

DIVORCE

HOW TO ACHIEVE A FINANCIAL SETTLEMENT: YOUR OPTIONS

INTRODUCTION

The purpose of this Guide is to outline the essential details of the Divorce process - the options and the procedures available to resolve disputes about the division of the family income and the assets, the roles of the solicitor and the likely cost, and other important issues that you should consider.

A divorce will end your marriage and we would want you to be sure at the outset that is what you wish. During times of stress we sometimes act rashly, only to regret our actions later on. Many couples who consult lawyers decide to try to resolve their differences rather than get divorced.

If you do decide to proceed, there are a number of options as to how you end your marriage. You need to decide, with our help and perhaps in consultation with your spouse, which of them is best suited to your circumstances, you and your spouse's personalities and your relationship with your spouse.

FINANCIAL ISSUES - OPTIONS

There are four different ways of proceeding. Which one is best for your situation depends on a number of issues. We will discuss each option with you so that you, in discussion with your spouse if that is appropriate, can decide how you want to proceed.

Each option can be described with a single word - Negotiate, Mediate, Collaborate, or Litigate. Only the last requires you to go to court. We look at the pros and cons of each below:

OPTION 1 - NEGOTIATE

If you are able to communicate with your spouse on equal terms, and you trust each other to divulge the full extent of your income and other financial assets openly and honestly and you both want to end the marriage, this is by far the quickest, cheapest, and least stressful way to reach a settlement.

Here, the role of the solicitor will be to progress and finalise the legal technicalities and record the financial agreement in a document called a Consent Order. This will be sent to the court for final approval by a judge and only rarely will either party need to attend.

OPTION 2 - MEDIATE

If couples feel they need help with issues where they are unable to agree, but nevertheless feel comfortable discussing those issues together, mediation can provide an answer. Here each party can take independent advice from their own solicitor but each attends meetings together with a trained mediator whose role is to facilitate discussions and help the couple to try to reach an agreement. The solicitors do not attend these meetings.

If agreement is reached through this process the solicitor draws up a Consent Order for approval by the court.

OPTION 3 - COLLABORATE

If mediation is not felt suitable a Collaborative process might be. This is not as silly as it might sound! Here each party appoints their own solicitor but, instead of going to court, all four parties agree to 'collaborate' in the sense of meeting and working together to reach an agreed settlement. Importantly, the lawyers will have an inducement to make the process succeed since each agrees, in writing, that should it fail and the couple resort to the court for adjudication new solicitors will be appointed by both spouses.

All issues have to be dealt with in face-to-face meetings where all parties are present and all parties have a real incentive to reach an overall agreement. If agreement is reached through this process the solicitor draws up a Consent Order for approval by the court.

OPTION 4 - LITIGATE

This is the traditional way of proceeding where each party appoints their own solicitor and all correspondence and negotiation proceeds through the solicitors, with each taking instructions from their respective clients.

It is listed last here but it might be the most suitable process for some couples from the outset – for example, if one party has a dominant personality, or if the financial issues are highly complex, or where the relationship is acrimonious or difficult. However it is listed last because in many cases one of the other options should be considered first. It is also the most expensive and may prove to be the most protracted option.

If agreement is reached through correspondence and negotiation between the solicitors a Consent Order is drawn up and submitted to the judge for approval in the same way as for the other options. If agreement is not reached the matter will go to court and the judge will ultimately make the decisions. Each case is, of course, different and the earlier you are able to achieve a settlement, the lower the costs.

FACTORS WHICH MAY INFLUENCE YOUR CHOICE.

Each marital relationship is different and every marriage exists in unique circumstances. You (with your spouse) can choose which of the above four methods is the best to use to bring your marriage to an end. Some of the factors which might influence your choice include:

- Your financial affairs are complicated.
- You are concerned to keep costs to a minimum.
- You want to retain a cordial relationship with your spouse.
- You want the process to as painless as possible and to avoid acrimony.
- Your spouse has a dominant personality and you don't want to deal with things on your own.
- You do not want a prolonged battle.
- You want an outcome which brings certainty and closure.

Before acting, we suggest that you should think through your options and discuss them with us. We will not seek to persuade you to take any one course - our role is to help you decide what is best for you.

NOTE ABOUT SELF HELP:

It is important that you understand that you must not obtain documents belonging to your spouse and that there could be significant consequences if this advice goes unheeded, including the risk of a claim by your spouse for:

- i) breach of confidence;
- ii) a trespass to goods;
- iii) breach of Article 8 (The Right to Privacy) of the Human Rights Act 1998;
- iv) a criminal offence under the Computer Misuse Act 1990;
- v) a criminal offence under the Data Protection Act 1998.

Penalties within the matrimonial proceedings may include:

- i) a court refusing to admit the information obtained;
- ii) an order to change solicitors;
- iii) an order for you to pay costs.

Julian Scrace

Julian is a partner of the firm. He graduated from Lancaster University with a BA Hons in History and Politics. He later studied at The College of Law in Guildford and was articled with Mills and Reeve in Norwich.

Julian joined RPJ in 1983 and became a partner in 1988. He is a member of Resolution and a trained collaborative lawyer.

Deborah Yeates

Deborah Yeates is an Associate solicitor. She graduated from Oxford University with a degree in Classics in 1986, before embarking upon her legal training at Guildford College of Law. Following Articles with Reynolds, Parry Jones, she was admitted as a solicitor in 1990 and became an Associate solicitor of the firm in 1998.

Deborah has specialised exclusively in family law throughout her career. She has been a member of the SRA's Children Accreditation Scheme (formerly the Law Society's Children Panel) since 1995. She is also a member of Resolution.

