

## Legal Guide: Family & Relationship Issues

Here you will find a summary of some of the legal issues and services available to support you in the event of a relationship breakdown, including children issues.

Don't forget to take a look at our [FAQ](#) section and our [Legal Glossary](#) which explains some of the most commonly used legal terms. And if you would like to talk to someone or arrange for a consultation please feel free to contact a member of [the team](#).

### Separation Agreements

Sometimes a married couple wish to separate and reach agreement with regard to their children and finances without proceeding with a divorce. In these circumstances it may be possible to draw up a Separation Agreement.

In a Separation Agreement parties can set out exactly how they wish assets to be divided. They can record a full range of financial provisions including Orders in relation to property, payment of lump sums and maintenance for both spouses and children.

The one issue that cannot be adequately dealt with in a Separation Agreement is a Pension Sharing Order. It would be possible for the Separation Agreement to deal with intentions in relation to pensions but a pension share could not be effected without an Order from the Court. Separation Agreements are not strictly binding upon a Court, but if both parties have had the benefit of legal advice and if certain key issues have been adequately addressed by the parties prior to signing the Agreement, it is most unlikely that the Court would impose an Order materially different to the terms agreed.

Please ask about our [fixed fee service](#) available for the negotiation and preparation of separation agreements.

## Dealing with Children Disputes

In many cases the proposed arrangements for children following divorce or relationship breakdown are agreed by the parties involved. The Court won't interfere with the arrangements for the children unless there is a dispute.

There is now an obligation to refer a disputed issue concerning the children to mediation before issuing Court proceedings.

If Court proceedings are issued, the Court will still urge the parties to work co-operatively in exercising parental responsibilities and will adopt a conciliatory approach, referring the case back to mediation if appropriate.

Married couples each have parental responsibility for their children. Neither party has more rights than the other. The mother of a child has parental responsibility whether or not she is married. An unmarried father on the other hand, will have parental responsibility automatically if he was named on the child's birth certificate registered after the 1 December 2003.

A father without parental responsibility can acquire responsibility either by the signing of and registration of a Parental Responsibility Agreement or by obtaining a Parental Responsibility Order from the Court.

Where agreement can't be reached in relation to children, applications to the Court can be made. The Court has power to make a range of Orders, the main ones relating to children are:

- Child Arrangements Order
- Prohibited Steps Order
- Specific Issue Order

If Court proceedings are issued in relation to children the Court may involve CAFCASS (the Children and Family Courts Advisory Service). CAFCASS provide a safeguarding report to the Court before the first hearing. A CAFCASS Officer is then present at the first hearing and can be asked by the Court to prepare a report as to the child's wishes and feelings or indeed a fuller welfare investigation about the child's circumstances.

At Napthens we have specialist lawyers who are members of the Law Society's Children Panel. Our team can provide comprehensive advice in relation to all children issues.

Please ask about our [fixed fee service](#) available for advising on children disputes.

## Pre-Nuptial Agreements

Pre-nuptial Agreements are made prior to marriage when both parties set out their intentions as to how their assets and income are to be dealt with in the event of separation and divorce. They are not binding upon the Court in divorce proceedings, but as they are becoming more common, Courts are now much more inclined to uphold them.

When deciding whether to uphold a Pre-Nuptial Agreement, the Court will consider whether:

- both parties understood the nature of the Agreement at the time of signing
- they had the benefit of legal advice
- there was any duress
- there had been full financial disclosure
- it would be fair to uphold the terms of the Agreement

Please ask about our fixed fee service for the preparation of pre-nuptial agreements.

## Cohabitation

Contrary to popular belief, there is no such thing as a 'Common Law Husband or Wife'. Unmarried couples have different legal rights and responsibilities to married couples.

In divorce proceedings a Judge has discretion in relation to finances to make such Order as he considers fair and reasonable, but there is no such provision in relation to unmarried couples who are bound by strict property law principals. This can result in great unfairness and hardship when unmarried couples separate. It is

therefore important that unmarried couples consider precisely what they intend in relation to finances when setting up home together and in the event of separation.

A cohabitation agreement can be signed by both parties when they begin to live together and should help clarify what would happen if the parties were to separate.

Please ask about cohabitation agreements which can be arranged for a [fixed fee](#).

## Civil Partnerships

A Civil Partnership gives gay and lesbian couples the same legal rights as their married, heterosexual counterparts. The procedure for a Civil Partnership Dissolution follows very closely the procedure in relation to a divorce.

Please ask about our fixed fee arrangements for civil partnership disputes.