

The mechanics of obtaining a divorce nowadays are usually quite straightforward, particularly if the couple agrees that the marriage is over. The challenges tend to lie in resolving the related practical issues stemming from divorce such as how to separate, where to live, and arrangements for the children and finances.

Your attention will probably be concentrated on these related issues, which can mean that the process of actually obtaining a divorce is either overlooked or poorly understood. This leaflet outlines the divorce process, highlighting key points and setting out the sort of timetable you can expect.

Who can start divorce proceedings?

Anyone who has been married for over a year provided one or other of the couple is either domiciled here or has been a resident in England or Wales during the preceding year. It does not matter where the marriage took place.

On what grounds can a petition be started?

The only ground for divorce is that the marriage has irretrievably broken down. However, a divorce will only be granted if one of five facts that prove irretrievable breakdown is established.

What are the facts?

- Your spouse has committed adultery and you find it intolerable to carry on living together.
- Your spouse has behaved in such a way that it would be unreasonable to expect you to keep living together.
- Your spouse has deserted you for a continuous period of two years or more.
- You and your spouse have been living separately for a period of two years or more and your spouse agrees to the divorce.
- You and your spouse have been living separately for five years or more, whether or not your spouse consents to the divorce.

If the marriage has irretrievably broken down and one of the five facts applies, what happens next?

This will depend upon your particular circumstances. It is often sensible to try to obtain your spouse's consent to the petition and try to reach agreement over the contents of the petition for divorce – this is the document that states why you are divorcing.

For example, if your spouse agrees that the petition should be based on unreasonable behaviour, you need only provide a brief outline of the particular behaviour. You do not have to go into great detail and the absence of such detail will not usually prejudice the proceedings.

What does the petition actually look like?

Every petition follows the same form. It contains the basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down. It will also state the “fact” on which it is intended to rely.

The petition will include a section (known as a “prayer”) that includes a request for the divorce to be granted. It may also include a request for an order relating to children; a claim regarding costs of the divorce; and an order for financial provision.

How much does the divorce cost?

We offer a Fixed Fee for undefended divorce: £1000 plus VAT plus court fees of £550.

Are financial issues dealt with before the divorce is finalised?

It is not necessary for financial discussions to be completed by the time the divorce is final, but it is usually advisable. This is because certain benefits of being a spouse are lost on the grant of a Decree Absolute of divorce, such as widow's pensions and inheritance tax exemption.

Are the proceedings public?

Court proceedings in undefended divorce are usually private. This means that the public and press are not allowed access to the court papers. However, the press are able to publish the fact that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the “facts” of the divorce but they are not able to publish details of any adultery or unreasonable behaviour.

Timetable

After one year of marriage:

Either spouse may start the divorce. He or she is referred to as the “Petitioner”. The petition is completed and sent to the family court together with the marriage certificate. A fee (currently £550) is payable.

On issuing the petition, the court sends copies to the other spouse, referred to as the “Respondent”. A copy of the petition is also sent to anyone named in the adultery petition, although it is very unusual to involve a third party in this way.

From the date the documents are received, the Respondent has time limits to observe.

Within eight days:

He or she should send to the court a form called an “Acknowledgment of Service” which accompanied the petition. The form asks the Respondent to acknowledge receipt of the papers, indicate whether he or she intends to defend the petition, and whether any claim for costs is disputed.

Within 29 days of receipt (longer if the documents have to be sent to an address abroad):

Whether or not an Acknowledgment has been filed, the Respondent must, if he or she intends to defend the petition, file a Defence (called an Answer). The petition then becomes defended and the procedure outlined below does not apply. Defended divorce proceedings resulting in a fully contested hearing are very rare and are not necessarily private. A delay in finalising the divorce is inevitable.

Within a few days of receiving the Acknowledgment of Service from the Respondent (and Co-Respondent) the Court sends to the Petitioner’s solicitor a copy of the Acknowledgment(s) of Service.

If the Respondent is not defending the petition, the Petitioner can prepare an application for the Decree Nisi to be pronounced. This is an order by the court stating the date on which the marriage will end unless a good reason not to grant a divorce is produced.

The Petitioner must complete a Statement confirming that the contents of the petition are true. It will also state whether any circumstances, including those relating to any relevant children, have changed since the filing of the petition. The petitioner will sign and date the Statement and it will then be sent to the court with the request for a date for the first decree of divorce (“Decree Nisi”) to be pronounced.

What happens if the Acknowledgment(s) of Service is not returned to the court?

Proof that the Respondent and any named Co-Respondent have received the petition will have to be obtained before the Petitioner can take the next step. This may involve arranging for someone to deliver the petition personally or, exceptionally, obtaining a court order that proof does not need to be given that the Respondent and Co-Respondent have received the petition. This is called “dispensing with service”.

On receipt by the Court of the application for the Decree Nisi and Statement, the District Judge reviews the papers and, if they are in order, gives a certificate for the Decree Nisi. Depending on the Court’s diary, the date is likely to be a few weeks after the application is lodged. The couple does not have to attend court.

Six weeks and one day after the date of Decree Nisi:

The Petitioner may, if appropriate to do so, apply for the final decree (“Decree Absolute”) by sending the appropriate form to court. This step does not happen automatically and is advisable to ensure that any questions over finances have been resolved by way of a court order before this step is taken. Once the application is received by the Court it will be dealt with quickly and the Decree Absolute may be available within a few days.

Alternatively, the Respondent may apply for the Decree Absolute if the Petitioner has not already done so within three months of this being possible.

For further information please do not hesitate to contact a member of our family team.

Financial Arrangements on Divorce

For many people, the financial and practical issues associated with relationship breakdown and divorce are more immediate and pressing than the legal process of the divorce itself. But they can also seem overwhelming.

At Morr & Co, we provide practical and pragmatic advice to guide you through the process and help you make the complex and strategic decisions necessary to reach a settlement. This could include:

- Seeking assistance for payment of your costs through litigation funding or an order against your spouse to pay a sum for your legal costs (a 'Legal Services Order')
- Negotiating financial settlements, whether in court proceedings or otherwise
- Ensuring and assessing full and proper financial disclosure
- Obtaining expert reports if needed, e.g. a pension report or business valuation and helping you to understand them
- Emergency matters such as interim maintenance ('maintenance pending suit') or freezing orders to prevent assets being dissipated, and enforcement of orders if they are breached
- Advising and assisting where court orders need to be re-considered, including variation of maintenance, or a capital payment in place of maintenance, to enable a clean break.

We can advise you on the court's powers and procedures in relation to a wide range of issues relating to financial arrangements in divorce, dissolution and separation cases, including:

- What 'Fairness' means with regards to a 'fair' distribution of assets and the court's far reaching powers.
- Court Orders on Divorce or Dissolution of Civil Partnership – the court has wide-ranging powers to make financial orders
- Court Procedure – Court Applications for Financial Orders ('Financial Remedy Proceedings')
- Treatment of different types of asset:
 - Inherited or Pre- or Post-acquired Assets
 - Family Businesses
 - Trust Assets
 - Treatment of Pensions

Determining 'Fairness' on Divorce or Dissolution of Civil Partnership

The court has very wide discretion when deciding how family assets should be shared. It can also alter the ownership of existing assets, order that assets be sold, or even overturn transfers of assets that have already taken place.

In deciding how the assets should be shared, courts must give first consideration to the needs of any children, if they are still minors. Once this has been done, the ultimate objective is to achieve a 'fair' outcome between the parties and, in doing so, courts will consider the following factors, which are set out in s25 of the Matrimonial Causes Act:

- The income, earning capacity, property and other financial resources that each of you have or are likely to have in the foreseeable future, including efforts to improve earning capacity if appropriate
- The length of your marriage, including pre-marital cohabitation
- Your ages and any physical or mental disabilities
- The financial needs and obligations you each have or are likely to have in the foreseeable future
- Your standard of living prior to the marital breakdown
- The contributions each of you have made or are likely to make in the foreseeable future, including contributions by way of looking after the home and children
- The conduct of both parties, but only where such conduct is so bad it would be unfair to disregard it
- The value of any benefits that might be lost, such as pension provision

The significance of each of these factors and weight given to them will vary from case to case.

Increasingly, courts are also taking into account the terms of any pre- or post-nuptial agreements.

Courts will always be looking at achieving an equal division of assets, and will only depart from equality where such a departure is justified, such as where the housing needs of the children require it. This is known as the 'sharing principle'.

Court Orders on Divorce or Dissolution of Civil Partnership

The court has very wide powers and can make a variety of orders, which usually include one or more of the following:

- Property Adjustment Orders, such as orders for the sale of the home or for its transfer from your joint names to one of your sole names
- Lump Sum Orders for the payment of a sum of money by one of you to the other
- Pension Sharing Orders, such as where one of you has a larger pension than the other, the court may order funds to be transferred from one pension scheme to another
- Maintenance Orders, either on an interim basis as 'Maintenance Pending Suit' to provide support until the case is concluded, or as a Periodical Payments Order as part of the final order

Court Procedure – Court Applications for Financial Orders ('Financial Remedy Proceedings')

Financial application (Form A) filed with the court.

Court fee: £255

On receipt, the court sets a timetable, giving dates for certain steps to be taken plus a date for a hearing (the 'First Directions Appointment' or 'FDA').

A hearing should be listed 12 – 16 weeks later.

NB: *With a Form A, it is now necessary to file a form FMI stipulating what efforts have been made to resolve the matter through mediation (please refer to our Mediation section for further information).*

At least 35 days before the hearing date: Financial Disclosure – Form E

Both parties must prepare a statement of their financial position. This is called Financial Disclosure.

These statements are in a standard form. It is known as a Form E and is quite detailed, requiring numerous documents to be attached, including bank statements for the past year, p60s, payslips for the last three months, property valuations and pensions information.

The obligation on both parties is to provide full financial disclosure, including such documents and information as is appropriate to give a complete picture.

At least 14 days before the FDA: FDA documents

- Chronology
- Statement of Issues
- Questionnaire and request for further documents

The first two of these documents deal with the basic background to the case, contextualising it for the judge.

The questionnaire is an important opportunity to request further information or documents needed from the other party to complete their financial disclosure.

Court Hearing: FDA

Parties and legal advisers must attend all court hearing in financial remedy proceedings.

The purpose of the FDA hearing is to consider what, if any, further information and documentation is necessary to enable the court to make a decision over the overall financial outcome to the case.

The District Judge might therefore make various orders, for example:

- An order that the matrimonial home is valued
- An order that the pensions are valued
- An order that a business is valued

- A timeline for questionnaires to be answered (usually the order is for replies within 28 days)
- (NB amendments to questionnaires are often ordered).
- The next hearing date.

The FDA hearing is not specifically about trying to settle the case but it is not uncommon for negotiation to take place. By agreement, additional orders can be made, such as orders for interim maintenance to be paid at an appropriate level. So, despite the FDA hearing being primarily procedural, it can be a very useful and productive hearing.

Court Hearing: FDR

The second court hearing is designed to encourage and help the parties to settle the case. This is known as the Financial Dispute Resolution hearing (FDR).

Prior to this hearing, both parties must attempt to negotiate. Copies of offer letters must be provided to the court to assist the District Judge hearing the case.

This is a 'Without Prejudice' hearing, which means that offers can be made that will not subsequently be referred to in court if the case does not settle.

If an agreement is reached, it will be set as a court order by way of a Consent Order, concluding the case.

If no agreement is reached, the District Judge will set a further timetable to prepare the case for Final Hearing. Orders may be made for updating financial disclosure etc.

Final Hearing:

A few weeks before the Final Hearing, the parties may be required to submit statements setting out their case by reference to the factors laid out in s25 of the Matrimonial Causes Act (see 'Determining "Fairness" on Divorce or Dissolution of Civil Partnership')

Before the Final Hearing the Applicant and the Respondent must make proposals to settle the case and those proposals will be provided to the court adjudicating the matter.

The Applicant is required to prepare the bundles of documents and evidence for the court. There are rules on how bundles of documents are prepared and evidence and documents which are to be included.

The parties and their solicitors or barristers attend the Final Hearing.

The Judge will hear evidence and they will be subject to cross-examination. The judge will then make a final binding decision providing for the division of matrimonial capital and income.

Costs: The court may make an order requiring one party to pay some of the other's costs in cases where conduct is deemed to have been very poor. However, this is rare and each party will usually be required to pay their own costs.

Few cases go all the way to a Final Hearing with most settling at some point along the way.

Types of assets

- Inherited or Pre- or Post-acquired Assets
- Family Businesses
- Trust Assets
- Treatment of Pensions

Inherited or Pre- or Post-acquired Assets

Not all assets are viewed by courts as family assets.

Certain assets can be treated differently, but only where it is possible to achieve a 'fair' outcome without recourse to them. However, courts have wide discretion and determining what might be a 'fair' outcome is a subjective matter.

Courts will, for example, often regard inherited assets or assets acquired by you before the cohabitation began or after you separated, as 'non-marital' assets. It is therefore sometimes possible to ring-fence those assets from inclusion in the settlement. When deciding whether an asset can be ring-fenced, courts will consider the following:

- The nature and value of the asset

- When you acquired the asset
- The length of your marriage
- Whether the asset still exists
- Whether the asset has been mixed in with other family assets, or was kept separately
- Whether the asset is needed in order to achieve a fair overall outcome

Generally, the longer the marriage and the more the asset has been enjoyed by both parties during the marriage, the less likely it is that the court will allow it to be ring-fenced from the settlement.

Family Businesses

Dealing with businesses in divorce or dissolution can throw up a range of challenging issues, including:

- Correctly valuing the business and shares held in it, and the income stream available from it
- Whether to treat it as a capital asset with a sale value, or an income stream, producing valuable income to support the family – or a combination of both
- Making appropriate allowance for any inherited element of the business and third-party interests
- Taxation issues that may arise

Business and share ownership can be very complex and finding ways to appropriately structure a settlement following relationship breakdown can be extremely difficult.

Family courts have a very broad discretion to deal with assets as they choose, but they will try to avoid threatening the viability of the business. This is a key concern where the business produces a significant income stream for the family, which will be the backbone of any future maintenance payments.

We have close links with accountants, tax experts and financial advisers, and can assist you in coming to efficient and fair solutions, taking account of the business needs and both short and long-term needs of all parties involved.

Trust Assets

Trust assets are often a valuable resource in a case. It might be that only one of you is entitled to benefit from a trust, but it is nonetheless a financial resource and as such, is relevant and will be considered.

When considering overall 'fairness', courts are bound to take into account not only the assets as they now are, but also such assets as you '...are likely to have in the foreseeable future'. Clearly, this could include trust assets that you have already received, but it could also include those from which you may soon benefit. In simple terms therefore, trust assets or an obvious entitlement to trust funds may be a key factor in a case. However, trusts and their assets are rarely straightforward and there can often be very significant sums of money at stake.

Courts have an additional power in relation to some trusts, namely, to vary the terms of a trust, to make financial provision for one of you or, indeed, for your children. These additional powers relate to nuptial settlements, i.e. where the trust is for the benefit of one or both of the married couple and it was created because of, or by reference to, the marriage. This is a complex area of law and determining whether a settlement is a nuptial settlement is far from simple.

Because trusts often involve significant complexity, it is usually a good idea to take expert advice. We work closely with our private client department, tax experts and independent financial advisers to provide you with that advice and devise appropriate strategies to achieve a fair outcome for you.

Treatment of Pensions

Pensions are often one of the largest assets in a case.

Courts have the power to deal with them in several ways, including pension sharing orders, pension attachment orders, and off-setting them against other assets. For example, one party may prefer to keep a larger share of the family home and while the other may prefer to keep more of the pension investments.

Pension sharing can only take place upon a Decree Absolute of divorce, dissolution of a civil partnership, or nullity.

All forms of pensions in the UK can be subject to pension sharing orders, except for the basic state pension. This applies whether they are still being paid into, are frozen, or are already in payment following retirement or draw down.

A pension sharing order will specify the percentage amount that is to be deducted from the pension holder by way of

pension debit and paid to the other party's pension scheme as a pension credit.

It is often necessary for the beneficiary of a pension sharing order to set up their own pension scheme in order to receive a pension credit i.e. to create somewhere to put the pension credit.

Pensions are complex and the law relating to them is constantly changing. It is often extremely difficult to assess the value of the pension schemes to the parties and, confusingly, the value may differ significantly in amount between the pension holder and the non-pension holder, by virtue of their age or health. It is also difficult to quantify the loss of the pension benefits as a result of the divorce. Expert advice is essential, from an actuary or other such pension expert.

We work closely with pension experts and can refer you to suitable professionals, to assist you in understanding the value of your pensions and any pension credit received, and in deciding how to invest any pension credit you may receive by way of a pension sharing order.