

PENGILLYS

SOLICITORS ● MEDIATORS

Financial Remedies

Clear, strategic advice for
financial resolution



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Your guide to Financial Remedies

At the end of any relationship, be it marriage, cohabitation or civil partnership, there are likely to be financial consequences arising.

Marriage or Civil Partnership

There will always be financial support for children, either to be resolved by mutual consent or by an application to the Child Maintenance Service. Otherwise the parties will need to consider whether there is any ongoing regular financial support (often known as Maintenance or Periodical payments) to be paid by one to the other.

If necessary, urgent interim financial support can be taken and, furthermore, if appropriate, secured provision can be sought.

The Court also has power to deal with Transfer of Property and Lump Sum. It may also be necessary to explore Pension Sharing or Pension Adjustment.

Cohabiting Couples

The provision for child support remains.

The Court has power to deal with any jointly owned property or, if grounds can be established, under the Trusts of Land and Appointment of Trustees Act.

Otherwise on the end of a cohabiting relationship there is no entitlement to financial provision, lump sum or pension sharing.

If a cohabiting partner dies then the survivor may be entitled to establish a claim on the basis of the Inheritance (Provision for Family and Dependents) Act 1975.

The Criteria

These matters are resolved taking into account all the circumstances of the case, treating as the first consideration any children of the family, and relevant factors under Section 25 of the Matrimonial Causes Act 1973.

Matters to which the Court is to have regard in deciding how to exercise its powers.

The Court has an obligation to have regard to all of the circumstances and the first consideration is to the welfare of any child under 18 and with regard to the following matters which, expressly, are not in any priority. Collectively they are taken into account as part of all of the circumstances. The Section 25 statements needs to specifically to refer to them.

- (a) The income, earning capacity, property, and other financial resources which each of the parties to the marriage has, or is likely to have in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which would, in the opinion of the Court, be reasonable to expect a party to the marriage to take steps to acquire.
- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage have, or is likely to have in the foreseeable future.

- (c) The standard of living enjoyed by the family before the breakdown of the marriage.
- (d) The age of each party to the marriage and the duration of the marriage.
- (e) Any physical or mental disability of either party to the marriage.
- (f) The contributions which each of the parties has made, or is likely in the foreseeable future to make, to the welfare of the family including any contribution by looking after the home or caring for the family.
- (g) The conduct of each of the parties if, in the opinion of the Court, it would be inequitable to disregard it.¹

¹ Conduct really has to be gross and is rarely relevant

Different criteria applies to civil partnership and cohabiting couples so please seek advice.

Final Order

If you obtain an agreement or Order ending your marriage or relationship, it is crucial that consideration is given to an Order concluding financial remedies (even if only for a clean break), so as to avoid potential difficulties in the future. If claims are not disposed of they can be resurrected.

Please contact a member of our Family team for guidance and advice.

Emergency Procedures

From time to time it is necessary to preserve assets or seek other urgent injunctive relief from the Court and the Court has full powers in this regard and can also take steps following the conclusion of a matter to enforce and implement its awards.

Experienced members of the Pengillys Family team can assist in connection with any of these matters and always seek to avoid conflict and, where necessary, to obtain an expedient settlement or, otherwise, to engage in Alternative Dispute Resolution to assist you to secure the appropriate outcome.

We hope that this short guide has helped you. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Family team.

Please visit www.pengillys.co.uk where full details of our Family team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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We can also advise on:

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