

Financial
Vulnerability
Taskforce

A SAFE
PAIR OF HANDS

Good Practice Guide

Advising and supporting clients going through divorce (in England and Wales)

A Practitioner's Guide





A SAFE PAIR OF HANDS

6 key messages about vulnerability

1.

**Vulnerability relates to circumstances,
it is not a category of person**

2.

It doesn't just affect those in later life

3.

**Anyone can find themselves in vulnerable circumstances at
any point in their lives, whether permanently, temporarily,
periodically or to varying degrees**

4.

**Not everyone is aware of or willing to disclose their
vulnerability or the potential vulnerable circumstances
they may face**

5.

**Many recipients of financial advice are vulnerable due to
a lack of relevant knowledge, unfamiliarity with language
used and/or the technical complexity involved**

6.

**The process of advising clients in vulnerable circumstances
is about recognising additional or alternative needs and
then taking action to meet those needs**



If you have not done so already, we hope you will consider becoming a visible supporter of our Charter.

You can register your support by going to fvtaskforce.com

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Foreword



Keith Richards
Chair of the Financial Vulnerability Taskforce

On 6 April 2022 the Divorce, Dissolution and Separation Act 2020 came into force, meaning divorcing couples in England and Wales are no longer required to assign blame for the breakdown of their marriage. The legislation allows either or both parties to apply to the court for an order that the marriage has broken down irretrievably.

This removal of the need to include blame is designed to help resolve divorce matters outside of court, resulting in less discord and more collaborative dealings between parties.

That said, for many the emotional, mental and financial anguish of going through a divorce, regardless of where the blame might lie, will still be heart-felt, and for some will remain a significant contributing factor of individual vulnerability. Research consistently suggests that divorce and separation can present significant financial risk, especially to those left in vulnerable circumstances, having scaled down their paid work or career opportunities to accommodate family life in their mid-30s to early 40s.

While the role or even involvement of individual professional advisers will be highly case-specific, understanding the role of individual services and how a financial adviser or planner can actually become a strong source of stability, co-ordination and pre- and post-divorce financial advice, can be of significant benefit long term to all parties involved. While divorce obviously has many sides, given the disruption of such an event, the nature of which will vary from one person to another, normally integral to any anxiety is the financial situation.

This guide has therefore been created specifically to help financial advisers and planners who do not specialise in this area, but want to gain a basic understanding of the key issues involved, benchmark good practice, and better understand the role that they and other professional services play in supporting clients going through this difficult life event.



“We hope this guide helps all adopters of the Financial Vulnerability Charter appreciate the need to offer advice or services where they have relevant expertise, and signpost to others where they do not.”

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The Financial Facts

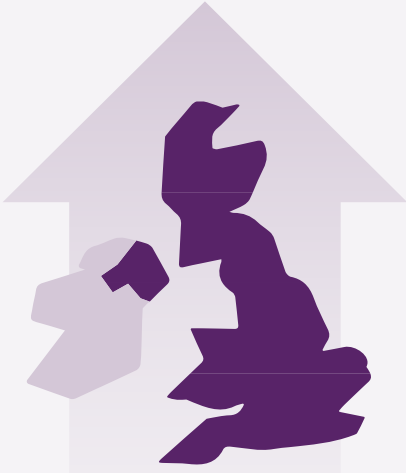


Following the introduction of 'no-fault' divorce, **33,234** divorce applications were made from April-June '22 — a record high¹

The **median age for divorce** among opposite-sex couples hit an **all-time high** of



47 years for men **45 years for women**²



Since 1990, the number of **divorces** for the **over-60s** has **risen 59% for men** and **74% for women**³

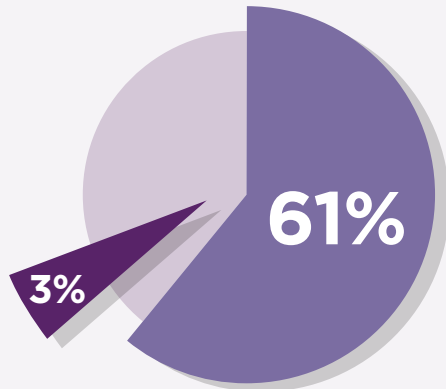
Divorce rate for the **over 60s** is



2.5x higher for **remarriages** than **first marriages**⁴

1. The Law Society, Record-breaking number of divorce applications, September 2022.
2. Office for National Statistics, Divorces in England and Wales, 2019 dataset.
3. Office for National Statistics, Divorces in England and Wales, 2019 dataset.
4. Brown, S.L & Lin, I.F. (2012). The gray divorce revolution: Rising divorce among midde-aged and older adults, 1990-2010. *Journals of Gerontology*, 67, 731-741.

The Financial Facts continued



61% of people aged 50+ consulted a solicitor during their divorce

Only 3% sought financial advice⁵



On average, **divorced women retire with savings of**

£77,400 less than men⁶

31%

of women in their 60s said they'd **waive rights** to their **partner's pension**⁷



50%

of people said they'd **split their home** in a divorce



Just 12% said they'd **consider pensions**⁸

5. Legal & General research, September 2020.

6. Pensions Policy Institute, Understanding the Gender Pensions Gap, July 2019.

7. Legal & General research, September 2020.

8. Legal & General research, September 2020.

Divorce and Vulnerability

Any client going through a divorce is likely to find themselves in vulnerable circumstances due to upset and anxiety, often compounded by the financial uncertainty stemming from such a split.

Even where a divorcing couple have outlined that they are on good terms with each other, once they start getting into the splitting of financial assets things can often quickly turn sour, given that for many their financial settlement may influence their financial security for the rest of their lives.

While the extent of vulnerability will vary considerably from one person to another, certain circumstances are likely to make some more vulnerable than others. For example:

- Those in later life, perhaps due to a lack of an adequate pension for one party, or the prevalence of age-related physical or mental health issues putting increasing pressure on individuals.
 - Those susceptible to scams, both romance scams and financial scams, with divorce potentially leading to increased vulnerability to both.
 - Those who are lonely, perhaps unsupported by family or friends through their divorce.
 - Older women, a demographic who are particularly exposed due to the frequency of life-long lower earnings, a long absence from the workplace, reduced working hours due to childcare, the persistent gender pay and pension gap, career breaks or life decisions made with their husband when times were better.
 - A lower earner, or the non-working spouse, due to the potential cliff-edge drop in income that may be their lot post-divorce.
- Divorce among those with children, especially dependent children, that is likely to involve greater issues of emotional vulnerability, given the involvement of custody agreements, maintenance payments, childcare costs and potential career changes.
 - Those with long-term responsibilities to support children or other family members with disabilities.
 - Those whose short-term challenges make focusing on the longer term too difficult.
 - Those who have lived with long-term power imbalances within their relationships, some of whom will have endured economic, financial or other forms of abuse.

Younger couples with no children may potentially be the least vulnerable, albeit there may be some degree of reliance in respect of their standard of living. However, their joint financial commitments and emotional ties are likely to be less significant.

But the above is not always the case — and advisers might do well to consider that both parties are in vulnerable circumstances and at risk at this time, regardless of their financial knowledge and/or position. The emotional, mental and financial anguish of going through a divorce can be destabilising for all involved.



“For many, their financial settlement may influence their financial security for the rest of their lives.”

Economic Abuse

Economic abuse is a legally recognised form of domestic abuse and is defined in the **Domestic Abuse Act**.

It often occurs in the context of intimate partner violence, and involves the control of a partner or ex-partner's money and finances, as well as the things that money can buy. While economic abuse is not always an inherent behaviour, necessary cause or significant aspect of separation or divorce, those seeking advice on separation or divorce may have experienced some degree of economic abuse.

Furthermore, one should be aware of the vexatious use of litigation and legal proceedings as an example of post-separation abuse that can occur during a divorce or separation — for example, perpetrators hiding assets, refusing to consent to the sale of a joint property, or making it difficult to arrange child maintenance.

- While economic abuse can happen to anyone, the data based on reporting suggests women are more likely to experience financial abuse than men: on this basis, one in five women experiences financial abuse compared to one in seven men (Office for National Statistics, Crime Survey for England and Wales November 2019).
- Economic abuse can include exerting control over income, spending, bank accounts, bills and borrowing. It can also include controlling access to and use of such things as transport and technology, which allow us to work and stay connected, as well as property and daily essentials such as food and clothing. It can include destroying items and refusing to contribute to household costs.

- Economic abuse rarely happens in isolation and usually occurs alongside other forms of abuse, including physical, sexual and psychological abuse. 95% of cases of domestic abuse involve economic abuse. This type of abuse is designed to create economic instability and/or make one partner economically dependent, which limits their freedom.
- Economic abuse and financial abuse involve similar behaviours, but it can be helpful to think of financial abuse as a subcategory of economic abuse. Financial abuse involves the controlling of finances, the stealing of money or coercing someone into debt. Economic abuse involves financial abuse plus controlling resources such as housing, food, transport and employment, among other things.
- You can find out more about economic abuse via **Surviving Economic Abuse**, a registered charity that helps in the understanding of economic abuse, how to recognise it and how one can seek help.
→ Visit survivingeconomicabuse.org

Understanding Process

Ending a marriage or civil partnership

Key terms

- To formally end a marriage, parties need to get a divorce. If parties don't want a **divorce**, they can get a **legal separation**.
- To formally end a civil partnership, parties can apply for a **dissolution**.
- If a marriage or civil partnership isn't legally valid, parties can ask for an **annulment**.
- If married or in a civil partnership for less than a year, parties cannot yet get a divorce or dissolution.

How long does it take?

A divorce or dissolution will take at least six months to complete, even if circumstances are relatively straightforward. It can take far longer in more complex cases, particularly if financial issues need to be resolved pending conclusion of the divorce.

How much does it cost?

There is currently (2022) a £593 fee to apply for a divorce or dissolution. Further costs are detailed in leaflet EX50 entitled 'Civil and Family Court Fees'.

→ [gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50](https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50).

If using a solicitor or barrister or other professionals, these will charge for their time in dealing with the matter.

Applying for a divorce or dissolution

This can be done online or by post, either as a sole or joint applicant using a form known as 'D8'. Legal representatives are required to apply digitally through the [MyHMCTS Solicitor Portal](#). Under new legislation, for those seeking a divorce after 6 April 2022, the party applying for the divorce is referred to as the applicant (previously referred to as the petitioner) and the other party still referred to as the respondent.

A conditional order (formerly called a 'decree nisi') is a document that says that the court does not see any reason why a person cannot divorce or seek a dissolution. A final divorce order (formerly called a 'decree absolute' and not to be confused with a final financial order) legally ends a marriage or civil partnership.

Seven steps to getting a divorce

1. Get support and advice
2. Check if you can get divorced/get legal advice
3. Make arrangements for children, property and money
4. Apply for a divorce
5. Apply for a conditional order (previously called a 'decree nisi').
At this point it is important to highlight the need for a consent order from a court to settle financial matters prior to point 6 below.
6. Apply for a final order (previously called a 'decree absolute')
7. Report that your circumstances have changed (for example if you are in receipt of benefits or you have a visa that is based on your marriage)

(Source and further details: [gov.uk/get-a-divorce](https://www.gov.uk/get-a-divorce))

Understanding Process continued

How has the Divorce, Dissolution and Separation Act 2020 in England & Wales (no blame) changed things?

This Act, which came into effect on 6 April 2022, amends the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004, to remove fault-based concepts in proceedings for divorce, dissolution and (judicial) separation. The act aims to reduce the potential for conflict among divorcing couples by:

- removing the need to make allegations about the conduct of a spouse;
- removing the ability to contest a divorce application other than on wholly exceptional grounds (for instance, a court in a different country should be dealing with the divorce or the parties were not married in the first place);
- allowing couples to end their marriage jointly; and
- altering terminology used for the benefit of parties and children involved in the process.

The Act also introduces a minimum period of 20 weeks from the date divorce proceedings were issued (officially started by the court) to application for a conditional order. This provides couples with a period of reflection.

The person seeking the divorce must wait at least six weeks and one day after the conditional order has been made before applying for a divorce final order (formerly a decree absolute). The divorce final order can be applied for jointly if the divorce and conditional order applications were made by the couple jointly. Once the final divorce order is made, both parties are divorced.

The overriding objective of the legal process

The Family Court procedure is governed by the Family Procedure Rules 2010. These provide for a court to deal with a case justly and include, so far as is practicable:

- Ensuring that the parties are on an equal footing.
- Saving expense.
- Dealing with the case in ways that are proportionate:
 - to the amount of money involved;
 - to the importance of the case;
 - to the complexity of the issues; and
 - to the financial position of each party.
- Ensuring that it is dealt with expeditiously and fairly.
- Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

All parties are required to help the court to further the overriding objective. Part 9 of the Family Procedure Rules sets out how an application for a financial remedy (ie where the court is being asked to manage and possibly determine the parties' financial arrangements arising out of the divorce) will be approached. There are other important parts of the Family Procedure Rules that are beyond the scope of this note.



Understanding Process continued

Dealing with money and property – the legal principles

The court has a very wide discretion in deciding who gets what when making financial orders in favour of either party to the proceedings and/or for the benefit of any children of the couple. The range of orders (interim or final) available to the court covers the allocation of lump sums, future income, property assets and pensions between couples.

Payments for the care of children are usually not dealt with by the court and are dealt with by the Child Maintenance Service using a prescribed formula. There are, however, limited circumstances when the court may also be able to make a child maintenance order – most commonly these would be if the parties agree in writing that the court can make an order (but any such order could be displaced after 12 months by either party applying for an assessment under the Child Maintenance Service rules), for school fees, where a child suffers from a disability, or where the Child Maintenance Service has determined that the paying party earns more than £156,000 gross per annum, a top-up can sometimes be applied for.

Other than the Child Maintenance Service for child maintenance, there is no accurate calculator that can tell a person, based on their circumstances, what a fair financial settlement on divorce should be, as each case, each family and each set of circumstances, is likely to be different. The law itself is very general in that it merely provides a list of what the court may take into account, derived from Section 25 of the Matrimonial Causes Act 1973.

The main rules and principles of division include:

The concept of fair settlement

On divorce, the aim is to divide the assets fairly, which does not necessarily mean an equal division, although that is the position the court will notionally start from. What it does mean is that both parties' needs must be met (so far as is possible given the available finances) and that there must be no discrimination between the respective roles of breadwinner and homemaker – which are regarded under the law as equal. This often results in an unequal division of capital, for example where one party has a better mortgage capacity, and the weaker financial party may need more of the available capital for rehousing.

The needs of children

First consideration must always be given to the needs of the minor children. In practical terms, this usually means that accommodation must be provided for the children and, therefore, the parent who looks after the children for the majority of the time (although parenting might be equally shared).

Section 25 of the Matrimonial Causes Act 1973

Section 25 directs the court to have regard to several factors including:

- Welfare of minor children (first consideration).
- Financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
- 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 earnings capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.
- 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 make to the welfare of the family, including any contribution by looking after the home or caring for the family.

Understanding Process continued

- The value to each of the parties to the marriage of any benefit which, by reason of the dissolution of the marriage, that party will lose any chance of acquiring.
- The conduct of each of the parties if that conduct is such that in the opinion of the court it would be inequitable to disregard it.

Future needs

The court will seek to meet the needs of each party as far as is possible. If these needs can be met from the available assets and if there is then a surplus, the court may go on to consider dividing the remaining assets taking into account their origin (ie was the asset earned by either of the parties during the marriage or was it acquired before, or after the marriage or was it gifted to one party during the marriage). This may require sectioning the assets into matrimonial and non-matrimonial property.

Financial clean break

Wherever practical, the court will seek to achieve a financial separation between the parties. This is called a clean break, which means that there will be no ongoing financial links between the parties save for child maintenance, if relevant. A clean break can be a desirable outcome, as it removes the need for a couple to communicate in the future, or for one to be reliant/dependent upon the other, which can be a source of ongoing stress and tension.

If a clean break cannot be achieved immediately, then the court has the power to order spousal maintenance for a fixed period, so as to achieve a clean break in the future. The court may decide that a financial clean break is not possible and order spousal maintenance for a period of time or, in rare circumstances, life.

Dealing with pensions

Pensions are an asset that will be taken into account, and the court has three ways that it can treat pension assets:

1. Offsetting (against other matrimonial assets)

Offsetting is the process by which the right to receive a present or future pension is traded for present capital. Offsetting may be desired by parties and in some circumstances may be the only feasible option. The result, however, needs to be considered and fair, and it is important that people engaged in the process know the value that they might be losing, retaining or acquiring.

2. Pension sharing order

The pension sharing order sets out how much of a pension(s) will be transferred to either party (usually expressed in percentage terms). These are available in cases where the divorce commenced on or after 1 December 2000.

3. Pension attachment order (previously referred to as 'earmarking')

A pension attachment order is a court order instructing pension trustees to pay a proportion of the pension income to a former/separated spouse when the pension is drawn, rather than to the pension member. These are not really used much any more, as the pension remains in the legal name of the pension holder and so when they die the pension benefits may also disappear. The pension attachment order was an old-style order mostly used between 1996 and 2000, when pension sharing came into force.

Whatever options are contemplated with pensions, it is important that a solicitor and the financial adviser work together to identify the net effect of taxation in any pension solutions contemplated, before solutions are finalised. They should also consider the value of state pension entitlement and potential interactions with means-tested benefits in the future.

Dealing with property

When there is a divorce or dissolution of a civil partnership, parties have several options for what to do with their former family home. They might decide to:

1. Sell the home and both parties move out, with money raised divided between the parties, usually to put towards each buying their new home.
2. Arrange for one party to buy the other out, perhaps using offsetting (see above) or by raising a mortgage.
3. Transfer the property entirely to one party, subject to the other being released from the mortgage now or at a reasonable point in the future.
4. Keep the home and not change who owns it. One party could continue to live in it, perhaps until children are 18 or leave school.
5. Transfer part of the value of the property from one party to the other as part of the financial settlement. The party who gave up their enjoyment of their immediate ownership rights would keep a stake, or interest, in the home. This means that when it's sold, they'll receive a percentage of its value.

Understanding Process continued

As well as the options above, a court in England or Wales can defer the sale of the home through what's called a Meshor order (named after a case where this was used). This can put off the sale of the home until a specific event triggers the sale — for example, the youngest child reaching 17 or 18. The net sale proceeds are then divided in accordance with the court order.

A court can also use a Martin order (also named after a case) to defer the sale of the house. This gives one person an entitlement to occupy the property for life, until some agreed date or until remarriage.

Dealing with income and spousal maintenance

The court may make a maintenance order for a limited period of time (called a term order), or a joint lives order. A joint lives order usually does not mean for the life of both parties (although sometimes it will have that effect) but an order until one party successfully applies back to court for the order to be dismissed.

Maintenance orders can be varied by the court (up and down) and upon a dismissal of a maintenance order, a court may make a capital award to reflect the loss of the maintenance. Maintenance will automatically come to an end upon the remarriage of the payee. It is possible for the court to order a bar to stop a party applying to extend the term of maintenance. If no bar is ordered it is possible, in limited circumstances, for a party to apply to extend the term of maintenance.

Awards of maintenance are only ever made to meet the parties' needs, and there is no right to share in a former spouse's future income. What parties' needs amount to is a highly elastic concept, and will depend in part upon the amount of money available and the standard of living in which the parties lived during the marriage.

Maintenance will stop upon the death of either party, unless a secured maintenance order has been made, in which event the order will continue to be payable out of the payor's estate.

Sometimes, where neither party has applied to the Child Maintenance Service for an assessment, a court will make a global order, which will include a notional amount that will be reduced on a pound-for-pound basis of any Child Maintenance Service assessment that may be made.

It is not uncommon for there to be step-downs in maintenance orders, with a larger sum payable in the immediate years after divorce, but tapering down when the court estimates that the payee will have adjusted to financial independence, for instance when the children are all in secondary school and so it would be possible for the payee to have employment or longer hours in employment.

Miscellaneous

- In considering **income**, the court may take into account bonus and commission payments and what is likely to be received in the foreseeable future, on the basis of what has been received in the past. Courts will also take into account fringe benefits and perks such as company cars, petrol, payment of phone bills, pension payments, share options etc. The general rule is that each party is expected to **maximise their income**. The income and potential income of the parties are also important, in that they determine mortgage capacity, which is often a critical factor directly linked to providing accommodation.
- The issue of **future inheritance** may be raised by one or both parties. While these (and lifetime gifts) can be involved particularly where they have been received during the course of a marriage, the general rule is that future inheritances are not taken into account.
- The court can take into account the value of a **business**. If the business is to be retained, then it may need to be independently valued by a forensic accountant. It will also bear in mind that while such an asset may be valuable, it is illiquid in nature.
- Courts have wide discretion in respect of **trusts (both on and offshore)** and if some or all of the trust assets are a resource of that party, then they may well be taken into account when the court considers needs.
- In respect of **foreign assets**, orders can encompass worldwide assets, although enforcement may well be another matter.
- **Loans** between and by parties can also be taken into account, although the nature of hard versus soft loans can complicate matters (and can often lead to litigation).

Understanding Process continued

Dealing with money and property — key documentation

Form E — The Financial Settlement

Both parties will be required to fill in a financial statement (Form E) if going through the court process in England or Wales to get a financial order after splitting up with a husband, wife or civil partner. The purpose of the form is to provide the court with full details of a person's financial arrangements.

Form E must be completed and sent to the court and a copy to the other person, no later than 35 days before the date of the first appointment.

If both parties have reached agreement about the financial matters, there is no need for either to fill in a Form E. The agreement (sometimes known as a consent application) should be handed to the court before the first appointment, or can simply be submitted for court approval without starting formal proceedings. In such instances it is vital that Form D81 (see below) is completed, so the court can see a summary of the parties' assets and understand why the agreement was reached, before it approves any settlement. If it is not clear to the court why an agreement has been reached, it may decline to make the order and require the parties to better explain the position or, in some instances, return to the negotiating table.

Form D81 — Statement of information for a consent order in relation to a financial remedy

Form D81 is used to support an application for a consent order or a financial remedy order relating to a divorce or dissolution of a civil partnership.

Form D81 is different from the Form E that's used when the parties have reached an agreement. That form enables the parties to exchange financial information and begin discussions on how assets should be divided. Form D81 on the other hand presents the full financial picture. It also explains the practical impact of the consent order on family finances and living arrangements.

Form P — Pension Enquiry Form Information

Form P is needed when a Pension Sharing Order or Pension Attachment Order may be made. This should be sent to each pension fund provider, so they are aware that the context of the request is a divorce and provide relevant information needed for ultimate inclusion within Form E.

Form BR20NSP — State Pension Enquiry

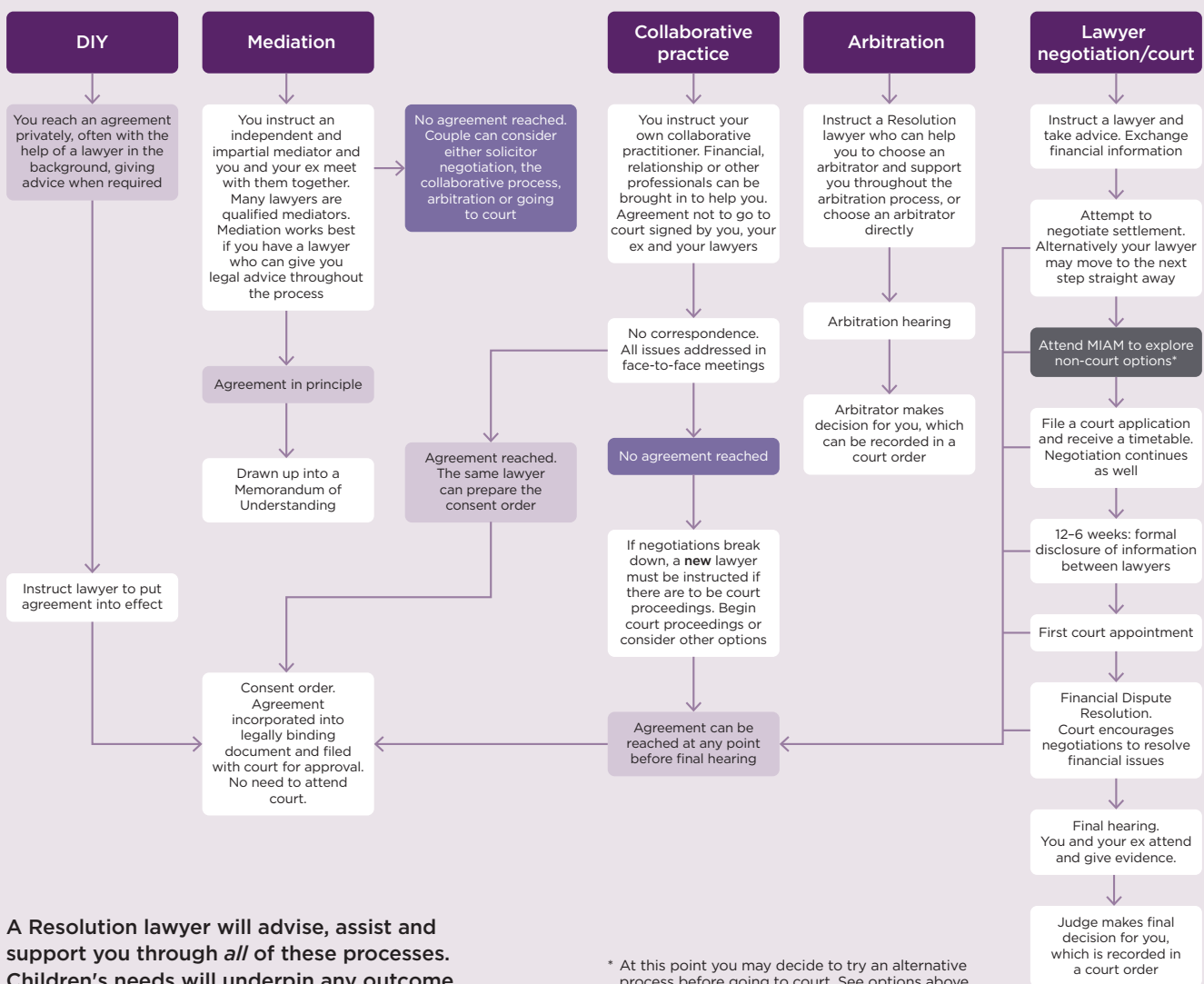
The court can treat the couple's state pensions as financial assets. They can decide if some of a party's state pension should be shared with a former spouse or partner. This form is to request full details of the accrued and potential state pension benefits of each party to be considered by the court.

From DIY to Mediation to Court

There are a number of routes that can be taken to achieve a divorce, which are well illustrated in the diagram below (although for clarity parties can go to court without appointing a lawyer/solicitor).

Outline of options for separating and divorcing couples

(Source: resolution.org.uk)



Although a consent order is needed to finalise a financial agreement, parties do not have to attend court to reach a settlement about children, property, their home or money. It is possible for both parties to reach a settlement without the assistance of a qualified professional, a 'do it yourself' approach either with or without the support of a solicitor or lawyer in the background to fall back on for advice.

That said, if pension sharing is involved, that can happen only with a court order, as pension providers or pension schemes cannot transfer any pension without order from the court.

Alternatively, there are a number of routes that can be taken where agreement requires dialogue and compromise between both parties with the assistance of qualified professionals.

From DIY to Mediation to Court continued

The DIY route

This is where both parties go through the divorce and financial negotiation process with little or no help from a solicitor or other professional. This can be straightforward in some cases, but there can be problems associated with any financial settlement. Negotiating a financial agreement without professional support can seem the cheapest and easiest way to a settlement, but it can be complex, and it's good practice to have at least one safety check meeting with a specialist family lawyer and financial adviser, to ensure both parties understand their rights and the full implications of any agreements and decisions made. Ultimately any agreements should be incorporated into a legal agreement (a consent order) and filed with a court for approval — although neither party will need to attend court.

Did you know?

- If you haven't covered all the issues — or if you leave financial claims outstanding — there can be problems later.
- In England and Wales, getting a divorce or dissolution doesn't end either party's ability to make a financial claim against the other, and there is currently no time limit for making such a claim.
- In Scotland, you can't make a claim for financial provision after you've divorced.
- In Northern Ireland, the obligation to maintain a dependent spouse continues after divorce, even where no maintenance order was made at that time. The obligation of spousal maintenance terminates only on the death or remarriage of the receiving spouse.

Source: moneyhelper.org.uk/en/family-and-care/divorce-and-separation/diy-do-it-yourself-divorce-or-dissolution

Family mediation

Family mediation is a process in which an independent, professionally trained mediator helps both parties work out arrangements for children and/or finances following separation. Mediation can be helpful when arrangements made may need to change, particularly as children grow up. A mediator can help parties agree on how to split money, property and other assets, without taking sides, and can be quicker, more flexible and cheaper than going to court to decide matters. The parties may still want legal advice before or after a mediation session. In family mediation it is not common for lawyers to attend with parties. There are other models of mediation, such as the civil and commercial model (sometimes referred to as the hybrid model in the family law context), where lawyers actually support their clients during the mediation sessions themselves.

Parties need to attend a mediation information and assessment meeting (MIAM) to find out about mediation options, before they start legal proceedings or the mediation itself. At the end of mediation, they'll get a document showing what was agreed. This document, called a memorandum of understanding, is not legally binding in itself. If a legally binding agreement is needed, parties will need to draft a consent order and get a court to approve it. The consent order can be based on what was agreed in mediation. The consent order can be filed with the court, which will often fast track uncontested cases where everything has been worked out in advance. Lawyers will often help with the wording of a consent order, as it is difficult to do so without their help.

Parties can't usually take their case to court until they find out if mediation can help first, by attending a MIAM. If they can't show that they've considered it, a court judge may stop or delay proceedings until they have — unless they are exempt from attending a MIAM, for instance if there has been domestic abuse.

Mediators are unbiased and work neutrally for both parties and seek to find common ground. They don't work exclusively in the interests of either party, but the risk may exist that they are subject (unconsciously) to imbalances in power between parties.

From DIY to Mediation to Court continued

Finding a mediator

Anyone can call themselves a family mediator, even if they have had no training. Choosing a mediator from the Family Mediation Council (FMC) Register guarantees that a mediator is appropriately trained and qualified. The FMC Register lists mediators who have been trained to agreed professional standards, who follow the FMC's Code of Practice, maintain their professional practice by carrying out appropriate professional development activities, and are supported by a supervisor (known as a Professional Practice Consultant). They are fully insured and offer access to a complaints process if something goes wrong.

For further information on Family Mediation visit:

→ familymediationcouncil.org.uk/family-mediation

You can find out more about a MIAM at:

→ familymediationcouncil.org.uk/family-mediation/assessment-meeting-miam

If the differences that exist between parties' concern children, a free voucher worth up to £500 for mediation may be available. Find out more at:

→ gov.uk/guidance/family-mediation-voucher-scheme

Alternatives to mediation

If either party files for divorce before resolving issues such as child arrangements, child support, distribution of marital property and spousal maintenance, they may need to engage a lawyer to help get the outcome they want. If parties would rather avoid court, they could try:

- Instructing a collaborative lawyer — both parties will have solicitors in the room working together to reach an agreement.
- Going to family arbitration — an arbitrator is a bit like a private judge — they'll look at the things parties disagree on and make their own decision.

Collaborative law

Each party has their own separate lawyer/solicitor, who is specially trained in collaborative law. The four typically meet in the same room (outside a formal court room) and work together to reach an agreement. Each party will need to pay their own solicitor's fees, and how much they will pay depends on how long it takes both parties to reach an agreement.

Before starting collaborative law sessions, each party will have to sign a contract saying they'll try to reach an agreement. Otherwise, they'll need to go to court to sort out the issues and instruct new solicitors. If an agreement is reached through collaborative law, solicitors will normally draft a consent order — this is a legally binding agreement about finances. If both parties are not yet ready to apply for a divorce or end their civil partnership, they can record arrangements as a separation agreement instead, although such an agreement is not legally binding. A separation agreement can be documented in a consent order at a later point to achieve a financial final order.

As noted, each party usually signs a declaration that they will not use their collaborative lawyer to bring court proceedings. The idea is that everyone in the room will own the problem, rather than leaving it to the court to sort out. An informal practice has arisen in some cases of adopting a 'collaborative lite' process, where the parties adopt the same approach but do not sign the declaration not to use their collaborative lawyer to go to court.

Family arbitration

Arbitration is a form of dispute resolution that again takes place outside a formal court room. The parties enter into an agreement under which they appoint a suitably qualified person (an arbitrator) to adjudicate a dispute concerning finances or children. They agree to be bound by the reasoned written decision of the arbitrator. The arbitrator's decision is called an award (finances) or a determination (children).

The jurisdiction to make a decision is only on the basis that each party invites them to do so. The court will usually then ratify the arbitral decision (known as an award) in a formal court order. The court will only not endorse the award if the decision is 'plainly wrong' such that it would give rise to grounds of appeal if it had been made by a judge in court.

From DIY to Mediation to Court continued

The arbitrator is more often than not a highly qualified lawyer — often a specially trained divorce lawyer — and he or she will examine the case carefully before making a decision. The arbitrator is neutral, so will rule on what he or she deems to be fair, given both parties' circumstances. Usually both parties will each need to appoint their own divorce lawyer, who will help prepare the case for arbitration, so that the arbitrator has all the necessary information about the issues involved. An arbitrator can be used for the whole process or just to determine some particular issues.

It's a good idea to speak to a solicitor before deciding on arbitration — they can tell parties if it's right for them and might be able to recommend a good local family arbitrator. Alternatively, a family arbitrator can be found online via the Institute of Family Law Arbitrators website:

→ ifla.org.uk/search-for-an-arbitrator

Court-based hearings

Where an agreement cannot be reached, court-based proceedings dealing with the financial aspects of a divorce may be necessary. This involves the following:

1. **A first directions appointment (FDA) hearing** — here a judge will review the first appointment documents and set out directions for the progression of the case.
2. **A financial dispute resolution (FDR) hearing** — where the sole focus is for both parties to reach a settlement and avoid a final hearing.
3. **A final hearing** — at which the judge makes a final decision based on all the evidence, reports and all the points put forward by both parties.

Where a final hearing is necessary — perhaps because one party is wedded to an outcome that the other sees as unrealistic — this requires a decision to be made by the court, because both parties have been unable to reach one themselves. Here the judge will hear from both parties and perhaps third-party experts (for example a PODE — [see page 23](#)) and then give a judgement that will determine how assets/income are to be divided and what order(s) should ultimately be made by the court.

Private financial dispute resolution (FDR) hearings

An FDR is 'without prejudice' or private, so in theory conversations can take place in a spirit of openness and negotiation. Ultimately this means that at a final hearing the judge will have no knowledge of what was discussed at the FDR.

Alongside mediation, arbitration and the collaborative process, private FDR hearings are a means of assisting couples to resolve issues between them.

A private FDR is held before an agreed appointed evaluator/tribunal, often a barrister or solicitor who does this type of work in practice. It will be held at an agreed time and location, avoiding the need to wait for a court-based hearing. So while a private FDR is a voluntary process where a party cannot be compelled to attend and where the costs involved vary (for example dependent upon the seniority of the evaluator/tribunal chosen), an effective and successful private FDR can in some cases help manage associated costs and avoid delays.

If a private FDR has been conducted, the court can waive the otherwise compulsory requirement to have a court-based FDR.

The Role of the Solicitor

There is no requirement that a party must involve a lawyer in a divorce, or that they must take legal advice. Indeed, since 2018, separating spouses can complete the divorce process online, without the need for solicitors. However, it is advisable to get legal advice and to have representation throughout the divorce and financial settlement process for several reasons, including:

- To save time in respect of the accurate completion of forms and documents (and avoiding them being sent back by the court).
- To avoid court — if only one party has a solicitor, an out of court agreement may be less likely.
- To ensure their clients' best interests are considered, and obtain a fair settlement.
- To understand the full range of solutions that are available, including the array of orders that can be used; for instance, to ensure future income, protect the family home while children are dependent, share assets including pensions.
- To help avoid a stalemate and/or break a deadlock between parties.
- To trace financial assets, considering ways assets may be hidden or moved, and raising potentially suspicious actions which parties may not notice.

A solicitor should:

- Discuss a party's options, including dispute resolution such as mediation.
- Explain the divorce process and what they need to do at each stage.
- Start the divorce action by filing the necessary forms.
- Once it is under way, keep the client informed of any developments.
- Help them to reach an agreement with their ex-partner without having to go to court.
- Provide help and support with related legal issues, such as where each person will live and who gets what, and future arrangements for any children
- If they have to go to court, their solicitor will present the case (sometimes with the assistance of a barrister), explain what they need to do and what the judge's decision means for them.
- If the client is at risk of domestic abuse, their solicitor will make it a priority to keep them (and any children) safe.
- Sometimes, if a person cannot afford to have a solicitor act for them all of the time, they can engage them to provide what are sometimes called unbundled services, whereby they assist only with discrete pieces of work when specifically asked to help.

Choosing a solicitor

If your client doesn't already have a solicitor, they can find one at lawsociety.org.uk/findasolicitor (search under 'family').

Consideration should be given to instructing a member of the Law Society's Family Law Accreditation Scheme, a recognised quality standard for family law practitioners, details of which are on its website.

You can also look for a specialist family lawyer by searching for an accredited member of Resolution — a community of family justice professionals who work with families and individuals to resolve issues in a constructive way.

→ Visit resolution.org.uk.

The Role of the Barrister

While solicitors tend to do more of the case management and have more contact with their client in the early stages of a case, a barrister tends to be involved when a case goes to court or to a significant dispute resolution appointment (eg an arbitration or private FDR), or a significant and complex piece of advice is required on which the solicitor wants a second opinion.

Their common role is to act as advocates in court-based and other dispute resolution appointments, which means they present the case on behalf of their clients in front of a judge or tribunal. They can also have particular knowledge of an area of the law, and so are often called on to give legal advice in complex cases and likely settlement outcomes. This can be in writing or in a meeting, usually called a conference.

In some cases, the solicitor will conduct some hearings at court, but in others will instruct barristers to attend court where they feel an element of specialisation, negotiation or experience of making arguments in front of judges is needed. For example, they may do so for the following reasons:

- Where a barrister has specific experience of the area of law under consideration in the case.
- Where it is more cost-effective — a solicitor who has to attend court all day will typically charge an hourly rate, whereas barristers tend to work for a flat fee for the day. Also, solicitors have day-to-day responsibilities for which they often need to be in the office. Instructing a barrister can allow them to meet their other clients' needs.

Direct access

The rules of the barristers' profession used to be that a client could not instruct a barrister directly without going through a solicitor. That has changed and clients are now able to instruct barristers directly through the Public Access Scheme, without the need for a solicitor. Direct access has both advantages and disadvantages that need to be weighed up.

Advantages include:

- Direct communication with the person who is actually going to conduct the case in court.
- Costs may be lower and more predictable, because barristers tend to charge set fees for specific pieces of work.
- Where a case has been fully and properly prepared and someone just wants representation for one of the hearings before the court.
- Where someone may want advice at the start of a case as to what sort of settlement they should be after.

Disadvantages include:

- They cannot correspond with the court and the other party as a solicitor can, which may have an impact on case preparation (unless they are specifically authorised to conduct litigation, which is rare).
- They most often do not have the infrastructure of a solicitor's firm (for example support staff and procedures to protect clients and their money), although there are some mixed solicitor/barrister practices.

Finding a barrister

The Bar Council's Direct Access Portal provides details of thousands of barristers in England and Wales who are qualified to work under the Direct Access Scheme. Not all barristers are able to accept instructions on a direct access basis.

→ Visit directaccessportal.co.uk

The Role of a Separation and Divorce Coach

The emotional, mental and financial anguish of going through a divorce can be crushing for all involved. A separation and divorce coach is someone who helps both individuals and couples at various stages throughout the separation process. They provide people with a listening ear and advice on how to best get through even the most difficult and high-conflict separations. In such cases, people can spend many years within the family court system and become totally overwhelmed and traumatised by the process, and a specialist coach can ease this journey considerably.

A separation and divorce coach will impart practical advice and offer emotional support using tried-and-tested techniques to help individuals going through separation or divorce cope and move on. This role is about giving people clarity about their situation, and help them gain control to better manage the practical but difficult matters associated with separation and divorce. This may include untangling emotions and empowering control of situations, so strong decisions can be made about difficult and life-changing events, moving them towards a clear goal(s) and positive future.

What might a separation and divorce coach work on?

- How to manage negative emotions.
- How to let go of an ex-partner.
- How to talk to an ex-partner, with and without the children being present.
- Techniques to empower and cope with separation for all involved.
- How to deal with high-conflict separations and controlling behaviour.
- How to feel calm and in control.
- Coping strategies to get through separation.
- How to be a single parent.
- The steps to build a new life.
- The confidence to date again.

The kind of work that a divorce coach does helps the client in ways that are different from but complementary to a therapist, a mediator and a solicitor/lawyer. Divorce coaching complements the divorce settlement process in helping the client to make the best decisions for their future, based on their wants and needs.

While there are no formal qualification requirements for a separation and divorce coach, there are several accreditation coaching schemes, examples of which are:

The Blanford Centre — Divorce Coach Diploma
→ inst.org/divorce-coach/accreditation.htm

The Divorce Coaching Academy — Diploma in Professional Divorce Coaching
→ thedivorcecoachingacademy.com

The International Divorce Coach Centre of Excellence — Sara Davison: The Divorce Coach
→ saradavison.com/coaches/coach-signup

When the impact of separation or divorce is such that one or both parties are deeply disturbed, for example in the aftermath of domestic abuse, the value of turning to a professionally qualified therapist or counsellor should not be underestimated.

While there aren't any legal requirements for becoming a psychotherapist or counsellor, almost every institution that employs them requires them to be accredited by one of three leading institutions:

The UK Council for Psychotherapy (UKCP)
→ psychotherapy.org.uk

The British Psychoanalytic Council (BPC)
→ bpc.org.uk

The Association of Child Psychotherapists (ACP)
→ childpsychotherapy.org.uk

The Role of a Pensions on Divorce Expert (PODE)

A Pensions on Divorce Expert (PODE) is an individual with appropriate technical expertise, instructed by either or both parties in a divorce. Their role can involve the production of a report that enables a clearer understanding of how the pensions element of the financial settlement may most fairly be dealt — not only as to value, but also as to how to structure any division and settlement so as to maximise value to both parties. Alternatively, they can provide wider support on pensions matters.

Upon divorce, financial disclosure must include a cash equivalent (CE) for a party's pensions. It may well simply be an accurate valuation of a defined contribution (or money purchase) scheme provided by the pension provider. However, as a good practice rule of thumb, where the pension(s) have a combined CE of over £100,000 and an accurate valuation is more complicated, both parties might be well advised to have a PODE instructed early on, to deal with valuation issues via the production of a formal PODE report or the provision of advice. A report should also be sought in more complex cases, such as where there is a material difference in the parties' ages, or where the pension includes safeguarded rights (some form of guarantee such as defined benefit pensions or pension plans that include guaranteed annuity rates).

Such a report should put forward calculations based on certain assumptions, and give a range of opinion as to value. However, it is not for the PODE to recommend which option is best, especially if they are not a regulated individual. It is for the parties to negotiate, or the court to impose.

Who can be a PODE?

There is currently no qualification or regulatory system for PODEs, who can come from a range of professional backgrounds and can have varying professional affiliations. According to The Pensions Advisory Group, in its definitive report, *A Guide to the Treatment of Pensions on Divorce* (July 2019) — see the [Resources](#) section of this guide — these include:

- Actuaries (either regulated by the Institute and Faculty of Actuaries (IFoA) or who fall outside its regulatory system).
- Managers of regulated or unregulated actuaries, not themselves actuaries.
- Independent financial advisers regulated by the FCA and approved to practise.
- Former financial advisers or financial planners who are not regulated by the FCA.
- Members of the Academy of Experts or the Expert Witness Institute, which are not professional bodies but have a code of practice and complaints procedures.
- Others who do not fall into any of the above categories, but hold themselves out with good and verifiable justification as having the necessary knowledge and expertise to carry out the work of a PODE.

Certification of standards

In its report, the Pensions Advisory Group recommended that all PODEs self-certify in respect of standards, competencies and professional indemnity via a Statement of Truth, and include a specimen letter of appointment that also suggests good practice involves consideration of a shadow PODE or financial adviser.

The Role of a Financial Adviser/Planner

Some financial advisers specialise in divorce work, often as a PODE or shadow PODE. However, all financial advisers can play a significant role in supporting their clients going through a divorce or separation, and their financial wellbeing after the event.

By the very nature of their role, financial advisers and planners tend to have lengthy and ongoing relationships with their clients, and can be viewed by many as trusted friends. In practical terms, such a role can complement and add value to the role of other professionals, helping all parties get a broad picture of their financial position, helping them navigate the financial elements of the divorce process, as well as assisting with financial matters post-divorce.

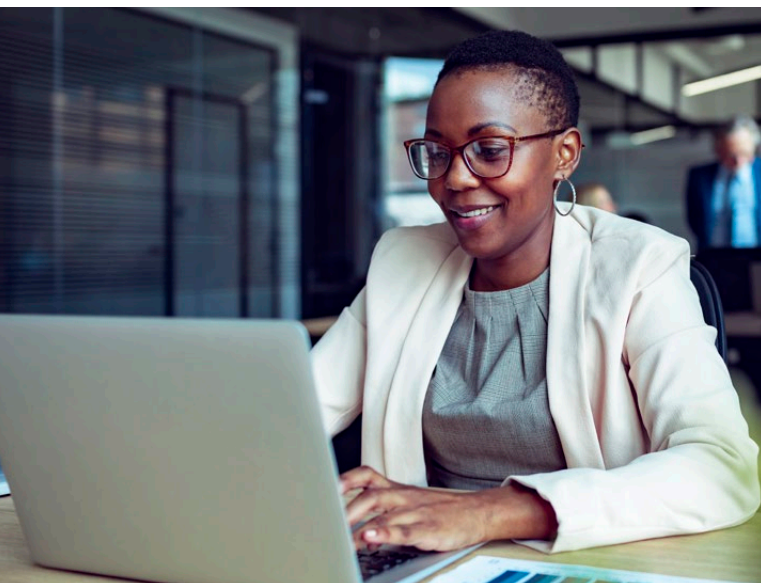
In respect of mediation, financial advisers and planners are increasingly playing a part in the divorce mediation process, during which a couple try to reach a financial agreement before resorting to the courts. Financial advisers may be invited to join mediation meetings either as co-mediators (if they have the necessary qualifications) or as experts.

Financial advisers/planners have a unique role within collaborative divorce. Their role is no longer partisan or loyal to only one of the couple. Instead, they can assimilate updating documentation, summarise assets, income and pensions, and take a broad view of both parties' interests.

Where divorce lawyers are involved, while they will have a certain understanding of the financial aspects of divorce, a professional financial adviser can generally provide more comprehensive assistance in this regard. A financial adviser/planner can also add value by familiarisation with the legal process and necessary legal paperwork, supporting their clients with its completion, for example in respect of the forms detailed on [page 15](#) of this guide.

People often turn to a financial planner once their divorce settlement is agreed, but involving a financial planner early on means that they can help shape the divorce settlement and potentially avoid a lot of financial harm to both parties. While some family law solicitors have a thorough understanding of financial arrangements in general, and pensions in particular, this is not universal. By the financial adviser/planner making sure they are involved at the Form E stage ([see page 15](#)) they can help all parties understand the nature and value of the various financial arrangements, and the options (and pitfalls) they offer.

Instead of acting in an advice and adversarial capacity for one party, the financial planning professional might in an increasing number of cases be asked to act as a single joint expert, recommending a possible division of assets, for example to provide equality of income at a specific retirement age. Before undertaking this type of work, it is important that the financial adviser/planner should have a thorough understanding of the relevant rules and regulations, including Part 25 of the Family Procedure Rules, how courts approach issues, and the issues and problems arising out of the division of pensions on divorce. Whether working in a court-related arbitration, collaborative or mediation case, acting as a joint expert may mean that the financial planner cannot assist with implementing orders due to the potential conflict of interest.



The Role of a Financial Adviser/Planner continued

Before and during divorce

- It may be helpful to engage with clients at an early stage in relation to planning for legal and associated costs. Options on financing legal fees (including litigation or matrimonial finance loans), advising as to potential borrowing capabilities and assisting with the funding of costs. There may be a lack of liquidity, or simply an imbalance of wealth between the parties.
- The identification and valuation of pension benefits, investments, business interests, life policies and other assets including the family home, ensuring any settlement is based on a fair valuation.
- Ensuring that all the matrimonial assets are actually considered, given the financial adviser/planner already typically holds considerable data on clients' assets and investments.
- Assisting clients with financial disclosure, eg completing documentation including forms detailed on [page 15](#) of this guide.
- The provision of expert advice on insurance, risk management and tax liabilities. If the divorce is completed in the tax year in which the separation becomes permanent, when parties pass investments between each other there's usually no capital gains tax (CGT) to pay. However, moving into a new tax year may result in liability ([see notes on the following page](#)). Either way, the financial adviser/planner has a role to play in knowing when to signpost to tax experts.
- Advice to ensure that assets are being split in a tax-efficient manner, including pensions — note any lifetime allowance issues.
- Helping the parties take a holistic view of their assets — eg they don't get hung up on retaining the matrimonial home at the expense of sharing savings, investments or pensions, or keeping their pension at the expense of having anywhere to live.
- Using cashflow analysis to support negotiations to arrive at a fair outcome, and to reassure one or both parties on their long-term financial security.
- Determining the cost of replacing items under an employee benefits package for the ex-spouse (eg life cover, critical illness cover, PMI, PHI, dental insurance, subsidised mortgages, spouse's pension and death in service).

- Advice and the arrangement of life insurance in connection with maintenance orders, either to protect maintenance income in the event of the death of an ex-spouse, or to provide for the ex-spouse and children in the event of death.
- Advice on pensions, allowances and transitional protections, including spousal rights, equalisation of benefits, allocation of death benefits, selecting and instructing a PODE.
- While a solicitor will be concerned first and foremost about an equitable split, a financial adviser will focus on the client's current and ongoing financial needs and how they are going to meet them. Both approaches are correct, however a collaborative approach can result in a solution that meets both requirements.
- Are life insurance policies to be maintained? Do plan ownership, premium payment or any associated trusts need to be changed?

Post-divorce

- Implementing pension sharing orders.
- Providing clients with financial planning advice to ensure that the client understands their new financial situation and is not daunted by the prospect of it.
- Assessment of post-divorce income and expenditure (cashflow and budget analysis).
- Reflecting upon and reviewing lifestyle and financial objectives.
- Explanation of tax implications.
- The structure of assets post-divorce, including investing lump sum settlements.
- Advising on a new mortgage or borrowing.
- Generally helping parties rebuild finances, with a focus typically on how to get savings back on track and top up any pension entitlement.
- Liaising with their legal adviser to put new will and lasting powers of attorney in place.

The Role of a Financial Adviser/Planner continued

Notes regarding tax liability

When spouses or civil partners separate, currently what is known as 'no gain or no loss' treatment is available only in relation to any disposals in the remainder of the tax year in which the separation happens. After that, transfers are treated as normal disposals for capital gains tax purposes. However, legislation subject to final amendments is proposed within the Finance Bill 2022-23, that will provide for:

- Separating spouses or civil partners be given up to three years after the year they cease to live together in which to make no gain or no loss transfers.
- No gain or no loss treatment to apply to assets that separating spouses or civil partners transfer between themselves as part of a formal divorce agreement.
- A spouse or civil partner who retains an interest in the former matrimonial home to be given an option to claim Private Residence Relief (PRR) when it is sold.
- Individuals who have transferred their interest in the former matrimonial home to their ex-spouse or civil partner and are entitled to receive a percentage of the proceeds when that home is eventually sold, to be able to apply the same tax treatment to those proceeds when received, that applied when they transferred their original interest in the home to their ex-spouse or civil partner.

This measure is intended to make fairer the process for those spouses who are separating or divorcing and are in process of distributing assets between themselves. The operative date for these changes applies to disposals that occur on or after 6 April 2023. For more information go to:

→ [gov.uk/government/publications/capital-gains-tax-transfers-of-assets-between-spouses-and-civil-partners-in-the-process-of-separating/capital-gains-tax-separation-and-divorce](https://www.gov.uk/government/publications/capital-gains-tax-transfers-of-assets-between-spouses-and-civil-partners-in-the-process-of-separating/capital-gains-tax-separation-and-divorce)

Developing Good Practice (for financial advisers/planners)

1.

It is important that any financial adviser/planner appreciates any limitations in their knowledge in respect of divorce (for example, relevant legal and financial rules and regulations) and identifies experts to whom they can signpost their clients — for example, a PODE, divorce specialist financial planner, tax specialist or specialist divorce solicitor.

2.

Trusted advisers should help their client assemble an appropriate advisory team — every divorce is different, so the professionals a client needs may vary.

3.

It is also important that all financial advisers/planners provide appropriate support and reassurance, given the trusted nature of the typical adviser/client relationship.

4.

Regardless of whether the adviser continues to work with their client(s) as a couple through the process, and whether they will work with one or both of them individually once a divorce is finalised, it's important they identify and deal with any conflicts of interest and set some ground rules in their dealings with clients, so all parties are clear about their position. For example, whether the adviser will remain open and impartial in discussing financial planning matters with both spouses.

5.

The adviser should consider the need to terminate any financial planning arrangements they are facilitating or providing to the couple — and whether to stop charging any fees related to these services while the divorce process proceeds.

6.

The adviser should get involved at the earliest stage — for example, by being able to explore pension options upon separation much earlier, financial advisers/planners can play a fuller role in shaping the division of the assets, and not simply be asked to implement pre-agreed arrangements.

7.

Advisers should make sure all parties understand the long-term value of assets such as pensions (including the risks in destroying value if pensions are shared in sub-optimal ways, inefficiently, or without fully understanding the consequences of sharing pensions).

8.

Advisers should make sure all parties understand their short-, medium- and long-term financial needs and how factors such as inflation may impact.

9.

Advisers should help clients understand and manage the potential long-term financial and emotional consequences of decisions.

10.

During the period of reflection following divorce, it can be prudent to advise holding assets in cash until there is both time and emotional space to formulate a robust plan for the future.

Resources

General resources

Divorce & separation

Advicenow

- advicenow.org.uk/divorce-and-finances
- advicenow.org.uk/guides/how-fill-your-financial-statement-form-e-film
- advicenow.org.uk/guides/how-get-divorce-or-end-civil-partnership-without-lawyer

Citizens Advice

- citizensadvice.org.uk/family/how-to-separate1/getting-a-divorce-or-dissolution/

Fair Result — divorce support

- fair-result.co.uk

MoneyHelper (from the Money & Pensions Service)

- moneyhelper.org.uk/en/family-and-care/divorce-and-separation

Resolution — a community of family justice professionals who work with families and individuals to resolve issues in a constructive way

- resolution.org.uk

The Group Hug — divorce and separation support forum

- thegrouphug.com

Financial/domestic abuse

FCA Insight — the hidden harm of financial abuse

- fca.org.uk/insight/hidden-harm-financial-abuse

MoneySavingExpert — Martin Lewis: Financial abuse, joint accounts and managing money within relationships

- blog.moneysavingexpert.com/2019/06/martin-lewis--financial-abuse--joint-accounts-and-managing-money

Refuge

- refuge.org.uk/get-help-now/support-for-women/financial-abuse/

Respect: Men's Advice Line

- mensadviceline.org.uk

Surviving Economic Abuse

- survivingeconomicabuse.org

Mediation

Advicenow — a survival guide to family mediation

- advicenow.org.uk/guides/survival-guide-family-mediation

International divorce

Where a husband, wife or civil partner decide to start divorce or dissolution proceedings outside the country the other party lives in.

MoneyHelper (from the Money & Pensions Service)

- moneyhelper.org.uk/en/family-and-care/divorce-and-separation/a-guide-to-international-divorce-or-dissolution

Technical resources

Assets

Advicenow — A survival guide to sorting out your finances when you get divorced

- advicenow.org.uk/guides/survival-guide-sorting-out-your-finances-when-you-get-divorced

Gov.uk — Money and property when you divorce or separate

- gov.uk/money-property-when-relationship-ends

Pensions

A Guide to the Treatment of Pensions on Divorce, The Report of the Pension Advisory Group (July 2019)

- nuffieldfoundation.org/wp-content/uploads/2017/06/Guide_To_The_Treatment_of_Pensions_on_Divorce-Digital1.pdf

Pensions and Divorce — a video by MICRA (Manchester University's Institute for Collaborative Research on Ageing)

- youtube.com/watch?v=VUhOZuh1xbl

A Survival Guide to Pensions on Divorce — Advicenow

- advicenow.org.uk/pensions

The family home

Dividing the family home and mortgage during divorce or dissolution (from MoneyHelper)

- moneyhelper.org.uk/en/family-and-care/divorce-and-separation/dividing-the-family-home-and-mortgage-during-divorce-or-dissolution

Business assets

MoneyHelper (from the Money & Pensions Service)

- moneyhelper.org.uk/en/family-and-care/divorce-and-separation/dividing-business-interests-on-divorce-or-dissolution

Glossary of Terms

Annulment

Formal declaration that a marriage is void, with the effect that the marriage is considered never to have taken place in the eyes of the law.

Applicant/petitioner

The party applying for the divorce. Under current divorce legislation, the person is known as the applicant and the term petitioner is obsolete.

Arbitration (in divorce and finance proceedings)

A form of dispute resolution, where a neutral third party makes binding decisions in place of a judge.

Arbitrator

An independent and impartial person suitably qualified to adjudicate an arbitration.

Barrister

A type of lawyer, generally instructed for their advocacy in court hearings or advice on specific points of law.

Child arrangement order (CAO)

An order setting out who a child should live with and how much time they should spend with the other parent.

Child maintenance

Money paid by one parent to the other for the benefit of the child, by way of periodical payments.

Civil partnership

Introduced in 2005 as a legal recognition of a same-sex relationship. Now an alternative to same-sex or opposite-sex marriage.

Clean break

Where all financial claims are dealt with and there is no ongoing spousal maintenance or support payable.

Collaborative divorce

A process in which the parties try to work together to reach a settlement, with a commitment to avoid going to court.

Common-law husband or wife

People who are not married, but live together as if husband and wife. In England and Wales, such people have none of the legal rights of marriage or civil partnerships.

Conditional order (previously called a decree nisi)

The first order in relation to divorce or dissolution proceedings, saying that there is no reason not to grant a divorce or dissolution. The marriage or civil partnership does not end at this point.

Consent order

An order sealed by the court setting out an agreement by the parties.

Decree absolute

See Final order.

Decree nisi

See Conditional order.

Decree of judicial separation

An order of the court terminating spousal obligations between the parties. The parties remain legally married.

Disputed divorce

When the respondent disagrees with some elements of the petitioner's divorce petition (the jurisdiction, validity of the marriage or the marriage has already been legally ended).

Dissolution

The same as a divorce, but for civil partnerships.

Divorce barrister

A specialist barrister who will represent their client in court, speaking on the client's behalf and acting on instructions in relation to divorce and family law.

Divorce lawyer/solicitor

The specialist lawyer with the day-to-day running of the case.

Divorce petition/papers

The application to the court to initiate divorce proceedings.

Divorce/dissolution proceedings

The applications to the court to dissolve the marriage or civil partnership and terminate all legal obligations to the spouse.

Divorce settlement

A common phrase to refer to the conclusion of divorce proceedings and the financial proceedings.

DIY divorce

Parties to the divorce agree matters between them and initiate divorce proceedings without instructing solicitors to act on their behalf.

Duxbury calculation

An actuarial calculation used to determine an amount necessary to provide a party with a capital sum instead of continuing maintenance.

Earmarking/detachment order

An order made by the court determining the proportion of pension benefits (pension income) that must be paid directly to the ex-spouse instead of to the pension member upon drawing the pension.

Glossary of Terms continued

Economic abuse

Economic abuse is a legally recognised form of domestic abuse and is defined in the Domestic Abuse Act. It often occurs in the context of intimate partner violence, and involves the control of a partner or ex-partner's money, finances and other resources (for example housing, food, transport and employment).

Family court

Courts in England and Wales that hear family law matters. These are the Family Division of the High Court, the Central Family Court, County Courts and Family Proceedings Courts.

Family law

The law relating to family matters, such as laws relating to marriage or children.

Filing for divorce

Starting proceedings by issuing a petition at court.

Final hearing (financial)

The last hearing in financial remedy proceedings, which will result in a financial settlement.

Final order (previously called a decree absolute)

The second order in relation to divorce or civil partnership proceedings, officially ending the marriage or civil partnership.

Financial abuse

Involves controlling the finances of another, stealing money or coercing someone into debt.

Financial dispute resolution (FDR)

Usually, the second hearing in financial proceedings, where the judge gives an initial indication and parties are encouraged to negotiate around it.

First appointment documents

Forms ES1 and ES2, a chronology, and a questionnaire setting out what further information and documents they need from the other party by way of disclosure.

First directions appointment (FDA) hearing

The first hearing in court before a judge. The judge will review the first appointment documents and set out directions for the progression of the case.

Freezing order

An order of the court typically made without notice, preventing one party from disposing of their assets.

Home rights

The right of a spouse to live in the matrimonial home, even if they do not own it.

Home rights notice

A notice sent to the Land Registry, which records the existence of home rights. This protects the non-owning spouse's rights of occupation in the event of the owning spouse trying to sell or remortgage the property without their knowledge.

Judicial separation

A process terminating legal obligations between spouses but not dissolving the marriage.

Jurisdiction in divorce cases

The court must have jurisdiction in order to hear a case. Jurisdiction is a complex legal principle but will largely depend on the parties' links to a particular country.

Litigation lending for divorce

A loan to cover the costs of the divorce proceedings, financial remedy proceedings and children matters.

Martin order

This gives one person an entitlement to occupy the property for life or until remarriage.

Mediation (in divorce cases)

A form of alternative dispute resolution. A mediator helps the parties reach a mutual agreement.

Mediation information and assessment meeting (MIAM)

A meeting, now required by the courts in most cases, to see if mediation is a suitable way of resolving the case.

Mesher order

An order that a party should retain a share in a property, but that the sale of the property is deferred until a date in the long-term future, for example when children have left school.

No fault divorce

This new law will allow couples to follow a more conciliatory and reflective approach, which in turn will reduce conflict and hopefully make the process more amicable for the parties involved, as well as any children.

Non-matrimonial property

Non-matrimonial property refers to assets that were built up other than during the marriage.

Notice of first appointment

Order of the court setting out the date for the first directions appointment hearing and necessary directions including deadlines for the completion and exchange of the Form E and the first appointment documents.

Glossary of Terms continued

Occupation order

Order of the court stating who has the right to remain in the family home. The occupation order does not affect the legal ownership of the home.

Online divorce

A service allowing a person to complete and file divorce papers online. This will not resolve the financial matters.

Order for sale

An order that a property or shares be sold and the proceeds directed as ordered by the courts.

Pension sharing order

An order of the court detailing how a pension fund should be split between the parties upon divorce.

Property adjustment order

An order transferring ownership of a property between parties.

Respondent

The person who responds to any application made to the court by the petitioner, applicant or appellant.

Section 25 factors

The factors set out in Section 25 of the Matrimonial Causes Act 1973, which the court will consider when making financial provision.

Section 25 statement

Statement made in financial proceedings before the final hearing, setting out each party's case in relation to the Section 25 factors.

Section 37 application

Application under Section 37 of the Matrimonial Causes Act to set aside a transfer where a party has deliberately moved money to avoid it being affected by the divorce.

Separated parents information programme (SPIP)

A special course that helps parents understand how to manage child arrangements and communicate about their children. This can be taken voluntarily or ordered by the court.

Separation agreement

An agreement reached by a couple following separation, setting out matters including where each party will live, division of the assets, and agreement as to the children matters.

Serving divorce papers

The formal delivery of divorce papers from the applicant/petitioner to the respondent.

Single joint expert

An individual who is given instructions from both the parties, often via their solicitors, to provide a level of expertise (for example, to value a business).

Solicitor

A type of lawyer, responsible for the day-to-day running of the case and strategic advice.

Spousal maintenance

Payments made by the higher-earning spouse to their ex-partner, after the breakdown of their marriage.

Statement of issues

One of the documents prepared for the first directions appointment, which sets out the issues that the parties disagree on.

Statement of truth

Formal declaration that the contents of a witness statement or other court document are true.

Submissions

Legal arguments made to the court.

Third-party disclosure order in divorce cases

Information requested from someone other than the applicant/petitioner and respondent in the form of a court order with which they must comply.

Trusts of Land and Appointment of Trustees Act (TOLATA)

A statute that allows the court to determine the beneficial owners of properties. Often used in co-habitee disputes, or in matrimonial proceedings where there is a dispute about who owns property.

Void marriage

A marriage treated as though it never existed in the first place because it was unlawful or invalid. Void marriages include marriages where one party was underage, or one party had committed bigamy.

Whole life order

This is a maintenance order, which lasts until one of the parties dies, or the receiving party remarries.

