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MEAL TICKETS FOR LIFE? THE NEED FOR EVIDENCE-BASED EVALUATION OF FINANCIAL REMEDIES LAW

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Introduction: the socio-economic context

The law of financial remedies on divorce raises deep questions about the nature of the obligations created by marriage and their persistence after divorce. Considerable media attention is garnered by high-profile, predominantly "big money" cases, especially those that entail joint lives provision – the so-called "meal ticket for life" award. Media coverage of *Waggott v Waggott* ([2018] EWCA Civ 727) perhaps had a slightly gleeful tone as it reported Mrs Waggott's appeal "backfiring" on her loss of a joint lives award (e.g. *Daily Telegraph*, 11 April 2018).

But, looking beyond the sensational media reporting of the predicaments of the rich, illustrated with images of homes worthy of *Country Life*'s property pages (e.g. *The Sun*'s online coverage of *Waggott*), what do the data tell us about the experiences of the general population?

Official statistics and nationally-representative survey data indicate that these questions still arise in a highly gendered context in which the presence of children is critical. Just under half of all divorces feature children of the family under the age of 16. (ONS, *Divorces in England and Wales: Children of Divorced Couples*, www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/datasets/divorcesinenglandandwaleschildrenofdivorcedcouples). Many women still have less economic capacity than most men to deal alone with the economic shock of divorce, not least thanks to the distribution of childcare and labour market participation. The most common organisation of the English family economy, adopted by 1.8 million families, is a full-time working father and part-time working mother. Around a quarter of mothers with dependent children are economically inactive (i.e. are neither in work nor seeking work); less than half of single mothers of children under 2 are in paid employment. (ONS, *Families and the Labour Market, England: 2017,* www.ons.gov.uk/releases/familiesandthelabourmarketengland2017).

Meanwhile, many fathers say that they want to get more involved in childcare, but various cultural, psychological and economic barriers prevent their doing so (see Equality and Human Rights Commission (2009). *Working better: fathers, family and work—contemporary perspectives. Research summary 41*. www.equalityhumanrights.com/en/publication-download/research-summary-41-working-better-fathers-family-and-work-contemporary). And the latest ONS data show that women on average still carry out 60% more unpaid work than men (ONS, *Women shoulder the responsibility of 'unpaid work', www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/womenshouldertheresponsibilityofunpaidwork/2016-11-10.*

Many women clearly incur a considerable 'motherhood penalty' – in reduced earning capacity and savings/pension accumulation – the impact of which will be felt following divorce. (For data overview, see Chartered Insurance Institute, *Risk, exposure and resilience to risk in Britain today: Women's Risks in Life – an interim report* (2017), www.cii.co.uk/consumer/risks-in-life/).

It is therefore unsurprising that Fisher and Low, analysing longitudinal British Household Panel Survey data, found that wives who later divorced had on average contributed just 36% of the matrimonial household's income during the marriage. They also found that both the impact of divorce and recovery from it was on average considerably worse for wives than for husbands, whose position – measured in terms of equivalised household income – by contrast on average *improved* following divorce. ('Recovery from divorce: comparing high and low income couples' (2016) 30 *International Journal of Law, Policy and the Family* 338; see further analysis in article by Fisher and Low forthcoming in the *Australian Journal of Family* Law.)

The Divorce (Financial Provision) Bill: evidence-based law reform?

This is part of the backdrop against which Baroness Deech's Divorce (Financial Provision) Bill [HL] 2017-19 falls to be considered.

Baroness Deech is a longstanding campaigner for reform, having been prominent in academic and public debates since soon after the enactment of the original Matrimonial Causes Act scheme (e.g. 'The Principles of Maintenance' (1977) 7 *Family Law* 229). Those debates led to the amendments made in 1984 – removing the 'minimal loss' principle, introducing the clean break provisions and the requirement to give first

consideration to the welfare of minor children of the family. There is much in current public discourse that finds echoes in those earlier debates. Notably, complaints about the 'lifelong meal ticket' of 'alimony drones' that were central then are recurring now: see '"Meal ticket for life" divorce deals must be stopped, urge law chiefs' (*The Times*, 20 Nov 2017, p 17).

But as the Law Commission said in 1981, handicapped by the lack of empirical data in the area: '[W]e have said only that the law is "widely thought to be capable" of producing unjust and inequitable results; we have not said that it in fact does so.' (Law Com No. 112, 1981, para 7) Research later conducted by John Eekelaar and Mavis Maclean examining pre-1984 outcomes showed that – thanks to the impact of benefit rules (withdrawing benefit £ for £ of maintenance received) – maintenance paid to female single parent-families 'rarely had any impact on the total household income of that family unless the woman was working full time'. Once child support payments ceased on children's reaching independence, older mothers found that 'their earning capacity had been devastatingly impaired by the interruption of their employment pattern'. (*Maintenance after Divorce* (Clarendon Press, 1986) p 102) So much for the alimony drone lifestyle.

Baroness Deech makes various charges against the current law (see, for example, her speech introducing an earlier iteration of the Bill in 2014: Hansard HL Deb col 1490 (27 June 2014)). These include: its perpetuation of the indignity of lifelong spousal support; lack of transparency making the law inaccessible to lay people and obstructive of settlement; the high costs of litigation in media-reported financial remedy cases; and high awards in 'big money' cases that have made London a prime destination for the 'gold-digger'. (For an excellent riposte to this last charge, see Thompson, 'In defence of the "gold-digger"' (2016) 6 *Oñati Socio-Legal Series* 1225: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2887022. And see remarks in *Waggott v Waggott* [2018] EWCA Civ 727 at [156], noting that long-term maintenance can sometimes be necessary as part of a fair outcome, and expressing understanding of counsel's concern that 'the expression "meal ticket for life" can be used as an unfair trope'.)

What has been notably absent from debate on the Bill thus far, just as in the late 1970s and early 1980s, is significant reference to what official statistics and research tell us about the reality of financial provision on divorce for ordinary people in 'everyday'

cases, most of whom (around two-thirds – see MoJ *Family Court Statistics Quarterly* www.gov.uk/government/collections/family-court-statistics-quarterly, table 13) obtain no court-ordered income, capital or pension provision at all (by consent or otherwise). Little is known about that no-order population, save what we can glean from the worrying findings of studies such as Fisher and Low's. Instead, public and parliamentary debate has focused on the atypical (mostly stratospherically high-value) cases that attract media attention and from which misleading stereotypes may be generated and inappropriately generalised.

Whilst any good law reform properly seeks to give coherent effect to a particular principled view about what the law (and so the affected parties' underlying relationship) should be, any law reform should also be informed by the best available empirical data. Without such an evidence-base, reform may both fail to achieve its principled objectives and exacerbate existing problems. And so this article now turns to data drawn from the authors' study of financial remedies cases concluded with a court order, the vast majority of which are by consent (see MoJ data, above, table 15). Data from this study and other sources cast doubt on several charges made against the law. On the legal costs incurred on divorce, see the comparatively modest average legal fees for divorce and non-marital separation in Aviva's UK-wide *Family Finances Report:* www.aviva.com/content/dam/aviva-corporate/documents/newsroom/pdfs/Aviva-Family-Finance-Report-The-hidden-cost-of-divorce-and-separation.pdf). On the suggestion that it is the substantive law which foments dispute, see successive studies by Eekelaar and Maclean (notably Eekelaar, Maclean and Beinart *Family Lawyers: the Divorce Work of Solicitors* (Hart Publishing, 2000), and our findings that key factual disagreements and other non-legal factors are often the problem: *Assembling the Jigsaw Puzzle: Understanding Financial Settlement on Divorce*, (Univ of Bristol, 2013), ch 4 www.nuffieldfoundation.org/final-settlements-financial-disputes-following-divorce and summary in (2014) *Family Law* 44: 309-18).

But we focus in this article on the charge that lifelong support is prevalent, unjustified and 'undignified' for recipients, and reflecting a 'victim mentality' (Baroness Deech, Hansard HL Deb 11 May 2018). Our key findings are that: the clean break culture is prevalent; spousal support orders are largely confined to cases involving dependent children of the family, with scarcely any orders being made in cases without children (of any age); there is geographical variation in courts' use of spousal periodical payments,

but this variation may be more a product of local wealth levels and housing costs than ideological difference.

The financial settlement study: data sources

The data discussed here come from three sources collected for the authors' study of financial settlements on divorce, the first two shortly before LASPO's legal aid reforms were implemented, the third shortly after the creation of the Regional Divorce Centres:

(i) c. 400 court files from two time periods in 2010-11 and 2011-12, from four courts around England;

(ii) interviews with 32 family solicitors and mediators with experience in money cases in the areas in which those courts are situated; and

(iii) two focus group discussions conducted with District Judges from several regions across England, extending beyond the court survey areas.

The financial settlement study's court file survey population: a socio-economic overview

We cannot claim that the sample is representative of the jurisdiction, but the four courts/areas in the first two elements were selected to achieve a spread of different socio-economic circumstances. Table 1 shows the economic and occupational status of those spouses in the court file survey whom we could classify given occupations on the divorce petition, based loosely on the most simplified National Statistics Socio-Economic Classification tool. (For further detail, see appendix to our article forthcoming in the *Australian Journal of Family Law*.) With the exception of just six individuals (three husbands, three wives), we were able to identify all spouses whose occupation was not classifiable as nevertheless being economically active. Notably, the court file population included a much higher proportion of higher-occupation husbands than the general divorced population (compared with Labour Force Survey data from 2015). This may suggest that financial orders are more likely to be obtained by couples with assets or financial issues on a scale perceived to merit a formalised outcome – though our pre-LASPO sample included several cases that, as a prudent exercise of post-divorce housekeeping simply perfected a clean break between couples with no assets (cf *Vince v Wyatt* [2015] UKSC 14). For comparison with general population and regional income and property data, see figures cited by Douglas in the forthcoming special issue of the *Australian Journal of Family Law*.

Table 1: Economic and occupational status of spouses in the court file sample at date of petition

	Husbands		Wives	
	N	%	N	%
Economically active				
higher	160	40.1	114	28.6
intermediate	50	12.5	83	20.8
routine/manual	81	20.3	69	17.3
unemployed	29	7.3	36	9.0
unclassifiable	48	12	20	5
Total active	***368***	***92.2***	***322***	***80.7***
Economically inactive				
homemaker	0	0	56	14.0
retired	28	7	15	3.8
student	0	0	3	<1
Total inactive	***28***	***7***	***74***	***18.5***
unknown if active	***3***	*<1*	*3*	*<1*
All classifiable	**348**	**87.2**	**376**	**94.2**
All unclassifiable	*51*	*12.8*	*23*	*5.8*
Total	399	100.0	399	100.0

Table 2a shows the variation in wealth-levels at issue between the four courts and for all cases in which spousal periodical payments were ordered. Table 2b shows the income levels for those spousal support cases in each court. The median figures provide a better indication than means, naturally stretched by high outliers. These figures are based on our rough estimates (where broadly calculable, in the face of many difficulties) of the total values of capital assets, pension funds and combined incomes at stake in each case – there are a number of cases in which we were unable to generate the relevant figure, so the averages reported in the tables do not cover all cases (for more detail, see our forthcoming article in the *Australian Journal of Family Law*). There is clearly considerable variation in the wealth-levels dealt with by the four courts. Reflecting the husbands' higher-level occupations, cases involving orders for spousal support on average involved higher annual combined incomes.

Table 2a: combined wealth values by category, for all cases, by court for all cases, and for all spousal pp cases in the sample

		£Non-pension	***£Pension***	***£Income***
All courts, all cases	***mean***	***583,035***	***192,834***	***55,807***
	median	***117,080***	***72,437***	***37,746***
Court A	*mean*	209,090	185,913	47,715
	median	113,326	59,875	37,080
Court B	*mean*	112,023	112,737	32,949
	median	63,304	44,500	31,475
Court C	*mean*	174,019	119,438	37,508
	median	72,166	61,146	33,468
Court D	*mean*	1,863,976	331,817	119,828
	median	549,443	127,737	87,018
All spousal pp cases ***[note]***	*mean*	721,970	260,113	84,299
	median	293,300	112,502	78,642

Note Numbers here are inflated by one very high capital value case (>£10M), without which the means would be c.£560K, £237K, and £82K and medians £281K, £103K, £79K.

Table 2b: number of orders for spousal pps made in each court, with mean and median combined incomes for those cases

	Spousal pps		***£Income combined – spousal pp cases*** [NOTE]	***£Income combined – all cases***
All cases		***mean***		***55,807***
		median		***37,746***
Court A	*16*	*mean*	64,189	47,715
		median	56,000	37,080
Court B	*3*	*mean*	44,741	32,949
		median	47,928	31,475
Court C	*8*	*mean*	55,570	37,508
		median	37,812	33,468
Court D	*37*	*mean*	117,090	119,828
		median	97,917	87,018
All spousal pp cases	*64*	*mean*	85,063	
		median	77,072	

Note: The figures in this column are based on spousal pp cases in each court for which we had valid income data: 15 out of 16 in Court A, all 3 in Court B, 7 of 8 in Court C, 20 of 37 in Court D. If all spousal pp cases are included (i.e. including cases with incomplete income data), the income figures in spousal pp cases for Courts C and D go down (but are still higher – in D, by reference to the median case only – than for all cases in those courts), while those in Court A go up slightly.

What orders were made, and what happened to the FMH?

Tables 3 and 4 summarise the frequency in the court file sample of various types of court order for spouses' benefit (child maintenance orders, not included in table 3, are addressed below). The fate of the former matrimonial home (FMH) was often dealt with outside the order: table 4 shows the destinations of the FMH in *all* cases, whether by order (as in table 3) or not.

Table 3: Frequencies of types of final order for benefit of spouse

Type of order (for benefit of spouse, only)	*Number*	*% of total sample with order (N=399)*
Dismiss all claims	65	16.5
Spousal periodical payments	64	16
Lump sum	167	42
FMH orders		
Outright transfer	129	32
Sale [*note*]	86	22
Mesher	6	1.5
Martin	3	<1
Transfer with charge back	7	1.8
Tenancy transfer	2	<1
Other key types of order		
Order re other property	86	22
Pension sharing	72	18
Pension attachment	1	<1

Note Plus associated lump sum orders distributing net proceeds of sale – those orders are not included in the count for lump sum orders. This figure excludes *contingent* orders for sale, mostly to be triggered only should some other aspect of the deal fail to come together – e.g. transferee of FMH unable to get other spouse removed from mortgage

Table 4: All destinations of the FMH, whether by order or not

All destinations of FMH	*Number*	*% of total sample (N=399)*
Outright transfer	162	41
Sale	126	32
Retained by owner	41	10
Transfer with charge back	8	2
Mesher	6	1.5
Owned by third party	6	1.5
Martin	3	<1
Intervening bankruptcy	1	<1
Tenancy retained by one	20	5
Tenancy surrendered [*note*]	15	3.8
Tenancy transfer	2	<1
Unclear / no info	8	2

Note This includes 11 cases where we infer that was the outcome, given evidence on file about the home's tenure or from which tenure could be inferred (e.g. both spouses now renting in new property with zero capital and no borrowing declared).

The clean break: the prevalent practice

Evidently, clean breaks prevail, both as regards income and capital orders that preserve an ongoing link: spousal maintenance featured in just 16% of cases, and *Mesher* (and similar) orders in relation to the FMH and pension attachment were rare.

Other data from our study indicate that this clean break culture is driven by many couples' preferences:

> *[M]arried couples almost always want a clean break of some form or another – even if it's a clean break as to capital and income. (Mediator 1)*

> *[C]lients like clean breaks. They don't want to have any more bother with the other party, and even if a clean break isn't - you know, the safeguarding aspect of it, the nominal in case something should go wrong, they don't want the link and I don't think they've got the stomach for going back to court again if something does go wrong. (Solicitor/mediator 27)*

A self-sufficiency focus was also evident from some judges' responses to the case study (involving a primary carer wife of three children) presented to the focus groups:

> *Judge 11: [I]n my court we would always consider, always consider in every case whether a clean break is appropriate. That's the starting point.*
>
> *Judge 14: I'm encouraging her [the wife in the case study discussed in the focus groups] towards self-sufficiency because I think that's the principle we've got to adopt. So I'm saying to her that the transition from married to separated life is not a permanent meal ticket and you've really got to expect to try and achieve self-sufficiency as soon as you practically can and I like to get them on the road to that.*

But the clean break norm may under-protect economically vulnerable wives. An example discussed by a solicitor interviewee involved a husband (the interviewee's client) on a low six-figure income and a wife caring full-time for four young children. The clean break outcome gave the wife a little over half of the non-pension capital so she could re-house mortgage-free, standard child maintenance, but no pension share or spousal periodical payments:

> *What they agreed was a very good deal for him, actually in my view. I did say to him, if I was acting for the wife, I wouldn't be advising this. She's got a clean break which, with 4 small children and no income, I thought wouldn't even get past the court, and I said to him and warned him, 'you know, your danger is this isn't going to get past'. It did. She did get a significant proportion of the capital upfront to be able to re-house herself.… I think, from her position, she wanted to get out of the matrimonial home and get herself a new property. … I thought it [the outcome] worked very well for him because he got the deal he wanted. The wife might not think so. [*Interviewer: In a few years' time?*] Absolutely, when her money's run out and she's got no income and 4 small children. … (Solicitor 14)*

This outcome typifies the so-called 'present bias' of many wives / mothers, such that they focus on immediate needs (particularly of their children) not their own longer-term positions (see Arthur et al, *Settling Up: making financial arrangements after separation* (NatCen, 2002); Perry et al, *How parents cope financially on marriage breakdown* (Joseph Rowntree Foundation, 2000)). Meanwhile, husbands are commonly very attached to their pensions:

> *Judge 9: Yeah, I mean my experience in a case like [the one presented for discussion in the focus group], the wives will always be going for the house and the husbands will be hanging on to their pensions for dear life and so the sort of … the common scenario is still wife trying to keep the house, whether she can afford it or not and very often you're getting wives saying, you know, borrowing money off their parents.*

As that quotation from the focus groups indicates, clean break outcomes may only be sustainable with the financial or "in-kind" aid of relatives (especially parents) or new partners. This is reflected in Fisher and Low's analysis of general population data, showing that wives' post-divorce recovery is typically driven not by increased labour market attachment or income-transfers from the ex-husband, but by the support of new partners or (at least while children were dependent) the state (e.g. Hayley Fisher and Hamish Low, 'Who Wins, Who Loses and Who Recovers from Divorce?', in J Miles and R Probert (eds), *Sharing Lives, Dividing Assets* (Hart Publishing, 2009) and their (2016) article, above).

Our interview data also indicate that outcomes may sometimes be shaped by the parties' relative psychological strength:

> *He was an alpha male and she [worked part-time] and looked after the children. I think she probably just saw her role … I think she was just grateful actually to have met some of her aims. And even despite me very positively talking about what she could achieve and hope to achieve, I don't think she really thought it was worth the effort.…[S]o I think it's very much the husband's determination not to concede anything very easily and wore her down. Ultimately she got the outcome she wanted but it was also the outcome he wanted to give her. So I never lost sight of that fact. (Solicitor 25)*

This raises questions about the approval of such outcomes in consent order applications. But hard-pressed judges processing large numbers of applications with only the information provided by Form D81 (unless they request more, as they occasionally do – we identified just eight examples in the court files of cases that suggested unease about a clean break) may prefer to give weight to party autonomy. However, our evidence indicates that a clean break does not necessarily mean we have two self-supporting parties. The wife (as it typically is) may instead simply be reliant on others, or have no obvious adequate alternative means of support. Whether such outcomes are 'dignified' for the women involved is doubtful.

The minority with spousal support: it's (almost) all about the kids

So what of the minority of cases with orders for spousal support? Official court data have since 2006 reported spousal and child periodical payment orders in one figure for "periodical payments" (see HMCTS *Family Court Statistics Quarterly*), so court file surveys are needed to distinguish them.

Our findings were similar to Hilary Woodward with Mark Sefton's (*Pensions on Divorce*, Cardiff University, 2014: www.nuffieldfoundation.org/pensions-divorce, hereafter 'Woodward'). Table 5 sets out the frequency and rate in the two studies of spousal and child periodical payments orders (excluding school fees orders); two other cases in our study, not included in the table, involved orders for older children. Adding those cases where we found *positive* evidence of child maintenance transfers *outside* the order (e.g. under a calculation made by the statutory agency or privately agreed payments), we found child maintenance in around two-thirds of the 225 cases involving a minor child of the family. (For more detail, see our paper 'Child maintenance: the arrangements of a financially-engaged population of divorcing parents', forthcoming; we cannot, for the most part, definitely say that no child maintenance was being paid in the cases where we found no evidence of it.)

As for spousal support orders, Table 6 shows the frequency of different types of order found in the Hitchings/Miles study. The husband was the sole payer in all bar two cases (those two involving mutual orders, with purely nominal obligations for the wives). Over 80% (52) of the husband payors were in higher-level occupations. A third (21) of the recipient-wives were housewives at the petition (in turn, representing over a third of all housewife cases), while the other two-thirds (42) were economically active in some way (13% of all economically active wives).

Table 5: numbers and proportions of court file cases, including periodical payments orders ('pps') for spouse or for child, comparing authors' study with other recent study

	Hitchings/Miles	Woodward
Sample sizes:		
Total sample size in each study ('all cases')	399	369
N of cases with minor children of family ('child cases')	225	183
- *As % of all cases*	56%	50%
Periodical payment orders within samples:		
N of cases with pps for spouse	64	46
- *As % of all cases in sample*	16%	12%
N of cases with pps for child	83 [*note*]	60
- *As % of all child cases in sample*	37%	33%

Note: Excluding orders for school fees

Table 6: types of spousal periodical payment order, all cases and of those cases where any minor child of the family ('child cases') at date of financial order

	N (all cases)	*% of all cases*	N (child cases)	*% of child cases*
immediate clean break	333	*83.5*	168	*74.6*
deferred clean break: s28(1A)	28	*7*	24	*10.6*
ongoing provision, extendable fixed term	14	*3.5*	12	*5.3*
joint lives	22	*5.5*	19	*8.4*
no order, but pps not dismissed	2	*0.5*	2	*0.8*
Total	*399*	*100*	225	*100*

Joint lives orders were rare (just 22 cases of the 399), constituting only a third of all 64 spousal support orders in the sample. The median duration of non-joint lives orders (calculated by us in relation to the likely first terminating event other than death/remarriage etc) was nine years. But the most striking finding (replicating the

finding of Eekelaar and Maclean in 1986) is how the *spousal* support payments were actually (almost) all about *children*:

- spousal support was almost always confined to cases with children of the family;
- the duration of payments in about three-quarters of the non-joint lives orders was linked to the youngest child achieving a milestone (age or education stage), though over half of these orders (and a third of all spousal support orders) were nominal only, providing just a safety net.
- only nine of the 64 spousal periodical payment orders did not involve minor children of the family:
    - two of these nine were no-child cases (out of a pool of 84 cases with either no child at all or no child of the family); these were both non-extendable fixed term orders, one providing short-term, transitional support after a short marriage, the other supporting an older wife following a 20+ year marriage; and
    - in the remaining seven cases, spousal support was ordered where the children were all independent following marriages of 20+ years, during which we may suppose that the wife had been the primary carer (that information was not available on file). That there are only seven such cases (out of a pool of 90 cases with all-adult children of the family) may make us wonder whether at least some of these other women might be struggling economically, compared to their ex-husbands, if their earning capacity had earlier been compromised by childcare.

The focus group judges were alive to the challenges that wives looking after children post-divorce might encounter in trying to become financially independent.

> *Judge 11: I'm a working mother and I see that I can do it and yes you do put in place childcare arrangements, you … if you can afford to. I've been lucky I have been able to, so you can actually do it, but will this lady [in the case study] be able to do it, that's the question. … Would she be able to do it with three young children, no support from the husband because they're getting divorced and we would have to consider how realistically she will be able to do that and if we do look at her situation and children are aged seven, four and two it's going to be very difficult for us to push her to self-sufficiency.*

Judges were also conscious that wives' own efforts to improve their economic position through paid employment would, over time, interact with the withdrawal of benefits and tax credits once the children left their household in a way that might leave them no better off overall, and possibly worse off, after the benefits-loss:

> *Judge 5: Yeah, but she's not going to increase her earnings, is she? She's just going to be able to compensate for the loss of benefits that occurs as her children leave home.*

And the judges were conscious of the implications of Universal Credit (UC), which alters the situation considerably: where spousal support might hitherto have been one of an array of income sources (alongside earnings and tax credits) available to cover the needs of the primary carer's household, spousal (but not child) support receipts are included in UC means-testing, reducing UC £ for £ (and see broader concerns raised by Gingerbread, *Where next on Universal Credit? www.gingerbread.org.uk/policy-campaigns/welfare-reform/where-next-universal-credit/*).

What about the geography?

The variation in wealth-level data reported in Table 2a above partly correlates with variation in use of clean breaks, evident from Table 2b: Court D had both the lowest clean break rate (at 61%) and the wealthiest client base; Court B had 97% clean breaks and the least wealthy clients. Concerns have been expressed (not least by the Law Commission) about apparent geographical variation in financial remedy case outcomes. But our data suggest that a good part of the difference may simply reflect the different resources available. Participants in both judicial focus groups did feel that there was a predisposition against clean breaks and towards longer-term spousal support in one region. But they also felt that economic variation in incomes and housing costs were significant, whatever ideological preferences might be in play:

> *Judge 7: [T]he idea that there's a north/south divide on this is actually less important than the idea that there's an "amount of money" divide. … With [Region 3] housing costs that doesn't take you very far. And you're much more likely to allow the maintenance to run on much longer in that sort of case, than whereas if you're presumably in [location 5A], where you're in a different world. And there's a good deal of myth making about, you know, everybody's fact-specific; everybody's looking at the facts that they particularly deal with, and we*

> *in [Region 3] … are dealing with a lot of cases where fact-specific reasons, you need to ... delay a clean break.*

Where living costs are lower, child support payments might be adequate to meet that household's needs (along with other sources of income, including benefits and tax credits – many of those dependent on the children's presence), so that spousal support is not required to help make ends meet:

> *Judge 7: The thing is this: that child support is going to be enough for most people up to a certain level. And it's only when you get above that level that you really start looking at spousal seriously. I think one of the reasons for regional variation here is exactly that. The myth is that everybody up north terminates spousal support immediately. And if it's true, it's because they get enough from child maintenance not to need spousal support.*

By contrast, where living (especially housing) costs are higher, primary carers, past and present, might need more support from the ex-spouse to sustain an acceptable standard of living.

Concluding thoughts

Evidence-based policy and law-making that seeks to identify and understand the lived realities of 'everyday' couples who have experienced divorce are indispensable. Despite all the media attention attracted by cases in which joint lives awards are made (or, recently, lost), the 'meal ticket for life' award is, in practice, rare. But, as Moylan LJ affirmed in *Waggott* (at [156]), that does not mean that spousal support, even joint lives support, has no role in mitigating the (typically gendered) economic disparity exposed on divorce: in some cases it is an important tool for helping to achieve a fair economic outcome. The option of spousal periodical payments may also provide an important bargaining tool to help secure fairer clean break settlements. Our findings suggest a close link between spousal support and children. So it may be concerning that these orders were made in only a minority of those cases, especially once the children are adult. Our court file data can only provide a snapshot of the parties' positions on divorce – we cannot know what were the longer-term outcomes for the individuals in our survey, in particular how many ex-wives alleviated any continuing economic disadvantage by repartnering. But, as forty years ago, the greater problem may not be over-generosity to ex-wives, but the enduring, disproportionate economic impact of

divorce on women. This is clear from the longitudinal survey data (which in turn is unsurprising given the labour market data) and, quite possibly, also from the fact that two-thirds of divorcing spouses are not invoking this jurisdiction at all.

Some might argue that the solution lies in increased female labour market participation and equal pay. Further work is undoubtedly needed to enable more equal sharing of paid and unpaid labour within marriage and other relationships. But it is not clear that couples can or should be *required* to arrange their lives that way. And it is certainly not clear that the law of financial remedies should be reformed in order drastically to curtail the support it offers long before that more equal society has arrived.

Rather than being 'undignified', or reflective of or reinforcing a 'victim mentality', receiving the benefit of orders that acknowledge the economic impact of how a couple have chosen – or have been required by circumstance – to raise their children protects the dignity of the primary carer, more fairly distributing between the parties the full economic impacts, positive and negative, of their marital partnership.

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