

'Unreasonable behaviour' most common ground for divorce, new research suggests

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What grounds do people give for wanting a divorce?

That question sits at the centre of a new Oxford University study which charts the changes in the main 'facts' that husbands and [wives](#) give for petitioning for [divorce](#), since the Divorce Reform Act 1969 was

implemented in 1971.

The Act made the irretrievable breakdown of a marriage the sole ground for divorce, which can be established by 'proving' one or more 'facts' - though the 'fact' is not necessarily the cause of the breakdown.

In addition to 'fault-based' facts, which imply blame: 'unreasonable behaviour,' adultery and desertion, the Act introduced two new innovative, 'no-fault' separation facts; one of 2 years' separation with both parties agreeing to divorce, and the other of 5 years' separation without agreement.

It was originally hoped that these 'no-fault' facts would account for most divorces, but, despite an initial uptake, this has not proven to be the case. Over time, people's use of the law for legally ending their unions has changed considerably, with the fault-based fact of 'unreasonable behaviour' most used in recent years, and desertion the least.

John Haskey, an Associate Fellow of Demography in the Department of Social Policy and Intervention at Oxford, examined the available statistical data and some earlier demographic analyses on how current divorce legislation has been used in practice since the Act was introduced.

His analysis finds that after 1971, the facts used most frequently to get a divorce were 'fault' based - 'unreasonable behaviour' for wives, and adultery for husbands. However, since 1991 there has been a modest growth in the relative importance of both the separation facts, for divorces granted to both husbands and wives.

Divorces granted to wives citing adultery peaked in 1987 at 25 per cent, and at 45 per cent of those awarded to husbands. But both proportions fell substantially to 11 per cent in 2016. In the case of husbands, this

trend was counterbalanced by the growth in the proportion of divorces on 'unreasonable behaviour.'

Desertion is now the least used fact for divorce. It was already used proportionally less than others in 1971, but continued to fall afterwards, and represented less than 1 per cent of husbands' and wives' divorces in 2016. Part of the reason for this lack of use may be that respondents must have deserted the petitioner for at least two years before they file for divorce—which is exactly the same wait as for two years' separation with consent.

Petitioners and respondents may together have preferred the latter option, no-fault, less adversarial, fact.

Overall, there is a clear pattern of 'fault' fact divorces combined having steadily increased as a proportion of all divorces from 1971 to 1991, after which they formed a steadily decreasing proportion. As far as the balance between 'fault' and 'no-fault' divorce is concerned, the situation has returned to exactly the same as it was just after the Act was legislated, with 63 per cent of wives' divorces, and 48 per cent of husbands' divorces, being awarded on a 'fault' fact.

The proportion of divorces granted on the grounds of 'unreasonable behaviour' has grown considerably. Of divorces granted to wives, the proportion awarded on 'unreasonable behaviour' has trebled from 17 per cent in 1971 to 51 per cent in 2016. And for divorces granted to husbands, the corresponding change has been even more dramatic, from having been the least used fact in 1971 to the most used in 2016 (from 2 per cent to 36 per cent of husbands' divorces).

Of why the 'fault' facts have been preferred, and in particular 'unreasonable behaviour,' John explains: "Divorcing couples have become pragmatic in using the provisions of divorce law, learning, or

being advised, that petitioning on a 'fault' fact ensures a faster divorce than on a separation fact—with 'unreasonable behaviour' providing the fastest. Divorcing wives may well need to obtain ancillary relief urgently, which may explain their greater use of 'unreasonable behaviour' than [husbands](#). Furthermore, the strength of evidence, and level of detail, required for 'unreasonable behaviour' has weakened over the decades, and is now nominal."

He explains: "At present, no petition can be made within one year of marriage, but a petition on adultery or 'unreasonable behaviour' can be made immediately after that, whereas a petition on 2 years' separation can only be made after a further 2 years, and after a further 5 years for 5 years' separation. Hence the separation facts do not stand a 'sporting chance' in the stakes for selecting a winner for a quick divorce, in a 'flight to the swiftest." Much of the criticism of the present law stems from this differential in the speed of obtaining divorce, which can encourage a needless exaggeration of the respondent's failings, and contribute to the conflict and bitterness of the present system. There is divided opinion over the retention of fault as a ground for divorce, and proposals for an entirely fault-free system, but a general recognition of the failings of the current law."

More information: [www.familylaw.co.uk/news_and_c ... d-wales#.W18nbNIzZGN](http://www.familylaw.co.uk/news_and_comments/divorce/wales#.W18nbNIzZGN)

Provided by University of Oxford

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