

UPDATED  
THIRD EDITION

THE  
GOOD  
DI  ORCE  
GUIDE

FACING REALITY WHEN YOUR WORLD IS UPSIDE-DOWN

THE PARFITT CRESSWELL  
FAMILY LAW TEAM

# **The Good Divorce Guide**



# **The Good Divorce Guide**

*Facing reality when your  
world is upside-down*

**The Parfitt Cresswell  
Family Law Team**

All rights reserved.

No part of this book may be reproduced in any form by photocopying or any electronic or mechanical means, including information storage or retrieval systems, without permissions in writing from both the copyright owner and the publisher of the book.

First edition published 2017

Second edition published 2019

Third edition published 2025

© Teresa J. Payne & Parfitt Cresswell Solicitors

Published by

[www.printandpublishbooks.com](http://www.printandpublishbooks.com)

Printed and bound in Great Britain by

[www.printandpublishbooks.com](http://www.printandpublishbooks.com)

A catalogue record for this book  
is available from The British Library

ISBN 978-1-9157308-6-2

## **Disclaimer & Invitation**

We hope you find the information contained in this book helpful. Please remember every divorce is different and you should make sure you obtain the best settlement possible for you in your circumstances. We advise you to actually speak to a family solicitor personally, because they'll be able to help with your individual situation and provide bespoke advice for you.

If you're ready to talk to a lawyer, we'd like to invite you to a free, face-to-face meeting with one of our expert family lawyers. You can come to any of our offices and be sure to find a lawyer who will understand your individual needs and who will look after your best interests.

Simply call 0800 999 4437.

Or email [tgdg@parfittcresswell.com](mailto:tgdg@parfittcresswell.com) and book a time to come and tell us about your relationship.

**Other books by Parfitt Cresswell Solicitors**

*The Later Living Guide*

*The Home Mover's Guide*

*Hey, We're Part Of This Too!*

# Acknowledgements

This book is a collaborative effort from the entire Family Law Team at Parfitt Cresswell Solicitors. We have combined our knowledge, expertise, and insights to provide you with this resource, aimed at helping you navigate the challenges of separation and divorce with clarity and confidence.

We would like to thank our dedicated team members—Eve Geere, Sharon Micuta, Ewa Sierawska, Elizabeth Jones, Anne-Marie Smith, and Jessica Bennett—for their invaluable contributions to this project, as well as everyone in our Family Law Team who work tirelessly to support our clients in moving forward with hope and happiness.

Finally, we extend our deepest gratitude to our wonderful clients, who have generously allowed us to share their stories. Their resilience and optimism have been a source of inspiration, and we hope their experiences will guide and encourage you as you embark on your next chapter.



# Contents

INTRODUCTION: You're Not Alone	1
CHAPTER 1: Divorce Demystified	9
CHAPTER 2: You Have Options	29
CHAPTER 3: Keeping Costs Under Control	53
CHAPTER 4: Making Sense of Finances	71
CHAPTER 5: Attention Business Owners!	97
CHAPTER 6: Think of the Children	107
CHAPTER 7: Do Grandparents Have Rights?	129
CHAPTER 8: Ending a Civil Partnership	139
CHAPTER 9: How to Cope with an Abusive Partner	145
CHAPTER 10: Getting Married	165
CHAPTER 11: Next Steps	171
<i>Jargon Explained</i>	177
<i>About Parfitt Cresswell Solicitors</i>	185
<i>Index</i>	191



# Introduction

## You're Not Alone

*Everything you need to know to survive  
divorce—and come out positive*

The end of a relationship can feel like the end of the world—and in some ways, it is. If you're facing divorce, an entire chapter of your life is coming to an end. The person you thought you'd be spending the rest of your life with will no longer be your partner.

Everything will be different, everything seems to happen at once—and if you're lying awake at night worrying, please know you're not the only one.

You probably have dozens of questions spinning around your head. Questions like:

What does my future hold? Will I be happy again? What did I do wrong? What could I have done instead? Am I making the right decision? What if I can't cope on my own? How do I protect my children and my family? Where do I even start, and who can I trust to look out for my interests?

All those questions are perfectly natural, and I want you to know you're not alone.

Because, sadly, more than 50% of marriages in the UK eventually fall apart. It can be the most traumatic time in your life as things finally come to a head after months—and sometimes years—deciding whether to stay together.

When you've finally made the decision to separate, you'd expect it to come as a relief... but there are a thousand-and-one things to worry about.

We'd love to be able to tell you divorce can be a breeze, but the truth is, there's no easy way out.

Getting divorced is upsetting even under the best of circumstances, but you don't have to go through it on your own. Lean on your friends and family for emotional support and let us help you take care of the practical challenges.

That's what this book is all about. We want to reassure you that you're not alone. Divorce doesn't have to be as complicated, traumatic, and confrontational as you may fear, and you can come out of it stronger and happier.

We also want to lay to rest any myths you may have heard or believed about divorce. Unlike in the bad old days, you can arrange the end of your marriage with very little fuss and cost.

## **“Do I really need a solicitor?”**

It's true divorce is much simpler and fairer than it used to be, but there are still complex procedures to follow and documents to file. This can be a minefield for the inexperienced and unwary, particularly when emotions are running high and rationality has a tendency to fly out of the window.

A good solicitor will help you navigate the whole process, will give you invaluable advice and support, and will prevent you from making any errors that will slow things down or harm your own interests.

In short, a good solicitor will help you get the best outcome for everyone, with as little fuss, cost, and stress as possible.

Many people fear solicitors will take advantage of them at their most vulnerable time—but a good solicitor would never do that. Contrary to popular belief, we don't have hearts of stone. Many of us have partners and families ourselves, and some of us have been through exactly what you're going through now.

Choose your solicitor carefully and they'll be your rock, have your back, and encourage you to work towards the fairest outcome for everyone: you, your spouse, your children, and your family. Having a good rapport with your solicitor is vital.

Incidentally, you'll often hear the terms “solicitor”, “divorce lawyer”, “family lawyer”, and “family law solicitor”—and they can all mean the same thing.

“Lawyer” is a generic term which describes anyone who is licensed to practice law. When someone uses any of these words, they usually mean a solicitor or legal executive who specialises in family and divorce law.

Barristers (specialists in representing clients in court) are also divorce lawyers, but you’ll usually see a solicitor at first, and might never need to see a barrister. Barristers can be involved for a number of reasons, for example, if the case is complex and there are court proceedings. If so, your solicitor and barrister will work as a team to ensure you make the very best representation of your case to the judge.

Or, it may be more cost-effective to instruct a barrister to go to a court hearing—especially if the court is some distance from your solicitor’s office. Barristers often wear a wig and gown in court, but this is rare in family courts.

### **“Where do I start?”**

This book gives you all the information you need to start the divorce process and choose the right solicitor for you. It walks you through common myths and misconceptions and shows you what’s really involved.

You’ll discover how to deal with the practicalities of finances, funding, children, businesses, and families—and how to negotiate with your spouse calmly and rationally so everyone gets the best possible outcome.

- In Chapter 1, you'll discover what divorce is and what it involves—and how to navigate the process with as little fuss, stress, and cost as possible.
- In Chapter 2, we'll lay out all your options for navigating your divorce with your spouse and for working with solicitors on both sides.
- Chapter 3 is all about funding: how to pay for your divorce, even if you're struggling.
- In Chapter 4, we'll look at your finances as a couple and what you need to consider. You'll discover how to protect your assets; how to make arrangements for pensions, maintenance, mortgages, and wills; and what to consider if you ever get married again.
- Chapter 5 covers business ownership and helps you think through everything you need to consider if you want to protect your business—or divide it fairly.
- In Chapter 6, you'll discover how children are affected by divorce and how to ensure you get the best outcome for them.
- Chapter 7 explains what rights grandparents have, and how you can make sure children stay in contact with their whole family, if that's in their best interests.
- Marriage isn't the only form of long-term commitment. In Chapter 8, we will explain how to formally end a civil partnership.

- Chapter 9 is all about domestic abuse under the law—and what you need to know.
- Chapter 10 is all about what you need to know before you get married.
- And in Chapter 11, we will cover what happens next: how to move forwards and even stay friends with your spouse.

## **Who is this book for?**

We've written this book for people who are in the midst of a relationship breakdown, or who are already starting the divorce process. It's for anyone who's uncertain, confused, or frightened about what the future holds and how to navigate divorce.

It's for people who want the best outcome and future for everyone: for their spouse, their children, their families, and their friends—because divorce doesn't have to become a war zone and it doesn't have to become a fight for supremacy. If you want to make a new start, rather than gear up for a big fight, this book will help you do just that.

If you read this book carefully, and refer to it whenever you need to, you'll have a much better idea of what to expect. Over the years, we've found it's not specific events that people fear; it's the unknown.

That's why we wrote this book: to demystify divorce and to break down any fears you may have. To take you from a frightening, uncertain present to a well-

informed, well-prepared future. We are here to advise you and help you work through your divorce, not tell you what to do. This is all about finding what's best for you, your spouse, and your family—and making it happen.

We want you to be able to stop dwelling on the past and start looking forward to and planning for a happy future. It is possible—that we promise you.

**The Family Law Team**

Parfitt Cresswell Solicitors



# Chapter 1

## Divorce Demystified

### *Truths and myths*

Whatever myths exist about getting a divorce must be laid to rest. It's no longer the preserve of old men in wigs with judgemental attitudes and prejudices: the whole procedure has been modernised, meaning you can arrange the end of your marriage with very little fuss and cost.

The process has been simplified and is largely online. Divorce is no longer about dragging people through the courts; it's all about form-filling and including only what's necessary to finalise the divorce. The bad old days of hearing evidence in every case and considering childcare arrangements in court have long since passed—so don't let the process itself frighten you off.

The most difficult part of any divorce is always emotional—and, of course, the real practicalities of ending a relationship and splitting a shared life.

But no matter how painful the end of a relationship is, it should never be necessary to make things more difficult. That's why you can now resolve any problems arising from your marriage outside the courts, through negotiation directly with your spouse or through your solicitor, mediation, arbitration, collaborative law, or round table negotiations. This is called Alternative Dispute Resolution (ADR), also known as Dispute Resolution or Non-Court Dispute Resolution (NCDR). Your solicitor will help you find the most suitable method.

Although things are much simpler now, your solicitor should always be your first port of call to find out where you stand on divorce, separation, and financial issues—including questions or concerns you may have about domestic abuse or child arrangements.

The law is simpler now, to be sure; but it's still a minefield for the inexperienced and unfamiliar. As your case moves forward, you may need to seek further advice and support. A good solicitor will be invaluable here, helping you submit applications, attend hearings on your behalf, or draft documents to help with a hearing.

Chapter 1 is all about the divorce process itself and specifically addressing the associated finances: we're going to explain exactly what's involved, then go through and throw out some of the most common myths and misconceptions.

## **Staying in control of your emotions**

First, though, we want to say a few words about the human side of divorce. The legal side of divorce can seem like a cold process—but let's not forget humans are messy, emotional creatures...

When a relationship ends, one person often reaches the decision to separate before the other. In a way, they'll have the emotional advantage because they've had time to build up to that decision—which may have come as a shock to their spouse. Keep this in mind when you talk about negotiations and settlements—because the person who decides to leave will already be thinking about the future... while their spouse has been left behind. The person with the emotional disadvantage may find it very difficult to settle at first, because their emotions will be very raw.

A good family lawyer will have many years of experience dealing with divorce and separation. They will understand the importance of being open and compassionate, especially at the start of the process.

Before your solicitor puts forward any settlement proposal for you, they should do everything they can to make sure you can make an informed decision about whether to go ahead with the proposal. This is where the skill of an experienced family solicitor really comes into play—it's as much about being able to provide assured support that keeps your matter out of the courts as it is about providing expert legal advice.

When we work with clients, we often refer them to a counsellor or family therapist to help them work through their emotions. Ultimately, of course, how you proceed is up to you—but it's best for everyone involved if you do whatever you need to do to make sure you're prepared for what's coming.

If you or your spouse rush in while emotions are still high, that's when mistakes can be made and things can get very painful. Don't be afraid to take a little time out for yourself, to come to terms with what's happening, before coming back to your solicitor if you feel you need to—you'll find the process much easier if you do.

However, if you believe your spouse may try to dissipate or hide assets (by spending money frivolously or attempting to remove property from its current ownership) to avoid the assets being part of the divorce settlement, contact a solicitor immediately.

## **What is divorce?**

A marriage is a legally binding relationship, so if a couple no longer wants to be part of that relationship, they'll need to consider getting divorced to break the legal ties to their spouse.

Not every married couple that splits up gets divorced right away; some simply separate instead. If you're not sure what to do, speak to a family law solicitor who'll be able to talk you through the legal and practical implications of divorce, compared to separation.

Whether you divorce or separate, you'll still need to deal with the financial and other aspects of ending a relationship—all of which this book will help you with.

If you've been married for less than a year, you can't legally apply for a divorce—but you do have other options, which we'll explain later in this chapter.

## **The Divorce, Dissolution and Separation Act 2020**

Before 6 April 2022, if a couple wished to divorce immediately (and not wait two years to divorce by consent because of two years' desertion, or wait five years), it was necessary to show that someone was at fault. If adultery was not a relevant factor, then most often one party would cite the other's unreasonable behaviour. Or, sometimes, both parties would cite unreasonable behaviour with cross-petitions, to show their marriage had irretrievably broken down. In doing so, however, there was a real risk of increasing the "temperature" unnecessarily, causing bad feeling to one or both parties.

This has not been conducive to divorcing couples approaching matters in a conciliatory way.

Because of this, the organisation Resolution (family lawyers and professionals committed to resolving family disputes constructively) has long campaigned for a change to this area of law to bring in a "no fault" divorce system. The main aim is to minimise conflict between separating couples.

Following the Supreme Court decision in July 2018 of *Owens vs Owens*, in which Tini Owens was denied a divorce on the basis that she had not sufficiently proved that her marriage had irretrievably broken down because of unreasonable behaviour, there was a call for the law to be reformed. She had no specific grounds for divorce—other than she felt “unloved, isolated, and alone”.

When she petitioned for divorce based on unreasonable behaviour—the only option open to her at the time—her husband disputed the petition and the High Court and Court of Appeal rejected her petition. The courts said her husband’s behaviour was “to be expected in a marriage” and that “parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage”.

Happily, because of the Divorce, Dissolution and Separation Act 2020, couples can divorce immediately without placing blame.

The key elements of the Divorce, Dissolution and Separation Act 2020 are:

- The requirement to provide evidence of a “fact” of conduct or separation has been removed and replaced with a statement of irretrievable breakdown.
- The ability of a party to defend the decision to divorce or end a civil partnership has been removed.
- The option to dispute the divorce application

is limited to issues of jurisdiction, validity and, where it is asserted that the marriage has already ended or the civil partnership dissolved. It may also be possible to challenge the application based on fraud or procedural irregularity.

- For the first time, people have a choice to apply jointly or independently. This is a significant step for couples who are seeking an amicable divorce or dissolution, with both parties working together to formally end their marriage.
- There is a minimum timeframe of twenty weeks between the start of divorce and dissolution proceedings and the earliest date the applicant(s) can apply for a conditional order (formerly known as decree nisi). The purpose is to provide the couple with a period of reflection.
- There is a minimum timeframe of six weeks between the conditional order and the earliest date the applicant(s) can apply for the final order (formerly known as decree absolute).
- The language has been simplified to help those outside of the legal profession and to ensure consistency across legislation relating to divorce, dissolution, and separation.
- The default position regarding costs is that the court will not make a costs order in standard uncontested cases and where there has been no litigation misconduct.

- Grave hardship is no longer a bar to applying for the final order, but it remains open to a respondent to apply to delay a final order to afford an opportunity for the court to consider the finances in all cases.

The above legislative changes to divorce and dissolution do not change any other area of matrimonial law, such as children or financial provision, which are covered by separate proceedings.

**Former terminology**

**Current terminology**

Petition

Application for Divorce

Petitioner

Applicant

Decree Nisi

Conditional Order

Decree Absolute

Final Order

Decree of Nullity

Nullity of Marriage Order

Decree of Judicial  
Separation

Judicial Separation Order

**What do you need to get divorced?**

Before applying to the court for divorce, you'll need:

- Your original marriage certificate (or a certified copy if the original was lost or destroyed). If you married abroad, you can still get divorced as long as you fulfilled the criteria for marriage in that country. Ask your solicitor to check the marriage certificate—and you'll need an official translation if it's not in English.

- Your spouse's contact details. If you have no idea where your spouse is living, you may still be able to go ahead with a divorce—but you'll need to talk to your solicitor about what you'll need to do to try to find your spouse's address. Be aware that it could delay things and cost more money.
- You will need the correct fees to pay the court. You can find the current court fee for issuing a divorce petition at [www.gov.uk/court-fees-what-they-are](http://www.gov.uk/court-fees-what-they-are).
- You will need to decide whether you wish to make a sole application or a joint application. You may choose to apply jointly to reduce any animosity and encourage co-operation. A joint application is likely to be seen as a declaration that you agree on the decision to divorce. A sole application may be preferable if a party is concerned about the other party's engagement, or if there is domestic abuse, jurisdictional issues, or a freezing injunction is contemplated. Whilst it is possible to change a joint application to a sole application, it is not possible to change a sole application into a joint application. A solicitor will discuss these considerations with you and can prepare the application for divorce or dissolution on your behalf.

Many solicitors, including our own firm, provide free initial consultations so you can talk about the likely cost before making any commitments.

## **The divorce and dissolution process — considerations and requirements**

The application for divorce or dissolution can be made online via the designated court portal. (It does, however, remain open for lay persons to apply on paper if preferred. Solicitors must use the court portal).

- It will be important to identify whether the application relates to divorce or dissolution.
- It will also be important to identify whether the application is a joint or sole application.
- The parties' details (and those of any appointed solicitors) are required.
- Details of the marriage or civil partnership are required, including whether the marriage took place outside of the UK.
- A statement of irretrievable breakdown is necessary (it will not be possible to proceed in the absence of this).
- Questions on jurisdiction must be answered.
- Details of other proceedings are required (if relevant).
- If financial claims are sought, parties must indicate this.
- The marriage certificate must be uploaded. If the parties married abroad, any certified translation must also be provided.
- The applicant(s) must provide a statement of truth.

## **Joint applications**

Within a joint application, one party will complete the application and pay the court fee. After checking all details, the first applicant must “submit” the application, to enable the second applicant to receive it. The second applicant has two weeks to verify all information and submit. Both parties must confirm receipt via the court portal. After this step, the twenty-week timeframe will begin.

After twenty weeks, it will then be possible to apply for a conditional order. Once the first applicant has submitted the application, as before, the second applicant will check and “submit”. A legal adviser will then consider the case and confirm the entitlement to a conditional order.

At the point of applying for a conditional order, either party can apply to move from a joint application to a sole application.

Six weeks after the conditional order, the party or parties may apply for the final order. If the application remains joint but one party will not co-operate in applying for the final order, the other party can provide fourteen days’ notice of their intention to apply for a final order on a sole basis.

All notifications will be via email and no paper copies will be sent unless the application was issued on paper.

In certain specific circumstances, it may be possible to shorten either the twenty-week reflection period or

the six-week period between conditional order and final order. An application would need to be made online for this purpose.

It is no longer necessary to seek permission from the court to apply for the final order if the application is made outside of twelve months of the conditional order, but it will be necessary to set out the reason(s) why the application was not made sooner when applying for final order.

### **Sole application**

If the application is a sole application, once the court has issued it and served on the other party (“the respondent”), this party will have two weeks to acknowledge service. The respondent will receive the application for divorce via email and will also be notified by post. If no email address is available or the applicant prefers for the application to be sent by post, the court will serve the respondent by first class post. If no postal address is provided, the applicant can apply for alternate service on a Form D11.

Service outside of the jurisdiction is required to be in line with the law of the country in which the respondent lives (and the court will not serve an application outside of England and Wales).

If the applicant requests to serve the application, it must take place within twenty-eight days of the application being issued by the court. In certain circumstances, it is possible to apply to extend the

timeframe for service. The court has case management powers, depending on the circumstances of the case.

It is possible for the applicant to apply for a conditional order if there has been no indication of an intention to dispute the application. The court will determine whether there is entitlement to a conditional order or may list the case for a hearing. The court will make a final order after checking that there has been no reconciliation, there are no appeals regarding the conditional order, and no party has applied to delay the final order.

It is possible for the respondent to apply for the final order three months after the earliest date the applicant may apply (regarding sole applications).

The court is likely to stay any proceedings if an application has been made outside of the jurisdiction, which may affect validity.

### **Is there an alternative to divorce?**

There is—and it is most commonly considered if you've been married for less than a year or you object to divorce on religious or cultural grounds. You can apply for a judicial separation order.

This is a court order and is similar to a divorce. You'd remain legally married—but your normal marital obligations cease and you don't have to go on living together. Normally, people who get a judicial separation order don't want to divorce, but want to live apart from

their spouse with enough formality to allow them to each live their own lives.

A judicial separation order has three primary effects:

1. You're no longer obliged to live together.
2. The court can divide all property and assets just as if you were getting divorced, although not with quite the same finality and without being able to address pension-sharing.
3. Wills are unaffected by judicial separation, in contrast to divorce. However, if you die intestate, your spouse would be treated as if they are dead.

Unless you've been married for less than a year, or both partners are opposed to divorce for religious reasons, a judicial separation order is unlikely to be recommended.

In fact, it could store up issues for the future, particularly if one or both people meet someone else and want to remarry. If you decide to get divorced in the future, you'll need to go through the whole divorce procedure from the start and meet the associated costs.

We would strongly advise you to get legal advice before agreeing to enter a judicial separation order.

Another alternative is a Separation Agreement, in which you agree to live apart. It can include clauses dealing with financial arrangements, including dividing assets and paying maintenance. It can address child arrangements too.

A separation agreement is akin to a contract, so rules apply. However, whilst on the one hand it can offer

flexibility, you can't achieve the same finality with a separation agreement as with a final financial order—so you'll want to consider this before deciding. Whether you're divorcing or separating, always review your will and carefully consider your financial situation to ensure everyone ends up in the best situation.

### **Common divorce myths**

There's something about emotional upheaval that makes rumours fly around, and there's a variety of myths and misconceptions about marriage and divorce law. Many people are shocked to discover the outcome they expect isn't possible.

So, let's look at the most common myths...

#### **“I've got a common-law marriage...”**

Contrary to popular belief, there's no such thing as a “common-law marriage”—in the UK at least. Some people mistakenly believe if you and your spouse have been living together for long enough, you'll be recognised as married in the eyes of the law.

This isn't true.

No matter how long you've lived together, the courts won't recognise you as a married couple unless you're legally married. If you do not wish to take marriage vows, you can enter into a civil partnership, with a view to providing financial protection upon separation.

**“My spouse was unfaithful and abusive, so I’m entitled to everything!”**

Regardless of how upsetting and damaging adultery and domestic abuse may be, adultery has no effect on the finances arising because of divorce, and domestic abuse seldom affects the financial outcome (unless directly linked).

**“Mothers are always granted care of the children.”**

Although in the past it may have been common that the mother has the child or children living with her, it’s definitely not a hard-and-fast rule, and changes in the ways we live now mean any child or children might more commonly live with their father, or that the two parents share care between them.

The Children Act 1989 states clearly that a child’s welfare is the court’s paramount consideration. Ideally, parents will agree arrangements without involving the court. If you really can’t work it out together, and the court becomes involved, the court’s decision regarding child arrangements will be based on what’s best for the child or children.

**“Grandparents have no visitation rights.”**

Grandparents do not have automatic rights to spend time with their grandchildren under the law in England and Wales. However, grandparents can apply to the

court to spend time with their grandchildren, if this time is being prevented.

If there are existing court proceedings relating to the children, grandparents can ask the court for permission to make them a party to the case—which means they can be represented at court.

Otherwise, grandparents may independently apply for permission or leave to apply to the court. If permission is granted, any decision made by the court will focus on the children's wellbeing. Read Chapter 7 for more information on grandparents' rights.

**“Divorce is always expensive.”**

We've seen estimates in the tabloid newspapers of typical divorces costing £100,000 plus. This is rarely the case—and unless your proceedings are extremely complicated and / or contentious, your fees should be nothing like this. Costs will rise if you're unfortunate enough not to settle early in financial negotiations, and will rise further if proceedings are issued, as there are potentially three hearings.

**“I want a quickie divorce.”**

There's no such thing. All divorces in England and Wales take about the same time. The soonest you can divorce is in approximately six-and-a-half to seven months, however it is usually advisable not to apply for a final order until there is a financial settlement, which can often take longer to achieve.

**“Mediation is all about saving the marriage.”**

Mediation is not the same as marriage guidance counselling, and the purpose isn't to save your marriage. Mediation is all about finding a constructive solution to your dispute. The aim is to resolve your differences in a positive and purposeful way, which is particularly important if you have children.

**“I want a divorce on the grounds of irreconcilable differences.”**

Unfortunately, this isn't an option in England and Wales. To get a divorce, you must confirm that your marriage has irretrievably broken down.

**“You must have a solicitor to get divorced.”**

You can represent yourself if you want to; you don't have to get a solicitor. However, although the divorce process is much simpler than it used to be, it remains possible to come unstuck, particularly regarding associated financial matters. There is a risk that you do yourself a disservice and do not reach a fair or reasonable financial settlement. It is further necessary for any financial consent order to be prepared in a particular way and for specific important considerations to be taken into account.

We strongly recommend you appoint a solicitor, if for no other reason than to check everything over.

Remember, too, that a good family solicitor will also take away a lot of extra stress and worry when you are

likely to already be under a lot of strain.

**“Solicitors always go to court—I don’t want that.”**

Court is only necessary if you can’t reach an agreement, or if one party is not willing to co-operate. If court proceedings are issued, it remains possible for parties to compromise matters by consent and rare for cases to go all the way to final hearing. Courts are keen for parties to settle by consent and to negotiate—and so are good, conscientious solicitors.

Contrary to popular belief, the last thing solicitors want is a vicious fight. Many family lawyers are members of Resolution—our firm included—and we abide by its Code of Practice, which always encourages a non-confrontational and constructive approach.

In Chapter 2, we’ll look at your options for working through your divorce proceedings, including mediation, collaborative law, arbitration, round table negotiations, and what happens if you go to court.

**Summary**

- Divorce is the final dissolution of a legal marriage—to get started, you’ll need your original marriage certificate, your spouse’s address, and the correct forms and fees.
- The applicant applies for a conditional order when the respondent acknowledges the divorce proceedings.
- The final order can be issued six weeks and one

day after the conditional order is pronounced—as long as no objections are raised or matters are outstanding.

In Chapter 2, we'll look at your options for working through your divorce proceedings, including: mediation, collaborative law, arbitration, round table negotiations, and what happens if you do go to court.

## Chapter 2

# You Have Options— Alternative Dispute Resolution

*You don't have to go to  
court to get a divorce*

**M**any people believe a courtroom drama is an inevitable part of divorce. In fact, many couples can sort out the details of their separation together, or with the help of a professional, with no need to go through the difficulties and expense of court.

Unlike in the high-profile, sensational divorces you may hear about in the media, most people don't have knock-down, drag-out fights with their spouse.

Good family law solicitors believe court should be a last resort. Check your solicitor is a member of Resolution—an organisation of over 6,500 family law professionals who believe most problems facing separating couples are best solved without confrontation. Resolution provides advice, support, and training to family law solicitors.

You can find a solicitor in your area by visiting <https://>

resolution.org.uk/find-a-law-professional/ and if you search for our firm—Parfitt Cresswell Solicitors—you’ll find us in there too.

Divorce is always difficult, but resolving problems in a constructive, calm way leads to the most satisfactory, long-lasting outcomes for you and for any children. It also makes it far more likely you’ll be able to work amicably with your spouse after your divorce—which is crucial if you have children. It may even enable you to become friends, eventually.

You have plenty of options—and in this chapter, we are going to explain them to you. This process is Alternative Dispute Resolution (ADR) and with the support of a professional, processes like this let you and your spouse talk through your problems together and work out what’s best for you and your family.

There are several alternatives to court:

- Negotiation directly with your spouse or through a solicitor.
- Mediation.
- Mediation with a solicitor.
- Collaborative law.
- Family arbitration.

All these processes give you privacy, allow you to control the pace, and—to a certain extent—you both control the outcome. In nearly all cases, you can choose to negotiate a settlement through your family lawyer and maintain an amicable relationship with your spouse.

## **Negotiation**

Some couples find they can negotiate things for themselves at the end of a relationship. These are the lucky ones, and if you can sit down with your spouse and talk things through in a friendly manner and come to an agreement, then it is open to you to do that.

Whether you can do that will depend on how simple your issues are and whether you can comfortably talk about them.

Having said that, ending a relationship is at best emotional and at worst traumatic, so there is no shame at all if negotiating between yourselves is impossible.

Feelings run high and it's all too easy to get into an argument or lose your temper—and if you find that happening, it may be better to find a solicitor to negotiate on your behalf.

Even if you do sort things out between you, we strongly recommend you meet with a solicitor once, just to make sure you've thought of everything. The last thing you want in your new life is for an ex-spouse to make a financial claim against you. We've seen this happen, even years after a divorce has been finalised.

Whatever you decide, it's really important to get legal advice because your solicitor can explain what the issues are, your rights, and how best to sort things out. An initial meeting, so you know what to expect, can be a good place to start. Whether you decide to negotiate

between yourselves or ask solicitors to negotiate for you, you'll need to know what to do first.

It is very important once you have agreed to consult a family lawyer to have that agreement incorporated into a court order which is legally binding on both of you.

### **What's the first step?**

If you're asking a solicitor to negotiate your financial settlement, start by pulling together all your financial details for financial disclosure.

You can do much of this yourself, and your solicitor will help you. There's a standard court form—called a Form E Financial Statement—that will help you do this. Sometimes, in straightforward and amicable cases, if both parties wish to do so, they can share disclosure in a less formal and abbreviated way. However, it remains important to be transparent at all times.

When you or your solicitor has exchanged financial information with your spouse or their solicitor, you can ask your solicitor to negotiate on your behalf.

Your solicitor will look at all the options with you and help you understand how the law works and how the settlement can be structured. Your solicitor will advise you on what the potential best outcome will be and discuss what would be unacceptable to you.

When you've done this, you can move onto the next steps, which are a combination of:

- Letters setting out proposals—a detailed starting point is helpful.
- Telephone discussions, which can speed things up.
- A face-to-face meeting involving everyone (although not necessarily at the same time).
- A two-room meeting, which is more common when discussions are tense and emotional.

### **Advantages of solicitor negotiation**

Experienced family solicitors are very familiar with these types of negotiations and will almost certainly have seen similar situations to yours before. They'll be able to explain what a fair settlement is likely to look like for you and explain your options—then they'll be able to negotiate to achieve your goals, finalise your divorce, and resolve your financial settlement.

### **Disadvantages of solicitor negotiation**

Solicitor negotiation can become confrontational and potentially make things more difficult between you and your spouse, but a good family solicitor will make everything as simple, amicable, and painless as possible.

It can become expensive because most solicitors charge by time—and it is impossible to know how long negotiations will take.

Couples sometimes feel they're not in control of discussions about their financial settlement during solicitor negotiations, but a good family solicitor

will make sure you're fully involved and in control of everything throughout your divorce process.

## **Mediation**

Mediation isn't about helping couples get back together; nor is it relationship counselling. Instead, it helps couples who are separating decide how to end their relationship and work things out together, whether that's making sure your children are coping or working out financial problems.

The mediator is there to make sure your discussion is constructive, non-combative, and that each of you can have your say.

During mediation, you and your spouse, helped by a trained mediator, talk through the problems you need to solve. That might be money, children, property, business, or anything else affected by your separation. It's all about working out what's best for you and your children, if you have any.

Some describe mediation as similar to having a referee—or an impartial guide, if you prefer—for your discussions. Your mediator will be completely neutral and won't take sides, regardless of the circumstances of your separation—and they can't give legal advice.

Most people going through mediation find it helpful to take advice and support from their family solicitor, who'll be able to consider the fairness of any agreement you reach during mediation and take steps to ensure it is legally binding. That advice may be given as the

mediation process takes place or can be at the end when you have an outline agreement.

Mediators can, however, give you information about the law and your options and draw up a Memorandum of Understanding, setting out what you propose together. You can take it to your solicitor, who can use it to work through all the legal steps you need to finalise your divorce.

Many couples say mediation helped them divorce or separate without increasing hostility and anger, and that discussing their problems face to face helped them reach fair solutions that suited them individually.

### **How does it work?**

Before you start mediation, you'll each meet the mediator separately, remotely or in person, to ensure you're both comfortable—and safe—to get together in discussions. In most cases, you will be in the same room as your former partner or spouse and the mediator.

Alternatively, you can take part in shuttle mediation. The mediator speaks to you and your spouse separately, then relays each person's concerns and proposals to the other and reports the responses. The mediator works to define the issues and to find acceptable solutions.

Traditionally, you'll have several sessions, each lasting about an hour and a half. You might need only one or two sessions, or you may need several; it depends on you and your spouse, and what issues you're facing.

During the first session, you'll talk about the agenda and what issues you want to address. The mediator will help you gather information and discuss your issues.

### **Why go to mediation?**

First, mediation really does help some couples to sort out issues and reach an agreement with as little stress, anguish, and strife as possible. Second, it's by far the most cost-effective way of sorting out what happens when you split up.

You'll be involved in all the discussions, so you will know if you reach an agreement, it will be one you and your spouse are comfortable with. You're in charge, and you'll find it's an empowering process. Instead of putting all the responsibility into the hands of your solicitor, you will be the one driving the process. You gather the information you need and make sure you understand it.

If you go to court, decisions will be made for you, and you'll have to live with them whether you like them or not. If you and your spouse can take control and work together amicably, though, you can make the decisions—and ensure they're the best ones for you and your family.

### **Is mediation compulsory?**

No, it's not compulsory. We believe it's the right thing for most people to consider though, as do most solicitors. So does the court and the government. Mediation is not necessarily suitable for everyone, however, because

you have to trust your spouse to be open and honest, especially when producing financial information. Some people are simply not reasonable, and it's difficult to get them to agree to things.

You also need to feel safe in mediation, so it's not appropriate if there is any domestic abuse, or too much of a power imbalance in your relationship.

Before court proceedings can be issued, about children or money, you usually have to go to a Mediation Information and Assessment Meeting (MIAM) to make sure you know about the process. However, your solicitor may decide with you that a MIAM is unnecessary—perhaps because of domestic abuse, or some aspect of extreme urgency. You may also find that mediation is inappropriate if you've already been through the collaborative law process and not been successful.

Of course, you also need to make sure your spouse is willing to go to mediation with you. You can't force someone to go if they don't want to, even if seems to be the best way forward. Don't push too hard if they're unwilling. You may find them more open to the idea as time passes. You can help by passing on as much information as you can about mediation and could even give them a copy of this book—just get in touch with us and we'll send you another copy.

## **Mediation with a solicitor**

You might think mediation sounds like a daunting prospect—something you don't want to do alone. In most cases, people find mediation to be incredibly helpful... but you do have another option: lawyer-assisted mediation.

If your issues are very complex and there's a lot at stake, your solicitor can be there with you during the sessions to give advice on the spot. Or you can negotiate with your solicitor's help. People often use lawyer-assisted mediation when court proceedings have already started, to sort out any issues without the expense and unpleasantness of being in a courtroom.

If you choose this option, be aware it will be more expensive because your solicitors are there, however, if you have difficult legal issues, perhaps consider it an investment rather than a cost. Going to court will inevitably cost far more.

Like all mediation, lawyer-assisted mediation is very flexible, but it's different from standard mediation because it takes place over one long session rather than a series of shorter meetings. The mediator is in charge and directs communications between you and your solicitor, and your spouse and their solicitor. You may have an initial meeting, then each of you meets separately with your solicitor and the mediator to work out what you want to achieve and what you're willing to agree to. If it goes well, the mediator brings everyone

back together again to go through it all and, if possible, your solicitors can draw up the agreement into a consent order there and then.

Ultimately, with any form of mediation, the number of meetings required, and the success or failure of the process depends on the individuals involved and the issues they're deciding upon.

### **Collaborative law**

Collaborative law is another way to deal with legal issues when a relationship breaks down. You each appoint your own solicitor, but instead of negotiating with your spouse by letter or phone, you all get together to work things out. As with mediation, the idea is to avoid going to court. If you want to go down this route, make sure the solicitor you choose is properly trained because it's a specialist area—not all solicitors are trained to do it. You and your appointed solicitor will be required to sign up to a Collaboration Agreement, to commit to the process and to resolving matters in this way. In the unfortunate event that it is not possible to reach a consensual resolution through collaboration, you will thereafter be required to appoint a different solicitor to assist you going forward.

### **Family arbitration**

Family arbitration is another method of resolving disputes at the end of a relationship. A third party, called a family arbitrator, will decide about your finances for

you. Just like a courtroom judge, a family arbitrator makes sure relevant facts and evidence are collected so they can make a fair decision.

The arbitrator will also consider the views of you and your spouse when making a decision—but their decision, known as an “award”, is final.

Family arbitration is an alternative to court proceedings, used when a couple cannot resolve financial disputes. You might consider it if you and your spouse could not come to an agreement through discussions, or through collaborative law, mediation, or negotiations between lawyers.

You or your spouse can suggest arbitration, but you both have to agree to arbitration for it to go ahead. Once you’ve appointed a family arbitrator, though, you can’t back out of it without your spouse’s agreement.

You both choose the arbitrator, usually based on advice from your solicitor—or you can ask the Institute of Family Law Arbitrators (IFLA) to choose one for you.

It’s a very flexible process—the only rule is your chosen arbitrator must apply the family law of England and Wales.

If you’ve chosen to use arbitration to deal with the finances during divorce, that’s the only thing your family arbitrator will deal with. Other issues, like the process of ending the marriage, or contact with children, will be sorted out separately.

Keep in mind that family arbitration means a decision is made for you, so it’s like going to court in

that respect. You may, therefore, wish to first try to sort out your finances by agreement. Consider mediation or collaborative law first.

If you really can't agree everything and are choosing between court and arbitration, this next section should help you decide.

### **Advantages of family arbitration**

- You can choose an arbitrator with the experience to deal with your issues, so you know who you're getting. At court, you can't choose the judge and perhaps, surprisingly, not every judge is a family law specialist. Family arbitrators have to be specialists.
- Your arbitrator will deal with every stage of the process so you have consistency. You won't have to explain the same things over and over again. In family proceedings, whilst the court endeavours to assign one judge to one case, this is not always possible.
- You can choose exactly what you want your arbitrator to decide on—everything in dispute between you, or one or two specific issues. For example, you might agree with the amount of maintenance, but not how long it should be paid for. Or you may argue about selling the house now, or in the future.
- You can agree on how to disclose your financial position to each other. You can use the same

form as in court proceedings, but you don't have to. If you prefer, you could use a spreadsheet with supporting documents. Every case is different, and the arbitration process is a lot more flexible than court, so you can choose whatever method works best for you. You could even agree to have the family arbitrator decide everything based on written evidence and representations rather than hearings.

- You can choose with the arbitrator where and when you meet. You're not stuck with court-imposed times.
- It's often much quicker than going to court. Court delays are becoming worse and worse, and in many parts of the country you can wait many months or even a year or more from the start to the end of your case.
- Arbitration is much easier to keep private—there's no risk of journalists being present and confidential paperwork floating around, as is possible in a court.

### **What about the disadvantages?**

There aren't many disadvantages to arbitration, but consider:

- You must pay the family arbitrator's fees and expenses, and you'll often have to pay extra to record / transcribe each family arbitration hearing. If you were to go to court for the finances,

you'll have to pay a court fee, and the fees of any appointed lawyers, but you don't actually have to pay directly for a judge's time.

- The arbitrator cannot make an order to freeze assets or recover assets that have been wrongly removed. If during your case there's a problem with your spouse not being truthful about a financial position, or with assets being hidden or moved, then you can, in some circumstances, invite the court to assist and then come back to arbitration.

However, if you believe at the start that this might happen, court proceedings will probably be more appropriate.

### **What can family arbitration deal with?**

Arbitration can deal with everything to do with family law finance, including:

- Finances on divorce or civil partnership dissolution, e.g. maintenance, property, or pension sharing.
- Financial provision for children.
- Disputes between people who have been living together but are not married.
- Disputes between relatives about distributing someone's estate when they've died.
- Arbitration can also deal with some issues relating to children, including:
  - Arrangements for children (e.g. where they live

and how much time they spend with the other parent).

- Relocation within England and Wales.

You can't use arbitration for serious disputes affecting children, like serious allegations of actual or potential harm to children, or other safeguarding issues, or international relocation.

These options aren't all-or-nothing: there's no reason you and your spouse can't choose arbitration to deal with one or two issues but choose other methods for other problems.

For example, you might be in mediation but have a problem with one or two simple issues. In that case, you could ask an arbitrator to decide rather than go to court, then come back to mediation to tie everything up.

### **Who's involved in arbitration?**

The only people who must be involved in arbitration are you, your spouse, and the arbitrator. But you or the arbitrator could involve others if appropriate.

You can represent yourself or appoint a solicitor to help and advise you.

If assets like property or a company must be valued, or pensions are involved, the arbitrator can ask for expert evidence from a qualified professional.

Arbitration is similar to court proceedings and the arbitrator can make an order for one of you to pay the other's costs.

## **Is an arbitration award binding?**

Yes. You and your spouse agree at the start that you'll accept the arbitration decision whether you like it or not. Technically, a court could override the decision—but in practice that won't happen unless there's a very good reason, like dishonesty in financial disclosure.

After the arbitrator has made the decision (award) in almost every case, you'll ask the court to confirm it in a formal court order (known as a Consent Order). This is crucial because if your spouse doesn't comply with it, you need to be able to enforce it. It's essential if the decision involves sharing a pension.

You have only a limited right to appeal against the arbitrator's decision, so make sure this is the right decision for you.

## **How much does arbitration cost?**

Arbitration costs vary because each family case is different. But there are some things that affect costs:

- How much the arbitrator charges, which varies depending on their experience and where in the country you live. Often it is possible to agree on a fixed fee or otherwise to pay per hour of their time.
- Venue: many arbitrators have their own premises or Chambers, and the venue will be covered in their hourly or fixed fees. Others need to find a separate venue, so the cost depends on where it is, and how many hearings you need.

- If you have the hearings recorded or transcribed, you'll pay those costs too.

Ask the arbitrator how the costs are likely to add up so you can budget properly. Agree with your spouse how to manage costs—and if you don't agree, you'll usually each pay your own costs. Remember, though, the arbitrator can make an order for one of you to pay some or all of the other's costs.

Because the process is usually much quicker than going to court, you'll save money there—but you'll have to pay separately for any court fees for the divorce process itself, or for turning the arbitrator's award into a formal court order. You won't be able to get legal aid for arbitration, so bear that in mind.

### **What if we go to court?**

Sometimes, it's impossible for couples to reach any kind of agreement. It's rare, but it happens.

In that case, you or your spouse can apply to the court by completing a Form A: Notice of [intention to proceed with] an application for a financial order. This bit of legal jargon simply refers to the process of sorting out finances at the end of a relationship. You may need to attend a MIAM first and have the mediator sign the Form A to confirm your attendance and their assessment of the circumstances.

You'll both submit your financial statements (Form E), together with financial documents like bank statements, house valuations, and pension statements,

and sign a statement of truth to confirm you've given full, frank, clear, and accurate disclosure of your financial circumstances.

You both attend the first appointment, usually in front of a district judge (these hearings are sometimes dealt with remotely), who'll decide what directions are required—what you and your spouse need to do before the next meeting. Directions can include providing more information about your finances and answering a questionnaire put to you by your spouse concerning your initial disclosure. The court will want to understand why certain claims should be considered and others should not, and part of this process will be to decide what evidence each of you must produce to help decide your case.

If either of you refuses to cooperate, the court may assume you have something to hide, so, as always, it's in your best interests to be totally honest and transparent.

After this process, you'll go onto the financial dispute resolution hearing (FDR), which is a judge-led opportunity to settle things through negotiation and discussion.

### **Financial dispute resolution hearing**

You and your spouse should arrive at least an hour before the FDR starts so your solicitor and/or barrister can negotiate on your behalf. The judge will have read all the paperwork, including settlement proposals made before the hearing. During the hearing, they will hear

your solicitor's/barrister's submissions and give you an idea as to the outcome, and what they would expect another judge might decide at a trial.

If your expectations are unreasonable, this part is very important—especially if one of you wants to “take 'em to the cleaners”. In the vast majority of divorces, it's extremely unrealistic to aim to take all of a spouse's assets.

During the negotiations at FDR, the judge will see you and your solicitor/barrister to discuss any issues as many times as they can accommodate you throughout the day, however, because of the court's resources being exceptionally stretched it is unlikely to be more than twice. Remember, even if you can't agree, your solicitor can still carry on negotiating on your behalf out of court. If you can reach an agreement this way, you can apply to court at any time to get a consent order.

If you do reach an agreement at court, your solicitors will draft a consent order setting out the terms of the agreement. The judge will then consider the agreement and if they are satisfied the agreement is reasonable, they will seal the order, meaning it's binding on you and your spouse. If you can't reach an agreement—for whatever reason—the district judge will list the matter for a final hearing.

### **The final hearing**

At the final hearing (or trial), evidence is based on statements prepared in advance, then you and your

spouse will both give evidence in person. If necessary, experts and witnesses also give oral evidence based again on pre-prepared reports or statements.

The judge at a final hearing will always be different from the judge who attended your FDR hearing. When this judge has heard all the evidence, they'll make a final order.

Of course, you and your spouse may still settle at any point in between these hearings. If you do, your solicitors will draw up a consent order setting out the terms of your agreement stating that it's the final settlement of all financial claims one of you has against the other.

The consent order is filed at court with a form setting out all relevant assets, pensions, liabilities and income, and the judge will consider it. If it's a reasonable settlement, they'll approve it and make it an order, which will be binding on you and your spouse.

It is possible to arrange for a private FDR hearing. The format is the same as above, except you will have the "judge's" attention and help all day. There is an additional cost as you have to pay for the "judge", but a private FDR can be heard and dealt with much quicker than using the court system. If the matter does not settle at the private FDR, then there will need to be a final hearing. However, paying for the FDR seems to encourage settlement.

## **How long will a court case take?**

How long your court case takes will depend on how willing you both are to co-operate and negotiate, and how complex your financial issues are.

If you can agree quickly, it will take much less time to finalise everything. If you can't reach an agreement, the whole court process can take up to a year or more until the final hearing.

Many family matters that reach the courts are based on both parties' needs. The court will consider how much money is available, then consider the needs of you, your spouse, and your children (if you have any). The needs of any children are always the priority of the court. The money will be divided to make sure everyone's reasonable needs are met as far as possible, considering factors like employment. For example, if one parent cares for the children full-time, they won't be able to take a permanent full-time job.

This is a pragmatic, common-sense approach that leaves emotions out of the situation as much as possible.

Most cases settle long before a final hearing—all the family lawyers at Parfitt Cresswell always work with clients to make sure final hearings never become a serious possibility unless it's unavoidable.

It may be unavoidable if your spouse refuses to engage in the court process or fails to provide information about finances. Or they may not accept or propose a reasonable settlement to allow an amicable agreement.

## **Summary**

- Negotiation is ideal—especially if you can sort things out between yourselves amicably, only working with a solicitor to check things over.
- Mediation is not about helping you get back together, it's about helping you decide how to end your relationship and work out financial problems or decide what's best for any children.
- Mediation with a solicitor gives you the added security of knowledgeable and experienced advice and help at every stage.
- Collaborative law aims to keep you out of court: you'll get together in a four-way meeting with your spouse and your solicitors, and work everything out together.
- Family arbitration involves appointing a “judge” to make a final decision regarding the issue or issues in your case. You have control over the selection of the arbitrator or “judge”, venue, timings, and issues to be decided. Arbitration will keep you out of court if you're finding it difficult to come to an agreement.
- Court should be a last resort for those who find it impossible to work together or who have very complex financial issues. It could take a year or more to get to a final hearing—so we strongly recommend you avoid going to court.

In Chapter 3, we'll explain how to keep your divorce costs as low as possible and talk about your funding options so you can pay for your divorce—even if you're struggling financially.

# Chapter 3

## Keeping Costs Under Control

*How to pay for your divorce,  
even if you're struggling*

It's universally acknowledged that going through a divorce is one of the most stressful times in a person's life. As if the emotional fallout of a relationship ending wasn't enough, you also have to deal with the financial, practical, and legal consequences.

Getting advice from a solicitor about likely outcomes and how to navigate the divorce process is a great first step. Costs are likely to be high on your list of concerns, so this chapter is full of practical advice about how to keep your costs as low as possible.

### **Hold your head high**

Although it's tempting, it won't help to pretend this isn't happening. I'm afraid it is. Facing your situation and dealing with it now will be far less stressful in the long run. Getting good legal advice early on can help you identify any potential problems and show you how

you can manage them—meaning you’ll avoid some common mistakes that can prove very expensive, such as:

- Agreeing a financial settlement that’s not in your best interests.
- Removing the incentive for your spouse to deal with financial matters because you’ve moved out of the family home.
- Setting a precedent for spousal maintenance by paying your spouse more than you should.
- Increasing your chance of going to court because you refuse to agree to something to which you would have agreed had you understood the legal implications.
- Allowing the emotional side of the breakup to dictate how a settlement should be reached.

A good family solicitor will make sure you understand all your options and help you avoid making such mistakes.

### **Lean on your support network**

You’ll need help from your entire support network—family, friends, and professionals—to get through the breakdown of your relationship.

Friends and family will be a great source of comfort and support, so lean on them for that. Do not, however, use your friends or family as legal advisors. You’ll probably know someone who’s gone through a divorce, and they may well be eager to help—but no two families

are the same and any financial settlement will depend on your individual circumstances. Your friends and family are perfect when you need a shoulder to cry on, or an ear to rant into, or a friendly face to just listen, but they are seldom trained lawyers.

A trained counsellor can support you in addressing emotional challenges, helping both you and your spouse manage feelings of anger or mistrust. Increasingly, individuals are also turning to divorce coaches and family mediators to navigate the complexities of divorce, ensuring a smoother process for themselves and any children involved.

A solicitor is there to help you understand the law and make sure you don't make any costly mistakes. They provide an objective perspective on your case and how a court is likely to decide on a financial settlement. You don't have to instruct a solicitor to act for you, but for most people, it's an excellent idea. Even essential.

Remember, though, your solicitor will charge you for their expertise in family law—they're not a substitute for friends, family, or counsellors. We have a lot of practical advice that can help you, and many of us have been through divorces ourselves... but we're not trained counsellors. Make sure you only pay your solicitor for their legal expertise. You can find much more appropriate emotional and practical support from counsellors, family, and friends.

If you're not sure who's the best person to help you with a particular question or problem, here are some of

the most common scenarios your support network may be involved in.

**Friend:**

“This is so unfair—how can my partner treat me this way?”

Hugs and sympathy.

“I cannot believe this is the way the court system works! What about the fact they cheated on me/are refusing to see the children/etc.?”

**Counsellor:**

“I don’t know how to cope with him/her/life/proceedings/children.”

“I don’t know how I’m going to be able to move on.”

**Solicitor:**

“I don’t know how to deal with divorce.”

“What are my rights and obligations with the children?”

“How much money am I likely to get when we get divorced?”

“They have changed the locks—what do I do now?”

“I’m afraid of losing everything; how can I legally protect myself?”

**Choose your solicitor wisely**

Your solicitor will charge for their time and their hourly rate will depend on their experience... and on their location. (London lawyers will usually cost more than regional firms.)

If your divorce is complicated, consider working with a more experienced solicitor. Although their fees

may seem too expensive, using a cheaper solicitor could cost you more in the long run, as their inexperience could lead to your divorce dragging on for longer than it should do.

Many people feel very hurt and angry about the breakdown of their relationship, wanting to “make them pay” or “take them to the cleaners”. If you feel like this, you may be tempted to find a solicitor with a reputation for being a Rottweiler... and there may be some situations in which this is an appropriate choice to make, but it could make things more complicated, time-consuming, and expensive than they need to be.

For most people, it's far better to put your trust in a specialist family solicitor who can help you resolve everything quickly, as painlessly as possible, and with minimal costs. A family law expert will give you practical and objective advice.

Encourage your spouse to seek early advice because if you both get sensible legal advice, you'll be more likely to agree on everything with no need to go to court.

When you're choosing your solicitor, it's crucial for you to build a rapport with them. When you meet or talk with them for the first time, make sure you feel comfortable with them, or you'll find it difficult to work together. It's worth putting a little time into finding the right solicitor at the start, because changing solicitors during your divorce will increase your costs.

If you can find a solicitor who offers a free initial consultation or a chat on the telephone before you

actually get started, take them up on it. It will help you decide if you've found the right solicitor, and they'll be able to make sure you're the right client and that they can help you get the outcome you want.

### **Stay out of court if you can!**

Going to court is by far the most expensive (and unpleasant) way of getting divorced, so try your best to avoid it. A good specialist family solicitor will talk you through all the options available to you, the good and the bad!

If you've read Chapter 2, you'll be familiar with your options and may even know how you and your spouse want to proceed.

Your solicitor should be able to help you save money, time, and heartache by avoiding long, drawn-out negotiations and arguments. An out-of-court settlement will almost certainly be less expensive.

Having said that, it's still important for you to reach an agreement as fast as you can. The longer it takes, the more time your solicitor will have to spend on your case, and the higher the fees will be.

A good specialist solicitor will do their best to wrap everything up for you fast... whereas an inexperienced one may inadvertently make things much more difficult, which will only increase your costs.

Our firm once acted for a husband in his divorce, working with him to sort out financial matters. He'd transferred from another solicitor part-way through the

process because he'd been with them for many months, but they'd made no progress.

We advised him to issue court proceedings and were able to conclude the divorce and the financial matters within four months because we reached an agreement at the first court hearing. He was a very happy client because it took less time to conclude than he'd spent with his previous lawyer going through a voluntary exchange of information.

An experienced lawyer can help you sort everything out much faster than you might think is possible—and that will help you keep your costs down.

### **Invest in early negotiation**

The cliché “time is money” is appropriate when it comes to legal costs, so if you can agree to the division of assets and income without going through lengthy court proceedings, you'll save a lot of money. An alternative to avoid the delays of court proceedings is arbitration or private court hearings where you agree on the date of a hearing and pay for the judge's time. The courts are under increasing pressure to deal with a backlog of cases, meaning you sometimes have to wait months before your case is heard. Your solicitor will advise if this approach is appropriate.

### **Do your homework**

As you no doubt know, solicitors charge according to how much time they spend on your case. So, the less

time they spend dealing with your divorce, the less it will cost you.

If your solicitor asks you for certain information, give it to them in an organised, comprehensive, and easy-to-read manner because they'll be able to read through it much faster.

If you're not sure if something is relevant, include the information anyway—your solicitor can filter out anything they don't need to know when they're going through your paperwork. This will be quicker and cheaper than going backwards and forwards because they keep asking you for more information.

Ask for more guidance about what they want from you—your solicitor will be happy to spend a few minutes going through it with you, and it will save you money in the long run.

If your solicitor puts a deadline on any information they ask for, make sure you provide it on time. If they need to chase you, they'll charge you and you may miss an important deadline—and if you're working under pressure, you're more likely to make mistakes. The earlier you deal with everything, the easier your solicitor will find your case and the lower the fees will be.

### **Be truthful—and try to stay friendly**

Trust often breaks down at the same time as a relationship, and both partners can feel like they're being put under the microscope. Although it may seem like you're under suspicion and being asked for more

information than seems necessary, it's vital that you provide as much information as you can. If financial disclosure on either side is incomplete, your solicitors will need to prepare detailed questionnaires, which increases your legal costs.

Difficult though it may be, if you can stay on relatively friendly terms, you'll be much more likely to keep your costs down (as well as keeping any unpleasantness at a minimum).

This is important because there are several ways your spouse can increase your legal costs—including by acting contrary to the advice given in this book. There's nothing your solicitor can do to prevent your spouse acting in such a way, and there are only limited circumstances in which the court will penalise your spouse, or even just criticise them.

The best way to avoid such a situation is for both of you to be as amicable as possible and to be open and honest with financial disclosure. This will not only minimise your costs, but it ensures that any financial settlement reached is fair.

### **Principles are expensive**

Your solicitor will instinctively undertake a cost-benefit analysis at the start of your divorce proceedings, which will continue throughout the process, and especially when considering settlement proposals.

This does not mean your solicitor isn't fighting your corner; it means they're considering whether the cost

of going after information or documents outweighs the benefit to you. Arguing about a point of principle is unlikely to reap big financial rewards for you, so do consider your solicitor's advice carefully.

Most divorces will reach a point in negotiations where you need to decide about whether to accept a settlement. No solicitor can guarantee an outcome at court, so you'll want to think about whether you're likely to achieve a better outcome if you pursue things through the court—bearing in mind how much it will cost to get there.

Let us give you an example. If we tell you spending £10,000 on legal fees is likely to result in you receiving £20,000+ then it's worth pursuing the matter.

However, if we tell you spending £10,000 is likely to result in you receiving £10,000, you gain nothing.

And if we tell you spending £10,000 may or may not get you £10,000 in a settlement, you could end up losing out completely and being out of pocket. Under those circumstances, your solicitor may advise you against pursuing your point—even though it may be entirely valid. This type of situation can stick in your craw, but we advise you to take your emotions out of the equation and consider if it's really worth it.

## **Letters and phone calls**

There are many ways you can get in touch with your solicitor, but email and telephone are the most common. If you email or phone your solicitor every day

with questions, your legal costs will definitely go up.

Our top tip for you is to make a note of your questions and comments every time they pop up and then compile a list once a week. Email it to your solicitor, and they'll consider everything at once and respond to you in one email—which will be much more cost-effective for you.

We've had clients who'd send an email, then telephone immediately, just as the email popped up in the inbox. There's little point in speaking to that client until we've had time to read the information and/or questions—and find an answer. We'll still need to read the email, but now it'll take longer.

If you want to know whether your solicitor has received a letter or sent something to you, try calling their secretary—it's unlikely you'll be charged for that. If you call the solicitor, you'll definitely be charged for it.

We solicitors have a reputation for charging for every second spent on cases... but it's pretty simple to keep your costs down. We're not out for everything we can get, but we do need to use our time—and your time—wisely.

## **Funding options**

Separation and divorce can be a stressful and emotionally draining experience. One that can be made even more stressful when worries of financial uncertainty race through your mind.

The fear of not being able to pay for legal representation during a divorce often leads to sleepless

nights. It's the worry about paying solicitors' fees that leads many people to fend for themselves, assuming that going without expert legal advice and representation is the only way they can proceed.

However, although going it alone might seem like your best—or even your only—option, it often isn't. Taking on your divorce alone is not always the most cost-effective choice, and representing yourself can mean your case takes longer. If you represent yourself, you may increase your chances of going to court—or you may find you don't reach as good a settlement as you could have with expert legal help.

You have several options to help you fund your divorce or separation. We'll go through them here.

## **Legal Aid**

Since April 1, 2013, Family Law Legal Aid has been all but abolished by the Legal Aid, Sentencing and Prosecution of Offenders Act 2012. This Act reduced the availability of Legal Aid to cases of domestic abuse only, leaving many people fighting their own legal battles or looking for alternative solutions, like arbitration.

This has severely limited everyone's options, and it can have significant and damaging consequences. Legal Aid is still available if you've suffered domestic abuse, but it's limited, and you will need to provide evidence to meet the requirements.

## **Savings and investments**

Many people turn to savings and investments to pay for the cost of their divorce—but if your savings are held in a joint account, your spouse may object to you using them until you've agreed on a settlement.

## **Bank loan**

You may want to take out a bank loan for a fixed sum, to be repaid on a set date with a fixed APR. The downside is you'd have to make your monthly repayments during your separation and before you get a financial settlement or court order—so it may stretch your finances.

## **Legal services order**

You can apply to the court for funds from your spouse to pay your legal fees. Remember, your spouse must have enough income or assets for this method to be effective. There's no point applying for a court order if your spouse can't provide the funding.

To get a legal services order, you'll have to prove this is the last resort for you and you have no other way of paying the legal costs for your divorce.

## **Credit cards**

A credit card is an expensive source of finance if you don't clear the balance every month. Plus, of course, you must repay a minimum amount each month, so it may not be suitable for everyone. You can still find 0% rates, but this is often only a short-term fix and may not be

your best option. Problems also arise if you reach your credit card limit, but your legal costs continue to rise.

### **Borrowing from family and friends**

Loans from family and friends are often called “soft loans”. They’re usually undocumented, with no interest charged, and with no set repayment date.

The court often doesn’t take them into consideration when considering the overall financial position of you and your spouse, because such loans are often treated as a gift.

If you do borrow from friends or family, you could have a loan agreement drafted by a solicitor and signed by you and your lender—which could help to ensure the court takes your loan into account.

### **Remortgage your property**

If there’s enough equity, you could remortgage your property—but only if it’s in your sole name, or both parties agree. This usually offers a low interest rate compared to credit cards.

### **Third-party loans**

Companies like Level offer divorce litigation funding—but they may ask for security, such as a charge over your property. Always get independent legal advice when you’re considering this option.

Interest and administrative charges will be added onto your loan, but interest is only charged on the

amount of the loan you've actually drawn down, not the total of the loan they agree to make to you.

### **Sears tooth agreement**

This is an agreement between you and your solicitor in which you irrevocably agree to pay their fees out of your capital settlement at the end of your divorce case.

It allocates to your solicitor a portion of your financial settlement up to the value of your legal costs.

Most solicitors will not offer this type of agreement because it significantly increases the payment delay. There's also a risk of not being paid at all.

### **Cost orders**

Don't count on being able to recover your legal costs from your spouse when the case is concluded. The family courts rarely make costs orders against a party; the normal position is that each party is expected to pay their own costs. Even if yours is one of the rare cases where the court does order your spouse to pay some of your costs, you will still face the practical problems and extra expense of trying to recover the money from them. It is also unlikely that you will recover all your legal costs from your former spouse.

### **Working with your solicitor**

One final point to note: solicitors are not allowed to enter no-win no-fee conditional agreements in family law and you can't instruct them under similar terms to a personal injury lawyer. Nor are they lending institutions:

solicitors won't wait to be paid from the assets when the divorce has been finalised.

Talk to your solicitor. Ask as many questions as you need to make sure you know what your solicitor thinks each stage of your divorce will cost.

Your solicitor should be completely open with you and should be able to give you a rough estimate of costs. They should also provide written cost estimates in their “client care” material or terms of business.

Agree from the start how and when you'll pay fees—and ask to receive regular cost updates. Your solicitor will not want you to struggle financially—it's not in your interests and it's not in their interests, either.

## **Summary**

- Tempting though it is, burying your head in the sand will only prolong your divorce and increase your costs. Instead, lean on your friends, family, counsellors—and take the advice your legal professional offers.
- Choose your solicitor wisely: someone who'll keep you out of court if they can, work in your best financial and personal interests, and whom you like.
- Do your homework, be truthful, and try to stay amicable—you'll get through everything far more quickly and at as low a cost as possible.
- Be open about any funding concerns you have—talk to your solicitor about your options and

*Keeping Costs Under Control*

make sure you get estimates and regular cost updates so you can stay on top of your fees.

In Chapter 4, we'll look at the financial implications of getting divorced: your home, your pension, your salary, and your will.



## Chapter 4

# Making Sense of Finances

*What happens to your assets?*

**W**hen you married your spouse, the law gave each of you the right to make certain financial claims against each other in the event of a divorce. These include claiming a share of properties, capital (savings and investments), pension funds, and each other's income (i.e. maintenance payments).

These claims do not only remain “live” during the marriage but also after the conditional order of divorce has been made final, unless you get an order of the court. This can be obtained either by agreement or imposed by the court, following financial remedy proceedings. The order sets out what should happen to your finances and property and usually includes a clause stating that parties can no longer make any further financial claim against the other once the terms of the order have been fully implemented. This provides both parties

with certainty as to their respective financial situations following divorce, preventing any future financial upheaval.

All this sounds terribly complicated, especially when couched in such dense legal jargon—but it does not have to be. In this chapter, we'll explain how financial settlements work and how they affect your family home, pensions, wills, savings, and investments.

Remember: you can contact our firm for a free initial meeting, and our family law team will make sure you understand all the implications for you and your family.

### **Matrimonial and non-matrimonial assets**

In the world of law, we talk about “assets”. The *Oxford English Dictionary* defines an asset as “an item of property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies”. An asset is simply something you own.

With divorce, it's important to decide which assets are considered as “matrimonial” and which are not. The Matrimonial Causes Act 1973 (Section 25) sets out what the court must consider when deciding on a fair division of matrimonial assets, and these provisions are set out in more detail below. There is no fixed definition as to what constitutes ‘matrimonial assets’, but they are assets the couple has built up together during the marriage.

The starting point for dividing these assets is fifty-fifty, and decisions are made from that starting point,

although the court then needs to consider the various Section 25 factors.

Non-matrimonial assets are not necessarily divided between you. Again, there's no fixed definition, but a non-matrimonial asset is acquired by one person before the marriage—or it may be given as a gift or inherited by one person during the marriage. For example, if you bought a house before you got married, and it's not your family home, that house is unlikely to be considered a matrimonial asset. Having said that, the most important aspect of your case is satisfying the financial and re-housing needs of both you and your former spouse, and sometimes this can only be achieved by relying on a non-matrimonial asset. Remember—needs trumps all, so if your needs cannot be met with an equal share of the matrimonial assets, the balance required may need to come from non-matrimonial property held by your spouse.

For businesses, though, things get much more complicated—so if you're a business owner, or your spouse owns a business, read the next chapter carefully.

### **Financial disclosure**

The first thing you will have to do when negotiating finances during a divorce is exchange full, frank, and clear financial disclosure with your spouse. That means you'll have to open your books for your spouse to look through.

I know it may seem like a huge invasion of privacy, but the fastest and cleanest way to settle your divorce amicably and move on is for you and your spouse to exchange financial information and documents at the earliest possible opportunity. Until you both know what each of you has in terms of capital, income, and pensions—and what the associated value is—you can't start negotiating on how to divide them between you.

The simplest way to do this is for you each to complete a Financial Statement (Form E), used in family court proceedings, although this form can also be used by agreement between you voluntarily. You each enter information clearly and logically, ensuring you miss nothing out. This makes it easy for you to compare and easy for you to account for all your assets.

It's crucial that you both include everything, or the financial agreement you reach may not be as fair or advantageous as you think, and the final settlement could be set aside for material non-disclosure.

When you're completing Form E, you'll both need to provide the following documents and evidence as a minimum:

- Twelve months' bank statements for each account you hold or have an interest in
- Investment statements
- Recent house valuations
- Up-to-date mortgage statement
- Pension fund valuations
- Your P60

- Your P11D
- Your business accounts for the past two years
- Your latest tax return

You may be able to agree with your spouse to have a more limited exchange of financial disclosure. For example, if you believe you know your marital assets very well—including those in your spouse’s name—you might agree to provide just the last six months’ bank statements. It is, however, advisable to be as comprehensive as possible.

Try to collate your financial information in a logical, focused manner and to ensure all your valuations are up to date. This will save you time and expense later on, because if your valuations were conducted too long ago, they may need to be revisited. It’s a good idea to get three valuations for your home and take the average as a base figure to work from when negotiating a division of assets.

You’ll also want to look at any investments you have, which may include cash, stocks and shares, and other property. Most investments are divided based on the valuation figure, but some plans may have guarantees on maturity and/or penalties for cashing them in—so consider carefully how best to share them. Sometimes, you can assign a joint policy, so when it matures, the assignee will receive benefits.

Pensions often cause the most work and can cause confusion during divorce settlements. Pension values or “cash equivalents” (CE’s) rarely represent the true value

of the benefits the pension will pay, so look at them with caution. These values are not necessarily the best basis to use when dividing a pension. For this reason, it is nearly always advisable to instruct an actuary to prepare a report setting out the true value of the pension and the fairest way to share them.

Most pension providers are familiar with valuations for divorce and will give you a standardised response if you ask them. If your pension is not in payment, the provider will give you one valuation per year free of charge. If the pension is in payment, the provider usually charges for a valuation.

### **“What if someone disputes my financial disclosure?”**

This is quite common during the divorce process, so be scrupulously honest about your finances—and be very diligent, so you don’t make any mistakes, either. Your spouse may seize even an innocent oversight and make it appear as deliberate dishonesty.

If anyone discovers you’ve been dishonest in any way, the court will take an extremely dim view of it, and it may affect your final settlement. In extreme cases, dishonesty in financial disclosure may be considered perjury—and that’s very serious indeed. If you suspect your spouse has been dishonest, approach it carefully and discuss it with your solicitor.

Don’t be tempted to search through their possessions secretly, without permission. Once upon a time, if

you'd discovered hidden assets through inappropriate means, like rooting through their affairs, for example, the court would likely accept that evidence. But the law has changed, and there are potentially very serious consequences.

If you suspect dishonesty, we recommend you raise it with your solicitor, with a view to it being raised with your spouse or their legal representative. If your spouse doesn't come clean, or no evidence surfaces, you can apply to the court to address.

The court has a range of powers to force financial disclosure when one person is not being forthcoming, or where there's a suspicion of dubious conduct. The court can issue orders to search properties and seize documents and issue disclosure orders against third parties.

### **Considering a financial settlement**

When you've both prepared your disclosure, you'll set a date to send each other's solicitor a copy of your Form E. Your solicitor will consider it carefully and will discuss the content with you. If you are not happy that full and frank financial disclosure has been given at this stage, you can ask your solicitor to prepare a questionnaire, which can be sent to your spouse so they can then answer your queries. Once all the relevant information is available, your solicitor will prepare a schedule of the assets, income and liabilities—and start looking at your options for dividing them.

Your solicitor should consult with you to find out what you want to achieve and whether it will be possible. To make a suitable proposal to your spouse, your solicitor will consider Section 25 of the Matrimonial Causes Act 1973:

25. Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 [24A or 24B] above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 [24A or 24B] above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;<sup>1</sup>

All that legalese essentially does is provide a checklist of factors the court has regard to when determining what is fair in your case. The needs of any children will be prioritised and considered with all the points listed from (a) to (g).

Your solicitor will also consider any case law, which means they'll look at what judgements and decisions judges in higher courts have made in the past. This gives us an idea of what you could expect as a reasonable settlement. The case law we have at the moment clarifies that a judge should try to reach a fair outcome based on factors (a) to (g) listed above. How important each factor is in the decision will depend on your personal situation. Courts always start by considering what the settlement would look like if your net assets were divided

---

<sup>1</sup> © Crown copyright

equally—and will only depart from equality if there are good reasons to do so, most commonly because of the financial needs of one party, as mentioned above. For this reason, assets are often not divided equally, and the law allows a wide discretion to enable the court to make an order, or for you and your spouse to reach a settlement that’s reasonable and fair to both of you. Your solicitor will advise you about your specific settlement options.

**“What will happen to our family home?”**

Dividing the family home can be quite simple. It’s often possible to sell the home so you can buy two smaller properties (so long as you can get mortgages if you need to). When you’ve sold your property, the money will be divided between you and your spouse under the agreement reached or the terms of the court order made at a final hearing. This division is likely to be based on your respective needs and resources, which means the court will consider your incomes and mortgage capacities.

Sometimes, one spouse may keep the family home for themselves and the children. This may mean transferring ownership solely to one spouse.

If the court decides it’s not appropriate to sell the property immediately, and an outright transfer of ownership is unfair to the other person, it may order a deferred sale. This means one spouse and the children can live there until the children reach a certain age,

which is usually the eighteenth birthday of the youngest child, or when that child ceases full-time secondary education, if this date is later, or until another specified event, at which point the property is sold. The proceeds will then be divided as agreed. It is also possible for there to be a delayed transfer of ownership and “buy-out” of the other party’s interest.

There are other options, too. The property may be sold when the occupying spouse leaves, remarries, lives with a new partner for a specified period, or dies. Alternatively, the family home may be transferred into the sole name of the person living there, who grants a “charge” back to their spouse to reflect their ongoing interest, which will be paid to them upon sale.

### **“What will happen to my pension?”**

Your pension is one of your most valuable assets—but it’s often not given due consideration during a divorce. There are three ways to deal with it:

1. Adjust the marriage assets to account for pension rights, offsetting them against other assets. (Pension values are not, however, comparable pound for pound with liquid assets).
2. Earmark a proportion of the pension and lump sum for your spouse, for them to receive in the future when your pension is in payment.
3. Split the pension so it’s divided when you divorce, effectively creating two separate pension

funds you can both contribute to in the future (a pension sharing order).

The court doesn't have to make a pension sharing order, but it must still take the values of pensions into account when looking at financial settlements.

If this isn't your first divorce, be aware that just because your pension was not subject to an order from a previous marriage, it doesn't mean it's safe during a second divorce!

### **“Will I get maintenance from my spouse?”**

This is a question we're asked often, and the answer is that it depends on several things. If there's a significant disparity between yours and your spouse's incomes and future earning capacities, the court can seek to address this in several ways. This can be through a capital adjustment in favour of the lower earner or by ongoing spousal maintenance payments.

The test which the court must apply is to assess the level of maintenance required to be paid (if any) to meet a party's reasonable need, together with the payer's ability to pay that or any amount of maintenance, without affecting that person's ability to meet their own needs. It's a balancing act between “needs” and “resources”.

If there are children, the court will consider any child maintenance that is being paid, either through court order or after an assessment has been carried out by the Child Maintenance Service (CMS). It may be that after paying child maintenance, along with meeting all

other essential outgoings, there's little or no income left to pay spousal maintenance, in which case no such maintenance will be paid.

In middle to high-income families, there's usually more disposable income available. Before deciding what (if any) spousal maintenance should be paid, the court will first assess whether the family's needs are being met, before considering the standard of living the parties enjoyed during the marriage, which might lead to a higher spousal maintenance award.

You can read more about the finer details of maintenance below.

### **“How will a divorce affect my will?”**

Ensure you have an up-to-date will to make sure your estate (all your assets) are handled as you wish after you die—but if you're getting divorced, you'll need to go back to your will to make sure it still does what you want it to.

Contrary to what some believe, getting divorced won't void or invalidate your will. Instead, when your divorce is finalised, any provisions in your will which benefit your spouse are automatically revoked. That simply means your spouse will be treated as if they are dead. They won't inherit your estate once the final order of divorce has been made. Of course, that may be what you want—but if you'd left everything to your spouse, it's particularly important you go back and revise your

will because the effect is as if you'd died without a will at all, which complicates things for those left behind.

Similarly, if you appointed your spouse as your executor, that role will automatically be revoked when your divorce is finalised, even if you'd appointed them trustee of a trust for the benefit of your children.

However, if you were to die before your divorce was finalised, your spouse would receive any gifts or provisions you left to them. For that reason, it may be best to make a new will as soon as you decide to separate, so everyone is clear about what you want to happen if you die.

Perhaps the most important thing to ensure, though, is any money you want to leave to your children will go to them no matter what. It's vital that if you want your children to be sure of an inheritance, you leave it to them specifically.

Let's say your spouse remarries in the future. Anything they take into the relationship is considered theirs to use, which means if they divorce a second time, anything they've inherited will be subject to the second round of divorce proceedings—which means money you intended for your children may instead go to their new spouse as part of their divorce settlement.

Far too many people fail to consider this during a divorce, so we strongly advise you to think about it and act on it as soon as you can—even if a new spouse hasn't come into the picture yet.

## **“What can we claim for?”**

When you're getting divorced, the court can make income orders (maintenance) and capital orders (payment of lump sums) and these fall into four financial areas you can claim for:

1. Property Adjustment Orders.
2. Capital Lump Sum Orders.
3. Pension Sharing/Attachment Orders.
4. Periodical Payment and Secured Periodical Payment Orders. (Maintenance Orders for a spouse and, in certain circumstances, for a child)

Your solicitor will explain what each of these means for you.

## **Spousal maintenance**

Every spouse has the right to claim for maintenance, but that doesn't guarantee you'll receive a spousal maintenance order. In most cases, the purpose of maintenance is to make sure both spouses can meet their daily outgoings. It isn't about simply equalising two different incomes.

As far as possible following divorce, both spouses will have a relatively similar standard of living and are able to meet their reasonable financial needs, which is what financial settlements are all about.

When we talk about income, we mean all forms of income—including employment and self-employment, any state benefits you may receive, rental income, investments like dividends and pensions, and income

from a business. There's no statutory formula for calculating spousal maintenance. It's a two-stage test.

First, the court must consider the position of the lower earner and assess their total income from all sources, alongside their reasonable outgoings, and determine whether there's a deficit. Under these circumstances, where there is more money going out than coming in, an application for a spousal maintenance order can be considered. When looking at such an application, the court will focus on the higher earner and decide, based on their income and outgoings, if they can meet or reduce their spouse's deficit.

The court can make the following orders—either by an agreed “consent” order or by imposing a court order during court proceedings:

1. Monthly payments from one spouse to another.
2. Nominal maintenance payments from one spouse to the other.
3. A one-off lump sum payment instead of monthly payments.
4. A clean-break order dismissing all claims for maintenance.

When the court makes an order for monthly spousal maintenance payments, it will specify the exact amount and the exact date on which it must be paid—for example, £500 per month, to be paid on the first day of each month, to start on 1 April 2025.

The order will also specify how long the payments will continue, and there are two options:

1. For joint lives—meaning until either spouse dies or the receiving spouse remarries (these orders are now exceptionally rare).
2. For a defined term—e.g. until the youngest child reaches age eighteen, or completes secondary education, or graduates from university... or for a fixed period, say five years.

If you're awarded a spousal maintenance order and you get married again, you'll automatically no longer be entitled to those payments and your right to claim against your spouse will be dismissed.

Unlike a capital lump sum order, maintenance orders can vary depending on changing circumstances. Let's look at a few examples:

- If the receiving spouse returns to work or gets a pay rise, maintenance could decrease.
- If the paying spouse loses their job by redundancy or ill health, maintenance could be decreased or dismissed.
- If a specific termination clause was included by agreement—for example, if the receiving spouse lives with a new partner for more than six months.

Any term can be extended by agreement or by court order, unless the court makes an order that it shall be “non-extendable”. If you need to apply to extend a term order, it's essential to apply to the court before the original term expires, or you'll lose the right to apply at all. If the term is “non-extendable”, it means that if

an order is made for payments to stop five years from the court order, the receiving spouse has no right to ask their partner or the court to increase the time limit at any time.

A Nominal Spousal Maintenance Order keeps a party's claim for maintenance open and potentially variable upwards for the duration of the agreed term. The wording that tends to be adopted in these court orders is to state that the payer will make an annual payment of, say £1 to the other party, and although this payment is never usually made, it serves to leave the door open for an upward variation of maintenance, should circumstances support this. It is often considered an essential safety net where there are young children and a risk a party may not be able to support them if their circumstances change unexpectedly.

It is possible for maintenance payments to be capitalised, which means you will then receive a one-off lump sum payment rather than regular maintenance payments. Once the lump sum is received, you will no longer have the right to pursue any future maintenance payments from your spouse and your maintenance claims will be dismissed, as you will have already received the money upfront as a cash sum instead.

Finally, where it is not appropriate for there to be a spousal maintenance order, because you can't demonstrate a need, or your income positions are roughly comparable, or your spouse simply can't afford to make any payments, you can either agree, or the court

can order, the dismissal of your claims. This is referred to as an income clean break.

## **Child maintenance**

As both parents are responsible for the costs of raising children, the absent parent will have to contribute to the cost of the child's care and upkeep. This usually means regular financial payments to the parent with care. You and your spouse can agree this between yourselves, which is known as a family-based agreement, but if the payer fails to make the payments due, there will be no means of enforcement available. Such agreements can, however, be incorporated in a consent order. Parties can rely on child maintenance set out in a consent order for one year from the order date. After this time, it is open to either party to apply to the CMS for an assessment. Alternatively, the CMS can assess and address the level of payment at the outset.

The Child Maintenance Service is a government scheme which started in 2012 and replaced the Child Support Agency. It's available for you if you're unable to reach a family agreement, or if your agreement has broken down, or if you just want the certainty of having a legally enforceable agreement. There is a fee for using the service.

## **Court order for child maintenance**

A court can deal with child maintenance in certain circumstances where:

- Your spouse lives abroad and you can't use the Child Maintenance Service.
- Your spouse is a high earner and has a gross income of more than £156,000 per annum, which equates to £3,000 per week (sum correct at the time of publication). The receiving spouse can apply for top-up maintenance in addition to any award under the Child Maintenance Service.
- You wish to apply for payment of school or university fees.
- For step-children.
- To meet the costs of a child's disability.
- For a child who has left secondary education.

Child maintenance is a complicated area and varies depending on your circumstances. It's worth speaking to a family solicitor to make sure you understand what options are available to you.

### **The consent order**

When you've finished negotiations and you've reached a full and final financial settlement with your spouse, it's time to formalise it all with a consent order.

A consent order is the legal document that sets out the terms of the financial agreement you've reached. For the consent order to be made into an order, it must go to the court so a judge can consider it. Don't worry—you don't need to attend court in person because your solicitor will submit the consent order, usually online.

When the judge considers the financial agreement, they will refer to a Statement of Information for Consent Order form, which is also known as a D81. This form summarises your financial circumstances. It's a short version of Form E, which enables the judge to see if the agreement is fair and reasonable based upon all the circumstances of the case and the s25 factors we referred to above.

The court will not approve the consent order if it's concerned about the division of assets. The judge must be satisfied the agreement is fair and reasonable and that it meets everyone's needs based on the facts. The court can raise questions about the consent order, and it will not be prepared to approve its terms until the judge is completely satisfied. Only then will the court order be approved and sealed, creating a legally binding and enforceable court order.

### **The court order**

When the court makes an order, the agreement is legally binding, and all the financial claims a couple can make against each other in connection with their marriage will be satisfied or dismissed. This means neither of you has a right to renegotiate the terms or issue a further application to the court, unless it relates to an open claim which the court has not yet dealt with or has left open. Generally, the only claims that can be varied are those relating to spousal maintenance or payment of a lump sum by instalments.

This means both spouses must comply with the terms in the court order, and if either refuses to do so, the other can apply to the court to enforce and implement anything that was supposed to happen.

For example, if the court ordered a jointly owned property to be transferred into the sole name of one spouse, but the other refuses to sign the transfer deed, they can apply to the court for a short hearing. The judge has the power to execute and sign the transfer deed on behalf of the other spouse, so transferring ownership of the property can complete. If a court order hadn't been obtained in the first place, this wouldn't be possible.

### **Your options**

When you start divorce proceedings, your solicitor will talk to you about the different options you have open to you, so you can decide how you want to deal with your financial discussions.

These are the options we talked about in Chapter 2—including what happens if you have to go to court.

### **What's next?**

After the consent order has been sealed by the court, or a court order has been made, you need to implement the terms.

Your divided assets will naturally be worth less than your joint assets, and it can be rather daunting to work out what the next steps are after your divorce, particularly if you don't have a solicitor. Here are a few

of the more common steps:

- You'll have to move any agreed pension share from one fund to another—which can be confusing because there are so many options.
- You'll have to sort out another mortgage if you're buying a new property or even remortgage your current home.
- You'll probably want to discover how best to use the assets and cash you're left with.

We strongly recommend you get in touch with a financial advisor who specialises in divorce and post-divorce finances to help you make sense of what's left—and to help you plan for a brighter future.

The sooner you do this—preferably early on during your divorce process—the better prepared you'll be, not just to cope with the divorce, but to make the most of what you have afterwards.

### **A client's story**

Our client had been separated from her husband for five years when she was able to buy him out of their former marital home, where she lived with the children. When she came to us, she'd been trying to speak with her estranged husband, and his parents, who had a second charge secured against the house, which ranked behind the main mortgage.

We hoped they could agree on how much her spouse and his parents would receive so they could remove their interest in the property. Unfortunately, he refused

to negotiate and remained silent. This left our client with no option but to start financial remedy proceedings through the court. Her husband failed to respond to the many letters we'd sent, and he also failed to comply with the court's instructions and to attend the first hearing.

At that hearing, the district judge ordered that unless our client's husband complied with the court's instructions, he would transfer the whole equity in the house to the wife, subject to the mortgage and his parents' interest, both of which would obviously need to be repaid. Perhaps surprisingly, her husband still failed to act, so at the next hearing the court made an order to transfer her husband's interest in the property to our client, together with an order for costs against the husband. This allowed our client to recover a substantial amount of her court costs.

This is not at all the result our client had imagined. However, having brought the courts into it, she could argue her case, and get a far better result than she had originally hoped to achieve.

## **Summary**

- It's vital for you and your spouse to be scrupulously honest about your finances for financial disclosure. If you're not, it will slow things down and increase expenses at best—and could be considered perjury at worst.
- The family home, pension, and any savings and investments are all likely to be divided up

when you get divorced, but individual financial circumstances will dictate what happens. The court always has fairness in mind.

- Typically, you'll only get maintenance from a spouse if you can show a reasonable need which you can't meet and that your spouse has the resources to meet the same.
- Do not neglect your will! It won't become void when you divorce, so make sure it still reflects your wishes—especially if you have children.

Chapter 5 is all about business—so if you're a business owner, or your spouse owns a business, read it carefully.



## Chapter 5

# Attention Business Owners!

### *Keeping your business secure after your divorce*

If you own a family business, you might assume your business will be protected during your divorce... but that's not always the case. Businesses used to be protected during a divorce, but this has changed—in England and Wales, the family business is now considered to be a matrimonial asset and will need to be listed during financial disclosure.

Divorce can be extremely damaging to a business. The business is put under the microscope, with forensic accountants digging into every detail to find out how much it's worth, how profitable it is now, and how profitable the business is likely to be in the future.

Your plans, hopes and dreams for your business can fly out of the window because your plans won't necessarily coincide with other people's ideas about what should happen to the company. The court will

look at how profitable your business is and consider the cash flow. Then it will decide if your business assets could meet housing needs or other claims from your spouse and for the benefit of your children (if you have any) when you get divorced.

You can see how this would be a big problem if you planned to use those cash assets to develop your business in the future.

The good news for business owners is the court leaves the business with the business owner wherever possible, looking to compensate the other spouse with a larger share of other assets or with a maintenance order. This is often what couples want, anyway.

In an ideal world, the court doesn't want to leave one person with cash and the other with assets tied into a business, but it can happen. If the business is divided, though, the court will look to the business owner sharing income or splitting the shares.

### **Protecting your business**

The best time to read this chapter is just before you get married... but few of us go into a relationship with the end in sight, so it is worth thinking about what would happen to a business if your relationship ends.

As soon as divorce looks likely, think carefully about what you want to get out of the business, now and in the future. Take good, specialist advice on this from your solicitor, then an accountant. The financial settlement

needs to be built around your objectives and needs, and it must be fair to both of you.

If you're a business owner, look at your options for protecting the business. If you're not the business owner, think about the best way for you to claim a fair share without damaging the business. For farms, things become even more complicated, and we strongly advise you to get specialist advice.

If you're facing divorce and you want to protect your business, tread carefully and get specialist advice. If it looks like you're hiding, deliberately depleting or moving assets, or changing shareholdings to avoid future claims in a divorce, your case will be damaged.

The court takes an extremely dim view of such behaviour and has the power to disregard any actions you take that are specifically designed to avoid your spouse's future claims. If your divorce is imminent, it may be too late to protect your business as much as you'd like, but if you're merely planning for any eventuality, there are a few principles to keep in mind.

Although they're not legally binding, and a judge will consider any agreement in light of whether it is considered fair in all the circumstances, a pre-nuptial or post-nuptial agreement can help limit claims against your business. If you've planned at the time you get married (as a pre-nuptial agreement) or afterwards (as a post-nuptial agreement), for example, if you inherit a business, you can ask your spouse to agree for the business to be kept by you and not to make damaging

claims against the business, in case the marriage breaks down in the future.

Keep your business and private assets separate. This is good business advice, anyway.

You may want to involve your spouse in the business, and this can be a good idea, particularly for tax purposes. However, if your spouse is involved, they have a stronger claim on your business assets because they'll have contributed to the business and its success.

If one person owns 100 percent of a business, the court will treat the business like any other asset. Unless there are good reasons not to, you'll have to divide or share the business between you. If there are independent third parties involved as shareholders or business partners, the court will also consider the impact of any changes to the business structure and third parties' interests /incomes.

## **Business structures**

If you're not the owner of the business, it may help to understand a little about how businesses are structured.

- Sole trader: the business owner controls the assets but is also personally liable for any business debts. The most important figures for your purposes are income and profitability, but the court may also consider other assets like premises, vehicles, or machinery.
- Partnerships: these may be formal (with contracts) or informal (with no written

agreements). If people other than you and your spouse are involved in a business, it can be more complicated to value it, and you'll need expert help.

- Limited company: valuing a limited company may be relatively simple if you and/or your spouse own all the shares. If other people are involved, again, things can become complicated, so seek expert help.

### **What's your business worth?**

You may have spent years building up your business, so the idea of losing part of it or having it divided in a divorce can be heartbreaking—but you must be prepared because it might happen.

Not all businesses have to be formally valued—some, like partnerships, can simply be income streams. If there's nothing to sell, and no “good will” value, only the income stream will be relevant and this might be shared through a maintenance order.

If your business isn't just an income stream, though, you will need to get it valued, or agree on a value with your spouse. Valuing a business can be a tricky job requiring a specialist valuer. You'll need to consider many factors, including the value of the assets themselves, projected income, goodwill, costs of sale, the estimated capital gains tax, depreciation costs, and the nature of the business itself.

It's possible your business would be worth very little without your skills and expertise, so it's crucial to get a valuation as soon as possible. The sooner you do it, the less likely costs are to escalate, and you can get a better chance of a fair settlement.

If you and your spouse own the business together, you can jointly arrange the valuation. If one of you owns the business outright, either alone or with other business partners, this can initially be addressed independently. Be aware: this can be an expensive process, especially if the business is complicated.

If you and your spouse can't agree on the valuation, the court usually requires an independent valuer or accountant to value the business, who'll act on behalf of both of you when making an assessment of the business.

During the valuation process, the accountant will consider:

- **Tangible assets:** including land and property, vehicles, machinery and equipment, inventory, furniture, and securities (like stocks, bonds, and cash). There are two types of tangible assets: current assets, which can be sold easily to raise cash, and fixed assets, which are needed to run the business continually.
- **Intangible assets:** these are usually non-physical assets—often intellectual—and as such, it's difficult to value them. They may include patents, trademarks, franchises, goodwill, copyrights,

brands, blueprints, internet domain names, and many other assets.

- Earnings: the profit the business is expected to make in the future.
- Structure: whether the company is a limited company, sole trader, or partnership.

If you believe the valuation is not accurate based on the evidence, you can apply to the court for permission to engage separate accountants to do a valuation. This situation is rare, though, and the court will only agree if the costs are proportionate to your case.

### **What to do if the valuation is disputed**

It's not uncommon for one spouse to disagree with a valuation, especially when emotions are running high. It may seem like the owner has undervalued the business deliberately, especially if the other spouse isn't familiar with the day-to-day running of the business.

If you're worried that your spouse may undervalue their business—or if you're the business owner and are concerned that you may be accused of undervaluing the company—remember, businesses are complex and things can change fast. A company that was doing well a few months ago may take a downturn and no longer be as profitable.

Keep in mind, too, that some businesses depend solely on the business owner(s) and are worth very little without them. Finally, remember business owners tend to be optimists—and that optimism about future

profitability doesn't always gel with reality. It may be that your image of how well a business is doing comes from the behaviour and attitude of your spouse, which may not reflect the real situation.

If the business owner isn't co-operating with the valuation, you can apply to the court to get information directly from the bank or accountant dealing with the business.

The court can decide to appoint a single expert or allow each spouse to appoint their own experts to value the company—but remember, experts can be expensive.

It is possible to mediate, which can help you sort things out amicably and keep costs down. You can find out more about mediation in Chapter 2.

### **“Needs” take priority**

Whatever you believe about your business—or your spouse's business—all arguments are moot if the court decides the other matrimonial assets do not meet all the needs you, your spouse, and any children have.

So even if you successfully argue that most of your business was a non-matrimonial asset, the court still has the power to use it as a financial resource if it decides that your family needs a share in order to be secure.

For example, if you and your wife own a family home between you, and there isn't enough equity in the property for you both to comfortably rehouse, the court may consider a business as a financial resource.

## **Summary**

- You need to provide full and open financial disclosure for your business in the same way you do for your personal wealth and assets—and you need to be scrupulously honest.
- Tread carefully if you want to protect your business. Any actions you take that are obviously designed to limit your spouse's claims will be disregarded by the court and will damage your own case.
- Get in touch with an experienced family solicitor as soon as you suspect your relationship may be in trouble—and immediately if your divorce is imminent. The more you know and understand, the better prepared you'll be, and the better the outcome for you and your family.

If you have children, Chapter 6 will be one of the most helpful sources of information for you. The next chapter will help you navigate what is probably the most emotionally fraught part of divorce—and the more you understand, the better the outcome for your children (and you).



## Chapter 6

# Think Of The Children

*How to make arrangements  
that are best for everyone*

Probably the most emotive area of family law, separation, and divorce concerns children. If you're a parent considering or going through a divorce, you're probably worried about how your children will cope.

We always find emotions run high when helping parents organise and—hopefully—agree to arrangements about where children should live, and what time they should spend with the parent they don't live with.

The primary focus is on the children's welfare and their best interests. The court sees children's welfare as the most important consideration and is the overriding objective throughout the whole process.

This often causes tension between parents, especially when they're at odds—but you must remember to keep children out of any disputes. It is crucial to be child-

focused when dealing with arrangements for children and not to cloud this with how you may feel towards your spouse. For example, whether the other party is contributing financially towards the children or supporting you financially—this is often confused and separated parents may feel justified in not allowing the children to spend time with the other parent for these reasons. However, the court deals with both issues separately, and the court will not take financial contributions into consideration when addressing the child's arrangements.

When you consider arrangements for your children, by far the best course of action is for you and your spouse to reach an agreement together. If you're unable to do this, you might want to bring in a solicitor to help you agree. If you still can't agree, turn to Alternative Dispute Resolution (ADR), which you can read more about in Chapter 2.

We want you to be prepared to deal with some of the sensitive challenges you're likely to face over the coming weeks and months, so in this chapter you'll find everything you need to know about your legal rights, as well as practical suggestions to help you and your children manage during what can be a very traumatic time for families.

Before we go into all that though, we want to get rid of any confusion around legal terminology and children's arrangements, because it has changed over the years.

You may have heard the terms “custody” and “access” and “residence”, “residency” and “contact” but we no longer use such terms. After the Children and Families Act 2014 came into force in April 2014, arrangements for children are now defined using the terms “living with” and “spending time with”... which is much simpler for everyone to understand.

This chapter is all about walking you through everything you need to know about the law and children regarding divorce—so let’s start at the beginning.

### **Parental responsibility**

Parental responsibility is defined in section 3(1) of the Children Act 1989 as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

That’s the legal jargon. What it actually means is “parental responsibility” gives parents who have parental responsibility the right to make and be consulted on all the important decisions in a child’s life—such as which school they attend, what religion they’ll follow (if any), decisions regarding their health, where they live, etc. It sounds fairly straightforward—after all, if you’re a child’s parent, you automatically have responsibility for them, don’t you?

Well, yes—if you’re the mother. But if you’re the father, and you weren’t married to the child’s mother when the child was born, it’s not quite that simple.

All mothers have parental responsibility for the child from birth, unless they surrender that responsibility through adoption. For fathers, it depends on your circumstances. If you were married when your child was born, you'll have parental responsibility as the child's father.

If you were unmarried when your child was born, the child's date of birth matters. If your child was born after December 1, 2003, and you were named on the birth certificate, you'll have parental responsibility. If your child was born before that date, only the mother will automatically have parental responsibility.

If you don't have parental responsibility, you can get it by doing one of the following:

- If you married the mother of your child after the birth, you'll have gained parental responsibility (and should re-register the birth).
- You can apply to the court for a parental responsibility order.
- You can make a parental responsibility agreement (in a set procedure) with the child's mother's agreement.

If you are successful in obtaining one of the above:

- You can apply for a Child Arrangements Order.
- You can be appointed the child's guardian.

Parental responsibility can only be terminated by adoption or a court order. With a court order, the parent needs to get permission from the court and from the child, as long as the child can understand what's going

on. It doesn't happen often, and the court doesn't take it lightly—but it can be justified in certain circumstances.

In one case that went to the Court of Appeal, a father's parental responsibility was terminated after he went to prison for sexually abusing his own child's half-sisters. The court decided the child's emotional and psychological security would be in jeopardy if the father remained in the child's life.

Please note that a parental responsibility order doesn't automatically give the non-resident parent a right to spend equal time with the child—you'll still need to work those arrangements out with your former partner.

### **Making arrangements to spend time with a child**

The court has a “no order principle” because it much prefers families to work out issues relating to children by mutual agreement rather than a court-imposed set regime.

Our experience of working with families shows this is by far the best way to go about things, for the children and for you.

But we also know that, even with the best of intentions on all sides, it's not always possible for parents to reach an agreement without outside help.

Your first port of call should be one of the Alternative Dispute Resolution (ADR) methods detailed in Chapter 2—and you should talk to your family solicitor for advice and guidance, too.

## **Applying to the court**

If you're unable to reach an agreement with your former partner directly, through solicitors or through ADR, you may have to apply to the court under Section 8 of the Children Act 1989. The court can make the following orders.

### **Child arrangements order**

This used to be called a contact and residence order but was renamed in 2014. The old-style contact and residence orders made some parents feel like they were a “winner” or a “loser”.

The aim of the order is to send a clear message to parents that both of you will bring up your children together, albeit separately.

The order defines whom the children live with and whom they spend time with. If you agree a shared care arrangement with your spouse, the child arrangements order can state that your children live with both parents—but that doesn't necessarily mean they'll spend half their time with you and half with your spouse, because this could be very disruptive.

### **Prohibited steps order**

A prohibited steps order prevents one parent from doing something specific. A parent might apply for this order to prevent the other parent from taking the child out of the country. If one parent is worried the other parent may not bring the child back, this order may be

granted—especially if the country in question isn't a member of the Hague Convention.

The Hague Convention is a treaty aiming to promptly return children under the age of sixteen who have been abducted from their usual country of residence. The Convention's primary goal is to preserve the child arrangements existing immediately before the child was removed, deterring a parent from crossing international boundaries (such as in search of a more sympathetic court) and to promptly return any abducted child.

### **Specific issue order**

This order enables the court to decide on a specific issue relating to a child, particularly in emergency situations. Here are some examples of specific issue orders (these are only examples, and there are many more possibilities):

- One parent doesn't want their child to have medical treatment.
- For the child to attend a specific school.
- Deciding on the child's surname.

The court will only grant a specific issue order if it considers it absolutely necessary—and will always put the child's welfare first. A child arrangements order is often made at the same time as a specific issue order.

### **Who can apply for a court order?**

If you want to apply for a court order under Section 8 of the Children Act 1989, you might find you need

the court's permission to do so. If you're one of the following, you don't need permission and you can apply for a court order at any time:

1. The parent, guardian, or special guardian of a child.
2. Anyone with parental responsibility.
3. Anyone with a child arrangements order or old-style residence order.
4. Anyone in a marriage or civil partnership where the child is a child of the family.
5. Anyone with whom the child has lived for at least three years.
6. Anyone who has permission from:
  - A child arrangements order or old residence order.
  - The local authority if the child is in their care.
  - Everyone with parental responsibility for the child.

Other people can ask the court for permission to apply for a child arrangements order, for example, grandparents. Before the court decides whether to grant permission, though, it will consider:

- The nature of the application.
- The applicant's connection with the child.
- Any risk of disruption to the child's life to such an extent it would harm them.

It's becoming more and more common for grandparents to apply to the court—and to do so, they must get permission from the court first.

Before the court makes any order, though, it will carefully consider the Welfare Checklist.

## **The Welfare Checklist**

The court will consider seven key factors when deciding about children. This is the welfare checklist, and it is included in section 1(3) of the Children Act 1989.

If there are safeguarding concerns, an officer from the Children and Family Court Advisory and Support Service (CAFCASS) will put together a welfare report, including the seven key factors making up the welfare checklist.

Whether or not a report forms part of the case, however, the court will always consider the welfare checklist and consider:

1. The child's wishes and feelings.
2. The child's physical, emotional, and educational needs.
3. How a change in circumstances following the court's decision might affect the child.
4. The child's age, sex, background, and any other characteristics which will be relevant to the court's decision.
5. Any harm the child has suffered or may be at risk of suffering.
6. How capable the child's parents (or any other relevant people) are at meeting the child's needs.

7. The powers available to the court in any particular case.

### **1. The child's wishes and feelings**

Depending on how old the child is, and whether they can understand their circumstances, the court is likely to consider the child's wishes and feelings.

There's no fixed age at which the court will consult children, because maturity and understanding are different for every child; however, the older a child is, the more weight is usually attached to what they say.

When making a decision, the court will also look at whether a child's wishes and feelings are their own, or if they may have been influenced by someone else.

Not every case involves CAFCASS, but if an official report is directed, the CAFCASS officer will meet the child to find out their wishes and feelings and understand whether there's any influence and will include that in their report to the court.

### **2. The child's physical, emotional, and educational needs**

Contrary to popular mythology, there is no assumption or presumption that children will automatically stay with their mother. She will still have to demonstrate she can meet the child's day-to-day needs. The court's job is to look at who's in the best position to meet the child's emotional, physical and educational needs. The court tries hard to avoid disruption to the

child or children as far as possible. As always, the child's welfare is the primary consideration.

### **3. The effect of a change of circumstances**

The court wants to make sure any change in the child's circumstances will have as little effect on them as possible—and that the change will be for the child's benefit.

### **4. Child's age, sex, background, and other characteristics**

The court may consider issues like religion and culture when it's making a decision—as well as the parents' lifestyle, or any new partners, if any of these factors are likely to affect the child negatively.

### **5. Any harm the child could suffer**

The courts will consider any harm the child has suffered in the past—as well as any harm they're likely to suffer. The idea is to minimise any distress for the child. Harm can be emotional, physical, sexual, psychological, or financial.

### **6. Parents' capability to meet child's needs**

Each parent must demonstrate they're capable and committed to meeting the child's daily needs. The court must be satisfied the child is living with the parent best-suited to look after them, or that both parents can care for the child.

## **7. Range of powers available to the court**

When making its decision, the court has to consider all the orders available to it—the child arrangements order, the prohibited steps order, the specific issue order, and others like the special guardianship order.

### **How to apply for a court order**

Before you can apply to court, you must attend a Mediation Information and Assessment Meeting (MIAM) to assess whether your case is suitable for mediation and to encourage an amicable agreement—this acts to filter out any cases that should never go to court at all. The mediator will invite both parents to attend but if one parent refuses, that does not prevent you issuing a court application. For detailed information about MIAMs, refer to Chapter 2.

There are some instances in which you wouldn't have to attend a MIAM, which include:

- Allegations of domestic abuse.
- Urgency.
- No mediator within fifteen miles of the applicant's home or no available appointments.
- Where children's services are involved because of child welfare concerns.
- Disabilities preventing someone from accessing a mediator.
- Where you don't want to notify the other party.
- Either party lives abroad.

- Where you don't know where the other party lives.
- There is a linked and live case.
- Either party is in prison or has bail conditions.

When you've applied and paid the correct court fee, the court will usually list your case for a hearing—the First Hearing Dispute Resolution Appointment (FHDRA).

You'll normally wait a few weeks before a judge hears your case, so you'll both need a lot of patience. This is just one reason applying to court should be a last resort for most people.

At the FHDRA, the judge will listen to the issues and reasons for your application. Before the FHDRA, a Children and Family Court Advisory and Support Service (CAFCASS) officer will write a safeguarding letter carrying out checks to find out if the family is known to the police or children's services.

The officer will speak to both parents about their concerns and what they want to achieve from the proceedings. This letter goes to the court with a recommendation about the next steps and what further involvement CAFCASS should have.

The CAFCASS officer will attend the hearing to help the judge decide. If there are safeguarding concerns, the judge may order the CAFCASS officer to put together a report having regard to the child's age. The judge may also ask the CAFCASS officer to prepare a report about the child's wishes and feelings.

At the hearing, the judge will outline what steps need to be taken—for example, a CAFCASS report, police disclosure, social services disclosure, and / or witness statements.

Your case will then be listed for another hearing.

There is no hard and fast rule as to how many hearings are necessary. If anyone has made allegations which can have serious consequences for the child, the judge will usually order everyone to complete a schedule of allegations and list the matter for a fact-finding hearing, which may last a few days.

The whole process of going to court can be very stressful and costly, and there's little anyone can do to eliminate that. But the process is made worse by having to wait for a court date.

Despite introducing MIAMS, the courts have fallen victim to government cuts, which only cause further delays. It's fairly common for cases to run for more than a year before they can be resolved, although the court must deal with cases as swiftly as possible to avoid causing any unnecessary delay which could negatively impact a child.

Family break-ups are almost always distressing. Even more so if children are involved. However, it is possible to work things out amicably and we strongly advise you to do so if you can manage it. It's best for your children, best for you, and best for the rest of your family.

If you have no choice but to go to court, be patient: the process may be lengthy, expensive, and stressful—

but focus on the end goal and always think about your children because whatever decisions you make now will continue to influence them as they grow up.

Since the United Kingdom left the EU in January 2020, you may wonder how this affects private law matters relating to children in the family courts and particularly relating to the return of a child from a country outside the UK.

Until 31 December 2020, cases were dealt with under the EU law known as Brussels IIA. From 1 January 2021, Brussels IIA ceased to apply to new cases. This means that when a decision is made on whether a court can hear a matter, the rules set out in the 1996 Hague Convention will apply instead. All members of the EU are also signed up to the 1996 Hague Convention.

There are a few differences between the position under the Brussels IIA, and the rules that have applied since 1 January 2021 under the 1996 Hague Convention. If you have any further concerns or questions regarding this, you can speak to a solicitor.

## **Client stories**

Many of our clients are worried about what will happen to their children. They also worry about whether they'll be able to spend as much time with them as they'd like. We're sharing these stories so you know you're not alone, and so you understand you can get the best possible outcome for your whole family.

One client came in for an initial consultation because his wife had stopped him from seeing his children. He was understandably devastated as he dotes on his children and had previously instructed another law firm but was unhappy with the service he received.

We advised the client to apply to court. He was reluctant at first because he knew he'd have to wait at least six weeks for a hearing date, which meant more time away from his children. But his wife refused to enter into any negotiations.

We kept in regular contact with the client and spoke to him often when he was feeling down about not seeing his children. We attended a FHDRA to deal with the issue and arranged for him to see his children the next day. He was overjoyed and called to tell us how well the meeting had gone and how his children had loved seeing their father.

We were able to arrange supervised contact for a few sessions up to the final hearing. Luckily for our client, we could avoid that final hearing and we reached an agreement between solicitors that works well for him and, most importantly, the children. He now spends time with his children regularly. They stay with him on alternate weekends, for one evening in the week, and talk on the telephone often. He and his ex-partner have also agreed to arrangements for him to spend time with the children during the school holidays.

Whenever we speak to him, he always thanks us, because he knows he couldn't have done this alone.

Another client was in a bitter dispute with his spouse over their child. The mother moved out of the family home shortly after the child was born and our client travelled to see his child every fortnight without fail at his parents' home.

This went on for three years until the mother stopped all contact without telling our client why. He applied for a child arrangements order—which is when the mother raised allegations of sexual abuse while the child was in his care. Police and social services investigated, as you would expect.

Social services interviewed the child—but at the fact-finding hearing carried out following the child arrangements application, the social worker was heavily criticised for asking leading questions and interviewing a young child, under five years old, for over an hour without a break or any refreshments. The judge found the interviews wholly unreliable and found they did not comply with guidelines.

After a four-day fact-finding hearing, the judge found in favour of the mother despite the unreliable evidence. We were all astounded, including the mother. In fact, we'd been in discussions with the mother about planning for our client to spend time with the child before the judgement was handed down. Our client had already been interviewed by the police and the judgement may have resulted in him being charged, potentially imprisoned, and put on the Sex Offenders Register. Our client felt he had no choice but to appeal

the decision to clear his name, save his reputation, and repair the damage caused to his relationship with his child.

At the appeal hearing, the judge found the trial judge hadn't considered the allegations within the context they were made and that he had made a mistake in relying completely on the mother's evidence. He also found the original judge made a mistake by not providing substantive reasons that our client was not a credible witness. The judge felt the child had been unnecessarily pushed by the mother and failed by children's services.

The findings against our client, the father, were set aside. The allegations against him were not proved, and the case went forward on the basis the abuse never happened. This was a significant result for everyone involved.

Our client was granted supervised contact at a contact centre with his child until the final hearing. The judge was very keen to conclude everything quickly because he felt the child had been denied the opportunity to have a relationship with the father. Our client saw his child for the first time in many months and although the child was shy at first, the contact centre reports recorded they hugged and kissed at the end of the first session. This did not stop the mother from alleging the child was distressed after he spent time with the child, which was proven not to be the case.

At the final hearing, the judge ordered that the child was to see the father unsupervised every fortnight with

overnight stays, shared holidays, and mid-week contact. Result! We could not have asked for anything more.

One of our solicitors saw another father who was extremely distressed because he'd been prevented from seeing his two young children. He'd been in a very volatile relationship with the children's mother, who later accused him of stalking and harassing her, when in reality he was simply desperate to see his children.

He sent the mother a letter, pleading with her to allow him to see the children, but he sent the letter after the police had officially warned him not to contact his spouse. As a result, he was charged and found guilty of harassment.

Our client was at an extremely low ebb, but after we started proceedings under the Children Act for a Child Arrangements Order, we secured supervised time at a contact centre. This continued for several months, and although the mother sometimes failed to co-operate, our client formed an excellent relationship with his children, who got used to spending time with him again, and really looked forward to seeing him. He was absolutely thrilled when his youngest child called him "Daddy" for the first time!

Our client had little hope of ever seeing his children on his own, because of how his spouse had behaved throughout. At the final hearing, he was worried the court would be taken in by all her "woes"—but this wasn't the case. The contact centre staff and the social worker could see how dedicated our client was to his

children. It was all documented in the contact centre notes and the social services report, which the court received.

In the end, the court ordered that our client should see his children more and more often away from the centre. His visits increased from a few hours to a day, then overnight at the weekends. The court also ordered Christmas and birthday visits, because there was no doubt that having their father in their lives was most certainly in the best interests of these two children.

Had the father not got legal advice, bearing in mind his spouse's level of hostility, it's extremely unlikely that he would have been able to see his children regularly. Having taken court action, he is now an active part of his children's lives.

He can watch them grow, and he plays an important role in their development, in a way that every diligent father should be able to do.

In another case, we acted for the mother. The parties had two young children, and they shared the care of the children equally. Our client noticed that the children started to make comments about her and it became clear that the father was trying to alienate them from their mother. The mother then became aware on the days the father took the children to school and nursery, they were routinely late or did not attend at all. On other occasions, the father attended the children's school and nursery and removed them in the middle of the day for no apparent reason. He also arrived on days the mother

was due to collect the children and tried to remove them from the mother's care.

Our client applied with our help for an order that the children live with her and spend alternate weekends with the father and for a prohibited steps order to prevent the father removing the children from school or nursery without her permission. She was successful as we were able to prove the father's actions were causing harm to the children and that in considering all the circumstances, his time with them should be reduced.

## **Summary**

- Mothers automatically have parental responsibility—and so do fathers if they were married when the child was born or if they are registered on the birth certificate after 1 December 2003. If you don't have parental responsibility, there are several ways to get it.
- The orders the court can make regarding children are: child arrangements orders, prohibited steps orders, and specific issues orders.
- Grandparents are increasingly applying to the courts for orders, but they need to get permission to do so (find out more in the next chapter).
- If you can work things out amicably, either by discussing things together or by using alternative dispute resolution methods, that's by far the best way for everyone—going to court can take more than a year.

- Even if you've been prevented from contacting your children, don't give up hope. But you must get good legal advice and act quickly—trying to go it alone is a recipe for disaster.

In Chapter 7, we'll walk you through grandparents' rights, and what you can do if you're worried you may lose contact with your grandchildren following a divorce.

## Chapter 7

# Do Grandparents Have Rights?

*How to keep your family together after a divorce*

It's heartbreaking to see your child go through a divorce—and even more painful to face separation from your grandchildren afterwards.

Grandparents can play a very important role in their grandchildren's lives. It's estimated that one in three working parents look to the grandparents for help, and of the 14 million grandparents in this country, almost two-thirds of them look after their grandchildren regularly. With this level of input, it would seem that grandparents should have a right to see their grandchildren if the parental relationship breaks down. Unfortunately, this is not the case.

Relationship breakdowns are painful for everyone involved and emotions run high—and often, despite everyone's best intentions, the children are the ones who suffer the most.

When everything in a child's life is uncertain, and parents are struggling through a breakup, the grandparents' home should be a haven. But if you're prevented from seeing your grandchildren because of a family rift, you can't provide the love and support that could help them through such a difficult time.

Grandparents find it distressing to be isolated from their grandchildren—and often feel terribly guilty because they can't be there for them.

Added to that guilt is shock and despair when they discover grandparents do not have an automatic right to see their grandchildren under the law.

However, there are applications you can make, and your legal advisor will help you decide the best way to proceed.

### **Grandparents are not helpless**

You may not have an automatic legal right of access as a grandparent—but that doesn't mean you have no options at all.

Grandparents often ask what rights they have when they've been denied the opportunity to spend time with their grandchildren through no fault of their own.

The sad truth is, grandparents don't have an automatic right to seek help from the family courts in this situation. But the family court's focus is always what's best for the children.

The courts do recognise the invaluable role grandparents play in their grandchildren's lives so you

can seek permission from the court to apply for an order allowing you to spend time with your grandchildren. This is a process involving two stages, which should filter out those applications which would interfere with a child's safety and security.

Before any application can be made, it is important to consider what alternatives there may be. There is a cost both emotionally and financially, so it is important to consider whether discussions with the family may help avoid court applications.

Mediation may be a good option, and the court requires attendance at a MIAM as a precursor to any formal application (unless one of the exemptions applies).

Mediation involves a mediator trained in family law bringing everyone together to resolve any difficulties and disagreements without involving the courts. It usually takes place over several weeks or months at regular intervals.

Or there is the collaborative process, which focuses on finding solutions to family problems with specially trained collaborative lawyers in face-to-face meetings.

If neither mediation nor collaborative law are appropriate, it is likely you'll need an application to the court for permission to apply for a determination. The application for permission to apply would be sent to the court at the same time as the application itself. If permission is granted, the court will consider the application itself.

It is important therefore to sit down with your legal advisor to go through the statutory requirements, so they can advise you whether permission is needed at all, and if so whether the criteria that the court has to consider when granting the application itself is likely to be met.

When deciding whether to grant permission, the court will take several factors into account. Key matters include:

- The order itself (i.e. what you want to achieve)
- The grandparents' connection with their grandchild
- If there is a risk the proposed application could cause harm to the child by causing a significant disruption to their life.

The test for the standard of harm has to be significant, so, for example, it has to be more than just to cause stress and anxiety to the parents, which would affect the child. The harm would have to be significantly severe so as to impair the child's emotional, social, or behavioural development.

The government has considered whether there should be any changes to this process, but it has decided not to make any changes. The system remains the same for the present: namely that in most cases grandparents need to seek permission from the court.

There are, however, exceptions to this general rule.

If, for example, the grandchild has lived with the grandparents for a period of over one year or for three

years, permission will not be required.

If the child in question has been living with the grandparents (or another third party) for a period of over three years within the last five years, and this time has not ended within three months of the court application, the grandparents (or third party) can apply for a Child Arrangements Order with no need for consent, such as an order dealing with living and contact arrangements. The application must be made promptly, however, as if more than three months have passed since the child stopped living with the grandparents, permission is required.

The above examples are exceptions to the general rule.

In every case, it is necessary to look at the individual factors to consider how such an application will be received. It is important to remember that whilst the court will be keen to promote a meaningful and ongoing relationship with a child's close extended family where possible, this is subject to it being in the child's best interest and that there is no evidence to the contrary.

### **What are your options?**

If the court is satisfied the children's best interests involve seeing their grandparents, it will grant permission for you to apply for a Child Arrangements Order in the same way a parent would. If you're successful, the order specifies when the children can spend time with you.

The order requires the person with whom the children live to allow their children to visit anyone named in the order. It may include time during the day and also overnight stays, including holidays and other special occasions, like birthdays or national holidays.

The court has the power to enforce the order—and punish anyone who deliberately refuses to abide by it. Punishments are usually fines or community service—but in rare and extreme circumstances, the party in breach could go to prison.

But the best course of action for everyone is to avoid going to court if you can avoid it.

### **Keep the peace**

The best way for you to make sure you remain a part of your grandchildren's lives is to be a stable, calming influence. Make sure your home is a neutral space. It may be overwhelmingly tempting to take sides—after all, you may well feel more loyalty to your child than to their former spouse or partner.

However, your grandchildren will need your support, and you won't be helping them if they hear you criticising their mum or dad.

You'll probably want to help and support your child and give the separating couple some space—as well as stay involved with your grandchildren. It can be tricky to strike a balance, so sit down with your child and their spouse as soon as you can to talk about how best you can support them.

Give everyone the chance to explain what they need and keep calm.

If you can't meet in person, consider sending each parent a note telling them you'd like to support them, and how you think you can help. Perhaps you could offer to look after the children more than usual to give them and their parents the space they need.

If you've been through your own divorce or separation, remember what it was like for you. What did you handle well, and what do you wish had been different? What did you do to make sure your children stayed in touch with their grandparents? What caused the most family conflict, and how can you help to avoid that for your child and grandchildren?

It's normal to feel angry towards your child's former spouse or partner—and even towards your own son or daughter. Their breakup doesn't just affect them; it causes shockwaves throughout the extended family. It can be tempting to blame the ex if you don't see your grandchildren as much as you'd like initially—but try not to blame either parent. Conflict isn't helpful for anyone, especially your grandchildren.

If your son or daughter's former spouse or partner doesn't want to see you or talk to you, give them a little time. They're probably struggling with their own emotions and may be worried about how you feel about them.

As a grandparent, you're in an interesting position: part of the situation, yet outside of it. It's up to you to be

an impartial observer, at least where your grandchildren are concerned. If your grandchildren talk to you about what's going on, be careful not to criticise either of their parents. You'll probably want to defend your own child, but remember your grandchildren love both their parents. If they hear you criticising or judging either of them, your grandchildren may be less likely to confide in you because they'll feel they have to take sides.

If your grandchildren don't want to talk, don't push them. They'll be comforted to know you're always there to listen when they do want to talk.

Reassure your grandchildren that you love them, their parents love them, and remind everyone that although things are tough, everything will get better.

We frequently help families resolve differences and often help grandparents who are experiencing difficulties staying in regular contact with their grandchildren. How you approach this sensitive situation will affect the outcome.

## **Summary**

- Although grandparents have no automatic legal right to spend time with grandchildren, there are options: you can seek permission from the court to apply for an order allowing you to spend time with your grandchildren.
- The family court's primary focus is always what's best for the children, and it recognises the invaluable role grandparents play.

*Do Grandparents Have Rights?*

- You can apply for a Child Arrangements Order in the same way a parent would. If you're successful, the order specifies when the children can spend time with you.
- You don't have to go to court, and it's best not to: you can look at mediation or collaborative law to come to an agreement instead.
- Try to stay neutral and be a source of calm and love for your grandchildren and your child. Your best chance of remaining a part of your grandchildren's lives comes from keeping a good relationship with both parents.

If you're in a civil partnership that's ending, rather than a marriage, the next chapter will help you.



# Chapter 8

## Ending a Civil Partnership

*What to do when your civil  
partnership has broken down*

Since 2013, when the Marriage (Same Sex Couples Act) came into force, same-sex couples in England and Wales have been able to get married in the same way as mixed-sex couples. In 2014, the Marriage and Civil Partnership (Scotland) Act 2014 did the same in the north.

Before that though, same-sex couples who wanted to formalise their relationship only had one option: to enter into a civil partnership, which they could do for the first time in 2004.

Under the Civil Partnership Act (CPA) 2004, two people of the same sex enter into a formal legal relationship when they register as civil partners of each other. Although a civil partnership is not a marriage, civil partners have the same legal status as married

couples when it comes to tax, inheritance, pensions, and financial provision if the relationship breaks down.

The right to enter into a civil partnership has now been extended to couples who are not of the same sex, by the Civil Partnerships, Marriages and Deaths (Reg. etc) Act 2019, which came into force on 26 May 2019.

This can only be a good thing because those who don't want to get married can be shocked to find when one partner dies, they don't have the same rights as married partners.

There is no such thing as a "common-law marriage" under UK law. Extending civil partnerships to mixed-sex couples will offer the same protection and benefits married couples currently receive.

## **Formalities**

A civil partnership is formed by both partners signing a legal document in the presence of a civil partnership registrar and two witnesses. You don't have to have a ceremony or exchange vows, unlike for a marriage, but you can do if you want. Like a civil marriage ceremony, there must be no religious service while the civil partnership registrar officiates during the signing of a civil partnership document. The relevant registration authority ensures the registration and any other information required by regulations is recorded in the register as soon as is practicable.

All couples who want to enter a civil partnership must abide by a "waiting period" of 28 days. Each

person must be unmarried and not already part of a civil partnership.

Until recently, it had been possible to enter a marriage or a civil partnership aged 16, providing you had parental or guardian consent. However, following the recent enactment of the Marriage and Civil Partnership (Minimum Age) Act 2022, which came into force on 27 February 2023, the legal age has now been increased to 18 years. This change will not affect the validity of any marriages or civil partnerships entered before this date.

Both partners entering a civil partnership must consent and have the capacity to consent—if either person doesn't make a voluntary decision to enter a civil partnership, the relationship may be null and void.

### **Ending a civil partnership**

Civil partners don't get divorced; they can only end their relationship with a final dissolution or nullity order. A separation agreement doesn't end a civil partnership.

If you want to end your civil partnership, you must get permission from a court for:

- A dissolution order (if your civil partnership has lasted at least one year).
- An annulment (if your civil partnership wasn't legal).

If you don't want to end your civil partnership (but wish to separate) or you have been civil partners for less than one year, you can enter a separation agreement.

If you're not a British Citizen, ending a civil partnership may affect your right to stay in the UK.

The law for dissolving a civil partnership in England and Wales changed on 6 April 2022 when the Divorce, Dissolution and Separation Act 2020 came into force. This new legislation allows couples to either divorce or dissolve their civil partnership based on “no fault”, and the relationship only needs to have “irretrievably broken down” for one party. Having said that, the legislation permits “joint applications” to be issued, if both parties agree their relationship has irretrievably broken down.

### **What about the details?**

To dissolve a civil partnership, you must apply for a dissolution order and confirm your civil partnership has irretrievably broken down. You will need your original civil partnership certificate. You can apply to dissolve a civil partnership jointly or independently and the process is akin to applying for divorce. See Chapters 1 and 2 for more information about how to proceed.

Everything else—addressing children, finances, businesses, and abusive partners—is the same as for a married couple. You can find everything you need to know in the other chapters of this book.

Ending any long-term, serious relationship is tough. This will probably be one of the most challenging periods of your life. But remember, you're not alone, and life will get better.

Follow the advice in this book—and get in touch with an experienced family lawyer if you have questions or concerns. As with divorce, a good law firm should offer you an initial free consultation so you can find out where you stand and what your next steps should be.

## **Summary**

- Civil partnerships confer the same tax, inheritance, pension, and financial provision rights and benefits onto partners as marriage.
- The same rules and guidelines apply to civil partnerships as marriages when it comes to children, businesses, finances, and abusive situations.

In the next chapter, we'll look at how domestic abuse affects divorce and dissolution proceedings, and what help is available if this affects you.



## Chapter 9

# How to Cope With an Abusive Partner

*You're not alone—and you can get help*

**Y**ou may be surprised to learn that “domestic abuse” isn’t just physical violence. In fact, most forms of domestic abuse aren’t physical at all...

And domestic abuse doesn’t just affect women and children, although they make up most victims. Men can be victims of domestic abuse too. Throughout this chapter, we’re using the term “domestic abuse” to cover all forms of abuse, including physical, emotional, coercive control, and financial.

Many people consider “domestic abuse” to be actual physical violence against a person—or an imminent threat of physical violence. As a result, many people remain in unhappy relationships where they tolerate unacceptable behaviour.

They become more and more isolated from family and friends, while their spouse criticises and belittles

them, because they feel there's nothing they can do about it.

This isn't true—domestic abuse exists in many forms within a marriage or relationship, and you don't have to tolerate it. Nobody should find themselves in a relationship where their partner behaves unreasonably towards them. Over time, they may begin to feel worthless, lose their confidence, and slowly become a “victim” in their relationship rather than a partner.

Ultimately, this cycle usually leads to depression, emotional turmoil, insecurity, isolation and/or loneliness. And if the behaviour carries on long enough and is extreme enough, it can end in death or serious injury.

We've all heard stories in the news about people who suffered for years, and whose lives ended in tragedy. We often wonder how this could happen; why they didn't leave. The reasons are many and complicated, but it's important to realise that in most cases, they didn't go into an abusive relationship; they went into a relationship that became abusive over time, so slowly and insidiously that it was difficult to notice it.

When this type of behaviour happens often and over a long period, the victim slowly begins to believe that this type of behaviour is acceptable and normal—because it doesn't happen all at once.

Victims of domestic abuse often feel embarrassed and humiliated by their treatment and are too frightened to ask for help. Unfortunately, this is very common. But

if you're suffering from domestic abuse, please know you're not alone—sadly, domestic violence and abuse affect one in four women and one in six men during their lifetime, regardless of age, race, disability, or lifestyle.

The UK officially has a zero-tolerance attitude towards domestic abuse and the courts take abusive behaviour seriously. If your children are also subjected to abusive behaviour from your spouse, or are witnessing abuse within their home, the courts can make orders to protect them from the perpetrator—sometimes even severing all contact between the perpetrator and the children.

The government defines domestic abuse as “any incident or pattern of incidents of controlling, coercive, threatening, violence, or abuse between those aged sixteen or over who are, or have been, intimate partners or family members regardless of gender or sexuality.”

Such abuse can involve, but is not limited to:

- Psychological.
- Physical.
- Sexual.
- Financial.
- Emotional.

Domestic abuse also includes “honour-based violence”, forced marriage, female genital mutilation (FGM), and stalking.

It's crucial to understand that most domestic abuse doesn't start as physical violence—but much of it ends

there. Looking at past cases of domestic abuse, we know strangulation is one of the most potentially lethal forms. A study conducted in 2001 found ten percent of violent deaths in the United States were because of strangulation and most victims were women.

### **It's not your fault**

Most of us look back, occasionally, to times when we wish we'd done something differently. Victims of violence and abuse often do the same thing—but if this is you, you must not blame yourself. If someone tries to control you by saying cruel things, making threats, or acting dangerously towards you, it is not your fault. It is their fault.

An abusive spouse's destructive behaviour is not your responsibility. It's theirs, and there is no excuse for it. Abuse is not caused by alcohol, drugs, poverty, or any other external factor (although they can certainly make things worse). Abuse is all about power, and abusers want power over their victims.

Until the victim takes action or the aggressor accepts they have a problem and asks for help, the victim will continue to be a victim. Difficult though it is—and sometimes it seems impossible—you can take action against destructive behaviour, and you can start living a fulfilled and happy life.

If you believe you're suffering at the hands of someone who's subjecting you to ongoing abusive or unreasonable behaviour—or they're physically violent

towards you—you do not need to tolerate it and there are ways to deal with it.

### **Clare's Law**

Clare Wood was murdered by her boyfriend in 2009. In the months before her murder, she had contacted the police repeatedly, alleging her murderer had caused criminal damage, harassed her, threatened to kill her, and tried to rape her.

She was severely let down by the system, as her boyfriend's past crimes came to light after she died. He had previous convictions and had been jailed for three years in 2002 for harassing another woman. A year before that, he was in prison for six months for breaching a restraining order on another ex-girlfriend.

Clare's parents are convinced she'd still be alive today if she'd known about her boyfriend's past, and they campaigned to change the law. In 2014, the Domestic Violence Disclosure Scheme (known as Clare's Law) came into force.

Under this new law, anyone in a relationship can ask the police to give them information that may protect them from abusive situations. It allows the police to disclose facts about any previous history of domestic violence or violent acts if someone asks.

Before Clare's Law, we would have to ask the court, at a hearing, for permission to get the police to disclose all previous criminal activities and charges. That was a long process with more costs for the applicant. You had

to write to the police in a particular format and wait a long time for the reply. It's much easier now to find out information that could save your life.

If you start a relationship with someone and you want to check out their past because alarm bells ring, you can do that. You do have to follow an application process, but it's much simpler than it used to be, and it's confidential between you and the police.

If you're in a relationship and you think it might be abusive, but you're not sure—or if you have suspicions about your partner's previous relationships—you can now find out confidentially.

All you have to do is go to the police station and talk to the police about the steps you have to take.

Remember, though, that often victims of abuse do not report their abusers, and even if they do, their abusers may not be convicted. So, people who use the scheme and are told there is no history of abuse may have a false sense of security. So, if you believe you may be a victim of domestic abuse, please seek help—even if the information you get under Clare's Law doesn't back up your fear.

## **The Domestic Abuse Act 2021**

After years of campaigns and research, the Domestic Abuse Act 2021 came into force on 30 April 2021. It is the first single dedicated law concerning domestic abuse.

The effect of the Act is:

1. New statutory definition of domestic abuse, broadening the scope of behaviour classed as abuse. The definition now includes financial abuse and relationships between family members and people who are not cohabiting. This is good news because research suggests financial abuse and violence by family members other than partners is high among some groups (like older people) and in specific contexts (like “honour”-based violence).
2. A Domestic Abuse Commissioner to help the government transform its response to domestic abuse.
3. Protection for victims and witnesses in court: abusers can no longer cross-examine their victims in family courts. The family court has the power to appoint a legal representative to do the cross-examination. Domestic abuse victims are now automatically eligible for special measures in the criminal courts to support more victims to come forward and give evidence.
4. Councils must fund safe accommodation for victims of domestic abuse and prioritise housing for survivors.
5. New criminal offences have been introduced to include post-separation coercive crime, non-fatal strangulation, and threats to disclose private sexual images.

6. There is a ban on an abuser citing “rough sex” as a defence.
7. There is a bar to GPs charging for evidence of domestic abuse.
8. The government has issued a Code of Practice with respect to data sharing.

### **“What are my options?”**

By far the most difficult step of all is the first one: deciding to get help, then actually doing it. The first thing many people want to do is talk to someone—and we’d like to assure you there is always someone you can talk to, even if you feel you can’t talk to friends or family.

There are several domestic abuse charities across the UK, such as Dash—Domestic Abuse Stops Here. You can find them at [www.thedashcharity.org.uk](http://www.thedashcharity.org.uk) or call their helpline on 01753 549865.

You can also contact Women’s Aid via their website: [www.womensaid.org.uk](http://www.womensaid.org.uk). Or contact Refuge via their website at: [www.refuge.org.uk](http://www.refuge.org.uk). Their shared helpline is 0808 2000 247, and it’s open 24 hours.

Their services are free and confidential, and they can give you support and advise you on your options.

When you feel able to take the next step in finding freedom from domestic abuse, they will assess and complete a support plan tailored to your individual family needs.

They’ll support you throughout, both emotionally and with safety planning and crisis intervention,

including safe housing accommodation. They're also trained to support and help your children.

**“How does domestic abuse affect my children?”**

Unfortunately, studies have shown that children and young people who suffer or witness domestic abuse are three times more likely to suffer emotional difficulties, including low self-esteem, aggressive behaviour, and other behavioural difficulties which could affect their own future relationships.

It's vital to seek help from trained professionals so your children have the best chance of coming through their experiences healthy.

**“What if my spouse won't accept my decision?”**

The aggressor in an abusive relationship often feels like they “own” their spouse, so it's common for an abusive spouse to feel like they've lost control and ownership when someone takes steps to stop domestic abuse. The abusive spouse may resort to threatening, harassing, and intimidating behaviour to prevent their partner from leaving, and to regain control.

This is a critical time, because it's at this stage many people return to abusive relationships for fear of the consequences if they don't. If you're in this position, you'll need all your strength and as much support as you can find from professionals and friends and family, to leave the abuse behind and find freedom.

If you find your spouse tries to prevent you from leaving, you can ask the court to protect you and your children, so you can move on and begin your new life.

### **The court's role**

The Family Law Act 1996 gives the court the power to make a variety of orders, including a non-molestation order forbidding an abusive spouse from using or threatening violence against you. It also prevents them from harassing, pestering, or intimidating you.

The court can also order that there should be no communication between you—including preventing instructions to a third party, such as your spouse's family and friends, from acting on their instructions.

If there are any children, the court can also prevent an abusive former partner/spouse from harming or contacting them.

The court process can seem quite daunting, but it isn't as complicated as it may seem. We've included a simple flowchart at the end of this chapter so you can see what routes are open to you.

### **“Why should I leave my home if I'm the victim?”**

No victim of domestic abuse should feel they have to leave their home, their friends, or their family because of someone else's behaviour. So, as well as a non-molestation order, the court can sometimes make an occupation order. Here, the abusive spouse must leave the family home and isn't allowed to return for a

specified period. That way, the victim of the abuse and any children can stay in their home.

If the situation is urgent, you may be able to get a short-term non-molestation order immediately and without notifying your abusive spouse. In extreme and rare cases, you may be able to get an occupation order at the same time.

These orders can stay in force for up to a year and can be extended if necessary. They can also carry a power of arrest, which allows the police to arrest someone if they break the order.

### **The power of arrest**

Once you've got an order from the court, a process server must serve it personally on your spouse (but if your spouse was present at court, the court will often dispense with this requirement). When that has happened, you may call the police if you believe your spouse has broken the order. The police will arrest the person, and they'll have to go before the court as soon as possible.

The power of arrest may be valuable over weekends or bank holidays when you may have less support than during the working week. The police can hold the perpetrator until they're able to take them to court. If the court finds your spouse has breached the order, they can be punished—which could include an immediate prison sentence, a suspended prison sentence, a fine, or community service.

The punishment will depend on how serious the breach was.

### **“Can I get Legal Aid?”**

At the time of writing this book, it costs nothing to apply to the family court for a domestic violence injunction. In some circumstances, you may get public funding for legal help to get any of the orders we’ve mentioned. The Legal Aid Agency will assess you and find out if this is possible.

If you’re not eligible for Legal Aid, you can find a solicitor privately, or if you feel able, you can apply to the court yourself. However, if you’ve been manipulated and bullied, and you’re afraid of your spouse, this may not be a good idea. The more help and support you can get, the better.

Most important of all, if you are or have been a victim of domestic abuse, please remember you’re not alone and it’s not your fault. And remember, too, that you don’t have to suffer anymore—there is a way out when you’re ready to take it and there is help available.

### **Peace of mind**

Our firm worked with a client who was desperately trying to escape an abusive marriage. This is her story...

Our client was anxious. Couldn’t stop crying and couldn’t focus on any of the questions we were asking her. And no wonder, because she’d been in an abusive relationship for years. Her husband had physically and

mentally abused her, systematically destroying her confidence and her self-esteem. She felt worthless. She'd been made to feel worthless.

Her husband would hit her, then put his hand over her mouth to stop her from crying. He'd make her eat food from the floor if he was angry. She spent her marriage living in fear of upsetting him because he'd become angry for days on end... and she'd never know what the punishment would be.

She knew she wanted to get divorced—she couldn't stay in an abusive marriage any longer. But she was afraid of what would happen when her husband found out, so we made an emergency application to the court for a non-molestation order. It was successful and gave our client the protection she needed to move forward with her divorce.

We've kept in touch with her throughout—then we saw her two months later at court for the return hearing of the non-molestation proceedings, and she looked and seemed like a different person. She was stronger; she was able to smile, and she said she just felt happy knowing he could no longer threaten her.

She has her good days and her bad days, as is normal with the breakdown of a marriage—but she said the most important thing she has now is peace of mind, knowing her husband can no longer dominate, control and punish her.

## **It's never too late**

Another client came to our firm after thirty years of marriage, proving it's never too late to make a positive change...

Our client was retired. She'd been married to her husband for many years, suffering significantly because of ongoing domestic abuse. Her husband would regularly strangle her, throw her downstairs, threaten her with a knife—and much more. There was medical evidence to support past injuries.

But she'd simply been too afraid to do anything about it. When she contacted the police, her husband threatened her with financial hardship if she pushed it further. Finally, she contacted DASH in desperation, and they referred her to us.

This time, a relative supported her and convinced her to report it to the police. Her husband was arrested, charged with assault, and bailed.

We met her on the same day she contacted us. We were shocked at how this lady's suffering, for such a long period, had affected her. She would visibly jump if there was a loud noise. She was constantly looking around her and was extremely nervous and anxious. She'd grown so nervous she couldn't drive her car anymore.

Her husband had made her feel that she was worthless and a waste of space, and we were horrified to see this lady in such a state.

With our support and her relative's support, we

applied without notice and got an order against her husband the next day, giving her a non-molestation order and occupation order so she could live in her home. He was forbidden from returning to the family home for twelve months and was not allowed to use or threaten any violence against her for the same period.

At the return hearing, she was so frightened we got the judge's permission for her not to come into court.

One reason she'd never had the strength to escape was money: her husband had threatened repeatedly to leave her poor. We asked the court, under the Family Law Act, for an order requiring her husband to contribute financially to the family home for twelve months.

This allowed our client to rest peacefully at home, away from her violent and abusive husband and without worrying about paying the bills. She could begin to recover and start her new life.

Since then, she's grown strong enough to start divorce proceedings and, after some difficult negotiating between us and the husband's solicitor, a financial settlement was eventually reached, allowing her to stay in her home.

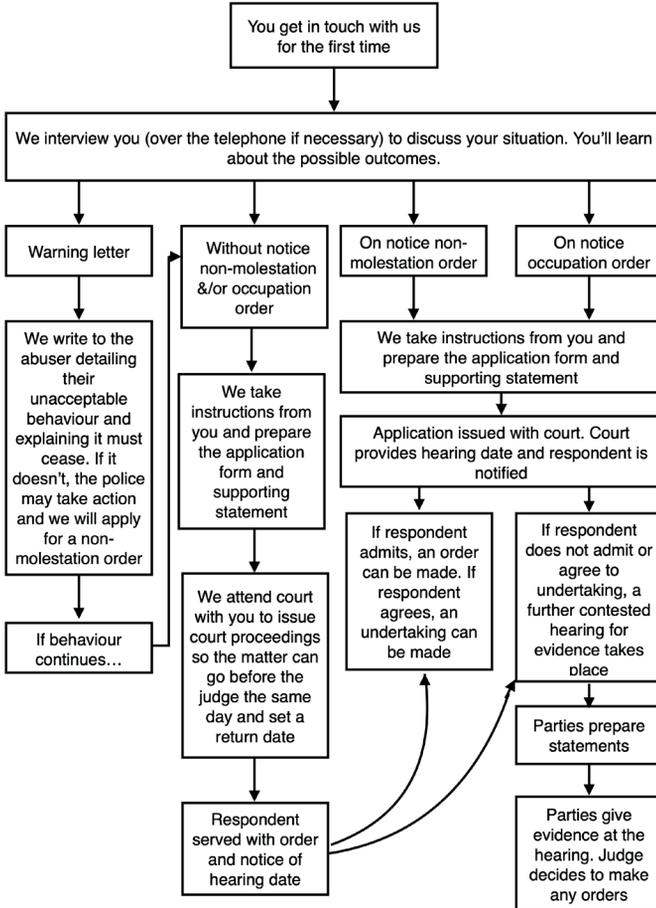
Her life has taken a dramatic change for the better since we first met her. She now drives and goes to the gym regularly. Although she'll always be a little nervous, she's improved enormously since we first met. And she often tells us how much she values our support and will be forever grateful for what we've helped her do.

Taking all this action has given our client enough courage to stand up to her abuser in court—and her husband was found guilty of all charges.

It's never too late to change your life.

If you are living in an abusive relationship the following flowchart shows what action you can take to bring your experiences to an end.

## The Domestic Abuse Legal Process



## **Summary**

- Domestic abuse isn't just physical abuse—it can involve (but is not limited to) psychological, sexual, financial, physical, and emotional abuse.
- It's not your fault! You are not responsible for someone else's abusive and destructive behaviour. Abuse is all about power; it's not caused by alcohol, drugs, poverty, or any other external factor (although they can make things worse).
- If you're worried your spouse may be abusive, or you suspect they have previous convictions for domestic violence, Clare's Law allows you to ask the police for information that could save your life.
- You can ask for help from charity Dash (Domestic Abuse Stops Here) or national charities Women's Aid and Refuge.
- Men can suffer domestic abuse too—and although most victims are women, men should feel they can ask for help.
- The court has the power to intervene to protect you and your children if necessary—by ensuring you can stay in your home, and by cutting contact with your spouse.

The Family Team at Parfitt Cresswell Solicitors offers specialist advice and help for people suffering from domestic violence and abuse. We understand how

difficult it can be to ask for help—but if you're ready to talk to a solicitor, or you'd simply like to visit us to talk about your situation, we'd like to invite you to a free, completely confidential face-to-face meeting with one of our expert family lawyers. You can come to any of our offices, and we'll make sure you find a solicitor who understands your individual needs and will look after your best interests.

Simply call 0800 999 4437, or you can email us at [tgdg@parfittcresswell.com](mailto:tgdg@parfittcresswell.com) and book a time to come and talk.



# Chapter 10

## Getting Married

*Do you need a prenuptial agreement?*

**A**lthough courts in England and Wales still don't treat prenuptial agreements as 100 percent binding, and they take significant changes in circumstances that would affect the agreement into account (like having children), they are likely to uphold the original agreement you make provided the agreement meets the criteria.

### **Why get a prenuptial agreement?**

Apart from allowing you both to go into a marriage with your eyes wide open, another advantage of a prenu is it can help to keep your divorce out of the courts if you split up later on.

If you go to court, accredited members of the press can sit in on and report on divorce cases. If one or both of you are in the public eye, or are significantly wealthy,

there'll always be some media interest. A prenup will help you keep your divorce and finances private.

If you're marrying late in life and one or both of you brings significant assets to the marriage, a prenup is particularly important. In cases like this, one of you may bring more to the marriage than the other, or one of you will stand to benefit from an inheritance because of the marriage.

It's perfectly reasonable to protect your own position as an individual, especially if you have assets you want to protect for your children and prevent them being lost to a claim by your spouse in any divorce.

They can also be useful for a range of people, such as professional athletes, or others who can earn a lot of money for a relatively short period in their careers. A prenup can help protect the assets they built up before getting married, to provide them with financial security once their high-earning career has ended.

## **Creating a prenup**

If you decide to create a prenuptial agreement, it must be fair and balanced. If one spouse can show the other had an unfair advantage when the agreement was written, the court may disregard it altogether—or rely on it less during a divorce.

When you sit down and put the agreement together, start by disclosing all your assets, including properties, savings, and any accounts you both have—shared or individual. Get independent legal advice from separate

solicitors to make sure you each understand the agreement you're entering into.

If you go into the agreement in this manner, you'll both know exactly what you're signing and why, so there's no confusion and no opportunity for anyone to claim they were misled later on. I recommend you allow as much time as possible to sort your prenup out. The Law Commission suggests you enter any agreement at least twenty-eight days before your wedding to avoid any suggestion it may have been signed under duress—so start talking about it in plenty of time. If, however, you have left it too late to arrange a prenup, you could have a post-nuptial agreement drawn up, which will have similar terms to a prenup except it will be executed after you've married.

This may not be easy, because it's not exactly the most romantic way to enter a marriage... although the most successful marriages are ones in which both partners are practical and clear-headed about their lives together.

If you move abroad, bear in mind your English prenuptial agreement may not be valid. There is no such thing as a globally recognised prenup at the moment. If you move abroad after getting married, take legal advice in the country you move to.

Likewise, if you've moved to England or Wales from abroad, get legal advice from a solicitor here whether any agreements you have are valid in this country.

If you do get a prenup, consider updating it every few years—and particularly if you have a major change

of circumstances, like having children, suffering a disability or serious illness, or inheriting money or property. An updated prenuptial agreement is known as a post-nuptial—and it will help to keep things clear in case of divorce in the future.

It is also worth noting that the law regarding prenups can change and may carry more weight in the future. Your solicitor will advise you on the current position on prenups and how, in the event of a divorce and even if the prenup meets the qualifying criteria, the courts ultimately have discretion to set aside the prenup to ensure that a financial settlement is fair to both parties. This becomes more relevant as a family and/or capital grows.

## **Summary**

- A prenuptial agreement isn't 100 percent legally binding, but courts generally uphold them unless there is a valid reason not to, such as a significant change in circumstances, like having children.
- Prenups are particularly important if you're marrying late in life, or if one of you is extremely wealthy, or is due to inherit substantial wealth.
- Having a prenup can help to keep any future divorce and financial affairs private because it can help to keep you out of court.

Whatever stage you're at in your relationship, the next steps are important. One of the most useful and

## *Getting Married*

important things you can do early on is find a solicitor you trust. In the next chapter, we'll explain what to look for in a family law solicitor so you can make sure you choose the right person.



# Chapter 11

## Next Steps

*What does your future hold?*

We hope you have a much better understanding of divorce and dissolution law in England and Wales, whether you're going into a new relationship or facing the end of one. The beginning or end of a relationship is a monumental event in anyone's life, which is why it's so important you get all the support you need.

Friends, family, and professional counsellors should be your first stop for emotional support—and an experienced, compassionate family law solicitor should be your first port of call for legal advice. So, with all this information at your fingertips, why is it such a good idea to see a family lawyer... and what should you look for?

The most important characteristic to look for in a family solicitor is experience. The wider the variety of divorces and separations they've dealt with, the

better they'll know exactly what's needed to resolve your divorce or dissolution in the way you hope. Some solicitors do occasional family law work alongside other areas of law, such as wills, probate, property sales, and purchase. This isn't always ideal, as it can affect their experience.

At Parfitt Cresswell Solicitors, our family law team comprises full-time family lawyers with many years of experience, which means they're best placed to ensure you achieve the very best outcome in your circumstances.

You'll recall we mentioned back in Chapter 4 that the courts have a wide discretion under the section 25 considerations of the Matrimonial Causes Act. There can be a significant difference between one end of discretion and the other... A good solicitor will advise you in this respect and ensure that you are as prepared as possible.

Ideally, your solicitor will be a member of Resolution, which means they'll be committed to dealing with your divorce or dissolution amicably and constructively. A good solicitor will not want you to go to court, and they'll do their absolute best to help you resolve matters in a constructive and proportionate way, avoiding court if possible.

They'll be able to advise you on alternative dispute resolution methods, like mediation or collaborative law, and they'll help you decide on the best course for you and your family.

But experience and legal knowledge, while essential, are not enough on their own. A truly exceptional family solicitor will combine their skills with empathy and compassion, helping you keep your emotions under control and resolving your situation without escalating.

This means your solicitor will be willing and able to tell you some hard truths when necessary—so when you're looking for the right solicitor for your case, choose someone who'll advise on what's best for you, even if you don't like hearing it. A great solicitor will do that with compassion and will explain it to you clearly, so you understand why you're getting this advice.

Remember: your solicitor is there to advise you, and it's for you to decide whether to follow that advice.

The family solicitors at Parfitt Cresswell are all experienced, compassionate, and dedicated to helping you move on to a bright future—and with that in mind we'd like to invite you to a free, face-to-face meeting with one of our expert family lawyers.

You can come along to any of our offices and be sure to find a solicitor who will understand your individual needs and who will look after your best interests.

Our family law solicitors work with many people going through a relationship breakdown to help them plan their future; and we work with people at the start of a relationship and at the end.

Call 0800 999 4437 or email us at [tgdg@parfittcresswell.com](mailto:tgdg@parfittcresswell.com) and book a time to come and talk to us about your relationship.

## **What to expect from your first meeting**

Divorce and separation are life-changing events and mistakes can be expensive, so it's vital to find the right solicitor as soon as possible. Being well-prepared will help you reach the best outcome in the shortest time.

The Parfitt Cresswell team has worked in family law for a long time, and we know how important it is to establish what you need and how best we can help you before you make a final decision about choosing a solicitor. That's why we offer this initial meeting.

Having a good relationship with your family lawyer will make the divorce or dissolution process less stressful. That means the decision-making process will be easier—and there will be several decisions you'll have to make with the support of your lawyer while you're going through this process. The initial meeting is a chance to find out whether you connect and get on with a potential family lawyer.

We want you to be prepared for what comes next.

You'll certainly have lots of questions, especially about your home, your children, and your financial settlement. Much as we'd like to, we can't possibly give you easy or definitive answers because every divorce and dissolution is different. So, the more information you bring with you to our first meeting, the better we'll be able to give you an idea of what to expect.

If you can bring as much financial information as possible, as well as thinking about your goals and

circumstances, that will enable you to get the most out of your first meeting. It's unlikely you'll get everything together immediately, but this book has given you an idea of what you'll find helpful to bring along—and we'll be able to guide you through everything else when we meet.

### **First meeting checklist**

To make the most of your first appointment, bring the following along with you:

- Any correspondence you've received from your spouse/civil partner or their solicitor.
- Any correspondence you've received from the court or other relevant third parties.
- Your marriage or civil partnership certificate.
- Dates and details of any previous marriages.
- Your spouse's/civil partner's name, date of birth, and address.
- Your children's names and dates of birth, and the schools they attend.
- Names and dates of birth of any children who are part of your family and live in the same household but are not children of you and your spouse or civil partner.
- Details of your circumstances, such as an outline of your relationship and the issues you are experiencing.
- Financial information—yours and your spouse's/civil partner's income, plus details of any assets

such as bank accounts, savings, shares, other investments, pensions, trusts, cars, jewellery, antiques, estimated value of the matrimonial home and details of any mortgages, credit cards, and loans.

- Details of any other property owned in the UK and overseas.
- Details about what you want to achieve from the divorce or dissolution settlement.
- Questions you want to ask your solicitor at the first meeting.
- Two forms of identification: usually your passport or driving licence along with a utility bill or bank statement that's less than three months old. (This is to comply with the Anti Money Laundering Regulations.)

Finally, please feel free to bring a friend or relative along if you feel this will help support you. We don't recommend children attend unless absolutely unavoidable as you'll be discussing some difficult issues during your meeting.

Remember—you can book your free face-to-face, no-obligation meeting anytime. Call 0800 999 4437 or email [tgdg@parfittcresswell.com](mailto:tgdg@parfittcresswell.com) and book a time to come and talk about your relationship.

Take control of your own future today.

# Jargon Explained

## *Divorce law made simple*

**Alternative Dispute Resolution (ADR):** ways of resolving disputes without going to court

**Annulment:** You can apply for an annulment within the first year of a marriage (unlike a divorce). To do so, you will need to show that the marriage was either not legally valid or it was legally valid but is voidable (and meets the specific criteria).

**Assets:** property with value and available to meet debts, commitments, or legacies, owned by a person, solely or jointly, or a company

**Court Bailiff:** employee of His Majesty's Courts & Tribunals Service, responsible for enforcing orders of the County Court

**Barrister:** a specialist lawyer who is typically an advocate and is instructed to attend court hearings.

**CAFCASS:** the Children and Family Court Advisory

and Support Service—a non-departmental public body in England set up to promote the welfare of children and families involved in family court and to assist the court in its decision-making

**Capital:** wealth in the form of money or other assets owned by a person solely or jointly

**Capital Orders:** one spouse is ordered to pay a cash lump sums, transfer of property, or pension adjustment

**Case Law:** the law as established by the outcome of former cases

**Child Arrangements Order:** an order defining with whom a child will live and where, and when and how often the child will see another person or persons

**Clean Break:** an order which would lead to each spouse becoming financially independent of the other

**Cohabitation Agreement:** An agreement reached between a couple who have chosen to live together (whether they are heterosexual or homosexual). Such agreements are not binding.

**Collaborative Law:** a legal process involving working with lawyers to end a marriage outside of the courts

**Collaborative Participation Agreement:** a form both spouses sign when they begin the collaborative law process

**Conditional Order:** First stage in divorce (previously Decree Nisi) which can be applied for following 20 weeks after issue of the divorce application by the court

**Consent Order:** a legally binding agreement reached between you and your spouse and approved by the court

**Contract:** a written or spoken agreement that is intended to be enforceable by law

**Declaration of Trust:** a document in which “trustees” are appointed to hold property for “beneficiaries”

**Decree of Judicial Separation:** confirms the parties to a marriage or civil partnership are separated (but remain married/in a civil partnership)

**Divorce:** the termination of a marriage or marital union

**Domestic Abuse:** violent or aggressive behaviour, psychological abuse, financial abuse, sexual abuse, emotional abuse, and controlling or coercive behaviour

**Drafting Orders:** preparing an order, such as a consent order.

**Estate:** all money and property owned by a particular person

**Family Arbitration:** a form of private dispute resolution in which the parties enter into an agreement under which they appoint a suitably qualified person (an “arbitrator”) to adjudicate a dispute and make an award. It can be used to resolve financial disputes and disputes concerning children

**Final Order:** Final order within a divorce (previously Decree Absolute) and which can be applied for by the applicant(s) after a minimum of 6 weeks have passed from conditional order

**Financial Disclosure:** gathering the financial documents needed to reach a financial settlement

**Financial Dispute Resolution Hearing (FDRH):** a court appointment during which a divorcing couple

engage in without prejudice discussions, and are assisted by a judge, to reach a financial settlement

**Financial Relief:** the application to resolve financial issues arising from any divorce, dissolution proceeding or judicial separation

**First Appointment:** a first court appointment when financial relief proceedings have been issued, at which the court timetables the case and makes orders relating to evidence and procedure

**First Hearing Dispute Resolution Appointment (FHDR):** the first court hearing after an application has been made to court in private family law proceedings relating to children, e.g. for a Child Arrangements Order

**Form E:** your financial statement giving disclosure

**Hearing:** a court appointment

**Income:** money received, for work or through investments, welfare benefits, or via a trust

**Lawyer:** a person who practices or studies law, especially (in the UK) a solicitor, legal executive or a barrister or (in the US) an attorney

**Lodge Application:** forwarding an application to the court

**Magistrates Courts:** a lower court, where almost all criminal proceedings start and where some less complex civil matters are also decided, notably family proceedings

**Married Women's Property Act 1882:** an Act of Parliament that significantly altered English law regarding the property rights of married women, which

besides other matters allowed married women to own and control property in their own right

**Matrimonial Causes Act 1973:** an Act of Parliament governing divorce law and marriage in England and Wales

**Mediation:** a form of ADR, a way of resolving disputes between spouses with a third party, the mediator, to help negotiate a settlement out of court

**Mediation Information and Assessment Meeting (MIAM):** a meeting to see if mediation could be used to resolve your difficulties, rather than going straight to court

**Parental Responsibility:** the legal rights, duties, powers, responsibilities and authority a parent has for a child and the child's property (which does not always automatically apply to an unmarried father)

**Parental Responsibility Agreement:** an agreement made between the mother and the unmarried father, or other third party, permitting parental responsibility

**Parental Responsibility Order:** an order under the Children Act 1989, which unmarried fathers, can apply for when the mother refuses to allow the father to be registered or re-registered on the birth certificate, or refuses to sign a Parental Responsibility Agreement with him – it is also possible for other third parties' to obtain a Parental Responsibility Order

**Pension Sharing Order:** an order that a pension fund should be divided in percentages

**Pension Attachment/Earmarking Order:** enables

the court to direct pension scheme trustees to make payments of capital and/or income to an ex-spouse from the date the member draws on the pension benefits

**Power of Arrest:** a mandate that allows an individual to remove a criminal's (or suspected criminal's) liberty; can also be used to protect a person from harm or to protect from damage to property

**Prenuptial Agreement:** an agreement made by a couple before they marry concerning the ownership of their respective assets should the marriage fail

**Process Server:** delivers or "serves" legal documents to a person involved in a court case

**Property Adjustment Orders:** orders the court can make about ownership of the family home and transfer of it

**Property Sale Order:** an order for the immediate or delayed sale of the family home and division of the proceeds

**Residence Order:** now known as a "Live With" Child Arrangements Order

**Respondent:** A party who receives service on an application

**Round Table Negotiations:** Can be termed a Round Table Meeting (RTM) or Joint Settlement Meeting (JSM), the purpose of which is to enter into negotiations and reach a settlement

**Separation:** living apart from your legal spouse

**Separation Agreement:** also known as a Deed of Separation, it records who is to have what and what

both parties' responsibilities are (can include child arrangements as well as financial provision)

**Solicitor:** a member of the legal profession qualified to deal with legal matters

**Spousal Maintenance Orders:** an order for your spouse to pay monthly financial support

**Spouse:** a husband or wife

**Welfare Checklist:** the checklist the court will refer to when making decisions affecting children

**Will:** a legal declaration by which someone names one or more persons to manage their estate and provides for the distribution of their property at death



# About Parfitt Cresswell Solicitors

*A message from Group  
Director, Teresa Payne*

I'm Teresa Payne, one of the Group Directors at Parfitt Cresswell Solicitors. Growing up, I never dreamt of being a lawyer... Until I found myself facing divorce in my late twenties. I had a seven-year-old son and the last thing I thought I'd experience was my relationship ending and having to start again.

To be honest, I didn't know where to turn. The road ahead felt like an enormous mountain and I didn't have the emotional or physical strength to even take the first step of the climb. Fortunately, I had a good friend who supported me through this. With her encouragement, I went along to my local solicitors, feeling confident they'd be able to help me.

They were qualified professionals and advertised "family law" so I thought I was in good hands. I think most would agree that was a reasonable assumption—

but after experiencing their non-existent client care and paying substantial legal fees for a very poor service and very little practical advice, I decided I could do far better than this myself.

I started researching “how to divorce”, “what happens to the family home when couples separate”, and “where will the children live after divorce”—all those questions that wake you up in the night when it feels like your world is falling apart.

### **My mission**

My research was daunting and time-consuming, but it sparked an interest in learning more about our legal system. This interest, and my desire to help others going through separation and divorce, changed my direction in life. I decided to qualify as a solicitor—and spent the next seven years studying until I qualified in 2004.

At the start of my professional life, I worked face-to-face, individually, with many clients helping them through some of the most difficult times in their lives. It was so rewarding to help others navigate the legal and emotional maze and help them find their new life so that they could start again.

As my client numbers grew, I realised I needed more “me’s” if I was going to fulfil my mission of helping as many people as possible navigate the divorce process. So, in 2007, I bought my own law firm, Parfitt Cresswell Solicitors. We started in a small office in Fulham Broadway in West London.

Over the past seventeen years, I've focused on growing a specialist family law team of qualified lawyers who share the same values as I do. They work hard to provide the very best standards of client support and legal advice to all our family law clients. They're all experts in family law and are all members of Resolution, which means they're committed to taking a conciliatory approach to helping you achieve the best settlement results possible in your situation. However, if it becomes clear your ex or their legal advisor isn't adopting a conciliatory approach, my family lawyers are more than willing to play hardball if necessary.

My team also understands the emotional pressures you're going through and will support you and, sometimes, introduce you to other professionals who can help—like therapists and counsellors.

### **This isn't about revenge**

My mission is very clear—I want to help you get the best possible outcome for you and your family. So, if you're feeling angry and looking for revenge, and you want to hurt your ex as much as possible, we're not the law firm for you.

I completely understand why you may feel so angry at the thought of your relationship ending, but revenge will not help you move on in your life. We would not be helping you by accepting your instructions and we would not be honouring our commitment and mission

to help people through their relationship breakdown and reach their best settlement.

There are plenty of law firms who will accept your instructions and take your money... and you may even find this eases your anger for a while. But in the long run, it all too often leads to even more stress and heartache for you.

I've never seen revenge bring anyone any peace.

It's really important to remember that ending a relationship is a huge event and fear of the unknown can be paralysing—even when you know the relationship has broken down.

My advice is this: understand your emotional position, but try to take a balanced and objective view about how you are going to reach a settlement that works for you and your ex.

We're here to help people who are looking for expert help to navigate through the divorce process. People who want to achieve the best settlement they can in their circumstances—and keep a civilised relationship with their ex if they need to, which is particularly important if you have children.

Because of this, we ask all our clients to meet us in person for a free consultation. This gives you the opportunity to tell us about your situation and your goals, and it gives us the opportunity to show you what we offer and for us both to decide whether we are the right firm for you.

Give us a call on: 0800 999 4437.

*About Parfitt Cresswell*

Or email: [tgdg@parfittcresswell.com](mailto:tgdg@parfittcresswell.com) and book your initial meeting today.

Whichever route you choose, I wish you well in your search for happiness in your new life.

Teresa J. Payne  
Parfitt Cresswell Solicitors



# Index

- abduction (of children), and Hague Convention 113
- abuse *see* domestic abuse
- “access” (to children), replaced with “spending time with” 109
- Acts *see* laws
- adoption 110
- adultery 13, 24
- Alternative Dispute Resolution (ADR) 10, 30, 108, 111–12, 127, 172
  - see also* collaborative law; family arbitration; mediation; negotiation
- annulment 141
- Anti Money Laundering Regulations 176
- application for divorce or dissolution
  - application formerly called ‘petition’ 16
  - before applying
    - correct court fees 17, 27
    - marriage certificate 16, 27
    - sole or joint application 17
    - spouse’s contact details 17, 27
  - considerations and requirements
    - court portal or on paper 18
    - divorce or dissolution 18
    - financial claims, indication of 18
    - jurisdictional issues 18
    - marriage/civil partnership, details of 18
    - parties’ details (incl. solicitors) 18
    - sole or joint application 18
    - statement of irretrievable breakdown 18
    - statement of truth 18
  - joint applications
    - conditional and final orders 19, 20, 27–8
    - court fees and timeframe 19
    - moving from joint to sole application 19
    - notifications via email or paper 19
    - shortening timeframe 19–20
  - sole applications
    - conditional and final orders 21, 27–8
    - jurisdictional issues 20, 21
    - notifications by email and post 20–1
    - timeframe 20–1
    - using Form D11 if no postal address 20
- summary 27–8

arbitration *see* family arbitration  
arrest, power of 155–6  
assets  
    defining asset 72  
    different types  
        intangible assets 102–3  
        matrimonial assets 72–3, 97, 104  
        non-matrimonial assets 72, 73  
        tangible assets 102  
    and judicial separation orders 22  
    and separation agreements 22  
    spouse trying to dissipate/hide assets 12, 43  
    *see also* business owners; financial disclosure; financial settlements  
attachment orders 85  
awards (arbitration decisions) 40, 45  
  
bank loans, as funding option for divorce costs 65  
bank statements 74, 75  
barristers 4, 47–8  
    *see also* solicitors  
Brussels IIA 121  
business accounts 75  
business owners  
    business structures  
        limited companies 101, 103  
        partnerships 100–1, 103  
        sole traders 100, 103  
    business valuations  
        assessment process 101–3  
        disputes 103–4  
        earnings 103  
        intangible assets 102–3  
        tangible assets 102  
    family business as matrimonial asset 97, 104  
    full disclosure required 97, 105  
    impact of divorce on businesses 97–8  
    protecting your business 98–100, 105  
        keeping business and private assets separate 100  
        pre-nuptial or post-nuptial agreements 99–100  
        spouse's involvement in business 100  
    summary 105  
  
CAFCASS (Children and Family Court Advisory and Support Service) 115, 116, 119–20

- capital lump sum orders 85
- case law 79–80
  - see also* Owens vs Owens (2018)
- child arrangements orders 110, 112, 114, 118, 127
  - grandparents' applications 133–4, 137
  - see also* children
- child maintenance 82–3, 85
  - child maintenance orders 89–90
  - family-based agreements 89
  - see also* children
- Child Maintenance Service (CMS) 82, 89, 90
- Child Support Agency 89
- children
  - clients' stories 121–7
  - courts and child's welfare 24, 50, 107, 108, 113
  - former and current legal terminology 108–9
    - “access” and “residence” replaced with “spending time with” 109
    - “custody” replaced with “living with” 109
  - mutual agreement approach
    - court's “no order principle” 111
    - help from solicitor 111
    - using Alternative Dispute Resolution method 111–12, 127
  - no agreement and applying for court orders
    - child arrangements orders 110, 112, 114, 118, 127
    - prohibited steps orders 112–13, 118, 127
    - special guardianship orders 118
    - specific issue orders 113, 118, 127
    - welfare checklist of 1989 Children Act 115–18
    - who can apply for court orders 113–14, 127
  - parental responsibility
    - as defined in Children Act 1989 section 3(1) 109
    - different rules for mothers and fathers 109, 110, 127
    - myth about mothers' custody rights 24, 116
    - parental responsibility agreements 110
    - parental responsibility orders 110, 111
    - terminating parental responsibility 110–11
  - process of going to court
    - attending MIAM meeting to consider mediation 118, 120
    - cases when MIAM meeting not required 118–19
    - First Hearing Dispute Resolution Appointment (FHDR) 119
    - further hearing(s) 120
    - government cuts and delays 120–1, 127
    - legal advice essential 128
    - role of CAFCASS 119–20

- returning a child from country outside UK
  - effect of UK's departure from EU 121
  - Hague Convention (1996) 113, 121
- separation agreements and children 22
- summary 127–8
- see also* child maintenance; domestic abuse; grandparents; guardians (children's guardians); welfare checklist (section 1(3) of the Children Act 1989)
- Children Act (1989)
  - child's welfare and the courts 24
  - Section 1(3) with welfare checklist 115–18
  - Section 3(1) on parental responsibility 109
  - Section 8 on court orders 112, 113–14
  - see also* welfare checklist (section 1(3) of the Children Act 1989)
- Children and Families Act (2014) 109
- Children and Family Court Advisory and Support Service (CAFCASS) 115, 116, 119–20
- civil partnership
  - ending a civil partnership
    - annulment 141
    - dissolution orders 141, 142
    - irretrievable breakdown. 142
    - “no fault” dissolution 142
    - repercussion for non-British citizens 142
  - entering a civil partnership
    - formalities 140–1
    - legislation for different-sex couples 140
    - legislation for same-sex couples 139–40
    - minimum age legislation 141
    - same protection and benefits as marriage 23, 140, 143
  - separation agreements 141
  - summary 143
  - see also* application for divorce or dissolution; Divorce, Dissolution and Separation Act (2020)
- Civil Partnership Act (CPA) (2004) 139–40
- Civil Partnerships, Marriages and Deaths (Reg. etc) Act (2019) 140
- Clare's law (Domestic Violence Disclosure Scheme known as) 149–50, 162
- clean-break orders 86, 89
- CMS (Child Maintenance Service) 82, 89, 90
- collaborative law
  - as an alternative to court 10, 27, 28, 30, 172
  - description of process 39, 51
  - and family arbitration 40, 41
  - for grandparents' access to grandchildren 131, 137

- and MIAM process 37
- see also* Alternative Dispute Resolution (ADR); family arbitration; mediation; negotiation
- common-law marriages 23, 140
- conditional orders (formerly decree nisi) 15, 16, 19, 20, 21, 27–8, 71–2
- consent orders 26, 39, 45, 48, 49, 89, 90–2
  - Statement of Information for Consent Order form (D81) 91
  - “contact” (with children), replaced with “spending time with” 109
  - contact and residence orders *see* child arrangements orders
  - cost orders 67
  - cost-benefit analysis 61–2
- costs
  - advice to keep them under control
    - avoid common mistakes 53–4
    - choose your solicitor wisely 56–8
    - do your homework to reduce solicitors’ fees 59–60
    - “expensive” principles vs cost-benefit analysis 61–2
    - invest in early negotiation 59
    - lean on your support network 54–6
    - letters and phone calls 62–3
    - myth about high costs of divorce 25
    - seek solicitor’s advice 53, 54
    - stay friendly with your spouse and be truthful 60–1
    - stay out of court if you can 58–9
    - summary 68–9
  - funding options
    - avoid having to represent oneself 63–4
    - bank loans 65
    - cost orders (unlikely) 67
    - credit cards 65–6
    - legal aid 64–5
    - legal services orders 65
    - remortgage your property 66
    - savings and investments 65
    - Sears tooth agreements 67
    - “soft loans” from family and friends 66
    - third-party loans 66–7
  - working with your solicitors
    - agreeing how and when to pay fees 68
    - no-win no-fee conditional agreements not allowed 67
  - see also* fees
- counsellors 12, 55, 56, 68, 171
- court
  - court fees 17, 19, 27, 43, 46, 119

- court portal 17, 18, 19
- delays and government cuts 42, 120–1, 127
- going to court
  - final hearing 48–9, 50, 51
  - financial disclosure 45, 46–7
  - financial dispute resolution hearing (FDR) 47–8
  - first appointment at court 47
  - Form A (notice of application for financial order) 46
  - Form E (financial statement) 46
  - as last resort 29, 51, 119
  - length of court case 50
  - private FDR hearing 49
  - statement of truth 47
- private court hearings 59
- see also* children; court orders
- Court of Appeal 111
- court orders
  - annulment 141
  - attachment orders 85
  - capital lump sum orders 85
  - child arrangements orders 110, 112, 114, 118, 127, 133–4
  - child maintenance orders 89–90
  - clean-break orders 86, 89
  - conditional orders 15, 16, 19, 20, 21, 27–8, 71–2
  - consent orders 26, 39, 45, 48, 49, 89, 90–2
  - cost orders 67
  - disclosure orders 77
  - dissolution orders 141, 142
  - final orders 15, 16, 19–20, 21, 25–6, 28, 71–2
  - income orders (maintenance) 85
  - judicial separation orders 13, 16, 21–2
  - legal services orders 65
  - non-molestation orders 154, 155
  - nullity of marriage orders 16
  - occupation orders 154–5
  - parental responsibility orders 110, 111
  - pension sharing orders 82, 85
  - periodical payment orders 85
  - prohibited steps orders 112–13, 118, 127
  - property adjustment orders 85
  - residence orders 114
  - secured periodical payment orders 85
  - special guardianship orders 118
  - specific issue orders 113, 118, 127

- spousal maintenance orders 85–9
  - see also* laws
- credit cards, as funding option for divorce costs 65–6
- cross-petitions 13
- cultural and religious issues 21, 22, 117
- custody
  - “custody” term replaced with “living with” 109
  - mothers and custody rights 24, 116
  
- Dash (Domestic Abuse Stops Here) charity 162
  - contact details 152, 158
- decree absolute 15, 16
  - see also* final orders (formerly decree absolute)
- decree nisi 15, 16
  - see also* conditional orders (formerly decree nisi)
- decree of judicial separation 16
- decree of nullity 16
- disclosure orders 77
- dispute resolution *see* Alternative Dispute Resolution (ADR); First Hearing Dispute Resolution Appointment (FHDRA)
- dissolution *see* application for divorce or dissolution; civil partnership; Divorce, Dissolution and Separation Act (2020)
- dissolution orders 141, 142
- divorce
  - book introduction (you’re not alone) 1–2
    - advantages of having a solicitor 3–4
    - content and purpose of the book 4–7
  - defining divorce 12–13, 27
  - divorce rate 2
  - simplification of process 9–10
  - see also* application for divorce or dissolution; Divorce, Dissolution and Separation Act (2020); divorce myths
- Divorce, Dissolution and Separation Act (2020)
  - applicable to civil partnerships 142
  - from fault to no fault divorce 13–14
  - key elements 14–16
  - terminology (former and current) 16
- divorce coaches 55
- divorce lawyers 3
  - see also* solicitors
- divorce myths
  - adultery, abuse and financial settlement 24
  - common-law marriage 23, 140
  - cost of divorces 25

- custody of children to mothers 24, 116
- grandparents' visitation rights 24–5
- irreconcilable differences as ground for divorce 26
- mediation as a way to save the marriage 26, 34, 51
- “quickie divorces” 25–6
- solicitors and having to go to court 26–7
- domestic abuse
  - clients' stories 156–60
  - defining abuse
    - different forms 145, 147, 162
    - effects on victims 145–7
    - government's definition 147
    - men can be victims too 147, 162
    - often ends in physical violence 147–8
  - divorce and domestic abuse
    - financial settlements 24
    - sole application preferable 17
  - domestic abuse charities 152–4, 158, 162
  - impact on children 153
  - it's not your fault 148–9, 156, 162
  - leaving an abusive spouse 153–4
  - legal aid 64, 156
  - legislation
    - Domestic Abuse Act (2021) 150–2
    - Domestic Violence Disclosure Scheme (Clare's Law) 149–50, 162
    - Family Law Act (1996) 154, 159
  - role of the court
    - court orders 147, 154, 162
    - domestic abuse legal process 161
    - no mediation (MIAM) meeting required 37, 118
    - non-molestation orders 154, 155
    - occupation orders 154–5
    - power of arrest 155–6
    - summary 162–3
- Domestic Abuse Act (2021) 150–2
- Domestic Abuse Stops Here (Dash) charity 162
  - contact details 152, 158
- Domestic Violence Disclosure Scheme (Clare's Law) (2014) 149–50, 162
- earnings (from business) 103
- emotional abuse 147, 162
- emotions
  - staying in control of 11–12
  - support network 54–6, 171

EU (European Union)

Brussels IIA 121

United Kingdom's departure from (January 2020) 121

family arbitration

as an alternative to court 10, 27, 28, 30, 59

awards (arbitration decisions) 40, 45

control over choice of arbitrator, timings and issues 40, 51

costs 42–3, 45–6

description of process 39–41

disadvantages and advantages 41–3

what it can deal with 43–4

who is involved 44

*see also* Alternative Dispute Resolution (ADR); collaborative law; mediation; negotiation

family counsellors 68

*see also* counsellors

family home

and financial settlements 80–1

house valuations 74, 75

*see also* mortgage

Family Law Act (1996) 154, 159

Family Law Legal Aid 64

family law solicitors 3

*see also* solicitors

family lawyers 3

*see also* solicitors

family therapists 12

*see also* counsellors

family-based agreements (child maintenance) 89

farms 99

fathers

case of terminated parental responsibility 111

and parental responsibility 109, 110, 127

FDRH (financial dispute resolution hearing) 47–8

private FDR hearing 49

fees

court fees 17, 19, 27, 43, 46, 119

family arbitrators' fees 42–3, 45–6

solicitors' fees 59–60, 61, 62–3, 64, 67–8

*see also* costs

female genital mutilation (FGM) 147

FHDRA (First Hearing Dispute Resolution Appointment) 119

final orders (formerly decree absolute) 15, 16, 19–20, 21, 25–6, 28, 71–2

- finances see financial disclosure; financial settlements
- financial abuse 147, 151, 162
- financial advisors 93
- financial disclosure
  - be truthful 32, 45, 46–7, 61, 73–4, 94
  - disputes 76–7
  - family business to be included 97, 105
- forms and documents
  - bank statements 74, 75
  - business accounts 75
  - Form E (financial statement) 32, 46, 74, 77, 91
  - house valuations 74, 75
  - investment statements 74, 75
  - mortgage statements 74
  - P11Ds 75
  - P60s 74
  - pension fund valuations 74, 75–6
  - tax returns 75
- see also* financial settlements
- financial dispute resolution hearing (FDRH) 47–8
  - private FDR hearing 49
- financial remedy proceedings 71–2
  - client's story 93–4
- financial settlements
  - assets, matrimonial and non-matrimonial 72–3
  - different elements
    - child maintenance 82–3, 85, 89–90
    - family home 80–1
    - pensions 81–2
    - spousal maintenance 82–3, 85–9, 95
    - wills 83–4, 95
  - different income and capital court orders
    - capital lump sum orders 85
    - pension sharing/attachment orders 85
    - periodical payment orders 85
    - property adjustment orders 85
    - secured periodical payment orders 85
  - financial settlements and consent orders 26, 90–2
    - Statement of Information for Consent Order form (D81) 91
  - financial settlements and final orders 25–6
- laws
  - case law 79–80
  - Matrimonial Causes Act 1973 (Section 25) 72–3, 78–9, 91, 172
  - myth about abuse and financial settlements 24

- next steps 92–3
  - assets and cash 93
  - mortgage/remortgage 93
  - pension funds 93
- summary 94–5
- see also* business owners; financial disclosure
- financial statements *see* Form E (Financial Statement)
- First Hearing Dispute Resolution Appointment (FHDRA) 119
- FGM (female genital mutilation) 147
- forced marriages 147
- Form A (notice of application for financial order) 46
- Form D11 (alternate service) 20
- Form D81 (Statement of Information for Consent Order) 91
- Form E (Financial Statement) 32, 46, 74, 77, 91
- freezing injunction 17
  
- glossary (jargon explained) 177–83
- grandparents
  - effect of divorce
    - estrangement from grandchildren 129
    - guilt and despair 130
  - myth about grandparents' visitation rights 24–5
    - no automatic legal right 130, 136
  - options before going to court
    - collaborative law 131, 137
    - mediation (MIAM meeting) 131, 137
  - options involving the court
    - application for permission to apply 114, 127, 131–3, 136
    - granting of child arrangements order 133–4, 137
  - staying neutral and keeping the peace 134–6, 137
  - summary 136–7
- guardians (children's guardians) 110, 114
  - special guardians 114
  - special guardianship orders 118
  
- Hague Convention (1996) 113, 121
- harassment 125
- “honour based violence” 147, 151
- house valuations 74, 75
  - see also* family home; mortgage
  
- income orders (maintenance) 85
- Institute of Family Law Arbitrators (IFLA) 40
- investments

- and financial settlements 71, 72, 94–5
- as funding option for divorce costs 65
- investment statements 74, 75

irreconcilable differences 26

irretrievable breakdown. 14, 18, 26, 142

jargon explained (glossary) 177–83

judicial separation orders 16, 21–2

jurisdictional issues 15, 17, 18, 20, 21

## laws

- case law 79–80
  - Owens vs Owens (2018) 14
- Children Act (1989) 24, 109, 112, 113–14, 115–18
- Children and Families Act (2014) 109
- Civil Partnership Act (CPA) (2004) 139–40
- Civil Partnerships, Marriages and Deaths (Reg. etc) Act (2019) 140
- Divorce, Dissolution and Separation Act (2020) 13–16, 142
- Domestic Abuse Act (2021) 150–2
- Domestic Violence Disclosure Scheme (Clare’s Law) (2014) 149–50, 162
- Family Law Act (1996) 154, 159
- Legal Aid, Sentencing and Prosecution of Offenders Act (2012) 64
- Marriage (Same Sex Couples Act 2013) 139
- Marriage and Civil Partnership (Minimum Age) Act (2022) 141
- Marriage and Civil Partnership (Scotland) Act (2014) 139
- Matrimonial Causes Act 1973 (Section 25) 72–3, 78–9, 91, 172
  - see also* court orders

lawyer-assisted mediation 34–5, 38–9, 51

lawyers 4

- see also* solicitors

legal aid 46, 64–5, 156

Legal Aid Agency 156

Legal Aid, Sentencing and Prosecution of Offenders Act (2012) 64

legal costs *see* costs; fees

legal services orders 65

legal terminology (former and current)

- child arrangements 108–9
- divorce 16

Level (company) 66

limited companies 101, 103

“living with”, formerly “custody” 109

loans

- bank loans 65
- “soft loans” 66

third-party loans 66–7

maintenance

- child maintenance 82–3, 85, 89–90
- and separation agreements 22
- spousal maintenance 82–3, 85–9

marriage

- common-law marriages 23, 140
- forced marriages 147
- if married for less than a year 13, 21, 22
- marriage certificates 16, 27
- post-nuptial agreements 99–100, 167, 168
- pre-nuptial agreements 99–100, 165–8
- see also* civil partnership

Marriage (Same Sex Couples Act 2013) 139

Marriage and Civil Partnership (Minimum Age) Act (2022) 141

Marriage and Civil Partnership (Scotland) Act (2014) 139

marriage guidance counselling 26

matrimonial assets 72–3, 97, 104

Matrimonial Causes Act 1973 (Section 25) 72–3, 78–9, 91, 172

mediation

- as an alternative to court 10, 27, 28, 172
- description of process 34–6, 51
- direct or via solicitor 30
- lawyer-assisted 34–5, 38–9, 51
- not compulsory 36–7
- reasons to do it
  - cost-effective and empowering 36
  - grandparents’ access to grandchildren 131, 137
  - not to save the marriage 26, 34, 51
- shuttle mediation 35
- see also* Alternative Dispute Resolution (ADR); collaborative law; family arbitration; negotiation

MIAM (Mediation Information and Assessment Meeting) 37, 46, 118–19, 120, 131

mortgage

- mortgage statements 74
- mortgage/remortgage after consent order 93
- remortgage as funding option for divorce costs 66
- see also* family home

mothers

- and custody rights 24, 116
- and parental responsibility 109, 110, 127

myths *see* divorce myths

negotiation  
  direct or via solicitor 10, 30, 31–2  
  first steps 32–3  
  ideal solution 51  
  invest in early negotiation 59  
  pros and cons of solicitor negotiation 33–4  
  round table negotiations 10, 27, 28  
  *see also* Alternative Dispute Resolution (ADR); collaborative law; family arbitration; mediation  
“no fault” divorce *see* Divorce, Dissolution and Separation Act (2020)  
“no order principle” 111  
Non-Court Dispute Resolution (NCDR) 10  
  *see also* Alternative Dispute Resolution (ADR)  
non-matrimonial assets 72, 73  
non-molestation orders 154, 155  
no-win no-fee conditional agreements 67  
nullity of marriage orders 16  
  
occupation orders 154–5  
Owens vs Owens (2018) 14  
  
P11Ds 75  
P60s 74  
parental responsibility 109–11, 114, 127  
  parental responsibility agreements 110  
  parental responsibility orders 110, 111  
  *see also* fathers; guardians (children’s guardians); mothers  
Parfitt Cresswell  
  clients’ stories 93–4, 121–7, 156–60  
  contact details 173, 176, 188–9  
  domestic abuse specialist advice 162–3  
  experienced family law team 172, 173  
  family arbitration and final hearings 50  
  free initial meeting 72, 163, 173–6, 188–9  
  members of Resolution 30, 187  
  message from group director Teresa Payne 185–9  
    it’s not about revenge 187–8  
partnerships 100–1, 103  
Payne, Teresa J. (Parfitt Cresswell), message from 185–9  
pensions  
  and family arbitration 43, 45  
  and financial settlements 81–2  
  and judicial separation orders 22  
  pension fund after consent order 93

- pension fund valuations 74, 75–6
- pension sharing orders 82, 85
- periodical payment orders 85
- petition (now “application for divorce”) see application for divorce or dissolution
- post-nuptial agreements 99–100, 167, 168
- power of arrest 155–6
- pre-nuptial agreements
  - advantages 165–6
  - to protect your business 99–100
  - creating the agreement 166–8
- private court hearings 59
- process servers 155
- prohibited steps orders 112–13, 118, 127
- property adjustment orders 85
  
- “quickie divorces” 25–6
  
- Refuge 162
  - contact details 152
- religious and cultural issues 21, 22, 117
- remortgage, as funding option for divorce costs 66
- representing yourself 26–7, 64
- “residence” or “residency”, terms replaced with “spending time with” 109
- residence orders 114
- Resolution 13, 29–30, 172, 187
  - Code of Practice 27
- round table negotiations 10, 27, 28
  
- same-sex couples marriage laws 139
  - see also* civil partnership
- savings
  - and financial settlements 71, 72, 94–5
  - as funding option for divorce costs 65
- Sears tooth agreements 67
- secured periodical payment orders 85
- separation
  - vs divorce 12–13
  - judicial separation orders 16, 21–2
  - separation agreements 22–3, 141
  - see also* Divorce, Dissolution and Separation Act (2020)
- sexual abuse 111, 123–4, 147, 162
  - ban on “rough sex” as defence 152
- shuttle mediation 35

“soft loans” 66  
sole traders 100, 103  
solicitors  
    advantages of having a solicitor 3–4, 10, 11–12, 26–7  
    choosing the right solicitor 56–9, 171–3  
    “client care” material 68  
    discussing costs 53, 54  
    fees 59–60, 61, 62–3, 64, 67–8  
    finding a solicitor 29–30  
    first meeting 174–5  
    first meeting checklist 175–6  
    free initial consultations 17, 57–8, 142, 173  
    London lawyers 56  
    myths about solicitors 3, 26–7  
    no-win no-fee conditional agreements 67  
    as part of support network 55, 56  
    vs representing yourself 26–7, 64  
    specific situations  
        business owners 105  
        children’s arrangements 108, 111, 112, 128  
        collaborative law 39, 51  
        family arbitration 40, 44, 47–8, 49  
        financial disclosure disputes 76, 77  
        grandparents’ access to grandchildren 132  
        mediation 30, 34–5, 38–9, 51  
        negotiation 10, 30, 31–4, 51  
    *see also* Parfitt Cresswell  
special guardians 114  
special guardianship orders 118  
specific issue orders 113, 118, 127  
“spending time with”, formerly “access” or “residence” 109  
spouses  
    contact details 17, 27  
    spousal maintenance 82–3, 95  
    spousal maintenance orders 85–9  
        Nominal Spousal Maintenance Order 88  
    stay friendly with 60–1  
    those trying to hide assets 12, 43  
stalking 125, 147  
Statement of Information for Consent Order form (D81) 91  
statements of truth 18, 47  
strangulation 148  
support network 54–6, 171  
    *see also* “soft loans”

Supreme Court, Owens vs Owens (2018) 14

“take them to the cleaners” attitude 48, 57

tax returns 75

terminology *see* legal terminology (former and current)

The Hague *see* Hague Convention (1996)

third-party loans 66–7

unreasonable behaviour 13, 14, 148

valuations

businesses 101–4

houses 74, 75

pension funds 74, 75–6

welfare checklist (section 1(3) of the Children Act 1989)

child’s age, sex, background, and other characteristics 115, 117

child’s physical, emotional, and educational needs 115, 116–17

child’s wishes and feelings 115, 116

effect of change of circumstances 115, 117

harm the child could suffer 115, 117

parents’ capability to meet child’s needs 115, 117

range of powers available to court 116, 118

wills

and financial settlements 83–4, 95

and judicial separation orders 22

reviewing when divorcing or separating 23

Women’s Aid 162

contact details 152

Wood, Clare 149

Clare’s law (Domestic Violence Disclosure Scheme known as) 149–50,

162