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January Blog – New Year, new start?



What you need to know about divorce by Staffordshire family and matrimonial solicitor Lisa Cogger...

FOR better or for worse, many people in unhappy relationships choose to make plans to separate for the New Year after having one last Christmas as a family.

While the most recent figures from the Office for National Statistics show that 130,473 couples divorced in 2013, down almost three per cent in a single year, the number of people over the age of 50 separating is rising.

However, no matter what your age, undertaking a [separation and divorce](#) is an extremely stressful and emotional process, which is why it is so important to seek independent advice from a [specialist solicitor](#) as soon as possible.

People often don't do this early on because they fear involving a solicitor will mean a costly court battle. Actually, our aim is to help you to consider all the options available, including mediation or the option of round-table meetings between the parties with the support and presence of their solicitors.

These could help you separate in a less adversarial way, which is often the desired outcome for most parties.

For anyone considering separating or filing for divorce, here are just some the most common questions I am asked:

1. What do I need to prove to get a divorce?

You need to show that the marriage has broken down irretrievably upon reliance of one of the following 5 facts: adultery, unreasonable behaviour, desertion (for at least 2 years), two years' separation with consent of your spouse (the respondent) to the divorce petition, or five years' separation without consent of the respondent.

2. What types of unreasonable behaviour are valid grounds for divorce?

This is behaviour by your spouse which means that you cannot reasonably be expected to continue to live with them. This can include violence, verbal abuse, threats, alcohol or drug related behaviour, lack of emotional support, gambling or lack of a sex life.

Behaviour does not need to be proved and is representative of your (the petitioner's) personal views and beliefs as to why the marriage has broken down.

3. Why do I need to use a solicitor?

Taking independent advice from a solicitor is particularly crucial when your divorce involves children, significant amounts of money or other lucrative assets or business interests built up during the course of marriage.

They will provide skilled negotiations on your behalf, which may involve future child arrangements, together with the fair division of financial assets to ensure a financial settlement is achieved meeting with your best interests.

Each spouse requires their own solicitor as one solicitor cannot act for both parties. The solicitor will ensure all your court documents are completed correctly and filed on time, thereby, eliminating this additional pressure from you.

4. What information or paperwork do I need to provide?

Your solicitor needs to understand the background to the divorce, what financial assets are involved, and whether there are any children of the family. The more information you can provide the easier it is for your solicitor to advise you.

Information you provide could include:

- You and your spouse's income and outgoings
- You and your spouse's assets such as properties, savings, investments, pensions etc.
- Which of you is applying for divorce and whether you have both agreed that you should divorce and on what grounds
- Your main aims e.g. to stay in the family home with the children or to receive a lump sum of capital to enable you to re-house, ensuring future child arrangements are agreed etc.

- If you have instructed a new solicitor then you will also need to provide evidence of your identity such as your passport/driving licence and utility bill for proof of address.

5. What is the divorce process?

When you first meet your solicitor, under the Family Law Protocol they are required to consider a number of issues to ensure that the divorce can proceed on an undefended basis.

Other matters your solicitor will discuss with you at the outset may include whether there has been abuse, whether the children are in danger of being taken abroad, or moved to another part of the UK (known as internal relocation without consent) and whether there is a need to freeze access to joint accounts and/or limit the usage of credit cards.

The actual divorce process begins when either you or your spouse files a Divorce Petition with the court which is usually drawn up by your solicitor.

Financial agreements can be arranged at any time before, during or after divorce proceedings, but cannot be finalised and endorsed by a Court Order until the Decree Nisi has been pronounced (i.e. a provisional Decree of Divorce pronounced by the court when satisfied a person has met the legal and procedural requirements to obtain a divorce within the jurisdiction of England & Wales).

Following the pronouncement of Decree Nisi, the marriage still exists and you are not yet 'divorced'. The person seeking the divorce must then wait at least six weeks and one day after the pronouncement of the Decree Nisi before making their application for the Decree Absolute.

Agreement on child arrangements can also be arranged at any time, and if possible you should try to agree between yourselves how they will be looked after. The court may have to become involved in determining these matters, if mediation is unsuccessful, or refused by one party, in efforts to resolve the dispute amicably.

6. How much is getting divorced likely to cost and how long will it take?

At [Bowcock & Pursaill Solicitors](#) we actually offer a [Fixed Fee service](#) in [Family & Matrimonial](#) matters with a transparent pricing structure enabling you to assess your legal expenditure without the fear of hidden costs.

The cost of an undefended divorce includes court fees and your solicitors' legal costs as a [fixed fee](#). This provides you with the reassurance that no further charges will be incurred in the conclusion of your divorce.

However, additional costs are likely to accrue depending on whether you can negotiate agreement between yourselves, for example over childcare arrangements and the division of matrimonial assets. The more issues remain contested, the more your solicitor and the courts are involved and the longer the process takes with greater legal fees that inevitably decrease the amount of capital available in the 'matrimonial pot'.

A relatively straightforward divorce typically takes six to eight months provided you deal with the court papers promptly. Agreements over financial arrangements can take longer than this, though it is possible to get divorced before the financial agreement has been finalised. Your solicitor will advise you on this.

7. What happens if my spouse refuses to get divorced?

Your spouse can defend a divorce by claiming the facts stated in the Divorce Petition are not true, which could mean you have to delay your divorce unless you can petition again on a different basis. This is why it is helpful for both parties to obtain legal advice at the outset to encourage proceedings being issued in the most cost-effective and prompt manner as possible.

What is more common however, is for an aggrieved spouse to make the process more difficult by failing to respond to court documents, claiming they intend to defend the divorce to delay proceedings, by asking the court to intervene in financial or childcare arrangements or drawing out agreements on those arrangements which are entirely separate to the divorce.

8. If I leave the family home does this matter?

Leaving the home should not affect any final settlement. However, it could place you in a weaker position financially if you have difficulty paying the rent in your new property and therefore need to negotiate the sale of the house as soon as possible. Remember when you leave to take any important documents with you just in case you have difficulty gaining access later on, and to obtain legal advice before making the decision to leave the property.

9. What can I do to stop things getting nasty while we are negotiating for divorce?

With emotions running high, not surprisingly divorce negotiations can become adversarial, particularly, if one spouse feels wronged or betrayed. Even if you have made up your mind to get divorced, you may both want to consider counselling which can help you come to terms with the separation.

Ideally try and discuss finances and child arrangements with your spouse, and perhaps negotiate the wording of documents you are going to file with the court in advance of commencing the divorce process (for example, if you are going to file a petition setting out details of your spouse's unreasonable behaviour) before handing things over to your solicitor. This could help keep your costs down and decrease the time it takes for the divorce to go through.

Mediation can also help you both to discuss these matters and reach an agreement. This is where an independently trained third party acts as a neutral negotiator to help you discuss matters and reach an agreement. Mediation is flexible and confidential. It gives you and your spouse a way to settle the conflict between you in a controlled environment.

We can identify the most appropriate mediator for your situation, advise you in the background as to your legal position and help you formalise any agreement reached thereafter. Alternatively, if you prefer to have the support of solicitor presence and both parties have engaged the services of a solicitor then round-table meetings can be organised in efforts to negotiate and reach a financial settlement.

Do we have to agree what will be happening to our children before the divorce can go through?

You do not have to reach a final agreement before you can be divorced. In practical terms, you will need to sort out what is going to happen once you and your ex-spouse live in separate homes. The longer you leave it to reach an agreement, the more likely it is that the court will have to become involved.

When negotiating the arrangements for your children, you should focus on:

- Establishing where they will live
- Arranging what level of time the children shall spend with the other parent
- Ensuring the children are provided for financially

Wherever possible, maintaining a constructive relationship with your former spouse and ensuring that you are both acting in the child's best interests is the best approach for effective co-parenting.

The prospect of separation can be daunting, however after an initial meeting where your legal position and options are explained you will be informed and hopefully less anxious about what the next steps might involve.

For more information and to discuss your case contact Lisa Cogger today by calling 01538 370830 / 07814 175 350 or by emailing lc@bowcockpursail.co.uk. Lisa is also available outside of working hours for a confidential discussion at your convenience.