

Relationship special: dealing with divorce

The breakup of a marriage is naturally a stressful time which can have far-reaching impacts. We asked a panel of expert family lawyers about the separation process and the alternative options to divorce...

I want a divorce. What do I need to consider in respect of... Housing?

Alexander David: This is one of the most important issues to be resolved; certainty is what people want. If the parties are currently living in SFA, then it will probably be the case that the spouse or partner will have to move out within 93 days of the marriage breaking down. This can be distressing and it is important that advice is sought without delay if there has been a separation. In terms of private housing, the details of the mortgage-raising capacity, if any, of both parties is key as well as confirming what type of housing is required to meet both parties' needs. Who is to be the primary carer for any children can be a decisive factor as the needs of children are legally more important than any other factor. A court can order that a property be sold or transferred to one of the parties. If there is a mortgage, then it needs to be paid and the court may order one party to make monthly contributions to the other to assist with meeting the payments. A mortgage company may also agree to a payment holiday.

...Pensions?

Katie Raybould: In the first instance, both parties will need to obtain cash equivalent values from their own pension provider. This can be done by contacting the policy provider and explaining you need a valuation for divorce purposes. This information will form part of your financial disclosure. The court has the power to make several different orders in relation to pensions, the most common of which is a Pension Sharing Order. When deciding what type of pension share should take place, the court considers all aspects.

In some cases, one spouse may have built up a valuable pension whilst the other has not, perhaps because they were at home caring for the children while the other worked. The court views contributions of money through work and contributions by caring for the children as equal or following their soldier around the world and so may look to equalise pensions, especially where there is a long marriage.

...Finances?

James Carter: The terms of settlement are usually agreed following a disclosure process and agreed either through solicitors or mediation. If an agreement cannot be reached court proceedings can be issued. However a settlement is obtained, its structure is usually based on what a court would have been likely to decide. The most important priority will be the welfare of any dependent children, followed by other factors including each party's financial resources, ages, length of their relationship, earning capacities, standard of living and their contributions. In terms of capital, the usual starting point is a broadly equal division, but there can be a departure from equality in one party's favour for several reasons.

...Children?

Jill Cameron: As parents, you will want to ensure that disruption and upset is kept to a minimum for your children. Talk to your spouse and try to reach an amicable arrangement that puts the needs of your children first. Is it possible to put in place, and would the children benefit from, a shared care arrangement? If that isn't possible, try to ensure the children

have regular contact with the parent with whom they don't live. Don't forget to include other people in this contact – grandparents, cousins, aunts and uncles. You may want to consider using a parenting plan, which you can get from CAFCASS (caf cass.gov.uk). If you're finding it difficult to come to an amicable arrangement, then think about mediation as an alternative to court proceedings – indeed, in almost all circumstances, parents are obliged to try mediation before going to court if they can't reach agreement about their children, post separation.

What options are open to me other than divorce?

Jeremy Tier: Firstly, you should ask yourself whether or not the marriage can be saved. If so, consider whether or not your spouse will attend marriage guidance counselling with you. If the marriage has broken down, some parties consider a simple separation. This will normally involve them reaching an agreement about the children and matrimonial finances and asking a solicitor to prepare a separation deed. One party or the other may start divorce proceedings after two years or more. This option is ideal if one party (or both) cannot go through the process of divorce so soon after the marriage breakdown. Another option (although rarely used) is judicial separation. It is similar to an informal separation, although it puts the separation on a more formal footing. Indeed, it is often used when a married couple may have a religious or moral objection to divorce. It is important to note that judicial separation could affect your soldier's PStat category and therefore impact upon allowances or housing. ■



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