

Fair Shares?

Sorting out money and property on divorce

Executive summary

Emma Hitchings, Caroline Bryson, Gillian Douglas, Susan Purdon and Jenny Birchall



The authors

Emma Hitchings is a Professor of Family Law at the University of Bristol Law School

Caroline Bryson is a partner at Bryson Purdon Social Research

Gillian Douglas is a Professor Emerita at King's College London

Susan Purdon is a partner at Bryson Purdon Social Research

Jenny Birchall is a Senior Research Associate at the University of Bristol Law School

The research

This executive summary provides an overview of the key findings from the Nuffield-funded research study: 'Fair Shares? Sorting out money and property on divorce'.

The report explores how the current law regarding financial and property division on divorce works in practice for the entire divorcing population and provides recommendations to inform debate about what legal and procedural changes may be required. The study was led by Professor Emma Hitchings at the University of Bristol.

The full report is available to download from:
bristol.ac.uk/law/fair-shares-project

The Nuffield Foundation

The project has been funded by the Nuffield Foundation, but the views expressed are those of the authors and not necessarily the Foundation.

Visit www.nuffieldfoundation.org



Extracts from this document may be reproduced for non-commercial purposes on condition that the source is acknowledged.

“Prepare yourself, life will be harder. Financially, like I say, no-one comes out of divorce better off than they were before you started.”

Divorced Wife

This major research study provides the first fully representative picture in England and Wales of the financial and property arrangements that people make when they divorce and seeks to evaluate the extent to which it enables them to reach fair outcomes.

The law governing this issue, contained in the Matrimonial Causes Act 1973, has been subject to increasing criticism in recent years. However, much of this criticism has been based on high-value reported cases, which make up a tiny minority of the general divorcing population. In contrast, very little is known about how the law and process works for the majority of divorcees. While approximately 100,000 couples divorce each year, of these, only around one third leave the marriage with a court order, with the vast majority of these being made by consent. We know something about this court population through court file surveys, but almost nothing about the two thirds of couples that do not go to court.

This study provides detailed findings on how the law works in practice for the entire divorcing population. It provides unique data wider in scope than any previous study, both in terms of its inclusion of the full range of divorcees and the granularity of data collected. This is important because without robust data regarding how financial arrangements are arrived at and the consequences for families and children, there is no firm evidence base from which policy makers can assess what, if any, legal and procedural changes might be required.

Aims and methods

The study explored three broad research questions:

- *What* are the financial and property arrangements made?
- *How* do divorcing couples arrive at financial and property arrangements?
- What are the *short-term effects* of those arrangements?

This was done through a bespoke large-scale online survey of 2,415 individuals who had divorced in the past five years administered by YouGov, and 53 in-depth online qualitative interviews.

The financial context for the ‘everyday’ divorce

The picture of couples’ financial position at the point of divorce was quite contrary to the impression given by the media’s reporting of divorces. Most divorcees in the study had relatively modest amounts of wealth to divide at the end of their marriage. The median value of divorcees’ total asset pool including home and pension and those with debts and no assets to divide, was £135,000. Seventeen per cent of divorcees had no assets to divide and 63 per cent had total assets worth under £500,000. Although 68 per cent of divorcees had been living in owner-occupied matrimonial homes, once mortgages were taken into account, 34 per cent of these had homes with an equity worth less than £100,000, with only seven per cent reporting an equity above £500,000. Twenty-eight per cent of divorcees were renting, the majority in private tenancies.

The study reflected well-established findings that wives, and particularly mothers, were in more precarious financial positions at the point of divorce than husbands.¹ They were more likely to have part-time employment during the marriage and to earn less than husbands, with 28 per cent having take-home pay of under £1,000 per month compared to only ten per cent of men. Relatedly, women had accumulated poorer pension provision. Although women were as likely as men to have a pension, men were more likely to have paid into it for longer, and their pensions were worth more than those of women. This financial vulnerability impacted on many women’s ability to achieve a standard of living post-divorce comparable to that which they had enjoyed during the marriage, particularly when they were taking the main responsibility for the care of children.

¹ Note, although the survey included same-sex as well as opposite-sex divorcees, same-sex divorces account for a very tiny proportion of divorces.

Lack of financial and legal knowledge

There was a lack of awareness of family finances amongst a significant proportion of divorcees. Ten per cent of homeowners with a mortgage did not know what the equity in their home had been at the point of divorce and 38 per cent of divorcees felt their knowledge of their ex-spouse's finances during the marriage was not good. Over a third (37 per cent) did not know the value of their own (let alone their ex-spouse's) pension pot and nearly a quarter (23 per cent) did not know what kind of employer pension scheme they were enrolled in, whether defined benefit or defined contribution. Such lack of knowledge may have had significant impacts on how, and how well, these individuals negotiated any arrangements with their ex-spouse.

While lawyers were the 'obvious' and most common source of advice about the divorce for two in five (40 per cent) divorcees, there was a rather chaotic picture of where divorcees obtained information, advice and support. Government websites and signposting did an important job, with 29 per cent of divorcees saying they had used them. But there was also a mass of undifferentiated sources of varying authority and clarity, particularly on the internet, and only a limited supply of free advice services. It was therefore not surprising that 12 per cent of divorcees said they had sought *no* advice or information about their divorce.

Divorcees' attitudes and objectives

Four broad 'types' of divorcee were identified according to the attitudes they evinced towards their marriage and their ex-spouse and their patterns of behaviour during the marriage. These types helped explain the kinds of arrangements reached in the divorce. **'Housemates'** took an individualistic approach to their relationship, often keeping finances separate and regarding 'ownership' as the key factor in the division of assets. **'Parents'** saw the lasting legacy of their marriage as their children, and the arrangements for their future care and wellbeing determined how assets should be allocated. **'Partners'** viewed their marriage as a joint enterprise in which each had made – and might continue to make – an equally valuable contribution, with assets allocated accordingly. **'Unequal'** divorcees had been in relationships where the other spouse had dominated, often with domestic

abuse and coercive control as a feature. They had little power when it came to the allocation of assets.

The process of sorting out finances

There was confusion between different forms of dispute resolution and the forms of legal support available, including misunderstandings regarding what mediation is,² and is for, and about the effects of a consent order.³ Yet only 32 per cent of divorcees had made use of legal services in relation to their financial arrangements, with 42 per cent of those who did not do so saying they had been deterred by fear of the cost.

A third of divorcees (36 per cent) told us they had not made any particular financial arrangement with their ex-spouse when they divorced.⁴ In the main, as one might expect, it was divorcees with more, and higher value assets, as well as higher household incomes, who were most likely to have made a financial arrangement on all aspects of their finances.

Of the arrangements that were arrived at, 52 per cent were made by couples themselves, a further 17 per cent did so through solicitor negotiations and 13 per cent did so through mediation. The strongest predictor of using mediation was having used a lawyer: 28 per cent of those using a lawyer tried mediation, compared with just 11 per cent of those who had not. Women were twice as likely as men to use the court because they could not get an agreement with their ex. The reasons for using lawyers, and using courts, in preference to mediation, primarily concerned a lack of ability to negotiate with the other spouse – this might be related to the power relationship between the parties, including where there had been domestic abuse, or the refusal of one spouse to engage.

Where divorcees' financial and property arrangements had been finalised through solicitors or with a court order (whether by consent or adjudicated), there was evidence to suggest some difference in outcomes compared with divorcees who did not obtain legal advice. Not using a lawyer made it more likely that the pension position would not be adequately addressed, with men more likely to share their pension if they had received legal advice.⁵ The use of legal advice was also linked to a greater likelihood of: wives receiving ongoing support; the home being transferred to the wife; and, where the home was sold, the wife receiving a higher percentage of the proceeds

2 Mediation is the process by which a couple negotiate with the assistance of a neutral third party.

3 A consent order is a legally binding order made by the court conclusively dealing with a divorcing couple's agreed financial arrangements.

4 This is based on responses of survey participants to a question about how they sorted out their property and money on divorce. These participants chose response options that they had gone their separate ways or had no money or assets to divide, but in fact they had often nonetheless made decisions about who got what. However, they had not perceived this as a 'financial arrangement'.

5 Note that a court order is required if a pension is to be shared or split.

of sale. While the study could not establish a causal relationship, it is plausible that lawyers advising clients were encouraging them to ‘bargain in the shadow of the law’ to arrive at arrangements likely to meet with the approval of the court. As one might expect, legal oversight, whether through the court, or through the provision of legal advice, therefore appears to provide a potentially valuable form of monitoring which may protect individual divorcees, particularly wives, from unfair financial arrangements.

The majority of divorcees (62 per cent) incurred costs in trying to sort out their finances on divorce. Yet contrary to popular misconception, where legal or mediation costs were incurred, the amounts spent were relatively modest.

Whilst funding even small amounts may be difficult for many divorcees given their overall asset levels, a quarter (24 per cent) had to find less than £1,000, a further 18 per cent had costs between £1,000 and £2,999 and nine per cent incurred costs of £10,000 or more, with higher costs associated with more assets. Twenty per cent of divorcees with assets between £500,000 and £999,999, and 18 per cent of those with assets of £1 million or more, incurred costs of at least £10,000, compared to only five per cent of those with assets under £100,000 and two per cent of those with nothing or only debts. While therefore, very substantial sums can be spent on pursuing legal proceedings, legal costs were *not* inevitably high.

Equal sharing of assets not the norm

Only 28 per cent of divorcees reported receiving around half (between 40 and 59 per cent) of the total asset pool. The majority shared out their assets unequally, reflecting need, individual circumstances and differing motivations amongst divorcees, such as wanting a ‘clean break’. There was no significant difference between men and women in the value of the shares received, but what did differ between them were the factors tending towards them receiving the larger share in any unequal division. For men, being less entangled in the marriage, such as having no children, or being younger, married for a shorter time, and having fewer assets, pointed towards doing better than their ex-spouse. For women, the reverse pattern was exhibited, though more weakly.⁶ However, having a larger pension at the point of divorce was associated with receiving a larger share of the combined asset pool for both women and men, underlining the potential of pensions to make a significant difference to an individual’s financial position post-divorce.

Financial outcomes

Since the median value of divorcees’ total asset pool was £135,000, it is unsurprising that half of divorcees who had made arrangements across all of their assets received less than £50,000. Almost a quarter (23 per cent) ended up with nothing or only debts and 21 per cent ended up with less than £25,000. Nine per cent came out of the marriage with £500,000 or more. The picture that is painted is thus of many divorcees ending up with very little, not unexpectedly, given the modest value of their assets.

The family home

The most common decision taken in relation to an owner-occupied matrimonial home (by 46 per cent of all homeowners) was to transfer ownership to one party, followed by selling up (29 per cent). Limited resources meant that a compensating payment in transfer cases could not always be afforded, and men were less likely to receive such a payment than women. Unsurprisingly, therefore, ‘compensation’ in those cases tended to be in the form of ‘offsetting’ the value of the equity against a pension, or forgoing maintenance.

Where the home was sold, a third of divorcees split the equity equally. Women were more likely (60 per cent) to receive half or more of the equity, compared to men (49 per cent). However, this did not translate into big discrepancies between genders in the monetary value of the equity actually received. A larger share of the equity was associated, for men, with not having dependent or any children, and for women, with being older.

For divorcees in the rented sector, tenancies were retained in just under half (47 per cent) of cases, with this being much more likely for those in social housing than those in private rentals, and women were much more likely to have stayed on in the home than men.

⁶ For example, women with dependent children were somewhat more likely than those without to receive more than 50 per cent of the assets, but the differences did not reach statistical significance.

Pensions, assets and debts

There was a lack of awareness, understanding or interest in pensions amongst many divorcees which fed through into how they had dealt with pensions in making their financial arrangements.

Only 11 per cent of divorcees with a pension yet to be drawn had made an arrangement for pension sharing. Pensions were significantly more likely to be shared where they were of higher than lower value or where there were dependent or non-dependent children. Where a pension not yet in payment was shared, there was an equal split of the participant's pension in only 22 per cent of cases. In nearly half of cases the recipient received less than half and in 18 per cent over half. General lack of interest in the pension, and a strong sense that it should remain with the spouse who has been contributing to it, were the main reasons for the failure to see it as a potential sharing resource.

Divorcees generally received only modest amounts of other assets or savings. Equal sharing was uncommon, with assets generally allocated according to ownership. Debts were mostly allocated according to which spouse was liable for them, and were usually for modest amounts, with men more likely than women to take on a larger share.

Achieving a financial clean break between the spouses

The study confirmed earlier research findings that couples favoured a clean financial break. Around 40 per cent of both men and women considered having no ongoing financial ties their top objective. Only 22 per cent of divorcees had a spousal maintenance arrangement. Women were more likely to receive maintenance than men, but this was nearly always for a fixed term and tied mainly to the recipient's childcare responsibilities. There was nothing within our findings to suggest that maintenance was being used as a 'meal ticket for life' for the wife. Instead, payments appeared primarily to be used to address the adjustment to post-divorce living arrangements, such as to meet housing and household expenses.

Child maintenance

For the vast majority of divorcing parents, sorting out child maintenance happened in addition to, rather than as part of, the divorce process. However, a substantial minority of divorced parents (39 per cent) did not have a child maintenance arrangement or were still trying to set one up. Shared care arrangements, lack of affordability and unwillingness to pay were the main reasons given for not having an arrangement. Parents who were better off financially during the marriage were more likely to have an arrangement, and of these, 'family-based arrangements' (i.e. informal non-binding agreements) were the most prevalent arrangement type, representing just over a quarter of all divorcing parents with dependent children. Family-based arrangements also had the highest levels of reported compliance. This is unsurprising given that parents who make family-based arrangements tend to be on better terms than those families using the Child Maintenance Service's Direct Pay or Collect and Pay routes.

Although the child support system does not require parents to support their children once they enter early adulthood, the study found that a large majority (84 per cent) of divorced parents who had non-dependent children continued to support them financially at the point of divorce, and for a time afterwards. Mothers were more likely to provide this support through enabling adult children to live with them at home, whilst fathers were more likely to provide financial support.

Circumstances after the divorce

The study highlights the financial vulnerability of many female divorcees, particularly mothers, and those in older age, compared to men. At the time of the survey, up to five years after the divorce, women, and in particular mothers with dependent children, were, on average, worse off financially than men. Not only were mothers more likely than fathers to be working part-time rather than full-time, but more mothers than fathers with dependent children were in receipt of Universal Credit and Child Tax Credit. In addition, older wives without children had incomes that were significantly lower than men's. By contrast, women and men under 50 without children had similar living standards to each other at the time of the survey. About a third of parents of dependent children had re-partnered by the time of the survey. But men enjoyed a gender premium in re-partnering, being more likely than women to move into or remain in higher income bands than before the divorce.

Achieving 'fair shares' - policy thoughts and recommendations

To determine what, if any, reform of the current law is needed to help couples to make fair financial arrangements when they divorce, as much attention needs to be paid to the process by which arrangements are made, as to the substantive law governing them. And it is vital to focus on the circumstances of the majority of divorcees who have limited means, rather than on the concerns of the very wealthy whose stories tend to dominate media accounts.

Process

Authoritative, accessible and affordable information and legal advice, in a variety of formats, is required to address the deficit in knowledge about the law and legal procedure among the divorcing population. This needs to provide couples, at an early stage in the process, with a clear understanding of what issues they should be focusing on, including the range of assets (including pensions) that can and should be brought into account and the principles that should guide their arrangement; and how to reach a settlement, with signposting to appropriate and affordable forms of dispute resolution.

A range of appropriate and affordable methods of dispute resolution, supplemented by focused legal and other advice and support, needs to be made readily available. Consideration should be given to robust and effective screening and triage systems that can identify and direct divorcees to methods appropriate to their needs, with particular attention paid to the circumstances of 'unequal' divorcees.

The supervisory value of court scrutiny to ensure fair arrangements and to enable couples to have the finality and certainty of court orders should be recognised, with consideration given to how divorcees can be 'prompted' or assisted to seek consent orders when they go through the process of obtaining their divorce.

Substantive law

The current broad discretion provided by the law to shape financial arrangements to meet the individual circumstances of each couple, appears both appropriate and necessary, given the range and disparities in wealth and earning capacity of the divorcing population, and couples' own priorities and circumstances. It is doubtful that laying down a strong legal presumption of equal sharing of assets would deliver a substantively fair outcome between divorcees or reflect their own priorities. To the contrary, it would be more likely to cement inequality as between husbands and wives, with mothers and older wives doing particularly badly.

Instead, policy makers need to focus their attention on how to enable and encourage couples to take full account of all of their assets and their future prospects when deciding on what would be the appropriate outcome for them and their family. In particular, greater consideration needs to be given to how pensions may more readily be factored into the arrangements that couples make, if real fairness, as distinct from notional 'equality', is to be achieved.

bristol.ac.uk/law/fair-shares-project

Copyright © 2023 University of Bristol

