

CROSSMANS MTA

SOLICITORS LLP

Divorce



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INTRODUCTION

A step-by-step guide to the procedures on Divorce and includes full details of our charges.

Divorce can be a difficult time. Our aim is to ensure that the process is as pain free as possible. We are committed to keeping you informed of the progress of your case and in particular the cost. Our aim is to take a conciliatory approach where necessary and to ensure that differences are settled in a constructive manner.

This guide is not meant to be exhaustive; there are many factors involved when there is a breakdown in a relationship. We have tried to set out the key stages involved in Divorce Proceedings and will be happy to provide further information upon request.

EXPLANATION OF WORDS

Acknowledgment of Service

The Respondent completes this form. It is a straightforward 'question and answer' form that asks the Respondent firstly to confirm when and where the Petition (and if applicable the Statement of Arrangements for Children form) was received, and secondly whether or not the Respondent will allow the divorce to proceed undefended. If applicable the Respondent will also confirm whether or not he or she agrees to pay the costs of the proceedings (i.e. of the divorce itself and not any ancillary costs such as for the negotiation of financial matters).

Affidavit in Support of Petition

The Petitioner completes this document.

It is a question and answer form simply confirming that the contents of the Divorce Petition are true. The document has to be sworn or affirmed by either a Solicitor or a Commissioner for Oaths.

Certificate of Entitlement to Decree Nisi

The document that confirms whether or not you are entitled to a divorce, together with a date for the Decree Nisi.

Irretrievable Breakdown

This is the one and only ground for divorce and means that the marriage is beyond repair. To obtain a Divorce the irretrievable breakdown has to be proved on one of five grounds namely Adultery, Unreasonable Behaviour, Separation for at least two years together with your spouse consenting to the divorce, Desertion for at least two years or Five years Separation.

Petitioner

The person applying for the divorce.

Respondent

The person who is being divorced.

Petition

The document completed by the Petitioner to start the divorce process.

The Petition (in brief) will include the date and place of marriage, yours and your partner's address and occupation together with details of the children (if applicable). The Petition will also set out the ground for the divorce and any potential claim for costs and financial relief.

Statement of Arrangements for Children

The document that sets out the current and future arrangements for the children. The form (in brief) sets out the full names of the children, details of their living arrangements, proposed contact and where they attend school.

Decree Absolute

This document formally dissolves the marriage and is the final stage of the divorce process.

Costs

The Petitioner in the Divorce Petition can make an application that the Respondent pays the cost of the Divorce. The Respondent will indicate on the Acknowledgment of Service form whether or not he/she consents to this. In the event an agreement cannot be reached it will be necessary for both the Petitioner and the Respondent to attend Court at the date the Decree Nisi is pronounced to ask the District Judge to make or not make as the case may be an order as to Costs. Costs on divorce generally only include the costs of the divorce itself and not ancillary costs such as negotiation with regard to financial matters or issues relating to the children.

Ancillary Relief

This is a broad term that basically means the division of the assets on divorce. In the event an agreement cannot be reached then it is possible for either the Petitioner or the Respondent to apply to the Court for an order for Ancillary Relief'. The Court can make a whole range of orders for you, your spouse or the children. The orders are set out below. Generally, the application for Ancillary Relief will be made in the Divorce Petition and will only be activated in the event an agreement cannot be reached.

Maintenance Pending Suit

This is a form of maintenance for your spouse. Application is usually made where one spouse cannot manage financially as a result of the breakdown of the relationship. The order will only last until Decree Nisi whereupon it can be converted to an order for Periodical Payments.

Periodical Payments

This is maintenance for either you or your spouse. It is usually paid at monthly intervals.

Secured Periodical Payments

It is possible to ask the Court to make an order that a Periodical Payments order is secured on other assets for example dividends from shares or property.

Lump Sum Orders

This is the order of a payment of a specified figure or percentage of assets. It can be paid by installments or as a whole. It can also be secured as with Secured Periodical Payments. Lump Sum Orders can also be deferred to a date specified in the future.

Property Adjustment

The Court can order that one spouse transfer to the other spouse property, which includes land, furniture, vehicles, and policies amongst others.

Settlement of Property

The Court can make an order that property is 'settled'. For example the matrimonial home can be held on 'trust for sale', the house not being sold until for example the youngest child of the family completes full time education. The Court can also order a spouse to set up a Trust Fund for the benefit of a spouse or child.

Pensions

The Court can make orders in relation to pensions. Please see the section regarding pensions for more information.

Clean Break

This is an order of the Court that dismisses any of the above applications that can be made (i.e., periodical payments, lump sum, property adjustment and pensions). The effect of this is that neither Petitioner nor Respondent can apply to the Court in the future for any of the above orders. There is usually also provision that would state that neither party can make any claims against the others estate following death.

Court Order

This is as the name suggests. It is an important document telling you to do or carry out a specific act.

Consent Order

This is a Court Order but one entered into by the agreement of you and your spouse when dealing with the financial matters.

PROCEDURE FOR STARTING A DIVORCE

1. The Petition, once completed, will be sent to the Court who will then send a copy to the Respondent spouse together with the Acknowledgement of Service form for him/her to complete and return to the Court. This procedure usually takes between one to two weeks. It is on the Acknowledgment of Service form that the Respondent confirms whether or not he/she intends to defend the Petition for divorce and whether or not (if applicable) there is any dispute as to costs. It is usual in most cases that the solicitors representing the Petitioner will write to the Respondent first to advise the documents will be sent to Court.

2. Once the Respondent has returned the Acknowledgment of Service form to the Court the Court then sends a sealed copy to the Solicitors representing the Petitioner. At this stage approximately one month will have passed although it can take longer if the Respondent does not co-operate. Upon receipt of the Acknowledgment of Service form the Solicitors representing the Petitioner prepare the next stage of the divorce, namely an Affidavit in support of Petition. This document has to be sworn or affirmed and confirms the contents of the Petition are true.
3. Once the Affidavit in Support of Petition has been sworn it will be sent to the Court together with a request that the District Judge grants a Certificate of Entitlement to a Decree Nisi. This means that the Judge will consider granting the Decree Nisi without the attendance of either the Petitioner or the Respondent at Court. It is usually a paper exercise. It is only usually necessary to attend before the Judge if there is a dispute as to the costs of the proceedings or the divorce is defended. Otherwise the Decree Nisi will be pronounced as a matter of formality.
4. Once the District Judge has had the opportunity to consider the documents both the Petitioner and the Respondent will receive a Certificate of Entitlement to a Decree Nisi (at this stage approximately two to three months will have passed) together with a date confirming when the Decree Nisi will be pronounced. This is usually six to eight weeks from the date of the Certificate of Entitlement but can take longer if there is an argument as to costs. The Decree Nisi is the first Decree in the proceedings. The Decree must be made Absolute before the marriage is dissolved.
5. The Petitioner will be able to make an application for the Decree Absolute and this can be made six weeks and one day after the pronouncement of the Decree Nisi. In certain circumstances it is possible to ask the Petitioner not to apply for the Decree Absolute until financial matters have been resolved. This is generally the case where there is a question involving entitlement to a pension or a right to occupy the matrimonial home as these entitlements might end upon Decree Absolute.
6. It is not necessary to attend Court to obtain Decree Absolute unless the Respondent wants to apply. In these circumstances the Respondent can apply for Decree Absolute three months after the date when the Petitioner can apply and this will involve a Court Hearing.
7. At any time up to the Application for the Decree Absolute a Petitioner may withdraw from the proceedings. However once Decree Absolute has been applied for and granted by the Court, there are only exceptional circumstances in which it can be set aside.
8. The Decree Absolute is the final stage of the Divorce Proceedings and it is the document, which proves you are divorced. You will be sent the original document for safekeeping .

DIVORCE INVOLVING CHILDREN

1. The Petition, once completed, and the Statement of Arrangements for children will be sent to the Court who will then send a copy to the Respondent spouse together with the Acknowledgment of Service form for him/her to complete and return to the Court. This procedure usually takes between one to two weeks. It is on the Acknowledgment of Service form that the Respondent confirms whether or not he/she intends to defend the Petition for divorce, whether or not they accept the proposals for the children and whether or not (if applicable) there is any dispute as to costs. It is usual in most cases that the Solicitors

representing the Petitioner will write to the Respondent first to advise the documents will be sent to Court.

2. Once the Respondent has returned the Acknowledgment of Service form to the Court the Court then sends a sealed copy to the Solicitors representing the Petitioner. At this stage approximately one month will have passed although it can take longer if the Respondent does not co-operate. Upon receipt of the Acknowledgment of Service form the Solicitors representing the Petitioner prepare the next stage of the divorce, namely an Affidavit in support of Petition. This document has to be sworn or affirmed and confirms the contents of the Petition are true.
3. Once the Affidavit in Support of Petition has been sworn it will be sent to the Court together with a request that the District Judge grants a Certificate of Entitlement to a Decree Nisi. This means that the Judge will consider granting the Decree Nisi without the attendance of either the Petitioner or the Respondent at Court. It is usually a paper exercise. It is only usually necessary to attend before the Judge if there is a dispute as to the costs of the proceedings, over the care of the children or the divorce is defended. Otherwise the Decree Nisi will be pronounced as a matter of formality.
4. Once the District Judge has had the opportunity to consider the documents both the Petitioner and the Respondent will receive a Certificate of Entitlement to a Decree Nisi (at this stage approximately two to three months will have passed) together with a date confirming when the Decree Nisi will be pronounced. This is usually six to eight weeks from the date of the Certificate of Entitlement but can take longer if there is an argument as to costs. The Decree Nisi is the first Decree in the proceedings. The Decree must be made Absolute before the marriage is dissolved.
5. The Petitioner will be able to make an application for the Decree Absolute and this can be made six weeks and one day after the pronouncement of the Decree Nisi. In certain circumstances it is possible to ask the Petitioner not to apply for the Decree Absolute until financial matters have been resolved. This is generally the case where there is a question involving entitlement to a pension or a right to occupy the matrimonial home as these entitlements usually cease upon Decree Absolute.
6. It is not necessary to attend Court to obtain Decree Absolute unless the Respondent wants to apply. In these circumstances a Respondent can apply for Decree Absolute three months after the date when the Petitioner can apply and this will involve a Court Hearing.
7. At any time up to the Application for the Decree Absolute a Petitioner may withdraw from the proceedings. However once Decree Absolute has been applied for and granted by the Court, there are only exceptional circumstances in which it can be rescinded.
8. The Decree Absolute is the final stage of the Divorce Proceedings and it is the document, which will represent proof of the dissolution of the marriage. You will be sent the original document for safekeeping.

MATTERS WHICH THE COURT MUST CONSIDER

In every case it is the duty of the Court to consider all the circumstances of the case.

First consideration is given to the welfare of any child of the family who has not yet attained the age of 18.

The Court rules provide that when making decisions about financial matters eg, maintenance, lump sum orders or property adjustment orders, the Court shall give particular consideration to the following: -

1. The income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which it would in the opinion of the Court to be reasonable to expect a party to the marriage to take steps to acquire.
2. The financial needs, obligations and responsibilities which each of the parties to the marriage has, or is likely to have in the foreseeable future.
3. The standard of living enjoyed by the family before the breakdown of the marriage.
4. The age of each party to the marriage and the duration of the marriage.
5. Any physical or mental disability of either of the parties to the marriage.
6. The contributions which each of the parties has, or is likely to have, in the foreseeable future to make to the welfare of the family, including any contributions by looking after the home or caring for the family.
7. The conduct of each of the parties, if that conduct is such that it would in the opinion of the Court, be wrong to disregard (this is rarely relied upon).
8. The value to each of the parties to marriage of any benefit which, by reason of the dissolution of the marriage, that party loses a chance of acquiring. This is particularly relevant in respect of pension entitlements.

The above factors are given as a guide only and are not intended to be exhaustive, but do illustrate factors which the Court, and therefore legal advisers take into account when trying to negotiate financial settlement.

PENSIONS ON DIVORCE

Since 1999 the Courts have been given extensive powers in relation to pensions during the divorce process. There are three options available during the course of divorce.

Pension Sharing (also referred to as Pension Splitting):

Each pension has what is called a 'Fund Value', which is often referred to as a 'Cash Equivalent Transfer Value'. This fund is used in the future to pay your pension. The effect of a pension sharing Order is to divide your pension Fund. This in real terms means that it can be ordered by the Court that a percentage of your pension is transferred to your spouse or vice versa. The fund managers or trustees of your scheme have to approve such transfer and the terms of it. The effect is that the percentage is transferred to a pension scheme set up by your spouse thereby giving your spouse pension rights that are independent from yours.

Pension Attachment (also referred to as 'Earmarking'):

It can be ordered by the Court that the managers or trustees of your pension scheme pay to your spouse part of your monthly income and/or your lump sum that you receive upon retirement. The pension would remain yours and the pension provider would automatically make the payments.

Offsetting:

When the assets of the marriage are looked at as a whole it may be appropriate to 'offset' a pension against other assets of the marriage. For example, in return for not receiving a share of the pension either on a 'Sharing' or 'Attaching' basis it is possible to receive a larger share of the realisable assets.

DIVORCE AND INHERITANCE

Decree Absolute affects inheritance under a Will. Where either the Petitioner or the Respondent has made a Will, from the date of Decree Absolute, any appointment of the former spouse as an executor or trustee is treated as if omitted. In addition any gift in the Will to a former spouse lapses unless there is clear evidence in the will that you want a former spouse to inherit despite the divorce. If you are therefore a beneficiary or named as an executor in your spouse's Will, the position will change automatically on the grant of the Decree Absolute. Conversely, if you have made a Will including any provision for your spouse, that provision will also lapse.

MEDIATION

Attached at appendix 1 is a leaflet from the Solicitors Family Law association and Cambridge Mediation Centre explaining mediation. This is a process whereby you and your spouse can try and reach an agreement in relation to the children or financial matters together with the help of an impartial mediator who will assist. Any agreement reached can be consolidated into a legally binding document. You can also take legal advice with us at any time during the process.

CHILD MAINTENANCE

It is usual in most cases that an agreement will be reached as to the amount of child maintenance to be paid. The courts only have authority to deal with issues of child maintenance in exceptional circumstances. However, in the event an agreement cannot be reached either party can apply to the Child Support Agency. The rules are quite complex however generally child maintenance will be assessed as follows: -

- If there is one child then the CSA will assess the absent parent as having to pay 15% of his/her net weekly income.
- If there are two children then the CSA will assess the absent parent as having to pay 20% of his/her net weekly income.
- If there are three or more children then the CSA will assess the absent parent as having to pay 25% of his/her net weekly income.

There are various other rules that may apply to your case and such other information is available upon request.

THE MATRIMONIAL / FAMILY DEPARTMENT

Rachel Dunne who is a partner here at Crossmans supervises the department. Sara Simons is a Solicitor. She is also a member to the Law Society's Family law Panel and a member of Resolution (formerly the Solicitors Family Law Association). She will look after your case. Sara has vast experience in family law and will endeavour to make the process as straightforward as possible and will ensure you are informed as to the status of your case at every opportunity.

OUR CHARGES

There are various Court fees that may arise. In brief, the Court charges £300.00 to issue the Divorce Petition and £40.00 for a Decree Absolute. Should you need to issue an application for Ancillary Relief the Court fee is £210.00, however, if matters are agreed and a Consent Order is lodged the Court fee is £40.00.

We also offer a fixed fee divorce package. We confirm we will not charge more than £525 plus VAT and disbursements for a straightforward, uncontested divorce. This fee does not include any ancillary matters such as resolving financial matters and disputes in relation to the children.

FAMILY DEPARTMENT SERVICES

At Crossmans Solicitors we offer a full advice service in relation to matrimonial/family law. Our lawyers are experienced and sympathetic to all our client's problems and needs whilst progressing each case in a professional and understanding manner. We will offer independent advice on how to achieve the best outcome and guide you as to other services that may be available. We specifically offer advice in the following areas: -

Divorce, Separation and Civil Partnership Disputes

Crossmans Solicitors can provide full assistance during this difficult time. We will advise you as to the options available and explain each step that needs to be taken and we will endeavour to make this process as pain free as possible.

Cohabitation

We are able to provide information as to cohabitation breakdown and negotiate on your behalf in the event a dispute arises. We can also provide valuable advice as to the relevant property issues that may need to be addressed and any issues in relation to children of unmarried couples. We can also prepare Cohabitation Agreements, which will outline your intentions in the event of a separation.

Children

Should a situation arise where there is a dispute in relation to your children our lawyers are fully competent with experience in dealing with any such necessary court application. However, our aim would be to show a sensitive and constructive approach to settling differences, as this is usually beneficial to all concerned.

Financial and property issues

We are able to provide you with the information you will require in relation to any dispute as to the assets of the relationship. Our lawyers have experience in this area and are able to advise how to proceed and negotiate on your behalf and if necessary take your case through the courts.

Matrimonial conveyancing and wills

Should you require any related work carrying out following separation or divorce our property lawyers will be fully informed of your case and it will be dealt with in the same constructive manner with full liaison with your matrimonial/family lawyer.

Domestic violence and injunctions

During this very difficult time our lawyers will be able to offer you immediate advice on the remedies available.

Legal Aid

Crossmans Solicitors are pleased to offer legal aid for family matters.

APPENDIX 1 Cambridge Family Mediation Service

Supporting Families Facing Break-up

Cambridge Family Mediation Service works with couples facing separation or divorce and with other members of their families, offering:

- Information about separation and divorce
- Mediation, helping couples make decisions on practical arrangements
- Counselling for adults and children
- Information on how best to help children through parental separation

Mediation addresses:

- Decisions about the care of the children – contact and residence
- Children's adjustment to their parents' separation
- Financial settlement including the division of assets and payment of debts
- Housing
- Maintenance

Mediators explore possible solutions and practical arrangements with couples. They don't take sides or impose decisions. Their presence provides a calmer way of reaching agreement, avoiding arguments and costly court fees.

Any proposals accepted by both parties can be made binding by their solicitors.

Sessions usually last about 1½ hours. For a simple problem, one visit may be enough, but several could be needed for more complex cases. Children can be consulted. Grandparents and step-parents can also use the service.

There is a charge for the mediation service, which varies according to your income and will be waived if you are eligible for public funding.

Counselling

We offer free counselling to children and young people aged 4 to 19 who are affected by family breakdown. Contributions to the cost of this service are always welcome.

Adult counselling is also available.

The Service is:

Confidential – nothing you say is passed on to anyone without your consent. However, should there be concerns regarding harm to others, particularly children, this will have to be reported.

Privileged – what you say during mediation cannot be quoted in any future proceedings.

Without Prejudice – decisions reached during mediation are not binding unless and until laid down in a Court Order or set out in a legal agreement between you. You are recommended to have a short advice-only session with a family solicitor at an appropriate stage of mediation.

More Information

You can ask for more information about the services we offer. Contact:

Cambridge Family Mediation Service
3rd Floor, Essex House
71 Regent Street
CAMBRIDGE
CB2 1AB

Telephone: 01223 576308
Fax: 01223 576309
E-mail: families@cambridgefms.co.uk
Website: www.cambridgefms.co.uk
Open: 9.30am -5.00pm Monday to Thursday
9.30am -4.00pm Friday

Appointments at other times by arrangement.

The Service is a registered charity dependent for its funds on grants and donations. It operates on a not-for-profit basis.

Affiliated to National Family Mediation Community Legal Service Franchise
Registered Charity Number 1041476. Company Limited by Guarantee: 2975404

Supported by:

Cambridgeshire County Council
South Cambridgeshire District Council
Cambridge City Council
Huntingdonshire District Council
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St John's College
Trinity College
Cambridge & West Suffolk Solicitors Family Law Association
The Mrs Smith and Mount Trust
Dr & Mrs S Bragg
Cambridge Student Rag Appeal
Other friends and supporters

If you require a map to the Cambridge Family Mediation Service, then please contact us on 01223 362414 and we will be happy to place a map in the post for you. Unfortunately, we are unable to produce the map in this form.

MTA Services

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