

Divorce

There is only one ground for divorce, which is the irretrievable breakdown of marriage. This has to be supported by what is known as one of the five facts. These are:-

- Two years separation with the consent of both parties.
- Five years separation without consent of the other party.
- The other party has committed adultery and you find it unreasonable to live with the other party.
- Behaviour which you find unreasonable to live with, (unreasonable behaviour).
- Desertion for more than two years (rarely used)

The most common fact used is that of the other party's unreasonable behaviour. On average, approximately 95% of divorces are based on this ground. This means that you can start divorce proceedings at any time after the breakdown of the marriage. However, you must have been married for at least one year before you issue proceedings.

The party intending to commence divorce proceedings should in most circumstances notify their spouse at least 7 days in advance to see if an agreement as to the contents of the petition can be reached. The Petitioner will then issue a divorce petition at the Family Court together with the original marriage certificate which will be retained by the Court, a cheque for £410 (being the Court fee) and a Statement of Reconciliation.

The Court will then serve the Respondent with a notice of proceedings and an acknowledgement of service form which must be returned to the Court by the Respondent within 7 days.

The next stage is called the **decree nisi**. If the application is undefended and 8 days has expired since serving the application on the Respondent, the Petitioner can apply for a decree nisi. The decree nisi will be pronounced at Court by a District Judge. Following this the Court can make orders for financial remedy.

If the Petition is defended, the process becomes more complex and it is likely that both parties will be required to attend Court. Defended divorce proceedings are not covered in this fact sheet, but it should be noted that they can be very costly.

The final stage of the divorce is the **decree absolute**. Applicants cannot apply for this until six weeks and one day after the decree nisi is pronounced. It is advisable for financial matters to be addressed before applying for a decree absolute and this might take some time.

We would also remind you that it is advisable to have any Will reviewed, and of course, make a Will if one does not exist as Divorce affects inheritance. In the event of your death, if you are still married and have not reviewed or made a Will, your estate will pass under the rules of intestacy. This can often lead to unexpected results. We have a team of experts here at Awdry Bailey and Douglas who will be more than happy to assist you with this and with the Divorce process. Please contact one of our experts at one of the four offices listed below.