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Factors to be considered in financial settlements (The Section 25 Factors)

The courts have a very wide discretion as to what orders it can make when assessing financial settlement for divorcing couples

All the circumstances of the case are to be taken into account and every case is dealt with on its own facts.

To assist the courts there are standard considerations which must be taken into account when looking at what is reasonable in all the circumstances. These considerations or "factors" are set out in Section 25 of the Matrimonial Causes Act 1973.

There is a general duty to have regard to all the circumstances of the case but first consideration must be given to the welfare of any child of the family who has not yet attained the age of 18. However, this is not the overriding consideration.

The other specific matters which must be considered on an application for financial settlement are as follows:-

- (a) 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, including any increase in that capacity which it will be reasonable to expect the parties to take steps to acquire.
- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
- (c) The standard of living enjoyed by the family before the breakdown of the marriage.
- (d) The age of each party to the marriage and the duration of the marriage.
- (e) Any physical or mental disability of either of the parties to the marriage.
- (f) The contributions which each of the parties have made or is likely, in the foreseeable future, to make to the welfare of the family, including any contribution by looking after the home or caring for the family.
- (g) The conduct of each of the parties is that conduct is such that it would be, in the opinion of the court, inequitable to disregard it.
- (h) In the case for proceedings of divorce or annulment of marriage, the value to each of the parties to marriage of any benefit which, by reason of a dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The court is obliged, when looking at a financial settlement, to consider whether it would be appropriate to achieve a clean break between the parties. A Clean Break Order is one that achieves a once and for all settlement between the parties by dismissing all of their claims and preventing any future claims.