

# Guernsey Family Proceedings Guide

There is a great variety of family proceedings, ranging from divorce to judicial separation to ancillary relief proceedings (resolving financial issues on divorce) to injunction proceedings seeking domestic violence orders to child protection proceedings. It is prudent to consult an Advocate in all such circumstances.

The procedure for divorce is standardised but still relatively complex, centring around a petition for divorce, statement of arrangements for children, an affidavit in support of the petition, a reconciliation statement (or rather lack of reconciliation), a certified copy of the marriage certificate and a filing fee. There are particular requirements for the service of documents on a respondent and co-respondent (if adultery is alleged). The petition is the equivalent of a pleading in a civil case and may likewise lead to further pleadings in the form of an answer (denying or admitting the facts relied upon) or even a cross-petition.

The issue of divorce itself can be the subject of a trial but is generally dealt with by agreement. It is more likely that there will be disputes concerning the division of assets. Court practice changed from the end of 2004<sup>[1]</sup> in this respect. There is now what is called a “pre-action protocol” which amounts to a set of guidelines for how parties should approach disputes over matrimonial finance with a view to reaching agreement, or at least narrowing the issues as quickly and as cheaply as possible. If agreement cannot be reached and court proceedings result then there are again a series of new forms and procedures designed to resolve the issues swiftly and efficiently, including what is known as a Financial Dispute Resolution appointment. This takes the form of a court hearing where a Judge will actively attempt to facilitate an agreement between the parties (who would usually be represented by Advocates). If the appointment succeeds then all well and good. If it fails, that Judge will not be involved with the final hearing. The idea is that parties should be able to make offers and counter-offers and discuss the issues candidly. Save in exceptional circumstances, what goes on at the Financial Dispute Resolution appointment may not be referred to subsequently at the final hearing.

As with any civil proceedings it is prudent to try to resolve differences amicably in order to save costs and the strain associated with litigation. The parties should, and are expected to, negotiate to try and reach a settlement without the need for a contested hearing. There are other possible means of attempting to reach agreement, for example via mediation. Here an independent mediator, usually a lawyer with considerable experience of the relevant area of law, will attempt to facilitate an agreement between the parties. Likewise, if one party believes that the other is being unreasonable, a written offer “without prejudice save as to costs” can be made. This type of offer is often referred to as a “Calderbank” offer, because the consequences of making such an offer were given detailed consideration by a court in a matrimonial case of that name. The intention is to put the other party under some pressure and at risk of a costs order being made against them if they fail to better the offer at trial. Courts require parties to behave reasonably. The party behaving unreasonably can expect to be punished in costs orders against him or her.

Family proceedings also take place in the Magistrate’s Court relating to claims for maintenance and, in particular, maintenance from an absent unmarried father (these latter proceedings are sometimes

referred to as “affiliation proceedings”). These proceedings are commenced by summons and proceed to trial in the ordinary way if agreement cannot be reached.

Care proceedings are a particular form of family proceeding concerning the welfare and protection of children. The advice and assistance of an Advocate should always be sought.