



NAVIGATING DIVORCE & SEPARATION

for LGBTQ+ couples

The legal process for divorce and separation in England and Wales is the same for all couples, regardless of sexual orientation or gender identity. However, LGBTQ+ couples may have unique considerations when navigating the end of a relationship. This article explores key legal considerations for LGBTQ+ couples navigating divorce or separation and outlines how our experienced family law team can help protect your rights and guide you through each step.

Hay & Kilner

Here for you

Divorce Process

Since the introduction of no-fault divorce in April 2022, all married couples can divorce without assigning blame. You only need to confirm that the marriage has irretrievably broken down. The process begins with an application to the court and leads to a Conditional Order (after a minimum 20-week reflection period), followed by a Final Order at least six weeks later, which legally ends the marriage.

This process applies equally to same-sex and opposite-sex couples.

Civil Partnership

Same-sex and opposite-sex couples may choose to formalise their relationship through a civil partnership, which offers legal rights and responsibilities equivalent to marriage.

Ending a civil partnership involves applying for a dissolution order, again on the sole ground that the partnership has broken down irretrievably. The process and financial implications mirror those of divorce.

Children Matters

Parental Responsibility

Parental responsibility refers to the legal rights and responsibilities a person has towards a child, including decisions about their education, healthcare, and upbringing. A biological mother automatically has parental responsibility, and a second parent may acquire it through:

- Marriage or civil partnership at the time of birth;
- Being named on the child's birth certificate;
- Adoption; or
- A parental responsibility agreement or court order.

Where parental responsibility is not automatically granted, it is vital to take legal advice to formalise it to ensure you are able to make decisions about the child's welfare.

Child Arrangements

When couples separate, they need to agree where the child will live and how much time they will spend with each parent. If an agreement cannot be reached, the court can make a Child Arrangements Order based on what is in the child's best interests.

The law treats all applications equally, regardless of the parents' genders or sexual orientations. However, ensuring your legal position is clear, especially regarding parental responsibility, is essential before approaching the court.

Financial Considerations

Upon divorce or dissolution, financial matters must be resolved reasonably and fairly. This includes the division of property, pensions, savings, and any businesses. The court considers both parties' needs, responsibilities, and contributions, as well as the welfare of any children.

Pre-nuptial and cohabitation agreements can be especially helpful for LGBTQ+ couples, particularly where one partner brings significantly more assets into the relationship or where family wealth is involved.

Cohabitation - the myth of a 'common law marriage'

Many couples believe that long-term cohabitation creates a 'common law marriage' with legal rights. This is a myth. In England and Wales, unmarried couples do not have the same legal protections as married couples or civil partners.

This can lead to unexpected outcomes following separation, particularly where one partner owns the family home or where financial contributions have not been formally recorded.

We encourage cohabiting couples to consider entering into a cohabitation agreement to set out their financial arrangements, expectations, and responsibilities. These agreements can offer clarity and peace of mind, especially where children or property are involved.

Seeking Legal Advice

Navigating relationship breakdown can be complex and emotionally challenging. Seeking legal advice early on from an experienced family lawyer is crucial to understand your rights and options, ensuring a fair outcome and protecting your future.

At [Hay & Kilner](#), we are proud to support LGBTQ+ individuals and couples with understanding, inclusive, and specialist legal advice. We understand the unique challenges you may face when going through divorce or separation and are committed to helping you achieve a fair and amicable resolution.

Contact our Divorce & Family Team here: www.hay-kilner.co.uk/contact-us/ or call us on 0191 232 8345.