**Ledingham Chalmers** What to expect — divorce ledingham chalmers



Whether you're divorcing, separating or dissolving a civil partnership, our experts are on your side.

We work closely with you throughout this difficult time and help you reach the right settlement for you and your circumstances.

Everyone's situation may be different, but this document sets out what you can expect from the process, and Ledingham Chalmers, and answers some of the commonly asked questions we hear from clients.

## What is a divorce?

A court-granted divorce decree legally ends a marriage. Similarly, civil partnerships can only be dissolved by court decree.

If you and your partner can agree matters relating to finances and arrangements for the care of any children of the marriage, then the court only needs to deal with the issue of your divorce, which can — in this case — proceed under an "undefended procedure".

Here, if any children of your marriage are still under the age of 16 years, a solicitor should draft and submit the court application on your behalf.

However, if your children are over 16 years old and you have reached a financial agreement, then your divorce can proceed under the simplified procedure. If you can't reach agreement on the financial aspects of your marriage and/or issues relating to your children, either you or your partner would have to instruct a solicitor to raise a court action.

Whatever happens, it's important you know where you stand throughout the whole process. We'll be clear from the outset about your options, and what you can expect as things progress.

# First steps

#### You've made contact.

We can usually offer a fixed fee initial meeting, if you're keen to explore your options.

You don't have to take up the offer of this session, but if you do it is a no obligation appointment with one of our family solicitors. We'll run through your situation and give you some initial advice. You don't have to instruct us beyond this, but if you do, we'll explain the costs for any future work so you know exactly where you stand.

We don't offer legal aid for divorce or family law, but you can find out more from the Scottish Legal Aid Board.

If you decide to proceed, our team will send you some paperwork to look at and sign, including our letter of engagement, privacy notice and terms of business. Please read through these carefully, sign and send back the letter of engagement, and let us know if you have any questions.



Divorce is one of life's challenges we never wish to endure, however when that day came for me finding the best legal guidance and support was vital. I was lucky enough to find Emma who from the first meeting showed me compassion, kindness and professionalism.

Client testimonial for senior associate Emma Somerville.

## What's next?

After your first session you'll have a clear picture of the options available given your own circumstances. These include —

Fixed fee divorce (when matters are resolved)

### Simplified divorce

Where all financial issues have been agreed and there are no children under 16, we offer a £333 plus VAT fixed fee. This includes court costs.

## **Ordinary divorce**

Where all financial issues have been agreed — £1,200 plus VAT fixed fee. There are additional court costs to pay.

### Negotiation

If matters aren't agreed, we use hourly rates to charge for our work throughout the negotiation process. More information's available via the pricing section on our website.

We'll provide an estimate for concluding your matter and detail up-front fees so you're clear about everything from the outset.

#### Collaboration and mediation

If, with the right support, you think you can reach an agreement with your ex-partner about issues around money, property or any children then mediation or collaborative law are worth considering.

These different approaches can help couples avoid the cost, stress and longer timescales associated with settling a court dispute.

#### Collaborative law

Where parties work together with specially trained lawyers, throughout a series of scheduled meetings to find a mutual settlement.

Here, a participation agreement is signed at the beginning, confirming a commitment to the process.

Trained professionals including financial advisers and family counsellors can also be involved.

#### Mediation

Another way of sorting any differences with the help of an impartial third person: a mediator. The mediator has been trained to help people to sort out disagreements and won't take sides. You and your ex-partner decide what happens next and agree any arrangements.

If you reach a settlement through negotiation, mediation or collaboration, we'll draft a formal agreement to record the terms.

#### Court procedures

If matters aren't resolved, we can help you raise or defend court proceedings. We'll discuss this option and how things work at our initial meeting.

# Frequently asked questions

# What do I wear to my first meeting?

Whatever you feel comfortable in! There's no need to dress formally for meetings.

### What should I bring?

- Your marriage certificate, whether you're raising an action or not
- A list of the assets and debts
- Any paperwork relating to an urgent issue, such as aliment
- Any original court paperwork, including forms (if applicable)

# What are the grounds for divorce?

Scotland has the 'no fault' principle, which means that no matter why you're getting divorced, or whose fault it might be, neither of you will be penalised financially.

There are two grounds for divorce.

The most common is that the marriage has broken down irretrievably and this can be shown in one of the following ways —

- You have been separated for a year and your spouse consents
- You have been separated for two years or more, in which case your spouse's consent is no longer required
- You can prove your spouse committed adultery
- You can establish your spouse behaves in such a way you can't be reasonably expected to carry on living with them

You can also apply for a divorce if either you or your spouse has had an interim gender recognition certificate under the Gender Recognition Act 2004.

## We both want a divorce and we are already separated, what next?

You should speak to a solicitor about making the necessary plans to get a separation agreement in place — also known as a minute of agreement. This legally binding document sets out how matrimonial assets and liabilities are divided. It can also cover what care arrangements are in place for any children and other connected issues such as child maintenance.

You can agree these terms through negotiation, collaboration or mediation too.

If you and your partner can't agree though, one of you may have to raise a divorce action and ask the courts to intervene and make a decision on your behalf.

# My spouse doesn't want a divorce, what do I do?

We can help.

Depending on which ground you're using, it may not matter that your spouse does not consent because in some circumstances you may be able to apply for a divorce without consent.

# What am I entitled to in a divorce?

In Scotland, each person is entitled to a 'fair' share of the matrimonial property. The starting point here is 50% each; however, there are situations where this isn't a fair split. Everyone's situation is different, and we'll be able to talk this through with you.

### What happens to the children?

If parents can't agree, the court can be asked to determine where the children live using the legal test of what's in the children's best interests.

It's better if parents can reach an agreement themselves in relation to arrangements for children.

Often this can be achieved with the help of a trained mediator

# What is the date of separation and why is it important?

This date is often referred to as "the relevant date" and can have huge financial significance when it comes to determining the matrimonial assets that need to be divided. We talk about it more in this blog post.

Legally, it is the date the couple stops living together as husband and wife. Sometimes they may carry on living under the same roof for a period and it is necessary to clarify when the spouses started to live independently and no longer as a married couple to identify the date of separation.

## How long will it take?

In our experience, a simplified divorce can be completed within eight weeks if both parties agree, all required information is provided promptly, and the court service is able to process the documentation timeously.

In contrast, a contested divorce may take nine to twelve months to reach a conclusion.

Factors affecting the timescale include the discretion the court has in fixing key hearings and stages of the process and/or the extent of matters in dispute which the court determines; whether decisions are appealed; or if the other party delays in responding to matters as they arise.

## The team



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