

Separation and Divorce

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Contents

About Graysons	3
Matrimonial Services	4
What are the grounds for divorce?	5
How long will it take?	6
I am leaving my spouse for a new partner, how likely is it that they will become involved?	7
Who will get custody of the children?	8
If I move out of the family home, will this affect my rights?	9
Does the admission of adultery affect the ultimate financial settlement?	10
If my children stay with my partner, how often will I get to see them?	11
How much does the divorce cost?	12
Will my partner get half of my pension?	13
Do I need to make a Will?	14
Contact us	15

About Graysons

Separation from a spouse or partner can be a deeply traumatic process. It is normal to feel a wide range of different and complex emotions.

Yet important practical decisions have to be made that will have significant implications for your long term future. Property and finances may need to be divided. Choices may have to be made about who the children live with and arrangements for contact with the other parent.

At Graysons we offer a prompt and efficient service, with speedy access to jargon-free information, support and sympathetic advice to enable you to make informed decisions for yourself, your children and your family.

From the outset, Graysons' team of highly experienced matrimonial solicitors will strive to help you resolve the issues you face in a positive and cost effective way. Recognising that it is usually best for you and in the interests of any children to reach agreement, we adopt a conciliatory approach in an effort to minimise bitterness and hostility wherever possible.

Unfortunately it is not always possible to reach agreement either by mediation or by negotiations through solicitors. In such cases our matrimonial solicitors have the experience and expertise in dealing with court proceedings so as to achieve the best and fairest outcome.

Graysons Matrimonial Services

We offer a free initial consultation to all our clients where we can assess your circumstances and advise you on the best way forward. We can also arrange public funding (legal aid) in suitable cases.

We offer a range of services for both married and unmarried couples including:

- Divorce
- Financial disputes between unmarried couples
- Separation agreements
- Financial and Property settlements
- Child residence and child care arrangements
- Maintenance
- Prenuptial agreements
- Claims against the estate of a deceased
- Court Injunctions

This guide covers the 10 questions we are most frequently asked by people considering divorce.

What are the grounds for divorce?

Obtaining a divorce requires one party to be able to show that the marriage has broken down irretrievably. This must be proven by one or more of five facts:

- a Adultery** - you can obtain a divorce immediately providing you can prove adultery. The adultery does not need to be the cause of the breakdown of the marriage. You do, however, need to be able to prove adultery and it is not sufficient simply to know that your spouse is in another relationship and to suspect that adultery has taken place. It is best to ensure in advance that your spouse will agree that they have committed adultery.

- b Unreasonable behaviour** - this might include violence, threats, abuse, mental cruelty, financial irresponsibility or even just prolonged failure to give emotional and practical support within the marriage. You can obtain a divorce if your spouse has behaved so unreasonably that you cannot be expected to continue living with him/her. It is, however, more than the fact that you simply do not get on any longer and that you have drifted apart. There needs to be some particular behaviour by your spouse that you can point to as being unreasonable.

- c Separation for two years and the other party consents to the divorce** - if your spouse refuses to agree, then you cannot obtain a divorce on this basis.
- d Separation for five years when consent is not required** - you will be entitled to obtain a divorce without consent after you have lived apart for a period of five years.
- e Desertion by the other party for two years** - you can obtain a divorce if your spouse has deserted you and you have lived apart for a period of at least two years before starting the divorce. Because of the other grounds for divorce that exist, it is very rare to come across a petition on this basis.

How long will it take?

The length of a divorce can vary and depends on how co-operative your spouse is in the divorce proceedings. If they return the necessary court forms without delay then the whole process of the divorce should take between four and six months. If they do not co-operate then it may be necessary to have your spouse personally served with the divorce papers by a court bailiff or by an enquiry agent and the case could be delayed whilst that occurs.

I am leaving my spouse for a new partner, how likely is it that they will become involved?

Your spouse may name your new partner in the divorce proceedings. In general this is no cause for concern. Your new partner may be worried about being named, but it is highly unlikely that this will have any legal or practical implications for him or her. Your new partner is likely to receive copies of the divorce papers and will need to sign a reply form saying whether he/she objects to the divorce.

However, once that has been done it would normally be the end of the matter so far as your new partner is concerned.

Your spouse will not be able to bring a claim directly against the income or assets of your new partner. However, it is possible that your new partner's financial situation might be taken into account when sorting out your financial settlement. Any assets or income of your new partner might affect your entitlement to your share of the matrimonial 'pot' or your liability for maintenance for your spouse or for the children.



Who will get custody of the children?

In legal terms the concept of ‘custody’ no longer exists. It was replaced by the idea that parents should work together to try and agree arrangements for where the children should reside and the basis on which they should have regular contact with the other parent.

It is up to you as responsible parents to try and agree these arrangements, taking into account what you feel is best for the children. If no agreement can be reached then the court can become involved.

In making any such decision, the court’s first and most important consideration is the welfare of the children and not any supposed ‘rights’ of the parents.

If I move out of the family home, will this affect my rights?

In general a spouse will not be penalised for moving out of the family home. In the vast majority of cases the ultimate financial settlement is not affected and you would not lose any rights to a share of the house or any other capital. Although your rights are not affected by moving out, you will lose some control over certain matters, such as contact with any children or access to personal possessions. If the house is to be sold at a later stage, you may lose control over how it is marketed to prospective purchasers. It would therefore be sensible to obtain some initial advice before you actually move out.



Does the admission of adultery affect the ultimate financial settlement?

When looking at a financial settlement, the court does not attempt to apportion blame for the breakdown of the marriage. Only in extreme cases will the court consider bad behaviour or conduct. Far more important are the respective financial needs of both parties (and of any dependent children) and the capital resources which are available to meet those financial needs.



If my children stay with my ex-partner, how often will I get to see them?

What is important is that as parents you work out a routine for contact which is regular and which suits the needs of both parents and the children to maintain frequent and significant contact with the non-resident parent.

In some cases where the children are of school age, it might only be appropriate for contact to take place at weekends. Whenever possible the children should be encouraged to spend long periods with the non-resident parent, to include overnight stays.

This might not suit all circumstances and there might be some cases where for practical reasons it is not possible to agree overnight stays or contact for more than a few hours at a time. However, there are no specific rules and it is up to you to agree a plan and a routine that suits the children. In our experience, agreements reached by the parents work better than those imposed by the court.

How much does divorce cost?

Solicitors charge an hourly rate for the work which they actually carry out in dealing with your case. How long it takes to sort out your case will depend upon the choices you and your spouse make, and the extent of the agreement you are able to reach. The more you agree between yourselves the less it will cost. Solicitors are obliged to give an estimate of the legal costs at the start of the process. The final figure will depend on whether you settle the case early or there needs to be a court hearing. This is something which you should discuss with us in detail at your initial appointment. We will then have an idea of the issues involved and what is likely to be required to resolve those issues. As a result we shall be able to give you a more accurate estimate of the anticipated legal costs.

Public funding (legal aid) may be available in limited circumstances. In the early stages of the case we will discuss with you whether you might be eligible. Even if you do receive public funding you may be required to repay all or part of the costs at the end of your case out of any property or capital you retain or recover from your spouse. It is still in your interests therefore to have an estimate of costs at the outset.

Will my ex-partner get half of my pension?

Whenever a financial settlement is being worked out all assets held by both partners must be brought into account. It is always considered better that arrangements should be made for a settlement which prevents either partner having claims against the other in the future. If there are other substantial assets then it is possible to give your partner a larger share of those assets to compensate for loss of pension.

There have been moves recently towards an equal division of the capital, including the value of pensions which have been built up by either partner, especially during a long term marriage. However, that does not necessarily mean to say that your spouse will get half of your pensions when you retire. In a simple case one spouse may receive more than half of the house, but in return will have no claim over the other spouse's pension. In that way the assets are still divided equally, the value of the pension is taken into account but the pension itself remains unaffected. It is fair to say, however, that there might be cases where the other assets are not of sufficient value to offset the value of the pension entirely. In such cases there will most likely be some claim over the pension.

Do I need to make a Will?

Almost certainly, yes. There are various reasons for this. It is likely that your house will be in joint names. Without a Will, if you should die, then the house will automatically pass to your spouse as the sole surviving joint owner. This can be prevented by severing the joint tenancy and making a Will leaving your half of the house to your intended beneficiary.

Similarly, until your divorce goes through then your spouse remains your next of kin. If you should die without making a Will, your spouse will be entitled to all or part of your estate. If that is not what you would want to happen, then you need to make a Will leaving your share of the assets elsewhere. If you have an existing Will you may wish to remove your spouse as beneficiary and possibly add others. You might also want your Will to include provisions for guardians for the children and to say what you would wish to happen with the children if they should still be minors at the time of your death.

Pick up our other informative brochures

- Personal Injury Claims
- Industrial Disease Compensation
- Wills, Estates and Trusts
- Elderly Client Services
- Conveyancing
- Medical Negligence Claims
- Child Care
- Separation and Divorce

Contacting us is easy If you would like more information on any of the areas we cover we have a range of brochures available to help you.

Phone us or return one of our pre-paid cards to receive more information.

Or go online to download our full range of brochures and information sheets.

Or phone or email us to request an appointment.

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