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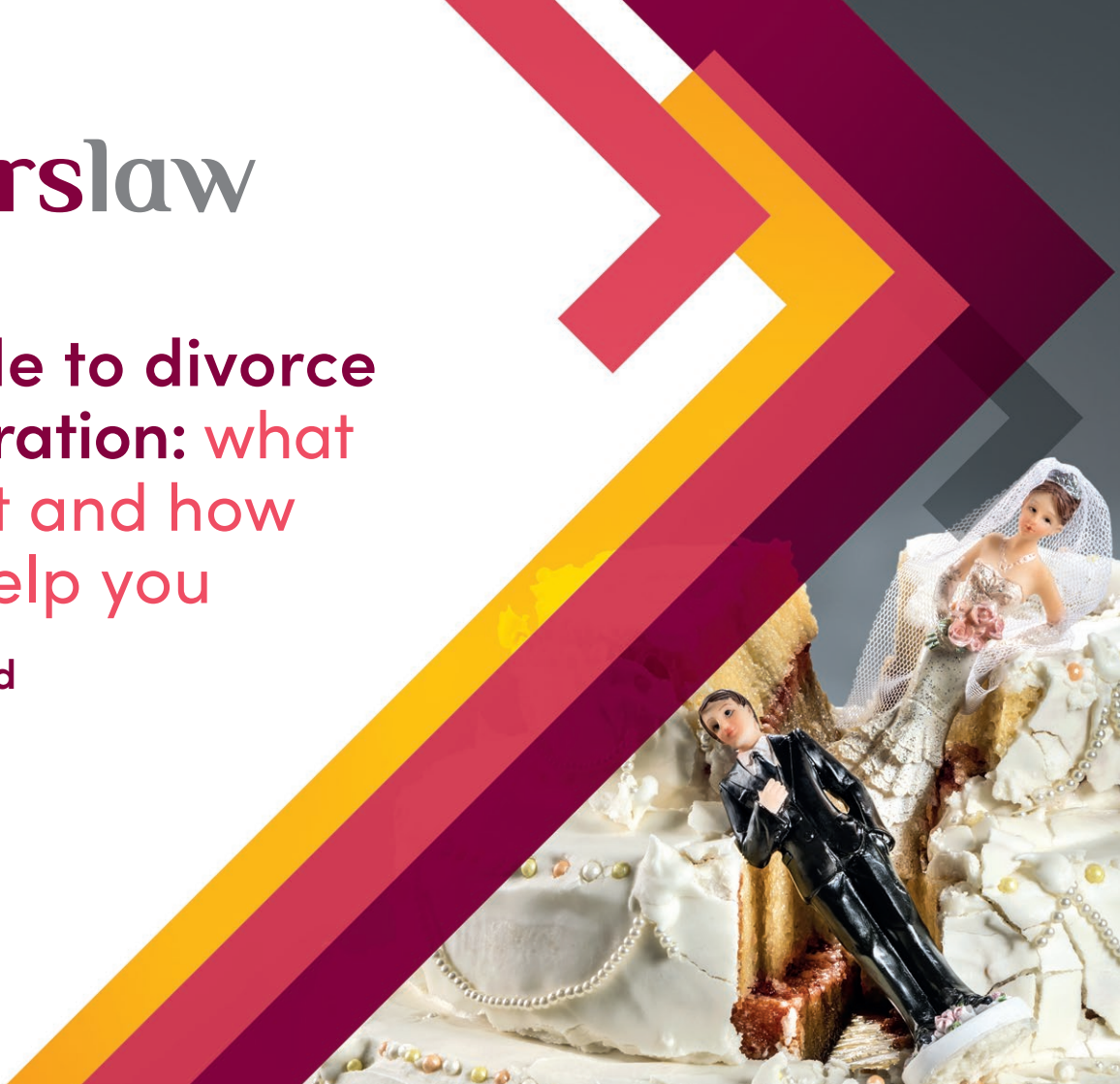
Your guide to divorce and separation: what to do next and how we can help you

Moving forward together



Even the most amicable divorce or dissolution is likely to be difficult and stressful at times. If you are already feeling upset and angry, then worrying about legal proceedings, your financial arrangements and what happens to you – and your children – can be an additional concern.

If you have not consulted a solicitor before, you may also feel anxious about seeking legal advice. In fact, this is one of the wisest moves you can make.

Independent legal advice can be crucial in helping to resolve issues within divorce or if you have concerns about financial issues and how to divide your property, assets and/or liabilities.

Your solicitor's job is to look after your best interests, and those of any children. They will give realistic, professional advice that is right for you and your circumstances, using their knowledge of the law and their professional experience.

Divorce law has been designed to be flexible enough to meet the different needs of every couple affected – more than 100,000 marriages end in divorce each year in England and Wales alone – so at times it can seem complex and confusing.

This guide covers some of the key points relating to separation and divorce. For simplicity, we use "partner" to mean a husband, wife or civil partner and "married" to describe being married or in a civil partnership. We also use the word "divorce" for both married couples and civil partners, although the legal word for the equivalent of divorce for civil partners is "dissolution".

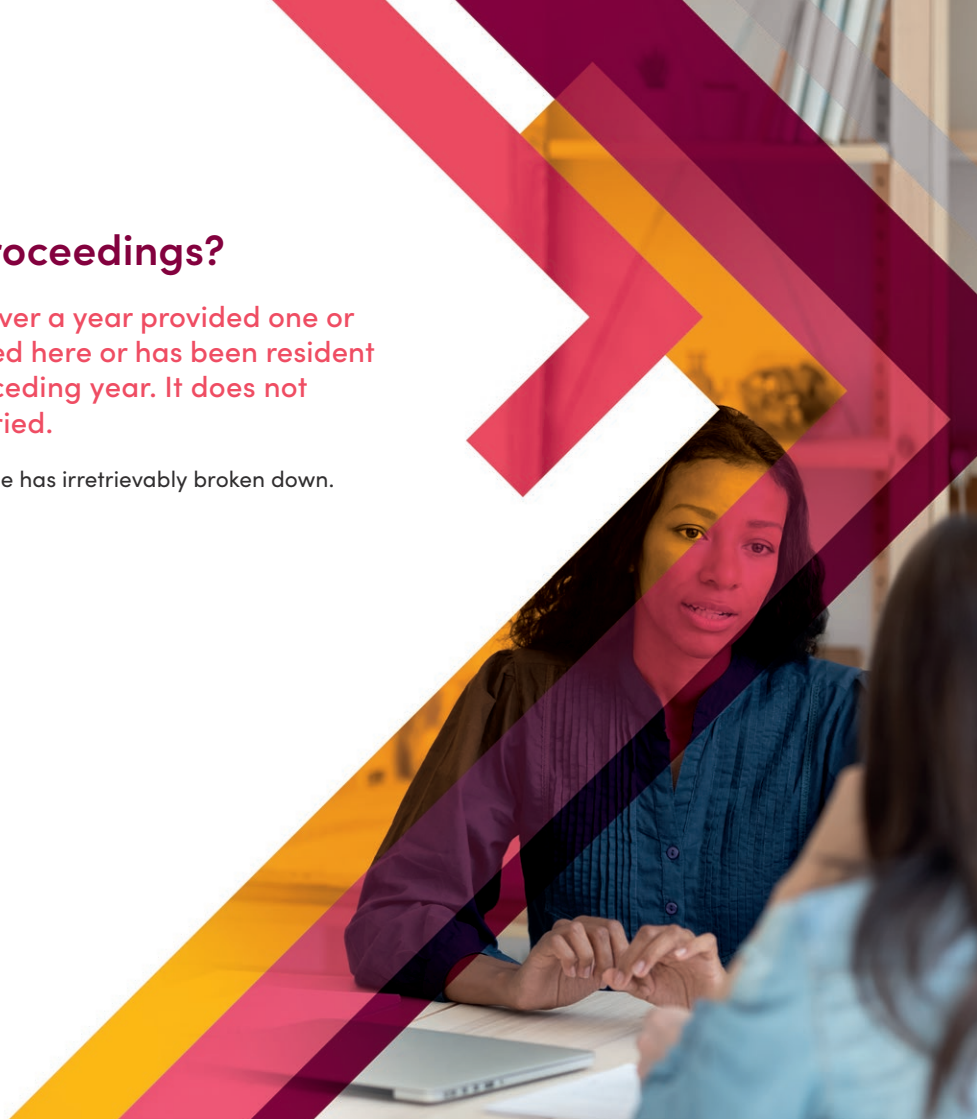
The law is substantially similar for both marriages and civil partnerships and we raise the main differences between them.

Divorce

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 resident in England or Wales during the preceding year. It does not matter where the couple were married.

The only ground for divorce is that the marriage has irretrievably broken down.



If you are filing for divorce, you set out your evidence in a document called an application. If you file for divorce you are called the applicant and your spouse is called the respondent. Both you and your spouse can file for divorce jointly with you being applicant 1 and your spouse being applicant 2.

In the case of you proceeding to issue an application in your sole name, your spouse is then required to acknowledge receipt of this. Whilst your spouse is not able to defend the divorce, they may dispute this on jurisdictional or validity grounds, should these apply. If you proceed with a joint application with your spouse, then you will proceed straight to the next stage of the divorce.

You are required to wait 20 weeks before applying for your conditional order which is the first stage of the actual divorce. This confirms that there are grounds for divorce. The final stage of the divorce is called a Final Order, for which either you or your spouse can apply for six weeks and one day after the conditional order is pronounced. When you receive the Final Order, you are no longer married.

It is not necessary for financial discussions to be completed by the time the divorce is final. Frequently they will still be in the early stages if finances are complicated. However, it should at least be possible to resolve immediate problems and make temporary maintenance arrangements. In many cases however it may be more advantageous to delay the Final Order until financial matters are resolved. Any financial order will also only come into force after the Final Order has been made.

It is important to keep the Final Order safe as you will not be able to remarry without it.

Financial relief

Either party, regardless of who initiated the divorce proceedings, can claim ancillary relief, which may deal with the sale or transfer of property, maintenance payments, a lump sum payment and/or a pension sharing or attachment order. Such a claim can be made at any time, sometimes many years after the divorce or dissolution.

There are alternative methods available to help you resolve your disputes following the breakdown of the marriage, other than court proceedings. These are mediation and collaborative law, but these may not be suitable for everyone and both parties have to agree to attend.

All potential applicants for a court order are now expected to attend mediation. This is a cost-effective way of resolving matters. The parties would attend a "Mediation Information and Assessment Meeting" (MIAM) together or separately. The aim is to help the parties to find a solution. If you are unable to resolve matters and it does become necessary to issue court proceedings, then you would be required by the court to file a Family Mediation Information and Assessment form. This would confirm to the court that you have attended mediation and the matter has not been resolved.

Collaborative Law is also an alternative to issuing court proceedings. The parties involved have their own solicitors and formally agree in writing not to go to court. They then try and reach an agreement by having meetings together.

The financial proceedings are separate from the divorce proceedings but can only be commenced once a divorce is underway. To start these proceedings, a document known as Form A must first be filed at court.

The court will then draw up directions and both parties will disclose their financial circumstances to the other. A financial statement must be filed at the court and exchanged with the other person. The financial statement is known as a Form E. This is an extensive financial statement giving details of your current financial position including any other details which you feel are relevant for the court to take into account when determining your application. Sometimes certain documents may need to be filed with the Form E, such as bank statements and pension details.

The parties can then set about seeking a financial settlement without the court's involvement.

If an agreement cannot be reached between the parties, then the matter will be heard by a Judge at what is called a first directions appointment (FDA). This hearing is utilised as a "housekeeping" hearing, ensuring that the parties have disclosed their full financial position supported by documentation. The Judge will give directions as to any other documents that will need to be filed, such as valuations of properties.

If the parties have made full disclosure, then this hearing may be converted into a Financial Dispute Resolution (FDR) hearing.

No financial order can be made by the court at this point without the consent of both parties. The same also applies for the FDR hearing, if this is necessary.

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Legal 500
August 2021

If the finances still cannot be resolved, then the financial application will be heard at a final hearing, when the court's order will be imposed and binding upon the parties, subject to both parties being open and transparent about their finances. If this has not happened, one party might choose to bring the matter back before the court.

The court has powers to make the following orders within ancillary relief proceedings:

The court may make an order that covers any or all of the above. Not all of the orders that are available may be suitable or appropriate in your case. Whether you would be successful in obtaining an order in respect of any of the above depends upon the circumstances and both you and your partner's financial position.

If you need help deciding whether you can apply for an order, it would be wise to seek legal advice. Even if you think you can reach an agreement with your former partner, talking to a solicitor will make sure your interests are protected.

Divorce and children

When a relationship ends in divorce, the welfare of any children involved is paramount.

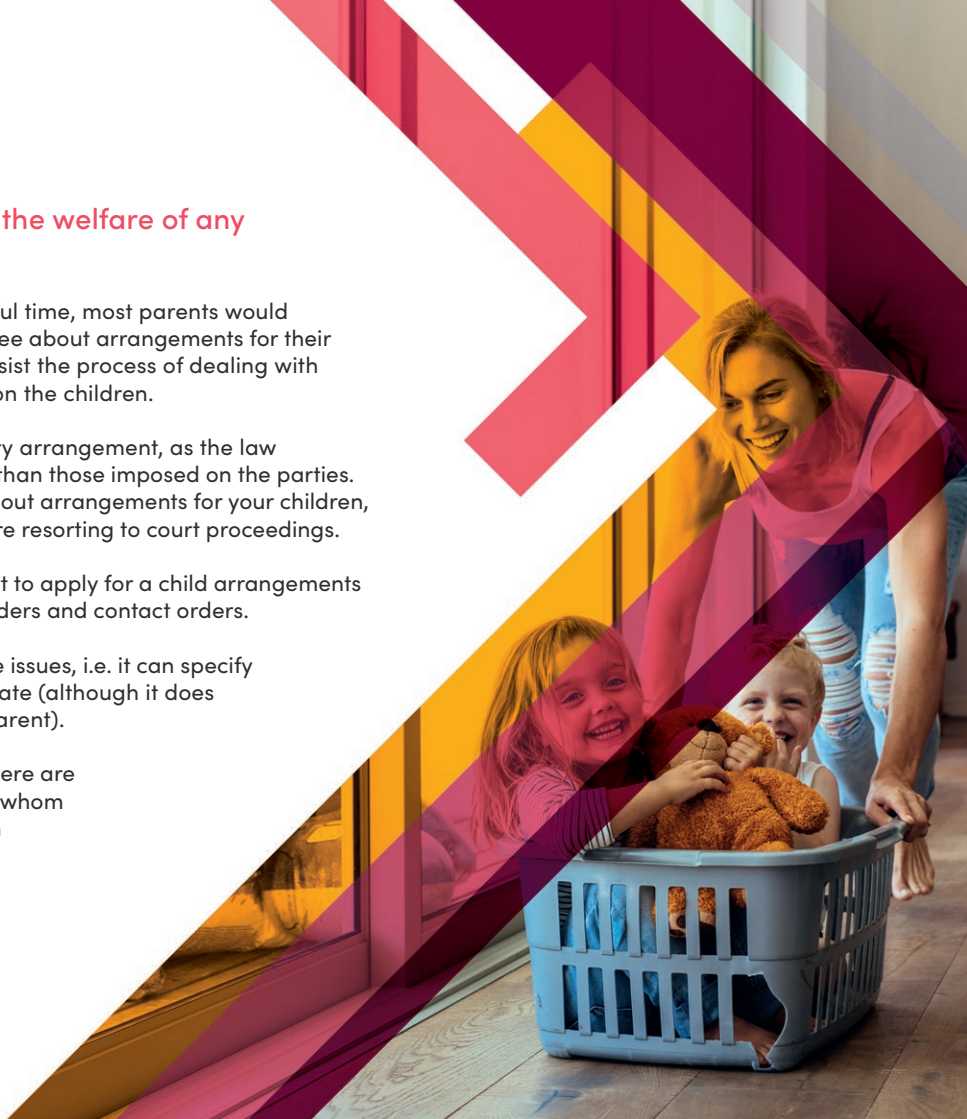
During what is likely to be a difficult and stressful time, most parents would ideally wish to put their differences aside to agree about arrangements for their children. Consulting a family solicitor should assist the process of dealing with the breakdown of a marriage and its effect upon the children.

The courts are unlikely to interfere in a voluntary arrangement, as the law considers that these are more likely to succeed than those imposed on the parties. If you and your former partner cannot agree about arrangements for your children, both parties will need to attend mediation before resorting to court proceedings.

If all else fails, it may be necessary to go to court to apply for a child arrangements order. These orders have replaced residence orders and contact orders.

A child arrangements order can cover residence issues, i.e. it can specify where the child will live in if their parents separate (although it does not necessarily mean they have to live with a parent).

In difficult relationship breakdowns, or where there are concerns about a child's safety, the parent with whom the child lives may try to prevent the other from contacting the child.



The other parent can then apply to the court for a child arrangements order for contact, which will set out who a child can have contact with and, if necessary, where this will take place and on what days and times. The order can cover contact in writing, by email, telephone or face-to-face visits, including overnight.

The court will only grant a child arrangements order if it believes it would be in the child's best interests to do so.

Legal advice should always be sought before proceeding with any sort of application. Even if you feel that you have no alternative but to go to court, the experience of a family solicitor may help to resolve the problem before it goes that far, by providing practical, professional advice.

Although your marriage or relationship may have ended, you will continue to be a parent with your ex-partner for the rest of your life. This issue should be borne in mind before or during any proceedings.

Although it may be difficult, exploring every possible way to work with your ex-partner to make joint decisions about your children – with your solicitor or perhaps through mediation – is a hugely important step in protecting them from the worst anxieties and anger of divorce or dissolution, and ensuring that they continue to have a loving relationship with both parents.

Separation

Some couples may wish to separate without divorcing and there are several ways to do this legally and for tax and state benefit purposes.

Separation usually involves living apart, but you can live in the same property and still be separated if you no longer sleep and eat together or do any domestic chores, such as ironing or washing, for each other. If you decide to separate, you can:

- live separately and apart without any agreement relating to children, money, property or other issues
- live separately and apart, putting your agreement on children, money, property and other issues into a document called a deed of separation, which you should get a solicitor to prepare
- sign a legal document, incorporating the deed of separation. This is called a separation agreement and is not legally binding
- a judicial separation (or separation order for civil partnerships). This is a court order, and virtually the same as a divorce, but the partners cannot marry anyone else nor obtain a final financial order dismissing all claims against each other (a "clean break"). If the partners decide at a later date that they want to divorce, they will still have to go through the divorce process.

> *"Palmers 'is an excellent firm that provides efficient and competent advice for a reasonable cost' in matters such as divorce, financial remedy, cohabitation, nuptial agreements, private law children matters (including special guardianship), civil partnership dissolution and domestic violence."*
>
> Legal 500
> *August 2017*

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