

## **No Fault Divorce – The Future of Divorce Law?**

Our divorce law is now over 50 years old. Couples seeking a divorce in England and Wales must either spend a minimum of two years separated or one must blame the other for the marriage breakdown, citing adultery or unreasonable behaviour. Even if both partners mutually agree the relationship is over, they still must apportion blame if they wish to waive the two year waiting period.

In 2015 60% of divorces in England and Wales were granted on adultery or unreasonable behaviour. By contrast in Scotland where divorce is different, this percentage was only 6%.

Divorce and separation is often a time of conflict and distress. There are a lot of potential crises and issues to resolve for couples even where they have mutually agreed that their marriage is over, and many working in Family Law believe that the present divorce law can create further conflict, and can make reaching agreement about arrangements for the children and financial matters more difficult.

The Law Society's Family Law Protocol encourages Solicitors drafting divorce petitions based on unreasonable behaviour to include brief particulars that are sufficient to satisfy the Court. When drafting the particulars, the Family Procedure Rules 2010 provide that they must evidence the Applicant is entitled to a divorce but should be as concise as possible. As part of the Protocol, Solicitors are also asked to provide the other party with a draft copy of the petition wherever possible, with a view to agreeing the allegations of behaviour and minimising any conflict between the parties. Even where that does occur, there can still be a feeling of unfairness by one party.

On the 17<sup>th</sup> March 2018 the Supreme Court heard an appeal by a Mrs Owens against the refusal of a Judge to grant her a divorce on the basis of the unreasonable behaviour of her husband. The couple had been married for nearly 40 years and it was Mrs Owens' position that she had been left feeling 'unloved, isolated and alone'. She stated that she had moved into rented accommodation in early 2015 and that she and Mr Owens had been living separate and apart since then and had lived separate lives under the same roof for many years previously. The Judge dealing with the case ruled against Mrs Owens, concluding that her allegations were 'of the kind to be expected in marriage'. The Court of Appeal dismissed her appeal, acknowledging that their ruling left her 'trapped in a loveless marriage'. Explaining the ruling, Sir James Munby, President of the Family Division, hearing the appeal, said 'It is not a ground for divorce if you find yourself in a wretchedly unhappy marriage – people may say it should be'.

The above case has led to concerns about the drafting of Divorce Petitions based on unreasonable behaviour, and the need to ensure that the particulars are sufficient to satisfy a Court.

Resolution, the organisation who represent many Solicitors practising in Family Law in England and Wales have proposed a new divorce procedure where one or both partners can give notice that their marriage has broken down irretrievably. The divorce could then proceed and after a period of six months, if either or both parties still thought they were making the right decision, the divorce would be finalised.

The decision of the Supreme Court in the Owens case is awaited, and whether the publicity surrounding the case leads to Parliament amending the law remains to be seen.

For advice about family law matters, please contact Steven Barratt or Heather Weavill at Alison Fielden & Co on 01285 653261, [www.alisonfielden.co.uk](http://www.alisonfielden.co.uk)