BOYS & MAUGHAN
Solicitors

GUIDE TO DIVORCE, DISSOLUTION AND SEPARATION

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INTRODUCTION

Many people seen by our family lawyers have spoken to friends and family about their experiences of separation or have read advice on the internet. As a result, they often expect the end of their marriage, civil partnership or cohabiting relationship to follow a particular course.

It is crucial to bear in mind, however, that the ending of your relationship is personal to you and the details will not be a match for anybody else's.

Choosing the right solicitors to represent you is a major decision at a time when you are likely to feel particularly unsettled. It is crucial that you give this thought because your lawyer's input will have a significant impact on the eventual outcome.

Our goals with this booklet are to help you learn about the legal side to separating and your options, so you can ask the right questions and instruct a family lawyer with the appropriate skills, experience and commitment. We would also like to explain the approaches we take to different situations and some of the processes involved.

If you don't ask questions, you could select a lawyer who has time to fit you in, rather than one who is the best fit for you.

A good family lawyer will help you maintain a clear focus on the relevant points when there are high levels of emotion. We suggest that you ask yourself whether you will be able to get on with the person who is about to guide you through the challenges ahead, and whether they will identify and support the solutions you need.

Also ask yourself whether your lawyer is accomplished at representing people from a wide range of backgrounds and if they bring additional experience, knowledge and skills to the table.

It's crucial that your lawyer really listens to you and you feel comfortable opening up to them. Don't lose sight of the fact that they will not be trained to be your therapist or coach, but they should be able to introduce you to other advisers if you would find this helpful. Counselling, coaching and therapeutic input can be invaluable.

Above all, we recommend that you trust your instincts. Any of our family lawyers will be happy to have a free introductory meeting, video or telephone call with you, so that you can start to build a rapport with one you like and can relate to.

Lexcel Practice Management Standard Law Society Accredited

resolution collaborative family lawyer

resolution specialist

resolution member

NO FAULT DIVORCE

Couples can now divorce without apportioning blame. Most people we see are seeking to divorce with dignity through a constructive, collaborative approach so the change is welcome.

Divorce law reform

Reform was long overdue because making it difficult to obtain a divorce did not keep people together, it usually just made the situation worse. Before 6 April 2022, if you wanted to start divorce proceedings, you would need to provide a reason for the divorce even if you felt the agreement to split was mutual. If you had not been separated for more than two years, you would have to attribute fault or blame to your spouse.

Understandably, blaming your partner for the breakdown of the relationship can increase the likelihood of an acrimonious divorce. The impact can be huge and it goes without saying that poor communication between separating couples makes it much more difficult to find solutions to childcare arrangements and financial matters.

Key changes to the divorce process

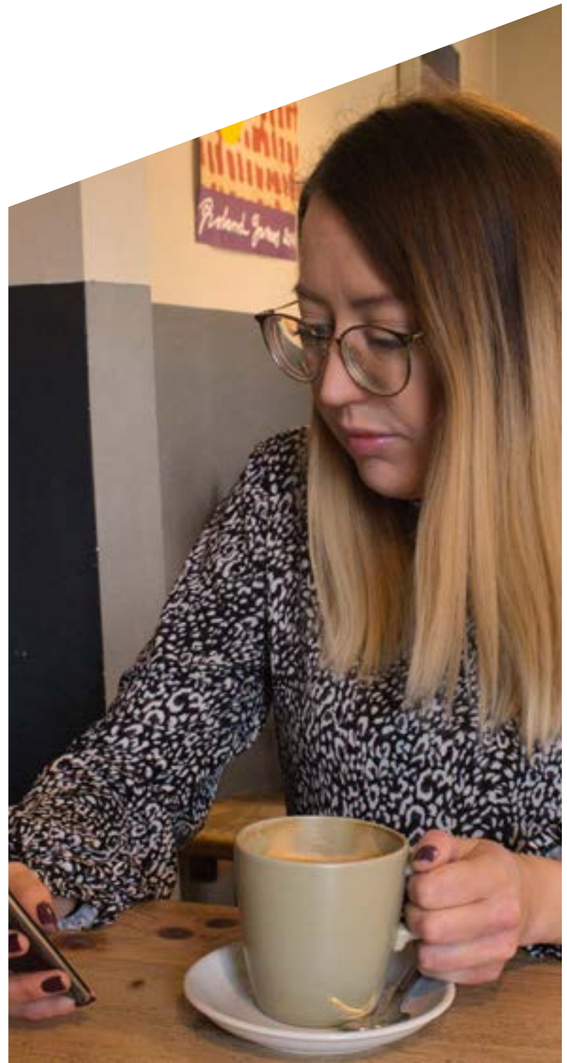
Divorce will always remain a painful process, regardless of the legislation involved but couples who have decided to divorce are now more able to concentrate on working out an amicable parting and future for them and any children. There is time included in the process for reflection but ultimately the law will trust individuals to decide if their marriage is over with less judicial scrutiny involved.

- No fault - couples no longer need to provide a reason for the breakdown of their marriage;
- You can apply for divorce with a joint application, but you do not have to;
- There is a mandatory 20 week “cooling off” period between making your application to court and the court providing the first of two orders of divorce, giving parties the chance to discuss the best way forward or consider reconciliation;
- The divorce application can no longer be contested by either party, except on grounds of the validity of the marriage.

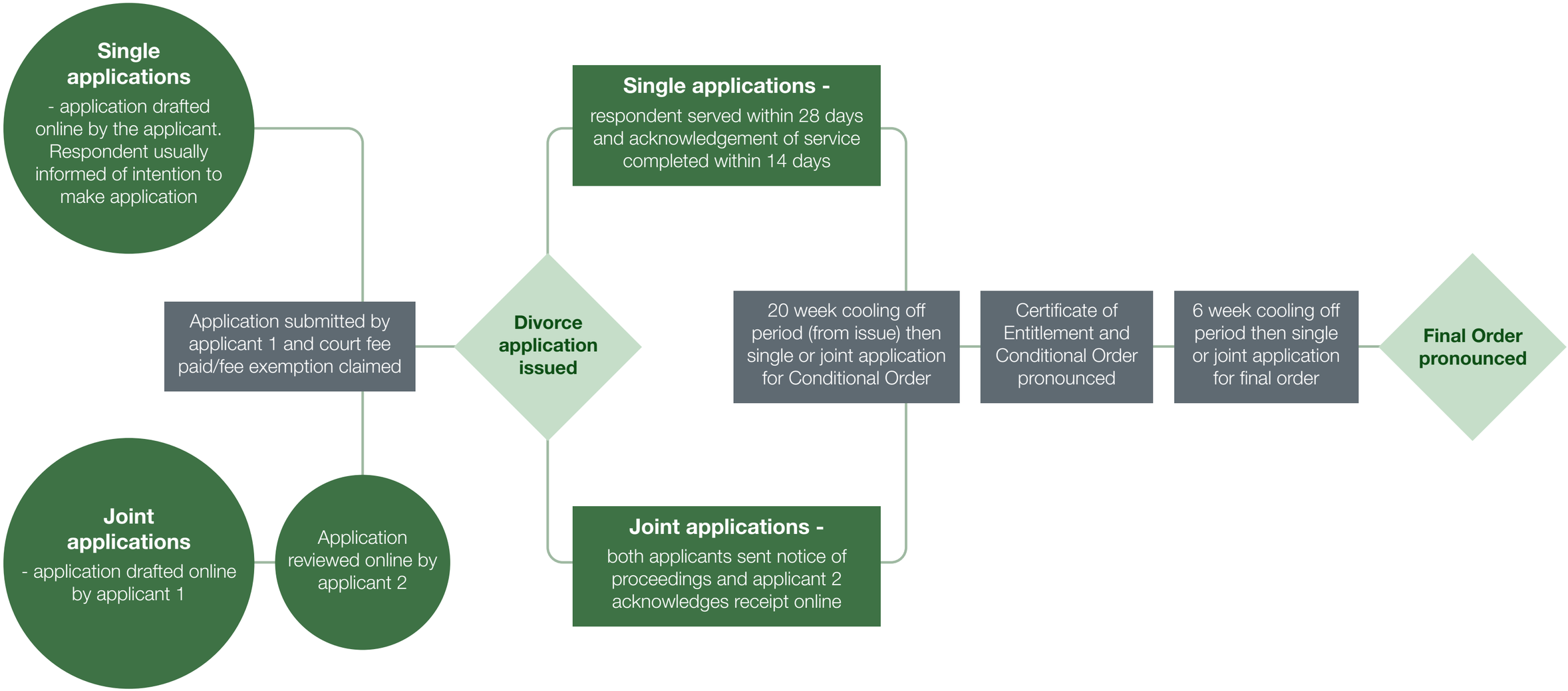
We recognise that no-fault divorce may help end the ‘blame game’ and prolonged resentment, but it doesn’t mean that all couples will suddenly stop blaming each other. We also recognise that separating couples will still usually feel deep feelings of hurt and upset, and our lawyers are in no doubt that helping clients through a no-fault divorce will require a high degree of sensitivity.

Orders

New terminology to replace decree nisi and decree absolute has been introduced. Conditional Order is the first order of divorce and confirms that the court does not see any reason for the divorce not to continue. The second order is the Final Order which ends the marriage.



Divorce process summary



Aspects of the divorce process that remain the same

Our goal will continue to be to bring your marriage to an end as quickly and as painlessly as possible.

- Once the divorce application has been made, unless you have submitted a joint application, your spouse will still need to complete an ‘acknowledgement of service’ to confirm that they have received the application from the court;
- Couples will still have to wait until the first Conditional Order is made before making an application for an agreed financial settlement order;
- There will still be a mandatory six weeks and one day waiting period between receiving the Conditional Order and applying for the Final Order;
- There is still a court fee to pay of £593 to apply for a divorce, unless you are financially exempt.

Divorce proceedings that started before 6 April 2022 will continue under the ‘old’ law and procedure and will not cross over to the new approach.

Financial arrangements

The changes to the divorce process do not affect how solicitors approach financial settlement negotiations. This process will stay the same. An agreed financial settlement can still be negotiated and approved by the judge, or by making an application to the court to start financial remedy proceedings where an agreement cannot be reached or an out of court approach is not appropriate. One of our team can talk you through your options in more detail.

Your Will

Your legal rights and responsibilities to your ex-spouse may change significantly after you divorce. We recommend that you consider amending your current Will, or, if you do not already have a Will, having one drafted. Our private client team would be more than happy to discuss your options.

ENDING A CIVIL PARTNERSHIP

When the UK introduced civil partnerships in 2005 they were originally intended for same-sex couples wishing to enter a legal union. The laws were altered in 2013 to allow same-sex marriage and then changed again in 2019, allowing opposite-sex couples to also enter civil partnerships.

Divorce ends a marriage and dissolution ends a civil partnership. If you want to legally end your civil partnership, you will need to apply to a court for a dissolution order and we can assist you with this. Your civil partnership must have lasted at least one year before you can apply for a dissolution.

No fault dissolution

Previously you had to state your grounds for a dissolution choosing from a number of categories, but now you can apply without needing to give grounds or reasons for your decision. Applying for dissolution, like applying for divorce, is now much more straightforward. For more information, all the references to divorce in this booklet also apply to dissolution.

COLLABORATIVE

Jonathan da Costa is currently Boys & Maughan's only collaborative solicitor but he is amongst an increasing number of lawyers across the country who firmly believe this approach is most likely to achieve the best possible solutions for clients and their families.

What is collaborative?

Collaborative is a process where both parties commit to resolving their arrangements without resorting to court proceedings. It is often used for divorce, dissolution or separation but is equally useful for other family issues.

Each person appoints their own specially trained collaborative lawyer and the couple meet with their lawyers to work things out face to face, usually at either solicitor's office. There is no need to ever go to court.

The couple decide what they want to talk about, not the lawyers, who instead guide the detail of those discussions. Each lawyer can give legal advice because they are not neutral, unlike a mediator.

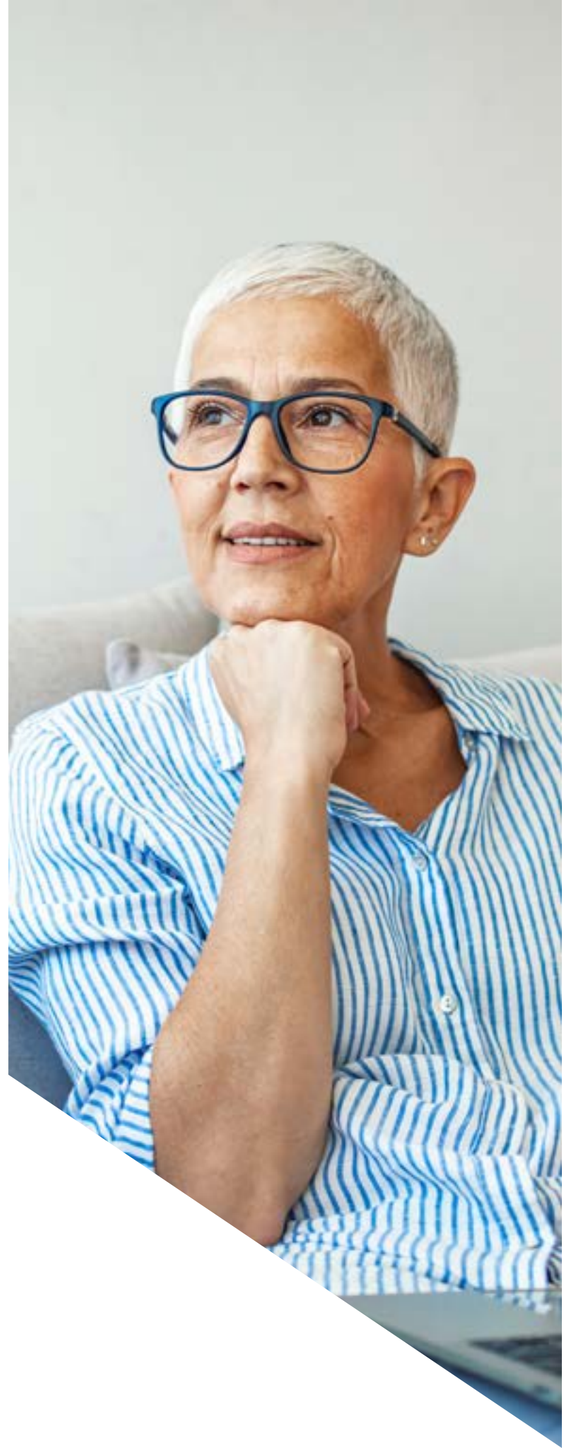
Legal advice will be constructively given as part of the process. Jonathan will focus on your interests and generating options. Both lawyers will encourage an appreciation of the separating couple's concerns and maintain a calm, constructive and respectful approach throughout the negotiations, whilst being solution focused.

Collaborative divorce will encourage you to look at the wider picture and seek improved outcomes for the whole family. Your children's welfare will always be prioritised.

Other professionals, such as jointly instructed financial advisers, accountants or child consultants, can be invited to meetings if you both agree it is appropriate and helpful, and Jonathan can assist with referrals to specialists with appropriate skills.

In addition to the clear focus and integrity you would expect from any good solicitor, you can also expect a collaborative lawyer to pay particular attention to being supportive, creative and flexible.

Both you and your partner should emerge from collaborative not only satisfied with the outcome but also the process.



What are the different stages for a collaborative divorce, dissolution or separation?

If you choose a collaborative approach, you and your partner will be in control of the timetable and number of meetings.

At your initial meeting with Jonathan he will explain the collaborative process and the other options available to you. Jonathan will help you to identify your priorities and the issues that really matter to you. Jonathan will help you evaluate your options and consider your objectives. He will also talk to you about your vulnerabilities, fears and concerns and at the end of this meeting it should be clear whether collaborative is appropriate for you.

Before your first four-way meeting, Jonathan and your partner's lawyer will have spoken to one another and discussed the agenda for the meeting and some of the practicalities such as the location and length of the meeting. The lawyers will also talk about how advice will be given. They will identify their client's priorities but will not negotiate with one another.

At the first four-way meeting everyone will discuss and agree how the process will work. You will then sign a four-way participation agreement.

If you have any children, you are likely to discuss the impact of the situation on them at the first meeting. You will also talk about how financial information will be shared and assign tasks for the next four-way meeting.

The collaborative process requires you to play a considerable role in the discussions and Jonathan will ensure that you are fully involved in each meeting and that your views are heard.

Who would collaborative be suited to?

Collaborative could be the best approach if both of you would like to discuss matters honestly and openly and you want to find a solution together.

Collaborative lawyers focus on minimising confrontation and helping couples put their differences aside, so they can find lasting solutions in the long-term interests of all of the family.

Many of our collaborative clients have children whose arrangements they wish to get right alongside their financial arrangements. When things go well, which they often do, special times of the year like birthdays can continue to be enjoyable even after separation.

It is an inescapable fact that whichever way you look at divorce, dissolution or separation you are bound to continue to feel a sense of sadness. Some clients are anxious about being in the same room as their partner but after a few collaborative sessions things often improve. It is far better than sitting in a courtroom together.

Sadly it is still all too common for adversarial solicitors, practising a hard line method, often with a focus on court processes and a communication style which attributes blame and causes great distress and upset, decimates families, causing particular harm to children. This can also make the process longer and more expensive.

Collaborative stands for the opposite of this approach.

The collaborative process is not appropriate for everyone but in our experience it consistently leads to more lasting and positive outcomes and is suitable for many couples who currently end up in court.

Will collaborative go more smoothly?

Clients who deal with their separation using the collaborative process often feel more settled about their future and benefit from improved levels of communication with their partners.

Jonathan will help you prepare for each meeting. He will listen, check he has understood you correctly and ask open exploratory questions. During the negotiations Jonathan will seek to find common ground, whilst always focusing on your perspective and avoiding over-persuading. He will be constantly mindful that this is a major life event for you.

The number of meetings before your final meeting will be controlled by you and your partner. At the final meeting various documents will often be signed to bring the legal process to a conclusion. You will discuss potential future pitfalls and agree how you would like to handle them. The divorce will then be finalised on your behalf.

Will I be able to control how much my collaborative process costs?

Yes, you will be able to exercise significant control because you will control the number of meetings. If you take the more traditional approach to divorce, dissolution or separation, the court will control the process.

The collaborative process focuses on the separating couple and working out an agreement. It gives the couple the ability to decide what is discussed and when.

The goal is to reach an agreement that you are both comfortable with and that is much more likely to happen by working collaboratively. Once you've reached an understanding, it's then far easier – and therefore quicker and cheaper – to draw up a legally binding agreement.

I think collaborative might be right for me. What are the next steps?

You have two options. You could choose a free initial meeting with Jonathan to identify your options, possible solutions and discuss costs. This approach might suit you if you wish to test the water before making a decision about whether to use our services. We recognise that it is vital you are comfortable with the family lawyer you instruct.

Alternatively, you could make a fixed fee appointment with Jonathan. Sometimes attempting to talk through the issues at a short meeting is difficult or impossible and you might want us to confirm our advice in writing. We therefore offer a detailed initial meeting for £100 plus VAT (£130), followed by a letter setting out our advice. Our only condition in relation to this option is that your legal proceedings have not already started.

PARENTING CHILDREN

If you are contemplating divorce, dissolution or separation from your partner, your first concern will probably be about where your children will live and how they will spend time with both of you.

Even if you divorce or separate, you will both continue to be parents. So it is important to make sure that the changes ahead do not prevent you from co-operating and communicating effectively on what is best for your children. A constructive and conciliatory approach will lay the best foundations for your children to feel settled with the new family situation.

Family lawyers are trained to support and encourage families to put the best interests of any children first.

Finding a way forward

You know your children best, so you will be best able to consider the effects of your break-up on them and together find a solution that works for all of you.

Negotiation is important as agreements reached together are more likely to work in the long term and be respected by the wider family. There are a number of options open to you both to work towards an amicable agreement such as mediation and the collaborative process. People who choose these processes often find that their relationship with their partner improves because you are communicating directly and this is especially important where children are involved.

Despite best intentions not everybody is able to reach a lasting agreement, and where necessary you can ask a court to decide the arrangements. We will be able to advise you on the best way of doing this, explain the process, timescales and costs, without letting matters get tangled up in any financial issues.

What are my responsibilities as a parent?

Family law talks about parental responsibility for a child:

- If a child's parents were married when the child was born, both will have parental responsibility for the child
- If a father who was not married to the child's mother when the child was born was named on the birth certificate then he will also have parental responsibility;
- A father who was not named on the birth certificate and was not married to the mother can acquire it by agreement with the child's mother or if necessary by applying to a court.

If both parents have parental responsibility, there are some things one parent cannot or should not do without first having the agreement of the other parent, who should be approached and asked to agree. If the other parent will not agree then an application can be made to the court to decide what would be in the best interests of the child. Examples of actions that require the agreement of both parents include removing a child from the UK (even for a holiday or a day trip) or changing the name of a child.

What if we can't agree and a court needs to make decisions for us?

Going to court is often seen as a last resort. If you cannot come to an agreement we recommend you consider mediation or collaborative law. You can find out about these on our website or by talking with one of our solicitors.

The Children Act 1989 is the main legislation dealing with arrangements for children. What used to be called custody and access, then residence and contact is now known as a Child Arrangements Order. These orders define the time the child will spend with each parent and can specify (a) with which parent the child will live and (b) when the child will spend time with the other parent.

The court can also make an order to stop a parent doing something, a Prohibited Steps order, or to make a parent do something, a Specific Issue order.

The child's welfare is the paramount consideration when the court considers any question in relation to their upbringing. To determine what arrangements will be best for the child the court will apply what is known as the welfare checklist to help it make its decision.

The welfare checklist examines the child's:

- Wishes and feelings, considered in the light of his/her age, maturity and understanding
- Physical, emotional and educational needs
- Age, sex, background and any characteristics which the court considers relevant
- The likely effect of any change in the child's circumstances
- Any harm which the child has suffered or is at risk of suffering, and
- How capable each parent is of meeting the child's needs.

An independent Family Court Advisor (CAFCASS officer) may be asked by the court to write a report to the court. This will explain all the information the officer has read and obtained and make recommendations about the arrangements. This might involve interviewing the child and making various enquiries.

A court will not make any order relating to a child unless it is satisfied that making one would be better than not making an order.

Mediation Information and Assessment Meeting

Before you can issue a court application you will need to attend a Mediation Information Assessment Meeting, or MIAM for short. This meeting will establish whether mediation could be used to resolve your difficulties rather than you going straight to court. It can be between the mediator and just you or with your ex-partner. You may not need to attend a MIAM if there is evidence of domestic violence or there are child protection concerns, otherwise you will be required to attend a meeting and obtain a certificate from the mediator which must form part of your court application form.

We cannot provide a Mediation Information Assessment Meeting (MIAM) certificate with a view to you issuing a court application but we can refer you to a mediator who can.

We do not provide Legal Aid for mediation.

The court process

The application form is lodged with the court, a date for a first hearing is fixed and the papers are sent to the other parent.

CAFCASS will carry out some initial background checks and inform you and the court if there are any factors revealed by these which the court should take into consideration.

You then both attend the first hearing, which is usually a first appointment when there will be discussions to see if an agreement can be reached, and if this is not possible, to identify what the issues are. A CAFCASS officer might be at court to speak to you both to help with this. If an agreement cannot be reached, the court will not usually be able to decide the arrangements on this occasion but instead will decide what further information and documents need to be obtained and decide the dates by which these should be prepared. This is likely to include a statement setting out all of the points you want the court to consider and might include reports or statements from other organisations, such as medical reports or a full written report from CAFCASS.

Exactly what will be required in each case will depend on the issues between you and the other parent. We will explain the process and advise you on the merits of your case.

A first hearing is likely to take place three to six weeks after the application is issued by the court office. The rules require the other parent to be given 14 days' notice of the hearing. If an agreement cannot be reached at the first hearing, it could take between six to 12 months to conclude the case depending on the issues involved.

FINANCIAL ARRANGEMENTS

Where you will live and how assets will be divided are key issues for the majority of separating couples.

The more complicated your financial situation is, the longer it's going to take to reach an agreement and separate your money. And you'll probably need professional help.

Most people prefer to avoid going to court and it is often better to agree the arrangements where possible, safe and sensible to do so, and avoid the delay, uncertainty and expense of a court application.

You may be thinking through the potential for conflict between you and your ex-spouse caused by either of you feeling like you have lost out financially. Even the most amicable divorces can be fraught with money worries and uncertainty, and you both need the opportunity to be able to start afresh once your marriage has legally ended.

Agreeing about your finances will be easier if, for example:

- You both agree to the divorce or dissolution
- You don't have children, or your children are grown-up and don't depend on you financially
- One of you doesn't financially depend on the other
- You agree how you should split your property and pensions, or you can discuss the options amicably with your ex-partner.

If you manage to reach an amicable agreement between you, all you will then need is for the settlement to be made legally binding in a consent order approved by the court. This wouldn't require a court hearing.

Many clients find that agreeing on financial matters is not straightforward, and when this is so, our lawyers can support you through mediation, including hybrid mediation. They can also assist you in the collaborative process or negotiate with your partner's solicitors. If necessary, and sometimes it is, we can provide expert representation in the court process.

There are additional methods for finding solutions outside of the court process which we will be happy to discuss with you at any stage, such as arbitration or a "private" Financial Dispute Resolution Appointment (FDRA).

Our family lawyers will always seek ways to save you time, money, stress and frustration.

If you are not married or in a civil partnership,a separation agreement is a useful way of dealing with splitting jointly-held assets and responsibilities (see page 26).

Financial solutions

A financial settlement has two main stages:

1. All of the assets, resources and liabilities must be identified and valued.
2. Those assets, resources and liabilities need to be fairly divided.

Making informed decisions is essential. The process of identifying and valuing assets is called disclosure and it is a very important part of the process. The couple have a duty to make an open, full, frank, honest and clear disclosure of all assets, resources and liabilities. This duty continues until the divorce or dissolution is finalised. Disclosure can be provided by the preparation of schedules of income and assets or by the completion of a pro forma, called Form E.

Either way, it is essential to identify all of the information and documentation that needs to be collated. Once the information is all prepared, which we can help you with, it is exchanged with your spouse's solicitor.

You will get to see a complete copy of their disclosure and they will get to see a complete copy of yours.

There is then an opportunity to consider the information and documentation and ask questions. In the court process, the judge controls who has to produce what. In non-court cases, this is discussed and agreed. Additional information is also considered, such as housing needs, mortgage borrowing capacity evidence, along with other types of needs.

It is not unusual for advice to be required from other professionals such as accountants in respect of the valuation of business assets or the taxation implications of disposing of certain types of assets or settlements (Capital Gains Tax), extracting money from a business to fund a settlement (Dividend Tax), or an actuary to advise on pension values and the options on splitting (sharing) pensions.

On divorce or dissolution, the court can order the payment of maintenance, payment of lump sums, the transfer or sale of property and other assets and sharing of pensions. Securing a court order which makes financial obligations binding and enforceable is usually essential before money or property passes hands. We can help you turn an agreement into a court order called a consent order, or if an agreement is not possible, secure an adjudication of fair terms from a judge.

The proportion or percentage in which assets should be divided is not fixed and changes to reflect individual circumstances, though there are some general principles to be followed. The court has the power to adjust asset ownership.

It is usual for each spouse to pay his/her own legal costs.

It is often important to think about whether a Will needs to be made or updated at an early stage, whether joint bank or building accounts need to be reviewed or whether joint ownership of property as joint tenants should be amended to tenants in common.

What does the court expect?

Guidelines have been issued by the courts which explain how couples should behave towards each other before court proceedings are issued. The aim is to help couples resolve their differences speedily and fairly, or at least reduce the issues and, should that not be possible, to assist the court to do so. These guidelines are called the pre action protocol.

General principles

1. Couples must always bear in mind that the court has an overriding objective of trying to ensure that court applications are resolved and a fair outcome achieved as quickly as possible without costs being unreasonably incurred.
2. The needs of any children should be addressed and safeguarded.
3. The procedures which it is appropriate to follow should be conducted with minimum distress and in a manner designed to promote as good a continuing relationship between the couple and any children affected as is possible in the circumstances.
4. The principle of proportionality must be borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the dispute. Where a court exercises its discretion as to whether costs are payable by one party to another, this discretion extends to pre-application offers to settle and conduct of disclosure.

The pre action protocol

The protocol is intended to apply to all claims for a financial remedy and is designed to cover all classes of case, ranging from a simple application for maintenance to an application for a substantial lump sums and property in high net worth situations.

The pre action protocol should only be encouraged where both parties agree to follow this route and when the mutual provision of all necessary information and documentation (disclosure) is not likely to be an issue or has been adequately dealt with in mediation or otherwise. We will consider at an early stage, and keep under review, whether it would be appropriate to suggest mediation or other non-court options to you as an alternative to solicitor negotiation or court based litigation.

However, sometimes making an application to the court should not be regarded as a hostile step or a last resort, rather as a way of starting the court timetable, controlling disclosure and endeavouring to avoid a costly final hearing and the preparation for it.

Disclosure

The protocol underlines the responsibility of both parties to make full and frank disclosure of all material facts, documents and other information relevant to the issues. As solicitors we have a duty to tell you in clear terms of the possible consequences of breach of this responsibility. The duty of disclosure is an ongoing obligation and includes the duty to disclose any material changes after initial disclosure has been given until the end of the case. A material non-disclosure can have very serious consequences, ranging from a settlement being overturned to being in contempt of court, which can be punished by a fine, costs being awarded or even imprisonment. Documents should only be disclosed to the extent that they are required by Form E. Excessive or disproportionate costs should not be incurred.

Identifying the issues

Parties must seek to clarify their claims and identify the issues between them as soon as possible. This requires full, frank and clear disclosure of facts, information and documents which are material and sufficiently accurate to enable proper negotiations to take place to settle differences, as well as being realistic about what is likely and what is not.

Correspondence

Letters should focus on the clarification of claims and identification of issues and their resolution. Under the terms of the protocol, protracted and unnecessary correspondence and ‘trial by correspondence’ must be avoided. This usually means that solicitors will try hard not to make the letters emotive, even though it is a difficult and emotional time. Counselling or divorce coaching can be very useful.

Experts

Expert valuation evidence is only necessary where the couple cannot agree or do not know the value of some significant assets. The costs of a valuation should be proportionate to the sums in dispute. Wherever possible, valuations of properties, shares, etc., should be obtained from a single valuer instructed jointly by the couple, who will share the costs of obtaining the expert opinion, which the couple agree to follow.

If one person wants to instruct an expert he/she should first give the other a list of the names of a number of experts in the relevant speciality whom he/she considers are suitable to instruct. Within 14 days the other person may select one of the named experts.

Where the identity of the expert is agreed, the parties should agree the terms of a joint letter of instruction. We will help to draft this and discuss the areas that the expert should be asked to provide an opinion on.

Where no agreement is reached as to the identity of the expert, each party should think carefully before instructing their own expert because of the potential to incur extra costs securing an opinion which the other is unlikely to agree. We strongly recommend to clients that they speak to us before incurring any costs. Disagreements about disclosure such as the use and identity of

an expert might be better managed by the court within the context of an application for financial remedy orders. Whether a joint report is commissioned or the parties have chosen to instruct separate experts, which is increasingly unusual, it is important that the expert is prepared to answer reasonable questions raised by either party, and in the court process, permission has been obtained from the judge to rely on the report before the expense is incurred of obtaining the report.

Where the parties propose to instruct a joint expert, there is a duty on both parties to disclose whether they have already consulted that expert about the assets in issue.

When there is no alternative to court proceedings

An application can be made within the divorce or dissolution process for the court to decide the division of assets. The court controls the process by setting dates by which documents must be prepared and court hearings. There are a variety of reasons why this might be the better approach.

The court process can be broken down into three stages, which are explained below. Before you can start the court process you will normally be required to have attended a meeting with a mediator. This is called a Mediation Information and Assessment Meeting or MIAM. The mediator needs to provide a certificate to confirm that you have done so and which forms part of the court application. Your application will be rejected without this certificate unless an exemption applies.

Part 1: From issue of application to First Directions Appointment

You and your spouse will be required to complete Form E, a substantial financial statement, setting out all your financial details and producing copies of documents such as bank and building society statements, payslips, valuations and business trading accounts, tax returns and so on.

Pension valuations called a Cash Equivalent Value (CEV) will also be required and can take time to be prepared so it is best to ask for this as soon as possible. If you are not already getting your pension and you have not had a CEV in the last 12 months you should be able to get this free of charge. You can obtain the information which you need by sending pension enquiry Form P to your pension provider. We can provide you with Form P. You only need to complete the front page and send the entire form to your pension provider who will collate the necessary information and return the completed form to you.

The court will fix a date by which Form E must be completed, filed with the court and exchanged with your spouse with the required documents. We can help with the preparation of your Form E and collation of the necessary documents, and also to analyse forensically your spouse's Form E.

Once the completed copies of Form E have been exchanged, there are a number of further documents which need to be prepared, again by a date fixed by the court. We can draft those documents for you.

The court will also fix a date for the First Appointment (court hearing) before a district judge. You will both need to attend this court appointment at which we can represent you or arrange for you to be represented by us or by a barrister. The purpose of the appointment is for the district judge to review the information and documentation which has been collated so far and decide what further information and documentation is still required, and to set dates by when the further information or documents must be prepared or obtained, and lodged at court or sent to your spouse. This might include, for example, dealing with the valuation of assets.

14 days before the First Appointment, you and your spouse will be required to file at court a jointly obtained market appraisal of the family home. You will also both be required to use your best endeavours to obtain 3 sets of property particulars showing what your case is likely to be on housing needs for yourself and your spouse together with jointly obtained brief indications with respect to your respective mortgage borrowing capacities.

By no later than the day before the hearing a Case Summary schedule must be sent to the court called ES1 and a composite asset schedule called ES2.

This stage can take 3-4 months from the date the court application is started. A lot of work is front loaded into this stage.

Part 2: From First Directions Appointment to FDR

The further information and documentation must be prepared and sent to the court and your spouse as directed by the district judge at the First Directions Appointment.

There will then be a second court appointment known as a Financial Dispute Resolution (FDR) appointment.

Both you and your spouse must attend this court hearing with your solicitor or barrister. The focus of this appointment is for a district judge to be available to assist in exploring whether it is possible to reach an agreed solution. The judge will give guidance to help

you reach an agreement often indicating what s/he thinks would be a reasonable outcome. If an agreement can be reached then a court order can be drawn up there and then to bring the proceedings to a conclusion.

The timescale of this stage will depend on what the issues are but it usually takes 4-6 months. By the time you reach this hearing you will have formulated an offer and received an offer from your spouse. These offers are often made on a legally privileged basis called “Without Prejudice” which means that you can exchange offers in private, however there is now very strong encouragement from the courts to make “open” offers at an early stage, and failing to do so or failing to negotiate openly can result in judicial criticism.

Part 3: From FDR to Final Hearing

If an agreement cannot be reached, the judge will decide what more needs to be done before the case can come back to court for a final hearing. On this occasion the judge, who will not be the same judge you see at the FDR, will hear the case in detail and make a decision.

This is usually the most expensive part of the process. Typically a great deal of information needs to be prepared and thought through. The timescale for this stage will depend on a number of factors including how long the final hearing will be (most cases take at least one full day of court time but often last longer) and how soon the court can make a judge available. It could take another 4-6 months or longer.

After the order

Once the order has been obtained it will need to be implemented. This might mean the transfer of a property needs to be put into effect by our conveyancing department, a lump sum needs to be paid or a pension shared. We will continue to work with you to ensure that the terms of the order are put into effect.

Factors to be taken into account and approach to making an offer

There is no fixed formula but the main piece of legislation, the Matrimonial Causes Act 1973, sets out the factors to be considered. These same factors will need to be considered when trying to reach an agreement and how important each is will vary from case to case. The court will consider all of the circumstances, and give first consideration to the welfare of any minor children of the family who are under 18.

The court will have particular regard to the following factors which are known as the Section 25 factors”.

The key factors are the:

- Income, earning capacity, property and resources of each spouse
- Financial needs, obligations and responsibilities of each spouse now and in the foreseeable future
- Standard of living enjoyed by the family before the breakdown of the marriage or civil partnership
- Age of each spouse and the duration of the marriage or civil partnership
- Contributions made by each spouse to the welfare of the family, including looking after the home and bringing up children
- Conduct of each person but only if it is so bad it would be unfair to ignore it
- Physical or mental disability
- Any benefit lost because of the divorce (in practice this is restricted to loss of pension benefits).

The law in this area is very flexible so that courts can achieve fairness depending on the individual circumstances of each case. We can help by explaining how the court is likely to apply the law to the facts of your case.

The starting point is that there should be an equal division but there can be an unequal division if there is good reason, to the extent that a departure from equality can be justified. Every case is different. There is no hard and fast rule.

Judges tend to take a broad brush approach. The court has a wide discretion to adjust strict property rights to do what is fair.

How long will it take and how much might it cost?

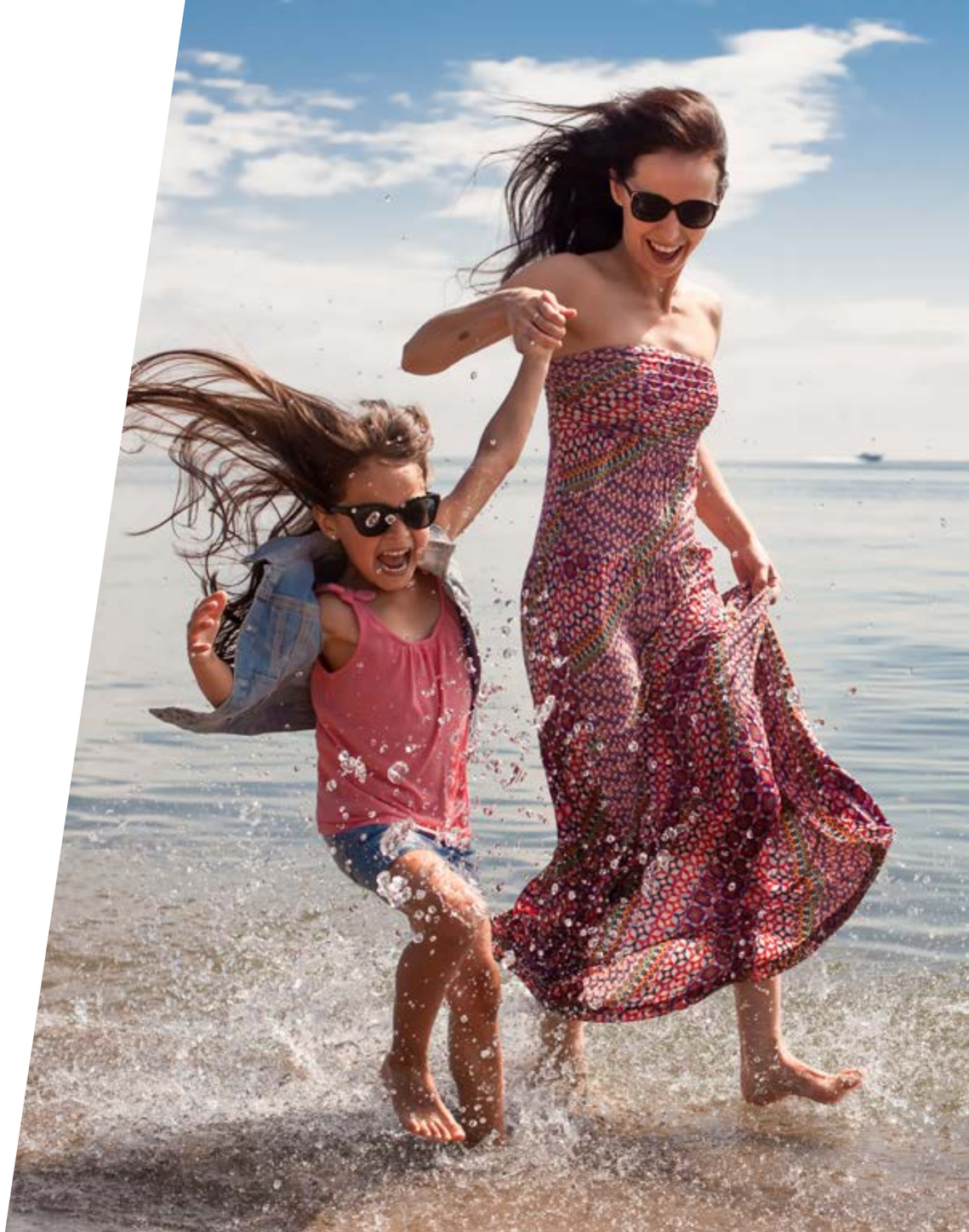
We provide personalised cost estimates to every client when their case commences. Regardless of which solicitors you choose, you are entitled to an estimate of costs at the beginning of your case and regularly throughout it. You should also receive bills at regular intervals and can ask for an up to date costs figure at any point. These are professional obligations which solicitors must adhere to.

A typical court application takes 9-18 months but sometimes it can take longer. Much depends on the complexity and facts of each case.

Your spouse's costs are likely to be similar to yours, if they are represented. The starting point is that you will pay your costs and your spouse will pay their costs but the court does have the power to order one spouse to pay some or all of the other's costs if one has behaved poorly during the case by, for example, failing to disclose assets and resources, failing to comply with court orders, or if they pursue their case unreasonably. This power tends to be used sparingly. You should calculate your financial commitment on the basis that you will have to pay your own costs.

The rules governing divorce and dissolution proceedings encourage early, open negotations and the court expects solicitors and clients to be reasonable and realistic. It is important to note that the court can impose a costs order if you or your spouse refuse to negotiate openly, reasonably and responsibly.

Stage 1	Stage 2	Stage 3	Stage 4
Up to the issue of court proceedings or agreement without proceedings (a "consent order")	From issue to First Directions Appointment (FDA)	From FDA to Financial Dispute Resolution Appointment (FDR)	From FDR to Final Hearing
Typical time estimate for this stage is 6-12 months	Typical time estimate for this stage is 3-4 months	Typical time estimate for this stage is 4-6 months	Typical time estimate for this stage is 6-12 months



COHABITATION

People who live together without being married often mistakenly think they have similar rights to married couples if the relationship breaks down or one of you dies. This is often not the case.

There is no such thing as a common law marriage and cohabitants have very few rights or financial claims that arise out of the breakdown of the relationship. Cohabitants cannot, for example, claim maintenance from a former cohabitant for their own benefit. They are usually also unable to seek a share of their former partner's general wealth and assets.

Property

If you live in a property in your partner's sole name, you have no automatic right to a share. You would have to establish a right (called a beneficial interest) in the property. These can be complicated to establish but some examples in which this might be possible could include the following scenarios:

- You contributed to the purchase of the property; or
- You and your former partner agreed that you would have a share and you acted to your detriment in reliance on that agreement; or
- You made direct financial contributions;
- Taking account of all of the financial arrangements throughout your relationship.

These are examples and are not intended to be exhaustive.

Determining whether you might be able to establish whether you have a beneficial interest in the property can be a time consuming and lengthy process of analysing a great deal of information, about what was said and done during your relationship. The strength of your case will depend on what evidence you have.

If you live in a property that is held in joint names with your partner:

- The starting point is to be clear about out whether you co-own the property as beneficial joint tenants or tenants in common.
- Usually, depending on when the purchase took place, the solicitor who dealt with your purchase will have specified one of these. It might be necessary to look at the solicitor's file or check your Land Registry title deeds which will specify your type of ownership.
- If it can be confirmed that you do co-own as joint tenants then the presumption will be that you have equal shares unless one of you can establish something different based on the sort of principles described above. Sometimes this presumption can be challenged, sometimes it cannot.
- If you own the property as tenants in common the size of your share might have been specified in a separate document, often called a Declaration of Trust or a Deed of Trust. You should check. If you have such a document then this might be determinative of your shares and interests.
- If it has not been specified, you will have to establish the size of your share based on various principles, including what was said, agreed and your financial contributions.

You can engage in mediation, the collaborative process or solicitor negotiations with a view to finding an agreed solution. If an agreement cannot be reached a court claim can be issued under the Trusts of Land and Appointment of Trustees Act 1996 for a decision about what you are entitled to.

Children

If you and your partner have children together, and you are the main carer for the children, you can make financial claims on behalf of the children under Schedule 1 of the Children Act 1989. A claim could be made independently or in conjunction with a claim under the Trusts of Land and Appointment of Trustees Act 1996.

You and the children may be able to stay in the house whilst they are dependent or under the age of 18, regardless of who owns the property, or the court can make orders for lump sums to provide for housing or for other specific capital needs of the children. When making a decision the court will look at whether this would be in the best interests of the children. You might have to re-pay capital once the children are 18 or finished their education but this very much depends on the circumstances.

Child support can be assessed and collected, if necessary, through the Child Support Agency or the Child Maintenance Service, and sometimes through a court.

Making a Will

If you have not made a Will then we recommend you do so. You might need to make a new will if you made a will whilst you were living with your partner.

Cohabitation contracts

You can enter into a cohabitation contract which is an agreement which can record various financial arrangements, both during your relationship and in the event of the relationship breaking down. Such agreements are not automatically binding or enforceable, but they can be helpful to record agreed intentions, and can therefore be of evidential use in the event of court proceedings, and increasingly the courts are attaching considerable weight to such agreements, though this is at the discretion of the court and depends on the facts of each case.

Separation agreements

If you have decided to separate it might be important to record the financial arrangements in one document for clarity and completeness, and therefore a separation agreement might be sensible.

We can discuss these options and your needs, and help you decide what is right for you.

HOW MUCH WILL IT COST?

We will tell you in advance how much your matter is likely to cost and in many circumstances can agree a fixed fee with you.

Set out below are the options for your first meeting with one of our expert family lawyers.

A free 30 minute meeting

An initial meeting with one of our family law specialists to identify your options, possible solutions and discuss costs. This approach might suit you if you wish to test the water before making a decision about whether to use our services. We recognise that it is vital you are comfortable with the family lawyer you instruct. One of our experts will usually speak to you over the telephone before a meeting is arranged.

Fixed fee initial appointment

Sometimes attempting to talk through the issues at a short meeting is difficult or impossible and you might want us to confirm our advice in writing. We therefore offer a detailed initial meeting for £130 including VAT, followed by a letter setting out our advice. Our only condition in relation to this option is that your legal proceedings have not already started.

Thereafter should you wish to continue instructing us this would be done on an hourly rate basis. This will be confirmed to you following our meeting.

UNBUNDLED LEGAL SERVICES

Some clients wish to be able to switch between navigating their own way through separation and getting legal advice, and this is called unbundling. You would lead on matters rather than us and we would 'act in the background' when you ask us to. There are disadvantages and risks to this approach and we recommend that you consult us about your circumstances before making a decision.

Unbundled services allow you to stay very strictly in control of the cost. They enable us to deliver family legal services according to the needs of clients working to tight budgets; people who might otherwise go without access to legal advice.

If you ask us for an unbundled service you would involve us in limited specific tasks such as reviewing or drafting documents, or helping you negotiate or prepare for court hearings. You might also ask us to give a second opinion, represent you at court or help you represent yourself, for example.

CONTACT US

For further information about any of the subjects discussed in this booklet or to discuss your divorce, dissolution or separation please contact one of our local offices.

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reception@boysandmaughan.co.uk
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BOYS & MAUGHAN
Solicitors

You would also be welcome to contact one of our family law experts directly

Email addresses and phone numbers for our lawyers can be found on the ‘Our People’ section of our website.

Video calls

All of our specialists are happy to meet clients via video call, including for initial meetings, so if you would prefer this approach don’t hesitate to say.

READ OUR REVIEWS

Our latest reviews can be found on our website under ‘About us’ and elsewhere online. We are amongst the top firms in the country on the leading solicitors’ independent review platform, ReviewSolicitors, due to high levels of positive feedback from clients across all our practice areas.

Calm and methodical
“I was at ease with Jonathan from the beginning and appreciated his calm and methodical approach. A good resolution was achieved with a minimum of friction.”

Friendly and efficient
“I would like to acknowledge how helpful, friendly and efficient Mrs Huckstepp’s secretary was. She was so kind and thoughtful when I was having problems.”

Highly recommend
“Excellent service - dealt with my divorce and settlement. Great communication throughout. Zoey Arscott was friendly and very efficient.”

BOYS & MAUGHAN
Solicitors