

# FAMILYFIRST

FAMILY LEGAL ADVICE MAGAZINE

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&  
Betteridge  
SOLICITORS

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# WHAT OUR CLIENTS SAY

“Lisa was never too busy to speak to me and most importantly she went over and above to win the case for me. My emails were answered promptly and with detailed responses provided to any queries. My case was slightly complicated in that the other party was overseas and the whole process could have been very stressful but thanks to Lisa's expertise; the distance was no obstacle and everything was sorted to my complete satisfaction.”

“After a very abusive marriage breakdown in Spain I was advised to get a solicitor whom deals with Molestation Orders to give myself protection. This was dealt with very smoothly with sensitivity and care. A few months later I found myself needing help with a divorce. Neve and her team were amazing, professional and with such a calm way. I had advice for every part of the process explaining every detail and extremely supportive and continue to give any advice needed.”

“Katie has been amazing throughout the process, getting back to me quickly and efficiently, she made a very difficult time for me much, much easier. She was a pleasure to deal with. She was great to have on my side and I can't thank her enough.”

“Regardless of the challenges I presented, Ailsa was determined to see me walk away with my fair share of the joint assets. Due to her patient persistence with me, coupled with her professional tenacity in acting on my behalf, I eventually walked away with considerably more than I expected and was initially prepared to accept.”

“Helen supported me through a lengthy and difficult divorce, she went above and beyond to help me through every step of the process and was always kind and friendly. I would recommend Helen and would definitely use again. First class service by Helen and her team.”

“Mr Dadswell and his colleagues provided an outstanding service where nothing was too much for them to help me with. The level of attention to detail and customer service, exceeded my already high standards. I have personally recommended this team to friends and colleagues.”

“My experience with Deborah from Sills & Betteridge was second to none. Her knowledge and understanding of what was required is impressive and her strength and tenacity throughout the process could not be faulted. Having the support of Deborah truly made having to deal with my divorce situation so much easier.”

“I came to Natalie after trying every avenue myself, during the first conversation her knowledge was brilliant. She set me at ease and didn't push any decision for me to make. Everything was explained and I was kept up to date at important parts. I would have no hesitation at using Natalie for any further work I needed. She dealt with a 6 year battle within 2 months.”

“Seeing Lisa in Court was mesmerising; her confidence and straight-to-the-point arguments gave me confidence and won my case.”

You only have to look at the thousands of online reviews our clients leave to see how important service is to the firm. Our overall rating never falls below 4.8 out of 5 from over 4000 reviews. Our client satisfaction surveys show that over 97% of our clients would use us again or recommend us.



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# WELCOME

FROM HELEN DERRY,  
HEAD OF FAMILY LAW



We remain one of the largest family law practices in Lincolnshire, Yorkshire and the East Midlands with over 130 team members. At the senior end we have a highly experienced group of partners, all of whom are experts in their particular field of family law. We consistently invest at the junior end, bringing on trainees, paralegals and solicitors into the family department, to train and develop the stars of the future.

As a large family law practice our resources enable us to maintain multiple sub-groups dedicated to different branches of family law – matrimonial, finance, private children, domestic abuse and care with specialist partners at the head of each group. In practice this powerful combination of breadth and depth enables us to serve all corners of the community from wealthy individuals going through marital separation to cases involving children in care. Added to this we have several niche areas of expertise at the practice such as a strong understanding of agricultural and farming industries and a long association with the Armed Forces.

We also offer mediation. The government remain committed to mediation and The Ministry of Justice are offering mediation vouchers whereby they will contribute up to £500 per family to the mediation costs of a child arrangements case to encourage people to resolve their disputes outside of the court process.

**I hope that you find the articles interesting and as always I am grateful to receive your feedback.**

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# WHAT TO EXPECT WHEN YOU FIRST MEET WITH A FAMILY LAWYER

Going through separation is a difficult time with lots of practical considerations and emotions. It is vital to take advice at an early stage so that you are aware of your options moving forward so that you are fully aware of the processes available to you to aid with resolution. Getting things on the "right track" at the start is important and can make a real difference and will hopefully assist in reaching an amicable agreement.

Your first meeting with a family lawyer can feel daunting – opening up about such personal issues to someone who you do not know is not an easy thing to do and may feel like big step to take. It may be that your partner, friends and family are unaware of your feelings and that you have been struggling to decide what to do, or how to approach issues for the best. To help alleviate any worry, here is a guide to what to expect at your first meeting:

## 1. DATES

You will be asked to provide relevant dates such as:

- a. Date of cohabitation
- b. Date of marriage
- c. Date of separation (if this has occurred)
- d. Dates of birth for yourself, your former partner and any dependant children

## 2. BACKGROUND

We will ask you about the background to the financial issues, such as whether the home is rented or owned, and, whether this is in joint names or in on person's sole name. We will also ask whether there are any contributions that either partner has made or inheritances that have been received by you or your former partner.

We will also explore with you any other issues that impact upon you, or the children, to include any health conditions or needs that you have or whether there are any issues in relation to your partner's behaviour that are concerning you, whether it be about financial issues, the children or behaviour towards you.

## 3. FINANCIAL CIRCUMSTANCES

We will discuss with you what your respective financial positions are in term of income, capital, and pension provision along with any liabilities that you each have.

It's absolutely fine at this stage if you don't know exact figures or even if you do not know in detail about your former partner's position. This is quite usual and we will provide guidance to you based on your individual circumstances. However, the more information you can provide, the better as it gives a clearer picture of the position.

## 4. OUTCOMES

We will explore with you what your desired outcomes are. For example, if there is a jointly owned property would you like this to be sold or would you prefer to consider buying out your former partner? It is helpful for us to understand this at an early stage so that we can consider with you the realistic possibilities and outcomes. Please do not worry though if you are unsure about how you want to move forward, we will talk you through the options and you do not have to make any decisions at this time.

## 5. PROCEDURE

We will talk you through the processes that are available to you to help to resolve matters and consider what the best approach may be for your individual circumstances and in consideration of your desired outcomes.

## 6. COST

We will give you an indicative idea of the costs that may be incurred in each action.

Finally, you can of course bring a trusted friend or relative with you to the appointment if you wish to do so. Some people also find it useful to write down any questions they have ahead of the meeting as a reminder so that they can ask any specific questions they have in the meeting.



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Hopefully the above will assist in the event that you do require assistance from a family lawyer and help you to prepare for the meeting to get the most out of this.

We often find that people feel relieved after the first meeting and that any nervousness dissipates quite quickly. The meeting is nothing to worry about and we really do want to help - it is just a conversation.

# LEGAL STEPS TO TAKE ON SEPARATION

There may be a number of legal and financial processes that you need to go through to separate. This will vary depending on whether you are married or unmarried and the nature of your assets.

## ARE YOU MARRIED?

It is important to take legal advice from an experienced divorce lawyer when you first separate to ensure that all the necessary steps are taken at the correct time and are in your best interests. Your family solicitor can guide you through this.

You may need to deal with the following legal processes:

1. Obtain a divorce.
2. Obtain a financial court order dealing with the financial aspects of your separation in relation to any property, lump sum, spousal maintenance and pension provision under Section 25 of the Matrimonial Causes Act 1973. Obtaining a divorce does not resolve financial matters and it is therefore important to obtain a separate financial court order dealing with this. If you fail to do so your respective financial claims against each other may remain open which is usually considered unsatisfactory as it may lead to one making a claim against the other in the years to come. Often there is no need to go to Court. If there is an agreement a financial Consent Order can be prepared and sent to the Court to be dealt with on a paperwork basis. It is crucial that this document is prepared by a lawyer who specialises in divorce and finances to ensure it is legally binding.  
**WARNING:** If you fear that your ex-partner is concealing or disposing of assets it is important to take legal advice without delay.
3. Make arrangements regarding the children by agreement with your former partner unless there are safeguarding issues in which case it is important to obtain legal advice as soon as possible. Other than where there are safeguarding concerns the courts would prefer parents to agree arrangements for the children between themselves. This is not always easy particularly when tensions can be running high following separation. We can help you navigate this path and negotiate arrangements on your behalf. If it is not possible to reach an agreement either through solicitor negotiation or mediation then it may be necessary for an application to be made to the Court. Again, we can support you through this process.
4. Deal with any property conveyancing formalities if a property is to be transferred, sold or purchased following the making of a financial Consent Order. This will not happen automatically and you will need to instruct a conveyancing solicitor. We can refer you to our team of conveyancing lawyers during the process.
5. Prepare a new Will. Again, we can refer you to our in-house Wills department for further advice.

## DO YOU COHABIT?

A commonly held misconception is that cohabitantes have the same or similar rights as married couples. This is not the case if you live together as a couple or upon separation. You may however need to deal with the following legal issues:

1. Assess your financial interest in any property.
2. Deal with any property conveyancing formalities if a property is to be transferred, sold or purchased.
3. Prepare a new Will.
4. Consider whether any nomination needs to be changed on any life insurance, pension policy etc.
5. Try and make arrangements regarding the children by agreement with your ex-partner unless there are safeguarding issues in which case it is important to obtain legal advice as soon as possible. The courts would prefer not to become involved in arrangements regarding children and would prefer for parents to agree matters between themselves. If this is not possible then it may be necessary for an application to be made to the Court.

There are a number of ways to try and resolve matters upon separation. Normally issues are resolved through lawyer negotiation. If matters cannot be settled via this route parties may try mediation or arbitration as an alternative route prior to making an application to the Court.



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# WHAT AM I ENTITLED TO ON DIVORCE?

When facing divorce proceedings, whether as the one filing for divorce or the respondent, one of the most concerning issues will be the financial settlement.

Divorce can be a costly process – understanding your rights and entitlements in advance can be helpful to ensure that you understand what you are entitled to and how best to achieve this. Parties with a clear idea of what they wish to achieve, how they wish to achieve it and whether it is realistic are more likely to reach their desired financial settlement. This can reduce stress and cost.

## WHAT IS A DIVORCE SETTLEMENT?

A financial settlement within divorce proceedings setting out how assets and property is to be divided at the end of a marriage or civil partnership needs to be incorporated into an official legal financial order to protect both parties from any future claims they have against each other. It is imperative that it is properly drafted by an expert family lawyer also known as a family solicitor or divorce lawyer who specialises in divorce and finances. If you fail to do so financial claims may remain open resulting in a claim being made many years later.

## WHAT ARE MATRIMONIAL ASSETS?

Matrimonial assets, also known as marital assets, are the financial assets that you and your spouse built up during the period of marriage. This is different to non-matrimonial assets (see below). Matrimonial assets can include the following when acquired during the marriage period: -

- Family home
- Other property and land
- Pensions
- Savings
- Cash in the bank
- Vehicles
- Furniture and appliances
- Stocks, Bonds, mutual funds, ISAs, crypto currency
- Businesses and farms

## WHAT ARE NON-MATRIMONIAL ASSETS?

Non-matrimonial assets are financial assets which were acquired before or after the period of marriage. Each of the examples above, if acquired outside of the marriage period, would be considered a non-matrimonial asset. This would therefore be treated differently to matrimonial assets.

## ARE NON-MATRIMONIAL ASSETS EXCLUDED FROM DIVORCE SETTLEMENTS?

Not necessarily. A divorce settlement and division of assets

will depend upon various specific circumstances and pre-arranged agreements that might be in place such as a pre-nuptial agreement.

Some non-matrimonial assets may be excluded from financial settlements but this is not always permitted. For example, a non-matrimonial asset such as an inheritance may be used during the period of marriage to buy a car, house or other asset. The resulting asset would in all likelihood be classed as a matrimonial asset.

The overriding consideration will be the needs of the parties in light of the available resources. It includes making sure that each spouse has a home and income for daily living costs both in the short-term and often the longer term i.e., pension for later life, depending on such things as the length of marriage, resources available. Needs is not just the minimum each partner needs to survive on. Needs is usually considered more generously taking into account the standard of living during the marriage and the length of marriage. In certain circumstances needs may need to be met out of the non-matrimonial assets. This is not always the case and it is advisable to take expert legal advice so full consideration can be given to this.

## ARE MATRIMONIAL ASSETS SPLIT 50:50?

No, this is a misconception. It is generally a starting point that matrimonial assets will be split 50:50; however there is no rule that they must be.

The Court's aim is to divide assets in a way that is fair but this does not necessarily mean half and half. Numerous factors will be considered by the Court including: -

- The relative needs of each party – a spouse in an economically weaker situation may be judged as needing more as part of a fair settlement.
- The arrangement for the children – a spouse responsible for caring for children may be awarded more in order to ensure their wellbeing.
- Future earnings – a spouse who has sacrificed career progression and therefore future earnings, in order to care for the children, may be awarded more capital.

Matrimonial assets will be split equally to the best of the Court's ability; however, they will ultimately determine the division of the assets based on each person's respective circumstances.

## WHAT ABOUT DEBTS?

Yes, debts will be taken into account. If you and your spouse have accrued any debts during the term of your marriage these will also be taken into account as part of your divorce financial settlement. This includes your mortgage, credit cards, overdrafts, loans and any other commitments.

## HOW TO WORK OUT YOUR ASSETS?

Before any discussions about financial settlements on divorce you must first work out exactly what your assets and liabilities are in the eyes of the Court. As with everything relating to divorce proceedings we strongly recommend a consultation with a qualified family solicitor. Here are a few things to consider: -

- **Property value:** you will need to have some idea of the value of the family home and any additional properties owned. Initially you could obtain a free marketing appraisal. Also be aware of your remaining mortgage balance and how much equity you have.
- **Savings account:** make sure all your savings/passbooks are up to date.
- **Investments:** if you have an investment portfolio you should seek the advice of an independent financial advisor to get a valuation of your investments.
- **Pension:** a value known as the cash equivalent transfer value (CEV/CETV) will need to be obtained for each pension from the pension company.
- **Valuable items:** make sure to get any expensive items you own valued.
- **Total debts:** you will need to know the balance on all debts including your credit cards, any car finance, overdrafts or other financial commitments.
- **Mortgage capacity:** this is important information so that proper consideration can be given to housing needs.
- **Valuable items:** what is the current value of items such as cars, jewellery and valuable collections.

At a later date it may be necessary for experts to provide valuation reports, e.g., an actuary report in relation to pensions or a valuation report in relation to any business or farm. Experts should only be instructed once you have considered matters fully with a divorce solicitor so that the correct information is obtained otherwise you may waste money unnecessarily.

## DO YOU LEGALLY HAVE TO DECLARE ALL ASSETS?

Yes. It is mandatory that all assets are declared. This includes both joint and sole assets. Attempts to hide assets may result in a hefty Costs Order being made against you from the Court.

## HOW TO PROTECT YOUR ASSETS DURING DIVORCE?

How matrimonial assets are divided is ultimately the Court's decision; they will seek to do so in a way that is as fair and balanced as possible.

If you suspect that your spouse may be taking unethical steps to hide assets before divorce proceedings get underway, there are a number of ways you can tackle this. However, you should always speak to a solicitor and get tailored legal advice and never make assumptions.



## HOW DO YOU MAKE A SETTLEMENT LEGALLY BINDING IF YOU REACH AN AGREEMENT?

To make your financial agreement legally binding a financial Consent Order will need to be prepared by a solicitor and approved by a Court. This is important because if your agreement is not legally binding the Court will not be able to enforce it should there be any issues later. You also run the risk that if your claims are left open against each other that your former spouse may come back years later and make a claim against you (potentially at a time when your assets have increased). A financial Consent Order is a legal document. This should always be prepared by a family lawyer.

## WHAT DO I GET IN A DIVORCE SETTLEMENT?

What you will receive from a divorce settlement will be what you and your spouse, or a Court, determine is fair. This may not necessarily be your ideal settlement; however, expectations should be managed. A good way to do this is to seek the advice of a divorce solicitor who can review your matrimonial assets and provide a realistic estimate as to what you can expect.

## HOW IS THE FAMILY HOME DIVIDED IN A DIVORCE?

For many divorcing couples who own one, the family home is the biggest asset involved in any settlement. What happens to the family home can be one of the biggest causes of stress and friction so it is important to understand how a family



A separating couple will often consider one of the following options: -

- **Sell and split:** this involves both people moving out and selling the family home and paying off the mortgage. This money, if sufficient, can then be split as required in order for each party to buy another home.
- **Buy out and transfer:** one spouse can arrange to buy the other out of the property at an amount to be agreed or as decided by the Court and for the property ownership to be transferred to that spouse thereby making them sole owner. Normally, although not always, they solely take on the mortgage and arrange for that to be transferred into their sole name.
- **Postponed sale (Mesher Order):** This involves one party continuing to live in the house and postponing the sale of the property until a later date, for example when the youngest child moves out. The sale value of the property will then be divided as agreed or as the Court sees fit.

## WHAT ABOUT THE MORTGAGE?

If you are divorcing you must ensure the mortgage is paid even if the family home is uninhabited until such time as an agreement has been reached in relation to the mortgage. If you have a joint mortgage you will be jointly and severally liable on that. Failure to pay the mortgage can result in a bad credit rating which may impact on your ability to buy a property in the future.

We strongly recommend seeking advice from a qualified mortgage advisor as well as a family solicitor before proceeding with any mortgage arrangements ahead of your divorce.

## WHEN DOES A FINANCIAL SETTLEMENT HAVE TO BE REACHED IN A DIVORCE?

A divorce can be a lengthy process and there is no set point in this process when a financial settlement must be legally agreed. We strongly recommend however that a settlement is negotiated and agreed, if possible, prior to the divorce proceedings being concluded by way of a final order. There can be unintended consequences if the divorce is finalised prior to an order being made. If a financial order was not

obtained prior to the final order being made in the divorce it is extremely important that a financial Consent Order is obtained prior to any remarriage.

## HOW TO STOP A SPOUSE TAKING MONEY FROM A JOINT ACCOUNT?

It is not unheard of for a spouse to make large withdrawals from a joint account without your agreement ahead of a divorce. This may result in losing money. Be aware that you will also be liable for any debts that are run up in your joint account.

Precautions can be taken such as the closure of a joint account or cancellation of joint credit cards ahead of divorce; however, this can cause potential issues if your spouse requires money for living expenses. As all marriages will have different circumstances we recommend consulting with a divorce and family solicitor to discuss any concerns you might have. They will be able to deliver realistic options tailored to you.

## ARE BUSINESS ASSETS INCLUDED IN A DIVORCE SETTLEMENT?

Yes. Business assets, including farms, can be included in a financial settlement. As with all matrimonial assets this will depend on your personal circumstances. If an agreement between you and your ex-spouse cannot be reached the Court will determine what they believe to be a fair split. Even if one of the partners has no involvement in the business directly, or did not build it up, they may still be entitled to some of its value. There will be numerous things to consider in each case: -

- If relevant, can the husband and wife continue to work alongside each other? If so, is a new business structure appropriate?
- Is one spouse able to raise funds to buy out the other's interest and thereby leave the remaining spouse to run the business unimpeded.
- Can claims be met out of non-matrimonial assets?
- Is a sale or part sale the only way to meet the needs of a spouse?

Every business is unique and often imaginative ideas are required to enable constructive proposals to be put forward.





## WHAT IS SPOUSAL MAINTENANCE?

Spousal maintenance is money paid by one spouse to their former spouse after a divorce has been finalised. It is usually paid when one spouse does not have the means to support themselves financially outside of the marriage, a common instance is following a marriage when one person was the sole earner.

Spousal maintenance payments may be required depending on the following factors: -

- The ability of each person to support themselves and earn money.
- Age of divorcees.
- Living standards pre and post-divorce.
- Special needs or disabilities.
- Length of marriage.

In simple terms, if after a long marriage, one partner has not been working or earning for a number of years they will have more difficulty supporting themselves independently after the divorce. In this instance a divorce settlement may offer that person a percentage of their former spouse's income for a period of time after. Depending on their age and other assets this is often limited to allow them an opportunity to find employment, train etc. or for any pension share to come into payment. If spousal maintenance is not necessary a financial clean break order dismissing the claims will be required.

Child maintenance is dealt with separately.

*The above is not to be regarded as advice since much will depend upon your personal circumstances. It is important that you seek the advice of a family solicitor to understand your position.*

Sills & Betteridge LLP has one of the largest family law teams in the region with an office near you. We have experienced family lawyers in our award-winning family law team who specialise in divorce, financial claims, (including those involving pensions, businesses, farms, inherited assets, trusts, personal injury awards and investments), pre-nuptial agreements, post-nuptial agreements, civil partnership disputes, separation agreements, child arrangements (previously known as custody) and grandparent rights. Our dedicated divorce and family solicitors can deal with both complex and straight-forward divorce and financial settlements and have an outstanding success record. They are highly regarded by the industry and clients alike reaching the prestigious top tier status in the Legal 500. They will help you understand what you are entitled to and work hard on your behalf to achieve that.



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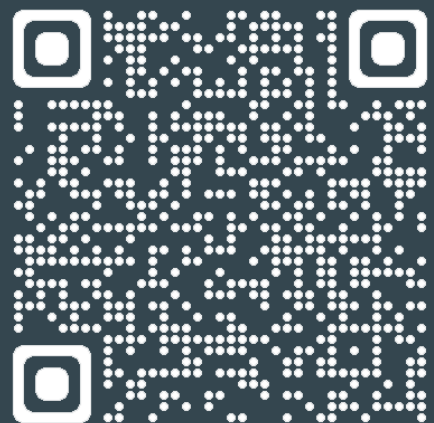
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## FAMILY LAW WEBINARS

Some of our specialist Family, Divorce and Children Lawyers regularly join forces with other professionals to provide webinars on the key issues arising out of relationship breakdown.

- *Divorce | How to build your Dream Team*
- *Getting Divorce Ready*
- *Sorting Out The Finances*
- *Supporting Children Through Divorce*
- *Planning for the Holidays*
- *Handling a Challenging Ex-Partner*

**Please scan the QR Code  
to browse the recordings.**



# KEY CONSIDERATIONS IN A HIGH NET WORTH DIVORCE

Navigating a high net worth divorce requires both legal expertise and financial acumen. Our team specialises in managing complex financial and asset division, ensuring your interests are protected. We work closely with local experts in business valuation, tax planning, and asset management to craft tailored solutions for each unique case.

## INCOME AND MAINTENANCE

Understanding how income factors into divorce settlements is critical.

### Key points include:

- Spousal Maintenance: Determining the need for maintenance, its amount, and duration.
- Self-Employed Spouses: Assessing business income and its impact on the settlement.
- Bonuses: Deciding if annual bonuses should be included in the financial division.
- Capitalising Maintenance Claims: Exploring the option for a greater share of assets in exchange for waiving future maintenance.

## TRUST ASSETS

Trusts can be significant in high net worth divorces. Courts require full disclosure of all Trusts and their details before determining how to handle these assets.

### Important factors include:

- The purpose and timing of the Trust.
- Whether income or assets are accessible to the spouse under Trust terms.
- The jurisdictional complexities, particularly with offshore Trusts.
- Whether Trustees must participate in court proceedings.

## LAND & PROPERTY

Valuing real estate correctly is vital, especially for large estates or properties with development potential.

### Key points for consideration:

- Engaging professional surveyors for accurate valuations.
- Accounting for Capital Gains Tax and other tax impacts.
- Evaluating how property sales might affect the parties or their businesses.

## NON-MATRIMONIAL WEALTH

In divorce proceedings, non-matrimonial assets—those acquired before or outside the marriage—are typically treated differently.

### Important factors include:

- How non-matrimonial assets were managed during the marriage.
- Whether these assets should be included in the settlement.

## BUSINESS INTERESTS

Divorces involving business assets demand careful consideration of valuation, liquidity, and operational stability.

### Essential points include:

- Whether third-party owners need to participate in court proceedings.
- Assessing shareholding value, especially in "quasi-partnership" situations.
- The tax and liquidity implications when extracting funds from a business.
- Determining the fair income available to the spouse who retains the business.

## SPECIAL CONTRIBUTIONS

In ultra-high-net-worth cases (assets over £50 million), courts may consider "special and unmatched contributions" when dividing assets. This requires a robust, well-supported argument for one party's greater claim on the assets.

## PENSIONS

Pensions often represent a significant part of a high net worth divorce. Proper valuation and expert advice are essential for an equitable settlement.

### Key considerations include:

- Valuing SIPPs and other pension structures.
- Understanding the tax implications of pension division.
- Ensuring accurate reports, possibly from an actuary, for defined benefit schemes.

## HIGH-VALUE PERSONAL BELONGINGS

Chattels like cars, art, and luxury items can be valuable assets in a divorce. Getting accurate valuations ensures these items are fairly divided.

**Divorcing with significant assets requires a detailed and strategic approach. High net worth divorces involve unique complexities, from intricate financial portfolios to complicated asset division. Whether you have substantial income, a thriving business, or valuable property, expert legal guidance is crucial to ensure fair outcomes.**



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# BUSINESS ON DIVORCE

Businesses can often be one of the trickier assets to deal with upon divorce, but also, in many cases, they can be one of the most significant capital assets available, as well as being an income provider to one or both parties.

If you are separating and have a business, you will no doubt have many questions that will need answering. Below, we answer 3 common questions that arise when considering businesses on divorce:

## 1. Will the business need to be valued and if so, what is the process?

As with all assets on divorce, the starting point is to obtain a valuation of the business. However, valuing a business is not as straightforward as valuing other assets.

Usually a forensic accountant will need to be instructed to value the business, although depending on the nature of the business and any assets held within the business structure, other experts may be required in addition to the accountant, such as a chartered surveyor. The accountant will often be asked to look at a range of other issues, in addition to the 'value' of the business, to include tax issues, liquidity and maintainable earnings.

In some cases, a business may not have any capital value but provides an income for one or both of the parties. In such cases, expert evidence may still be required to look at the likely income that the business can produce, both at the time of separation and in the future, rather than the capital value of the business.

If the parties are agreed, then experts can be instructed without the involvement of the court, however, if an agreement cannot be reached with regards to the need for an expert or the identity of the expert, then an application to the court may be required. It is usually better to instruct a single joint expert who is jointly instructed, but independent of both parties. In these circumstances, the cost of the valuation is generally shared equally.



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## 2. Will the business be considered an asset in the divorce process?

If the business is not just an income provider and has a capital value, it will be considered an asset within the divorce process. However, as mentioned above, a business is not usually a liquid or easily realisable asset and so will generally be treated differently from assets such as properties or cash investments. The general principle, however, is that matrimonial assets will be shared equally on divorce. A business which is established and run throughout a marriage by one or both of the parties will generally be classified on divorce as a matrimonial asset.

For many businesses, however, they do not have a capital value and are simply income providers. In those circumstances, the court would not consider the business as an asset, but as an income stream to one or both of the parties.

There are some limited circumstances when arguments can be made that some or all of the business should not be included as a matrimonial asset and that one party should retain the asset without claim from the other. An example might be if the business was built up prior to marriage by one party. These arguments are complex and full, specific legal advice would need to be obtained.

## 3. Can the court order a sale of the business?

Although the court do have the power to order the sale of a business, they will always try to avoid this if at all possible.

There are many options available to the Court before considering a sale of a business and much will depend upon the nature of the business, any other shareholders or directors outside of the marriage, what cash is available or can be raised as well as mitigating any tax that may be payable by the parties and/or business.

An option may be for one party to 'buy out' the others interest in the business. In such circumstances, the party who will retain the company may need to raise a lump sum in return for the transfer of shares. A lump sum can be paid either in one instalment or in a number of separate instalments over a period of time. Alternatively, if a lump sum cannot be raised, the court can look at ordering spousal maintenance, if the business is able to generate a sufficient income to sustain such payments.

Offsetting business interests against other assets may also be another option. For example, if there is a jointly owned property or sufficient savings, those can be divided unequally between the parties or transferred entirely to one party to 'offset' interests in the business.



# HOW LEGAL DOCUMENTS CAN HELP TO PROTECT YOUR BUSINESS ON DIVORCE

Relationship breakdown and divorce is usually a period of significant change and uncertainty. For business owners, the stress and anxiety can be exacerbated with worrying about what will happen to their business on divorce.

The good news is that there are legal documents that can be put in place to create much greater certainty as to what should happen with assets on divorce including business interests. Having those documents properly prepared is relatively inexpensive particularly when compared to the significant costs that can be associated with an acrimonious divorce.

## PRE-NUPTIAL AGREEMENTS

If you are not yet married but are intending to do so then the first legal document you should consider entering into is a pre-nuptial agreement. In the last couple of years I have seen an increasing demand for pre-nuptial agreements as there appears to be growing awareness of these legal agreements and less of a taboo around them. A pre-nuptial agreement is essentially a contract between you and your fiancé that sets out how you both would like your assets to be dealt with and divided should the marriage come to an end. The advantage of setting out those terms at the outset is it creates much greater certainty and the pre-nuptial agreement can be used to protect certain assets, for example a business.

Having said that, pre-nuptial agreements should still strive to be fair and the Family Court does retain a discretion to override the terms of a pre-nuptial agreement if the needs of one person and/or the children on divorce are likely to be prejudiced.



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## POST-NUPTIAL AGREEMENTS

If you have already married there is a second legal document which can be prepared known as a post-nuptial agreement. A post-nuptial agreement is very similar to a pre-nuptial agreement except it is a contract that you enter into after marriage rather than before. Again, the purpose of the post-nuptial agreement is to set out how you and your spouse would like your assets to be divided should the marriage come to an end. In my experience, clients often want a post-nuptial agreement preparing if, for example, one of them is due to come into an inheritance or a significant gift from another family member and they want greater certainty that that particular asset will be protected on divorce. The same applies with a business interest, it might be that your business partners would also like greater certainty of knowing that your business interest is not going to be compromised should your marriage come to an end.

Having said all of the above I do wish to reiterate the point that the Family Court will not be bound by the terms of either a pre-nuptial agreement or a post-nuptial agreement but in most cases they are very persuasive and parties to these agreements should expect to be held to the terms.

# THE FARMING DIVORCE – ARE FARMING CASES TREATED DIFFERENTLY?



The Courts when dividing marital assets are guided by S25 of the Matrimonial Causes Act 1973. The law is the same whether dividing assets on divorce in a farming case or otherwise. The aim of the law is to share out all of the assets of both partners in a way that is fair. In the majority of cases a fair outcome, depending on the resources, is one that ensures that both spouses' needs are met in the short-term and, if the resources allow, in the long-term. What someone 'needs' depends on their particular situation. The needs of any children of the family and of each partner are going to be the main focus of the case. Where the assets involved in a case are more than enough to cover needs additional considerations may apply, for example, some non-matrimonial assets (usually those acquired before or after the period of marriage) are more likely to be excluded. It cannot however be assumed that a farm is protected and it will depend on many factors but particularly whether the needs of each partner and that of any child can be met without looking at the farm. The wish of the remaining spouse to preserve the farm for future generations will not in itself prevent a sale. Having said that the Courts will normally do their best in farming divorces to find solutions which are fair to both spouses and which do not force a sale.

Often farming cases can have additional complications which will need to be taken into account including the following: -

- Farms are often inherited and it is often the case that both spouses hope that future generations will carry on the business. The focus then becomes how capital can be extracted for the departing spouse's needs without selling the farm.
- They are often inter-generational with other family members being involved in the running of the farming business. Any divorce could therefore impact on other family members.
- Farmers are often asset rich and cash poor. Liquidity can be a significant factor which will need to be explored.
- There are often different tenancies involved. Some may be let on a long-term interest under the Agricultural Holdings Act 1986 and some may be under shorter term tenancies which we call 'farm business tenancies'. This can all add to the complexity.

- Many farm businesses involve some form of Trust or family settlement.
- Often farms are run as partnerships between the couple with one of them owning land which has been inherited, often being passed down to the third or fourth generation. A couple often work together actively on the farm and within the business.
- Sometimes the farmhouse will be both part of the working farm and home to the parties. There may be a tie over the farmhouse which exists to restrict the occupancy of the farmhouse for those involved in working on the land. Therefore as a matter of planning law the option of transferring the family home to one of the spouses may not be available.

When looking at a divorce case the Courts will firstly require a full valuation of the assets including farm, farmhouse, freehold farmland, tenanted farmland, livestock, crops, machinery, subsidies and quotas together with the other savings, investments and pensions.

As highlighted above, of significance in a farming case will be the needs of the spouse leaving the farm, including their housing and income needs and whether their reasonable needs can be met without a sale of some or all of the remaining assets. In a longer marriage those needs will be assessed generously. Liquidity, cashflow and how to raise and extract capital can become the main issue for consideration in cases involving farms.



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# VALUING FARMS AND FARMLAND ON DIVORCE

*"A well-researched valuation report can help achieve a fair settlement in divorce cases for the parties."*

It is important that a valuer is thorough and impartial so as to ensure they have the confidence of both parties, particularly in the midst of often-difficult divorce cases. This, in turn, will hopefully enable the parties to arrive at a settlement without recourse to proceedings.

Often, the book value of farmland and farm buildings may be quite different from their value in the property market. A decision will need to be made as to whether it is proportionate and appropriate to obtain a valuation of the land, buildings, and machinery etc., and whether this is necessary before the case can be resolved. Normally a valuation report is required.

If it is decided that it is necessary to value the farm and farmland, then it is often appropriate to instruct a single joint expert that the parties both agree on. The method of valuing land and farms for matrimonial purposes is similar to that used for sale, purchase, or bank lending.

The valuation process normally starts with a joint letter of instruction being sent to the valuer. Providing there is no conflict, the valuer will confirm their timescale, cost, and any further documents that he or she requires. Their valuation process then normally starts with a detailed inspection, measuring the farmhouse and farm buildings and land, assessing the quality of the soil on the land, the efficiency of the land drainage and the condition of the crops. An expert in valuing farmland is always recommended. Following the inspection they will carry out research with the assistance of the solicitors to establish land ownership, tenancies, restrictions, covenants, and development clawbacks. They will gather evidence of property sales in the region to form the basis of their valuation.

It is not unusual for ownership anomalies to arise. For example, the farmhouse may not be in the same ownership as the land and buildings. The value of the house is then potentially reduced by having the disruption of the farming operations close by. Another potential problem is that some of the land may be let on secure lifetime tenancies, regulated by the Agriculture Holdings Act 1986. In this situation the tenant has the right to occupy the holding for its lifetime and potentially, there may be rights for their children to succeed to the tenancy. In addition, the rent is reduced by the provisions of the Act. The reduced rent and the inability to obtain possession means that it can be worth less than land with vacant possession. This can be quite common on family farms where tax planning schemes were put in place for family members with the deliberate intention to reduce the land value to reduce future tax bills.



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Given that many farms now diversify, means that the valuer may be required to value a variety of non-agricultural assets including offices, holiday cottages, farm shops, commercial storage, haulage yards, caravan parks, fishing lakes, woodlands, and windfarms. If such diversification has taken place, then enquiries will need to be made of the joint expert whether they have experience in this area or can involve someone that does.

The expert should also consider any development potential, but this may involve reviewing the Local Authority's planning policies, and where appropriate, discussing issues with the planning officer. Where land has development potential, but no planning permission, this can be contentious. Sometimes consideration will need to be given to a future development clause if the intention is that both parties share the benefits of any future planning permission.

Valuations are an art rather than a science. It is important that an independent and impartial expert is instructed who will take a balanced view to find a fair value for the property and land. They will hopefully give an indication of the likely value range. The parties will then need to take this into account in their negotiations.





# DIVIDING MATRIMONIAL AND NON MATRIMONIAL ASSETS ON DIVORCE

There are two main principles which apply to how your assets are divided in a divorce - 'needs' and 'sharing'. As part of the fact-finding process I go through when establishing who owns what and how much the assets are worth, I will also need to know where the money / assets came from.

I will often need to spend time with clients talking through the history of the relationship and possibly the history of a particular asset (whether it is land, a farm or a business). Part of this exercise is to try to establish which assets are 'matrimonial' - built up during the course of the marriage as a result of one or both parties' endeavours, or 'non matrimonial' - introduced from an external source such as inheritance). Just because an asset is owned in one spouse's name does not mean it is non matrimonial -and an asset placed in joint names does also not automatically become matrimonial.

The general approach in a divorce is that the matrimonial assets should be shared equally. Non matrimonial assets are usually only divided up if there isn't enough money in the matrimonial assets to provide for your 'reasonable needs'.

## WHAT ARE REASONABLE NEEDS?

Ultimately this will be a point to try and negotiate. Of course, one side is likely to say they need a more expensive house or higher income than the other side. As part of your divorce you are likely to be asked to provide a list of your monthly outgoings and to try to estimate what they might be in future once your divorce is finished. You will also need to look at houses which you would say are suitable for you. It is important to take time making sure all of this information is accurate. We also have to think about costs of moving and furniture and other costs such as needing to buy a new car. The more you can justify your monthly income and capital budget, the more difficult it is for the other side to challenge it. If you have had a high standard of living during your marriage, it is more likely that your needs will be generously interpreted. However, you cannot expect to simply duplicate the lifestyle you have had previously.

Assessing whether assets are matrimonial or non matrimonial and making sure your needs are well presented is an essential part of the work I carry out with all my clients to give you the strongest platform possible to try to negotiate a fair settlement with their spouses.



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# WHAT HAPPENS TO PENSIONS ON DIVORCE?

The Court have wide powers when it comes to financial issues on divorce but one of the most overlooked areas is the issue of pensions. Pensions can be shared on divorce, just like other assets, but they are also a complex area which often requires expert advice from a pensions actuary to properly consider.

The pension value for either spouse can be the most significant asset in a case. However, pensions are often not an asset that is available immediately, subject to the age of the parties, and the purpose of a pension is of course to provide an income and lump sum in retirement which may be many years away. The Court do however have the power to divide pensions, regardless as to whether the asset is in payment or not.

In terms of procedure, upon separation the Cash Equivalent Transfer Value ("CETV") for any pension schemes held by either party should be obtained so that consideration can be given as to how is best to proceed. Transparency is needed to understand what your respective pension provision is. CETVs can take some time to be received so I would advise that a request is made early on following separation for this information to minimise any delay.

## HOW CAN THE COURT DEAL WITH PENSIONS?

In broad terms the Court have the power to make the following orders:

### PENSION SHARING

This is the most common order. This means that a percentage of the pension fund is transferred into a separate pot in the other party's name and you would each draw down from your own individual schemes in retirement.

### PENSION ATTACHMENT

This essentially means that a non-member spouse can "attach" to the pension payments received by their spouse and they receive payment of a portion of the lump sum and/or monthly income received when the pension is drawn down.

Such orders are quite uncommon as there is more risk attached to this type of order for the receiving spouse as payments would cease upon the death of the policy holder. This order also means that there is not a "clean break" which creates risk for both parties but more predominantly for the "paying" spouse. A clean break means that neither party can make a financial claim against the other as a result of the marriage and draws a line under such claims providing certainty and is generally the court's preferred approach.

### OFFSETTING

Offsetting is a process whereby one party retains more of the capital from other assets, whether it be the home or other savings, in lieu of a pension claim. It is possible to partially offset claims as it may not be possible in all cases to fully offset the value of the pension from other assets. It is important to remember that £1 of pension is not the same as £1 in immediately available cash and therefore expert advice is advised in relation offsetting calculations.

The starting position for division of assets on divorce is equality but the Court can also take "needs" into account, both in relation to capital and income. The individual circumstances of each case should be considered and there is not a "one size fits all" approach to dividing assets on divorce.

Pensions can be shared both by capital value and income value but individual advice will need to be taken as everyone's circumstances are different. A pensions actuary can comment upon the impact of both approaches.

### POTENTIAL ISSUES IN RELATION TO SECTOR/POLICE PENSIONS

Public sector pensions, such as police pensions, are more valuable than standard private occupational schemes and cannot be compared on a "like for like" basis against other types of scheme, even if the CETV is similar. Defined Benefit pension schemes, such as Police pensions, can also have a greater value than the CETV provides for.

Further, there is currently the additional impact of the "McCloud" remedy which is impacting on many police pensions at present. In affected cases, a portion of the newer 2015 scheme can be "rolled back" into the legacy scheme which will increase value. Many CETVs being produced now do include the remedy but it is important to check the position as the CETV may not be accurate if the remedy has not been applied. It is not just Police pensions affected by such changes but all public sector pension schemes.

### SUMMARY

Pensions are just one facet of the financial position that needs to be considered on divorce and each case is different. Early advice is recommended in relation to the financial issues arising out of a divorce so that you can fully consider the procedures and potential implications of the same taking into account your own circumstances.

Pensions are also a complex area where expert advice from a pensions actuary is likely to be needed to consider how the asset may be fairly divided.

Pensions, whilst usually a future consideration, often represent the most significant asset in the marriage. Therefore, pensions are an asset which should be properly considered to provide clarity and certainty.



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## COHABITATION AGREEMENTS

*"A cohabitation agreement is often entered into by couples who have no current intention to marry but wish to live together."*

A cohabitation agreement is often entered into by couples who have no current intention to marry but wish to live together. The preparation of a cohabitation agreement is a sensible and prudent course of action for people entering into a relationship. It can save much litigation and stress if the relationship breaks down.

If you separate from someone that you have been living with (and are not married) there are no particular set of rules that automatically apply. There is no such thing as 'common-law marriage'. Living with someone for a certain period of time does not mean you are automatically entitled to some financial support or to share their property after you separate. There have been proposals to change the law but the government has said that it does not intend to do so at the moment. In the absence of any statutory regime like that available to married couples, cohabitants must rely upon the General Law of Contract. This means that where a couple has not been married or in a civil partnership, sorting out disputes about property without an agreement can be expensive and take a long time. Many couples therefore enter into a cohabitation agreement. Many couples find that the process of making

an agreement means that they have the chance to think and talk about how living together is going to work financially, meaning that arguments about money are less likely later on.

A cohabitation agreement is a written, signed document often signed as a deed in front of a witness. It will generally deal with 3 main principle areas:

- Who owns (and owes) what at the time of the agreement and in what proportion.
- What financial arrangements you have decided to make while you are living together, and;
- How property, assets and income should be divided if you separate.

Where the agreement is properly drawn up, the terms are reasonable and each of you has had separate independent legal advice on its effect, a Court is more likely to uphold the agreement in the event of a dispute.

Sills & Betteridge have a large team of experienced family lawyers who are specialists in their field. Our family solicitors work hard on behalf of their clients which has resulted in them winning numerous awards over recent years including Top Tier in the Legal

500, Children Law Firm of the Year and the prestigious Family Law Firm of the Year – Midlands and Wales at the Family Law Awards. Our family lawyers are approachable, hard-working and care about achieving the best outcome for their clients.



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# THE DO'S AND DON'TS WHEN USING TECHNOLOGY

We live in a time where it has never been easier for other people to access your sensitive information from your phone or laptop. Staying safe on social media is important for everyone, and for those going through family law proceedings. There are multiple reasons why an ex-partner may want access to your information, including, but not limited to, using it as evidence against you in court proceedings, wanting to know more about a shared child, or stalking – 45% of stalking cases are carried out by an ex-partner.

To decrease the risk of you becoming a victim in these situations follow these do's and don'ts when engaging with technology:

- **Change your password regularly** – make your password as complicated as possible, include at least one capital and one lower case letter, numbers, and a special symbol. Also, try to change your security question and answer to something your ex-partner would not know. Do not make your password something obvious such as your birthday or mother's maiden name.
- **Don't leave your device logged on when unattended** – this means logging out of every site
- **Make sure your privacy settings are updated** – privacy settings on all social media platforms should be set to private so only your friends have access to your profile and your location should be turned off.
- **Don't accept friend requests from people you do not know** – an ex-partner can easily create a fake account to learn information about you from various profiles. You can also limit the amount of 'friends' you have on social media to people you know well and trust.
- Block your ex-partner's phone number – if they continue to be persistent despite this and calling you using other numbers, change your number. If you have a landline become ex-directory. You may also wish to change your email address.
- **Be cautious of any photos/videos you post online** – even if you are not 'friends' with them on social media, there are still ways that an ex-partner can access what you post. Ensure that there is no private information included, this could be a photo of the street you live on, videos announcing

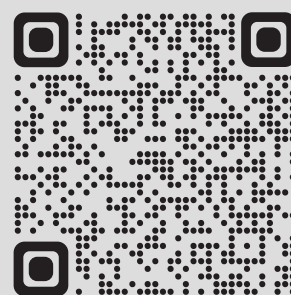
where you are/will be or even photos of your children in school uniform.

- **Install anti-virus software on all devices** – this is particularly important with your phone as most laptops and computers have this already installed. This type of software can detect spyware on your device. Spywares are apps that are added to your device and can be used to track what you do on that device and let them have access to passwords on various accounts.
- **Store any threatening and aggressive emails/text messages from your ex-partner** – these emails then be printed off and given to the police and your solicitor. Evidence can be compiled and used to take legal action against your ex-partner e.g., a Restraining Order.
- **Trust your instincts** – if you believe something is wrong, trust this and talk with an expert. They will talk you through what more can be done to protect yourself.
- **If you wish to keep your address confidential from your ex-partner** and children are moving between the two households, be careful that Air Tags are not being returned with the children's belongings as your ex will be able to identify

where you are. Likewise, be careful if the children's mobile phones (or indeed your own) have a 'Find my phone' App which will enable the phone to be traced.

- **Never post information regarding an upcoming holiday or trip as your status.**
- **Avoid putting your phone numbers, address, email, children's or pet's names on your profile.** People often use words such as pet's names or numbers as passwords, so it is not recommended to publish them online.
- **Use 1471 to see who has tried to call you.**
- **Use 141 to withhold your number.**
- **Call the police if you receive threatening calls.**

For more advice on social media safety, how to block or remove friends and change privacy settings, scan the QR code.



# THE EMOTIONAL EFFECTS OF SEPARATION ON YOU AND YOUR CHILD(REN)

*"Both parents and children go through a grieving process. You may feel strong emotions and be frightened by their intensity."*

Typically there are 5 key emotional stages which you and your child may go through at different times. These stages may occur in any order and you may find you swing between one and then another.

If there are problems in your relationship for some time the grieving may have occurred along the way. Often those that seek to leave the relationship think about separation for years prior to leaving and are therefore often more emotionally detached and are prepared for the event. If however for one person the separation is sudden and unexpected they will often enter the first stage of separation which is denial.

## THE 5 STAGES OF SEPARATION

### 1. Denial

Initially you feel shocked and overwhelmed. You will ask yourself 'is this really happening to me?'. You may feel numb.

#### HELPING YOURSELF

Try and build some time and space for yourself to think things through whilst maintaining a regular routine for yourself and your child. When you stop avoiding the reality you will start the process of healing. Initially this can be painful. It is important to know that you can and will eventually move on. This may take time.

Accessing support for yourself from friends and family or through organisations such as Relate, local support groups or counsellors early in the process may make a difference.

During separation your child may be experiencing a huge range of emotions. Talk to them and understand their feelings.

#### HELPING YOUR CHILD

Your child may deny that there is a problem and believe that you will reconcile. Once it is clear that there will be a separation it is important not to distort the truth by giving hope about a future reconciliation. By doing so you are preventing your child from adjusting.

Try to keep regular routines and normal activities. Try to keep the child's life at home, school and clubs as regular as possible. However difficult it is and however upset you are, try and ensure that they see the other parent regularly unless there are safeguarding issues.

### 2. Anger

Gradually all the feelings that you have been denying will begin to surface. This is part of the healing process and helps you to let go of the pain.

#### HELPING YOURSELF

Whilst it is important to recognise your emotions you must not let

them dictate your behaviour. You must not engage in an argument or situation that might lead to conflict in front of your children. To help your child's wellbeing, and your own, you will need to practice self-control. You are still going to have to see the person who has created this anger. Give yourself time to vent your anger through talking to a friend or counsellor, not your child.

The more you view the separation as being unfair, the more anger you will feel. Your suffering may be managed by how you choose to think about the separation. The key challenge will be how you manage your own behaviour so as not to place more pressure on the child who themselves will be coping with all the changes that are taking place. Allow yourself to experience your emotions but do not allow them to dictate your behaviour.

Although difficult, try and replace your own and your child's negative thoughts of the future with positive ones and the emotions will become less intense.

#### HELPING YOUR CHILD

Your child may feel anger too. They may make statements, e.g., 'I hate you for leaving us'. Do not deny these feelings, acknowledge them. Continue to show them love and continue to set boundaries.



Help your child find a way to express their feelings. There are many books about separation available from Amazon, e.g., 'Split Survival Kit' by Dr Angharad Rudkin and Ruth Fitzgerald.

### 3. Bargaining

This stage often involves the hope that you can postpone or delay the separation. Negotiation is often with the ex or some higher power, i.e., 'I can change, please give me a second chance'. Children may feel responsibility for the separation or they may think that they can try and save the relationship.

#### HELPING YOURSELF

If you are having second thoughts find someone you can talk to who can help you work out if it is a good idea. The important thing to remember is that you cannot control the thoughts or actions of another person.

#### HELPING YOUR CHILD

You can reinforce that they cannot fix or change what has happened. Again do not distort the truth by giving them hope about a future reconciliation. Keep reinforcing to them that you both love them and that will not change.

### 4. Depression

This is a feeling of sadness and the degree of sadness will be different

for each person. During this phase you will realise the reality of your separation.

You may spend much more time crying. It is coming to terms with the end of your relationship. The feeling of these emotions shows that you have begun to accept the situation. This is not an illness, it is an appropriate response to a loss. Grief is a process of healing and sadness is one of the many steps along the way. Remember that eventually these feelings will diminish over time.

#### HELPING YOURSELF

It can be hard to feel motivated when you are feeling so sad. You must work hard to take care of yourself, especially in regard to sleep, exercise and nutrition. Do not neglect yourself. You need to stay strong for your child. Try to exercise even if it is for a 10 minute walk each day. Try to continue to connect with people as much as possible. If you get stuck in this mode or it is affecting your day-to-day life you should seek help from a counsellor or your GP.

#### HELPING YOUR CHILD

Again, let them know that they have a right to feel sad and acknowledge their feelings. Be aware however if they feel sad day after day, have trouble sleeping and easily become upset and

tearful. They too may have got stuck and getting help from a GP or a counsellor may help.

### 5. Acceptance

Usually a more normal pattern will emerge. You will start to feel more settled and more balanced. At this stage you will come to terms with the situation and learn to live with it. You will let go of the past and move forward into the future. Your child will be able to move on sooner if you are able to move on from the situation and accept the reality of it.

Learning to live without the support of your ex-partner and establishing a post-separation identity may be the most difficult part of separation. Invest in your child, your friendships and your family. Eventually you will feel more settled and there will be a growing sense of being a whole independent person.



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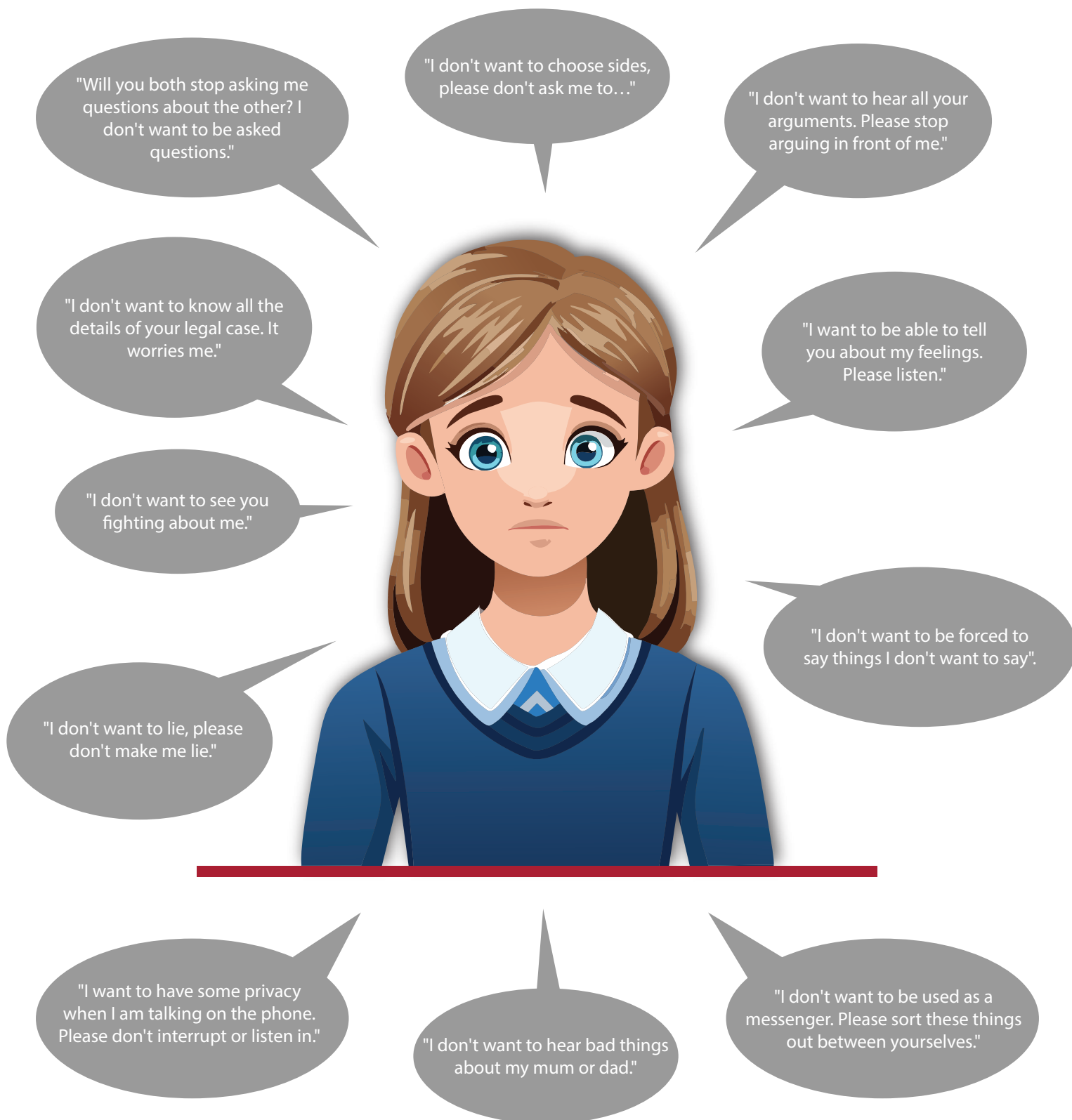
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# CHILDREN'S WISHES

Studies have shown that ongoing conflict between parents after separation may result in poor outcomes for children both now and in the future. The primary task for you should be to prevent your child suffering any emotional harm. This should be reduced if you follow the key messages contained below.



# TIPS THAT MAY HELP YOU NEGOTIATE WITH THE OTHER PARENT

It can be incredibly difficult to talk with the other parent following separation. Trust is often at an all time low. You may both feel angry, frustrated, offended and even threatened. You may misinterpret each other.

Many parents get into a pattern of putting forward their position and if it is not accepted they attack the other parent's position and character. This is often met with the other parent rejecting their position outright, defending their own position and attacking back. This cycle of reaction and counter reaction rarely results in any agreement being reached.

## STRATEGIES THAT MAY HELP

### 1. Do not react

However unreasonable you may feel the other parent is being, do not reject what they say outright as this will simply lock them into their position. Break the cycle by refusing to react. Stay calm, strong and in a professional mode. You may well feel anger. That is fine and you are entitled to feel how you feel, but do not act impulsively. Although very difficult freeze your reactions. Do not try to control their behaviour, control your own.

### 2. Listen

- Try to focus 100% of your attention on them and their issues.
- Do not rush things – allow time to find out the whole story.
- Focus on their concerns. Ask them why they are saying what they are saying or ask them what they are asking for. Try to get to the bottom of their concerns. You can do this by listening. In difficult situations it helps to be able to show not only that you are listening, but that you are trying to understand the other person's point of view. Acknowledge the difficulties of the situation and that you understand that they are upset. Do not interrupt, even if you feel they are wrong. Most of us are so preoccupied with our own concerns that we pay little interest in others. Ask them to tell you more by asking things like "why is it that you want that?", "what are your concerns?".

### 3. Put forward your concerns

When you fully understand their position let them know what your concerns are. Make this about your concerns and not your position.

### 4. Come up with some options

- Try and come up with some options that meet your concerns and that you think will meet their concerns.
- "What if" can be incredibly useful in terms of trying to work out a problem – use this often.
- Sometimes offering a choice is useful.
- Ask them what they think about the idea and ask

them if they feel it deals with their concerns.

- Ask them what they would do in your position.

## FURTHER TIPS

- Do not raise your voice.
- Try to resolve your problems side-by-side rather than one person forcing their will against the other. Whatever has gone on try and deal with them politely and sensitively as human being.
- Always try and aim for a win/win situation.
- Have any discussion that is needed away from the children.
- If you know in advance that you may have to face a difficult situation prepare for it, e.g., by scripting what you want to say or run through it in your mind.
- Avoid the game of scoring points.
- Stop trying to apportion blame.
- Try and focus on the future and not the past.
- If the other parent feels attacked they will stop listening.
- Do not be premature in saying "no" or to criticise.
- Do not try to force the parent to back down or revert to dirty tactics. It is in your child's best interests to rebuild your trust.
- Apologising, if appropriate, can be incredibly powerful.
- Remember this is not about just giving in, this is about negotiating.

## STAY SAFE

- Be assertive when necessary but avoid becoming aggressive. Tell the other party if you are having a problem with their behaviour.
- End the conversation if necessary, but warn them first that is what will happen if they continue to talk aggressively etc.
- Do not let situations escalate. Say that you will get back to them once you have considered matters. Try to end the situation before it gets out of control.
- Trust your instincts.
- If there has been threatening behaviour in the past do not ever put yourself in a vulnerable position. Be in a public place or keep negotiations through solicitors.
- If you have found a situation difficult talk to someone.



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# STEP-PARENTS AND PARENTAL RESPONSIBILITY

*"A step-parent often plays a major role in the upbringing of their step-children, but their legal obligations to these children are often confused."*

To be considered a child's step-parent, a person must marry/enter into a civil partnership with a mother or father who is no longer in a relationship with the other parent.

Becoming a step-parent however, does not grant an individual automatic rights to their step-children. They have no parental responsibility towards them. In practical terms, this means that the step-parent has no obligation/right to:

- Agree to medical treatment for the child
- Discipline the child
- Provide a home for the child
- Provide schooling for the child

A step-parent can obtain parental responsibility for their step-children in certain situations. This can be done in the following ways:

## 1. Parental Responsibility Agreement

This method of obtaining parental responsibility involves obtaining the consent of all those who hold Parental Responsibility for the child's. It enables the step-parent to have the same rights and obligations as the parent.

## 2. Parental Responsibility Order

If a parent does not wish to enter into a Parental Responsibility Agreement, an application can be made to the Court. Each person that has parental responsibility will be named as a respondent

and hence, will be able to put forward their position. The Court will consider the application, in particular the step-parent's commitment and attachment to the child. They will also take into consideration the step-parent's reason for applying.

## 3. Adoption

This involves dissolving the parental responsibility between the child and the parent who is not in the marriage/civil partnership. As this measure is so extreme, it is unlikely to be used unless the other parent has died, or do not play a role in the child's life.

## 4. Obtaining a Child Arrangements Order

If a Child Arrangement Order is made naming the step-parent as a person the child is to live with the step parent will have Parental Responsibility during the time the child lives with them. If a Child Arrangement Order is made naming the step-parent as a person the child is to spend time with the Court may provide in the order for that person to have parental responsibility whilst the child is in that person's care.

If the step-parent and parent were to separate, and unless the child was adopted by the step-parent, then the step-parent would not have an automatic right to spend time with the child or an obligation to pay child

maintenance even if they had parental responsibility. The step-parent can in these circumstances apply for a Child Arrangement Order so they can be named as either a person the child is to spend time with or live with. The Court will consider all relevant factors and particularly whether they have a healthy and mutually beneficial relationship with the step-child. Along with this Order, they may grant the step-parent parental responsibility. If the step-parent is named as someone who the child is to live with, then they will receive parental responsibility automatically.

We have experts who deal with Parental Responsibility Agreements/Child Arrangement Orders who can help you navigate the right approach for you and your family.



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# FOREIGN HOLIDAYS AND YOUR CHILD – YOU MUST OBTAIN CONSENT

Upon separation the Courts do not tend to become involved in arrangements for children if the parents are able to agree holiday arrangements between themselves. No Court Order is necessary if there is an agreement between the parents and there is no existing Court Order in place preventing this. Generally parents agree and consent to the other parent taking a child abroad and often see travel as a beneficial experience for their child particularly where there is no reason to fear that a parent will not return because, for example, there is no overseas connection, the parent owns a property in the UK, works in the UK and has family connections here. If however no agreement can be reached between the parents then an application to the Court may be made by the parent planning the trip or by the parent who wishes to prevent the trip. A parent cannot take a child abroad in most cases without consent of the other parent unless this is provided for in a Court Order. It is always best to act transparently and give the other parent plenty of notice of any planned trip and obtain their consent.

Under Section 1 of the Child Abduction Act 1984 a parent commits an offence if they remove their child, aged under 16, from the UK unless they have either 'appropriate consent', permission from the Court, or are acting in compliance with Part 2 of the Children Act 1989.

Under the Children Act 1989 (s13) where a Child Arrangement Order is in force setting out with whom the child is to live, any person named in the 'lives with order' may take the child abroad for up to 1 month. Everyone else requires the written consent of every person with parental responsibility for the child or the Court's permission. Occasionally if there have been Court Proceedings the Court will change that default position so the starting point will always be to check the Court Order if there is one.

In most cases that come before the Court the holiday is opposed on the basis of an alleged risk that a child will be retained abroad often where the trip is to the parent's home country, or where they have family connections. The Courts in these circumstances will often look at the risk involved and whether the child could be made to return to the jurisdiction if they are retained. This will largely depend upon whether the 'holiday' is to a Hague Convention country (1980 Hague Convention on the Civil Aspects of International Child Abduction). This states how the Courts will investigate what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires. Courts will often look at the benefits and risks to the child. In looking at the benefits they will consider the benefit to the child of being able to travel to their parent's home state, visiting their family at home and experiencing their culture. They will look at the history and the risk of retention and where the parent is based, what commitment they have to the UK, the emotional state of the parent, previous threats



to remove etc. The Courts will look at whether there are any safeguards that mitigate any risks. Where there is a non-Hague Convention country the Courts and the parents are understandably going to be more concerned as the ability to ensure the return of the child is more difficult. The Courts will look at what safeguards can be put in place in these circumstances, if any.

Holidays to Hague Convention destinations are generally perceived as lower risk on the basis that if the child is retained a swift return can hopefully be effected.

Holidays are generally considered a good experience and beneficial to a child. Opposing a holiday application where there are no genuine grounds for doing so could result in a deterioration in the relationship between the parents and in some circumstances the child. Where the Court determine that the reasons for opposing the holiday are malicious this could potentially result in the Court criticising that parent and a Costs Order being made. If however, there are genuine concerns regarding a risk of abduction it is crucial that legal advice is obtained as soon as possible. A family lawyer can help you navigate this difficult area.

In recent years our specialist family solicitors have won numerous awards as a result of their specialism including the prestigious national Children Law Team of the Year at the Family Law Awards and Tier One of the Legal 500. Our client reviews speak for themselves and highlight our outstanding success record.



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# QUESTIONS & ANSWERS

**My ex-wife and I divorced 2 years ago. Neither of us used solicitors as we completed the forms ourselves. I thought that on Decree Absolute we would be free of one another financially however, recently a friend told me that unless she remarried she would be able to make a claim for financial provision. Is this true?**

Yes, financial claims that arise out of a marriage outlive the Decree Absolute (now known as a Final Order). The case of Wyatt v Wyatt illustrated why it is so important to ensure that the financial matters are dealt with at the same time as the divorce. In this case, the parties divorced in 1992, and a number of years later the husband made a significant amount of money and built a business valued at £90 million. The Supreme Court ruled that the ex-wife should be allowed to bring a financial claim against him despite them being separated for a long time. However, your friend may be correct if she has remarried. This could potentially be a bar for her making a claim for financial provision in certain, but not all, circumstances. Specific legal advice is recommended to explore what claims may be open if any.

**I have been married to my husband for 20 years. We have 2 children aged 11 and 14. When the children were born, I stopped work in order to care for them and look after the family home. My husband has always paid for everything since the children were born and he says that means he will get more of the assets. Will the court consider my contribution, and will I be entitled to 50% of our assets?**

Whether a settlement is reached through negotiations or the courts, the following factors will be taken into account; any children and their welfare and financial needs, the length of the marriage, the current income of each party, the potential earning capacity of each party, the assets of each party including pensions, the standard of living enjoyed during the marriage and the financial and non-financial contributions of each party. Assets are not automatically split equally in a divorce. The main consideration is the individual needs of the parties and those of any children. The court may consider a 50/50 split or an unequal split if they think one of you is in greater need than the other. Your husband's greater financial contribution as a result of his income is unlikely to be a factor that will lead to him receiving more of the assets.

**I have been in a difficult marriage for many years. I have been controlled by my husband. I have little confidence left and just want to move on. I have a limited income and do not have the money to spend on legal fees. My husband has suggested a 50:50 split and that his solicitor will prepare the agreement. This seems fair. Do I really need a solicitor in this situation?**

You mention that you felt controlled by your husband during the marriage but do not mention specifics. In certain circumstances Legal Aid is still available. If you go to a firm that offers Legal Aid, it will be possible for them to assess this before you take any action. You can obtain more information about Legal Aid availability for divorce here [Check if you can get legal aid – GOV.UK](#) I understand that people are often worried about seeing a solicitor because the other party has said that they do not need one or are scared that a lawyer is going to make things worse. Often if one half says that you do not need a solicitor, this is an attempt to control you so that it is easier for them to get the outcome that is best for them and not for you. A 50:50 division of the assets may be appropriate, but without you each making full financial disclosure we will not be certain whether all the assets and liabilities are being taken into account.

There is always a risk that a spouse does not disclose all the assets or provides an inaccurate valuation (he may do this unwittingly). Further, not all cases settle on a 50:50 basis. Sometimes 'needs' dictate that one spouse should receive more of the assets than the other. This can be properly reviewed by a solicitor. It is generally important to exchange financial information and then proper consideration can be given when putting forward a financial proposal that takes into account all the assets and relevant circumstances.



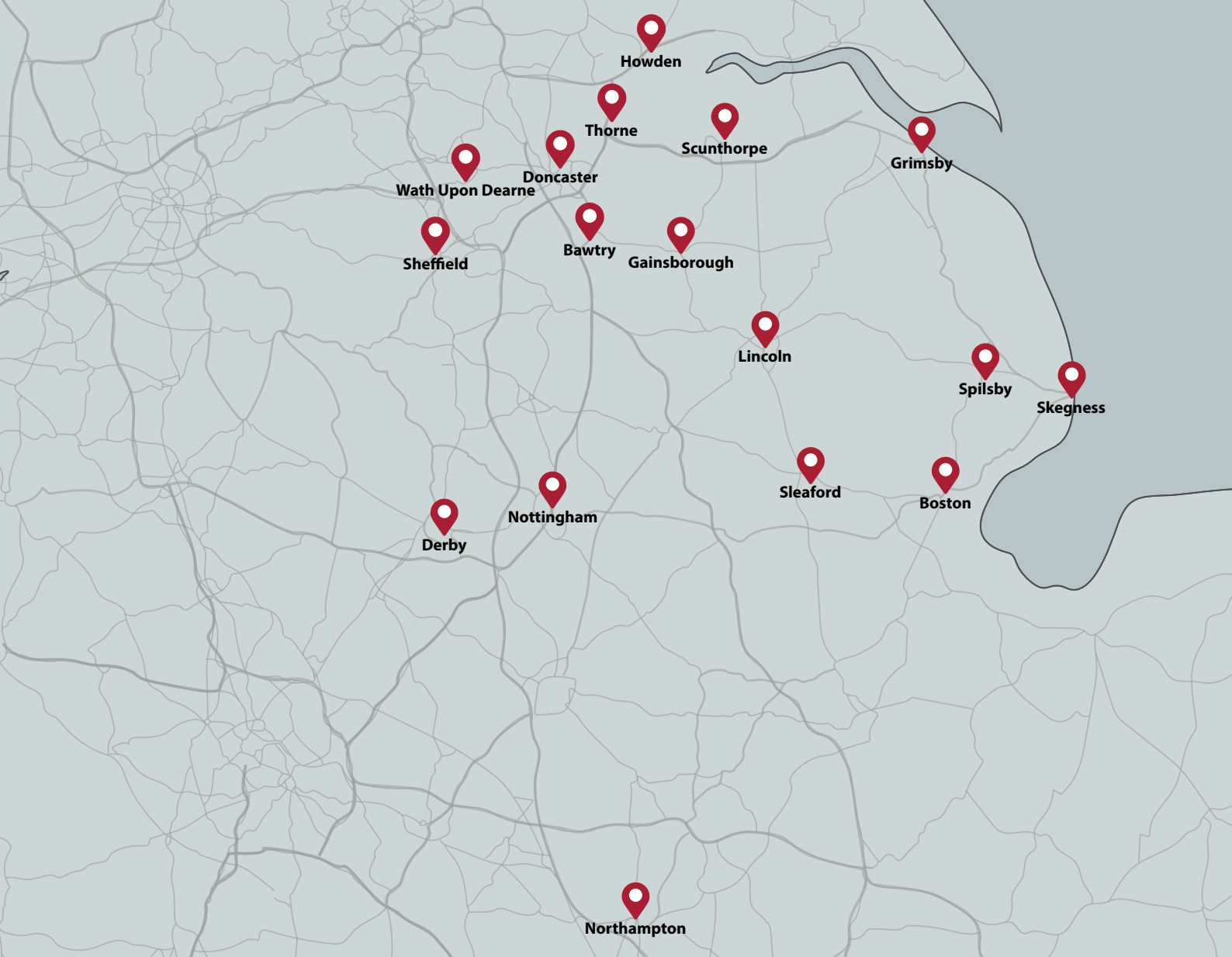
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