support our campaigning for key changes to the family justice system. We've also updated our training and learning offering, expanding it to include online courses.

You will hopefully have seen Resolution's report, "Family Law and Justice", authored by Angela Lake-Carroll. It charts dramatic shifts in the family justice landscape, in terms of technology, government thinking, client needs and consumer behaviour. These insights are instrumental to ensure a clearer understanding of the family justice landscape over the next 12 to 18 months and Resolution's place within it going forward.

After National Conference and the elections it is always exciting to sit down with our new National Committee for these planning sessions, as the mix of experience and new perspectives helps the whole group look at things differently, bringing fresh ideas. Sitting with the staff team also provides a brilliant opportunity to bring in even more diverse ideas and ensure everyone is joined up for the work ahead. I'd like to share a few ideas with you (and these are just initial thoughts at the moment), highlighting the blue-sky thinking from these sessions and the importance of getting many different points of view to contribute to this exercise.

"Legal aid has been an issue ever since the cuts came into place. To feed into the LASPO review, Resolution could look at gathering evidence from member experience and gathering case studies for a potential PR campaign on the real impact of the cuts."

"Brexit is still a big unknown. Resolution may want to think more about 'going global', and building greater links with international practitioners."

"It strikes me that the change in consumer behaviour, and future changes to pricing structures, mean Resolution is well placed to look at changing customer/client expectations. This could be done by creating a more integrated community of family justice professionals and providing training on working holistically, campaigning to the public on the benefit of using a Resolution member, or even just by sharing experiences across regions of the benefits and challenges of working with other disciplines."

Our planning process continues until September when the National Committee discuss and agree the plans and activities for 2019 whilst at the same time having "what does the next three years look like for our members" at the forefront of their minds. If you have any thoughts you'd like to share on what Resolution could be doing for members next year, we'd very much like you to share these with us by emailing *communications@resolution.org.uk*.

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Owens v Owens: Is the tide turning on the blame game?

Sarah Wasaya *Stone King LLP*

Despite the decision, the campaign for no-fault divorce and the impact of the Supreme Court case of Owens v Owens *will be a catalyst for change*

Family law professionals will be well aware of the multiple problems caused by a fault-based divorce system and the many advantages of ending the blame game. If the fault-based facts (adultery, behaviour and desertion) are not used to prove the ground that the marriage has broken down irretrievably, then the only other options are to wait for two years (with consent) or five years. This can be extremely difficult and puts enormous emotional and financial pressure on what is already a troubled time for the parties. Many couples will not be able to afford to live in two separate households and living separately under the same roof for an extended period of time in these circumstances is far from ideal, particularly where there may be children who could be witnessing parental conflict. This results in parties engaging in a blame charade.

Resolution's written case as intervenor in the Supreme Court hearing of *Owens v Owens* succinctly summarises the impact of behaviour allegations as having "a tendency to antagonise and to engender animosity, bitterness and recrimination, and thus to exacerbate and increase the inevitable trauma of the breakdown of the marriage. It may also have an adverse knock-on effect on the ability of the parties to resolve the consequential issues as to

their financial affairs and as to the arrangements for their children, and as to the future relationships between all involved, and may in such situations result in substantial legal costs…" It is for these very reasons that Resolution has for many years been campaigning for no-fault divorce.

The campaign

The Solicitors Family Law Association, which later evolved into Resolution, formed an integral part of the divorce reform debate which led to the Family Law Act 1996. It is rather unfortunate that the provisions in this Act which introduced no-fault divorce were not implemented and were repealed in 2014.

In February 2015 Resolution launched "A Manifesto for Family Law", which sets out Resolution's proposals in respect of the introduction of no-fault divorce. The process would begin by one or both parties filing a statement of marital breakdown. There would then be a waiting period of six months to give the couple time to think about whether they are making the right decision. After six months, if either or both parties file a declaration confirming that the marriage has broken down irretrievably, the divorce should be made final. In circumstances where the parties have already been living separately before filing an initial statement, the waiting period should be reduced accordingly. So if the parties have lived separately for six months already then no waiting time will be required. There should also be an opportunity to shorten the waiting period in exceptional cases.

In 2016 Resolution's campaign continued as members met their local MPs at the Houses of Parliament to discuss the benefits of a no-fault divorce system. This was successful in raising support from MPs and the wider public.

Resolution is not alone in the campaign for no-fault divorce. Senior members of the judiciary (including the former President of the Family Division, Sir James Munby, and the President of the Supreme Court, Lady Hale), *The Times* newspaper, the Family Mediation Taskforce and the October 2017 report by the Nuffield Foundation "Finding Fault? Divorce Law and Practice in England and Wales" all support the introduction of divorce without blame.

A No Fault Divorce Bill 2015-16 was introduced by Richard Bacon but unfortunately the Bill did not proceed further.

It is interesting to note that the periods of separation required to prove irretrievable breakdown of marriage in Scotland are one year where the parties consent and two years where they do not, compared to the two years and five years respectively in England & Wales and Northern Ireland. Ireland has always had no-fault divorce and other countries such as Australia, the US and Spain do too. Resolution has highlighted the many benefits of no-fault, and responded to the limited opposing arguments. Parties decide to divorce for a variety of reasons but the difficulty in the divorce process is clearly not a factor impacting their decision to end their marriage.

The Supreme Court case of *Owens v Owens*

The Supreme Court hearing took place on 17 May 2018. On the morning of the hearing, I along with other Resolution members gathered outside Parliament, to show support for Mrs Owens and the wider no-fault divorce campaign by calling on the government to reform the law.

Resolution was the only third party given permission to intervene in the Supreme Court hearing, albeit by written submissions only. Resolution's written case stated that "in a section 1(2)(b) case the entire focus should be on the petitioner's capacity to endure the behaviour of the respondent, irrespective of how good, bad, reasonable or unreasonable that behaviour might be when viewed from an objective perspective" (para 57).

It is not the role of the Supreme Court to reform the law. Indeed, Resolution was very clear that its intervention was not about asking the Supreme Court to make new law or usurp Parliament's role in making law, but rather the proper construction and application of the current law relevant in this case, taking into account current social mores. Mrs Owens argued in her grounds of appeal that the only consideration should be the subjective impact on her of Mr Owens' behaviour when considering whether it was reasonable for her to live with Mr Owens. However, Mr Philip Marshall QC representing Mrs Owens accepted at the Supreme Court hearing that the test in section 1(2)(b) is not a purely subjective one but requires a balancing act of the subjective test and objective test.

The judgment

The eagerly awaited judgment was handed down on 25 July. It was disappointing to hear Lord Wilson confirm that the appeal was dismissed. This means that Mrs Owens will now have to wait until February 2020 before she can file a divorce petition on the basis of her five years' separation from Mr Owens.

It was held that the trial judge had applied the correct legal test, however Lord Wilson and Lady Hale expressed their concerns about the trial judge's judgment. Lady Hale found this a "very troubling case" explaining her misgivings of the trial judge's judgment as failing to properly evaluate the cumulative effect of the 27 particulars of Mr Owens' behaviour on Mrs Owens; falling into the unreasonable behaviour linguistic trap; and incorrectly considering whether Mr Owens' behaviour had caused the breakdown of the marriage. She states that the correct approach would have been to allow the appeal and for the matter to be heard again. However, as that approach was opposed by Mrs Owens and considering the fact that she would be able to file a divorce petition on the basis of five years' separation in February 2020, Lady Hale reluctantly agreed to dismiss the appeal.

The future

Resolution will continue to call on Parliament to reform the law allowing for no-fault divorce and no doubt this case will strengthen the case for reform.

Private Members' Bill

Baroness Butler-Sloss is sponsoring a Private Members' Bill titled "Divorce (etc.) Law Review Bill" which requires the Lord Chancellor to conduct a review of divorce law (which must have commenced within six months of the Bill being passed), provide a progress report to Parliament every six months and report to Parliament on the conclusions of the review and any proposals. The Bill demands consideration of a no-fault divorce system enabling parties to divorce by way of an application to the Court followed by confirmation of the application requiring no further evidence or reason. The application can be made by one party or the parties jointly and the parties will have to wait a minimum of nine months after the application has been filed before confirmation can be given. The first reading of the Bill took place in the House of Lords on 18 July 2018 and the second reading has not yet been scheduled. It will be interesting to see the outcome of this Bill.

Conclusion

It is hoped that this judgment does not result in a change in the way that divorce petitions are drafted and that they remain anodyne. This approach was approved by the Supreme Court at paragraph 7 of Lord Wilson's judgment. On the rare occasion that a divorce petition is defended, the petitioner will have an opportunity to file an amended divorce petition to expand on the allegations as Mrs Owens did in this case.

This case is a very clear example of how divorce law is in desperate need of reform, giving momentum to Resolution's long running campaign. Following Lady Hale's judgment in this case, perhaps we should be referring to no "conduct-based" divorce rather than "no-fault" divorce.

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What will *Owens* mean in practice?

James Pirrie *Family Law in Partnership*

Following the judgment, the focus could shift to establishing "unreasonable expectation"

Mr and Mrs Owens married in 1978, five years after the passing of the Matrimonial Causes Act 1973 and five years before the Solicitors Family Law Association came into being, with a major aim of overturning that act. Margaret Thatcher, former education secretary, was in opposition to Jim Callaghan and Tini and Hugh could have had the recent hits from Saturday Night Fever at their wedding… but probably didn't. Mr Owens was said to be "old-school" in his outlook. He was forty and she was 28. Their relationship was, according to Mr Owens, never emotionally intense but they learned how to rub along. Thirty-four years later, Mrs Owens wanted a divorce.

Six years of litigation later, she still wants a divorce but can't have one. As Mrs Owens only moved out in February 2015, her five-year petition can't yet get off the blocks. She is still married; we still have one of five facts to prove for the court to determine that marriage has broken down irretrievably and the Supreme Court is clear that it can't make the law, however much it – or we – might want it to be able to do so.

I dislike this law as much as anyone. But we cannot make the argument on this case that Mr and Mrs Owens are the tip of an iceberg of misery, where couples are still married despite the breakdown of the marriage. At para 17, we are told that courts reasonably come at the case from the expectation that almost every petition should succeed. "The authors of the *No Contest* report discovered no recent example other than Mr Owens himself, of a respondent to a defended suit who successfully opposed the grant of a divorce on some basis or another."

The realities seem to have been that had Mrs Owens taken time to spell out the cumulative effect on her of Mr Owens' behaviour, the court properly directing itself would have been able to grant a divorce. The Supreme Court seem to have regarded the first instance judge as having teetered on the edge of misdirecting himself, and Mrs Owens was as good as offered a re-hearing, a reasonably clear indication that, differently managed, she would have got her case over the line.

Key points

"Unreasonable expectation" petitions?
This is probably the biggest lesson out of the long-awaited judgment: the test is not whether the behaviour is unreasonable. From para 48: "… 'unreasonable behaviour'. This is a convenient but deeply misleading shorthand for a very different concept." The test is whether the expectation of the parties' continued living-together (in the light of the found behaviour and its impacts upon this person) would be unreasonable.

Of course we knew all of that already, but the profession has been called to account to raise its terminology for fear of its infecting its capacity to do its job. The first letter to Mr Owens in December 2012 contained a draft petition. Mr Owens warned her off. In May 2015, she issued a petition. One wonders whether, had the first communications been to build a conversation with Mr Owens (however difficult that might