



COURT PROCESS

ANYONE GOING THROUGH DIVORCE OR SEPARATION CAN MAKE AN APPLICATION TO THE FAMILY COURT TO HAVE THEIR LEGAL DISPUTE RESOLVED

THE PROCESS

The Family Court seeks to resolve legal disputes between individuals in respect of divorce, financial claims and child arrangements on separation or divorce. The process varies depending on the nature of the issue.

Getting a divorce

In order to obtain a divorce or dissolution, one party must petition the court. The judge will consider the petition and dissolve the relationship by way of decree nisi, followed by decree absolute, or conditional order, followed by a final order (as appropriate). It is very rare for a petition to be contested, provided that it is drafted carefully.

Financial claims

In financial claims, the court is looking to make the financial order that it considers to be most fair, bearing in mind all the circumstances of the case. It has a wide range of powers. Before the court can distribute resources, it must calculate what they are, and so most financial claims involve detailed disclosure and valuation exercises, so that the court can allocate.

Child arrangements

In children cases, the court will look to make an order that best promotes the welfare of the child who is the subject of the application.

In all types of case, the court will encourage settlement wherever possible, but ultimately if parties cannot reach agreement then the court will decide for them. Some applications can be relatively simple to determine because they involve discrete issues, but others can be very complex, and can take months to be determined.

SUITABLE CIRCUMSTANCES

The certainty and finality of a court process is suitable for many circumstances but it is not necessarily the most proportionate use of time and money.

Family Court decisions are highly discretionary and different judges can take different views, making outcomes unpredictable.

The impact of contested court proceedings can be enduring. People often find court proceedings costly, stressful and difficult. There are nonetheless circumstances where court should be your first port of call. For example, if you suspect:

- ▶ risk of harm to a child in children proceedings
- ▶ the other party is dissipating assets in financial proceedings or adopting an unreasonable approach towards disclosure or negotiations
- ▶ risk that the other party might be able to initiate divorce and/or financial proceedings in another country which is less advantageous.

If it is necessary to seek court intervention it is often possible to limit the court's involvement to the issues where you require a judge's input. For example, you may require the court to grant orders to secure assets or to provide an indication about the likely outcome in financial proceedings but subsequently negotiate or mediate the remaining issues.

Starting court proceedings does not mean that the court then has to determine every issue between spouses. Court proceedings can in fact sometimes be a useful backdrop to, and provide a timetable for, other forms of dispute resolution.

BENEFITS



Finality – parties can often achieve finality. For the same reason, disputes resolved using other methods such as mediation and arbitration will usually need the seal of approval of the Family Court to become final and binding.



Certainty – separating couples have certainty to make decisions in reliance on the outcome.



Enforceability – for the same reason disputes resolved using other methods usually require an order to ensure that agreements can more easily be enforced.



Precedent value – sometimes one party can point to a judgment or court order to use as a precedent to bolster their position in subsequent proceedings.



A set timetable – can often help people to resolve their disputes using other methods, knowing that the court timetable is running in the background.

At Forsters we see court as one of a myriad of options for clients to resolve their divorce, financial and children issues. But we are also ready to deploy our highly experienced, market-leading solicitors and barristers to guide you through the court process, and any court hearings, should the need arise. We work as a team with our professional networks to ensure both a highly personal service and the very best results.

OUR INSIGHT

The Family Court has unparalleled expertise in navigating family issues and addressing international family law issues.

The intervention of a Family Court judge can provide important impetus to parties to negotiate an agreement, particularly where they have become locked in negotiations and unable to progress.

The neutrality and fairness of a Family Court judge can also help parties to accept the outcome and conclude the issues, enabling parties to move forward in life.

CASE STUDY

A separating couple are on relatively good terms and have agreed the shared care arrangements for the children. The husband has always been very secretive about his business interests and is keen to conclude a financial settlement as soon as possible.

As the wife's solicitors we would advise that, whatever process they elect, they will first need to provide financial disclosure. It will be essential that the wife has a proper understanding of the husband's business before she starts to negotiate a settlement. We suggest that it would be sensible to make an application to the court, and for the disclosure process to be dealt with in court proceedings. This has the advantage that the court will set a binding timetable and can make orders compelling the husband to disclose information.

If the disclosure process goes well and the husband is cooperative in providing information, they will then be in a position to select the negotiation process that is most likely to bring about settlement. After discussing the various options with their solicitors, they select a private FDR as being the most appropriate. The wife is worried that the husband will talk over her in mediation, and believes that he will be more receptive to hearing an indication from an experienced judge. She is reassured that if the private FDR is unsuccessful, they can return to court and a judge can determine the issue, before too much time and money is wasted.