

Austin Kemp

2024 Divorce & Family Law Report

A close look at divorce &
family law in 2024.



Introduction

Welcome to our annual report on divorce and family law, in which we examine the most important developments in 2023.

This survey is based primarily upon the latest available statistics for marriage, birth characteristics, families and households, the Family Court, and legal aid.

In May 2023 the Office for National Statistics (‘ONS’) published its latest statistics for marriages in England and Wales, for the year 2020.

In May the ONS also published its latest statistics for families and households in the UK, for the year 2022.

And in December the Ministry of Justice 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 2023.

Between them these statistics provide an overview of the current state of family law in this country.

As always, the news is rather mixed, but some worrying trends that we saw last year are still present.

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

Snapshot

Marriage



65%

Of all families are married-couple families



58%

Of family mediation outcomes were successful agreements

Divorce



25,907

Digital divorce case applications during July to September 2023



65 Weeks

Average time from application to final order

Family Law



5.7%

Increase of families in the UK in the decade since 2012



13,420

New private law children applications

Overview of Family Court

An overview of the workload during 2023.

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

Before going into the details of the different types of applications made to the Family Court, we will first take a brief overview of the workload of the Family Court in 2023.

As with much of the information on the Family Court that follows, this is based primarily upon the latest quarterly Family Court statistics published by the Ministry of Justice, as mentioned above.

In that quarter some work types increased, and some decreased. For example, there was an increase in financial remedy cases starting, but at the same time there were

decreases in matrimonial (i.e. divorce, nullity, judicial separation and civil partnership dissolution), private law children case (i.e. cases not involving social services), and domestic violence cases.

Meanwhile, there were increases in most case types reaching a final disposal, including matrimonial, financial remedy, domestic violence and private law children cases.



Fewer divorce applications

As the reader will no doubt be aware, a new system of no-fault divorce was introduced on the 6th April 2022. It was feared in some quarters that the new system would increase the number of divorces, by making the system easier.

Only now are we beginning to understand whether or not this has been the case. (As expected, there was a significant spike in the number of divorce applications immediately after the new law was introduced, due to many couples waiting for the change.)

Between July and September 2023 there were 27,290 divorce and civil partnership dissolution applications made. This was a decrease of 12% from the same quarter in 2022, where applications were still quite high due to the recent introduction of the new law.

It is perhaps more useful to look at the total number of applications thus far in 2023, and compare that with the total for the same period (January to September) in 2021, the most recent year when the number of divorce applications (or petitions, as they were then called) under the old law was unaffected by the proximity of the introduction of the new law.



In that period in 2021 there were 85,221 divorce and civil partnership dissolution applications made under the old law.

And in that period in 2023 there were 85,805 divorce and civil partnership dissolution applications made under the new law.

The difference between the two figures is surely insignificant. It appears that the new law has not, in fact, had any impact upon the number of divorces.

As to the number of divorces granted in the quarter to September 2023, the figures are still affected by the law change, as petitions under the old law still go through the system. There were 25,824 final orders granted in July to September 2023, 20,229 of which were granted under the new divorce law and 5,595 of which were granted under the old law. The total number was up 31% compared to the same quarter in 2022, again reflecting the spike in applications after the introduction of the new divorce law.



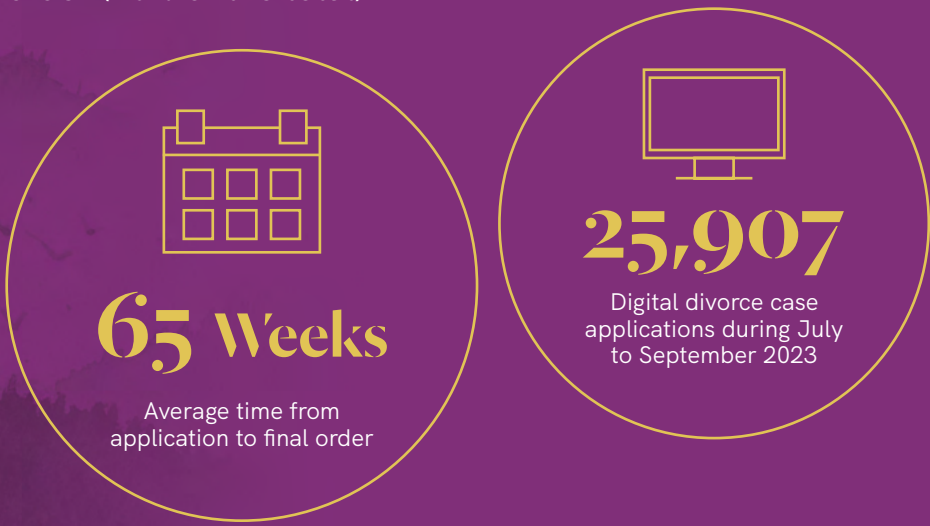
Decrease in the average time for divorce proceedings

In July to September 2023 the mean average time from application to conditional order (91% granted under the new divorce legislation) was 41 weeks, down 2 weeks from the same quarter of 2022.

The mean average time from application to final order (78% granted under the new divorce legislation) was 65 weeks, down 1 week from the equivalent quarter in 2022.

(Note that, due to the mandatory waiting period between applying for divorce and applying for the conditional order, this means that any new cases started since 6th April 2022 would have had to have waited at least 20 weeks before getting to the conditional order stage.)

For digital divorce cases (i.e. those dealt with by the Courts and Tribunals Service Centres that are digital at all stages), there were 25,907 applications made during July to September 2023 (95% of the total, similar to the same period of 2022). The average time to conditional order (91% of the total) for July to September 2023 was 32 weeks, and 46 weeks from application to final order (78% of the total).



More joint divorce applications

A big change introduced by the new divorce law was that for the first time it allowed joint divorce applications by both parties. It was hoped that, along with removing fault from the divorce process, this would help reduce animosity on divorce.

And the latest figures are encouraging.

For sole divorce cases, there were 20,563 applications made during July to September 2023. This was 75% of the total, down 3% from the same period in 2022. The average time to conditional order for July to September 2023 was 32 weeks, and 41 weeks from application to final order.

For joint divorce cases, there were 6,727 applications made during July to September 2023. This was 25% of the total, up 3% from the same period in 2022. Interestingly, joint divorces were quicker. The average time to conditional order for July to September 2023 was 28 weeks, and 37 weeks from application to final order.



Children cases taking longer

There were 13,420 new private law children applications (i.e. applications not involving social services) made in July to September 2023. This was down 5% on the equivalent quarter in 2022, with 19,908 individual children involved in these applications.

And the number of private law cases disposed of by the courts in July to September 2023 was 29,511. This was down 3% on the equivalent quarter in 2022.

But the most worrying statistic concerns the timeliness of private law cases.

In July to September 2023, it took on average 45 weeks for private law cases to reach a final order, i.e. case closure.

This was up almost 1 week from the same period in 2022, and continues the upward trend seen since the middle of 2016, where the number of new cases overtook the number of disposals.

Commenting on the figures, the Law Society described them as showing “a growing crisis in the family justice system”. Law Society president Nick Emmerson said:

“There were more than 80,000 children caught up in the family backlogs last year. We are seeing similar numbers this year. It is unacceptable that thousands of children are waiting almost a year to find out who they will be living with long-term because of delays in the family court system.

“Delayed justice can cause significant harm to the wellbeing of both children and parents by preventing them from having the stability they need to thrive. Research shows that children involved in private law proceedings are more likely to experience depression and anxiety.”





More financial remedy applications and disposals

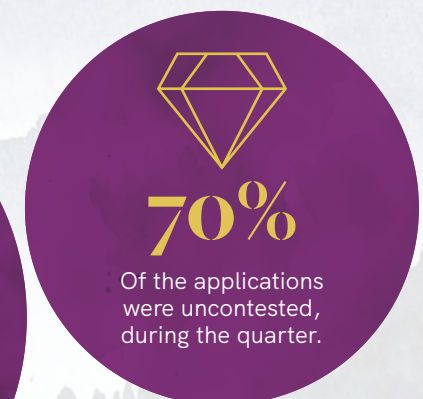
The news was perhaps a little better when it came to financial remedy applications. Whilst the number of applications made increased, the number of cases disposed of went up even more.

There were 11,118 financial remedy applications made in July to September 2023. This was up 15% from the same period in 2022.

Meanwhile, there were 10,512 financial remedy disposals events, which was up by up 20% on the same period in 2022.

During the quarter, 70% of the applications were uncontested (i.e. agreed), and 30% were contested.

Unfortunately, the statistics did not include figures for the timeliness of the contested financial remedy applications.



No change in the prevalence of domestic abuse

In November the ONS published the latest figures for domestic abuse in England and Wales, for the year ending March 2023. The figures come from the Crime Survey for England and Wales, police recorded crime, and other organisations.

The figures showed that there was no significant change in the prevalence of domestic abuse experienced in the year, compared with the previous year.

The Crime Survey for England and Wales estimated that 2.1 million people aged 16 years and over (1.4 million women and 751,000 men) experienced domestic abuse in the year ending March 2023, a prevalence rate of approximately 5.7% of women and 3.2% of men.



The Crime Survey also showed that an estimated 9.8 million people aged 16 years and over had experienced domestic abuse since the age of 16 years, equating to a prevalence rate of approximately one in five people aged 16 years and over.

The police recorded 1,453,867 domestic abuse-related incidents and crimes in England and Wales (excluding Devon and Cornwall) in the year ending March 2023; 889,918 of these were recorded as domestic abuse-related crimes. The number of domestic abuse-related crimes recorded by police remained similar compared with the previous year.

Lastly, there were 43,774 offences of coercive control recorded by the police in England and Wales (excluding Devon and Cornwall) in the year ending March 2023, compared with 41,039 in the year ending March 2022.



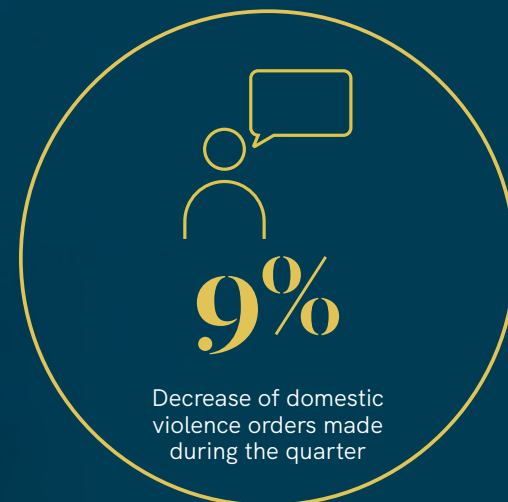
Long-term increase in applications for domestic violence remedy orders

The lack of change in the prevalence of domestic abuse was perhaps reflected in the latest Family Court statistics from the Ministry of Justice, for the quarter July to September 2023.

In that quarter the number of applications made for domestic violence remedy orders was similar to the equivalent quarter in 2022, decreasing by less than 1%.

There were 8,063 applications, requesting a total of 9,271 orders (multiple orders can be applied for in a single application). Most of the orders applied for were non-molestation orders (83%) compared to occupation

orders (17%); these proportions have remained relatively consistent in recent years. Applications for non-molestation orders in July to September 2023 were down by 2%, whereas applications for occupation orders were up, by 4% respectively, compared to the same period in 2022.



And the number of domestic violence orders made during the quarter was actually down 9% compared to the same quarter in 2022. There were 9,222 orders made, 94% of which were non-molestation orders and 6% occupation orders, with non-molestation orders down by 9% and occupation orders down by 8% compared to the equivalent quarter in 2022.

But the overall picture highlights a longer-term increase in the number of applications, with the number made in the quarter getting on for double those made when the current series of statistics began in 2011. Whether this is due to a higher prevalence of domestic abuse since then, to victims having a better awareness of the availability of these orders, or to a combination of both factors, one can only guess.



Similar lack of legal representation

The statistics also give figures for the number of litigants who were legally represented.

Whilst the figures show little change from the previous year, they still make depressing reading when compared to the situation prior to April 2013, when legal aid was abolished for most private law family matters.

In July to September 2023, the proportion of disposals where neither the applicant nor respondent had legal representation was 40%. This was similar to July to September 2022, but was an increase of 26 percentage points compared to January to March 2013.



Correspondingly, the proportion of cases where both parties had legal representation went from 41% in January to March 2013 to 18% in July to September 2023, up 1 percentage point compared to the same period in 2022.

In general, cases where either both parties or the respondent only had legal representation took longer to be disposed of than those cases where only the applicant was represented, or where both parties were without legal representation. This may be thought by some to be a good thing, but it may also indicate that unrepresented litigants may fail to bring relevant matters to the attention of the courts, thus enabling their cases to be dealt with more quickly.



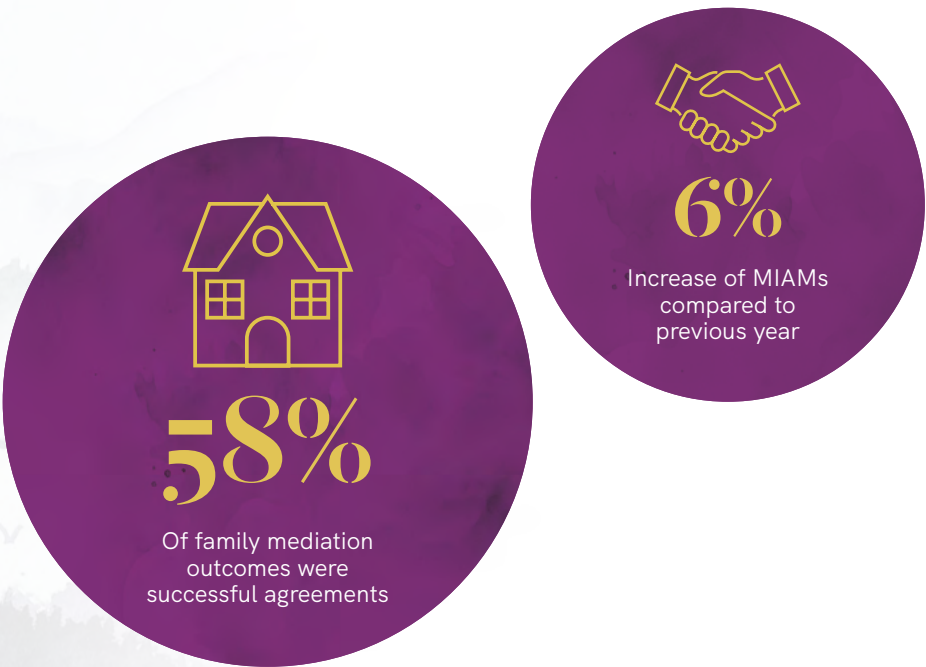
Fewer mediation starts

The Ministry of Justice also published statistics for family mediation in the quarter July to September 2023.

The statistics related both to mediation starts (where the couple agree to refer their case to mediation) and to Mediation Information and Assessment Meetings ('MIAMs'). A MIAM is an initial meeting between one or both parties and a mediator to see if family mediation could be used to reach agreement without using the courts. Anyone wishing to make an application to the Family Court must attend a MIAM unless they are exempt, for example because they are a victim of domestic abuse.

The statistics showed that the volume of MIAMs increased by 6% in the quarter compared to the previous year, although they still stand at just over a third of the level that they were at before legal aid was abolished for most private law family matters in April 2013.

Family mediation starts meanwhile decreased by 20%, although total outcomes increased by 15%, of which 58% were successful agreements. Mediation starts are now sitting at around half of the level that they were at before legal aid was abolished.



Majority of births outside marriage for first time

In January the ONS published its latest statistical bulletin on birth characteristics in England and Wales, for the year 2021.

The bulletin included a particularly striking statistic, which could mark a turning point for family life in this country.

This was the first year that the number of live births registered outside of a marriage or civil partnership exceeded the number of births registered within a marriage or civil partnership, since records began in 1845.

There were 624,828 live births in 2021, of which 51.3% (320,713) were registered to women outside of a marriage or a civil partnership, increasing from 47.2% in 2011.

Similarly, the percentage of births registered to cohabiting parents increased, with 36.5% of all births being registered to cohabiting parents in 2021, compared with 31.2% in 2011.

Whether births outside of marriage will continue to exceed births within a marriage or civil partnership, we will have to see. However, it does seem that we may have reached a watershed, which may have considerable implications for future government policy making.

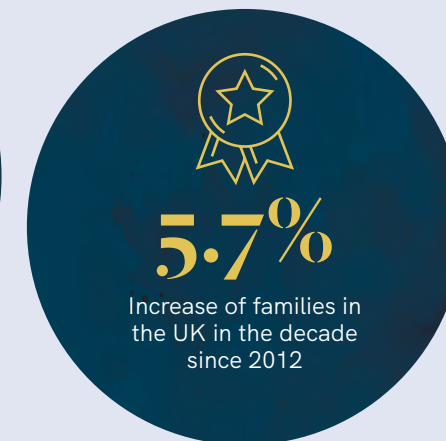
Cohabiting couples fastest growing family type

Continuing the theme, in May the ONS published the latest annual statistics for families and households in the UK, for the year 2022, and these indicated that cohabiting couples are the fastest growing family type.

The statistics showed that there were 19.4 million families in the UK in 2022, an increase of just over 1 million families (5.7%) in the decade since 2012.

Married-couple families remained the most common type of family in 2022 (12.7 million), accounting for 65% of all families. Since 2012, the number of married-couple families has increased from 12.3 million, although this family type has been generally declining as a proportion of all families over time (67% in 2012).

Meanwhile, the statistics showed that opposite-sex cohabiting couples were the fastest growing family type over the previous 10 years. In 2022, these made up 18% of all families (3.6 million opposite-sex cohabiting couple families), an increase from 16% of all families (2.9 million) in 2012. This increase of almost 700,000 families accounted for almost three-quarters of the total growth in the number of families in the UK over the ten-year period.



These figures must surely increase the calls for the introduction of basic property rights for cohabitants ending their relationship.

Same-sex cohabiting couple families accounted for 0.6% and civil-partner couple families (both same sex and opposite sex) accounted for a further 0.6% of all families in 2022.



Effect of Covid on marriages

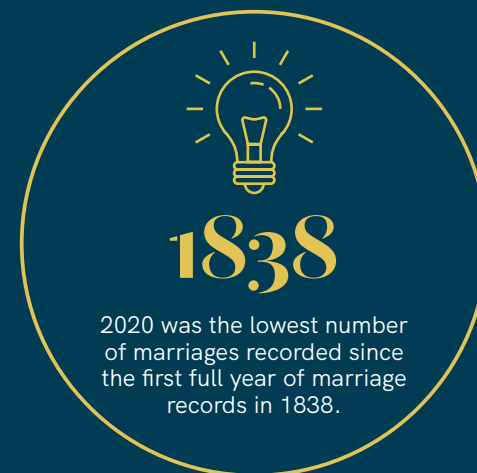
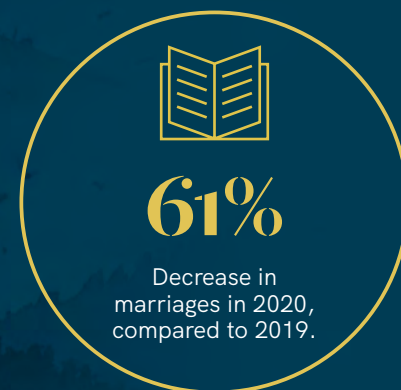
The latest ONS statistics for marriages in England and Wales, for the year 2020, did not tell us what we might usually expect about the popularity of the institution of marriage, because of the effect of the COVID-19 pandemic upon the number of marriages that took place that year.

There were 85,770 marriages in England and Wales in 2020, a decrease of 61.0% from 219,850 in 2019. This is the largest annual decrease ever recorded, and is the lowest number of marriages recorded since the first full year of marriage records in 1838.

What is more, for the first time since records began, marriage rates were lower than divorce rates. There were 7.4 marriages per 1,000 unmarried men and 7.0 marriages per 1,000 unmarried women compared with 8.5 divorces

per 1,000 married men and 8.6 divorces per 1,000 married women. This despite the fact that divorces were also impacted by coronavirus restrictions, which disrupted family court activities.

Obviously, one would expect the figures for 2021 to show a return to 'normal' marriage figures, although whether the pandemic will mean that some couples who previously intended to do so will never tie the knot, we may never know.



Legal age of marriage rises to 18

It is perhaps relevant to note here that there was a rare change in the law regarding eligibility to marry in 2023, which may have a small impact upon future marriage statistics.

The minimum age at which anyone could marry in England and Wales was fixed at 16 for nearly a hundred years. However, that changed in February 2023 when it was raised to 18.

When parliament fixed the minimum age at 16 in 1929 it also stipulated that anyone under 21 could only marry with parental consent. That stipulation was changed in 1987 when the age at which parental consent was required was reduced to 18.

And that has also been the position in relation to civil partnerships, since they were introduced in 2005.

But now 16 and 17-year-olds will no longer be able to marry or enter into a civil partnership under any circumstances, even if they have parental consent.

The change was brought in for several reasons, in particular to protect children from forced marriage.



Summary

There are, perhaps, three things that stand out from the above.

Firstly, that the new no-fault divorce law, introduced in 2022, does not appear to have led to an increase in the number of couples divorcing, as some had feared.

Secondly, that the Family Court still faces serious problems with its high workload. This is perhaps most worryingly demonstrated by the increased time that private law children cases are taking to finalise. This delay is having a serious adverse effect upon the children involved, as pointed out by the President of the Law Society.

Lastly, the ONS statistics regarding the increase in couples cohabiting and in the number of children being born outside of marriage demonstrate once more a major shift in society. As mentioned above, the time for giving cohabiting couples basic property rights on separation must surely be getting closer.



The latest ONS statistics for marriage are [here](#), their statistics for birth characteristics are [here](#), and their family and household statistics are [here](#). The latest Ministry of Justice/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](#).

For more information on this report or to answer any questions, please contact:

marketing@austinkemp.co.uk

Austin Kemp

www.austinkemp.co.uk