

# Hamers

SOLICITORS



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Divorce & Separation



## Why use Hamers?

We are one of Hull and East Yorkshire's best known law firms, offering professional and cost effective legal advice. We have a team of experienced family lawyers to help you through this difficult time.

The team, which includes specialist panel solicitors and a solicitor with higher court advocacy rights, is led by partner Peter Harris who has over 25 years' experience in this field of work.

Areas of advice include:

- Your children
- Divorce and separation
- High value and complex matters
- Company/partnership issues
- Pre-nuptial agreements
- Civil partnerships
- Co-habitation agreements
- Maintenance
- Pensions
- We offer out-of-hours appointments on a Wednesday evening and Saturday morning by special arrangement
- Public funding may be available
- West Hull offices with easy access/parking

## When am I entitled to a divorce?

Currently you are not able to apply for a divorce until you have been married for at least one year, even then you cannot obtain one automatically. You will need to have sufficient grounds for divorce. Your marriage will have had to have broken down irretrievably as a result of at least one of the following:

### (i) Adultery

The adultery will need to be admitted or you will have to prove it. If you have committed adultery and want a divorce you can ask your husband/wife to divorce you.

### (ii) Unreasonable Behaviour

Everyone has different ideas about what is unreasonable and in the end it will be up to the divorce court to decide whether the behaviour you allege is unreasonable enough for you to be granted a divorce.

### (iii) Two Year Separation

To obtain a divorce after a two year separation both parties have to consent to the divorce. This means you both have to agree the marriage has broken down and that you want a divorce.

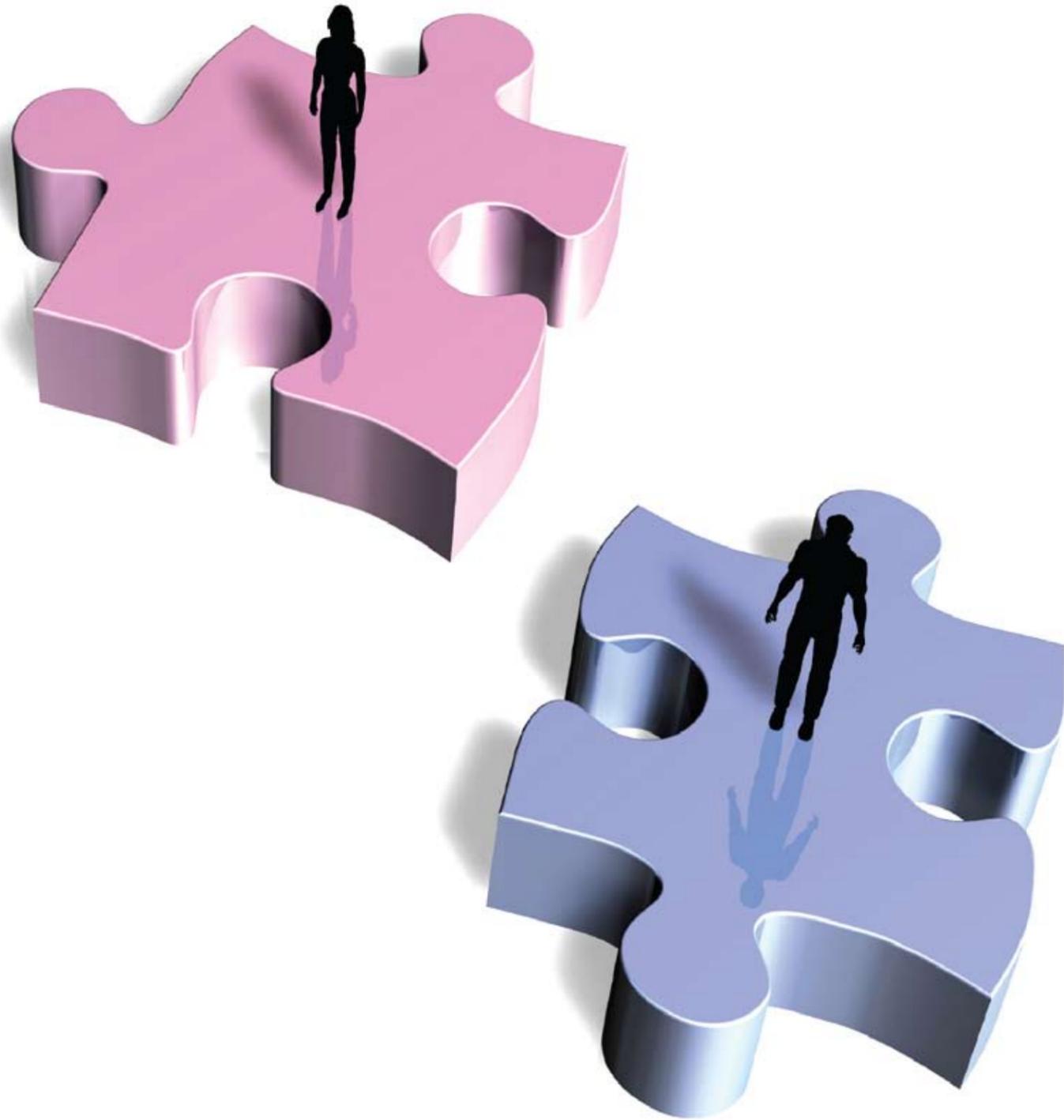
### (iv) Desertion

Desertion requires an intention to stop living together and actually ceasing to live together against the wishes of your husband/wife for a period of at least two years.

### (v) Five Year Separation

A divorce can usually be obtained after five years of separation without the consent of your spouse.





## Is getting a divorce expensive?

A divorce does not have to be expensive, provided the divorce is undefended. Most divorces are. The current court fees for commencement are £300 upon issue and £40 to obtain a decree absolute. In addition, there are our costs. We can provide you with an estimate of these.

You may also be able to claim your costs or a proportion of them from your husband/wife if you commence the divorce. We will be able to advise you about this, although ultimately you remain responsible for your own costs.

The costs in respect of the financial aspects of the divorce are charged separately and in addition to the costs of the divorce itself. You may be eligible for Public Funding depending upon your financial circumstances. We will be able to advise you as to whether you qualify.

## Will I have to go to court?

Most divorces are dealt with in the county court. In undefended cases there is no hearing as such unless you are opposing a claim for costs being made against you. You will not have to be present when your divorce is granted.

Even if you have children under 18 and still in full time education, you will not usually need to go to court as the Judge will simply read the written details you have given and decide that there is no need for the court to intervene.

If the Judge has any queries or feels there are problems, he may need to see you about the arrangements that have been made for the children. This is an informal hearing and nothing to worry about. No one except you and the Judge need be present. Of course, it becomes more complicated if both you and your husband/wife want to have the children living with you. You may have to go to court if you cannot agree about financial matters or the children.

## What if I do not want a divorce?

You could consider entering into a separation agreement to deal with your finances and then divorce at a later date.

If your husband/wife has applied for a divorce and you do not admit the allegations made against you, then it is your legal right to defend the divorce petition, but

this is easier said than done. Your first obstacle will be the expense. In such cases there will be a court hearing which you will need to attend. It is unlikely that you would be granted public funding for the purpose of defending a divorce.

If you are unable to defend the divorce, do not worry. Except in exceptional circumstances, the allegations made against you will not 'blacken your character' in the eyes of the court and affect any decision it might have to make, regarding finances or the children.

## How long will it take to get divorced?

If there are no major problems, getting divorced should take approximately four to six months, however this will depend on the level of conflict between you and your husband/wife.

Remember, if you start the proceedings, you are free to change your mind right up to the court pronouncing the decree of divorce. Bear in mind that the decision to seek a divorce is just as important as the decision to get married and deserves careful thought.

If there is any prospect of reconciliation, we can put you in touch with a number of agencies providing marriage counselling and advice.

## What about maintenance?

In some cases there may be a claim for maintenance in favour of the wife or even the husband. This can be for a limited period of time or may be ongoing, depending upon the individual circumstances of the case.

We will assess the financial situation and advise you as to what may be best for you and also how a court may deal with your case. The intention is then to try and negotiate a settlement as this will make a saving in legal fees.

The amount of maintenance payable to a husband/wife is rarely final - an application can be made to vary the amount, if either of your circumstances change sufficiently.

## What about the children?

See our leaflet 'Children, Divorce and Separation'.

## Will we have to sell the house?

Not necessarily. If you cannot come to an agreement, the court will make a decision for you.

Often the court will allow the parent looking after the children to stay in the house until the children grow up, or until he or she remarries or lives with someone else. This will also depend on whether they can afford the running expenses of the house.

The court, in appropriate circumstances, will decide how the sale proceeds are to be divided if you cannot reach an agreement with your husband/wife. The court can transfer ownership to one person either with or without payment.

The court, in making their order, will take into account how other assets are to be divided and the issue of maintenance.

## What about the business?

The court will not normally make an order whereby the business has to be sold or an interest in a business. A business can include a sole trader, partnership, LLP or a Limited Company.

Often the income from a business has to continue to be used to provide income for both the husband/wife and the children. However, it may be necessary to value the business or an interest in a business and to consider what monies may be available or could be made available by the business. We can advise you upon these issues and a specialist accountant may need to be instructed.

## What about pensions?

Pensions, along with the house, are often the most valuable assets of a divorce. We will advise you as to how best to deal with the pensions. Courts now have the power to order that a pension is shared and this includes the State Second Pension (formerly known as SERPS).

## Mediation

We are able to make a referral to Family Mediation. Mediators are fully qualified to deal with financial issues and children matters in relation to divorce and separation. The mediator tries to work with you both to resolve any matters upon which you are not agreed. It is a condition of any application for public funding (Legal Aid) that mediation is attempted.

Mediation can be a quick and amicable way of resolving disputes. The mediator, however, cannot advise you on the terms of settlement. If legal issues are raised it is likely that the mediation will fail. Mediation may not be suitable in all cases but can be effective particularly where there are disputes regarding children.

## What should I think about when relationship problems start?

- Consider closing joint bank and building society accounts and credit cards. Where possible acquire joint signatures on the accounts
- The relevance of your separation date – discuss with us
- Changes to your Council Tax bill – eligibility to discount?
- Responsibility for domestic bills
- Making or changing your Will (see our booklet Protecting Your Assets and Making a Will)
- Consider revising pension nominations and life insurance payments
- Interim provisions for children and where appropriate your husband/wife

