



# NO FAULT DIVORCE: TIME FOR REFORM?

Nobody exchanging vows on their wedding day thinks about the possibility that someday they may be divorcing their spouse. Divorce is a last resort in an unhappy marriage and couples divorce for a myriad of reasons ranging from the obvious to the obscure.

Under the current law in England and Wales, unless someone can prove, after being married for at least one year, that their marriage has broken down irretrievably due to fault-based facts (adultery, behaviour and desertion), the only way to obtain a divorce is to live apart and wait for two years to present a divorce petition with a spouse's consent or five years without a spouse's consent.

Waiting for up to five years to present a non-fault-based divorce petition often puts enormous emotional as well as financial pressure on what is already a very difficult time for the parties.

Many couples cannot afford to have one of them move out of the family home resulting in both parties having to live separately under the same roof for an extended period of time. These circumstances are far from ideal, particularly where children who may be witnessing parental conflict are involved.

Like me, many family lawyers believe that the current law of divorce is not fit for purpose. We

hope to see the introduction of a no-fault divorce that enables divorce without blame and allows couples to move on when they wish to, rather than being forced to remain married until the passage of two or five years.

The desire for change has intensified following the recent Supreme Court judgment in *Owens v Owens*. This is a case that you will have no doubt read about in the news recently about a wife, Mrs Owens, who alleged that her marriage of forty years had broken down irretrievably and her husband, Mr Owens, had behaved in such a way that she could not reasonably be expected to live with him. Mr Owens defended the fault-based divorce successfully and Mrs Owens' final recourse was the Supreme Court appeal, which took place on 17 May 2018.

Disappointingly, the appeal was dismissed and Mrs Owens now has to wait until February 2020 before she can file a divorce petition on the basis of her five years' separation from Mr Owens.

In spite of this decision, those wishing to present a divorce petition relying on allegations relating to their spouse's behaviour need not panic. It is uncommon for a divorce petition to be defended in the first place and if it is defended then the person who presented the petition to the Court will have an opportunity to file an amended

divorce petition and expand on the allegations.

In the midst of all of this, one thing is certain and that is the call for reform of our current divorce law must not go unanswered. Until that day, the way that divorce petitions are drafted ought to remain anodyne and unnecessary antagonism between parties must be avoided through working collaboratively. Meaningful communication and effective co-parenting can help marriages to end with families remaining intact.

**Shefali Maher is a Solicitor based at our Henley-on-Thames and Beaconsfield offices. With compassion, Shefali helps clients through what is more often than not a difficult time and adopts a pragmatic approach to achieve a fair result, balancing the benefits to be gained against the costs. Clients find Shefali to be extremely approachable and she is known for her determination and ability to achieve the best results.**

**K J Smith Solicitors are specialists in family law, with offices in Berkshire, Buckinghamshire, Oxfordshire, Surrey, Hampshire & London. We are recognised by the Legal 500 as a Leading Firm. Why not contact us to arrange a free initial consultation? Call 01491 630 000, email [info@kjsmith.co.uk](mailto:info@kjsmith.co.uk) or visit [www.kjsmith.co.uk](http://www.kjsmith.co.uk) to find out more.**