

Divorce Proceedings

The Parties

The party who commences the divorce is known as the Petitioner and the other party is known as the Respondent.

The Grounds

(i) Divorce proceedings cannot be commenced until the parties have been married for at least year and the only ground upon which divorce proceedings can be pursued is that a marriage has irretrievably broken down.

(ii) To satisfy the Court that a marriage has broken down irretrievably it is necessary for the Petitioner to prove to the Court that one of the five following situations exists :-

(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 it would be unreasonable to expect the Petitioner to continue to live with the Respondent

N.B. (a) and (b) above are the only two facts upon which it can be relied upon to commence divorce proceedings immediately

(c) The Respondent has deserted the Petitioner for a continuous period of at least two years

(d) The parties of the marriage have lived apart for a continuous period of more than two years and the Respondent will consent to a divorce being granted.

(e) The parties have lived apart for a continuous period exceeding five years. There is no necessity for the Respondent to consent.

It is often sensible – and indeed the protocol – to try and obtain the other spouse’s consent to the divorce petition and to reach agreement over its contents.

For advice on these issues, or any other family related problem, then please contact our Family Law Team on 01730 268211.

Please note that information is for guidance purposes only should not be regarded as a substitute for taking legal advice.

Divorce Procedure

The five following distinct stages in divorce proceedings need to be followed to finalise a divorce:

i) The Petitioner files a divorce petition with a county court and documents are posted by the court to the Respondent and (where appropriate) the co-Respondent.

(ii) The Respondent files an acknowledgement of service of the divorce paperwork with the Court confirming whether or not the proceedings will be defended.

(iii) Almost all cases are undefended. Once the divorce proceedings have been acknowledged in an undefended divorce the Petitioner can file a statement in support of the divorce petition and ask the court to grant permission for the divorce to proceed.

(iv) Once the court has considered the further documents filed the court will list the date for the pronouncement of the decree nisi.

(v) Provided that all arrangements relating to any children of the parties are approved by the court the Petitioner can apply for the decree nisi to be made absolute six weeks and one day from the date of the decree nisi. If the Petitioner does not apply the Respondent may do so three months after the date when the Petitioner could have applied.

Children as a part of the Divorce Process

A statement of arrangements for any minor children will be required by the court in order for the divorce to progress. Again it is sensible to try and agree the arrangements for the children before the paperwork is filed with the Court. When acknowledging receipt of the divorce paperwork the Respondent will need to confirm agreement to the arrangements for the children.