

Divorce – avoiding the pitfalls

The pitfalls of the divorce process are all too obvious:

- it encourages people to initiate the divorce even when the other is still reeling from the marriage breakdown;
- it encourages people to give evidence of adultery and unreasonable behaviour – something that has no basis in reality;
- the courts still make orders for costs against whoever is being divorced – again without any regard for whether or not that is fair;
- it leaves one spouse feeling disadvantaged, sometimes with good reason; and
- worst of all, it undermines good parenting.

Here are our five tips on how to avoid the worst of the law

1) Agree not to start the divorce

This seems like stating the obvious but, in the emotionally charged context of marriage breakdown, it is necessary.

You can agree between yourselves not to start divorce proceedings or you can do this between solicitors. It does not matter who makes this offer, provided that one of you does as soon as possible.

There is a danger otherwise that one or the other of you will “get in first”, perhaps in the heat of the moment.

It helps keep things calm if you can also put this in writing. Like the days of the Cold War, it is a “no first strike” agreement. Such an agreement cannot be binding. The courts do not uphold agreements to divorce or not to divorce: that ultimately is the decision of a judge.

Hopefully, though, you will stick to it – out of respect for each other.

This approach is very much in keeping with collaborative law. See the [approaches](#) section.

2) Focus on the children

When emotions are at their highest, it is best to find common ground early on.

Wanting the best for your children is usually something everyone can agree on.

Giving the reassurance that children need, working together to support each other as parents and stepping back from areas of disagreement – all of this will help for the future.

Some issues, like where the children are going to live, will be obvious. Sometimes they will be difficult to even consider, but at this stage it helps to agree as much as possible, especially about the children.

3) Focus on the practical and financial arrangements

Having “parked” the question of divorce, many couples simply get on and try to resolve the other issues.

By the time those are sorted out, it is usually easier to agree what happens to the marriage itself. Questions of who divorces whom, and on what basis, are more straightforward.

Actually, the divorce process itself is not that important. In the context of everything else, it is a relative footnote and should be achieved with as much dignity as possible for both of you.

4) Avoid hurting each other

It is often tempting to name the co-respondent – the person with whom your husband or wife has been having an affair. It is humiliating to them to do so, especially as they will be sent the court papers.

The Law Society Family Law Protocol states that this should not happen. It increases the costs of the divorce unnecessarily.

It is rare to cite the co-respondent. Those who do so usually appear spiteful and aggressive. If ever you want a judge to be on your side, perhaps in finances or relating to the children, you may not be helping your cause by taking an aggressive and spiteful stance in the divorce.

It is also good practice to draft the particulars of unreasonable behaviour and send them to the other solicitor for approval. No one is required to do this, but it helps to agree to take this line of action. It is the most dignified thing you can do.

There is a risk that your spouse may “get in first” and petition against you, but for most people that is a risk worth taking. Coming to an agreement about how to divorce – as mentioned earlier – is part of damping things down, of making sure nothing blows up in what can be a very combustible situation.

In collaborative law, the practice of drafting your own particulars against yourself has begun. For example, if you have agreed to be the respondent in the divorce proceedings – the one on the receiving end of them – then you can say what your own behaviour is for the purposes of the petition.

The law is ludicrous and badly drafted. It helps everybody to rise above its shortcomings.

5) Never divorce in anger

It helps to allow your spouse to have some breathing space. Agreeing not to divorce, and coming back to it later, usually defuses what can be an emotional bomb.

The reverse is the case if you divorce immediately – if you file a petition based on adultery or unreasonable behaviour without discussion and without warning.

The Law Society Family Law Protocol states that you should give advance warning before filing a petition. This is not legally binding, and sadly the courts are generally oblivious of this. Nonetheless, it is best practice in every sense.

Occasionally it is necessary to divorce straight away. This is the case if there is domestic violence or the threat of divorce proceedings being issued in a different country.

Otherwise, there is simply no excuse for starting a divorce unilaterally.

The repercussions of starting a divorce without warning are considerable. The emotional temperature will rise dramatically. It will make it more difficult to discuss and agree other issues, perhaps to do with the children or to do with finances.

The less agreement, the more you will have to rely upon the courts and the legal profession to sort out the mess. You will be spending far, far more on legal fees as a result. The family pot will be emptier and your standard of living will be lower.