



Ways forward on Separation

The procedure is usually straightforward. The difficulties tend to lie in resolving related issues such as how to separate, where to live, arrangements for the children and money matters.

Divorce

From April 2022 there is now only one ground for divorce and that is that the marriage has broken down irretrievably. It is no longer necessary or possible to refer to one of the 5 facts for divorce. These no longer exist. There is no requirement to assign blame and one party, or the couple jointly can make a statement of irretrievable breakdown. No evidence will be necessary, beyond this statement. The person who starts the divorce proceedings is known as "the Applicant" and his/her spouse is called "the Respondent".

It is often sensible to try to obtain your spouse's consent to the Application (formerly known as petition) and to try to reach agreement about the costs. Once the application has been submitted online (or on paper), there is a 20 week waiting period from the start of the proceedings. Thereafter, the Conditional order (formerly Decree Nisi) can be applied for. Six weeks later it will be possible to apply for the Final order (formerly Decree Absolute).

Regularising your Separation

If you would prefer to regularise your separation without actually divorcing there are two options available:

- Judicial Separation
- Separation Agreement

Judicial Separation

This involves a Court procedure which is virtually identical to that which applies to a divorce. The essential difference is that the Court pronounces a Judicial Separation order rather than a divorce and therefore you and your spouse would remain married.



Separation Agreement

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving any Court procedures at all. The way this can be achieved is for them to sign a written legal document which incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which maintenance and/or property are to be dealt with.

There are no restrictions on what can or cannot be included in such an agreement. If one of the parties fails to comply with the terms of the Separation Agreement, the other party can sue for breach of contract.

In any enforcement proceedings, the Separation Agreement will not be held to be binding unless the parties gave full and frank disclosure of their financial circumstances when entering into the Agreement. It is important to bear in mind that should either person make a subsequent financial application to the Court, the Court is not bound by the financial arrangements contained in the Separation Agreement.



Mediation

Mediation is a process in which an impartial third person assists those involved in family breakdown to communicate better with one another and to reach their own agreed and informed decisions about some or all of the issues relating to or arising from the separation, divorce, children, finance or property. A Mediator will set up joint structured meetings with a view to parties reaching their own decisions. This reduces the chance of damaging or expensive court proceedings. The Mediator will see you for an initial appointment on your own to assess whether or not your case is suitable for Mediation.

Collaborative

It may be appropriate for you to address the issues relating to the separation such as finance and the children through the Collaborative Family Law Process whereby the parties and their respective Collaborative lawyers agree not to go to court but instead meet round the table and work through the issues face to face until an agreement is reached. This can benefit the parties as they are not in conflict and are working together to find solutions without threatening to go to Court. The parties benefit from each having their own lawyer present to negotiate and give legal advice at the meetings.

Court Proceedings

Where it is not possible to reach an agreement as to financial matters, it may be necessary to make an application to the court for financial remedy proceedings.

The court takes various matters into account when considering what order should be made. The court considers all the circumstances of the case, gives first consideration to the welfare of any children of the family under the age of 18 and, in particular, the court has regard to the following matters:

- 1) The income, earning capacity, property and other financial resources which each spouse 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 be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
- 2) The financial needs, obligations and responsibilities, which each spouse has or is likely to have in the foreseeable future.
- 3) The standard of living enjoyed by the family before the breakdown of the marriage.
- 4) The ages of each spouse and the duration of the marriage
- 5) Any physical or mental disability of each spouse.
- 6) The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
- 7) The conduct of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard.
- 8) The value to each spouse of any benefit which one spouse because of the divorce will lose the chance of acquiring (most usually pension provisions).

The overriding factor in most cases is the reasonable needs of yourself and your spouse. The Courts expect every client to have carefully considered their position and arrived at a sensible and realistic view regarding the range of outcomes to the application.

There is a duty to be reasonable and to try and settle the case wherever possible. There can be financial penalties for failing to do so.

In most cases, the Courts no longer have power to make orders for child maintenance; an application to the Child Maintenance Service has to be made for child maintenance to be assessed.

