

Divorce

The Process

To begin divorce proceedings, you need to have been married for at least a year. One of the parties must file a Divorce Petition at court stating that the marriage has “irretrievably broken down”. This has to be based on one of the following five grounds:

- Adultery by the other party (save on a same sex marriage)
- Unreasonable behaviour by the other party
- Two years’ separation with the consent of the other party
- Five years’ separation (no requirement for the consent of the other party)
- Desertion by the other party

The Children

Where children are involved, if such issues as where the children will live and who they will spend time with cannot be agreed this may involve one or both parents applying for a Child Arrangements Order.

Undefended or defended

If both parties agree that the divorce should proceed undefended, the procedure is quite straightforward and does not require attendance at Court. If the divorce is defended (which is rare), a full hearing in Court will be required, with both parties to attend.

Procedure for an undefended divorce

- 1 Appoint a solicitor to represent you. Discuss the grounds for divorce with your solicitor and proposed arrangements for any children. Your solicitor will then send the Divorce petition to Court together with marriage certificate and Court fee.
- 2 The court will register the case and post the papers to the other party (known as “the Respondent”) or their solicitors, with an Acknowledgement of Service form.
- 3 The Respondent, or their solicitors, will complete the Acknowledgement of Service form, stating that the Petition will not be defended and send it back to the court.
- 4 The court sends the Acknowledgement of Service form to your solicitors.
- 5 Your solicitor drafts a statement in support of the application for Decree Nisi, which is then sent to the Court.
- 6 The District Judge looks at the papers and decides whether to grant Decree Nisi.
- 7 If the Judge decides to grant the Decree Nisi, both parties are informed that it will be read out in court on a certain date and time (but the parties do not need to attend).
- 8 A copy of the Decree Nisi is sent to both parties.
- 9 Six weeks and one day after the Decree Nisi you can apply for the Decree Absolute.
- 10 The Decree Absolute is sent by the Court to both parties.
- 11

Finance

The Decree Absolute ends the marriage but it does not dismiss the potential financial claims that the parties have against each other or sort out where the parties are going to live. Decisions have to be made regarding property, pensions and maintenance issues. Both you and the other party must disclose your income and assets to each other.

Divorce

Continued

Finance Continued

Once agreement is reached regarding financial matters, the solicitors draft a Consent Order, which is signed by both of you and sent to the Court for the District Judge to approve.

If child maintenance cannot be agreed, then it will be necessary to apply to the Child Maintenance Service (CMS) for an assessment.

Options

There are various options available to you when resolving disputes and it is important that you are aware of all of them so you can choose the best way forward for you.

- 1 **Direct agreement between you.** This is where you come to an agreement yourselves by talking to each other directly. It is important that you instruct a solicitor to advise on the proposed agreement. The solicitor can then take steps to make the agreement legally binding for you if it is appropriate.
- 2 **Mediation.** You can seek the assistance of a third person to help you communicate and reach an agreement. The mediator cannot give legal advice. Again, once an agreement is reached, a solicitor must be instructed to advise on the proposed agreement and thereafter take steps to make the agreement legally binding if appropriate.
- 3 **Instruct a solicitor** to pursue an Out of Court Agreement or to deal with proceedings at Court (providing you have attended, at the very least, a Mediation Information meeting).
- 4 **Deal with matters collaboratively,** with solicitors trained in collaborative law. This involves a series of open discussions with everyone present and a commitment not to use the court process.

For more advice contact Erica Cottrell or Tina Coward on 01722 410664 or email erica.cottrell@sampsoncoward.co.uk or tina.coward@sampsoncoward.co.uk