

## Family Law Fact Sheet

### What is family law?

Family law deals with a wide range of issues that arise in our family lives and personal relationships. It primarily focuses on helping couples make arrangements for their children and their finances when they decide to divorce or separate but can also cover issues such as surrogacy, adoption, cohabitation and more.

### What types of topics are covered by this area of law?

- Divorce
- Child arrangements
- Finances
- Pre and post-nuptial agreements
- Surrogacy arrangements
- Child abduction
- Domestic violence
- Gender recognition

### What does Family law involve?

Family law can broadly be divided into children work and financial work and these proceedings are separate to one another. Children work can involve anything from sorting out day-to-day contact disputes to dealing with applications for one parent to relocate overseas with the children. Financial work can involve reviewing financial information, preparing schedules of assets and considering how much capital and income each party should reasonably receive. Family law can also involve issues around jurisdiction where one party has connections with another country or issues around domestic violence or harassment. Family law specialists will always try to help their clients resolve matters amicably if possible. Alternative forms of dispute resolution such as mediation should always be considered but as family law involves dealing with emotive disputes, solicitors can quite regularly end up going to court to get directions from a judge about how to best resolve issues.

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# THE LEGAL APPRENTICE

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### What skills does a Family lawyer need?

Family lawyers need to have strong communication skills and must be personable and level-headed. You need to be able to empathise with the client where necessary but also be able to take an objective view on the situation and give clear advice. Family lawyers must be practical and reasonable as often in family cases the positions of the parties are polarised and emotions are running high: it is the lawyer's job to give sensible advice to help the parties find a way forward.

### Key pieces of law

#### Children's arrangements

The Children Act 1989 is the key source of law in relation to children, their upbringing and welfare. The overriding principle is that the welfare of the child should always be the paramount consideration above all else.

In addition to the above, there are various pieces of legislation dealing with child abduction. The UK is a signatory to the Hague Convention 1980 on the Civil Aspects of International Child Abduction and the Child Abduction and Custody Act 1985 imports the convention into English law. The aim of the 1980 Hague Convention is to provide a mechanism for the return of children who have been abducted from the country in which they live by one parent without the other parent's consent. The Child Abduction Act 1984 is also relevant as it makes child abduction a criminal offence.

#### Divorce and matrimonial finance

The Matrimonial Causes Act 1973 (MCA 1973) is the core piece of legislation relating to divorce and financial proceedings. The Civil Partnership Act 2004 (CPA 2004) allows same sex couples to form registered civil partnerships although this will soon be extended to opposite sex couples. Section 25 MCA 1975 sets out the factors that a court must consider when making financial orders on divorce and case law

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### Personal protection

The Family Law Act 1996 (FLA 1996) provides civil remedies to people who feel that they need to be protected from their ex-partner or another family member. Section 42 FLA 1996 provides for a judge to make a non-molestation order which prevents the person against whom the order is made (the respondent) from molesting the person applying for the order (the applicant). Molestation is not defined but in practice these orders are used to protect a party from physical violence, verbal harassment and threats.

The respondent to the application must be an “associated person” i.e. they must have a specific personal link to the applicant. If there is no such link then the protections provided in Act do not apply and the applicant would have to look at other means of protection including involving the police. Section 62(3) clarifies who would be classed as an associated person for the purposes of an application under the FLA 1996. This includes not only spouses and cohabitants but also relatives, whether by blood or marriage, such as siblings, uncles, aunts, nieces and nephews.

The same Act also includes provisions relating to the occupation of the family home allowing a judge to exclude one party from the property or parts of it.

### Interesting new developments

- **Civil partnerships for all?**

In the case of *R (Steinfeld and Keidan) v Secretary of State for International Development* [2018] the Supreme Court ruled in favour of civil partnerships for all and encouraged the government to change the law to enable heterosexual couples to have the right to enter a civil partnership instead of getting married. The government have since introduced new legislation in the form of the Civil Partnerships, Marriages and Deaths (Registration Etc) Act 2019 which rectifies this.

- **No fault divorce?**

There is much debate around whether the law should be reformed so that there is ‘no fault divorce’ i.e. you no longer have to satisfy one of the five reasons for

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divorce. The Court of Appeal judgement in *Owens v Owens* [2017] has further drawn attention to this. Whilst the wife's appeal (challenging the court's refusal to grant her a divorce) was dismissed, there were strong arguments advanced that the law no longer reflects modern day realities and that no fault divorce is called for.

- **Maintenance for life?**

The Court of Appeal's judgment in *Waggot v Waggot* [2018] signals a move away from the financially weaker party being able to get a 'meal ticket for life' and rather favours a move to ensure parties have greater financial independence post-divorce.