

NAVIGATING THE SILVER SPLIT

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The marked increase in divorces for those aged over 50 is not just a UK based phenomenon – hail the rise of the silver splitter

Divorce for the older couple will no doubt become a hot topic once again in the wake of the Chancellor's 2016 autumn statement, which outlines an imminent reduction to Money Purchase Annual Allowances. Perhaps of more interest to Channel Island couples are the statistics published last year by the Office of National Statistics which show that despite there being an overall decrease in the rate of divorce across most age groups in the UK compared with a decade ago, there was a marked increase in divorces involving those over fifty. A divorce for those in this age bracket have become so common that the nickname 'silver splitter' has emerged, which in some dictionaries even merits its own definition.

This is not just a UK based phenomenon. A recent survey from the American Academy of Matrimonial Lawyers has found that 64% of their responding members reported an increase in the amount of divorce cases involving couples of more than 50 years of age. As yet there is no age specific report on the increase in over fifties divorces in the Channel Islands but my professional experience would suggest that the same trend is being seen here.

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There are many potential reasons for this increase: we have an aging population; a change in social norms may be a factor; divorce has lost much of its stigma; women are no longer confined to traditional roles in the home and so called 'empty nest syndrome' may also be a trigger.

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Additionally, couples may simply drift apart as they uncover new interests and a desire to get as much out of life as possible in their retirement. Divorce, as opposed to remaining in an unhappy marriage for many years to come, may be the more attractive prospect for some.

Divorce at any age is difficult but more complicated factors may come into play for older couples. They will often have more significant and diverse assets and more complex savings and portfolios. Some may still have dependent children at university or parents for whom they are responsible. The years remaining to work, and earn back some of what will be lost on divorce, will be limited. Inheritance may be imminent and the idea of sharing it distinctly unpalatable.

When determining financial matters on divorce, the courts in the UK and the Channel Islands will have regard to all the circumstances of the case, and the factors set out in section 25 of the Matrimonial Causes Act 1973 ("the section 25 factors") which include the age of each party, the length of the marriage, the financial needs, obligations and responsibilities of each party, the income, earning capacity, property and other resources each party has, or is likely to have in the foreseeable future, the standard of living during the marriage and the contributions that each party has made, or is likely to make in the foreseeable future. Balancing those factors on the features of the case, the goal is to divide the assets fairly, which may not always mean equally.

The contributions made by each to the wealth and welfare of the family, whether as breadwinner or homemaker, have been regarded as equal since the seminal case of *White v White* in 2000. Where roles have been divided along gender traditional lines over a long marriage, assets will usually be split between the parties equally, but factors which may justify a departure from equality include, by way of example, the receipt of an inheritance by one party shortly before the divorce (cf *JL v SL* (No 2) (Appeal: Non-Matrimonial Property) [2015] EWHC 360 (Fam)), or the ownership of shares in a company many years before the marriage [cf *Robertson v Robertson* [2016] EWHC 613 (Fam)].

Cohabitation by a wife after her divorce does not extinguish her contribution towards the assets accrued during her marriage or her entitlement to have provision for her needs met from it (cf *Hart v Hart* [2016] EWCA Civ 497).

Happily romance is not dead and the phenomenon of the silver splitter is balanced by the rise of the second time bride and groom, for whom a prenuptial agreement may be prudent if they wish to protect certain assets for their children from a previous relationship. While not binding, they are given increasing weight by the English courts and in a case where each party was independently wealthy and had agreed that in the event of divorce, neither would be entitled to financial assistance from the other, the prenup was held to be of 'magnetic importance' such that the wife was denied a further award (*Crossley v Crossley* [2007] EWCA Civ 1491). This case and those which have followed it, recognise the increasing desire of people for greater financial certainty and autonomy in the divorce process. Good communication may be key to a successful marriage but good advice from specialist matrimonial lawyers and financial advisers is essential to navigate the often more complex features of a silver split. ■