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Heartbreak to Harmony

Your guide to navigating the legal process during divorce





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Introduction

Breaking up is hard to do – even if it is your decision to end the marriage.

Dealing with the emotional rollercoaster of divorce can be tough - so much so, that divorce is recognised as one of life's top stresses. Then, in the midst of it all you have to be pragmatic. If you have children, decisions around where they are going to live will need to be resolved and then an agreement reached about how the marital pot of finances will be shared. With tensions often frayed between divorcing couples, trying to sort these issues by yourselves can prove extremely difficult and in some instances, impossible.

That's when you'll need to consider legal assistance. Whilst you may have the emotional support of family and friends, it can be difficult to know where to turn when you're dealing with the practical side of divorce. After all, very few of us will have any prior experience with what this difficult process involves.

At the onset, the whole experience may feel daunting and overwhelming and you are likely to have more questions than answers; "Why do I need a lawyer, can't we just do it ourselves?", "What's mediation?", "Where do I find the right lawyer?", "How much is this going to cost me?", "How can I ever afford this?", "How can I keep costs down?" and "What does getting divorced actually involve?"

To help make your legal journey from 'heartbreak to harmony' a little easier, Kate Ryan – a family law expert, mediator and Head of the Family Law Department at Turbervilles Solicitors has written this guide filled with useful insights and advice.



Amanda Melton
Partner,
Head of the Family Law Department



Kate Ryan
Partner

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Do I really need a lawyer?

The short answer is it depends.

You may not have to use a solicitor for the entire process.

Your options can include:

DIY Divorce

Doing the divorce yourself can work if you and your partner are splitting amicably and can come to an agreement about what happens to the custody of children. The finances can be resolved between you if the relationship is amicable and you trust your spouse to be honest in respect of their finances. You will need to fill in a number of different documents for the Court to review and approve. You can download these from www.justice.gov.uk and pay a fee to the Court. However, going it alone isn't always the best route or as cost effective as it might appear. Also Courts often report errors in the way forms are filled in and you will have to go through the whole process again, delaying the divorce for even longer.

Mediation

Before any couple can file an Application for Financial Relief (one of the Forms to progress the Court process when an agreement regarding the finances cannot be reached any other way) all couples will need to show they have attempted Mediation (the only exception for this stipulation is if domestic violence has taken place in the relationship). Mediation provides parties with a forum to discuss any issue (including those concerning children and finances) with a qualified and impartial third party mediator present. Their role is to facilitate and help manage the discussions with the aim of resolving matters.

Mediation can be excellent if you are looking for a cost-effective and swifter way to agree the terms of your divorce, so you can both move on with your lives. If possible, seek out a mediator who is also a lawyer, since they understand the legal system and will be able to inform you what a Court may do in any given situation. The mediation sessions last 90 minutes and ideally, if it is going to work, then matters should be resolved by the fourth session. At this stage you will need to instruct a lawyer to draw up a legally binding document called a Consent Order

Collaborative Process

Another means to avoid going to Court but reach a resolution, is where you instruct lawyers who are specially trained in the Collaborative Process and then all four parties meet for a number of sessions. The process will require you and your spouse to sign a written agreement and to make a full and complete disclosure to each other about all assets, liabilities and other relevant information that needs to be shared. If you reach an agreement on all of the issues, your lawyers will prepare the appropriate written agreements that will progress those agreements for both of you to sign. These are then included in the Consent Order which is sent to the Court ending your respective claims in respect of each other's finances.

Be aware that going down the Collaborative route can prove to be far more expensive than Mediation because you are paying for the time of lawyer a to prepare and attend the sessions. Also, should the collaborative process fail, then neither you nor your spouse will be able to instruct your collaborative lawyer to represent you in Court.

The Court Process

If you find yourself at the stage where neither mediation nor collaboration has worked, then you will need to call in the support of lawyers or barristers – often both – who will advise and represent you in the run up and during the Court hearings.

Direct Access?

To reduce legal costs, you could consider going direct to a barrister who will represent you at the Court Hearings. However your barrister will not organise the case, draft any of the necessary documents that will be needed in Court or liaise with the Court to arrange dates for the hearings. Be aware that once you go down the Court route, you will need to fill in a number of forms and you may not have the expertise, the time or the emotional equilibrium to do these justice. This is where the expert steer of a family lawyer can prove invaluable.

Finding the right lawyer

Although your friends and family may have recommendations for divorce lawyers, be aware one size doesn't fit all. Your friend may have been delighted with the Rottweiler celebrity lawyer who secured her multimillion settlement, but your family and financial circumstances may be entirely different. Perhaps you will need a lawyer with expertise in child custodial issues or someone who understands the cultural or religious sensitivities pertaining to your divorce.

Do make sure you talk or meet with three family law specialists before making your decision who to appoint. Whilst you can do some initial research by looking at the law firm's website, you will get a far better feel by talking on the phone or meeting face to face for half an hour. Most lawyers are happy to give a free consultation.

Realise time is a valuable investment at this stage. I have known of too many cases where a person has panicked, made a knee-jerk reaction and appointed the first lawyer they spoke to and then had to change to a different lawyer half way through the legal process because they were not happy, or did not feel their lawyer had the necessary expertise.

Do make sure they have the necessary expertise and understanding for your case. When you meet don't be afraid to ask what other relevant experience they have. Even if you are not planning on going to Court (sometimes this route is unavoidable, despite all good intentions to avoid), it would be useful for you to know their track/success record at Final Hearings.

Be aware that the lawyer you meet may not be the person who deals with your day to day affairs during the divorce proceedings – you should also ask to meet with their associate at that meeting too.

Don't be impressed by the hype you may have read in media about a high profile lawyer or their celebrity client-base. If the lawyer seems too attached to being a 'famous/celebrity divorce lawyer' and you are not the in the 'celebrity gang' chances are you may not get the attention or time you deserve for your case. Plus it doesn't necessarily mean the lawyer will have the right experience for your needs.

Make sure you feel at ease with them and he or she listens to you and how you want to approach matters. Beware of any lawyer that talks 'big' and promises you 'a large settlement' at the onset – there are never any outright guarantees with divorce. At the start of the process your lawyer can give you a guide of what the worst case and best case scenario could be based on the facts they have to hand at that stage.

Above all, trust your gut instinct – It is important you trust the lawyer and feel you can talk freely and easily to them throughout the process.

Legal costs

Depending on the size and location of firm, divorce rates vary. As a guide, central London based family law firms charge a lot more than family law specialists outside the capital – be aware lawyers in central London firms do not necessarily have better expertise than out of London /regional family lawyers – their higher charge out rates are often to cover costs such as an expensive lease for their offices. Hourly rates for solicitors can range from £200-500 per hour. Barristers fees can be substantial. Some firms will ask for a certain amount up front and the rest of the fees to be paid thereafter on a retainer basis. Other firms may be happy to agree a fixed cost for your case. Occasionally some law firms will be happy to receive a small deposit at the start and then receive the remainder once monies are released following the settlement – however it's worth stressing this isn't normal practice.

Being able to pay the fees

If you have an amicable relationship with your spouse and it's financially viable, you may agree upfront that the breadwinner will pay all the fees up front and then funds can be reallocated once monies are freed up from the settlement.

However if the relationship has soured and become acrimonious, it's highly unlikely you will reach such an agreement. If family or close friends are unable to help (a contract can be drawn up to reassure them they will get their loan returned by you at an agreed date) then the other option is to reach out to loan companies which specialise in divorce funding. Be warned the interest rates for such loans are very high and will keep accruing until you are able to pay back. If your settlement rests on the sale of your marital home and there are delays with sale, the ££s can quickly mount up.



Top tips to keep your legal costs down

Mediation or Collaboration

If you are successful going down either of these routes, then you and your spouse will save thousands of pounds by avoiding litigation costs incurred by going to Court. The processes can fall down because emotions can run high and crucially one or both parties are not prepared to compromise.

Agreeing a fixed cost for the divorce with your lawyer and/or barrister

If you have to go down the Court route, then try and secure a fixed cost for your case at the onset.

Avoid using your lawyer as a counsellor /emotional support

Emotions will run high throughout the divorce and you may have the urge to share your worries, pain and general fears with your lawyer. Remember the clock is running and you will be charged by your lawyer – even if they are listening and not offering advice.

Establish a core group of friends/family who you can confide in and offload your feelings during the divorce process. Stick to using your lawyer for advice on the best strategy and action plan to help dissolve your assets and sort any custody issues.

Take on some of the administration

Some law firms offer their clients the opportunity to consult legal advice on an ad-hoc basis and you do the bulk of the leg/administration work (this is where time can easily mount up) such as chasing the Court for Hearing dates and getting the relevant forms such as Form E.

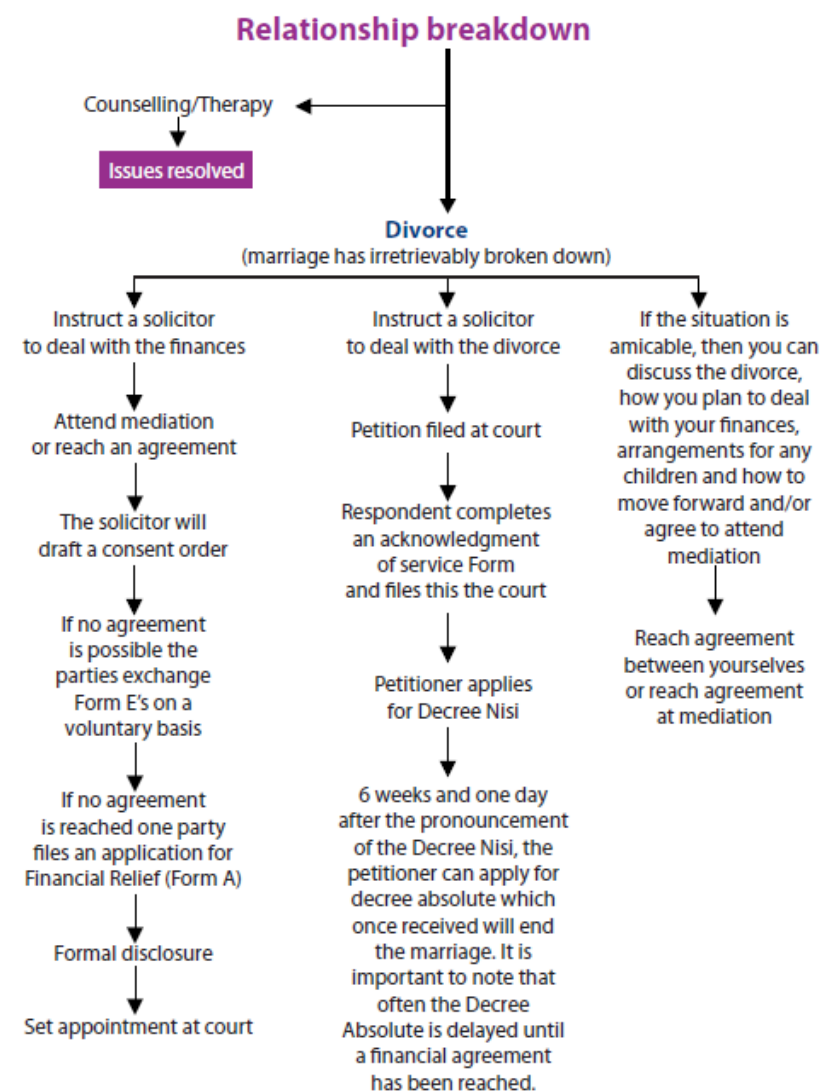
Make sure your lawyer sends you Word documents and not PDFs for revisions

Be warned that some documents such as Form E's (financial disclosure statements), Divorce Petitions and other applications can be lengthy once all details are filled in. Ask your lawyer to send you Word documents rather than PDFs so you can make changes directly with track changes.

Reduce emails /phone calls

Some lawyers will charge you for the time taken to review and send a response back to every email, even if they are not giving advice. Try to only make phone calls to your lawyer if it is important such as responding within a short timeframe. Otherwise send emails which include a number of questions or issues, so your lawyer deals with one email only.

Heartbreak to harmony



What can you do to protect your assets during divorce (and you don't have a prenup in place)

- 1 If you are not the owner of the property then you make an application to the Land Registry to ensure that it is not sold or re-mortgaged during the divorce proceedings.
- 2 Don't do anything major and don't unnecessarily rack up a massive credit card bill during the divorce process – as you could be asked to pay this back.
- 3 If you have money tied up in a joint account – then you are not supposed to move money (particularly large sums) out of bank accounts during the divorce process. You could ask the bank to freeze the money to ensure that neither party is able to access the funds during this time.
- 4 Be aware all of your actions are transparent and if an application to Court is made all your actions concerning finances will need to be shown to the Judge. It will look pretty obvious to a Judge that if on the day the Petition was received, £50,000 was transferred from the joint bank account.
- 5 Try and keep the status quo and get an agreement with your spouse that until the divorce is complete all household and mortgage payments are paid and no debts are incurred by not paying the bills.

Happily ever after?

The process from heartbreak to harmony can be a challenging one and there may be fraught moments where you may feel a resolution will never be reached. However the right advisors will be there to support you throughout and get you over these 'bumps'.

Try not to see the process of divorcing as a "winner" or "loser" situation and realise that you and your partner may have to make some compromises to reach an agreement. By doing so, you will both save a lot of time and money and reduce the emotional turmoil. Crucially you will then be in a position to move on with the next stage of your life.

For a free family law consultation, please contact:

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Glossary of definitions:

Divorce Petition

Document required to commence divorce proceedings.

Decree Nisi

First stage of divorce proceedings.

Decree Absolute

Final decree ending your marriage.

Form A

Application for financial relief (Court proceedings to commence discussions and find a resolution of financial matters).

FDA

First Directions Appointment (first Court hearing).

FDRH

Financial Dispute Resolution Hearing (second hearing in the Court process aimed at assisting parties in reaching an agreement).

Final Hearing

Last hearing where the Court, in the absence of an agreement, makes an order.

Consent Order

Order of the Court reached by an agreement of parties. This can be dealt with without proceedings if parties are amicable.

Court Order

Order made by the Court at one of the hearings listed above.

Memorandum of Association

Agreement drawn up at mediation if parties successfully resolve matters. This is usually sent to solicitors so a legally binding consent order can be drafted.

Maintenance

Income for children or a spouse.

Lump Sum Order

Order requiring a payment of a certain amount of money to one spouse.

Property Adjustment Order

An order transferring one party/spouse's interest in a property to the other party/spouse.

Pension Sharing Order

An order sharing one spouse's pension with the other spouse.

Non-Molestation / Occupation Order

Non-Molestation Order: An injunction preventing one party harassing, abusing or behaving in a threatening manner towards the other.

Occupation Order: An injunction preventing a party returning to and residing in the former matrimonial home.

Child Arrangements Order

An order by the Court setting out the schedule of contact if this can't be agreed by the parties.



About Amanda Melton:

Amanda is head of the family team with a particular expertise in complex financial aspects of divorce and separation for medium to high net worth clients.

In addition she brings expertise in relation to contentious trust and probate disputes being a member of the Association of Contentious Trust and Probate lawyers.

She is experienced acting for clients in financial remedy matters arising out of relationship breakdown. She also has experience in Inheritance Act claims and property disputes arising between cohabiting couples.



About Kate Ryan:

Kate deals with all aspects of divorce and separation, including the financial issues consequent upon relationship breakdown.

She acts on behalf of a broad range of clients advising on complex issues relating to businesses and limited companies, the family home and other matrimonial property, tax and pensions issues, which are often the main areas of concern for clients when dealing with a relationship breakdown. Kate is also an expert in mediation.

Kate also deals with the area of cohabitation and Trust of Land Act claims, and has experience in drafting and advising upon cohabitation and pre-nuptial agreements.

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