

Court proceedings

Do all divorces require court proceedings?

Many divorces can be settled before this point but sometimes there is no alternative but to go to Court. Due to high costs and long timescales court proceedings should be the last resort. You may like to consider family arbitration as an alternative to court proceedings. This can be much quicker and more focused.

However, if it has not been possible to agree on aspects of the divorce such as home and finances, it will be necessary to ask a Judge to make a decision for you.

Your solicitor may discuss with you the option of starting court proceedings whilst negotiating a settlement to save time and avoid unnecessary delays if an agreement cannot be reached.

Examples of when divorce court proceedings are necessary:

- your spouse is not giving you all the financial information you need to make a decision.
- there is no hope of negotiating a fair financial settlement
- there are complex financial issues that you need a divorce court to help you sort out, to get a financial settlement on divorce
- there is domestic violence – or the threat of it
- there is an international element: if divorce proceedings may be started in another country, it may be necessary to issue divorce proceedings immediately in England or Wales

How do I get started with divorce court proceedings?

As financial proceedings on divorce and proceedings about children are separate to the divorce process, you will need to start divorce proceedings before you can issue proceedings about finances.

Firstly, you will need to file an initial application to the court (often called a petition) and you can then issue an application for a financial settlement or sort arrangements for any children, if needed.

How much does it cost to go to court?

The cost can vary greatly depending on the level of finances involved and how complex the issues are.

A large amount of legal time is involved with court proceedings and solicitors charge by the hour. Extensive paperwork has to be filed and financial proceedings involve three hearings if they go to court. These financial proceedings typically take six to eighteen months. It can take longer if there are complicated issues to deal with, such as companies or trusts.

Your solicitor will be able to advise you on a rough figure for your expected legal costs depending on your divorce proceedings, financial proceedings and your Children Act proceedings. You can also talk to one of our experienced divorce lawyers about a possible fixed-fee for your proceedings.

Who pays the fees?

This can vary on the circumstances of the marriage ending. For the divorce proceedings itself, this can be split or, if it is brought by your spouses adultery or unreasonable behaviour, then you can ask them to pay for this cost.

In financial proceedings, the law says that each party should bear his or her own costs.

Very occasionally, in financial proceedings, it is possible to ask the court to ask the other spouse to pay for some or all of the costs. For example, if one spouse has been extremely unreasonable, obstructive or has been refusing to give financial disclosure, then it is possible to try and persuade a judge to give an order for costs.

How long will financial and divorce proceedings take?

It will usually take up to 6 months or a year for the divorce proceedings however the Decree Absolute may take longer, until the finances have been sorted.

Depending on how complex the case is and how busy the courts are, financial proceedings through the courts can take a long time. If an agreement cannot be reached during financial proceedings then it may take nine months to two years to sort the finances through the courts.

Financial proceedings – what should I do next?

It is often necessary to attend a Mediation Information and Assessment Meeting (MIAM) before you can apply to the court to resolve a financial dispute. Your spouse should also be encouraged to attend a MIAM.

If your solicitors are experienced and specialised family lawyers then they should be able to help you to think about what you are trying to achieve and what your objectives are before commencing proceedings. It is important that you are prepared and well-researched.

An initial meeting with your solicitor will enable them to advise you on how quickly and easily your case will likely be settled and the likelihood of whether you will need to go to court. A good solicitor will do everything they can to keep the case out of the courts. This initial meeting can usually be done for a fixed fee.