

Austin Kemp

2023

Divorce & Family Law Report

A review of divorce &
family law in 2023.



Introduction

Approaching the year 2023 we take our annual look at the state of marriage, divorce, civil partnership dissolution, and the Family Court.

In May 2022 the Office for National Statistics (‘ONS’) published its latest statistics for marriages in England and Wales, for the year 2019.

In March the ONS published its latest statistics for families and households in the UK, for the year 2021. In November the ONS published its latest statistics for divorces in England and Wales, for the year 2021, and in December it published its latest civil partnership formations and dissolutions statistics, also for 2021.

In December the Ministry of Justice (‘MoJ’) and the ONS published the latest set of quarterly statistics for the Family Court and legal aid in England and Wales, for the period July to September 2022.

Finally, In December HM Courts and Tribunals Service (‘HMCTS’) published its latest Management Information, providing details of court workload volumes and timeliness. Between them these statistics provide an overview of the current state of family law in this country. The news is, as ever, somewhat mixed, but there are certainly some worrying trends.

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

Snapshot

Marriage



219,850

There were 219,850 marriages in England and Wales in 2019.



↑ 22.9%

Cohabiting couple families in the UK saw an increase of 22.9%, from 2.9 million to 3.6 million.

Divorce



9.3%

Increase in opposite-sex divorces. A total of 111,934 from 2020 to 2021.



8 Years

Of marriage before divorce in 2021. A total of 6,229 opposite-sex couples divorced after 8 years.

Family Law



28%

Parties with legal representation stood at 28% in July to September 2022.



65,691

New cases were started in family courts, which was similar to the equivalent quarter in 2021.

Lowest marriage rates on record

It seems appropriate to begin with marriage, and the news is not good for those who support the institution.

The latest marriage statistics show that there were 219,850 marriages in England and Wales in 2019. This was a decrease of 6.4% from 234,795 in 2018, and was the largest annual decrease since 2012. Remarkably, this was the lowest recorded number of marriages since 1893.

Of those marriages in 2019 213,122 were opposite-sex marriages, a decrease of 6.5% from 2018 (227,870), and 6,728 were same-sex marriages, a decrease of 2.8% from 2018 (6,925).

The figures for marriage rates, which take account of changes in the size of the unmarried adult population, as well as the number of marriages and therefore provide a better indication of changing trends, are even more striking.



Marriage rates for opposite-sex couples have fallen to their lowest on record since 1862. In 2019, for men, there were 18.6 marriages per 1,000 unmarried men, a decrease from 20.1 in 2018. For women, there were 17.2 marriages per 1,000 unmarried women, a decrease from 18.6 in 2018.

The ONS say that the long-term decline in marriage rates is a likely consequence of increasing numbers of men and women delaying marriage, or couples choosing to cohabit rather than marry, either as a precursor to marriage or as an alternative.

This is backed up by the families and households statistics, which show that in the ten years to 2021 the number of cohabiting couple families in the UK saw an increase of 22.9%, from 2.9 million to 3.6 million.

As the ONS point out, there has been a gradual decline in the number of marriages since the early 1970s - the number of opposite-sex marriages has fallen by 50% since 1972.

We are clearly seeing a continued shift in society, away from marriage and towards cohabitation. This has led to growing calls for the introduction of basic legal protections for cohabitees on relationship breakdown, enabling them to seek financial support from their former partners.

One such call was contained in a report published by the House of Commons Women and Equalities Committee in August. Sadly, the Committee's recommendation was rejected by the Government.



Sharp increase in divorces

Moving on, the latest divorce statistics show that in 2021 there were 111,934 opposite-sex divorces in England and Wales, which is an increase of 9.3% from 2020, and 4.0% from 2019 divorces.

This is the highest number of divorces seen since 2013, when there were 114,720 divorces.

Nearly two-thirds of these divorces were issued by wives, similar to previous figures. There were 1,571 same-sex divorces in 2021. This is an increase of 36.1% compared with 1,154 same-sex divorces in 2020. It should be noted, however, that same-sex divorces have only been possible since 2015, because of the introduction of same-sex marriages in 2014.

As to divorce rates, in 2021 the divorce rate for opposite-sex and same-sex couples combined was 9.3 for men and 9.4 for women per 1,000 of the married population. These are the highest rates since 2014, where the rates for men and women were 9.3 per 1,000 of the married population (opposite-sex only).

So more divorces and a higher divorce rate. What might be behind this? The ONS point out that there was a decrease in the number of divorces in 2020, due to the effect of the pandemic, and that the timing of divorce completions has been affected by processing delays (in 2017 and 2018) and the pandemic, which may be affecting the trend since 2020.

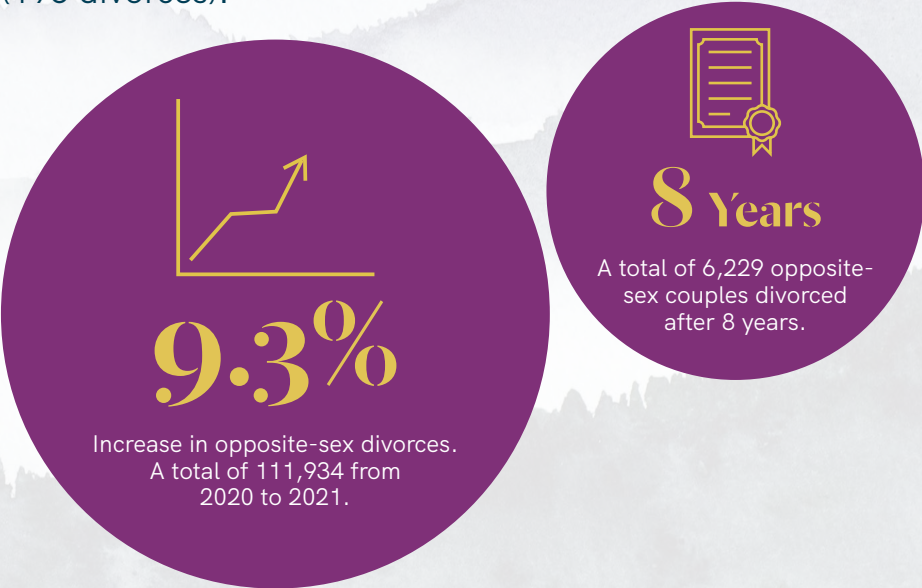
It is also interesting to look at the data for the percentage of marriages ending in divorce, and the duration of marriage. The cumulative percentages of marriages ending in divorce by their 25th (silver) wedding anniversary has increased over time. For couples who married in 1963 (the first cohort with data available), 23% had divorced by their 25th anniversary.

This has steadily risen to 41% for couples who married in 1996 (the latest marriage cohort to potentially reach their 25th anniversary).

There have also been changes in the percentage of marriages ending in divorce by their 10th wedding anniversary over time. This has increased from 1 in 10 couples married in 1965 (10%) to 1 in 4 couples in 1995 (25%). However, for couples married more recently there has been a decrease, with 18% of marriages in 2011 ending in divorce by their 10th wedding anniversary (the most recent cohort to reach their 10th anniversary).

As to duration of marriage, for opposite-sex divorces in 2021, the median duration of marriage at divorce (the mid-point of all durations) was 12.3 years, an increase compared with 11.9 years in 2020. This is slightly below the highest value for the median, which was 12.5 years in 2018. The lowest recorded median duration was in 1985 with 8.9 years. The most common duration of marriage for opposite-sex couples getting divorced in 2021 was 8 years, with 6,229 divorces.

For same-sex divorces in 2021, the median duration of marriage was 5.9 years for male same-sex couples and 5.1 years for female same-sex couples. Both male and female marriage durations are the highest seen, which reflects that same-sex divorces have only been possible in England and Wales since 2015. The most common duration of marriage for male same-sex couples in 2021 was 5 years (75 divorces) and 4 years for female same-sex couples (195 divorces).



Reason for divorce

The divorce figures for 2021 are of course historic, in that that was the last full year of the old, fault-based, divorce system.

Thankfully, we now have a system where it is no longer necessary to give a reason for the breakdown of the marriage.

Nevertheless, for now purely academic reasons it is still interesting to see what the statistics said about the reason for divorce in 2021.



Opposite-sex divorce

The most common ground for opposite-sex divorces for females petitioning in 2021 was unreasonable behaviour (48.1%). This was slightly higher than in 2020 (47.4%). Unreasonable behaviour was the ground given for 43.2% of all opposite-sex petitions in 2021, including 34.8% of divorces where the petitioner was male. This was the most common ground for females petitioning for over 40 years.

Between 2006 and 2019, the most common ground for males petitioning in opposite-sex divorces was unreasonable behaviour. In 2020, two-year separation became the most common ground. In 2021, both unreasonable behaviour and two-year separation each accounted for 34.8% of the grounds for males petitioning opposite-sex divorces.



Same-sex divorce

For same-sex couples in 2021, unreasonable behaviour made up 54.5% of divorces. This comprises of 53.8% for females petitioning and 56.0% for males petitioning under this ground.

Unreasonable behaviour was the most common ground for same-sex divorces since the first same-sex divorces in 2015. However, the percentage of same-sex divorce because of unreasonable behaviour decreased with time, from 77.3% in 2015.

Obviously, the proportions for the grounds given for same-sex couples are not directly comparable with opposite-sex couples because of same-sex marriage only being legal since 2014.

Civil partnership losing relevance?

Before we move on to the Family Court statistics, a quick look at civil partnership.

The latest statistics show that in 2021 there were 6,731 civil partnerships formed in England and Wales, a decrease of 19.4% from 8,351 in 2020.

The majority (5,692) of civil partnership formations in 2021 were between opposite-sex couples; this is a decrease of a quarter (24.8%) from 7,566 in 2020, the first full year that opposite-sex civil partnerships had been possible in England and Wales.

The number of civil partnerships entered into by same-sex couples has numbered just in the hundreds per annum since same-sex marriage was introduced in 2014. Opposite-sex civil partnership formation peaked in 2020, after it was introduced in December 2019, but that too now seems to be dropping off. Could civil partnership be losing relevance?

As to civil partnership dissolution, the figures can be stated shortly: there were 680 same-sex civil partnership dissolutions granted in England and Wales in 2021, an increase of 1.3% compared with 2020, when 671 dissolutions were granted.



Family Court

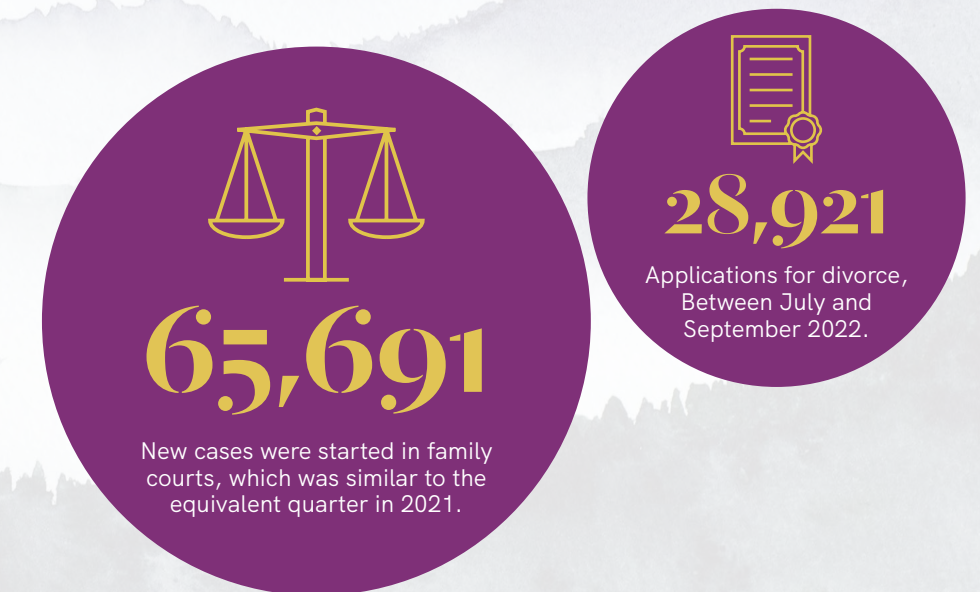
We now move on to statistics for the Family Court, and begin with the number of cases started in the latest quarter for which figures have been published (July to September 2022).

In that quarter 65,691 new cases were started in family courts, which was similar to the equivalent quarter in 2021. This was due to decreases in financial remedy applications (20%), public law children cases involving social services (2%), adoption and private law children disputes between parents (both 1%) cases, which were offset by increases in matrimonial (i.e. mostly divorce - 8%) and domestic abuse (2%) case starts.

The increase in divorces is significant, as the figures follow the introduction of no-fault divorce in April. Between July and September 2022 there were 28,921 applications made under the new law (77% from sole applicants, 23%

from joint applicants). The number of applications was an increase of 8% from the same quarter in 2021, perhaps indicating that a number of couples may have been waiting for the new law before commencing divorce proceedings.

For digital (online) divorce cases, there were 27,868 applications made during July to September 2022 (96% of the total, up from 80% in the same period of 2021).



Divorce timeliness

As with reasons for divorce, the figures for the timeliness of divorce proceedings in 2021 may be considered academic, as the new no-fault divorce system introduced new mandatory waiting periods at key stages.

That said, the mean average time from the date of petition/application to decree nisi/conditional order was 43 weeks for July to September 2022, up 19 weeks from the same period in 2021, and the mean average time from petition/application to decree absolute/final order was 66 weeks, up 11 weeks from the equivalent quarter in 2021. The ONS point out that these increases were impacted by resourcing issues, which led to backlogs.

For digital divorce cases the news was much better: the average time to decree nisi/conditional order for July to September 2022 was 28 weeks, and 37 weeks from petition/application to decree absolute/final order.



More bad news on private law children cases

Perhaps the most concerning figures in the Family Court statistics relate to the timeliness of private law children cases, e.g. cases involving disputes between parents over arrangements for their children.

The ONS said: “In July to September 2022, it took on average 45 weeks for private law cases to reach a final order (similar to the peak seen between April to June 2022), i.e. case closure, up 5 weeks from the same period in 2021. This continues the upward trend seen since the middle of 2016 [when cases were taking about 22 weeks on average], where the number of new cases overtook the number of disposals.”

These disturbing figures are backed up by the HMCTS Management Information, which showed that in October the average number of weeks for these cases to be completed reached 48.

As we are all aware, and is specifically stated in the Children Act, delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of the child.

It is therefore essential that children cases be dealt with as quickly as possible, and it is surely acknowledged by all that these figures are unacceptable. Hopefully, efforts to speed up these cases will be redoubled, and we will be seeing better figures next year.

Less legal representation

As the ONS points out, with some understatement, the removal of legal aid for many private law cases (in particular children cases and financial remedy cases) in April 2013 “resulted in a change in the pattern of legal representation over time.”

The latest figures for legal representation show that things are still getting worse. They show that in July to September 2022 the proportion of case disposals where neither the applicant nor respondent had legal representation was 39%, an increase of 26 percentage points since January to March 2013, and up 2 percentage points from July to September 2021.

Correspondingly, we are told that the proportion of cases where both parties had legal representation went from 41% in January to March 2013 to 18% in July to September 2022, down 2 percentage points compared to the same period in 2021.

The change seen in the pattern of legal representation is also demonstrated in private law cases with at least one hearing, where the proportion of parties with legal representation stood at 59% in 2012, compared to 28% in July to September 2022.

Interestingly, the proportion of parties with legal representation in cases with at least one hearing varies by case type and range, from around 73% for financial remedy cases to 3% for adoption cases, with figures subject to change as new cases progress.

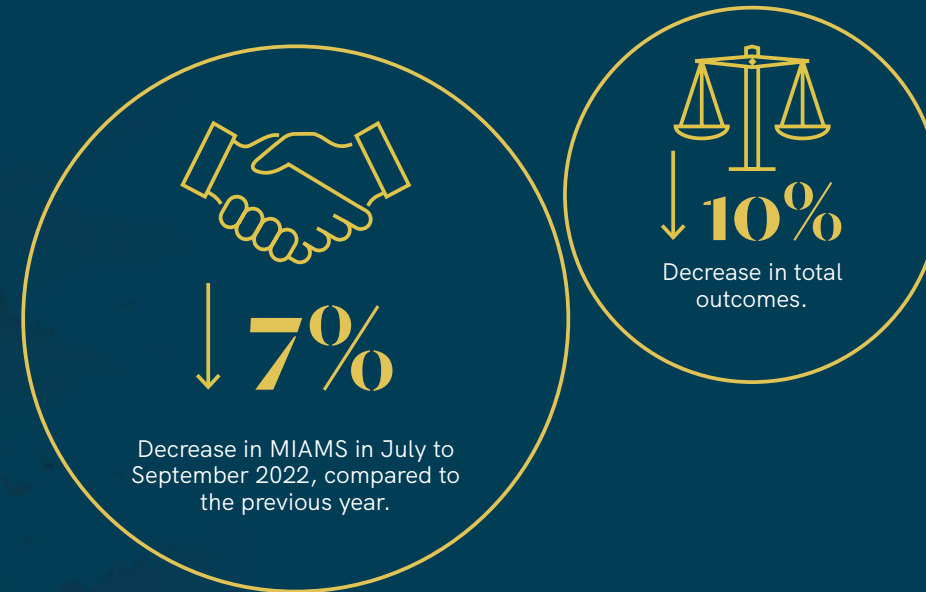


Mediation still way down

Family mediation is voluntary, but in most cases if anyone wants to take their family dispute to court they must first attend a mediation information and assessment meeting

It was of course the hope of the Government that the abolition of legal aid for most private family cases would be offset by more couples choosing to resolve their disputes out of court, in particular via mediation, whereby an independent and impartial professionally-accredited mediator would help them try to resolve the dispute by agreement. Sadly, the Government's hope never materialised, as the latest figures confirm.

Before we go any further, a note on terminology. Family mediation is voluntary, but in most cases if anyone wants to take their family dispute to court they must first attend a mediation information and assessment meeting (often called a 'MIAM'). The MIAM is a meeting with a



specialist family mediator to consider whether the dispute can be resolved without going to court. The mediator will provide information about the options available for non-court resolution, including mediation, and explain the advantages and disadvantages.

A 'family mediation start' is when the parties agree to go to mediation, and the 'outcome' is when the mediation comes to an end, whether or not agreement has been reached.

The latest statistics show that whilst MIAMs, family mediation starts, and outcomes decreased significantly following the covid-19 restrictions in March 2020, volumes and expenditure have rapidly increased to levels temporarily exceeding pre-covid figures.

However, in July to September 2022, MIAMs decreased by 7% compared to the previous year, and currently stand at around a third of the levels they were at before legal aid was abolished in 2013. Family mediation starts increased by 5% while total outcomes decreased by 10%, of which 59% were successful agreements, and are now sitting at around half of the levels they were at before legal aid was abolished.



Summary

As has been stated more than once, family law in England and Wales has entered a new era, with the introduction of no-fault divorce.

As the figures above suggest, the new system seems popular. That is not to say that it will result in more divorces (it is far too early to reach any conclusions on that), but that the idea of being able to divorce without blame, and even being able to apply for a divorce jointly, is something that couples appear to appreciate.

The great hope for the new system is that, by doing away with the need to blame the other party for the marriage breakdown, the new system will reduce animosity between the parties, which will in turn lead to more disputes over child arrangements and finances being resolved by agreement. Again, we will have to wait for future statistics to see if this hope is borne out.

What else can we draw from the statistics? Well, perhaps the two most noticeable things are the record drop in marriages, and the worrying length of time that private children cases are taking.

As stated above, the drop in marriages confirms that the popularity of the institution is in continued decline, so the question is: where will it end?

One must remember that marriage is still far more popular than cohabitation: in 2021 there were some 12.6 million married couple families, compared to 3.6 million cohabiting couple families (although it is notable that in 2021 for the first time births registered outside of a marriage or civil partnership outnumbered births registered within a marriage or civil partnership).

But if current trends continue for long enough then cohabitation could eventually become more popular than marriage. That is still a very long way off, but still the shift we have already seen in society is significant, and perhaps

it is about time that family law changed to reflect that, as indicated above.

On a more practical level the delays in dealing with private law cases are extremely concerning. As also indicated above, this is bad for the children, and it is also of course bad for the parents. As Resolution, the association of family lawyers, has said, the family courts are in crisis, and the backlogs are “ruining lives”.

The figures do of course give even more reason to try to resolve family disputes out of court, whether through mediation, arbitration, or some other form of dispute resolution. And perhaps that is the overriding message here: the new era is not just about a new system of divorce, it may also be about new, and better, ways of resolving family disputes.



The latest ONS divorce statistics can be found [here](#), their statistics for civil partnership formations and dissolutions can be found [here](#), their statistics for marriage are [here](#), and their family and household statistics are [here](#). The latest MoJ/ONS Family Court statistics are [here](#), and the mediation statistics referred to above are contained in the latest legal aid statistics, which can be found [here](#). The latest HMCTS Management Information is [here](#).

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