

Family matters

Supporting professionals

When you need to gain legal advice on family issues, we understand that the circumstances can often be highly emotive and stressful. Consequently at Fosters Law we always adopt a sympathetic and understanding approach towards assisting you in resolving such matters.

However, this approach is balanced with the need to remain professional and objective; we will put your legal needs first.

Professional support

Gaining early professional guidance is always recommended. Advice from friends and relatives, no matter how well-meaning, can create pressure and could mislead you into making a bad decision. Not only do we have the requisite technical skills, we also understand that each situation is unique and is based upon its own set of circumstances. You can rely upon us to understand your objectives and look after your interests.










Presenting options

It is worth noting that in family and matrimonial proceedings, since neither party benefits from conflict, the emphasis these days is on negotiation rather than conflict; particularly when children are involved. Court proceedings are considered to be purely a last resort. Our aim is therefore to assist clients in reaching a timely and fair outcome during a traumatic period of their lives.

Your first interview with us will provide you with options and details of the costs associated with each issue that you may have. You can then make an informed decision on how to proceed.

We understand that no two matters are the same. One matter may require a tough-minded approach, particularly where an aggressive partner is involved; another may require a conciliatory approach. We are able to adapt accordingly to each situation.

Among the matters that we are able to assist you with are:

-  Cohabitation agreements
-  Pre-nuptial and Post-nuptial agreements
-  Civil partnerships
-  Dispute resolution and mediation
-  Separation and divorce
-  Separation agreements
-  Financial implications of relationship breakdown
-  Children issues
-  Injunctions

We hope you find the information below to be of assistance.

If you would like to discuss your particular case with one of our family law specialists, we are able to offer a free initial consultation. All matters are dealt with in the strictest of confidence.

Cohabitation Agreements

Many people now choose to live together without any formal ties, either before marriage or a civil partnership, or for the whole duration of their relationship.

If such an 'informal' relationship breaks down, the parties do not enjoy the same level of protection as married couples or those who have chosen to enter into a civil partnership. Despite this, clearly the issues can still be complex and costly litigation may ensue if it is not possible to reach agreement. It is therefore important for couples to consider regulating their relationship at the outset and certainly once the decision has been made to live together. This can be done using a cohabitation agreement. Although consideration of such a formal agreement can prove difficult, any such discussions can bring openness and maturity to the relationship.

Although Cohabitation agreements are currently not legally binding, the Courts are increasingly placing weight on the contents and, if information has been shared honestly, there is more chance that they will hold each party to their side of the bargain. Equally, if both parties have received the benefit of independent legal advice, then there should be no question as to undue pressure in entering the agreement.

It is a flexible agreement and the contents can be as simple or as complex as you wish. It can include:

- ✿ income and expenditure responsibilities,
- ✿ sensible terms if one owns the home both intend to share,
- ✿ trust deed plans for mortgage payments,
- ✿ share of property; how proceeds to be split if one dies,

In addition to entering in a Cohabitation Agreement, couples should also consider preparing wills since, if one of you should die, your assets will go to your next of kin and not your partner.

Pre-nuptial Agreements

In the fervour of wedding planning, the focus is generally on the big day itself or the honeymoon to follow. All too often, little thought is given to the inevitable ups and downs of marriage and certainly any consideration of the possibility of relationship break down or divorce is rare. Here, many would argue that this is natural: why would anyone get married if they can foresee the possibility that it might not work out? However, with 1 in 3 marriages ending in divorce, a bit of 'worst case scenario' planning might just prove to be a practical and preventative measure.

Although there is nothing romantic about pre-nuptial agreements, they are now considered by many to be an important part of common sense, personal planning. By highlighting and discussing the base materialistic facts in a relationship, it can provide clarity thereby avoiding potential thorny issues or disagreements in the future.

The contents of a pre-nuptial agreement can vary, but they commonly include provisions for the division of assets if the relationship breaks down at a later date. Pre-nuptial Agreements are not currently legally binding, however the Courts will consider the Agreement along with all the other surrounding circumstances. This will include considerations such as;

- ✿ length of marriage
- ✿ financial contributions made by each party
- ✿ provision in contract for support of wife and child
- ✿ whether information, financial or otherwise, was shared openly and honestly
- ✿ the parties' intentions at the time.

Of course, circumstances change throughout life and the Agreement may be updated in much the same way as you would update your Will. Again, we are able to assist with the revision of any agreement.

Civil Partnerships

The legal recognition given to same sex couples entering into Civil Partnerships confers a number of rights and responsibilities that include;

- ✿ parental responsibility for each other's children
- ✿ identical tax rules to married couples
- ✿ the dissolution process is the same as for divorce (other than the omission of adultery)
- ✿ financial settlements on dissolution are the same as a divorce
- ✿ Pre-registration agreements are treated in the same way as pre-marriage agreements

At Fosters Law we are able to help you understand how these matters could affect your property, children and inheritance rights; with the respective tax, financial, benefit and legacy ramifications therein. In conjunction with this, we are confident at managing discussions on the difficult subjects including pre-partnership agreements and dissolution, the civil partnership equivalent of a divorce.

Dispute resolution and mediation

Those who have been involved in any sort of dispute know the value of the 'it's good to talk' adage. However with family disputes, emotions run particularly high and being able to talk openly to your partner is often more easily said than done. The close emotional ties that bind personal relationships ensure that resolving problems within families can prove to be complex and challenging, and it is a sad fact that many personal or family disputes can result in long lasting detrimental emotional and financial implications for all parties

This is where an independent and impartial third party can help the family, or those in dispute within it, settle the conflict before they cause further, more lasting problems. Both arbitration and mediation are more commonly seen as more agreeable methods with which to resolve such disagreements or disputes.

Mediation provides a supportive environment in which to discuss the best way forward. It is a confidential and voluntary process, which can take varying lengths of time, dependent upon the parties and how many issues there are. As a neutral third person, the mediator will work with those in dispute to facilitate co-operation, helping them to identify the issues and reach a settlement in a controlled yet relaxed manner; thereby ensuring that needs of all parties, and in particular the needs of any children, are met in a way that is fair and equitable.

One of the many benefits of mediation is that the parties retain control of the situation. By contrast, if the parties proceed to Court then there is no guaranteed outcome and the decision rests with another party.

The mediator has no power to impose a settlement and so the resolution of the dispute will be one that the parties will have agreed to. Although the intention is to avoid the need to use more formal, legal or expensive procedures, it should be noted that this methodology does not diminish the effectiveness or legal standing of the agreed solution.

Separation and Divorce

It is a sad fact in this country that about 1 in 3 marriages now end in divorce. If you are considering divorce, it is important to consult a specialist family solicitor as early as possible. This does not mean that any divorce is certain, it is just better to understand your legal position from the outset.

The solicitor's advice will cover such considerations as rights over family assets, including personal possessions and property, arrangements for the children and the financial implications for you and your family. Their involvement, and the administration of the divorce process itself, will be largely determined by your and your partner's ability to reach agreement on these matters.

Once you know your rights, you need to understand the divorce procedure.

When getting divorced, you need to prove to the Court the reason or reasons why you want the marriage to end. There is strictly only one ground for divorce, which is that the marriage has irretrievably broken down; this must be based on one of five facts:

- ✿ separation for two years with the other party consenting to the divorce;
- ✿ separation over five years where consent is not required;
- ✿ adultery by the other party;
- ✿ unreasonable behaviour;
- ✿ desertion.

These must be proved by the person seeking the divorce. It will speed things up if your spouse agrees with the reasons that you want to use.

With the facts established, you or your spouse will need to make a formal divorce application to court, this is called the 'divorce petition'. Once the other party (the one that didn't initially make the application) has informed the court that they agree to the divorce, you can apply for a 'decree nisi', which is a document that says the court sees no reason why you can't divorce. Having obtained this, you look to get a 'decree absolute', which is the document that legally ends your marriage. Once you have it, you are officially divorced.

If you initiated the divorce then you can apply for a decree absolute six weeks after the court issues the decree nisi. If your spouse started the divorce, you can apply for a decree absolute after an additional three months (if your spouse has not done so already).

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It is not possible to petition for divorce during the first year of marriage. This does not, however, prevent you applying for an annulment or judicial separation action.

The Court fee is currently £410 for the issue of the Petition and the Decree Absolute.

If you find difficulty in agreeing on these or other matters, mediation can save you time and money. A mediator is an independent person who will work with both of you to reach an agreement. They won't take sides and will keep your discussions confidential.

Separation Agreements

Not all married couples who separate wish to divorce. In certain circumstances a less formal separation may be the preferred option; here, a Separation Agreement is used to set out in clear terms how a couple intends to manage their circumstances on separation. This details how the parties will manage such matters as:

- ✿ The family home
- ✿ Pensions
- ✿ Accounts and investments
- ✿ Personal belongings
- ✿ Arrangements for the children
- ✿ The parties' preferences as to the grounds for divorce

Separation Agreements are generally used if you've been married or in a civil partnership and have stopped living together but don't want to legally end the relationship, or you've been living together without being married or in a civil partnership and have split up.

Although, like pre-nuptial agreements, they are not currently legally binding, they do offer clear evidence of the parties' intentions and, should subsequent Court proceedings commence, although the Court is not bound to follow the agreement, it will be considered as one of the circumstances of the case. It provides suitable evidence of what you intended upon the breakdown of the marriage. Most financial applications within marriage are settled by consent. If the separation agreement reflects a fair division of assets and the arrangements for the children are satisfactory, then the Court will be more likely to endorse the agreement.

If the parties still agree the Separation Agreement terms when divorce proceedings begin, an Order can be drawn up in those original terms, making those terms legally binding and enforceable.

Generally, with separation agreements as well as during divorce negotiations, full and frank disclosure of assets should be provided and each party should be given the opportunity of receiving independent legal advice.

Financial implications of relationship breakdown

In many situations there will be financial assets to consider upon the breakdown of a relationship: these may include property, joint bank accounts and pensions. It is important to consider the various options open to achieving settlement of such matters, including;

- ✿ negotiation
- ✿ mediation
- ✿ Court proceedings.

If financial matters are not concluded following divorce, your former spouse can bring claims against you after the divorce and may even claim against your estate following your death. Financial claims will remain open between you and your spouse until such time as agreement has been reached.

The Agreement should then be incorporated into a legal agreement known as a Consent Order and should be lodged at the Court at the same time as, or following the pronouncement of, the Decree Absolute, the final Decree in the divorce proceedings. We are able to assist you with such delicate and confidential financial matters in relation to your divorce.

Children Issues

Relationship breakdown often involves consideration of arrangements for the welfare of the children of the relationship. This may involve deciding where and with whom the children will live, what contact

they will have with the non-resident parent, where they will attend school and what financial support will be available. Although relationship breakdown is traumatic for all concerned, the children's welfare must remain the most important consideration.

With many years' experience in practising family law, at Fosters Law we understand that children may often be used as bargaining tools during the divorce or separation process. Consequently we provide strong guidance on all children issues, ensuring that your children's interests are protected with the aim of avoiding conflict wherever possible.

The wellbeing and welfare of your children is a central consideration and we have an experienced team who can advise on issues such as:

- ✿ Residence
- ✿ Financial support (child support) including Child Maintenance Service (formerly known as the Child Support Agency or CSA)
- ✿ Contact
- ✿ Injunctions

Injunctions

Sometimes relationships falter to the point where you may feel that you need protection from your ex-partner. If you are feeling threatened or unsafe we can help you take action to stop your partner or any other person from worrying you. In such cases it is sometime necessary to apply to the Court for a Non-Molestation Order to prevent your partner from having any form of contact with you. This is commonly known as an injunction, which is a Civil Court Order that can be used to keep you safe by placing certain restrictions on the person, thereby reducing any further threat.

Injunctions can be obtained from the Court at very short notice, sometimes even on the same day. To start the proceedings, your partner does not even need to be informed that you are seeking an injunction.

Injunctions show the abusive person that you, and the Court, take their behaviour very seriously and that their actions are considered a serious threat to your safety. If the terms and conditions of the injunction are broken, it can lead to arrest and even imprisonment.

At Fosters Law, we can obtain an injunction on your behalf, speedily and economically. Our family department are experienced in handling these often frightening and difficult situations and you can trust us to deal with your case with sensitivity and care.

Foster Mackay is an innovative legal practice; combining time-honoured professional values with a progressive approach. Operating locally from high street premises and nationally within a number of specialist sector niches, the firm acts with skill and authority for private individuals, businesses and larger organisations.

The firm operates across three core sectors:

Private Client

Community Care Law
Court of Protection matters
Dispute Resolution
Employment Law
Family Law
Legal Aid
Landlord & Tenant
Litigation & Counsel Assist
Powers of Attorney
Property
Retirement Management
Wills, Probate & Administration of Estates

Commercial

Business Start-Up Advice
Business Growth Planning & Advice
Corporate Recovery and Debt Matters
Dispute Resolution
Employment Law
Litigation & Counsel Assist
Property (including leases)
Selling a business

Specialist sectors

Affordable/Social Housing
Auction Conveyancing
Multiple Unit Developments
New Homes
Retirement Homes
Retirement Services
Park Homes

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