



## BRIEFING PAPER

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# Financial provision when a relationship ends

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### Inside:

1. How assets are usually divided on divorce or dissolution
2. Division of wealth: case law
3. Application to court
4. Law Commission project on aspects of financial provision
5. Calls for reform
6. Enforcement of Family Financial Orders
7. Pre-nuptial agreements
8. Cohabitation



# Contents

<b>Summary</b>	<b>3</b>
<b>1. How assets are usually divided on divorce or dissolution</b>	<b>5</b>
1.1 Agreement between parties	5
1.2 The court's discretion	5
1.3 Practical problems	6
1.4 Information for litigants in person	7
<b>2. Division of wealth: case law</b>	<b>8</b>
2.1 The application of the statutory provision	8
2.2 Examples of case law	9
<b>3. Application to court</b>	<b>12</b>
3.1 Mediation Information Assessment Meeting requirement	12
3.2 Remarriage before application for financial provision	12
3.3 No time limit for financial provision order	13
3.4 Financial Remedies Courts	14
3.5 Financial Dispute Resolution	15
<b>4. Law Commission project on aspects of financial provision</b>	<b>17</b>
4.1 Law Commission consultation	17
4.2 Law Commission report	18
4.3 Law Commission recommendations	18
4.4 The Coalition Government's response	19
4.5 Family Justice Council Guidance	20
4.6 Update July 2019	21
<b>5. Calls for reform</b>	<b>22</b>
5.1 Private Member's Bill	22
5.2 Previous Private Member's Bills	22
5.3 Resolution campaign	23
5.4 Times newspaper campaign	24
<b>6. Enforcement of Family Financial Orders</b>	<b>25</b>
6.1 Law Commission consultation	25
6.2 Law Commission report	25
6.3 Government response	26
6.4 Law Commission response	27
<b>7. Pre-nuptial agreements</b>	<b>28</b>
7.1 Case law	28
7.2 Law Commission recommendations	28
<b>8. Cohabitation</b>	<b>29</b>

## Summary

This briefing paper deals with the law in England and Wales and relates to the division of a couple's property and income when their marriage or civil partnership breaks down.

### **Division of assets on divorce or dissolution of civil partnership**

A couple may agree between themselves how to divide their assets. Their agreement may be embodied in a consent order approved by the court which makes it legally binding and enforceable.

When agreement is not possible, the court may decide an application for financial provision. In deciding an application, the court is required by statute to have regard to "all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen". Therefore, each case is dealt with on an individual basis according to its facts.

### **Case law**

Case law has established that, in trying to achieve fairness in the division of property in any given case, the court should be guided by the principles of the needs of the parties; compensation; and equal sharing. The Law Commission has commented that the sharing principle is relevant only in a minority of cases because of the overriding problem of meeting needs.

### **Application to court**

Couples must attend a Mediation Information Assessment Meeting (MIAM) before issuing an application to court for a financial remedy (with some exceptions).

A party to divorce proceedings, who remarries before they have made any application for a financial order, **generally** loses the ability to apply to the Court.

Financial Remedies Courts (FRCs) have been established as a subsidiary structure working within the Family Court. The principal aim and objective of the FRCs is to improve the delivery of financial remedies for families involved in court proceedings relating to issues arising from the dissolution of relationships

### **Guidance**

The Coalition Government asked the Family Justice Council to take forward a recommendation by the Law Commission for guidance to clarify the meaning of 'financial needs'. In April 2016, the Family Justice Council published a guide, intended to help litigants in person, [Sorting out Finances on Divorce](#). The guide sets out how the Family Court approaches financial needs on divorce. Separate guidance has been published for the judiciary.

### **Calls for reform**

Private Members Bills have been introduced in a number of sessions with the intention of reforming the law relating to financial provision on divorce. To date, no Bill has completed its passage through Parliament. Resolution and the Times newspaper are among those who have also called for reform in this area.

### **Enforcement of Family Financial Orders**

The Law Commission has made recommendations aimed at ensuring that payment is made once a court order is in place. The Government has agreed to take forward the recommendations which do not require primary legislation to put into effect but has not yet decided whether to implement the statutory reforms.

### **Pre-nuptial agreements**

Some couples enter into a pre-nuptial or post-nuptial agreement which sets out how they would wish their property and income to be divided in the event of divorce or dissolution. Although these agreements are not automatically enforceable, following a landmark ruling in the Supreme Court, some pre-nuptial agreements will now have effect in the absence of circumstances which would make this unfair.

### **Cohabitation**

Cohabiting couples do not have the same rights to financial provision on relationship breakdown as married couples or civil partners.

# 1. How assets are usually divided on divorce or dissolution

## 1.1 Agreement between parties

During or after a divorce, annulment of a marriage or civil partnership, judicial separation, or dissolution of a civil partnership, a couple may reach agreement between themselves on how to divide their property and income, sometimes with legal advice.

This may be embodied in a legally binding 'consent order' approved by the court. The agreement may be based on what the couple might expect to have been awarded had the matter been decided by a court.

A consent order turns an informal agreement into a court order which is legally binding and enforceable

## 1.2 The court's discretion

When agreement is not possible, an application for a financial order may be decided by the court. This might involve, for example, the division of property and pensions, and the payment of maintenance. Financial orders used to be known as 'ancillary relief orders'.

### Each case decided on its facts

Under the [Matrimonial Causes Act 1973](#) (as amended), the court has a wide discretion when deciding an application for a financial order on or after divorce, annulment of marriage or judicial separation.

The court's general duty in dealing with such applications is set out in section 25(1). This requires the court, when deciding whether and, if so, how, to make a financial order, "to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen". A 'child of the family' means a child of both parties or a child who has been treated by both parties as a child of their family.<sup>1</sup>

Therefore, each case is dealt with on an individual basis according to its facts.

### Matters court must take into account

Section 25(2) directs the court to have regard, in particular, to the following matters when dealing with an application for a financial order for a party to a marriage:

- 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 in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage 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

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<sup>1</sup> Matrimonial Causes Act 1973 section 52

- (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 has 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, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the court be inequitable to disregard it
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

Financial provision may be awarded to either party depending on the circumstances involved.

[Section 72](#) and [Schedule 5](#) of the [Civil Partnership Act 2004](#) require the court to have regard to equivalent matters when dealing with an application for financial provision on or after making a dissolution, nullity or separation order in respect of a civil partnership.

### **‘Clean break’**

The court must also consider whether it is possible to achieve a ‘clean break’ between the couple; this means that neither party would have a financial claim on, or responsibility towards, the other party following an order allocating their assets (except in respect of any children).<sup>2</sup>

## **1.3 Practical problems**

In 2011, the Law Commission commented that only a small minority of cases are contested in the courts and that, in many cases, there are practical problems in financing two separate households:

First, the vast majority of cases are not contested in the courts, and many couples do not take legal advice.<sup>3</sup> Whether the problem is addressed by a judge or resolved by the couple themselves, the practical problem is that it is usually difficult to meet the needs of two households out of the resources formerly devoted to one. The resources available may be just adequate to meet the needs of the children, if any, and of the party with

<sup>2</sup> Matrimonial Causes Act 1973 section 25A

<sup>3</sup> Footnote to text: “In 2008 there were 121,779 divorces in England and Wales: Office for National Statistics, *Divorces in England and Wales*, Statistical Bulletin (28 January 2010). In the same year the county courts disposed of 94,431 applications for orders in ancillary relief (note that each individual may ask for more than one type of order and therefore this number is greater than the total number of divorces involved), of which the majority (70%) were uncontested: Ministry of Justice, *Judicial and Court Statistics* (2008) Cm 7697, p 97. See also the findings of G Barton and A Bissett-Johnson, ‘The Declining Number of Ancillary Financial Relief Orders’ (2000) 30 *Family Law* 94, 100”

## 7 Financial provision when a relationship ends

day-to-day care of the children; or there may be enough to re-house all the family. Rarely are there assets or income over and above what is required to ensure that all the family have accommodation and an adequate income. The objective that the courts are pursuing – and that lawyers will advise couples to try to achieve by negotiation – is clear; the problem is simply finding enough to go around.<sup>4</sup>

### 1.4 Information for litigants in person

Information about financial provision, which may be helpful for litigants in person (people who do not have a lawyer), is available online at:

- Gov.UK, [Money and property when a relationship ends](#);
- Citizens Advice, [Dividing up money and belongings when you separate](#);
- Family Justice Council, [Sorting out Finances on Divorce](#), April 2016;
- Advicenow: [A survival guide to sorting out your finances when you get divorced](#), November 2019;
- Advicenow, [How to apply for a financial order without the help of a lawyer](#), November 2019.<sup>5</sup>

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<sup>4</sup> [Law Commission Consultation Paper No 198, Marital Property Agreements, 11 January 2011, p5.](#)

<sup>5</sup> All the links in this section were accessed 19 February 2020

## 2. Division of wealth: case law

### 2.1 The application of the statutory provision

The application of the statutory principles set out in section 25 of the Matrimonial Causes Act 1973<sup>6</sup> has been considered in a number of reported 'big money' court cases. This means cases where the assets of the parties were well in excess of what was needed to meet the needs of the couple and any children.

The approach adopted by the courts has changed over the years.

#### Before 2000

Before 2000, awards were based on the principle that the reasonable requirements of the financially weaker party must be met, although this could result in that party receiving only a fraction of the richer party's total wealth, whatever the circumstances or the length of the marriage.

#### 2000: *White v White*

In 2000, in [White v White](#), a judgment of the Appellate (Judicial) Committee of the House of Lords put the role of homemaker on an equal footing with that of the family breadwinner, and established 'a yardstick of equality of division'.<sup>7</sup> This would not necessarily lead to an equal division in all cases as the circumstances of the case are also taken into account.

#### Later case law

In 2006, in [Miller v Miller](#) and [McFarlane v McFarlane](#), the Appellate Committee of the House of Lords held that three principles should guide the court in trying to achieve fairness in the division of property in any given case:

- the needs of the parties;
- compensation aimed at redressing any significant prospective economic disparity between the parties arising from the way they had conducted their marriage;
- equal sharing.<sup>8</sup>

The Law Commission has commented that the sharing principle is relevant in only a minority of cases because of the overriding problem of meeting needs:

1.14 Since [the] change in 2000, therefore, we can say that financial provision cases in the courts fall into two groups.

(1) At the lower end of the scale, where the vast majority of cases lie, all that can be achieved is an order that meets the needs of the parties, because there is not enough to do any more. Indeed, in most cases there is insufficient to do that; the court and the parties are trying to "get a quart out of a pint pot". The "sharing principle" is not relevant here:

In most cases the assets do not exceed what the two spouses need

<sup>6</sup> See section 1.2 of this paper above

<sup>7</sup> [2000] UKHL 54. The Appellate Committee of the House of Lords, as the predecessor of the Supreme Court, was the highest court of appeal at that time

<sup>8</sup> [\[2006\] UKHL 24](#)



## 9 Financial provision when a relationship ends

there is no room for equal sharing because of the overriding problem of meeting needs.

(2) In the very wealthy cases the courts work out what the person applying for the order “needs”, by reference to his or her budget (which will be drawn up on the basis of the standard of living that person expects to maintain). If those needs are met by an award of half the matrimonial property, pursuant to the sharing principle, then no further financial award is made – the family property is simply shared, with the exception of any non-matrimonial property...<sup>9</sup>

Information about the law of financial provision is set out in Part 2 of the Law Commission consultation paper, [Marital Property Agreements](#).<sup>10</sup>

## 2.2 Examples of case law

### Variation of maintenance order

#### Supreme Court decision in *Mills v Mills*

In July 2018, the Supreme Court ruled that a divorced husband should not have to increase payments to his ex-wife after she mismanaged her finances following their divorce.<sup>11</sup> The ex-wife had applied to vary a periodical payments (maintenance) order in a case where there had been no ‘clean break’.

The Supreme Court had previously summarised the facts of the case:

Following their divorce in 2002, the parties' financial claims were settled by a consent order which, amongst other things, provided the wife with a capital sum and required the husband to make periodical payments to the wife of £1,199 pcm. In 2014, the "husband" (as he has been described throughout these proceedings) applied to discharge the periodical payments order or, in the alternative, for a downward adjustment. His case was that the wife (i) had lost the capital she had been awarded in 2002 through gross financial mismanagement and (ii) was in a position to work more in order to increase her earnings. The wife sought an upward variation of the periodical payments on the basis that she was unable to meet her basic needs. The judge held that the order should continue without any variation. The Court of Appeal allowed the wife's appeal.<sup>12</sup>

The Supreme Court had granted permission to appeal on one ground: “whether, provision having already been made for the Respondent's housing costs in the capital settlement, the Court of Appeal erred in taking these into account when raising her periodical payments.”

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<sup>9</sup> [Law Commission, Matrimonial Property, Needs and Agreements: The Future of Financial Orders on Divorce and Dissolution Executive Summary, Appendix, paragraph 1.14](#), February 2014

<sup>10</sup> [Law Commission Consultation Paper No 198, Marital Property Agreements, 11 January 2011, pp16-36](#)

<sup>11</sup> [Mills v Mills \[2018\] UKSC 38](#)

<sup>12</sup> Supreme Court, [Permission to appeal decision Mills \(Appellants\) v Mills \(Respondent\)](#), 9 August 2017 [accessed 19 February 2020]

The Supreme Court unanimously allowed the husband's appeal. Lord Wilson, giving the lead judgment, set out the question the Court was considering:

In circumstances in which at the time of a divorce a spouse, say a wife, is awarded capital which enables her to purchase a home but later she exhausts the capital by entry into a series of unwise transactions and so develops a need to pay rent, is the court entitled to decline to increase the order for the husband to make periodical payments to her so as to fund payment of all (or perhaps even any) of her rent even if he could afford to do so?<sup>13</sup>

Lord Wilson decided that the answer to the question was "yes":

A Supreme Court [press summary](#) summarised the reasons for the judgment (references in square brackets are to paragraphs in the judgment):

The Court of Appeal had erred in saying that the judge had given no reason for declining to increase the order for periodical payments – the judge had given a clear reason, namely that the wife's unwise decisions in relation to her capital had increased her basic needs by requiring her to pay rent, and that it was consequently unfair to expect the husband to meet these increased needs in full [33].

The Court of Appeal should have considered the impact of the original capital payment on the wife's current need to pay rent, and this involved a consideration of three earlier Court of Appeal authorities ... These cases were correctly decided and in light of this the judge was entitled, although not obliged, to decline to require the husband to fund payment of the rent in full. This respects the wide discretion conferred upon the court under s.31(1) and (7) of the Matrimonial Causes Act 1973 in determining an application for variation of an order for periodical payments. Moreover, a court would need to give very good reasons for requiring a spouse to fund payment of the other spouse's rent in the circumstances of this case. A spouse may well be obliged to make provision for the other spouse, but an obligation to duplicate that provision in situations such as this is improbable [40].

### **Court of Appeal decision in *Waggott v Waggott***

The wife had been awarded a settlement of £9.76m and £175,000 in annual maintenance payments for life. She appealed, claiming a £23,000 a year increase in the annual maintenance payments. The husband challenged the original award.

In April 2018, the Court of Appeal concluded that the wife's overall settlement was sufficient to enable her to adjust to independence without undue hardship and ordered that the maintenance payments should cease after three years. The court said that the wife was not entitled to share in her ex-husband's very high income.<sup>14</sup>

Lord Justice Moylan said that the case had been decided on its facts and acknowledged that long-term maintenance can sometimes be required as part of a fair outcome in some cases:

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<sup>13</sup> [Mills v Mills \[2018\] UKSC 38](#), paragraph 1

<sup>14</sup> [Waggott v Waggott \[2018\] EWCA Civ 727](#)

## 11 Financial provision when a relationship ends

156.... During the course of the hearing, [counsel for the wife] was evidently concerned that recent public debate about how the courts determine a spouse's claim for maintenance might somehow intrude into the determination of this case. His particular focus was what he described as the unfair use of the expression "meal ticket for life" which, he suggested, was often deployed without regard to a spouse's fair entitlement which might properly include long-term maintenance. I do not comment on his remarks, save to say that I, of course, acknowledge that long-term maintenance can be required as part of a fair outcome and also that I understand why he suggests that the expression "meal ticket for life" can be used as an unfair trope. However, I would make clear that my determination of this appeal has been based solely on my view of the proper application of the 1973 Act and the principles identified above to the facts of this case.

In October 2018, the Supreme Court refused permission to appeal on the basis that the application did not raise an arguable point of law.<sup>15</sup>

### Short marriage

In 2017, the Court of Appeal allowed a wife's appeal against a decision to divide matrimonial assets on an equal basis.<sup>16</sup> The Court held that the wife was correct to contend that the combination of potentially relevant factors, namely:

- short marriage;
- no children;
- dual income and separate finances;

was sufficient to justify a departure from the equal sharing principle in order to achieve overall fairness between the parties.

Lord Justice McFarlane stated that the judgment was not intended "to unsettle the clear understanding that has been reached post-White on the approach that is to be taken to the vast majority of cases". He said that the narrow focus of the appeal, was "whether there is a fringe of cases that may lie outside the equal sharing principle".

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<sup>15</sup> Refused 31 October 2018

<sup>16</sup> [Sharp v Sharp \[2017\] EWCA Civ 408 \(13 June 2017\)](#)

## 3. Application to court

### 3.1 Mediation Information Assessment Meeting requirement

There is now a general requirement for couples to attend a Mediation Information Assessment Meeting (MIAM) before issuing an application for a financial remedy.<sup>17</sup> The purpose of the MIAM is for the couple to find out about and consider mediation, or other forms of non-court-based dispute resolution. There are some exceptions to this requirement including, for example, where there is evidence of domestic violence or of a risk of domestic violence; in these cases, the applicant may proceed straight to court.<sup>18</sup>

Further information about mediation is available at:

- [The Family Mediation Council website](#)
- Advicenow, [A survival guide to Using Family Mediation after a break up](#).<sup>19</sup>

### 3.2 Remarriage before application for financial provision

A party to divorce proceedings, who remarries before they have made any application for a financial order, **generally** loses the ability to apply to the Court.<sup>20</sup> If a party makes an application for financial relief before they remarry, they can generally pursue their claim after remarriage,<sup>21</sup> (although not for spousal maintenance).

An application for a financial order is usually made in the divorce petition, or separately in [Form A](#) (Notice of [intention to proceed with] a financial application to which the standard procedure applies).

[Form D8, Application for a divorce, dissolution or to apply for a \(judicial\) separation order](#),<sup>22</sup> asks the question:

10.1 Do you want to apply for a financial order?

This question has the following explanatory note:

If you answer 'Yes' to question 10.1 the court will take no action at this stage. To formally start financial proceedings, you will also need to complete a separate application form and pay another court fee.

<sup>17</sup> [Children and Families Act 2014 section 10](#) and the [Family Procedure \(Amendment No. 3\) Rules 2014, SI 2014/843](#). [Practice Direction 3A](#) sets out the applications to which the MIAM requirement applies

<sup>18</sup> [Family Procedure Rules 2010 \(as amended\), Rule 3.8](#) sets out the circumstances in which the requirement to attend a MIAM does not apply

<sup>19</sup> December 2016

<sup>20</sup> Matrimonial Causes Act 1973 section 28(3). [Form D8, Application for a divorce, dissolution or to apply for a \(judicial\) separation order](#) states: "This restriction does not apply to pension sharing or pension compensation sharing orders"

<sup>21</sup> This depends on the circumstances. It may be necessary to seek legal advice on this matter

<sup>22</sup> January 2020

## 13 Financial provision when a relationship ends

You can find more guidance on financial orders and how to get help agreeing on any issues at [www.gov.uk/money-property-when-relationship-ends/apply-for-a-financial-order](http://www.gov.uk/money-property-when-relationship-ends/apply-for-a-financial-order)

If you answer 'No' to question 10.1 you can still apply for a financial order in the future, but only until you remarry or form another civil partnership. This restriction does not apply to pension sharing or pension compensation sharing orders.

If you are unsure what to do here it is recommended you seek legal advice.

The court will not start processing your request for a financial order until you submit the separate application and pay the fee. You can do this at the same time you apply for your divorce, dissolution or (judicial) separation or at any time after that. Please note that decisions regarding child maintenance are usually made by agreement or by the Child Maintenance Service and the court can only make these orders under certain circumstances.

Online information about making an application for financial provision includes:

- Gov.UK, [Money and property when a relationship ends](#);
- Advicenow, [Apply for a financial order without the help of a lawyer](#), November 2019.

### 3.3 No time limit for financial provision order

In March 2015, the Supreme Court decided that an ex-wife could proceed with a claim for financial provision against her former husband (who since their divorce had amassed considerable wealth) even though it was more than 20 years since they divorced. The High Court was to consider how much (if anything) the ex-wife should receive.

The Supreme Court said that it was still open to the ex-wife to pursue her claim:

Early in 1992, in the Sunderland County Court, the wife issued the petition for divorce which resulted in the decree absolute dated 26 October 1992. Did she include in her petition applications for the full range of financial orders for the benefit of herself? In the absence of any copy of it, we can make only an educated guess – which is that she did so. Such was the usual practice. But it matters not for, in the absence of her remarriage (which would have precluded her doing so: section 28(3) of the Matrimonial Causes Act 1973 (“the 1973 Act”)) it was open to her to initiate applications for them in 2011 or at any time.

The Court confirmed that there was no time limit in family law for seeking an order for financial provision:

Consistently with the potentially life-long obligations which attend a marriage, there is no time-limit for seeking orders for financial provision or property adjustment for the benefit of a spouse following divorce. Sections 23(1) and 24(1) of the 1973 Act provide that such orders may be made on granting a decree of divorce “or at any time thereafter”.<sup>23</sup>

There is no time limit for making a claim, but the court might look at the reason for delay when deciding the amount of any award

<sup>23</sup> [Wyatt v Vince \[2015\] UKSC 14 paragraph 32](#)

The Supreme Court indicated, however, that in any case, a court would look at the reason for delaying making an application, and that delay might reduce or even eliminate the amount awarded:

Yet there is a prominent strain of public policy hostile to forensic delay. The court will look critically at explanations for it; and, even irrespective of its effect upon the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant. Nevertheless it remains important to address its effect upon the respondent. In some cases, albeit not in the present, a respondent can show that he has assumed financial obligations or otherwise arranged his financial affairs in the belief that the applicant would make no claim against him and that he has done so in a way which, even if it were possible, it would not be reasonable for him to put into reverse. Sometimes, instead, he can point to factual issues of which the dimming of memories or the disappearance of witnesses over the period of the delay no longer permits accurate determination...<sup>24</sup>

### 3.4 Financial Remedies Courts

Financial Remedies Courts (FRCs) have been established as a subsidiary structure working within the Family Court. The principal aim and objective of the FRCs is to improve the delivery of financial remedies for families involved in court proceedings relating to issues arising from the dissolution of relationships.<sup>25</sup>

#### Background

In 2017, Sir James Munby, who was then President of the Family Division, announced that specialist courts dealing with the financial aspect of divorce proceedings would be piloted.<sup>26</sup> Further information is provided on the Courts and Tribunals Judiciary website:

- Sir James Munby, [View from The President's Chambers \(18\), The on-going process of reform – Financial Remedies Courts](#), 23 January 2018;

In his final Presidential Guidance issued on 27th July 2018, Sir James announced that the Financial Remedies Pilot, which was at that time confined to the West Midlands, would soon be extended to eight other court centres, “albeit for the time being in modified form”:

For the time being, these further extensions will not involve the creation of any specified designated hearing centres and judges hearing financial remedy cases will not be expected to sit elsewhere than where they currently do. Cases will continue to be heard, as at present, in the premises currently used by the Family Court.<sup>27</sup>

In November 2018, Sir Andrew McFarlane, now President of the Family Division, announced that, following further consultation, he had given

<sup>24</sup> Ibid

<sup>25</sup> Courts and Tribunals Judiciary, [Financial Remedies Courts Good Practice Protocol](#)

<sup>26</sup> Courts and Tribunals Judiciary, [President of the Family Division Circular: Financial remedies courts](#), 11 December 2017

<sup>27</sup> [President's Circular: Financial Remedies Court Pilot Phase 2](#), July 2018

## 15 Financial provision when a relationship ends

the 'green light' for the pilot to start working in each of these eight courts:

In essence the new scheme is a ticketing and allocation regime designed to ensure that all Financial Remedy cases are case managed and heard by a suitably experienced judge. The positive reports of the operation of the Birmingham Pilot auger well for its replication elsewhere.<sup>28</sup>

In June 2019, Mr Justice Mostyn, National Lead Judge, Financial Remedies Court, drew attention to the "successful extension" of the Financial Remedies Courts project from its single original pilot zone (in operation since 2018 in Birmingham) to the eight new zones.<sup>29</sup>

Mr Justice Mostyn set out the aim of the project:

My aim in taking the Financial Remedies Court project forward is to ensure that cases are dealt with by ticketed judges who have a knowledge and experience of financial remedies work. It is important that cases are properly allocated from the outset to the right level of judge in the right place and allocation procedures are in place in all zones. We think it important to ensure that judges of all levels, including Circuit Judges and Recorders, are involved with first instance cases.

### Current position

The operation of the FRCs, and the creation of FRC zones and the appointment and role of the FRC Lead Judges within the zones, is recorded in the document titled [Overall Structure of the Financial Remedies Courts and the Role and Function of the Lead Judge](#).<sup>30</sup>

The [Financial Remedies Courts Good Practice Protocol](#) sets out the aims and objectives of the FRCs; procedure on application; and best practice.<sup>31</sup>

## 3.5 Financial Dispute Resolution

The purpose of a Financial Dispute Resolution (FDR) appointment is to facilitate discussion and negotiation by the parties in the presence of a judge:

The financial dispute resolution ('FDR') appointment was introduced into the court process, on a trial basis, in 1996 and was formally incorporated in the revised rules governing financial ancillary relief cases in June 2000. It was an innovative development, designed to enable the parties, with the assistance of the judge, to identify and seek to resolve the real issues in the case, at a time and in a manner intended to limit the overall financial cost for the parties, to reduce delay in resolving the case and to lessen the emotional and practical strain on the family of continuing litigation. Over ten years on, the procedure continues

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<sup>28</sup> Courts and Tribunals Judiciary, [Financial Remedies Pilot Extension](#), 1 November 2018 [accessed 20 February 2020]

<sup>29</sup> Courts and Tribunals Judiciary, [Message from Mr Justice Mostyn: Financial Remedies Courts](#), 20 June 2019 [accessed 19 February 2020]

<sup>30</sup> 7 November 2019

<sup>31</sup> 7 November 2019

to provide a timely and effective means of resolving many financial disputes.<sup>32</sup>

General information about FDRs is provided in section 17 of the Advicenow publication, [Apply for a financial order without the help of a lawyer](#).<sup>33</sup>

In July 2018, in his President's Circular, Sir James Munby hoped that judges would develop and encourage the use of "private" FDRs locally:

A private FDR is a simple concept. The parties pay for a financial remedy specialist to act as a private FDR judge. That person may be a solicitor, barrister or retired judge. No additional qualification is required. The private FDR takes place at a time convenient to the parties, usually in solicitors' offices or barristers' chambers, and a full day is normally set aside to maximise the prospects of settlement. It takes the place of the in-court FDR.

At present, demand on court resources has led to instances of over-listing of FDRs. A high settlement success rate is not likely to be achieved if the district judge's list for the day has more than five FDRs in it. This has the inevitable knock-on of far more cases being listed for a final hearing than should be so – a classic example of the law of diminishing returns.

Although a private FDR does require some (often quite modest) investment by the parties, this expense can be greatly outweighed by the advantages gained. The very fact of investment by the parties will signify a voluntary seat at the negotiating table rather than a sense of being dragged there. The "hearing" can take place at a time convenient to the parties, even in the evening or at a week-end, and for as long as the parties want. The private FDR judge will, by definition, have been given all the time needed to prepare fully for the hearing.<sup>34</sup>

Sir James spoke of anecdotal evidence which suggested that private FDRs had a very high settlement rate, adding, "Of course, each settlement frees up court resources to deal, sooner and more fully, with those interim and final hearings that demand a judicial determination".

The Circular provides for a procedure to be followed where a private FDR is envisaged.

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<sup>32</sup> Family Justice Council, [Financial Dispute Resolution Appointments: Best Practice Guidance](#), December 2012

<sup>33</sup> November 2019

<sup>34</sup> [President's Circular: Financial Remedies Court Pilot Phase 2](#), July 2018



## 4. Law Commission project on aspects of financial provision

### 4.1 Law Commission consultation

In 2009, the Law Commission started a project examining the status and enforceability of marital property agreements. Their consultation paper, [Marital Property Agreements](#), was published on 11 January 2011,<sup>35</sup> and the consultation closed on 11 April 2011. The consultation was subsequently extended in 2012 in order to cover two further issues of financial provision on divorce or dissolution of a civil partnership:

- financial needs - to what extent one spouse should be required to meet the other's financial needs, and what exactly is meant by 'needs'; and
- the definition and treatment of non-matrimonial property - what happens to property that one of the partners owned before the relationship or acquired during the course of it.

The Law Commission published a [supplementary consultation paper](#) in September 2012.<sup>36</sup> This consultation closed on 11 December 2012.

The Law Commission said that the project was not a full-scale reform project directed at the entirety of the law of financial orders, rather that the aim was "to bring clarity and predictability to areas of that law that cause particular difficulties".<sup>37</sup>

The Law Commission drew attention to the fact that, although there are detailed statutory provisions about the orders that the court can make in connection with a divorce or dissolution, the statute does not say what the court is to achieve by making these orders:

The judge in the family court has been compared to a bus driver, who has been told how to drive the bus and told that he must drive it, but has not been told where to go, nor why he is to go there. Couples who do not go to court have to make their own financial arrangements by agreement. In doing so they need to know what their rights and obligations are, and the fact that the law is incomplete and uninformative does not help them.<sup>38</sup>

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<sup>35</sup> [Law Commission Consultation Paper No 198, Marital Property Agreements, 11 January 2011](#)

<sup>36</sup> [Law Commission Consultation Paper No 208, Matrimonial Property, Needs and Agreements A Supplementary Consultation Paper, 11 September 2012](#)

<sup>37</sup> [Law Commission website, Matrimonial Property, Needs and Agreements](#) [accessed 19 February 2020]

<sup>38</sup> [Law Commission Consultation Paper No 208, Matrimonial Property, Needs and Agreements Executive Summary, 11 September 2012, p3, paragraph 5](#)

## 4.2 Law Commission report

On 27 February 2014, the Law Commission published its final report, [Matrimonial Property, Needs and Agreements](#),<sup>39</sup> together with an [Executive Summary](#).<sup>40</sup>

The Law Commission concluded that the underlying law relating to the responsibilities of former spouses to meet each other's 'financial needs' was not in need of statutory reform. It did not recommend an overall change in the courts' approach which, it said, tended to lead the parties to financial independence. However, the Commission found that the law was inaccessible to the general public, and that there was evidence that the courts in different areas of the country did not always apply the law consistently.

The Law Commission found that the law relating to "financial needs" was not clearly understood

The Law Commission found that the lack of clear law was problematic when so many settlements were reached out of court, sometimes without the advice of lawyers:

Most couples going through divorce, or the dissolution of civil partnership, do not have their financial arrangements made by a judge. Many reach a settlement with the assistance of lawyers. Some go through mediation; others make use of collaborative law negotiations, or of family law arbitration. Increasingly, many do not have access to lawyers because of the withdrawal of legal aid in this area. They do have access to the courts, but the majority nevertheless resolve their financial arrangements out of court; and we have to add that if all or even a majority of couples going through divorce or dissolution were to go to court for financial orders, the court system would be unable to cope.

Against that practical background, the lack of clear law is problematic. For the law to say, in effect, "it is up to the judge" may be acceptable if everyone gets to see a judge; but now that is the exception rather than the rule. There is a need for clearer and more transparent law so as to give people an indication of the sort of financial settlement that they ought to reach, as well as more certainty so that they can have confidence in the arrangements they have made.<sup>41</sup>

## 4.3 Law Commission recommendations

The Law Commission's report included recommendations for reform (among other things) to:

- clarify, through the provision of guidance by the Family Justice Council, the meaning of 'financial needs' to ensure:
  - that the term is applied consistently by the courts and
  - that people without legal representation are given access to a clear statement of their responsibilities and the objective

The Law Commission recommended that guidance should clarify responsibilities

<sup>39</sup> [Law Commission, Law Com No 343, Matrimonial Property, Needs and Agreements, 27 February 2014](#)

<sup>40</sup> [Law Commission, Matrimonial Property, Needs and Agreements: The Future of Financial Orders on Divorce and Dissolution Executive Summary, February 2014](#)

<sup>41</sup> [Law Commission, Matrimonial Property, Needs and Agreements: The Future of Financial Orders on Divorce and Dissolution Executive Summary, paragraphs 1.14-15](#)

of eventual independence that a financial settlement should strive to achieve; and

- investigate the possibility of whether an aid to calculation of ‘financial needs’ could be devised, to take the form of non-statutory guidance, which would give a range of outcomes, in figures, within which separating couples might negotiate.<sup>42</sup>

The Law Commission said that it was not recommending that the guidance regarding financial needs should prevent the application by the court of the sharing and compensation principles (where appropriate).<sup>43</sup>

Taking into account consultation responses, the Law Commission did not make any recommendations in respect of non-matrimonial property, but considered that it could be covered by contractual arrangements:

1.24 At the outset of our examination of non-matrimonial property we felt that the courts’ practice of not sharing pre-acquired, gifted and inherited property might usefully be captured in the form of statutory rules. We also felt that statute should address the sort of issues that are likely to arise in the context of such property, for example when it is sold and replaced, or grows as a result of the investment of either party. These are issues to which the courts have not yet been able to provide clear answers.

1.25 We have not made any recommendations about reform relating to non-matrimonial property. Although we would have liked to recommend statutory provisions to address those situations in which the case law has not yet provided clear answers, consultation responses have demonstrated that such provisions would be unacceptably controversial. Where the parties to a marriage want to achieve certainty in advance about the continued ownership of non-matrimonial property they should be free to make contractual arrangements to that effect, without having to submit their agreements to the courts’ assessment of fairness. Such contracts could also encompass other property, in particular property acquired or generated during the marriage, if the parties agree that they will not wish to share it in the event of divorce or dissolution. Equally, though, such agreements should not be able to prejudice the parties’ entitlement to have their financial needs met. Accordingly we have recommended the introduction of qualifying nuptial agreements.<sup>44</sup>

### 4.4 The Coalition Government’s response

In April 2014, the then Justice Minister, Simon Hughes, announced that the Ministry of Justice had asked the Family Justice Council “to take forward the Law Commission’s recommendation to clarify the law of ‘financial needs’ on divorce or dissolution of a civil partnership”. He said that separating couples would be given new guidelines setting out what they should expect when property and income were distributed by

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<sup>42</sup> [Law Commission website, Matrimonial Property, Needs and Agreements](#) [accessed 19 February 2020]

<sup>43</sup> [Law Commission, Matrimonial Property, Needs and Agreements: The Future of Financial Orders on Divorce and Dissolution Executive Summary, Appendix paragraph 1.15](#)

<sup>44</sup> [Law Commission, Matrimonial Property, Needs and Agreements: The Future of Financial Orders on Divorce and Dissolution Executive Summary](#)

the courts. The Ministry of Justice said that the new guidance would help:

- Divorcing couples - by dispelling myths about need and help couples to approach the separation process with realistic expectations.
- The Judiciary - by removing the regional variations in the interpretation of 'financial needs' as identified by the Law Commission.
- Mediators – so they will be able to give financial advice to help separating couples settle disputes out of court.<sup>45</sup>

Simon Hughes also wrote to the Law Commission on 8 April 2014 and 18 September 2014 - the Law Commission has said that these two letters together formed the Coalition Government's interim response to their recommendations.<sup>46</sup>

In the first letter, Simon Hughes confirmed that officials had already opened discussions with the Family Justice Council about guidance defining and explaining financial need. He welcomed the Law Commission's proposal that a working group be established to consider the feasibility of numerical guidance. This, he said, would be a long-term project but officials would begin to scope the establishment and make-up of a working group within the next six months. Simon Hughes also said that he would give further consideration to the Law Commission's recommendations in respect of nuptial agreements before committing to any reform in that area.<sup>47</sup>

In the second of the two letters, Simon Hughes said that a final response to the Law Commission on nuptial agreements would be postponed until the next Parliament, rather than being published in February 2015 (as previously expected). He said that this was not a rejection of the Law Commission's recommendations, and that the new Government would have time to consider the matter further.

## 4.5 Family Justice Council Guidance Guide for the public and litigants in person

In April 2016, the Family Justice Council published a guide, intended to help litigants in person, [Sorting out Finances on Divorce](#). The guide sets out how the Family Court approaches financial needs on divorce and is a response to the Law Commission's recommendation for clear guidance.

The guide states that what someone "needs" depends on their particular situation.

The guide sets out a general overview of the law and covers:

- making an agreement without going to court;
- what the law aims to do and takes into account – and so what a couple should aim to agree;

<sup>45</sup> [Gov.UK, Ministry of Justice press release, Divorce myths to be dispelled, 17 April 2014](#) [accessed 19 February 2020]

<sup>46</sup> [Law Commission website, Matrimonial Property, Needs and Agreements](#) [accessed 19 February 2020]

<sup>47</sup> [DEP 2014-1304](#)

## 21 Financial provision when a relationship ends

- the sort of orders which can be made

It includes more detailed information on matters including:

- housing and other capital;
- maintenance and income; and
- pensions.

There are also examples showing how the law would generally be applied in some typical situations, and some FAQs, which deal with particular issues that come up on divorce.

### Guide for the Judiciary

The Family Justice Council also published further guidance, this time for the Judiciary, [Guidance on “Financial Needs” on Divorce](#). This guidance was first published in June 2016 and a second edition was published in April 2018.

### 4.6 Update July 2019

The Law Commission’s [Annual Report 2018-19](#), published in July 2019, includes the following information:

The Government is considering the Law Commission’s recommendations on a financial tool for separating couples and on qualifying nuptial agreements as part of a wider consideration of family law and will respond in due course.<sup>48</sup>

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<sup>48</sup> [The Law Commission Annual Report 2018-19](#), (Law Com No 385), HC 2470, 10 July 2019, p45

## 5. Calls for reform

### 5.1 Private Member's Bill

On 20 January 2020, Baroness Shackleton of Belgravia (Conservative) introduced a Private Member's Bill, the [Divorce \(Financial Provision\) Bill \[HL\] 2019-21](#), as Bill HL 39 of 2019-21. Information about this Bill is provided on the [Bill page on the Parliament website](#). A date for Second Reading has not yet been announced.

### 5.2 Previous Private Member's Bills

Baroness Deech introduced similar Bills, with the same name, in previous sessions, most recently the [Divorce \(Financial Provision\) Bill \[HL\] 2017-19](#) (the Bill).<sup>49</sup> Information about the Bill is provided on the [Bill page on the Parliament website](#).

A [Lords Library paper](#) on the Bill provides further information.<sup>50</sup> It states that Baroness Deech had set out the purpose of the Bill as follows:

The purpose of this Bill is to reform the law relating to the splitting of assets on divorce. The current law is the Matrimonial Causes Act 1973, section 25, which has not been thoroughly debated by Parliament for 40 years despite radical changes in society and families, and which has been the subject of calls for reform from the Law Commission, Resolution and the Centre for Social Justice. Reform is urgent because the law is uncertain, to such an extent that it is failing to conform to the rule of law. It is largely judge-made law, which bears little resemblance to the statute. Judicial discretion has led to unpredictability and conflicting decisions, which make it hard for parties to negotiate and lead to disproportionate costs. Legal aid has been removed and parties of modest means are left unrepresented with little guidance as to the right outcome. The Bill would implement provisions very similar to those of Scottish law, and the laws of most European and North American states. It would introduce as a fair starting point the equal division of all the property and pensions acquired by the couple after marriage; provision for short-term maintenance; flexibility to allow the home to be retained for the carer and children; and binding pre-nuptial agreements. This is intended to facilitate mediation, reduce litigation and costs, and recognise equal partnership in marriage.

[Second Reading](#) took place on 11 May 2018. Baroness Deech introduced the debate saying:

My Lords, this Bill would replace the current system for splitting money on divorce, a system that is past its sell-by date, with a tried and tested system modelled on that used in Scotland and in most of Europe and North America.<sup>51</sup>

Replying for the Government, Baroness Vere of Norbiton noted the lack of consensus on how the law governing finances on divorce should be reformed:

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<sup>49</sup> Bill HL 26 of 2017-19

<sup>50</sup> 2 May 2018

<sup>51</sup> [HL Deb 11 May 2018 c375](#)

## 23 Financial provision when a relationship ends

From the debate it is very clear that there is consensus among your Lordships that reform of the law governing divorce finances is overdue, but it is also the case that consensus on the type of reform is not universal. The President of the Family Division, Sir James Munby, who, as the noble Baroness, Lady Deech, noted, favours reform, also recently observed that,

“views on what form such reform should take are sharply divided”.

It seems that this divide comes from the differences of opinion about how we should balance the law. We can all agree that the current legal framework gives the court wide-ranging flexibility in making financial orders and that judges skilfully exercise that flexibility and discretion every day. For those who see the virtue of the existing law, that flexibility allows for fairness. For those who see a problem with the law as it is, that same flexibility makes for uncertainty. For example, the noble and learned Baroness, Lady Hale, the President of the Supreme Court, has suggested that, sometimes, open-ended periodic payments are the only way to,

“give each party an equal start on the road to independent living”.

It is clear to me that the breadth of views, including from those at the very top of the legal profession, warrants careful consideration by the Government.<sup>52</sup>

Baroness Vere said that the Government wanted to see an evidence base for reform:

In any reform of the law to balance flexibility and certainty, the Government need to be sure that a proposal would achieve what it sets out to do and would not cause unintended difficulties.

Given the complexity involved in disentangling the finances of a shared life and the impact of any changes at a personal level, the Government are keen to see a solid evidence base for reform.

...Put simply, we all want to get this right.<sup>53</sup>

Baroness Vere stated that the so-called “big money” divorces were small in number and that the Government wanted to consider the effect of reform on more typical cases. She then outlined the Government’s reservations about the particular provisions in the Bill.

The Bill completed its passage through the House of Lords without further debate. It was introduced in the House of Commons by Tim Loughton (Conservative) as [Bill 310 of 2017-19](#). The Bill did not make any further progress through Parliament and fell when session ended.

### 5.3 Resolution campaign

Resolution’s [Manifesto for Family Law](#) was launched in February 2015.<sup>54</sup> Among other things, it calls for help for people to understand how their divorce will affect their future finances. Resolution notes that the

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<sup>52</sup> [HL Deb 11 May 2018 c398](#)

<sup>53</sup> [HL Deb 11 May 2018 cc399-400](#)

<sup>54</sup> “Resolution is the largest membership organisation for family justice professionals in England and Wales. Resolution members sign up to our Code of Practice, promoting a non-confrontational approach, which results in better outcomes for families and children.” [Resolution website](#) [accessed 20 February 2020]

removal of legal aid has led to a rise in unrepresented litigants and that the law is difficult for them to understand.

Resolution called for clearer guidance and reforms to the law:

Resolution calls for clear guidance for people entering the court system, so that they are more aware of the potential outcomes and consequences, and for a wide-ranging reform of the financial provision system to achieve more clarity.

The reforms to Section 25 of the Matrimonial Causes Act 1973 that Resolution wants to see emphasise independence and greater certainty on the level and timescale for payment of maintenance, with children's interests at their heart.

Enforceable agreements (commonly known as 'pre-nups') should be permitted with suitable safeguards. This would provide certainty to people entering the courts that a previously-made agreement will generally be binding, unless it does not satisfy clearly identified criteria. The independent Law Commission has also called for change in this area.

Clear guidelines are needed on the division of capital resources and pensions. Resolution proposes a distinction between matrimonial property and non-matrimonial property in cases where resources exceed the needs of the separating couple.<sup>55</sup>

## 5.4 Times newspaper campaign

In November 2017, the Times newspaper launched its "Family Matters" campaign. Among other things, it calls for "the end of the so-called meal ticket for life maintenance awards".<sup>56</sup>

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<sup>55</sup> Resolution, [Manifesto for Family Law](#), p25 [accessed 20 February 2020]

<sup>56</sup> Frances Gibb, "[Family Matters: Urgent call for new divorce laws as judges demand overhaul of 'corrosive' system](#)", The Times, 17 November 2017 [accessed 20 February 2020, subscription required]



## 6. Enforcement of Family Financial Orders

Sometimes people do not comply with court orders for financial provision, for example because changing circumstances mean they are no longer able to comply, or because they are unwilling to do so.

The Law Commission has noted that the law of enforcement of family financial orders is a complicated area, contained in a range of legislation and court rules. This can make it difficult for parties, particularly litigants in person, to recover the money they are owed, and “can lead to significant hardship both for the parties and for their children”.<sup>57</sup>

### 6.1 Law Commission consultation

On 11 March 2015, the Law Commission published a [consultation paper](#) on the enforcement of family financial orders in England and Wales.<sup>58</sup> The Commission asked for views on options for reform that could simplify and clarify the law.

The consultation closed on 31 July 2015.

### 6.2 Law Commission report

On 15 December 2016, the Law Commission published its report, [Enforcement of Family Financial Orders](#).<sup>59</sup> The Commission made a number of recommendations which, it said, were designed “to create an effective system that produces compliance with court orders in a way that is fair to both the creditor and the debtor”.<sup>60</sup>

The Law Commission said that its recommendations took into account four key problems with the current law:

- the complexity of the rules;
- a lack of information about the debtor;
- some of the debtor’s assets being beyond existing enforcement powers;
- a lack of means to apply pressure to debtors who can but will not pay.

The Commission summarised its recommendations as including:

- consolidating the procedural rules, which can be hard to find and difficult to follow
- providing more guidance and information for litigants

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<sup>57</sup> [Law Commission website, Enforcement of family financial orders](#), [accessed 20 February 2020]

<sup>58</sup> [Law Commission Consultation Paper No 219, Enforcement of Family Financial Orders, 11 March 2015](#)

<sup>59</sup> [Law Commission Law Com 370, Enforcement of Family Financial Orders, HC 862, 15 December 2016](#)

<sup>60</sup> [Law Commission website, Enforcement of family financial orders](#), [accessed 20 February 2020]

- increasing the obligations on the debtor to provide honest and early disclosure of his or her financial circumstances
- providing the court with wide powers to obtain information from third parties
- extending existing methods of enforcement to assets that currently cannot be enforced against. Our project recommends, for example, that creditors are able to enforce against funds held in a joint account and against pension assets
- that the courts should be able to apply pressure to debtors that have the means to pay but are refusing to pay what is owed to the creditor – including that debtors may be disqualified from driving or prevented from travelling out of the country until the judgment debt is settled, where it is in the interests of justice to do so.<sup>61</sup>

### 6.3 Government response

The Government provided an interim response in the form of [a letter dated 2 August 2017 from the then Justice Minister, Dominic Raab](#).

The Government's full response was set out in a [letter from the then junior Justice Minister, Lucy Frazer, dated 23 July 2018](#). This stated that the Government shared the Commission's concerns about the complexity of the current enforcement system, adding that it was "open to exploitation by those debtors who choose not to comply with a court order". The Government also accepted that more should be done to assist those debtors who cannot pay.

The letter stated that the Government had asked officials to work with the senior judiciary, Family Procedure Rule Committee and HMCTS to take forward the recommendations which do not require primary legislation.

These reforms could be implemented through changes in court rules and practice directions; court administration; and the provision of guidance.

The Government considers that the Family Procedure Rule Committee's expertise would enable procedural rules to be developed which would be clear and accessible to all court users, particularly litigants in person.

No indication was provided of how long it would take to implement reforms to the existing process. However, the junior Minister said that she regarded the work as important and that she would support the Family Procedure Rule Committee in progressing it in a timely manner.

With regard to the recommendations which require primary legislation, the Government said, "the demands on parliamentary time currently are significant". It had decided to await the implementation of the non-statutory reforms before taking a view on whether additional measures were required.

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<sup>61</sup> Ibid

## 6.4 Law Commission response

The [Law Commission's response](#) to Lucy Frazer was set out in a letter from Law Commissioner Professor Nick Hopkins, dated 15 August 2018.

This stated that the Commission was “delighted” that the Government had agreed to take forward the recommendations not requiring primary legislation. Professor Hopkins agreed that this would cover much of what had been recommended:

We agree that a comprehensive and clear procedure for enforcement, supported by changes to operational processes, court procedure and court forms, and importantly, detailed user-friendly guidance, will go a long way towards making enforcement in this area more efficient, effective and accessible.

The Commission continued to believe that their recommendations requiring primary legislation were also necessary and hoped that, in due course, the Government would decide to take these forward.

## 7. Pre-nuptial agreements

Some couples try to decide in advance how they would wish their property and income to be divided in the event of divorce or dissolution and enter into a pre-nuptial or post-nuptial agreement. Such agreements are not automatically enforceable in courts in England and Wales.

### 7.1 Case law

In a landmark ruling in 2010, in the case of [Radmacher v Granatino](#), the Supreme Court held that courts should give effect to a pre-nuptial agreement that is freely entered into by each party with a full appreciation of its implications, unless, in the circumstances prevailing, it would not be fair to hold the parties to their agreement.<sup>62</sup> The ruling does not make pre-nuptial agreements binding in all cases; the fairness of upholding any particular agreement will be considered by the court on a case by case basis. However, some pre-nuptial agreements will now have effect in the absence of circumstances which would make this unfair.

### 7.2 Law Commission recommendations

The Law Commission has recommended the introduction of 'qualifying nuptial agreements', as enforceable contracts, which would enable couples to make binding arrangements for the financial consequences of divorce or dissolution. These agreements, which would have to meet certain requirements, would not be subject to the court's assessment of fairness. Couples would not be able to contract out of meeting the financial needs of each other and of any children.

Further information is set out in a separate [Commons Library briefing paper, Pre-nuptial agreements](#).<sup>63</sup>

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<sup>62</sup> [2010] UKSC 427

<sup>63</sup> Number 03752

## 8. Cohabitation

Although couples who live together without entering into a formal relationship (marriage or civil partnership) do have some legal protection in a number of areas, they do not have as many rights and responsibilities as married couples. In particular, unmarried couples have no automatic rights to ownership of each other's property on relationship breakdown. If a cohabiting couple separate, the courts have no power to override the strict legal ownership of property and divide it as they may do on divorce.

Further information about the rights of cohabiting couples is set out in another [Commons Library briefing paper, "Common law marriage" and cohabitation](#).<sup>64</sup>

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<sup>64</sup> Number 3372

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