

Divorce: why finding fault isn't fair

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Finding fault in divorce is an artifice which has been continued for far too long. The idea that in complex human relationships it is possible to identify precise reasons for the breakdown of a marriage, or a culpable party is anachronistic and totally out of step with modern society. Nowhere is this more obvious than in the case of Tini Owens who, despite pursuing her application for a divorce all the way to the Supreme Court, is faced with an intransigent husband who argues that their marriage has not broken down irretrievably and that he has not behaved unreasonably, as is suggested by his wife.

In the narrative of a relationship breakdown, fault should be irrelevant when considering whether a relationship has foundered. It is already irrelevant when it comes to determining the financial outcome on divorce. Sir Paul Coleridge expressed so eloquently the view that it is not for judges to 'rummage through the attic' of a marriage. Fairness from a financial perspective does not take account of the history of the personal relationship of marriage. And yet clients who are told this on the one hand (and who sometimes find it hard to accept the idea that fault and fairness are not related in this context) are then asked to attribute blame in finding a reason for divorce if they want to divorce before they have been separated for two years.

Tini Owens's case has already resulted in judicial calls for reform. But those calls have been ignored, government preferring instead to allow these individuals to expend their emotional and financial resources in their pursuit of a change in the law. And what is more alarming is that this isn't the only example of this. The Supreme Court this week hears the challenge by Charles Keidan and Rebecca Steinfeld to civil partnerships being closed to opposite sex couples, where the Court of Appeal had already told government that it needed to decide which way to jump. And despite *Radmacher v Granatino* being heard in the Supreme Court in 2010, with Law Commission recommendations for reform in 2014, there is still no statutory framework for binding prenuptial agreements. The reform of family law is critical and to ignore it is to the detriment of society as a whole.

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