

FREETHS

Family Law

How do I sort out my finances?

Some couples believe they have to go to court. Although, for some, this may be the most appropriate approach, it is not the only option now available.

The alternatives are:

Reaching an agreement between yourselves

If you are able to talk together, this is by far the cheapest and quickest way to reach a settlement. It suits couples where there is a mutual and amicable decision to divorce, where communication between them is good and where both know all their financial facts and trust each other enough to effect a mutually satisfactory division of their assets.

A solicitor, putting in to effect an agreement reached in this way, will not be able to give advice as to whether the settlement reached is fair and reasonable since the solicitor will not have had the opportunity to consider all of the financial details. The solicitor will progress and finalise the divorce and record the financial agreement in a document called a Consent Order. This order is sent to the court for final approval by the Judge and no one will need to attend court.

Guideline cost £2,000 - £3,000 plus VAT each

Reaching an agreement using mediation

Often couples need help with issues on which they are unable to agree and more and more separating couples are calling on the process of mediation as a means of resolving these disputes. They attend a series of meetings with a mediator, usually a solicitor who practices in and has a wide knowledge of family law. The mediator is impartial, is able to give them information but not advise them. The mediator's role is essentially, to facilitate discussion and help the couple towards reaching agreement about issues relating to financial matters, children matters or perhaps even on the divorce itself.

The process is confidential and it is known to work best where each person has their own solicitor available for advice as the discussions progress. If a settlement is agreed through mediation, the couple's own solicitor's prepare the Consent Order to be sent to the court for approval by the Judge.

Guideline cost £2,000 - £5,000 plus VAT each

Reaching an agreement using collaborative practice

Mediation is not suitable for all couples. Collaborative Practice may be preferable as a way for divorcing or separating couples

to work together with the constant support of trained lawyers in face to face meetings to discuss and agree how to resolve the issues without going to court.

It is necessary for both parties to instruct solicitors specifically qualified in collaborative practice, an increasingly popular choice for couples. The two collaborative solicitors agree to help their clients through the divorce/separation process and sign, with the couple, a formal document called a participation agreement. This document explains how the process will work and that should an agreement not be reached the couple will have to instruct new solicitors. This prospect, of being put back to square one, is the 'glue' of the collaborative process. It keeps everybody committed to discussing all of the issues around the table and working towards an agreement.

All issues have to be dealt with in face to face meetings. In some cases only a couple of meetings are required in others, four or five meetings may be necessary. Crucially, each party is accompanied by their solicitor through the whole process giving support, guidance and advice. The meetings follow agreed agendas and the couple agree what is to go on every agenda.

When an agreement has been reached the collaborative solicitors will be able to put that into effect. A divorce can be finalised and a Consent Order sent to the court for approval by the Judge.

Guideline cost £4,000 - £10,000 plus VAT each

Solicitor led negotiation

This option may be the most suitable process for some from the outset. Alternatively, it may be the only option left where couples have been unsuccessful in reaching a direct agreement or for whom mediation or collaborative practice has failed.

Each person instructs their own solicitor who corresponds with the other's solicitor. In many cases, there is a voluntary exchange of financial information so that the solicitors are able to advise their respective clients about what a fair and reasonable settlement might be. The solicitors then embark upon a process of negotiation which may just be contained to correspondence, or may also involve round table meetings. If an agreement is reached then it is recorded in a Consent Order and sent to the court for approval by the Judge.

Guideline cost £10,000 - £20,000 plus VAT each

If an agreement is not possible, then an application is sent to the court and the court issues a formal timetable setting out the steps that have to be taken. This does not preclude negotiation. Any case can still settle before a final hearing.

Court application

The basic court timetable initially directs one hearing, a First Appointment. If no settlement is reached the court directs a Financial Dispute Resolution Hearing, and then, if necessary, a Final Hearing.

At the First Directions Appointment, the Judge will ask what the issues are and will give directions so that those issues can be progressed to the next stage. Often settlement is reached but if it is not at the second hearing, the Financial Dispute Resolution Hearing, the parties and their respective solicitors are expected to attend court with proposals for settlement. The Judge will try to encourage a settlement and if a settlement can be reached an order will be made.

If no agreement is reached, then the matter has to be dealt with in a final hearing. At this hearing the Judge usually hears evidence from each person and any experts. The court then has a broad discretion to make a final decision and will make whatever order the Judge thinks is fair. The couple are bound by that final decision. Very often because the parties want to avoid the significant costs and the risk of an unfavourable decision, an agreement is reached in advance of the final hearing and a Consent Order is then sent to the court for final approval by the Judge in the same way as referred to above. For more details of the court procedure please see our guide 'Applications to the Court'.

Guideline cost varies significantly, please contact us for an estimate

If you would like a free initial consultation with the head of our family team, Rachael Oakes, to discuss which process option may be most suitable for you, please telephone to speak with Rachael on 0845 128 6960.

