

The Truth About Splitting Up



There are many myths and legends surrounding the end of relationships. Local practitioner and part-time Judge specialising in family law, Richard Clarke of Chiltern Family Law explores the legal reality for couples breaking up.

In a relationship break-up there are large areas of misconception which have passed into folklore. Some have a nugget of truth, but this is often lost in mis-information.

specialist child advisory officers to interview children, so that they can understand what the child's real wishes are.

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Myth 2
“The mother can stop the father seeing the children.”

This is something that the Courts try to address at a very early stage. Access is now known as contact. Contact is the right of the children, not the parents. The key thing to remember is that a child needs both parents and in all but the most exceptional circumstances, usually where there is a real risk of harm, the non-resident parent will get contact. Where a parent with residence is deliberately blocking contact, the Courts have a range of powers up to and including imprisonment of the parent stopping contact and removal of the children to the other parent. Once a relationship is over the parents will often want nothing to do with each other, but if there

are children they will almost inevitably have to continue to deal with each other. In the same way that the Courts will not tolerate anyone using contact as an opportunity to be abusive to their ex-partner, the Courts take a very active role where one parent is refusing to allow contact to the other.

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Myth 3
“The wife always keeps the house.”

Most families do not have enough resources for both parties to have their own house upon separation. Where there are children the main residence is generally reserved for them and whoever they are living with, as long as there are sufficient assets for this. The other parent may have to wait until the children grow up to be able to release their share of the property as a result. If there are no dependent children the court will usually order a sale of the property or one party will try to buy the other out.

Myth 4
“Conduct will affect who gets what.”

The Court will only take into account the conduct of a party where it is either exceptional or relevant to the financial issues. The fact that your spouse had an affair will not change the financial split. The fact that they are now living with that person, who has a lot of money, may. The starting point is a 50/50 split of the assets and liabilities, except for short marriages (usually up to 10 years) where more weight is given to who brought what into the relationship. For the longer marriage that 50/50 split is considered in the whole of the circumstances to see whether it is fair. The Court considers both the past and the future needs of the parties and greater weight is given to the need to provide for any children. Everything is taken into account, including any property, pensions and income.

Myth 5
“It makes no difference that we were not married.”

If you were not married then you have very limited rights and there is no legal status of 'common-law spouse'. When an unmarried couple break up, assets are divided on the basis of who contributed to what unless there was a prior agreement as to how this should be split. This will take into account the fact that resources may have been pooled, so if one person paid for utilities and the other the mortgage the one who paid the mortgage will not automatically get the property. Any property will normally have to be sold, unless a party can afford to buy out the other's share. If there are children then there is a right to Child Support. Otherwise there is no entitlement to maintenance irrespective of who earns what. It is a very risky place for a non-working partner with children to be.



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