

THE 2020

# DIVORCE

REPORT



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AN INDUSTRY-FIRST SUMMARY OF THE DIVORCE  
LANDSCAPE IN ENGLAND AND WALES.

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Austin Kemp



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## Executive Summary

The last decade saw a lot of change, including in family law. The good news is that we saw fewer people get divorced, but the bad news is that the people who chose to get divorced are finding the process a lot harder.

Our team have put together this industry-first report about what's changed in 2019. It's an interesting read, and it highlights some of the things you should consider before embarking on the process of divorce.

By producing reports like this, Austin Kemp provides information that you will find useful to help you make the correct decisions because divorce shouldn't be taken for granted.

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Austin Kemp are one of the prominent family law companies based in England. Austin Kemp work with high net worth individuals, specialising in divorce and separation, finances, children and international cases.

Austin Kemp

# Introduction



## Opposite Sex Divorces



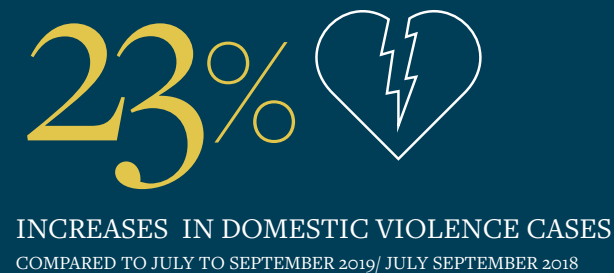
## More Same Sex Couple Divorces



## Reasons For Divorce



## Spike In Domestic Violence Cases



## Average Time It Takes To Divorce



## Marriages Endings



# Snapshot

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# What the latest statistics tell us about the state of family law

**In November the Office for National Statistics (‘ONS’) published its latest statistics for divorces in England and Wales, for the year 2018, and in December the Ministry of Justice (‘MoJ’) and the ONS published the latest set of quarterly statistics for the Family Court in England and Wales, for the period July to September 2019.**

Between them, these statistics provide a snapshot of the current state of family law in this country.

And as we will see, the news is a mixed bag. While there are some reasons to be cheerful, there are also certain reasons to be concerned.



# Fewer, faster divorces



## **Divorce is, of course, central to much of the work of the Family Court.**

It gives rise not just to deal with the procedure of divorce (including still, sadly, a few contested divorces) but also to ancillary matters, such as disputes over arrangements for children, financial remedy claims and domestic violence applications. The number of divorces, therefore, has a substantial impact on the workload of the Court.

And the news, at least on the face of it, would appear to be good. The divorce statistics told us that the number of divorces of opposite-sex couples in England and Wales in 2018 decreased by 10.6% to 90,871, compared with 101,669 in 2017. This was the lowest number of opposite-sex couple divorces since 1971.

And the Family Court statistics informed us that there has also been a decrease in the average time taken by divorce proceedings: for those granted Decree Nisi in July to September 2019, the mean average time from the date of the divorce petition was 30 weeks, down 1 week from the same period in 2018 and down over 3 weeks since a peak in April to June 2019; the mean average time from petition to Decree Absolute was 54 weeks, down 2 weeks from July to September 2018 and down from a peak of 59 weeks in January to March 2019.

But the important question is: what was behind these figures? Was it that fewer people are choosing to divorce (obviously generally considered to be a good thing), and the courts being more efficient? Sadly, the primary reasons may be slightly less favourable.

## Decrease in opposite sex divorces by

**10.6%**  
2018 compared to 2017

This was the lowest number of opposite-sex couple divorces since 1971.

## Average time it takes to divorce

 **30** weeks



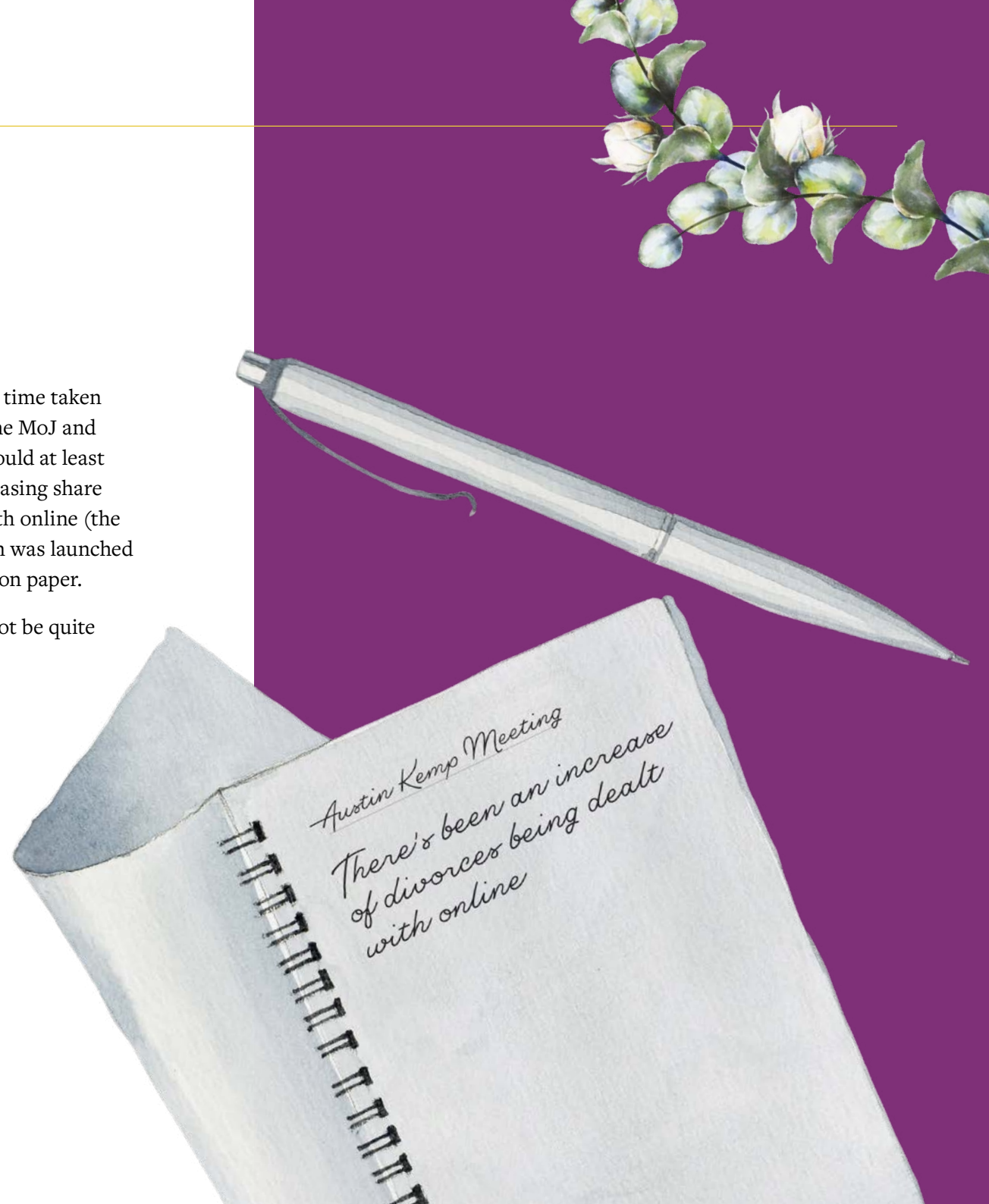
# Administrative reasons

**With regard to the number of divorces, the ONS told us that the decrease partly reflected the overall downward trend seen in recent years.**

But that it could also be attributed to a particularly low number of divorce petitions processed by the new central Divorce Centres (which were established in 2015 with the aim of streamlining the process of divorce) in 2017, which then reached decree absolute in 2018.

And as for the decrease in time taken by divorce proceedings, the MoJ and ONS indicated that this could at least in part be due to the increasing share of divorces being dealt with online (the new online divorce system was launched in May 2018), rather than on paper.

So, the 'good news' may not be quite as good as it seemed.



## More same-sex couple divorces

**Marriage for same-sex couples was introduced in March 2014. It is, therefore, to be expected that the number of same-sex couple divorces has yet to reach its peak.**

Sure enough, the statistics show that the number of divorces of same-sex couples has increased each year since 2014. In 2018, there were 428 divorces

among same-sex couples in England and Wales, increasing by more than one-quarter (26.6%) from 338 in the previous year.

It should be noted that since December 2014, same-sex couples have been able to convert their civil partnership into a marriage, which will, of course, have a small effect upon the divorce figures.



26.6%  
Increase in same sex divorces

## Percentage of marriages ending in divorce

**Perhaps the most crucial question that anyone concerned with the institution of marriage might ask is: what are the chances of a marriage ending in divorce?**

To answer that question, we have to look back in time. The ONS tells us that the percentage of marriages ending in divorce generally increased for those marrying between the 1960s and the mid-1990s. For example, 22% of marriages that took place in 1965 had ended by their 20th wedding anniversary. By 1995, this had increased to 38% of marriages ending in divorce after the same length of time.

However, for those marrying since the mid-1990s, the ONS says that there is evidence of a decrease in

the proportion of marriages ending in divorce. For example, 11% and 25% of marriages that took place in 1995 had ended by their 5th and 10th anniversaries, respectively. The ONS's latest data indicates that only 6% of marriages that took place in 2013 had ended by their 5th anniversary and that 19% of marriages that took place in 2008 had ended by their 10th anniversary.

So, it does seem that the chances of any given marriage ending in divorce are decreasing somewhat.

## Marriage between 1960s–1990s

22% 38%

of marriages that took place in 1965 had ended by their 20th wedding anniversary

of marriages that took place in 1995 had ended by their 20th wedding anniversary



# Reasons for divorce

**Unsurprisingly, the ONS state that unreasonable behaviour was the most common ground for divorces granted in England and Wales in 2018, as has always been the case.**

Of all divorces granted to one partner (rather than jointly or both), unreasonable behaviour accounted for nearly half (46.3%) of all divorces granted; 46.1% of opposite-sex couples and 76.2% of same-sex couples divorced for this reason (unreasonable behaviour for same-sex couples who divorce can include having a sexual relationship with someone else of the same sex).

Two years separation with consent was the second most common ground for divorces granted in 2018, accounting for more than one-quarter of divorces

(26.8%), while five years' separation without consent accounted for 16.1% of divorces. Most of the remaining divorces were granted on the grounds of adultery (10.1%), and 0.8% were for desertion and a combination of two or more grounds. (Note that adultery can only legally be committed between two persons of the opposite sex.)

Of course, the Government indicated in its Queen's Speech that it intends to proceed with the introduction of a system of no-fault divorce, which will do away with the need to prove a reason for the breakdown of the marriage.



# 46.3%

of divorces in 2018 stated unreasonable behaviour was the reason for divorce.

## Busier courts

**Moving on to look at the Family Court statistics in more detail, the main headline was that there had been an increase in the number of cases started.**

We are told that in July to September 2019, 67,431 new cases started in the Family Courts, up 1% on the equivalent quarter in 2018. The MoJ and ONS say that this was due to a 23% rise in domestic violence cases started, along with increases in private law children (5%) and public law childcare (1%) case starts. We will look at the figures

for domestic violence and private law children cases a little more closely in a moment.

67,431 may not be the highest quarterly figure in recent years, but it does continue an upward trend since the drop in 2013 caused by the abolition of legal aid for most private law family matters. That would not perhaps be so significant, were it not for the considerable reduction in resources available to the family justice system as a result of government cutbacks

(there has been a 25 per cent cut in funding to the justice system since 2010-11). The pressure of the workload facing the family courts is reaching crisis point. The Government announced in June 2019 that it will be taking steps to recruit and retain more judges where there is a need, but will that be too little, too late? (There is evidence to suggest that fewer lawyers are being attracted to the judiciary, due to poorer working conditions.)



# 67,431

new cases started in  
July – September 2019



# 1%

increase in new cases from  
the equivalent quarter in 2018

# Public law failures

**One of the areas where the crisis is perhaps most deeply felt is public law, i.e. cases in which local authorities institute proceedings (usually care proceedings) to protect children.**

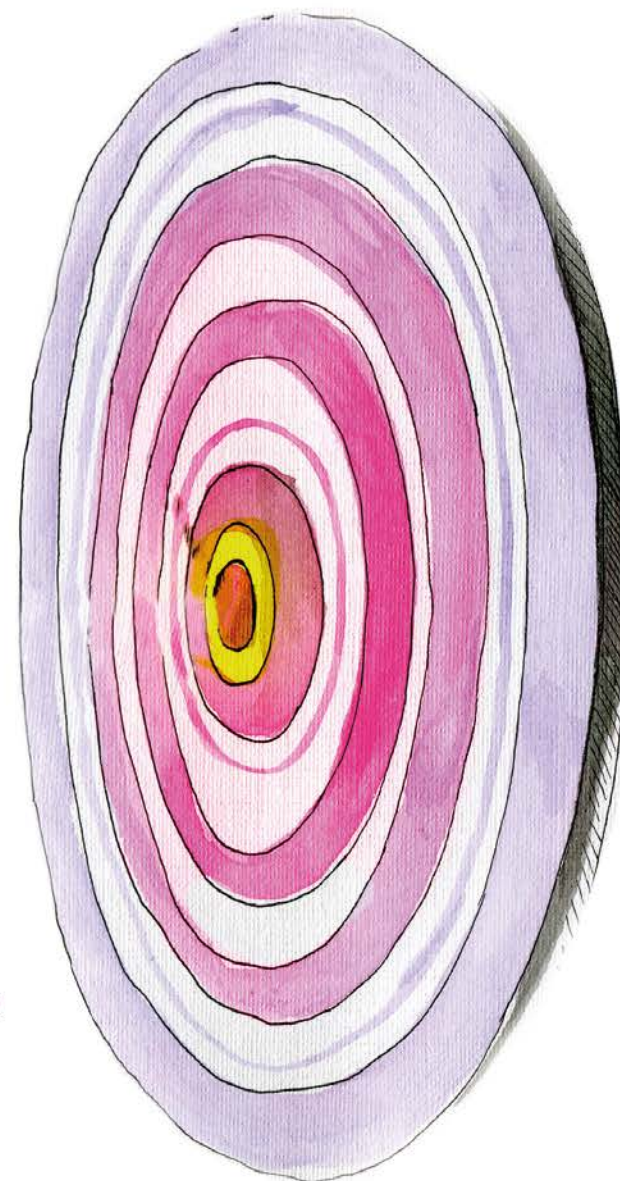
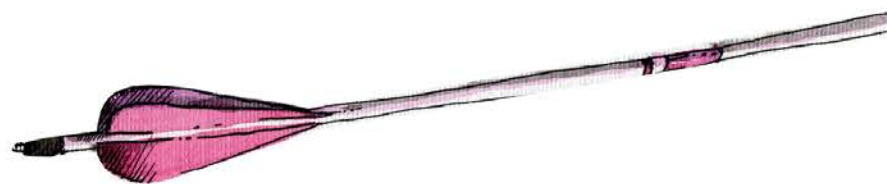
In 2014 the Government introduced a 26-week time limit for care proceedings to be dealt with. However, the MoJ and ONS tell us that the average time for a care and supervision case to reach the first disposal was 33 weeks in July to September 2019, which was up 3 weeks from the same quarter in 2018, and the highest average since early 2014.

So, the courts are failing to meet the Government's target, by a significant and increasing amount. The law is supposed to be there to protect children from harm, but these very delays are actually adding to the harm that they have suffered.

And the number of children affected is huge: there were 7,633 individual children involved in new public law applications from July to September 2019.

# 7,633

individual children who were involved in new public law applications



# Private law cases taking longer too

**And private law children cases (i.e. cases in which the parents are in dispute over arrangements for their children) are also subject to problems.**

Not only are there more private law cases (14,196, the highest since mid-2013), but the cases are also taking longer. The MoJ and ONS tell us that: “In July to September 2019, it took on average 29 weeks for Private law cases to reach a final order, i.e. case closure, up nearly 4 weeks from the same period in 2018. This continues the upward trend seen since the middle of 2016, where the number of new cases started overtook the number of disposals, creating a greater number of outstanding cases.”

It's a vicious circle: more cases meaning cases take longer, which in turn creates an even higher number of outstanding

cases. And again the ultimate victims of this are the children involved (21,736 individual children were involved in new private law applications between July and September). Those children may, for example, be denied contact with one of their parents until the case has been dealt with. And obviously, the longer cases take, the more likely the children involved will be adversely affected.

To be clear, the blame for all of this does not lie with the courts and the dedicated professionals that work within them, including judges, court staff, social workers, Cafcass officers and family lawyers. The blame lies with the lack of necessary resources to deal with the caseload in a timely fashion, leaving us with a family justice system that is now only barely fit for purpose, and that may fail completely in the foreseeable future.



# 21,736



individual children were involved in  
new private law applications 2019

# Spike in domestic violence cases

**The most notable figure in the list of case types that has increased is the rise in the number of domestic violence cases started.**

The statistics show that in July to September 2019, there were 7,876 applications made for a domestic violence remedy order, which is up 23% on the same quarter in 2018, and the highest quarterly number of applications since the statistics were first recorded at the start of 2009. Most of the applications were for non-molestation orders (82%) compared to occupation orders (orders relating to the occupation of the family home - 18%). Applications for non-molestation orders in July to September 2019 were up by 25% compared to the same period in 2018, while occupation order applications increased by 16%.

The number of domestic violence orders made by the courts was similarly up: there were 8,839 domestic violence orders made in July to September 2019, up 18% from the same period last year, also representing the highest number since the statistics were first recorded. 93% of those were non-molestation orders, and 7% were occupation orders, with non-molestation orders up 19% and occupation orders up 9% compared to the equivalent quarter in 2018.

On the face of it, all of this is extremely concerning. However, it does have an explanation.

When the legal aid cuts were introduced in 2013, the Government intended to exclude domestic violence cases from the cuts, to ensure that domestic violence victims could still seek the protection of the law. However, they introduced stringent

evidential requirements when applying for legal aid, as victims had to prove that they or their children were at risk of harm from an ex-partner. Those evidential requirements were relaxed somewhat in January 2018, hence more victims have been getting legal aid (as confirmed by recent, separate, legal aid statistics from the MoJ), and therefore more domestic violence applications have been made.

Thankfully, it seems that more of those victims of domestic violence and abuse who require the protection of the law are now getting it.



# 23%

increase in applications for domestic violence remedy orders



## A decrease in financial remedy cases

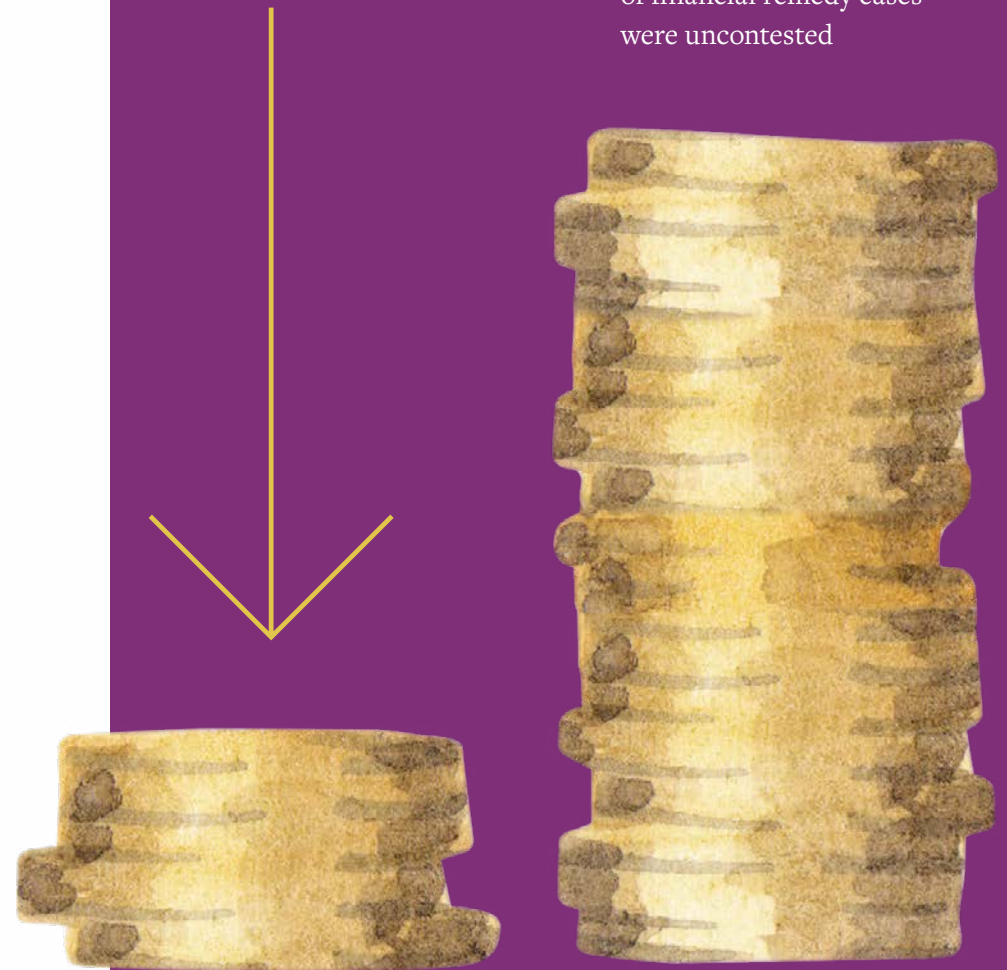
The courts' caseload is not all bad news. The statistics show that there has been a decrease in the number of new financial remedy cases started. (Financial remedy cases are usually linked with divorce, where a party seeks a financial order, such as a maintenance order, a lump sum order or an order relating to family property.)

*The statistics tell us that there were 10,075 financial remedy applications made in July to September 2019, which was down 2% from the same period in 2018. In July to September 2019 10,881 financial remedy cases were disposed of by the family courts, up 1% over the same period.*

No reason is suggested for the decrease in the number of applications. However, we are told that 64% of those disposals were uncontested (often referred to as 'consent orders', where the parties just seek a court order to give effect to an agreed settlement), 27% were initially contested, and 10% were contested throughout. (The recent legal aid statistics from the MoJ indicate that more cases are now being resolved via mediation.)

# 64%

of financial remedy cases were uncontested



# More unrepresented litigants

**The abolition of legal aid for most private law family matters in 2013 has already been mentioned. The statistics show that the effects of that measure are still being felt to this day.**

The MoJ and ONS tell us that: “The removal of legal aid for many private law cases in April 2013 resulted in a change in the pattern of legal representation over time. In July to September 2019, the proportion of disposals where neither the applicant nor respondent had legal representation was 39%, increasing by 25 percentage points since January to March 2013, and up 2 percentage points from July to September 2018. Correspondingly, the proportion of cases where both parties had legal representation went from 41% in

January to March 2013 to 19% in July to September 2019, down one percentage point compared to the same period in 2018.”

*We are still getting more unrepresented litigants in the family courts, six and a half years after legal aid was abolished.*

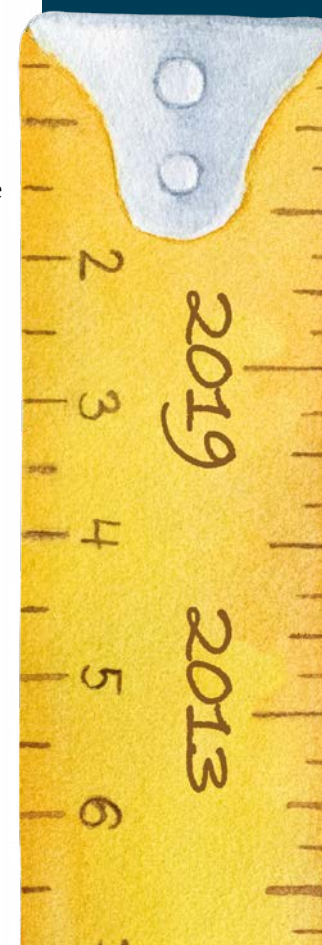
And spare a thought for those litigants. It is not just that their cases may not be presented to the Court as well as they could. They may not even realise what rights they have, or what kind of case to pursue. And some may be so scared by the prospect of going to Court without representation that they may choose not to seek a remedy at all. Others

may find themselves at the mercy of unqualified legal advisors, who may simply provide them with bad advice.

And the problem of unrepresented litigants affects the courts too. Court staff have to spend longer explaining things to the litigants, and judges have to make allowances for them and make decisions without cases being properly argued before them.

The legal aid cuts have seriously damaged the family justice system, in more ways than surely even the Government envisaged back in 2013.

Proportion of disposals with no legal representation



39%

14%

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# So what is the state of family law in England and Wales?

**Well, it is clearly a system undergoing considerable change.**

No-fault divorce is (hopefully) just around the corner. That is likely to lead to a short-term increase in the number of divorces, but quite what the long-term effect, if any, will be remains to be seen. Meanwhile, there are indications that perhaps more people are choosing to remain married, or at least to remain married for longer.

Online divorce is still in its infancy, and is just one of the first steps in a process that will ultimately see much of family justice dealt with digitally,

as part of HM Courts & Tribunals Service's on-going programme to modernise the courts generally.

And in the 'real world' there are new ways of dealing with things, such as specialist financial remedy courts and problem-solving courts, such as the Family Drug and Alcohol Courts, that seek to deal with the practical issues that families face, rather than just the legal issues.

But family law is also a system under huge strain.

Family Courts are having to deal with a seemingly ever-increasing number

of cases, many of which, as we have seen, involve the additional challenge of unrepresented litigants, thanks to the legal aid cuts of 2013. And the increased workload means that cases are taking longer. Not mentioned in the statistics, but these problems have been exacerbated by the fact that many courts have been closed in recent years, and many that remain are in a dilapidated state.

And all of this comes at a time of continued austerity and severe fiscal restraint. It is hoped that the modernisation programme referred to above will go a long way towards

# Summary

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relieving the strain on the courts, but there are already concerns that the programme will not meet its aims.

And the only other way to deal with the issue of workload is of course to pump significant new resources into the system. But that seems highly unlikely to happen.

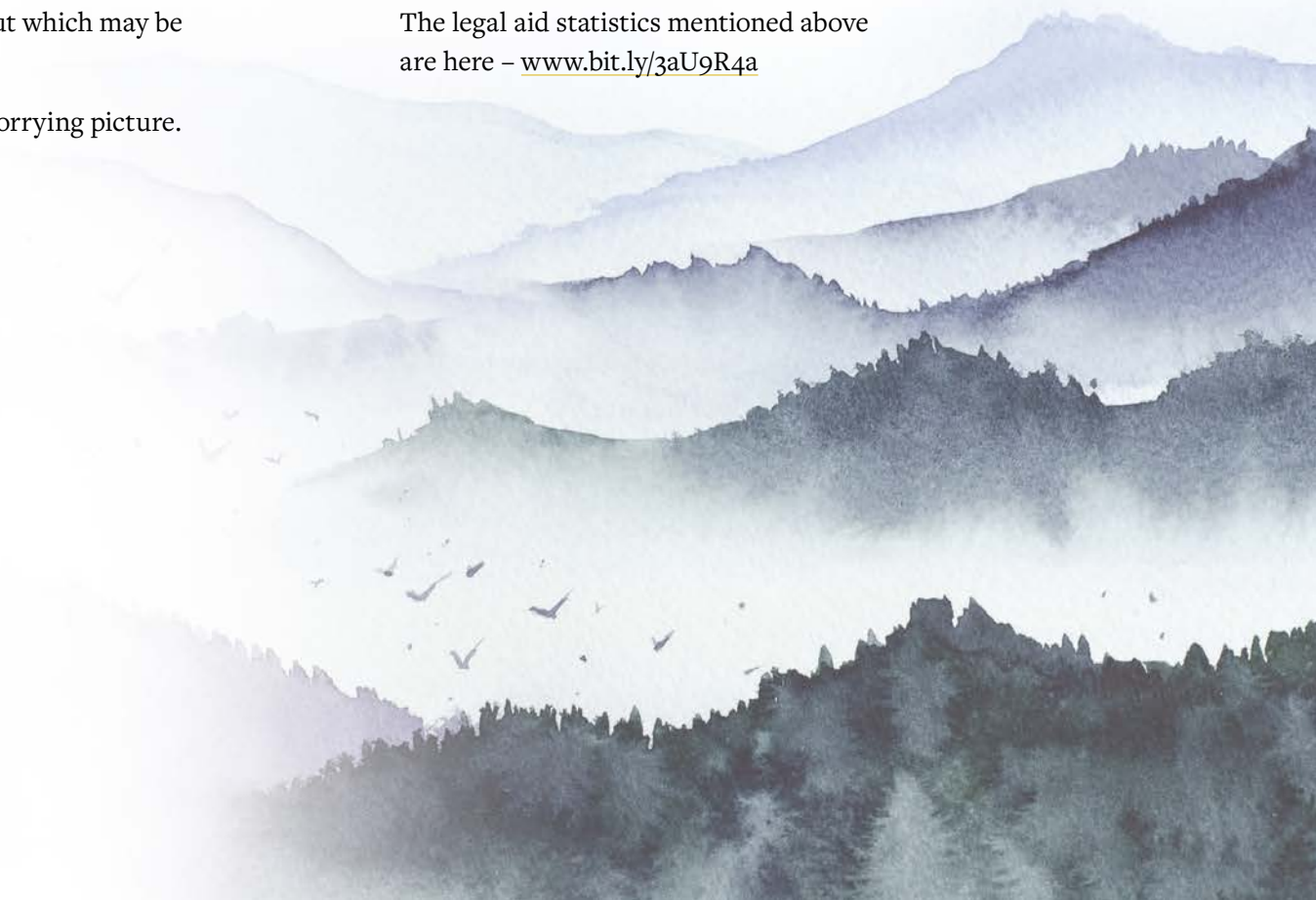
It is also highly unlikely that the Government will reinstate legal aid, or even provide resources for litigants to seek early legal advice, as some have proposed. The number of litigants who will have to find their way through the family justice system without

proper legal advice or representation will not therefore be going down any time soon. Meanwhile, theirs will be a second-class kind of justice, which will not just take longer, but which may be denied entirely.

All in all, it is a very worrying picture.

#### Links

The ONS divorce statistics can be found at [www.bit.ly/3b4Em7E](http://www.bit.ly/3b4Em7E) and the MoJ/ONS Family Court statistics at [www.bit.ly/2S1rpm7](http://www.bit.ly/2S1rpm7)  
The legal aid statistics mentioned above are here – [www.bit.ly/3aU9R4a](http://www.bit.ly/3aU9R4a)



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