



# Information on Civil partnership dissolution

Civil partnerships are available to both same sex and heterosexual couples.

Sadly, some civil partnerships will break down and it may be necessary to apply to court to dissolve the civil partnership.

The information that follows applies solely to Civil Partnerships as distinct from same sex marriages

## **Dissolution**

Firstly, you cannot apply for a dissolution order unless you have been in a civil partnership for over one year. One party to the civil partnership must also either be domiciled or resident in England and Wales.

The only ground for dissolving a civil partnership is that the partnership has irretrievably broken down. The person applying for the dissolution (the Petitioner) has to prove that the civil partnership has irretrievably broken down by establishing the existence of one of the following four facts:-

1. that the other party to the proceedings (the Respondent) has behaved unreasonably and the applicant cannot reasonably be expected to live with the Respondent;
2. the parties have lived apart for a continuous period of two years before the application to dissolve the civil partnership and the Respondent consents to the dissolution order being made;
3. the parties have lived apart for at least five years before making the application to dissolve the civil partnership;

4. the Respondent has deserted the Petitioner for at least two years before the application to dissolve the civil partnership is made.

It is not possible to dissolve a civil partnership on the basis of adultery.

## **The court process for dissolution**

Firstly, the Petitioner needs to complete and file a Dissolution Petition with the Court along with an original or certified copy of your civil partnership certificate and a court fee.

Once the Court has issued the Dissolution Petition, it will the Petitioner confirmation of the date it was issued and when they sent the dissolution documentation to the Respondent. The documentation includes a blank Acknowledgement of Service form. The Respondent must complete and return the Acknowledgement of Service form within a specified time limit (usually 14 days).

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Once the Acknowledgement of Service form has been returned by the Respondent, the Petitioner can then complete documents called a Statement in Support of the Dissolution and an application for a Conditional Order which is then sent to Court. The Court will consider all of the dissolution documentation that has been filed to date and decide whether or not the Petitioner should be entitled to a dissolution. If the Petitioner is successful with their application then the Court will send the Petitioner and Respondent a certificate, which includes a date for when the Conditional Order will be granted. The Conditional Order is the first of two orders and your civil partnership would not be legally dissolved at this point.

Once the Conditional Order has been granted, the Petitioner has to wait for a period of six weeks before they can apply for the Final Order. The Final Order means that your civil partnership is legally dissolved.

#### Financial relief

There are frequently a number of financial issues to be resolved following the breakdown of a civil partnership. These often include dividing capital assets and pensions and the provision of maintenance for either party of the civil partnership or any children of the family.

Chafes Hague Lambert have an experienced Family Law Team that can guide you through the resolution of your financial matters in an empathic, proactive and cost conscious way.

#### Voluntary agreement

It is important that you make every effort to resolve financial issues amicably without resorting to court proceedings. You and your civil partner will be under a duty to provide full and frank disclosure of your respective financial positions. This often means providing the following:

1. a valuation of the property shared with your civil partner and any other properties;
2. redemption figures on any mortgage;
3. surrender values on any endowment policy or insurance policy;
4. full details of all savings and bank accounts including the last 12 months' bank statements and passbooks;
5. documentary evidence of other assets including shares, bonds and other assets of value;
6. the most recent P60 and last three months' wage slips;
7. two years' accounts if self employed and tax return forms;
8. details of any benefits;
9. details of any debts;
10. lists of expenditure/outgoings;
11. cash equivalent transfer values and other information in relation to any pensions;
12. capital sums sought for accommodation and other needs.

The above list is non-exhaustive

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We can assist you in negotiating a suitable settlement and can advise you appropriately on any proposals made by your civil partner or to be made by you. In some cases financial mediation and/or conciliation services are available to assist you in achieving a settlement. Please see our Keeping you out of Court Information Sheet for more details.

If a voluntary agreement can be reached between you and your civil partner then you should have a Consent Order drawn up reflecting the agreement you have reached. A Consent Order is a legally binding court order. A document called a "Statement of Information for Consent Order" is also completed with some basic personal and financial details so that the court can approve the Consent Order. Provided that the Judge is satisfied that the Order is appropriate and fair, having considered the information provided, then the Order will be made by the court without your attendance being necessary. The Order then becomes legally binding.

## Factors/Orders

The court takes various matters into account when considering what orders should be made. The court is obliged to consider all the circumstances of the case and will give first consideration to the welfare of any children in the family under the age of 18. The court will also have regard to the following matters

1. The income-earning capacity, property and other financial resources which each civil partner has or is likely to have in the foreseeable future. This includes any increase in the earning capacity that it would be reasonable to expect a civil partner to take steps to acquire;

1. The financial needs, obligations and responsibilities which each civil partner has or is likely to have in the foreseeable future;
2. the standard of living enjoyed by the family before the breakdown of the civil partnership;
3. the age of each civil partner and the duration of the partnership;
4. any physical or mental disability of either civil partner;
5. the contributions which each civil partner has made or is likely in the foreseeable future to make to the welfare of the family (including any contributions by looking after the home or caring for the family);
6. the conduct of each civil partner (if that conduct is such that it would be in the opinion of the court inequitable to disregard it);
7. in the case of proceedings for a dissolution order, the value to each civil partner of any benefit which, because of the dissolution, that civil partner will lose the chance of acquiring.

The overriding factor to be considered in most cases is the reasonable needs of the parties. The courts have a duty to be fair to both parties.

The court must also consider whether there should be a clean break (a once and for all settlement) where all of the financial claims are dismissed so that neither party can make any further financial claims against the other.

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The court has the power to make the following orders:

maintenance for one of the parties and in certain circumstances for any of the children of the family; property adjustment orders transferring property to one civil partner; lump sum orders; order for sale of properties; pension sharing orders.

In circumstances where maintenance is required in the intervening period, an application for interim maintenance can be made.

The court can also exercise its powers in relation to any children in the family and must have regard to the financial needs of the child, the income and other financial resources of the child, any physical or mental disability of the child, and the way in which the child was being educated or trained.

The court must also consider other factors, namely whether or not to exercise its financial powers against the civil partner who is not the parent but the child has been treated as a child of the family. The court will consider whether there has been any assumption of responsibility for the child's maintenance and, if so, the extent to which and basis upon which responsibility was assumed and the length of time; whether the parent knew that the child was not his or hers and the liability of any other person to maintain the child.

A financial claim is made by way of an application to the court following the issue of a Dissolution Petition. A Court Order can still be made by consent at any time following the issue of proceedings if an agreement is subsequently reached. If the application is not resolved in this way then an Order would be made following a final hearing before a District Judge.

### **Court Procedure**

Not all cases are settled by a voluntary agreement. If an agreement cannot be reached within a reasonable period of time (or the other party will not co-operate or full disclosure is not given) then it may be necessary to commence court proceedings.

The usual court procedure is:

1. The Applicant files an application at court and pays the relevant court fee following the issue of a Dissolution Petition.
2. The court will list the matter for a First Directions Appointment (FDA) 12 - 16 weeks from the date of the application
3. Parties file and serve a Form E, Questionnaire, Statement of Issues and Chronology before the FDA.
4. Parties attend the FDA where the court may direct the answering of the Questionnaires; direct valuation evidence (of a property or business for example); direct a pensions report and list for a Financial Dispute Resolution Appointment (FDR) some months later. If following the FDA and before the FDR an agreement can be reached then a Consent Order can be drawn up.

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5. Parties attend the FDR. The parties will attempt to settle matters with the assistance of a Judge. Negotiations will take place at court and it is only if matters are still not agreed that the court will list the matter for a final hearing. If matters are agreed then a Consent Order can be drawn up.
6. Parties attend the Final Hearing. Both parties attend to give oral evidence and be cross-examined. The hearing will be held in the District Judge's Chambers and depending upon the complexity of the issues made, it may take several hours to resolve. At the end of the hearing the District Judge may give an immediate decision but it is more than likely that he/she will retire for a period of time to consider their decision. In doing so he/she will have regard to all the circumstances of the case, matters listed above and the evidence given. Once a final decision has been made, this decision will be embodied in a Court Order and all the outstanding issues will be dealt with. The Judge's decision is final.

Even after court proceedings have commenced, it is very important to make every effort to come to an agreement with your spouse so as to save time, stress and costs.

More often than not, it is possible to settle a case on terms that are satisfactory to both parties, prior to the final court hearing.

**At Chafes Hague Lambert, we have an experienced family team that are here to discuss your situation, please contact us on:**

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