

**CAMERON JONES
HUSSELL & HOWE LTD
SOLICITORS**

DIVORCE

INTRODUCTION

Cameron Jones Hussell & Howe Ltd is a local Firm providing a comprehensive range of legal services to the general public. We aim to provide an effective and efficient service in a friendly and approachable manner, and to combine modern ideas and technology with the traditional values of a family practice. This leaflet explains how we deal with domestic violence matters.

YOUR MATTER EXPLAINED

The breakdown of a marriage is one of the most traumatic events that can occur in a person's life. We appreciate that this can be an upsetting and difficult time for you and this leaflet explains how we deal with divorce matters.

THE DIVORCE PROCESS

This information sheet is intended to give you a brief explanation of how a divorce case is dealt with. We will have discussed this during our meetings, and I will be reminding you about some of the points raised. If there is anything about which you feel you need further advice, or anything that you would like me to explain, please do not hesitate to contact me.

I refer below to the "Petitioner" and the "Respondent". The Petitioner is the person who begins the divorce process by applying to the Court for a divorce, while the Respondent is the person who receives the Application for divorce.

1. **The Petition** – This is the document applying to the Court for divorce. There is only one ground for divorce, which is irretrievable breakdown of marriage. However, the Petitioner has to satisfy the Court that the marriage has broken down by establishing one of five facts, which are:-

- a) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her.
- b) That the Respondent has committed adultery and that the Petitioner find it intolerable to live with him or her;
- c) That the Respondent has deserted the Petitioner for a continuous period of at least two years;
- d) That the parties have lived apart for a period of two years preceding the issue of the petition, and that both parties consent to a divorce being granted;
- e) That the parties have been separated for five years preceding the date of the petition.

The petition tells the Court which of these facts applies, and gives the Court other relevant information regarding the marriage.

2. **The First Step** – the Petitioner sends the petition and other documents to the Court, which sends copies to the Respondent, together with an Acknowledgement of Service form.

3. **The Acknowledgement of Service Form** – the Respondent completes this form to provide certain information to the Court, most importantly, whether he or she intends to defend the divorce. Defended divorces are rare, and we will give further advice if the matter becomes defended. This form is then returned to the Court.

4. **What happens next?** – The Court sends a copy of the acknowledgement of service form to the petitioner who can then apply to the Court for a Decree Nisi to be granted.

The Court then checks all documents, and if satisfied, will give a date for Decree Nisi. Decree Nisi is the halfway stage of the divorce. You are not divorced until the Decree Nisi is made Absolute.

No one need attend Court for pronouncement of the Decree Nisi by the District Judge, unless they wish to object to the Decree being granted, or to any Order that they should pay the costs of the divorce.

5. The petitioner can usually apply for the Decree Nisi to be made Absolute, six weeks and one day after the pronouncement of the Decree Nisi. There may however be good reasons for delaying such an Application until financial matters are determined.

If the petitioner does not apply promptly for the Decree Absolute then any time from three months from the date when the petitioner could have applied, the respondent can apply for the Decree Absolute.

7. The Decree Absolute is the final Decree. Once this is obtained, then you are divorced. The usual time scale for the proceedings to be completed – if both parties co-operate, is four to five months.

There are some important points I would like you to bear in mind, which are as follows:-

(a) Mediation is available to help you sort out any of the issues which need to be decided, including issues regarding the children, and financial matters. This would involve you and your spouse meeting with a trained mediator who would try to help you reach your own solutions to your problems. If you decide to pursue this, or you need further information about it, then I can give you the details of people qualified to help. The advantage of mediation is that you arrive at your own solution rather than having one imposed on you and without Court proceedings which can be lengthy and bitter.

(b) This is your case, and you decide what steps to take and when. If the petitioner decides at any stage that they do not wish to proceed, then the proceedings can be halted. Do not be embarrassed to contact me if that is what you want.

(c) It is always going to be beneficial to everyone concerned if a reasonable approach is taken, and a settlement is reached. In particular, this is likely to result in a saving in costs.

(d) Until a Decree Absolute of divorce is obtained, should you or your spouse die, then the surviving spouse is likely to be the main beneficiary, and is likely to inherit most or all of the estate. If you do not wish this to happen, please contact me and arrange for a Will to be drafted.

FINANCIAL PROCEEDINGS ARISING OUT OF THE DIVORCE

Financial matters, such as Orders for Maintenance, Lump Sum, division of money or property, decisions regarding your home, its contents and pensions, are not automatically dealt with during the divorce but are dealt with by way of separate proceedings. Unless matters are very simple, and can be dealt with by agreement, it is usual to apply for full legal aid to deal with these matters, although as a preliminary step, the matter will usually be referred to mediation which might help you to achieve agreement.

Either party can apply to the Court for financial matters to be dealt with. This is done by making an Application to the Court on a specific form, and paying a fee.

The court will usually require you to have met with a Mediator to see if your case is suitable for mediation before proceedings are issued.

The Court will then fix a date for the first appointment. Both parties **must** attend that appointment. It will take

place 12-16 weeks from the date your application was made.

At least 35 days before the first appointment both parties need to file and send the other party their **FORM E**, which is a financial statement. FORM E needs to be accompanied by certain specific documents. We will advise you about these at a later stage. FORM E contains a statement of truth, so that if it contains untruths, this can be a very serious matter, in the same way as if someone lies in Court when on Oath. The Court expects both parties to be honest, and to make full disclosure of their circumstances, and failure to do this can be very serious, and can lead to unpleasant consequences for that party. For instance, the Court can order the party who fails to make full disclosure to pay the other party's costs or if it is discovered that a party has been dishonest or has failed to disclose relevant matters, any Order made by the Court can be set aside, the matter re-heard and the offending party will usually pay the costs of both parties.

If FORM E is not filed and served on time, the Court can order the party at fault to pay costs.

At the first appointment the Judge gives Directions about the case, for instance he may need further information to help him decide the case. If no agreement has been reached, he may give a chance for the two of you to seek help from a mediator to decide matters, or he can ask you to return to Court on another day for a Financial Dispute Resolution Hearing (an FDR). If all disclosure has been provided in time and if both parties agree, the first appointment may be utilised as a Financial Dispute Resolution Hearing.

The FDR is an informal hearing, and again both parties **must** attend. The Judge will use that appointment to try to help both parties and their legal advisors to reach an agreement.

If matters cannot be agreed, then a hearing will take place, and the District Judge is then likely to hear evidence from

both parties to help him in making a decision as to how to divide the assets.

It is possible, before or after one or other party applies for the Court for Orders to be made, for an agreement to be reached between the parties. This will usually be cheaper than the matter proceeding to Court, and probably rather less stressful. Even if agreement is reached however, it is best for that agreement to be shown to the Court, so that the Court can make a Court Order containing all the terms agreed between the parties. This can be done without anyone having to attend Court. It is necessary for financial disclosure to be given and obtained before any Consent Order can be issued/entered into.

When making decisions in relation to financial matters, the Judge considers what are called the S25 factors because they are set out at S25 of the Matrimonial Causes Act 1973. These are as follows:-

1. The income earning capacity, property and financial resources which each party has or is likely to have in the foreseeable future.
2. Financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future.
3. Standard of living enjoyed before the breakdown of the marriage.
4. Age of each party and the duration of the marriage.
5. Physical or mental disability of either or the parties in the marriage.
6. Contributions.
7. Conduct (if it would be inequitable to disregard it). In practice few Judges will be prepared to allow conduct arguments.
8. The loss of benefits which either party would have acquired were it not for the divorce.

COSTS

If your matter is being legally aided then we will have set out the full position in an accompanying letter.

If you are paying our costs privately then you will have received a letter setting out our charging rates and providing you with an estimate of costs, and a request for payment on account of costs.

Please note that we cannot accept payments in excess of £500.00 in cash, but would need such payments to be made by cheque, standing order, bankers draft or bank transfer.

If you do have any concerns about the costs you may have a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974. Details available upon request.

IDENTIFICATION

It is our standard practice these days to request all clients to provide satisfactory evidence of identity. We enclose herewith a list of the items which are acceptable for establishing this. Please would you be good enough to call at the Office at an early stage bringing with you suitable identification for photocopying. Occasionally, we may be asked by third parties to produce evidence of your I.D. (e.g. by the Developer's Solicitors if you are purchasing a brand new property) and we will assume unless you advise us to the contrary that you have no objection to us passing on details of your I.D. in such case.

COMPLAINTS

We do of course very much hope that you will not have cause to complain about the services which you receive from us. If you do however have any concerns about the way in which your matter is being handled, the costs presented to you or about our services generally,

we should be grateful if you would please in the first instance contact the Fee Earner having the overall conduct of this matter in order to discuss your complaint. Should we be unable to resolve any complaint raised by you by this method, then we will ask you to put the complaint in writing to our Complaints Manager, John Hussell. He will then deal with the complaint from that point, providing you with full details of our complaints procedures. If your complaint is regarding a matter that he has conduct of, then Mrs Sally Kingsbury will deal with the complaint.

If you are still not satisfied you can contact the Legal Ombudsman (www.legalombudsman.org.uk). Tel: 0300 555 0333. Or you can email them at enquiries@legalombudsman.org.uk

Any complaint to Legal Ombudsman must usually be made within six months of receiving a final written response from us.

The Legal Ombudsman may not consider a complaint about the bill if a client has applied to the court for assessment of the bill.

CONFIDENTIALITY

We will not discuss your business or disclose the contents of your file to any third party without your written consent except that:-

- Unless you instruct us otherwise, your file may be used for auditing or monitoring purposes and
- We are legally obliged under the Proceeds of Crime Act 2002 and other similar legislation to report any knowledge or suspicion of money laundering to the National Criminal Intelligence Service

CONCLUSION

We hope that the above notes and observations are helpful to you and will assist you in understanding how this matter is being dealt with. Please retain it for reference and if you have any comments or observations about our services then please do not hesitate to let us know.

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This leaflet is intended as a guide for existing clients of Cameron Jones Hussell & Howe Ltd. It is not intended to be a detailed statement of the law nor does it obviate the need to take detailed legal advice