

Time to make big changes in your personal life?

How friendly developments in matrimonial and civil partnership law will make a fresh start a whole lot easier...

I have just finished reading two tutorial type books about the family and how we can all make things just a little better for one another, even through difficult times, by essentially being less critical and simply kinder to those closest to us. The first book is by Marie Tourell Soderberg and is all about the art of “hygge”, a Danish word which resonates with many Scandinavians and translates as a warm, cosy enjoyment of the moment and the small things in life. Making the best of what you have and being grateful for it. “Hygge” can be added to anything: the first coffee of the day is my hygge –coffee. Lovely.

The second life-guide is “The Sixty Minute Family”, by Rob Parsons and looks at what is special to us as individuals and family units and again, how we can cultivate that just by being a whole lot more “present” and nicer on a daily basis. He talks of the “January love”, meaning it is easy to love someone in June (sunny times), but being at least civil to that person in January (dark grey chill) is the real test. He states that good relationships are where you “...don’t dig up dirt from the past”.

So, these considered works link rather nicely to the Government’s announcement last month that a softer, more respectful way of divorcing (please read “dissolution” for civil partnerships) is going to be possible. The “no fault divorce” will be for those who don’t want to wait for a period of two years’ separation and certainly don’t want to start slating their husband or wife in the divorce petition, just because the law requires it. The blame culture of divorce is pretty unhealthy for us all, but especially any children who are caught in the middle.

The new legislation follows years of pressure from senior judges, lawyers, politicians and members of the public. The family lawyers ethics group “Resolution” launched a major campaign a few years back and I recall a slightly fresh, but pleasant photo shoot on windy Worthing Pier, clutching a “No conflict divorce!” banner.

Justice Secretary, David Gauke, has said that the current 50-year-old divorce law sadly promotes “...hostility and conflict between parents” and that “...I have heard on many occasions that our divorce laws, as they stand, serve as an encouragement for some separating couples to grossly exaggerate their behaviour-based claims so that they don’t fall foul of the rules.” This is my experience also. I remember acting for a wife who wanted to bring the marriage to a close because she and her husband had “just drifted apart”. However, as the limitations of the Matrimonial Causes Act 1973 meant that they either had to wait two years from separating or effectively make up hurtful allegations about one another and plonk it in an “unreasonable behaviour” petition. Both agreed that they could come up with stuff about the other, but how would that help anyone ultimately? So, the soft behaviour petition went in and was immediately rejected, as per advice to my Client. What followed was a fresh petition with amplified conduct points, and it was accepted by the Court, of course. They got their divorce, but the journey there was not what they had envisaged.

Alongside the need for less drama at an already sad and stressful time, a significant factor is that of fulfilling the best interests of the family in terms of resolving the finances immediately and the being able to “move on” and fulfil respective hopes, ambitions and dreams. And of course, when you want out, you want out. (My apologies to all “remainers”, but this does fit here!) Divorce allows for a Consent Order to be lodged with the Court, enabling a final closure to all matters. But two years’ separation and no divorce until that time has elapsed can mean postponing a full conclusion to all issues, and a Separation Agreement is not an

enforceable Order, as helpful as it is. Pension sharing Orders cannot be made without divorce proceedings and cannot be implemented without decree absolute in the divorce.

As family lawyers, we have had to apologise to our Clients for the law in this area. I have routinely omitted the reference to “unreasonable” for several years now. For Resolution trained lawyers such as myself and my highly experienced colleague Jackie Gifford, the focus has been on keeping the heat down and not encouraging an unnecessarily messy and unkind process, whilst trying to tick all the boxes to get past “go” on the divorce board.

This 21st century divorce will enable couples to divorce without making accusations of bad behaviour, by giving notice that a marriage has broken down irretrievably. Spring has come late for divorcing couples, but it has at last arrived!

The new law will also remove the ability to contest a divorce. Contested divorces are pretty rare in any event, but when they occur, it is often about control and denial. Interestingly, there will be a minimum time frame of six months for the couple to “reflect” on whether they truly wish to divorce. This does provide a buffer to those who might be concerned that the new law will make divorce too quick and easy. By the way, from my legal life experiences, there has never been a “quick” divorce or indeed one that has taken less than six months, where there are children and or finances to look after. The definition of “easy” is highly subjective in this emotional context.

As a collaboratively trained family lawyer, this all makes sense. Much of our work is about pacing. The “hygge” part of me says that these changes allow for reflection, calm and dust-settling and perhaps even reconciliation. A new start and a new you. Now, that is big and friendly and fittingly celebrated with (another) hygge-coffee.

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