

A man and a woman are shown in a close embrace. The woman is in the foreground, wearing a white ribbed sweater, looking slightly to the left. The man is behind her, also in a white sweater, looking towards the camera. The background is a bright, out-of-focus indoor setting.

How do you find a way forward?

Divorce is never easy, but with advice and a plan of action it is possible to bring about certainty and a way forward for your situation.

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S O L I C I T O R S

Understanding Divorce

With many highly publicised celebrity divorces and a lot of conflicting information on the internet, it is often confusing for couples to know how to begin or to manage divorce proceedings. Our guide to understanding divorce touches on the following:

1. Starting divorce proceedings
2. What to think about
3. What the law says
4. How to come to agreements
5. How to plan for the future

While brief, we hope this will help you feel more informed and empowered.

1. Starting divorce proceedings

You cannot apply for divorce in England & Wales during the first year of marriage. You must wait until you have been married for at least a year (though you can have a formal separation during the first year of marriage).

There is only one ground for divorce: that the marriage has irretrievably broken down. The party applying for divorce

must prove this by relying on one of the following factors: a) the other party has committed adultery and admits it; b) the other party has behaved in such a way that it is unreasonable to continue living together; c) the parties have been separated for at least 2 years and both consent to a divorce; d) the parties have been separated for at least 5 years, regardless of whether the other consents to a divorce; and e) the other party has deserted them.

Sadly there is no option in England & Wales for "no fault divorce". Unless the 2 year or 5 year separation factor applies, one party must blame the other for the marriage breakdown. This can make the situation between you and your partner more acrimonious and get the divorce off to a difficult start. In recognition of this, many family lawyers are campaigning for law reform to introduce "no fault divorce".

2. What to think about

If you have children it is important to consider with your partner how to tell them about the divorce and support them through it. There are many resources available to help parents, and your solicitor can advise you on this.

With regard to practical arrangements, you need to think about where the children will live, how to ensure they spend good quality time with both parents, how to manage childcare in school holidays and how to manage important occasions such as birthdays and Christmas. Parents are encouraged to view matters from the perspective of what is in the child's best interests, and in terms of the child's rights rather than the parents'. For example, contact arrangements concern the right of the child to spend time with each parent (rather than the right of the parent to spend time with the child).

For a parent, this is undoubtedly one of the most difficult parts of separation/divorce and an area where many people seek professional help. A competent family solicitor will be able to offer practical as well as legal advice on how to manage this amicably. It is best for you both as parents to sort out arrangements for the children amicably, and always to keep the children's best interests in mind.

While you can obtain a divorce relatively quickly, in terms of being "no longer married", reaching a financial settlement may take longer. Whether you do this by negotiation or have to resort to court proceedings, it involves each party giving the other full details of their financial and other relevant circumstances, often with supporting documents as proof. You then discuss, with the help of your respective solicitors, how your assets and liabilities, income and outgoings, should be divided now and in the future.

Your solicitor can give you a form to fill in with details of your finances. It serves as a checklist to ensure you remember everything (whether in joint names or your sole name) including:

- Assets e.g. property, bank accounts, savings and investments, cars, pensions;
- Liabilities e.g. mortgages, overdrafts, loans;
- Income e.g. earnings from employment or self-employment, investment income, trust income;
- Expenditure e.g. mortgage payments, household bills, food, clothes, car (running costs and MOT, maintenance & repairs), leisure activities, holidays, children's school fees if in private education.

In addition to dividing your financial resources, you will need to decide how to divide belongings such as the contents of the

family home. Some people are able to do this informally, by agreement. Where parties find it harder to agree, it is usual to write a list of everything to be divided and take it in turns to pick items. It is worth giving thought to what you really want to keep, what you would be prepared to give up and which items you are happy for your partner to keep.

3. What the law says

If you have children, their welfare will always be paramount. This applies in relation to both practical arrangements for them and financial arrangements for the whole family.

In some countries, the law is prescriptive and sets out exactly how finances should be dealt with on divorce. In England & Wales, the law gives judges a wide discretion so that each settlement will be tailored to the facts of the individual case. This means it can be hard to predict at the outset what sort of settlement will be reached or, if necessary, imposed by the court. You should be careful not to compare notes with friends or colleagues who have been through a divorce, and not to expect a similar sort of settlement to theirs, as every case is different.

4. How to come to agreements

Increasingly the focus of family law is on parties resolving matters – whether relating to children or finances – by agreement rather than through court proceedings. There are a number of options, including negotiation through solicitors; mediation with a single, neutral mediator who helps the parties to reach agreement; and arbitration with a single, neutral arbitrator who hears each party's case and decides on a settlement for them. Court proceedings where a judge makes the final decision for you should be avoided if possible, as they can be costly both financially

and emotionally. As well as legal advice, it is also worth considering counselling to give one or both parties the emotional support they need while going through the divorce process. You may also need specialist advice from a financial expert if your finances are complex or if there are pensions to consider.

5. How to plan for the future

This should be an integral part of any settlement process, which will take into account the future needs of any children, as well as those of the parties. Factors such as the parties' ages, income needs, future earning capacity, available capital and pensions may all be relevant, depending on the children's and parties' ages at the time of divorce. It is important that you have advice on your options, and to make sure that any agreement is legally binding and can be enforced.

For further advice
or to book a
consultation, please
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