

# DICKSON HASLAM

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## Your Guide to Marriage / Civil Partnership breakdown

What follows is intended to be a very brief guide to the divorce process. It is hoped that by reading this you will be able better to understand where you are up to at any given time in your divorce. It is not meant in any way to replace the personal advice you will receive from us, but as the process develops, you may find it useful as an initial point of reference. It is intended to give you a view of the “bigger picture” of the process.

The law and procedure relating to divorce and dissolution of a registered Civil Partnership is essentially similar except the ground of adultery is not available in the case of civil partnerships. If we are advising you in relation to a civil partnership we will give you further advice to supplement this guide.

### Grounds for Divorce:

In order for you to obtain a divorce, it is necessary that you have been married for at least one year and then to establish that your marriage has irretrievably broken down. This can only be proved by establishing one of five “facts”.

In the case of a civil partnership, Fact 1 does not apply.

The five facts are:

1. Adultery (that your husband or wife has had an affair)
2. Unreasonable behaviour (that your husband or wife has behaved in such a way that you cannot reasonably be expected to live with her/him)
3. Desertion (that your husband or wife has left you for at least 2 years)
4. Consent (that you have been separated for at least 2 years and your husband/wife consents to a divorce)
5. 5 Years Separation (that you and your spouse have lived apart for at least 5 years, and in these circumstances, consent is not necessary)

It is for you to decide whether or not your marriage has broken down and if you think it has then we will discuss with you which is the most appropriate ground and prepare your divorce petition based upon the relevant “fact”.

### *The Divorce*

**Before proceedings are issued, and where there may be a choice, we will consider in which jurisdiction to proceed as some jurisdictions are more favourable than others.**

#### 1. Proceedings are issued

Acting upon your instructions, we will prepare your petition and all the documents necessary to start the divorce process. The papers will include a document setting out what arrangements have been made for the care of any children upon the breakdown of the marriage. The documents are sent to a County Court to be *issued*. It may be that we will decide to issue the Petition in a court which is not local. The reason for this will be to ensure the petition proceeds quickly as some courts are faster at processing petitions than others.

2. **Service of the Petition**  
Your spouse is sent, by post, a copy of the petition and supporting documents, together with an "Acknowledgment of Service" form which he/she will be asked to sign and return to court. If at this stage your spouse is difficult and refuses to return the form there are ways in which we can overcome this problem which will be discussed with you. Similarly, if your spouse tries to defend the divorce, there are various options open and these will be discussed. It is *very* unlikely that a defended divorce will go all the way to a hearing.
3. **Application for Decree Nisi**  
The Decree Nisi is the decree of divorce and is the most important stage of the process. After the Petition has been proved to have been served, you will be notified and asked to attend the office for us to complete for you an *affidavit* which you will swear/affirm in support of your petition. This is then sent to court with a signed request for the Decree Nisi.
4. **Directions**  
The papers will be placed before a District Judge by the court staff, who will be asked to approve the petition and certify that you are entitled to a Decree. No-one attends court at this stage. If the Judge wants more information he will ask for it and we will, in turn, ask you. Provided the Judge is satisfied with the contents of the petition and the statement regarding the children, he will certify this and the matter will be listed for Decree Nisi.
5. **Decree Nisi**  
This is pronounced in court together with many others at the same time. You do not attend court for this. You will, of course be advised of the date. It is important to note that you will not be divorced until the decree nisi has been made *absolute*.
6. **Decree Absolute**  
You may be advised not to apply for the Decree Nisi to be made absolute if there are outstanding financial matters to resolve, but normally, 6 weeks after the Decree Nisi, we apply for the Decree to be made Absolute. You are divorced when the decree nisi has been made absolute, *and not before*.

Provided there are no hold ups and your spouse co-operates, should take between 3 and 4 months from start to finish.

The Divorce is often used to sort out other related matters such as Children and Finances.

### **Children**

**Children who are relevant to divorce proceedings are known as "Children of the Family". These are children who have lived with you who have been regarded as your children although they may not be "genetically" yours.**

Where there are children of the family, these have to be considered before a divorce can be granted. It is, however, most usual, and highly desirable that agreement is reached between your spouse and yourself upon the main aspects of the children's welfare such as where they are going to live, how often they are going to see each parent and so forth.

It is **only** if agreement cannot be reached that *either* parent may make an application to court for the court to make a decision on important issues relating to the children.

If an application is made to court, the court has 4 main options open to it:

1. **Residence order** (this states where the child is to live)
2. **Contact order** (this states how often the child will see the spouse whom he/she does not live with)
3. **Specific issue order** (this governs a specific issue in the child's life, such as which school should the child attend)
4. **Prohibited steps order** (this will stop one of the spouses from taking a step in relation to the child, such as removing the child from the country)

If it is necessary to make any one of the above applications, the procedure is as follows:

1. **Application**  
We prepare the application form and send it to the court which is dealing with the divorce.
2. **Service**  
The form is sent by the court to your spouse who will be asked to acknowledge it.
3. **Directions**  
The matter will then be listed before the District Judge *when you will attend (with us)* and the Judge will see if it is possible to reach an amicable settlement. At this stage, there will be a meeting with a CAFCASS officer who is appointed by the court to meet with you and your spouse to see if the issues can be narrowed. He/she will try to help with the settlement process. If the matter cannot be resolved on the day of the first appointment, the judge can ask the CAFCASS officer to meet out of court with you and often the children to see if progress can be made. A brief report is emailed to the judge who will (after about 4 weeks) call us back for further directions. If agreement still can't be reached, directions will be given for the preparation of evidence and the CAFCASS Officer may be asked to meet both spouses again and possibly the child for the purpose of preparing a report with recommendations. It is also possible to enlist the help of other professionals such as child psychologists.
4. **Final Directions**  
The matter will come back before the Judge (after about another 12 weeks) for further directions, and if matters are still not agreed the Judge will order that the matter be listed for final hearing. You will attend at this stage.
5. **Final Hearing**  
Matters will be decided either by a Judge who will consider all the evidence and make a decision upon the points still in issue.

The above process usually takes about 6 months.

### **Finances**

It is important to remember that there are no strict rules on how the parties' finances are divided upon divorce. *All* the assets and income of both spouses form part of the *matrimonial pot* and can be divided between the parties.

In trying to resolve financial matters the solicitors acting for both parties must follow "The Family Law Protocol" which will, hopefully, assist to promote a settlement.

Also, in applying the Protocol, or during any court proceedings relating to financial matters, each of the parties and their solicitors are obliged *by Law* to apply an OVERRIDING OBJECTIVE and try to ensure that all claims should be resolved and a just outcome achieved as speedily as possible without costs being unreasonably incurred. The needs of any children should be addressed and safeguarded. The procedures which it is appropriate to follow should be conducted with minimum distress to the parties and in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances.

Any assets of each party can be the subject of court orders, including pensions. It should be stressed that there is a total duty on each party to make a full and frank disclosure of their financial circumstances throughout the entire process.

The principle of **PROPORTIONALITY** must be borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute.

It will always be our aim to agree how the finances are to be divided, but in the absence of agreement the court will have to be asked to decide.

If the court is asked to decide the following procedure is adopted:-

1. Application is issued in court Upon the court receiving the application it will list the case for a FIRST APPOINTMENT (FA) 12 – 16 weeks after.
2. 7 weeks before the FA Each party sends to the other a form (FORM E) setting out his and her assets.  
To enable us to prepare the financial form you will have to provide us with:
  - any valuations of your property obtained in the last 12 months
  - your most recent mortgage statement
  - you last 12 months bank statements
  - surrender value quotes of insurance policies
  - last 2 years business accounts
  - a valuation of your pension rights (including any “Cash equivalent transfer values”)
  - your last 3 pay slips and most recent P60.
3. At the FIRST APPOINTMENT (which you must attend with us) the District Judge will consider the application and give directions which will lead to a FINANCIAL DISPUTE RESOLUTION HEARING (FDR)
4. At the FDR (which you must also attend), the Judge will try to promote a settlement. In the event that the Judge cannot get you and your spouse to agree the matter will be listed for a FINAL HEARING.
5. The Final Hearing If it proves impossible to reach an agreement, the application will be heard before the District Judge who can make any one, or a combination of the following orders for yourself or for any of the children of the family:
  1. A maintenance order

2. An order that your spouse pay to you a one-off lump sum of money, or vice versa
3. An order that your spouse transfer to you his/her interest in property, including the matrimonial home, or vice versa
4. An order against either spouse's pension

In deciding how to exercise his discretion the Judge will start from the assumption of dividing the resources fairly. In deciding whether question of fairness, the judge will consider all the factors he/she considers to be relevant but will pay particular attention to the parties' financial resources (including earning potential and pension entitlement), their needs (and especially the needs of the children), the standard of living the parties enjoyed throughout the marriage, the length of the marriage (including sometimes pre-marriage cohabitation), any physical or mental disabilities the parties may have and the contribution each has made towards building up the financial resources of the marriage.

In addition it may be necessary to consider compensating one party for loss of career opportunity. Conduct is not a relevant factor.

You will attend the final hearing and play a part in it. We will, of course, ensure you are properly represented, either by a suitably experienced solicitor or a barrister (called counsel)

The length of time the financial process takes, if it has to go to a final hearing, will usually be between 6 months and 15 months. As an interim measure, the court can make an order that your spouse pay you regular financial support in the form of maintenance. Your requirements in this regard will be discussed with you.

### **Press access and reporting of court proceedings**

Accredited members of the Press are allowed to attend most court proceedings, including proceedings relating to children and finances. There are restrictions upon what can be reported in the papers. Generally, parties and children cannot be identified. When attending court, you should always be aware that a member of the press may be present. If this gives you specific concern, you should discuss this with us at the time.

### **Pre-Marital / Civil Partnership Agreements (“Pre-Nups”)**

Pre-Marital Contracts are becoming increasingly seen as a way of couples regulating their own affairs before they get married. There is a presumption that these are binding.

The Supreme Court has raised the status of pre-nups to a level where the court will be bound to follow its terms unless they are very unfair.

We have a wealth of experience in advising on and drafting pre-nuptial agreements and will happily discuss with you the merits and enforceability of them.

If you have entered into such an agreement, in any jurisdiction, please bring this to our attention.

### **Separation Agreements**

Similar to Pre-marital contracts, agreements reached between separating couples are only likely to be upheld by the court on eventual divorce if strict safeguards are taken at the time the agreement was made. That said, they can prove to be a very useful method of a couple regulating their own affairs during the period of their separation and beyond, thus minimising the uncertainty of litigation on divorce.

### **Protection from physical and mental abuse**

During the divorce process it may be necessary to seek protection from the court for you against your spouse. This is done by applying for an Injunction (known as a Non-Molestation Order). Injunctions can be granted to protect you while you remain living in your home, or, in extreme case can be granted to have your spouse removed from the home. If you think you need such protection, speak immediately to your solicitor and we will advise you in this regard and take whatever steps are appropriate to obtain necessary protection.

Please remember that the above procedures - The Divorce, Children matters, Financial matters and Injunctions are all inter-related. At any one time we can be making several applications for you. We will constantly review your requirements and discuss with you the most appropriate way forward.

### **Alternative Dispute Resolution**

The "Divorce Process" should be seen as the backdrop against which we will *always* endeavour to negotiate a suitable settlement of issues between your spouse and yourself. We will constantly attempt to achieve this informally. We will discuss with you the appropriateness of methods of resolving disputes by avoiding the courts. Michele Wright has trained as a **family Mediator** and Sarah McCarthy has trained as a **"Collaborative Lawyer"**. We will always be happy to discuss with you the options of referring your case to an outside mediation or arbitration service.

### **Child Support Agency**

Maintenance for children usually agreed between parents with the assistance of solicitors and then formalised into a court order.

The court only has power to order maintenance for children, however, if it has been agreed between the parents. Where agreement cannot be reached, or when the parent with care of the child, is in receipt of income related benefits, the Child Support Agency (CSA or as it is also known, C-MEC) will make an assessment. We can advise you on the amount the CSA might assess should be paid, but this information can easily be obtained (free of charge) from the **CSA National Enquiry Line - 0845 7133 133**.

The amount payable will be a percentage of net income. There are factors affecting the amount payable, such as the number of nights each year the children stay with the non-residential parent.

In certain circumstances, such as school fees and where a child has capital requirements, the courts have retained jurisdiction to make an order outside the CSA.

### **Resolution (formerly the Solicitors Family Law Association)**

All solicitors in the Family Law Department of Dickson Haslam are members of Resolution and as a firm we are committed to conducting "Family Law" matters within the Code of Practice as laid down by that Association. We enclose a copy of the Resolution "Code of Practice" and ask you to read it, as it will give you an insight into the way in which we shall endeavour to conduct any family litigation on your behalf.

### **Specialist Accreditation**

Michele Wright is a Member of the **Law Society Family Law Panel**. This is a panel of solicitors accredited by the Law Society of England and Wales. To become a panel member the members must have had to prove their expertise and experience in Family Law Matters.

## **Relate**

Relate is a registered charity which helps couples to discuss the prospects of saving their marriages or relationships. Relate also run local courses for separated people to come to terms with the break-up of their relationship and to give individuals the skills and confidence to build a better future. The courses are accredited by The National Open College Network. For more information on Relate telephone the local office – 01772 712808.

## **Human Rights Act 1998**

This has the effect of requiring English courts to apply the European Convention on Human Rights in all proceedings. This is likely to have quite an effect on Family Law, especially Article 8 of the Convention, “Right to respect for private and family life”. Any possible application of this Act upon your case will be fully considered at the appropriate time.

## **Making a Will**

Everyone over the age of 18 should have a will. Without a will, if you die, you will be, relying on the law of intestacy. If you die without a will whilst married a set proportion of your estate will go automatically to your surviving spouse, and this might not be what you want to happen. If you have doubts about your marriage, you should consider whether to make a will and we will be pleased to advise you on this. Whilst considering making a will we will advise you on the matter of jointly owned property and how the ownership can be divided (severed) so that your share can be left according to your will rather than necessarily to your spouse.

## **Equalising State Pension after divorce**

Most married couples’ contribution to a State Pension is different. After a divorce it is quite a simple exercise to require that the Department of Work & Pensions compensate the lower contributor. This is done by attributing the lower contributing spouse with the same number of years contribution as the higher contributing spouse. Nothing is lost in this exercise – only gained. On divorce we will be happy to take the necessary procedural steps where appropriate.

## **Funding**

Please refer to our standard terms and conditions for the terms of our retainer. As a firm we have formed the opinion that we are unable to offer the high level of service to clients we wish under the constraints imposed by the Legal Services Commission and therefore, do not conduct any publicly funded work on behalf of clients. This means we do not conduct any Legal Aid work.

We do have arrangements in place with banks who can arrange bespoke lending facilities to enable your legal costs (and other incidental expenses) to be paid as you go along and repaid at the end of the process; please ask for further details.

If you wish to seek assistance from the Legal Services Commission (Legal Aid) you will have to consult a solicitor who is willing to offer that service. We do, however, offer a flexible range of funding options, including fixed fees.

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