

# Spousal maintenance across regions

Report

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## The authors

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## The research

This report explores a subset of the Fair Shares dataset to consider the prevalence of spousal maintenance arrangements at the point of divorce by Government Office Region, focusing on the question of whether there are regional disparities in the prevalence of spousal maintenance across the wider divorcing population.

The study was led by Professor Emma Hitchings at the University of Bristol.

More information about the Fair Shares project can be found at:

<https://www.bristol.ac.uk/law/fair-shares-project/>

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### **Summary of Key Findings**

**Spousal maintenance arrangements were much more common in London than elsewhere and largely related to having children, whether or not those children were of dependent age at the point of divorce.**

- Twice as many divorces in London involved a spousal maintenance arrangement compared to the other regions combined (41 per cent compared to 19 per cent).
- Half of divorced parents in London (53 per cent) had some form of spousal maintenance arrangement at the point of divorce compared to a quarter (27 per cent) of parents in other regions.
- The prevalence rate among divorcees without children were low both in London (five per cent) and in other regions (six per cent).
- Among parents, regional differences in housing and living costs appeared to be a key factor in relation to regional disparity in spousal maintenance arrangements.

**The higher prevalence of spousal maintenance in London compared to elsewhere was present regardless of divorcees' levels of wealth, although the 'London difference' was particularly notable for mid-asset level cases.**

- In lower level asset cases, three in ten (30 per cent) divorcees in London had a spousal maintenance arrangement, compared to 16 per cent of divorcees elsewhere. Among those with higher level assets the percentages were 43 and 21.
- In mid-level asset cases, six in ten (61 per cent) divorcees in London had a spousal maintenance arrangement compared to a quarter (24 per cent) of divorcees elsewhere.

**The 'London difference' in spousal maintenance largely related to cases where divorcees had legal support and those who had a court order, although the 'London difference' was also present amongst those who had not used a lawyer and without an order.**

- Almost three times as many divorcees in London who had used a lawyer had a spousal maintenance arrangement compared with divorcees in other regions (60 per cent compared to 22 per cent).
- Among those who had not used a lawyer, a third (32 per cent) of divorcees had a spousal maintenance arrangement in London compared to one in five (18 per cent) in other regions.
- Among those who had obtained a court order, rates of spousal maintenance were twice as high in London than in other regions (56 per cent compared to 23 per cent), although among those with an arrangement which was not made into an order, the rates in London were still significantly higher than elsewhere (46 per cent compared to 25 per cent).

**These findings suggest that, while the 'London difference' may be partially explained by the use of legal support/advice and the use of formal court orders taken to reach a financial agreement, there are other key geographical factors at play. A particular issue is the high cost of (re)-housing for divorcees in London necessitating the payment of ongoing spousal maintenance to meet the recipient's needs.**

## Introduction

The question of whether there should be a maximum term limit for spousal periodical payments orders is one of the issues outlined in the terms of reference for the Law Commission's Scoping Review of the law of financial remedies.<sup>1</sup> In order to properly evaluate the advantages and disadvantages of any such limit, it is vital to understand the extent to which spousal periodical payments are being made at all, whether spousal periodical payments are more prevalent in certain areas compared to others, and the reason(s) why spousal periodical payments are (not) being ordered. The Fair Shares Report found that only 22 per cent of divorcees reported having a spousal maintenance arrangement at the point of divorce, with women more likely than men to receive maintenance. This was nearly always for a fixed term and tied mainly to the recipient's childcare responsibilities.<sup>2</sup> One of our key findings was the lack of any evidence to suggest that maintenance was being used as a 'meal ticket for life' for wives. Instead, payments appeared primarily to be used to address the adjustment to post-divorce living arrangements, such as to meet housing and household expenses. Indeed, by the time of the survey, up to five years after the Decree Absolute, the percentage of divorcees with a spousal maintenance arrangement had dropped to 14 per cent. One issue that we did not consider in the original report was whether there were any regional differences in the payment of spousal support. It is this issue to which we turn in this paper.

Policy-makers have previously expressed concern about regional disparities in the prevalence of spousal support apparently being awarded by different courts.<sup>3</sup> After examining the small amount of data available in 2014, the Law Commission concluded that there was 'evidence of regional inconsistency, and of its being used strategically by legal advisers, for us to regard it as problematic'.<sup>4</sup> However, the Commission did not know whether any such inconsistency arose from geographical 'variations in the employment market and other factors which provide an objective justification for the difference, or whether it is an ideological difference which cannot be so justified'.<sup>5</sup> Nor were they able to assess whether geographical variation in spousal maintenance occurred beyond the court arena – i.e. in the informal financial arrangements space.

Following the Law Commission's 2014 report, research examining court file survey data not only found quantitative evidence to support the finding of geographical variation in financial remedy case outcomes across some courts in England and Wales, but also suggested that a 'good part of the difference may be attributable to the resources available in cases before the different courts'.<sup>6</sup> However, this study examined a sample of the court population in only four courts, the authors acknowledging that the sample – whilst taken from areas chosen, amongst other things, for their socio-economic differences – could not be taken to be

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<sup>1</sup> See <https://lawcom.gov.uk/project/financial-remedies-on-divorce/>

<sup>2</sup> E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall, *Fair Shares? Sorting out money and property on divorce*, ch 9.8, available at <https://www.nuffieldfoundation.org/project/fair-shares-sorting-out-money-and-property-on-divorce>

<sup>3</sup> Law Commission, *Matrimonial Property, Needs and Agreements*, Law Com No 343 (2014), para 2.45-2.53.

<sup>4</sup> *Ibid*, para 2.53.

<sup>5</sup> *Ibid*, para 2.49.

<sup>6</sup> J Miles and E Hitchings, *Financial remedy outcomes on divorce in England and Wales: Not a 'meal ticket for life'* (2018) 32(1&2) *Australian Journal of Family Law*, p60.



representative of the whole jurisdiction.<sup>7</sup> Furthermore, it has long been evident from published court statistics that divorcees who obtain court financial remedy orders (even purely by consent) are a minority of the divorcing population and so research into their experiences cannot provide a *full* understanding of any geographical variation in spousal maintenance payments across the *entire* divorcing population (i.e. including those who do not use the court at all).

The Fair Shares datasets provide that insight into the wider population, with survey responses from and qualitative interviews with divorcees whose Decree Absolute had been granted in the previous five years. This short follow-up report sets out the prevalence of spousal maintenance arrangements at the point of divorce by Government Office Region. The key finding is that spousal maintenance arrangements are much more common in London than elsewhere. Although this ‘London finding’ largely relates to cases involving children and where divorcees had had legal support, it is also evident among those who did not have legal support, and across divorces with higher and lower levels of assets.

The findings should be read with the following caveats:

- The region relates to the Government Office Region where a divorcee was living at the point of the survey; this may not be where they were living during their marriage or at the point of divorce, or indeed the location of any court used;
- The findings are based on divorcees’ responses to a question about whether there was an agreement for one party to pay spousal maintenance to the other, with spousal maintenance defined as ‘regular sums of money paid by one of you to the other for ongoing financial support’, with a clarification to ‘not count nominal payments sometimes included in court orders such as £5 per year’. As such, responses may have covered not just formal arrangements, but also a range of more informal agreements and ongoing payments, including transitional arrangements.
- Once we break the sample down by region, the sample sizes are modest, particularly when we break the sample down into subgroups. For this reason, after reporting on the overall prevalence rates in the first section, the note focuses on a comparison between London and all other regions combined.<sup>8</sup>

## How do the prevalence rates of spousal maintenance vary across regions?

Figure 1 shows the percentage of divorcees who had a spousal maintenance arrangement at the time of their divorce. At the top of the Figure, London is compared to all other nine regions, with the percentages for each individual region shown below. Twice as many divorces in London involved a spousal maintenance as in the other regions combined (41 per cent compared to 19 per cent).<sup>9</sup>

A series of pair-wise significance tests suggest that the key differences are between London and Yorkshire and Humberside, the East Midlands, the South East, the East of England and

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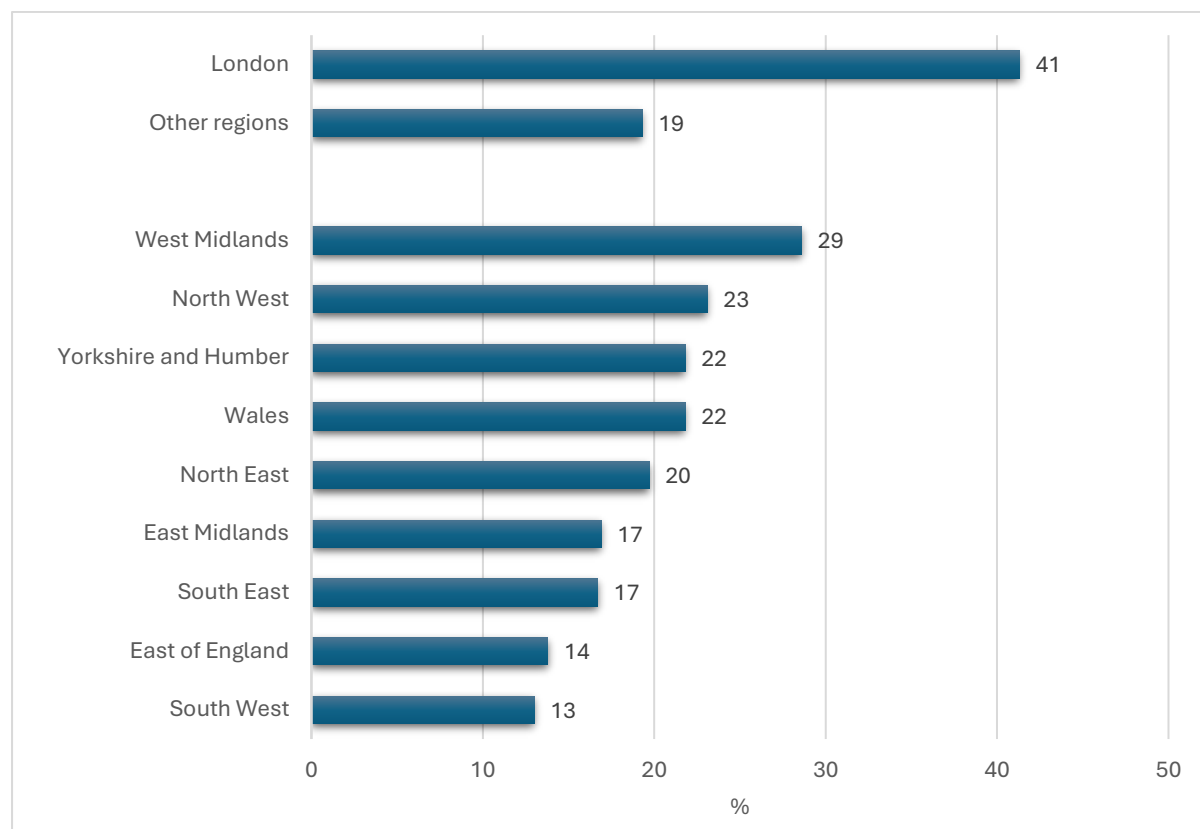
<sup>7</sup> J Miles and E Hitchings, Financial remedy outcomes on divorce in England and Wales: Not a ‘meal ticket for life’ (2018) 32(1&2) *Australian Journal of Family Law*, p56.

<sup>8</sup> A full regional breakdown can be found in the Figures A.1 to A.5 in the Appendix.

<sup>9</sup> P-value <0.001.

the South West.<sup>10</sup> No other differences between regions in the Figure are statistically significant.

**Figure 1: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by region**



Bases: London (229); all other regions (2,186); West Midlands (232); North West (277); Yorkshire and Humber (242); Wales (143); North East (117); East Midlands (226); South East (402); East of England (250); South West (297)

## Is there variation in rates depending on whether divorcees had children?

In the main Fair Shares report, we reported that divorcees who had children with their ex-spouse were more likely than other divorcees to have a spousal maintenance arrangement, particularly where the children were older and no longer dependent. We also found that women were more likely than men to receive maintenance.<sup>11</sup> Here, we look at whether this relationship between having children and having a spousal maintenance arrangement is

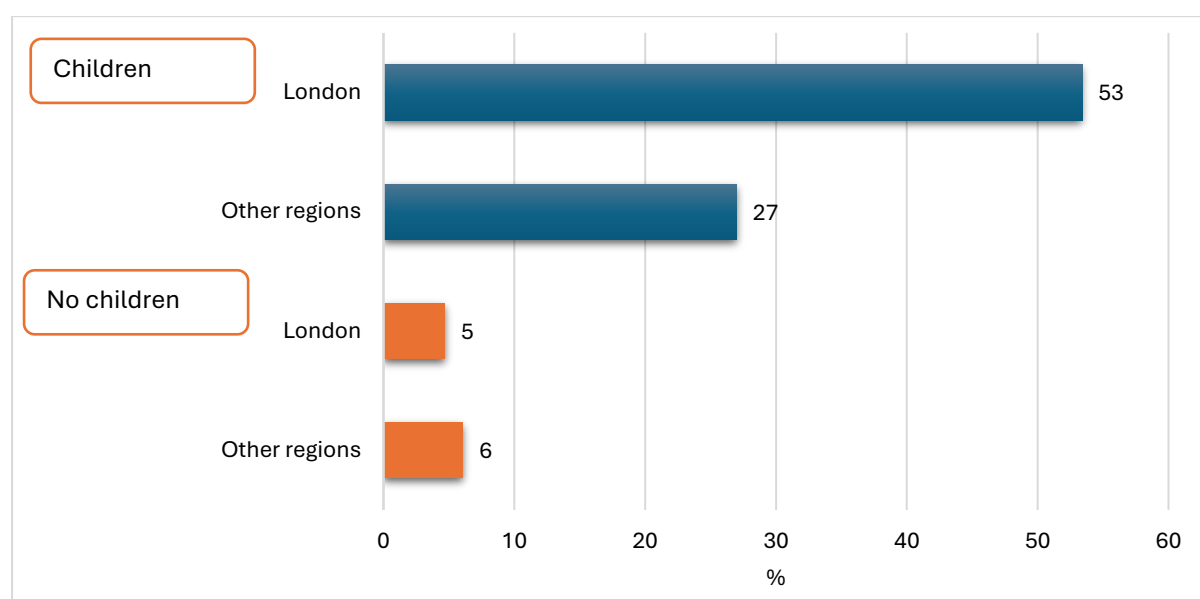
<sup>10</sup> Given the large number of pairwise comparisons involved in comparing across all regions, and the risk of identifying false positive differences, only differences where the p-value is less than 0.001 are assumed significant, and commented upon here. This is based on a Bonferroni Correction, and is in contrast to other situations in this paper where a p-value of below 0.05 is considered significant. Note that differential sample sizes across regions will affect the ability to detect statistically significant differences.

<sup>11</sup> E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall, Fair Shares? Sorting out money and property on divorce, p256-258, available at <https://www.nuffieldfoundation.org/project/fair-shares-sorting-out-money-and-property-on-divorce>

present across regions. The sample sizes are not big enough to differentiate between those with dependent or non-dependent children.

Figure 2 shows the percentage of divorcees in London and elsewhere with a spousal maintenance arrangement at the point of divorce, split into those with and without (dependent or non-dependent) children with their ex-spouse. The 'London difference' only applies to spousal maintenance for parents, where half (53 per cent) of parents had a spousal maintenance arrangement compared to a quarter (27 per cent) of parents in other regions.<sup>12</sup> The prevalence rate among divorcees without children were low in London (five per cent) and other regions (an average of six per cent).

**Figure 2: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by whether or not the divorcees had children with their ex-spouse, London versus other regions**



Bases: Children: London (152) ; other regions (1,326); No children : London (74) ; other regions (842)

These findings are particularly noteworthy and provide robust evidence to demonstrate the correlation between the payment of spousal maintenance and having children, whether or not those children are dependent at the point of divorce. They emphasise the link between such payments and the associated needs arising from taking, or having taken, primary care of any children of the relationship.<sup>13</sup> The interview data also highlighted the association between spousal maintenance, having children, and the primary carer's associated needs. One wife noted what the spousal maintenance was intended to cover as follows:

'He [ex-husband] basically pays my mortgage, that's what it is. So, it's not maintenance as in here's money for you to go and play with every month. He pays my mortgage and then the child maintenance basically covers a lot of our living expenses obviously and then I have what I earn on top.'

<sup>12</sup> P-value <0.001. Prevalence rates in London were significantly higher than in the East Midlands, the South East, the East of England and the South West (see Figure A.1 in the Appendix).

<sup>13</sup> See also E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018), p 14-17.

Covering the recipient's ongoing needs, particularly housing costs in areas where housing is expensive, is particularly noteworthy in light of Jennifer Buckley and Debora Price's important analysis of pension and former matrimonial home wealth by geography.<sup>14</sup> Their findings show 'the distorting effect of property prices in London'.<sup>15</sup> They found that outside London and the South East, the pension is usually the largest asset for the 40 per cent of couples with greatest pension wealth, whereas in London in particular, very high housing costs make the former matrimonial home much more valuable. This specific geographical issue with regards to high housing costs, may well be a key factor leading to the regional disparity in spousal periodical payments, with the primary carer more likely to need spousal periodical payments to pay a mortgage on the existing or new family home, or towards rental costs.

## How do prevalence rates vary by the level of assets to divide?

Figures 1 and 2 do not take into consideration the differential levels of wealth across different regions of England and Wales. Here, we look for evidence whether regional variations in spousal maintenance are a function of divorcees having greater levels of wealth in some regions over others.

Figure 3 shows the prevalence rates of spousal maintenance arrangements within different wealth groups in London and in other regions, splitting divorcees according to the total value of their financial assets (less than £100,000; £100,000 to £499,999; £500,000 or more).<sup>16</sup>

The higher prevalence rates of spousal maintenance in London compared to elsewhere are present regardless of the level of wealth. Among those with lower level assets, three in ten (30 per cent) divorcees in London had a spousal maintenance arrangement, compared to 16 per cent of divorcees elsewhere,<sup>17</sup> and among those with higher level assets the percentages were 43 and 21.<sup>18</sup> However, the difference is particularly striking in cases where there were mid-level assets, where six in ten (61 per cent) divorcees in London had a spousal maintenance arrangement compared to a quarter (24 per cent) of divorcees elsewhere.<sup>19</sup> This may indicate that other geographical factors are at play here at the point of divorce – for example, the high cost of (re-)housing in the capital compared with other geographical areas.

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<sup>14</sup> Jennifer Buckley and Debora Price, 'Pensions on divorce: where now, what next?' [2021] 33(1) *Child and Family Law Quarterly*, 5,

<sup>15</sup> *Ibid*, p 22.

<sup>16</sup> We have chosen asset level rather than household income as a more straightforward example of wealth, as differences in household income levels will partly be a function of the working patterns of both parents, which in turn are associated with parenthood.

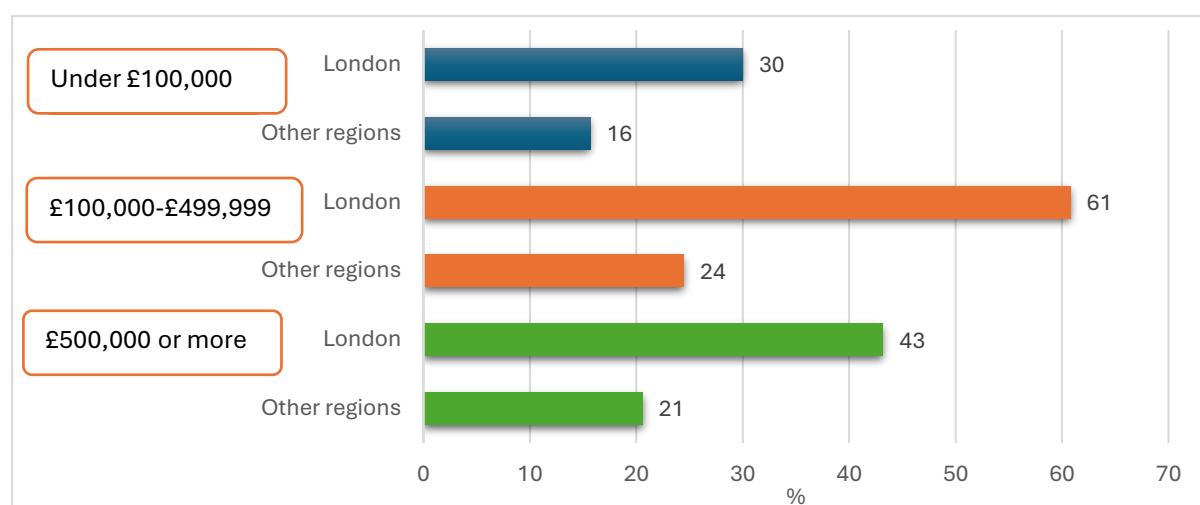
<sup>17</sup> P-value 0.007.

<sup>18</sup> P-value <0.001.

<sup>19</sup> P-value <0.001. Among mid-level asset cases, London divorcees were significantly more likely than divorcees in the East Midlands, South East, the East of England, and the South West to have an arrangement.



**Figure 3: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce by asset level, London versus other regions**



Bases: Under £100,000: London (86); other regions (760); £100,000 to £499,999: London (58); other regions (792); £500,000 or more: London (77); other regions (510)

## How do prevalence rates vary by the use of legal support and financial orders?

In this final section, we look across regions at the prevalence of spousal maintenance arrangements for those who made use of legal support and financial orders. In doing this, we are exploring whether the variations between London and other regions shown above relate to any advice or support that divorcees received during the divorce process, or to the routes they took to reaching a financial agreement. It appears that the differences we see in London largely apply to those who either used legal support or came to a formal arrangement about their finances. There are fewer regional differences in rates of spousal maintenance when divorcees did not see themselves as having come to a formal financial arrangement.<sup>20</sup>

Figure 4 shows the prevalence rates of spousal maintenance arrangements for those who did or did not involve a lawyer or legal services company (LSC) when trying to reach a financial arrangement. Among those who used a lawyer, almost three times as many divorcees in London had a spousal maintenance arrangement than in other regions (60 per cent compared to 22 per cent).<sup>21</sup>

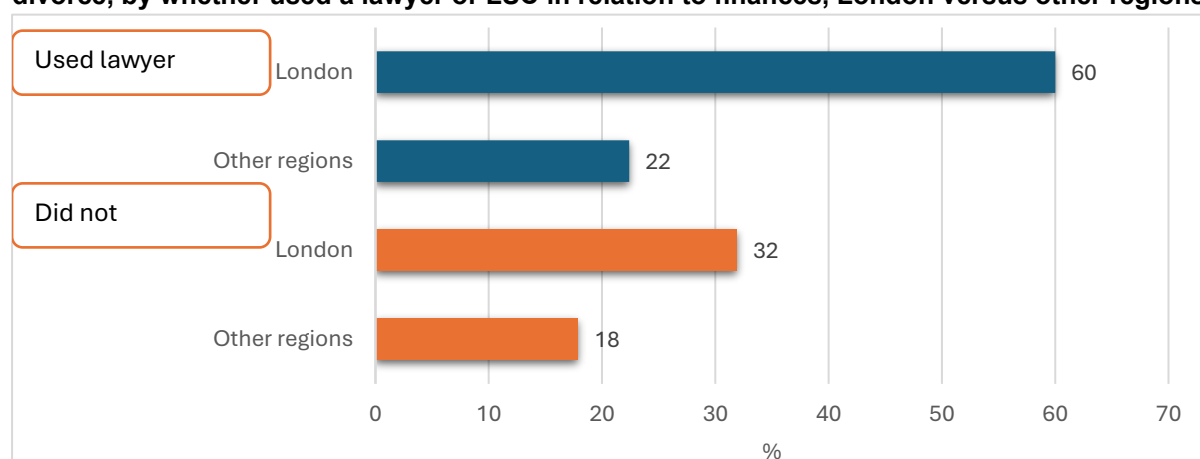
However, there was still a London difference among those who had not used a lawyer, albeit not as large, with 32 per cent of those who had not used a lawyer with a spousal maintenance arrangement compared to 18 per cent in other regions.<sup>22</sup>

<sup>20</sup> We discussed in the main Fair Shares report that these divorcees – who reported having nothing to divide or going their separate ways – usually had assets to divide. Indeed, 17 per cent of these divorcees had a spousal maintenance arrangement at the time of divorce.

<sup>21</sup> P-value <0.001. London was significantly higher rates than the North East, East Midlands, West Midlands, South East, the East of England, Yorkshire and Humber, and the South West.

<sup>22</sup> P-value 0.002.

**Figure 4: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by whether used a lawyer or LSC in relation to finances, London versus other regions**



Bases: Used lawyer: London (85); other regions (788); Did not use lawyer: London (144); other regions (1,398)

Whilst it is unsurprising that spousal maintenance arrangements were more common where a lawyer had been used, what is more interesting is that there was still a London difference amongst those who had not used a lawyer. Whilst we cannot discount that this may be in part due to a divorcee's ex-spouse having received legal advice, it could also be due to the prevailing economic circumstances in the capital, including housing costs, the employment market, and higher costs of living (particularly where there were dependent children). For example, the following interviewee lived in London and had not received legal advice, but he did have an informal arrangement to pay spousal maintenance to his ex-wife which was to cover household bills as his ex-wife was not working:

'Well, she didn't have a mortgage as I told you. So, what it would cover was household bills, the kids as you know had a separate allowance so the two lots kept her in everything she needed for clothes for the kids, food, just general insurance for the house, council tax ... So, all her bills were paid.'

Figure 5 shows the prevalence rates in London and other regions, split into those who reported having a financial arrangement which was made into an order, an arrangement not made into an order, or no formal financial arrangement. Among those who had an order, rates of spousal maintenance were twice as high in London than in other regions (56 per cent compared to 23 per cent).<sup>23</sup> Likewise, among those with an arrangement which was not made into an order, the rates in London were significantly higher than in other regions (46 per cent compared to 25 per cent).<sup>24</sup> When we look at those who did not have a formal financial arrangement, there is a difference between London and the other regions, although this does not reach statistical significance.

<sup>23</sup> P-value <0.001. Rates were significantly higher in London than in the North West, North East, the South East, East of England and the South West.

<sup>24</sup> P-value 0.001. Rates were significantly higher in London than in the East Midlands and East of England.

**Figure 5: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce by whether there was an order, an arrangement with no order, no arrangement, London versus other regions**



Bases: With order: London (64); other regions (685); Without order : London (65); other regions (575); No arrangement: London (88); other regions (796)

## Concluding thoughts on the ‘London difference’

The key finding in this report is the confirmation that there is geographical variation in spousal maintenance in England and Wales, with rates significantly higher in London than elsewhere. The differences between London and elsewhere lie with parents of dependent or non-dependent children, rather than among divorcees without children. In addition, the fact that ‘the London difference’ is apparent across cases with different levels of assets available to divide may indicate that other geographical factors are at play at the point of divorce – for example, the high cost of (re-)housing in London compared with other geographical areas.

The other important finding relates to the use of legal support and obtaining a formal court order. Among those who had used a lawyer in relation to their finances and among those who had come to a formal financial arrangement, the number of spousal maintenance arrangements was markedly higher in London than elsewhere. Indeed, among those who had a financial order, rates of spousal maintenance were twice as high in London than in other regions. However, there was also a significant ‘London difference’ among those who had not used a lawyer in relation to their finances, with a similar (but not significant) pattern among those who did not have a formal financial arrangement.

Put together, these findings suggest that, while the ‘London difference’ may be partially explained by the use of legal support/advice and the use of formal court orders taken to reach a financial agreement, there are other factors at play. One potential factor – which would be particularly pertinent to the needs associated with having children, and especially being the parent with care – are the higher living costs in London. The quantitative and qualitative data provides evidence of divorcees in London paying spousal maintenance to meet their ex-spouses’ ongoing needs, whether that is through paying a mortgage or other household bills. A second potential factor might be a particular London legal culture, where legal advisors in London are more likely to suggest spousal maintenance because the combination of the higher costs of living and higher incomes they often deal with have led to

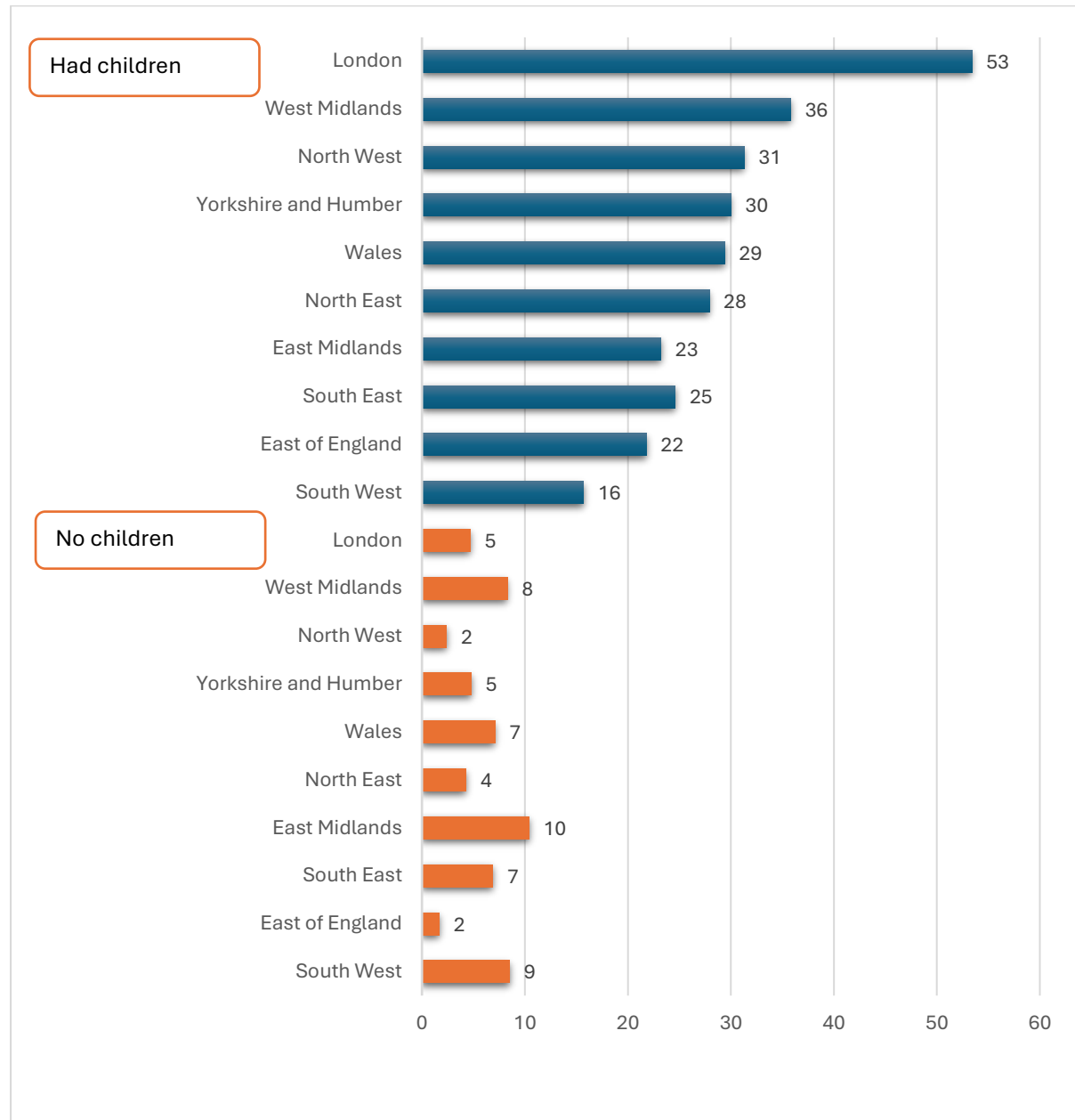
a particular need for spousal maintenance. Of course, this would not directly address why those without legal support or without a court order are still more likely in London to have spousal maintenance, but this may be due to the effect of receiving information or advice from friends or family based on the local context and experience, as well as the higher costs of living in the capital.

So, to answer the first question asked by the Law Commission in their 2014 Report as to whether geographical inconsistency is limited to the courts: this is not clear cut. There appears to be some link with formal orders, but geographical inconsistency also occurs in arrangements with no orders. Therefore, in light of the finding that the 'London difference' is present among those who did not have legal support, those who did not obtain a court order, and across divorces with higher and lower levels of assets, we suggest that there are other factors at play. Instead, a key underpinning factor is the parties' needs, especially related to the needs associated with *being* the primary carer of dependent children or *having been* the primary carer of children. This finding also provides an answer to the second question asked by the Law Commission in its 2014 report: does geographical inconsistency arise from geographical 'variations in the employment market and other factors which provide an objective justification for the difference or is it an ideological difference which cannot be so justified'? Given the findings presented here, particularly in Figure 2, which shows the 'London difference' applies to spousal maintenance for parents of dependent and non-dependent children only, we suggest that the parties' *needs* are a key factor justifying the spousal maintenance arrangement and it is suggested that lawyers may be advising their clients accordingly.

## Appendix: full regional breakdowns

Please treat these figures with caution given the often very modest sample sizes.

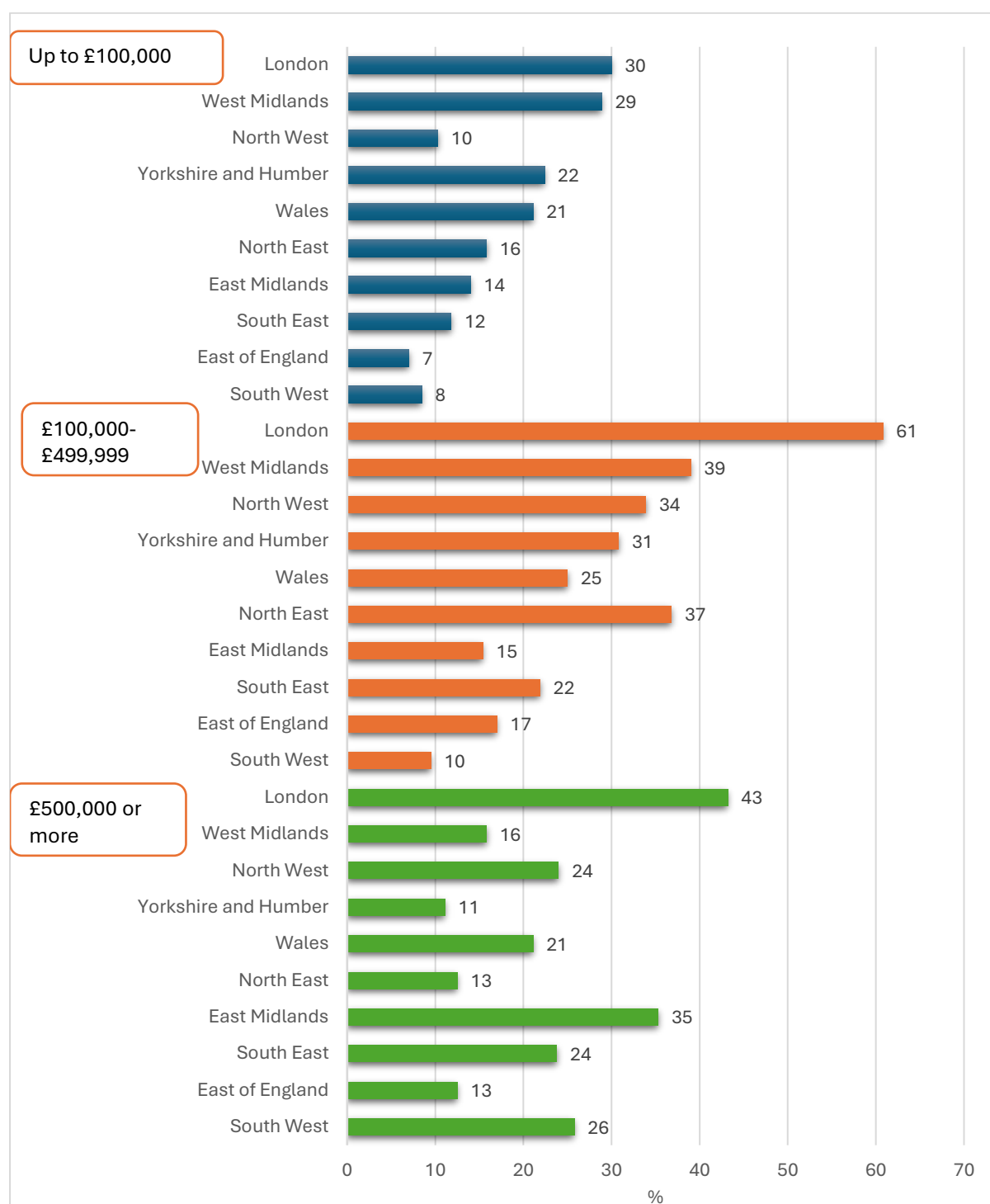
**Figure A.1: Percentage of divorcees with a spousal maintenance at the point of divorce, by whether there were children, by region**



Bases: Children : London (152) ; West Midlands (148) ; North West (173) ; Yorkshire and Humber (159) ; Wales (89) ; North East (76) ; East Midlands (125) ; South East (228) ; East of England (145) ; South West (183) ; No children : London (74) ; West Midlands (82) ; North West (102) ; Yorkshire and Humber (82) ; Wales (52) ; North East (41) ; East Midlands (96) ; South East (170) ; East of England (105) ; South West (112)

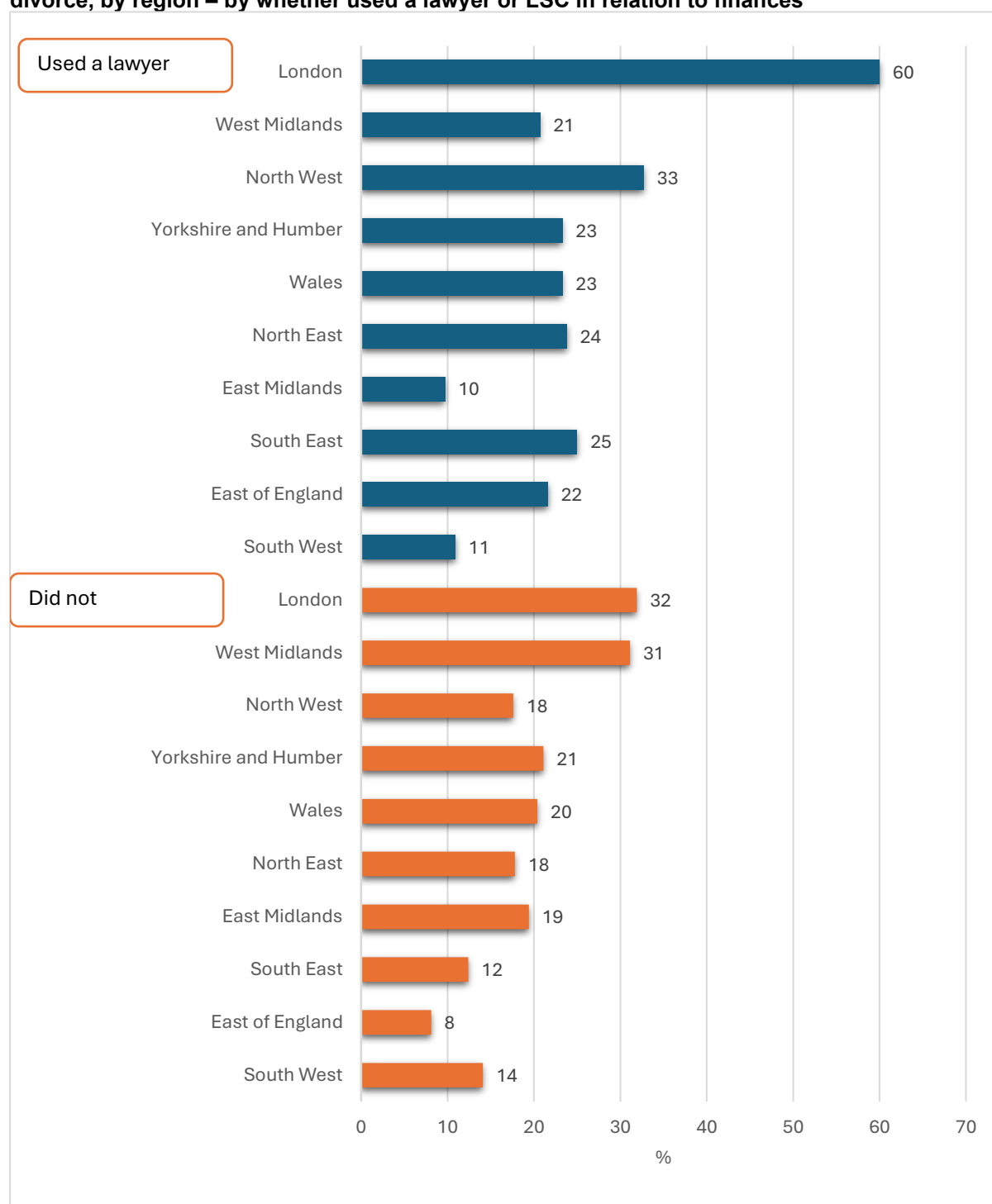


**Figure A.2: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by asset level and region**



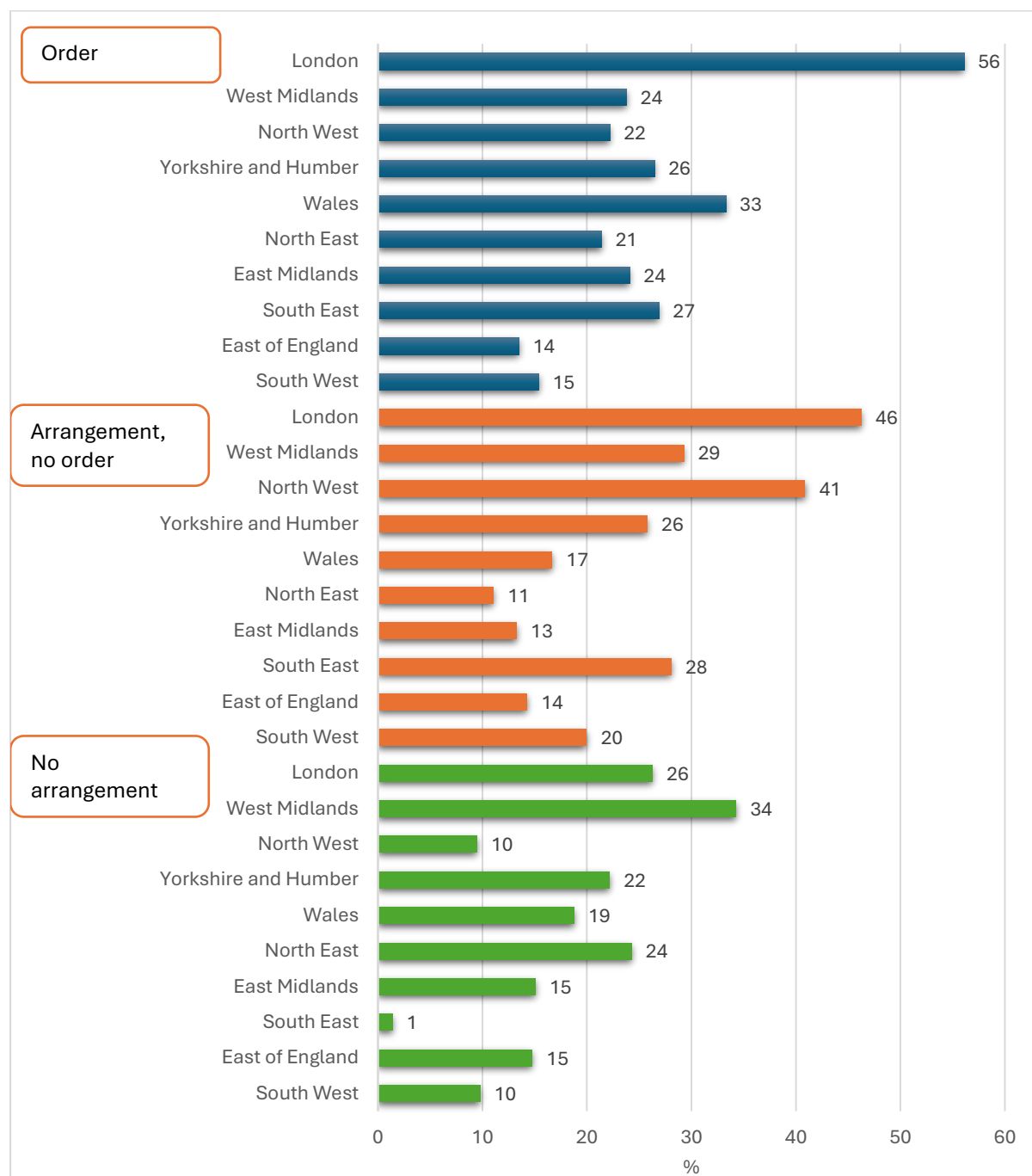
Bases: Under £100,000 : London (86) ; West Midlands (95) ; North West (104) ; Yorkshire and Humber (78) ; Wales (57) ; North East (54) ; East Midlands (85) ; South East (123) ; East of England (69) ; South West (95) ; £100,000 to £499,999 : London (58) ; West Midlands (79) ; North West (100) ; Yorkshire and Humber (96) ; Wales (46) ; North East (41) ; East Midlands (83) ; South East (147) ; East of England (99) ; South West (101) ; £500,000 or more : London (77) ; West Midlands (48) ; North West (59) ; Yorkshire and Humber (52) ; Wales (34) ; North East (16) ; East Midlands (45) ; South East (104) ; East of England (68) ; South West (84)

**Figure A.3: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by region – by whether used a lawyer or LSC in relation to finances**



Bases: Used lawyer : London (85) ; West Midlands (64) ; North West (102) ; Yorkshire and Humber (86) ; Wales (53) ; North East (46) ; East Midlands (79) ; South East (147) ; East of England (103) ; South West (108) ; Did not use lawyer: London (144) ; West Midlands (168) ; North West (175) ; Yorkshire and Humber (156) ; Wales (90) ; North East (71) ; East Midlands (147) ; South East (255) ; East of England (147) ; South West (189)

**Figure A.4: Percentage of divorcees with a spousal maintenance arrangement at the point of divorce, by region – by whether there was an order, an arrangement with no order, no arrangement**



Bases: With order : London (64) ; West Midlands (61) ; North West (82) ; Yorkshire and Humber (74) ; Wales (43) ; North East (34) ; East Midlands (62) ; South East (143) ; East of England (85) ; South West (101) ; Without order : London (65) ; West Midlands (60) ; North West (80) ; Yorkshire and Humber (67) ; Wales (41) ; North East (22) ; East Midlands (63) ; South East (105) ; East of England (66) ; South West (71) ; No arrangement : London (88) ; West Midlands (95) ; North West (100) ; Yorkshire and Humber (85) ; Wales (52) ; North East (52) ; East Midlands (87) ; South East (132) ; East of England (80) ; South West (113)

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