

Divorce, Courts & Costs (& How We Can Help)

1 – The Divorce Process & Meeting a solicitor

This guide provides an insight into divorce and how the lawyers involved would manage your case if you chose to take the traditional route of appointing solicitors and barristers to reach a settlement.

It is written by two of the founders of Intelligent Divorce, Mahie Abey, a solicitor, and James Roberts, a barrister. It is their personal view of how they would help if you were to appoint them to assist in your divorce – and highlights how things would differ using Intelligent Divorce.

The Initial Meeting

The Initial Meeting is the first stage when working with any solicitor. The aim is to make the client aware of the issues and costs involved in a divorce and also to get them started on collecting the information I would need to help them.

I explain that the meeting will be broken down into 6 stages:

- ▲ an explanation of our Terms and Conditions
- ▲ the gathering of personal details
- ▲ an explanation about separation and divorce
- ▲ discussions about children
- ▲ discussions about money
- ▲ an explanation of the possible costs

Terms and Conditions

I first take them through our basic Terms and Conditions. I let them know:

- ▲ my charge out rate is £225 per hour plus VAT
- ▲ I bill on a monthly basis
- ▲ my firm's terms of payment are strictly 30 days from delivery of the invoice. If payment is late interest is charged at 8%
- ▲ the peculiar way in which a solicitor charges for their time. Each hour is broken down into units of 6 minutes each and the minimum I can charge for any task is 1 unit or 6 minutes of time. Therefore if we have a telephone conversation that lasts for 30 seconds, they still get charged for 1 unit of time (or £22.50 plus VAT at my charge out rates)

Personal Details

I then start gathering their personal details and those of their ex-partner and ask for:

- ▲ their name, date of birth, address, telephone number etc.
- ▲ when they started cohabiting
- ▲ when they married
- ▲ when they separated
- ▲ the birth dates and names of any children
- ▲ the circumstances that led to the breakdown of their marriage

I need to gather this information to understand the client's personal situation and because it may be important in terms of the divorce, the children and the money.

How can we help?

This gathering of information is mirrored in the Personal Information section on the Intelligent Divorce website. Using our site means that this important information is collected and stored. It will then be used as part of the bundle of information sent to the barrister to form the basis of their opinion.

Separation and Divorce

I then talk about the options available to the client, usually describing three:

Do nothing: when people separate they do not have to do anything formal to end the marriage. As an example I mention my own parents who separated in 1975, are financially independent, have new partners but are still married to each other. This is not an option that is to be recommended as there is no certainty, either financial or emotional.

Have a separation agreement: people who do not want to get divorced can enter into a separation agreement. This is a contract between the two of them which, as long as it is entered into with the benefit of legal advice, full disclosure and at arm's length, can generally form the basis of how the money will be divided. However I also have to point out that such an agreement can be overruled by the

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Court if the judge thinks something in it is unfair.

Divorce: if, and only if, the client is sure their marriage is at an end I tell them that, in my view, divorce is the best option. Divorce provides emotional and financial certainty and closure, both of which are very important to people who are separating. I also point out that the divorce is an administrative process that runs alongside the steps leading to a settlement on money and children. I then take my client through the rules on divorce which, in my view and those of many other family lawyers, are outdated and somewhat ridiculous.

The only legal reason for divorce is the irretrievable breakdown of a parties' marriage. That breakdown must be demonstrated in the divorce petition (the form which initiates the divorce process) in one of five different ways.

One of these is desertion but that is so rarely used that I ask clients to ignore it.

The other four can be divided into "no fault" and "fault" grounds.

"No fault" divorce means just that: no-one is blamed for the divorce. The "no fault" grounds are:

- ⤴ 2 years separation with consent
- ⤴ 5 years separation, irrespective of consent

Both these grounds mean you have to wait a period of time before the divorce petition can be presented.

The "fault" grounds are:

- ⤴ adultery
- ⤴ unreasonable behaviour

At this point I explain that unreasonable behaviour is used as the catch all ground of divorce - any marriage, however happy, has enough to justify an unreasonable behaviour application. There is an unwritten rule in English divorce proceedings where judges set a relatively low bar as to what qualifies as such behaviour, to allow people to get divorced without waiting 2

years, even if in reality no-one is at fault.

Co-operating on the divorce itself

An important part of my role at this stage is to explain that as a member of Resolution I am committed to helping the client end their marriage with as little acrimony as possible. Most family lawyers belong to Resolution, although not all practice what the Resolution code of practice suggests.

I urge my clients to put the divorce into a box in their head. A divorce should be just the administrative process of bringing their marriage to an end (although that process is unnecessarily complicated). The emotional upheaval has taken place before the decision to divorce is made. After that point, every effort should be taken to keep emotion out of the divorce process.

The chief aim is to have an undefended divorce, one in which neither party disputes the reasons for the divorce. This is achieved by the parties compromising on the contents of the relevant documents.

If there is to be a divorce based on unreasonable behaviour, I will explain that the other party can respond by accepting that the marriage has irretrievably broken down but that they do not accept the facts (or "particulars") of the behaviour, reserving the right to challenge them at a later date if required. This useful device allows unreasonable behaviour petitions to go through without either party needing to admit responsibility. Hopefully this reduces the potential for conflict on what can be very emotive issues

If an adultery petition is contemplated, I stress that the person with whom the adultery has been committed (the "co-respondent") should not be mentioned in the divorce documents. This is unnecessary and increases the complexity and the cost, as all the forms have to be sent to them too for their comments.

I also stress that an adultery petition should only go ahead if the other party accepts that adultery has taken place. If not, then adultery is next to impossible to prove and should be avoided as a basis for a divorce.

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If the basis for divorce is two years separation with consent I explain that separation, in its legal context, means that you can live in the same house but in different households where there is little or no sharing of lives. This will be enough to establish separation as long as there is an intention to separate.

The key is to reach agreement on how the divorce will proceed and to do everything possible to avoid arguing about the terms.

How can we help?

The main reason for using Intelligent Divorce is to help you resolve your finances on divorce by providing tools to help you disclose all your assets and liabilities as the basis for an informed opinion from a specialist family barrister. However (on the co-operative service) we also help you complete the necessary paperwork for your divorce as part of the fixed price.

The divorce process

I then set out the details of the divorce process.

I explain that the person starting a divorce is known as the Petitioner and the person receiving the divorce petition is known as the Respondent. Once the divorce petition and (if relevant) a form setting out what will happen to the children in the household (the "Statement of arrangements") are agreed, the Petitioner will send the two forms to the Court with a cheque for the Court fee of £340. The Court will require the original of the marriage certificate which will not be returned. The Court will then issue the divorce petition and deliver it ("serve") to the other party. He or she completes and returns an acknowledgement of service form indicating that they do not intend to defend the divorce and are content for it to proceed.

The Petitioner can then apply for Decree Nisi, which is the first of the two Decrees necessary to bring a marriage to an end. Six weeks and 1 day from the grant of Decree Nisi the petitioner can apply for Decree Absolute which, once granted, formally brings the marriage to an end. The whole process usually takes

between four to six months.

Where pensions are involved, it is usual to delay the Decree Absolute as, by formally ending the marriage, it will mean that the parties cannot benefit from widows or widower's entitlement to pension funds if the pension holder dies before the finances are resolved. Therefore it is usually the case that finances are resolved before making an application for the Decree Absolute.

Costs

I then talk about costs. These are the costs of the appointing solicitors and also the fees charged by the Court on the divorce alone (i.e. not the resolution of finances). The Court does not charge for the time of the judges or staff or using the Court building.

The person who starts the divorce (the Petitioner) will always incur more solicitor's costs than the Respondent as there is more work required.

At this point, I stress the importance of agreeing how those costs will be met. They are often shared, though not always. I urge clients not to argue about the cost of the divorce as they will inevitably spend more in doing so than they will ever recover.

Children

I then move on to talk about children. My advice is not to argue about the children using lawyers, as the only winner will be the lawyers. Having children is a responsibility that obviously continues after the parents have separated. Whatever the animosity between the couple, I stress how important it is not to let the divorce affect the relationship that each parent has with their children and that they recognise each other's importance to the children while they are minors. Unfortunately not everyone listens.

How can we help?

This site does not deal with disputes over children and to use this site there should be no substantial dispute over who the children will live with.

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Finances

I then talk about money. First of all I outline some of the principles.

I explain that I will talk a lot about the Court when talking about money. That is not because the couple need to go to Court to sort out their finances, but because the best a divorce lawyer can do is to try to second guess what a Court might do in the circumstances. This is because the agreement reached should be in the range of possible answers the Court might impose on the couple at the Final Hearing (see below).

How can we help?

We will provide you with an opinion from an experienced, specialist family barrister, who will know what the Court is likely to conclude given your circumstances, without the costs of employing a solicitor. This level of legal opinion and experienced know-how sets us apart from other online divorce services. You can then use this opinion to help you resolve your finances.

The discretionary Court system

I explain that there is a discretionary system in this country. This means that Judges have a great deal of flexibility in deciding the outcome, which will depend on the circumstances. There is no single right answer but a range of possible outcomes, with numerous factors taken into account and which may carry different weight.

As a result, if the couple went to six different Judges they would get six different answers. Hopefully the good Judges will give an answer in the middle of the range, the less good at the edges of the range and the downright poor ones (of which there are some) outside the range entirely. Only experience can tell where the range lies.

I explain that everything they have, their ex-partner has or they have jointly is put into one pot. It does not matter who owns it. How that pot is divided will depend on a number of factors including where the assets come from.

I show them Section 25 of the Matrimonial Causes Act 1973 and ask them to read it (you can read the section online at legislation.gov.uk). I explain that divorce lawyers are lucky because there is only one section of that statute that deals with how money on divorce is divided, though what the words mean can only be understood properly by looking at the cases that have been decided since the law came into force. (This is because particular cases have interpreted the meaning of this section of law, and Judges take account of these interpretations too – “case law”.)

I then explain that the Court looks at all the circumstances. However not all the factors set out in Section 25 are equally important or as a judge would say, “carry equal weight”.

The first consideration is the needs of any children of the family who are minors. The children's needs could include, among other things, somewhere to live, access to settled suitable schooling and income to feed and clothe them.

The Court then looks at the needs of the parties. Most cases do not get beyond this stage as there will not be enough money to justify thinking about any other considerations.

However I then explain that if there is something left after needs have been satisfied, the Court will look at all the other factors.

In long marriage cases (no definition is provided although 15 years is a long marriage but 10 years not so and in between a grey area) the Court's starting point is equality of division of capital although that too will be trumped by the needs of the couple.

The need for disclosure

I explain that before any negotiation or properly considered advice about finances can be given, both parties must provide “full and frank financial disclosure”: that is that each party must let the other party know about all their assets and income.

This is usually done by completing and exchanging a long form known as Form E. Form E must be used if

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Court proceedings are issued, it is also often used by solicitors for disclosure on a voluntary basis (ie even if the Court won't be involved). I show them the form (you can have look yourself by downloading the Form from the [Court Service website](#)). It is a detailed document almost 30 A4 pages long which aims to provide, if completed correctly and with all the necessary attached documents, a snap shot of the financial position at a particular point in time. I go through the form and the accompanying documents needed with the client.

I repeatedly emphasise that disclosure is so fundamental to the process that if they do not fully disclose their assets, they can be penalised in costs and in the award made.

Settling by agreement

I then explain that the vast majority of finance cases settle by agreement and that should be the aim of the client. It is in the process of providing disclosure and reaching agreement that solicitors make their money from divorcing couples.

How can we help?

Intelligent Divorce allows you to complete the disclosure exercise yourself, and then provides an expert's opinion to guide you as you negotiate a settlement yourselves.

I explain that once an agreement has been reached, the solicitors will use it as the basis for the legal version of the agreement known as a Consent Order. This will be sent (or "lodged") with the Court for approval by a Judge. It is only when a Consent Order is approved that they have an enforceable document

I let my client know that not all cases can be resolved by agreement, but the majority are, and that broadly speaking there are five ways to achieve this:

Talk to each other: This is by far the cheapest and often best way. The problem is that it is not always possible and where it is, the solution is not always clear.

Use mediation: A great idea for some. Mediation is a voluntary process that involves both parties visiting a trained mediator whose job is not to give advice, but to assist in the parties reaching their own conclusion. Whilst mediators can give information, they are strictly forbidden from giving advice, or indeed their opinion, to the clients. This can be a disadvantage although generally speaking mediation is a very good option, as it is relatively cheap and allows people to come to their own agreement. It is suitable for most people who are prepared to give it a try.

How can we help?

Intelligent Divorce offers an alternative to mediation as we help you reach an agreement that is backed by legal opinion. Mediators cannot provide any advice so if you choose that route you still have to work out for yourself whether the agreement is one that you would have achieved in court.

Use solicitor-led negotiation: This is the most widely used method. Solicitors will assist with disclosure and negotiate on a client's behalf.

Use Collaborative Law: This is an alternative to conventional solicitor negotiation. All the negotiations take place around a table with the parties and their solicitors present. This is no cheaper than a solicitor-led negotiation, but for some the outcome is a better relationship with their ex partner.

Go to Court: There is no need to be afraid of going to Court as the process is geared towards settlement. However it can be very expensive.

I then set out the steps involved in going to Court. First is to complete a Form E and exchange it, that is sent to the other party, who will send their Form E to me at the same time. There is then a Court hearing called a First Directions Appointment at which the Judge will give instructions (known as "directions") about any additional questions needed to establish the financial position of the parties, and about arrangements for getting any valuations and other reports.

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How can we help?

We can help you satisfy yourself that you know the detail of your family's finances without using a Form E and without the need to use a solicitor. We have removed the confusing legal language and made it as easy as possible to list clearly all your assets and income so you know what you have jointly and in your sole names.

By using Intelligent Divorce, it will be easier to gather this financial information than if you were simply given a Form E by your solicitor to complete by hand. Our process is not only more cost-effective than the traditional routes but also less frustrating.

The Court will then set a date for (or "list") a Financial Dispute Resolution hearing which will normally take place some months later (normally 3-6 months). At this hearing, the Judge will give a non-binding, without prejudice view on the likely outcome, to help the parties agree a settlement. The vast majority of cases do settle at this point.

If an agreement is not reached

If an agreement is not reached outside of the Court process, or at the initial stages of the Court process, then the latter parts of the Court process come into play.

If the parties do not settle at the FDR, (and as I've said above the vast majority of cases do), then the Court will list a Final Hearing (normally in 4-12 months time), after which the Judge hearing the trial will impose an outcome on the parties.

Again I stress that if the parties are unable to agree, then ultimately it is the Court that will decide.

Likely outcome

After this run through of the process and the options available, I will then ask my client to give me a summary of their current financial position, so I can advise them.

I will always try to give the client an idea of likely outcome based on the information they have provided to

me. My advice will only ever be as good as the information they provide. Not all solicitors will advise at the first meeting, preferring to wait until the information is in to give their views. I personally don't think that is the right approach as clients need an idea of the likely outcome as early as possible.

How can we help?

We can provide you the same sort of view as would be provided by the Judge at this FDR Court hearing but without spending thousands out of your total pot of money on appointing solicitors and barristers for you and your partner and in a much, much quicker timescale that you – not the lawyers – can control

Costs

The last thing I talk about at this initial meeting is the likely cost. You will recall this was also the first thing mentioned in the meeting.

Divorce: The costs for handling the divorce itself are relatively predictable. If it is undefended, the cost of acting for the Applicant will be roughly £750 plus VAT and Court fees of £385. The costs will be less if I am acting for the Respondent, around £200 plus VAT.

Finances: I always tell my clients that it is the cost of settling the finances that will really hurt them. These will vary according to the assets involved. I will often allocate the work to a member of my team with a cheaper charge out rate than me.

The cheapest solicitor-led negotiation, including full disclosure, is likely to cost £2,000 to £2,500 plus VAT (plus the cost of the divorce set out above). More usually the cost will be between £5,000 and £10,000 but can be more if the case becomes more complex. Note these costs are for one half of the couple only – the other person will have similar costs to pay.

If negotiations fail and Court proceedings are necessary, I usually estimate a further £5,000 to £10,000 to the First Directions Appointment, a further £5,000 to £10,000 to the Financial Dispute Resolution and a further £10,000 to £20,000 to the final hearing. That's

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£20,000 to £40,000, and again for just one half of the couple. The other will have fees of a similar level. All of these fees are plus VAT.

There will also be disbursements which include Court fees and, more particularly, the cost of a barrister, who would present the case in Court. These costs can be significant. They will depend upon the barrister's seniority, but range from £500 to £2,000 for a preliminary meeting and from £500 to £4,000 for a day's hearing at Court. If one of the couple has a barrister it is likely the other person will do, so these costs will be doubled.

These are the costs for an average cases. The more assets there are, or the more contentious the case, the higher the costs will be.

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After the Initial Meeting: the next steps

After the initial meeting I send out a Terms and Conditions letter and ask for a deposit, known as “payment on account of costs”. I usually ask for between £500 to £1,000 depending on the nature of the case. I start work only when that document has been returned to me and the money paid.

My first task is then to write to the other party's solicitor (or the person themselves if they have no solicitor yet). The letter will be friendly and pragmatic. I set out the preferred route for the divorce itself depending on the instructions I have received from my client (see my explanation in the Initial Meeting note). Mostly, agreement will be reached by the two parties on the route to be used and on how the costs will be divided.

I also suggest that we use Form E, the standard form used in Court proceedings, as a way to list and then settle the finances. This is not because I think Form E is a particularly well designed form - in fact the opposite - but because there is no better alternative. In the majority of cases, the other side agrees this is the most sensible way forward. I then send my client a blank Form E, a list of documents required to support the valuations of assets and liabilities listed, and a blank expenditure/income needs schedule to complete.

Listing the assets - completing Form E

Form E is a difficult, intimidating form to complete as it is almost 30 pages long. I tell my clients not to worry about adding anything up as most solicitors use software to do that. Instead they should concentrate on making sure they provide accurate information on all their assets and income. I try to make the process as easy as possible, guiding my client through what information and documents are required.

Yet, however financially sophisticated and literate my clients are, the form is invariably completed sketchily and the bundle of documents is incomplete or, even worse, jumbled up.

All of which means I will need to re-write and check the form, and check the documents provided. Of

course, this work will cost my client but without a properly completed Form E and an easily understandable schedule of documents no progress can be made with the other party.

That is because it is very important that your Form E can be followed easily by anyone acting for the other party and by your ex-partner. If not then further costs will be incurred as questions flow back and forth from one solicitor to the other. This will also delay the process. For the same reason, it is important that all the documents are clearly indexed and in the right order.

Completing Form E is not just an exercise in disclosure, it is also an opportunity to spin a case in a particular way. That does not mean a solicitor will seek to mislead, merely that they will try to put the best possible gloss on their client's position. Making sure that the Form E is presented in a way that strengthens my client's position can often lead to significant questions being asked by the other party, which can add to the costs.

Once both sides have completed their Form E, they are sent to the other party – “exchanged”.

What happens after the Form Es have been exchanged?

The next step is to send my client the other party's Form E with instructions to highlight anything they disagree with and indicate any omissions.

How can we help?

All the issues listed are faults of the system and the solicitors or clients who prepared the Form E.

In the hands of solicitors, the disclosure process is often an elaborate “dance of the seven veils” where each side deliberately under or overstate valuations in the knowledge that the position will change as more is revealed. In my opinion, this is a complete waste of time and money.

What should happen is full and proper disclosure by both parties. Where values are needed accurate, sensible figures should be supplied (with help available on how to get each value).

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Where there is doubt about the value of a particular asset, an independent valuer should supply a valuation (again with help on who to approach if necessary).

We believe there is no reason that sensible people cannot do all of this themselves with the help of Intelligent Divorce.

I do likewise, noting areas that require further questioning. Only rarely, will there be no need for clarification.

Common problems are

- ⤴ differences in property valuations
- ⤴ missing bank statements
- ⤴ transactions that need explanation
- ⤴ incomplete lists of other investments that are also inadequately explained or valued
- ⤴ missing, or unrealistically low, business valuations
- ⤴ incomplete pension details
- ⤴ exaggerated income needs schedules

Next I prepare a list of questions for the other party to answer about their own Form E. Where valuations are disputed, I suggest splitting the difference or obtaining a specialist independent valuation, especially if a business is involved. Businesses can be complex and often under valued by the party running them though a valuation can be very expensive.

I will receive a similar list of questions from the other party about my client's Form E, which I answer with the help of my client. Most of these can be dealt with easily but sometimes more detail is required.

An answer that reveals an asset or bank account which has been overlooked or deliberately left out is rare. The vast majority of people will complete their disclosure honestly. My feeling is that it is the clunky, not very user friendly Form E that is part of the problem.

The disclosure process is only completed when any independent evidence and valuations are received. This can take some time.

How can we help?

Have you noticed that, except for the relatively simple procedural and legal aspects relating to the divorce itself, nothing in what I have done to complete disclosure (ie agreeing what assets, liabilities and incomes the parties have) involves legal knowledge? It is all about fact and document management.

What we have created at Intelligent Divorce is a framework which will allow you to complete the disclosure process yourselves – without solicitors. You can ask each other to answer additional questions on a certain item if you want more information, post messages about it, get help on showing the other documentary evidence to support the valuation, and find out how to instruct independent valuers where you cannot agree a value.

Remember disclosure is there to satisfy you and your ex-partner that you each know all that needs to be known about your respective finances. The standard Form E is designed for and by lawyers which makes it difficult for someone to complete without their assistance. Our website leads you through the questions covered by the Form E and allows you to ask additional questions of your ex-partner only when they are needed – you don't have to complete endless questions in situations where you are both happy to agree the value.

How do I resolve the case?

Once disclosure has been completed, I look at applying the legal principles. I have been a practising divorce lawyer since 1994 and have gained a great deal of experience in this field over the years. That experience is very useful in assessing what I think is a suitable outcome in a case and the best method of getting there.

However, the main focus and intention is not based on what I think, but on what the client wants and what they can realistically achieve so resolving the finances is driven to a very large extent by the parties and common sense.

Usually solicitors resolve things in two ways:

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- ⤴ letters and telephone conversations with the solicitor acting for the other party
- ⤴ a round table meeting with the other party and their solicitors

Where I am unsure on what approach to take I may arrange to have a meeting, or “conference” with a barrister, along with my client, to decide on the best strategy and approach. These meetings can be very useful in giving me guidance on outcome and strategy. The best way to describe the difference between a solicitor and a barrister is to think of a solicitor as a GP and a barrister as a specialist consultant.

Where an agreement is reached, it needs to be written down in the form of a Consent Order (which will then make the agreement legally binding). (If agreement can't be reached, then one party or the other will issue proceedings to obtain the Court's assistance in solving their dispute.)

How can we help?

If you choose our co-operative service, once you have received the barrister's opinion you can use our agreement tools to structure the final agreement ready for us to create your consent order.

Why you can do most of this work yourselves

The skills I provide to my divorcing clients are my

- ⤴ knowledge of the law.
- ⤴ ability to assess objectively and dispassionately how the law should be applied to a particular case.
- ⤴ experience.
- ⤴ negotiation skills.

In some cases, mainly involving wealthy clients who have complex assets or couples who can't communicate with each other, all of these factors are brought into play and I, and the solicitor acting for the other party, play an essential part in achieving a settlement.

However, in many of my cases the clients are not wealthy, are on reasonable terms and both want a reasonable result. For those couples, I wonder whether I really add value. **Instead, might it not be possible if, with the benefit of the right tools and**

objective expert advice on their situation, for them they could reach agreement without any solicitors at all?

I think for many that is a real possibility.

The key is to receive objective advice. Our system allows for that from an expert family barrister at one of England's best family law chambers. Armed with that advice, then I can see no reason why sensible people cannot reach their own agreement.

Turning the agreement into a Consent Order

Once agreement has been reached, a Consent Order needs to be drafted. This is difficult for a non-lawyer to do competently, as there are specific legal requirements that need to be included to make them valid. Once I have prepared a draft of the Order, I will show it to my client for approval. Once approved, I will send it to the other party's solicitor for their client's comments. Sometimes amendments will be suggested, sometimes not.

Once the Order has been agreed, the final copy is circulated for signature. It is then lodged with the Court for approval together with a short statement of means form (a D81) and a fee of £45.

The Judge's Role in approving the Consent Order

The Consent Order is then considered by a Judge. Approval is not just a rubber stamping exercise. The Judge has to be satisfied that the agreement reached is fair and the Order is properly drafted. The vast majority of Orders I prepare are approved. Only rarely will the Court have a query or require clarification so the Order usually passes judicial scrutiny. If it does not, then I will write to the Judge answering his queries and explaining any anomalies. It is essential that an Order is fair to both parties, otherwise it may be rejected by the Judge.

How can we help?

Once you have agreed what you want to do, with the help of the opinion from our specialist barristers, we turn that agreement into a professionally drafted consent order for approval by the Court. The consent order is included as part of the price.

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After the Consent Order has been approved

Once a Consent Order has been made then it needs to be implemented. This may take time if, for example, a house needs to be sold or a pension needs to be shared, but with the backing of a properly drafted Consent Order it should be the easiest part of the process.

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3 – Barristers, Opinions & Going to Court

What is the difference between a barrister and a solicitor?

People are often confused about the difference between a barrister and a solicitor.

Perhaps the best way to understand the current set up is to compare it with the medical profession. Think of your GP and a Consultant. For day-to-day health issues you first go to see your GP. If there is something a bit more complex or out of the ordinary then you could be referred by the GP to a Consultant who specialises in a particular area.

The same is true of lawyers. Solicitors tend to deal with the initial aspects of a case and, if required and if it can be afforded, it moves on to a barrister like me, who will advise on how the case should progress and the potential outcome. I may also represent you in court if any hearings are required. In simplistic terms, solicitors prepare cases, deal with the client on a day to day basis and gather the evidence; barristers advise in relation to specific legal difficulties and present the case to the Judge in court.

Like a GP referring you to a consultant, it is hard to see a barrister without first instructing a solicitor (the law has recently changed to make 'direct access' to barristers possible, but most barristers are not currently accepting this type of work, and can only be instructed by a solicitor, not a member of the public.)

As a barrister specialising in family law I spend the majority of my working day actually presenting cases in court. The rest of my time is spent advising clients face to face, reading the papers in cases and digesting them so that they can be presented in a manageable way to the court.

I also have to keep up with the case law. The law setting out how finances are divided after a divorce only provides a general framework and much what I need to know is in fact set out in the many cases previously decided by judges. It is this knowledge of case law, coupled with the daily experience how the law is actually applied in court, that makes up a barrister's greatest asset. And because two people may reasonably disagree in relation to the outcome on any given set of facts, it is important that advice is taken from a barrister who has experience at this very practical

level.

How can we help?

The barristers we use at Intelligent Divorce all have at least 5 years experience in dealing with family cases. By using our service you will have access to the level of legal knowledge and experience that is usually only available to the wealthiest couples.

Advising on outcome before a case goes to court

Sometimes a solicitor instructs me to give a view on a specific aspect of the case before there has been any disclosure. At that early stage, I cannot give a view on the likely outcome of the case but I may give an opinion on a hypothetical case. Where the parties are able to agree what assets they have, it is easier for me to advise at an earlier stage. This saves time and money. In reality very few cases will revolve around such fundamental differences that it is impossible to make a prediction of the outcome. Where that does happen, it is usually because one side accuses the other of hiding assets or there are substantial disputes about the value of the assets.

Where clients can achieve full disclosure of assets and income, and have satisfied the other side's follow-up queries, it is possible for me to give an early opinion on the possible outcome which will help them reach agreement about their finances at an early stage. This represents a considerable saving in stress, time and money.

How can we help?

Most people cannot afford to get hold of this important opinion as it is very difficult to instruct a barrister unless you have also instructed a solicitor. Of course having two people work on your case adds to your costs and the time it will take. Using Intelligent Divorce you can go direct to an experienced barrister at an early stage without the costs of also appointing a solicitor.

What would happen if you go to court

The First Directions Appointment (FDA)

In many cases I am not instructed until a court hearing is required (because it is too expensive to have asked for my opinion earlier). Usually that court hearing is one known as a First Directions Appointment (FDA),

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and generally occurs 3 months after an application has been issued. Before this FDA hearing both sides will need to have completed and exchanged their Form Es. A chronology, setting out the dates of important events, and a document called a Schedule of Issues, setting out the likely areas of dispute, are also prepared. Each side files their own versions of these documents with the court.

For a FDA I will receive written 'instructions' from the solicitor. These instructions set out the history of the case, details of the assets, the issues in the case generally and the issues that are likely to come up at the hearing. I will also receive all of the relevant documents, which I will read and use to create a Schedule of Assets. This is a time consuming exercise.

How we can help?

The Intelligent Divorce website creates this Schedule of Assets for the barrister automatically from the data you have entered. This is just one way in which the Intelligent Divorce process has streamlined the process, allowing us to reduce the costs of instructing a barrister. Those time savings are then passed on to you as you get the benefit of advice from experienced family law barrister at a fraction of the cost of traditional routes.

At the FDA, the court decides:

- ⤴ which questions should be answered and by when
- ⤴ what further documentation is needed, if any, setting a timetable for obtaining and exchanging the new documents
- ⤴ whether any independent valuation is required for assets such as the house or a business.

The court usually orders that any valuations are carried out by a jointly instructed valuer, setting a timetable to do so, and also orders that the parties should work together to prepare any information or questions the valuer needs to complete the task. Finally the court sets a date for the next hearing which is called a Financial Dispute Resolution hearing (FDR). Dealing with the replies can take 6 weeks and the date of the FDR hearing is usually set about 5 or 6 months from the date of the FDA. Add on the 3 months it took to reach the FDA hearing and you can

see that process is very drawn out – it's taken 8 to 9 months to get to this stage. You will also see that all of the information gathering – questions and replies – could have been carried out by the parties together at a much earlier stage.

How we can help?

The aim of the Intelligent Divorce website is to gather all the information the barrister requires right from the start. Not only will this save you money but could dramatically shorten how long it takes to sort out the money with your ex-partner.

Providing a written opinion

Once the replies have been provided by both sides I am in a position to advise the clients as to the likely outcome of the case should the matter proceed to a final hearing. At this point it is usual to arrange a meeting so I can be instructed to provide a written opinion as to the likely outcome of the case. It may be that the replies throw up more questions that need answering but generally at this stage I will be able to give a good idea as to outcome.

How we can help?

This written opinion is exactly what you get from the barrister in our process – at a fraction of the time and costs involved in traditional routes.

The Financial Dispute Resolution Hearing (FDR)

The purpose of the FDR hearing is for a Judge to give their view of the likely result of the case if it proceeded to a final hearing.

Once the clients have got a written opinion, it is usual for one party's solicitor to make an offer in writing to the other side. Such offers are known as 'without prejudice' offers and can only be referred to openly at the FDR hearing.

Before the hearing I and the barrister representing the other party will have prepared a Schedule of Assets and also documents setting out our client's case and why the offer each side has made is the right one.

Both parties are required to attend court at least an hour before the hearing for the purposes of negotiation. Usually the offers will have been made with an

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eye to being able to move a little in the other side's direction during negotiations so we tend to spend the time before the hearing discussing and making counter offers before we see the Judge.

How can we help?

We think that if you approach your divorce intelligently then there is no need to spend months or even years in court proceedings, causing you stress and racking up significant legal costs. Those costs can often swallow up the value of the assets you own in the first place. With an opinion as to outcome and the agreement section of the website you should be able to come to an agreement between yourselves

During the FDR hearing we set out our cases and the Judge will give an indication as to the likely result in a case if it were to be heard by him. The hearings are only really as good as the Judge hearing the case and you should bear in mind that the Judge may have a number of cases to deal with on the same day. How much attention each case receives is heavily dependant upon what the court has listed that day. Once the Judge has given an indication as to the likely result in the case the parties are encouraged to continue negotiation at court. Frequently we are at court all day.

If agreement can be reached then it is written down – at this stage in general terms. We return to see the Judge and the court will be informed of the terms of the agreement which the Judge approves. At this stage there is a binding agreement between the parties but it has to be put in the form of a Consent Order. Invariably, there will be a number of issues that have not been discussed by this stage, so further negotiation will take place while the order is agreed.

The agreed draft Consent Order is then sent in to the court who then approve it and return a copy to both parties carrying the court's seal to show it is the final order in the case.

If there is no agreement, the court will make directions for evidence to be filed for the final hearing.

The Final Hearing

Each party is usually required to file a sworn statement or affidavit setting out their case for the court.

The disclosure of assets and related valuations will also need to be updated and sometimes the court allows further questions to be put to the other side by way of a further questionnaire.

Most hearings will last for at least two days and it will be listed (or timetabled) for 5 or 6 months after the FDR (the longer the hearing, then the longer it will take to get a date for it).

Before the final hearing each side is required to set out in writing their open position detailing what they say is the appropriate division of assets and issues of maintenance. I will normally draft the open offer from my side after a further meeting with my client and the solicitor once the disclosure has been updated and the affidavits prepared.

In the days leading up to the hearing I will draft a written presentation of my client's case and update the Asset Schedule since the last hearing. Files of papers are prepared for the court and for each side for use at the hearing. The clients have to pay the costs of the preparation of all of the necessary documentation.

At the final hearing itself I will outline the case to the Judge, if I am representing the Applicant, and go through the relevant passages in the disclosure so that the Judge has a good idea what the case is about and the issues that have to be decided. After that, each party goes into the witness box and gives their evidence. They are then cross examined by the myself and the barrister on the other side, and any other witnesses will also give their evidence. Where there are disputes as to valuation the relevant valuers are also called to give evidence.

After all the evidence the barristers make their closing speeches in which they sum up their cases and explain why the offer that they have put forward should be the one the court orders in the end.

Sometimes the Judge will give his or her decision ('give Judgment') immediately after the hearing ends. Sometimes the Judge will decide to adjourn (meet again later) and give the decision (with the reasons for it) at a later stage. Either way it is likely that the parties will still have to produce the terms of the order for the court and then submit it to the court for

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approval.

You can see that the whole process from issue of proceedings to the conclusion of the final hearing can take about a year.

How can we help?

Delay and a sense of powerlessness are often found to be the major contributors to the stresses of divorce. Using Intelligent Divorce you set the timetable for agreeing the money after your divorce and are in control, making the process quicker and less stressful.

**CALL US NOW ON 0845 745 6850
or start using
Intelligent Divorce for free at
www.intelligentdivorce.co.uk**