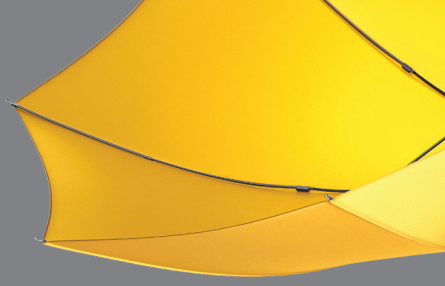
Family Law
A step-by-step guide

Eatons



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The breakdown of a relationship can be a worrying and emotional time, but you now have available to you Eaton's expert professional help to guide you through the process.

Here we set out what the court takes into account and how it makes decisions about your marriage, your finances and your children.

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#1

Your Divorce

The procedure for divorce can very often seem complicated and fraught with legal terms and expressions. However, the mechanics of obtaining a divorce nowadays are usually quite straightforward, particularly if both partners feel the marriage is over.

#1.1

Either or both parties to a marriage may apply to the Court for an Order (a) "Divorce Order" which dissolves the marriage on the ground that the marriage has broken down irretrievably. An Application must be accompanied by a Statement by the Applicant or Applicants that the marriage has irretrievably broken down.

#1.2

Here we set out the procedure of divorce, explaining many of the legal terms used. We hope you will find it a useful guide that you can refer to as the matter progresses to Divorce Order; the final document in your divorce.

An Application to Court for a Divorce Order can only be made after 12 months of marriage.

There is only one ground for Divorce and that is that the marriage has irretrievably broken down.

Either or both parties can apply to the Court for a

"Divorce Order" which dissolves the marriage on the basis of irretrievable breakdown.

An Application for a Divorce Order must be accompanied by a Statement by the Applicant or Applicants that the marriage has irretrievably broken down.

#1.3

The court procedure; step-by-step

The Court dealing with an Application for a Divorce Order must;

a) Take the Statement to be conclusive evidence that the marriage has broken down irretrievably and;

b) Make a Divorce Order.

A Divorce Order is;

a) In the first instance a Conditional Order and;

b) May not be made final before the end of the period of 6 weeks from the making of a Conditional Order.

The Court may not make a Conditional Order unless;

a) In the case of an Application that it is to proceed as an Application by one party to the marriage only that party has confirmed to Court that they wish the Application to continue or;

b) In the case of an Application that is to proceed as an Application by both parties to the marriage those parties have confirmed to the Court that they wish the Application to continue.

A party or parties may not give confirmation before the end of the period of 20 weeks from the start of the proceedings (Application for a Divorce Order).

As divorce effects inheritance under a will you may, at this stage, wish to consider revising any Will that you have already made or consider making a Will if you have not already done so. If you do make a Will, you should be aware that subsequent re-marriage may also affect any Will that you have made (prior to re-marriage).

Judicial Separation

Either or both parties to a marriage may apply to the Court for an Order (A Judicial Separation Order) which provides for the separation of the parties to the marriage.

An Application for a Judicial Separation Order must be accompanied by a Statement by one party if that person seeks to be judicially separated from the other party to the marriage or if the Application is by both parties to the marriage a Statement by both of them that they seek to be judicially separated from each other.

The Court dealing with an Application for a Judicial Separation Order must make a Judicial Separation Order.

Civil Partnership; Dissolution & Separation

Either or both Civil Partners may apply for Dissolution of the Civil Partnership.

An Application for Dissolution of a Civil Partnership must be accompanied by a Statement by the Applicant or Applicants that the Civil Partnership has broken down.

Every Application for a Dissolution Order is in the first instance;

a) A Conditional Order and;

b) May not be made Final before the end of the period of 6 weeks from the making of the Conditional Order.

The Court may not make a Conditional Order unless;

a) In the case of an Application that it is to proceed as an Application by one party to the marriage only that party has confirmed to Court that they wish the Application to continue or;

b) In the case of an Application that is to proceed as an Application by both parties to the marriage those parties have confirmed to the Court that they wish the Application to continue.

A person or persons may not give confirmation before the end of a period of 20 weeks from the start of the Application for Dissolution of a Civil Partnership.

An Application for Nullity or Presumption of Death Order

Every Nullity or Presumption of Death Order;

a) Is in the first instance a Conditional Order and;

b) May not be made Final before the end of the prescribed period.

An Order that annuls a marriage which is void or voidable;

a) Is in the first instance a Conditional Order and;

b) May not be made Final before the end of the period of 6 weeks from the making of the Conditional Order.

Separation of a Civil Partnership

Either or both Civil Partners may make an Application for a Separation Order. An Application for a Separation must be accompanied by;

a) If the Application is by one Civil Partner only a Statement by that person that they seek to be separated from the other Civil Partner or;

b) If the Application is by both Civil Partners a Statement by them that they seek to be separated from one another.

The Court dealing with an Application for a Separation Order in respect of the Civil Partnership must make a Separation Order.

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#2

Finances and Property

This section refers to the financial orders that the court can make within divorce, civil partnership dissolution and judicial separation proceedings. This guide is intended to set out the obligations on both yourself and your former partner in respect of the disclosure of relevant matters and also to explain to you the facts that will be taken into account in determining the resolution of financial issues between you as well as giving a brief explanation as to the procedure which will be followed.

#2.1

Obligation to give full and frank disclosure

There is an obligation on both sides in financial remedy proceedings to give full and frank disclosure of financial matters. This includes details about any assets, income and outgoings, even if you believe something should not be taken into account, (e.g. assets held in your sole name, assets acquired after you have separated or assets of a relatively low value).

This is an ongoing obligation meaning that any change in financial circumstances that occur during the course of proceedings must be notified to the other side. There is also an obligation to disclose material factors that may affect any settlement, such as the intention to remarry or co-habit with another person. In providing disclosure, it will usually be necessary for valuations of any matrimonial assets to be obtained and to be agreed if possible, e.g. a valuation of any matrimonial home.

Up to date statements of any Bank or Building Society accounts will need to be provided ,as well as details of the amount outstanding in respect of a mortgage, personal loans, catalogue debts etc. Details of the value of any other assets will also need to be obtained e.g. investments in the form of ISA's shares, insurance policies and the cash equivalent transfer value of pension schemes.

The importance of giving full and frank disclosure cannot be over-emphasised. Failure to do so could result in any settlement that has been agreed being set aside, if the failure to disclose financial information has had a material effect on the outcome of the proceedings. It could also result in Punitive Orders and orders for costs being made against you during the course of the proceedings.

If you deliberately give false information you may be committing a criminal offence and proceedings may be brought against you under the Frauds Act 2006 or for perjury.

"Your due diligence and efficient communications by email made the whole process of finally letting go of our parents home less emotionally challenging."

You are not entitled to take a copy or retain copies of confidential documents belonging to your husband/wife/civil partner. Confidential documents will not include documents in respect of joint assets. If you do search and find confidential documents belonging to your husband/wife you may be criticised by the Court and may even be committing a criminal offence. The following would be considered to be confidential documents:

Hard Copy Documents

(a) This information is contained within a locked filing cabinet or equivalent, you should not break in or it or ask anyone else to do so on your behalf.

(b) If documents are in open files or in communal office area you should not look for or copy documents belonging to your spouse unless it is known that he/she would consent to those documents being viewed/copied.

(c) If information has been left out openly (i.e. not locked in a drawer or study) but it is known that the spouse did not consent to the information being copied it should not be taken or copied. It is acceptable to make a mental note of what the documents say or contain or take a written note of the key points. If copied documents are taken they should not be passed to your solicitor.

(d) If any information id sent to your solicitor then it has to be disclosed to the owner and his/her solicitor.

(e) Original documents should not in any circumstances be taken with out agreement.

Other Forms of Information/Documents Considered To Be Confidential

Information that is contained on the home or business computer, information contained on an external hard drive, memory stick or CD/disk, and information contained within, e.g. Social Media account, would be considered confidential but not information posted on a public Social Media "wall".

(a) If the information is password protected and the password is unknown to you then you must not obtain access to this information or ask anyone else to do so.

(b) If the information is unprotected, or available with a password which is known (or was a joint password) then access to this information can be obtained if it is known that the spouse would agree.

(c) If computer access is freely available but it is known by you that the spouse would not consent to this information being copied then it should not be copied. You should be aware that it is acceptable to make mental note of what the document says or contains or take a written note of what the documents say or contains or take a written note of the key points. However if copies are taken then these should not be emailed on to your solicitor.

(d) If information is sent to your solicitor then it has to be disclosed to the owner or his/her solicitor even if the spouse consented.

Failure to observe confidentiality can result in you committing a criminal act.

It is also important that you do not dispose of assets unreasonably, either when you know you are going to separate, or at any time after you separate, because the Court may take exception to this. If you are unsure as to whether you should be disposing of things, you should discuss this with us before doing so.

#2.2

Matters relevant to the distribution of matrimonial assets

There are various matters that have to be taken into consideration which include the following:

(a) the income, earning capacity, property and other financial resources that each party to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities that each party to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage.

(f) the contributions made by each party to the welfare of the family including any contribution made in caring for the home or family;

All the circumstances of the matter will need to be taken into consideration. However, where there are any minor children in the family who have not attained the age of 17, first consideration will be given to their welfare and particular regard will be given to the following matters:

- the financial needs of the child;
- the income, earning capacity, if any, property and other financial resources of the child;
- any physical or mental disability of the child;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the manner in which the child was being, and in which the parties to the marriage expect him/her to be, educated or trained.

#2.3

Re-marriage prior to making an application

If you are applying for a Divorce Order and have not included a claim for financial remedy in your Application and remarry before making such an application, then you are barred from proceeding.

If an Application for financial remedy is made before re-marriage it can be continued after re-marriage although the re-marriage will be relevant to the outcome of the proceedings.

#2.4

Orders which can be made

The court has a wide discretion in dealing with financial matters and the fact that an asset is held in one party's name does not prevent the court from ordering the transfer of that asset to the other party.

The court can make orders for the immediate sale, and distribution, of proceeds of the sale of any property. They can order the property to be transferred to one or other party or for one party to remain in occupation of the property (particularly where there are dependant children) until an agreed future time when the non-occupying party will be entitled to realise their interest in the property.

The court can also make an order for a lump sum payment i.e. the transfer of capital from one party to the other. Although the courts still retain jurisdiction to make orders for the payment of maintenance between husband and wife, they do not generally have jurisdiction to make orders for the payment of maintenance in respect of the natural children of the parties.

Such applications would usually be dealt with through the Child Maintenance Service who would calculate the level of maintenance payable by application of a strict formula.

The court can also currently take the parties' pensions into account in three ways.

(a) they can offset any inequalities in pension provision against other assets such as the equity in the property.

(b) they can earmark the lump sum/death in service benefit/annuity payments payable under a pension scheme when they become due.

(c) the court can also make pension splitting/ sharing Orders. Pensions will not be dealt with in isolation from the other financial issues and, as with all other assets, there will be no automatic entitlement to an equal share of pension.

In considering financial claims, it is always necessary to consider the possibility of achieving a Clean Break Settlement. This means regulating financial affairs between the parties in such a way as to ensure that any continuing financial obligations between the spouses are brought to an end as soon as possible.

"There is an obligation on both sides in financial remedy proceedings to give a full and frank disclosure of financial matters."

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#2.5

The court procedure; step-by-step

In the majority of cases, financial settlements are negotiated by agreement following disclosure of financial matters. It is advisable that any agreement reached in this way is incorporated into the form of an order within the matrimonial proceedings, as the agreement is then binding on both sides.

The only way to prevent a further financial claim being made by one spouse against the other in the future, is to have a court order dismissing the right to pursue further applications. A formal court order also has the benefit of ensuring that any Clean Break Settlement can be given legal effect.

If agreement regarding financial matters cannot be reached, a formal application to court may need to be made. This application is made on a standard court form and the court will formally issue the application and serve a copy upon the respondent. The case will be listed by the court for a hearing 12 to 16 weeks after the application was made. At least 35 days before the date given for this hearing the parties must exchange a detailed statement "Form E" setting out their financial circumstances and exhibiting appropriate documents such as bank statements, pension value etc.

You will be asked to sign a statement that the contents of this document are true. Not less than 14 days before the hearing, having looked at the other parties Form E, the parties must file an agreed Chronology, a Questionnaire and request for information/documents and an agreed Statement setting out the issues involved in the case and an agreed Schedule of Assets & Liabilities if possible.

The only way to prevent a further financial claim being made by one spouse against the other in the future, is to have a court order dismissing the right to pursue further applications.

At the first hearing which will be heard by a District Judge in his Chambers (i.e. it will not be open to the public). Both parties file a schedule of the legal costs incurred to date.

The District Judge will then examine the questionnaires and statements and decide which questions should be answered and which documents should be disclosed. The District Judge will make any other orders that are appropriate to the particular case in order to progress the matter, e.g. ordering a joint valuation of a disputed property be prepared. Time limits will be set for dealing with each point and the case will then be listed for a further hearing known as a Financial Dispute Resolution hearing (FDR).

Each party must comply with the disclosure and replies etc, ordered by the District Judge, within the appropriate time limits. Before the FDR hearing an up-to-date schedule of costs must be filed and details as to all the offers, proposals and responses exchanged during the negotiations must be lodged at Court.

The District Judge dealing with the FDR hearing will have full knowledge of the issues involved in the particular case and will allow the parties time to discuss issues and negotiate a settlement.

The FDR hearing is designed specifically for this purpose and, if appropriate, the District Judge can give guidance to the parties and their legal advisors.

Often, with the District Judge's guidance, an agreement will be negotiated and the District Judge will make a Consent Order.

If agreement cannot be reached, it is likely that the case will be listed for a final hearing. The final hearing will be dealt with by a District Judge, however this will not be the same District Judge who dealt with the Financial Dispute (FDR) hearing.

The District Judge at the final hearing will have no knowledge of the negotiations that have taken place and will only listen to the evidence in the case presented by the parties and their legal advisors.

The District Judge will hear evidence from the parties themselves, look at any documentary evidence as may be appropriate, and listen to any other witnesses called by the parties (if appropriate). The parties legal advisors will then make submissions to the District Judge and he will decide how the financial issues should be resolved. The decision will usually be made there at this point / immediately and will be recorded in the form of a Court Order.

The costs of disputed financial proceedings are relatively high. In the circumstances, provided we are satisfied that we have had all the relevant financial matters disclosed to us, we would always advise clients and secure a negotiated settlement of financial matters if at all possible. Indeed, it is becoming increasingly important to ensure that the parties put forward reasonable proposals for settlement.

As part and parcel of the financial settlement we often obtain values in respect of any life and savings policies. Sometimes these go on to be assigned to one or other of the parties as part of a settlement, sold or surrendered.

We do not offer advice to our clients on the appropriateness, or otherwise, of selling, surrendering, assigning or converting such policies and we recommend that you obtain advice from an Independent Financial Advisor in this regard. We will be happy to refer you to an appropriate Independent Financial Advisor if appropriate.

#2.6

Entitlement to benefits

If there is only one working adult occupying the property you may qualify for an automatic 25% discount on your Council Tax. If you are on a low income you may, in addition, qualify for Council Tax Benefit, or Housing Benefit if you are in a rented property. People on a low income may also qualify for Tax Credits and other Benefits such as free prescriptions, free dental care, free opticians or free school meals. After an initial period of claiming benefit assistance with mortgage interest payments. The Local Authority will be able to provide you with more information about the Council Tax Benefit / reduction or Housing Benefit, and the Benefits Agency or your GP / Dentist / Opticians can tell you about the other benefits for which you may qualify. In addition, Working Tax Credit and Children's Tax Credit may be available where the total income into the household does not exceed quite a sizable amount a year. You should contact your local Department of Works and Pensions, or obtain an application form from the Post Office, to see if you are eligible for these benefits. Further information is also available on the Government website.

#2.7

Mediation

Mediation is a process of direct negotiations, between you and your former partner, with the assistance of a trained mediator. Both parties involved in a family breakdown are encouraged to communicate with each other and hopefully reach their own decisions about issues such as the children and financial arrangements, arising out of the separation. If successful, mediation may be an alternative to, or reduce the need for, negotiations between solicitors or going to court.

If you feel that mediation would benefit your situation, rather than negotiations through solicitors, please let us know and we can make arrangements to refer you to the Mediation Service. If you are contemplating issuing Court proceedings it is a requirement that you are referred to mediation before we can issue proceedings.

If you require further information on Collaborative Law, see **www.collabfamilylaw.org.uk**

enquiries@eatons-solicitors.co.uk
www.eatons-solicitors.co.uk

#2.8

Collaborative Law

Collaborative law is an alternative approach where both parties agree not to go to court, and with their own lawyers (who are members of Resolution; the specialist family lawyers group reach solutions face to face. In many cases agreement can be reached with a minimum of pain and disruption to those getting divorced and their children. Where agreement cannot be reached, court proceedings may be required and different lawyers will be appointed to represent each side.

#2.9

Arbitration

Family Arbitration is a form of private dispute resolution in which you and your ex-partner appoint a fair and impartial Family Arbitrator to resolve your dispute.

Family arbitration is an ideal approach for people who want to resolve a family dispute without the delay and expense of the court process. It allows you and your ex-partner to engage in a flexible process, with complete confidentiality, and the knowledge that a decision will be made.

The family arbitrator will produce a decision after hearing from each of you. They will act fairly and impartially, giving each of you the opportunity to put forward your views.

Family arbitration can be used to help separating couples (whether married or not) following the breakdown of a relationship to settle disputes relating to:

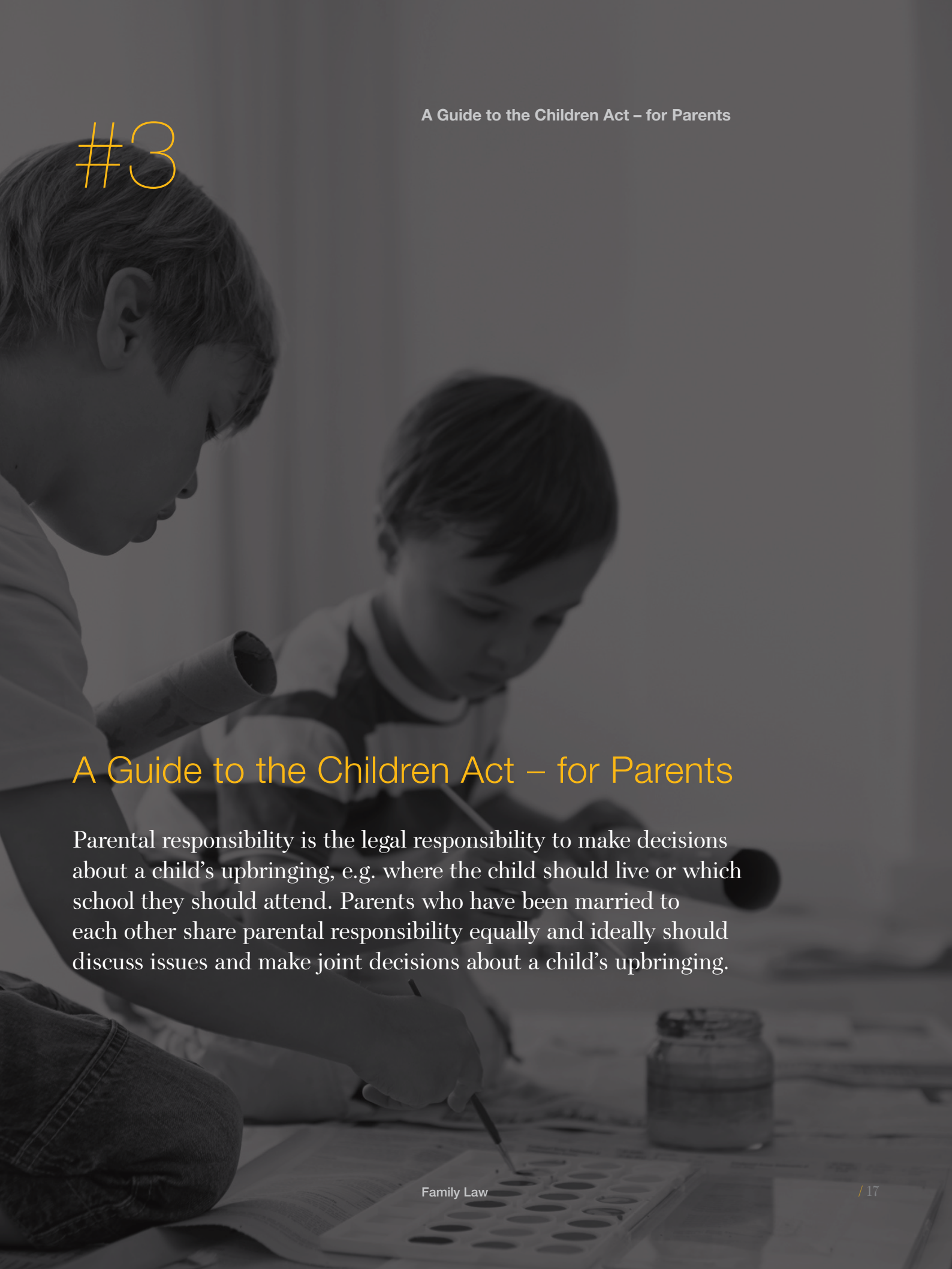
- Finances and Property
- Child maintenance
- Living arrangements for your children after separation
- The time your children will spend with their parents
- Other arrangements concerning the upbringing of the children (e.g. schooling)
- Moving the children with a parent to a different part of England Wales.

#2.10

Private FDR

The parties have an option of asking the Court to agree to the use of a Private Financial Dispute Resolution evaluator. Once a Private Financial Dispute Resolution Appointment has been fixed this may only be adjourned by agreement or pursuant to an Order of the Court. The identity of the Private FDR evaluator will need to be agreed. This enables the matters to be determined out of the Court by an appropriate qualified approved individual. Often these will be Senior Lawyers or former Judges.

#3



A Guide to the Children Act – for Parents

Parental responsibility is the legal responsibility to make decisions about a child's upbringing, e.g. where the child should live or which school they should attend. Parents who have been married to each other share parental responsibility equally and ideally should discuss issues and make joint decisions about a child's upbringing.

#3

Under the present law an unmarried father only acquires parental responsibility with the child's mother if, at the time of the child's birth his name is registered on the Birth Certificate. Otherwise parental responsibility can either be acquired either by agreement (which is written up into a formal agreement registered at Court) or (if the parties cannot agree) by applying to the court for a Court Order.

The Children Act 1989 is intended to deal with practical issues when they arise. "Custody" and "Access" Orders and residents/contact orders are no longer made; ("Childrens Arrangements" is now the terms used). Children are given more right to be listened to in Court proceedings about them.

#3.1

What is parental responsibility?

Parental responsibility enables a person to take a decision about the child's upbringing. Generally parental responsibility continues until a child is 18 although children can now make more decisions for themselves as they get older.

Parents keep their parental responsibility if they separate or if they divorce, even if they do not live with the child. A divorce brings a marriage to an end, but not parenthood. Generally a parent only loses parental responsibility if a child is adopted by somebody else.

The Children Act encourages parents who do not live with their children to remain in touch and to be involved in the child's life.

Under the old law when parents divorced, Custody and Access Orders and residence/contact orders were often made about the children. These Orders sometimes restricted one parent's involvement in the life of the child. Parents are now encouraged to make their own joint decisions and no orders will be made by a court unless needed.

Parents can set up a "Parenting Plan" between them. Assistance is available from Conciliation Services, the Children and Family Court Advisory Support Service (CAFCASS) and Social Services and solicitors to promote children's welfare by resolving disputes away from Court. The Children Act recognises that Courts should be a last resort for family decisions over children.

#3.2

Who has parental responsibility?

Both parents have equal parental responsibility if they were married to each other when the child was born or marry each other afterwards.

If the parents of the child have never married each other only the mother initially has parental responsibility, unless after 1. December 2003 the father's name is placed on the Birth Certificate at registration or re-registration.

The Children Act enables unmarried parents to make a formal agreement to share parental responsibility without going to court. A special form must be used to record this agreement and this must be registered with the court. If the parents cannot agree, the father can ask a court to give him parental responsibility.

Parents can ask somebody else, such as a relative or friend, to carry out their parental responsibility for them, e.g. whilst they spend some time abroad or in hospital. Parents who do this remain responsible for their child.

People who are not parents, like step-parents, grandparents and other relatives, do not automatically have parental responsibility even though the child may be living with them.

However, they may acquire parental responsibility in three ways.

(1) They may be appointed guardian by a parent with parental responsibility (see below).

(2) They may obtain a Child Arrangements Order from a court for the child to live with them.

(3) They may adopt the child.

A step-parent does not obtain parental responsibility simply by marrying the child's parent but can now apply for parental responsibility without applying for adoption or residence orders.

Even if people do not have parental responsibility for a child, the Act encourages them to do what is reasonable to look after the child while they have care of him or her.

Adults who have temporary care of children, like childminders, teachers, babysitters, relatives and friends, also have to do what is reasonable to look after the child in their care.

#3.3

Guardians

The Children Act makes it easier to appoint guardians to care for children if their parents die. This need no longer be made by way of a will but must be in writing signed and dated. A guardian is appointed to have parental responsibility on the death of a parent who had parental responsibility.

A guardian's appointment will only take effect when both of the children's parents are dead unless the deceased parent had a residence order in his or her favour or was the only one with parental responsibility.

If a parent does not appoint a guardian before death, a court may appoint one if needed.

#3.4

When are court orders made?

Although courts are discouraged from making unnecessary orders, they are given more flexibility if an Order is needed. Anyone who is genuinely concerned about a child's welfare can apply

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to court at any time and the Court is given a range of practical Orders to make. The Orders should deal with any question which arises in the child's life.

Children themselves can apply for an Order if they have sufficient understanding to do so. The court will decide what is best for the child and will not make an order unless it is better for the child than not making an order.

The Children Act provides a checklist of factors which the court will consider in order to decide what is best for the child. At the top of the list are the child's wishes and feelings which will be assessed in the light of his/her age and understanding. Other factors in the checklist include the child's age, sex and background, his or her physical, emotional and educational needs, the ability of those concerned to meet those needs and the likely effect on the child of a change of his or her circumstances.

When a court is involved in a dispute, the court will usually be informed of these factors through a report (see below). Courts are required to set timetables to ensure that there is no unnecessary delay. They are expected to hear cases quickly as delay is usually not in the child's interest.

Under the child arrangements program before making a family application to the Court the person who is considering such an application must attend a Mediation Information and Assessment Meeting with a mediation provider. At that meeting they will be given information about the mediation of disputes and ways in which a dispute can be resolved other than through Court. It is the responsibility of the prospective applicant or their legal representative to contact a family mediator to arrange a Mediation Information and Assessment Meeting.

#3.5

What are court orders?

- Child Arrangement Orders
- Specific Issue Orders
- Prohibited Steps Orders
- Family Assistance Orders

Each decides a particular question in a child's life.

Child Arrangement Orders

Sets out arrangements for where a child should live/ spend time. Under the Children and Families Act 2014 it is presumed a child will benefit from spending time with both parents if it is safe to do so. However the act makes clear it does not mean any particular division of time e.g. equal division.

Specific Issue & Prohibited Steps Orders

This decide particular aspects of a child's life, such as schooling, medical treatment or emigration.

Family Assistance Orders

Where a family may need specialist help, a Family Assistance Order can be made. This is a short term order to a CAFCASS or a Social Services Department to advise and assist a family for about six months. It can only be made with the consent of the adults involved and it is intended to help adults resolve those conflicts surrounding divorce and separation which affect children.

#3.6

Childrens act Court procedure

#3.6.1

The contents of the application

Every application follows a similar format containing basic information about the person making the application, the respondent to the application and the children in respect of whom the application is being made, as well as details of the Order being asked for. In addition, the application will contain brief details of the reasons for making the application and of any plans for the child. It also confirms whether an interpreter will be needed at the court, or disabled facilities.

#3.6.2

The first hearing directions resolution appointment

Prior to the first directions resolution appointment (FDHRA) The Family Court Advisor and Support Service (CAFCASS) will have been required to undertake background safeguarding checks to assist the Court. This will usually involve them speaking to both parties in the case and obtaining background information regarding any Police or Social Services involvement with the family. A safeguarding letter is sent to the court and the parties before the hearing identifying what the issues/concerns in the case may be and giving guidance to the Court as to the way in which it is being recommended the case should proceed. At the FHDRA the CAFCASS Officer will try to explore with the parties whether issues between them can be resolved safely.

A report can be ordered by the Court if they feel that there are welfare issues regarding the children or other considerations that need to be looked at.

The Court will also consider if there are allegations being made by one party against the other whether or nor the case needs to be listed for a finding of fact hearing to determine whether or not the allegations have been proved true.

If the Court order a report by the CAFCASS Officer to look at matters in more detail then the case will be adjourned for that report to be prepared the CAFCASS Officer will need to arrange meetings with the parties and usually the children involved before filing a detailed report setting out their recommendations for the Court as to what orders should be made.

There will usually be a further directions hearing for the Court to consider how to proceed with matters following the filing of any CAFCASS reports at which the Court may then give directions for parties to file statements setting out their case. The Court will set out a timetable within which any directions must be complied.

#3.6.3

The full hearing

Following the filing of the report, if matters have still not been resolved by agreement, the case will proceed to a full hearing. It will be necessary for both sides to give evidence in relation to the case at the hearing and the CAFCASS officer may also be required to attend to give evidence.

The Court, having heard the evidence, will be required to give consideration to "the statutory checklist" which sets out various factors that the Court has to take into consideration in deciding what is best for the child.

The criteria include factors such as:

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)

(b) their physical, emotional and educational needs

(c) the likely effect to them of any change in their circumstances

(d) their age, sex, background and any characteristics of his which the Court considers relevant

(e) any harm which they has suffered or is at risk of suffering

(f) how capable each of their parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs

(g) the range of powers available to the Court.

#3.6.4

Confidentiality

Court proceedings in respect of children matters are confidential. This means that all documents prepared for the case and what is said in Court may not be disclosed to anyone who is not involved in the case without permission of the Court.

Absolute confidentiality is required. Only the Court can overrule that confidentiality and only when satisfied that it would be right to do so in the interest of the children. Breach of the confidentiality rule would amount to contempt of the Court which could be punishable by imprisonment or a fine.

It is always preferable, with matters concerning children for, the parties to reach agreement between themselves as to what future arrangements for their children's care should be. The Children Act very much encourages people caring for children to work together to negotiate their own arrangements, rather than having arrangements imposed by the Court.

If you are unable to reach agreement you may wish to consider, as an alternative, attendance at a conciliation/ mediation service.

#3.6.5

Enforcement of Contact Arrangements

Whenever a Court makes or varies a Contact Order, it has to attach a Notice warning of consequences of failing to comply with that Order. The Court has power to make an Enforcement Order requiring the party to undertake unpaid work or an Order for financial compensation and sanctions for contempt of Court where Orders are not complied with.

#4

A Guide to Injunctions

Where a person is being subjected to domestic abuse/violence or harassment, as well as the police being able to take action if criminal offence is committed, the civil Courts also have power to make orders to restrain abusive behaviour and provide protection to the victim, including any children who might be affected.

#4

The Government defines domestic violence and abuse as any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence, or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse;

- Psychological
- Physical
- Sexual
- Financial
- Emotional

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependant by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is; An act of a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

This definition includes so called (honour) based violence, female gentile mutilation (FGM) and forced marriage and it is clear that victims are not confined to one gender or ethnic group.

Under Part IV of the Family Law Act 1996, there are two forms of injunction order that can be obtained in connection with any associated person.

Person are associated with another person if:

- They are or have been married to each other;
- They are or have been civil partners to each other;
- They are co-habitants or former co-habitants; they live or have lived in the same household otherwise than merely by reason of one of them being the others employee, tenant, lodger, or boarder;
- They are relatives (as defined). This can include father, mother, step-father, step-mother, son, daughter, step-son, step-daughter, grandmother, grandfather, grandson, or granddaughter, brother, sister, uncle, aunt, niece, nephew or first cousin including that persons spouse, civil partner or former civil partner;
- They have agreed to marry one another, i.e. being engaged (whether or not the Agreement has been terminated);
- They have entered a Civil Partnership Agreement (whether not that agreement has been terminated);
- They have or have had and intimate personal relationship with each other which is or was of significant duration;
- In relation to child, both persons are parents or have had parental responsibility for the child;
- They are parties to the same family proceedings.

#4.1

Non molestation injunction

The Court can make an Order of a Non Molestation Injunction, which is an Order prohibiting the Respondent, e.g. your former partner, from molesting another person who is associated with the Respondent (as set out above) and/or relevant child. Often these will include orders telling a person not to. Often these will include orders telling a person not to threaten, harass, pester or assault you or any relevant child. It can include specific provisions e.g. not to contact you in any way other than through solicitors or not to come near to a specified address.

The Court will make any Order for as long as it feels it is necessary to enable the situation to settle down. Usually, this will be for 6 or 12 months. If problems are still continuing when the Order is due to run out, then you can go back to Court and ask the Court to Order for it to continue for a longer period.

Eatons

#4.2

Occupation order

In some situations, people have legal rights to live in a property e.g. where they jointly own the property or are both on the tenancy agreement. It is possible for an individual to prevent somebody exercising

his or her rights to live in a property. However, the Court can make an Order regulating occupation of the property and requiring somebody who otherwise has a legal right to be there to move out and requiring a person who has left not to return to the property. In some circumstances, even where a person does not have a legal right, e.g. by virtue of a tenancy agreement to live in a property the Court can still order that the person without legal rights obtain an Occupation Order, although in that situation it may not be for more than 6 months but can be extended only once.

When the Court consider whether or not to make an application for an Occupation Order, the Court have regard to all the circumstances, including housing needs and resources of each party, the financial resources of each party, the likely effect of any Order on the health, safety or well being of the parties and any relevant child, the conduct of the parties in relation to each other and otherwise, the length of time that has elapsed since the marriage or civil partnership was dissolved or annulled and the existence of any pending proceedings between the parties.

As well as making Orders regulating who should be able to live in the property for a period of time, the Court can also make Orders in circumstances about who should pay the rent or mortgage on the property and other bills and decide who should keep which item of furniture. They can also require the person in the house to keep the house and furniture or other contents secure.

It is also possible for the Court to make Orders under the Family Law Act transferring tenancies from joint names into the name of one tenant only.

We will provide you with an estimate as to the likely costs of making an application to Court.

If you secure a Non Molestation Order against someone who breaches the Order i.e. they do not do the things that have been told not to do, this is treated as a criminal offence and a person found guilty of breaching such an Order can be imprisoned for up to 5 years or fined. If the Court makes an occupational Order then they can also consider attaching an additional clause called Power of Arrest. That enables a constable to arrest without warrant person he has reasonable cause of suspecting to in breach of any such provision.

Sometimes, rather than making an Order to the Court, the person whom an Order is sort offers to give the Court an "undertaking". This is a solemn promise made to the Court not to act in the way alleged, i.e. no to harass or pester. The Court cannot accept a promise i.e. undertaking, rather than making an Order if they would have otherwise attached a power of Arrest.

When you decide to make an application for either a Non Molestation or Occupation Injunction, you will need to provide your solicitors with full details of the incidence that you wish to rely on to support your application, as well as providing details of the housing and financial resources, details of conduct and other relevant matters as set out above. It would be helpful if you could make notes about these incidents before you see your solicitor so they can help you decide what action needs to be taken. If you have had medical treatment as a result of any assault on you, or if you have involved the police, it would be helpful if you could bring details to your solicitors as to where you have obtained medical treatment, with the name of your doctor, if possible, and also details of any police involvement.

An application for an Injunction will require you attend Court on at least one occasion and you

and your solicitors will need to prepare a detailed statement from the information you have provided to them, to support your application. Normally, before

"Sometimes you may already have protection and may not need to obtain an injunction."

the Court will grant any Orders,

it will be necessary for the person that you are applying for the Order against, to have been served with a copy of your application and your statement in support at least 2 days before any hearing takes place. However, where the situation is particularly urgent and you are worried about protection between the period between the papers are served and the Court hear the application, the Court can grant something called an Ex Parte Order. This is an Order for a limited period only to give protection during the period between service of the application and a hearing at which the other party is given the chance to put their position to the Court.

As well as discussing injunction proceedings with you, your lawyer will also be able to give you information about other support organisations, i.e. women's aid/refuge as you may need urgent with rehousing or other practical matters.

We understand that going to Court following a relationship breakdown can be daunting and may not always be the right way to deal with your situation. Sometimes a "warning letter" from solicitors telling the person concerned that if behaviour does not stop or they do not move out, that you may need to consider an application to Court, is enough to calm things down without the need for an Injunction Application.

We will always consider whether an Injunction Order or warning letter would be the best option.

Sometimes you may already have protection and may not need to obtain an injunction. This might be where the person concerned has been arrested as a result of a criminal offence having occurred and is subject to bail conditions. If that applies to you but bail conditions have come to an end, then you do need to think about whether or not you need to apply for an injunction to give you continued protection if bail conditions are no longer in place.

Where you cannot apply for an injunction under the family law act because you do not meet the criteria, there may be the possibility of seeking an injunction under some other provision, e.g. the Protection from Harassment Act 1997 or attached to an application for damages.

This leaflet is intended to give you an over view about possible injunction proceedings only. It is not a definite guide to the law. If you feel you need to consider an inunction application, then you should always take independent legal advice about your own particular circumstances.

#5

Cost Estimates

We estimate that for representing you in a straight forward, undefended divorce, our costs to be £765-£1,020 plus VAT and 'disbursements'. Disbursements usually consist of fees to be paid to the Court such as the Application for a Divorce Order fee of £593. You will appreciate that the estimate may need to be revised if any difficulties arise in progressing the divorce.

#5.1

Your divorce

We estimate for representing you in an Application for a Divorce Order our costs will be between £765-£1,020 plus VAT and 'disbursements'. Disbursements usually consist of fees to be paid to the Court such as the Application for a Divorce Order fee of £593. You will appreciate that the estimate may need to be revised if any difficulties arise in progressing the divorce.

These are costs for dealing with the procedure for obtaining your divorce alone. Our charges for dealing with other aspects of sorting out you matrimonial affairs (e.g. financial remedy or children issues) will be separate and will, as with all aspects of our work, be calculated on a time charge basis as set out in the Client Guide sent to you separately. Below are some estimates of the type of works that might be under taken and potential costs. Any additional work dealing with matters not specifically referred to below will also be separately chargeable on a time charge basis.

Application for Financial Remedy – I would estimate that for drafting a Financial Remedy Consent Order on your behalf and submitting this to the Court for approval and advising generally in relation to the potential merits of the Agreement (including where this has been agreed at Mediation) that my costs will be between £765.00 and £1,200 plus VAT and Disbursements. The only disbursement likely to be incurred will be the Court fee for lodging the Consent Order, which is currently £53.00. Please note the Court are not compelled to approve Financial Remedy Consent Orders and can refuse to do so if they do not feel that the terms of settlement are fair.

On the assumption that matters are already broadly agreed, we would estimate that representing you in relation to the exchange of financial disclosure, negotiating a final settlement within a reasonable time scale and drafting a consent order to file with the Court to secure an order on agreed terms, our costs will be between £2,000-£6,000 plus VAT disbursements. The main disbursement, which is likely to be incurred, will be a fee of £53, payable to the Court, for lodging the Consent Order for approval by the judge.

For representing you in relation to financial proceedings up to and including the first hearing within an application or a financial remedy, we would estimate our costs to be between £4,000-£9,000 plus VAT and disbursements. This will include a Court fee for the issue of proceedings, which is currently £275.

Eatons

Cost Estimates

For representing you in relation to financial proceedings up to and including the financial dispute resolution hearing, we would estimate our costs to be between £4,000-£12,000 plus VAT and disbursements. This is will include a Court fee for the issue of proceedings, which is currently £275.

For representing you in contested proceeding to a final hearing, we would estimate our costs to be between £6,000-£25,000 plus VAT and disbursements. This will include a Court fee for the issue of proceedings, which is currently £275. It is likely that the disbursements will include a fee for instructing a barrister to represent you at the final hearing. The barristers' fee will depend on how experienced the barrister is and how complex you matter is. It is likely that a barristers fee for a final hearing would be between £2,500-£5,000 plus VAT.

In all the above situations if any valuation of property is required then a disbursement would be payable by a way of a fee to the valuer for the preparation of his report. This is likely to be between £200-£350 plus VAT.

If any financial settlement involved the pension sharing order the pension provider will charge a fee for implementing the pension share. They may agree to this being deducted from the pension fund or may require it to be paid "upfront" before implementing the pension sharing order. These charges vary depending on the pension provider but could be between £2,000-£5,000 per pension.

Children Act matters - We would estimate that for representing and negotiating an agreement in respect of contact with your children, our costs will not exceed £3,000-£7,000 plus VAT and disbursements. Disbursements will usually consist of the Court fee for issuing an application in Court, which is currently £232. In addition there may be, if proceedings need to be served personally on the other party, be a Process Servers fee incurred which is likely to be between £120-£200 plus VAT.

We would estimate that representing you in Children Act Proceedings up to and including the filing of the Children's and Family Court Offices Report, our costs will be between £3,000-£7,000 plus VAT and disbursements. Disbursements will usually consist of the Court fee for issuing an application in Court, which is currently £232. In addition there may be, if proceedings need to be served personally on the other party, be a Process Servers fee incurred which is likely to be between £120-£200 plus VAT.

We would estimate that for representing you in respect of Children's Act Proceedings which proceed as contested to a Final Hearing that our costs will be between £5000-£12000 plus VAT and disbursements. Disbursements will usually consist of a Court fee for issuing the application, which is currently £232. In addition, it is likely that a barrister would be instructed to represent you at a final hearing. The barrister's fee will depend on the complexity of your case, but it is likely to be between £2,000-£3,000
plus VAT.

Eatons

5.2

Injunction proceedings

We would estimate that our costs for representing you in preparing an Application for a Non Molestation and/or Occupation Order at a without notice hearing followed by a further return date hearing would be between £2,000-£6,000 plus VAT, upon whether or not the proceedings were contested. In addition, you would incur disbursements such as a Process Server fee to effect service of the Proceedings on your Opponent of around £150-£300 plus VAT.

In the event of a breach of an injunction which is not being treated as a criminal offence, we would estimate that our costs for dealing with a Warrant of Arrest and Committal Proceedings would be in the region of £2,000-£5,000 plus VAT.

We would estimate for representing you in respect of Court Proceedings for the Court to determine Findings of Fact, our costs would be between £3,000-£7,000 together with disbursement by way of barristers fees of around £1,500-£3,000 plus VAT.

However, our costs could be greater than estimated depending on the amount of work in which we are involved. You will appreciate that this is not always clear at the outset precisely what work may be required in the matter and what disbursements are likely to be incurred.

Notes

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www.eatons-solicitors.co.uk/family