

# Respect

Men's advice line

# Divorce proceedings

This factsheet is for anyone considering a divorce or dissolution. It explains the application process and the stages of proceedings.

Before applying for divorce, it is important to find the right legal representative to achieve the best outcome for you and your family.

### The One Year Time Bar

You cannot divorce in the first year of marriage. If you are still within the first year of your marriage, you must wait for the year to pass. This does not mean that any progress stops. Your legal representative can take your instructions and prepare your matter to proceed at the point that the one year has passed.

### On what basis can I apply for divorce?

There is only one ground for divorce: legal representatives must prove that your marriage has 'broken down irretrievably'.

The ground is proven by one of five facts:

- Adultery – whereby you petition to state that the respondent has committed adultery and that you find it intolerable to live with them any longer.
- Unreasonable behaviour – this is arguing that the respondent has behaved in such a way that you cannot reasonably be expected to live with them.
- Desertion – in circumstances where the respondent has deserted you for a continuous period of at least two years immediately preceding petition.
- 2 years separation (with consent) – If you have both lived apart for a continuous period of at least two years immediately preceding the petition and the respondent is agreeable to the decree progressing.
- 5 years separation (no consent) – If you have lived apart for a continuous period of at least five years immediately preceding the petition.

The documents need to be tailored to your personal circumstances. If the incorrect fact is selected, it could lead to the court refusing the petition, the parties' disputes escalating and matters becoming defended and/or requiring attendance at

court. There would also be additional costs and delays, i.e. should you need to amend a petition. Remember, normally in undefended proceedings, neither party has to attend court.

## The 5 stages of divorce proceedings

If the proceedings are undefended, the common stages are as follows.

- **First stage – understanding**

The first step is for you to understand the law, legal processes, and procedures. This is often done by way of instructing legal representatives and providing them a thorough background of your personal circumstances. It is very important for a plan of action to be prepared and tailored to your personal circumstances.

- **Second stage – commencing proceedings: filing & serving**

During this stage, you routinely prepare your plan of action and you start to progress it. This includes:

- drafting the petition; a statement supporting the reasons for divorce.
- preparing the associated documents and court bundles.

It is fundamental that you review all the content and provide your approval before the documents are sent to the court. If all the documentation is in order, they will be issued and assigned a case number. If not, they will be returned.

The court will serve the respondent with the documents and this will normally be by way of post.

- **Third stage – acknowledgment of service**

This acknowledgment of service is a two-page form that the court provides to the respondent when serving them with the issued divorce documentation. This will normally need to be completed by the respondent and returned to

the court. If the respondent completes this and confirms that they are not defending the proceedings, the matter will proceed, and their involvement will normally cease at this stage. The rest of the steps will continue to be taken by you or your legal representatives.

If they decide to defend the proceedings your legal representatives will need to act in a measured way to avoid unnecessary costs, proceedings, and court hearing(s).

- **Fourth stage – Decree Nisi**

The court will inform you that the acknowledgment of service has been completed appropriately and returned. If the matter continues undefended, you prepare an application for Decree Nisi and a Statement in Support. Again, it is very important that you approve the content of these documents.

If the court is satisfied that legal and procedural requirements are met, they will list a hearing for the Decree Nisi to be pronounced in court. The parties need not attend this hearing unless there is an issue in dispute. It is at this late stage that some petitions are refused. This could be for reasons such as the court not being satisfied, by the evidence provided, that the marriage has broken down irretrievably.

This highlights the vital importance of ensuring the correct fact is selected at the outset and full supporting evidence is provided to satisfy the court. Otherwise there will be the additional costs attached to amending the petition and re-serving the same. This will also delay the proceedings.

- **Fifth stage – Decree Absolute**

This is the final stage. The court requires a period of 6 weeks and 1 day after the Decree Nisi pronouncement to pass. Thereafter, you can consider making an application for Decree Absolute. When this is processed the court will return the Decree Absolute and this will conclude the marriage. That will be the end of your marriage.

It is important to consider financial matters before deciding to proceed with the Decree Absolute. It requires an expert eye to consider your financial circumstances and decide if you are at risk of losing certain financial entitlements (i.e. your partner's pension). It should be a considered decision and the financial circumstances should be handled with care.

### The timeline for divorce

On average, divorces are currently taking between 4–6 months. The timeline can be further skewed by financial remedy proceedings in cases where there is the possibility of a loss of entitlements should you complete your divorce (i.e. partner's pension).

### What about the cost of proceedings?

The legal representatives' costs can vary. Most firms provide a fixed-fee divorce service. Ensure that you fully understand the extent of a fixed-fee agreement and the further costs that can arise should the circumstances fall outside of this agreement.

The current court fees are £550.00. However, the court fee remission system can reduce or waive your fees – dependant on your financial circumstances. Please visit <https://www.gov.uk/get-help-with-court-fees> for in-depth information.

This resource has been brought to you by Azhar Hussain (Solicitor-Advocate & Experienced Head of Family Dept) and you can find further information at <http://www.azharhussain.co.uk/legal-blog/>