



KINGSLEY NAPLEY

WHEN IT MATTERS MOST

CLIENT GUIDANCE

Getting divorced – the legal process

We all talk about "getting divorced" but in legal terms, the divorce is only the first step in disentangling your married lives. From our perspective, much of the focus will instead be on sorting out your financial arrangements. This note is intended to give you an overview of the legal process for both parts – the divorce and the finances.

In this note, we talk about the way in which finances are dealt with by the courts, because that is the "end game" if we cannot agree a settlement. We will do our best to try to finalise matters as quickly as possible and without the need for litigation, but sometimes it is necessary to initiate court proceedings to put a timetable in place to resolve matters.

We will give you advice at each stage of the process to supplement the information below, but hopefully this will provide a useful introduction. We have marked some of the family law jargon in bold throughout the document so that it will act as a quick reference point for some of the legal terms you may hear us use. We also have a "family law glossary" available; please do ask us for one if you believe it would be helpful to you.

The divorce

On what grounds can a divorce be obtained?

There is only one ground for divorce in England and Wales, which is that the marriage has irretrievably broken down. Since the introduction of "no fault"

divorce on 6 April 2022, the applicant (the person applying for the divorce) only has to confirm within the divorce application (formerly known as a divorce petition) that the marriage has broken down irretrievably. No supporting facts or evidence are required. The respondent to the divorce (the other spouse) is not able to challenge the divorce on the basis that they do not accept that the marriage has broken down irretrievably; it is therefore no longer possible to "defend" a divorce on that basis.

The procedure

The standard procedure involved in a divorce has been set out on the next page. This process must now take place online via a court portal. The exception to this is where the applicant does not have a solicitor, or where one solicitor is acting for both spouses. It is Kingsley Napley's policy not to act for both spouses in a divorce because we can only advise one spouse.

It is now possible for the spouses to make a joint application for divorce. In that case, both applicants would state that the marriage has broken down irretrievably, and neither spouse would be treated as the respondent to the divorce. If the application is made jointly, but one spouse no longer wishes to proceed, the other spouse can progress the application as a sole application, without needing to file a fresh application or amend the original application. The process for progressing a joint application as a sole application depends on whether the decision to proceed as a sole applicant takes place at the conditional or final order stage.

It is not possible to apply for the interim divorce order, known as a conditional order (formerly a decree nisi) until 20 weeks after the application was issued.

It then usually takes several weeks for the court to process the application and list a date upon which the conditional order will be pronounced. In the average case, it is therefore likely to take around 7–8 months from the point of preparing the divorce application to get to the conditional order stage.

Once the conditional order has been pronounced, there is a minimum timescale of 6 weeks and one day

before the applicant can apply for a final divorce order (previously known as decree absolute).

Often we advise applicants to delay making the application for a final order (which ends the marriage) until the financial matters have been resolved due to the legal and financial consequences of the marriage being brought to an end. Depending on the circumstances, pension and/or death in service benefits could be affected and there could be tax implications if the final divorce order is made prior to a final financial order.

THE APPLICATION

A divorce application is filed at court either by one party as a sole applicant or both parties as joint applicants. The court then issues (stamps) the application.

SERVICE

Sole application - the application is sent to the other party (known as the respondent) with an accompanying blank acknowledgement of service. The default is that the court sends the application to the respondent, but it is possible to request that the applicant's solicitors arrange service instead. Where the court carries out service, the default is for the application to be sent to the respondent via email, but an accompanying

postal notice must also be sent out. Where the respondent's email address or postal address are not known, alternative arrangements must be made.

Joint application - the court will send copies of the application to both applicants, together with a notice of proceedings (instead of an acknowledgement of service).

ACKNOWLEDGE SERVICE / PROCEEDINGS

Sole application - the respondent must file the acknowledgement of service within 14 days of receipt (although longer periods apply where the respondent is served outside the jurisdiction). If the respondent is seeking to dispute the application (which is only now possible in very specific circumstances) they must then file an answer to the application

within 21 days of the date of the acknowledgement of service.

Joint application - both applicants must file their acknowledgment of receipt of the notice of proceedings within 14 days.

CONDITIONAL ORDER

Once 20 weeks have passed from the date upon which the application was issued by the court, the applicant (or, in a joint case, applicants) can apply for a conditional order. The court will review the application to ensure all is in order, schedule a date for the conditional order to be pronounced, and circulate a notice of this to the parties. The conditional order will then be pronounced.

FINAL ORDER

Six weeks and one day after the pronouncement of the conditional order, the applicant (or applicants) can apply for the conditional order to be made final. The reality, however, is that often this application is delayed until a financial settlement is reached. The final order formally brings the marriage to an end.