

FACTSHEET: DIVORCE PROCEDURE

The aim of this leaflet, which is intended only as a guide, is to outline the procedure involved in a divorce and to highlight the key aspects so as to provide you with an idea of the timetable and course of action to expect. Most divorces progress without difficulties and without the need to attend Court.

Who can start divorce proceedings?

Anyone who has been married for over one year can start divorce proceedings, provided that one or other of the couple is either domiciled in England or Wales when the divorce proceedings have begun or has been resident in England and Wales throughout the period of one year ending with that date. It is irrelevant where the couple were married.

The person starting the divorce is known in the proceedings as the “Petitioner” and their husband or wife is known as the “Respondent”.

On what grounds can a divorce petition be started?

There is presently only one ground for divorce in England and Wales and that is that the marriage has irretrievably broken down. To establish an irretrievable breakdown in the marriage the Petitioner must prove one of five “facts”.

What are the five facts?

The five facts are:-

1. That one party has committed adultery and as a result of such adultery the other person finds it intolerable for them to continue living together.
2. That one party has behaved in such an unreasonable manner and as a result of such unreasonable behaviour the other person finds it intolerable for them to continue living together.
3. That one party has deserted the other for a continuous period of two years or more.
4. That the parties have been living separately for two years or more and both parties agree to the divorce.
5. That the parties have been living separately for five years or more. The consent of the other party is not required.

Facts 1 and 2 are the most commonly used. With all of the other facts the parties will need to have lived apart for more than two years.

Only fact 4 needs the other spouse’s formal consent on the divorce papers, but in practice it is easier and avoids delay if the parties have agreed that the marriage has broken down. Hopefully, this will ensure that the divorce is not defended and that time and legal fees are saved.

If your marriage has irretrievably broken down and one of the five facts applies what happens next?

Stage 1 – Preparing the papers (Petitioner’s Responsibility)

A divorce petition is prepared by the Petitioner. Every divorce petition follows the same basic form. It contains essential information including names, addresses, ages of children (if relevant), a statement that the marriage has irretrievably broken down and details of the “fact” that is being relied upon.

The divorce petition will also include a section known as the “prayer”. This includes a request for the divorce to be granted, a claim regarding costs of the divorce and an Order for all types of financial provision. The inclusion of a request for financial provision does not necessarily mean the Petitioner will pursue such claims. This can be decided at a later date and the course of action taken will depend on the financial circumstances of the parties.

What about the children?

A form is sent to the Court with the divorce petition that details the arrangements relating to the children. This is not restricted to only children who have been born to the parties, but can also be any other child (excluding foster children) who have been treated by both the Petitioner and the Respondent as children of the marriage. Once again, it is sensible if the contents of this form (known as the “statement of arrangements for the children”) can first be agreed with the Respondent. This is, however, not essential and even if the arrangements for your children are not agreed this will not prevent the divorce from commencing.

Is there anything else required to start divorce proceedings?

Yes, the divorce petition and statement of arrangements for the children must be sent to the Court with the parties' original marriage certificate. If this has been misplaced or is in the possession of the Respondent, a certified copy can be obtained from the Church where the marriage took place or from the General Register Office in exchange for payment of a small fee. The marriage certificate will only be returned if the proceedings are withdrawn.

The Petitioner will also need to pay a Court fee (*see list of fees attached*). Alternatively, if the Petitioner is eligible for Public Funding (i.e. formerly Legal Aid) or is in receipt of a low income he/she will need to complete a fee exemption form to avoid this Court fee needing to be paid or to reduce the fee payable.

The Petitioner may also need to complete a form confirming that the Petitioner has contemplated the possibility of a reconciliation before taking steps as regards a divorce.

Stage 2 - Starting the proceedings

Once the papers are received by the Court it will formally "issue" the proceedings. This means that they will allocate a case number to the divorce that is individual to the parties.

It can take several weeks for the divorce issue process to take place.

A copy of the divorce petition and statement of arrangements will then be sent to the Respondent, together with a standard form known as an "acknowledgement of service" to be completed by him/her and returned to the Court. This form asks the Respondent whether they intend to defend the divorce, dispute any claim for costs and seeks any orders regarding finances amongst other matters.

How soon will the Respondent have to return the acknowledgement of service?

The Respondent will officially have seven days from the date the papers are received to return the acknowledgement of service to the Court if the proceedings are not being defended.

In practice, due to delays in the Court or for other good reason, an acknowledgement of service may not be sent by the Court to the Petitioner strictly within these time limits, even if it has been received on time from the Respondent.

What happens if the acknowledgment of service is not returned to the Court?

The Petitioner will need to obtain proof that the Respondent and any named Co-Respondent (*adultery petitions only*) have received the divorce petition before he/she can take the next step. This may involve arranging for someone to deliver a further copy of the divorce petition to the Respondent and any named Co-Respondent personally or, exceptionally, obtaining a Court Order to say the Court is satisfied the Respondent knows about the proceedings, but is avoiding service. This is called "dispensing with service". Further fees would be payable.

The acknowledgement of service has been returned. What happens next?

Either stage 3(a) or stage 3(b) applies.

Stage 3(a) – The divorce is being defended

The procedure outlined in Stage 3(b) below does not apply if the Respondent returns the Acknowledgement of Service within seven days indicating an intention to defend when he/she will be given a further twenty one days to prepare a detailed response.

Defended divorce proceedings resulting in a fully contested hearing are nowadays relatively rare. Usually a compromise is capable of being reached between the parties. A delay in finalising the divorce is however inevitable.

Stage 3(b) – The divorce is being undefended

The Petitioner will need to apply for what is known as "directions for trial (special procedure)".

This involves the completion of a standard application form and affidavit (i.e. a sworn statement) in support. The Petitioner's affidavit essentially swears that the contents of the divorce petition is true. It will also state whether any circumstances (including those relating to the children) have changed since the divorce petition was initially prepared.

The Petitioner will have to swear the affidavit before a Solicitor. For this there is a charge payable (*see list of fees attached*). The Petitioner will not be able to swear this affidavit with their own Solicitor. Instead this must be done with an independent Solicitor. The application and affidavit are then sent to the Court for consideration by a District Judge.

What happens when the application and affidavit are sent to the Court?

On receipt by the Court of the application for directions for trial (special procedure) and affidavit in support, the District Judge will look through the papers and, if they are in order, give a certificate for the decree nisi to be pronounced. The parties are then advised of the date that has been fixed for decree nisi. Depending on the Court's diary the date is likely to be a few weeks after the application is lodged. Neither the Petitioner nor the Respondent will need to attend Court when the decree nisi is pronounced, unless there are issues that are still contested, such as costs.

The decree nisi is merely a procedural stage confirming that the Court's approval has been given and that the divorce can proceed. The divorce will not be finalised and the marriage brought to an end until the decree absolute of divorce is granted.

What normally happens with regard to the children?

If agreement has been reached, the District Judge is unlikely to interfere.

If agreement has not been reached, the District Judge may ask the parties to attend an informal Court hearing to explore a solution to the difficulties. The District Judge may also ask for a Children and Family Reporter to become involved. If a solution cannot be reached this will delay the divorce being granted.

If the arrangements in relation to the children are settled between their parents what happens next?

Stage 4 – Applying for the decree absolute of divorce

The Petitioner may apply for the decree absolute of divorce to end the marriage six weeks and one day after the date the decree nisi was pronounced. This step is not automatic and the Petitioner will need to complete and send the appropriate form to the Court. The decree absolute of divorce will then be processed and may be available as quickly as the same day. At this stage and only then will the marriage have been brought to an end, enabling the parties to remarry should they choose to do so.

If the Petitioner does not apply for the decree absolute of divorce then the Respondent must wait a further three months after the date when the Petitioner could have first applied, before the Respondent may apply to the Court for the decree absolute. The Petitioner will be informed of such an application and will have the right to object to the Respondent's application. The matter will then be considered by the Court who can either grant the decree absolute of divorce, require further investigations or, if necessary, retract the previous decree nisi.

Will I have to attend Court at any time?

Provided the divorce is undefended (that is that the parties agree to a divorce) there is usually no need for either the petitioner or respondent to go to Court. The case can all be dealt with on paper. If the divorce is defended or difficulties are experienced, it is possible a Court hearing may be needed where both the Petitioner and Respondent will need to attend.

How long will the divorce take?

The average divorce takes between four and six months from start to finish. This time estimate can be extended if either party delays in taking any particular step throughout the proceedings or difficulties are experienced. There are sometimes good reasons to delay the obtaining of the decree absolute of divorce to end the marriage and the Petitioner would be advised as to whether the application should be submitted to the Court at the first opportunity or delayed until a later date.

Prepared by: CROMBIE WILKINSON SOLICITORS

19 CLIFFORD STREET
YORK
NORTH YORKSHIRE
YO1 9RJ
Tel: (01904) 624185

FORSYTH HOUSE
MALTON
NORTH YORKSHIRE
YO17 7LR
Tel: (01653) 600070

6 PARK STREET
SELBY
YO8 4PW
Tel: (01757) 708957

12 QUAY ROAD
BRIDLINGTON
YO15 2AD
Tel: (01262) 609585

D CHRISTOPHER MYLES
VICTORIA MORTIMER

PAUL BARKER



COURT FEES: DIVORCE

These are the standard fees usually payable to the Court where the divorce is undefended:-

	£
To present the initial divorce petition to the Court	300.00
Upon swearing an Affidavit	5.00
Plus, for each exhibit attached	2.00
To apply for the decree absolute of divorce	40.00

**Prepared by:
CROMBIE WILKINSON
SOLICITORS**

19 CLIFFORD STREET
YORK
NORTH YORKSHIRE
YO1 9RJ
Tel: (01904) 624185

FORSYTH HOUSE
MALTON
NORTH YORKSHIRE
YO17 7LR
Tel: (01653) 600070

6 PARK STREET
SELBY
YO8 4PW
Tel: (01757) 708957

12 QUAY ROAD
BRIDLINGTON
YO15 2AD
Tel: (01262) 609585

D CHRISTOPHER MYLES
VICTORIA MORTIMER

PAUL BARKER