

## **Divorce**

Divorce is something that no couple wants to go through. Breaking down a committed personal relationship is more or less distressing and hard on both the parties, especially if any children involved. The initiative of divorce might be taken by you, your partner or it might be your mutual decision. We, at 'Not Just Law' endeavour to guide you through this extremely personal and emotional process and will provide you practical guidance that will help you and all those involved to cope up with the changed circumstance.

### **Do I have to go to court for divorce?**

The court is concerned with the procedures involved in divorce, but usually, one is not required to attend court until and unless the divorce case is defended, meaning that the other partner or spouse have a difference of opinion regarding the evidence or reasons provided for the divorce. Although it happens on rare occasions that a divorce is defended. However, you might need the help and guidance of an experienced divorce solicitor or divorce attorney, who will guide you through the formal stages of the divorce procedure.

### **Is Divorce Law in UK complicated?**

No. In fact the divorce procedure in UK is relatively uncomplicated. However, some people might face difficulties while going through the procedure, even if both the parties mutually agree that their marriage or relationship have reached its ending. The major challenges and difficulties emerge when it comes to dividing the common marital property, finances and while deciding who will take care of the children, if involved, and provide for their maintenance.

### **What are the rules and procedures for divorce?**

According to the UK divorce law, one cannot file for divorce before completing 1 year of the married life. The divorce proceedings are initiated after the 'petitioner' files for divorce, after completing 1 year of marriage. The person who requests a grant for divorce or files a petition in the divorce county court is known as petitioner, whereas the other spouse is considered 'the respondent'. In case the partners have arrived of the decision of taking divorce after mutual agreement, then they have to decide on their own as to who will file the petition, and who will become the respondent.

The spouse who is the petitioner is required to establish that the marriage has 'irretrievably broken down'; means there is no way left to save the marriage. To prove this, the petitioner can refer to one of the five reasons or facts:

- Unreasonable behaviour of the other spouse

Behaviour of the other partner that is considered unreasonable by the petitioner is the most frequently alleged reason for divorce. However, the petitioner should prove that the behaviour of

the spouse is making it impossible for him/her to stay together with the respondent to such extent that it is difficult for them to continue living together. Violence, financial irresponsibility, alcoholism, excessive sexual demands, being cold, insults and general unpleasantness are some of the behaviour that are considered unreasonable that can be provided by the petitioner.

- Infidelity of adultery by the other spouse

Infidelity is considered as the second most alleged basis for getting a divorce. However, the adultery reason is available for marriage only. The rules for civil partnership differ to some extent. When providing adultery as the reason for divorce, the petitioner is required to prove that they can no more tolerate staying with the respondent. However, one should be aware that the petitioner cannot use this reason, in case the partners have kept on living together for 6 months even after the petitioner came to know about the infidelity as then it would be extremely difficult to show that it is 'intolerable' to stay together.

- The other spouse deserts for a minimum 2 years

If one spouse leaves the other partner without any intimation or explanation then it is considered as desertion and is one of the reasons to file for divorce.

- 2 years separation, when the partner consents for divorce

If the couple is living separately for more than 2 years, and the other spouse also agrees for the divorce, then it can be a valid reason for divorce. However, up to 6 months of separation might be implemented to try and reconcile the two parties, and these six months will not be counted in the 2 years separation period. However the 2 year period will start again after completing these 6 months.

- 5 years separation

If the couple is living separately for more than 5 years, then the petitioner can file for divorce. In this case, the consent of the other spouse to the divorce is not necessary.

### **What is the procedure of filing a divorce?**

In order to file for divorce one need to follow the prescribed rules and regulations. Usually, 4 stages are covered in the divorce procedure, which are as follows:

#### **1. Filing of Petition**

Firstly, one needs to file a petition for divorce in the court. For this purpose, the petitioner – the person who initiates the divorce or files the petition, is required to submit copies of the marriage certificate in the court. The petitioner also needs to furnish details about the children, if involved, and inform about any arrangements made for them. In case adultery is mentioned as the reason for separation, then the petitioner should also provide the contact details of the person assumed to have been involved in adultery with the respondent.

## 2. Serving the Petition

By serving the petition, it means that the petition is posted by the courts to the respondent or other partner. The petition is served or posted only when the court finds the documents submitted by the petitioner satisfactory. The courts allows a maximum of 8 days for completion and return of the form (an Acknowledgment of Service form) by the respondent acknowledging the receipt of the petition and affirm if they wish to dispute the divorce.

In case the respondent fails to return the form within the prescribed time then the court might ask for a court bailiff to serve the petition to the respondent. Although, it might slow down the procedure as the process cannot move forward without the proof of receipt of petition by the respondent.

A copy of the form is sent to the petitioner after the return of the form and the petitioner might have to provide more details, especially if children are involved, as the court will think about the details if any arrangements are being made for them or not. The arrangements will include living arrangements as well as contact arrangements for the parent who might not be living with the children after the divorce.

## 3. Decree Nisi

This is considered as the first stage of divorce. If all the documentations are in order and up to the satisfaction of the court, then the court fixes a date for the decree nisi to be pronounced by the court,

At this stage, the court approves all financial matters and arrangements for children. However, the decree nisi is not the completion of the divorce, in fact it can be said to be a 'temporary' divorce until the issuing of decree absolute.

## 4. Decree Absolute

The petitioner can apply for the decree absolute, once the mandatory period of 6 weeks and 1 day is completed after issuing the decree nisi. In case the decree absolute is not applied by the petitioner, then the respondent can apply for it 3 months later. Following which the court will analyse all arrangements in the order like finances and arrangement for children, if involved.

A copy of the decree absolute will be sent to both parties after it is pronounced by the court, following which the divorce is complete and both parties are free to marry again.

### **How much time does it takes for the divorce procedure?**

The entire procedure of divorce can take somewhere around 3 to 6 months and even more, which includes the mandatory waiting period of 6 weeks after decree nisi.

The time period of the process usually depends on the time taken by the respondent and the court to deal with the documents. Moreover, the length of divorce might increase if there are certain issues regarding arrangements for children or financial issues.

The petitioner and the respondent might even have to go to court if they are unable to reach a mutual agreement on the arrangements related to the custody of children etc. In this case, the court will set a date for resolving the issues.

However, if there are no such issues then the divorce can be arranged by post and the divorce process is completed very quickly.

### **What about the financial matters?**

All the financial matters are settled after the courts pronounce the decree nisi. The court will deal with all the arrangements for the finances, separately. The court has the authority for making provisional arrangements in the interim, until the execution of the divorce.

Mostly, one need not visit a court for financial settlements. However, one might need to go to court if both the parties fail to reach a mutual agreement. In that case, the procedure of financial settlement may take longer than the divorce.

### **What is the process of making an application for ancillary relief?**

The petitioner or respondent is supposed to fill a form for making a financial application, after making the petition. After making the financial application, the court will decide if a financial order, i.e. 'ancillary relief', is to be made. The ancillary relief order deals with all financial issues like property that includes the house and belongings, paying the maintenance, sharing the pension, paying a lump-sum amount to one of the parties.

One might require legal advice for the division of property and finances, even if both parties reach an agreement, as the property is not divided half-half by default.

Different aspects are considered by the court while determining whether to make a financial order. Some of them are:

- Requirement of any children is the most important factor
- Length of the marriage is another factor, as a person who was married for a short time is usually not entitled to any 'ancillary relief'
- Age of both the parties, especially if a parent is young and unable to support themselves or if one is older and cannot work
- Needs of both the parties, including the lifestyle before the divorce
- Earning capacity and financial resources of each party are also considered

### **Is the family home included in financial arrangements?**

Orders can be made by the court in relation to the 'former matrimonial home', regardless of who it is owned by. The key considerations for the court are likely to be whether there are any children living there, mortgages and the value of the house. In some cases the court will order that the house must be sold, although there are other options including postponing the sale of the house and passing an order giving just one party the right to live there.

### **What about making arrangements for children?**

If both the parties are not able to make any arrangements for children, then it will be done by the court separately. Usually, the court intervenes in the arrangements issues only if both the parents are not able to reach an agreement. The court might even take arrangements in its hands if it does not find the suggested arrangements by the parents satisfactory, after receiving a "Statement of Arrangements for children" before the execution of divorce.

### **Who will decide about providing maintenance for children?**

The court does not deal with the applications for maintenance for children. One needs to seek the services of the Child Support Agency, which holds the responsibility of child maintenance.

The Child Support Agency has the authority to order a parent to pay the maintenance after the finalization of divorce or if they are not paying it, irrespective of the fact that the parents are married or not. However, if the children are over 17 years of age, then the Child Support Agency cannot order a party for paying maintenance and they can just make assessments, in case any one of the parents is staying in a foreign country.

### **What will be the expense of the entire divorce procedure?**

One has to pay certain fees for getting a divorce. The expenses involved in divorce may include fee for the submission of divorce application or petition, £30 for decree absolute and other fees for any financial or children issues.

In case one feels that the court fee is too expensive or unaffordable, then one can also apply for a financial help in the form of a concession provided by the court. The decision of whether to provide a partial or full concession to the party is taken by the court, depending upon the person's circumstances.

In a divorce case, the fee of the solicitor is also to be borne by the petitioner, if one avails the services of a solicitor. The fee of the solicitor might vary according to the length of the case, and if the case is contested and the solicitor has to appear in the court. This time-period may vary depending upon the complexity of the case and so does the fees of the solicitor. In case the case is not contested, the solicitor may charge a fixed fee for obtaining the divorce.

### **Is there any way of availing legal aids for divorce?**

Legal aids are available to the divorce party in case the expenses involved in the proceedings, including the court and solicitor fees, gets beyond their reach. The eligibility of an applicant for the legal aid is granted as per the set rules of Legal Services Commission. This legal aid can be calculated with the help of Legal Aid Calculator available on the Community Legal Advice Website.

However, if a financial gain is made from the divorce case then this legal aid has to be paid back. Such gain may include any property or cash benefits.

### **Is there any liability on the other party to pay for the legal costs?**

One party in a divorce case can be ordered to pay the legal costs of the case, when any petition filed by another party on the basis of adultery or unreasonable behaviour is proven right.

### **Are there any Alternative solutions to the issues surmounting from divorce?**

Nowadays efforts are made to avoid the cost involved in court hearings in case of divorce, through alternative dispute resolution (ADR). In ADR an individual, often in the form of a divorce solicitor, is introduced in civil disputes in order to settle the said case without the need of a court hearing.

You can also take help of a mediator as an alternative dispute resolution. The method of mediation involves a neutral individual who is a mediator by profession and helps in solving the divorce dispute. Mediation is held in a confidential environment where both the parties are convinced to settle for a compromise other than the option of a divorce. The fee of the mediator can also be claimed from the public funding. The meetings between the mediator and the parties can take place either at the same time or separately. If the outcome of the mediation is a satisfactory solution for both the parties then the need of the court hearings is eliminated but if the result is non-satisfactory then the court hearings are carried on.

### **What are the effects of Divorce?**

Given that divorce is a big step of anyone's life, one might face certain effects or consequences during or after the execution of the divorce, like:

- Applying for a divorce means complete disclosure of all the assets of both the parties like property, cash and others.
- Decision of using the same surname of her ex husband or using her native name is completely of the wife. Both the parties are also free to remarry.
- Wills created post-divorce are affected after the execution of divorce.
- More Information regarding divorce cases can be availed from Citizens Advice Bureau.
- Some useful information on divorce cases can also be found through court services.