

THE 2022

# DIVORCE

REPORT



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A TIME OF CHANGE:  
THE CURRENT STATE OF FAMILY LAW

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Austin Kemp



# An overview of the current state of family law

As we approach the year 2022 we look at the state of divorce, civil partnership dissolution, and the Family Court.

This overview is based upon the latest available divorce, civil partnership dissolution, Family Court and legal aid statistics.

In November the Office for National Statistics (‘ONS’) published its latest statistics for divorces in England and Wales, for the year 2019 (the latest civil partnership dissolution statistics are also for 2019), 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 2021.

Between them these statistics provide an overview of the current state of family law in this country. And once again the statistics provide a mixed bag of good and bad news, in what is a time of profound change for the family justice system.

# Introduction

This really helpful, user-friendly document guides to some of The most noteworthy Family Law cases of 2021 and The 2022 Divorce Report at a time of change and provides an excellent introduction to some of the most important cases decided in the family courts over the past year, and a fascinating insight into the facts and figures surrounding relationship breakdown just as we are about to see the end to fault based divorce.

Whether your interest is in financial remedies or children cases, there this is something here of interest for everyone. Helpfully concise case summaries, and succinct outlines of what was decided, provide an excellent practical introduction which will point you in the right direction and keep you up to date.



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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.

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# Large increase in divorces

**We will begin with the divorce statistics. After all, divorce can be said to be the biggest single driving force behind the work of the Family Court, certainly as far as private law work (i.e. cases not involving social services) is concerned.**

Whilst divorce itself does not occupy much of the time of the Family Court (and will occupy even less when the new system of ‘undefendable’ no-fault divorce comes into effect in 2022), the ancillary matters arising out of it, in particular disputes over arrangements for children and finances, account for a vast proportion of the time of the Family Court.

The divorce statistics are divided into opposite-sex divorces and divorces among same-sex couples.

The ONS tells us that there were 107,599 opposite-sex divorces in 2019.

This is an increase of 18.4% from the 90,871 figure in 2018, and is the highest number of opposite-sex divorces recorded since 2014, when 111,169 divorces were granted in England and Wales. The ONS also points out that it is “the largest annual percentage increase in the number of divorces since 1972, following the introduction of the ... Divorce Reform Act 1969, which made it easier for couples to divorce upon separation.”

That last fact is quite remarkable. After the sharp rise caused by the Divorce Reform Act the divorce rate remained fairly stable until about 2004, since when it has been pretty steadily dropping. Until now.

*Continued overleaf*



## Increase in opposite sex divorces by

18.4%  
2019 compared to 2018

This is the highest number of opposite-sex divorces recorded since 2014.



# Large increase in divorces

*Continued*

But there may be a factor at play, apart from simply fewer marriages breaking down. The ONS points out that: “The size of the increase can be partly attributed to a backlog of divorce petitions from 2017 that were processed by the Ministry of Justice in early 2018, some of which will have translated into decree absolutes (completed divorces) in 2019. This is likely to have contributed to both the particularly low number of divorces in 2018 (the lowest since 1971) and the increase seen in 2019.”

So the increase may just be a temporary ‘blip’ - opposite-sex divorces still remain 30% lower than the 2003 figures.

The ONS also point out that when considering changes in the number of divorces, it is important to take account of the size of the married population, which will obviously affect the number of divorces. They say that in 2019, the number of divorces of opposite-sex couples per 1,000 married men and women aged 16 years and over increased for both men and women to 8.9 from 7.5 in 2018. However, divorce rates remain well below the most recent peaks recorded in 2003 and 2004 (13.4 men per 1,000 married men and 13.2 women per 1,000 married women).

The ONS say that: “Changes in attitudes to cohabitation as an alternative to marriage or prior to marriage, particularly at younger ages, are likely to have been a factor affecting the general decrease in divorce rates since 2003. Levels of cohabitation increased over this period while the married population declined and our latest marriage statistics for 2017 show that nearly 9 in 10 couples (88%) were cohabiting before marriage.”



Moving on to same-sex divorces, we must bear in mind that same-sex marriage was only introduced in March 2014, so the figures will not yet have ‘settled down’.

The ONS tell us that there were 822 divorces among same-sex couples in 2019, which is nearly double that in the previous year, when there were 428 same-sex divorces. Of these, 72% were to female couples, a decrease from 75% in 2018. Kanak Ghosh, of the Vital Statistics Outputs Branch at the ONS, commented:

*“Same-sex couples have been able to marry in England and Wales from March 2014. Since then, we have seen the number of divorces of same-sex couples increase each year from very small numbers in 2015 when the first divorces took place, to more than 800 in 2019, reflecting the increasing size of the same-sex married population in England and Wales.”*



 822  
Same-sex divorces in 2019



# Most common reason for divorce

As mentioned above, we will soon have a system of no-fault divorce, in which it will not be necessary to prove to the court that the marriage has irretrievably broken down. It is hoped that because it does not require the attributing of blame for the breakdown of the marriage no-fault divorce will help to make divorces more amicable, and therefore more couples will be able to resolve disputes over arrangements for children and finances by agreement.

For now, however, we still have to prove irretrievable breakdown by showing either that the other party has committed adultery, or that they have behaved unreasonably, that they have deserted us for two years, that the parties have been separated for two years and the respondent consents to the divorce, or that the parties have been separated for five years.

The ONS keeps a record of which of these five reasons were used to prove that the marriage had irretrievably broken down, as well as which party instituted the divorce proceedings.

The ONS tells us that the most common reason for opposite-sex divorce in 2019 was unreasonable behaviour, with 35% of all husbands and 49% of all wives petitioning for divorce on this basis.

35%

of all husbands petitioning for opposite-sex divorce stated unreasonable behaviour was the reason for divorce.

49%

of all wives petitioning for opposite-sex divorce stated unreasonable behaviour was the reason for divorce.

Unreasonable behaviour has consistently been the most common reason for wives petitioning for divorce since the late 1970s, although it has only been the most common reason for husbands petitioning since 2006 - in the 1980s and 1990s adultery was generally the most common reason for husbands petitioning, while between 1999 and 2005 it was two years separation with consent. The ONS comment that:

*“There are likely to be a range of behavioural, cultural and financial reasons for these trends.”*

Unreasonable behaviour was also the most common reason for divorces among same-sex couples in 2019,

with 65% of same-sex couples divorcing for this reason (70% of male same-sex divorces and 63% of female same-sex divorces).

As to which party instituted the divorce proceedings, we are told that the majority of divorces of opposite-sex couples in 2019 were petitioned by the wife (62%), which is the same proportion as the previous year. The ONS say that:

*“Wives have consistently petitioned the majority of opposite-sex divorces in England and Wales since 1949, but the proportion has fallen by 10 percentage points since the peak in 1992 when 72% of divorces were petitioned by the wife.”*

65%

of same-sex couples stated unreasonable behaviour was the reason for divorce in 2019.





# Shorter marriages

**The last aspect of divorce that the ONS statistics looked at is the duration of marriages.**

The figures tell us that in 2019, the median duration of marriage (the mid-point of all durations) for divorces granted to opposite-sex couples was 12.3 years, a small decrease from 12.5 years in 2018. The ONS tells us that the 2018 and 2019 figures have now surpassed the previous high seen more than forty-five years ago in 1972, when it was 12.2 years. Over the last 50 years, the median duration has fluctuated between 8.9 years and 12.5 years.

The median duration of marriage for same-sex couples who divorced in 2019 was 4.3 years for men and 4.1 years for women. These smaller durations obviously reflect that same-sex marriage has only been possible in England and Wales since March 2014, and the first of these divorces took place in 2015.



# A quick look at civil partnership dissolution

**Civil partnerships were introduced in 2005, as a means by which same-sex couples could formalise their relationships. Obviously, the advent of same-sex marriage in 2014 led to a significant decline in the number of couples entering into civil partnerships, although this may increase again, as civil partnerships were extended to opposite-sex couples on the 31st of December 2019 (on that day alone, 167 opposite-sex couples took the opportunity to register their partnerships).**

But because civil partnerships are so much rarer than marriages, we will not spend long looking at them here.

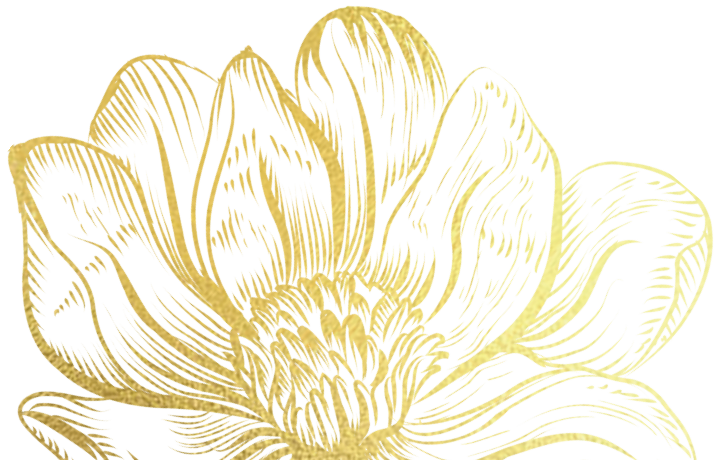
The ONS's figures show that there were 916 same-sex civil partnership dissolutions granted in England and Wales in 2019, which is a small decrease of 1.2% from 927 dissolutions in 2018. Female couples accounted for more than half (54%) of all those dissolutions in 2019, and the number of dissolutions in 2019 fell by 30% from 1,313 dissolutions in 2016, when it was the highest on record.

The ONS goes on to say that:

*“Since civil partnership dissolutions were first recorded in 2007, more dissolutions have occurred between female couples than male couples. This is despite the fact that historically, a greater number of men have formed civil partnerships.”*

The ONS make the obvious point that:

*“The falling number of dissolutions since 2016 is likely to be a consequence of many same-sex couples choosing to marry or to convert their existing partnership into a marriage, leading to a decrease in the size of the civil-partnered population in England and Wales.”*





# Care cases taking longer

**The latest Family Court statistics, for the quarter July to September 2021, start with some good news. After an increase in the number of new cases last year, there has now been a decrease.**

In that quarter 63,084 new cases were started in family courts. This is down 11% on the equivalent quarter in 2020. The MoJ say that this was due to decreases in all case types: matrimonial (i.e. divorces – down 15%), public law (i.e., children cases involving social services – down 14%), adoption (down 12%), private law (children cases not involving social services – down 10%), domestic violence/abuse (down 8%) and financial remedy cases (down 5%).

And there was also good news regarding the number of cases disposed of by the Family Court. The MoJ say that there were 61,249 case disposals in July to September 2021, which was up 9% on the equivalent quarter of 2020. This, they say, was due to increases in financial remedy (19%), matrimonial (16%) and domestic violence (5%) cases. However, it was not all good news on the disposal front, as there were decreases in adoption (7%), public law (7%) and private law (2%) case disposals.

As to what was behind these changes, a statistician commented:

*“Volumes of new cases starting across all Family Justice areas have decreased this quarter, possibly stabilising following the recovery from the impact of Covid-19 in the end of 2020 and early 2021 ... the latest figures are more in line with longer term trends seen pre-Covid 19.”*



63,084

new cases were started in family courts for the quarter of July to September 2021.

11%

decrease in new cases started in family courts, compared to 2020.

61,249

cases were disposed of by the family courts, up 9% on the same quarter from 2020.

# Fewer, longer divorces

**The alert reader may find the reduction in the number of divorces rather contradicts the increase mentioned above, The difference, of course, is that the ONS figure was for 2019, whereas the MoJ figure is just for the quarter July to September 2021. The recent reduction may of course tend to support what the ONS suggested may be the reason behind the increase in 2019.**

Looking a little more deeply at the latest Family Court figures, the MoJ say that divorce petitions were down by 15% in July to September 2021 compared to the same period in the previous year, but decrees absolute granted were up by 16% in July to September 2021 compared to the same period in 2020.

As to timeliness of divorce cases, for those granted decree nisi in July to September 2021, the mean average time from the date of petition was 26 weeks, down 3 weeks from the same period in 2020, but the mean average time from petition to decree absolute was 55 weeks, up 4 weeks from the equivalent quarter in 2020.

Perhaps the most important divorce figures relate to digital divorce, as it became mandatory last September to use the digital divorce system in all cases. Perhaps unsurprisingly, the MoJ's figures show that the digital system is much quicker: the average time to decree nisi for July to September 2021 was 14 weeks, and 24 weeks from petition to decree absolute.



14 weeks

is the average time to decree nisi, based on the new digital system between July and September 2021.



# Bad news on private law children cases

There were 14,263 new private law children applications made in July to September 2021, which was down 10% on the equivalent quarter in 2020, with 21,510 individual children involved in these applications.

The number of private law court disposal events in July to September 2021 was 19,059, up 4% on the equivalent quarter in 2020.

However, the most concerning figure was surely the timeliness of these applications. We are told that:

*“In July to September 2021, it took on average 42 weeks for private law cases to reach a final order, i.e. case closure, up 9 weeks from the same period in 2020 – reaching record levels in this published time series [i.e. since 2014]. This continues the upward trend seen since the middle of 2016, where the number of new cases overtook the number of disposals.”*

This is clearly something that needs to be urgently addressed.



14,263

new private law children applications made in July to September 2021.

19,059

private law disposal events in July to September 2021.

# Reduced legal representation

The last area in the Family Court statistics that we will look at relates to legal representation, and here also is a worrying trend.

The MoJ makes the obvious point that the removal of legal aid for most private law cases (i.e. cases not involving social services) in April 2013 resulted in a change in the pattern of legal representation over time. They say that:

*“In July to September 2021, the proportion of disposals where neither the applicant nor respondent had legal representation was 37%, increasing by 23 percentage points since January to March 2013, and up 1 percentage point from July to September 2020.”*

They continue:

*“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 2021, down 4 percentage points compared to the same period in 2020.”*

The effect of this upon those having to navigate the family justice system unassisted, and ultimately upon the outcome of cases, can only be imagined.



37%

of disposals where neither the applicant nor the respondent had legal representation.

19%

of cases where both parties had legal representation between July and September 2021.



## Fewer mediation starts, but more outcomes

Ever since legal aid was abolished for most private law family matters in 2013, it has been the government's policy to promote mediation as an alternative to going to court. And that policy may be about to be accelerated, as the new Lord Chancellor and Justice Secretary Dominic Raab recently indicated that he was looking for 'drastic and bold' incentives for couples to resolve their disputes out of court, for example via mediation, in order to reduce the number of cases going to court.



For now, however, the policy of mediation promotion cannot be said to have been a success.

Anyone wishing to make an application to the Family Court must first attend a Mediation Information and Assessment Meeting ('MIAM'), unless they are exempt. The MIAM is a first meeting with a mediator, to explain how mediation works, and to assess whether the case is suitable for mediation. The latest statistics, again for the quarter July to September 2021, show that the number of MIAMs decreased by 11% compared to the same quarter the previous year, and currently stand at around a third of the level that they were at prior to the abolition of legal aid.

Meanwhile, family mediation starts also decreased, by 2%. Total mediation outcomes did increase by 8%, of which 61% were successful agreements, but are still only sitting at just over half of the level that they were at prior to the abolition of legal aid.





# Conclusions

**There are conclusions to be drawn from the above, but over-arching everything is the fact that the family justice system is going through a radical time of change.**

The law on divorce is about to change, not just for the first time in fifty years, but forever, in the sense that once we have no-fault divorce there will be no going back. No longer will the law pry into the private lives of couples, in an ultimately pointless attempt to ascertain the causes of the marriage breakdown, and attribute blame. As we have indicated, the reasons for divorce will be a thing of the past.

As stated above, we have already seen an increase in the number of divorces, albeit one that may have been largely caused artificially, and we can surely expect another surge in divorces when the no-fault system comes into effect next spring, with many couples putting off divorce proceedings now, so that they can proceed in a more amicable fashion.

Years ago when no-fault divorce was being considered, one of the arguments against it was that it might ‘open the floodgates’ by making divorce too easy, with many more couples being prepared to go their separate ways at

the slightest sign of trouble, rather than working at their marriages. Will we now see a sustained increase in divorces, or will any surge just be a limited thing? Only time will tell.

Of course, more same-sex marriages will inevitably have an impact, increasing the number of divorces, but in the overall scheme of things, that impact is likely to be minimal.

On the other hand, the availability of civil partnerships to opposite-sex couples might lead to a small reduction in the number of couples getting married, and ultimately therefore on the number of divorces.

The other effect of no-fault divorce may be on the numbers of disputes over children and finances that go to court. As mentioned above, it is hoped that doing away with the ‘blame game’ will lead to more couples resolving their issues by agreement, rather than through the court. Whether this actually transpires, and if so how big an effect it will be, will be interesting to witness.

And the other big change to divorce is of course the full roll-out of the digital divorce system which, as we have seen, has meant divorces being dealt with more quickly. The effect of that, however, may be greatly diminished by the new no-fault system, which will take a minimum of 26 weeks in any event.

The statistics above highlight a number of problems within the family justice system, in particular cases taking longer. However, it seems that further efforts will shortly be underway to reduce the number of family cases going to court, and that would of course alleviate

many of these problems. Hopefully that will come to pass, although, as we have seen, the government’s attempts to promote alternative (i.e. non-court) methods of dispute resolution have thus far not been a resounding success.

Whatever, it does appear that family law in the future will be considerably different from family law in the recent past.



## Links

The latest ONS divorce statistics can be found [here](#), their statistics for civil partnership dissolution can be found [here](#), and the MoJ/ONS Family Court statistics are [here](#). The mediation statistics referred to above are contained in the latest legal aid statistics, which can be found [here](#).

# Summary





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