What’s mine is yours?

Elizabeth Hoddler suggests that seeking the advice of a specialist solicitor is paramount when starting separation or divorce proceedings.

How to protect your financial assets after separating from your spouse is a question solicitors are often asked, with concerns about splitting pensions and mortgages causing great stress. Divorce and separation is considered one of the most stressful life events, along with family bereavement and job loss. Worry and uncertainty that comes from separating all aspects of a life shared, emotionally, physically and financially can be assuaged by seeking expert advice from a solicitor, who specialises in this area of law.

Both parties will have questions, concerning their wishes to protect their hard-earned finances and investments, so naturally black and white answers will often be sought. It is important to note that a solicitor will have to advise on likely outcomes based upon the client’s case and a judge’s criteria therefore concrete answers may not be available, especially in an initial meeting.

Judging a case

The criteria a judge will apply to each case are set out in section 25 of the Matrimonial Causes Act 1973:

(a) The income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the court, reasonable to expect a person to take steps to acquire.

(b) The financial needs, obligations and responsibilities each party has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the court, reasonable to expect a person to take steps to acquire.

(c) The standard of living enjoyed by the family before the breakdown of the marriage.

(d) The ages of each party and the duration of the marriage.

(e) Any physical or mental disability.

(f) The contributions each party 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.

(g) The conduct of each party, if that conduct is such that it would in the opinion of the
Court be inequitable to disre- 
gard.

(h) The value to each party of any 
benefit one party because of 
the divorce will lose the 
chance of acquiring (most 
usually pension provision)

Exchanging information
When seeking legal advice, 
both parties will be asked to pro-
vide the same financial informa-
tion to their individual solicitors 
enabling a ‘level playing field’. 
Each solicitor will exchange in-
formation, and each side can 
themselves ask for further details to fill 
any gaps or to clarify issues that 
may have arisen.

To provide solicitors with 
an indication of how to split a 
family’s finances, clients will 
be asked to provide valuable 
financial information about 
them.

Solicitors will request:
• Details of earnings both past 
and present
• Values of pension/s
• Non-financial contributions to 
the family unit (such as looking 
after the children/home)
• Contributions to the family ‘pot’ 
of money which were not 
earned by either party (inheri-
tances under a family mem-
ber’s estate)
• Future expectations (pay in-
creases/new jobs with fringe 
benefits such as company car or 
private healthcare).

On reviewing this informa-
tion, a solicitor will take into ac-
count Section 25 criteria a) – h) for 
both parties and assess an equi-
table outcome for their own client.

A fair outcome
In order to achieve an overall 
fair outcome for both parties, a 
claim to assets may be required. 
Assessing how a court will di-
vide up a family’s assets such as 
a dental practice or pension 
fund is not a precise science, as 
Judges ultimately only have dis-
cretion over the facts placed be-
fore them.

Only when all relevant case 
facts are known can a solicitor 
offer advice on the likely out-
come based on the statutory 
checklist Section 25 and cur-
rent law.

Meeting with a solicitor for 
an initial interview to discuss fi-
nancial implications of divorce 
is the first step towards achiev-
ing a fair outcome. If both par-
ties provide the solicitor with a 
frank and exhaustive account 
of their financial positions, it 
will enable the solicitor to be in 
the same position as the Judge 
who will judicially determine a 
case.

Tips for the initial meeting 
with your solicitor:
• Take three local estate 
agents’/brokers marketing ap-
praisals with you giving an idea 
of the value of your home and 
any other property such as your 
dental practice or laboratory
• Get a current transfer value for 
your pension/s
• Get surrender values for any 
endowment policies/bonds
• Take in your P60
• Make a summary (as far as you 
can) of your spouses’ assets
• Make a list of your debts and 
those of your spouse (if any)
• Get a statement showing the 
balance on your mortgage ac-
count/s.

This information will aid 
your solicitor in understanding 
where you stand financially, 
and enable them to provide you 
with initial advice on how the 
court may treat different assets 
within your case.

Seeking the advice of a special-
ist solicitor is paramount when 
starting separation or divorce pro-
ceedings and as such it is wise to be 
aware of well meaning friends and 
colleagues who have been through 
a separation. As the Section 25 
checklist is applied to individual 
circumstances, the right outcome 
for them may not necessarily be the 
correct option for you.

About the author
Elizabeth Hoddler 
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