



A summary of the Law Commission's 18 December 2024 scoping report on Financial Remedies on Divorce & Dissolution

On 18 December 2024 the Law Commission published their highly anticipated scoping report regarding financial remedies on divorce and dissolution. Links to the full report[1] and the summary [2] are set out below. This article summarises the problems that have been identified with the current law on financial remedies and the models of reform that have been proposed in the report.

The Law Commission were tasked with considering whether the current law regarding financial remedy orders, i.e., the Matrimonial Causes Act 1973 (MCA 1973) which is mirrored in the Civil Partnership Act 2004 (CPA 2004), is fit for purpose. The significantly discretionary system that we currently have in place in the Family Court in England & Wales features consistently throughout the report as an argument as to why the law is not fit for purpose and should be reformed. The report however does acknowledge that since the introduction of the MCA 1973, the law on financial remedies has been developed by case law in a number of key decisions, but these are mainly high-net-worth cases and so do not resonate with the majority of the public. The Law Commission have emphasised in the report that spouses / civil partners require certainty and clarity when going through separation and trying to resolve their finances.

The concepts of '*financial needs*' and '*sharing*' which are well versed to family law practitioners are explained in the report. The Family Court will always try, where possible, to ensure that the needs of both spouses are met (with children's needs being firstly prioritised) on divorce / dissolution. Where there is a surplus, the Family Court will divide matrimonial assets equally unless needs



require a departure from equality. The report acknowledges that *'financial needs'* are not defined in the MCA 1973, neither are *'matrimonial'* or *'non-matrimonial assets'*. These concepts have been developed through case law; this is concerning when most separating couples deal with their finances without or with little legal guidance.

A number of problems with the current law were identified in the report; they can be broadly summarised as follows:

- Many couples do not apply to the Family Court to resolve their finances upon divorce / dissolution. Therefore, few couples will have a bespoke or fair solution ordered by the Court based on their specific situation.
- The significantly discretionary system causes dispute instead of promoting settlement. When couples take legal advice, they can receive different advice from their representatives which makes it more difficult to reach an agreement. Also, the lack of detail in the statute makes it virtually impossible for couples to deal with their finances themselves (if they choose to do so).
- The significantly discretionary system, which causes inconsistent outcomes, can often increase legal costs and the length of proceedings.

Paragraph 1.55 of the full report succinctly summarises the findings of the Law Commission:

"The MCA 1973 does not reflect the significant developments to financial remedies law arising out of judicial decisions. Combined with the wide-ranging discretion contained in the current law, this means that it is not possible for an individual going through divorce to understand, by reading the statute, how their case will be decided. The law lacks certainty, and accessibility to an extent that it could be argued to be inconsistent with the rule of law."

Some critics have suggested that the discretionary system allows for flexibility and the creation of bespoke outcomes. The Law Commission's report states this is an *"elusive ideal"* and the current



law “does not... provide a cohesive framework in which parties to a divorce or dissolution can expect fair and sufficiently certain outcomes”.

The report sets out four models upon which the Law Commission proposes that any reform should be based on (it does not make recommendations for reform of the law):

1. Codification

- Minimal change to the existing law in section 25 of the MCA 1973.
- Case law is codified.
- Discretionary system retained.

2. Codification-plus

- Current law is codified.
- Additional reform is developed to address the specific areas where the law is unsettled, e.g., nuptial agreements, spousal maintenance, the law on ‘conduct’ [REDACTED]
- Discretionary system retained but limitations on discretion introduced.

3. Guided discretion

- Introduce underpinning principles and objectives which guide the exercise of the discretionary system.
- Reform beyond changing existing law in section 25 of the MCA 1973.



4. Default regime

- Creation of a matrimonial property regime (as already in existence in other European and Commonwealth jurisdictions).
- When marrying / entering a civil partnership, couples will be informed of how property would be dealt with on divorce / dissolution.
- Limited discretion and instead high level of certainty.

The models represent a spectrum of reform possibilities. The level of work associated with the reform increases per model. The first model is the simplest approach and would involve settled case law principles being set out in statutory form. The fourth model would require complete reform of the law as a whole. The other two models fall somewhere between the first and fourth.

The report concludes that the Government should consider the report to decide whether reform work should be carried out. If the Government decides that it should be, then they should shape the reform. The responsible Minister is to respond as soon as possible to the report and with an interim response within 6 months of the Law Commission's report (so by June 2025) and a full response within one year (so by December 2025). It would be disillusioned to think that reform will happen quickly, but it is important and welcomed by many family law practitioners that this issue is being addressed.

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Notes

[1] <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2024/12/Financial->



Remedies-scoping-report-Dec-24-1.pdf

[2] [https://cloud-platform-](https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2024/12/Financial-Remedies-summary-Dec-24-1.pdf)

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