

# Part 02

## **Domestic Abuse and Money Education:**

Resources and information to support effective practice



# Chapter 07:

## Financial arrangements on relationship breakdown

### 7.1 Introduction

The law relating to finances on relationship breakdown is very complicated, and the entitlements an individual has will depend on factors such as whether she is married or not married, whether there are children, any agreements between the parties, and contributions (financial or non-financial) which have been made to the finances and the relationship by either party.

In this chapter, we look at the law relating to financial relief, division of property and child support in divorce and cohabitation disputes, and set out some of the key information on financial rights further to relationship breakdown<sup>56</sup>.

**Each person's individual situation will be different, and it is vital to explain to the woman**

**you are supporting the importance of seeking independent legal advice.**

The chapter is divided into four main sections:

- A:** Financial relief on marriage breakdown;
- B:** Parties who are not married nor in a civil partnership;
- C:** Financial support for children;
- D:** Legal aid;
- E:** Family mediation information and assessment meetings (FMIAM) and mediation.

For more information on any of the issues covered in this chapter, Rights of Women publish a number of useful Guides (See Chapter 12 for full list and how to obtain these.)

## A Financial relief on marriage breakdown

### 7.2 Financial relief on marriage breakdown: introduction to the issues

Dividing up property following the breakdown of a marriage can be very complicated. Once one or other party has started divorce proceedings, either party can apply to the court for orders to deal with the matrimonial property. This is known as applying for financial relief. The law in relation to these applications is set out in the **Matrimonial Causes Act**

**1973 (MCA 1973)**. For details on divorce see **Rights of Women's Guide to Divorce** and for more information on finances see **A Guide to Financial Arrangements after Marital Breakdown**.

Matrimonial property can include:  
■ the family home;

<sup>56</sup> For legal rights in relation to protection from abuse, and making safe arrangements for children, see Chapter 8

- any other property owned solely or jointly by the husband and wife;
- the contents of the family home, cars and other vehicles;
- any savings, life assurance, pensions, etc.;
- the family business.

The court can also look at debts owed by either party during the marriage.

## 7.3 What orders can the court make?

There are a wide range of orders the court can make to divide matrimonial property including the following:

- a. Transfer a property from one party's name to the other's.
- b. Transfer a tenancy from one party's name to the other's.
- c. Order that a property is sold and that the proceeds of sale are divided between the parties.
- d. Place a legal charge over property or other assets in favour of one party.
- e. Award a lump sum to one of the parties.
- f. Order future payment of a lump sum from pension funds.
- g. Vary pensions.
- h. Order maintenance.

## 7.4 Matrimonial home rights

If the matrimonial home is in joint names, both parties have equal rights as home owners and one party cannot dispose of the property without the other party's consent. If one party owns the property in his or her sole name, the other party to the marriage will only have the right to live there as long as the marriage is continues (i.e. until the divorce is finalised.) If the survivor's partner is the sole owner of the property, she can protect her rights to the property by registering her matrimonial home

rights at the Land Registry. This will mean her husband or civil partner will not be able to sell the property without her consent.

If a woman's husband/partner has been abusive to her and she no longer wants to live with him/her, she should consider applying for an occupation order and/or a non-molestation order (for more details see **Domestic violence injunctions** in Chapter 8 and **Rights of Women's Guide to Domestic Violence Injunctions**).

## 7.5 Maintenance

Sometimes the court will decide that one party to the marriage should pay the other maintenance, usually on a monthly basis. The court will only award maintenance where appropriate; for example, where the husband and wife have been in a long marriage he earns significantly more than she does, and she is the primary carer of young children.

Sometimes the court will order that the father of the children has to pay a sum of money for the children - for example, to pay for school fees - in addition, to child maintenance. (For more information see **Child maintenance**, section 7.14).

## 7.6 How does the court decide how to divide matrimonial property?

When considering how to divide the matrimonial assets the court will look at **all the circumstances of the case**, but must firstly consider the **welfare needs of any children in the family who are under 18**.

After that, the court will then consider:

- the **income, earning capacity, property and financial resources** of the wife and husband, now and in the future;
- the **financial needs, obligations and responsibilities** of the wife and the husband now and in the future;
- their **standard of living** before the breakdown of the marriage;
- the **ages** of the parties and the length of the marriage;
- any **physical or mental disability** that the wife or husband has;
- any **value or benefit that would be lost when divorced**, for example, a pension benefit.
- any **contributions the wife or husband has or will make, including looking after the home and caring for children**. The court tends to treat raising children and running a household as an equal contribution to the marriage as being the main earner. The court will also sometimes take into account contributions made by one party before the marriage, for example, where one party introduced a great deal of capital in the beginning.
- any **behaviour that the court considers relevant**. Bad behaviour or conduct will only be taken into account if a fair result could not be achieved if the behaviour was not considered. In very few cases is conduct serious enough to be taken into account;

## 7.7 Behaviour and domestic violence

When dividing joint assets the court only considers behaviour where it is “inequitable to disregard it”; this means where it would be unfair if the court did not consider it. The court usually only considers behaviour which directly affects a party’s financial position when dividing joint finances. However, the courts have recently taken very serious domestic violence into account where it has affected a woman’s

earning capacity. For example, in a recent case the husband subjected the wife to a vicious knife attack and was subsequently convicted of rape and the wife could no longer continue her career as a police officer. The court considered it fair in all the circumstances that the wife should get a greater share of the matrimonial assets, including the entire proceeds of sale from the former matrimonial home.

## 7.8 The pre-court process

Before a solicitor can properly advise a client on her entitlement further to a divorce, she or he will need to have details of both parties’ financial situation. Both parties to the divorce must, therefore, provide full and frank details of all their financial resources. This is called **financial disclosure**<sup>57</sup>.

If the parties are able to agree, the client should still take legal advice from a solicitor, and in order for the agreement to be legally binding, it should be drawn up into a **consent order**.

If parties cannot reach an agreement they must, with a few exceptions, consider mediation<sup>58</sup>.

<sup>57</sup> This process can be done either through correspondence between the solicitors, or, if this fails, through the court procedure.

<sup>58</sup> Mediation is a voluntary process which aims to help the parties negotiate with the help of a mediator.

There is now a requirement to attend a Family Mediation Information and Assessment Meeting (FMIAM). For more information see section E, on Family Mediation Information

and Assessment Meetings and mediation. Mediation is not appropriate if there has been domestic violence or there is an imbalance of power between the parties.

## 7.9 Application to court

If the parties are not able to reach an agreement either party can make a formal application for financial relief to the court by filling in a **Form A** at a cost (at the time of writing) of £240.

For more information on the court process see Rights of Women's Guide to Financial Relief on Matrimonial Breakdown.

## 7.10 Dissolving Civil Partnerships

We recognise that domestic abuse occurs in same sex relationships and the law is largely the same for heterosexual persons who are married as persons in same sex relationships who are in civil partnerships. In the above section we have focussed on financial relief and divorce, but the

legal situation will be very similar for those in civil partnerships. For more information on dissolving civil partnerships see Rights of Women's **Guide to Dissolving Civil Partnership** and **Guide to entering Civil Partnership**.

## **B** Parties who are not married or in a Civil Partnership

The information in this section applies whether people are in a same-sex or opposite sex relationship.

## 7.11 Division of property on relationship breakdown where parties are not married

If the title deeds to a property are in the names of both parties, then they are both legal owners of the property. Even if the parties are not married, and the abuser owns the property they live in, the survivor might still be able to remain in the property. She might also have a financial interest in that property, depending on any contributions she made and

any agreement between the parties. For more information on cohabitation rights see Rights of Women's **Guide to Living Together and the Law**.

**Everyone's individual circumstances will be unique, and it is important that the survivor seeks independent legal advice if she is affected by any of the issues discussed here.**

## 7.12 Owning a property in joint names

There are two ways in which a property can be owned jointly. If the parties are *joint tenants* they have equal shares in the property. If one party dies the property would automatically go to the

other joint tenant without forming part of the deceased's estate. For this reason, if someone separates from her partner, she may want to sever the tenancy to ensure that she can leave her share

in the property to someone else.

If the parties are **tenants in common**, they will each have a defined share of the property, and their shares will be specified in an agreement. This could be either an equal share (i.e. 50 / 50) or unequal shares (e.g. 70 / 30). A tenant in common can make a will and leave their share to someone else in the event of their death: it will not automatically become their partner's.

There is also a difference between being **named on the mortgage** of a property and being **named on the deeds**. The title deeds are the legal documents that confirm who owns the property. A mortgage is a loan to finance paying for the property. If a person is named on the mortgage, this means they are responsible for paying it, but it does not mean they are an owner of the property. Normally, anyone named on the mortgage, will also be on the title deeds, but it is important to check this.

## 7.13 Property in the sole name of one of the partners

If a woman lives in a property that is registered in her partner's sole name, she is not a legal owner of the property and does not automatically have any legal rights in relation to it. If she and her partner separate, he can ask her to leave, and he can lawfully change the locks of the property. Similarly, if the property is in her sole name she can legally change the locks and ask her violent partner to leave and he will have no legal right to occupy.

If she has experienced domestic violence she might be able to secure an occupation order to enable her to remain in the property and to restrict her partner's ability to occupy the property for a period of time, even if it is in his sole name. See Chapter 8., section 8.4

### Occupation orders.

Looking at the title deeds of the property alone will not necessarily provide the answer to who is entitled to live at the property or benefit financially from it. There are three ways in which a woman might be able to establish a financial interest in a property registered in her partner's sole name:

- If she has made a **payment towards the purchase** of the property (including contributions to the deposit or to mortgage payments) she might be entitled to a share of

the property proportionate to the amount of money she contributed.

- If she **entered into an agreement, arrangement or understanding** that the property was to be shared, and she relied on that agreement to her detriment, the court could decide that she should be entitled to some financial benefit from the property.
- If she has been led to **believe that she owned or part owned the property**, or she was led to believe that she would own the property in the future, and she relied on this agreement to her detriment, (for example, by paying money towards the mortgage or paying for renovations) again the court could decide that she should be entitled to some financial benefit from the property.

To make a claim, she will need to apply to the County Court under section 14 of the **Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)**. This is a complicated civil law procedure and she should seek expert legal advice. She can register her potential interest in the property by registering a notice on the legal title of the property by contacting the Land Registry.

For further information, see Rights of Women's Legal Guide, **Living together and the law**.

## C Financial support for children

### 7.14 Child maintenance

Parents have a legal responsibility to provide for their children even if they no longer live with them. When child maintenance is paid it can make a significant difference to the life of the family receiving it. If a woman's child or children live with her and she leaves her violent partner, he can be required to pay child maintenance regardless of whether he has parental responsibility or has any contact with the child. For more information see Rights of Women's **Guide to Child Support**.

Child maintenance can be agreed with the other parent by negotiating this directly, attending mediation to reach an agreement, or through solicitors' correspondence. However, negotiating a private agreement might not be possible or safe for those who have experienced domestic violence, and mediation with a violent ex-partner will not be appropriate. Some women who have experienced violence might, for safety reasons, elect not to pursue a claim for maintenance at all.

If the parties do reach an agreement this can be recorded in a private agreement form available from **Child Maintenance Options**. However, this agreement will not be legally binding.

If it is not possible or safe to negotiate or reach an agreement, or the agreement with the non-

resident parent has broken down, the parent with care of the children can make an application for child maintenance to the Child Support Agency (CSA). This is currently free of charge<sup>60</sup>. A maintenance order from the CSA will be legally binding.

Under the current scheme, child maintenance is worked out on the basis of the non-resident parent's net weekly income. There is a child maintenance calculator on the **Child Maintenance Enforcement Commission's website**.

The government is in the process of reforming the child maintenance system, and it is therefore subject to change. The new scheme for calculating child maintenance will be based on the non-resident parent's gross income, using income figures received from HMRC. This should mean that the onus will no longer be on the parent with care to produce evidence of the non-resident parent's income.

The government is also proposing that using the Child Maintenance Enforcement Commission (CMEC) to recoup child support will no longer be free. This is currently the subject of debate in parliament and it is important that you check the current position.

### 7.15 Seeking maintenance through Schedule 1 of the Children Act

There are certain limited circumstances in which a parent with care can seek orders from the Court under **Schedule 1** of the **Children Act 1989** (CA), in addition to seeking maintenance through the CSA; or sometimes Schedule 1 can be used where no CSA assessment is available.

This includes cases in which:

- the non-resident parent lives abroad;
- the income of the non-resident parent is greater than the statutory scheme's upper limit<sup>61</sup>;

<sup>60</sup> This is likely to change.

<sup>61</sup> Currently £104,000 per year after income tax, national insurance and pension contributions.

- the application concerns costs for a child's education or to support a child with a disability;
- the resident parent is seeking a lump sum of money, for example to provide a home for the child.

Under the CA 1989, a parent with care can apply to the court for a carer's allowance, a lump sum, or the transfer of property into her

sole name. When deciding an application the Court will consider all the circumstances in the case, including the welfare of the child.

Any financial provision that the court orders will last until the child reaches 18; or it can continue beyond that if she or he is, or would be, in full time education or training, or there are special reasons why the provision should continue (e.g. because the child has a disability and requires further support).

## D Legal aid

### 7.16 Eligibility for legal aid: the current situation

In some cases, legal aid can be claimed to help pay the costs of seeking legal advice and going to court. Currently, to be eligible for legal aid there is a **means test** and a **sufficient benefit test**, both of which must be met in order to be eligible for legal aid in family law proceedings.

Firstly, a person's means must not exceed the **income and capital limits** set by the Legal Services Commission<sup>62</sup>. Someone who is in receipt of income support, or income-based job seekers' allowance, will automatically be eligible. Otherwise, she will need to be assessed by a solicitor as to whether her income, disposable income, and capital meet the criteria.

There is a legal aid eligibility calculator available at

[www.legalservices.gov.uk/civil/guidance/eligibility\\_calculator.asp](http://www.legalservices.gov.uk/civil/guidance/eligibility_calculator.asp)

Alternatively, clients should be referred to Community Legal Advice to check whether they are eligible (0845 609 6677), or to a local legal aid family law firm (see Chapter 12 for details on how to find a family law solicitor).

Secondly, the proposed claim must pass the **"sufficient benefit"** test in order for legal aid to be awarded to fund the matter. Legal aid would not be available where a claim is viewed to be hopeless, or does not pass the cost/benefit test; for example, it might not be financially viable to obtain legal aid to support an application for financial relief where there are only household items and no property.

### 7.17 Legal aid for domestic violence injunctions

There is now a discretionary waiver of the income, disposable income and capital for obtaining legal aid to apply for a domestic violence injunction. This means that irrespective of the client's financial means, she will be eligible

for legal aid to apply for a non-molestation order, an occupation order, a forced marriage protection order or a restraining order.

She will, however, subsequently have to pay

<sup>62</sup> Currently £104,000 per year after income tax, national insurance and pension contributions.



a contribution to her legal costs, if her income and capital are above the specified limits. On average, depending on her income and capital, the contribution is between £100 and £200 per

month, and sometimes the legal aid contributions can work out as more expensive than paying privately. The applicant should discuss this with her solicitor or with Rights of Women's advice line.

## 7.18 The statutory charge

Legal aid is not free: being eligible for and receiving legal aid does not necessarily mean that there will be nothing to pay for advice and representation. In broad terms, if a client is in receipt of legal aid, and benefits financially from the case, any money or property that she receives can be taken by the Legal Services Commission and used for payment of solicitor's fee; or the LSC might apply to take a legal charge over her property. If a client is receiving legal aid, her solicitor should explain the potential future impact on her financial settlement.

If a woman does not receive any financial gain from her case - for example, she receives legal aid only for a child contact matter and/or to obtain a domestic violence injunction - she will not have to pay this money back. However, if she later brings an application for financial relief after marital breakdown and receives a financial award, the Legal Services Commission could take a portion of her award to pay for her solicitor's costs.

## 7.19 The Proposals for reform of legal aid charge

Reform of the legal aid system is currently the subject of debate in parliament and it is important to check the current position. The government has proposed removing legal aid for private family law, except for victims of domestic violence. Despite this specific exception, the evidence that, under these proposals, women

will be required to produce to access public funding is very restrictive, and it is not yet clear whether or not some forms of abuse (e.g. financial or emotional abuse) will be covered at all<sup>63</sup>. If these proposals become law, they would be implemented sometime in 2013/2014.

## E Family mediation information and assessment meetings and mediation

### 7.20 Mediation

Mediation is a voluntary process which aims to help parents negotiate with the help of a mediator. A woman might be eligible for free mediation if she is on benefits or a low income. For further details about legal aid see above. Mediation is not appropriate for a woman who has experienced domestic violence, and she

should therefore advise the mediator of this prior to attending a FMIAM, or, failing that, at the first available opportunity.

If either party to family law proceedings wishes to apply to the court, they are required to attend a **family mediation information and**

<sup>63</sup> See research conducted by Rights of Women and Welsh Women's Aid. [www.rightsofwomen.org.uk/pdfs/Policy/Evidencing\\_dv\\_the\\_facts.pdf](http://www.rightsofwomen.org.uk/pdfs/Policy/Evidencing_dv_the_facts.pdf)

**assessment meeting (FMIAM)** prior to making an application, for example, for financial relief or child contact, unless they fall within certain exceptions (see below). The FMIAM is a meeting about mediation where the mediator must consider whether the dispute may be capable of being resolved by mediation. The person making the application to the family court is expected to find a mediator and arrange **the FMIAM**.

The **exceptions** to the requirement to attend a FMIAM include:

- The mediator is satisfied that mediation is not suitable because another party to the dispute is unwilling to attend the FMIAM
- A mediator decides that a FMIAM is not suitable, for example because there has been domestic abuse or an imbalance of power in the relationship
- A mediator has decided within the last 4 months that the case is not suitable for a FMIAM or for mediation
- There has been an allegation of domestic violence against a party to the dispute. This allegation has resulted in a police investigation, or an application for a non-molestation or occupation order has been made in the last 12 months (for more information see Rights of Women's Guide to Domestic Violence Injunctions).

Although rare, if an individual fails to comply with the requirement to attend a FMIAM, and does not fall within the exceptions, they may be required to pay the other party's legal costs. If an FMIAM is to take place the client should ask the mediator to see her separately from her ex-partner and explain her concerns about mediation.

## 7.21 Summary

Survivors who are seeking a divorce or dissolution of a civil partnership are advised to consult a solicitor, particularly if decisions need to be made about joint property.

- Options for financial relief and division of property vary according to marital status and legal ownership of property.
- Child maintenance can be arranged using the Child Support Agency/CMEC. Reforms are planned in future and this might mean using CMEC will be subject to a fee.
- Legal aid might be available to help pay for legal advice and representation, but this is likely to be considerably restricted in future.
- Experience of domestic violence should exempt survivors from the requirement to go to family mediation. If referred to the initial assessment session, FMIAM, they

should tell the mediator about the abuse at the first available opportunity.

The issues covered in this chapter can be complex and we have only provided a very basic overview of terminology, law and court practice and procedure. We would strongly advise you to seek legal advice either by telephoning the Rights of Women legal advice line, or consulting a solicitor.

**Please note that the law as set out here is as it stood at the date of publication. The law might have changed since then and accordingly you are advised to take up to date legal advice. We cannot accept responsibility for any reliance placed on the legal information contained in this chapter. It is designed to give general information only.**