

Separating together: Your options for separation and divorce



About this handbook

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

If separation or divorce is sadly inevitable, keeping the process non-confrontational is likely to 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 are able 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.

About Resolution

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

For more information contact:
01689 820272
info@resolution.org.uk

How to find a Resolution member

Go to
<http://www.resolution.org.uk/findamember/>

Foreword

by Lord Thomas of Gresford
Co-Chair of Liberal Democrat Justice Committee

We all know that going through a separation or divorce is one of the most difficult things that can happen to a family. Unfortunately, there will always be an element of pain involved. There is no such thing as an easy divorce, particularly when children are involved.

However, we also know that separation does not have to involve the court-room confrontation and angst that we see on television. Many couples can sort out the details of their separation together, by talking about how to divide their money, what should happen to the family home, and how they should care for their children.

You might not be able to do this on your own. A mediator or a good solicitor (perhaps one specialising in collaborative law) can help you through the process. Family lawyers who are members of Resolution have signed a code of practice committing them to working in a constructive and non-confrontational way, which takes into account the long term consequences for a family of everything they discuss and advise.

Separation is not easy. An amicable solution which avoids the courts is not possible for every couple. But with commitment from both sides, an agreement can be reached over the consequences of the breakdown of a relationship. Undoubtedly, it is the best way to bring it to an end.

Lord Thomas of Gresford
Co-Chair of Liberal Democrat Justice Committee

Separating Together

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

Nearly one in three children see their parents separate or divorce before they turn 16.

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.

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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.

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 will also need to contact a **lawyer**. However you decide to approach your separation, it is important that you understand your legal position. You should also make sure that your lawyer is able to explain all the options for how you can separate.

Lawyers who are members of **Resolution** will be able to talk you through all the options available. They 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.

Legal Aid

Legal Aid is a scheme that helps people pay for legal advice, and can cover the costs of mediators and legal advisers. To receive legal aid, you'll need to make sure you qualify. The Directgov website explains how legal aid works and who is eligible.

<http://www.direct.gov.uk/en/index.htm>

After April 2013, in most cases legal aid will not be available if you are separating. You will need to be able to provide evidence of domestic abuse in order to access family legal aid funding. Your lawyer will be able to talk to you about whether you are eligible for legal aid to apply for an order to protect you from domestic violence, or will signpost you to information about getting family legal aid or assessed for mediation.

What about money?

After deciding how your children will be cared for, agreeing on property and financial issues is one of the most difficult things that you will have to sort out. Deciding what should happen to the family home (and if one of you should live in it) and how to provide for yourself and your children should be a priority. You will also need to decide how to deal with any other assets that you have (such as a pension), or any debts.

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 of their 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 their mum and their dad. 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 mum and dad 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 mum and dad, 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 to have the answers to these questions as soon as possible and let them know that it’s OK to ask questions.
- Children often feel responsible when their parents break up. Make sure that 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 grocery 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 will both always be 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 mum and dad, and you can love us both.
- We will both continue to be part of your life.

Solving problems together

Fighting each other invariably makes the process of separating protracted and more painful, for you and your children. 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 rarely requires going to court. Acrimonious negotiations can increase the amount of conflict in the situation, and is not good for you or for your children.

Instead of going to court, you can choose to address the legal consequences of your separation using mediation or collaborative law. These processes let you and your former partner talk through your problems together, and work out solutions which are right for you and your family, with professional support. Another option is family arbitration, in which you place decision-making in the hands of an arbitrator. All these processes have the benefits of privacy, and you having more control over the pace and final outcome. In nearly all situations, you can choose to negotiate a settlement through your solicitors while maintaining an amicable relationship with your former partner.

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

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

Eileen – used mediation

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 and neutral mediator, will talk through the issues (in relation to money, the children and any other consequences of the separation) that you need to solve, and 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 also each use a lawyer to take advice during the process and to make sure that their agreements 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.

You might be eligible for public funding for mediation 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.



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 needed 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 an attempt to solve problems without going to court. To keep focussed on this, everyone signs an agreement that commits you to trying to resolve the issues without going to court and your collaborative lawyer will not be able to represent you in court should negotiations break down. This 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, will get 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 binding ruling, known as an "award".

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

There is a great deal of flexibility about the way in which the arbitration is run. The only 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 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 solicitor who shares your aim of an amicable separation.

Solicitor negotiations or going to court

If mediation, arbitration or collaborative law are not for you, your solicitors can negotiate an agreement. Outcomes often depend largely on what your lawyers expect would be the outcome of any eventual court process.

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).

If the court process reaches what is called the Final Hearing, the judge will make a binding decision on what he or she thinks is fair.

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.

Where to go for help

The organisations below can offer further information and support.

If you are divorcing or separating, Resolution members 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 other organisations that will be able to provide information on specific issues. 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
- **Money Advice Service** – www.moneyadvice.service.org.uk or call 0300 500 5000
- **One Plus One** – www.oneplusone.org.uk
- **Only Dads** – www.onlydads.org
- **Only Mums** – www.onlymums.org
- **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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