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Free
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Guide

Services

Children Law
Criminal Law & Fraud
Education Law
Employment Law
Family Law
Human Rights &
Civil Liberties
Immigration Law
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Family Law



After separation, in addition to child maintenance, it can also be possible to obtain a lump sum for the benefit of a child or the transfer or settlement of property for the purpose of providing a home for a child. This free information guide provides further details of the law and type of circumstances when such provision will be made.

The Child Maintenance Enforcement Commission (CMEC), otherwise referred to as the Child Support Agency (CSA), does not have the ability to make capital awards for children or deal with the settlement of property for children. In some circumstances the Court can make such financial provision. However, it is important to note the Court will usually only do so in cases where at least one of the parties has substantial capital assets.

Financial provision for the children when parents are divorcing/obtaining a dissolution of a civil partnership

When spouses divorce a financial order will often be made under the Matrimonial Causes Act 1973. Identical financial relief can be made under the Civil Partnership Act 2004 when a civil partnership is dissolved.

When making an order the Court is required to give first consideration to the welfare of any minor children of the family (which can include step children). When the Court makes financial provision for the parties' needs, an order will also take into account the needs of any children of the family. Occasionally however an order will also provide for separate financial provision for a child of the family.

Upon divorce/dissolution the Court may have the ability to make an order providing for child maintenance, the Court's powers are now limited as CMEC usually has jurisdiction.

Upon divorce/dissolution the Court can make an order requiring a spouse/civil partner to pay to another person a lump sum of money for the benefit of a child. The Court can even order that a lump sum of money be paid directly to the child that will benefit from the money. Examples of when such an order may be made is when a fund will be set up for school or university fees or if a child is disabled or has special needs and has a clear need for capital.

Upon divorce/dissolution the Court can also make an order requiring one spouse/civil partner to transfer property to their spouse/civil partner or another person for the benefit of a child. The property can also be transferred to the child whom is to benefit. If there is only one property from the marriage/civil partnership, it is highly unlikely that the Court would make such an order.

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However, in cases involving considerable wealth, particularly if a child has a disability or special needs, this is an option which may need to be explored. The general rule is that financial provision will not be made for a child who has reached the age of 18.

Although an order may be made if the child is still in education or there are special circumstances. Children over 18 can directly seek financial provision from separated parents under Schedule 1 of the Children Act 1989 (see Children over the age of 18 below).

Factors that the court considers

When deciding whether to make an order for separate financial provision for a child, the Court will have to consider the following:

- The financial needs of the child
- The income, earning capacity (if any), property and other financial resources of the child
- Any physical or mental disability of the child
- The manner in which he was being and in which the parties to the marriage expect him to be educated or trained
- The parties (usually the parents) financial resources, needs, standard of living and if they have any disability

If the child of the family is a step child, the Court also has to consider:

- Whether the step parent assumed any responsibility for the child's maintenance, and if so, the extent to which, and the basis upon which, they assumed responsibility for the child and for how long
- Whether in assuming and discharging that responsibility the step parent knew that the child was not his or her own
- The liability of any other person to maintain the child

Financial provision for children when the parents have never married or third parties are involved

Schedule 1 of the Children Act 1989 gives the Court the power to make orders for financial provision for children. It does not tend to be used if the parents have been married and both reside in England and Wales.

A parent, guardian (which includes a special guardian) or person with a residence order can apply to the Court for financial provision for a child.

A parent can include any party to a marriage/civil partnership (even if now divorced/dissolved) in relation to whom the child concerned was treated as a child of the family; so an order can be made in favour of or against a step-parent. However, an order cannot be made against a step parent in relation to financial provision for a child over the age of 18.

Types of financial provision

The Court can make an order for child maintenance in situations when CMEC does not have the power to do so and/or obtaining a financial order alongside divorce/dissolution proceedings is not appropriate. For further details, please refer to our free information guide titled 'Child Maintenance.'

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Services

[Children Law](#)
[Criminal Law & Fraud](#)
[Education Law](#)
[Employment Law](#)
[Family Law](#)
[Human Rights &
Civil Liberties](#)
[Immigration Law](#)
[Legal Disputes](#)
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The Court can make a lump sum order, an order whereby one party has to pay a sum of money to the other, for the benefit of the child. The Court can make more than one lump sum order and payments can be made in instalments. Lump sums orders are made to meet a particular capital need which is for the benefit of the child e.g. the purchase of a car for the parent with whom the child lives, fees for medical treatment or to pay off arrears of school fees.

The Court has the power to transfer or settle (hold in trust) property for the benefit of a child until a trigger event e.g. the child reach the age of 17 or completes full time secondary or university education.

In special circumstances, for example if the child is disabled, the property can be used to house the child for longer. When the trigger event occurs, the home will either be transferred back to the parent who brought it or it shall be sold and the parent that funded the purchase shall receive the proceeds of sale.

In circumstances where co-habitants have separated and there is a dispute about the ownership of the home, or the parties' respective shares in it, an application under Schedule 1 for a transfer or settlement of property may accompany an application under the Trust of Land and Appointment of Trustees Act 1997.

Children over the age of 18

A child over 18 can make an application to the Court for an order for maintenance or a lump sum from one or both of their parents. In order to do so the child has to either be or intending to receive instruction at an educational establishment or training or alternatively there are special circumstances such as the child has a disability/illness.

The Court cannot make an order at a time when the child's parents are living with each other in the same household.

Factors that the court will consider

When deciding an appropriate level of financial provision, the Court will have reference to the following factors:

- The income, earning capacity, property and other financial resources which each of the parent has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities which each parent has or is likely to have in the future
- The financial needs of the child
- The income, earning capacity (if any), property and other financial resources of the child
- Any physical or mental disability of the child
- The manner in which the child was being or is expected to be educated or trained

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Legal costs

In cases where the other party is very wealthy and the person bringing the application is unable to pay for legal representation in the proceedings, the Court may make an order for interim maintenance which includes an element for legal costs for the remainder of the proceedings.

Parents/children who live outside of England and Wales

When a child lives outside of England and Wales with a parent/guardian or person with a residence order, an application can be made in England and Wales for financial provision for the child as long as the parent against whom the order is being made lives in England and Wales. The Court can only make maintenance orders, not capital or property provision.

An application can be made if the child resides in England and Wales with a parent/guardian or person with a residence order and the person against whom the order is being made (the paying parent) lives elsewhere.

In situations where the child or one of the parents lives outside England and Wales the other country may also have the power to make an order for financial provision for the child. In such circumstances it is important to seek specialist legal advice promptly to ensure that proceedings are dealt with in the most favourable jurisdiction.

I would like more advice about financial provision for my child. What should I do?

The law in relation to financial provision for a child can be complex and daunting. Fisher Meredith has a dedicated team of Family Law solicitors who will be able to advise you fully in relation to what you may be entitled to or what your liability may be.

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