

Boys & Maughan Family Fact Sheet - THE DIVORCE PROCESS

The legal process of ending a marriage or civil partnership can have a major emotional and financial impact on all family members.

If you are having problems in your marriage or partnership, you should first consider whether these difficulties could be resolved with the help of a trained relationship counsellor. Organisations such as Relate, www.relate.org.uk, could help you.



Family

If you do decide to divorce or dissolve your partnership, we will be able to advise and guide you through the process. We will outline your options at every stage and give you the information to make your own decisions.

NB: The process for dissolution of civil partnership is the same as for divorce. Where the term 'divorce' is used in this fact sheet it should be taken to include dissolution of civil partnership. The only exception is adultery which is a specific legal term relating to heterosexual sex and which cannot therefore be used as grounds for dissolving a civil partnership. If your partner is unfaithful the grounds for dissolution would instead be unreasonable behaviour.

Reasons For An Application For Divorce

To get a divorce in England and Wales, you need to show that you have been married for more than a year and that the marriage has broken down.

The marriage must have broken down for one of these reasons:

- Your spouse has committed adultery and you find it intolerable to live together.
- Your spouse has behaved in such a way that you cannot reasonably be expected to live together.
- You have been separated for two years and your spouse agrees to divorce.
- You have been separated for five years.
- Your spouse deserted you more than two years ago.

The reason for the breakdown of the marriage forms the basis of the divorce application, known as the 'petition'. If more than one of the above reasons applies, we will advise on which is most suitable to your circumstances and what additional information the court needs. If you or your spouse has committed adultery, it is not usually necessary to name the other person. If the petition is based on the behaviour of your spouse, you will need to give some limited examples of their behaviour and how it has affected you.

These details, (known as 'particulars'), can be agreed with your spouse in advance, to avoid increasing any conflict between you both. If you carry on living together for more than six months after either the last act of unreasonable behaviour or the discovery of the last act of adultery, then you cannot get a divorce based on this. Similarly, a period of separation is discounted if you live together again for a period of six months.

The Divorce Process

- Divorce petition is sent to court.
- A copy is sent to your husband or wife.
- Your husband or wife completes an Acknowledgment of Service.
- If undefended, you sign a statement confirming details are true.
- Judge considers all the papers and decides if you are entitled to a divorce.
- Court sets date for pronouncement of Decree Nisi.
- 6 weeks and 1 day after decree nisi you can apply for Decree Absolute.

What The Process Involves

The divorce is begun by sending to the court the petition, your marriage certificate and the court fee, (or a claim for exemption from the fee if you are eligible). If you have children, you will also need to give details of their names and dates of birth, where they are living, which schools they attend and what arrangements have been made for their care. This is called the 'Statement of Arrangements for Children'. See *our fact sheet on Contact With Children After Divorce Or Separation*.

- A copy of the petition and statement of arrangements for children is sent to your spouse who is required to complete an Acknowledgment of Service saying whether or not he/she agrees with the divorce. Provided he/she does not contest it, following this.
- You then confirm that all the details are true and the court grants a Decree Nisi if satisfied that the ground for divorce is established.
- After six weeks and one day, it can be converted into a Decree Absolute, which marks the end of the marriage.
- If the spouse who issues the divorce, (called the petitioner), has not applied for the Decree Absolute 3 months after the 6 week period, the other spouse, (the respondent), can apply for a court hearing to get it. However, in some circumstances the divorce can be held up until arrangements for any children and financial matters are agreed.
- The petitioner can stop the process at any time before the Decree Nisi and if both parties agree it can be stopped after Decree Nisi provided that it is before Decree Absolute.

For an undefended and uncomplicated divorce the costs are usually in the region of £1,000 plus VAT inclusive of Court fees of £385. If the divorce is defended, the position is much more complex and the costs are likely to be much more.

You will also need to settle financial matters relating to the family home, maintenance, pensions, and any savings and investments. The legal term for this is 'Ancillary Relief' - see *our fact sheet on financial arrangements on divorce*.

The time it takes to get a divorce will vary according to the complexity of each case and the practice of the particular court. Even the most straightforward divorces will take between 4 and 6 months.

If you decide to divorce then it can also be a good time to consider making a will. If you have made a will already it might need to be changed when you divorce. If you re-marry, then any will you have already made may need to be changed again. *We can also help with this. Please ask.*

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.



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