



 **VIBERTS**
FAMILY



We are recognised as having the leading family law team in Jersey.

Our team is committed to handling family law issues in an expert way that minimises conflict and stress for the parties involved. We also recognise the impact that family law matters can have upon children and believe that they should be considered at the heart of decisions.

Our family law team is one of the largest in Jersey. We have extensive experience in matters regarding:

- > Children
- > Civil partnerships
- > Divorce
- > Family dispute resolution
- > Financial provision
- > Pre-nuptial and post-nuptial agreements
- > Relationship break-ups and injunctions

The scenarios in this brochure reveal some of the most common issues that occur, which Viberts can advise you on.





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Pre-Nuptial Agreements

It is perfectly lawful for a couple intending to marry to draw up a contract setting out the division of their assets in the event of divorce. Such contracts are becoming increasingly common and can be a practical way of introducing a degree of certainty into such matters. Pre-nuptial agreements are particularly beneficial for people embarking on second or subsequent marriages who are concerned about protecting the interests of children from their first marriage, or in a situation where one partner is particularly wealthy.

Although the Royal Court has never been asked to rule upon the effect of such contracts under Jersey law, the likelihood is that it would follow the approach of the English courts. In England, a pre-nuptial agreement is not binding, but may be taken into account by the court as a relevant factor. For example, if the marriage has been short and there are no children, the terms of any pre-nuptial agreement would carry weight. If, however, the couple had been married for 15 years and had four children, any agreement made prior to their marriage which did not make adequate provision for the mother and children would carry little weight.

Couples who are contemplating such agreements must ensure that they receive thorough and independent legal advice and that they are completely honest about their assets. The contract should contain clauses to cater for the different circumstances which may occur, such as the birth of children and the duration of the marriage. These variations may affect any eventual proposed settlement. At Viberts, we can help you draft this important agreement.

Post-Nuptial Agreements

A post-nuptial is an agreement entered into during marriage. They are sometimes used, for example, to deal with inheritance that occurs during marriage. If the couple ever divorce in the future, then the agreement will be one of the factors the court considers when dealing with assets. However, it is important that a post-nuptial agreement is not made in contemplation of divorce or separation, as this could mean it is less enforceable.

Ken's story

Ken is engaged to be married to Deidre. It will be his third marriage. Ken is an extremely wealthy man despite having experienced two difficult divorces previously. He wants to protect his remaining assets and has spoken to Deidre about entering into a pre-nuptial agreement. She agrees and Ken wants advice on whether or not the pre-nuptial agreement will be binding in the event of divorce.

Separation on the breakdown of marriage

Marriage imposes certain duties upon a couple, including the duty to live together. When a marriage breaks down, it may not be possible to apply for a divorce immediately; for example, if a couple have been married for less than three years. It may simply be the case that the couple no longer wish to live together and no adultery or other conduct giving grounds for divorce has occurred.

In such circumstances there are two options available;

- (i) enter into a Separation Agreement or
- (ii) apply for Judicial Separation.



Sally's story

Sally married Kevin two years ago but she has come to the conclusion that she no longer loves him and wants to separate. They do not have any children but have purchased a house together, both have final salary pensions from the bank that they work for and also have a boat that has just been purchased by way of a loan for £50,000.

Sally is very concerned about the best way to deal with their financial arrangements. Both she and Kevin agree that separation will be the best way forward for both of them. She asks for advice about the possible steps to take.

1. Separation Agreement

This is a contract which sets out the terms under which the parties agree to separate, how the matrimonial assets are to be divided and what provision is to be made for any children.

Each contract is individually drafted to the requirements of the individuals concerned and may include provisions governing the agreed grounds for divorce in due course. It is also usual to incorporate clauses governing the allocation of any property owned, the amount of maintenance to be paid for the spouse and/or children, the division of any other assets and liabilities including insurance policies, motor vehicles, bank accounts etc.

The benefits of such agreements cannot be over estimated. They enable a couple to negotiate the financial arrangements and division of assets whilst waiting for their divorce to be permitted.

Separation Agreements can either be based upon arrangements reached between the couple themselves or can be negotiated by their respective lawyers on their behalf.

In either event, it is far less expensive to negotiate the settlement than to have it decided by the court.

Once a separation agreement has been negotiated and signed by the parties, it is binding upon them as a contract. When in due course a divorce petition is presented to the court, the separation agreement can be ratified by the court and its terms become incorporated into the Court Order.



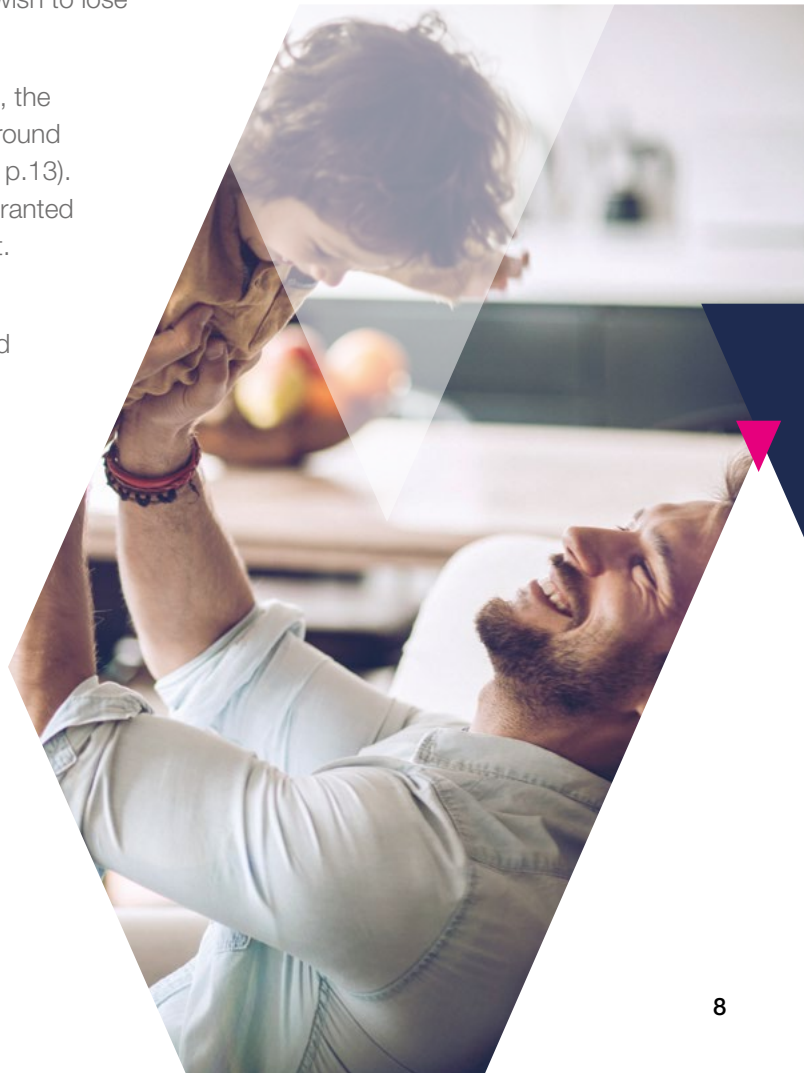
2. Judicial Separation

This occurs when a person wishes to separate but not divorce. The difference between a Separation Agreement and Judicial Separation is that the latter is placed before the court. Judicial Separation is more common when there are religious reasons precluding divorce or where one party does not wish to lose their spouse's pension benefit.

In order to obtain a decree of Judicial Separation, the person applying to the court must show that a ground for divorce has been established (see Divorce on p.13). Once a decree of Judicial Separation has been granted it is no longer obligatory for the parties to cohabit.

Where there is to be a Judicial Separation, the court can make specific orders as to financial and children's matters, either after an agreement has been reached or following a court hearing.

Following a decree of Judicial Separation, it is possible for either party to apply for a divorce at a later stage, should they so choose.





Cohabitation Agreements

More and more couples are deciding to live together without getting married. They will often purchase a property together, but it is also very common for one person to go and live in a property owned by the other.

A cohabitation agreement, which is a contract between the couple, can be an extremely useful way of dealing with issues that could arise either if the cohabitation breaks down or sadly one of them dies. In practical terms, it simply means listing all assets that each person owns prior to the cohabitation and for each person to take their own independent legal advice.

At Viberts, we find that cohabitation agreements are becoming increasingly popular.



Gail's story

Gail has met and fallen in love with Michael. They are both in their 70s and have been married previously. They want to cohabit before getting married to make sure that it is the right thing to do.

Before they live together, they want to ensure that their own separate assets are protected in case either of them dies during the cohabitation.

Gail asks for advice on drawing up a cohabitation agreement and the legal status of this.



Breakdown of cohabitation



Leanne's story

Leanne and Nick have been cohabiting for 15 years. Leanne lives in a house that is owned by Nick, but she has paid 50% of the mortgage and other outgoings for the entire time they have lived together. They also have a son together, Simon.

Recently their relationship has deteriorated to the point whereby Nick has asked Leanne to leave the house with Simon. Leanne comes for advice as to whether or not she has any rights in the equity of the house.

Divorce

In order to obtain a divorce in Jersey it is necessary for at least one party to be domiciled or resident in the Island. Either both the husband and wife must be domiciled here or, if they are not, one of them must have been ordinarily resident in the Island for a minimum of one year before the divorce petition was issued.

A couple must have been married for at least three years before a divorce can be obtained. Exception will only be made to this rule if it can be proved that waiting for the three year period to elapse would cause exceptional hardship for the party seeking the divorce, or that the spouse is guilty of exceptional depravity.

The grounds for divorce are as follows:

- > Adultery
- > Desertion for two years
- > Life imprisonment/imprisonment for 15 years
- > Separation for one year with the consent of both parties
- > Separation for two years
- > Unreasonable behaviour
- > Unsoundness of mind

The most commonly used grounds are unreasonable behaviour and one year's separation with consent.

Divorce is a two stage process. At the first stage, a decree nisi is granted by the court. At the second stage, provided six weeks has passed since the decree nisi was granted and provision has been made for any children of the marriage, application may be made for a decree absolute. The parties are then free to remarry if they wish.



Izzy's story

Gary and Izzy have been married for almost three years and have an adopted baby son.

Izzy has discovered that Gary may be having an affair with Yas, although she does not have any actual proof of this. She and Gary have argued almost constantly about money for the past 12 months and there is no longer any affection between them. Izzy wants advice about obtaining a divorce from Gary as quickly as possible.

Financial provision on divorce

When a marriage breaks down many difficult questions will need to be addressed regarding the financial consequences of the breakdown. This area of law is known as ancillary relief and is probably the most complex area of all family law.

At Viberts, our team will provide you with advice throughout your divorce on financial matters. These are the main issues that clients may face.

What orders can the court make?

The short term

Final orders can only be made by the court once a decree nisi is ordered by the court.

At an early stage in divorce proceedings it is possible to apply for Maintenance Pending Suit. This exists to bridge the gap between commencing divorce proceedings and the end of the proceedings. This is therefore a short term or temporary measure.

The order will be for the regular payment of a sum of money by way of maintenance. It will continue until matters are finally determined either by agreement or by a court hearing.

The long term

The court can order:

- (a) Financial provision order i.e. periodical payments for the other spouse and/or children, and lump sums;
- (b) Property adjustment orders i.e. transfer/settlement of immovable property.



The procedure

You will be advised by us as to when to make an application for ancillary relief. In addition we will also ensure that all the possible options for financial relief are discussed with you.

Once a summons for financial relief is filed it will be necessary to file financial disclosure with the court. This is initially done by an Affidavit of Means and is intended to give a complete picture of your financial circumstances.

Throughout the financial proceedings the court will be considering all your financial affairs and those of the other party. It is therefore essential that you keep all documents safely and produce them for your lawyer when asked to do so.

A further stage of financial disclosure normally now takes place through financial questionnaires.

It is essential again that all relevant documents are disclosed.

Examples of what documents will be requested are:

- > Bank statements
- > Credit card statements
- > Details of insurance policies
- > Details of loan agreements
- > Details of pensions
- > Receipts for food, motoring, utility bills etc.

If you own immovable property a valuation will need to be disclosed and ideally agreed.

The most complex cases are those involving any of the following:

- > Inheritances
- > Large pensions
- > Overseas assets
- > Private companies or partnerships
- > Self-employed individuals
- > Trusts or foundations

Roy's story

Roy and Hayley have been married for over 30 years but are now going through a very difficult patch in their marriage.

Roy asks for some preliminary advice about possible divorce proceedings. In particular, he wants to know what may happen to the business in which they are joint shareholders and which is their only source of income.

Roy wants everything to be settled as amicably as possible and has discussed the possibility of mediation or collaborative law with Hayley. He also wants to know about the possible grounds for any divorce proceedings.



Civil partnerships

This allows same sex couples to obtain essentially the same rights and responsibilities as married couples. This means that all the legal rights regarding financial provision and children also apply to couples entering into a civil partnership. The grounds for the dissolution of a civil partnership are the same as for divorce (with the exception of adultery).

Sean and Billy's story

Billy seeks advice as three years ago he and Sean entered into a civil partnership but their relationship has now broken down due to Sean's erratic and, at times, violent behaviour. Billy is concerned about his pension and the house they live in, which is in his sole name. He needs advice as to how matters can be resolved and the civil partnership dissolved.





Children

If there are children from a relationship it is obviously essential for their parents to be fully advised of the law in this area.

The main areas are as follows:

- > Care proceedings
- > Child abduction
- > Contact
- > Maintenance
- > Parental Responsibility
- > Residence



David's story

Kylie and David are married and have two children, Lily and Max. However, one of the children, Max, is not the biological child of David but does not see his real father. In every way, David considers Max to be his son. David has recently discovered that Kylie has been taking drugs and he is considering whether or not they should stay together.

David is very worried about his legal rights in relation to Max and also what steps he needs to take to ensure that both of the children live with him in the future. He accepts that Kylie should have contact with the children if they separate, but wants advice on how this can happen without putting the children at risk.



Residence

Since the introduction of the Children's (Jersey) Law 2002, the familiar terms 'custody' and 'care and control' have been replaced by 'residence', 'parental responsibility' and 'contact'.

Residence is the term used to describe who the child lives with and who looks after the child on a day-to-day basis. It may often be the case that there is no dispute as to who the child should reside with. The person who the child lives with is seen to have 'de facto' residence of the child.

Where there is a dispute as to which parent the child shall live with, an application can be made to the court to make an order to resolve it. The court can either make an order for sole residence, which means the child lives with one parent, or shared residence, where the child lives with both parents.

In determining the issue of residence, the court's paramount consideration is the welfare of the child. In residence applications it is normal for a JFCAS officer to be appointed who will prepare a report with recommendations for the court based on meetings with both parents and the child.

Dev's story

Dev and Julie have twins and have been married for five years. Julie has now met someone else and wishes to go and live with him, taking the twins with her. Dev is in agreement with this, but only if they continue to live in Jersey. Julie's new partner has been offered a very good job in New York and Julie now wants to go and live there with the twins. Dev does not agree with this and asks for advice.



Child maintenance

Every non-resident parent has a legal obligation to pay child maintenance regardless of whether they were married to the child's mother or not. In Jersey, the court uses the CSA 2000 guidelines as a starting point when assessing the level of child maintenance. However, the court will also take into account ability to pay and the particular circumstances of the child. In Jersey, payments for children will often be increased to take into account school fees and extras such as school uniforms, after school provision and school trips.

Molly's story

Molly entered into an agreement with her former partner, Tyrone regarding child maintenance for their daughter. For a few months Tyrone paid this regularly, but he has now sent her a text saying that he can no longer afford to pay it.

The maintenance makes a huge difference to Molly's ability to manage financially and she now wants advice on what she needs to do to ensure that the child maintenance continues to be paid.



Family dispute resolution

Whenever possible, we try to steer clients away from the court process towards the various dispute resolution methods. In all cases we will consider with the client:

(a) Collaborative law

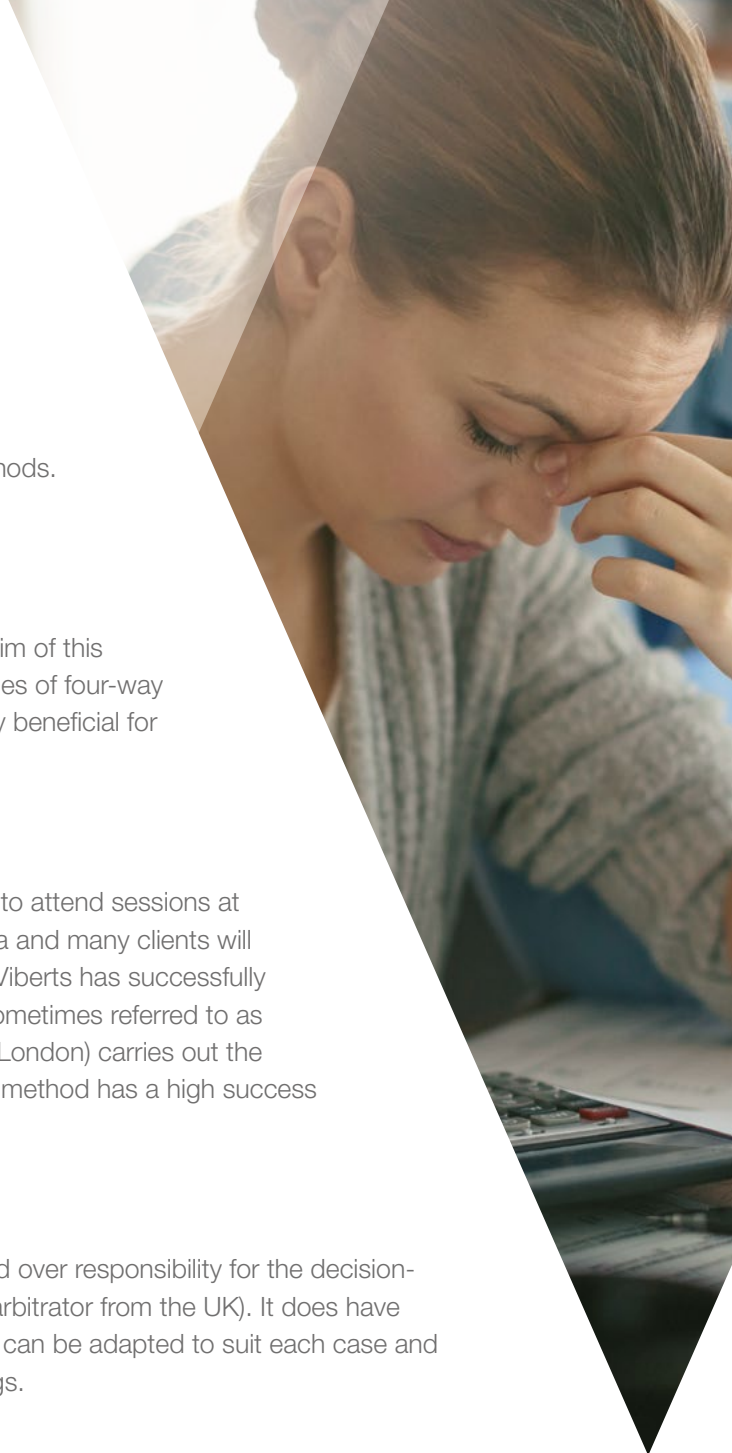
We have the necessary training in collaborative law. The aim of this method is to discuss and hopefully resolve issues in a series of four-way meetings between clients and lawyers. This can be hugely beneficial for opening up dialogue and finding solutions to the issues.

(b) Mediation

In more straightforward cases, it may be useful for clients to attend sessions at the Jersey Mediation Service. However, it is not a panacea and many clients will want, or need, a more lawyer-led approach. In this case, Viberts has successfully used what is called 'lawyer-led' or 'directed' mediation, sometimes referred to as 'private FDR', where an experienced lawyer (usually from London) carries out the mediation. The costs are shared between parties and the method has a high success rate.

(c) Arbitration

This is more akin to the court route in that the parties hand over responsibility for the decision-making to a third party (again normally a qualified lawyer-arbitrator from the UK). It does have significant advantages over going to court as the process can be adapted to suit each case and it is cheaper and quicker than contested court proceedings.





Beth and Kirk's story

Beth and Kirk are involved in complicated divorce proceedings. They are unable to agree what should happen to the family home and their business assets. However, they are really keen not to have to go to court, as friends have told them that this could cost tens of thousands of pounds in legal fees. They are both anxious to reach settlement and have heard about lawyer-led mediation.

Eventually, they agree with their lawyers to bring an independent lawyer/mediator over from London for the day. Although it takes all day, with the mediator's intervention, everything is agreed by the end of the discussions. They are both really pleased that a resolution has been reached without going to court.

Care proceedings

In certain circumstances, e.g. neglect, emotional/physical abuse of a child, it becomes necessary for the Minister of Health and Social Services to issue care proceedings in respect of the child. There are various stages to these complex proceedings and anyone involved as a parent (and occasionally as a grandparent) must take urgent legal advice.

Faye's story

Faye is a young girl who has just had a baby, Miley. Faye is suffering from post-natal depression and her parents are very worried about her ability to look after Miley. The Children's Service is now involved and it is considering asking the court for an interim care order.

Faye and her parents ask for advice on what they should do as they are particularly concerned that the proposed care plan for Miley may include adoption.



Glossary

Divorce Terms:

Petitioner

The person who instigates the divorce by way of a divorce petition.

Respondent

The other spouse who receives the divorce petition.

Co-Respondent

The 3rd party in an adultery divorce petition.

Defended Petition

Where one party objects to the contents of the divorce petition.

Greffier's Certificate

The stage prior to decree nisi.

Decree Nisi

The 1st stage of the divorce process.

Decree Absolute

The 2nd and final stage of the divorce process that ends the marriage.

Judicial Separation

Similar to a divorce but it does not end the marriage. Can be useful in the first 3 years of marriage or where there is a religious objection to divorce.

Injunctions:

Non-Molestation Injunction

An order of the court for one party (or their agents) to stay away from the other party.

Ouster Injunction

An order of the court removing one party from their home.

Non-Removal Injunction

An order of the court stopping children being removed from Jersey.

Finance Terms:

Pre-Nuptial Agreement

An agreement entered into prior to the marriage dealing with the division of assets if a divorce occurs in the future.

Post-Nuptial Agreement

An agreement as to the division of assets that is made during the marriage.

Separation Agreement

An agreement between the spouses dealing with the financial assets prior to divorce proceedings.

Ancillary Relief

Financial claims made to the court within divorce proceedings. Often also called financial relief.

Financial Disclosure

Where the parties need to disclose all their assets and provide all the necessary financial evidence.

Affidavit of Means

The document that is completed showing all the assets, liabilities and needs of the parties and any children.

Financial Questionnaire

A document where questions are asked about the disclosure made by each party.

Form 16 Summons

The application to the court for financial relief.

MPS (Maintenance Pending Suit)

Preliminary hearing before the court to deal with immediate financial issues.

PDH (Preliminary Directions Hearing)

A short court hearing where the court will set a timetable for financial disclosure.

CRH (Case Review Hearing)

A hearing before the court of approximately 30 mins where the court will check the progress in the case and urge ADR (see below).

Mesher Order

Where the property remains in joint names until a 'trigger' date such as the youngest child leaving education.

Spousal Maintenance

A claim by one party against the other for a regular payment to cover her/his needs as distinct from child maintenance (see p.34).

Schedule 1 Application

An application made for maintenance/lump sums to maintain the child where the parties are not married.

Consent Order

The final financial order made by the court where the parties have reached an agreement as to the financial relief.

Form M

The form that goes with a consent order to the court giving brief details of the financial position of the parties.

Undertakings

A binding promise to the court to do or not do something.

Glossary continued

Children:

Parental Responsibility (PR)

The ability to be involved in the big picture decisions about children.

Residence

The parent who cares for the children on a day to day basis has residence.

Joint or Shared Residence

Where the children live with both parents often on an equal basis ie the children have 2 homes.

Contact

The parent who does not have residence will have contact which can take various forms.

Child Maintenance

The amount that is paid for the needs of children by the non-resident parent.

Public Law Children Proceedings

Where the Minister issues proceedings in relation to the children where there are concerns over the care of the children.

Removal from the Jurisdiction

Where one parent applies to the court for permission to take the children to live outside Jersey on a permanent basis.

Habitual Residence

The jurisdiction that the child lives in – the place that is considered to be their home.

Hague Convention

The list of States who have signed the international convention which means that children can be returned from that state to Jersey and visa versa.

Adoption

A process whereby a person assumes the parenting of another, usually a child, and, in so doing, permanently transfers all rights and responsibilities from the biological parent or parents.

Article 10 Orders

Orders made by the court regarding PR, residence and contact.

Prohibited Steps Order

An order that stops a parent taking certain steps e.g. taking the child away from Jersey.

Specific Issue Order

An order that resolves a particular child related issue such as what school a child should attend.

ADR (Alternative Dispute Resolution):

This is an alternative to court based solutions to any of the issues above. It can take a number forms:

Mediation

Where an independent 3rd person attempts to negotiate agreement.

Private FDR

Where an independent lawyer attempts to resolve matters and both parties have their own lawyers present.

Arbitration

Where an independent 3rd person (a lawyer normally from outside Jersey) will make a binding decision with regard to the issues.

Collaborative Law

Where suitably qualified lawyers assist the parties to reach agreement on the issues outside the court process through a series of 4 way meetings (both parties and their lawyers).

General:

Family Registrar

The judges in the Family court.

JFCAS

The Jersey Family Court Advisory Service. In cases involving children issues very often a JFCAS officer will be appointed to consider child welfare issues.

Guardian

A person appointed by the court to consider the welfare of the children in difficult cases.


Contact us

If you are affected by any of the scenarios described within this brochure or similar and would like to seek professional advice, please contact our team at Viberts who will be happy to help.

You can be assured that all correspondence is handled with discretion and confidentiality.



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