



## GUIDE TO A MEDIATED DIVORCE

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Divorce is never easy, particularly when children are involved, we can help you through the whole process. This guide will hopefully answer some of your questions but if you have more, then please get in touch on 0330 113 0005

If you are planning to divorce and you agree upon how to share your marital assets and if children are involved, and you have already agreed their living and contact arrangements, then there may only be a small amount of support you need to conclude your divorce. Here at Family Mediation & Counselling Services we understand that this can be a challenging time for all those involved.

We offer a Collaborative Divorce Package to guide you through the process and help you prepare to divorce the easy way. You can find out more below.

Divorce can be expensive especially if you are not in full agreement around finances and children. The natural tendency may be to visit a solicitor who will help get the process started. Others opt for the support of a

divorce mediator because they understand the divorce process and all the steps you need to take to minimise the cost and stress. In collaboration with a mediator and a solicitor, you can do elements of the process yourself. This could include making the application for divorce online (<https://www.gov.uk/divorce/file-for-divorce>), which is so much easier than before. You can also make a joint application. Unless you are unable to agree about finances and child arrangements, there is no prospect of having to physically go to court as it largely a paperwork exercise.

This guide assumes that you require some support not only with the process but in helping to reach a final agreement with your ex-partner. Even if you are not married, this service can help you.

## 1. APPLYING FOR A DIVORCE

There are three areas needing your consideration and agreement, the first being the application for your divorce and as the divorce laws have changed in April 2022, now it cannot be contested but equally there is no expectation to give detailed reasons why your marriage or partnership has broken down. This is helping many couples and is taking away any potential conflict as often existed before. The other two things you need to consider therefore are child arrangements (if you have children from the marriage) and how you divide your marital assets. Under the old divorce laws, couples had to provide details about why the relationship had broken down and this often led to more conflict. This could have been due to unreasonable behaviour, citing lurid details or because of adultery. The other option was to separate for at least 2 years before applying for a divorce and if one partner had deserted the other, a longer waiting time of 5 years was required. Thankfully this has now been removed and a simple statement testifying that the relationship has irretrievably broken down is all that is required. One other key factor is that the respondent or person you are divorcing no longer has to acknowledge and agree to the divorce.

The new divorce law sees a minimum period of 6 months from the application being processed to the divorce being granted. To apply for a divorce, you will need to have been married for at least 12 months prior to the application.

Once the divorce application is processed and acknowledged, then there is 20 weeks to wait until the court issues the Conditional Order (In the old divorce process, this was known as the Decree Nisi). During the 20 weeks wait, hopefully you and your ex-partner will have reached agreements for any children and their living and contact arrangements and you have agreed a financial settlement. Six weeks and one day following the issue of the Conditional Order, you are then permitted to apply for the Final Order (or Decree Absolute in the old-style divorce). The Final Order is often considered to be divorce certificate and proves to the world you are now divorced.

## 2. ARRANGEMENTS FOR YOUR CHILDREN

So, you have applied for your divorce and that is going on in the background. If you have children as part of your marriage or civil partnership, then you will need to decide upon where and who they live with. More and

more, separating couples are agreeing shared care arrangements and this is the ideal scenario, however, sometimes this is simply not practical especially where work commitments may not permit such arrangements or where one parent lives some distance from the other. Where one parent will be the primary carer, meaning that the child will live and be registered at their address, for the purposes of schooling, doctors / dentists, etc. then contact or visitation needs to be agreed for the other parent.

Through our Mediated Divorce assistance, we can help you both to develop a typical 12-month plan for living and contact arrangements for the children. This can be on a shared care or primary carer basis. If required, we can also assist with creating a Parenting Plan. We will explain more about Parenting Plans later in this guide.

We can help you work on two aspects of child arrangement plan, firstly the regular weekly contact and secondly, agreements around holidays, festive religious times, birthdays, Mother's / Father's Day and Bank Holidays. We will help you to discuss timings such as what time a child will be handed over at the start and end of any contact; communication between parents as well as helping to consider the logistics and this may include moving the child's personal items around, school uniforms and other factors.

### 3. FINANCIAL SUPPORT FOR CHILDREN

If you have agreed shared care for your children, it may not be necessary for one parent to pay Child Maintenance to the other but invariably there will be costs that need to be shared. This may include the cost of school uniforms, trips, sports / hobby equipment, tutoring, club subscriptions, mobile telephone contracts, etc. It is far better to try and agree these practical elements before you separate than to do so afterwards. By clearly detailing in writing the living and contact arrangements along with agreements for continued financial support of your children at the outset, is for many one less problem that needs facing in the future. As your children grow and their needs change, so it may be necessary to modify the arrangements, and this becomes so much easier if the basis for agreement already exists.

There is a useful calculator on the government website (<https://www.gov.uk/calculate-child-maintenance>). It can be used by those who may have to pay as well as those who may receive Child Maintenance. The calculator asks questions about income, the number of nights a child or children spend with the parent, and it will then provide a minimum amount you would be expected to pay. It is preferred that you use the calculator as a guide and then make a voluntary arrangement, ideally via a weekly or monthly standing order for payments to be made. The Child Maintenance Service (previously known as the CSA) can be instructed to take payment direct from a parent's salary or wages if they refuse to pay, however, they will normally take a percentage to cover the administration of the service, and this results in a lower amount received. If you are the parent who expects to receive Child Maintenance, you can ask the CMS to calculate the amount especially if you don't the other parent's income. There may be a small charge for this service.

#### 4. AGREEING A FINANCIAL SETTLEMENT OF MARITAL ASSETS

Reaching a financial settlement is crucial on several levels. If you have accrued assets which may include property, savings, investments, cars, jewellery, and pensions, during your marriage, then you must agree how they will be divided-up between you. This also includes any debt such as loans or credit cards. The best outcome to any financial settlement is to try and agree a clean break arrangement. Ideally, you do not want to have any financial ties once the marriage has ended. Reaching a financial agreement also then means that you sever the financial tie between you. The only exception to this of course, is the ongoing financial support of your children. Once you have agreed your financial settlement, it needs to be drawn-up into a legally binding agreement called a Financial Consent Order (see below) and this will have to be submitted to the courts as they will want to review any agreement to ensure they feel it is a fair arrangement.

Generally, the way to decide starts with an equal split or 50/50 but there is also a consideration towards needs as well, particularly to ensure the children are suitably housed and supported. This is something the courts would consider carefully if agreement cannot be reached privately. We suggest legal and financial advice is taken at this time because it can be a bit of a grey area. There are other factors that may also have to be taken into consideration including any age difference between you and your partner or any medical conditions.

#### 5. PENSIONS

Pensions are something you will also have to agree upon. If one or both of you have made pension contributions during your marriage or civil partnership, it is likely they will be deemed as marital assets and agreement will be needed to how these are dealt with.

##### a) CLEAN BREAK PENSION AGREEMENT

If they are of similar values, you may decide upon a clean break, meaning that you each keep your own.

##### b) PENSION SHARING ORDER

However, if there is an imbalance with one of you having accrued more than the other, you may need to consider equalising them through a pension sharing order. This is largely a paperwork exercise and can be dealt with by a request to the courts (More information can be found here

<https://www.gov.uk/government/publications/make-or-change-a-pension-sharing-order-form-p1>) You may also need to engage the expertise of a Pension Actuary to calculate exactly how much may need to be transferred from one to the other. There is a cost involved in this process and they will produce a Pension Sharing Report.

##### c) OFFSETTING PENSIONS

Another option that divorcing couples may consider where there is an imbalance in pensions is Offsetting. This means that in return for perhaps offering more of the equity in a property, or a larger share of the savings or

investments, pensions are left alone. This is often a preference when one parent will benefit from additional funds today rather than waiting for retirement.

## 6. MARITAL LIABILITIES - DEBTS

During the divorce process, you must also consider what will happen to any debts you have accrued during the marriage or civil partnership as they will need to be dealt with. If assets are being sold off, then it might be a good idea to settle any debts at this time. Often, debts may be in individual names, and you may agree that the person with the debt will continue to maintain them after the divorce has been completed. This is fine but will need to be documented so that they cannot come back to you later.

## 7. FINANCIAL CONSENT ORDER (FCO)

As already mentioned, it is strongly recommended that once you have reached a financial agreement of your marital assets and liabilities, you will have a Financial Consent Order or FCO drafted by a solicitor. They will produce a document that is not only legally binding, but it will also protect you both in the future. Once signed and witnessed by both parties it will be submitted to the court and a Judge will determine if they feel it is a fair division of your marital assets. They will be considering the children and whether adequate provision has been made for them in your agreement.

The FCO also means that if either one of you do not conform to the agreements, then an application can be lodged with the courts to enforce the conditions not being met.

You can choose which party's solicitor will draft the FSO and we generally recommend opting for the lowest cost as they can vary from solicitor to solicitor. Remember, it will be a legally binding agreement that protects you both and does not favour either one of you.

## 8. MEDIATED FINANCIAL DIVORCE SETTLEMENT

Through a mediated divorce, your divorce mediator will work with you and your ex-partner to help you consider all aspects of a financial settlement and draft a Memorandum of Understanding or MoU. The MoU sets-out in clear lay terms the agreements you have reached. This document can then be used to instruct your solicitor in drafting a Financial Consent Order. This often removes the need for a lengthy consultation at your solicitor's hourly rate and the need to provide any financial disclosures, as they will already have been completed by your divorce mediator in advance of any discussions.

## 9. PREPARING FOR A FINANCIAL MEDIATION

As part of a mediated divorce settlement, we will ask you and your ex-partner to disclose information about your assets and liabilities (See link to A&L Form). Before we get to this though, we need to determine whether

you are already in agreement over your finances and child arrangements because if you are, then you will likely benefit from our Collaborative Divorce Mediation service (See below). If you are not quite in agreement, then you may opt for the Mediated Financial Remedy service (See below), as this will include mediation as part of the process.

## 10. COLLABORATIVE DIVORCE SERVICE

Our collaborative divorce service has been developed to guide you through the full divorce process to ensure you have considered all aspects of child arrangements and financial separation. It begins with a joint MIAM (See more info regarding MIAMS) whereby a divorce mediator will provide lots of detail that you will need to consider as well as the information that will be required to complete your divorce. If you agree on all aspects of child arrangements and financial settlement, then your divorce mediator will begin preparing your Memorandum of Understanding. During your joint MIAM you will be asked to complete a full financial disclosure (See below for more details). You can either prepare a joint disclosure or opt for individual admissions, either way they will eventually be shared and discussed. Once all information has been collated and supplied to the divorce mediator, they will produce a document summarising your financial information called an Open Statement of Financial Information (OSFI). The next step will see your divorce mediator scheduling another joint meeting with you and your ex-partner and this is when the agreements will be recorded and written-up into your Memorandum of Understanding ready to be submitted to your solicitor for drafting into the Financial Consent Order.

## 11. MEDIATED FINANCIAL REMEDY SERVICE

This service is not that different in some ways to the Collaborative Divorce Service but is useful if you are not in full agreement about how to divide your assets and liabilities. The aim is still to help you both reach agreement. Equally, another aim is to deter the need for you to go to court. This should be the absolute last option and for good reason. If you are unable to reach agreement and court is unavoidable, then you must consider three important factors. Firstly, the cost of litigation using a solicitor can be extremely expensive. You may be paying a solicitor or barrister hundreds of pounds per hour to represent you. Hearings get adjourned but legal fees are still payable if your legal representatives attend court, they will charge you irrespective of whether you see a judge that day! Secondly, it could take months if not years to reach a conclusion. This not only increases costs, but it also means it will drag on. Thirdly, it is can be extremely stressful and may have a lasting effect on your mental health and if children are also involved it often affects them too. So, a word of warning, wherever possible try and find a private solution through mediation or better still around the kitchen table.

## 12. FINANCIAL DISCLOSURES

Whether you opt for a joint financial disclosure or individual, you will need gather information and submit so that it can be shared at a later time. Your divorce mediator will provide you with an Assets & Liability Form

(Link to example here). If you own property, then you will need at least three valuations completed by recognised estate agents or valuers. We normally suggest you each choose an estate agent and agree upon a third. The valuations will help you both to discuss what may happen to the property. If it is the main marital home, one of you may wish to purchase the other's share in the equity and for this, you will need to agree a fixed valuation to calculate the amount. If the property is to be sold, then you can discuss and agree how you will set the price for sale. You will also need copies of your mortgage statement as this will often detail any early repayment penalties that may apply if you were to pay off your mortgage before the term is completed. There may be other factors to consider, especially if your property was purchased under the Help to Buy scheme offered by the government or if it is co-owned property. You may have had an equity release on your property and there are often penalties to pay if you sell the property. Selling a Help to Buy property is a little more complicated and we advise that you take independent advice. You may want to read the information on the Government website (<https://www.gov.uk/guidance/how-to-repay-your-equity-loan-when-you-sell-your-home>).

Other financial assets are a little more straight forward, as you should be able to easily access bank and building society statements, or value your share portfolio and the like. Valuing businesses you may own could prove a little more difficult, however your mediator can guide you. Items such as cars, caravans, and other assets can be valued by several online services such as Autotrader and the similar. Jewellers can value you any precious metals and gems, usually at scrap value.

If you have private or company pensions, and there may be more than one, you will need to contact your pension provider (details can normally be found by contacting your current or past employers or accountant). You will need to obtain a statement that details the Cash Equivalent Transfer Value (CETV) for each. This is the amount of money that is currently in your pension pot. The next thing is to determine is how much of the pension was accrued during your marriage, and this is normally based on your contributions. Again, your mediator can help you to determine these values.

Finally, if you have any marital debt, you will need to gather any statements of the outstanding amounts. A monthly credit card statement may be all you need, however, if you have a loan, a statement may be required to show how much is outstanding and if there are any penalties for early repayment.

### 13. INCOME & EXPENDITURE DISCLOSURES

As part of the financial discussions and disclosure is the need to review income and expenditure. You will be asked to disclose your income and to also predict your future living costs, especially if you are caring for children. If a court is requested to make a ruling about your finances, they will want to understand the earning capacity of both parents. It is also a very useful exercise for understanding the costs that will need to be covered, for instance if you are to move to rented accommodation or planning to purchase a new property.

### 14. PARENTING PLANS

It may not be necessary to create a formal Parenting Plan, particularly if your parenting styles are similar. The main aim of the plan is to agree the basics of caring for your children and this might include the times they go

to bed at night, as one example. Here are some other factors the plan will ask you to consider, some or all may be relevant.

- What parenting decisions don't we need to consult each other about?
- How are we going to behave towards each other in front of the children? We want them to know we are getting along and have them in mind.
- How are we going to share important information with each other, (for example, school reports, health issues)?
- Do we need regular meetings to discuss parenting issues?
- How do we find out what the children want to happen? and make sure that they have a say in what we decide?
- At what times is it OK to call the other parent and when isn't it OK?
- How will we settle disputes?
- Should we discuss how we talk to the children about the other parent?
- How will we talk to the children about the arrangements we have made?
- What do we do about emergencies, (for example, medical, dental, or accidents)?
- How will we make sure our children stay in contact with supportive friends or relatives from the other side of the family?
- How will we introduce new partners to our children's lives?
- Are there any important rules that we consider essential for the children, (for example, bedtimes, when homework is done, staying out late)? Do we agree that these rules are followed?
- How do we work together to make the big decisions, (for example, school, course selection and careers advice)?

It may also consider how you will communicate about your children and will go into more depth about living and childcare arrangements. Your divorce mediator will talk through developing a parenting plan if you both feel it is necessary.

## WHAT TO DO NEXT

Here at the Family Mediation & Counselling Services, we have a professional team of advisors and family mediators. We also have a dedicated Financial Remedy Team that specialise in helping you to reach a fair and equitable financial settlement as part of your divorce or separation. They will guide you through the whole process effortlessly and sensitively.

Call us today on 0330 113 0005 for an informal chat with one of our advisors or email us at [enquiry@fmacs.org.uk](mailto:enquiry@fmacs.org.uk)

Visit our website at [www.fmacs.org.uk](http://www.fmacs.org.uk)

