LCP INSIGHT CLARITY ADVICE

LCP on point

"You've got mail" – the new divorce law and its potential impact on the sharing of pensions in England and Wales

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Contents

Executive Summary

Divorce law in England and Wales is about to undergo its biggest change in half a century. From April 2022 a new process of 'no-fault' divorce will be introduced, allowing a spouse, or spouses acting jointly, to secure a divorce within a period of six months without needing to demonstrate that anyone was at fault for the irretrievable breakdown of their marriage.[1]

In many respects, the reformed system represents a positive change. Where a marriage has broken down irretrievably, couples will be able to bring it to an end without the need to prove fault, or to have a prolonged period of separation before a divorce can be granted.

However, there may be a risk that a new streamlined process, when coupled with the move to associated online financial remedy applications, might lead to the risk of greater unfairness in the sharing of assets at divorce, particularly with regard to sharing of pensions.

It is well documented that there is currently a 'gender pension gap', whereby women in retirement typically enjoy far less pension wealth than their male counterparts. One group of women in retirement who are particularly disadvantaged are divorced women who may not have secured a material share of their husband's pension wealth at the point of divorce. Only around one in three divorces has a court order concerning the couple's property and finances[2], and only a relatively small minority of these include the sharing of pensions. Although it is possible for couples to take account of pensions outside of a formal court order, typically allowing one partner to claim a greater share of the housing wealth in exchange for renouncing any claim on the pension wealth, there is poor quality evidence as to the scale on which this occurs. There are also concerns about how pension assets should be valued fairly when compared to currently available assets.

The current system of pension sharing on divorce in England and Wales is often already failing to deliver good outcomes in retirement to many divorced women. But this problem could be about to get worse, for reasons explained in this paper.

Our case is that a more streamlined 'no-fault' divorce process coupled with a move to more online resolution of associated financial applications, with an entirely laudable emphasis on a swift and amicable resolution, may not sit well with the detailed, time-consuming and frankly often messy process of valuing pension assets and deciding upon a fair share. Our concern is that the focus on speed and 'moving on' may be to the detriment of fairness when it comes to pensions.

The paper is organised as follows. We begin by setting out the current processes for sharing pensions at divorce, before summarising some of the data which question whether these processes are effective. Then we summarise current divorce law and how it will change in April 2022. Next, we set out our concerns about how these changes could

[1] The same procedures will follow in the case of the dissolution of a civil partnership. For brevity we refer throughout this document to marriage, but this should always be taken to include civil partnerships as well unless otherwise stated.
[2] See: Table 13 : https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2021.

potentially undermine the process of pension sharing, before making some recommendations for all those involved in the system.

Under the current system, there is remarkably little reliable systematic evidence about how pension sharing is working in practice. Further, little is known about those who do not opt for a formal financial settlement (which by definition cannot involve a pension sharing order but might include an informal trade of the value in a pension for another asset). It is vital that there is proper monitoring of processes and outcomes in the reformed divorce system to ensure that the good intentions of the forthcoming reforms do not inadvertently lead to poorer outcomes for many when it comes to securing a fair share of the couple's pension wealth.

01 Background

a) Pensions and Divorce in theory – a brief overview of how the system is meant to work

When a couple divorce they may come to a financial settlement which sets out how assets are to be divided. The most obvious asset is often the family home, but it will not necessarily be the most valuable one. Where one or both partners has a large pension pot or has long service in a final salary type pension scheme, the capital value of pension rights can easily be larger than the value of any property owned by the couple (especially outside of London and the South East).

One illustration of the importance of pension wealth comes from the latest Wealth and Assets Survey,[3] published in January 2022. This shows that for all households (not just those where a couple is divorcing) the total value of private pension wealth stood at £6.4 trillion, whereas the total value of property wealth (net of outstanding debt) stood at £5.5 trillion. Separate research[4] shows that amongst couples in Great Britain pension wealth is likely to exceed property wealth in around 40% of cases. These simple statistics are a reminder that pension assets should not be overlooked.

Whilst divorcing couples will inevitably focus on more immediately pressing issues such as care for any children and where each partner will live, it is vitally important that pensions are not forgotten. Each partner will need something to support them in retirement. It is often the case that a partner who has, for example, spent a lot of the marriage bringing up children at the expense of full-time paid employment ends up with much smaller pension rights than would have been the case had they worked full-time throughout their working life. A financial settlement reached on divorce provides the critical – and only – opportunity to make sure that these inequalities can be addressed.

The helpful guide to handling pensions on divorce prepared by 'Advice Now'[5] includes this short summary of how the law handles the sharing of assets (including pensions) when a couple divorce:

> *"A judge has the power to share out all your income, property, pensions and savings (the law calls these things of value 'assets') in a way that meets the needs of your children (who are under 18) first, and then you and your ex. The overall aim is to get a fair outcome for you and your ex. But be aware that to get to this, it doesn't always mean that everything is shared out equally – 50/50. What someone might think of as fair when it comes to pensions may well be very different to how the law views it…*

3 Household total wealth in Great Britain - Office for National Statistics (ons.gov.uk)
4 See: Buckley, J & Price, D 2021, Pensions and Divorce: Exploratory Analysis of Quantitative Data: Report of a MICRA Seedcorn Project supported by the Pensions Policy Institute. University of Manchester, Manchester Institute of Collaborative Research on Ageing, Manchester.
5 See A survival guide to pensions on divorce | Advicenow

How the court deals with the finances in a case depends on all the circumstances, such as your different needs, health, differences in age and how long you have been married. If there are children (under 18), the law puts their needs first and then looks to what will give a fair outcome for the adults". (p16)

There are three main ways in which pensions can be shared as part of a financial settlement on divorce:[6]

- Pension Sharing – introduced in 2000, pension sharing enables each party to receive a share of the total pension wealth in their own right; for a 'pot of money' or 'Defined Contribution' (DC) pension, this means that each party will end up with their own DC pension pot; for a salary-related or Defined Benefit (DB) pension, each party will end up with their own rights to a pension, which may be "internal" from that pension scheme or the receiving party may be required to take their "pension credit" and invest externally into their own DC pension arrangement

- Pension Offsetting – rather than sharing the pension itself, pension wealth is taken into account in the global reckoning of assets and it is agreed that one party will get a larger share of the non-pension assets in return for not making any claim on the pension of their ex-spouse;

- Pension Attachment (or 'earmarking') – introduced in 1996, pension attachment gives one party a right to payouts from the pension of their ex-spouse; this approach is much less common than in the past (in fact it is hardly ever used now), partly because it does not provide a 'clean break' between the two parties. An attachment order simply "attaches" to the pension holder's existing pension fund and the percentage ordered is then paid to the holder of the order as and when the pension holder draws on their pension.

One important point to note is that pension sharing or pension attachment both require a court order, whereas pension offsetting (or indeed the division of other forms of assets) can be arranged without need for a court order. However, parties in this latter situation would do well to remember that only a court can provide finality and so unless there is such a court order, one party may "come after" the other at some future date.

In the next section, we look at how these rules work in practice and at the sort of outcomes which result.

b) Pensions and Divorce in practice

One way of evaluating how well the system is working is to consider the outcomes for people who divorce when it comes to their retirement wealth. Since the majority of pension wealth in divorcing couples is held by men, it is particularly important to look at how far the current process for pension sharing is delivering decent pensions in retirement for divorced women.[7]

The results are not encouraging.

[6] For more information see the MoneyHelper website at: Pensions and divorce | Pension Wise.
[7] A good deal of research has been undertaken at the University of Manchester on pensions and divorce and a summary of key findings can be found at: Pensions on Divorce: Where now, what next? | Research Explorer | The University of Manchester

Research undertaken by the University of Manchester in partnership with the Pensions Policy Institute[8] demonstrates that pension wealth is hugely unequal within marriages. Notably, in about half of all couples with pensions, one partner has at least 90% of all the pension wealth. But pension sharing on divorce is often doing little to even things up. The research found that divorced women in their late sixties who are not cohabiting with a new partner have only 30% of the pension wealth of equivalent divorced men.

A review of the effectiveness of the current system is contained in a paper by one of the present authors (Rhys Taylor) and Hilary Woodward, *Till Pensions Do Us Part: The Pension Advisory Group and the Search for Consensus on Divorce*.[9] That paper begins as follows:

> *Only around one third of divorces with final decrees include a final financial remedy order, and of those, a relatively small (albeit increasing) proportion include an order dealing with the parties' pensions. The rest are either dealt with by offsetting the pension against another asset such as the family home, or quite often not properly considered at all. Empirical and anecdotal evidence indicates that the quality of pension disclosure on divorce is poor, that practice in this complex field has been operating inconsistently and has led to a large proportion of potentially unfair outcomes, particularly for divorcing wives, and an increasing number of negligence claims.*

The paper highlights the findings of Woodward's Pensions on Divorce study (2014), in which the researchers analysed a sample of 369 divorce files with a financial court order and undertook qualitative research involving family solicitors and judges. Key findings were as follows:

- The quality of data on pensions presented in the paperwork submitted by the parties to the court was generally much poorer than for other types of assets, perhaps indicating the low priority given to pensions even in cases like these which are handled by the courts;

- The way in which pensions were taken into account in the final settlement was 'economically irrational' in over half of the financial orders examined;

- Levels of experience and confidence in dealing with pensions varied considerably amongst the solicitors interviewed;

- Judges typically dealt with relatively few financial remedy cases (i.e. cases where people apply for the court to determine their finances when they are getting divorced) involving pensions, and judicial training on pensions was minimal.

In response to concerns about the fairness and effectiveness in the operation of the current system of pension sharing, the Pension Advisory Group (PAG) was brought together in 2017, an interdisciplinary group including lawyers and other experts in pensions and divorce. The group undertook extensive research and in 2019 produced a carefully considered report *A Guide to the Treatment of Pensions on Divorce*[10] which is now increasingly referenced in court cases and has helped to improve practice relating to pensions in financial remedy cases heard in court.

The best outcomes – in terms of ensuring that pensions are properly considered as part of a divorce settlement – will be achieved where parties are able to take advantage of expert

[8] Pensions and Divorce: Exploratory Analysis of Quantitative Data (manchester.ac.uk)
[9] Pensions: Law, Policy and Practice (Agnew et al), Hart Publishing, 2020, Chapter 17.
[10] A Guide to the Treatment of Pensions on Divorce (nuffieldfoundation.org)

advice. Notably, calculating an accurate present capital value for a salary-related pension is a complex task, generally undertaken by specialists. Without bringing in this expertise, there is a real risk of the parties' pension rights not being properly valued.

Moreover, many individuals going through these cases may not even have the benefit of legal advice and assistance. When the current rules on pensions sharing on divorce were introduced just over twenty years ago, legal aid was still available to divorcing couples. However, legal aid for financial remedy cases was abolished in 2013 except in cases of domestic abuse, so since then more people have had to navigate this whole process without legal support.

One potentially important recent change to the process for resolving finances on divorce has been the greater use of an online application process. Most consent orders (i.e. financial settlements which have been formally approved by the family court as part of a divorce) are now dealt with online. On some measures, this system has been a success, reducing the time taken for orders to be approved by the court. The Ministry of Justice is also currently developing an online system for contested financial remedy applications. This is at an early stage of development and presently cannot be used by litigants in person who must send in paper applications which can then be scanned on to the system. It is hoped that the online contested system will, in the near future, develop to match the success of the consent order system.

However, whilst using an online application process should simply streamline the process and should not – of itself – lead to a change in outcomes, the online system may remove some of the real life 'nudges' that parties might otherwise encounter to consider pensions as part of any settlement. A virtual nudge has now been included in the online consent order process.[11]

It remains to be seen whether a process designed to streamline the administration of divorce and financial settlements could unintentionally mean less time and focus on ensuring that all financial assets are fairly shared. The timetable for an application for a financial remedy application needs to be borne in mind. An applicant for a financial remedy order is likely to be required to attend a Mediation Information and Assessment meeting with a mediator, as a condition precedent for being able to issue the financial remedy application. It will then take two months for financial disclosure to be provided in Form E. It may only be at this point – 3 months down the line – that it becomes apparent that pensions are going to be an issue. All the while, the timetable in respect of the divorce application has been ticking away. It will require the applicant to be quick off the mark in seeking advice and possibly expert actuarial assistance. If there is any delay, beyond the prescribed 28 days (for which see discussion later in article), in the service of the divorce application, the time to start reacting to the financial issues will be truncated further.

The foregoing potentially competing timetables between the divorce application and the financial remedy application is not without consequence. Typically, an applicant for a pension share does not want a decree absolute to be granted before a pension sharing order has "taken effect." There is a period of time between the court making a pension sharing order, which is usually the later of 28 days after the making of the financial order or the making of a final order in the divorce, before the order 'takes effect' as a matter of law.[12] If the pension holder were to die within the window of 28 days after the making of the pension sharing order, but having already obtained a final order for divorce, the pension claimant is no longer a spouse and so will have lost their entitlement to a widow's

[11] For example, when parties submit a consent order to the Family Court for approval, they are required to submit a Form D81, which includes a detailed summary of the parties' asset position. This form was substantially revamped and improved in February 2022. Question 13 has a side prompt requiring parties to explain how they have approached any pension offsetting agreement. www.gov.uk/government/publications/form-d81-statement-of-information-for-a-consent-order-in-relation-to-a-financial-remedy

[12] This is not to be confused with the reference to a 28 day deadline in the previous paragraph, which relates to another part of the divorce process.

or survivor's pension but the sharing order will not have "taken effect" and so the pension claimant gets nothing.[13] This is a very important reason why pension sharing should be ordered, if at all possible, at least 28 days before the making of a final order for divorce.

[13] Critical timing of decree absolute: unexpected death. [2017] Fam Law 871, Cobley *et al* Fam Law 2017 Aug 871 - 28-days-and-DA-article.pdf (oakbarnfp.co.uk)

02 The 2022 Changes to Divorce Law

April 2022 will bring a major change to the law on divorce in England and Wales, implementing what is often referred to as 'no-fault divorce'. In this section we describe what is changing, before going on to consider the potential implications for pensions and divorce.[14]

a) The system pre-April 2022

Divorce law in England and Wales has remained largely unchanged for nearly half a century and is still governed by the Matrimonial Causes Act 1973. Under the law in effect prior to April 2022, a divorce can only happen when the marriage has 'irretrievably' broken down. This can only be demonstrated in one of five ways specified in the Act: adultery, (what is misleadingly called) 'unreasonable' behaviour, desertion for two years, separation of at least two years (if both parties consent to divorce) or a separation of at least five years (without consent to divorce).

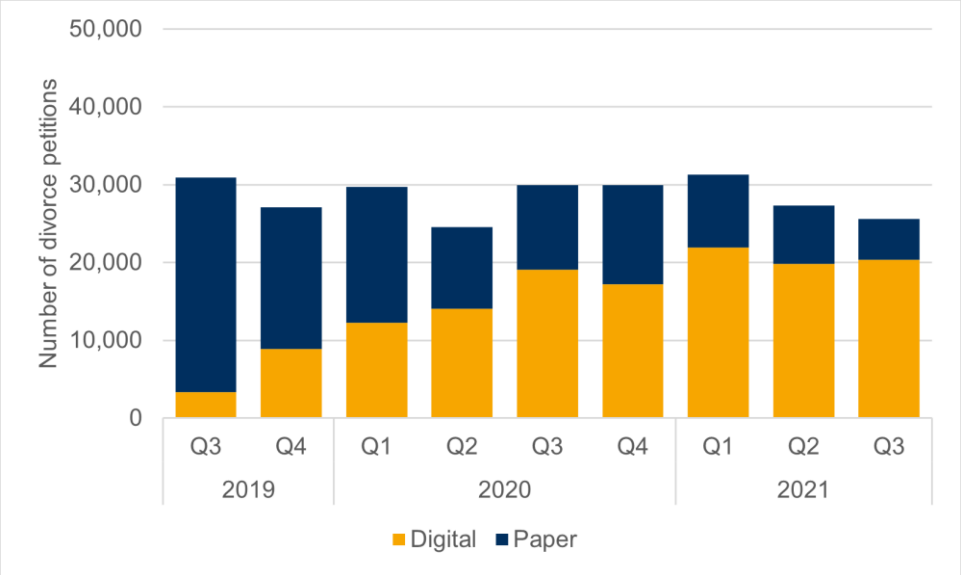
In practice, the most common basis for divorce, especially for those wanting to divorce relatively quickly using the procedure for uncontested divorce petitions, is to file the application for divorce on the basis of the of adultery or behaviour of the other party. This route is commonly chosen where a couple is already separated, and one partner (usually the wife) is not easily able to support themselves financially. That partner, in particular, may wish to secure a comprehensive financial order alongside an immediate divorce, rather than wait until two years have passed and obtain a consensual divorce on the basis of separation.

In 2020, the most recent full year for which figures are available,[15] there were just over 114,000 petitions for dissolution of marriage; indeed, in every year since 2013, the number has been in the range 100,000-120,000. As shown in the chart below (based on quarterly data), an increasing proportion of divorce petitions in the courts of England and Wales are being handled 'digitally', and divorce applications are now mostly digital by default.

[14] A summary of the changes can be found at: England's new divorce law from April 2022 | iFLG | International Family Law Group

[15] See: Family Court Statistics Quarterly: July to September 2021 - GOV.UK (www.gov.uk)

Divorce petitions made between Q3 2019 to Q3 2021, by case type



Source: Family Court Statistics Quarterly: July to September 2021 – GOV.UK (www.gov.uk)

However, if we turn next to the statistics regarding financial remedy applications (applications made to court to resolve financial disputes when parties divorce), in 2020 just under 38,000 cases were started (most of those by way of application for a consent order i.e. an agreement between the parties submitted to court for formal approval), slightly down on an average of around 40,000 cases a year in the last five years. Put together, these two datasets indicate that the courts make financial remedy orders in very roughly only 1 in 3 divorce cases. Since 'pension sharing' and 'pension attachment' can only happen if ordered by the court, and since we know from research by Woodward and others that only a relatively small minority of all financial remedy orders made on divorce include pension orders, this suggests that aside from the (unquantified) use of pension offsetting arrangements, pensions may not be getting the attention that they need and deserve in the majority of divorce cases.

b) The reformed system from April 2022

One concern about the current pre-April 2022 process of divorce is that the requirement to prove 'fault' has the potential to lead to unnecessary acrimony, which is unhelpful both to the divorcing parties and, in particular, to any children who are involved. There are also concerns that the process may be too drawn out in cases of domestic abuse where a swifter mechanism for divorce could improve the position of the survivor of abuse.

Given the growing chorus of opposition to the 1973 Act scheme, the present Parliament passed the Divorce, Dissolution and Separation Act 2020, whose main measures will be implemented in April 2022. A key difference with the new procedure is that it will no longer be necessary – or even possible – for either party to prove 'fault' in order to obtain a divorce.

Under the new system, a divorce can, in principle, be completed from start to finish in six months.[16] That period will start when one party (the applicant) files – or, in an important

[16] According to the latest statistics (Family Court Statistics Quarterly: July to September 2021 - GOV.UK (www.gov.uk)) the median time from petition to decree absolute is currently around 32 weeks, and the mean time is 55 weeks. This

innovation of the new law, the parties together file – for a divorce online. In the case of solo application, the applicant will then be expected to notify the other party (the respondent) within 28 days. The default method of notification is by email, though a paper confirmation of the email is also expected to be sent to a known address. The box below sets out some of the concerns about the presumption of service to a normal email address.

How could service to a 'usual' email address work in practice?

The regulations around the new divorce process require service to a 'usual' email address. Although the 'practice direction' which accompanies the new rules discourages the use of work email addresses[17], such an address could still be used in some cases. This raises several concerns:

- On a purely human level, for an individual to receive an email (possibly out of the blue) indicating that their spouse wishes to end their marriage could be very distressing, and this may be especially difficult to manage in a workplace environment if the usual email is a work email
- Many work email accounts are not private and may routinely be read by other people, further reducing the privacy of the entire process if the usual email is a work email
- An employer may have a legal right to access an employee's email account which could mean in some situations something which a party to the divorce wanted to keep entirely private could be known where they work.

Twenty weeks after filing (and assuming that – in a solo application case – the respondent has been adequately notified), the applicant(s) will then be able to apply for the first court order (currently known as a decree nisi, but under the new law to be known as a conditional order for divorce); in solo cases, the applicant will need to give the respondent 14 days' notice in writing of their intention to file for this first decree. Six weeks later, they will be able to apply for the final decree (currently known as a decree absolute, but under the new law to be known as a final order for divorce). So, putting finances aside for a moment, the divorce process itself will potentially be resolved within six months from start to finish.

One very important difference about this new process is that there is no longer any need for the applicant to demonstrate fault to a court. Similarly, the respondent can no longer object to the divorce, save on narrow, technical grounds (for example, if they dispute that the marriage ever took place, or that the court has jurisdiction). One unintended consequence of this 'no-fault' process is that it might possibly enable some wealthier couples to abuse the process in order to maximise the amount of pension tax relief which they can enjoy. This point is discussed more fully in the box below.

Some concerns have been raised that a 28-day deadline (28 days after the divorce application has been issued) for the serving of divorce papers on the respondent does not appear to be absolute. It remains unclear what will happen upon applications to extend time for service (beyond 28 days), within an overall timetable which allows for divorce

suggests that the new process may not be much quicker for the typical case, but more complex cases are likely to be resolved significantly more quickly.

[17] FPR Practice Direction 6A, paragraph 4A.1 states that a usual email address "is generally considered to be the email address actively used by the respondent for personal emails. Email service to a respondent's business email address should be avoided where possible."

within 6 months. It has yet to be seen how the court will respond to a party who fails, without good reason, to notify their spouse within the prescribed timeframe of 28 days. Whilst courts may require the respondent to be properly served with notice of the application, where it has not been done within 28 days, they cannot in general extend the six-month deadline for the whole process. Quite how the court will deal with any unmeritorious applications to extend the time for service remains to be seen. This means that there is a risk that a respondent may in some cases only have a relatively short period between first learning of the application for divorce and the conditional order being granted. We discuss below why that might matter in relation to pensions.

One vitally important point to note is that the application for a divorce is separate to any application for a financial settlement (technically known as an application for a financial remedy). Given the potential speed with which the divorce process itself is likely to operate under the new regime, there are likely to be many cases in which the process of agreeing any financial settlement has not been completed by the time the final order of divorce can be applied for.

Under the current law it has been common practice (even if the law is somewhat grey in this area) for the parties to hold off from applying for a decree absolute until financial affairs have been resolved.[18] This is especially so where pensions are part of the mix, as a decree absolute means a wife is no longer a spouse able to benefit from death benefits but until any pension sharing order has "taken effect" (see above) she may also not have a pension entitlement in her own right. It is hoped that the amended s.10 Matrimonial Causes Act 1973 (amended by Part 1, Paragraph 10 of the Schedule to the Divorce Dissolution and Separation Act 2020) may give the courts a wider power to delay the making of the final order if pensions are a consideration.

Potential for abuse of pension tax relief system under no-fault divorce?

Under current HMRC rules, each member of a couple can enjoy a Lifetime Allowance (LTA) of £1,073,100 in pension saving whilst benefiting from pension tax relief. But where one spouse has reached their lifetime limit and the other has not, there is no process to transfer unused LTA from one partner in a marriage to the other.

In the event of a divorce, this situation can change. If pension rights are shared as part of the divorce settlement this will often mean that the spouse with the greater pension wealth transfers some of his or her pension to the spouse with less pension wealth. If the spouse with greater pension wealth was previously at the LTA, the situation post-divorce is that he or she now once more has capacity to save into a pension whilst benefiting from tax relief. This can be a valuable benefit, especially if the partner at the LTA is benefiting from tax relief at the higher or additional rate of income tax.

Although current divorce law would in theory allow couples to 'max out' on pension tax relief limits as described above, in practice there may be several practical barriers. The quickest way to secure a divorce would be for one party to allege that the other party is 'at fault' for the divorce. This may not be a pleasant process, especially where children are involved, and it would be necessary for this to be proved to the satisfaction of the court. Alternatively, if an irretrievable breakdown is claimed with consent by both parties this could only happen after a two-year separation. Either of these requirements may put a something in the way of someone thinking of divorcing purely to maximise pension tax breaks.

[18] See *Thakkar v Thakkar* [2016] EWHC 2488 (Fam), [2017] 2 FLR 399 which suggests a test of "special circumstances" must be applied to justify a refusal of a final order for divorce. Anecdotally, the presence of a pension often persuades district judges to refuse the making of a final order until the finances are resolved, which might suggest that the "special circumstances" is not always applied in practice.

By contrast, in the new system these barriers are greatly reduced. First, there is no longer any requirement for either party to allege fault or indeed to prove to a court any fault. Either – or both – parties can simply file for divorce and within six months the whole process can be completed. Similarly, although the couple still need to assert that the marriage has broken down irretrievably, there is no need for this to be demonstrated by a lengthy period of separation.

One possible scenario is that a couple agree to divorce and 'go through the motions' of demonstrating that their relationship has broken down. Pensions are then shared, only to be followed by an apparently remarkable reconciliation (and possibly even remarriage) a short period thereafter. Very large sums of tax may be dishonestly avoided in this scenario.

This strategy is dishonest and may breach the criminal law. It may not, however, be easily detected, save by tipping off to the HMRC.

03 The new divorce law and pension sharing?

In principle, because the process of securing a financial order is separate from the process for applying for a divorce, a more streamlined 'no fault' divorce process should not automatically change the likelihood of fair financial settlements being achieved.

However, there is a risk – if the emphasis of the new process becomes, in practice, ending a marriage swiftly – that anything seen as complicated, emotionally-charged or time-consuming – such as sorting out pensions – will not get the attention that it deserves. This could particularly be the case if the 'respondent' only finds out about the proposed divorce a few weeks before the conditional order is granted and may have so much to think about, including the impact on children and housing, plus their own emotions, that anything else becomes too difficult to deal with. It may also be the case that it will be feel harder for some applicants who are divorcing "amicably" under the new process to raise something as contentious as pensions (often wrongly seen by the pension-holder as being personal to them in contrast to the way which a house is commonly viewed as a joint asset), which risks souring an otherwise amicable process.

In the case of a relatively short marriage this may not matter too much; a short marriage may have had little impact on the relative pension positions of each spouse. But where the marriage has been a long one, inattention to the pensions can seriously disadvantage the partner with less pension wealth. As research has demonstrated, this is almost invariably the wife.

We therefore suggest that several things need to be done in order to remove the risk that an already flawed system gets worse when the new divorce law comes into force:

a) The Ministry of Justice should monitor the number of divorces that involve financial settlements before and after the changes and, in particular, assess the extent to which there is any change in the number of financial orders involving pensions. With the advent of the new Form D81 (referenced in footnote 11 above), the form which has to be submitted to court by both parties when they want the court to approve a financial settlement reached out of court, much more data will be available to the Ministry of Justice which it is hoped will be able to be deployed to provide more meaningful statistics about court use in this context[19];

b) As the online contested financial remedy application system is developed for use by litigants in person, the Ministry of Justice should keep in mind the need for effective prompts or 'nudges' to the parties to give due weight to pensions, for instance with clear explanations of how the system works and signposts to sources of assistance, such as the Advice Now guide;

[19] Indeed, we are pleased to see that this work is already underway: https://www.familylawweek.co.uk/site.aspx?i=ed228603

c) The Ministry of Justice should evaluate the outcomes currently being achieved by those who handle their own divorce, whether through the court process ('litigants in person') or without using the court system at all (in which case there can have been no pension sharing) and the relative fairness of the financial outcomes achieved by these individuals.[20] If there is evidence of seriously poor outcomes, it should review the case for the wider provision of legal aid in certain circumstances.

[20] We welcome the research currently being undertaken at the University of Bristol by the Fair Shares project under the leadership of Professor Emma Hitchings into financial outcomes for those who divorce without the assistance of the courts.

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