

The Divorce Surgery

Prepared by Kysen PR

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Why divorcing couples and families need to find alternatives

- Learn about how divorce proceedings work now and why there is demand for reform.
- Understand some of the options available to divorcing couples that may ease the process.
- Consider what role advisers can play in mediated divorces.



By **Samantha Woodham**

Financial Adviser

When it comes to divorce in the UK, seemingly on a daily basis the headlines are dominated either by embittered celebrities or landmark cases which seek to challenge the current legislation.

The message that members of the public are often left with is that divorce is an ugly, costly, and emotional affair, underpinned by legislation which is outdated and no longer fit for purpose.

While divorce is usually emotional it does not have to be ugly or exorbitantly costly, and while some slow progress is being made in divorce law, there is also a practical alternative for couples right now.

The overarching issue is that the current system funnels separating partners down an adversarial path right from the beginning. Couples then often take more combative positions from the off, and talk through their solicitors to reach an agreement on children and finances, rather than each other.

As a result, research from law firm Seddons shows that the average divorcing couple spends between £17,000 and £30,000 on legal fees when separating, in a process that takes, on average, 14.5 months.

Reform

The BBC TV drama *The Split* has proven to be immensely popular, with a second series already commissioned for next year. The programme has put a spotlight on a variety of divorce issues and real life challenges facing couples.

While the plot lines were delivered for dramatic punch, and are a far cry from the reality of how divorce solicitors conduct their cases, the series has played an important role in raising national interest in divorce reform.

Indeed, away from the fictitious BBC show, there has been some real life drama playing out in the UK court rooms, demonstrating the need for legislative reform to this area of the law.

Key points

- There is public appetite for divorce law reform
- No-fault divorces and an online divorce process offer a way forward for divorcing couples
- Financial advisers can play a critical role in mediated divorces

First, the case of Mrs Owens is one that has sparked national interest.

Mrs Owens would like to divorce her husband. Her husband wants to stop her. Due to the divorce legislation we have in this country Mrs Owens had to set out the grounds upon which she considered her husband's behaviour to be unreasonable such that she should no longer be forced to remain married to him.

Mr Owens challenged those grounds in court and won.

Mrs Owens, trapped in a loveless marriage, has therefore become embroiled in a tense Supreme Court battle when all she wants to do is divorce her husband.

This case is being held up by campaigners as an example to illustrate that the modernisation of divorce law is desperately needed and that no-fault divorces should be introduced.

Instead of finding fault, or waiting two years, couples should be able to divorce straight away without the drama and emotional stress of having to name sometimes very minor, specific examples of unreasonable behaviour.

In the modern world the current law is hugely outdated and only serves to increase tension between separating couples.

Second is the case of Mr Mills, which brings into play the question of how long ex-spouses should be supporting each other financially following a divorce.

The Supreme Court is considering whether businessman Mr Mills should have to increase maintenance payments to his wife 16 years after they divorced or whether settlements should have a time limit.

This case has arisen as, two years ago, Mr Mills applied to court to end the payments and his ex-wife put in an appeal to increase the sum as she claimed she could no longer meet her basic needs with the amount previously ordered.

Ultimately, the judge agreed that the monthly payment was no longer meeting the ex-wife's needs and should be increased to £1,440 a month.



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Many are hoping that this case provides some much-needed clarity around how long a spouse should pay maintenance, balancing the need to separate financial ties against the need to avoid undue hardship on either side.

Other progress is being made with the development of an online divorce process. Sir James Munby, president of the High Court's family division, has predicted that in time most divorce cases will leave the court rooms and be dealt with online.

After the pilot scheme was dubbed a "triumphant success", the process has been rolled out nationwide.

However, this is only the process for securing a divorce, namely changing the couple's legal status from married to divorced. It will not deal with the much more complex issue of dividing up financial resources or making arrangements for any children of the marriage.

These two important cases, and the development of the online court system, suggest that change is beginning to happen.

The system is being tested by new pressures of modern day family life, and the government is going to have to reform divorce law to cope with the evolving family dynamic.

However, many governments have been and gone without this issue being tackled, and there are many couples who need practical, cost effective help right now.

In my experience, our adversarial legal system works very well for corporates and companies, but for families in crisis it can be a nightmare.

As a divorce barrister I have first-hand experience of how difficult our adversarial process can be for the families within it.

Thankfully, there are a few other options available.

Mediation is one – and since 2013 couples have been actively encouraged to consider this as an alternative.

A new law meant that couples now have to attend an initial information and assessment session to see whether it would be better for them to use mediation than to get embroiled in a legal battle over dividing property and agreeing child custody arrangements.

Collaborative law is another option – in this instance, couples appoint their own lawyers but take part in four-way meetings which help reduce antagonism and encourage everyone to come to a workable ongoing arrangement.

London is known as the 'divorce capital of the world' and although it is likely the city will continue to lead in this field, it is expected that we will see more conciliatory options for couples.

Financial advice

So why should a financial adviser be minded as to what sort of divorce their client has?

Many reading this article will be all too familiar with the paperwork involved – the ‘form E’ for instance, which is the financial statement for a financial order. This gives the court all the details relating to an individual’s financial position.

But the role of financial advisers in a divorce process is imperative – much more than just a form-filling exercise, especially if the couple has significant assets cross-border.

Their assistance will include the disclosure process, structuring a settlement and important tax considerations.



If a financial adviser’s clients decide to use mediation or another conciliatory approach, this makes the whole process much easier, more transparent and ultimately cheaper for everyone involved.

They can provide invaluable help in putting together future budgets and for calculating capitalised maintenance. If a spouse is wealthy, the adviser will be relied on to provide clarity in the divorce process, in particular as to the scale of assets and how they can be realised.

However, for a financial adviser, divorce can be a stressful time.

Until the point of divorce they will often have advised the couple together. However, they can be put under pressure during litigation to be more partisan, which can make it difficult at the end of a divorce to maintain an ongoing professional relationship with both sides.

Therefore, if a financial adviser’s clients decide to use mediation or another conciliatory approach, this makes the whole process much easier, more transparent and ultimately cheaper for everyone involved.

There are not any rules stopping advisers working for both parties in a divorce (solicitors for example cannot do this) and this joint process can work very well – the adviser remains financially neutral and gives information (rather than advice) so both spouses can get to a practical position they are happy with.

From a financial adviser’s perspective, particularly those who, pre-separation, were advising a couple together, it fits very well being able to recommend a service to clients which will serve them both and enable them both to receive impartial advice.

From the couple’s perspective, they can each work separately with their trusted financial adviser to get the financial information and disclosure needed by the barrister, building a professional relationship which can then survive the divorce.

Why should one-half of a couple necessarily have to change a professional adviser following a split?

From the financial adviser’s perspective, a cooperative divorce would certainly be a more comfortable process, and for them, much less partisan.

Easy?

No, divorce will never be easy and emotions will often run high.

But it does not have to be as hard as it is at the moment. Or as expensive.

The public mood is urging reform, but that will take time. Couples need a solution now.

Our view is that while legal expertise is undoubtedly needed for couples facing the surrender of half (or sometimes more) of their assets, this can be done in an impartial, focused and cost-effective way, leaving them better off financially and less battle-bruised by the process.

Samantha Woodham is co-founder of The Divorce Surgery