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Fair Shares?

Sorting out money and property on divorce

Report

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The research

This 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.

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

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

The Nuffield Foundation

The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in Education, Welfare, and Justice. The Nuffield Foundation is the founder and co-funder of the Nuffield Council on Bioethics, the Ada Lovelace Institute and the Nuffield Family Justice Observatory. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily the Foundation.

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Foreword

Divorces happen. Often they can be amicable, but sometimes they are not. As well as the emotional stress that divorcing couples and their families go through when a marriage breaks down, the process of divorce and making a financial arrangement can have long-term financial consequences, especially where such arrangements are unfair.

Despite divorce being relatively commonplace we have, until now, known frustratingly little about the process by which divorcing couples settle their finances and the fairness of those arrangements, especially among the majority of people who reach agreement outside of the courts. The *Fair Shares* research addresses this knowledge gap and in doing so, not only highlights flaws within the existing system, but also challenges prevailing myths about splitting assets on divorce.

As the first detailed representative study of finances on divorce in England and Wales it shows clearly that the majority of cases involve relatively modest amounts of assets, that most separating couples would prefer a clean break, that the use of 'expensive' lawyers was not common, and that 'meal ticket for life' type arrangements are extremely rare.

This research lands at a particularly critical moment, as the Law Commission reviews the laws implemented half a century ago that determine how finances are divided between couples after divorce. There is no doubt that the research, which adds a much-needed empirical understanding to the process, outcomes and experience of reaching a financial arrangement, will prove invaluable to the work of the Commission. It makes tangible the challenges that currently exist, including the persistence and prevalence of myths around finances and divorce, as well as the need for nuance and flexibility in how incomes and assets are quantified, attributed and shared.

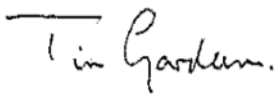
Confirmation of the myths that plague the family justice system points to the need for clear information and public legal education initiatives to counter the sensational and widespread coverage of the very atypical, but widely reported, divorces of the ultra-high-net-worth individuals that appear to dominate public thinking.

However, of more consequence to those going through the process of separating is the insight the research offers with regards to the unequal financial footing of parties going into and coming out of a divorce. Here, women appear more financially vulnerable due to having lower incomes during marriage and tending to be financially worse off than men in the years

after the divorce. The causes of income and employment disparity between married couples are well known, especially where there are dependent children living in the home.

The research serves to caution against establishing new prescriptive principles without careful thought, as doing so may replace existing hazards with different ones. Findings presented in this report can help to shape proposals for reform to ensure financial arrangements properly recognise and value non-monetary contributions to a marriage and family, promote fairness by moderating vulnerability and inequity between separating parties, and allow truly informed decisions about the sharing of finances. All within a framework that is simple and transparent, with recourse to affordable financial and legal advice and support if required.

The Nuffield Foundation is delighted to have funded and supported Professor Emma Hitchings and her colleagues in undertaking this important research and bringing together the findings in this engaging report. It is with gratitude to the authors and all of those who took part that I recommend anyone with an interest in the process of divorce and its consequences, to read the study and consider its valuable findings.

A handwritten signature in black ink that reads "Tim Gardam." The signature is written in a cursive style with a horizontal line above the first few letters.

Tim Gardam
Chief Executive of the Nuffield Foundation

Acknowledgements

We would like to thank the Nuffield Foundation for their financial support for this study, and in particular Ash Patel and Rob Street for their advice and support and Ellen Wright for her administrative assistance. We are also grateful to colleagues at the University of Bristol for their help in administering the project and ensuring that robust ethical standards and data management systems have been in place throughout. In particular, we would like to thank Professor Andrew Charlesworth for his helpful advice and prompt response to our various queries. We would especially like to record our thanks to the project's Research Associate for the first half of its duration, Dr Donna Crowe-Urbaniak, now of the University of Edinburgh.

Originally, we intended to recruit the participants in the study via the divorce court records held by His Majesty's Courts and Tribunals Service (HMCTS). Although this ultimately proved unfeasible, we are very grateful to both HMCTS and officials in the Ministry of Justice, particularly those within the Data Access Services Team for their assistance in trying to develop this line of approach and in helping us to recruit some interviewees for the qualitative phase of the study. We would like in particular to thank Sehrish Khalil, who conducted the initial pilot study for us. We would also like to thank Support Through Court, Surviving Economic Abuse and National Family Mediation who assisted us with recruitment for the pilot cognitive stage of the study.

The method of recruitment that we used instead was to employ first YouGov, an online research data and analytics technology group, to carry out the quantitative survey and to collect the dataset for us to analyse, and then QaResearch, an independent social and market research organisation, to recruit recent divorcees to be interviewed in depth. We are grateful to Jane Rowe, Sophie Hinchcliffe and Honor Gray from YouGov, and Helen Hardcastle and Natalie Hardcastle from Qa Research for their assistance.

Throughout the project, we have been fortunate to have the expert advice and support of the past and present members of our Advisory Group: Rosa Abulafia, Professor Anne Barlow, Sabrina Bailey, Karen Dovaston, Joanne Edwards, Jude Eyre, Amanda Farineau, Thomas Glynn, Rachael Lally, Penny Mansfield, Joanna Miles, Ash Patel, HHJ Richard Robinson, Mena Ruparel, Professor Hamish Low, Stuart Moore, Professor Bren Neale, Rhys Taylor and Professor Liz Trinder. We are very grateful to them for taking the time to read and comment on drafts at various stages of the study.

Finally, and most importantly, we would like to thank all the people who gave up their time to take part in this research and to share their experiences and views with us. It is not easy to discuss matters of such personal and emotional significance and we are enormously grateful to them for their candour and their trust.

Glossary

Arbitration: A form of dispute resolution where a neutral lawyer (or former judge) hears the dispute in private and issues a determination that the parties agree to be bound by and which can then be taken to court to be made into a binding order.

Child arrangements: This term covers, in the context of divorce or separation, with whom a child is to live, spend time or otherwise have contact.

Child maintenance: A payment transferred from one parent to another to cover some or all of the child's living costs. It is made following parental separation or where parents of a child have never been in a relationship.

Child Maintenance Service (CMS): An administrative body (originally named the Child Support Agency) set up to calculate, arrange and enforce child maintenance between parents.

Child Support Agency (CSA): The original body set up to administer arrangements for child maintenance.

Clean financial break: An outcome which provides an end to any ongoing financial relationship between spouses on divorce. If made into a court order, it precludes any possibility of future liability.

Collaborative law: A form of dispute resolution where both parties and their lawyers negotiate in round table discussions, and the parties agree to hire new lawyers if they are unable to reach an agreement.

Collect and pay: The Child Maintenance Service collects payments for child maintenance from the paying parent and passes on these payments to the receiving parent. Fees are charged by the CMS for the use of this service.

Consent order: A legally binding order conclusively dealing with the parties' financial agreement arising from their divorce.

Contested litigation/proceedings: A case where the parties have not been able to reach agreement and the case proceeds to a hearing or series of hearings in court.

Decree Absolute: The old terminology for a final court order in divorce proceedings, which legally brings the marriage to an end.

Deed of trust: A legally binding document which specifies how the ownership of a property is to be held.

Defined benefit pension: A pension scheme which will provide an income in retirement which is based on a proportion of the pension holder's salary, either over time (career average scheme) or their final salary (final salary scheme).

Defined contribution pension: A pension scheme which is built up by regular contributions over time which are invested. The final pension is determined by the value of those contributions and investment returns at retirement.

Direct pay: Where the CMS has calculated the amount of child maintenance payable, but the parents agree on the frequency and transfer arrangements, then payments are arranged directly between the parents themselves.

Disposals: A disposal hearing is a short hearing where a judge will not normally hear oral evidence but may decide the amount payable or give directions as to the future conduct of proceedings.

Dispute resolution: The process by which parties resolve their disagreement. There are a number of different methods to resolve family legal disputes including arbitration and mediation.

District judge: Judges at county court level who deal with a wide spectrum of civil and family law cases.

Equity: For outright homeowners without a mortgage, this is the total value of the home. For those with a mortgage, this is the value after the mortgage is repaid.

Family-based arrangements: Private child maintenance agreements reached between the parents both as to the amount of maintenance and how payments are to be made.

Family Court: Civil court which decides family matters including divorce.

Family Justice Council (FJC): The FJC is an advisory body which monitors the effectiveness of the family justice system. The main role of the FJC is to promote an inter-disciplinary approach to family justice and to monitor the system.

Final order: An order at a final hearing made by a judge following a contested application .

Financial arrangement: An arrangement concerning spouses' finances and property which they make on separation or divorce.

Financial dispute resolution appointment (FDR): A meeting in which a judge attempts to help the parties and their advisors to narrow the areas of disagreement between them, and to give an 'early neutral evaluation' of the likely outcome if the case does not settle. A 'private FDR' may be used by the parties outside of court proceedings to facilitate settlement.

Financial provision order: An order which deals with the payment of money via regular periodical payments, or as lump sums.

Financial remedies jurisdiction: The area of law which deals with the financial and property arrangements of spouses on divorce.

Financial remedy order: A legally binding order made on divorce relating to a couple's finances and property. FPR 2010, r 2.3, defines each of those terms.

Fixed term order: A financial provision order which is limited to a fixed duration (e.g. five years) rather than being open ended.

Form D81: Accompanies a consent order application and sets out the parties' current financial circumstances, their proposed arrangements and the rationale for these.

Form A: Specifies each type of order that is sought by the applicant when giving notice of their intention to proceed with an application for a financial remedy order.

Form E: Used in contested proceedings to set out in detail each spouse's financial circumstances and provide information such as a valuation of the matrimonial home.

Full arrangement: We use this term to refer to couples who considered that they had made an arrangement on all aspects of their finances and property.

HMCTS: His Majesty's Courts and Tribunals Service, the executive agency responsible for the administration of criminal, civil and family courts and tribunals in England and Wales.

Joint lives order: A financial provision order which has no fixed duration, enabling periodical payments to be paid from one spouse to the other following divorce until brought to an end by the death of one of the parties or by a later court order.

LASPO: Legal Aid, Sentencing and Punishment of Offenders Act 2012. Legislation reforming and limiting the scope of legal aid (public funding for legal services).

Lawyer: A legally qualified professional, including barristers, solicitors and legal executives, who may represent clients in legal proceedings.

Legal services company (LSC): Companies which provide legal advice or support, but not representation.

Litigation misconduct: Non-compliance with directions or with rules of court, or unreasonable conduct of the party's case.

Lump sum payment: A single sum of money paid from one spouse to the other on divorce; it may be paid in instalments.

MCA 1973: Matrimonial Causes Act 1973. The legislation governing financial proceedings on divorce.

Mediation: A form of dispute resolution where the couple negotiate with the assistance of a neutral third party.

Mediation Information and Assessment Meeting (MIAM): A meeting at which the process of mediation is explained and the suitability of the case to be resolved via mediation is

assessed by a trained mediator.

Ministry of Justice (MoJ): Government department responsible for, among other things, courts, and family law policy.

Monetary assets: Assets in the form of money or savings, investments, inheritance or a pension lump sum.

Non-court dispute resolution: The process by which parties resolve their disagreement outside of court.

Non-molestation order (NMO): An order made by the court to protect a victim of domestic abuse from an abuser who is harming or threatening the victim.

Saleable assets: Assets in the form of items such as a car, business or equity in a second home.

Partial arrangement: We use this term to refer to couples who considered that they had made an arrangement on some aspects of their finances and property, but not others.

Pension attachment: A court order enabling a pension to be split so that the pension provider pays part of the income (or a lump sum) to the ex-spouse once the pension becomes payable. This was originally known as 'pension earmarking'.

Pension sharing: A court order enabling a proportion of the *rights* to a pension pot to be transferred to the ex-spouse, as a new beneficiary, who will be able to receive the pension at retirement age as if they had accumulated it themselves.

Periodical payment: A regular payment, paid from one ex-spouse to the other following divorce.

Pre-Application Protocol: Outlines the steps that parties should take to seek and provide information to each other prior to any application for a financial remedy. See Practice Direction 9A, para 2.1 and associated Annex.

Pre-nuptial agreement: Legal arrangements agreed by a couple before marriage which set out the financial arrangements that will apply in the event of marriage breakdown.

Private ordering: 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.

Property adjustment order: An order which deals with the transfer, settlement or variation of ownership of property. For example, ownership in a property may be transferred from one spouse to the other.

Shared care: An arrangement between parents following parental separation, where the child(ren) live with each parent for some of the time. This can be an equal or unequal split.

Single lawyer instruction: Where, if the ethical considerations permit, one lawyer can advise and support both spouses in reaching and drafting a settlement.

Solicitor negotiation: Solicitors assist a couple to reach an arrangement through negotiation. This may take place through correspondence, meetings or phone calls.

Specialist financial remedies court: A specialist court in each region of England and Wales to handle this jurisdiction and ensure the expert and efficient disposal of the case.

Spousal maintenance: A regular payment, paid from one ex-spouse to support the other following divorce.

Tenure of the home: Information about whether a household rents or owns the accommodation they occupy.

Executive summary

‘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.

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

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.

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.

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.

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 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.

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.

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

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.

£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.

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.

Chapter 1: Context and background

*'The ultimate objective is to give each party an equal start on the road to independent living.'*⁷ Baroness Hale of Richmond

1.1 Introduction

Each year in England and Wales, around 100,000 couples end their marriages by divorce.⁸ The task of 'uncoupling' from each other may involve an array of issues and problems including the process of obtaining the divorce itself, the need to make caring arrangements for any children of the couple, and the decisions that must be taken regarding the financial consequences.

Issues relating to the division of the former matrimonial home, any pensions, other capital and future income, may need to be resolved before the couple can move on to new lives after divorce. However, it is not mandatory for a divorcing couple to obtain a court order regarding their finances and fewer than 40 per cent of those who divorce each year in England and Wales use the legal system to reach a financial arrangement.⁹ The majority negotiate their own arrangements or reach no settlement at all. While it is potentially risky not to obtain a court order finalising their financial affairs,¹⁰ divorcees are at liberty to make or not make financial arrangements, to do so with or without legal advice, and to do so, inside or outside of the formal court processes.

Despite the fact that the legal framework governing the financial consequences of divorce has existed for fifty years, surprisingly little is known about what arrangements couples make, and how these work in practice. For example, what does the process of sorting out financial affairs look like, and does this result in a couple achieving the 'equal start on the road to independent living' that Lady Hale articulated as the objective of the law? Equally little is known about the effect of the enormous social and cultural changes that have occurred since the law was put in place on couples' attitudes and expectations regarding their divorce. Should there be a continuing obligation to support a dependent former

⁷ Miller v Miller; McFarlane v McFarlane [2006] UKHL 24, para 144.

⁸ MoJ, Family Court Statistics October – December 2022, Table 12, using data for 2021 due to the change in divorce regime during 2022.

⁹ Ibid, Table 14, using data for 2021.

¹⁰ Wyatt v Vince [2015] UKHL 14.

spouse? Should the fact that one spouse brought more into the marriage by way of assets and income be reflected in the way that wealth is divided when the marriage is over? In other words, how far should the fact that two people have been married to each other affect their finances and financial ties to each other, once their marriage has ended?

This study is intended to fill this evidence gap by providing robust data on couples' financial circumstances before their divorce, the financial and property arrangements they made (or did not make), and their views on whether, with hindsight, they feel these arrangements were appropriate and fair.

1.2 Chapter outline

This chapter provides an account of the law and policy governing the financial consequences of divorce and provides the background against which the study's findings will be outlined. Our final chapter will discuss our conclusions and resulting recommendations we suggest for the improvement of the law.

- Section 1.3: Outlines the legal framework, setting out the powers of the family courts and the separate system intended to govern child support
- Section 1.4: Discusses the judicial guidance on how the courts' powers should be exercised
- Section 1.5: Explains modes of dispute resolution and the process for obtaining a court order
- Section 1.6: Examines the findings of previous research studies on the workings of the law
- Section 1.7: Outlines the proposals that have been made over the past decade for reform of the law
- Section 1.8: Sets out the order of discussion in succeeding chapters of this report

1.3 The legal framework

The law governing the financial and property consequences of divorce is set out in the Matrimonial Causes Act 1973 (MCA 1973). The Act itself vests wide-ranging powers in the court. This enables the court to make orders encompassing options such as pension

sharing,¹¹ lump sum payments,¹² transfers of property,¹³ and periodical payments.¹⁴ The legal framework providing the basis on which such orders are made is contained in section 25 of the MCA 1973. Section 25(1) requires the court to give 'first consideration ... to the welfare while a minor of any child of the family' under the age of 18, while section 25(2) is a section containing a 'checklist' of factors to which the court must have regard, the importance of each of which varies from case to case. Reported case law provides additional guidance on how the statutory criteria should be applied and is explored in further detail below.

For the majority of the divorcing population that do not use the courts to obtain a financial remedy order on divorce, such financial and property arrangements may be done 'in the shadow'¹⁵ of this law or completely disregarding it. However, certain financial arrangements require an order of the court and a private agreement concerning them will be ineffective. For example, any arrangement reached by a divorcing couple which involves sharing a pension must be embodied in a court order. The vast proportion of those individuals who do go to court to obtain a financial remedy order are using it as a 'rubber-stamp' to confirm their already agreed settlement. This is done through the making of a 'consent order' by the judge on the terms that have been agreed by the divorcing couple. Only around 13 per cent of financial remedies proceedings begun in court are decided by a judge after contested litigation.¹⁶

1.3.1 *The Matrimonial Causes Act 1973*

The Matrimonial Causes Act 1973 was enacted¹⁷ to complement the major reform to divorce law achieved in the 1960s, when the basis for granting a divorce became the 'irretrievable breakdown' of the marriage, rather than matrimonial fault. As well as generally updating and clarifying the court's powers to deal comprehensively with the parties' property and finances, provision was also made to protect spouses – usually wives – who might, as a result of the shift from fault to breakdown, find that they were being divorced against their wishes even

¹¹ Section 21A(1) MCA 1973

¹² Section 23(1)(c) MCA 1973

¹³ Section 24(1)(a) MCA 1973

¹⁴ Section 23(1)(a) MCA 1973

¹⁵ R Mnookin and L Kornhauser, 'Bargaining in the Shadow of the Law: The Case of Divorce' (1979) 88 Yale LJ 950.

¹⁶ Family Court Statistics October – December 2022, Table 14, data for 2021.

¹⁷ Originally in the Matrimonial Proceedings and Property Act 1970.

though they were the 'innocent' party.¹⁸ Initially, therefore, the courts were instructed to exercise their powers as far as possible 'to place the parties... in the financial position in which they would have been if the marriage had not broken down...'. This approach became known as the 'minimal loss' principle,¹⁹ whereby a divorced person – in practice, the dependent ex-wife – should *ideally* be able to continue to enjoy the standard of living experienced during the marriage, indefinitely. For most couples, however, this was financially unattainable; there is not sufficient wealth in most families to permit two households to be maintained at the same standard of living as one. Moreover, many divorced men pointed out that the irretrievable breakdown of the marriage might be due to the *wife's* misconduct and that the *husband* might be the 'innocent' party. It was unfair to expect them to maintain a 'guilty' wife indefinitely, potentially spoiling their own chances of forming new relationships.

While such debates were continuing, the higher courts were developing the principles and guidance necessary to enable the statutory provisions to be implemented. Two important principles emerged early on. First, the Court of Appeal confirmed that matrimonial fault should rarely be taken into account when determining the financial arrangements on a divorce, and only when it was both 'obvious and gross'.²⁰ This meant that from a judicial perspective, husbands' complaints about the misconduct of their wives would largely fall on deaf ears. Secondly, the House of Lords recognised that an important principle of the modern legislation was:

'the principle of "the clean-break". The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down.'²¹

The 'clean break' principle was understood as meaning the ending of any continuing financial ties between divorcing spouses; their arrangements should focus on the sharing of assets, and the avoidance of ongoing financial support, by way of periodical payments ('maintenance'), of the ex-spouse where possible.

¹⁸ See S Thompson, *Quiet Revolutionaries: The Married Women's Association and Family Law* (Hart Publishing, 2022) Ch 8.

¹⁹ J Eekelaar, *Family Law and Social Policy* 2nd edn (Weidenfeld & Nicolson, 1984) p 109.

²⁰ *Wachtel v Wachtel* [1973] Fam 72, 90, CA.

²¹ *Minton v Minton* [1979] AC 593, 608, per Lord Scarman, HL.

The idea that there is life after divorce and that the parties should be encouraged and enabled to go their separate ways – Lady Hale’s ‘road to independent living’ – was enshrined in amendments to the legislation in 1984. Following recommendations by the Law Commission, the Matrimonial and Family Proceedings Act 1984 abolished the ‘minimal loss’ principle. It encouraged the making of clean break settlements by enabling the courts to dismiss applications for ongoing support and requiring them to consider the feasibility and desirability of ending financial ties between the spouses as soon as possible.²²

The 1973 Act was subsequently amended by adding provisions to enable the courts to make pension orders so that a dependent ex-spouse could receive some of the benefit of the pension built up by the other during the marriage.²³ It had become recognised that, other than the matrimonial home, for most people the pension is the largest asset they will accrue, and with increasing life expectancy, the time spent in retirement has lengthened. Elderly ex-spouses, usually wives who had been out of the labour market because of caring responsibilities during the marriage and thus unable to build up their own pension entitlements, could find themselves facing considerable hardship in later life. It was therefore provided that a court could order pensions to be split so that the pension provider pays part of the income (or a lump sum) to the ex-spouse once the pension becomes payable. This was originally known as ‘pension earmarking’ (later ‘pension attachment’).²⁴ Subsequently, it became possible to order that a proportion of the *rights* to a pension pot be transferred to the ex-spouse, as a new beneficiary, who would be able to receive the pension at retirement age as if she had accumulated it herself.²⁵ In practice, it is only this latter form of arrangement that is made.²⁶

No further reforms of any significance have been made to the governing legislation, although we discuss below the major changes made by the Child Support Act 1991 concerning the assessment, collection and enforcement of maintenance of children whose parents have separated or divorced.

²² See *Waggott v Waggott* [2018] EWCA Civ 727 for an example of the imposition of a limited term for the payment of periodical payments to the ex-spouse.

²³ Pensions Act 1995 and Welfare Reform and Pensions Act 1999.

²⁴ Section 25B(4) and s 25C(2)(a) MCA 1973.

²⁵ Section 21A(1) MCA 1973.

²⁶ Known as a pension sharing order.

Table 1.1: Timeline of the financial remedies jurisdiction 1970 – 1999

1970	Matrimonial Proceedings and Property Act	Widens court powers over financial arrangements on divorce Introduces ‘minimal loss’ principle
1972	<i>Wachtel v Wachtel</i>	Court of Appeal rules matrimonial ‘misconduct’ to be irrelevant in financial proceedings unless ‘obvious and gross’
1973	Matrimonial Causes Act	Consolidation of legislation
1979	<i>Minton v Minton</i>	House of Lords approves ‘clean break’ settlements
1984	Matrimonial and Family Proceedings Act	Abolishes ‘minimal loss’ principle Makes child’s welfare ‘first consideration’ Promotes clean break settlements ‘Conduct’ to be relevant only when inequitable to disregard it
1995	Pensions Act	Introduces ‘pension earmarking’ orders, later known as pension ‘attachment’ orders
1999	Welfare Reform and Pensions Act	Introduces ‘pension sharing’ orders

The legislation is distinguished by three particular factors that mark it out from most regimes operating in other jurisdictions.

Table 1.2: The court’s powers and discretion under the 1973 Act

Powers of the court ²⁷			
Section 23	Section 24	Section 24A	Section 24B
‘Financial provision orders’	‘Property adjustment orders’	Sale of property	Pension sharing
<i>Periodical payments</i>	<i>Transfer of property</i>		
<i>Lump sum</i>	<i>Settlement of property</i>		
<i>Pension attachment</i>	<i>Variation of settlement</i>		

²⁷ Maintenance pending suit (s 22) and legal services orders (s 22ZA) omitted.

Principles and factors to be considered		
Section 25(1)	Section 25A	Section 25(2)
First consideration to welfare of any child of the family (dependent children)	Desirability and feasibility of 'clean break' (i.e. no periodical payments) either immediately or at a future point	Income, earning capacity, resources
		Needs, obligations, responsibilities
		Standard of living during marriage
		Age of parties and duration of marriage
		Any physical or mental disabilities
		Contributions to welfare of family through caring
		Conduct if it would be inequitable to disregard it
		Value of any loss of a benefit due to the divorce

First (see Table 1.2), the Act gives very wide powers to the courts to deal with all of the spouses' income and property and to redistribute this as between the two, regardless of whose name assets are in or how they were derived.²⁸ The court may make 'financial provision orders' dealing with the payment of money via regular periodical payments, or as lump sums.²⁹ It may also make 'property adjustment orders' which deal with the parties' other assets, including the matrimonial home. Ownership in such assets may be transferred from one spouse to the other, or each spouse's proportionate share of ownership in the value of the asset may be adjusted.³⁰ Property may be ordered to be sold and the value realised then shared or allocated to one or other party. Thus, a home acquired by one spouse before the marriage and held in his or her sole name can be transferred to the other; an inheritance received by one spouse from a parent may be used to meet the capital needs of the other spouse; a pension or the rights to a pension, as noted, can be shared between the spouses even though contributions towards it have been made by only one of them. It is also possible to order that the matrimonial home be kept for a number of years, for example while the children are still at school, with a sale to follow in the future and the proceeds then to be divided between the parties in such proportion as the court thinks fit.

²⁸ Matrimonial Causes Act 1973 ss 23, 24, 24A.

²⁹ Section 23. Such payments may also be ordered to be made from one ex-spouse's pension in payment to the other: s 25B et seq.

³⁰ Tenancies may be ordered to be transferred between the spouses, under either s 24 of the Matrimonial Causes Act, or Sch 7 to the Family Law Act 1996.

Secondly, these wide powers are exercised according to a very wide discretion.³¹ The court must give *first* consideration to the welfare of any child of the family and consider whether a clean break settlement, as explained above, can be achieved, but other than this, there is no overriding goal or objective set out in the legislation. Instead, that has had to be provided by the judges, as the quotation from Lady Hale exemplifies. The court is, however, directed to a list of factors to which it must have regard, including the parties' means, needs and responsibilities, their capacities and foreseeable requirements, the standard of living they enjoyed during the marriage, how long the marriage lasted, their conduct (but, as noted above, and now in statutory language, only where it would be 'inequitable to disregard it') and, most importantly, 'the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.' This last provision enables the court to recognise, and compensate, a spouse for contributions made in non-financial ways, most importantly through child or other caring responsibilities taken on during the marriage. It meant that the courts, at the time the legislation was first enacted, could reflect and allow for the 'breadwinner/housewife' model of marriage that predominated at that time. It still gives due recognition to the unequal division of household labour in many modern marriages despite the majority of wives returning to work after having children, the fact that many do so in a part-time capacity,³² the continuing gender pay gap in the workplace,³³ and the resultant unequal financial position that ex-wives may find themselves in on divorce as compared to ex-husbands.³⁴

Thirdly, the powers the courts have been given enable them to deal with both capital and income issues together, and to achieve an overall package of arrangements, rather than having to treat future 'maintenance' of an ex-spouse as a matter separate from the distribution of assets. For example, one spouse might forego ongoing periodical payments from their ex, by taking a larger slice of the equity in the matrimonial home. The ex can leave the marriage with no ongoing financial ties to the other spouse who has the security of the capital in their hands rather than being reliant on the continuing goodwill or capacity of the ex to keep up regular payments. However, it should be noted that this neat approach of

³¹ Matrimonial Causes Act 1973, s 25.

³² Office for National Statistics, Families and the Labour Market, UK (ONS, 2021).

³³ Office for National Statistics, Gender pay gap in the UK: 2022 (ONS, 2022); Institute for Fiscal Studies, Wage progression and the gender wage gap: the causal impact of hours of work (IFS, 2018).

³⁴ See further below, Section 1.6.1, and J Buckley and D Price, 'Pensions on divorce: where now, what next?' [2021] CFLQ 5.

dealing with *all* the financial issues arising between the spouses together was somewhat undermined by the introduction of a new system for child maintenance by the Child Support Act 1991, which prohibited the courts from making maintenance orders for children except in particular circumstances.³⁵ This has resulted in the treatment of child maintenance being uncoupled, at least theoretically, from the rest of the financial issues on divorce.

1.3.2 *Child maintenance*

The change was made because the government of the day (rightly) regarded the court-based system of child maintenance as ineffectual.³⁶ The courts' decisions on the amount to order a parent to pay were marked by inconsistency of approach; their mechanisms for collection of sums due were poor; and their enforcement of orders was weak. The result, it was felt, was that too many 'absent parents' (mainly fathers) were 'getting away' with not supporting their children and too many parents with care (mainly mothers) were having to rely on social security instead.³⁷

The solution was to remove the courts' jurisdiction over child maintenance almost entirely, to a new administrative system, the Child Support Agency (CSA) which would be the first port of call when parents separated. Launched in 1993, implementing the Child Support Act 1991, this scheme would apply a formula to determine the amount of child maintenance to be paid, to try to ensure consistency in the sums ordered, and a new collection and enforcement system was planned that would supposedly rigorously gather in the amounts owed. But the child support scheme that was introduced was far too complicated to administer, and its expectations of the level of payments that non-resident parents³⁸ could be required to pay were wildly over-optimistic. After considerable opposition to the scheme and a variety of unsuccessful reforms intended to improve its operation, the eventual decision was taken to promote 'family-based arrangements', with the new Child Maintenance Service (CMS) launched in 2012. Family-based arrangements are private agreements reached between the parents both as to the amount of maintenance and how payments are to be

³⁵ Child Support Act 1991 s 8.

³⁶ See N Lowe et al, *Bromley's Family Law* 12th edn (Oxford UP, 2021) Ch 7 for full discussion.

³⁷ Department of Social Security et al, *Children Come First: The Government's Proposals on the maintenance of children* (Cmnd 1264, 1990).

³⁸ The term used in the legislation for parents not having primary day-to-day care of the child: Child Support Act 1991 s 3 (as amended). We use this term later in this report, as short-hand, while recognising that many 'non-resident' parents may actually have their children living with them for part of the time. Where parents share care equally, we make that clear.

made. Using the state system was to become the last resort rather than first port of call with parents now encouraged to agree child maintenance between themselves after separation. To this end, parents can make use of an online child maintenance calculator to determine how much the state thinks it is appropriate to pay in their particular circumstances.³⁹ Parents can agree this amount, or use it as a basis for negotiation, or ignore it entirely, in deciding for themselves what provision is to be made for their children. Where they nonetheless wish to make use of the formal child support system, they are disincentivised through incurring costs, both on making an application, and through a deduction by the CMS in the amounts received.⁴⁰ Nonetheless, nearly 900,000 children were the subjects of arrangements made through the CMS in 2022 and nearly 120,000 new applications to the service were made in that year.⁴¹

The courts do retain a residual jurisdiction to make orders relating to the support of children, primarily where the parties have reached agreement and consent to the court making the order. It is thus still possible to deal with child maintenance within the overall package of financial arrangements, and around a third of cases in the courts contain provision for this.⁴²

1.4 Judicial guidance on the working of the legislation

The courts have provided important guidance on how the statutory provisions in the MCA 1973 should be interpreted. Since the 1980s, no further significant changes to the statute governing finances on divorce have been made (apart from those relating to pensions).⁴³ The highest courts have filled this gap through a number of leading judgments seeking to keep the operation of the law in tune with current norms and attitudes, most importantly the view that marriage is a partnership of equals in which each spouse plays an equally important role.

³⁹ See <https://www.gov.uk/calculate-child-maintenance>.

⁴⁰ Unless exempt, e.g. because of domestic abuse. For details see N Foley, *Child Maintenance: Fees, enforcement and arrears* (HC Library: 2023).

⁴¹ DWP, *Child Maintenance Service statistics: data to December 2022 (experimental)* <https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-december-2022-experimental/child-maintenance-service-statistics-data-to-december-2022-experimental#applications-to-the-child-maintenance-service-1>.

⁴² See E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018) p 15, Table 6.

⁴³ Parliament has, of course, introduced civil partnerships and same sex marriages into the law. Both of these are governed by the same financial regime as heterosexual marriages.

During the 1980s and 1990s, the reported case law dealing with financial remedies increasingly became concerned with wealthy spouses where the husband (usually) had accumulated significant wealth and the question was how large a slice of that wealth the wife could claim on divorce. Reflecting a continuing view of marriage (perhaps reinforced by the factual circumstances in these particular cases) as involving a breadwinner husband and a dependent housewife who would need to be 'maintained' post-divorce, the courts generally restricted awards to wives to meeting their 'reasonable requirements', albeit that such requirements should be 'generously' assessed.⁴⁴

1.4.1 *Fairness and equality*

The gendered nature of this approach came to be challenged in the 1990s. The courts became less comfortable with the view that there should be a 'ceiling' on the provision made for wives, and in *White v White*⁴⁵ the House of Lords definitively shifted the approach to be taken. Given that the legislation no longer provided an overall explicit objective, Lord Nicolls laid down that 'implicitly, the objective must be to achieve a fair outcome.' He considered that:

'In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles.... If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.'⁴⁶

Taking non-discrimination, then, as a key factor in assessing the spouses' positions, his Lordship considered that:

'Before reaching a firm conclusion ... a judge would always be well-advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality

⁴⁴ *Preston v Preston* [1982] Fam 17; *Dart v Dart* [1996] 2 FLR 286, CA.

⁴⁵ [2001] 1 AC 596, HL.

⁴⁶ *Ibid* p 599ff.

would help the parties and the court to focus on the need to ensure the absence of discrimination.⁴⁷

1.4.2 Needs, compensation and sharing

Lord Nicholls accepted that there might be many cases where an equal division of the wealth would *not* be the 'fair' outcome in the parties' particular circumstances, but it was left to subsequent case law to set out explicitly the factors that might justify a departure from equality. The House of Lords sought to pull together the underlying principles that should guide the courts in this endeavour, in the combined appeals of *Miller v Miller; McFarlane v McFarlane*.⁴⁸

The principles that led the House to arrive at their conclusions were set out by Lord Nicholls and Lady Hale. A court is required to have regard first to the *needs* of the parties (and any children). This will generally include the provision of a home for each spouse, and the income they will require to live on, including into retirement. Most families are likely to be unable to go beyond attempting to satisfy these requirements, indeed many can do no more than satisfy their accommodation needs.⁴⁹

The *McFarlane* case broke new ground by recognising the 'relationship-generated disadvantage' that may arise when one spouse adjusts their individual circumstances to meet what the couple regard as their important priorities as a unit, and particularly the goal of bringing up children. In a society where women still undertake the larger share of childcare and home-making,⁵⁰ many women may be in a position similar to that of Mrs McFarlane (where both parties had promising careers earning similar amounts and both agreed that the wife should give up work to bring up the couple's children), though very few will be in marriages where the other spouse is earning enough to compensate them for their ongoing loss. It has indeed proved difficult for the courts to determine when or how *compensation* should be awarded, with a general view that this will be subsumed by an award that meets the party's needs,⁵¹ or under the third principle of 'sharing'.

⁴⁷ Ibid p 605.

⁴⁸ [2006] UKHL 24, [2006] 2 AC 618.

⁴⁹ See Chapters 6, 9 and 10.

⁵⁰ R Wishart et al, Changing patterns in parental time use in the UK (NatCen, 2019).

⁵¹ SA v PA (Pre-Marital Agreement: Compensation) [2014] EWHC 392 (Fam). For a rare example of an award, again based on giving up a potentially highly lucrative legal career, see RC v JC [2020] EWHC 466 (Fam).

In *White v White*, Lord Nicholls had stressed that equal *sharing* of the parties' available wealth should be regarded as a 'yardstick' by which to assess fairness, but not a 'presumption'. In *Miller; McFarlane* he elaborated on the rationale for the 'equal sharing' principle:

'[It] derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. ... The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary.'⁵²

Both he and Lady Hale noted that equality reflects what most people regard as the fair outcome but that all must depend upon the circumstances of the case. In *Charman v Charman (No 4)*,⁵³ the Court of Appeal went further by holding that equal shares should be the court's starting point, or presumption. The parties may therefore be expected to assess their future needs in comparison with their available resources and see if equal division of the latter will suffice to meet those needs. In the relatively rare case where there would be a surplus left over after satisfying needs (and any compensation), equal division of the total pool may be the 'fair' outcome.⁵⁴ But where the pool is inadequate to meet the parties' respective needs, an unequal division may be fairer. For example, a parent with primary care of young children, who is unable to work full-time, or earn as much as the other parent, may need all or a larger share of the proceeds of sale of the matrimonial home to rehouse her or himself and the children and manage on a lower income, than the parent who is able to work full-time and build up savings towards another home. In the shorter (if not longer) term, each spouse is likely to be financially stretched and 'fairness' is to be found in fairly allocating the diminution in living standards.

⁵² N 48 above, para 16.

⁵³ [2007] EWCA Civ 503.

⁵⁴ We do not discuss here the voluminous case law concerning how to determine which of the parties' assets should be 'counted' in the sharing exercise. Where needs must be satisfied, prior ownership by one spouse of individual assets is irrelevant if they are required to help meet the other's needs, but 'non-matrimonial' property, generated or acquired by one spouse before or outside the marriage may be ring-fenced from 'sharing' once needs have been met. For full details, see N Lowe et al, *Bromley's Family Law* 12th edn (Oxford UP, 2021), Ch 9.

1.4.3 Pre- and post-nuptial agreements

Some couples may wish to side-step all of this complexity, by setting out either before or during their marriage, what they think ought to happen if they divorce. Or one party might wish to protect her or his wealth, perhaps because it was inherited from a wealthy family, or ensure that children from an earlier relationship take priority. The courts in England and Wales were traditionally wary of giving effect to pre-nuptial or post-nuptial agreements,⁵⁵ but in 2010, in *Radmacher v Granatino*,⁵⁶ the Supreme Court held that a court should give effect to such an agreement, so long as it is freely entered into by each party with a full appreciation of its implications, unless, because of particular circumstances in the case, it would not be fair to hold the parties to their agreement. The extent to which such agreements are now being made is difficult to gauge.⁵⁷

Table 1.3: Timeline of the financial remedies jurisdiction 1996 – 2010

1996	<i>Dart v Dart</i>	Court of Appeal confirms wife's provision should be limited to her 'reasonable requirements'
2000	<i>White v White</i>	House of Lords rejects ceiling of 'reasonable requirements' and approves 'yardstick of equality' in seeking a 'fair outcome'
2006	<i>Miller v Miller; McFarlane v McFarlane</i>	House of Lords sets out needs, compensation and sharing as core principles in assessing fairness
2010	<i>Radmacher v Granatino</i>	Supreme Court upholds terms of pre-nuptial agreements unless it would not be fair to do so

⁵⁵ See *F v F (Ancillary Relief: Substantial Assets)* [1995] 2 FLR 45, CA.

⁵⁶ *Radmacher v Granatino* [2010] UKSC 42, [2011] 1 AC 534, at §75. Lady Hale was the sole dissident.

⁵⁷ See discussion in Chapter 4, section 4.4.

1.5 The process of obtaining an order

The following section will outline the process of obtaining a financial remedy. However, it is important to reiterate that whatever the legislation or case law may prescribe, it is not mandatory for divorcing couples to go to court to obtain a legally binding order determining the financial consequences of their divorce and fewer than 40 per cent will do so. We discuss the significance of this point below.

1.5.1 *Settling out of court*

For those spouses who do wish to obtain a legally binding order resolving their financial affairs, there is very strong pressure to reach an agreed settlement rather than to leave it to a judge to decide. Solicitors⁵⁸ generally offer strong advice that it is almost always better to settle out of court. As an alternative or addition to solicitor-assisted negotiation, the method of dispute resolution preferred by the government is mediation,⁵⁹ where the couple negotiate with the assistance of a neutral third party. Vouchers worth £500 are available to encourage couples to use mediation for financial remedy and other family law disputes.⁶⁰ Other non-court based modes of resolution may also be used. For example, a process known as ‘collaborative law’ may be used. This entails both parties signing a contract committing them to resolving their issues out of court and agreeing that if this does not prove possible, they will each hire a different lawyer to represent them in future proceedings. They then seek to negotiate a settlement with the help of their solicitors in a round-table meeting. Alternatively, they may decide to go to arbitration, where a neutral lawyer (or former judge) hears the dispute in private and issues a determination that the parties agree to be bound by and which can then be taken to court to be made into a binding order.⁶¹ A further option is single

⁵⁸ As well as going to a solicitor, there are an increasing number of online legal support services that couples may use, which offer advice on how to complete the forms necessary to obtain the divorce and accompanying orders, and which may also draft agreements on terms settled by the couple themselves, to be taken to court to be incorporated into an order. In our survey, we described such entities as ‘legal services companies’ and collected data on their use: see Chapter 4, section 4.5.

⁵⁹ See Ministry of Justice, Supporting earlier resolution of private family arrangements CP 824 (2023), 7.

⁶⁰ See <https://www.gov.uk/guidance/family-mediation-voucher-scheme#what-is-the-family-mediation-voucher-scheme> (accessed 26 February 2023). See A Sixsmith, ‘Mediators’ perspectives on the Family Mediation Voucher Scheme’ [2023] CFLQ 9 for positive findings on the scheme’s effectiveness from the perspective of mediators taking part.

⁶¹ A variant, discussed below at footnote 68 is for a ‘private financial dispute resolution hearing’, whereby a neutral judge or lawyer gives an ‘early neutral evaluation’ of the likely outcome of the case as an encouragement to the parties to settle.

lawyer instruction where, if the ethical considerations permit,⁶² one lawyer can advise and support both spouses in reaching and drafting a settlement.

1.5.2 *Consent orders*

When an agreement is reached, the parties may then take it to court to be made into a 'consent order'. This is a legally binding order conclusively dealing with the parties' financial claims on each other arising from their divorce. A 'Form D81' which sets out the parties' current financial circumstances, their proposed arrangements and the rationale for these, must be filed with the court. The district judge has a duty to scrutinise the arrangements in light of the factors under s 25 of the MCA 1973, but it has been said that 'the judge is not a rubber stamp. He is entitled but is not obliged to play the detective. He is a watchdog, but he is not a bloodhound or a ferret.'⁶³ In practice, while most settlements appear to be approved with a fairly light-touch evaluation, recent studies have found a rather more interventionist judiciary than earlier research.⁶⁴

1.5.3 *Contested proceedings*

If no agreement is reached out of court, an application to obtain a financial order from the court must be preceded by attendance by the applicant at a Mediation Information and Assessment Meeting (MIAM),⁶⁵ at which the process of mediation is explained and the suitability of the case to be resolved via mediation is assessed by a trained mediator. Where there is domestic abuse, a case is unlikely to be suitable for mediation, but even where this does not apply, there is no current compulsion to attempt mediation before beginning proceedings – it is only the MIAM that is mandatory, and only for the applicant.⁶⁶ However, there is an expectation, set out in a 'Pre-Application Protocol', that the parties will have attempted to negotiate and to exchange relevant information before any proceedings.

⁶² Any risk of conflict of interest must of course be avoided.

⁶³ *L v L* [2006] EWHC 956 (Fam), [73], Munby J.

⁶⁴ See E Hitchings, J Miles and H Woodward, *Assembling the Jigsaw Puzzle: Understanding financial settlement on divorce* (University of Bristol, 2013) and H Woodward with M Sefton, *Pensions on divorce: an empirical study* (Cardiff University, 2014), discussed below, compared with G Davis et al, 'Ancillary relief outcomes' (2000) *Child and Family Law Quarterly* 43.

⁶⁵ Unless the parties have already tried mediation.

⁶⁶ The government issued a consultation on whether mediation should become mandatory in 2023: MoJ, *Supporting earlier resolution of private family law arrangements*: [Supporting earlier resolution of private family law arrangements - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/supporting-earlier-resolution-of-private-family-law-arrangements)

Proceedings are begun by filing a 'Form A' specifying each type of order that is sought. Where the application is contested, both spouses must then complete a 'Form E' setting out in detail their financial circumstances and provide information such as a valuation of the matrimonial home. Each party is under a duty to make full, frank and up to date disclosure of their assets and circumstances.⁶⁷

The Family Court has a specialist financial remedies court (in each region of England and Wales) to handle this jurisdiction and ensure the expert and efficient disposal of the case. A first appointment may be held for the judge to define the issues and give directions for how the case is to be dealt with, although where both spouses are legally represented, their solicitors may agree such directions on paper with the court so that a hearing is not required. A financial dispute resolution appointment ('FDR') is then held at which a judge attempts to help the parties and their advisors to narrow the areas of disagreement between them, and to give an 'early neutral evaluation' of the likely outcome if the case does not settle.⁶⁸ Where this does not result in an agreement (which could then be made into a consent order), that judge will play no further part in the proceedings, which will be managed by a different judge.

As a further incentive to reach a settlement as well as to discourage the parties from wasting their assets in litigation, the general rule in financial remedy proceedings, in contrast to other civil proceedings, is that the court does not usually order one party to pay the other's costs. Only where there has been significant 'litigation misconduct', through non-compliance with directions or with rules of court, or unreasonable conduct of the party's case, is an order likely to be made – a refusal to 'negotiate reasonably and responsibly' may amount to such misconduct.⁶⁹

The costs of obtaining legal advice and representation are a significant burden for many divorcing spouses, especially given the withdrawal of legal aid for most family proceedings introduced in 2013 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012

⁶⁷ Livesey v Jenkins [1985] AC 424, HL

⁶⁸ A variation is for a private financial dispute resolution appointment to be held, in which a nominated practitioner offers a view of the likely outcome of the case should it fail to settle, instead of the judge doing so as part of the court proceedings. The object is to enable a more considered view to be given than may be possible within the constraints of the court timetable upon over-burdened judges. See A Chandler, ['How Private FDRs Can Be Improved'](#).

⁶⁹ Family Proceedings Rules 2010 r 28.3, as amended. The government have consulted on whether the costs rules should be amended to deter unnecessary litigation, see above note 57.

(known as 'LASPO'). Thus in addition to the incentives to settle provided by the legal system itself, there is the negative consideration of seeking to keep costs down by avoiding expensive legal services, especially for representation.

The result of these positive and negative incentives is that approximately 70 per cent of 'disposals' made in financial proceedings in court are uncontested, a further 15 per cent start out as contested but later settle, and only around 13 per cent are determined by a judge.⁷⁰

1.6 The research evidence

The bulk of the reported case law relating to financial remedies concerns larger money exceptional cases. These cases may have little resonance with the mass of divorcing couples who lack substantial wealth. Moreover, as noted above, the majority of divorcing couples do not go to the courts for any kind of binding order relating to their finances. Very little is known about the arrangements they make, nor the basis on which they make them.

It is therefore necessary to consider what other sources of information we have that shed light on the reality of the financial consequences of divorce. There are three types of research study that have sought to collect data on this. First, there is statistical analysis of data from population studies, which seeks to measure the economic impact of divorce on ex-spouses, comparing their current standard of living with that which they previously enjoyed. Secondly, there are studies that explore the operation of the law and legal process, drawing information from court data, observation of court proceedings, and the views and experiences of legal professionals and judges dealing with financial remedy cases. Finally, there are studies that capture the perspectives of divorced couples themselves.⁷¹

1.6.1 *The economic outcomes of divorce*

As Hayley Fisher and Hamish Low have noted, there is an extensive international body of work establishing that divorce has a negative impact on women's economic circumstances, but has little effect on men, at least in the short to medium term.⁷² They have added to that picture by focusing on longer-term effects, using data from the UK Understanding Society

⁷⁰ Family Court Statistics October - December 2022, Table 14.

⁷¹ We focus only on the more recent studies in this overview, which are more likely to reflect current experiences than those carried out before *White v White*.

⁷² H Fisher and H Low, 'Divorce early or divorce late? The long-term financial consequences' (2018) 32 AJFL 6.

survey. Their study relates to wealth and income measures in 2012-13, so after the financial crisis of 2008, but including people who may have divorced many years earlier.

They found that divorced women have lower household incomes than continuously married women over the long-term but that there is no equivalent financial penalty for men. This difference 'is partly explained by differences in men's and women's labour force participation and earnings: as women on average earn less than men, women's household income falls more as a consequence of divorce through the loss of [the] husband's higher income'.⁷³ By contrast, both men and women experience lower housing wealth post-divorce, and it is this which is 'the predominant source of differences in household resources for divorced men and women alike compared to the continuously married [while] differences in income and financial wealth are much smaller'.⁷⁴ Unfortunately, they were not able to analyse the impact of pensions on financial outcomes. When children in the family were taken into account, they found that for women, 'having children at the time of divorce makes divorce more costly in terms of income and housing wealth' while for men, the same effect related to housing wealth alone.⁷⁵

In common with other studies, they found that re-partnering, especially by marriage, 'recovers both the income and wealth positions of divorce for both men and women'.⁷⁶ They suggest that a key policy question arising from their results concerns whether 'an emphasis in law on children's needs leads to a disproportionate cost on women rather than men once children are adults'⁷⁷ and they conclude that their results 'highlight just how difficult self-reliance can be in the long term, rather than recovery through re-partnering', as well as emphasising the importance of housing wealth in understanding and mitigating losses on divorce.⁷⁸

⁷³ Ibid, p 21.

⁷⁴ Ibid, p 18.

⁷⁵ Ibid, p 21.

⁷⁶ Ibid, p 8.

⁷⁷ Ibid, p 9.

⁷⁸ Ibid, p 26.

1.6.2 *The working of the law and the legal process*

A range of studies has been conducted into different aspects of the legal process concerning financial remedies, but many were carried out over 20 years ago.⁷⁹ There have been three more recent studies, using a mixture of quantitative and qualitative methods.

In 2007-2008, Emma Hitchings⁸⁰ interviewed 24 family solicitors in three areas of England to discover how far they were influenced in dealing with their clients by the 'big money' cases such as *White v White* which form the bulk of the reported case law and hence the guidance coming to practitioners from the higher courts.

In the course of the study, she was able to gain a broader understanding of how the 'everyday' divorce is handled by practitioners. Unsurprisingly, perhaps, she found that where the available assets were limited, 'needs' and practicalities dominated the search for the right outcome,⁸¹ with the yardstick of equality having limited traction. However, she did find that the sharing principle was used by practitioners to provide a 'theoretical background', as a starting point for considering an outcome, albeit one which was likely to be departed from as the parties' financial realities were factored into the equation.

This picture of the 'everyday' divorce was supplemented in later research by Hitchings, Miles and Woodward (the *Jigsaw* study).⁸² This involved a court file survey of nearly 400 cases resulting in a financial order from four courts in different regions of England, interviews with 22 solicitors and ten mediators, and focus group discussions with district judges. The orders were made in 2010 to 2011, before the implementation of the LASPO legal aid reforms. They found that lawyer-led negotiation was the dominant dispute resolution mechanism, with mediation a minority activity and very little use of collaborative law.⁸³ Legal representation appeared to be associated with settlement being achieved, and doing so earlier than where parties were unrepresented.⁸⁴ As Hitchings had also posited in her earlier study, they found that factors tending to promote or prevent settlement being reached were as much non-legal

⁷⁹ For an overview of these findings, see Hitchings et al, 2013, p25-29, n 64 above.

⁸⁰ E Hitchings, 'The impact of recent ancillary relief jurisprudence in the 'everyday' ancillary relief case' (2010) 22 CFLQ 93.

⁸¹ *Ibid*, p 97.

⁸² E Hitchings, J Miles and H Woodward, *Assembling the Jigsaw Puzzle: Understanding financial settlement on divorce* (University of Bristol, 2013).

⁸³ *Ibid*, p 36.

⁸⁴ *Ibid*, p 149.

as law or process-related. Non-legal factors included the parties' emotional readiness to settle, the presence or absence of children whose welfare needed to be safeguarded, and the role of third parties, including family and friends, in helping or hindering the spouses to come to terms.⁸⁵ Legal and process-related factors included the quality of legal advice and expectation management received by the spouses, timely disclosure of information, strong case management and the fear of costs.⁸⁶

In terms of the substantive provisions being made, they found that the court file cases involved a higher proportion of higher-occupation husbands than the general divorced population, suggesting that financial orders are more likely to be obtained by couples with assets or financial issues which were felt to warrant a legally binding outcome.⁸⁷ In addition, cases involving orders for spousal support – 16 per cent of the total sample⁸⁸ – on average involved higher annual combined incomes.⁸⁹ Only a third of these orders were for 'joint lives' (i.e. open-ended); the median duration of fixed term orders was nine years.⁹⁰ Nearly all spousal support orders were confined to cases where there were dependent children of the family, and the duration of fixed-term orders was linked to the youngest child reaching a certain age or stage of education in around three-quarters of cases.⁹¹

The study showed a strong preference by both husbands and wives for a clean break outcome. The authors' focus group discussions with judges and the interviews with solicitors suggested a strong 'present bias' amongst many wives/mothers, to focus on satisfying their immediate needs rather than planning for their longer-term circumstances,⁹² with wives 'going for the house and the husbands will be hanging on to their pensions for dear life ...'⁹³ This was reflected in the finding that pension sharing orders were only made in 18 per cent of the sample.⁹⁴

⁸⁵ Ibid, Table 4.1, p 86.

⁸⁶ Ibid at p 87.

⁸⁷ E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018), p 6, <https://www.nuffieldfoundation.org/sites/default/files/files/briefing%20paper%20Jun%202018%20FINAL.pdf>

⁸⁸ Ibid, Table 4, p 10.

⁸⁹ Ibid, p 6.

⁹⁰ Ibid, p 16.

⁹¹ Ibid.

⁹² Ibid, p 13.

⁹³ Ibid, quotation by a judge.

⁹⁴ Ibid, Table 4, p 10. Note that pension sharing must be the subject of a court order and cannot be achieved simply by the parties agreeing to share (though of course, they could privately agree that one ex-spouse will

They also found that the former matrimonial home 'was often dealt with outside the order',⁹⁵ presumably because the parties had not waited or could not wait for the consent order to sort out their housing needs. Taking all destinations of the matrimonial home together, including those dealt with outside the order, 41 per cent were transferred outright to one of the spouses, 32 per cent were sold and 10 per cent were retained by the sole owner.⁹⁶ Only small proportions of cases dealt with the home in other ways, such as deferring the sale to a later date (4 per cent),⁹⁷ and only two cases out of the total of 399 involved an order relating to the transfer of a tenancy.⁹⁸

The third study focused on pension sharing within divorce settlements at around the same time as the *Jigsaw* study and involved similar methods: a court file survey, practitioner interviews and judicial focus groups.⁹⁹ The research, undertaken by Hilary Woodward with Mark Sefton, also included a pension expert's assessment of a sample of 122 of the court files which were representative of those disclosing relevant pensions, to see whether the pensions had been taken into account appropriately.¹⁰⁰

In 20 per cent of the court file cases (n = 369), neither party disclosed a pension other than the state pension; in 66 per cent of cases, a pension was disclosed but no pension order was made, and in just 14 per cent of cases was pension sharing ordered, representing 17 per cent of cases with relevant pensions.¹⁰¹ All the pension orders except two were made in favour of the wife, and all were for sharing rather than attachment. Perhaps to be expected, the pension orders were associated with a relatively wealthy socio-economic group compared to the parties in cases where there was a pension but no order had been made.¹⁰²

receive payments or a lump sum from the other which are drawn from his or her pension when it is in payment/drawn down. However, they cannot require the pension provider to facilitate this without a court order).

⁹⁵ Ibid, p 9.

⁹⁶ Ibid, Table 5 p 11.

⁹⁷ See above n 54, p274-275.

⁹⁸ Tenancies, in particular, seem to have been dealt with outside the court process, with 37 such cases (9% of the total); n. 87 above, Table 5 p 11.

⁹⁹ The researchers examined court files from three different courts in England and Wales where a financial remedy order had been made between 2009 and 2010, carried out interviews with 32 family solicitors and conducted focus groups with seven district judges.

¹⁰⁰ H Woodward with M Sefton, *Pensions on divorce: an empirical study* (Cardiff University, 2014).

¹⁰¹ Ibid, Chapter 3. This is almost the same proportion as in the *Jigsaw* study.

¹⁰² The median amount of the parties' combined pensions' cash equivalent values was £290,000 where a pension order was made, compared to £109,000 for the non-order group; the median value of the parties'

Offsetting the pension (trading off a share against other assets or provision) was far more common than pension orders, and those interviewed reported that the parties generally preferred this, mainly for pragmatic reasons.

The pensions expert considered that the approach taken to the pensions had been economically rational in fewer than half of 118 cases examined, and of 119 cases where he assessed the fairness of the pension settlement quantum, he considered only about one third to be fair.¹⁰³ Solicitors and judges were divided as to whether the rationale for pension orders relates to needs or sharing.¹⁰⁴ While they did not see pensions as raising especially contentious issues they did find them complex to deal with.¹⁰⁵

1.6.3 *The experiences of those undergoing a divorce*

Finally, there has been some research exploring the perspectives of those who have been through the divorce process themselves. Two studies were conducted around the time of the millennium and thus before *White v White* and the withdrawal of legal aid. However, they contain some potentially relevant findings for our study.

In the first study, Alison Perry and colleagues interviewed 57 divorced parents. The focus was on the immediate impact of separation on married parents with dependent children but the team also collected information on the financial arrangements that had been reached.¹⁰⁶ They found that apart from the house, the participants considered that entitlement to assets should follow ownership – particularly in the case of a spouse’s pension, although this was seen as the ‘trade-off’ for husbands giving up their interest in the matrimonial home.¹⁰⁷ Again in line with other studies, they found mothers much more concerned to secure their immediate housing needs, and those of their children, than to worry about their longer term financial security; meeting the needs of the children and avoiding conflict were the primary factors influencing the settlement. The disposition of other assets and debts followed no

combined net capital assets excluding pensions was £329,000 compared to £125,000, and the husband’s median annual net income was £31,000 compared to £22,500 (p xi).

¹⁰³ Ibid, p xii.

¹⁰⁴ Ibid, p xii.

¹⁰⁵ Ibid, p x.

¹⁰⁶ A Perry et al, How parents cope financially on marriage breakdown (Family Policy Studies Centre, 2000).

¹⁰⁷ Ibid, p 31.

particular pattern and the whole arrangement was driven by pragmatism dictated by the needs of the children.¹⁰⁸

Spousal maintenance was uncommon, with only three out of 35 women in the sample receiving it and only two out of 31 men paying it.¹⁰⁹ Around half the parents with care of children were receiving some form of child maintenance, but the study noted that as well as, or instead of, regular payments, other forms of 'support' were commonly made, such as the payment of school fees, school trips, extra-curricular activities or one-off items such as buying clothes.¹¹⁰

Around two thirds of the sample had used a solicitor to help them reach their arrangements, though few had done so in the initial stages of separation. It was common for parents to reach their own agreements and then check these with a solicitor, with nearly a third of participants saying they had simply agreed matters between themselves. Only a quarter had obtained a consent order, and just over half had no order of any kind. It could take a long time to reach a settlement – while two-thirds of those separated for less than three years had sorted things out, nearly 20% of the full sample had not yet reached a settlement, including a couple who had lived apart for more than five years.¹¹¹

In a second study conducted around the same time, *Settling Up*,¹¹² the researchers conducted a telephone survey with 69 divorcees and then follow-up interviews with 37 of these, who had been identified by a previous study as having experienced problems relating to the division of their finances.¹¹³ They found that several financial decisions were of necessity taken during the early stages of separation, including who was going to live in the family home, what should happen to the children, and how financial issues such as child support, payment of the mortgage and other debts and arrangements regarding joint bank accounts should be organised.¹¹⁴ These decisions could be influential later; for example, 'in

¹⁰⁸ Ibid, p 32.

¹⁰⁹ Ibid, p 23.

¹¹⁰ Ibid, p 24.

¹¹¹ Ibid, Table 5.2 p 28.

¹¹² S Arthur et al, *Settling Up*, making financial arrangements after divorce or separation (National Centre for Social Research, 2002).

¹¹³ The study also included former cohabitants identified from the British Social Attitudes Survey so that a comparison of the impact of marriage and cohabitation could be made.

¹¹⁴ See n 112 above, p ii.

virtually all cases where the house was finally transferred to one partner, it had been the other partner who had moved out on separation.¹¹⁵

The matrimonial home was usually the highest value asset or played the most important role in the financial arrangements. Where it had been owned, it was either sold or more commonly transferred to one partner. Pensions do not appear to have been considered in most of the cases in the study, apart from where the parties were older and had been married a long time, and had relatively substantial other assets.¹¹⁶ Pension orders would only just have been introduced into the law, so this is unsurprising, but the study also found little consideration that the pension might be an asset that could be offset against the allocation or division of other assets – rather, it was regarded as ‘belonging’ to the earner (in practice, the husband). Even at that time, the clean break predominated, with only ten out of 72 respondents reaching agreement over maintenance for the spouse. The researchers concluded that ultimately, ‘married women – and to a lesser extent men with substantial caring responsibilities – traded off housing against income, capital and future provision.’¹¹⁷

A valuable feature of their study was the attention they were able to give to the role of couples’ personal views and values when making their financial arrangements. A dominant factor for divorcees was how to meet the needs of the two parties from their available resources, with children’s needs generally emphasised over those of the parents. There was also an emphasis on current rather than future circumstances, and capital rather than income provision, resulting in ‘a greater focus on the provision of a home than on the means to support the home’¹¹⁸ – the same kind of ‘present bias’ found by Perry et al and later in the *Jigsaw* study. There was a reluctance to regard income as remaining ‘joint’ after separation, except as a resource to support the children, and items funded out of one partner’s income, or assets acquired before the marriage or through inheritance, were no longer viewed as joint once the parties had split up. The only exception was the matrimonial home, where non-financial contributions such as running the home and child-care were regarded as giving an entitlement.¹¹⁹

¹¹⁵ Ibid.

¹¹⁶ Ibid, p iii.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid, p iv.

Reflecting the attitudes expressed in *White v White* and the findings from Hitchings' study of the everyday divorce, 'equal division was seen as an underlying principle, but one which did not apply in a range of circumstances'. The idea of equality of *impact* did not appear to be important in influencing people's approach, except in assessing the fairness or otherwise of their own arrangements, with 'much bitterness and resentment where it was felt that the impact of arrangements was being experienced unequally.'¹²⁰ The *Settling Up* researchers also noted that 'fault' for instigating the break-up was a key factor underlying people's approaches to finances and how they viewed their subsequent fairness, though participants also felt that this should not override what were seen as more important objectives, such as equal division, or meeting needs. The researchers noted that people's views were not based on much knowledge or understanding of the legal position. 'Rather, they were underpinned by pragmatism, emotional preferences, financial constraints, and moral principles or personal values.'¹²¹

The follow-up stage of the study enabled the researchers to learn how the participants had coped with the aftermath of their divorce and how they were experiencing the arrangements that had been made. Reflecting the findings regarding disposition of the matrimonial home, and the prevalence of the clean break, for men, the focus of interviewees was on the change in their housing circumstances, while for women it was more likely to be on managing on a reduced income, sometimes having become dependent on state benefits.

Finally, a more recent study carried out by Anne Barlow et al explored the level of awareness and use of different forms of dispute resolution process by those engaged in family litigation – solicitor negotiation, mediation and collaborative law.¹²² Although this did not focus primarily on financial remedies cases, it did shed light on the nature of divorcing couples' experience of different non-court methods of resolving their disputes. The researchers interviewed 96 people who had experienced one or more of the forms of dispute resolution being examined since 1996; 56 had experienced mediation, 44 solicitor negotiation and 8 collaborative law.¹²³ They also interviewed 40 practitioners (both lawyers and mediators) and

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² A Barlow, R Hunter, J Smithson and J Ewing, *Mapping Paths to Family Justice* (University of Exeter, 2014). The study also involved a nationally representative survey of 2974 respondents' awareness of dispute resolution mechanisms.

¹²³ Ibid, p 3. The authors note that these proportions do not reflect the general use of mediation and solicitor negotiation. Interviews were conducted between 2011-2013.

observed five mediation processes (one relating to finances), three collaborative law processes (all relating to divorce and financial matters) and five solicitor-client first meetings (two of which concerned divorce and finances).¹²⁴

They found that 'quite a few' of those involved in disputes had not understood that solicitors engage in out of court dispute resolution, assuming that going to a solicitor meant going to court.¹²⁵ Most had known little about mediation beforehand, and the 'great majority' were referred to it by their solicitor. However, most considered themselves well-informed as a result of talking to the solicitor or mediator or via a MIAM by the time they started on the process. Parties felt strongly steered to a particular method by the practitioner providing the information, 'potentially limiting people's awareness and choice'.¹²⁶

The large-scale survey confirmed that 47 per cent of couples divorcing or separating between 1996 and 2011 sought no legal advice and interviewees who did seek legal advice or assistance from lawyers or mediators were strongly advised to avoid court if possible. Of the roughly 30 per cent of survey respondents who had been offered mediation and solicitor negotiation for their divorce or separation issues, only 38 per cent took up mediation while 89 per cent sought legal advice,¹²⁷ but it may be noted that the survey was conducted before LASPO and well before the introduction of mediation vouchers.

The researchers found a clear distinction between husbands and wives as regards the norms they held in relation to financial matters:

[The] predominant norm held by wives... was the desire to meet their Needs, usually (although not always) due to their status as the children's primary carer. ... Wives were, however, more likely to have mixed feelings and to bring in a range of normative considerations, including feelings of guilt, pragmatism or sacrifice, or concerns about compensation, which were rarely put forward by husbands...

The predominant norms held by husbands in financial matters were Formal equality and Contributions... Formal equality and Contributions were more likely and Needs less likely to be brought into the collaborative

¹²⁴ Ibid.

¹²⁵ Ibid, p 4.

¹²⁶ Ibid, p 5.

¹²⁷ Ibid, p 6.

process; Needs were slightly more likely to be brought into Solicitor Negotiations, while Formal equality was slightly more likely to be brought into Mediation.¹²⁸

1.7 Proposals for reform of the law

As one might expect with a law that has been in operation for half a century, there have been several calls and suggestions for reform. These have been motivated by a variety of concerns. First, the broad discretion within the current financial remedies law militates against helping the parties to negotiate or reach settlement: they cannot be sure whether the bargain they are striking is a fair or appropriate one; they may incur substantial costs and still make poor bargains. For couples unaware of the legal framework, or unable to afford professional assistance, especially post-LASPO, the law may provide little if any practical guidance as they try to sort things out for themselves. Even for those who go to court, lawyers and judges may struggle to cope with the mass of case law elaborating on operationalising the broad principles of needs, compensation and sharing in the context of a myriad of financial and other circumstances faced by individual couples. Both the judiciary and the legal profession have called for an examination of the law with a view to reform. Government initially resisted such calls, but growing demands for recognition of pre-nuptial (and post-nuptial) agreements did result in the Law Commission undertaking a review of whether these should be legally enforceable as contracts, and if so, subject to what, if any, conditions and safeguards. In carrying out that review, they concluded that they should also examine the concepts of 'needs' within the substantive law itself.

In their report,¹²⁹ they recommended that it should be possible, subject to procedural safeguards, to make an agreement which would be binding on the parties as a contract, to be known as a 'qualifying nuptial agreement'. However, they considered that it should not be possible to contract out of meeting a spouse's financial needs (as interpreted under the current law, i.e. a party's reasonable requirements rather than basic economic needs), nor deprive a child of financial support. Since most couples lack the financial resources to do more than meet their needs and those of their children after a divorce, it is unlikely that many would bother to enter into such an agreement, which would probably be of greater relevance

¹²⁸ Ibid, p 23.

¹²⁹ Law Commission, Matrimonial Property, Needs and Agreements Law Com No 343, HC 1089 (2014).

to those wealthy spouses whose cases form the main subject matter of the case law. For everyone else, the 'default' regime contained in the MCA 1973 remains more important.

The Law Commission had issued a supplementary consultation document after their work on nuptial agreements, seeking further views on how 'needs' should be understood and assessed.¹³⁰ Criticism of 'needs' as a basis for post-divorce provision is based on the question of what is the foundation on which an ex-spouse can expect to have their needs met by their former spouse into the indefinite future? The Commission accepted that the financial consequences of the ending of the marriage are likely to bear unequally on one party, and so the other should, as a matter of justice, be required to redress that so far as possible, but for how long, and at what level? And what of needs that arise independently of the marriage, but affect the party's ability to be financially self-sufficient?

The Law Commission examined models from other jurisdictions and invited responses. In light of these, they recommended – echoing Baroness Hale – that 'the objective of financial orders made to meet a party's needs should be to enable a transition to independence',¹³¹ while recognising that the parties might have made choices during the marriage which render this more difficult or impossible to achieve. They accepted that the broad concept of needs as elucidated by the courts remains apposite and rejected any rigid time limit for periodical payments, although they did recommend that a fixed term order should not last for more than ten years. However, they did not propose amending s.25 to incorporate the objective of enabling a transition to independence into the statute, since it would be difficult to assess the impact of such a provision on the rest of the factors contained within the section, which they had not been asked to review. Rather, they saw this as a clarification and recognition of what the courts seek to do already, and – mindful of the increasing number of divorcing couples who have little or no legal assistance – recommended that the message be transmitted via 'authoritative guidance' to be drafted and issued by the Family Justice Council. This was completed and contains information regarding what 'needs' are, how they are measured and how long they should be met. There is no data on what use is made by divorcing couples, or lawyers, of this document. In addition, however, a version written in

¹³⁰ Law Commission, *Matrimonial Property, Needs and Agreements: A Supplementary Consultation Paper CP No 208* (2012).

¹³¹ Law Com No 343 (n 129 above) para 3.67.

everyday language was helpfully produced by the legal advice charity Law for Life, which is likely to be more widely used.¹³²

The Law Commission also recommended that work should be done on how to produce a formula to calculate individual needs, as has been done in other jurisdictions, in order to provide the same kind of guidance as is available in relation to child maintenance, through the child support calculator, but there has been no reported progress by government on this issue.

The other main source of ideas for reform in recent years has been provided by the regular introduction of a Bill into the House of Lords, the Divorce (Financial Provision) Bill,¹³³ by Baroness Deech. The Bill seeks to amend the MCA 1973 by a) setting a presumption that 'matrimonial property' will be shared equally between the spouses; b) limiting spousal maintenance to a five-year fixed term unless the receiving party would otherwise suffer serious financial hardship as a result; and c) providing that nuptial agreements would, subject to safeguards, be binding without any reservation as to meeting a party's needs. While the Bill would give some weight to the caring burdens primarily undertaken by wives, this would only be in relation to the award of spousal periodical payments (which as we have seen, are already comparatively rare). There is no clear recognition in the Bill of the central importance of unequal sharing of the couple's assets where this is required to meet the basic ongoing needs of one or other spouse or their children.

The government has referred the matter of reform of the law on financial remedies to the Law Commission, who aim to produce a scoping paper by autumn 2024.¹³⁴ This study, we hope, provides a clear and comprehensive picture of the current realities for divorcing couples which will contribute to that review and help shape reforms that can deliver an outcome that gives both parties an equal start on the road to independent living after divorce and safeguards the needs of their children.

¹³² See Family Justice Council, Guidance on 'Financial Needs' on Divorce (2nd edn, 2018, FJC) and Advice Now, A survival guide to Sorting out your finances when you get divorced (2022)

<https://www.advicenow.org.uk/guides/sorting-out-your-finances-when-you-get-divorced>

¹³³ Divorce (Financial Provision) Bill [HL] Session 2021-22, HL Bill 45.

¹³⁴ See: Review to examine 50-year-old laws on finances after divorce and the ending of a civil partnership - Law Commission (2023) <https://www.lawcom.gov.uk/review-to-examine-50-year-old-laws-on-finances-after-divorce-and-the-ending-of-a-civil-partnership/>

1.8 Order of discussion in this report

The following chapters explain how we carried out our study, set out our findings, and then conclude with a discussion of the implications, and suggested recommendations for reform.

Chapter 2 provides a detailed account of the methods used in the study, which is supplemented by the Appendices. Chapter 3 sets out the context in which the divorcees in our study had to sort out their arrangements when they divorced, providing data on their financial situation during the marriage. Chapter 4 gives an account of the processes that divorcees went through to agree, try to agree, or decide not to pursue, arrangements regarding their money and property, explores their use or non-use of legal and other services, including the family court, and their experience of these. Chapter 5 goes into further detail regarding the objectives that divorcees were hoping or trying to achieve, the principles they felt were important, and their understandings and perceptions of the law and the legal process.

Chapters 6 to 9 then examine the arrangements that divorcees made, in relation to the matrimonial home, any pensions, assets and debts they might have accrued during their marriage, and what, if any, ongoing support they made for a dependent spouse, or their children, in the form of maintenance. Chapter 10 provides a picture of the overall arrangements they made, bringing these different aspects together, and identifying how far arrangements may be sorted into different typologies. In Chapters 10 and 11 we report on the outcomes of these arrangements. In Chapter 12, we set out our conclusions and identify the policy and practice implications of our findings.

Chapter 2: The study's research methods

2.1 Introduction

This study provides the first fully representative picture in England and Wales of the financial and property arrangements that people make when they divorce. With a bespoke large-scale survey of recent divorcees and in-depth qualitative interviews, covering people's experiences of the process of trying to settle their finances and details of the arrangement itself, the study provides unique data which is wider in scope than any previous study, both in terms of its inclusion of the full range of divorcees and in the granularity of the data it collects.

This chapter provides an overview of the study, including the research questions it addresses, as well as detail of the methodologies used to achieve these.

2.2 Chapter outline

This chapter summarises the methodological approach taken in this study, outlining the phases of the work and the analysis undertaken of the data.

- Section 2.3: The study's aim and research questions
- Section 2.4: The survey element of the study, including the method of recruitment, the content of the survey, composition of the sample, and an explanation of the presentation and analysis of the survey data
- Section 2.5: The qualitative, interview element of the study, including recruitment of the sample, development of the interview schedule and method of coding and analysis
- Section 2.6: Ethical and data management considerations

2.3 The study's aim and research questions

This study's aim was to capture the lived complexity of arriving at and experiencing post-divorce financial and property arrangements, providing the first detailed, fully representative picture in England and Wales. In doing so, it has included both couples who did and those who did not use the courts to obtain a financial remedy order, those with and without children, and those from across the socio-economic spectrum. An online survey provided prevalence data on the financial outcomes of different population groups. An in-depth study involving qualitative interviews addressed questions concerning divorcees' assumptions,

expectations and rationales for particular arrangements; the roles of each spouse and any professionals; outcomes and their perceived effects. Our objectives were to:

- Ensure that current policy debates about whether and how the law should be reformed are based on reliable information that reflects the full range of financial circumstances of divorcing couples
- Provide robust, nuanced data for professionals and policy-interest groups on the lived experiences of divorcees, to improve practice
- Add substantially to the academic literature on divorce negotiations and post-divorce finances, providing a benchmark for future changes

In order to do so, the study addressed three broad research questions:

1. *What* are the financial and property arrangements made on divorce?
2. *How* do divorcing couples arrive at financial and property arrangements?
3. What are the *immediate effects* of those arrangements?

Addressing the research questions required a combination of quantitative survey data and qualitative interview data, which were collected sequentially from August 2022 to February 2023. In the sections below, we provide a broad overview of the methods for each element.

2.4. The survey¹³⁵

2.4.1 Recruitment

The survey was carried out by the research organisation YouGov among divorcees within its online panel who had received their decree absolute in England or Wales within the previous five years. The five-year window was a pragmatic choice, taking into account the sample size required, given the low prevalence of divorce among the general population, and the need for participants to still have a good recall of the divorce process and any settlements made.

In total, 2,415 divorcees completed the survey during August and September 2022.¹³⁶ The overall sample size was set to ensure key sub-groups of interest could be analysed and compared. This included: men and women; those who did or did not have dependent or non-dependent children; divorcees of different ages; those with different levels of assets during the marriage, divorcees who had used legal or other dispute resolution services, those who

¹³⁵ For more details, please see [YouGov's Technical Report](#).

¹³⁶ The YouGov panel is a sample of individuals. In the unlikely event that both parties of a divorce were included in the survey, we would not be able to identify this in the data.

had used the court to obtain an order for their finances and property and those that did not. The survey questions were developed and cognitively piloted by the research team¹³⁷ prior to YouGov programming the survey and testing it among 96 eligible panel members.¹³⁸ As a consequence of this timing, all the participants in the study divorced under the old divorce law with the survey taking place a few months after the implementation of the reforms contained in the Divorce, Dissolution and Separation Act 2020.

2.4.2 Content of the survey

The survey, which was designed to be completed in 15 to 20 minutes,¹³⁹ covered the following broad elements, taking participants from their marriage through to their current circumstances:

- People's economic and familial circumstances during the marriage, prior to divorce, as well as perceived reasons for the split.
- The value of the assets from the marriage: the matrimonial home, pensions, savings, other assets, minus any debts.
- How these assets were divided, including views on fairness or reasons for how this was done:
 - Was the home sold, transferred to one party, etc.? What proportion of the equity did the survey participant receive? Who remained in any rented home?
 - What proportion of any savings or assets did the participant receive? Likewise, how much of the debt did they take on?
 - Was there any pension sharing? If so, who received what in relation to the other's pension?
- Any child or spousal maintenance arrangements, and the nature of these arrangements.
- The process of coming to a financial settlement: sources of advice and support; use of legal advice (and reasons for doing or not doing so); methods of dispute resolution and the reasons why these were chosen; the nature of any settlement, and how it was made; the costs involved in coming to the settlement.

¹³⁷ Pilot survey respondents were recruited via His Majesty's Courts and Tribunals Service (HMCTS) and a variety of stakeholder organisations, including Support Through Court, National Family Mediation and Surviving Economic Abuse.

¹³⁸ Given few changes were made between the YouGov pilot and mainstage, these 96 surveys were included in the final dataset.

¹³⁹ The survey schedule, including the full wording and response scales, [can be viewed here](#).

- How the settlements had worked out in practice, and current circumstances.

2.4.3 *The sample*

YouGov took two routes to identifying eligible panel members for the study:

1. In order to ensure that the study had a representative sample of eligible divorcees, YouGov undertook a very large-scale screening exercise among the 'nationally representative' element of its panel. In total, 20,532 panel members completed the screening questions, of whom 380 (1.9 per cent) met the eligibility criteria of having received a decree absolute in the previous five years and completed the full survey.
2. In order to increase the sample size to allow us to look at sub-groups of the divorcing population, YouGov also targeted panel members for whom it had prior information to suggest that they might be eligible (e.g. based on their marital status). In total, 2,035 such panel members completed the full survey.

This report is based on the responses of divorcees from both sampling approaches, totalling 2,415. To ensure that the figures we present are as representative as possible of people who had divorced in the previous five years, the 'targeted' sample has been weighted¹⁴⁰ to match the profile of the 'representative' sample across a large number of variables, including gender, age, ethnic group, level of education, economic status at time of divorce, time since divorce, length of marriage, number of children and age of youngest child, and social class.

A comparison of the weighted survey sample against Office for National Statistics (ONS) statistics¹⁴¹ shows that our survey sample reasonably closely matches the divorcing population on the available variables (Table 2.1, below).¹⁴²

¹⁴⁰ Using propensity score matching. See Appendix A for more details.

¹⁴¹ HMCTS also provide some statistics on the percentage of cases with a financial remedy order, and the percentage of those which were contested and uncontested orders. However, the nature and format of these statistics make it difficult to make direct comparisons with the survey sample. In broad terms, the survey sample looks to be in line with HMCTS statistics, as far as comparisons can be made.

¹⁴² Where the differences are largest, for instance fact proven and length of marriage, we have tested whether weighting to ONS statistics notably changes key findings. Given they do not, a decision was made not to introduce further weighting.

Table 2.1: Comparison of survey sample against ONS divorce statistics

	ONS statistics	Survey sample¹⁴³
	%	%
Age of applicant		
Under 40	33 ¹⁴⁴	39
40 to 49	33	24
50 to 59	24	22
60 and over	9	15
Gender of applicant		
Male	38	34 ¹⁴⁵
Female	62	66
Year of decree absolute¹⁴⁶		
2017	20	11
2018	18	16
2019	21	19
2020	20	19
2021	22	19
2022	n/a	10
Don't know	n/a	5
Fact proven		
Adultery	9	15
Behaviour	44	35
Desertion	Less than 0.5%	5
Two year separation	28	22
Five year separation	17	12
Don't know/prefer not to answer	n/a	10
Length of marriage¹⁴⁷		
Under 6	19	29
6 to 10	26	25
11 to 20	33	31
21 or more	22	15

¹⁴³ Based on the weighted survey sample.

¹⁴⁴ Only available from 2017 to 2019. Percentages calculated excluding not stated.

¹⁴⁵ Gender breakdown among those who said they filed for divorce.

¹⁴⁶ Reference period for the survey was August/September 2017 to August/September 2022, with the closest available ONS covering the calendar years 2017 to 2021. The differences in 2017 and 2022 are therefore to be expected.

¹⁴⁷ Opposite sex marriages only, as same sex year categories are different in the ONS statistics.

Prefer not to answer	n/a	1
Base	517,246	2,415

Table 2.2 shows the profile of the survey sample using characteristics not available for comparison with the ONS.

Table 2.2: Profile of the survey sample using additional characteristics

	Survey sample ¹⁴⁸
	%
Ethnicity	
White	80
Mixed	7
Asian	9
Black	3
Other	1
Education level	
Degree or above	24
Higher education qualification below degree level	23
A level or equivalent	20
GCSE level or equivalent, or lower	22
No qualifications	7
Don't know or prefer not to answer	3
Economic status just before separation	
Employed	62
Self-employed	13
Both employed and self-employed	7
Unemployed	3
Looking after family	6
Retired	2
Don't know or prefer not to answer	7
Social grade¹⁴⁹	
A	12
B	14
C1	35
C2	15
D	10

¹⁴⁸ Based on the weighted survey sample.

¹⁴⁹ This information was only available at the time of the survey rather than at divorce.

E	12
Unknown	2
Had dependent children at divorce¹⁵⁰	54
<i>Base</i>	2,415

2.4.4 Presentation of the survey data and analysis approach

The survey findings are presented in figures and tables, with further detail and explanation in the text. Throughout Chapters 3 to 11 we detail the prevalence of different financial arrangements, overall and across our key subgroups of interest (see Section 2.4.1). In addition, for key issues of interest, we use exploratory regression analysis¹⁵¹ to identify which family characteristics are most closely associated with the arrangements that divorcees make, as well as with their use of legal support. Regression analysis identifies the strength of an association between each variable included in the analysis (in the ‘regression model’) and the issue of interest (e.g. the arrangement), having taken into account – or ‘controlled for’ – the association between the issue and the other variables in the model. For example, it allows us to identify whether there is an association between a particular type of arrangement and the length of someone’s marriage, having taken into account other factors such as the person’s age, whether they had children, their gender, and so on. Table B.1 in Appendix B shows the variables included in the models, which are largely consistent across the regressions, with some adaptation to include (or exclude) those of specific relevance for particular issues. The regression analysis has been used to identify key associations, which are then reported – referred to as ‘exploratory regression analysis – in the figures, tables or text.

Where we make comparisons between different groups of divorcees (e.g. women and men), differences in the findings have been tested for statistical significance, with the p-value showing the probability of an observed difference being due to chance alone, rather than being a real underlying difference between the two groups. A p-value of less than five per cent is conventionally taken to indicate a statistically significant difference (p-value <0.05).¹⁵² The term statistically significant is often abbreviated to significant in the text. With the exception of the regressions, the majority of the statistical tests for the comparisons across

¹⁵⁰ For number of children and age of youngest child, see figure 3.2.

¹⁵¹ The regression models are primarily logistic regressions with independent variables entered forward stepwise.

¹⁵² The p-values have been calculated in the complex samples module of SPSS.

groups made in this report are based on chi-squared statistics, taking into account the weighting of the data.

Due to rounding, percentages in the figures and tables do not always total 100 per cent. Where participants said that they did not know or would prefer not to answer the question, these participants are included in the base. However, for ease of reading, they are not included in the figures and tables unless they represent a notable proportion of the total (e.g. where high levels of 'don't knows' is a finding in itself, highlighting a lack of knowledge about a particular issue). The unweighted sample sizes are cited at the end of each table.

All analysis was conducted within SPSS v 28.0.1.1.

2.5 The qualitative interviews

This phase involved 53 semi-structured interviews carried out between November 2022 and February 2023. Matching the eligibility for the survey, the interviewees were all divorcees whose decree absolute was granted within the previous five years. The in-depth interviews complemented the survey by providing detailed information on experiences, drivers and trajectories. The purpose was to gain a more nuanced understanding of individuals' financial and property arrangements and how divorcees arrived at these, as well as to capture data on the outcomes which flowed from earlier decisions.

2.5.1 Recruitment

The sample for this stage was generated primarily through a research agency who recruited 50 individuals who had been divorced in the past five years. They were purposively selected to ensure inclusion of a range of key factors related to gender, ethnicity, age, those who had and had not used the court, those with and without children and geographical region.¹⁵³

Each interviewee was also asked to complete a Bristol-administered (JISC) online survey¹⁵⁴ prior to the interview (this mirrored the YouGov survey). All interviews were conducted virtually and lasted approximately one hour.

¹⁵³ Ensuring a spread of interviewees from across the country is important as the potential cost of re-housing is known to impact parties' decision-making (Hitchings, E. and Miles, J. (2019) 'Rules Versus Discretion in Financial Remedies on Divorce' *International Journal of Law, Policy and the Family* 33(1), 24-50).

¹⁵⁴ JISC is an online survey provider made specifically for education and research institutions: <https://www.onlinesurveys.ac.uk/> (last accessed 12th June 2023).

Over the initial phases of the study, we also worked with HMCTS to secure an additional qualitative sample. This was generated by HMCTS emailing 476 individuals who had completed their user feedback survey and inviting them to participate in our study.¹⁵⁵ Just under 45 completed our survey and of these, 30 left their email addresses to be contacted in the future for a further qualitative interview. This provided a sample of 30 to contact for the pilot and top-up stages if required.

In order to ensure our interview sample reflected the ‘top-line’ statistics in the survey sample (i.e. those with/without dependent children; those with court orders and those without; those with a pension/those without) we decided to supplement the research agency sample. Five of the additional HMCTS ‘top-up’ participants were contacted to see whether they would be willing to be interviewed. Two agreed and these interviews were completed in early February 2023.

2.5.2 Development of the interview schedule

The interview schedule was developed over autumn 2022.¹⁵⁶ The schedule was tested through feedback from members of the project Advisory Group with expertise in qualitative methods. This provided an initial idea of how participants might experience the schedule before it was piloted. Members’ feedback helped to focus the schedule, ensure that the questions were clear, and tailor the questions more appropriately for the target audience. One pilot interview took place and, given that almost no changes were made to the interview schedule following the pilot, this interview has been included in the final interview sample.

2.5.3 Coding and analysis

Three members of the research team undertook joint coding sessions, where three interview transcripts were read and coded separately and in advance by each team member and then coded together in two joint sessions to ensure that the entire team had input into the coding process and generated the codes together. Coding took place on NVivo. We drew on a mixed approach to coding and analysing the data: (i) issues that had been identified previously from the survey stage, including the ongoing survey analysis, interview schedule and literature review were reflected in a range of codes; ii) issues that emerged through

¹⁵⁵ The HMCTS user feedback survey is embedded within the online divorce process but includes only those divorcees who apply for a divorce themselves (rather than via a solicitor) using the online divorce application system. Divorcees who used the paper-based approach or individuals who were represented at their divorce stage are not included within the sample.

¹⁵⁶ The interview schedule is contained in Appendix C.

analysis of the data were coded, and iii) data was coded and analysed through a thematic approach. Themes included knowledge of the law; motivations; arrangement drivers and levels of conflict.

2.6 Ethics and data management

The study collected personal data, including sensitive personal data. This was considered in detail in an ethics application and data protection impact assessment. Ethical approval was given by the University of Bristol Law School's Research Ethics Committee in October 2020 and subsequent amendments to the study were outlined and approved by the Committee. A data management plan was initially written before the survey cognitive pilot stage in summer 2021 and updated throughout the project. This provided a written guide to enable data protection measures to be followed by the research team.

Participation in both stages of the project was based on informed consent. The information provided to participants at all three stages explained the project, aims and methods of the research, as well as how the data would be collected, stored and used, and informed participants that they could request further information about the project and timescales for when they could withdraw their data. By providing such information to all potential participants, we endeavoured to support participants' rights as to the use, processing and storage of their data.

In the next chapter, we set out a detailed picture of the circumstances of the couples in our sample, during the marriage and at the time they divorced. These provide the context in which the detailed financial and property arrangements that they made, or experienced, can be properly understood and evaluated.

Chapter 3: The family context: Divorcees' circumstances at the end of the marriage

Key findings

A large number of divorcees were in constrained financial circumstances at the point of divorce

- Two in five (43 per cent) divorcees had monthly net household incomes under £2,000 when they separated.
- Seven in ten (68 per cent) divorcees had owned the matrimonial home, while three in ten (28 per cent) had rented.
- Of those who owned the matrimonial home, eight in ten (80 per cent) lived in a home worth under £500,000, and half (49 per cent) in a home worth less than £250,000. A third of divorcees' homes had an equity of under £100,000 after any mortgage was paid off.
- One in six (17 per cent) divorcees had no assets to divide; nearly two-thirds (63 per cent) had total assets (including equity in the home and any pensions) worth under £500,000; the median value of divorcees' total asset pool, including those with debts and no assets to divide, was £135,000.
- Two thirds (65 per cent) of divorcees had debts (other than mortgages on the matrimonial home) at the time of the divorce. For some these were modest (e.g. 16 per cent had debts under £5,000), but one in seven (14 per cent) owed £20,000 or more.

On average, women were in more precarious financial positions at the point of divorce than men

- Women were less likely to be in paid work at the time of separation, and their average earnings were lower than men's, with nearly three in ten (28 per cent) having take-home pay of under £1000 compared to only one in ten (10 per cent) men.
- The position was particularly precarious for mothers; among women in paid work, mothers were far more likely (32 per cent of those with dependent children and 39 per cent of those with older children) than working women without children (20 per cent) to have a net monthly take home pay of less than £1,000.
- In seven in ten (70 per cent) cases, one or both parties had a pension other than the state pension. Women were as likely as men to have a pension, but men were more likely to have paid into it for longer, and their pensions were worth more than those of women; 41 per cent of women not yet drawing it had a pension worth under £50,000 compared to 29 per cent of men.

There was a lack of awareness of family finances amongst a significant proportion of divorcees

- Over a third (37 per cent) of divorcees not yet drawing their pension did not know the value of their own pension pot, with women (40 per cent) more likely than men (34 per cent) to say that they did not know.
- One in ten (10 per cent) homeowners with a mortgage did not know what the equity in their home had been at the point of divorce.

3.1 Introduction

The context in which couples enter the divorce process is crucial to understanding the financial arrangements that emerge at the end of that process. Their financial

circumstances, including the level of income that came into the household during the marriage, the assets and debts they had accumulated, and whether one or both had a pension, are relevant to the level of financial security they will experience after they are divorced. There may also be key factors differentiating how they manage their financial arrangements when they divorce, including the extent to which they use legal or other professional services and the involvement of the courts. The nature and extent of the financial and caring contributions they made during the marriage, including their respective incomes and earnings, may also help explain the balance reached between ongoing financial support and the division of any assets after divorce.

There are also other factors, not directly related to finances, about the marriage and how it ended which may affect the financial outcome of the divorce. Some of these are relevant considerations when a court is determining the issue, as discussed in Chapter 1; for example, the divorcees' ages, the length of their marriage, and whether or not they had children. There are also other matters, such as the power balance during the marriage, including how finances were managed, and the reasons for the marriage breakup, that may be potentially significant drivers, especially given the ability of couples to make their own arrangements without involving the courts or lawyers. We explore these in subsequent chapters.

3.2 Chapter outline

This chapter provides a picture of divorcees' circumstances during their marriage, up to the point of separation or divorce,¹⁵⁷ describing:

- Section 3.3: The length of their marriage, their age, and any children they had
- Section 3.4: Income, working patterns and styles of money management
- Section 3.5: The matrimonial home
- Section 3.6: Pensions
- Section 3.7: Savings, assets and debts
- Section 3.8: The total value of their assets (the home, pensions, savings, other assets minus debts)
- Section 3.9: Concluding comments

¹⁵⁷ Some questions, such as working patterns, focused on the point of separation whilst others, such as the value of the assets, asked about the situation when the divorce process began. The relevant time point will be stated explicitly in the text.

The sections highlight notable differences within the key subgroups of interest (see Chapter 2, Section 2.4.1) – between men and women; between those who did or did not have children; between divorcees of different ages; and by level of assets – as well as other family characteristics which appear to distinguish divorcees' circumstances, during the marriage.¹⁵⁸

3.3 Length of marriage, age and children

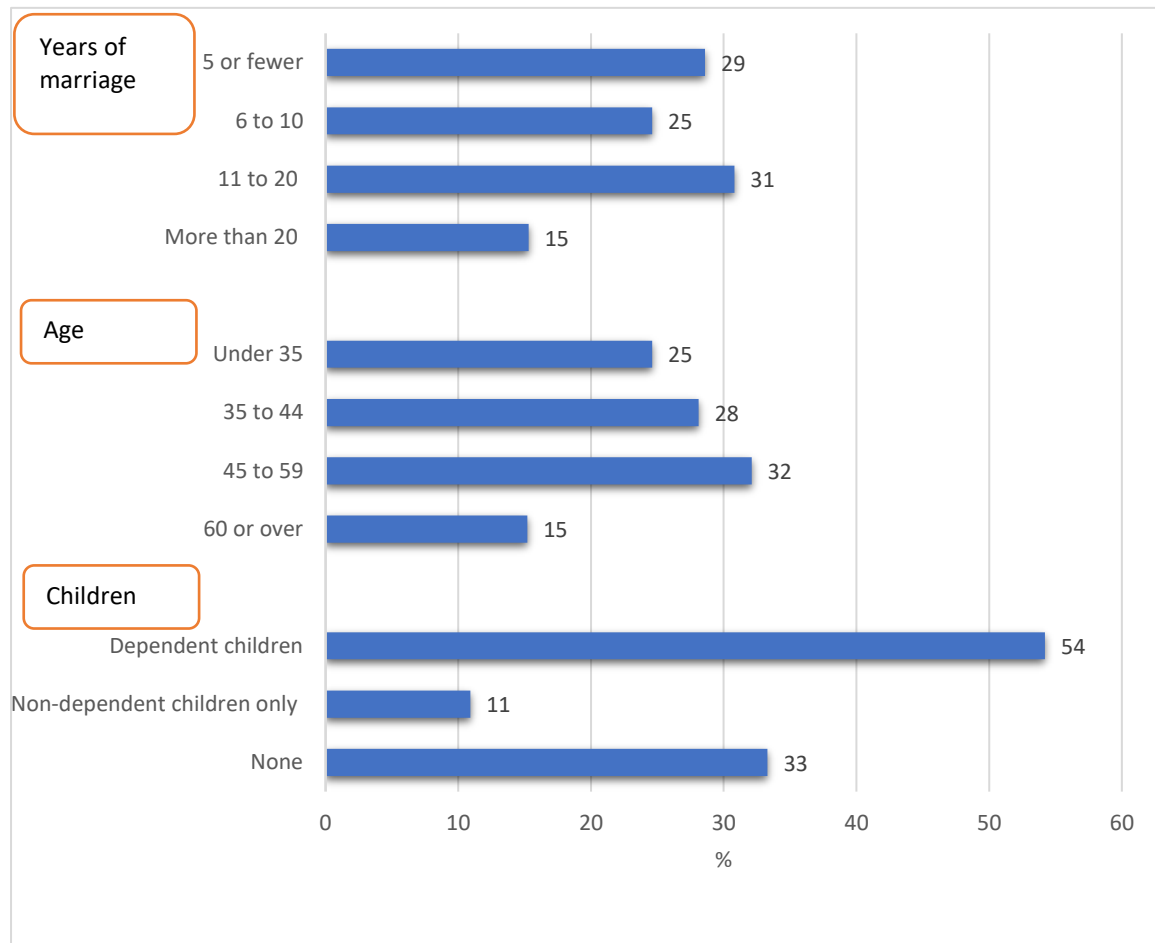
Figure 3.1, below, shows the number of years that divorcees were married, their ages¹⁵⁹ and whether they had children with their ex-spouse. The spread of marriage lengths is a reminder that people get divorced at different points in the life course. Three in ten (29 per cent) divorcees reported that their marriages lasted five years or fewer while, at the other end of the spectrum, 15 per cent had been married for more than 20 years.

The vast majority of divorces happened prior to retirement age, with only 15 per cent of divorcees aged 60 or over when they divorced. However, divorcees under 60 were quite evenly spread across the age distribution, with a quarter (25 per cent) aged under 35, three in ten (28 per cent) aged 35 to 44 and a further three in ten (30 per cent) aged 45 to 59. Two thirds (65 per cent) of divorcees had children with their ex-spouse. At the time of their divorce, just over half (54 per cent) had dependent aged children (aged under 16, or 16 to 19 in full-time education). A further one in nine (11 per cent) divorcees had children who were of non-dependent age at the point of their divorce.

¹⁵⁸ Focusing on characteristics identified in regression analysis as significantly associated (see Chapter 2, Section 2.4.4).

¹⁵⁹ Note, the survey data included their age at the time of the survey, rather than age at divorce. As such, the participants were up to five years younger at the point of divorce.

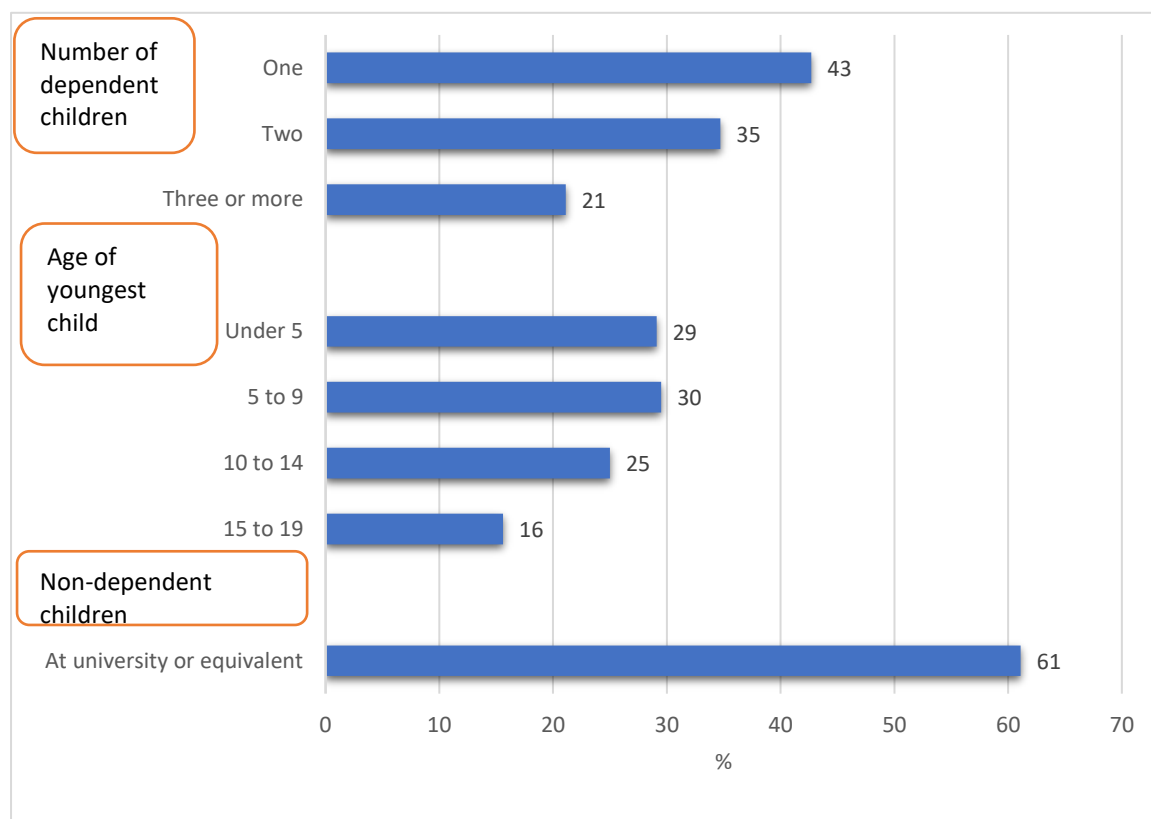
Figure 3.1: Length of marriage, age and children with their ex-spouse



Unweighted bases: All divorcees (2,415)

Over half (56 per cent) of divorcees with dependent-aged children had more than one dependent child (Figure 3.2, below). Looking at the age of the youngest child, most divorcees with dependent-aged children would continue to have financial responsibility for them for many years after the divorce: three in ten (29 per cent) had a child under five at the point of divorce and a further three in ten (30 per cent) had a child aged between five and nine. Moreover, no doubt reflecting the age profile of divorcees at time of divorce, where they had older children, six in ten (61 per cent) had a child still in education, at university or an equivalent.

Figure 3.2: Number and age of dependent children, and non-dependent children still in education



Unweighted bases: All divorcees with dependent children (1,189); all divorcees with non-dependent children (762)

3.4 Income, working patterns and styles of money management

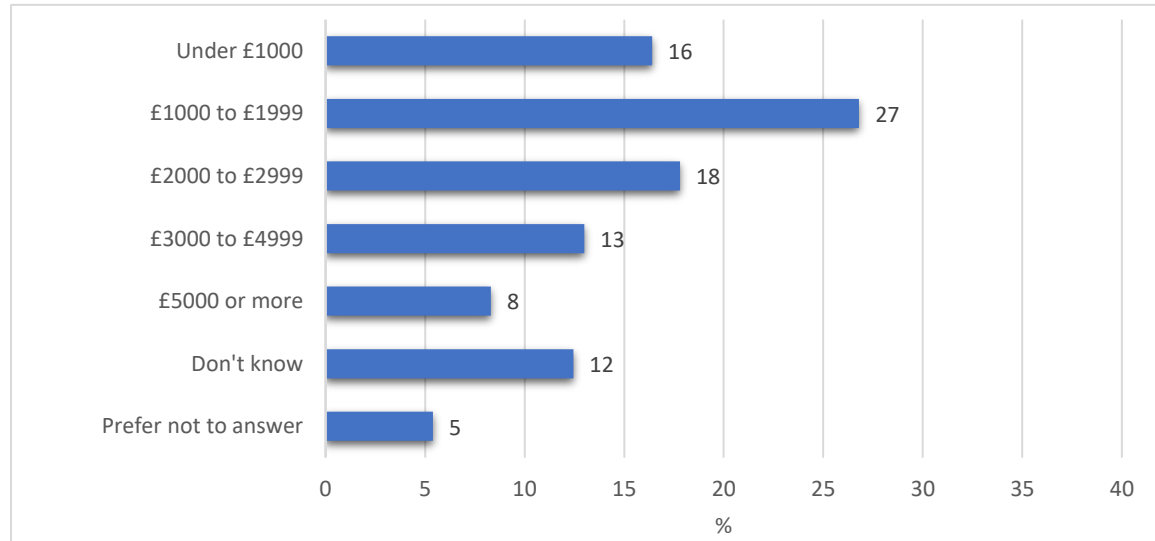
3.4.1 Income

Many divorcees were living in marriages with relatively constrained finances. Figure 3.3, below, shows the breakdown of their monthly household incomes, after tax, prior to separation. One in six couples (16 per cent) reported¹⁶⁰ having a monthly disposable income of under £1,000 at that point, with a further quarter (27 per cent) living on £1,000 to £1,999 per month. At the other end of the scale, eight per cent had a disposable monthly income of £5,000 or more. Comparing these to ONS statistics on median disposable household incomes in 2017/18 (as a rough average point when the divorcees in this survey may have

¹⁶⁰ These figures should be taken as approximate as survey participants were having to recollect back to the point at which they separated, often several years previously.

separated), the household income of divorcees appears to have been roughly in line with those of the population as a whole.¹⁶¹

Figure 3.3: Household income prior to separation¹⁶²



Unweighted bases: All divorcees (2,415)

When asked how well they were managing financially at the point of separation, using a five-point scale, only one in five (22 per cent) felt that they were 'living comfortably' at that time, with a third (33 per cent) 'doing alright', a fifth (22 per cent) 'just getting by' and one in five (19 per cent) finding it 'difficult' or 'very difficult'. Unsurprisingly, those with lower incomes were more likely to report struggling financially than those with higher incomes, with a third (32 per cent) of those with a household income of under £1,000 each month finding it 'quite' or 'very difficult', compared with 12 per cent of those with a monthly income of £5,000 or more (p-value <0.001).

¹⁶¹ 2017/18 monthly disposable household incomes per quintile (calculated from the yearly figures) are: bottom quintile £1,242; 2nd quintile £1,885; 3rd quintile £2,545; 4th quintile £3,408; top quintile £5,294. See: <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/datasets/householddisposableincomeandinequality>

¹⁶² Where the percentages do not add exactly to 100 per cent, this is due to rounding to the nearest percentage point.

As one wife commented when asked if she and her husband had ever argued over money:

‘We got stressed by it but never argued about it, no. ... we were always skint ... we knew we couldn’t go and buy [things] because we didn’t have any money. So, yeah, that’s how it was.’ (Wife 26)

A husband explained how he and his wife had got by each month through reliance on their credit cards:

‘We were very young and stupid, and we lived life by credit. If one couldn’t get a credit card the other one would. ... We used to pay with credit card[s] each month, this, that, and that ... that’s just how we lived our lives.’
(Husband 21)

Another described how he had taken on a second job, initially to cover unforeseen expenses, like car repairs, but that this had then become a necessity:

‘I did a couple of weeks of nights ... because we were struggling. So I did a fortnight on top of my day job just to help us out. ... And then for about three or four years after that, I was doing probably about four nights a month and if I hadn’t have done that, I really don’t know where we would have been financially. ... finances were always an issue.’ (Husband 19)

In contrast, and reflecting on the relaxed approach to finances in a wealthier household, one wife noted the benefits of having two salaries coming into the house:

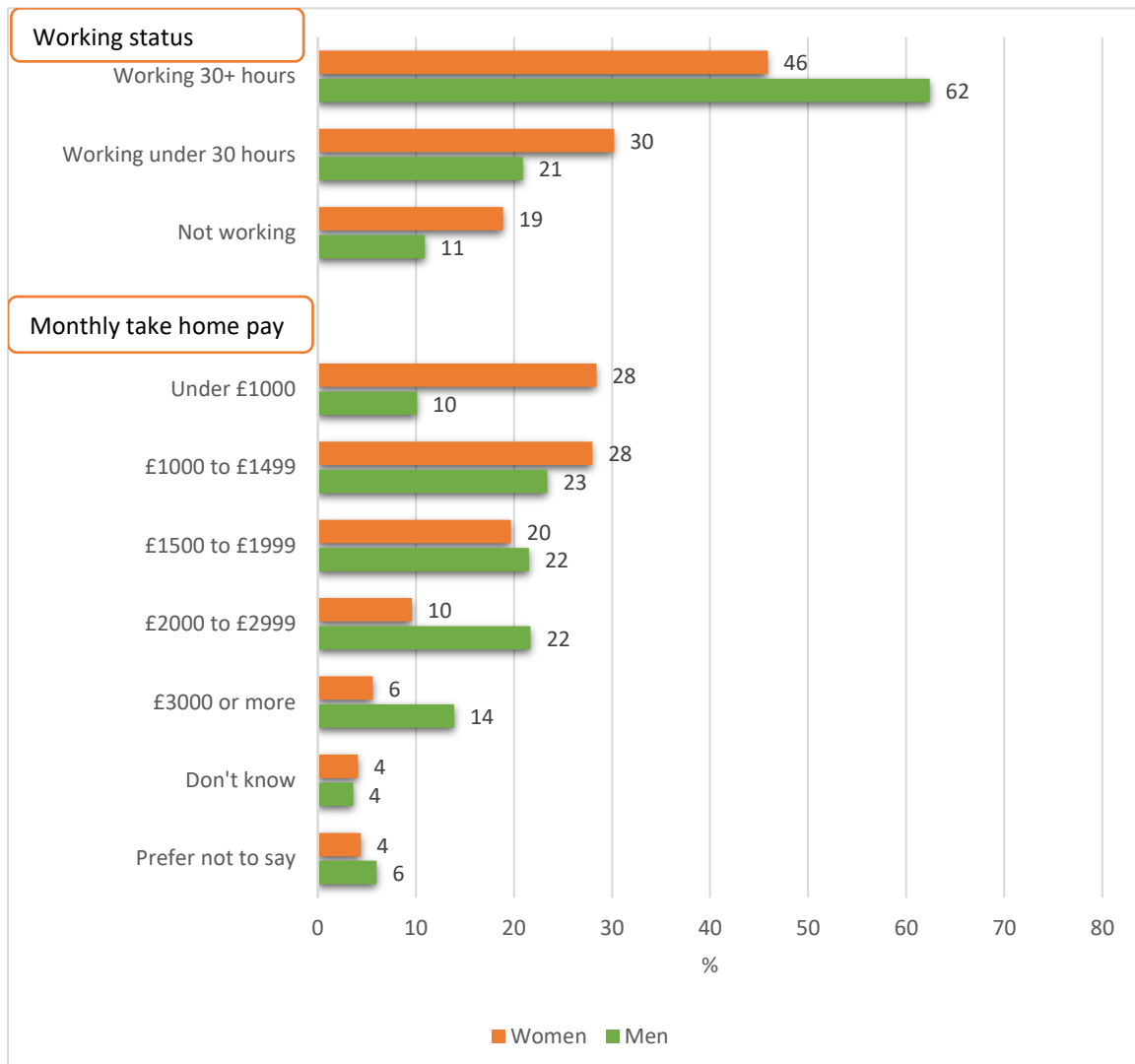
‘... because the kids were older ... because there were two salaries coming in you’re kind of like, well, yeah, enjoy what’s there, you know, if you want something get it, if I want something get it. I think on the bills side of things to be fair we were quite relaxed about what was going in or out, as long as the bills were being paid and everything was getting sorted...’
(Wife 19)

However, there were notable minorities of lower income households who reported that they had been living comfortably or doing alright (e.g. 15 per cent and 21 per cent respectively of those with monthly incomes of under £1,000). Likewise, only half of divorcees (46 per cent) with a monthly household income of £5,000 or more said that they were living comfortably. So, it appears that, for many, their perceptions about their standard of living may have taken into account their overall financial commitments (i.e. their disposable income) and/or their aspirations about how they would like to live.

3.4.2 Working patterns

On average, women were bringing less income into the household prior to separation, being less likely than men to be in paid work (78 per cent compared to 86 per cent), especially full-time work (46 per cent compared to 62 per cent) and earning less on average than men (differences in the economic status of women and men significant at p-value <0.001) (Figure 3.4, below).¹⁶³ Three in ten (28 per cent) working women had a take-home pay (after deductions for tax, etc.) of less than £1,000 per month, compared with one in ten (10 per cent) men. At the other end of the spectrum, only six per cent of women earned £3,000 or more per month, compared to 14 per cent of working men (p-value <0.001).

Figure 3.4: Paid work at point of separation, by gender



Unweighted bases: Female divorcees (1,380); Male divorcees (1,035); Female divorcees working at point of separation (1,125); Male divorcees working at point of separation (903)

¹⁶³ Two per cent of women and two per cent of men were working but did not give information about their hours.

While mothers and women without children were equally likely to have been in paid work at the point of separation, women without children (61 per cent) were more likely than mothers to have been working full-time. However, interestingly, among mothers, those with dependent children at the time of divorce were more likely than those with only non-dependent children to have been working full-time (42 per cent compared with 23 per cent) (p-value <0.001). Overall, and likely reflecting their higher rate of part-time employment, the salary levels of mothers in paid work were somewhat lower than those of women without children. Among women in paid work, mothers were far more likely (32 per cent of those with dependent children and 39 per cent of those with older children) than women without children (20 per cent) to have a net monthly take home pay of less than £1,000. At the other end of the earning spectrum, one in five (21 per cent) women without children took home £2,000 a month or more compared to 13 per cent of mothers with dependent children and eight per cent of those with older children (p-value <0.001).

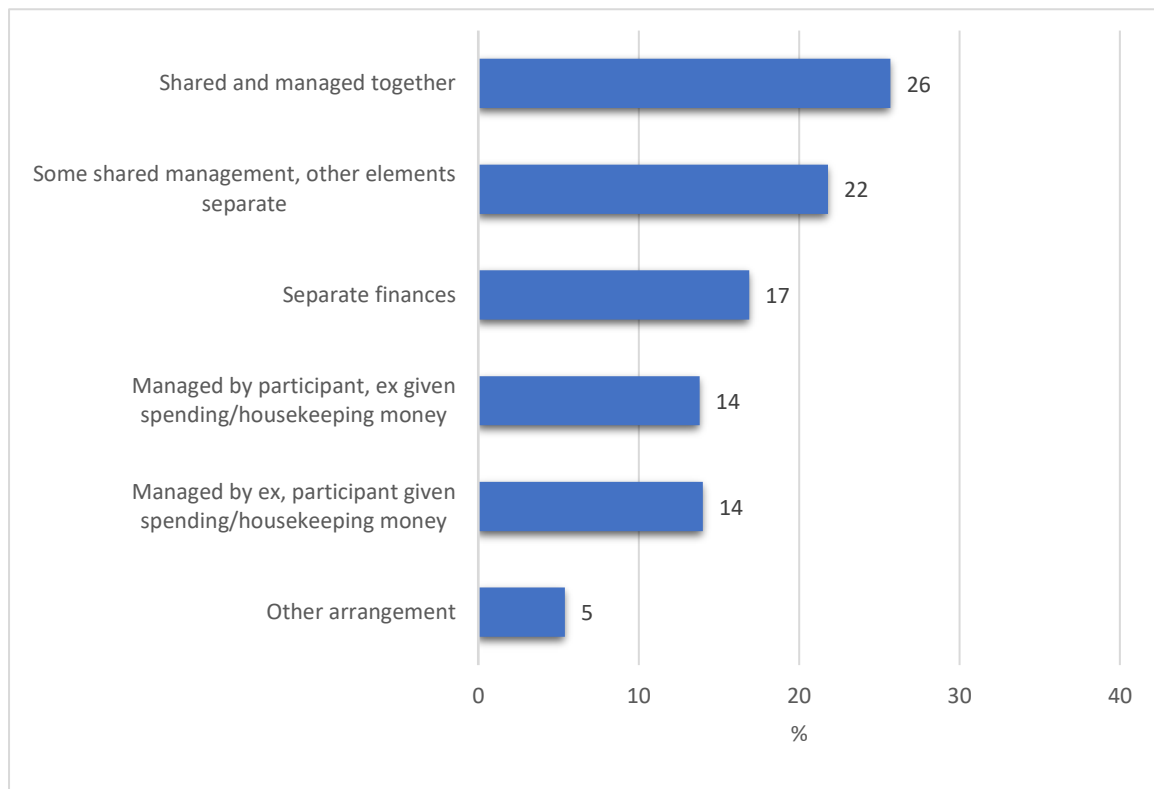
These figures suggest that, at least in the immediate aftermath of the separation or divorce, women's – and particularly mothers' – earnings, and earnings potential, made them more likely to be vulnerable financially than men. An example of this ongoing financial vulnerability for some mothers is provided by this wife who emphasised her ongoing care responsibility for the couple's children:

'I've spent a good 15 years with him, raising his children who both have autism and I'm still having to be a full-time mum because of their special needs, so it's not easy for me to go out and get a job because I've always got to go to different meetings and different places ... so obviously my pension, I will have hardly anything.' (Wife 8)

3.4.3 Styles of money management

When asked how they managed their finances during their marriage, just under half (48 per cent) of divorcees reported some form of joint money management, with a quarter (26 per cent) fully sharing and managing their money jointly, and a further one in five (22 per cent) managing some of their money together and keeping the rest separate. In three in ten (28 per cent) cases, one spouse looked after the finances, providing the other with spending or housekeeping money. Others (17 per cent) kept their finances completely separate from their spouse (Figure 3.5, below).

Figure 3.5: Money management during marriage



Unweighted bases: All divorcees (2,415)

These different styles of management might reflect different attitudes towards money. One husband told us that:

‘I was very much an “earn and save”, and she was very much an “earn and spend” ... that’s what really broke down our marriage eventually because I just couldn’t do what she wanted. Me and her just were not aligned in terms of our thinking.’ (Husband 2)

One wife commented that she thought pooling money and having a joint account was ‘more of an older generation thing’. She had wanted to keep her money separate to prevent her husband’s former wife from ‘[going] after my money.’ But the outcome was that she felt she had paid for everything other than the mortgage:

‘... his favourite saying was “If you want it, you buy it. You pay for it”. ... Even the cat that we had, “You want him, you pay for him”.’ (Wife 1)

Another husband told us that he and his wife had used a joint account because that was easier than trying to divide up direct debits for payments and so on, and it enabled him to keep track of how their money was being spent and ensure debts were not being incurred without his knowledge. But he told us that this had only worked because he and his wife had

trusted each other: 'had it been acrimonious then the first thing I would've done is close that account and made everything separate.' (Husband 14).

Sharing the money management, either totally or partially, was more common among higher income households, while lower income households were more likely to be those where spouses kept their finances separate. For instance, a quarter (25 per cent) of those with a net monthly household income of under £1,000 kept their finances completely separate, compared to only one in ten (10 per cent) of those with a monthly income of £5,000 or more (p-value <0.001). Among workers, at least some joint sharing of finances was more common in two earner households (where just over half (53 per cent) of couples had shared all or some of their finances compared to within 38 per cent of single earner households, p-value <0.001).

Sharing money management, or indeed, seeming to have control over the household finances, did not necessarily mean that the relevant spouse was in a strong position. One wife told us:

'... his credit wasn't very good, and I have always been more of the breadwinner. I'm a little bit more organised than he is and that kind of stuff so it was just easier to put everything in my name and things like that. But that often means everything's on my shoulders because everything's in my name, so I am actually liable for everything.... his money was more "his money" and my money was more "our money".' (Wife 24)

Domestic abuse involving coercive control and economic abuse could occur notwithstanding that the perpetrator did not actually earn the money. One wife said,

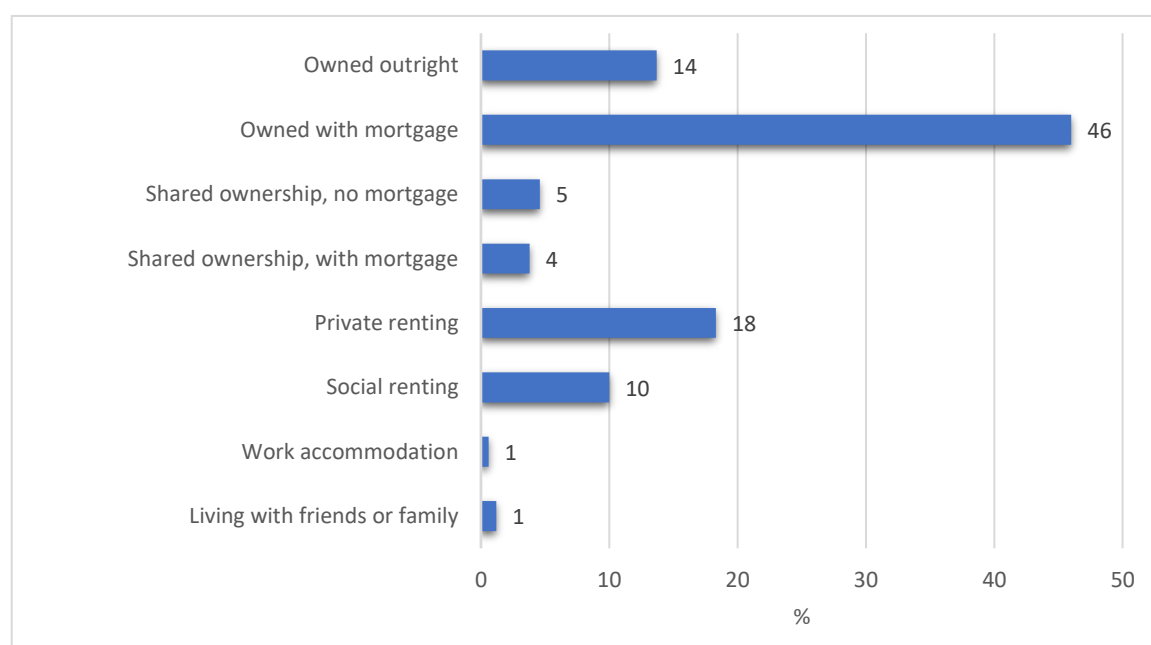
'...so from day one it was my financial payments towards him, supporting him like I was, you know, the breadwinner in the home sort of thing. ... And helping himself to my money every time that he wanted it... he knew how to get the money out of me and use and abuse. And it came to, it was not in hundreds, it was in thousands every time, you know, because I was working full-time and everything...'. (Wife 2)

3.5 The matrimonial home

At the point of separation, seven in ten (68 per cent) divorcees owned their matrimonial home, with 14 per cent owning their home outright, 46 per cent with a mortgage and eight

per cent in a shared ownership scheme. Three in ten (28 per cent) divorcees were renting, either privately (18 per cent) or in social housing (10 per cent) (Figure 3.6, below).¹⁶⁴ As to be expected, home ownership in general was associated with higher incomes, and outright ownership with longer marriages and being older.¹⁶⁵ Eight in ten (83 per cent) of those with a net monthly household income of £5,000 or more owned their own home, with or without a mortgage, compared to just over half (54 per cent) of those with a monthly income of under £1,000. A third (34 per cent) of those married for more than 20 years owned their home outright, compared to nine per cent of those married for fewer than six years. Similarly, a third (32 per cent) of divorcees aged over 60 owned their home outright, in contrast to 13 per cent of those aged under 35.

Figure 3.6: Tenure of the matrimonial home



Unweighted bases: All divorcees (2,415)

The opposite was true for renting, particularly private renting, where tenants were more likely to be younger (e.g. 25 per cent of those under 35 were private renters compared to 10 per cent of those aged 60 or over), with shorter marriages (28 per cent of those married for fewer than six years were private renters compared to seven per cent of those married for 20 years or more) and lower incomes (43 per cent of divorcees with a net monthly income of under £1,000 were private or social renters compared to 14 per cent of those with a monthly

¹⁶⁴ Where percentages in the text are different to those in the figure, this is due to rounding to the nearest whole per cent.

¹⁶⁵ Tenure significantly associated with p-value of <0.001 in relation to income, marriage length and age.

income of £5,000 or more). Social tenancies were twice as likely as private tenancies (48 per cent compared to 26 per cent) to be in one spouse's sole name (p-value <0.001).

Figure 3.7, below, shows the estimated value of the matrimonial home at the point of divorce as well as the estimated equity in the home (that is, the value minus any mortgage to pay off), split by those owner-occupiers in the survey with and without a mortgage.¹⁶⁶

Figure 3.7: Value of and equity in the matrimonial home by owning outright or with a mortgage



¹⁶⁶ The figures exclude those in shared ownership, who gave the total value of the home and the equity, rather than the percentage share of their ownership. The equity for outright owners is the value of the home, while those with mortgages were asked about equity after the mortgage was paid off. The two questions had different bandings, with the bandings shown in Figure 3.7 wider than ideal in order to fit within the bandings of the two questions.

For most divorcees, the value of their homes was modest.¹⁶⁷ Overall, eight in ten divorcees had been living in homes worth less than £500,000, including 49 per cent in homes worth less than £250,000 and 31 per cent in homes worth between £250,000 and £499,999. Higher value properties were relatively rare, with only five per cent of homeowners having homes worth £750,000 or more. Looking at the equity in the matrimonial home once any mortgage was repaid, a third (34 per cent) of divorcees had less than £100,000 in equity once any mortgage was paid off. Only eight per cent had equity of £500,000 or more.

Those who owned their homes outright were more likely than those with mortgages to be living in higher value properties (p-value <0.001).¹⁶⁸ For instance, one in five (20 per cent) outright homeowners were living in properties worth £500,000 or more compared with one in ten (10 per cent) of those with a mortgage. However, the greater disparity between the two groups was, unsurprisingly, in relation to the equity in the home (so, for those with mortgages, after the mortgage was paid off). Eight in ten (82 per cent) outright owners had equity of £100,000 or more, compared with two in five (43 per cent) of those with a mortgage (p-value <0.001).

The fact that one in ten (10 per cent) homeowners with a mortgage said that they did not know what the equity in the home had been is of potential concern, insofar as this might well have hindered their ability to make informed decisions in any negotiations about their financial arrangements. One wife told us that when they split up, she and her husband had done it all without legal advice:

‘The house next door to us had sold very recently so we kind of knew the rough cost, so we didn’t even get the house valued, which I don’t know whether that was a particularly good choice looking back but we didn’t. ... So, he took out a loan I think to pay me out of the house ...’. (Wife 16)

The analysis used to identify the factors most closely associated with having more or less equity in the matrimonial home (see Chapter 2, Section 2.4) confirmed that the strongest indicator of higher equity (defined as £100,000 or more) was having owned the home outright, rather than with a mortgage or via a shared ownership scheme (p-value <0.001).

¹⁶⁷ This is in line with national statistics on house values, with a median house value of £270,000 in England in September 2022:

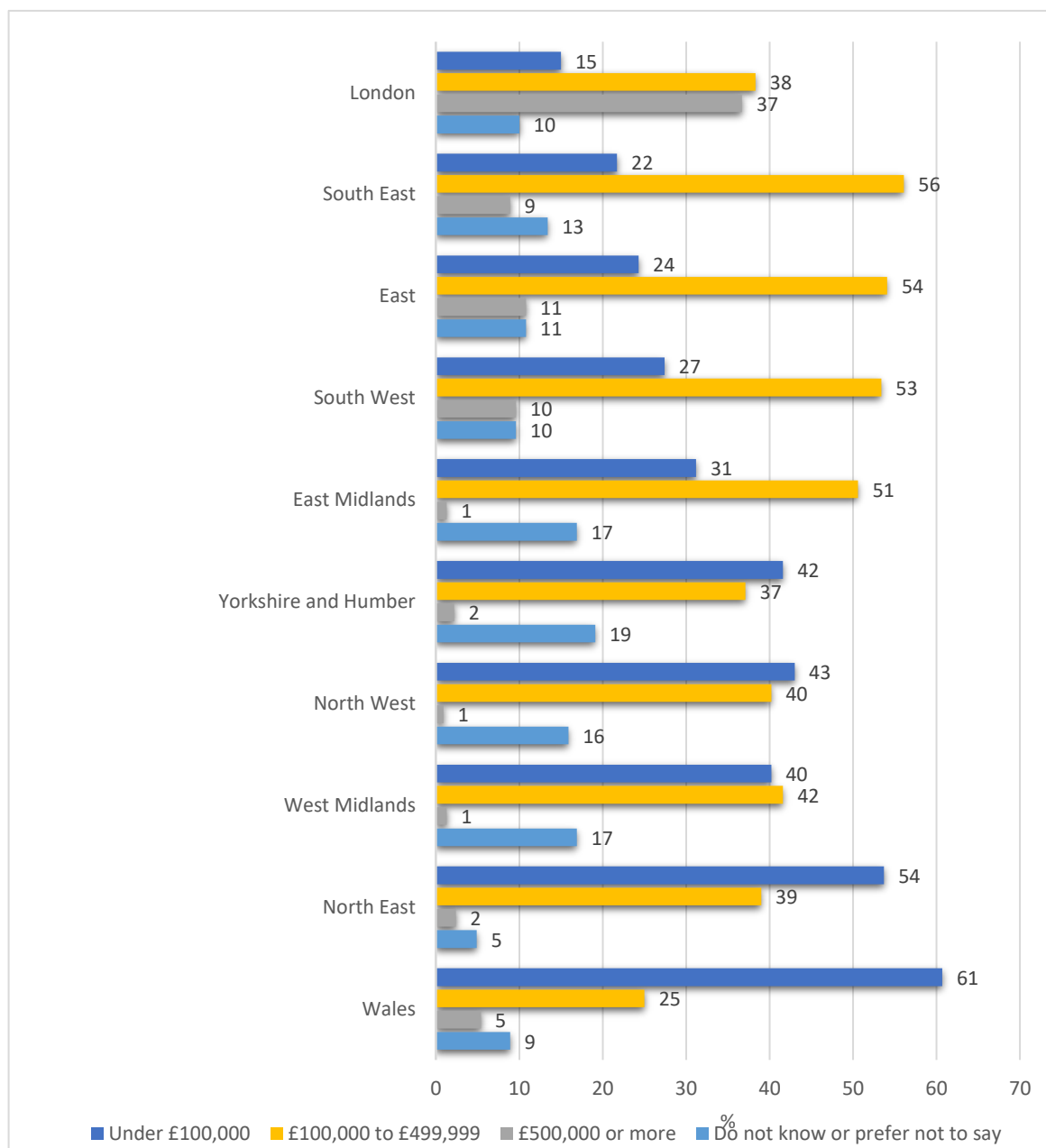
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/medianhousepriceformationalandsubnationalgeographiesquarterlyrollingyearhpsdataset09>

¹⁶⁸ They were also more likely to be older and in longer marriages.

Beyond this, the second key factor was the geographical region in which divorcees had been living (p-value <0.001). With wide disparities in house prices across England and Wales, it is not surprising that those living in London, the South East and East of England had greater levels of equity on average than those in Wales, the North of England and the Midlands. Figure 3.8, below, shows the level of equity for homeowners across each region.¹⁶⁹ In London, only 15 per cent of homeowners had equity of under £100,000 and a third (37 per cent) had equity of £500,000 or more. At the opposite end of the spectrum, six in ten (61 per cent) homeowners in Wales had equity of under £100,000, and only five per cent had equity of £500,000 or more. Clearly, the ability to free up capital, or to buy another home, will be impacted by these price differentials across the country and different areas may employ, or require, different approaches and solutions.

¹⁶⁹ Some survey participants were living in Scotland, Northern Ireland or outside of the UK, but the numbers are too small to show here.

Figure 3.8 Equity in the matrimonial home by region



Unweighted bases¹⁷⁰: All homeowners in London (126); South East (333); East (151); South West (182); East Midlands (154); Yorkshire and Humber (178); North West (205); West Midlands (160); North East (77); Wales (108)

In the main, the other factors significantly associated with having a level of equity in the matrimonial home were the other forms of wealth or assets that the divorcing couple had at the time of separation or divorce.¹⁷¹

¹⁷⁰ Again, excluding shared ownership.

¹⁷¹ For instance, having a higher level of household income (p-value <0.001).

3.6 Pensions

In seven in ten (70 per cent) cases, at least one spouse had been paying into a pension other than the state pension during the marriage. For two in five (40 per cent), both spouses had pensions, but for three in ten (30 per cent) only one spouse had a pension. Women and men were equally likely to have a pension (59 per cent of women and 63 per cent of men). In line with survey participants' ages, in eight in ten cases (82 per cent), pension holders were not yet drawing their pension at the point of divorce.

Those without pensions included younger divorcees and the self-employed, as well as those with low earnings. For example, we interviewed a husband who told us that he and his wife had been paying off their student loans, and the costs of their wedding:

'We didn't get as far as pensions and stuff like that because a pension at the time was something that I wasn't able to afford to pay into anyway, my wife wasn't able to pay into one either.' (Husband 24)

And a wife commented of her self-employed husband that:

'I'm pretty sure he didn't [have a pension] ... I just think he never bothered to organise anything. ... the fact that we did have a little bit of savings and we, you know, we were getting the mortgage gone, he probably didn't consider that it was an absolute necessity really.' (Wife 9)

This wife's uncertainty reflected the fact that a good proportion (24 per cent) of divorcees did not know whether their ex-spouse had a pension (and were presumably unable to take this into account in the negotiation of any financial arrangements).¹⁷² Women were more likely (28 per cent) than men (21 per cent) not to know if their ex-spouse had a pension (p-value 0.039). A husband explained:

'[Wife] had been in and out of work so she might have had temporary pensions with different people, but I didn't know that she had one definite pension, or one scheme put together.' (Husband 2)

One wife told us:

'Not aware, no. Not aware if [husband] did have one. Not for the company because he was being a security officer so wasn't quite sure about the ins

¹⁷² This degree of ignorance as to the pension position of their ex means that our analysis is based on participants' responses in respect of their own pensions only.

and outs of the job or what it entailed. I didn't have access to what he was being paid anyway. ... Pensions weren't discussed amongst any communications between us.' (Wife 4)

As we would expect, those who had worked more during their marriages were more likely to have a pension (74 per cent of those who worked for all of the time compared with 39 per cent of those who worked for some of the time, p-value <0.001). Having a pension was also associated with being more educated (73 per cent of those with a high education level compared to 52 per cent of those with a low level of education, p-value <0.001), having a higher salary (p-value 0.007), or being a homeowner (p-value <0.001).

Older people (77 per cent of those aged 60 or over compared to 38 per cent of those aged under 35, p-value <0.001); those with longer marriages (81 per cent of those married for more than 20 years compared to 54 per cent of those married fewer than six years, p-value <0.001); and those with dependent children (64 per cent) or no children (66 per cent) were also more likely to have pensions than those whose children were all of non-dependent age at the point of divorce (41 per cent, p-value <0.001).¹⁷³

Figure 3.9, below, shows the nature of those pensions, split by gender.¹⁷⁴ Among those with a pension, the vast majority (90 per cent) had an employer pension, sometimes alongside a private pension (19 per cent). The proportions of men and women reporting having employer or private pensions were broadly similar. However, when asked whether employer pensions were in defined contribution or defined benefit schemes, a good proportion of participants did not know (23 per cent) or preferred not to say (two per cent), and women were twice as likely as men (30 per cent compared to 15 per cent) not to know which type of employer pension they had (p-value <0.001). As with housing equity, this is an issue to which we return in later chapters, given the implications for divorcees being able to negotiate a fair arrangement.

For those who knew the type of pension they had, the majority of employer pensions (41 per cent) were defined benefit pensions, rather than the less generous defined contribution schemes. These defined benefit schemes may be more prevalent in this study because of the age profile of divorcees. Three quarters (75 per cent) were over the age of 35 and were

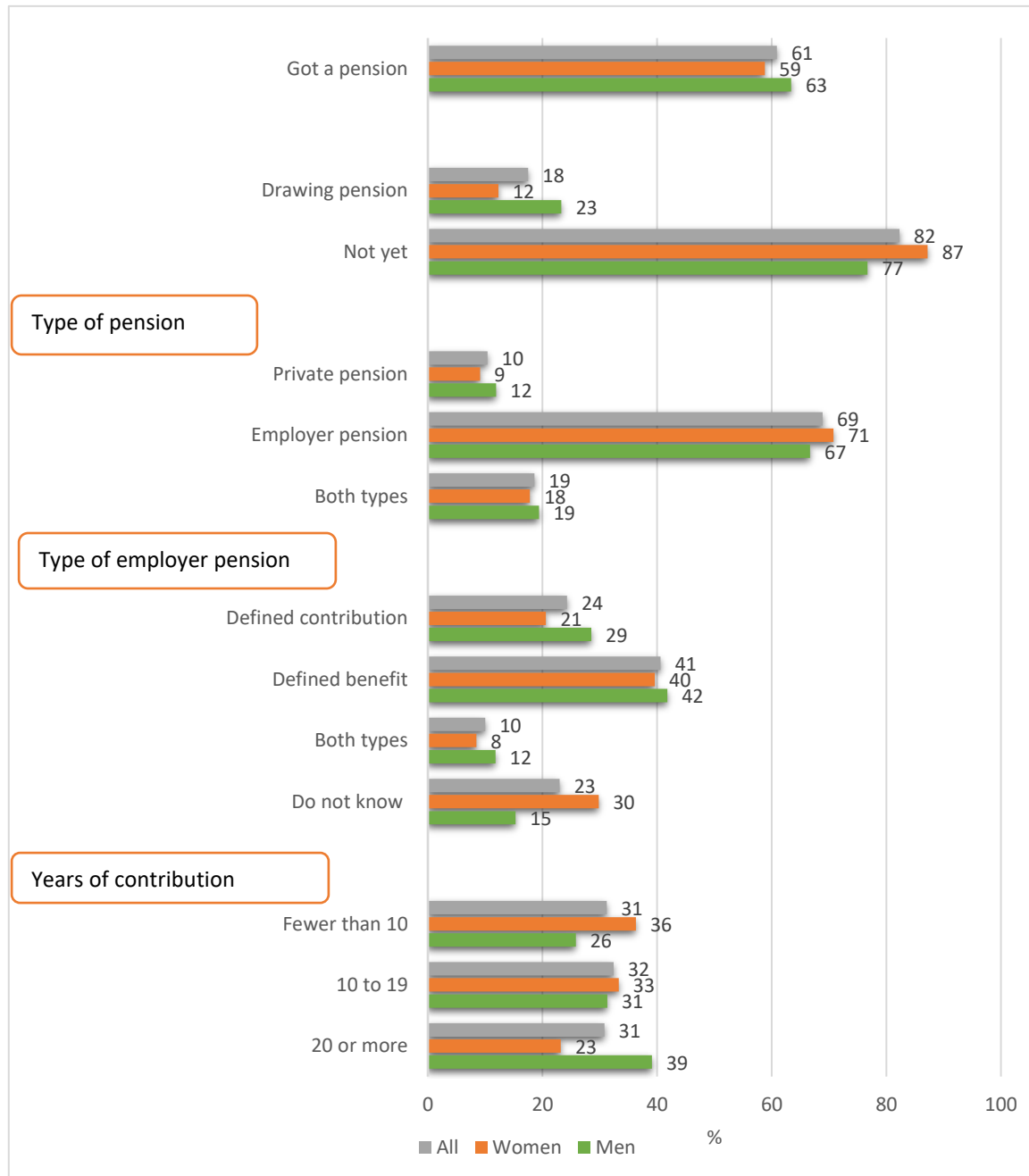
¹⁷³ All these factors came out as statistically significant in a regression model, with p-values cited taken from the model.

¹⁷⁴ This information is based on survey participants' pensions and does not include those of the ex-spouse.

possibly more likely to have begun their careers contributing to defined benefit pension schemes rather than defined contribution schemes. It may therefore be expected that the number of members in defined benefit schemes amongst the divorcing population will reduce over time.

However, the average number of years that women had been contributing to their pension was lower than that of men, probably due to periods out of the labour market while they were looking after children (p-value <0.001). For instance, a third (36 per cent) of women with pensions had been paying in for fewer than ten years, compared with 26 per cent of men. At the other end of the spectrum, a quarter (23 per cent) of women and two in five (39 per cent) men had been paying in for 20 years or more.

Figure 3.9: Pensions, by gender

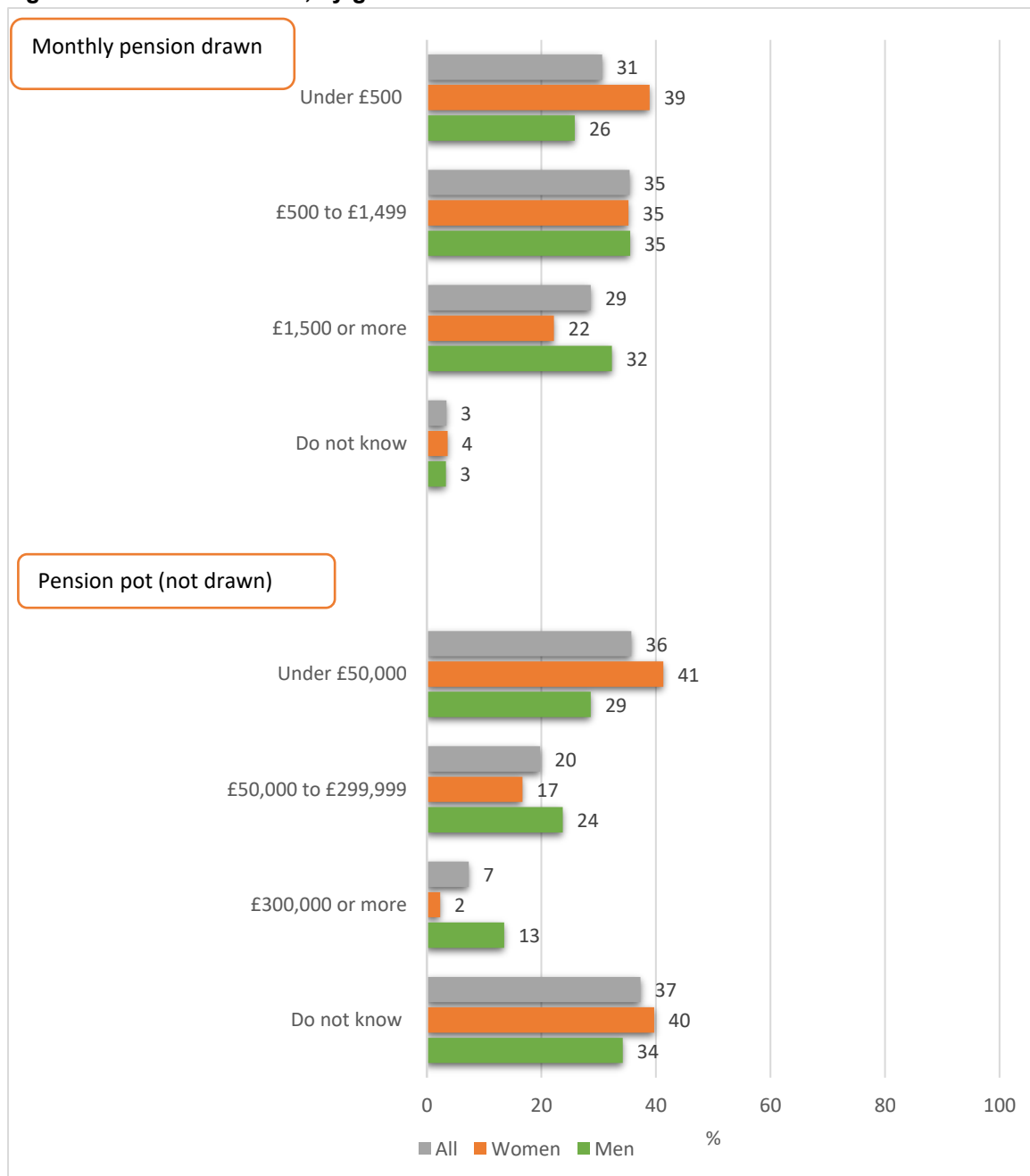


Unweighted bases: All divorcees (2,415); female divorcees (1,380); male divorcees (1,035); all divorcees with a pension (1,745); female divorcees with a pension (963); male divorcees with a pension (782); divorcees with an employer pension (1,547); female divorcees with an employer pension (859); male divorcees with an employer pension (688)

The most striking disparity in the pensions of women and men appears when we look at the value of the pension. Figure 3.10, below, splits divorcees into those already drawing their pension and those with a pension pot yet to be used. Those already drawing their pension were asked the monthly amount they received, after any deductions, while those not yet drawing their pension were asked the value of the pot. Both questions had banded

responses which have been collapsed into the three categories below, plus a category for those who did not know or preferred not to answer.

Figure 3.10: Pension value, by gender



Unweighted bases: All divorcees drawing pension (276); female divorcees drawing pension (104); male divorcees drawing pension (172); all divorcees with a pension pot (1,464); female divorcees with a pension pot (854); male divorcees with a pension pot (610)

Although both women who were drawing and those who were not yet drawing appear to be more likely to have a lower value pension than men, the difference between genders is only

statistically significant among those not yet drawing their pension (p-value of <0.001).¹⁷⁵ For instance, two in five (41 per cent) women not yet drawing their pension had a pension pot worth less than £50,000, compared to three in ten (29 per cent) men. And only two per cent of women had a pension pot worth £300,000 or more compared with 13 per cent of men. It is concerning that a third (37 per cent) of divorcees not yet drawing their pension did not know the value of their own pension pot, with women (40 per cent) again more likely than men (34 per cent) to say that they did not know (p-value 0.039).

Exploratory regression analysis focusing on pension pots not yet being drawn¹⁷⁶ confirms that, once we take into account the variables listed in Chapter 2, Section 2.4.4, there is a statistically significant difference (p-value 0.002) in the pension values of women and men. However, a number of other factors, most of which would be expected, are also associated with higher pension values. The analysis tested the factors most strongly associated with having a higher value pension pot, defined as one worth £100,000 or more. In addition to the gender difference presented above, those with larger pension pots¹⁷⁷ were, unsurprisingly, more likely to have higher earnings (p-value <0.001) and to be older (p-value <0.001).¹⁷⁸

3.7 Savings, other assets and debts

Nearly a third of divorcees (31 per cent) said that they had no savings or assets (other than a pension or matrimonial home) when the divorce process started. These included both assets held in joint names and those in the sole name of either the survey participant or their ex-spouse.

Where divorcees had savings or other assets, they were as likely to have monetary assets as they were to have saleable assets. In the survey, divorcees were asked to list any money or assets which were individually worth at least £1,000, ticking as many boxes as applied. Two in five (44 per cent) divorcees (or their ex-spouse) had monetary assets, in the form of money or savings, investments, inheritance or a pension lump sum, and two in five (42 per cent) had saleable assets in the form of items such as a car, business or equity in a second

¹⁷⁵ The modest sample size of those already drawing their pension makes it harder to detect statistically significant differences.

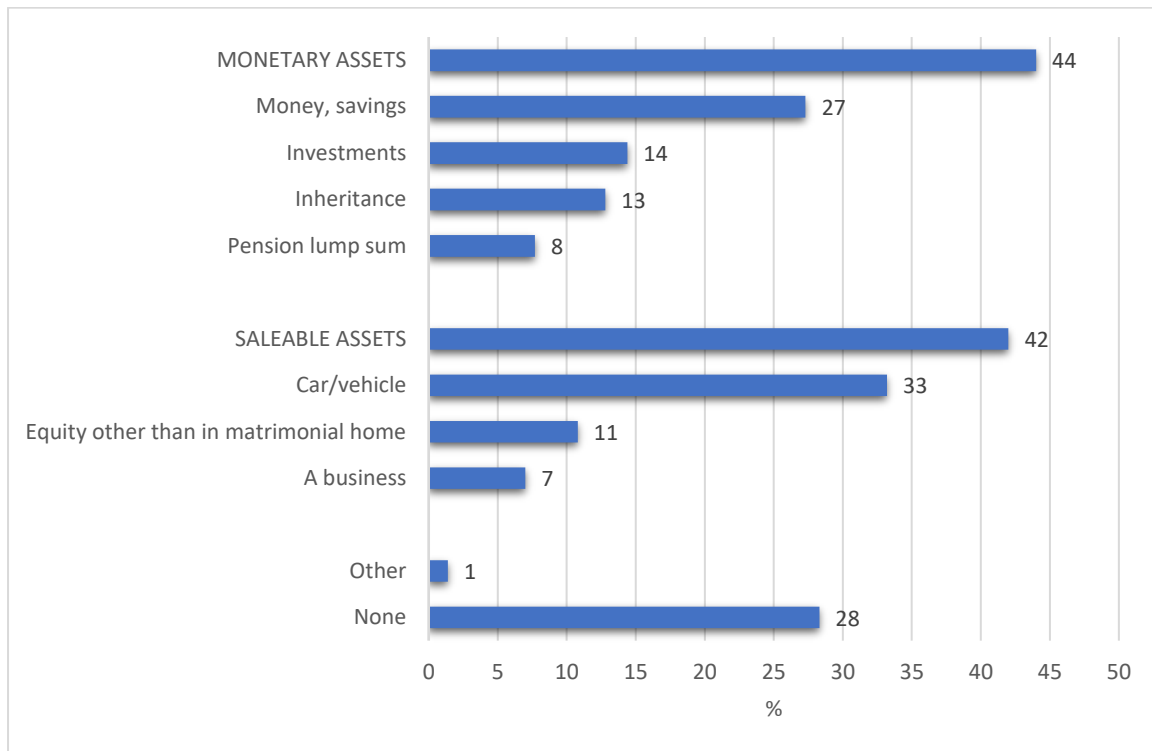
¹⁷⁶ Because of the larger sample size available for this group.

¹⁷⁷ Here, because of the larger sample sizes, we focus on the value of the pension pot for those not yet drawing their pension.

¹⁷⁸ In addition, another indicator of wealth which was significant was being an owner occupier rather than renting (p-value 0.045).

home (Figure 3.11, below).

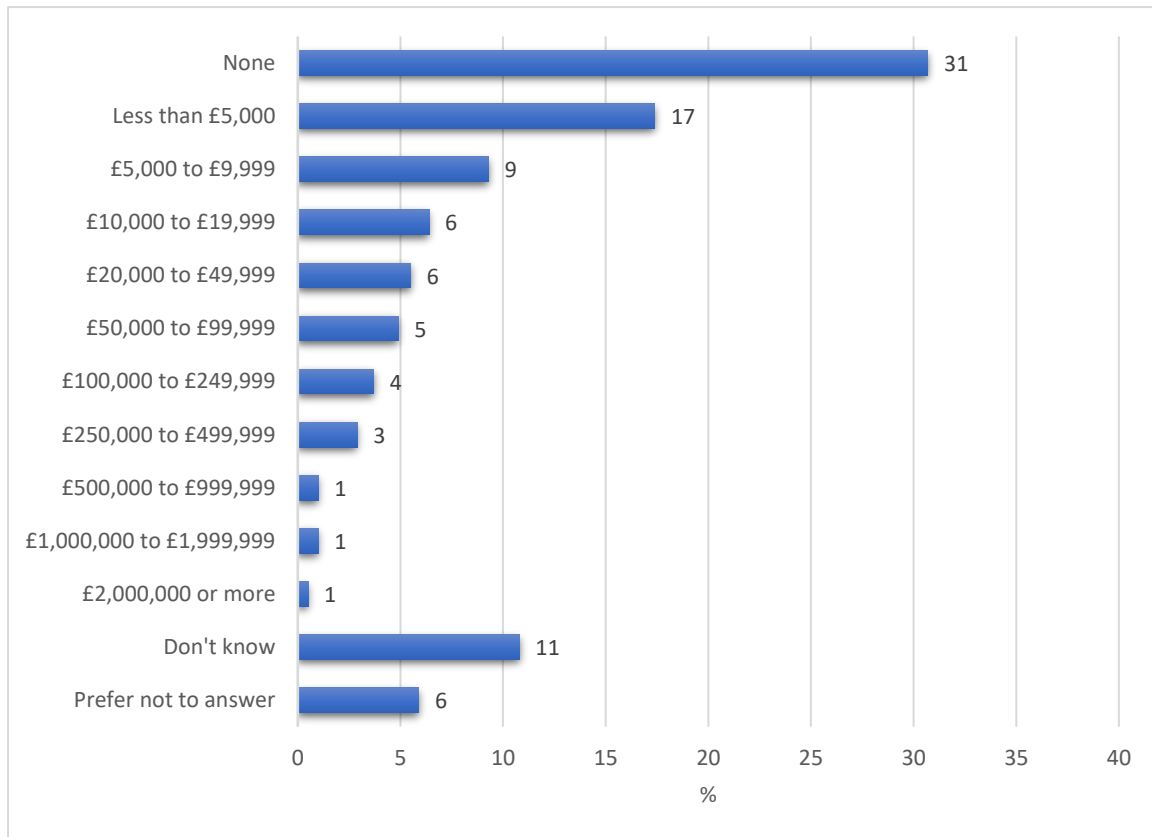
Figure 3.11: Money and assets at time of divorce worth £1,000 or more



Unweighted bases: All divorcees (2,415)

However, for many, the monetary value was relatively modest. Survey participants were asked the *total* value of any savings or assets they or their ex-spouse had, either individually or combined (including any worth less than £1,000) when they left the marriage (Figure 3.12, below).

Figure 3.12: Total value of money and assets at time divorce process started



Base: all participants (2,415)

Two thirds (63 per cent) of divorcees had at least some savings or assets.¹⁷⁹ However, only 14 per cent of divorcees said that they or their ex-spouse had savings or assets worth £50,000 or more. A quarter (27 per cent) had assets worth less than £10,000 (17 per cent having less than £5,000).¹⁸⁰ One husband summed up the position for him and his wife:

‘ ... we didn’t have a massive amount of money and a massive amount of assets. So the house, we didn’t have much equity in, I had a decent pension ... and I owned, well, I owned one car and one car was in her name ... So really the only thing we had was a few grands worth of credit card debt, the house and two cars. And that’s, any pension, that’s all we really had to deal with.’ (Husband 17)

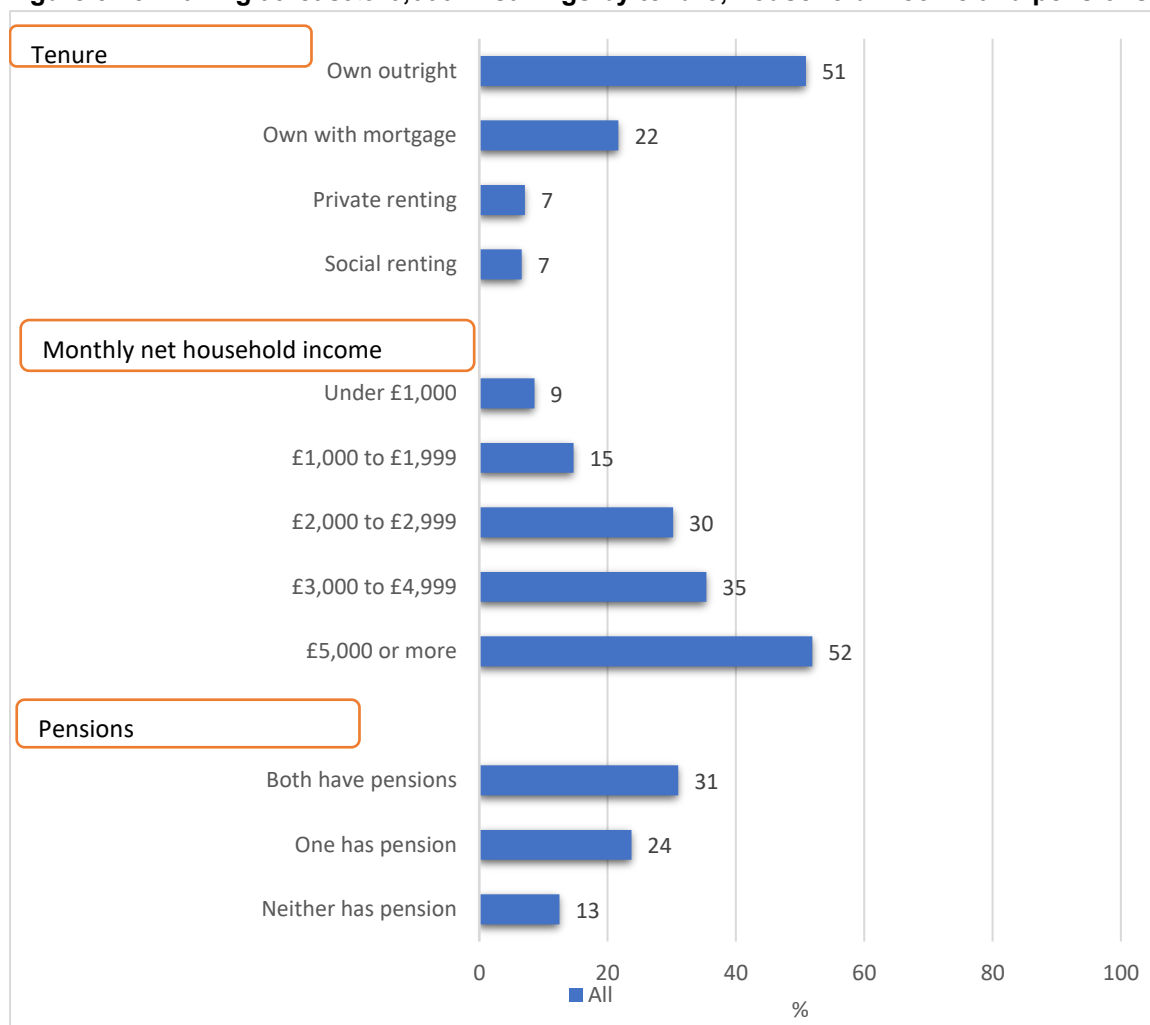
¹⁷⁹ This includes 11 per cent who said they did not know on the basis that they did not know the amount rather than whether or not they had savings. The remainder either had no savings or preferred not to answer.

¹⁸⁰ Differences to the percentages in the figure are due to rounding to the nearest percentage point.

Overall, those who had higher levels of savings or assets were also those who had higher levels of wealth generally. Exploratory regression analysis (as outlined in Chapter 2, section 2.4.4) identified that those with savings or assets of more than £20,000 (chosen as a rough median value across the divorcing population) were more likely to be homeowners (p-value <0.001), have pensions (p-value 0.018), or have a higher level of income coming into the household (p-value <0.001) at the time of separation.

Figure 3.13, below, shows the percentage of divorcees with savings or assets (other than the matrimonial home or pensions) by housing tenure, household income and number of pensions. Those who owned their home outright were seven times as likely as renters to have savings or other assets worth £20,000 or more (51 per cent compared with seven per cent). Similarly, those with net monthly household incomes of £5,000 or more were six times more likely than those with monthly incomes of under £1,000 to have this level of savings or assets (52 per cent compared to nine per cent). Divorcees in marriages where both spouses had pensions were twice as likely as those with no pension to have these savings or assets (31 per cent compared to 13 per cent).

Figure 3.13: Having at least £20,000 in savings by tenure, household income and pensions



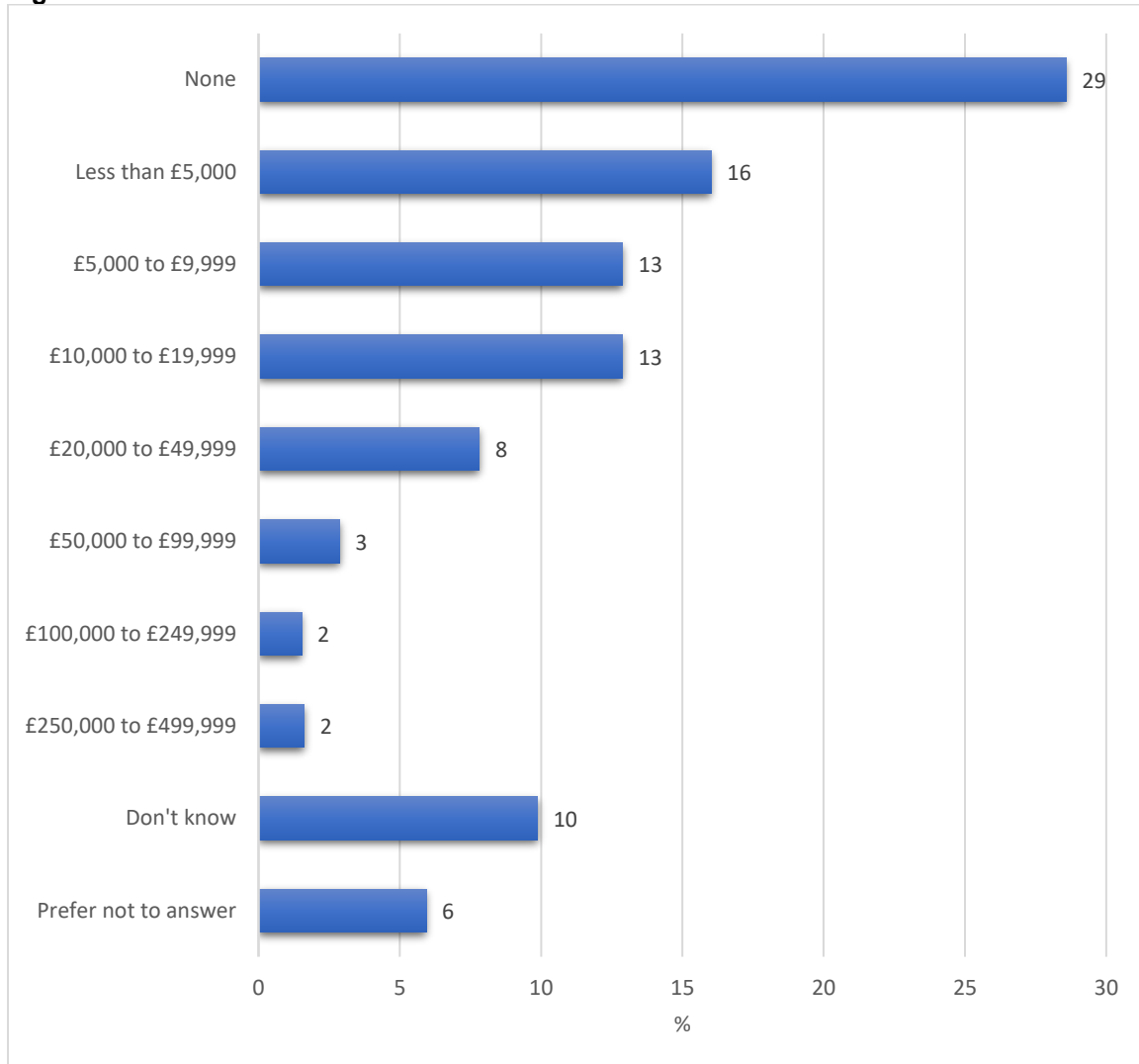
Base with savings value information: outright homeowners (342); owned with mortgage (1,053); private renters (322); social renters (167); those with income under £1,000 (252); those with income of £1,000 to £1,999 (498); those with income of £2,000 to £2,999 (395); those with income of £3,000 to £4,999 (449); those with income of £5,000 or more (249); divorcees where both spouses had pensions (1,060); divorcees where one spouse had pension (343); divorcees where neither spouse had pension (235)

At the same time, two thirds (65 per cent) of divorcees or their ex-spouse had debts at the point the divorce process began, again either in joint names or in the sole name of either the survey participant or their ex-spouse.¹⁸¹ While 16 per cent had debts of under £5,000, others

¹⁸¹ In addition to any mortgage on the matrimonial home. This includes 10 per cent who said they did not know, on the basis that they did not know the amount rather than whether or not they had debts. The remainder either had no debts or preferred not to answer.

had considerably higher debts: a quarter (26 per cent) owed between £5,000 and £19,999 and six per cent¹⁸² owed £50,000 or more (Figure 3.14, below).

Figure 3.14: Total value of debts

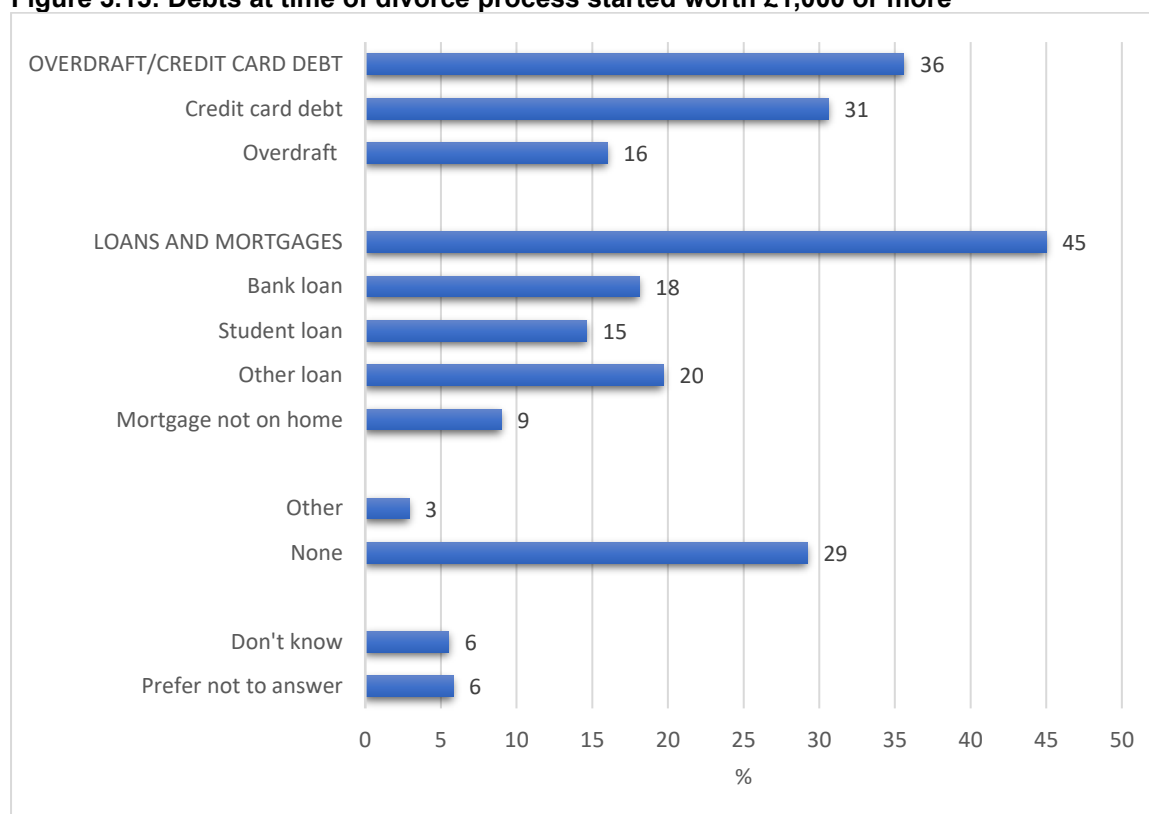


Base: all participants (2,415)

When asked about any money owed by themselves or their ex-spouse at the time of divorce, divorcees' debts were a mix of overdrafts and credit card debt (36 per cent) and loans or mortgages on places other than the matrimonial home (45 per cent) (Figure 3.15, below).

¹⁸² Differences to percentages in figure due to rounding to nearest percentage point.

Figure 3.15: Debts at time of divorce process started worth £1,000 or more



Base: all participants (2,415)

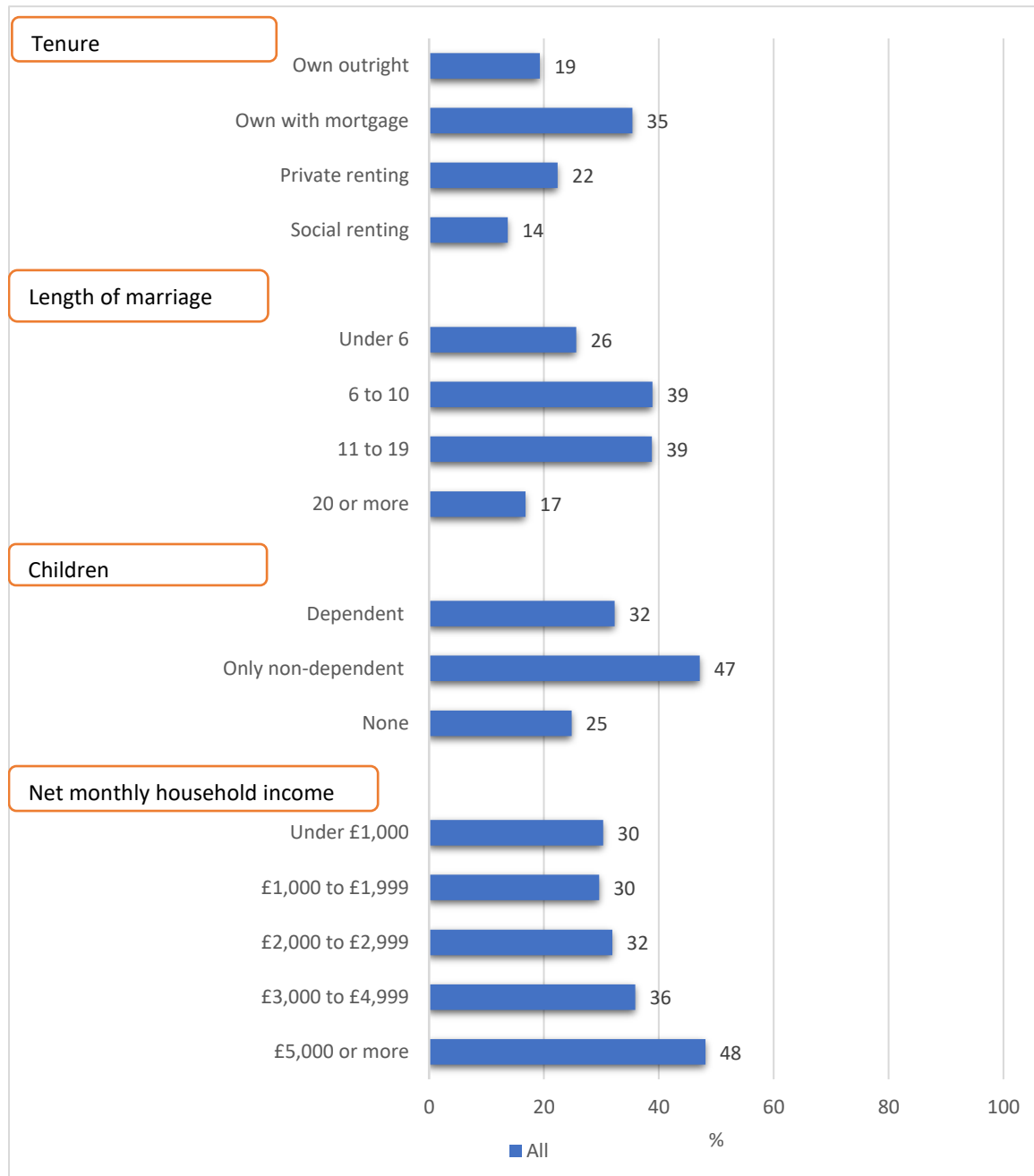
Those with higher incomes and more assets were as likely as those with less wealth to have debts, presumably because those with more wealth have a higher borrowing potential. Figure 3.16, below, which focuses on debts of £10,000 or more,¹⁸³ shows that those with a mortgage were more likely (35 per cent) to incur such debts than other owners (19 per cent of outright owners) or renters (22 per cent of private renters and 14 per cent of social renters) (p-value <0.001). Those who had been married between six and 19 years were more likely to have such debt than those married for fewer or more years (e.g. 39 per cent of those married six to 10 years compared to 17 per cent of those married for 20 years or more, p-value <0.001). Those with children, particularly older, non-dependent children (47 per cent), were more likely to be indebted, as were (p-value <0.001) those with the highest net monthly incomes (e.g. 48 per cent of those with a monthly net household income of £5,000 or more compared to 30 per cent of those with incomes of under £1,000, p-value 0.003).¹⁸⁴ All of these factors may reflect the life course – for example, older, wealthier homeowners may have paid off more of their debts (as well as their mortgage). By contrast, couples with regular incomes, paying a mortgage but incurring costs through having children

¹⁸³ Chosen as a rough median level of debt across the divorcing population.

¹⁸⁴ All of these factors were identified as significant in regression analysis, as outlined in Chapter 2, section 2.4.4.

or seeking to make home improvements, may take on more debt while they are financially in a stronger position to cover the cost.

Figure 3.16: Having at least £10,000 in debts by tenure, length of marriage and household income



Base where information on debt value provided: outright homeowners (372); owned with mortgage (1,103); private renters (294); social renters (170); married under six years(447); married six to 10 years (488); married 11 to 19 years (636); married 20 years or more (504); divorcees with dependent children (1,040); divorcees with only non-dependent children (260); divorcees with no children (775); those with income under £1,000 (244); those with income of £1,000 to £1,999 (515); those with income of £2,000 to £2,999 (396); those with income of £3,000 to £4,999 (462); those with income of £5,000 or more (254)

Qualitative data from our interviews reflected a willingness to take on debts for spending, particularly on the home and family. One husband told us that there was a debt of £18,000 incurred on credit cards in his name; the purpose had been ‘for the house and everything, you know, decorations, kitchen, new kitchen, new bathroom, stuff like that’, but because he was the sole earner, the credit card was in his name and he paid it off (Husband 3). Another husband told us of a loan of £35,000 to pay for a new kitchen (Husband 5). A wife said that she:

‘... had ended up putting some things on really for the wedding, well not being a bit sneaky but I suppose men like, don’t understand the cost of a wedding dress, do they... I remember saying “I’ll just put it on my credit card, it’ll be fine, I’ll like, pay it off.” ... you know, things like buying like, surprises for each other and stuff, you stick it on the credit card ... you don’t think twice about it because you’ve got two salaries coming in.’ (Wife 19)

3.8 Total net assets

Negotiations about how to divide any financial assets when couples divorce often centre on particular assets, most notably the matrimonial home. Depending on divorcees’ circumstances, they may prioritise short-term stability (e.g. the home) over long-term income (e.g. pensions).¹⁸⁵ However, negotiations should be done in the context of the total value of all the assets the couple had at the point of divorce (less any debts).¹⁸⁶ To that end, we have taken the figures presented in Sections 3.4 to 3.6 and estimated the total value of the divorcing couples’ assets, minus any debts. The estimation includes:

1. The equity in the matrimonial home (so, for outright homeowners, the total value of the home and for those with a mortgage, the equity after the mortgage is repaid)¹⁸⁷
2. The value of the pension pot of both the participant and their ex-spouse, for those with a pension they were not yet drawing
3. The value of any assets or savings (including any pension lump sum)
4. Minus the value of any debts

¹⁸⁵ See Chapter 1, Section 1.6.3.

¹⁸⁶ However, see Chapter 7, particularly section 7.3, for discussion of some divorcees’ failure to take all assets, notably the pension, into account.

¹⁸⁷ Note that, for shared ownership situations, we have approximated a 50% owner-renter balance when calculating the equity, as survey participants were not asked about the ratio during the survey.

The estimation is necessarily approximate, as survey participants responded about each asset type using banded monetary values. Moreover, substantial minorities of participants did not know the value of the asset, particularly pension pots, and these have been imputed. Nonetheless, the calculation provides not only a valuable tool for looking at the value of divorcees' assets and how they vary across different groups, but also an explanatory variable in later chapters, when we seek to understand the drivers of different arrangement routes and the types of arrangements made. Full details of the calculation are provided in Appendix D.

Figure 3.17, below, shows the total value of the assets, including the matrimonial home and pensions¹⁸⁸ that divorcees had to divide on leaving their marriage. Overall, the median asset value was £135,000, including those divorcees who had nothing or only debts. Nearly one in five (17 per cent) had no money or assets to divide.¹⁸⁹ Indeed, within this group were the 12 per cent of divorcees who had only debts to divide, ranging from £1,000 to over £1,000,000 (with a median of £6,500).¹⁹⁰

Among those with assets to divide, the amounts were relatively modest for a substantial proportion of divorcees, with a median total net asset value of £190,000. Three in ten (28 per cent) divorcees had total net assets of under £100,000 and a further third (35 per cent) had assets worth between £100,000 and £500,000. At the upper end of the spectrum, only seven per cent had between £1,000,000 and £1,999,999 and two per cent had £2,000,000 or more.¹⁹¹

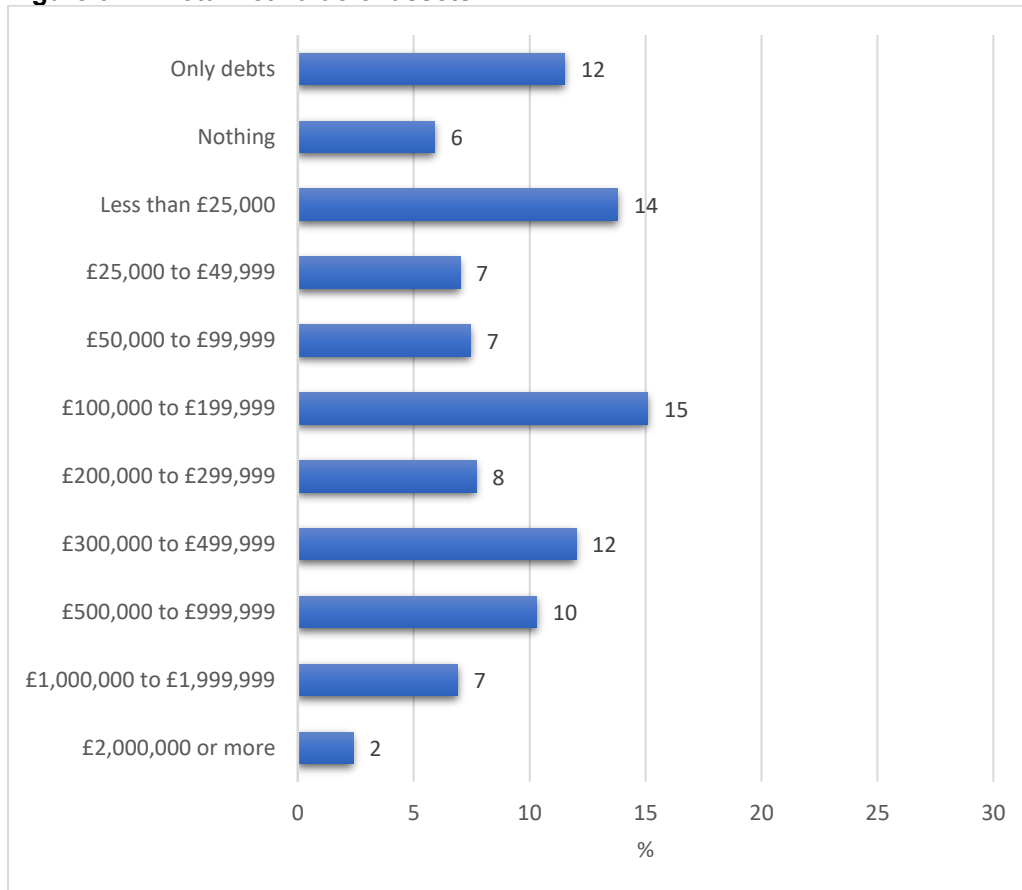
¹⁸⁸ The total value of the equity in the home, pensions, savings and other assets has been calculated, with any debts, including any negative equity in relation to the matrimonial home deducted from the total. For some participants, this left them with a value of zero or only debts.

¹⁸⁹ Differences between percentages in the text and in the figure are due to rounding to the nearest percentage point.

¹⁹⁰ The total net value of divorcees' assets appears to be somewhat lower than average (<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/totalwealthingreatbritain/april2018tomarch2020>). This likely reflects the age profile of divorcees and their potential for having accumulated wealth by the point of divorce.

¹⁹¹ Differences between percentages in the text and in the figure are due to rounding to the nearest percentage point.

Figure 3.17: Total net value of assets



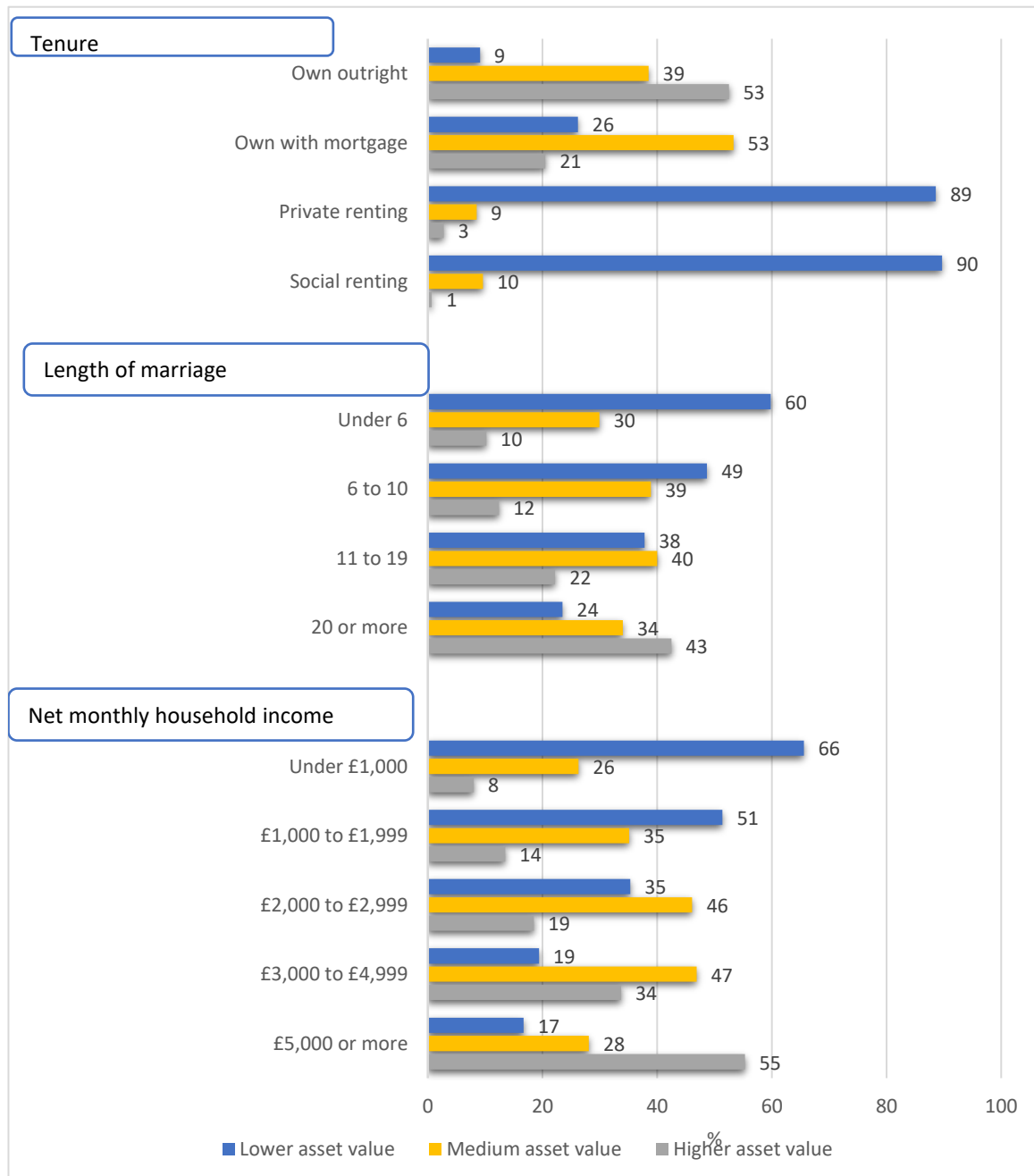
Base: all participants for with an estimation of the value of their assets (2,283)

Exploratory regression analysis (see Chapter 2, section 2.4.4) used to identify which divorcees were likely to have assets above the median asset value (including in the calculation those with no assets or only debts) of £135,000 confirmed what would be expected, in as much as home-owners (p-value <0.001) and those with pensions (p-value <0.001) were more likely to have this level of assets. Beyond these two factors, other variables associated with 'wealth' include having a higher household incomes (p-value <0.001), living in a wealthier part of the country (p-value 0.003), being older (p-value 0.012) and having been in a longer marriage (p-value <0.001).

Figure 3.18, below, splits divorcees' total assets into 'lower', 'medium' and 'higher' values, defined as under £100,000, between £100,000 and £499,999 and £500,000 or more. It shows how the percentages in each group vary according to tenure, marriage length and household income. The importance of home ownership is stark. Half (53 per cent) of outright homeowners and one in five (21 per cent) of those with a mortgage had higher levels of assets (£500,000 or more) compared to just four per cent of renters. Nine in ten (89 per cent of private and 90 per cent of social) renters had low value assets (under £100,000).

Similarly, those who had been married longer had accumulated more assets, with two in five (43 per cent) of those married for more than 20 years having the higher level of assets compared with only one in ten (10 per cent) of those married fewer than six years. There was also a high correlation between divorcees' current household income and their accumulated assets.

Figure 3.18: Value of total net assets by tenure, length of marriage and household income



Base (all for those where an estimation of total assets could be made): outright homeowners (393); owned with mortgage (1,186); private renters (354); social renters (186); married under six years (526); married six to 10 years (531); married 11 to 19 years (677); married 20 years or more (539); those with income under £1,000 (275); those with income of £1,000 to £1,999 (544); those with

income of £2,000 to £2,999 (433); those with income of £3,000 to £4,999 (493); those with income of £5,000 or more (267)

3.9 Concluding comments

This chapter has shed light on the context in which the divorcing couples in our study sought to resolve the financial consequences of the end of their marriage, which we explore in the rest of this report. The majority of divorcees had been married for sufficient time to have ‘mingled’¹⁹² much of the property they brought into the marriage, or acquired during it, which had then to be divided or disposed of (although patterns of money management varied widely and keeping most finances separate or under one spouse’s control was as common as having some form of pooling arrangement). They had also been married long enough to take on debts and other financial commitments, not least in having children. Over half of the divorcees had dependent children, and even those with adult children found themselves continuing to support them as they completed higher education or training. The difficulty faced by young people of securing even rented affordable property makes it all the more likely that these parents will continue to house (if not support) their children well into their twenties.

The study reflected well-established findings that wives, and particularly mothers, were more likely to have part-time employment during the marriage and to earn less than husbands; relatedly, they had accumulated poorer pension provision. This financial vulnerability is likely to have impacted on their ability to achieve financial independence post-divorce, particularly if they were taking the main responsibility for childcare.

Worryingly, a third of divorcees did not know the value of their (let alone their ex-spouse’s) pension pot and nearly a quarter of divorcees had no awareness of the nature of their employer pension scheme; whether they were defined benefit or defined contribution. One in ten homeowners with a mortgage did not know what the equity in their home had been at the point of divorce. Such lack of knowledge may have had significant impacts on how, and how well, they negotiated any arrangements over these major assets with their ex-spouse.

Most divorcees had not enjoyed significant wealth during their marriage. One third reported that their net household income was under £2,000 a month when they separated, and a further 40 per cent had lived on less than £5,000 per month. While the large majority of

¹⁹² N v F (Financial Orders: Pre-Acquired Wealth) [2011] EWHC 586 (Fam), [2011] 2 FLR 533.

divorcees had been living in owned matrimonial homes rather than renting, the value of the home was generally modest. Most (eight out of ten) owners lived in properties worth less than £500,000, and a third had less than £100,000 in equity after any mortgage was paid off. This will have made sharing or allocating the value of the matrimonial home in order to provide two households post-divorce a potentially tricky conundrum to resolve.

Nearly a third of divorcees said that they had no savings or assets other than a pension or matrimonial home at the point of divorce, and nearly a fifth had nothing at all, while 12 per cent had only debts. Indeed, two thirds of divorcees or their ex-spouse had debts at the point the divorce process began, with a quarter owing between £5,000 and £20,000 and six per cent owing £50,000 or more.

The median value of the total asset pool (including house and pension) held by divorcees was only £135,000. Two thirds of those with assets had under £500,000 at their disposal, and nine per cent had more than £1 million. And the three in ten divorcees who had rented during their marriage had a generally lower level of income, assets, and pensions, than owner occupiers, leaving little, perhaps, to argue over, but little to provide financial security to cushion their transition to living in two households.

So, the picture of the financial position of couples at the point of their divorce is quite contrary to the impression given by the media's reporting of divorces. Most divorcees did not enjoy lives of luxury during their marriage and had relatively modest amounts of wealth to divide at the end. On the one hand, this might make things simple – there would be no need for forensic accountants and complex calculations assessing the value of private company shares and so forth, which might well take up the time of family lawyers and judges dealing with 'high net worth' individuals. But working out how best to manage limited resources to try to ensure a degree of financial stability for divorced spouses and especially their children, is no easy undertaking either. If the goal is to secure for both parties 'an equal start on the road to independent living' and a fair outcome, the task is likely to be even harder. We examine how our divorcees fared in the following chapters, beginning with the processes they used to try to reach an outcome.

Chapter 4. The process of sorting out finances

Key findings

A substantial number of divorcing couples made no particular financial arrangements between them, did not seek legal advice and felt knowledge of their ex-spouse's finances was not good

- A third (36 per cent) of divorcees did not see themselves as having made a 'financial arrangement' as such with their ex-spouse.
- Just over half (56 per cent) of divorcees had sought legal advice at some point during the divorce process. 29 per cent had used government websites, but 12 per cent said they had sought *no* advice or information about their divorce.
- Only a third (32 per cent) of divorcees reported that they had used some form of legal advice in relation to their finances during the divorce process.
- Two in five divorcees (38 per cent) felt that knowledge of their ex-spouse's finances at the start of the divorce process was not good.

Divorcees (particularly women) made use of lawyers because they did not feel they could manage without their expertise or support

- The two most common reasons that divorcees gave for using a lawyer *throughout* the divorce process related to an inability to negotiate an arrangement with their ex-spouse by themselves: 45 per cent of participants said that they 'didn't feel comfortable' and 40 per cent that they 'couldn't discuss things well' with their ex. Women were significantly more likely than men to report this.
- A quarter (26 per cent) of women (but only 7 per cent of men) cited domestic abuse as a reason for using a lawyer.

Although the costs of divorce for the majority of divorcees were comparatively modest, cost was a significant deterrent from using lawyers

- Six in ten (62 per cent) divorcees incurred legal or mediation costs trying to sort out their finances when they divorced. Interview data suggested this included a range of costs such as conveyancing fees for selling or transferring the matrimonial home.
- For many of those incurring costs, the amounts they had to spend were relatively modest. A quarter (24 per cent) had to find less than £1,000, with a further one in six (18 per cent) having costs of between £1,000 and £2,999. However, one in eleven (nine per cent) incurred costs of £10,000 or more, with higher costs associated with more assets.
- Cost was a major factor in deterring participants from using lawyers, with 42 per cent not using them at all and 48 per cent for only part of the process.

The majority of arrangements were made by couples themselves although women were twice as likely as men to go to court because they could not get an agreement with their ex

- Half (52 per cent) of financial arrangements had been reached by the divorcing parties themselves. Agreements were reached with the aid of lawyers by just 17 per cent of participants, and through mediation by only 13 per cent of participants.
- The strongest predictor of using mediation was having used a lawyer: three in ten (28 per cent) of those using a lawyer tried mediation, compared with just one in nine (11 per cent) of those who had not.
- Women were more concerned than men to get a legally binding order and were twice as likely (45 per cent) as men (24 per cent) to go to court because they did not feel they could get an agreement with their ex, even with the help of a lawyer.

- Divorcees who mentioned 'fault' as the reason for the divorce were more likely to make an arrangement via lawyer negotiations (21 per cent) or adjudication (eight per cent) than those who did not (13 per cent and three per cent respectively).

4.1 Introduction

This chapter describes the processes that divorcees went through to agree on, attempt to agree on, or decide not to pursue a division of their money and assets when they divorced. We start with a description of the proportion and profile of divorcees who reached a financial arrangement. The chapter then discusses the advice, support and legal representation that they obtained, the various routes they used to attempt to come to a financial arrangement, and the cost of the process.

As we set out in Chapter 1, although all divorces are granted by the Family Court, it is not mandatory for couples to obtain any order governing their financial arrangements, and the majority do not do so.¹⁹³ Nonetheless, the Matrimonial Causes Act 1973 sets out the legal parameters within which arrangements are supposed to be set. The extent to which divorcees are able to reach an arrangement that reflects the expectations of this legal framework may be influenced by how far they have access to legal advice and support, their bargaining position vis á vis each other, and of course, their own financial circumstances and those of any children.

4.2 Chapter outline

This chapter covers:

- Section 4.3: The proportion of divorcees reaching a financial arrangement
- Section 4.4: How the divorce process started, and knowledge of each other's finances at that point
- Section 4.5: Legal advice, support and representation during the divorce process
- Section 4.6: Other forms of advice and support
- Section 4.7: Non-court routes to settle financial arrangements
- Section 4.8: How arrangements were made, and the use of orders
- Section 4.9: Reasons for using or not using the courts
- Section 4.10: Costs incurred during the process
- Section 4.11: Concluding comments

¹⁹³ See Chapter 1.

As with Chapter 3, the sections highlight notable differences within the key subgroups of interest (see Chapter 2, Section 2.4.1) as well as other family characteristics which appear to distinguish divorcees' circumstances during their marriages.¹⁹⁴

4.3 The proportion of divorcees reaching a financial arrangement

During the survey, divorcees were asked how they 'sorted out finances and property' as part of their divorce. They chose from a list of options summarised in Figure 4.1, below.¹⁹⁵ A third of divorcees (36 per cent) did not see themselves as having made any particular financial 'arrangement' as such. One in six (18 per cent) reported going 'their separate ways' and a further one in six (18 per cent) felt they had nothing to divide. This is not to say that these divorcees had no assets eligible for division or that no decisions were made about what to do about these. Rather, their responses likely reflect the fact that they did not see themselves as entering into a formal arrangement about how these would be divided, either because they saw the division as having been a private process or because the outcome involved each party keeping what was deemed 'theirs'. This is an issue to which we return throughout this chapter and the report.

Half (50 per cent) of divorcees had reached an arrangement on some, if not all, of their finances. A third of divorcees (36 per cent) had reached a full arrangement and 14 per cent had reached an arrangement on some financial issues.¹⁹⁶ A further three per cent of divorcees were still trying to come to an arrangement.¹⁹⁷ In a small proportion of cases (two per cent), divorcees had tried and failed to come to an arrangement.

In the main, divorcees with more, and greater value assets, as well as higher household incomes, were most likely to have reached a full financial arrangement. By way of illustration, Figure 4.1 shows the percentage of divorcees with and without arrangements

¹⁹⁴ Focusing on characteristics identified in regression analysis as significantly associated (see Chapter 2, section 2.4.4).

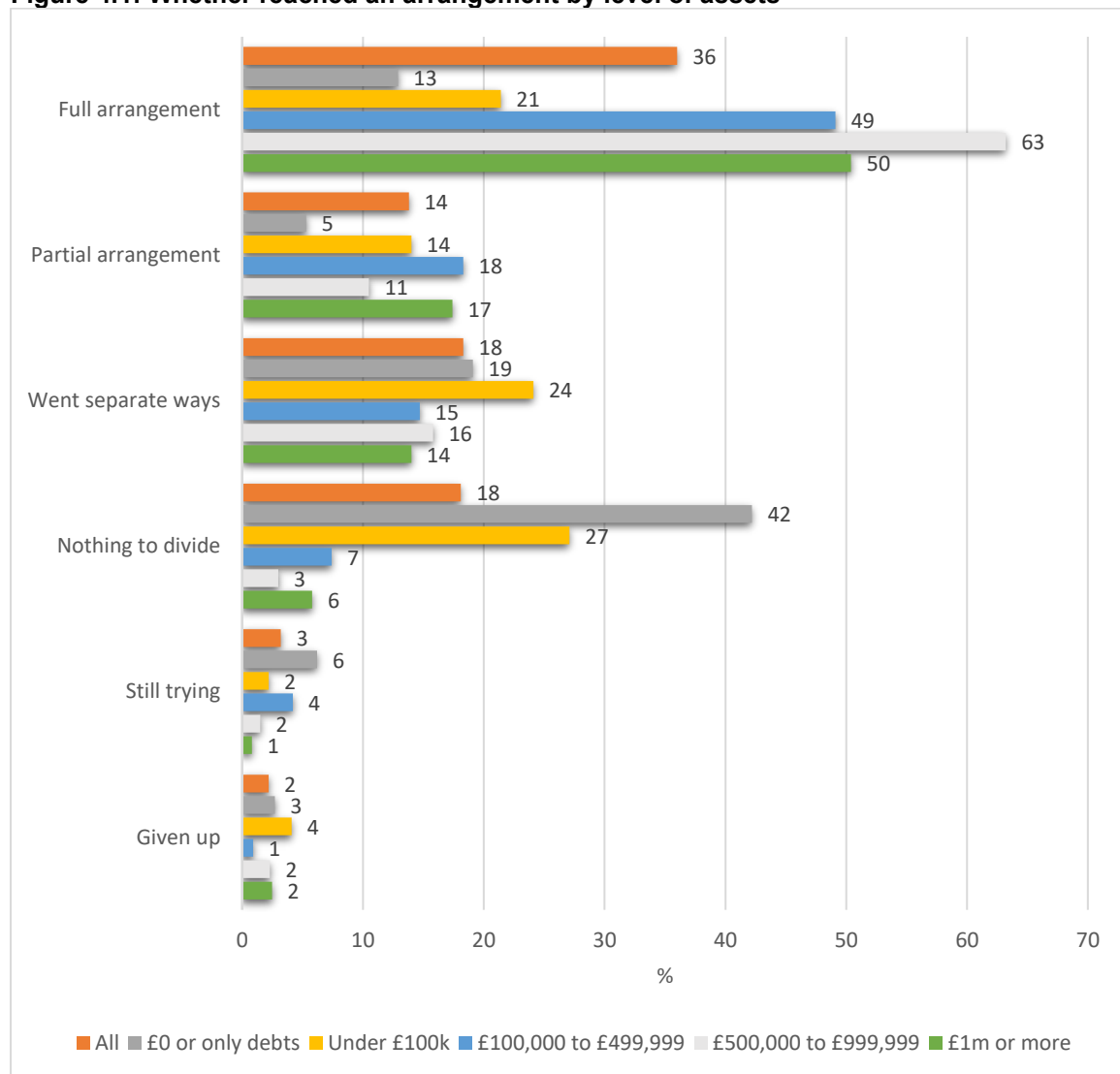
¹⁹⁵ 'Full arrangements' were described as 'We have made an arrangement on all aspects of the finances and property' while 'partial arrangements' were described as 'We have made an arrangement on some aspects of the finances and property but not others'.

¹⁹⁶ These included both informal arrangements between the parties and formal arrangements made through the court (see Section 4.9).

¹⁹⁷ Divorcees in the survey had divorced in the past five years. The propensity to have reached an arrangement was not significantly associated with the length of time since the decree absolute had been granted.

split by the total value of their assets.¹⁹⁸ Only 13 per cent of those with no assets or only debts, and only one in five (21 per cent) of those with assets under £100,000, had a full financial arrangement, compared with 63 per cent of those with assets of £500,000 to £999,999 (p-value <0.001). However, having higher value assets of £1 million or more was actually associated with being less likely (50 per cent) to have a full financial arrangement, which may suggest, not surprisingly perhaps, that these cases were more complex to resolve.

Figure 4.1: Whether reached an arrangement by level of assets



Bases: all divorcees (2,415); all divorcees with no assets or only debts (276); assets of under £100,000 (570); assets of £100,000 to £499,999 (850); assets of £500,000 to £999,999(326); assets of £1 million or more (261)

¹⁹⁸ Three per cent of divorcees said they did not know and a further five per cent preferred not to answer the question.

The majority (73 per cent) of full financial arrangements had been made prior to the decree absolute. A further one in ten (10 per cent) were made within 12 months of the decree absolute, with one in eleven (nine per cent) made within one to two years and a further five per cent only made more than two years later. In contrast, with partial arrangements, the process appears to have been more drawn out. Just over a third (38 per cent) had been made prior to the decree absolute, with a quarter (23 per cent) made within a year, a further quarter (24 per cent) made within one to two years and five per cent only made after more than two years.

The analysis used to unpick the factors most closely associated with a divorcee having a full financial arrangement (the exploratory regression analysis introduced in Chapter 2, section 2.4.4) confirmed what we might expect, namely that those with a full financial arrangement were most likely to be those who had more to divide. Alongside the total value of their assets, the strongest predictor of having a full financial arrangement¹⁹⁹ was owning the matrimonial home (either outright or with a mortgage), rather than it being in shared ownership or a rental property (p-value <0.001). For instance, half (52 per cent) of those who owned their home outright had a full financial arrangement, compared with 13 per cent of private renters. Other financial factors significantly associated with having a full financial arrangement included both spouses having pensions (p-value 0.012) and having a higher household income at the point of separation (p-value 0.016). Just over half (54 per cent) of those with two pensions had a full financial settlement, compared to one in five (21 per cent) of those where neither spouse had a pension. Similarly, half (51 per cent) of those with a monthly net household income of £5,000 or more had a full financial arrangement compared with one in five (20 per cent) of those whose monthly income was under £1,000.

Conversely, the strongest predictors in exploratory regression analysis of couples going their separate ways, rather than coming to a financial arrangement, related, as might be expected, to having fewer assets to divide and fewer ongoing ties. Those divorcees who went their separate ways were less likely to have children (either dependent or non-dependent) together (p-value <0.001), more likely to be private renters (p-value 0.005) and less likely to both have pensions (p-value 0.002). Only 15 per cent of those with dependent children reported going their separate ways financially, compared to 27 per cent of those

¹⁹⁹ A regression analysis including those with a full or partial arrangement identified a very similar set of predictors. However, given uncertainty about, and likely variation in, the nature of partial arrangements, we have focused here on full arrangements.

with no children. Three in ten (29 per cent) private renters went their separate ways after the divorce, compared with one in five (19 per cent) of those who owned their homes outright. However, it was surprising to find that one in six (16 per cent) of those with assets between £500,000 and £999,999 and one in seven (14 per cent) of those with at least £1 million in assets said they went their separate ways. The reasons for this may be complex: one wife told us that her controlling husband had dictated to her that she must accept his terms or he would make sure she paid more in costs than she would receive. She said:

‘It was a very strange situation. Nothing was really sorted out; I was just told what to do and that I had to do it. ... So, I just kind of had to walk away with nothing.... In the end it was advice I was given by my mum. She was like, “Your sanity is worth more than money because at the end of the day he’s just not going to be reasonable. Just walk away. Just walk away.”

(Wife 21)

Likewise, when we look at divorcees who said that they had nothing to divide, it is perhaps understandable that two in five (42 per cent) of those with no assets or only debts, and a quarter (27 per cent) of those with under £100,000 (particularly given that half (50 per cent) of these had less than £25,000 (see Section 3.10)) said they had nothing to divide. But it is perhaps more puzzling that six per cent of divorcees with assets of £1 million or more reported that this was the case.

Those with longer marriages were more likely than those with shorter marriages to have a full financial arrangement (p-value 0.004). This was not simply because those with longer marriages had, on average, higher levels of income and more assets to divide.²⁰⁰ For instance, those who had been married for 20 years or more were twice as likely (56 per cent compared to 23 per cent) as those married for five years or fewer to have made a full financial arrangement. This suggests that couple’s finances become more intertwined the longer they have been married, making it more likely that they need to come to an arrangement about how to divide their assets. This hypothesis is backed up by the fact that there was also a link between the way in which couples managed their finances during the marriage²⁰¹ and whether or not they made a financial arrangement. Those who pooled all or some of their finances – whether they were then jointly managed or organised by one spouse – were more likely than others to have come to a full arrangement (p-value 0.007)

²⁰⁰ That is, the length of the marriage was associated with making or not making an arrangement, after having controlled for income level and assets.

²⁰¹ See Chapter 3, section 3.4.3

and less likely to have gone their separate ways (p-value 0.010). For instance, among those who managed all their money jointly, two in five (41 per cent) had a full financial arrangement and one in six (18 per cent) had gone their separate ways, with the comparable figures of 28 per cent and 26 per cent for those who kept their finances separate.

4.4 Going into the divorce process and knowledge of each other's finances

The divorce process was more likely to be initiated by women than by men.²⁰² Two thirds (64 per cent) of women reported filing for the divorce, compared to two in five (40 per cent) men. When asked how much they knew about their ex-spouse's finances at the start of the divorce process, using a four-point scale, only just over half of divorcees felt their knowledge was very good (19 per cent) or fairly good (35 per cent) (Figure 4.2, below). Two in five felt their knowledge was not very good (19 per cent) or not at all good (19 per cent).

Figure 4.2: Knowledge of ex-spouse's finances



Bases: all divorcees (2,415)

While this did not vary significantly between women and men, unsurprisingly, those who, during the marriage, had shared the money management (see Section 3.4) either totally or partially, and those with main responsibility for the finances, reported that they had higher levels of knowledge than those with separate finances or those whose ex-spouse took

²⁰² This is consistent with other published statistics. See ONS Divorces in England and Wales, 2021 (2022): <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/bulletins/divorcesinenlandandwales/2021> Worksheet 6a.

charge of the finances during the marriage. For instance, seven in ten (68 per cent) divorcees who fully shared and managed their money with their spouse during the marriage said they had a good understanding of the ex-spouse's finances, compared to three in ten (30 per cent) of those whose ex-spouse gave them housekeeping money (p-value <0.001). One wife commented that 'I never did anything with the money when [husband] was here. He did everything. I didn't even know what bank we used' (Wife 27). Another told us that her husband:

'... never really even had a bank account, but we had one bank card – my bank card – we never even had a joint account, so if he wanted to go shopping, he'd take the card. ... when we did separate, I felt quite maternal in a way, because he'd never paid a council tax bill, a water bill, it just came directly out of my account and that's how our relationship worked really.' (Wife 28)

We might expect the degree of knowledge a divorcee had would be influential in shaping the course of negotiations and the eventual outcome of arrangements. But what a spouse thought they knew about the other's financial situation might turn out not to be the case. One husband told us that, although he and his ex had shared the money management '60/40', he did not find out about her credit card debts or the fact that some mortgage payments had been missed until after they split up:

'I didn't find out until afterwards really, when we were talking about the financial part of it ... I was unaware of what she'd done.' (Husband 6)

And just because one spouse might have been in charge of the finances, it did not follow that they had a full understanding of the other's position. Another husband, whose ex was not earning because she had been studying as a mature student told us that:

'... it felt I was effectively providing pretty well everything. ... I was completely surprised when she did admit [during mediation] that she had got some £40,000 of premium bonds saved, which I knew absolutely nothing about.' (Husband 20)

A wife reported that she and her ex had reached an agreement over finances but he then said he could not afford it and they went to court. The process revealed that:

'... he had more debt than I thought, so [the situation] changed dramatically because I thought he had more affluence than what it initially was. When you're married you don't know everything that goes on between your

partner and such and such. So it was a bit of an eye opener. I was a bit shocked to be quite honest' (Wife 7)

Yet a spouse might know about their ex's assets but be unable to prove their existence:

'It was a challenge itself, I mean he was saying one thing when I knew by living with him it was something different.' (Wife 2)

Pre-nuptial agreements

The survey sought to collect information about the prevalence of making, and following, pre-nuptial agreements. It included a definition of pre-nuptial agreements, which we described as 'legal arrangements agreed before marriage which set out the financial arrangements that will apply in the event of marriage breakdown', with the clarification for Muslims to include *mahr*²⁰³ and adding that 'Nuptial/marital property agreements are made during the marriage before separation'.

Thirteen per cent of divorcees reported having a pre-nuptial agreement, with the prevalence much higher among younger divorcees than among older divorcees (e.g. 39 per cent of those under 35 compared to two per cent of those aged 60 and over). Moreover, a much higher proportion of participants of mixed (46 per cent), Asian (45 per cent) or Black (26 per cent) ethnic backgrounds reported such an agreement compared with White participants (7 per cent). This may reflect a higher proportion of Muslims in these groups who were familiar with the concept of *mahr* but we cannot tell this from our data. This issue is worthy of further exploration.

However, these figures should be treated with caution as the concept appears to have been misinterpreted by a proportion of the survey participants. The qualitative interviews suggested that some divorcees had counted informal discussions, at the point of marriage or living together, about how they might divide any assets if they split, as 'pre-nups'. For example, one husband told us that he and his wife had 'a gentleman's agreement' before they married that, if they divorced, they would split everything 50:50, and that is what they did (Husband 5). Others had made a 'deed of trust' to specify the beneficial interests on the matrimonial home if they divorced and used that as the basis for how they divided their assets.

The fact that only two in five (38 per cent) of those with a pre-nuptial agreement reported in the survey that they had followed it fully when it came to the divorce is another indication that they may not have been referring to pre-nuptial agreements as legally understood. A further quarter (23 per cent) said they had followed the agreement partially, a quarter (23 per cent) did not follow it at all, and a further 17 per cent did not know or want to say.

²⁰³ Under Islamic law, *mahr* is the amount of money or property agreed by the husband at the time of the wedding to give to the wife as an obligation of the marriage. Should the husband divorce the wife, he must pay her any amount of the *mahr* owing, but if she divorces him without cause, she is not entitled to it.

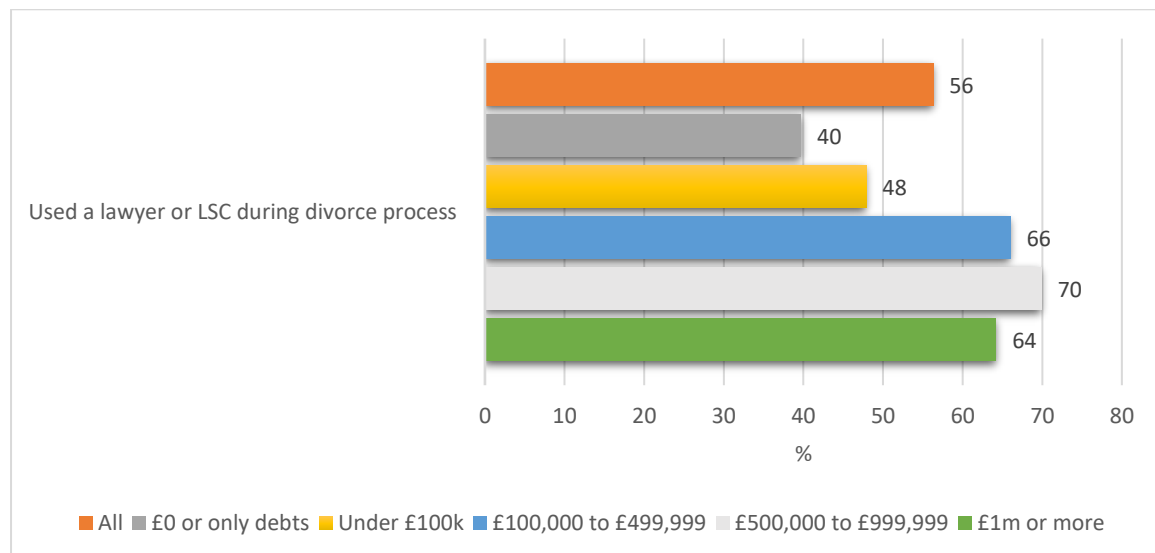
4.5 Legal advice and representation during the divorce process

4.5.1 Legal advice and support during the divorce process

In the survey, divorcees were asked separately about their use of lawyers and legal services companies (LSCs), the latter being defined as companies which ‘provide legal advice or support, but not representation’. However, here, and in later sections, we combine lawyers and LSCs, often referring to them in combination as ‘legal support’ or ‘legal advice’. This is because the qualitative interviews suggest that some survey participants had counted firms of lawyers within the definition of an LSC, and likewise, a small proportion had included other advice routes, such as the Citizens Advice Bureau. Therefore, we are unable to look separately at the two types of legal support.

Only just over half (56 per cent) of divorcees reported having made use of lawyers or legal services companies (LSC) in their divorce process. Divorcees with higher levels of assets were more likely than those with fewer assets to have used legal support (see Figure 4.3, below). For instance, two in five (40 per cent) divorcees with no assets had used a lawyer or LSC during the process, compared with seven in ten (70 per cent) divorcees with assets between £500,000 and £999,999 and two thirds (64 per cent) of those with assets of £1 million or more (p-value <0.001).

Figure 4.3: Use of lawyers and legal services companies by level of assets



Base: all divorcees (2,415); divorcees with no assets or only debts (276); divorcees with assets under £100,000 (570); divorcees with assets between £100,000 and £499,999 (850); divorcees with assets of £500,000 to £999,999 (326); divorcees with assets of £1,000,000 or more (261)

Interviewees with a higher level of assets gave a number of reasons for not obtaining legal advice, with the theme of lawyers' costs coming through strongly. This included the unaffordability of employing a lawyer to act on her behalf for a wife who, despite having a higher level of assets, was income-poor due to being a full-time carer (Wife 15), and the fear of eroding the marital pot through lawyers' fees (Husband 10). Other reasons given included the fact that the ex-spouses could discuss things well between them as well as not wanting to waste money on legal fees:

'Because we get on so well and my ex-husband is a lawyer so we are the first people to know that the last thing we wanted to do was waste a penny of money that essentially will go to our children on lawyers' fees. ... All I do know is that I have come out very, very well out of my divorce and I do know that, so I never felt a need to seek any kind of legal advice.' (Wife 18)

4.5.2 *Legal support in relation to financial issues*

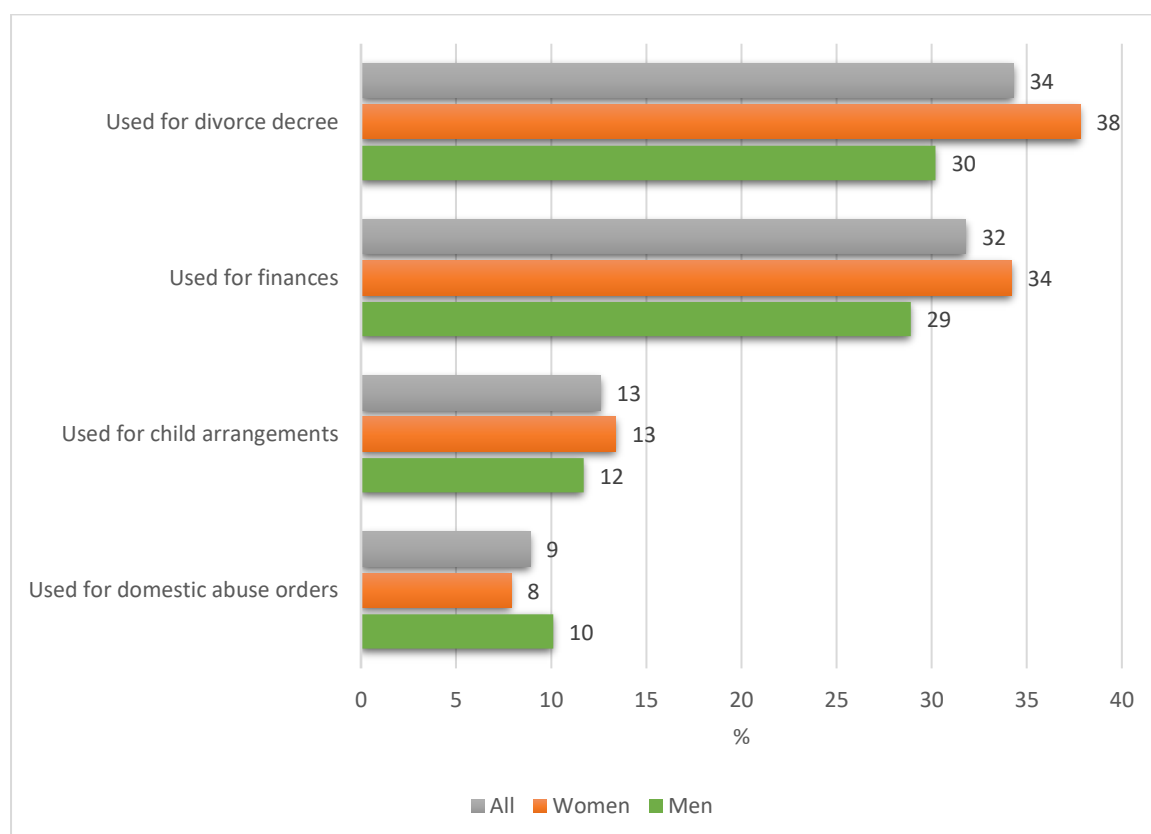
In the survey, divorcees were given a list of elements of the divorce process where they might have involved a lawyer or LSC: the divorce decree, financial arrangements, child arrangements or domestic abuse orders. Figure 4.4, below, shows the percentage of divorcees using legal support for each of these elements, overall and split by women and men.

A third (32 per cent) of divorcees reported that they had used some form of legal support in relation to their *finances* during the divorce process, with women slightly more likely than men (34 per cent compared to 29 per cent) to have done so (p-value 0.036). Again, those with higher levels of assets were more likely than those with fewer assets to engage with lawyers or LSCs about their financial arrangements.

A third (34 per cent) of divorcees had used a lawyer or LSC in relation to the *divorce decree*, 13 per cent in relation to *child arrangements* and nine per cent in relation to *domestic abuse orders*. Women were more likely than men to seek legal support in relation to the divorce decree (38 per cent compared to 30 per cent, p-value 0.002), with no significant gender differences in relation to children and domestic abuse orders.²⁰⁴

²⁰⁴ As with legal support about financial arrangements, those with higher levels of assets were more likely than those with lower assets to seek legal help with the divorce decree. There was no such difference in relation to child arrangements. However, help with domestic abuse orders was more common among those with no assets or only debts than among any other group, possibly reflecting the availability of legal aid in such circumstances.

Figure 4.4: Using lawyers for elements of the divorce process, by gender



Bases: all divorcees (2,415); female divorcees (1,380); male divorcees (1,035)

Exploratory regression analysis (see Chapter 2, section 2.4.4) confirmed, as one would expect, that the strongest financial predictors for involving lawyers or LSCs in relation to financial arrangements involved having more assets to divide. Half (48 per cent) of those with assets worth at least £1 million had legal support in relation to their financial arrangements, compared with one in eleven (nine per cent) of those with no assets or only debts, and a quarter (23 per cent) of those with assets worth less than £100,000 (p-value 0.028). Two in five homeowners (39 per cent of those who owned their house outright and 42 per cent of those with a mortgage) used a lawyer or LSC in relation to their finances, compared to one in nine (11 per cent) private renters (p-value <0.001). Those with pensions (other than the state pension), or whose ex-spouse had a pension, were more likely than those where neither party had a pension to have used legal support (45 per cent of those where both parties had pensions, 41 per cent of those where there was one pension, and only 14 per cent of those without pensions (p-value <0.001)).

Beyond financial issues, those who mentioned fault (an affair, abuse or behaviour issues) as a reason for their marriage breakdown were more likely than others to have engaged a lawyer or LSC in relation to finances (35 per cent compared to 26 per cent, p-value 0.001).

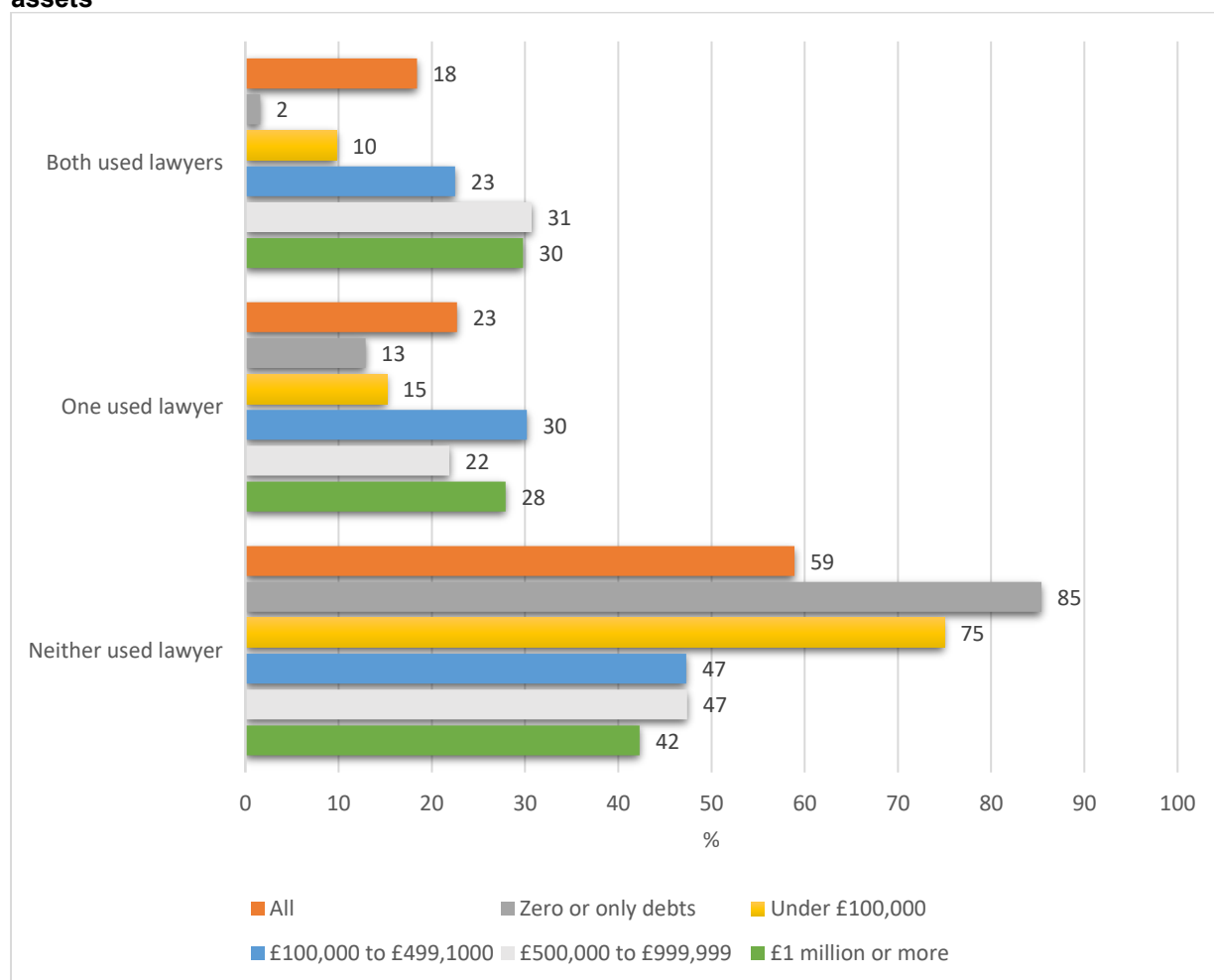
Amongst those who mentioned fault as a reason for their divorce, interview participants noted practical reasons for obtaining legal advice, for example, lack of confidence in dealing with the finances themselves (Wife 12); the need for tailored individualised legal advice rather than generic information that was provided online (Husband 9); and not being able to discuss things with their ex-spouse (Husband 7). However, other participants alluded to the behaviour elements as a reason which led them to seek legal advice. For example, in one case, an ex-wife wanted to know what she was entitled to after her ex-husband would not let her back into the former matrimonial home or return her personal possessions (Wife 25). In other cases, there was a need to know how to respond to threats (Wife 17) and how to seek protection:

‘... like I said to you at the beginning of this interview, I did not have a clue about what I was letting myself in for. ... nobody says to you this is how the legal process works when you get a divorce and the other thing to add to the mix was my ex was always saying, ‘Oh we should just do the divorce ourselves’ ... but I just felt really unprotected because this man I just felt was manipulative so I felt I needed a solicitor.’ (Wife 11)

4.5.3 Ex-spouses’ use of legal support

When seeking to understand the financial arrangements that divorcing couples make, it is useful to know whether one, both or neither party involved legal advisers in that process, as this may be relevant to the nature, ease and comprehensiveness of the arrangement reached. Overall, there was a relatively even split between those where both parties had a lawyer (18 per cent) and those where only one party did (23 per cent). The likelihood of both parties using legal services increased with the level of assets to divide (Figure 4.5, below) (p-value <0.001). For instance, where divorcees had assets of £1 million or more, in three in ten (30 per cent) cases, both parties engaged lawyers in relation to their financial arrangements. This was only the case for two per cent of divorcees in situations where they had no assets or only debts to divide.

Figure 4.5: Survey participants and ex-spouses using lawyers for financial issues by level of assets



Bases: all divorcees where information provided on whether they and ex-spouse used lawyers for financial issues (1,885); with no assets or only debts (170); with assets of under £100,000 (417); with assets of £100,000 to £499,999 (699); with assets of £500,000 to £999,999 (293); with assets of £1 million or more (233)

Our interviewees shed light on some of the difficulties that could arise when one party was represented but the other was not. One wife said that her solicitors had had difficulty in serving papers on her husband, because:

‘... he kept running, running from everywhere you know, his work, from his address, from his work, they couldn’t get hold of him... it really took out a lot, you know, timescale ... because he wasn’t responding to any correspondence, he made it very, very difficult.’ (Wife 2)

Another, whose husband had refused to move out, noted:

‘[It was] very hard when the person you’re living under the same roof with doesn’t want to listen to any [advice], and my solicitor had said if he’d gone and got some legal advice... but obviously he didn’t have that and wasn’t

going to have that and so it was just me trying to firefight. ... if he had to look at stuff, he didn't want to look at it or he wouldn't put his signature to stuff and, again because he didn't have a solicitor, that was all on me to find the right time to bring it up or ask for a signature or "can you just look at these figures to check that you think they're right?" (Wife 26)

But those with a straightforward, agreed, reasonably amicable settlement, might feel quite capable of representing themselves. One husband told us that he and his wife had agreed that she would take the house and he would keep his pension. When he received forms from the court for the consent order that her solicitor was seeking on her behalf, he obtained some free legal advice and was told:

"you can quite easily represent yourself" and I had [from my job] ... a little bit of legal knowledge and I was used to the court process and what have you, so I just thought I'm just going to represent myself and if she wants to waste thousands of pounds on a solicitor just to get what we'd already agreed for nothing, so be it. And it turned out okay.' (Husband 17)

4.5.4 *Reasons for the use of lawyers and LSCs*

Divorcees were asked the reasons for choosing whether or not to get legal advice or support during the divorce process, with the questions varying depending on their pattern of use:

- Those who had used lawyers throughout were asked why they had done so
- Those who had used lawyers during certain parts of the process were asked why they had not used them throughout
- Those who did not use a lawyer or a LSC were asked why they had not²⁰⁵

Participants were able to choose as many of the responses as they felt applied to them.²⁰⁶ Their survey responses are laid out in Tables 4.1 to 4.3, below. Because of the importance of understanding the varying experiences of women and men, both in relation to the process of making financial arrangements and the actual arrangements arrived at, their responses are

²⁰⁵ Those who had used a LSC but not a lawyer were asked why this was the case, as were those who had used both lawyers and LSCs. Their responses were similar to the other questions and, as such, not included here.

²⁰⁶ Participants were also able to write in an 'other' answer or say don't know or prefer not to say, but these are not included in the tables.

shown separately in the tables.²⁰⁷

Table 4.1, below, shows the reasons that divorcees gave for using a lawyer or LSC throughout the divorce process. The two most common responses related to an inability to personally negotiate an arrangement with their ex-spouse; 45 per cent of participants said that they ‘didn’t feel comfortable’ doing so and 40 per cent that they ‘couldn’t discuss things well’. Women were significantly more likely than men to report feeling this (p-values of <0.001 and 0.018 respectively). In addition, a quarter (26 per cent) of women cited domestic abuse as a reason for using a lawyer during the process.

Table 4.1: Reasons for using lawyer throughout

	All	Women	Men
	%	%	%
Didn’t feel comfortable negotiating with my ex	45	53	35
Ex and I couldn’t discuss things well	40	45	33
Thought that the lawyer would be able to get me a better deal	27	27	28
Thought that the lawyer would help me keep my assets	27	30	22
We had lots to settle or arrange	23	21	27
Because of domestic abuse	18	26	7

Base: divorcees using lawyer throughout (718), by women (431) and men (287)

One wife told us that because her husband had refused to attend the mediation appointment she had made, ‘there was no other option’ than to use a solicitor’ (Wife 1). Another said that, although her husband had not engaged a lawyer, she felt she could not deal with him herself (Wife 2). Other wives spoke of wanting to ensure their interests were properly protected. As one wife told us, again with a husband who acted for himself: ‘I needed somebody to help me, to make sure that he wasn’t pulling the wool over my eyes.’ (Wife 10).

Both husbands and wives noted their need for a lawyer’s expertise. One husband said:

‘I’d been into WH Smith and bought a do-it-yourself divorce kit, but when I spoke with the solicitor I found that it would have been a lot easier to go

²⁰⁷ With the exception of Table 4.5 where the sample sizes were too small to split by gender.

through the solicitor, which is what I chose to do and I got a refund on the DIY divorce kit.’ (Husband 7)

The view that one’s lawyer was there to protect one’s interests tended to be focused on the practical expertise of the solicitor, rather than the emotional support they might give:

‘... it sounds silly but it’s all about my peace of mind, my mental health, because for me to feel that I’ve got control, I need to know the facts and not emotion, so I just needed to know, and that gave me the strength then not to battle with him, but just to say, “Enough is enough, I know now. Stop.”’ (Wife 17)

‘... he was a good guy... He was good, he was knowledgeable ...[But] He’s a guy. He didn’t give me any emotional support, he just spelt it out as it was... He was a specialist... He wasn’t touchy, touchy, feely and emotional but he was practical.’ (Wife 7)

The other reasons given related to what divorcees had to settle, and how they could best get what they felt was a good deal for them, with each response cited by around a quarter of those using a lawyer.

Table 4.2, below, focuses on survey participants’ responses to the question of why they used lawyers for part of the process, but not throughout. The most common reason given (by 48 per cent) was cost, suggesting that these divorcees may have wanted to use lawyers more than they were able to afford.

Table 4.2: Reasons for using lawyer for certain parts of the process

	All	Women	Men
	%	%	%
Cost	48	48	48
Only wanted help with certain parts of the process	32	34	31
Not much to settle or arrange	30	32	29
Ex and I could discuss things well	23	16	31
Didn’t want to make relations difficult	19	21	16
Didn’t know what lawyer could/would do	11	14	7

Base: divorcees using lawyer for certain parts of the process (400), by women (235) and men (265)

One husband, who did use a lawyer for the financial side of the divorce, commented:

‘... obviously you can’t do it without a solicitor. I don’t think it’s possible because there are certain things that have to be done. But it was like, look, let’s not spend half our money arguing about who gets it, because it just defeats the point. You might as well be slightly unhappy, rather than slightly happy and a ten grand solicitor’s bill.’ (Husband 1)

One in five (19 per cent) also mentioned not wanting to make things difficult with their ex-spouse. However, for others, it appears to have been a conscious choice, only wanting help with certain aspects (32 per cent), not having much to settle (30 per cent) or a view (held more often by men than women, p-value 0.004) that they could discuss things well with their ex (23 per cent):

‘I’m lucky in that it was very amicable and you know, we both agreed at an early stage that we didn’t want to be wasting any more money on fees and stuff than we needed to.’ (Husband 14)

Finally, those who did not use lawyers or LSCs for any part of the process were asked why this was the case (Table 4.3, below). Two in five (42 per cent) were constrained by the cost of obtaining legal advice or support.

Table 4.3: Reasons for not using a lawyer or LSC

	All	Women	Men
	%	%	%
Did not feel a need to use a lawyer	43	40	46
Cost	42	45	39
Not much to settle or arrange	36	37	34
Ex and I could discuss things well	25	21	29
Didn’t want to make relations difficult	11	10	11
Didn’t know what lawyer could/would do	3	4	2
My ex asked me not to	3	3	4
Distrust lawyers	3	2	5

Base: divorcees not using lawyer or LSC (954), by women (523) and men (431)

As one wife told us:

'I can remember seeing one solicitor right in the very early stages and he kind of explained that you know, depending on how far it goes and how far you want to fight, a barrister, you need a barrister and they're very expensive and I thought, oh no, it was just out of the question.' (Wife 3)

Another commented: 'I didn't have much money so I just wanted to keep the costs down. So, I just did everything myself' (Wife 13). Similarly, a wife told us: 'It was again, spending money I didn't have. ... to be paying mediators, bloody solicitors, a mortgage on your own, two cars, two kids – the money just wasn't there to support that' (Wife 28).

However, for large proportions, they simply felt they did not need to use a lawyer (43 per cent), they had little to settle (36 per cent) or they and their ex-spouse could discuss issues between them (25 per cent). For example, one husband said:

'Yeah, if things were a little bit more spicy or we were at each other's throats over something then yeah, you might need to get solicitors involved, but we sorted out our issues a long time ago ... We were simply staying together until the house was sold and as soon as the house completed and we got our cheques that was it, we sat on the couch and got it done [application for the divorce].' (Husband 5)

Similarly, a wife told us:

'...we'd already sold the house and everything, there just wasn't a lot to sort out between us really. He didn't have any money for maintenance or anything so it just seemed a bit pointless paying extra for a solicitor or whatever to draw up even documents or anything. It seemed pointless.' (Wife 13)

Of course, it is not in fact 'pointless' to obtain a consent order, so as to preclude one spouse seeking some provision subsequently, perhaps when the other's financial circumstances have improved, but it is not surprising that this may not occur to couples keen to 'move on'.²⁰⁸

²⁰⁸ See *Wyatt v Vince* [2015] UKSC 14, where the ex-wife was able to pursue a claim against the former husband nearly 20 years after they divorced, when neither had had any meaningful income, by which time he had become a multi-millionaire.

One wife explained that, having been married before, she had wanted to ensure that, second time around, she preserved her home for herself and her child. Her solicitor had ‘made [the second husband] sign some documents and I wasn’t really involved in that.’ He had understood that she would keep the family home if they divorced.²⁰⁹ They had kept their finances separate and their divorce was amicable. She did not feel the need for any advice or representation in these circumstances:

‘To be fair, it was him who instigated the divorce ... I didn’t want to have to bear the cost of the divorce, so I kind of left it in his ball park and then he went through and pursued it. I was just happy to go along with it, sign the documents that needed to be signed.... I felt that I could do it without [a lawyer] ... because I’d gone through a similar situation with my first partner.’ (Wife 4)

Once again, men were more confident than women that they could discuss things well with their ex, and that there was no need to use a lawyer.

4.6 Other sources of information, advice and support

Lawyers and LSCs are not the only sources of information, advice or support that divorcees access during the divorce process. In recent years, the government has developed information and advice websites as an alternative to making lawyers the first port of call.²¹⁰ However, when asked where divorcees had gone to for advice and support (as shown in the top bar of Figure 4.6, below), lawyers were the most common source of advice or support for two in five (40 per cent) divorcees and cited as the most useful source by 36 per cent.²¹¹

It is particularly important to understand where those who do not engage with these legal sources of advice and support are obtaining their information or advice given the policy priority of private ordering on separation.

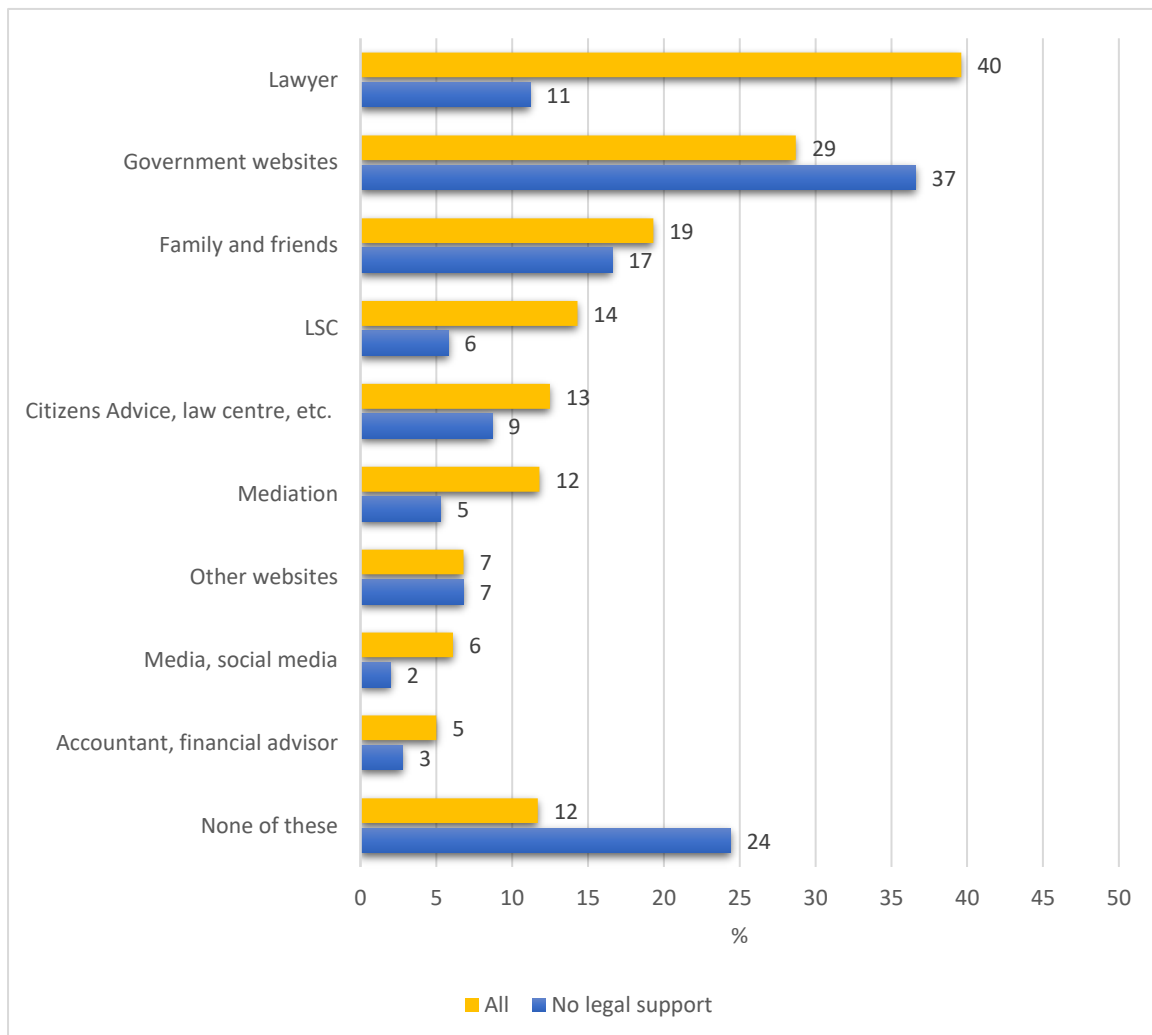
²⁰⁹ Although the wife referred to this as a pre-nuptial agreement, since she had not signed it herself, it seems more likely that it was some form of declaration that he would not receive a beneficial interest in the home.

²¹⁰ Examples include: <https://www.gov.uk/money-property-when-relationship-ends> and <https://www.moneyhelper.org.uk/en/family-and-care/divorce-and-separation/how-to-sort-out-your-finances-on-divorce-or-dissolution>.

²¹¹ Note that the question asked about information and advice. As a result, some participants who engaged lawyers or LSCs in the process have not necessarily included them within the sources of information or advice.

The blue bars in Figure 4.6 show the sources of advice for those who did not report using a lawyer or LSC during the divorce process or in relation to their finances. Some had sought advice at some point from lawyers (11 per cent) or LSCs (six per cent) (but presumably at the lower end of engagement given they did not mention this when asked specifically about *legal* sources of support or advice). Among this group, government websites²¹² were the most common source, used by 37 per cent of divorcees, with three in ten (28 per cent) finding them the most useful source.

Figure 4.6: Sources of advice and support



Base: all divorcees (2,415); divorcees not using lawyer or LSC (1,058)

²¹² In the survey ‘government websites’ and ‘other websites’ were listed as options to select by survey participants. However, due to time and space constraints, we were unable to drill down into the specific websites used by participants. Furthermore, a number of important information websites are not ‘government’ sites – for example, [‘Law for Life’](#).

As we quoted above, some interviewees saw lawyers as the obvious first port of call. Others found the facilities of legal services companies useful for them. One husband explained:

‘... online was a major key for me. I didn’t want to have to take time off work, go to a solicitor’s firm, or a legal firm every so often and get phone calls during work. If there was a portal I could use to login, upload my documents, sign paperwork on there, answer questions, send them the emails all through there, that was the package that I was looking for. ... they also had a live webchat option on there as well, so I was able to contact them whenever I needed to and get clarity on queries that I needed.’ (Husband 11)

Another used such a firm because: ‘I don’t trust solicitors. My mother didn’t trust solicitors ...’ (Husband 12).

Many of the interview participants had done their own research into what the law says and what their entitlements might be. There was variation on how useful this research proved to be. One interviewee told us:

‘I did feel reasonably well informed. Like I say, from the little bit of research I did, I think it was fairly obvious what I was or wasn’t entitled to and by the end, definitely by the end, especially seeing what was going on with other people, I definitely knew that I was OK.’ (Wife 18)

Others, meanwhile, found the results of their research too ambiguous:

‘I suppose when you scroll through Google you could find any answer really you want. You could find something that would say you’ll get everything, or sometimes you’ll find you’ll get nothing, or you’ll get 50%, it’s just depending on what site you open up.’ (Husband 2)

A good proportion (29 per cent) of divorcees had used government websites, with 15 per cent thinking that they were the most useful source. Interviewees used such websites for a variety of purposes. Some used them for gleaning basic information about the divorce process when they were in the early stages and wanting to have some sense of what would happen. One husband commented:

‘The government was really good. I went on the gov.co.uk [sic] website and yes, then kind of looked at different kinds of I suppose sections on the

website. ... That was really good for information purposes to research on. To kind of get a grip of UK law, really.' (Husband 11)

Others wanted to check that they were doing things correctly, with one wife telling us:

'I didn't want to keep coming back for things I'd done wrong. I just wanted to make sure, and it does tell you exactly how to fill everything out and all the information you need, so that was really helpful.' (Wife 20)

Use was made of the online calculators that are provided to help work out benefit entitlements and child maintenance, so that divorcees could see what they might need by way of income, or maintenance, after the divorce. A wife explained:

'... when we were doing the spreadsheet of our finances and when I was thinking about how much he'd have to pay obviously I used the calculator, and so it gave me some of the information to then have the conversation with him ... I definitely found what I needed from those things to have better informed conversations with him, I think.' (Wife 26)

As far as other websites were concerned, interviewees told us they had 'Googled' to find things out and had found information from a variety of sources, including law firms, Citizen's Advice, and forums for people in a similar situation.

However, there was some caution and negativity too. One wife noted the problem of the sheer volume of information and whether one could trust the reliability of different websites:

'... the internet is so vast isn't it? You can use them but nothing is consistent, the information isn't consistent because it varies on case by case situation I guess...' (Wife 11)

Another stressed the complexity of the issues and answers given:

'I remember thinking at the time, you know, I class myself as a fairly educated, switched on, smart person [...] and I just thought it was a minefield trying to get the right information. I remember Googling different forums and they'd all give different answers. I remember thinking, how do people with ... less intelligence, less switched on, even get through this process? I did look at .gov type websites. I always think with things like that, with any piece of legislation you read, they need an easy read version, because I don't think they're written for lay public at all [...] Yeah. I, remember thinking it was it was a minefield.' (Wife 28)

And one husband was firmly dismissive of such sources: 'I didn't need to get advice from "Google QC"' (Husband 10).

Interviewees were asked whether they had used citizen's advice bureaux or other advice centres. There was a mixed response regarding these. One wife already familiar with using them for other issues had found them very useful in explaining her situation and reassuring her (Wife 7); another had got confirmation from the CAB that her case was a straightforward one (Wife 4). But another had felt they had been dismissive of her case as being too simple: 'it was like "what are you here for?", I don't know, it felt like that my situation wasn't justified because of the lack of financial issues that I had' (Wife 5), while others commented on the difficulty of getting an appointment.

As Figure 4.6 (above) shows, family and friends were also cited as providing advice and support for around one in five (19 per cent) divorcees.²¹³ Some interviewees had been able to rely on friends or relatives who had financial or legal expertise to help them understand documents in their case, and one wife told us:

'I actually used a friend's divorce papers ... I mirrored. I wrote all out the contracts and sent it with all the divorce papers. I thought it was going to come back as "sorry, you are wrong; you can't do it like this" but it didn't....

[Interviewer] 'Okay so you were able to use hers as a template?'

'I mirrored hers. That's it; it is a template.' (Wife 23)

Perhaps inevitably, people's experience of confiding in family or friends was mixed. While a divorcee's 'mum' was often mentioned as providing emotional support, one wife told us that:

'... my mum wasn't very pleased at all, because our sort of culture it's not a good thing to get divorced, and, you know, now I'm the black sheep of the family ... I relied on my friends quite a lot.' (Wife 13)

The range of different advice, and different experience, that family members and friends had between them could leave divorcees having to pick and choose or look for endorsement of choices they had already made.

²¹³ For discussion of the financial support provided by family and friends in relation to legal costs, see section 4.10 below, and more generally, Chapter 11, section 11.9.

The overall picture suggests the need for the comprehensive provision of authoritative, clear and accessible information and advice for divorcing couples – a point we return to in the concluding chapter.

4.7 Use of non-court routes to reaching a financial arrangement

As we outlined in Chapter 1, divorcing couples who wish to engage some support in making a financial arrangement have a number of routes available to them outside court, involving varying degrees of direct communication between themselves and their ex-spouse. They may each engage a lawyer to negotiate on their behalf, or to engage in a ‘collaborative law’ process involving roundtable discussions between both parties and their lawyers together. They may go to mediation where a neutral third party seeks to help them reach an agreement between themselves, or they may appoint an arbitrator to decide on the outcome for them. Of these mechanisms, the one strongly supported by successive governments, on the assumption that it is cheaper for the parties and less ‘adversarial’, is mediation, and as we noted, vouchers worth up to £500 are available to those wishing to use this method of resolution.

Two in five (39 per cent) divorcees had used one or more non-court processes in attempting to sort out their finances (Figure 4.7, below). Despite government encouragement to use mediation, fewer than one in six (17 per cent) divorcees reported having tried it, but the figure is not dissimilar to the proportion (21 per cent) attempting negotiations via lawyers. Use of arbitration and collaborative law was uncommon, with only five and six per cent of divorcees using each route. Whilst one of our interviewees commented that, when ‘arbitration’ had been suggested, this ‘put the fear of God into me. No, I don’t like that word; I know what it means in business!’ (Wife 7), other qualitative data suggests that there may have been some confusion amongst interviewees as to what arbitration is, with the concept appearing to have been misinterpreted by some interview participants. For example, one husband we interviewed was discussing the option of shuttle mediation, but incorrectly referred to this as ‘arbitration’:

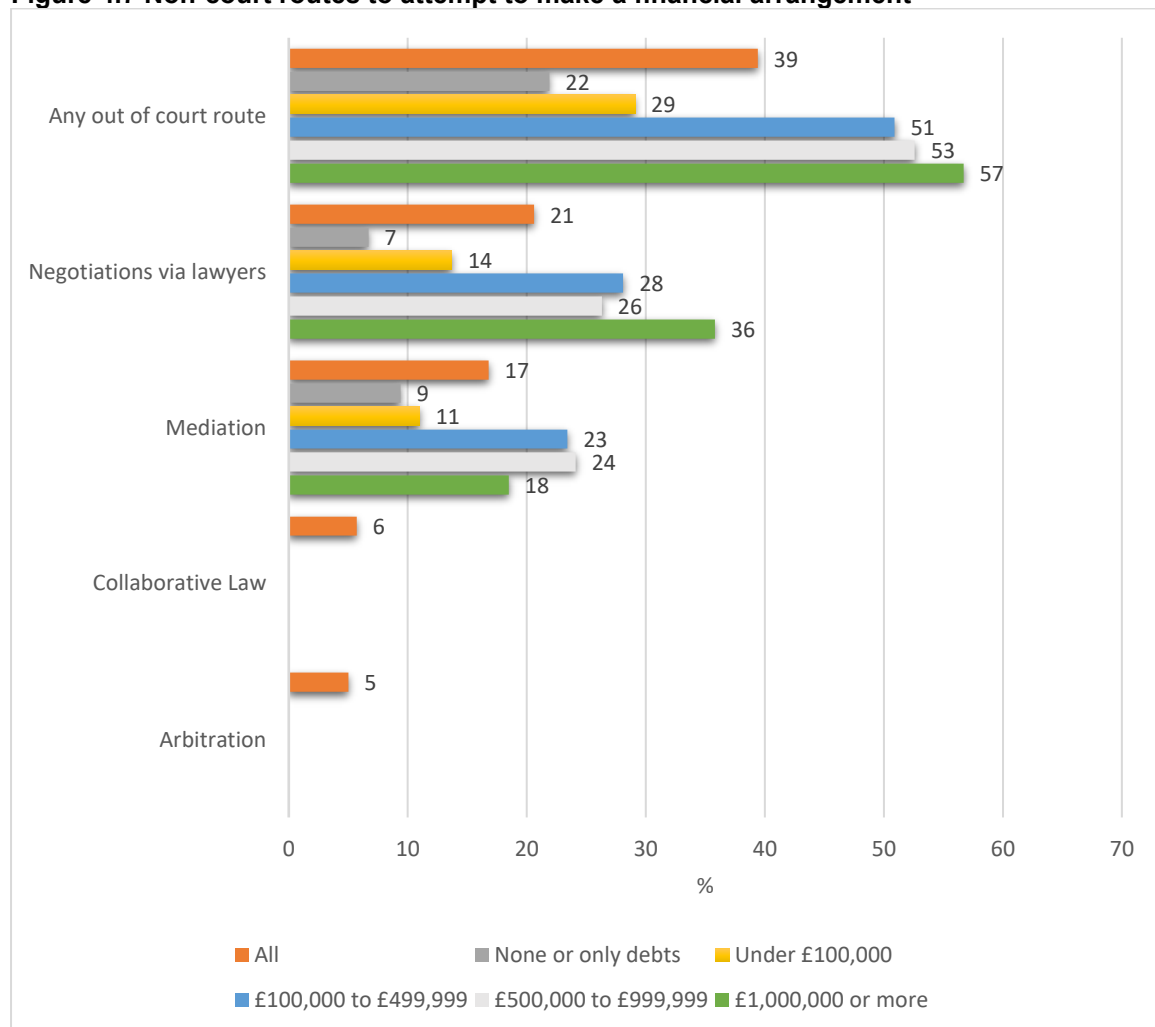
‘We did put in the option that we could do the arbitration where we were in separate rooms and have someone running between the two but she wouldn’t even entertain that ... But then it was recorded that I had tried being reasonable and offering arbitration to sort it out to avoid having to go to court.’

[Interviewer] ‘Can I just clarify, you’re using the term arbitration, I just wanted to check if it was arbitration or mediation because they’re both slightly different?’

‘Oh, sorry. Mediation, not arbitration.’ (Husband 7)

Overall, those with higher levels of assets were more likely to try non-court routes to reach a financial settlement than those with less wealth (p-value <0.001). Figure 4.7, below, shows how take-up of such routes overall, and of negotiation via lawyers or mediation, varied across divorcees with different levels of assets to divide.²¹⁴ For instance, where divorcees had no assets or only debts to decide upon, only one in five (22 per cent) used any out of court route, compared to six in ten (57 per cent) of those with £1 million or more to divide.

Figure 4.7 Non-court routes to attempt to make a financial arrangement



²¹⁴ Sample sizes are too small to do this for arbitration or collaborative law.

Base: all divorcees (2,415); divorcees with no assets or only debts (276); divorcees with assets under £100,000 (570); divorcees with assets between £100,000 and £499,999 (850); divorcees with assets of £500,000 to £999,999 (326); divorcees with assets of £1,000,000 or more (261)

4.7.1 *Negotiations via lawyers*

Just under half (46 per cent) of those who had sought advice from lawyers or LSCs about their financial arrangements had attempted to reach a non-court financial arrangement via their solicitor negotiating on their behalf.

When we look beyond use of legal support at what else is associated with attempting to reach a financial arrangement via lawyers, several of the predictors (using analysis explained in Chapter 2, Section 2.4.4), as we might expect, relate to the value of the assets the couple had to divide. Those with higher value assets (p-value 0.006) (as reported in Figure 4.7, above) and those who owned the matrimonial home (p-value 0.010) were more likely than others to attempt to reach an arrangement via lawyer negotiations. For instance, a third (33 per cent) of those who owned their home outright had negotiated via lawyers compared to seven per cent of private renters.

However, a second set of factors suggests that divorcees were more likely to negotiate via lawyers because of the nature of the breakdown of the marriage, their knowledge of what assets might be in the financial pot, or because of a financial vulnerability on the part of one spouse. Those who felt that their marriage breakdown related to the fault²¹⁵ of one spouse were more likely than others to have negotiated via lawyers (23 per cent compared to 17 per cent, p-value 0.004), as were divorcees who were not working at the point of separation²¹⁶ (24 per cent compared to 18 per cent of those who were employed, p-value <0.001) and those with a long-term illness or disability (25 per cent of those with a disability that limited them a lot compared to 19 per cent of those with no disability p-value 0.010). Divorcees who knew whether or not their spouse had a pension were also more likely than those who did not to negotiate via lawyers (for instance, where both spouses had pensions, 29 per cent of cases involved negotiations via lawyers compared to seven per cent where they did not know, p-value <0.001). Divorcees who were self-employed were also more likely than others to have negotiated via lawyers, perhaps because of the added complexity of self-employed income (33 per cent compared to 18 per cent of those who were employed, p-value <0.001).

²¹⁵ An affair, abuse or other behaviour issues.

²¹⁶ Among those not working, the largest group (40 per cent) were looking after family, with a further one in five (19 per cent) not working through ill health, 18 per cent unemployed and 16 per cent retired.

4.7.2 Use of mediation

Given that lawyers and legal advisors have always been important sources of advice and encouragement to use mediation,²¹⁷ we are not surprised to find that divorcees who had engaged with lawyers or LSCs in relation to financial arrangements were more likely than others to use mediation. In fact, the strongest predictor of using mediation was having used a lawyer or an LSC (p-value <0.001 in exploratory regression analysis). Among those using a lawyer or LSC in relation to their finances, three in ten (28 per cent) used mediation, compared to only one in nine (11 per cent) of those who did not.²¹⁸

In line with other studies, divorcees' experience of using mediation was mixed.²¹⁹ Some had a very positive experience. One husband said:

'... it was really insightful. Yeah, it was good. ... I didn't have any expectations of what would be the outcome, it was just a process of questioning both of us, sort of "is this something you agree on?" and all of a sudden, we'd gone through the process and it was quite easy.' (Husband 25)

For others, however, it had been expensive, or unproductive, given their particular circumstances. For example, one wife (Wife 3) said that she had been told by the court that 'your next step is mediation – before we can move to the next stage, you've got to go to mediation.' She noted that the fee charged was £120 per hour for each party and commented: 'So people are forced into paying lots and lots of money then to another body of people and I'm not saying that they don't do a good job, but you know, I think £240 for an hour is quite good pay.' She and her husband reached a settlement after six sessions of mediation, but this was not an easy process:

'... it was just fight, fight, fight, even in mediation, you know, [husband was] laughing at me and, he made himself look stupid, you know, I kept composed all the way through, those were the times when he turned up or when he turned up on time. Sometimes half of it was wasted.' (Wife 3)

²¹⁷ Indeed, the reduction in access to legal aid coincided with a drop in the use of mediation: MoJ, Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum Cm 9486 (2017), para 161.

²¹⁸ Beyond the strong link with using legal support, there was no clear pattern as to what factors might be significant in understanding propensity to use mediation.

²¹⁹ Symonds, J. et al. (2022). Separating families: Experiences of separation and support. Nuffield Family Justice Observatory. <https://www.nuffieldfjo.org.uk/resource/separating-families-experiences-of-separation-and-support>

A husband felt that, although he could see the value of mediation for matters such as complex business issues, or problems over the children, it had been unnecessary for him and his wife, and had simply cost them £250 each:

'I thought it was a rip-off if I'm honest. ... basically, they said exactly what we'd already agreed in the kitchen at home and then they wrote sort of an agreement out which then went to [wife's solicitor]. ... they were good, yeah, but I wasn't arguing so it was just like, "this is what I've offered you, this is all I've got." ... So the mediator was just like, "well yeah, I'm not really sure why we're here because you seem to have already agreed by yourselves..."' (Husband 17)

The importance of both parties engaging if the process were to be productive was emphasised by one interviewee:

'... I think we had about two or three sessions of mediation and then he refused to pay for any more. And what was agreed in mediation he denied any knowledge of even discussing it. And so, you know, I think that for me was one of the biggest flaws of this process. ... I just think that it was a pointless waste of money that achieved nothing unfortunately, but of course you can't even go into a court arena these days without going to mediation first. I think from memory it was like £120 an hour, so it wasn't cheap and he was refusing to pay for it. So it's an expensive process to get to that point when then it means nothing.' (Wife 28)

Divorcees who did not attempt mediation gave a variety of reasons. One husband told us that it would have been a waste of time because of a refusal to communicate on the part of his ex:

'Yeah, yeah, I'm very pro mediation of stuff, I'd have loved to have gone through a mediator, but my ex-wife didn't do talking, doesn't do talking and mediation would have just fallen flat.' (Husband 24)

Another husband, in a case where both spouses had raised allegations of domestic abuse, said that his wife had told her solicitor that 'there was no way she could be in the same room as me to talk about it.' (Husband 7)

One wife told us that, when mediation was suggested early on by her husband, she had not been emotionally or mentally ready for it, but it was not mentioned later by her solicitor, so it was never attempted (Wife 2).

Another spoke of her husband's entrenched views precluding mediation:

'... the fact that he was so hell-bent on 50:50, nothing less, he shouldn't be paying for anything else, he wouldn't have listened to what a mediator would have been suggesting because he wouldn't have liked it... there's nobody who was ever going to be able to help us meet in the middle ... and we would have paid out money then that we didn't have.' (Wife 26)

Another wife described a similar situation: '[Mediation] was never discussed because he would have never done it. You'd have got more information talking to a tree...' (Wife 6). Other divorcees felt that they had sorted everything out (rather like our interviewee above who *had* nonetheless gone through the process) and there was simply no need for mediation, although one husband pointed out that failing to do so had resulted in delay as different suggestions for other outcomes were raised by each party's solicitor:

'I think if we'd all been around and having a proper mediation I think it would have been thrashed out quicker but actually it would have cost me less, because they were all to-ing and fro-ing, each email letter from the solicitor costs a ridiculous amount.' (Husband 9)

Finally, it is worth noting that some interviewees told us that they had not heard of mediation or had thought it only related to disputes over children, suggesting that there is still a significant level of ignorance about this option.

4.8 Routes to reaching an arrangement or a decision not to have an arrangement

The half (50 per cent) of participants in the study who reported that they had made an arrangement in relation to all (36 per cent) or some (14 per cent) aspects of their finances²²⁰ were asked how these arrangements had been reached, and whether or not they had been formalised through a court order.

Figure 4.9, below, sets out how these arrangements had been made, combining those with full and partial arrangements. Half (52 per cent) of arrangements had been reached by the divorcing parties themselves, with half of these (48 per cent, accounting for 25 per cent of all

²²⁰ Figure 4.1 above. We want to reiterate that among those who said they had nothing to divide or went their separate ways were divorcees who had in fact divided their property and finances. However, because they did not say that they reached 'an arrangement', they were not asked the routes by which these were made.

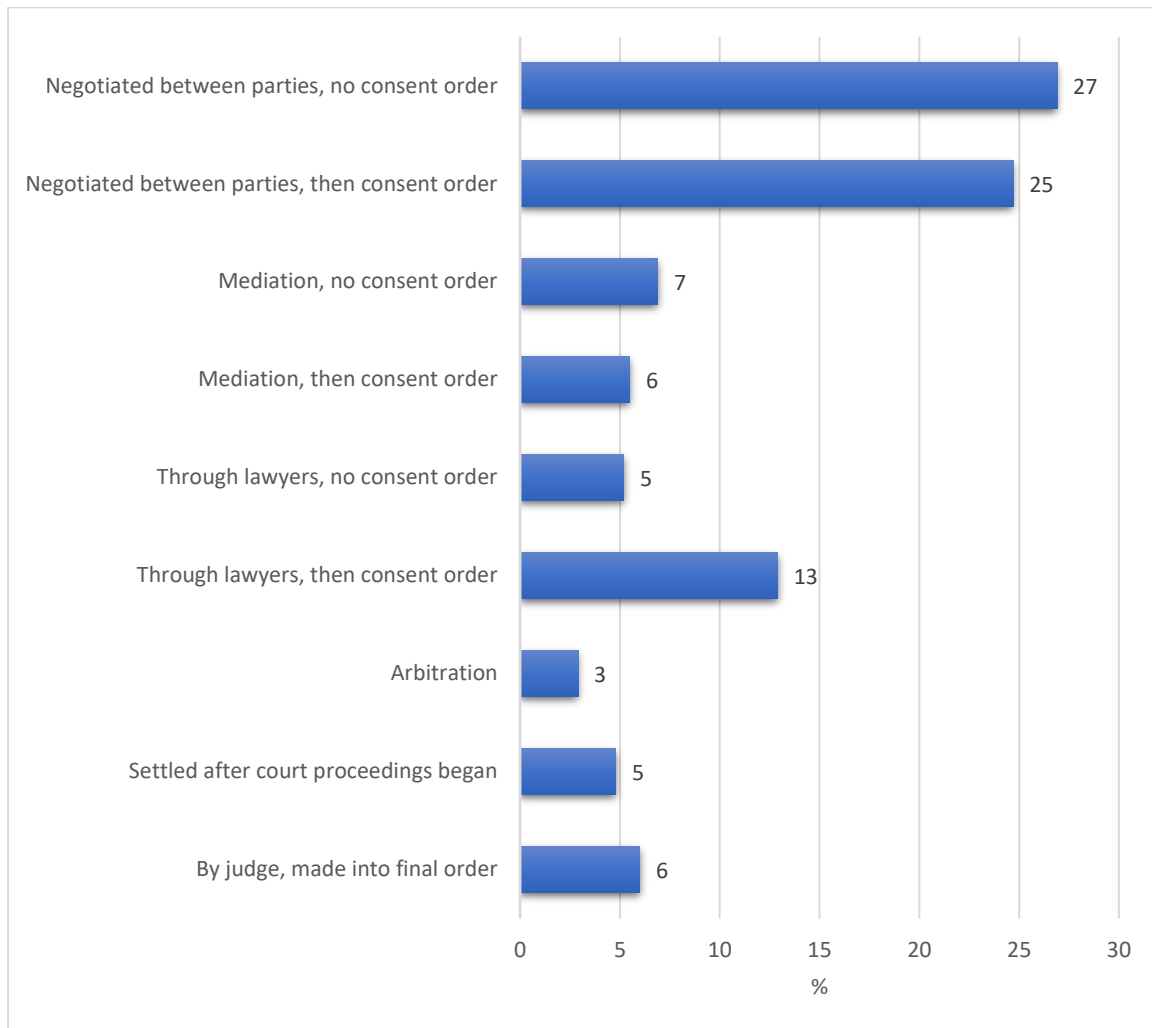
arrangements) then being made into a consent order. Agreements reached through mediation were relatively uncommon, with 13 per cent made via mediation. As with arrangements made between the divorcing parties, just under half of those made via mediation (45 per cent, accounting for six per cent of all arrangements) were then made into a consent order. In the one in six (18 per cent)²²¹ cases where an agreement had been reached via lawyers, consent orders were more common – around seven in ten (72 per cent, accounting for 13 per cent of all arrangements) were made into orders.

Only one in nine (11 per cent) cases were taken to court as contested proceedings. Among these, half (five per cent of all arrangements) were settled after court proceedings had begun, with the other half (six per cent of all arrangements) decided by a judge. Across all the arrangements made, half (49 per cent) resulted in a court order, either a consent order (43 per cent) or a final order (six per cent).²²²

²²¹ Difference to the percentages in the figure due to rounding to the nearest whole percentage point.

²²² This figure of 49 per cent is based on arrangements where the participants specifically mentioned consent orders or final orders within their survey response. Thus, we have not included arrangements made via arbitration or collaborative law routes or settlements after court proceedings had begun, as we do not have sufficient information about whether an order was made.

Figure 4.9: How arrangements were reached



Base: all divorcees with an arrangement (1,389)

Those with higher value assets were more likely than those with fewer assets to have obtained a court order. Among those reaching a full or partial arrangement, six in ten (61 per cent) divorcees with assets of £500,000 or more obtained an order compared with half (50 per cent) of those with assets between £100,000 and £499,999 and a third (36 per cent) of those with assets of less than £100,000 (p-value <0.001).

Although the decision to have a court order was associated with the total value of the assets, the route to reaching an agreement was less associated with how much there was to divide. Instead, exploratory regression analysis found that mentioning fault as the reason for the ending of the marriage was associated with taking a more formal route in sorting out finances. Negotiating via lawyers and going to court for a judge to decide were both more likely to be associated with cases involving fault (an affair, abuse or other behaviour issues) as a reason for the marriage breakdown (p-values of 0.005 and 0.020 respectively). Among

those mentioning fault, one in five (21 per cent) had settled through lawyers and eight per cent had a final order from a judge. For those not mentioning fault the respective percentages were 13 per cent and three per cent.

These findings reflect existing research evidence that couples are more likely to come to an agreement if they are emotionally ready to settle.²²³ If recrimination and blame are still uppermost in divorcees' minds, then it is unsurprising that more formal routes to settlement may have been chosen. This has implications for policy and is relevant to the question of whether it should become mandatory to attempt mediation (or other forms of non-court dispute resolution) before being able to pursue an application to court, a matter recently the subject of government consultation.²²⁴ We return to this issue in our concluding chapter.

4.9 Reasons for using or not using the courts to reach a financial arrangement

Divorcees who used the court in relation to their finances were asked why they did so, and those not using the court asked why they did not (Tables 4.4 and 4.5, below). Because of an interest in the varying experiences of women and men, both in relation to the process of making financial arrangements and the actual arrangements, their responses are shown separately in the tables.

Table 4.4: Reasons for using the courts

	All	Women	Men
	%	%	%
To make sure the arrangement was legally binding (court order)	54	58	50
We could not reach an agreement ourselves (even with help of lawyer)	35	45	24
So I could find out the real financial position	22	18	27
To force my ex to take the issue seriously	18	20	17
My ex wanted a court order	17	13	21

Base: all those using the courts (469); women using the courts (262); men using the courts (207)

²²³ See Chapter 1, section 1.6

²²⁴ MoJ, Supporting earlier resolution of private family law arrangements (2023) CP 824.

The most commonly cited reason for going to court was to get a legally binding order, with just over half (54 per cent) of divorcees going to court citing this. It was important to both men and women to ensure that there could be no 'comeback' later. A husband told us:

'Yes, that's what I wanted. That was something that I knew would be formal. There would be a legal implication for it. It was set in stone and both parties could follow, so that's what I wanted.' (Husband 11)

One wife was advised by her solicitor of the importance of getting an order:²²⁵

'... the solicitor was like "even though you've agreed all this between you, I think you should still have it lodged with the court that you've come to this decision because then if anything changes at least it's filed with them and you've got that written in", I guess. ... it was like a roller-coaster and it all happened and it felt like it was spinning out of control, and I think they were just really worried that if it wasn't lodged with the court things could easily get out of hand and decisions be made and not be respected or adhered to, I guess.' (Wife 26)

Women were also twice as likely as men to say that they went to court because they could not reach an agreement (45 per cent compared with 24 per cent, p-value <0.001). This is a recurring theme in the data, where women perceive more difficulties negotiating with their ex-spouses than men do.

In contrast, among those who did not go to court (Table 4.5, below), men were more likely than women (36 per cent compared to 24 per cent) to say that it was because they could discuss things well with their ex-spouse (p-value <0.001).

In general, the most commonly cited reason that divorcees gave for not using the court was that they did not have much to settle (47 per cent), with those with lower levels of assets more likely to give this as a reason. Three in ten (30 per cent) cited cost as a reason for not using the court.

²²⁵ See above section 4.5.4 for comparison.

Table 4.5: Reasons for not using the courts

	All	Women	Men
	%	%	%
Not much to settle or arrange	47	47	48
Cost	30	31	28
Ex and I could discuss things well	29	24	36
Didn't want to make relations between me and my ex more difficult	19	19	18
Didn't know what court could/would do	9	9	8
My ex asked me not to	4	3	4

Base: all those not using the courts (1,771); women using the courts (1,029); men using the courts (742)

These reasons were reflected in our interview data, and often intertwined. For example, the fact that everything had been sorted out between them meant that couples did not see the need for an order, and did not want to spend the money to get one:

‘... we both didn't want to spend our money because we would have had to pay to have it go through legal proceedings and get it legally documented and we both said we would prefer to take the money and not have to put it into unnecessary court proceedings.’ (Wife 16)

An important factor was the level of trust the spouses still had in each other. This wife and others mentioned that they and their ex had felt they could trust each other to stick to the terms of what they had agreed. For example, one husband (Husband 10) explained that he had asked a friend of his who was a lawyer if he and his wife needed to involve the courts, given that they had agreed on a settlement, and his friend had said: ‘If you trust the fact that she's going to honour the agreement with you and you honour the agreement you have with her, you haven't got a problem.’ When the friend suggested putting a charge on the matrimonial home to ensure he would receive a share of the equity if his wife remarried, he said he had thought: ‘all of a sudden that's throwing a doubt on my trusting her into the works, and I didn't want to do that.’ (Husband 10)

Nonetheless, one approach taken to trying to ensure that agreements would be honoured, was for couples to make their own written agreement, and even have it witnessed by friends or family. One husband told us that two of the couple's children had witnessed their agreement: ‘Because it's then another pair of ears, kids don't forget’ (Husband 8).

Another explained that he and his wife found out from the internet that she would be 'entitled' to a percentage of his pension, and they had agreed that he would pay her some of it when he retired. They had put this in writing and he commented:

'I'm hoping she'll forget [laughing], but we'll see.'

[Interviewer] I expect she's got the piece of paper somewhere.

'I'm sure she has!' (Husband 23)

Unsurprisingly, those divorcees amongst our interviewees who had obtained an adjudicated settlement told us that this had been because of the opposite factors to these: *lack* of trust, poor communication, lack of disclosure, and inability to reach an agreement:

'As we couldn't reach an amicable decision and that mediation had been rejected then the only way forward would be for a judge to sit down and listen to both of us and decide from there.' (Husband 7)

4.10 Costs

Survey participants were asked how they covered any legal or mediation costs related to sorting out their finances when they divorced. Six in ten (62 per cent) divorcees reported incurring costs, with a further eight per cent either not knowing or preferring not to say. Those who filed for divorce were more likely to have incurred costs than respondents (66 per cent compared to 58 per cent, p-value 0.002).

While those who had reached a full or partial arrangement were most likely to have spent money on legal or mediation costs (79 per cent and 71 per cent respectively), still, around half of those who said they had no money to divide (44 per cent) or went their separate ways (51 per cent) spent some money on legal or mediation costs during the process.²²⁶ Our interviews suggest that these may have related to the cost of the divorce proceedings and obtaining the decree, as well as costs associated with the financial arrangements such as conveyancing for selling the matrimonial home or transferring title to one spouse.

While most discussion of costs concerned those charged by professionals such as solicitors and mediators, some interviewees commented unfavourably on the cost of getting 'the piece of paper' ending their marriage, i.e. the court fee. As one wife said:

²²⁶ That said, among those incurring costs, those who had reached a full or partial arrangement had, on average, spent more than those who had not: see figure 4.11 and discussion below.

‘But really, £550 just to stamp a bit of paper? And you know, for some people £550 is a serious amount. A serious amount of money to set them free from that marriage and whatever else.’ (Wife 28)²²⁷

And another emphasised this emotional aspect of paying to be ‘set free’, particularly if the reason for divorcing was the other’s abuse:

‘It’s heartbreaking that I’ve got to go through this in the first place and now I’ve got to even pay X amount of money to do this.’ (Wife 24)

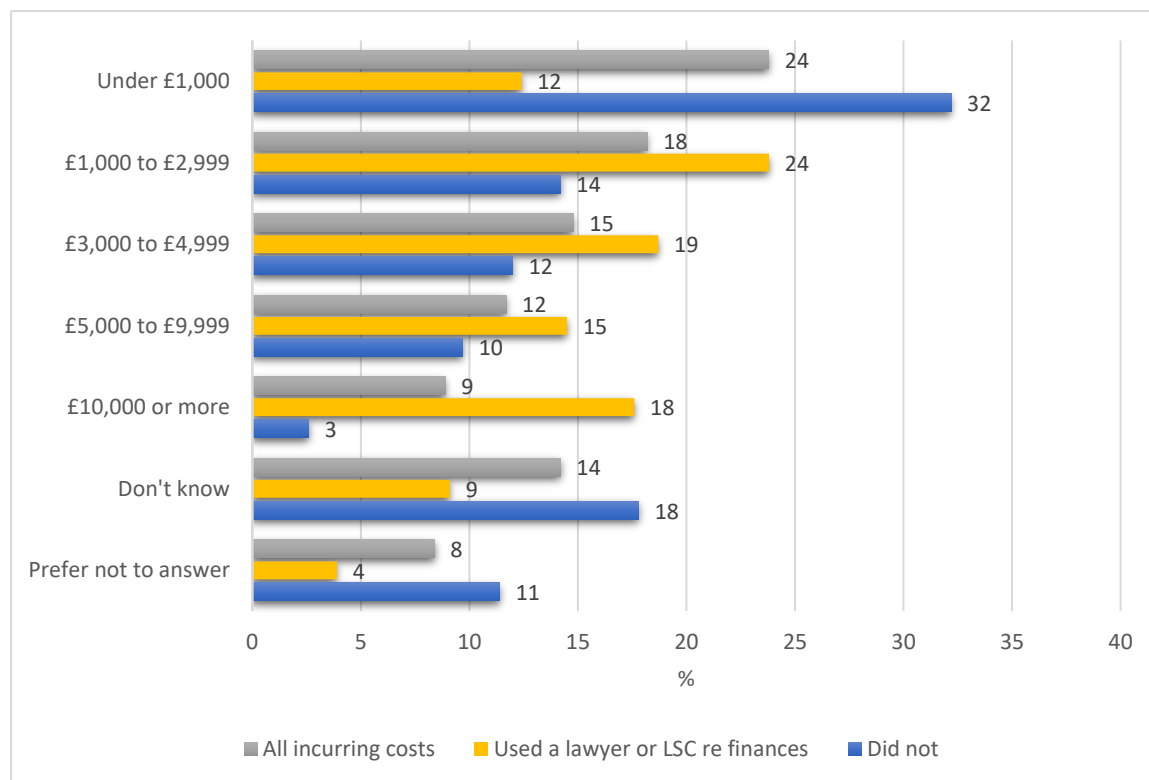
Given the low overall asset levels of households outlined in Chapter 3, it should be noted that funding even small amounts of legal costs may be difficult for many households. Nonetheless, for many of those incurring costs, the amounts they had to spend were relatively modest. A quarter (24 per cent) had to find less than £1,000, with a further one in six (18 per cent) having costs of between £1,000 and £2,999. At the other end of the spectrum, one in eleven (nine per cent) incurred costs of £10,000 or more (Figure 4.10, below).

Although higher costs were, as one would expect, correlated with the use of legal support, a good proportion of those using legal support still had relatively modest costs. By way of illustration, Figure 4.10 also shows how the costs compared for those who did or did not use a lawyer or LSC during the process of sorting out their finances. A third (36 per cent) of those using a lawyer incurred costs of under £3,000. However, at the other end of the scale, a third (32 per cent) of those using a lawyer incurred costs of £5,000 or more, double the percentage (12 per cent) of those who did not use legal support (p-value <0.001).²²⁸

²²⁷ The court fee has increased since this wife obtained her divorce and is currently £593.

²²⁸ Differences in figure and text due to rounding to the nearest whole percentage point.

Figure 4.10: Legal and mediation costs incurred in relation to finances, by use of legal support regarding finances



Base: all divorcees incurring legal and mediation costs (1,656); all those incurring costs who used a lawyer or LSC for finances (802); all those incurring costs who did not use a lawyer or LSC for finances (854)

Beyond the costs of the decree, interviewees differed on whether they felt their legal and mediation costs had been reasonable. For some, there had been ‘no other way of doing it’ (Husband 1), or ‘it was worth it for my sanity... it was money well spent’ (Wife 6). Others considered with hindsight that they should have been able to sort things out more cheaply, but felt that they had been in the hands of the professional:

‘... it did seem costly to me, but it is difficult for me to say because then they are giving you expert advice and what do you compare it to, you know ...’ (Husband 13)

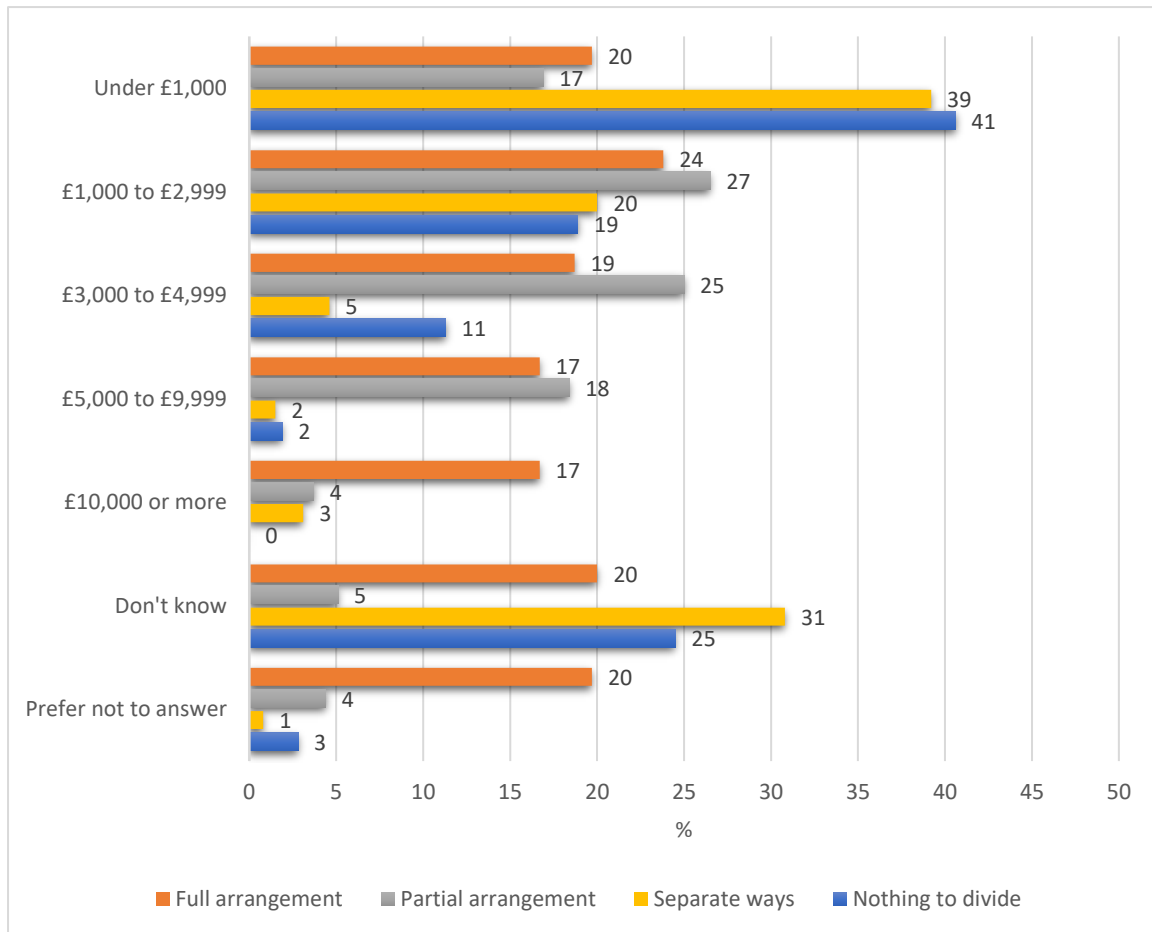
At the higher end, one wife we interviewed had costs of £40,000. There were no children of the marriage, and both parties had kept their finances separate. Ultimately, the outcome of proceedings consisted of the husband buying out her share of the matrimonial home. Yet this simple case had involved the wife changing solicitors twice because she had not felt that they understood her situation; her husband would not negotiate or mediate; and both parties accused each other of lying about their assets. Unsurprisingly, the case went to court, with

representation by a barrister for the hearing. She felt it had been 'money down the drain' (Wife 1).

When we look at the costs incurred by divorcees with different levels of asset value, as one would expect, those with more to gain in reaching a good arrangement were more likely to have spent more trying to obtain it. For instance, one in five divorcees with assets between £500,000 and £999,999 (20 per cent) or over £1 million (18 per cent) spent over £10,000 in costs compared to two per cent of those with nothing or only debts to divide and five per cent of those with assets worth under £100,000 (p-value <0.001).

It is not surprising to find that those who had reached an arrangement had spent more in the process, on average, than those who said they had gone their separate ways or had little to divide (Figure 4.11, below). For instance, two in five divorcees who said they had no money or assets to divide (41 per cent) or that they went their separate ways (39 per cent) spent under £1,000, and rarely spent over £5,000 (two per cent of those with nothing to divide and five per cent of those going their separate ways). Conversely, 17 per cent of those who had reached a full financial settlement had spent £10,000 or more in the process of doing so (p-value <0.001).

Figure 4.11: Legal and mediation costs incurred in relation to finances, by whether an arrangement was reached

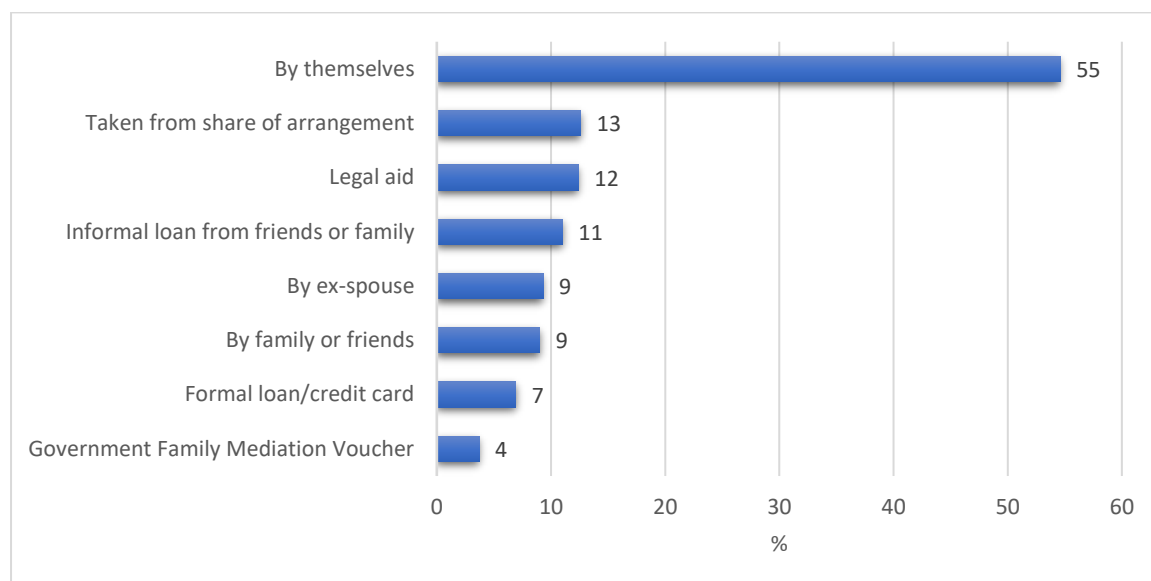


Base: all divorcees incurring legal and mediation costs to reach full settlement (887); all those incurring costs to reach partial arrangement (196); all those incurring costs but went separate ways (226); all those incurring costs but nothing to divide (169)

When asked how these costs had been covered, half of divorcees incurring costs (55 per cent) had covered all or some of the costs themselves and one in eight (13 per cent) had paid out of their share of the financial arrangement. Notable proportions had to borrow money to pay for the costs, with 11 per cent having an informal loan and seven per cent taking out a formal loan or putting the costs on a credit card. Only one in eight (12 per cent) of those incurring costs had Legal Aid to cover the costs (Figure 4.12, below).²²⁹

²²⁹ Given the survey sample population divorced between 2017 and 2022, the small numbers (three per cent) using a Government Family Mediation Voucher are expected, given their recent introduction in 2021.

Figure 4.12: How legal and mediation costs were covered



Base: all divorcees incurring legal or mediation costs (1,563)

Our interviewees told us they had split the costs with their ex-spouse in some cases, particularly the cost of getting the divorce itself, or had taken on all the costs themselves. For others, the ‘bank of mum and dad’ seems to have been a useful resource, with parents supporting their son or daughter either with a loan or a gift:

‘My mum was able to help me out because right at the end of the divorce my money ran out completely. I think it was about £2,500 short and my mum said she had the money available and she said she was quite happy to let me have the money so that we could get it completed and I could get rid of [wife] ...’ (Husband 7)

4.11 Concluding comments

Perhaps contrary to popular misconception, or at least, the picture presented by the mass media, resolving financial arrangements on divorce need not, and does not always entail making use of the legal system, or even any legal advice or support. A third of survey participants told us that they did not have, and did not intend to make, any financial arrangement at all. This did not mean that they had not divided their assets in some way, but rather that they had not felt that they had entered into a formal arrangement. It does not follow, of course, that because they had taken this course, it was a wise one; there is still the question of whether greater information, advice and help with the legal side of things might have enabled them to reach an outcome that may have been ‘better’ or ‘fairer’ for them.

Yet other than the assumption that lawyers are the 'obvious' sources of advice and information for those undertaking divorce proceedings (a source that not all were able to take advantage of, with only around half of divorcees saying they had done so), the data presents a rather chaotic picture of where else divorcees might be able to go. Increasing amounts of information are available on the internet, and there are undoubtedly good websites that can point users in helpful directions and provide significant quantities of clear advice. The government's own websites and signposting do an important job in this regard, with nearly a third of divorcees saying they had used them, and one in seven rating them as their most useful source of information. But there is also a mass of undifferentiated sources of varying authority and clarity, competing perspectives and 'wisdom' on offer from such sources, as well as family and friends, but only a limited supply of free or nearly free robust and accurate advice services. It is perhaps not a huge surprise, therefore, although it must surely be worrying, that one in eight of our participants said they had sought *no* advice or information about their divorce.

A capacity to negotiate and to strike a sensible deal should, one might assume, be associated with the level of knowledge of the real financial position of both parties. Yet only just over half of divorcees felt their knowledge of their ex's financial position was very good or fairly good. Two in five felt their knowledge was not very good or not at all good. Our interview data supplemented this picture, by demonstrating that even joint management of finances during the marriage did not necessarily translate into a clear understanding of the situation of the other spouse. This reflects one of our key findings from Chapter 3 concerning the lack of awareness of family finances amongst a proportion of divorcees. How far legal assistance could remedy this problem by pursuing financial disclosure or interrogating the details more thoroughly depends on the accessibility of such assistance.

Yet only around a third of divorcees made use of lawyers in relation to their financial arrangements. As to be expected, use of legal services was associated with having higher levels of assets; owning rather than renting the matrimonial home; and having a pension. The old days of a reasonably high likelihood of both spouses being represented by a lawyer are, of course, long gone in the wake of the withdrawal of legal aid under LASPO. Our survey found that only two in five divorces involved one or both parties engaging a lawyer in relation to their financial arrangements. Fewer than one in five involved both parties being represented. Once again, the likelihood of both parties using legal services was associated with the level of assets.

It is clear that fear of the cost of legal services is a major factor in deterring divorcees from retaining legal representation, either at all, or for all aspects of the divorce, while the fear that doing without will put a party in a weak position vis á vis their ex is a strong driver to do so. A concern that a spouse would not feel comfortable negotiating, or able to discuss matters with their ex, by themselves, was an important reason for making use of a lawyer, and this was expressed significantly more often by women than men.

Government policy is to encourage and promote the use of non-court methods of dispute resolution: as we can see, the majority of divorcees are already doing so, either on their own, or with the aid of lawyers and mediators. One in five divorcees reported negotiating via lawyers, with similar numbers attempting mediation. Our study confirms what was already known in the wake of LASPO – that lawyers are the main – and best – sources of information about the utility of trying mediation. In our survey, the strongest predictor of using mediation was having used a lawyer: three in ten of those using a lawyer tried mediation, compared with just one in nine among those who had not. Yet mediation remains a minority pursuit; just one in eight arrangements were made via mediation despite means-tested funding being available, compared with one in five cases where agreement had been reached via lawyers. The reasons for using lawyers, and using courts, in preference to mediation, were primarily concerned with a lack of ability to negotiate with the other spouse – this might be to do with the power relationship between the parties, or the refusal of one spouse to engage. Whether it would be sensible to make an effort to reach a settlement through mediation a mandatory prior step to using the courts must therefore be open to doubt.

Across all the arrangements made,²³⁰ half (49 per cent) resulted in a court order, which were nearly always consent orders rather than final orders. Women were twice as likely as men to go to court because they did not feel they could get an agreement with their ex, even with the help of a lawyer. Only one in ten cases were taken to court as contested proceedings, and among these, half were settled after court proceedings had begun, with the other half decided by a judge.

²³⁰ Excluding situations where couples went their separate ways or reported having little to divide.

These findings reflect previous research and data from the Family Courts,²³¹ and they reinforce the importance of recognising that the need for information, advice, support and help with reaching an arrangement arises outside of the court space, and well before any court proceedings may be envisaged. Greater attention might well be paid to ‘front loading’ such information, advice and support, rather than assuming that effort should be put into deterring, or, perhaps, streamlining access to the back end of the system. And greater attention is needed to address the power imbalance between wives and husbands, with wives feeling less confident in negotiating with their husbands, and thus feeling a greater need to engage legal support that they might well be less able to afford.

This raises a final point, concerning the costs of getting divorced. The court fee itself is not an insignificant sum to raise, and for a person who has strong and pressing reasons to end their marriage, such as an abusive spouse, it seems like adding insult to – literal – injury to make them pay substantially for the privilege. But the cost of mediation, even with the availability of the government’s voucher scheme, may be far from negligible and is not a ‘cheap’ option. Indeed, while of course, very substantial sums can be spent on pursuing legal proceedings through expensive lawyers, lawyers’ costs are *not* inevitably high, and the majority of divorcees pay less for their divorce than they probably did (allowing for inflation) for their wedding.

We revert to these issues in Chapter 12. The next chapter considers divorcing couples’ priorities and objectives in obtaining a financial and property arrangement, as well as their (mis)understandings of the law and process.

²³¹ See Family Court Statistics October – December 2022, Table 14, data for 2021 and E Hitchings, J Miles and H Woodward, *Assembling the Jigsaw Puzzle: Understanding financial settlement on divorce* (University of Bristol, 2013).

Chapter 5: Understanding and motivations: divorcees' principles, objectives and perceptions

Key findings

Achieving a 'clean break' was the most common objective reported by both men and women, followed by family and caring goals

- Two in five men and women (40 per cent and 38 per cent respectively) regarded achieving a clean financial break as their most important priority, and nearly one in five (19 per cent) women and 16 per cent of men put having no ongoing contact with their ex at the top of their list. However, those with dependent children were less likely to see a clean break as key.
- Nearly half of divorcees with dependent children (46 per cent of mothers and 45 per cent of fathers) put ensuring stability for their children as their key objective, while twice the proportion of men (15 per cent) as women (seven per cent) considered that keeping a good relationship with their ex should take priority.
- Only a third of divorcees reported fairness as having been their chief consideration.

There was a complex relationship between the reasons given for the ending of the marriage and the way that finances were dealt with

- Two in five (43 per cent) divorcees said they and their ex-spouse had 'grown apart' and around one in ten mentioned different stress factors such as financial, family or parenting, or health issues. A third (36 per cent) cited their ex having had an affair and over a quarter referred to abusive or controlling behaviour (29 per cent) or other forms of 'behaviour' (26 per cent). Women were much more likely (41 per cent) than men (16 per cent) to mention abuse.
- However, the practicalities of the situation and the power dynamics between the parties impacted on how far notions of 'fault' or fairness actually carried through into the arrangements made.

Divorcees exhibited lack of knowledge, confusion and ambivalence towards the law and the legal process

- In the main, a majority of survey participants were able correctly to identify 'true' and 'not true' statements about the law on financial remedies.
- However, interviewees displayed a range of beliefs and attitudes at variance with the law, such as emphasising ownership of assets (and debts) and misunderstanding the position regarding pension sharing. There was considerable misunderstanding and confusion regarding the divorce process itself and what it would entail, about mediation, and about consent orders.

5.1 Introduction

Any negotiation, litigation, or coping strategy concerned to resolve a dispute will be informed by the parties' goals, feelings and expectations. The strict rights and wrongs of a situation

may be of less importance to the parties than their personal key objectives and sense of fairness. A spouse entitled to seek a share of the other's pension, for example, might choose not to do so, in order to set this off against another part of the pool of wealth that the couple has, such as the value of the former matrimonial home, because current housing stability may be more important to that spouse than future financial security. A spouse who might be reluctant to pay child maintenance might grudgingly agree to do so because they wish to preserve a good relationship with the primary carer and with the children themselves. A spouse desperate to move on from a bad experience might be prepared to concede to the other's demands, because a clean break is more important than asserting their 'rights'.

In a situation where, as we saw in Chapter 4, many divorcees make financial arrangements with limited, or even no, legal advice and assistance, their principles and values, emotions and motivations, are of particular significance. If we are to understand the decisions that divorcees take, especially where these might seem to run counter to the legal norms that should govern their situation, then we need to know what they themselves thought best to do in their situation, and why. We noted past research on this issue in Chapter 1 (Section 1.6.3) and here we explore what participants in our survey, and particularly our interviewees, told us about these non-legal, but crucial, personal factors influencing the financial outcomes of their divorce.

5.2 Chapter outline

This chapter covers:

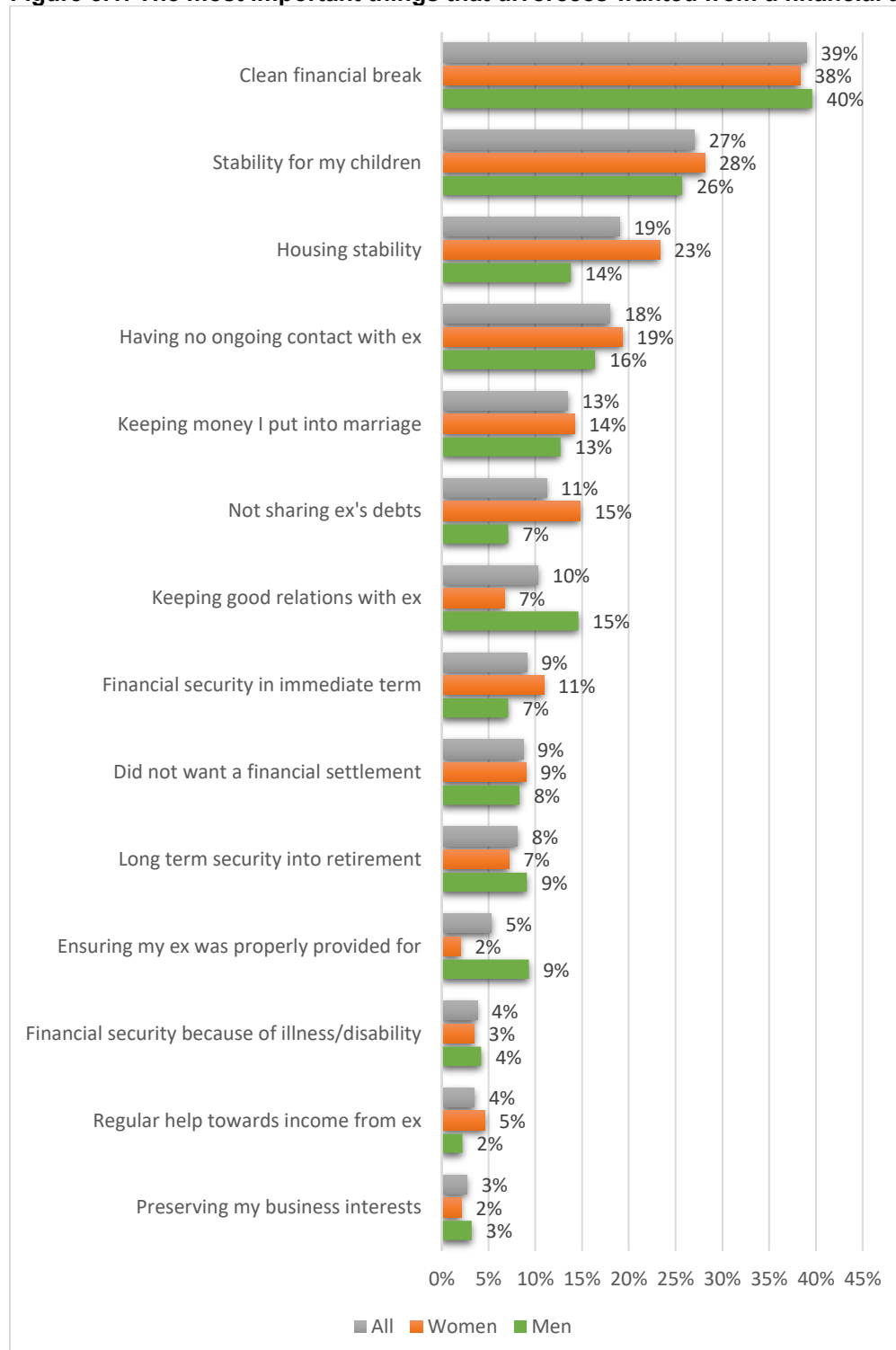
- Section 5.3: The motivations and priorities of divorcing couples
- Section 5.4: The factors that may facilitate or hinder divorcees' motivations and priorities
- Section 5.5: Divorcees' knowledge, perceptions and attitudes toward the law around divorce
- Section 5.6: Concluding comments

5.3 The motivations and priorities of divorcing couples

In order to find out about divorcing couples' motivations and priorities, our survey included a question asking divorcees what they regarded as the most important things that they wanted from a financial arrangement (Figure 5.1, below). Participants could choose up to three options.

The option chosen most often, by both women and men, was a clean financial break (chosen by 40 per cent of men and 38 per cent of women), followed by stability for their children (chosen by 28 per cent of women and 26 per cent of men). Indeed, among those with dependent children, stability was cited by 46 per cent of mothers and 45 per cent of fathers.

Figure 5.1: The most important things that divorcees wanted from a financial arrangement



Base: all divorcees (2,415); all women (1,380); all men (1,035)

There were some options where women and men's responses were statistically significantly different. These included issues linked to current financial security, which women were more likely than men to regard as of key importance, such as housing stability, where a quarter (23 per cent) of women, but only 14 per cent of men rated this as most important (p-value <0.001); financial security in the immediate term, chosen by one in nine (11 per cent) women and seven per cent of men (p-value 0.009); and not sharing their ex's debts, where 15 per cent of women but only seven per cent of men ranked this at the top of their list (p-value <0.001). By contrast, factors linked to a positive relationship were more likely to be ranked higher by men than women. For example, 15 per cent of men but only seven per cent of women regarded preserving a good relationship with their ex as most important (p-value <0.001), and just two per cent of women but nearly one in ten men (ten per cent) said that ensuring their ex was properly provided for was most important (p-value <0.001).

Our qualitative interviews further explored and shed light on some of these motivations and priorities. Some of those most commonly mentioned are discussed below. Others are discussed later, in section 5.4.

5.3.1 *Achieving a clean break*

A financial clean break

The most commonly cited priority for divorcees in both the survey and the interviews was having a 'clean break'. In the interviews the term 'clean break' was used broadly by participants. Some used it in relation to the separation of finances, whereas others used the term to talk about a broader process of 'moving on' from the relationship and cutting all ties with their former spouse. Some also seem to have interpreted it as getting the divorce process itself over and done with, with one interviewee, for example, noting that: '...this split is hard enough as it is, I'd like to get out of it as quick as possible and move on with my life really. So, that was my main motivation' (Wife 16).

The importance of having a clean break was discussed by both women and men, but there were some differences between the way these two groups used the term. Husbands for whom a clean financial break was important when coming to an arrangement talked about gaining control over their finances and ensuring that the move from being a couple to becoming two single people included a clear financial separation. As one husband explained:

'It was always about being a clean break. Both of us had financial security with our jobs and things. We didn't need to rely on each other in the future for anything or have that lingering connection that wasn't there anymore.'

(Husband 16)

Other interviewees had specific reasons for wanting a financial clean break. A husband who found out after separating from his wife that she had accrued debts in both their names, explained that:

'Predominantly for me it was a clean break, you know, it was silly things like I did a credit search because it was saying that my credit score was low, and I could see her name all over my credit file, "known associate" and stuff like that and it was just – silly to look back at it now but it was things like that that were getting to me from that point of view of "no, I need to make a break from this and I can prove that I'm not associated with that person anymore".'

(Husband 4)

Another husband, who provided some financial support for his ex-wife on separation, talked about the importance of ensuring there was an end point to that support:

'I've helped her out for the first year but then I can't keep doing that if we're not together and we're divorced ... That's why we agreed on a lump sum, so she doesn't have to keep coming back and asking, or I don't have to keep giving and just prolonging something that didn't need to be stretched out.'

(Husband 23)

In the interviews, female participants tended to talk about having a 'clean break' in less specific terms. One wife told us that:

'I just wanted everything done, I wanted it completely, I just wanted everything finished completely, financially, everything else.'

(Wife 5)

Another, who had experienced domestic abuse during the marriage, explained that:

'I just wanted done, I wanted a big, fat, black line underneath it, you go your way and I'll go mine and I'm more than capable of supporting myself. I would never have wanted to be beholden to him for a half penny.'

(Wife 6)

One wife who was still waiting for the sale of the marital home to go through and the equity to be split, explained that she had agreed to take less equity than she originally expected, in the hope of having a 'clean break':

'I wanted to end up comfortable, that I could afford to buy a property, which I am in the process of [although] not the one I wanted. I've taken less but I feel now I can have a clean break, by taking less, as long as he keeps his side of the bargain, fingers crossed that he will.' (Wife 7)

Moving on/walking away

As discussed above, the term 'clean break' was used by some interviewees to talk about cutting ties with their former spouse more broadly, and not just in relation to the separation of finances.²³² As we saw in Figure 5.1, having no ongoing contact with their ex was prioritised by 19 per cent of women and 16 per cent of men taking part in our survey. In the interviews, both women and men talked about 'moving on' as meaning more than just a clean financial separation. As one participant put it: 'I just wanted, you know I wasn't interested in it, it was just like "just give him what he wants and let me get free" sort of thing' (Wife 25). Another told us: 'I was worn out. I just wanted an end to it. I didn't want to have to keep looking over my shoulder' (Husband 12).

For interviewees whose marriages had ended acrimoniously, 'moving on' or 'walking away' could become a priority. One wife whose marriage ended when her husband had an affair explained this:

'I would say because of the nature of what happened ... I didn't want him to think in any way that I needed him to support me, stupidly or whatever. I always felt like I was a good wife and contributed and did everything, and it's almost like you can't, you're so upset you just, you want to run away from it I think, that's what it is, you want to run away and start again'. (Wife 19)

Another, who had experienced domestic abuse from her former husband over a number of years, explained why moving on was more important to her than sorting out finances:

'Well, I'll be honest, because the way the relationship was, because he was abusive and it was horrible, I basically had to get the locks changed, it wasn't very pleasant at all. So, the money factor was right at the bottom of

²³² The original judicial justification for a financial clean break was also to enable the parties to 'move on' in their lives: see *Minton v Minton* [1979] AC 593, HL at 608 per Lord Scarman: 'An object of the modern law is to encourage each [spouse] to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down.'

my pile, and I know that sounds ridiculous. Everyone that I speak to normally it's at the top, but for me all I wanted was my life back.' (Wife 17)

Linked to 'moving on' or 'walking away' was a desire discussed by some interview participants to preserve their mental health and wellbeing. One husband told us:

'I know I've come out massively financially worse off, hugely, right but then that's something that I've had to take on the chin and deal with because ultimately it's stuff that you can't put a price on isn't it, people's mental health, your relationship with the kids and your relationship with other people in your life.' (Husband 14)

Some interviewees described reaching a point during divorce proceedings where they had to choose between either continuing to fight for a financial arrangement or 'walking away' to protect their mental health:

'... when [pensions] came into the negotiations in mediation, he only offered to give me that menial amount providing I don't try to touch his pension and he had a massive pension. Again, my mental health just wanted, I just wanted it off my mind, so I just gave into everything then.' (Wife 3)

5.3.2 Prioritising stability for children and meeting children's needs

Stability for children was a key motivation chosen by 46 per cent of mothers and 45 per cent of fathers with dependent children in the survey. Prioritising children's needs and focusing on stability for children was mentioned by both female and male interview participants. Interviewees spoke about the impact of divorce on children, and their desire to shield their children from this as much as they could:

'I want my children to feel safe and secure and happy. I didn't want them to keep overhearing her on the phone or seeing me and her arguing face to face about money. The kids already, as you can imagine, saw a number of arguments when we were going through the splitting up phase. Let's just not put them through that anymore.' (Husband 1)

Many of these participants spoke about compromising or conceding when it came to the division of finances, in order to spare their children from the emotional upheaval of divorce as far as they could:

'I know the impact that a separation can have on children. So, to me, that just trumped any argument over debt and finance and everything else. And I think as well having friends around me who were going through the same bitter, bitter separations and divorces, where children were just pawns in the middle of this game. I wasn't prepared to go down that road at all, and if that meant swallowing a bitter pill over finances, that is, I think, where he trumped me in a way because I wasn't, I just wasn't prepared to argue over money.' (Wife 28)

Other interviewees explained how they considered stability for their children as part of their decision making regarding particular aspects of their divorce arrangements. For one husband, this was the reasoning behind the decision that he would stay in the family home, rather than it being sold:

It was the family home; I didn't want them to go through two bits of change, like two different houses, so it was more of a stepping stone really – one of us would keep the family home, and because I was the main breadwinner, it made sense that I explored those options and made that happen.'
(Husband 25)

5.3.3 *Financial and housing stability*

As Figure 5.1, above, highlights, and reflecting studies discussed in Chapter 1,²³³ housing stability, financial security in the immediate term and not having to share their former spouse's debts were important priorities among female survey participants, particularly those with children. As one interviewee told us: 'I think we just wanted to know that we had a roof over our heads, as much as we could afford without getting into debt again, definitely to be debt free' (Wife 26). For interviewees who came out of their marriage with debts, financial stability and avoiding further debt were an important consideration:

'I just wanted to make sure that all my bills were paid. That I was never in arrears with my bills, on any of my bills, and if I needed something I would save up for it ... If we can't afford it, we don't buy, it's as simple as that. So and yeah, just the stability, and to know that I'm not gonna get any knock at the door or anything.' (Wife 27)

For those who had become single parents, and did not have an agreement about child maintenance in place, financial stability was an upmost priority:

²³³ See Chapter 1, section 1.6.3.

'I was kind of thinking that I need to really just know how to live and have my finances sorted with me and my children, separate from him, because in my mind... you know we weren't particularly high earners or anything like that so we couldn't go back and forth and discuss money and things and you know, but if for any reason he couldn't contribute whatsoever I just knew that I had to rely on myself, so I need to just make sure that I had my affairs in order, that I could look after my children, pay my bills and anything else that I get from him is a bonus but it's not that I'm dependent on it.' (Wife 14)

While women were more likely to prioritise this area, it was mentioned by men as well, as the excerpt below shows:

'For the children, and for my part as well, I wanted to be able to be carrying on working, carrying on living, in an accommodation, so I didn't want me to be kind of not, I don't know, not living on a sofa somewhere. I wanted my situation to be, I suppose, as painless as possible.' (Husband 11)

Another husband, who had transferred his share in the family home to his former wife, spoke about how fortunate he felt that housing security was not an issue he needed to worry about:

'I am fortunate in that I didn't need to sell the house in order to buy the next place and I did have somewhere to go because I've got a bit of a property portfolio and I really appreciate that.' (Husband 14)

5.3.4 Protecting assets and contributions to the marriage

Thirteen per cent of survey participants said that keeping the money they had put into the marriage was a motivating factor for them (see Figure 5.1, above). One interviewee explained why keeping the property that he and his former wife had been living in was his key focus when sorting out finances:

'I had saved more, I had more invested in the property and the property that I had at the time, it was all mine, it was nothing to do with her and I had the prospect of losing it at one point, so my main motivation was to save my property and then just to move on as quickly as possible.'
(Husband 2)

Taking out what they had put into the marriage was particularly important to those who had been married (and divorced) before:

‘When I got married to him, I was probably in a better financial position than he was. I think when it’s a second marriage that unfortunately that’s how it is, it’s yours and you know you have certain monies and that was mine and he had his monies as well ... I was advised by a solicitor in that this is, you know, this is what you need to do. You’ve got to protect yourself. You’ve got to protect your children.’ (Wife 10)

Protecting contributions made to pensions was another important issue for some interviewees. As we discuss in Chapter 7 (section 7.3), pensions were largely seen as ‘belonging’ to the individual spouse rather than as a product of the marriage. As one husband told us:

‘We had joint current accounts and joint savings and everything but when it’s separate things, either through work, or whatever, just keep it separate. So, what I’ve paid into my pension is all going to me, and what she’s paid into hers will go to her. We just decided to do it that way.’ (Husband 11)

5.3.5 Resolving things amicably and maintaining good relationships

For other interview participants, the primary motivation was coming to a financial arrangement in an amicable way, trying to preserve relationships wherever possible. This approach involved compromise and considering the situation from different viewpoints:

‘I think, yeah, keep it as amicable as possible. Give and take, accept that you’re not going to get everything your own way, but try and put yourself in their shoes, I thought was a good way of doing it, as well. What if you were her? What would you accept? Sort of, do it from that angle. Try and not just think of your own needs.’ (Husband 1)

As we saw in Figure 5.1, 15 per cent of men and seven per cent of women taking part in our survey prioritised keeping good relations with their ex. Some did so because they did not feel that the divorce was anyone’s ‘fault’ and they wanted to remain friends:²³⁴

‘She didn’t do anything wrong and she’d committed a portion of her life to me and our children. I think you have to treat people in the way you’d like to be treated yourself and I’m a firm believer of that and I felt that she should be treated in an honourable way, and that’s what I did.’ (Husband 10)

²³⁴ Fault is discussed further in section 5.4 below.

For other interviewees, especially mothers, taking an amicable approach was important in order to increase the likelihood of successful co-parenting in the future:

‘Me being on civil terms with him was more important than me fighting for money because at the end of the day I thought if, you know, we become hostile, that’s going to affect the relationship with the children, so I’d rather play nice and just get on with what I can get on with, so that obviously we had a decent relationship to co-parent.’ (Wife 14)

Some of the participants who were fathers spoke of the importance of keeping good relationships with their children, and how, in turn, this was linked to an amicable approach to sorting out finances with their ex. As one interviewee told us:

‘I won’t be that bitter person, I don’t want to be 75 and sat on my own with my grandkids not coming round, because “dad didn’t pay for this” 20 years ago.’ (Husband 14)

5.3.6 *Taking a ‘fair’ approach*

Some interview participants discussed how they had tried to take an approach that was fair. As one interviewee explained:

‘I think a lot of it comes down to personality and how you are as a person. And I think for me it’s about fairness. And even though, you know I hated him at the time and didn’t love him and everything else, I wasn’t going out of my way to rip him off. I didn’t want to drag it through the courts, you know, to make it some horrible experience.’ (Wife 28)

Concepts of fairness varied from person to person, however, with some interviewees talking about the need to be fair to oneself as well as others:

‘I wanted to be fair – ultimately I wasn’t trying to stitch anybody up, it was a case of I wanted to do the fair thing but be fair to myself as well and not be too fair if that makes sense.’ (Husband 9)

Being ‘fair’ was not, for everyone, about dividing finances or assets equally, or taking an amicable approach. One interviewee talked about how, when advised that she and her former husband should split the equity in their home 50:50, she began to question the fairness of this in their situation:

‘I started thinking deeper and I thought: “Well, I’ve always paid the mortgage”; my parents helped with the deposit for that property because

he wasn't in a secure job, he was in and out of jobs and all sorts of ... I was the main person with the job I had [...] When the solicitor said he's entitled to half I was like, "Hmm, that's not really fair. I've contributed, I've worked, he's not paid any maintenance". I just wanted what I put in, we both came into this marriage, we both brought things so if this marriage is ending, we both take away what we put in. I saw that as simple and clear cut as that.'
(Wife 11)

Another interviewee, who signed over his share in the marital home to his former spouse, told us: 'I knew [things] would be sorted out in the end. Like I say, I'd done it before so I know that if you're fair with each other it will work out' (Husband 22).

5.3.7 Considerations taken into account when making financial arrangements

As the above section highlights, there are many different, and sometimes competing factors to be considered by divorcing couples when sorting out their finances. This variety is also demonstrated in Table 5.1 below. In addition to the findings above about the most important things that divorcees wanted from a financial arrangement, our survey also asked divorcees what was taken into account in making (or trying to make) an arrangement. There were three questions which asked:

1. Those with full or partial arrangements: What was taken into account when any arrangements were made?
2. Those with partial arrangements or those trying to make an arrangement: What would they like to be taken into account as and when any future arrangements were made?
3. Those with no arrangement who were not longer trying to make one: What would they have liked to have been taken into account had an arrangement been possible?

Participants could choose as many answers as they wished from a list of options. In Table 5.1, their answers have been grouped into financial and practical considerations; family and caring considerations; legal considerations and fairness; and relationship considerations.

Table 5.1: Factors taken into account when making a financial arrangement

	Taken into account when full or partial arrangement made	What would want to take into account if arrangement made	What would have wanted to take into account if had been able to make arrangement
	%	%	%
Financial and practical considerations			
The value of the home	37	17	17
Having a clean break	36	14	28
Whose name the property/money/pension/assets/belongings were in	18	11	8
The value of the pension	18	9	24
Who had money/property before marriage	15	8	9
Who had paid in more during the marriage	14	15	28
Whose name the debts were in	12	8	29
A pre-nuptial agreement	2	1	5
Family and caring considerations			
Where the child(ren) were living	21	9	24
The time I/my ex had spent looking after the home/children	15	16	13
Who most needed the money after the divorce	13	12	18
Providing ongoing financial help for me/my ex	8	12	4
Giving some of it to our child(ren)	5	14	9
Legal considerations and fairness			
What one/both of us thought was fair	34	12	23
What we were advised by a lawyer/other professional	22	11	0
The length of the marriage	16	9	8
What the law said/we thought it said	13	7	7
Relationship considerations			
Trying to keep a good relationship with my ex	21	15	15
Whose fault it was the marriage had ended	9	17	17
Frightened or intimidated by my ex ²³⁵	8	n/a	n/a
Other reason	2	2	9
Don't know	3	11	6
Prefer not to answer	3	5	7

Base: Those with full or partial arrangements (1,398), Those with partial arrangements or trying to make arrangement (318), Those who failed to make an arrangement (46)

²³⁵ This response was not provided as an option for two of the questions.

A third of divorcees who had reached a full or partial arrangement reported that they had taken into account the value of the home (37 per cent), having a clean financial break (36 per cent), or what one or both parties thought was fair (34 per cent).

Around one in six had considered matters related to ownership, such as whose name property was in (18 per cent), who had brought what into the marriage (15 per cent), and who had made a bigger financial contribution during it (14 per cent). Some interview participants discussed these types of considerations. One wife, for example, described the rationale behind the arrangement that she would keep the home, which was solely in her name:

‘I have my house, you’ve obviously come into the relationship, don’t expect to draw off my asset because this is what I’ve earned. I’ve only met you maybe five years down the line and say if we were together for two years and then you want part of my asset that wouldn’t have sat well with me.’

(Wife 4)

Caring and family considerations were also relevant, with the children’s living arrangements, and keeping a good relationship with their ex mentioned by around a fifth (21 per cent) of divorcees with arrangements. Reflecting the comparatively low level of resort to legal services (see Chapter 4, Section 4.5), only a fifth (22 per cent) of those with an arrangement mentioned legal advice and just one in eight (13 per cent) mentioned having regard to what the law was – or what they thought it was.

Amongst divorcees with partial arrangements, or still trying to make an arrangement, a number of considerations received equal attention. Around one in six mentioned the value of the home (17 per cent) and who had paid in most during the marriage (15 per cent) as well as achieving a clean break (14 per cent), but similar proportions also referred to who had looked after the children (15 per cent) and keeping a good relationship with their ex (15 per cent). Somewhat at odds with this last, 17 per cent also mentioned fault as a factor they would take into account.

One husband, whose arrangement was not yet complete as the matrimonial home was still on the market and it was as yet unclear if there would be any equity to share after paying off debts, told us that:

'She was just very bitter. Had we stayed together we probably would have paid each other's debts off because it would have come out of a joint pot [...] She'd be like "that debt is yours". "But it's not, we both went on the same holiday that was paid on your credit card", it's just like that really. I had to stand firm and say "look, I'm paying things off on my IVA that were through you. Yes, they're in my name but a phone contract that you didn't adhere to. A loan that you didn't adhere to", type thing.' (Husband 21)

As well as having disputes over debt and contributions to the marriage, there were interviewees who had experienced domestic abuse during the marriage and had been unable to come to an arrangement as a result. One interviewee, who had not yet received any child maintenance from her ex-husband, told us:

'I'm still in arguments or in problems about my child arrangements because he's just difficult basically. And I still have things lingering on even now, two years later. It was thought of as 'I just need to get away' and I wanted everything to be as clean cut and just [...] Maybe because we've got children it doesn't really feel like it's clean cut (Wife 24).

Of those divorcees who had not been able to come to an arrangement,²³⁶ nearly three in ten said they would have wanted to take into consideration achieving a clean break (28 per cent), who had paid in more during the marriage (28 per cent), and whose name the debts were in (29 per cent), while a quarter referred to fairness (23 per cent) and where the children were living (24 per cent). One in six (17 per cent) mentioned fault. One of our interviewees provided a further insight into the position of those who had failed to secure an arrangement:

'Nothing was really sorted out; I was just told what to do and that I had to do it [...] It was just kind of, I left, just filled in the papers I was told to fill in, and that was the end of it really. There was no what I thought would have happened which was you go and see a solicitor each, it all gets done amicably because your solicitors agree it and then... but that's just not what my reality was at all really. And he was quite a controlling man, my husband, as well [...] So, I just kind of had to walk away with nothing.' (Wife 21)

²³⁶ The small number of participants in this group should be noted.

When the answers of the group who had made a full or partial arrangement, and the group who were still trying to reach an arrangement were disaggregated by gender, some interesting findings were revealed. Among the group who had made a full or partial arrangement, women were more likely than men to say they took into account what they were advised by a lawyer (26 per cent, compared to 17 per cent of men, p-value <0.001). Women were also more likely to have taken into account the length of the marriage (18 per cent of women, compared to 13 per cent of men, p-value 0.030), the time that one person had spent looking after children (18 per cent of women and 11 per cent of men, p-value 0.006), and who needed money after the divorce (16 per cent of women and 10 per cent of men, p-value 0.017). These considerations were reflected in the interviews. One interviewee, whose children were living solely with her, and whose ex-husband refused to pay child maintenance, explained that:

‘I had to think that there were three of us to deal with, not just, you know, he could think of himself but I had to think of two other people. I had two other people in the equation as well.’ (Wife 15)

In addition, more women than men said that being frightened of or intimidated by their ex was a factor in the arrangement that they came to (11 per cent of women, compared to 5 per cent of men, p-value <0.001). All of these factors suggest a focus on the consequences of the marriage for women, and their comparative financial and emotional lack of bargaining power vis á vis their former spouse. Men, on the other hand, were more likely to say they took into account trying to keep good relations with their ex (24 per cent of men, compared with 18 per cent of women, p-value 0.036).

Among the group who were still trying to reach an arrangement, women were again more likely to say they were considering time spent looking after children (24 per cent, compared to nine per cent of men, p-value 0.027), as well as the value of pensions (chosen by 14 per cent of women and five per cent of men, p-value 0.010).

5.4 The factors that may support or obstruct divorcees’ objectives

The above section discussed the priorities, motivations and considerations that were important for divorcing couples as they attempted to come to an arrangement around finances. The extent to which these priorities and motivations can be actioned, fulfilled or realised depends on other factors. For example, it may not be possible to have a clean financial break where there are ongoing child maintenance responsibilities; and it may be very difficult to resolve things amicably if the marriage has ended due to one spouse’s abuse

of the other. Some of these considerations are discussed below.

5.4.1 Reasons for the marriage breakdown

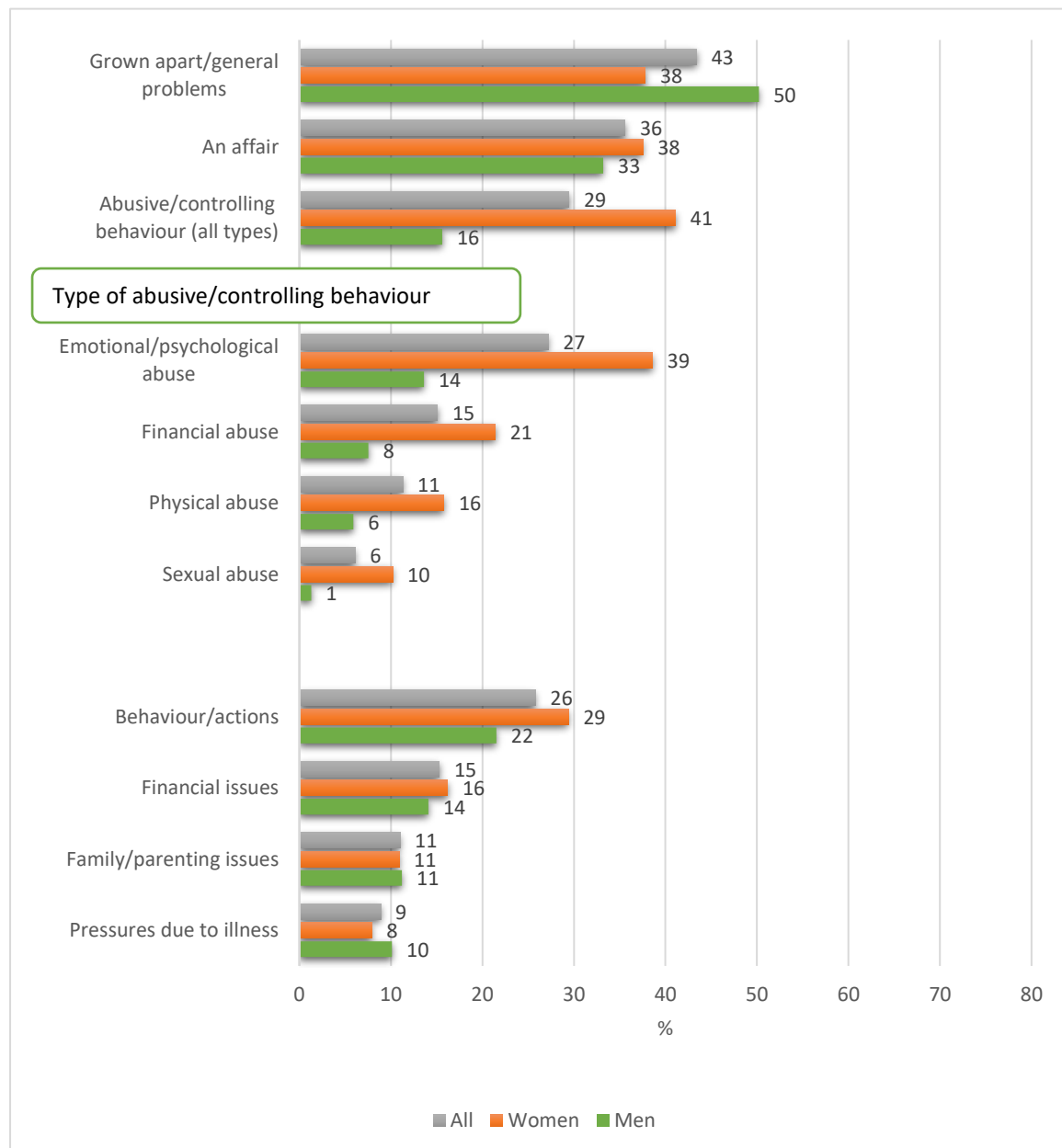
Divorce law on financial arrangements does not usually take into consideration the reasons why the divorce ended. Nonetheless, these may well be included within the rationales given by divorcees for wanting particular types of arrangements, both in terms of the nature of the arrangement (e.g. the need for a clean break) and perceptions of what is fair.²³⁷ For arrangements made where couples negotiate between themselves without legal advice or recourse to the courts, these have the potential to be influential.

For this reason, the survey included a question on why the participant and their ex-spouse split up,²³⁸ offered a potential list of reasons (with the option of writing in another) and asked participants to tick as many as applied to them. Figure 5.2, below, shows the range of responses, across all participants and split by their gender.

²³⁷ See Chapter 1, and S. Arthur et al, *Settling Up, making financial arrangements after divorce or separation* (National Centre for Social Research, 2002).

²³⁸ Note, they were also asked for the reason cited on the divorce application, reported in Chapter 4.

Figure 5.2: Reasons for separation, by gender



Unweighted bases: All divorcees (2,415); Female divorcees (1,380); Male divorcees (1,035)

The most common reason given – by 43 per cent of divorcees – was that they had simply grown apart. As one wife said:

‘Our break-up was very much two people had just kind of fell out of love with each other. I think that makes a big difference as well. There was no infidelity or anything like that. I think that makes a massive difference because there’s nobody the victim.’ (Wife 18)

But the other most common reasons all involved the actions or ‘fault’ of one or both parties. A third (36 per cent) of divorcees cited an affair as a reason for them splitting from their ex-

spouse. Interview participants made clear distinctions between cases that involved 'fault' and those that did not, with one interviewee noting that:

'I understand if there's someone else involved and you've been unfaithful or not been a good person, I can understand there's – not revenge but there's, "I want something out of this".' (Husband 16).

Yet the extent to which 'fault' actually influenced outcomes was complicated. One husband told us:

'... up until she had the affair we'd always gone 50:50 on everything and then once I found out she'd been sleeping with somebody, I stayed in the house and kicked her out, because obviously she was the one who cocked-up.' (Husband 5)

However, because they had come to a 'gentleman's agreement' before they married that if they ever separated, they would split everything 50:50, he decided to abide by this, even though he believed (erroneously) that he would have been entitled to a larger share.

Another husband noted that:

'At the start, blame was very, very much important to me because ... I was being sort of tarnished with a brush of "oh, you're divorced" and to be very blunt, when you talk about being divorced as a man you say, "oh so what did you do wrong?" it's the first thing anybody will say to you and for me, in this situation I wanted to really highlight that I wasn't at fault and that was a really important thing for me. But then throughout the process what became more important from what I learnt about how the finances could be affected and stuff like that, it was actually more important for me to make sure there was a clean financial break in the end.' (Husband 4)

This echoes the findings of the *Settling Up* study (see Chapter 1, Section 1.6.3) that when it comes to the finances, reality and practicality will usually take precedence over feelings of hurt and wounded pride. But it may also come down to the strength of the personalities, and the power relations between the couple. One wife, (Wife 25), whose husband had met someone else but who then decided that he wanted to continue the marriage, left the matrimonial home, only for him to refuse to let her take any of her belongings, including sentimental items such as photographs of their children, and she agreed to the house being put in his name in return for less than a quarter of the equity.

Fault in the form of domestic abuse was more complex still. That three in ten (29 per cent) divorcees cited abusive or controlling behaviour as a reason for the split is concerning, with nearly everyone who raised this as an issue (98 per cent of women and 88 per cent of men) unsurprisingly saying that it related to their ex-spouse's behaviour. The figures were, however, much higher for women (41 per cent) than men (16 per cent of men) (p-value <0.001). The most common form of abuse reported was psychological or emotional abuse (39 per cent of women and 14 per cent of men), followed by economic abuse (21 per cent of women and eight per cent of men). The prevalence of this form of abuse, especially for women, has particular implications in relation to financial arrangements on divorce. One wife told us that she had moved out of the matrimonial home eight or nine years before the divorce, because of the husband's abuse, towards both her and the children. Yet her husband would not agree to sell the house, in her view because:

'... he just wants to be still bound by the house so he gives me a bit more grief you know, not to release, and so I don't have the peace of mind, you know, that sort of thing. So it's always to have that upper hand on the other individual so they can still have that control.' (Wife 2)

A quarter (26 per cent) of divorcees cited other forms of behaviour or actions as the reason for splitting with their ex-spouse, with again, more women (29 per cent) than men (22 per cent) citing this (p-value <0.001), with the majority (95 per cent of women and 81 per cent of men) talking about the behaviour of their ex-spouse.

5.4.2 Recognising each spouse's financial starting point and post-divorce requirements

Another factor influencing the types of arrangements made by divorcees is the financial starting point of each spouse, and what their requirements might be going forward. As discussed in section 5.2, female survey participants were more likely to say that when making, or trying to make a financial arrangement, they took into account the time that one person had spent looking after children. When the survey data presented above in Figure 5.1 is disaggregated by whether the participant had dependent children with their ex, it shows that divorcees with dependent children were less likely to list a clean financial break as one of their key considerations (35 per cent, compared to 42 per cent of those without dependent children, p-value 0.006), or to prioritise having no ongoing contact with their ex (12 per cent, compared to 22 per cent of those without children, p-value <0.001). Those with dependent children were also less likely to focus on long term security into retirement (six per cent, compared to ten per cent of those without children, p-value 0.010), and more likely

to prioritise getting regular help with their income from their ex (five per cent, compared to three per cent of those without dependent children, p-value 0.017).

In the interviews, participants explained how they had tailored arrangements to ensure that they took account of financial imbalances and requirements going forward. Most commonly these imbalances had arisen from one spouse having been engaged in unpaid care work. As one wife told us:

‘We basically made the decision when we got married and had kids that I would be kind of be a housewife. My career was still sort of in its early days and I was doing very, very well. I mean, I was earning significantly more than him at that point ... I basically completely put my career not just on hold, it will never, ever go back to that, it will never take off again; I’m too old. [Now] my ex-husband earns significantly more than me. His ability to get a large mortgage is obviously much easier than mine. My ex-husband is one of the most fair men literally walking the planet so he said, “you know, it makes sense for you to take a bigger chunk of this”.’ (Wife 18)

Another participant discussed how the years his ex-wife had spent taking care of their children formed part of decision making around sharing his pension:

‘I thought my ex-wife, she looked after the kids for maybe two or three years, didn’t work so I kind of thought it makes sense, I can’t just not give her any pension because she didn’t work for a period when she was looking after the children so she’d halted her career to look after our kids.’ (Husband 9)

Other couples made arrangements based on discrepancies in earnings. One husband explained why he agreed to pay off the majority of their joint debts as part of their arrangement, noting that:

‘I knew that she couldn’t afford to pay for herself effectively, she would only just be affording to pay for the house, you know, she’d be on her backside, whereas I wasn’t exactly well off but I think I was on about £30,000 at the time but she was on about £12,000 so that was my decision really.’ (Husband 17)

Some interviewees described how these differences in financial positions were woven into the process of negotiating an arrangement on divorce, with initial expectations and priorities needing to be readjusted:

'I went into it initially thinking in terms of what we'd each put into it. And then acknowledging that yeah okay, she should take more out of it than she actually put in, because there was such a disparity in our salaries at the time.' (Husband 20)

Not all cases ended in agreement however, and the value of unpaid care within a marriage was not always recognised. One wife told us:

'I thought he would give me 50:50 of everything, I thought it would be 50:50 but as he said, he said to me "you haven't paid in as much over the years" and that's where it all started because I hadn't paid in. I said "but I was looking after our child, it's our child". "Yes well, you wanted to get pregnant" and I said "well, it takes two to tango, it's not just me".' (Wife 15)

Unsurprisingly, older divorcees were more likely to mention issues linked to longer-term security as factors they had wanted to take into consideration than younger participants. For example, one in five divorcees (22 per cent) aged 60 and over mentioned long-term security into retirement, compared to only eight per cent of those aged 45 to 59 (p-value <0.001). Housing stability was a consideration referred to by the same proportion (22 per cent) of the over-60s, although this was even more important to divorcees aged 45 to 59 (24 per cent) (p-value, <0.002). By contrast, only around one in seven divorcees aged under 45 (15 per cent of those under 35 and 16 per cent of those aged 35 to 44) mentioned either of these factors.

The amount of total assets within the marriage also appeared to influence each party's priorities and considerations. Wanting a clean financial break was chosen more frequently by survey participants with £500,000 or more to divide (47 per cent, compared with 39 per cent of those with £100,000-£499,999, and 34 per cent of those with less than £100,000, p-value 0.001). Long term security into retirement was also prioritised more by those in the higher assets group (18 per cent of those with £500,000 or more, compared with two per cent of those with less than £100,000, p-value <0.001). Meanwhile, those in the lower assets group were more likely to say they were concerned about having to share their ex's debts (13 per cent of those with less than £100,000, compared with five per cent of those in the higher assets group, p-value <0.001). They were also more likely to say that they did not want a

financial arrangement at all (13 per cent, compared to five per cent in the higher assets group, p-value <0.001).

The qualitative interviews illustrated some of these differences. In one case where the assets in the marriage were under £100,000, the husband explained that:

‘In hindsight the debt was more of an important thing to me than the actual physical assets because that was definitely more of a value, so my priority was the car because I needed to get to work every day, and the other priority was the debt and that not being incurred anymore.’ (Husband 4)

Another participant, who had no assets at all to divide on divorce, noted that his priorities were:

‘Figuring out the remaining joint debts that were held, the remaining cost of the wedding we were still paying off in terms of how much each person contributed to that each month, and also when there was going to be a defined endpoint to those sort of payments being made. We didn’t get as far as pensions and stuff like that because a pension at the time was something that I wasn’t able to afford to pay into anyway, my wife wasn’t able to pay into one either.’ (Husband 24)

Meanwhile, an interviewee with assets of £500,000 or more to divide, told us that: ‘One of the principles was that I didn’t want any ongoing commitments, I was determined it should be a clean break’ (Husband 20). It is worth noting, however, that interviewees in the higher assets group who had children did not tend to stress the importance of a clean break. These participants were more likely to highlight the importance of stability and quality of life for everyone. One wife, for example, said:

‘I mean, you want the best for your kids and you want to know that you’re not going to be financially screwed over or homeless and I don’t want to have bad relations with anybody. So, is that too simple an answer? I mean surely anyone would want that?’ (Wife 18)

5.4.3 The availability and influence of legal advice

The arrangements that divorcing couples come to, and the extent to which these arrangements reflect initial motivations and priorities, can depend on whether parties can access legal advice, and the level of knowledge divorcees have of their legal entitlements (this is discussed further in sections 5.5 and 5.6). As discussed above (see section 5.3), 22

per cent of survey participants who had made a full or partial arrangement said they took into account what they were advised by a lawyer. When broken down by gender, the figure was 26 per cent of women and 17 per cent of men (p-value <0.001).

The qualitative interviews provided some potential reasons as to why some divorcees might decide not to act on or align with the legal advice they were given. One husband discussed how he had felt that his initial motivation towards taking an amicable approach conflicted with the approach advocated by his solicitor:

‘I felt really pushed by the solicitor to come up with this massive list of stuff ... even though we were quite, well I was trying to make it quite amicable, and keep the peace for the sake of the kids and you know, I still had to see them, I still had to see my ex-wife, so why make it difficult? I suppose eventually I did stop, after even a couple of weeks and just think, actually stop, what is best for everybody – rather than what is equitable and legal and you know, because they’re very different things, aren’t they?’

(Husband 14)

Another interviewee, who had been in an abusive relationship and when making a financial arrangement was still sharing the marital home with her husband, explained that, although her solicitor advised otherwise, she felt unable to argue for anything other than a 50:50 split:

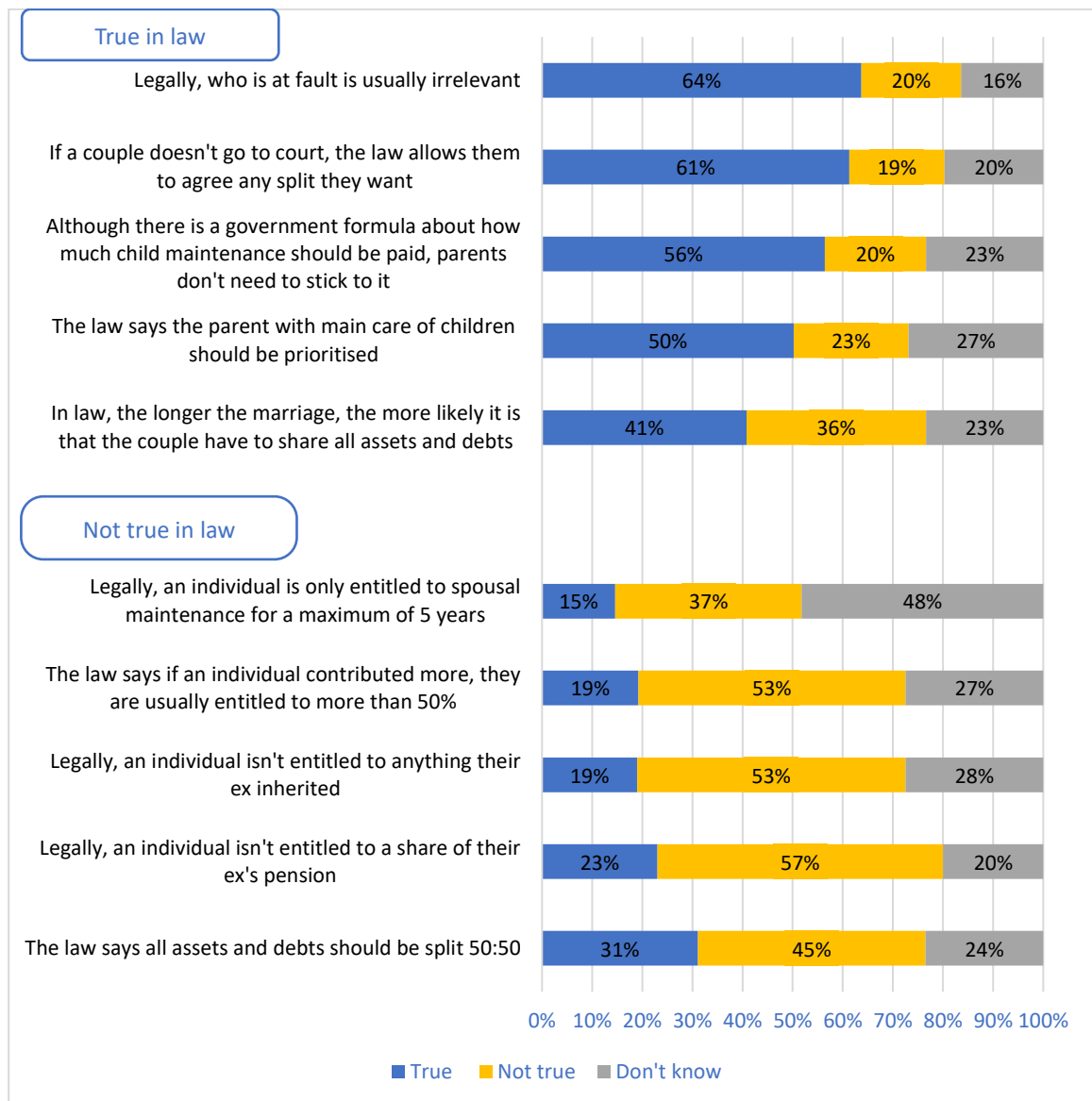
‘The solicitor wanted to take it all into account but it just felt like “I can’t have those conversations, no”. So, no, I don’t know what the fair split would have been. The solicitors obviously were trying to tell me it wasn’t a fair split but they weren’t able to tell me what a good split would be ... I think they probably thought “Oh my god, what is this stupid woman doing?” But I just ploughed on because it was the easy, well, the easier, of all the options to just do it 50:50, or as much as we could do.’ (Wife 26)

5.5 Divorcees’ knowledge, perceptions and attitudes toward the law on divorce

The arrangements that divorcing couples come to, and the approaches and rationales used in reaching those arrangements, can depend on how divorcees understand the law and their entitlements under it. The quantitative stage of our research involved asking a sample of divorcees for their views on a range of statements about the law on divorce; some true, and some untrue. The results are presented in Figure 5.4, below. It is important to note that

these results reflect divorcees' knowledge of the law *after* they had been through divorce themselves. Therefore, it cannot be assumed that the results reflect their knowledge before they began divorce proceedings.²³⁹

Figure 5.3: Divorcees' understanding of the law ²⁴⁰



Base: all divorcees (2,415)

²³⁹ Note that these questions were also asked of a nationally representative population sample of 20,532 participants in order to capture information about the general level of knowledge and understanding of the law on financial remedies. See Chapter 2, and the [YouGov Technical Report](#). The results will be published separately.

²⁴⁰ Where the percentages do not quite total 100 per cent this is due to rounding to the nearest whole percentage point.

It is interesting that, despite low levels of divorcees apparently making much use of expert legal advice or assistance, and some interviewees clearly indicating a misunderstanding of the law, the majority of survey participants were not wildly off course in their responses. In particular, two thirds (64 per cent) correctly identified that 'fault' is usually irrelevant in sorting out finances, and almost as many (57 per cent) rejected the proposition that a pension is not available for sharing – even though, as we discuss in Chapter 7 (Sections 7.3 and 7.5), most divorcees did not in fact share the pension and strongly regarded it as 'belonging' to the spouse making the contributions.

The majority of participants also correctly considered that couples can in fact make their own arrangements regardless of what the law might say – many no doubt drawing on their own experience of having done exactly that. However, there was greater propensity for misunderstanding and lack of awareness in the 55 per cent of divorcees who either thought that the law requires all assets and debts to be split 50:50 (31 per cent) or did not know the legal position (24 per cent), and an even larger proportion (63 per cent) who either did not know that spousal maintenance is not limited to five years (48 per cent) or incorrectly thought that there is a maximum time limit (15 per cent). Furthermore, although just over half of divorcees correctly answered the inheritance and contribution questions, a large minority either did not know the answer or incorrectly identified it, which potentially speaks to the finding in Chapter 7, that ownership of and contribution towards an asset other than the former home, debt or pension, was a dominant rationale driving decision making on these issues.

When the data was disaggregated by whether the participant had had legal advice from a solicitor or legal services company, there were some differences, with those who had received legal advice being more likely to agree that 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 (56 per cent of those with legal advice, compared to 47 per cent of those without, p-value 0.006); and that who was at fault for the breakdown of the marriage is usually irrelevant when deciding how to share out assets and debts (73 per cent of those with legal advice, compared to 59 per cent of those without, p-value <0.001).

Those who had had legal advice were also more likely (correctly) to disagree that 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 (63 per cent of those with legal advice, compared to 49 per cent of those without, p-value <0.001); that an individual is not usually entitled to anything their ex-spouse inherited during the marriage (61 per cent of those with

legal advice, compared to 50 per cent of those without, p-value 0.002); and that an individual is not entitled to a share of their ex-spouse's pension (69 per cent of those with legal advice, compared to 50 per cent of those without, p-value <0.001).

While this may suggest that those divorcees who receive legal advice may end up with better legal knowledge about the financial aspects of divorce, it is important to avoid making causal assumptions. The data show that, even with the benefit of legal advice, many respondents did have erroneous beliefs about the law. Moreover, as Chapter 4 (sections 4.5 and 4.6) illustrated, divorcees across the survey had varying levels of access to information about the law, from a wide range of more or less reliable sources. It also showed that those who seek legal support are different in a number of ways to those who do not. It may be that a combination of factors, not just having legal advice in itself, influences their levels of legal knowledge.

The qualitative interviews further highlighted these differing levels of knowledge about the law, with interviewees presenting a mixed picture regarding knowledge and perceptions of the law on divorce. Some interviewees were ambivalent about the law and its relevance to their own divorce proceedings. For example, this participant made a distinction between legal obligations and moral obligations, prioritising 'doing the right thing.'

'We literally only had I think two conversations about it but I wasn't really interested in what my legal obligation was or what my legal entitlement was. I wanted what I thought was morally right for us and whether that was in keeping with what the law may suggest or not, I didn't care.' (Husband 10)

One participant illustrated both his ambivalence toward the law around divorce and his misunderstanding of what the law says when he explained:

'Strictly speaking I was entitled to more than I got because it was her who admitted to having an affair, so I could have got more out of the relationship than I did but it's not the reason I got into the divorce, I just wanted to be done with it. So the law can say one thing but it's completely irrelevant, you just ignore it and do what you want.' (Husband 5)

The interviews also highlighted the ways that knowledge can increase as a result of going through a divorce. As one participant told us:

'I didn't really know much at all. Only what you've seen on TV, like Eastenders or Coronation Street. What I knew from talking to friends, what they felt comfortable sharing. Now, I feel a lot more knowledgeable about how it works.' (Husband 1)

Another participant explained how it was only after speaking to a solicitor that his knowledge about divorce increased, noting that 'unless you go through a divorce you don't really know what it is and what people are entitled to' (Husband 2).

However, this was not the case for all interviewees, with some reporting a lack of knowledge about the legal process and their entitlements throughout:

'...like I said earlier, when you mentioned about debt and that kind of thing, I didn't really know that that was even, like even pensions, I didn't even know that he could have part of my pension. I don't know that he did either which is why it probably never came up. So, I felt fine with the decisions that were made and the outcome but in terms of knowledge ... not particularly knowledgeable about the legal process and all the entitlements legally.' (Wife 16)

5.6 Concluding comments

Divorcees had a range of objectives and priorities when sorting out their financial arrangements. Unsurprisingly, given the general wish to 'move on' at the end of a marriage unencumbered by ongoing ties with an ex-spouse, around 40 per cent of our survey participants rated achieving a clean break as their top priority. This included those who wanted nothing to do with their ex at all, as well as those who understood the clean break in purely financial terms.

Of course, parents with children, particularly dependent children, are less able to 'go their separate ways' after divorce, and a concern to put their children's needs first (at least in terms of having a stable home) was a strong objective for a quarter of divorcees. A corollary for these divorcees was therefore that less significance was attached to a clean break – couples who know they must continue to 'parent' also recognised there would be continuing ties that bind. In our interviews, preserving a good relationship was seen as a key goal by fathers, no doubt in order to secure ongoing contact with their children, and by mothers who wanted to ensure positive co-parenting experiences.

A principle of 'fairness' was most important to about a third of divorcees, but the need to secure finality through a clean break, or arrangements that would work for the children, may have tempered the significance attached to this more abstract notion, and inevitably, different divorcees viewed 'fairness' in different ways. Yet achieving any kind of arrangement will be impacted by the level and kind of knowledge or belief that couples might have about the law which is meant to govern the situation. We saw in Chapter 4 that many couples manage their financial arrangements with little or no regard or recourse to the law or legal assistance. Unsurprisingly, therefore, interviewees revealed degrees of confusion and misunderstanding regarding their entitlements and the expectations of the law. It does not follow that divorcees made bad bargains – a majority of survey participants, by the end of the divorce process at any rate, appear to have had a reasonable grasp of the core features of the current law. But we do not know how far these necessarily drove the arrangements they reached. What we do know is that confidence at the time of the survey could be masking error and confusion during the divorce process, while lack of confidence, particularly where there was inequality of bargaining power, could leave divorcees in a state of uncertainty or powerlessness when it came to sorting things out.

In the next four chapters, we explore in detail the arrangements that divorcees did make, starting with the former matrimonial home and then moving on to look at pensions, assets and debts, and maintenance for children and spouses. We also evaluate the overall packages of arrangements that they made in order to shed light on how far these were either fair, or in accordance with legal norms and expectations.

Chapter 6: The matrimonial home

Key findings

Where the matrimonial home had been owned, the most common decisions were to transfer ownership or to sell up

- The most common decision taken in relation to an owner-occupied matrimonial home (by 46 per cent of couples) was to transfer ownership to one party, followed by selling up (29 per cent). Age was a significant factor associated with the decision, with older couples more likely to sell and younger couples to transfer.
- Transfer of ownership was more likely to be to the wife than the husband and was associated with motherhood. Couples who did not report 'fault' as a reason for splitting up were more likely to transfer the home.
- Where there had been a decision to *postpone* sale or transfer, this was generally to enable the wife to remain in the property, usually with dependent children. Fifteen per cent of couples had decided not to transfer ownership or sell up at the time of the divorce, although two in five (43 per cent) had subsequently done so.

Only a third of those who sold the home shared the equity equally, with women more likely to receive half or more of the equity. However, the monetary values received were usually quite modest

- Only a third (34 per cent) of divorcees who sold the home 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 actually received. A larger share was associated, for men, with not having dependent or any children; for women, with being older.
- Two thirds (64 per cent) of divorcees who sold received under £100,000 as their share of the equity after sale, and a quarter (25 per cent) received under £25,000.
- Three in ten (30 per cent) transfers did not involve any compensating payment being made to the spouse losing their share in the home, although in some cases that spouse would have kept other assets, including their pension.

Under half of rented properties were retained after the divorce, with this much more likely in social housing than private rentals, and with women much more likely to remain than men

- Rented properties were retained in just under half (47 per cent) of cases. Tenancies in social housing were much more likely to be retained (62 per cent) than private rentals (38 per cent). Women were much more likely (71 per cent) to have stayed on in the home than men (46 per cent).
- Where someone on the tenancy agreement had moved out of the home, in three quarters (74 per cent) of cases the tenancy agreement had been changed to reflect this. This was almost always done with the agreement of the landlord (93 per cent) rather than through a court order (three per cent).

6.1 Introduction

As we set out in Chapter 3, section 3.5, at the point of separation, seven in ten (68 per cent) divorcees owned their matrimonial home, with 14 per cent owning their home outright, 46 per cent with a mortgage and eight per cent in a shared ownership scheme. For many homeowners, the matrimonial home will have been the most valuable asset to consider in any divorce settlement, despite the fact that the value in many divorcees' homes was modest. Both its monetary value and its potential to provide stability in the immediate and longer term, particularly when children are involved, mean that decisions about the matrimonial home are key to any divorce settlement.

This chapter describes the decisions that homeowners made about their home as part of the divorce process, including whether it was sold or the ownership was transferred to one party, or whether there had been no decision about a change in ownership at the point of divorce. It includes details of any equity received, or to be received, by either party as part of a financial arrangement.

For those in the rented sector, sorting out a home for both parties and children is equally important of course. In the survey, one in six (18 per cent) divorcees were renting privately and one in ten (10 per cent) had been in social housing. So this chapter also describes what happened where the matrimonial home was a rented property.

6.2 Chapter outline

This chapter provides a picture of what happened to the matrimonial home, describing:

- Section 6.3: The decisions made by homeowners about what should happen to the matrimonial home
- Section 6.4: The process of transferring ownership of the home to one party, including any compensating cash or property transfer to the other party
- Section 6.5: The process of selling the home, and the division of any equity
- Section 6.6: What happened when the home was not sold or ownership transferred at the point of divorce
- Section 6.7: The decisions made about homes which were rental properties
- Section 6.8: Concluding comments

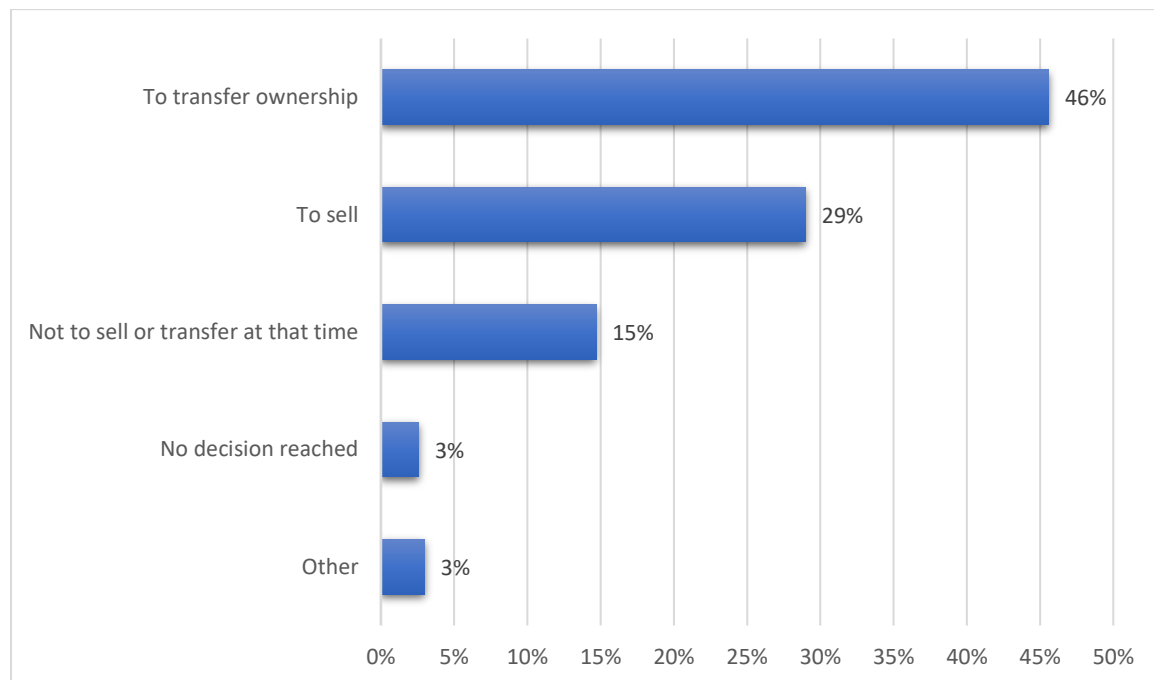
The sections highlight notable differences within the key subgroups of interest (see Chapter 2, Section 2.4.1) – between men and women; between those who did or did not have

children; and between divorcees of different ages – as well as other family characteristics which appear to distinguish divorcees’ circumstances during their marriages.²⁴¹

6.3 Homeowners’ decisions about the matrimonial home

Homeowners were asked what decision had been made about the matrimonial home, either during divorce proceedings or after the decree absolute was granted. The most common decision – reported by 46 per cent of homeowners – was to transfer ownership of the home to one party, with a further three in ten (29 per cent) deciding to sell. Fifteen per cent of divorcees said that there had been a decision not to sell or transfer ownership of the matrimonial home at that time, and a further two per cent said that no decisions had been made at the time (Figure 6.1, below).

Figure 6.1: Decision about the matrimonial home



Base: all homeowners at point of divorce (1869)

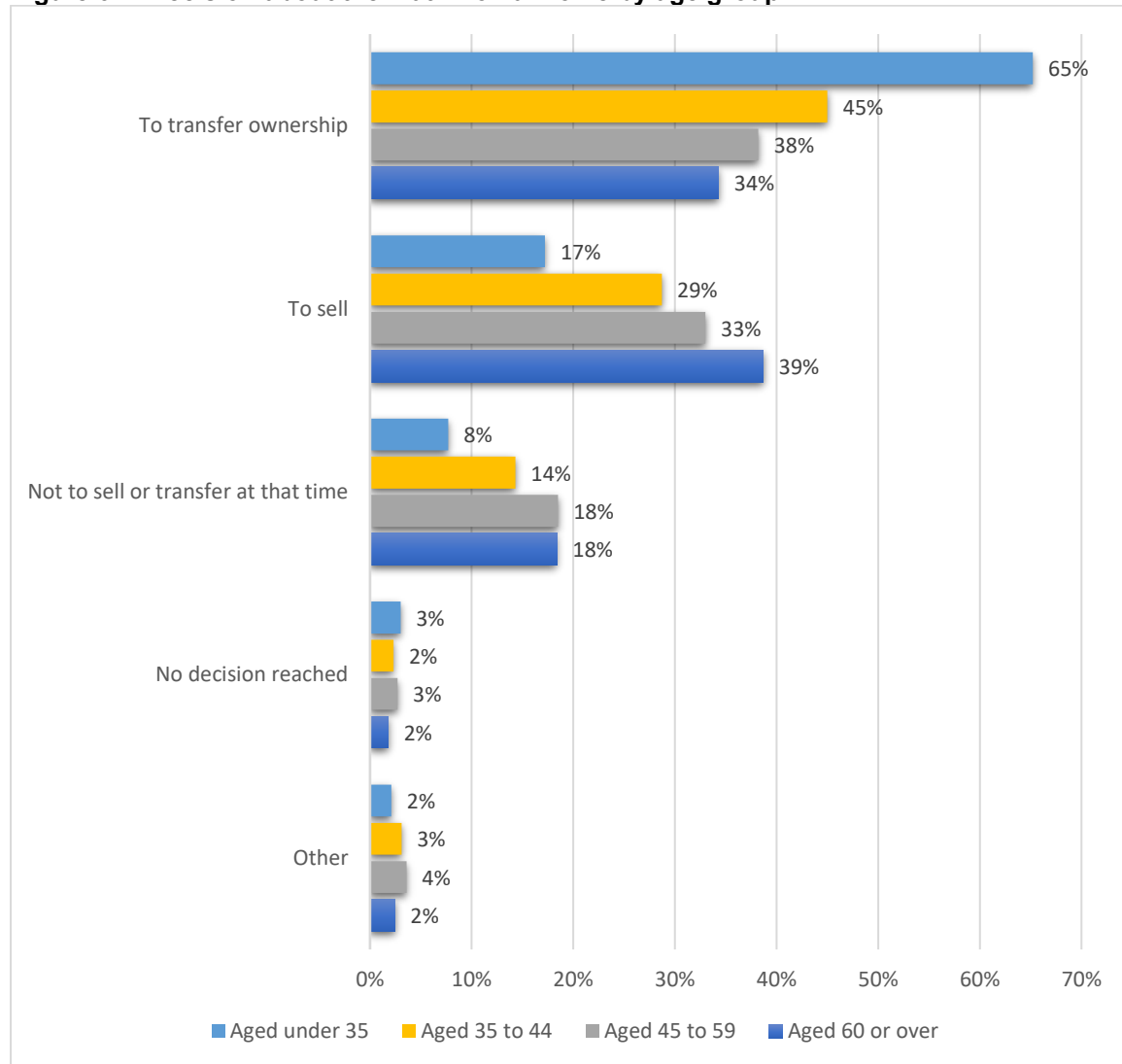
²⁴¹ Focusing on characteristics identified in regression analysis as significantly associated (see Chapter 2, section 2.4.4).

There were no notable differences in the decisions of those who owned their home outright and those who had a mortgage, with 47 per cent of outright owners deciding on a transfer and 29 per cent deciding to sell, compared with 43 per cent and 34 per cent of those with a mortgage.²⁴²

Beyond tenure, the other factor most closely associated (in exploratory regression analysis introduced in Chapter 2, section 2.4.4) with a decision to transfer or sell the matrimonial home, or do neither at the time of divorce, was the divorcee's age (Figure 6.2, below). Older divorcees were significantly more likely to have decided to sell the home (p-value 0.017) or make a decision neither to transfer nor sell (p-value 0.006), whilst younger divorcees were significantly more likely to decide to transfer it to one party (p-value <0.001). As we would expect, older divorcees had, on average, homes with higher values and were more likely to own their homes outright. However, this difference across the age groups was still present after having taken into account the tenure and the value of the property to divide.

²⁴² Among those with a shared ownership property, only seven per cent decided to sell the property, while three quarters (76 per cent) transferred ownership to one party. In regression analysis, these decisions were significantly different to other homeowners (p-value 0.004 in relation to a decision to sell and p-value 0.015 in relation to a decision to transfer ownership).

Figure 6.2: Decision about the matrimonial home by age group



Base: homeowners aged under 35 (229); homeowners aged 35 to 44 (452); homeowners aged 45 to 59 (755); homeowners aged 60 and over (433)

Transfers of ownership were also more common among divorcees who did not mention ‘fault’ when asked why they had separated (p-value 0.022 in the regression model). Half (52 per cent) of divorcees who did not mention fault decided on a transfer of ownership, compared with two in five (42 per cent) of those who said that one party had an affair, was abusive or there were behaviour issues. Conversely, those who mentioned ‘fault’ were more likely than others (17 per cent compared to ten per cent) to have made a decision not to sell or transfer the home at the point of divorce (p-value 0.048). These findings may reflect, on the one hand, less antagonism between the parties over the reasons for the divorce and a greater readiness to enable one spouse to remain in the former matrimonial home and, on the other hand, difficulties in reaching a settlement where the parties have separated acrimoniously and neither is willing to ‘let go’ of the home completely.

As one husband commented in explaining why he had transferred his interest in the home to his wife: 'We were amicable about it and we're still friends and I just thought that was the easiest thing to do' (Husband 22).

However, the decision to sell or transfer also, not surprisingly, turned on practicalities and affordability. As one husband told us:

'First choice at that time would probably have been I would have bought my ex out of that house, but that wasn't really affordable. It really had to be sold to split the total assets the way we were going to [50/50], there was no way I could afford to keep the house on.' (Husband 20)

Other interviewees were uncertain about the legal situation regarding their homes. Wife 4, for example, noted that at the start of the divorce proceedings: 'I didn't realise that if somebody was on your mortgage deed they were entitled to half your property.' Another told us that:

'I'm not that au fait with the law and legal jargon. Initially I thought that I would just get the house automatically, I was silly to think that that was the case because I trusted him. There you go.' (Wife 7)

6.4 A decision to transfer the home to one party

Among the nearly half (46 per cent) of homeowners who had decided to transfer the ownership of the matrimonial home to one party, it was more common for the home to be transferred to a woman than to a man. Among those where there was a decision to transfer the home, two thirds (64 per cent) of women said that the home was to be transferred to them, and over half (55 per cent) of men said that the home was to be transferred to their ex-spouse.²⁴³ This was largely associated with motherhood. Among those deciding to transfer ownership of the home, seven in ten (72 per cent) mothers with dependent or older children said the home was to be transferred to them, compared to half (49 per cent) of women without children (p-value <0.001).

There were two major reasons given for transferring the matrimonial home rather than selling it, amongst our interviewees. First, reflecting the survey findings, so that it could remain the home in which their children would grow up (usually with the ex-wife as primary

²⁴³ The majority, but not all of whom will have been women.

carer), and secondly, because that was the most practical option, given the couple's financial circumstances:

'We've agreed that if she ever sells the house, I get half. She'll probably stay there forever [laughs] but that's the house the kids are going to grow up in ... it was put into her name just for things like, anything like when she needs to remortgage because, you know, every two years or five years, you have to do that. I didn't want to be – and I'm trying to get to rent like, you know, you've got to go through the process when it says, "have you got any other commitments like credit cards", it would tie me down quite a lot. ... there's still like 20 years' worth of mortgage to be paid. If we sold it, we might be left with about £50,000 between us. So, twenty-five each. And then you'd both be renting separately, what with her income and what she can afford, they're going to be living in a far inferior property with all the stress that comes from renting' (Husband 1)

Similarly, a husband explained:

'What we didn't want was the kids to have two new houses in a sense so we wanted to keep a little bit of stability and my ex-wife wouldn't have been able to afford to keep the mortgage repayments and everything... Affordability of the house I could just about do it, so we agreed it that way, at least we've got the home and we're not just saying to the children, "right mummy and daddy are splitting up and you've got two new houses" ...' (Husband 9)

Interviewees also saw the home as something that would be inherited by their children:

'... I've got a daughter, so it was his theory that that was her house and it has continued that way. ... That is hers and that is from a bit of me and from a bit of her dad ...' (Wife 23)

'... we kind of agreed at the start of it that it was, like most people, that house is ultimately going to go to the kids at some point ...'. (Husband 14)

Other reasons given by interviewees for transfer to a particular spouse included who had put the most money into the property, which spouse most wished to stay there, and a wish by one party to avoid 'hassle' in arguing over shares:

'I put more money into the house to start with anyway and I had a lot of family and all my friends [who] did all the work on the property.' (Husband 18)

One wife explained:

'... it was either he buy me out, and he couldn't afford to do that, and I then decided that I was in a better position so I could afford to buy him out and I wanted... you know, it was my home at the end of the day, our home I should say ...' (Wife 12)

A husband who had been divorced before once again gave up his interest in the home because:

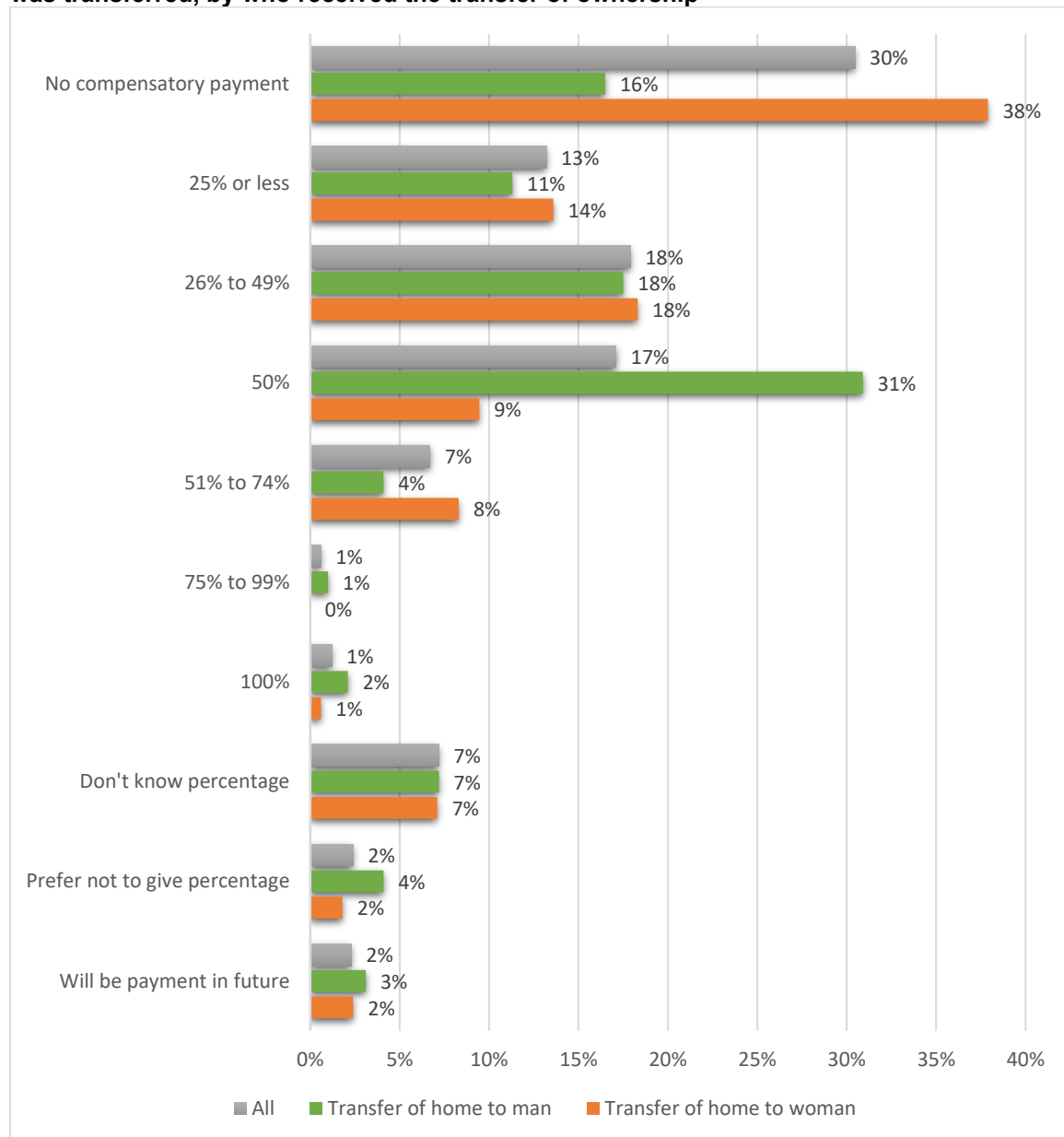
'Well, I've seen what happens to people when they start trying to divide stuff, and there's a lot more heartache involved and a lot more cost ... I just didn't want the hassle basically. I just thought to myself that it's a lot easier to do it that way. ... We were amicable about it and we're still friends and I just thought that was the easiest thing to do. This might not be anything to do with it, but I did that with my first wife as well.' (Husband 22)

In three in five cases (62 per cent), the home had been transferred by the time of the survey, with a further 15 per cent having plans to transfer.

In most cases, the transfer of the home to one party involved giving a compensating payment to the other. Where the transfer had happened, in two thirds (66 per cent) of cases the other party had already been given money, with a further two per cent having plans to do so in the future.²⁴⁴ However, in three in ten (30 per cent) cases, one party had taken over the home without the other party receiving any compensating payment (Figure 6.3, below).

²⁴⁴ In the small number of cases where there were plans to transfer money at some point in the future, divorcees were asked when this would be. The numbers are too small to present, but most often involved children reaching a certain age or leaving education, with the second key point being if the person remaining in the home were to re-partner or remarry.

Figure 6.3: Percentage of compensatory payment when ownership of the matrimonial home was transferred, by who received the transfer of ownership



Base: all homeowners where home had been transferred (616); divorcees where the transfer was to a man (217); divorcees where the transfer was to a woman (399)

Whether or not any money was transferred to the other party did not appear to be significantly associated with whether the couple had children. Instead, the factors most strongly associated (in exploratory regression analysis) with such a transfer were how the couple had managed their money during the marriage (p-value 0.002), whether the home was transferred to a man or a woman (p-value <0.001),²⁴⁵ and the age of the divorcee (p-value 0.002).

²⁴⁵ This variable is created using the gender of the survey participant and assumes opposite sex couples. The survey sample will include a small number of same sex divorces, but these cannot be identified in the data.

A compensating payment was more likely when couples had shared their money management (77 per cent), compared with those who had kept their finances separate (55 per cent) or in the hands of one spouse (51 per cent). Such a payment was much less common among older divorcees (e.g. only 50 per cent of those aged 60 and over) than younger divorcees (e.g. 90 per cent of those aged under 35 and 72 per cent of those aged 35 to 44), and when the home was transferred to a woman rather than a man. One reason that compensating payments may be less common amongst older divorcees could be due to their use of pension wealth to offset the equity in the home, whereas younger couples do not have sufficient pension wealth to do so and therefore resort to compensating payments to 'buy out' the other spouse. When the home was transferred to a man, in four in five (81 per cent) cases there was a payment to the other party, compared to three in five (62 per cent) cases where the home was transferred to a woman.²⁴⁶ In some cases, the wife would not have been in a financial position to compensate the husband in cash, but in others, the transfer was offset in other ways. For example, one wife told us that it had taken seven years to finalise the transfer to her from the husband:

[He would say] "I'll give you the house." "I won't give you the house. I'm not gonna do that, you wipe out my ..." Because he had arrears in maintenance. "Wipe out the arrears." "Okay I'll wipe out the arrears, you're not giving me anything anyway, I'm managing." But it was all this pull, push, control, and all those kinds of things.' (Wife 11)

Or a spouse might keep other assets or offset these against the value of the house. As one husband rather ruefully told us:

'Yes, basically we waited until the decree absolute came through and then she moved out, sold the house ... I got my ridiculously low amount of equity, however, I got to keep my pension, which was worth a lot more in 2019 than it is in 2023.' (Husband 19)

Among those where the transfer had already happened, only 17 per cent of divorcees received half of the value of the equity if the home was transferred into the name of their ex-spouse. Six in ten received nothing (30 per cent) or less than half (30 per cent), and only eight per cent reported receiving more than half.

²⁴⁶ Other significant associations with a transfer of equity in the regression model included the total value of the assets to split (p-value 0.001) and household income prior to separation (p-value 0.043).

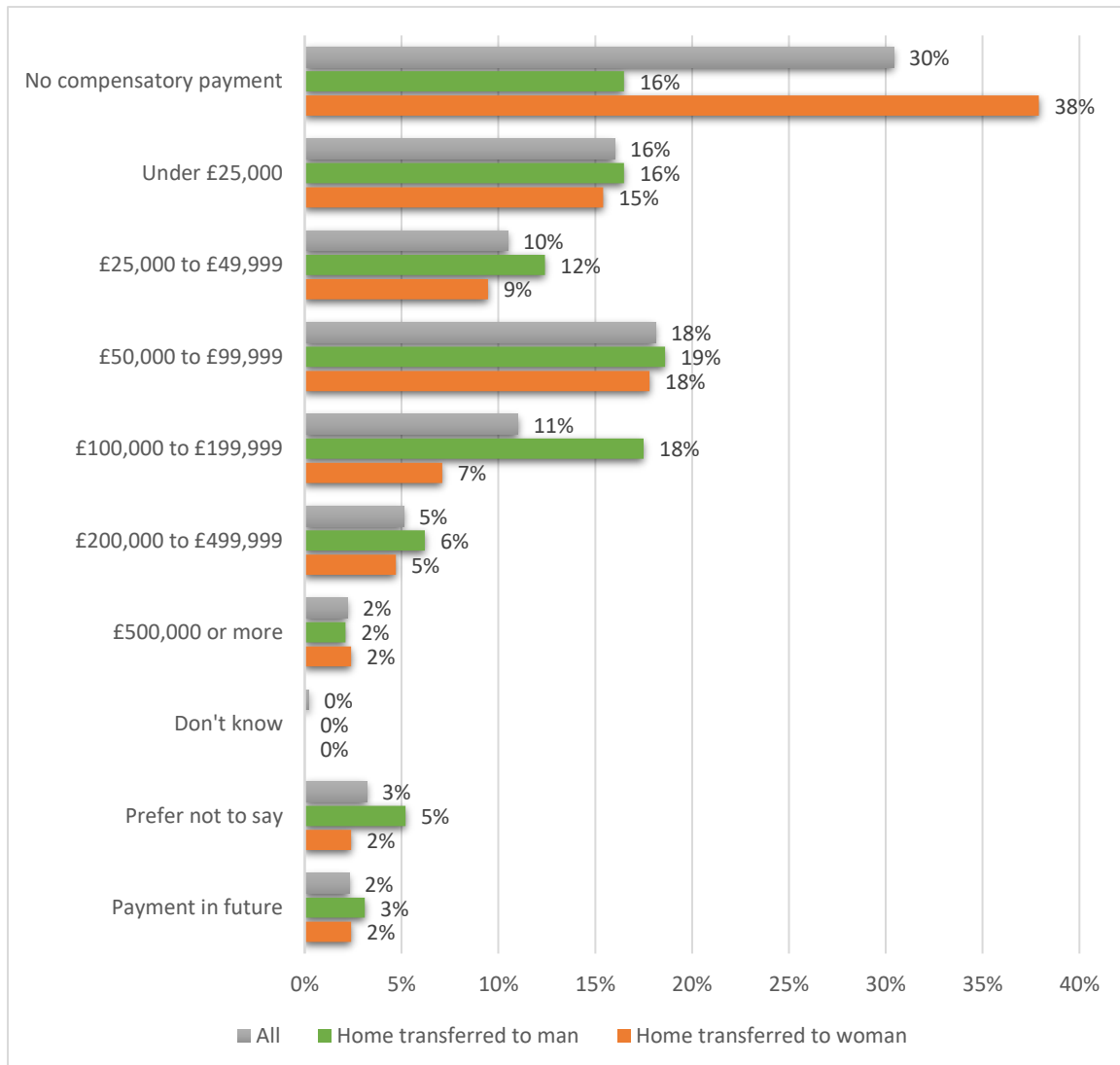
However, where the home was transferred to a man, the wife was far more likely to get at least half of the equity than when the home was transferred to a woman (38 per cent compared to 18 per cent) (p-value 0.020). One example is Husband 9, quoted above, who had paid around 70 per cent of the equity value of the home to the wife, as well as her keeping an inheritance that the husband had received which had been put into an ISA in her name to save tax. Those with longer marriages were also more likely to transfer a higher equity share.²⁴⁷ For instance, those married for 20 years or more were far more likely (35 per cent) than those married for under six years (19 per cent) to transfer or receive 50 per cent of the equity or more (p-value 0.017).

Figure 6.4, below, sets out the value of the payment these divorcees received, again by gender of the recipient.²⁴⁸ Because many divorcees had only modest amounts in housing wealth (see Chapter 3, section 3.5), the average amounts received in transfers were not high, particularly given that the percentage of the equity was smaller than in situations where the home had been sold. Three quarters (75 per cent) of divorcees whose home was transferred to their ex-spouse received under £100,000 (including 30 per cent who received nothing) in return for giving up their share of the home. As well as being less likely than men not to receive a compensatory payment (16 per cent compared to 38 per cent), women were also more likely (26 per cent compared to 14 per cent) to receive at least £100,000 when ownership of their home was transferred to their ex-spouse.

²⁴⁷ These significant factors were identified in exploratory regression analysis, see Chapter 2, section 2.4.4.

²⁴⁸ Again assuming opposite-sex marriages.

Figure 6.4: Value of compensatory payment when ownership of the matrimonial home was transferred, by who received the transfer of ownership



Base: all homeowners where home had been transferred (616); divorcees where the transfer was to a man (217); divorcees where the transfer was to a woman (399)

It is worth noting that, in 17 per cent of cases where the original plan was to transfer ownership to one of the spouses, there had been a change of plan. This was often a decision not to transfer or sell in the immediate term (cited by half (50 per cent) of those who said there was a change of plan). But in other cases, there was a change in who the home was being transferred to (25 per cent) or a decision to sell the home instead (21 per cent).

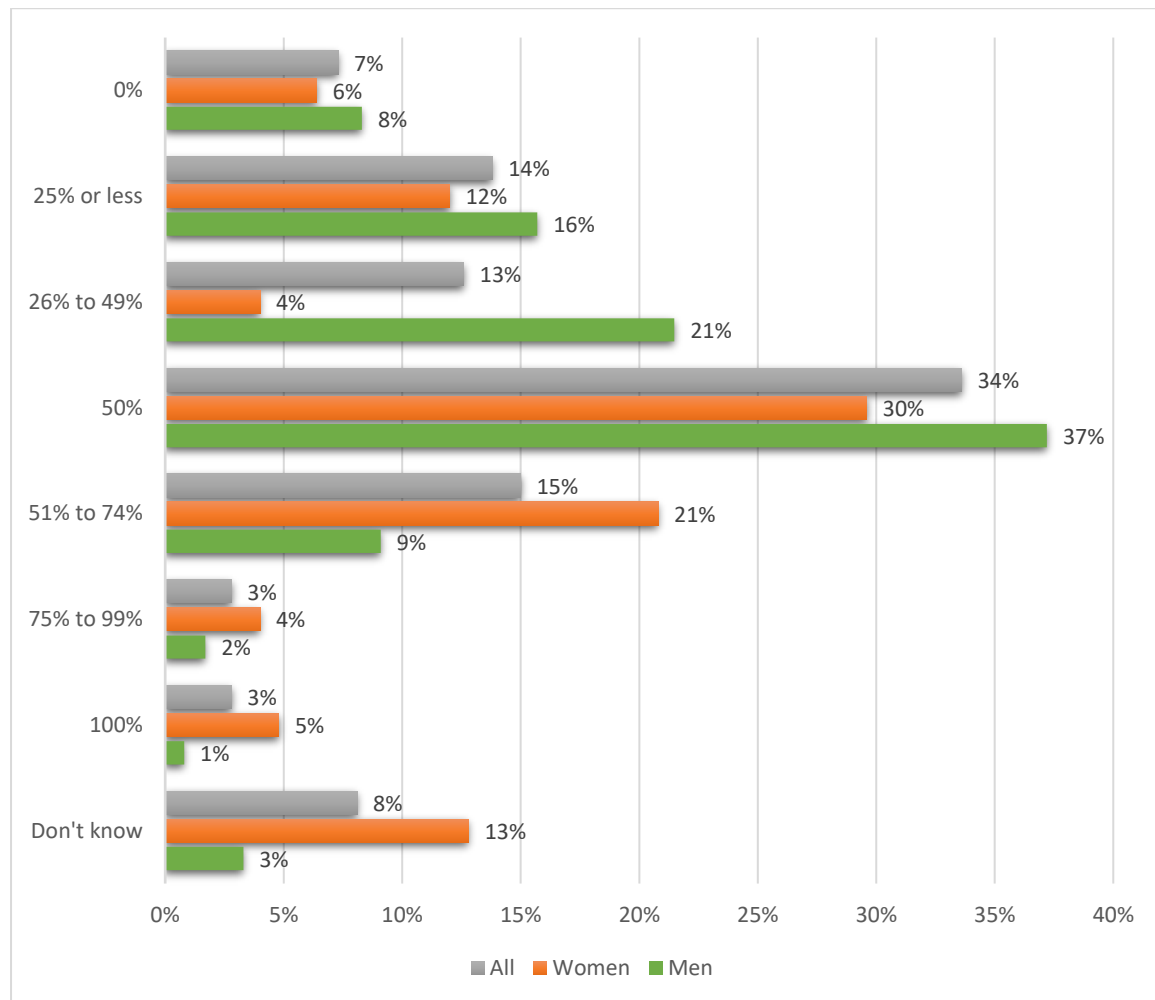
6.5 A decision to sell

The vast majority (87 per cent) of those who had decided to sell the matrimonial home had done so by the time of the survey, while a further six per cent had their home on the market or had plans to sell it.²⁴⁹

6.5.1 The percentage of equity received

Where the home had been sold, in only a third (34 per cent) of cases was there a 50:50 split of the equity between the two parties (Figure 6.5, below).

Figure 6.5: Percentage equity split when the matrimonial home was sold



Base: all homeowners where home had been sold (553); female homeowners where home had been sold (303); male homeowners where home had been sold (250)

²⁴⁹ In the small number of cases where there had been a later decision not to sell, divorcees were asked what happened to the home instead. The numbers are too small to present, but most often involved a later decision to transfer the home to one party.

Equal shares might be the expectation of the spouses based on what they had done when they purchased the property. For example, one wife told us that the home had been put in her husband's name when they bought it, because she had been a student at the time, but each had contributed to the deposit and there was a declaration of trust that they owned in equal shares. When they divorced, he paid her a sum equivalent to half the value of the property:

'... we just literally halved everything ... we both contributed throughout the whole five years we were there and then obviously, the equity on the house, we just halved so it felt fair at the time.' (Wife 16)

Agreeing to an equal share was also seen as the easiest outcome, avoiding difficult negotiations and preserving the relationship between the parties where there were children:

Interviewer: And what was the reasoning behind you deciding to split the proceeds of the sale 50:50?

'Because I couldn't be bothered to argue with him, is the frank answer to that one. ... I actually went back to work because I was earning more than him. So he was a stay-at-home dad for quite a long time because of the costs of childcare. ... my attitude was that was a decision we made as a couple. I was grateful that when I'm working the children are with their father and not in childcare, so I didn't think it was fair to penalise him, based on decision we came to together, that he would stay at home and I would go out to work ... and the 50:50 was just, I just couldn't be bothered to argue. ... It's not worth creating animosity when I've got to co-parent the children with him for the next god knows how many years really.' (Wife 28)

However, while there was recognition amongst some interviewees that half shares might be the objectively fair outcome, a 50:50 split could leave one spouse (usually the wife) with insufficient resources to be decently re-housed. In the survey, women were significantly more likely than men to report receiving a greater share of the equity.²⁵⁰ Three in ten (30 per cent) women reported getting half of the equity, with a further 30 per cent receiving more than half. Conversely, just under half (46 per cent) of men reported receiving less than 50 per cent of the equity, with a third (37 per cent) getting half and only 12 per cent saying that they received more than that (p-value <0.001).

²⁵⁰ In exploratory regression analysis, the gender of the participant was the strongest predictor of receiving at least 50 per cent of the equity.

An unequal division of the equity might reflect a recognition that one party was financially in a stronger position than the other going forward. As one husband said, explaining a 55:45 split in favour of the wife:

‘We agreed on finances. She doesn’t earn as much as me. We both obviously wanted to move on and re-purchase houses, so for [ex] to do that I had to give her a little bit more of the equity than I had. ... Neither of us could afford to buy each other out, so we had to sell it, unfortunately.’
(Husband 23)

A wife made the similar point from her perspective (although she also told us that she had put up all of the original deposit on the house):

‘At first, myself and the kids were going to stay there because we thought that [selling] it would be the most unsettling thing for them ...as time went on, I felt that actually, a fresh start for everybody would be better. ... my ex-husband earns significantly more than me. His ability to get a large mortgage is obviously much easier than mine. My ex-husband is one of the most fair men literally walking the planet so he said, you know, it makes sense for you to take a bigger chunk of this so that you’ve always got that.’ (Wife 18)

Unequal shares can also be reflective of offsetting the value of the home against other substantial assets, such as the pension, as we saw above. One wife who received all of the equity from the sale of the home told us:

‘The reason I took the house was because he was taking his pension at the time. He’d retired early and was drawing down on a pension which was a really good pension. We’d had some money advice from mediation and stuff and they said, “don’t touch his pension but you have the house”. He argued the point a bit, but in the end gave in, because otherwise I was going to take some of his pension.’ (Wife 15)

We revert to this point in Chapters 8 and 10 where we consider the overall financial packages reached by divorcees in the study.

In addition, following a recurring theme in the data, women were more likely than men (13 per cent compared to three per cent) to report not knowing about the size of their proportionate share. This reflects findings in Chapters 4 and 7 regarding a lack of awareness

by some divorcees, particularly women, of the details of their own and their ex-spouse's finances and is an issue to which we return in Chapter 11.

Among men, there was a significant difference (identified in exploratory regression analysis, see Chapter 2, section 2.4.4) in the level of equity received by those with and without dependent children. Only a third (34 per cent) of men with dependent children reported receiving 50 per cent of the equity or more, compared to two thirds (64 per cent) of men with older children and two thirds (63 per cent) of men with no children (p-value 0.001). These findings may reflect childcare arrangements amongst spouses with dependent children and an awareness amongst some couples that the ex-wife might require a greater share of the equity due to affordability issues going forward. This is reflected in the following quote by a husband with dependent children who received just under 50 per cent of the equity:

'When we decided to separate, we had two small children and it seems to be fairly common that the children go to live with the mother ... and that was in any event the best scenario. Yes, I'd loved to have had my children living with me but ... it wasn't practical. ... she did get slightly over the 50 per cent, just because she needed slightly more than 50 per cent to come up with 50 per cent of the amount they [with her new partner] were buying the house for ... it was also for the sake of my children so that they were comfortable.' (Husband 10)

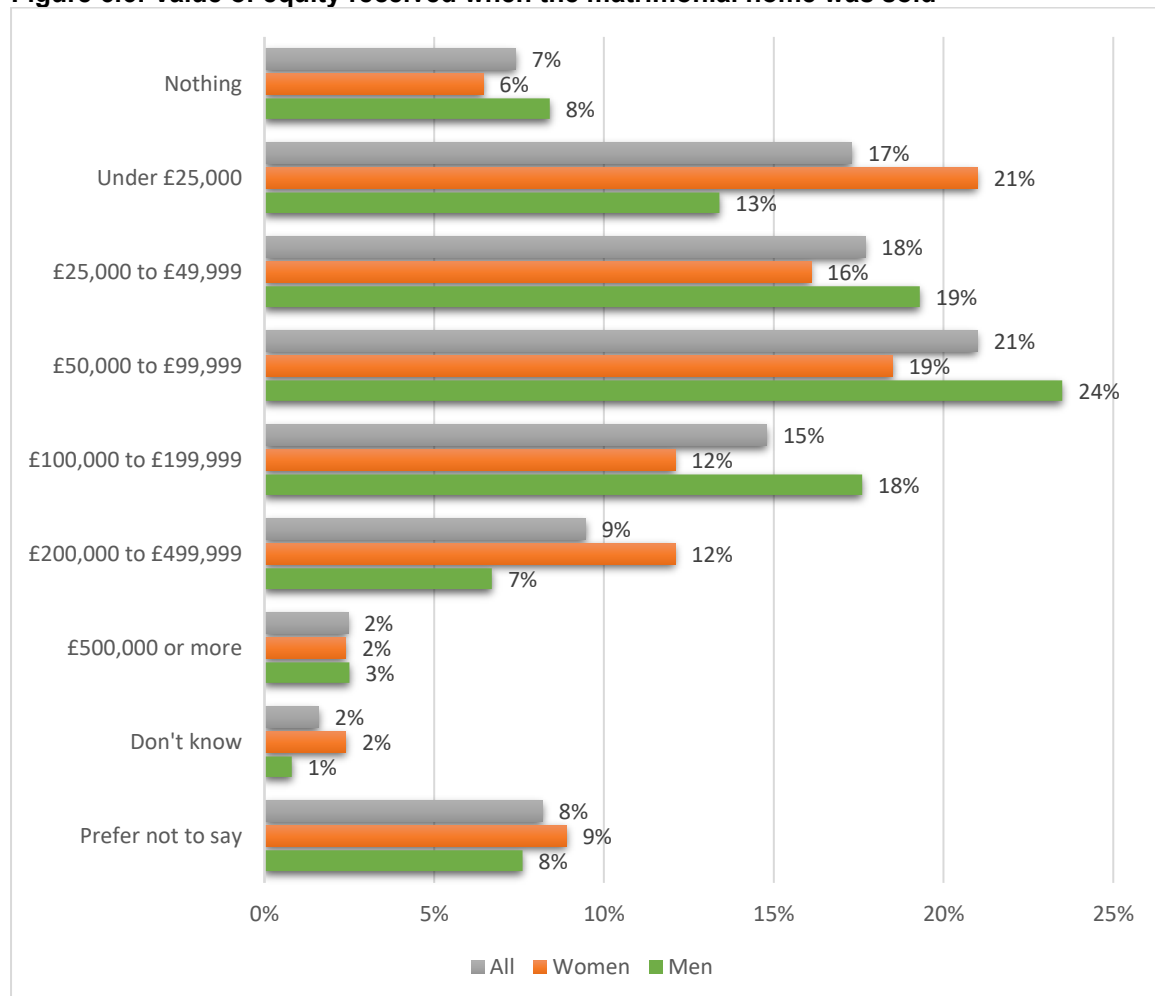
No such association with children was found among women, where the strongest predictor of receiving at least half the equity was their age, with older women more likely than younger women to receive more (p-value 0.011). Two in five (39 per cent) women aged under 45 received at least half the equity, compared with three quarters (75 per cent) of women over the age of 60. As noted earlier, this may reflect the practice of offsetting other assets such as pensions, or practical considerations such as ability to rehouse. As our findings in Chapter 3 demonstrate, men are in a less precarious financial position at the point of divorce compared with women, and with ex-husbands potentially being in more highly remunerated jobs, there is the potential for them to rehouse more easily with a lower level of the equity.

6.5.2 *Cash value received*

Figure 6.6, below, sets out the cash value of the equity these divorcees received, again split by gender. Because many divorcees had only modest amounts of housing wealth (see Chapter 3, section 3.5), the average amounts received after the sale of the home were not high. Indeed, where a property had been bought only a short time before the divorce, or with

a very large mortgage, or there had been a period of *decreasing* house prices in the market, there might be no equity at all.

Figure 6.6: Value of equity received when the matrimonial home was sold



Base: all homeowners where home had been sold (553); female homeowners where home had been sold (303); male homeowners where home had been sold (250)

One husband we interviewed told us that the matrimonial home had been bought at the height of the property boom in 2007, on an interest-only mortgage, and he and his wife had fallen into arrears. The home was on the market at the time of our interview and the mortgage company had told him that if it sold for less than the mortgage, he and his wife would have to carry on paying for the outstanding debt. He told us:

'I honestly don't think we're going to make anything out of the house to be honest, I think we'll just about break even ...'. (Husband 21)

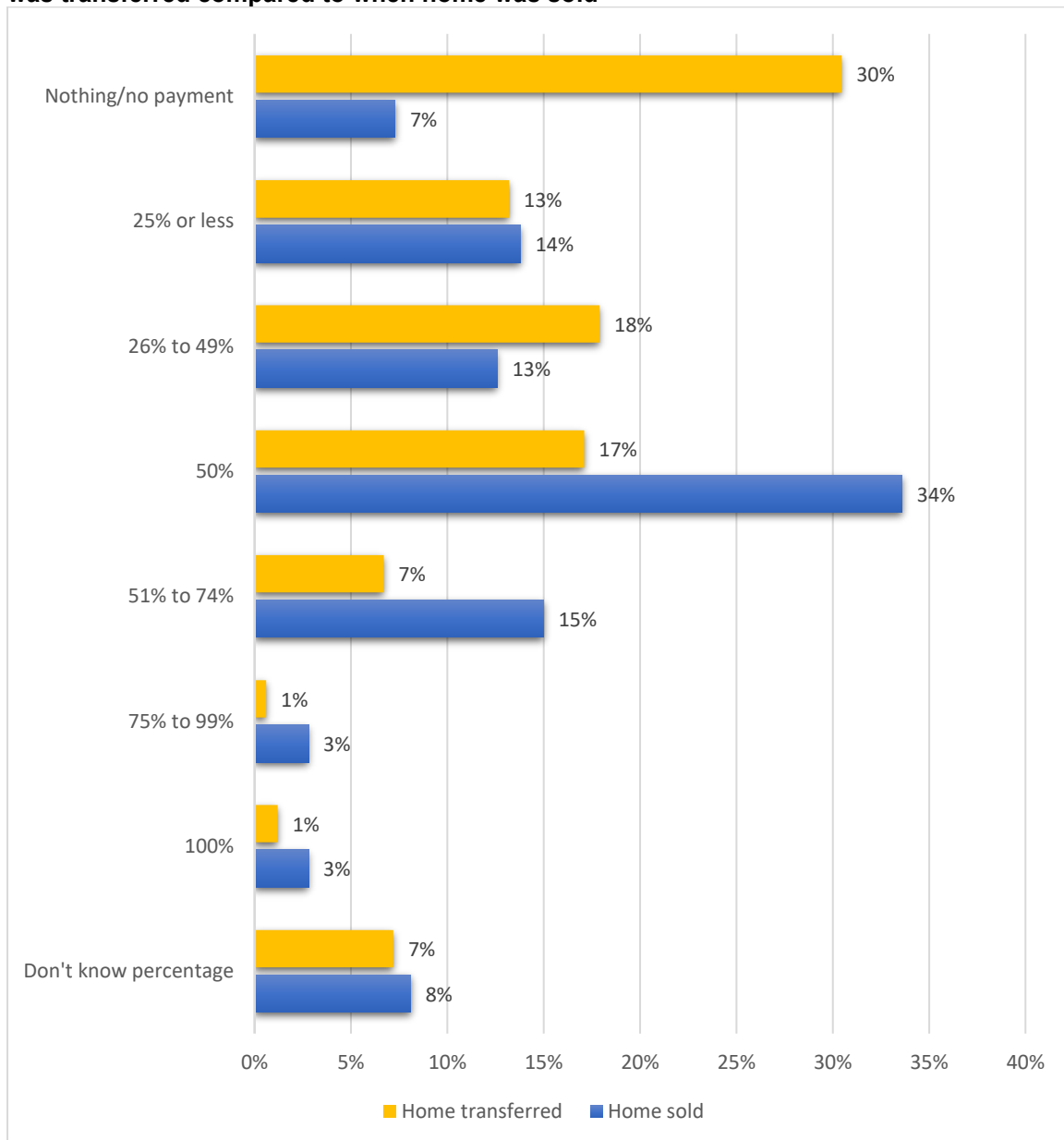
Nearly two thirds (63 per cent²⁵¹) of divorcees who sold the matrimonial home received under £100,000 from the sale, with a quarter receiving less than £25,000. A further quarter (24 per cent) received between £100,000 and £499,999. Just three per cent received £500,000 or more. Although women were more likely than men to receive a higher proportion of the equity in percentage terms, this did not mean that they received more in cash terms. Indeed, to the contrary, within the broad bandings available to us, we find no significant differences in the monetary values received by women and men. The picture that is painted is therefore complex and is one of wives obtaining a slightly higher percentage share of the equity but this not translating into monetary value received.

6.5.3 *Comparing transfers of ownership and sales*

Figure 6.7, below, compares the percentage amounts of compensatory payments received when ownership of the matrimonial home was transferred compared to when the home was sold. It was much more common (30 per cent compared to seven per cent) for a divorcee to receive nothing from the arrangement when the home was transferred to the other spouse, than when it was sold. Moreover, where money was received, the percentage share received in any compensatory payment was, on average, lower than the percentage share of the equity received from the sale.

²⁵¹ Note this appears one percentage point lower than the figure, but this is due to rounding to the nearest percentage.

Figure 6.7: Percentage amounts of equity received when ownership of the matrimonial home was transferred compared to when home was sold



Base: all homeowners where home had been transferred (616) or sold (553)

6.6 A decision not to sell or transfer the home to one party at the time of divorce

Where there was a decision at the time of the divorce not to sell or transfer the matrimonial home, in the majority of cases, the wife remained in the home, especially if there were dependent children. Seven in ten (68 per cent) of women in this situation reported that the plan was for them to continue living there (compared to two in five (41 per cent) of men), with the percentage as high as 72 per cent of mothers with dependent children.

In two thirds (66 per cent) of these cases, the spouses were waiting to see what would be the best decision to make in light of how things turned out in the future. Among those divorcees where there had been a decision that the home would be sold at a particular point in time, this most commonly related to children reaching a certain age or leaving education (48 per cent), or when one or other party got a new partner or remarried (35 per cent). However, for many of those who had made the deliberate decision at the time of divorce *not* to sell the home or transfer ownership to one party, subsequent decisions had been made by the time of the survey. One wife told us:

‘After [husband] moved, initially there were no intentions to sell [the home]. But to be quite frank, when I, it still felt like our home. And when he came to pick the children up, he’d walk in the door so it never felt like mine, even though I was then fully paying the mortgage, fully paying the bills. And so yeah, that decision sort of came, just because it didn’t feel like a final split, if that makes sense. ... Yeah, I didn’t want him just walking in thinking it was his house anymore, which arguably it was on paper.’ (Wife 28)

Among those who had made an initial decision not to sell or transfer ownership of the home, one in five (20 per cent) had since sold the home and a further quarter (23 per cent) had transferred ownership to one of the parties.

6.7 Rental properties

Where divorcees had been renting their matrimonial home, only half (47 per cent) of the tenancies were still retained by the time of the divorce. Social tenancies were much more likely (62 per cent) than private tenancies (38 per cent) to have been retained. This may reflect the fact that social tenancies were twice as likely as private tenancies (48 per cent compared to 26 per cent) to be in a sole name (see Chapter 3, section 3.5), where it would be more natural for the tenant to remain.

In private tenancies, where the intention was for both parties to move out, the spouses either gave notice to end the lease, or moved out when it came to an end. One husband told us that during the notice period: ‘What I did was I, well, I sofa-surfed and lived at the property when I knew she was not there and working nightshifts, for example’ (Husband 4). Another (Husband 15) explained that he and his wife had sold their home before the marriage broke down to move into the catchment area of their son’s school, and had been renting while trying to find somewhere suitable to buy. He remained in the rented property until the

tenancy expired, but neither spouse wanted nor needed to remain there in the longer-term, as they could use the money from the sale of the former home to make new arrangements. Where the tenancy continued, women were much more likely than men to have stayed in the matrimonial home (69 per cent compared to 46 per cent of men, p-value 0.006) Women were particularly likely to remain in the home if they had dependent children (36 per cent compared to 21 per cent, p-value <0.001).

However, another factor may be that the social housing system operates distinctively. A joint tenancy may be terminated by one party, and it will then be for the housing authority or association to decide whether to grant a new tenancy. The system also favours families with children. One wife told us:

‘The plan, I guess you know, is when you’re a joint tenant, if one party leaves the tenancy, the tenancy is finished and it’s quite black and white. ... I decided that the best thing to do was for me to leave, allow [husband] to remain in the property with my son and his girlfriend and my dog (which is another very sore point).’

Her husband then ended that tenancy

‘... which left us both homeless. ... but he made a mistake with the council in the fact that he ended the tenancy but he asked to downsize hoping that he would get the benefit but because he couldn’t work the system, they gave the benefit to me to downsize. ... I was given a golden ticket and ... I was fortunate enough to get a brand-new smaller property.’ (Wife 6)

Another wife told us: ‘One thing my mum brought me up on is with your tenancy agreement, never put a man’s name on it’ (Wife 8). She therefore had a social tenancy in her sole name and was able to remain there after having the husband excluded because of abuse.

The question of whether one or both spouses moved out of a rented property depended to some extent on the nature of the tenancy. For example, the fact that private tenancies are time-limited means that it may be easier simply to see out the term of the lease while making arrangements to move elsewhere, while the social housing system exerts greater control over tenants and there is less flexibility as to who can remain in the tenancy. As one husband explained, the reason for him remaining in the matrimonial home was that it was a tenancy provided by a charity for injured veterans, and his wife would have been ineligible to live there if he had left. ‘So, it wasn’t a case of me being an arrogant sod and saying, “I’m staying in the house”’ (Husband 12).

Where someone on the tenancy agreement had moved out of the home, in three quarters (74 per cent) of cases the tenancy agreement had been changed to reflect this. This was nearly always (in 93 per cent of cases) done with the agreement of the landlord (be that a private landlord or a local authority or housing association), with only three per cent done through a court order.

Both social and private sector landlords could be amenable to a change. As one wife, whose landlord changed the tenancy from a joint one to a sole one for her, told us:

‘... it was always me that paid the rent anyway ... the landlord at the time did knock me off £50 per month, which I know is not much but it’s something. We’ve always been good tenants, so there’s no reason why he would want to move us out.’ (Wife 17)

Given the very high proportion of agreed tenancy changes, it is helpful to note one possible rationale for seeking an order, as explained to us by one husband, who had been a joint tenant in social housing:

‘That was the main reason for going to court, to sort out the tenancy, because we’d both been told not to give up our side of the tenancy, otherwise we would be making ourselves intentionally homeless and therefore we wouldn’t get any help from the local authority.’ (Husband 7)

6.8 Concluding comments

When a marriage ends, deciding who should move out and what should happen to the matrimonial home are naturally key issues to be resolved. To an extent, they are linked – the person who is the primary carer of young children may more ‘naturally’ expect to remain in the home, at least in the short to medium term, while the spouse with greater financial wherewithal may more easily move out and move on. How far the parties’ resources, including any equity generated by a sale of the home, will enable them to rehouse both themselves and their children in the longer term, and at what standard compared to during the marriage, will also drive the decisions to be taken.

The survey found that, in the 68 per cent of cases where the home had been owner-occupied, the most common decision was to transfer ownership to one party, followed by selling up. Age was the most significant factor associated with this decision, with older couples more likely to sell and younger couples to transfer. This seems linked to a major

theme that emerged from our interviews – that the practicality and feasibility of transferring or selling is likely to be uppermost in divorcees' minds. When coupled with the finding that transfer of ownership was much more likely to be to the wife than the husband and was associated with motherhood, a reasonable supposition is that couples in later life, whose children were off their hands, or who did not have children, may be more financially able to start afresh after divorce, with each settled in a new home. By contrast, a wish to preserve the home for the children to continue to grow up in, may make transfer the desirable option for couples with dependent children, provided that the parties, or one of them, will have the earning capacity to cover a larger mortgage consequent on not having so much equity to put towards purchasing another home.

Where there had been a decision to postpone sale or transfer, this was generally to enable the wife to remain in the property, usually with dependent children, but nearly half of such decisions were later changed, reflecting couples re-thinking what was the best arrangement. To that extent, a decision 'not to decide' at the time of the divorce may have been a sensible one as couples took time to adjust to their new circumstances. A 'clean break' may not always be the best way forward in situations where there is limited financial security and uncertainty as to what will transpire.

It is also important to note that only a third of divorcees who sold the home split the equity equally between them, with women more likely to receive half or more of the equity than men. A larger share was associated, for men, with not having dependent or any children, and for women, with being older. However, whilst wives received a higher percentage of the equity on sale, this did not translate into big discrepancies between genders in the actual monetary value received.

Furthermore, it is crucial to recognise that nearly two thirds of divorcees who sold received under £100,000 as their share of the equity after sale, and a quarter received under £25,000. The harsh realities of the housing market, accentuated by regional differences, mean that a home that has been owned is not necessarily the pot of gold that will smooth the adjustment to living in two households. And this is reflected further in the fact that three in ten (30 per cent) transfers did not involve any compensating payment being made to the spouse losing their share in the home (although sometimes this will have been offset by decisions over other assets – such as not to seek a share of a pension, or not to pursue maintenance, even for the children).

Rented properties were retained in just under half of cases, with tenancies in social housing being more likely to be retained than private rentals and women being more likely to have stayed on in the home than men. This reflects the nature of the two rented sectors: social housing imposes stringent conditions on eligibility in order to preserve a limited stock of housing for cases that best meet social objectives – particularly that families with children should be securely housed. The private sector brings flexibility of movement with, of course, the uncertainty caused by lack of security of tenure – but a good relationship with a landlord could be leveraged, in both social and private housing, to secure continuing occupation of the home.

In Chapter 7, we look at other assets, including pensions, as well as debts, that divorcees might have had, that also formed part of the package of arrangements that they made.

Chapter 7: Pensions, other assets and debts

Key findings

Pension sharing was uncommon amongst those yet to draw a pension, and pensions were only shared equally in a fifth of such cases

- There was a lack of awareness, understanding or interest in pensions amongst many divorcees which fed through into how far they had dealt with pensions in making their financial arrangements.
- Pensions were largely seen by interviewees as 'belonging' to the individual spouse rather than as a product of the marriage.
- Pension sharing 'arrangements' appear to have been understood by participants as not confined to those made the subject of specific court orders.
- Amongst divorcees where one or both spouses had a pension they were not yet drawing, only one in nine (11 per cent) had made an arrangement for pension sharing. Men (14 per cent) were much more likely to report sharing their pensions than women (three per cent).
- Higher value pensions were significantly more likely to be shared than those of lower value and the presence of dependent or non-dependent children also increased this likelihood.
- Where a pension not yet in payment was shared, there was a 50:50 split of the pension pot in only a fifth (22 per cent) of cases. In half of cases (48 per cent) the recipient got less than half and in 18 per cent over half.

Divorcees generally received only modest amounts of other assets or savings. Equal sharing was uncommon, with assets generally allocated according to ownership

- One in 11 (nine per cent) divorcees received nothing by way of assets or savings. One in five (22 per cent) received assets worth less than £5,000 and a further one in ten (10 per cent) received between £5,000 and £9,999. Only 16 per cent of divorcees received assets worth £100,000 or more.
- Assets were commonly allocated according to ownership, with jointly owned assets shared but other assets retained by the owner.
- Only three in 10 divorcees divided their assets in equal shares.

Debts were generally 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

- Debts were generally allocated according to who was liable for them; only one in five (20 per cent) couples shared debts equally.
- The amount of debt was relatively modest for most divorcees. Three in ten (28 per cent) took on debts of less than £5,000 with a further quarter (26 per cent) taking on between £5,000 and £19,999. Only nine per cent took on debts of £50,000 or more.
- Men were more likely than women to report having taken on more of the debts. A third of men (34 per cent) reported taking on all the debts, compared to 25 per cent of women.

7.1 Introduction

This chapter describes the decisions that were made about whether, and if so how, the value of any pensions, savings, assets or debts was to be split between the divorcing parties.

Where there was a division of the assets, the chapter includes details of the percentage split between the parties, as well as the monetary amounts received.

As we set out in Chapter 3, the majority of divorcees had pensions, savings or assets eligible for potential division in any financial arrangement made upon divorce. For the large majority, however, assets other than the pension or the home were limited. Our survey participants and interviewees mainly mentioned having cars, some savings and the physical assets of the matrimonial home. Some interviewees mentioned pets, and the difficulty of resolving what should happen to those too.

In two in five (40 per cent) divorces, both spouses had been paying into a pension other than a state pension during the marriage. In a further three in ten (30 per cent), one spouse had a non-state pension. In addition, two thirds (63 per cent) of divorcees reported that they or their ex-spouse had savings or assets (other than the pension or matrimonial home) at the point of divorce, albeit that two thirds (65 per cent) also reported having debts.

Even if, for many divorcees, the size of their pension was relatively modest, it could constitute a valuable asset alongside any equity in a matrimonial home. A share of such a resource has the potential to make a significant contribution to longer-term financial stability for a financially vulnerable spouse (and we explore this more closely in Chapters 8 and 10). By contrast, for most divorcees, the value of any additional assets or savings was relatively modest, as was the value of the debts to divide (see Chapter 3, section 3.7).

7.2 Chapter outline

This chapter provides a picture of divorcees' pensions and any other assets they or their ex-spouse had at the time of divorce, as well as any debts, describing decisions in relation to:

- Section 7.3: Pension sharing where pensions were not yet being drawn
- Section 7.4: Offsetting the pension against other assets
- Section 7.5: Division of savings and assets
- Section 7.6: Division of debts
- Section 7.7: Concluding comments

7.3 Pension sharing where pensions were not yet being drawn

In the survey, divorcees with pensions were asked whether, at the time of the divorce, it was decided that their ex-spouse would receive a share of their pension pot (with a similar question asked about their ex-spouse's pension). While rights to an ex-spouse's pension pot, or payments directly from the pension itself, require a specific court order, the survey question did not ask about this directly, although it did ask the broader question about whether any arrangements had been made into an order. Among those who reported a pension sharing agreement for a pension not yet being drawn, we are relatively confident that the majority of these were formal pension sharing orders. Only 12 per cent of these divorcees reported that their financial arrangement as a whole had not been made into an order²⁵² (see Chapter 4, section 4.8 for more information on orders).

However, both the survey responses and interviews suggest a greater degree of confusion among those reporting the sharing of a pension in payment, with some participants referring to 'sharing' a pension even when they did not have an order to do so, and others when they meant that their ex-spouse had made payments to them from his or her pension in payment. In the survey, only two in five (42 per cent) of these divorcees reported that their financial arrangement as a whole had been made into an order.²⁵³ It is therefore more appropriate to include discussion of money transfers from pensions in payment in Chapter 9, alongside other ongoing financial support such as spousal and child maintenance. In this section, we focus on divorcees with pensions not yet in payment.

7.3.1 *Lack of knowledge about pensions*

We noted in Chapter 3 (section 3.6) that a quarter (24 per cent) of divorcees did not know whether their ex-spouse had a pension, and that a quarter (23 per cent) of those who themselves had an employer pension did not know what type of pension it was. A husband who knew little about his own pension, and nothing about whether his wife had one, told us:

²⁵² 71 per cent reported that their arrangement was made into an order, while the remaining 18 per cent were not asked the question about orders because they had earlier said that they 'went their separate ways' or 'had nothing to divide'. As reported in Chapter 4, in reality, many of these divorcees had divided their assets, but had not necessarily viewed these as formal arrangements.

²⁵³ 15 per cent reported that they had an arrangement not made into an order, but 42 per cent said that they had made no arrangement (i.e. had nothing to divide or went their separate ways).

'To be honest I wouldn't have a clue. ...

Interviewer: you put in the survey that you weren't sure if your ex-wife had a pension apart from the state pension?

'I imagine that she has, yes ... It wouldn't be very much. ... I didn't think about my pension and a few years down the line I didn't even realise, but I had automatically been enrolled [into a pension scheme]. ... I'm not sure if [ex-wife] knows I have got one. ... it didn't get discussed at all. We are both pretty laid back really.' (Husband 18)

For divorcees some way off retirement, it is understandable that pensions might not be a high priority. As one wife commented: '... it doesn't mean anything does it, not really, when I'm only 43 and got a long time to work.' (Wife 26)

Similarly, a husband explained that his solicitor had given him:

'a brief overview about pensions ... we were both in our 30s and I mean, they'd said that pensions were not really too much emphasised when you're that age going through divorce really. ... it was like, yes it's another 30, 35, 40 years away in terms of when the money would come, when you can draw on that money really.' (Husband 11)

Another wife knew that her husband had various valuable pensions, but had 'no idea' how much they were actually worth:

'He's worth an absolute fortune when he dies. ... [but] if there was a way around him not giving me any money, he would find that way. So I didn't look into it. If you don't know what you're missing, you don't mind.' (Wife 27)

This lack of awareness, understanding or interest fed through, as one would expect, into how, if at all, pensions were taken into account when couples sought to make their financial arrangements.

7.3.2 *Whether there was a pension sharing arrangement*²⁵⁴

It is important to recognise that, although in many cases both spouses had pensions, these

²⁵⁴ We use this term to cover both pension sharing and the rarely ordered, pension attachment orders (see Chapter 1, section 1.3.1),

pensions were likely to be of differing value, with the size of women's pension pots significantly lower, on average, than those of men (see Figure 3.10, chapter 3).²⁵⁵ Three in five (59 per cent) survey participants reported that at least one spouse in the couple had had a pension that they were not yet drawing.²⁵⁶ Among these, only 11 per cent of divorcees had an arrangement that one or both parties' pensions should be shared. In the majority (71 per cent) of these divorces, the arrangement was to share only one pension, with the remaining three in ten (29 per cent) involving pension sharing of both ex-spouses' pensions.

As noted above, there was a considerable level of ignorance about pensions in general, and about the possibility of sharing them on divorce in particular, amongst divorcees.

Interviewees commonly told us that the subject 'never came up' in discussions, including even when both parties were represented by solicitors.²⁵⁷ But this was not necessarily only due to ignorance. A spouse might not actually *want* a share of the other's pension. A husband who told us his wife had a good pension but that it had never been discussed said:

'But you know what, I wouldn't have taken it anyway. I'm not like that, you know, I can kind of fend for myself... I'm just not like that, no.' (Husband 8)

A wife agreed:

'I wouldn't want [husband's] pension, I just wouldn't, even if it was the other way around, if it was, I don't know, a million pounds I just don't think I would want it. I would just want that separation and just to have that clear cut financial break.' (Wife 11)

Another husband noted that although his wife:

'... could take 50 per cent of [the pension] She decided not to. I don't know why. ... it's been a bonus, like the whole pension thing, that she hasn't ... I was prepared to like, lose half my pension, but the fact that she said she didn't want it, that's been a bonus.' (Husband 25)

²⁵⁵ For national data, see DWP, *The Gender Pensions Gap in Private Pensions* (2023), <https://www.gov.uk/government/statistics/gender-pensions-gap-in-private-pensions/the-gender-pensions-gap-in-private-pensions#valuing-defined-benefit-db-pension-wealth>, which reports a 35 per cent gap between men's and women's pensions not yet in payment.

²⁵⁶ However, this is a likely underestimate given the percentage of divorcees who did not know whether their ex-spouse had a pension.

²⁵⁷ For the solicitor's duty of care in relation to advice about pensions on divorce, see *Joanne Lewis v Cunningtons Solicitors* [2023] EWHC 822 (KB).

Interviewees often expressed the view, found in earlier research,²⁵⁸ that pensions are personal to the individual who is making the contributions:

‘I would have viewed it as like a, an individual aspect rather than a product of the marriage.’ (Husband 25)

This no doubt reflects a variety of factors: the fact that a person may start contributing well before they meet their spouse; that the contributions may continue for many years; that they usually come out of a person’s salary and are recorded on the pay slip, or the fact that employers may make contributions too. As one husband, reflecting on the difference between a pension and the matrimonial home, told us:

‘... the property ... it’s practical, you need a roof over your head... is the first thing, but the property is something you’ve paid for jointly; your pension is something that you’ve taken out of your salary every month, right, that’s a very personal thing, even though you don’t think about it at the time, it’s very, very personal. ... You do think about it differently [from the home] because you’ve – I suppose part of your pension is what you’ve earned because it’s your contribution, but the other bit is the bit from your employer that you’ve also kind of, it’s your little freebie in life, isn’t it?’ (Husband 14)

But another reason for keeping away from the pension was to avoid complexity and dispute and to ensure a complete clean break:

‘Yeah, it was brought up and quite swiftly we agreed that we would just keep our own pensions really ... We both had similar sort of pensions so what would we gain really, apart from the animosity and the grief and the expense.’ (Husband 16)

‘I initially wanted a share of his pension, ‘cause I thought, well hang on a minute I’ve got responsibilities here, I have a child and everything. He has to support his child, so I thought the pension was part of that... but the reason why I agreed to separate it was because it would have been protracted, more documentation to present, it would have extended the

²⁵⁸ See Chapter 1, section 1.6.3; S Arthur et al, *Settling Up, making financial arrangements after divorce or separation* (National Centre for Social Research, 2002), p 43.

divorce period and I just wanted to be completely free and in the end I just thought, okay.’ (Wife 7)

It might well be in a divorcee’s interest to remain low-key about their pension, and hope that the other spouse did not raise the issue. One husband, who had both an employer and a private pension said:

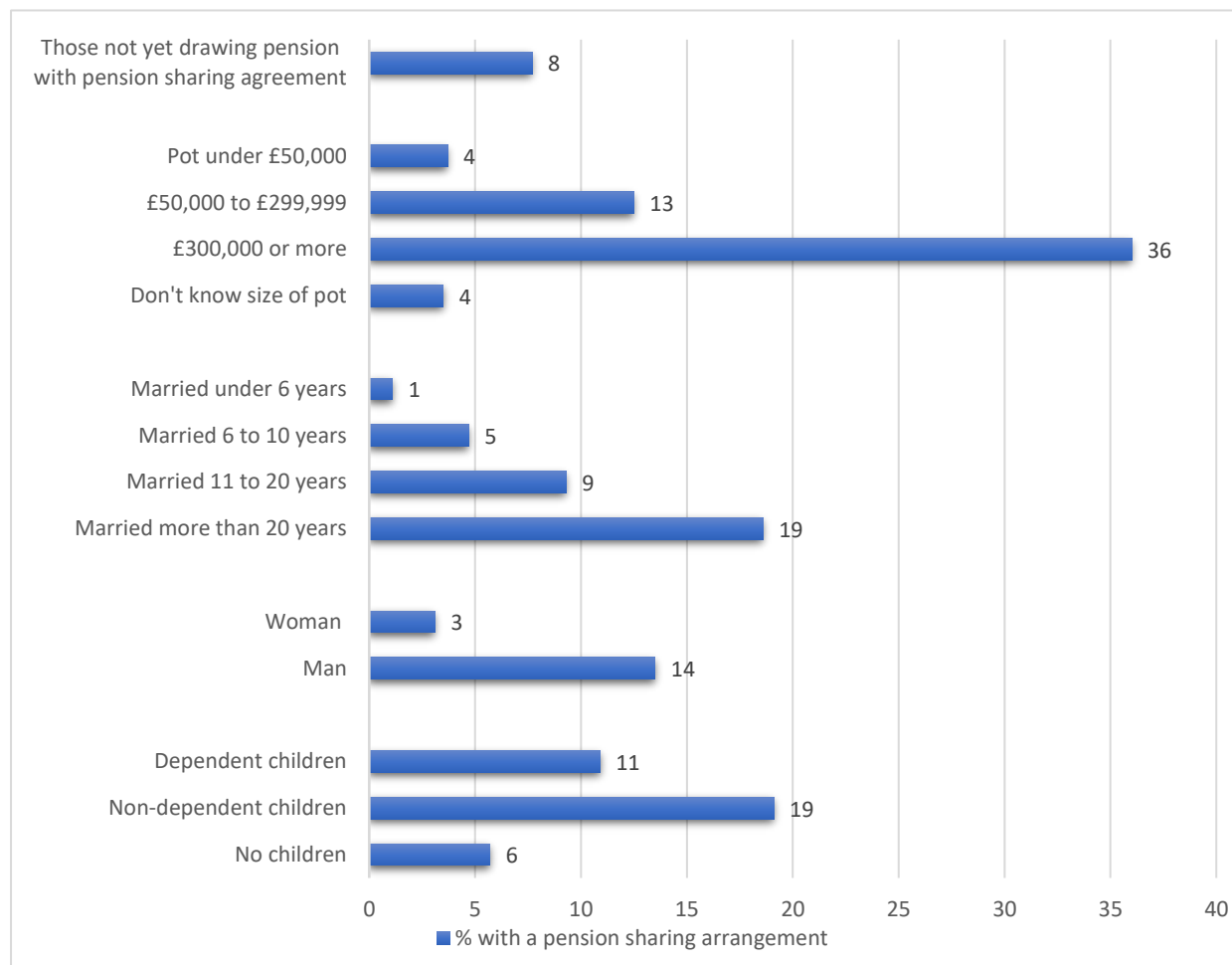
‘My solicitor said, she might be able to claim a share of it... he says, “what’s your sort of instinct?” I was like, “I think I can say to her, it’s my pension. It’s mine and I think she’ll accept that, especially the work one”. And so, I just said, “we’ll keep our own pensions” and she was like, “yeah” ... I wasn’t so clear to her how much I was putting in my private pension either. There’s probably more in there than she knows about. I wasn’t going to obviously tell – when we were married, I wasn’t like keeping it a secret to be sneaky, I just never really mentioned it. ... I think if she did know how much was in the private pension she may have said, “I want some of that”.’ (Husband 1)

In trying to unpick further who came to a pension sharing arrangement, we focus here solely on the pensions of the survey participants themselves, where we have the best data on whether they had a pension, and the value of any pension pots.²⁵⁹ Among the 50 per cent of survey participants who themselves had a pension they were not yet drawing, only eight per cent said that they had made a sharing arrangement with their ex-spouse (see Figure 7.1, below).²⁶⁰ However, as we discuss above, it is important to note that while a pension not yet in payment can only be shared through a court order, the interview data outlined below suggests that not all of the arrangements that these participants referred to will in fact have been formalised through such an order.

²⁵⁹ Given the level of ignorance regarding the pension position of the ex-spouse (see Chapter 3, section 3.6).

²⁶⁰ This is different from the 11 per cent figure outlined above as this figure relates only to participants in relation to their own pension.

Figure 7.1: Percentage of divorcees with a pension they were not yet drawing who had a pension sharing arrangement, overall and across key demographics



Base: all divorcees with a pension they are not yet drawing (1,464); with pot of £50,000 or less (440); with pot of £50,000 to £299,999 (356); with pot of £300,000 or more (135); don't know size of pot (533); married under six years (300); married six to 10 years (365); married 11 to 20 years (450); married more than 20 years (349); women (854); men (610)

As we would expect,²⁶¹ higher value pensions were significantly more likely to be shared than lower value pensions (p-value 0.003). This came out as the strongest predictor of pension sharing in our exploratory regression analysis. A third (36 per cent) of pension pots worth at least £300,000 were shared with the ex-spouse, compared with only four per cent of pots worth under £50,000. One husband, whose own pension pot was worth under £50,000, explained that neither he nor his wife wanted to claim a pension share:

²⁶¹ See H Woodward with M Sefton, *Pensions on Divorce: An Empirical Study* (2014), Section 3.3. Other similarities with their findings include the length of the marriage, and the presence of children.

‘... she was only paying in about £50 a month or something like that, so it wasn’t worth anything... [and] she said straightaway that “I’d never touch your pension”, so yeah, that was always a line in the sand that we wouldn’t go there.’ (Husband 17)

At the other extreme, a wife, who was to receive about two thirds of the husband’s pension pot of between £300,000 and £500,000 told us that her husband, who was a lawyer, and had a number of pensions:

‘... earns a fortune and he’s still nowhere near at the top of his game so, working on the assumption that life reasonably goes to plan, he still has the potential to earn enormous amounts of money... whereas, with my earnings in my job, I will never, ever reach anywhere near what he does. So again, I think he just felt that was a fair thing for me to take the most valuable one at the moment because that pretty much gives me financial security for my future.’ (Wife 18)

It is worth noting that this couple had not yet actually formalised their agreement through a pension sharing order, leaving the wife in a potentially precarious position in the future, although it may be assumed perhaps, that the lawyer husband would ensure this was done. Beyond the pension pot value, the other key factors associated with coming to a pension sharing arrangement were being in a longer marriage (p-value 0.002) and being a man (p-value <0.001). For instance, among those with a pension, one in five (19 per cent) of those married for 20 years or more had a pension sharing arrangement compared with only one per cent of those with a pension who had been married for under six years. Even after taking into account the fact that men had larger pension pots than women on average, men with pensions were far more likely than women with pensions to report having a pension sharing arrangement. Fourteen per cent of men who had a pension they were not yet drawing reported that their ex-spouse would receive a share of their pension pot, compared to only three per cent of women. This may in part be explained by men usually being older than their wives and having a larger pension in consequence of having worked for longer. As one husband, with several employer pensions, said:

‘... my ex-wife was seven years younger than me so I’d obviously been working for, in theory, seven years more so I’ve kind of had a pension going for a longer period. ... it’s only now obviously I’m in a better position, better paid job where the employer contributes more so it’s really only now that my pension is getting okay so that’s that. ... we agreed to split certain

ones 50 per cent. The biggest one that we had I agreed that I would just do 50 per cent on that and I've got a few smaller ones.' (Husband 9)

Interestingly, a disparity in ages led to a decision by one judge not to impose a pension share in the case of one husband we interviewed. He told us that there was an online hearing to sign off a consent order and:

'[Wife] brought the pension up while the judge was there and it went quiet and this was all done over the phone because of COVID ... The judge asked about pensions. ... I explained, I said, "Well, there is a 14-year [age] difference. I've been working for 20 years, so my pension is going to be considerably higher [than hers]. ... By the time [she] reaches my age and she's been working for 20 years, the same as I have, the pension is probably better than my pension... so by the time she reaches retirement age or whatever, the pensions are going to be balanced, do you know what I mean?" The judge agreed with what I said. He said "No, as long as you're happy with that" and she had to say that she was happy with that really because it was true. ... The judge agreed and said that on that basis he was happy to sign the decree [sic].' (Husband 12)

One wife who had struggled to secure what she felt was a fair share of the assets in the marriage because she believed her husband had undisclosed property commented that:

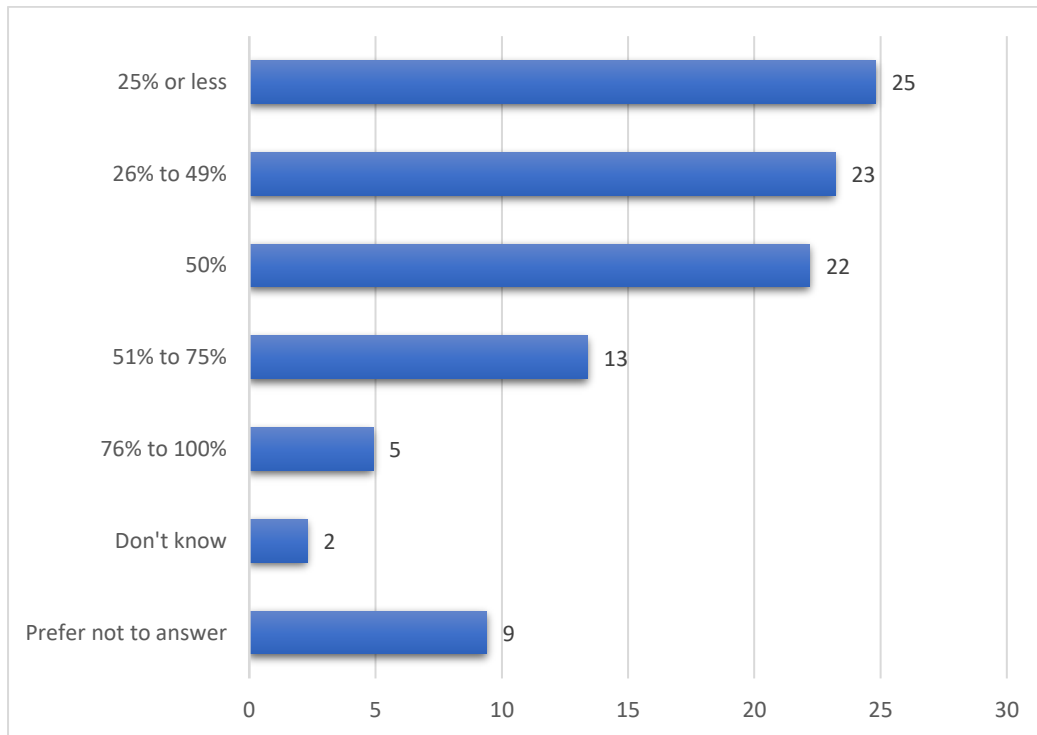
'Out of the whole divorce, I think [the pension share] was a straightforward process, he agreed on, so that went straight through, the court did that side, because it was all the papers, he couldn't say "oh, I don't have this" or "I don't have that" ... this is the way I saw it anyway – if he's not paying, he's never supported any maintenance towards the children for the last ten, you know, ten odd years ... I talked to my solicitor and I said, "look the whole value of [the pension], that's the only money my kids are going to get from him through the court system, that I want the payment outright to my kids". Basically, if it comes to me it will go to my children, so it gives them financial stability.' (Wife 2)

7.3.3 *Percentage of the other party's share*

Figure 7.2, below, shows the percentage share of the divorcee's pension that the other spouse received. In only one in five (22 per cent) cases, had there been a 50:50 split of the pension pot, and in nearly half of cases (48 per cent) the recipient got less than half (indeed, in 25 per cent, the share was less than a quarter). Only one in six (18 per cent) recipients

got more than half of the pot, which is perhaps to be expected. The number of pension sharing arrangements is too small to look at differences across gender²⁶² or other characteristics.

Figure 7.2: Percentage share received by the ex-spouse



Base: all divorcees agreeing their ex-spouse would have a share of a pension pot they are not yet drawing (142)

While there was some reliance on solicitor advice amongst our interviewees regarding the percentage of the pension to be shared, one divorcee (Husband 23) told us that he and his wife had googled pensions on divorce and had agreed that she should receive a share when he came to retire, based only on their years of marriage. They had written this down by themselves but had taken no legal advice at all, nor had they been to court for any financial remedies order. This approach is concerning, not only because there is no court order to formalise the pension share, but also because the couple appear to have used erroneous online information to guide them in how to come to a percentage share. Guidance by the Pension Advisory Group suggests that in needs cases such as this, apportionment based on

²⁶² Particularly given so few women shared their pension.

length of the marriage only, will not normally be appropriate.²⁶³ The misconception that pensions would be shared 'pro-rata' based on the length of the marriage was also highlighted in the case of Wife 10, who was put off from applying for a pension share for the same reason:

'Well, what he said was basically, if I go for his pension, he could go for me and I had more as in probably more tangible that he could get hold of and at that point, he said, you might not get anything from this pension. It could be pro rata to the amount of years that you've been with him. And at that point then I decided then I would never go for his pension anyway.' (Wife 10)

7.4 Offsetting the pension against other assets

It is clear that sharing the pension itself is still a comparatively rare outcome. The strength of the view that pensions 'belong' to the contributor, coupled with a need (and wish) to resolve the matter of housing for the couple and any children, mean that 'offsetting' the pension by foregoing a share, or as large a share, in the former matrimonial home, or transferring other assets, may be a useful strategy where the question of the pension *is* raised in negotiations,²⁶⁴ and this was reflected in some of our interviews. One husband told us:

'... I'd been in the house and had spent an awful lot of money on an extension to the house and things, so I didn't feel at the time that a 50/50 split was completely fair ... I also felt at the time in terms of what we'd each put into it at all, that I should have something more. [But] I came down to splitting it 50/50 in the end on the basis of, she then gave up any claim to ongoing part of my pension.' (Husband 20)

Another explained that his wife kept her inherited share portfolio in return for not pursuing a share of his pension:

'... she could have had a claim on my pension but... I'm not going to be drawing it any time soon so she wouldn't have gotten anything now anyway and this was all part of our discussion and negotiation as I said to

²⁶³ 'In needs-based cases the timing and source of pension assets is not generally a relevant consideration as the court can have resort to any assets, whenever acquired, to ensure the parties' needs are met.' Pension Advisory Group, *A Guide to the Treatment of Pensions on Divorce* (Nuffield Foundation, 2019), p 3.

²⁶⁴ See G Lazarus, "You need the house, love – let him keep his pension" [2019] Fam Law 373.

you, with her share portfolio that she had that she was left, and she kept that. So, there was give and take...' (Husband 10)

Deciding what to do will in part depend on assessing the comparative value of the pension as against the home:

'I just basically gave [wife] the house with the equity and everything, basically because I didn't want it because it was another financial burden on me leaving her and everything, and she needed it, so it worked both ways and that was a good excuse for me to say, "you've definitely got to leave my pension alone if I'm doing this."' (Husband 17)

'... from what my solicitor told me, if I agreed to a lower percentage of the equity of the house then by rights the pension would be mine. [Wife] wanted a 50/50 break in all of it. ... I knew that I could get my personal pension when I'm 60 and I was thinking it would – well, for a start, I was thinking it was gonna be worth 13 grand more than it is now! ... So you know, I was looking at the value of the house and I was looking at the value of the pension ... The pension would have been frozen and then we'd have both been taxed on it, so it would have been worth a lot less than, you know, if I got to keep it and took more of a hit on the equity of the house.' (Husband 19)

A wife whose husband was already drawing his pension, told us:

'The reason I took the house was because he was taking his pension at the time. He'd retired early and was drawing down on a pension which was a really good pension. We'd had some money advice from mediation and stuff and they said "don't touch his pension but you have the house." He argued the point a bit but in the end gave in because otherwise I was going to take some of his pension. ... He was definite that he was not going to share that whatsoever.' (Wife 15)

It is doubtful that she would, in fact, have pursued her husband for his pension, because she had not used any legal services other than legally aided mediation. She was dependent upon welfare benefits and her husband had refused to contribute maintenance either to her or for their children, including a child with special needs. She finished her interview by telling us:

'I probably would have paid [for legal advice] purely for the fact of the pension side of it because I know he's got a lot more than I've got coming in, and it's only him.' (Wife 15)

7.5 Division of savings and assets

This section sets out whether, and if so how, the two thirds (63 per cent) of divorcees who reported that they or their ex-spouse had at least some savings or assets (beyond pensions and the matrimonial home) divided these at the point of divorce.

7.5.1 *Whether a decision had been made to divide assets and savings*

At the point of the survey, up to five years after the decree absolute, seven in ten (72 per cent)²⁶⁵ of divorcees with any savings or assets had come to a decision about how to divide them.²⁶⁶

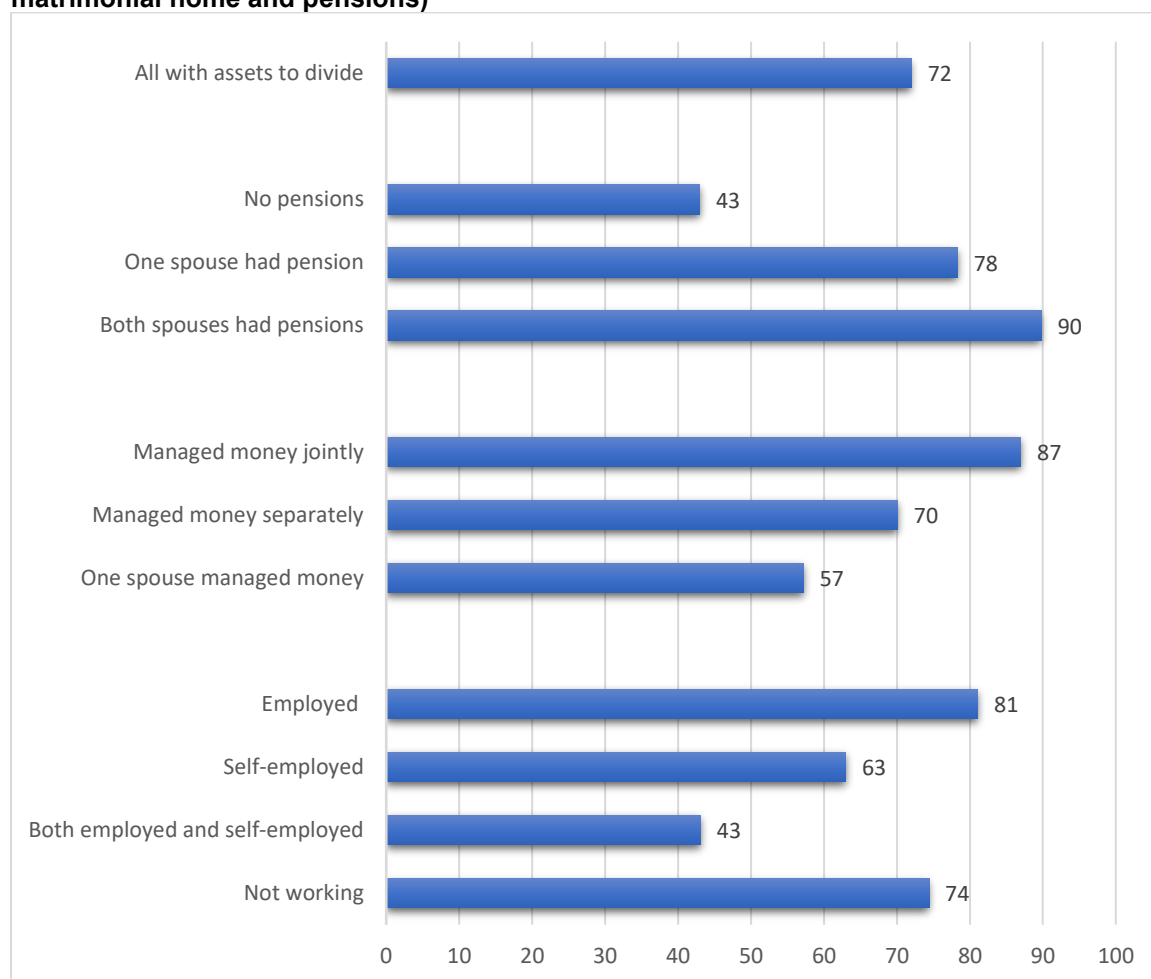
Decisions were not related to the level of savings and assets to divide. Rather, having made a decision was most strongly linked (in exploratory regression analysis, see Chapter 2, section 2.4.4) to whether or not the divorcees also had pensions (p-value <0.001); how they managed their money (p-value <0.001); and their work status during their marriage (p-value <0.001).

Many of these factors suggest that those couples who had more to divide in general were those most likely to have sorted out how to divide their assets. For instance, a decision had been reached in nine in ten (90 per cent) cases where both spouses had pensions, compared to two in five (39 per cent) cases where neither spouse had a pension. Those who had managed their money jointly were also more likely than others to have decided how to split any assets or savings (87 per cent compared to 57 per cent of cases where one spouse handled the finances). The fact that fewer self-employed people (63 per cent and 43 per cent of those who were both employed and self-employed) had come to a decision may reflect the complexity of their finances in comparison to those who were employed (81 per cent) (Figure 7.5, below).

²⁶⁵ Nine per cent said that there was nothing to divide after their debts were paid off, and these have been excluded from the base.

²⁶⁶ Fifteen per cent of divorcees were still trying to sort things out, with the remainder either not knowing or wanting to provide an answer.

Figure 7.5: Whether a decision was made on how to divide savings and assets (other than matrimonial home and pensions)



Base: all divorcees with assets or savings to divide (1623); with no pensions (including don't know) (264); with one spouse having a pension (407); with both spouses having a pension (952); those who managed money jointly (1,018); managed money separately (246); where one spouse managed the money (270); employed (1,089); self-employed (186); both (95); not working (218)

7.5.2 *The nature of the assets owned by divorcees*

As we noted in Chapter 3 (section 3.8), most divorcees in the survey had only modest amounts of wealth in the form of assets other than the home and a pension, with a median net value of all assets including home and pension of £135,000. Amongst our interviewees, the assets most frequently mentioned, apart from personal and household items, were cars and savings, with a few referring to inheritances, second properties (usually brought into the marriage) and investments.

Physical assets

Our interviewees took different approaches to how different assets should be allocated. As far as any cars were concerned, these appear to have stayed with the spouse who had

bought or used them or in whose name they were kept, being seen almost as the personal property of that spouse. For example, one wife was firm in telling us:

‘That was my own personal car, and obviously he didn’t have a driving licence, so he wasn’t the owner, he had no ownership towards my car. ... That was outright mine.’ (Wife 2)

A husband noted that he had needed his car: ‘... my priority was the car because I needed to get to work every day ...’ (Husband 4). Another explained that though the car was in his name: ‘it was [wife’s] car ... So even though legally it was my vehicle, it was her car, so I signed the logbook over to her’ (Husband 5). Similarly, a husband who had bought his wife a car said, ‘I couldn’t take it back, it was a gift’ (Husband 12).

For couples with more than one vehicle, it was obviously straightforward to allocate each to whichever spouse had used it: ‘I took the car that I’d been driving and he took the car that he’d been driving so we both had a car each’ (Wife 16). But for couples with multiple vehicles, things could get trickier. One wife (Wife 19) told us that her husband had a second-hand car, while hers was being bought through finance. By each keeping their ‘own’ car, she felt she had been saddled with the debt: ‘I was still paying my loan on the car, and he went away with his car fully paid for.’ She was further annoyed that they had also owned a caravan but when they split up she had nowhere to put it, so her husband had kept it and then sold it, keeping the proceeds. She commented that the cost of keeping up payments on her car, and losing out on the caravan sale, were things she had:

‘... missed along the way, do you know what I mean, you just take it for granted that you’ll just leave with your own things.’ (Wife 19)

This view that ‘you’ll leave with your own things’ could also determine the sharing out of other items, such as furniture and household equipment:

‘... in terms of furniture within the home, you know, the stuff that I bought with my own money I kept, the stuff that she bought with her own money she kept ... There was only one thing which we both contributed to equally, which was the bed, but we both agreed to just give it to charity.’ (Husband 13)

But another approach was to allocate items according to need, or convenience. As another husband explained, he had kept a campervan, while the furniture from the matrimonial home went to his wife’s new home where the children were living:

'I mean, I've lost out massively on that but it is what it is, you know, I could've gone and lived in the back of the campervan, the kids can't ... I just felt like it was the right thing to do.' (Husband 8)

Similarly, one husband who had remained in the matrimonial home transferred some of his savings to his wife to enable her to equip her new property:

'When she walked out, she walked out with a lot more than she came in with, if you like. Plus, six and a half, seven thousand that I gave her that I had in my savings at the time. Rather than pulling out the washing machine, tumble dryer and things like that, I gave her the money to buy those to fit her new place. ... I was in a job where I could quickly, not quickly, but I could make those [savings] back up again, which I did [although] she got those as well, a year and a half later, when the final decree came through. She walked away with another £12,000.' (Husband 12)

However, the power dynamics in a marriage could result in a spouse losing almost everything. One wife told us that, although he had had an affair, her husband had not wanted to divorce. When she left him, he therefore refused to allow her to take anything from the home other than her clothes. Despite involving a solicitor, she said:

'... I never got anything from the house, not one thing. ... I had some beautiful things that my mum and my grandmother had bought me, and they were still there. He just wouldn't – I'm sorry, it upsets me ... I had photographs of my children when they were young. He just wouldn't give me anything. ... I just said to my solicitor, "can you tell him that I want these things?" I didn't want everything, more personal items I wanted.'

(Wife 25)

Pets could be a particular headache. The emotional value attached to these can make their allocation a source of considerable tension.²⁶⁷ One wife told us that she had been unable to keep them because of the cost:

'In the end, I had to rehome my dogs that were the world to me. ... I loved them with all my heart and in the end I rehomed them... to the most marvellous people. I wish they could have rehomed me! that's why I'll

²⁶⁷ See D Rook, 'Who Gets Charlie? The Emergence of Pet Custody Disputes in Family Law: Adapting Theoretical Tools from Child Law' (2014) 28 Int J Law Pol & Fam 177.

never, ever, forgive [ex-husband] and I never want to see him again is because he robbed me of something that was so precious to me.’ (Wife 6)

Other couples came to arrangements whereby one spouse would contribute to the cost of upkeep of their pets, in a form of ongoing financial support, which we discuss further in Chapter 9 (section 9.10).

Monetary assets

The value of monetary assets, including the equity in second properties, might be shared, where these had been intended as joint investments at the outset. As one husband explained:

‘... there were two properties we had then ... and we’d just been renting them out and so we sold those off, sold both those off because we just, you know, they were a real investment rather than a place we used to go. ... And then the other sort of assets like you know, kind of unit, we’ve got some unit trusts, so we’ve got some ISAs and we’ve got you know, other bits and pieces that you put your money in and yeah, we pretty much just sat down and split it down the middle, and some of it went to the kids ...’
(Husband 14)

But some decisions about savings and investments appear to have been taken according to whether they were in joint or in sole name accounts. For example, one wife said:

‘We had separate bank accounts; we didn’t have a joint bank account. All our finances were separate. ... I had my savings but obviously he was probably aware, but we just didn’t have that conversation. ... It didn’t come into the proceedings at all.’ (Wife 4)

By contrast, another told us:

‘We basically had all our money together. ... ‘

Interviewer: There weren’t other assets in other accounts that you decided to split? It was that bank account and the cars?

‘Yes. And the only other thing, which he wasn’t aware of and he still isn’t aware of, I had my own premium bonds. ... So I had all that was in my name and he never even knew I had that, let alone took it with me, so that’s still a secret.’ (Wife 9)

On the other hand, sharing savings and investments equally was seen by this husband:

‘... as the easiest thing to do to save time. It wasn’t necessarily an equal 50/50 if you look at it in terms of who invested more in anything, but it was just to save time and make it amicable for the children as well.’ (Husband 11)

Inheritances were treated rather differently. Our interviewees recognised these as ‘belonging’ to the spouse to whom they had been bequeathed and this meant there were a variety of approaches to determine what to do with them. One husband said that his wife had inherited a share portfolio before they married:

‘So whilst I could have argued well, we’re splitting everything 50/50, I was quite happy for her to retain that share portfolio in its entirety and it meant that I had less financially. ... I was happy with that. The outcome we were both satisfied with, no one was left with a bad taste in their mouth, which was a great thing to do.’ (Husband 10)

Another told us that he had helped his mother to buy a house and she had left it to him in her will. He had not told his wife about this, and, as probate had not been completed during the time of the divorce, he had not declared it as an asset:

‘It sounds a bit sneaky, but if it wasn’t an asset of mine or showing as an asset of mine when I declared, then it’s not part of that process and I’d already been screwed over, if you know what I mean.’ (Husband 12)

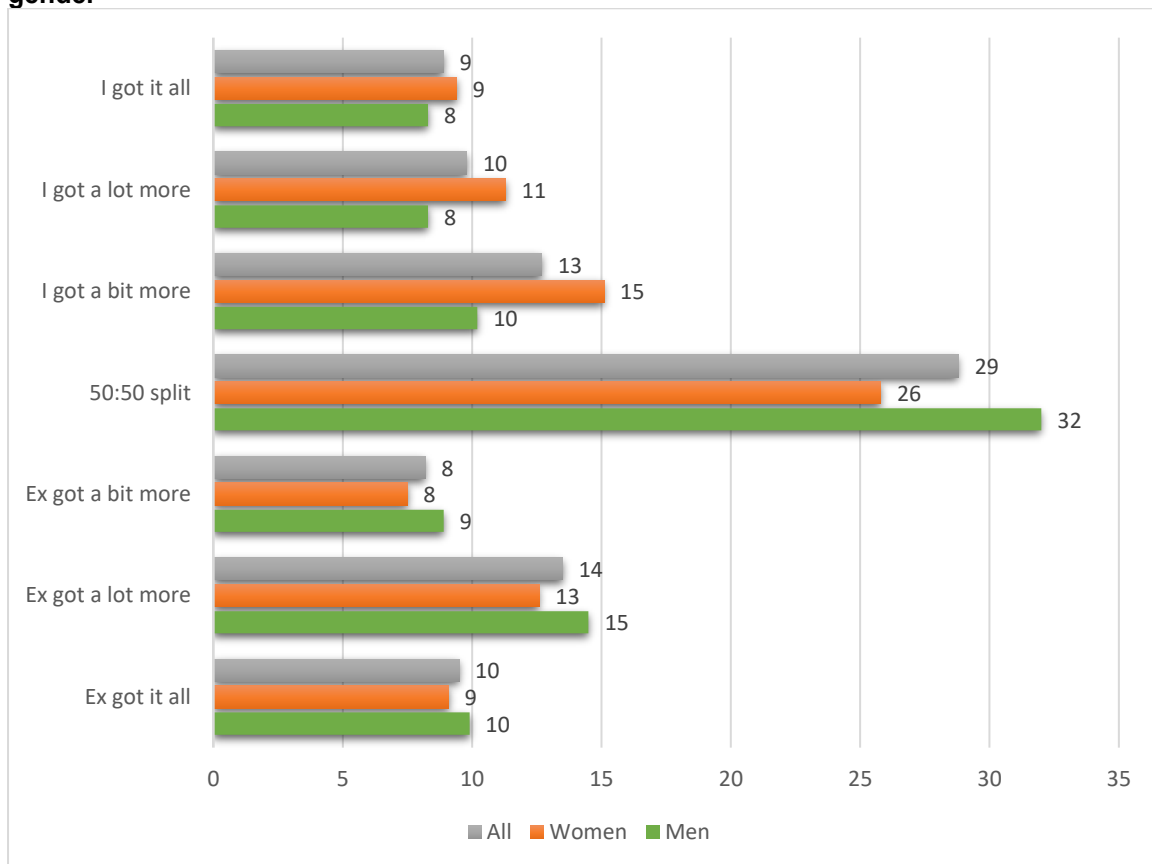
Other interviewees had kept an inheritance as a trade-off against the house, or offsetting it against a pension:

‘... we were discussing that in mediation, we had to put, we had to list liabilities and assets, so she listed [her inheritance] as an asset. I put my pension as mine, and it was decided that she wouldn’t go after my pension, and I wouldn’t go after her inheritance. Because that was her dad’s money, and I’d feel really bad to say, “that’s your inheritance from your dad, and I’m gonna take it off you” because that’s not fair, I don’t think.’ (Husband 25)

7.5.3 The percentage and value of the assets and savings received

In the survey, amongst divorcees who had agreed how to divide any assets and savings, just three in ten (29 per cent) had agreed a 50:50 split. Women were more likely than men to report having received more than half of any assets or savings (36 per cent compared to 27 per cent).²⁶⁸ Men were more likely than women to report receiving half (32 per cent compared to 26 per cent) or less than half (33 per cent compared to 29 per cent) (p-value 0.027).

Figure 7.6: Proportion of savings and assets received if agreement had been reached, by gender



Base: all divorcees with arrangement on how to divide savings or assets (1,371); women with arrangement (732); men with arrangement (639)

Our interviews suggested that unequal allocations may have been the result of the kinds of decisions noted above, with some assets regarded as 'belonging' to one spouse and thus to be preserved for them if possible, such as the car, while others, viewed as 'joint', were to be

²⁶⁸ Note, percentages in this paragraph are slightly different to those in Figure 7.6 due to rounding to the nearest percent.

shared equally, or to go with the primary carer of the children. An interesting example²⁶⁹ given by a wife was:

‘... my engagement ring was worth a lot of money but what we did with that was we sold it because I had no desire to keep it and we took half of the money each. That’s the only other thing of value. Other individual [things] like watches, etc. I took mine, he took his.’ (Wife 18)

One husband, who had been married for about 11 years, told us:

‘My basic principle was that during the marriage, again I understood legally that anything less than up to five years was regarded as something of a short marriage, and each partner could effectively take out of it what they’d put into it. But going on longer term than that it was a bit more involved. But I guess I still felt that, fair enough, you share things within the marriage, but I felt that I’d put much more into it at the time that I felt it was reasonably fair that so long as she went away with a reasonable amount, that actually I felt it was only fair that I should have taken the larger portion of the combined assets.’ (Husband 20)

However, some divorcees were also advised that the courts would regard the wife’s ‘contribution’ as equal to that of the husband and would award equal shares:

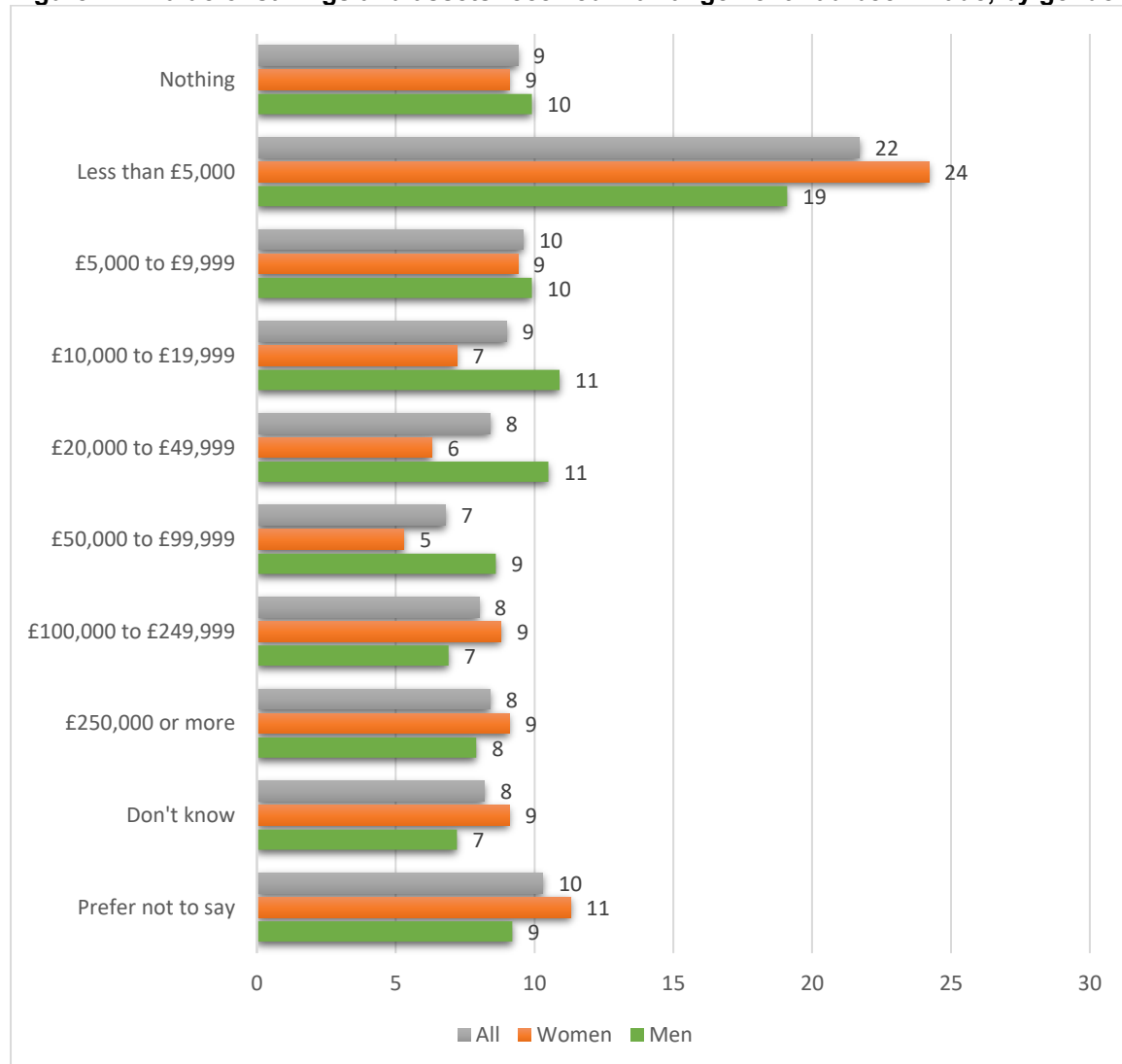
‘Yeah, I kept the car and we split the investments like 50/50. ... Just when I was like having an informal talk to my solicitor as well, and I said “what would you offer?” ... And he says, just offer half because if you try and say, you want 80/20, she’ll say no, and then it will end up going before the judge and it will cost you more anyway. He says, “with this, it’s a couple, she worked part-time, you worked, she’s taking the childcare. They’re going to give her 50 per cent. You might as well just be the bigger man, and just give it in the first place.”’ (Husband 1)

Unsurprisingly, given the modest levels of wealth for most divorcees, of those who had reached a decision regarding their assets or savings, the amounts they received were relatively small (Figure 7.7, below). Nearly one in 11 (nine per cent) received nothing at all, while one in five (22 per cent) received under £5,000 and a further one in ten (10 per cent)

²⁶⁹ Family law students are always taught that the engagement ring is presumed in law to be an absolute gift to the recipient: Law Reform (Miscellaneous Provisions) Act 1970 s 3(2), so this wife would have been entitled to treat it as hers, although of course it would have been ‘counted’ in any asset distribution by a court.

got between £5,000 and £9,999. Only 16 per cent received £100,000 or more. In monetary terms, the amounts received by women and men were broadly similar.

Figure 7.7: Value of savings and assets received if arrangement had been made, by gender



Base: all divorcees with arrangement on how to divide savings or assets (1,371); women with arrangement (732); men with arrangement (639)

As one wife commented, reflecting on the fact that the investment property that she and her husband had owned had been bought at the height of the property boom before the financial crisis in 2008:

‘... that was in negative equity anyway. So again, that wasn’t an asset as such, even though it was a house, if that makes sense. ... that was sold. Luckily, we broke about even in the end on that house. So there was nothing to split and nothing to sort. It was just a noose around our neck that was gone.’ (Wife 28)

7.6 Division of debts

This section mirrors the section on assets, setting out whether, and if so how, the two thirds (65 per cent) of divorcees who reported that they or their ex-spouse had at least some debts divided these at the point of divorce.

7.6.1 *Whether a decision had been made to divide debts*

At the point of the survey, up to five years after the decree absolute, two thirds (63 per cent) of divorced couples with any debts had come to a decision about how to divide them. One in five (19 per cent) divorcees were still trying to sort things out, with the remainder either not knowing or wanting to provide an answer.

Our interviews suggest that, for some of these, this response might have reflected a 'fait accompli', where a spouse might be left to manage any outstanding bills and debts because the other had simply walked away. Furthermore, where there had been economic abuse in a relationship, a theme that emerged from the interview data concerned how some domestic abuse perpetrators accrued debt in their spouse's name with that spouse being left with this debt on divorce. One wife told us that her husband:

'... was of the type of character that he would get cards and things and just not pay them. ... he would put things in my name, run the credit up. When we split up, as far as I was concerned I had a couple of cards which was fine, my mobile phone. Subsequently, later, I discovered he'd taken out a credit card and a phone and just ditched them so I was chased for the money, which I paid off... so the thing is, we just paid the debt, we paid the few debts and as far as I know, I've never spoken to him from the day we walked out of the house ... we paid for the divorce, just to get rid of him.'

(Wife 6)

Another said that her husband had agreed in mediation to pay half of various debts including an outstanding soft loan to her parents, who had helped them buy their home, but then refused to do so, preferring to use his share of the equity for his new home. She simply paid the money herself, commenting that 'I just put it down to experience and lessons learned' (Wife 28). In very similar terms, a wife who only discovered that her husband had put their house up as security for various car loans when it came to be sold, told us that she had had to accept a smaller amount of equity than she had expected:

'I've had to take that and lump it if I wanted to move on ... it hasn't left me in debt, but it did make me lose most of my equity. So yeah, expensive lesson to learn.' (Wife 20)

More egregiously, another wife told us that her husband had fraudulently claimed a carer's allowance and housing benefits in her name during the marriage without her knowledge, and the overpayments were clawed back from her afterwards:

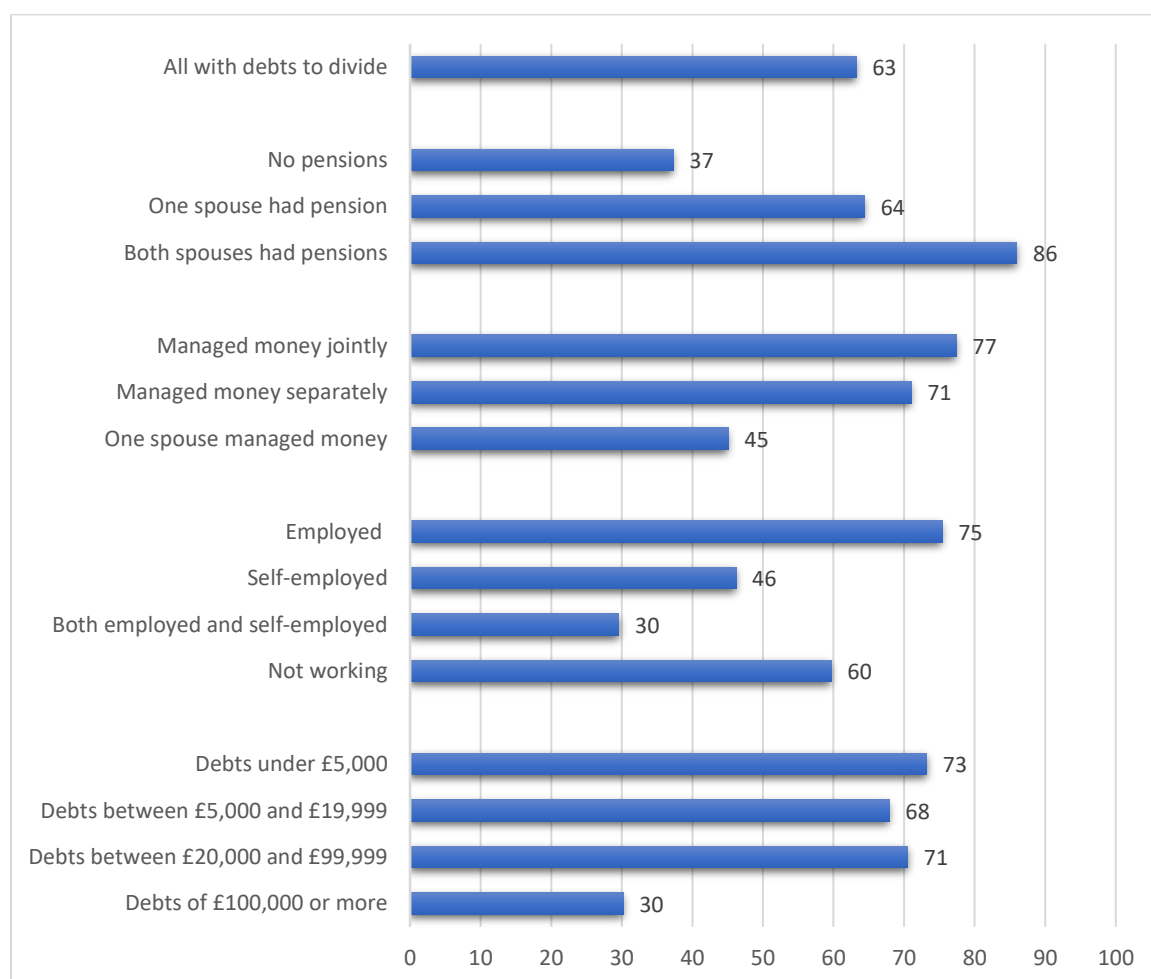
'I get my wage bumped up by universal credit ... and so it turned out that I got a £900 rebate, or refund, off them... and we were so excited ... and then it never arrived at my bank, and when I rang them, again it was for an overpayment that [husband] had claimed ... When you're living sort of day to day, and you get a letter saying you're getting a refund back, that refund means everything. But to have it taken off because of a lie that he's told, and he's had that money, it's even more, it's just maddening. But anyway, there's nothing I can do about it.' (Wife 27)

Unlike decisions about savings and assets, whether or not a decision had been made about how to divide debts was related to the total value of the debts. Those with debts of £100,000 or over were *less* likely than others to have come to a decision (e.g. 30 per cent of those with debts of over £100,000 had come to a decision compared to 73 per cent of those with debts under £5,000) (p-value 0.029).²⁷⁰ However, unsurprisingly, the strongest predictors (in exploratory regression analysis) of having made a decision about debts were similar to those in relation to assets and savings. Those who managed their money jointly were also more likely than others to have decided how to split any assets or savings (77 per cent compared to 45 per cent of those in situations where one party managed the finances, (p-value <0.001)).

Furthermore, a decision had been reached in nine in ten (86 per cent) cases where both spouses had pensions, compared to a third (37 per cent) of cases where neither spouse had a pension (p-value <0.001). As with assets and savings, the fact that fewer self-employed people (46 per cent and 30 per cent of those who were both employed and self-employed) had come to a decision may reflect the complexity of their finances in comparison to those who were employed (75 per cent, p-value <0.001) (Figure 7.8, below).

²⁷⁰ However, note the small sample size (51) of divorcees with debts in the upper band.

Figure 7.8: Whether a decision was made how to divide debts

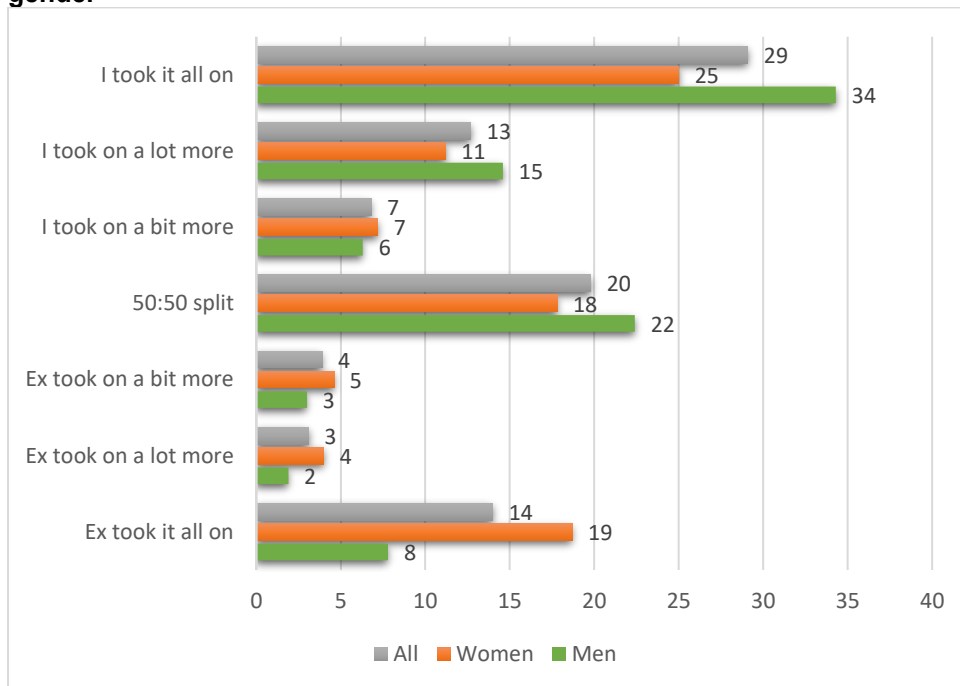


Base: all divorcees with debts to divide (1623); with no pensions (including don't know) (368); with one spouse having a pension (493); with both spouses having a pension (734); those who managed money jointly (898); managed money separately (244); where one spouse managed the money (335); employed (1,116); self-employed (154); both (97); not working (186); debts under £5000 (401); debts between £5,000 and £19,999 (552); debts between £20,000 and £99,999 (251); debts of £100,000 or more (51)

7.6.2 *The percentage and value of the debts received*

Where divorcees had made an arrangement regarding how to divide any debts, 50:50 splits were uncommon, with just one in five (20 per cent) having agreed this split. Men were more likely than women to report having taken on more of the debts. A third of men (34 per cent) reported taking on all the debts, compared to 25 per cent of women. Likewise, one in five (19 per cent) women reported that their ex-spouse took on all of the debts, compared to eight per cent of men (p-value <0.001) (Figure 7.9, below).

Figure 7.9: Proportion of savings and assets received if arrangement had been reached, by gender



Base: all divorcees with arrangement on how to divide debts (1,198); women with agreement (703); men with agreement (495)

Our interviews shed light on how these decisions were arrived at. The primary approach that participants reported was to view future responsibility for debts as dependent upon whose name they were in. If a debt was joint, then it would usually be split or shared, but if it was in one spouse’s name, it was assumed to be for that spouse to deal with it.

Thus, couples who had held a joint credit card might split the debt, on the basis that each had used it equally: ‘What was owed on the card was more or less equal balance of what we equally had spent on it’ (Wife 7).

Where debt had been incurred for the benefit of the couple or family, it would again be shared:

‘... there was a bit of discussion just to clarify basically for what purpose was each loan taken out, what did each loan and account get? Once we verified which ones were for things that we’d jointly gone for, so, like furniture, products for the house, things for the wedding, we agreed we would split those 50/50. Both of us, I imagine, had small personal obligations for stuff that we wanted ... smaller more incidental stuff you just handled it yourself, that’s how we did it.’ (Husband 24)

Even if the spending had been primarily by one spouse, if the debt was in joint names, the other might agree to share it. One wife who told us she and her ex had split the debts 50/50 said:

‘The debts were very much run up by me, actually. I have to hold my hands up and say that they were very much me. So ... my ex-husband was very, very good, actually, to even, I don’t think he would have been unreasonable to say, “you’ve done this, it all comes out of your money”, but he didn’t.’ (Wife 18)

However, where debts were taken out in one spouse’s name, the starting point seems to have been to assume that the debt had been incurred for that spouse’s benefit and it was that spouse’s responsibility to pay it off. One husband told us that:

‘... whatever debt that was on [wife’s] credit card, she kept, and I kept the debt on my credit cards. The loan that I took out, I took all that debt on as well.’ (Husband 11)

Similarly, a wife explained that:

‘... basically like the way that our finances worked it was like I paid the rent and I had my bills and then he had his bills ... I had a credit card that was mine, he probably had his own credit card, I have my loan, so I just knew that was kind of my things to pay and he had things to pay, so it was quite easy just to kind of take what belonged to each of us and just kind of do our own thing.’ (Wife 14)

It is perhaps unsurprising that, although student loans are probably going to be one of the largest debts that individuals incur in their lives, apart from taking on a mortgage, they were invariably viewed by our interviewees as matters for the individual spouse themselves to deal with. No doubt this was partly because, as one husband pointed out to us, ‘the university [loans], they go out of your wages anyway, so that wasn’t split or anything’ (Husband 11). And of course, the amount of repayments is dependent upon the person’s earnings over time. Moreover, as a wife pointed out:

‘I was the one that had chosen to go to university ... I wouldn’t have even been aware that I could have maybe asked him to pay some of that but, I guess that even if I’d had that information, it’s still my responsibility so I wouldn’t have felt it was fair for him to have to pay any of my student loan.’ (Wife 16)

One husband told us that the issue had been raised during mediation, but there had been no agreement on his part to help his wife out:

‘... okay, she got that debt for the fees and things, but obviously she’d been closely supported by me and it was all down to my income, and the number of years after she graduated’. (Husband 20)

Interviewees told us that even if a debt had been incurred for household items, holidays, or things for the children, or even for the benefit of the other spouse, it might still fall to the legal debtor to clear them. One wife told us that her husband was being chased for payment of several debts, including through county court judgments, but:

‘The only debt that I sorted out was a car loan because it was in my name so although he had the car I was paying for the – naïvely again paying for the loan of the car ... I had to say to the finance company, I had to be honest to them and say, “I don’t have the car, it’s under my name, I’m in this predicament,” and then he eventually did give the car back and the loan – I can’t remember now, I paid the loan off, I think.’ (Wife 11)

Some spouses who had been left to shoulder loans, both sole and in joint names, incurred or avoided by the other, told us that they paid them because they were concerned to protect their own ability to borrow and their credit rating.

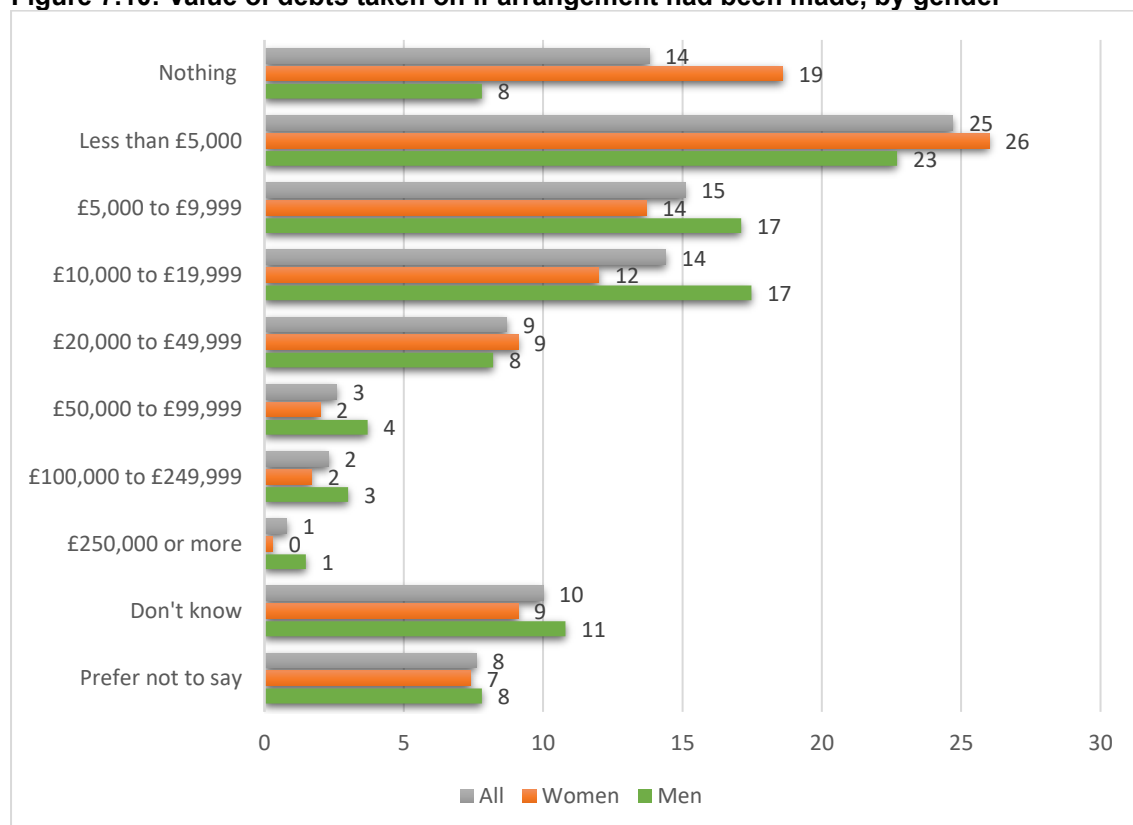
‘... we did have a bank loan ... I suppose there was about £6,000 left on that... it was joint loan but was being paid off by myself only. ... Obviously, because it was a joint loan I didn’t want to take the risk on my credit history that if she stopped paying it, or if she said I’m not going to pay it, and then we both get bad credit for it.’ (Husband 2)

For most divorcees who had decided how to deal with their debts, the amounts they took on were relatively modest. A third (37 per cent) took on no debts or debts of less than £5,000, with a further 15 per cent taking on between £5,000 and £19,999. Only six per cent took on debts of £50,000 or more. Nonetheless, even a comparatively low level of debt may be highly significant for the person concerned. As we quoted above, one wife had seen her social security benefits reduced to pay off her husband’s false claims. She and her husband had debts of between £5,000 and £10,000, and he was supposed to pay around £100 a month to help meet the cost. However, she told us that he rarely did so, and rarely without prompting. When he left:

‘He literally walked out and left us with £7 in the bank ... I haven’t got the money to go to solicitors, to get the money back off him. ... the latest [debt] with £1,466 I think it was, and I asked him for £750 back of it, and ... that again was for paying for another benefit he had, something like twelve years ago. ... he just sent a message saying ... “I have no intention of giving you any money back, just to let you know.” Oh God! So now I just hope that there’s nothing else and nothing else comes out.’ (Wife 27)

As reflected in the proportions above, in monetary amounts, men took on a larger level of debt than women (p-value 0.003). Eight per cent of men took on debts of at least £50,000 compared to four per cent of women. Conversely, among those agreeing a split of the debts, just under half (45 per cent) of women took on no debts or debts of less than £5,000 compared to three in ten (30 per cent) men. It is notable that a substantial minority (10 per cent) did not know the level of debt that they had taken on (Figure 7.10, below).

Figure 7.10: Value of debts taken on if arrangement had been made, by gender



Base: all divorcees with arrangement on how to divide debts (1,198); women with arrangement (703); men with arrangement (495)

As our interviews highlighted, these amounts and proportions reflect the parties’ living standards and attitudes to debt during the marriage. Both husbands and wives complained of their ex’s willingness to run up debt, but the unequal amounts of debt taken on, coupled

with the assumption that debt is paid by the person incurring it, may simply indicate the fact that men generally earn more than women and are more able both to assume higher levels of debt than women and to meet the repayments.²⁷¹ Yet while the general picture from the interviews does suggest a working assumption among divorcees that debtors must pay their ‘own’ debts, there were also instances of spouses taking on the other’s debt or recognising the other’s inability to pay towards a joint debt, and wishing to preserve the relationship, especially where children were involved. As one husband concluded, although he had resented the fact that, as sole earner – and holder of the credit card – he got no ‘credit’ for having used it for household items when it came to dividing the equity in the matrimonial home:

‘... my daughters, at the end of the day [wife’s] not working, how is she going to pay for it, it’s going to affect my daughters, you know ... You know what, I was just thinking to myself I’ve put myself in a bad situation and I’ll free her, and you know, so she can have a nice life with my daughters.’
(Husband 3)

7.7 Concluding comments

Reflecting the picture set out in Chapter 3 of the generally modest amounts of wealth that divorcees reported during their marriage, when it came to divorce, there might be little of ‘high net worth’ to discuss. This did not make things necessarily easy for couples, but their decisions appear to have been driven by two main factors in particular – ideas about ownership, followed by need and convenience. This was true as much for pensions, which were the most valuable such assets (apart from the home) that divorcees had, as it was for physical assets like cars or furniture, monetary assets such as savings, and even debts. Both the quantitative and qualitative data strongly suggest that there is little awareness, understanding, or interest, in pensions, amongst divorcing couples, which is hardly surprising given their complexity. Interviewees frequently told us that pensions ‘had not come up’ in discussions over financial arrangements, including even when lawyers had been involved. The prevailing view appeared to be that pensions are entitlements of the individual concerned, and generally to be preserved by that person, rather than ‘marital assets’

²⁷¹ ONS, Household Debt Inequalities (2016)

<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/debt/articles/householddebttinequalities/latest> Table 9, showing median male indebtedness as £2,800 and female as £1,800.

Unfortunately, the data are old, but are the most up to date available.

available to be shared. Where pensions were considered, a lack of legal knowledge and advice might well lead some divorcees to make unwarranted assumptions or bad bargains regarding what to do with them.

Reflecting the earlier research we discussed in Chapter 1, it is therefore unsurprising that this study found very low levels of pension sharing, with only 11 per cent of divorcees not yet drawing a pension having made such an arrangement. This was more likely with higher value pensions, where the marriage had been long, the pension was held by the man, and there were dependent and non-dependent children of the marriage. In only one in five cases was there a 50:50 split of the pension pot.

When it came to other assets and debts, the way in which couples organised their finances during marriage was commonly a strong predictor as to whether the couple made a decision about these. Where finances were more intertwined during their marriage, the couple were more likely to have sorted out their assets and debts. The same principle of ownership, alongside what was practical, appears to have frequently determined the outcome. Only three in ten divorcees divided their assets in equal shares. Assets such as furniture or other household items might be allocated according to who had bought them, or who needed them the most; items that had been clearly acquired for the couple or family were more likely to be shared. Cars were seen as the personal possessions of who had bought or used them. Monetary assets such as savings were allocated according to who held the account, with joint accounts shared, and sole accounts left to the individual. Inheritances were seen as belonging to the beneficiary. However, where amounts were substantial, they might have been used as trade-offs against other items, such as the share of the equity in the house. The assumption that things bought or owned by one spouse were 'theirs' may have driven an apparent lack of curiosity in knowing or finding out what they actually had, and have helped justify a degree of opaqueness in revealing certain assets, on the part of some divorcees.

Ownership was even more the dominant rationale driving decision-making in relation to debt, no doubt partly because liability resided with the legal debtor. Equal sharing of debts was uncommon, with just one in five (20 per cent) having agreed this. Men were more likely than women to report having taken on more of the debts, but this probably reflects their generally higher level of earnings and indebtedness. However, unfortunate spouses who had held debts in joint names could find themselves saddled with clearing them if the other failed to pay up, particularly in cases where spouses had experienced economic abuse and debts had been taken out without their knowledge. And while most amounts of debt were

comparatively small, for those with very limited income and resources, they could be a major burden and obstacle to 'moving on' after the divorce.

Having explored what happened to the individual assets that divorcing couples had during their marriage, in the next chapter we pull together the data from chapters 6 and 7 to look at how the 'total pool' of all the parties' assets has been distributed between the couple.

Chapter 8: Overall division of the property and assets

Key findings

The majority of divorcees left the marriage with under £50,000 by way of assets

- Overall, half (50 per cent) of divorcees who had made arrangements across all of their assets received less than £50,000. A quarter of divorcees (23 per cent) ended up with nothing or only debts; 21 per cent ended up with less than £25,000. Only one in 11 (nine per cent) came out of the marriage with £500,000 or more.

Only a third of divorcees divided their asset pool roughly 50:50; there was no significant difference in the proportion of the assets received by men or by women, but the presence of a pension tipped the balance towards a larger share

- Around three in ten (28 per cent) divorcees reported receiving between 40 and 60 per cent of the asset pool; a further third (32 per cent) received less than 40 per cent and two in five (40 per cent) received more than 60 per cent.
- There was no significant difference between men and women in the shares received.
- Having a pension was associated with receiving a larger share of the total asset pool, for both men and women.

8.1 Introduction

In *White v White*,²⁷² as we discussed in Chapter 1 (Section 1.4.1), the House of Lords held that, to determine a ‘fair’ outcome in the financial arrangements a couple make on divorce, a ‘yardstick’ of equality should be used, but that where the needs of the parties so require, a ‘departure’ from equal sharing will be the correct – and fair – result. In Chapters 6 and 7, we described whether, and if so how, divorcees’ different assets (and debts) had been shared when they divorced and noted that 50:50 sharing of these was common but by no means the predominant mode of allocation, reflecting the exigencies created by the parties’ individual circumstances and needs.

Here, we pull together the data from these two chapters to look at how the ‘total pool’ of all the parties’ assets had been distributed between the couple. The chapter describes, where there had been a division of assets, the percentage share of the assets and finances that divorcees received and shows how this translated into monetary values. While it starts to present how this varied according to key characteristics, this is explored in much greater detail in Chapter 10, where the financial arrangements – and the consequences of these –

²⁷² [2001] 1 AC 596, HL.

for four key groups²⁷³ are set out in some detail.

8.2 Chapter outline

The sections in this chapter are as follows:

- Section 8.3: The monetary value of the property and assets received by women and men
- Section 8.4: The percentage share of the property and assets received by women and men
- Section 8.5: Variation in shares according to key characteristics
- Section 8.6: Concluding comments

As with the other chapters, the sections highlight notable differences within the key subgroups of interest (see Chapter 2 for information on the subgroups and the analysis approach taken). Because this chapter focuses very heavily on which parties received what in the overall arrangement, a key interest is in the division of the assets as between women and men.

8.3 The monetary value of the property and assets received by women and men

Chapters 6 and 7 describe whether and how divorcees had divided, or were to divide, their assets – the matrimonial home, pensions, savings and other assets, as well as any debts. In answering those questions, four in five (81 per cent) divorcees appear to have come to arrangements about all the assets (and debts) they had. Chapter 11 includes a discussion of what divorcees were doing to try to resolve any remaining financial issues. For now, in order to be able to calculate a monetary and percentage share across all the assets, we concentrate on those divorcees who had reached arrangements on all their finances.²⁷⁴

For each of the assets, survey participants who had come to an arrangement were asked what percentage of that asset they received, with responses being banded (typically: zero; a

²⁷³ Those with dependent-aged children, those with non-dependent children, and those without children split into those under and over the age of 50.

²⁷⁴ Note, this is based on their responses to what had happened to each of these assets, regardless of whether they said (as reported in Chapter 4) that they had come to a formal arrangement. In other words, it includes those who had divided all their assets but said that they had 'nothing to divide' or 'gone their separate ways'.

quarter or less; more than a quarter, less than a half; a half; more than half, less than three quarters; three quarters or more, but not all; all). Alongside the value of that asset (as reported in Chapter 3), these have been used to estimate the approximate value of each asset going to the participant.²⁷⁵ The sum of these individual asset values gives the estimated total share of the assets – or financial pot – going to the participant.²⁷⁶

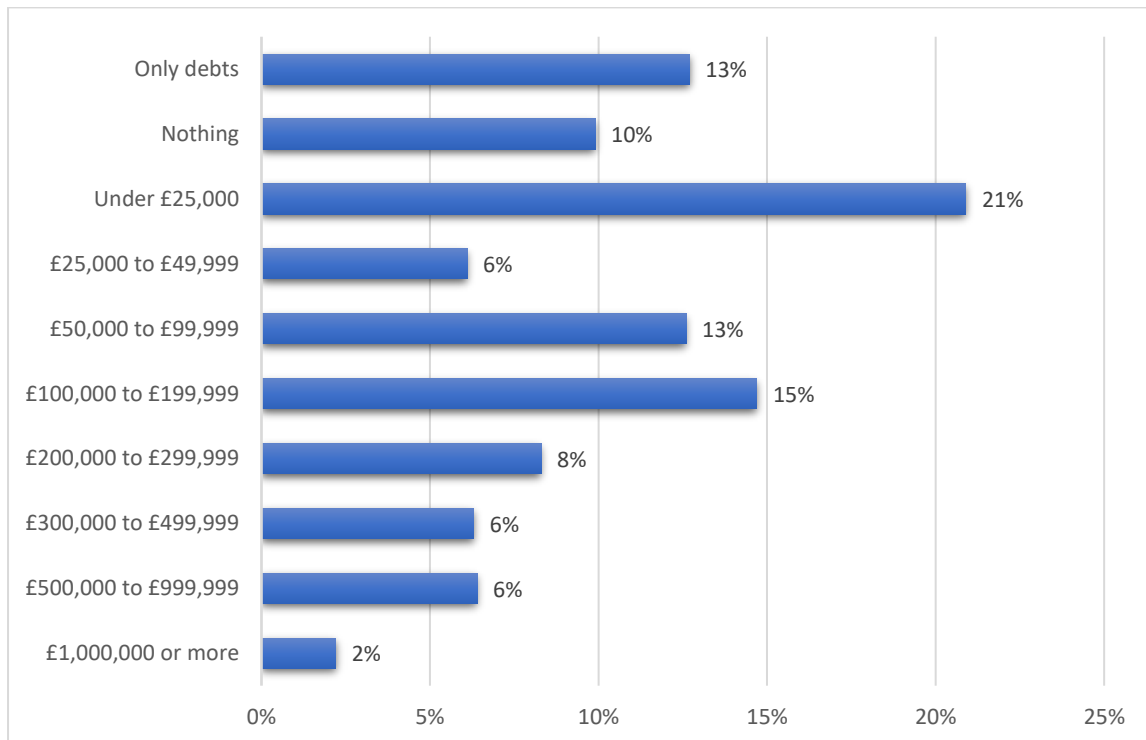
Figure 8.1, below, breaks down the value of the money and assets that divorcees received when they had settled all their finances, net of debts. It highlights both that many divorcees came out of their marriages with nothing, and the modest value of the money and assets that other divorcees received. A quarter (23 per cent) of these divorcees either ended up with nothing (10 per cent) or only debts (13 per cent).²⁷⁷ A further one in five (21 per cent) ended up with money or assets worth under £25,000.

²⁷⁵ For the calculation it has been assumed that 'a quarter or less' equates to 12.5%, 'more than a quarter, less than a half' equates to 37.5%, 'more than half, less than three-quarters' equates to 62.5%, and 'three-quarters or more, but not all' equates to 87.5%.

²⁷⁶ See Appendix D for more details.

²⁷⁷ Previous research examining court files has highlighted that in some cases where the divorcee ends up with nothing, the other spouse will also have been left in a similar position, i.e., where the parties have no capital or pension assets and there is a clean break 'of nothing'. J Miles and E Hitchings, 'Financial remedy outcomes on divorce in England and Wales: Not a 'meal ticket for life'', (2018) 32(1&2) Australian Journal of Family Law 43, footnote 36.

Figure 8.1: Value of the assets and money received by divorcee



Base: all divorcees who had divided assets (including only debts) for whom a calculation could be made (1,449)

Overall half (50 per cent) of divorcees who had made arrangements across all of their assets received less than £50,000. At the other end of the financial spectrum, only one in 11 (nine per cent)²⁷⁸ came out of the marriage with £500,000 or more.

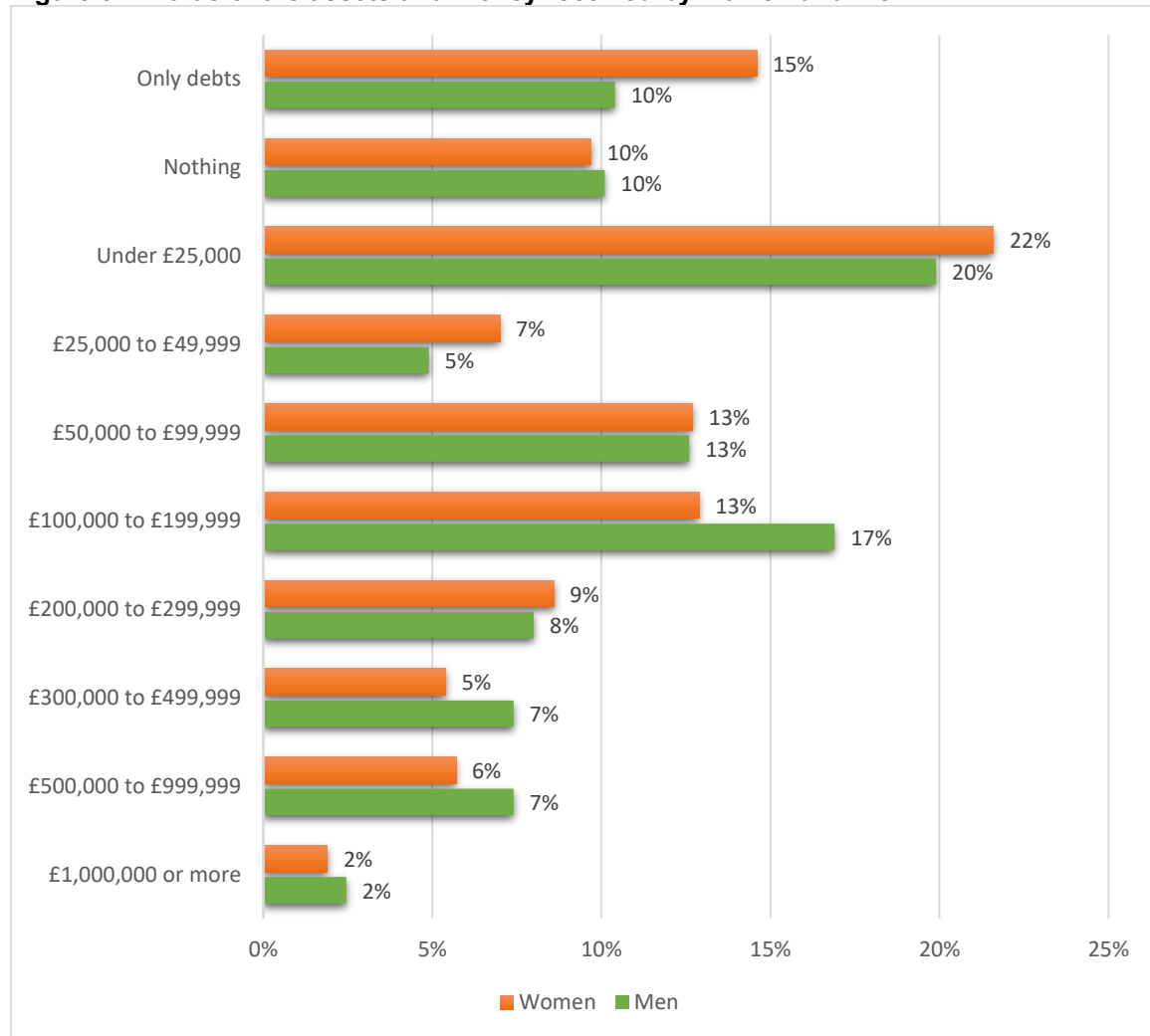
This is not unexpected given the modest value of divorcees' assets reported in Chapter 3 (Figure 3.17), where one in six (17 per cent)²⁷⁹ of divorcees reported having no money or assets to divide, and a further 14 per cent had money or assets worth less than £25,000. Only one in five (19 per cent) had £500,000 or more and the median asset value (including those with no assets or debts) was £135,000.

Taking into account all property and assets, there were no significant differences in the amounts received by women and men (Figure 8.2, below).

²⁷⁸ Percentage slightly different to figure due to rounding to nearest whole percentage point.

²⁷⁹ Percentage slightly different to figure due to rounding to nearest whole percentage point.

Figure 8.2: Value of the assets and money received by women and men



Base: all women (795) and men (654) who had divided assets (including only debts) for whom a calculation could be made

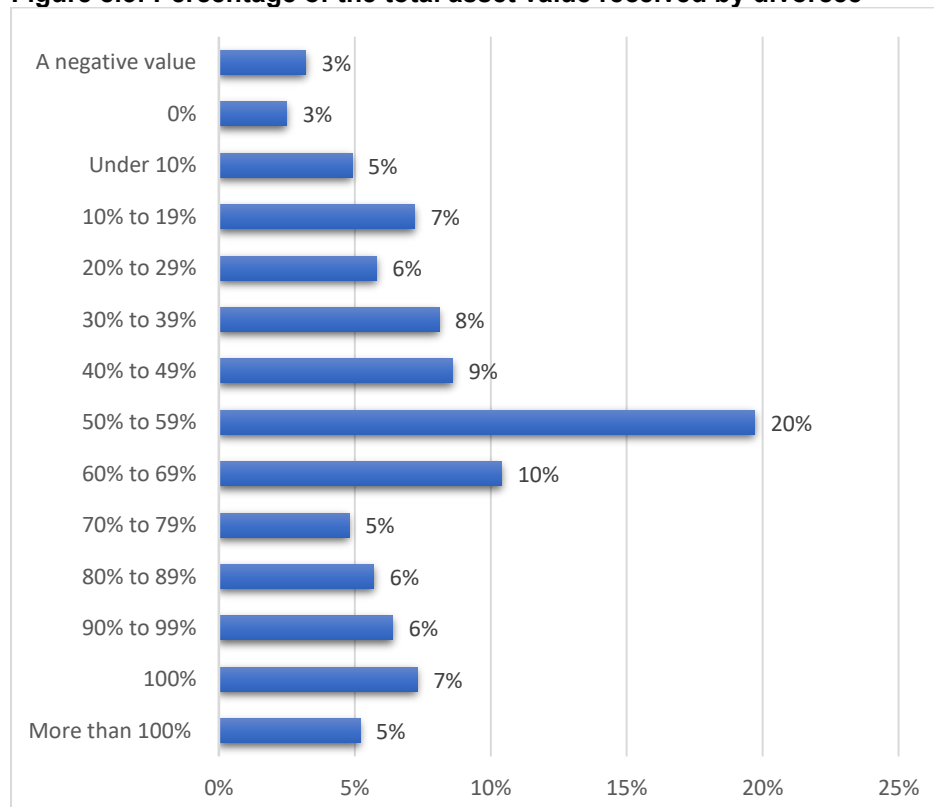
8.4 The percentage share of the value of the property and assets received by women and men

The low value of the money and assets divorcees took with them on their divorce is a crucial finding, particularly the large proportions who got very little and the similarities across men and women. However, if we want to unpick who ended up with what, and who came out better, from the divorce, it is also useful to look at the percentage share that each party received, taking into account the matrimonial home, any pensions, savings, other assets and debts. For each divorcee who had an arrangement in relation to all their assets, we have calculated a percentage share, with the estimated value of the assets going to the participant (as reported above) as a proportion of the total value of the assets available to divide.

Figure 8.3, below, shows the percentage share of the financial pool that divorcees had, or were going to receive, split into deciles. Here, we restrict the analysis to marriages where the couples had at least some money or assets (£1 or more), excluding those who had nothing or were left with only debts.

Three in ten (28 per cent)²⁸⁰ divorcees who had divided their assets reported receiving around half – so between 40 and 59 per cent – of the total value of the pool. This means that the majority of arrangements involved one party receiving considerably more than the other. A third (32 per cent) of divorcees reported receiving a percentage share of less than 40 per cent, including three per cent who took on more debts than they received in assets (reported here as ‘a negative value’) and a further three per cent who received nothing. Two in five (40 per cent)²⁸¹ divorcees reported receiving 60 per cent or more of the total value of the finances, including seven per cent who received all of the pool and a further five per cent who received more than 100 per cent, possibly as a result of their ex-spouse taking on debts.

Figure 8.3: Percentage of the total asset value received by divorcee



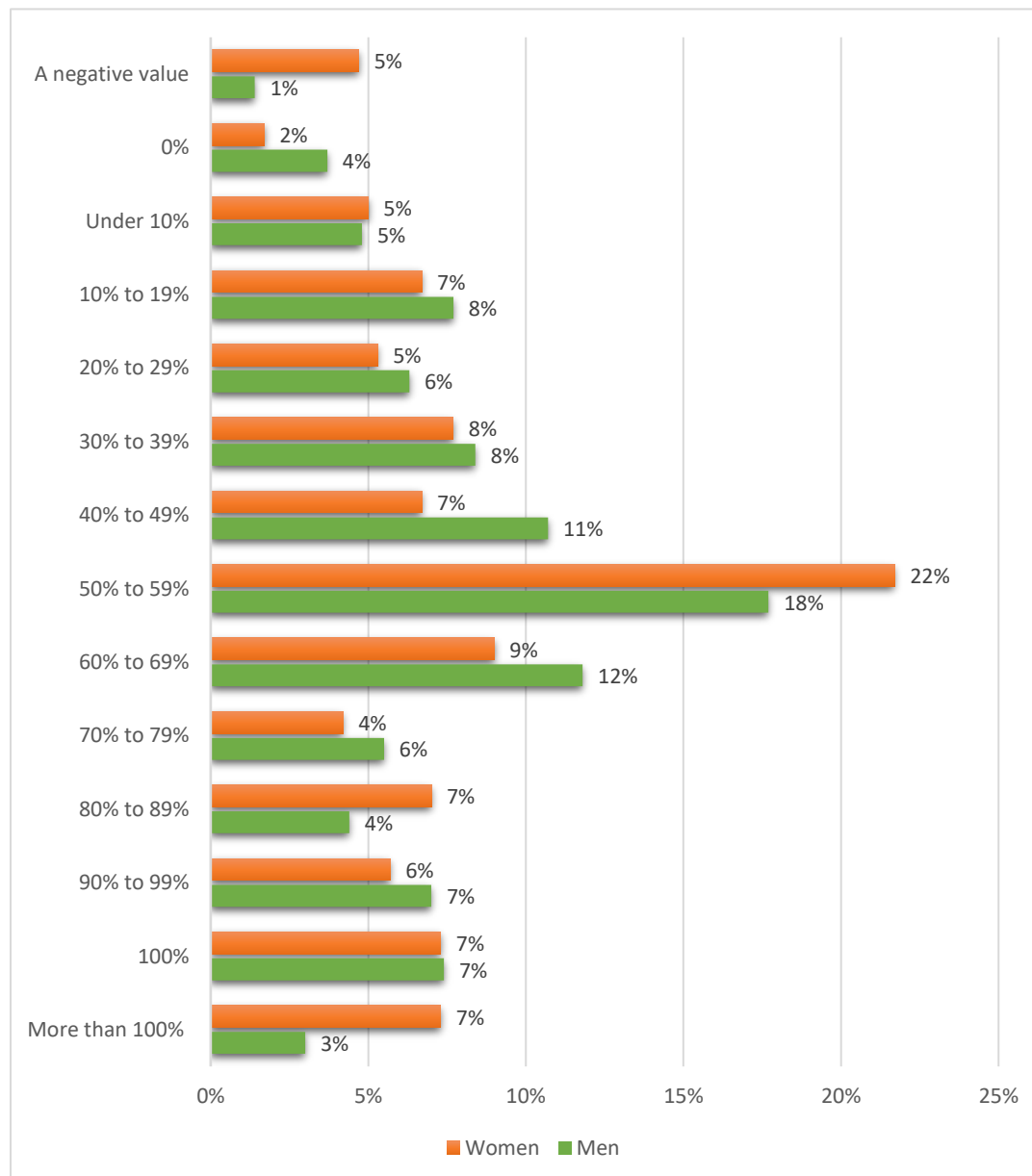
Base: all divorcees who had divided assets (excluding those with only debts) for whom a calculation could be made (1,280)

²⁸⁰ Percentage slightly different to figure due to rounding to nearest whole percentage point.

²⁸¹ Percentage slightly different to figure due to rounding to nearest whole percentage point.

Figure 8.4, below, shows the percentage shares reported by women and men. As with the monetary values, there were no significant differences in the percentage shares received by women and men.²⁸²

Figure 8.4: Percentage of the total asset value received by women and men



Base: all divorcees who had divided assets (excluding those with only debts) for whom a calculation could be made (1,280), by women (698) and men (582)

²⁸² While there is a significant difference across the deciles presented (p-value 0.013), no clear picture emerges of women or men receiving a higher percentage. When we group the percentage share into quartiles, or those receiving more or less than half, differences between women and men are not significant (p-values of 0.322 and 0.183 respectively).

8.5 Variation in shares according to key characteristics

Exploratory regression analysis²⁸³ to understand which divorcees were likely to receive a greater or smaller percentage of the pot has been restricted to those reporting getting between zero and 100 per cent.²⁸⁴ We ran separate analysis for men and women.

For men, some of the strongest predictors in exploratory regression analysis²⁸⁵ of getting a higher percentage share of the assets suggest that those with fewer ties and less need to 'untangle' themselves from the marriage came out with more.

Thus, those²⁸⁶ likely to receive more than 50 per cent of the value of the assets included men without children (50 per cent, compared with 43 per cent of those with dependent children, p-value <0.001); renters (54 per cent compared with 44 per cent of homeowners, p-value 0.001);²⁸⁷ younger men (p-value <0.001) and those married for fewer years (p-value 0.004): for instance, just under half (47 per cent) of men married for fewer than six years got at least 50 per cent of the value of the total assets, compared to a third (33 per cent) of men married for more than 20 years.

Those who managed their finances separately from their ex-spouse during the marriage were also more likely to do better, with 54 per cent of these getting at least 50 per cent of the pool, compared to a third (36 per cent) of those who managed their finances jointly (p-value 0.029). In addition, those with lower household incomes at the point of separation (who, we noted in Chapter 3, section 3.4, were more likely to keep their finances separate) were also more likely to get a higher percentage than those with higher incomes, with just over half (53 per cent) of those with monthly incomes of under £1,000 receiving at least 50 per cent, compared with two in five (39 per cent) of those with a monthly income of £5,000 or more (p-value 0.030).

In the main, the reverse pattern of results was evident for women, so, for example, women with dependent children were somewhat more likely to receive more than 50 per cent of the

²⁸³ See Chapter 2.

²⁸⁴ The unusual nature of those receiving less or more than this complicates the interpretation of the findings.

²⁸⁵ Using the percentage share as a continuous variable.

²⁸⁶ Percentages based on all those with a percentage share of at least zero.

²⁸⁷ This chimes with findings in Chapter 6, where women received a higher proportion of any monies resulting from the sale or transfer of the matrimonial home.

assets, but the differences did not reach statistical significance. However, restricting the analysis to homeowners, women whose homes had larger levels of equity received a higher percentage share of the overall financial pool (p-value 0.035). Again, this chimes with the findings in Chapter 6 (figures 6.3 and 6.5) that women received a greater share of any matrimonial home if it was sold or ownership transferred to one spouse.²⁸⁸

In addition to the factors described above, what was true for both men and women was that the percentage share of the total financial pool they received was strongly associated with their pension situation. Because so few pensions were shared,²⁸⁹ the relative size of a divorcee's own pension pot could increase or decrease the likelihood of them having a higher percentage share of the financial pool overall compared to the ex-spouse. Given that men were more likely to have a larger pension pot than women, this led to an important distinction between them. Men without pensions were the least likely to receive at least half of the financial pot, with a third (32 per cent) having done so, compared to half (52 per cent) of those with a mid-value pot and two in five (43 per cent) of those with a high value pot (p-value <0.001). The pattern was similar, but more pronounced, for women, with three in ten (30 per cent) women without a pension getting at least half of the financial pot, compared to 63 per cent of those with a mid-value pot and 70 per cent of those with a high value pot (p-value <0.001).

The reverse was true in relation to ex-spouse's pensions. Because they were rarely shared, the ex-spouse having a higher value pension pot decreased the percentage share of the survey participant, among both women (p-value <0.001) and men (p-value <0.001).

8.6 Concluding comments

This analysis confirmed the low value of assets that the majority of divorcees received when they divorced. When all the available assets (net of debts) were combined, including, importantly, the asset commonly ignored by them in their own negotiations – their pensions – the picture was of how relatively little each divorcee had available to them, with half of all divorcees receiving less than £50,000. The 'everyday divorce' is one truly marked by relative financial hardship for both parties, and their children, as they set out on the 'road to independent living'.

²⁸⁸ However, this did not come out as a significant predictor of male homeowners' percentage share.

²⁸⁹ See Chapter 7, section 7.3.

Importantly, the analysis also confirmed that when dividing their asset pool, fewer than three in ten divorcees did so in broadly equal (between 40 and 60 per cent) shares. The majority shared their assets out unequally, no doubt reflecting need and individual circumstances, as the jurisprudence laid down by the House of Lords in *White v White* expects.

Moreover, there was no significant difference between men and women in the shares they received, or their net value. But what did differ between them were the factors tending towards them receiving the larger share in any unequal division. For men, being less enmeshed 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, with the analysis confirming the picture presented in Chapters 6 and 7 that women tended to receive a larger share of the pool where there was more value in the matrimonial home.

Finally, the analysis confirmed the importance of the pension pots of both spouses as a combined asset with the potential to make a significant difference to their financial position post-divorce. We consider the implications of the failure by most divorcees to take proper (or any) account of their pensions when sorting out their financial arrangements in Chapter 12. In the next chapter, we focus on the arrangements divorcees made for ongoing financial support for children and spouses post-divorce.

Chapter 9: Ongoing support for spouses and children

Key findings

While a majority of divorced parents with dependent children had a child maintenance arrangement, a substantial proportion (two in five) of divorced parents did not. However, amongst those who did, family-based arrangements were the most prevalent with reported compliance being fairly high

- At the time of the survey, two in five parents (39 per cent) did not have any child maintenance arrangement.
- Reasons given for not having a child maintenance arrangement included sharing the care of children so costs were split between the parties, affordability of payments for the paying parent and the paying parent's lack of willingness to pay.
- While more divorced parents had family-based arrangements than any other arrangement type, they still only represented a quarter (27 per cent) of all divorcing parents with dependent children. A quarter (25 per cent) had a Child Maintenance Service (CMS) arrangement, using either Direct Pay (19 per cent) or Collect and Pay (six per cent).
- For the majority of divorcing parents, sorting out child maintenance was something that happened in addition to, rather than as part of, the divorce process.
- Those parents who were better off financially during the marriage were more likely than parents who were less well-off to have an arrangement.
- A quarter (26 per cent) of parents with child maintenance arrangements reported that they paid less than £199 each month in child maintenance, while one third (35 per cent) had an agreement of between £200 and £399 each month.
- Reported compliance with child maintenance arrangements was fairly high; compliance levels were highest amongst those with family-based arrangements, but lower under other types of arrangements.

For most divorcees financial support for their children did not stop once they were of 'non-dependent' age

- A substantial majority (84 per cent) of divorcees who had non-dependent children were financially supporting them in some way at the point of divorce, while at the point of the survey, this had only dropped to seven in ten (69 per cent) of divorcees with non-dependent children.
- Mothers were more likely to have children living with them at home, while fathers were more likely to be providing financial support.

Spousal maintenance arrangements were relatively uncommon and were generally for a fixed period. Maintenance was usually connected to having children or having an illness or disability

- Only one in five (22 per cent) divorcees had a spousal maintenance arrangement at the point of divorce. Women were more likely to receive maintenance than men. The arrangement was usually connected with having children, or the recipient having an illness or disability. Older wives were no more likely to receive spousal maintenance than younger wives.
- The duration of spousal maintenance was for a fixed term in 88 per cent of cases.
- Some form of pension income distribution between older divorcees was reported by one in five (21 per cent) divorcees, where one of the spouses was drawing their pension at the time of the divorce.

9.1 Introduction

While previous chapters have explored the allocation or division of assets (and debts) held by divorcees, an important part of the overall financial arrangement that many couples make will be in the form of ‘maintenance’, or ongoing financial support. Previous research²⁹⁰ has shown that maintenance for a former spouse has been comparatively rare for many years, as the goal of securing a clean break has become generally accepted. But enforcement of the obligation to support one’s dependent children has remained a key policy goal of successive governments since the fundamental reforms introduced by the Child Support Act 1991. Nonetheless, the extent of compliance with the duty has remained patchy and contested.²⁹¹ This chapter discusses the incidence and significance of both child and spousal maintenance amongst our survey participants and interviewees to gain a clearer picture of its place within their overall financial arrangements.

At the time of divorce, just over half (54 per cent) of divorcees had dependent aged children with their ex-spouse, a number which had reduced to two in five (39 per cent) by the time of the survey, up to five years after their Decree Absolute was granted. This chapter focuses first on the financial support – in the form of child maintenance – which non-resident parents²⁹² are legally required to pay to support their children while they remain in full-time education. It describes the living situations of the dependent children at the time of the survey or interviews – who they were living with and the contact they had with the other parent – and the proportion and profile of resident parents²⁹³ receiving child maintenance. The chapter includes a discussion about the amounts of child maintenance being paid and why parents reported not paying or receiving child maintenance.

Parents’ financial commitments to their children do not necessarily end when the children enter adulthood, and this chapter shows the ways in which parents of non-dependent aged children were supporting their children.

²⁹⁰ See E Hitchings, J Miles and H Woodward, *Assembling the Jigsaw Puzzle: Understanding financial settlement on divorce* (University of Bristol, 2013); A Perry et al, *How parents cope financially on marriage breakdown* (Family Policy Studies Centre, 2000).

²⁹¹ See N Foley, *Child Maintenance: Fees, enforcement and arrears* (UK Research Briefing No. 7774 (House of Commons Library, 2023)).

²⁹² Parents with whom the child does not live for the majority of the time.

²⁹³ Parents with whom the child lives for the majority of the time.

The final sections of the chapter focus on the financial support that ex-spouses were providing in the form of spousal maintenance.

9.2 Chapter outline

This chapter provides a picture of any arrangement in place to provide ongoing financial support for children and ex-spouses, describing the situation in relation to:

- Section 9.3: Who had primary care of the children, and what involvement the other parent had
- Section 9.4: Whether there was a child maintenance arrangement in place, and which type
- Section 9.5: Reasons for not having a child maintenance arrangement
- Section 9.6: Amounts of child maintenance and the reliability of the arrangement
- Section 9.7: Support for children who were no longer of dependent age
- Section 9.8: Whether there was a spousal maintenance arrangement in place, and the nature of that arrangement
- Section 9.9: The monetary value of the spousal maintenance arrangement
- Section 9.10: Other financial support to or from the ex-spouse
- Section 9.11: Concluding comments

The sections highlight notable differences within the key subgroups of interest (see Chapter 2, section 2.4.1) – between mothers and fathers, or elsewhere, between resident and non-resident parents; between those who did or did not have children (in relation to spousal maintenance); and between divorcees of different ages – as well as other family characteristics which appear to distinguish divorcees' circumstances during their marriages.²⁹⁴

9.3 Primary care of the children, and the involvement of the other parent

In line with other evidence,²⁹⁵ more mothers than fathers reported that their dependent-aged children lived with them for most of the time, both at the time of their divorce and when they responded to the survey. However, there were differences in the perceptions of mothers and

²⁹⁴ Focusing on characteristics identified in regression analysis as significantly associated (see Chapter 2, section 2.4.4).

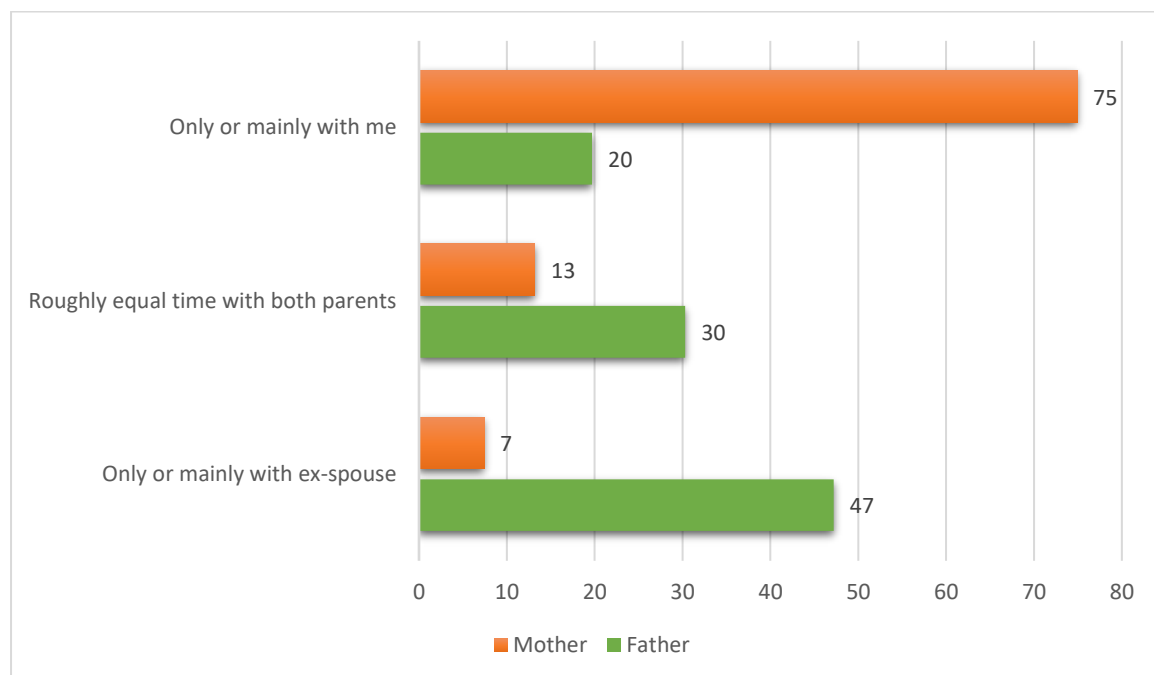
²⁹⁵ See ONS, Families and households 2022 (2023) Table 1: around 88% of lone parent families with dependent children headed by lone mother. Note that this includes widowed, never-married and separated as well as divorced parents.

fathers about what constituted their children living ‘only or mainly’ with one parent and what constituted ‘roughly equal time’ with each parent. Fathers were far more likely than mothers to say that their children stayed with them half the time.

In this section, we focus on the circumstances at the point of the survey,²⁹⁶ comparing in the text where relevant with what was happening at the point of divorce.

At the time of the survey, three quarters (75 per cent) of mothers said that their child or children lived ‘only or mainly with me’, with a further 13 per cent reporting that their child(ren) spent roughly equal time with each of their parents. Only seven per cent of mothers said that their child(ren) lived with the other parent.²⁹⁷ Just under half (47 per cent) of fathers said that their child(ren) were living with the other parent, with three in ten (30 per cent) reporting that their child(ren) lived with them roughly half the time, and a further one in five (20 per cent) saying that their child(ren) lived with them²⁹⁸ (Figure 9.1, below).

Figure 9.1: Reports of where the child(ren) were living at time of survey, by gender



Base: mothers with dependent children (536); fathers with dependent children (397)

More parents reported an equal time share at the time of the survey than they said had been the case at the point of divorce (up from 20 per cent of fathers and eight per cent of

²⁹⁶ As this is also where we have most detail about the child maintenance arrangement they had.

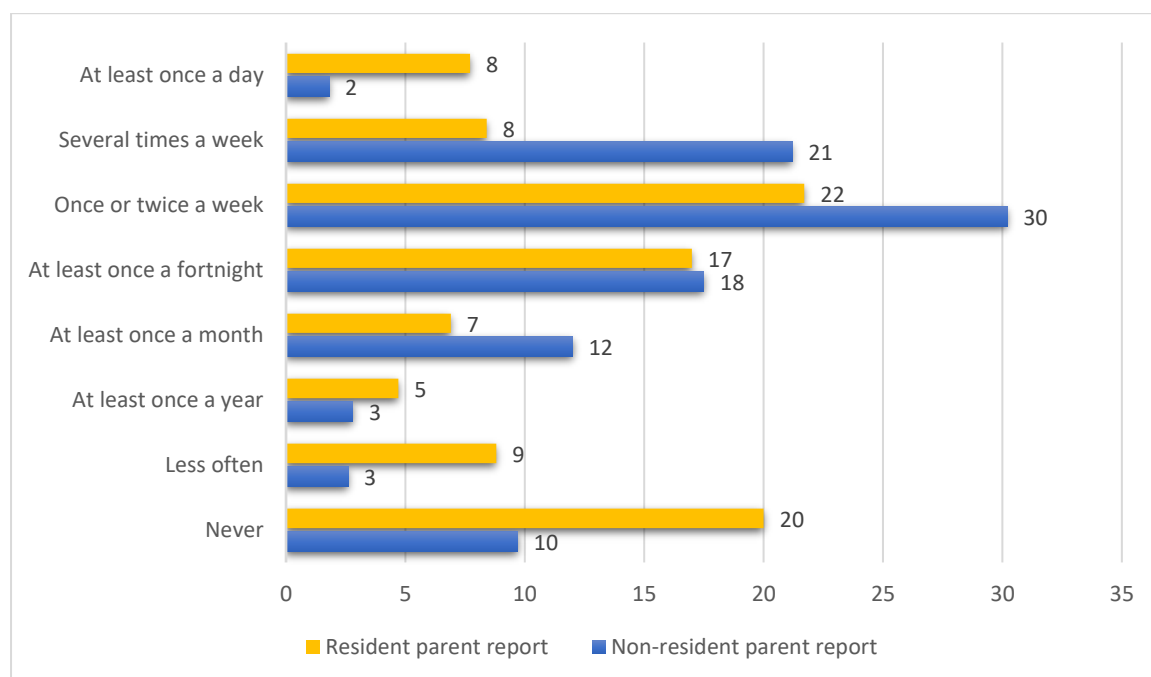
²⁹⁷ Five per cent said ‘other’ or did not give a response.

²⁹⁸ Three per cent said ‘other’ or did not give a response.

mothers), perhaps because of an increased flexibility in arrangements some time after the divorce (p-value <0.001).

Those without equal care were asked how often the non-resident parent saw their child(ren) during term-time. On average, non-resident parents reported more frequent contact than the resident parents. Two in five (38 per cent) of resident parents and just over half (53 per cent) of non-resident parents reported that the non-resident parent saw their child(ren) at least once a week. This difference in reporting between resident and non-resident parents may perhaps be due to sensitivities over how children’s care is shared, with non-resident parents being more likely to augment the proportion of time they have with their children and resident parents emphasising their role as ‘primary’ carer.²⁹⁹ However, according to both parents, a substantial proportion of non-resident parents saw their child(ren) infrequently or never. One in five (20 per cent) resident parents and one in ten (10 per cent) non-resident parents reported that their children never saw the non-resident parent (Figure 9.2, below).

Figure 9.2: Frequency of the non-resident parent seeing their child(ren) at the time of the survey, by the reports of resident and non-resident parents³⁰⁰



Base: resident parents with dependent children (463); non-resident parents with dependent children (224)

²⁹⁹ See, for example, N Wikeley et al, Relationship separation and child support study Research Report No 503 (DWP, 2008). Chapter 3.

³⁰⁰ Whilst it might have been interesting to look separately at resident mothers and fathers, and non-resident mothers and fathers, the numbers of resident fathers and non-resident mothers are too small to do this.

On average, non-resident parents were seeing less of their children at the point of the survey than they had been when they were first divorced. For instance, half (48 per cent) of resident parents said their child(ren) had seen the non-resident parent at least once a week at the point of divorce, and only 12 per cent said that there had never been any contact.

9.4 Whether there was a child maintenance arrangement in place, and type of arrangement

Two in five (39 per cent) divorcees with dependent children did not have a child maintenance arrangement at the time of the survey. Three in ten (31 per cent) reported no prospect of having one, while one in 11 (nine per cent) said that they were trying to set one up (Figure 9.3, below).³⁰¹ Fewer parents had a child maintenance arrangement at the time of the survey than they had at the time of divorce (58 per cent compared to 64 per cent,³⁰² p-value <0.001).³⁰³

Note that parents were asked to include arrangements regardless of how well they were working and whether any money was being paid.

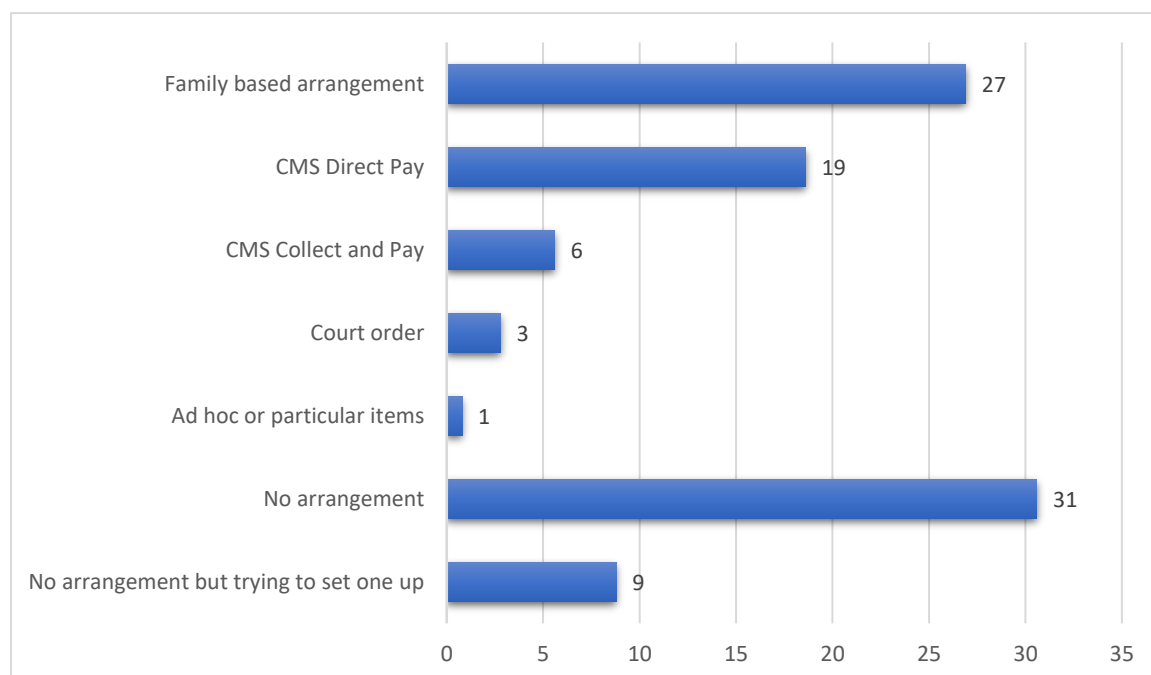
Out of all the divorced parents who had dependent children in the survey, a quarter (27 per cent) had family-based child maintenance arrangements, one in five (19 per cent) were Direct Pay arrangements, set up via the Child Maintenance Service (CMS) and a further six per cent were Collect and Pay arrangements. Only three per cent had been made via a court order (Figure 9.3).

³⁰¹ These two percentages total 39 per cent, when rounded to the nearest whole percentage point.

³⁰² Based on survey participants whose children were still of dependent age at the time of the survey.

³⁰³ In line with other research, this may reflect changing family dynamics over time, including re-partnering and changes in contact arrangements.

Figure 9.3: Whether there was a child maintenance arrangement at the time of the survey, including type of arrangement



Base: all parents with dependent children (929)

Seven in ten (71 per cent) of the current child maintenance arrangements had been made during the divorce, with three in ten (29 per cent) made since. However, for the vast majority of divorcing parents, sorting out child maintenance was something that happened in addition to, rather than as part of, the divorce process. At the time of their divorce, among the three in five (60 per cent) parents with a child maintenance arrangement at that time, only 13 per cent had made this as part of a wider financial arrangement on divorce, with the other 47 per cent arranging it outside of any divorce settlement. In this interview, the husband explained how and why the child maintenance in his case was sorted separately from the rest of the finances, focusing on the need to financially support his children and his perception that this is what you do as a ‘good father’:

‘[S]he [wife] put the [child maintenance] application in when we separated ... so I started paying it straightaway ... so it was done before the divorce. ... I think child maintenance had to be sorted out before because I think child maintenance is something that as soon as you’re separated, ... you know like that person’s upbringing their kids, so they need that financial money, so I think if you’re a good, as good father you have to start it straightaway.’ (Husband 3)

Interviewees reported a range of reasons for having different forms of child maintenance arrangements. Amongst those who had a family-based arrangement, this included the

situation being amicable between the parties (Wife 7), an understanding by the paying party that there was a need to contribute to the children's upbringing costs so a family-based arrangement was reasonable and fair (Husband 10) and the need to have continuity for the children in their schooling with an informal agreement to pay school fees (Husbands 9 and 14).

In the following case, the wife did not feel it was necessary to go down the formal route and obtain a consent order due to the fact that she would be unlikely to be able to afford to enforce it and she trusted her ex-husband to pay anyway:

'We were going to do a consent order to solidify all of this but actually, our attitude in the end was a little bit kind of like a lot of these things often aren't worth the paper they're written on because ultimately, if he were to renege on something that we've agreed, am I realistically going to go through the courts and spend thousands of pounds to try and get something rectified that's been put on paper? It probably wouldn't be worth it – that was our attitude. ... I do trust him, some people might say foolishly so, we've not even done the consent order.' (Wife 18)

For individuals within the interview sample who used the CMS routes – either through Direct Pay or via Collect and Pay, a range of issues were reported which led the receiving parents to approach the CMS rather than coming to a family-based arrangement. Inconsistent and irregular payments were provided as a leading reason why receiving parents approached the CMS, with one wife explaining that because her ex-husband's payments were 'so haphazard ... I just wanted something regular, I did call the CSA and then they obviously started the process and he just went absolutely ballistic at that.' (Wife 11)

Some interviewees reported having a difficult and somewhat bitter ongoing relationship with their ex-spouse which meant they were unable to discuss things well. The following quote provides a good example of an acrimonious relationship between ex-spouses – from how they spoke to each other, to celebrating the fact that due to the way in which the husband received his income, his child maintenance assessment would be lower than his ex-wife was expecting:

'[W]hen she asked me for child maintenance there was a way of asking me, the way she asked me I didn't like it, you know, the tone of the voice, the language that came out of her voice, so I left her to it. She went to child maintenance, because I've got a limited company, I only pay myself

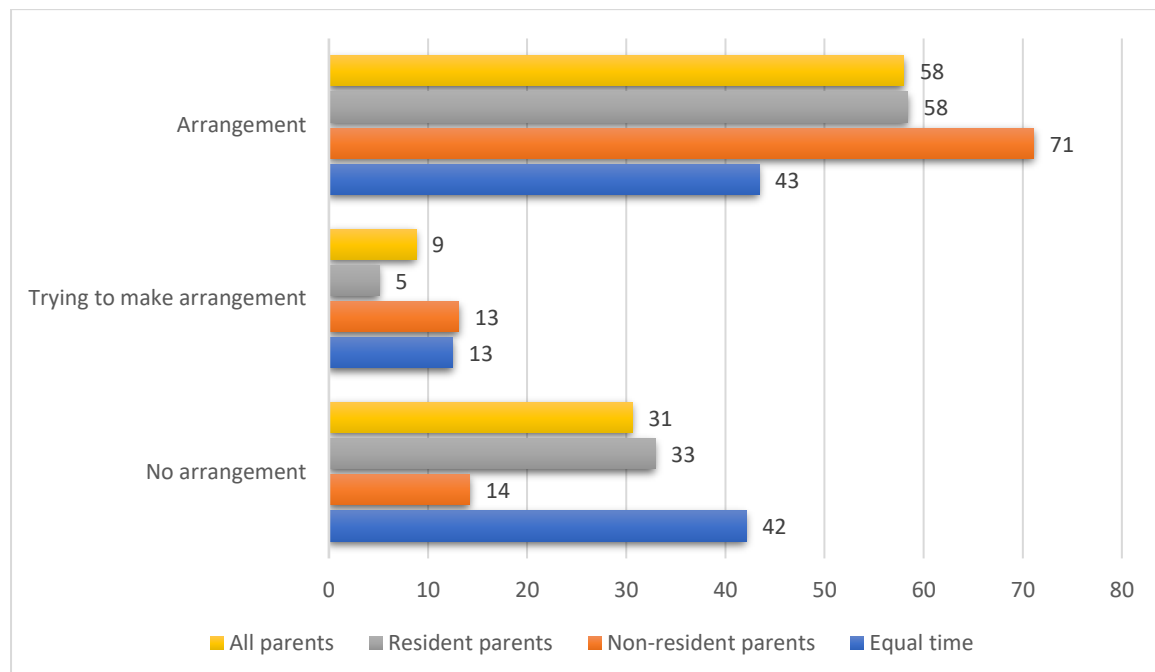
dividends, so they go on that, so she's come out worse off and then you have certain ... her family on social media slagging me off.' (Husband 8)

Domestic abuse issues were also raised by some interviewees with one interviewee noting that before approaching the CMS, her ex-husband had refused to pay for shopping and other items for the children and when he had paid for something, the shopping he had sent was inappropriate for feeding a family: 'it was Oreos and yoghurts and I was like, that's not feeding my children'. This led her to apply to the CMS, about which she noted:

'it was very easy... fair and simple, because obviously I sent them proof of the situation, the NMO [non molestation order] ... so I didn't have to go directly to him.' (Wife 8)

Non-resident parents were more likely to report having an arrangement in place than resident parents (71 per cent compared to 58 per cent, p-value <0.001). Two in five (43 per cent) of those parents who reported having their child(ren) living with them for around half the time said that there was nonetheless a child maintenance arrangement in place (Figure 9.4, below).

Figure 9.4: Whether there was a child maintenance arrangement at time of survey, by whom child(ren) living with by residence status of parent



Base: parents with dependent children (929); resident parents with dependent children (463); non-resident parents (224); equal time (242)

Those parents who were better off financially during the marriage were more likely than parents who were less well-off to have an arrangement (p-value 0.005 in exploratory

regression analysis (see Chapter 2, section 2.4.4)). For instance, while two thirds (66 per cent) of those with assets worth between £100,000 and £499,999 and two thirds (65 per cent) of those with assets worth £500,000 or more had an arrangement, this was only the case for two in five (42 per cent) parents with no assets or only debts and 55 per cent of those with assets worth under £100,000.

9.5 Reasons for not having a child maintenance arrangement

The nine per cent of parents who were trying to work out an arrangement were asked why they had not managed to make an arrangement to date, with their responses set out in Table 9.1, below. For two in five (39 per cent) of these parents, the delay was because it was part of wider discussions about coming to a financial arrangement. However, the other responses sound like more entrenched issues which may or may not lead to them being able to make a child maintenance arrangement in future and are useful in understanding the barriers to making arrangements. For instance, a quarter (25 per cent) of these parents said that it was because the parent who was supposed to pay did not want to or was refusing to pay, and one in six (17 per cent) said that that parent could not afford to pay. One in five (19 per cent) said that not having an arrangement was related to issues concerning domestic abuse, and 13 per cent that they did not yet have an arrangement because they were concerned about dealing with their ex-spouse.

Table 9.1: Reasons why the parties are still trying to work out a child maintenance arrangement

	%
Trying to sort it out as part of wider financial arrangements	39
The ex-spouse who should pay doesn't want to/refuses to pay	25
Because of domestic abuse in relationship	19
The ex-spouse who should pay can't afford to	17
The ex-spouse who should receive maintenance is worried about asking/dealing with their ex-spouse	13
The ex-spouse/children who should receive maintenance doesn't have any contact with the other ex-spouse	12
Because of the reason for the split	9
<i>Unweighted base: all trying to work out arrangement</i>	<i>48</i>

Similarly, parents who did not have a child maintenance arrangement, and had no plans to make one, were asked why this was the case. Table 9.2, below, provides a breakdown of their responses, both overall and split by resident parent, non-resident parent and those

saying that the child(ren) spent roughly equal time with both parents. (Note that the small numbers of non-resident parents not reporting having an arrangement mean that we need to treat these findings with caution).

Table 9.2: Reasons why the parties do not have a child maintenance arrangement

	Resident parent	Non-resident parent	Equal time	All parents
	%	%	%	%
The ex-spouse who should pay doesn't want to/refuses to pay	48	0	2	28
Because we have equal care	0	0	83	25
The ex-spouse who should pay can't afford to	18	44	4	16
Because we had a clean break settlement	10	18	22	15
The ex-spouse who should receive maintenance doesn't have any contact with the other ex-spouse	18	22	0	14
The ex-spouse who should receive maintenance doesn't want it	18	6	9	13
The ex-spouse who should receive maintenance is worried about asking/dealing with their ex-spouse	14	24	4	13
Because of domestic abuse in relationship	15	28	2	13
Because of the reason for the split	9	6	2	6
Trying to sort it out as part of wider financial arrangements	10	17	0	7
The ex-spouse who should pay maintenance doesn't have any contact with the children	0	22	0	2
Waiting for arrangement to be set up	2	0	0	1
<i>Unweighted base: all without an arrangement</i>	<i>125</i>	<i>25</i>	<i>111</i>	<i>289</i>

Affordability and lack of willingness to pay were two key reasons that emerged from both the survey and interview data as to why there was no child maintenance arrangement in place. 16 per cent of all parents suggested that payments were not being made due to the paying spouse being unable to afford them. One wife explained:

'He claims that he doesn't have any money still, so this whole COVID thing in [place] has been quite bad for him. He hasn't been able to work and the

project that he was trying to do has got stopped midway so he'd been in limbo for quite a long time. (Wife 13)

Affordability was a particular issue for non-resident parents, especially given the failure to lift child maintenance thresholds for the basic, reduced, flat and nil rates since they were originally introduced in 1998.³⁰⁴ The most frequently cited reason by resident parents without a child maintenance arrangement as to why child maintenance was not being paid was that their ex-spouse was unwilling to pay child maintenance. Half (48 per cent) of this population suggested that their ex-spouses did not want to pay child maintenance. According to one resident parent interviewee, her ex-husband continually refused to pay child maintenance so she had given up trying to get it. This wife described getting an arrangement for child maintenance as:

'more hassle than it's worth. ... I feel that he can't separate our child and mine and his relationship so he feels as if, if he's giving money, it's actually helping me not helping our son.' (Wife 24)

This parent was not alone in conveying the feeling of it being too much effort or hassle to get child maintenance. When one wife was asked why there wasn't a child maintenance arrangement, she suggested it was because:

'it was really hard to fight for things ... My mum has been saying "right, we're just going to ring the CSA, whoever they are, I'm going to report him." But it just makes life harder for me.' (Wife 26)

Another of the main reasons that emerged from both the survey and interview data as to why some parents did not have a child maintenance agreement in place, was that they had an arrangement to share the care of their child(ren).³⁰⁵ Four in five (83 per cent) parents who reported that they had a 'roughly equal time' shared parenting arrangement did not have a child maintenance arrangement in place.³⁰⁶ Parents viewed it as unnecessary if they were sharing the costs of raising their child(ren):

³⁰⁴ The monetary thresholds for each 'rate' are contained in primary legislation (CSA 1991, Sch 1) and therefore only amendable by an Act of Parliament.

³⁰⁵ See Figure 9.1 for the difference in reporting shared care between fathers and mothers, with men more likely to report that they had a shared care arrangement compared with women.

³⁰⁶ However, whether the parents who reported having a shared care arrangement met the narrow criteria that would remove a child maintenance obligation as a matter of law is a different matter. See Child Support Maintenance Calculation Regulations (CSMCR) 2012, reg 50.

‘Yeah, to be fair she never asked me for that but it was my understanding that if you’re sharing custody then what additional maintenance would I be needing to pay? ... But our guiding principle there was if you’ve got the child each 50 per cent of the time, you’re incurring broadly 50 per cent of the cost.’ (Husband 24)

One of the potentially contentious issues for shared care ‘equal time’ parents that did arise was who would receive child benefit given that both parties considered that they were sharing care of the children.³⁰⁷ Husband 24 specifically referred to the fact that his new partner had raised this as an issue and in light of this, he was now more aware of what the child benefit money was being spent on by his ex-wife. He suggested that if there was any emergency need for clothing for the child for example, then he would expect his ex-wife to cover the cost because she was claiming child benefit. Another interviewee noted that her ex-husband had argued that they should split the child benefit 50:50 until she pointed out to him all the additional items that she ended up paying for:

‘And I keep the child benefit. He did ask me once to have half of the child benefit, and then I pointed out, “when was the last time you paid for a school trip? A haircut? A phone bill?” I said “I don’t keep that money.” And so when I pointed out those things that I do, he piped down and never ever asked for it ever again.’ (Wife 28)

The issue of child benefit was not limited to those sharing care of their child(ren), but was also a potential bone of contention for other parents in the interview sample where child maintenance was not being paid, with one wife suggesting that the reason for her not receiving any child maintenance from her ex-husband was due to his perception of her not needing it as she would be receiving benefits for the children as part of an overall ‘package’ deal. This links to a further reason suggested by 15 per cent of all parents in the survey as to why they had no child maintenance arrangement in place – that this was part of a ‘clean break’ arrangement:

‘[H]e wouldn’t give [child maintenance] to me. He told me I could have the house, no pension and no child maintenance.’

³⁰⁷ According to CSMCR 2102, reg 50(3), if the applicant parent is receiving child benefit for the child, they are assumed to be providing day to day care to a greater extent than any other person, in the absence of any contrary evidence.

Interviewer: What was his argument behind not giving you any child maintenance?

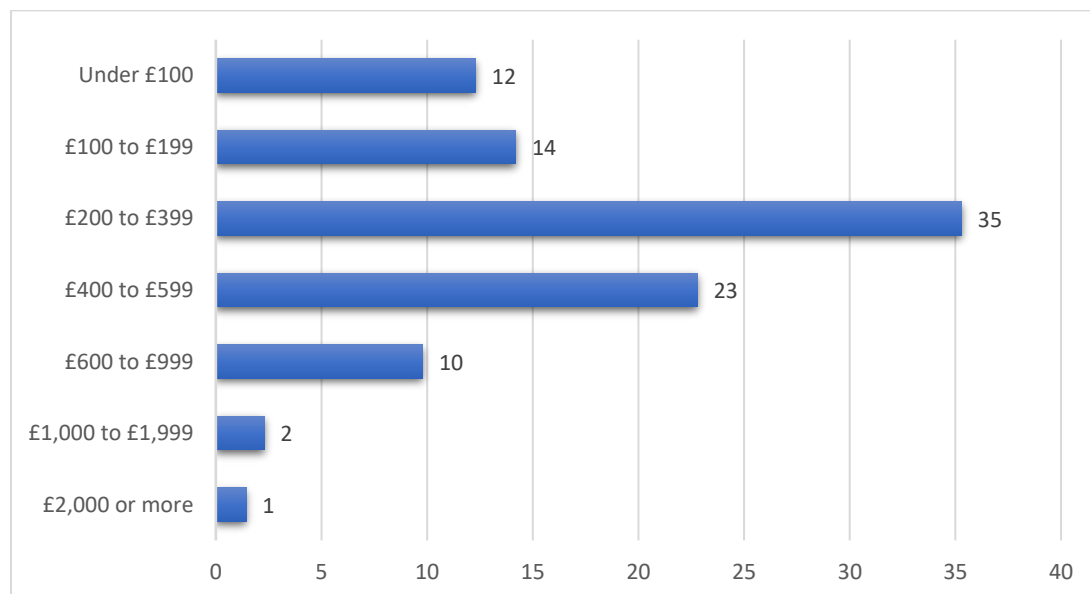
'I got the child benefit. I got income support. I got child tax credits. I got everything for them. So, while I got everything for them, I had money coming in. ...' (Wife 15)

9.6 Child maintenance amounts, and the reliability of arrangements

9.6.1 Amount of child maintenance to be paid

Figure 9.5, below, shows a breakdown of how much child maintenance parents were meant to pay or receive each month, according to their arrangement. Parents were asked the frequency with which they should receive child maintenance, and the amount they should receive each time. With most parents reporting agreements for payments each calendar month, monthly amounts have been calculated for those with different payment schedules. A quarter (26 per cent) of parents with child maintenance arrangements said that the agreed amount was less than £200 each month. A third (35 per cent) had an agreement of between £200 and £399 each month, with a quarter (23 per cent) citing a figure between £400 and £599. Only four per cent³⁰⁸ of parents with a child maintenance arrangement said that it was for £1,000 or more each month.

Figure 9.5: Level of child maintenance agreed, converted to monthly figures



³⁰⁸ This percentage is slightly different to those in the figure due to rounding of percentages to the nearest whole percent.

Base: parents with a child maintenance arrangement where amount could be calculated (528)

Explanatory (regression) analysis confirmed, as would be expected, that the child maintenance arrangements³⁰⁹ for those with higher household incomes prior to divorce (p-value 0.04) and those with higher value assets (p-value 0.001) were for greater amounts than those who were less well-off during the marriage. For instance, seven in ten (72 per cent) of those with monthly household incomes of £5,000 or more during the marriage had an arrangement to pay child maintenance of £400 or more each month, compared to three in ten (31 per cent) of those with household incomes under £1,500 each month.³¹⁰

As noted in Chapter 4 (section 4.6) the gov.uk website has an online calculator to assist parents when coming to a child maintenance arrangement with the formula based on the statutory calculation in the Child Support Act 1991. Many interviewees reported that they used this online calculator to come to an arrangement about child maintenance, either as the exact figure to pay or as a basis on which to start discussions:

‘...it was a good gauge ... that figure gave us a reasonable basis for us to work from ... we worked out all our bills together, how much is the household going to cost you, how much do you bring in, how much do I bring in and obviously I earned more than her so I looked at it and said I’ll balance it out a little bit because at the moment you haven’t got any spare cash so that money I said, this is voluntary then.’ (Husband 9)

While a number of interviewees found the online calculator helpful, some participants suggested that it was not particularly useful in their own circumstances, particularly where private school fees needed to be paid (Husband 14) or in the case of Wife 24, where she was aware that the amount due to be paid was negligible.

For other interviewees where the online calculator was not used, participants reported that they just sat down and worked out the child maintenance between themselves. One interviewee noted that although she knew the online calculator was available, she did not use it. Instead, she came up with a figure of what would allow for a reasonable standard of

³⁰⁹ The regression analysis tested for predictors of having a monthly child maintenance arrangement of £400 or more.

³¹⁰ Participants gave the total monetary amount, across any dependent children they had. Therefore, as expected, the regression analysis found that higher amounts were also related to the number of dependent children they had at the time of the divorce (p-value 0.007).

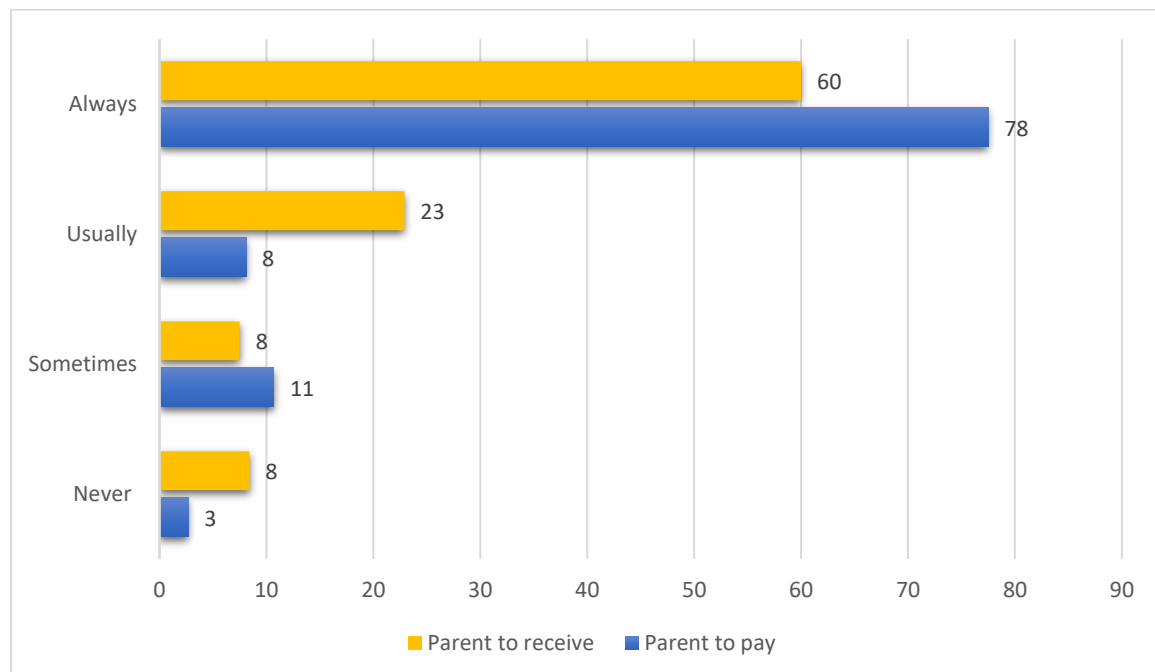
living for their child taking into account expenditure such as school uniform, food and other clothing (Wife 7). Another interviewee explained that he paid a set amount, but this could vary sometimes depending on what was required:

‘...it was basically how much do you think you need but then it has changed on occasion. We have a set amount but I have given her more if she’s taken the kids on holiday and things like that.’ (Husband 10)

9.6.2 Reliability of payments

When asked about reliability of the child maintenance payments (on a scale from ‘always’ to ‘never’), it is noticeable that paying parents reported a greater level of compliance with the existing arrangement than the receiving parent. However, the majority of parents with arrangements reported that the amount agreed was always paid. Four in five (78 per cent) of parents who *paid* child maintenance said this was the case. Although this was only reported by three in five (60 per cent) of *recipients*, a further quarter (23 per cent) said that it was usually paid. Only eight per cent of recipients and three per cent of those paying child maintenance said that the payments were never made (Figure 9.6, below).

Figure 9.6: Level of compliance with child maintenance arrangements, by parents paying and receiving the maintenance



Base: parents who should receive maintenance (318); parents who should pay maintenance (232)

Comparing parents receiving or paying child maintenance through family-based or Direct Pay methods,³¹¹ reported compliance was highest among those with family-based arrangements, with four in five (81 per cent) parents who should receive maintenance and all of those who should pay it saying that the payments were always made. This may partly reflect the fact that parents who make family-based arrangements tend to be on better terms when they go into the arrangement. It could also reflect the fact that, given family-based arrangements are not usually formalised, a parent may suggest they have 'no arrangement' at all rather than a family-based arrangement that is not working.

Compliance levels were significantly lower under Direct Pay arrangements, compared to family-based arrangements (p-value <0.001). Just under half (47 per cent) of those receiving maintenance under Direct Pay arrangements and 68 per cent of those paying maintenance under this method reported that these payments were always made.³¹²

Table 9.3, below, shows the reasons that parents gave for not always paying or receiving the maintenance that they should.

Table 9.3: Reasons given for not always paying or receiving child maintenance payments

	%
The ex-spouse who should pay doesn't want to/refuses to pay	41
The ex-spouse who should pay thinks the amount isn't fair	28
The ex-spouse is worried about asking/dealing with their ex-spouse	17
The ex-spouse who should pay has no or limited contact with the ex-spouse or children	16
Because of domestic abuse in relationship	15
The ex-spouse who should pay can't afford to	15
Because of the reason for the split	11
Because of the pandemic	4
<i>Unweighted base: parents who did not always pay or receive the maintenance payments</i>	128

The most frequent reason, provided by two in five (41 per cent) parents, was that non-

³¹¹ The numbers of parents paying or receiving maintenance via Collect and Pay or court orders were all under 25.

³¹² This figure is in line with that found by the DWP in 2016: see Foley, above note 2, p.15: 49% of receiving parents on Direct Pay reported having an effective arrangement after three months, rising to 53% after 13 months.

payment was due to an ex-spouse refusing or not wanting to pay. This was also reflected in the interview data:

‘He just didn’t want to pay me any money basically. We’d set something up ... I even got him to sign something that he’d pay each week and then he’d give it to you one week or he’d only got half the next week, or he’d got nothing the week after.’ (Wife 20)

While three in ten (28 per cent) survey participants considered that non-payment was due to the amount of maintenance not being fair, affordability and domestic abuse issues also came up in the interview and survey data as reasons why individuals did not pay child maintenance regularly, with one in seven survey participants (15 per cent) identifying each of these options. The issue of domestic abuse affecting child maintenance payments is highlighted by the case of one of our interviewees. In this case, which was also noted in Chapter 6,³¹³ the divorce took seven years overall and involved protracted negotiations over the home, which in the end was transferred to the wife. The husband refused to pay child maintenance and exhibited a number of signs of post separation economic abuse and controlling behaviour; for example, by running up £6,000 - 7,000 arrears with the CMS. He insisted that his ex-wife tell the CMS to cancel the arrears if she wanted him to cooperate on the house transfer:

‘Yeah and I wiped the arrears because I had to tell them [the CMS] because he was saying to me, “You better wipe my arrears...” and all this and obviously at that point he used that as leverage in terms of getting the house so I was in a catch 22 situation and I just thought well, the arrears are no good to me anyway, the house is more important so I had to go with that.’ (Wife 11)³¹⁴

9.7 Support for children no longer of dependent age

For the purposes of the law governing finances on divorce, only the welfare of minor children of the family is explicitly considered in the relevant legislation. Likewise, child maintenance legislation ends once a child leaves full-time school or equivalent, although a court order

³¹³ Chapter 6, section 6.4

³¹⁴ See chapter 11, section 11.5, for a further example of this wife’s relationship with her ex-spouse and why she agreed to clear his arrears with the CMS.

extending periodical payments for a child beyond school leaving age may be obtained.³¹⁵ However, despite this, many children remain financially dependent on their parents for some time after this point, particularly if they go into higher or further education and before they are able to afford to pay for their own home.

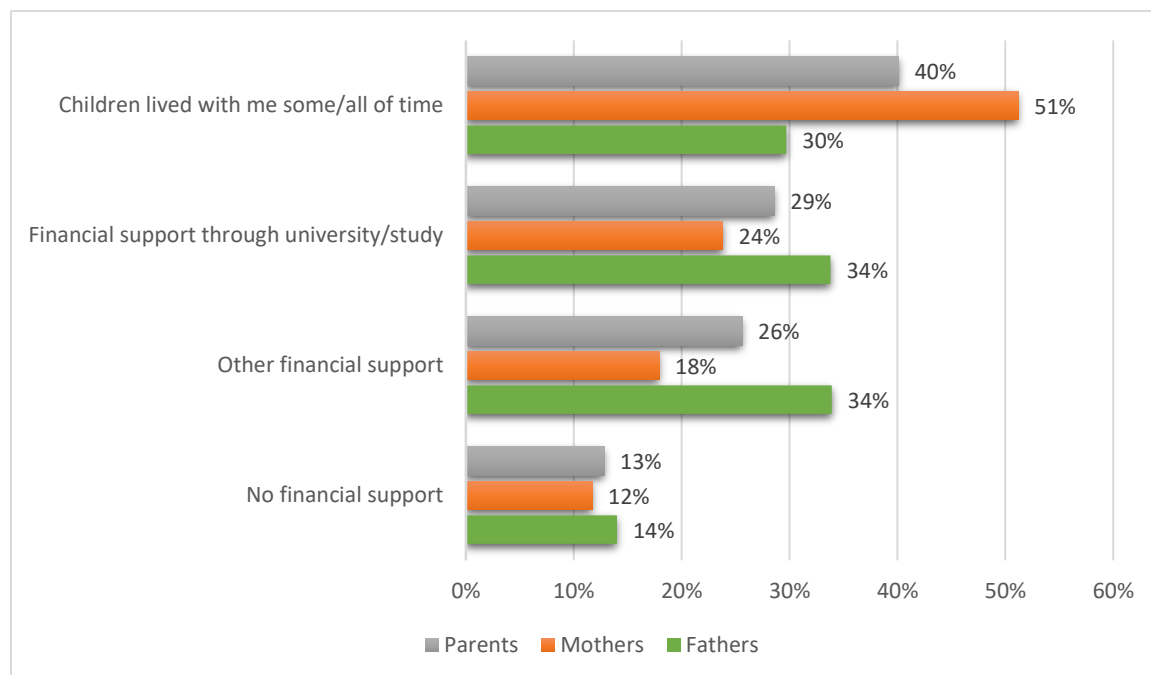
A substantial minority of divorcees had children who were no longer of dependent age, the majority of whom were being financially supported by their parents, both at the time of the divorce and, still, by the time of the survey. A third (36 per cent) had older children at the time of their divorce, with this proportion rising to two in five (42 per cent) by the time of the survey. A third (36 per cent) of these children were in full-time university education or the equivalent at the time of the survey.

The vast majority (84 per cent) of these divorcees said that they were financially supporting their older children at the point of the divorce.³¹⁶ Mothers and fathers were equally likely to be providing financial support (83 per cent of mothers and 85 per cent of fathers said they were providing support) at that time. However, the nature of the support was different, with mothers more likely to be having the children living with them at home (51 per cent compared to 30 per cent of fathers, p-value <0.001), and fathers more likely to be providing financial support for their studies (34 per cent compared to 24 per cent of mothers, p-value 0.024) or in other ways (34 per cent compared to 18 per cent of mothers, p-value <0.001) (Figure 9.7, below).

³¹⁵ Matrimonial Causes Act 1973, s 29(3). For an example concerning a child with disabilities, see *AB v CD* [2023] EWFC 103.

³¹⁶ The likelihood of a parent financially supporting their older children at the point of divorce did not differ significantly by their household income or level of assets.

Figure 9.7: Financial support for older, non-dependent children, at the point of divorce, overall and by mothers and fathers



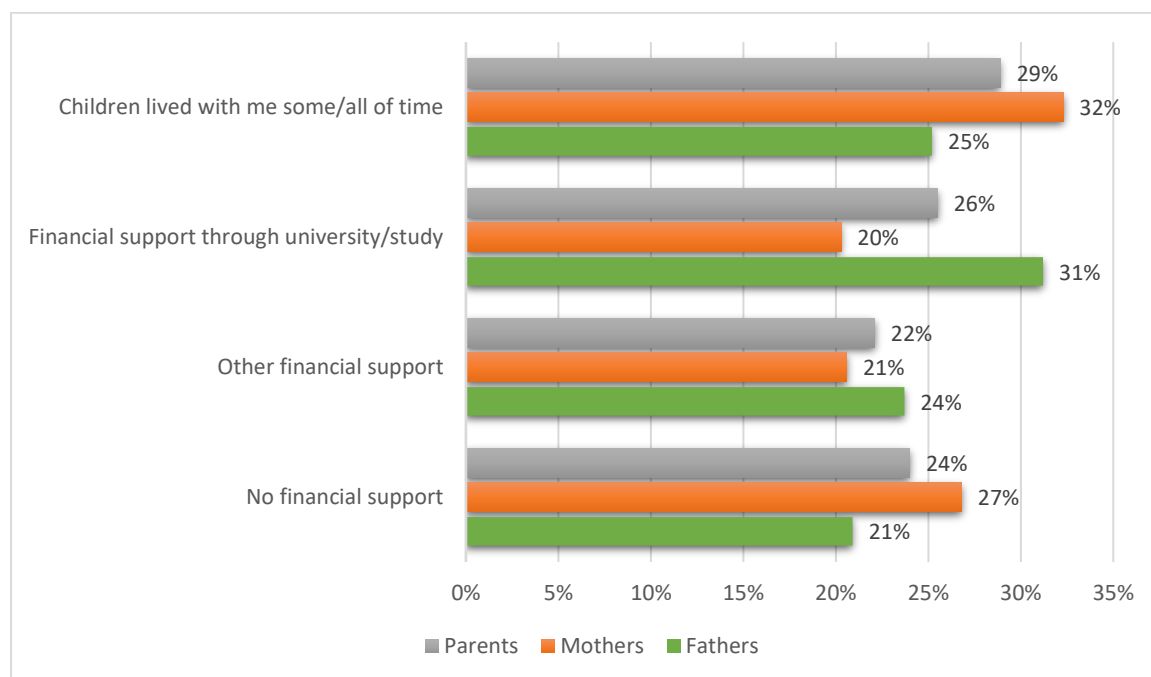
Base: parents with non-dependent children at divorce (762); mothers with non-dependent children at divorce (418); fathers with non-dependent children at divorce (344)

This different approach between mothers and fathers to providing ongoing support to non-dependent children was reflected in the interview data. For example, one husband noted: ‘She’s not living with me now, but I’m still supporting her financially’ (Husband 6), whilst the non-dependent children of Wife 22 were still living at home with her although both were working and paying her a small amount of rent/housekeeping which meant that they ‘were certainly living cheaper than they could do if they were not at the house.’

By the time of the survey, seven in ten (69 per cent) parents with older children were still supporting them financially (Figure 9.8, below),³¹⁷ no doubt reflecting the gradual move to fully independent living by non-dependent children over time. In addition, fewer parents had older children who were living at home by this point (29 per cent compared to 40 per cent at the point of divorce), with no significant differences in the proportion of mothers and fathers with older children at home.

³¹⁷ The difference between mothers (67 per cent) and fathers (71 per cent) is not statistically significant.

Figure 9.8: Financial support for older, non-dependent children, at the time of the survey, overall and by mothers and fathers



Base: parents with non-dependent children at survey (846); mothers with non-dependent children at survey (462); fathers with non-dependent children at survey (384)

Fathers continued to be more likely than mothers to be supporting children through university or other study (31 per cent compared to 20 per cent of mothers, p-value 0.012), as highlighted by this quote from the interviews:

‘[F]or me it’s going to be like another five years, six years until, well no, four yeah, four and a bit years, but then you know I’m carrying on paying for my daughter to do her Master’s degree and I’m paying for another one to go to university in the summer.’ (Husband 14)

9.8 Spousal maintenance

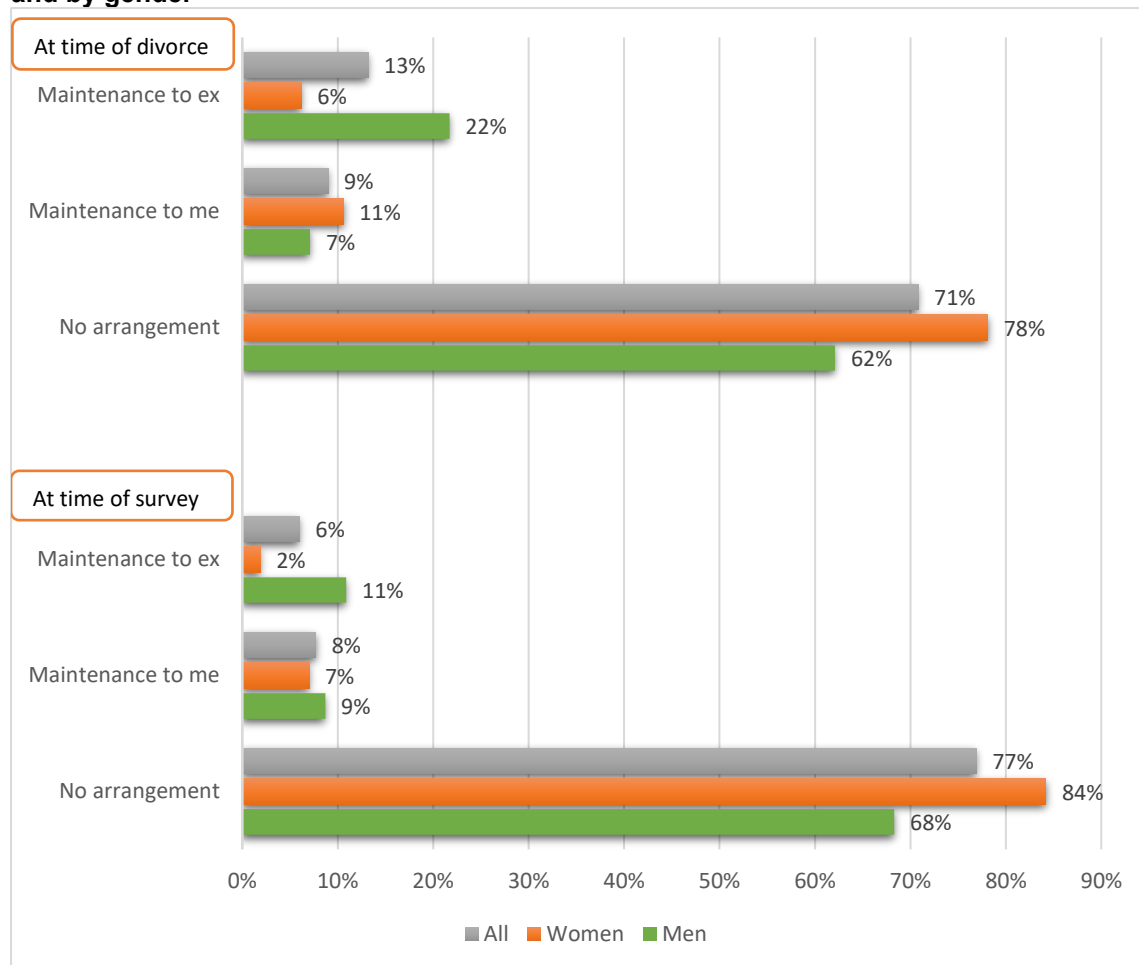
9.8.1 *The prevalence of having an arrangement*

In the survey, one in five (22 per cent) divorcees reported having had a spousal maintenance arrangement at the point of divorce, but by the time of the survey, this percentage had dropped to 14 per cent (Figure 9.9, below).³¹⁸ At both time points in the

³¹⁸ This initial figure of 22 per cent is six percentage points higher than court-based research on the prevalence of spousal periodical payments orders within the court population, with 16 per cent of cases in the latter sample

survey, men were much more likely than women to report there being an arrangement in place (p-value <0.001 at each time point). Three in ten (29 per cent) men said there was a spousal maintenance arrangement at the point of divorce, with one in five (20 per cent) saying that there was still one in place when they completed the survey. The comparable figures for women were 17 per cent and nine per cent.

Figure 9.9: Spousal maintenance arrangements at time of divorce and of the survey, overall and by gender



Base: all divorcees (2,415); all women (1,380); all men (1,035)

Both men and women were more likely to report having arrangements for the woman to receive the maintenance.³¹⁹ For instance, at the time of the divorce, 22 per cent of men reported paying spousal maintenance to their ex-spouse, and 11 per cent of women reported having an arrangement to receive spousal maintenance. In contrast, six per cent of women

containing an order for spousal support. E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018), Table 4, p 10.

³¹⁹ This assumes opposite sex marriages. We cannot identify same sex marriages, but they will account for a very tiny proportion of all divorces.

reported paying spousal maintenance and seven per cent of men reported having an arrangement to receive it. The majority of divorcees, therefore, did not pay spousal maintenance and a number of principal reasons came through from the interview data as to why most couples did not do so. For many divorcees, the issue was simply not on their radar when going through divorce, with many unaware of the concept. 'I'd never actually heard of it up until the survey really' (Wife 5). Either it was not raised during financial negotiations or discussions about future arrangements, or, where individuals were aware of it, they considered it inapplicable in their situation.

For some divorcees, a need to demonstrate financial independence from the other spouse morphed into an almost defensive position of not wanting to appear as though they were claiming from them. In the following case, the wife emphasised that she did not consider that she had a right to spousal maintenance because she worked full-time and there were no children:

'I couldn't afford to take proper legal advice but I actually believed that "what right have I got when I work full-time, what right have I got to take, expect him to pay me money?" We didn't have any children.' (Wife 3)

Other divorcees considered themselves to be financially independent of each other and there was therefore no need for spousal maintenance payments. Both parties worked and had similar levels of income:

'[O]ur earnings are quite similar so ... we were going from like to like really, so I just thought I wouldn't be entitled to anything and he certainly doesn't want to keep me, that's for sure!' (Wife 26)

Furthermore, the lack of children came up as a common reason for not needing spousal maintenance: 'We didn't have any kids, so I suppose there was never a discussion about maintenance' (Husband 2).

Other reasons given amongst the sample included the desire for a clean break and wanting to move on so that there were no ongoing ties between the ex-spouses; not wanting to be beholden to their ex-spouse; and domestic abuse issues, with the victim of the abuse wanting to be away from the perpetrator, and not wanting to have to communicate with them going forward. There was also the practical reality of the situation that there was no point in requesting maintenance because they knew their ex-spouse would not pay it, or that part of their income was received 'informally' which was not officially recorded: 'I couldn't prove any other way that he was earning an extra £400 or £500 a week or whatever it was' (Wife 25).

The explanatory analysis (see Chapter 2, section 2.4.4) suggests that an arrangement for spousal maintenance³²⁰ was often connected to having children (p-value <0.001). For instance, there was such an arrangement in three in ten (30 per cent) divorces involving dependent children, and two in five (43 per cent) with non-dependent children, compared with only seven per cent of divorces not involving children. We are not able to tell from the data whether the higher proportion of those with non-dependent children reflected former, or ongoing caring responsibilities (such as caring for elderly relatives or a disabled adult child)³²¹ which had limited wives' earning capacity going forward.

It should be noted that, among those with dependent children at the time of divorce, the majority (77 per cent) of wives who said they were receiving spousal maintenance said they were getting child maintenance. Given that previous research has also found a link between the payment of spousal maintenance and having or having had dependent children,³²² this finding is unsurprising. The interview data also highlighted the association between spousal maintenance and having children, with one husband noting that in his case the spousal and child maintenance payments were merged together in one large payment:

'It was all covered in the child money, like whatever we thought she would need to run the house, pay electric, gas, mortgage, whatever, it's all taken from that. We could have broken it up into two separate payments, but what's the point? It's all in that one payment.' (Husband 1)

However, spousal maintenance could also be paid in certain situations where there were no dependent children. For example, in the following case, the husband paid the wife £500 per month for approximately a year to 'get her going' on the path to independent living, although she was also paying him monthly instalments towards a joint loan they had taken out:

'He gave me that spousal maintenance to get me going. ... So obviously I had to keep the house, the flat going. That was one thing that he had to pay the bills for the flat whilst I was there. I wasn't – I didn't work. ... When it came to an end I had managed to get myself some sort of part-time job to just try and make ends meet.' (Wife 10)

³²⁰ At the time of divorce or at the survey.

³²¹ For an example, see *AB v CD* [2023] EWFC 103.

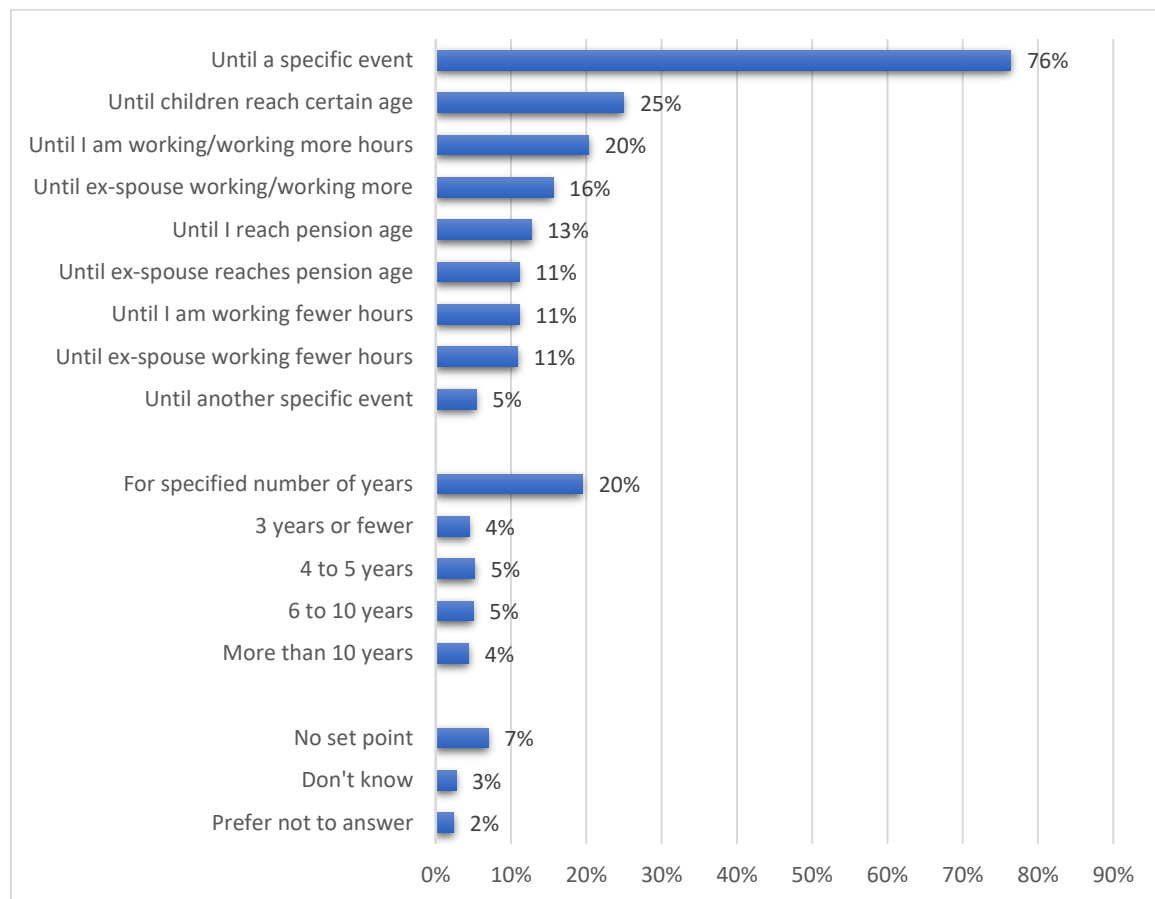
³²² E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018), p 14-17.

Spousal maintenance was also associated with the survey participant having an illness or disability (p-value <0.001). Just under half (46 per cent) of those with an illness or disability that limited them a lot had an arrangement, compared to a quarter (26 per cent) of those whose condition limited them a little, and 14 per cent of those without an illness or disability.

9.8.2 The period for which spousal maintenance would be paid

The vast majority (88 per cent) of spousal maintenance arrangements were for a specified period, either defined by a particular event or an agreed number of years (Figure 9.10, below).

Figure 9.10: Period for which spousal maintenance to be paid³²³



Base: divorcees with a spousal maintenance arrangement (394)

For most (76 per cent), the agreement was anchored to a particular event. A quarter (25 per cent) had an agreement until their children reached a certain age, which is consistent with findings from previous research,³²⁴ while others had agreements linked to the earnings

³²³ Participants could pick more than one response, hence the figures amounting to more than 100 per cent.

³²⁴ E Hitchings and J Miles, *Financial Remedies on Divorce: The Need for Evidence-Based Reform* (2018), p 16.

potential of either the maintenance recipient or the ex-spouse paying the maintenance. For example, one wife in the interview sample had made an informal agreement with her ex-husband that he would pay her mortgage until the youngest child finished education, although some uncertainty was expressed over the exact end date:

‘[W]hen my youngest finishes education ... [a]lthough this one is a little bit grey at the moment. I think this one may continue a little longer actually ... because I earn significantly less, plus I’m self-employed so the whole mortgage situation, I’m not entirely sure ... this is the one thing that is very up in the air because it’s such a long way away.’ (Wife 18)

Another specified event linked to the termination of spousal maintenance can be re-marriage or the arrival of a new partner who subsequently moves into the house. In one husband’s case, spousal maintenance payments had been made until his ex-wife moved in with another partner. The husband had covered his ex-wife’s household bills as there was no mortgage on her new property and she was not working:

‘When she moved into the new house on her own with the kids, there was an arrangement but now she is married to another person who is her partner, husband, whatever, he’s picked up that slack. ... I don’t want to be paying for another guy as well and she understood that, it was only reasonable.’ (Husband 10)

Only one in five (20 per cent) arrangements specified a particular number of years that the spousal maintenance would be paid, with those amounts including in roughly equal proportions shorter term arrangements (e.g. four per cent of arrangements were for three years or fewer) and those which lasted at least into the medium term (e.g. four per cent were to last for more than ten years).

9.8.3 *Spousal maintenance and sharing pensions amongst older divorcees*

This section focuses on ongoing income payments among divorcees aged 60 and over, starting with money transfers from pensions being received by the ex-spouse, and then looking whether and how these sit alongside spousal maintenance (as reported in section 9.8.1).³²⁵

³²⁵ Aged 60 was chosen in order to capture those who divorce earlier than state pension age. The survey sample also included some participants under 60 who reported that they were drawing their pension. However, it may be that some over 55s were, in fact, referring to some form of pension draw down and, as such, we have not

One would expect older wives to be more likely to have had disrupted careers and a lower earning capacity as a result of child caring when they were younger, and thus also to be more likely to need ongoing financial support from their ex-spouse. We therefore looked more closely at the position of older, potentially more vulnerable women to see the nature and extent of any ongoing 'maintenance', also comparing their position with men in this age group.

Two in five (39 per cent) divorcees aged 60 or over reported that either they or their ex-spouse were already drawing a private or employer pension at the time of their divorce. In a third (32 per cent) of divorcees within this age group, only one of the spouses was drawing a pension, while in a further seven per cent both spouses were drawing their pensions. Men aged 60 and over were almost twice as likely as women aged 60 and over to be drawing a pension (40 per cent compared to 23 per cent, p-value 0.008).³²⁶

With the very important caveat that the number of pensions in payment that were being shared in the survey was therefore low, we found that sharing income from a pension in payment in retirement was much more common than having a pension sharing arrangement where pensions were not yet being drawn. One in five (21 per cent) divorces involving divorcees aged 60 and over where at least one spouse was drawing their pension at the point of divorce resulted in some form of arrangement (not necessarily by way of a formal pension sharing order) to share money from the pension in payment, compared to one in nine (11 per cent) of those where the pension was not yet being drawn (see Chapter 7, section 7.3.2). Among those drawing their pension, men (21 per cent) were more likely than women (five per cent) to report sharing it with their ex-spouse (p-value 0.009).

In a quarter (27 per cent) of cases where a pension in payment was being shared, there had been a 50:50 split of the monthly pension payment.³²⁷ In half (49 per cent) of cases, the ex-spouse received less than half, with only 13 per cent receiving more than half.³²⁸

included them in our analysis. We are unclear why some younger participants reported drawing their pension and, as such, have also excluded them from our analysis.

³²⁶ Based on the pensions of survey participants (given the greater accuracy of those data).

³²⁷ These figures are based on pension sharing of the survey participant's pension in payment.

³²⁸ These figures are based on only 41 survey participants so should be treated with caution.

If we look across the spousal maintenance payments reported in section 9.8.1 and receipt of income from ex-spouses' pensions in payment above, we get a better picture of the ongoing financial support received by those aged 60 and over. As we might have expected, there is a substantial cross-over in those reporting receipt of both. In reality, in some cases, these payments may be one and the same, while for others there may have been separate arrangements for spousal maintenance and pension payments.

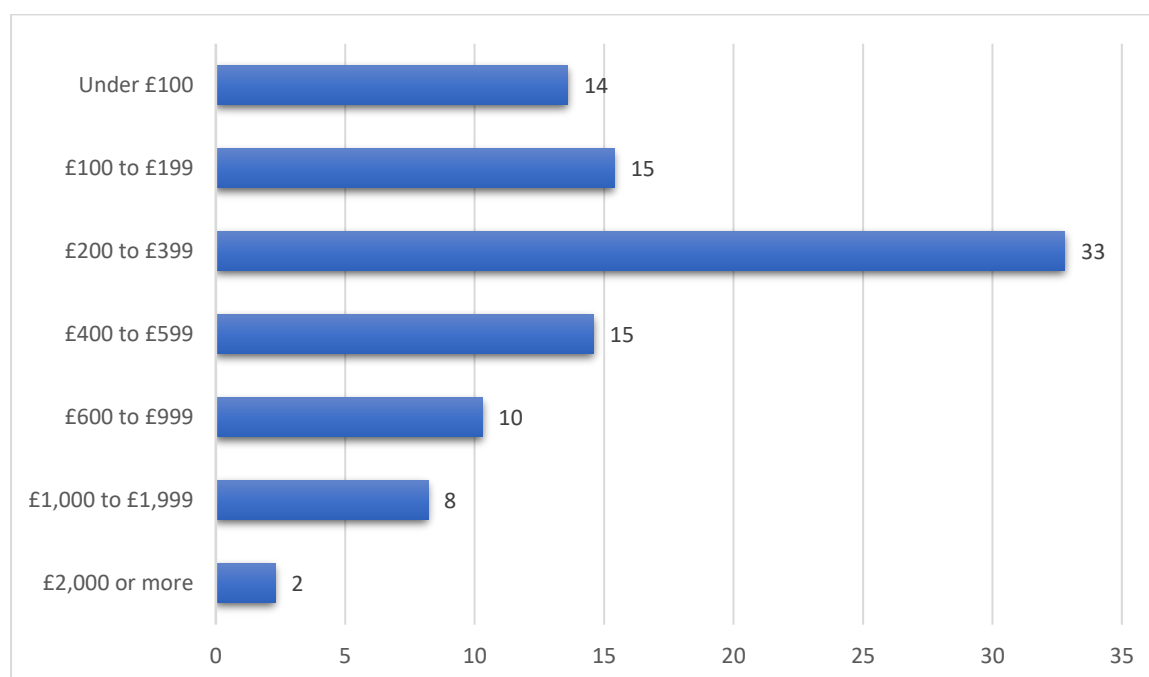
Amongst divorcees aged 60 and over, 18 per cent of women and only five per cent of men were receiving ongoing financial support from their ex-spouse, either by way of spousal maintenance, or from a pension that the other spouse was drawing. For the large part, this support was in the form of spousal maintenance. Among women aged 60 and over, 11 per cent were receiving only spousal maintenance, four per cent were receiving money from their ex-spouse's pension but not spousal maintenance, and three per cent were receiving money from both sources of income. For men, the relative figures were five per cent, one per cent and no one.

Older wives were therefore no more likely than younger ones to be receiving income transfers from their ex-husbands after divorce, unless there was some factor other than age that meant they were more dependent, such as continuing childcare responsibilities, illness or disability. Given their greater likelihood, nonetheless, of having reduced incomes either from earnings or from their own pensions, this group of divorced women were probably facing a significantly reduced standard of living as they moved into old age.

9.9 Spousal maintenance amounts, and the reliability of the payments

Figure 9.11, below, shows a breakdown of how much spousal maintenance divorcees were meant to pay or receive each month, according to their current arrangement. As with child maintenance, divorcees were asked the frequency with which they should receive spousal maintenance, and the amount they should receive each time. Since most divorcees with spousal maintenance arrangements reported arrangements for payments each calendar month, monthly amounts have been calculated for those with different payment schedules.

Figure 9.11: Level of spousal maintenance agreed, converted to monthly figures

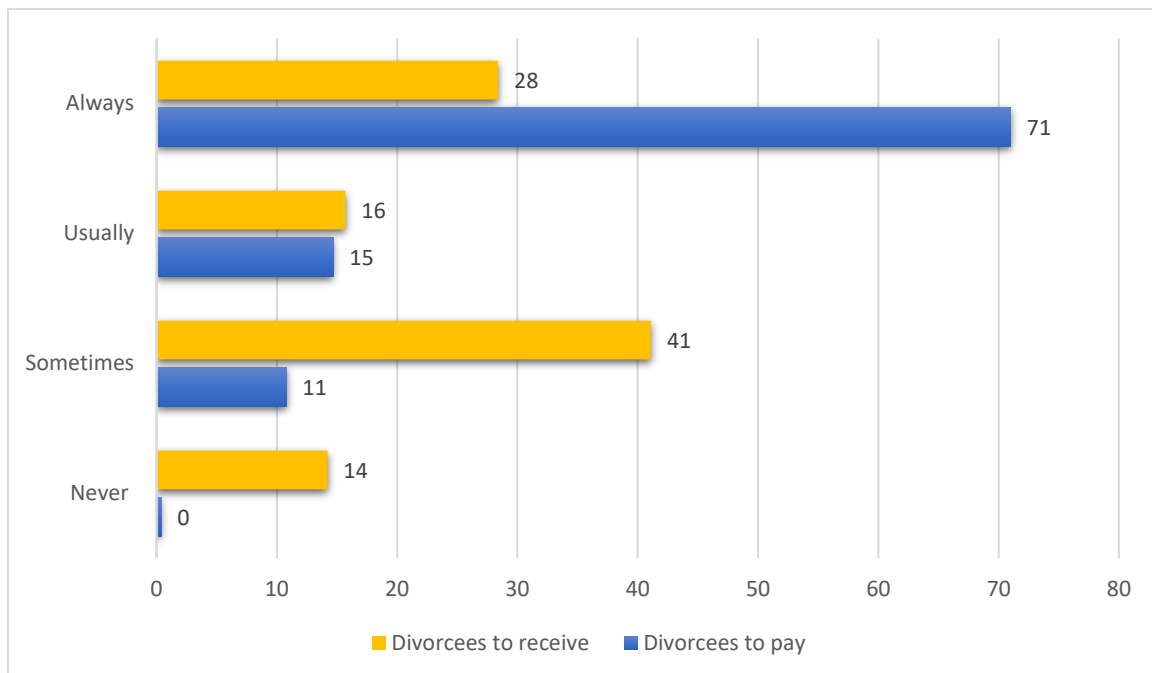


Base: divorcees with a current spousal maintenance arrangement with a regular payment agreed (234)

Three in ten (29 per cent) divorcees with spousal maintenance arrangements said that the agreed amount was less than £200 each month. A third (33 per cent) had an arrangement for between £200 and £399 each month, with 15 per cent citing a figure between £400 and £599. One in ten (10 per cent) of divorcees with a spousal maintenance arrangement said that it was for £1,000 or more each month.

When asked about the reliability of spousal maintenance payments (on a scale from 'always' to 'never'), it is noticeable that those who were meant to pay the maintenance reported much greater levels of compliance with the existing arrangement than the receiving divorcees. Over half of the divorcees who were meant to receive the spousal maintenance said that they only sometimes (41 per cent) or never (14 per cent) received it. Only three in ten (28 per cent) said that they always did, in contrast with the seven in ten (71 per cent) divorcees who should pay the maintenance saying that they always paid what they were supposed to (Figure 9.12, below). If we compare these compliance levels with those relating to child maintenance (e.g. 67 per cent of receiving parents said that they always got what was due), spousal maintenance arrangements were much less reliable. This is possibly due to parents' greater willingness to pay for the continuing care of their children compared with ongoing payments towards their ex-spouse.

Figure 9.12: Level of compliance with spousal maintenance arrangements, by divorcees who should be paying and receiving the maintenance



Base: divorcees who should receive maintenance (121); divorcees who should pay maintenance (125)

Table 9.4, below, shows the reasons that divorcees gave for not always paying or receiving the maintenance that they should, with one third (36 per cent) of those who did not always pay or receive spousal maintenance giving domestic abuse as reason for this. One in five survey participants noted the reason for the split (20 per cent) and the lack of limited contact with children (20 per cent) as reasons for not always paying or receiving spousal maintenance. Financial reasons also came into the explanation given for not always paying or receiving spousal maintenance with 18 per cent of participants suggesting that their ex-spouse did not want or refused to pay and 12 per cent suggesting that their ex-spouse could not afford to. In the interviews, one wife noted that although she had hoped to receive spousal maintenance (and noted on her survey response that there was a spousal maintenance agreement) ‘when we actually got to the agreement, he didn’t have the money to do that’ (Wife 7).

Table 9.4: Reasons given for not always paying or receiving spousal maintenance payments

	%
Because of domestic abuse in relationship	36
The ex-spouse who should pay has no or limited contact with the ex-spouse or children	20
Because of the reason for the split	20
The ex-spouse who should pay doesn't want to/refuses to pay	18
The ex-spouse who should pay thinks the amount isn't fair	18
The ex-spouse who should pay can't afford to	12
Because of the pandemic	12
<i>Unweighted base: divorcees who did not always pay or receive the maintenance payments</i>	79

9.10 Other financial support to or from the ex-spouse

In addition to spousal maintenance, a minority of divorcees were providing, or had provided in the past, other forms of financial support to their ex-spouses. As with spousal maintenance, more divorcees reported doing this at the point of divorce rather than at the time of the survey. This initial support to ex-spouses could be seen in the occasional example from the interview data. Although one husband had indicated in his survey that he had not paid any ongoing spousal maintenance, when questioned in the interview he disclosed that he had paid his ex-wife some money 'when the divorce came through' that was separate from the house and pension arrangements. In this case, the intention of the lump sum was to help her out in the initial period after the divorce – to get her back on her feet:

'[B]ecause I earn more than [ex-wife's name] to help her out for the first year so she's not short. It was just for that reason really.' (Husband 23)

Seven per cent of survey participants said that they were currently helping their ex-spouse financially, in ways other than through spousal maintenance, with a further ten per cent saying that they had done so in the past. In seven in ten cases (69 per cent), this help was in relation to housing costs.³²⁹

This type of 'ad hoc' financial support between ex-spouses other than through spousal maintenance payments, is illustrated through examples in the interview sample. Husband 14 noted that he helped out his ex-wife with house repairs and the upkeep of the property, while

³²⁹ Other divorcees cited a range of other costs (e.g. children, car, pets, household bills).

in another case, the husband had helped the wife with various occasional payments from time to time, both at the time of the divorce and sometimes later:

‘[S]he got a flat to rent which was unfurnished and I did get some stuff to put in it ... to be nice rather than actually obliged to.... Sometimes she’d ring up and say she couldn’t afford to pay a bill and I’d pay for her but that was sort of random rather than organised, if you know what I mean.’

(Husband 6)

The interview data also provides some insight into ongoing support payments for pets of the relationship:

‘We got dogs during the marriage and said if anything ever happens we’d decide who wants to keep them, whose situation was better, and if they wanted to keep them the other person would just pay towards them since it was like a joint responsibility we had. ...she’d keep the dogs and I put a direct debit every month, ... I just pay her £250 a month, so the dogs don’t get impacted with what’s happened between me and her. Obviously, I don’t want them losing out on insurance or high quality foods.’ (Husband 5)

However, in other cases, the retention of pets after marriage breakdown was not so straightforward. A wife with a less accommodating spouse told us that her husband:

‘... did actually still pay towards the dog. But he was supposed to do a transfer every month and I had to ask for it every month. He couldn’t just set up a direct debit – he had to be in control and it had to be asked for and then given, so even that was But I was not letting up on that. I was like, “You can pay for the dog!” So, he did actually pay for the dog.’ (Wife 21)

9.11 Concluding comments

As was noted in Chapter 1 (section 1.3.2) a decision was taken in 2012 to shift child support policy away from use of the statutory system of calculation, collection and enforcement of maintenance to the promotion of ‘family-based’ informal arrangements.³³⁰ Separating parents, irrespective of marital status, are encouraged to reach a child maintenance

³³⁰ See Sir D Henshaw, *Recovering child support: routes to responsibility* (DWP, 2006) and DWP, *Strengthening families, promoting parental responsibility: the future of child maintenance Cm 7990* (DWP, 2011).

arrangement between themselves, privately, and without recourse to any outside bodies. Only if they are experiencing difficulties in coming to an arrangement or enforcing it, is recourse to outside organisations advised.

In light of the focus on private and informal family-based arrangements, it appears concerning that a substantial minority (two in five) of divorced parents within the study, did not have a child maintenance arrangement or were still trying to set one up. One of the main reasons that parents gave for not having an arrangement was that they shared the care of their children so costs were split between the parties. However, the other reasons provided by parents for not (yet) having an arrangement, sound like more entrenched issues which may or may not lead to them being able to make a child maintenance arrangement in the future. An awareness of these reasons is useful in understanding the barriers to making arrangements. The main reasons included the paying parent's reluctance to pay, regarding the amount as unfair, or being unable to afford the payments.

For the vast majority of divorcing parents, sorting out child maintenance was something that happened in addition to, rather than as part of, the divorce process. At the time of their divorce, among the six in ten parents with a child maintenance arrangement at that time, only 13 per cent had made this as part of a wider financial arrangement on divorce, with the other 47 per cent arranging it outside of any divorce settlement. To that extent, the routes to a child maintenance arrangement that divorcing parents attempt to navigate are the same as those used by those separating from cohabitation, or by divorced parents some time after the divorce has come through. This is unsurprising as married couples who separate must find ways of supporting their children and will not necessarily be able to afford to wait to sort everything out at the same time.

Amongst those parents who did have some form of child maintenance arrangement, family-based arrangements were the most prevalent arrangement type, representing just over a quarter of all divorcing parents with dependent children. Amongst those who had such an arrangement, interviewees noted that they had made it because there was a relatively amicable situation between them and their ex-spouse and also an awareness that the children's ongoing support costs needed to be paid. Furthermore, out of all the types of child maintenance arrangement, compliance levels were highest amongst those with family-based arrangements. Alongside other data which suggested that parents who were better off financially during the marriage were more likely than parents who were less well-off to have an arrangement, a picture is painted of family-based arrangements generally working for

those families who chose this route; with good levels of compliance, and regular payments between parents, resulting in arrangements that in the main, appeared to work well.

However, this private, amicable route to arranging child maintenance appears to be suitable for only a minority of divorcing parents with dependent children. For those who were required to use other routes to obtain some form of child maintenance, the picture was not quite as positive. The quarter of families using the Direct Pay (19 per cent) or Collect and Pay (six per cent) routes under the CMS appeared to have less amicable situations and interview data suggested that those using these routes were in much more tricky and tense ongoing relationships with their ex-spouses, which meant they felt less able to discuss things well and felt forced to have recourse to these more formal routes to obtain child maintenance. These routes were also used by individuals who had experienced domestic abuse. As a consequence, it is unsurprising that compliance levels were significantly lower in these cases, with just under half (47 per cent) of those *receiving* maintenance under Direct Pay arrangements and just under seven in ten of those *paying* maintenance under this method reporting that payments were always made.

While the focus of child support (and divorce/financial remedy) policy is on dependent children of the family, the research also captured what divorcing parents pay (if anything) towards their non-dependent children. Although the child support system does not require parents to support their children once they enter early adulthood, the study found that the vast majority (84 per cent) of divorced parents who had non-dependent children continued to support them financially at the point of divorce, and 69 per cent at the time of the survey. 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.

This finding is something for policymakers to reflect on. With large numbers of young people remaining in education or training beyond the age of 18, the cost of higher education and high housing costs mean that parental support on a child's road to independent living is lasting beyond their officially 'dependent' years. The question is, to what extent, if at all, should this be reflected in the law on divorce and/or child support? We revert to this issue in Chapter 12.

Finally, the issue of spousal maintenance has received a lot of attention in the media and from policymakers over the last few years. Claims that the current law provides ex-wives with a 'meal-ticket for life' in the form of ongoing spousal periodical payments have been used as a rationale to suggest reforms to the law which would limit the period over which

spousal maintenance could be paid. However, the findings outlined in this chapter show that only a relatively small minority of divorcees (22 per cent) had a spousal maintenance arrangement at the point of divorce, and when it was paid, it was usually only for a specified period of time. In a quarter of cases, this was until a child reached a certain age or until the receiving spouse earned more money. It was also associated with a degree of vulnerability on the part of the receiving spouse; for example, where spousal maintenance was paid, it was more likely to be paid to the woman, and the arrangement was often connected with having (or having had) children and having an illness or disability. Therefore, it was associated with the recipient having a particular need that could not readily be overcome by the recipient themselves. Being older was not, perhaps surprisingly, a factor making the receipt of spousal maintenance more likely.

Amongst older divorcees, however, where at least one of the spouses was drawing a pension at the time of divorce, one in five cases involved some form of pension sharing arrangement, so there was a greater propensity to 'share' the pension in some way, amongst these divorcees than amongst those who were not yet drawing their pension, discussed in Chapter 7.³³¹

In the next chapter, we bring the elements of the financial arrangements that have been explored separately in Chapters 6 to 9 together, to examine the overall arrangements made by four distinct groups who make up the divorcing population.

³³¹ See Chapter 7, section 7.3.2.

Chapter 10: How do arrangements vary across different groups of divorcees?

Key findings

Two major 'life course' factors – being a parent and an individual's age – were associated with certain financial arrangements made at divorce amongst particular groups of divorcees: those with dependent children; those with non-dependent children; those aged under 50 without children; and those aged 50 and over without children

The matrimonial home

- Divorcees with dependent children or those without children who were younger were more likely to transfer than to sell the former matrimonial home. Older divorcees without children were as likely to sell as to transfer ownership.
- Among divorcees with dependent children, it was twice as common to transfer ownership of the home to the mother as to the father.
- Where the home had been sold, mothers and older wives without children were more likely than fathers to receive a higher percentage share of the equity.

Pensions not yet in payment

- Being older, and having children, were associated with a greater likelihood of sharing a pension.

Assets, savings and debts

- Equal sharing of assets was more likely to be reported by divorcees without children.
- Fathers with dependent children, and husbands over 50 without children, were more likely to report taking on responsibility for the majority of debts.

Ongoing financial support

- Among parents with dependent children, six in ten mothers and a quarter of fathers were receiving ongoing financial support at the point of divorce, mainly in the form of child maintenance.
- Ongoing financial support was uncommon for other divorcees, particularly those without any children. For example, only one in ten women aged over 50 without children reported receiving support, mostly in the form of spousal maintenance.

Current living standards

- At the time of the survey, mothers and older wives were, on average, worse off financially than other divorcees.
- Younger male and female divorcees without children were more likely to have similar living standards after divorce.

A divorcee's gender was associated with particular aspects of their financial situation and arrangements across the four groups

- Wives were more likely than husbands to receive a compensating payment if the home was transferred.
- Wives' pensions were worth less than those of husbands and husbands' pensions were more likely to be shared than those of wives.
- In terms of the combined pool of assets, there were no significant differences, in either the proportionate share of the assets received, or the monetary value of this, between husbands and wives. Husbands tended to receive more of the value of the combined pension pool, and wives of the matrimonial home.
- Re-partnering softened the impact of reduction in living standards after divorce for both men and women. However, re-partnering appeared to have a larger (more positive financial) effect on men.

10.1 Introduction

In this chapter, we bring together some of the findings from Chapters 6 to 9 which explored elements of the financial arrangements that divorcees made to consider the overall balance between spouses as regards the percentage share and monetary value that they received in exiting their marriage. As well as continuing to highlight differences related to gender, we do this through an examination of four distinct groups who make up the divorcing population. Every divorcee falls within one of the four groups that we have identified. These groups are of particular interest as each has a distinct set of issues and circumstances which provide key areas of differentiation.

When considering the division of finances and property on divorce, the Matrimonial Causes Act 1973 provides that the court's first consideration is any minor children of the family. For this reason, and because we know that having children creates vulnerabilities and potential long-term economic consequences as a result of caring obligations, two of the groups contain parents. Our first group contains divorced spouses who have dependent children. The second contains divorced spouses who have older children who, as we saw in Chapter 9, may remain factually financially dependent on their parents notwithstanding their legal status as 'non-dependants'.

The final two groups contain divorced couples who do not have any children of the relationship, but instead are distinguished by the age of the parties; the dividing line for our purposes is the age of 50. This age was chosen for two main reasons. First, there are the socio-demographic trends which have led to individuals getting married and having children later in life, so that couples in their 40s may still be childless but nevertheless plan to have children in the near future. In contrast, by the age of 50, the decision whether or not to have children will usually have been made (although there will be exceptions) and at this stage of life, parties may be more likely to consider their needs in the years leading to and after retirement. Secondly, although the vast majority of divorces amongst our participants happened prior to retirement age, with only 15 per cent of divorcees aged over 60 when they divorced (see Chapter 3), we know from previous chapters how important pension wealth is to the total matrimonial pot on divorce. As a consequence, the age of 50 was chosen on the basis that divorcees over the age of 50 would be nearer to retirement age and therefore possibly more cognisant of the need to consider pension wealth within their financial and property arrangements.

The chapter builds on the earlier analysis in Chapter 8 of the overall financial and property ‘packages’ that couples arrived at, by now analysing how far these key factors of age and parenthood impacted on whether these packages could be said to have produced ‘fair shares’ between the parties.

10.2 Chapter outline

The chapter looks first at how each asset – the matrimonial home, pensions, savings and other assets and debts – was divided or allocated between women and men within each of the four groups. Where divorcees were both homeowners and had pensions to draw, we look at the combination of the arrangements made for these assets, to explore how they may or may not have been offset against each other. The chapter then shows the total value and percentage share of all the divorcing couple’s assets received, analysed by gender, to see the aggregate result of decisions made about individual assets.³³²

Alongside any division of assets, as we saw in Chapter 9, financial arrangements may include ongoing financial support from one party to the other, particularly where there are children involved. So, for each of the four groups, the chapter shows the proportions with ongoing support arrangements, overall and broken down into types of support (child maintenance, spousal maintenance and receipt of a proportion of any monthly pension payments).

We then conclude with an assessment of each party’s current living circumstances, comparing objective and subjective measures of financial wellbeing for women and men in each of the four groups as well as the compromises and trade-offs that divorcees made in coming to their overall arrangement.

The sections are as follows:

- Section 10.3: The matrimonial home
- Section 10.4: Pension pots
- Section 10.5: Savings, other assets and debts
- Section 10.6: Percentage and monetary value of all assets for mothers and fathers
- Section 10.7: Ongoing financial support
- Section 10.8: Current living standards

³³² See Chapter 8 for a discussion about how these were calculated.

- Section 10.9: Compromises and trade-offs in coming to the overall arrangement
- Section 10.10: Concluding comments

The sample sizes of divorcees with dependent children are far larger than those for other groups. They accounted for just over half (55 per cent) of divorcees. As such, we have been able to do more analysis of this group. For all four groups, as a rule, where we are looking at subgroups (e.g. within homeowners making different housing decisions), we restrict our analysis to survey questions where at least 30 women and 30 men answered the question, and we highlight where findings are based on particularly small numbers.

10.3 The matrimonial home

As might be expected, divorcees with (dependent or non-dependent) children and divorcees aged 50 or over without children were more likely to have owned the matrimonial home than younger divorcees without children.³³³ Moreover, those who were 50 or over with no children and those with only older, non-dependent children were more likely than the other groups to own their property outright.³³⁴

Among homeowners with (dependent or non-dependent) children and those under 50 without children, the most common decision about the matrimonial home was to transfer ownership to one party. Half of parents (48 per cent of those with dependent children and 52 per cent of those with older children) did this, as did 44 per cent of those under 50 without children (Figure 10.1, below).

Among homeowners with dependent children, it was twice as common to transfer ownership of the home to the mother than the father (32 per cent compared to 16 per cent).³³⁵ Among those with older children or without children, any transfers were equally likely to be to the husband as the wife. For example, among those with older children, 27 per cent of matrimonial homes were transferred to the mother and 25 per cent were transferred to the father.

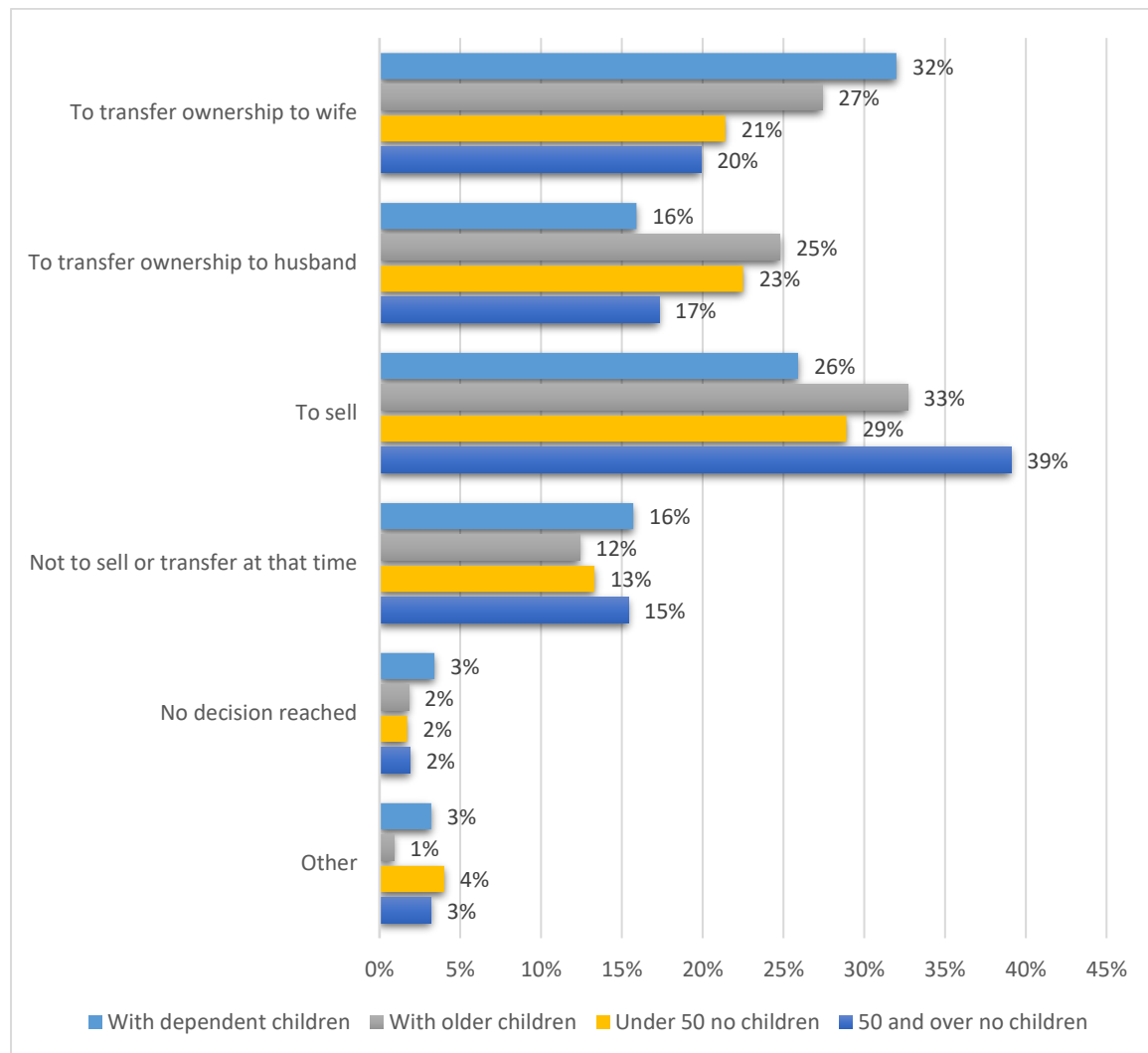
³³³ 69 per cent of those with dependent children, 73 per cent of those with older children and 75 per cent of those aged 50 and over with no children, compared to 61 per cent of those under 50 with no children, p-value 0.003.

³³⁴ For instance, 29 per cent of those aged 50 and over without children owned their home outright compared to 10 per cent of those with dependent children.

³³⁵ These figures assume opposite-sex marriages.

However, homeowners aged 50 and over without children were equally likely to decide to sell (39 per cent) as transfer ownership (37 per cent). They were more likely to sell than younger divorcees without children (29 per cent), or those with dependent (26 per cent) or non-dependent (33 per cent) children (p-value 0.004).

Figure 10.1: Decision about the matrimonial home, where home was owned



Base: Those where the matrimonial home was owned: with dependent children (911); with only non-dependent children (248); under 50 with no children (308); 50 and over with no children (479)

Where a decision had been made to transfer ownership to one party, this was more likely to have happened or be in prospect by the time of the survey where dependent children were involved (76 per cent of these parents), or where there were no children (79 per cent of those under 50 and 100 per cent of those aged 50 and over). In contrast, among those with older children, this was only the case for just over half (55 per cent) of those who had originally decided on a transfer of ownership (p-value <0.001).

Where the transfer of ownership had happened by the time of the survey, in the majority of cases involving divorcees with dependent children (66 per cent), older children (75 per cent) and younger divorcees without children (80 per cent), the other party had received some money in return. However, this was less common among older divorcees without children, where only 45 per cent of transfers resulted in a payment to the spouse. This may have been due to offsetting the pension value against the equity in the home.³³⁶

Moreover, across all four groups, a compensating payment was less likely when the transfer of ownership was to the wife rather than to the husband.³³⁷ For instance, among those with dependent children, a compensatory payment was made in two thirds (65 per cent) of cases where the home was transferred to the mother, compared to 83 per cent of cases when the transfer of ownership was to the father (83 per cent) (p-value 0.004).³³⁸

Similarly, where the matrimonial home had been sold, wives were more likely than husbands to receive a higher percentage share of the equity,³³⁹ a finding which was true for parents of dependent and non-dependent children and older divorcees without children.³⁴⁰ Figure 10.2, below, shows the percentage, overall and split among wives and husbands for these three groups.

Among parents with dependent children, while roughly equal proportions of mothers (25 per cent) and fathers (22 per cent) received a 50 per cent equity share from the sale, mothers were nearly three times as likely as fathers (33 per cent compared to 12 per cent) to receive more than 50 per cent, and half as likely as men (30 per cent compared to 61 per cent) to receive less than 50 per cent (p-value 0.004). Among those with older children, again, mothers appeared more likely than fathers to receive a higher percentage share of the

³³⁶ Indeed, this hypothesis is backed up when we look later (see Figure 10.9) at the value of the total assets (home, pensions, savings and other assets minus debts) received by men and women, where the amounts are not significantly different. See additional discussion in Chapter 6, section 6.4.

³³⁷ See also Chapter 6, section 6.4.

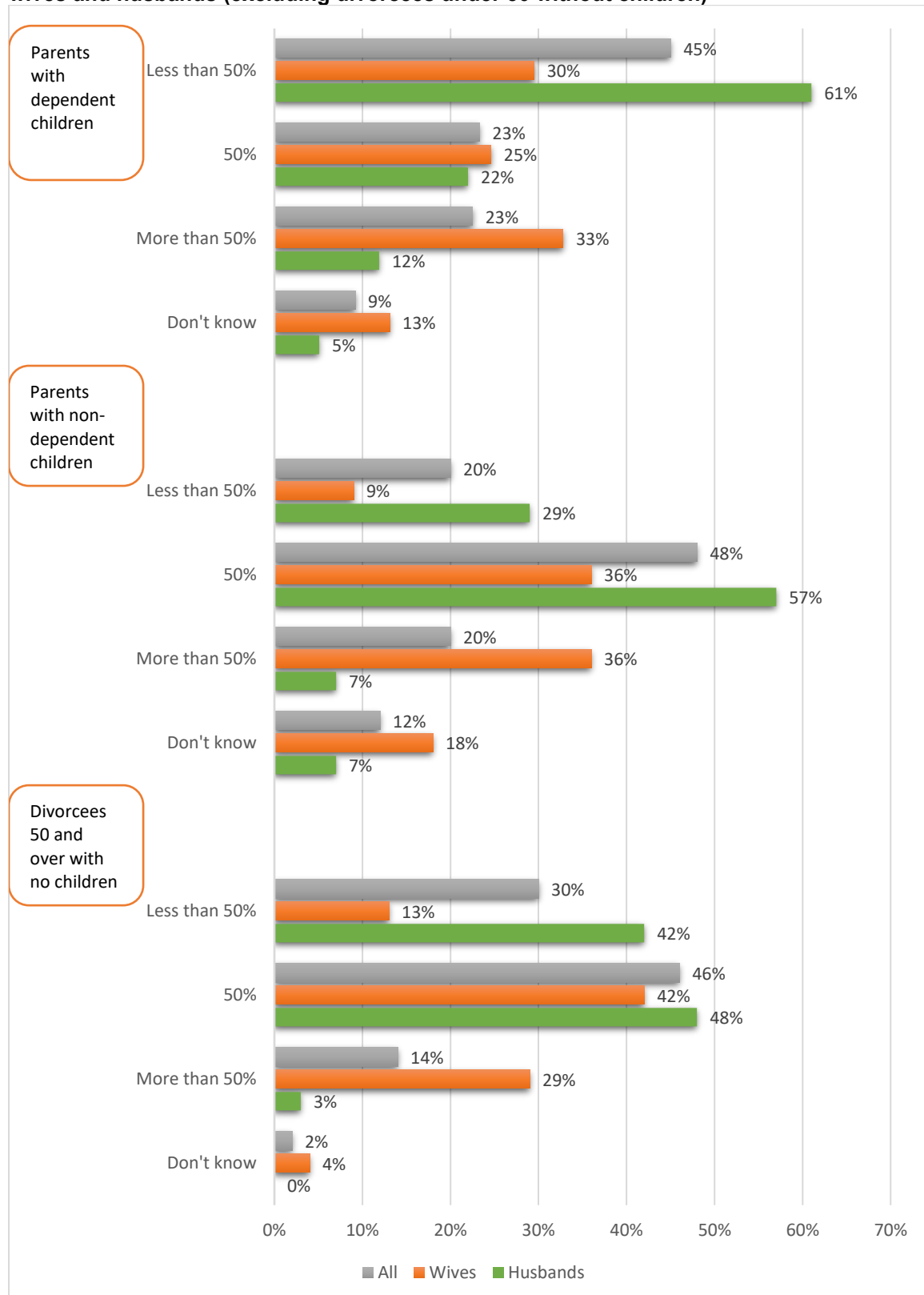
³³⁸ The equivalent percentages for the other three groups are: 55 per cent and 100 per cent for those with older children (p-value 0.002); 72 per cent and 88 per cent among younger divorcees with no children (not statistically significant, but the same pattern); 60 per cent and 33 per cent among older divorcees with no children (p-value 0.036). The numbers of divorcees receiving money from transfers in each of the four groups were too small to compare the percentage share across wives and husbands.

³³⁹ Note that in Chapter 6, we outlined that this higher percentage share of the equity did not translate into big discrepancies between the genders in the monetary value actually received.

³⁴⁰ The numbers of younger divorcees without children who were homeowners deciding to sell were too small to look at the equity split among this group (the sample size for men was only 29).

equity, although the limited numbers mean that this difference did not reach statistical significance (p-value 0.059).

Figure 10.2: Percentage equity split when the matrimonial home was sold, overall and by wives and husbands (excluding divorcees under 50 without children)



Bases: all parent homeowners with dependent children where home had been sold (239, 128 mothers, 111 fathers); all parent homeowners with older children where home had been sold (82,39 mothers, 43 fathers); all divorcees 50 and over with no children where home had been sold (136, 69 wives, 67 husbands)

Among older divorcees without children, 50:50 splits were more common. Just under half (46 per cent) of these divorcees had a 50:50 split of the equity. However, like parents, where there had not been a 50:50 split women were more likely than men to receive more than 50 per cent of the equity (p-value <0.001). Three in ten (29 per cent) women received more than 50 per cent compared to three per cent of men, while two in five (42 per cent) of men received less than 50 per cent compared to 13 per cent of women.

Among parents with dependent children, in the 16 per cent of cases where there was a decision to neither sell nor transfer ownership of the matrimonial home at the point of divorce, mothers were far more likely than fathers to remain in the home. Seven in ten (72 per cent) mothers reported this to be the case, compared to three in ten (28 per cent) fathers (p-value <0.001).³⁴¹

Similarly, among those renting the matrimonial home, more mothers than fathers with dependent children continued to live there. Where at least one of the parents was still living in the rented matrimonial home at the time of divorce³⁴², seven in ten (71 per cent) mothers reported living there, compared to two in five (39 per cent) of fathers (p-value 0.011).³⁴³

³⁴¹ The numbers of divorcees in the other three groups where the plan was not to sell or transfer the home were too small to explore, as were the numbers who were renting and still had the tenancy at the point of divorce.

³⁴² Half (51 per cent) of tenancies were still active at the time of the divorce.

³⁴³ In three per cent of cases, both parties were still living there. Note that we are reporting on what participants told us, with a degree of discrepancy between in the reports of mothers and fathers in the survey sample.

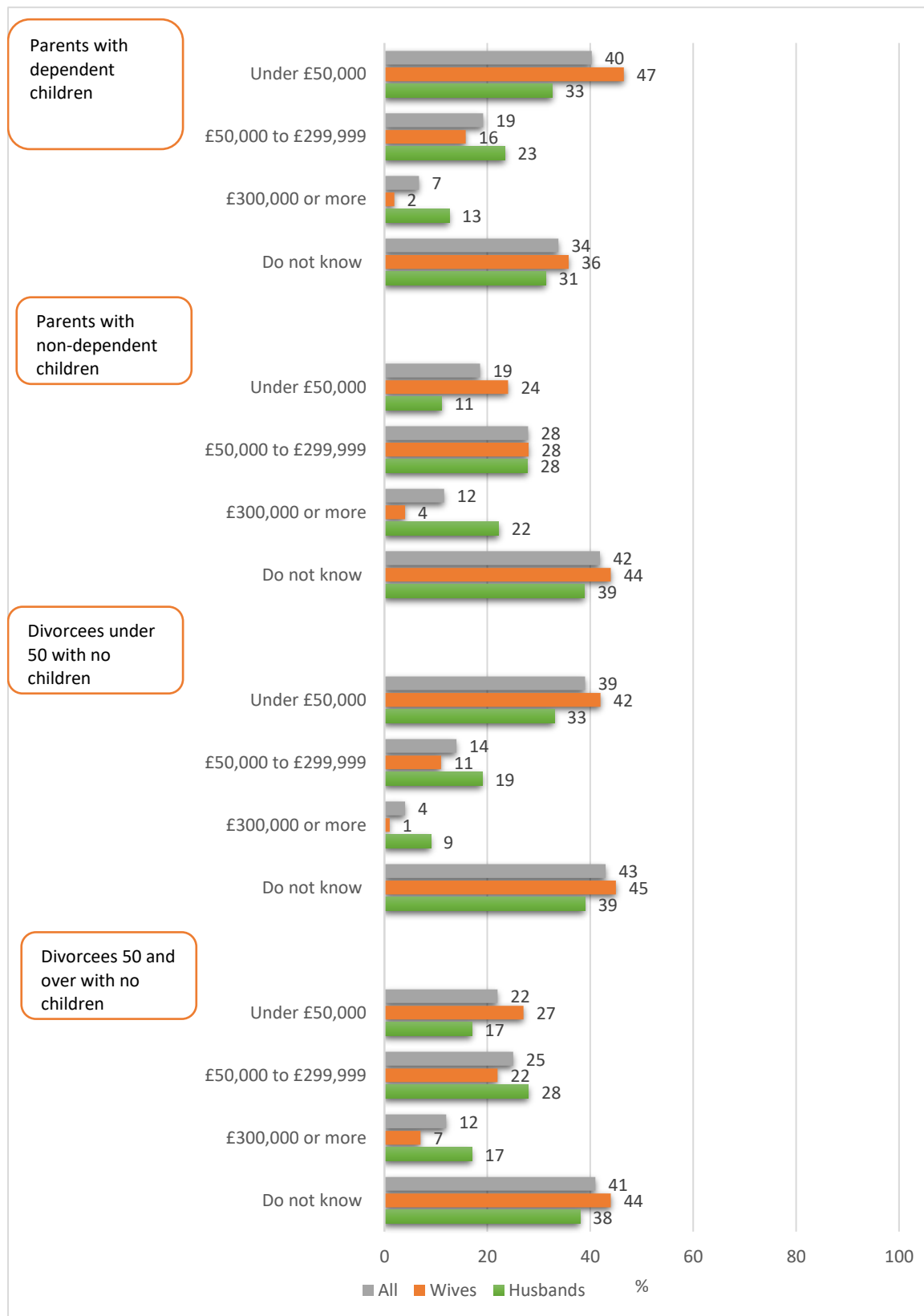
10.4 Pension pots

As we discussed in Chapter 3, although very similar numbers of wives (51 per cent) and husbands (49 per cent) had a pension (other than a state pension) that they were not yet drawing,³⁴⁴ the average values of wives' pension pots were significantly lower than those of husbands. As we would expect, across both wives and husbands, the average value of the pension pots was lower among those with dependent children and those under 50 without children than they were for those with non-dependent children and those aged 50 and over without children. But, within each of the four groups, wives were more likely to have a lower value pension than husbands (Figure 10.3, below). These differences were statistically significant for those with dependent children (p-value <0.001), with non-dependent children (p-value <0.001) and for those under 50 with no children (p-value 0.004) but not quite significant for older divorcees without children (p-value 0.056).

For instance, among those with dependent children, just under half (47 per cent) of mothers' pension pots were worth under £50,000, compared to a third (33 per cent) of fathers' pots (p-value <0.001). Conversely, 13 per cent of fathers had pension pots worth at least £300,000 compared to only two per cent of mothers. And among older divorcees without children, a quarter (27 per cent) of women had a lower value pension compared to 17 per cent of men. Conversely, while 17 per cent of these men had pension pots worth at least £300,000, this compared to only seven per cent of women. This means that decisions about pension sharing could have a significant bearing on the financial situation of wives when they reach retirement.

³⁴⁴ Note, this section refers to pensions not yet being drawn at the point of divorce. A further 15 per cent of husbands and seven per cent of wives had pensions they were already drawing at the time of divorce. These are discussed below in section 10.7.

Figure 10.3: Pension value, by wives and husbands



Unweighted bases: All parents with dependent children with a pension pot (781, 441 mothers, 340 fathers); all parents with non-dependent children with a pension pot (136, 78 mothers, 58 fathers); divorcees under 50 with no children with a pension pot (292, 194 wives, 98 husbands); divorcees 50 and over with no dependent children with a pension pot (254, 140 wives, 114 husbands)

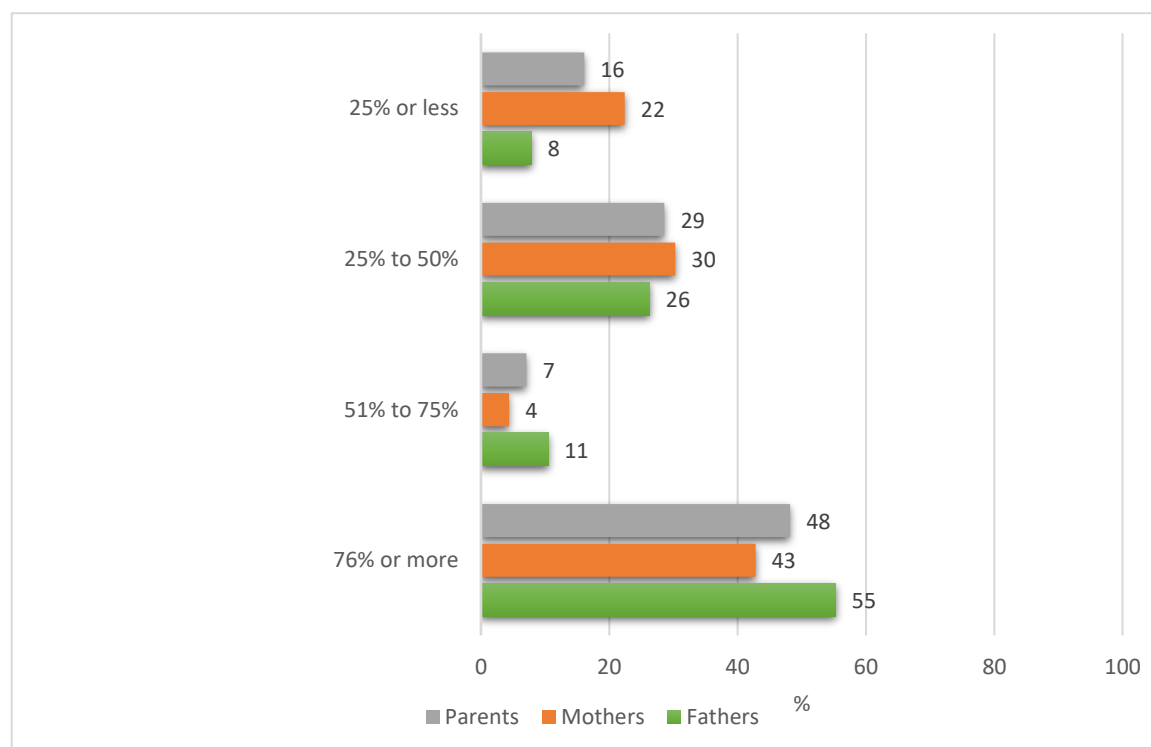
Probably reflecting the higher values, it was far more common for the husbands' pension to be shared with their ex-spouse than it was for wives' pensions to be shared. Five times as many fathers with dependent children as mothers (16 per cent compared to three per cent) reported having an arrangement for their ex-spouse to receive part of their pension (p-value <0.001). A third (33 per cent) of fathers with older children reported having an arrangement for their ex-spouse to receive part of their pension compared to four per cent of mothers (p-value <0.001), with similar levels of pension sharing among those 50 and over without children (11 per cent of men and four per cent of women reported pension sharing). Among younger divorcees with no children, pension sharing was very rare, with only two per cent of women and four per cent of men reporting that their pension was shared with their ex-spouse. Moreover, as these data show, both age and parenthood were associated with the likelihood of a pension sharing arrangement being reached. For example, it was twice as likely to occur amongst divorcees with non-dependent children as those with dependent children, and amongst those aged over 50 as those aged under 50.

In the survey, we asked those who had a pension sharing arrangement about the percentage the spouse received. Among the four groups, we only have sufficient numbers to look at the percentage split agreed among parents with dependent children where there was an arrangement to share the father's pension pot. Among this group, where the father's pension pot had been shared, mothers usually received less than half of the value. Three in five (59 per cent) fathers reported that their ex-spouse received less than half of the pension pot value, one in five (19 per cent) said they got half, and one in nine (11 per cent) said they got between half and three quarters of the pot.³⁴⁵

Bearing in mind the relative value of mothers' and fathers' pension pots combined with the fact that only a minority of pensions were shared, it is useful to look across the total value of both spouses' pensions to understand what percentage each party received of the pension pool that could potentially be shared. Figure 10.4, below, shows that fathers with dependent children were more likely than mothers to retain a higher percentage of the pool. Just over half (55 per cent) of fathers with dependent children left the marriage with more than three quarters of the total pension value that they and their ex-spouse may have had, compared to two in five (43 per cent) mothers (p-value <0.001).

³⁴⁵ No one received 100 per cent of the pot. The numbers of mothers sharing their pension were too small to look at the percentage the other spouse received.

Figure 10.4: Percentage of the total pension pool retained, by mothers and fathers of dependent children



Unweighted bases: All parents with dependent children with a pension pot where values of any pension pots known (708); mothers with a pension pot where values of any pension pots known (406); fathers with a pension pot where values of any pension pots known (302)

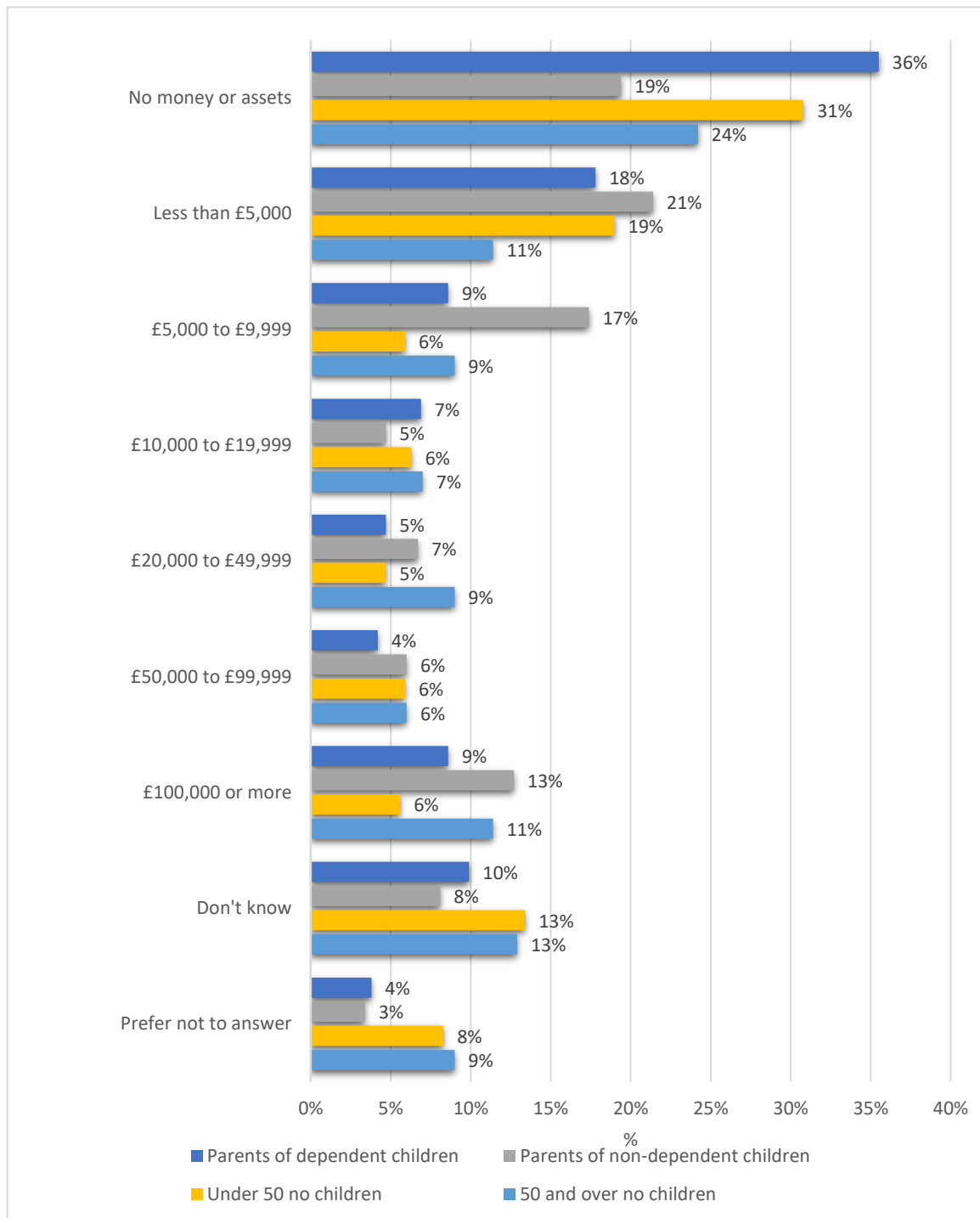
10.5 Savings, other assets and debts

10.5.1 Savings and other assets

As we discussed in Chapters 3 and 7, the majority of divorcees did not have much in the way of savings or assets other than the matrimonial home or the pension. For instance, just over half of parents with dependent children (53 per cent) and half of divorcees under 50 (50 per cent) said that they had nothing or less than £5,000. Among these two groups, only one in eight (13 per cent and 12 per cent respectively) had savings or assets worth £50,000 or more. On average, parents of non-dependent children and those aged 50 and over without children had somewhat more but, still, two in five (41 per cent of those with dependent children and 36 per cent of those aged 50 and over) had nothing or less than £5,000. And, still, only one in five (19 per cent and 17 per cent respectively) had savings or assets worth £50,000 or more (Figure 10.5, below).³⁴⁶

³⁴⁶ Any differences in the percentages in the figure and the text are due to rounding to the nearest whole percentage point.

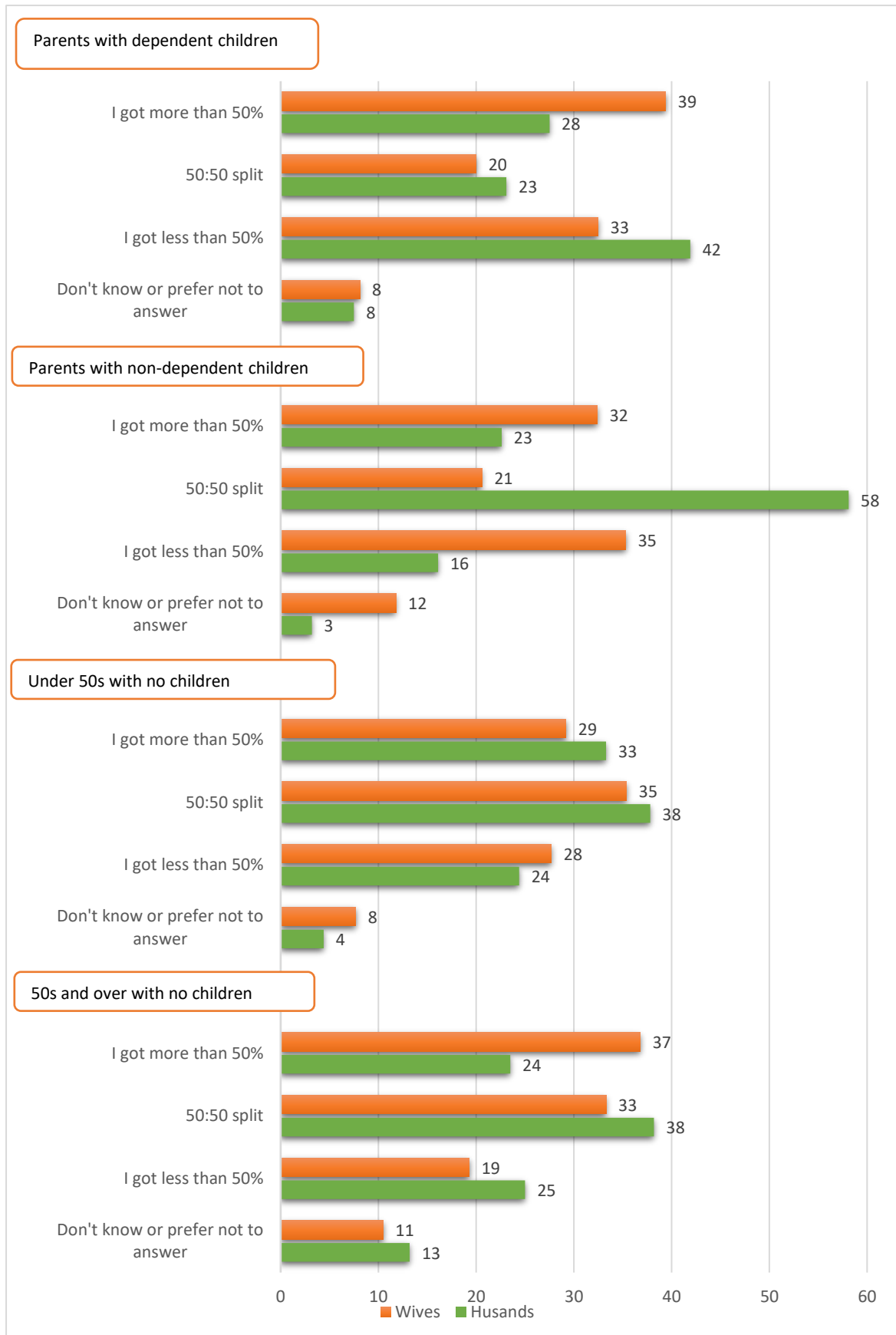
Figure 10.5: Value of any savings and assets at the time of divorce, by group



Bases: parents with dependent children, 1,189; parents with non-dependent children, 289; divorcees under 50 with no children, 437; divorcees aged 50 and over with no children, 479

Among those with any savings or assets, three quarters (74 per cent) of divorcees had come to an arrangement about how these should be split. Among those under 50 without children, the reports of wives and husbands were very similar in terms of the percentage shares that they received. Among the other three groups, although there appeared to be a general trend towards wives being more likely to receive a greater share of the savings and assets, this did not reach statistical significance among parents with dependent children and those aged 50 and over without children. The findings for parents with non-dependent children are hard to interpret, with mothers more likely than fathers to say both that they received less than and more than half of the savings and assets, while fathers were much more likely to report a 50:50 split (p-value 0.005). What was clear, however, was that equal sharing was more likely to be reported by divorcees, both older and younger, without children; around a third of both wives and husbands in each of these groups reported a 50:50 split, while those with dependent or non-dependent children were more likely to report unequal sharing (Figure 10.6, below).

Figure 10.6: Proportion of savings and assets received if arrangement had been reached, by wives and husbands



Base: all those with arrangement on how to divide savings or assets: parents with dependent children (324 mothers, 299 fathers); parents with non-dependent children (91 mothers, 93 fathers); divorcees under 50 with no children (153 wives, 83 husbands); divorcees 50 and over with no children (162 mothers, 164 fathers)

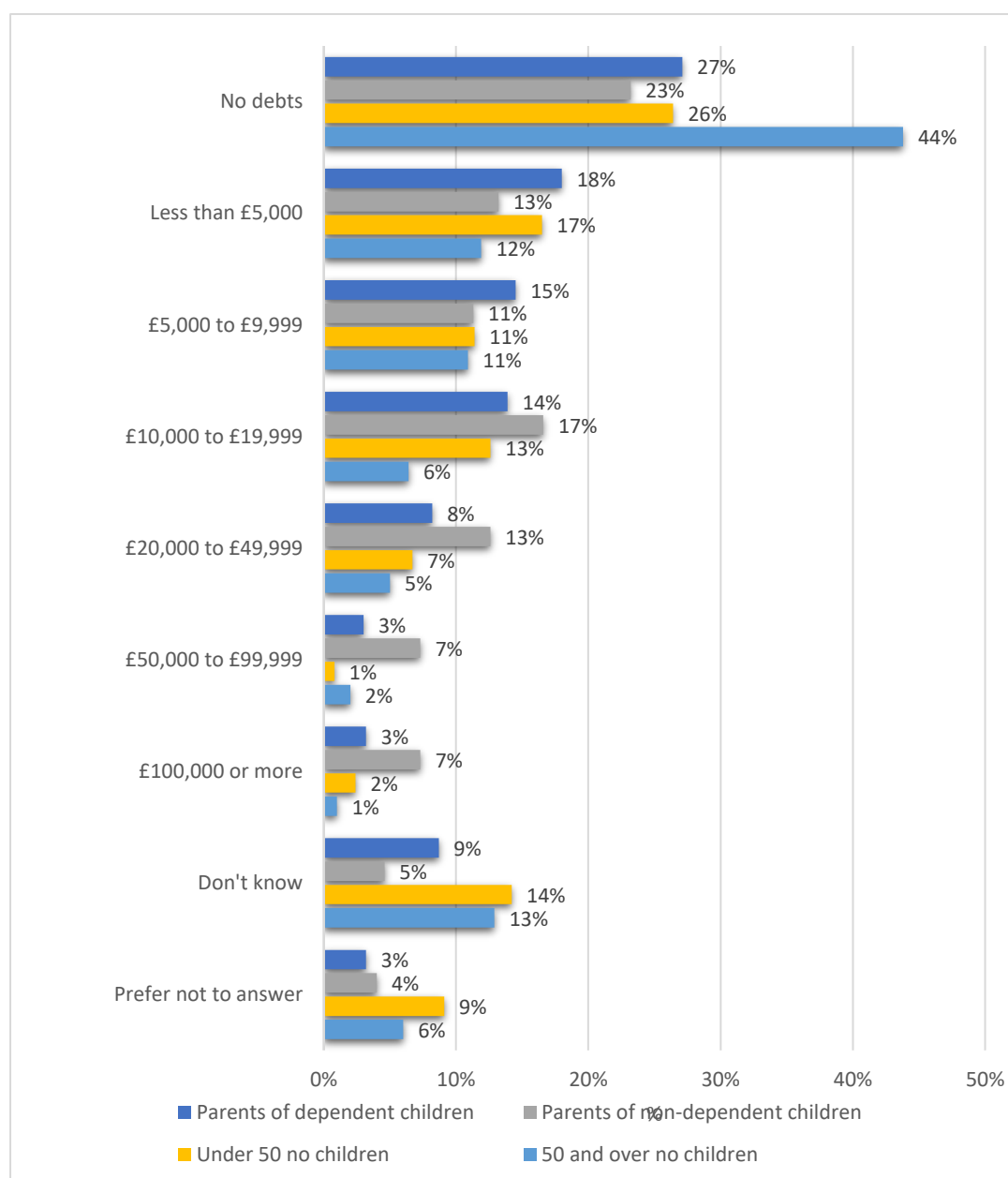
10.5.2 Debts

Just over half (57 per cent) divorcees had some level of debt at the time they divorced.

Those with children (61 per cent of those with dependent children and 68 per cent of those with non-dependent children) were more likely than those without children (50 per cent³⁴⁷ of those under 50 and 37 per cent of those aged 50 and over) to have some level of debts (p-value <0.001) (Figure 10.7, below).

³⁴⁷ Differences between the percentages in the figure and in the text are due to rounding to the nearest whole percentage point.

Figure 10.7: Value of any debts at the time of divorce, by group



Bases: parents with dependent children, 1,189; parents with non-dependent children, 289; divorcees under 50 with no children, 437; divorcees aged 50 and over with no children, 479

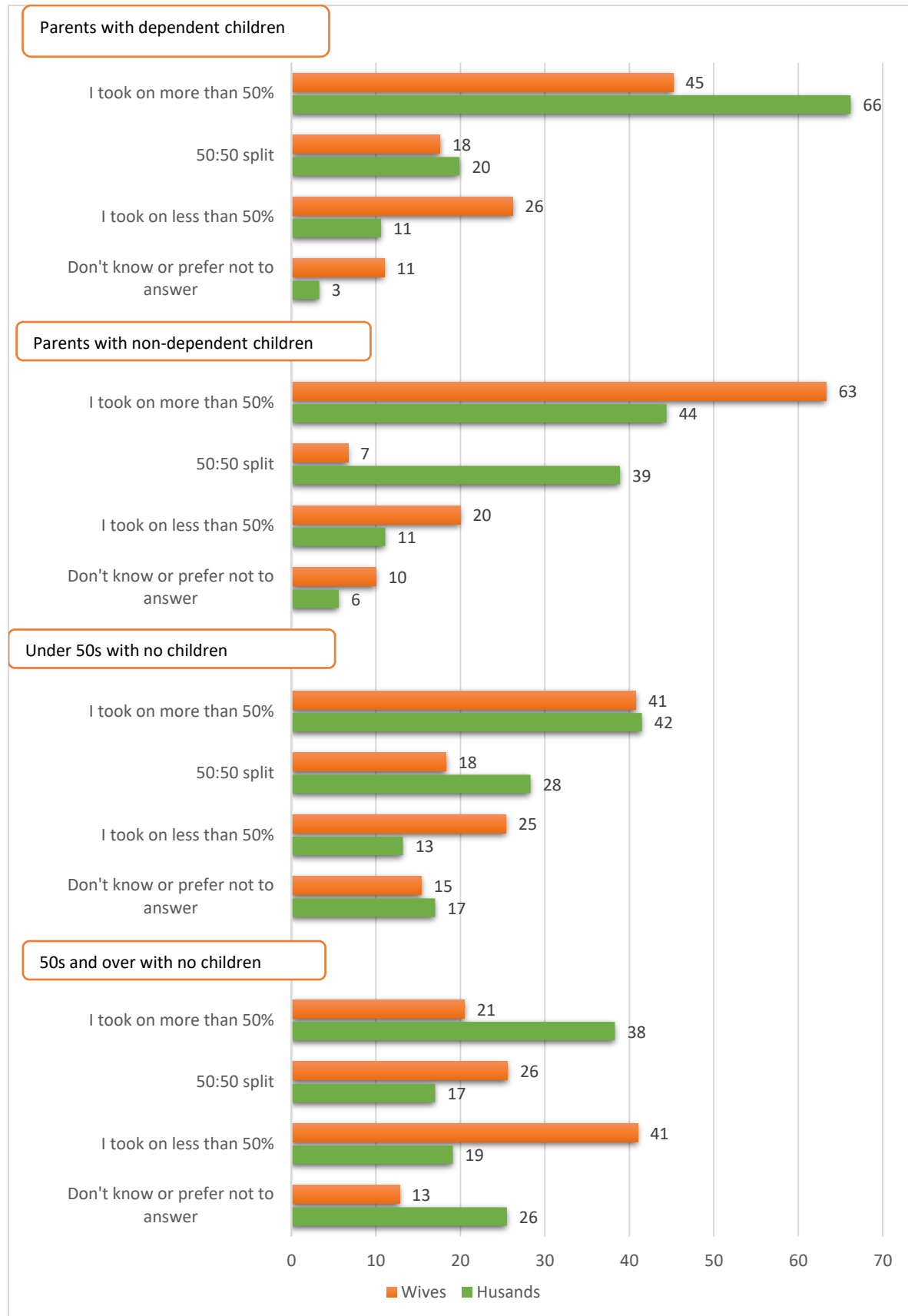
As with the savings and other assets, two thirds (65 per cent) of those with debts had come to an arrangement about how they would be divided. Among parents with dependent children and divorcees aged 50 and over without children, husbands were more likely than wives to report taking on the majority of the debts. Among those with dependent children, two thirds (66 per cent) of fathers took on more than 50 per cent of the debts, compared to 45 per cent of mothers (p-value <0.001). Only one in six (18 per cent of mothers and 20 per cent of fathers) reported a 50:50 split. Among older divorcees with no children, similar

proportions split debts 50:50, but, again, more men (38 per cent) than women (21 per cent) reported taking on more than half of the debts (p-value 0.022) (Figure 10.8, below).

Among younger divorcees with no children, there appears to be less of a gender division in who took on the majority of the debts, with two in five (41 per cent of women and 42 per cent of men) reporting taking on more than half of the debts (p-value 0.022).³⁴⁸ As with savings and assets, the findings in relation to parents with non-dependent children are hard to interpret, with fathers much more likely than mothers (39 per cent compared to seven per cent) to report a 50:50 split of the debts. Because of the small numbers, we treat these findings with caution.

³⁴⁸ That said, the picture is complex, with more men than women reporting a 50:50 split (28 per cent compared to 18 per cent), and more women than men reporting taking on less than half the debts (25 per cent compared to 13 per cent).

Figure 10.8: Proportion of debts taken on if arrangement had been reached, by wives and husbands



Base: all those with arrangement on how to divide debts: parents with dependent children (375 mothers, 269 fathers); parents with non-dependent children (71 mothers, 50 fathers); divorcees under 50 with no children (153 wives, 82 husbands); divorcees 50 and over with no children (104 wives, 94 husbands)

10.6 Percentage and monetary value of all of the assets for wives and husbands

In this section, we look across the arrangements made by divorcees about how to split each of the assets described above – so, the matrimonial home, pensions, savings and other assets plus debts – and look at the total value of those assets (see Chapter 8 for information on how these were calculated). Across all four groups, neither the percentage split nor the monetary amounts received or retained by wives and husbands were significantly different.³⁴⁹ So, while in broad terms, wives were more likely to retain more of the value from the home, and husbands were more likely to retain more of the value of the pensions but take on more debts, in combination, this meant that divorcees were receiving – at least in monetary terms – very similar amounts.

Figures 10.9 to 10.12, below, show, for each group in turn, the percentage share, and the monetary value of that share, for wives and husbands.³⁵⁰

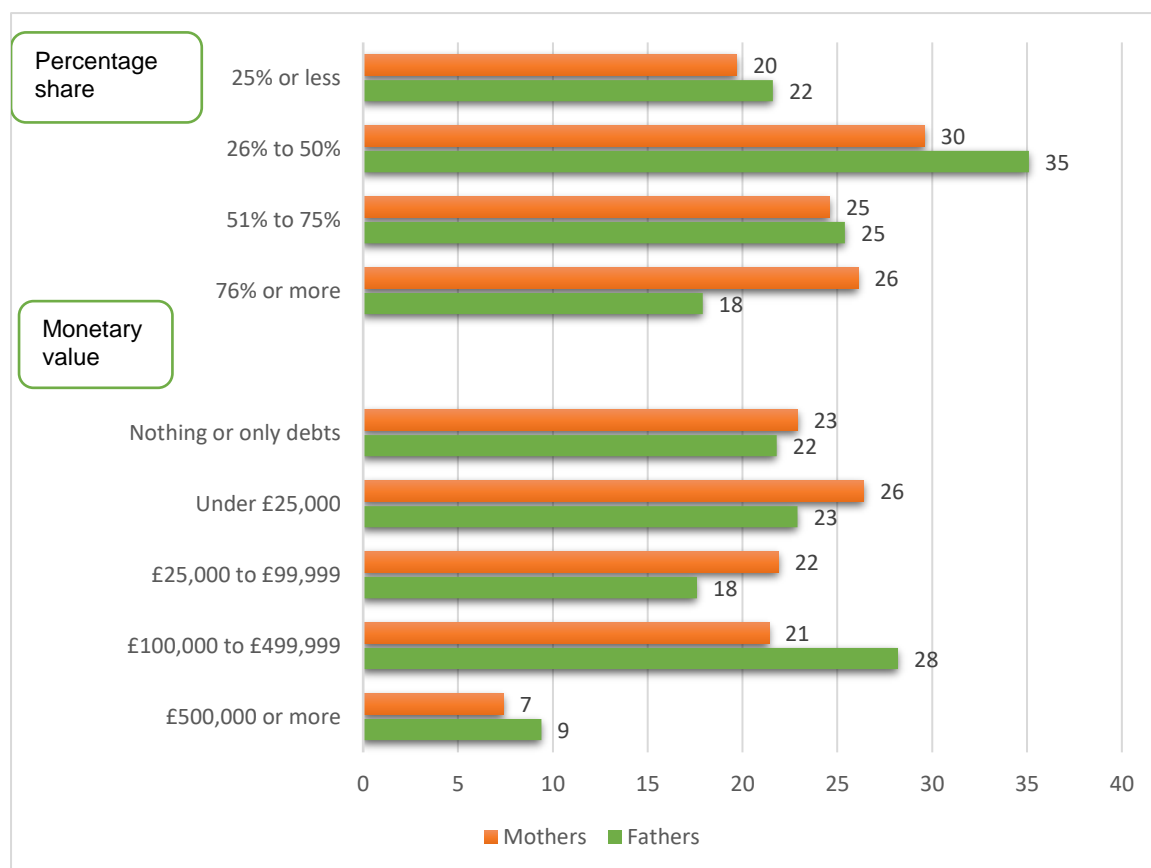
Although, on the face of it, mothers with dependent children were more likely than fathers to receive at least half of the total value of the assets in percentage terms³⁵¹ (51 per cent compared to 43 per cent), this difference is not statistically significant (p-value 0.406). Moreover, when we present this in terms of the monetary value of what each parent got, mothers and fathers with dependent children appear to have received or retained very similar amounts in terms of the monetary value. For instance, for a quarter of both mothers (26 per cent) and fathers (23 per cent), their monetary share was worth under £25,000, while one in 12 (seven per cent of mothers and nine per cent of fathers) had a share worth £500,000 or more (p-value 0.281) (Figure 10,9, below).

³⁴⁹ Differences in the monetary values received by mothers and fathers with non-dependent children were significant, but the small numbers mean that we are treating these findings with caution.

³⁵⁰ Because of small sample sizes, the percentage shares for parents with non-dependent children are necessarily simply split into 50 per cent or less and 51 per cent or more.

³⁵¹ Note these percentages are based on cases where there were at least some assets (excluding debts) to divide. However, the figures are similar if we include those with only debts or nothing by way of assets.

Figure 10.9: Percentage and monetary value of assets received or retained, by mothers and fathers with dependent children



Base: all mothers (312) and fathers (269) with dependent children where could calculate percentage share between 0% and 100%; all mothers (390) and fathers (311) with dependent children where could calculate total value of assets

Parents with non-dependent children were dividing higher levels of assets on average than parents with dependent children. However, as in the case of parents with dependent children, there were no statistically significant differences in the percentage split received by mothers and fathers (Figure 10.10, below). While Figure 10.10 suggests that mothers with older children were more likely than fathers to receive at least half of the total value of the assets in percentage terms³⁵² (57 per cent compared to 43 per cent), the difference between mothers and fathers is not statistically significant (p-value 0.534). When we present this in terms of the monetary value of what each parent got, fathers with non-dependent children do appear to have received or retained *more* of the value of the assets than mothers (p-value 0.042). For instance, three in ten (30 per cent) mothers ended up with nothing or only debts, compared to one in nine (11 per cent) of men, while one in five (19 per cent) men got

³⁵² Note these percentages are based on cases where there were at least some assets (excluding debts) to divide. However, the figures are similar if we include those with only debts or nothing in assets.

£500,000 or more compared to one in 11 (nine per cent) of mothers. However, we are cautious about drawing any firm conclusions about this given the small numbers.

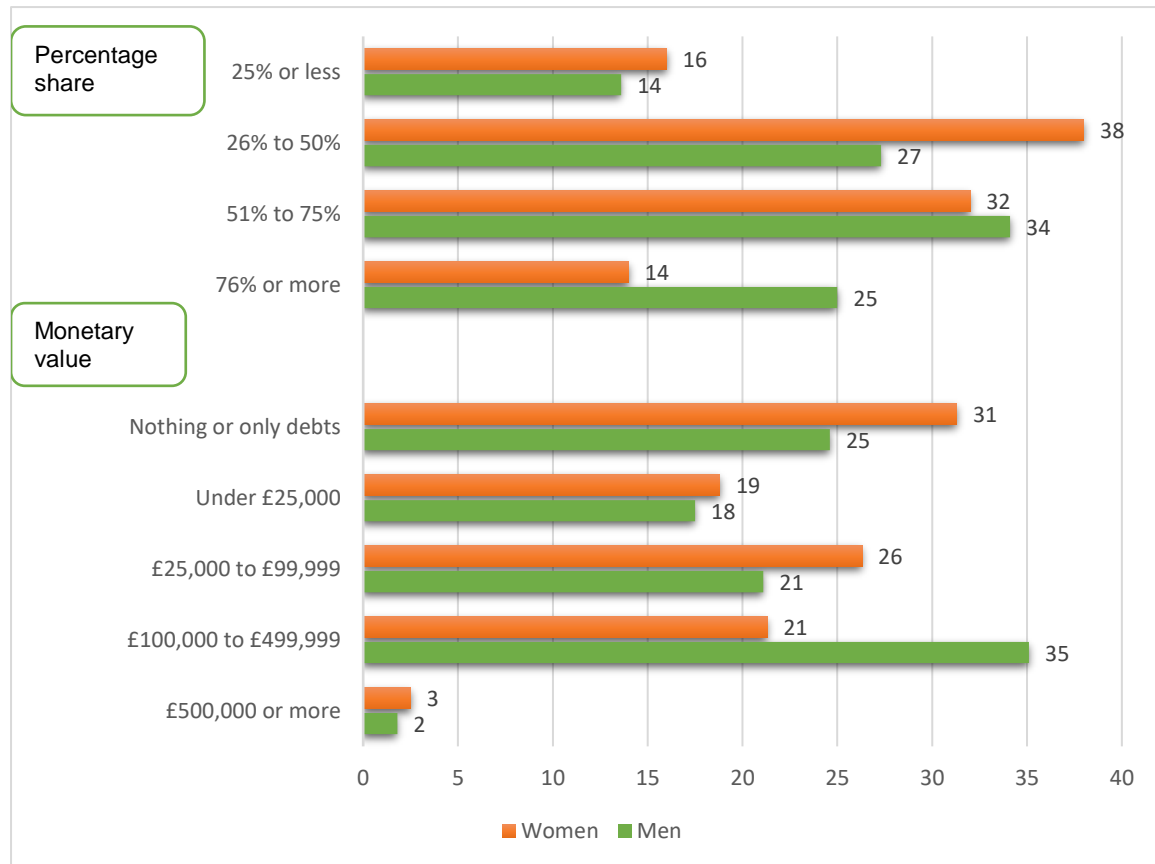
Figure 10.10: Percentage and monetary value of assets received or retained, by mothers and fathers with non-dependent children



Base: all mothers (70) and fathers (76) with non-dependent children where could calculate percentage share between 0% and 100%; all mothers (84) and fathers (85) with non-dependent children where could calculate total value of assets

Figure 10.11, below, presents the same data for younger divorcees without children, where, again, the differences between women and men in terms of percentage split or monetary value are not statistically significant (p-value 0.358 and p-value 0.247 respectively).

Figure 10.11: Percentage and monetary value of assets received or retained, by women and men under 50 with no children



Base: all wives (121) and husbands (82) under 50 with no children where could calculate percentage share between 0% and 100%; all wives (165) and husbands (100) under 50 with no children where could calculate total value of assets

While older divorcees without children were receiving, on average, higher monetary values than other groups, as with the other groups, the percentage split and monetary values did not differ significantly between wives and husbands (Figure 10.12, below).

Figure 10.12: Percentage and monetary value of assets received or retained, by women and men aged 50 and over with no children



Base: all wives (133) and husbands (136) aged 50 and over with no children where could calculate percentage share between 0% and 100%; all wives (153) and husbands (157) aged 50 and over with no children where could calculate total value of assets

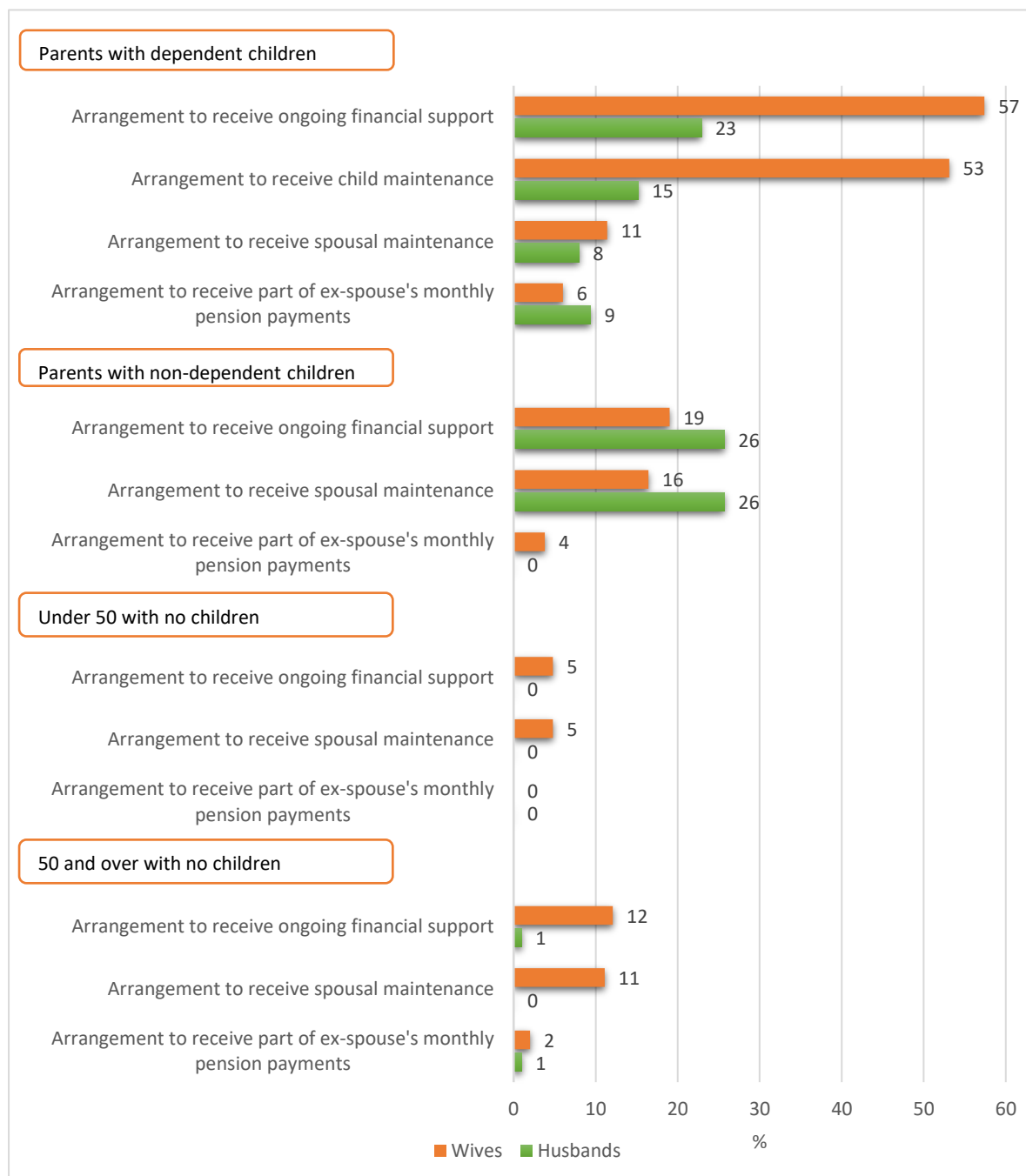
10.7 Ongoing financial support

The fact that, overall, wives and husbands appear to have received a roughly equal financial share needs to be looked at in the context within which they were leaving the marriage. On average, wives, particularly mothers, were working fewer hours and earning less than husbands, as well as being much more likely to be the resident parent with day-to-day responsibility for any children, with the added costs involved in that as well as potential restrictions to their working hours (see Chapter 3).

Figure 10.13, below, shows the proportion of wives and husbands, within each of the four groups, who were receiving ongoing financial support – in the form of child or spousal

maintenance or from pensions in payment – from their ex-spouse at the time of divorce.³⁵³ We provide an overall figure, and then show the percentages who were receiving each form of support.

Figure 10.13: Percentage of divorcees with ongoing financial support at the time of divorce, by wives and husbands



³⁵³ See Chapter 9 for more information on each of these forms of ongoing financial support. Note that the discussion here focuses only on those who reported *receiving* ongoing support, whereas that chapter also discusses those *paying* it.

Unweighted bases: Mothers (685) and fathers (504) with dependent children; mothers (152) and fathers (137) with non-dependent children; wives (277) and husbands (160) under 50 with no children; wives (255) and husbands (224) aged 50 and over with no children

As we would expect, ongoing financial support was much more common where there were children involved, particularly dependent children.

At the time of the divorce, just over half (57 per cent) mothers³⁵⁴ with dependent children received some form of ongoing financial support from their ex-spouse, as did a quarter (23 per cent) of fathers (p-value <0.001).³⁵⁵ Just over half (53 per cent) of mothers and 15 per cent of fathers with dependent children were receiving child maintenance, with around one in ten parents receiving spousal maintenance and one in ten from pensions in payment. Within those parents with dependent children receiving financial support, the vast majority (92 per cent) of mothers were getting child maintenance, with one in five (20 per cent) getting spousal maintenance and one in ten (10 per cent) receiving money from their ex-spouse's pension in payment.³⁵⁶ In contrast, while two thirds (66 per cent) of the fathers getting financial support reported getting child maintenance, they were more likely than mothers to report receiving spousal maintenance (35 per cent) or payments from their ex-spouse's pension (41 per cent).

In the absence of child maintenance, ongoing financial support was far less common among parents with non-dependent children, with no statistically significant differences in the proportions of mothers and fathers reporting receipt (19 per cent of mothers and 26 per cent of fathers, p-value 0.456).³⁵⁷

³⁵⁴ 16 per cent of mothers said that they did not have the main care for their children (they were not the resident parent) at the time of divorce. Among those who were resident parents, 65 per cent were receiving ongoing support from their ex-spouse.

³⁵⁵ This was largely accounted for by fathers who reported being the resident parent at the time of divorce, among whom 68 per cent reported receiving ongoing financial support from their ex-spouse, compared to those who were non-resident parents (ten per cent) or had equal care (six per cent). However, it is important to note a large discrepancy in the reports of mothers and fathers, as only 12 per cent of mothers reported paying ongoing financial support at that time.

³⁵⁶ Of course, divorcees can be getting financial support from more than one of these sources.

³⁵⁷ There is some discrepancy in the reports of mothers and fathers, with 31 per cent of fathers reporting paying ongoing financial support to their ex-spouse (more than the percentage of mothers reporting receiving it), while 16 per cent of mothers reported paying ongoing financial support (while 26 per cent of fathers reported receiving it).

Similarly, receiving ongoing financial support was also much less common among divorcees without children. Indeed, only five per cent of divorcees under 50 without children reported receiving ongoing financial support from their ex-spouse at the point of divorce. However, one in eight (12 per cent) of women over 50 without children reported receiving some form of ongoing financial support from their ex-spouse (but only one per cent of men (p-value <0.001)). The large majority of this support came in the form of spousal maintenance with the remainder in the form of an arrangement to receive part of the ex-spouse's monthly pension payments.³⁵⁸

However, it is worth reiterating, as reported in Chapter 9, that a substantial majority (87 per cent) of divorcees who had non-dependent children were financially supporting them in some way at the point of divorce, indicating an additional burden that would otherwise be left out of account in assessing how well financially they came out of the divorce.

10.8 Current living standards

10.8.1 Income levels

Despite any ongoing financial support from the ex-spouse, at the time of the survey, up to five years after their divorces were granted, women – notably mothers with dependent children – were, on average, worse off financially than men. The exception to this was younger women under 50 who had not had children with their ex-spouse. The metrics we have used to assess this are divorcees' working status, benefit receipt and their household income at the time of the survey.

Working status and benefit receipt

While the working patterns of younger divorcees with no children were similar among women and men (e.g. 77 per cent of women and 76 per cent of men were working full-time), among the other three groups, women were either less likely to be working or less likely to be working full-time. While mothers with dependent children were equally likely to be in paid work as fathers with dependent children (80 per cent of both groups), mothers were twice as likely as fathers to be working part-time rather than full-time (30 per cent compared to 13 per cent). Linked to this, more mothers than fathers with dependent children were in receipt of Universal Credit (31 per cent of mothers, 20 per cent of fathers, p-value 0.002) and Child Tax Credit (19 per cent of mothers and seven per cent of fathers, p-value <0.001) at the

³⁵⁸ Differences between the percentage total and percentages for the individual forms of support are due to rounding to the nearest whole percentage point.

point of the survey. The challenge of living on benefits was explained by one of our interviewees who told us that she felt worse off now because when she was married her ex-husband had a decent income, but she was now having to deal with the difficulties of the benefit system to top up her working wage:

‘...he had a good wage coming in. Mine is sort of backed up with my working tax credits but there’s still the minefield of all the – if you get the benefit, you can’t get this one and you get carers because you can’t and then you’re earning too much and you’ve got to let this one know, and it adds up.’ (Wife 15)

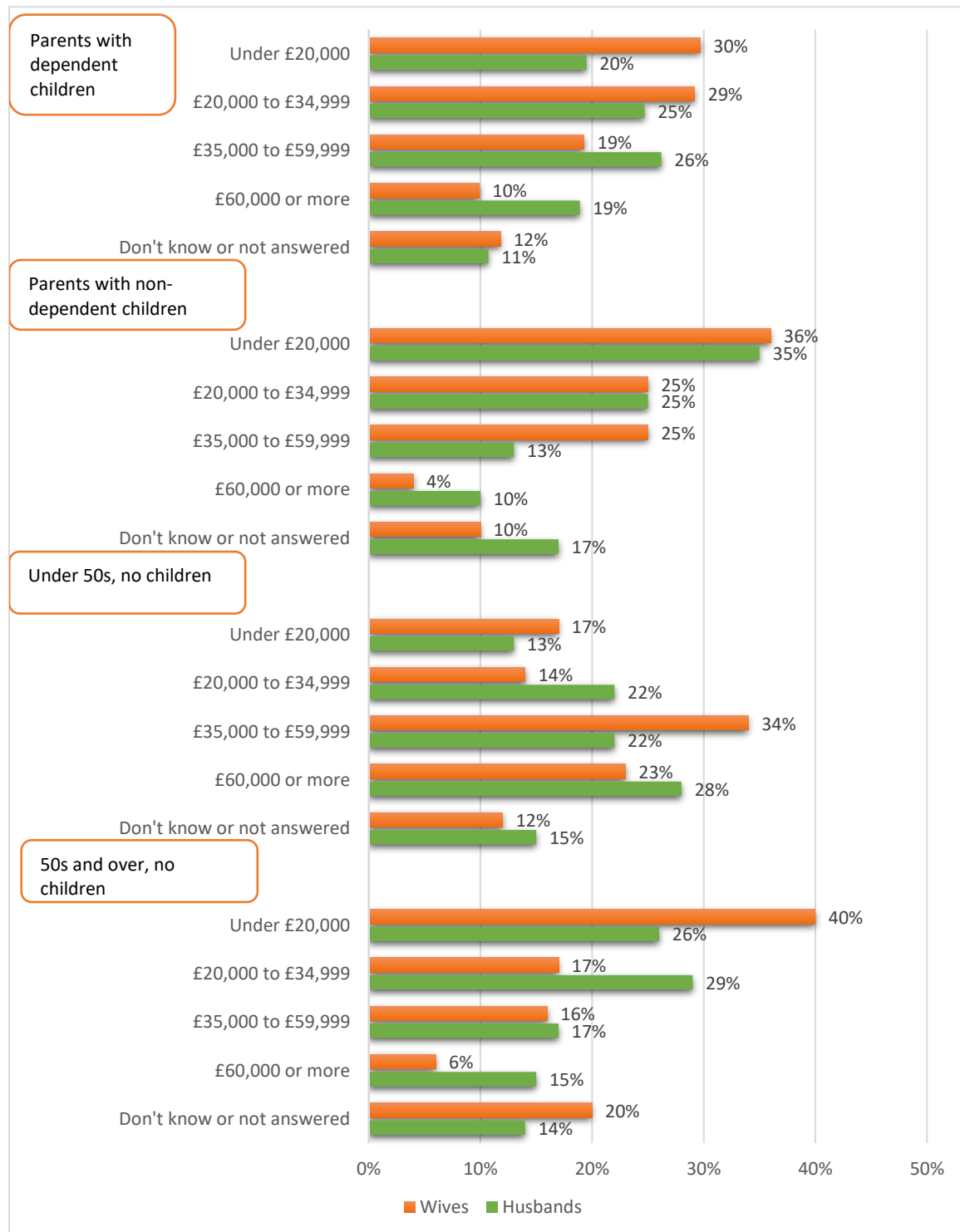
The gender differences were also apparent among parents with non-dependent children, this time in terms of the proportion of mothers and fathers in paid work at the time of the survey. Seven in ten (72 per cent) fathers were working, compared to half (51 per cent) of mothers (p-value 0.012).

With a proportion of those aged 50 and over already in retirement, the percentages of women and men who were working at the time of the survey were lower than for other groups, with similar percentages of women (52 per cent) and men (51 per cent). However, again, women were more likely than men to be working part-time (17 per cent compared to six per cent). Again, they were more likely than men to be claiming means tested benefits, as well as disability benefits. Women were more likely than men to be in receipt of Council Tax Benefit (23 per cent compared to nine per cent, p-value 0.002) and Housing Benefit (17 per cent compared to eight per cent, p-value 0.023), as well as disability benefits (18 per cent compared to eight per cent, p-value 0.010).

Household income

Figure 10.14, below, shows the gross annual household incomes of women and men at the time of the survey, for each of the four groups. Among parents with dependent children and older divorcees without children, women had significantly lower household incomes than men. No such differences were found among those with non-dependent children and younger divorcees without children.

Figure 10.14: Gross annual household income at time of survey, by women and men



Unweighted bases: Mothers (685) and fathers (504) with dependent children; mothers (152) and fathers (137) with non-dependent children; wives (277) and husbands (160) under 50 with no children; wives (255) and husbands (224) aged 50 and over with no children

Three in ten (30 per cent) mothers with dependent children had a household income of under £20,000 each year compared to one in five (20 per cent) fathers. At the other end of the spectrum, twice as many fathers as mothers with dependent children had annual incomes of £60,000 or more (19 per cent compared to 10 per cent) (p-value <0.001). As we would expect given the proportion of those aged 50 and over without children in retirement, on average, the incomes of both women and men were lower than those of other divorcees. However, women's incomes were significantly lower than men's (p-value 0.002). For instance, two in five (40 per cent) of these women had a household income of under £20,000 each year compared to a quarter (26 per cent) of men. At the other end of the spectrum, 15 per cent of men and only six per cent of women had annual household incomes of £60,000.

10.8.2 Re-partnering

Parents and younger divorcees without children were more likely to have re-partnered by the time of the survey than those aged 50 and over without children. A third (33 per cent) of parents with dependent children were living with a new partner by the time of the survey, with the same percentages of mothers and fathers. Among the two in five (43 per cent) parents of non-dependent children who had re-partnered, again there were no significant differences in the proportion of mothers and fathers (38 per cent compared to 49 per cent, p-value 0.215). However, among those under 50 without children, women were more likely than men to have re-partnered. Half (51 per cent) of these women were living with a new partner by the time of the survey, compared to a third (35 per cent) of men (p-value 0.035). By contrast, only one in five (22 per cent) divorcees aged 50 or over without children had re-partnered, with no significant differences in the proportion of women and men (20 per cent of women and 25 per cent of men).

As we would expect, divorcees who had re-partnered had higher household incomes than those who had not. This finding reflects and confirms earlier research (see Chapter 1, section 1.6.1). However, re-partnering appears to have a larger effect on men than women. Among parents with dependent children, a third (34 per cent) of fathers and one in five (20 per cent) of mothers had household incomes of at least £60,000 a year if they had re-partnered, compared to 12 per cent of fathers and five per cent of mothers who had not re-partnered (p-value <0.001). Among those under 50 with no children, three in five (59 per cent) men who had re-partnered had incomes of at least £60,000 a year compared to a third (35 per cent) of re-partnered women. And, among divorcees aged 50 and over, a quarter (27

per cent) of men who had re-partnered had incomes of at least £60,000 a year compared to one in nine (11 per cent) of re-partnered women.³⁵⁹

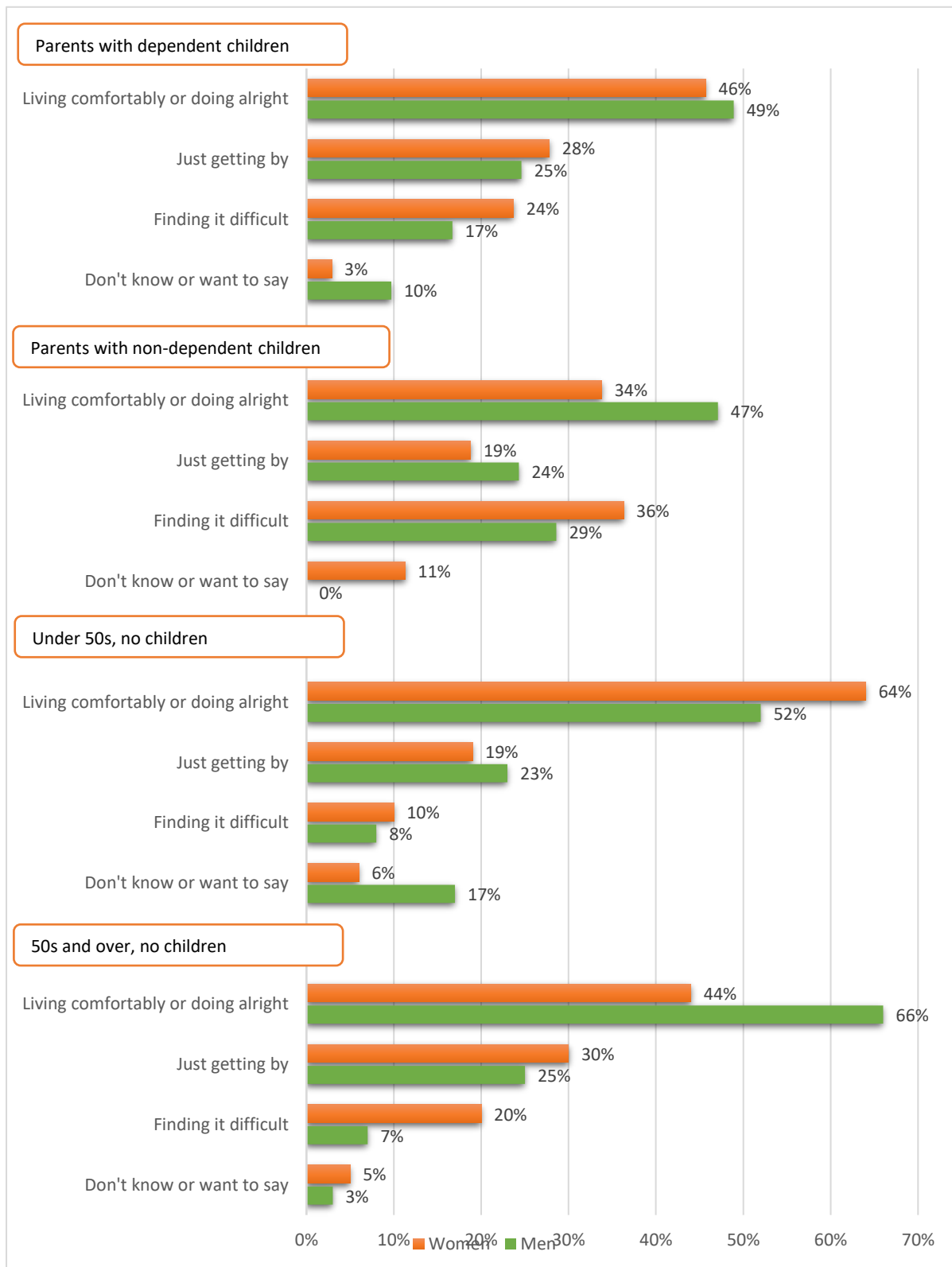
10.8.3 Perceived living standards

Divorcees were asked to rate how well they felt they were managing financially at the point of the survey, using a five-point scale from 'living comfortably' to 'finding it very difficult', with Figure 10.15, below, collapsing the scale into three categories.³⁶⁰

³⁵⁹ The numbers are too small to look at the effects of re-partnering on the incomes of parents with non-dependent children.

³⁶⁰ Divorcees were also asked the same question about during their marriages, but we do not have sufficient numbers of most of the four groups to compare responses over time.

Figure 10.15: How well doing financially at time of survey, by women and men



Unweighted bases: Mothers (685) and fathers (504) with dependent children; mothers (152) and fathers (137) with non-dependent children; wives (277) and husbands (160) under 50 with no children; wives (255) and husbands (224) aged 50 and over with no children

Mothers – with dependent and non-dependent children – and older women without children were all significantly more likely than their male counterparts to report finding things difficult financially, with the most stark differences coming from those with non-dependent or no children.

A quarter (24 per cent) of mothers with dependent children were finding things difficult financially compared to 17 per cent of fathers (p-value <0.001). Likewise, mothers with non-dependent children were significantly more likely than fathers to report finding it difficult financially (36 per cent compared to 29 per cent), while fathers were more likely to say they were living comfortably or doing alright (47 per cent compared to 34 per cent of mothers) (p-value 0.034).

Yet escaping economic abuse and coercive control could enable some women to feel better off, regardless of their objective living standards. As one wife told us:

‘I would say [I feel] a little bit better off than what I was then because obviously I’m not having to ask him for anything and not having to think, oh gosh, I’ve got to ask him for some money to go down the shop and get a bottle of milk.’ (Wife 8)

Among divorcees aged 50 and over without children, men were significantly more likely than women to report that they were living comfortably or doing alright financially (66 per cent compared to 44 per cent) (p-value 0.003).

In contrast, among divorcees under 50 without children, women were significantly more likely than men to report that they were living comfortably or doing alright financially (64 per cent compared to 52 per cent) (p-value 0.034). The fact that these women were more likely than men to report feeling comfortable financially is likely a function of them having been more likely to have re-partnered. Women who had re-partnered were significantly more likely than those who had not to report living comfortably or doing alright financially (76 per cent compared to 50 per cent, p-value <0.001).

10.9 Compromises and trade-offs in coming to the overall arrangement

Our interview data suggested that in the main, divorcees did not really focus on ‘overall packages’, but instead, referred to the individual elements of the arrangement and the compromises and trade-offs they had made with respect to particular assets, debts or

income. One of the main compromises and trade-offs that emerged from the interview data related to divorcees foregoing a share of the pension in order to have a larger share, or the entire equity of the former matrimonial home. For example, in the case of Wife 10, the husband had presented her with a 'package deal' which gave her a large proportion of equity in the former home as well as retaining the equity in another property, in exchange for her not touching his large pension. In another pension offset case, the former matrimonial home was transferred to the wife, with no compensating payment to the husband. He suggested that this was because of his long-term financial prospects being better than his ex-wife's due to his better income:

'So really the only thing we had was a few grands' worth of credit card debt, the house and two cars. And that's and my pension, that's all we really had to deal with. ... I mean I'm in a different job now earning three times what I used to, so I knew that even on the wage that I was on at the time [of the divorce], I'd be able to move on and I'd be able to rebuild but she wouldn't have, so I said you take the house ... because I knew that she wouldn't be able to even afford to rent somewhere, take the house ... and I'll just take my car. And she agreed that she wouldn't touch my pension and I said I'd take the credit card debt as well which was going to be a struggle for me at the time ...' (Husband 17)

This case also touched on how the issue of managing debts could form part of the overall arrangements that spouses made. Other interviewees similarly noted how they had compromised with their ex-spouse on the issue of debts in order to retain other assets. In one low asset case where there were only low value pensions and which involved the couple living in a rented property, the wife's priority was keeping her car (which was being bought on finance). As a consequence, she was willing to compromise on the debts incurred during the marriage:

'[A]s far as the car goes, I knew I needed that car, a) to take the children and b) to get me to work, and I think I was more scared, apprehensive maybe, if we were maybe splitting credit card debts and car finance debts, so I split my car, do I lose my car? ... So I think I was more apprehensive about losing the car, I was more bothered about keeping the car.' (Wife 5)

Other interviewees were willing to compromise on certain assets in order to maintain their mental health, which for them was more important. One interviewee had wanted to get out of the relationship and as a consequence, decided to forego a share of the husband's large

pension, but she also received less than half of the value of the small equity in the former matrimonial home (less than £50k):

‘The pension, I really wasn’t interested in that because I just wanted a clean break, I wasn’t interested in anything and I know now in hindsight I probably could’ve ... we didn’t have any children so I didn’t feel I had a right to take too much from him and the pension, when that came into the negotiations in mediation, he only offered to give me that menial amount providing I don’t try and touch his pension and he had a massive pension. Again, my mental health just wanted, I just wanted it off my mind, so I just gave into everything then. (Wife 3)

This case speaks very strongly to the potential long-term financial wellbeing issues, raised above, particularly in relation to women divorcees over 50 without children, where women’s incomes following divorce were significantly lower than men’s. Compromising (or giving up) on potential legal entitlements during financial arrangement negotiations, including where the reason for the compromise might be emotional or health-related, opened up the more financially vulnerable party to potentially adverse long-term economic consequences of their decision.

10.10 Concluding comments

At the beginning of this chapter, we explained how considering the financial arrangements, or ‘packages’, reached by four different groups of divorcees could shed light on how far these might be said to have produced ‘fair shares’ between the parties, given their particular life circumstances. One might expect that two major life-course factors – being a parent, and one’s age – would have an effect on what arrangements it would be most sensible to make, and with what consequences, in addition to the impact of gender that we have considered throughout this report.

We did indeed find that parenthood, age and gender were associated with particular choices. For example, mothers with dependent children were more likely to remain in the former matrimonial home and receive a larger share of its value if it were sold or transferred. While there was a noticeable difference in housing outcomes between the genders in the groups with dependent children, the housing position for men and women in the other groups was more similar, with men equally likely to get the home where ownership was transferred. Furthermore, where the home was sold, divorcees in the non-dependent

children and over 50s group were more likely to have had a 50:50 split of the equity – much higher than parents with dependent children.³⁶¹

This speaks very clearly to three points. First, it appears as though divorcing couples with children are, to a large extent, prioritising the housing of the parent with care and the children, which sits with the law's priority to provide first consideration to the welfare of any minor children of the family under section 25(1) of the MCA 1973. Secondly, the finding chimes with previous research outlined in Chapter 1, which has noted that mothers of dependent children are more likely to demonstrate a 'present bias', prioritising re-housing in their financial and property arrangements. Thirdly, it appears that where dependent children are removed from the equation, and there is no 'first priority' as per the Matrimonial Causes Act, the housing outcomes for women and men are more 'formally' equal. However, although housing outcomes may be similar for these groups, this does not take into account pensions. And, again, the situation is more precarious for women across the groups with women's pension pots smaller than men's.

Women and men under 50 who had divorced with no children had similar living standards to each other at the time of the survey. This is in contrast with the findings that mothers and older female divorcees without children were generally worse off than men at the time of the survey. The reality when looking at the drop in living standards and income post-divorce for these groups is that mothers and older women are hit harder by their ongoing socio-economic circumstances and vulnerabilities associated with childcare, the gender pay-gap, part-time work and lower value pension pots. In contrast, the picture painted for the divorcing population under 50 without children is a group that is more independent, with no significant differences in assets and housing outcomes between the genders on divorce and with pensions largely ignored. Furthermore, there is almost no use of spousal maintenance within this group. It appears that this autonomous, more egalitarian positioning of divorcees who are under 50 and have no children, is a consequence of both the lack of dependency and related vulnerabilities associated with caring for dependents, and being young enough to recover their economic position.

Parenthood and age were also associated with factors such as whether to share a pension or receive income from a pension in payment – more common amongst older divorcees and

³⁶¹ The under 50s group sample size is not large enough to consider equity share.

those with children. We also found that ongoing financial support was very strongly associated with having dependent children.

Any assessment of the extent to which these arrangements are providing 'fair shares' is, however, not straightforward. The findings show that mothers of dependent and non-dependent children receive a higher proportionate share from the house, and fathers get more, or perhaps more accurately, retain more from the pension. Furthermore, where there is an unequal division of the equity for divorcees over 50 without children, pension offsetting appears to be the most reasonable explanation for the differences in the percentage equity split. Of course, offsetting assets against each other does not take into account the disproportionate long-term income implications for the individual who is focused on retaining the house over obtaining a share of a pension. Nor does offsetting take into account the value/risk associated with different assets and what they are worth, or how they are valued over time. For example, in an era of fluctuating market volatility for both the housing market and the stock exchange, is the 'safer' bet to take the 'bricks and mortar' housing option, or the defined contribution pension, in a possible offset situation?

Overall, we found no significant differences between men and women, or between the four groups of divorcees, in either the proportionate share they took of the combined asset pool, or in the monetary value of that share. At first glance this seemingly provides 'fair shares' for both spouses. However, this fails to take into account the significant association between parenthood, age and gender, as well as divorcees' current standard of living at the time of the survey. In addition to confirming the well-known finding that women tend to do financially worse from divorce than men, we found that being a parent – especially a mother – and being older – especially an older wife – were associated with greater financial hardship, both objectively in terms of the amount of income received, and subjectively in terms of the perception of the participant's standard of living. Indeed, younger women, unencumbered with child-care responsibilities, tended to do relatively well, in comparison to women who were older or had children. It is therefore parenthood, and particularly motherhood, that has the most significant impact in relation to meeting a divorcee's immediate financial needs and long-term prospects.

We turn in the next chapter to look at how things worked out for those who did and did not use legal support or obtain legal orders. We also explore divorcees' reflections on the fairness of the overall arrangement and whether things turned out as they expected.

Chapter 11: How things worked out

Key findings

Where divorcees used legal support, there is evidence to suggest some difference in outcomes with respect to the home, pensions and ongoing support compared with divorcees who did not obtain legal advice

- Wives were more likely to receive a transfer of the matrimonial home if they had used legal services. A third (37 per cent) of wives who had received legal advice received the transfer of the home, compared with a quarter (27 per cent) of wives who did not.
- Where the home was sold, a divorcee having received legal advice was more likely to receive a higher percentage of the proceeds of sale. Just over half (56 per cent) of wives who had received legal advice received more than half of the proceeds after sale of the home, compared with only 14 per cent who did not.
- Men were more likely to share their pension if they had received legal advice.
- Women were more likely to receive ongoing financial support if they had received legal advice.

Women tended to do better where a financial remedy order was obtained from the court (whether by consent or adjudicated)

- Women were more likely to receive a transfer of the matrimonial home and less likely to make a compensating payment to the ex-spouse where there was a court order.
- They were more likely to receive over half the value of the home if it were sold.
- They were more likely to obtain a share of the ex-spouse's pension.

The majority of divorcees who had an arrangement in relation to all their finances considered that their financial and property outcome was fair

- 60 per cent of divorcees who had reached a full financial arrangement on divorce considered the outcome fair (moderately or very fair)
- However, only 46 per cent of divorcees who had come to a partial arrangement considered the outcome fair (moderately or very fair).

Arrangements made through mediation were less likely to work out as expected, compared with arrangements made informally or through lawyers or with an order

- Nine in ten (90 per cent) arrangements arrived at by the divorcing couple themselves had worked out as expected. Three quarters of arrangements made via lawyers (76 per cent) or via a judge (76 per cent) had worked out as expected. However, only two in five (44 per cent) arrangements made via mediation had worked out as the divorcee had expected.

Financial support from family or friends was received by a substantial minority of divorcees

- While just over half of all survey participants (55 per cent) reported that they did not receive any financial help from family or friends during or since the divorce, 36 per cent reported that they had received financial help in some form.

11.1 Introduction

As we set out in Chapter 4, just over half (56 per cent) of divorcees had sought legal advice at some point during the divorce process, with only a third (32 per cent) of divorcees using some form of legal advice in relation to their finances. For those divorcees who wanted to ensure that this arrangement was made into a legally binding agreement, a court order ‘by consent’ could be made.

This chapter begins by examining how arrangements differed between those who used legal support in relation to their finances compared with those who did not, as well as those who did or did not use the court to formalise arrangements. However, it is important to emphasise that the data is unable to show that the use of legal support or the process of formalising an order causally ‘led’ to a particular outcome. Instead, the data can only show whether there is any correlation between particular outcomes and whether the divorcee had obtained legal advice or a court order. There may have been other factors in play with regard to why it was that some outcomes were more likely to occur for certain groups with or without legal advice, or with or without a court order.

Chapter 11 also considers other features of how things worked out for divorcees. This includes divorcees’ views on who had the most say in their financial arrangement, whether they considered that their arrangement worked out as expected, the fairness of the arrangement, divorcees’ reflections on who came out better financially from the arrangement, and what, if any, financial help divorcees received from family or friends during or since the divorce.

11.2 Chapter outline

This chapter covers:

- Section 11.3: The use of legal support and how things worked out
- Section 11.4: The use of legal orders and how things worked out
- Section 11.5: Divorcees’ views on who had the most say in their arrangement
- Section 11.6: Have arrangements worked out as expected?
- Section 11.7: Reflections on who came out better financially from the divorce
- Section 11.8: Divorcees’ views on the fairness of their arrangement
- Section 11.9: Financial help from family or friends during or since the divorce
- Section 11.10: Concluding comments

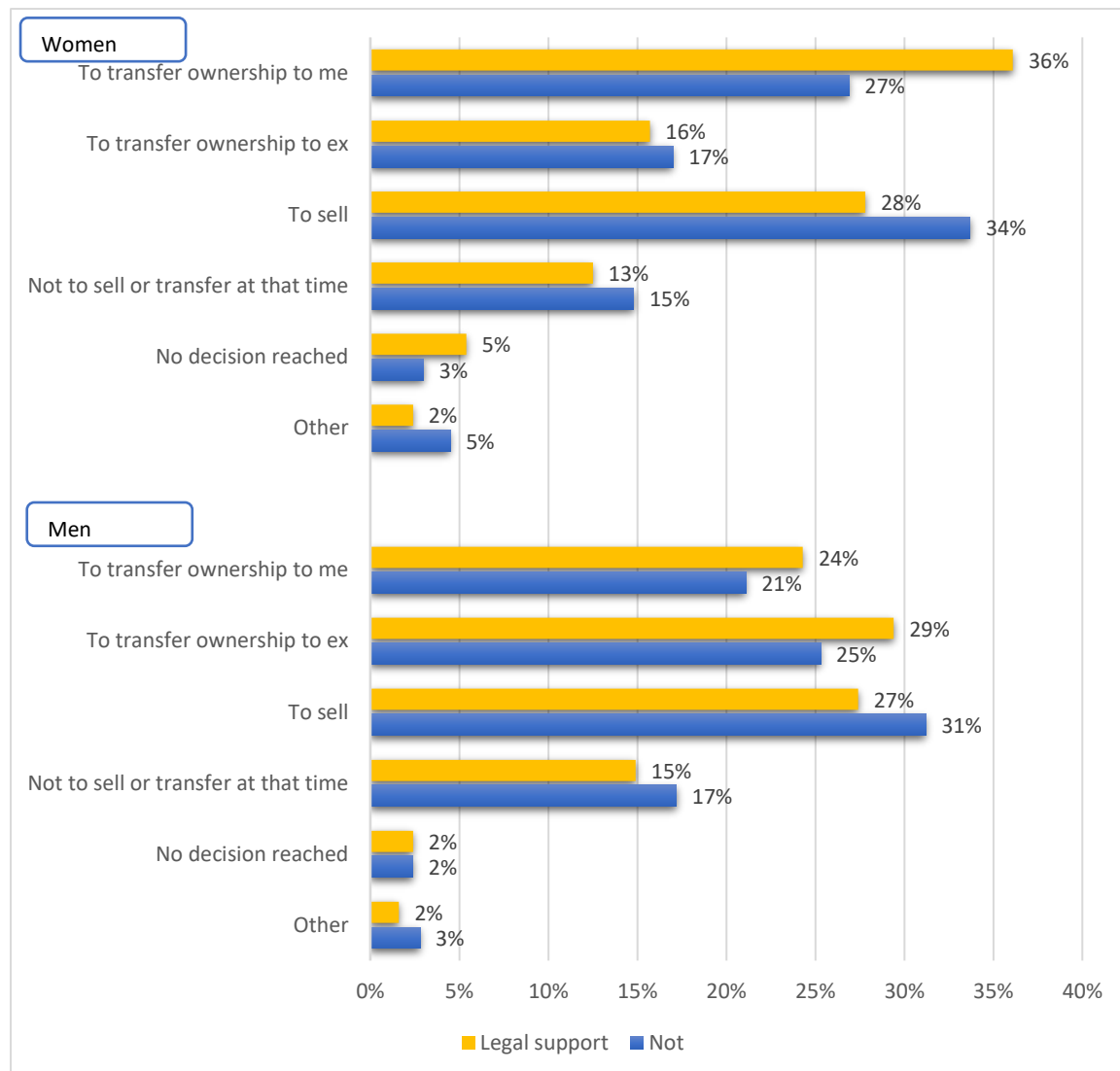
11.3 The use of legal support and how things worked out

As we mention above, when comparing the outcomes of those who did and did not use legal support in relation to their finances, and those who did and did not get a legal order (section 11.4), we cannot imply that their use *led* to a particular outcome, but rather than the two are associated. However, in order to bring us closer to understanding the contribution that such support had on the outcome, in our analysis we have ‘matched’ those who did and did not use support (so, legal support in section 11.3 and legal orders in section 11.4) on a number of background variables. We have weighted the two groups, so that they have the same demographic profile in relation to gender, age, tenure, dependent children, pensions and level of assets.³⁶² By doing this, we can rule out the possibility that any differences in outcomes between those who did and did not use support or orders are due to differences in those demographics. However, what we cannot say is whether other factors (many of which might be unobservable in the survey data) led certain divorcees to go down a legal support or order route, some of which may have themselves affected the financial arrangement they ended up with. For this reason, we are very careful not to overinterpret the findings in Sections 11.3 and 11.4.

Using our ‘matched’ data, there is some evidence that divorcees, particularly women, who used lawyers or Legal Services Companies (LSCs) in relation to their finances, had slightly more advantageous outcomes in terms of the matrimonial home. While there was little difference in the reports of men who did and did not use legal support about what happened to the matrimonial home, for women, using lawyers or LSCs was associated with a greater likelihood that the home was transferred to them. A third (37 per cent) of women who had used legal support received the home in a transfer of ownership, compared with 27 per cent of women who did not (p-value 0.037) (Figure 11.1, below).

³⁶² This was done using Propensity Score Matching (see Appendix E for more detail).

Figure 11.1: Decision about the matrimonial home, by wives and husbands using legal support or not



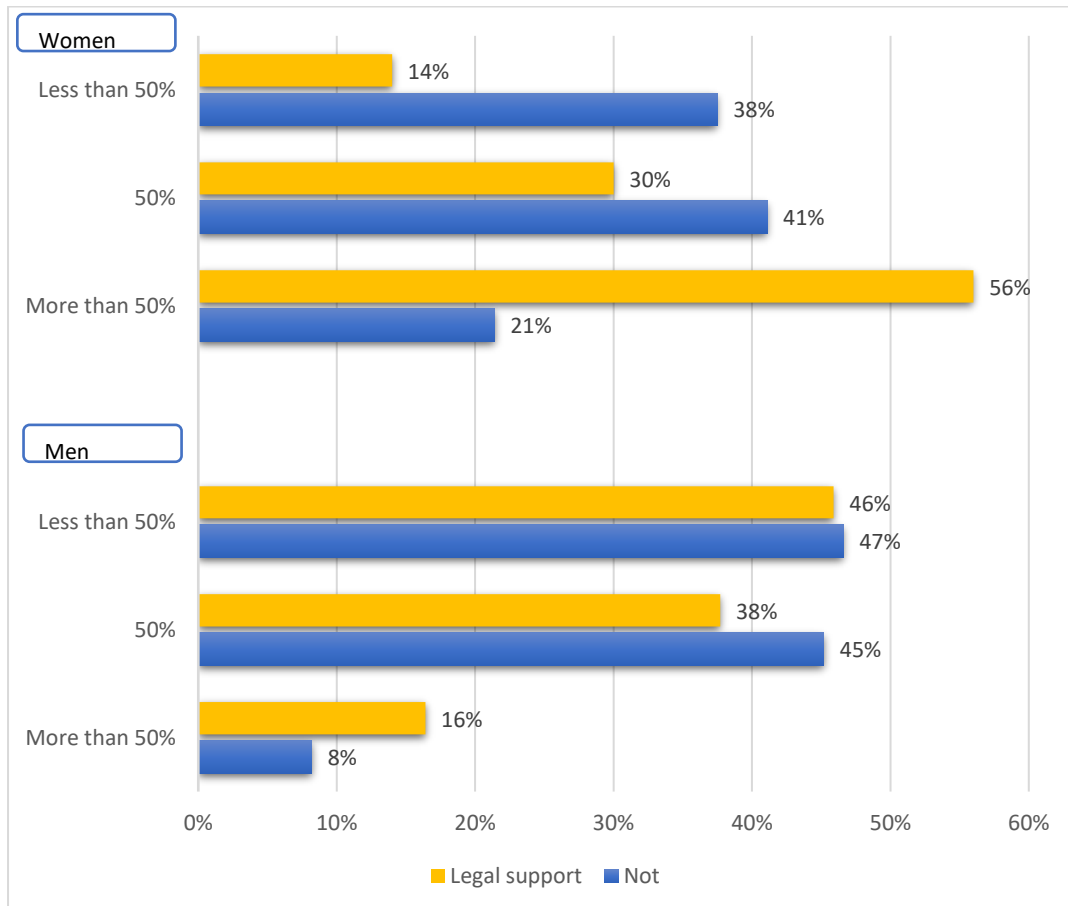
Base: all female homeowners using legal support for finances (490) and not (520); all male homeowners using legal support for finances (298) and not (503)³⁶³

Where the home was sold, divorcees using legal support appear to have been more likely to get a higher percentage of the proceeds of sale, but the differences are only statistically significant for women (Figure 11.2, below). Women who had received legal support were more than twice as likely as those who had not (56 per cent compared to 21 per cent) to have received more than half of the equity after sale (p-value <0.001). The comparable figures for men were 16 per cent and eight per cent (p-value 0.403). Wives were less likely to receive an equal share where they used legal services, with 30 per cent doing so, compared to 41 per cent where they had not used legal advice. While we cannot say that an

³⁶³ To balance the two groups, we have excluded those who said don't know or prefer not to say.

increased share of the equity is 'because' the individual had used a lawyer, there does appear to be a noticeable difference in the higher percentage share received, particularly for women.

Figure 11.2: Percentage equity received on sale of the matrimonial home, by wives and husbands using legal support or not



Base: all female homeowners who sold home using legal support for finances (126) and not (133); all male homeowners who sold home using legal support for finances (89) and not (148)³⁶⁴

It was also noted in Chapter 10 that mothers with dependent children were more likely to receive a larger proportion of the equity in the family home while men took a larger share of the pension wealth. It is possible that mothers who had used a lawyer had been advised that the law gives first consideration to the welfare of the children, so that there would be a strong case for demanding a larger share of the equity in order to provide suitable new accommodation for them, in return for offsetting this against the pension.

³⁶⁴ To balance the two groups, we have excluded those who said don't know or prefer not to say.

With regard to pensions, men were more likely to share their pension if they had received legal advice about their finances. Approximately one in six (17 per cent) men who had legal support shared their pension, compared with one in ten (10 per cent) men who did not use a lawyer or LSC (p-value 0.045). When it came to ongoing support, women were more likely to get any type of ongoing financial support if they had used a lawyer or LSC. Two in five (43 per cent) women who had used a lawyer or LSC received ongoing financial support, compared with 29 per cent of women who had not used a lawyer (p-value 0.006).

No direct causal link can be proved between receiving legal advice and the outcomes outlined above. It may be that divorcees who had a more complex set of financial issues to deal with were more likely to make use of legal support. But the data suggests that in certain situations, there is a greater likelihood of a particular outcome occurring where there has been legal advice. This may be due to such advice providing a more holistic overview and a greater focus on what both parties need. This approach can be seen in the following quote from the interview data:

[The solicitor] said “you know, what you’ve got to do is you’ve got to come to an agreement for the children, you know, they need a place to live, you need a place to live, your wife needs a place to live; simple, easy.” He said, “why make it difficult?” (Husband 8)

11.4 The use of legal orders and how things worked out

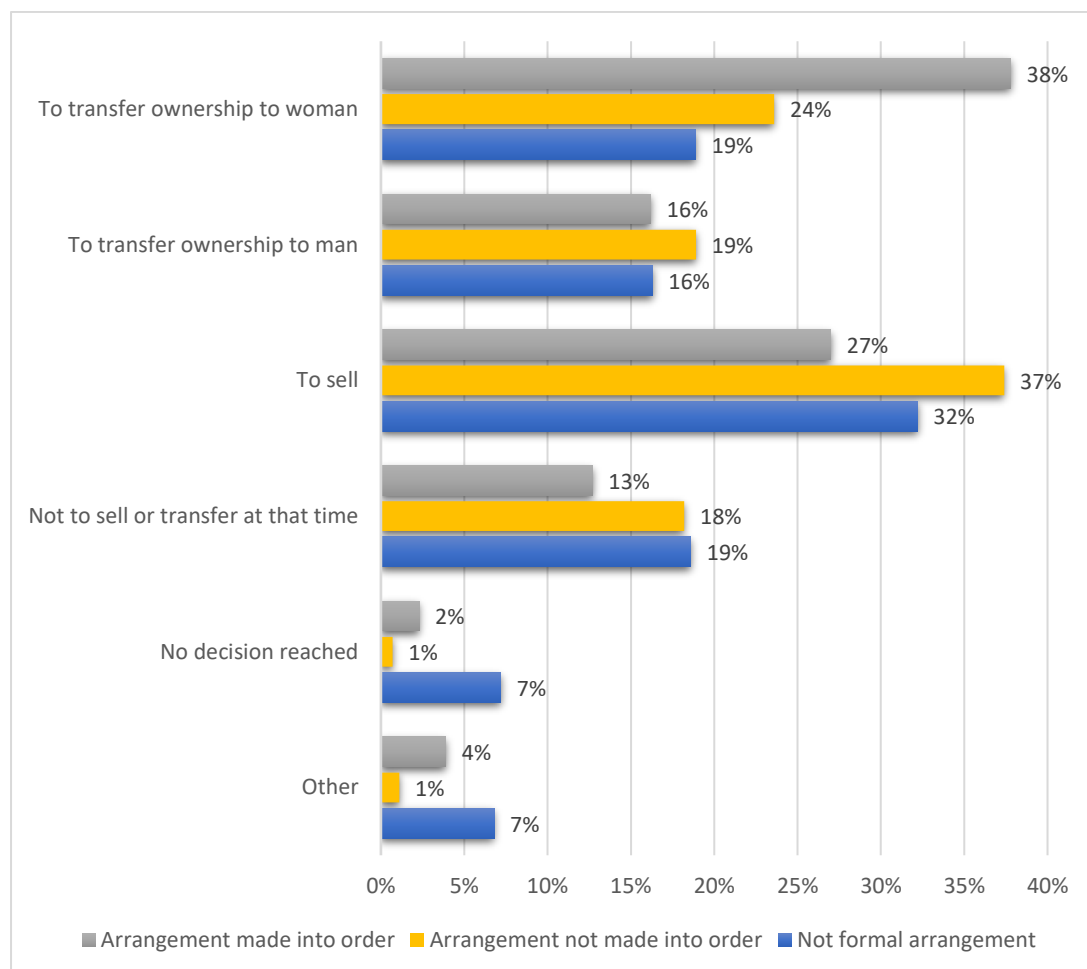
As outlined in Chapter 1, if a divorcing couple wish to make their financial and property arrangement legally binding, then it needs to be made into a consent order. The vast majority of financial remedy orders made through the courts are made by consent.

There is evidence that obtaining a financial remedy order through the court, either by consent or following a trial, was associated with a greater likelihood of transfers to wives (Figure 11.3, below). Where the matrimonial home was owned, two in five (38 per cent) orders involved a transfer of ownership to the woman, compared to a quarter (24 per cent) of arrangements not made into an order and one in five (19 per cent) situations where no formal arrangements had been made (p-value <0.001). There was no such difference in relation to transfers of ownership to men, which were equally likely regardless of orders and formal arrangements. In addition, where the home was transferred to the woman, men were less likely to get a compensatory payment where there was a court order than when an arrangement had not been made into an order. Just under half (47 per cent) of men received

a compensatory payment under an order compared to four in five (80 per cent) of those where the arrangement had not been made into an order (p-value 0.001).³⁶⁵

There was also evidence that obtaining a financial remedy order was associated with a lower likelihood of selling the home, compared to arrangements not made into an order. A quarter (27 per cent) of orders were related to a sale of the home, compared with a third of arrangements without orders (37 per cent) (p-value 0.031).³⁶⁶

Figure 11.3: Decision about the matrimonial home, by wives and husbands with orders or other arrangements



Base: all homeowners with orders (782); arrangements not made into orders (459); no formal arrangement (439)³⁶⁷

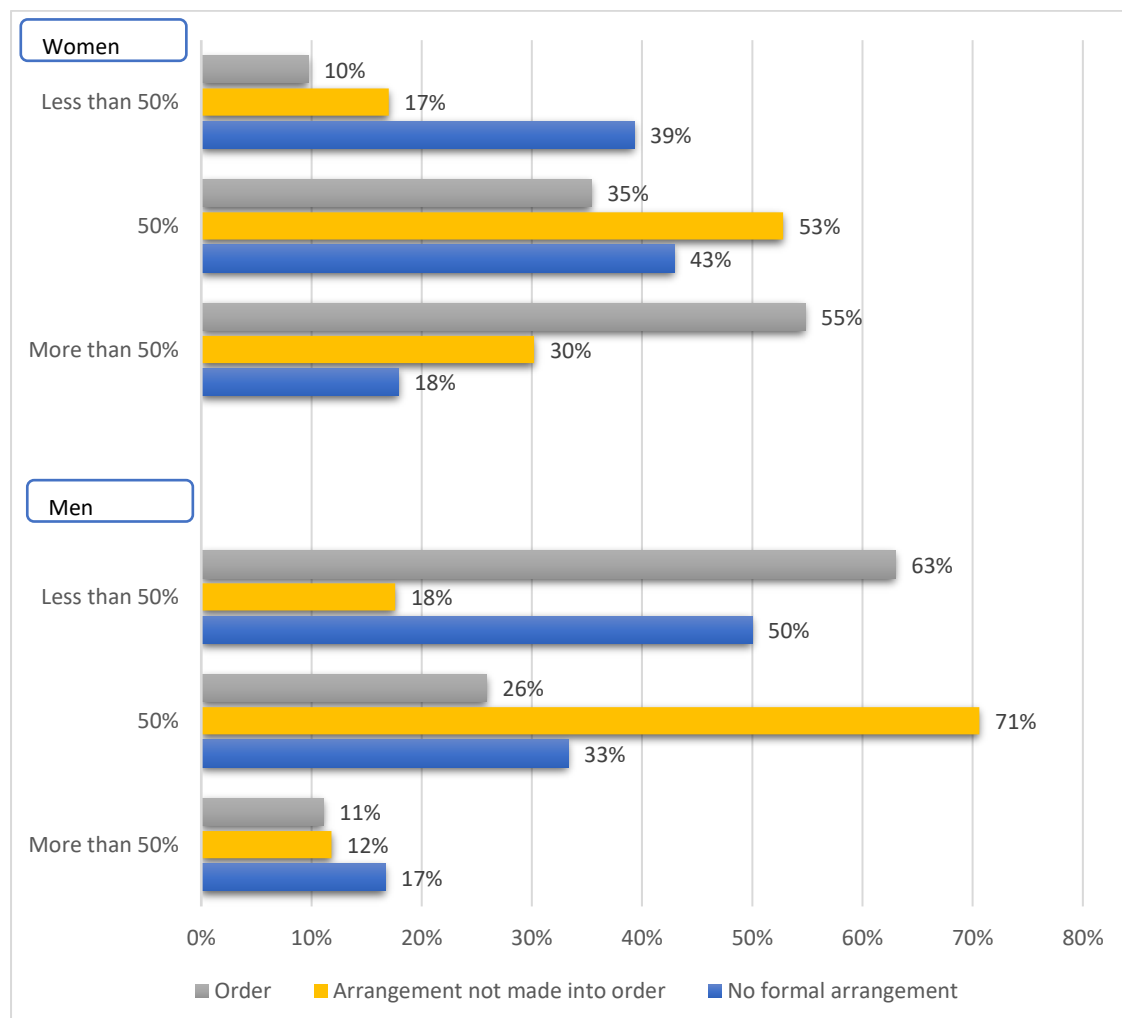
³⁶⁵ Here we compare between those with an order and those with an arrangement, with the numbers with no formal arrangement with a transfer of ownership too small to include.

³⁶⁶ A third (32 per cent) of those with no formal arrangements decided to sell the home, which was not a statistically significant different proportion to those with orders.

³⁶⁷ To balance the two groups, we have excluded those who said don't know or prefer not to say.

Where a sale did take place, those consequent upon court orders were associated with women receiving more than 50 per cent of the equity, while arrangements without orders were more likely to result in 50:50 splits. Where there had been a court order, 63 per cent of husbands received less than half of the equity after sale in comparison with 18 per cent of those where the arrangement was not made into an order (p-value 0.006). The opposite was true for women. Just over half (55 per cent) of wives who had obtained an order obtained more than half of the equity in the home after sale, while a third (35 per cent) received a 50:50 split. This can be compared with those women who did not obtain an order, of whom three in ten (30 per cent) received more than half of the equity, but just over half (53 per cent) received a 50:50 split. This can be compared with those women who did not obtain an order, of whom three in ten (30 per cent) received more than half of the equity, but just over half (53 per cent) received a 50:50 split (p-value 0.010).

Figure 11.4: Percentage equity received on sale of the matrimonial home, by wives and husbands with orders or other arrangements



Base: all female homeowners who sold home with order (99), with arrangement without an order (82), with no formal order (57); all male homeowners who sold home with order (109), with arrangement without an order (67), with no formal order (54)³⁶⁸

³⁶⁸ To balance the two groups, we have excluded those who said don't know or prefer not to say.

This difference may be due, first, to court applications being submitted with an eye to what the court will accept and which therefore lie within a legally acceptable range of circumstances. Secondly, this may reflect the law's consideration to place the children's welfare first, which could result in a greater percentage share to mothers with care where the home was sold, whereas for those divorcees who do not use the court to formalise their arrangement, a higher proportion of formally 'equal' splits may reflect the principle of 'equal division' as an underlying principle, as noted in previous research outlined in Chapter 1.³⁶⁹

Unsurprisingly, nearly all pension sharing was connected with a court order. Among those with an order, 15 per cent of men with a pension they were not yet drawing said there was an agreement that this would be shared with their ex-wife, compared to only five per cent of those with arrangements not made into orders or no formal arrangements. This finding is to be expected given the fact that the sharing of a pension not yet in payment requires a court order. The fact that there were a few survey participants – and interviewees – without orders who talked about pension sharing agreements suggests that there had been some informal discussions to 'share' pensions which had not (yet) materialised into a formal arrangement.³⁷⁰ In one example from the interview data, the wife was aware of the formal requirements that would need to be undertaken in order to formalise their informal agreement to share her husband's pension:

'I'll be honest with you, we've not done it. We do know the process but we've not done it. That is actually on my to do list because it's obviously really important to get it transferred into my name so we need to do that yet.' (Wife 18)

As with legal advice, while no direct causal effect can be proven between orders and the type of arrangement made, the finding that women were more likely to receive a transfer of the home, a pension share, or a larger share of the equity where the home was sold, could be due to the following factors. First, those submitting an arrangement for approval by the court may have been more likely to have received some form of legal advice and therefore arrangements seeming to take less account of wives' needs may have been tempered through this prior advice. Secondly, previous research has shown that the judiciary can, and do, intervene in consent order applications, with judges not only intervening with regard to technical and drafting queries, but also in relation to substantive issues and the overall

³⁶⁹ See Chapter 1, section 1.6.3 for discussion. S Arthur et al, *Settling Up, making financial arrangements after divorce or separation* (National Centre for Social Research, 2002).

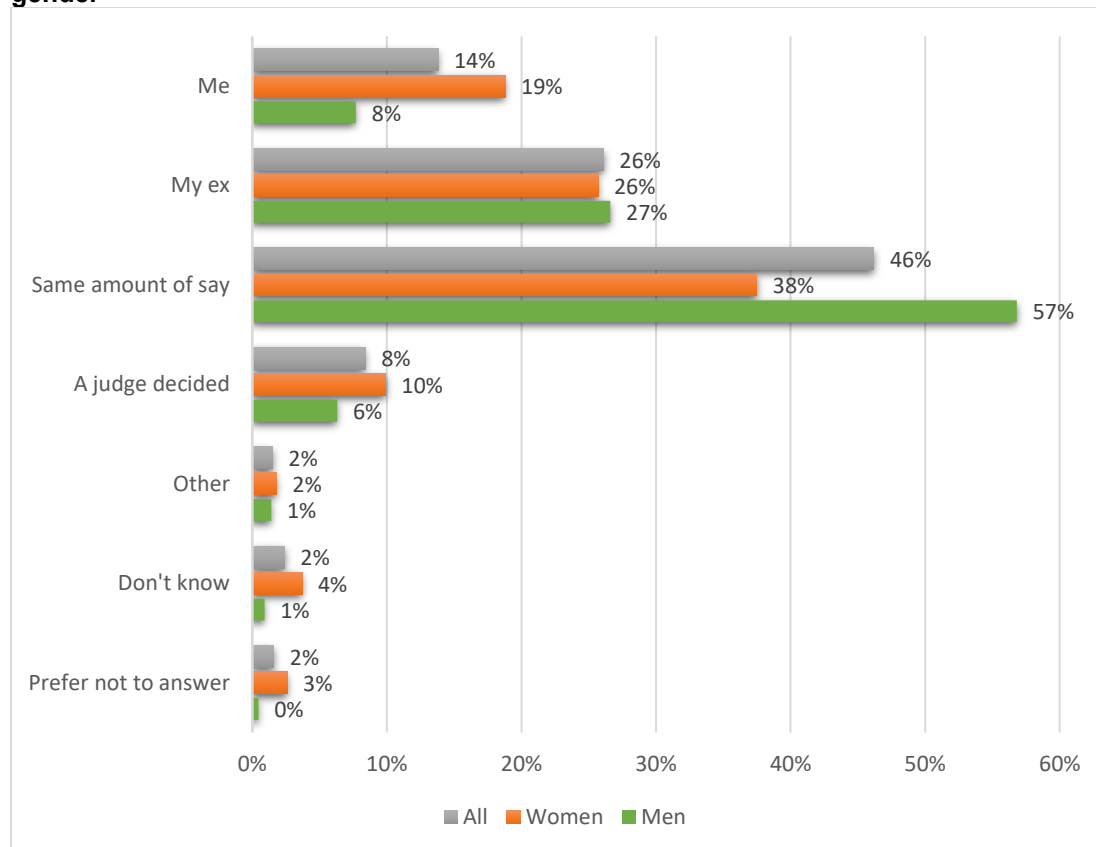
³⁷⁰ Those with arrangements include some with arrangements on some elements of the finances and not others.

fairness of proposed orders.³⁷¹ Therefore, while it is important to emphasise that there is no causal link between obtaining a court order and the outcome, it does appear that some form of judicial oversight of the application, or perhaps the realisation by the spouses that they will need to submit a consent order application that looks ‘fair’ to the court and lies within the shadow of the law’s spectrum of acceptable financial remedy arrangements, may act as restraining factors on applications to the court.

11.5 Divorcees’ views on who had the most say in their arrangement

Our survey included a question about who divorcees felt had the most say in determining the outcome they had reached. Figure 11.5, below, presents the answers to this question from respondents who had reached a full arrangement for their finances.

Figure 11.5: Perception of who had most say in coming to a full financial arrangement, by gender



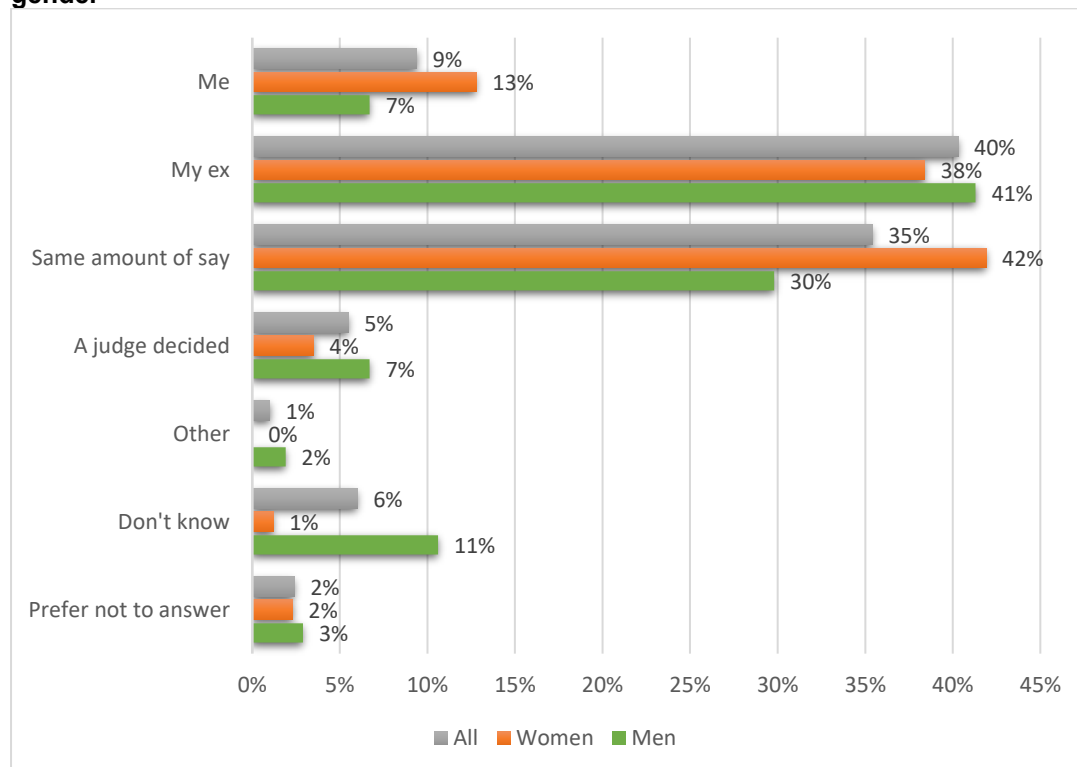
Base: all divorcees with a full arrangement (1,114)

³⁷¹ E Hitchings, J Miles and H Woodward, *Assembling the jigsaw puzzle: Understanding financial settlement on divorce* (2013), p 52-61.

The perceptions of women and men were different (p-value <0.001). The largest group of women and men said that they felt both they and their former spouse had had the same amount of say in the outcome that was reached, although men were much more likely to choose this option (57 per cent, compared to 38 per cent of women). Women and men were equally likely to say that their ex-spouse had had the most say, while women were more likely to say that they had had more say than their former spouse (19 per cent, compared to eight per cent of men).

Figure 11.6, below, presents the answers to the same question from participants who had reached a partial arrangement for their finances, where again women and men had some different perceptions (p-value 0.022). In these cases, men were more likely to say that their former spouse had the most say (41 per cent of men and 38 per cent of women), while women were more likely to feel that both parties had had the same amount of say (42 per cent of women and 30 per cent of men). These differences in perceptions as between those with full or partial arrangements might perhaps be explained by a greater sense of frustration or powerlessness where some matters remained to be resolved and a feeling that the situation was being driven by the other spouse.

Figure 11.6: Perception of who had most say in coming to a partial financial arrangement, by gender



Base: all divorcees with a partial arrangement (275)

Divorcees who were still trying to reach an arrangement with their former spouse were asked the same question. The numbers in this group are too small to split by gender, but in aggregate three in ten (30 per cent) divorcees felt their former spouse had the most say, and a quarter (23 per cent) felt that they had the most say.

The qualitative interviews highlighted that views on who had the most say could be complex and sometimes contradictory. Some interview participants described situations where one party clearly had more say than the other. One wife said that: 'He was giving what he wanted to give. He wouldn't give his figures or anything to anybody. He wouldn't tell anybody anything' (Wife 15). Meanwhile, a husband told us:

'I think it was me who said: "We're going to do this and we're going to do that" sort of thing, which I thought was fair, and she was quite happy to do it like that because she knew what she'd done. She knew what she'd done and what she was leaving with.' (Husband 6)

Others described situations where they felt both parties had an equal say. As one husband explained:

'Basically, we sat round the table, not in one hit – over a period of time – and we were still living together at this point, planning what was going to happen [...] So, it was over a period of time; one of us would bring it up and say "listen, I've had a thought about this or that" and chat it through.' (Husband 10)

Some of the interviews also shed light on why, as our survey responses showed, men might be less likely to say that they had the most say in reaching an arrangement than women. One husband felt that his former wife had the major say because their children would be living with her, and she would be managing all of the household expenses going forward:

'I suppose in reality, the majority of the finances, the house, the assets, the income for the kids and all the rest of that, was going to be dealt with by her so [...] she drove most of that.' (Husband 14)

Some interviewees, however, described more complicated scenarios where 'say' and bargaining power went back and forth between parties. One wife, whose former husband had refused to engage with divorce proceedings unless she authorised the Child Maintenance Service (previously the CSA) to clear his arrears, told us:

'I mean obviously some bits I was cornered in like the giving up the CSA – clearing those arrears. I just felt I was – but then if you look at it if I didn't do that would there be an implication on getting the house in my name so it was just so – I mean it might look clear cut to you guys as a no brainer but when you're in it it's just like, "Oh but if I do this," or, "If I say that," you don't know how people will respond and they're already heightened and it's so emotive.' (Wife 11)

Another interviewee's comments further highlighted the strategic nature of 'say' when attempting to reach an arrangement:

'I think there was a bit of a skew in, not in her favour but because she'd managed a lot of the financial stuff for so long, she had a lot more of the information than I did [...] Even though she had a lot of the say in terms of what the figures were, she did also have to do a lot of the justification as to why those figures were where they were. Because there was no trust at that point in time about anything. She might have had the say on paper because she had the figures, but in practice there was a lot of back and forth in terms of thrashing out what totals worked out where.' (Husband 24)

In some cases, participants felt that they had some or even the most say, despite ending up financially worse off. When one wife found she was tens of thousands of pounds in debt after her husband took out loans in her name, she felt she had no alternative but to pay off the debts herself, yet still felt that she had the most say in sorting out finances on separation:

'Once I sat down and realised how much debt we were in, what credit cards he'd got, and bills he'd got that haven't been paid, I took it over, and I said, "from now on, I will deal with all the bills." I didn't want him still doing it while I wasn't with him, with my name on. I didn't want to do that.' (Wife 27)

Meanwhile another wife, who had not come to any financial arrangement with her former husband, felt that she had had some say in the outcome, despite being in debt and receiving no child maintenance:

'I think in terms of the child maintenance thing probably he [had the major say], because I haven't really chased it up so he's just kind of let that be what it is [...] And then in terms of the debts and things obviously I [have had the major say], because I just felt like because it's in my name, it's for

me and it's things that I decided to take out, so I didn't really expect him to have any say in that really.' (Wife 14)

One interviewee explained how, despite feeling that she had had the major say in financial matters during the marriage, when it came to sorting out finances on divorce, she found that her former husband had all the bargaining power, due to his refusal to contribute towards their joint debts:

'When he refused to pay anything, that put all the power in his hands. With the debts being in my name, I felt I had zero come back. So ironically, bearing in mind it was me sorting everything out, it was him that held the power by refusing, refusing to pay.' (Wife 28)

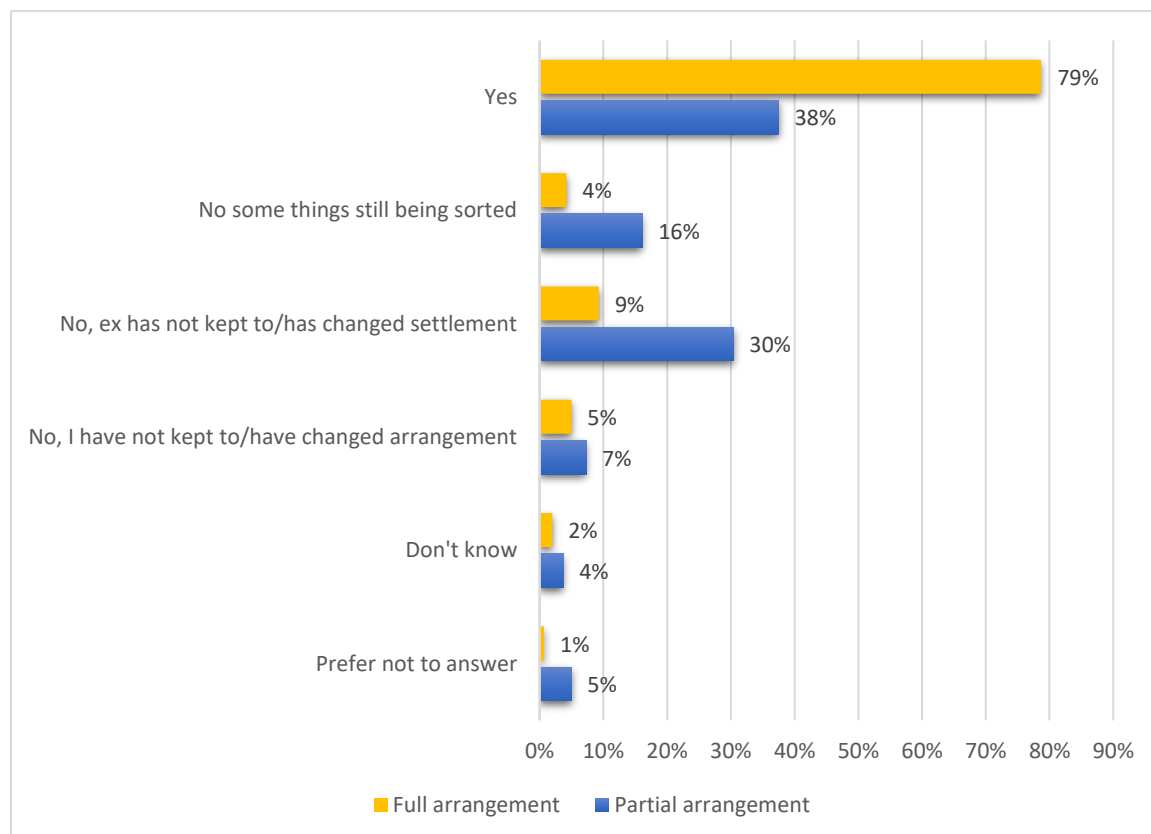
In some cases where there had been domestic abuse or other harmful behaviour, interviewees who were victims/survivors were able to look back and recognise how the abuse had taken away their opportunities for a 'say' in any outcome reached:

'I was saying, I've got a good job, I'm not stupid, I'm quite strong – believe it or not – and independent, and then when I look back at some of the things I think I literally must have been a wreck of a person [...] Mentally I just wasn't equipped for it. God, if it was to happen now, I'd love to go back in time and be in the mental state I am now and do it. He wouldn't have a leg to stand on [...] I just wouldn't put up with that at all, but at the time I did.' (Wife 21)

11.6 Had arrangements worked out as expected?

We asked survey participants who had made financial arrangements whether these had worked out as they had expected in terms of being implemented as agreed or decided. Full arrangements were far more likely than partial arrangements to have worked out as divorcees expected (Figure 11.7, below). Four in five (79 per cent) divorcees with a full settlement reported everything working out as expected, compared to only two in five (38 per cent) of divorcees with a partial settlement. In part (in 16 per cent of cases with a partial settlement), this was because there were still things being sorted out. However, those with partial settlements were much more likely than those with full settlements to say that one or other party had changed the arrangement. This was most commonly the ex-spouse, who was reported to have not kept to or changed three in ten (30 per cent) partial arrangements and one in 11 (nine per cent) full arrangements.

Figure 11.7: Whether arrangements have worked out as expected, by full and partial arrangements



Bases: divorcees with a full arrangement (1,114); divorcees with a partial arrangement (275)

There was very little difference in the reports of divorcees whose arrangements had been made into an order and those whose had not. This was true for both full and partial arrangements. For instance, 81 per cent of full arrangements made into orders had worked out as expected, compared to 77 per cent of those not made into orders. Likewise, 35 per cent of partial arrangements made into orders had worked out as the divorcee expected, compared to 38 per cent of those not made into orders.

However, where there was variation was in the route by which an arrangement had been made. Nine in ten (90 per cent) full arrangements arrived at by the divorcing parties themselves had worked out as expected, presumably reflecting the better relations of those who had felt able to negotiate their own arrangements. Three quarters of full arrangements made via lawyers (76 per cent) or via a judge (76 per cent) had also worked out as expected. However, only 44 per cent of full arrangements made via mediation had worked out as the divorcee had expected (p -value <0.001).³⁷²

³⁷² The numbers are too small to look across partial arrangements, but the overall pattern appears similar.

What is particularly noticeable from this data is the proportion of arrangements made via mediation that did not work out as expected. This could be as much to do with the nature of the people making the arrangement and their willingness to come to an arrangement as the route they took. Those undertaking mediation may have already tried and failed to negotiate an agreement between themselves (including with the help of lawyers), so that when they did then reach a settlement via mediation, it may have been the result of a rather grudging compromise rather than a real meeting of minds and thus more likely to unravel when it came to be implemented and a party had second thoughts. In light of the government's recent proposals to make mediation compulsory before an application to court,³⁷³ this data should serve as a warning about the risk of reform.

Where elements of full or partial arrangements were still being sorted, or where elements had not been kept to or changed, divorcees were asked what elements this involved. Their responses are set out in Table 11.1, below.

Table 11.1: Elements of arrangement still being sorted or having not been kept or changed

	What is still being sorted?	What elements have not been kept or changed?
	%	%
Home not been put up for sale yet	26	10
Home has not yet sold	22	42
My portion of the savings/investments	17	26
My ex-spouse's portion of the savings/investments	12	22
Property or assets due to come to me	10	16
Property of assets due to go to my ex-spouse	5	9
A portion of my ex-spouse's pension due to come to me	15	9

³⁷³ Ministry of Justice, (2023) Supporting earlier resolution of private family law arrangements: A consultation on resolving private family disputes earlier through family mediation. CP 824. Available from: https://consult.justice.gov.uk/digital-communications/private-family-law-consultation/supporting_documents/supportingearlierresolutionofprivatefamilylawarrangementsconsultationweb.pdf [Accessed July 2023]

A portion of my pension due to go to my ex-spouse	13	8
A lump sum due to come to me	4	8
A lump sum due to go to my ex-spouse	4	3
Still have to sort out debts	12	2
Child maintenance payments to me	11	9
Child maintenance payments to my ex-spouse	7	15
Spousal maintenance payments to me	4	13
Spousal maintenance payments to my ex-spouse	9	6
<i>Bases (including both full and partial arrangements)</i>	<i>73</i>	<i>167</i>

Property issues in relation to the former matrimonial home were a particular problem for these participants, with the home not yet being put up for sale or not having been sold; both causing difficulties. For one interviewee, the wife explained how her ex-husband was reluctant to agree to a lower selling price on the home:

‘...[A]t every stage of selling the house, I had to get his permission to do everything. So, if he didn’t like the idea of the price of somebody putting it in, I couldn’t accept it because he’s still on the mortgage. ... I had to keep talking to him every five seconds about “I want to sell the house and this is who I’m selling it to” and he wasn’t happy and I’m like “well, to be the honest truth, we’ve got to sell it. So you’re telling me we’ve got to sell it but you’re saying no at £10,000 under and this and that”.’ (Wife 15)

When it came to ongoing issues with respect to pensions, one interviewee explained that the reason the pension sharing element of their informal financial arrangement had not yet been sorted was because they had not yet begun the procedural requirements (see section 11.4 above).

Where there were still elements of the arrangements to be sorted, or where one party had not kept to or had changed the arrangement, divorcees were asked why these had not yet been resolved (Table 11.2, below) and what they were currently doing to sort out these issues. The two most frequent reasons given by participants as to why elements had not been sorted or kept to, or changed, were that the ex-spouse could not afford it (19 per cent) and the ex-spouse was refusing to cooperate (16 per cent).

Table 11.2: Reasons why elements have not been sorted or kept to, or been changed, by women and men

	Women	Men	All
	%	%	%
Ex-spouse can't afford it	24	14	19
I can't afford it	10	8	9
Ex-spouse is refusing to cooperate	24	9	16
I am refusing to cooperate	12	10	11
Trying to sell the home	17	12	14
Trying to sell other assets	18	11	15
Covid pandemic	15	6	10
Ex-spouse didn't agree with settlement	2	8	5
I didn't agree with settlement	10	3	6
Ex-spouse says the time isn't right	5	5	5
I think the time isn't right	15	11	13
Still in dispute over the children	10	1	5
<i>Bases (including both full and partial arrangements): those with things still to sort out or where one party has not kept to or changed the arrangement</i>	127	113	240

There were three significant differences between the genders in response to this question, with men more likely to suggest that their ex-spouse did not agree with the settlement where there were elements of the arrangements still to be sorted, or where one party had not kept or had changed the arrangement (eight per cent of men compared with two per cent of women, p-value 0.022). Women, however, were not only more likely to suggest that the reason why elements had not yet been sorted or kept to, or had been changed, was because they were still in dispute over the children (ten per cent of women compared with one per cent of men, p-value <0.001), but also more likely to suggest that their ex-spouse refused to co-operate (24 per cent of women compared with nine per cent of men, p-value 0.002). This refusal to cooperate is highlighted in the following case from the interview data, where the wife was having ongoing issues with her ex-husband in relation to debts. After the marriage ended, she discovered that he had accrued tens of thousands of pounds of debt – some in joint names and some just in hers. She had consolidated the debts into an IVA, of which he was supposed to pay half through monthly payments, but she frequently had to chase these up:

‘I don't think he's ever paid the full amount, and it's very, very rare – in fact, I'm trying to think if he's actually ever managed to pay it without me texting

him several times to say, your bill money is now due, overdue, well overdue. Yes, so again in hindsight, I would have put something formal in place if I'd known what I was doing.' (Wife 27)

In response to being asked what divorcees were doing to sort out ongoing and unresolved issues, participants' most prevalent response was that they had stopped trying, with three in ten of all participants (30 per cent) noting this (Table 11.3, below). While just over one in six (17 per cent) participants were trying mediation or another out of court process in an attempt to resolve the issue, 15 per cent were seeking advice from Citizen's Advice Bureau or another agency and 14 per cent responded that they were going to court. The only statistically significant difference between men and women that emerged from the data was that women were more likely to try to resolve the ongoing issue by negotiating via a lawyer (18 per cent of women compared with 5 per cent of men, p-value 0.004).

Table 11.3: What divorcees are doing to sort out the issues, by women and men

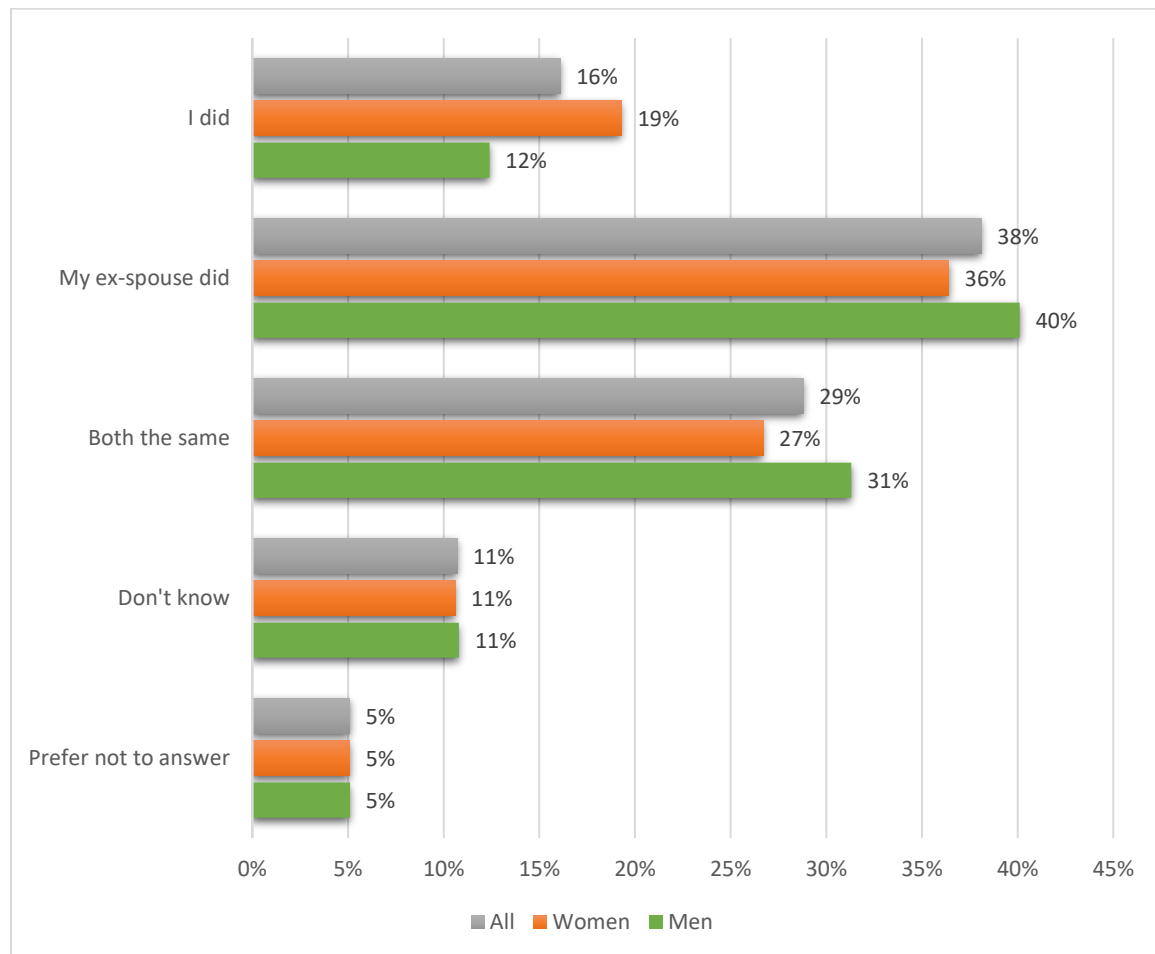
	Women	Men	All
	%	%	%
Nothing, stopped trying	29	31	30
Trying mediation or other out of court process	18	15	17
Seeking advice from Citizen's Advice Bureau or other advice agency	22	9	15
Going to court	11	16	14
Trying to talk directly with ex-spouse	11	12	12
Negotiating via a lawyer	18	5	11
Waiting for a buyer for the home	14	7	10
<i>Bases (including both full and partial arrangements): those with things still to sort out or where one party has not kept to or changed the arrangement</i>	<i>127</i>	<i>113</i>	<i>240</i>

11.7 Reflections on who came out better financially from the divorce

Towards the end of the survey, divorcees were asked to reflect on whether they thought that they or their ex-spouse had come out better financially from the divorce, or whether things were roughly equal (Figure 11.8, below). Only one in six (16 per cent) divorcees felt that they had come out better than their ex-spouse financially, with a further three in ten (29 per cent) feeling that things were pretty equal. Two in five (38 per cent) felt that their ex-spouse did better than them in any division of the finances. In line with a recurring theme in this report about a lack of knowledge about their finances, one in nine (11 per cent) of divorcees did not

know who they felt had come out better financially.

Figure 11.8: Perceptions of who had come out better financially from the divorce, by gender³⁷⁴



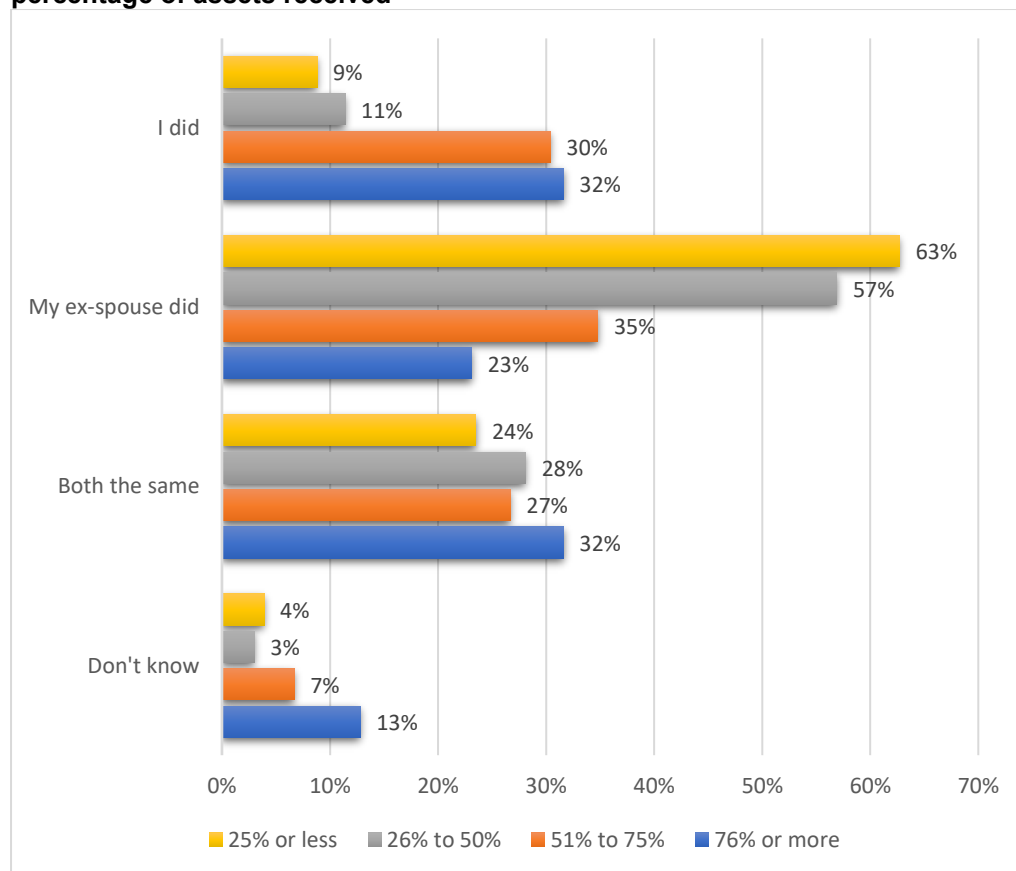
Bases: all divorcees (2,415); women (1,380); men (1,035)

The pattern was the same for both men and women – each was more likely to think that their ex-spouse came out better than they did (40 per cent of men and 36 per cent of women). However, more women than men (19 per cent compared to 12 per cent) felt that they had come out better financially from the divorce than their ex-spouse (p-value 0.002). Men with dependent children with their ex-spouse were more likely to think that their ex-spouse came out better than them financially than men without children (47 per cent compared to 34 per cent) (p-value 0.045). Given that the overall outcomes data examined in Chapter 10 indicated that mothers with dependent children were more likely to retain more of the value from the home and fathers were more likely to retain more of the value of the pensions, the gender difference in the perception data outlined above is unsurprising.

³⁷⁴ One per cent said 'other'.

However, divorcees' perceptions of who came out of the divorce better financially do not necessarily reflect how well they did objectively. While those who received a higher percentage of the total value of the assets were more likely than those who received a lower percentage to say that they themselves came out better, it was still a minority view. Only a third (32 per cent) of those who got, by our calculations, at least three quarters of the value of the total assets said that they felt they had come out better financially than their ex-spouse (p-value <0.001) (Figure 11.9, below). There was a very similar pattern of responses from men and women.

Figure 11.9: Perceptions of who had come out better financially from the divorce, by percentage of assets received³⁷⁵



Bases: all with share of 25% of less (214); with share of 26% to 50% (423); with a share of 51% to 75% (322); with a share of 76% or more (240)

Clearly, there are factors other than the actual value of assets which contribute to divorcees' thinking about the fairness of any financial arrangement, including their own earnings or income capacity. Divorcees in the survey were asked to say what they thought the main factors were which affected the financial outcome. Their responses are set out in Tables 11.4 to 11.6, below.

³⁷⁵ One per cent of those with a percentage share calculation said 'other'.

Table 11.4 looks at the reasons why survey participants considered that they had come out better than their ex-spouse. The top three reasons provided were that the participant had been firm about how far they were willing to share the assets (22 per cent); that their knowledge of the process/procedure/law was better (15 per cent), and thirdly, that some of the assets were in their name and therefore they insisted that they were not available to share with their ex (15 per cent).

Table 11.4: Reasons why survey participant came out better than ex-spouse, by women and men

	Women	Men	All
	%	%	%
I was firm about how far I was willing to share the assets	18	24	22
My knowledge of the process/procedure/law was better	15	16	15
Some of the assets were in my name and therefore I insisted they were not available to share with my ex	17	12	15
My ex could not afford legal advice	18	5	14
My ex felt guilty about the divorce, so was more generous about financial arrangements	13	18	14
Ex-spouse wanted the process over	11	12	11
My ex was afraid of incurring additional legal costs by pushing for a better deal	14	6	11
I could afford to use lawyers/ obtain legal advice	13	8	11
Mental or physical health problems	13	6	11
I think my ex got worse legal advice than I did	6	8	7
My ex was afraid that pushing for a better deal would mean I would try to stop my ex from spending time/more time with our child(ren)	5	9	6
Other events happened to me not related to the settlement (e.g. inheritance, increased earnings, re-partnering)	4	8	5
My ex was keen to ensure I was financially secure	3	6	4
I was able to hide some assets but my ex couldn't prove it	1	6	3

My ex was afraid that by pushing for a better financial deal I would not pay child support/maintenance	1	5	3
My ex was afraid that by pushing for a better financial deal it would make me angry and less willing to settle	1	3	1
<i>Bases: those who felt they came out better financially from the divorce</i>	277	118	395

The only significant difference between women and men was that a larger proportion of women considered that the reason they came out better was because their ex could not afford legal advice (18 per cent of women compared with 5 per cent of men, p-value 0.019). In the following example, one interviewee reflected on how she wished her ex-husband had been able to afford legal representation and explained how her mother was able to help her out with her legal fees whereas her ex did not have anyone to provide this financial assistance to him:

‘I wish I’d pushed for him to get a solicitor as well, but then that was another thing about money. My mum’s paid for mine. Who would have paid for his? I don’t think his mum would have, and we didn’t have the money in our joint bank account to certainly be paid for him to have a solicitor but I think if he’d had legal representation as well we might have come to better decisions. ... so my mum’s been putting it on her credit card and I have to at some point pay her back, which I’m hoping she might forget but, yeah, she keeps talking about it all the time so I don’t think she’s going to forget!’
(Wife 26)

Table 11.5, below, looks at the reasons why participants considered their ex-spouse had come out better than themselves. The three most frequent explanations were that they had wanted the process over (48 per cent), that their ex was able to hide some assets but they could not prove this (23 per cent) and that they had been afraid of incurring additional legal costs by pushing for a better deal (23 per cent).

Table 11.5: Reasons why ex-spouse came out better than survey participant, by women and men

	Women	Men	All
	%	%	%
I wanted the process over	56	40	48
My ex was able to hide some assets but I couldn't prove it	31	15	23
I was afraid of incurring additional legal costs by pushing for a better deal	26	20	23
I was afraid that by pushing for a better financial deal it would make my ex angry and less willing to settle	26	17	22
Mental or physical health problems	18	16	17
I could not afford to use lawyers/get legal advice	19	14	17
Other events happened to my ex not related to the settlement (e.g. inheritance, increased earnings, re-partnering)	13	10	11
My ex was firm about how far they were willing to share the assets	12	9	11
Some of the assets were in my ex's name and therefore they insisted they were not available to share with me	13	6	10
My ex had legal advice	10	10	10
I felt I got worse legal advice than they did	9	10	9
I was afraid that pushing for a better deal would mean my ex would try to stop me from spending time/more time with our child(ren)	6	14	9
I was keen to ensure my ex was financially secure	2	14	8
I was afraid that by pushing for a better financial deal my ex would not pay child support/maintenance	11	2	6
I was afraid that by pushing for a better financial deal, my ex would try to get residence / more contact with our child(ren)	7	5	6
My ex's knowledge of the process/procedure/law was better than mine	7	4	6

I was happy for my ex to get a better deal than me because I felt guilty about the divorce	4	8	6
<i>Bases: those who felt their ex-spouse came out better financially from the divorce</i>	531	465	996

As one interviewee explained:

‘For me, obviously I could have probably got more but then I also wanted to settle it fairly quickly because I just wanted to move on in my life. Also, the longer it went through obviously the more the solicitor charges, every time they send an email or contacts then everything escalates in costs. I thought, what’s the point for another couple of grand or to fight over £5,000 or whatever it was.’ (Husband 2)

There were a number of significant differences between the genders in responses to this question, with women not only more likely to want the process over (56 per cent of women compared with 40 per cent of men, p-value <0.001), but 31 per cent of women considered that their ex came out better than themselves because they were able to hide some assets, compared with 15 per cent of men (p-value <0.001). In addition, more women than men were afraid that by pushing for a better financial deal their ex would become angry and less willing to settle (p-value 0.012) or would not pay child support (p-value <0.001).

For men, the focus was different. First, one in seven (14 per cent) men were keen to ensure that their ex was financially secure, whereas only two per cent of women noted this as a reason (p-value <0.001). Husband 20, for example, explained how he wanted to ensure that this was the case: ‘...it would be totally wrong and unfair for either party to be left destitute.’ Secondly, one in seven (14 per cent) men suggested that a reason why they believed their ex-spouse came out better than them was due to their fear that pushing for a better deal would mean their ex would try to stop them from spending time/more time with their child(ren) (p-value 0.002). The final significant difference between the genders was in relation to the issue of guilt, with more men suggesting that they were happy for their ex-spouse to get a better deal because they felt guilty about the divorce (8 per cent of men compared with 4 per cent of women, p-value 0.005).

Overall, non-legal factors appeared to come out very strongly from the factors identified by participants in their responses to these two questions. It appears that the more ‘personal’ reasons, such as strength of personality, wanting the process over with, fear of incurring additional costs, affordability of legal advice, fear of the consequences of pushing for a

better deal and mental or physical health problems were all factors that played a part in determining the outcome according to the perception of the participants.

The last table (Table 11.16, below) provides a list of reasons why the participants considered that they came out the same. The three most frequently given factors were, first, that the couple had come up with a workable and practical solution (31 per cent); secondly, that they were able to work together (22 per cent), and thirdly, that they had split everything 50:50.

Table 11.6: Reasons why both parties came out the same, by women and men

	Women	Men	All
	%	%	%
We came up with a workable and practical solution	25	37	31
We were able to work together	10	25	22
We split everything 50/50	14	18	16
We were both concerned to make sure each of us was as financially secure as possible	10	15	12
We didn't blame each other for the divorce	15	9	12
We both had legal advice	7	14	11
We had sufficient wealth to enable us to leave the marriage on an equal footing	8	14	11
Other events happened not related to the settlement (e.g. inheritance, increased earnings, re-partnering)	7	10	9
We went to court and the judge made the decision	5	8	7
We used mediation	5	7	6
<i>Bases: those who felt both spouses came out the same financially from the divorce</i>	373	331	704

All three most frequently cited factors come across in the following quote provided by Husband 16. After their short marriage, this couple decided to have a 50:50 split of all their assets (house and joint savings), although their pensions were kept by each of them:

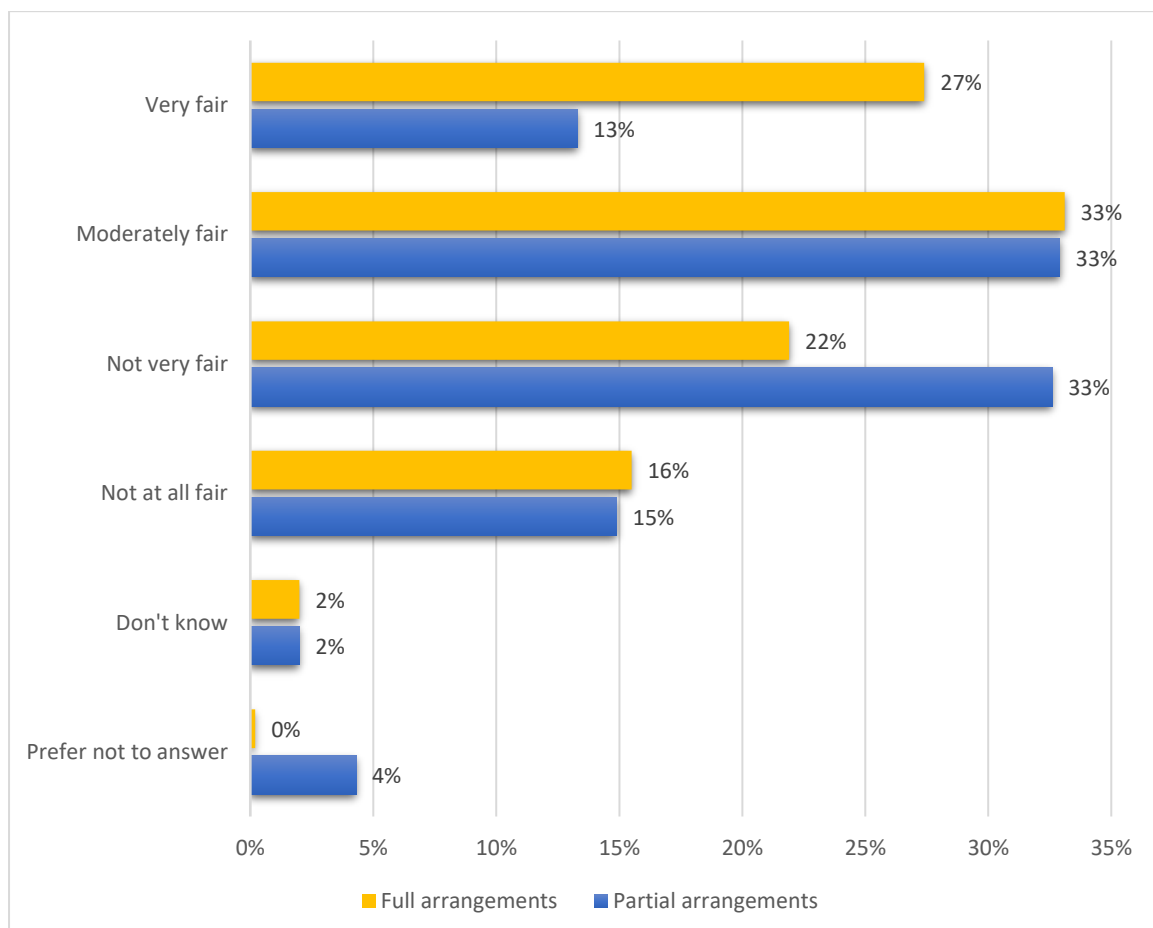
‘We both put the same amount in – deposit when we bought the house. We both contributed to the mortgage, we both worked full-time and everything was really – bills-wise and mortgage was a joint effort so I didn’t want to be – wouldn’t say the alpha male who says, “I paid more in and I did this, that and the other.” It wasn’t like that. It was quite amicable. We

just sort of grew apart and there was no third person or anything in the marriage or anything. It was just a case of grew apart so there was no real need to get angry or one up or there was never revenge. There was no bitterness. It was a case of we both bought the furniture together, we both did everything together, so let's just – rather than make it messy and expensive. The only winners out of this are the lawyers so instead of making it expensive we'll just split it down the middle.' (Husband 16)

11.8 Divorcees' views on the fairness of their arrangement

Our survey included a question to divorcees who had made full or partial arrangements on how fair they felt the arrangement was at the time (Figure 11.10, below).

Figure 11.10: Perception of how fair arrangement was, by full and partial arrangements



Base: all divorcees with a full (1,114) or partial arrangement (275)

Generally, fewer divorcees (46 per cent) who had reached partial arrangements thought that these arrangements were very or moderately fair, compared to those with full arrangements (60 per cent).

Answers from those who reached full arrangements, however, varied significantly across ages and between those with and without children.³⁷⁶ For example, 72 per cent of divorcees aged 60 or more thought their arrangement was fair compared to 40 per cent of those aged under 35. 64 per cent of divorcees without children thought the arrangement was fair, compared to 55 per cent of those who had children.

Among our qualitative sample, participants explained their views regarding the fairness of what they had ended up with. For some, the issue of fairness was clear cut, with one wife telling us: 'For me again it was about the moral bit, it was fair because I got what I put in.' (Wife 11).

For others, however, fairness was a difficult concept to define. One husband, whose wife received all the equity in their house when it was sold, explained his feelings about fairness:

'I say moderately fair because I financially, if I really wanted to be callous, over the years financially I put in more than she did into the marriage into the pot. Financially, she came out with more than I did. You can't put a value on what she did as a mother and as a homemaker, I get that. So, that's why I put moderately fair. I think morally, if you'd asked me that question morally, I'd say yes, fair, 100 per cent fair but if you ask on a financial basis, I would say moderately fair.' (Husband 10)

The qualitative interviews provided an insight into why divorcees with children might be less likely to think the arrangement they came to was fair. One husband, who split all assets (except for pensions) 50:50 with his ex-wife, explained that he felt that stability for their children was prioritised over each person leaving the marriage with what they had put in financially:

'I mean, if you look at it in terms of the finance side of it and what I've put into the property, I knew that I wouldn't get everything I've put back into it because I wanted the children to live in the same house and my ex-partner would have to be there anyway. So, I kind of knew that I wouldn't get as

³⁷⁶ However, there were no significant differences in views across women and men.

much back from what I put into it. I knew that anyway, so that's why I put moderately fair.' (Husband 11)

Another interviewee, whose husband had used his share of the equity to buy a house with large ongoing costs which resulted in him being unable to afford to pay child maintenance, discussed what she felt would have been a fairer outcome for her and their children:

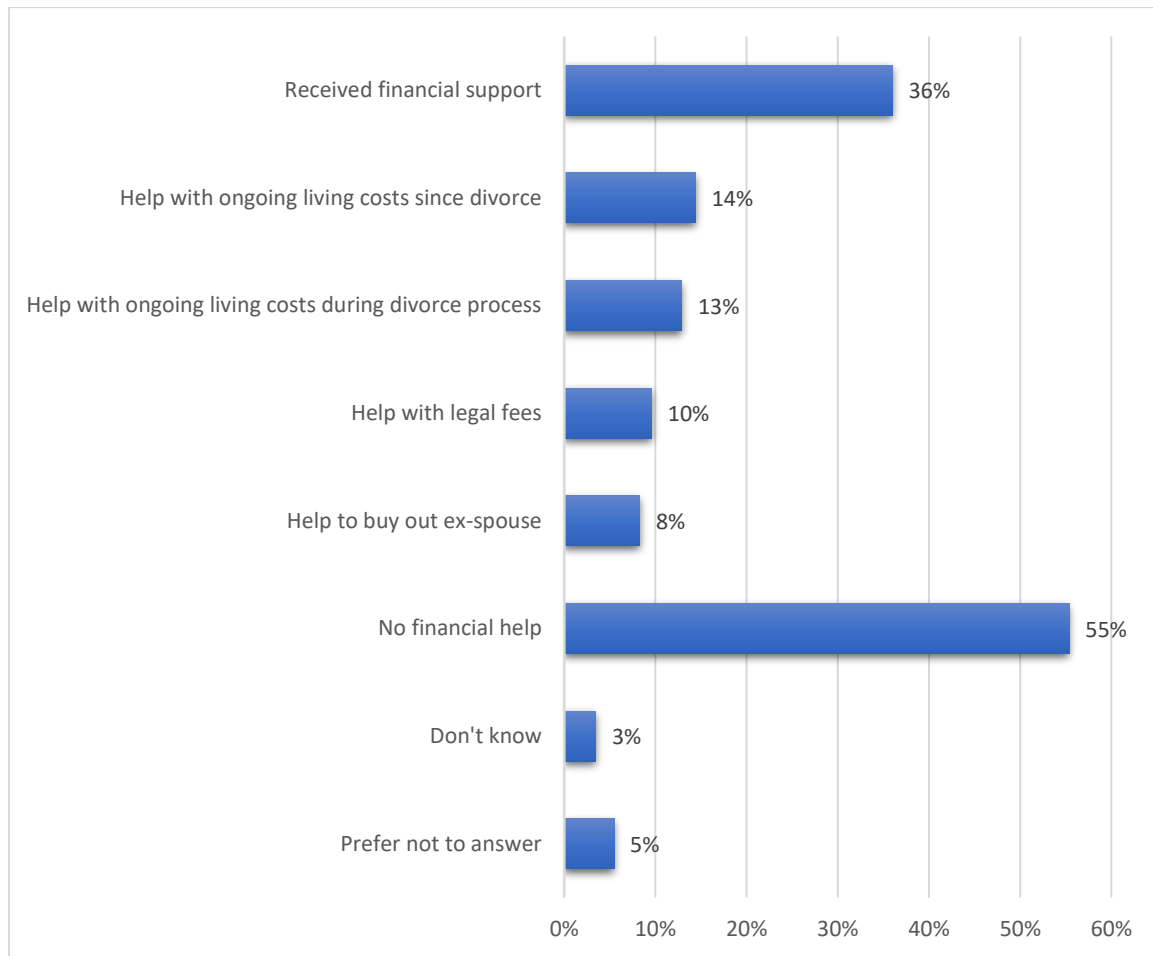
'I just think being the one to have the children ... we'd both chosen to have them but knowing how expensive they are and having to take all that responsibility [...] Maybe if we'd taken a different split he could have ended up with a flat and so there still could have been consistency with the children, like after school they could have hung out there. I didn't need to see him, did I, but I could have then picked them up on the way home from work. It could have been a bit better I think if he'd also thought about the children and what their needs would have been.' (Wife 26)

While the survey did not show significant variation across asset levels in views about fairness, some interview participants who had not been able to afford legal advice expressed a view that their outcomes may have been different with legal input. Wife 3 noted that: 'I still think it was unfair, but I didn't really have the finances to do a real good process'.

11.9 Financial help from family or friends during or since the divorce

Divorcees were asked whether they had received any financial help from family or friends during or since the divorce, with participants able to tick more than one option in response. While just over half of all survey participants (55 per cent) reported that they did not receive any financial help from family or friends during or since the divorce, 36 per cent reported that they had received financial support in some form. A quarter (27 per cent) noted that this was to meet ongoing living costs, either since the divorce or during the divorce process, while one in six (18 per cent) reported that financial help was provided to assist with more specific costs – either help with legal fees (10 per cent) or help to buy out their ex-spouse (8 per cent) (Figure 11.11, below).

Figure 11.11: Whether received financial help from family or friends during or since the divorce³⁷⁷



Base: all divorcees (2,415)

There were no differences in the assistance received by women and men. The interview data provided some examples of this ongoing support and why it was needed. One wife had experienced domestic abuse, and the assistance of her family in the period following her divorce was crucial:

‘I was lucky enough to have the support of my family, so I knew that if the worst happened, they would be able to support me, and they did for the first year. I’ve got myself back on my feet now, but yeah, the first year was awful.’ (Wife 17)

Other interview participants also emphasised how useful they considered this financial support to be as well as providing information on how the debt would be repaid. In the

³⁷⁷ Two per cent said ‘other’.

following example, a husband noted that although he was not yet able to pay back his mother's loan, she was quite relaxed about it and that in turn, this was a relief for him:

'Unfortunately, at the moment I've still not been able to start repaying my mum the money but once I get into full-time employment and I'm able to straighten out my finances around this place then I will be able to say to mum "right, I can now start to repay you the money and I can repay it at X amount over X period." But mum said "oh that'll be as and when" she said "there's no rush for it" and because it's an informal loan from my mum, rather than a formal loan through the bank, I haven't got to worry about interest and missing payments and all that sort of stuff. ... It's a massive relief.' (Husband 7)

11.10 Concluding comments

While only a third of divorcees used some form of legal advice in relation to their finances (Chapter 4), it seems that for those who did so, there is evidence to suggest some difference in outcomes with respect to the home, pensions and ongoing support, compared with divorcees who did not obtain legal advice.

Although it is important to emphasise that no direct causal effect can be proven between legal advice and the outcomes provided by the data, these differences might perhaps be explained by an increased awareness following legal advice, of not only the underlying legal principles but also the re-housing and income needs of the other spouse. Such information may have led to individuals' greater willingness to provide more fairly for their ex-spouse. While some of the data indicates that the provision of legal advice correlates to a slightly more advantageous outcome for those divorcees receiving legal advice (e.g. where the home was sold, the divorcee receiving legal advice was more likely to receive a higher percentage of the proceeds of sale), the full picture concerning legal advice and outcomes is not quite as straightforward. On the contrary, the finding that men were more likely to share their pension if they had received legal advice suggests that perhaps legal advisors may not be focused solely on getting the 'best' deal for their client above everything else, but instead may provide an appraisal based on their knowledge of the arrangements acceptable to the courts and thus within the 'shadow of the law', resulting in a more nuanced approach to asset division.

This links to the next finding, that where arrangements had been finalised through a court order, women tended to do better. In particular, greater attention seems to have been paid to meeting the wife's housing needs: the home was less likely to be sold; if it was sold, the wife was more likely to receive over half the value of the equity; and wives were less likely to receive a half share. This speaks to the fact that, as noted, lawyers advising clients may have one eye to the realistic range of decisions that courts are likely to make, with arrangements failing to have regard to the wife's needs less likely to be approved by the court unless they can be justified as fair given the couple's individual circumstances. This is a significant finding because it reveals the monitoring and supervisory role of the court which protects individual divorcees from potentially unfair financial and property arrangements. The court therefore appears to act as a tempering restraint on applications made to it.

Since the cuts to legal aid as a consequence of LASPO, the government's focus has been on encouraging couples to use mediation rather than the courts or lawyers in the expectation that this would provide families with 'an affordable, appropriate and effective alternative to court'.³⁷⁸ While this aim is laudable, a variety of concerns have been raised about the appropriateness of mediation for all couples who separate or divorce. Our data also provides a warning in response to the government's suggested aim to make mediation compulsory before any private family law court application. The number of mediated agreements that did not turn out as expected was much higher than arrangements agreed by the couples themselves or arrangements negotiated via solicitors. This raises the question whether, if parties feel pushed into mediation where it is not appropriate, this is likely to assist them in reaching outcomes about which they are happy and which work for them in the long-term?

Much attention is devoted to the perceived problems with the current law and the implications of this for divorcees' own arrangements³⁷⁹ – leading to the question whether divorcees consider the outcomes that they have reached to be fair. The findings show that in reflecting upon their financial and property arrangements, close to two thirds of divorcees who had a full arrangement considered that their financial and property outcome was indeed fair. It therefore seems that if calls for future reform of the law are based on claims that a

³⁷⁸ Ministry of Justice, (2023) Supporting earlier resolution of private family law arrangements: A consultation on resolving private family disputes earlier through family mediation. CP 824, p3. Available from: https://consult.justice.gov.uk/digital-communications/private-family-law-consultation/supporting_documents/supportingearlierresolutionofprivatefamilylawarrangementsconsultationweb.pdf [Accessed July 2023].

³⁷⁹ Hansard, HL Deb, vol 791, col 375-404 (11 May 2018).

majority of divorcees consider their financial and property outcomes to be unfair, this would be misleading based on the data examined here.

Finally, one of the findings in this chapter highlights how many divorcees were reliant on family and friends for financial support either during their divorce or in the period following it. While just over half of all survey participants reported that they did not receive any financial help from family or friends during or since the divorce, a third reported that they had received financial help in some form. This 'silent support' for divorcees, whether it be in paying living costs during the period of the break-up or a specific amount of money to pay for legal advice was an important factor in determining 'how things worked out' for these divorcees.

Having explored how things worked out for divorcing couples once they had come to an overall arrangement or 'went their separate ways', we turn in the final chapter to our general conclusions and key implications for policymakers.

Chapter 12: Fair Shares? The road to independent living after divorce

12.1 Introduction

Divorce is a key moment in a couple's life. The division of their property and finances will have a knock-on effect for many years. For example, where a wife forgoes any of her husband's pension in order to stay in the former matrimonial home, the potential lack of income that she will receive in retirement may result in a lower income level in later years and potential vulnerabilities through lack of financial security. Husbands may find themselves struggling to rehouse themselves and having to downsize because their share in the home has gone to their ex-wife. The children of divorcing parents may experience disruption through having to move out of the family home, possibly having to change schools and leave friends and relatives behind. They will have to adjust to life with parents who no longer live together and who may struggle to support them at the standard of living they were used to before. It is therefore important to understand the decisions divorcees make, how and why they make them, how these decisions work out, and whether they produce fair outcomes, before one can form views on how the current law might be reformed.

This first nationally representative study of the financial arrangements made by divorcing couples sought to do this by answering three key questions: what arrangements are made, how are they arrived at and what are the outcomes in the short term for divorcing couples and their children? We were particularly interested to discover what happens to the majority of divorcees (over 60 per cent) who do not use the courts to settle these arrangements. As a result, a picture of the 'everyday divorce', as one of our team described it over a decade ago,³⁸⁰ could be produced in order to act as a corrective to the cases often involving extraordinary wealth which make up much of the content of financial remedies case law, and the interest of the mass media.

Our survey data, based on responses from 2,415 participants who had divorced within the past five years, together with data from interviews with 53 divorcees, has shed light on such divorces, while also adding to the earlier research discussed in Chapter 1. In this chapter, we evaluate how far the current legal regime based on the Matrimonial Causes Act 1973 secures 'fair shares' for divorcees and equips them to start their journey on the road to

³⁸⁰ E Hitchings, 'The impact of recent ancillary relief jurisprudence in the 'everyday' ancillary relief case' (2010) 22 CFLQ 93.

independent living. We then consider their implications in the context of recent reform proposals with a view to assisting those tasked with the reform of policy and practice.

12.2 Chapter outline

This chapter covers:

- Section 12.3: The ‘everyday’ divorce
- Section 12.4: The importance of divorcees’ attitudes and objectives
- Section 12.5: Key issues for reformers
- Section 12.6: The role of the financial remedies’ jurisdiction

12.3 The ‘everyday’ divorce

The multifaceted picture set out in previous chapters of the arrangements our divorcees made is, in part, a product of the fact that the current financial remedies regime in England and Wales is highly discretionary and enables a very wide range of solutions to be arrived at to meet the individual parties’ needs and circumstances. There are relatively few constraints imposed by the law on the terms of settlements that divorcees may reach or judges may decide.³⁸¹ Although legal finality can only be achieved by way of a court order, couples are not obliged to obtain one, and as we have seen, many do not. This means that they have a free hand to shape outcomes as they wish, with the risk that the stronger party in the relationship may determine the arrangements made. Nonetheless, the situation is not chaotic nor a free-for-all. We found there were some common patterns amongst types of divorcing couples as well as common objectives and common decisions that divorcees took to arrive at arrangements that would fit their situation.

12.3.1 The extent of limited wealth amongst divorcees

It is important to recognise that that situation was generally one of constrained financial circumstances. The majority of the divorcing population were very far from being well-off before their divorce, and women, as one would expect, tended to have lower incomes and (hence) lower value pension pots than men. Although two thirds of divorcees had been living in owner-occupied matrimonial homes, once mortgages were taken into account, a third had homes with an equity worth less than £100,000 and only seven per cent reported an equity

³⁸¹ The powers and discretion are not unlimited, of course: for details, see N Lowe et al, *Bromley’s Family Law* (12th edn, Oxford UP, 2021), Chapters 8, 9.

above £500,000. Nearly a third of divorcees were in rented properties, the majority in private tenancies, with the consequential insecurity of tenure that accompanies these.

Few divorcees had much by way of other assets or savings, with nearly a third saying that they had none, other than personal possessions. Two thirds of divorcees had total net assets (*including* any equity in the home *and* both spouses' pensions) worth under £500,000, with a median value of just £135,000. Unsurprisingly, nearly a fifth of survey participants said they had found things difficult or very difficult financially during the marriage, and a further fifth had been 'just getting by'.

Two thirds of divorcees had children, and over half had children of dependent age. The majority of parents reported that children were living with their mothers at the time of divorce, so that childcare responsibilities were falling primarily on divorced wives, potentially limiting their earning capacity and future pension contributions. Importantly, a third had children who were older (including a quarter with both dependent and older children), and the large majority of such parents continued to provide support to these children, classed by the law as 'non-dependents'.

For these 'everyday divorcees', the breakdown of the marriage presented a severe challenge as they sought to reorganise and adjust their finances to their new post-marital situation. The vast majority constituted what the law describes as 'needs' cases,³⁸² where the available resources of the parties, including earning capacity and assets, are at best able to meet core requirements for housing and future support. Almost always, they do not stretch sufficiently to prevent a diminution in living standards, at least for a time, and the more vulnerable financial position of women leaves them more likely to be worse off than men, for longer.

12.3.2 Preference for a clean break between the spouses

The study confirmed earlier research findings discussed in Chapter 1 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 and a further one in five wanted to have no ongoing contact with their ex at all. This was less of a priority for parents with children, with over a quarter of these divorcees putting stability for their children as their most important concern, but nonetheless, the practical reality was that most of these divorcees sought and achieved

³⁸² See *Miller v Miller*; *McFarlane v McFarlane* [2006] UKHL 24, discussed in Chapter 1, section 1.4.2.

a clean financial break from each other, notwithstanding any ongoing financial transfers (and the ongoing parental relationship) in respect of their children.

Only a fifth of divorcees had a spousal maintenance arrangement at the time of their divorce, and this had dropped to 14 per cent by the time of the survey, up to five years later. Spousal maintenance was no 'meal ticket for life': nearly all maintenance was time-limited with only seven per cent of arrangements being open-ended. The duration of payment was generally tied to a point at which the recipient could go back to full-time work because of children ceasing to need daytime care, or the payer was going to retire. Where terms of years were specified, these varied evenly between periods of under three years, up to five years, over five years, or over ten years, suggesting that imposing a short time limit would not be suitable for all divorcees. The amounts of spousal maintenance were generally low, with only a fifth for more than £600 a month. In most cases, then, maintenance was paid to 'help out' and supplement the recipient's income rather than fully to 'maintain' them by meeting all their needs on an ongoing basis.

12.3.3 Equal sharing of assets not the norm

Where the matrimonial home had been owned, the most common decision (in nearly half of cases) was to transfer ownership to one of the spouses. Although a compensating payment was made where it could be afforded, limited resources meant that this was not always possible – men were less likely to receive such a payment than women, reflecting the more limited financial resources available to women. It is not surprising then, that 'compensation' in those cases tended to be in the form of 'offsetting' the value of the equity against the pension, or forgoing maintenance. Around three in ten divorcees sold the home. While dividing the equity in half was more common than when the house was transferred, it was still only chosen in a third of cases, with women tending to receive the larger share to counteract their more limited borrowing capacity due to their lower earnings.

For divorcees in the rented sector, tenancies were retained in just under half of cases, with this being much more likely for those in social housing than those in private rentals. In the social housing sector, where families with children are favoured, it was much more likely for women with children to have been the sole tenant anyway, and to retain that tenancy as primary carer after the divorce.

Pension sharing was uncommon where the pension was not yet being drawn with just one in ten divorcees reporting an arrangement. But access to the income from one spouse's

pension was much more common where one or both spouses was already in receipt of payments. Amongst divorcees aged 60 and over drawing pensions, one in five reported that some money transfers were taking place from a spouse's pension. In both cases, it was much more common for a man's pension to be shared than a woman's. In the former category, reflecting their higher pension wealth, men were much more likely than women to report that their pension was being shared. Only around a fifth of divorcees said they were sharing the pension 50:50; and a sharing arrangement was more likely to be reported where there were children. Our qualitative data confirmed that offsetting the value of the pension against other assets, most commonly the former matrimonial home, was the preferred way of dealing with it for many couples, reflecting a strong belief that a pension belongs to the person who has built it up through their earnings.

Only three in ten divorcees reported that their other assets (e.g. any savings and investments as well as physical assets such as cars) were shared equally, with this being more common where there were no dependent children. Our interviews indicated that couples generally allocated assets according to two main criteria: who was the owner of the property, and who could make best use of the asset or most needed it? One in ten divorcees said they received nothing from the value of any such assets on the divorce, and a quarter less than £10,000. Only a quarter received £50,000 or more from these assets. While it was more common for women to report receiving more than half of these assets, there was little difference in what men and women received in cash terms.

A similar pattern was observed for debt allocation, although men were more likely to report taking on a larger share of debt than women. This was reflective of their generally higher indebtedness in the first place, but also their greater ability to pay off debts from higher incomes. But both wives and husbands told us in interviews that they had experienced being saddled with significant debts after the divorce which their ex had either walked away from or could not cover themselves.

12.3.4 Child maintenance heavily reliant on the goodwill of the payer

Two in five divorcees with dependent children said there was currently no arrangement for the payment of child maintenance in place, with most of these saying there was no prospect of one being set up. Of those with an arrangement, just under half had a 'family-based arrangement', i.e. a private, non-binding agreement with the ex-spouse.³⁸³ Most of the rest

³⁸³ See Chapter 1, section 1.3.2.

were using the Child Maintenance Service, mainly via Direct Pay. Just nine per cent of parents reported a binding arrangement backed up (in theory) by the coercive power of the state – six per cent were using the CMS Collect and Pay system, and three per cent had a court order. This reliance on private arrangements demonstrates the extent to which the state has withdrawn from the position, taken at the time the Child Support Act 1991 was enacted, that it should proactively seek to enforce the legal duty on non-resident parents to support their dependent children.

Shared care arrangements, lack of affordability and unwillingness to pay were the main reasons for not having an arrangement. However, 15 per cent of parents said there was no child maintenance arrangement because they had a 'clean break' settlement with their ex, even though the law does not recognise the ability of a parent to offset child maintenance against the division of assets.³⁸⁴

The amount of child maintenance payable under the arrangements couples had made was related to the level of income and wealth during the marriage, and so, reflecting the generally low level of these noted above, amounts of child maintenance were similarly low. Encouragingly, however, a large majority of parents reported that payments were always made in full, especially for those with family-based arrangements. Unfortunately, but not unexpectedly, given that those who can agree arrangements between themselves will do so, compliance was reported to be significantly lower for those using Direct Pay.

12.3.5 Parents' support of children of 'non-dependent' age

An important finding concerned the extent of support for older children, who are not yet financially independent even though the law may treat them as such (in the absence of a court order for maintenance to be paid). Only 13 per cent of parents of such children said that they were *not* being provided with financial support at the point of the divorce, a figure rising to just under a quarter at the time of the survey, reflecting older children becoming independent in the meantime. Mothers and fathers were equally likely to be providing support, but mothers were more likely to have the children living with them, and fathers to be providing financial support for their studies or in other ways.

³⁸⁴ Crozier v Crozier [1994] 1 FLR 126.

12.3.6 *Unequal outcomes*

When all assets, including the home and pensions, net of debts, were taken together, there was no significant difference in the proportion of assets received by men or women. The difference in their underlying financial security lay in the nature of the assets they were receiving. Focusing on the two main assets only – the home and any pensions that each spouse had – it was generally the case that women received more by way of the value of the home, and men by way of the combined pension wealth.

Since most divorcees came out of the marriage in a worse financial position than they enjoyed during it, a key question that arises is how far did they manage to make up this loss in the years after the divorce? As the participants in our study had divorced up to five years before taking part, we were able to capture data on how they had got on since their divorce.

At the time of the survey, women, and in particular mothers with dependent children, were, on average, worse off financially than men, with the exception being younger women under 50 who had not had children with their ex-spouse. 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, for the over 50 group of divorcees without children, women's incomes were significantly lower than men's. Women in this group were also more likely to be claiming both means tested and disability benefits. Given the older demographic of this group, with around only half in paid work, the incomes of both women and men were understandably lower than those of other divorcees due to the proportion in retirement, but it is noticeable how women's income levels were particularly low. This can be contrasted with women and men under 50, who, on the same objective measures such as whether they were in paid work, the level of household income and benefit receipt, had similar living standards to each other at the time of the survey.

We know from large scale studies that re-partnering is a way of restoring one's financial position after divorce and can be particularly important for women.³⁸⁵ We found that about a third of parents of dependent children had re-partnered by the time of the survey. But the greater benefit that men acquire from re-partnering was also apparent: men enjoyed a gender premium in re-partnering, being more likely to move into or remain in the higher income bands than women.

³⁸⁵ See Fisher and Low, discussed in Chapter 1, section 1.6.1.

The overall inferior position of women emerging from the everyday divorce is hardly a new finding. What our study has done is to provide further depth and detail to what was already known. We have shown that the arrangements couples make may look roughly 'fair' and 'equal' to many of them, in terms of how assets are allocated in percentage terms or according to ideas of ownership, but the reality is that, by husbands keeping their (greater) pension wealth, they emerge in a stronger position than women. The study confirms earlier research that, in the everyday divorce, women were waiving their future financial security in return for current housing stability, particularly if they were still caring for children. That leaves wives, other than those who are younger and do not have children, in an inferior position from which to start their journey to financial independence, and this legacy can be long-lasting.

12.4 The importance of divorcees' attitudes and objectives

What divorcees wanted from a financial arrangement was coloured by their circumstances and experiences, and by their attitudes to both the marriage and the divorce itself. Given the variety of arrangements that can be made under the current law, getting a sense of divorcees' attitudes towards the marriage, their views of their ex, and their approach to the divorce, can help illuminate why they settled for different outcomes.

12.4.1 *A typology of divorcees*

Drawing in particular on the qualitative data from our interviews, it was possible to identify four different 'types' of divorcee according to the attitudes they evinced towards their marriage and their ex-spouse and their patterns of behaviour during the marriage. We term them as 'housemates', 'parents', 'partners' and 'unequals'. These groupings are not listed in order of prevalence amongst our sample, they are not intended to be predictors of particular arrangements being made, and individual divorcees might well fall into different categories from their ex or display elements of belonging to more than one type. But the typology helps to explain why different couples in similar factual circumstances nonetheless might make different choices regarding their financial arrangements.

'Housemates'

In this category were divorcees who took an individualistic view of their position within the relationship. They were likely to have kept their finances separate during the marriage, perhaps setting up quite complicated arrangements to transfer money into a joint

housekeeping account or to decide which spouse would cover particular household expenses such as the mortgage or utility bills. They may have kept their earnings, savings and expenditure 'private' so that the other was not aware of what they had. They were clear (in their own minds at least) about which spouse owned or was responsible for which asset or debt. Their home may have been in their sole name, either as sole owner or tenant, from before the marriage, and they would see it as still 'theirs' at the end.

Such divorcees were more likely to divide assets according to who was the legal owner or who had acquired them or used them more. They may well have been younger divorcees, yet to have children, who could more easily 'walk away' and start afresh, but they might also be older, possibly with experience of a previous divorce, who would be keen to protect their position (and that of any children from a former relationship). They would be prime candidates to make a pre-nuptial agreement or at least to have sat down and thought about what might happen should the marriage end in divorce. But they might equally just view the relationship as one where the fact of marriage did not fundamentally alter their view of themselves as having their 'own rights' which they continued to enjoy regardless of their change of status. Rather like housemates moving on, they had shared a home but when it came to disengaging, they took back what was theirs, and split anything clearly regarded as 'joint', either 50:50 or in shares proportionate to their contributions. They would be keen to secure a clean break financial settlement and might have limited interest in what would happen to their ex in the future.

'... he knew what he came in with prior to marrying me ... "This was my family home, if anything happened down the line there wouldn't be any financial commitment for you to intervene in my property basically." That was always determined from the get-go that it was my property. ... We had separate bank accounts; we didn't have a joint bank account. All our finances were separate. He had his, I had mine. That's just how it was really the relationship was done with so we just both wanted to move on with our lives and not be kind of lingering in the past, so yeah, we just wanted to move forward.... I didn't want to share my finances, my financial gain, even though it's a person that I married ...'

Wife 4, second divorce, keen to preserve her home and assets this time round and protect the interests of child from first marriage.

'Parents'

We have noted that having children, especially dependent children, was a significant factor in determining the types of arrangement couples made. This was also reflected in the attitudes expressed by interviewees who saw resolving the issues concerning their children as the most important objective they needed to accomplish. For these divorcees, the lasting legacy of the marriage was their children, and their major concern, having decided who would be the children's primary carer or how care would be shared, was to determine what should happen to the home as a consequence.

While the marriage might be at an end, divorcees recognised that their identity as 'parents' would continue, and that this would mean ongoing contact and communication with their ex. For those parents – more likely to be fathers – who were not going to be primary carers, preserving their good relationship with their children was of huge importance. That might mean 'compromising' over what would happen to the home, such as agreeing to a transfer rather than a sale and forgoing a share of the equity value, in order to provide stability for the children in the future. They would also be willing to agree to a 'family-based' arrangement to pay child maintenance.

For women as primary carers, ensuring a stable home for the children to continue to grow up in, ideally remaining in the former matrimonial home, was the major motivation which took priority over their own longer-term financial position. Hence, they were willing to offset the home (or more of its equity value, if it could not be preserved) against the other spouse's pension. For men, whilst ideally, they might want a share of the matrimonial home, if this was not possible (at least in the short term) (re-)housing their children was the priority, and as a consequence, they were prepared to compromise, with a willingness to offset the house's value against their pension.

While a total 'clean break' was not on the cards for these parents, a financial one, as between the couple themselves, was still likely to be seen as desirable. With limited incomes, non-resident parents, mainly men, would prefer to provide ongoing support for their children than their ex, and thus if spousal maintenance was to be paid (or if sale of the home was to be postponed), it was very likely to be geared to the duration of the children's dependency and the wife's ability to increase her hours or return to full-time working.

'... for me it was all about ensuring that the kids had the house to look at you know, it was quite a pragmatic approach for me, I wasn't going to be that alpha male that wanted to ruin everybody's lives just to make sure I got my 10p's worth and all the rest of it, and I just, because I've seen too many people do that and I've seen too many guys who have done that and have come out at the end of it and they're still bitter and twisted, right, and they have fragmented relationships with their kids and it's just you know, you don't want to do that.'

Husband 14: four children, house transferred to ex-wife; paying child maintenance and school fees, with occasional financial help to ex-wife

'Partners'

A third group of divorcees were those who viewed their marriage as having been a joint enterprise in which each had invested, both emotionally and financially. They would be likely to have played an equal part in major decision-making during the marriage, and to have favoured joint money management so that resources would be likely to be pooled, or, if one took charge of the money, both would be generally aware of and involved in the accumulation and disposition of their wealth. Assets acquired during the marriage would be seen as joint products of their endeavour and become 'mingled' over time. While the spouses might well make unequal financial contributions during the marriage, a 'partner' divorcee was likely to recognise that caring for the children and the home was an equally valuable contribution which needed to be recognised in the divorce.

It does not follow that, because their view of marriage was as a partnership, they would more readily decide on a simple equal sharing of the assets. This would depend upon the factual circumstances they found themselves in. For those with children, an unequal split might be seen as appropriate in order to compensate for one spouse's greater past or future caring responsibilities, or simply because there would not be enough wealth to meet the needs of both equally. Similarly, a clean break might be desired if both spouses could manage sufficiently on the resources available (including those of a new partner), but ongoing spousal support, at least for a time, might be given by the spouse with the higher income, to help out the other. Such divorcees would probably be more open to pension-sharing, if the marriage had been a long one, or the parties were past or near retirement age.

'...When we first got together, my wife was also a fairly good money earner and then obviously when we had children she stopped working and was looking after the children and I think that is a job in itself. So, I think that whilst I'm bringing in finances, she's bringing up children and keeping a home together and I don't think you can really put a price on that. So, 50:50 was how we thought it should be and the fact that on a couple of occasions she ended up with slightly more, I actually think she was entitled to it, certainly for putting up with me.'

Husband 10: two children; home sold and new house purchased for ex-wife and children; child and spousal maintenance paid. When wife re-partnered, that house sold and he received slightly less than 50 per cent of its value.

'Unequals'

The final category were those divorcees whose marriages had clearly been unequal relationships, with a dominant spouse who either exercised control over the finances or simply put their own interests and preferences first and would not recognise the needs or claims of the other (or their children). As well as obvious examples of such unequal relationships which involved domestic abuse, including coercive control and economic abuse, a divorcee could also be faced with a domineering or selfish spouse, who had never compromised during the marriage. Such divorcees were likely to find themselves unable to negotiate from an equal position, let alone one of strength, when it came to sorting out the divorce.

But this category was not limited to such clear-cut examples of unequal bargaining power. There were also cases where one spouse might make it clear from the outset that the marriage would operate according to certain ground rules that they favoured, with the other expected to like it or lump it. And there were others still where the spouse simply would not engage with the other, either during the marriage or the divorce. This left the other having to take responsibility for everything, picking up the pieces and making good the losses or problems caused by the spouse's self-centredness.

This group were more likely to divide assets unequally, with the more dominant spouse receiving a greater share, and the less dominant spouse subject to a range of different 'uneven' outcomes depending on their personal circumstances. Even where a 50:50 split could have appeared superficially 'fair' in such cases, this option might have been pursued despite one spouse having greater ongoing needs, because these needs or vulnerabilities were ignored or sidelined by the more dominant spouse. Alternatively, and as outlined in the

example below, a final arrangement may not even have been a possibility due to the imbalanced relationship.

‘... Nothing was really sorted out; I was just told what to do and that I had to do it. So, nothing really was ever sorted out. It was just kind of, I left, just filled in the papers I was told to fill in, and that was the end of it really. ... And he was quite a controlling man, my husband, as well so it just wasn’t a very easy... So, I just kind of had to walk away with nothing.... When we spoke he would only speak about what he wanted to speak about. If I wanted to ask questions or I wanted to... he just flat out refused. He would just have his what he was going to say and that was the end of it and he’d just leave. He’d just walk away. He just wouldn’t have a conversation. It was never a conversation; it was him telling me what was going to happen and the second I would ask a question that he didn’t want to answer he’d just refuse to answer it.’

Wife 21: no children; returned to her own property which had been rented out during marriage; discovered ex had spent their joint savings; ex threatened to seek share of her pension if she pursued him for share of the matrimonial home.

12.4.2 ‘Fault’

Although divorces are no longer granted on the basis of matrimonial fault,³⁸⁶ it does not follow that divorcees no longer assign blame to each other, or that they are immune to feelings of rejection or guilt, which feed through into how they handle the wider aspects of becoming divorced. We collected information on what divorcees felt were the reasons for the failure of the marriage,³⁸⁷ and while 43 per cent reported that they and their spouse had grown apart, around a third mentioned an affair, abuse or controlling behaviour, or other forms of ‘behaviour’.

We used exploratory regression analysis to see when fault or blame might have been a significant factor in a particular decision being made. Interestingly, a focus on the other spouse’s fault appears to have been linked both with a greater likelihood of using a lawyer to sort things out, *and* a refusal or failure to make an arrangement rather than to reach a particular outcome. We found, for example, that a transfer of the former matrimonial home

³⁸⁶ All participants in our sample divorced under the previous legal regime. This would have been based on one of the five facts which included some fault-based categories.

³⁸⁷ See Chapter 5, figure 5.2. Divorcees could give more than one reason and focused on reported reasons for the split rather than selection of one of the three fault ‘facts’ under the old divorce law.

was *less* likely to have occurred where divorcees had cited fault as the reason for the divorce than where they had not, and such divorcees were also more likely to have declined to agree to either a transfer *or* a sale at the point of the divorce. Indeed, we also found that divorcees who had failed to make an arrangement or were still trying to do so at the time of the survey were twice as likely to consider fault as something to take into account, as those who had reached an arrangement.

It does not follow that in all such cases, an aggrieved divorcee was stubbornly holding out for a better deal from the 'guilty' spouse. An 'unequal' divorcee in an imbalanced relationship with their ex, possibly a victim of abuse, might be unable to get the other to compromise or agree to any arrangement at all: that other's matrimonial misconduct could well be a cogent factor in the divorcee's approach. Thus, we also found that divorcees mentioning fault as the reason for the divorce were more likely to use lawyers or legal services companies than those who did not. They were also more likely to pursue more formal avenues for resolving matters, with a fifth negotiating their arrangement via lawyers, compared with 13 per cent of those not mentioning fault, and eight per cent obtaining a final order from a judge, compared with just three per cent who did not. This suggests that divorcees who focused on fault may have (legitimately) felt a greater need for support and assistance rather than try to handle things by themselves. On the other hand, a focus on fault could also reflect that a divorcee did not feel ready to 'move on' and forgive and forget by making a final arrangement. We discuss such 'readiness' to reach an arrangement further in section 12.5.3 below.

12.4.3 *Fairness*

As Lord Nicholls said in *White v White*:

'... everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder ...'.³⁸⁸

Our participants certainly held differing views of fairness. For some, equal sharing was seen as the most obvious 'fair' arrangement; for others, getting back what they had put into the marriage was their benchmark; while others still considered that *unequal* shares would be fairer because these would recognise the particular extra contribution or sacrifice that one spouse had made to the marriage (or would make in the future through caring

³⁸⁸ [2001] 1 AC 596, HL, at 599.

responsibilities). This may explain why 50:50 sharing was by no means the predominant mode of sharing assets. Rather like the notion of fault, equal shares might start out as a factor in divorcees' thinking, but be superseded by other concerns, such as ensuring stability for children or leaving the relationship debt-free. On the other hand, it was also seen as the easiest way of resolving matters, and this might be important to couples wishing to avoid difficult negotiations or to preserve an amicable relationship for the sake of the children.

Only a third of divorcees reported that 'fairness' had been a key objective for them in reaching an arrangement. When asked to reflect on whether what had happened had in fact been fair, it is interesting to see that more divorcees who had reached a full arrangement, felt that the arrangement they had made was very or moderately fair than those who had only reached a partial arrangement, who presumably were feeling uncertain about how things would turn out and what their total 'package' of arrangements would look like. However, it is also noteworthy that this was truer of divorcees without dependent children, reflecting, no doubt, that they had found it easier to disengage than those with the ties created by having children. By contrast, those divorcees who had sorted everything out were more likely to view the arrangement as fair if they were older or had children. This might in turn reflect a greater sense that all relevant issues had been fully dealt with and that due weight had been given to both spouses' 'contributions' to the marriage.

12.4.4 Domestic abuse

Abusive and controlling behaviour on the part of one of the spouses was reported by three in ten (29 per cent) survey participants as one of the reasons for why they split up, with women (41 per cent) being more likely to do so than men (16 per cent). Emotional and economic abuse were reported more frequently than physical abuse, and all forms of domestic abuse had an impact on how financial arrangements were made, in various ways. First, a tactic seen in the interview data was the accrual of debt in a victim's name, especially without their knowledge. This could have long-lasting and damaging consequences for the victim in getting onto the path to independent living. Secondly, even divorcees who had been the main breadwinners could feel intimidated and subject to control by their spouse during the marriage, which fed through into a sense of weakness or resignation when it came to trying to settle arrangements on the divorce. Interviewees who had experienced coercive control reported feeling unable to negotiate, still less demand, shares of the assets or even child maintenance from their ex, and feeling that they had no option than to take on responsibility for debts that their ex had incurred. Thirdly, such divorcees were strongly motivated to achieve a complete clean break – not just a financial one – from the abuser. Interviewees

reported 'giving up' or walking away from trying to get a (better) deal for the sake of their children and their own mental health and wellbeing. The issue of finances therefore became a lower priority for victims of domestic abuse, with their focus, instead, on keeping themselves and their child(ren) safe and wanting to 'move on'.

For those victims and survivors of abuse who did persevere in trying to get a financial arrangement, it is unsurprising that they were more likely to make use of legal assistance, and more formal routes to an outcome, being more likely to feel the need for professional support, and less able to communicate or negotiate with their ex. Nearly one in six (18 per cent) of those who had used a lawyer throughout the divorce process gave domestic abuse as a reason for doing so, again with women (26 per cent) more likely to mention this than men (seven per cent). Settling through lawyers rather than by themselves was associated with a greater likelihood of mentioning abuse or other 'fault' as the reason for the divorce (21 per cent) and having an adjudicated outcome (eight per cent), compared to those who did not mention fault (13 per cent and three per cent respectively). A similar pattern was observed in relation to child maintenance, with survivors turning to the Child Maintenance Service rather than being able to make family-based arrangements, because of economic abuse in the form of the ex-spouse withholding or being inconsistent over payments in order to exert continuing control over them.

The significance of domestic abuse, including controlling behaviour, has received greater recognition in relation to disputes over child arrangements than financial matters,³⁸⁹ but our study shows that it was an important factor in cases where divorcees had 'settled' for poor deals, or even no deals, reflecting their weak bargaining power and the continuing control that the dominant party exerted over them even years after separation and divorce.

12.5 Key issues for reformers

12.5.1 *Divorcees' lack of financial and legal knowledge*

A significant proportion of divorcees did not appear to know much about their own finances and even less about those of their ex-spouse. About one in ten homeowners with a mortgage did not know (or at least could not recall) what the equity in their home had been

³⁸⁹ But see J Crisp et al, 'Domestic Abuse in Financial Remedy Cases' (2022) *Financial Remedies Journal* 123-126; O Piercy and A Mehta, 'Is It Time to Consign the 'Gasp' Factor to the History Books?' (2023) *Financial Remedies Journal*, blog post, 18 October 2023, <https://financialremediesjournal.com/>

at the time of their divorce, a third were unaware of the value of their own pension pot and a quarter did not know whether their ex even had a pension. Women were more likely not to know these details than men. Nearly a quarter of divorcees with an employer pension did not know whether it was a defined benefit or defined contribution pension. Given the complexity of pensions, and the fact that, for the majority of divorcees, retirement was some way off, this is unsurprising, but it is concerning. Even if it was unlikely that a pension-sharing arrangement would be suitable in their situation (perhaps because of the small size of the pot), divorcees may have missed out by not appreciating that the combined value of all their assets might point towards a different proportionate split to the one that they arrived at.

Although divorcees (just under half of those in the survey) who had jointly managed their money during the marriage were more likely to say that they felt they had a good understanding of their ex's finances than those (around a third) whose spouse gave them housekeeping money or an allowance, there was no clear link between who had notional 'control' and their degree of knowledge about finances. For example, those using joint accounts might still leave it up to one spouse to do the active management of them, and some divorcees had hidden their true level of earnings and assets (and indebtedness) from their spouse. Many divorcees, therefore, were in a weak position to challenge their spouse's assertions regarding their levels of wealth and what was available for distribution.

There have been many calls for better access to legal information regarding family matters since the withdrawal of most legal aid in 2013, and to restore and promote early access to advice which could help steer couples away from contentious litigation towards non-court dispute resolution.³⁹⁰ The impact of the lack of such access was clear amongst divorcees. Apart from those who had already been through a divorce and could use their own experience (not always particularly wisely) as a guide to what to do, divorcees' ignorance about financial matters was accompanied by similar ignorance about the law.

For divorcees seeking some basic information before using a lawyer, or instead of doing so, government websites appear to have been the most commonly used source of information. But beyond these, which might be regarded as more 'authoritative', divorcees made use of a variety of other sources – other websites, friends and family, or sometimes Citizens' Advice. They had mixed views, and mixed experiences, of how helpful such sources were. It is

³⁹⁰ See for example, Justice, Improving Access to Justice for Separating Families, 2022, <https://files.justice.org.uk/wp-content/uploads/2022/10/12154403/JUSTICE-Improving-Access-to-Justice-for-Separating-Families-October-2022.pdf>

concerning that more than one in ten divorcees said they had sought *no* information or advice about their divorce.

We found confusion about what a solicitor is and what other forms of legal support, such as legal services companies, are available and what they can do. Some divorcees also appeared confused regarding what a pre-nuptial agreement is, thinking, for example, that a declaration of trust over the matrimonial home or an informal understanding about what would happen if the couple divorced constituted such an agreement. There was confusion between different forms of dispute resolution, and there were misunderstandings regarding what mediation is, and is for, and about the effects of a consent order. Thus, most divorcees had limited financial or legal ‘intellectual capital’ on which to draw when it came to deciding how to negotiate, what to hold out for, or simply what needed to be done, in arriving at an arrangement.

Public information campaigns aimed at raising awareness of particular issues within the family law sphere have had limited impact³⁹¹ and improving the general level of financial literacy amongst the population goes well beyond the remit of family law reform. However, these findings suggest that consideration should be given to whether enhancing access to authoritative information and individualised advice would help reduce the extent to which divorcees may be giving up opportunities to secure better outcomes due to their ignorance or fear of dealing with financial and legal complexity.³⁹² In the absence of funding for individualised legal advice, the focus needs to be on where scarce resources can be spent and more appropriate modes of delivery developed, to provide vital guidance and legal information for those not accessing legal advice. With the data suggesting that authoritative websites are a key source of information for divorcing couples, it is therefore extremely regrettable that the government has reduced, rather than expanded, its funding for third sector legal information, advice and public education services which are well-placed to fill the gap.³⁹³

³⁹¹ See, e.g. A Barlow et al, *The Living Together Campaign: An investigation of its impact on legally aware cohabitants* (2007, MoJ).

³⁹² Calls for such services have been made by many active in family justice policy, including in the House of Commons Justice Select Committee’s response to the government’s consultation on supporting earlier resolution of private family law arrangements:

<https://committees.parliament.uk/publications/40827/documents/199020/default/>

³⁹³ See, for example, Law for Life’s Advice Now website <https://www.advicenow.org.uk/lawforlife>, core funding for which was not renewed by government in 2023.

12.5.2 Use of the family justice system

Two in five divorcees told us they had not made what they viewed as a ‘financial arrangement’ when they divorced. It is important to note that it does not follow that they had done absolutely nothing to sort things out when they separated and had simply walked away from each other (although some interviewees told us their ex had done exactly that). They may well have had little to sort out, and they may only have had debts, but what some appear to have meant was that they took what was ‘theirs’, gave up a tenancy or waited for it to expire for example, and then moved on, making no use of the legal system other than to obtain the divorce itself.³⁹⁴ Unsurprisingly, divorcees who had more assets, higher incomes, or were owner-occupiers, and those who had children, were more likely to come to an arrangement and more likely to make use of lawyers³⁹⁵ during the divorce. Yet only just over half of divorcees said they had done so at all, and only a third in relation to the financial arrangements.

Nearly half of those who had made use of lawyers said they had felt uncomfortable negotiating with their ex or could not discuss things well with them, with women much more likely to feel this than men; a quarter of women (but only seven per cent of men) had used a lawyer because of domestic abuse. So, it is worrying that fear of the cost was a factor for between four and five in ten of the divorcees (both men and women) who did not engage a lawyer, or only did so for parts of the process. ‘Unequal’ divorcees will have been at particular risk of failing to secure the assistance they needed to redress the inequality of bargaining power that they were experiencing with their ex. Not using a lawyer also 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. The use of legal advice was also associated with a greater likelihood that women would receive ongoing support, and where the home was sold, the divorcee receiving legal advice was more likely to receive a higher percentage of the proceeds of sale.

It is not surprising that divorcees would wish to limit the costs of their divorce, and the message that governments have promoted for many years is that going to lawyers is an expensive waste of money. But it is important to note that even those not using lawyers did not escape cost-free from the divorce process. As well as paying for the divorce application itself (if they were the applicant), the cost of which was noted with disfavour by interviewees,

³⁹⁴ For difficulties in interpreting participants’ responses to this issue, see Chapter 4, section 4.3.

³⁹⁵ Or legal services companies.

those who had decided to sell or transfer the former matrimonial home of course incurred further costs in the sale and conveyancing process, land tax, and so on. Yet contrary to the picture that is often presented in the case reports, getting a divorce and sorting out the finances did not necessarily incur major expenditure on legal costs. While there were some examples amongst our interviewees of high costs, seven in ten survey participants using lawyers had costs below £10,000, and just over half (55 per cent) under £5,000. For many couples, legal fees need not be exorbitant, and are likely to be money well spent.

12.5.3 Private ordering and non-court dispute resolution

Private ordering

In civil law jurisdictions, it is common for intending spouses, who do not wish to be bound by whatever is the default matrimonial property regime, to make a binding pre-nuptial agreement setting out the terms that will govern the ownership and allocation of property between them, both during and at the end of the marriage. As noted in Chapter 1 (section 1.4.3), an agreement of this kind regarding arrangements on divorce is presumptively valid and binding in England and Wales, but it is unlikely to be upheld if it makes no provision for the post-divorce needs of the more vulnerable spouse and any children. We also noted in section 1.7 that the Law Commission has recommended that there should be legislation to govern the issue and that those calling for reform have sought to introduce such legislation. No doubt, new legislation on the subject would be helpful to wealthy couples or to spouses anxious to protect their and their children's interests after a previous relationship. However, it would be important that the law was clear on what the 'default' position would be in the absence of such an agreement, and that the wealthier party could not opt out from any duty to meet future needs that the state deemed necessary.³⁹⁶ Yet, based on the findings in our study, it seems unlikely that this would impact on the majority of couples who have limited or average wealth. Apart from confusion over what such an agreement actually is, it seems doubtful that many couples, who are reluctant to spend money on legal services when they do actually divorce, would do so before they marry in order to cater for a risk that they would hope would not affect them.

Non-court dispute resolution

Previous research has emphasised how important it is that both spouses are ready to reach an arrangement if negotiations or other non-court dispute resolution methods are to prove

³⁹⁶ See further below, section 12.5.4.

successful.³⁹⁷ The emotional readiness of both parties – to accept the ending of the marriage, to face up to the need to sort things out, and to determine how far arrangements will involve any ongoing ties – is a matter for each party and is not something that the family justice system can directly influence. In addition, however, divorcees need to know what has to happen to enable them to make an arrangement, and to be in reasonable alignment with each other over what resources are available to them. We have seen that lack of knowledge about financial details, or how the legal system addresses the issue of financial remedies, may leave spouses struggling; better access to information and support could potentially help to deal with this.

Costs ramp up if couples are unable to settle their finances and engage in litigation. The settlement culture of the family justice system provides strong incentives to settle and disincentives to litigate, which were reflected in our study. Over half of the financial arrangements³⁹⁸ divorcees made had been reached by the couple themselves, and a further fifth did so through solicitor negotiations. However, the government's preferred mode of non-court dispute resolution – mediation – was a relatively unpopular avenue to pursue, with only 17 per cent of divorcees saying they had used it, and only 12 per cent reaching agreement by that route. Some divorcees commented unfavourably on the costs of mediation, which they felt had been a waste of money as the mediation had either failed or had simply confirmed the agreement the couple had already arrived at. Furthermore, only 44 per cent of full arrangements made via mediation had worked out as the divorcees expected, compared with 76 per cent for those made via a lawyer or a judge and 90 per cent for full arrangements made by the divorcing couple themselves.

Of course, many participants will have been through the divorce process before the government's mediation voucher scheme came into effect, so it is not possible to know how far this would have boosted uptake. It is, however, important to note that divorcees were much more likely to have attempted mediation if they had engaged with a lawyer: three in ten of these had tried mediation, compared to only one in ten of those who had not. Lawyers therefore remained the best sources to offer advice and encouragement about mediation. Without that signposting and support, levels of understanding about the potential of mediation remained low: many divorcees had not heard of mediation, did not understand

³⁹⁷ E Hitchings et al, *Assembling the Jigsaw Puzzle: Understanding financial settlement on divorce* (2013, University of Bristol), p 86, 150.

³⁹⁸ Note, this excludes those who said they went their separate ways or had nothing to divide, many of whom had divided their assets despite viewing themselves as not having made an arrangement.

what it is, assumed that it is only relevant to disputes about the children, or could not get their ex to agree to it.

This is not to say that mediation would otherwise have been the best option for divorcees who were stuck without a settlement, or with a poor one, or forced into litigation. Our ‘unequal’ divorcees, in difficult relationships with a more powerful spouse, especially those experiencing domestic abuse (including economic abuse), would have struggled to cope with mediation unless, at a minimum, they had had the back-up of legal support, and even then, the undesirability of requiring mediation between couples where there has been abuse is – or should be – well understood.³⁹⁹ The risks of making it mandatory to attempt mediation before being permitted to pursue an application in court, on which the government has consulted,⁴⁰⁰ have been articulated in several responses to the consultation,⁴⁰¹ and appear borne out by our findings, particularly if no greater access to legal advice is to be provided.

Orders by consent

It does not follow that every couple reaching an arrangement through non-court methods of dispute resolution had no wish or need to go to court, for many will have wanted to make sure that their agreement was legally binding and would certainly have been advised to do so if they had legal advice or representation. Half of the financial arrangements divorcees made had been reached by the couple themselves, and half of these were then made into a consent order. Unsurprisingly, of the settlements reached through solicitor negotiation, around three quarters were then made into consent orders, and this was also the case in around half the arrangements reached through mediation. In line with family court statistics, only 11 per cent of cases went to court as contested applications, and half of these were settled, leaving six per cent decided by a judge.

Where parties’ financial and property arrangements had been finalised through a court order, women tended to do better in a number of respects. They were more likely to obtain a

³⁹⁹ Hunter, R et al, Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report, MoJ, (2020).

⁴⁰⁰ MoJ, Supporting earlier resolution of private family law arrangements:

<https://www.gov.uk/government/consultations/supporting-earlier-resolution-of-private-family-law-arrangements/supporting-earlier-resolution-of-private-family-law-arrangements>

⁴⁰¹ See e.g. Resolution, Supporting earlier resolution of private family law arrangements: Resolution’s Response to the Ministry of Justice (2023) <https://resolution.org.uk/news/resolution-guards-against-mandatory-mediation/>; Bar Council, Bar Council/FLBA response to the Ministry of Justice Consultation on Supporting earlier resolution of private family law arrangements (2023) <https://www.barcouncil.org.uk/policy-representation/consultations.html>

share of their ex-spouse's pension, to obtain a transfer of the former matrimonial home, and to receive over half of the value of the home if it were sold. These findings may not only reflect the law's requirement to place the children's welfare first, potentially resulting in outcomes in relation to the home which reflect gendered ongoing caring responsibilities, but they also emphasise the court's monitoring and supervisory role, which protects individual divorcees from potentially unfair financial and property arrangements. 'Unequal' divorcees, in relationships with a more dominant spouse, benefit particularly from the supervisory oversight of the court. The role of the court, not as a 'rubber stamp' but as a guarantor of the legal efficacy of the couple's agreement,⁴⁰² is therefore an important one that needs to be safeguarded in any reform of the system. Indeed, the benefits of certainty and finality that come with a consent order, as well as the opportunity to check the fairness of the arrangement, suggest that more should be done to encourage couples to obtain one even when they are in full agreement.

12.5.4 Achieving a fair outcome

The importance of pensions

Throughout the study, we have highlighted the financial vulnerability of female divorcees, particularly mothers, and those in older age, compared to men. Not only were their incomes lower during marriage, but they were likely to leave the marriage in a worse financial state than their husbands. At the turn of the millennium, reformers thought that they had solved this problem by legislating to provide for forms of pension sharing, yet it is clear that this is simply not happening. Our study has made clear that the possibility of sharing a pension that has not yet been drawn remains off the table for the large majority of divorcing couples making their financial arrangements. But the findings also showed that for those couples where one or both are already in receipt of the pension, there appears to be a greater likelihood that the pension may in practice be shared in the form of formal or informal maintenance payments. However, it was unclear how far this translated into the making of pension sharing or attachment *orders* and this is an area where further research, focused on pensions in payment, would be highly valuable.

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 in most divorces. But couples also carried out a cost-benefit analysis to determine if it was worthwhile to do so and for those whose pension pots were of

⁴⁰² L v L [2006] EWHC 956 (Fam), [73].

relatively low value, it might make little sense to split them. It is also important to recognise that, since pensions may only be shared through the making of a court order, couples who did not 'go to court' had no opportunity to obtain a meaningful and binding arrangement about pensions anyway. Moreover, couples who might consider pension sharing were likely to face considerable additional expense and delay in obtaining a valuation and taking expert advice on what the right sort of sharing arrangement should be in the light of investment strategies and macro-economic factors as well as their own circumstances.

It is therefore not surprising that offsetting in the form of trading shares in the matrimonial home was the preferred alternative for many couples, as reflected in our study by the extent to which wives received a transfer of, or a larger share of the equity in, that home. Yet as we saw in Chapter 10, this does not adequately redress the imbalance in the total pool of financial resources (in the form of income and earning capacity as well as capital) available to the husband and wife. Neither does it redress the differences in divorcees' living standards up to five years after their divorce, with women, on average, worse off financially than men. It is clear, therefore, that both parties to a divorce need to be made more aware of the potential importance of pension wealth as a part of their entire asset pool. In particular, the issue of how to deal with pensions needs to be re-examined to consider how it should be made easier for them to be fully factored into the financial arrangements that couples make.

Spousal support

While making pension sharing easier might help partially to redress the financial imbalance between husbands and wives, it would not, however, entirely deal with the financial hardship that divorcees may experience after divorce.

As we have shown, spousal periodical payments are not common, and are nearly always for a fixed term and tied mainly to the recipient's childcare responsibilities. There is nothing within our findings to suggest that they are being used as a 'meal ticket for life' for the wife, and indeed, it is worth noting that we found payments were being made by women to their ex-husbands as well. Instead, they appeared to be primarily used to address the individual's need for an additional source of income or funds to cover their adjustment to new post-divorce living arrangements, such as housing and household expenses, that could not be met from their own resources.

Moreover, adjusting to financial independence by increasing hours of work is not straightforward for mothers still taking the major role in childcare of younger children, and for those who do 'go back to work', life may still be a struggle. Choices made during the

marriage may have turned out to be unwise and those made in settling financial arrangements may have been short-sighted. One of our interviewees told us that her ex-husband earned a high salary and she had changed to a part time job to support him in his career. When they divorced, she was keen to get things done quickly and move on, so she agreed to split the equity in the matrimonial home equally. From this, she had paid off her credit card debts and car finance, which had been necessary for her to obtain a mortgage, and had also drawn down part of her own pension, in order to furnish and decorate her new home. She had struggled to get back on her feet financially and looking back, she wondered if she should have pushed for a better deal:

‘I know it’s not Enid Blyton land and ... everybody’s going to be amicable ... there’s some horrible ends to marriage and stuff and it’s not that easy but if you can, just try and give the woman a little bit of leeway because she’s, you know, in a lot of cases she will be starting off again, you know, and there’s a lot of things to consider. ... I went out and got a full-time job but like I say, to start again right at the bottom, and to start on £18,000 and it took me years to sort of work up again, do you know what I mean, to what I consider a decent salary to look after yourself.’ (Wife 19)

Unequal shares

The study has revealed something of a paradox. On the one hand, as we discussed in Chapters 8 and 10, divorcees quite often left the marriage with what looked like broadly equal shares, and broadly comparable cash amounts, from the combined asset pool. On the other hand, we also found, confirming earlier studies,⁴⁰³ that although many divorcees might initially have regarded a 50:50 split of their assets as the ‘fair’ or easiest outcome, it proved impractical and undesirable when they weighed all their circumstances up, especially, of course, where they had children. There was clear recognition that childcare changes the financial equation between husbands and wives, whether the childcare had been undertaken in the past or would continue to be undertaken in the future.

Policymakers considering reform will no doubt evaluate the merits of narrowing the current broad discretion the law provides to the courts (and by extension, to all divorcees) to shape financial arrangements to meet the individual circumstances of each couple, to a more formulaic presumption of ‘equal sharing’. Our findings suggest this would be unlikely to

⁴⁰³ See Chapter 1, section 1.6.3.

deliver subjective 'fairness', given that many couples recognised that it would not be appropriate to their circumstances. Nor would it necessarily achieve objective 'equality', because, regardless of couples' intentions, even when the asset pool looks as if it has been shared equally, the nature of the assets assigned to each spouse may result in future economic inequality by leaving the bulk of pension wealth to the husband and the bulk of the value of the former matrimonial home to the wife. Moreover, there would be a particular challenge in achieving such equality in the case of those couples who had rented the matrimonial home and had no other substantial asset to split or to 'offset', especially where the tenancy was retained by the primary carer in accordance with social housing criteria. Achieving a fair outcome should therefore be about enabling parties to emerge from their marriage in a broadly substantively equal position to move to financial independence – which may require unequal sharing – rather than formally equal in percentage or cash terms.

Financial support for dependent and older children

While the study showed the importance most parents attached to ensuring their children would have a secure home after the divorce, the picture regarding ongoing child maintenance was less positive. We noted the very small proportion of parents who could turn to the state to enforce the non-resident parent's duty to pay (and we know that collection and enforcement via the state is unreliable and inefficient), and how this was, for all but the few with a court order, to be managed through a completely separate state agency – the Child Maintenance Service, rather than within the divorce process itself. Of course, this was a deliberate policy decision taken when the child support scheme was first set up, and it is most unlikely that government would countenance a return to general use of the family courts for this purpose. In any case, many parents could not afford the luxury of waiting to sort everything out in the divorce before resolving the question of child maintenance, and they had to deal with that earlier on. But the bifurcation adds to the complexity of handling all the issues – as one wife commented to us:

'I just, things are just coming to me now, like just in terms of actually how is the process linked to even maintenance you know? When you have children – we talk about assets and finance ... but then actually there's a financial element when it comes to the children as well and what's the duty of care?' (Wife 11)

The moral 'duty of care' towards one's children was also clearly demonstrated in our study by parents' support for their older, but still not financially independent, children. While the main focus of attention of reformers in this area of the law has been on the changing position

of women, and changing attitudes to marriage and divorce, since the 1973 Act was passed, an equally important change, clearly revealed in this study, has been in the situation of young adults.⁴⁰⁴ In the 1970s, the school leaving age was 16, and around 14 per cent of young people went into higher education, with most going into full-time work (or, of course, unemployment, for which they were entitled to social security in their own right). Now, young people have to remain in some form of education or training until they are 18, around 30 to 40 per cent then go into higher education, and benefit rates are lower for claimants aged under 25. The cost of renting is currently very expensive for young people on low incomes. The result has been an extension of factual dependency, such that we found the large majority of 'non-dependent' children were in fact still receiving financial assistance from parents; from their mothers, mainly by continuing to live with them, and from their fathers, in assistance with living costs.

This situation is to be examined by the Law Commission as part of their review of the financial remedies jurisdiction, but the way forward is not straightforward, and should be considered in the context of child maintenance more broadly, especially the already poor enforcement of child maintenance for dependent children. There would be little point, for example, in extending the duty of support through the child support system if it could not be enforced and the burden simply fell even further on the parent with whom the older child was living – in practice, more likely to be the mother. But there might be value in extending the duty on the court under s 25 of the Matrimonial Causes Act to give 'first consideration' to the welfare of children of the family to include 'non-dependent' children so that their presence within the family unit could be expressly taken into account.⁴⁰⁵

12.6 The role of the financial remedies jurisdiction

Our findings and these key issues raise a final but fundamental question that we suggest law reformers need to address before proposing specific changes to the law, and that is to determine what the role of the financial remedies jurisdiction should be. This is a multi-faceted question.

⁴⁰⁴ Baroness Deech's Divorce (Financial Provision) Bill recognised this, by providing that a court would have to consider the needs of any children of the family up to the age of 21 when considering if an unequal division of assets should be ordered but made no provision for ongoing support for such children.

⁴⁰⁵ As proposed for children aged under 21 in the Divorce (Financial Provision) Bill introduced by Baroness Deech: cl 4(5)(c).

12.6.1 *Divorcees' awareness of the legal principles*

First, if the reality is – as we have seen – that many of those whom the law is intended to address are ignorant of the guidance and principles that it lays down because they experience barriers to accessing reliable advice and assistance about it, what purpose does it serve? It is true that most divorcees did find out something about what they should be doing and how to go about sorting things out, but many may have reached their arrangements more by luck than judgement, and whether their bargains turned out to be well-made was an even greater matter of chance. It might be argued that a much more straightforward, clearer, and limited set of rules or principles would be far easier to communicate to divorcees and thus much easier for them to make use of than the wide discretion that currently exists. However, even a very straightforward law will have limited impact if couples remain unaware of it or how to carry it into effect for themselves.

Moreover, since it is not mandatory to obtain any kind of court order, how can society ensure that the arrangements that couples make *are* in accordance with the principles it wishes to assert? Of course, the majority of those who seek consent orders will have obtained some form of advice or steer, either from mediation or from a lawyer, but what of the majority of divorcees who obtain no order at all? Should the law take such a *laissez faire* approach to the financial needs of many thousands of divorcees and their children, and in particular, should it do so when there is such clear evidence that women, and 'unequal' divorcees in particular, may emerge with unfair arrangements likely to be detrimental not only to their own long-term interests but those of their children?

It seems clear to us that the state retains an interest in the financial well-being of its citizens and the promotion of outcomes that society regards as fair, rather than standing back and deciding that this is none of its business. That being so, even if there is no impetus to reinstate legal aid, and no desire to row back on the promotion of non-court dispute resolution, providing early, authoritative information, advice and assistance could do much to prepare divorcees for what they should seek by way of a financial arrangement. Many of our interviewees stressed how valuable this would have been for them – as one interviewee said, when asked what they would do differently:

'I definitely think I would've contacted the solicitor quicker, I think, and had some help immediately because there was a couple of, well, it was almost two years before ... I think in hindsight it would've been more sensible to take some advice quicker.' (Husband 4)

Divorcees understand that a divorce is a legal process that must be gone through to end their marriage. Making financial arrangements carries legal implications and legal risks so there seems little justification for discouraging divorcees from obtaining some legal information and help – no one would suggest they do their own conveyancing, after all! If the state wishes to provide legal parameters which it believes should guide financial arrangements, then it is incumbent upon it to provide effective means of enabling couples to be aware of them and to use them.

Some of our interviewees suggested that there should be some kind of judicial ‘check’ on financial arrangements before a divorce is granted. There are precedents for this, in the form of the old ‘welfare check’ on arrangements for children when parents were seeking a divorce,⁴⁰⁶ which was abolished in 2014, or the proposal to delay the grant of a divorce until the couple’s financial and other issues had been settled, as was intended to happen under the ill-fated Family Law Act 1996. It might be valuable for policymakers to explore the merits and feasibility of some mechanism of this kind, particularly given the introduction of the online, no fault divorce system which may well result in more couples divorcing without receiving adequate legal advice. At the least, it might be helpful to consider whether more could be done by way of ‘prompts’ to divorcees when completing the online forms they must use, as to the financial issues they should be thinking about, so that those unaware or uncertain of such matters could be given clearer warnings about their importance. Consideration might also be given to the value of some form of ‘triage’ approach to ensure that couples can receive an appropriate level of support – and scrutiny – from the family justice system commensurate with their circumstances. For example, ‘unequal’ divorcees might need particular forms of support and guidance, while couples in full agreement might only require a simplified consent order process.

12.6.2 Fairness, equality and independence

Secondly, what should the principles, or the overall objective, of the financial remedies jurisdiction be? We have quoted senior judges throughout this report, who have alluded to the value of enabling couples to secure a ‘clean break’ so that they can move on to life after divorce, to the importance of ensuring that outcomes are ‘fair’ between the spouses, and to the desirability of ‘giving each party an equal start on the road to independent living’. But can these goals be achieved through a focus only on the circumstances of individual couples, if there are underlying structural barriers in the way of doing so? If equality can only ultimately

⁴⁰⁶ Matrimonial Causes Act 1973 s 41.

be achieved through societal reforms to the way that care work is allocated so that both men and women can thrive in their careers *and* ensure the best upbringing for their children, is it 'fair' to expect individual spouses (mainly men) to make good the shortfall in the meantime?

This raises two opposing responses. One answer is to regard the main job of securing equality as that of the state, not the individual. A divorce represents the end of a partnership and like other partnerships, all that is required is an accounting of the profit and loss of the enterprise and a division of any surplus in accordance either with a principle of equal shares (because 'contributions' can take non-financial as well as financial forms), or based on the financial contributions each put in. Either of these would reflect what significant numbers of divorcees are currently doing in reaching their arrangements, though it would leave primary caregivers – mainly women – in a financially weaker position, as now. It would then be for the state to recompense any further losses incurred by reason of caregiving, since that is a task that is of value to the state.⁴⁰⁷

The other answer is to focus on the gains and losses that each spouse has incurred during and as a result of the relationship, vis á vis each other. A spouse who steps back from their career to facilitate the other's, or who will continue to take the major burden of childcare after the divorce, loses out while the other spouse takes the benefit, which they enjoy in the form of higher earnings or greater freedom of movement. The suggestion that fairness may sometimes require that the law compensate for 'relationship generated disadvantage' forms part of the current jurisprudence on what constitutes 'fairness' in financial remedies law⁴⁰⁸ and it provides the justification for imposing an unequal outcome in favour of the financially weaker party when it comes to sharing the marital assets. This approach was taken by many divorcees in our study who recognised that a 50:50 split would not be fair in their particular circumstances – that fairness itself required a different response. The problem was that, by ignoring the pension position in many such cases, they still ended up with unfair outcomes. If pensions could be reliably and consistently factored into the discussions and calculations regarding asset sharing, some progress towards achieving real fairness between the spouses could potentially be achieved. But it would not deal with underlying structural inequality.

⁴⁰⁷ A view propounded by, amongst others, M Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press, 2004).

⁴⁰⁸ *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, para 140, per Baroness Hale.

Only by sharing the responsibility for advancing equality between both the state and the individual couple will progress be made. And ultimately, as one wife told us, for nearly all divorcees and their children, divorce will continue to represent a financial crisis and setback which the state can seek to mitigate but cannot entirely eradicate:

‘Prepare yourself, life will be harder. Financially, like I say, no-one comes out of divorce better off than they were before you started. So, that would probably be my main thing. However much money you think you’re going to need every month, it will be worse.’ (Wife 18)

All that the state can ultimately do (to alter the words of Baroness Hale a little), is to try more effectively to create the conditions in which the parties have a *fair* start on their post-divorce journey to independence.

Appendices

Appendix A: Weighting the targeted sample to the representative sample

YouGov took two routes to identifying eligible panel members for the study:

- In order to ensure that the study had a representative sample of eligible divorcees, YouGov undertook a very large-scale screening exercise among the 'nationally representative' element of its panel. In total, 20,532 panel members completed the screening questions, of whom 380 (1.9 per cent) completed the full survey, having met the eligibility criteria of having received a decree absolute in the previous five years.
- In order to increase the sample size to allow us to look at sub-groups of the divorcing population, YouGov also targeted panel members for whom it had prior information to suggest that they might be eligible (e.g. based on their marital status). In total, 2,035 such panel members completed the full survey.

This report is based on the responses of divorcees from both sampling approaches, totalling 2,415. To ensure that the figures we present are as representative as possible of people who had divorced in the previous five years, the 'targeted' sample has been weighted to match the profile of the 'representative' sample across a large number of variables that were known, or were anticipated to be, related to outcomes. This was done using propensity score matching, the main steps of which were:

- The probability (or propensity) of an individual being in the representative group (rather than the target group) was estimated from a logistic regression model of the data. The binary outcome variable per model is the group (1=representative; 0=target). The predictors were:
 - Gender
 - Age-group
 - Ethnic group
 - Level of education
 - Whether has a long-standing illness of disability
 - Economic status at the time of separation
 - Economic status of ex at the time of separation
 - Number of years since divorce

- Length of marriage
- How money was managed during the marriage
- Household income at time of separation (grouped)
- How well the household was managing financially at the time of the separation
- Social class
- Region
- Number of children
- Age of youngest child at time of the divorce
- Whether currently have dependent children
- The target group was then weighted so that the distribution of propensity scores in the target group was the same as in the representative group.

The technical details of the matching undertaken are as follows:

- The logistic regression model was fitted within SPSS with the predictors entered forward stepwise. A p-value of 0.05 was set of inclusion, and 0.1 for exclusion.
- The weights for the target group were calculated as inverse propensity weights (i.e. $p/1-p$). Target group members that are very similar to representative survey participants, and hence have a high propensity score are given a large weight; target group members that are dissimilar to representative survey participants, and hence have a low propensity score, are given a small weight.
- The largest and smallest weights were trimmed (to the value of the 99th and 1st percentiles respectively).
- Having calculated the target group weights, a check was made that there were no significant differences across the full range of matching variables each time.

In generating a total combined, weighted sample, the weights for the two arms (representative and target) were each scaled to their estimated effective sample sizes, this giving a combined sample that maximises precision.

Appendix B: Variables included in the regression models

Table B.1: Variables used in regression analysis

Variable at point of separation or divorce ⁴⁰⁹	Chapter 3 (family characteristics) ⁴¹⁰	Chapter 4 (legal routes)	Chapter 6 (the home)	Chapter 7 (pensions, savings, other assets and debts)	Chapter 8 (total division of assets)	Chapter 9 (ongoing financial support)
Age	√	√	√	√	√	√
Gender	√	√	√	√	√	√
Education level	√	√	√	√	√	√
Ethnicity ⁴¹¹	√	√	√	√	√	√
Length of marriage	√	√	√	√	√	√
Dependent/ non-dependent/ no children	√	√	√	√	√	√ ⁴¹²
Net household monthly income	√	√	√	√	√	√
Whether in work	√	√	√	√	√	√
Disability	√	√	√	√		√
Year of decree absolute	√	√	√	√		√
Tenure	√	√	√	√	√	√
Value of matrimonial home ⁴¹³			√	√		
Transfer to man/woman			√ ⁴¹⁴			
Total value of assets		√	√	√		√
Perceived reason for divorce (whether one person at fault)		√	√	√	√	√
Money management (joint,		√	√	√	√	√

⁴⁰⁹ Some variables (e.g. region) were not included in later chapters because of sample size restrictions. Others were only relevant to particular chapters.

⁴¹⁰ The exact variables included in each model varied a little depending on the dependent variable.

⁴¹¹ Collapsed to 'white/non-white' in some models.

⁴¹² For pensions and spousal maintenance.

⁴¹³ For homeowners.

⁴¹⁴ For models in relation to transfers.

by one person, separate)						
Variable at point of separation or divorce ⁴¹⁵	Chapter 3 (family characteristics) ⁴¹⁶	Chapter 4 (legal routes)	Chapter 6 (the home)	Chapter 7 pensions, savings, other assets and debts)	Chapter 8 (total division of assets)	Chapter 9 (ongoing financial support)
Whether one, both or neither had pension(s)	√	√	√	√ ⁴¹⁷		
Value of pension				√ ⁴¹⁸	√	
Whether other party had pension				√ ⁴¹⁹		
Whether one, two or no worker household	√					
Net monthly earnings	√					
Work history	√					
Region	√		√			
Saleable vs monetary savings/debts				√ ⁴²⁰		
Value of savings or other assets					√	
Value of debts					√	
Age of youngest child						√ ⁴²¹
Whether resident, non-resident or shared parenting						√ ⁴²²

⁴¹⁵ Some variables (e.g. region) were not included in later chapters because of sample size restrictions. Others were only relevant to particular chapters.

⁴¹⁶ The exact variables included in each model varied a little depending on the dependent variable.

⁴¹⁷ For models in relation to savings, other assets and debts.

⁴¹⁸ For models in relation to pensions.

⁴¹⁹ For models in relation to pensions.

⁴²⁰ For models in relation to savings, other assets and debts.

⁴²¹ For child maintenance

⁴²² For child maintenance.

Appendix C: Interview schedule

Part 1: Introduction to the interview (Time: 5 mins max)

Introductions and explanation of project/consent/anonymity/permission to record the interview etc.

- The research is funded by the Nuffield Foundation and is being undertaken to understand how people sort out their finances and property when they get divorced and what they feel about the process.
- If you agree to take part, the things you say to me/us may be used in the research report but your identity will be kept strictly confidential. All of the research will be reported anonymously. This means that you will not be identified in any way in the research.
- In the future, we hope to undertake some follow-up interviews to see how the arrangements made on divorce have worked out. Do we have your permission to keep your contact details and contact you in a few years time to conduct a follow-up interview?
- In order for us to listen carefully to what you say and that we can accurately convey your points and views, we would like to record the interview. Do we have your permission to record the interview?

Thank the interviewee for completing the survey and explain that we are going to use their survey responses as the basis for discussion in the interview, However, flag to the interviewee that if we have misunderstood anything from your answers, please correct me/us.

Explain that the aims of the interview are:

First, to get a deeper understanding of your experience:

- What your own circumstances had been like during the marriage and the divorce, such as what the relationship with your ex was like (hostile? Friendly? Equal? Unequal?) and how these had affected what you were able to do in trying to reach a financial arrangement. [need to draw on the survey here, e.g. if they told us in the survey that the relationship was hostile, or unequal, need to acknowledge that and ask them to say a little more about what that was like].

- How you went about reaching your financial arrangement and what you took into account in doing so.
- What was important to you in sorting things out (were you concerned about who was to blame? Sharing equally? Hanging on to your own things and not having to take on your ex's debts?) [again, make reference to what they told us about this in the survey and say we want to learn more about it].

Secondly, to get your thoughts, with the benefit of your experience, on the process you have gone through.

For those who have made financial arrangements

Have these worked out as you expected? Did you hit any particular difficulties in sorting things out? Do you think the process was fair and what would you do differently with the benefit of hindsight?

For those still trying/have given up

We'll be interested to know more about why this has happened, your reflections about the situation you are in, and whether you think the process has been fair? Would you do anything differently with the benefit of hindsight?

We hope to get an overall sense of the arrangement that you made, and we're likely to go over some things more than once. We want to look at the separate aspects of the arrangement that you reached, but can we start by asking if you made decisions about what to do as part of an overall 'package' to sort everything out, or did you deal with things separately? If separately, what was the order in which you dealt with things and what sort of trade-offs did you make?

(NB for interviewer: Not all interviewees will have pensions/other assets/spousal pps/ child maintenance etc. Only ask questions of relevance from survey responses)

Part 2: Aspects of the arrangement (Time: 25 mins max)

The former matrimonial home (FMH)

You told us in the survey that the FMH was owned (with/without a mortgage)/rented

Core question: What were the reasons behind the decision to:

If owned - sell/ keep /transfer the home?

If rented – give up or transfer the tenancy?

Possible follow-up questions (if not covered already):

- Why a 50:50 split (or another % split) of the FMH?
- How important was what happened to the FMH to you/your ex? Any why was/wasn't it important? [prompts – how easy was it for either/both of you to find somewhere else to live?]
- Had one of you already moved out? If so, to where (e.g did you/ex have a partner you moved in with)? If dependent children in the home, what factors were taken into account in considering their situation in relation to the FMH– eg school/friends/stability]
- When you were deciding this, what did you understand about the legal situation affecting the options you had regarding your home?
- Did you face any difficulties in understanding what needed to be done in relation to the FMH? [prompts – organising a sale, changing the legal title to yours/ your ex's sole name, taking your/your ex's name off the mortgage or the tenancy, talking to the landlord about a new tenancy]

Assets and debts

Like we did in the survey, we are going to ask you separately about any assets you had, and then any debts, and then if you had both, we'll talk a little about how (and how far) you balanced these out in the arrangement you reached.

Assets

You told us in the survey that you had [savings/other property/car/investments/inheritance etc] and that you [shared them/kept them/ etc – according to survey response, or ask for clarification if unclear]

Core question: What were the reasons behind the decision to divide these assets in the way you did?)

Possible follow-up questions (if not covered already):

- When you were deciding this, what did you understand about the legal situation affecting the options you had regarding this asset/these assets?

- Regardless of whose name they were legally held in, how did you both view these assets– as things you shared as a couple and were jointly entitled to, or as items belonging to you or your ex individually?
- Did this have any implications for the arrangement you made and why?

Debts

You told us in the survey that you had certain debts [credit card/overdraft/loan etc] and that you [shared them/kept them in whoever's name they had been in/ etc – according to survey response]

Core question: What were the reasons behind the decision to deal with the debts in the way you did?

- When you were deciding this, what did you understand about the legal situation affecting the options you had regarding this debt/these debts?
- Regardless of whose name they were legally held in, how did you both view these debts– as things you shared as a couple and were jointly responsible for, or as debts that were owed by you or your ex individually ?
- Did this have any implications for the arrangement you made and why?

For those interviewees who had both assets and debts

- Looking at your assets and debts together, how did you balance them out?
[Prompts: did you for instance add up the values of both and divide them in half? Did you each keep what you had and owed and but made an adjustment with the FMH or pension or maintenance?]

Pension(s)

You told us in the survey that you and/or your ex had/did not have a pension, and that you [kept/shared etc] the pension

Core question: What were the reasons behind the decision to share/ offset/ keep your own or your ex's pension(s)?

Possible follow-up questions (if not covered already):

- When you were deciding this, what did you understand about the legal situation affecting the options you had regarding your/your ex's pension?

- How important was what happened to the pension(s) to you/your ex? And why was or wasn't it important?
- How did each of you view who was entitled (morally) to the pension(s)? [prompt - regarded it as your or ex's own asset? Or as a product of the marriage?]
- In the survey, you noted that you did not know the value of your/your ex's pension(s) - why did you not find out the value?

Child arrangements for maintenance/support

You told us in the survey that you have dependent children and did/did not have an arrangement for child maintenance for them at the time of the divorce - is that still the case?

For those with an arrangement

- Why did you make this kind of arrangement? [prompts - CMS calculator was easy to use / enforceability /trust/ ease of arriving at an outcome?]
- In working out the arrangement, did you use the CMS online calculator as a guide at all? Why/why not? If you used it, how helpful was it?
- Did you face any difficulties in understanding what needed to be done or in getting any help to sort things out?
- [If not known already] – did you try to use the CMS at all? If you used or tried to use the CMS what was your experience with them?
- Did you view the Child Maintenance arrangement as something that needed to be sorted out regardless of what happened with the other financial arrangements or as part of the overall package? And why? If separate, what was the timing of this?
Prompt - Did you reach an arrangement earlier during the divorce process/ while you were separated?
- How has the arrangement worked (so far)? Have there been any difficulties in getting/paying the amounts due? [refer to survey responses]
- Has the arrangement changed over time? If so, how and why? If not, is it still in operation or has it come to an end?

For those without an arrangement

- Why do you not have an arrangement for child maintenance?
- [If required] You told us in the survey that you are still trying to sort this out/have stopped trying or didn't want an arrangement - [refer to survey answers]. Can you tell us a little more about this?

Spousal maintenance

You told us in the survey that you do/don't pay/receive spousal maintenance

Core question: What were the reasons behind this decision?

Possible follow-up questions (if not covered already):

- Importance of ongoing support vs. a clean break to you and your ex? [prompt: did you value a clean break or ongoing spousal support more highly – and why? What about your ex
- What was more important to them – ongoing spousal support or a clean break – why?]

For those with an arrangement:

- For recipient - What did you want the spousal maintenance for? / What was it intended to cover? [prompts – housing costs/one-off bills/ child care costs/just making ends meet]? Have you used it in this way? If not, why not?
- For payer – what did you think the spousal maintenance should be used for [prompts – housing costs/one-off bills/ child care costs/making ends meet]? Do you know if it has been used for this? If not, why not?
- How has the arrangement worked (so far)? Have there been any difficulties in getting/paying the amounts due? [refer to survey responses]
- Have there been any changes to the arrangement? If so, what and why?

Part 3: Drivers of the arrangements reached (Time: 10 mins max)

How did you arrange the finances during the marriage [draw on survey responses]? Who had the major say over financial matters – you or your ex? Did you ever argue over money? If yes, when and why?]

For those who said in the survey that they had experienced abuse/financial abuse

You told us in the survey that there was domestic abuse during the marriage – can you tell us how that impacted/is impacting on financial issues?

For individuals yet to finalise arrangements with their ex

Are you still hoping to come to an arrangement over your finances/property/pensions? If not, why not?

For those still hoping to come to an arrangement

So now thinking about the overall arrangement that you hope to reach, who has the major say [refer to survey response] and why? How is this influencing the negotiations/process and what do you feel about it?

- How long has it taken so far and what has been difficult/easy to resolve?
- (If not covered already) What are your motivations when you are trying to sort things out? [prompts from survey on issues such as 'clean break'/stability/secure home/future security of income/the law etc]. And why are these important to you?
- What do you hope to end up with in terms of the home, other assets, pensions and debts and future income, and why? And is this the same as what you expect to end up with? Why/why not? And how far are your expectations (being) met? Why is this? (If not covered already)
- What sort of principles are you and your ex using in arriving at your arrangement? [prompts - sharing? Equality? Priority to the children? Blame? Ownership?] Which is most important to you/ to your ex? If you have different views, whose view is prevailing? And why?

For individuals who have finalised arrangements with their ex

So now thinking about the overall arrangement that you reached, who had the major say [refer to survey response] and why? How did this influence the outcome/ process and what you felt about it at the time (– and now)?

- How long did the process take? Were there any particular issues that took longer or were sorted quickly?
- (If not covered already) What were your motivations when you were sorting things out? [prompts from survey on issues such as 'clean break'/stability/secure home/future security of income/the law etc]. And why were these important to you?
- What did you hope to end up with in terms of the home, other assets and debts and future income, and why? And was this the same as what you expected to end up with? Why/why not? And how far were your expectations met? Why was this?
- (If not covered already) What principles did you and your ex use in arriving at your arrangement? [prompts – sharing? Equality? Priority to the children? Blame? Ownership? Which was most important to you/ to your ex? If you had different views, whose view prevailed? And why?

Part 4: How do divorcing couples arrive at financial and property arrangements?

(Time: Max 10 mins)

For interviewees who didn't use a lawyer at all

i. In the survey, you noted that you didn't use a solicitor due to X. Could you expand on why X was/were a factor(s) that meant that you didn't use a solicitor?

ii. In the survey, you noted that you relied on XX for information and advice. How did you find out about this information source? Did you find this information helpful? If so why/if not, why not? At what point in the process did you use this advice / info?

- [If relied on friends and family/other individuals] Did your friends and family provide any other support? [prompt - as providers of partisan comfort, advice, as sounding board?] How helpful were these, and why?

iii. How confident did you feel at the start about your knowledge of your legal position and the options? Did you feel better informed and more confident by the end? If so, why, and if not, why not?

iv. How did you go about negotiating with your ex?

- How confident did you feel in dealing with your ex about all this?
- Did you experience any barriers when trying to negotiate with your ex?
- Did you have any help/support in the actual process (prompts - e.g working out your finances and what you would need or want/ assembling your 'case' and 'evidence'/ writing letters etc./ rehearsing conversations/ having someone with you while talking to your ex about the arrangements)

v. **[If didn't use mediation]**

- Had you heard about mediation?
- Did anyone tell you, or did you find out about attending a 'MIAM'? If yes, what did you understand this to be?
- If yes, did you go to a MIAM? If yes, what was it like for you – did you find it helpful/a waste of time? What were your reasons for not proceeding to mediation?
- If not, do you now know what a MIAM or mediation is, and if so, do you think they might have been helpful to you?

[If did use mediation]

- If you used mediation, you probably attended a 'MIAM' first. Is that correct? If yes, what was the MIAM like for you? [did you find it helpful? A hoop to jump through?] If no, how did you sign up for the mediation?
- What were your reasons for trying mediation? How did it work for you?
- If you did use it, did you get legal aid or a government mediation voucher to help with the costs?
- Did you feel supported by the mediator in the sessions? If yes, in what ways, and if not, why not? (prompts – knowledge, confidence, cost, unequal bargaining power)
- If you reached an agreement in the mediation, how did you take that forward with your ex? Did your mediator offer any advice about that? (eg to get it written up by a lawyer?)

vi. In the survey, you noted that you did/ did not get a court order embodying the arrangements you reached. If so, why? If not, why not?

For those who got an order after fully-contested proceedings:

How did it come about that the judge had to decide the outcome of your proceedings? [prompts – you/your ex were unwilling to compromise; couldn't cope with negotiations; needed the court's powers to find out the financial situation]

For interviewees who used lawyer or legal services company for any or all of the finance and property arrangements part of the divorce (use survey answers as basic info/refresher) or for everything (divorce suit, children and finances)

i. In the survey, you noted that you used a solicitor/legal services company in relation to some/all of your finance and property arrangements. Why did you use a solicitor/legal services company for all/part of the process?

ii. Follow-up question:

For those who used lawyers 'throughout': Had you already started engaging them prior to the divorce, or when you started thinking about finances?

For those using lawyers for some parts and not others: What was the pattern of use throughout the process? (i.e. had some arrangements been made before you engaged a solicitor?)

iii. Did you feel you were knowledgeable about divorce at the start? And by the end?

iv. How did this arrangement work for you?

- How far did you feel your lawyer/legal services company gave you adequate information/ emotional support?
- How far did you feel they were 'on your side' at the time – and now? And why do you think this?

v. [If response in survey provides info] Your survey responses noted that you also relied on [xx] as additional advice / guidance? How did you find out about this information source? Did you find this legal information helpful? If so why/if not, why not? How did you find out about this information? At what point in the process did you use this additional information?

- [If relied on friends and family/other individuals] Did your friends and family provide any other support? [prompt - as providers of partisan comfort, advice, as sounding board?] How helpful were these, and why?

vi. **[If didn't use mediation]**

- Had you heard about mediation?
- Did anyone tell you, or did you find out about attending a 'MIAM'? If yes, what did you understand this to be?
- If yes, did you go to a MIAM? If yes, what was it like for you – did you find it helpful/a waste of time? What were your reasons for not proceeding to mediation?
- If not, do you now know what a MIAM or mediation is, and if so, do you think it might have been helpful to you?

[If did use mediation]

- If you used mediation, you probably attended a 'MIAM' first. Is that correct? If yes, what was the MIAM like for you? [did you find it helpful? A hoop to jump through?] If no, how did you sign up for the mediation?
- What were your reasons for trying mediation? How did it work for you?
- Did you receive advice to use it?
- If you did use it, did you get legal aid or a government mediation voucher to help with the costs?
- Did you feel supported by the mediator in the sessions? If yes, in what ways, and if not, why not? (prompts – knowledge, confidence, cost, unequal bargaining power)
- How did using your lawyer/legal services company dovetail in with the mediation?

- What did the lawyer/legal services company do to take forward any arrangement you reached in mediation? Did it seem to work smoothly? If yes, in what ways and if not, why not?

vii. Did your lawyer/legal services company suggest you try any other ways of sorting things out, eg single lawyer representation (both you and your ex use the same lawyer), arbitration, round table negotiations?

viii. In the survey, you noted that you did/ did not get a court order embodying the arrangements you reached. What advice did you receive from your lawyer/legal services company about this? And did you follow that advice? If so, why, if not, why not?

For those who got an order after fully-contested proceedings:

How did it come about that the judge had to decide the outcome of your proceedings? [prompts – you/your ex were unwilling to compromise; couldn't cope with negotiations; lawyer advised no settlement; needed the court's powers to find out the financial situation/enforce the order]

FOR ALL WHO USED A LAWYER/LEGAL SERVICES COMPANY

ix. What do you feel now about the service you received? (Not the outcome, but the service itself) [prompts - looking back, do you feel they knew what they were doing? Did you feel supported emotionally? Do you feel they did their best/all they could for you? How far do you feel you got good value for money from your lawyer/legal services company?]

x. Would you recommend that particular lawyer or firm, or legal services company to someone in a similar situation?

In addition to questions from one of the routes above, for those interviewees where discussions/negotiations are still ongoing

- [If not covered in answers provided already] Are you using any forms of advice/support to come to an arrangement at the present time? If not, why not?
- If yes, which forms of advice/support are you using and which is proving to be most helpful, and why?

For all interviewees

- i. In the survey you noted that you felt that the principles of (XX, XX) were important in arriving at the outcome you and your ex-spouse came to. Could you expand on why you felt those principles were important?
- ii. How far do you feel that the settlement / outcome you reached was determined by what the law says?
- iii. How far do you think that any costs you incurred were justified given the arrangement you ended up with? Did you feel the money was well spent?

Part 5: What are the outcomes of those arrangements? (Time: Max 10 mins)

From your answers in the survey it looks like xx months/years since you reached your financial arrangement – is that right?

OR

From your answers in the survey it's difficult to assess how long ago you reached your financial arrangement with your ex – could you confirm how long ago that was?

- i. How has the arrangement (or lack of one) worked out? Did it go as expected? If not, what went differently? Why was this? What, if anything, did you do about it, and why?
- ii. Have you achieved certainty by now? Do you feel the arrangement (or lack of one) is now solid/done and dusted? What are the reasons why? [prompts – do you still have to deal with your ex in regard to any of the details? How easy/difficult is this and why? Are parts of the arrangement still to be completed, eg sale of house, or ongoing maintenance issues?]
- iii. In the survey you noted that you felt that what you ended up with [was/was not] fair at the time. Why did you think this? Do you still think this now?
- iv. Have you had any major life changes since the arrangement was made? (eg changes to your family re-partnering / additional children; changes to your employment status eg retirement; ill-health for you or a family member?)

If so, has there been any effect from this on the arrangement made from your divorce?

- v. In the survey you noted that you felt [better/worse] off. Why do you think this?

FOR ALL INTERVIEWEES INCLUDING ANY WHO HAVE YET TO FINALISE THEIR ARRANGEMENTS

I. With the benefit of experience and hindsight, would you have done anything differently? If so, what? (prompt: would have liked to have better understanding of the law/their rights; behaviour of them/their ex since; impact on children; Use an(other) expert eg financial adviser, accountant or pensions expert) Why/why not? [prompt: individual elements of arrangements made eg child maintenance – use of CMS rather than have family based arrangement or vice versa / overall arrangements]

II. What advice would you give someone in your position, with the benefit of your experience?

III. Would you like to see any changes made to the law or the way the financial arrangements are made on divorce?

IV. Is there anything else you'd like to tell us about regarding your financial arrangements that we haven't covered in the questions?

Appendix D: Derivation of the total assets variable and the share of the total assets going to the participant

Derivation of the total assets variable

In Chapter 3, we describe the total assets that divorcees had at the point they divorced, using a banded variable which is then also used in subsequent chapters as an explanatory variable. This is a derived variable, based on the sum of estimates of different asset types. This appendix describes how the variable was created.

The survey did not ask participants to directly estimate the *total* value of their assets. Instead, to make the questionnaire manageable, participants were asked to separately estimate the value of five main asset types: the matrimonial home (total house value for owner occupiers who owned outright, and equity in home minus mortgage for those with a mortgage); the size of any pension pot for the survey participant; the size of any pension pot of ex-spouse; savings and other assets; and debt. For each of these, participants were asked to give a value within bands. For instance, the categories for house value were: Under £100k; £100k-£249k; £250k-£499k; £500k-£749k; £750k-£999k; £1,000k-£1,999k; £2,000k or more. To derive a 'total assets' value per participant, a value within the relevant band per asset was assumed and then these values added (or subtracted for debt) to give a total. The details of how this was done are given below.

The overall aim was to create a total assets value that was then divided into a small number of broad groups for the report, the groups being 1. Zero or negative assets; 2. Less than £100k; 3. £100k to just under £500k; 4. £500k to just under £1,000k; 5. £1,000k or more. The calculation of the total assets per participant is necessarily very crude, based as it is on a sum of assumed values from multiple banded response categories. The total assets category that participants are allocated to will inevitably be incorrect for many participants, although we cannot put a figure on how many. The total assets grouping needs to be interpreted bearing this in mind.

The data

As noted above, the questions asked on assets are divided into five main asset types: the matrimonial home (total house value for owner occupiers who owned outright, and equity in home minus mortgage for those with a mortgage); size of pension pot for the survey participant; size of pension pot of ex-spouse; savings and other assets; and debt. (Note, the pension pot is only included for those not yet drawing their pensions. For those already drawing their pensions, these are treated as income, as with maintenance and earnings.)

A complication is that for each asset type there are quite a large number of ‘don’t know/prefer not to say’ responses. For these we do not have a value to include in the total assets calculation so it was necessary to impute one.⁴²³ The rate of missing values varies across the asset categories. It is particularly high for the pension pot of the ex-spouse.

	% missing
House value (owner-occupiers without a mortgage)	5%
Equity in home minus mortgage	14%
Own pension pot	36%
Pension pot of ex-spouse	53%
Savings and assets	16%
Debt	14%

For each of the five asset types two steps were completed:

1. **Where the response categories are missing (i.e. the ‘don’t knows/prefer not to says’) a category was imputed**, via a multinomial regression model.

The predictors used vary from asset to asset.

- For house value the predictors used were: age, length of marriage, household income at separation, region of home;
- For equity in home minus mortgage the predictors were: age, length of marriage, household income at separation, region of home; and house value (where known);
- For pensions the predictors were: age, work history, salary level, type or pension (personal or employer; defined contribution or defined benefit), number of years in pension;
- For savings the predictors were: age, length of marriage, household income at separation, source of savings;
- For debt the predictors were: age, length of marriage, household income at separation, source of debt.

Where data on important predictors⁴²⁴ were missing, no imputation was attempted. The regression model generates a ‘predicted’ response category per participant as well as the probability for all other response categories. Rather than impute the ‘predicted’ category

⁴²³ The alternative was to exclude all participants with missing data on one or more relevant assets, but this would have excluded too high a percentage of participants.

⁴²⁴ Key ones were identified via forward stepwise models

which tends to favour the largest overall category (which is often the lowest value category here), a category was imputed per participant with probability proportional to the probabilities assigned to each category by the model.⁴²⁵

2. For each response category per asset type, a value at the point 30 per cent along the range was taken as the estimate of the actual value.

For example, if a survey participant said the value of their house was in the range £100k to £249k, we assumed a value of £145k. If the value was in the range £250k to £499k we assumed a value of £325k. If a participant said the value of their house was under £100k, we assumed a value of £30k. Similarly across the other categories. The 30 per cent is a crude estimate of where the median is likely to approximately fall within each response category (taking into account that there is a left-skew across the distributions, and hence, it is assumed, within each category).

If the participant selected the highest category (i.e. £2,000k or more for house value), we assumed a value of £2,500k. In practice the value that is assigned to the largest category per asset type does not affect the final category of 'total assets' that a participant is assigned to, because irrespective of the value assigned, these participants are almost all assigned to the highest total asset group. Furthermore, across all of the asset types, the numbers in the top category are very small (typically less than one per cent).

Having generated a value per asset group per participant, the values were summed across the asset types to generate the total assets value per participant. These values were then divided into 'total asset' groups.

Sensitivity analyses

The decision to impute a value at 30 per cent of the category range was a pragmatic one. To test whether the final categorisation into 'total asset' groups was affected by this decision, different approaches were tested.

- A. Using the central values per range rather than the 30 per cent point
- B. Assuming that within each response range there is variation in values, and assigning (at random) 50 per cent of participants to have a value at the 15 per cent mark, 35 per cent to have a value at the 50 per cent mark, and 15 per cent to have a value at

⁴²⁵ For instance, if the model gives a probability of 0.1 for the lowest category, then the participant was assigned to this category with probability equal to 0.1.

the 85 per cent mark. (So if the range is, for example, £100k-£250k, 50 per cent would be assigned a value of £122.5k, 35 per cent would be assigned a value of £175k, and 15 per cent would be assigned a value of £227.5k)

- C. Using other surveys that collect detailed assets data to impute a random value within the range that follows the distribution of values for the population. The UK Household Longitudinal Survey (UKHLS) was used for house values and the ealth and Assets survey (WAS) for pensions.⁴²⁶

The percentage assigned to each reporting category under the adopted approach and these three alternatives are shown below. The distributions are very similar across the alternative approaches and we concluded that the findings presented in this report are not sensitive to the decision on which approach to take.

Total assets group	Assigning the value at 30% of each response category	A. Assigning the central value of each response category	B. Assigning a random value per response category per asset type	C. Assigning a value per response category based on the distribution found within other surveys
	%	%	%	%
Zero or negative assets	17	17	18	16
>0 but <£100k	28	26	27	28
£100k-£500k	35	36	35	36
£500k-£1000k	10	11	11	11
£1000k+	9	10	9	9

Estimation of the share of the total assets going to the participant

Chapters 8 and 10 report on the percentage and monetary value share of the assets that went to the participant. For each of the five asset types, survey participants who had come to an arrangement were asked what percentage of that asset they received, with responses

⁴²⁶ For this approach, for each Fair Shares participant within an asset range, a random selection was made from survey participants from the same asset range within the external survey. This was repeated six times, giving six possible values per Fair Shares participant per asset type. For savings and debts, where no external surveys were identified that could be used, six random values within the range were generated from a uniform distribution. A total assets value was generated per participant from each of the six generated values and the median of these taken as the best estimate of 'total assets'.

being banded (typically: zero; a quarter or less; more than a quarter, less than a half; a half; more than half, less than three-quarters; three-quarters or more, but not all; all). Used alongside the assumed value of that asset (derived as described above), these have been used to estimate the approximate value of each asset going to the participant.⁴²⁷ The sum of these individual asset values gives the estimated total of the assets – or financial pot – going to the participant.

⁴²⁷ For the calculation it has been assumed that 'a quarter or less' equates to 12.5 per cent, 'more than a quarter, less than a half' equates to 37.5 per cent, 'more than half, less than three-quarters' equates to 62.5 per cent, and 'three-quarters or more, but not all' equates to 87.5 per cent. For savings and debts, where the response categories are different, 'my ex got a lot more than me' was equated to 12.5 per cent, 'my ex got a bit more than me' was equated to 37.5 per cent, 'I got a bit more than my ex' was equated to 62.5 per cent, and 'I got a lot more than my ex' was equated to 87.5 per cent.

Appendix E: Matching those who did and did not use legal support and legal orders

In Chapter 11, in order to compare the outcomes of those who did and did not use legal support in relation to their finances, and those who did and did not get a legal order we 'matched' those who did and did not use support on a number of background variables. This was done using propensity score matching. Propensity score weights were applied to those using legal support to give them a profile similar to those not using legal support, and those with an arrangement made into an order and those with an arrangement but no order both being weighted to given each a similar profile to those without a formal arrangement. Separate propensity score models were run by gender, to ensure a reasonably good match within both gender groups. The matching variables included per model were age, tenure at the time of the separation, whether has dependent children, whether either the participant or their ex-spouse had a pension, and the total asset group. All variables were entered irrespective of significance.



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