

How Family Lawyers Can Help Jewish Wives Obtain a Get

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28 Feb 2022



The Importance of Obtaining a Jewish Divorce (a Get)

It is essential for all Jewish wives to ensure their husbands grant them a Get (a Jewish divorce) as well as a civil divorce.

Without a Get, neither party is free to remarry in the Jewish faith even if the parties have obtained a civil divorce.

However, for Jewish women the ramifications of not having a Get are significantly more serious and include:

- Being deemed to be committing adultery in Jewish law if they commenced a sexual relationship with another man, even if they had a civil divorce and they cannot marry a man if their relationship with that man commenced before obtaining a Jewish divorce.
- Having a child with another Jewish man, would mean that child would be deemed to be illegitimate (and he/she would be known as a '*mamzer*') which would preclude him/ her (and his/her descendants) from marrying in Jewish law.
- Impacting her standing in the Jewish community generally.

Therefore, it will be seen that the ramifications in particular for Jewish women and their children can be huge and life changing.

How the Jewish Courts (Beth Din) Can Help

In most divorces Jewish husbands understand the importance of the Get and grant the Get to their wives without any issues arising.

Where a Get is being refused the Jewish community encourage the parties to engage in dialogue with the Beth Din.

Many Beth Din will be happy to help encourage husbands to grant their wives a Get. However, in some more Orthodox Beth Din there remain concerns about whether a Get, which is provided without the full consent of the husband, constitutes a valid Jewish divorce.

All Beth Din take a dim view of husbands using coercion to grant a Get. The forms of pressure commonly adopted by husbands are demands for lower financial settlements, with whom a child should live or better child arrangements.

How the Family and Criminal Courts can help currently

The civil family courts have a highly effective power to enable the giving of a Get.

If requested by the solicitor acting for a divorcing wife, a judge will be willing to delay granting a final order for divorce until the parties have made a formal declaration that they have taken all steps required to dissolve the marriage in accordance with Jewish Law.

In rare instances incalcitrant husbands do not mind if the marriage is terminated or not, so they refuse to cooperate in granting a Get. More commonly their motives surround the coercive techniques referenced above.

On 13th January 2020 *'The Jewish Chronicle'* published an article about a Jewish wife who resorted to issuing the first private prosecution of its kind in England against her husband. The husband had tried to press the wife into revoking a non-molestation order against him and required her to leave the country before he would grant her a Get. The wife alleged that the husband had committed an offence, contrary to section 76 of the Serious Crime Act 2015 which makes it illegal to inflict controlling or coercive behaviour in an intimate or family relationship.

In this case the husband was due to face a Crown Court trial which carried a potential custodial sentence of up to five years. However, subsequent to the issuing of the private prosecution the husband gave the wife her Get. The wife then discontinued her private prosecution against him.

A private prosecution will remain a very rare approach.

However there has been a further legal development for tackling incalcitrant husbands based on coercion which can result in them being imprisoned.

The Domestic Abuse Act 2021

Recently issued statutory guidance about the Domestic Abuse Act 2021 published by the Government specifically states coercion and controlling behaviour can include spiritual abuse and religious marriage and divorce, to include the failure to provide a 'Get'.

What currently constitutes controlling or coercive behaviour is outlined in the statutory guidance issued by the Government under s77 of the Serious crime Act 2015.

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour; and

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim

The Government's Domestic Abuse: Draft Statutory Guidance, last updated on 6 August, sets standards and promotes best practice surrounding the application of the Domestic Violence Act 2021.

<https://www.gov.uk/government/consultations/domestic-abuse-act-statutory-guidance/domestic-abuse-draft-statutory-guidance-framework>

At paragraph 67 the guidance states '*Recognising domestic abuse*':

67. In Judaism this concerns the Get^[1] and instances whereby a recalcitrant husband may refuse to give his wife a Jewish bill of divorce (or a wife may unreasonably refuse to accept a Jewish bill of divorce). Unreasonably preventing a religious Jewish marriage being dissolved often includes the imposition of such conditions.

If the husband's actions are found to be controlling or his behaviour coercive, and he is found guilty of such behaviour, he could be imprisoned.

This therefore presents a promising further tool for Jewish women who are unable to obtain a Get.

The Domestic Abuse Act 2021 Act also amends the controlling or coercive behaviour offence to remove the '*living together*' requirement. It therefore now applies to partners and ex-partners, or family members regardless of whether they live

together. This significant amendment commences in Spring 2022.

Alternative Methods of Resolving the Issue of an incalcitrant Husband

In some cases, arbitration or mediation can also assist, but whichever option is applied to seek to encourage the husband to provide a Get, it remains sensible for the Jewish Wives and to some extent their lawyers to engage with the relevant Beth Din.

Conclusion

The family courts are very familiar with the importance of a Jewish Wife obtaining a Get in addition to a civil divorce. However not all family law practitioners are familiar with the importance of a Get to Jewish families.

Very helpful and often highly effective protection is already provided by the courts and further protection is also offered under the recent guidance on the Domestic Abuse Act 2021.

If you have any concerns about a husband who is threatening not to provide a Get, please get in touch with us to discuss your concerns as we have helped many Jewish wives overcome or prevent this problem arising.

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[1] Get – a Jewish bill of divorce. Without such a document, a couple remain married religiously, even if they have been divorced in the civil courts. Jewish couples have their marriages registered civilly at the time of their religious marriage. However, divorce is a twin-track process, involving a civil divorce and a religious one (a ‘Get’). In Orthodox Judaism, a Get must be given and received with consent. If the husband does not consent, the wife is unable to remarry under Orthodox Jewish auspices and any children she has in a future relationship will face severe restrictions as to whom they are able to marry.

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