



Divorce and Separation

A GUIDE BY FAMILY LAW CONSULTANTS



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NO FAULT DIVORCE

We know that divorce can raise sensitive and personal issues and we always do our utmost to put you at ease. We are approachable and provide straight forward advice, tailored to your individual needs.



HOW WE CAN HELP:

- Provide expert advice about the divorce process
- Start and manage your divorce proceedings through to conclusion
- Keep you informed of progress
- Send you copies of important letters and documents
- Provide you with clear information about the cost of your case at the outset

If you are at risk from domestic abuse you should inform your solicitor immediately. We will make it a priority to discuss how to keep you and any children safe.

WHAT WE WILL NEED TO KNOW:

Every case is different, so it is important that you are open with us in order that we can fully understand your circumstances and advise you appropriately. We will ask you for a variety of details and documents.

These may include:

- Details of any children who are, or have been treated as part of the family
- Current and proposed future living and contact arrangements for the family
- Details of your assets, savings, income, pensions and debts and those of your spouse (so far as they are known to you)
- Any other relevant information
- Details of any domestic abuse
- Your marriage certificate



“NO FAULT” DIVORCE

From the 6th April 2022 the divorce system, which has been in place since the Matrimonial Causes Act 1973 came into force, will come to an end and will be replaced by a system for divorce without blame. Divorcing couples will no longer be required to give reasons as to why their marriage has failed and they will simply need to state that it has broken down irretrievably.

No fault divorce will take away the ability of the responding party to object or defend to the divorce. The divorce once issued, either by one person or by joint applicants will end the marriage once the process has been completed, even if one party does not agree.

If the process of divorce is not suitable for you, due to religious reasons, we can advise you about other forms of separation.

130,592

NUMBER OF DIVORCES GRANTED IN 2020

When going through the process of a Divorce, people can feel isolated and lonely. According to the Office for National Statistics, this is clearly not the case so take heart in knowing that you are not alone.

THE DIVORCE PROCESS

The new divorce law provides for a 26 week period from the start of your divorce application to the final divorce order being made. In reality this period may be longer due to court delays or procedural steps.

To start a divorce either one person (sole applicant) or both parties jointly (joint applicants) file an Application for Divorce. We will prepare the divorce application for you and it can be sent to court once you are happy with it, if you are a sole applicant. We do however, recommend providing a draft copy of the application to your spouse or their solicitor for them to consider, before it is issued, in accordance with the good practice of the Family Law Protocol.

In the case of joint applicants, you may have a solicitor each in which case we will liaise with your spouse's solicitor to ensure the divorce application is prepared to everyone's satisfaction, or in some cases we may represent you both.

Once the divorce application is sent to the court for issue, in most cases via the online portal, the court will charge a court fee of £593.00 to issue your application. Should you wish to share any of the divorce costs with your spouse, we will need to agree this in writing with them or their solicitor, before the application is issued. The court will no longer consider applications for costs orders within divorce, unless your case falls into the small group of cases, which are disputed (see below).



11.9 YEARS

According to the Office for National Statistics, this is the average duration of a marriage in England and Wales that were granted a divorce in 2020.

If you are a sole applicant, once the application has been issued the court will send a copy of the application to your spouse. There are some complicated rules concerning the service of the divorce application on your spouse and we will of course advise you accordingly, to ensure your spouse receives the application in good time. Service is not applicable to a joint application.

CONDITIONAL ORDER (FORMERLY DECREE NISI)

In the case of a joint application, after a period of 20 weeks following the issue of the application, we will be able to apply for the Conditional Order. This can be done by one of the applicants or jointly. The 20 week period is to allow for a period of reflection and time to attempt to resolve possible child or financial arrangements. The conditional order will signify that the divorce is progressing. An application by a sole Applicant will follow the same process once service of the application can be demonstrated. Once a conditional order is issued you will be able to file any consent order that may have been agreed regarding your financial settlement.

FINAL ORDER (FORMERLY DECREE ABSOLUTE)

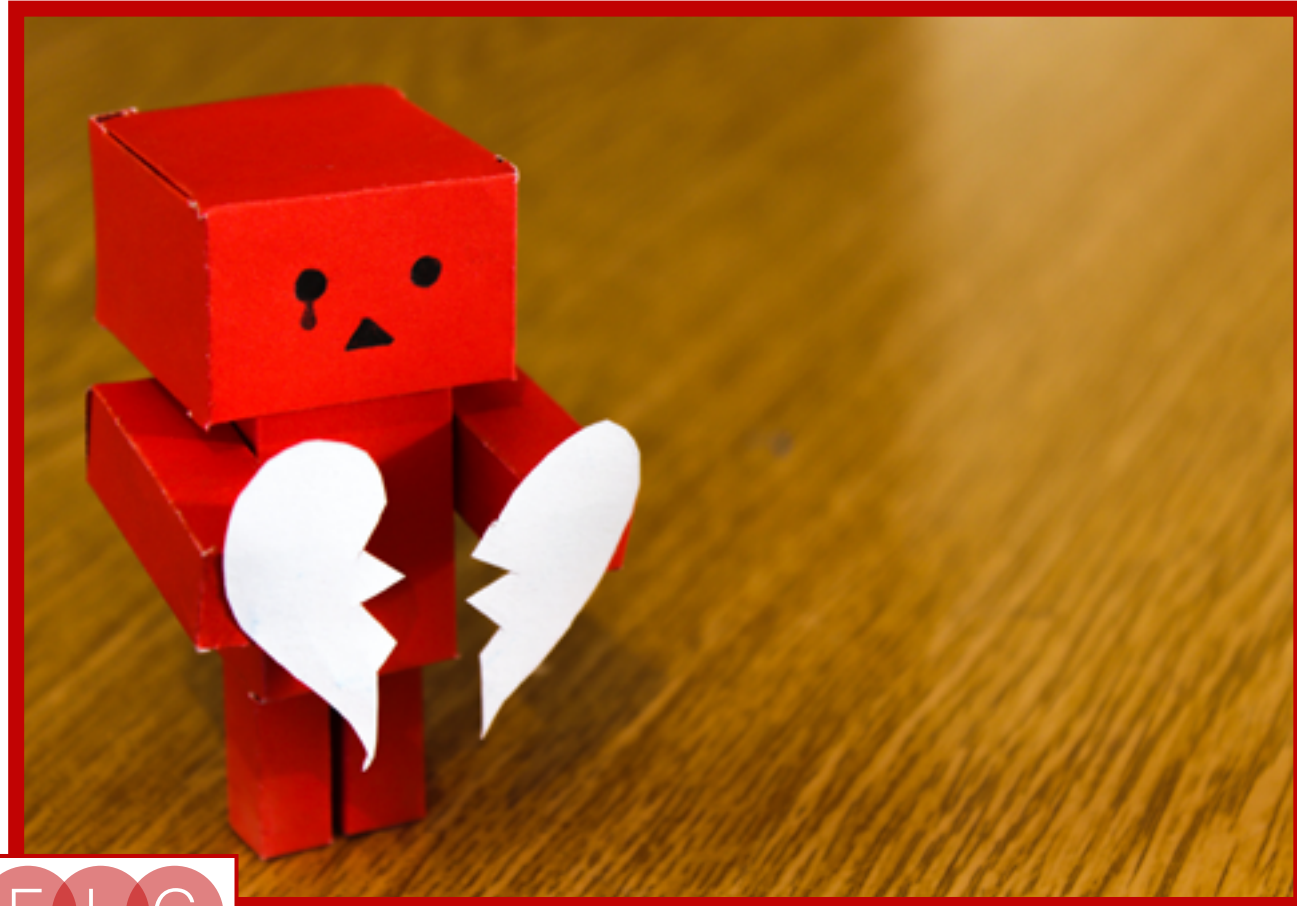
Once 6 weeks has passed after the conditional order was made, one or both applicants can apply for the final order, which will end the marriage.

DISPUTING THE DIVORCE PROCESS

The new law will no longer allow a person to object or defend a divorce. You may only dispute the divorce as a Respondent; if you believe the courts of England & Wales do not have jurisdiction, the validity of the marriage is disputed or the marriage has already legally been ended elsewhere.

For more information, check out the quick and informative videos on our channel. Click the link below.





Judicial Separation (Legal Separation)

This process allows couples to legally separate and live apart without divorcing or ending their civil partnership. The reason this process exists is that divorce isn't right for everyone, for example for religious reasons or where a couple has been married or in a civil partnership for less than a year.

An application for Judicial Separation must be made on paper rather than via the online portal. The application can be made by a sole applicant or jointly by both parties. The court fee for issuing the application is currently £365.00. The process has 2 stages being the application and then an application for a judicial separation order.

It is important to note that at the end of the proceedings you will have an order stating you are legally separated, however, you will remain married or in your civil partnership. Whilst you will be able to seek a financial settlement as a result of the this process, you would not be free to remarry.

Divorce might not be the only option. There may be alternative routes which we can advise you on.

£593

This is the current Court Fee to issue the proceedings for a divorce. This is payable when submitting the application whether it is done by a legal representative or a member of the public.

Nullity Proceedings

Nullity applications will continue to be a paper process and can only be made by one applicant. A nullity application can still be disputed. It is a complicated area of law and we would need to carry out an assessment of your unique circumstances, as to whether such as application is appropriate for you.

The benefit of a nullity petition is that the court can declare your marriage as void or voidable and as such it may put you back in the position had you never had married.

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Mediation

It is now a legal requirement for anybody seeking to make an application to the court in respect of their matrimonial finances, or issues relating to children, to first attend a mediation assessment meeting.

There are some exceptions to this, for example, if there is documented domestic violence or if one of you lives outside of England and Wales.

Some people also find that mediation is an effective way of reach an agreement in respect of finances or issues relating to the children and it is certainly worth considering, to see if it is right for you. This is something that we can help you to arrange or you can make your own enquiries of a suitable family mediator.

If, after the initial meeting, you decide mediation is not for you, or if it breaks down part way through the process, the mediator will provide you with the relevant form to you need to pass on to us so we may make an application to the court on your behalf.

Legal aid is still available to assist those who qualify financially, with the cost of mediation. To find out if you are eligible, you would need to speak to your chosen mediator.



A FINANCIAL SETTLEMENT

Many people believe that a divorce automatically ends the financial relationship between them and their spouse.

This is not the case.



If you do not obtain a financial remedy order, either by consent, or as a result of contested court proceedings, you could be leaving yourself open to claims against your assets in the future.

This could be months or even years down the line. Even if you have no assets at the time of the divorce, you should still consider obtaining a clean break order so as to protect any assets you do acquire in the future from claims by your ex-spouse.

Sometimes the cost of obtaining a financial remedy deters people from dealing with financial matters properly, but this can turn out to be a false economy. It is likely to be much more cost effective to obtain an appropriate order at the time of your divorce than having to deal with a court application in the future. For example, assets may have increased in value or you may have paid a mortgage

by yourself since separation believing the property to be yours. We have seen numerous cases in which financial relief has been sought by one party some time after the divorce and because of the increase in the value of the assets over time, a lump sum has had to be paid that would not have been ordered if matters had been dealt with properly at the time of divorce.

Also, if you were to come into some money by way of an inheritance or lottery win after your divorce but no final financial order was made, your former spouse could have a claim on that money. Even if their claim were unsuccessful, the cost of dealing with such the proceedings is likely to be higher than if a financial remedy order had been obtained at the time of the divorce.

45-54 YEARS OF AGE

According to the Office for National Statistics, this is most likely age group to get divorced. This most often also means considering significant financial ties and the care of children of the marriage.

It is important to note that until a financial remedy order is approved by the court, either party could go back on their word.

If you are unable to reach an agreement directly between yourselves, with the help the solicitors or through mediation, you would need to make an application to the court for the matter to be dealt with by a Judge. The cost of doing this will of course be higher and contested court proceedings can take several months, but sometimes it is the only way to resolve the issues between you.

If you are the respondent within the divorce proceedings and you re-marry before finalising your financial position from your first marriage, you will be barred from making any financial application in the future. This may mean that your ex-spouse could retain matrimonial assets in their sole name, that you could otherwise have had a claim on.

WAYS OF REACHING AN AGREEMENT

BETWEEN YOURSELVES

You and your spouse may be able to reach an agreement between yourselves in respect of how you would like to divide the income, assets, pensions etc. If this is the case we can help you formalise the agreement by incorporating it into a financial remedy order and can then submit the order, at the appropriate time to the court for approval.

However, if you reach an agreement without entering into the process of full and frank financial disclosure (see below) we will not be able to advise you whether the agreement you have reached is right for you.

At the time of preparing the order you will be asked to sign a disclaimer to confirm that we have not advised you as to the appropriateness of the settlement.

The advantage of reaching an agreement in this way is that you will receive a settlement that you have both agreed is acceptable. By keeping legal work to a minimum we are

able to offer you a competitive Package Fee (ask for details of our Clean Break Package).

MEDIATION

Mediation is the process of sitting down with your spouse and an independent trained mediator with a view to reaching a financial settlement that can then be drafted into a final order.

You will be asked by the mediator to gather documents demonstrating the value of your assets, liabilities, pensions and income. These documents will be used to assist the mediation process. If an agreement is reached the mediator will draw up a "Memorandum of Understanding" setting out the details. However, this is not a legally binding documents and you would, therefore, need to provide a copy to us so we can draft it into a formal financial remedy order. We would then file the same with the court for the approval of the Judge.

NEGOTIATING THROUGH SOLICITORS

We can assist and advise you with regard to obtaining a suitable settlement. In order to do this, we will first need

to guide you through the process of full and frank financial disclosure. This is where both you and your spouse would gather documents to demonstrate the value of your income, assets, liabilities and pensions and provide these documents to your respective solicitors.

This information is then exchanged with your spouse's information, which we will go through thoroughly. Once this has been done we should then be able to advise you as to an appropriate settlement and make offers to settle in writing.

If your spouse refuses to engage in the voluntary disclosure process then we shall advise you to issue an application at court as a voluntary agreement will not be possible.

However, if disclosure does take place and if an agreement is reached, we would then incorporate this into a formal order and file it at court for the approval of the judge.

COURT APPLICATION

If all else fails, or the other options are not suited to your particular circumstances, you can apply to the court for assistance.

It is still possible to reach an agreement at any stage, during the course of court proceedings (and this is actively encouraged), but, if no agreement is forthcoming the judge, at the final hearing will make an order, after considering all the documents and evidence.

Whatever your circumstances you can be assured that we will advise you as to which of the above methods are suitable for you and assist you through the process.

If the process of divorce is not suitable for you, due to religious reasons, we can advise you about other forms of separation.



SEPARATION DEED



WHAT IS A SEPARATION DEED?

A Separation Deed is a legally binding contract entered into voluntarily by both you and your spouse or ex-partner (if unmarried) which contains details of your financial assets, liabilities and income and how they are to be dealt with upon separation.

Separation deeds can be entered into either by married couples or civil partners who have separated, or by unmarried couples who are separating.

Married couples who either do not want to, or are unable to divorce straight away may wish to consider a separation deed, as it allows them to sort out their finances before divorcing at some point in the future.

Once signed, a separation deed is effectively a contract between you and your ex-partner which is capable of

being enforced. Upon a divorce the deed would need to be converted into a formal financial remedy order and filed at court for the approval of a judge.

It is important to note however, that a separation deed does not bind the court in. There is always a slight risk, therefore, that if either of you experience a significant change in circumstances after the separation deed is entered into, the court could refuse to make an order in the same terms as the deed following a divorce. In most cases, this is unlikely to happen, but it cannot be ruled out.

Therefore, if you do have the grounds to divorce and enter into a financial remedy order, this would be the most final and secure way of dealing with matters.

There is no such thing as a "common law marriage" so if you are not married, as a general rule, you cannot make a claim on any assets owned by your partner.

There are a few exceptions to this, but it is complicated and we would, therefore strongly advise you to talk to us if you find yourself in this situation.

Some examples of items that can be included in a Deed:

- A statement setting out the purpose of the deed and the fact that you both intend it to be legally binding.
- The date of your separation and the fact that you intend to divorce in the future. You can also state such arrangements as who will issue the divorce, and who will pay for it in the future;
- What is to happen to the former family home for example: whether it is to be sold or transferred to one of you;
- Whether a lump sum is to be paid by one party to the other;
- Child maintenance arrangements;
- How any pension fund will be dealt with in the future upon divorce (this will be not be enforceable without a divorce).

There are many other things that can be incorporated into a separation deed and we can discuss all options with you once we have full details of your case. We can help you negotiate a settlement to be incorporated into a separation deed or simply embody an agreement you have already reached with your spouse into a deed. Your separation deed is specifically drafted for you and is therefore unique to your circumstances.

Before proceeding we would recommend that you consider, after advice, whether a divorce or a separation deed is most appropriate for you.

26 WEEKS

Under the Divorce and Dissolution and Separation Act 2020, this is the quickest that a divorce can be granted in England and Wales.



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