Reducing Family Conflict:

Reform of the legal requirements for divorce

Relate response to the Ministry of Justice consultation on proposed reform of the divorce laws

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Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce? You may wish to give reasons in the text box.

YES

Irretrievable breakdown provides a simple and clear ground for divorce. Divorce is one of the most stressful life events that some people and families experience, and in this context it is beneficial to keep the process as straightforward as possible. Relate would not support the introduction of other potential grounds for divorce, which could cause further stress for divorcing couples and families by complicating the process.

There is an additional benefit to retaining the sole ground for divorce, in that this actually helps to reinforce the importance of marriage and the commitment that people make when getting married. This may seem a counter-intuitive point at first, but the ground of irretrievable breakdown is there to take account of the fact that sometimes, regrettably, relationships and marriages do deteriorate to the point where they are no longer viable. So divorce provides the solution when relationships have reached this end point – and that point is contained in the very word ‘irretrievable’. So retaining this as the sole ground helps to reinforce that marriage is a serious commitment and not one that anyone should wish to abandon lightly.

1. In principle, do you agree with the proposal to replace the five facts with a notification process? You may wish to give reasons in the text box.

YES

The replacement of the five facts with a notification process would be a positive step towards reducing the high levels of conflict caused by the current system. This and the other reforms being proposed require only minor changes to the law, but will have huge benefits to the wellbeing of individuals, children and families. They will also benefit the public purse as, by reducing conflict, they should help to reduce the negative impacts of conflict on people’s health and wellbeing – many of which end up costing the state money through needing to be treated in health settings.

The three fault facts in particular are associated with increased levels of conflict. In 2017 a survey of divorcing couples found that 62% of petitioners and 78% of respondents said that using fault had the made the process more bitter.[[1]](#footnote-2)

Relate’s response to this question is based on three considerations of the impact of relationship distress on health; inequalities in the current divorce process; and the five facts undermining the work of the relationship support sector.

Impacts of Relationship Distress on Mental and Physical Health

Distressed relationships and relationship breakdown are clearly correlated with negative outcomes in mental and physical health:

* There is an ‘unequivocal association’ between relationship breakdown and general adult ill health as well as more specific conditions such as coronary heart disease and raised blood pressure. This association extends to poor child outcomes.[[2]](#footnote-3)
* People who live in distressed and troubled relationships are three times as likely to suffer from mood disorders (e.g. depression) as people who do not experience such relationship distress.[[3]](#footnote-4)

Given the negative impact of relationship distress on people’s health (and the subsequent financial costs to the state of treating health problems), the divorce process should seek to mitigate, rather than exacerbate, the stress that people already feel at this difficult stage of their lives. The removal of the five facts would clearly be a positive step in this context. Relate strongly supports this proposal and the replacement of the five facts with a notification process.

However, there is an opportunity to go further in mitigating the distress caused by the divorce process. While the removal of the five facts is to be welcomed, the Government should also consider how it can strengthen the provision of relationship support. This would be helpful both to people going through the divorce process and to those who need to establish constructive relationships post-divorce, particularly for co-parenting arrangements where it continues to be in the best interest of children to reduce parental conflict.

There are a range of options open to the Government, including:

* providing additional funding for relationship support organisations;
* signposting from public services and health settings such as GPs surgeries to relationship support organisations;
* providing online information, educational and self-help materials about healthy relationships;
* embedding relationship support in front line public services, particularly those in which people are likely to encounter stressful events and life transitions that frequently trigger relationship stress e.g. benefits and employment services, maternity and early childhood services; and
* developing a campaign to raise awareness of relationship support options and to tackle the stigma associated with seeking help for relationship problems.

This should be part of a concerted strategy across Government departments to support healthy relationships at all stages. The Government’s own evaluation of UK relationship support found that Relate’s relationship counselling resulted in statistically significant, positive changes in individuals’ relationship quality, communication, and wellbeing, according to validated scores of relationship quality, communication and wellbeing, with the effect size particularly large for wellbeing (d=0.85).[[4]](#footnote-5) The same evaluation assessed the cost-effectiveness of Relate’s relationship counselling and found that for every £1 invested the state could see £11.40 in savings.

The proven efficacy of relationship support in maintaining and strengthening relationships, has the preventative potential to reduce conflict and save relationships and marriages before entering into divorce proceedings. Equally, relationship counselling has an important role to play in helping people to split up amicably and constructively, helping to achieve the objective of the wider family justice system of reducing conflict.

Please note that Relate is not suggesting that relationship support should be included in reforms of the divorce law and our suggestion about a cross-Government relationships strategy would need to be taken up by other Government departments and led by a minister with formal responsibility for this agenda across departments. But Relate hopes that the Ministry of Justice will lead the way in championing a more coherent relationship support strategy, drawing together the many initiatives already underway in areas such as adult and children’s mental health (Department of Health and Social Care); relationships and sex education (Department for Education); Reducing Parental Conflict (Department for Work and Pensions); and support for armed services personnel and veterans transitioning back into civilian life (Ministry of Defence). Divorce reform provides a great platform from which to consider how best to reduce conflict in families at all times and not just when relationships are in serious trouble.

Inequalities in the divorce process

Demographic factors suggest an unfairness in how couples choose – or are economically able to choose – which Facts to apply to their case. Trinder et. al. noted that “Middle class couples were more likely to use separation than fault Facts and less likely to use behaviour than working class couples”[[5]](#footnote-6) and that “those in higher grade occupations were more likely to use separation facts than fault Facts.”[[6]](#footnote-7)

It would seem reasonable to suggest - as the Government’s consultation paper notes - that this is often because middle class people are better able to afford the running costs of the separate homes and living arrangements that are necessary while the two and five year qualifying periods for the separation Facts run their course. On the basic point of equality of access, it cannot be right that economic factors lead the less well-off to ‘choose’ the fault Facts which are most likely to stoke conflict and potentially trigger or exacerbate the health problems noted above.

Relate’s own research consistently shows that money worries are the top strain on couple relationships:

* In 2017 over a quarter (26%) of respondents to a survey said that money worries were the top strain on their relationship.[[7]](#footnote-8)
* In 2016 we found that money was the top strain on the relationships of parents with a child under the age of 19, with 41% saying this compared to 26% without a child under 19.[[8]](#footnote-9)

The evidence also shows that financial hardship predicts lower relationship satisfaction and quality[[9]](#footnote-10) and higher psychological distress.[[10]](#footnote-11)

Relate believes that the socio-economic unfairness in the selection of Facts - coupled with the clear links between financial hardship, relationship distress and psychological distress - creates a situation that disadvantages those on lower incomes, exposing them to the risk of higher levels of conflict and, therefore, the risk of higher levels of physical and mental ill health. This is an unviable position for public policy and for this reason Relate again supports the proposal to remove the five facts and replace them with a notification process.

There is also an inequality in the divorce process in that the period of time it takes to achieve the final divorce – the decree absolute – is highly variable according to factors such as whether the fault or separation facts are chosen, and also due to issues such as geography. It would be very beneficial to all parties to have clear boundaries and expectations set about the length of the process. A fixed notification period of six months would ensure that the time period is the same for everyone, and should help to alleviate the stress caused by variable and excessively long and complex time periods in the current system.

A further equalities consideration would be the potential for the process to be manipulated by perpetrators of domestic abuse, or for a victim to feel unsafe to proceed and be forced to remain within an abusive marriage.

The Five Facts Undermine Relationship Support

Relate – and many other relationship support organisations - works tirelessly to support relationships and to help both intact and separating couples, individuals, children and families work through their problems and find a positive way to move on with their lives. We provide both counselling and mediation services and while many people are able to move on to a stronger future in their relationship, in some instances we support people to separate constructively in a manner that reduces conflict and its damaging consequences.

Our highly trained counsellors devote a great deal of their time to helping couples and families communicate better. The communications and listening skills that we help people to develop, have a clear impact on relationship quality. In 2017 – 18 our monitoring data showed that 91% of clients in our adult relationship counselling service said that their communication was better after attending counselling, and 84% felt better able to cope with any difficulties they might face in the future.[[11]](#footnote-12)

It makes little sense for the state to perpetuate a fault based divorce process that exacerbates conflict, while charities like Relate work to reduce it – and do so with limited resources at their disposal. Government should note the effectiveness of relationship support and counselling in helping people to work through their problems constructively and consider how to take learnings from this into a package of information and guidance for people considering or entering the divorce process.

1. 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? You may wish to give reasons in the text box.

YES

In the spirit of reducing conflict, it is appropriate for both parties to be able to give notice of the irretrievable breakdown of their marriage. Relate recognises that in some instances relationships come to an end and we work with the couple to reach this painful decision in as amicable a way as possible and to take a constructive approach to managing their lives afterwards. This is particularly important where children are involved, and it should always be recognised that in a co-parenting situation divorced people will continue to have a ‘relationship’ with each other. In these circumstances it is in everyone’s interest that arrangements are well managed with a view to reducing conflict. The divorce process could facilitate this from the beginning by making provision for both parties to give notice, which in itself is likely to reflect a more collaborative and consensual approach to the ending of the marriage.

We would also support the ability for notice to be provided by one party, as well as both. This is particularly important in the context of domestic abuse, where one party may be the victim of violence, coercive controlling behaviour, or other forms of abuse.

The government’s approach to notice being given by one party or both should be both / and, not either / or.

1. 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?

YES

Relate accepts the principle that a two-stage process is helpful in enabling a couple to consider and agree any practical issues such as arrangements for co-parenting after the divorce has taken place.

A two-stage process would be helpful in providing a period of reflection during which reconciliation may be achieved, where that is possible and is the right outcome for a particular couple. A YouGov survey of over 5,000 UK adults conducted in 2016 on behalf of Relate and Relationships Scotland, found that 10% of those surveyed who were divorced said that, with the right support, “we would have been able to save the relationship and stay together” (5% definitely, 5% probably).[[12]](#footnote-13) The same survey also found that 18% of those surveyed who were divorced, said that, with the right support, “we would have been able to make the ending of the relationship easier to deal with” (8% definitely, 10% probably).[[13]](#footnote-14)

Given that 110,000 couples divorced in 2017 this suggests that a significant number of those marriages might have been sustained, or that the ending of a marriage could have been achieved with less conflict and psychological distress. Once again, this highlights the importance of relationship support and counselling both as a preventative factor in addressing relationship and family breakdown, and in helping to end relationships constructively.

1. What *minimum* period do you think would be most appropriate to reduce family conflict, and how should it be measured? Please give your reasons in the text box.

SIX MONTHS

In the consultation document, the Government observes that, while the current minimum period is six weeks and day, in practice the time period between the two stages of decree nisi and decree absolute is often longer for a variety of practical reasons.

In Relate’s experience of providing counselling to couples and families, there is no ideal period of time or a deadline in which to work through problems. Every couple is different, and will have different support needs, different attitudes, and a range of problems which can often be complex and rooted in their own childhood and upbringing. In some cases a couple might find that some counselling sessions arranged over a number of weeks is sufficient, while others might take significantly longer. This is an important point to consider for couples who may feel that reconciliation might be a potential solution for them and would benefit from some extra time in which to explore this option. For these reasons – along with the practical issues above – we feel that six weeks and a day is too short a timeframe for a couple to reflect adequately on the implications of petitioning for divorce. Relate therefore supports the Government’s proposal of a minimum six month period.

It would also be sensible for the minimum six month period to fall between notification and decree nisi, rather than between decree nisi and decree absolute. By doing this, it would remove any sense that the divorce is a foregone conclusion that might result if the minimum period were to be between decree nisi and decree absolute – which could be seen simply as a waiting game. This would help to emphasise the importance and solemnity of the decision to divorce and allow a sufficient period of time for reflection, making arrangements for childcare post-divorce (where relevant) and – potentially – for reconciliation and the sustaining of the marriage. The provision of information about healthy relationships and signposting to sources of support, such as relationship counselling, would clearly be helpful here. And this should also help to alleviate any concerns that some people may have about reforms to the process potentially undermining the institution of marriage.

1. Are there any circumstances in which the minimum timeframe should be reduced or even extended? If so, please explain in the text box.

NO

It would be beneficial to the large majority of cases for there to be a clear and fixed minimum timeframe that is not open to manipulation or abuse, for example by an aggrieved party falsely claiming an exceptional circumstance or for an abusive and controlling person to pressurise their spouse into extending the period. It will also be beneficial to the business and operation of the divorce courts system itself to have a clearly fixed period, in order to maximise efficiency and to help reduce the variation in the timeframe experienced by people going through the current process.

Relate recognises that some people may feel that this stance is rather stark and we have some sympathy with the view that there should be exceptions for compassionate circumstances. However, overall we feel that exceptional circumstances would be extremely rare and it is in the best interest of the large majority of cases for there to be a clearly fixed period to ensure fairness and clarity of expectations for all parties.

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

The issue of nullity is not one that Relate tends to encounter, so our level of experience here is limited. However, our view would be that if nullity is intended to indicate that a marriage is invalid or illegal, then there is no valid married relationship that could potentially be reconciled. So it would seem sensible to retain the current arrangements for dealing with cases of nullity, rather than reflect any reformed processes for dealing with divorce.

1. Do you agree with the proposal to remove the ability to contest as a general rule? You may wish to give reasons in the text box.

YES

Relate believes that removing the ability to contest (or ‘defend’) as a general rule is both consistent with the other reforms proposed, and a necessary step in itself, towards the goal of reducing conflict in the family justice system.

We note the very recent and timely findings of Trinder and Sefton who have highlighted that the very few cases of contested petitions are caused by the law itself with its provision for finding fault that enables a small number of aggrieved spouses to contest the allegations of fault; that the defence process is expensive, emotionally stressful and procedurally unfair; that defence is open to manipulation by controlling spouses and perpetrators of domestic abuse; and that the “removal of fault would make the concept of defence redundant”.[[14]](#footnote-15)

1. Are there any exceptional circumstances in which a respondent should be able to contest the divorce? Please explain these exceptional circumstances in the text box.

NO

However, there may very occasionally be a case involving the mental incapacity of one or both parties. On such occasions the court will need to assess the validity of the notification, taking into account possibilities such as whether one person has been manipulated or coerced into the divorce process. The court will then need to consider how the matter should be handled.

1. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place? You may wish to give reasons in the text box.

YES

Relate notes that the Government has not seen any evidence to suggest that the current one year bar creates any notable difficulties or that it is necessary to remove it. Retaining the one year bar would help to emphasise the importance of marriage as an institution that everyone should enter into seriously. This would complement our recommendation to place the minimum time period between notification and decree nisi – again, to reinforce the importance of marriage and to provide a sufficient period for reflection (see question 5).

However, we recognise that some people would be concerned about issues such as domestic abuse or forced marriages where there could be clear, legitimate and urgent reasons for petitioning for divorce in the first year of marriage. While we acknowledge the complexity of this issue, we feel that ultimately this becomes a matter for proceedings under criminal law rather than divorce law.

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

Relate recognises that some people will be concerned about the impact of these divorce reform proposals on the institution of marriage; that marriage could in some way be undermined by the changes; and that the proposals might make it ‘easier’ to divorce and therefore increase the divorce rate. However, we believe that these fears are not supported by evidence and that there are better ways to support marriage than by putting unnecessary legal impediments in the way of people whose relationships have genuinely come to an end.

To suggest that these reforms would make divorce ‘easy’ is patronising and does a disservice to the many people who take the deeply painful decision to end a relationship. Trinder et al note that “the decision to end a marriage is not taken lightly. Marriage is highly valued as an institution and as a relationship, and not one that people give up on precipitately”.[[15]](#footnote-16) The same report notes that from the international research on divorce law and divorce rates “there is no evidence that the removal of fault or a reduction in the separation periods in England and Wales would have a significant or long-lasting effect on the propensity to divorce.”[[16]](#footnote-17)

Relationship quality is really the key consideration. There is a substantial body of evidence that demonstrates the importance of healthy relationships to our mental and physical health and overall wellbeing, and of the damage wrought by unhealthy or distressed relationships (see our response to Question 2). The evidence is also clear about the protective effects of healthy relationships and the damaging consequences of distressed relationships, in the context of the happiness or unhappiness of a marriage. For example, Williams found that unhappily married people are at greater risk of poor health than divorced people[[17]](#footnote-18) and there is also evidence to show that single people have lower blood pressure than people in unhappy marriages.[[18]](#footnote-19) And of course, there is a substantial body of evidence that demonstrates the importance of the parental relationship for children’s development and the damaging effect of parental conflict on children’s longer term life chances. For example, Harold et al found that “the quality of parental relationships, level of parental stress, and quality of family functioning also have a significant impact on children’s well-being, in both intact and separated families”.[[19]](#footnote-20)

In other words, an unhappy marriage is bad for individuals, couples, families and children. The proposed reforms to the divorce laws will have a positive impact in helping to reduce conflict and its negative consequences for people’s health and wellbeing.

Relate agrees that marriage should be supported, but it should be supported in the broader context of healthy relationships and people’s relational wellbeing whether they are married or not. The best way to achieve this is for Government to develop a cross-departmental strategy that provides the right information, education, guidance and support to help people live with healthy relationships. In our response to Question 2 we set out the evidence for the clinical effectiveness of relationship counselling; its cost effectiveness and money saving potential for the state; and some practical suggestions for what a relationship support strategy should contain.

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

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13. Ibid. [↑](#footnote-ref-14)
14. Trinder, L. & Sefton, M. (2018) No Contest: Defended Divorce in England and Wales. Nuffield Foundation, University of Exeter. [↑](#footnote-ref-15)
15. Trinder, L, et. al. (2017). Finding Fault? Divorce Law and Practice in England and Wales. Nuffield Foundation. [↑](#footnote-ref-16)
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