

Divorce – time for reform

In an ideal world, it should not matter which spouse starts the divorce off – whether it is the husband divorcing his wife or the other way round. After all, the purpose of divorce is to bring to an end a marriage that has run its course.

But this is not an ideal world. The law – drafted 40 years ago – is divisive and makes a difficult situation even worse.

Quickie divorces

Most people want to get a divorce over and done with as quickly and painlessly as possible. The law prevents this.

The architects of the current law assumed that everybody would be prepared to wait for two years, that they would live apart for this time and then divorce by consent.

Well over 70 per cent of couples want to get the divorce over with straight away. To do that, they have to show to a judge that their spouse has either committed adultery or has behaved unreasonably.

Defending divorces is expensive because it means lawyers have to be involved in drafting additional documents. Usually, when a marriage breaks down, one person is driving that forward – and because nobody wants to defend a divorce, the law encourages people to start proceeding based on adultery or unreasonable behaviour.

Picture this: you think your husband is still committed to the marriage. You have never given it a moment's thought. He tells you out of the blue that he has fallen in love with another woman and wants a divorce now. Anybody in that situation is going to be devastated.

The last thing you want is for divorce proceedings to start. It would be unthinkable. You need time to adjust, once your pleas for a reconciliation have been rejected. Like a bereavement, you are not capable of thinking clearly about your future.

Tragically, this scene is played out thousands of times a year.

The law does not protect the wife in that position. It does the opposite.

Once the husband's patience has run thin – perhaps an unfairly short period of respite – he may say that he is not prepared to wait any longer. If the wife does not divorce him on terms that he is prepared to agree, then he will divorce her based on her unreasonable behaviour.

To add insult to injury, he will give examples of actions or incidents that are supposed to illustrate the wife's unreasonable behaviour.

What will her lawyer do?

Insult to injury

She will be advised not to defend the divorce. She should allow it to go through, because that is the sensible and expedient thing to do. "Don't waste any money on legal fees – the court will grant the divorce anyway because the marriage has broken down."

The outcome

If it has not been possible to sort out the divorce proceedings by agreement, one or the other of the couple is usually left frustrated and let down. It is difficult enough coming to terms with the end of the marriage without feeling caught out or duped by the technicalities of the law.

This example is less and less typical of what happens. But any alternative is very much dependent upon the goodwill of the other spouse and both lawyers involved.

Goodwill is very often in short supply when marriages break down, and solicitors have to take instructions from their clients at the end of the day. Even if clients are advised not to press home divorce proceedings in these circumstances, they often reject that advice.

All in all, it is messy and complicated. It would be bad enough if that were the end of it, but it is not.

In very many cases, there are children involved on divorce. Charging headlong into divorce proceedings necessarily also involves them. Their arrangements have to be considered, and this happens against a backdrop of increasing anxiety and legal expense.

The relationship between the divorcing couple can be badly affected by the divorce process. Nothing could be worse for their new role as separated parents.