

DON'T KNOW WHERE TO START WITH DIVORCE



We created these 'don't know where to start' courses because often when divorcing couples call us for the first time, that's exactly what they say: we just don't know where to start.

Well, when it comes to the legal aspects of divorce, we can help with that.

The aim of this course is to help you understand what a divorce is and its legal repercussions, how to apply for divorce, what no-fault divorce means and how it has changed the law, and a checklist of what you need to start thinking about. Our aim is that by the end of the course you will have a solid understanding of the legal aspects of divorce, so you can make a plan for how to navigate it.

ABOUT THIS COURSE

Divorce is a legal process. But most people going through it are navigating it for the first time. And many of the online resources, and information in the media, can be confusing.

So where do you start? Well the first thing to understand is the legal process and how it applies to your situation. There are three main legal areas separating couples may need to navigate on divorce:

1. The divorce application itself;
2. The division of your finances; and
3. If you have children, the arrangements for them.

This course is going to focus on the divorce application itself, so that by the end you will gain a broad appreciation of the legal and practical issues that arise upon divorce, and you can work out what further help you need in your specific circumstances. We will also explain the relevance of the divorce application to the division of your finances and point you in the direction of our other courses about finances and children that you may find helpful if you feel you don't know where to start. But our courses are not and never can be a substitute for seeking expert legal advice on your own family's specific circumstances.

Lastly, you'll find a series of checklists designed to get you thinking, when you're ready, about these three areas and the help you'll need.

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THE DIVORCE APPLICATION

Simply enough, this is the process by which your legal status is changed from married to divorced. It is a paper exercise which takes not less than 6 months in total and carries a standard Government fee. Following the introduction of 'no fault divorce' in England and Wales in April 2022, separating couples no longer specify reasons for their decision to end the marriage.

There are legal and often also financial and tax consequences that flow from that change of status, so it's important, when approaching a divorce, not to look at the divorce application on its own, but also to consider your overall financial situation at the same time.

The first question, of course, is whether you want to get divorced. That is an intensely personal decision. The aim of this course is to give you a high level introduction as to what divorce entails from a legal perspective, so you can use that to help make a decision as to the best next steps for your family. Importantly, it's worth bearing in mind that you cannot remarry unless you have first divorced.

DIVORCE: WHAT IS THE LAW?

When can you get divorced?

You can get divorced in England or Wales if:

1. you've been married for over a year;
2. your relationship has permanently broken down; and
3. your marriage is legally recognised in the UK (including same-sex marriage).

If you do not want a divorce, you can get a legal separation without ending the marriage. You might also be able to annul the marriage. These situations are not covered by this course, and you should seek tailored legal advice if you are seeking an annulment or legal separation.

There is a different process if you want to get a divorce in Scotland or Northern Ireland.

What is no-fault divorce?

Thanks to the Divorce, Dissolution and Separation Act 2020, which came into force on 6 April 2022, the divorce process in England & Wales has become considerably more humane.

No-Fault Divorce removes the focus on one party's conduct as a factor which is relevant to the divorce. No-one has to prove anything – adultery, desertion or unreasonable behaviour. Nor do you have to wait 2 or 5 years to proceed.

Instead, a spouse (or both spouses acting together jointly if they agree) simply has to notify the court when the marriage has broken down irretrievably.

There is a minimum period of 20 weeks from the start of proceedings to the date when the court can make a 'Conditional Order' (which under the old regime was called 'Decree Nisi'). Six weeks and one day after that, the court can conclude matters by making a 'Final Order' (which used to be called 'Decree Absolute').

By removing the focus on past conduct, and enabling couples to apply jointly for divorce, the process has become much kinder and more conciliatory, thus fostering better conditions for amicable discussions.

As an aside, there is no such thing as a 'quickie divorce'. In principle at least, the position has always been that all uncontested divorces should take the same time to process.

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DIVORCE: WHAT DO WE NEED TO DO?

Applying for divorce

A brief summary of the process in England and Wales is as follows:

You need to decide whether you want to make a joint application with your husband or wife or whether you want to apply on your own.

It normally takes at least 6 months to get a divorce. This is the same for joint and sole applications.

You can make a joint application if:

- you both agree that you should get a divorce; and
- you're not at risk of domestic abuse.

A sole application will be more suitable if:

- you're at risk of domestic abuse;
- your husband or wife does not agree you should get a divorce;
- you do not think your husband or wife will cooperate or respond to notifications from the court; or
- there are urgent reasons for one of you to apply for a divorce without notifying the other, for example jurisdictional issues, in which case you should obtain urgent independent legal advice.

To apply for a divorce you will need:

- both your full names and addresses;
- your original marriage certificate or a certified copy (and a certified translation if it's not in English);
- proof of a name change if you've changed it since you got married - for example your marriage certificate or a deed poll;
- your husband or wife's current address. This is so the court can send them a copy of the divorce application. If you give your husband or wife's email address, the court will send the divorce papers to them online. If you do not give an email address the papers will be sent by post.

There is a £593 court fee to apply for a divorce. You may be able to get help with fees if you receive benefits or are on a low income. If you are making a joint divorce application and want help with paying the fee, you must both apply for help. If your husband or wife is not eligible or does not apply, you'll have to pay the full fee.

The Conditional Order

Once your application for divorce is received by the court it will be checked and, provided it is correct, you will be sent:

- a notice that your application has been issued;
- a copy of your application stamped by HM Courts and Tribunals Service (HMCTS); and
- a case number (which you should then quote in any correspondence with the court).

If you have made a sole application, the court will also send your husband or wife the divorce application and an 'acknowledgement of service' notification. Your husband or wife must respond to the acknowledgement of service notification within 14 days saying whether they:

- agree with the divorce (in which case you can continue with the divorce by applying for a conditional order once 20 weeks has passed); or
- intend to dispute the divorce (in which case they will have to complete an 'answer form' to say why they disagree with the divorce. There are very limited legal grounds to dispute a divorce, for example that the English court lacks jurisdiction, that the marriage was not valid or that the marriage has already been legally ended. Spouses can no longer dispute a divorce simply because they do not want a divorce or to delay the process).

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Assuming neither of you dispute the divorce, you then need to wait 20 weeks. After this time you and your husband or wife can continue with the divorce by applying for a Conditional Order.

A Conditional Order is a document from the court confirming that the court does not see any reason why you cannot divorce. It will tell you the time and date you'll be granted a Conditional Order. You will still be married after it has been granted.

After the Conditional Order is made, the court can convert any agreements you have reached as to the division of your finances into Court Orders (see further below).

The Final Order

Once any financial agreements have been made into Orders of the Court, and at least 43 days (6 weeks and 1 day) after the Conditional Order is made, you can apply for a Final Order which then ends your marriage. This has important repercussions in particular for tax and pensions, which is why it is so important to have final Court Orders in relation to your finances before this step is taken.

You should apply for a Final Order within 12 months of the Conditional Order, otherwise you will have to explain the delay to the court.

After you apply the court will check that time limits have been met and there are no other reasons not to grant the divorce, and will then send both of you copies of the Final Order.

Once you get the Final Order, you are divorced, no longer married and free to marry again if you wish. You should keep the Final Order safe - you will need to show it if you remarry or to prove your marital status. If you lose your Final Order, you can apply to the court for a copy.

DIVORCE: DO WE NEED EXPERT ADVICE?

Applying for divorce

Many couples can navigate the online divorce application without legal advice. The best thing to do as a starting point is take a look at the gov.uk website: [Get a divorce: How to apply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/get-a-divorce).

If, after taking a look, you decide that you would like some legal input, there are many fixed fee services to assist you (including our own) so do shop around and find the option which is the best fit for you.

THE RELEVANCE OF DIVORCE TO THE DIVISION OF YOUR FINANCES

What is this all about?

Getting divorced does not automatically mean your finances will also be resolved. Separate legal proceedings are required for each. Dealing with the money is known as 'financial remedy proceedings'.

When a married couple separates each has a financial 'claim' against the other, until a court dismisses that claim.

Most married couples will have some assets held in their joint names, for instance the family home, but even if all your assets are held separately, as a result of your marriage you will have legal claims against each other, which remain alive unless they are dismissed by a family judge.

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The role of the Family Court

A key point to understand is that any agreement you reach as to how your finances are to be divided will need to be approved by a judge and converted into a Consent Order if you wish to finalise each of your claims.

The Family Court continues to exercise a closely supervisory role when it comes to the financial arrangements between separating spouses. A judge will only approve a Consent Order where he/she considers it is fair having regard to your particular circumstances. Critically, the court's power to make orders in relation to your finances only arises at all if you have also reached a certain stage in your divorce proceedings ('Decree Nisi' under the old rules, or 'Conditional Order' under the new No-Fault divorce rules).

This is worth bearing in mind at an early stage, given the time it takes to process the divorce. Many couples choose to start divorce proceedings, negotiate a financial settlement whilst awaiting their Decree Nisi or Conditional Order, and then finalise the finances before returning to finish off the divorce afterwards.

But isn't it just 50/50?

There is a common misconception that resources are all divided '50/50'. In fact, that is a relative rarity. In England and Wales we have a highly flexible system, designed to take account of the individual circumstances of individual families, avoiding the one-size-fits-all approach of some other jurisdictions.

So, this is an area where you would be wise to take some expert legal advice from a qualified lawyer (either apart or together) to understand what is fair in your particular situation.

FINANCES: DO WE NEED EXPERT ADVICE?

If you would like to further your reading, the following additional courses may be of interest:

- Don't know where to start with the finances?
- What about filling in a Form E?
- What are 'needs' and why are they relevant?
- What is 'sharing' and when is it relevant?
- What about giving up a career?

Alternatively, if you're ready to move beyond our courses to seeking expert legal advice tailored to your specific circumstances, then do consider taking joint legal advice here at The Divorce Surgery. Our specialism is in advising couples together, as to how a court would regard their situation. Our approachable, specialist barristers have extensive experience in every kind of financial remedy case, both large and small. You can then use their detailed advice to progress your settlement discussions.

Another major consideration when it comes to decisions about divorce and its timing is tax. The treatment of Capital Gains Tax in particular will depend on how long ago you separated. Under the previous Capital Gains Tax (CGT) laws, separating couples transferring their assets had to do so within the tax year of separation to ensure no CGT was payable. After this period, any transfers were liable for CGT. For instance, if a couple were to divorce in December, they would have until April 5th to pay. However, a number of tax reliefs were announced by the Chancellor in the March 2023 budget, including an extension of this period of "no gain, no loss" transfers to three tax years. This affords spouses and civil partners who are separating and don't live together more time to transfer assets between themselves as part of a divorce settlement. You should always take specialist and up-to-date tax advice if you have significant financial resources to divide, to ensure you structure any financial settlement and timetable any transfers of assets tax-efficiently.

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It's crucially important to be aware that if you remarry this will have a very significant impact on your legal entitlement to make financial claims arising from your former marriage. So if you intend to remarry, you really must sort your finances out first.

DIVORCE AND ARRANGEMENTS FOR YOUR CHILDREN

If you separate and have children, one of the first questions you'll be asking yourselves is: how do we co-parent in this new reality? What arrangements are going to work for our children and ourselves, in the short and the long term? What if we can't agree?

The first thing to know is that it is completely normal not to agree about the future arrangements for your children. Divorce is a life change, and on some aspects of their care you may well both be pulling in different directions.

What matters isn't reaching agreement straight away (hardly anyone does). What's important is how to navigate your inevitable disagreements.

CHILDREN: WHAT IS THE LAW?

No automatic role for the Family Court

The starting point is this: if it is safe for you and your fellow co-parent to work together, that should be your starting point. The courts will expect you to do so, and research consistently shows that reducing conflict has better outcomes for the emotional health of the children and adults involved.

The family court will not get involved in the arrangements for your children unless you ask it to. The law recognises that a child's parents, and those who share parental responsibility, are the people best placed to make decisions about that child's welfare.

Will you need a court order?

You do not need a court order confirming the arrangements for your children's care. In this respect, it is very different from any agreement you reach about the division of your finances (which does need to be reflected in a court order to be binding). It's a good idea to set out your agreement in writing, and many parents draw up a parenting plan together so they are both clear about what they've agreed, but there is no need at all for the court to see that document or approve it.

But for some co-parents, an understanding of what a judge might do in their situation can be helpful in reaching an agreement.

If you believe that your safety or your child's safety is at risk, seek independent legal advice urgently. The courts have many protective powers and are there to safeguard you. Working together is not appropriate if your physical or emotional safety is at risk.

How to start working together

If you're agreed that you want to work together, and it's safe for you to do so, it's then a three step process:

- **Identify, in the broadest terms, what your aims are with regards your re-shaped family.** For example, for your children to move happily between your homes, for you both to attend the same school events without awkwardness, to be a source of support for each other as your children face challenges of their own, to re-define your relationship from an intimate adult connection which wasn't working, to a co-parenting bond which does.

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- **Work out what is on the agenda for discussion.** A great way to start this is working through a parenting plan. Remember it's normal not to agree. All you're doing here is working out the areas where you're aligned, and those where you aren't.
- **Agree how to resolve your differences of opinion.** You have many more options than you may realise. Some parents need a session or two with a co-parenting expert. Some benefit from some joint legal advice, to understand what family judges view as 'normal', and what they might do in their particular situation. You may want to see separate solicitors. You may feel you don't need legal advice but want a mediator to help you negotiate with each other, or a divorce coach to support you. There are also online services which can help. We explore these options more fully in our course about the law relating to children, but for now know this: you should choose the expertise to fit your family, and not the other way round.

CHILDREN: DO WE NEED EXPERT ADVICE?

If you would like to further your reading, the following additional courses may be of interest:

- Don't know where to start with the children?
- What about the law relating to children?
- What about parental responsibility and does it matter?
- What about moving with our child?

If the arrangements for your children following separation have become an issue between you, there are many places to which you can turn for help.

For many co-parents the support of a co-parenting expert, even just for a standalone session, can be a brilliant way to begin discussions around future child arrangements in a positive and forward-looking way. A co-parenting expert or mediator can help you navigate those early conversations with your children about separation and can include your children in discussions if that would be helpful. Provided your safety is not at risk, engaging with a co-parenting expert and working through a parenting plan can provide an excellent framework to explore whether agreement is achievable or not. So many legal issues can be resolved (or narrowed) by effective communication.

If you're reaching a stalemate be careful not to become entrenched in a mindset that agreement is impossible. Sometimes joint legal advice will be just what you both need to see how a judge might approach your situation, and unlock the solution. If you and your fellow co-parent would like legal advice which is tailored to your specific circumstances then please don't hesitate to get in touch. At The Divorce Surgery we have a specialised service called Living Apart Parenting Together, through which we advise co-parents, together, as to how a court would regard their family situation. Our approachable, specialist barristers will look at your circumstances from both perspectives and advise you both, impartially, as to the likely outcomes.

Remember prolonged periods in conflict are bad for everyone's mental health. The sooner you both engage in possible solutions to the disagreement, and seek professional support if needed, the sooner you can identify the right outcome for your family as a whole.

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A SHORT-TERM CHECKLIST

To help you get started with the wider decisions around divorce, we've set out three checklists which may be helpful looking at short-term arrangements, and cover the preliminary issues you both need to be considering.

Some items will be easy to agree, others won't. Remember that is normal. All you're doing is identifying the areas where you have different perspectives. Then if you need some help to finalise those points, you can get it.

Divorce checklist

This checklist is designed for families where there are no safety concerns. If you believe you, or your child, are at risk, or that your spouse may be taking steps to initiate divorce proceedings in another country without your consent, please do urgently seek advice on your own from a family solicitor. The Family Courts are there to protect you.

- Are you both agreed that divorce is the right route for your family? Many couples find separation counsellors helpful in reaching that decision. Would you like to explore other options, such as a separation agreement, before reaching a concluded view? If so do consider getting some legal advice, together or separately.
- Are you an international family with links abroad? If so you'll need to decide in which country ('jurisdiction') you want to divorce. If you think you are unlikely to agree on the country, you should seek separate and independent legal advice urgently.
- If you already agree you want to divorce in England & Wales, explore whether you would like to apply jointly for a divorce.
- Have a look at the gov.uk website. Do you feel confident doing the divorce application yourselves? If not there are many fixed fee services to assist you (including our own) so do shop around and find the option which is the best fit for you.

Finances checklist

This checklist is designed for families where there are no safety concerns. Abuse can be financial. If you believe you, or your child, are at risk, or that your spouse may be taking steps to conceal assets from you, please do urgently seek advice on your own from a family solicitor. The Family Courts are there to protect you.

Your overall financial situation:

- To what extent do you understand your family finances?
- Provided it is safe for you and your spouse to work together, sit down and go through everything together.
- You may want to involve an IFA to help work out your mortgage capacities and monthly spending needs, and don't forget to take tax advice too (see below).

Your current living arrangements:

- If you're still living together under the same roof you'll need to agree what the continuing arrangements should be while you work to resolve the wider issues. If one or both of you does not feel safe then you must take urgent independent legal advice. Do you want legal advice before you can decide this issue anyway?
- If one of you is going to be moving out, can you agree where to? You'll want to consider:
 1. The type and quality of housing needed. Will children be living or staying there? Is this just a stop-gap solution, or for the longer-term?
 2. Geography. Are you restricted to a particular location, for work, or childcare?
 3. There will be rent or mortgage payments, utility bills, council tax, service charges, ground rent, set up and moving costs

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4. What will be the impact on the wider family finances? If you are spending limited resources setting up another home, this may have a significant impact on what is left over for other family expenditure
 5. Tax (again), in particular if you have significant resources. The date when you separate is important from a capital gains tax (CGT) perspective. Take accountancy advice
- If money is going to be tight it might be worth exploring what measures you can agree to take to reduce your outgoings on the family home, at least for a time-limited period. Some options might include:
 1. whether a mortgage 'holiday' can be arranged. Will your lender defer payments for a short period of time?
 2. If you presently have a repayment element to your mortgage, can it be converted to interest only?
 3. Are you entitled to Council Tax Reduction? (<https://www.gov.uk/apply-council-tax-reduction>)

Tax

- Do you need tax and legal advice on the timing of any divorce proceedings?
- You should always take specialist and up-to-date tax advice if you have significant financial resources to divide, to ensure you structure any financial settlement and timetable any transfers of assets tax-efficiently.

Work and benefits

- Do you know if your employer has a Divorce Policy aimed at supporting you? If not, do you know what informal support can be given in terms of flexible working hours / time off to enable your participation in the separation process?
- If money is tight, are you presently maximising your earning capacities, having regard to any childcare and other commitments?
- Are you receiving all state benefits to which you are entitled? Find out, using gov.uk information on where to find benefits calculators (<https://www.gov.uk/benefits-calculators>)

Borrowing money

- Do you need to borrow money to make ends meet for now, and if so where from? How do you strike the balance between meeting your present needs and not undermining your future prospects? Take financial advice
- Should you repay money previously lent by family members, if this is agreed? Is this affordable at present?
- Should you repay money previously lent by family members, if this is not agreed? Consider carefully whether this is likely to create difficulty between you at this stage, and be aware that any unilateral steps taken by you can, in certain circumstances, be 'undone' by the court adding the money you transferred back into the pot.

Children checklist

This checklist is designed for families where there are no safety concerns. If you believe you, or your child, are at risk please do urgently seek advice on your own from a family solicitor, the police and/or social services. The Family Courts are there to protect you.

Discussions with the children

- Having decided you are separating, if you have children and if they don't know already have you both agreed when and how you are going to tell them? Have you agreed what support the children will need?
- If you're in new relationships which are likely to endure, have you decided when and how you are going to tell the children? Have you each met each other's new partners?
- Do you need some help navigating these conversations (many parents do)?

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Childcare arrangements (whether you are living together or apart)

- This is not the time to be making knee-jerk long-term plans. Focus on the next three months.
- How are you going to manage the day-to-day care of your children, ensuring they spend meaningful time with each of you (provided that is safe), and fitting around your respective work and life commitments?
- Focus on logistics: who can cover the school runs/ weekend activities on which days. This is short term: just concentrate on practicalities while you work on a longer term plan.

Special occasions

- Are there any special occasions coming up in the next 2-3 months (such as birthdays, school events, Mother's Day, Father's Day, Christmas, Easter, Eid, Diwali or Passover)? If so, you will need to agree how you are going to manage those in a way which works for your children.

Holidays

- Are there any school holidays coming up? Have you agreed what the plans are?
- Are you both happy for the other parent to take your children abroad?
- Are there any countries you would not want the children to visit for safety reasons?
- Can you agree to give each other notice and details of any foreign trip?

Communication

- Many children want to speak to one parent when they are in the care of the other. How will you manage this? Can it be ad hoc or do you want to agree a routine? Remember to be flexible- the needs of human beings don't always fit into set schedules.
- When are you going to talk about your children together? Some parents find a monthly coffee, scheduled in the diary, is a good way to cover any parenting issues which arise.
- How is your behaviour with each other in front of your children? Are there ways you can try to improve your co-parenting relationship yourselves? If not consider going to see a co-parenting expert together, even just for one session, to get things in better shape.

Other important decisions

- Are you approaching any important decisions which will affect your children, for instance school choices? Identify any differences of opinion now so you can make a plan for how you are going to navigate them, and any support you might both need.

THE DIVORCE SURGERY

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All efforts have been made to ensure the information set out in this course is accurate and reflects the laws of England and Wales as at October 2024. It should be used to supplement rather than replace professional legal advice.