

Does behaviour or conduct during a marriage affect my financial settlement on divorce?



Within a Form E, you are given the opportunity to complete section 4.4, which sets out your spouse's bad behaviour or conduct. This section exists as the law set out in the relevant legislation (section 25(2)(g) Matrimonial Causes Act 1973) requires the court to consider the conduct of each party if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

However, the court has made it clear that there is a very high threshold for a financial award to be altered on account of conduct and the conduct will only be taken into account in the most exceptional of cases.

So when may the behaviour or conduct of your spouse influence a financial settlement if it is only in exceptional circumstances?

Domestic abuse or infidelity (personal misconduct)

Domestic abuse or infidelity is generally not considered to meet the threshold to alter the final financial settlement unless it has a financial impact upon you, for example, if the impact of your spouse's violence, either physically or mentally, prevents you from working. If a spouse attempts to raise personal misconduct within your financial remedy proceedings, such conduct must be "obvious and gross". Mostyn J in *OG v AG [2020] EWFC 52* commented, "conduct should be taken into account not only where it is inequitable to disregard but only where its impact is financially measurable. It is unprincipled for the court to stick a finger in the air and arbitrarily fine a party for what it regards as immoral conduct".



In considering whether making a claim against a spouse's personal misconduct is proportionate to the assets in determination, the court has also provided guidance to judges in respect of the court's case management powers. Pleading conduct in any financial remedy case has the impact of increasing costs and entrenching parties in their positions, which discourages settlement and increases the possibility that the financial remedy proceedings endure for longer than necessary. The court is therefore guided that it must take into account "whether it is proportionate to permit the allegation to proceed, for a pleaded conduct claim usually has the effect of increasing costs and diminishing the prospects of settlement".

Finally, the court should take into account whether the allegation, even if proved, would be material to the outcome (*Peel J in Dmitry Tsvetkov v Elsinia Kharyova*). Further, the court forcefully re-stated the need for proportionality in excluding a party's conduct claims from consideration in *N v J [2024] EWFC 184*, for example, and to elaborate upon the above, "even in those very rare cases where there is a possible financial consequence of the alleged conduct, the court must decide whether there is a possible financial consequence of the alleged conduct, the court must decide whether there is any need to litigate the allegations. It seems to me that in the great majority of cases, the impact on the alleged victim can and ordinarily will be taken into account by reference to the conventional criteria regardless of whether domestic abuse has taken place".

In conclusion, the court in this case claims that cases where personal misconduct will be allowed to proceed where there is no marked financial impact are "vanishingly rare", that the "alleged conduct (even if it reaches the threshold and has a financial consequence) must be material to the outcome" and "to inquire into conduct must be proportionate to the case as a whole".

Financial misconduct

Financial misconduct, for example, gambling, hiding or concealing assets, depleting or depreciating assets, or making large unjustified gifts to friends or family may meet the court's threshold for conduct that should be taken into account on determining a financial settlement. If you are suspicious of your spouse's financial conduct, you should raise that with your solicitor. Remedies such as seeking an injunction to prevent your spouse from dissipating further assets or seeking an add-back to compensate you for the lost assets can be sought.

Litigation misconduct

Litigation misconduct is one of the most common examples of when the court deem it appropriate to alter the financial settlement on divorce as a result of your spouse's conduct. If your spouse behaves improperly during the financial remedy proceedings by failing to disclose assets, lying or omitting the truth, or seeking to frustrate the proceedings, the court can penalise that spouse by making orders that they pay your some or all of your costs or adjusting the final financial settlement.

How we can help

Should you require assistance as to whether it is appropriate to include examples of your spouse's behaviour or conduct in your Form E having regard to the specific circumstances of your case, please contact our [family team](#).



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