

## How Divorce Works: A summary of what is involved with divorce proceedings

The basic requirements for obtaining a divorce in England and Wales are that a couple must have been married for a year, the marriage must be legally recognised under UK law and it must have broken down irretrievably. Irretrievable breakdown must be demonstrated to the court by one of five reasons or 'grounds':

- Adultery
- Unreasonable behaviour
- Desertion
- Two years' separation with consent; or
- Five years' separation without consent

In practice, if both parties want to be divorced quickly, then the most common ground on which to proceed is unreasonable behaviour. This is used when there has been no adultery and the parties wish to avoid the delay caused by the last three grounds. Unreasonable behaviour can be evidenced by, for example, violence or mental cruelty as well as more subtle complaints such as the exercise of unreasonable control. To support the claim of unreasonable behaviour, one party must agree to give a brief description of the behaviour in the divorce petition.

It is useful to understand the outline of the process and some of the legal terminology. The party to the marriage who files the Petition

for divorce is known as the Petitioner while the other party is called the Respondent. The Petition for divorce is delivered to, or served on, the Respondent. The Respondent then has 29 days in which either to admit that the Petition is true or to defend the divorce - defended divorces are very unusual. The Respondent then has to return an Acknowledgment of Service to the Court indicating his intention regarding the Divorce.

Normally, a District Judge will then decide whether the facts have been proved and, if satisfied, will give a date for pronouncement of the Decree Nisi. This is the first step towards the final divorce. Six weeks after the date of the Decree Nisi, the Petitioner can apply for the Decree Absolute. When this is granted, the divorce is final and both parties are free to remarry. However, if the Petitioner does not apply for Decree Absolute, the Respondent may do so three months after that date.

The divorce process is likely to take between five and eight months to complete. However, it will take longer if there are disagreements regarding the children or money which cannot be settled without the intervention of the court.

It is of course beneficial if arrangements concerning any children and the division of family

assets are agreed without having to go to court. It is important to have good legal advice even if these decisions are made amicably. The court will always suggest mediation in the first instance in order to reach a mutually acceptable agreement between the parties.

Alternatively, you may wish to consider the Collaborative Law route. Details of this new approach to separation and divorce can be found in our Collaborative Law leaflet which describes how, even when parties separate, it is possible to have a dignified divorce and avoid the stress of going to Court.