

Divorce and Separation

This guide deals with divorce and separation arising from a marriage. Our family lawyers in London also deal with cohabitants (**see cohabitation**) and same-sex relationships (**see civil partnerships**).

There is only one ground for Divorce and that is that the marriage has broken down irretrievably. The person who starts the Matrimonial proceedings is known as 'the Petitioner' and their spouse is called 'the Respondent'.

To satisfy the Court that there has been an irretrievable breakdown the Petitioner must prove one of the following five facts:

- a) The Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- c) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the Divorce.
- d) You have lived apart for a continuous period of at least two years immediately before the start of the Divorce and the Respondent consents to a decree being granted.
- e) You have lived apart for a continuous period of at least five years immediately before the start of the Divorce.

Most Divorces are based on facts (a) 'adultery' or (b) 'behaviour'. 'Adultery' is an act of sexual intercourse with a person of the opposite sex. To be able to rely on this in the Divorce the adultery must have happened in the six months before separation or at any time after separation. There is no need to name the person with whom the adultery took place or indeed to involve them in the Court proceedings.

The test for 'behaviour' is subjective and it does not need to consist of extensive violence, drug or alcohol addiction or other extreme behaviour. A combination of less obvious behaviour can be sufficient. Often issues like working too much (or not working enough), showing too much (or too little) affection, combined with a number of other similar factors are used.

Regularising your separation

If you would prefer to regularise your separation without actually divorcing there are two options available:

- 1) judicial separation;
- 2) separation agreement.

These two options, together with a Divorce, are all now termed "matrimonial orders".

Judicial separation

This involves a Court procedure which is virtually identical to that which applies to a Divorce. The essential difference is that the Court pronounces an Order for judicial separation rather than a Divorce and therefore you and your spouse would remain married. The main reason people choose judicial separation over Divorce is for religious reasons or if valuable pension benefits are lost on Divorce. However, since the Court can now share pensions, this is no longer so important.

Separation agreement

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving the Court at all. The way this can be achieved is for them to sign a written document which incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which any maintenance and property issues are to be dealt with. Whilst there are no restrictions on what can or cannot be included in such an agreement, it is important to bear in mind that if either person makes a subsequent financial application to the Court, the Court is not bound by the financial arrangements in the separation agreement.

First Step

As our first step, a letter would be written, usually enclosing a draft Petition for your spouse's consideration. A time limit of perhaps 14 days would be suggested in which to revert with any amendments your spouse wanted to be made to the Particulars and for them to obtain independent legal advice. We aim to deal with the Divorce in an amicable & non-confrontational manner to set an appropriate tone to deal with any financial or children matters.

Should you require any further information on regularising your separation, we highly advise you speak to a divorce solicitor in London. Please do not hesitate to contact us on 02074366767 [or info@kmjsolicitors.com](mailto:info@kmjsolicitors.com).