



## 'No-Fault Divorce' – One year on

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Today's Family Lawyer

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Thursday 6th April 2023 marks 1 year since the changes to the Divorce, Dissolution and Separation Act enacted so-called “No-Fault Divorce.” Discussion over the updated legislation continues to rage and it’s full impact is yet to be seen. In the run up to the anniversary Today’s Family Lawyer has been taking the temperature of industry sentiment.

Figures out this week indicate a significant jump in applications. There were 24,273 divorce applications made between October and December 2022 under the new legislation, an increase of 5% from the same quarter in 2021, according to the Ministry of Justice.

Applications for divorce rose by 11% last year to 119,709, the most since 2012. And since 6th April 2022, there were 89,123 applications made (78% from sole applicants, 22% from joint applicants). There were also 21,507 conditional orders made under the new law and 7,453 final orders.

Writing in *The Times* Francesca Davey of Nockolds suggested that the introduction of no-fault divorce was “turbo-charging hasty DIY divorces” with a freedom of information request showing the number of DIY divorce applications outnumbered those made by solicitors by more than two to one.

### **Nicholas Fairbank, Barrister and Head of Matrimonial Finance at 4PB, said:**

*“Has the system delivered as it should in its first year? Whilst not everything has gone entirely to plan, overall it’s probably a decent enough 7 out of 10.*

*It is certainly a two-tier process: those who can afford the £593 fee can use the streamlined digital portal service. After a mandatory wait of 20 weeks they can then proceed to a conditional divorce order. This period of reflection allows the other spouse the opportunity to take some much-needed advice. Applications for a final divorce order are being processed promptly, often the same day.*

*Tier two, by contrast, for those receiving legal help remain paper-based and they often struggle to submit the correct paperwork to prove eligibility for fee exemption. The experience of ‘no fault’ divorce for the poor is, for sure, significantly more faulty than for the rich.”*

One of the hopes for the legislation was an [end to the combative language of family separation](#) with The Family Solutions Group calling for a change in the language used around separation. In a survey of professional 99% of respondents said that the language legal professionals use affects both parents' and children's mindsets and behaviour.

**Graham Coy, Partner at Wilsons Solicitors added:**

*"We have had a year of "no fault" divorce – it is a step in the right direction but it was long delayed and, to be honest, has not made a lot of difference. Many of us hoped that by taking the "sting" out of the divorce process itself separating couples might be able to adopt a less confrontational approach to making arrangements for their children and resolving the financial issues when their relationships came to an end. That has been wishful thinking.*

*There are so many ways of finding a resolution but all too often they are ignored and as family law professionals have we can do much better in ensuring that our clients are aware of these and together with their children are able to move on in their lives.*

*Whilst the Court have improved the online portal, where all applications must be submitted, there are still some teething problems, not least when applicant's file their own application, but instruct a lawyer afterwards. This can cause difficulties and time delay.*

*Further, as we are a year in to no-fault, as expected, we are seeing an increase in client's instructing us who submitted their own application and did not give thought to how the finances were to be resolved. This is a major pitfall and why it is so important to seek legal advice ahead of making any application."*

Despite the increase in divorce applications reported this week, **Peter Burgess, partner at Burgess Mee Family Law**, suggests that the driver for this was couples delaying their divorce in anticipation of the changes in April 2022, rather than a societal shift.

*"Contrary to critics decrying no-fault divorce for hastening the demise of marriage, we do not expect the new laws to prompt a long-term rise in the divorce rate. While the number of divorces in April 2023 was double the April 2022 figure, this was likely a temporary spike driven by couples who had been waiting to take advantage of the new no-fault provisions.*

*"The process to apply for a divorce has been streamlined, reducing the early administrative work about who will file, and the basis on which they will do so. It provides separating couples with more certainty and less stress from the outset of their divorce proceedings, encouraging an amicable rather than adversarial approach to achieving fair financial and child agreements.*

*"We have seen an increase in couples using mediation to agree a financial settlement and arrangements relating to their children, rather than heading to the courts, and we expect this trend to continue.*

*"The government is also considering a significant change to the role of mediation within the resolution of disputes to make it mandatory for court users to have attended mediation, suggesting a strengthening of the current use of Mediation Information and Assessment Meetings and more judicial powers to refer into DR processes.*

*"For a reluctant or litigious respondent to the divorce, there is certainly far less opportunity to slow the process down, because it is no longer possible to defend a divorce by objecting to the particulars of a petition.*

*"Meanwhile, the government has recently announced a Law Commission review into the law governing financial provision on divorce. While we await the details of any proposals for reform, any change would need to be the subject of careful consideration, as the current framework provides a discretion that protects from unfair outcomes."*