

Asset splits

‘How far can you push the court over standard splits in asset division such as 50:50 or 60:40, including factors such as short marriages, needs and contributions?’

Michael Horton KC

17 June 2025

Contents

- Percentages and the ‘cross-check’
- Special contribution
- Conduct
- Elder children
- Soft debts
- Costs

Introduction



Introduction

- Or
- How I Learned to Stop Worrying about Percentages and Love section 25?

Percentage splits

- Is 60/40 really a thing?
- NB we went from no starting point of equality of division, but checking the judge's tentative views against the yardstick of equality of division (White [2001] 1 AC 596, 605G) to
- Charman (No 4) [2007] 1 FLR 1246, [66] – sharing principle applies to all property – but non-matrimonial property provides better reason for departure from equality

Percentage splits

- But even as late as 2008, courts saying beware the siren call of equality
- See *B v B* [2008] EWCA Civ 543 [2008] 1 WLR 2362
- H from Kosovo, running car wash business from premises owned by W
- DJ ordered equal division of c £1.4m
- But all assets owned by W before marriage ...

Percentage splits

- For percentages, three types of case
 - Low value case – all about needs in absolute figures, %age a possible restraining factor
 - Middle value case - %age is important because needs usually the same and still dominate
 - High value case - %age may be relevant, but often irrelevant

Percentage splits

- Eg small money case
- Not enough for both parties to rehouse
- The residential parent may get to stay in the house
- The other may end up with very little current capital
- The Mesher percentage will be influenced by (i) contributions (ii) overall fairness (iii) housing needs when children 18

Percentage splits

- Eg the middle value case
- Enough for both to rehouse
- %age relevant because assumption that both parties' needs will be very similar
- And possibly because all property is matrimonial

Percentage splits

- But even in this case, disparity in mortgage capacity will allow for departure from equality
- Say asset pool is £900k
- But spouse A has £300k mortgage capacity
- Spouse B none
- £600k to B and £300k to A allows them to rehouse at same amount
- What does the %age tell us? Anything?

Percentage splits

- Eg the bigger money case
- If claimant's award is greater of needs and sharing, and there is not much sharing, then what does %age tell us?
- E v L [2021] EWFC 60 [2022] 1 FLR 95 – 2y m, 4y cohab, assets £9.2m, matr pty is £3.92m, w ended up with £2m
- See [104] 79:21 split – ‘scarcely relevant’

Contributions

- ‘Special contribution’ – not dead yet – see Gray v Work [2017] EWCA Civ 270 [2018] Fam 35 (although H’s appeal against rejection of his special contribution argument failed)
- Wholly exceptional
- Only if such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard (see [15] [102])

Contributions

- And then, per Charman ‘significant as opposed to token’ departure from equality [90]
- So not 50/50 but more like 55/45
- And most unlikely further than 66.6%/33.3%

Contributions

- What about ‘the superwife’?
- Especially against ‘useless Dad’?
- Usually in context of perceived likely unequal future contributions
- Depends which type of case it is
- But even useless Dad has needs!

Conduct

- NB most of the debate about conduct is whether it gets over the s 25(2)(g) threshold
- ie can the court even take it into account?
- Impact of conduct (H v H [2006] 1 FLR 990, [44])
 - Potential magnifying factor re other factors
 - Move award towards very top end of the scale
- In that case W got c 75%

Conduct

- If conduct is the other side of coin from contribution, then max departure to 66.6/33.3??
- Don't forget conduct is not just about 'obvious and gross'
- Is the conduct such that it would be repugnant or offensive to a sense of justice to ignore it?

Conduct

- Extreme example is K v L [2010] EWCA Civ 125
- CA refused permission to appeal
- H pleaded guilty to sexual abuse of his step-grandchildren and taking indecent photos
- J found further abuse had taken place
- W had £4.3m, H c £100k plus due to inherit from 94 year old mother

Conduct

- H asking for £500k to house on release from prison
- J left him with £100k (less 50k costs!)
- H had 2.27% of total

Elder children

- Common argument – children with W
- They hate H and don't even see him
- H's needs are lower
- Big departure from equality please

Elder children

- Courts very wary of accepting that current snapshot of child arrangements is fixed in stone forever
- The distribution of assets on divorce has life long consequences

Elder children

‘Boomerang’ adults back in family home by average age of 26

Many younger people are moving back in with their parents to save money for their own home — with a fifth of those returning aged over 30

Elder children

- Variant on previous argument
- The children all live with spouse A
- Spend no time with spouse B
- One of them is already back from uni
- Likelihood is they will be with spouse A for years after end of education ...

Elder children

- Many judges will be feeling the pain too!
- Neither spouse has obligation to support twentysomething children who are not in education and not disabled
- But s 25(2)(b) obligations include moral obligations
- J has to assess likely future contributions but ...

Soft debts

- Everyone very familiar with the principles in P v Q [2022] EWFC B9
- Is the debt 'soft' – is the obligation in reality going to be enforced?
- J says if soft then the court may as an exercise of discretion decide to leave it out of the computation table

Soft debts

- In P v Q, H (along with other two siblings) had received £150k loan from his mother in 2010
- H's mother said might seek repayment when no longer able to look after herself
- But could not envisage ever suing for the debt
- If not repaid, she would adjust her will

Soft debts

- After separation, H paid his mother £150,000
- W said [19(v)] cynical device to remove £150k from asset schedule so it did not have to be divided 50:50 on sharing principles
- ?

Soft debts

- W had borrowed €30k from her father prior to marriage
- Contemporaneous document
- No demand made for repayment
- J considered both these debts soft and re-credited £150k to H's column
- His eventual split was 50.1% to W, 49.9% to W

Soft debts

- On basis of his schedule, W was proposing 57.5% to 42.5% in her favour, and H 60:40 in his favour
- ‘Arguments for departure from equality should be treated as broadly balancing each other out’
- But why? NB neither the £30k nor the £150k would be subject to the sharing principle

Soft debts

- The real issue in most soft debts cases is not computation and percentages
- But priority of needs

Costs

- Why should spouse A be able to spend much more on costs than spouse B?
- And have the 50/50 division after all those costs paid?
- ‘I’m paying half of their (excessive) costs too’

Costs

- The 2006 no costs reforms suggested that each party would pay their costs out of their share
- Who knows, it might even restrain expenditure on costs!

Costs

- The test for adjustment appears to be no adjustment unless there is a marked disparity in the level of costs which cannot be justified having regard to work done and need to do work

Costs

- eg BR v BR [2025] EWFC 88, Peel J
- 55:45 split – after £86m ls to W – court discount/ H retaining riskier less liquid assets
- W costs £870k, H £560k - no adjustment warranted
- But W accountants costs £1.9m versus H £310k
- W to pay H £375k (25% of diff) offset against ls

Conclusion

- Percentages, like Duxbury, useful tool
- Not a straightjacket

The end!

© Michael Horton KC

mhkc@coramchambers.co.uk

www.hortonkc.com

[@mikehortonbar.bksy.social](https://www.bksy.social/@mikehortonbar)