



France vs England: which country should I choose for my divorce?



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In this interview, we discuss the main differences between getting divorced in France and in England. Just to be clear, not everybody has that choice so it's important to check whether you do. But if you have ties to both countries, you may be in the unique situation where you can choose where to divorce and that's where understanding the implications of that decision is going to be very important. I work a lot with French people who are abroad, a lot of them in the UK, and this is usually quite an overwhelming decision to make. It feels in a lot of ways that it's the biggest one and it's certainly one of the earlier ones they have to make, so we spend a lot of time discussing this. Getting advice from a lawyer is key in this process to really understand what the possible outcomes would be in each country. In making this decision there are a lot of factors to consider: definitely what the laws are in each country and which one is likely to give you the best outcome based on your situation, but also how long it takes to get divorced in each country and how much it might cost, what requirements are in place (some countries have waiting periods or different grounds for divorce). Gathering all that information is key to making that decision. What we wanted to do here is to provide an




overview of some of the main differences between the two jurisdictions so that you can have a better initial idea of what to consider if you are faced with this decision.

To discuss this topic, I've invited two lawyers from either side of the English Channel. [Rachel Freeman](#) is a solicitor in England and she works at [Burgess Mee](#). She has over 20 years' experience working on divorce, children matters, financial matters and mostly on International cases. [Coline Le Cam-Mayou](#) is based in Paris, she is a lawyer in France and she has years of experience working in both French and British International family law.

Before we dive into the meat of the matter, I thought it would be good to do a bit of level setting. All of the differences that we are going to discuss today are very much linked to the cultural backdrop that we see in each country. This explains why they have different approaches to how you apply for divorce, why the grounds for divorce will vary, but also why the legal culture is different in both countries.

Rachel, can you please tell us first what it how the process works in England in terms of getting a divorce and then we can talk about France with Coline?

Rachel Freeman (English solicitor): In England, we don't have to deal with grounds for divorce because, since April 2022, we have had no fault divorce, meaning that you do not need to justify why you want to divorce. Also, the English system allows couples to divorce without children arrangements or a financial order in place. The divorce is treated completely separately to the splitting of assets or the parenting arrangements. However, it is always absolutely recommended to sort out your financials at the same time. The move to no-fault divorce in 2022 was a really big step. Before that you needed a reason as to why the relationship had broken down, grounds such as living apart for two years for example. This means that divorcing is now more harmonious, you can even have a joint application if you want to.



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Coline Le Cam-Mayou (French lawyer): There are a lot of differences between our two systems obviously, but this is one of the big differences. In French law we still need a ground for divorce in the French civil code there is four specific grounds provided. There is a mutual consent divorce it can be an in-court divorce or out of court with a Notaire. Another ground for divorce is the separation of the couple at least since a year. The 3rd ground for divorce is the agreement of the spouses on the principle of the divorce but not on the consequences of it. This means that they can agree on the divorce itself, but they disagree on the consequences regarding finances or children. In this case it can be a joint petition too if you agree on the principle of the divorce and the procedure will be focused on the consequences only. The last ground for divorce is on the basis of a fault. There is a fault when there is a break of one of the obligations arising from the marriage. In the civil code these obligations are defined as respect, fidelity, aid and assistance. A break of these obligations could be for example infidelity or abuse. Another big difference with what Rachel said is that, in France, when you file for divorce, the court will have to sort out every matter in the same process. We will deal with the grounds for divorce at the same time as the financial consequences and the consequences with regards to the children. If there are children in the family, the question regarding their care will be dealt with during the procedure, you can't avoid it.

Chloe O.: Thank you Coline. In preparing for this event, we were talking about the many differences between the two jurisdictions, and we felt that it boiled down to about five major topics. The first one is Financial Disclosure, which is handled differently in each country. The second is prenups or contrats de mariage in France. Pensions is another. Spousal maintenance and child maintenance are the final two. I suggest we run through the list, I'm sure it'll bring up other bits that are different as well but those are kind of the five main elements that that we boiled it down to. Let's start with the financial disclosure process.

Rachel, could we understand from you how it all works in England please?

Rachel Freeman: The English financial disclosure process is very thorough. The standard process is for the spouses to complete a Form E, disclosing all their assets



worldwide: debts, pension, income. They are asked to provide supporting documents as well such as bank statements, pension statements, tax returns... Each party receives a copy of the other's form, and they then have an opportunity to ask further questions. If they are struggling with valuing certain assets, such as a property or a company, they can instruct the court to involve an expert valuer. This is a very thorough process and everything must be disclosed.

Rachel can you just clarify whether this is a mandatory process or optional?

Rachel Freeman: The parties can agree to not do a disclosure but if they want a Clean Break through a financial consent order, they must submit a disclosure to the court.

Coline, do you want to tell us about how it works in France?

Coline Le Cam-Mayou: In France, there is no legal disclosure process. Of course, if you are divorcing in court or out of court you have to disclose your assets and income, but we don't have any enforcement, so if one of the parties decides to lie or to hide some assets or income it could become very hard to find them. There is no sanction in France if one of the parties is not transparent.

Chloe O.: That's really helpful. It's a very different approach in each country. I think this is something that people often take into consideration when making this jurisdictional decision because, if there is a fear that their spouse might be hiding assets, the English disclosure process provides some comfort, although it's not foolproof of course. But it allows them to gather the information they feel they need to make the right decisions.

The second major difference between France and England, which we mentioned, is prenups (in France they are called *contrat de mariage*). While they are signed at the same time and with the same intent they're handled very differently. Coline, could you tell us a little bit about how they're handled in France?



Coline Le Cam-Mayou: In France, as in the UK, you can have a prenup or a postnup. In the prenup, you will choose one of the legal matrimonial regimes provided by the French civil code. The most common matrimonial regimes are the separation of assets and the community of assets. If you do not have a prenup, the default regime applicable to you will be the community of assets if you live in France after the wedding. At divorce time, if it so happens, the contrat de marriage will be fully respected by French court, ie the court has no discretion on that matter because there are rules in the civil code explaining how the liquidation of assets has to be handled. The will of the parties is very important French law, so because it's in the contract it will be very strongly respected.

Chloe O.: That is very different to the English approach. Can you tell us a little bit about that Rachel?

Rachel Freeman: that is very different from the English approach. While we do have rules about how assets get split, judges have a lot of discretion. We don't have a matrimonial regime in England, it is a discretionary system based on the statutes of the Matrimonial Causes Act and case law. Every case is different and has its own facts. That is why is it so important for people to try to reach an agreement rather than going to court. At the end of the day, there is no certainty with regards to outcomes in court, the has full judge discretion and different judges have different views of what's fair. We are seeing an increasing number of couples enter into prenups and postnups since 2010. Since then they've been formally recognized and that really changed the scene because a judge is very likely to uphold the agreement. There are conditions for the prenup or postnup to be valid, and that is that there has been full disclosure of each spouse's financial for example. The parties also need to have received legal advice and to not have been under any pressure to enter into the agreement.

Chloe O.: Thank you Rachel. Can you tell us a little bit about how pensions are treated in England?



Rachel Freeman: Here, the court has to make pension sharing orders. This means that a pension belonging to one of the spouses can be shared and all of the fund (or a certain percentage) of the fund can be moved the other party. It can also be dealt with as a cash equivalent. We normally instruct experts to work out the value of the pension. But it would be treated as another asset in the divorce and it has to be disclosed.


Chloe O.: Coline, how does it work in France?

Coline Le Cam-Mayou: In France, pensions are taken into account in case of divorce, but differently from the other assets. It's very complicated to talk about it in a few minutes because it depends of your matrimonial regime. For example, if you are in a community of assets, and if the community financed your own pension, it will be counted as a matrimonial asset to be shared during the divorce.

Chloe O.: Thank you Coline. Another big difference between the two countries is how spousal maintenance is allocated.

Coline Le Cam-Mayou: In France, we have the prestation compensatoire, which is a financial compensation due after the divorce. There are legal criteria to determine if it should be a compensated or not, as well as how this should be calculated. For example, the criteria are considerations such as the spouses' age, the number of children, any career sacrifices, illness, the duration of the marriage... The amount of the prestation compensatoire is always complicated to value because there is a big part of discretion left to the Court: it will depend from a court to another, from a judge to another. The principle is that this is a lump sum that the wealthier spouse will pay to the other at the time of the divorce. It can also be a monthly payment but over a maximum of eight years.

Rachel Freeman: In England, it's called spousal maintenance and it's dealt with very differently. Surprisingly, it can last forever it can be on an end-of-life basis or made for a



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specific term. It is absolutely not systematic for one spouse to receive spousal maintenance from their ex, the decision is based on need. If one spouse believes they need spousal maintenance, they will prepare their budget and the court will look at what they earn and evaluate when that party might become financially independent. The judge can make a joint lives order, which means that a change of circumstance can lead to ending that order. That is another difference from the French system. In English law, maintenance is always variable on a material change of circumstance such as somebody losing their job or earning lots more money or the other person in receipt of the maintenance getting a job or earns more money. Spousal maintenance is usually paid as a monthly pay rather than a lump sum, like in France. The court will definitely look at whether it can be capitalized so that the parties can have a clean break because, ideally, it wants to have a clean break between the spouses. Technically, the payments are indefinite unless there is a variation but, that being said, that is becoming less common as the courts expect more and more the receiving spouse to become financially independent.

Chloe O.: Another important difference between the two countries, and the last one we we're going to touch upon, is a topic that usually leads to a lot of conflicts at the time of divorce: child maintenance. Rachel you can tell us a little bit how that's is decided upon in England? How is it calculated and how does it get enforced?

Rachel Freeman: In England, the first port of call is not the court. Ideally the parties will find an agreement but if they cannot, the person who is requesting the maintenance has to apply to the Child Maintenance Service (CMS). The CMS will do an assessment using the financial information they hold to do a specific calculation based on the payer's income, how many children are involved and how many nights the children spend with each parent. There is a very useful calculator online on the Child Maintenance Service website that people can look at for an indication of what they would be likely to pay or receive. The CMS is an independent body that helps to administer all of this and their calculator is applied quite rigorously. Now if one of parents is paying the other more than £6,000 or it's an application for something above typical living expenses such as school fees, then the person who is requesting child maintenance can apply to the court. The judge has a lot more discretion as they won't use a specific formula.




Chloe O.: Coline, is there an official body that regulates child maintenance in France too?

Coline Le Cam-Mayou: No, it's not the same at all because, as I explained earlier, when you divorce you will have to agree on the child maintenance at that stage (if there are children of course), it has to be part of the divorce process. Child maintenance is based on the children's needs but that is a very relative concept because it will depend on the lifestyle of the family or on the parents' income. Child maintenance can take different forms: it can be a monthly payment (most of the time it is) or a direct payment of some specific fees, for example school fees or extra-curricular activities or health insurance. It can also be a right of use of the family home for the parent who has the children the most. With regards to how it is calculated, there no official calculator but there are some tools provided by the government and there is a website where you can calculate your maintenance. However, in practice, we use only use the website as a reference because it is not always adapted. It's usually not adapted for higher income families or families who live in expensive cities. Also, it does not include other expenses such as private school fees, which need to be added to the calculations.

Chloe O.: Another difference that we had discussed is how long child maintenance is paid for. How does it work in France?

Coline Le Cam-Mayou: In France, the rule is that it's due until the child is financially independent, so it depends on their studies. As a result, it can last for many years. The paying parent can go back to the court if there is a change in the situation or the parents can agree to revalue the maintenance if one of them loses their job for example.

Chloe O.: Rachel how does it work in England?



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Rachel Freeman: The Child Maintenance Service is applicable until the child is 16 or finishes their full-time secondary education. After that, it's the court that has to deal with child maintenance during university.

Chloe O.: As you can see, there are many factors to consider when deciding where to divorce, if you have the choice. I hope this interview provided you with some initial ideas of the main differences and what factors you might want to look at before you proceed. These factors will be more or less important based on your specific situation. It really isn't that France will be always better than England or vice versa, it will depend on your situation and that is why the conversation is really key. Speaking to a lawyer in both countries is fundamental, as well as working with a divorce coach like myself to review all the information at hand and make an informed decision.

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