

Appendix A

Cost of unrecovered debt due under family financial orders

A1. For the purposes of this project family financial orders comprise:

- 1) Financial orders made to redistribute assets between the parties under the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 (“financial remedy orders”).
- 2) Orders made for the benefit of a child under Schedule 1 to the Children Act 1989.
- 3) Orders for costs made on a petition for divorce or an application for the dissolution of a civil partnership.¹

A2. Calculating the amount of debt that, every year, is not successfully enforced and is due under family financial orders involves calculating the following:

- 1) the number of family financial orders made;
- 2) the number of family financial orders that are not complied with;
- 3) the number of enforcement applications made;
- 4) how many of those enforcement applications are unsuccessful; and
- 5) the value of the orders that are not complied with and not successfully enforced.

A3. Unfortunately, data is only routinely collected in respect of 1) above, the number of family financial orders made. We have had to make a number of assumptions to complete steps 2) to 5).

Number of family financial orders made

A4. The following data is available:

- 1) In 2015 there were 38,834 disposals of financial remedy claims, all of which resulted in the making of at least one family financial order.²
- 2) Between 2013 and 2015, there were on, on average, 451 disposals of applications made for financial provision for children under Schedule 1 to the Children Act 1989, which contained at least one family financial order.³
- 3) In 2015 there were 102,804 decrees absolute, which is the order that ends a marriage.⁴ We do not know how many decree absolutes will have included an order for costs, but for illustrative purposes we assume 50%.

¹ We do not include orders for costs made as part of family financial orders under the Matrimonial Causes Act 1973, the Civil Partnership Act 2004, or the Children Act 1989. In all those proceedings the general rule is that there is no order as to costs. So although costs orders are sometimes made, this is the exception.

² <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2016> (Table 10).

³ Data provided by Family Court Statistics Quarterly on request.

Number of family financial orders that are not complied with

A5. It is not possible to tell the number of family financial orders that are not complied with in any way other than looking at the number of enforcement applications made. That of course does not account for cases where the order is not complied with but the creditor takes no action. We understand that does happen, but it is not something we have the data to factor in.

Number of enforcement applications made

A6. To calculate the number of enforcement applications made, we have used data collected by the Central Family Court (“CFC”) over the period of 12 months from August 2015 to August 2016. During that period the CFC recorded the number of applications made for a financial remedy order and the number of applications for enforcement that were made. Although the applications for enforcement may not relate to financial remedy applications made over the same period, we have assumed that year on year the numbers of financial remedy applications and enforcement applications are relatively consistent, so that it is possible to work out the relationship between the two. The figures tell us that 9.4% of financial remedy cases result in enforcement action.⁵

A7. We have applied that percentage to financial remedy orders and Schedule 1 orders, but not to orders for costs where we understand that non-compliance is not so prevalent. In respect of costs orders, we have assumed, for illustrative purposes that 1% require enforcement action.

A8. These calculations mean that enforcement applications are made to enforce 3,650 financial remedy orders, 42 orders made under the Children Act 1989 and 514 costs orders.

Number of enforcement applications that are unsuccessful

A9. By “unsuccessful” we mean that the creditor does not receive what he or she is owed.⁶

A10. In addition to recording the number of enforcement applications made, the CFC has also kept a record of the progress of those applications. To determine how many of those are unsuccessful, we have first considered the following:

- 1) how many applications have concluded;
- 2) how many of those concluded cases have resulted in a “dismissal” (meaning that no enforcement order has been made); and
- 3) how many cases have resulted in a “dismissal” should we treat as “unsuccessful”.

A11. Out of the applications that concluded, 28% resulted in a “dismissal”.⁷ However, we do not think that all 28% would have been unsuccessful, as in some cases the debtor will have

⁴ <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2016> (Table 7)

⁵ 1,549 financial remedy applications and 145 enforcement applications.

⁶ Sometimes that will be because the debtor is a “can’t pay” debtor and so our recommendations for reform will not greatly assist in recovering that debt (unless they lead to earlier enforcement action at a time when the debtor has the means to pay). We take that factor into account when we consider the benefit of our reforms.

⁷ 86 applications had conclude and 24 of those resulted in a “dismissal”.

complied with the family financial order as a result of the creditor making the enforcement application. It is not possible to know in how many cases that will occur. For illustrative purposes, we assume that in 15% of cases where the enforcement application results in a dismissal debtors comply with the family financial order after an enforcement action has been made. Applying that discount to the 28% of enforcement cases means that 23.8% of enforcement applications were unsuccessful.⁸

A12. Drawing on the data from the CFC, we assume that 23.8% of enforcement applications are unsuccessful. That means enforcement action is unsuccessful in respect of (rounded to the nearest whole number):

- 1) 869 financial remedy orders;
- 2) 10 orders under the Children Act 1989; and
- 3) 122 costs orders.

Value of the orders that are not complied with and are not successfully enforced

A13. There are no available data as to the average value of the family financial orders that are made. Some cases are reported but they tend to be “big money” cases and to use the figures involved would be distortive. Therefore, in order to assess the cost to family creditors of unenforced family financial orders we have worked from data collected about the average wealth of families types in the UK and applied our understanding of how family financial orders are made, to arrive at an average value for family financial orders.

A14. In this way we have calculated the average value of orders made under the Matrimonial Causes 1973, the Civil Partnership Act 2004 and the Children Act 1989.

Orders made under the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004

A15. For orders made under the 1973 Act and 2004 Act we have considered only those orders that are most likely to require enforcement via the methods discussed in the Report, namely: lump sum orders, periodical payments orders, property adjustment orders and orders for maintenance pending suit.

A16. We have made the following assumptions:

- 1) The average value of a lump sum order is half the value of a household’s average savings (with a low estimate being one quarter the value and a high estimate being three quarters of the value). We have taken the average savings to be £5,900,⁹ making the average value of a lump sum order £2,950.
- 2) The average value of a periodical payments order is one third of an average household income. We have taken an average household income to be £24,564, meaning that the average value of a periodical payments order is £8,188. Periodical payments orders can last for different terms, taking a low estimate of a 5 years’ term and a high estimate of a 15 years’ term, with default of 1 years’ and 5 years’ worth of payments respectively, gives values of £8,188 and £40,940. Taking the mid-point as

⁸ If 15% of the 24 applications result in a dismissal because the debtor complies with the order, then in 20.4 of those cases the creditor will not receive what they are due.

⁹ http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_428683.pdf

an average means that an average value for default on a periodical payments order is £24, 564.

- 3) The average value of a property adjustment order is one half of the average amount of equity in a UK property. We have taken the average property value to be £216,750,¹⁰ and the average outstanding mortgage balance to be £85,000.¹¹ Given that not all properties will be encumbered with mortgage debt, we have reduced the average mortgage balance by 20% to £68,000, giving an average net equity of £148,750, making the average value of a property adjustment order £74,375.
- 4) Maintenance pending suit is interim maintenance to cover essentials before a final family financial order is made. We have assumed that, on average, such an order would last for 6 months and would be worth one fifth of an average household income over that time. That gives a value of £2,456.

Orders made under the Children Act 1989

A17. In calculating the value of orders made under the Children Act 1989, we have assumed that the most commonly made order is one to provide provision for housing. We have calculated the value of such orders using the average cost of private rent multiplied by the number of years of housing provision that the order would be based on.

A18. The average cost of rent is £650 p/m¹² and we have assumed for illustrative purposes that the order would be to provide housing for 16 years. That gives a total value of £124,800.

Costs orders

A19. In calculating the value of costs orders, we have considered the cost of obtaining a divorce/dissolution of a civil partnership by looking at the relevant application fees.

A20. The cost of issuing a petition is £550 and the combined costs of applying for a decree nisi and decree absolute is £100, making a total cost of £650.

Calculation

Financial remedy orders

A21. As a first step, it is necessary to work out how many of the different types of financial remedy orders are made, so as to estimate what proportion of the 869 unsuccessful enforcement applications to enforce a financial remedy applies to which type of order.

A22. In 2015 the following orders were made:

- a) 22,858 lump sum orders;
- b) 21,228 property adjustment orders;
- c) 9,767 periodical payments orders; and
- d) 2,463 orders for maintenance pending suit.

¹⁰ July 2016, <http://landregistry.data.gov.uk/app/ukhpi>.

¹¹<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/debt/article/s/householddebttinequalities/2016-04-04>.

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524006/PRM_Statistical_Release_160519.pdf.

A23. In total, those orders amount to 56,316. Of which lump sum orders were 41%, property adjustment orders were 38%, periodical payments orders were 17%, and orders for maintenance pending suit were 4%.¹³

A24. Out of the 869 unsuccessful enforcement applications, it could be assumed that:

- 1) 356 are lump sum orders;
- 2) 330 are property adjustment orders;
- 3) 148 are periodical payments orders; and
- 4) 35 are orders for maintenance pending suit.

A25. If that were to be the case then the unrecovered debt from financial remedy orders would be:

$$(356 \times £2,950) + (330 \times £74,375) + (148 \times £24,564) + (35 \times £2,564) = £29,319,162$$

A26. However, we understand that property adjustment orders require enforcement action in fewer cases than the other types of order. Further, we understand that periodical payments orders require the most enforcement action.

A27. If property adjustment orders were to account for 20% of enforcement action and the 18% previously attributed to property adjustment orders was re-distributed as an additional 12% to periodical payments orders and 6% to lump sum orders, that would give rise to the following amount of unrecovered debt:

$$(408 \times £2,950) + (173 \times 74,375) + (252 \times £24,564) + (35 \times £2,564) = \mathbf{£20,350,343}$$

A.28 Applying an even greater discount so that property adjustment orders were to account for only 10% of enforcement actions, and the 28% previously attributed was re-distributed as an additional 19% to periodical payments orders and 9% to lump sum orders, would give rise to the following amount of unrecovered debt:

$$(435 \times £2,950) + (87 \times 74,375) + (313 \times £24,564) + (35 \times £2,564) = \mathbf{£15,531,897}$$

A29. We consider the two applied discounts to represent high and low estimates of the amount of unrecovered debt from financial remedy orders. It is important to bear in mind that most financial remedy orders will in fact contain more than one type of financial order, and so the debt that a creditor is seeking to enforce may be what is owing, for example, under both a periodical payments order and a lump sum order. That is not accounted for in these calculations and this may mean that the actual amount of unrecovered debt is nearer the higher end of this range.

Orders made under the Children Act 1989

A30. The value of unrecovered debt under orders made under the Children Act 1989 is $10 \times £124,800 = £1,248,000$.

Costs orders

A31. The value of unrecovered debt under costs orders is $122 \times £650 = £79,300$.

¹³ All numbers rounded to the nearest whole number.

Total

A32. Combining the unrecovered debt due under financial remedy orders, orders under the Children Act 1989 and costs orders, provides a range of between:

£16,859,197 to £21,677,643