

“Fairness is not necessarily the same as equality”¹

There is no calculation that you can make, or your solicitors can make, about what financial settlement might be awarded. The law is uncertain, and each case is individual. If you were to ask five Judges what settlement they would give, using the same set of facts and figures, you would get five different replies. There is a huge amount of discretion given to Judges, who have flexibility when making, or approving, financial orders.

The one thing that all legal professionals (and Judges) have to guide them is section 25 of the Matrimonial Causes Act 1973. This says that:-

It shall be the duty of the court in deciding whether to exercise its powers under sections 23, 24 or 24A above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare whilst a minor of any child of the family who has not attained the age of eighteen.

The Act then goes on to list the eight factors that the court MUST take into account. This list is not exhaustive, and there may be other unique factors that are relevant to *the circumstances of the case*.

These factors are:-

- 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 be in the opinion of the court 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;*
- 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 parties to the marriage;*
- f) *The contributions which each party 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, 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 any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.*

¹ B v B [2008] 2 FLR 1627

If there is 'enough' money to go around, a court may decide that the sharing principle shall apply. If not, then the available money, capital, income and pensions will be used to meet basic needs, and this may provide a reason to depart from equality.

Remember that you may need a final and binding order, which requires the approval of the court. They do not simply 'rubber stamp' agreements made in mediation.