



Owens v Owens: Supreme Court dismisses appeal for divorce

The judgment in the English case of *Owens v Owens* was handed down by the **Supreme Court** yesterday.

Mrs Owens sought a divorce from her husband on the basis of his behaviour. She said that his behaviour was such that she could not reasonably be expected to cohabit with him. Unusually, Mr Owens sought to defend this saying that their marriage was largely successful.



Debbie Reekie

In England, parties can only obtain a divorce if there has been adultery, unreasonable behaviour, non-cohabitation for 2 years and both parties consent to divorce or non-cohabitation for 5 years even if one party doesn't consent.

Mr and Mrs Owens separated in 2015 and because of Mr Owens' objection to the divorce, it could only be granted if the trial judge was satisfied as to the behaviour of Mr Owens.

Although the trial judge was satisfied that the marriage had broken down, he was not satisfied that the behaviour of Mr Owens was sufficient to meet the test prescribed by law.

The **Court of Appeal** and now the Supreme Court have upheld that decision, although the Supreme Court commented that **Parliament** should consider replacing the law which denied Mrs Owens a divorce in these circumstances. **Lady Hale** commented that she found this "a very troubling case."

Commenting on the case, **Debbie Reekie, senior solicitor in BTO Solicitors' family law team** said: "The issue of 'non-fault' divorce has been a hot topic in England in recent times with thoughts that England lag behind many other countries who have a non-fault system, like Australia and Scotland. It seems archaic to apply a legal test which was put in place over 40 years ago and which no longer fits the fast paced realities of modern life.

"The law around divorce was modernised in Scotland in 2006. Here, parties can get divorced after one year if they both consent or two years if one does not. They can also get divorced prior to that if there has been adultery or unreasonable behaviour.

"Whilst family law in Scotland may not be perfect, it seems a great more palatable than that in England. There would appear to be no benefit to anyone in being forced to remain married to someone to whom they no longer wish to be married.

"In addition, it also seems unduly arduous to expect someone to wait five years for a divorce, particularly when faced with an unreasonable spouse. Mr Owens in this case said that he should not be 'unfairly criticised for attempting to save his marriage.' Does he really want to remain married to someone who clearly has no desire to be married to him?

“The law in England evidently requires to be modernised so that spouses can obtain divorce and move on with their lives without having to blame one another for the breakdown of their marriage. The issue is now one for Parliament. Hopefully this case provides some fuel to the current desire to amend the legal position.

“Meantime, Mrs Owens will require to sit tight as a married woman.”