

New research study: Finding fault? Divorce law in practice in England and Wales

1. Context: A majority of divorce petitions in England and Wales still rely on allegations of fault, mainly behaviour and adultery. Research in the 1990s suggested that the use of fault had the potential to cause or exacerbate hostility between the parties, whilst not saving marriages. Meanwhile, to save judicial time, the 98% of petitions that are undefended are now scrutinised by legal advisers rather than judges. It is not yet clear how this is operating in practice, but there appears to be an increasing gap between the potentially painful requirement on parties to produce evidence of fault and the reality of rather limited inquiries by the court. The President of the Family Division, Baroness Hale and Resolution have called recently for divorce law reform. There is therefore a pressing need for robust research on how the current law is working.

2. Aims and research questions: The aim of the research is to explore how the current law on the ground for divorce and civil partnership dissolution operates in practice and to inform debate about whether and how the law might be reformed. The study addresses three main questions:

1. How does the current law work in practice during the process of petitioning? Fundamentally, is the production of the petition, particularly fault-based petitions, reflective of the real reasons for the breakdown of the relationship and what impact does the process have on relationships?
2. What does the “duty of the court to enquire, so far as it reasonably can, into the facts alleged” mean in practice? How rigorous is the process and has the scrutiny of petitions already become to all intents and purposes an administrative rather than an inquisitorial process?
3. Is there a desire and need for law reform, and if so, how?

Where possible the research will explore similarities and differences in the production and scrutiny of petitions between (opposite sex) divorce and CP dissolution/same sex divorce.

3. Research design: The research incorporates three linked studies:

1. *Producing a petition study* exploring how petitions are produced and with what effect on the parties. Consisting of (a) qualitative sample of 75 cases tracked over the course of a year from the pre-petition stage (b) focus groups with lawyers in five localities and (c) interviews with 25 lawyers focusing on disputed cases.
2. *Court scrutiny study* exploring the content of petitions, case progress and scrutiny process. Consisting of (a) Case file analysis of 300 completed cases (b) case file analysis of 100 contested petitions (c) observation and interviews with legal advisers and judges about the scrutiny process.
3. *Public attitudes survey* exploring attitudes to the current law on divorce and civil partnership dissolution and views on law reform of a sample of 2,000 adults in England and Wales and 1,000 divorced adults.

4. Project timetable: The project runs from October 2015 to September 2017. Results from the national attitude survey will be available in spring 2016 with an interim report from the producing the petition study in late 2016. A final report will be published in late summer 2017.

5. Project team: The project is led by Professor Liz Trinder (Exeter University). The research team includes Bryson Purdon Social Research, One Plus One, Julia Pearce, Janet Reibstein and Mark Sefton. The team will be working closely with Resolution and Wikivorce for the producing a petition study. The research is funded by the Nuffield Foundation.

6. Further information: please contact Professor Liz Trinder by email e.j.trinder@exeter.ac.uk, phone 01392 723375 or by post at Law School, Exeter University, Rennes Drive, Exeter, EX4 4RJ.

