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## Divorce

### The First Year of Marriage

It is not possible to start divorce proceedings within the first year of a marriage (although things that happen during that first year can be used as evidence in proceedings after the first year).

However there are a number of measures that we can take on your behalf:

1. Nullity

A decree of nullity can be obtained to say that the marriage is void (treated as never having existed) or voidable (valid until the date of the decree of nullity). It is void if it is essentially defective, for example if one party is already married or was under the age of 16 at the date of the wedding. It will be voidable if one of the parties was married under duress or there has been no consummation of the marriage.

2. Separation Agreement

We can prepare a separation agreement for you (please see our separate article for details).

3. Protection from violence

Protection from violence, for example non molestation orders, can be obtained under Part IV Family Law Act 1996.

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4. Maintenance Proceedings

During the course of a marriage we can apply to the court on your behalf for maintenance to be paid to you by your spouse.

5. Welfare Benefits Advice

You may be entitled to welfare benefits. Any maintenance payments would be taken into account.

6. Children

We can help you deal with the issue of who your children will live with after a separation, contact for the non resident spouse and maintenance payments for children.

### **After the First Year of Marriage**

After the first year of marriage you can apply for a divorce. An application must be made to the court setting out the reason(s) that the marriage is at an end (or has 'irretrievably broken down'). Only one of the five following reasons will be accepted by the court:

1. Adultery

- a) you can only use this ground if you are the non defaulting party, i.e. not the one having the affair.
- b) you must be able to prove that sexual relations have taken place.
- c) you must make your application within six months of the affair taking place.
- d) the sexual relationship must have been with someone of the opposite sex.

2. Unreasonable behaviour

There is a strict two part test applied by the court:

- a) there has been an irretrievable breakdown of the marriage; and
- b) your spouse has acted in such an unreasonable manner that you can no longer tolerate living with them.

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There is no set list of unreasonable behaviour and the court will take into account the background of each case individually. However certain types of behaviour are commonly used, for example:

- i) financial irresponsibility
- ii) violence or abusive conduct (physical or verbal including excessive criticism or nagging)
- iii) a lack of, or excessive, sociability
- iv) a lack of, or excessive, demands for sexual intercourse

### 3. Desertion

This applies if your spouse walked out on the marriage, with the intention never to return, at least two years ago.

### 4. Two years separation - with consent to divorce from spouse

You must have been living apart for a continuous period of 2 years and your spouse must consent to the divorce.

### 5. Five years separation – contested by spouse

If your spouse will not consent to the divorce you must be able to show that you have been living apart continuously for a period of at least five years.

To find out more talk to Tony, Rachel or Anne or visit [www.gardandco.com](http://www.gardandco.com).

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