

Divorce – time for reform – ending the blame game

The breakdown of a marriage is almost always a difficult and stressful time for both spouses. Sometimes the decision to separate is reached jointly after genuine efforts to save the marriage. Often, one person is making the decision against the wishes of the other. But when it is clear that the marriage is definitely over, how should the law provide for it to be ended?

Most people would say that where there has to be a divorce it should be done in a way that keeps the distress and bitterness to a minimum and, where there are children, in a way that promotes good ongoing relationships for their benefit. Do we have that with our current system? The simple answer is no.

The current system

Although the only ground for divorce in England and Wales is the irretrievable breakdown of the marriage, if you want to divorce by mutual consent, you have to wait two years. If there is no consent, it is five years. Once it is clear that the marriage is at an end, most people understandably want to get everything sorted out more quickly than that so that they can get on with their lives. Furthermore, it is only on divorce that it is possible to get a binding financial settlement and if you want or need a pension sharing order there has to be a divorce. It cannot be done just by agreement.

For these reasons, 70% of divorces are currently based on either adultery or unreasonable behaviour – in other words, in 70% of divorces one spouse has to blame the other for the breakdown.

Very often, neither side wants to blame the other, but the current system pushes people into making allegations that can cause unnecessary distress and undermine efforts to move forward in a civilised and dignified way.

The blame game in practice

The whole system is illogical, particularly when, in all but the most serious situations, the reason for the divorce makes absolutely no difference to decisions about the children and money.

In practice, family lawyers have to explain to their clients that the divorce process is something of a game. Where it is necessary to make unreasonable behaviour allegations, for example, we try to encourage the applicant for the divorce (the petitioner) not to go overboard. Often, allegations will be sent out in draft first to the other spouse for agreement. The district judges who are responsible for considering the evidence and deciding whether it justifies the granting of a divorce are very aware that the reason for the breakdown is not relevant to the other issues that need to be decided. Accordingly, even though the allegations are frequently intentionally mild, the divorce will be approved.

Reform

What alternatives are there to the current system? The national family law organisation, Resolution, has been campaigning to get divorce reform back on the agenda. In 1996, the Family Law Act was passed. That would have replaced the current process with a new no fault divorce ground involving a waiting period of between 12 and 18 months after the initial application for divorce. There was a great deal of political and other opposition to the proposals, but they went through, only to be repealed later. The reasons for the repeal had nothing to do with the principle of no fault divorce.

Resolution now proposes a process that involves a wait of six months after the filing of a statement of breakdown by one or both of the parties to the marriage. If they are already separated, the waiting period would reduce by the period of that separation. There would be no need to make any allegations of behaviour. There would be

time to reflect upon the decision and to start to discuss, and even finalise, arrangements for the children and the financial consequences. The family would be focusing on the future, not dwelling on the unhappy background to the breakdown of their relationship. This must be the right way to deal with a difficult and often distressing situation. It is entirely in keeping with the approach taken by most family lawyers and in keeping with developments such as the introduction of collaborative law (see [Splitting Up/Approaches/Collaborative Law](#)).

It is high time for change. Divorce reform is long overdue. Divorcing couples and especially their children deserve better from our legal system.