

21 Mistakes to avoid

when getting divorced
(A practical guide to divorce)



A personal, professional
and prompt service that
you will value



INTRODUCTION

Family break-ups are never easy, and our family team understand that this can be a difficult, stressful, and often confusing time. We understand the importance of providing clear and simple advice whilst also providing a value for money service.

Larby Williams provide you with a high quality, personal service from their highly knowledgeable and experienced team. Our aim is to make this difficult time run as smoothly as possible for all of our clients.

Please contact the **Larby Williams** office for further information or to arrange your free 30 minute consultation. Our contact details are on the back of this booklet.

Visit our website www.larby-williams.co.uk

21 Mistakes to Avoid when getting Divorced

1 Not acting when you are served with divorce papers

When you are served with a divorce petition, you must instruct a solicitor. Do not think that if you do not answer these papers or cooperate that your spouse will not be able to divorce you. In fact, your spouse may be able to not only get a divorce, but also obtain a generous financial settlement. Instruct a solicitor of your own as soon as possible.

2 Not conducting matters in a constructive and non-confrontational way

Don't instruct an aggressive or combative solicitor. You should avoid the use of inflammatory language both written and spoken in all dealings with your spouse. If you behave in a civilised way, you will be more likely to achieve the settlement that you want without recourse to court proceedings. Having to ask the court to make a decision in the matter will only serve to increase the legal costs dramatically for both you and your spouse.

3 Not responding quickly to all your solicitors requests

If you don't respond reasonably promptly to your solicitors requests for information, it may adversely affect your case and will certainly increase the costs of your divorce.

4 Not taking into account the long term consequences of actions and communications as well as the short term implications.

Emotions tend to run very high shortly after separation and you may be very stressed. This doesn't help a couple to sort things out amicably and rationally. Therefore, step back and try to consider the longer term implications of what you are proposing.

5 Not considering mediation or collaborative law

Divorce court proceedings should be the last resort in resolving matrimonial finances. If you think you can sensibly negotiate with your spouse, where you are both thinking realistically and are prepared to compromise to reach a reasonable settlement, we recommend you give serious thought to the collaborative law or mediation process.

6 Not putting the interests of the children first

Never involve children in the divorce acrimony between you and your spouse, and never use them as pawns in the divorce negotiations so you can achieve your financial goals. The divorce courts are very critical of parents who deny or offer contact to their children in return for some financial gain. It has been established that children are not so much affected by their parent's divorce as by the way their parents behave towards each other before, during and after the divorce. Don't let your divorce give your children a legacy of unhappiness and difficult relationships of their own.

7 Not telling your children about the divorce in the right way

If it is possible, the children should be told by both parents about the divorce. They should know who will be remaining in the household with them, and how and when they will be seeing the parent who is moving. Each of the parents should reassure the children that the separation is not due to anything the children have done, and that both parents will continue to love and provide for them. This is very important.

8 Not dealing appropriately with questions from children

Balance honesty with being appropriate don't give them details that are better kept between adults. Children are stressed and emotionally harmed by being asked to take sides between parents.

9 Not being open and honest in all dealings

This is an absolute must and particularly in all matters financial, or you may find yourself being penalised by the divorce court. Truth in all matters, even if it hurts, is by far the best policy. If you try to hide things and you're found out, your spouse and his/her solicitor will delve into your affairs in such a way as to substantially increase your costs and theirs, and they will be unlikely to want to reach an early divorce settlement if they think there has been non-disclosure of important information. You could even find that the Court could order you to pay your spouse's costs if it considers that you have attempted to conceal important information.

10 Not keeping your credit in the black

When divorcing, consider asking creditors to close any joint accounts and provide you with written confirmation. Try to reopen these as individual accounts. If your ex-spouse handles a joint account irresponsibly, your credit record may suffer.

11 Having totally unrealistic expectations or demands on what you are gaining from a divorce

Too many people start divorce proceedings expecting that they will get everything they want. Often those demands are exaggerated. Since finances, children, property, a business or a pension are in dispute, you will need to make your demands reasonable and not expect that you will get everything. Our advice – the key in approaching divorce is to have realistic expectations, focus on problem solving and do everything you can to help your own case.

12 Not giving consideration to balancing the benefits of any steps against the likely costs – financial or emotional

Some things may not be worth pursuing such as the division of some of the contents of the former matrimonial home. Consider carefully the financial and emotional costs involved. If you let your emotions gain control rather than reason and logic, you will undermine your own case and increase your costs.

13 Withholding information from your divorce solicitor

Some people do not confide in their solicitor, even though the solicitor is representing them. By withholding information about their future plans or financial assets, they try to maintain control over the situation. This can be counter productive. Our advice – you need to present a clear picture of what your motives are and if you want your solicitor to do an effective job, they need the whole truth.

14 Not asking enough questions of your divorce solicitor

Many people are intimidated by the divorce process and even sometimes by their own solicitors, and instead of asking questions accept everything in blind faith. That doesn't work. Instead make sure that you ask as many questions about your settlement as you would if you were buying a car or a house. Be thoughtful and analytical. Our advice – ask your solicitor for an honest view of what your chances are to obtain assets, home and money. Decide what is a realistic settlement and then ask questions of your solicitor to make sure that you and your solicitor do everything to try and achieve that settlement. .

15 Expecting the legal system to be fair and that the court will see things from your point of view

No matter how much you think you are right, the judge can see issues from another viewpoint, not always yours. Furthermore because of procedural rules, judges often rule on limited information. They don't care if you are nice. Our advice – don't expect that your viewpoint, will always prevail no matter how fair and reasonable you may consider it to be. The more sceptical and balanced you are, the better you can solve problems and obtain the most favourable outcome.

16 Don't assume that you know what your future financial position will be

Many people assume that there will be a straight 50/50 split of the family assets. Whilst this may well be appropriate in long marriages where there are no dependent children, it may not be appropriate in other cases – eg. short marriages, cases with dependent children or where the parties' earning potential are significantly different. An equal division of family assets is not necessarily fair. Our advice – don't make assumptions and don't just agree something with your spouse without taking expert legal advice from a specialist divorce solicitor. Trying to deal with any relationship break up in an amicable fashion as possible should always be the aim; but equally you do need to make sure that you are safeguarding your future financial position.

17 Not checking facts or figures given to you

Solicitors are human too, and they can sometimes make mistakes. Equally your spouse may not have given the correct information or be withholding information. You must read all documents to ensure accuracy or it may be too late to correct it.

18 Allowing too much time to pass

Understandably too many people going through divorce proceedings will sometimes ignore rules and court deadlines. They may simply bury their head in the sand and hope that the issue will go away. Our advice – although you should never be rushed into anything by your solicitor, don't unnecessarily postpone decisions or put off providing requested information. Especially don't delay providing information ordered by the court. Equally if the court order is made and you need to enforce it – don't allow too much time to pass.

19 Not taking independent financial advice

Divorce proceedings involve all your assets, including property and pension, some of which have tax implications. Our advice – make sure you understand the consequences of divorce. Do you know whether child maintenance is tax deductible? Equally what is the most effective way of dealing with your new financial position? Do you have the right life assurances and appropriate pension provision given your new circumstances?

20 Not knowing your own financial position

Many people in a divorce, do not have a full understanding of all the matrimonial finances. Our advice – you need to try and make sure that you are aware of every asset and investment – from pensions through to life assurance – and make sure you have full documentation and where possible copies of all relevant materials. This information will put you in a better negotiation position and should save you money as your solicitor will not incur fees for time spent tracking down the documents. Read every financial statement and make sure you understand them – if not, make sure you ask.

21 Not moving on

It is natural to mourn the loss of a partner, even if the divorce resulted in feelings of resentment. Don't go out of your way to find out what your spouse is doing and never repeatedly question children about your former spouse's actions. The best thing you can do for yourself and your children is to move ahead with your life and find happiness in a new relationship.

Your Questions Answered

It may seem obvious but just what is a divorce?

Divorce is the legal dissolution of your marriage. Once divorced you are no longer legally married to your husband or wife. It's a big step but one that many others have taken. Certain rights and obligations come to an end but there may be others in their place such as the obligation to pay maintenance.

Do I have grounds for divorce?

This depends. There is only one ground for divorce that the marriage has broken down irretrievably however, you have to prove one of five things:

- A. **Adultery by your husband or wife.**
- B. **Unreasonable behaviour by your husband or wife.**
- C. **Desertion for two years.**
- D. **Two years separation with agreement.**
- E. **Living apart for five years.**

Do you need a Solicitor?

If your situation is very simple, sometimes it is possible to deal with matters yourselves, however it is always best to get advice from a Family Law specialist at the start of your case who will be able to advise you of the key points you need to be aware of. You may also need a Solicitor if:-

- **You or your partner have children**
- **There are properties, pensions or other assets to be settled**
- **There is any other complicating feature, such as businesses, inheritance, of other parties involved.**

If you decide to deal with matters yourself, you can contact your local County Court who will be able to provide you with further information (www.hmcourts-service.gov.uk).

If you decide to get advice from a Solicitor, you can find local Solicitors through:-

- **Resolution – the association of specialist solicitors www.resolution.org.uk**
- **The Law Society - www.lawsociety.org.uk**
- **Or search online at www.google.co.uk**

What are the likely costs?

The costs of a divorce or separation vary greatly depending on how complicated your case is and how far you and your partner can agree things between yourselves. Your Solicitor will charge by how much time they spend on your case, and you will always be given an estimate of the likely costs at the start of your case, and at regular intervals as your case progresses.

If you are on low income, you may qualify for legal aid. You can check your eligibility on the Legal Services Commission website at www.legalservices.gov.uk.

How long will it take?

The time can vary depending on how quickly both of you can deal with your paperwork. It usually takes between 6 and 8 months to get the final order in a divorce or dissolution of a Civil Partnership.

It is often the financial side of things that can take longer to complete, and it is important that financial matters are dealt with at the time that you get divorced or separate.

Do you need to go to Court?

It is not always necessary for you to go to Court when getting a divorce or dissolution of a Civil Partnership. If your partner agrees to sign the papers, neither of you will need to go to Court.

There are however times when you will need to go to court:-

- **If your partner objects or defends the application**
- **If there is an argument about costs**

If you need to go to Court, your Solicitor will explain the process to you fully.

Sorting out arrangements for the children.

Wherever possible, you and your partner should try and agree the arrangements for the children between yourselves. These arrangements should include:-

- **Where the children will live**
- **What contact they will have with both parents**
- **Whether the children will need to change schools**
- **Who will pay for the children**

Sometimes, it is not possible for parents to agree things about the children, and it is then useful to get some legal advice from a Family Law specialist. Often, your Solicitor will suggest that you and your partner should go to mediation to try and sort out the arrangements with the help of an independent third person. This is often a good way of resolving problems for the long term benefit of both parents and, most importantly, the children. It can also be a cheaper and quicker way of resolving disputes.

Occasionally, it will be necessary for a Judge to be involved particularly if:-

- **There are issues of alcohol or drug use by a parent or guardian**
- **There are concerns that one parent might disappear with the children or leave the area**
- **One parent stops the other parent from seeing the children**

In any of these circumstances, your Solicitor will advise you about applying to Court. Your solicitor will explain the process to you, and will also explain the likely costs.

Sorting out arrangements for the finances.

If you can agree with your partner about money matters, it is often a good idea to try and do this. Your Solicitor might advise you to go to mediation to try and sort things out with the help of an independent third person. If you and your partner cannot reach an agreement, it will be necessary for you to get advice from a Family Solicitor.

Sometimes, financial matters can be quite complicated especially if they include any of the following:-

- **Businesses**
- **Jointly owned properties**
- **Properties owned by one partner only**
- **Pensions, particularly Forces Pensions, Police Pensions and other Government Pensions**
- **Inheritance**
- **Large amounts of savings, shares and other assets**
- **Large amounts of debt, particularly in one person's name only**
- **There are children of the family**
- **You are unsure what assets your partner may actually have**

If any of the above is relevant in your case, or if you are unsure what you might be entitled to, you should always get advice from a Family Solicitor. You could be entitled to a larger proportion of the assets than you think, and your Solicitor will explain everything to you, including whether you need to go to Court.

REMEMBER – if you own a property with your partner, you need to understand what will happen to the property if you or your partner were to die. Your solicitor will explain this to you at the start of your case. If you don't want your partner to inherit all of your property, you will need to take action immediately.

How to choose your solicitors

The questions to ask	NO	YES
Do they give a free first interview?		●
Are they available for face-to-face meetings?		●
Do they have specialist practitioners?		●
Do they find sound solutions for you?		●
Do they charge sensible prices?		●
Do they keep in touch?		●
Do they return your phone calls?		●
Do they keep their promises?		●

- **We say YES to all these questions, So say YES to us.**

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At **Larby Williams** we work to help our clients with those important changes in life ... whether moving house, entering into marriage, making a will, considering divorce or facing bereavement - we provide a personal and professional legal service that you will value.



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