

The breakdown of a marriage is a difficult time for all involved, particularly in the early stages. There can be all sorts of questions about the separation and divorce process, uncertainties about care arrangements for children and financial matters, and difficulty coming to agreement on key issues for many separating couples. Here are ten common misconceptions about divorce:

1 “We married in one country, so we have to divorce there too”

Wrong. The place that you were married is largely irrelevant. You may in fact be able to divorce in more than one country, as the jurisdiction rules are largely based upon where either you or your spouse currently reside. You can apply for a divorce in Scotland if you or your spouse have lived here for the last 6 months, if either of you are domiciled here. If neither of you are domiciled here then one of you would need to have lived here for the last 12 months before you could apply. Even if you are not currently living in Scotland, you may be able to apply for a divorce here if you can prove that you are domiciled here. That means that you can show that you have a permanent attachment to Scotland and intend to return here to settle one day. Often, a couple may have a choice of jurisdiction available to them. If so, one spouse may find that they would be financially better off applying for a divorce in a different country and as such it is often advisable that you obtain advice not only from a Scottish lawyer but also from a lawyer from the other country, before deciding which is best. Jurisdiction is a complicated area and it is important to obtain advice from the outset before embarking upon proceedings.

2 “I will lose my rights over the family home if I move out”

Wrong. You will not be penalised if you chose to move out of the family home. Lots of people assume that they will give up some right to the home by moving out but that is quite simply not the case.

3 “Lawyers just want to fight and drag cases through the court”

Wrong. Responsible divorce lawyers will advise their clients that in the majority of cases, court should be viewed as a last resort. We recognise that both parties going through a divorce essentially lose all control when the matter is decided through the courts. As such, we aim to encourage our clients to resolve matters on an amicable basis where possible, through negotiations or by using a form of Alternative Dispute Resolution, such as Collaborative Law and Mediation. For some people, court may be the only way to resolve a dispute but that should generally only be used once you have exhausted your other options.

4 “I will lose out in my divorce settlement because I had an affair”

Wrong. Although most people believe that to be the case before they obtain legal advice, in Scotland there is a no fault principle in divorce. This means that a person's conduct is not taken into account when determining the division of the assets and a person will not be penalised for committing adultery.

5 “I can divorce now and sort out the financial matters later”

Wrong. Once Decree of Divorce is granted it is virtually impossible to revisit the divorce settlement. You should never feel pressured into agreeing to a divorce before all outstanding financial matters have been satisfactorily resolved.

6 “Matrimonial assets are always split 50/50”

Wrong. Although in the majority of the cases the assets are ultimately divided on a 50/50 basis, the law does not provide that they must be. The law provides that the matrimonial property should be divided “fairly”. Whilst that often will result in an equal division, there is scope for a party to seek an unequal division of the matrimonial property in certain circumstances. One example may be where a party has used pre-marital funds to purchase a matrimonial asset. It is possible for that person to seek to claw back some of their original money by seeking an unequal division of the assets. It is important to obtain specialist advice on this from the outset, before committing yourself to an agreement with your exspouse.

7 “The mother will always be awarded the custody of the children”

Wrong. Whilst historically, it tended to be the mother who was awarded residence (custody) of the children upon divorce, this is not the case today. Fathers are frequently awarded full residence/custody of children by the Courts, depending on the circumstances. However, much more common is for the parents to have a shared care arrangement in place either by agreement or by order of the court. Shared care does not necessarily mean that they spend precisely the same amount of time with each parent but that both parties play a major role in the upbringing and care of the children.

8 “I will have to pay my wife maintenance for years after our divorce”

Wrong. Whilst it is possible for both wives and husbands to seek maintenance from their spouse following a divorce, courts prefer to effect a clean break, so that the parties are no longer financially tied to one another for years to come following a divorce. Whilst child maintenance will normally be paid by the parent who is not the principal carer of any children of the marriage, it is in fact quite rare for one spouse to continue to receive a separate award of maintenance for themselves, from the other spouse after the date of divorce.

9**“There’s no point claiming my partner’s pension, they say it’s worth very little”**

Wrong. We often hear both husbands and wives telling us that their other half has informed them that their pension is virtually worthless. However, pensions can be the most valuable asset in a divorce, often worth more than the family home. There is no way for a person to simply assume or guess the value of a pension. This requires to be formally valued by the pension scheme itself. Sometimes advice from an actuary will be needed to verify the value of a pension fund. Often a pension can be worth hundreds of thousands of pounds. Therefore to simply take your spouse’s word for it that it is worth very little is inadvisable.

10**“I have my own savings, my partner isn’t entitled to them if we divorce”**

Wrong. Unfortunately, any savings which have accumulated between the date of your marriage and the date of your separation are treated as matrimonial property and as such your spouse is entitled to claim a fair share of those.

For our expert advice, or to speak with a Family Lawyer, call us on **03330 430150** for a chat, or contact us to book an appointment and we will be more than happy to help you.

Alternatively, visit our website for more information, or to submit an online enquiry form:
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