

HARDMANS & CO. SOLICITORS

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DIVORCE and FAMILY LAW

This page is not intended to give specific advice, but only to outline procedures / processes, to enable you to ask us more informed questions.

There are principally three areas within Family Law, namely DIVORCE, CHILDREN and PROPERTY / MONEY. Often the three are inter-linked.

We can help you deal with what may be one of the most traumatic times of your life, with sympathy and common sense.

Please note that, though not referred to separately, much the same procedures (save for the “fact” of adultery) apply with regard to the breakdown of civil partnerships and same gender marriages, as for heterosexual marriages. If you want to know more, please ask.

DIVORCE

1 Q Who can petition?

A Anyone married for more than a year, domiciled or resident in England and Wales, who can show the Court that the marriage has broken down irretrievably by reason of one or more of five “facts”.

- a that your partner has committed adultery, AND because of that, or for another reason, you find it intolerable to carry on living together
- b that your partner has behaved in such a way that it is unreasonable to expect you to carry on living together
- c that your partner has deserted you for at least two years

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- d** that you and your partner have lived in separate households for at least two years AND your partner agrees to a divorce
- e** that you and your partner have lived in separate households for at least five years
- 2 Q** What should be put in your Petition?

 - A a** Where possible the “fact” that is least contentious
 - b** Details of the parties, the marriage and the children of the family
 - c** Details about the “fact” relied on (e.g. date of separation)
 - d** A request for costs or sharing of costs (sometimes) and what orders you would like regarding money or property
- 3 Q** What else must be filed with the Court?

 - A a** Your marriage certificate
 - b** The Court fee (usually)
- 4 Q** What happens after the Petition has been filed?

 - A a** Your partner will be asked to complete and file an “acknowledgement of service” stating whether s/he objects to the Petition
 - b** If uncontested, you can then make a statement in support of your Petition, and ask for the preliminary “decree nisi”

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- c As long as the arrangements for the child(ren), and for money and property, have been sorted out, you can apply for the final “decree absolute” six weeks after decree nisi**

CHILDREN

1 Q Whose children?

A If arrangements cannot be agreed, then the Court will be concerned about the arrangements for all “children of the family”, and so not only children of the marriage but also those (e.g. stepchildren or adopted children) who have been treated by both of you as part of the family

The Court will place the child’s interests first, even if its view of the child’s welfare conflicts with the views of both parents

2 Q What orders will be made?

A None, unless the Court considers it best for the child to do so

The main orders which a Court is likely to make are:-

a Residency (previously - custody)

This may be required where the parents cannot agree where the child’s primary home is to be

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b Contact (previously - access)

This may be required if the parents cannot agree when a child can visit and / or stay with the parent with whom the child does not live primarily

The Court will be concerned that parents agree everything possible, either by mediation, or with the help of CAFCASS - the Court Welfare Officer, who may prepare a report if agreement seems unlikely

c The Court can also be asked to make orders with regard to specific issues (such as in relation to education, passports etc.)

PROPERTY / MONEY

The Court will try to achieve the impossible, namely to put the parties in the same position as if the relationship had not broken down. It will encourage the parties to agree whenever possible, but, if not, will “manage” the Court hearings process.

We cannot advise you on what may be best for you, without full disclosure of the financial position by both parties. Although some factors will always be relevant (the main ones are set out in s.25 of the Matrimonial Causes Act), it must be borne in mind that each person’s circumstances are different, and so there are few hard and fast rules in this area of law.

Where parties have been married, it is possible for the Court to make a “property adjustment” order (amongst others). As its name suggests, the Court can “adjust” that which property law would normally stipulate, so as to achieve a “fairer” result in the Court’s eyes. If the parties have not been married, then the Court is confined to applying property (and trust) law.

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With the greater “flexibility” available within proceedings for divorce or judicial separation, the Court can achieve a division of assets which will allow a “clean break” between the parties (which can minimise future acrimony). This may not be possible if there are young children, or insufficient assets.

Essentially, the Court looks at:-

- Capital (transfers of assets, creation of trusts, pensions sharing, lump sums, etc.)**
- Income (maintenance)**

The Court will not usually deal with child maintenance, which is dealt with by a separate government agency, unless there is sufficient income to “top up” the level prescribed by that agency (e.g. for school fees).

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