

When two parties to a marriage or civil partnership separate the issues that are frequently the most difficult to resolve are the questions of the division of property and assets between the parties and the parties' continuing financial responsibilities to one another and to the children. Whilst there have been few reported cases dealing with the resolution of such issues in the situations of civil partnership, it is reasonable to assume the following principles will be applied.

Most cases settle through negotiation without going to Court. In advising you we will bear in mind the factors which the law says a Judge must take into account. Those factors will apply to each case but as each situation is different, so are the results. It is not usually helpful to compare cases with friends or relatives as you will not know their full circumstances.

The aim of the court is to achieve **fairness** between the parties. The court will consider all the circumstances of the case giving **first consideration to the welfare of any children of the family** aged under 18 years.

The factors taken into account include:

1. Each person's income and future earning potential.
2. Each person's savings and other assets.
3. Each person's present and future financial requirements/needs and responsibilities.
4. The welfare/needs of any children involved.
5. The parties' standard of living before the break-up.
6. The parties' contributions to the welfare of the family.
7. The length of the marriage.
8. The ages and health of the parties.
9. In exceptional cases only, the behaviour of the parties.

Because these factors will apply differently to each case and because a Judge has wide powers when deciding, it is impossible for us to guarantee the outcome of your case.

We can of course advise you of likely outcomes based on previous experience and recent cases reported through the legal press.

Both parties have a duty to tell each other of their financial position before any Court Order or Agreement is made. This is known as giving “**full and frank disclosure**”. Some clients, who may have already reached agreement, are prepared to waive that right. It is important to realise that most Order/Agreements are made in full and final settlement of any and all claims. This means you cannot come back for more, if you discover the other person has more money than you realised, unless you ask for full disclosure, and it has not been properly given.

Problems with disclosure are one of the major causes of delay and expense. We appreciate some clients do not wish to disclose information, but it is a legal requirement and failure to disclose usually only causes unnecessary difficulties.

If you or your spouse/civil partner are living with a new partner, their contribution to your financial situation could affect the extent of your needs, as determined by the Court. This is a subject which can cause misunderstanding and resentment. You have a duty to disclose a new partner’s finances insofar as they affect your household’s income and expenditure.

**It is important you tell us immediately if you are thinking of remarrying/forming a civil partnership or living with someone as it will affect your case.** Failing to tell your ex of an intention to remarry or cohabit, which then occurs after the Agreement or Order is made, can be grounds for an appeal. You may be prevented from making a later claim if you remarry/form a civil partnership before your claim is started. It does not mean you must always finish your case before remarriage/forming a civil partnership but please discuss it with us before making any plans.

We hope this explains some of the basic principles which apply. More individual and detailed advice will of course be given to you throughout your case as and when necessary.

## CHILD MAINTENANCE

With regard to child maintenance, in most cases the Courts no longer have power to make Orders for child maintenance except by agreement, therefore child maintenance has to be dealt with through the **Child Maintenance Service** (formerly the Child Support Agency).

### **Perveez Sethna**

Partner

Whitstable Office

01227 276276

Perveez.Sethna@parrylaw.co.uk

### **Victoria Evans**

Solicitor

Whitstable / Herne Bay Office

01227 276276

Victoria.Evans@parrylaw.co.uk

### **IMPORTANT NOTICE**

This literature is intended purely as an overview of this area of law in England and Wales and no action should be taken upon it without specific legal advice. It is not intended as a substitute for formal legal advice on your specific circumstances