



Overview of services and expertise

DIVORCE

There is only one ground for divorce – the irretrievable breakdown of the marriage which must be based on one of five facts set out in the Matrimonial Causes Act 1973. The person petitioning for divorce has to rely on one of them –

- adultery (of the other spouse)
- unreasonable behaviour
- separation for two years or more (where the other consents)
- separation for five years or more (no consent from the other needed)
- desertion (rarely used)

You cannot bring divorce proceedings until you have been married for at least 12 months although it is possible to have the marriage annulled or obtain a decree of judicial separation.

Generally, the divorce itself will take between four and six months to progress through the court from the date of the petition to the date of the final order – the Decree Absolute.

Whilst the divorce is progressing, negotiations will continue to try and iron out the issues surrounding your financial affairs and the arrangements for your children.

At present, the court fee to issue the petition is £340, the Decree Absolute fee is £45 and you will have a small fee of £10 or so to pay to swear an affidavit mid-way. In addition you will incur the costs of your legal team but generally a straightforward divorce with co-operation from the other party can be achieved with 3 hours of work from your solicitor.

Sometimes you can obtain a costs order against the other party and if this is likely, we will explain to you at the outset the circumstances in which this is likely to be the case.

FINANCIAL ORDERS IN DIVORCE & CIVIL PARTNERSHIP DISSOLUTION

The financial issues surrounding relationship breakdown are often the most difficult to resolve.

Whether resolved through the court process, collaborative law or mediation, the outcome for both parties must be fair and reasonable.

There is a misconception that everything is divided in half. Not true – the family courts have a wide discretion when exercising their power to make orders for financial relief and must take on board the welfare of any minor children. S.25 of the Matrimonial Causes Act 1973 sets out a 'checklist' that the court will consider in every case, taking account of:

- income, earning capacity, property and other financial resources
- financial needs, obligations and responsibilities
- the standard of living enjoyed by the family before the breakdown of the marriage
- the age of each party to the marriage and the duration of the marriage
- any physical or mental disability of either of the parties to the marriage
- the contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family
- 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
- the value to each of the parties of any benefit that might be lost as a result of the dissolution of the marriage (eg. pensions)

The vast majority of financial applications are resolved by agreement and it is essential to have expert advice – you only get one chance to achieve the right result. We will always focus on the outcome for you both by guiding you through the process whether with or without court proceedings.

CHILDREN ISSUES

The decisions you make about your future should be yours. The same applies in respect of your children.

There is a presumption enshrined in the Children Act 1989 that the court should not get involved in matters concerning your children. As parents, you are best placed to make decisions about your children's welfare.

Unfortunately, disputes do arise. We can help you deal with these in a variety of ways to minimise the disruption for the children.

Some of the things we can help you with:

- residence orders – determining with whom the children should live
- contact orders – formalising the arrangements to make sure the children can maintain the important relationship with the non-resident parent
- applications for leave to remove the children to a different country
- emergency orders such as prohibited steps orders to prevent something happening or specific issue orders to make sure something does happen
- financial orders under Schedule I of the Children Act to provide financial support over and above the provisions in the Child Support Act

Whatever the issue is, we will deal with it sensitively but realistically and always with the children's interests at the heart of the matter.

We have extensive links with specialist family law barristers if court proceedings are unavoidable to ensure that your case is put before the court fairly and ethically, focusing on the outcome for you as a family.

SEPARATION AGREEMENTS

Some couples prefer to separate now and perhaps divorce in the future. There may also be a desire to formalise the financial arrangements and agreements concerning the children at the time of separation.

A Separation Deed can formally record these arrangements. A Separation Agreement like any other agreement, can form the basis of a legally binding contract between you and whilst the court could, at a later date in divorce proceedings, disagree with the terms of the agreement, it is highly unlikely that it would seek to disturb what you have already agreed between you and have probably already implemented some time beforehand.

It is usual for there to be full financial disclosure before a Deed is formalised and generally any negotiation as to its terms should proceed on that basis. An agreement is much more likely to be upheld by the court if full and open disclosure has taken place and each party has had the benefit of independent legal advice.

We are happy to work with you in this way if you prefer not to issue divorce proceedings and providing the terms of the agreement represent a fair and reasonable outcome for you both, you can ask the court in any subsequent proceedings to endorse your agreement – all the hard work has already been done!

PRE-NUPTIAL AGREEMENTS

Since the well publicised case of the German heiress Katrin Radmacher in 2009, pre-nuptial agreements are very likely to be given considerable weight by the courts. In other countries they are binding and commonly used to protect couples planning to marry.

There are many reasons why a pre-nup might be a good idea –

- to predict the outcome of any divorce settlement before you marry
- to save on costs and the acrimony that can arise in divorce proceedings
- to prevent speculative claims following a short marriage
- to protect those marrying in later life or for a second or subsequent time
- to limit the claims of a second spouse thereby protecting the interests of children from previous marriages

Whatever your circumstances and whatever questions you may have, we will tell you exactly what you need to know, draft a comprehensive agreement for you and ensure you have the best protection possible for your future life.

Even if you are just planning on living together, an agreement setting out your intentions, particularly in respect of your finances, will give you peace of mind from the outset and avoid costly and harmful disputes later on.

CIVIL PARTNERSHIPS

Since December 2005 same sex couples have been able to register their partnership, which ensures they acquire the same rights and responsibilities as married couples. We have expertise in dealing with pre-civil partnership agreements and, if it all goes wrong, dealing with the dissolution of the partnership

You may wish to consider the legal rights and responsibilities that your civil partnership confers upon you from the outset, or even in advance of registration. These include -

- a duty to provide reasonable maintenance for your partner and any children of the family
- ability to apply for parental responsibility for your partner's child
- equitable treatment for the purposes of assessment for child support, life assurance, tax (including inheritance tax), employment and pension benefits or inheritance of a tenancy agreement
- access to fatal accident compensation
- protection from domestic violence and from discrimination on the grounds of sexual orientation
- recognition for immigration and nationality purposes
- wills are revoked when you enter into a civil partnership and your partner can sue the other's estate if they are not named as a beneficiary under a will. If there is no will, partners benefit in the same way as married spouses

With so much at stake, you may wish to consider having an agreement in place before the ceremony to protect your interests and those of your partner. This might be, for example, because you bring different capital into the relationship or you might plan to live in a property owned by one of you. Whatever the issue, considering having an agreement in place in advance may protect you in the long run if things go wrong.

If the relationship fails, will guide you through the process of the dissolution and advise and assist you with financial or children issues so that you can separate with dignity.

ISSUES CONCERNING COHABITING COUPLES

HOME OWNERSHIP

If you move into a property owned solely by your partner, you may struggle to establish

any rights to the proceeds of sale of the property.

If your partner asks you to leave, you may have no right to remain.

If the property is not in both your names, you have no right of inheritance if your partner dies unless they make a will dealing with this.

If your partner dies and has not made a will, you would need to make a claim against your partner's estate providing you have been living together for more than two years and have been financially supported by your partner.

It is possible to transfer property into joint names and have a deed of trust in place setting out how the property is to be shared.

RENTING PROPERTY

Consider having both names on the tenancy agreement

CHILDREN

From 1 December 2003 if your child's father is jointly registered on the birth certificate, he automatically has parental responsibility for the child. If not, you can still enter into a parental responsibility agreement. Stepparents can also obtain parental responsibility now.

We can help

you with this and explain what it might mean for you and for the children.

If you separate from your partner, you may need to make an application to the Child Support Agency for financial help.

BANKING

Consider having a joint bank account. If one of you dies, you will not automatically be entitled to the money in your partner's account.

NEXT-OF-KIN

Unless there is a written agreement in place, you may not be considered as your partner's next-of-kin.

TAX MATTERS

You do not have the same tax benefits as married couples or civil partners. This is particularly the case with capital gains tax and inheritance tax. If you want to give major assets to your partner, you may face a large tax bill.

PENSIONS

Your state pension does not automatically pass to your partner although some private pensions to allow benefits to pass to either of you, depending upon the rules of the particular scheme.

WILLS AND COHABITATION AGREEMENTS

Be in control, in advance and make a will and consider a living together agreement or cohabitation contract. That way, it is not all left to chance in the event of separation or death.

MEDIATION EXPLAINED: WHAT IS A MIAM?

From 6 April 2011, if it is your intention to issue proceedings in the family courts to deal with issues surrounding your children or financial matters, you are expected to attend for a Mediation Information & Assessment Meeting (MIAM) with a mediator to see if the issues are capable of being resolved through an alternative dispute resolution method.

If court proceedings are then issued, the judge will want to know if mediation has been attempted and you may find the proceedings are put on hold and the judge refers you to mediation before the case can go any further.

In certain circumstances, the requirement does not apply, for example if you have attempted mediation before or if the issue is urgent and a court application is necessary immediately. Generally, the mediator will see you both together with a view to identifying the issues that need dealing with and assessing whether your circumstances make the case suitable for mediation.

Assuming you agree to go ahead, a meeting will be arranged for you to come back and with the help of the specially trained mediator, to work through the issues and try and reach agreement.

Throughout the process, you are free to take advice from your own solicitors and providing you both agree, you can bring your solicitors with you if you think this will speed up the process of reaching terms that you can settle upon.

Providing you have attended the MIAM, you are still free to issue court proceedings even if your case has been deemed suitable for mediation by the mediator, but the majority of couples who embark upon the mediation process do continue and reach agreement thus saving the emotional and financial cost of going to court.

If the mediation goes ahead, you may find that the issues can be resolved in just one meeting where the issues are straightforward but even when dealing with more complex financial matters, once financial disclosure has taken place, most mediations conclude in two or, at most, three sessions.

The mediator's role is to assist you both to try and resolve conflict and reach joint solutions and to do this, the mediator will provide you with information such as how the law operates, to help you do this. The focus in mediation is forward thinking and where there are children, they are put at the centre of the discussions.

Sometimes, your case will be settled by discussions at court and the court can be asked to make an order reflecting your agreement. A court order cannot be made unless you have obtained a Decree Nisi in your divorce but the court will record your agreement for later.

If it is impossible to settle at the First Appointment or if there are outstanding matters remaining to be dealt with such as house valuations or questionnaires to be replied to, the court will give directions as to how the case should proceed, and will list your matter for a Financial Dispute Resolution hearing – the "FDR."

You must attend the FDR and you must use your best endeavours at this hearing to reach an agreement. If agreement is not reached at the FDR, the case will be set down for a final hearing, or a trial, which will increase your costs and delay a resolution. It is therefore imperative that all information is available at this hearing when the judge will hear the facts of your case, hear legal submissions on behalf of both parties and will give an indication of how he or she believes the court would decide your case at trial. The judge will warn you both of the cost involved in going to trial and encourage you to settle.

If it is impossible for you to reach agreed terms, then the case will be listed for a trial in the future before a different judge.

Throughout the process, even though a formal application has been made, you are under an obligation to continue to try and negotiate an agreed settlement.

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