

Why instruct a solicitor?

When a relationship breaks down, and a couple decide to separate, there are many difficult decisions which have to be made, including arrangements for the care of the children, the division of any assets and possible continuing financial support. The following points are tailored towards the situation where a married couple separate, although a number of these points will also be applicable to the break up of a cohabiting couple.

A husband and wife who are separating may decide they want to reach a private agreement between themselves in relation to the financial aspects of the break up. There are clearly advantages in being able to reach an agreement which both parties are happy with. However, reaching an agreement without first taking legal advice may result in an unfair agreement. possible reasons for this are:

- One or both parties may not be aware of their legal rights and obligations when reaching an agreement, which could result in one party conceding too much.
- Whatever the circumstances in which the marriage has broken down, it is a very emotive time when it may be difficult to make clear and rational decisions about a whole range of practical matters, without receiving independent advice.
- Sometimes it may be perceived that one party is endeavouring to exert undue pressure on the other to agree an unfavourable financial settlement, perhaps because most of the assets are in one party's name, or one party has sought to threaten the other will have reduced contact with the children.

Sometimes reaching an agreement directly is just not possible, and continuing to be embroiled in a day-to-day argument about financial arrangements can hamper the parties continued relationship in agreeing and making suitable arrangements for children.

Instructing a Family Solicitor would ensure that specialist and independent advice can be received and make sure that a fair settlement is reached. In particular, a Solicitor can ensure that all the relevant information is obtained before reaching an agreement and give you practical and proactive advice to ensure you achieve a fair and appropriate settlement.

Points to consider when deciding whether to instruct a Solicitor are:

- As above, proper advice can be sought as to your legal entitlements and obligations.
- The Solicitor can ensure that any agreement reached can be properly formalised to ensure that it will be enforceable in the future.
- Sometimes it is mistakenly believed that instructing a Solicitor is an aggressive step which will prevent or hamper agreement being reached. However, instructing a Solicitor does not mean that an agreement cannot be reached with your former spouse, simply that such agreement can be properly and fairly negotiated. Solicitors working under the Resolution Code of Conduct or the Law Society's Family Law protocol will endeavour to assist you in reaching an amicable settlement, whilst protecting your best interests.
- There is sometimes a misconception that instructing a Solicitor will be extremely expensive, and that such costs would be a waste of money if the parties can reach an agreement between themselves. However it should be borne in mind that a Solicitor will discuss with you at the outset of your case the likely costs involved depending on the particular circumstances and issues involved. The Solicitor will also discuss with you, as the case progresses, any proposals as to settlement to be made, or received, in the light of the potential costs of litigating the case. It can be far more costly in the long term to fail to take legal advice and settle on terms which are not advantageous, or are not subsequently carried out because the agreement has not been properly formalised and implemented.
- Sometimes parties are concerned that if they instruct a Solicitor, they will lose control of the decision making process. However that is not the case, as you would still retain control of making a decision in your case, but can do so confident that your decision is made in the light of having received appropriate legal advice as to your rights and the options open to you.

- If the family assets include business assets and/or pensions, or it is considered that your spouse may try to conceal the full extent of their assets, or dispose of assets or remove them from the jurisdiction, it is advisable to instruct a solicitor to ensure these issues, which can be complex and may require urgent action, are properly considered and advice received as to the steps to be taken and the implications of these on any settlement.
- Where agreement is not possible without issuing Court Proceedings, the Solicitor can obviously advise as to the procedure and potential outcome of such proceedings, and guide you through each step of the process.
- Instructing a Solicitor does not mean there will be a lengthy delay in resolving a financial settlement. A Solicitor will however advise you as to the vital steps which do need to be taken before a settlement is reached, in order to protect your position. A Solicitor can also advise you as to any steps which can be taken to speed up resolution where necessary, for example, in issuing Court Proceedings where appropriate.
- There can be a number of traps for the unwary in reaching a private agreement without seeking legal advice. Examples of these include; where the parties reach an agreement as to the division of assets, but do not actually formally transfer one or all of the assets. For example, one party may be paid a lump sum for their interest in the house but fail to transfer the house, thereby retaining a legal interest in the property and causing difficulties for example when the other party comes to sell the property. Alternatively, one party may believe that they have reached an agreement on all matters, but because the agreement has not been properly formalised, the other party may still subsequently make a financial claim against them, which could possibly even be years after the separation.

Decisions made during and following a relationship break up can be of crucial importance, and may have far reaching consequences for years to come.

Why choose Linder Myers?

At Linder Myers our dedicated Family Department, who between them have many years of experience in all aspects of Family Law, can offer you proactive and constructive advice to guide you through the legal process and assist you in reaching a positive resolution of your dispute.

We are committed to providing a high level of service to our clients in order to achieve the best outcome for them. Because of the range of legal services Linder Myers provides, the Family Department is able to draw on the expertise of other departments to advise on other areas of law such as Property or Company, which may impact on your matrimonial case.



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