

**Ministry of Justice Consultation – “Reducing family conflict:
Reform of the legal requirements for divorce”**

A Response by

The Chartered Institute of Legal Executives (CILEx)

[December 2018]



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1. Summary of Recommendations

- 1.1. Divorce/dissolution should, in most circumstances, be considered as a last resort option (4.1-4.2)
- 1.2. The grounds of 'irretrievable breakdown' should be satisfied even where only one party believes this to be the case. (4.3)
- 1.3. The current system of divorce/dissolution of civil partnerships, which relies on proving one of five facts, is no longer fit for purpose (4.4-4.12)
- 1.4. Abolition of the three fault-based facts (adultery, behaviour, desertion) is in better alignment with family law principles for promoting conciliation. (4.5-4.6)
- 1.5. In abolishing the two separation-based facts (2 years, 5years), there must be sufficient 'breathing space' retained within the divorce/dissolution process to provide parties with sufficient time for reflection and the opportunity to reconsider. (4.7-4.9)
- 1.6. It should be possible to make joint petitions/applications for divorce/dissolution; however, this should not negate the possibility of bringing such proceedings on an individual basis. (4.13-4.14)
- 1.7. The two-stage process should be retained along with its current mandatory timeframe, i.e.: 6 weeks and a day, measured as the period between issuing both decrees/orders. (4.15-4.20)
- 1.8. There should be exceptions in which the mandatory timeframe for divorce/dissolution procedures can be reduced (such as in cases of domestic abuse) or extended (such as in complex cases involving children). (4.21-4.23)
- 1.9. The right to contest should only be removed where the fault-based facts have been abolished; all persons have a right to defend themselves against allegations made against them. (4.24-4.25)
- 1.10. Exceptions should be in place for special circumstances in which a person may be entitled to contest the divorce/dissolution proceeding. (4.26-4.27)
- 1.11. As a general rule, the first-year ban on filing for divorce/dissolution should be retained, however exceptions should be considered for situations of domestic abuse and forced marriage. (4.28-4.29)
- 1.12. The power of the Queen's Proctor should be retained as a useful protection against fraudulent claims. (4.30)
- 1.13. The power of the court to require legal practitioners to certify whether they have discussed the prospect of reconciliation, and to stay proceedings where there is a prospect of reconciliation, should be retained. (4.31)
- 1.14. Proposals to reform the divorce/dissolution process needs to take into account careful consideration of vulnerable persons, including the acute grievances faced by those in minority communities. (4.32-4.35)

2. Introduction

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. Amongst these more than 2,500 specialise in family law.
- 2.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 2.3. This response includes contributions from some of CILEx's members working in family law. CILEx liaised with practitioners through its Family Law Specialist Reference Group and conducted a survey of members into their experience of laws relating to divorce and the dissolution of civil partnerships. These are expanded in more detail below.

3. General Points

- 3.1. Family law has evolved to see a departure from the generally adversarial nature of our justice system. With family law principles advocating for the use of a conciliatory approach (minimising harm for all involved), it stands to reason that a divorce process predicated on finding fault is no longer fit for purpose.
- 3.2. CILEx nonetheless recognises the need for divorce/dissolution of civil partnerships to have a requisite level of formality to ensure that the process does not lose its significance.
 - 3.2.1. Survey respondents have not only called for this in order to protect the sanctity of marriage/civil partnerships, but to further prevent these legal relationships from being exploited as a tool for economic gain.¹
 - 3.2.2. 84.76% of survey respondents thus maintained that the courts should still have involvement in the process of divorce/dissolution. Respondents were of the opinion that the court's role here is justified both procedurally, on the basis that a marriage/civil partnership is a legal contract and thereby its termination should be under those auspices; and substantively, to safeguard the interests of all involved, particularly where there are children, vulnerable persons or victims of domestic abuse concerned.²
- 3.3. CILEx tentatively welcomes the proposed notification-based procedure, provided that the two-stage process is maintained along with sensible time limitations to safeguard against instant divorce/dissolution.
 - 3.3.1. In recognition of divorce/dissolution as a life defining decision, this two-stage process is essential in affording some time for parties to reflect on their decision, whilst allowing the courts to identify and safeguard against fraudulent petitions/applications.
 - 3.3.2. There was a general consensus amongst survey respondents that the additional one-year time restraint against filing for immediate divorce/dissolution further ensures that these types of proceeding continue to be valued as a last resort option.

4. Responses to Specific Questions

Q1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce?

- 4.1. The decision to legally separate needs to be a well-considered one, with survey respondents cautioning against the creation of instant divorce/dissolution which could risk undermining the sanctity of marriage/civil partnerships and open the system up to abuse.

¹ Member comments cautioned that if divorce/dissolution becomes too easy, there is a risk that marriage/civil partnerships could be used as a means of profiteering, claiming temporary tax benefits and even overcoming barriers to immigration (particularly post-Brexit).

² Respondents further pointed out the facilitative role that courts play in helping to resolve financial disputes, order childcare arrangements and protect against fraudulent petitions.

4.2. CILEx thereby welcomes that divorce/dissolution needs to be predicated on parties having considered any alternatives to, and, consequences of, such a decision. Retaining ‘irretrievable breakdown’ as the sole ground fulfils this aim, in recognising divorce/dissolution as a final resort.

4.2.1. One survey respondent commented: *“There should be a reason for divorce - even if the reason is we just aren’t compatible (i.e. no fault) - because it is needed emotionally, and this consultation is forgetting the emotional side involved in the legal process. If people are forced to divorce too quickly without time to process and heal we are going to see a rise in mental health implications.”*

4.3. 79.31% of survey respondents agreed or strongly agreed that irretrievable breakdown is still the correct test to use. However, it was suggested that this ground needs to be construed liberally, so that even in situations where only one party believes the relationship has broken down, this should still suffice.³ Survey respondents cautioned that the alternative could see petitioners/applicants forced to continue in an unhappy or loveless relationship which could have psychological repercussions and pave the way for controlling and/or abusive relationships.

4.3.1. CILEx is mindful that there are arguments against unilateral divorce, however finds this approach to be realistic in recognising that a marriage/civil partnership, which fundamentally requires there to be commitment from both parties, shall no longer exist in substance where one party is no longer committed to it.

4.3.1.1. However, CILEx does recognise the implications that this approach could have in communities where divorce still carries with it a stigma. It is therefore encouraged that more needs to be done to improve awareness and the availability of support mechanisms where this is the case.

4.3.1.2. At the same time, it has been pointed out that in communities where the rights and treatment of divorcees (particularly women) is lacking, care needs to be taken to safeguard interests and protect vulnerable persons post-separation.⁴

Q2. In principle, do you agree with the proposal to replace the five facts with a notification process?

4.4. CILEx concurs with the consultation paper’s finding that the current five facts are no longer fit for purpose.

4.5. With regards to the facts of adultery, behaviour and desertion, CILEx agrees with findings that the fault-based nature of these claims is likely to instigate conflict and aggravate later attempts at finding a consensus for post-separation arrangements.

4.5.1. 74.23% of survey respondents agreed or strongly agreed that these three facts are premised on finding fault, which promotes conflict and is thereby

³ 77.14% of survey respondents agreed or strongly agreed that divorce/dissolution should only require one of the parties to believe that the relationship has broken down for the ‘irretrievable breakdown’ test to be satisfied.

⁴ Survey comments warned of the issues around the triple talaq provisions which have led to human rights abuses for women in the UK. Concerns were raised that there may be inadequate protections to safeguard divorcees from the emotional and financial burdens that this form of instant divorce can give rise to.

contrary to family law principles. Survey respondents commented that in practice these facts can have the effect of inciting feelings of guilt and poor self-worth, with acute concerns raised of the impact this can have especially when children are involved.

- 4.5.2. Anecdotal evidence suggested that the use of these facts has often frustrated non-litigious mechanisms for dispute resolution (such as mediation) and presented obstacles at later stages of the divorce/dissolution process where there is a general need to find resolutions.
 - 4.5.3. In addition, survey results highlighted that use of these facts in practice will often lead to an abuse of process, whereby allegations are constructed against respondents in the hope of expediting the divorce/dissolution proceeding. CILEx recognises that the impact therein is to undermine the current process and may render the three fault-based facts as somewhat illusory in practice.⁵
- 4.6. It is noted however, that a minority of survey respondents did express caution at the idea of abolishing the three fault-based facts; suggesting that they can sometimes aid in the healing process where a respondent's actions had been the primary cause of relationship breakdown.
- 4.6.1. In appreciation of these concerns, CILEx encourages the ongoing endeavours of advice providers and support services in helping parties during the separation and post-separation stages. Such services guide parties throughout the healing process and shall help ensure that the removal of fault-based facts does not in any way belittle the harm that the acts of adultery, certain behaviours and desertion can cause to petitioners/applicants.⁶
- 4.7. With regards to the facts preceded on 2 years or 5 years separation, 82.29% of survey respondents agreed or strongly agreed that the separation terms are lengthy and as a result may be burdensome and unrealistic for parties.
- 4.7.1. Anecdotal evidence suggested that this can cause inconveniences for clients in practice, preventing them from moving on with their lives post-separation and causing acute pressure upon financially weaker parties who have to wait for the separation term to end before financial orders can be made.⁷
- 4.8. CILEx presented survey respondents with 4 options for reform: a). to retain all the facts but with reduced time periods under the two separation-based facts; b). to eliminate the three fault-based facts but retain the two separation-based facts; c). to eliminate the three fault-based facts and reduce time periods under the two separation-based facts; or d). to eliminate all of the facts.

⁵ These findings were also documented in: Liz Trinder, Debbie Braybrook, Caroline Bryson, Lester Coleman, Catherine Houlston and Mark Sefton, *Finding Fault?: Divorce Law and Practice in England and Wales* (London: Nuffield Foundation, 2017).

⁶ Of course, it shall still be possible in extreme situations for parallel claims to be made against respondents, e.g.: cases of domestic violence, harassment etc.

⁷ One member commented: *"It can be unfair on a financially weaker party to have to wait at least two years but possibly five years for a divorce or dissolution so that a financial settlement can be agreed. Parties could dispose of assets in that time which affects the financial settlement. It is unfair to hold parties in a loveless or unhappy marriage/ civil partnership to have to wait to finally end the relationship and move on with their lives. People can move on in that time but then old feelings are brought up and can affect new relationships or families because of the stress of a divorce/ dissolution."*

- 4.8.1. 58.07% of survey respondents supported options which eliminated the three fault-based facts of adultery, behaviour and desertion, and 62.37% of survey respondents further supported options which reduced time periods under the two separation-based facts.⁸
- 4.8.2. A sizeable minority of 22.58% of respondents agreed with proposals for eliminating all facts. However, it was noted that a major incentive for favouring alternative options was the ability for the divorce/dissolution procedure to provide parties with time to reflect upon their decisions.
- 4.8.2.1. CILEx recognises the importance of mandating time limitations for divorce/dissolution to safeguard against fraudulent or exploitative marriages/civil partnerships, and to ensure that parties turn to divorce/dissolution as a last resort. This is conducive in encouraging parties first and foremost to take careful consideration of, if not make attempts to utilise, any other options available to try and salvage their relationship. To this end, CILEx agrees with subsequent proposals to retain the one-year limitation in bringing petitions/applications.⁹
- 4.8.2.2. Provided this one-year bar is retained, CILEx would feel assured that notwithstanding replacement of all five facts with a notification procedure, the divorce/dissolution process shall still be capable of providing sufficient 'breathing space' for the parties to ascertain whether divorce/dissolution truly is the right option for them.
- 4.9. Provided the two-stage process and time limitations are maintained, CILEx welcomes the proposed notification procedure. In this circumstance, replacing the five facts with this new proposal we believe would promote amicable relations, and help clarify the procedure for clients and litigants in persons.
- 4.9.1. Anecdotal evidence from members suggested that the current system, whereby 'irretrievable breakdown' must be supplemented with one of the five available facts, is often misunderstood by clients. In the context of litigants in persons this misunderstanding was commented to have exacerbated difficulties in agreeing the content of proceedings leading to an increase in costs, time and the likelihood of contested proceedings.
- 4.9.2. Survey results also identified that the current fact-based system can lead to misunderstandings amongst parties who mistakenly believe that any claims made about their behaviour shall have an impact on related proceedings (e.g.: financial settlements and childcare arrangements). Abolition of the five facts at this stage can therefore help to overcome this misconception, making the process less stressful overall for both parties.
- 4.10. A majority of survey respondents agreed or strongly agreed that utilising the proposed notification-based procedure would be: realistic (69.41%), cost effective (65.12%) and well-balanced in the interests of both parties (58.62%).
- 4.10.1. With regards to the latter point, CILEx stresses that any replacement divorce process needs to ensure that there remains an adequate disclosure of the petition/application to the respondent so that they are aware of proceedings and are provided with time to emotionally and financially

⁸ General suggestions were made for the prescribed time limits to be reduced to somewhere within the region of 1-1.5years (for consent petitions) and 1.5-2years (for non-consensual petitions).

⁹ See para 4.29.

prepare; this should be the case irrespective of if the right to contest is removed.

- 4.11. In addition, a majority of survey respondents (50.6%) did not believe that the proposed notification-based procedure would dilute the significance of marriage as an institution.
- 4.11.1. Survey comments were largely of the opinion that wider sociological factors have a greater role to play in determining the significance of such relationships,¹⁰ and 64.37% of respondents thereby opposed the idea that a notification procedure should be supplemented by any form of mandatory relationship counselling.¹¹
- 4.12. While some members suggested retaining the current system and introducing a no-fault option, so that petitions/applications could be filed by parties who do not wish to make allegations against one another, we feel this approach would not be as effective in mitigating feelings of resentment and conflict as eradicating the fault-based approach altogether would, and may overly complicate the procedure for clients and litigants in persons.

Q3. Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party?

- 4.13. CILEx welcomes this proposal in bringing divorce/dissolution proceedings in better alignment with the family law focus of conciliation. 83.53% of survey respondents agreed or strongly agreed with the proposal to introduce the ability to file joint petitions/applications. Where both parties are in agreement, it would help facilitate the process and endorse a more constructive approach for the parties to be able to form a dialogue and accept dual responsibility within the decision to separate.
- 4.13.1. 81.18% of survey respondents felt that joint petitions/applications could help minimise conflict. Survey comments highlighted that this would help counter situations in which a respondent feels as if it is only the petitioner/applicant that has control over the separation process; something which exacerbates tensions at an already very sensitive period.
- 4.13.2. Anecdotal evidence from respondents suggested that this would be useful in a number of cases that they deal with, having come across many situations where both parties have a shared intention to separate.¹²
- 4.13.3. However, a small minority of 8.24% of survey respondents were not convinced that this would greatly reduce conflict, pointing to issues of asset

¹⁰ Member comments included: *"I don't think marriage has the same significance as it did in any event. Making divorce easier is unlikely to change that. It's not the process that deters people, it's all the ancillary stuff that makes it protracted and unpleasant."*; *"If the Parties have made up their minds that a marriage is not working I do not think it will dilute the significance of marriage. I don't think it will even cross their minds."*

¹¹ Survey respondents strongly cautioned about the dangers that mandatory relationship counselling could have on domestic abuse victims in particular.

¹² Survey comments included: *"In most applications based on the respondent's behaviour, the respondent has usually agreed the allegations before the application is issued. It therefore makes sense to...allow parties to file a joint application as most applications are usually agreed by both parties anyway."*; *"In practice I get lots of queries from couples whose marriage has broken down mutually and they wish to be divorced. They see having separate solicitors as pricey, as well as thinking this may cause conflict."* Often parties agree that a marriage has broken down irretrievably and a joint petition would allow costs to be born equally and parity rather than having one person divorce the other."

distribution, finances and childcare arrangements as the most acute period for conflicts to arise. CILEx nonetheless recognises that the filing of joint petitions/applications would help to advocate a more collaborative approach which, as compared with the current state of affairs, may facilitate a stronger foundation from the outset for parties to reach an accord over these more contentious stages.

- 4.14. Nevertheless, the ability to bring a unilateral petition/application is still necessary to account for situations where one party does not agree with the separation, and CILEx thereby strongly encourages that this option should be retained.

Q4. We have set out reasons why the Government thinks it helpful to retain the two-stage decree process (decree nisi and decree absolute). Do you agree?

- 4.15. In appreciation of how significant the decision to divorce/dissolve civil partnerships is, with major implications for both parties and third-party family members, it is sensible that there should be opportunities within the process for parties to change their mind.¹³

4.15.1. The two-stage decree process is welcomed in providing petitioners/applicants with a crucial period of reflection in which to either reassess their decision or solidify their resolve.¹⁴

4.15.2. 75.32% of survey respondents agreed with retaining the two-stages and noted, in either case, that a 6-week period is not onerous nor inconvenient, but rather facilitates processes by providing time for parties to resolve their finances and other relevant matters before the decree absolute is issued.

- 4.16. The two-stage process is similarly important in retaining a requisite degree of formality throughout the divorce/dissolution procedure to reflect the gravity of the decision being made. CILEx regards the two-stages as relevant in providing the overall process with a clear structure as well as some breathing space.

- 4.17. Survey comments further highlighted the benefits of this interval in allowing for the Queen's Proctor to safeguard against fraudulent petitions/applications.¹⁵

Q5. What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured?

- 4.18. 64.56% of surveyed respondents agreed or strongly agreed that there should be a mandatory minimum timeframe for divorce/dissolution, placing limitations on when it is permissible for the courts to issue a decree absolute/final order. This is in keeping with the majority view to retain the two stages of the divorce/dissolution process so

¹³ It is for the same reasons that survey respondents have favoured retaining the power of the courts to intervene where there is a prospect of reconciliation, see: paragraph 4.31.

¹⁴ One member commented that: *"I have, on a number of occasions applied to rescind Decree Nisi. It is a significant event for some parties which does cause them to reflect on their marriage and its imminent dissolution. A period of 6 weeks is not onerous and should remain."*

¹⁵ See para 4.32.

that there is some breathing space for parties to reflect on their decisions and negotiate financial and childcare arrangements.

4.19. 61.04% of survey respondents agreed with retaining the current minimum period of 6 weeks and a day and 64.86% of survey respondents agreed with retaining the current method for measuring the minimum time period, i.e.: the period between the two decrees/orders.

4.19.1. One of the motivating factors behind retaining this measurement was the importance of resolving financial disputes prior to issuing the decree absolute/final order.¹⁶

Q6. Are there any circumstances in which the minimum timeframe should be reduced or even extended?

4.20. Survey results identified the following exceptions in which it should be possible to reduce the minimum timeframe: a). where there is domestic abuse, b). where there are extreme cases of behaviour (e.g.: stalking), c). cases of forced/arranged marriages, d). situations of terminal illness, e). where there have been criminal convictions against the respondent, f). where either party is elderly, g). urgent medical grounds, h). where there is a danger to the party and/or any children involved.

4.21. A majority of respondents agreed with retaining the current exceptions which enable the courts to expedite the decree absolute/final order.

4.21.1. 85% of respondents agreed with retaining the exception for cases of imminent death. This was in light of the practical benefits that expediting the divorce/dissolution proceedings can have, i.e.: providing time to assist in resolving the estate, safeguarding the rights of loved ones given the impact that divorce/dissolution proceedings can have on inheritance, and facilitating early remarriage.

4.21.2. 82.5% of respondents agreed with retaining the exception for cases where there is danger to a party/domestic abuse so that the divorce/dissolution procedure is able to protect vulnerable persons and minimise harm to the parties involved. Observations were made that the procedure should place emphasis on trying to sever any control that a dominant party has over their victim, as soon as possible.

4.21.3. 53.16% of respondents agreed with retaining the exception for cases where there is a pregnant petitioner in situations where the child is by a third party. However, it was suggested that as societal attitudes have softened towards babies born outside of wedlock, this exception is no longer as necessary as before.

4.22. Survey results identified the following exceptions in which it should be possible to extend the minimum timeframe: a). complex cases involving children, b). where

¹⁶ Some respondents suggested that there should be an additional prerequisite for all financial and childcare arrangements to be determined prior to the courts having the power to issue a decree absolute/final order.

there are complex financial issues, c). financial hardship cases, d). where one party is located overseas, e). where there are concerns that mitigating factors may have attributed to the petition/application (e.g.: mental health issues), f). where there is a party with limited capacity.

Q7. Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?

4.23. A majority of respondents (55.26%) agreed that the minimum period on nullity cases should reflect the reformed minimum period in divorce/dissolution cases. This opinion was largely voiced to ensure consistency within procedures.

4.23.1. Nevertheless, there was a dissenting opinion that as nullity cases are concerned with acknowledging 'non-existence' of a marriage/civil partnership there is no reason why they should not be immediate.

Q8. Do you agree with the proposal to remove the ability to contest as a general rule?

4.24. 57.14% of CILEx members responding to our survey agreed with the proposal to remove the right to defend. However, member agreement was largely voiced in the context of situations where there have been no allegations made about the conduct of respondents.

4.24.1. Amongst survey results, those who both agreed and disagreed with this proposal commented that where the facts of adultery, behaviour and desertion are retained, respondents should be entitled to challenge assertions and defend themselves against accusations (as is the case in all other areas of law).¹⁷ CILEx maintains that it is a principle of our justice system that all persons should retain the right to dispute any allegations that have been made against them.

4.24.2. Nevertheless, CILEx recognises that should proposals to abolish fault-based facts be realised, it logically follows that the only grounds for contesting a petition/application would be based on contentions that the marriage/civil partnership had not irretrievably broken down. In such situations, removing the right to defend, as a general rule, is welcomed. This is in keeping with aforementioned views,¹⁸ for advocating a more liberal interpretation of 'irretrievable breakdown'; that irretrievable breakdown should only require for one party to wish to separate.

¹⁷ One member highlighted the social repercussions that might otherwise be faced if a respondent is not entitled to contest an allegation made against them: *"We have no other situation where someone isn't allowed to defend themselves for one. And secondly the accusations against them could have serious consequences not just practically e.g. losing job but socially – e.g. if husband says wife cheated and she can't defend herself, in Asian community she will be ostracised."*

¹⁸ See paragraph 4.3.

- 4.25. Survey comments further identified the risks that the right to defend currently pose on victims of domestic abuse, with abusers able to aggravate the process by creating time delays and extra costs.
- 4.26. CILEx does however maintain that there are certain situations in which a respondent should be able to retain the right to defend. These are expanded below, in response to the next question.

Q9. Are there any exceptional circumstances in which a respondent should be able to contest the divorce?

- 4.27. CILEx members responding to our survey identified the following circumstances in which a respondent should be able to contest the divorce: a). where divorce is an issue due to religious reasons, b). where there are concerns of the petitioner's mental capacity, c). in situations of financial hardship (where there should be scope for delaying the process), d). where parallel allegations of a criminal nature have been made, e). where it is suspected that the petitioner/applicant is acting unlawfully/fraudulently, f). where there is an abuse of process, and g). where there are any damaging particulars that could impact upon other proceedings.
- 4.27.1. It was further suggested that these exceptions should not be overly prescribed for in statute, providing some judicial discretion to assess situations on a case by case basis.

Q10. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place?

- 4.28. As previously mentioned,¹⁹ CILEx supports the notion that there should be a time limitation against filing for divorce/dissolution to encourage parties to seek alternative solutions before choosing this course of action.
- 4.28.1. 62.50% of survey respondents agreed or strongly agreed with retaining the one-year limitation in acknowledgement that the first year of marriage/civil partnership can be especially tricky to navigate.²⁰ Members noted that the time limitation has been gradually reduced over the years, however felt that a further reduction is not necessary as one year is a sufficient period of time to 'test' the relationship whilst not being overly onerous on the parties. Members further commented that without this limitation the nature of marriage/civil partnerships as a 'commitment' would be diluted, and the risk of exploiting these relationships would be likely to increase.

¹⁹ See paragraph 4.8 above.

²⁰ One member noted: "[The] first year of marriage is always hard for people and especially for those in Asian communities where arranged marriages are rife. They should be given the time to be sure it's definitely not working...especially so for Asian communities where the stigma is on women when they get divorced..."

- 4.29. Nevertheless, it was brought to CILEx’s attention that in circumstances of domestic abuse and forced marriage, the one-year limitation does pose problems for vulnerable persons in practice.
- 4.29.1. We acknowledge that there are legal remedies available in, for example, instances of domestic abuse (such as non-molestation orders and occupation orders), however CILEx iterates that the divorce/dissolution procedure must ensure that it is able to protect vulnerable persons, including from re-traumatisation at a later date, and that the principle of natural justice is at play where it is arguable that a victim should not have to remain married to an abuser for an extended period.
- 4.30. We would therefore welcome reassessment of this first-year limitation in considering domestic abuse and forced marriages as an exception.²¹
- 4.30.1. Should these exceptions come into play, it is recognised that safeguards shall be warranted to prevent false allegations from being made against respondents for the purposes of expediting proceedings. Accordingly, these exceptions should require a requisite level of evidence to ensure the legitimacy of claims.²²
- 4.31. A handful of member comments additionally raised the difficulties that this limitation can cause in situations of adultery. CILEx recognises however, that the role of judicial separation/separation orders may be able to facilitate in this regard. A distinction is drawn here between adulterous circumstances and circumstances involving vulnerable parties (where an exception to the first-year ban can be justified in preventing the perpetuation of victimhood).

Q11. Do you have any comment on the proposal to retain these or any other requirements?

- 4.32. 65.75% of respondents showed support for the Queen’s Proctor as a useful safeguard against fraudulent petitions/applications and as a deterrent against the exploitation of marriage/civil partnerships.
- 4.33. Majority of survey respondents further expressed agreement that the court should retain its power to make rules requiring legal practitioners to certify whether they have discussed the possibility of reconciliation (61.33%) and to stay proceedings if there is a prospect of reconciliation (76%).
- 4.33.1. The reasons for retaining these powers echo CILEx’s findings that divorce/dissolution should be regarded as a last resort, utilised only where

²¹ Member comments included: “If the reason is domestic abuse of any nature then to force someone to continue to be tied to someone who is/has been abusive, is, in itself, abuse in my view. Therefore, if this is the reason for dissolution then the one-year rule should not apply.”; “in the case of a ‘so called forced marriage’ I’d say the sooner the better.”; “[The current limitation] can restrict the court in making some orders such as domestic violence...”; “I understand the current limitation however those who marry could then find out they have an abusive husband/wife and are unable to divorce for another year.”; “I agree they should be made to last the full year unless there are exceptional circumstances... E.g. domestic abuse.”

²² CILEx appreciates that this may be easier to achieve in the context of domestic violence cases, in which there is already an existing mechanism for proving domestic abuse, and/or where existing protections (such as non-molestation orders) could suffice in legitimising claims.

the alternative options for attempts to reconcile have already been considered.

Q12. We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.

4.34. In reforming the divorce/dissolution process care must be taken to safeguard the interests of vulnerable persons. Herein, CILEx stresses the importance of facilitating victims of domestic abuse throughout proceedings and eradicating any barriers which may empower a dominant partner to continue exerting control over their victim.

4.34.1. 36% of survey comments identified this particular group as more at risk of being disadvantaged by changes to the divorce/dissolution process.²³

4.35. CILEx further highlights the acute grievances that may be faced in some minority communities where situations of forced or arranged marriage may be more prevalent, and/or where the rights and protections afforded to spouses within marriage/civil partnerships are unduly weighted to one party (i.e.: cases where there is a substantially weaker financial party). In addition, care and sensitivity must be paid to supporting vulnerable persons in communities where there is still stigma associated with divorce, in order to protect the interests of divorcees post-separation.

4.35.1. 32% of survey comments identified these particular groups as more at risk of being disadvantaged by changes to the divorce/dissolution process.

4.35.2. It was also highlighted that the interests of non-English speaking parties need to be considered.

4.36. Further attention should be paid to protecting the interests of those with disability (both mental and physical), as well as elderly and pregnant persons.

4.36.1. CILEx emphasises that protections need to be in place to prevent such persons from being exploited through abuses to the institution of marriage/civil partnerships.

4.37. Survey respondents highlighted the increase of litigants in persons within family law more broadly, and the likely increase of unrepresented parties should these proposals be implemented. Safeguards to ensure that both the petitioner/applicant and the respondent has access to independent legal advice where needed should be ensured.²⁴

²³ One member commented that in particularly sensitive situations such as domestic violence, care needs to be taken on both sides: “people subjected to D[omestic] V[iolence] but also people falsely accused of D[omestic] V[iolence].”

²⁴ Member comments included: “As long as there is an ability for a partner to obtain legal advice, free if their means are low, I see no group [that is more at risk of being disadvantaged by the changes].”

For further details

Should you
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