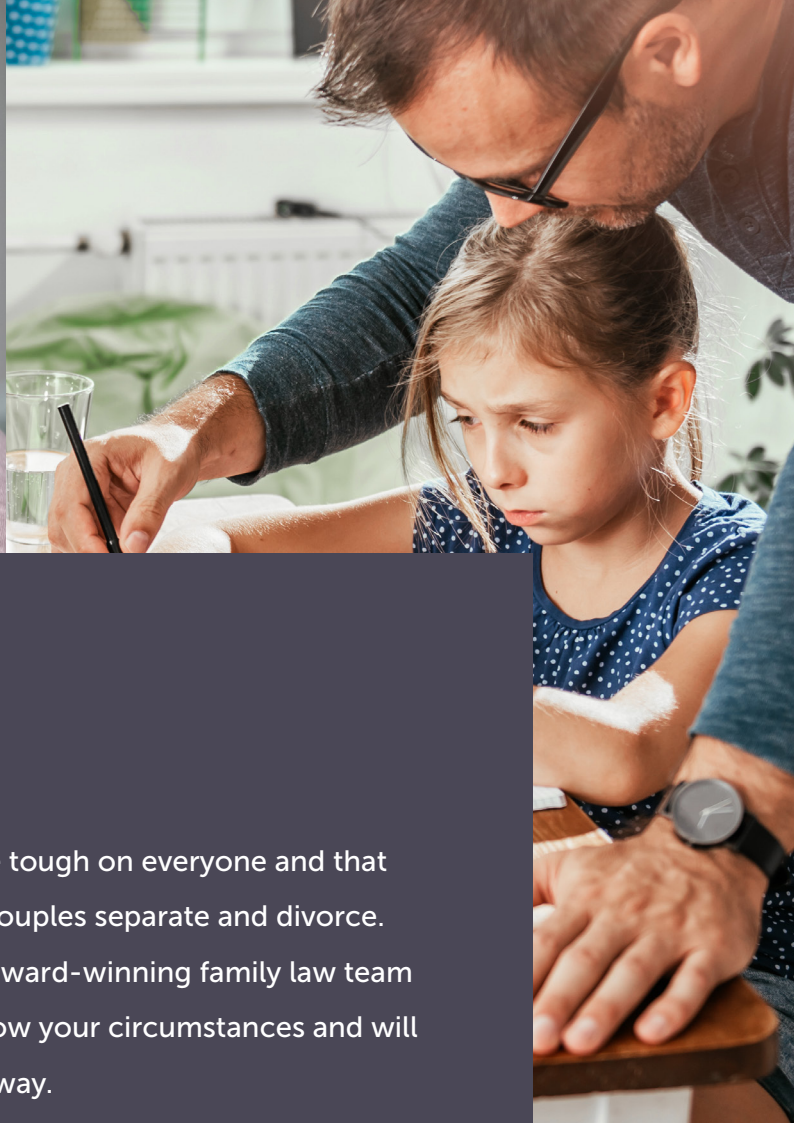




The Divorce Process

We know what you are going through, and we are here to help.



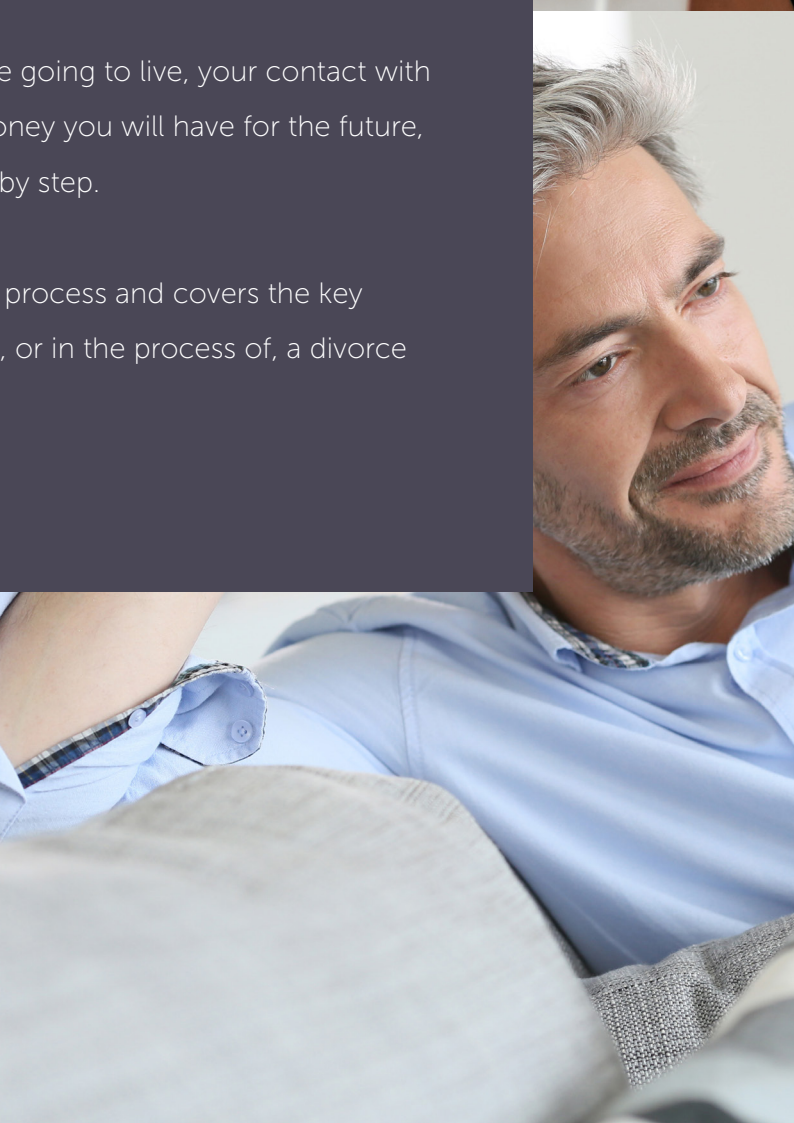


We know...

That family breakdown can be tough on everyone and that there are many reasons why couples separate and divorce. Whatever your situation, our award-winning family law team will take the time to get to know your circumstances and will be with you every step of the way.

Don't worry about where you're going to live, your contact with your children or how much money you will have for the future, we'll guide you through it step by step.

This guide explains the divorce process and covers the key points that anyone considering, or in the process of, a divorce should understand.



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The Divorce Process

The divorce process is usually broken down into 3 separate stages which will be dealt with as three separate matters.

1

The Actual Divorce (No Fault Divorce)

This is the process of legally bringing the marriage or Civil Partnership to an end. This is often the part with the least disagreement between both sides and can usually be done on a fixed fee basis.

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2

Financial Arrangements

This includes how any assets, including the family home will be distributed and whether any maintenance will be paid.

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3

Arrangements for children

This covers who the children will live with, contact rights for the other partner and any financial maintenance.

These processes are separate but are often in progress at the same time. For example, you may be in the process of ending the marriage, whilst also negotiating over a financial settlement.

Our expert divorce solicitors are highly experienced and will treat each case uniquely depending on your circumstances

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Stage 1 – The Actual Divorce (No Fault Divorce)

Ending the marriage/civil partnership.



With the new no fault divorce process, a couple can file for divorce once they have been married for at least 12 months. There is no need to apportion blame or fault, as was the case under the previous law when parties had not been separated for a period of over 2 years.

No fault divorce removes the need to prove one of the five facts of divorce (adultery, unreasonable behaviour, desertion of two years, separation of two years with consent to divorce and separation of five years without consent). Instead, only a statement of irretrievable breakdown will be needed.

What no fault divorce means for separating couples

The Divorce, Dissolution and Separation Bill which introduces no fault divorce will:

- Keep the sole ground of irretrievable breakdown of the relationship
- Remove the requirement to establish one or more facts to prove irretrievable breakdown
- Introduce joint applications where the couple both agrees that the relationship has irretrievably broken down (applicants will still be able to submit a sole application if their partner does not agree)
- Remove the ability to contest a divorce, dissolution or separation
- Introduce a new minimum period of 20 weeks from the start of proceedings to when the 'Conditional Order' can be made
- Keep the 6 week period between the Conditional Order and when the Final Order can be made

Frequently Asked Questions

Will I need a solicitor for a no fault divorce?

The role of the divorce solicitor will change, but they will still have a role in:

- Assisting with the preparation of the divorce paperwork and lodging the same with the Court.
- Advising on how finances should be divided on divorce, including things like how the family home will be dealt with, how pensions and other savings and investments might be split and whether there is a requirement for maintenance payments.
- Preparing documents, for example, the consent order to create a legally binding financial agreement between the parties.
- Advising on entitlements and helping to negotiate. If no agreement can be reached, a solicitor will advise as to the merits of issuing court proceedings and will represent you within these proceedings.
- Implementing orders, whether by consent or decided by the court.
- Advising and supporting parents who are in dispute to reach arrangements about how they will care for their children.
- Preparing cases to be presented to the court and conducting the proceedings where disputes cannot be settled.

This is not an exhaustive list but illustrates that the divorce itself may only be a small part of the legal process of relationship breakdown.

How do I file for a no fault divorce?

To file for a no fault divorce you usually have 3 options:

- Use a solicitor to file the paperwork for you
- File yourself using the [government portal](#)
- Use an online divorce service

Remember that this is just to start the divorce part of the process. The parenting and financial arrangements will normally need to be agreed separately to this part.

How long does the no fault divorce process take?

Divorce for most people will take a minimum of 26-weeks or six months, with additional time for the conditional order application to be considered and pronounced. If the couple need more time to complete their divorce, then the law will allow for this.

In exceptional circumstances (such as terminal illness or imminent birth of a child to one of the parties), it may be possible to have this process expedited.

Stage 1 – The Actual Divorce

Is a no fault divorce 'cheaper'?

It makes sense that if your separation is less contentious, then the legal costs will be lower, but there are often financial arrangements to sort out as well as dissolving the legal marriage or civil partnership.

With a no-blame culture in place, it is hoped that it will encourage more constructive discussions leading to better, and therefore less expensive, outcomes. However, there is no guarantee that this will necessarily be the case. A no fault divorce financial settlement is the same as any other divorce settlement, and may include maintenance and the division of assets etc.

Do both parties have to agree to a no fault divorce?

It is possible for one party to contest a no fault divorce in the same way that they could contest a traditional divorce. This occurs when the parties cannot agree on the terms of the divorce, i.e. a fair division of money and assets, maintenance, child custody etc. If this occurs, then the case will be put before a judge, unless the couple agree on ADR (alternative dispute resolution) such as mediation.

Separation and its benefits

Quite often couples will separate as a practical alternative to seeking a divorce straight away. Separation gives you the option to separate straight away from your partner without needing to get the courts involved. A benefit to this is that you can use the arrangements you have made in your separation as the same arrangements within your divorce. For some couples, separation can be an easier long-term solution especially if things are amicable; obviously neither of you are able to remarry without getting a divorce first.

You are able to separate both informally or formally by drawing up a legal document. In either case it is a good idea to come to a decision on finances and the arrangements of any children. We would also recommend that you deal with other important issues like rewriting your will if necessary and registering your right to live in the family home.

Normally one of you will move out of the family home, the financial agreement you both reach will need to take this into consideration. Perhaps you decide that you will both accept a lower standard of living however you will have your independence and are both able to lead separate lives. You may come to an agreement that you both would like to remain living under the same roof but live separate lives, in a separation you have this flexibility.

In many cases partners will have the arrangements drawn up in a deed of separation. This can help to add certainty to any arrangements made, however the terms of this separation agreement can still be overruled by the court. You are able to get your agreement recognised by the court however this procedure is similar to that of a divorce and usually is only used when one partner objects to a divorce.

Stage 1 – The Actual Divorce

The legal process of a divorce

The divorce process is usually a paper exercise and does not usually require anyone to attend court. On average, an uncontested divorce will usually take around 6 months.

Step 1

We will:

- Prepare a divorce petition form to start proceedings confirming the reason for divorce.
- Send the petition to the Court to start your divorce.
- Your spouse receives a copy of the petition and a form which he/she has to complete and return to the court.

You will need to provide:

- A marriage certificate (we can help you get a copy if you don't have one).
- Court Fee £593.

Step 2

We will:

- Prepare a form to confirm to the Court what, if anything has changed, since the divorce proceedings were started.
- Send the form to the Court and the District Judge decides if you have sufficient grounds to divorce your husband / wife (the Conditional Order).

Step 3

We will:

- Prepare your application for the Final Order (6 weeks and a say after the Conditional Order).
- Send the Final Order application to the Court.

The Final Order brings your marriage to an end and leaves you free to re-marry.

Stage 2 – Financial Arrangements



The break-up of a relationship can be a very stressful and emotional time for individuals. Concerns about finances can mean the divorce process can become hostile and unpleasant. The aim should be to come to an agreement that provides for each party fairly and any associated children involved.

Initial Financial Agreements

Upon your initial separation there should be some sort of financial agreement made. If you are the main or sole earner within the marriage you may have to keep supporting your partner financially before you come to a final agreement. This could include paying the bills even if you have moved out of the marital home.

These types of payments should not have any effect on the final agreement that is made. If you fail to provide some form of financial support the chances of your situation becoming hostile are likely to increase.

Equally if you are financially dependent on your partner you should request that suitable payments be arranged. If your partner is unwilling to make reasonable provisions you are able to apply for an interim financial order from the court.

This will require your partner to provide adequate financial support until a final agreement is reached.

Initially there are some steps you should take to protect yourself financially, these include:

- If you and your partner jointly own a property as Joint Tenants, then it may be sensible to sever the tenancy in case anything were to happen to either of you prior to the completion of your divorce, to allow your interest in that property to pass in accordance with your Will.
- It would also be sensible when separating to update the terms of your Will to ensure that your assets are distributed in accordance with your wishes.
- Closing any joint bank accounts if you believe your partner may take advantage of them
- Registering your interest in your home if your partner is the sole owner of the family home. You should speak to a solicitor for more advice on how to do this
- Get immediate advice from a family law solicitor if you believe your partner is shifting any assets

Providing Financial Support for Children

The first priority is to ensure the welfare and financial needs of any children involved. Specifically, children that are under the age of 16, children in full time education and children with special needs.

The welfare of children means providing them with a home to live in. This could mean that one parent chooses to remain living in the family home with the children and the other partner moves out. This however is not always the case particularly when there are limited assets. It may be necessary to sell the family home if it's in the best interest of both parents financially as well as the children.

The parent who no longer lives with the children will normally provide some financial support. An agreement can be made between both parties, however you can also involve the Child Maintenance Service to help come to a fair agreement.

Considerations when Determining a Financial Settlement

The cause of the marriage breakdown rarely has an impact on the financial settlement. The considerations that are made when deciding upon a fair financial agreement include:

- The income of each partner and other financial resources. Pension entitlements are also taken into account
- The needs financially of each partner
- The length of the marriage and the age of each partner
- The full contribution each partner has made to the marriage. This can include the care for children and the family home as well as income
- The family's standard of living prior to the divorce. In many cases both partners end up financially worse off as they each now have the responsibility of running a household

These circumstances will differ depending on the individuals therefore your family law solicitor will advise you on what would be a reasonable agreement in your circumstances.

BB

You were very helpful and sympathetic whilst dealing with my case and your knowledge and advice was excellent. Once initiated, my case was dealt with speed, professionalism. Good contact and communication was maintained throughout.

Mr G, Stavely

97% of our clients would recommend us to a friend

(ongoing client survey)

Stage 2 – Financial Arrangements

Agreeing a Financial Settlement

Similar to other parts of the divorce proceedings the financial settlement can be made easier if you and your partner are able to come to a mutual agreement that is fair for both parties. There are a variety of different options available for you to negotiate an agreement; this includes using a mediator or collaborative lawyer or perhaps using a divorce solicitor. You may wish to involve your solicitor for guidance on what would be a fair agreement and then again to tie up the finer details once an arrangement has been made. Expensive drawn out negotiations should be avoided as both sides could end up worse off.

As a starting point each partner should disclose their financial position. If you fail to do this it may mean an agreement you reach could be overturned later on in the divorce proceedings.

You should also begin to establish what your objectives are from the financial agreement. You may decide that you wish to retain the family home. Or perhaps the non-earners priority may be to secure regular maintenance payments. Failure to make arrangements could mean the court will have to impose a solution. There is no set time frame in which you must come to a financial agreement.

However, it is beneficial to come to an agreement as soon as possible. Once an agreement has been made which both partners agree to you should apply to the court for a consent order. This allows the court to review the arrangement and ensure it is fair. It also makes it easier for you to take action if your former partner is not honouring the commitments made in the agreement.

Tips when negotiating a financial settlement

If you and your partner decide to come to a mutual agreement between yourselves, you should use the below points as a checklist to ensure you have covered all the major issues.

- Which partner is going to retain the family home? Or will it be sold to provide adequate assets for each partner to purchase a home
- Will one partner continue paying maintenance to the other or will you decide on a one-off lump sum payment instead?
- What arrangements will be made for any children? This includes welfare and financial agreements
- If appropriate how will any pension funds be shared?
- What will be done for any life insurance or other investments policies? Will one partner continue to pay the premiums?
- The changes that you are going to make to your wills

If you agree that one partner will make regular maintenance payments to the non-earner it is important to consider the potential risks:

- Your partner is able to apply to change the payments if circumstances change
- It is likely if you were to remarry maintenance payments will stop
- If your former partner was to die maintenance payments may stop

If you are unsure on any of the points above, we would advise that you speak to a specialist family solicitor. At Banner Jones our specialist team of divorce solicitors are on hand to guide you through the divorce process. We will ensure that we get the best financial settlement for you.

Stage 3 – Arrangements for children



3

Divorce is difficult enough for adults, but for children it can affect every aspect of their daily lives. From not being able to sleep or concentrate properly, to the possibility of feeling that the blame rests on them, children and teenagers need adults to be patient and supportive throughout the proceedings.

Parental responsibility

Married parents both have responsibility for their children, including education, medical and welfare, and therefore should consult each other on these issues. They do not need to consult one another regarding their day to day care of the children. However, there are times that communication between parents can be difficult during a divorce.

Unmarried mothers have parental responsibility for their child. If an unmarried father has his name on the birth certificate and the child was born after 1st December 2003, he also has parental responsibility. An unmarried father for a child born before 1st December 2003 can acquire parental responsibility by either:

- Entering into a parental responsibility agreement with the mother.
- Obtaining a Parental Responsibility order of the Court.
- Marrying the mother of his child.
- Obtaining a Child Arrangements Order that includes a living with element.

Mediation

In the case of a divorce, an appointed mediator can help you to resolve issues and make important decisions regarding your child's welfare in a friendly and civil environment. These decisions can include:

- Arrangements for the care of your children.
- Financial arrangements.
- Dividing up your property and other shared assets.
- Your separation or divorce.
- How you and your partner will communicate in the future.
- Any other related issues.

Stage 3 – Arrangements for children

Child Arrangements Order

Came into effect on 22nd April 2014 and is defined as an order regulating arrangements relating to any of the following:

- Which parent the child is to live with or otherwise have contact with.
- When the child is to live, spend time or have contact with any person.

If the parents cannot agree the above arrangements between themselves, the Court will decide by assessing the child's needs and best interests. Siblings are rarely separated, but often the children will be allocated time living with each parent, effectively giving them two homes.

Spending time and contact

If the child lives with one parent and arrangements to spend time with the other parent cannot be agreed upon by both parents, a contact element can be written into an order. This stipulates the types of time allowed, and the days/times at which they can take place. Contact can take the form of:

- Letters and emails
- Telephone calls
- Visiting time
- Overnight stays

Applying to the court

Save for limited circumstances where an exemption applies, you cannot issue an application without first attempting mediation. It is important to remember that a court battle can be a long-drawn-out series of hearings and, throughout this, your children will be aware of what is happening. Applying to the court is therefore often seen as the last resort, as you can only do so when you have ensured that all avenues of cordial agreement have been exhausted.

Maintaining priorities

A divorce can affect children and teenagers in a number of ways, from mental health, dietary habits and sleeping patterns, to their short-term cognitive abilities and social life. At Banner Jones we realise that the proceedings will be difficult for you, but they are ultimately more difficult for your children. We therefore ask that you make every effort to arrange their future welfare in a good-natured manner, using our advice and support services as a means of making everything run more smoothly.



Exceptional service at a very reasonable cost.

Mr G, Forest Town

97% of our clients would recommend us to a friend

(ongoing client survey)

How is a divorce funded?

There are various sources of funding available to both parties during the divorce process and it is essential that you make a decision on funding at the earliest opportunity. Within this guide we have highlighted a few different funding possibilities this should allow you to make informed decisions on one that will work for you.

Your own resources

You may be able to support the funding for the divorce with your own resources.

Savings: If you have access to a savings account, this can be a simple and effective way to support your divorce proceedings. As a way of accessing money quickly, this can help speed up your divorce proceedings.

Income: If your income exceeds your outgoings, you may wish to use the left-over cash to fund your divorce. It may be that you have to cut down on your outgoings and budget more carefully in order to have extra money available to put towards your legal fees.

Disposing of your assets: If you are considering disposing of any assets to help with funding then we would advise you to speak with one of our specialist family solicitors as this could be seen by the court as an attempt to put assets beyond the reach of your spouse.

Soft loans from family or friends: If your friends or family were in a position to offer you a loan, this would be classified as a soft loan and is often treated as a gift. Soft loans are not obliged to be paid back by the individual. A soft loan is usually interest free and has no fixed date to be paid back. The option of a soft loan may be appealing for individuals who have a poor credit rating and may struggle to secure any formal borrowings.

From a third party source

Credit Card: Depending on the cost of your divorce you may wish to use a credit card, low interest rates may be available on a short term basis. You should consider this carefully as low interest rates can quickly revert to higher interest rates.

A personal loan: A personal loan can be obtained from a high street bank; rates will be dependent upon the circumstances. The loan will be for a fixed period. Availability for a personal loan is highly dependent upon the individual's ability to repay on a capital and interest basis from surplus income or other capital.

Maintenance during the court proceedings

Sometimes known as interim maintenance, this is where one spouse applies to the court for maintenance from the other party whilst court proceedings are ongoing. In order for a spouse to apply for maintenance, a divorce and financial relief must have been issued.

A partner must be able to demonstrate to the court that there is a shortage in their monthly earnings that can be made up by their opposing partner making monthly maintenance payments.

We know...

you need expertise and compassion.

Our expert divorce solicitors are highly experienced and will treat each case uniquely depending on your circumstances. Our family law specialists achieve solutions through confidential settlements and are always on hand to provide support as we know going through a divorce can be a stressful time. We have worked on many family law divorce cases and we ensure each of our clients receive the utmost care and consideration throughout the case.

If your financial circumstances are complex and you need advice on the division of high value matrimonial assets and property, then we have the experience and skills to ensure you receive a fair outcome.

Our team are ready to help

1

Free call with one of our team

2

Agree a fixed fee (no hidden costs)

3

Appointment with an expert solicitor

4

Receive professional and specific advice in writing

5

You decide how you would like to proceed



Kelly Parks
HEAD OF FAMILY LAW



Shetal Gudgeon
FAMILY LAW SOLICITOR



Lauren Mahon
FAMILY LAW SOLICITOR



Sarah White
PARALEGAL



Our Family team have been ranked in the Legal 500 yet again for their outstanding work.

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Disclaimer

The information contained in this update does not constitute legal advice. It's our best assessment of the current position and is in places based on opinion. In order to bring you a comprehensive guide we have included some financial information, but this does not constitute financial advice. If you want specific advice, please contact us.