

Conservative manifesto – commitments to modernise family law

I am writing to ask the Conservative party to commit in your 2017 General Election manifesto to modernising family law and support the hundreds of thousands of couples that separate each year to do so as amicably as they can and without the process encouraging the apportioning of blame.

Resolution represents around 6,500 family lawyers and other professionals committed to the constructive resolution of family disputes and issues. We urge the Conservatives to commit to:

1. **Allow couples to divorce without blame.**
2. **Give cohabiting couples, who make up 10% of the population, some basic legal rights.**
3. **Ensure there is fair access to the family justice system.**
4. **Give people more financial clarity on divorce.**

These four policies are strongly supported by the family law sector and by the general public.

1. ALLOW COUPLES TO DIVORCE WITHOUT BLAME

Current divorce law does not encourage couples to divorce amicably. People often have to cite unreasonable behaviour or adultery on the divorce petition. This leads to unnecessary conflict, makes an amicable separation less likely, and reduces the chances of reaching agreement on children and financial issues.

We are seeking a change in legislation to remove the need for many to apportion blame on the divorce petition. This will help people to manage their separation with as little conflict and stress as possible, which would subsequently lessen the negative impact of divorce on children.

The recent *Owens v Owens* case illustrates why reform is urgently needed. It is simply wrong that in 2017 anyone can be forced to remain in a marriage that they no longer wish to be in. Current divorce law, as demonstrated in this case, so often introduces or exaggerates conflict in family disputes.

No fault divorce has been legislated for before. Parliament enacted the Family Law Act 1996 but this was never implemented, due to issues unrelated to the principle of no fault divorce. Many other countries, including Scotland, Australia, many of the USA states, the Netherlands, Spain and Sweden, already have divorce without blame.

There is a robust body of research on the detrimental impact of parental conflict on children. The interests of children must be paramount. We want to remove fault from the divorce process to give couples the best chance of minimising that damaging conflict.

No fault divorce would also support couples to resolve disputes outside the courts. This would save taxpayers money by reducing the amount of court time spent dealing with children or financial issues relating to divorce.

There is consensus across international research studies that no fault divorce has had little impact on the divorce rate in the long-term. In Scotland, for example, within two years of reform the divorce rate reverted to the pre-reform level and then continued on a downward trend, and with a reduction in the number of divorces based on fault.

Who supports no fault divorce?

In a recent survey of family law professionals, over 90% agree that no fault divorce should be available to separating couples.

A YouGov poll in Feb 2017 found 69% of the public support a change in the law to allow for No Fault Divorce. **The same survey found that 69% of Conservative voters back such a change in legislation.**

In March 2017, *The Economist* called for no fault divorce. This followed similar calls for reform from the Law Commission; Sir Paul Coleridge, chairman of the Marriage Foundation; and Lord Wilson of Culworth, a Supreme Court judge. They are the latest in a long line of senior figures, including the President of the Family Division, who have urged politicians to introduce no fault divorce.

Policy proposal for no fault divorce

Resolution recommends the Conservative party adopts a policy that would see:

- A divorce finalised where one or both of the parties to a marriage give notice that their marriage has broken down irretrievably and one or both of them are still of that view after six months.
- Separating couples would be supported by information to help them explore whether the marriage can be saved and/or on the different process options available to them, as well as parenting information.

2. PROVIDE RIGHTS FOR COHABITING COUPLES

Cohabiting couples represent nearly 10% of the population, the fastest growing family type in UK.

However, under the current law in England and Wales it is possible to live with someone for decades and even to have children together and then simply walk away without taking any responsibility for a former partner when the relationship breaks down.

This can create significant injustices **mostly** for women and children, particularly in cases where a mother has given up or reduced her work to raise a family.

The reform Resolution proposes would not give cohabiting couples equal legal status to married couples. But it would provide a legal safety net for those cohabitants who currently – wrongly – believe they have legal rights.

A YouGov survey in April 2017 found that more than a third of people in cohabiting couples are unaware that they do not have the same legal rights as their married counterparts. Reform of the law would go some way to addressing the widespread ‘common-law marriage’ myth.

In a recent survey of Resolution members, 80% agree that cohabiting couples should have some basic legal rights. MPs also support reform, with a 2013 Resolution poll showing more than 57% believe the law needs to be reformed to afford protection to unmarried couples upon separation.

Policy proposal for cohabiting couples

Resolution would recommend the Conservatives adopts a policy that would see:

- The introduction of a legal framework of rights and responsibilities when unmarried couples who live together split up. This would provide some legal protection and secure fair outcomes at the time of a couple’s separation or on the death of one partner. Other countries, such as Scotland, Australia and Canada recognise these relationships and provide legal protection. The Law Commission has recommended changes in this area.
- Cohabitants meeting eligibility criteria indicating a committed relationship would have a right to apply for certain financial orders if they separate. This right would be automatic unless the couple chooses to ‘opt out’.
- The court would be able to make the same types of orders as they do currently on divorce, but on a very different and more limited basis.
- Awards might include payments for child care costs to enable a primary carer parent to work.

3. ENSURE FAIR ACCESS TO THE LEGAL SYSTEM

The legal aid reforms created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have had a severe impact on the ability of vulnerable people to access family justice since they came into effect on 1 April 2013.

Resolution's view is that too much effort has focused on the point of crisis rather than prevention, and the number of people who have no choice but to represent themselves in the family court has risen sharply. This creates particular problems for victims of domestic abuse, who, since LASPO, have found it more difficult to demonstrate their eligibility for legal aid to which they are entitled.

It is our belief that funding should be provided for free initial advice for people of limited means, to help them identify their options on separation and divorce, helping them to put the needs of any children first, and ensuring they are better informed at the start of the process. This would mean those who go on to represent themselves are better informed about their legal position from the outset.

This advice would enable vulnerable people to access the domestic violence gateway to legal aid, and/or learn about and choose more options to help them than just mediation. It is also likely to result in a higher referral rate to mediation, as it would restore a major source point of access that existed before LASPO. This would, in turn, reduce the number of unrepresented parties appearing in court.

Policy proposal for fair access to the legal system

Resolution would recommend the Conservatives adopts a policy that would see:

- Commit to immediately carrying out a review of LASPO in the next Parliament.
- Provide funding for those on low incomes to access initial advice about their options upon separation, to ensure separating couples are better informed at the start of the process.
- Immediately widen the domestic abuse evidence gateway to allow more victims of abuse or violence to access legal aid to which they are entitled.
- Introduce measures to protect victims of domestic abuse from cross-examination by their alleged perpetrators.

4. HELP PEOPLE UNDERSTAND HOW THEIR DIVORCE WILL AFFECT THEIR FUTURE FINANCES

The removal of legal aid has led to a rise in unrepresented litigants, with a 30% rise increase across all family court cases in which neither party had legal representation.

Divorce law relating to finances is complex and difficult to understand. Outcomes can be difficult to predict, even for legal professionals. Section 25 of the Matrimonial Causes Act 1973, which determines how money is divided up on divorce, has fundamentally remained unchanged for the last 40 years.

The concern is that people separate with little or no understanding of the financial consequences of their break up, making it more difficult for them to reach agreement and placing a greater burden on the court system.

Greater clarity should also be provided over the legal status of pre and post-nuptial agreements (commonly known as 'pre-nups'), which are not currently automatically enforceable in courts in England and Wales. Whilst case law has provided precedent to uphold such agreements, Lady Hale of the Supreme Court has said "the law of marital agreements [was] in a mess and ripe for systematic review and reform." We believe the next government should carry out this reform. The independent Law Commission has also called for change in this area.

Policy proposal for greater clarity on finances upon divorce

Resolution would recommend the Conservatives adopts a policy that would see:

- Consider reform of Section 25 of the Matrimonial Causes Act 1973, to emphasise independence and greater certainty on the level and timescale for payment of maintenance, with children's interests at their heart.
- Make marital agreements (or 'pre-nups') enforceable, with suitable safeguards. This would provide certainty to people entering the courts that a previously-made agreement will generally be binding, unless it does not satisfy clearly identified criteria.

These four policies will make a huge, positive difference to the lives of the hundreds of thousands of people that separate each year. Not only are they right for today's modern society but they will be make the family justice system more cost-effective. Less conflict means less costly court time is spent resolving family issues, and better facilities and technology will mean cases are resolved more efficiently.

Resolution would be delighted to meet with those in the Conservative party responsible for writing the sections on family law to discuss our policy proposals in further detail. Please contact me via Matt Bryant, Resolution's Director of Communications, on matt.bryant@resolution.org.uk if this would be of interest.

I look forward to hearing from you.

A handwritten signature in black ink that reads "Nigel Shepherd". The signature is written in a cursive style and is followed by a horizontal line.

Nigel Shepherd
National Chair, Resolution