



## Guide to divorce and separation

**Even the most amicable divorce or separation is likely to be difficult and stressful at times. If you are already feeling upset and angry, then worrying about legal proceedings, your financial arrangements and what happens to you – and your children – can be an additional concern.**

If you have not consulted a solicitor before, you may also feel anxious about seeking legal advice. In fact, this is one of the wisest moves you can make.

Independent legal advice can be crucial in helping to resolve issues relating to divorce or separation; if you're not sure whether you have grounds for divorce, or if you're concerned about the arrangements for your children, or about financial issues and how your money and property might be divided, you should consult a solicitor.

Your solicitor's job is to look after your interests, and those of any children. They will give realistic, professional advice that is right for you and your circumstances, using their knowledge of the law and their professional experience.

Divorce law has been designed to be flexible enough to meet the different needs of every couple affected – around 150,000 marriages end in divorce each year in England and Wales alone – so at times it can seem complex and confusing.

This guide covers some of the key points relating to separation and divorce. For simplicity, we use the term "partner" to mean a husband, wife or civil partner and "married" to describe being married or in a civil partnership. We also use the word "divorce" for both married couples and civil partners, although for civil partners divorce is known as "dissolution".

The law is substantially similar for both marriages and civil partnerships and we raise the main differences between them.

**“Breaking up can turn your world upside down”**

### Divorce

Who can start divorce proceedings?

Anyone who has been married for over a year. It does not matter where the couple were married provided at least one partner is either domiciled, or resident in England or Wales.

The only ground for divorce is that the marriage has irretrievably broken down. This must be established by one of the following five facts:

1. Your partner has committed adultery with a person of the opposite sex and you find it intolerable to continue living together. The adultery can occur after you have already separated.
2. Your partner has behaved in such a way that you cannot reasonably be expected to live with them.
3. Your partner has deserted you for a continuous period of two years or more.
4. You and your partner have been living separately for two years or more and your partner agrees to the divorce.
5. You and your partner have been living separately for five years or more, whether or not your partner consents to the divorce.



If you are filing for divorce, you set out your evidence in a document called a Petition. If you file for divorce you are “the Petitioner” and your husband or wife is “the Respondent”.

Once you file your Petition with the appropriate court, you have started the divorce process.

What happens next depends upon whether or not your partner contests or agrees to the divorce. It is sensible to seek your partner’s agreement to a divorce and to try to reach agreement over the contents of the divorce Petition before proceedings are started, especially in cases of adultery or unreasonable behaviour.

Your partner will receive a copy of the Petition and must acknowledge receipt of it, indicating whether they agree to a divorce. If they do, the procedure is relatively straightforward.

If a judge is satisfied that there are grounds for divorce and that your partner does not wish to contest it, he/she will pronounce a “Decree Nisi”; this is the first stage of the divorce.

Six weeks thereafter you can apply for the final divorce decree known as the “Decree Absolute”. The Decree Absolute brings the marriage to an end.

It is not necessary for a financial settlement to be completed by the time the divorce is made final. Quite often financial negotiations will still be in the early stages, particularly if finances are complicated. In many cases however it may actually be advantageous to delay the final divorce decree until financial matters are resolved. Any financial order will only come into force after the decree has been made absolute.

It is important to keep the Decree Absolute safe as you will not be able to remarry without it.

### Financial remedies

Either party, regardless of who started the divorce proceedings, can claim financial remedies as part of the divorce; these remedies may include a sale or transfer of property, maintenance payments, a lump sum of money and a pension sharing or attachment order. Such a claim can be made at any time, sometimes many years after the divorce, which is why it is imperative that the terms of any financial settlement reached is recorded properly.

There are various ways in which you might obtain a financial settlement following the breakdown of the marriage.

You and your partner might be able to agree everything between yourselves with minimal guidance needed from your solicitors during the negotiation stage.

You might wish to consider Mediation – a process which enables you and your partner to discuss a settlement with an independent third party who will help you try to reach an agreement. You may still need legal advice upon any proposals made in the mediation process.

Alternatively, you may wish to instruct your separate solicitors to negotiate on your behalf and to look after your respective interests.

If you are both keen to avoid hostility and are looking for a solution which is beneficial to both of you and to your family, then “collaborative law” may suit you best.

In the collaborative process you and your partner meet together with your solicitors to discuss the financial consequences of your separation and to consider possible solutions. This usually involves at least two or three meetings together as a group. Each of you can still have legal advice from your solicitor, but the solicitors will work together to help you reach an agreement.

If, as a result of either option above, you are able to reach a settlement with your partner, then you will need to instruct a solicitor to record the terms of agreement into a “Consent Order”, which is legally binding upon you both.

If you cannot resolve an issue in one of these ways, then you can still apply to the court for a financial order. However, before doing so the court will expect you to have at least considered mediation as an alternative. Each party will be expected to attend a “Mediation Information and Assessment Meeting” (MIAM) either together or separately. The purpose of such a meeting is to explain the process of mediation and to help you decide whether this might be suitable in your case.

If a court application does prove necessary, one party will issue proceedings for a financial remedy and the court will, in the first instance, give directions as to how the case should proceed. Such directions will include a requirement that both parties disclose their financial circumstances to the other by completing a financial statement, a document known as “Form E”. This is a detailed statement of your current financial position and includes any information which you may feel the court should take into account when dividing your money and property. You must attach to your Form E various documents to prove your financial position, such as 12 months of bank statements and pension valuations.

These financial statements and accompanying documents must be filed with the court and a copy provided to your partner or their solicitor.

A judge will consider both parties’ financial statements at an initial court hearing, known as a “First Directions Appointment”. At this hearing the judge will ensure that the parties have each made a

full disclosure of their financial positions supported by the relevant documentation. The judge will decide what other documents may need to be obtained or disclosed for the case to be progressed, perhaps, for example, a valuation of property.

If each party has already made a full disclosure of their financial position, and nothing further is required, then this hearing may become a “Financial Dispute Resolution Hearing” when the judge will hear a summary of each party’s case, what they are hoping for and why they think their proposals would represent a reasonable settlement. The judge may comment on each party’s position, and will encourage them to negotiate. If the parties reach an agreement at this hearing, the judge will record the agreement in a “Consent Order”, bringing the case to an end.

If, despite some negotiation and the judge’s comments the parties cannot reach agreement, then a further, final hearing will be fixed when the court will decide the matter. The court will make an order (known as a “Financial Remedy Order”) which will be final and binding upon both parties.

The court can make the following orders in financial remedy proceedings:

- **Maintenance payments for a spouse** – usually a monthly or weekly payment to be made by their partner.
- **The payment of a lump sum** by one partner to the other.
- **A property adjustment order** – perhaps transferring the ownership of property from joint names to one partner, or from one partner to the other.
- **Pension attachment orders** (previously known as “earmarking”) in respect of a pension – to give a partner maintenance or a lump sum when their spouse retires.
- **Pension sharing orders** – dividing one partner’s pension fund between the two spouses at the time of the divorce.

The court may make an order that covers any or all of the above. Not all of the orders that are available may be suitable or appropriate in your case. Whether you would be successful in obtaining one of these orders, and if so, how much you might receive depends upon your circumstances and your own, and your partner’s financial position.

If you need help deciding whether to apply for an order, or what the outcome might be, it would be wise to seek legal advice. Even if you think you can reach an agreement with your partner, talking to a solicitor will make sure your interests are protected.

## Divorce and children

When a relationship ends in divorce, the welfare of any children involved is paramount.

During what is likely to be a difficult and stressful time, most parents would ideally wish to put their differences aside to agree the arrangements for their children. Consulting a family solicitor will help you deal with the breakdown of the marriage and its effect upon the children.

Even if you and your partner cannot agree upon the arrangements for your children, you will still be able to obtain a divorce. Any dispute about the children will be dealt with by the court as a separate matter.

Of course, any arrangement which you and your partner make together will undoubtedly be the best solution. The courts will not interfere with any such agreement as the law considers that such arrangements are more likely to succeed than those imposed on the parties by a judge.

If you and your partner cannot agree about the arrangements for your children, it is worth considering mediation before resorting to court proceedings. If all else fails, however, it may be necessary to go to court to apply for a specific order, the most common of which are:

- A **“Child Arrangements” Order** – an order which indicates with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person.
- A **“Prohibited Steps” Order** – an order which prohibits an action by a parent in respect of the child except with the consent of the court.
- A **“Specific Issue” Order** – an order which determines any specific question or issue affecting the child’s welfare.
- A **“Parental Responsibility” Order** – an order which gives to a parent or some other person “parental responsibility” in respect of the child.

Until April 2014, the types of Orders that could be made concerning a child’s living arrangements were:

- a **“Residence” Order** – an order which decided where the child should live and with whom; and
- a **“Contact” Order** – an order which required the person with whom the child lived, to allow the child to visit or stay with another person, or otherwise to have contact with that other person.

The terms “Residence” and “Contact” are no longer used and instead the pattern of time a child is to spend with his/her parents respectively is referred to as a “Child Arrangements Order”.

Any proceedings involving children are likely to be stressful and emotionally demanding, but your solicitor can help by providing practical, professional advice to help you reach a solution that is in your children’s best interests.

Even if you feel that you have no alternative but to go to court, the experience of a family solicitor may help you resolve the problem before it goes that far.

Although your marriage or relationship may have ended, you should bear in mind that you will continue to be a parent with your ex-partner for the rest of your life.

Although it may be difficult, exploring every possible way to work with your former partner to make joint decisions about your children – with your solicitor or perhaps through mediation – is an important step in protecting them from the anxieties and the anger which can follow divorce or separation, and to ensure that they continue to have a loving relationship with both parents.

## Separation

Some couples may wish to separate without a divorce and there are several ways you can do this legally.

Separation usually involves living apart, but you can live in the same property and still be separated if you no longer sleep and eat together or do any domestic

chores, such as ironing or washing for each other. If you decide to separate, you can:

- live separately and apart without any agreement relating to children, money, property or other issues
- live separately and apart, putting your agreement about children, money, property and other issues into a document called a Separation Agreement which you should get a solicitor to prepare
- take “judicial separation” proceedings. Although similar in some ways to a divorce, such proceedings do not bring your marriage to an end. The partners cannot marry anyone else nor obtain a final order dismissing all financial claims against each other (a “clean break”). Whilst the court is able to deal with financial and property matters by way of an Order, it is not able to make Orders concerning the parties’ pensions. If the partners decide at a later date that they want to bring the marriage to an end, they will still have to go through the divorce process.

## Contact us for advice

The specialist family team at our firm can assist you with all family-related issues including those relating to divorce and separation.

**Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact a member of Mander Hadley’s family team.**