



# /guide

## The Divorce Petition

### AND WHAT CAN I DO IF MY SPOUSE IGNORES IT?

**If you find yourself in the situation where the Court has issued your divorce petition, but your spouse refuses to respond, what are your legal options?**

There are a number of options open to people if their spouse does not return the Acknowledgment of Service to the Court but this depends on the fact relied upon in the divorce petition.

For example, if you have used unreasonable behaviour, 5-year separation or desertion, you can proceed without the return of the Acknowledgment of Service.

However, if your petition is based on 2-year separation or adultery, you will require your spouse's express consent/admission and the return of the Acknowledgment of Service.

If this is not achievable, you can amend your petition and rely on a fact that does not require your spouse's consent as mentioned above.

Reaching the decision to divorce is a long and often painful process so someone refusing to acknowledge the petition can be extremely frustrating.

#### Issuing a divorce petition

On the application of a divorce petition, the Court sends out a copy of the petition and an Acknowledgment of Service form to the respondent. They are given 7 days to complete this and return to the Court.

The Acknowledgment of Service form confirms to the Court that the respondent has received the petition. If they consent to the divorce being pronounced, this then allows the divorce process to move on to the next stage, applying for the Decree Nisi.

In rare cases, the divorce may be contested and if so, directions will be made for the matter to be heard before a judge to make a determination.

#### What can I do if my spouse doesn't respond to divorce papers?

If your spouse fails to respond, as a first option, contact your spouse and inform them that the Acknowledgment of Service needs to be returned to the Court within 7 days and ask them to now do so.

It may be that there is a logical explanation for why they have not completed the Acknowledgment of Service in the time frame, such as they forgot, are seeking legal advice or perhaps have already provided their form to the Court without providing you with a copy.

If, however, they are still ignoring you or refusing to complete the Acknowledgment of Service you have different options available to you depending on the basis of your divorce petition.

If you used 2-year separation with consent or adultery, you should consider amending your divorce petition to rely on one of the other facts (unreasonable behaviour, 5-year separation – without consent or desertion) that do not require your spouses' express consent/admission.

If you have petitioned or changed your petition on the basis of unreasonable behaviour, 5-year separation (without consent) or desertion, you can overcome the hurdle of your spouse returning their Acknowledgment of Service with one of the following options:

## Personal service by court bailiff or process server

Personal Service is an option, if your spouse has not returned their Acknowledgment of Service to the Court within 14 days and you have a reasonable belief that they are still living at the address set out in the petition.

This can be arranged by a Court Bailiff (if you do not have legal representation) or a Process Server (if you have a solicitor acting for you) to physically serve the documents on your spouse at their address or an alternative address, like their work address.

The server can make several attempts, if necessary, to serve your spouse with the divorce papers.

Once your spouse has been served, the process server or court bailiff will file a certificate of service to confirm their successful service.

If the Court is satisfied that your spouse has been correctly served and is aware of the proceedings, **it is then possible to go on to the next stage and apply for the Decree Nisi without requiring your spouse to complete their Acknowledgment of Service.**

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit [www.stowefamilylaw.co.uk](http://www.stowefamilylaw.co.uk)

## Application for deemed service

If you have correspondence or evidence that your spouse did receive the issued petition in the post, you can make an application for "deemed service".

You will need to provide a detailed account of any conversations you have had with your spouse and provide as much evidence as possible with your application (for example, emails and text messages) to satisfy the Court that your spouse has received, and is aware of the divorce proceedings.

Once the Court has approved your application, you can proceed to apply for the Decree Nisi without waiting for the respondent to complete the Acknowledgment of Service

If options 1 and 2 fail you could also consider 'Substituted/ Alternative Service' where you request permission from the Court to notify your spouse of the divorce proceedings using a different method. For example, this could include serving it by email, via an employer or relative.

## Application to dispense with service

In exceptional cases, the Court may allow you to dispense with service. However, this can only be when it is not possible to serve the divorce petition at all, for example, you are unable to locate your spouse.

In this application, you need to evidence your extensive efforts to try and locate your spouse, including all the enquiries you have made. This may include speaking to friends, family, their employer etc. **The Court will only make this application in limited circumstances when all other options have been exhausted.**

Please note that you may be able to seek a cost order against your spouse for any additional fees you have incurred as a result of having to make any of the above applications.