

An Ultimate Guide to Business and Divorce

Divorce proceedings are difficult enough at the best of times, but they can become significantly more complex when business assets are involved. Whether they are jointly owned or operated solely by one spouse, businesses are usually considered marital assets in England and Wales. Therefore, they are subject to division during a divorce. This means that, like property or pensions, businesses must be evaluated and accounted for in any financial settlement.

In this Ultimate Guide, we'll answer all of your questions about how businesses are treated during divorce proceedings. This includes:

- [How Business Valuations Work](#)
- [How Different Types of Business Structure are Dealt with During Divorce](#)
- [Matrimonial Assets, Non-matrimonial Assets, and Asset Offsetting](#)
- [Protecting Your Business with Pre- and Post-nuptial Agreements](#)
- [How to Run Your Business During and After Your Divorce](#)
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Business Valuations During a Divorce: Everything You Need to Know

When a marriage dissolves and a business is involved, determining the value of that business is crucial for achieving a fair financial settlement. Business valuations in the context of divorce can be complex, requiring professional expertise and a thorough understanding of the business's structure, financial health, and future potential. Below, we'll discuss the common methods used to value businesses during divorce proceedings, the challenges that can arise, and the importance of agreeing on an expert for the valuation process.

Methods of Business Valuation

There are several methods used to value a business during divorce proceedings in the UK, each suited to different types of businesses:

1. **Asset-Based Valuation:** This method involves calculating the total value of the business's assets and subtracting any liabilities. It is most suitable for businesses with significant tangible assets, such as property or equipment, rather than service-based businesses.

2. **Earnings-Based Valuation:** This approach looks at the business's ability to generate income in the future. Commonly used methods include the Discounted Cash Flow (DCF) method, which estimates future cash flows and discounts them to present value, and the Capitalised Earnings method, which uses a multiple of the business's current earnings to estimate its value.
3. **Market-Based Valuation:** This method compares the business in question to similar businesses that have recently been sold. It is often used for businesses in well-established markets where comparable sales data is available.

Challenges in Valuing a Business

Valuing a business is not a straightforward task and can present several challenges, particularly in a divorce setting:

- **Agreeing on an Expert:** One of the first hurdles is agreeing on a qualified accountant or business valuer. Typically, the parties will submit a list of potential experts, and both sides will choose one to carry out the valuation. If they cannot agree, the court may appoint an expert. The aim is to ensure that the valuation is impartial and acceptable to both parties.
- **Valuation Costs:** Business valuations can be expensive, ranging from £5,000 to £25,000 or more, depending on the complexity of the business. It is essential to weigh the cost of the valuation against the value of the business itself, as it may not be necessary in every case.
- **Nature of the Business:** The business's nature can significantly impact its valuation. For example, a business that is simply a vehicle for one spouse's professional work, such as a consulting firm, may not have much value beyond the individual's earning potential. In contrast, a business with a diversified customer base, contracts, and tangible assets, like a manufacturing company, will have intrinsic value independent of the owner.
- **Complex Financial Structures:** Businesses with complex financial arrangements, such as director loans or intertwined personal and business finances, require a detailed analysis to ensure an accurate valuation. This is particularly challenging if one spouse has been drawing unsustainable amounts of income from the business, which can skew the perceived value.
- **External Factors:** External factors such as economic conditions or industry-specific challenges can affect a business's valuation. For instance, the COVID-19 pandemic has had a substantial impact on many businesses, and valuers need to account for such anomalies when determining sustainable earnings.

The Role of the Valuation Expert

In most cases, the valuation will be conducted by a single joint expert—a chartered accountant or business valuer—agreed upon by both parties. This expert will analyze the business's financial statements, assets, liabilities, and other relevant information to produce a comprehensive valuation report.

The expert will consider various factors, including:

- **Sustainable Earnings:** Assessing whether the current earnings are sustainable or inflated due to temporary factors.
- **Asset Values:** Including properties, equipment, and other tangible assets.
- **Business Structure and Operations:** Evaluating how the business is run and whether its value is closely tied to the involvement of one spouse.
- **Market Conditions:** Considering the broader economic and industry-specific factors that could affect the business's value.

Alternatives to Formal Valuation

In some cases, a formal valuation may not be necessary. For example, if both spouses agree on the business's value, they can proceed without a professional valuation, provided they both understand the risks. Alternatively, if the business is a shared venture and both parties intend to continue co-owning it post-divorce, they may decide not to pursue a formal valuation.

Types of Business Structure and How They're Dealt with During Divorce

The type of business structure—whether it's a sole proprietorship, partnership, or limited company—can influence how the business is handled during a divorce. Here's a breakdown of the unique considerations that need to be given to each of the three main business structures in the UK, and how they will be handled during a divorce:

Sole Proprietorships

A sole proprietorship, where the business is essentially an extension of the owner, often has little to no intrinsic value beyond the income it generates. Common examples include freelancers, consultants, or sole traders such as market vendors or private medical practitioners. In these cases, the business may not need a formal valuation because it is primarily a vehicle for the owner's work rather than an asset that can be divided or sold. Instead, the focus will be on assessing the income derived from the business and determining how this income affects financial settlements, such as spousal or child maintenance.

Partnerships

In a partnership, especially one with multiple partners, the situation becomes more complex. It's essential to determine the nature of the partner's stake in the business. For example, if one spouse is a minority partner in a legal or professional services firm, the value of their share may be more about the income it generates rather than the business's overall value. It's also important to consider partnership agreements, as they may restrict the sale or transfer of shares. Valuation in such cases may focus on the spouse's individual earnings and their ability to draw income from the partnership rather than the partnership's total value.

Limited Companies (Ltd)

For limited companies, the valuation process can be more detailed. If a spouse is a sole or majority shareholder, the business itself may have significant value independent of the individual's involvement. Factors such as the company's assets, liabilities, contracts, and overall profitability will be considered. In cases where the business is co-owned by both spouses or has multiple shareholders, it is necessary to determine the specific value of the shares held by the divorcing spouse. The complexity increases if the company has tangible assets like property, equipment, or intellectual property, all of which must be valued separately.

Assets: Matrimonial, Non-Matrimonial, and Offsetting

In the context of divorce, the distinction between matrimonial and non-matrimonial assets is crucial when determining what should be divided between spouses. This categorization affects how business interests, properties, and other financial assets are handled during settlement negotiations. Understanding these distinctions helps ensure a fair and equitable division of assets.

Matrimonial Assets

Matrimonial assets are those acquired during the course of the marriage. They typically include the family home, joint savings, pensions accumulated during the marriage, and any business ventures started or developed by the couple. These assets are generally considered to be owned equally, regardless of whose name they are in, and are subject to division upon divorce.

For businesses, if the company was established or significantly developed during the marriage, it is usually deemed a matrimonial asset. This is true even if one spouse was the primary operator or owner. The value of the business would be assessed, and an equitable portion would be allocated to each spouse, often through a lump sum payment or other financial arrangements.

Non-Matrimonial Assets

Non-matrimonial assets are typically those acquired by one spouse before the marriage or received as an individual gift or inheritance during the marriage. These assets are not automatically subject to division, but they can become part of the marital pot if they have been "mingled" with matrimonial assets.

For instance, if one spouse owned a business prior to the marriage but later involved the other spouse in its operations or used joint funds to expand it, the business may be considered a matrimonial asset. Similarly, if pre-marital property is sold to purchase a new family home, its value can become part of the matrimonial assets. In such cases, the court will consider whether the asset has maintained its separate nature or has been effectively converted into a shared asset.

Offsetting

Offsetting is a method used when dividing assets in divorce to provide a fair outcome without the need to split all assets directly. For example, if one spouse retains full ownership of a business, the other spouse may receive assets of equivalent value, such as the family home or a larger share of the savings or pension.

This approach is particularly useful when selling or dividing a business is impractical or undesirable. Offsetting allows one spouse to maintain control of the business while ensuring that the other spouse is compensated appropriately. It also provides a cleaner financial break and helps avoid disrupting business operations.

Pre- and Post-nuptial Agreements: How They Can Protect Your Business

Pre- and post-nuptial agreements can play a crucial role in protecting business interests during a divorce. While these agreements are not legally binding in the UK, they are considered highly persuasive by the courts, especially when both parties have entered into them freely and with full understanding of their implications. For business owners, these agreements can be instrumental in safeguarding their company from potential claims during a divorce.

The Purpose of Pre- and Post-nuptial Agreements

The primary goal of a prenuptial (before marriage) or post-nuptial (after marriage) agreement is to outline how assets, including business interests, should be divided in the event of a divorce. These agreements are particularly beneficial when one party enters the marriage with a business or when substantial business assets are acquired during the marriage. They can specify that the business or certain assets related to it should remain with the original owner, thereby preventing disputes over ownership or value during a divorce.

How These Agreements Protect Business Interests

1. **Clarity on Ownership:** A well-drafted pre- or post-nuptial agreement can clearly state that the business, or a specified portion of it, is the separate property of one spouse. This can prevent the business from being considered a matrimonial asset subject to division. For example, if a business owner has built a successful company before getting married, a pre-nuptial agreement can ensure that the business's pre-marital value is protected.
2. **Valuation and Growth:** The agreement can include a business valuation at the time of marriage or the signing of the post-nuptial agreement. This is useful for distinguishing between the business's initial value and any growth that occurs during the marriage. If the non-owning spouse has not contributed to the business's success, the original value could be ring-fenced, with only the marital growth considered for division.
3. **Protection Against Claims:** Pre- and post-nuptial agreements can also stipulate that the non-owning spouse will not make claims on the business's assets, whether directly or indirectly. This is particularly useful for businesses with other shareholders or partners, as it provides security that external parties won't be affected by the divorce.

Limitations and Legal Standing

It is important to reiterate that while pre- and post-nuptial agreements hold significant weight, they are not legally binding in the UK. Courts will review these agreements as part of the overall financial settlement, but they will not automatically enforce them if they are deemed unfair or if they fail to meet the non-business owning spouse's reasonable needs. For example, if the agreement leaves one spouse without sufficient resources for housing or living expenses, the court may choose to override it.

Running Your Business During, and After, Your Divorce

Divorce proceedings can take time and energy away from running your business. Additionally, the stress of a divorce can lead to behaviours that unintentionally—or intentionally—affect the business. For example, an owner may feel less motivated to grow the business if they believe it will only increase the share their ex-spouse will receive.

It's also important to consider the impact on staff. Employees may become anxious about their job security if they sense instability at the top. Clear, consistent communication is key to maintaining morale and productivity during this uncertain time. Reassuring staff, without revealing too much personal information, can help keep the business steady.

Some businesses are easy to split. If you own a chain of hair salons or restaurants, for example, you can just take half each and run them independently. However, not all businesses are so easily dealt with. When both you and your partner want to keep running the business, and splitting, selling, and offsetting aren't on the table, then you may have no option but to continue to run the business together.

Working Together After Divorce

Continuing to run a business with your ex-spouse is rarely straightforward. While some couples manage to maintain a professional relationship, for many, unresolved personal conflicts can make cooperation difficult, if not impossible. Disagreements over business decisions can be exacerbated by lingering resentment or mistrust, which can ultimately harm the business and its operations.

That said, there are cases where ex-spouses continue to work together successfully, particularly if there is mutual respect and a shared vision for the business. However, it's crucial to have clear boundaries and roles defined. This can prevent personal issues from spilling over into business matters.

Strategies for Managing a Shared Business

If you find yourself in a position where you must continue working with your ex, there are several strategies that can help:

1. **Appoint a Neutral Manager:** Consider appointing a managing director or another senior figure to oversee the daily operations. This allows the business to continue functioning smoothly without the need for constant interaction between you and your ex.
2. **Divide Responsibilities:** Clearly define your roles within the business. If possible, focus on separate areas of the company to minimise the need for day-to-day communication. For example, one spouse might manage operations while the other handles finances or marketing.
3. **Communication Protocols:** Establish clear communication protocols and stick to them. This could involve limiting business discussions to scheduled meetings or using a third party to mediate any disputes.
4. **Formalise Agreements:** Ensure that all agreements regarding the business are formalised in writing. This includes decisions about ownership, management, and profit distribution. Having everything documented can prevent misunderstandings and disputes later on.
5. **Exit Strategies:** It's wise to agree on exit strategies for either or both parties, should it become impossible to continue working together. This could involve selling the business, one spouse buying out the other's share, or agreeing on a timeline for a phased exit.

As a final note, there are two points we want to make about running a business during and after a divorce. First, while going through divorce, it is vitally important that you don't start taking much more (or less) income out of the business than usual in an effort to manipulate its value prior to asset division. You will get caught if you try to do this.

Second, experience has shown us that it is wiser, by far, to not continue running a business with your ex partner. Some people make it work - most do not. Unless you and your former spouse both have an enormous amount of trust and respect for one another, it will be very difficult indeed.

You Ask, Blanchard Answers

Q: Does the role of each spouse in the business affect the division of business assets during a divorce?

A: Typically, the role each spouse plays in the business does not significantly impact the division of business assets, especially if the business was built up during the marriage. The courts do not distinguish between the roles of homemaker and breadwinner, viewing both as equally valuable contributions to the marriage. However, in exceptional cases where one spouse has made a unique, pioneering contribution to the business—such as being the primary driving force behind its success—the court may consider allowing that spouse to continue running the business while compensating the other spouse for their share. This is rare, and generally, both parties' contributions are viewed as equal, regardless of whether they were directly involved in the business or supporting from home.

Q: If both spouses want to keep the business, how does the court decide who should continue running it?

A: If both spouses wish to continue running the business, the court will look at their respective roles within the company. If one spouse is the managing director, has been the primary force behind the business's growth, and has the necessary skills and knowledge to run it, they are more likely to be allowed to keep the business. The other spouse would typically be compensated for their share of the business, ensuring they are not financially disadvantaged by the decision. This situation is uncommon, but the court aims to ensure the business remains viable while providing a fair outcome for both parties.

Q: How is business cash flow considered when calculating spousal and child maintenance?

A: Business cash flow is crucial in determining the sustainable income a business can generate, which directly impacts the amount of spousal and child maintenance that can be awarded. The courts will often rely on an accountant to assess whether the business owner's current level of income is sustainable. This includes evaluating whether they are taking an appropriate amount from the business or if they are manipulating income by withdrawing too much or too little. Sustainable income, rather than just declared income, is used to ensure that maintenance payments are fair and reflective of what the business can realistically support in the long term.

Q: What options are available if one spouse wants to buy out the other's interest in the business?

A: If one spouse wants to buy out the other's interest in the business, the first step is to assess whether the business has sufficient liquidity or whether the purchasing spouse has access to enough capital to fund the buyout. Often, the accountant will be asked to determine whether the business can provide the necessary funds or if other assets, such as property or cash, can be used to offset the value of the business interest. In many cases, instead of a direct buyout, the spouse retaining the business may take a larger share of the business while the other spouse keeps a comparable value in other assets, such as the family home. This helps avoid the need for immediate cash payments, which can be challenging to arrange.

Q: What happens if the business needs to be sold during a divorce?

A: The sale of a business during a divorce is generally considered a last resort. The courts prefer other solutions, such as one spouse buying out the other's interest or offsetting the business value with other marital assets. A forced sale might only be ordered if both spouses are equally involved in the business, cannot agree on how to proceed, and the business cannot be divided or run separately. In such cases, the court may decide that selling the business is the fairest solution, allowing both parties to start afresh. However, this is rare and usually only happens when all other options have been exhausted.

Q: How can business owners protect confidential business information during divorce proceedings?

A: While all relevant business information must be disclosed during divorce proceedings, business owners can take steps to ensure that this information remains confidential. This often involves having all parties involved—such as accountants, lawyers, and even the opposing spouse—sign specific confidentiality agreements. These agreements are in addition to the general confidentiality obligations that legal and financial professionals are already bound by. At Blanchards, we can also restrict access to sensitive business within a legal team, ensuring that only essential personnel are privy to it. Finally, it may be possible to request additional confidentiality measures if the business information is particularly sensitive. For example, if disclosing certain details could harm the business's competitive position, you can ask the court to impose reporting restrictions or limit the distribution of specific documents.

Q: What are the potential tax implications when dividing business assets in a divorce?

A: Dividing business assets during a divorce can have significant tax implications, particularly when it comes to Capital Gains Tax (CGT). If business shares are transferred between spouses within a certain timeframe of separation, this can be considered an exempt transfer, avoiding an immediate tax liability. However, it's essential to be aware that the asset will still carry a CGT liability that may arise in the future if sold. It's crucial to get tailored tax advice from an accountant to ensure that any division or transfer of business assets is done in the most tax-efficient manner, and to avoid unexpected tax burdens later on.

Final Thoughts

If you're a business owner and you want to protect your business, your best bet is to not get married. Of course, we don't expect you to take this advice - but we hope it makes one thing very clear: you cannot enter into marriage without exposing your business to risk, no matter how small.

Risk is a part of life, and must be balanced against reward. We cross roads because the risk is tiny and the world would be much more difficult to navigate if we didn't. However, we don't run headlong into traffic. We use common sense, make sure we understand the rules in play, keep our wits about us, and pick the right time and place to make our move. Marriage is no different.

We cannot help you find the right person to marry, nor can we help you pick the right time and place. However, we can encourage you to take a common-sense approach to your relationship, using the knowledge in this Ultimate Guide to provide your business with the most robust and protection possible.

This Guide has been designed to give you a broad understanding of how businesses are dealt with during divorce proceedings, as well as the practical tools necessary to protect your business. However, it is not a substitute for professional advice. If you have unanswered questions, or would like to discuss your own situation with a lawyer, please contact Blanchards on 0333 344 6302 or send us an email via our [contact form](#).

