



DAWSONS  
SOLICITORS

## Family

### The Family Department

The breakdown of a family relationship is often the most difficult period of the lives of all concerned and should be handled with great understanding.

At Dawsons, we are able to talk you through the issues and options and help you to decide the best way of proceeding in your particular case. We deal with a whole range of clients from those without substantial assets to high net worth individuals with assets in different jurisdictions.

We are used to dealing with complex and sensitive cases. We will advise you on all the legal avenues available to you. If your case is suitable for mediation and you wish to attempt to resolve matters this way, we will assist you in finding the best mediator to suit your circumstances, and will continue to advise you through that process. If mediation is not appropriate we will negotiate financial matters on your behalf or if Court proceedings are issued, we will prepare all the Court documentation.

Whatever role you wish your solicitors to fulfil, whether as a background adviser or to conduct the entirety of your case, it is essential that you obtain good legal advice early on. It is important not to make tactical errors at the outset of your case which may lead to difficulties later on.

When you look for a solicitor, choose someone you have confidence in, and with whom you have a good rapport. After all, you are trusting this person with assisting you in making decisions which may affect the rest of your life and perhaps the lives of your children.

At Dawsons we are conscious of the costs involved in instructing a solicitor and we will consider whether it is financially worthwhile for you to adopt a course of action at any given stage.

In addition, to help keep you informed of the costs being incurred, you would receive regular interim bills.

### Marriage Breakdown

If you are married and it seems that the relationship is ending, what can you do?

- You may wish to live separately from your spouse and reach an agreement as to what should happen for the future. The agreed terms can be set out in a separation agreement, which can deal with a whole range of matters including when and whether you will get divorced, the arrangements for the children and financial matters
- You may decide that you want to end the marriage and issue divorce proceedings. A Decree of divorce can be granted on any of the following grounds:
  - Adultery by the other party
  - Unreasonable behaviour of the other party
  - Desertion (i.e. the other party left without just cause) for two years
  - Separation for two years where both parties consent to the divorce
  - Separation for five years

The procedure for divorce is fairly simple and generally takes between four to six months. Once the final Decree of divorce (the Decree Absolute) is made, you will be free to remarry if you so wish.

## Financial Provision

The House of Lords' landmark decision in *White v White* in 2000 is said to have been the most important decision in relation to financial settlements in the last 30 years. The Court indicated that before reaching a firm conclusion about a financial Order, the Judge should check his tentative view of the division of assets against the "yardstick of equality". The Court emphasised that this was not to introduce a legal presumption of equal division although many people seem to have assumed that it means a 50/50 split.

The Court is actually looking for what it considers a "fair" outcome and will weigh up various factors including the financial needs and available resources of both parties and their contributions. As a result of the decision in *White v White* there was a growing trend in cases of high value for the husband to try to demonstrate that he had made a "stellar contribution" to the finances of the marriage in order to tilt the division of assets in his favour. The Court of Appeal indicated in *Lambert v Lambert* that this will only be a successful argument in exceptional circumstances and this was confirmed by the House of Lords recently in *Miller and McFarlane*. In fact, each case depends on its unique circumstances and the Court has a wide discretion. At Dawsons, we would advise you of the likely split of the assets in your particular case, and on the question of maintenance being payable.

The question of spousal maintenance was recently considered by the House of Lords in *McFarlane*. After a long marriage Mrs McFarlane was awarded £250,000 pa for life (33% of Mr McFarlane's net income) in order to cover her needs, share the "fruits of the marital partnership", and provide "compensation" for the sacrifice she made in giving up her high earning career as a city solicitor. The level of

income above needs made this case unusual on the facts but the concepts of sharing and compensation are likely to be more generally applied.

It may be that agreement can be reached in relation to all financial matters between a separating or divorcing couple. If so, a separation agreement may be drawn up or, if divorcing, the Court can issue a consent Order. If agreement cannot be reached by a divorcing couple, they may issue a Court application to resolve financial matters.

The first stage in dealing with such a Court application is for the two individuals to complete a document called a Form E which requires detailed financial information. Forms E are exchanged by both parties and then their solicitors prepare a Questionnaire to the other party setting out what additional information and documents they require.

Next, the couple attends what is known as the First Appointment at Court, with their own solicitors, which usually lasts about half an hour. At the First Appointment, the District Judge will consider the Questionnaires and decide which questions should be answered and which documents should be provided by each of the parties. The Court will then give a date for what is known as the Financial Dispute Resolution.

The whole purpose of the Financial Dispute Resolution is to obtain the Court's assistance in resolving matters. It is an appointment before a District Judge to see if an agreement can be reached. If it can, then the case will proceed no further. If it cannot, the District Judge will give directions as to how the case should be brought to trial.

If your case does proceed to a trial then the Court will be obliged to consider certain factors when dealing with your financial case. These are

called the Section 25 factors and can be summarised as follows:

- 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
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each spouse and the length of the marriage
- Any physical or mental disability of either of the parties to the marriage
- The contributions which each of the parties has made, or is likely to make in the foreseeable future, to the welfare of the family, including any contribution by looking after the home or caring for the family
- The financial conduct of each of the parties, if in the opinion of the Court it would be inequitable to disregard it
- The value to each spouse of any benefit (for example a pension) which, by dissolution or annulment of the marriage, that person will lose the chance of acquiring

The law is always developing and changing in relation to financial applications and we will keep you informed of the current case law when dealing with your case.

## Children

Decisions about who a child will live with, or what levels of access and child contact separating parents are allowed are normally taken outside Court. The Court will only intervene if agreement cannot be reached.

Generally speaking, the parents simply live apart and come to arrangements themselves or via their solicitors as to who shall look after the children on a day to day basis and as to the arrangements for contact.

However, if the parents cannot agree, then Court Orders can be made, which include:

- A Residence Order – settling who a child lives with
- A Contact Order – allowing a child to visit or stay with a named person
- A Prohibited Steps Order – stipulating that the consent of the Court is needed before a specified action concerning a child can be taken
- A Specific Issue Order – giving directions about particular issues relating to a child e.g. his or her education.

The Court's primary consideration in these matters is the welfare of the child. The Court considers the following welfare criteria in every case:

- The wishes and feelings of the child (considering the child's age and understanding)
- The child's physical, emotional and educational needs
- The likely effect on the child of any change in circumstances
- The child's age, sex, background and any relevant characteristics
- Any harm which the child has suffered or is at risk of suffering
- How capable each of the parents and any other relevant person is of meeting the child's needs

Applications for a Residence or Contact Order start with a Conciliation Appointment before a District Judge and a CAFCASS (previously known as a Court Welfare) Officer.

If the child concerned is over the age of 9, he or she should also attend the appointment (but cannot go into the Court room).

The Court will try to persuade the parents to agree terms. If agreement cannot be reached, no Order can be made and so a CAFCASS Officer will then be appointed by the Court to prepare a report for the Court. Both parents will then have the opportunity of filing statements for the Court.

If the matter proceeds to a hearing, the parents will give evidence to the Judge about their case.

Applications in respect of children are not limited to the parents. For example, the grandparents may apply in their own right for contact with a child.

## Child Support

On 3 March 2003, the new Child Support Act came into effect. The Court is now only able to make an Order for child maintenance if:

- There is agreement between the parents, though it will last only for a one year period after which either parent is free to apply to the CSA (see below) for an assessment
- There are school fees to be paid
- The non-resident parent's income exceeds a certain limit (when a "top up" Order can be sought)
- There was a pre-existing child maintenance Order which needs changing.

If it is not possible for agreement to be reached between the parents, then a government agency called the Child Support Agency (CSA) assesses what sums should be paid as child maintenance. This is based on 15% of the non-resident parent's net income for one child, 20% for two children and 25% for three or more children.

There are, in addition, other important factors which can affect the final amount and we, at Dawsons, will be able to advise you of these.

In most cases parents agree to pay the amount of child maintenance that the CSA would otherwise stipulate.

## Pre-marital Agreements

A pre-marital agreement is an agreement reached between two people who intend to marry and wish to regularise and organise the legal position of their assets if they subsequently divorce.

In the UK pre-marital agreements are currently not binding but are a factor which the Court may take into account when assessing the division of income and assets on divorce. This contrasts with America and some European countries, where pre-marital agreements are binding. However these agreements are likely to be of no effect if the couple have children.

A pre-marital agreement will usually state the terms for the division of property, bank accounts, insurance policies, shares or other assets owned solely or jointly by the parties. A pre-marital agreement can also provide for the payment of maintenance by one party to the other. It can deal with ownership of property and occupation of a home.

It is crucial when drawing up a pre-marital agreement that both parties are represented by separate solicitors. In addition, there should be a complete disclosure to each other of the parties' individual financial circumstances.

## Unmarried Couples

Where two people have no present intention of marrying, we can prepare a cohabitation agreement. This agreement will set out the conditions for dividing the assets, if there is a subsequent relationship breakdown.

We are also able to advise you on legal matters and deal with property disputes on your behalf. When children are involved, we will explain to you how the amount of child maintenance is calculated, and will help you deal with issues such as residence and contact.

### Civil Partners

We can advise clients who may be considering entering into a civil partnership on the legal ramifications of their decision.

If appropriate, we can prepare a pre-registration agreement, similar to a prenuptial agreement. We can also advise on the impact of dissolution of a civil partnership.

## Family Law at Dawsons

This brochure is only a brief guide to separation and divorce. As each individual case is different, it is essential for you to obtain full and proper legal advice.

Within the family department at Dawsons, we can help you with:

- Separation and divorce
- Children disputes
- Financial matters (including lump sum payments, and transfer of properties)
- Maintenance Orders and variation of existing Orders
- Tax matters
- Jurisdictional issues and international disputes
- Nullity of marriage
- Paternity disputes and DNA testing
- Cohabitation agreements and disputes
- Civil Partnership matters
- Pre-marital contracts
- Inheritance Act applications
- Adoption
- Enforcement of Orders both UK and foreign.

We also offer a mediation service.

For further assistance, please contact:  
Partner and Head of Department  
Suzanne Kingston  
Tel +44 (0)20 7421 4814  
Email [s.kingston@dawsons-legal.com](mailto:s.kingston@dawsons-legal.com)