

FREQUENTLY ASKED QUESTIONS – FAMILY

I've separated from my spouse and want to get a divorce – what do I do now?

You should consider whether or not you really want to get a divorce. There are a number of specialist marriage guidance resources such as relate (www.relate.co.uk).

In order to get a divorce in the UK you need to show that the marriage has broken down irretrievably, which can be demonstrated to the Court through proving one of 5 different facts:-

- a) adultery
- b) unreasonable behaviour
- c) desertion
- d) two years separation and consent
- e) five years separation

Our specialist matrimonial department can guide you through this process.

We need to sort out our finances upon divorce, how does this work?

The law on financial separation can be complex and dependent on a number of factors. If you are trying to arrange a financial separation on divorce then the Matrimonial Causes Act sets out a number of factors which should be considered in the separation, including needs, contributions, the length of the marriage and the standard of living during the marriage. If possible, you should try to agree matters with your former spouse, possibly through mediation, as this is usually a much cheaper and less contentious way to deal with matters. Our matrimonial lawyers can help you with what can become a complex process.

If you were not married then the financial separation can be subject to a number of different rules, depending on whether or not there are any children and the legal ownership of property amongst other things. Our specialist family department has significant experience in resolving any such disputes.

Do I need a pre nuptial agreement?

English law does not formally recognise pre-nuptial agreements in the way that some other countries do. The English Courts have to consider a large number of factors when deciding how to reorder or redistribute a couple's assets. Pre-nuptial agreements are not listed as one of these factors but increasingly the English Courts are giving pre nuptial agreements weight. In some cases they are now upheld in their entirety.

A pre nuptial agreement can provide clarity for separating couples and help avoid the costs and stresses of contested financial proceedings. A pre nuptial agreement may not be for everyone but it is certainly something worth considering.

For a more detailed consideration of the position regarding pre nuptial agreements as at October 2009 please see [\[add aw article link\]](#)

I am thinking of adopting a child, how would I go about this?

You will need to decide whether you wish to adopt a child domestically in this country or to apply for an international adoption of a child from abroad. You will also need to consider the pros and cons of both options. We will be able to advise you on this and also on the process of the home study assessment of your suitability to adopt by a local authority or voluntary adoption agency. We would also advise you on the legal steps that you will need to take for either a domestic or international adoption. Many of our international adoption clients are living and working abroad. We are able to advise on the issues and implications of this, both while you are living abroad and also when you wish to return to settle in this country.

I am not married and have separated from my partner. What do we do about our home?

If you were not married then the financial separation can be subject to a number of different rules, depending on whether or not there are any children and the legal ownership of property amongst other things. In particular, the intentions behind the ownership of and usage of the family home are considered in depth.

Our specialist family department has significant experience in resolving any such disputes.

My partner is threatening me, what protection can I get?

If your partner is harassing or threatening you or has been violent towards you then your first port of call should normally be to report the matter to the police. They usually have a dedicated domestic violence department who may be able to assist you. The police may decide to question your partner, charge him or her with an offence or, if it is less serious, they may give him or her a warning instead.

You may also be able to apply to the family court for an injunction (a non-molestation order) which will prohibit your partner from harassing, pestering or intimidating you or from using or threatening violence. Provisions can also be included to prevent him or her from contacting you or going near your home. In certain circumstances it may be appropriate to apply for this order on an emergency basis which means that it would be done without notice to your partner. They would then have an opportunity to put forward their side at another hearing.

In certain circumstances, the court also has the power to make orders relating to the home where you and your partner live or were living (an occupation order). This could include an order that your partner must leave the home or that you should be allowed to return to it. You would need to show the court that such an order is necessary.

If you think you may need any orders for your protection then you should take legal advice as soon as possible in case emergency action is needed. You may be eligible for legal aid to apply for the relevant order.

I do not agree with my former partner about the arrangements regarding our children, what can I do?

If parents find they are unable to agree arrangements in respect of their children then they are encouraged to discuss matters in a conciliatory manner with a view to reaching an agreement that is in the children's best interests. In reality parents often find this difficult as emotions are high and opinions differ. Parents are therefore encouraged to attend family mediation so the issues can be discussed with a mediator to see if an agreement can be reached. However, sadly mediation does not assist everyone and sometimes parents find they have no option but to seek assistance from the court.

A parent, step parent or grandparent may apply for a contact order and / or a residence order under section 8 of the Children Act 1989. Upon receipt of an application the court will list the matter for a conciliation hearing. At that hearing the Judge is assisted by a CAFCASS Officer (Children And Family Court Advisory Support Service) who will consider the issues with the Judge and see if an agreement can be reached at court. If this is unsuccessful the court will ask both parents to file statements and the matter will be listed for a trial whereby the Judge will make a final decision if an agreement still cannot be reached. The involvement of CAFCASS often continues so they are able to work with families and make recommendations to the court by way of a report, which is considered by the Judge at the trial. However, parents should note that these proceedings are lengthy and expensive. Mediation is therefore encouraged and the courts expect parents to engage in mediation before any application is made. A court application should be if at all possible, a last resort. For further information on mediation, see the Resolution website: www.resolution.org.uk/advice_for_parents

Social Services have become involved in the care of my children, how can I ensure that they remain in my care?

Social Services involvement with your children may involve care proceedings already or it may not be at that stage yet. Social Services involvement may feel intrusive to you, but they are seeking to ensure that your children are safe and it would be constructive to cooperate with them in their investigations. Whether there are court proceedings already started or it is an option being contemplated, it is crucial to seek legal advice at the earliest opportunity so that you understand how to maximise the strength your case to have the children remaining in your care.

Our specialist team has experience in all types of care proceedings, many of which have involved complex issues. We have represented many parents who have successfully retained full time care of their children.

Normally social services will want to undertake an assessment of you and the children if they have concerns about your parenting. It may be that you cannot resist your children going into foster care or staying with an alternate family member for an interim period whilst assessments are undertaken by social services but you would benefit from legal advice to determine whether this is appropriate in your case.