



CITY EXPERTISE

without the city



A·W·G

AUSTEN
WHETHAM
& GUEST

SOLICITORS

Separation and Divorce

THE FIRM

A Partnership of Lawyers set in the heart of West Dorset at Bridport maintaining high professional services and a personal partner led service.

The firm prides itself not only on their legal ability but also the ability to see the wider picture in protecting the best interests of their clients and their children.

The firm provides an effective and efficient service and the best possible quality of advice.

There is the added advantage that by using a local firm you are keeping your legal costs down and yet receiving the same standard of service as a London or provincial firm. Also you will be able to see us easily and have regular contact with us.

When necessary and particularly if you have substantial assets we will engage a Barrister (from London if thought fit) so that your interests will always be properly protected and you will have the best representation possible. We will have contact with Accountants and other professional services as necessary.

Equally if you are ineligible for legal aid and have negligible capital you may be facing the problem of securing legal advice and representation in order to pursue your rights against a person who is obstructive or whose financial circumstances are complex or unclear. In the right case you may be able to secure a loan to cover your costs.

Scott Bowley has been a Partner since 2001 and has developed a good family practice covering not only divorce and financial provision on marriage breakdown but also the welfare of children within divorce proceedings and public law cases as well. Scott is a natural strong litigator. He is a clear and effective communicator which he uses in conscientious client care and strong advocacy in court. In Children Act cases Scott combines common sense and persuasive negotiations in putting forward a clear and firm case.



sb@awg-law.co.uk

Peter Alexander was for many years a Partner in a firm in London dealing with cases involving high net worth individuals including Andrew Lloyd-Webber and Directors of Public Companies and moved to West Dorset to join the firm as a Consultant in 2003. He has a reputation for fair mindedness and being a skilled negotiator but will always hold his ground if needs must. He continues to act for many of his London clients and contacts and with modern communications he is able to look after clients from any part of the Country. The firm has a relationship with a firm of Solicitors in London and has an address where we can see our clients by arrangement. Of course we will make arrangements to see our clients wherever they wish including in their homes if that is necessary.



pa@awg-law.co.uk

The breakdown of a family relationship is a very difficult time for all concerned not only for the parties but also for the children and the wider family.

The situation needs to be handled very carefully with great understanding to achieve a result that does not devastate the lives of the people concerned and more particularly the children of the family whose interests are paramount.

Those specialising in family work at Austen Whetham & Guest are:

Peter Alexander, Partner;
Scott Bowley, Partner;
Ros Oliver, Assistant Solicitor.

We are used to dealing with complex and sensitive cases. We will advise you on all the avenues available to you. And if your case is suitable for mediation and you wish to attempt to resolve matters this way we will assist you in finding the best mediator to suit your circumstances, and will continue to advise you through the mediation process. If mediation is not appropriate we will negotiate financial matters on your behalf or if Court proceedings are issued we will prepare all the Court documentation.

Whatever role you wish your Solicitors to fulfil whether as a background adviser or to conduct the entirety of your case it is essential that you obtain good legal advice early on. It is important not to make tactical errors at the outset of your case which may lead to difficulties later on. When you look for a Solicitor choose someone you have confidence in and with whom you have a good rapport. After all you trust this person with assisting you with making decisions which may affect the rest of your life and perhaps the lives of your children.

MARRIAGE BREAKDOWN

When you face a marriage breakdown you are likely to be at a complete loss as to what to do and it is important to realise that there are various alternatives that face you.

You may wish to live separately from your spouse and reach an agreement as to what should happen for the future.

In the first place you can discuss matters between the two of you and seek to reach agreement. Of course in deciding what is fair you may need advice and do not hesitate to speak to us and we will help you in the background without rocking the boat.

The agreed terms can be set out in a Separation Agreement which can deal with a whole range of matters including when and whether you will get divorced, the arrangements for the children and financial matters.

You may decide that you wish to go to a Mediator and we can assist you in the recommendation of a Mediator. If agreement is reached again we can give effect to the terms by setting out the terms in an agreed Separation Agreement.

Alternatively you may decide that you want to end the marriage and issue divorce proceedings. A decree of divorce can be granted on any of the following grounds:

- adultery by the other party
- unreasonable behaviour of the other party
- desertion (i.e. the other party left without just cause) for two years
- separation for two years where both parties consent to the divorce
- separation for five years

The procedure for divorce is fairly simple and generally takes between 4 to 6 months. Once the final decree of divorce (the Decree Absolute) is made you will be free to marry if you so wish.

The divorce may be delayed if financial matters have not been resolved.



If your case does proceed to a trial then a Court will be obliged to consider certain factors when dealing with your financial case and these are called the Section 25 factors and can be summarised as follows:

- The income, earning capacity and other financial resources which each of the parties has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities which each of the parties of the marriage has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each spouse and the length of the marriage
- Any physical or mental disability of either of the parties to the marriage
- The contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family including any contribution by looking after the home or caring for the family
- The financial conduct of each of the parties if in the opinion of a Court it would be inequitable to disregard it
- The value to each spouse to any benefit (for example a pension) which by dissolution or annulment of the marriage that person will lose the chance of acquiring

It may be that you and your spouse are not able to reach agreement on financial support that should be provided in which case either party may issue a Court application to resolve financial matters.

The first stage in dealing with such a Court application is for the two individuals to complete a document called a Form E which requires detailed financial information. Forms E are exchanged by both parties and then their Solicitors prepare a Questionnaire to the other party setting out what additional information and documents they require.

Next, the couple attends what is known as a first appointment at Court, with their own Solicitors, which usually lasts about half an hour. At the first appointment the District Judge will consider the Questionnaires and decide which questions should be answered and which documents should be provided by each of the parties. The Court will then give a date for what is known as the financial dispute resolution appointment.

The whole purpose of the financial dispute resolution appointment is to obtain the Court's assistance in resolving matters. It is an appointment before a District Judge to see if an agreement can be reached. If it can, then the case will proceed no further. If it cannot the District Judge will give directions as to how the case should be brought to trial.

The law is always developing and changing in relation to financial applications and we will keep you informed of the current case law when dealing with your case.

For example, the House of Lords recent landmark decision in *White v White* is said to have been the most important decision in relation to financial settlements in the last thirty years. The Court indicated that before reaching a firm conclusion about a financial order, the Judge should check his tentative view of the division of assets against the 'yardstick of equality'. The Court emphasised that this was not to introduce a legal presumption of equal division although many people seem to have assumed that it means a 50/50 split.

Referring to the factors above what the Court is actually looking for is what it considers a 'fair' outcome and will weigh up the various factors including the financial needs and available resources of both parties and their contributions. Each case depends on its unique circumstances and the Court has a wide discretion.

At Austen Whetham & Guest we will advise you on the likely split in your particular case and on the question of maintenance being payable.

In making any offer we will consider carefully the implication of legal costs on the proposals that you are making. Sometimes the amount of legal costs can outweigh the benefit of taking any particular line of argument.



Within the Partnership we have Partners dealing with private clients and we liaise closely with our Tax Lawyers in order to advise you and deal with the tax implications of your case.

Similarly we will share the expertise of our Trust Partners when Trusts are involved.

We can also advise you on which country or jurisdiction to issue divorce proceedings in. If there is a choice it is obviously vital to select the most favourable. At Austen Whetham & Guest we have considerable experience of inter jurisdiction disputes and have good contacts with other lawyers and officials in different countries who are able to assist us.



BUSINESS ASSETS

Very often a case will involve business assets.

It may have to be taken into consideration that it is the business that provides the income upon which the family relies for survival so that it becomes unrealistic to seek a half share of the business. Each business and the accounts of the business will have to be examined carefully and consideration given to the nature of the business in question.

The advice of Accountants will be sought as necessary.

Farm businesses are special in that they tend to have asset values that are out of all proportion to the income earning capacity – at least in the present climate. Asset values and in particular the question of where these values fall, are often distorted as a result of legislation passed for some specific purpose concerning agriculture and its funding. Farm balance sheets tend not to reflect some of the assets created by UK and European legislation because such assets even if valuable could be awarded and not purchased.

CHILDREN

Decisions about who a child will live with, or what levels of child contact separating parents are allowed are normally taken outside Court. The Court will only intervene if agreement cannot be reached.

Generally speaking, the parents simply live apart and come to arrangements themselves or via their Solicitors as to who shall look after the children on a day to day basis and as to the arrangements for contact. However if the parents cannot agree then Court decisions will be made which include:

A Residence Order – settling who a child lives with

A Contact Order – allowing a child to visit or stay with a named person

A Prohibited Steps Order – stipulating that the consent of the Court is needed before a specified action concerning a child can be taken

A Specific Issue Order – giving directions about particular issues relating to a child e.g. his or her education



The Court's primary consideration in these matters is the welfare of the child. The Court considers the following welfare criteria in every case:

- The wishes and feelings of the child (considering the child's age and understanding)
- The child's physical, emotional and educational needs
- The likely effect on the child of any change in circumstances
- The child's age, sex, background and any relevant characteristics
- Any harm which the child has suffered or is at risk of suffering
- How capable each of the parents and any other relevant person is of meeting the child's needs

Applications for a Residence or Contact Order start with a conciliation appointment before a District Judge and a CAFCASS Officer. If the child concerned is over the age of 9 he or she should also attend the appointment (but cannot go into the Court Room).

The Court will try to persuade the parents to agree terms. If agreement cannot be reached no order can be made and so a CAFCASS Officer will then be appointed by the Court to prepare a Report for the Court. Both parents will then have the opportunity of filing statements with the Court. If the matter proceeds to a hearing the parents will give evidence to the Judge about their case.

Applications in respect of children are not limited to the parents. For example the grandparents may apply in their own right for contact with a child.

CHILD SUPPORT

If it is not possible for agreement to be reached between the parents a Government Agency called the Child Support Agency assesses what sums should be paid as child maintenance. This is based on 15% of the non resident parent's net income for one child, 20% for two children and 25% for three or more children.

There are, in addition, other important factors which can affect the final amount and we at Austen Whetham & Guest will be able to advise you of these.

In most cases parents agree to pay the amount of child maintenance that the Child Support Agency would otherwise stipulate.

After the new Child Support Act comes into effect the Court will only be able to make an Order for child maintenance if:

- There is agreement, although it will only last for a one year period
- There are School fees to be paid
- The non resident parent's income exceeds a certain limit (when a 'top up'- order can be sought)
- There was a pre existing Child Maintenance Order which needs changing

PRE MARITAL AGREEMENTS

A Pre Marital Agreement is an Agreement reached between two people who intend to marry and wish to regularise and organise the legal position of their assets if they subsequently divorce.

In the UK Pre Marital Agreements are currently not binding but interestingly are a factor which the Court will take into account when assessing the division of income and assets on divorce. This contrasts with America and some European Countries, where Pre Marital Agreements are binding. However these Agreements are likely to be of no effect if the couple have children.

A Pre Marital Agreement will usually state the terms for the division of property, bank accounts, insurance policies, shares or other assets owned solely or jointly by the parties. The Pre Marital Agreement can also provide for the payment of maintenance by one party to the other. It can deal with ownership of property and occupation of a home.

It is crucial when drawing up a Pre Marital Agreement that both parties are represented by separate Solicitors.

In addition, there should be a complete disclosure to each other of the parties' individual circumstances.

UNMARRIED COUPLES

Where two people have no present intention of marrying Austen Whetham & Guest can prepare a Co-habitation Agreement.

This Agreement will set out the conditions of dividing the assets if there is a subsequent relationship breakdown.

We are also able to advise you on legal matters and deal with property disputes on your behalf. When children are involved we will explain to you how the amount of child maintenance is calculated and will help you deal with issues such as residence and contact.

There is no doubt that because of the lack of legal rights of co-habitees it will become common place for Co-habitation Agreements to be put in place and we recommend that in all cases of co-habiting couples there should be a Co-habitation Agreement so that the parties' legal positions are clear.

It is perhaps important to point out that in the case of unmarried couples the mother has no rights to make an application for financial provision as occurs on a divorce although there is a general belief that such a person has 'common law' rights.

This brochure is only a brief guide to separation and divorce and pre-marital agreements and co-habitation agreements.

As each individual case is different it is essential for you to obtain full and proper legal advice.



Within the family department at Austen Whetham & Guest we can help you with:

- Separation and Divorce
- Children Disputes
- Financial Matters (including lump sum payments and transfer of properties)
- Maintenance Orders and variation of existing orders
- Tax matters
- Jurisdictional issues and international disputes
- Nullity of marriage
- Paternity disputes and DNA testing
- Co-habitation Agreements and disputes
- Pre-Marital Contracts
- Inheritance Act applications i.e. claims on the estate of a deceased close relative, spouse or former spouse
- Adoption
- Enforcement of Orders both UK and foreign



CITY EXPERTISE

without the city



A·W·G

AUSTEN
WHETHAM
& GUEST

SOLICITORS

AUSTEN WHETHAM & GUEST

Family Law Department
21 South Street, Bridport

Dorset DT6 3NR
Tel: 01308 422236

Fax: 01308 427772