

# Surviving Family Conflict and Divorce

A plain English guide to  
the legal issues



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## Introduction

This booklet has been pulled together, drawing on a wealth of experience from lawyers who deal with relationships, divorce and family conflict on a daily basis.

The articles provide useful information to help you make informed decisions and ask the right questions of your lawyer.

The law surrounding relationships, family finances and children is very complicated and it is essential that you take advice before acting upon any of the information that you read. Woolley & Co offers a free half-hour telephone assessment for this purpose. Call us on 01789 267377 or email [info@family-lawfirm.co.uk](mailto:info@family-lawfirm.co.uk).

Woolley & Co is an unusual law firm. We operate throughout the UK with a team of family law specialists based in home offices. All our lawyers are fully qualified and have many years experience in handling complex and demanding cases. Our lawyers act for clients throughout England and Wales and indeed English expats throughout the world.

Woolley & Co is a member of and is regulated by the Law Society of England and Wales.



## Prenuptial agreements: not just for the rich and famous

Michael Douglas and Catherine Zeta-Jones famously signed a detailed prenuptial agreement after he had to pay out \$40 million as a financial settlement to his ex-wife. Scary Spice Melanie Brown apparently ignored the advice of friends and family and didn't have a prenuptial agreement in place with her ex-husband. She had to give him £3 million of her £20 million fortune.

'A prenuptial agreement allows the parties to protect their separate property and other assets.'

Now most people won't have a multi-million-pound fortune to protect, but they may have a property and other assets that they are taking into a new relationship. And the advice of specialist divorce and family lawyer Lisa McDonald of Woolley & Co is to make sure these assets are secured with a professionally worded prenuptial agreement.

### What is a prenuptial agreement?

It's an agreement in which a couple sets out their rights in relation to any property, income and other assets either purchased together or that they have bought into a relationship. A prenuptial agreement allows the parties to protect their separate property and other assets.

The reason for this is that once you are married or in a civil partnership all your assets become matrimonial assets and, unless otherwise protected, are thrown into a single financial pot.

Such an agreement also allows each party to protect themselves from the other's debts – those incurred before the marriage. With the vast amount of personal debt that many individuals have, for some people this can be even more important than protecting the family home.

A prenuptial agreement can address situations in which one partner leaves a secure job to go and live with their partner in another part of the country, or indeed the world. If the marriage then breaks down, a prenuptial agreement can take account of such losses to the party who made the move for their partner.

The primary purpose of a prenuptial agreement will frequently be to limit the potential claims on the wealth of one of the parties to the marriage. This is normally the case when one party brings considerable wealth to the relationship or perhaps one or more of the parties have been married before and have family who might potentially benefit from a step-parent's wealth.

'Protection from personal debt can be even more important than protecting the family home.'

Such agreements are flexible and can be written to take account of changes in circumstances, in particular the birth of a child, and the longevity of the relationship. The parties may of course only have intended the agreement to act as a safeguard in the event of a short marriage.

#### **How do prenuptial agreements work?**

It used to be the case that agreements made before marriage that attempted to influence the way in which the divorce courts allocated assets were of little value.

However, recent case law indicates that England is catching up with the rest of Europe, where prenuptial agreements have been recognised for years.

The validity of prenuptial agreements in the UK was strengthened in 2004 when the English courts upheld a prenuptial agreement and a wife lost a substantial claim.

The courts now take prenuptial agreements seriously but they will carefully consider questions like:

- 1) Did the party with the most to lose understand the nature of the agreement?
- 2) Did he/she have independent legal advice?
- 3) Was he/she under pressure to sign?
- 4) Was there full financial disclosure?
- 5) Would an injustice be done if the agreement were upheld?

#### **Why use a prenuptial agreement?**

'Prenuptial agreements can provide certainty.'

A significant percentage of marriages now end in divorce. It is understandable that mature adults, and in particular those who have been married before, might wish to agree what should happen in the event of a breakdown of the relationship. Prenuptial agreements can provide certainty and the means of protecting pre-marriage assets, inheritance and existing family commitments such as children from a previous marriage.

### How to get a prenuptial agreement

Prenuptial agreements are, of course, not without their problems. They must be carefully drafted, and financial disclosure must be obtained before negotiations take place. Independent legal advice must be sought by both parties in order to protect the other party against the allegation of undue pressure to sign an agreement. Such important matters as these are taken into account by the courts, so it's important to get them right up front. Prenuptial agreements cannot take away the discretionary powers of the court in deciding what is fair, but a well-drafted agreement will be of significant value in any decision made by the courts as it clearly shows the intention of the parties involved.

And it's clear that you don't have to be rich to benefit from a carefully constructed prenuptial agreement. With the current value of property, and the extremely high divorce rate, it makes no sense NOT to consider whether a prenuptial agreement is in your interests.

This article was written by Lisa Macdonald, a divorce and family solicitor with Woolley & Co. Based near Bath, Lisa has clients throughout the UK and regularly handles matters for British expats abroad.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

'Will the friendly separation continue when one of you starts dating someone new?'

## How to make a separation legal

A couple decide to go their separate ways but don't necessarily feel they are ready for divorce – but they want to split their monies and, for example, sell the house. What can they do? They each think they trust the other but are not quite sure. Will their friendly separation continue when one of them starts dating someone new? It is amazing how frequently a couple who believed totally in each other's intentions and trusted their partners implicitly turn into doubting Thomases. Suddenly Aunt Agnes's pot of ashes becomes ultra-important and worth arguing over!

### Financial ties

In such circumstances a separation agreement, otherwise known as a Deed of Separation, is worth considering. Such a document allows the couple to conclude their financial situation at the time that they agree to go their separate ways. This means they record who is to have what and hopefully avoid the necessity of court proceedings. It is especially suitable if the couple don't want to get divorced or do not have the requisite 'grounds' straight away and choose to be separated for two years before applying for their divorce.

### What is included in a separation agreement?

When preparing to draft the separation agreement each party must produce full and frank financial disclosure, showing documentary evidence of their assets and

liabilities. Each party exchanges this information with the other. Then the discussion takes place – and hopefully an explicit separation agreement can be drawn up.

On receipt of instructions from a client wishing for a separation agreement your lawyer will draft a legally worded document for presentation to the other party's solicitors for their consideration.

The separation agreement includes such information as age, employment and accommodation. A draft agreement is sent to the client and is accompanied by a letter to them confirming the agreement is only persuasive and not enforceable. In other words it's a gentleman's agreement, which the parties would feel morally bound to keep but unfortunately there is no legal penalty for failing to do so.

Once you are happy with the agreement the draft will be sent to the other side's solicitors with copies of bank statements, valuations and accounts, etc. The documentation includes details about you and your partner: where you intend to live, how you intend to split your monies and who will have control of the sale of any property. It may also dictate who will pay for what and information relating to the arrangements for the children, if any.

**Save time with a well-worded agreement**

'More and more people are choosing to adopt the route of obtaining a separation agreement.'

The ever-stretched courts are always striving to reduce costs in family proceedings and minimise the use of their time. If a couple have successfully agreed to a division of their family assets and the agreement has worked well for a period of two years or so, perhaps the best way forward would be to remove the court's discretion when a properly prepared separation agreement is presented to it.

There is no doubt that the timescale for finalising financial affairs at the end of a marriage can be significantly reduced when a separation agreement has previously been drawn up.

More and more people are choosing to adopt the route of obtaining a separation agreement. While not enforceable, the agreement tends to make each party feel more comfortable and, for previously married couples, allows the divorce to take place when the tension has subsided a little. When a married couple do eventually divorce, their separation agreement, if it has worked, can form the basis of the consent order application and the District Judge is notified of the parties' long-term agreement and the fact that it has worked well.

Of course, if the couple decide to divorce straight away it is not necessary to consider drawing up a separation agreement as the financial settlement on divorce achieves the same ends.

This article was written by Davina Warrington, a divorce and family solicitor with Woolley & Co. Based in Burton-on-Trent, Davina has clients throughout the UK and also deals with divorce for expats.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

## Divorce: sorting out the finances

Divorce is said to be one of the most traumatic events in a person's life, along with bereavement and moving house.

'Many believe that a divorce automatically includes the settlement of financial matters.'

The divorce process itself need not be a stressful one. It can be, however, if you misunderstand what exactly is involved in obtaining a divorce and what this really means in terms of any financial settlement. Many believe that a divorce automatically includes the settlement of financial matters – and for this reason some people decide not to obtain a final order with regards to financial matters. Generally speaking people will give one of the following five reasons for not sorting out the finances at the same time as they obtain a divorce, but to be honest none of these reasons are good ones:

1. We have no assets, so why should we pay someone to obtain an order merely dismissing all our claims?
2. We will sort them out between ourselves – we do not need somebody else to tell us how to sort out our financial arrangements as we are still amicable.
3. I have had a quote from a solicitor to sort out financial matters and I can't afford it.
4. We have agreed the matter between ourselves and therefore see no reason to involve anybody else.

5. We have decided that we have both had enough stress going through the divorce. We are going to let matters rest for a little while and come back to settling our financial matters perhaps when the children are older.

Unfortunately anyone thinking that matters will get easier as time goes by is sadly mistaken. There are any number of circumstances that could create problems if this approach is taken. For example, if one party receives an inheritance or wins the lottery after the divorce and no final order dismissing claims has been obtained, the other party may still have a claim on that 'new money'. Even if they don't have a claim, the cost of defending their action may be more than if matters had been dealt with alongside the divorce.

If the parties have no assets then matters are relatively simple to resolve by agreement. The parties can enter into a consent order dismissing all financial claims they have against each other by virtue of their marriage to one another. There is no reason, therefore, to avoid 'sorting it out'.

Likewise, if you have already reached an agreement between yourselves, then embody it in a consent order. Any agreement you reach between yourselves does not become legally binding unless it is in a court order. Before an order is made, one party could go back on their word and although you can attempt to prove that you had an agreement to the court, the cost of doing so is likely to

be significantly higher than if you had had the matter dealt with appropriately at the time of the agreement.

### Property

Most people realise that if they sell a property that is not their main residence there will be capital gains tax issues. What people fail to appreciate is that the Inland Revenue will only give you a period (the current tax year) in which you obtain your divorce before one party may be liable for capital gains tax. Therefore, by delaying matters, you may incur a tax charge which can be avoided.

### Child residence

Waiting for the children to come of age will change the position of the person who lives with the children. That is to say that their needs will change, and therefore financially they may be in a less well-off position to argue than they would have been had they settled when the children were younger.

### Valuation

'The question of what each asset is worth can be very difficult.'

The question of what each asset is worth can be very difficult. It is an issue that must be resolved before an agreement can be reached. Timing can make all the difference. If an agreement cannot be reached, the court will require up-to-date values of all assets at the time that the court is considering the settlement. This could be some time after the divorce. The court will not use values at the time that you separated if this was some time ago. This can seriously disadvantage you if you have

been paying for a property for some time after a divorce as the party who has not been paying may well benefit from the payments you have made and vice versa. Obviously each party will want the valuation that is most advantageous to them. This in itself may cause arguments. You could be disadvantaged significantly by waiting.

You may have read about the case of footballer Ray Parlour. His ex-wife was awarded one third of his future earnings in a ruling which overturned conventional divorce law thinking. This can happen in family law; all of a sudden a case comes along and changes everything. No-one can guess what will happen to the law in the future. Your case will be governed by the legislation and case law which is current at the time.

'If your spouse does not wish to finalise financial matters, ask yourself why.'

If your spouse does not wish to finalise financial matters, ask yourself why. If everything is amicable and agreed then why not have it embodied in a court order? Are they really hoping that you will get back together, or do they still wish to keep some degree of control over you? If you have obtained a divorce, bring your financial relationship and obligations to an end too and get a final (ancillary relief) order.

If you are the respondent within the divorce proceedings and you re-marry, you will be barred from making any financial application in the future. This may mean that your ex-spouse could retain matrimonial assets if they are in their sole name and you will not be able to make a

claim for financial relief. You may be able to make a different application other than one under the Matrimonial Causes Act but you are likely to recover less, if successful, than you would have been able to under the Matrimonial Causes Act. No other legislation gives the court such wide powers to deal with a person's assets.

Our advice is, if you have decided to divorce or you are divorced, see to it that all matters are properly concluded by obtaining a court order either by agreement or by a decision of the court bringing your joint financial relationship to an end. It may seem costly now, but failing to deal with matters properly at the time could cost you a lot more in the future.

This article was written by Joanne Bennett, a divorce and family solicitor with Woolley & Co. Based in Coventry, Joanne has clients throughout the country and handles divorce and financial settlements for British expats.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

## Pension treatment on divorce

Did you realise that your pension could be a considerable capital asset? You certainly should be aware of this if you are going through a divorce.

How courts deal with pensions is often clouded in confusion and complication. Pensions can be complex and confusing at the best of times. But just because they are complicated doesn't mean they should be overlooked.

'The courts have long had the power to take pensions into account.'

The issue is ignored at your peril. The details need to be addressed carefully by a specialist lawyer aided by an experienced independent financial advisor (IFA) if you and your lawyer think that is necessary.

The courts have long had the power to take pensions into account in dividing up the matrimonial assets. Frequently, one person has a substantial pension and the other might have none or a very limited pension provision because, for example, they have given up their job to look after the children. That person was always likely to be 'compensated' for their lack of pension entitlement but until just a few years ago, this tended to be accomplished by being 'given' more than 50 per cent of the house.

Being realistic, it is normally the wife who has the lower (if any) pension provision. While the marriage continues, the spouses no doubt assume that when the husband retires, the wife will benefit from his pension and might

expect to receive a surviving spouse's pension from his pension provider if he dies before her. When they divorce, these benefits are lost. Often, then, the wife has little chance of being able to build up a sufficiently large pension during any working life that may be left to her.

'There is no automatic entitlement to a spouse's pension.'

But it is important to realise that there is no 'automatic' entitlement to a spouse's pension. It is often thought that just because they have been married they are entitled to half of everything – including the pension. That is not the case. The court looks at all the facts and figures in each case.

Divorce courts often regard the most appropriate solution for the division of the matrimonial assets and pension rights as 'offsetting'. Certainly people who can come to an out-of-court settlement will usually use offsetting of the pension fund value against other matrimonial assets such as the house.

Offsetting is often a sensible approach. However, for wealthier or older couples the retirement benefits might be worth more than other assets. This can make offsetting financially impossible, as there are insufficient other assets to compensate for loss of pension.

Another approach is 'earmarking'. A court can award a former spouse a percentage of the income the other spouse gets – if, for example, a couple divorce after a pension has become an income source (known as the pension being in payment). There are disadvantages to

this solution, such as the income ceasing on the death of the pension holder and also the pension entitlement ceasing if the recipient of the earmarking order remarries.

In recent years the Welfare Reform and Pensions Act 1999 (WRPA) allowed 'pension sharing' on divorce. This basically allows one party the opportunity to secure a percentage of their spouse's pension rights and to put that percentage into their own name. Without getting too technical, in effect part of the pension fund is transferred out of the fund of one spouse and into a fund in the name of the other. Clearly, this will be preferred by many even if only because you then feel more in control of your own future pension and can decide when you want to retire. There is also the benefit that it can be paid to children or a new spouse if you die before you retire.

In our opinion the process ought to be roughly:

1. Find out what pension provision there is (we mean what there really is, not what the person holding the pension says there is!)
2. Decide with your lawyer if the amount of the pension and the facts of your case make further investigation justifiable (i.e. cost versus benefit).
3. Investigate fully, almost certainly aided by a specialist IFA (your lawyer will be able to recommend someone).
4. Decide how to adjust the settlement in the light of this knowledge.

This article just 'scratches the surface'. It is essential to take advice from a specialist divorce lawyer, supported by a knowledgeable IFA.

This article was written by Karen Agnew-Griffith. Karen handles many large and complex divorce cases involving pensions and trusts. Based in Norfolk, Karen has clients throughout the country and overseas.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

## A collaborative approach to divorce and family conflict

Divorce is stressful – in fact, psychologists have shown that divorce and separation is the second most stressful event possible in a person's life. And a key part of this stress is the conflict: about the children, the house, or money in general.

Now the English legal system is generally admired across the world for its integrity and impartiality, but it is better at some things than others. For instance, it can (in principle) determine pretty well who has broken the law. If there can be a winner and a loser in a case, pitting one party against the other in our adversarial system is effective. But family law is different. Who is the winner and who is the loser in an argument about what should happen to the family home, or in a dispute about the living arrangements for children? Many judges who regularly hear family cases would generally agree with – and express – the sentiment that if a family conflict reaches the courts, a fair outcome will result only in both parties feeling like losers.

So over the years, family law has become less adversarial and lawyers have embraced more constructive methods of resolving these family conflicts. It is now the case that even of those situations in which lawyers become involved, at least 90 per cent do not reach a final court hearing.

So what are the alternatives to court? Negotiation and mediation have been around for a little while. But these alternatives, however useful and effective in their own right, share one disadvantage that can make them unsuitable for some people: the option of going to court is always there in the background, for one party or the other to think, 'This is as far as I am willing to compromise, because I would do at least as well as this if I went to court.' And if both parties think this, then the negotiations will hit an impasse.

This is where a new approach, *collaborative family law*, comes into its own. The unique feature of the collaborative process is a formal 'participation agreement' which prevents the parties and the lawyers from relying on the fall-back option of the court if agreement is not reached. In effect, if the collaborative process fails, then the parties have to instruct new lawyers and start from scratch if they want to go to court. This 'stick' motivates everybody involved – including the lawyers – to do everything reasonable to reach agreement. There is also the 'carrot' of the parties having far more control over the outcome of their dispute than if they were to ask a judge to make a decision for them.

In practice, the parties work with their lawyers, rather than just through them, to resolve their case. Everything is conducted at meetings, much like mediation, to give a speed and immediacy to the process that negotiations through correspondence cannot match. Unlike

mediation, however, there is no neutral third party; instead, each lawyer unashamedly represents his or her client's best interests, while together supporting the collaborative process itself (e.g. by making sure that the conversation remains constructive and that it is understood by everyone).

For the parties, collaborative family law can offer huge benefits. It won't be right for every family dispute, but for those for whom it is suitable, it allows a flexibility that the courts simply cannot provide. Every family is different, of course, and however ably a judge might take into account all the factors of a case, he or she only has a certain number of tools with which to craft a settlement; but in collaborative practice, it is not lawyers but the parties who determine what issues are more important than others, when they should be addressed and what outcome would be fair.

And there are other benefits, too. For instance, there are more than just legal issues involved in any family conflict. There are often financial or emotional issues too, and these can be addressed through the collaborative process with relative ease, simply by involving financial advisers, counsellors or any other professional in the meetings.

Collaborative family law has enjoyed considerable success in the USA, where it originated, and participants view the entire process much more positively than those

who go through the more traditional methods of resolving legal disputes. And although the concept is much newer in this country, there are already signs that it is making divorce and separation a much less stressful experience. Who knows, maybe psychologists will have to re-evaluate their list of stressful life events?

This article was written by John Barklam, a divorce and family solicitor with Woolley & Co. As well as being a fully qualified solicitor, John is trained in collaborative family law. Based in Worcester, John has clients throughout the UK.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).



## Fathers and step-parents: your legal rights and responsibilities

Do you have parental responsibility for your child? You might think the answer to this question is pretty straightforward. But it isn't necessarily for fathers or step-parents.

Parental responsibility is defined as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'. Therefore if you have parental responsibility you are recognised in the eyes of the law as having all the legal powers to make appropriate decisions in relation to the upbringing of your child.

'A mother automatically has parental responsibility.'

### What does parental responsibility mean in practice?

On a practical level having parental responsibility will, among other things, allow you to contact your child's GP to obtain or discuss medical treatment for your child and to play an active role in your child's education, giving you access to school reports, parents' evenings, etc.

A mother automatically has parental responsibility for her child, as does a married father irrespective of whether the marriage to the mother occurred before or after the birth of the child.

As from 1st December 2003 unmarried fathers of children born after this date, provided they are named on the birth certificate of the child, also have parental responsibility.

### Fathers: how to obtain parental responsibility

So what about the fathers of children born before 1st December 2003 who haven't acquired parental responsibility by virtue of marriage, or unmarried fathers of children born after 1st December 2003 who are not named as the father on the child's birth certificate? In these cases it is only the mother who is deemed to have parental responsibility in respect of the child.

If you are a father who does not have parental responsibility it can be obtained in one of the following three ways:

1. by marrying the mother of the child (which is not always an option);
2. by entering into a voluntary parental responsibility agreement with the mother; or
3. by obtaining an order of the court (parental responsibility order).

Before the court will make an order granting parental responsibility, a father would need to establish that there is a degree of commitment to the child; that a degree of attachment exists between the child and the father; and that the application is being made purely in the interests of the child's welfare.

Once you have parental responsibility it must be exercised appropriately and jointly with the mother of the child. Parental responsibility comes to an end when the child attains the age of 18 years or by court order if earlier.

Irrespective of whether or not you have parental responsibility, you are at liberty to apply to the court for a contact and/or residence order so that you can see your child.

### **The complex world of step-parents' rights**

There are, in this complicated world, a great many step-parents. If you are one, do you know your legal position in terms of what you can and cannot authorise when it comes to your step-children?

Imagine you have recently married and your spouse has three children. Your spouse is off on camp with the youngest child leaving you to run around with the elder two. You agree they can go out cycling for half an hour. Then the police knock on the door. One of the children has been in an accident and is currently being treated by paramedics before being taken to hospital. The other child is being accused of causing the accident and the police want to talk to her.

Neither of the children's natural parents can be contacted by mobile phone. What can you do or, more importantly, what are you allowed to do? The answer to this question will depend on whether you have parental responsibility.

'A step-parent does not acquire parental responsibility for a child automatically.'

### **Who *really* has parental responsibility?**

A step-parent does not acquire parental responsibility for a child automatically. Parental responsibility is the bundle of rights and duties relating to a child. Duties include

providing clothing, a home, an education and making sure no harm comes to the child. An individual with parental responsibility can authorise a change of name for a child in certain circumstances and can give consent to marry if the child is under the age of 18.

The mother of a child always has parental responsibility. Step-parents since 5 December 2005 can also acquire parental responsibility through a formal agreement or court order. Other orders which result in parental responsibility to a step-parent or other individual (e.g. grandparent) are a residence order which regulates where a child will live and gives the individual with the residence order parental responsibility until the child is 16. A parental responsibility order, however, endures until the child's 18th birthday. Following the Civil Partnership Act 2004 coming into force on 5 December 2005, same-sex partners in a registered civil partnership are also able to acquire parental responsibility by formal agreement or court order.

Step-parents, however, still will not and do not acquire parental responsibility automatically. For a formal agreement each person with parental responsibility has to sign the agreement. This is often the natural parents and any other individuals who have acquired parental responsibility since the birth of the child.

A step-parent on acquiring parental responsibility has the same duties and responsibilities as any other individual,

including a natural parent, with parental responsibility.

This article was written by Dianna Gerald, a specialist divorce and family lawyer with Woolley & Co. Dianna regularly advises clients on parental responsibility issues. She operates from a base in Gloucester and has clients throughout the Gloucestershire and Worcestershire areas.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

## The rights of a grandparent

The breakdown of a marriage or long-term partnership can be upsetting for all concerned. But for grandparents it can be even more so if contact with grandchildren is denied.

Over the years case law has developed to provide a presumption of contact in favour of absent parents (usually the father), but this is not the case with grandparents, which is rather a sad fact.

Visits with grandparents are a precious and integral part of a child's experience. The loving and nurturing relationship between grandparents and a grandchild often provides the child with intangible benefits that cannot be derived from other relationships.

Grandparents influence their grandchildren both directly and indirectly. Direct influence comes from face-to-face interaction – talking to them, taking them on trips and so on. When a grandchild has been confronted with a situation, a grandparent is able to support them and the grandchild knows that the grandparent is on their side. Therefore a grandparent indirectly influences them by emotionally being there. A grandparent is a role model and can be a number of things: stress-buster, watchdog, arbitrator, family historian and a supporter.

Increasingly however, grandchildren, often the product of broken homes, have been deprived of contact with their grandparents and lose that very special relationship.

### So what should a grandparent do if they fear they might lose contact rights?

The first step is to approach the child's mother or father and explain that no matter what the problems are between the parents, you as a grandparent do not intend to take sides but that you only wish to maintain contact with your grandchildren.

If this is not successful you can try mediation. For this to take place both sides have to agree to mediate. It is not a compulsory process, although many courts are now attempting to make it so.

'If this is not successful you can try mediation.'

The final resort is an application to the court. Here grandparents are at a disadvantage compared to parents since there is no presumption of contact and it is necessary to apply for leave to make an application. This is the first hurdle. The parent may object, in which case the court must be persuaded, usually by way of a full hearing, that you had a meaningful and ongoing relationship with your grandchild and that it is in his or her best interests for your relationship with him or her to continue.

If that hurdle is crossed, your application will then be considered. More often than not because of allegations being made there will be welfare issues to be determined and the court will appoint a CAFCASS officer to prepare a report which will be presented to the court. These take between 12 and 16 weeks to

complete. If the report is favourable, the mother may still not agree, which will mean a full hearing with both sides having to give evidence.

**What happens if the court makes an order and the mother or father still does not allow contact?**

Unfortunately, enforcing contact in the UK is extremely difficult. The courts in the past have been very reluctant to enforce orders, the remedy being to imprison mothers. They are becoming more robust, but the situation is far from perfect.

'It is important... that legal advice is sought about the options open.'

It is important, therefore, that when there are problems, legal advice is sought about the options open. Early advice will allow you to understand your options and act in an appropriate way so as not to unsettle what could be a very delicate situation.

This article was written by Carol Whereat, a divorce and family lawyer with Woolley & Co. Based in Cirencester, Carol has clients throughout the UK.

For more details about divorce, separation and family matters visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk).

## Divorce options for expats

These days more and more people from the UK are working abroad, either permanently or on long-term contracts. Many are choosing to retire to a home in the sun.

Unfortunately the latest Government statistics show that over 40 per cent of first marriages break down, and while it is bad enough to go through the upset and trauma of separation and divorce in the UK, the problems for expats are very much worse in many cases.

You feel somehow disconnected from the help you could obtain in the UK, the Citizens Advice Bureau, the friendly local solicitor just down the road, the powers of the English courts and their ability to dispense swift and fair justice, and you really can't face the thought of going to a local lawyer; what with the language problems, the strange laws and customs, and you have heard that it takes years to get a divorce locally.

Before any readers start to think we are being parochial in our focus on the English court system, we should explain that the English courts have jurisdiction over England and Wales, but not Scotland.

You may think that, because you are not currently a UK resident, you cannot use the English courts if the worst comes to the worst and you decide to get divorced. Unfortunately this is true for those originally from Scotland or who believe they may be governed by

Scottish law. In this case you'd need to take special advice from a Scottish solicitor.

'As long as an English court is satisfied that England is one of the parties' "home country" then the court can deal with a divorce'

The good news is that in most circumstances anyone originally from England or Wales can use the English courts, on the basis that they are 'domiciled' in the UK. Domicile is a somewhat obscure legal concept but means, basically, that you have a 'legal connection' with England and that the English courts therefore have jurisdiction, for instance, to grant you a divorce.

The House of Lords said recently that the test to be applied by divorce judges is: 'Was the connection with England of the parties and their marriage sufficiently close to make it desirable that our courts should have jurisdiction to dissolve their marriage?'

As long as an English court is satisfied that England is one of the parties' 'home country' then the court can deal with a divorce, even in cases where someone has lived abroad for many years.

Sometimes, however, there are problems and judges have been known to reject a divorce on the grounds that the petitioner is not domiciled in the UK (even though the party concerned may think they are).

When this happens it is almost always because the judge will rule that the party has 'relinquished their domicile', usually because they have formed an intention to spend the rest of their days in their adopted country. In those

cases the court will often find that the party has 'relinquished their domicile of origin, and adopted a domicile of choice'.

This legal 'snag' can be a problem if you have retired abroad with the intention of never coming back, and may mean that the UK courts cannot help you.

In cases where the courts can help, however, most expats are surprised to learn how quick and uncomplicated a divorce can be these days. The average case takes around 16 weeks, and neither party has to appear in court at any stage.

Of course the divorce itself is only part of the story. If you have been together for a long time there may be property, pensions and other finances wrapped up in the marriage. You may therefore be wondering how the matrimonial assets would be dealt with by an English court.

First, the divorce courts do not deal with any of the matrimonial assets during the case itself, and will not do so until after a decree nisi has been pronounced. Any financial or property disputes are then dealt with as an entirely separate case (an ancillary case) and even then only when the parties themselves cannot reach agreement.

'Matrimonial assets cases should be avoided if at all possible.'

Matrimonial assets cases should be avoided if at all possible. They can take the best part of a year to reach their conclusion, you will have to attend at least two and

possibly three court hearings, and they are very expensive indeed. By the time the average party has paid the court fees, solicitor's fees, barrister's fees, property valuer's fees, actuary's fees, forensic accountant's fees and more, he or she will need to have a very understanding bank manager. So, most solicitors will strongly advise you to agree, agree, agree even if it means a compromise.

The biggest problem of all is that the English courts cannot make orders in respect of overseas assets, except by consent. They cannot, for instance, order a house in France to be transferred to one particular party. This would have to be dealt with by a local lawyer.

Finally, you may also be wondering, 'What about the children?' Well, custody has been abolished in the UK, as has 'access', and the divorce process no longer deals with disputes concerning children, nor does it any longer have the power to make maintenance orders for children, except in very limited circumstances. Perversely (some would say), the court will not, however, grant a divorce unless an acceptable 'parenting plan' has been filed along with the divorce papers, dealing with such things as who will be the parent with care, contact with the other parent, housing, health and education, childminders and more. Your solicitor can help you complete the necessary paperwork for this.

This article was written by John King, a divorce and family lawyer with Woolley & Co. John is an expat divorce specialist and also acts for many UK clients from his base in Derby.

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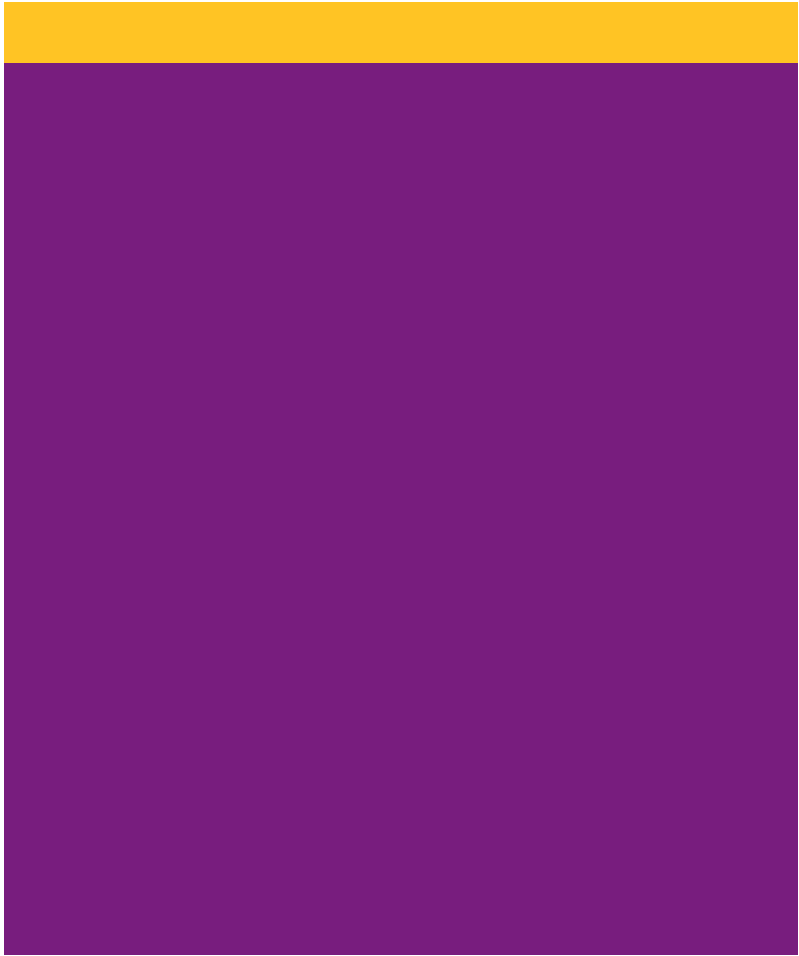
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