

Understanding of the law around finances and property on divorce

Report

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The research

This report presents findings from the Fair Shares dataset about people's understanding of the current law related to finances and property on divorce in England and Wales. The report considers understanding of the current law amongst the general public as well as those who have experienced divorce in the past five years. The study was led by Professor Emma Hitchings.

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

Public understanding

- Overall, the public's understanding of the law around finances and property on divorce was patchy and often poor, with a substantial proportion of the public having little awareness of the legal position.
 - Given 10 statements about the law and asked to say whether each was true or false, the public correctly identified an average of 4.5 statements.
 - Just over half (55 per cent) of the public correctly identified at least half (five or more) of the statements, with one per cent correctly identifying all 10 statements.
 - Eleven per cent of the public did not correctly identify any of the 10 statements.
 - While we found some differences between different demographic groups, these tended not to be large, with consistently high levels of misconception across the board.
- Although levels of understanding were somewhat higher among married people - for whom the law was arguably more relevant - the differences between married people and others were not large, with misconceptions and lack of knowledge remaining high among married people.
- People with higher qualifications or incomes were somewhat more likely than those with lower level qualifications or incomes to know what the law was in relation to financial remedies on divorce.
- Among the public, women were somewhat more likely to know about aspects of the law relevant to having children, and men to know somewhat more about the law around the division of assets.

Divorcees

- Divorcees were somewhat more knowledgeable about the law than others – they identified an average of 5.2 statements correctly compared to 4.4 statements among those who had not been through a divorce. However, the differences between divorcees and others were not large, with levels of misconception still high among divorcees.
- Among divorcees who had divorced in the previous five years:
 - Those who had used more formal routes to reaching an arrangement, or consulted or used a lawyer, tended to know more about the laws around finances on divorce than those who had not.
 - Those with higher levels of assets to divide on divorce tended to have a greater understanding than those with lower levels or no assets.
 - Divorcees with dependent children were more knowledgeable than other divorcees in relation to the law around the legal position of parents with main care of their children and around the child maintenance formula, although there were still high levels of misunderstanding among parents on these issues.

1. Introduction

This paper presents findings from the *Fair Shares* study on people's understanding of the current law related to finances and property on divorce. The initial section discusses what is known among the general public in England and Wales, with the second half of the paper focusing on the understanding of those who have experienced a divorce in the previous five years.¹

Despite the fact that the statutory framework governing the financial consequences of divorce has (largely) existed for fifty years, surprisingly little is known about the public's understanding of the current law, set out in the Matrimonial Causes Act 1973 (MCA 1973).² The Act vests wide-ranging powers in the court to order financial provision, to adjust property rights and share private pension entitlements with a statutory steer towards a clean break where possible. The basis on which the court is empowered to do these things is highly discretionary - the statute requires the court to give 'first consideration ... to the welfare while a minor of any child of the family' under the age of 18, and also contains a 'checklist' of factors to which the court must have regard³ - thereby enabling a wide range of solutions to be arrived at. Key decisions by the courts have provided guidance on how these statutory provisions should be interpreted and how the court should exercise its discretion. In particular, in seeking to achieve a fair outcome,⁴ the court should consider three elements: needs, compensation and sharing.⁵

It is important to know about the public's understanding of the law around finances and property on divorce, given that, as Pleasance et al suggest, 'erroneous beliefs are likely to prove stubborn to dislodge.'⁶ By no means will everyone personally experience divorce, but most people will be the family member or friend of someone who does. We know from the *Fair Shares* report that the majority of the divorcing population reach arrangements relating to their finances and property outside of the formal family justice system,⁷ and also that one in five (19 per cent) divorcees seek advice and support from family and friends during the divorce process.⁸ For these reasons, it is important to know what level of knowledge people have, and whether there are misconceptions which might be influencing the decisions made by divorcees and the advice family and friends provide.⁹ This is particularly important in a

¹ While we included topline findings of the understanding of divorcees in Chapter 5 of the main *Fair Shares* report (E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023)), here we have the opportunity to look in more depth at the understanding of different groups of divorcees.

² As amended.

³ Matrimonial Causes Act 1973, s 25.

⁴ *White v White* [2000] UKHL 54.

⁵ *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24.

⁶ P Pleasance, N Balmer and C Denvir, *How People Understand and Interact with the Law*, (PPSR, 2015), iii.

⁷ Private ordering is the settlement of individuals' own financial (or other) arrangements without court proceedings (save to approve a consent order), and with or without the support of lawyers or mediators.

⁸ E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), section 4.6, p 155-120.

⁹ Certainly, there is evidence of other public misconceptions about the rights of separating couples. Barlow et al (2008) found that the common law marriage myth was widespread, with a lack of legal awareness demonstrated among cohabiting couples. See A Barlow, C Burgoyne, E Clery and J Smithson (2008), 'Cohabitation and the law: myths, money and the media' in Alison Park et al, *British Social Attitudes – The 24th Report*. London: Sage, 29-51.

context in which access to legal aid for private family law disputes in England and Wales has been severely curtailed.¹⁰ As Pleasance et al explain:

(T)he government is placing increasingly greater reliance on the abilities of individual citizens to understand and navigate this law-thick world alone. This is a significant challenge for the public, recognised in the Public Bill Committee debates regarding the passage of the LASPO Bill, where it was observed that changes to legal aid demanded greater public knowledge of rights if individuals are expected to self-help and self-represent more often.¹¹

Following on from our findings about the awareness of the general public, the evidence we have from the divorcees in our study comes from a somewhat different perspective. The analysis of their understanding of the law takes place within the context of having been through the divorce process. It is valuable to gauge divorcees' awareness of what the law is (or is not) because, as the *Mapping Paths* research found, uneven levels of knowledge, and parties bringing their own norms to dispute resolution, can make it difficult for divorcing couples to come to an arrangement.¹² So, in this paper we are also able to compare the understanding of divorcees who have or have not used legal advice or support, and those taking different routes to reaching a financial settlement.

From a policy and practice perspective, this evidence – from the public and from divorcees - provides an opportunity to consider whether a deficit in public knowledge could be improved by the restoration of early stage legal aid. The findings also help to highlight the groups most in need of legal support when going through a divorce.

The paper draws on 10 survey questions designed to gauge people's understanding of the current law on financial remedies on divorce. The questions were fielded as part of the *Fair Shares* study both among a representative sample of 20,532 members of the general public living in England and Wales¹³ and among the 2,415 divorcees included in the main *Fair Shares* survey.¹⁴ The questions involved presenting survey participants with 10 statements¹⁵ – and asking them to say whether they thought each was 'true', 'not true' or that they did not know. Unbeknownst to participants, half of the statements are (in fact) true and the other half not:

¹⁰ Legal aid (public funding for legal services) was withdrawn for most private family law proceedings by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), although it remains available for mediation.

¹¹ P Pleasance, N Balmer and C Denvir, *How People Understand and Interact with the Law*, (PPSR, 2015), p 25-26.

¹² A Barlow, R Hunter, J Smithson and J Ewing (2017), *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* London: Palgrave, 196-204.

¹³ These were asked of YouGov's nationally representative online panel during the process of screening for people who had divorced within the previous five years to take part in the main *Fair Shares* survey. The sample is weighted to ensure it represents the population, using ONS population statistics.

¹⁴ These two samples are not completely distinct as a subset (380) of the divorcees (the nationally representative element) are also present within the general public sample. For a full account of the methods used in the study, see E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall, *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), ch 2.

¹⁵ Given the discretionary nature of the law, some of these statements are generalisations of the legal position. The statements were shown in a random order.

Statements which (in fact) are true in law:

- If a couple doesn't go to court, the law allows them to agree any split they want, regardless of their circumstances
- The law says that the parent with the main care of the children should be prioritised when it comes to the division of assets after divorce
- Legally, who was at fault for the breakdown of the marriage is usually irrelevant when deciding how to share out assets and debts
- In law, the longer the marriage, the more likely it is that the couple have to share all their assets and debts
- Although there is a government formula about how much child maintenance should be paid, parents don't need to stick with that amount

Statements which are (in fact) not true in law:

- The law says that all assets and debts should be split 50:50, regardless of whose name they were in during the marriage
- The law says that if an individual contributed more money during the marriage, then they are usually entitled to more than 50 per cent of the assets
- Legally, an individual is not entitled to a share of their ex-spouse's pension
- Legally, an individual is not usually entitled to anything their ex-spouse inherited during the marriage
- Legally, an individual is usually only entitled to spousal maintenance for a maximum of 5 years after the divorce

Note on the presentation and interpretation of the findings

Where we make comparisons between different population groups, differences in the findings have been tested for statistical significance, with the p-value showing the probability that a difference we observe is simply down to chance, rather than being a real underlying difference between the two groups. A p-value of less than five per cent (p-value <0.05) is conventionally taken to indicate a statistically significant difference. The term 'statistically significant' is often abbreviated to 'significant' in the text. The majority of the statistical tests for the comparisons across groups are based on chi-squared statistics, taking into account the weighting of the data. In the main, the tests compare the proportion of people providing the correct answer, compared to those who gave the wrong answer or said that they did not know. We sometimes compare the proportion of people who responded that they did not know, against those who gave a response (regardless of whether it was correct). Where we refer to 'average' scores, this relates to mean scores, unless otherwise specified in the text. The unweighted sample sizes are cited at the end of each Figure. All analysis was conducted within SPSS v 28.0.1.1.

2. The public's understanding of the law

Overall

Figure 1 shows, for each statement, the proportions of the public who thought that this was the law, was not the law or that they did not know. Given the discretionary nature of the law dividing finances and property on divorce and its associated complexities, we are not surprised that levels of public understanding are relatively low. Overall, the public got an average (mean) of 4.5 of the 10 statements correct (i.e. correctly identified them as true or false). Just over half (55 per cent) of the public got at least half (five or more) statements correct, with one per cent getting all 10 correct. In contrast, 11 per cent got none correct.¹⁶

There were seven statements which the public were best at classifying as true or false, attracting correct answers from around half of the public. Amongst those seven, the two issues with the greatest level of understanding were (a) the fact that divorcing couples can decide on whatever asset split they want outside of court (55 per cent of people gave the correct categorisation) and (b) the fact that fault is not a relevant consideration in a financial settlement (answered correctly by 54 per cent).

There was more limited understanding of more specific points of law, including the fact that a longer marriage might make it more likely that assets and debts were divided equally (37 per cent answered correctly); that law does not state that assets and debts should be split 50:50 (38 per cent answered correctly); and the fact that spousal maintenance is not limited to a five year period (38 per cent answered correctly).

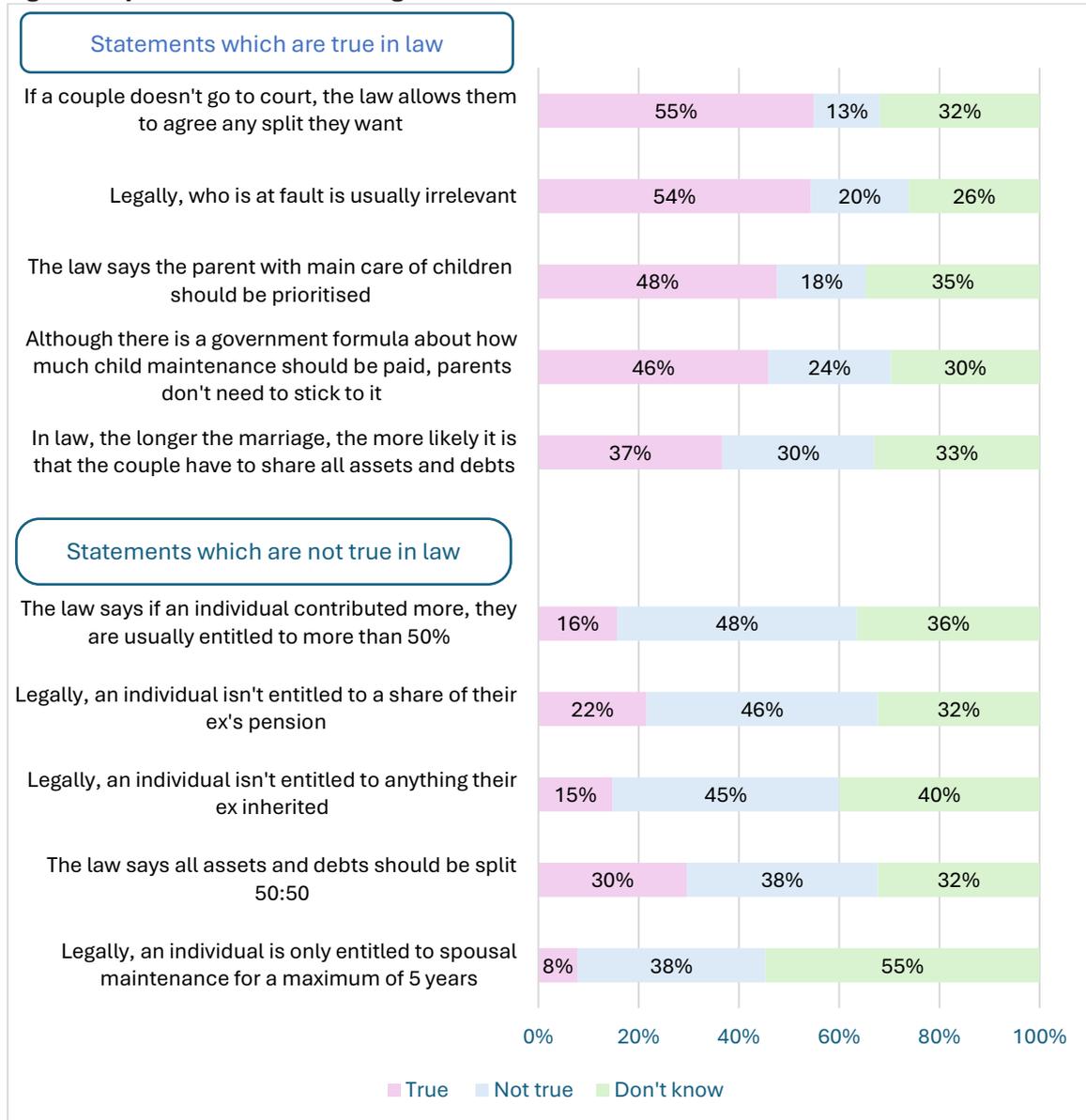
Where the public did not give the correct answer, they often said that they did not know, rather than got the answer wrong. Across all 10 statements, at least a quarter (26 per cent) of the public said that they did not know whether it was the law or not, with the proportion rising to as high as 55 per cent in relation to the question of spousal maintenance. On average, the public said that they did not know to 3.5 of the 10 statements, with one in 10 (10 per cent) saying 'don't know' to all the statements.¹⁷

The greatest misconceptions – the statements about which people gave the wrong answer – related to the 50:50 division of assets and debts (where 30 per cent thought this was the law) and in relation to the length of the marriage (where 30 per cent said it was not true that this would make an equal split more likely).

¹⁶ Twenty-one per cent got between one and three statements correct; 28 per cent got four or five statements correct; 27 per cent got six or seven statements correct; and 12 per cent got seven or more statements correct. The median score was 5.0.

¹⁷ The median score was 3.0. One in ten (10 per cent) of people said they did not know to all ten statements, while one in five (21 per cent) did not say they did not know to any of the ten statements.

Figure 1: public understanding of the law



Base: all participants, 20,532

Differences by socio-demographics

We found that, generally speaking, the high levels of misconception and lack of knowledge are present across the population when we looked for any differences in the levels of understanding of women and men and of people with different marital statuses, ages, educational qualifications and income levels. Where there are differences, they tend to be in the order of only a small number of percentage points correctly identifying a statement as true or not true.

That said, there are clear patterns suggesting that levels of understanding are greatest among those for whom the law is more relevant (e.g. those who were married, separated or divorced) and among those with higher levels of qualifications or incomes. And when we compare the levels of understanding of women and men, women were more likely to know about aspects of the law relevant to having children, and men knew more about the law around the division of assets. Older people, in turn, were more knowledgeable than younger people, regardless of their experience of divorce.

Marital status

Here, our particular interest is in the extent to which people who were currently married or in a civil partnership knew about their legal rights were they to get divorced.¹⁸ Were those individuals any more aware of the law than those who were cohabiting or not living with a partner? And how much more did those whose were separated from or had divorced their spouse or civil partner know compared to those who were married or in a civil partnership?¹⁹

In short, while spouses and civil partners²⁰ were somewhat more knowledgeable than those who were cohabiting or not living with a partner (but not separated or divorced),²¹ many married people were poorly informed about the rights that they would have in the event of divorce. For instance, only six in ten (58 per cent) married people knew that their assets could be split in any way they decided if they did not go to court, while a third (33 per cent) thought that the law specified that all assets and debts should be split 50:50. Between a quarter (24 per cent) and a half (52 per cent) of married people said that they did not know whether a particular statement was true or not true in law. And, while in some respects, those who said that they were separated or divorced were more knowledgeable than those who were still married or in a civil partnership, again the differences were not large, suggesting limited additional learning had occurred during the process of separation or divorce.²²

¹⁸ Differences in the understanding of people who had or had not ever experienced divorced (regardless of their current marital status) are reported in a later subsection.

¹⁹ Of course, some people who were married, cohabiting or not living with a partner will have previously experienced a divorce. This was the case for 21 per cent of those married, 20 per cent of cohabiters and nine per cent of those not living with a partner. Moreover, 22 per cent of those who gave their status as 'separated or divorced' said that they had not gone through a divorce, when asked the later question about experience of divorce.

²⁰ For brevity, referred to as married in the subsequent text.

²¹ This group were single, widowed or in a relationship with someone they were not living with. Those who were married or in a civil partnership were significantly more likely to get each statement correct than those were cohabiting or not living with a partner (p-values between <0.001 to 0.002), except the statements in relation to parents who were the main carer and about there not being a requirement for a 50:50 split (the latter statement was more likely to be correctly identified by those not married, p-value <0.001).

²² Those who gave their status as separated or divorced were significantly more likely than those who were married or in a civil partnership to get four statements right. These related to the facts around

On average, spouses and civil partners correctly categorised 4.8 statements out of 10, with those whose marital status was separated or divorced correctly identifying 5.1, and cohabitants an average of 4.4. People who were not living with a partner (but not separated or divorced) correctly classified an average of only 4.1 statements out of 10.²³ Similarly, people not living with a partner were more likely to say that they did not know the answer to any question, giving this response to an average of 3.8 statements. By comparison, spouses and civil partners said this in relation to 3.3 statements, and those who were separated or divorced 3.1 statements.²⁴

Gender

There was a difference in women's and men's understanding of different areas of law, with women more likely than men to correctly identify whether a statement was correct in some areas, and men more likely to do so in others. Women knew more than men in relation to the laws around children, significantly more likely to know that the law prioritises the parent with main care of the children (49 per cent compared to 46 per cent of men) and in relation to the fact that parents do not need to stick to the government formula in relation to child maintenance levels (49 per cent compared to 43 per cent of men). Women were also more likely than men to know that the law on financial remedies does not take into account who was at fault for the breakdown (57 per cent compared to 52 per cent of men).²⁵

In contrast, (the irrelevance of fault aside) men were somewhat more likely than women to know about what factors are, or are not, taken into account in law in relation to the division of the assets. Men were significantly more likely than women to know about that the law surrounding financial contributions brought into the marriage (49 per cent of men compared to 47 per cent of women) and that longer marriages were more likely to mean that all assets or debts would be shared (38 per cent compared to 35 per cent of women). They were also more likely than women to know that spousal maintenance is not restricted to a maximum period of five years (39 per cent compared to 36 per cent of women).²⁶

Age

We split the public into four age groups: 18 to 34, 35 to 49, 50 to 64 and 65 and over. Overall, older people had a somewhat better understanding of the laws around financial remedies than younger people. They were more likely to correctly identify whether a statement was true or not true, and less likely to say that they did not know either way. This holds true whether or not they had experience of divorce. This finding is possibly due to older people being able to draw on a wider range of personal life experience as well as those of friends and family.

Across nine of the 10 statements, the proportion of people correctly identifying whether a statement was true or not true went up significantly by age.²⁷ For instance, six in ten (59 per cent) of people aged 65 and over – compared to half (51 per cent) of 18 to 34 year olds – correctly said that it was true that the law allows couples who do not go to court to agree any asset split they want. Those aged 65 and over and those aged 50 to 64 got an average of

fault, 50:50 splits, pensions and child maintenance (p-values <0.001 to 0.021). See later section for a more detailed discussion of the differences for those who had, at some point been through a divorce.

²³ P-value <0.001.

²⁴ P-value <0.001.

²⁵ P-values of <0.001 for each statement.

²⁶ P-values of <0.001 for each statement.

²⁷ P-values of <0.001 to 0.006 comparing the proportions across four age groups, 18 to 34; 35 to 49; 50 to 64; 65 and over. There were no significant differences in relation to knowledge about the main carer.

4.9 statements correct out of the 10. Among 18 to 34 year olds the average score was 4.0, with those aged 35 to 49 year olds getting an average score of 4.4.²⁸

Younger people were also significantly more likely than older people to say that they did not know whether the statement was true.²⁹ This finding is not surprising given younger people's stage in the life course and their general experience. On average, 18 to 34 year olds and 35 to 49 year olds said that they did not know in relation to 3.8 of the 10 statements, while 50 to 64 year olds said that they did not know about an average of 3.3 statements, and those aged 65 and over to 3.2 statements.³⁰

Educational qualifications

Overall, people with higher qualifications had a somewhat better understanding of the laws around financial remedies than those with fewer or no qualifications.³¹ For the purposes of this analysis, we separated respondents into three groups: those qualified to degree level or above; those with A levels or qualifications below degree level; and those with either no qualifications or qualifications at GCSE level or below (referred to here as higher, mid-level and lower level/no qualifications). However, the differences between these groups were largely accounted for by the proportions of people who said that they did not know whether a statement was true or not true.

People with lower or no qualifications were significantly more likely than others to say that they did not know to eight out of the 10 statements;³² they were more confident about the rights of parents with main care of their children and legal entitlement around spousal maintenance. Those with higher qualifications were more likely to classify those eight statements correctly.³³

The most notable differences related to people's knowledge that the law does not require that assets and debts should always be split 50:50 and in relation to the fact that parents need not necessarily use the Child Maintenance Service (CMS) formula for setting child maintenance.³⁴ Forty-four per cent of those with higher level qualifications correctly classified as false statement about 50:50 splits, compared to 39 per cent of those with mid-level qualifications and 33 per cent of those with lower level or no qualifications. The respective figures in relation to the child maintenance calculation were 49 per cent, 46 per cent and 44 per cent.

Overall, those with higher level qualifications got an average of 4.8 statements correct out of the 10, compared to 4.5 among those with mid-level qualifications and 4.4 among those with lower level or no qualifications.³⁵

²⁸ P-value <0.001 across the four age groups.

²⁹ Differences were statistically significant in relation to all 10 statements, with p-values comparing across four age groups, 18 to 34; 35 to 49; 50 to 64; 65 and over between <0.001 and 0.021.

³⁰ P-value <0.001 comparing the four age groups.

³¹ See P Pleasence, N Balmer and C Denvir, *How People Understand and Interact with the Law*, (PPSR, 2015), Table 3.1 and p 44-45 for discussion of correlation between educational qualifications and legal knowledge in relation to housing, employment and consumer issues.

³² P-value differences of <0.001, comparing the proportion of participants in the three qualification bands who gave a true/not true answer to those saying don't know.

³³ With p-values between <0.001 to 0.003.

³⁴ P-values of <0.001 to 0.006.

³⁵ P-value <0.001.

Household income

Given the high level of correlation between people's educational qualifications and their household income, the findings in relation to household income follow a similar pattern. People with higher incomes were more likely than those with lower incomes to know what the law was in relation to financial remedies on divorce. They were more likely to know whether the statement was correct and less likely to say that they did not know.

For this analysis, we compared people with gross annual household incomes of under £25,000, between £25,000 and £49,999 and £50,000 and over. The average number of statements that these three groups in turn classified correctly went from 4.4 to 4.8 to 5.1, with the number of statements to which people said that they did not know going from 3.6 to 3.2 to 2.9.³⁶ There were significant differences across the income groups in the proportion of people getting the statement right and in the percentages who said that they did not know for all 10 statements.³⁷

Differences between those who have and have not experienced a divorce

While those who had been divorced³⁸ were more likely to have a greater understanding of the law on financial remedies than other people, the level of misconception or lack of knowledge remained high among divorcees. Figure 2 shows the responses to the five 'true' statements, with the top half of the figure relating to divorcees and the bottom half to those who had not been divorced. Figure 3 does the same for the five 'not true' statements.

Those who had been divorced were significantly more likely to get the answer right in relation to nine of the 10 statements.³⁹ On average, divorcees gave the correct answer to 5.2 of the 10 statements, compared to 4.4 correct answers among those who had not been divorced.⁴⁰ Divorcees were also significantly less likely than other people to respond that they did not know whether the statement was true or not,⁴¹ with an average of 3.0 don't knows compared to 3.7 among those who had not been divorced.⁴²

However, substantial proportions of those who had experienced a divorce either misunderstood the law or did not know. The proportion of divorcees saying that they did not know ranged from 17 per cent in relation to the role of fault to 50 per cent in relation to spousal maintenance. And fewer than half of divorcees knew the law in relation to 50:50 splits (42 per cent), the implication of longer marriages (37 per cent), and the rules around spousal maintenance (45 per cent). One interesting finding is in relation to knowledge about 50:50 splits; 30 per cent of both divorced and never divorced individuals incorrectly viewed

³⁶ P-values of <0.001.

³⁷ P-values of <0.001 across all 10 statements.

³⁸ Note, these are people who were identified in the national representative screen as having been divorced at any point, rather than the divorcees included in the main *Fair Shares* study whose divorce had been in the previous five years. We look later at the responses of divorcees from the main *Fair Shares* study, comparing them across key demographics and their use of legal support in relation to financial settlements.

³⁹ P-values of <0.001 to 0.003. There were no significant differences in relation to knowledge about the length of the marriage.

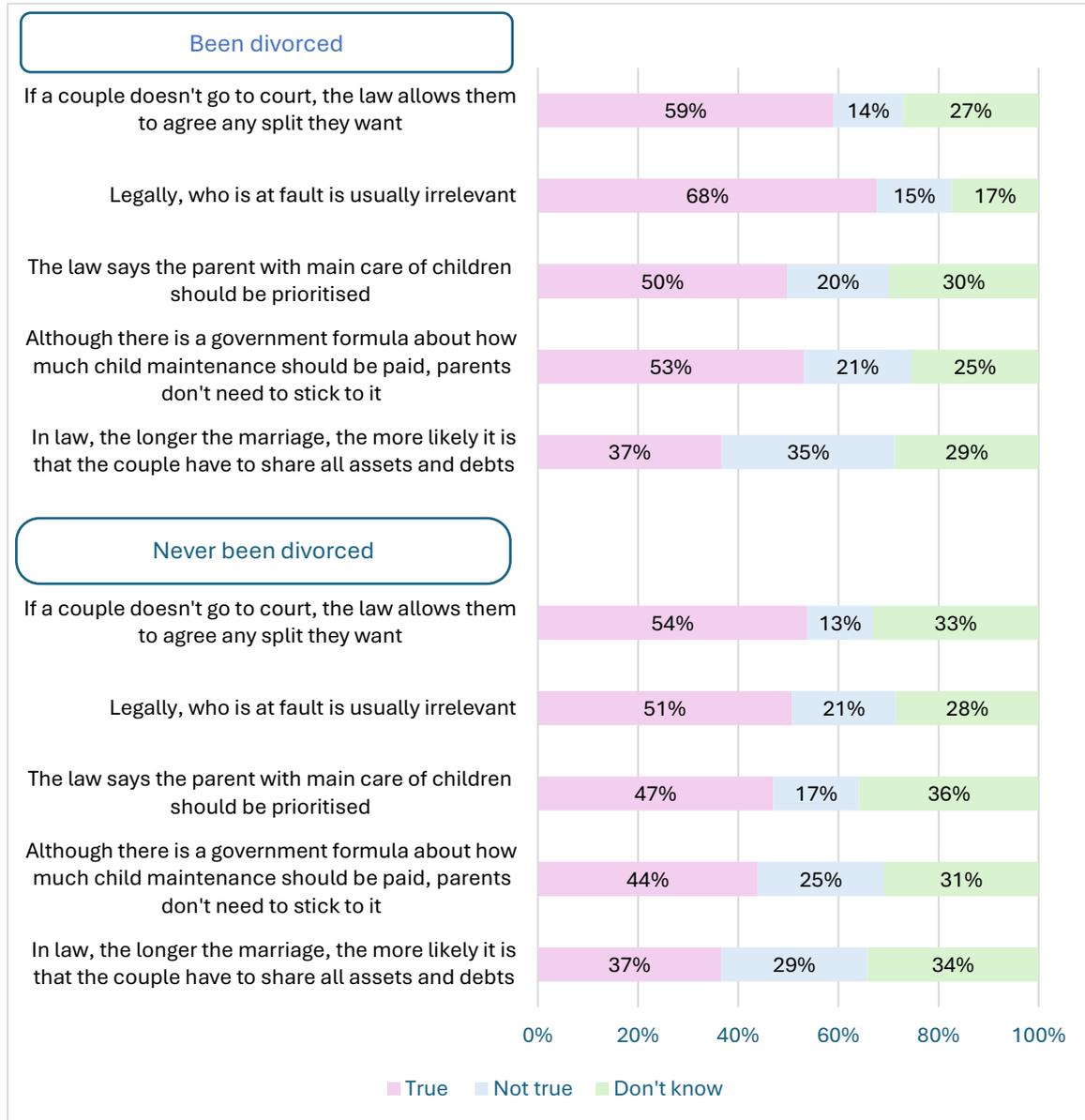
⁴⁰ P-value <0.001.

⁴¹ They were significantly less likely to say 'don't know' for each of the 10 statements, with p-values of <0.001.

⁴² P-value <0.001.

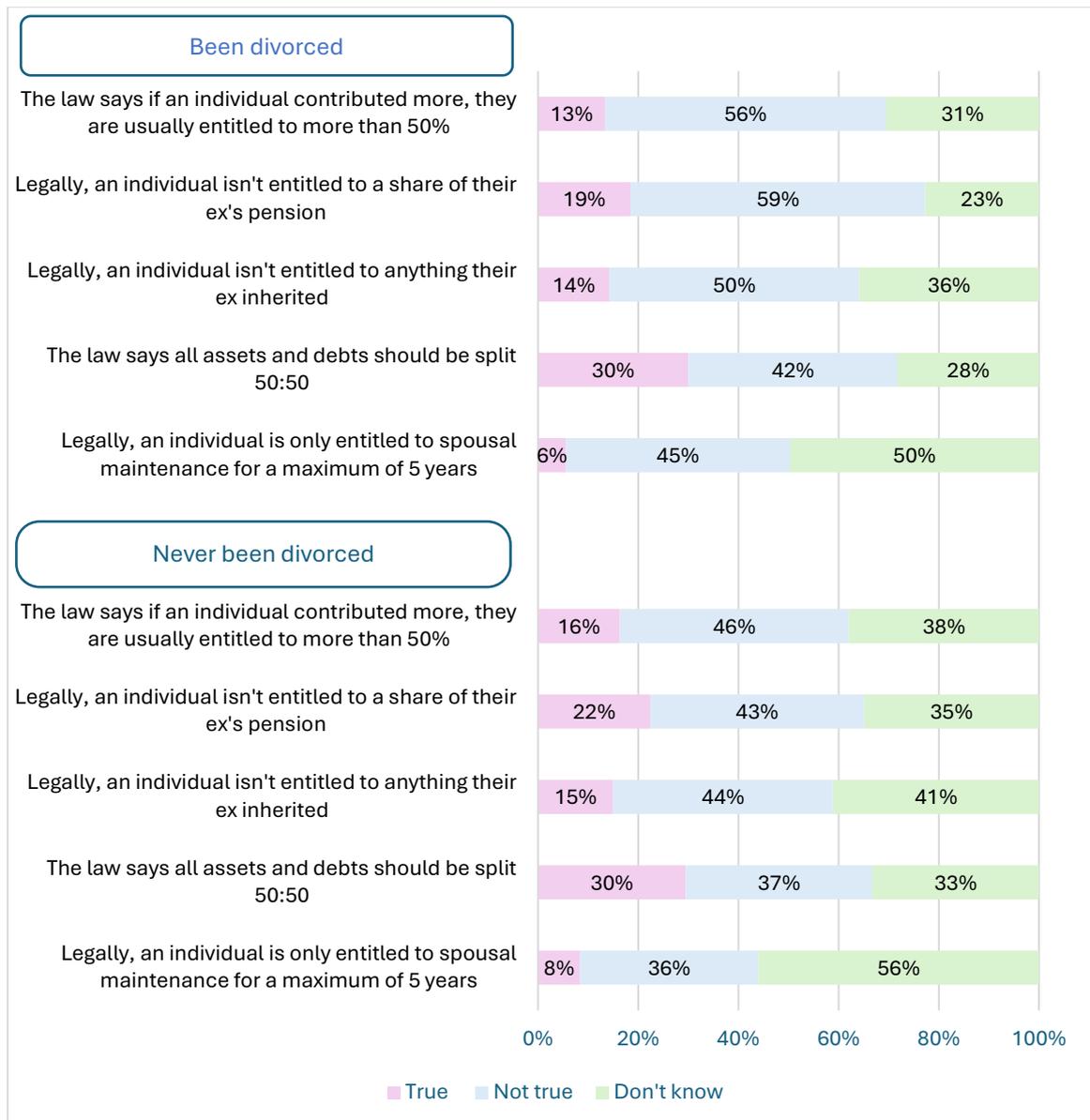
the law as requiring all assets and debts to be split 50:50, suggesting that the goal of equality of asset division on divorce is relatively prevalent across the population.

Figure 2: understanding of the law among those who had or had not been divorced - 'true' statements



Base: those who had been divorced (4,154) or not (16,378)

Figure 3: understanding of the law among those who had or had not been divorced - 'not true' statements



Base: those who had been divorced (4,154) or not (16,378)

3. Divorcees' understanding of the law: a closer examination

This section uses the responses of the 2,415 divorcees who took part in the main *Fair Shares* survey, all of whom had received their Decree Absolute within the previous five years.⁴³ By drawing on these recent divorcees (rather than simply those identified in the nationally representative screen), we can explore divorcees' understanding of the laws around financial remedies according to the range of data we collected about their circumstances prior to their divorce and about their experiences of the divorce process.

Differences by divorcees' circumstances prior to divorce

Length of marriage⁴⁴

Overall, divorcees whose marriages lasted longer had a somewhat better understanding of the law than those with shorter marriages, although the differences were not large. Those who had been married for more than 20 years correctly identified an average of 5.5 statements out of 10, with those married between 11 and 20 years correctly identifying 5.4 statements. Among those married fewer than six years, the average score was 4.9, and 5.1 among those married between six and 10 years.⁴⁵

The greatest disparities in knowledge related to pension rights and the fact that entitlement was not based on the relative contribution of each party during the marriage. Those with longer marriages were much more knowledgeable about their pension sharing rights than those with shorter marriages⁴⁶ (e.g. 71 per cent of those married for more than 20 years compared to 49 per cent of those married for fewer than six years). And two thirds (64 per cent) of those married for more than 20 years were aware that an individual who contributed more financially during the marriage was not usually entitled to more than half of the assets, compared to 48 per cent of those married for fewer than six years and 47 per cent of those married between 11 and 20 years.⁴⁷

Gender and children

Overall, there were no significant differences between women and men in relation to the number of statements they correctly identified (5.3 and 5.1 out of 10 respectively).

As may be expected, parents of dependent children were more knowledgeable than other divorcees in relation to the law around the rights of parents with main care of their children and around the child maintenance formula. However there were still high levels of misunderstanding among parents on these issues. Half (54 per cent) of parents with

⁴³ These include 380 identified as part of the screening exercise among members of YouGov's nationally representative panel and a further 2,035 identified via a targeted screen (see Chapter 2 of the main *Fair Shares* report for a full description of the sampling approach). Their responses to these ten statements are reported in Section 5.5 of the main *Fair Shares* report.

⁴⁴ Given the correlation between length of marriage and a divorcees' age, we see a similar pattern of results across different age groups, with older divorcees more knowledgeable than younger divorcees. For instance, divorcees under the age of 35 got an average of 4.4 answers correct, compared to 5.4 among those aged 60 and over. Likewise, those with longer marriages had, on average, a higher level of assets to divide, hence the similar pattern of results in the later section on the assets available to divide on divorce.

⁴⁵ P-value 0.002.

⁴⁶ P-value <0.001.

⁴⁷ P-value <0.001.

dependent children knew that the parent with main care of the children should be prioritised when it comes to the division of assets, although one in five (21 per cent) did not know. In comparison, 46 per cent of divorcees without children were aware of this fact and 39 per cent said that they did not know.⁴⁸ Two thirds (68 per cent) of parents with dependent children knew that there was no legal stipulation for parents to adhere to the child maintenance formula, compared to four in ten (41 per cent) of parents of older non-dependent children and 45 per cent of other divorcees.⁴⁹ Mothers with dependent children were more likely than fathers to know about the child maintenance rules (71 per cent compared to 64 per cent⁵⁰).

Assets available at the time of divorce

We compared the understanding of the law of divorcees with assets to divide on divorce (equity in the matrimonial home, pension pots, savings and other assets, minus any debts) worth less than £100,000; between £100,000 and £499,999; and worth £500,000 or more. Those with higher levels of assets to divide on divorce tended to have a greater understanding of the laws around financial remedies than those with lower levels or no assets. Those who had assets worth at least £500,000 correctly identified an average of 5.9 statements out of 10, compared to 5.6 statements for those with assets worth between £100,000 and £499,999 and 4.7 statements among those with assets worth less than £100,000.⁵¹ Those with lower level assets were significantly more likely to say that they did not know (to an average of 3.0 statements out of the 10) than those with mid-level (2.1 statements) or higher level (2.0 statements) assets.⁵² Those who had lower assets were significantly more likely than those with higher assets to say that they did not know whether something was the law or not, with the only exception in relation to the child maintenance formula.⁵³

Divorcees who had their own pension (other than a state pension) or knew that their ex-spouse had a pension were more knowledgeable about pension sharing rights than those who had not. Two thirds of those who had a pension (66 per cent) and those whose ex-spouse had a pension (67 per cent) knew that individuals were entitled to a share of their ex-spouse's pension, compared to 44 per cent of those who did not have their own pension and 54 per cent of those whose ex-spouse did not have a pension.⁵⁴

⁴⁸ P-value 0.021 across parents with dependent children, older children and no children.

⁴⁹ P-value <0.001. In turn, parents with dependent children were less likely to say that they did not know (14 per cent compared to 23 per cent of parents of older children and 38 per cent of divorcees without children).

⁵⁰ P-value 0.045.

⁵¹ P-value <0.001. There were significant differences (p-values <0.001 to 0.022) in relation to all statements except the fact that couples can decide on any division they like outside of court and the fact that there is not a requirement for a 50:50 split.

⁵² P-value <0.001.

⁵³ P-values between <0.001 and 0.038.

⁵⁴ This includes situations where the divorcee did not know whether their ex-spouse had a pension. P-values of <0.001.

Differences by divorcees' use of legal advice and routes to reaching a financial settlement

As we might expect, and hope, divorcees who had gone through more formal processes were on average more knowledgeable than those who had not. Those who had consulted or used a lawyer or Legal Services Company (LSC)⁵⁵ in relation to their finances tended to know more about the law on financial remedies than those who had not. Likewise, those who had reached a formal arrangement (on either some or all of their finances), particularly those with a financial order, had greater levels of knowledge than those who had failed or not attempted to reach a financial arrangement.

Of course, we cannot claim that there is a causal link between the use of lawyers or formal routes and divorcees' knowledge of the law. It may be that those who knew more about the law were more likely to reach out to a lawyer or use formal routes, rather than them learning about the law during the process. Or, it may be partly reflecting the fact that those with a greater level of assets (who we saw above, had a better knowledge of the law) are more likely than others to use a lawyer. However, it does appear that those had used a lawyer or came to a formal arrangement were more likely to be making arrangements with some knowledge of the law.

That said, again, the differences in knowledge between those using or not lawyers or formal routes were not always large, and there was a great deal of misconception and lack of understanding even among those who had used formal routes. Arguably, this may not matter as much if they are getting appropriate legal advice.

Use of lawyers in relation to finances

Figure 4 shows the responses to the five 'true' statements, with the top half of the figure relating to divorcees who had consulted a lawyer in relation to their finances and the bottom half to those who had not. Figure 5 does the same, but for the five 'not true' statements.

Those who had consulted a lawyer were significantly more likely to get the answer right in relation to seven of the 10 statements.⁵⁶ The only issues where those who had used lawyers were not significantly more likely than other divorcees to know the law related to child maintenance, spousal maintenance, and the fact that couples can agree any split they want outside of the court. These findings are not surprising. First, lawyers may not have advised on the child maintenance issue for divorcees, with divorcees possibly relying on the online calculator and therefore not requiring legal advice on this point. Secondly, in relation to spousal maintenance, the more limited knowledge exhibited here by divorcees may be due to the fact that only 22 per cent of divorcees had a spousal maintenance arrangement,⁵⁷ and for many divorcees, an understanding of the issues surrounding spousal maintenance will not have been relevant in their case. Finally, it is more understandable that divorcees who have used a lawyer will have less knowledge about the rules governing the non-court space in settling any financial matters.

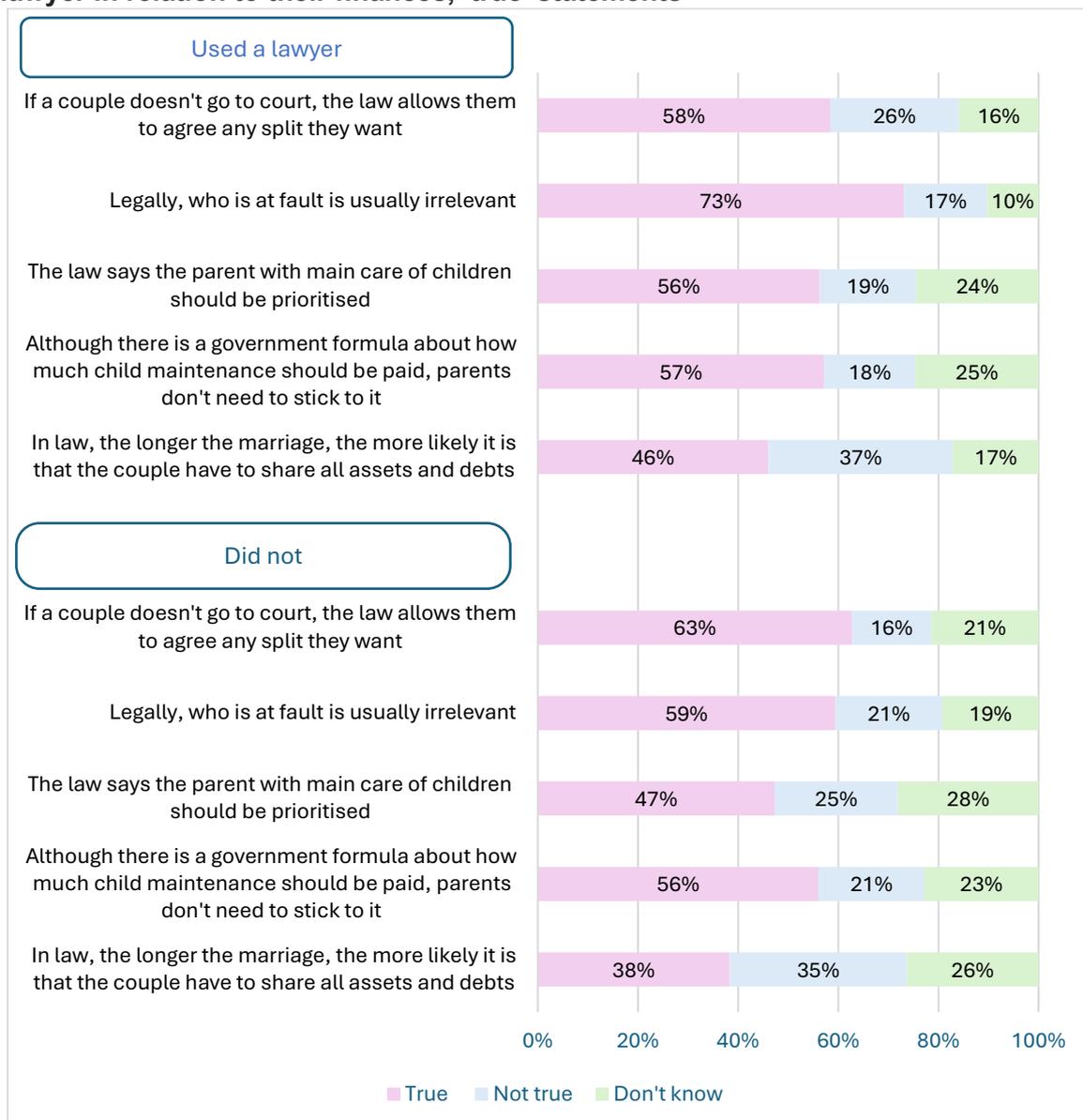
⁵⁵ For brevity, we refer to these as lawyers in the remainder of the paper.

⁵⁶ P-values of between <0.001 to 0.005.

⁵⁷ E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall, *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), p 255.

On average, divorcees who had used a lawyer gave the correct answer to 5.7 of the 10 statements, compared to 4.9 correct answers among those who had not used a lawyer.⁵⁸ Those who had used a lawyer were also significantly less likely than those who had not used a lawyer to respond that they did not know whether the statement was true or not, with an average of 2.1 don't knows compared to 2.8.⁵⁹

Figure 4: understanding of the law among divorcees who had or had not used a lawyer in relation to their finances, 'true' statements

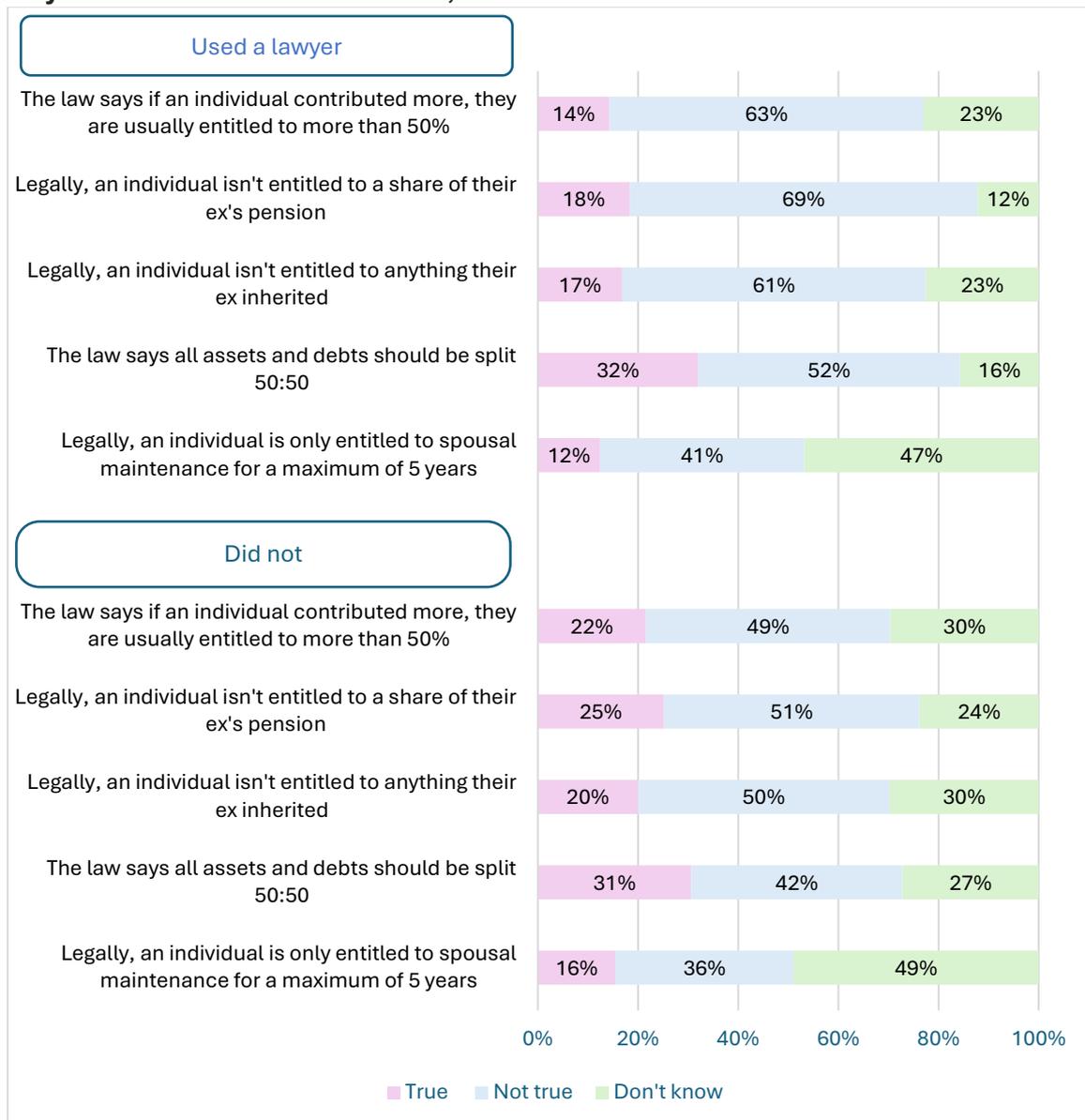


Base: divorcees who used a lawyer in relation to finances (873) or did not (1,542)

⁵⁸ P-value <0.001.

⁵⁹ P-value <0.001. Those who used a lawyer were significantly less likely than those who did not to say that they did not know to seven of the 10 statements.

Figure 5: understanding of the law among divorcees who had or had not used a lawyer in relation to their finances, 'not true' statements



Base: divorcees who used a lawyer in relation to finances (873) or did not (1,542)

Reaching a settlement

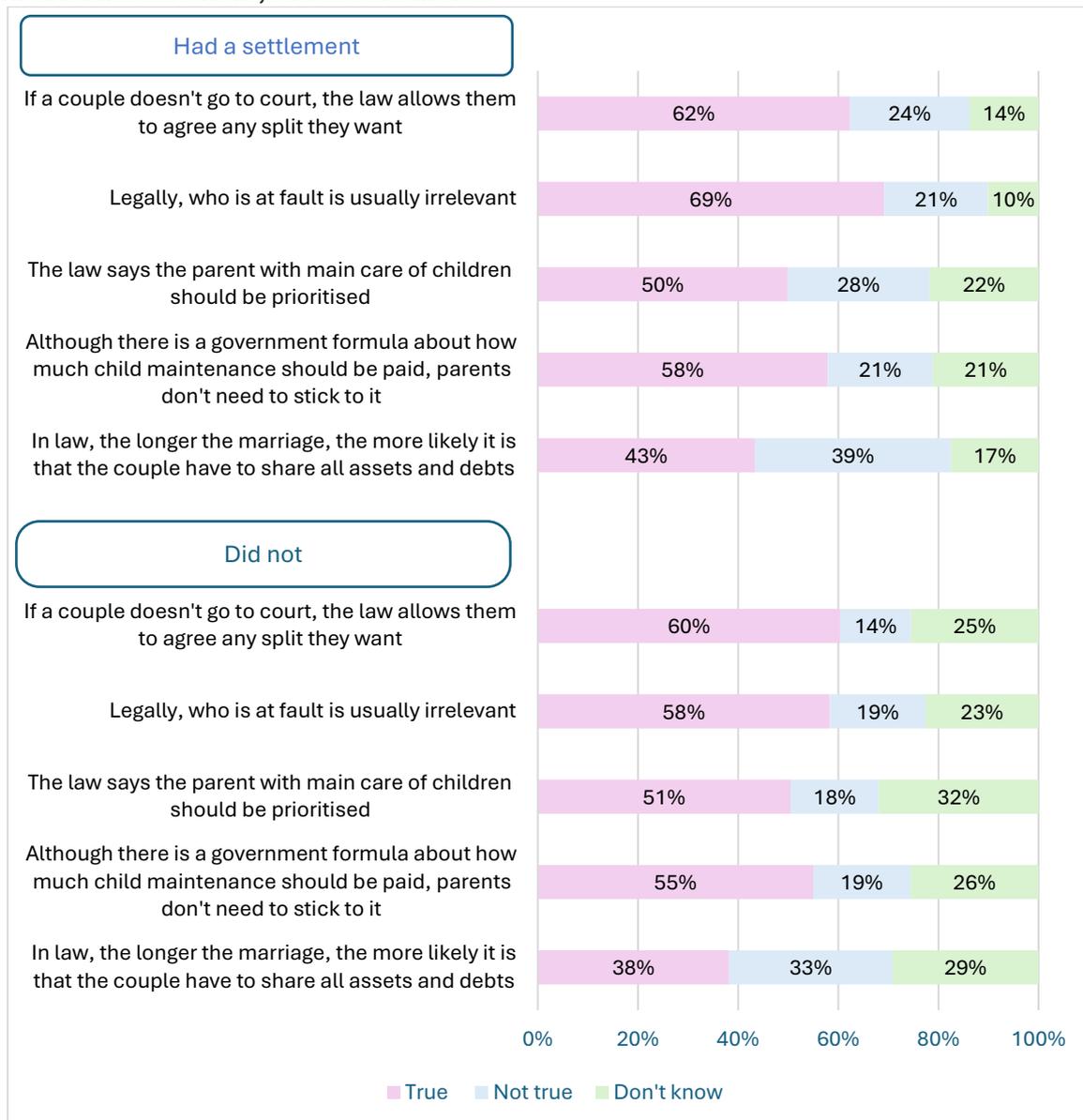
Divorcees were asked whether or not they had reached a financial settlement, with separate response options for having sorted out only some of their finances or all of their finances. Those who had not reached a settlement could respond that they had 'gone their separate ways', had little or nothing to divide, that they had given up trying to make an arrangement or that they were still trying.

Those who had gone through the process of reaching a full or partial formal arrangement were more likely than other divorcees to know about the laws related to financial remedies. Those who had reached a full or partial arrangement correctly identified an average of 5.6 statements out of 10 compared to 4.7 among those who had not.⁶⁰ They were significantly

⁶⁰ P-value <0.001.

more likely to correctly identify six of the ten statements.⁶¹ Those who did not have a formal arrangement were more likely than those who did to respond that they did not know to more statements (an average of 3.1 compared to 2.0 out of 10).⁶²

Figure 6: understanding of the law among divorcees who had or did not have a formal financial settlement, 'true' statements

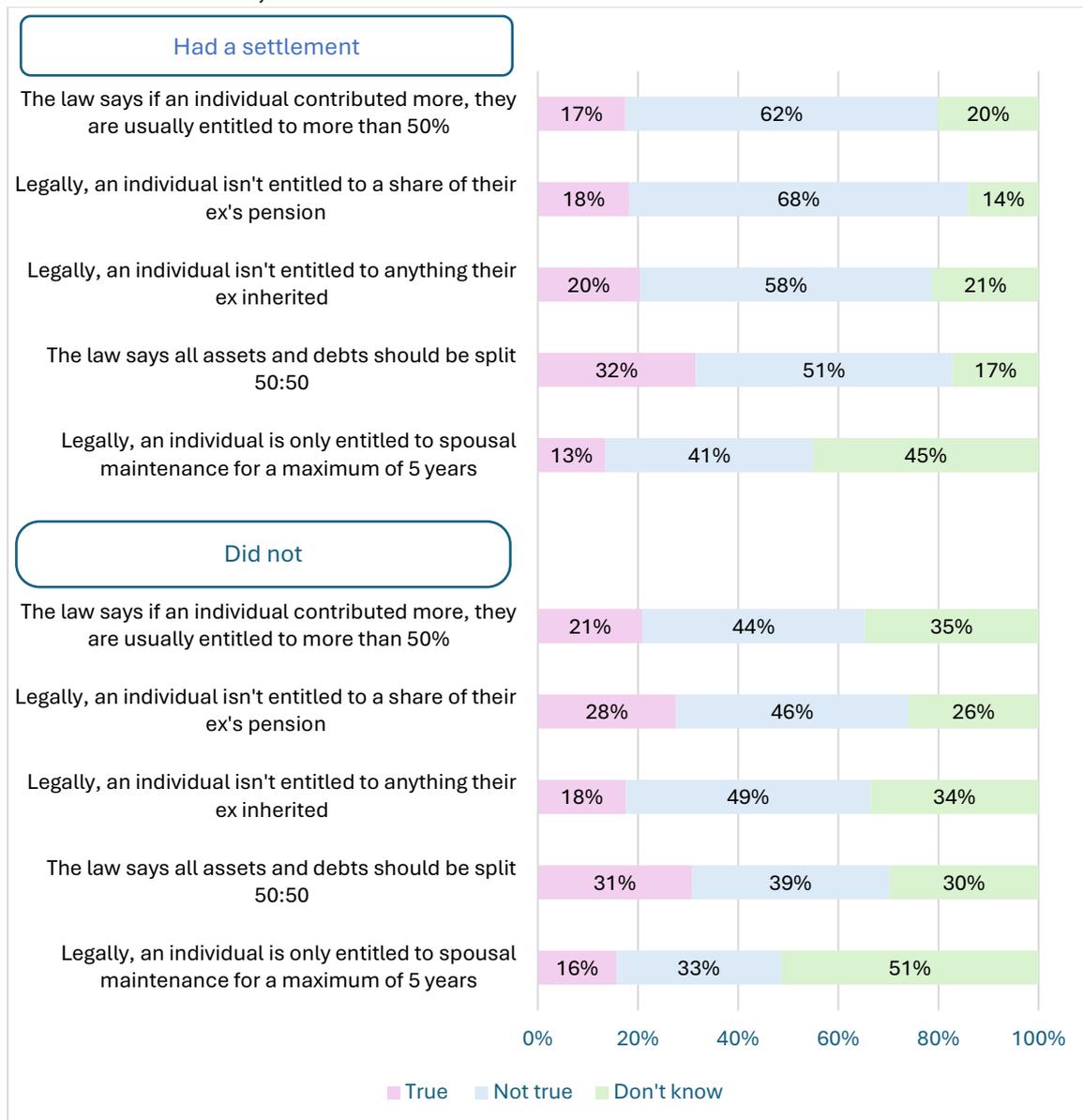


Base: divorcees who had a full or partial financial settlement (1,389) or did not (1,026)

⁶¹ P-values of <0.001. They were no more likely to know about the rights of parents with main care of the child, child maintenance, the implications of the length of the marriage and the fact that couples can decide whichever split they like outside of the court.

⁶² P-value <0.001.

Figure 7: understanding of the law among divorcees who had or did not have a formal financial settlement, 'not true' statements



Base: divorcees who had a full or partial financial settlement (1,389) or did not (1,026)

Moreover, among those with a formal financial settlement, those whose arrangement was made into an order were more likely to know about the laws around financial remedies than those whose arrangements were not made into an order. Those with an order were significantly more likely to correctly classify eight of the 10 statements.⁶³ There were no significant differences in relation to spousal maintenance. Yet, notably, those without an order were significantly more likely than those with an order (68 per cent compared to 57 per cent⁶⁴) to correctly identify that couples making arrangements made outside of the court could decide on any split that they wished.

⁶³ P-values between <0.001 and 0.030.

⁶⁴ P-value 0.003.

4. Conclusions

The findings outlined here, provide an important perspective on both the public's and divorcees' understanding of the law concerning finances and property on divorce.

Overall, the public's understanding of the law on financial remedies is patchy and often poor. Substantial proportions of people simply say that they do not know what the law is, with others incorrectly identifying which statements were true or not true. This finding is consistent with previous studies which have found a public legal knowledge deficit across a range of civil justice issues.⁶⁵ This is significant as people's erroneous beliefs may prove stubborn to dislodge, an important point when it comes to potential law reform, particularly as previous research has shown that individuals' beliefs are influenced by personal morality and social norms.⁶⁶ As we know from the *Fair Shares* report, one in five (19 per cent) divorcees sought advice and support from family and friends during the divorce process.⁶⁷ When considered in conjunction with the fact that the majority of the divorcing population reached informal arrangements outside of the formal family justice system (i.e. without a court order) and only a third (32 per cent) of divorcees made use of legal services in relation to their financial arrangements, it is important to be cognisant of the significance of this informal support network and the consequent risk of legal misconceptions in potentially influencing the advice and guidance that friends and family provide.

On the one hand, we might not expect the public as a whole to know – or need to know - about the laws related to financial settlements when couples divorce, particularly given the law's complexity, its discretionary nature, and its limited bearing on the general public's day-to-day lives.⁶⁸ However, in line with research into legal awareness in other fields,⁶⁹ we might expect legal knowledge to be substantially higher among those who had experienced divorce, and also to be higher among married people, for whom it is arguably important that they should understand their rights were they to divorce. While we found that levels of understanding were indeed slightly higher among those who had experienced divorce, and married people had a somewhat better understanding of the law relating to finances and property on divorce than other people, the differences were not as large as we might have expected. This suggests that there was limited additional learning either during marriage, or during the process of separation or divorce. That said, in general, divorcees who had used more formal routes to reaching an arrangement tended to know more about the laws around finances and property on divorce than those who did not. Whilst we are unable to claim a causal link between the use of lawyers or formal routes and divorcees' knowledge of the law,

⁶⁵ See for example, P Pleasence, N Balmer and C Denvir, *How People Understand and Interact with the Law*, (PPSR, 2015); C Denvir, N Balmer and P Pleasence, 'When legal rights are not a reality: do individuals know their rights and how can we tell?' (2013) 35(1) *Journal of Social Welfare and Family Law*, 139-160;

⁶⁶ See for example, P Pleasence and N Balmer, 'Ignorance in Bliss: Modeling Knowledge of Rights in Marriage and Cohabitation' (2012) 46(2) *Law and Society Review*, 297-333; P Kim, 'Norms, Learning, and Law: Exploring the Influences on Workers' Legal Knowledge', (1999) *University of Illinois Law Review*, 447-515, and A Barlow, S Duncan, G James and A Park, *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century*, (Hart, 2005).

⁶⁷ E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023), section 4.6, p 155-120.

⁶⁸ The latter point made previously by P Pleasence, N Balmer and C Denvir, 'Wrong about Rights: Public Knowledge of Key Areas of Consumer, Housing and Employment Law in England and Wales' (2017) 80(5) *Modern Law Review*, 836-859.

⁶⁹ See J Casebourne, J Regan, F Neathey and S Tuohy, *Employment Rights at Work: A Survey of Employees 2005* (London: Department of Trade and Industry, 2006) where employees with dependent children were more likely to know a lot/ fair amount about the right to request flexible working (p39).

it may be that those who knew more about the law were more likely to use formal routes or access legal support, rather than them acquiring knowledge about the law during the process. However, our findings do clearly show that divorcees who had used more formal routes to reach an arrangement, or had consulted or used a lawyer, were more likely to be making arrangements with some knowledge of the law.

Overall, this generally poor and patchy understanding of the law relating to finances on divorce amongst both the general public and divorcees presents a particular challenge when it comes to potential law reform.⁷⁰ With most of the divorcing population remaining ‘outside’ the formal family justice system and not accessing legal services in relation to their financial arrangements, questions arise not only about the effect that any future law reform may have on such divorcees, but also how (updated) legal information should be provided to couples who appear to be bargaining outside the ‘shadow of the law’.⁷¹ As noted by one of us previously, divorcees ‘are increasingly reliant on themselves, their own (in)ability to settle their family dispute, and [...] their own (mis)understanding of family law’.⁷² This is particularly pertinent given our finding that those without an order were significantly more likely than those with an order to be aware that couples making arrangements made outside of the court could decide on any split that they wished.

In light of our findings here and in our earlier reports,⁷³ we once again conclude that some form of early legal advice and information for all divorcees should be a policy priority for the Ministry of Justice. This could help to address the deficit in knowledge about the law and legal procedure among the divorcing population, particularly amongst those divorcees who do not obtain any form of legal support. We welcome the recent policy announcement about an early legal advice pilot in specific regions in England and Wales,⁷⁴ and consider that it will be particularly important to assess the routes by which this will be done. We trust that a variety of methods of providing such advice are tested to ensure that legal help is available to as broad a range of divorcing couples as possible. In particular, it is important to gauge which methods are most successful in raising divorcees’ levels of awareness and understanding of their entitlements and obligations when it comes to sorting out their finances. The findings set out in this paper provide, we hope, a valuable baseline against which this assessment can be made.

⁷⁰ Law Commission, *Financial remedies on divorce and dissolution: A scoping report*, Law Com No 417 (2024)

⁷¹ R Mnookin and L Kornhauser, ‘Bargaining in the Shadow of the Law: The Case of Divorce’ (1979) 88 Yale LJ 950.

⁷² E Hitchings, ‘Official, operative and outsider justice: the ties that (may not) bind in family financial disputes’ (2017) 29(4) Child and Family Law Quarterly 359-378, at 378.

⁷³ E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023) and E Hitchings and C Bryson, *Dividing property and finances on divorce: what happens in cases involving domestic abuse?* (University of Bristol, 2024).

⁷⁴ Ministry of Justice, *Supporting earlier resolution of private family law arrangements: Government response on resolving disputes earlier through family mediation* (2024). Available at <https://assets.publishing.service.gov.uk/media/65c3518e3f6aea000dc15549/early-resolution-consultation-response.pdf>.

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

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