



DEAN WILSON
SOLICITORS

Separation Agreements

What is a separation agreement?

People who are already married or in a civil partnership can enter into a written agreement setting out what they intend to happen to their money, property and other practical issues as a consequence of their current or planned separation. This written agreement is called a separation agreement. Separation agreements are usually entered into by parties who are separating but who do not want to divorce or dissolve their civil partnership at that time, perhaps for religious or practical reasons.

Separation agreements are contractual agreements between parties to a marriage or civil partnership dealing with:

- your agreement to live apart
- your obligations to maintain one another and any children of the family
- the distribution of your assets
- arrangements for the children of the family

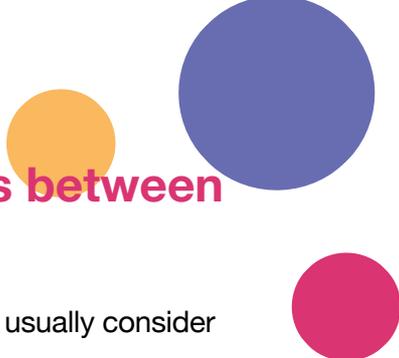
What sort of things can a separation agreement cover?

A separation agreement is a bespoke document drawn up for the two of you for your particular circumstances, so it can cover almost anything you want it to. There are certain things that couples usually think about when deciding to separate:

- recording the date on which you separated, whether you are going to get divorced and, if so, when, on what grounds and who is to be the petitioner
- what is to happen to property either of you brought into the marriage, including your home
- what is to happen to any property given to you or inherited during the marriage or any income or assets derived from trusts
- what is to happen to money held in joint accounts and property purchased jointly
- what is to happen to any saved money earned during the marriage and your pensions
- how are you going to deal with any debts
- whether either of you are to pay or receive any maintenance and, if so, for how long
- what events will require the separation agreement to be reviewed
- what the arrangements are for any children of the family, in both financial and practical terms, such as where the children will live (residence) and when they will see their parents (contact)

In order to make the separation agreement as persuasive as possible in any future divorce or dissolution proceedings, you both need to disclose and set out your financial circumstances in full and take independent legal advice on the agreement and its effects. A separation agreement can be negotiated using mediation or collaborative law, or by using solicitors to talk to each other on your instructions. We will find the process most suitable for you.

A separation agreement can have a draft consent order attached. This enables it to be turned into a final court order if you decide to proceed with a divorce or dissolution, as long as circumstances have not significantly changed from those envisaged when the separation agreement was made.



How do the courts approach prior agreements between parties?

When deciding what weight should be placed on agreements the court will usually consider the following factors:

- whether there was pressure by one party on the other party to enter into the agreement
- whether one party exploited a dominant position to secure an advantage
- whether either party's knowledge of the situation was inadequate, including in relation to finances
- whether either party did not take legal advice or received bad legal advice
- whether the circumstances changed and whether such changes were overlooked or unforeseen at the time of the agreement

Are separation agreements binding on the court?

Separation agreements are not binding on the court in the event of a later divorce or dissolution. Parties to a marriage or civil partnership cannot contract out of the court's jurisdiction to make orders for financial provision upon divorce or dissolution. However, the existence of a separation agreement will be one of the factors that the court considers. A separation agreement may have a persuasive or even decisive influence on the outcome of either party's application for financial remedy, depending on the precise circumstances surrounding the completion of the agreement.

The court must consider whether the agreement is 'fair'. Agreements are more likely to be considered to be fair if they are recent, if circumstances have not changed and if you both knew exactly what you were getting into when the separation agreement was made, both legally and financially, without undue pressure being applied.

What happens if we have children?

An agreement between adults does not remove the court's responsibility to consider the interests of any children in your family. In the event of a divorce or dissolution, if the court is asked to intervene in financial arrangements its first consideration is always the children involved. If the court considers that any agreement between the adults may adversely affect their children it is likely to consider that it is not fair to uphold the separation agreement, or part of it, in the circumstances. It is not possible to contract out of providing financial support for a child in a separation agreement.

Case Studies

Successful Defence of a Race Discrimination Claim Arising from a Manipulated Image

Our firm effectively represented a client in defending a race discrimination claim stemming from an accusation that an employee's image had been Photoshopped to resemble a character from a Hollywood blockbuster. The claim asserted that the individual was targeted due to their racial origin. As the litigation progressed, new allegations emerged, even during cross-examination at the final hearing.

Throughout the process, we supported our client in presenting a robust and consistent defence, meticulously highlighting the contradictions and lack of credibility in the Claimant's position. Following a thorough three-day video hearing, our client emerged entirely successful in its defence, with the Employment Tribunal favouring our client's evidence across all aspects. Notably, the Tribunal found no evidence supporting the Claimant's assertion that their racial background played a role in being featured in the manipulated image.

Vindication of a Gross Misconduct Dismissal

We acted for the owners of a hotel chain in a disciplinary process involving a hotel porter's breach of security protocols during the COVID lockdown period. The employee faced dismissal for gross misconduct. Our representation in defence of unfair dismissal and unlawful deduction from wages claims resulted in the complete dismissal of the claims. The Employment Tribunal acknowledged the reasonableness of our client's decisions and the fair process implemented before the dismissal.



Case Studies

Negotiation of Acceptable Severance Terms

Our client, a senior executive in a multinational business, faced an unexpected exit following the appointment of a successor without prior agreement. We advised on potential claims of unfair dismissal and age discrimination, successfully negotiating a mutually acceptable termination package. Subsequently, we guided our client through the terms of a Settlement Agreement to formalise the negotiated terms.

Safely Navigating the Redundancy Process

In response to reduced levels of new car sales post-pandemic, our client needed to downsize its workforce. We provided guidance on a fair consultation process, application of selection criteria, and the terms of redundancy dismissals. Our coaching of managers ensured a successful completion of the challenging process, meeting the client's goal of reducing the workforce without consequential claims.



“ Clare has excellent knowledge and understanding of employment law, and provides advice that is practical and user friendly

HR Director, Multi National Construction Company

Our best tips for employers

Take advice early from the Dean Wilson LLP Employment Team to validate proposals and ensure adherence to the appropriate process.

Keep detailed and comprehensive notes of discussions as these may be needed later on.

Exercise caution in written communication, particularly with the increased use of data subject access requests.

Approach tricky situations professionally, consulting with experts to ensure fairness and appropriateness in implemented processes.

“ I found that Clare provided practical, pragmatic employment advice. She had a great understanding of the potential employment relations impacts of her advice for the organisation, which meant where possible she could provide risk assessed options
HR Manager, Local Authority

“ Hermione
Once again, I appreciate your professional, courteous and efficient support

Manager, Financial Services

“ Hermione - Thank you so much for your professional and extremely helpful advice

Electrician