



**By Sarah Beskine**

I am a partner at Hopkin Murray Beskine, solicitors and family mediators [www.hmbsolicitors.co.uk](http://www.hmbsolicitors.co.uk). I am a divorce lawyer, mediator and collaborative lawyer. There are unexpected hurdles in the way of negotiating an agreed divorce. In England and Wales, divorce requires you to show that one of you is at fault unless you have lived apart for 2 years and your spouse consents to a divorce (in Scotland: one year). You don't need to have lived in different homes, but you must have had 'separate households' (not sharing living arrangements such as food, washing, socialising and obviously not sharing a bedroom). There was an attempt to introduce a no fault divorce in 1996 but this was scrapped for England and Wales as opponents said it would make divorce too easy.

Divorce gives you the right to use the court to sort out finances too. So to access this power and assistance, you either wait 2 years or you have to divorce on the fault of the other spouse. Clients from countries that allow "no fault divorce", including Australia, Canada, and Sweden, are astonished to find they need describe bad behaviour of their partner in order to divorce.

The ground for divorce is that your marriage has irretrievably broken down, shown by one of 5 reasons: adultery, unreasonable behaviour; or 2 years' desertion, or to live apart for 5 years if you do not have your spouse's consent.

Therefore, you may have to begin the delicate negotiations of separation, including making sensitive arrangements about children, whilst having to show a fault ground for a divorce. This adds further strain. In addition you may have to manage a different system of divorce separation within your religion.

'Unreasonable behaviour' for a divorce requires you to describe 3 or 4 examples of behaviour that an onlooker would agree was not reasonable and that you yourself did not find reasonable.

It is very important that if you find that you have to use 'unreasonable behaviour' to divorce, you do not let it hijack an otherwise amicable divorce. The first communication with your spouse must explain that even though you may both agree to divorce, you will be using 'unreasonable behaviour', otherwise you would have to wait 2 years. Usually the other partner is invited to comment on the exact wording, amend it if they want and only then the wording is sent into the court.

Divorces usually progress in parallel to negotiations about your finances. You will be advised not to conclude the divorce until the finances are sorted out including pensions. If your spouse should predecease you leaving you a widow or widower, you are in a very different position to take over their pension than if you were divorced already.

A word about costs - most solicitors offer a fixed fee for undefended divorce, usually around £500 to £700 plus VAT. However, the bulk of the cost is not the divorce itself, it is in negotiations regarding finance and children.

If you have any specific queries on this or any other aspect of marriage or divorce law or mediation please feel free to email me at [reception@hmbsolicitors.co.uk](mailto:reception@hmbsolicitors.co.uk).

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