

Family Law 4 Police

Divorce – Which Ground?

In the unfortunate event that your marriage has broken down and you are considering a Divorce, upon which ground to Divorce your husband or wife can be a daunting prospect. It is therefore important to understand your options at this difficult and emotional time.

The Ground For Divorce

There is only one ground for divorce, that is, that the marriage has irretrievably broken down under s.1 (1) Matrimonial Causes Act 1973.

The Five Facts

The Court cannot hold that the marriage has irretrievably broken down unless the Petitioner (the person presenting the Divorce Petition to the Court) satisfies the Court of one or more of the five facts set out in s.1 (2), Matrimonial Causes Act 1973.

The five facts are as follows:

Adultery

(a) That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.

Adultery is defined as voluntary sexual intercourse between a man and woman who are not married to each other but one of whom at least is a married person.

In order for a Divorce based on the Respondent's adultery to proceed, either the Petitioner must prove the Respondent's adultery or the Respondent must admit to the adultery.

Presenting the Court with proof of the spouse's adultery is rare as it is so difficult to prove. Indeed, it would be extraordinary for the Petitioner to produce a witness who had actually seen the Respondent committing adultery. Proof is therefore normally indirect using circumstantial evidence. For example, evidence that the Respondent is living with another person, evidence that the Respondent and the other person had the inclination and the opportunity to commit adultery or evidence that a child has been born as a result of the extra marital relationship.

To proceed on this fact, it is more common to obtain an admission to the adultery from the Respondent and it is sensible to obtain a signed confession before commencing

Divorce Proceedings where there is some doubt as to whether the Respondent will admit the adultery in the Acknowledgement of Service form (the form sent to the Respondent by the Court upon issue of the Divorce Petition).

In the event that the Respondent refuses to admit the adultery and proof cannot be obtained, the Petitioner need not worry as a Divorce Petition can be based on the next fact of Unreasonable Behaviour.

Unreasonable Behaviour

(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent

In assessing whether the marriage has irretrievably broken down on this fact, the Court must look at not just the Respondent's behaviour but also at the effect the Respondent's behaviour had upon the Petitioner.

Would any right-thinking person come to the conclusion that *this* husband has behaved in such a way that *this* wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?

Examples of behaviour which may seem relatively trivial in isolation (a wife continually criticising a husband over petty things and calling him names) can amount to sufficient behaviour when looked at as a whole.

It is quite common for Petitioners to rely on violent behaviour on the part of the Respondent, however the Respondent's behaviour need not be violent to entitle the Petitioner to a Divorce. Indeed, the Respondent's "improper association" with another person can be used in the Unreasonable Behaviour Particulars.

Every case is different and must be decided on its own facts

Desertion

(c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.

To rely on this fact, it is vital that cohabitation should have ceased and the Respondent must intend to bring cohabitation permanently to an end against the Petitioner's consent.

Nowadays, it is rare for a Petitioner to rely on desertion. This is because the Respondent is usually prepared to consent to a Divorce and the Petitioner can therefore rely on the next ground of Two Years' Separation and Consent.

Two Years' Separation and Consent

(d) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to a Decree being granted.

In considering whether a period of living apart has been continuous, no account is to be taken of a period or periods exceeding six months in total during which the parties remained living with each other. However, periods of cohabitation in excess of six months will automatically break the continuity of the separation.

The Respondent usually signifies his consent to the Court on the Acknowledgement of Service form, however as with adultery above, it is good practice to obtain the respondent's signed consent prior to commencing Divorce Proceedings.

Five Years' Separation and Consent

(e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition.

If the Petitioner can establish that the parties have been living apart for a continuous period of at least five years before commencing Divorce Proceedings, the Petitioner is entitled to a Divorce whether or not the Respondent consents.

Conclusion

As can be seen above, Divorce Proceedings can be instituted in a number of different circumstances, it is vital that an informed choice is made as to which of the five facts to rely on in satisfying the Court that the marriage has irretrievably broken down.

For a free, no obligation initial consultation, please telephone [Amanda McAlister](#), the solicitor representative for Merseyside Police officers on **0161 383 3642** in order to arrange an appointment. Appointments can be offered locally in our Manchester office or at the police federation offices in Merseyside.