

Guide to Family Matters

It is important that you should read and carefully consider the contents of this guide, if you seek advice in connection with a family matter. We at The Watson Ramsbottom Partnership have discovered that it is helpful to clients to have at their fingertips guidance in writing on such matters to which they can refer from time to time. We also consider it to be important that clients should have, at the outset of the conduct of the case, a reasonable understanding of the principles and considerations which will be involved in the conduct of the case so that they will better understand what is expected of them and they will be able to have greater input into the conduct and the preparation of the case.

We have therefore drawn up this guide to help you. It is in a simplified form and does not intend to set out the whole of the law in this field. Furthermore it is likely that not every section of the guide is relevant to your particular case.

It is not designed to be a substitute for the advice which we will give to you. It will however in many respects serve to confirm that advice. Much of the information in the documentation we have supplied will be discussed with you either at the outset of the case or throughout the course of the case.

The documentation can be read by you at your convenience. We hope that it will help to clear up some of the mysteries surrounding the divorce and family law procedure. If any queries arise from the contents of this guide we shall be happy to consider these with you.

Section 1

Mediation and Conciliation

We recognise that divorce, separation and other family disputes are often a traumatic experience for parties. Some cases need the help and guidance from mediation and conciliation services. The services will generally involve a series of visits to professional conciliators or mediators who can identify problem areas and seek solutions to them.

Sometimes this will achieve a reconciliation if that is what you want. However, in other cases conciliation and mediation services can simply smooth the way to a negotiated settlement. Such a settlement is, of course, desirable to be achieved. It will probably save money and a settlement where the parties have input into the agreement, even if concessions are made, is often better than having orders imposed by a Court.

Sometimes a settlement can be negotiated by a round table meeting attended by the parties and their professional advisors. In other cases it will be appropriate to refer the issues to organisations such as Relate or Marriage Guidance. There are also professional conciliation and mediation services available in the area.

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Obviously mediation and/or conciliation will not be suitable in all cases. It takes two willing parties to hold a discussion and for you to be sure a settlement is likely to be in your best interests, there will have to be full and truthful disclosure of all relevant financial and other matters. We will want to hear from you as to what you feel about the prospects of negotiating a settlement of some or all of the issues between yourself and your spouse and as to what problems you see standing in the way of a negotiated settlement.

Divorce

The grounds for divorce

A party intending to seek a divorce will want to know whether they have sufficient grounds to obtain a divorce. A spouse who receives divorce papers wants to know whether the Petition ought to be defended.

The sole ground for divorce is that the marriage must have irretrievably broken down. This must then be evidenced in one of 5 ways which may be summarised as follows:-

1. The adultery of the other party
2. The unreasonable behaviour of the other party
3. Desertion for a period of two years by the other party
4. The parties have lived apart for two years and the other party consents to a divorce
5. The parties have lived apart for five years

We will advise you fully of the more detailed evidence required to prove the relevant grounds in your case.

No divorce can be obtained within one year of marriage. However, other legal processes known as judicial separation or nullity may be available in such cases, indeed even in the first year of marriage. Again we will advise you more fully on these processes in appropriate cases.

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The Process of Divorce

The principal document placed before the Court in divorce is the Petition. The party who makes the application is known as the Petitioner and the recipient of the Petition is the Respondent. In adultery cases, the party whose name is in the Petition as having had an affair with the Respondent spouse is known as the Co-Respondent.

In divorce cases where the parties have children, step children or children living with them, a further document known as a Statement of Arrangements for Children must also be prepared. Indeed this document will often be sent by the Petitioner to the Respondent before the divorce proceedings are issued in order to see whether or not agreement can be reached between the parties on issues involving children before the divorce process itself gets underway.

Once the Petition has been issued it will usually be served on the Respondent by the Court through the post. The Respondent will receive copies of the Petition and, where there are children, the Statement of Arrangements for Children, together with the document called the Acknowledgement of Service.

The Acknowledgement of Service contains a series of questions as to whether the Respondent intends to defend the case and so on. The Respondent should complete and return the Acknowledgement to the Court within eight days of receiving it. When the Acknowledgement is received by the Court a copy is sent to the Petitioner or his or her solicitors.

If the Respondent fails to acknowledge service of the Petition further copies of the documents may be personally served on the Respondent. If they are still ignored the Court can, in most cases (not all), allow the Petition to proceed regardless.

If the Respondent indicates that he/she intends to defend the Petition we will advise you fully of the implications.

If the Respondent says in the Acknowledgement that he does not intend to defend, the next step is for the Petitioner to file an affidavit verifying the provisions of the Petition and apply for a date for the pronouncement of Decree Nisi. In normal circumstances the parties would not need to attend Court when the Decree Nisi is pronounced. The Decree Nisi confirms that the District Judge of the Court is satisfied that there are grounds for the divorce to go through.

However, this does not in itself end the marriage. Because divorce is a serious matter the parties need to have a period of six weeks reflection before the marriage is ended. However, after six weeks and one day has elapsed, the Petitioner can apply to the Court for a Decree Absolute of divorce to be made.

If the Petitioner has not applied for Decree absolute within three months after the pronouncements of the Decree Nisi, the Respondent may apply for leave of the Court to make the Decree Absolute. It is open

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a Petitioner to withdraw the Petition at any time before the divorce is made Absolute, if for example, a decision is reached to attempt a reconciliation.

When a Decree Absolute is made it brings the marriage to an end. The parties are no longer husband and wife. This has implications for National Insurance purposes and also the appointment of a former spouse as executor of a Will, as this will no longer be effective. You will undoubtedly wish to consider making a Will or a new Will at this stage of the proceedings, if indeed you have not already done so. We would be happy to give you further guidance on this aspect of your affairs if you wish.

Section 2

Financial Matters

When parties are separating, and whether they have been married or not, a number of issues relating to money and property will arise. The relevant law is different when the parties have not been married but have been cohabiting. In cases where the parties have been married, the Court will take into account the following factors:-

- The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which would, in the opinion of the Court, be reasonable to expect a party to the marriage to take steps to acquire.
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage.
- The age of each party to the marriage and the duration of the marriage.
- Any physical or mental disability of either of the parties to the marriage.
- The contributions which each of the parties has made, or is likely in the foreseeable future to

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make, to the welfare of the family including any contribution by looking after the home or caring for the family.

- The conduct of each of the parties if it is such that it would be in the opinion of Court inequitable to disregard it.
- In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example a pension) which by reason of the dissolution or annulment of the marriage that party would lose the chance of acquiring.
- If children are involved, the financial needs, income and earning capacity, property and other financial resources of the child become relevant as do the physical or mental disability of the child and the manner in which the child is being, and in which the parties to the marriage expected him to be educated or trained.

Where an Order is sought against a party to a marriage in favour of a child who is not a child of that party, it also becomes relevant to know whether that party should bear any responsibility for the child's maintenance and, if so, the extent of which and the basis upon which the party assumed such a responsibility and the length of time to which that party discharged that responsibility and whether in assuming and discharging such responsibility that the party did so knowing that the child was his/her own and, indeed also the liability of any other person to maintain that child.

It will be appreciated that the relationship of these various factors will vary from case to case and there are no firm formulae (other than were the CSA becomes involved) to provide guidance as to what shares of available income and assets each party ought to receive. Where there are children, a lot will often depend on what reasonable arrangements can be made for their accommodation and support.

Where parties have not married but have been cohabiting the law is less clear as to the factors involved and we will need to provide advice to you, depending on the particular circumstances.

In all cases involving financial matters the parties are expected to make full disclosure of their income, outgoings, assets and liabilities. Documents will need to be produced by the parties to verify the position.

Those who do not make accurate disclosure of their financial circumstances risk costs and other

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penalties, and Orders which are based on inaccurate information may subsequently be set aside or cancelled.

The Family Home

We will obviously want to learn from you as to whether the home in which you and your spouse/cohabitee have been living is rented or owned by you both jointly or by one of you alone. Where a property is rented it is open to one joint tenant to give notice to terminate the tenancy. Where a house is jointly owned we will want to consider with you whether any joint tenancy of the property under the provisions of which, on the first of the owners to die, the property will automatically pass to the survivor should be brought to an end by notice.

The family home is one of those assets (usually the principal asset) the future of which will be decided according to the factors we have described earlier and we will obviously advise you in fuller detail on this.

Pensions

This can in some cases be an important asset although one which is not immediately available to the parties. You will probably be aware that the law is changing in this field and is likely to change further so that in appropriate cases we will want to consider the position with you carefully.

Maintenance

Under the CSA, the level of maintenance for children will, in most cases, either now or in the future be determined by the Child Support Agency rather than by the Courts. The agency has, of course, had a bad press and wherever it will be involved we will want to discuss the implications with you. In other cases, the factors we have mentioned will come into play and you will need our advice on this

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Section 3

Children

Children frequently suffer in the short, medium or long term from the separation of their parents. The law and the Judges who apply the law understandably view the interests of children as being of great importance. In all cases involving the future of children their welfare is regarded as being of paramount or first importance. In cases involving financial issues between parties who have children, their interests are among those which are to be weighed up by the Courts and are often a determining factor.

You will wish to consider whether it is appropriate to try to negotiate a settlement of some or all the issues in relation to children through the conciliation services which were mentioned earlier in this guide.

The Children Act brought some new ideas into the law of England and Wales. Orders relating to children will not now be made as a matter of course. They will only be made if it can be shown on balance to be better for the child that an order be made than not made. This is called the 'no order' principle. In all cases the parties will be encouraged to reach agreement rather than have orders imposed on them.

It is believed to be in the best interests of children that parties should agree on what happens to the children. If parents can say to a child we have agreed that this is best a child is more likely to respond positively to this. The Courts would therefore prefer not to intervene in a dispute if it can be avoided.

There are a range of conciliation and mediation services available with experienced professionals who can assist parties to try to reach agreement.

Residence and Contact

However, if the Courts do have to intervene, the Judges have wide ranging powers. The Children Act replaced the old concept of custody with residence and access with contact. It must be remembered that these are the child's rights and not the rights of the parents. In any dispute the Court will look first and foremost at what solution is right for the child.

Residence deals principally with where a child will live but the person with residence will usually also be able to make decisions on religious upbringing, schooling and so on. This is subject to the power of the Courts to make specific issue Orders on disputed matters of health, schooling, holidays, religious upbringing and a range of other matters.

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Contact involves the child's right to see the parent with whom they are not living. This may be visiting contact where it is one day or part of each day, each week, fortnight or whatever. It might be staying contact where the child stays overnight. It might be defined if a Court fixes, or the parties agree certain specific times when contact shall take place. It may be supervised if it takes place at a Contact Centre or someone is required to be present with the parent enjoying contact when that contact takes place. In some cases it may not be appropriate for the other parent to see the child and a 'no contact' order can be made.

It should be noted that where a party refuses to comply with a contact order enforcement proceedings can now be brought that could result in the non compliant party being forced to undertake unpaid work.

Disputes

If a party makes application to a Court the parties will usually be required to attend one or more meetings with professional conciliators to see whether a solution to the problem can be found. If there is still no agreement and the Court has to make a decision the Judge will have regard to the following factors:-

1. The ascertainable wishes and feeling of the child concerned (considered in the light of his age and understanding)
2. His physical emotional and educational needs
3. The likely effect on him of any change in his circumstances
4. His age, sex, background and any characteristics of his which the Court considers relevant
5. Any harm which he has suffered or is at risk of suffering (including domestic violence)
6. How capable each of his parents and any other person in relation to whom the Court considers the question to be relevant can meet the needs of the child.
7. The range of powers available to the Court under the Children Act in the proceedings in question.

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The Court will, at an early stage, set a timetable for the preparation of the case for trial since it is regarded as being in the child's interests that any dispute between parents is resolved as quickly as possible. The timetable will generally include provision for a CAFCASS officer to be appointed to prepare a report to assist the Court and the parties in resolving disputed issues.

Parental Responsibility

Parental responsibility allows a parent to make important decisions for a child such as which school they should attend, what surname they should have and to give consent to medical treatment. It is a concept involving the status of a parent. It generally falls to be considered where the parents of children have not been married. The mother of the child automatically has parental responsibility for her child. However the father of the child does not automatically have parental responsibility.

Where a child is born before 1st December 2003 and the parties are not married, the father does not automatically acquire parental responsibility.

Where a child is born after the 1st December 2003, the father will automatically acquire parental responsibility, but only where he is registered as the child's father on the birth certificate.

Where the father does not have parental responsibility, the father and mother may agree that the father has parental responsibility and enter into a formal agreement confirming this. However, if it is disputed, the father may have to apply for a Parental Responsibility Order. As in all other cases, the interests of the child will be regarded as of the first importance in determining whether such an Order should be made.

Section 4

Domestic Violence

It may be that your spouse or cohabitee or associated person (for example a relative or someone you have been in a close relationship with) has been violent towards you or has threatened, harassed or pestered you. On the other hand it may be alleged that you have behaved in this way.

Alternatively, your children may have been assaulted or a threat made to abduct them. Social Services may have become involved and care proceedings may have been commenced or threatened

You may have been served with Injunction proceedings or have been told you should obtain an Injunction
In all these, and similar areas, we will be able to provide urgent attention to the needs of your case.

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An Injunction is an order that a party must do, or refrain from doing something. So, for example, a party may be ordered to leave the house and prevented from returning to it or within an area around it e.g. 100 metres.

The Court do not now attach a Power of Arrest to a non molestation as breach of a non molestation order is automatically a criminal offence.

In the event that a non molestation order is breached the breach should be reported immediately to the police and the Respondent should be arrested and dealt with in the criminal courts. The maximum sentence for breach of a non molestation order is now 5 years in custody.

There are two forms of order available under the current legislation:-

1. Non Molestation Order

- To prevent the use of or threats of and actual violence, pestering or intimidation or harassment by the person or their friends and family

2. Occupation Order

- This concerns the family home. An Occupation Order can order someone leaves the property and is forbidden to return within 100 metres. This type of order can even state that the excluded partner has to pay the mortgage or bills in respect of the property. An Occupation Order will still have a Power of Arrest attached to it and breach of an Occupation Order is not a criminal offence and will be dealt with as contempt of court in the County Court.

If you are experiencing domestic violence and wish to talk to somebody about it please contact the National Women's Aid helpline on 0808 2000 247.

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Forced Marriage Protection Orders

It is now possible to obtain a Forced Marriage Protection Order where you have or are at risk of being forced to enter into a marriage against your will.

These orders can be obtained on an emergency basis and can be against a number of individuals in or out of the jurisdiction. These applications are dealt with in the High Court sitting at Blackburn County Court.

Forced Protection Orders can be applied for by the victim of the forced marriage or in certain circumstances by third party such as the police or social services.

Breach of a Forced Marriage Protection Order is not a criminal offence in itself and would be dealt with in the County Court as contempt of Court. The maximum sentence for breach of a Forced Marriage Protection Order is 2 years imprisonment.

In Summary

As we mentioned at the outset, this guide cannot do more than sketch out some of the factors which will or may be relevant to your case. We at The Watson Ramsbottom Partnership hope that it will have been of assistance to you. If you have any queries on matters mentioned here, or indeed on any areas or particular points not covered by this guide, please do not be afraid to ask. We aim to be as approachable as possible and are here to help you.