Time for no fault divorce

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Another year, another Chair of Resolution and another call for no fault divorce. Couples have been able to divorce after two years separation by agreement since 1969. Nearly 50 years later the law of divorce has hardly changed. Parties seeking an immediate divorce have to point the finger – either by citing the other's adultery or unreasonable behaviour. Against the backdrop of significant cuts in the Ministry of Justice's budget, parties have been encouraged to use DR via compulsory attendance at Mediation Information and Assessment Meetings (MIAMS). On the one hand, they are encouraged to talk and reach agreed solutions and on the other, they are unable to proceed without attributing blame for the breakdown of their marriage. It is unnecessarily confusing as they are advised that behaviour makes little difference to the financial division yet at the same time they are asked to provide examples of behaviour for their divorce petition. This heightens tensions and increases costs as petitioners are often keen to settle scores and attempt to 'set the record straight'. For couples in the public eye, the behaviour requirement causes further problems that could easily be avoided. However anodyne a petition is, the red tops will take any opportunity to publish sensationalist articles that bear little relation to reality. Children could and should be protected from the attention that ensues from their friends and peers at school. While valuable in protecting those in abusive relationships, the introduction of the Serious Crimes Act 2015 dealing with controlling and coercive behaviour may lead to unintended consequences. Behaviour petitions often include examples of alleged controlling or coercive behaviour that could now be seen as allegations of criminal behaviour. If this leads to an increase in defended divorces, parties may be drawn into expensive and emotionally charged side-shows that will prolong the process and lead to unnecessary damage to dependent children. It is misguided to suggest that the introduction of no fault divorce would allow parties to behave poorly with impunity. In addition to the SCA 2015, the Family Law Act 1996 and the Protection from Harassment Act 1997 already protect parties from abusive and threatening behaviour. In addition, conduct is taken into account on asset division under the Matrimonial Causes Act 1973 in the most extreme cases. A significant proportion of judges' 'box work' consists of their checking unreasonable behaviour petitions to check that behavioural examples are sufficient to prove irretrievable breakdown. In a system that is already overstretched, is this really a sensible use of time and resources? Despite regular calls for reform, there is little appetite at Westminster for this. Aside from a reluctance to devote sufficient parliamentary time, calls for reform are often seen, quite wrongly, as an attack on the institution of marriage. There is no evidence to support the claim that an introduction of no fault divorce would weaken the institution of marriage. No fault divorce is available in many other jurisdictions such as Australia, throughout the USA, Canada and in Sweden and there is no cogent evidence to suggest that its introduction led to a prolonged spike in divorce rates. In fiscal terms, no fault divorce should save the Ministry of Justice money and free up resources. More importantly, it should help parties and their lawyers focus on reaching constructive and agreed solutions without having to attribute blame. This can only be a good thing.