

Dividing property and finances on divorce: what happens in cases involving domestic abuse?

Briefing Paper

Emma Hitchings and Caroline Bryson



This briefing paper provides an overview of the key findings from a supplementary analysis of the 'Fair Shares' dataset examining financial and property issues in cases involving domestic abuse. The study was led by Professor Emma Hitchings at the University of Bristol.

The full supplementary report is available to download from: <https://www.bristol.ac.uk/law/fair-shares-project/>

Authors: Emma Hitchings and Caroline Bryson

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Dividing property and finances on divorce: what happens in cases involving domestic abuse?

The Fair Shares Report,¹ published in November 2023, provided a comprehensive overview of the financial settlements that people make on divorce. It is the first fully representative study in England and Wales to examine those arrangements.

This paper provides an exploration of the Fair Shares dataset to answer several policy and practice focused questions to help understand more about the profile, experiences and outcomes of divorcees who had experienced domestic abuse during their marriage. The findings are based on a subset of the Fair Shares dataset. This includes the reports of 670 divorcees who reported in the survey that the abusive behaviour of their ex-spouse was a reason for the breakdown of the marriage, and interview data from 12 divorcees who experienced abuse during the marriage.

Research questions explored in this paper

- What is the profile of divorcees who identified domestic abuse on the part of their ex-spouse as a reason for the breakdown of the relationship?
- What routes did they go through to reach a financial settlement, and what was their experience of the process?
- What were the asset splits for these divorcees, and what ongoing spousal support was there?
- For those with children, what child arrangements were made, both in relation to living arrangements and finances?
- How are these divorcees doing financially up to five years after the divorce?

Greater financial vulnerability for female survivors of abuse

Female survivors of domestic abuse were, on average, entering divorce in more precarious financial positions than other women. They often had fewer assets to divide than other female divorcees, with the matrimonial home less likely to be owner-occupied (61 per cent compared to 69 per cent) and being less likely than other women to have their own pension (55 per cent compared to 62 per cent).

They were also less likely than other divorcing women to have been working at the point at which they separated (24 per cent were not working compared to 16 per cent of other women), and – if working – less likely to have been working full-time (41 per cent of survivors compared to 49 per cent of other women). Among women who were working during the marriage, survivors were earning less on average than other women, with nearly twice as many survivors as other female divorcees earning under £1,000 per month after tax (39 per cent compared to 22 per cent).

Taken together, these findings demonstrate the particular financial risk that this group of divorcees face when getting divorced compared with other female divorcees, with potentially less capacity to support themselves financially after divorce, particularly given that domestic abuse was more common among women with dependent-age children (61 per cent of survivors compared to 52 per cent of other female divorcees), with the added financial burdens and constraints that childcare brings.

By contrast, the situations of male survivors of domestic abuse were less different from other men, although they had higher levels of gross debt (e.g. 41 per cent had at least £10,000 compared to 33 per cent of other men).

Among both genders, survivors were more likely to be entering into negotiations about the division of assets and finances with less knowledge about their ex-spouse's finances which potentially placed them at a disadvantage (e.g. 29 per cent of female survivors and 28 per cent of male survivors said their knowledge was not at all good compared to 17 per cent of other women and 14 per cent of other men).

¹ E Hitchings, C Bryson, G Douglas, S Purdon and J Birchall, *Fair Shares? Sorting out money and property on divorce* (University of Bristol, 2023).

Increased use of legal support

Both male and female survivors were more likely than other divorcees to use lawyers to try to sort out their finances on divorce (39 per cent of female survivors and 47 per cent of male survivors compared to 31 per cent of other women and 26 per cent of other men). When female survivors used lawyers, they were more likely than other women to instruct them to deal with the whole process rather than to choose to get advice or help at certain points (71 per cent of survivors using a lawyer did so for the whole process compared to 61 per cent of other women). Six in ten (61 per cent) of these female survivors suggested that this was because they did not feel comfortable negotiating with their ex-spouse. In addition, male survivors were twice as likely as other men (20 per cent compared to 11 per cent) to have engaged lawyers in relation to making child arrangements.

Reaching arrangements

Although male survivors were as likely as other men to have reached a financial arrangement (54 per cent compared to 52 per cent had a full or partial arrangement), female survivors were less likely to have done so than other women. Three in ten (31 per cent) of female survivors had a full arrangement and a further seven had a partial arrangement, with the comparative figures among other women being 40 per cent and 15 per cent.

The importance of the formal legal system

Domestic abuse survivors who reached a financial arrangement had made significant use of formal legal processes, with the majority of arrangements made by both female and male survivors (61 per cent) made into a court order. This was more likely than for other divorcees (42 per cent of other women and 48 per cent of other men). Among women, survivors were more likely to use contested court proceedings, with 17 per cent of female survivors reporting that their case had been determined by a judge and a further five per cent settled after financial proceedings had begun. This compares to only four per cent determined by a judge and three per cent settled after proceedings began for other female divorcees.

The limited use of mediation

Very few domestic abuse survivors had successfully used mediation to reach a financial arrangement. Whilst 16 per cent of female survivors and 13 per cent of other women had attempted mediation, only four per cent of arrangements made by female survivors had been made by mediation compared to one in five (19 per cent) arrangements made by other female divorcees.

Legal/mediation costs and limited use of legal aid

Although domestic abuse survivors are – subject to means-testing – entitled to seek legal aid for private family law children and finance matters if they meet one of the prescribed evidence requirements, both male and female survivors of domestic abuse were more likely than other divorcees to have incurred legal or mediation costs in sorting out their finances on divorce (70 per cent of female survivors and 73 per cent of male survivors, compared to 63 per cent of other women and 56 per cent of other men). Only 16 per cent of female survivors and 19 per cent of male survivors received legal aid, whilst half of both female survivors (50 per cent) and male survivors (51 per cent) paid for legal or mediation costs themselves.

Asset splits: a mixed picture, but dominance of the clean break

Whilst the overall picture relating to asset splits is rather messy, a clear finding to emerge is the preferred *mode* of settlement by many domestic abuse survivors: a focus on a clean financial break (43 per cent of female survivors and 59 per cent of male survivors said this was an important aspect they wanted from a settlement compared to 35 per cent of other women and 37 per cent of other men) and to minimise ongoing contact with their ex-spouse (29 per cent of female survivors and 37 per cent of male survivors cited this compared to 13 per cent of other women and men). Another issue that stood out was the low levels of spousal maintenance (seven per cent of female survivors had a spousal maintenance arrangement for their ex-spouse to pay at the time of divorce, compared to 13 per cent of other women).

Difficulties with child maintenance

For both male and female survivors, child maintenance arrangements were more likely to be made via the Child Maintenance Service (CMS) than directly between the parents. Among those with an arrangement, only a third (36 per cent) of female survivors had a family-based arrangement compared to seven in ten (70 per cent) arrangements among other mothers. The same pattern was exhibited for male survivors.

Reported rates of compliance were also lower, with 12 per cent of female survivors with an arrangement reporting having never received their child maintenance payments compared to only three per cent of other women. However, there was only a slightly higher level of 'Collect and Pay' use amongst domestic abuse survivors with an arrangement to receive maintenance, compared with other mothers.

Poor financial circumstances after divorce

Female domestic abuse survivors often continued to be in more precarious financial positions following divorce than other women. Up to five years after their divorce, female survivors were less likely than other women to be in full-time paid work (44 per cent compared to 56 per cent), and more likely to be on Universal Credit (32 per cent compared to 17 per cent). Nevertheless, female survivors were more likely than other women to feel that they were financially better off than prior to their divorce (44 per cent compared to 33 per cent of other women), likely reflecting issues of feeling more in control of their lives and finances following their exit from an abusive relationship.

There were fewer differences in the living standards of male survivors and other divorced men.



Policy thoughts and recommendations

- Our findings suggest a potential **need to raise the legal aid capital and income thresholds for survivors of domestic abuse** in light of findings that many survivors of domestic abuse are funding their own cases, and the low levels of legal aid awarded to them. In addition, following on from our recommendation in the Fair Shares report as well as the high proportion of survivors paying their own legal costs, we continue to suggest that **publicly-funded, tailored legal advice at an early stage in the process, alongside focused information on an appropriate range of family justice options for all divorcees**, would provide everyone going through a divorce with the requisite information at the right time and in particular, would help to ensure that all domestic abuse survivors, particularly those above the capital and income thresholds, would be able to receive some support and guidance.
- Given our findings which show that very few survivors had successfully used mediation to reach a financial arrangement, we support Resolution's 'Vision for Family Justice'² which calls for the **replacement of statutory Mediation and Assessment Meetings (MIAMs) with an 'Advice and Information Meeting' (AIM)** This meeting would be delivered by a broader range of family justice professionals than mediators alone.
- A number of our findings suggest, in combination, that **further amendments to the Family Procedure Rules should potentially be considered, to ensure that the court explicitly considers whether NCDR is appropriate when domestic abuse is involved.** The fact that survivors used the court in higher numbers than other divorcees, with few survivors coming to agreements using mediation, suggests that many survivors want – and need – robust judicial oversight and intervention. Indeed, overall, survivors were more likely than others to say that their ex-spouse had the most say when coming to any financial arrangement. Thus, we suggest that confirmation is needed within the rules to clarify that domestic abuse is a valid exemption from the Pre-Action Protocol, and that survivors will not be faced with the prospect of a costs order being made against them if they fail to engage in NCDR because of domestic abuse.
- **There may be a need for a clarification of the current legal position for those who work within the family justice system**, particularly in light of our finding that financial arrangements involving domestic abuse survivors were far more likely to have involved court proceedings compared with other divorcees. Therefore, we support Resolution's 'Domestic Abuse in Financial Remedies Proceedings' Report recommendation for an **explanatory Practice Direction setting out the approach for cases involving suspected domestic abuse in financial remedy proceedings.**³
- If the law of financial remedies is to properly protect and support some of the most vulnerable members of the divorcing population, it must focus on what it can do to assist survivors back onto the road to independent living whilst being mindful of what is appropriate and feasible within a stretched and under-resourced family justice system. In light of our findings which show that female domestic abuse survivors continue to be in more straitened financial circumstances up to five years after divorce compared with other female divorcees, **questions are raised about the extent to which the strict position in relation to the lack of express consideration of domestic abuse in the substantive law remains appropriate.**

2 Resolution, Vision for Family Justice, [2023], <https://resolution.org.uk/wp-content/uploads/2023/11/Resolution-Vision-for-Family-Justice-full-221123.pdf>

3 Resolution, *Domestic abuse in financial remedy proceedings*, [2024], p 31.

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