

The background of the page is a blue-tinted photograph of a man and a woman sitting at a table, possibly in a meeting or consultation. The man is on the left, wearing glasses and looking towards the woman. The woman is on the right, looking towards the man. Their hands are clasped on the table. The overall tone is professional and serious.

# **A Guide to Financial Planning during a Relationship Breakdown**



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**Whatever  
your personal  
circumstances  
our financial  
planners will help  
you navigate your  
options with respect  
and compassion.**

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## Welcome to bdhSterling

This Guide to Financial Planning during a Relationship Breakdown is designed for anyone who is in the process of getting divorced, separating or going through a relationship breakdown, or if you are assisting somebody who is. The breakdown of a relationship is likely to be a stressful and emotional time. It also involves some big decisions that can affect your future and obtaining the right information and advice is extremely helpful.

# Financial implications of divorce

During the course of a marriage or civil partnership, your financial affairs will have become intertwined and it is likely that you will have built or acquired joint assets together as well as individual assets.

These could include:

- The family home
- Pensions
- Joint accounts and savings

If the relationship has come to a permanent end and is going to result in a divorce, these assets may need to be split to allow the parties to go their separate ways.

The assets need to be valued before they can be divided. In the case of pensions, understanding the options for how they can be split can make a huge difference to the eventual agreement.

## Personal financial planning

The end of any relationship where you live together will mean a significant change to both parties' ongoing financial situation, especially if you have children together. Monthly income may decrease while the cost of running a house and other expenses may remain the same.

A person's future earning potential or income may also be affected if they have to change jobs or hours, and the household income will be significantly reduced and may affect their planned retirement date or if they can afford to retire.

## How can we help?

We can work in conjunction with your solicitor to help you analyse the assets in the marriage or civil partnership, work out your income needs and consider your options to ensure that a fair outcome is reached.

Many people will be concerned about how long their money will last and this will be a key question for financial planners when considering your options.

### By using a detailed fact-finding process we will determine your:

- Monthly outgoings
- Any planned expenditure
- Income
- Savings
- Investments
- Tax liabilities
- Debts (i.e. loans and mortgages)
- Expected inheritance

This information is used to create a personal forecast of what your future financial situation could be, and most importantly whether you have enough money to support yourself and live the life you want.

We take into account factors such as inflation, the possible returns on your pension or investments, and planned expenses you may have in the future.

We see this as an ongoing process over many years and our advisers can update your forecast as you progress to see how your situation has changed and how this affects your future.

To arrange an appointment call **01372 724 249** or email **infouk@bdhsterling.com**

# What do I need to know about my assets?

## Pensions

Regardless of which method you choose to agree your financial settlement, the pension provisions of both parties need to be included and confirmed through a court order.

If you are not married or in a civil partnership, your pensions can't be shared if you separate.

If either party to a divorce has or is likely to have any benefits under a pension arrangement, they must obtain a valuation of their benefits from the pension company or trustees of the scheme, including how this was calculated. This information must be passed to the other spouse or civil partner within seven days.

If a pension scheme is a defined benefit scheme, i.e. it pays a certain amount per year for life, the capital value needs to be calculated by the scheme. This is known as the Cash Equivalent Value.

There are three ways of dealing with pension rights.

- Offsetting them against other assets
- Pension Attachment Orders (previously known as earmarking)
- Pension Sharing Orders

If a party has more than one scheme, different approaches may be applied to each scheme.

## Offsetting

Offsetting provides a clean break to the parties by taking an overall view of the assets involved, and offsetting the pension against other assets, for example, the house or other investments.

### This may be appropriate if:

- The transfer value is small and the alternatives are not worth considering
- Each partner has sufficient pension provision of their own
- There is a greater need to secure the family home if children are involved for example
- The parties are young and have good prospects of building future pension benefits after divorce
- There are overseas pension assets which can't be split by a UK court order

## Attachment Orders

Attachment Orders are when the court directs the pension trustees to pay part or all of the member's pension benefits to the ex-spouse on retirement or death. These have not been very popular because they are lost if the ex-spouse remarries, and the ex-spouse has no control over when the benefits are taken. If the member continues working late in life, the pension benefits are delayed until they retire.

## Pension Sharing

Pension sharing also allows the couple to have a clean break as the pension benefits are divided at the point of divorce and a legal transfer of ownership of benefits is made from the member to the ex-spouse.

### Pension sharing may be appropriate where:

- There is a large transfer value and the ex-spouse has no pension rights of their own
- The ex-spouse is unlikely to be able to accrue sufficient pension rights themselves

- Retirement income is more important to the ex-spouse than property rights
- The scheme may not be able to include the ex-spouse as a member
- The ex-spouse needs control of when the benefits are taken

There will inevitably be complications in practice and it is therefore important to seek professional advice to ensure that the right questions are asked, your needs are properly assessed and the right options are recommended for your circumstances.

## The family home

The matrimonial home is often the most valuable asset in a relationship. The house can be sold and the proceeds divided, however, if it is to be retained by one party then the other party may receive a greater share of other assets to equalise the overall division.

If there are children involved, then this will be an important factor in deciding if the house should be retained and who would remain in occupation.

If one party is to remain in the house but the mortgage is in joint names, the person who is leaving may be unable to obtain a mortgage on a new home. This problem can be overcome by releasing that person from the mortgage by a certain date in the future, which may involve selling the house at this point. Alternatively, they may be allowed to retain a share in the property by a secured legal charge, often until any children have finished their education.

You may be entitled to Private Residence Relief (against Capital Gains Tax) on any gain arising on the disposal of your only or main residence.

You can only receive relief on one property at a time apart from the transfer of your former matrimonial home if it is made within 18 months (this may reduce to 9 months in April 2020) of your last occupation of that address.

### Joint accounts and savings

In general, joint accounts and savings will be divided along with the other assets of the relationship. Complications have arisen when the purpose of the joint account was to achieve savings in inheritance tax but in most cases, this is not an issue.

### Inheritance and non-matrimonial assets

It is often the case that parties will bring assets to a marriage or civil partnership or they may receive inheritances while they are together. When it comes to the division of assets, a decision has to be made whether these are to be treated as matrimonial property or non-matrimonial property.

If they are treated as non-matrimonial then they should generally be excluded from the sharing principle unless the needs of one party cannot be met without accessing them.

If these assets have become intermingled with family assets over time, then this can lead to them being viewed as matrimonial property.



### Maintenance payments

As part of the financial settlement, one party may have been required to provide ongoing financial support.

The court can order regular monthly or weekly maintenance payments to a husband or wife while the marriage still exists, or after it has ended. It is in the interests of the person receiving these payments to protect them in the event that the person responsible for paying them is unable to do so through death, illness or accident.

This can be achieved through an insurance policy such as a family income benefit plan covering the period that the payments are going to be made. The settlement may require the payer to protect their own life in the interests of the recipient or the recipient may insure against the life of the payer.

This should be arranged before the divorce is finalised as once it is, the recipient may no longer have an insurable interest on the life of their ex-spouse.

# How do we agree on a settlement?

## Negotiation

Some couples may be able to negotiate a settlement between themselves, depending on how difficult the issues are. Sometimes emotions run high which can lead to arguments and in this case, it can be useful to negotiate through your solicitors.

## Mediation

Mediation involves the use of a trained mediator, who may or may not be a lawyer, to help couples to decide for themselves how best to resolve their issues. Mediators cannot provide advice or create binding settlements. To make sure that the agreed arrangements were fair and capable of becoming legally binding, a family lawyer would normally be involved.

## Family arbitration

Arbitrators have the power to make decisions that are binding on the parties and are useful where negotiation or mediation has been unsuccessful.

The parties must agree on the choice of arbitrator and decide the scope of the decisions to be made. The arbitrator could give a comprehensive financial resolution or a decision on a specific issue. There is greater control of the time scale of arbitration than there is through court proceedings.

## Collaborative divorce

The principal of collaborative divorce is that both sides are committed to the objective of achieving a mutually satisfactory solution for either separation or divorce.

The parties and their legal and financial planners as appropriate, will need to agree to the terms of a 'participation agreement' setting out the objectives and guidelines by which the settlement discussions will be conducted.

A key part of this agreement is that if the collaborative process breaks down and either partner decides to pursue court proceedings, then the respective lawyers and financial planners must step down. This ensures that everyone is focused on making a success of the process.

Financial planners have a unique role within the collaborative process. Their duty is to the success of the process, not to one party or the other. By taking a broad view of each party's assets, income, pensions and considering their interests, the financial planner can consider more creative options for the division of financial assets and the resulting settlement. The use of cash flow modelling and 'what if?' scenarios can be used to construct alternative financial strategies to inform the collaborative process.

At the end of the process, a court will normally be involved to convert the financial agreement into a court order.

## Litigation

If couples cannot reach a decision through these other methods, a court may be required to rule on the financial settlement.

A judge would decide what is fair, considering a range of factors.

There are no set rules to determine this although the first consideration is the welfare of any minor children.

The court will consider the accommodation needs of each party and what they need to live on at a suitable level. The primary carer of the children may need a larger share of matrimonial assets while the earner may need a higher share of income to pay for new accommodation. Surplus wealth is generally shared equally with non-marital assets returned to the party they belong to unless the needs of the other party cannot be met without accessing these assets.

# What do I do next?

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Hopefully, this guide has given you some useful information, and you will have a better idea of some of the financial issues involved in a divorce.

You may already have chosen a solicitor and taken some first steps towards a resolution, or you may be in the process of deciding what you should do.

We can help you to look at your financial assets and talk through your future expenses. We can work with your solicitor if necessary, especially with regard to the sharing of pensions. We can help you plan for your financial future after divorce.

We offer a free initial consultation so come and talk to one of our experienced financial planners over a cup of coffee.

Call us on **01372 724 249** or email [infouk@bdhsterling.com](mailto:infouk@bdhsterling.com)





## How to contact us

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