HARBOUR®
FAMILY LAW

COMPLETE GUIDE TO DIVORCE IN THE UK



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We understand that divorce can be a troubling time. Our aim is to help you through the process and make your journey to separation as smooth as it can be.

This is why we have created this comprehensive guide to UK divorce, which aims to inform you every step of the way of the correct processes to follow and the best practices to achieve a positive and amicable outcome.

This guide will cover the fundamental aspects of the legal processes relating to divorce, from an initial application to the final order. However, we understand that no two cases are the same, and every separation comes with its own set of unique circumstances. The process, whilst standardised in some respects, will of course vary depending on your situation.

It's common to feel overwhelmed at this point in your journey. You can rest assured that our experienced team is equipped with the right knowledge and resources to fully support you and have only you and your family's best interests in mind.

If you'd like our assistance, please do not hesitate to get in touch with our team.



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"From the start, right through to conclusion, Katy was kind, supportive, informative and professional. Any queries or concerns I had were always promptly dealt with and I felt fully supported."

- Mrs K



THE DIVORCE PROCESS IN BRIEF

The Divorce Process in Brief

STEP 1- SEPARATING

Take the time to prepare yourself emotionally and to gather as much information as you can manage concerning your situation. Once you're prepared, engage with a divorce specialist who can offer you the right service and support for your case. They can let you know if you are eligible for divorce or to end a civil partnership.

Some things you may wish to consider at this point include:

- Using mediation when you separate
- If your husband or wife lacks mental capacity to proceed with the divorce
- If you will need support to reach a financial settlement
- Your arrangements for children, if you have any

You should work together with your spouse to come to a mutual agreement on how to deal with your assets. This is the financial settlement, and you may use solicitors and mediators to assist you with the process.



The Divorce Process in Brief

STEP 2- APPLYING FOR DIVORCE

For a divorce to be able to proceed in the United Kingdom, you must have been legally married for at least a year. You and/or your former partner must primarily reside, or be domiciled, in the UK.

You or your spouse will be asked to give a statement that your marriage has broken down irretrievably.

An application to divorce can be made either jointly or as an individual.

A lawyer can help you with this process or talk you through your options if you need to file an Acknowledgement of Service after your husband or wife has applied for a divorce.

The next step, a minimum of 20 weeks later, is applying for a conditional order. This is a document declaring that the court sees no reason that you cannot finalise your divorce at a later stage.



"IN 2020, THERE WERE 103,592 DIVORCES GRANTED IN ENGLAND AND WALES, A DECREASE OF 4.5% COMPARED WITH 2019; OF THESE, THE MAJORITY WERE AMONG OPPOSITE-SEX COUPLES (98.9%)."

OFFICE FOR NATIONAL STATISTICS



The Divorce Process in Brief

STEP 3 - AGREEMENTS AND NEGOTIATION

Some divorcing couples negotiate this themselves, sometimes even before the first application is made. If this is so, a family lawyer can help you to formalise the agreement and make it legally binding. If not, they can supply advice and guidance as you and your former partner discuss these terms, or negotiate on your behalf.

When no satisfactory agreement can be reached through other methods, court proceedings are occasionally required, although this should be treated as a last resort. If you and your spouse still cannot come to an agreement, the court will make a judgment which will be legally binding on both of you.

The Divorce Process in Brief

STEP 4 - FINALISING A DIVORCE

A minimum of 6 weeks after the date of your conditional order, you can apply for a final order. This will finalise your divorce and you will no longer be legally married. We usually suggest that you wait until the financial aspects of your divorce have been resolved before applying for the final order.

The entire process of divorce (excluding the financial agreement), takes a minimum of 6 months to complete. While some divorces are really that simple, some come with unforeseen roadblocks and difficulties.

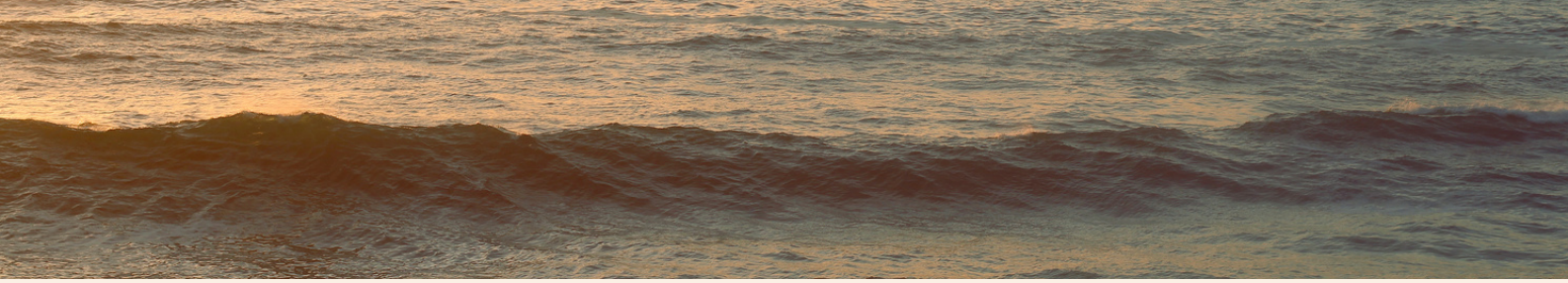
"Nicky never once dropped the ball. She is so organised, motivated and aware. I cannot imagine a better family solicitor."

- Ms L





BEGINNING THE PROCESS



Beginning the Process

Embarking on legally ending your marriage can be intimidating. It's a momentous decision which can forecast other significant changes in your life. The process itself can also be trying and time consuming.



However, with the right support and an open attitude, a divorce can also help you to find more closure on the relationship, and help you to imagine and organise your life as an unmarried person.

To begin the process, there are a few things you need to consider.

CHECK WHETHER YOU CAN GET DIVORCED

To have a divorce in England or Wales, you must meet the following criteria:

- You must have been married for at least a year
- Your relationship must have permanently broken down
- At least one of the parties should have their permanent or main home in England or Wales
- Your marriage must be legally recognised in the UK

Beginning the Process

CONSIDER WHO WILL APPLY FOR DIVORCE

You may be in a situation where you would prefer to handle the application yourself, but joint applications are now also an option.

Either way, to maintain a positive relationship for future negotiations, it's recommended that you communicate with your spouse on this point so that receiving notice of the divorce is not a surprise.

If you are in a difficult financial situation, this may also be something to consider when deciding who will apply for the divorce. The court fee is currently £593, but you may be eligible for government help if you are on a low income or receive certain benefits. To receive government help for a joint application, both you and your spouse must be able to prove that you are eligible.



Beginning the Process

NEGOTIATE CHILD AND FINANCIAL ARRANGEMENTS

Often the lengthiest steps in a divorce. We'll discuss this in later sections..

APPLY FOR DIVORCE

The next stage is filling in your divorce application.

To complete this, you will need the address of your spouse and a copy of your marriage certificate. Alongside your application, you will need to pay a fee of £593.



To demonstrate that your relationship has broken down irretrievably, the application must include a statement from either you, your spouse, or both (in the case of a joint application), declaring that your relationship has permanently ended.

As of April 2022, you no longer need to give additional reasons such as adultery or separation to demonstrate this to the court, nor do you need to assign blame to one party. All the statement needs to communicate is that the marriage has broken down irretrievably.

The divorce application will be processed and a copy will be sent to your spouse, often by email if an address is given. You may also choose to take responsibility for serving your spouse with the application yourself.

This can take up to 10 days if you filed for divorce online or 1 month if you applied through the postal system. In the case of a joint application, both you and your spouse will receive a copy of the application.

Any recipients should respond within 7 days with an acknowledgement of service. While divorces can no longer be defended, a spouse may object to the divorce if the marriage was invalid in the first place, or if divorce in the UK is impossible due to issues with where one or both parties reside.



WHO TO INVOLVE

Who to Involve

There are a number of professionals who may be able to assist with various aspects of your divorce. Some may not be applicable to your situation, but nonetheless it can be useful to know the help is available should you need it.



FAMILY SOLICITOR (GENERAL)

Whether your separation is amicable or otherwise, involves children or comes with financial, pension or property disputes, our family solicitors will have the expertise to guide you.

Family lawyers know the divorce process better than anyone.

They can talk to you about how to make your agreement as fair as possible, what sort of settlement terms are likely to be approved by a judge, and what pitfalls to avoid.

Where an informal “kitchen table” agreement exists between parties, they can create legally binding documents to formalise the arrangement and make it binding. They can also offer insight as to whether the agreement is likely to put you at a disadvantage.

Where mediation, negotiation, or court proceedings are required to reach an agreement, they can give expert advice, working with you and trusted third party specialists where necessary to achieve the best possible result. They can also help to build your case during court proceedings



Who to Involve

FAMILY SOLICITOR (COLLABORATIVE)

Collaborative family law allows you, the separating couple, to work with lawyers to come to an agreement and achieve a settlement without going to court.

It is also almost always a quicker process, beginning to end, than working through the judicial system. It's important to note that this process is voluntary and requires both parties to be willing to participate.

During the collaborative law process, each partner is committed to reaching an agreement without the need for litigation.

If you opt for the collaborative family law process, each partner will be assisted by a separate solicitor, both of whom will be trained in collaborative law. The solicitors are involved to assist both parties in working through any areas of conflict. Any negotiations that take place will be during four-way settlement meetings, which will be attended by both solicitors and their clients.

You can usually expect at least three of these sessions. In some instances, other family professionals or specialists may be involved – depending on the circumstances. In cases where there are a range of particularly complex emotional, financial and child welfare issues to deal with, there may be a need for more sessions.

Who to Involve

BARRISTERS

In the event your case involves contested court proceedings, your solicitor will discuss instructing a barrister to represent you at court.

These professionals are specifically trained in litigation and deal with court hearings almost every day. During your case, your barrister will be able to use this expert knowledge to represent your best interests at court. They will present your case to the judge or magistrate over the course of any court proceedings and work towards the best possible outcome for your case.



MEDIATORS

In many cases, you will need to supply proof that you have attended a mediation information and assessment meeting before making an application to court, so this is often an avenue worth exploring.

Although there is a cost, mediation is also generally quicker and cheaper than going to court. Mediation involves an unbiased third party- known as a mediator- working with both individuals in an attempt to forge an agreement. Although they are unable to give legal advice, they can help to create a calm, productive atmosphere and will listen to all involved confidentially and without judgement.

At the end of mediation, your mediator will create a “memorandum of understanding”. This document serves as a record for everything you’ve agreed and all parties are given a copy to take away with them. Where necessary, for example with financial agreements, your solicitor can turn your mediation agreement into a binding and enforceable consent order.

Who to Involve

PENSION EXPERTS

Pensions are often part of the financial settlement in divorce. In order to fairly divide assets, it is essential that they are taken into account.

Pensions represent a separate category of assets and can often be of substantial value. They represent a form of future income, so deciding how a pension can be shared or offset is a vital component in planning for the future of both parties.

If pensions become an issue in your matter, your solicitor will talk to you about instructing a pension expert to give advice on how to deal with your retirement income. Since this can be complex to unravel without specialist assistance, this is often the only way to ensure that you reach an outcome which is fair and reasonable.



SURVEYORS

Knowing the true value of your assets is critical when it comes to holding constructive negotiations. This is especially true with properties, regardless of whether they are to be sold, as they are often valuable matrimonial assets.

If it's not possible to agree on a value for the purposes of negotiation, it may be necessary to instruct a surveyor as a single joint expert to prepare a valuation report.

A valuation report is not a house survey and thus does not inform you of structural damage to the property. It will, however, provide an estimated value for the property. This is achieved by taking into account variables such as the house's location and condition.

The surveyor's knowledge of the local area and comparable property sales can also help to build a full picture of the asset's value.

Who to Involve

INDEPENDENT FINANCIAL ADVISORS

You might feel that you would benefit from advice from an independent financial advisor during or after your case. They can assist in several ways.

These include helping you with certain pieces of paperwork, planning for retirement, and arranging life insurance in connection with maintenance orders. Additionally, they may be able to give advice about how to invest lump sum payments or pension shares.

Independent Financial Advisors can be useful in helping to set you up in the best possible way to manage your assets for your life post-divorce. They can also help you find a new mortgage and will generally assist you to rebuild your finances.



" I went into the meeting feeling well-supported. During the discussions, she was flexible, kept the conversation moving and made practical suggestions on how to address impasses. The conversation was always calm and constructive."

- Mrs A

Who to Involve

COUNSELLORS AND THERAPISTS

It is normal to experience feelings of isolation, anger, and anxiety for the future during a divorce. Many of our clients find that the support of a professional is invaluable at this time.



Both counselling and therapy can provide you with a non-judgmental environment in which to work through your difficulties with a qualified expert. This can provide you with peace of mind and an outlet for any frustration or upset you feel during your matter.

Counselling is usually made up of a predetermined number of structured sessions while therapy is more of an ongoing, freeform process with more time for exploring your thoughts and feelings.

Sessions such as these can help you find the clarity you need to adjust to your new situation and move forwards with your legal matters.

FAMILY SUPPORT SERVICES

During a case involving child arrangements issues, the children's needs must always be at the forefront of everyone's minds. For this reason, it can be necessary to have outside support.

Sometimes, supervised or supported contact is advised in cases where a parent has a history with illegal substances or where there are concerns for the child's safety in their presence. It can also be an option when a parent has been uninvolved with the child's life for a substantial period of time.

Family Support Services can help to safely and efficiently coordinate this process. This can help children maintain a relationship with a parent in otherwise difficult circumstances.


FINANCIAL
SETTLEMENTS

Financial Settlements

A financial settlement is an arrangement between a couple that works to smooth over any financial issues that arise from their separation. The assets they own in their joint and sole names will be considered and, where appropriate, valued so that negotiations can take place.

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A financial settlement should be fair in distributing assets between the parties to achieve a final and binding arrangement over which assets they are each entitled to, avoiding future financial conflict.

A good settlement may take some time to achieve but will ultimately have both parties' interests considered and will be personalised to each unique situation.

Assets to consider when drawing up a financial settlement may include , bank accounts and savings in both sole and joint names, , businesses, pensions, incomes, land and family homes, and other property such as valuable furnishings and cars.

The process of reaching a financial settlement can be done within the same timescale of the divorce process and can sometimes take as little as a few months. However, there is no set timeframe and each case is different in terms of the assets involved and its complexity.

Financial Settlements

METHODS OF REACHING A FINANCIAL SETTLEMENT

If you live in England or Wales, you can reach an agreement without a solicitor if both of you wish. This should only be considered if you are able to come to a fair, mutual agreement without coercion. However, this must be considered very carefully as your decision will be legally binding and can have a great effect on your personal finances.



In many cases, you will need to supply proof that you have attended a mediation information and assessment meeting before making an application to court, so this This isn't the recommended route to take if your case is complex, such as if your assets are difficult to value or determine, you share a business, you have children or if the relationship is very long or contentious.

However the agreement is reached, we suggest you make sure your settlement is considered by a solicitor who can help you have it made final and binding in a consent order.

SOLICITOR NEGOTIATIONS

This has traditionally been the most common way to resolve a case. Your lawyer will liaise with the other party, or their solicitor, to establish exactly what's in the asset 'pot' to determine a sensible, fair settlement proposal which meets everyone's needs.

This process is flexible, cost-effective and tailored to your individual circumstances.

Financial Settlements

COLLABORATIVE LAW

This is a specific type of solicitor negotiation carried out by lawyers trained in the collaborative process.

Both parties will commit to doing their best to reach an agreement without going to court, and they have a series of meetings with the lawyers present for advice and support. They can also include any other experts they want in the meetings, such as a financial adviser or pensions expert who can give extra information.

MEDIATION

Mediation is a common alternative to solicitor negotiations. You and your ex will have separate meetings with the mediator to discuss the process and whether it's right for you.

Mediation is entirely voluntary, meaning it only works if you both agree to go. It's really important to have legal advice before you go to mediation, so you know what to expect and are able to negotiate confidently and fairly.



FDR AND ARBITRATION

If you think you would benefit from having a bit more structure to your negotiations, but you don't want to have the delays that can sometimes come with court proceedings, these can be useful options.

Both parties select an expert (such as an experienced barrister) who will consider your case and help you reach a settlement. In a private FDR they will give you an indication of the sort of judgement they would expect if you were at court. If you choose an arbitrator, you agree to let them make a binding decision about your case if you're not able to settle it yourselves.



Financial Settlement

COURT PROCEEDINGS



If the other options above don't lead you to an agreement or they aren't right for your situation, you can make a court application.

This is useful if, for example, one person is refusing to disclose assets or is looking for a completely unrealistic outcome.

The court will set out deadlines for you both to disclose information about your finances and encourage you to negotiate. Ultimately, if you don't agree on a settlement, there will be a final hearing where a judge will consider your case and make a judgement which will be binding on both of you.

Financial Settlement - Property

Properties can often be the most valuable assets to deal with in a divorce or separation, and they often have the most sentimental value too.

Those things alone are enough to make negotiation difficult, but when you add in uncertainty caused by Covid-19, Brexit and changes to stamp duty and mortgage deals, it can be difficult to know where to start.



MATRIMONIAL HOME RIGHTS

Through Matrimonial Home Rights, both parties have a right to stay in a family home until the divorce is finalised. This is true even if one party owns the property in their sole name.

If you are not a legal owner of your property, you may be entitled to register a matrimonial home rights notice with the Land Registry.

This protects your right to live in the home during the marriage, and can make it more difficult for your spouse to sell the property without your knowledge, as it warns any potential buyer of your rights in relation to the home.

In special cases, the courts may grant you a continuation order, which extends your matrimonial home rights for a period of time after your divorce.

There are a few exceptions to when you may be able to claim Matrimonial Home Rights. If your spouse shares ownership of the property with someone else (for example, a parent or former partner) this may affect your rights. Another exception is when one spouse obtains an occupation order against the other in cases of domestic abuse.

You are also only allowed to claim home rights on a single home at a time – the one you lived in during your marriage. You cannot claim on second properties or holiday homes.

Financial Settlement - Property

VALUATION

Knowing the value of a property is the first step towards having constructive negotiations. Even if you're not planning to sell, you will want to agree on a value to use for the purposes of your calculations.

As a starting point you might want to have your property valued by an estate agent. It can be useful to obtain 3 valuations so you can take an average.

If this doesn't help you find a value that you both feel is appropriate, a good option is to agree to instruct a Surveyor as a Single Joint Expert.

In this case, a joint letter of instruction should be prepared and their fee should be shared.





All correspondence with your Surveyor should be open so you can both have confidence that they are able to give you a neutral, realistic valuation.

Even once you've got a fair valuation, remember that property prices can always change. If you're planning to sell a property and share the proceeds, consider whether or not you want to base your negotiations on a percentage split.

Doing so means that you each share the risk or reward of a change in value in line with the proportions of your shares which can sometimes be the fairest approach.

However, this causes uncertainty, and some people need to agree a fixed sum or set a base line figure to ensure that they will be able to meet their needs in the future.



Financial Settlement - Property

MORTGAGE PAYMENTS

If you and your partner's name are on the mortgage for your existing property, it's important to have an early discussion about how this will be paid during your separation.

You and your ex-partner will be jointly and severally liable for repayments so if one does not pay their share, the other can be held accountable for the entire amount.

You do not have to split the mortgage equally between you, but you should come to an agreement early in the process about what division is reasonable and organise the logistics of how it will be paid.

In many cases, at least one of the parties will be looking for a mortgage in their sole name in the near future and arrears on the joint mortgage can affect their credit score.

Financial Settlement - Property

TIMING

Firstly, you should consider whether you want to push ahead with getting valuations as soon as possible. We usually find it's better to have more information, rather than less.



There can be good reasons to wait before actually selling or transferring a property. For example, if you are waiting for children to finish a key stage in their education, or if you would be heavily penalised under a fixed term mortgage.

Mediation is a common alternative to solicitor negotiations. You and your ex will have separate meetings with the mediator to discuss the process and whether it's right for you.

Mediation is entirely voluntary, meaning it only works if you both agree to go. It's really important to have legal advice before you go to mediation, so you know what to expect and are able to negotiate confidently and fairly.

You can still negotiate now, and your agreement can still be incorporated into a Court Order which will set out the timescales and steps to be taken.

If you are going to defer a property transaction, give careful consideration to what will happen in the meantime. What are the risks involved in waiting to realise an investment? Who will pay the bills in the interim? What happens if there is a significant change in the property value?

Always be prepared for the possibility that things could take longer than you expect. This makes it easier to be flexible if things don't go completely smoothly.

Financial Settlement - Property

IF YOU CANNOT AGREE

The court is able to make various provisions concerning property, and these are known as Property Adjustment Orders. These are considered as part of your financial settlement.

Some frequently occurring orders include:

- Immediately selling the property and dividing the proceeds from the sale
- Postponing the sale of the property until a specific event or time
- Transferring ownership of the property to one party, with a legal charge back for the other
- Transferring ownership of the property to one party, with a calculated buy-out or offset going to the other

Each of these have the potential to be legally complicated. When thinking about dividing proceeds from a sale or buying out a property, the equity of the property will need to be calculated and there will be a decision about whether an equal or unequal share is appropriate



The other options listed here depend on at least one party receiving some kind of payout at a future date. When deciding what this will be, there may need to be considerations about issues such as mortgage payments, Capital Gains Tax, and any changes to the property value over time.

With this in mind, it is important to seek legal advice before agreeing to any of these arrangements to ensure you get the fairest outcome possible.

Financial Settlement - Property

BUYING NEW PROPERTY

It's understandable to feel eager to purchase a new property, particularly if you have already moved out of the marital home.

It can feel necessary for building a new life or creating a stable second home for your children. However, if your divorce is not yet finalised, make sure that you discuss any plans to buy with your solicitor before moving forward.

If you have not yet reached a financial settlement, it is possible that any property you buy could still be classed as a matrimonial asset. Your spouse could potentially claim against the equity in the new property or gain a greater share of other assets. For this reason, it can sometimes be sensible to delay making any major changes until afterthe divorce process.

If you are still keen to buy a new property, your solicitor may be able to help you to do this in a way that minimises the risks, or to come to a binding agreement about the new property with your spouse out of court.



Financial Settlements - Pensions

Pensions are one of the most often overlooked assets in divorce cases. It's easy to see why. When there are such immediate and potentially emotionally fraught issues as the family home or the care of children to consider, it can be difficult to put as much effort into pension negotiations.



Some younger couples make the mistake of putting little value on them, since they will only receive the benefit from a pension in the long term. It can be difficult to invest much thought into something which will not significantly affect your life for many years.

Others assume that their spouse's pension will likely be of similar value to their own.

However, proper consideration of pension assets is vital to your future as a separated person.

Without an accurate valuation of both pensions, it's likely you won't reach a truly fair settlement. The court may even refuse to finalise your court order if a pension has not been accurately disclosed as part of your finances. You may also regret it later down the line.

Financial Settlement - Pensions

HOW DO I VALUE MY PENSION PLAN?

To discover how much your pension is worth, you will need to find out its Cash Equivalent Value (or CEV). This should appear on your annual statement.

If you don't have one already, Most pension providers can provide you with the CEV of your pension on request. However, in the case of pensions based on factors such as final salaries, the CEV may not be very accurate, and your solicitor and a PODE can give you guidance on this.



Different types of pension – such as public sector pensions or defined contribution schemes – may also need to be treated differently when calculating your assets. Pensions will additionally change in value over time, so it can be a difficult landscape to manage on your own.

To help you to get accurate calculations for pension sharing or offsetting, many divorcing people find it useful to consult a PODE. These specialists can be jointly hired by both divorcing parties or on an individual basis. A family law solicitor can guide you through asking the right questions and preparing the necessary paperwork.

ONLY 15% OF DIVORCING COUPLES INCLUDE PENSIONS IN THEIR FINANCIAL SETTLEMENT

WHICH SURVEY 2021

Financial Settlement - Pensions

HOW ARE PENSIONS SHARED IN DIVORCE?

Any pensions should be considered as assets within your financial settlement. If you are agreeing on how to split your finances out of court, these should be considered in negotiations with your spouse.

When you know the value of a pension and it makes the overall asset split unfairly balanced in the favour of one party, one option is to have a pension sharing order.

This is when a percentage of the pension is officially shared with the other party by setting up a new pension in their name and transferring the funds there. It is possible to still have a clean break divorce if you go down this route.

Another option may be to offset a pension sharing claim by receiving a greater share of other assets.



For example, if you are selling the family home, the party without a share in the pension may get a larger percentage of the net sale proceeds. Doing this should not affect your ability to have a clean break divorce.

If you take the matter to court, another possible , but much less common, option is receiving an attachment order. This is when the recipient of the pension is required to send the other party a certain amount of their pension income once they begin receiving it.

Attachment Orders cannot be given if your spouse already has an Attachment Order from a previous marriage. They also remove the option of a completely clean break divorce.

It should be noted that the appropriate approach to dealing with pension claims can be slightly different if one or both of the parties are already retired.



CHILD ARRANGEMENTS



Child Arrangements

For separating parents, deciding on arrangements concerning children is often one of the most emotionally fraught aspects of a divorce.

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Many parents feel concern that they may no longer be able to see their children as much as they would like to or frustration that the child's other parent might make decisions that they don't agree with.

In more serious cases, there might also be fears about a child's welfare when spending time with a parent or family member.

When facing a divorce without specialist legal help, it is all too easy to let fears and emotions dictate your actions in regards to agreements about your children.



While this is entirely understandable, it can lead to a process which takes more time, money and emotional strain than it needs to and can work against the best interests of your child. It can also lead to unnecessary conflict and the breakdown of relationships which could be valuable to your child's future.

Child Arrangements

WHAT TO AGREE ON

When it comes to making child arrangements, there are three broad topics which must be agreed on. Within those topics, however, there are many other considerations.

WHERE WILL THE CHILD LIVE?

Are you going to try shared care, or would the child feel more stable living with one parent most of the time? Who has enough space for the child? What distance will the child need to travel to move between parents and how will this be achieved? How will the child get to and from school and activities?

HOW WILL THE CHILD SPEND TIME WITH BOTH PARENTS?

Is there a certain routine you can both stick to when it comes to spending time with the children? What rules do you want to put in place around indirect contact? Are you in a place in your relationship where you could still constructively spend time as a family now and then? What will happen during birthdays or religious holidays? How will you communicate with each other if arrangements need to change?



HOW WILL THE CHILD'S NEEDS BE PAID FOR GOING FORWARD?

How will you divide costs for the children's everyday needs like food and clothes? What about larger purchases such as holidays, birthday presents or equipment for activities? Will the parent the child lives with most of the time receive regular payments from the other?

Generally speaking, it can be preferable to resolve these issues out of court, meaning everyone can save time, stress and money. Your children are likely to have their own opinions too, and these should be taken into consideration during discussions, particularly if they are older. However, it is important to never make them feel as if they are being forced to choose between their parents and decisions may sometimes be made against their wishes but for their best interests.



Child Arrangements

LEGAL HELP

Guidance from a solicitor experienced in family law can be invaluable during this process. They can help you to understand your situation from the start and talk you through how a court might be likely to your particular circumstances.

They can also speak to you about reasonable expectations for an outcome, your rights as a parent and more. This can allow you to enter mediation or negotiation with accurate information and achievable goals in mind.

Family lawyers who are a member of “Resolution” are also committed to working through the process in a way that is as constructive and low-conflict as possible.

They can help to advise you through discussing these challenging issues with your spouse in a calm way that prioritises the welfare of your child above all else. When a resolution is reached in this way, effective co-parenting relationships can often be preserved and everyone can move forward with a clear idea of how the family dynamic is going to function in the future.

Child Arrangements

COURT PROCEEDINGS

Custody is the term that used to be most common when referring to child arrangements, so you might have heard of terms like “custody hearing” or “custody dispute”. These terms are outdated and have not been used in English or Welsh law for many years. We now refer to “child arrangements orders” since they were Introduced in The Children and Families Act 2014.



For most parents, it is possible to reach agreement about child arrangements through discussions together or other forms of dispute resolution.

Unfortunately, for a small but significant minority of separating parents, where it is not possible to agree things through mediation or negotiation, an application to the courts is necessary. The court may rule on:

- A child arrangements order, setting out where the child(ren) will live, when they will spend time with each parent and the arrangements for any other contact (such as phone calls, skype etc)
- A specific issue order, for a decision about a particular point such as where the child(ren) will go to school
- A prohibited steps order preventing the other party from doing something, such as prohibiting a child from being taken abroad

Anyone considering an application to the court must attend a Mediation Information and Assessment Meeting first, to consider whether they could resolve their issues through mediation rather than through the court.

In cases where mediation is not appropriate, or it has been unsuccessful, a court application can then be issued.

Child Arrangements

WHAT'S THE FIRST STEP OF COURT PROCEEDINGS?

The court will ask CAFCASS (The Children and Family Court Advisory and Support Service) to conduct safeguarding checks and consider the best way to deal with the case. A CAFCASS worker will do some background checks on the parties involved in the case, speak to them to discuss the case and then write a letter to the court setting out their thoughts.

The court will also list the first hearing, which will take place after the CAFCASS safeguarding checks.

WHAT DECISIONS WILL THE COURT MAKE?

The court will ask CAFCASS (The Children and Family Court Advisory and Support Service) to conduct safeguarding checks and consider the best way to deal with the case.

The court process is structured around encouraging parties to reach agreement rather than continue with litigation, since the stress caused by court proceedings can often have serious, indirect consequences for children This is why mediation is generally the first step, with the aim of that process to be avoiding court proceedings.



In the event that court proceedings go ahead, it is expected that there will be some discussion and negotiation between the parties, through their lawyers, in the run up to and immediately before the hearing to agree issues where possible and narrow the scope of what the court needs to deal with.

The court will consider any risks to the child(ren), what evidence is needed to make decisions about the case and whether there needs to be involvement from any other professionals, such as a report from CAFCASS about a child's welfare.

In very rare circumstances, a Guardian could be appointed to ensure the child(ren)'s interests are represented and that the child(ren)'s welfare is safeguarded. They will report back to the court, make recommendations for further investigations, or make recommendations as to what type of orders they consider appropriate. They are used most often in adoption cases, but occasionally may be relevant in child arrangements cases where the court is concerned that the child(ren)'s interests are not held at the forefront of everyone's minds.

Child Arrangements

HOW MANY COURT HEARINGS WILL THERE BE?

Most cases require at least 2 or 3 hearings, to allow time for evidence and reports to be prepared, filed and considered. Parties are encouraged to agree where possible as a case proceeds.

If this is not possible, the court will work towards a 'final hearing' at which the evidence will be considered and examined in detail. After this has happened the judge or magistrates will make their final decision which will be imposed on the parties.

Anyone who is due to attend a court hearing should be aware that it will be a stressful experience. Any discussions before the hearing can be conducted in private and negotiations can happen through lawyers.

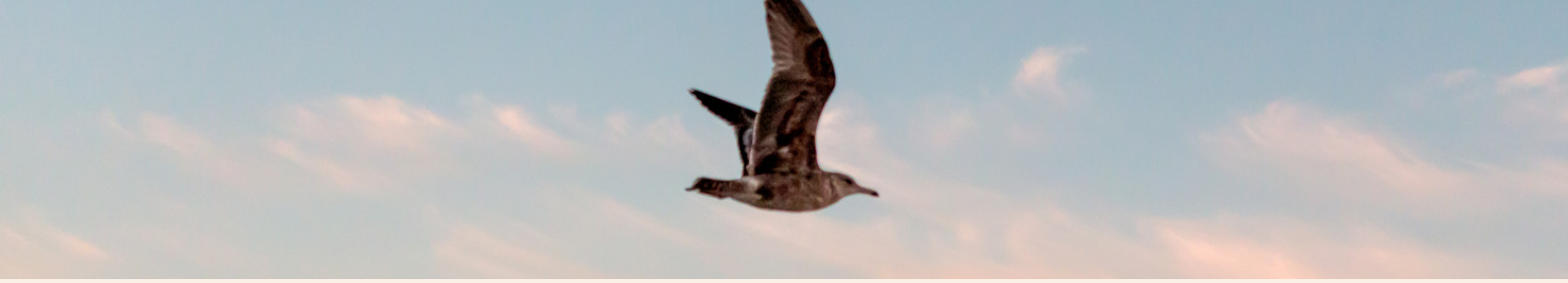




However, during the hearing itself, you will be in a courtroom with the other parties to the dispute. This can be an unpleasant experience, especially in contentious cases.



FINALISING YOUR DIVORCE



Finalising your Divorce

GETTING A CONDITIONAL ORDER

A Conditional Order (previously known as a Decree Nisi) states that the court sees no reason why you and your spouse cannot end your marriage.

You must wait 20 weeks after your divorce application has been issued before applying for a Conditional Order.

You can apply either by post or online. You can fill out the application as an individual, or jointly with your spouse if this is something you did on your initial divorce application.

In the application, you'll be asked to confirm some of the details from the initial application, state whether the respondent has filled out an acknowledgement of service, and confirm whether you wish to alter the statement in your first application. You'll also be asked to sign a "Statement of Truth.", confirming that you believe the facts in the application are true.



If the court approves your application, they will send your certificate. However, you may find that this takes several weeks.

Finalising your Divorce

GETTING A FINAL ORDER

Under the previous system, Final Orders were known as a Decree Absolute. They legally finalise your divorce.

You can apply for your Final Order 43 days after your Conditional Order. If you apply more than 12 months after your Conditional Order, you may be placed in a position where you have to explain the delay to the court, although this is usually very straight forward to do.

To apply for a Final Order, you are simply required to fill out the date the Conditional Order was made and complete another Statement of Truth.

On receiving your application, the court will check that the time limits have been met and that there's no other reasons not to grant the divorce. If they agree, they will send you or your solicitor both copies of the Final Order. On receiving these, you and your spouse are officially no longer married.

If you're filling out divorce applications as a sole applicant but do not continue with the Final Order, your spouse can choose to apply for the Final Order in your stead. However, they will have to wait an additional 3 months to do this.



Finalising your Divorce

FINANCIAL CONSIDERATIONS

There is no time limit in respect of making a financial claim from one ex-spouse to another.

Even once you have the final order of the divorce it is still open for either of you to bring a claim against the other despite any informal agreement reached between you both, no matter how many years may have passed since your divorce (except where you have re-married, which limits the potential financial claims you can make).

It is only once you have obtained an order, during or after your divorce, which is approved by the court, that you have that protection.

A clean break financial settlement is an arrangement that leaves a couple financially independent of each other after their divorce, with no ongoing maintenance payments between them. Having this kind of settlement means that your ex-partner can't make any financial claims against you after your separation.

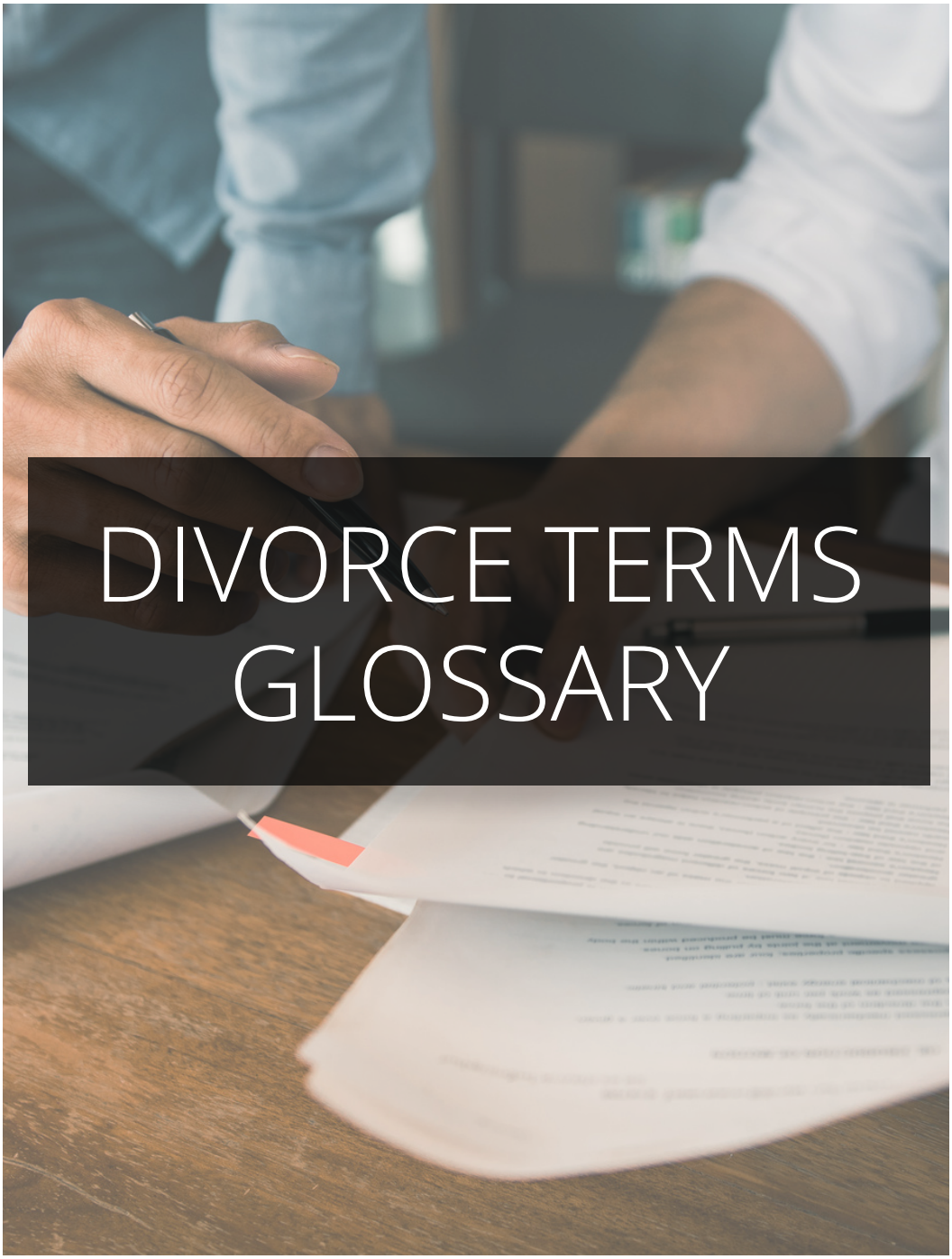
Not all types of financial settlement allow for a clean break. However, it is always something you should discuss with your lawyer to protect future income and property.



In the event that court proceedings go ahead, it is expected that there will be some discussion and negotiation between the parties, through their lawyers, in the run up to and immediately before the hearing to agree issues where possible and narrow the scope of what the court needs to deal with.

The court will consider any risks to the child(ren), what evidence is needed to make decisions about the case and whether there needs to be involvement from any other professionals, such as a report from CAFCASS about a child's welfare.

In very rare circumstances, a Guardian could be appointed to ensure the child(ren)'s interests are represented and that the child(ren)'s welfare is safeguarded. They will report back to the court, make recommendations for further investigations, or make recommendations as to what type of orders they consider appropriate. They are used most often in adoption cases, but occasionally may be relevant in child arrangements cases where the court is concerned that the child(ren)'s interests are not held at the forefront of everyone's minds.



DIVORCE TERMS GLOSSARY

Divorce Terms Glossary

Annul/Annulment - Ending an invalid marriage

Barrister - A member of the bar: a lawyer with the rights of audience before all courts. During court hearings, they are often the lawyers presenting the case to the court.

CAFCASS - Children and Family Court Advisory and Support Service. A government agency which looks after the interest of children involved in family proceedings.

Child Arrangements - The decisions around who a child will live with, who they will have contact with, and other considerations about their lifestyle or future.

Child Maintenance - Regular payments made by one separated parent to another, to meet a child's day to day needs".

Civil Partnership - A legal partnership with the same rights and obligations as a marriage. Particularly common between same-sex couples before marriage for all couples was legalised.

Clean Break - A type of financial order that means there will be no ongoing payments between parties after the divorce.

Cohabitation - When parties live together without getting married

Divorce Terms Glossary

Conditional Order - Previously known as a Decree Nisi. A document from the courts which states there is no reason two people cannot be divorced.

Decree absolute - The previous term for a Final Order

Decree Nisi - The previous term for a Conditional Order

Family home - The property the married couple used as their main home during their marriage

Family Law - A branch of law dealing with matters relating to the family, such as divorce and child arrangements.

Final Order - The court order which legally ends your marriage.

Financial Settlement - The agreement or decision regarding how the assets from your marriage will be split between parties.

Injunction - A type of court order which an individual from carrying out a specific act (for example, harassment or threatening behaviour).

Joint Application - When both spouses fill out a divorce application together.

Divorce Terms Glossary

Litigation - The process of taking a case through contested court proceedings

Parental Responsibility - All the rights, duties, powers, responsibilities and authority which a parent of a child has in relation to the child and their property.

Pension Attachment - When all or part of an individual's pension benefits must be paid to their spouse when it comes to be paid

Pension Sharing – When a percentage of an individual's pension is transferred into another scheme in their spouse's name.

Prohibited Steps Order – a court order which prevents an individual from carrying out a certain act in relation to a child (for example, taking them out of the country)

Separation Deed - A written document used to set out the agreed arrangements between a separating couple.

Sole Applicant – Someone who fills out an application as an individual.

Specific Issue Order - A type of Court Order which helps to settle a specific dispute about child arrangements after a separation or divorce.


FAQS

FAQs

What should I consider for a financial settlement alongside my divorce?

During financial settlement negotiations, each party has a duty of full and frank financial disclosure. This means everything you have in terms of income, capital and pensions must be disclosed and valued in order to have informed negotiations.

How long does a financial settlement take?

Every divorce is different, and the complexities of each case can cause huge variations in the length of time the entire process will take. But usually, we would recommend allowing six to ten months from start to finish, for the more straightforward cases. If there are issues which make your negotiations more complex, things may take longer.

Who pays the legal fees for a financial settlement?

It is usual for each party to pay for their own legal fees. If you need to Instruct a joint expert, such as an actuary who specialises in pensions on divorce, most people will divide the cost of this equally. In some cases, such as If one person refuses to cooperate, you may be able to seek a costs order obliging them to repay some or all of your legal fees



FAQs



Can I get legal aid for a divorce settlement?

Legal aid for family law disputes is now only available in a few limited circumstances. Harbour Family Law are not able to offer legal aid. If you think you may qualify for legal aid, you should make enquiries with a firm that offer this service to see if you are eligible.

What is a clean break financial settlement?

A clean break financial settlement is the term used to describe the division of property, savings and any other assets, with no ongoing payments being made between you and your partner. Once a clean break order has been finalised, neither party will be able to make any further financial claims.

What should I consider before leaving the family home during a divorce?

One spouse may choose to live elsewhere during a divorce or dissolution. This does not usually affect their immediate legal rights in relation to the family home. However, it may have other practical implications.

If your spouse owns the family home in their sole name you should seek legal advice before leaving the home.

In itself, leaving the home also shouldn't affect the court's approach to how your assets are split. However, if you demonstrate that you are comfortably able to live within your income outside the family home, this may be taken into account.

This is because deciding how the needs of all parties will be met is a key factor in addressing financial remedies.

FAQs

Are pre-nuptial agreements legally binding?

In England and Wales, a pre-nuptial agreement is not automatically binding in the same way as a court order, but is likely to be upheld in the case or a divorce so long as certain conditions have been met:

- Both parties must have received independent legal advice and freely entered into the agreement
- They must both understand the implications of the agreement, including the rights they acquire and / or give up by entering into it
- The agreement must be fair
- The agreement must meet the requirements for a valid contract
- The agreement must have been completed at least 28 days before the wedding (and ideally longer)
- The parties should exchange disclosure about their financial affairs
- The needs of any children must be met
- Both parties' reasonable needs must be met

If you have entered into a pre-nuptial agreement earlier in your relationship, it is still possible to contest this during separation.



In most cases, a dispute about a prenup will be based on an argument that it does not meet the requirements set out above, possibly as a result of a change of financial circumstances that were not anticipated at the time of signing.

You may also have your prenup contested if it was signed under improper circumstances, such as if a party was not mentally capable of entering into the agreement, did not receive legal representation, or if the agreement was not fully understood by one of the parties.

FAQs

What can I do to speed up the divorce process?

A few things you can personally do to help the divorce process to run as smoothly as possible include:

- Ensuring paperwork is filled out promptly and accurately
- Communicating with your spouse about who will be involved in the application beforehand.
- Applying for divorce online rather than through the post
- Gathering and submitting documents by the appropriate deadlines
- Using mediation or collaborative law to agree on settlements without going through the courts

While all of these can help to move the process along, delays can come from slowly processed paperwork, unexpected conflicts, or a myriad of other reasons.

It is reasonable to want this stressful time to be finished quickly. However, it is important for your wellbeing to focus on the elements that you have some control over, rather than the actions of your spouse or the courts.





Let us help you to reach a respectful resolution

Harbour Family Law are specialist family law solicitors. We are based in Clifton in Bristol, Portishead and Clevedon.

We provide our clients with practical, timely and specialist legal advice, providing a supportive framework in which they can achieve an amicable, reasonable agreement which preserves relationships and protects any children of the family and the parties involved.

We support, guide and advise our clients so that the decisions they take promote a fair outcome, the preservation of relationships and the protection of the children of the family.

We have a strong belief that an amicable settlement which seeks to preserve relationships and protect the children of the family is the best kind of outcome and once which we seek to promote wherever possible.

Contact us today for specialist help on your family law matter.

HARBOUR®
FAMILY LAW

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