

End of no-fault divorce comes at last

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Michael Gouriet

PARTNER | UK

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The announcement in today's Times that David Gauke intends to introduce legislation to remove blame from the divorce process is a welcome development which has the overwhelming support of family lawyers as evidenced by Resolution's effective campaign for reform alongside those run by The Times and the Marriage Foundation. Searching for fault is an unedifying prevalent characteristic of today's society and which, in the context of marriage breakdown, invariably fuels acrimony and is counter-productive to dispute resolution. A change in the law should lessen the impact on the children involved, and so this announcement is timely as it coincides with Children's Mental Health week. When the Owens case came before the Supreme Court in May last year I wrote an article for Times Law pages – an edited version of which is below for those who may be interested.

Time to end the blame game?

Blame culture is a pernicious feature of today's society; it rarely adds any real value. Within the context of divorce, blame is particularly insidious and artificial and yet, for the majority of those embroiled in marital breakdown, it remains a requirement of statute. When the Supreme Court considered the plea of Mrs Tini Owens for a divorce from her husband of 40 years, it highlighted the depths of contradictions in a system that is dubbed both 'divorce capital of the world' and 'fundamentally outmoded'. It does seem curious to many that despite a finding that Mr Owens was deluded in his belief that his wife could 'go on living' with him, the couple's legal bond remains intact.


In England, a divorce is only possible if a marriage has 'irretrievably broken down'. Where a couple have lived apart for two years, this can be achieved by consent. Without consent the requisite waiting period is five years. The majority of those embarking on divorce are not (whether for personal or financial reasons) prepared to wait and so are channelled towards the quicker fault based option. The inherent contradiction in the system means that whilst allegations of behaviour are usually irrelevant to financial outcome where (in Mr Justice Coleridge's words) the judicial approach positively discourages '*a general rummage through the attic of the marriage*', they are essential within the expedited divorce process. Even for those parties who are separating on relatively amicable terms, the effect of receiving a divorce petition citing particulars of unreasonable behaviour can permeate the entire case – breeding a resentment that simmers below the surface and risks derailing financial settlement or arrangements for children. The more unpleasant or incendiary the allegations the more damage is inflicted, often colouring the case from the outset.

Authors

Michael Gouriet

PARTNER | LONDON

Divorce and family

 +44 20 7597 6125

 michael.gouriet@withersworldwide.com