



## Legal Assistance on Marital Breakdown

### **Introduction**

Unfortunately, some relationships do not stand the test of time. At this often highly emotional period in one's life, it is essential to obtain good legal advice.

### **Divorce Procedure**

The procedure of obtaining a divorce is usually relatively quick and straightforward. The person applying to the court for a divorce is known as 'the Petitioner' and the other party to the marriage 'the Respondent'.

### **Grounds / Facts**

There is only one ground on which a petition for divorce may be presented; that the marriage has broken down irretrievably. However, the petitioner must satisfy the court of one or more of the five facts specified in the Matrimonial Causes Act. The five facts are; adultery and intolerability, unreasonable behaviour, two years' separation with consent, desertion, and five years separation. Whilst some detail is required in the petition to satisfy the court of the need for a divorce, it is general practice not to use the petition as a forum for parties to 'sling mud' at each other.

### **Financial Matters**

Reaching an agreement on how to settle financial matters following a relationship breakdown can be complex and daunting. It is important that a financial settlement is reached that enables one to move into the new phase of their life. There are various ways of approaching the issues. Often mediation at an early stage will help narrow the issues and lead towards settlement. Barwells Family Department will be pleased to offer advice and guidance on mediation services.

Alternately, matters can be resolved through voluntary financial disclosure by Solicitors followed by a meeting round the table. In the event matters cannot be resolved by negotiation then an application may be made to the court. The court system is designed to be non-adversarial and aims to lead to resolution with the court's assistance. It is only in rare cases that matters proceed to a contested hearing.

The court has various principles by which it decides how the matrimonial assets should be divided. Primary consideration is given to the children of the family. The court will also be guided by a 'principle of equality' and a duty to assess whether a clean break (i.e. no ongoing spousal maintenance) is appropriate. Case law on these issues is constantly changing and our experienced team can guide you through this legally complex area.

### **Children**

Where agreement cannot be reached over issues of contact or residence, the courts have wide powers to determine with whom children of the family should live and how much contact the non-resident parent should have. The court's primary consideration will be the welfare of the child. Child maintenance is payable through the Child Support Agency (CSA) and various capital and income orders can be made by the court.

### **Wills**

Decree Absolute (granted upon conclusion of divorce proceedings) has the effect of invalidating a prior Will where a former spouse is concerned. It is therefore prudent to execute a new Will to update or alter the appointment of executors, beneficiaries and guardians of any children to reflect the change in circumstances.

### **Endorsements / Family Department**

Barwells Family Law Department is headed by Senior Partner David George. He is a Solicitor Advocate with rights of audience in the upper civil courts and an advanced member of the Law Society's Family Law Panel. He is ably supported by Assistant Solicitors Brigitte Shakespeare and Sharon Parnell.



## Cohabiting Couples and Families

### Introduction

The number of couples who are living together without marrying has dramatically increased in recent years. Recent figures also show that over 40% of births are outside of marriage. There is a common public misconception that cohabiting couples enjoy the same rights as married couples (so called 'common law partners'). However, this is not so and on relationship breakdown the legal position of a cohabitee can be extremely precarious.

### The Family Home

Cohabiting couples who break up are not protected by the legislation that entitles divorcing couples to capital and income settlements. Entitlement to the equity in the family home is governed by land/trust law principles. If the property is held jointly the presumption of equal ownership will arise, albeit this can be rebutted by evidence that the parties intended to hold the equity in the property unequally (most commonly a 'declaration of trust'). If the property is held in one party's sole name, the presumption will be that person has the sole interest in the equity of the property. Recent case law has shown that only in exceptional circumstances will the court be willing to deviate from the above presumptions.

### Children

A cohabiting father does not automatically acquire parental responsibility for a child of the relationship. Parental responsibility is the 'rights, duties and responsibilities a parent has in relation to a child and includes the ability to make decisions about education, religion and medical care. Unmarried fathers can acquire parental responsibility in several ways, most usually by being registered on the child's birth certificate.

### Wills

A cohabiting partner will not be automatically entitled to a share of their partner's estate on their death if the deceased partner did not leave a Will (i.e. died 'intestate'). It is therefore important to consider making a Will if you wish your cohabiting partner to inherit all / part of your estate on death.

### Pre-Marital and Cohabitation Agreements

Generally, a pre-marital agreement will not be binding in English law, albeit recent case law has indicated that the courts are beginning to consider such agreements on marriage breakdown. In contrast, the courts have indicated a Cohabitation Agreement will generally bind the parties on the breakdown of a relationship provided the agreement adheres to general contractual principles. Such an agreement can set out arrangements whilst the couple are living together and in the eventuality of a relationship breakdown.

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