**What does the Court consider when dividing matrimonial assets?**

On divorce, the aim is to divide the assets fairly. Fairness does not necessarily mean an equal division. What it does mean is that the parties must be left in the position of equal standing and that there must be no discrimination between the respective roles of breadwinner and homemaker which are regarded as equal.

First consideration must always be given to the needs of the dependent children. In practical terms, this usually means that accommodation must be provided for the children and the custodial parent. In some cases, this will require the custodial parent to retain the matrimonial home. Ideally if the available assets permit, the Court will always look to accommodate both parties.

The starting point is an equal division of the assets. The Court is under a duty to consider all the circumstances of the case and in particular the factors listed below and then apply these to the facts of the particular case. Having considered the below factors, the Court may order an unequal division of the assets. The general rule is that assets should be divided equally unless there is a good reason to the contrary.

Since no rigid rules apply, the Court will take into account the following broad factors when considering division of the matrimonial assets:

1**. Welfare of the children**

Where there are dependent children, this will be the first consideration when deciding how the matrimonial assets should be divided in a divorce. In practical terms, this means providing a home for the children. Where assets are limited it will usually mean that the children’s carer will receive most or all of the liquid assets of the marriage so that the children can be rehoused.

However, this does not mean that the needs of the other parent will be overlooked or ignored. The outcome will seek to balance the financial needs that both parties have (housing, food, clothing, holidays, etc.) with the available resources, while at the same time making proper arrangements for the children’s financial needs.

2. **Available capital, income and other resources**

Before the Court can deal with division of the capital assets, the full extent of those assets has to be disclosed and identified. Disclosure normally takes place in Court proceedings by a way of exchanging Financial Statements (Form E). The former matrimonial home, any business or pension assets will need to be valued.

The Court will not only look at the current income position of the parties but their future earning capacity, which may change following the divorce. For example, the parties may be expected to increase their working hours or have to reduce them to accommodate child care. Where either the husband or the wife is in a new relationship and is co-habiting, the new partner’s financial affairs may also be taken into account.

3**. Parties’ financial needs obligations and responsibilities**

It is necessary to look at each of the parties’ needs in terms of both income and capital. This will include the re-housing needs of the parties. Both parties will need to provide a roof over their heads. Once again this will be a particularly important need for the carer of any dependent children. Costs of purchasing alternative accommodation in which to live will need to be looked at together with the parties’ mortgage capacity to raise or borrow money. The parties’ current and future income needs will need to be looked at.

In Court proceedings, the parties will be required to prepare a breakdown, estimating how much they will need to meet all of their outgoings on a weekly/monthly basis.

4. **Parties’ ages and the length of the marriage**

When the Court looks at the length of the marriage it will usually include pre-marriage cohabitation. The Court will normally consider a 50/50 split of the matrimonial assets when dealing with a long marriage following the ‘yardstick of equality’.

With short marriages, capital contributions become more relevant in deciding how assets are divided in a divorce. Age is also an important consideration. A ‘clean break’ order may be appropriate for a short childless marriage. If the marriage is longer and the parties are older, different considerations will become more relevant, such as pensions and provision on retirement. Age will also affect earnings and mortgage capacity and the ability to achieve independence.

5**. Standard of living enjoyed before the marriage breakdown**

This is usually taken into account in the context of balancing the overall available assets and resources, as against the needs of the husband, wife and the children.

Sadly in many cases there is often not enough to go around when assets are being divided in divorce. This will often mean that the parties will not be able to sustain the same standard of living enjoyed prior to the marriage breakdown.

6. **Any physical or mental incapacity of the parties**

Fortunately, in the vast majority of divorces, this is not a relevant factor. However, where it is relevant, it can have a significant impact upon the settlement and outcome of the case. Supporting medical evidence will normally be required from a GP or Consultant.

7. **Parties’ contributions**

It is well established that where one party has not worked during the marriage but has been a homemaker looking after the dependent children and the other party has been the breadwinner, they are treated as having made an equal contribution towards the family and matrimonial assets. Contribution arguments are more relevant with short marriages, particularly where the parties had significant assets prior to the marriage or where significant assets have been built up during the period of separation.

In addition, significant assets acquired during the marriage, for example, by a way of an inheritance, can also be viewed as a relevant contribution. However, as before, much will depend upon the length of the marriage and the needs of the parties. With an inheritance, much will depend also upon when the inheritance was received and whether it has been intermingled with other matrimonial assets.

8. **Loss of any benefit by reason of the divorce**

This normally relates to pensions. The Court now has the power to make a pension sharing order which enables this asset to be shared.

9. **Bad behaviour or conduct**

This is rarely taken into account, unless it is exceptional. The Court will only have regard to conduct if the conduct is so serious that it would be unfair for the Court to disregard it.