



Finding Fault? Divorce Law and Practice in England and Wales

Technical appendix

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About this technical appendix

This technical appendix describes the methodology used for the Nuffield-funded *Finding Fault* project.

The full report is available to download from www.nuffieldfoundation.org/finding-fault

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1. Research aims, research questions and design

The Finding Fault study is a large, multi-method study. It was designed to explore how the current law regarding divorce and civil partnership dissolution operates in practice in England and Wales and to inform debate about whether and how the law might be reformed.

The study explored three main questions:

1. How does the current law work *in practice* during the process of petitioning? What factors shape the selection of the Fact relied upon and how does that relate to the reasons for the breakdown of the relationship? What impact does the process have on the relationship between the divorcing couple?
2. What does the “duty of the court to enquire, so far as it reasonably can, into the Facts alleged”¹ mean in practice? How rigorous is the process and has the scrutiny of petitions already become an administrative rather than an inquisitorial process?
3. Is there a desire and need for reform, and if so, how?

The *specific* research questions were as follows:

1. ***How are petitions produced and what factors shape that?*** What is the process by which the petitioner decides to go ahead, facts are selected and petitions drafted? What advice is sought and from whom and at what stage? How comprehensible or accurate is that advice? What messages or norms are transmitted by lawyers and other advisers? Who drafts the petition, with what help and with what consultation or co-production between the parties? What strategies and tactics are used to ensure a successful petition? What strategies and tactics are used to reduce possible conflict? What is the relationship between the petition and the ‘real’ reason for the relationship breakdown? What similarities/differences are there between divorce and civil partnership dissolution?
2. ***What is the experience and impact of the process?*** How is the process, and especially the choice of Fact, experienced by the parties? What impact does the use of fault and non-fault grounds have on their relationship and their ability to co-parent? What impact does it have on related finance and/or children matters? Is there any difference between divorce and dissolution?
3. ***What is the level of detail and gravity of petitions and other statements?*** What level of detail and specificity about the Fact(s) is included in the petition (and Acknowledgement of Service or any Answers)? What is the level of seriousness (or triviality) of allegations in fault-based petitions? How does the type, specificity and seriousness of allegations compare to petitions from the Law Commission study from the early 1990s?
4. ***How do cases progress? What factors that?*** What is the overall length of proceedings and number/type of case events? What factors influence that, e.g. Fact, children, representation, whether substantive/procedural queries or disputes over children,

¹ Section 1(3) of the Matrimonial Causes Act 1973 imposes a duty on the court ‘to enquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent’.

finances and/or the divorce itself?

5. ***What is the incidence and nature of disputed petitions?*** What is the nature and incidence of real or mistaken 'contests' and how do these relate to Fact used? What is the incidence of an Acknowledgement of Service stating an intention to contest and of Answers filed? What other indicators of contest are there, including amended petitions, cross-petitions and withdrawn and new petitions issued?
6. ***What is the incidence and nature of court queries?*** In what circumstances does the court raise queries and/or refuse or delay decrees? What is the relative incidence of procedural problems with a petition compared to substantive issues? How do these vary by Fact? How do procedural and substantive queries relate to the specificity and seriousness of petitions (Q3 above)? What corroborative evidence is required and provided? Is there variation by location?
7. ***What actions does the court take and what are the outcomes of the scrutiny process?*** What actions does the court take in contested cases and in response to queries? What are the outcomes of applications, including decrees granted or not, by Fact and by presence of contestation and queries? To what extent, if at all, does the court exercise a protective function? What variation is there in approach within and between courts? What norms and guidelines inform practice?
8. ***What are the views of the public and professionals on current law and law reform?*** What are the views of (a) the general public, (b) adults who have divorced or had a dissolution in the last ten years ('divorced adults' for short) (c) family lawyers and (d) legal advisers and judges on the strengths and weaknesses of the current law of divorce and dissolution and on options for reform?

To answer these questions, the research incorporated five inter-connected studies, as set out in the table below. The *petition journey study*, consisting of qualitative interviews with petitioners and respondents and focus groups with family lawyers, was designed to shed light on what factors shape the selection of who petitions and on what basis. The journey study also provides crucial insights into the experience of the process and the impact of the use of fault on the parties.

The *court scrutiny study* was designed to explore the nature of the scrutiny process in undefended cases, by looking at case progress and outcomes in a sample of 300 divorce cases, together with observation of legal advisers as they went about the process of scrutiny of entitlement to divorce, supplemented by interviews about their role. Where possible, the study used similar questions as the court file study conducted for the Law Commission in the 1980s² to provide an informal baseline comparison.

The third question about whether, and if so how, the law might be reformed was addressed by the *national opinion study* and *comparative law study*, in addition to insights from the qualitative interviews with the parties from the *journey study*.

² Law Commission, *The Ground for Divorce* (Law Com No 192, 1990) Appendix D.

Components of the Finding Fault study

Study element	Method	Sample size	Sample source
1. Petition journey study	Qualitative interviews with petitioners and respondents	110 interviews with 81 people (57 petitioners, 22 respondents, 2 other)	Wikivorce ³ ; Splitting Up? ⁴ and Resolution ⁵
	Focus groups with lawyers	4 regional focus groups with 5-8 participants in each	Volunteers recruited via Resolution
2. Court scrutiny study	Main court file analysis	300 divorce cases issued Q4 2014 to Q4 2015 (75 from 4 Regional Divorce Centres (RDCs))	Samples identified by Ministry of Justice (MoJ) Analytical Services
	Observation of scrutiny process	17 observation sessions from 4 RDCs scrutinising a total of 292 cases	Negotiated locally with approval from HMCTS and the Judicial Office
	Interviews with legal advisers and judges	16 from 4 RDCs	Approval from HMCTS and the Judicial Office
3. Contested cases study	Contested cases court file analysis	100 files (25 from each of 4 RDCs) where there was an intention to defend	Samples identified by MoJ Analytical Services
	Contested cases court file analysis – Answers booster sample	Approx. 50 files (from 3 receiving courts) where an Answer was filed	Samples identified by MoJ Analytical Services
	Interviews with family lawyers discussing 2-4 high conflict cases	Approx. 14 interviews from four areas	Volunteers recruited via Resolution
4. National opinion study	Public opinion survey	2,845 individuals 16+ in England & Wales, including 1,336 divorcees, ran Nov 2015 to Jan 2016	Kantar Public face-to-face quota omnibus survey
5. Comparative law reform study	Workshop papers on law and law reform from different jurisdictions	Nine papers on 13 jurisdictions from Europe and North America	

³ Wikivorce – an online service providing advice and resources to support people through the divorce process <https://www.wikivorce.com/divorce/>.

⁴ Splitting Up?: Put Kids First - an online space hosted by OnePlusOne where people can access a programme on skills to ease the pressure on children and develop a parenting plan.

⁵ Resolution represent around 6,500 family justice professionals, the vast majority of whom are family lawyers.

The *contested cases study*, based on court file analysis of cases where there was at least an intention to defend, a boost sample of cases where an Answer had been filed to defend the divorce and interviews with solicitors about high conflict cases, will be reported on separately.⁶

The study focused on divorce, with some limited reference to civil partnership dissolution. We were able to observe a small number of civil partnership dissolutions being scrutinised. We were, however, unable as planned to recruit interviewees with experience of civil partnership dissolution. We also took the decision not to include civil partnership dissolution within the national survey as the legal differences between (opposite sex) divorce and civil partnership dissolution, although limited, are too complex to address in survey questions with a lay audience.⁷ Given that the legal differences between divorce and dissolution are small, and the process involved is largely the same, we believe that these findings are relevant to civil partnership dissolution, at least as far as the scrutiny process is concerned.

⁶ As a Nuffield Foundation Report '*No contest? 'Defended' divorces in England & Wales*'.

⁷ The ground and Facts for same and opposite sex divorce and civil partnership dissolution are very similar, save in two respects. First, the adultery Fact is not available for applicants for a civil partnership dissolution, meaning any allegations of sexual infidelity must be framed as behaviour rather than adultery. Second, petitioners in a same sex marriage may rely on the adultery Fact to divorce, but only if the respondent has voluntary sexual intercourse with a member of the opposite sex. See Section 1.1 of the main report for further details.

2. Research governance, ethics and access

3.1 Research governance

The research team had the benefit of an advisory group throughout the life of the project. The group met three times to advise on the progress on the research. Individual members were also available for consultation outside of the formal meetings.

The advisory group members were:

- Professor Masha Antokolskaia (Vrije Universiteit Amsterdam)
- Alexy Buck (Ministry of Justice Analytical Services)
- Professor Gillian Douglas (Kings College London)
- Joanna Miles (University of Cambridge)
- Shahnaz Khanam (HMCTS)
- Adam Lennon (HMCTS)
- Ian Rispin (Wikivorce)
- Rachel Rodgers (Resolution)
- Nigel Shepherd (Resolution).

3.2 Research ethics

The study is on a sensitive topic and included interviews with individuals who were involved in divorce or dissolution proceedings, interviews and observations with judges and legal advisers as well as access to confidential court files. Particular care was needed to ensure that the study was conducted to the highest ethical standards. The research team adhered to all requirements of the Ethical Statement of the Socio-Legal Studies Association⁸ in the design and conduct of the project and protection of data. Approval for all elements of the study, with the exception of the comparative law study, was sought from, and given by, the Research Ethics Committee of the College of Social Sciences and International Studies at the University of Exeter.

Participation in all observations, qualitative interviews and focus groups was on the basis of prior and ongoing informed consent. Written information sheets about the research were provided in advance to all potential lay and professional participants, as well as the offer of a further oral explanation. Consent to participate was recorded using written consent forms or oral consent in the case of telephone interviews. All data is presented on an anonymous basis.

3.3 Research access

It was necessary to get additional approvals in order to gain access to confidential court files and to observe and interview judges and legal advisers for the court scrutiny study. The three separate approvals secured were:

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https://www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_final_%5B1%5D.pdf.

- HMCTS Data Access Panel (DAP) for access to the courts/permission to involve HMCTS staff (including legal advisers) in research⁹
- A Privileged Access Agreement for access to court files
- Judicial Office approval to interview judges¹⁰

⁹ <https://www.gov.uk/guidance/access-to-courts-and-tribunals-for-academic-researchers>.

¹⁰ <https://www.judiciary.gov.uk/publications/judicial-participation-in-research-projects/>.

3. Petition journey study

3.1 Overview

The petition journey study was designed to provide an in-depth understanding of the petitioning process from the perspective of the parties and the lawyers who may advise them. It addressed Research Questions 1, 2 and 8, that is:

Q1. How are petitions produced and what factors shape that?

Q2. What is the experience and impact of the process?

Q8. What are the views of the public and professionals on current law and law reform?

The study had two elements: (a) qualitative interviews with petitioners and respondents and (b) four focus groups with family lawyers held in the journey sample areas.

3.2 Qualitative interviews with the parties

Purpose

The purpose of the qualitative petition study was to explore the divorce process ‘as it happens’, adopting a longitudinal perspective from pre-petition stage through to Decree Absolute. In accordance with the overall purpose of the study, this qualitative component was seen as offering a detailed insight into the origins of the petition (including who petitions) and in particular the experience of producing fault-based petitions and how these were, or were not, reflective of the reasons for the relationship breakdown. A further strand was to explore how the fault-based petitions were received by the respondent and what impact this may have had on the divorcing couple and their family.

In an area of little previous research, this qualitative approach was essential in allowing explanations and findings to arise inductively from the data. Semi-structured interviews are a suitable technique when there is a need to explore people’s subjective understandings of their everyday lives and experiences within, in this case, the divorce journey.¹¹ Qualitative methods are especially appropriate because epistemologically they allow a rich and meaningful way of generating data by gaining access to participants’ narratives and analysing their use and construction of discourse around their divorce – in this manner they may help to explain some of the quantitative data (including survey outcomes) generated in the additional components of the study.

The proposed and actual methods of data collection

The original intention was to recruit a sample of 50 cases via Resolution solicitors where a researcher would (a) observe the first meeting between lawyer and client (either potential petitioner or actual respondent); (b) interview the lawyer and client separately shortly

¹¹ Jennifer Mason, *Qualitative researching* (Sage, 2002).

afterwards; (c) hold a second telephone interview with the petitioner/respondent approximately four months later and (d) conduct a third telephone interview approximately one year from the initial interview, whether or not a petition had been filed. The other party would be approached for interview where contact details were provided.

In addition, we had proposed to recruit a second sample of 25 cases via the Wikivorce telephone advice line, to understand the experience of those clients who had not necessarily had access to legal advice. For the Wikivorce cases, there would be no planned observation but the same proposed sequence of two to three interviews, and a separate interview with party two where possible.

The proposal to include observations, multi-party interviews and a longitudinal element was designed to best capture the *interactive* nature of the petitioning process (i.e. how parties elicit and respond to legal and other advice, how they do or do not negotiate with their spouse) and its *dynamic* nature (i.e. how those interactions and reactions develop in *real time* from the point of advice-seeking to when most will have submitted or planned their petition or have decided not to proceed).

In retrospect, the plans for data collection were too ambitious. It soon became clear that lawyers had concerns about research observations at the first meeting with their client. The primary reason for that was that the lawyer would not have had the opportunity to build a relationship with the client and therefore to know whether inviting the client to consider participating in the research would be appropriate, or not. The research team decided to drop the planned observation, and instead focus on the interviews with lawyer and client. That too, proved difficult. Although lawyers were very helpful in supporting the focus groups and contested lawyer interviews, few felt able to volunteer to introduce the research to clients on our behalf. As a result, we concentrated our efforts on recruiting parties through Wikivorce and other advice agencies (see *Recruitment and sample profile*).

We also scaled back the plans to conduct multiple interviews with the parties. Recruiting interviewees via Wikivorce and other help lines meant that our first contact was often near the end of the legal process, in some cases after Decree Absolute. In those cases multiple interviews would be redundant. Similarly, very few interviewees were willing to provide contact details of their spouse or to recommend the study to their spouse. That was lower than expected and may have been because the interviews with party one were conducted by phone where it is more difficult to establish rapport. Some interviewees expressed an uneasiness about letting their ex-partner know they had been involved in the research, while others were not on good enough terms to feel able to communicate with them about this.

In practice therefore, the qualitative interviews with the parties are primarily single interviews reflecting retrospectively on the process, with a just over a quarter interviewed twice. As a consequence, the interviews were not as effective in capturing the interactive and unfolding nature of the process as we had planned. That said, we were still able to build a broadly-based sample which generated a conceptually rich dataset, even on the basis of what were generally single interviews.

Recruitment and sample profile

The participants for this 'journey' part of the study were recruited from three sources:

- Wikivorce (an online service providing support through all stages of the divorce process)
- 'Splitting Up? Put Kids First' (an online service hosted by OnePlusOne offering communication skills to parents and an online parenting plan)
- Resolution solicitors

For Wikivorce, staff managing the helpline service provided information about the study to callers who were at or near to the start of the divorce process. Where callers consented, the Wikivorce staff then sent contact details to the research team. The team then made contact with the interviewee to explain the project in more detail, proceeding to interview if there was informed consent.

For 'Splitting Up? Put Kids First', an email invitation was sent to those who had registered on the site within the previous six weeks (again, attempting to generate interest from those earlier in the process). All those who expressed interest were sent an information sheet explaining more about the study and the means of making contact to arrange a suitable time for interview. The interview was conducted following informed consent.

The Resolution clients were recruited via lawyers who had previously taken part in a focus group for the Finding Fault study. Lawyers were asked to pass on an information sheet to clients. Where there was consent, the lawyers provided further contact details to the researchers to follow up to arrange an interview.

The number of interviews, and their source, were as follows:

Table 3.1 Interviewees by recruitment source

Recruitment source	Participants (number)
Splitting Up? Put Kids First – interview one	52
Splitting Up? Put Kids First – interview two	12
Wikivorce – interview one	22
Wikivorce – interview two	17
Resolution – interview one	7
Total interviewees	81
Total interviewees participating twice	29
Total interviews	110

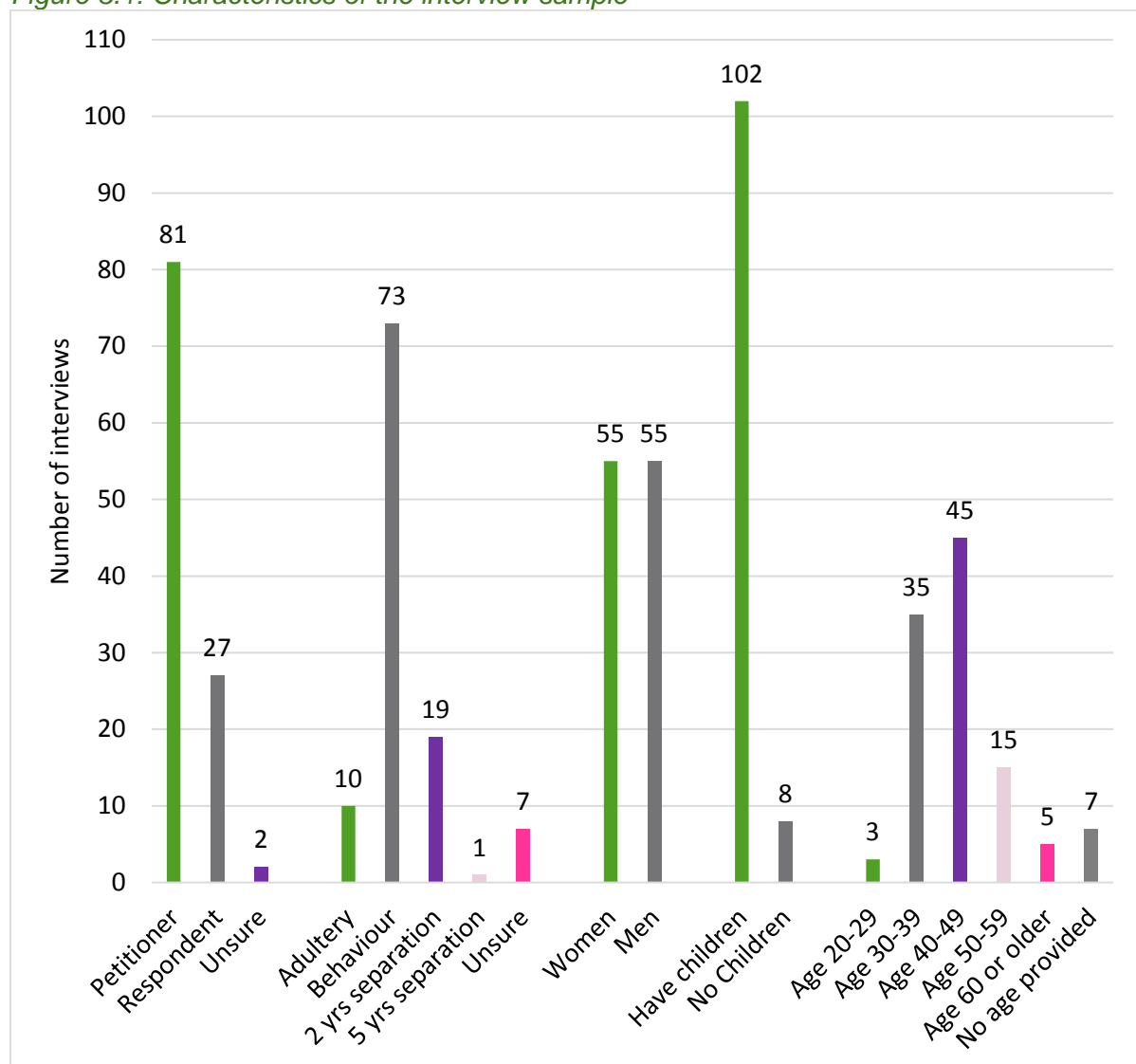
A total of 110 interviews were conducted, including 81 participants. Of those 110 interviews, 29 were interviews conducted with participants at a second time point.

As a qualitative study, we adopted a purposive sampling approach to the journey sample, informed by the literature and research questions. Two sampling criteria were built into the research design:

- Use/non-use of legal advice. In practice, we recruited fewer cases via Resolution than planned. However, the Wikivorce and Splitting Up samples included a wide range of levels of contact with lawyers - from no legal advice at all, to some initial legal advice to full representation throughout the divorce.
- Petitioning status. Both petitioners and respondents were recruited. In practice, it was easier to recruit petitioners than respondents, with three-quarters of interviews with the former (see figure 3.1).

The other characteristics of the sample are shown in figure 3.1. As a qualitative sample, reliant upon volunteers, we had fairly limited control over sampling parameters. That said, we are reasonably confident that we have a broad-based sample on most relevant characteristics, including age and gender. Fault-based divorces are well-represented in the sample, although we found it difficult to recruit five years' separation cases, and had no cases of desertion. The high percentage of interviews with those with children is reflective of the fact that the main recruitment route was the 'Splitting Up? Put Kids First' parenting plan service.

Figure 3.1: Characteristics of the interview sample



The three routes into recruitment also facilitated accessing a range of levels of conflict. In broad terms, the Resolution and Wikivorce cases *tended* to be lower conflict and the Splitting Up cases *tended* to be higher conflict, but that pattern was not fixed. We did not record occupational or social class details of interviewees. However, the sample encompassed higher income groups (primarily the Resolution sample) and lower income (primarily the Splitting Up cases).

We were not able to recruit civil partnership cases, despite attempts to recruit them via a range of sources.

Although the number of interviews was less than originally planned, we are confident that it is a broad-based sample, encompassing the main sampling parameters. The only exception relates to same-sex partnerships and the under-representation of separation-based divorces. With those limitations, it was clear that the 110 interviews from 81 interviewees offered a comprehensive insight into the experience of divorce for petitioners and respondents. We reached saturation point part way through the analysis when further interviews were confirming the analytical framework and not offering any new insights.

Establishing consent and conducting the interviews

For all three sample sources, the potential interviewee was given or sent an information sheet. Contact was then made either by phone, text or email (depending on participant preference). For those who did not respond, we chose to contact them on a maximum of two further occasions (otherwise they were excluded from the study). When contact was made, a preferred time for interview was arranged.

The very first stage of all interviews was securing oral consent – this covered areas such as understanding the purpose of the study, data security, thank-you vouchers, confidentiality, safeguarding, digital recordings, and use of data. The British Sociological and Psychological guidelines for ethical practice were adopted.¹²

Following oral consent, the choice of topic guide depended on a number of factors:

- Whether they were recruited from Resolution, Wikivorce or ‘Splitting Up? Put Kids First’
- Whether this was their first interview or their second interview

The interviews typically took around 40 minutes to one hour, and up to one and half hours on occasions. All were digitally recorded.

The interview topic guides

The interviews covered the following issues: circumstances of and reaction to the relationship breakdown, triggers for and influences on advice-seeking, prior knowledge about divorce law, expectations of the process, response to initial advice, planned next

¹² <https://www.britisoc.co.uk/media/23902/statementofethicalpractice.pdf>
<https://beta.bps.org.uk/sites/beta.bps.org.uk/files/Policy%20-%20Files/Code%20of%20Ethics%20and%20Conduct%20%282009%29.pdf>

steps; subsequently: what informs the decision to delay or proceed with petitions, how facts are chosen, any discussion with spouse, intentions of how to handle the process, impact of process on relationship and money and children issues, any further advice, how eventual petition relates to relationship breakdown and original intentions, views on law reform.

Rather than an actual list or order of questions, the topic guides for the qualitative inquiry acted as an aide-mémoire, reminding the researcher of the areas to be covered; thus providing a framework to ensure coverage of the same kinds of questions whilst maintaining flexibility in the discussion. This flexibility was critical in shaping the questions to suit the particular client in terms of specific needs such as their emotional state, stage in divorce process, relationship with ex-partner, etc.

The topic guides for the Wikivorce interviews are provided below. These were adapted slightly for the Splitting Up and Resolution interviewees.

Topic guide for Wikivorce Interview One

Introduction and oral consent

Opening and advice seeking:

- How you came to call the Wikivorce helpline (Are you looking to pursue a divorce/Have you recently received a divorce petition from your husband/wife/partner?)

The relationship and circumstances of the relationship breakdown

- Length of relationship
- When did you become aware that there were difficulties in the marriage/civil partnership? [nature of difficulties]
- When did you start thinking about getting/found out about the divorce?

Current relationship with partner

- Are you still living together?
- And how are you feeling about the breakup? [rushed or not fast enough; feeling in control; still working things out?]

Advice-seeking/taking action about the divorce

- How went about finding information about the divorce process?
- How heard about grounds for divorce?
- What information/messages about what court might expect? [level of detail, evidence]
- What did you think of the information you got? Was that what you expected?
- Readiness to proceed or accept the process?

The nature of the (proposed) petition

- Stage reached? Draft petition?
- What Fact is/might be used?
- Who/how decided/will decide?
- Feelings about the Fact chosen/likely [fair, accurate, impact on relationship?]
- Does the choice of Fact make the process easier or harder for you?
- Who drafted the petition/who will draft the petition?
- General approach to the process [emphasis on harm-minimisation etc.]

Expectations and next steps

- What are the next steps?
- Plans for any further help or advice?
- Feelings of preparedness

Finances and children [if not raised earlier]

- If children, if reached agreement and any issues
- If starting to think about family finances
- If divorce impacting on children and money, or vice versa

Views on the current law

- Whether helpful to give a reason/Fact?
- Whether helpful to include reasons based on fault?

Interview close

Topic guide for Wikivorce Interview Two

Introduction and oral consent

Summary of interview one

Update on circumstances since interview one

If petition submitted:

- Who petitioned, Fact chosen and details, process of drafting, reflections on/reaction to the petition, reaction of ex-partner
- If anything has changed from what had been planned
- Where are in the process – experiences and difficulties at each stage
- Whether reached agreement re children and finances and any issues

If petition has not been submitted (yet)

- Why is that?
- Planned next steps?

Advice seeking

- Any further information or advice or support around the divorce? [focus, source]
- What advice, help, guidance did you get – the specifics, general message
- Evaluation of advice/support received?

Impact of the divorce process and choice of Fact

- On relationship with ex-partner?
- On self?
- On child arrangements and co-parenting?
- On sorting out finances?

Knowledge and views about divorce law

- Whether feel more knowledgeable about the law?
- Helpfulness of having to give a reason/Fact?
- Helpfulness of reasons based on fault?
- What advice or information would give to friend about to go through a divorce?
- Are there any changes they would make to the divorce law if you could, if so why?

Interview close

Analysis including main outcomes

All digital files were transcribed verbatim. A thematic analysis was undertaken, focusing upon the generation and emergence of common explanations derived from the transcripts. In the first instance, the data were inspected through iterative listening and reading to ensure that there was an accurate transfer of information between the digital audio tracks and transcriptions. In doing so, a preliminary coding structure was devised as emerging themes were identified within and across the qualitative group discussions and interviews. Development of the final indexing categories were informed and guided by the key research questions, mainly around people's perspectives of the divorce process, and also grounded from the data itself i.e. whereby patterns, themes, and categories of analysis emerge out of the data.¹³ Specialised qualitative data software (NVivo) was partially used to support this process.

A more unique strand to this analysis was the case study approach used in the 29 participants who contributed to two interviews. Usually, these interviews, conducted up to six months later to their first, involved moving through a stage in the divorce process and enabled the participants to reflect on the ease/difficulties within stages and which parts the process may have become 'stuck'. Further to this within-case analysis, the findings were also compared across the remaining sample to permit the identification of common themes and explanations.

To assist in the reliability and verification of the results, regular meetings were held between the team to discuss coding procedures and consider any potential contradictory perspectives and alternative explanations for the data.

Although the results from this qualitative analysis are integrated alongside the inter-related component of the study, it is noteworthy that the themes arising were categorised broadly into the following 10 areas:

1. Circumstances of the relationship breakdown
2. Emotional Readiness and recovery
3. Triggers for and influences on advice-seeking
4. Prior knowledge about divorce law (and attitudes)
5. Factors shaping the nature of petitions (including reference to the real reasons and those used to secure divorce)
6. Drafting fault-related petitions or responding and the impact of this
7. Views on the current law and preferences for change
8. Current relationship with ex-partner - Acrimonious versus amicable separations and what made the difference
9. Overall experience of the process, including time and forms completed
10. Planned next steps

¹³ Ian Dey, *Qualitative Data Analysis* (Routledge, 1993); Michael Quinn Patton *Qualitative evaluation and research methods* (Sage, 2nd edn, 1990).

3.3 Lawyer focus groups

Four focus groups were conducted, each containing 5-8 participants. All participants were solicitors or legal executives who had volunteered to take part in response to a request from their local Resolution committee chair. A focus group was held in each of the four geographic areas covered by the four Regional Divorce Centres (RDCs) in the Scrutiny study. The four groups reflected broadly the range of work that Resolution members undertake, with one group including lawyers with a primarily legal aid clientele and one group with lawyers with high net worth clients. The other two groups contained lawyers with a mixed client base.

The focus groups lasted approximately one hour each. Each was audio-recorded and transcribed. The topic guide was kept brief to allow maximum scope for probing and follow-up:

Introductions

Current Law: Pros/Cons

- What are the problems with the current law on the ground for divorce?
- Relationship with disputes re children, finances?
- What advantages with the current law?
- What strategies to minimise/mitigate problems/maximise advantages of law?
- How effective are these strategies?

Law Reform In Principle

- Support for law reform?
- Pros/cons?

Views on Specific Proposals

- Resolution: 6 month notice period (mutual or unilateral)
- Sweden/Spain/Finland – immediate mutual or 6 months
- Scotland
- Any concerns re law reform?

Any other issues?

Each was analysed thematically using NVivo. The four focus groups produced very conceptually rich data, yet with very limited variation between the four focus groups despite some differences in client base.

4. Court scrutiny study (main and contested)

4.1 Overview

Fieldwork for the court scrutiny study was conducted in four of the eleven regional divorce centres (RDCs). The four were selected purposively, based on information supplied by all eleven centres, to achieve consistency in the type and range of work undertaken, but variation in: geographical coverage; the number of individual courts which RDCs had taken over from; length of time which they had been operational; and volume of divorces processed. Fieldwork was conducted on the understanding that neither individual participants in the study, nor the centres which they worked from, would be identified when reporting. Therefore, more details about the RDCs which took part are not provided here in order to safeguard anonymity.

There were two main elements to the court scrutiny study:

- A primarily quantitative review of paper files;
- Observations of the process of scrutinising applications for Decree Nisi, coupled with qualitative interviews with legal advisers and judges.

In each of the RDCs involved, the researchers were also able to speak with management and administrative staff to obtain explanations of the procedures and personnel involved in processing divorce cases in their particular centre, from receipt of a petition to Decree Absolute. These discussions provided useful context for a better understanding of the data on the court files, and also informed conduct of the observations and interviews.

Permissions for conduct of the court scrutiny study were obtained from HMCTS Data Access Panel, and, in respect of judicial participation, from the President of the Family Division. A privileged access agreement covering data collection was also entered into.

4.2 The court file review – sampling

The target for the court file review was a total of 400 divorce¹⁴ cases:

- A main sample of 300 divorces which followed the standard undefended pathway and in which there was no apparent element of formal ‘contest’ in respect of the proceedings;
- A ‘contested’ sample of 100 cases in which the petition was formally contested to some degree – as a minimum, by the respondent returning an acknowledgment of service indicating an intention to defend the divorce proceedings (whether or not the respondent followed up by filing an answer).¹⁵
- These samples were mutually exclusive.

The aim was for data collection to be equalised across the four RDCs, with data being collected on 75 main sample and 25 contested sample cases in each centre.

¹⁴ Civil partnership dissolution was excluded from the court file review due to the small numbers of cases involved and the fact that at their inception, not all RDCs were handling such cases.

¹⁵ A separate report will cover findings from the contested sample.

The study was successful in achieving each of the above targets.

Sampling and conduct of fieldwork for the court file review involved two particular challenges. The first was the relatively short interval between the opening of the RDCs and the commencement of fieldwork. The first centres began issuing divorce petitions in Q4 2014, but the last to become fully operational – i.e. to have taken over the process from all of the courts in the geographical area within their remit, did not do so until Q3 2015. With only two thirds of divorces reaching Decree Absolute within 12 – 15 months of petitions being issued,¹⁶ it was necessary to draw the sample from cases started early in the lifespans of the RDCs, to allow as long as possible for proceedings to have progressed, and preferably concluded, by the time of data collection. The precise reference periods for sampling were therefore tailored to each of the selected centres. However, in each instance the reference period for the main sample consisted of a fortnight, and allowed for at least a full calendar month to have elapsed since the RDC became fully operational.¹⁷

Lists of potentially eligible cases were generated by the Family Statistics team within Justice Statistics Analytical Services at the Ministry of Justice, and were passed to each of the RDCs to enable staff there to pull the files for the researchers to access. When collecting data, the researchers worked their way down the lists for each centre, until sufficient available and eligible case files were identified to fill the relevant quotas.¹⁸

The other main challenge for the file review was that following the establishment of the RDCs, cases were routinely transferred out to individual courts in circumstances in which previously, they would not have been.¹⁹ To avoid the sample being skewed by the exclusion of such cases, it was necessary to track down the paper court files involved. This had been anticipated, but was nevertheless quite resource-intensive – although less so for cases in the main sample than in the contested sample.²⁰

The petitions in the cases in the main sample were all issued either in the last quarter of 2014, or during 2015. Fieldwork for the file review was conducted between December 2016 and July 2017.

¹⁶ *Family Court Statistics Quarterly, England Wales January to March 2016*, Ministry of Justice Statistics bulletin, June 2016 (Table 9)

¹⁷ I.e. where the RDC became fully operational at some point during calendar month 1, the reference period for the main sample was the first two weeks of calendar month 3, and all petitions issued during that fortnight were potentially eligible for inclusion. The volume of cases handled by each of the RDCs made it possible for reference periods to be this short. Reference periods for the contested sample were slightly different; they will be covered in the separate report dealing with those cases.

¹⁸ The lists of potentially eligible cases proved highly accurate; it was necessary to turn to substitutes for only three of the cases which appeared in the lists.

¹⁹ Typically, in any case in which an initially contested financial remedy application was issued, and in any case in which attendance at a hearing was required (for whatever reason), as well as contested cases in which an answer was filed.

²⁰ A total of 33 out of the 300 cases in the main sample had been transferred out, to a total of 22 different courts. Files for these cases were accessed either by attending at receiving courts, or having the files temporarily returned to the RDCs. Both were facilitated via HMCTS centrally and HMCTS Regional Support Units.

4.3 The main court file review – data collection

As indicated earlier, the court file review was predominantly quantitative. Data were collected by two researchers and entered directly into a bespoke SPSS Statistics database constructed for the purposes of the study.

Quantitative data were collected from the key documents on the paper file, where present.

For the main file review, these were:

- Divorce petition (Form D8) and any amended petition
- Statement of reconciliation (Form D6)
- Acknowledgment of service (Form D10(1) or D10(3))
- Application for decree nisi (Form D84)
- Statement in support of divorce (Form D80A – D80E)
- Form D30 consideration of application for decree nisi (used internally to record decisions in respect of the scrutiny process)
- Certificate of entitlement to decree nisi (Form D84A)
- Notice of refusal of entitlement to decree nisi (Form D79)
- Decree nisi
- Application for decree absolute (Form D36)
- Decree absolute.

The key variables in respect of which quantitative data were collected, were:

- Dates for key events (the marriage, each stage of the process, the last event)
- Details of the parties (gender, age, occupation, whether previous marriage dissolved, whether dependent children indicated, whether living at the same address, whether represented by or receiving advice from a solicitor)
- Whether any other proceedings were indicated in the petition
- The Fact(s) relied on under S.1(2) MCA1973
- Whether costs were applied for
- Whether a fee was paid or help with fees granted
- Whether petitions were rejected by the court prior to issue, and if so, why
- Whether petitions were amended
- Whether an acknowledgment of service was filed by the respondent, and if so, whether respondent queried the court's jurisdiction, indicated an intention to defend, admitted adultery or consented to a decree where relevant, objected to paying costs
- Whether an application for decree nisi was made, and if so, key dates given (when petitioner became aware of adultery, last incident of behaviour relied on, when separated and concluded the marriage was at an end)
- Where an application for decree nisi was made, whether it was considered by a legal adviser or other judicial officer
- Where an application for decree nisi was made, the outcome, and if not granted at the first attempt, outcome(s) of any further attempt(s)
- Whether decree absolute was applied for, and if so, the outcome
- If decree absolute was not reached, stage reached and last event in the proceedings
- Whether any other applications were made in respect of the divorce proceedings, e.g. in respect of service
- Whether there were any hearings in the divorce proceedings

- Whether any financial remedy application was made, and if so, whether by consent or initially contested

In addition, the statement of case (Part 6) of each petition, and any rebuttal of the petition included on or with an acknowledgment of service, were transcribed verbatim.²¹ The researchers also made qualitative notes on many cases, to provide context and to aid analysis of the quantitative data.

4.4 The main court file review – coding and definitions

Coding of behaviour particulars – types of behaviour

For behaviour petitions, the particulars contained in the statement of case were coded according to categories based on the types of behaviour cited by the petitioner. These were designed to allow, insofar as was possible, comparison with findings from the Law Commission study.²² Precise matching of categories was not possible as the report of that study did not describe what each of the Law Commission’s categories included, therefore grouping of categories based on amalgamation of those used in each of the studies was also employed to aid comparison.

Behaviour particulars were also coded for strength and of attribution of responsibility. All this coding was undertaken by two researchers, who initially each coded independently, then conferred to reach consensus regarding any initial differences between them.

The categories of behaviour were:

Law Commission	Finding Fault	Finding Fault grouping
	Interpersonal problems	Interpersonal difficulties
Personality clashes		
No interest in home		
Unreasonable habits		
Sexual problems	Sexual problems	Non-domestic abuse acts of commission
Financial problems	Financial problems	
Improper associations	Improper associations	
	Serious breach of trust	Domestic abuse
Violence to petitioner	Violence to petitioner	
Violence to children	Violence to children	
Violence to property	Violence to property	
Abusive language		
	Cross-government definition of domestic violence/abuse	Mental health
	Mental health	
Alcohol abuse	Alcohol abuse	Any substance abuse
	Drug abuse	

²¹ Save for omitting any names or addresses referred to by the parties.

²² Law Commission, *The Ground for Divorce* (Law Com No 192, 1990) Appendix C.

Categories in the Finding Fault study encompassed:

Interpersonal problems: Personality clashes, religious and cultural differences, disagreements regarding parenting or family finances, not communicating or not socialising with petitioner and/or children of the family, prioritising work or outside interests impacting on petitioner and/or children of the family, not supporting petitioner in their work or interests, unreasonable habits, difficulties regarding relationships with wider families, infertility or refusal to have children.

Sexual problems: Complaints of no sexual relationship and/or no physical intimacy. Excluding sexual violence (coded under physical violence/cross-government definition of domestic violence/abuse).

Financial Problems: Financial irresponsibility and/or failure to contribute financially, impacting on petitioner and/or children of the family. Included gambling problems. Excluded arguments or different views as to how family finances should be utilised (coded under interpersonal difficulties). Excluded financially controlling behaviour (coded under domestic violence/abuse).

Improper associations: Limited to alleged involvement with an(other) individual(s), including online. Excluded only flirting and/or behaviour raising suspicions only (e.g. respondent going out without saying where/not coming home).

Serious breach of trust: E.g. false allegations of domestic violence/abuse against petitioner, non-disclosure of significant events such as another marriage, criminal activity other than against petitioner or children of the family.

Violence to Petitioner: Limited to physical violence to petitioner.

Violence to children: Limited to physical violence to children of the family.

Violence to property: Limited to violence to family property, e.g. former matrimonial home or vehicles. Excluded criminal damage to property of third parties.

Cross-government definition of domestic violence/abuse: Including physical violence to petitioner, children of the family, or family property. Also: verbal threats/abuse, controlling or coercive behaviour including financially controlling behaviour.²³

²³ The cross-government definition of domestic violence and abuse (2013) is: Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological; physical; sexual; financial; emotional. Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim. This definition includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group. See <https://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition/circular-0032013-new-government-domestic-violence-and-abuse-definition>.

Mental health: Either respondent's mental health problems impacting on petitioner, or respondent unresponsive in respect of petitioner's own mental health problems. Excluded impact of relationship breakdown on petitioner.

Alcohol abuse: Regularly drinking to excess with impact on petitioner and/or children of the family, and/or alleged dependency on alcohol.

Drug abuse: Alleged dependency on drugs, including prescription drugs.

Coding of behaviour particulars – strength and attribution of responsibility

The strength of behaviour petitions was coded according to whether, taking account of both the most serious behaviour cited and the totality of the particulars, they could be categorised as mild, mild-mid, strong - interpersonal, or strong - abuse.

These categories encompassed:

Mild: Largely just a description of irretrievable breakdown, based on the parties 'drifting apart', having nothing in common, leading separate lives. Could include no specific behaviour at all, or minimal reference to behaviour reflecting incompatibility between the parties, rather than specific failings of the respondent.

Mild-mid: Mostly a story of drifting apart/having nothing in common, but differed from 'Mild' in that more responsibility for (and criticism of) the drifting apart was placed on the respondent, rather than it being couched as an almost entirely mutual process. Particulars included some specific criticisms of behaviour, but which were relatively mild and centred on carelessness, selfishness, thoughtlessness, rather than the respondent actively seeking to hurt. The limited number of specifics and seriousness of the specifics differentiated 'Mild-mid' from 'Strong'.

Strong – interpersonal: Not a story of drifting apart but rather relationship-based conflict (other than domestic violence/abuse) between the parties. Covered a wide range of behaviours, focusing on: interpersonal problems, sexual problems, improper associations, financial problems, as well as breach of trust and mental health issues. Cited acts of commission or omission that impacted on the petitioner and/or children of the family. Involved significant criticism of the respondent, who was likely to be portrayed as cruel or unkind, rather than just careless, selfish or thoughtless, as with 'Mild-mid' petitions. Petitioner pinned the blame on the respondent, typically with no apparent concern to hold back on or tone down the particulars – although the petitioner might state that further particulars of behaviour could be supplied if need be.

Strong – abuse: Behaviours that were different from interpersonal or relationship conflict. Primarily acts of commission: violent or abusive behaviour, including controlling or coercive behaviour, that impacted on the petitioner and/or children of the family. Also included alcohol or drug abuse that impacted on the petitioner and/or children of the family. Could cover single or multiple serious incidents. Petitioner pinned the blame on the respondent, typically

with no apparent concern to hold back on or tone down the particulars – although the petitioner might state that further particulars of behaviour could be supplied if need be.

Lastly, behaviour petitions were also coded according to whether the behaviour cited was couched as mutual (or almost entirely mutual), or responsibility for the behaviour was attributed either more/mainly to the respondent, or entirely/almost entirely to the respondent.

Refusal of application for decree nisi – substantive and procedural reasons

Where the court file indicated that an application for decree nisi had been refused, the refusal was categorised as being for either procedural or substantive reasons (or both).

Substantive reasons were categorised as being those which went to whether or not irretrievable breakdown and the Fact relied on (adultery, behaviour, desertion, 2 years separation with consent, or 5 years) was made out. This included, in behaviour cases whether the threshold for behaviour was met, in separation cases whether the parties had been separated for the required period prior to the date of the petition (and consent in two year cases), and in all relevant cases, question marks as to whether the statutory maximum 6 months of cohabitation had been exceeded.

Procedural reasons were categorised as including administrative or technical errors (e.g. the identity of the parties not being clear due to discrepancies between the marriage certificate and the petition, documents not being signed or not correctly exhibited), doubts over the court’s jurisdiction, or other legal deficiencies not directly related to whether the Fact relied on by the petitioner had been made out.

4.4 Observations and interviews with legal advisers and judges

Targets were to conduct observations and linked interviews with 4 – 6 judicial officers in each RDC, so a total of 16 – 24. We were able to undertake 18 observation sessions, and conduct 16 interviews. These involved a total of 24 different participants, of whom 18 were legal advisers; 6 were judges, including deputy district judges. Ten people took part in both an observation and an interview – although as described below, observations which were not followed by separate interviews still involved discussions with the researchers.

The breakdown for achieved observations and interviews was:

RDC	Observation only	Interview only	Observation and interview	Total participants
1	4	1	1	6
2	-	2	3	5
3	-	1	4	5
4	4	2	2	8
Total	8	6	10	24

The legal advisers were typically experienced, with at least five years’ experience of court work. They were either family specialists, or did a mix of family and criminal court work, but

although a small number had previously been in private practice prior to joining HMCTS, all had been new to undertaking scrutiny of entitlement to divorce when the RDCs were set up.

The amount of time devoted by individuals to this work ranged from an average of one day a fortnight, to several days a week.

The judges and deputy district judges who took part were similarly very experienced, and also had experience of divorce court work which pre-dated the establishment of the RDCs.

Conduct of observations involved the researchers sitting in with those conducting scrutiny of applications for decree nisi as they went about their work, for between approximately an hour and a quarter, and two and a half hours, at a time.²⁴ In total, more than 30 hours of researcher time was spent observing in this way in seventeen sessions across the four RDCs, during the course of which a total of 292 applications for decree nisi were dealt with.

During the course of the observation sessions, those being observed were asked, insofar as was possible in the circumstances, to go about their work as they normally would if the researcher(s) were not present. However, they were also asked to describe how they generally approached the scrutiny task – i.e. which documents they looked at and in which order, and to ‘think aloud’ as they dealt with each file, highlighting verbally for the researchers’ benefit what aspects of the paperwork they generally considered important or not so important, the key things that they homed in on, and what features would lead them to decide to grant or refuse a certificate of entitlement to decree nisi. In respect of behaviour petitions, the researchers also asked those undertaking the scrutiny to indicate how far down the particulars of behaviour they had read before being able to reach a decision as to whether or not they were satisfied that the threshold for behaviour petitions had been met.

The researchers took detailed handwritten notes of these observation sessions; these were later typed up and analysed in conjunction with the other data from the court scrutiny study.

Interviews with legal advisers and judges were based on a semi-structured topic guide, which covered:

- A brief summary of the interviewee’s background as a legal adviser/judge
- Their experience of undertaking scrutiny in divorce cases
- Training undertaken and guidance received on how to undertake the work
- The circumstances in which they would typically grant or refuse certificate of entitlement to decree nisi, and the reasons why
- Where they felt the threshold lay in relation to behaviour
- Reflections on the scrutiny process generally
- Reflections on the role of the fault-based facts under the current law

Where the circumstances allowed, interviewees were also asked to consider a short vignette, to ascertain approaches to a hypothetical behaviour petition in which the particulars of behaviour were deliberately designed to be ambiguous or borderline:

²⁴ In most instances this involved one researcher per observation session; in a small number of instances, two researchers sat in on the same session.

“The respondent and I have grown apart. We have both stopped communicating with each other. We both have separate hobbies and separate social lives. We do not show each other affection and we have both said that we want to get on with our lives and are forming new relationships with other partners. There are times when we have both shouted at each other when arguing. Both of us are unhappy in the marriage and think the marriage is over.”

The majority of these interviews were conducted face to face; three were conducted by phone. They typically took between 30 – 45 minutes. In most instances interviews were audio-recorded and transcripts produced, otherwise, detailed notes were taken at the time and later written up.

5. National Opinion Survey

5.1 Overview

A national opinion survey was conducted among 2,845 adults living in England and Wales, the purpose of which was to measure public opinion about current divorce law and gauge appetite for reform, both in terms of the retention of fault and appropriate separation lengths. In order to look more closely at the views of those who had experienced divorce, the divorcees within the survey sample were boosted, with 1,336 of our 2,845 survey participants currently going through or having been divorced. In this section, we provide details of the survey, organised into the following sections:

- Aims of the survey (section 6.2)
- Sample frame and sample design (section 6.3)
- Question design and testing (section 6.4)
- Fieldwork and sample sizes (section 6.5)
- Data analysis (section 6.6)

5.2 Aims of the survey

The survey aims were:

- To measure the public's views on:
 - The positives and negatives to using fault
 - Whether fault should be a ground for divorce
 - An appropriate separation or waiting period:
 - within current law
 - within a 'no-fault' law
 - when children are involved
 - Whether divorce should be dealt with in court versus an administrative process
 - Knowledge of current use of fault vs separation
- To take a particular look at the views of those who have experienced divorce:
 - (How) do their views on the use of fault and the separation or notification period differ to those of the general public?
 - What were their own experiences of the divorce process?
 - Fact used, and how closely it reflected reality
 - Whether applicant or respondent and who cited as at fault
 - Whether citing/not citing fault affected:
 - Their relationship
 - Sorting finances
 - Sorting arrangements for children

5.3 Sample frame and sample design

The survey was run by Kantar Public (then TNS BMRB) using the Kantar TNS weekly face-to-face omnibus survey, with the sample for our survey restricted to adults aged 16 and over living in England and Wales. In order to facilitate separate analysis of the responses of those who had experienced divorce, the number of divorcees was boosted beyond those that

would be found within the general population. In practice, this meant that, having achieved the target number of interviews with the general population in the first wave of fieldwork, further waves of fieldwork were conducted to identify and interview those who reported that they were currently going through a divorce or had divorced within the past ten years.²⁵²⁶

The Kantar TNS Omnibus employs a random location methodology to achieve in-home interviews with around 4,000 UK adults aged 16 or over each week (with the Finding Fault survey restricted to those living in England and Wales). Each week consists of two waves of fieldwork, commencing on Wednesdays and Fridays. To create the sample frame, the UK is split into 605 different sample points originally defined using 2001 Census small area statistics and the Postcode Address File (PAF). These points are areas of similar population sizes formed by the combination of electoral wards with the constraint that each point must be contained within a single Government Office Region (GOR). In addition, geographic systems were employed to minimise the amount of time taken to cover each area, making it as efficient as possible.

Each wave of the Omnibus selects 416 of the points for use (after stratification by Government Office Region and Social Grade). They are also checked to ensure representativeness by an urban and rural classification. These points are then split into two equal batches (replicates): one batch is issued in the first week; the other used in the next week. Those replicates are used in rotation to give a wide spread across the province over time. The statistical accuracy of the sampling is maximised by issuing sequential waves of fieldwork systematically across the sampling frame to provide maximum geographical dispersion. This ensures that the sample point selection remains representative for any specific fieldwork wave.

All of the sample points in the sampling frame are divided into two geographically distinct segments, with each containing, as far as possible, equal populations. For the Omnibuses, alternative A and B halves are worked for each wave of fieldwork. Each week, different electoral wards are selected in each required half, with Census Output (OAs) Areas being selected within those wards. Groups of OAs containing a minimum of 130 addresses are sampled in those areas from the PAF (a maximum of 200 addresses are issued per interviewer assignment).

For each wave, addresses are issued to interviewers to achieve a sample of 10, 11, 12, 14, or 16 interviews in areas outside of London and 10, 11, 14 or 15 within London, depending upon the survey length (longer survey lengths reduce the number of interviews that can be achieved within a two day fieldwork assignment).

Individuals have to be at least 16 years of age to be eligible to participate in the Omnibus. Each interviewer's Omnibus assignment is conducted over two days of fieldwork and carried out weekday 2pm-8pm and at the weekend. Quotas are set by gender/working status. Within the female quota, a presence of children and a work status quota is set. For the male quota, a work status quota is set, to ensure a balanced sample of male adults within effective contacted addresses. All interviewers must leave three doors between each successful interview²⁷.

²⁵ Our original intention was to restrict our analysis of divorcees to those currently divorcing or having divorced within the past ten years. However, a lower incidence within the survey population than anticipated meant that we expanded our boost sample, and included in our final analysis, those who had experienced divorce more than ten years ago, given there had been no changes in divorce law for longer than ten years.

²⁶ Although for simplicity we did not make direct reference in the question wording to civil partnership dissolutions, interviewers were instructed to include civil partnership dissolutions if asked.

²⁷ There is a small degree of flexibility where completion of fieldwork is very difficult to ensure that the overall target is met, but these targets/rules are broadly achieved. Data is further weighted to achieve representativeness.

6.4 Question design and testing

The full questionnaire can be found in Section 6.7.²⁸ It was designed by Liz Trinder and Caroline Bryson, in conjunction with Ben Collins and Matt Downer at Kantar Public and in consultation with the Finding Fault Advisory Group, with particular input from Professor Gillian Douglas (Cardiff University, now King's College, London) and Joanna Miles (Cambridge University). Various drafts were informally piloted during the course of the design process. In the final version, the order of certain attitude statements was randomised in order to minimise order effects. In designing the questions, we also referred to the previous Law Commission survey in order to be able to make some comparisons with the previous work. However, priority was given to ensuring that the questions captured the nuance of the range of attitudes towards and experiences of divorce over direct replication of the previous survey questions. As a result, we can make only very broad comparisons with the previous survey.

6.5 Fieldwork and sample sizes

The face-to-face survey was conducted between November 2015 and January 2016. 2,845 interviews were conducted of which:

- 1,509 had never been divorced
- 645 were currently divorcing or had been divorced in past 10 years
- 691 been divorced longer than 10 years ago

Among the divorcees, 855 reported that their divorce had used fault, 336 had used separation and 145 did not know or refused.

6.6 Weighting

As stated above, interviewers were provided with quotas set on gender, working status and the presence of children in order to ensure that the survey respondents reflected the general population on these demographic characteristics. At the data analysis stage, weights were calculated. To bring the total sample, including the boost, into the correct proportions on the categories never divorced, currently divorcing, divorced in last 10 years, and divorced longer than 10 years ago. The 'correct' proportions were generated from the general population element of the survey.

5.4 National Opinion Survey Questionnaire

Grounds for divorce: what are the attitudes of the English and Welsh public, and what are the experiences of those going through divorce?

I'd now like to ask you some questions about the law on getting divorced.

ASK ALL

QDVRCE

Firstly, can I check, have you ever been divorced - or are you currently going through a divorce - in England or Wales?

²⁸ The omnibus survey includes as standard a wide range of demographic variables, which are not shown in the Finding Fault module attached but were available to us in analysis.

IF NECESSARY

THIS INCLUDES DIVORCES FROM SAME-SEX MARRIAGE OR CIVIL PARTNERSHIP DISSOLUTION BUT DOES NOT INCLUDE JUDICIAL OR INFORMAL SEPARATIONS FROM MARRIAGE.

INTERVIEWER INSTRUCTION:

- IF BOTH 1 AND 2 THEN PLEASE CODE 1

SINGLE CODE. SHOW SCREEN. ALLOW DON'T KNOW, REFUSED.

1. Yes – currently going through a divorce
2. Yes – been divorced
3. No

TEXT SCREEN: ASK IF QDVRCE = 2

If you have been through more than one divorce, for the purpose of these questions please think only about your most recent

ASK IF QDVRCE = 2

QDVRCE2

When did your divorce come through?

IF NECESSARY

- THIS INCLUDES DIVORCES FROM SAME-SEX MARRIAGE OR CIVIL PARTNERSHIP DISSOLUTION BUT DOES NOT INCLUDE JUDICIAL OR INFORMAL SEPARATIONS FROM MARRIAGE.
- PLEASE THINK ONLY ABOUT YOUR MOST RECENT DIVORCE
- WE ARE INTERESTED IN THE DATE OF DECREE ABSOLUTE AND NOT THE DATE OF SEPARATION

SINGLE CODE. SHOW SCREEN. ALLOW DON'T KNOW, REFUSED.

1. Less than a year ago (during 2015)
2. 1 to 2 years ago (in 2013/14)
3. 3 to 5 years ago (2010 to 2012)
4. 6 to 10 years ago (2005 to 2009)
5. More than 10 years ago (before 2005)

I'd like to know what you think about the current law on getting a divorce.

ASK ALL

QCOMMON

Currently, a divorce can only be granted if the marriage has 'broken down irretrievably' – in other words, there's no chance of saving the marriage. This has to be *proved* by using one of these five reasons. Three of these reasons are based on one spouse being 'at fault' for the marriage breakdown. The other two are based on the couple having been separated for a period of time.

Which reason do you think is most commonly used nowadays?

SINGLE CODE FOR EACH. SHOW SCREEN AND READ OUT. ALLOW DON'T KNOW, REFUSED

BEING 'AT FAULT'

1. Adultery
2. Unreasonable behaviour
3. Desertion
-
- BEING SEPARATED
4. They have been separated for two years and *both* of them want the divorce
5. They have been separated for five years and *one* of them wants the divorce
-
-

ASK IF CURRENTLY DIVORCING/DIVORCED AT QDVRCE OR QDVRCE2. OTHERS GO TO QFAULT

QOWNRSN

And which of these reasons was given (IF DIVORCING) in your current divorce application/(IF DIVORCED) in your divorce?

IF NECESSARY

- BY APPLICATION, WE MEAN THE DIVORCE PETITION
- PLEASE THINK ONLY ABOUT YOUR MOST RECENT DIVORCE
- IF RESPONDENT HAD CIVIL PARTNERSHIP DISSOLUTION RATHER THAN DIVORCE EXPLAIN "for simplicity, I'll be referring here to divorce, but please tell me about your civil partnership dissolution"

SINGLE CODE FOR EACH. SHOW SCREEN AND READ OUT. ALLOW DON'T KNOW, REFUSED

BEING 'AT FAULT'

1. Adultery
2. Unreasonable behaviour
3. Desertion
-
- BEING SEPARATED
4. You had been separated for two years and *both* of you agreed to the divorce
5. You have been separated for five years and *one* of you agreed to the divorce
-

ASK ALL

QFAULT

So, if one spouse is cited as being 'at fault' in their divorce application, the other can apply for a divorce as soon as they want. Otherwise, they have to wait for at least two years after they separate before applying for a divorce.

I am going to read out a list of statements, and I would like you to tell me how much you agree or disagree with each of them.

SINGLE CODE FOR EACH. SHOW SCREEN AND READ OUT. ROTATE STATEMENTS.
ALLOW DON'T KNOW, REFUSED

- a. If you have to cite one spouse as being at fault, it makes the whole divorce process more bitter than it needs to be (*anti-fault law, negatively worded towards fault law*)
- b. In many cases, it's unfair to blame just one spouse for the marriage breakdown (*anti-fault law, negatively worded towards fault law*)
-
- c. It's easier for divorcing couples to work things out between themselves - like arrangements over children, money and housing - if they don't have to cite one spouse as being at fault to get the divorce (*anti-fault law, positively worded towards no-fault law*)
- d. If someone's done something wrong towards their spouse, it's only right that it's given as the reason for the divorce (*pro-fault law, positively worded towards fault law*)
- e. Requiring couples to say in the application who's at fault may help them think through whether divorce is *really* the right thing to do (*pro-fault law, positively worded towards fault law*)
- f. There's a danger that couples will enter into marriage too lightly if they know they can get divorced without having to say why (*pro-fault law, negatively worded towards no-fault law*)

- 1. Strongly agree
- 2. Tend to agree
- 3. Neither agree nor disagree
- 4. Tend to disagree
- 5. Strongly disagree

Q TWO SEP

Under the current law, if a couple **both** want to divorce - but they can't or don't want to cite someone as at fault - they have to be separated for **two** years before they can get a divorce. Do you think this two year separation period is....?

Q FIVE SEP

Under the current law, if only **one** spouse wants a divorce – but they can't or don't want to cite someone as at fault - the couple have to be separated for **five** years before they can get a divorce. Do you think this five year separation period is....?

SINGLE CODE FOR EACH. ROTATE ORDER OF QUESTIONS. SHOW SCREEN AND READ OUT. ALLOW DON'T KNOW, REFUSED

1. Much too long
2. Too long
3. About right
4. Too short
5. Much too short

QNOFAULT

So, as we've talked about before, the current law allows couples to divorce either by citing one spouse as at fault or by waiting for a period after they separate. I'm interested in your view on whether fault **should** be one of the grounds for divorce. Which of these statements best describes your view?

SINGLE CODE. SHOW SCREEN AND READ OUT. ROTATE STATEMENTS. ALLOW DON'T KNOW, REFUSED

I think that...

1. Fault, such as adultery or unreasonable behavior, should continue to be **one** of the possible grounds for divorce
2. Fault, such as adultery or unreasonable behavior, should **no longer** be a possible ground for divorce.
3. NOT SHOWN: Other (WRITE IN)

Now imagine that the law was changed so it didn't include anything about who was at fault. Under this new law...

QBOTH

If both spouses want a divorce, do you think they should be able to get a divorce immediately or should they have to wait for a period of time after the marriage breaks down?

QONLY

If one spouse wants a divorce, but the other doesn't, do you think they should be able to get a divorce immediately or should have to wait for a period of time after the marriage breaks down?

SINGLE CODE FOR EACH. SHOW SCREEN AND READ OUT. ROTATE QUESTIONS. ALLOW DON'T KNOW, REFUSED

1. They should be able to get a divorce immediately
2. They should have wait for at least 6 months
3. They should have to wait for at least a year
4. They should have to wait for at least 2 years
5. They should have to wait for at least 5 years
6. They should have to wait for longer than 5 years
7. NOT SHOWN: Depends on the circumstances

QTCHILD

People have different opinions about what should happen if a divorcing couple has children under 16. I am going to read out a list of statements, and I would like you to tell me which is closest to your view.

SINGLE CODE. SHOW SCREEN AND READ OUT. ROTATE STATEMENTS. ALLOW DON'T KNOW, REFUSED

1. Where children under 16 are involved, couples should be able to get a divorce more **quickly** so that children do not have to stay in an unhappy environment.
2. The length of time it takes to get a divorce should be the **same** for divorcing couples with or without children under 16.
3. Where children under 16 are involved, couples should have to wait **longer** to get a divorce to make sure the children's interests are properly considered.

QCLRCL

If the law was changed so that couples didn't have to give a reason for the marriage breakdown, do you think courts should consider divorce applications or should it just be an administrative process like applying for a passport?

SINGLE CODE. ALLOW DON'T KNOW, REFUSED.

1. Should be considered by the court
2. Should be an administrative process

ASK IF CURRENTLY DIVORCING/DIVORCED IN LAST 10 YEARS AT QDVRCE AND QDVRCE2. OTHERS END

QWHODV

You said earlier that you are currently going through a divorce/were divorced between [dates at QDVRCE2]. Who filed for divorce - you or your former spouse?

IF NECESSARY:

- THE PERSON FILING FOR DIVORCE IS THE 'APPLICANT' AND THE SPOUSE IS THE 'RESPONDENT'
 - IF RESPONDENT HAD CIVIL PARTNERSHIP DISSOLUTION RATHER THAN DIVORCE EXPLAIN
"for simplicity, I'll be referring here to divorce, but please tell me about your civil partnership dissolution"
1. Respondent filed for divorce
 2. Former spouse filed for divorce

ASK IF FAULT DIVORCE (CODES 1 TO 3 at QOWNRSN). OTHERS GO TO QACTUAL QOWNFLT

Were you or your former spouse named as the party at fault?

1. Respondent named as party at fault
2. Former spouse named as the party at fault

ASK IF CURRENTLY DIVORCING/DIVORCED IN LAST 10 YEARS AT QDVRCE AND QDVRCE2. OTHERS END

QACTUAL

You said that the reason given on your (last) divorce application was [RESPONSE AT QOWNRSN]. How closely or not would you say that related to the *actual* reason for the breakdown of the marriage?

SINGLE CODE. SHOW SCREEN AND READ OUT. ALLOW DON'T KNOW, REFUSED.

1. Very closely
2. Fairly closely
3. Not very closely
4. Not at all closely

QRELATNSHP

So, you said your divorce was based on [RESPONSE AT QOWNRSN] [IF CODES 1 TO 3 AT QOWNRSN: which is a fault-based reason]. Overall, given your situation with your former spouse at the time, would you say that [IF FAULT DIVORCE: naming someone as at fault/IF NO-FAULT DIVORCE: not having to name someone as at fault] made your relationship with them easier or more difficult than it might have been?

QFINANCES

And, do you think that [IF FAULT DIVORCE: naming someone as at fault/IF NO-FAULT DIVORCE: not having to name someone as at fault] made it easier or more difficult than it might have been to sort out your finances when you separated?

QCONTACT

And, do you think [IF FAULT DIVORCE: naming someone as at fault/IF NO-FAULT DIVORCE: not having to name someone as at fault] made it easier or more difficult than it might have been to make arrangements about your children?

SINGLE CODE FOR EACH. SHOW SCREEN AND READ OUT. ALLOW DON'T KNOW, REFUSED.

1. Much easier
2. A little easier
3. Neither easier nor more difficult
4. A little more difficult
5. Much more difficult
6. Didn't have children under 16 at the time of my divorce

6. Comparative law study

As part of the *Finding Fault* study we held a comparative law workshop for international scholars in Amsterdam in July 2017.²⁹ The workshop included nine papers relating to thirteen different jurisdictions, mainly from Europe but also extending to North America. The papers addressed the law in each jurisdiction, the role and use of fault (if any) and pressures for and experiences of law reform. The jurisdictions were selected to represent a range of different types of divorce law and experiences of reform. Inevitably, even with thirteen jurisdictions there are gaps, but we think there is a good range and excellent coverage of our nearest neighbours.

²⁹ An edited collection of the papers will be published in 2018.