

Reducing family conflict Reform of the legal requirements for divorce

The Christian Medical Fellowship (CMF) was founded in 1949 and is an interdenominational organisation with over 5,000 British doctors 800 medical students and 400 nurse members in all branches of medicine, nursing and midwifery.

We are the UK's largest faith-based group of health professionals. A registered charity, we are linked to about 80 similar national bodies in other countries throughout the world.

As Christian doctors seeking to live and speak for Jesus Christ, two of our stated aims are:

1. To care sacrificially for the poor, vulnerable and marginalised.
2. To uphold marriage between a man and a woman, faithfulness and the family.¹

The consultation is written on behalf of the CMF membership. However please note that the main author of this consultation, Philippa Taylor, is on the Advisory Panel of the Marriage Foundation,² but takes a different view to the Marriage Foundation on divorce law reform. Her view, and the view of CMF, is in line with most Christian organisations and individuals in opposing removing no-fault from divorce proceedings.

Summary of concerns

- A central concern is that any shortening of the process undermines the marriage contract and will lead to increased divorce rates (see Q5 below).
- It is highly likely to have a negative effect on marriage rates and will discourage family stability (see Q2).
- The premise behind the proposed changes is reducing family conflict. **However an overemphasis on preventing conflict (as is the case with this consultation) ignores both the harm of parental separation and other major triggers of conflict, particularly financial and child arrangements.** These latter triggers are the main sources of conflict, not 'fault factors', which will not be lessened by removing 'fault' from divorce law and replacing it with a notification system. Conflict regarding finance and children often continues for years after a divorce is finalised, and have nothing to do with 'fault'. We are therefore sceptical that the proposed 'reforms' will achieve the stated goal of reducing conflict (see Q5)
- **There is a lack of public support for the change.** *Finding Fault* reports that 71% of the general public think that fault should remain part of the law. 56% agree that if someone has done something wrong towards their spouse that should be given as a reason.³ The proposed legal change to divorce is primarily driven by lawyers. But lawyers should not dismiss these poll findings as being uninformed. The 'public' may not be aware of all the small detail of divorce law but will be cognisant of **the signal that current fault based law sends to protect marriage (and couples) from no reason divorce.**

¹ <https://www.cmf.org.uk/about/beliefs-values-and-identity/>. While we promote the importance of marriage as a commitment for life, we do not support couples staying together if there is irresolvable violence or abuse.

² <http://marriagefoundation.org.uk/advisory-board/>

³ Trinder, L., Braybrook, D., Bryson, C., Coleman, L., Houlston, C. and Sefton, M., (2017), *Finding Fault? Divorce Law and Practice in England and Wales*, Nuffield Foundation.

- **An important signal would be lost**, that marriage cannot simply be exited for no reason. Conversely, **a strong signal will be sent** that the proposed legal changes will make divorce easier (see Q2)
- It will **harm some spouses if one does not want the divorce**. Moreover the weaker financial party will be most at risk because they will likely have more to lose from exiting the marriage (see Q2)
- We also disagree with the premise, and assumption, that this is ‘reform’ of divorce law. If implemented, it would of course require a change to the law but we do not consider it to be either a positive or necessary change, as is implied by the word ‘reform’.

The law has a direct impact on physical and mental health and well-being for both adults and children, hence our concern with this issue. The negative effects of family breakdown are well documented, not just for children but also for adults and communities.⁴ Given the high levels of relationship breakdown in this country, particularly in families where couples are not married, **the priority for Government should be to strengthen and stabilise families**, where appropriate. The driver behind all changes to divorce law must be to save saveable marriages. This should include time for reflection and opportunity for reconciliation and mediation. There is nothing in the consultation on how the Government plans to incorporate these (see Q5).

1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce?

Yes

Irretrievable breakdown should be retained as the sole ground for divorce, but must be kept in conjunction with grounds for divorce. Without retaining a requirement to show why a marriage has broken down, then the ground for divorce will simply become ‘no reason’ divorce, and will be dependent on one or both spouses simply deciding they no longer want to be in the marriage (even if the other does). It would undermine the promises and commitment of marriage and make the ‘contract’ almost meaningless.

2. In principle, do you agree with the proposal to replace the five facts with a notification process?

No

The proposed change would bring about divorce for no reason, which is a more accurate description of the change than ‘no fault’. Citing a reason for divorce serves an important function in society and removing it would have many negative impacts:

⁴ <http://marriagefoundation.org.uk/government-pressure-back-marriage-cost-family-breakdown-hits-51-billion/>

- If there were ‘no reason divorce’, then if one party considered the marriage simply to be pointless, **nothing would stand in the way of that person being able to unilaterally exit the contract;**
- There would be no pressure to work at the relationship and **no acknowledgement that anyone’s behaviour may have contributed to the breakdown;**
- **An important signal would be lost,** that marriage cannot simply be exited for no reason;
- Conversely, **a strong signal will be sent that the proposed legal changes will make divorce easier;**
- One spouse could successfully petition for divorce **over the objections of his or her spouse** without any grounds;
- **The basis of the marriage contract would become devoid of meaning;**
- **Marriage rates will decline** and cohabitation increase;⁵
- **Evidence shows that divorce rates are very likely to increase;**⁶
- An increase in divorce rates and fall in marriage rates **will harm children** (whether through marriage breakdown or increased cohabitation rates then breakdown), not only in the short term of the divorce process but also long-term;
- It will **harm some spouses if one does not want the divorce.** Moreover the weaker financial party will be most at risk because they will likely have more to lose from exiting the marriage (we have particular concerns about the impact on the vulnerable, and those with disability, in this respect);⁷
- The spouse pushing to leave the marriage would have most power, leaving the **weaker party at a disadvantage** and with no public or legal recognition of (for example) serious misconduct or abuse in the marriage;

⁵ Wolfers, J., (2006), *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results*, University of Pennsylvania <http://users.nber.org/~bstevens/papers/IMSC.pdf>

⁶ In Belgium the: ‘...the unilateral no-fault introduction in 1974 increased the divorce trend, but that a significant simplification of the divorce procedure in 1994 increased the divorce trend with almost the same amount...[and] the duration of the divorce process is indeed be [sic] a good proxy for ‘making divorce easier’ as it has a considerable impact on the divorce rates. Per month the divorce process was shortened, the divorce rate rose with a staggering 1.4%’. Bracke, S. and Mulier, K., (2017). Making divorce easier: The role of no-fault and unilateral revisited’, *European Journal of Law and Economics*, 43(2), p239. Also Wolfers states: ‘The data broadly indicate that divorce law reform led to an immediate spike in the divorce rate that dissipates over time. After a decade, no effect [on the divorce rate] can be discerned. More puzzling, certain estimates suggest that the divorce rate declined over the ensuing period. This eventual decline in the divorce rate is less robust, and a range of alternative specifications suggests that this decline may be illusory...It is clear that divorce law has an effect on the divorce rate; it is less clear that this effect is persistent.’ Wolfers, J., (2006), *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results*, University of Pennsylvania. Also Friedberg (1998), Gonzalez and Viitanen (2006) and Binner and Danes (2001).

⁷ Some vulnerable people, including those facing hardship such as a disability, would be in a particularly vulnerable position since they could be abandoned without cause. The greater ease of divorce could be used to coercively control disabled and other vulnerable people.

- As a **matter of justice**, a person who has remained faithful to their marriage vows only for their spouse to break them should have a means of reflecting this in the divorce;
- **There is no need for change.** Divorce laws accurately reflect the reasons for divorce. 91% of petitioners said the stated reason for divorce ‘very closely’ or ‘fairly closely’ reflected the real reason for it;⁸
- In 2016, 42% of divorces were on separation grounds, and the couple have had to wait for at least two years to divorce. **The plans will drastically speed up tens of thousands of divorces.**

The impact on divorce rates is central to this debate.

We cite two important pieces of research in reference four, however it is important to note that previous amendments to divorce law increased divorce numbers. Two changes in the 1970s saw the number of divorces in England and Wales increase from 58,239 in 1970 to 148,301 by 1980.

Wolfers notes that: ‘*This eventual decline in the divorce rate is less robust, and a range of alternative specifications suggests that this decline may be illusory.*’ It is difficult to be certain about cause and effect here. If marriage rates do indeed decline following the adoption of unilateral divorce laws, the size of the population ‘at risk’ of divorce also declines, which could possibly reduce the divorce rate (but if the cause is a fall in marriage rates, then this is detrimental to society because cohabitation is significantly less stable than marriage).

What Wolfers is certain about is that ‘*divorce law has an effect on the divorce rate.*’⁹

Given our current high divorce rates, more effort should be directed to make marriages work, especially where there are children, rather than sending a signal that divorce is being made easier.

3. Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party?

Notice should be given jointly. It should not be given by only one party unless, at minimum mediation were part of the procedure.

4. We have set out reasons why the Government thinks it helpful to retain the two stage decree process (decree nisi and decree absolute). Do you agree?

Yes

As explained above, we are strongly opposed to the proposed changes and request that the current two-stage process is retained.

⁸ Trinder, L., Braybrook, D., Bryson, C., Coleman, L., Houlston, C. and Sefton, M., (2017), Finding Fault? Divorce Law and Practice in England and Wales, Nuffield Foundation

⁹ ‘ Wolfers, J., (2006), Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results, University of Pennsylvania.

This two stage process also gives time for both reflection and planning. See the research we cite in Q5 below regarding couples who change their minds.

5. What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured?

- A different period

This should be a year, minimum. There is no evidence that a one-year wait causes *extra* family conflict. Instead it gives time, particularly for the weaker partner, to plan for the future. For divorces with one-party applications the time period should be longer.

It is important to note that there are several triggers to conflict, the main two of which are financial and/or child arrangements. Removing 'fault' and speeding up the process will make little difference to these two areas of conflict, and could instead rush them through unhelpfully.

Our central concern here is that any shortening of the process undermines the marriage contract and will lead to increased divorce rates. Bracke and Mulier show that changes to divorce law and procedure, **particularly duration, impact divorce rates by making it easier**. In Belgium:

'...the unilateral no-fault introduction in 1974 increased the divorce trend, but ... a significant simplification of the divorce procedure in 1994 increased the divorce trend with almost the same amount...[and] the duration of the divorce process is indeed be [sic] a good proxy for 'making divorce easier' as it has a considerable impact on the divorce rates. Per month the divorce process was shortened, the divorce rate rose with a staggering 1.4%'.¹⁰

The aim of policy should be to save any saveable marriages. **More time and focus is needed for reconciliation.**

Research has found that *seven in ten parents* who were unhappy at the time of the birth of their first child stay together. Of these, around two thirds were happy ten years later.¹¹ Therefore a rushed divorce process would remove from many couples the opportunity to reconsider and save what would potentially be a happy marriage in years to come.

Even a year would be quicker than the time currently in place for the 40% of couples who separate.

There must be a minimum period between petition and decree nisi as well as between nisi and absolute.

6. Are there any circumstances in which the minimum timeframe should be reduced or even extended?

N/A

¹⁰ Bracke, S. and Mulier, K., (2017), 'Making divorce easier: The role of no-fault and unilateral revisited', European Journal of Law and Economics, 43(2), p239

¹¹ Couples on the Brink', Marriage Foundation, February 2017

7. Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?

N/A

8. Do you agree with the proposal to remove the ability to contest as a general rule?

No.

This ability to contest is rarely used but remains important for some spouses. **If a spouse can get divorced without reason, justification or the agreement of their spouse, then married partners would have no security.** A person could effectively resign or walk from the marriage more easily than they could leave a phone contract.

If one spouse wants to stay married there is at least the *possibility* of reconciliation. These proposed changes would no longer allow people to be able to fight for their marriage.

What provisions and safeguards would be put in place for the partner who is unwilling to divorce, in a 'no-reason' legal framework?

9. Are there any exceptional circumstances in which a respondent should be able to contest the divorce? Please explain these exceptional circumstances in the text box.

N/A

10. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place?

Yes

Marriage is a commitment made for life. Clearly not all marriages succeed in keeping this commitment but nevertheless, it is important that *when people marry, they must know that they are making a binding commitment not a fully revocable one.* One year is the bare minimum that the law should require.

Allowing divorce within the first year of a marriage would make a mockery of the institution and the vows that are taken. Couples must be expected to give the marriage a chance.

11. Do you have any comment on the proposal to retain these or any other requirements?

The current legal process sends an important signal that would be lost with the proposed changes: that marriage cannot simply be exited for no reason. Conversely, introducing the proposed legal changes would send a strong signal that divorce will be easier.

At CMF we are concerned that the over-emphasis on reducing conflict in the proposed changes will not only fail to reduce conflict (because other triggers, such as child and financial arrangements are of equal, or greater, importance) but will harm children, and some spouses, particularly if divorce rates rise (even temporarily). The consequence of generating

more low-conflict divorces will be more, not less, net harm for children. It will negatively impact the weaker spouse and those who are more vulnerable. We cannot support the proposed changes.

12. We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.

Please note the evidence supplied in all the references above.

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