

The reality of financial settlements on divorce in England & Wales: findings from an empirical study

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Financial settlements on divorce have been a relatively under-researched area, compared with parent/child law issues, both in England & Wales and many other jurisdictions. We know that little over a quarter of couples in England & Wales now obtain an order to finalise their financial issues on divorce, but until recently no empirical research in well over a decade has looked closely even at those cases.

This paper will report findings from a recent study of financial orders made by English courts following divorce, drawing on several data sources: court file survey data concerning outcomes in cases of the sort that are rarely if ever recorded in the law reports; interviews with solicitors and mediators who handle such cases; and focus group discussion with first instance judges who make the orders in such cases, whether at the request of the parties following an agreed settlement or by way of adjudication following a contested case.

We know from population-level data that there are concerns about the adequacy of economic outcomes following for women family breakdown, in particular for primary carers of dependent children. The paper will examine the content of the orders being made – how the capital is divided between the parties, how the former matrimonial home is dealt with, what (if any) periodical income provision is made by one spouse for the other, what (if any) provision is made for the parties' income in retirement – with a view, in particular, to assessing the adequacy of the outcomes to meet the needs of primary carers and children, and individuals who have been primary carers over long marriages. Where possible, the paper will compare the findings of this study with that of another study (focused specifically on the treatment of pensions on divorce) conducted around the same time by the authors' research colleague, Hilary Woodward, to map as full a picture as possible of the current practical operation of financial remedies law in England & Wales.

The broader context for this research is one of longstanding concern (in some quarters) about the fitness for purpose of the heavily discretionary law operates in this area in England & Wales (and in Australia), particularly in the context of contemporary family justice in which public funding for legal advice and assistance is much harder to obtain and more individuals are having to navigate the law and the justice system without expert support. The paper will therefore also consider whether and (if so) how the substantive law might be reformed better to meet the needs of those individuals for a law that is clear and readily operable, and that makes appropriate financial provision for them on divorce.