

# Advising on Relationship Breakdown

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# Content

- Relationship status and the law
- Property
- Practical considerations (banks accounts, debts, wills, children, maintenance)
- Mediation
- Divorce
- Financial agreements

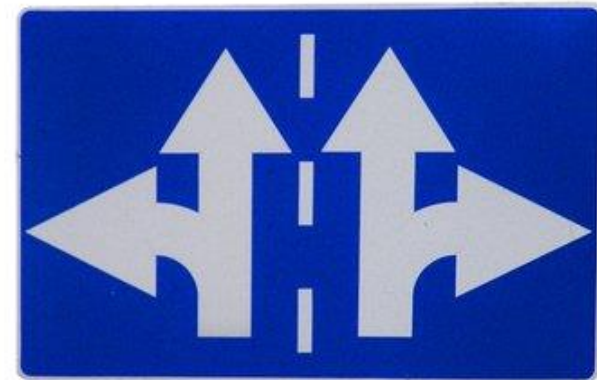
- It is important to find out whether your client is:
  - Married
  - In a Civil Partnership (CP)
  - Cohabiting
- Why?
  - The advice given will differ, because the law is different depending on whether client is married/in a CP or whether they are cohabiting
- Statistics
  - Social shift from marriage towards cohabitation
  - ‘Common law marriage myth’



- Law Commission
  - Recommendations made to improve position of cohabitants (Financial Consequences of Relationship breakdown 2007 (LC No. 307))
- Why is the law inadequate?
  - It treats cohabitants on relationship breakdown as two unrelated individuals
  - No 'special status'
  - Causes complications, as we will see...

# Ending the relationship

- Marriage/CP and cohabitation all end on death of one party
- Marriage or CPs can be **annulled** or can be ended by **divorce/dissolution** by the court under the **Matrimonial Causes Act 1973 (MCA 1973)** or **Civil Partnership Act 2004 (CPA 2004)**
- **(Judicial) Separation** is also available if you are married or in a CP.
- Cohabitation is effectively terminated by 'moving out'



## Marriage/CP

- If acquired during course of the marriage/CP, it will usually be considered to be a matrimonial asset
- If acquired before marriage, they are usually non-matrimonial assets, but can become matrimonial assets
- Non-matrimonial assets can still be divided if one spouse has financial needs which cannot be satisfied by the matrimonial assets

## Cohabitation

- Division of property is based on ownership
- If jointly purchased it will be jointly owned – will need to try and reach an agreement

## Unmarried partner of a tenant

- Usually have no rights to stay if tenant asks you to leave
  - Better to be a joint tenant
  - Can apply to court to transfer a tenancy under **Schedule 7 Family Law Act 1996**
  - Assign tenancy – depends on the type of tenancy
  - Practical tip – liaise with Landlord

## Married/CPs

- Both have right to live in matrimonial home regardless of named tenant
  - If agree who will stay – ask landlord to transfer tenancy into name of who is staying
  - Can apply to court to transfer a tenancy under **Schedule 7 Family Law Act 1996**

## Cohabitants

- If sole owner – right to stay in home
  - Non legal owner may claim a ‘beneficial interest’
- If joint owners – both have equal rights to stay in the home
- If there are children, court can transfer property into name of one party if in best interests of children and usually only for a limited period of time  
(**Schedule 1 Children Act 1989**)
- Claiming a beneficial interest
  - To recognise contributions made towards the home e.g. mortgage, renovations  
(**Trusts of Land and Appointment of Trustees Act 1996**)
- Applying for an Occupation Order (but more restrictive than if married/CP)



## Married/CPs

- Both have right to live in matrimonial home regardless of named owner.  
Known as 'Matrimonial home rights'
- If client is not the legal owner, this right should be registered to protect their interest.
  - Register with HM Land Registry (Registered Land – form HR1) or at the Land Charges Department (Unregistered Land – form K2 (Class F land charge))
  - If registered, it will show up when buyers do a search against the property
- Applying for an Occupation Order

## Jointly owned property

### Joint tenants

Equal rights to whole of property

Property automatically goes to other owner if one owner dies

Cannot pass share in will

### Tenants in common

Can own shares (equal/unequal)

Property does not automatically pass to other owner if one owner dies

Can pass share in will

- Can sever a joint tenancy to become a tenancy in common. Do not need other owner's agreement

## Joint tenant or tenants in common?

- If a client does not know how they hold the property, you can check by obtaining a copy of the Title Register from the Land Registry
- If joint tenants, there will be no restriction registered against the proprietor's name in Section B Proprietorship Register
- If tenants in common, the following will appear in Section B:  
*'No disposition by a sole proprietor or the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court'*

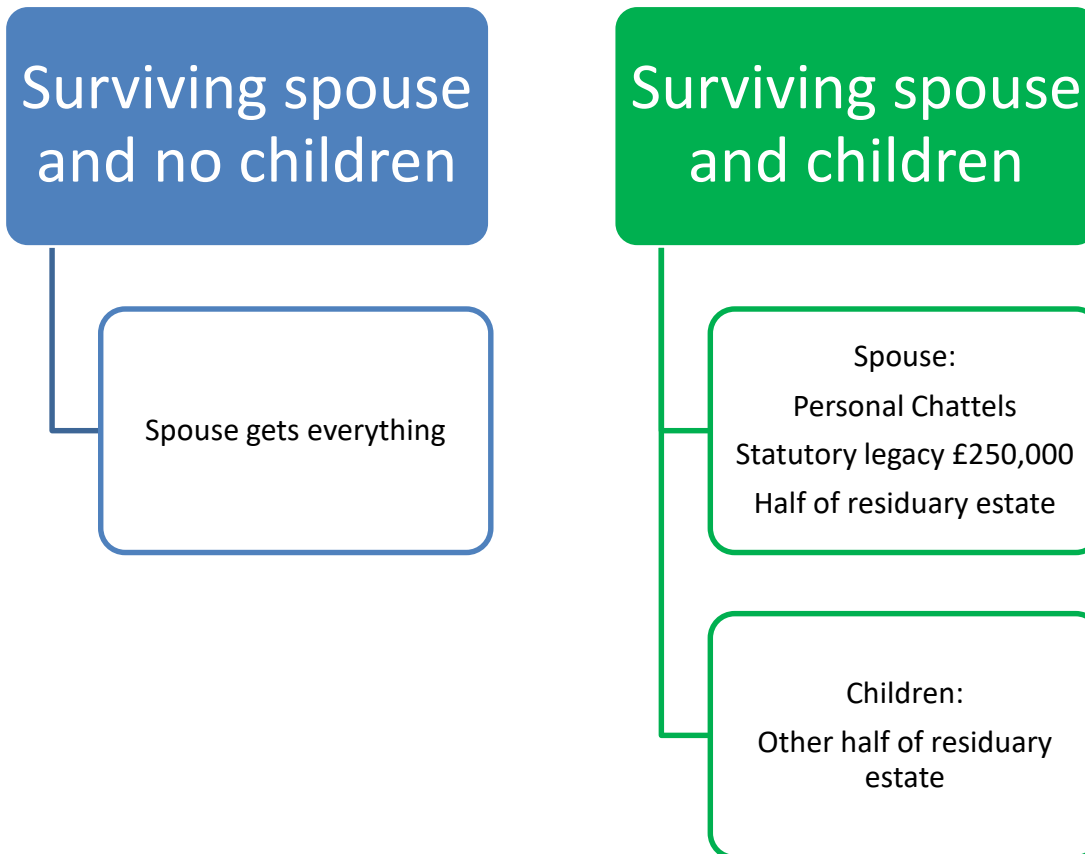
- Does your client have a joint account with their ex partner/spouse?
  - If joint account with partner, need to consider closing account to avoid ex accessing funds or running up debts which will still be client's responsibility
  - If married, any money in a joint account is jointly owned (a 'matrimonial asset'). But same considerations apply – consider closing account to avoid accessing funds or running up debts

# Debts

- Client is liable for debts in their name only, but not for debts in their partner's name
- If debts are in joint names, both parties are liable to repay the whole amount (joint and several liability)
- Practical tips:
  - Agree who will pay which debts
  - Ensure no further debts can be run up on the account (e.g. a credit card)
  - Reach an agreement with lender to see if they will accept lower payments
- If married or in a CP, debts may be considered 'matrimonial debts', even if in the name of one party and will be dealt with as part of a financial settlement



- If you do not have a will, your estate will pass in accordance the rules of intestacy



- If no surviving spouse, the relatives in highest category listed below:

Children

Parents

Brothers and sisters (whole blood)

Brothers and sisters (half blood)

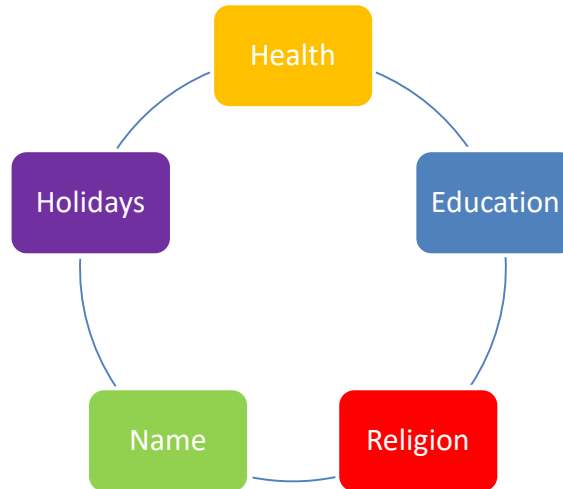
Grandparents

Aunts and uncles (whole blood)

Aunts and uncles (half blood)

Crown

- **Parental Responsibility (PR)**
  - Covers important decisions, e.g.



- Mother automatically has PR for child from birth
- Father usually has PR if married to child's mother or named on birth certificate
- Same sex partners both have PR if they were married/CPs at time of treatment



- **Acquiring PR**

- An unmarried father can get PR by:

PR agreement with  
mother (Form  
C(PRA1))

PR order from a court  
(Form C1)

Jointly (re)registering  
birth of child with  
mother (from 1<sup>st</sup> Dec  
2003)

Marrying the mother

Being named as  
resident parent  
under a CAO

- Same sex partners who are not married or in a CP, can get PR by being named on birth certificate or can acquire via PR agreement or court order (as long as conceived through fertility treatment at licensed clinic in UK/signed election forms)

- Financial support for children
  - Both parents responsible for financially supporting their children
  - Reach agreement or apply to Child Maintenance Service
  - How much?
    - <https://www.gov.uk/calculate-your-child-maintenance>
- Spousal Maintenance
  - If married or in a CP, can seek a court order for maintenance (periodical payments) **(MCA 1972/CPA 2004)**
- Cohabitants cannot seek maintenance from the other for themselves

# Mediation and MIAM

- Not the same as reconciliation
- Mediation is where an independent, professionally trained mediator helps both parties to reach an agreement in relation to various matters arising from their separation
- Cost – Legal Aid available
- No requirement to undertake mediation
- Requirement to attend a Mediation Information Assessment Meeting (MIAM) before issuing family proceedings (excluding divorce)



# MIAM exemptions

Domestic violence

Urgency/  
Application without  
notice

No mediation within  
15 miles of home

Bankruptcy

Insufficient contact  
details for other  
party

Prevented by  
disability/inability

Imprisonment/bail  
conditions/contact  
prohibited

Not resident in  
England and Wales

No mediator  
available in 15  
business days

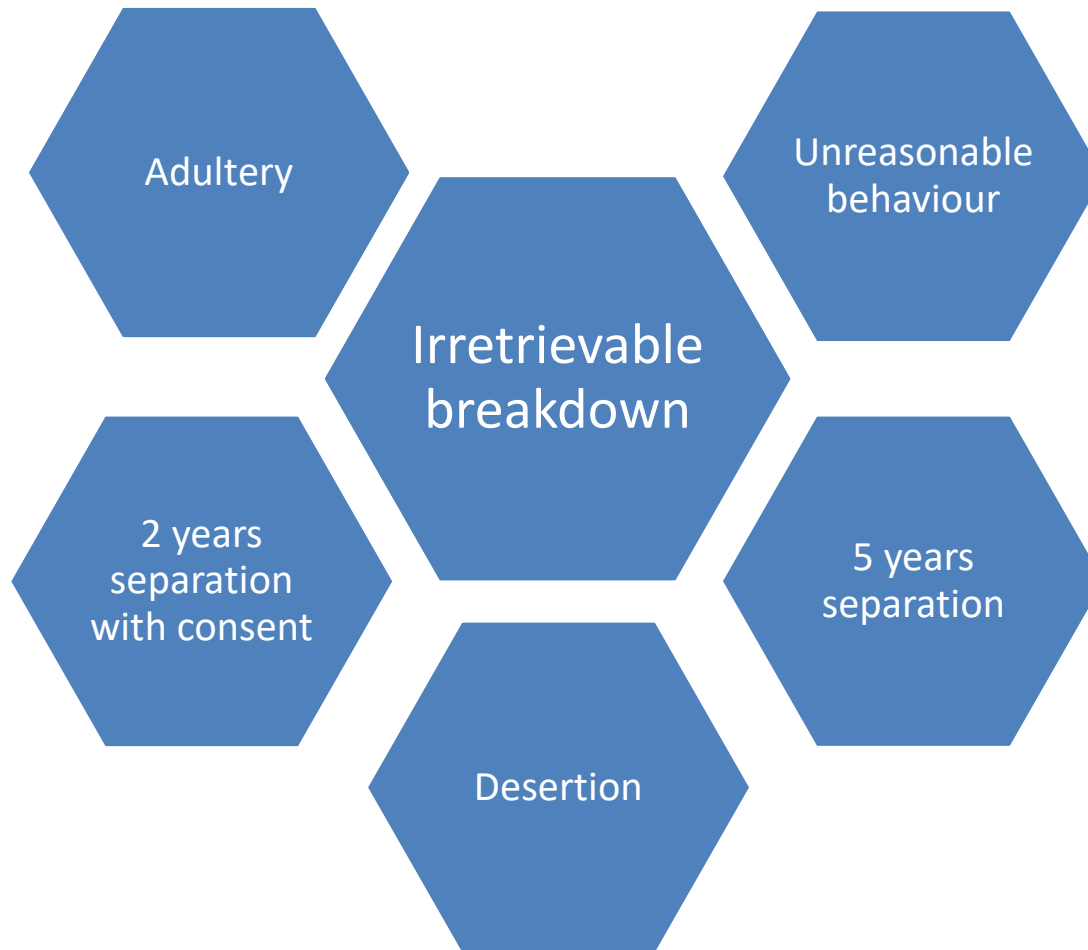
# Mediation Services

University of  
South Wales  
Prifysgol  
De Cymru



- Consider alternatives:
  - Annulment
    - Void = Marriage never existed
    - Voidable = Marriage exists until it is annulled
  - Judicial Separation – Releases parties from duty to live together
- Must have been married for one year before able to apply for a divorce
- Must be habitually resident/domiciled in England and Wales for Court to have jurisdiction
- Applicant = Petitioner
- Other party = Respondent

# Ground and facts



# Adultery

- Petitioner must prove:
  1. Respondent has committed adultery; and
  2. Petitioner finds it intolerable to live with the Respondent
- Adultery is defined as “conduct between the respondent and a person of the opposite sex”
- Need to prove – confession/evidence
- Good practice not to name the Co-Respondent
- Cannot use this fact if have lived together for more than 6 months after **discovery** of adultery



# Unreasonable behaviour

- Petitioner must prove:
  1. Respondent has behaved unreasonably; and
  2. Petitioner cannot reasonably be expected to live with the Respondent
- 6-8 examples of behaviour and effect on Petitioner - subjective
- Not prevented from using examples if lived together for more than 6 months after they occurred

# Desertion

- Petitioner must prove:
  1. Desertion
  2. For a continuous period of at least 2 years
  3. Immediately preceding the presentation of the Petition
- Respondent must not have just cause for leaving
- Petitioner must not consent/agree

## 2 years separation with consent

- Petitioner must prove:
  1. Separation;
  2. For a continuous period of two years;
  3. Immediately preceding the Petition; and
  4. Respondent consents to the divorce
- Living apart
- Living in same household - need to live separately and independently of each other
- Consent – in writing

# Five years separation

- Petition must prove:
  1. Separation;
  2. For a continuous period of five years; and
  3. Immediately preceding the Petition

# Divorce application

- Online <https://www.gov.uk/apply-for-divorce>
- Post <https://courtribunalfinder.service.gov.uk/search/aol>

## Application for a divorce

- D8 form
- 3 copies

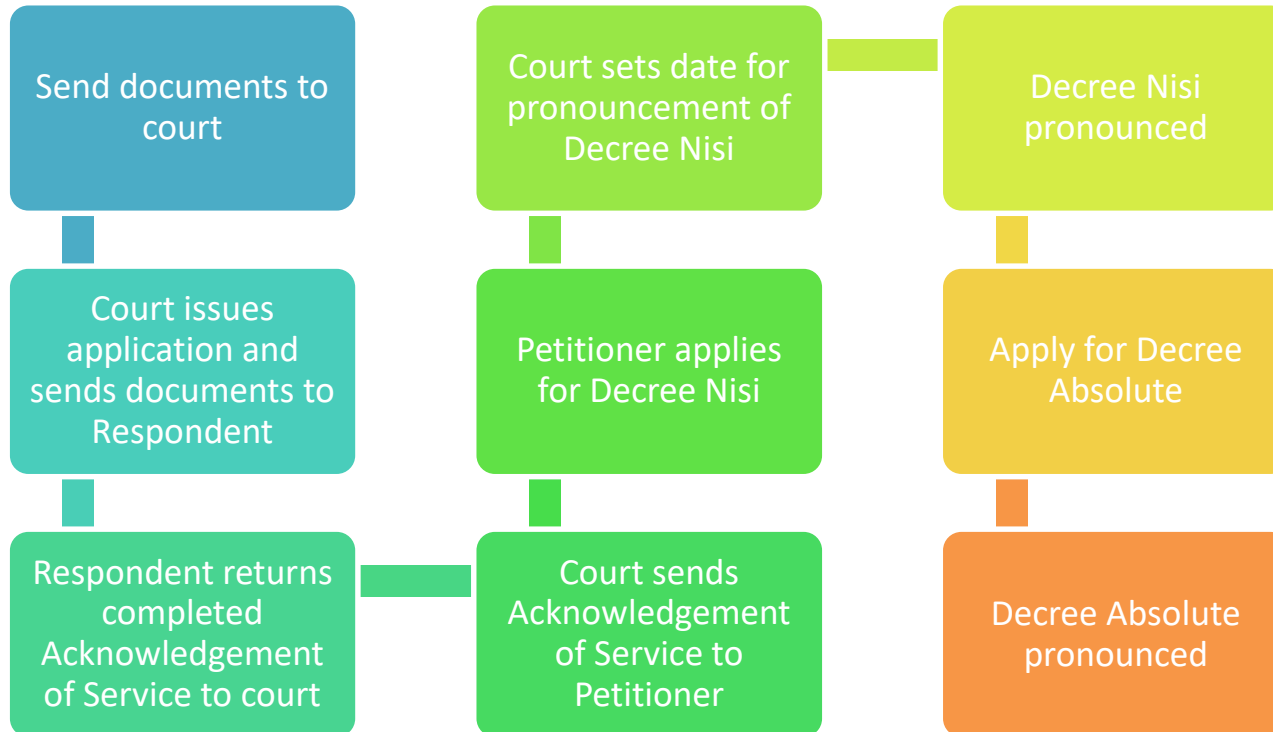
## Marriage Certificate

- Original OR
- Certified copy

## Court fee / Help with fees

- £550
- EX160 form

# Divorce procedure



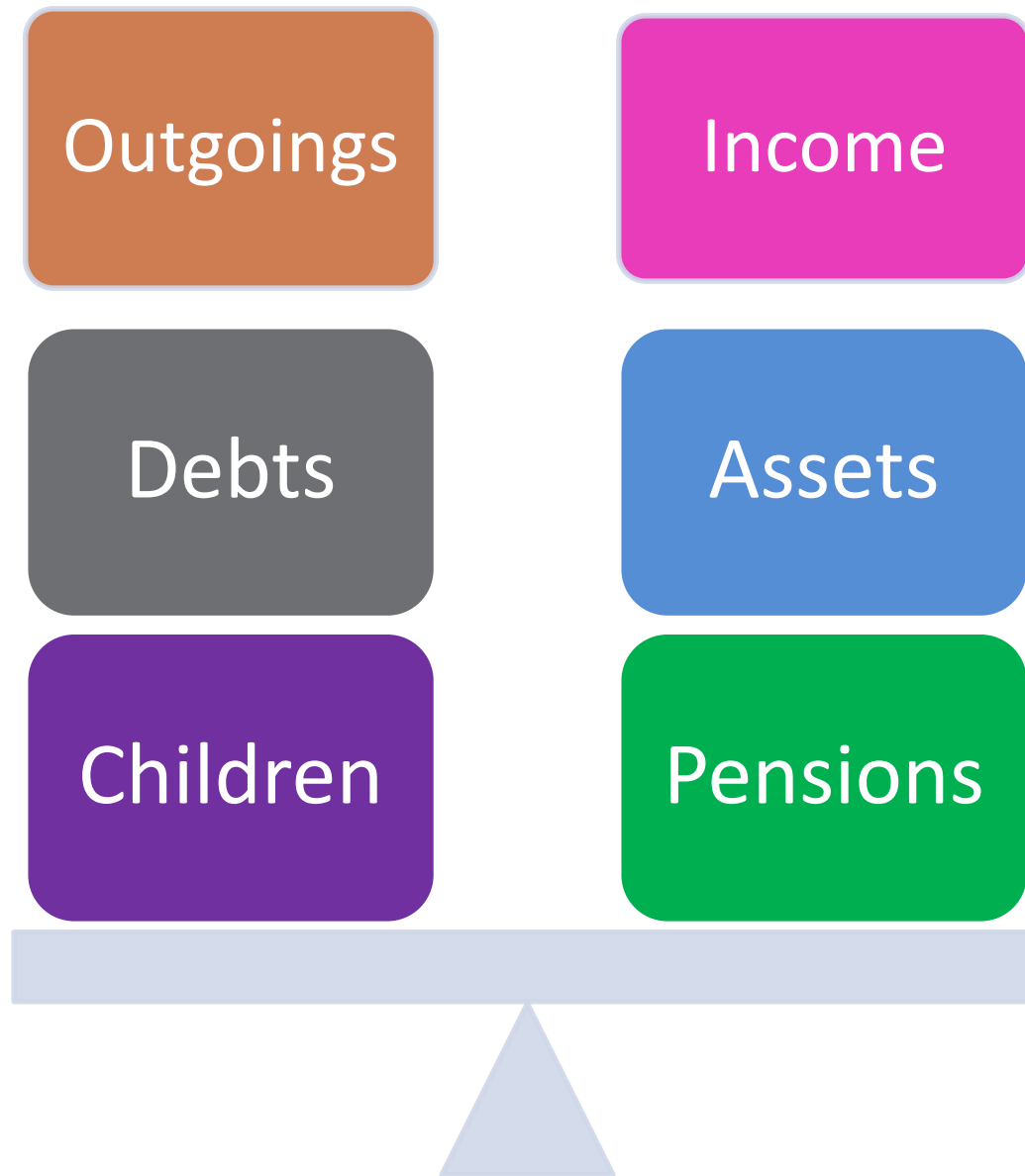
# Finances

Separation  
Agreement

Consent Order

Court proceedings  
Financial Order

# Considerations





# Separation Agreement

- Option for unmarried couples or married couples not ready to divorce
- To be binding:
  1. Full and frank financial disclosure
  2. Independent legal advice
- Separation Agreement sets out terms agreed in a contract
- Advantages: speed, flexibility
- Disadvantages: difficult to enforce, not final (married), can be varied by Court (married)

# Consent Order

- Court Order
- Not required but good practice to have:
  1. Full and frank financial disclosure
  2. Independent legal advice
- Consent Order sets out terms agreed
- Accompanied by Statement of Information for a Consent Order, (including statement of truth) which provides brief details of parties' financial circumstances
- Needs to be approved by Court

# Consent Order application

Consent  
Order

- 3 copies

Statement of  
Information  
for a Consent  
Order

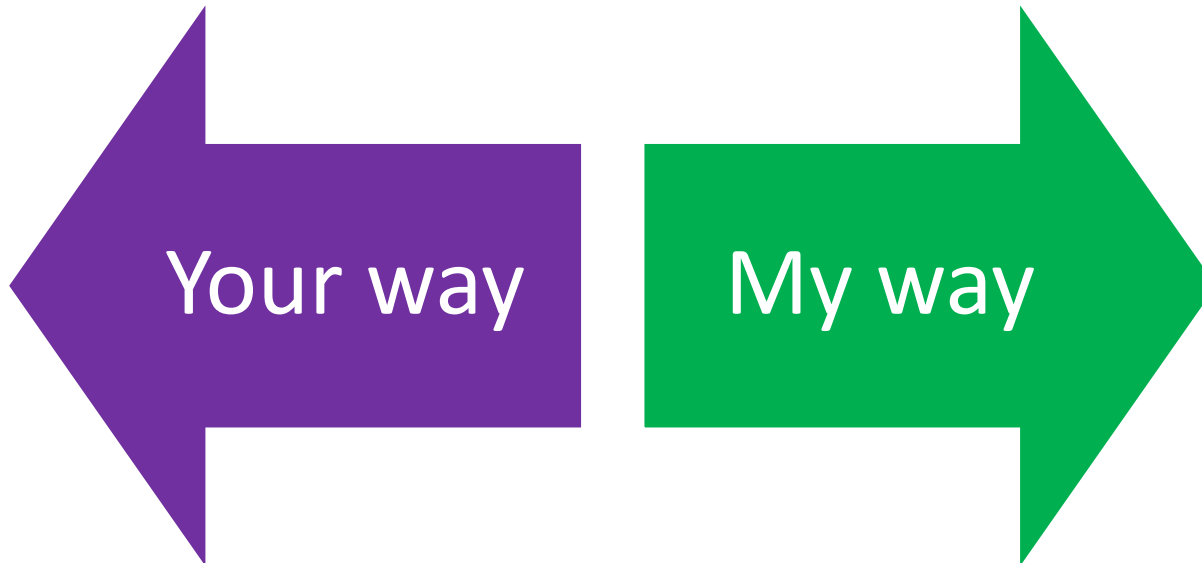
- D81 form
- 1 copy

Court fee /  
Help with  
fees

- £50
- EX160 form

# Clean break

- Cuts all financial ties between the parties
- Enables financial independence
- Enables parties to move on and start again



# Court Proceedings Financial Order

Application  
for a  
financial  
order

- Form A
- 3 copies

Court fee /  
Help with  
fees

- £255
- EX160

# Word of warning for clients!

- If finances not resolved, claims remain open!

# Thank you!

# Questions?