

At last - the end of the Blame Game.

Why we need to take “fault” out of divorce so that separated couples can still be a family.



Scott Emsden, Partner and Family Law specialist at Bates Wells & Braithwaite Ipswich, explains...

Last month, the government committed to the introduction of the Divorce, Dissolution and Separation Act 2020 on 6 April 2022.

Unless you have gone through a divorce, you may not be aware that currently, in England and Wales, a marriage or civil partnership can only be dissolved on the basis that it has broken down irretrievably. One of five facts must be cited in support of this:

1. **Adultery** - Your spouse/civil partner has committed adultery (they cannot rely on their own adultery) and you find it intolerable to live with them. It is not possible to rely on this fact if you have lived together for a period totalling 6 months after discovering the adultery;
2. **Unreasonable behaviour** - Your spouse/civil partner has behaved in such a way that you cannot reasonably be expected to live with them;
3. **Desertion** - Your spouse/civil partner has deserted you for at least 2 years;
4. **Living apart for two years** and both parties agree to the divorce happening on this basis; and
5. **Living apart for five years** – agreement is not required from both parties.

Adultery and unreasonable behaviour are the most commonly used in the absence of a long period of separation. Both involve an element of blame.

These rules are hopelessly out of keeping with modern society and far from protecting the essence of what “family” means, have caused unnecessary conflict with one party having to step up and “take the blame” in order just to get the proceedings started. Having to list 5 or 6 examples of your partner’s “unreasonable behaviour” means that matters rarely start on the most amicable footing and although who is to blame for the breakdown is unlikely to be taken into account when considering future financial arrangements, psychologically, “blame” is given a weighting which is at best nonsensical and at worst, dangerously throwing every separating couple into adversarial roles of innocent and guilty.

To explain just how out of sync with reality our divorce laws are, let me talk a little about the case of *Owens v Owens* which proved a catalyst for the long-awaited reforms. Tini Owens was in an unhappy, but long, marriage of 40 years. She was refused a divorce when the Court of Appeal ruled that her husband’s

behaviour was not “unreasonable”. Because of her husband’s insistence that the marriage was still viable, she had to wait five years to divorce her husband, that being the only fact that did not require Mr Owens’ agreement.

Under the new arrangements to come into effect next April, it will no longer be necessary to play the Blame Game; all that will be required is a statement of irretrievable breakdown. It will even be possible to make a joint application to dissolve a marriage.

Stamping out the archaic concept of “fault” and the negativity associated with the need for one spouse to bear the full brunt of the blame for the relationship breakdown, must surely be a healthier, kinder and more constructive start for two people, and importantly, their children, and to enable them to separate together.




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