

The Baroness Shackleton of Belgravia IVO, Family Partner at Payne Hicks Beach, features in Spears online on 29 June 2022 and reproduced with kind permission
<https://spearswms.com/queen-bees-divorce-family-law/>

OUR SURVEY SAID...

The 2022 *Spear's* Family Law Survey reflects a divided profession that welcomes change but is cautious about the consequences. By *Ian Douglas, Spear's* head of research

THE 2021 EDITION of the *Spear's* Family Law Survey was published in the midst of the Covid pandemic. At that time, the legal consequences of leaving the European Union were beginning to be felt. Vaccines had only just been rolled out in the most advanced countries, and lockdowns and limits on public life were still a daily reality. Schools were still closing their doors, lateral flow tests were a constant background noise, and work, mostly, was done from home.

This year, life has moved closer to normality and our responses – garnered from several dozen top family lawyers – reflect that. But they also demonstrate the uncertainty felt by lawyers and their clients in the new context of the Divorce, Dissolution and Separation Act 2020 and a future dominated by a radical increase in transparency.

HOW THE NEW LAW WORKS

Before 10am on 6 April 2022, a divorcing couple had to provide evidence of the breakdown of their marriage, with one side accusing the other of unreasonable behaviour, adultery or desertion. Without this accusation, the divorce would not be granted until the petitioner could show that they had been separated for two years if they were divorcing with the consent of their partner, or five years without it. Disagreements over this evidence led to disputes and the process could be drawn out unnecessarily for vindictive reasons, leading to years-long delays, trauma to children and wastage of court time.

Now, a declaration that the relationship was irreversibly broken down, made by filling in a straightforward online form, is taken as proof that it really has. The declaration can be made by one partner alone or jointly, in the hope that the separation can be made as amicably as possible.

The couple then has a minimum of 20 weeks to decide on the post-marriage arrangements for property and children before the conditional order is granted (previously known as the decree nisi). There is then another six-week cooling-off period, during which the divorce could still be reversed, before the final order (the new name for the decree absolute) is granted.

No-fault divorce was first introduced in the UK in the Family Law Act of 1996, but it was repealed five years later as unworkable. In this newer arrangement, no changes have been made to financial provision or child custody arrangements, although mediation is being encouraged more strongly than ever.

WELCOME CHANGE

All the respondents *Spear's* spoke to broadly welcomed the arrival of no-fault divorce, although many raised caveats and some had serious misgivings about possible consequences. Some thought it did not go far enough. Some thought the change made was to a fairly small detail of the proceedings, usually circumvented without too much bad feeling by either side, who usually recognised the need to specify

CHART 1

Family lawyers expect a the majority of their HNW clients to welcome the advent of no-fault divorce

What proportion of your clients do you anticipate will welcome no-fault divorces?

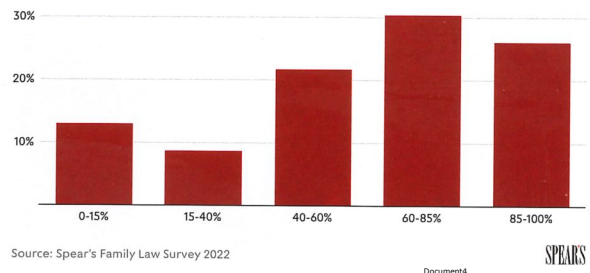
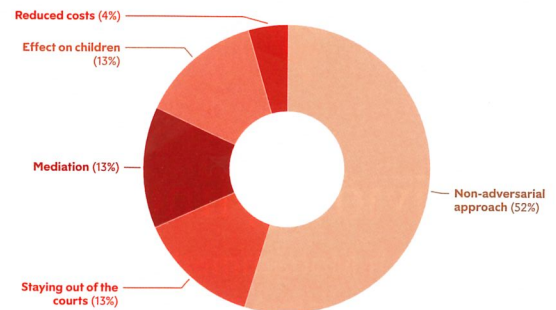


CHART 2

Family lawyers expect a less adversarial approach to be the chief benefit of no-fault divorce for (U)HNW clients

What aspect of no-fault divorces do you think would be most valuable to HNW couples?



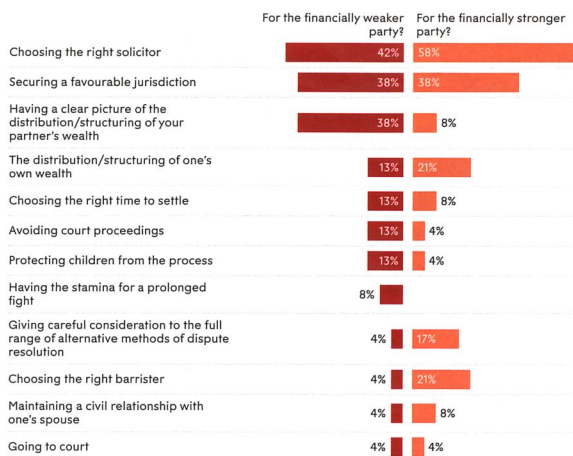
“Some clients have found they are disappointed at missing the opportunity to have their grievances acknowledged in public”

“ Couples coming to an agreement amicably themselves, but actually misunderstanding what they really are entitled to, really impacts women ”

CHART 3

In a (U)HNW divorce, choosing the right solicitor is the most important factor – according to solicitors

In a (U)HNW divorce, what are most often the most important factors in bringing about a favourable result...



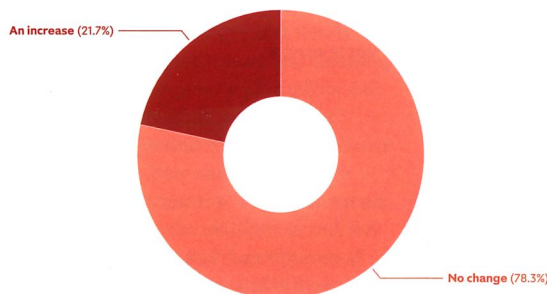
Source: Spear's Family Law Survey 2022

SPEAR'S

CHART 4

Over a fifth of family lawyers have seen an increase in HNW divorces over the past year

In the last 12 months, have you witnessed a change in the number of HNW divorces as compared to the year before?



Source: Spear's Family Law Survey 2022

SPEAR'S

unreasonable conduct – even in some detail – as a regrettable but necessary part of the process.

Despite all this, HNW family lawyers do believe their clients will welcome the change: 26 per cent predicted that 85-100 per cent of couples would welcome the news, and 30 per cent were slightly more circumspect, believing that 60-85 per cent would be content, adding up to a clear majority in favour (see chart 1). When asked what aspect of the new process would be the most welcome, 52 per cent of respondents cited the non-adversarial approach (see chart 2).

Some clients have found they are disappointed at missing the opportunity to have their grievances acknowledged in public, even if losing out on their moral superiority does smooth the legal course. Claire Nickolds of Jones Nickolds said: 'I have a couple of clients who are a bit upset about it because they want there to have been a record. They tend to be the cheated-upon spouse where they say, "Hang on a second, it didn't just break down, it's broken down because he's run off with his secretary."'

STRENGTH IN ADVERSITY

Other practitioners worry that the non-adversarial approach will not always be the best thing for the weaker party in HNW divorces – often a wife who has spent her time supporting the successful career of her husband.

Ceri Griffiths, a wealth manager whose practice is entirely devoted to women who are divorcing wealthy men, said: 'Where the danger is potentially going to come in is because there isn't that animosity, there is more likelihood that people are going to try and do this themselves – DIY divorce, doing it online without using a legal team. And that isn't necessarily a good thing, because what people think the law says about what they're entitled to and the reality are quite different. And so couples coming to an agreement amicably themselves, but actually misunderstanding what they really are entitled to, really impacts women.'

This view is echoed by the result of our survey question asking what the two most important factors in obtaining a good result are for the financially weaker partner in a marriage. More than 40 per cent of respondents said choosing the right solicitor, narrowly beating finding the best jurisdiction in which to make the claim and having a clear idea of your partner's wealth, both on 38 per cent (see chart 3).

Despite the new possibility of one solicitor representing both sides of the dispute and a very large proportion of the family law profession now being trained in independent mediation, getting the right advice and having the financial facts at your disposal remains paramount.

The industry agrees that the goal of couples divorcing in a way that makes life easier to deal with afterwards will be helped, if only a little, by the ability to split up without having to show adultery or unreasonable behaviour. Resolution, an association of family lawyers formed in >>

THE FIVE QUEEN BEES OF FAMILY LAW

Over the past three decades, five women have established themselves at the top of family law, attracting the biggest clients and often finding themselves going head-to-head in court. A new generation is lining up to revolutionise the industry (more of which on page 46), but for now the ‘Queen Bees’ remain as active as ever...



Sandra Davis

Mishcon de Reya

Over the course of her long career, Davis has dealt with just about every kind of case in family law. No wonder she’s been called a ‘powerhouse of knowledge’ by one peer. She has acted for many notable HNWs, including Princess Diana, Jerry Hall and Thierry Henry.



Frances Hughes

Hughes Fowler Carruthers

Famed for big-money cases, Hughes has told *Spear’s* the cases she settles are often the most rewarding: ‘We don’t want clients feeling like the walking wounded and spending the rest of their lives complaining about their awful divorce at cocktail parties.’

◀ 1982, campaigns for a non-confrontational approach to family law. It now has more than 6,500 members, among them many of those featured in the *Spear’s* Family Law Index. The association said that no-fault divorce represents ‘a better chance of helping couples to resolve the consequences of their relationship breakdown with minimal conflict’, and that the new rules are ‘a huge achievement for Resolution’.

Loraine Davenport, founder and chair of the Milton Keynes Resolution regional group and a director at Hawkins Family Law, sees it as the law catching up with the way Resolution members have been working for some time. ‘I think it is a really positive step,’ she said. ‘I’m not sure it’s as big a step as everybody says it is, because I think for Resolution lawyers, even if you had to draft an unreasonable behaviour petition, you drafted with the other side’s approval. Over the years I’ve encouraged people to draft their own so that they draft what the other side is going to say about them.’

‘I think for years the law was a bit of a nonsense because that’s how everybody was running it. Now you don’t have to go through that step, but I don’t think it will make a very big difference in terms of finance or substantive law.’

STEADY NUMBERS

Last year, three quarters of family lawyers expected divorce numbers to increase for HNW clients, but this year’s data does not reflect that expectation yet: only 21 per cent of lawyers saw an increase over the past 12 months (see chart 4). Only 39 per cent expect an increase over the next year (see chart 5),

with some attributing even that modest rise to people having waited for no-fault divorce to complete the paperwork while continuing with their separations, so the increase would be purely administrative.

The most recent official divorce figures from across England and Wales are from 2020 and show a 4.5 per cent decrease on 2019, continuing the downward trend of the past 15 years (see chart 6).

DIVORCING IN PUBLIC

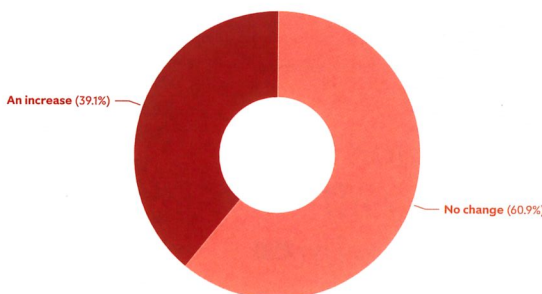
One issue that came up in many interviews was transparency in the courts. Families have been reluctant to have the details in their cases publicised, but many judges – and some lawyers – are keen to see justice done in court and to establish an archive of case law that can be referred to in future cases. The question ‘What is the most important objective for your HNW clients?’ yielded the widest range of answers of all, but 19 per cent cited the preservation of privacy, with a further 7 per cent wanting to avoid a court case more than anything else (see chart 7).

Last October Sir Andrew McFarlane, president of the family division of the judiciary, published a report in which he attempted to balance the competing needs for confidentiality and confidence in the court. There is, he proposed, a need for ‘much greater openness’, adding that public scrutiny and appraisal are the best means to examine the judgments passed.

As it stands, few stories are written in the press directly about the proceedings of family courts. While members of the press are free to attend almost all cases, they are not allowed to write about hearings

Four in 10 family lawyers expect to see an increase in HNW divorces over the next year

Do you expect a change in the number of HNW divorces in the next 12 months?



Source: *Spear’s* Family Law Survey 2022

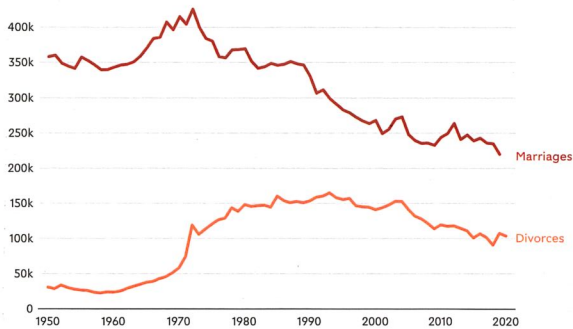
SPEARS

CHART 5

CHART 6

Divorce has been in decline since the early 2000s

Annual number of marriages and divorces in England and Wales



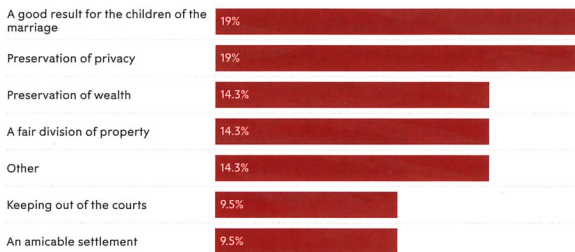
Source: Office for National Statistics: Marriages and Divorces in England and Wales

SPEARS

CHART 7

Protecting children and privacy are the top priorities of divorcing (U)HNWs

What is the most important objective for your HNW clients?



Source: Spear's Family Law Survey 2022

SPEARS

concerning children. Financial matters are also considered private unless specific permission is given by the court, leaving little for the press to write about. Sir Andrew noted that in the absence of authorised reporting, anonymous, often one-sided accounts of poor treatment or abuse still appear, eroding public trust in the system.

His report sets out his view that family law issues can be in the public interest, meaning that members of the press – journalists and legal bloggers – would be provided with financial documentation relating to the claims in hand, although they would have to be destroyed after six months. They still would not be able to name the children or publish photographs of them, and descriptions of assets would have to be general if they were not already in the public domain.

Many of the lawyers we spoke to were concerned that, far from developing a body of case law, this would discourage couples from going to court at all. A parallel system would come into being for publicity-shy

HNWs and celebrities, based on negotiation and bartering rather than law and justice.

William Massey, a partner at Farrer & Co, said: 'There is a tension between judges, family lawyers and clients who want to keep their private matters private, particularly where they are well-known figures or want to stay out of the public eye.' He believed there is a move to use more alternative dispute resolution, private financial dispute resolution hearings and arbitration. 'I think as a principle judges want the public to know that they are doing a good job and dispensing justice well, which I think they do. But there is a perception in the media – slightly one-sided reporting – that the judges have just got it wrong or are making idiotic decisions. The main driver is that justice should be seen to be done.'

The full consequences of the report and the move towards conducting family law cases in open court is not yet clear, but next year's *Spear's* Family Law survey is very likely to have a lot to say on the matter. **S**

“There is a tension between judges, family lawyers and clients who want to keep their private matters private”



Diana Parker

Withers

Parker was the first female senior partner of a City law firm in 1998 and worked on the country's first £1 billion divorce. One impressed QC told *Spear's* 'there's no glory-singing from her' and complimented her style: 'It's discreet. It's slick. It's awesome.'



Fiona Shackleton

Payne Hicks Beach

When *Spear's* asked family lawyers who they would instruct in their own divorce, the name of Baroness Shackleton of Belgravia was uttered more than any other. She recently secured Britain's biggest ever divorce payout, for Princess Haya bint Hussein of Jordan.



Helen Ward

Stewarts Law

'When she is on your case she is a tigress who never sleeps,' said one client of Lady Helen Ward's zeal for protecting the interests of her clients. A giant of the industry who attracts starry clients, she has fought for Andrew Lloyd Webber, Guy Ritchie and Countess Spencer.