

Separating together: Your options for separation and divorce



About this handbook

This handbook provides information, options and support for those faced with relationship breakdown, separation and divorce. Going through a separation or divorce is always traumatic, and should never be decided upon lightly. If you think that your relationship could benefit from counselling, there are organisations (some of which are listed at the back of this guide) that may be able to help you and your partner to stay together.

If you have come to a decision to separate or divorce, keeping the process non-confrontational will ease the transition and lead to longer lasting solutions. This handbook sets out the techniques you can use to reduce conflict during this time.

For ease of reference, we will use the term “separation” throughout this guide, which is intended to cover both separation and divorce.

This guide is for people who want to separate while working cooperatively with their former partner.

If you think that your former partner poses a risk to you or your children, you should seek legal advice straight away about the other options available to you.

Legal aid is available for mediation for those eligible, to assist with resolving your issues on divorce or separation. You will usually need to attend a Mediation Information and Assessment Meeting (known as a MIAM) at the outset to see whether mediation is right for you.

About Resolution

Resolution is an organisation of over 6,500 family law professionals who believe that most problems facing separating couples are best solved without confrontation. Separation is always difficult, but Resolution members find that resolving problems in a constructive way leads to the most satisfactory, enduring outcomes for couples and, where applicable, their children.

For more information
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To find a Resolution member visit:
www.resolution.org.uk/findamember

Foreword by The Rt Hon Lord McNally

Lord McNally is Minister of State for Justice, with responsibility for family justice and mediation. He is also responsible for the business of the Ministry of Justice in the House of Lords.



Everyone knows somebody affected by family separation or divorce. Relationship breakdown is one of the most difficult things a family can go through and can be distressing for everyone concerned, particularly for any children involved. But there are ways to avoid conflict and reduce the stress and pain involved in separation.

While many people believe a courtroom confrontation is an inevitable part of a divorce, couples can in fact often sort out the details of their separation together, or with the help of a professional, without the need to go to court. Matters such as how each parent can be involved in the child's life after separation and how to divide money and assets, for example the family home, can often be resolved through dialogue. This can be quicker, easier, and more cost-effective than going through the courts, allowing people to resolve their disputes and move on with their lives.

I want to ensure that non-court alternatives such as mediation become the first resort for separating couples, with court being the last resort. The Government believes that family mediation is a more advantageous way of resolving disputes than going to court, which is why there is no financial cap on publicly-funded mediation. It's also why we are introducing new laws to require individuals wanting to start certain kinds of family proceedings to first consider mediation before they can take their dispute to court.

I warmly welcome Resolution's continued commitment to all methods of resolving disputes away from the court, including family mediation. It's why I'm pleased to write the foreword for Resolution's Separating Together guide to alternatives to court on relationship breakdown. Resolution is an organisation which has pioneered new ways for couples to resolve disputes with minimal involvement of the courts, such as the recent 'Family Matters' service.

Resolution's members sign up to a Code of Practice which commits them to working with their clients in a constructive and non-confrontational way, and to talking them through all the options available to them. And crucially, at the heart of the Resolution Code is a focus on putting the interests of any children first.

A Resolution member may be able to help a couple reach an agreement without going to court, even if they think this might be impossible at first.

So if you are separating, or have arrangements to resolve after separating, take time to consider the alternatives to court, separate together and find a way forward that minimises distress and meet the needs of everyone involved – especially any children.

Lord McNally,
Minister of State for Justice

Separating Together

This guide is intended to help make the process of separation or divorce less difficult. This in turn leads to amicable working relationships post-separation (crucial when children are involved) and enduring solutions.

Going through a separation can be an emotionally turbulent time, and inevitably affects both adults and children. Children often say that seeing their parents turn against each other is just as upsetting as the split itself.

However, very few separating couples need to involve the court in the detail of their relationship breakdown. If you decide to separate you have choices about how to negotiate with your partner, how to talk to your children, and how to settle common issues arising from the end of a relationship.

This guide is intended to help make the process of separation or divorce easier. This in turn leads to amicable working relationships post-separation, which are crucial when children are involved and enduring solutions.

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What do I do?

If you have decided to separate you will need to take action to reach the best outcome for you and any children you have.

Who to talk to

Once you have decided to separate you will need as much support as possible. Try to talk to your friends, family and colleagues to make sure that they know what you're going through.

You should also contact a Resolution member. However you decide to approach your separation, it is important that you understand your legal position. A Resolution member will be able to explain all the options for how you can separate.

Resolution members have also signed up to a code of conduct meaning that they will always seek to minimise conflict and to act in the best, long-term interests of you and your children.

To see if you qualify, use the Ministry of Justice calculator:

<http://legal-aid-checker.justice.gov.uk/family/>

or speak to a Resolution member.

Legal aid

You may be able to access public funding - known as legal aid - to get help resolving your family dispute. Legal aid changed significantly in April 2013 but is still available in some cases:

- You can still access legal aid **for mediation**. This will depend on your ability to pay (your 'means') and whether mediation is assessed as being right for you.
- If you are eligible for mediation, you are also entitled to some independent legal advice funded through legal aid.
- Legal aid is available for certain family cases relating to finances and/or children, where there is evidence of domestic violence or child abuse, or in cases where an order to protect someone from domestic violence is needed.

Domestic abuse is a pattern of controlling and aggressive behaviours from one partner (or ex-partner) towards another. The abuse can be physical, emotional, psychological, financial or sexual. The violence and abuse can be actual or threatened and can happen once, every so often or on a regular basis. Speak to a Resolution member who can help you identify the evidence you need to claim.

Putting children first

The end of your relationship will be a difficult time for you, but if you have children it may be even more difficult for them.

The way you talk to your children about your separation will help them to feel secure and loved by both parents. This is easiest if you can maintain a civilised, practical working relationship with your former partner.

Children have a right to love both of their parents.

In nearly all circumstances, your children will be happier now and in the future if they have a good relationship with both parents. This is easiest to achieve if you can maintain a respectful relationship with your former partner.

Blaming one parent for the split will be confusing and difficult for your children. They might worry about betraying one of their parents, or that they are no longer loved.

Remember – while your relationship with your partner might have ended, your joint role as parents has not.

Tips for talking to your children

- If possible, sit down and tell your children about your separation together. This will help to show your children that you are still their parents, no matter what has happened.
- Talk in general terms, like "mum and dad have decided that we would be happier living in different homes". This will help to avoid involving children in complicated, grown-up problems.
- Children will be worried about how their life will change – where they will live, how often they will see each of you and how life might be different. Try and develop answers to these questions as soon as possible and let them know that it's okay to ask questions.
- Children often feel responsible when their parents break up. Make sure you reassure them that nothing is their fault and that they can do nothing to change the situation.
- Different children will react in different ways. They might be angry, upset or seem to show no reaction at all. In families where there has been a lot of fighting, children might even be relieved. It's important to let children know that their feelings are normal and that they can always talk to you.

- Talking to children about your separation whilst engaged in an everyday activity, such as playing football or doing the food shopping, can make the situation less tense and help the children feel that they are not being interrogated about their feelings. This can help them to open up.
- Some children don't want to talk; perhaps because they think that discussing the break up will make it "too real". You can let your children know that you understand this is hard for them, and that you will listen whenever they are ready to talk.
- Take care of yourself. Make sure that you have support around you to help you through this period, without leaning on your children or burdening them with your anxieties.
- If your child is particularly traumatised by the situation, and finding it difficult to communicate, a Resolution member will be able to refer you to a professional in your area who can help.

What children need to hear from both of their parents

- The feelings we have for each other have changed, but we will never stop loving you and both being your parents.
- We know this will be hard for you and we are sorry.
- This is a grown-up problem between mum and dad. You can't change it and it's not your fault.
- We will always be your parents, and you can love us both.
- We will both continue to be part of your life.

Solving problems together

For both you and your children, fighting makes the process of separating protracted and more painful. You might be able to resolve the consequences of your separation by talking to your partner (turn to page 8 for tips about how to do this).



Your options for separation and divorce

Divorce doesn't always require going to court. Acrimonious negotiations can increase the amount of conflict in the situation, and are not good for you or your children.

It is important to speak to a family law professional who can talk you through all of your options to find the one that best suits you and your family.

Instead of going to court, you can choose to address the legal consequences of your separation using mediation or collaborative law. With the support of a professional, processes like this allow you and your former partner to talk through your problems together, and work out solutions which are right for you and your family.

Another option is family arbitration, in which you place decision-making in the hands of an arbitrator. All of these processes have the benefits of privacy, you control the pace and, to differing degrees, you both control the outcome. In nearly all situations, you can choose to negotiate a settlement through your family lawyer while maintaining an amicable relationship with your former partner.

Legal aid is available for mediation for those eligible, to assist with resolving your issues on divorce or separation. You will usually need to attend a Mediation Information and Assessment Meeting (known as a MIAM) at the outset to see whether mediation is right for you.

Mediation

Mediation helps couples work things out together. It is not a form of relationship counselling, or a way to help a couple get back together. Instead it helps couples who are separating decide how to end their relationship. During mediation you and your former partner, helped by a trained mediator, will talk through the issues (such as money, children or any other consequences of the separation) that you need to solve, and help you work out what is best for you and your children. The number of mediation sessions you will need will depend on you and your partner's requirements.

Most people going through mediation find it helpful to take advice and support from a family lawyer during the process. Family lawyers can also make sure that agreements reached in family mediation are fair and legally binding.

Many couples say that mediation helped them to divorce or separate without increasing levels of hostility, and that discussing their problems face to face helped them to reach fair solutions tailored to their own circumstances.

"It increased transparency in the solution, and put the children where they belong, as the highest priority in the situation".

Eileen – used mediation



“Arbitration has been an effective and fast process for us to resolve the issues that we couldn't agree on. We were able to set a tight timescale and to go through the process without further hearings”

Mark – used arbitration

Collaborative law

Collaborative law lets you talk through the issues you need to solve, with you and your former partner each having a specially trained lawyer by your side at each meeting. The number of meetings will depend on the extent of the issues.

During each session, you and your lawyer will meet your former partner, together with their lawyer, to work out the details of your separation. You will therefore have support and legal advice as you go.

You will be able to decide which topics to focus on and whether to involve other experts, perhaps people trained to help children through the process or pensions specialists.

Using collaborative law is a way of solving problems without having to go through court. To keep focussed on this, everyone signs an agreement that commits each party to trying to resolve the issues. Your collaborative lawyer will not be able to represent you in court should negotiations break down, which means that all are absolutely committed to finding the best solutions by agreement.

“It was very reassuring to have my lawyer at my side throughout the negotiations, at the same time as being able to talk to my ex face to face”.

Ben – used collaborative process

Family arbitration

Family arbitration is a way of reaching a decision about your finances or your property if your relationship has come to an end. It's an alternative to asking a judge to do it if you haven't been able to sort things out directly between yourselves or through another form of dispute resolution.

Like a judge, the arbitrator will make sure that all the relevant facts are gathered together. The arbitrator will also gather evidence from you and your partner and will take into account your views on what you think should happen. He or she will then give a ruling, known as an “award”. At the start of the process both you and your partner will have agreed to stick to the award.

Both you and your former partner must agree to use arbitration and agree that once the arbitrator has been appointed, you will not back out without your former partner's agreement.

There is a great deal of flexibility about the way in which the arbitration is run. Under the scheme our members use, the main fixed requirement is that the arbitrator has to apply the law of England and Wales.

If you are asking the arbitrator to deal with the finances in a divorce situation, the divorce process itself will be dealt with separately by a court and not by the arbitrator.



Negotiating between yourselves

Negotiating your own agreement can be the cheapest and easiest way to reach a settlement following separation. This option isn't suitable for everybody, but may work well if you have mutually agreed to separate, remain on good terms, and broadly agree on issues relating to your property and any children you have.

Even if you agree, it is important to take legal advice to make sure that you understand the implications of your agreement, and that it is legally binding. You can help this process to work well by choosing a Resolution member – a family lawyer who shares your aim of an amicable separation.

Solicitor negotiations

Even if mediation, arbitration or collaborative law are not for you, your solicitors can negotiate an agreement. Issues between separating couples are often successfully resolved with the support and expertise of a Resolution member.

Going to court

If an agreement cannot be reached a judge will be asked to make a decision (although this sometimes happens right away if there are urgent problems to be resolved).

Often couples want to avoid conflict, court costs, delay, and the risk of an unfavourable decision, so an agreement is reached before the Final Hearing. When this happens, a Consent Order is sent to the court for final approval by the judge.

If people cannot reach a final agreement, the judge will make a binding decision on what he or she thinks is fair.

Where else to go for help

The organisations below can offer further information and support.

You can find more free advice and information on the Resolution website: www.resolution.org.uk

If you are divorcing or separating, a Resolution member will be able to talk you through your options. Many will provide initial advice without charge.

Resolution – www.resolution.org.uk/findamember
or call 01689 820 272

There is a huge range of organisations that will be able to provide help and advice on specific issues around your separation. Here are just a few as a starting point:

- **CAB** - www.adviceguide.org.uk
- **Family Lives** – www.familylives.org.uk or call 0808 800 2222
- **Fatherhood Institute** - www.fatherhoodinstitute.org
- **Gingerbread** – www.gingerbread.org.uk or call 0808 802 0925
- **Home-Start** - www.home-start.org.uk or call 0800 068 6368
- **Money Advice Service** - www.moneyadviceservice.org.uk or call 0300 500 5000
- **Mumsnet** - www.mumsnet.com/divorce-and-separation
- **Only Dads** – www.onlydads.org
- **Only Mums** – www.onlymums.org
- **Parent Connection** - www.theparentconnection.org.uk
- **Relate** - www.relate.org.uk or call 0300 100 1234

What factors may influence the route you choose?

Each family is different but some of the common factors that influence people when deciding how to get a divorce or separation are:

- What would be best for your children
- Wanting to feel in control of the decision being made about your family's future
- Whether your financial affairs are complicated and unclear
- Being up against a powerful personality and not wanting to deal with things on your own
- Believing you will need support to secure an outcome that is fair
- Wanting to keep control of the costs
- Not wanting a lengthy battle
- Wanting an option that will bring certainty and closure
- Wanting the process to be as painless as possible
- Wanting to understand and influence what is happening

Think through the issues that are important to you and your family and talk them through with your lawyer.



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Published November 2013