

Are online divorces less likely to result in a final decree? Provisional results of FOI request

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Overview

From April 2018 it has been possible to commence divorce proceedings online. Would this mean more premature petitions, perhaps issued online after a marital argument and therefore not proceeding to a final divorce once the couple had made up? Are there different patterns of attitudes and behaviours with online divorces? More than 12 months on, some FOI statistics might seem initially to confirm this.

The background to online divorces

From 1 April 2018, it was possible to lodge and issue a divorce petition online. For the first four months, until end July 2018, it was only available to litigants in person. From that time onwards, a pilot project was run involving initially four law firms and now involving many more with the intention of opening it up hopefully soon to the entire legal profession. Our firm was one of the four and issued the first law firm online divorce petition on 2 August 2018. The expectation is that the significant majority of divorces will be entirely online. Initially in the first few months once the petition was issued and served, the procedure ceased to be an online experience. But over the past few months, other elements of the divorce are now also online. By the first quarter of 2019, almost 40% of divorces were issued online and this will increase throughout 2019.

However, from the outset there was an anxiety that the online opportunity would give rise to premature divorce petitions, perhaps after a marital argument and simply making a point to the other spouse about unhappiness in the marriage. Certainly, the issue fee of £550 might put off many. But it is a far easier, much quicker and an immediate accessible experience to issue online than preparation of the paperwork and filing it physically at court.

These concerns were for some most demonstrated by the fact that on Christmas Day 11 people filed divorces online. How many of these would proceed?

In order to find out, our firm made a Freedom of Information Request to the Ministry of Justice in June 2019. We were ambitious, perhaps overambitious. We sought information to compare between paper divorce petitions and online applications. We asked for each quarter from April 2018 when it first became available, running through until the end of the first quarter 2019. We asked to differentiate between those petitions issued by litigants in person and those by solicitors. In responding to this specific request a couple of months later, the Ministry of Justice indicated that they did not have data available to distinguish between litigants in person petitioners and solicitors and in any event it would be

unreliable because sometimes people issued in person and then instructed lawyers or vice versa. For good measure we asked about the Christmas Day divorces. As the full data was not available, we compromised on the requested information and the response has been finally received, 16 August.

The FOI information about paper and online divorces

The Ministry of Justice provided details for each of the 4 quarters showing applications (divorce petitions and similar) received, acknowledgements of service filed, and the numbers of respective decrees nisi and absolute; separating paper and online. Their figures are below with our percentages added.

Application Type	QTR	Applications received	Service Recieved by the Court	Decree Nisi	Decree Absolute	leading to returned Acks of service	% converted to DN	% converted to DA
Paper Applications	QTR2 2018	27,103	23,999	23,359	17,548	89	86	65
	QTR3 2018	21,027	18,166	16,904	10,640	86	80	51
	QTR4 2018	21,041	17,746	14,044	6391	84	67	30
	QTR1 2019	17,734	14,167	4,999	853	80	28	5
On-Line Application	QTR2 2018	5,056	4,503	3,992	3,421	89	79	68
	QTR3 2018	8,557	7,524	5,669	3,781	88	66	44
	QTR4 2018	7,674	6,585	3,239	887	86	42	12
	QTR1 2019	11,338	9,103	2,564	724	80	23	6

Acknowledgement of service

The first notable feature is the consistency between physical and online divorces in the returns of the acknowledgement of service by the respondent. They are 80% for the most recent quarter, January-March 2019 (although some of these may still be in the court process given court delays), with the remainder and more reliable between 84% and 89%, and with barely any difference between paper and online. So, any suggestion that the online divorces would lead to respondents dealing differently with online divorce has no weight. It does however show that between 11% and up to at least 16% of all divorce applications, both paper and online, do not even get so far as the other spouse acknowledging them.

We acknowledge that in some cases it is necessary for the petitioner to prove service where the respondent has failed to acknowledge. But in our continued experience these cases are few. If there were many petitions where there was no acknowledgement of service, but the petitioner proceeded nevertheless by proving service in other ways, we would have expected the percentage of decrees nisi to be higher, but they are not. Even for the first two quarters, and therefore ignoring any court delays found in the last two quarters, the decrees nisi pronounced are always lower than the numbers in which the respondent acknowledges service.

So at least 10%-16%, perhaps as much as 20%, of issued petitions (hard and soft) seemingly have no acknowledgement by the respondent and do not proceed either beyond the petitioner issuing (and not serving) or to the point of service at which point it is perhaps agreed between the spouses that the divorce would not proceed further; hence no acknowledgement on the court record. So at least 11% and perhaps as much as 20% of divorce petitions at present, both physical and online, are not proceeding to the second stage of divorce. They are not irretrievably broken-down marriages

Decrees nisi and absolute

Next, there are the number of cases which proceed to the first decree, the decree nisi. The most interesting quarter might have been the second quarter of 2018 when only litigants in person could first issue online. There is 7% fewer first decrees online compared to paper divorces but by the decree absolute stage, the final divorce order, it had evened out. So there is no suggestion that the online experience for those early online litigants in person led to less divorces than if they had done so on paper.

It's curiously the third and fourth quarters of 2018, by which time a few law firms were now on board, where there is more of a differential. In the third quarter, 14% less divorces proceeded to a first decree if online compared to a paper divorce and 7% less divorces proceeded to a decree absolute. In the fourth quarter of 2018, 23% less divorces proceeded to a first decree if online compared to a paper divorce, with 18% less proceeding to a decree absolute. The first quarter of 2019 must be looked at more warily because of the delays in the court system. There are 5% less online divorces reaching the first decree stage in that quarter but an almost identical percentage reaching decree absolute; however this is very small figures and therefore less reliable statistics. So, these two quarters seem to show a lower follow-through with online divorces.

Incidentally with the much-vaunted statistic that it takes 12 months to get to a final decree absolute, about 5-6% of those who issued a divorce between January and March 2019 have obtained their decree absolute by early August (i.e. within 4-7 months). Of those issuing a paper application between October and December 2018, 30% had obtained their decree absolute by early August. So the 12 month statistic seems misleading and in our opinion is skewed in part by the cases where lawyers hold back on the decree absolute until the final financial order is made in order that there is no prejudice to either party if either were to die before a financial settlement.

Christmas Day

And what of the Christmas Day petitions? A very small sample. None have reached decree absolute. More interestingly, 54% have reached the first decree stage consistent in such a small sample with 42% of the online divorces issued over that quarter. Also, all of them were acknowledged. So, the media reports that they were only marital cries for help after an unhappy Christmas dinner do not automatically bear up. But they may well be part of the trend for lesser online divorces proceeding to a final decree. It will be interesting to see the statistics at the end of this year, to see if the reality is that only half of the Christmas Day divorce petitions have progressed beyond initial acknowledgement by the respondent

Approach by the Court Service (HMCTS)

We understand that HMCTS are alive to online divorces being submitted when emotions are running high. At an early stage in the pilot process, and aware of the emotions attached to pressing the submit button to lodge the petition, they introduced a "save and resume" functionality. This allows the user to save the divorce petition document after completing it and then have time to reflect and consider before deciding whether to go ahead and lodge. It may be that this element in the digital process needs emphasising

Both the petitioner and the respondent have far more immediate information about progress of the divorce online than through the paper process. They can see online the stage reached in the proceedings and do not need to contact the court for an update. This is available to both parties. It may be that the continued availability of knowing the progress of the divorce might in some cases prompt reflection and consideration.

The online divorce document and other online family court processes have given the opportunity for information about ancillary services such as marriage support to be provided through weblinks. This information should have been provided previously but has been absent in the paper divorce process. It may be that the online process is enabling couples to access services in ways they had not hitherto. This might also have an effect on the statistics for online divorces and might be one of the stories behind the statistics. It is not yet known.

Conclusion

So, is there evidence that less divorces issued online proceed to a final decree than paper divorce petitions? Seemingly so, although certainly not categorically and more time is needed to see continued patterns.

The acknowledgement of the petitions by the respondent is identical between paper and online, with about 10-20% of petitions not even being acknowledged (and therefore most not seemingly progressing any further).

The first group of online petitions with litigants in person over the first three months were fairly similar to paper divorces.

But over the next six months, July-December 2018, the difference is more prominent. A smaller number of online divorces proceed to either the first decree or the decree absolute. Why? Is it due to the ease of the online issuing process, perhaps causing more premature petitions? Is there a different constituency or demographics of litigants in person who issue

online, compared to those who still use the paper application (although this gives no account for the solicitors issuing online from August 2018 onwards)? It needs much further investigation. Once the divorces issued in the first quarter of 2019 have had a full opportunity to progress through the process, will they also show this difference? This needs to be reviewed in six months' time.

Patterns of behaviour and attitudes in the context of separation and divorce are precariously uncertain and fragile. It is such a sensitive area of law and practice. The first 12 months of availability of online divorces certainly show some differences in behaviour and approach to divorce, with less online divorce petitions resulting in final divorce decrees. There may be other or additional interpretations of these statistics. The analysis must be carried through, including the impact when there is more access and familiarity with the online divorce process.

None of this however should delay the full implementation of divorce and other family court procedures online.

We are grateful to the Ministry of Justice.

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