



DIVORCE AND DISSOLUTION OF CIVIL PARTNERSHIP INFORMATION PACK

Our offices

Campions Solicitors Nottingham

45-49 Mansfield Road

Nottingham

NG1 3FH

Tel: 01159 247022

Email: familymediationnottingham@campions.co.uk

www.familymediationnottingham.co.uk

Campions Solicitors Derby

21 Brunel Parkway

Pride Park, Derby

DE24 8HR

01332 224570

Email: familymediationderby@campions.co.uk

www.familymediationderby.co.uk

Introduction

In order to obtain a divorce or dissolution of a civil partnership you must have been **married/ in a civil partnership for at least 12 months** and must be able to demonstrate that your marriage/ civil partnership has suffered '**irretrievable breakdown**'. You will also be required to show that one of the grounds set out below applies.



The Divorce / Dissolution of the Civil Partnership Procedure

The process can be relatively straightforward and is a matter of working through the formalities so long as the other party co-operates in replying to documents and does not defend ie contest. There are often other issues that arise that can cause difficulties and disagreements between the parties such as children and property and financial issues. Sometimes these have to be dealt with. If so, one of our solicitors will discuss this with you and provide you with advice. We have specialised solicitors that deal with finance and children matters in separation. This pack does not cover children or finance and if you require advice about these issues please contact us.

At the first meeting with your solicitor you will discuss the reasons for the breakdown of the marriage/ civil partnership and you will be required to provide information in relation to the separation.

At our initial discussion with you we will be ask for the following information:

1. Information about the Marriage / Civil Partnership
2. Details of children, if any.
3. Details of finances.

We will ask for the following documents:

1. Marriage/ Civil Partnership Certificate, if you have one. If you do not have the original then you will need to obtain a copy of the same from either the place where you were married/ civil partnership or contact the Registry Office, if applicable. Please note that a photocopy is not acceptable at the court. We would need a clear colour copy sending to us via email so send to the court.
2. Your identification.
3. We will also ask you for a payment on account towards your fees.

After the initial meeting we will open a file and we will then write to your spouse / civil partner to inform them we are acting and to state we will be issuing proceedings.

We will need to set out the details of the relationship breakdown within the application to the court.

The person who issues (the Petitioner) will petition on one of following facts:

1. The Respondent has committed **Adultery** and the Petitioner finds it intolerable to live with the Respondent. THIS ONLY APPLIES TO DIVORCE AND NOT A CIVIL PARTNERSHIP. You would not normally name a third party. If a third party is named that person is called the Co-Respondent. If you have lived with your partner for over six months from the date when you discovered that your partner had committed adultery, you will not be able to proceed under this ground.
2. The Respondent has behaved in such a way that it would be unreasonable for the Petitioner to remain living with the Respondent.: i.e. **Unreasonable Behaviour**. You would need to give examples of their behaviour that led to the breakdown of the relationship. You must show that your partner has behaved in such a way that it is unreasonable for you to be expected to live in the same household. The behaviour can take may examples. It is hard to be dogmatic about what does constitutes behaviour but generally it could be defined as behaviour that any person should not reasonably expect to have to tolerate.
3. The Respondent has deserted the Petitioner for a period of at least 2 years and the Petitioner did not consent to the **desertion**. In practice, this is rarely cited in a petition because it is quite complicated and often other facts can be cited when you have separated.
4. The parties have lived separately for at least 2 years and the Respondent consents: **2 Years Separation with consent**. You will be able to have lived together for a period of six months over the two year period but such periods of living together will extend the two year period.
5. The parties have lived apart for at least 5 years. This ground does not require the Respondent's consent. : but the Respondent may apply for his/her financial situation to be finalised.

The Application to the Court

Once we have prepared the application it is then filed at the court online. It is filed with a clear colour copy of the Marriage Certificate which should have been obtained either from you or from the Church or Registry Office.

It is sent with a court fee. You may not be granted a Fee Exemption from the Court if you are on a low income / benefits. Sometimes the Court may assess you as having to pay part of the fee. If you wish to apply for a fee exemption you will need to complete a fee exemption form online and we will provide you with a link for this prior to us sending the document to the court.

What happens after we have issued proceedings?

The court will notify us proceedings have been issued and allocate a case number. The application will then be sent to the Respondent. The Respondent will then need to acknowledge receipt of the petition (normally within 14 days) indicating whether he/she intends to defend the petition by completing the **Acknowledgement of Service form online** sent by the Court.

If they do not return the acknowledgement of service form then we may need to arrange for the Respondent to be personally served. This will incur a further fee and the cost of that will depend upon the location or the Respondent / the complexity of serving him / her. We would also need to obtain a copy of the papers for service.

If the whereabouts of the Respondent are not known then they will have to be traced. Again this would incur further charges.

If the whereabouts are still not known after the above it may require an application to the court to process the application but the court decides if this is allowed. This will require showing the court the steps taken to trace / serve the Respondent.

Defending the Application

It is very rare that proceedings are defended. There are significant costs and complexities to this. Of course it depends on the accusations/grounds. We would rarely advise clients to defend proceedings. It rarely achieves a positive result and will most certainly increase the time (and cost) taken to conclude matters. If the divorce is defended we do not offer a fixed fee. A defended divorce would also take longer to conclude.

After The Respondent Has Been Served

The next step is for the Petitioner to make an application for a Decree Nisi / conditional order by submitting a Statement of Support confirming that the content of the petition is true and confirming his/her intention to proceed.

Decree Nisi / Conditional order

Upon receipt of the Statement in Support, a judge at the court will consider the application and if satisfied that there are grounds they will fix a date on which a Decree Nisi/ Conditional Order will be pronounced. The Decree Nisi/ Conditional Order is confirmation from the Court that the application can proceed; it does not end the marriage / civil partnership.

Decree Absolute/ Final Order

Six weeks and a day after receiving the Decree Nisi / Conditional Order , the Petitioner is entitled to apply for a Decree Absolute/ Final Order, which finally dissolves the marriage/ civil partnership. It may be advisable to delay applying for the Decree Absolute/ Final Order until all financial issues have been resolved as certain rights such as pension rights which would usually arise on death will cease.

Upon receiving the Decree Absolute/ Final Order, it may be necessary for you to make a new Will unless the existing will was made in contemplation of Divorce. You can do so with ourselves. Please contact our Wills and Probate Department if you wish to discuss this.

Can I claim costs against the other party?

Yes, however the solicitor will discuss whether or not this is appropriate. It can vary as to whether or not this is appropriate. Also, whether or not the court would order the other party to pay your costs or a proportion of the costs will depend on the decision of a District Judge. If a claim for costs is defended the court may list the matter for a hearing to decide the issue and this is not covered by our fixed fee divorce.

A claim for costs would only relate to the legal fees for the divorce and the court fee. Not those costs incurred dealing with financial or children matters.

A divorce based on the other's behaviour or adultery may lend itself to a reasonable claim for costs however 2 or 5 years separation may not (due to the fact these are 'no blame' facts in the application.

Is divorce/ dissolution the right thing for you?

There are other options which may or may not be appropriate in your case such as:

1. Reconciliation

Would you wish to seek a reconciliation with your spouse? Should you decide that this is an option you wish to take you should either contact an organisation such as Relate directly or you can contact this office and we can provide you with details of local services that may be able to help.

It may also be appropriate to use the professional services of a family mediator in negotiating arrangements between you eg , finances / children / living arrangements and again you can request further information from us about local services that can assist.

2. Nullity

We often get asked whether or not to annul as opposed to issuing divorce / dissolution proceedings. To obtain a decree of Nullity the marriage/ Civil partnership must either be void from

the beginning or alternatively require that the marriage / civil partnership has become voidable.

For it to be void one of the following situations has to arise:

1. Either was already married.
2. Either was under the unlawful age of 16 years at the time of the Ceremony or;
3. The parties are deemed to be too closely related to each other. There are strict rules about this.

For it to become voidable one of the following has to arise:

1. The marriage has not been consummated either to incapacity or refusal.
2. One did not consent to the marriage or
3. One of the parties simply may not have had the mental capacity to go through with the marriage / civil partnership.

Generally, if one is applying for a voidable application it should be done within 3 years of the date of the marriage/ civil partnership.

We also discuss with the client their particular circumstance on whether or not divorce/ dissolution or nullity is the better way forward. Nevertheless, it is generally thought that divorce/ dissolution is easier to proceed. Nevertheless, nullity may be preferred for religious reasons. We have different costs for a nullity and these can be requested from us if you wish to enquire.

3. Judicial Separation

Judicial Separation, otherwise known as legal separation. Again, this may be preferred by people for example for religious reasons.

The difference between judicial separation and divorce/ dissolution is that you do remain married/ in a Civil Partnership as you simply obtain a Decree of Separation.

Grounds for Judicial Separation

The grounds for judicial separation are the same as those for divorce / Civil Partnership. In fact the procedure for judicial separation is the same as divorce / Civil Partnership except you do not have a Decree Nisi and a Decree Absolute as you only obtain a Decree of Judicial Separation.

The same Financial Orders can be obtained as on Divorce. The Dismissal of Financial claims differs in the sense that you cannot have a clean break between the parties.

Judicial Separation is often considered when somebody separates within the first year of marriage and cannot start divorce proceedings or for religious reasons.