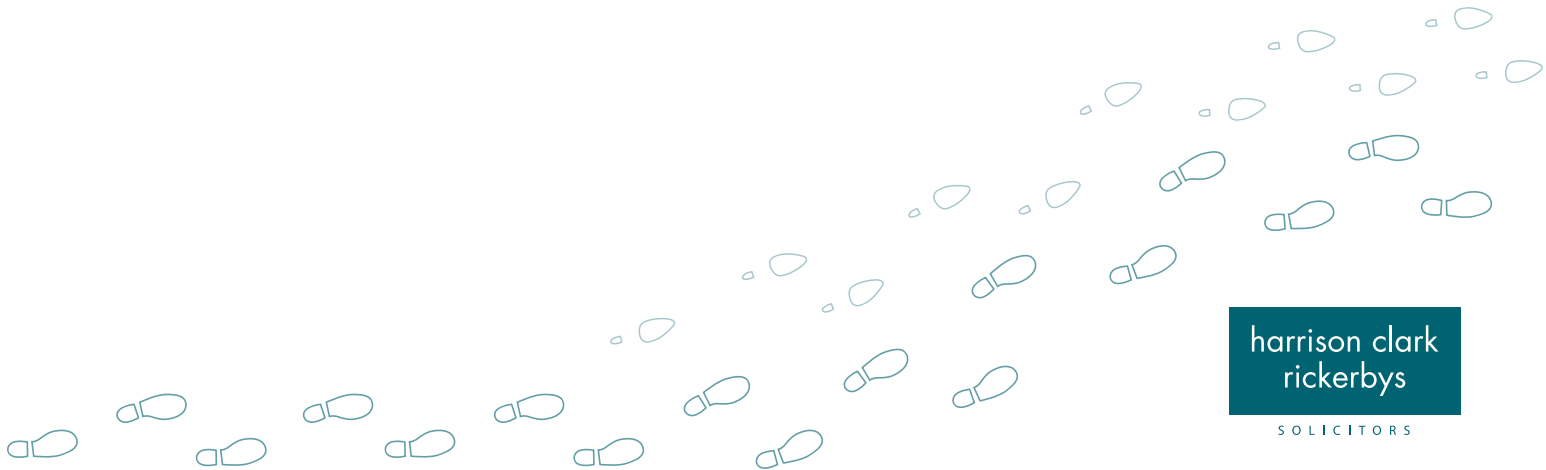




# MOMENTS THAT MATTER

BREAK UP, DON'T BREAK DOWN



**harrison clark  
rickerbys**

SOLICITORS

# BREAK UP, DON'T BREAK DOWN

**In this, our third issue of Moments that Matter, experts from our family law team look at the tricky issue of parenting apart and making sure that divorce really does mean financial closure so that both parties can move on with their lives and concentrate on the things that matter most, such as their children.**



Often the trauma of a relationship breakdown can continue for many years after the initial separation and for those with young children, the effects can be devastating. Making sure you have the right advice at the right time can be key to minimising the impact of the family breakdown and we have advisers who can help you with almost every area of family law.

**Andrew Caldicott**  
Partner, Head of Family Law

**Kevin Harris-James**  
Partner, Family Law

## Deal or no deal?



You might be surprised to learn that there are a significant number of couples who end their marriages without ever properly finalising the financial arrangements of their split.

**Kevin Harris-James**, a partner in our family law team, was recently involved in one such case that hit the national headlines where the lack of a formal court order cost the divorced husband dearly.

In the case of *Briers v Briers*, the parties married in 1984 and separated in 2002. Whilst the marriage was formally ended with a decree absolute in 2005, and Mr Briers had transferred the family home to his wife and paid her maintenance, in what he considered to be full and final settlement, no such settlement document was ever formalised. His fledgling business then became very successful, and eight years later, in 2013, the former Mrs Briers claimed a share.

Mrs Briers applied to the court for financial relief – a share of his assets – and much to her ex-husband's dismay, the court agreed that she should be awarded £2.7m (30% of the assets), all of which had been acquired by the husband's hard work since the end of the marriage.

Despite some very complex arguments by the husband's barrister, the judge in the case accepted that it was reasonable that the wife had no concrete explanation for the delay in making her financial claims, other than


the pressing demands of everyday life. The fact that Mrs Briers' relationship had just broken down was not, he felt, a motivating factor in her application.

So the moral of the story is simple. If you think you have an agreement in place, just check you really do. The door is only really shut on claims once a formal court order is in place, and delaying that process could cost you dearly.

## Key moment actions

- Keeping your divorce amicable is desirable, especially if you have children together and will be parenting them for years to come, but make sure that you formalise the arrangements.
- It is worth going through all the financial details as part of the divorce process, so that you both know what the future holds. If you cover this area thoroughly, the final consent order, which is the court order making a full and final financial settlement, will give certainty for both parties.





**Zoe Touhey**  
Partner, Real Estate

### Splitting the family home



Sadly the inevitable consequence for many divorcing couples is that the family home has to be sold and both parties will need to rehouse themselves. It's not always as simple as it seems, as **Zoe Touhey**, head of our residential conveyancing team, explains.

Once the ink is dry on the final court order, the parties will be looking to make arrangements for the future. If the house is to be sold, then, subject to an agreement over accepting any offers received and the usual frustrations with incomplete chains and last minute hitches, the process is no different or more stressful than an ordinary house move.

But if the house is to be transferred to one or other of the parties, then difficulties with the existing lender or trying to find a new one can cause all sorts of problems, and seeking advice early can be time well spent.

It would be usual to approach the existing mortgage lender about a transfer of equity application initially, and certainly long before the terms of the court order are agreed. If a new lender is to be involved, then a loan in principle should be agreed, making sure it truly is affordable. A good mortgage broker with up to date knowledge of the market place can be key at this stage, especially for those for whom organising borrowing is a dim and distant memory.

We can help too. Our expert property teams across all of our offices complete thousands of transactions every year, and whilst we cannot absolutely guarantee there will be no challenges and delays along the way, we will be on hand to do our best to achieve a smooth transaction and a quick completion, leaving you to move on in more ways than one.

#### Key moment actions

- Make sure that you raise the issue of your home with your lawyer during the divorce process - making decisions early in the process will mean that you are better prepared when the divorce is finalised.
- If one of you will stay in the family home, it's important that you talk to your mortgage provider or a mortgage broker, if you need to organise new lending.
- Bear your wills in mind too when the new living arrangements take effect - now is the time to review your wills.

### Planning apart



For newly separated parents, there are a number of challenges associated with parenting apart, not least who lives with whom, and when, and the possible disagreements about Christmas and birthdays. But what about planning apart for the death of one or both parents? All of a sudden, family dynamics can change dramatically, and relationships with wider family such as grandparents, become strained when the question of guardians arise.

Most divorcing couples will be advised to make wills as part of the divorcing process, and will usually discuss the terms of their own will with their individual advisers, but there are some decisions that would be better dealt with in collaboration between both sides.

The appointment of guardians is a key issue. Remember you cannot appoint a guardian over the head of a living parent, no matter how unsuitable you consider their parenting skills to be. If a formal guardian order has been made, however, then it's the guardian who must make a will to pass on that role on their death.


Making a will also ensures not only who your estate passes to, but also allows you to set an appropriate age at which children can inherit. The rules that apply when you don't leave a will automatically provide that children inherit at 18, yet most parents would be horrified to learn that their children would have full control over their wealth at such a young and potentially vulnerable age.

Whatever you decide to do, make sure writing a will is on your 'to do' list when finalising the terms of your separation, and that you talk to your co-parent about a joint decision that is in the best interests of your children.



#### Brexit touches families as well as businesses

– if you own property elsewhere in the EU or have investments tied up with family outside the UK, you may be worried about the way ahead after Brexit. Help is available from Nicolas Groffman, head of our international team, who also advises on setting up EU-based trading companies to hedge against uncertain times ahead.



**Nerys Thomas**  
Solicitor, Wills, Trusts and Estates





**Mathew Waddington**  
Partner, Family Law

**Keeping you safe from harm**



We are delighted to showcase our new, dedicated team, which acts to protect and promote the safety of vulnerable children and adults who find themselves at risk of significant harm.

Where a relationship has broken down amid domestic abuse or the abuse of a child, then Children Act proceedings will ask the court to decide with whom the child should live, where the child goes to school and how much time the child spends with a non-resident parent.

If concerns are raised with the local authority and it is considered that a child may be at risk of significant harm, then care proceedings may be brought by the local authority and parents will need to be represented by their own solicitor. In most cases, legal aid is available for these types of cases, and our Safe from Harm team can represent you throughout the whole of the case. We will see you through the whole process, beginning with an initial consultation in the office to appearing in court at the final hearing, so you will always be looked after by the same solicitor at what is a distressing time.

Leading the Safe from Harm team is our family law partner Mathew Waddington who has over 15 years' experience dealing with these types of cases. He is supported further by a team of qualified lawyers and administrative staff, ensuring that you will be receiving the best advice at a time when you need it most.

**Mathew Waddington, Partner, Family Law**  
T: 01905 678 542 M: 07825 682 064 E: mwaddington@hcrlaw.com

**YOUR JOURNEY**



**A PASSION  
FOR PEOPLE**

## Talk to us

If you would like to know more about our services or how we could support you, please call us for an informal, no-obligation chat.

### Dawn Oliver

Head of Wills, Trusts and Estates

01905 744 871 | 07721 564 340

doliver@hcrlaw.com

### Andrew Caldicott

Head of Family Law

01432 349 700 | 07774 870 756

acaldicott@hcrlaw.com

#### Birmingham

63 Church Street  
Birmingham  
B3 2DP

#### Cambridge

Compass House  
Chivers Way  
Histon  
Cambridge  
CB24 9AD

#### Cheltenham

Ellenborough  
House  
Wellington  
Street  
Cheltenham  
GL50 1YD

#### Hereford

Thorpe House  
29 Broad Street  
Hereford  
HR4 9AR

#### London

3rd Floor  
3 St Helen's  
Place  
London  
EC3A 6AB

#### Thames Valley

100 Longwater  
Avenue  
Green Park  
Reading  
Berkshire  
RG2 6GP

#### Worcester

5 Deansway  
Worcester  
WR1 2JG

#### Wye Valley

Overross House  
Ross Park  
Ross-On-Wye  
HR9 7US