

No fault divorce – should this be introduced in the United Kingdom?

The question on whether the United Kingdom should introduce a 'no fault' divorce is again raised following a recent decision to refuse a wife's petition based on unreasonable behaviour.

HHJ Robin Tolson QC refused to allow Tini Owens, 66, a divorce from her husband, Hugh Owens, 78, as he described her allegations as 'exaggerated' and 'at best flimsy'. He then went on to say that he found Mrs Owens "more sensitive than most wives".

As the law currently stands, Mrs Owens is unable to divorce her husband, without his consent, for five years. The parties separated in February 2015 and so the earliest she would be able to get a divorce is 2020, making her 69 years old and Mrs Owens 81 years old. Mrs Owens was represented by Philip Marshall QC and he argues that Mrs Owens is now 'locked in' to her marriage. One argument that Mrs Owen's legal team are raising is that this refusal is a violation of her Human Rights to private and family life and her right to remarry.

There are five grounds to support the irretrievable breakdown of a marriage, one of which must be selected in order to proceed to apply for a divorce in England and Wales. The five grounds are:

1. Unreasonable behaviour;
2. Adultery;
3. 2 years separation with the other parties' consent;
4. 5 years separation;
5. Desertion.

A huge number of divorce petitions are granted on the basis on unreasonable behaviour every year. It is common practise for solicitors to agree the petition wording between the parties in order to achieve the least inflammatory or acrimonious allegations of unreasonable behaviour. As a result it is extremely uncommon for a Judge to refuse to allow the divorce to proceed on the basis that the grounds are not unreasonable enough.

Marriage and divorce by their very nature are personal and subjective and therefore the reasons for the divorce or breakdown of the marriage are personal to the couple themselves. Lady Justice Hallet sums this up perfectly by stating that the marriage between Mr and Mrs Owens was an 'unhappy marriage' and 'what may be regarded

as trivial disagreements in a happy marriage could be another piece of salt in the wound in circumstances of an unhappy marriage’.

The Matrimonial Causes Act has remained unchanged since 1973, some 44 years. It cannot be denied that social norms and perceptions have shifted dramatically during this time but the law has not changed to reflect this. Further, it would be fair to accept that Mrs Owens believes that her marriage has irretrievably broken down but has now been denied the opportunity of a divorce until 5 years have passed since separation.

There are many couples in England and Wales who simply fall out of love or drift apart due to no fault of either party. Yet under the current law in order for them to get a divorce when there has been no alleged adultery or periods of separation, the petitioning party needs to put together some form of allegations that their husband or wife has been so unreasonable they can no longer be expected to live with them.

There is a strong argument for a ‘no fault’ divorce that would enable couples to move on from a marriage that is no longer working whilst avoiding pointing the finger of blame. Whilst some may argue this would undermine the sanctity of marriage, there is perhaps a greater argument to prompt co-operation and civility between parties post-divorce, especially when there are children involved, by avoiding either party shouldering the blame for the break down.

However, despite increased calls for a change in the law as it stands and a You Gov poll published in February 2017 indicating that 69% of people who polled believed that you should be able to divorce without claiming the other spouse is at fault, the Government has confirmed in the same month that that there are no plans to review current divorce laws.

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