

Marriage Breakdown: What are my Choices?



The Divorce Information Pack

The Questions you need to ask

Information provided by The Worcester Family Law Practice

Is this you?

You feel that your marriage may be coming to an end, but you are unsure of your next step ...

Perhaps you just want to know what would happen if you did separate

Perhaps you have already made the decision to leave your partner

Perhaps your partner has told you that it is over

If so, then the Divorce Information Pack is for you

From the pages of this pack, you will learn:

- What are the issues that you may need to deal with
- That traditional litigation is not the only way to sort out those issues
- Where you can find support
- How to choose the right family law professionals
- How to prepare for a first meeting with a solicitor
- Where to get more information

Important Note: This pack is designed to give basic information about how best to access legal advice. It is not a substitute for that advice.

The Issues

Things that need to be sorted out when a relationship breaks down

The paragraphs that follow will not give you answers. Instead, they will help you to identify what issues you will need to seek help and advice about.

- **Personal safety**

Domestic violence is a reality for many, especially during the difficult time when a relationship is falling apart. You may need to take steps to protect yourself or your children from a violent partner. Remember that no-one is entitled to abuse you and that there are ways to gain protection. If this is an issue for you, you should consult a specialist solicitor for advice. You may also need to contact the police, who have specially trained officers to help victims of domestic violence.

You may be put in touch with a Refuge worker who will be able to give practical advice and may be able to help with short-term housing if you need to temporarily move out of your home for your own safety.

Or you may find yourself more easily losing control of yourself, and causing harm to those around you. If so, it is important that you should find help without delay. Talk to your GP or contact Relate. Having the courage to face your demons will make a huge difference to your future life.

- **Housing**

Separation inevitably means having to find a solution to housing problems. It may mean a sale of the family home, though this is not always the answer. It will mean at least one partner to the marriage will move home. Early and practical advice can help to ensure that your housing needs are not overlooked.

- **The Family Business**

If your partner and you run a business together, it is important that the implications for the future of that business are considered at an early stage. Will you be able to carry on working together? Will it be necessary to refinance the business? What about Capital Gains Tax? These and other questions can be addressed by a family law solicitor, perhaps working with your accountant.

- **Parenting Arrangements**

A huge concern for parents will be their future relationship with their children. Will I be able to have the children live with me? Will I lose contact with my children? Will my partner fight me over them? Will the children choose the other parent and his/her new partner and reject me?

Especially in relation to children, the way that you choose to deal with the issues can make a huge difference. The next section of this Pack will talk about the choices.

Some Relate Centres offer a *“Relate for Parents”* service. This is not counselling as such, but an information session for parents (ideally together) to give an understanding about how parents can best protect their children from the harmful fall-out of your separation.

You may find it helpful to order or download leaflets for parents and children and a parenting plan booklet from www.orderprocessor.co.uk/catalog_category.aspx?cat_id=7. They are available in languages other than English.

A specialist family law solicitor may also be able to provide copies of these items.

- **Financial Issues**

The law relating to the division of the assets of a married couple (or civil partners) is complex. Do not make any assumptions about the likely outcome, and do not rely on what has happened to a friend or colleague. The law is based on a combination of Acts of Parliament and decisions of Judges. Take **early** advice from an experienced family law solicitor who will be able to weigh up the relevant factors and give you some idea of the options that are available to you.

If you or your partner is deeply in debt, then issues of Insolvency (bankruptcy) may arise.

And what about the Child Support Agency? For some parents, the Child Support Agency offers the best approach to sorting out issues of maintenance for children. For most, it will be better to reach agreement (and perhaps obtain an agreed court order) so as to avoid the bureaucracy and delays of the Agency.

Irrespective of the approach that you adopt to sorting out the financial issues, it will be necessary to exchange detailed financial information about property (including pensions), income, liabilities, and about present and future needs. Some preparation before seeing a solicitor will help him or her to give you useful initial advice.

- **Divorce or Separation**

Surprisingly, this is not usually the most important issue. However, sometimes the timing and the general approach to divorce can make a difference to how easy it is to resolve the other issues. A hastily prepared petition making unnecessarily unpleasant allegations can create an atmosphere in which it is more difficult to agree anything. In many areas, it is common practice for solicitors to submit a draft petition to the proposed respondent (or his/her solicitor) with a view to trying to reach agreement on what will be said in it, and how the cost of the proceedings will be

met. There may be advantage in discussing these things with your spouse.

In some cases, it might be important to press ahead with divorce proceedings. In other cases, some delay may be an advantage. These are things to talk to a solicitor about.

The Process Options

The ways in which the issues can be dealt with

Traditionally, when a couple separated, each would instruct a solicitor to represent them. The solicitors would then correspond or meet with each other and would try to negotiate an agreement. If that failed, an application would be issued for a judge to make decisions on behalf of the couple.

Whilst this route is still open and is taken by many, it is only one option.

This section will describe the options that may be available to you and your partner. The alternatives to the traditional route can only be used if both your spouse and you agree to do so.

The traditional route has two key features – it is strong on protection of the weaker party, but takes control of the decision making process away from the separating couple.

The challenge in finding alternatives is to give back that control whilst retaining the protection that each of the parties needs.

• **Direct Discussions**

For a few, the possibility remains that the issues can be sorted out “round the kitchen table” by the parties to the marriage (or civil partnership).

The difficulties with this approach are

- That you may not know the range of outcomes or the implications of the choices that you make
- That you may be less emotionally secure than you realise

- You may be vulnerable to pressure from your partner
- That you may fail to secure the clean break that you may wish

Those difficulties may often be overcome if, in parallel with your discussions, you are able to seek advice from a specialist solicitor. The solicitor will be able to give practical guidance in identifying the options that are available to you, and may help you to understand what details you will need to obtain and check in order to make informed decisions. The solicitor may also help you to test your capacity to deal with your spouse or partner directly and, if agreement is reached, may be able to help with implementing the agreement.

If entering direct discussions, you should agree, in advance, that any decisions that you make will be subject to each of you having opportunity to obtain independent advice before the agreement will be considered to be binding upon you.

Not every solicitor is willing to offer a support service for direct discussions.

You will understand also, that the solicitor is unlikely to be willing to accept responsibility for the outcome and may expect you to sign an acknowledgement that his/her role is a limited one.

• **Family Mediation**

Family Mediation is a natural extension of direct discussions. It adds the benefit of an impartial facilitator for your discussions; someone to manage the process and to provide information that will help you to develop options.

However, a family mediator will not offer legal advice. To do so would take away his/her impartiality.

Couples seeking to achieve agreement through mediation, especially where financial issues are concerned, will still need to take separate legal advice.

The outcome of a successful mediation will be a “memorandum of understanding” for you to take independent legal (and perhaps other) advice about. Only after you have had opportunity to obtain that advice will you commit to a binding agreement – usually through the solicitors preparing an application for approval by a judge.

Not all family mediators are legally qualified. It is our view that it is almost always preferable to use a legally qualified family mediator where financial issues are involved.

Your family law solicitor will have details of qualified mediators in your area and will be able to help you choose one. The Worcester Family Law Practice offers a family mediation service and a self-referral form can be downloaded from www.twflp.co.uk/fammediation.htm.

• **Collaborative Family Law**

Whilst mediation is a good choice for many, it does not offer immediate advice or support. Some will find this too difficult or threatening a situation. Nevertheless, they want to retain a degree of control over their discussions that the traditional process takes away.

If you fall into this group, then Collaborative Family Law may be the choice for you.

Collaborative family law is a new approach begun by family lawyers to manage the divorce process in a dignified manner. In this collaborative process the family lawyers and their clients agree in writing to reach settlement without court involvement. They agree to work together to resolve children and financial issues arising out of the separation. In addition, they may enlist other experts, such as child specialists, as part of the team. Using their skills in client representation, negotiation and problem-solving, collaborative family lawyers help their clients shape a fair agreement.

The process:

- You and your partner agree with your lawyers to resolve issues without going to court
- Settlement is reached in '4 way' face to face meetings (2 of you and 2 lawyers)
- All information and disclosure is provided in the collaborative process
- You remain in control of the process but with your lawyers there throughout for legal advice and guidance

However, if no settlement can be reached, new lawyers will have to be instructed for court proceedings.

• **The Traditional Negotiation Route**

The traditional route to resolving family law issues is for each party to instruct a solicitor to act for them. The solicitor then negotiates on their behalf with the other spouse's solicitor.

The greatest advantage of this approach is that you should be able to feel secure in the knowledge that your solicitor is doing his or her best for you and that, even if your spouse would be able to dominate you in discussion, it will be difficult for his or her solicitor to dominate your solicitor.

Clearly, for this to work, you must have confidence in your choice of solicitor.

The downside is that you may have less control over the process and there is greater scope for misunderstandings and breakdowns of communication.

• **Litigation – the Application to Court**

If agreement is not reached, whether through direct discussion, mediation, collaborative practice or traditional negotiation, the option of making an application to the court remains.

The court process is carefully structured with a view to helping parties to reach agreement. Only if this fails will there be a final hearing.

Once either party has lodged an application, a timetable is set leading to a First Directions Appointment. During the run up to that appointment, each party must give financial disclosure and both parties will consider what further investigations may be needed.

At the First Directions Appointment a District Judge gives directions about further investigation and steps to be taken leading to a Financial Dispute Resolution Appointment.

The Financial Dispute Resolution Appointment is, as its name suggests, an opportunity, with some help from the District Judge, to negotiate an agreement.

Only if agreement is still not achieved, will a final hearing be listed. On that occasion, lawyer advocates will present the cases for each of the parties and the Judge will make a decision for them.

The litigation system is well designed and enables most cases to be dealt with over the course of six to nine months. The process, especially if there is a final hearing, can be very costly.

- **The Danger of Warfare**

Some couples find themselves unable to reach agreement on any of the issues facing their family, and repeatedly resort to litigation, which can go on until the children have attained their majorities.

The cost of this state of family warfare is enormous, both materially and psychologically. As with many forms of warfare, the end is achieved only when the parties and their resources are completely exhausted.

With this sort of warfare, no-one wins (except, perhaps, the lawyers). Always, therefore, keep open the option of compromise and of looking for solutions that benefit your "opponent" as well as you.

Finding Support

The legal part is only a small part of the process

Divorce and separation are traumatic.

If you wish to be one of the few to come through the process and recover quickly, you should consider how you can best obtain emotional support.

In some cases, there may be sufficient support within the family – though some well-meaning relatives can cause more harm than good.

For most, there is an advantage in obtaining some form of counselling or therapeutic support.

If you can remain reasonably “together”, there is a greater chance that you will make good choices, and that you will be best placed to support, in turn, your children in the traumas that they face as you separate.

Seeking such support is not a sign of weakness or “lack of fibre”. It is especially not a sign of lack of “manliness” to acknowledge a need for help.

Your solicitor may have details of counsellors and psycho-therapists who are experienced in helping adults and/or children who are going through the process of divorce or separation. Otherwise, your GP may have limited counselling facilities available through the NHS.

Although such help can be a financial cost, counsellors are much less expensive than lawyers and their help can often lead to less lawyer-time being needed.

You may also find support through ‘self-help’ groups such as Gingerbread. Your solicitor mediator or counsellor will be able to put you in touch with local organisations

Choosing the Right Professionals

What to look for in a solicitor, mediator or collaborative practitioner

Choosing a solicitor is a very important matter, and should not be left to chance. How do you make the right choice?

- **Resolution**

Resolution (formerly the Solicitors Family Law Association) is an organisation of family law solicitors who have adopted a code of practice designed to improve the way in which divorce and other family law cases are dealt with. Check to see if the solicitor you are thinking of instructing is a member. Go to www.resolution.org.uk to view the Code of Practice and to access the directory of members.

- **Specialist Accreditation**

Family Law is complex and you will wish to find a lawyer with experience and expertise in this area. Some specialist family lawyers have obtained accreditation for their expertise through The Law Society and/or through Resolution.

Specialist accreditation should only be seen as an indicator and not as a guarantee or expertise. Some solicitors who are perfectly able choose not to seek accreditation.

However, do ask questions of a solicitor: How long have you been doing this sort of work? How much of your work is family law work? What is your approach to divorce work?

- **Specialist Firms or Departments**

Clearly a firm, or a substantial department of a firm, that deals solely with Family Law matters, is likely to have a spread of expertise among its team of lawyers. This sort of

arrangement allows individual solicitors to build expertise in particular areas of divorce or family law.

- **Recommendations**

As with all choices, ask friends who have been through divorce about their solicitors – what did they like or not like about them. Remember though, that they will probably not have had the opportunity to compare a number of solicitors.

- **Advertisements**

It may seem obvious, but solicitors and other family law professionals advertise their services in directories such as Yellow Pages. Don't be misled by the size of an entry – often the smaller advertisements reflect the fact that a company recognises the need to be included, but is not dependent on the entry as a source of new clients.

An advertisement may direct you to a web-site which offers more information about a firm and the services that it offers. When judging a firm from its web-site, you may be able to form a view as to how helpful the solicitors are likely to be and how they are likely to approach their work.

- **Qualifications**

It makes sense, especially if you are not sure about your choice of process options, to approach a solicitor or firm that is able to offer Family Mediation and Collaborative Family Law as well as traditional negotiation and litigation. Such multi-qualification is likely to indicate that the solicitor or firm is innovative and up to date. You can also be sure of helpful and well-informed advice over your choice of options.

- **The Initial Interview**

Treat the first meeting you have with a solicitor as an audition (for him or her, not for you). You will have opportunity to assess whether the solicitor's approach is one that you are comfortable with. You will be able to decide

whether you can be confident in the advice you are receiving.

If you are not happy, say 'thank you' and try elsewhere. It is better – and cheaper - to choose the right solicitor for you at the beginning than to change at a later stage.

Check too, to see whether – if you qualify – the solicitor can offer Legal Aid (or Public Funding).

Beware the solicitor who tells you what you want to hear, or only wants to know what you want out of the process. You need a lawyer who is willing to give unpleasant advice where necessary, and it is better to hear bad news from your lawyer at the beginning of the case rather than from a judge at the end of a final hearing.

Be prepared to pay for the first interview. With few exceptions, free initial interviews are worth only what you pay for them. Most firms have a fixed fee initial appointment – when enquiring, ask how much it will be and what you will get for your money. The Worcester Family Law Practice, for example, offers a meeting of up to an hour, an Information Pack and written confirmation of the advice given for a single fixed fee.

• **Other Professionals**

You may need to refer to other professionals – a valuer to tell you what a house or antique is worth, an accountant to look into a family business, a mortgage adviser to tell you how much and how best to borrow, a counsellor or psycho-therapist, or a family mediator.

Your solicitor should have built up a network of such professionals to whom he or she can refer you. They will be experts in their own field who understand the implications of advising people in your situation.

Preparing for your First Appointment

Getting the best value from the first meeting with your family law solicitor.

1. Understand what you hope to learn at the meeting – if it helps, prepare a list of questions;
2. Prepare a summary of information about your family, including:
 - a. Full names, dates of birth, occupations and home addresses of your spouse and you;
 - b. Date of marriage and, if applicable, dates of periods of separation;
 - c. Dates of birth of any children and details of the schools they attend
 - d. Details of any previous proceedings between you;
 - e. Details of any orders affecting the children;
 - f. Details of your income including any benefits and that of your spouse
3. Prepare a list of the property, including pensions, and debts that you each have
4. If you want the solicitor to start divorce proceedings, s/he will need a certified copy of your marriage certificate
5. You will be required to take with you evidence of your identity – two items including passport or driving licence (if available).
6. It may help to take a relative or trusted friend with you – most lawyers are happy with this, but check first

Where to get more information

Websites:

www.resolution.org.uk

www.collabfamilylaw.org.uk

www.advicenow.org.uk/go/feature/package_37.html

Books:

For details of useful books go to:

<http://www.relate.org.uk/RelateBooks.asp>