

D.I.Y Divorce versus using a Solicitor?

People are sometimes in 'two minds' as to whether to attempt to start Divorce proceedings themselves or to use a solicitor. You occasionally hear 'horror stories' from friends regarding the cost of a solicitor or the service received from a particular solicitor that can mean they are put off from using a Solicitor at all. Unfortunately it is usually only the 'horror stories' that you get to hear about, not all the good stories where a solicitor has stuck to their cost estimate, progressed the Divorce proceedings quickly and without any problems, negotiated a fair financial settlement and taken the client's mind off the proceedings by dealing with the whole process for them.

Whilst it is not impossible to do a DIY Divorce, or use the internet to find out information about Divorce, it is very important to properly research and understand the law and procedure before attempting to do it yourself. In our experience the internet offers little, if any, legal advice and most advice is generic and not specific to YOUR case. Whilst some sites do provide blank forms to complete and 'notes for guidance', there is no substitute for expert and experienced legal advice from a qualified Divorce and Family Law specialist Solicitor. Whilst the Court's 'notes for guidance' are useful, it is important to note that they do not 'give legal advice'. Likewise if you visit a County Court, the Court staff can provide you with forms and guidance, but they cannot and are not allowed to provide legal advice.

The Pitfalls of Doing It Yourself?

Simple errors in the wording of the Divorce Petition or other Divorce documents, or failure to adhere to the Rules and procedures governing Divorce law proceedings can mean that when you come to apply for Decree Nisi, the court rejects your Divorce or orders you to take further complicated steps to get the proceedings back on track. This can often mean that people, who have started their own Divorce proceedings, end up either getting stuck half way through the Divorce proceedings not knowing what to do next. At this stage they often resort to instructing a Solicitor which sometimes results in them having to spend more money in correcting any mistakes than if they had instructed a Solicitor from the start.

The solution?

At March Solicitors, we obtain most of our Divorce and financial work via recommendations from previous clients. We offer all new clients a half price one hour fixed fee initial interview costing just £102.00 including VAT, which gives clients the chance to meet their prospective solicitor, discuss the facts of their case with the Solicitor, and for the Solicitor to give initial advice as to the options available, recommendations, strategy and cost estimates. At that meeting we can also discuss the fixed cost options that we offer such as our Personal Divorce service for just £500 + VAT and Court fees, or our fixed cost services to deal with financial matters.

The BIGGEST DIY mistakes?

These mistakes fall into the following 3 categories:

1. Thinking that by obtaining a Decree Absolute in the Divorce proceedings that is the end of the matter and 'there is nothing else I need to do'. This is wrong!

Despite popular belief, commencing Divorce proceedings does not automatically deal with the financial aspects of your case arising from the Divorce. The financial aspect of your Divorce is an entirely separate matter and will only be finalised by way of a Court Order following an application to the Court by either spouse, or by the couple resolving financial matters between themselves by entering into a legal document called a 'Consent Order'. This is a binding legal document which when sealed by the Court dismisses all future financial claims between the couple and confirms that the settlement reached between the couple is in full and final settlement. Without a Consent Order being approved and sealed by a Court, or a Court Order being made, a former spouse can still make financial claims against the other spouse at any time in the future even though Decree Absolute has been pronounced.

2. A failure to adequately deal with financial matters by severing future financial claims against their spouse. This can mean that a person leaves themselves open to financial claims against them by their spouse at some unknown point in the future. Without a Court or Consent Order in existence, a former spouse could win the lottery

or receive an inheritance (even after Decree Absolute has been pronounced), and the other spouse could still make a claim in relation to it as it would be regarded as an asset that the court could take into account.

3. Agreeing to a financial settlement that is not objectively fair, does not meet your needs or agreeing to a termination of ongoing financial support (maintenance). Perhaps this is the most serious and lasting mistake made by clients'. Knowledge of local Courts', Judges and customs is crucial as some Courts will not end spousal maintenance whilst there are minor children to the marriage, whilst others will not hesitate in making an immediate clean break settlement even if there are minor children involved. Accordingly, it is very important to choose the right Court to issue your Divorce proceedings as a wrong decision may have significant detrimental implications for the financial aspect of your case. It is also very important to make sure that all the relevant factors of your case are taken into account when deciding a financial settlement.

It can't be that difficult to draft a Consent Order...

A Consent Order is a complicated document that should be drafted by a specialist family law solicitor. It is not a standard document that can be found on the internet and there is no 'one size fits all' document. Each and every Consent Order that is drafted by a Solicitor is unique, different and tailor made to the specific terms of the financial agreement reached between you and your spouse. The cost of drafting a Consent Order varies due to whether or not the Consent Order is a straightforward, or whether it is complicated and contains many terms and transactions. Your Solicitor will be able to advise you of the cost.

It is important to note that once a Consent Order is approved by a Court it is very difficult to "undo" except for limited circumstances such as non disclosure of material facts, fraud and misrepresentation, supervening events and undue influence.

The role of the Solicitor is not simply to draft the Consent Order, but to advise the client on the contents of the Consent Order, and make suggestions as to the best terms of settlement, and to provide advice as to the advantages and disadvantages of settling on particular terms that may have been agreed between you and your spouse.

Surely we can agree whatever we like in a Consent Order?

It is very important to remember that the duty of the Court and the Judge is the administration of justice. Accordingly, a Court cannot and will not simply rubber stamp a Consent Order – its task is to exercise its discretion under Section 25 of the Matrimonial Causes Act 1973 and to consider whether the terms of the agreement represent fair and proper financial provision for the parties in the circumstances of the case. The role of the Solicitor is to make sure that all factors contained in Section 25 are properly and objectively considered and taken into account before submitting a Consent Order to the Court to ensure the financial agreement reached is fair.

A recent example of the importance of expert legal advice concerned the case of a 61 year old lady who following direct negotiations with her husband was offered a lump sum by her husband of £90,000 in full and final settlement and on a clean break basis. After receiving legal advice and the involvement of a specialist financial expert, the settlement achieved following legal advice resulted in the client receiving a lump sum of £180,000 together with a share of her husband's pensions. Although her legal fees totalled £15,000, the final outcome resulted in the client achieving a final settlement worth more than double than was being offered by her husband and allowed the client to receive an income upon her retirement with the aid of pension sharing Orders.

So why use a Solicitor?

Given the tough economic times, and the removal of legal aid, Solicitors are acutely mindful that the cost of legal advice may appear to be expensive. The reality is that in relative terms the overall costs of obtaining expert advice and obtaining a hassle free Divorce, or achieving a fair financial settlement tailor made to your circumstances may be money well spent and more economical, than the monies that can be lost by not receiving proper legal advice. Doing a DIY Divorce will simply not provide the same level of expertise, knowledge or outcome that is required when dealing with something as important as the breakdown of your marriage. Most importantly in the unlikely event that a Solicitor makes a mistake, you have the peace of mind that they are protected by professional indemnity insurance.

There are also many other hints, tips and advice that a specialist family law solicitor can give you that are simply not available online or by doing the case yourself. From our experience whilst the prospect of a DIY Divorce may appear simple and cost effective, in reality the costs of "Doing It Yourself" and making a mistake may be more costly in financial and emotional terms in the long run.