

Gender in intimate relationships: a socio-legal study

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Abstract

In this thesis, I explore the extent to which the incorporation of same-sex relationships into formal regulatory domains is working to reinforce heteronormativity. I am focusing on this issue in relation to the provision of legal advice on civil partnership dissolution. My research brings together a range of theoretical and methodological tools from the social sciences and humanities to examine the degree to which lesbian and gay men are being assimilated into the marriage model in the realm of legal recognition. My thesis concentrates on three main questions: 1) How can same-sex relationships, in light of civil partnerships (and, by extension, same-sex marriage), help to challenge social and legal constructions about the gendered nature of roles in intimate relationships? 2) To what extent do solicitors construct the issues and legal framework as being identical in same-sex matters to different-sex cases? 3) How do lesbians and gay men understand and experience the law of financial relief?

To address these questions, I draw on the two theoretical frameworks of heteronormativity and equality (which I develop in chapter 2). Methodologically, I argue that a mixed methods approach facilitates a broader and more comprehensive understanding of a research topic (chapter 3). Consequently, I utilise quantitative and qualitative data to explore the ways in which assimilation (and, indeed, transformation) has taken place in the civil partnership dissolution context. As to the quantitative element, I use data from an online questionnaire on the conduct of domestic labour and household finances to argue that the family lives of subsisting lesbian and gay partners raise questions about the way that we think about gender in relationships (chapter 4). In the qualitative chapters, I interrogate the clients' and solicitors' discursive formulations of sameness and difference in terms of the making and breaking civil partnerships (chapter 5), the construction of the legal cases of civil partnership clients (chapter 6) and, more specifically, narratives relating to same-sex finances and approaches to the apportionment of 'future' assets (chapter 7). In the final chapter, I set out directions for future research addressing gender, sexuality, and the law of financial relief.

In the thesis, I argue that heteronormative conceptions of gender have been carried over from (different-sex) marriage into civil partnership proceedings, and that lesbians and gay men have, to a large extent, been assimilated into the mainstream. That said, civil partner clients have also resisted the imposition of heterosexual norms on their relationship, preferring to settle dissolution matters on their own terms, and particularly opposing substantive financial remedies such as maintenance and pension sharing. In this way, given the assumptions around financial interdependency that are inherent in the legal recognition of same-sex relationships, civil partnership dissolution does still pose some novel challenges for family law.

Table of contents

Table of contents	iv
Table of figures.....	viii
Table of tables	viii
Acknowledgments	ix
Chapter 1- Same-sex relationship recognition: Assimilation or transformation?	1
Same-sex marriage and gender: the existing debate.....	4
The case against same-sex marriage: regulation as assimilation.....	5
Regulation as radical	10
Regulation as rights-conferring	16
Research questions and theoretical frameworks.....	19
Thesis overview.....	22
Chapter 2- Equality and heteronormativity: a theoretical framework.....	27
Heteronormativity as regulatory	30
<i>White v. White</i> : a yardstick of ‘equality’	34
<i>Miller v. Miller</i> ; <i>McFarlane v. McFarlane</i> : compensating for a gendered division of labour	39
<i>Radmacher v. Granatino</i> : individual autonomy and sameness	44
<i>Lawrence v. Gallagher</i> : playing it straight?	48
Conclusion.....	54
Chapter 3- Methodology.....	58
Mixed methods research: adopting a pragmatic approach	58
Quantitative methods.....	63
The questionnaire	64
Methodological reflections: questionnaire use	70
Qualitative methods.....	71
Interviews	72
Methodological reflections: interviewing.....	78

Conclusion	82
Chapter 4- Greater familial ‘equality’: domestic division in same-sex relationships .	83
Workforce status.....	84
Childcare.....	86
Caring for a sick family member.....	89
Housework.....	91
Quantitative results	91
Qualitative explanations	94
Influences on ‘equal’ division	97
The use of household help.....	101
Summary of domestic results	103
The conduct of household finances	104
The use of joint/ separate accounts.....	106
The performance of financial tasks	109
Conclusion.....	115
Chapter 5- The making and breaking of civil partnerships	117
Why opt for civil partnership?.....	117
Romance driven?	118
Rights driven?.....	122
Recognition driven?.....	127
Financially driven?	130
Driven by a desire to enter into a marriage/ non-marriage?	135
Relationship dissolution: infidelity and irretrievable breakdown	141
Sex and the civil partnership	142
Conclusion.....	149
Chapter 6- Similarity and divergence between dissolution and divorce	151
Stories of sameness.....	151
Using identical terminology	152
Asking the same questions	154

Arguing on the basis of gendered stereotypes	157
‘Equality’ as sameness of treatment	166
Discourses of difference	169
Divergent factual matrices	169
A preference for resolving on their own terms, and against litigation	174
A different approach to finance and relationship breakdown.....	179
Conclusion	184
Chapter 7- In(ter)dependency	187
Existing literature on same-sex finances: how and why	188
Pre-separation finances.....	189
A more balanced approach towards financial management	190
More distinct financial arrangements and greater independence	196
Post-separation finances	202
Maintenance	204
Pension sharing.....	209
Conclusion	213
Chapter 8- Conclusions	215
Summary of findings	215
Limitations and possibilities for future research	223
Bibliographic references	227
Cases cited	270
Legislation cited	271
Appendix A. Division of labour in same-sex relationships questionnaire	273
Appendix B. Questionnaire participant information sheet	278
Appendix C. Client interview participant information sheet.....	281
Appendix D. Solicitor interview schedule.....	285
Appendix E. Client interview schedule	287
Appendix F. Demographic information form for interviews	289
Appendix G. Client consent form.....	290

Appendix H. Table of clients' basic relationship details.....	291
Appendix I. Tree of nodes generated in NVivo	294
Appendix J. Tables of positive chi-square results from the questionnaire.....	296
Appendix K. Tables of positive t-test results from the questionnaire	313

Table of figures

Figure 4.1. Bar chart of who conducts the childcare	87
Figure 4.2. Bar chart of who conducts the childcare by who the ‘main earner’ is in the respondent’s household.....	88
Figure 4.3. Bar chart of who cares for a sick family member	89
Figure 4.4. Bar chart of who cares for a sick family member by who the ‘main earner’ is in the respondent’s household	90
Figure 4.5. Bar chart of who conducts the ‘in home’ domestic tasks	92
Figure 4.6. Bar chart of who conducts the ‘out of home’ domestic tasks	93
Figure 4.7. Bar chart of who conducts the grocery shopping by whether or not there are children present in the respondent’s household	98
Figure 4.8. Bar chart of responses to the statement, “the division of household tasks in my relationship is unfair”	103
Figure 4.9. Bar chart of who pays the bills by the respondent’s social class	110
Figure 4.10. Bar chart of who makes the financial decisions	112
Figure 4.11. Bar chart of responses to the statement, “my partner and I always discuss financial decisions”	114

Table of tables

Table 3.1. Table of questionnaire demographics for respondents currently, or previously, in same-sex relationships	69
Table 3.2. Table of interview demographics	76
Table 4.1. Table of whether the respondent and their partner had the same occupational status by whether or not there are children present in the respondent’s household	86
Table 4.2. Table of who conducts the general cleaning by who the ‘main earner’ is in the respondent’s household.....	101

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Chapter 1- Same-sex relationship recognition: Assimilation or transformation?

There was historically a lack of legal recognition of the familial relationships of lesbians and gay men. Since the beginning of the twenty-first century, increasing numbers of jurisdictions have created frameworks of formal recognition for same-sex relationships. Full same-sex marriage is now available in Argentina (2010), Belgium (2003), Brazil (2013), Canada (2005), Colombia (2016), Denmark (2012), France (2013), Iceland (2010), Ireland (2015), Luxembourg (2014), parts of Mexico (2010), the Netherlands (2001), New Zealand (2013), Norway (2009), Portugal (2010), South Africa (2006), Spain (2005), Sweden (2009), parts of the UK (2014)¹ and Uruguay (2013), and the American Supreme Court has declared it legal across the entirety of the United States (*Obergefell v. Hodges*, No. 14-556, 2015 WL 213646). A “stepping stones” model was adopted in a number of jurisdictions, as was the case in England and Wales, where civil partnership was initially introduced (Waldijk, 2001).

The Civil Partnership Act, which was passed in November 2004 and came into force in December 2005, provided same-sex relationships with access to a similar legal status to that obtained under civil marriage. It was made available only to same-sex couples, unlike the alternative frameworks introduced in, for example, France.² More recently, the Marriage (Same Sex Couples) Act 2013 introduced same-sex marriage in England and Wales, commencing from March 2014, and couples were enabled to convert their civil partnerships to marriage from December 2014 (Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014). Section 15 of the 2013 Act specified that the future of the Civil Partnership Act was to be reviewed in light of same-sex marriage, potentially with a view to it being set aside. Yet, responses to a subsequent consultation displayed a lack of consensus as to the way forward, with less than a third of respondents supporting the abolition of civil partnership (Department for Culture, Media and Sport, 2014). That being the case, it seems that the two institutions will continue to co-exist, at least for the time being.

¹ Same-sex marriage is still not available in Northern Ireland, although it is in Scotland.

² A test case was launched challenging the ban on heterosexual civil partnerships, but it failed in the High Court (*Steinfeld and another v. Secretary of State for Education* [2016] 4 WLR 41).

There are a small number of substantive differences between civil partnership and (at least, heterosexual) marriage: you cannot annul a civil partnership on the basis of non-consummation;³ adultery is not set out as an express ground for dissolution;⁴ and a surviving civil partner can be lawfully prevented from accessing the benefits of their partner's pension contributions made before 5 December 2005 (Equality Act 2010, Sched. 9, para. 18(1)).⁵

My focus in this thesis is mainly on the breakdown of formalised same-sex relationships, and specifically on those who seek legal advice on financial relief under such circumstances. I will be concentrating on civil partnerships, rather than same-sex marriage, as my empirical research fell outside of the one-year period required to have passed before the initial same-sex marriages could be terminated (Matrimonial Causes Act, 1973, s.3(1), inserted by the Matrimonial and Family Proceedings Act 1984, s.1). Even so, I contend that many of my findings are likely to be applicable across both institutions. This is not least because civil partnerships have commonly been viewed as a “marriage-like status” “without the name ‘marriage’”, with Jacqui Smith MP having stated at the time of their formulation that civil marriage was to provide the “template” for them (Harding, 2007: 225; HC Hansard, 9 November 2004). Notably, the statutory provisions for financial relief on dissolution correspond with those applicable to married couples under the Matrimonial Causes Act 1973. Accordingly, as with section 25 of the 1973 Act, the courts should take a number of factors into account in deciding how redistribution should be conducted (including the parties' respective current and future income and financial resources, their financial needs and obligations, and their standard of living during the civil partnership) (Sched. 5, para. 21(2)). I will be examining the effects that incorporation into formal regulatory domains has had on lesbian and gay men at a time when attention needs to move away from arguing for legal change, and towards investigating its impact. Consideration of what happens at the end of relationships, and especially how law

³ The Marriage (Same Sex Couples) Act also excludes same-sex marriages from nullification by non-consummation (Sched. 4, para. 4(3)).

⁴ Same-sex adultery is still not available as a ground for divorce under same-sex marriage.

⁵ For same-sex marriages, pension providers need only provide for survivor's/ widow's benefits in respect of contributions from 5 December 2005 as well.

comes into play at that moment, is often overlooked, although it is vital to reflect on when thinking critically about same-sex relationship recognition.

I will also, more widely, be examining the potential held by that incorporation for challenging societal norms, and particularly, the oppression of women. Feminists have often looked to same-sex marriage as a method of transforming women's experience in marriage because both women's oppression and the exclusion of lesbians and gay men from marriage have been gender-based problems rooted in patriarchy (Watson, 2003). As part of this, it has been suggested that both have operated from assumptions about 'natural' masculine and feminine gender roles (Calhoun, 2006). In the discourse of neoliberalism, married women are assumed to take responsibility for children and to be dependent on their husbands (Duggan, 2003). Thus, a key feminist conceptual aim has focused on the emancipation of women from unpaid domestic and caretaking labour, and on liberating them from being defined as belonging to the private world governed by individual men. In this respect, it may appear that women are in a more advantaged position than ever. Not only is divorce relatively common, and less stigmatised than it was previously (with an estimated 42% of marriages in England and Wales ending in divorce), but additionally there are greater opportunities for women within the more public sphere of the workplace, at least for the more educated and affluent (Office for National Statistics, 2013a; 2013d).

It has, however, also been suggested that there has been a recent increase in stay-at-home mothering, and a report of the European Commission (2015) has cited that British mothers are almost twice as likely to stay within the home than their European counterparts (The Economist, 2014). This may be due to the comparatively high cost of childcare in the UK (Rogers, 2012). On top of that, where women do work, many are now required to adopt the "occupation: superwoman", taking responsibility for the house and the children in any event (Barker, 2012). Men remain primarily viewed as the breadwinners and providers, whilst women are viewed as carrying out complementary responsibilities. Furthermore, the continued exploitation of women's unpaid work and the privatisation of responsibility for care labour continue to amount to intrinsic components of the capitalist mode of production (Hennessy, 2000).

Therefore, as the Commission identifies, “despite positive trends in labour market outcomes, social challenges persist” (European Commission, 2015: 4).

It is within that context that this thesis seeks to answer three main questions: 1) How can same-sex relationships, in light of civil partnerships (and, by extension, same-sex marriage), help to challenge social and legal constructions about the gendered nature of roles in intimate relationships? 2) To what extent do solicitors construct the issues and legal framework as being identical in same-sex matters to different-sex cases? 3) How do lesbians and gay men understand and experience the law of financial relief? These questions give rise to subsidiary questions, to which I return below. As is evident from the first question, central to my research focus is the degree to which formalised same-sex relationships have resulted in the assimilation of lesbians and gay men into the ‘mainstream’ or, alternatively, generated possibilities of transforming heterosexual relational culture. Consequently, I begin my initial chapter by situating my research in relation to the literature around the possible effects of same-sex relationship recognition, looking particularly at the issue of gender in intimate relationships. Secondly, I expand on my main research questions before, thirdly, I outline the contents of each chapter and the key arguments that I will use in this thesis.

Same-sex marriage and gender: the existing debate

The battle for same-sex marriage comprised a variety of ‘fronts’. From an ‘external’ perspective, conservative religious bodies, such as the Church of England, objected on the basis of marriage necessitating a complementarity of genders (Goddard, 2015). Whilst this objection was presented so as to centre around procreation, it was stressed that, “even where, for reasons of age, biology, or simply choice, a marriage does not have this issue, the distinctiveness of male and female is part of what gives marriage its unique social meaning” (Church of England, 2013: 2-3). From a more ‘internal’ standpoint, the crux of the debate was neatly summarised by Eskridge (2002: 202) as follows: “Who can tell what will be ‘normalized’ [...] Homosexuality? Marriage?”. The lines were drawn broadly between those (opposing) who offered a feminist critique of marriage (for example, Auchmuty, 2004; Polikoff, 1993), and those (in favour) who perceived a possibility in same-sex relationship recognition to disrupt the

status quo (for example, Hunter, 1991). There were also those who employed the discourse of marriage equality (for example, Kitzinger and Wilkinson, 2004), as against those who, from a queer perspective, saw in the fight for equality a reproduction of heteronormativity (for example, Duggan, 2003). I will be engaging with this ‘internal’ literature (not only from the UK, but other countries such as Canada and the US) to introduce the various positions adopted and, in so doing, to contextualise this thesis. A significant portion of that international work stems back to a period when (in America, at least) the onset of neoliberalism was attacking downwardly redistributive social movements (such as feminism and gay and lesbian liberation), and when the AIDS epidemic forced same-sex partners to debate the legal issues surrounding their relationships (Duggan, 2003). I will be drawing insights from the writings of feminist and queer theorists, which form the bases of my theoretical framework. It is argued here that the two share common ground, given that both are, “subversive, to the extent that they question traditional, hegemonic understandings of sex and gender” (Fineman, 2009b: 1). Moreover, they offer complementary perspectives that are essential to the focus of my research: whilst one critiques gender hierarchy and compulsory heterosexuality, endeavouring to dismantle the traditional power dynamics between male and female, the other is concerned with problematising identity categories and developing a, “notion of the subject as fluid, unstable [and] constructed” (Carline, 2006: 309).

The case against same-sex marriage: regulation as assimilation

For some, marriage is inherently flawed, given that it reflects, “the existence of a structured set of inequalities attached to the living and loving arrangements we make in our personal lives”, always privileging some (traditionally men) and subordinating others (women) (Donovan, 2004: 24). Auchmuty (2004: 105) has viewed the effects of marriage’s “socially approved unequal dynamics of power” as problematic, especially given its role in, “limiting, impoverishing, and rendering [women] vulnerable to abuses of power by their husbands”. Indeed, marriage has been perceived as, “a restrictive institution of the state, epitomising the worst aspects of heterosexuality” (Weeks *et al*, 2001: 193). That being the case, it was asserted that the extension of it could not possibly result in the liberation of same-sex partners (or women) from the existing patriarchal structures, and those lesbians and gay men who

sought such inclusion were criticised for trying to, “mimic the worst of mainstream society” (Polikoff, 1993: 1536). In this respect, it was questioned why it should be assumed that lesbians and gay men should want to be just like heterosexual people, and why they should wish to replicate patterns of support and dependency that have typified patriarchal marriage (Jackson, 1999: 155). This question may seem all the more pertinent given a previous tendency to position ‘queerness’ in opposition to the notion of the future, with the corresponding devaluation of longevity (Edelman, 2004).⁶

Taking the idea further, Boyd and Young (2003: 757) warned that same-sex couples, who have traditionally been treated as ‘other’, were at risk of being “included into the dominant system”. This was arguably a serious issue, resulting in the strengthening of the existing system of norms, and in lesbians and gay men losing their uniqueness (Boyd and Young, 2003; see also Lannutti, 2005). It should be borne in mind that the jurisdiction within which Boyd and Young were writing (Canada) recognises ‘*de facto*’ couples for a range of purposes, including pension and next of kin rights. Consequently, Canadian same-sex partners have been in a more privileged position than those in England and Wales, where the position is not as clear. Nevertheless, Young and Boyd (2006: 213, 219) stressed that, whilst changes to the law might, *prima facie*, appear to be an “incredible success story for the lesbian and gay movement”, it may be that, “struggles to achieve legal recognition of same-sex relationships [...] require a normalisation of lesbian and gay intimate relationships to appear as marriage-like as possible”.

Young and Boyd (2006) use as an example the challenges that have been made under the Canadian Charter, as part of which affidavits in same-sex marriage cases emphasised (alongside, significantly, factors such as joint finances and monogamy) a desire to be ‘just like’ other couples. This ties in with Harding’s (2011: 63) explanation of an implicit acceptance that, for lesbians and gay men to be eligible for the, “protection of law, the similarities between lesbians, gay men and heterosexual people must be emphasised”. It may be unsurprising that many lesbians and gay men have willingly declined to challenge the role of marriage in reinforcing unequal

⁶ See chapter 7 for further discussion of futurity.

relations, given that they are themselves a product of their society (which still includes powerful traditional ideologies of the family) (Young and Boyd, 2006). Yet, it posed the risks of jeopardising the more diverse and democratic qualities that same-sex relationships have been suggested to possess, and of leaving intact the hierarchical social and economic relations embedded within marriage (Donovan, 2004; Burns *et al*, 2008).

Polikoff (1993) likewise predicted a de-radicalisation of pro-marriage discourse in order to ‘win’ (drawing examples from abortion and ‘gays in the military’ campaigns), and Ettelbrick (1989), in her earlier work, was concerned that marriage would act to constrain same-sex partners so as to make them more invisible. Whereas Ettelbrick (1989) felt that “justice” could only be achieved when homosexual couples are supported in spite of their difference from the dominant culture, she held that their incorporation into marriage would commence the process of silencing them. Such a “normalising” force would work to position gay and lesbian life so as to become intelligible within the heterosexually dominated framework, omitting to “embrace non-heterosexual lifestyles” (Harding, 2011: 40). Ettelbrick (1989) considered this difficult, given that she perceived herself, as a lesbian, to be “fundamentally different”. The institution of marriage, she emphasised, ought to be interrogated because, “being queer is more than setting up house, sleeping with a person of the same gender, and seeking state approval for doing so. It is an identity, a culture with many variations” (Ettelbrick, 1989: 15). However, formalised same-sex relationship recognition carried with it the possibility that underlying critiques, especially of the way that gender works in marriage, were to become, “not only secondary, but marginalized” (Polikoff, 1993: 1549). Accordingly, many considered that same-sex marriage was unlikely to challenge male economic privilege or the sexualised division of labour in the privatised family, and that it would most probably reduce the potential for reform (Harding, 2011).

In fact, Boyd and Young (2003: 763), drawing emphasis to a key notion underlying my thesis, suggested that an “assimilation discourse”, which “reinforces the heterosexual norm”, has been built into the legal process. They pointed, by way of an illustration, to a lower court decision in the Canadian case of *M v. H* [1999] 132 DLR (4th) 538, 545 (a lesbian matter concerning spousal support), where it had been

commented that ‘H’ had been more involved in the couple’s shared business, whereas ‘M’, “appeared content to devote more of her time to domestic, rather than business, tasks” (545, *per* Cory J). It is notable that England and Wales currently has little judge-made law relating to same-sex couples (an exception being *Lawrence v. Gallagher* [2012] 1 FCR 557, which I will discuss in detail in chapter 2), although cases such as *Fitzpatrick v. Sterling Housing Association* [2001] 1 AC 27 and *Ghaidan v. Godin-Mendoza* [2004] 2 AC 557 are instructive. Both cases dealt with the rights of a surviving same-sex partner of a tenant who held a statutory tenancy under the Rent Act 1977 and, in *Fitzpatrick*, the House of Lords found that paragraph 2(2) of the 1977 Act was gender-specific, referring to living “as his wife” or “as her husband”.

In contrast, in *Ghaidan* (by which point, the Human Rights Act 1998 was applicable), the majority of the Court opted for the purpose expressed in the statute rather than the language, extending succession rights beyond married couples to others that had made their home together. This later decision might appear progressive, moving the focus away from the (heterosexist) male/ female gender complementarity of the partners that had been a feature of the previous case law. Nevertheless, the decision centred around the question of how “marriage-like” a relationship is in deciding whether it meets the statutory test of living together “as husband and wife” (albeit with Lady Hale acknowledging that “husbands and wives decide for themselves who will go out to work and who will do the homework and the childcare” (609)). The discourse of the judgment may, of course, be a result of the particular wording of the statutory provision. However, in order to obtain the protection sought, Mr. Godin-Mendoza still had to ‘fit’ into the marital mould.

The judgment also placed emphasis on the “homosexual couple”, raising a further issue concerning the way that the law approaches same-sex partners, in terms of the focus being diverted away from non-monogamies and alternative forms of relationships (Klesse, 2006). It has been argued that non-heterosexual relationships are able to construct their relationships “from scratch”, having the freedom to create their own guidelines around monogamy (Heaphy *et al*, 2004). It was previously found that 65% of American gay male couples and 29% of lesbian couples had some kind of non-monogamous arrangement (as against 23% of heterosexual married and

31% of heterosexual cohabiting couples) (Blumstein and Schwartz, 1983). Weeks *et al* (2001) have identified that non-monogamy, especially for gay men, can amount to a conscious rejection of heterosexual values, and Rosa (1994: 107) has contended that this “anti-monogamy” provides, “a challenge to the institution of compulsory heterosexuality”. Same-sex marriage would seem to work against this, given that it legally enforces a “monogamous ideal” (Barker, 2012). Sullivan (1989) (whose work was, in fact, used to advocate same-sex marriage in the UK) viewed this a positive, asserting that this discouragement of promiscuity promotes a stable family environment. He links this in with the idea of marriage bringing about a “deeper commitment”, behind which lie notions of the privatisation of care (which do not assist in dispelling the expectation that care will be done for free at home by women) (Sullivan, 1989; Barker, 2015).

Non-monogamy has been heralded as a way for women to challenge the dualities that are inherent in heterosexuality, which favours, “the interests of both men and capitalism, operating as it does through the mechanisms of exclusivity, possessiveness and jealousy, all filtered through the rose-tinted lens of romance” (Robinson, 1997: 144). It has been contended that monogamy is of benefit to men, keeping women in unpaid domestic labour, and increasing their dependence on their male partners (Barker and Langdridge, 2010). A continued association of marriage with monogamy and procreation might be viewed to work to, “sediment patriarchal ideas and re-inscribe gender roles within the family” (Harding, 2007: 223). By extension, in operating to privilege two-partner sexual relationships, same-sex marriage imposes the norms of heterosexual culture onto the lesbian and gay community (including those relating to, “the presumed ownership of another individual” (Emens, 2004: 152)). It fails to acknowledge the rejection by many polyamorous people of the prioritisation of sexual over non-sexual relationships, and the blurring of distinctions in their relationships between friends and lovers, wherein ‘families of choice’ are created (Ritchie and Barker, 2006). Instead, it strengthens the nuclear family, neglecting the opportunity to, “use sexuality [...] to arrive at a multiplicity of relationships” (Foucault, 1996a: 308). Not only this, but the legal recognition of same-sex relationships has been perceived to result in the continued marginalisation of those in less traditional forms of relationship (Warner, 2000). The suggestion behind this is that marriage occupies a privileged status that is posited as the ideal,

positioning other intimate identities as deviant (Fineman, 1995). As a consequence, its extension arguably creates a new distinction between ‘good gays’, who conform to heterosexual norms, and ‘bad gays’, who violate them (Cossman, 2002).

It has ultimately been argued that, given its sex-stereotyped history and its invidious role in the oppression of women, lesbians and gay men should, “learn from the heterosexual experience” of marriage, and not seek to imitate it (Donovan, 2004: 28). Therefore, as opposed to embracing the institution as, “an accolade that grants us normality and acceptance, we should be reflecting on and challenging this version of love” (Donovan, 2004: 28). Fineman (1995: 230) has discouraged, “analogizing more and more relationships to marriage”, and Auchmuty (2004: 101) similarly cautioned lesbians and gay men against allowing themselves to be drawn into the heterosexual model (stressing that they should emphasise, “the potential for our relationships to act as better models for all relationships”). Indeed, many have endorsed the seeking of “true alternatives” and advocated the abolition of, “marriage as a legal category for everyone” (Ettelbrick, 1989; Polikoff, 2000: 176).

Regulation as radical

As against the idea that obtaining formalised relationship recognition necessitates having applied to oneself a conventional family form, others more optimistically lauded it as an opportunity for a more systematic reform of broader culture and politics. Such an approach borrows from Foucault’s work on power, and the way that feminist scholars have subsequently used it. According to Foucault (1980a), power does not simply function as a negative force, but it also performs a productive role. He argued that one of the greatest effects of this productive power is the subject, with individuals being constituted as such, and their behaviour being shaped, through their subjection to power relations (Foucault, 1980b). Power acts to set the parameters of acceptable and unacceptable behaviour; his conception entails that, “conformity to the norm is desired and non-conformities are marked and punished with a view to correcting the deviation” (Bell, 1993: 66). In this way, Foucault describes how, “everyone is pushed towards particular, normative modes of being” (Harding, 2011: 40). Inspired by the notion of subjection, Butler (1990) adopted the standpoint that feminists should aim to establish how the category of ‘women’ is both produced and

constrained by the structures of power through which they were seeking their emancipation. She saw the potential to, “deconstruct the substantive appearance of gender into its constitutive acts and locate and account for those acts within the compulsory frames set by the various forces that police the social appearance of gender” (Butler, 1990: 44). As such, she sought to reveal and challenge the legally and socially constructed ideal of ‘woman’, encouraging analysis of the existing “scripts” in an attempt to disturb them, and to expose opportunities for “resignification and subversive transformation” (Carline, 2006: 35).

Butler (1990: 45) argued that, “woman itself is a term in process, a becoming”, although that such constructions “congeal” into forms that make them seem permanent and natural. This bears relation to the social constructionist perspective that all knowledge is derived from, and maintained by, social interactions, with common sense knowledge being negotiated by people, and eventually coming to be presented as part of objective reality (Berger and Luckmann, 1966). It also builds on the view that identity is shifting and contextual in nature. Butler (quoted in Blumenfeld and Breen, 2005: 20) claimed that gender was far from natural, being a “matter of doing rather than an inherent attribute”. In so doing, she disaffirmed “identities/ essence/ stability” (Halley, 2009: 27). Particularly, she theorised gender as being independent of sex (which she also viewed to be culturally constructed), rather than mirroring, or being restricted by, it (Butler, 1990). Butler (1993) asserted that gender is constituted “performatively”, amounting to the effect of a regulatory regime in which genders are divided and placed in a hierarchy. The process by which this occurs, she suggested, involves the repetition of prior norms that work to animate and restrain the subject (Butler, 1993). Notably, Smart (1995: 192) drew on this notion of ‘performativities’ in employing the term “gendering strategies” to set out how individual, social and institutional practices bring into being, “gendered subject positions as well as subjectivities or identities to which the individual becomes [...] associated”. Providing a justification for the focus of the current research, Smart (1984: 101) contended, more specifically, that family law had symbolically reproduced the, “social relations between the sexes” (see further O’Donovan, 1993). Similarly, Fineman (1995; 2004), who depicted the law as a “dynamic process” whereby norms are generated and implemented, considered gender differences central

to law's consideration of the family, reflecting ideas of women being tied to that family.

Distancing herself from widely held assumptions about sex, gender and sexuality existing in relation to one another, Butler (1986: 35) held that the female body is, "the arbitrary locus of the gender 'woman', and [that] there is no reason to preclude the possibility of that body becoming the locus of other constructions of gender". This being the case, she highlighted the possibility of disrupting the "heterosexual matrix", under which 'maleness' entails masculinity and 'femaleness' femininity (with the latter incorporating ideas about reproducing, caretaking and nurturing), by subverting the stylised repetition of acts and doing things differently (Butler, 1990). She considered that "subversive" identities, such as those of lesbians and gay men, could help to demonstrate the constructed nature of gender roles and work to destroy their normative status, or to redefine the norm (Butler, 1990).

It might be acknowledged that Butler (2002: 17) was unconvinced by the benefits of state legitimisation, stating that it necessitates one, "to enter into the terms of legitimisation offered there and to find that one's public and recognizable sense of personhood is fundamentally dependent on the lexicon of that legitimisation". However, Butler's work has encouraged a plethora of academic commentary and critique on how gender performance is practised and regulated in contemporary society. Consequently, her writings proved useful in the development of ideas as to how same-sex marriage could potentially work to disassociate the institution from its sexist trappings, "destabilis[ing] the gendered definition of marriage for everyone" (Hunter, 1991: 12). Within lesbian relationships, in the absence of a man or husband to define it against, the social role of women might arguably be exposed as a gendered creation. In this respect, lesbian partners are, "uniquely positioned" to "violate" traditional gendered expectations that they, as women, will be "dependent on men in their personal relations, will fulfill the maternal imperative, will service a husband and children, and will accept confinement to the private sphere of domesticity" (Calhoun, 2000: 43). The incorporation of such relationships within the framework of marriage could therefore operate to deprive the institution of its hierarchical binaries. It could work to break down norms from within, disrupting the dividing lines that allow for the connection of 'sex' (used to refer to the category into which we are born,

which is determined initially by chromosomes) to 'gender'. Once marriage is simply a relationship between two people, rather than between a man and a woman, gender is displaced (Harding, 2007).

Hunter (1991) viewed there to be significant potential in this line of argument, given that she perceived that marriage has no natural existence outside of a particular regulatory environment. Hunter (1991) asserted that the extension of the institution in this way would work to remove the authority/ dependence status of husbands and wives, with this consequently raising the question as to what, without gendered content, these two "foundational constructs" mean. Indeed, it has been suggested that, "to legalise same-sex marriage would be tantamount to declaring that gendered husband and wife roles are inessential to marriage" (Calhoun, 2000: 115). This is important, because marriage as it stands operates to reinforce, "the linkage of gender with power by husband/ wife categories, which are synonymous with the social power imbalance between men and women" (Hunter, 1991: 17). Without the process of this reinforcement occurring, the possibility would arise for all women and men to defy conventional gender norms.

Foucault (1996b: 370) himself further declared that being gay held a capacity for resistance, claiming that it, "means rejecting the usual ways of life [...] we must use our sexuality to discover, to invent new relations". His revolutionary sentiment is echoed in the work of Weeks (2004: 159), who has described how non-heterosexual people are "in the vanguard", having the potential to become the "arch inventors" in society's "life experiments". Such premises are based on a belief that 'queerness' entails, "sexual freedoms, dyadic innovation, and support for gender nonconformity", bringing with it a multiplicity of sexual possibilities and a plurality of sexed and gendered practices (Green, 2010: 429). Weeks (2007: 187) proceeded to observe that, in the absence of strong external guidelines for lesbians and gay men as to how to live within partnerships, "nothing can be taken for granted, and the evolving norms [...] are based on the assumption of equality". He considered that their ethos is frequently based on notions of autonomy and choice, with them having, "unique possibilities for the construction of egalitarian relationships" (Weeks, 2007: 187). As a result of such reasoning, it has been suggested that, where formalised relationship status is granted

to same-sex couples, their ways of living and being might serve as an example to heterosexual partners (Peel and Harding, 2004).

In terms of that idea, researchers committed to lesbian and gay rights have conducted empirical projects to demonstrate that same-sex relationship practices and dynamics differ from heterosexual gender scripts. A key structural difference has been pinpointed in the division of household labour and childcare. Kurdek (1993: 136-137), for instance, in a study drawing a comparison between U.S. gay, lesbian and heterosexual married couples, found that it was more likely that one partner (the wife) did “the bulk of the housework” in heterosexual married couples, whereas “gay couples tended to distribute the pattern of specialization equally so that [...] one partner did not do all the work”. This latter finding is important, given that capitalism has been characterised as requiring an unequal division of labour (Hennessy, 2000). Subsequently, Patterson (1995), in her American study of 26 lesbian families, reported the equal sharing of household tasks, albeit with biological mothers having greater involvement in childcare (although Sullivan (1996), in her interviews with 34 lesbian coparenting couples, found a relative absence of a primary breadwinner/primary caregiver arrangement).

Dunne (1997), who conducted interviews with 60 British lesbian women, also found that chores were either undertaken together or that turns were taken, with both partners performing the ‘male’ and ‘female’ responsibilities. She described her respondents as having felt, “relatively free from the expectations and responsibilities associated with a gendered division of labour”, with there having been a lack of any clear, “overriding power dynamic shaping the relationship” (Dunne, 1997: 184, 205). This, they considered, was more conducive to an “egalitarian outcome” (Dunne, 1997). I recognise that such accounts cannot necessarily be assumed to reflect actual practices, with Carrington (1999) contending that an ideological commitment to egalitarianism means that inequality, where it exists, is denied.⁷ Even so, where each

⁷ Carrington (1999) asserted this commitment to be especially common amongst lesbians, but Dryden (1999) also found amongst heterosexual women that, although it was felt that contemporary personal relationships should be more egalitarian, their experiences often did not match this.

partner carried out different roles, Carrington (1999) reported that the division was still perceived to be fair, and it is important to be mindful of the multi-layered nature of terms such as ‘egalitarianism’ and ‘fairness’. The accounts of egalitarianism additionally sit consistently with the outcome of Green’s (2010) interviews with 30 Canadian same-sex “spouses”. Green (2010: 421) discovered that the majority of his participants described a, “domestic division of labour organised by individual interests, rather than predetermined, role-differentiated tasks”. He identified that the “negotiated character” of domestic labour was attributed by some respondents to the absence of gender differentiated roles in same-sex relationships, and by others to the fact that the partners, “experience the same gender socialization” (Green, 2010: 423). That character is relevant, as egalitarianism has been argued to be best measured through the process by which decisions are made (Barnes, 2013).

Another difference has been located between same and different-sex couples in the conduct of household finances. Dunne (1997) discovered a strong emphasis on independence and dual earning, whilst, in Weeks *et al*’s (1999a) interviews with 96 British non-heterosexuals, joint finances were considered “too heterosexual”. These findings work against the assumption made by the state that partners will take financial responsibility for each other’s wellbeing, a notion that underlies the frequent loss of social assistance when entering into a marriage or cohabiting relationship (as income is aggregated when calculating entitlement) (Harding, 2011; Young, 1994). That those studies offer a challenge on this basis is significant for the feminist cause; assumptions of this nature have historically been problematic for women, who have tended to have smaller incomes and fewer assets (Young and Boyd, 2006). Yet, the findings now date back some time, and the question is begged as to whether they are still reflective of modern-day lesbian and gay lives. More recently, Burgoyne *et al* (2011: 699) conducted a study on money management by British lesbians and gay men, which confirmed Weeks *et al*’s (1999a) suggestion of a lack of financial merging, and the widespread occurrence of shared financial decision-making. Nevertheless, the data drawn on still pre-dated civil partnerships in the UK, and there is currently a lack of research on the impact of the institution in this respect.

Peel and Harding (2004) contend it to be unlikely that extending a marriage-like status to lesbian and gay couples would suddenly create household inequity. That

said, it is possible that those who have elected to enter into a civil partnership (and have thereby sought the state's approval of their relationship) will be more likely to conform with traditional values, and further that incorporation into the institution could encourage the same. More empirical research is therefore required to examine the degree to which, within the actual context of legally recognised same-sex relationships, these potentially transgressive features of lesbians and gay men have been retained. Accordingly, this thesis aims to map the extent to which legal recognition forces those who decide to engage in it into ways of living that are compatible with heterosexual norms. This is especially in light of Auchmuty's (2015: 216) suggestion, from her interviews with 14 women and five men who had entered into a civil partnership, that, "most of the 'different' and 'egalitarian' qualities of same-sex relationships disappeared" with the advent of the institution. Of course, Auchmuty's research focused on 'failed' civil partnerships (having looked at dissolution). Consequently, it is perhaps difficult to generalise from it, and it may be that something different is happening amongst subsisting relationships.

Regulation as rights-conferring

An alternative, altogether narrower, assertion commonly made in support of the inclusion of lesbians and gay men into the formal regulatory frameworks of marriage was a human rights based one centring around 'equality' (see, for example, Eskridge, 2002). The idea behind it was that the systematic exclusion of a group of people from marriage is a powerful means of oppressing that group, and that it conveyed a symbolic message that that group was not worthy of equality and was less than human (Kitzinger and Wilkinson, 2004). Stoddard (1989: 12) notably argued from this standpoint, stating lesbian and gay marriage to be the, "issue that most fully tests the dedication of people who are not gay to full equality for gay people, and also the issue most likely to lead ultimately to a world free from discrimination against lesbians and gay men". Likewise, Sullivan (2004: 205) considered "full gay equality" as entailing "equal access to marriage", with denial of access to it constituting, "the most public affront possible".

The introduction of civil partnership, rather than marriage, was praised by some because the institution is less encumbered by heterosexual relational assumptions.

There were also suggestions of a potential to create distance from the past through the use of different terminology (Polikoff, 2008). On the other hand, many adopting a rights-based perspective saw little such potential, with it being stressed that, “when marriage is universally understood as the key social imprimatur of the couple relationship, it is fundamentally unjust to introduce a parallel system of relationship recognition for same-sex couples” (Wilkinson and Kitzinger, 2006: 56). Systems of this nature have been subjected to criticism for being a product of political compromise, created by the heterosexual majority to maintain the segregation of gay men and lesbians (Merin, 2002). In this way, the adoption of a separate institution and the consequent identification of same-sex partners as being, “different to the norm” might be viewed as contravening, “entrenched understandings of the meaning of equality” (Harding, 2011: 14, 41).

Nevertheless, a simplistic discourse surrounding equal rights was a common theme amongst the legal arguments made in favour of civil partnership, with Jacqui Smith MP claiming that, “we are doing this for reasons [...] of social justice” (HC Hansard, 9 November 2004: col. 776)). This ties in with wider indications within the parliamentary debates that the focus of the 2004 Act was on, “inclusion, rather than social change” (which was perhaps necessarily going to be the case, given the stress on sameness of treatment adopted by gay campaigning organisation Stonewall, who advised on the drafting of the legislation) (Stychin, 2006b: 81). That focus was additionally a feature of the discourse within the more recent debates about same-sex marriage in England and Wales. David Cameron (2011), for instance, stated that, “I don’t support gay marriage despite being a Conservative. I support gay marriage because I’m a Conservative” (whilst Montgomerie (2012) placed emphasis on the “conservatizing” nature of marriage). It seems that the neoliberal state is willing to accommodate new sexual citizenship only so long as it ‘fits in’ with the familial heteronorm (and its accompanying ideas about the privatisation of caring labour).

In fact, the way that the debates were framed in this respect might be considered to work against the transgressive possibilities of formalised same-sex relationships, “drowning out feminist perspectives” (Auchmuty, 2015: 217). Hunter (1991: 29), for instance, accepted that the radical potential of formalised lesbian and gay relationships will be effected by the arguments made in favour of it, claiming that,

“the impact of law often lies as much in the body of discourse created in the process of its adoption as in the final legal rule itself”. Polikoff (2000: 167) further criticised the ‘equality’ model for, “fail[ing] to envision a [...] transformative model of family life for all people”. By seeking inclusion into institutions rooted in justifications of this nature, lesbians and gay men may seem to become the champions of heterosexual marital values. In accordance with Duggan’s (2003: 179) conception of “new homonormativity”, they promise, “the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption” (simultaneously not contesting heterosexual assumptions). Whilst activism is necessary to achieve change in the ‘real world’, it may seem unlikely that systems of oppression will be challenged where there is a politics of equal rights, which reproduces the homonormative subject. On top of this, the terms upon marriage has been sought are not supportive of the multiplicity of relationships that might provide care, and neither do they encourage social responses to the question of who will provide such care (McRuer, 2012). The stress is on the privatisation of lesbian and gay men, embracing moves towards the downsizing of government (Duggan, 2002).

It is against this backdrop that this thesis rests. My concern is to examine the extent to which civil partnerships, having at least *prima facie* facilitated greater social and legal equality, have at the same time stood to, “impose a ‘marriage model’ based on traditional gendered power relations” (Rolfe and Peel, 2011: 324). The existing body of literature on this subject has failed to keep up with and reflect social realities, with much of it arising from a period when same-sex partners were actively challenging the structures from which they were excluded. Not only this, but the majority of it is theoretical, asking what might happen at a time when very few countries recognised lesbian and gay relationships in law at all, and it originates from jurisdictions where the legal (not to mention economic, political and social) systems differ immensely to our own. Particularly, in America, marriage brings with it a number of advantages, including eligibility for Supplemental Security Income and spousal benefits for retirement and disability funds (McCormick, 2015). This is as against the position in England and Wales, where the financial benefits of marriage (at least whilst the marriage is ongoing) are minimal to non-existent.

In bringing together a variety of insights from the existing work, and using them to explore the issue in practice in the current day English and Welsh context, this thesis will introduce a new perspective into the literature and offer an original contribution to socio-legal scholarship. I seek to highlight the continuities and contrasts between theoretical and practical understandings of gender in relationships, with a view to establishing whether, “those claims about difference and the superiority of gay and lesbian modes of relating were ever fulfilled in practice, or remained in the realms of unrealized ideals” (Auchmuty, 2015: 214). I consider the extent to which, given both that the formal legal framework of civil partnership largely mirrors that of marriage, and that political rhetoric has indicated towards the assimilation of same-sex partners, the arguments concerning transformation are relevant today. This issue is pressing, given suggestions of a recent lack of debate about marriage as potentially problematic (with many gay men and lesbians expressing a desire for “ordinariness”) (Bindel, 2014). In the next section, I turn to set out my research questions, and introduce more specifically the theoretical frameworks that I draw on in my thesis.

Research questions and theoretical frameworks

My focus coheres around the ways that same-sex relationships, in light of civil partnerships (and, by extension, same-sex marriage), can help to challenge social and legal constructions about the gendered nature of roles in intimate relationships. I explore this question predominantly with regard to financial relief on civil partnership dissolution, looking at the extent to which solicitors construct the issues and legal framework in civil partnerships as being the same as in (different-sex) divorce cases. This thesis examines how solicitors are negotiating gender in their interactions with lesbian and gay clients. I would add here that, whilst using the term ‘lesbians and gay clients’ to refer to those who have sought legal advice on civil partnership, I am aware that not everyone that embarks on a same-sex relationship identifies as gay or a lesbian, and that people move between gay and heterosexual identities (Auchmuty, 2015).

I am interested in the degree to which legal actors are applying heteronormative assumptions to same-sex relationships. I am concerned with assumptions surrounding those three aspects that the existing literature has identified as potentially being

disparate between same and different-sex couples: monogamy; financial dependency; and the gendered division of domestic and market labour. This thesis initially seeks to examine those aspects, concentrating especially on the way that household labour and finances are conducted in modern-day same-sex relationships. It then investigates the extent to which the differences found within subsisting same-sex relationships (as against existing data on different-sex couples) have been recognised by, and incorporated into, the law of financial relief. Moreover, I aim to interrogate how lesbians and gay men understand and experience the law in this area. This is with a view to considering the extent to which the introduction of formalised relationships has brought about a greater engagement of same-sex partners with the law. As part of that consideration, I will be questioning the degree to which the approaches of same-sex partners to financial division are reflected in those developed by the courts in previous heterosexual cases, and which solicitors apply within the precedent-based system. Comprehending lesbian and gay perspectives in this respect will help to inform a wider discussion of how gender and relational contexts should be regulated.

As I have touched on, I am employing within the thesis the lens of heteronormativity (which has tended to be more closely associated with queer popular liberation),⁸ alongside the traditionally feminist concern of equality. I am using the term ‘heteronormativity’ to refer to a combination of the two ideas of heterosexuality and normativity. This creates the view that heterosexual identity and practices are, “expected, demanded and always presupposed by society” (Chambers, 2007: 662). Heteronormativity works to privilege those behaviours and relationships that closely replicate the norm, whilst condemning, disregarding or ignoring those that deviate, and I argue in chapter two that its shaping role means that it can helpfully be recognised as ‘legal’ from a pluralist perspective (Chambers, 2007). It might be considered a way of arranging or ordering society in a manner that is similar to Butler’s (1990) “heterosexual matrix”, in that the gender, sex and desire of subjects all cohere (Markell, 2003). The assumption is made that there are only two genders, with a number of suppositions following from that, including that a woman would

⁸ Further developed in chapter 2.

prefer to remain within the home than to enter the economic sphere, and that she is only able to opt for one of those endeavours as her predominant life role.

Turning to equality, this concept goes to the heart of both the debates around the gendered nature of roles in intimate relationships, and about the recognition of same-sex relationships. The sameness/ difference debate, concerning the relative treatment of women and men, forms the underpinning of the (heterosexual) financial relief case law to date. I aim, within this thesis, to establish whether the ways in which the courts have employed the concept of equality in different-sex matters has been transplanted over into civil partnership cases. Particularly, I am looking at whether, now that same-sex partners are able to formalise their relationships, there is any possibility of a movement away from the binary gender roles that the courts' understandings of equality have entailed. That there may be such potential hinges on the notion that same-sex couples 'do family' differently, and I consider the extent to which this could work to challenge the status quo.

I argue that heteronormativity and equality are interlinked concepts, with the former being a feature of both the formal and the substantive approaches. I will give a detailed analysis of this contention in chapter 2 in relation to the more formal case law of financial relief. In this thesis more broadly, I interrogate the various meanings given to 'equality' (and their interplay with heteronormativity) in the discourse of legal actors and their lesbian and gay clients. Gaining a clearer understanding of those meanings allows for a more nuanced evaluation of the outcomes of legal developments for same-sex couples, and, by extension, for women. Whilst a stress has been placed on formal equality, my research makes an original contribution by raising new questions about how to implement 'equality' for lesbians and gay men where their lives differ from traditional heterosexual behaviour. In terms of the clients, the research also offers insights into the as yet under-researched subject of how same-sex couples go about unwinding their financial affairs, and their attitudes towards economic allocation (Leckey, 2013).

Thesis overview

In chapter 2, I set out how heteronormativity and equality can help to explain *White v. White* [2001] 1 AC 596, *Miller v. Miller*; *McFarlane v. McFarlane* [2006] 2 AC 618, and *Radmacher v. Granatino* [2011] 1 AC 534, three key heterosexual cases concerning financial relief, as well as *Lawrence v. Gallagher* [2012] 1 FCR 557, the only reported civil partnership dissolution case to date. In *White*, the Court (adopting a difference-blind, formal equality type of approach) introduced a “yardstick of equality” to address the hierarchical positions of women and men. However, in so doing, insufficient emphasis was placed on how the lives of the parties in the specific case had diverged from those positions. In *Miller/ McFarlane*, a new element of ‘compensation’ was introduced into the financial remedy equation. This was intended to achieve a form of substantive equality, although the economic obligations created by caregiving under this element are quantified in terms of lost market opportunities (working to sustain structural disadvantage). Finally, I contend that the decision to hold the husband in *Radmacher* to an unfavourable pre-nuptial agreement evinced a further type of formal equality, under which the husband and wife were treated as decontextualised contracting parties. The outcome seems to have been reached on the following bases: the husband’s failure to live up to his ‘masculine’ earning potential; his lack of (‘feminine’) vulnerability; or in recognition of his autonomy (as less frequently occurs with women). In this chapter, I demonstrate that the courts have been maintaining the constructed ‘breadwinner’/ ‘homemaker’ binary through a process of constant repetition, even to the point of implicitly following these norms in *Lawrence*. In doing so, the courts are both acting out, and requiring, a particular type of gendered performance, in the sense conceived of by Butler (1993).

In chapter 3, I provide a critical overview of the methodological and analytic approaches that I use in the rest of this thesis. My research is positioned within the realms of socio-legal studies and law, gender and sexuality and, as such, I draw on research methodologies that sit well with these areas of legal study. By ‘socio-legal studies’, I mean that I will be using insights from sociology as tools for the collection and analysis of data (Campbell and Wiles, 1976). I draw on two distinct methods which are traditionally used in the social sciences: firstly, an online questionnaire exploring the division of labour and conduct of finances in same-sex relationships

(301 respondents); and, secondly, interviews with 14 family solicitors and with 10 people (6 men, 4 women) who have sought legal advice relating to civil partnership dissolution. The chapter highlights the benefits of adopting a ‘mixed methods’ approach to empirical work, with it allowing me to generate rich data from individuals and to explore in detail their thoughts and experiences, as well as to attain a greater level of generalisability.

In chapter 4, I discuss the findings of my online questionnaire (consisting of quantitative and qualitative data). The quantitative analysis included a range of statistical analyses, including descriptive statistics and t-tests, whilst qualitative analysis of the questionnaire data was conducted thematically. The chapter helps to answer my first research question by exploring the ways in which same-sex couples subvert understandings of the traditional gender dichotomy. Childcare was shared more equally than it is amongst the wider population, and accounts of equal apportionment featured even more strongly with reference to caring for a sick family member. In this way, rather than reinforcing assumptions about binary gender roles, the respondents described their arrangements in an altogether less segregated fashion. Most participants similarly reported the equal sharing of domestic chores, and having conversed about and chosen these with their partner. In terms of the finances, the partners again commonly reported a more equal apportionment, supporting the notion of a greater egalitarian ethos amongst same-sex couples. For the purpose of clarification, I am using the term ‘egalitarian’, consistently with the above discussion, to mean that the couples shared tasks between them, and that aspects of those tasks were open to negotiation. Moreover, my same-sex participants were less likely than heterosexual couples to have a joint account alone. I argue that the findings raise potentially transformative challenges to traditional ideas about gender in relationships, demonstrating that there remain other ways of living and being beyond ‘masculinity’ and ‘femininity’.

In chapter 5 (as is additionally the case in chapters 6 and 7), my focus moves to my interview data. The purpose of this chapter is to introduce the participants, and it includes within it discussion of the reasons why people choose to enter into a civil partnership, comparing the accounts of the clients and the solicitors. I explain that the partners themselves most commonly cited pragmatic reasons, tying in to the

discussion of rights in the current chapter (and therefore fitting well with some of the existing literature). The solicitors instead tended to rationalise decisions to opt for civil partnership on the basis of (heterosexual) romance. Setting the scene for their wider endorsement of formal equality in chapters 6 and 7 (which provides an answer to my second research question), their focus on sameness is used to justify the imposition of an identical regime of property division as is applied to different-sex partners on divorce. However, this approach ignores the indication, within the clients' accounts of relationship formation, that they often did not intend to take on the financial obligations associated with marriage. It simultaneously results in insufficient attention being paid to the ways in which same-sex partners diverge from heterosexual practices, some of which are evident in chapter 4. I further consider the reasons why the clients' relationships broke down, concentrating on the issue of the inability to petition on the basis of adultery. Several clients felt that there should be an adultery-like provision included within the same-sex legislation, stressing a desire for sameness of treatment. My data demonstrates the difficulty of adopting a formal equality based legislative framework that largely mirrors marriage, but as to which there are a few exceptions. That said, the suggestion was that the meanings that the partners attributed to adultery extended beyond the legislative focus on the specific act performed, signalling some transgressive potential.

In chapter 6, I interrogate the ways in which sameness and difference between civil partnership dissolution and (heterosexual) divorce featured in the narratives of my interviewees. In so doing, I make an original, empirical contribution to the assimilation/ transformation debate. Four themes are identified in terms of sameness: that the solicitors used the same language; that they have asked their clients the same questions in introductory meetings; that they have argued their lesbian and gay cases in ways that centre around gendered stereotypes that have been carried over from the heterosexual case law; and that they have tended to view equality as entailing sameness of treatment or, in terms of asset division, a 50/ 50 split. Turning to accounts of difference, I identify that disparities were observed in the factual matrices of civil partnership and (heterosexual) divorce cases, although that the solicitors are not necessarily responding to these. There are also suggestions that lesbians and gay men may be adopting a different approach to financial relief to that taken in the 'big money' case law. This links in with the fact that, whilst formal legal recognition has

brought same-sex partners to law to a greater extent, practitioners have still reported a relative determination by their civil partner clients to settle on their own terms. In this way (and in addressing both my first and third research questions), even though heterosexual relational norms are being imposed on lesbians and gay men, they are making some attempts to resist them.

In chapter 7, the last of my empirical chapters, I explore my interviewees' responses to questions relating to the conduct of household finances. Consistently with my findings in chapter 4, I describe having found a relative lack of resource pooling, and greater financial independence, amongst same-sex couples. I observe a particular objection amongst same-sex clients to the division of 'future' assets as well (which, once more, assists in answering my third research question). I argue that this resistance may stem from the lack of futurity in gay and lesbian thinking. My finding as to 'future' assets would seem to indicate that clients would prefer to opt out of the substantive remedies introduced to address heteronormative assumptions about imbalance within relationships. I reflect on the fact that lesbian and gay negativity towards the future is not always optimal, as it could result in lower levels of compensation for economically weaker parties in financial relief matters. However, these attitudes can provide food for thought about assumptions of necessary dependency in couples.

In chapter 8, I bring together the strands of argument discussed in chapters 2-7 so as to answer my research questions set out above. I consider where they stand in relation to my hypothesis in embarking on the project, which had as its basis the notion that the dichotomous framing of the arguments around 'transformation' and 'assimilation' cause the literature to paint an unrealistic picture as to what is happening 'on the ground'. It may be difficult to imagine that significant challenges to the existing heteronormative model of social relations can be realised in the context of the formal equality derived, rights driven approach. Yet, I also perceive that the legal recognition of same-sex couples still carries with it some transformative effects. Indeed, empirical evidence has already supported a possible conjuncture between assimilation and transgression; Green (2010: 429), who described his participants as having, "one foot anchored in heteronormativity and the other in homosexuality", observed amongst gay and lesbian spouses, "complex [...] arrangements that bring

together tradition and innovation". I argue that, whilst same-sex partners have retained some transgressive potential whilst their relationships continue, it may be blunted when they come to 'law' at the end of those relationships. Even so, lesbians and gay men are providing some opposition to attempts by legal actors to impose heterosexual norms upon them (although the outcome of this can, in some respects, be questionably desirable).

Chapter 2- Equality and heteronormativity: a theoretical framework

In this chapter, I will be exploring the ways in which the two major theoretical concepts that frame my thesis, heteronormativity and equality, have played out in the key (heterosexual) financial relief case law of England and Wales. I discuss the sameness/ difference debate that has taken place within the feminist literature, before setting out how the conceptions of equality at the heart of this debate have featured in three ‘big money’ cases. I then proceed to consider the approach to equality adopted in *Lawrence v. Gallagher*, particularly focusing on the extent to which the case law centring around heterosexuals has been carried across. Whilst equality as a concept is generally considered progressive, the specific ways in which the courts have applied it in this context has received relatively little attention to date. At its most basic, it might be described as the ideal that, “at some [...] level, human beings have equal worth and importance, and are therefore equally worthy of concern and respect” (Baker *et al*, 2004: 23). Often, equality is taken to imply an element of sameness,⁹ and the extent to which the concept necessitates this type of treatment has proved a source of great friction.

In terms of the debate surrounding gender equality, ‘difference’ feminists, on the one hand, have espoused the differences between men and women. They have called for the law to address women’s unfavourable position within the societal power structure (Mentone, 2002). Such feminists have asserted that women’s needs and circumstances demand different legal remedies, notably ‘special’ concern and responsiveness, in order to achieve equality (Burchard, 2004). This is because, they argue, equality is only attained once women are raised from their inferior and subordinate position (a notion widely referred to as substantive equality) (Littleton, 1987). This standpoint has, however, been objected to on a number of bases. Firstly, it might be contended that affirming the difference between women and men has the potential to naturalise feminine traits that are the consequence of women’s continued oppression (Ascher, 2010). It carries with it the possibility of perpetuating the idea of women as being, “biologically domestic and dependent”, treating their difference from men as inherent (Sorral, 2011: 31). Secondly, it can work to reinforce

⁹ As is touched upon in chapter 1.

stereotypes and assumptions about a 'woman's place' and 'women's work' that women have struggled for years to escape (Lacey, 1990). 'Special' treatment may, in itself, reinforce women's marginalisation and create a, "more separate than equal" society (Rhode, 1989: 121). Thirdly, focusing on women's difference from men can result in the oversimplification of women's characteristics as a group and an inattention to their individual characteristics (Scales, 2006). It may, furthermore, direct attention towards those group characteristics to such an extent that it detracts from the more important task of considering the ways that societal institutions privilege some whilst disadvantaging others. Fourthly, MacKinnon (1989: 219) claims that emphasising difference works to rationalise and cover over disparities of power between men and women, referring to it as, "the velvet glove on the iron fist of domination".

Conversely, it has been emphasised that, despite their physical differences, women are equally capable of functioning within the ('masculine') public sphere. Hence, they are, or at least have the potential to be, like men (Barnett, 1998). The premise is that women should arguably be treated 'equally' to men on the basis of the Aristotelian formal equality principle that dictates that like cases should be treated alike (Gosepath, 2011). To do otherwise might be viewed as highlighting the characteristics that have historically been drawn upon to prevent women's access to the rights and protections enjoyed by men. Nevertheless, the treatment of men and women as being fundamentally the same in this way risks ignoring the socially constructed and conditioned gender disparities that differentially shape their lives. Fineman (2011: 53) has identified that formal equality is necessarily an "uneven" equality for women, given that they remain "mired" in a prevalent notion of the family within which they are understood to have, "unique reproductive roles and responsibilities that define them as [...] necessarily subordinate in a world that values economic success". Some time ago, she contended that the treatment of women as though they are in a comparable position, and have the equivalent possibilities, to men ultimately works to perpetuate their inequality of result (Fineman, 1991). This is because to do so is arguably to disregard the socioeconomic factors that place them at a disadvantaged position in the market, and favour their taking on domestic roles. Whilst, more recently, Fineman (2009a: 256) has recognised that women may have attained political and civil rights, and successfully achieved equality in a formal way,

she still contends that, “equality for women remains elusive in practical and material terms”. The ‘sameness’ approach might also be criticised on the ground that it omits to provide a framework for challenging the substantive inequalities and disparate allocations of privilege produced by existing institutional arrangements, perhaps even working to “deepen” them (Fineman, 2008; 2011). Indeed, it is difficult to suggest remedies for unequal circumstances where the dominant paradigm lays stress on treating everyone the same (Fineman, 1992). The approach has therefore been disparaged for operating as an obstacle to the creation and implementation of solutions to women’s societal problems (centring around a confinement to domesticity).

In the analysis that follows, I will argue that, in the law of financial relief post-2000, the courts have adopted a fairly unprincipled approach in deciding what amounts to a fair division of the assets. Initially, they favoured a solution that most closely resembled (although did not quite attain) a formal, or sameness, type of equality. Subsequently, a substantive element was imported into the equation. However, the courts more recently reverted back to the more formal approach, albeit of a different kind to that employed initially, under more unusual circumstances. The inconsistency between judgments in their approaches towards these understandings of equality perhaps makes sense when reflecting on the lack of a clear overarching objective in the financial remedy context, and the centrality of the judge in the development of the case law. In section 25 of the Matrimonial Causes Act 1973, the various factors listed are not ranked in any order (apart from first consideration being given to the welfare of any child of the family), and judges are able to decide how much weight to attribute to any of them. In so doing, they have played an integral role in shaping the law of financial relief, fleshing out the bare bones provided by the legislation. It is by reason of this role that I contend that, in order to establish how financial relief ‘works’, it is necessary to carefully scrutinise the judgments of the family courts. Given the “chaos, plurality, even antinomies” that appear on the face of such judgments, I suggest that a critical part of this exercise is to look behind the formal principles espoused and to critique the normative frameworks that underlie them (Diduck, 2011: 287). I identify heteronormativity as being important in an area which functions more on the basis of ‘law in action’ than ‘law in books’ (Harding, 2011). By ‘law in action’, I mean that the law of financial relief is always shaped by the

actors involved, institutional knowledge and social norms. I will now explore the meaning and signification that I am attributing to heteronormativity in greater depth.

Heteronormativity as regulatory

In setting out an approach also adopted in this thesis, Harding (2011; 2015) has argued for an understanding of heteronormativity as a type of legally pluralist structuring frame. As was touched on in chapter 1, by ‘heteronormativity’, I mean, “the institutions, structures of understanding, and practical orientations that make heterosexuality seem not only coherent [...] but also privileged” (Berlant and Warner, 2000: 312). Heteronormativity entails the promotion of heterosexuality as, “natural, self-evident [...] and necessary” (Cameron and Kulick, 2003: 55). It manifests in various practices that work to entrench gender so as to accord with notions of ‘maleness’ and ‘masculinity’ (so, behaviour such as engaging in the production and circulation of commodities, and a disengagement with domestic labour) and ‘femaleness’ and ‘femininity’ (involving the performance of work within the home). In using the term ‘legal pluralism’, I refer to the notion that a system of ‘law’ is not confined to its own internal logic, but overlaps in an operational sense with cultural norms (Davies, 2010: 812). This challenges ideas that state law is separate from other social codes, and suggests that some types of legal regulation whose formal origins do not lie in the state are becoming so important that their consequences for state law cannot be ignored (Davies, 2010). Whilst it has often been assumed that non-state law is only of relevance at the “edges” of law, legal pluralism argues against this presumption, especially in terms of the ways in which patterns of social ‘normality’ (including normative gender assumptions) are reflected in, and sustained by, law (Davies, 2010: 816).

Legal pluralism not only undermines claims by legal positivists (such as Hart, 1958) that the law is distinct from moral claims, but additionally that the legal system necessarily entails there being a single law in any particular geo-political space. Notably, this focus on singularity has meant that equality has been perceived as applying an ‘objective’ standard, regardless of people’s normative positioning (Davies, 2005: 92). Part of the understanding of law as an ‘it’ entails that it is conferred with a status of ‘truth’: “it is true because we assume it, and perform it on

an ongoing basis” (Davies, 2005: 112). The idea of the singularity of law has further resulted in law being depicted as a framework that performs no role in the distribution of power in society, entrenching law’s power and concealing its complexity. On the basis of such thinking, critical legal scholars have contended that the separation of the “legal” is a “myth perpetuated by law in order to mask its true level of involvement in the construction of regimes of power” (Davies, 2003: 170). They have conceived that law “is not separate from patriarchal power [...], from heteronormativity – the social power of heterosexual norms” (Davies, 2003: 170).

A plural understanding enables normative structures, such as heteronormativity, to be recognised as ‘legal’, rather than simply moral or cultural (Harding, 2011). Viewing heteronormativity as an interior part of the legal domain is helpful, as it directs one’s mind to holding it up to the same level of examination and analysis as occurs in relation to the more “official law” (Harding, 2011). It can expose the coercive force of such normative structures and the ways in which they work to shape, and it allows for the exploration of the impact that they have on social life. Harding (2015) argues that importing heteronormativity into understandings of legal pluralism also helps to reveal the way that seemingly ‘egalitarian’ legal change might be working to protect existing axes of privilege. The introduction of legislation recognising formalised same-sex relationships might seem, on the one hand, to have moved conceptions of ‘family’ away from heteronormativity. Yet, Harding (2015) asserts that the main purpose of marriage (or, in this case, quasi-marriage) is to bolster the heteronormative family, with all of its gendered implications. She describes it as being a “danger” that the performance of heteronormative family life is imposed on lesbians and gay men by modern day legal frameworks (Harding, 2015).¹⁰ This risks losing the transformative potential offered by alternative family forms, and consequently undermines the recognition obtained by granting ‘equal’ status (Harding, 2015).

I assert here that heteronormative constraints and pressures are experienced at all levels in family law as it attempts to attain equality. Leckey (2013: 187) claims that the law of financial relief, “imposes the distribution thought to be just by some external standard in light of how spouses are expected to have acted during their

¹⁰ This ties in to the discussion of assimilation in chapter 1.

union”. In this respect, the judiciary are unable to get past prevailing models that, problematically, derive from the notion of husbands and wives necessarily adopting distinct roles in a marriage. Both the formal and substantive models start from a position of rigid, polar opposite ideas of ‘women’ and ‘men’ and pigeonhole gender in such a way as to fail to acknowledge its *de facto* fluidity and multiplicity, retaining the gender standards of the status quo (Thompson-Schneider, 1997). Far from being progressive, the current dominant conceptions of equality evident in the case law may be closing off more creative ways of thinking about domestic relationships. Legal practitioners are likewise tied into this ‘straitjacketed’ way of thinking, given that they advise and represent their clients on the basis of the outcomes and successes of previous cases. As Smart (1984) observes, the boundaries of acceptability in this type of case are set by judges. Moreover, practitioners, like the judges themselves, are exposed and subjected to social norms as individuals. As Fineman (1992) claims, albeit in the American context, family judgments are typically made in response to social pressures. Their clients are also subjected to these norms, and may feel obliged to behave in certain ways, or at least to present their lives in such ways, when seeking legal advice. Accordingly, family law has been held back by heteronormativity, despite initially appearing, *prima facie*, to give its actors a relatively free reign.

That said, it must be taken into account that the judiciary are limited by the facts that appear before them. It is at this point that there appears to be a tension between the ‘realities’ of the cases and the messages that, from a normative perspective, family law arguably ought to be sending out. Pivotal here is Eekelaar’s (1984: 189) notion of the potentially supportive role of the law, under which it might work to promote, “certain ends of overall social justice policy”. I am grounding my arguments in this notion of the normative function of the law. The impact of high profile ancillary relief judgments is powerful, given that they offer, “guidance to family members and to society” (Diduck, 2011: 289). Baroness Young affirmed this in claiming that, “law influences behaviour” (HL Hansard, 29 February 1996: col. 1638). The current state of the law might be considered objectionable by reason that, in consistently drawing on ideas of the traditional gender binary, the courts are helping to reproduce patterns of expected roles. I suggest that it is simplistic to rationalise this simply on the basis of the constraining details of the cases, as legal actors can even be understood to construct relations of coherence between wives and femininity and husbands and

masculinity where they may not be reflective of the case. In this way, they work to reinforce stereotypes, particularly concerning the link between gender and biological sex (which Butler (1990) stressed was not natural¹¹).

I contend that law is one of the, “cultural strategies involved in [women’s] process of deviner” (or becoming) (Chunn and Lacombe, 2000:17). My aim here is to explain the range of underlying approaches to equality in the three key judgments of *White v. White* [2001] 1 AC 596, *Miller v. Miller*; *McFarlane v. McFarlane* [2006] 2 AC 618 and *Radmacher v. Granatino* [2011] 1 AC 534. I am focusing on *White* because the Court sought in that case to set out, for the first time, the principled basis on which law demands the assessment of financial remedy. I have selected *Miller/ McFarlane* because it provided the most significant clarification of the law post-*White* (which is still drawn on today), and *Radmacher* as it was the first case of this kind where it was the wife, rather than the husband, from whom the wealth originated. These cases might all be classified as ‘big money’ cases, by which I mean that, “the assets available exceed the parties’ financial needs for housing and income” (*White v. White*, [2001] 1 AC 596, 600, *per* Lord Nicholls). I am concentrating on such judgments in this chapter because they, having been decided by the most senior court in the land (formerly the House of Lords, now the Supreme Court), have shaped the law of financial relief. Smaller money cases often do not make it to court and, where they do, the parties normally do not have the funds available to take their matter to the higher courts. My focus in this respect may be considered problematic given that these cases arguably have only “passing relevance” to the small money case, which tends to be determined by “practicalities rather than legal doctrine” (Hitchings, 2010: 104). Nevertheless, big money matters have been identified as having been given some weight in the larger value everyday case, with principles such as ‘equality’ figuring more strongly (Hitchings, 2010). Furthermore, I submit that these larger money cases are of interest, as legal actors are given a freer reign where the division of assets is not determined entirely by needs (although those needs may themselves be constructed in accordance with preconceptions).

¹¹ See chapter 1.

I assert that the judiciary should be using their ability to convey social organising principles so as to target, and work to undercut, asymmetries of power within relationships. However, what we see within the cases is equality being used a way that upholds a heterosexual binary of roles, with this evidencing the “danger” expressed by Harding (2015). I proceed to consider whether the only currently reported case relating to financial relief on civil partnership dissolution, *Lawrence v. Gallagher* [2012] 1 FCR 557, signals any sort of disruption to this heteronormative framework. In accordance with the discussion in chapter 1, this is due to the notion that civil partnerships, relatively lacking in pre-existing models, are conducted in a more egalitarian and creative manner than heterosexual marriage. In revealing the potential difficulties of applying heteronormative assumptions to their relationships, same-sex couples may hold the capacity both to challenge these assumptions and to produce alternative “domains of intelligibility” (Butler, 1990). I turn to *Lawrence* and examine whether there is any evidence of a transformative weakening of norms, or whether we merely see attempts to ‘map’ the identity politics specific to different-sex marriage onto same-sex couples (Leckey, 2013).

***White v. White*: a yardstick of ‘equality’**

Prior to *White v. White*, a needs-based approach had developed where wives were held only to be entitled to their ‘reasonable requirements’ on the dissolution of their marriage, regardless of the extensiveness of the assets (*O’D v. O’D* [1976] Fam 83). The House of Lords’ decision in *White*, which brought with it a, “sea-change in the law of ancillary relief”, imported the language of ‘equality’ for the first time (Cooke, 2007: 99). The case involved a 33-year marriage where the spouses were partners in a farming business and possessed net assets amounting to £4.6 million. At first instance, Mr. Justice Holman awarded the wife £984,000 on the basis that her ‘reasonable requirements’ should determine her award ([2001] 1 AC 596). The Court of Appeal raised the wife’s award to £1.69 million, providing her with around 40% of the asset pot ([1998] 2 FLR 310). Both parties appealed to the House of Lords, which upheld the award, but also set out a new approach that the courts were to adopt in deciding financial relief matters. Lord Nicholls, delivering the leading judgment, asserted that there was no longer to be a, “place for discrimination between husband and wife and their respective roles” ([2001] 1 AC 596, 605). There was, he said, to be

no, “bias in favour of the money-earner and against the homemaker and the child-carer” (605). In order to avoid gender-based discrimination, he directed judges to check their provisional views in financial matters against a ‘yardstick of equality’, which was only to be departed from in the existence of “good reason” (615).

There may firstly be some debate as to whether the Lords adopted a formal or a substantive approach towards equality in this matter (Diduck and Kaganas, 2006). The decision does not comply with any notion of formal equality that dictates that women need conform to traditionally masculine characteristics and behaviour to receive financial benefits from a marriage. However, the Court appears to have adopted an overtly difference-blind, sameness approach to the “marriage partnership” in contending that, “it matters not which of them earned the money and built up the assets” (605, *per* Lord Nicholls). This idea of difference-blindness is further supported by the Lords’ description of the contributions of husbands and wives to the family as part of a “joint” endeavour, as well as Lord Nicholls’ introduction of the aid of the ‘yardstick’. This term is used to refer to an arrangement whereby the assets are split 50/ 50% between husband and wife where they are surplus to needs. Essentially, it aimed to implement something like a community of property approach, with scope for adjustments to achieve fairness.

I argue that we might identify, as regards the ‘yardstick’, a nod towards Dworkin’s (2000) equality of resources. This holds that people are treated as equal when the available resources have been distributed such that, “no further transfer would leave their shares of the total resources more equal” (Dworkin, 2000: 12). Yet, a 50/ 50% division was significantly departed from on the facts of this particular case. This was seemingly on the reasoning that the husband’s father had provided the couple with financial assistance some years previously (despite Lord Nicholls himself viewing this to be a contribution of minimal relevance). In fact, Herring (2013) observed that it has subsequently been hard to find a case where there has been a straightforward 50/ 50 split, given that, “most of the cases have involved rich husbands who have found many ways of persuading the courts they should be able to keep more than half of the assets”. Whilst the Court’s approach to financial relief in *White* had aspects of formal equality about it, it still did not quite attain that position. It is ultimately

unclear why, given that the Court of Appeal reached the same division on applying different principles.

In other respects, the Lords' judgments evince a substantive undertone. Diduck (2001: 180-181) lays emphasis on the fact that the Court, "focuses not on treating presumptively equal individuals the same, but rather on the advantages and disadvantages which accrue to contextualised subjects". Looking at the judgments from this perspective, the type of equality being espoused can be explained through the writings of Fraser. Fraser (2012) describes two theoretical views of injustice, one of which, "highlights socioeconomic inequities", and the other of which stresses, "cultural or symbolic injustices". She asserts that the remedial strategies for the two could be categorised respectively as paradigms of 'redistribution' and 'recognition' (Fraser, 1997; 2003). Whereas redistribution entails "political-economic restructuring", recognition broadly requires change that, "positively valoriz[es] cultural diversity" (Fraser, 2012). Regarding 'redistribution', Lord Nicholls identified that women had historically been exploited in the home, as they had facilitated their husbands' business successes but, on relationship breakdown, been confined to their 'reasonable requirements' (and, consequently, deprivation). The attribution of additional value to 'homemaking' work might be considered an initial step towards tackling such exploitation and, as a result, may be interpreted as (at least loosely) addressing gender-specific forms of distributive injustice.

Lord Nicholls' attempt to grapple with substantive equality must surely be considered a positive development, improving the position of women in terms of two key roles that Eekelaar (1984: 25) assigns for the law of financial remedy (namely, "adjusting the relationships between family members when family units break down" and "providing protection for individuals for possible harms suffered in the family"). Indeed, it might be argued that the Court in *White* could realistically do little else. All the same, the judges missed out on the opportunity presented by the facts to convey a message relating to the social organisation of family living (this being that there are other ways of 'doing family' than the traditional 'breadwinner'/ 'homemaker' model, particularly given that this was not the approach that the parties in *White* necessarily lived by). Their judgments might likewise be criticised for falling short of the necessary measures prescribed by Hinton (2001) in order to achieve equality of status.

Hinton (2001: 80) takes issue with the, “social relations that empower one group to take systematic advantage of the work done by members of another”, and identifies as an illustration the pressure that is placed on women to remain in the home whilst men go out to work in the public sphere. It is significant that the Court’s decision in *White* by no means alleviated this pressure. In fact, Fraser’s ‘redistribution’ has been conceived of as incorporating “diverse social processes”, including (alongside redistributing income) reorganising the division of labour (Young, 1997). This is not what happened here.

As to Fraser’s (2003) paradigm of ‘recognition’, the suggestion is that we should be concerned with the hindering effects of hierarchy and unfavourable cultural evaluations. In relation to this, we might consider that Lord Nicholls’ attempt to address the ‘breadwinner’/ ‘homemaker’ hierarchy, by instigating a revaluation of the traditional housewife role, went some way to tackle family law’s “institutionalised patterns of status inequality” that constitute women as inferior (Fraser, 2003: 29). We might similarly regard the decision as falling in line with the fledgling concept of equality of dignity (which Honneth (2004) regarded also as being encompassed by Fraser’s ‘recognition’). This entails that an individual or group feels “self-respect and self-worth”, and is harmed when individuals or groups are, “marginalized, ignored or devalued” (*Law v. Canada* [1999] 1 SCR 497, 530, *per* Iacobucci J). It is arguable that Lord Nicholls attempted to bolster women’s “self-respect and self-worth” in this way by stressing the value of their non-financial contributions.

What is most interesting about the judgments, though, is that they did nothing to facilitate the disruption of the heteronormative ‘breadwinner’/ ‘homemaker’ dichotomy. In focusing on how to address the differential positions of women and men, a sort of “pattern[ing] of status” could be identified, with a particular gendered norm of family life being reinforced. Close interrogation of the Court’s reasoning in *White* reveals that the parties, and (heterosexual) marriage as a whole, were presented in a way that centres around familial binary roles. On the one hand, Lord Nicholls recognised, in the earlier part of his judgment, that the traditional arrangement of the husband earning the money and the wife looking after the home and children may no longer be, “the order of the day” (605). Here, he seemed to deny any necessary correlation between sex and gender role, and the judge also acknowledged that,

“frequently, both parents work” (605). Then again, his presentation of the modern-day marriage predominantly corresponded with (hetero)normative ways of living, to the extent of one partner doing the ‘breadwinning’ and the other the ‘homemaking’, with both operating in “different spheres”. This is reinforced where he (seemingly being careful to adopt gender-neutral terms) stated that an awareness had developed that, “one spouse’s business success” may have been enhanced by the, “family contribution of the other spouse” (606).

Further into the judgment, Lord Nicholls slipped back into more overtly heteronormative understandings of family life. He placed stress on the scenario where, “a husband and wife by their joint effort [...] his directly in his business and hers at home, have built up a valuable business from scratch” (608). It might, of course, be contended that this is simply a reflection of the ‘reality’ to which the law is required to respond. Crucially, though, that scenario diverges from how the parties’ relationship was described in the case, given that the wife both brought up the children and worked on the farm. Lord Nicholls arguably placed insufficient emphasis on the wife’s farming role (despite finding that her business partnership with her husband was a “reality”), and on her persisting with this sort of work going forward. It was, of course, the Court of Appeal’s (larger) award that was upheld, and not that of Mr. Justice Holman, who considered Mrs. White’s wish to have enough money to purchase a farm not to fall within her ‘reasonable requirements’. All the same, despite having described the couple as both having farming “in their blood”, Lord Nicholls proceeded to concentrate on the husband alone continuing to farm, with the wife having money “to invest or use [...] as she pleases” (612). In so doing, he seems (perhaps as a result of heteronormative constraints) to have been trying to ‘fit’ the case into a “heterosexual matrix”,¹² and Mr. White was presented as the masculine money-earner, with Mrs. White as the feminine ‘homemaker’ (Butler, 1990).

As such, general assumptions were employed, and the normative ‘ideal’ was imposed on a couple to whom it did not apply. Lord Nicholls may have had a motivation for doing this, wishing to seize the opportunity that the case presented for introducing the new ‘yardstick’. Nevertheless, heteronormativity was consequently reinforced

¹² As to which, see chapter 1.

through the minimisation of the value of work performed by women in the economic sphere. Whereas the judge could have used Mrs. White's example to draw emphasis towards, and convey a message relating to, the valuable work that women are able to perform both in the domestic and economic spheres, he chose instead to present her predominantly in accordance with the traditional female stereotype. Notably, Lord Cooke acknowledged the wife's work as, "an active partner in the farming business" (615). However, his assertion that she met the, "responsibilities of [a] wife" again makes it clear that he was approaching the matter based on underlying preconceptions about traditional gender roles (615).

Therefore, there is abundant evidence in the early case of *White* of a judicial reliance on, and repetition of, dimorphic ideas about marital roles. Whilst I clearly recognise that our society simply has not attained a gender-neutral utopian state, the law should be moving away from the use of crude stereotypes. In spite of this, the decision must be lauded for giving direct value to work in the home. I contend that this advancement for women was, though, only short lived. A movement away from it was signalled in *Miller/ McFarlane*, where the principles underlying the court's exercise of discretion were subsequently revisited.

***Miller v. Miller; McFarlane v. McFarlane*: compensating for a gendered division of labour**

Miller/ McFarlane was a conjoined appeal concerning two rather different sets of circumstances. Mr. and Mrs. Miller had had a short childless marriage, during which the former had generated considerable wealth. Singer J awarded the wife £5 million at first instance, amounting to around one third of this wealth (*M v. M (Short Marriage: Clean Break* [2005] 2 FLR 533). This award was upheld all the way on appeal. Mr. and Mrs. McFarlane, in contrast, had had a 16-year marriage with three children, during which the wife had given up a successful career as a solicitor to perform a child-caring role. Mrs. McFarlane was awarded half of the assets and periodical payments on a joint lives basis at first instance. When she took the matter up to the Court of Appeal, the level of payments was increased, but the payments were limited to a term of five years (*McFarlane v. McFarlane; Parlour v. Parlour* [2005] Fam 171). The House of Lords subsequently decided that a five-year term was

unlikely to be sufficient in order to achieve ‘fairness’. The Lords, in their judgments, identified three criteria that an award should satisfy to be considered fair: the parties’ financial needs must be met; ‘compensation’ must be provided for a spouse (such as Mrs. McFarlane) who has suffered economic disadvantage as a result of the way that the relationship was conducted; and the assets of the partnership should be ‘shared’ (which links in with *White*’s ‘yardstick’).

In contrast with what might be viewed to be the ambiguity of *White*, it is plain that, in this decision, the Court added a form of substantive equality into the financial remedy equation. Lord Nicholls took the opportunity to emphasise that, “women [...] suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as homemaker and child-carer” ([2006] 2 AC 618, 632). He asserted that the judiciary were able to draw on this new element of ‘compensation’ to redress such disparity. Revisiting Fraser’s notion of redistribution, the judgment seemed to address the ‘homemaker’s’ iniquitous socioeconomic positioning, at least in a narrower sense, through facilitating the further adjustment of resources in their favour. Conversely, it is important to note that the economic obligations created by care giving were quantified in terms of lost market opportunities. The Court’s reasoning appears flawed to the extent that, in seeking to remedy the caregiver’s position, greater importance was simultaneously being placed on the traditionally masculine role of market-earning (Laufer-Ukeles, 2008). It is arguable that this sort of financial undercurrent will necessarily be present where the proceedings relate directly to finances. That said, in so doing, the judgments of the House of Lords might be viewed to have been sustaining structural disadvantage. They appear to evince a form of “androcentrism”, which Fraser (1996) pits against the achievement of ‘recognition’, and which she defines as, “the authoritative construction of norms that privilege traits associated with masculinity and the pervasive devaluation and disparagement of things coded as ‘feminine’”. In addition, whilst Cohen (1989: 916) explains that he considers the purpose of egalitarianism to be to “eliminate [...] disadvantage [...] for which the sufferer cannot be held responsible”, the Lords in *Miller/ McFarlane* were, in effect, reaffirming such disadvantage, attributing ‘homemakers’ with secondary status.

With regard to ‘compensation’, I identify a paradox: were the courts not somehow to address women’s greater economic requirements and the difficulties experienced in meeting them whilst conducting childcare, they would be condemned for placing emphasis on formal equality within an unequal society. It is appreciated that the judiciary must deal with the way that life is and, more specifically, that they are attempting to achieve ‘justice’ in the context of the facts before them. Indeed, I am not suggesting that *de facto* sacrifice should be ignored, or disputing that the courts should seek to protect those women who are in an economically vulnerable position (especially where children are involved). I acknowledge that it took a long time for women to obtain awards under the head of ‘compensation’, and that it would be patently unfair and inappropriate for a woman who has given up her career to care for children not to be given a substantial proportion of the marital assets on divorce. This is particularly the case given that the operation of the status quo presumption is likely to mean that, if the children are still at home, the woman will be doing the bulk of the care for them going forward. In the words of MacKinnon (1989: 200), a measure of this nature, whilst perhaps a little “patronizing”, is “necessary to avoid absurdity”.

Nevertheless, it is arguable that family judges should be working to find a way to meet this end, whilst also respecting the parties’ decisions. It is important that Mrs. McFarlane seems to have chosen to relinquish her career, and to fall into the traditional feminine gender role; she could have pursued an alternative lifestyle, but seems to have opted not to. Even so, she would have been subject to subtle pressures. Fineman (2008) asserts that notions of individual choice are unhelpful in a society where discrimination and oppression has occurred historically, whilst West and Zimmerman (1987) identify that women’s responsibility for domestic work is central to the reproduction of gendered traditionalism, rather than this being a rational decision. As such, we might wonder to what extent it was possible for Mrs. McFarlane to make an autonomous choice to stay at home, given that she was likely to have been constrained by structural issues in society.

It seems that the law of financial relief might helpfully draw from Sen’s (1992) writings on capabilities, the focus of which is on what people are effectively able to do and be. Under this approach, it is recognised that people’s relations with others, as well as with the state and other institutions, shape not only what they do (their

“functionings”), but also the possibilities of what they can do and be (their “capabilities”) (Sen, 1992). The assertion is that we must consequently be mindful of our motivations for attributing value to certain lifestyles (Robeyns, 2003). That said, Sen’s theorising may not be of particular assistance, in that he advocates only that “capabilities” should offer an evaluative space, and is vague as to how the capabilities should be selected and aggregated (Robeyns, 2003). Nussbaum (1988) has contended that Sen must endorse a specific list of valuable capabilities to enable its application to social injustice and gender inequality. Yet, the indications within Sen’s work are that the relevant community involved are intended to determine which capabilities to value, and how to understand and weigh them in relation to local beliefs (Crocker, 2008). Every evaluative assessment endorses further social theories, and divergent results can be achieved depending on which theories are added to the capability framework (Robeyns, 2003). This poses the danger that, for instance, in a community that is broadly conservative, a conservative theory of gender relations is likely to be integrated within the capability approach. In fact, a key feminist concern with the approach has been that it could be interpreted and applied in androcentric ways (Robeyns, 2003). Not only this, but the capability approach does not put forward any distributive rules, simply suggesting that distribution should operate on the basis of what matters for people’s wellbeing (Robeyns, 2011).

In any event, I suggest that it would be preferable for the Court to have placed direct value on Mrs. McFarlane’s ‘homemaking’/ care giving role, as occurs in *White*, as opposed to focusing (through ‘compensation’) on what she had lost in terms of her career. Doing so would have proved advantageous in working to convey the message that such work is a legitimate, and valuable, pursuit in itself. It is appreciated that the arguments being made may, at this point, appear to hit the courts from both sides, to the extent that I have previously criticised the Lords for having focused on the wife’s ‘homemaking’ work. However, the contention that I am making both in relation to *White* and to *Miller/ McFarlane* is a consistent one, it being that the courts should pay sufficient attention to what the wives before them actually did during their marriages.

In relation to the way that marital life was presented in the case, it appears that the Court, once again, adopted a heteronormative lens. Whilst we might be less critical in this respect than in the context of *White*, given the factual matrices of the cases that

they were dealing with, the judiciary must exercise care to avoid slipping blindly into the use of gendered stereotypes. Baroness Hale began by declaring that familial roles had, “become more flexible [...] with ‘breadwinning’ and ‘homemaking’ responsibilities being shared and changing over time” (655). However, she continued to refer to ‘breadwinning’ and ‘homemaking’ as distinct roles and, like Lord Nicholls in *White*, soon started to fall back on traditional notions of masculinity and femininity. For example, she used gender-specific language in discussing the position where business assets have been generated solely by the efforts of one party whilst the other performed, “her [...] contribution to the welfare of the family” (664). Baroness Hale stated, in addition, that, “if the money-maker had not had the wife to look after him, no doubt he would have found others to do it for him” (664). This implies that men are suited to economic activity alone, and that they are incapable of carrying out a feminine ‘looking after’ role, even if only for themselves.

In what initially seems to be an alternative approach, Lord Mance, delivering his judgment, deviated from this dichotic picture in recognising that, “there can be marriages [...] where both partners are and remain financially active” (670). Despite this, though, he went on to state that, under such circumstances, “the wife might still have the particular additional burden of combining the bearing of and caring for children with work outside the home” (670). In omitting to consider the possibility that the husband might instead conduct the childcare (or that it might be shared), he also reverted back to heteronormative assumptions about gender roles. In fact, it must be noted that there was no mention by the Lords, either in *Miller/ McFarlane* or in *White*, as to whether the husbands performed any role at all in terms of the home or the children. This echoes Collier and Sheldon’s (2008) suggestion that the ‘man of the law’ provides for his family by working in the public sphere, and that he omits to engage with childcare.

Whilst the judgments hinted at an acknowledgment as to how heteronormativity shapes inequality in intimate relationships, the Court ultimately posed no challenge to it. We might even accuse them of having helped to maintain its structural role, rewarding Mrs. McFarlane for her compliance with traditional femininity, and thereby working to “lock” women into a position that many wish to oppose (Minow, 1990). It is recognised that, given that the circumstances at hand seemingly ‘fit’ neatly into the

heterosexual matrix, the judiciary were presented with limited opportunities for creativity. Of course, it is hard to assess the extent of artificiality of the imposition of this framework on the parties, given that our knowledge originates from the ‘story’ that the judges and practitioners choose to tell. In spite of this, the question was begged as to what the courts would do were they to be faced with circumstances to which the matrix was less readily applicable. Such facts were to arise in the case of *Radmacher*.

***Radmacher v. Granatino*: individual autonomy and sameness**

The wife, in this altogether more unusual scenario, belonged to a wealthy industrial family worth around £100 million. The husband had been working as an investment banker at the time of the marriage (in 1998), earning several hundred thousand pounds. By the time of the relationship breakdown, he had left banking and embarked on a research degree. The parties had entered into an agreement prior to their marriage that stated that neither was to acquire any benefit from the property of the other, either during the marriage or on termination. The question before the Supreme Court was whether or not this agreement should be given effect to, with the husband arguing that he should instead be granted provision for his long-term needs. The majority found that it should and, in so doing, ruled that pre-nuptial agreements ought to be given presumptive weight. Their rationale was expressed to be that, “the court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated” ([2011] 1 AC 534, 564, *per* Lord Phillips).

In the judgments themselves, it is clear that the Court were aware that they were adopting a, “different kind of equality” (590, *per* Baroness Hale). Stress was placed on according respect to, “individual autonomy”. As a result, so long as each party to a pre-nuptial agreement entered into this agreement, “of their own free will”, it was held that the decision should be respected by law (561, *per* Lord Phillips). On the basis of such reasoning, a type of formal equality was adopted, where both husband and wife were presented and treated as decontextualised contracting parties. This conception of sameness of treatment is different to the way that it was used in *White*, where the suggestion was that such equality entails a 50/ 50% asset split in the

financial relief context (albeit that that is not the division that was ultimately reached). This illustrates the courts' inconsistency between cases, even where falling on the same side of the sameness/ difference debate.

A sameness approach of the sort advocated in *Radmacher* might be considered problematic, given the existing inequalities and differential allocations of privilege that make autonomy “unrealistic and unrealisable” (Fineman, 2008). Reifying individual choice under these circumstances may be argued to “mask” the role played by society in perpetuating *de facto* inequality, working on the erroneous basis that the state forms a “neutral” backdrop for a competition between two parties of the same social positioning (Fineman, 2008; 2011). Furthermore, as is touched on above, adopting such a focus might be identified as ignoring or trivialising the injuries presently being suffered (West, 1988). It is by reason of this that feminists such as Fineman (particularly in her earlier work) contend that affirmative measures are, in fact, a necessity. Fineman (2004) asserts that autonomy is a “myth”, and certainly not a naturally occurring characteristic of the human condition. It would only, she suggests, be feasible were individuals to be positioned so as to share the benefits and burdens of society, and were they to have the necessary resources to create their own options and make their own choices (Fineman, 2010; 2011). Fineman (2008) contends that autonomy is an unhelpful notion in a society where discrimination and oppression has occurred historically, and where “webs” of interdependencies are inherent in our personal relationships. Laying emphasis on it, such as occurs in *Radmacher*, arguably detracts from the goal of achieving equal access to “opportunity” (under which, individuals may succeed or fail purely on the basis of their own merits) (Fineman, 2004). That said, it must be acknowledged that Fineman writes from America, where individuals are not provided with the same level of state assistance as they are in the UK.

Baroness Hale, in her dissenting judgment, echoed Fineman's concern with this kind of sameness of treatment by reason of current social injustice. She highlighted that the purpose of pre-nuptial agreements was, “to deny the economically weaker spouse the provision to which she [...] would otherwise be entitled” (577). Despite this, she departed from Fineman as to who exactly experiences vulnerability in the context of a relationship. Notwithstanding that the question in the case at hand related to whether

the agreement should be held against the husband, her concern, in fact, was the hardship that would be suffered by women should such agreements be accorded greater legal status. Of course, where pre-nuptial agreements are enforced, fairness is judged at the point of entrance into the marriage, as opposed to several years later. It seems that Baroness Hale's disagreement with the majority was driven by what she perceived to be women's vulnerability and dependence on men during a marriage, and the harsh implications that they would experience through the assessment being conducted at this earlier stage. This, in itself, is a heteronormative argument, and it is interesting that she omitted to place importance on the vulnerability and dependency that may also conceivably be experienced by men in a marriage. We might consider Baroness Hale's underlying rationale in this respect to have been consistent with that of the rest of the Court, as their decision to adhere to the agreement may likewise be attributed to Mr. Granatino's perceived lack of vulnerability. It might, at least *prima facie*, seem difficult to argue that the husband was in any such position, given his evident intelligence and money earned in his own right. That said, he could be regarded as vulnerable in terms of the making of the contract, given his lack of independent legal advice.

The Court's approach to vulnerability therefore ties in with the gendered aspects of heteronormative discourse that link 'femaleness' with vulnerability and 'maleness' with dominance (Butler, 1990; Ingraham, 1994). Such discourse is incompatible with Fineman's writings, which suggest that vulnerability and interdependencies are inevitable within the family, being an inherent aspect of the human condition (Fineman, 2004; 2008). Fineman (2008: 20) advocates that equal regard should be given to the, "shared vulnerability of all individuals", shared on account of our human fragility, interconnectedness and interdependence. Yet, I argue that 'vulnerability' has been somewhat misused in the financial relief context, and that Fineman's writings are of relatively little utility, in any event, in explaining how we might take this term forward as a mechanism to promote 'genuine' social equality. Most significantly, she does not explain how we should go about developing a new understanding of the concept that disassociates it from its older, heteronormative, connotations (which are evident in *Radmacher*).

Returning more specifically to the case at hand, whilst doing so in a more complex and subtle manner than in the previous case law, it is arguable that the Supreme Court were still relying on heteronormative notions of gender. Other instances might be identified to support this assertion: Lord Phillips (delivering the substantive judgment), seemingly in an attempt to emphasise the husband's earning capacity, described him as "extremely able" and well qualified. Thereafter, he appeared to adopt an almost accusatory approach towards the husband's decision to leave a City career for academia, stating that this was, "not motivated by the demands of his family, but [that it] reflected his own preference" (573). Lord Phillips seemed to be taking issue with Mr. Granatino having acted against his 'natural' masculinity. In this way, whilst his decision to enter into the agreement was accorded with respect in this matter, the manner in which he chose subsequently to conduct his married life was not. This conveyed the message that men are still expected to perform a 'breadwinning' role. It should be observed that Baroness Hale responded to these contentions, acknowledging that it could instead be argued that, "the decision to change job might have been for the benefit of the family" (on the basis that "happy parents make for happy children") (595). Any such career move by a wife would, most likely, be viewed by the courts in this manner, given the pervasive assumption of women's association with children and childcare. The judgment can, at this point, be identified as marking an initial step towards judicial recognition that husbands are able to carry out a role in relation to their children that extends beyond the merely financial. Indeed, Baroness Hale appeared to go to some length to present a counter-narrative in the case. Despite this, she soon reverted back to referring to the "differing roles" adopted by parties in a marriage, somewhat harking back to the heteronormative binary.

In relation to that binary, it is also notable that very little emphasis was placed by the judges on the fact that it was the wife that was the moneyed party. It may be of relevance that the wife's money was family wealth, as opposed to earned income. In this way, the Court circumvented having to consider her as any sort of 'breadwinner'. A case where the wife has earned the money through market work would be helpful in allowing for further elucidation as to the courts' reasoning for giving effect to such a pre-nuptial agreement. It could particularly work to enlighten us as to what extent the judges might be motivated by the notion that 'family money' should be protected (a

fairly uncontroversial suggestion for the moneyed classes). Nevertheless, it is possible that their omission to deal fully with this detail of the case was at least partially motivated by the heteronormative assumption against associating women with (‘masculine’) finances. In a similar vein, the majority of the Court’s apparent reluctance to recognise the clear subversive potential presented by the facts of the matter might be considered significant. Through paying inadequate attention to the relative incompatibility of the relationship in *Radmacher* to the traditional gendered dichotomy, we might view the judges as having actively upheld this marital model.

In sum, the Supreme Court’s decision to treat the husband the same as the wife might be explained on basis of Mr. Granatino’s lack of (the traditionally feminine-associated) dependency and vulnerability, or his failure to fulfill his masculine ‘duty’ as a husband to maximise his earning potential. Alternatively, we might view the Court as having recognised his autonomy to contract in a way that does not often occur in relation to female parties, despite his (arguable) actual vulnerability. In any event, the suggestion may be that there is an inclination to take care more seriously where it is a woman providing the care (Monk, 2015). The Court’s approach towards equality shows that, even where the circumstances of a case do not appear to ‘fit’ squarely into the heterosexual matrix, the Court still struggle to get past heteronormative ideas of gender roles in marriage. The case of *Lawrence v. Gallagher*, concerning a civil partnership, takes us one step further again in testing this thesis.

Lawrence v. Gallagher: playing it straight?

The parties in this matter had been living together for 10 years prior to entering into a civil partnership in 2007. The relationship was formally dissolved in 2009, and it was agreed that the case should be treated as though they had been in a civil partnership for nearly 12 years. This was expressed to be on the basis that the option had not been available to the couple for most of the duration of their relationship, although the courts do now also take pre-marital cohabitation into account where there has been a “seamless” transition from cohabitation to marriage (*GW v. RW (Financial Provision: Departure from Equality)* [2003] 2 FLR 108). Mr. Lawrence was an equity analyst at JP Morgan and Mr. Gallagher was an actor and, whilst both were working, the former

earned considerably more than the latter. The total assets amounted to around £4.2 million and included two properties, two pension funds, some shares, and significant cash savings. As such, the case shared the ‘big money’ focus of previous reported financial relief case law. Of these assets, Mrs. Justice Parker awarded Mr. Gallagher around £1.6 million in the High Court (which equated to about 42% and included a £577,000 lump sum). In addition, he was granted around 45% of the payments from a deferred payment scheme due to Mr. Lawrence from his employment when it became payable (estimated to be worth around £90,000). Mr. Lawrence appealed to the Court of Appeal (on behalf of whom Lord Justice Thorpe delivered the main judgment), who reduced Mr. Gallagher’s lump sum by approximately £227,000 to a share of around 37% of the assets. Moreover, they reversed the order relating to the deferred compensation scheme. Their explanation for doing so was that this award would better reflect the Mr. Gallagher’s ‘needs’.

It might have been predicted, prior to the handing down of the Court’s judgment, that a formal approach to equality would be adopted based on lack of gender difference. The fact that the parties are of the same gender, asserts Chan (2013), generates room to argue that the notion of ‘sharing’ may be “less powerful”. One might have imagined that the Court would treat Mr. Lawrence and Mr. Gallagher as two individual men and, in this way, straightforwardly the same. An examination of the decision, however, reveals some inconsistency in the Court’s approach towards sameness and difference in the civil partnership context. On the one hand, it is arguable that the relationship was presented, at least in some respects, in the traditional dimorphic manner. The parties’ roles were portrayed as different, to the extent that the partnership was not described as a dual career arrangement. Mr. Lawrence was depicted as the money-earner, regardless of the fact that Mr. Gallagher had also been working. Whilst this may simply be the Court’s way of describing the fact that the former was a high-flyer whilst the latter was not, it is also possible that they were constructing the problem (and, so the parties) so as replicate the heteronormative binary of ‘breadwinner’ and ‘non-breadwinner’.

This idea is further affirmed by Lord Justice Thorpe’s discussion of the manner in which the parties’ two properties were to be divided. Whilst he deemed it appropriate for Mr. Lawrence to retain one of these, on the basis that it was “necessary for his

work”, he asserted that Mr. Gallagher should have the other, “his pride and joy” ([2012] 1 FCR 557, 566). The judge appears, through emphasising an emotional attachment to the property, to have been presenting the latter compatibly with the role of the ‘homemaker’. It may be that this portrayal originated from Mr. Gallagher’s legal representatives, who were quoted in the media as emphasising that he, “had played the major domestic and homemaking role”, and that he, “helped create and maintain a lovely home in the flat in various ways – soft furnishings, planting on balconies, improvement of the layout and fixtures, redecoration” (Gibb, 2012). All the same, the emotionality conveyed in the judgment is reminiscent of the manner in which wives have been described in previous (heterosexual) financial relief cases. For example, Singer LJ in *S v. S (Ancillary relief after lengthy separation)* [2007] 1 FCR 762, 779, noted how “very much” the home meant to the wife and how “devoted” she was to it. The judge in *Lawrence* additionally placed stress on a desire expressed by Mr. Gallagher to open a bed and breakfast in the property. This may be considered relevant, given that the running of such a business entails work in the home that bears resemblance to the traditional feminine role.

On the contrary, we must note the lack of any discussion of Mr. Gallagher’s sacrifices in the relationship. Such detail is conspicuously absent, given the substantial coverage that this issue has received in previous heterosexual cases such as *Miller/ McFarlane*. Neither was there any mention of the ways in which Mr. Gallagher may have helped to develop and bolster Mr. Lawrence’s earning capacity. Although there is no evidence of this on the facts as reported, I argue that this sort of issue would most likely be raised in the context of a (heterosexual) marriage. We might deduce that the discussion did not arise because it would seem to be incongruous with traditional thinking about gender roles in intimate relationships. In this respect, what the Court did not say might be considered to be more interesting than what it did. The gaps and silences in the judgment suggest an inability to conceive of a relationship between two men as entailing interdependency and shared lives.

In terms of asset division, it is significant that Mr. Lawrence failed in asserting that his pre-acquired property should not be brought into the equation. His failure was expressed to be on the basis that, “the rule for property not acquired during the marriage carries the exception for the matrimonial home”, a rule identified as having

originated from *Miller/ McFarlane* (564). We may perceive the Court's conclusion in this respect as a nod of acknowledgment towards the parties' shared lives. In contrast, we might view there to be some relevance in the fact that the Court considered it necessary to reverse the order relating to deferred compensation. Lord Justice Thorpe claimed (in my opinion, rather unpersuasively) that he could, "see no principled basis on which the respondent should be awarded 45% of that as though it were a present capital asset", given that the bonuses were conditional on performance and "taxed at top rate", and that half of them had been acquired post-separation (567). Nevertheless, it is questionable to what extent the exclusion of these assets from the 'sharing pot' might, once more, signify a lack of recognition of the supporting role that Mr. Gallagher may have carried out. A comparison can be drawn against the (heterosexual) matter of *B v. B* [2010] 2 FLR 1214, where the wife was awarded a sum equal to 15% of all sums received by the husband in respect of deferred bonus installments up to the year 2009, despite the parties having separated in 2007.

In relation to the division itself, it is noteworthy that the Court of Appeal did not decide that each party should simply be entitled to what they had earned during the relationship, with Mr. Gallagher seemingly being awarded a greater share of the assets than he personally would have brought in. Even so, the proportion of the assets that he was awarded was considerably below the 50% 'yardstick' (now a starting point principle in light of *Charman v. Charman* [2007] 1 FLR 1237). Whilst it is true that there has been a trend in the heterosexual cases for some members of the senior judiciary to decide against the equal sharing of assets, perhaps most important here is the fact that the award is further from this 50/ 50 division than the High Court considered fair (George, 2012). The Court omitted to express their decision in terms of a percentage share and, in fact, the award obtained by Mr. Gallagher was a needs-based one bearing similarity to what wives tended to receive pre-*White*. One wonders that a woman in his position might, nowadays, obtain a more substantial award. That said, challenging the judgment in this way is somewhat problematic, given the complexity of predicting the outcome of financial claims on divorce (Monk, 2015).

There is little rationale provided in the judgment in terms of justifying the departure from an equal division (Herring, 2012). A number of interlinked explanations might be offered, all of which relate closely to heteronormativity. Firstly, given that, under

the heterosexual matrix, sex and gender cohere, the Court may have measured and evaluated both parties according to their respective adherence to the traditional masculine role (with masculine identity being “inextricably linked to success as an income earner” (Arendell, 1995: 31)). Indeed, Monk (2015: 193) suggests that what is “at stake” in *Lawrence* is “what it means to be a man”. Assuming that the men were judged from a traditionally masculine perspective, this may go some way to account for the fact that Mr. Lawrence, who most closely replicated the ideal by reason of having a high-paying job, obtained a more favourable award than Mr. Gallagher. In support of this assumption, it is relevant additionally to observe that no mention was made as to how household labour was conducted in the relationship. Such discussion is consistently present in the context of heterosexual couples (normally with reference to the wife). This gap in the judgment would seem congruous both with Arendell’s (1995) suggestion that definitions about what is ‘masculine’ come predominantly from men’s “non-familial roles”, and with his stress on their presumed disengagement with domestic labour.

Secondly, we might explain the outcome reached by reverting back to the above discussion relating to vulnerability and dependency, which the Court may have viewed to be lacking here. From one perspective, this case might be seen as signalling a change of approach in this respect, reflecting previous research findings of greater financial independence in same-sex relationships.¹³ Then again, there was no indication that the Court intended to do this in the judgment. Moreover, given also the (albeit perhaps necessary) reliance on heterosexual cases within that judgment, it seems more likely that they were working on the stereotypical belief that vulnerability is a feminine affliction. It is difficult to tell whether this thinking factored into the Court’s reasoning, given their lack of expressed rationale. However, we might again draw significance from their silence; perhaps they did not consider the possibility that Mr. Gallagher might be in a vulnerable position on the basis that, as a man, he was able to go out and support himself. By extension, we might be led to wonder whether or not, in fact, this was a submission that was made by counsel in the case. It is recognised here that the issues raised by judges are usually driven in large part by the

¹³ See chapter 1.

submissions of counsel, and that it is generally thought to be inappropriate to rely in judicial reasoning on ideas that were not discussed in argument.

Thirdly, it might be contended that the ‘yardstick of equality’ was developed in the financial relief case law to redress perceived prejudice based on gender roles. Consistently with this idea, should the courts in cases such as *White* and *Miller/McFarlane* have been drawing on such notions to make it up to women for their (heteronormative) confinement to the feminine role, they may well have concluded it unnecessary to do the same for Mr. Gallagher. Given that he was, at least arguably, being treated as a ‘man’, and thereby being subjected to the same assumptions and expectations as Mr. Lawrence, there would appear to be no need to adjust for imbalance in the same way. Nonetheless, the absence of children in this case was likely to have been a weighty factor in the Court’s rationale. Were they to be faced with a civil partnership dissolution matter where children were present, the courts may be forced to reconsider the potential for imbalance in the same-sex relationship context.

I ultimately assert that the High Court’s award to Mr. Gallagher should have been upheld, with it not having been in any way unreasonable. The Court of Appeal’s reversion back to a focus on ‘needs’, and removal of the deferred compensation payments from the ‘pot’, only thinly veiled what appears to be an inability to conceive of interdependency in same-sex relationships. My contention is bolstered by the gaps in the judgment where the parties’ relationship does not fall neatly in the binary model. It is, of course, difficult to assess the extent of these gaps, given that we are entirely reliant on the judgment in order to ascertain the ‘facts’ at hand. All the same, particularly given the silence relating to household labour (at least some of which must have been conducted by one or other, or indeed both, of the parties, and would have been discussed in the heterosexual context), it seems apparent that the Court’s thinking was still constrained by ideas about gender roles.

Whilst care was taken to avoid making such suggestions in their discourse, there was little perceptible change in the case in relation to the Court’s underlying assumptions about masculinity. There was somewhat less of a focus on depicting the same-sex parties in accordance with a binary model of familial roles. Yet, in judging them on

the same ('breadwinning') basis for the purpose of reaching an equitable division, the parties were presented so as to be understandable on heteronormative terms (and a message was conveyed that men are expected to act accordingly). In this regard, an interesting final point to note is that, considering that this was the first such case concerning a civil partnership, the Court of Appeal neglected to engage in any discussion as to whether there might be differences between civil partnership and marital dissolution (or the relationships themselves). George (2012: 358) has commented that, "the Court of Appeal thinks it so obvious that there can be no difference between analogously placed married couples and civil partners that it is not even worth discussing the issue" and, strikingly, the fact that the claim arose from a civil partnership was described by them as being of "little moment". The Civil Partnership Act 2004 was mentioned just once and, thereafter, reference was made only to section 25 of the Matrimonial Causes Act 1973. A sameness approach appears to have been adopted, where civil partnerships are already being, "measured, proved and evaluated" by legal actors from the perspective of "straight" (Chambers, 2003: 26). The distinctive features of same-sex relationships are being ignored, thus diluting their radical potential (Barker, 2012).

Conclusion

The courts in *White*, *Miller/ McFarlane* and *Radmacher* adopted a variety of approaches towards the fair division of assets, whilst simultaneously being unable to get past, and consequently relying heavily on, heteronormative assumptions about marital life. In the former, the Court imposed an 'ideal' on a couple to whom it appeared to be inapplicable and, in *Miller/ McFarlane*, the rationale behind 'compensation' worked to reaffirm the traditional hierarchy of gendered labour, omitting to give value to home work per se. Furthermore, the decision in *Radmacher* seems to have been reached on one of the following bases: the husband's failure to live up to his masculine earning potential; his lack of 'feminine' vulnerability; or in recognition of his autonomy (which less frequently occurs in relation to women). Whilst I realise that many of the arguments that I raise might be used to challenge the case outcomes, I do not necessarily consider it the place of this critique to argue that these matters should have been decided substantively differently. This is both as a result of the acknowledged constraints of family law, and the necessity of a heavy reliance on the judgments alone for the facts. My main focus is to highlight the

problematic nature of the judgments' normative aspects, and the way that the assumptions and reasoning behind them (alongside the language used) might be identified as working to reinforce heteronormativity's structural role. There had been hopes that the case of *Lawrence* would present an opportunity to commence the project of subverting the courts' repetition of this model of intimate relationships. However, what we actually see in the Court of Appeal's judgment is the presentation of civil partners in a way that is still understandable under heteronormative ways of thinking.

It seems that, at this early stage, civil partners are already being assimilated into the heterosexual norm, signalling "the triumph of hetero-patriarchy" (Heaphy *et al*, 2013: 2). This hinders the capacity of lesbian and gay relationships to interrupt, in wider society, "the logic that translates women's labour into men's material advantage" (Dunne, 1999: 194). I ultimately contend that we must aim to, "keep open the possibilities of thinking of other futures", and to move away from the stereotypes which preclude us from rethinking and redefining the societal roles of those within intimate relationships (Bottomley and Wong, 2006: 53). My thesis, in this respect, draws influence from the notion of equality of condition. By this, I am referring to the notion of people being able to exercise "real choices among real options", and of people being similarly enabled and empowered (Baker *et al*, 2004: 34). I recognise that such notions may seem utopian, and that trying to establish prefigurative communities within societies that are deeply unequal is difficult (Cooper, 2004). Still, it is preferable to have aspirational conceptions of power relations rather than simply to accept power inequalities, and I nevertheless assert that utopia is useful in exploring alternative visions of society (Baker, 2015; Harding, 2011).

Equality of condition has been suggested to encompass five key dimensions: resources; respect and recognition; love, care and solidarity; working and learning; and power (Baker *et al*, 2004). In the thesis, I am especially focused on the dimensions of respect and recognition (entailing, according to Baker *et al* (2004), the freedom to live one's life without being the subject of contempt from the dominant culture); working and learning (meaning that it is ensured that everyone is able to develop their talents and abilities, and has a real choice amongst occupations that they find satisfying or fulfilling), and power (Baker *et al*, 2004). Respect and recognition,

which has some overlap with Fraser's (2003) above paradigm of 'recognition', is integral to this research. It entails that we should celebrate individual and cultural differences whilst simultaneously engaging critically in dialogue with others, with our cultural assumptions being open to challenge (Baker, 2001). As to working and learning, this understanding of equality requires that the benefits and burdens of work are more equally shared. Specifically with reference to care work, it entails that work of this nature should be acknowledged and shared, with the implication being of a rebalancing of other work so that everyone is able to engage in it (Baker *et al*, 2004). Equality of working and learning also rejects discriminatory access to employment, and can be expressed as a criticism of "engrained divisions of labour" (Baker and Lewis, 2010). Finally, Baker *et al* (2004) conceive of their dimension of power as challenging power inequalities in areas such as the family, which includes rejecting the power of husbands over wives (in favour of greater egalitarianism, democracy and cooperation).

Adding to this, my work draws influence from Cooper's (2000; 2004) contentions that all people should have the same capacity to impact on their environment, and her focus on the social and institutional support required for people to be able to participate economically, culturally and socially. Cooper's (2001) version of equal power encompasses technologies that currently allow some people to generate effects that others are denied, and it extends to the social world, as well as to the operation of the state's power. This is because, in order to attain a more equal society, we need to engage in processes of wider change and challenge to heteronormativity. I argue that the narrow legal approaches adopted to equality in the cases that I have analysed are unhelpful, on the basis that, "social asymmetries [...] cannot be tackled in isolation from normative-epistemological organising principles which naturalize and legitimate the status quo" (Cooper, 2000: 271). Equality needs to be conceived of less as a "state of social being", and more as a driving force for the examination of terrains across which social inequality plays out (Cooper, 2000: 272). It is only as a result of such political engagement and struggle that legal actors, and society, might get past specific, inherited identity categories and consider the potential (and actual) diversity of the law's subjects. Such endeavours are necessary given that, as Fineman (2008: 23) stresses, "equality must be a [...] guarantee that is a benefit for all".

However, case law, as Monk (2015: 184) emphasises, whilst providing, “a window into and an account of the lives of real people”, is in itself a weak source. Case law is atypical, with very few conflicts ever reaching the appellate courts, and it is in this context that the significance of my work becomes apparent (Monk, 2015). Through conducting empirical work with solicitors, I make an original contribution to knowledge by exploring in greater depth the extent to which legal actors are approaching same-sex financial relief matters with pre-existing assumptions and expectations in mind. On top of this, through the use of interviews and an online questionnaire, I examine the compatibility of those assumptions with the lives and attitudes of modern day same-sex couples. My findings carry the potential to impact wider issues such as child care arrangements, employment patterns, and the involvement of the welfare state in family life. This is because the law of financial remedies speaks not only to what husbands and wives ought to do in relation to one another, but also to what functions they should perform in terms of society more broadly. In the chapter that follows, I will explain the nature of my empirical project in further detail.

Chapter 3- Methodology

In this chapter, I provide a critical overview of the methodological and analytical approaches that I use in the rest of my thesis. In the first part, I explain my reasoning for using both quantitative and qualitative data collection phases in my project. I use the term ‘qualitative’ to refer to those aspects of my work that principally use words as data, whereas ‘quantitative’ is employed to describe those aspects that focus on counts and measures (Gorard and Taylor, 2004). I then proceed to describe the empirical components of my research, which consisted of an online questionnaire (301 respondents) and semi-structured interviews (with 14 solicitors and 10 people who had sought legal advice on civil partnership dissolution), before offering my methodological reflections. I argue that the use of a mixed methods approach allows researchers not only to draw from the strengths of both methods, but also to establish a more sophisticated understanding of the phenomenon under investigation.

Mixed methods research: adopting a pragmatic approach

The combination of quantitative and qualitative research methods in a single study has traditionally been discouraged. This is due to the widespread application of Kuhn’s (1962) notion of the “paradigm”, which has been taken to mean, “a consensual set of beliefs and practices that guide a field” (Morgan, 2007: 49). Researchers have long considered qualitative and quantitative work as falling under two separate “paradigms” in social science methodology. The ‘quantitative paradigm’ has been viewed as drawing heavily on positivism, this being the belief that objects’ existence stems from their measurement (Cook and Payne, 2002). Positivists conceive of ‘truth’ and ‘reality’ as existing objectively, independent of human perception (Perlesz and Lindsay, 2003). Hence, Durkheim (1966) argued that the concern of sociology should be the relationship between “social facts”, and that investigation into individuals’ subjective understandings was unnecessary. As against this, the ‘qualitative paradigm’ has been linked to constructivism, which holds that there are multiple ‘truths’ depending on the way that one constructs ‘reality’ (Sale *et al*, 2002). Constructivists argue that there is no access to ‘reality’ independent to our minds, and that all that research is able to generate is an interpretation of what is seen

by the researcher; research participants provide their own interpretations, which the researcher reinterprets (Smith, 1983; Gilbert, 2008). They dispute the notion of a single, external referent against which claims of ‘truth’ can be compared, and deny the possibility of measuring and observing human behaviour in the way that we might phenomena in the natural world (Banakar and Travers, 2005).

A divisive approach has been applied to the qualitative and quantitative research “paradigms”, with the “incompatibility thesis” (which posits that the two methodologies can, and must, not be mixed) having been adhered to by ‘purists’ from both camps (Howe, 1988). One aspect of this thesis has been Kuhn’s (1962) idea of “incommensurability”, entailing that an acceptance of one paradigm necessitates a rejection of all others, and that knowledge is unable to pass between paradigms (as a consequence of communication barriers). A result has been that two distinct subcultures have emerged, one of which praises their “hard”, generalisable data and dismisses the other as “naval-gazers”, whilst the other commends their own, “deep, rich” data and disparages number crunching (Sieber, 1973; Fielding and Fielding, 1986). Quantitative researchers have criticised qualitative techniques for lacking in precision, as well as for being “impressionistic” and subjective (Bryman, 2012). By this, they mean that such researchers place too much importance on the researcher’s unsystematic opinions of what is significant. In opposition, those favouring the qualitative approach have viewed the use of “rigid” instruments, such as questionnaires, as, “a source of surface information which relates to the social scientist’s abstract categories” (Fielding and Fielding, 1986; Bryman, 1988: 104). Moreover, they have asserted that quantitative methods are lacking in the contextual detail needed to interpret findings (Carey, 1993). Both camps have held that their underlying logic is so different that to merge the two methodological approaches would be a betrayal of their epistemological and ontological commitments (Rossman and Wilson, 1985). Indeed, Guba (1987: 31) once suggested that, “the one precludes the other just as surely as the belief in a round world precludes belief in a flat one.”

As against this, I adopt a middle ground. On the one hand, I accept that the notion of a universal ‘truth’ is flawed, given that “life is complicated” (an idea that Williams (1991: 10) emphasises as being, “of great analytic importance”). I also consider that people’s accounts are, at least to some extent, both socially constructed and context-

dependent. That said, I further hold that a feminist emancipatory project such as mine benefits from some notion of shared ‘reality’ or experience. A level of more general ‘knowledge’ is necessary alongside more local ‘knowledge’ to enable us to critique social convention. Besides this, we need to have relatively stable grounds for asserting the ways in which same-sex relationships are conducted before we are able to make claims about their potential to bring about change. With this in mind, I have adopted the approach that, “great advantages can be obtained by creatively combining qualitative and quantitative methods”, and that the two should not be considered an “either/ or” (Filstead, 1979: 42; Denscombe, 2007).

I argue that methods should be used as a “tool” to answer the research questions at hand, rather than constricting the scope of possible enquiry (Beyer, 1992). Therefore, I favour a ‘pragmatic approach’, under which it is stressed that a false dichotomy exists between the qualitative and quantitative approaches to research (Newman and Benz, 1998). There would certainly seem to be some areas of overlap between the two. Firstly, the view might be taken (although a statistician would be unlikely to agree) that all data collection methods are ultimately analysed in a qualitative manner. This is on the basis of the contention that, “the act of analysis is an interpretation, and therefore of necessity a selective rendering, of the “sense” of the available data” (Bryman, 1988: 12). Secondly, it has been claimed that quantitative researchers make subjective research decisions which mean that their interpretations of the data obtained cannot be entirely objective (Onwuegbuzie and Leech, 2007). Additionally, it has been observed that most methods of analysis make at least some use of numbers (Gorard and Taylor, 2004). Accordingly, the emphasis in ‘pragmatic’ research shifts to “shared meaning and joint action”, with any notion that there are limits to the meaningful communication that can take place between the different approaches being dismissed (Morgan, 2007: 67). Pragmatists reject the idea that different investigative techniques are exclusive to any individual perspective (Gilbert, 2008). They recognise that it is possible to separate methods from their philosophical traditions, and the focus is drawn away from the theoretical debate, which has worked to conceal the different ways that methods are being combined in reality (Teddle and Tashakkori, 2003; Maxwell, 1990). Instead, they adopt a problem-driven approach, mixing and matching design components to obtain the most useful data (Johnson and Onwuegbuzie, 2004).

Thus, my initial reason for choosing to conduct a mixed methods strategy is that I decided to pursue “what works” best for answering my research questions (Howe, 1988). I considered the use of a combination of quantitative and qualitative methods most suitable because I am examining a range of wider questions, relating to how same-sex relationships can help to challenge constructions of gender, and more specific ones, pertaining to the experiences of those who have sought legal advice on civil partnership dissolution. However, I felt that adopting such an approach would also carry a number of “synergistic benefit[s]” (Gilbert, 2008). Greene *et al* (1989) have suggested that the use of a variety of methods facilitates the following: triangulation (referring to the practice of viewing things from more than one perspective in order to seek convergence and corroboration of the results); complementarity (entailing that the researcher enhances the results from one method with those of another); and expansion. All three of these factored, to some degree, into my decision to employ both qualitative and quantitative investigative techniques.

Turning to the more precise notion of triangulation as an exercise of testing findings against one another, there was intended to be an element of this to my research: the ways in which the clients presented their lives in the qualitative aspect of my study were to be checked against the responses received through the questionnaire. Nevertheless, I had anticipated from the beginning that these sources of data might offer different accounts. This prediction was based on the fact that, whilst the clients would be in middle (or in the wake) of seeking a dissolution, the questionnaire respondents would be at a variety of different life stages. Therefore, the purpose of examining the consistency of the data in my study was not necessarily to conduct a validation exercise, as has been traditionally associated with triangulation. Alternatively, it had the purpose of investigating how the potentially distorted reports of the clients compared against those whose circumstances were likely to be more stable. In this way, I was using the comparison to explore the extent to which my results were divergent, an approach that does not seem compliant with ‘triangulation’ in the sense used by Greene *et al* (1989).

That said, it might be argued that the term has been widely misinterpreted; where ‘triangulation’ is used in navigation, the second bearing is not employed to verify the

first (Erzberger and Kelle, 2003). Instead, the two complement one another. In accordance with this, Gorard and Taylor (2004) have contended that, if triangulation is to be of any use in the social sciences, it is for this purpose of complementarity. The idea here is that qualitative and quantitative investigative techniques are used to measure similar, but different, aspects of the same phenomenon, resulting in an “enriched, elaborated” understanding (Greene *et al*, 1989). On a pragmatic note, the complementarity mixed methods approach most closely describes the way that I chose to conduct this project given that, for example, whilst my client interviews covered the issue of the division of labour, my questionnaire asked more specific questions as to who conducted certain tasks in the respondents’ relationship. Conversely, my questionnaire did not ask anything about the respondents’ experiences of seeking legal advice, whereas this was a key discussion topic in my interviews.

My approach moreover drew on a wider notion of complementarity to the extent that it used the strengths of one method to enhance another (Sale *et al*, 2002).

Particularly, the use of quantitative investigative techniques allowed me to “zoom out” to a greater scope by enabling me to generate findings on a macro level, whilst also offering precision where the qualitative work had provided ambiguity (Willems and Raush, 1969). The employment of the two methods similarly permitted me to combine two separate emphases in a complementary fashion, namely my own concerns and the voices of my participants (Onwuegbuzie and Leech, 2007). More importantly, however, the complementarity mixed methods approach would seem to be in keeping with my position that there is not necessarily a unitary ‘truth’ but, rather, that it is informative to consider a range of perspectives (Brannen, 2005). It appears beneficial to use qualitative and quantitative approaches in tandem should we accept, on the basis of complementarity, that there is inherent value in different data being produced by different collection methods. I argue that mixed methods research encourages the juxtaposition of data to generate, “insights that together create a bigger picture” (Brannen, 2005: 12).

The final benefit of pursuing a mixed methods research project identified by Greene *et al* (1989) was that of enabling ‘expansion’. This involves the extension of the breadth of the research through the use of a variety of methods. The manner in which I chose to conduct my project reflected an element of this: I was aiming to obtain

responses from a range of stakeholders to attain a broader and more comprehensive understanding of my research topic (Gilbert, 2008). It is acknowledged that the qualitative and quantitative methods were perhaps not employed in my study in compliance with ‘expansion’ as envisaged by the aforementioned scholars. This is in the sense that they were not strictly used to assess different components, with there being some degree of commonality. Nevertheless, my work took influence from the notion on the basis that the two approaches (and a number of perspectives) were considered necessary to enable me to tell the ‘full story’. It was intended that the use of qualitative methods (which provide thick description of complex phenomena) would help to build upon the relationships identified in my questionnaire data, and to illustrate how the patterns found applied in specific cases. I argue that the use of both qualitative and quantitative investigative techniques provides a depth of insight into the meaning of research findings that would not be possible to achieve through the adoption of a mono-method approach. Ultimately, as has been observed by Friedman (2009: 55), “neither stands on its own very well”. I shall now proceed to explore the two phases of my empirical project in further detail.

Quantitative methods

For the initial phase, I decided to conduct an online questionnaire concerning the division of household labour and money earning/ financial management. These topics were selected because the home has been described as a “gender factory”, and because money serves as a “cultural symbol” of “power, control” and, conversely, “dependency” (Berk, 1985; Vogler, 2005: 3). Not only this, but I assert that it is possible for everyday practices, in themselves, to be a political act. I chose to focus my attention on lesbian and gay respondents due to the abundant data that already exists relating to the division of labour in different-sex couples.¹⁴ No exclusion criteria were used in terms of who was permitted to complete the questionnaire, although it was specified on the opening page that responses were particularly sought from those currently in a same-sex cohabiting relationship.

¹⁴ See chapter 4.

The questionnaire

It is acknowledged that questionnaire use has been criticised for generating only a, “snapshot of how things are at the specific time at which the data are collected” (Denscombe, 2007: 7). Furthermore, the use of quantitative methods has been considered problematic in feminist research, with such methods being viewed as, “value-neutral, [...] dispassionate, disinterested, [...] protected from political interests, goals and desires” (Harding, 1987: 182). Quantitative scholars have been disparaged for omitting to look critically at the processes through which research is produced and how the research process might reflect social inequality (Harding, 1987). Yet, quantitative analysis has performed an important role in helping us to, “understand and challenge systems of inequality in many of its varied forms” and, in any event, “some feminist questions [simply] demand quantitative answers” (Harnois, 2013: 7; Risman *et al*, 1993: 608). I opted for the use of a (predominantly) quantitative method because it was to provide a level of generality that was perhaps lacking from my interview research (Morgan, 2007). It was to have the added benefits of not requiring me to take into account in the same way the impact of my own personal presence on the creation of the data, and of generating standardised answers (which would be comparable).

I chose to use the Bristol Online Surveys service to conduct my questionnaire. It was appreciated that opting for an Internet-based form of data collection posed the risk of under-representing certain groups, given that access to the Internet is greater amongst younger people and those from higher income brackets (Dutton *et al*, 2005). The use of an Internet-based questionnaire has also been identified as tending to result in an over-representation of better qualified, more technically oriented respondents (Harding and Peel, 2007: 282). That said, the questionnaire in respect to which that observation was made was conducted in 2004, and the Internet has changed significantly since then, as has access to it from across different social groups. Even so, it would be difficult to claim that the data obtained through this kind of project could be representative, given that the extent of the population that are currently (or have previously been) in a form of same-sex cohabiting relationship is unknown to any degree of accuracy (Harding and Peel, 2007). Data from the 2001 census

revealed that 78,522 people disclosed living in same-sex couples in England and Wales, whereas five times as many disclosed the same in the 2011 census (Office for National Statistics, 2004; Office for National Statistics, 2013b). Whilst the 2011 census data may present a more accurate picture, due to the lower level of stigma by that point, this does not mean that the numbers are now accurate. As Weeks *et al* (1999: 45) acknowledge, achieving statistical representativeness amongst non-heterosexuals is, “a notoriously elusive goal at the best of times”. The achievement of a representative sample using an online questionnaire such as mine might seem particularly unattainable, as a result of the respondent population being self-selecting. Having not chosen participants at random from a defined population, it is not possible to make positivist empiricist claims relating to the ‘truth’ of my data (although, as previously set out, I do not necessarily conceive of the existence of a simple ‘truth’). However, it was felt that making use of the Internet would prove helpful, because it allows access to a broad sample (Gilbert, 2008). Online questionnaire completion may additionally be considered advantageous from the respondent’s perspective, as it allows them anonymity and confidentiality (Harding, 2006).

The questionnaire (see appendix A) was piloted by ten friends and colleagues, who checked the questions, and amendments were made prior to its launch. In terms of structure, it consisted of three distinct parts. It began with a set of ‘attribute’ questions, which dealt with such matters as the respondents’ and their partners’ gender, their ethnicity, their religion, their sexual orientation, their country of residence, their social class, their political views, their relationship status, and their and their partners’ occupation and level of education. The second part of my questionnaire addressed the respondents’ behaviour. It questioned who conducted the following tasks: childcare (if applicable); caring for a sick family member; car maintenance; cooking; dishwashing; DIY; gardening; general cleaning; grocery shopping; vacuuming; and ironing (1 = always me; 5 = always my partner). Participants were also asked whether they employed any help within the home, and how the household finances were conducted within their relationships. The latter questions addressed such issues as bill paying, financial decision-making, what the gross annual household income amounted to, who the respondent considered the ‘main earner’ to be, and whether the partners had joint and separate bank accounts.

The third part contained what Gilbert (2008) describes as “attitude” questions. These were considered beneficial, as they allowed me to compare the respondents’ actions against their perceptions and views. The questions in this third part were formulated as statements that the respondents could react to by selecting a point on a Likert scale. These ordinal scales assume that the strength or intensity of experience is linear (Rattray and Jones, 2007). The questions asked participants to respond to statements that included the following: ‘my partner and I share household tasks equally’; ‘my partner and I always discuss major financial decisions’; and ‘my partner and I are financially independent’ (1 = strongly agree; 7 = strongly disagree).

Whilst Likert scales are normally made up of five points, mine consisted of seven (incorporating ‘slightly agree’ and ‘slightly disagree’ options) as a result of feedback that I received at pilot stage. I felt that adopting this expanded scale would provide more nuance, and that it may remove some of the potential for neutral responses. At the end of the questionnaire, there was a web link to a separate questionnaire that allowed respondents to submit their e-mail address for the purpose of receiving a lay summary of the findings. The fact that these addresses were kept separate from the questionnaire data meant that respondents could rest assured that they could not be linked up with their responses.

The majority of the questions on the main questionnaire were formulated in a ‘tick box’ style, which meant that it was quick to fill in, and this was likely to have encouraged completion. That said, I was aware that the use of fixed categories of answers can work to bias a questionnaire’s findings towards the researcher’s hypotheses, “channel[ing] responses away from the respondent’s perception of matters” (Denscombe, 2007: 171). I attempted to overcome this difficulty by providing an ‘other’ category, and free text boxes, where appropriate. These allowed participants to elaborate, whilst facilitating an expansion of the scope of the possible data generated beyond what I had envisaged at the earlier stages of my project (and the data were subsequently coded both inductively and deductively). In this way, whilst most of my questions were aimed towards producing quantitative data, there were also qualitative portions of my questionnaire. This went some distance to address the relative superficiality and intrinsic bias of data collected by questionnaires (although it still did not allow for the provision of detail concerning the “subtleties of social life” to the same extent as interviewing (Denscombe, 2007: 312)). As

Friedman (2009: 55) suggests, “numbers are meaningless unless you flesh them out with some statement about how they relate to actual people and actual events”.

My questionnaire was live online between the months of July and October 2013. My quantitative data collection phase was over, for the most part, by the time that I began interviewing in September 2013, so the data emanating from my questionnaire was not really used to influence the way that my interviews were conducted. Moreover, ethical approval for both phases was sought at the same time, meaning that the interview schedules and questionnaire were designed at the same time. This might appear to go against the notion of complementarity, which would suggest an element of interactivity between the qualitative and quantitative aspects. It was, though, a product of the time constraints of a doctoral project. I recruited participants for this aspect of my study through a number of strategies, drawing on strategic opportunistic and snowball sampling approaches: e-mailing 71 lesbian and gay organisations, mailing lists and publications that might potentially take an interest (I found those by conducting Internet searches for the phrases ‘LGBT network’, ‘LGBT group’ and ‘LGBT magazine’, as well using the term ‘LGBT’ combined with the names of a number of major cities); using Twitter to ‘tweet’ 116 individuals and groups, and making use of ‘hash tags’ such as ‘#LGBT’, ‘#LGBTQ’ and ‘#LGBTfamilies’; and posting on the notice boards of two online forums (pertaining to ‘rainbow families’ and ‘relationships’, as well as ‘discussion, chat and gossip’). I sent further e-mails to four academic contacts, asking them to forward on the details of the project to people that they thought might be willing to participate. I felt that I was more able to draw on personal contacts in this context, as confidentiality was not quite such a concern here as it was in my interviewing phase. Besides this, I sought to encourage my contacts to ‘share’ a recruitment advertisement on Facebook.

It is, of course, difficult to comment on the ultimate success of any particular one of these tactics, given that I am unable to ascertain where each of the questionnaire respondents obtained the details of my study. Nonetheless, 301 people answered my questionnaire who were in a same-sex relationship, a number that greatly exceeded my initial target of 150 respondents. I classified ‘same-sex’ as being where the respondent provided identical responses for their own and their partner’s gender. Therefore, I included in my analysis respondents that classified both themselves and

their partner as ‘genderqueer’, and that referred to them both as ‘transgender’. I also included two responses where the participant had specified that they did not presently have a partner, but where they had subsequently answered that they identified as gay. An additional 57 people responded who were in a different-sex relationship. However, I will not be using their data for this project, as I have chosen to focus on same-sex couples, and in any event I am not intending to engage in a direct comparative exercise between same and different-sex relationships. Of those respondents that reported being in a different-sex couple, 7 were bisexual. Their data were not included in my analysis on this occasion, as they may have answered with respect to their current relationship. In total, 138 people expressed an interest in receiving a summary of my findings.

Table 3.1 provides outline demographic information for the 301 same-sex participants. The majority of respondents were women ($n = 211$, 70.1%), which might be accounted for by the fact that my recruitment advertisement featured in a lesbian publication with a large readership, and on the notice boards of a popular lesbian chat forum. Of these women, 167 (79.1%) classified themselves as being a lesbian, 20 (9.5%) as bisexual and 14 (6.6%) as gay. Of the 87 male respondents, 79 (90.8%) considered themselves gay and three (3.4%) bisexual. In terms of sexuality, an ‘other’ response was offered, in relation to which 11 respondents in total specified that they were queer, two that they were pansexual, two that they did not assign a label to themselves, and one that they were non-heterosexual. Participants were overwhelmingly white ($n = 283$, 94%), with a large proportion answering that they were of no religion ($n = 211$, 70.1%) and that they had no disability ($n = 267$, 88.7%). A majority lived in England ($n = 236$, 78.4%) and self-defined as middle class ($n = 210$, 69.8%). Respondents most commonly described themselves as cohabiting ($n = 156$, 51.8%), with fewer having entered into a civil partnership or marriage ($n = 132$, 43.8%).

Table 3.1. Questionnaire demographics for respondents currently, or previously, in same-sex relationships

	N	%
Gender		
Female	211	70.1
Male	87	28.9
Other	3	1
Total*	301	100
Ethnicity		
White British	228	75.7
White Irish	9	3
White Other	46	15.3
Mixed (White and Asian)	1	0.3
Mixed (White and Black Caribbean)	1	0.3
Mixed Other	2	0.7
Black African	1	0.3
Bangladeshi	1	0.3
Chinese	1	0.3
Indian	1	0.3
Asian Other	2	0.7
Other	7	2.3
Total	300	99.7
Disability		
Reported disability	30	10
No disability	267	88.7
Total	297	98.7
Religion		
No religion	211	70.1
Buddhist	8	2.7
Christian	54	17.9
Hindu	3	1
Jewish	4	1.3
Muslim	1	0.3
Other	13	4.3
Total	294	97.7
Sexual orientation		
Bisexual	23	7.6
Gay	93	30.9
Lesbian	168	55.8
Other	16	5.3
Total	300	99.7
Country of residence		
England	236	78.4
Scotland	13	4.3
Wales	10	3.3
Northern Ireland	6	2
Other	35	11.6
Total	300	99.7
Relationship status		
Married	10	3.3
In a civil partnership	122	40.5
Cohabiting	156	51.8
Single	6	2
Divorced/ separated	2	0.7
Widowed	2	0.7
Total	298	99
Self-defined social class		
Middle class	210	69.8
Working class	71	23.6
Other	7	2.3
Total	288	95.7

* Where totals do not add to $n = 301$ / 100%, this is due to missing responses

Methodological reflections: questionnaire use

The first, and most substantial, problem encountered during this phase of my research was that, at the point at which I was using Bristol Online Surveys, it was not possible to amend a questionnaire subsequent to having launched it. The fixed nature of a questionnaire might be contrasted against methods such as interviewing, where the researcher is able to develop their enquiries (Genn, 2009). It proved to be particularly frustrating, as an error was made in translating the questionnaire across from Word, and a question concerning the respondents' age did not feature in the final version. Unfortunately, this error was not picked up whilst the questionnaire was being piloted and, by the time that I had discovered it, I was unable to correct it. This was because I had already obtained a number of responses to the original questionnaire, and I had sent out the relevant link to a number of organisations (meaning that I would have needed to have launched a new questionnaire with a different web address in order to rectify the omission). The occurrence had limiting effects when it came to analysing the data, as it meant that I was unable to investigate the influence of age as a factor.

A second practical issue to which the participants alerted me was the lack of a 'back' button on my questionnaire (given that Bristol Online Surveys did not offer such a facility). A few respondents contacted me to report that they had either accidentally skipped ahead by unintentionally clicking to proceed, or that they had planned to return to a question and subsequently found themselves unable to do so. I am unsure of the extent to which this impacted on my data, given that I am unable to distinguish between purposeful and accidental missing responses. Thirdly, there were also some ambiguities in the questions that had not become apparent at pilot stage. These were problematic because questionnaires work on the assumption that, "the researcher and respondents share underlying assumptions about language", and interpret question wording similarly (Rattray and Jones, 2007: 235). For example, whilst participants were provided with the option to answer that they were either 'widowed' or 'cohabiting', the question was later raised as to what response should be provided where the respondent had previously been widowed but had subsequently proceeded to cohabit.

Fourthly, as is touched on above, I appreciated from the outset that the respondents may have felt restricted in completing my questionnaire, given that they were required to answer the questions that I had formulated using the answers that I had provided (Gilbert, 2008). In this respect, the participants did occasionally express dissatisfaction that they were unable to provide the detail that they had considered important. For instance, in the space offered for supplying details of equal division, one participant made the point that, “you haven’t asked how long we’ve been together – 15 years”. Another e-mailed to explain that she had felt unable to set out her personal motives for dividing household labour in the way that she had (given that the questionnaire specifically asked for elaboration as to how household tasks were equally shared). This reinforces a previously made criticism that the employment of such research methods, “rules out the possibility of understanding the process by which people come to adopt particular values of behaviours” (May, 2001: 112). Statistics are descriptive, and they tend not to enable you to answer questions as to “why”. I explained to the participant that I was additionally planning to conduct qualitative work, and that this would enable me to develop a greater understanding of people’s perspectives, social process and context.

Once the data had been collected, they were imported onto IBM SPSS Statistics version 21, and chi-square and t-tests were conducted. It is recognised that I may have had a more substantial impact on my data at this stage, given that I recoded some of the responses to gain valid outcomes for the statistical tests. For example, I recoded household income into deciles and contracted some of my Likert responses. Whilst it was essential to do so in order to work around the constraints of my data, I was simultaneously imposing my own structure on them (although, of course, this is the case with all statistical data). Consequently, a qualitative phase to the project was further considered necessary, given its greater potential to allow my respondents’ concerns to come to the fore.

Qualitative methods

The qualitative aspect of my research concentrated on family solicitors and their clients. Therefore, I decided to focus both on the “dispossessed” and the “locally powerful” (termed as such by Herman (1994) and Smart (1984)). My gaze was

turned towards the lawyers, as well as towards the parties, in dissolution matters because I am seeking to examine whether advice practices are working to reproduce the dominant family structure. I chose to look at solicitors (rather than barristers or judges) given that financial issues on relationship breakdown will tend to be resolved without entering into contested proceedings (Hitchings *et al*, 2013). On top of this, as Smart (1984: 149) emphasises, the law, “is not exclusively encompassed by case law and the discourse of high-ranking judges”, but is also, “what fairly low-ranking solicitors do every day”. My choice of focus was motivated by a recognition of the key role performed by solicitors in financial relief matters, as part of which they “translate personal conflicts into legally recognisable categories of dispute” (Smart, 1984: 160). They form a central part of the “interpretive community’ that control, “the forms of closure that define the legal field as a domain of expert knowledge and practice” (Baker *et al*, 2004: 120).

Interviews

The reasoning behind my choice to conduct interviews was to obtain multiple perspectives on the dealings between legal professionals and their clients. I considered it important to hear how things are working ‘on the ground’, as opposed to conducting library-based research, as that would best enable the gathering of information about how dissolution matters are playing out in practice. I opted to conduct in-depth, face-to-face interviewing (where possible) because it would provide me with the opportunity to explore the solicitors’ and clients’ experiences and thoughts in detail (May, 2001). In my interviews, I utilised a semi-structured interview schedule (see appendices D and E), which meant that I had identified beforehand the issues that I wished to address. The idea behind this was to provide a greater structure for comparability than one would tend to have if conducting an unstructured interview (May, 2001). However, I was prepared to be flexible in order to probe beyond my respondents’ answers, enabling me to explore the meaning contexts of their utterances (Lee, 1993). This flexibility was further intended to give my respondents the opportunity to develop their ideas and explain their views (Gilbert, 2008). This was important as, given that my research concentrates on the potential imposition of heteronormative structures, I sought not to impose structures of my own. I asked the participants broad questions (encouraging them to, “tell me a

bit about your experience of...?’”), the purpose of which was to allow them to answer on their own terms. The approach sought to ensure that my research questions were addressed, whilst providing scope for the emergence of unanticipated issues (Hitchings, 2010).

Prior to pursuing my interviewing phase, I obtained ethical approval from the Birmingham Research Ethics committee (and the same is true of my questionnaire, although there I foresaw no significant risks to the questionnaire participants). Appendices to the application included the participant information sheet relating to my solicitor and client interviews (see appendix C for an example), my interview schedules (see appendices D and E), the demographic information form for the interviews (see appendix F), and the consent forms (see appendix G for an example), alongside the questionnaire itself (see appendix A), and the participant information sheet for the same (see appendix B). A particular issue flagged up in response to the application was the degree of risk to which I was exposed when attending clients’ homes to interview. To minimise this, I agreed to inform a friend of the address that I would be attending, and to contact them afterwards confirming my safety. I additionally explained in the form that I would respect the anonymity of respondents and the confidentiality of information supplied, although adding that confidentiality could only be preserved so far as the law permits. I identified the possibility that professional malpractice might come to light within the solicitor interviews, in which case I was to raise this matter internally with the solicitor’s employers (this was not something that ultimately occurred). In terms of the clients, given that I was seeking to interview these people at a difficult time in their lives, I agreed to bring contact details for support organisations.

As to the recruitment strategies utilised, whilst seeking solicitors to participate in this aspect of my research, I expanded my search further afield than Birmingham. This was due to the small size of the city’s LGBT community, and the consequent risk of identification. I selected firms to contact through conducting an Internet search for the term ‘civil partnership dissolution solicitor’. I felt that e-mailing individual solicitors would be most effective, as it would enable me to bypass administrative staff and managers. For this reason, I examined the firms’ websites to establish whether any of the solicitors’ individual profiles specified that they had experience of

advising on civil partnership dissolution. Where I was unable to locate this information, I e-mailed the heads of the firms' family departments. In the event that no more specific contact information was available on the websites, I telephoned the firms' offices. In total, I contacted 291 solicitors' firms, of which 14 solicitors from 10 different firms agreed to participate in one or more element of my research. Whilst I did manage to exceed my aim of interviewing a total of 10 solicitors, this is a fairly low response rate. My experience in this respect complied with Bell's (1978) account of the problems of 'studying up' the powerful. In relation particularly to legal practitioners, Macauley (2009: 19) emphasises that, "lawyers are busy, and they always feel pressed for time." This was confirmed by the responses that I received from several solicitors informing me that they would be unable to engage in the research due to a confluence of hearings.

In addition to this, though, it soon became clear that many of the firms that I contacted had not conducted many civil partnership matters to date. This is, perhaps, somewhat unsurprising, given that the first dissolutions of recognised civil partnerships happened in quarter 2 of 2007, and that only 3,466 dissolutions had taken place in the UK by the end of 2013 (with 66,730 civil partnerships having formed up to the same point) (Office for National Statistics, 2015). The figure represents a small proportion of relationship breakdown matters over that timespan, with 719,075 divorces having been recorded between 2007-2012 in England and Wales alone (Office for National Statistics, 2014b). Accordingly, some solicitors were unwilling to participate by reason of their lack of exposure to this type of matter. I had also hoped to obtain, through the solicitors, introductions to their civil partner clients in order to recruit client interview participants (as did Sarat and Felstiner (2009) in their study on divorce lawyers and their clients). However, even where the solicitors themselves were willing to participate in my study, a number displayed a reluctance to grant me access to their clients. Furthermore, even where the solicitors did encourage their clients to partake, the clients were often still not forthcoming. As Auchmuty (2013) acknowledged, people are "disillusioned" by dissolution, preferring to talk about the celebratory aspect of civil partnership. As a result, I was only able to 'match up' the first two clients with their solicitors in terms of interviewing.

In consequence, I found it necessary to adopt an alternative strategy to recruit client interviewees. Plans for this eventuality were included in my application for ethical approval. I initially e-mailed an advertisement to 217 lesbian and gay organisations, mailing lists and publications with a potential interest in the subject. This was the most fruitful tactic that I used to generate participants, especially when my e-mail was circulated around a number of trade union LGBT groups. I subsequently used Twitter to 'tweet' the details of the project, and directly 'tweeted' 87 people and organisations asking them to 'retweet'. I made use of relevant 'hash tags', such as '#LGBT', '#LGBTQ' and '#LGBTfamilies', to ensure that my 'tweet' would come up in the results of relevant searches, and 'tweeted' the link of a project blog that I set up on 'Wordpress'. Besides this, I either sent, or delivered in person, posters advertising my research to 13 lesbian and gay centres and venues, and wrote on the notice boards of two online forums (pertaining to 'rainbow families' and 'relationships', as well as 'discussion, chat and gossip'). I had planned to use Facebook too, although established that it would not be possible to access the majority of these groups without becoming a member.

Whilst the use of this combination of strategies generated the further eight participants that I needed to reach my client target of 10, access was a concern for a significant portion of the nine-month interviewing phase. That said, perhaps this was only to be expected, given that I was seeking to reach such a small portion of the population: those who had experienced civil partnership dissolution, had sought legal advice, and were willing to engage in an interview. Although, in the earlier stages, I had planned only to interview people who had sought legal advice in the past two years (given that their reports would be likely to be most reflective of recent practices), I proceeded to widen this out to anyone who had sought legal advice. This was so as not to unrealistically narrow down my potential respondent pool. Nevertheless, it is recognised that the sample obtained was relatively small. Whilst it must be stressed that I conducted the research alone on a limited timescale, this element of my work risks the accusation of being too local and specific (May, 2001). It might be felt important for my data to be generalisable if it is accepted that the purpose of empirical socio-legal research is to help us to better understand society. Yet, I argue that, despite their limitations, the recruitment and sampling processes followed in this research can be understood, at least, as offering some enlightenment

as to contemporary discourse around civil partnership dissolution for clients and solicitors.

Table 3.2. Interview demographics

	Solicitors (14)	Clients (10)
Gender		
Female	9	4
Male	5	6
Age		
20-29 years	2	
30-39 years	4	1
40-49 years	6	6
50-59 years	1	3
Missing response	1	
Ethnicity		
White British	12	10
Indian	2	
Disability		
Reported disability		2
No disability	14	8
Religion		
No religion	5	7
Christian	6	3
Hindu	1	
Jewish	1	
Sikh	1	
Sexual orientation		
Bisexual		1
Gay	1	6
Heterosexual	11	
Lesbian	2	2
Other		1
Self-defined social class		
Middle class	11	6
Working class	2	4
Other	1	
Political views		
Conservative	3	
Liberal Democrat	1	3
Labour	6	4
Other	2	3
Missing response	2	

Table 3.2 provides outline demographic information for my interview participants. I interviewed five male and nine female solicitors, and 11 of these identified as heterosexual, two as lesbian and one as gay. The solicitors ranged from 28 to 59 years of age and, whilst twelve were white and two were Asian in ethnicity, six considered themselves Christians, five had no religion, one was a Hindu, one was Jewish, and one a Sikh. The solicitors were located in the Southwest and Southeast of England, Greater London and the Midlands. Unfortunately, no Northern English or

Welsh solicitors volunteered to be interviewed. I sought to recruit rural solicitors as well as city ones, although none of my interviewees would ultimately be considered as working in a particularly rural practice (this may be because the rural firms have dealt with fewer civil partnership matters). I interviewed 12 of the solicitors in their offices, one in a coffee shop, and one over the telephone. They dealt with cases concerning a range of assets, from modest amounts to multi-million pound 'big money' matters, and, although one estimated having advised on 50 civil partnership cases, one had no direct experience of a dissolution.

In terms of the clients, I interviewed six men and four women. It is interesting that more men than women should have come forward, given that a greater proportion of female civil partnerships have broken down than males (8.4%, as against 4.5%, by the end of 2013 (Office for National Statistics, 2015)). This might be because men are, on average, wealthier than women, and so may be more likely to seek legal advice on relationship breakdown (Auchmuty, 2015). Of the clients that I interviewed, six identified as gay, two as lesbians, one as both, and one as bisexual. They ranged from 38 to 54 years of age, with a mean age of 45 (falling on the older side of the average age at dissolution, which was 39.4 years in England and Wales in 2013 (Office for National Statistics, 2015)). Six considered themselves middle class, and four thought of themselves as working class. All of the clients were white, and seven answered that they were of no religion, whilst three identified as Christians. Two had a disability, and the clients resided in locations across Greater London and the Midlands. Their assets ranged from very little to significant (see appendix H for basic relationship details) and, whilst three were in the process of dissolution and asset division, seven had completed this process. Of those seven, one had had their matter resolved by the courts, three had settled through the use of solicitors, and three had settled between themselves, having received initial legal advice. The partners' relationships varied in length: whilst one client had been with her partner for 25 years, a further one spent only a week living with her civil partner, with there having been a prior year of cohabitation. Two were interviewed at their solicitor's offices, three were interviewed in a meeting room at their workplace, three at their home, one in a hotel lounge, and one over the telephone.

Methodological reflections: interviewing

As with the questionnaire, a number of practical difficulties arose during the course of my interviewing phase. Turning to the professional interviews, firstly, the flexibility of my interviewing approach resulted in the solicitors frequently trying to push their own interests and agendas, rather than answering the question at hand. I found that I was trying to achieve the difficult balance of steering the conversation back ‘on-track’, whilst not making the participant feel that I was not interested in what they had to say. Secondly, I felt that, on occasion, the solicitors were making somewhat homophobic comments. Whilst I did not wish to endorse those, I also did not want to discourage them from speaking, so I would seek to respond to them in a non-committal fashion (such as saying, “mmm”). Thirdly, quite a few of the solicitors asked me for my opinions, alongside what my research findings had been to date. Under those circumstances, I emphasised that the purpose of the interview was for me to elicit their views and that, whilst I could not comment on my data as it had not yet been analysed, I would send them a summary in due course. Fourthly, I was aware of the fact that, in the context of this artificial discursive environment, people like to “entertain you” (Macauley, 2009). As a consequence, they often choose to tell you, “the best story that they’ve got”, as opposed to what they consider to be an accurate account of events and experiences (Macauley, 2009: 22). This, of course, posed a further limitation in terms of the representativeness of the data gathered.

Fifthly, the practitioners (and, to a lesser extent, the clients) seemed, at times, to be trying to second-guess what I was ‘getting at’ through asking any particular question. This fits in with Denscombe’s (2007) observation that interview respondents may feel under pressure to supply answers to “fit in” with what they believe the interviewer expects of them, and to tailor their answers to comply with what they believe the researcher’s point of view to be. Where I considered this to be the case, I sought to assure them that I was not specifically ‘getting at’ anything, and that I was genuinely interested in obtaining their thoughts. Sixthly, I perceived that the solicitors might have been made to feel “under the microscope” whilst being interviewed, as though being somehow scrutinised or tested (Denscombe, 2007: 206). I was aware that, as professionals, they may have wanted to answer the questions in a way that reflected favourably on themselves and their practice (Durand and Chantler, 2014). Finally,

one solicitor had to ask me to cut the interview short, and to return another time, due to a court commitment. This return date ended up taking place over a month later and, whilst I re-listened to the first part of the interview beforehand to refresh my memory, the break interrupted the 'flow' of the conversation. On a related note, there was a problem of recall more generally, as the solicitors could often not remember the details of cases that they had previously worked on (given that they had since, for example, been on maternity leave, or moved firm).

As to the clients, the most challenging obstacle faced was the participants' emotional state (similarly identified by Brannen (1988) in exploring topics such as relationship difficulties). This meant not only that they were sometimes unwilling to answer my questions, but also that they were likely to have perceived themselves as having performed a more substantial role in the relationship than if they were reflecting at another point in time. On top of this, some clients expressed embarrassment about discussing private matters such as money (correspondingly reported by Bennett, 2013). Where this happened, I was careful to emphasise that they were not obliged to answer anything that they did not wish to. A further difficulty was that a few of the clients expressed a wish for me to offer them legal advice. In that event, I stressed that I did not have ethical approval to offer such advice and, as an upshot of me doing so, one potential interviewee withdrew her consent to participate. Added to this, the audio recordings were sometimes not as clear as I had hoped, as a result of background noise having been picked up by my device. That was a particular concern during the interview that took place in the hotel (as well as during the solicitor interview held in the coffee shop). Lastly, in terms of the telephone interview that I conducted, I found this challenging to the extent that it was much more difficult to gauge the emotions of the client than it was face-to-face. A problem posed was my inability to see the participant's body language and facial expressions. Moreover, it was tricky to work out whether the client was simply pausing, or whether they had finished answering the question. This meant that I unintentionally interrupted my interviewee at times (which similarly occurred in the solicitor interview that took place over the telephone, although less so).

On completion of the interviews, I transcribed them myself verbatim, removing identifying information. This had the advantage of allowing me to become familiar

with the data. Participants were given pseudonyms, with clients being assigned first names and practitioners surnames. My decision to do this was by no means to suggest that the solicitors carry more authority, but instead to allow readers of my research to distinguish between the two bodies of interviewees (and to avoid the use of codes, which can become clunky). The transcripts were imported onto NVivo 10, and this software was used to assist me in conducting thematic analysis, which entails searching across a data set to find “repeated patterns of meaning” (Braun and Clarke, 2006: 86). Codes were generated both inductively and deductively. NVivo proved a useful tool for analysis, given the way in which it invites the user to think about themes as ‘trees’ of interrelated ideas (see appendix I, which sets out the node trees that I created for my project). This facilitates the consideration of possible hierarchies between codes at an early stage. Not only this, but the way in which the programme groups together all text pertaining to a particular theme enables data to be quickly located. However, one also needs to be aware of the risk that using NVivo poses with regard to decontextualising data, given that it encourages its users to focus on chunks of coded text rather than the entirety of the transcripts (Fielding and Lee, 1998). Furthermore, whereas the software operates to encourage analysis that is increasingly more finely grained, a researcher will tend to want to begin with finely grained codes and subsequently to work towards developing over-arching themes. I often resorted to using pen and paper to work out which codes worked together.

In analysing the data, I was cognisant that the statements of interview respondents can be impacted both by the context of the interview and by the personal identity of the interviewer. I anticipated from the outset that what was most likely to be of relevance here, especially in relation to the client respondents, was my impact as a heterosexual interviewer. I was mindful that the data that I would obtain would be unique, and that it might differ from that which might have been acquired by a lesbian interviewer (who may have been able to engage the research participants more easily (Dwyer and Buckle, 2009)). This notion is supported by Guba and Lincoln’s (1994) assertion that qualitative research findings are mutually generated as a result of the interactive link between the investigator and participant. In fact, I found myself in an interesting position in this aspect of my research, because I might be classified an “outsider” with respect to my sexuality, whilst simultaneously being an “insider” amongst the family lawyers (having qualified as a family solicitor). Given my “insider” status, it might

have been considered difficult for me to study the solicitors as a neutral, detached observer to the same extent as my client interviewees (Merton, 1972). Conversely, whilst it was to be less problematic for me to separate my personal experiences from those of my client participants, it might be perceived hard for me to truly understand their situations and experiences without having also experienced them first-hand (Kanuha, 2000).

In terms my status as an “outsider”, I am aware that Herman (1994) suggested that her lesbian and gay interview respondents trusted her partly as a consequence of her being able to present herself as “a lesbian”. It is notable that none of my interviewees actually posed a question concerning my sexuality. This experience contrasts against Oakley’s (1981) report on her study on motherhood, where she explains that her participants asked her questions back (and, similarly, against the practitioner interviews, where I was sometimes asked about my professional background). My client interviewees did, though, appear to make their own assumptions, which are likely to have impacted their answers. I noticed, amongst the lesbian interviewees, that they referred to “us” (as to which, I felt that they might have been including me), whilst one of the male participants reported that:

What I found difficult was relaying, umm, you know [...] quite a personal conversation and, kind of, personal events within our relationship with a – no disrespect – but, a straight woman (Isaac).

I realise that my heterosexual identity may have caused my interviewees to view me as what Herman (1994) terms “one of those” in relation to my sexuality, adding to the hostility that they may already have felt towards me as “one of those” academics. It might, likewise, have caused them to view our interviewer-interviewee relationship as a hierarchical (and ‘unequal’) one, given that I do not share my participants’ subordinated position in a society in which heterosexuality dominates. Oakley (1981) has argued that such a relationship is not conducive to successfully finding out information about people, and my respondents may have felt a lack of shared identification to such an extent as to affect their fullness in presenting their lives to me. I was reluctant to disclose my heterosexuality, in case it made them feel obliged to tailor their accounts so as to be more compliant with heteronormativity.

It was apparent, as a result of such consideration, that I, as the interviewer, had the potential to impact my interview data. Yet, the idea of the stark “insider/ outsider” dichotomy may be an oversimplification. Dwyer and Buckle (2009) set out how, because of the interviewer’s role as a researcher, it is difficult for them to qualify as “complete insiders” in any event. Similarly, they argue that, “the intimacy of qualitative research no longer allows us to remain true outsiders to the experience under study” (Dwyer and Buckle, 2009: 61). In fact, Dwyer and Buckle (2009: 61) contend that an aspect that qualitative research adds to quantitative work is the way in which, in the former, researchers are, “firmly in all aspects of the research process and essential to it”.

Conclusion

The use of a mixed methods approach has traditionally been criticised from an epistemological perspective. In addition to the problems associated with each method employed, adopting a combination poses organisational and intellectual challenges for the researcher. Mixed methods not only involves a greater volume of data (which are time-consuming to collect and to analyse), but it requires the researcher to navigate, and become proficient at using, twice the amount of software. Nonetheless, I argue that mixed methods research offers strengths that counterbalance the weaknesses of quantitative and qualitative methods alone, and generates more comprehensive evidence to assist in the answering of research questions. Moreover, I assert that the use of such an approach is desirable in socio-legal projects that seek to study the complexities of our social world. I contend that researchers that limit themselves to one method alone risk missing, “whole dimensions of social experience because their methodological repertoire or tradition limits their view” (Mason, 2006: 13). On the contrary, choosing to generate data through a variety of methods enables the researcher to view this social world through different “windows”, or perspectives, as a result of which they are able to develop different types of understanding (Gilbert, 2008). I now proceed, in the next four chapters, to explore the responses offered by the participants to the questionnaire (chapter 4), before analysing the data obtained from my qualitative interviews (chapters 5, 6 and 7).

Chapter 4- Greater familial ‘equality’: domestic division in same-sex relationships

In chapter 2, I outlined how the courts, in financial relief matters, have been unable to transcend prevailing models that derive from understandings of men and women taking on separate, gendered roles in intimate relationships. In chapter 3, I set out my mixed methods approach to research. This chapter is the first of four empirically grounded chapters situating lesbian and gay lives in relation to the heteronormative assumptions made by the law. It explores the results of my online questionnaire into the division of care and household labour and the conduct of finances in same-sex relationships.¹⁵ It focuses on the home as a space where socially acceptable types of behaviour can be normalised or, indeed, contested (Baydar, 2012).

As has previously been acknowledged, legal actors can be restricted by the facts of the matters before them, and current social norms feed into family law as practitioners and judges are exposed to them. As to the nature of these norms, Ellison *et al* (2009: 34) reported that over three quarters of mothers in their UK study stated that they have primary responsibility for childcare. Likewise, the British Social Attitudes Survey (BSAS) tells us that women are over seven times more likely to care alone for a sick family member than men (Scott and Clery, 2013: 128). The same survey described how women perform 70% of the laundry, 56% of household cleaning, and 55% of cooking (Scott and Clery, 2013: 128). The position is one of a traditional dichotomy, where women are ‘naturally’ associated with housework, and men with earning in the workplace (and, within the home, with DIY-type tasks alone). This arguably holds the law back and helps to reinforce stereotypes.

I contend, however, that such models of domestic life are not reflective of the lived ‘realities’ of many couples, and my questionnaire results highlight the difficulties of relying on them in relation to same-sex partners. This chapter presents the data obtained from the questionnaire to examine how cohabiting lesbian and gay partners understand and negotiate their familial roles. I turn to my respondents’ accounts and,

¹⁵ The format of this questionnaire was discussed in chapter 3.

in addressing my initial research question, highlight ways in which same-sex relationships hold the capacity to challenge ideas of gender complementarity, and heteronormative discourses around housework and childcare. For the full set of data tables generated, see appendices J (chi-squares) and K (t-tests). Amongst the participants' reports, there was little to indicate that tasks were being apportioned out along 'masculine' and 'feminine' lines. Moreover, the arrangements were often unaffected by factors such as gender, relationship status, income, social class, and disparity (or similarity) in the partners' workforce status, which have been used to explain the division of labour in different-sex couples. In this way, the research raises new questions around what we commonly understand to be 'truths' about the organisation of intimate relationships, so as potentially to have a transformative impact. The data suggest that the participants experienced relative equality of condition (Baker *et al*, 2004). This is to the extent that (in terms of working and learning) they more commonly shared both caring and domestic work and employment within the wider economy, and had choice amongst occupations that they found satisfying.

I proceed, in the chapter, to consider the respondents' descriptions of their financial behaviour, which featured accounts of relative financial independence and, again, the sharing of tasks. Financial decisions were perceived to be discussed between partners, as was the case with housework. In this respect, conforming with notions of equality of power, the participants were able to influence the decisions that affected their lives, with there being high levels of negotiation, democracy and cooperation (Baker *et al*, 2004). This is in contrast to heterosexual relationships, where the female partner's identity, "remains profoundly shaped by an ideology of domesticity" alone, and where preferences are shaped by the context in which they are made (Crompton, 2006: 202).

Workforce status

In terms initially of the participants' workforce status, a large number described both themselves and their partner as working full-time ($n = 157$, 54.7%). This is notable, as Britain has been suggested to have a large proportion of what Moen (2003) describes as "neo-traditional" households (where the man works over 40 hours a week

and the woman works less, typically part-time) (Crompton and Lyonette, 2005). It also indicates relative equality of working and learning, with both partners having access to employment (Baker *et al*, 2004). Few respondents were in a relationship where one or more of the partners was not working ($n = 36$, 12.4%). That finding accords with previous suggestions that same-sex relationships tend to be ‘dual-earner’ ones, arguably as a result of the comparative insignificance of prescribed gender roles (Blumstein and Schwartz, 1983; Dunne, 1997). The proportion of male participants who reported that they and their partner were working full-time ($n = 44$, 54.3%) was similar to that for the females ($n = 111$, 54.7%). The result relating to the females is interesting, given that 172 (82.3%) respondents were working full or part-time, by comparison to a 67% employment rate for women across the UK population (Office for National Statistics, 2013a: 1).

Yet, my workforce status findings might be unsurprising, given that the sample were also well qualified. Whilst the 2011 census found that 27% of the population had completed an undergraduate degree or higher, 244 (81.9%) of my respondents reported having attained that level, with 118 (39.6%) having a Master’s degree or a PhD (Office for National Statistics, 2012). Gender did not impact in this respect, with 81.6% ($n = 71$) of men and 82.2% ($n = 171$) of women being educated to university level. Likewise, 221 (75.2%) respondents said that their partners held at least an undergraduate degree. This might at least partially be because my sample was biased by my recruitment strategy. For instance, it is probable that the academics that I asked to forward on the details of the study sent them to similarly educated people.

As to the partners’ occupations, self-defined social class did not influence whether or not the partners adopted the same status. This is striking, as Crompton (2006: 46) asserted that combinations of employment statuses varied by class in different-sex households. However, I found the presence or absence of children to be of impact ($\chi^2 = 8.960$, $df = 1$, $p = 0.003$). As is shown by table 4.1, of the respondents that had children, a greater proportion ($n = 35$, 51.5%) had a different workforce status to their partner than those without ($n = 70$, 31.5%). This trend has also been identified amongst the population as a whole; couples with dependent children have been found less likely (68%) to be dual-earners than those without (72%) (Walling, 2005: 277). The reasoning would presumably be to enable the lesser-working partner to take

greater responsibility for childcare. We will now turn to an in-depth discussion of this type of labour.

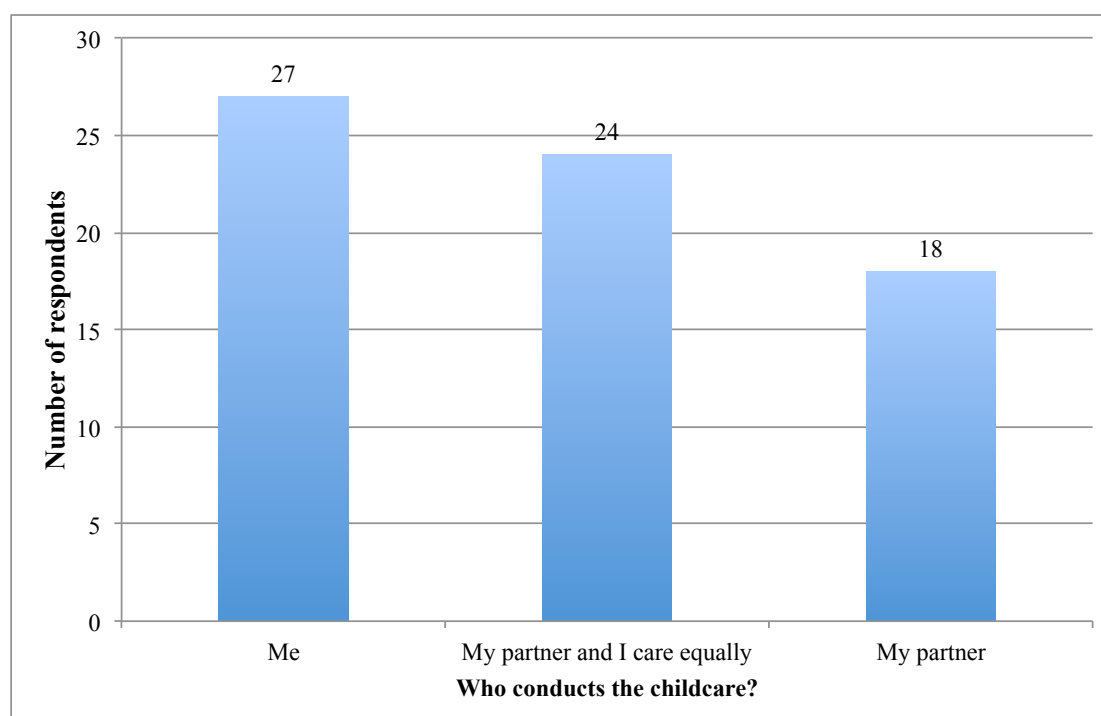
Table 4.1. Whether the respondent and their partner had the same occupational status by whether or not there are children present in the respondent's household

		Children present	Children not present	Total
Partners have the same occupational status	Count	33	152	185
	Expected count	43.4	141.6	
	%	48.5	68.5	63.8
Partners have a different occupational status	Count	35	70	105
	Expected count	24.6	80.4	
	%	51.5	31.5	36.2
N (=100%)		68	222	290
		Value	df	Sig
Chi-square test		8.960	1	0.003

Childcare

71 (23.6%) of the participants said that they both had, and lived with, children. Whilst there are no available percentage statistics for the proportion of UK same-sex couples raising children, my sample reflects American estimates of around one in five doing so (Gates, 2013: 1). In terms of how the care of these children was apportioned, as can be seen in figure 4.1, whilst 27 people (39.1% of those responding to the question) described themselves as the majority carer, 18 (26.1%) answered that their partner conducted this work, and 24 (34.8%) that it was shared. It is acknowledged that the percentage of responses answering that childcare was shared is relatively small. My figure for equal caring is, on the one hand, only a little higher than that provided by Ellison *et al* (2009: 35) for (predominantly heterosexual) men's perception of childcare. Of the responses gathered in that study as to whether childcare was shared, 31% of males stated that it was. That said, the female respondents did not agree. Only 14% of Ellison *et al*'s (2009) women participants reported shared childcare, which is markedly lower than the result that I obtained.

Figure 4.1. Who conducts the childcare

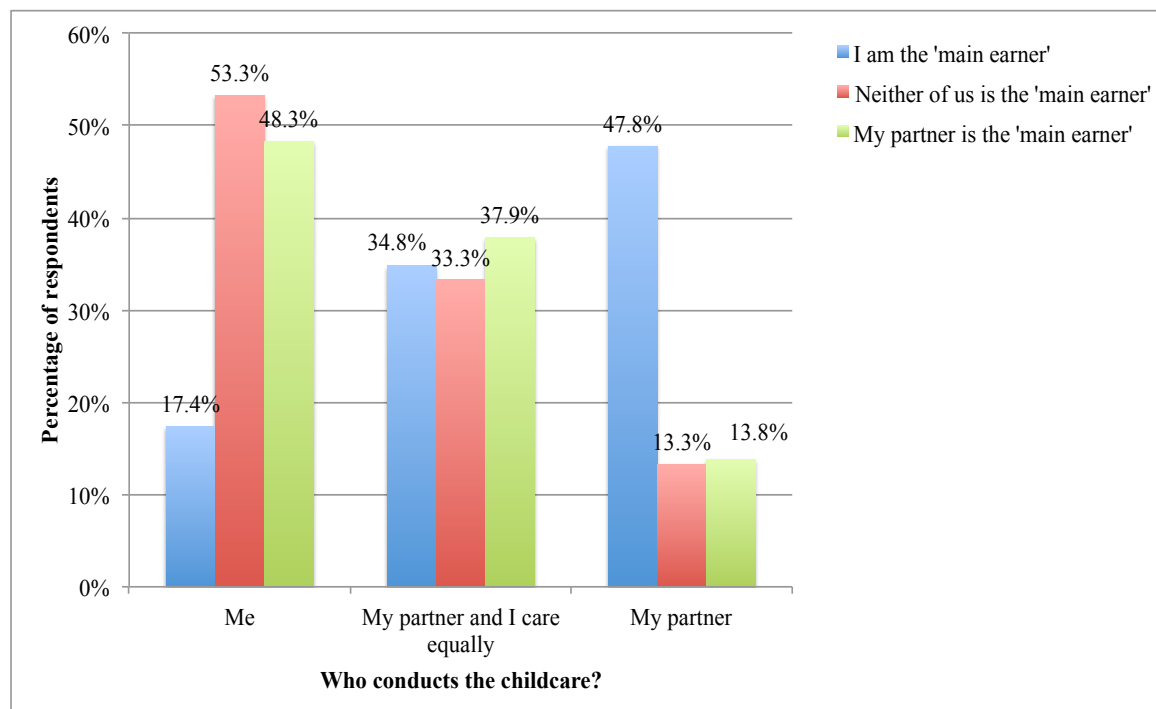


My findings are likely to be reflective of ongoing difficulties within this domain relating to structural impediments, particularly within the workplace. Lesbian and gay relationships do not exist in a “power-free zone”, and paid work opportunities are structured in a way that omits to recognise parents’ responsibilities outside of work (Heaphy *et al*, 1999; Dunne, 1999). Even so, the findings would indicate that childcare is shared more equally within my same-sex sample than it is across the wider population. In this way, they are more compatible with Baker *et al*’s (2004) ‘working and learning’ aspect of equality of condition. My observation corresponds with Sullivan’s (1996) assertion of a commitment to “equity” in lesbian parenting practices, and Chan *et al*’s (1998) finding, in their study of 46 American families, that the lesbian parents adopted a more egalitarian division of childcare labour than the heterosexuals.

As to the factors that influenced the division of childcare, it is difficult to comment meaningfully on the impact of gender, as there were insufficient cases of male respondents with children ($n = 5$, 5.8%) to enable further investigation. However, chi-square analysis investigating the influence of the level of gross household income revealed no significant associations. This is noteworthy, as it is commonly assumed that this factor accounts for heterosexual division of labour (although Saad (2012)

disputes that mothers who perform a greater caring role are largely privileged, as household income will tend to be lower where the mother does not work). Nevertheless, a significant association was identified relating to the identity of the 'main earner' ($\chi^2 = 11.232$, $df = 4$, $p = 0.024$). The relationship observed was that the respondents who answered that their partner was the 'main earner' were more likely ($n = 14$, 48.3%) to perform the majority of the childcare. Conversely, where they themselves were the 'main earner', they were more likely ($n = 11$, 47.8%) to report that their partner conducts the majority of the caring. This sits in contrast with different-sex couples, given that where a woman is the family 'breadwinner', she will still typically take on the larger share of the childcare (Rampell, 2013). That said, the statistic for the equal sharing of childcare did not vary a great deal according to the identity of the 'main earner'. As is evident from figure 4.2, 34.8% ($n = 8$) of 'main earner' respondents considered childcare to be shared equally, whilst 37.9% ($n = 11$) of those whose partner was the 'main earner' adopted the same view, alongside 33.3% ($n = 5$) where neither were classified in this way.

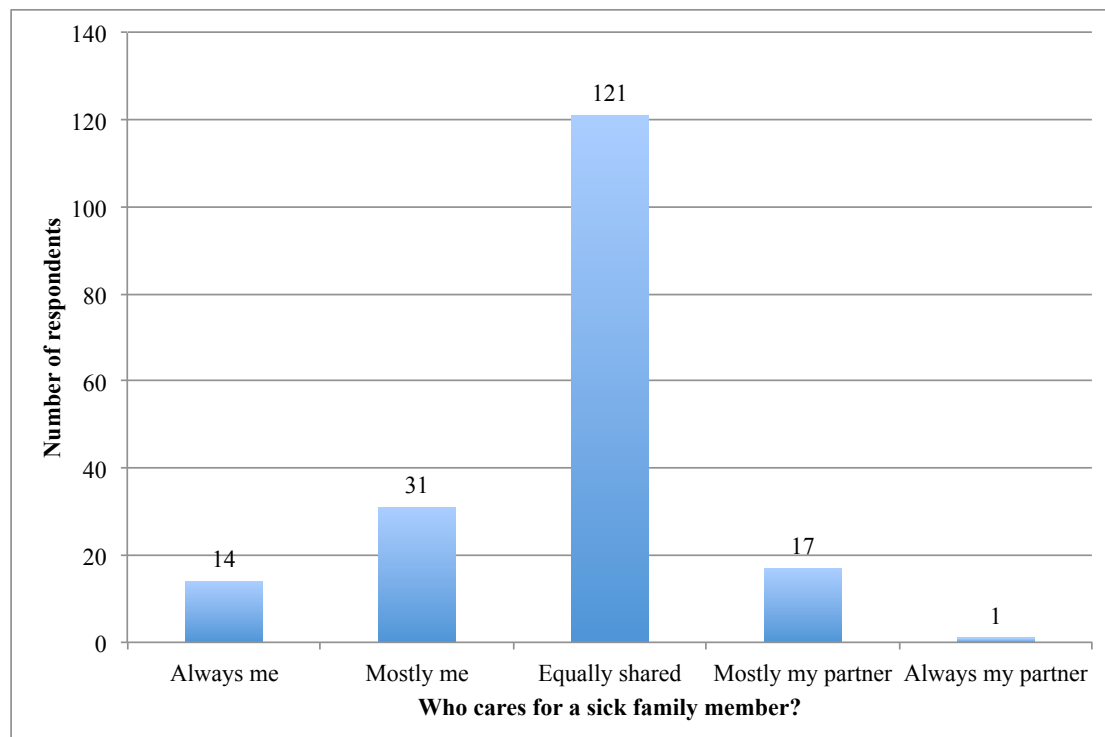
Figure 4.2. Who conducts the childcare by who the 'main earner' is in the respondent's household



Caring for a sick family member

Still with reference to caring, the results of my questionnaire as to who cares for a sick family member featured sharing more prominently, thereby signalling even greater equality of working and learning (Baker *et al* (2004)). This carries with it transgressive possibilities, given that Crompton (1999: 205) identifies that a dual-caring model, “is the most likely to generate less traditional gender relations” and to “deconstruct” the gendered division of labour. As is shown by figure 4.3, a total of 121 respondents (65.8%) answered that they shared this work with their partner. This statistic is markedly higher than those generated by Henz (2009) based on the British General Household Survey. The range for the receipt of care from both spouses was found to be from 39-47% in that instance, with the former referring to the percentage of wives’ fathers cared for in such a way, and the latter the husbands’ parents (Henz, 2009: 149).

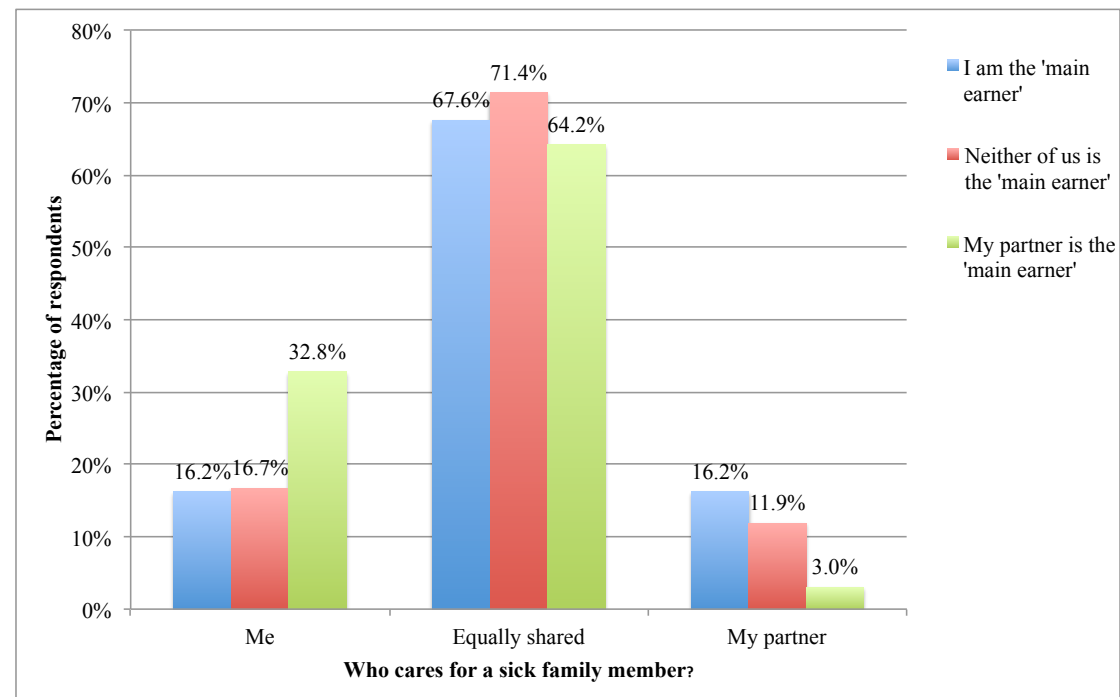
Figure 4.3. Who cares for a sick family member



There were insufficient cases in my data to investigate the impact of other variables on the division of this type of caring work whilst utilising a fivefold scale (always me; always my partner). Yet, on having reclassified the participants’ responses into ‘me’, ‘my partner’ and ‘equally shared’, I was unable to prove the influence of gender. This

finding is relevant, given that earlier studies (see Tennstedt *et al*, 1989) have identified that daughters tend to be more involved than sons in caring for their elderly parents. The fact that males in same-sex relationships may be more likely to get involved in this work corresponds with stereotypes of gay men having closer relationships with their mothers (LaSala, 2011).

Figure 4.4. Who cares for a sick family member by who the 'main earner' is in the respondent's household



A statistically significant relationship was again observed between the identity of the 'main earner' and how this type of labour is apportioned ($\chi^2 = 11.144$, $df = 4$, $p = 0.025$). As can be seen in figure 4.4, where the respondent was the 'main earner', they were more likely ($n = 11$, 16.2%) to say that their partner cares for a sick family member than where their partner was the 'main earner' ($n = 2$, 3%). Similarly, those whose partner was the 'main earner' were more likely ($n = 22$, 32.8%) to be the majority carer than those considering themselves the 'main earner' ($n = 11$, 16.2%). In any event, though, equal caring was the most popular response. The arrangements were described in this way by 67.6% ($n = 46$) of 'main earner' respondents, 64.2% ($n = 43$) of those who perceived their partner in such a way, and 71.4% ($n = 30$) who considered neither themselves nor their partner to be the 'main earner'.

As was also the case with childcare, whether or not the partners were of the same occupational status was not found to influence who cared for a sick family member. The suggestion is that it is not the fact that both partners may be working full-time that makes a difference, but the implications of one partner having a higher status occupation than the other (such as needing to work longer hours and having less flexible working arrangements).

Housework

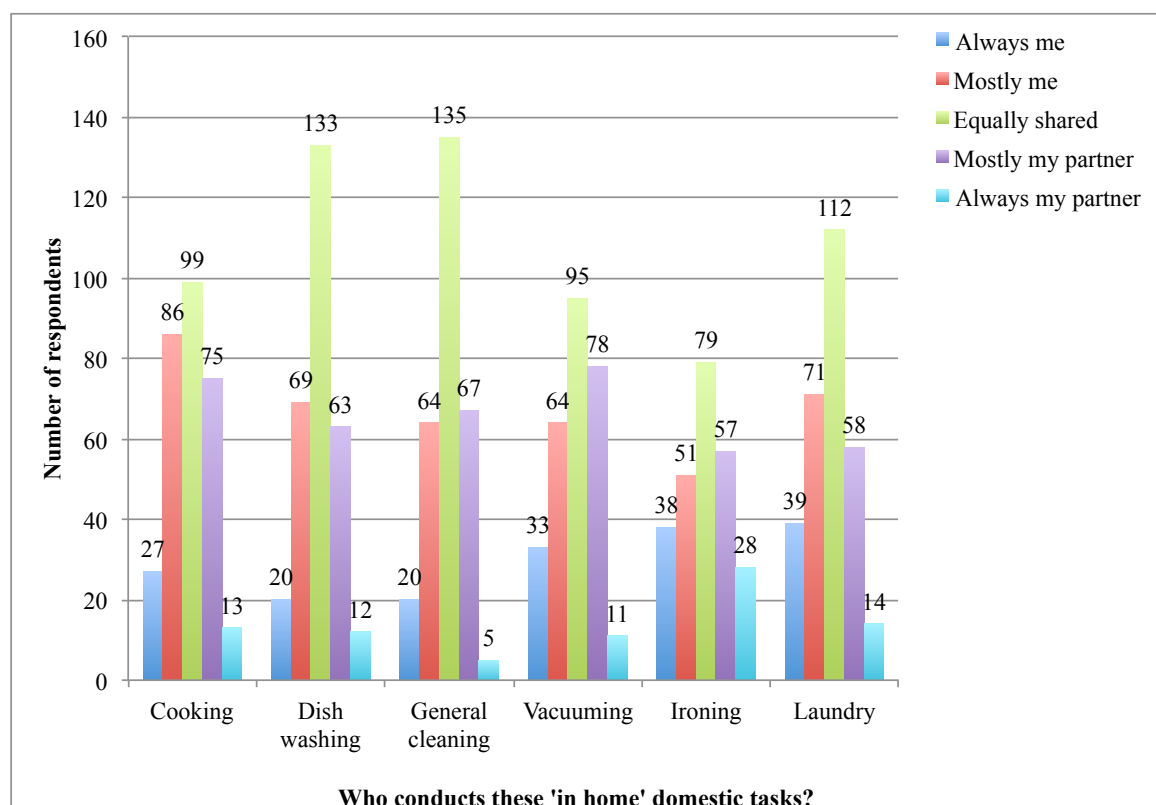
Descriptions of equality featured commonly in relation to the variety of other household chores referred to in the questionnaire. This works to suggest that lesbians and gay men might help to break down the heteronormative (binary) roles frequently assumed to be ‘natural’ within different-sex couples (and, in undermining “engrained divisions of labour”, can assist in attaining greater equality of working and learning (Baker and Lewis, 2010)). I explore the extent to which tasks were expressed as being shared in response to the quantitative-style questions, before examining the participants’ (qualitative) accounts of what this ‘equality’ entailed, the factors that influenced how ‘equally’ labour was apportioned, and the employment of household help. I observe that tasks have often been negotiated within the respondents’ same-sex relationships and that, even where there has been role specialisation, household labour has still not been apportioned out to accord with traditional masculinity and femininity.

Quantitative results

A calculation of the average score (where 1 = always me; and 5 = always my partner) of all of the results relating to housework (with the exception of care) generated a figure of 2.88. Those tasks focused more outside of the home (car maintenance, DIY, gardening and grocery shopping) came out slightly lower, with an average of 2.87, whereas those based in the home (cooking, dishwashing, general cleaning, vacuuming, ironing, and laundry) came out higher, at 2.89. However, there was little observable difference between the two types of work. This is important, as Kan and Gershuny (2010) identified the in-home, more routine, tasks as being more associated with women in different-sex couples, given that they have less potential for

adjustment according to work schedule. We might account for the numbers falling slightly on the side of the respondent conducting the tasks on the basis that we are more likely to be aware of the tasks that we conduct ourselves than to keep track of what others are doing. Nonetheless, all of the averages are close to a score of 3, which signifies equal sharing. The result is compatible with a finding that the vast majority ($n = 214$, 72.8%) of participants agreed (on a scale of slightly agree to strongly agree) with a statement that they and their partner share household tasks equally. Similarly, it sits comfortably with a finding that the majority ($n = 204$, 69.4%) disagreed (from slightly disagree to strongly disagree) that most household tasks were done by them.

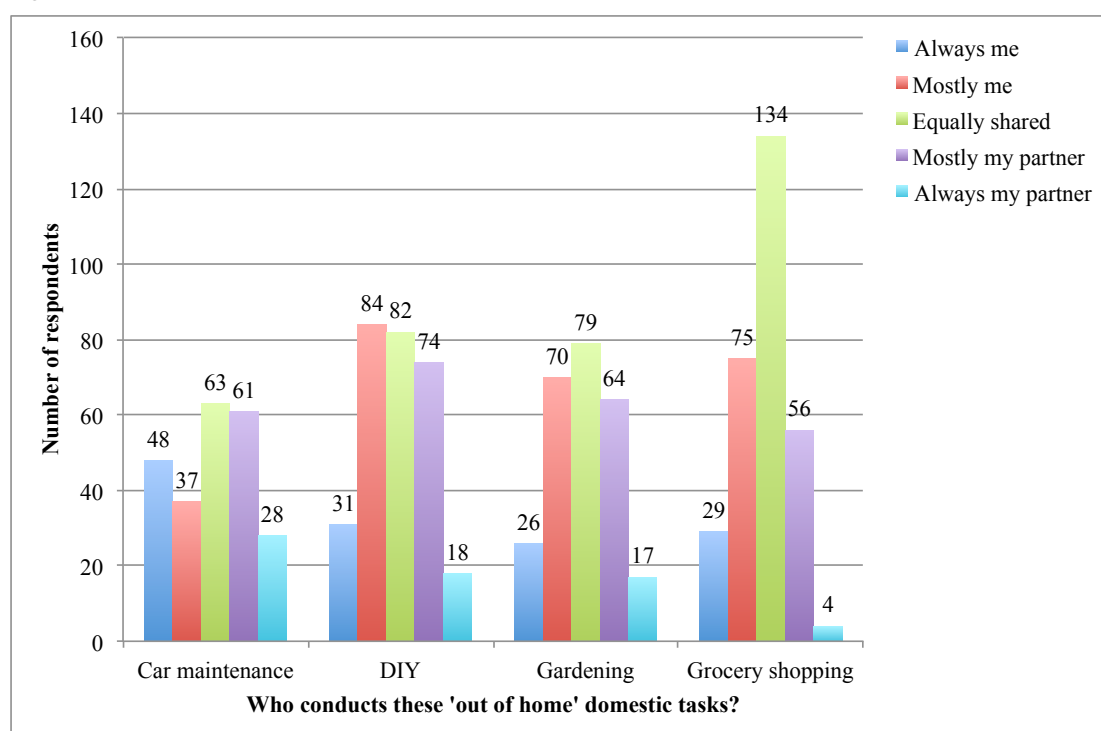
Figure 4.5. Who conducts the 'in home' domestic tasks



As can be seen in figure 4.5, those tasks within the home that received the highest number of responses affirming equal sharing were general cleaning ($n = 135$, 46.4%) and dishwashing ($n = 133$, 44.8%). The 'out of home' task most commonly described in that way was grocery shopping ($n = 134$, 45%) (see figure 4.6). In relation to all three tasks, the combined number of responses for either partner conducting them alone was lower than that for equal sharing. The figures are of particular note

because cleaning and dishwashing have been identified as “routine” housework associated with women’s feminine identities in different-sex couples (DeVault, 1990). Not only this, but findings from the British Household Panel Survey (BHPS) and the BSAS suggest that the statistics for the equal sharing within my sample are higher than those for the UK population as a whole. The BHPS found that 39.7% of respondents to a question about grocery shopping answered that this task was shared (Institute for Social and Economic Research, 2009). Moreover, it reported that 28.3% described the cleaning and vacuuming as being divided equally, whilst the BSAS provided a 29% figure for the equal sharing of cleaning (Scott and Clery, 2013: 128). My own finding relating to vacuuming was that 33.8% ($n = 95$) of participants answered that this work was shared.

Figure 4.6. Who conducts the ‘out of home’ domestic tasks



The result within my sample in terms of the equal sharing of cooking ($n = 99$, 33%) was also greater than those supplied by the BHPS (26.9%) and BSAS (27%), as was the case with laundry. 20.1% of BHPS respondents described laundry as being shared (defining it as including both washing and ironing). Likewise, 20% of BSAS participants said the same, and a stark difference was reported between the two genders (with women conducting 70% of this work (Scott and Clery, 2013: 128)). As

against this, 38% ($n = 112$) of my respondents that answered the relevant question said that laundry (separated off from ironing in my questionnaire) was equally shared. In addition, 31.2% ($n = 79$) said that ironing was apportioned out equally. This finding as to the greater sharing of laundry amongst same-sex couples was similarly observed in Matos's (2015: 4) study of American dual-earner couples (44%, as against 31% for different-sex partners).

With reference to the remaining tasks that the participants were asked about, an arrangement of equal sharing was the most popular answer concerning who performs gardening ($n = 79$, 30.9%) and car maintenance ($n = 63$, 26.6%). Even with respect to DIY, the figure of 28.4% ($n = 82$) for the sharing of this work was much higher than the 10% statistic reported by the BSAS (which found that this labour is usually conducted by men (Scott and Clery, 2013: 128)).

Qualitative explanations

As to how the respondents described the division of domestic tasks in the qualitative portion of the questionnaire, there was evidence of Kurdek's (1993) "equality" and "balance" patterns. The former pattern refers to an arrangement where one party is just as likely as another to conduct housework. The "balance" pattern means that each partner is responsible for an equal number of household tasks, but that their tasks are different (and, in this respect, Ryan-Flood (2009) stressed that a 50/ 50 division of labour does not necessarily mean that both partners participate in every household task). Both patterns might be contrasted with the "segregation pattern", under which one partner does the bulk of housework labour (Kurdek, 1993). This is the pattern that heterosexual couples have traditionally been more likely to adopt (see, for example, Blair and Lichter, 1991).

Turning initially to the "equality" pattern, there were indications of three trends within my results that fall under this umbrella term. Firstly, there was a great deal of use of the language of "togetherness" in relation to housework, suggesting the conduct of the same tasks simultaneously. Most commonly, couples reported cleaning at the same time, and cooking and going grocery shopping with one another. Secondly, a number of respondents discussed taking it in turns to conduct tasks, either

on a daily/ weekly basis, or dividing according to who performed that task on the last occasion. Cooking again featured regularly as something that the partners might alternate, as did dishwashing. Thirdly, some participants reported a fairly ad hoc arrangement to housework, under which the partners both conducted it but according to no particular pre-set division (adopting a “take it as it comes” attitude (R90)). This might be contrasted against the more defined apportionment under the “balanced” approach, or taking chores in turn. Under this more unplanned, informal arrangement, the responses suggested that who conducted the tasks would often be determined by who spotted that they needed doing, or by the person who was the most available at that point. In terms of this time-related explanation, one respondent set out how the division of labour, “depends who is busiest with their work” (R11). With reference to all three arrangements falling under the “equality” pattern, there was crossover, to the extent that there were occasions where it was reported that:

We either do the task together or, more often, take it in turns (R194).

Likewise, participants described a combination of the “equality” and “balance” patterns:

We take turns to do chores and we share according to preference (R115).

This latter description fits particularly well with the ‘working and learning’ dimension of equality of condition, under which there is real choice to be made amongst satisfying occupations (Baker *et al*, 2004).

In relation to the more ‘divide and conquer’ type “balance” pattern, there was some evidence of role specialisation. In many of the respondents’ relationships, housework was apportioned on the basis of personal inclination (as was previously identified by McWhirter and Mattison, 1984; Kurdek, 2007). For instance, it was explained by one participant that:

I hate washing dishes so my partner usually does those, while he hates cooking so I usually do that (R207).

Alternatively (or sometimes additionally), participants answered that tasks were assigned according to, “talent” and “skill”. In this way, they were being conducted by the party to whom they were most suited. As one participant expressed it:

We just do what we are best at (R76).

Crucially, though, even where the apportionment was approached in this way, there was little to suggest that labour was divided out along traditionally gendered lines. For example, one participant described how her partner would do the vacuuming whilst she cleaned, and another explained that the two of them shared the decorating and DIY. The accounts here accord with Cooper’s (2000) notion of equal power, as the respondents were living outside of, and disrupting, the constraints of social positioning dictated by heteronormative family structures (which have allowed some people to generate effects or outcomes that will be denied to others).

A further key feature of the qualitative accounts was that the respondents highlighted a tendency to discuss with their partner the apportionment of household labour. It is through conscious decision-making in this way that same-sex partners distance themselves from prescriptive gender scripts. This element of negotiation was previously observed by Weeks (2007), Barrett (2015), and in Matos’s (2015) study (where communication within same-sex couples was found to be better). It would, as well, seem to fit with notions of equality of power, given that both partners are able to influence household decision-making. Cooper (2004) explains how this type of equality stresses the importance of having greater capacity to shape the world as a social decision-maker (and of undermining organising principles, such as gender, which currently deny this). Baker *et al* (2004) also consider equality of power to be about a more egalitarian, participatory politics, and the extension of democratic principles to all areas of society, particularly the economy and the family. An exception to this element of negotiation within my sample can perhaps be found in the more ad hoc approach, where there were suggestions that, “it just works out that way” (R4), and that the partners, “just do things as needed” (R222). Those descriptions more closely match the responses of Stocks *et al*’s (2007) different-sex partner interviewees concerning how their domestic arrangements were reached. However,

the trend, on the whole, tallies with the broader way in which the respondents' accounts depicted the partners working with, and assisting, one another.

That said, one might also identify hints of individualism. A few respondents described how they and their partner conducted their own ironing and cooking (with the latter being explained on the basis that the partners had different diets). Such an arrangement is more unusual, given that the ironing of, and food provision for, both partners would tend to be dealt with together, albeit perhaps by one partner. The accounts might appear relevant given that, as one respondent clarified:

I would consider [ironing] to be shared equally because we each do our own (R40).

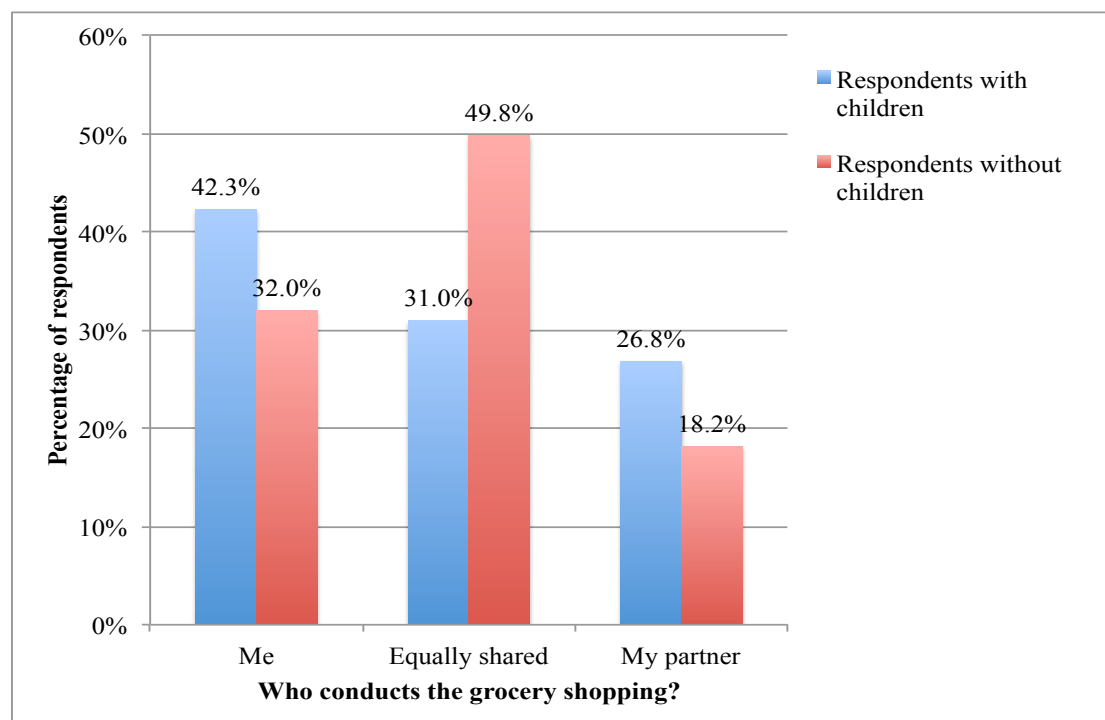
The indication here is that a more nuanced conception of equality may be adopted than a straightforward 50/ 50 split of tasks.

Influences on 'equal' division

For the purpose of investigating whether there were any particular influences on the way that household labour was apportioned, chi-square tests were run against a selection of variables. In this respect, it could not be proved that gender impacted labour division (apart from in relation to laundry ($\chi^2 = 9.785$, $df = 4$, $p = 0.044$)). This is interesting, given that the female respondents ($M = 3.02$, $SD = 1.424$) were more likely to agree ($t = 2.746$, $df = 289$, two-tailed $p = 0.006$) than the males ($M = 3.54$, $SD = 1.524$) with a statement that same-sex couples share household tasks more equally than different-sex couples. It may be that women have a heightened awareness of the societal expectations placed upon them in a different-sex couple (given the ties drawn between traditional femininity and the home). Such a supposition is reinforced by Dunne (1997: 187), who described her lesbian interview respondents as being sensitive to, "circumstances which supported relations of domination". Women may therefore be more conscious of experiencing a lesser burden where they share domestic labour with a partner of the same sex.

On top of this, with respect to the majority of tasks, it could not be proved that the parties' apportionment of domestic work was influenced by the presence or absence of children (with dishwashing being an exception ($\chi^2 = 12.291$, $df = 4$, $p = 0.015$)). This chimes with Patterson's (1995) assertion that lesbian couples maintain a relatively egalitarian division of household responsibilities even under child rearing pressures. Yet, the finding contrasts with Pahl's (1984) observation that the presence of young children produces a segregated pattern of household labour in different-sex couples, and an increased burden for women (and Crompton *et al*'s (2005: 220) suggestion that having a child decreases the likelihood of an egalitarian division of domestic work).

Figure 4.7. Who conducts the grocery shopping by whether or not there are children present in the respondent's household



The tests produced an invalid result for grocery shopping whilst using the original fivefold scale (always me; always my partner), so the responses were recoded into 'me', 'my partner' and 'equally shared', at which point I established a statistically significant relationship ($\chi^2 = 7.798$, $df = 2$, $p = 0.020$). This was that the participants without children were more likely ($n = 112$, 49.8%) to share grocery shopping equally, whereas those with children were more likely to do the grocery shopping

themselves ($n = 30$, 42.3%) (as can be seen in figure 4.7). That is perhaps because supermarket shopping is more straightforward where children are absent. Where there were children present, it additionally appears that such unequal apportionment, where it occurred, entailed a more active choice between the partners. Those without children ($M = 5.09$, $SD = 1.795$) were more likely to disagree ($t = -2.262$, $df = 291$, two-tailed $p = 0.024$) with a statement that a conscious decision had been made as a couple to share household tasks unequally than those with ($M = 4.54$, $SD = 1.811$). That said, this was a difference of degree, as both groups disagreed with the statement.

On the whole, it could not be proved that whether or not the participants were in a legally recognised relationship was of impact on labour division. This finding is of importance, given that previous studies have identified that being married tends to mean less housework for men and more for women (Coltrane, 2000: 1222; Crompton, 2006: 141). The one exception where a significant association was found again related to grocery shopping ($\chi^2 = 12.183$, $df = 4$, $p = 0.016$). This was shared much more equally amongst cohabiting couples ($n = 83$, 53.9%) than it was amongst those in a civil partnership or a marriage ($n = 46$, 35.1%). This finding seems easily reconcilable with the result relating to the presence (or absence) of children, as those respondents in a legally recognised relationship were more likely ($n = 56$, 42.4%) to have children than those who were not ($n = 15$, 9.6%). That this should be the case may be because a civil partnership is required for access to parental status for children conceived with a known donor (Harding, 2011).

Turning to factors such as social class and gross household income, no statistically significant relationships were established concerning the apportionment of housework. The former finding is striking, given that Barnes (2013) argues that gendered inequalities can more easily be avoided amongst those that are middle class (and have security and flexibility in their finances). As to income, it has, in fact, been suggested that the identity of the spouse with the greatest earnings is of most influence. Aldous *et al* (1998: 810) explained that, “usually the husband [...] will have greater power to avoid doing household tasks”. With this borne in mind, tests were run to explore whether there were any associations between whether the partners were of the same occupational status and who the ‘main earner’ was, on the one hand,

and who conducted the various household tasks on the other. Firstly, regarding the partners' occupational statuses, it could not be proved that this impacted domestic division, apart from in relation to grocery shopping, cooking and vacuuming. The nature of the relationship observed ($\chi^2 = 11.750$, $df = 4$, $p = 0.019$) for grocery shopping was that it was more likely ($n = 88$, 48.4%) to be shared where the partners were of the same occupational status than where they were not ($n = 41$, 39%). Similar associations were identified in relation to cooking ($\chi^2 = 10.570$, $df = 4$, $p = 0.032$) and vacuuming ($\chi^2 = 9.598$, $df = 4$, $p = 0.048$). However, the fact that the remaining tasks were not found to be influenced goes some way to counter Carrington's (1999) argument that same-sex partners' apportionment of domestic labour is determined by their relative paid work.

In relation to the 'main earner', the suggestion emerged that an imbalance in earnings between partners did not provide the higher earner with the same power to avoid conducting domestic tasks as has been identified in previous (different-sex) research. This is consistent with Matos's (2015) study, where the relative income of the lesbian and gay partners was not found to determine how they divided household responsibilities (as against the different-sex couples, where it was). The only significant association that I found using the fivefold scale was in the context of vacuuming ($\chi^2 = 25.781$, $df = 8$, $p = 0.001$). The nature of the relationship was that those participants who considered there not to be a 'main earner' within their relationship were more likely ($n = 35$, 49.3%) to say that vacuuming was equally shared (as against 35.1% ($n = 34$) who said that they were the 'main earner' and 21.2% ($n = 22$) who said that their partner was). Moreover, a greater proportion ($n = 49$, 47.1%) who described their partner as the 'main earner' reported that the vacuuming was conducted by them than that this work was conducted by their partner ($n = 33$, 31.7%), and vice versa.

As to general cleaning, statistical tests produced an invalid result when I investigated the influence of the identity of the 'main earner' using the fivefold scale. The responses were recoded into the threefold scale, at which point I established that general cleaning varied significantly by the identity of the 'main earner' ($\chi^2 = 16.209$, $df = 4$, $p = 0.003$). As can be seen in table 4.2, those that answered that they were the 'main earner' were more likely ($n = 33$, 33%) to say that their partner performed

general cleaning duties than those whose partner was the ‘main earner’ ($n = 21$, 19.3%). Contrariwise, those who said that their partner was the ‘main earner’ were more likely ($n = 43$, 39.4%) to answer that they carried out general cleaning duties than that their partner did ($n = 21$, 21%). Additionally, those participants who considered neither partner to be the ‘main earner’ reported the highest amount of sharing ($n = 43$, 58.9%). This corresponds with Harry’s (1984) assertion that egalitarianism emerges where there is only a small income difference between partners. Even so, the description of equal sharing was the most popular across all three scenarios (amounting to 47.5% ($n = 134$) of the overall responses).

Table 4.2. Who conducts the general cleaning by who the ‘main earner’ is in the respondent’s household

		I am the ‘main earner’	My partner is the ‘main earner’	Neither of us is the ‘main earner’	Total
I do the general cleaning	Count	21	43	14	78
	Expected count	27.7	30.1	20.2	
	%	21	39.4	19.2	27.7
The general cleaning is equally shared	Count	46	45	43	134
	Expected count	47.5	51.8	34.7	
	%	46	41.3	58.9	47.5
My partner does the general cleaning	Count	33	21	16	70
	Expected count	24.8	27.1	18.1	
	%	33	19.3	21.9	24.8
N (=100%)		100	109	73	282
		Value	Df	Sig	
Chi-square test		16.209	4	0.003	

The use of household help

A final point of relevance was that a high proportion answered that they employed domestic assistance. 60 participants did so (20.3% of valid responses), as against 12% of Britons as a whole (Churchill, 2011). In response to a subsequent question enabling qualitative expansion, 41 people reported employing a cleaner, alongside 4 seeking assistance with ironing and 5 with gardening. As against this, the BHPS found that 3.1% of cleaning and vacuuming was conducted by paid help, alongside 0.8% of washing and ironing (Institute for Social and Economic Research, 2009). On

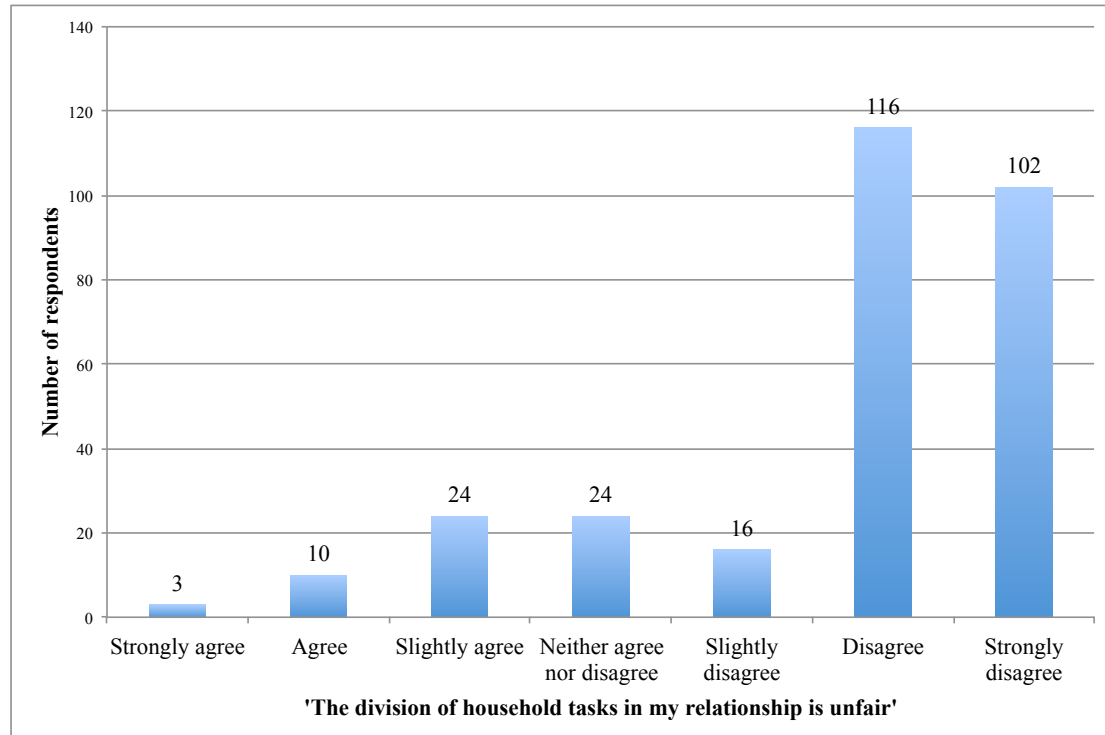
the running of statistical tests to investigate the factors that might influence such an arrangement, it is unsurprising that I found a significant relationship relating to household income ($\chi^2 = 26.117$, $df = 1$, $p = 0.000$). Respondents were more likely ($n = 49$, 33.8%) to call on this kind of assistance where their income fell within the tenth decile (set by the Office for National Statistics, 2013c) than where it fell within the ninth or lower ($n = 7$, 6.6%). This reflects Carrington's (1999) suggestion that wealthier lesbian and gay families will more often purchase domesticity in the marketplace. The result is also consistent with a finding that the participants' social class impacts their likelihood to employ such assistance ($\chi^2 = 12.240$, $df = 1$, $p = 0.000$). Those who considered themselves middle class were much more likely ($n = 51$, 24.9%) to employ domestic help than those identifying as working class ($n = 4$, 5.6%).

Tests run further established a significant association regarding the presence (or absence) of children ($\chi^2 = 17.891$, $df = 1$, $p = 0.000$). Those with children were found to be more likely ($n = 27$, 38%) to employ such support than those without ($n = 33$, 14.8%), which might be explained on a twofold basis: firstly, that those with children are likely to have less time available to undertake such chores; and, secondly, that they are likely to have more domestic work that requires addressing. A corresponding significant relationship was found between whether the partners were in a legally recognised relationship and the employment of household help ($\chi^2 = 4.846$, $df = 1$, $p = 0.028$). Participants who were in such a relationship were more likely ($n = 34$, 26.2%) to employ this kind of assistance than those who were cohabiting ($n = 24$, 15.6%). Interestingly, it could not be proved that resorting to domestic assistance impacted how equally household labour was perceived to be apportioned. That finding works somewhat against Henz's (2010: 150) assertion (albeit in the context of care) that there may be greater sharing of the remainder of the work where external help is sought.

Summary of domestic results

Whilst the law of financial relief has developed around stereotypes of men and women's work,¹⁶ the respondents in my sample reported household arrangements that looked different to that stark dimorphic picture. Their descriptions indicated a more 'equal' approach towards the division of domestic labour, according with previous assertions of lesbian and gay egalitarianism (see, for example, Burns *et al*, 2008; Kurdek, 1993). This was often the case regardless of various factors drawn on to rationalise the heteronormative organisation of intimate relationships. Whilst having a 'main earner' had an impact on the distribution of caring, vacuuming and general cleaning, we might still draw a contrast against different-sex couples. This because women, on the whole, will do most of the domestic work even where they are the 'main earner', thereby bearing a "dual burden" (Harkness, 2008; European Social Survey, 2013). Shifts in the amount of unpaid work that is performed by men have been slow (Scott *et al*, 2010). Consequently, the claim has been made that, "women bring home the bacon, then fry it" (Cooper, 2013).

Figure 4.8. Responses to the statement, "the division of household tasks in my relationship is unfair"



¹⁶ See chapter 2.

In terms of what ‘equality’ means, it is a subjective term which cannot necessarily be reduced to a 50/ 50 split (Weston, 1997; Downing and Goldberg, 2011). Nonetheless, the positioning of the ‘equality’ option at the midpoint of the scales used in my questionnaire might be viewed to suggest more of a 50/ 50 type of arrangement (whether this be by taking tasks in turns, performing tasks together, or otherwise). A perception of the ‘fairness’ of this more evenhanded arrangement was widespread, with 79.3% ($n = 234$) disagreeing (on a scale from slightly disagree to strongly disagree) with a later statement that the division of tasks within their relationship was unfair (as is evident from figure 4.8). The participants’ approach seems to comply with what Piña and Bengtson (1993) label “equity theory”, under which people will see as most ‘fair’ those situations in which they are neither over nor under-benefitted. It is of note that these lesbians and gay men, being less subject to heterosexual norms, should choose to embrace egalitarian ideals in this way. Through not apportioning housework in the traditionally gendered fashion, the respondents’ behaviour holds the potential to interrupt the perpetuation of heteronormative understandings about such labour being ‘women’s work’. Likewise, given the vast proportion of the participants who reported that both they and their partner work full-time, my findings challenge, and hold the potential to transform, the prevailing notion of the financially dominant, money-earning partner. To this end, I shall now explore the participants’ financial arrangements in greater detail.

The conduct of household finances

By way of an initial observation concerning finances, my respondents’ gross household income was, overall, remarkably high. 147 (57.9%) participants fell within the top 10% of the population, having provided a figure greater than £48,496 (the uppermost decile point set by the Office for National Statistics, 2013c). This is by comparison to the 18 (7.2%) respondents that fell within the bottom 50%. The results might seem, at least *prima facie*, to correspond with the image of lesbian and gay luxury and wealth propagated by the religious right (Gluckman and Reed, 1997). This image has frequently been used as a “weapon” to rationalise the marginalisation of LGBT people, and particularly gay men (Friess, 1998; Maulbeck, 2013). My findings do, however, go some way to counter what has been argued in that respect. It has been suggested that same-sex couples are richer, given that they do not tend to

have children (Flandez, 2013). Nonetheless, at least in terms of income, no significant association was observed within my data relating to the presence (or absence) of children. Furthermore, I did not observe gender to be of influence. That said, my findings cannot be considered representative, given the bias of my sample in terms of educational qualifications.

A second point to bear in mind is that, when asked whether there was a ‘main earner’ in their relationship, the majority of respondents ($n = 215$, 73.6%) did consider there to be such a party. To that extent, it seems that there was somewhat of an imbalance in earnings between the partners, even if not in occupational status. This is reflected in the participants’ responses to a statement that they and their partner share equally in money earning. A total of 46.8% ($n = 137$) agreed with this (on a scale from slightly agree to strongly agree), whilst 47.8% ($n = 140$) disagreed (from slightly disagree to strongly disagree). Even so, where the respondents answered that neither they nor their partner were the ‘main earner’, they were subsequently enabled to provide details of their arrangements, and the language of “equality”, “sameness” and “similarity” abounded. In addition, nine participants described how the position had varied throughout the relationship, signifying there to be no constant ‘breadwinner’ in their household.

It is within this context that I look more specifically at the financial behaviour of my questionnaire respondents. I consider the ways in which their money was held, before moving on to examine the ways in which they described the performance of financial tasks. Whilst patterns of dependency have typified patriarchal marriage, I argue that there was a lesser use of joint accounts, and greater financial independence, amongst my sample than has been the case amongst different-sex partners. In addition, as against heteronormative notions associating men with financial dominance, there were widespread accounts of the sharing of bill paying and financial decision-making. This, once more, supports the notion of there being greater equality of power, which may be transformative to the extent that Cooper (2000) views this type of equality as undoing relations of domination and hierarchy.

The use of joint/ separate accounts

In terms of joint accounts, the majority of participants (158, 55.2%) answered that they and their partner had such an account. That said, just 9.8% ($n = 28$) had a joint account alone, without also having the use of separate accounts (as against different-sex couples, where this is more common (Vogler *et al*, 2006)). Statistical tests identified gender to be of influence in this respect ($\chi^2 = 8.375$, $df = 1$, $p = 0.004$), with women being more likely ($n = 123$, 60.9%) to have a joint account than men ($n = 34$, 42%). This is as against Clarke *et al*'s (2005) assertion that it is especially true that lesbian couples keep their finances more separate than heterosexual partners. Yet, the result seems compatible with another association found ($\chi^2 = 4.875$, $df = 1$, $p = 0.027$), in that those couples who had children were more likely ($n = 45$, 67.2%) to have a joint account than those who did not ($n = 113$, 51.8%). Burgoyne and Kirchler (2008: 144) identified that starting a family may prompt financial merging (because caring responsibilities can cause greater financial dependence (Dunne, 1999)), and women accounted for a vast proportion of those with children in my sample ($n = 65$, 92.9%).

The level of gross household income was also found to influence whether or not the respondent had a joint account with their partner ($\chi^2 = 19.802$, $df = 1$, $p = 0.000$). The relationship there was that those reporting their income as falling within the uppermost decile were more likely ($n = 99$, 69.7%) to have such an account than those reporting it to be lower ($n = 43$, 41.3%). This could be because those who are wealthier may be more willing to undergo credit checks, or may be more likely to pass such checks, than those with lesser funds. It would seem, additionally, to tie in with an association identified in relation to social class ($\chi^2 = 18.108$, $df = 1$, $p = 0.000$). The nature of this was that middle class participants were more likely ($n = 126$, 62.7%) to have a joint account than those who were working class ($n = 22$, 32.8%).

A final factor of impact in relation to joint accounts was whether or not the partners were in a legally recognised relationship ($\chi^2 = 37.106$, $df = 1$, $p = 0.000$). Those participants who were married or in a civil partnership were more likely ($n = 96$, 76.2%) to have such an account than those who were cohabiting ($n = 60$, 39.7%) (and Elizabeth (2001) similarly observed a trend towards more separate finances amongst

cohabiting couples). This supports Heaphy *et al*'s (2013: 14) suggestion that, "entering into a civil partnership did seem to be a platform for combining aspects of the couples' finances". It might be that those choosing to enter into a formalised relationship may open a joint account as a symbolic gesture of their togetherness. Indeed, international studies on different-sex couples have also identified that married couples are more likely than those cohabiting to operate as a single economic unit (see, for example, Heimdal and Houseknecht, 2003). Then again, only 17.5% ($n = 22$) of those within such a relationship had a joint account alone, as against nearly half of UK heterosexual married couples having previously been found to hold nearly all of their household income in a joint account (Laurie and Rose, 1994). There seems to have been a greater desire, amongst my sample, to keep at least some of their finances separate from their partner's.

These results correspond with Burgoyne *et al*'s (2011) assertion that same-sex couples merge their finances less than is typical of heterosexual married couples. This is relevant, as evidence has shown that joint finances often conceal unequal access, providing a cover for one partner's spending to be privileged (Nyman and Dema, 2007). That said, there is a lack of recent larger scale data on how different-sex couples hold their finances, and there have been suggestions of a wider move towards separateness in couple finances (Lewis, 2001; Pahl, 2008). Alliance and Leicester (2004) reported that 34% of their sample of 1001 (married and cohabiting) British couples managed their finances through a joint account alone. More recently, 27.5% of valid responses to a question posed as part of Understanding Society's Innovation Panel reported 'joint only' assets (Institute for Social and Economic Research, 2013). However, those particular results grouped together not only deposit accounts and savings (with Ashby and Burgoyne (2008: 466) claiming the latter to be more, "subject to individual decision-making" than earnings), but also a variety of investments. Kan and Laurie (2010) identified a downward trend in the joint holding of investments (and debts) with reference to BHPS respondents.

The findings concerning the relative financial independence of my sample were congruous with the responses obtained to a statement that the participant and their partner were financially independent. A total of 54.4% ($n = 160$) agreed with this (on a scale from slightly agree to strongly agree), whilst only 32.2% ($n = 95$) disagreed

(from slightly disagree to strongly disagree). This sits well with Heaphy *et al* (2013) and Dunne's (1999) earlier observations as to the relative rarity of same-sex partners being financially dependent on one another. That said, when statistical tests were run, it was identified that those in a relationship where both partners were working full-time ($M = 3.10$, $SD = 1.804$) were more likely to agree ($t = -3.497$, $df = 267.783$, two-tailed $p = 0.001$) with the statement than those who were not ($M = 3.89$, $SD = 2.012$). This is presumably on the basis that each of the partners would be more able to support themselves than if this were not the case. Furthermore, and compatibly with the results pertaining to joint accounts, it was found that those without children ($M = 3.22$, $SD = 1.907$) were more likely to agree ($t = 3.974$, $df = 291$, two-tailed $p = 0.000$) that they and their partner were financially independent than those with ($M = 4.24$, $SD = 1.821$). This is reflective of Fleming's (1997) contention that the arrival of children often leads to changes in money arrangements. Similarly, those respondents who were cohabiting ($M = 3.11$, $SD = 1.800$) were more likely to agree ($t = 3.659$, $df = 283$, two-tailed $p = 0.000$) than those who were in a civil partnership or married ($M = 3.93$, $SD = 1.985$).

In terms of this notion of cohabiting couples keeping their financial lives more distinct from one another, a significant association was found between relationship status and the retention of separate accounts ($\chi^2 = 13.226$, $df = 1$, $p = 0.000$). The nature of the relationship was that those who were cohabiting were more likely ($n = 145$, 96%) to have such accounts than those in a civil partnership or a marriage ($n = 107$, 82.9%). That finding concurs with Singh and Lindsay's (1996) assertion (albeit in the Australian heterosexual context) that, for cohabiting couples, money tends to be more "individual" and less "nebulous". Even so, the fact that the figures were so high in both categories corresponds with the idea of separate financial lives, and of an "ethic of co-independence" being a common feature of same-sex relationships (Weeks *et al*, 2001: 100). In this respect, it is notable that 44.2% ($n = 126$) of the participants had separate accounts alone. This is as against the 28% of couples found by Alliance and Leicester (2004) to have maintained totally separate financial arrangements. There were further clear descriptions, within the qualitative accounts, of financial independence:

We have separate bank accounts and control our own money (R235).

We both have control over our own income. This gives us both a reasonable amount of financial independence to spend money when and how we want (R273).

The former respondent, interestingly, still perceived bill paying as being ‘equally shared’ within her relationship, and it is to such discussion that we will now turn.

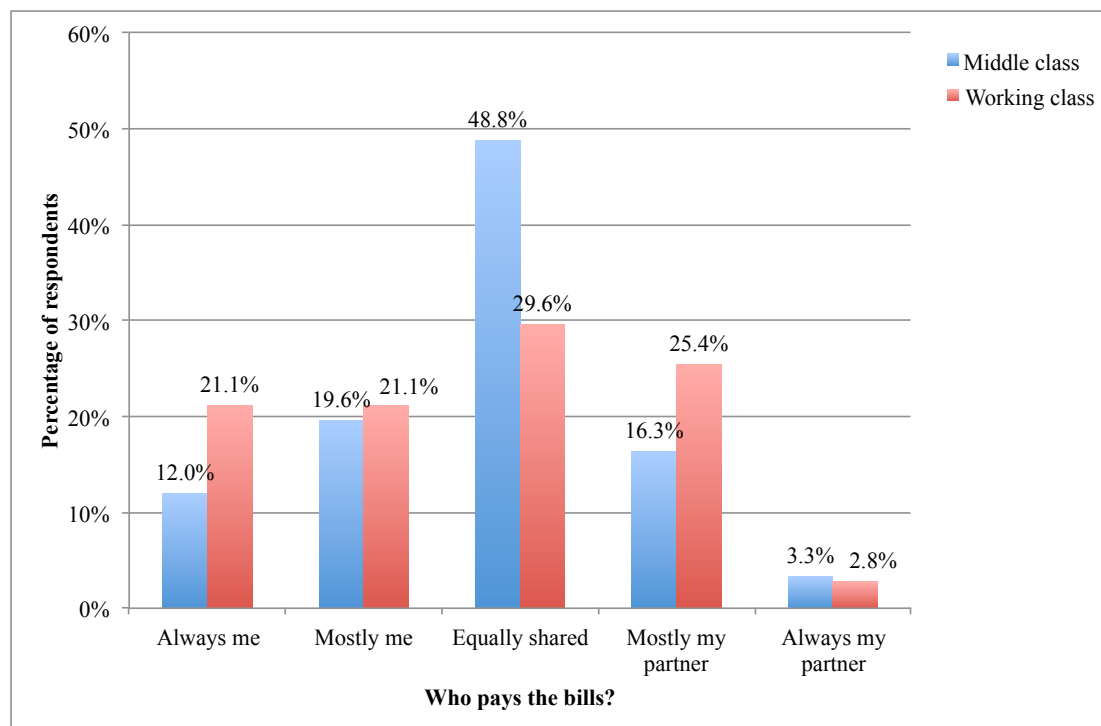
The performance of financial tasks

As to their financial behaviour, 33.9% ($n = 101$) of the participants considered that they paid the bills, and 22.1% ($n = 66$) said that that their partner did. This outcome clearly weighed towards one or other of the partners performing this task, as opposed to it being shared (with that description accounting for the remaining 44% ($n = 131$)). The figure for equal sharing fell below the 49% finding of Burgoyne *et al* (2011: 699) relating to bill paying in same-sex couples. However, it was higher than the 35.9% statistic provided by Skogrand *et al* (2011: 30) for neither spouse taking charge of this task in different-sex relationships, as well as the 31% figure set out by Pahl (1989: 81). Pahl (1989: 81) reported that 40% of bills were paid by the husband, which fits with Solomon *et al*’s (2005: 562) assertion that, “men pay for more items”. That said, Pahl (1989) also recognised that, where a husband controls finances, he will usually “delegate” parts of money management to his wife, and Dema-Moreno (2009) identified that those tasks can become an extension of the household chores. In this respect, we might make a distinction between the day-to-day expenditure and the more gendered “strategic” control over money (as does Vogler, 1998). In fact, a recent report by Lloyds TSB (2012) suggested that women aged under 45 are now handling most (54%) of everyday financial management, such as bill payment.

Regarding bill paying in my sample, no association could be proved in relation to gender, and neither could it be established with reference to the level of gross household income. The latter is relevant, given that women have been identified as taking greater control over bill paying in low-income households (Rake and Jayatilaka, 2002; Goode *et al*, 1998). There was, though, a statistically significant relationship found concerning the identity of the ‘main earner’ ($\chi^2 = 47.185$, $df = 8$, p

= 0.000). This was that those who did not classify either partner in such a way were more likely ($n = 41$, 54.7%) to share bill paying equally (as against 48.2% ($n = 53$) of those whose partner was the ‘main earner’, and 31.7% ($n = 33$) who answered that they were). Another relationship was identified concerning social class ($\chi^2 = 10.038$, $df = 4$, $p = 0.040$), this being that the higher the participants’ class, the more likely they were to share bill paying. As can be seen in figure 4.9, whilst 48.8% ($n = 102$) of middle class respondents answered that bill paying was apportioned in this way, the same was true of only 29.6% ($n = 21$) of working class participants. That appears to tie in with my above findings relating to joint accounts.

Figure 4.9. Who pays the bills by the respondent’s social class



Participants were subsequently asked to describe how they and their partner shared household income and expenditure. Four common descriptions emerged from the qualitative accounts, these being applicable both to the lesbian and gay respondents. Firstly, the language of “50/ 50”, and “splitting” in “half” featured strongly, with one participant describing how:

We calculated monthly debits and arranged to settle them half each (R131).

Similarly, the terminology of “equal sharing” was once more relied on heavily, with respondents clarifying that they meant “straight down the middle” (R251). Secondly, by way of an alternative approach, respondents described dividing the bills proportionately between them, based on their earnings (a trend that was identified by Burns *et al*, 2008):

[We] pay [a] relative percentage of income as outgoings, e.g. I earn 2/ 5 of income and pay 2/ 5 of outcome (R3).

She makes 55% of our gross, and I make 45%, and we split our shared expenses (food, rent, car payments, etc.) in a 55: 45 split (R233).

Regarding these first two methods of bill division, 86 respondents referred to payments having been made through a joint account. The indication was that, where there was a joint account, household bills would tend to be paid out of that (with any separate accounts being used for personal expenditure, savings, and the holding of family inheritance money). Whilst some set out how, “all income goes to a joint account” (R188), the majority said that:

We both pay an agreed amount into the shared account to cover monthly bills, mortgage, etc. (R232).

A third system of bill payment, described by 14 participants, was that one partner took charge of certain expenses, and the other was responsible for others (it is acknowledged that this might also be set up to fit within either a 50/ 50 or a proportional type of arrangement). For example, it was stated that:

She has all of the fixed costs (mortgage, water, electric, TV license and gas), I do all of the flexible costs (phone, broadband, food, petrol, car) (R68).

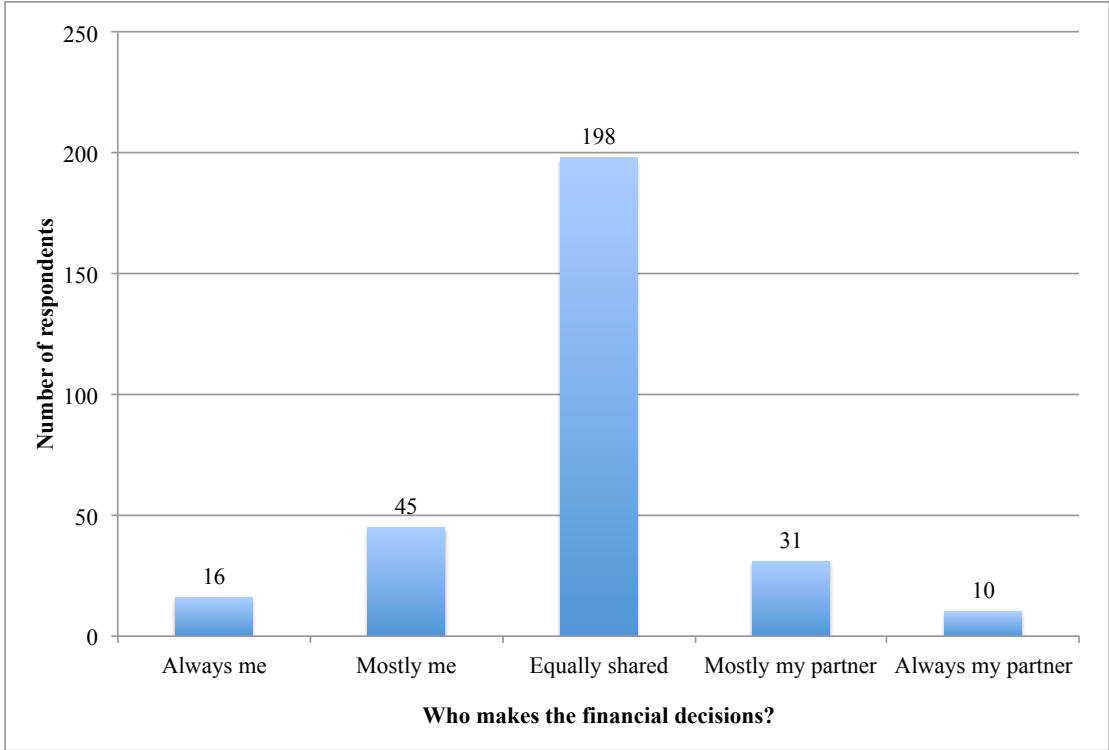
We have two of the four utilities each and we have a large payment each going out of our accounts – mine is the car and associated costs, his is the mortgage (R135).

Such behaviour, tending to work through the use of separate bank accounts, evinces a form of what Pahl (1983) terms, ‘independent management’. Burgoyne (2004: 166) previously suggested that less than 2% of married different-sex couples use a form of ‘independent management’. A fourth, and additional, arrangement was of one partner paying for the bills, and the other making a transfer to that partner. In one answer, for example, it was explained how:

Usually, I pay and, at the end of the month, my partner transfers her share (R20).

Finally, although only in two instances, the partners had taken it in turns to pay for their expenses.

Figure 4.10. Who makes the financial decisions



The respondents were further questioned as to who makes the financial decisions within their relationship (a key aspect of what Edwards (1981) terms financial “control”). I envisaged that they would have in mind the purchase of larger items (such as a television or a car), or decisions relating to the investment of money, although I appreciate that participants may have interpreted this question in different

ways. As can be seen in figure 4.10, of those that answered the question, 66% ($n = 198$) said that they and their partner made such decisions equally, with only 20.3% ($n = 61$) suggesting that financial decisions were mostly or always conducted by them, and 13.6% ($n = 41$) that they were made by their partner. A contrast might be drawn between this result and Pahl's (1989) finding that men tend to have a greater say as to how money will be used in different-sex relationships. There, it was observed that the husbands were the dominant decision-making partner in 44% of the couples interviewed, by comparison to 37% making such decisions equally (Pahl, 1989: 173). That said, there have been suggestions of younger women now taking charge of the majority (52%) of choices relating to long-term financial planning (Lloyds TSB, 2012). Statistical tests were again run to investigate which factors might be impacting my respondents' behaviour in this respect, and significant associations were likewise identified relating to social class ($\chi^2 = 9.518$, $df = 4$, $p = 0.049$) and to the identity of the 'main earner' ($\chi^2 = 41.854$, $df = 4$, $p = 0.000$). As to the former, the relationship was that respondents who viewed themselves to be middle class were more likely ($n = 147$, 70.3%) to describe the equal sharing of financial decisions than those considering themselves working class ($n = 38$, 53.5%).

With respect to the identity of the 'main earner', the association was established upon me having subsequently recoded the data into a threefold scale (me; my partner). The nature of the relationship was that respondents were more likely ($n = 59$, 76.6%) to share this task where there was no 'main earner' (as against 70% ($n = 77$) where the participant's partner was the 'main earner', and 53.8% ($n = 56$) where they were). Moreover, a greater number of respondents ($n = 40$, 38.5%) that answered that they were the 'main earner' said that they made the financial decisions than we might expect were there no difference between the categories, and fewer ($n = 8$, 7.7%) responded that their partners made these decisions (and vice versa). What this indicates is that, where one partner earns more than another, that partner is more likely to make the financial decisions. Therefore, there is some evidence of the "patterns of dominance that cohere around the role and status afforded the higher earner", even in same-sex couples (Burns *et al*, 2008: 499). The pattern hints at Blood and Wolfe's (1960: 29) "resource theory" of power, under which the balance of power may be determined by, "the comparative resourcefulness of the two partners" (an observation also made by Rowlingson and Joseph, 2010). Yet, contrary to that

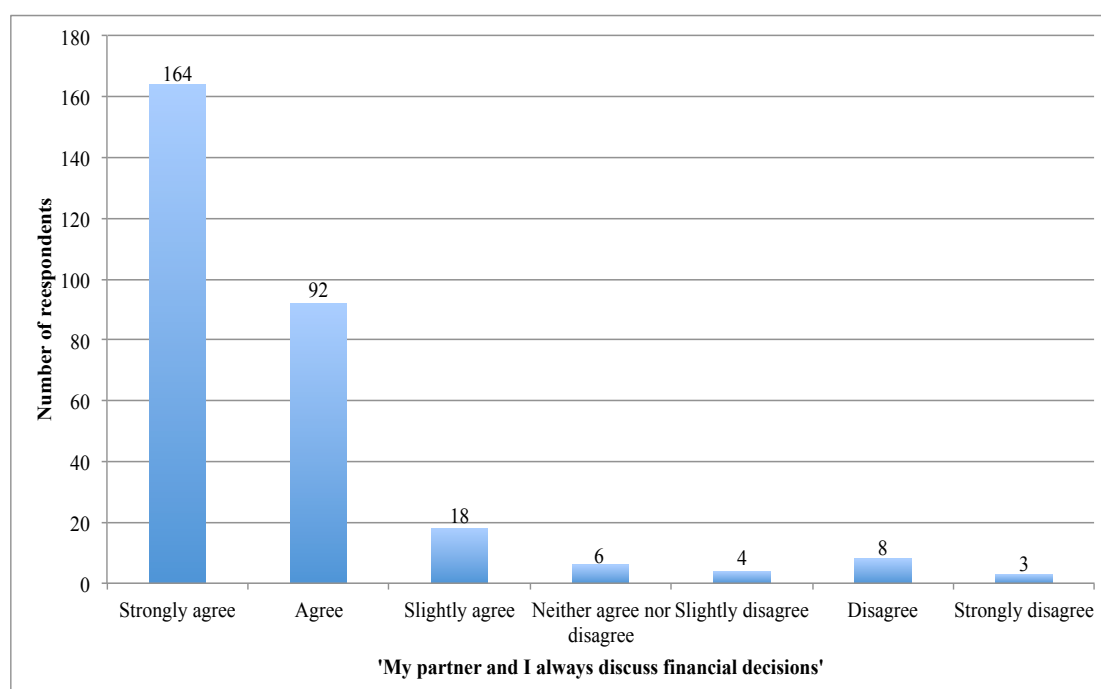
theory, female ‘breadwinning’ has not necessarily meant control over household income in different-sex couples (Sonnenberg, 2008).

In the participants’ descriptive accounts, a stress was placed on how:

We [...] would not make an extravagant purchase without talking to [one another] (R40).

This accords with responses to a later statement that they and their partner always discussed major financial decisions. As can be seen in figure 4.11, the majority of respondents ($n = 164$, 55.6%) strongly agreed with this statement, with just 15 (5.1%) disagreeing (from slightly disagree to strongly disagree). This finding again sits well with the democracy and cooperation that characterises Baker *et al*’s (2004) equality of power. Those with children living in their household ($M = 1.52$, $SD = 0.876$) were more likely to agree ($t = -2.124$, $df = 172.125$, two-tailed $p = 0.035$) that they and their partner engaged in such discussion than those without ($M = 1.81$, $SD = 1.278$). Similarly, those in a legally recognised relationship ($M = 1.54$, $SD = 1.040$) were more likely to agree ($t = -2.468$, $df = 284$, two-tailed $p = 0.014$) that they and their partner discussed such decisions than those cohabiting ($M = 1.89$, $SD = 1.302$).

Figure 4.11. Responses to the statement, “my partner and I always discuss financial decisions”



Tying the various threads together in relation to the respondents' financial arrangements, it seems that, in the absence of gendered 'scripts' as to how they 'should' behave, a position of relative independence has been adopted. This is evinced by the wide retention of separate accounts and the lesser use of joint accounts, by comparison to existing data on different-sex couples. The results suggest that models of heterosexual behaviour such as money sharing may not necessarily be reflective of the lived experiences of same-sex couples. Furthermore, there was a relative absence of financially dominant behaviour by one partner in terms of the family finances (in contrast to what has tended to occur within different-sex relationships), indicating greater equality of power (Cooper, 2000). Participants described bill paying and financial decision-making as being conducted more 'equally', with the average score for the two tasks amounting to 2.85. This figure, whilst weighing slightly more towards the respondents' side than the figure obtained for housework, is still close to the value of 3 (amounting to equal division). Such results appear, once again, to work against heteronormative suppositions of the male 'breadwinning' versus female 'homemaking' scenario that forms the basis of our current regime for financial remedy, raising the possibility of transformation.

Conclusion

The law of financial relief seems to assume a level of homogeneity amongst its subjects.¹⁷ However, my findings signal that, in terms of how household tasks and financial responsibilities are divided, same-sex partners may live in an altogether more 'equal' and balanced manner than different-sex couples. Being shared, negotiated, discussed and chosen by the partners on a more level 'playing field', rather than dictated by gendered restrictions and constraints, the participants' roles evince a higher level of equality of working and learning, and of power (as conceived of by Cooper (2000) and Baker *et al* (2004)). This being the case, the property rules that have been made available to same-sex partners on relationship dissolution may not be suited to these relationships (Leckey, 2013). The different ways in which the relationships have been conducted, as discussed in this chapter, indicate that we need

¹⁷ As was demonstrated in chapter 2.

to think again about how to go about implementing LGBT ‘equality’, as against adopting a straightforward focus on formal equality.

More broadly (and in helping to answer my first research question), I assert that the results set out in this chapter help to raise new challenges and ways of thinking about what gender means in relationships, so as to bring about a shift in our conceptual understandings. This is particularly the case given the contention made by, for instance, Heaphy *et al* (2013) that developments in heterosexual and same-sex relationships can be “intrinsically interlinked”. My findings suggest, as has previously been argued by Hunter (1991), that lesbian and gay partners hold the capacity to expose and denaturalise the historical construction of gender that marriage centres around. On the basis of the notion that gender is something that people do, the results reveal the ability of subsisting same-sex couples to ‘undo’ gender difference. The predominant focus of this particular project is, of course, on what happens when lesbian and gay couples come to ‘law’, and the knock-on effect of them doing so could potentially be to enable law to get past inherited notions of identity (as the facts before the legal actors will no longer replicate heteronormativity). This would open up new possibilities for the law to consider the multiplicity of its subjects, and to achieve greater equality of respect and recognition (under which differences are celebrated (Baker, 2001)). I will move on to consider the degree to which this potential is being realised in the three chapters to follow, where I analyse interview data obtained from practising family solicitors and clients.

Chapter 5- The making and breaking of civil partnerships

The main purpose of this chapter is to introduce the interview participants and to interrogate the clients' accounts of entering into civil partnerships, alongside the reasoning behind their relationships breaking down (and the solicitors' perceptions of the same). In respect of civil partnership formation, I return to some of the reasons for seeking formalised relationships identified in chapter 1. I argue that the clients' accounts drew on discourses of romance and recognition, although more practical, rights-based, explanations featured most frequently. This may be because, as was highlighted by Richman (2014: xix), "almost all of the [...] political maneuvering to gain the right to same-sex marriage was framed as an issue of equal rights, and included a refrain about the [...] legal and financial benefits [that had been] denied" to couples unable to marry. I then move on to discuss the causes of dissolution. Both the client and solicitor accounts stressed a desire for sameness of treatment in terms of the possibility of petitioning on the basis of adultery. In contrast, I observe that the legislative framework positions gay and lesbian couples outside of, and 'other' to, (traditionally heterosexual) monogamy, due to cultural stereotypes about their sexual relationships. There were indications within the client interviews, though, in favour of rethinking the ways in which we conceive of adultery, moving away from the common law's focus on an archaic heterosexual definition.

Why opt for civil partnership?

In this section, I consider the motivations described by my interviewees for embarking on civil partnership, and test their discourse against the existing academic arguments. I make a distinction between those explanations centring around "the ideal of marriage for love" and those that were more practical (Bourassa, 2004: 61). Pragmatic rationales featured most commonly amongst the partners' explanations, which is interesting given that only three of the 39 different-sex partners interviewed in Eekelaar's (2007) study reported having married for "pragmatic ends". The lack of importance placed on 'love' amongst the clients might appear to carry potential for transformation, given the link made by Rich (1983) between idealised romance and naturalised gender roles and domestic subordination.

On the other hand, as was set out in chapter 1, rights-based reasoning can be criticised for entailing that lesbians and gay men seek inclusion into institutions rooted in heteronormativity. In fact, I observe a relative lack of desire for social and legal recognition through civil partnership, which may seem striking given the disparities found between same and different-sex partners in chapter 4. Not only this but, in the context of a broader stress on formal equality, there was some use by the clients of the terminology of ‘sameness’ to marriage, and of identical language. Notably, the solicitors rationalised the actions of same-sex partners on heteronormative terms to a greater extent, and this assists in beginning to answer my second research question (marking the start of the wider discourse of formal equality discussed in chapters 6 and 7). There also seemed to be a common lack of intention amongst the clients to take on, through civil partnership, the same financial obligations as attach to marriage. This leads to questions as to the appropriateness of applying an identical approach to financial relief.

Romance driven?

Turning initially to the more romantic reasons that can lie behind civil partnership, consider the accounts of Bill and Heather:

I thought, ‘oh, we’re good... you know, if we’ve stood... we’ve been through all of this [...] we’re meant for each other’, and that was my thing, and I thought, ‘let’s make it... let’s make it official’ [...] Ever since civil partnerships came about, 2005, he was, you know, every now and again he would say about putting a ring on my finger, and all of this sort of thing [...] To me, it was a formal commitment for life, recognised in law, for me to be with that person (Bill).

It’s ultimately about two people who love each other, that want to spend their lives together, umm, committing to a relationship (Heather).

These explanations evoke the sentiment of “forever” that “characterises traditional ideas of romantic love” (Donovan *et al*, 1999: 695). Peel and Harding (2004: 591) are

critical of such discourse, contending that it is “awash with heterosexuality”. Even so, it is perhaps to be predicted that at least some of the clients should have spoken in these terms, given that lesbians and gay men are, “socialized within the dominant heteronormative discourses of romantic love” (Green, 2010: 428).

From a slightly different perspective, Edward (the youngest client in my sample) resorted to the “rituals of heterosexual romance” in describing the day that he had entered into his civil partnership (Peel and Harding, 2004: 591):

We had, umm, a registry office ceremony, followed by a, sort of, family-based lunch, followed by, umm, a wedding... so, a Church of England blessing, and we had about 200 people at that [...] and that was a big commitment to both of us. In fact, in many ways, that service and the public nature of that was almost bigger than the private ceremony, and I think that we both felt that that gave such a strong message to so many people about the things that we believed, and how proud we were to have the whole thing (Edward).

The client hinted at having used the occasion as a way of achieving social acknowledgment from, for instance, families of origin (and a desire to attain this has previously been cited as important by Barker (2012)).

Seven of the solicitors repeated the partners’ romantic sentiment, placing even stronger emphasis on it. It was particularly evident in the narrative of Bill’s solicitor, Mr. Kennedy (who was working on his second civil partnership matter to date). This might be viewed in two ways: firstly, that he was simply reflecting the feelings that his client had expressed about his relationship; or secondly, that he and the client had recently discussed presenting the case in such (heteronormative) terms at the impending court proceedings. In any event, when asked why he considered that Bill had opted to formalise the relationship, Mr. Kennedy highlighted that:

There was clearly no element of him thinking, ‘I’m entering into this civil partnership as a way of regulating my relationship with my partner’. It was his way of showing that he was committed and that he loved his partner (Mr. Kennedy).

The solicitor made the assertion that lesbians and gay men enter into civil partnerships to show commitment, and that idea was expressed more widely. For instance, it was stated that:

They're leading with their heart [...] Emotional stability, emotional security, and knowing that you are saying, 'we're going to stay together'. I think that that's why they do it (Ms Irvine).

It is almost showing a commitment to each other and showing that you intend to- as with marriage- [...] be bound together as one unit. So, I think that it's [...] wanting to show that you love each other and, actually, you want to be committed, legally as well as emotionally (Ms Main).

The fact that Ms Main stresses sameness between marriage and civil partnership indicates that heterosexuality remains the unspoken norm against which people are measured (Herman, 1994). The drawing of parallels between same and different-sex couples notably featured in a number of other solicitor accounts as to why people enter into civil partnerships, including those of Ms Boyce (who had conducted one dissolution matter and dealt with a number of enquiries) and Mr. Arnold (who had conducted 10):

I would imagine that it is, you know, really similar reasons to the reasons that people get married. You know, this wish to sort of show everybody, you know, 'we are now this couple who are doing this', and having some stability, you know... an expression of love [...] and [they] think that it is a romantic thing to do, probably (Ms Boyce).

Mr. Arnold: I think that gay couples marry for the same reasons as straight couples, it's all of that soppy sentimental stuff, which really surprised me actually. I mean, when civil partnership first came out I was, sort of, thinking, oh, you know, 'gay couples, [...] they'll go into it with their eyes open...'

Interviewer: Not so much?

Mr. Arnold: No [laughs].

The practitioners' narratives chime with arguments made in favour of same-sex marriage in the recent Parliamentary debates, in which parliamentarians emphasised that marriage was about 'love' (Harding, 2015).

Conversely, two of the solicitors did recognise a difference in attitude amongst lesbians and gay men towards formalised relationships:

I think that perhaps the, sort of, pragmatic, practical issues... same-sex partners were more alive to them. Whereas, you know, the dream of heterosexual marriage, you know, it's rose tinted spectacles, 'this is it' (Mr. Derrick).

I've got friends who are doing it and don't want anyone to know, because you didn't become a feminist to get married, and you certainly didn't become a bloody lesbian [to do so] (Ms Field).

Whilst Ms Field (who had had the most experience of these matters in my sample) reported older lesbians as rejecting the potentially romantic aspect of civil partnerships, she did not consider this to be true of the younger generation. She viewed that marriage is fashionable, and felt that young lesbians and gay men would wish to formalise their relationships to 'keep up' with their heterosexual contemporaries.

Amongst the clients that I interviewed, however, it was not only the older lesbian feminists that eschewed the heteronormative idealising of formalised relationships. Debbie, who was in her forties, set out how:

I said to her, 'I am not marrying you because I need to show you how much I love you' [...] I didn't make any bones about, you know, saying that it was a love thing. 'I think that [from] the fact that I've been with you for this amount of years [...] you should know that anyway' (Debbie).

It is striking that Debbie should reject the notion of romance whilst, at the same time, drawing on the traditional language of ‘marriage’. In this way, in just one sentence, she indicated both elements of assimilation into, and of resistance against, the heteronorm. The denial of romance may be surprising, seemingly working against Solomon *et al*’s (2005: 565) finding that a majority (93.7%) of their American participants cited ‘love’ as the reason behind their civil union. That said, the participants in that study were still in their formalised relationship, and the same is true of Heaphy *et al*’s (2013: 13) respondents (in their early twenties and thirties) who reported that, “decisions to marry were most often cast in the language of love”. It may be the case that people whose relationships have broken down, such as my interview participants, may not be so keen on the ‘love’ discourse. On top of this, Clarke *et al* (2007) observed a minimal emphasis on such reasoning amongst their long-term same-sex partner participants in the context of a broader study focusing on finances. Their suggestion was that this focus may have directed concentration towards material concerns, and the same point might be made with respect to my own project. Indeed, Debbie ultimately set out how her civil partnership had been embarked on for “practical reasons”, and such factors were cited more widely across the client accounts. This was occasionally in conjunction with romantic discourse, revealing the “multilayered experience” of formalising relationships (Richman, 2014). I will proceed to examine these rationales, and especially those centring around rights rhetoric, in greater detail.

Rights driven?

That the partners should place greater weight on the pragmatic motivations for entering into a civil partnership may seem transformative, deviating from the heteronormative romantic ‘ideal’. The rationalising notably deviates in this way because its focus is on protecting partners at the end of a relationship due to illness or death, rather than on the continuing nature of the partnership. Even so, there are still some features that resonate with hegemonic notions of the family. This is particularly the case in terms of the significance placed by a number of clients on ‘kinship’, and on the desire for healthcare workers to acknowledge their partner, which resonates with traditional concepts of familial care and responsibility. The participants’ responses echo a previously employed pro-marriage argument focusing on the

injustice of one partner in LGBT couples being denied access to the other during a medical emergency, and being denied the right to make decisions on their partner's behalf (Polikoff, 2008; Barker, 2012). The issue of medical treatment was also a strategy employed by Stonewall (2004) and, once again, by Members of Parliament during the debates that preceded the 2004 Act. For instance, David Borrow (HC Hansard, 12 October 2004: col. 210), MP for South Ribble, referred to the, "well-documented cases of the partners of people who have died or become ill being completely excluded from consideration". In fact, there is no law in England and Wales governing who can visit a person in hospital, and nobody has the right to consent to another adult's medical treatment, meaning that this problem is more social than legal (Auchmuty, 2004). Nevertheless, several of the clients expressed their concern:

In the event that something terrible were to happen, I would want my wishes to be carried out, i.e. pull the plug, as harsh as that might sound. The person who should make that decision should be my partner (Anthony).

If something, umm, had rendered either of us, umm, in hospital, we knew that neither of us would be treated as next of kin. And, that was something that neither of us could tolerate, because although we now have very good relationships with parents and things, umm, it wasn't appropriate in our relationship for those to be the main people who had a say (Jennifer).

Dickens *et al* (2009) identified a similar emphasis in their earlier study on the impact of civil partnership on the lives of same-sex couples, whilst Thomas (2012: 212) found that his same-sex partner interviewees, "expressed a kind of vulnerability" around next of kin rights. Yet, the point was picked up in just one of the solicitor interviews. When asked why she perceived that people choose to enter into a civil partnership, Ms Field stressed that:

It's about what happens if you have dementia [...] I think that it's wanting to make sure that... you know, that you can't be excluded, umm, from your partner's life (Ms Field).

As a lesbian herself, Ms Field was probably able to reflect from more of an ‘insider’ perspective, as well as on her experience in practice.

The clients’ interview data evinced a desire to be included within aspects of citizenship long reserved for heterosexual married partners. This sits well with Clarke *et al*’s (2007) finding that rights were considered “paramount” amongst their participants, and links back to the rights-based arguments set out in chapter 1. Of course, the approach is subject to the same criticism as I set out at that point, that being that rationalising in this way may reduce the radical potential of formalised lesbian and gay relationships. However, a wish was expressed to be treated the same, and we might anticipate this, given the awareness of the lack of formal equality still attributed to same-sex partners in many jurisdictions. Jennifer specifically voiced the rights-based argument:

When I got civilly partnered, it was mostly to do with, ‘I, as a tax-paying citizen, want the same rights as the next person, and if I’m getting less then it’s... you know, it’s not right’. It can’t be done in a civilised society (Jennifer).

Jennifer’s point ties in with Harding’s (2006: 529) finding that her respondents stressed having, “fulfill[ed] their part of the bargain by being good citizens” in a tax-paying sense, and that they should therefore be treated as “full citizens”.

With that notion in mind, and continuing with the concept of ‘kin’, my participants also rationalised their decisions to formalise their relationship on the basis of obtaining inheritance rights. Debbie detailed having seen the film ‘If These Walls Could Talk 2’, which operated as a powerful representation of the lack of kinship recognition (Kane, 2000). She set out how, within it, one party to a lesbian couple had died intestate and:

The family came and basically took everything, and this woman is now left grieving for her partner that she’d been with for maybe thirty years, and pretty much homeless, furnitureless... and that, sort of, was obviously something that was in my head (Debbie).

Heather additionally explained how her ex-partner had sought protection of this nature, although she personally had been:

Relatively happy to stay as we were, living together. We'd got wills set up so that, if anything happened to either of us, we were both protected. Umm, she was stated on my pension as the benefactor if anything happened to me. So, from that point of view, we'd sort of tried to set things in place prior to civil partnerships being available (Heather).

Weeks *et al* (1999b) and Monk (2011) previously observed such safeguards as having been put in place in lesbian and gay relationships, given that the intestacy rules are more likely to reflect the wishes of heterosexuals. Nonetheless, the wills created would, of course, have been automatically revoked on entering into a civil partnership.

On a note related to this issue of inheritance, Anthony explained his decision to embark on civil partnership as being driven, at least in part, by the tax implications. Anthony was the wealthiest participant in my project, and he highlighted that the assets held during the relationship had exceeded the inheritance tax threshold. He objected to the consequences of this, describing them as “crazy”, and Ms Field echoed his view:

They were some of the worst injustices before civil partnerships: people having to sell their homes, umm, you know, to pay the inheritance tax (Ms Field).

The payment of tax for property transferred on the death of a partner was highlighted as a worry for same-sex couples prior to civil partnerships having become available (see Women and Equality Unit, 2003, although it has been suggested to be of most relevance to men (Auchmuty, 2015)). The point was additionally raised by Shipman and Smart (2007) in relation to the interviews that they conducted with same-sex couples that had opted for a commitment ceremony. The introduction of civil partnerships appears to have provided a mechanism for same-sex partners to protect

themselves from this kind of unfavourable outcome.

The notion of there being such practical reasons behind lesbians' and gay men's choices to enter into the institution featured in other practitioner accounts. Consider these explanations:

On death, of course, it's terribly important. You know, if I were to die, everything goes to [partner], without any fuss or bother. She can sort out the funeral, she can have everything and the properties, you know (Ms James).

Some people [...] might have more of a practical, financial approach, as with marriage. More to do with wealth planning, rather than an emotional level (Ms Main).

This suggestion of "wealth planning" is supported by the discussion below of the use of pre-civil partnership agreements. Once more, Ms Main is making contentions of sameness to different-sex couples, although existing data seems to dispute this. In Eekelaar's (2007) study, a greater number of participants referred to their marriage as having been an external manifestation of an internal state, or a source of confirmation of their sense of commitment.

The solicitors identified further motivations centring around the social benefits enjoyed by married couples (which were highlighted as concerns for same-sex partners by Donovan *et al*, 1999). In this respect, Cooper (2001) has notably emphasised that the ability of lesbians and gay men to access some of the same benefits as heterosexuals can be seen as "progressive" from the perspective of equality of power. This is given that they are now able to generate effects that were previously denied to them. The specific motivations raised within the interviews related to pension rights on the death of a partner and to immigration. The issue of pensions was not evident in the clients' explanations, although Ms Field described having come across immigration issues in a case where there had been a 'marriage of convenience' between a British man in his fifties and a 30-year-old foreign national. Immigration-related reasons were cited as a key impetus by George as well, who stated that he had embarked on civil partnership because his partner was not a British

citizen, and they had feared that he might be sent home.

Recognition driven?

A third broad rationale that arose concerned the importance of achieving a form of social and legal recognition through civil partnership. That notion draws back to the works of Fraser (and that of Baker *et al* (2004) on respect and recognition).¹⁸ Fraser's (1997; 2003; 2012) use of the word 'recognition' seems to encompass the possibility of entering into a civil partnership to combat the "cultural" devaluation of homosexuality. Isaac spoke specifically in terms of 'recognition', although perceiving this to be something brought about more by marriage than by civil partnership. He explained how he and his new partner intended to get married because they planned to adopt, feeling that it was, "quite a large tick box" as far as social workers were concerned. This reiterated the sentiment of two of Heaphy *et al*'s (2013: 98) male respondents as to their prospects of being considered as adoptive parents, as well as that of a number of MacIntosh *et al*'s (2010) Canadian lesbian and gay participants. Not only this, but Isaac referred to a friend's experience of passing through immigration in another country, where:

He goes into what people call the 'brown room' [...] where they put people from ethnic backgrounds [...] and, umm, his partner asked if he could be with him in the room, err, and he was told, err, 'well, are you together?', and he said, 'yes, we are together, he's my partner', and, err, he said, well, umm, 'do you share a surname?', and he said, 'no, we don't'. Err, and immigration was like, 'well, you're not together in the eyes of our law' (Isaac).

Isaac believed that entering into a marriage would be a way of avoiding such a situation occurring between himself and his partner (although, of course, the true situation is that same-sex marriage is legally recognised in some jurisdictions and not in others). His response here resonates with Finlay *et al*'s (2003) assertion of lesbians and gay men viewing marriage as a route to obtaining recognition by the state. It was, nevertheless, highlighted in chapter 1 that obtaining such recognition can entail a

¹⁸ As discussed in chapter 2.

trade-off, as, “one’s public and recognizable sense of personhood [may become] fundamentally dependent on the lexicon of that legitimation” (Butler, 2002: 17).

That said, whilst I am mindful that my sample is not representative, notions of recognition received a broader lack of emphasis and enthusiasm in the client interviews. Anthony, for instance, explained that:

When [civil partnership] became possible it wasn’t like, ‘great, here’s my flag, I’ll wave it, and aren’t we great and pioneering’, it was more around the... okay, there are some practicalities of it (Anthony).

This may be on the basis that, as Butler (1998) has argued, the oppression of lesbians and gay men has been situated in the economic or material sphere as much as in the structure of cultural valuation. Butler (1998) contends that the production of ‘family’ life, and particularly of the heterosexual normative family, has been an essential component of how society produces what it needs. Indeed, the family has become increasingly important in light of an ideological shift favouring the notion of marriage and the private household being the ‘proper’ place to provide social support (with there being less of a collective sense of responsibility for individuals in need) (Duggan, 2003). The ‘holy family’ has consequently constrained the routes by which property interests are regulated, and Butler (1998) cited as an example of this the inability of lesbians and gay men to receive the property of a deceased partner. Whilst that inability has now been addressed by the 2004 Act (and, as is discussed above, my interviewees considered this significant), it may have come at a cost. This is because with the incorporation of lesbians and gay men into formalised relationships has arguably instigated the, “domestication of deviant sexualities within a safe and recognizable framework that is useful to capitalism” (Boyd, 1999: 45). Accordingly, it may be that same-sex partners have been pushed towards acting as, “good families [...] i.e. families that have a certain kind of economic status”, thus reinforcing existing norms (Kandaswamy, quoted in Dettmer, 2010: 34).¹⁹

¹⁹ This links in to the discussion in chapter 1.

Despite their overall lack of focus on the need for recognition, there was also a lack of subversive discourse in the clients' responses. Whereas I have identified that a body of feminists historically saw same-sex marriage as having transgressive possibilities,²⁰ much of that literature is now dated, and the attitude was largely absent the partners' discourses. This is possibly to be expected, given the wider emphasis on formal equality. It did, though, feature in a couple of the solicitor accounts; whilst Mr. Henry touched on the attitude of being "gay and proud", Ms James's description of her own civil partnership ceremony harked back to Weeks's (2004) point about same-sex lives being an "experiment". Notably, Ms James was only moderately younger than the '50 years plus' age group suggested by Auchmuty (2013) to enter into civil partnerships as a "political gesture". Ms James explained how, on the day of her civil partnership ceremony:

We had a do, and we went up to [location name], a very nice restaurant [...] and, at 5 'o' clock, [partner] said to me, 'why are they all still here?', and I said, 'oh, we're supposed to go, aren't we?' (Ms James).

Subsequently, she stressed that lesbians and gay men are still "making it up", feeling little connection with heterosexual conventions. Ms James opined that her clients had been aware that:

The institution doesn't ape the patriarchal... you know, all of that taking the name of the man, being given away by your father, and that shit. None of that happens, or it doesn't have to happen, umm, and it's been different (Ms James).

More commonly, however, the solicitors placed a greater emphasis than the clients on the perceived desire for same-sex relationship recognition. That said, their stress tended to focus less on the acknowledgment of the potential differences in lesbian and gay family lives (and so, on achieving 'recognition' in Fraser's (2012) sense of "positively valorizing [...] diversity"), and more straightforwardly on the partners' integration within 'society'. For instance, Ms Ennis claimed that:

²⁰ See chapter 1.

They want it more concrete for stability, and for society to accept them. And it gives them, you know, it gives it... to make it more legalised, it makes them more confident as a person (Ms Ennis).

Ms Ennis's response repeats the recurring theme of "acceptance" deployed within the political rhetoric in support of the 2004 Act (Barker, 2006). Ms Gale, who had worked on three civil partnership cases, likewise contended that same-sex partners might be seeking acknowledgment, especially where one or more partner has resided in a country where there is no such relationship recognition available. Ms Irvine, taking the idea further, said that she believed that people opted for civil partnership as they think that it is the 'right thing to do', particularly where there are children present.

Financially driven?

The clients and solicitors also took somewhat different views on whether same-sex partners have borne in mind the financial implications of their formalised relationship 'going wrong'. On the one hand, three solicitors considered that there had been a level of cognisance:

Their intentions were to really show to the other person that they were serious about them, and the way that they were serious was that they were entering into a legal arrangement or partnership that meant that the starting point, in law, was an entitlement to claim against each other's assets (Ms Gale).

You would think that people would look into it before they did enter into civil partnership (Ms Main).

Ms Main was making an assumption, having had no direct experience of dissolution (although having assisted on one case as a trainee). Ms James (who had been involved in twenty civil partnership cases) additionally considered that there had been awareness, amongst her gay male clients, of the obligations that would arise were

their relationship to break down. Conversely, she described the women as being more, “we’re going to stay together”.

In fact, Ms Irvine, who reported working on approximately two dissolution matters a year, observed a wider lack of forethought as to what would happen if the civil partnership were to fail. This point was reflected elsewhere in my solicitor interview data:

One bloke said to me in the beginning, ‘err, I didn’t realise that it was almost the same as getting married’, ‘well, what did you think that you were doing?’ ‘Do I really have to go to court to get out of this?’ (Ms Field).

The indication was that there has been a lesser degree of understanding of the legal and financial implications of entering into a civil partnership than those of entering into a marriage. Ms Field considered there to have initially been a “surprising” level of “ignorance” in this respect amongst civil partners, and she expressed uncertainty as to the level of comprehension, even to date, of the monetary obligations that arise. In agreement with this, it was commented that:

A woman that I’m advising on a civil partnership dissolution at the moment, she is the one with the money and she had no idea, she said, when she registered the civil partnership that she was getting into the, sort of, financial obligations that I’m now telling her that she’s got (Mr. Arnold).

People don’t consider the financial implications, and the arising of potential claims, when they enter into a civil partnership. But, I presume that that is down to the fact that we haven’t seen [...] a huge amount of civil partnership clients. And, as a result, umm, we can only assume that there hasn’t been a huge amount in the area. Umm, and so, there are not many people who’ve experienced the arising of claims as a result of a civil partnership, when you compare that to the amount of people who have been through, or know somebody that has been through, for example, err, a divorce (Mr. Kennedy).

In relation to his own client, Bill, Mr. Kennedy proceeded to claim that the financial consequences were not taken into account at all.

Bill's own account supported his solicitor's suggestion, describing how, at the point of embarking on civil partnership:

We'd been a couple for fifteen years, we'd lived in the house for thirteen years [...] I would never have believed that we'd be in this situation now (Bill).

Notably, Bill and his partner had entered into an agreement when purchasing their property that set out how that property should be determined were their relationship to break down. The case being run on Bill's behalf was that entering into this agreement constituted 'conduct' for the purpose of the legislation, and that there was no reason why it should not still stand. This, it was being asserted, was particularly given that the subsequent civil partnership had, at least arguably, been entered into for emotional reasons (rather than because the parties were seeking financial regulation of their relationship). The outcome of that argument is unknown, given that the interviews were conducted immediately prior to the commencement of legal proceedings. Yet, it is interesting that Mr. Kennedy should appear to be picking and choosing which aspects of traditional heterosexuality he sought to draw on, emphasising romantic love whilst, at the same time, rejecting the conventional pooling and asset sharing that tends to be associated with formalised relationships.

The optimistic attitude of Bill (aged 54) as to the prospects for his partnership resonates with Auchmuty's (2013) contention that older people tend to believe that their relationships will not break down (although that contention, tying into Ms James's above suggestion, more specifically applied to women). This belief may be held on the basis that, given that their relationships have often been of some length, it must be difficult to foresee a change in the status quo. Even so, an observable confidence that their relationships would endure, and a resulting lack of forethought of what the impact of dissolution would be, were common features across my sample. For instance, it was also reported (by three clients in their forties) that:

We'd been together for twelve years, not had a problem, and had a, you know,

good life together. And, there was never really a hint that there would be any issues [...] It hadn't really entered my head that I would be in the position that I was in (Heather).

People often think about all of the nice things in a civil partnership, umm, but they don't think about what it means in law and what you may have to do if you need to back out of it (Isaac).

When you get civil partnered, you don't think about the awful truth of what might happen (Freddie).

Such remarks reveal that, whilst seeking the rights already conferred on married couples, same-sex partners have not simultaneously wished to take on the full legal implications, and consequent economic responsibilities, associated with formalised heterosexual relationship breakdown.²¹ I recognise that there have been assertions that different-sex couples do not understand the legal implications of divorce either (see, for example, Clarke, 2014), and that such implications rarely figure in decisions to enter into a first-time (heterosexual) marriage (Barlow, 2009). Nevertheless, the solicitors observed this to be a more striking feature amongst their dissolution cases. The only real exception to this in my sample was Anthony (in his mid-forties), who accounted for his decision to enter into a civil partnership partially by reason of the asymmetry in his and his partner's financial earnings. All the same, whilst having anticipated what would happen to the assets, Anthony highlighted that he had not considered the possibility of having to pay ongoing maintenance.²²

It must further be highlighted that the solicitors interviewed reported having worked on a number of pre-civil partnership agreements. This suggests that those who have grasped the financial consequences of civil partnership breakdown have regularly chosen to opt out of them. It might, in some respects, seem remarkable that this should be the case, given the notionally more 'equal' economic positions of same-sex partners (although there were indications that these agreements may sometimes be

²¹ This idea will be explored further in chapters 6 and 7.

²² I return to this issue in chapter 7.

used to ring-fence inherited wealth). Indeed, amongst my client participants, only Isaac reported having considered entering into one, ultimately deciding against it because he viewed them still to be a “bit flaky” (despite this being subsequent to *Radmacher*, where the weight attributed to pre-nuptial agreements was strengthened).

However, contrary to Isaac’s decision, Ms James considered that gay men were more likely to enter into such agreements than heterosexual couples. In terms of the types of cases where this occurred, both she and Mr. Arnold were in agreement:

Gay guy from abroad comes over here, pre-nup... I do lots of those (Ms James).

I get a lot of pre-nups... pre-civil partnership agreements from this practice, and there seem to be an awful lot of these middle aged men who are entering into a civil partnership with, you know, a twenty-something Brazilian (Mr. Arnold).

Mr. Arnold’s response might appear to reflect Ross *et al*’s (2011) claim that age differences are more common in male partnerships than female. It additionally signals that ‘green card marriages’ may have been an issue amongst civil partners. As to why else a greater number of men may have sought agreements, this could be because they tend to have more extensive assets than women, and thus have greater need for protection (Trades Union Congress, 2013). That said, more generally, Ms Field considered that a favourable attitude towards agreements was “trickling through” amongst same-sex partners. Mr. Derrick similarly observed the popularity of pre-civil partnership agreements, explaining this on the basis that:

A lot of the objections that we’d seen historically from the courts around prenuptial agreements in heterosexual marriage were the whole issue around being against public policy [...] whereas [...] because there was no religious element, initially, under the CPA, and it was a partnership, then actually, because it was a contractual arrangement tantamount to any contractual arrangement, you should be able to make some planning around it (Mr. Derrick).

This view of civil partnership amounting to a contract is most likely due to the fact that the legal mechanism of civil partnership is signing the register, rather than speaking vows. Nonetheless, the question is also raised as to whether it is easier to see same-sex relationships in such a light because they will less frequently have children. There are hints of this attitude having been adopted in Quebec, where couples without children are able to dissolve their civil unions extra-judicially by signing a joint declaration in front of a notary.²³

The contract-based perspective was, though, not often expressly located in the client accounts. Whilst that may be because those interviewed were not fully aware of what they were entering into, it could also allude to a lack of perception of a sharp distinction between civil partnership and marriage-like status. Whereas contracts are entered into by, “rational, self-interested actors for mercenary reasons”, it is possible that the clients viewed their relationship as rising above, “the banalities of contract” (Stychin, 2006a: 910). This point necessarily leads into an interrogation of how exactly the civil partners conceived of the nature of the institution that they were embarking on, which I will move on to discuss.

Driven by a desire to enter into a marriage/ non-marriage?

Within the interview data, there was an emphasis on the language of sameness between civil partnership and marriage and a denial of difference. Consider, for instance, Bill’s reflections:

I mean, to me, it was a marriage. And, I wondered why, you know, there’s been this, sort of, discussion lately about [...] actual same-sex marriage. And I’m thinking [...] legally, we’ve got what we’re after already. So, what do we want gay marriage for? [...] I would have thought that [...] there were certainly common elements, if not exact parity, with marriage (Bill).

²³ Although divorce centres are also being introduced more widely in England and Wales, with legal advisors dealing with the majority of routine decree nisi applications (Resolution, 2015b)

It is significant that this particular client (given his age) should espouse that view, as it appears to counter Auchmuty's (2015) finding that civil partnership did not mean 'marriage' to older people. Heather further asserted that she and her partner had always described themselves as 'married'. It may be unsurprising that she should use this terminology, given that the media have overwhelmingly referred to civil partnership as "marriage" (Peel and Jowett, 2010). Remarkably, though, Heather proceeded to comment as follows:

I was going to say that our relationship was quite a normal relationship, but normal in what way? I mean, that was a bit of a bizarre thing to say, umm, because I'm quite sure that most civil partnerships are pretty normal (Heather).

This echoes Heaphy *et al*'s (2013: 170) stories of "ordinariness" amongst his interviewees, which might be viewed as "claiming recognition on the basis of respectability".

The practitioners' accounts featured this idea of sameness to marriage even more strongly, which we might expect given their overall focus on this discourse in relation to civil partnership formation. For example:

My experience of the people that I've dealt with who have been in a civil partnership, I would say that they see it exactly the same (Ms Clarke).

I think that he probably regarded it as pretty much a marriage (Mr. Henry).

A lot of people in civil partnerships do see themselves as married, which, you know, to me is the right way of seeing it (Ms Lane).

It is possible that this understanding has recently been fed into by the fact that civil partners are able to convert their partnership into a marriage under the Marriage

(Same Sex Couples) Act 2013.²⁴ On top of this, of course, civil partnership, as an institution, is extremely close to marriage in its structure and provisions. In fact, the perception of sameness was one of the explanations cited by Ms James for certain people choosing not to enter into civil partnerships (and this ambivalence to same-sex relationship recognition was likewise noted by Weeks *et al* (2001)). Turning to the theme of lack of divergence, the solicitors emphasised that:

If you're looking at civil ceremonies for heterosexual couples versus civil partnerships for same-sex couples, there's not a lot in it (Ms Boyce).

Such accounts seem to mirror that of Sir Mark Potter in *Wilkinson v. Kitzinger* [2007] 1 FCR 183, 197, that the intention of the government in introducing the 2004 legislation was to create, "a parallel and equalizing institution".

Continuing with the notion of civil partnership and marriage being perceived as similar entities, also telling is the use of heterosexual terminology by the interviewees to refer to same-sex relationships and ceremonies. Strikingly, all but two of the clients employed such language, with them most regularly referring to having 'got married' and having had a 'wedding'. Such terminology featured, on occasion, alongside the more accurate description of having entered into a 'civil partnership'. For instance, Caroline explained that, when she first met with her solicitor:

I said [...] 'oh, I've got a civil partnership and I want a divorce', umm, and she asked me how long I'd been married and I said that I'd been married for a year now (Caroline).

This quotation raises the possibility that practitioners have been using the terminology of 'marriage' during their meetings with their civil partner clients. That idea is backed up by Debbie's comment that, in clarifying what was going to happen in the legal proceedings, her solicitor had stressed that she and her partner had been "a married couple". In addition, 11 of the solicitors employed this language during their interviews. Given that the solicitors' caseloads will be predominantly made up of

²⁴ As is touched on in chapter 1.

different-sex cases, it must be easy to slip into the marriage terminology.²⁵ Even so, the suggestion is that they may be viewing civil partners on heterosexual terms. It is notable that the practitioners should be doing so, given Ms Clarke's assertion that:

I don't remember any of them particularly saying, 'well, when I got married...'. I think that they're quite aware, really, of the fact that it's a civil partnership, and the actual accurate lingo is probably used (Ms Clarke).

In support of this, Mr. Kennedy explained how the two clients that he had dealt with had been clear with the terminology of civil partnership. That observation might, though, seem ill fitting with his client Bill's emphasis on the institution's marriage-like qualities.

In opposition to the attitude of sameness, a few of the clients did convey perceptions of difference. For example, it was stated that:

Lots of people just assume that you're getting married, but you're not, because it's not a marriage, it's a civil partnership. And, they are different, I suppose, legally and lawfully [...] It may not have been a marriage, but it meant something (Freddie).

I sort of equate it with... slightly less than a registry office wedding [...] I think that civil partnership is more like a business arrangement [...] It's not religious, and it's not spiritual because it's not a marriage (George).

The argument of civil partnership being worth 'less' than a marriage might be used to justify reaching differing results on financial relief. In fact, it was run by the respondent in the case of *Hincks v Gallardo* 2013 ONSC 129, which concerned an attempt to resist an application for 'equalization' of net family property and spousal support made in Canada subsequent to the parties having entered into a civil partnership in the UK. However, the Court concluded that the civil partnership fell within the definition of 'marriage' contained within the Canadian Civil Marriage Act

²⁵ I will return to this point in chapter 6.

2005 (this being, “the lawful union of two persons to the exclusion of all others” (s.2)). Consistently with that decision, the solicitors in my study were less willing than the clients to acknowledge any particular difference between civil partnership and marriage (apart from in relation to adultery, which I discuss below). That said, Ms Ennis did highlight the religious disparity between the two, and Mr. Henry expressed the view that:

The whole concept of getting married is such a massive thing, umm, and they’re kind of being denied that (Mr. Henry).

Of course, lesbians and gay men are now no longer refused access to marriage, subsequent to the coming into force of the 2013 Act (although this had not yet occurred at the point of this interview). Nonetheless, Mr. Henry’s response here really stresses the notion of marriage as a key cultural institution (Badgett, 2009).

Mr. Henry went on to contend that the use of the terminology of ‘civil partnership’, was putting a class of society into a separate category (alluding to Harding’s (2006) description of the institution as a “second class status”). This view was shared by other practitioners:

I think that it’s their status that’s obviously... it’s almost saying... almost being discriminatory to say that, ‘because you’re in a same-sex relationship, you can only enter into a civil partnership, you’re not entitled to be married’ (Mr. Henry).

Mr. Arnold similarly emphasised the importance of parity of terminology, proposing that the distinct label of the ‘civil partnership’ had resulted in people erroneously conceiving of the institution as something distinct. This links in with my previous discussion about the weight attached to sameness; Mr. Arnold was advocating the inclusion of lesbians and gay men within traditionally heterosexual institutions to avoid their differentiation from the associated norms. Consistently with that idea, Mr. Kennedy posed the question as to whether there was a need for a separate label to ‘marriage’, seemingly advocating a form of assimilation. It is interesting he should take this approach, given that the clients were less emphatic about the need to be

treated in this way. Whilst Jennifer acknowledged that, under recent developments in the law:

People were able to say that they could get married, and to a lot of, you know, people that I know, friends of mine and everything, that was very important [...] I thought that it was a bit unimaginative (Jennifer).

Indeed, this keener stress on sameness in the solicitor's accounts, as against those of the clients, is a prominent feature of the wider explanations provided for choosing to enter into a civil partnership.

Drawing the above discussion together, the solicitors focused more strongly than the clients on motivations relating to traditionally heterosexual romantic love. Whilst they also recognised pragmatic reasons that might factor in, the emphasis remained on how same-sex partners bear similarity to those of a different sex. This marks the start of their predominantly formal equality based approach towards civil partnerships, which will feature strongly in the next two chapters. In adopting this focus, my analysis will demonstrate that the legal actors were working to mould their lesbian and gay clients' relationships into heteronormative patterns. The notion of formal equality might be a way of rationalising the imposition of the same regime of property division to same-sex partners as is applied to heterosexual relationship breakdown. However, it simultaneously results in the overlooking of aspects that do not conform to the heteronormative 'ideal', and to there being a gap between law's 'story' and 'reality'. The suggestion is that same-sex partners have often not consciously taken on the economic effects of the legal relationship recognition, and that they have chosen to contract out where they have been aware of them. Failure to acknowledge this risks foregoing the chance to reconsider the (heterosexually derived) economic obligations and responsibilities that we tend to view as the 'norm' (Stychin, 2006a: 916). I shall now go on to consider the extent to which dissolution discourses similarly pose the (unrealised) prospect of, "rethink[ing] in a radical way the institution of the family in law" (Stychin, 2006a: 916).

Relationship dissolution: infidelity and irretrievable breakdown

The clients provided a variety of reasons why their relationships ultimately broke down. Caroline and Isaac, for instance, set out how their partners had caused them financial difficulties:

She never stayed in a job for more than five seconds, umm, and just stayed on benefits all of the time [...] In the end, I just cracked, I think. Everything just, sort of, came to a head. My credit card debt just got worse and worse and worse, my mortgage... I was constantly in an overdraft (Caroline).

He didn't have any money, refused to pay me, refused to contribute, and refused to do anything about it, apart from put his head in a bucket really. And, he had very large credit card debts, err, and, umm, err, you know... in that situation, I think that anybody else would have just either gone to seek professional help or got a job, and he refused to do either of the two (Isaac).

These stories reflect Oswald and Clausell's (2006) finding that financial issues are a common reason for ending same-sex relationships. In fact, the finances had caused such a strain on Caroline's relationship that the partners had a "massive argument" within days of their civil partnership ceremony, and Caroline had sought legal advice on dissolution only a week later.

Edward, on a different note, explained that his partner had become very religious, which he had found difficult:

It wasn't that I was completely against his direction and everything that he thought and believed, it was just that there was no time put aside for us, really, and it meant that we were living quite separate lives (Edward).

Moreover, George described how his partner had left him subsequent to having obtained a passport. He claimed that his partner had been cruel to their pet cats too, as a result of which they had developed behavioural problems and had to be re-

homed. George expressed having feared that people that are cruel to animals progress on behave in this way towards humans. In a similar vein, Jennifer highlighted how:

The dissolution is going ahead on the basis of unreasonable behaviour, and that was a lot to do with her alcoholism, and her behaviour when she had been drinking. So, you know, over a period of time, that has always gone on and it just got worse and worse, until it became dangerous for me to stay in our home (Jennifer).

This account reiterates Kurdek's (1991) identification of alcohol problems being a top reason for same-sex relationship breakdown. Jennifer proceeded to focus especially on an incident where, whilst she had been sleeping, her ex-partner had physically assaulted her, although she additionally described how her ex-partner would often hurt herself by throwing things around. Indeed, Donovan *et al* (2006) found that more than a third of their respondents to their UK-wide survey said that they had experienced domestic abuse at some time in a same-sex relationship.

The most frequently cited reason, though, for civil partnership breakdown was infidelity. I will move on to examine my interviewees' accounts of this issue, and how those sit in relation to the legislative framework.

Sex and the civil partnership

In the early days of formalised same-sex partnerships, there was considered to be some prospect of breaking away from heteronormative ideas of monogamy, and of queering legally recognised relationships.²⁶ This possibility (at least arguably) opened up further as the Civil Partnership Act 2004 was introduced, which omitted to set out any requirement for a sexual and monogamous relationship. Sexuality is left unspoken in the legislation, with adultery not being specified as an express basis for dissolution. The lack of provision for dissolution on the basis of adultery appears not to have been intended to extend formalised relationships to the likes of carers and friends, as Baroness Scotland made clear in the Lords that the Act, "is not a cure-all

²⁶ As was indicated in chapter 1.

for the financial problems of those outside marriage” (HL Hansard, 22 April 2004: col. 389). Instead, it seems to have harked back to concerns raised that gay men (especially) might not ‘sign up’ to monogamy, in accordance with their stereotypical associations (Stychin, 2006a).

The absence of this provision stands in contrast to heterosexual divorce, where it is possible to petition using adultery as a factor in evidencing the irretrievable breakdown of the relationship under 1(2)(a) of the Matrimonial Causes Act 1973. Woodward and Sefton’s (2014: 15) study of court files found that the petitioner had relied on the basis of adultery in 20% of cases (although it has been indicated that the proportion of divorcing partners accusing each other of adultery has halved since the 1970s (Gardner, 2013)). Yet, civil partners are instead required to demonstrate that their partner’s “behaviour” has been such that they, “cannot reasonably be expected to live” with them (s.44(5)(a) of the 2004 Act). The same is true of the more recent Marriage (Same Sex Couples) Act 2013, where only relations with somebody of a different sex would constitute ‘adultery’ (Sched. 4, para. 3(2)).

It might be suggested that, compared to the public interest in supporting different-sex marriage (which resulted in the abandonment of the abolition of fault under the Family Law Act 1996 (Roiser, 2015)), there is not the same social and legal desire to keep people in same-sex relationships. This may go some way towards rationalising the absence of an adultery provision, especially given that, where adultery is not admitted, it can be difficult to prove. Nevertheless, the implication of the legislation might appear to be that it is necessarily acceptable to have a number of sexual partners within a same-sex relationship. As against that notion, the fact that my interviewees so commonly explained their dissolution as having been brought about by affairs indicates that the legislation is based on models that do not correspond with my sample’s lived experiences. The clients generally reported their partners’ affairs, rather than their own (with the exceptions of Anthony and Edward, although they only admitted behaviour of this sort subsequent to the partnership having taken a turn for the worse). However, those whose relationships have recently dissolved will tend to blame the other party, particularly where there have been acrimonious legal proceedings (Day Sclater, 1998).

Accounts of unfaithfulness were provided both by female and male clients, although a distinction might be made in that, whereas the women had mostly moved on to another monogamous relationship (as observed in Auchmuty's (2015) study), the unfaithful males were more frequently involved with multiple other men. For instance, Debbie set out how her partner had met another women whilst on a trip abroad, subsequently moving to Europe to be with her, and Heather's partner likewise informed her that, "she'd met somebody else a few weeks before". Conversely, Jennifer explained that her partner had been promiscuous under the influence of alcohol. Her account might seem to work against the idea of lesbian serial monogamy, suggesting that it may be a bit too stereotyped (and Weeks *et al* (2001) also found non-monogamy in lesbian relationships). Turning to the men, Bill, Freddie, Isaac, and Anthony all provided stories of their partner having cheated:

I realised that he'd been playing... he'd been behaving this way with maybe a hundred or more people [...] There was a record for a Gaydar membership going back to 2004, [...] and it was still ongoing (Bill).

I noticed that there was some little memory card [...] and curiosity got the best of me. And, I looked at the memory card and discovered that he was actually having sex with quite a lot of different men over a very long period of time, and he'd gone to the trouble of keeping all of the photographs. So, those photographs were in our home, and in our previous flat, and even in our bed (Freddie).

He was very, very sexually active, and [...] he sexually just wanted to be on a, kind of... no leash at all. He wanted to go and do his own thing (Isaac).

Bill's partner contracted HIV due to his conduct outside of the partnership. This was also the case in relation to Anthony's partner, with the HIV subsequently causing deterioration in his mental health to the extent that they had become "strangers". I recognise that there has been research (such as that conducted by Francis and Mialon (2010)) that has suggested that tolerance of same-sex relationships is negatively associated with the HIV rate. This is because it can arguably cause sexually active men (especially) to avoid underground, risky behaviour. Nonetheless, in terms of

contentions (as made by, for example, Eskridge (1996)) of formalised relationship recognition working to encourage more ‘responsible’ behaviour in this respect, that was not necessarily the experience within my client sample.

Occurrences of infidelity could likewise be found in the solicitors’ accounts. Mr. Derrick, for instance, recalled how one of the parties in a case that he had worked on had met somebody through work and formed a new relationship with them. He contended that:

The reasons for it were very usual [...] It’s perfectly standard stuff, I think, and, err, human nature, you know, people drift apart, people meet somebody new and cheat (Mr. Derrick).

Echoing this, Mr. Norris observed that the usual “human frailty” found in different-sex cases (such as adultery) had likewise been present in his civil partnership matters. The solicitors’ suggestions of sameness in this regard fit well with their wider construction of the issues and legal frameworks in dissolution matters as being identical to different-sex divorce.²⁷ However, they are noteworthy, given that same-sex partnerships are not treated the same as heterosexual relationships in terms of adultery, with the legislation positioning them outside of (and ‘other’ to) monogamy.

In fact, those interviewed found this aspect of the legislation problematic. That being the case, whereas previous work has suggested that it does not matter that there is no adultery provision as there is the option of unreasonable behaviour (see, for instance, Barker and Monk, 2015), this opinion was not shared by my interviewees. Heather, for example, reported having felt exasperated that:

I had to apply on the grounds of, umm, unreasonable behaviour [...] and initially my application got declined because the judge that it obviously went in front of didn’t read the form, and it basically got sent back to me just saying that I should have applied on the grounds of adultery, so [...] I had to photocopy all of the original paperwork and send it all back with a cover letter

²⁷ See particularly chapter 6.

basically saying, ‘I can’t, it’s a civil partnership’ [...] I can’t see the rationale behind it, because if you’re in a committed relationship with someone and they’re unfaithful, then it’s adultery (Heather).

Jennifer voiced similar bewilderment to Heather, exclaiming that, “I don’t get it”, whilst Bill, taking a stronger position, contended that he felt that there should be a law against behaviour such as his partner’s (where he had been unfaithful both days before the civil partnership ceremony and a short time after their honeymoon). The clients appeared broadly to favour a type of formal equality, supporting the ‘transplanting’ of the relevant heterosexual provision into the same-sex legislation, and perceiving the possibility of arguing ‘unreasonable behaviour’ alone not to be ‘enough’. Again, this is perhaps to be anticipated in light of the more widespread approach towards ‘equality’ as necessarily amounting to sameness of treatment (and it demonstrates the difficulty of adopting this approach across the board, apart from in relation to just a few exceptions). This is particularly the case in light of contentions, such as that of Tatchell (2013), that the current differential in the law between same and different-sex couples is “not equality”. That said, the emphasis placed might be construed as signalling the assimilation of same-sex relationships into heterosexual culture in a way that many had initially feared (and it may seem to contrast against the dissonance shown by those few partners as to the nature of the institution itself, above).

Turning to the solicitors, my interviewees did not believe that they would be likely to face obstacles in arguing that the non-monogamous circumstances of their clients’ cases was ‘unreasonable behaviour’. This stands against Barker’s (2006) suggestion the lack of a specific adultery provision could hold transformative potential, as it may not be self-evident that non-monogamy would necessarily constitute unreasonable behaviour in a same-sex relationship. Yet, Ms Lane asserted that her clients’ inability to petition on the ground of adultery, “does, you know, probably annoy all of us”. She acknowledged the heterosexist origins of the legislation, under which a ‘real’ sexual act remains one of vaginal penetration (stemming back to the common law definition of adultery, which applies only to heterosexual intercourse (*R v. R* [1952] 1 All ER 1194)). This ties in to Stychin’s (2006a: 907) assertion that the issue of what amounts to lesbian and gay sex remains, “shrouded in mystery”. It seems that one of

the central reasons for omitting to include a provision relating to adultery is the legal complexity of (and possible squeamishness about) defining sexual acts between two women and two men. This is indicated by Baroness Scotland's comment, within the Parliamentary debates, that, "we do not look at the nature of the sexual relationship that enters into the civil partnership. It is totally different in nature" (HL Hansard, 17 November 2004: col. 1479). As Barker (2006) has highlighted, it would appear that a greater challenge would have been posed to heterosexuality as a whole had lesbian and gay sex been explicitly included within the Civil Partnership Act. Particularly, it may have been beneficial for MPs to have discussed lesbian and gay sexual acts in a non-criminal context.

That said, it might seem inappropriate for the legislation to have retained any such focus on the physical acts performed by the partners. There were, in fact, indications by the interviewees that gay men may well still retain multiple sexual partners even within a committed and formally recognised relationship. Notably, the fact that this observation focuses around men accords with Auchmuty's (2015) contention that men are much less likely to expect fidelity than women. My finding here helps to add to existing body of research that attests to the occurrence of non-monogamy in same-sex relationships (Coelho, 2011; Blasband and Peplau, 1985; McWhirter and Mattison, 1984), and it goes some way to contradict suggestions, such as that of Kondracke (2003), that civil unions operate to promote monogamy. Through behaving in this way whilst in a civil partnership, there appears to have been a level of resistance towards the imposition of heterosexual, binary-based, norms. Ms Field observed that a number of her male clients were in open relationships, whilst Isaac's partner had worked in the sex industry during the early stages of their relationship. Bill, who had attended a 'leather club' with his partner, further described how those who have entered into formalised relationships have still been using the site 'Grindr'. Bill explained that:

There are even the pictures of their ceremony on their sex site, and they were inviting people into their beds, or floors, or whatever it was to have sex (Bill).

For this reason, he felt that some same-sex partners must view their relationships, even though now legally recognised, as being different to, and set apart from,

(traditionally heterosexual) monogamy. It must be acknowledged that the sexual behaviour of Bill and Isaac's partners did play a significant role in ultimately bringing about the breakdown of their civil partnerships. Therefore, despite the assumptions that may appear to underlie the omission of adultery from the 2004 Act, it does not seem necessarily to be acceptable for gay men (particularly) to have a number of sexual partners. Yet, in this context, the clients were less concerned with the fact that their partner had engaged in physical activity with someone else in itself than with their partner's dishonesty and the consequent breakdown of trust within their relationship. Consequently, my data suggest that there may be a dissonance between the legal and social meanings of 'adultery'.

The notion of there having been an issue with trust was apparent from the explanation of Isaac that, "it was that that killed the relationship [...] I lost complete trust in what was going on". In the same way, Bill set out how:

He was never honest enough to tell me, you know, if there was anybody that he had slept with [...] it was just lie on top of lie, so [...] I told him, 'that's it, you know, go. There's no hope' (Bill).

Bill described his partner, in so behaving, as not having acted "in accordance with the principles of civil partnership". That sentiment chimes with Mr. Justice Garson's suggestion in the Canadian case of *P. (S.E.) and P. (D.D.)* 2005 BCSC 1290, [48], that, "the wrong for which the petitioner seeks redress is something akin to violation of the marital bond". The Judge ultimately held in this case that, "intimate sexual activity outside of the marriage may represent a violation of the marital bond and be devastating to the spouse [...] regardless of the specific nature of the sexual act performed" [48]. The matter itself concerned a different-sex marriage where the husband had been intimate with another man. The Court found there was no reason why the wrong should be limited to heterosexual acts; the husband had committed adultery, and an order for divorce was granted. A similar approach may seem to offer a way forward for England and Wales, departing from an outdated focus on the specific nature of the physical acts.

In terms of my first research question, any such modernisation in the approach

towards adultery could helpfully be extended to different-sex couples, so as to challenge gendered constructions around intimate relationships. It is important that the law is congruous with public conceptions and practices and, in this respect, Mr. Henry contended that:

I think that the main issue is that the law has looked at monogamous, heterosexual relationships for too long, and the world out there isn't actually like that. [...] I think that there's probably been a bit of an explosion, over the last thirty years, in terms of how people do choose to live [...] We don't have family law to cater to that (Mr. Henry).

Mr. Henry proceeded to suggest that, amongst his wider client base, "all sorts of scenarios are thrown up nowadays". Taking this idea further, Barker (2013) has emphasised that, when we look across time and cultures, we see a diversity of relationships. Many societies are polygamous, and many seemingly monogamous societies feature widespread secret non-monogamy. The legal definition of 'adultery' as it stands is not reflective of such observations, and does not challenge the constructed nature of the heteronormative binary.

Conclusion

Despite being legally similar (and being based on, "largely analogous foundations-notions of stable coupled relationships" (Peel and Harding, 2004: 590)), lesbian and gay and heterosexual formalised relationships appear to have different cultural meanings attached to them. I identify amongst civil partners a relative lack of emphasis on the romantic notions that have "descended over the heterosexist institution of marriage like a fog" (Peel and Harding, 2004: 591). As against this, a wider stress was placed by my client interviewees on the practical advantages of entering into a formalised relationship, particularly centring around the need for protection on a partner's illness or death (which sits well with the findings of, for example, Clarke *et al* (2007)). I have previously observed that rights-based reasoning can work against the transgressive possibilities of formalised relationships.²⁸ That

²⁸ See chapter 1.

said, this difference in focus is important, as romantic discourse has operated to obscure the ways in which marriage sustains the power and status of men. The absence of sex within the civil partnership legislation might seem to have indicated a further break away from the notion of one man belonging to one woman within the home. However, within my interviews, importance was placed on sameness through favouring a separate ‘adultery-like’ basis for dissolving same-sex partnerships (in light of a more widespread approach based around formal equality). This is despite the fact that descriptions of gay non-monogamous lifestyles did also feature. My research does, though, offer a way forward in this respect, suggesting (in accordance with the partners’ understandings) that the definition of ‘adultery’ should be modernised so as to move away from concentrating on the specific sexual act performed.

More broadly, the solicitors were consistently keen to emphasise the parallels between same and different-sex couples, and often ignored difference where it was apparent (such as relating to intentions to create financial obligations). In addressing my second research question, heteronormative assumptions were applied when relaying the stories of their civil partner clients, eroding the potential for transformation. It is noteworthy that this should be the case, given that civil partnership is distinctively and legally non-heterosexual. The practitioners tended to highlight the aspects of the partners’ lives that were perhaps more socially recognisable, in accordance with (hetero)normative behaviours. In so doing, they were acting against Baker *et al*’s (2004) dimension of respect and recognition, under which cultural assumptions are open to challenge (see also Baker, 2001). The accounts led to queries as to the extent to which the solicitors have also built their arguments on the basis of sameness, and formal equality, in civil partnership financial relief matters. My analysis will now investigate this.

Chapter 6- Similarity and divergence between dissolution and divorce

In this chapter, I examine both the clients' reflections on, and how the solicitors have perceived and conducted, civil partnership cases. I begin by considering the extent to which there has been a focus on sameness between civil partnership dissolution and (heterosexual) divorce, before moving on later in the chapter to a discussion of difference. My engagement with this issue follows from chapter 5, given that adultery marks an observable divergence in legal framework between civil partnership and marriage. I will be interrogating the degree to which legal actors are uniformly applying the concepts developed within divorce law, given that my questionnaire findings in chapter 4 suggested that the roles undertaken by civil partners might be different from the more traditional roles adopted in marriage. I argue that, in terms of financial relief, heteronormative arguments and case law have been employed, and a stress has again been placed on identical treatment and formal equality. This has been in spite of client attempts to emphasise dissimilarity, and of acknowledgments by the solicitors themselves of the often incongruent factual matrices of the cases. The chapter will draw on the literature of assimilation and transformation, and assert that there is more evidence of assimilation occurring in the realm of legal recognition, as solicitors construct their clients' cases to fit with the marriage model. Rather than being treated as 'other', lesbians and gay men are being, "included into the dominant system" (Boyd and Young, 2003: 757). That being the case, they are being denied their full potential to expose the constructed nature of masculine and feminine roles in formalised relationships, and to cast light on the fact that there are other ways of living and being within a family.

Stories of sameness

In this section, I set out the ways in which my interviewees constructed and treated dissolution and divorce as being parallel to one another. Four themes, relevant to heteronormativity, were apparent in the data. The first was that the solicitors frequently used the same language for their same and different-sex matters.²⁹

²⁹ I initially raised this point in chapter 5.

Secondly, in their initial meetings with their lesbian and gay clients, they asked them the same questions that they would ask a client in a different-sex relationship. Thirdly, they have subsequently presented these clients' cases so as to centre around gendered stereotypes that have been carried over from the heterosexual case law. The fourth theme is that legal actors have tended to view equality as entailing sameness of treatment or, in relation to asset division, a 50/ 50 split (as per the judgment in *White*). I will discuss each of these themes, highlighting how heteronormative constructs of gender inequalities have been applied.

Using identical terminology

The solicitors in my sample regularly reverted to heterosexual language when referring to civil partnership dissolution. For instance:

I have, on occasions, slipped and said 'divorce' rather than 'dissolution' because it's absolutely, you know, what I do every day, really. It's just breaking the habit, not for any other reason. I just deal with more divorces than civil partnerships, so I would, you know, just refer to, 'well, when we get your decree nisi', and then I'm like, 'oh no, it's not a decree nisi in your case' (Ms Clarke).

I see [civil partnerships and marriage] as being the same, and I very naughtily often refer to 'divorce' when it should be 'dissolution', umm, and refer to 'decree nisis' when it should be 'conditional orders' (Ms Gale).

It is interesting that Ms Clarke suggests here that her employment of inaccurate terminology had been a slip of the tongue reflecting the predominant makeup of her caseload, whilst Ms Gale implies that hers had been a result of her unconscious association between the two institutions. In any event, the use of such language might account for the fact that half of the clients interviewed similarly drew on the terminology of 'divorce'.

There was one exception, in terms of the practitioners' refusal to apply the labels 'husband' and 'wife'. This is despite one of the clients (Debbie) having made

reference to her “wife” on a number of occasions. The legal actors’ approach in this respect seems to undermine Hunter’s (1991) suggestion that formalised same-sex relationships raise the question of what the “foundational constructs” of ‘husband’ and ‘wife’ mean (although perhaps this was only applicable to marriage). Polikoff (2008) stresses the importance of making way for neutral terms, and this attitude was, in fact, favoured by a number of solicitors:

I don’t think that they really call themselves a ‘husband’ or a ‘wife’, do they? It’s just... they call themselves ‘partners’ [...] In that one [case], she said, ‘my partner’, or she used her first name [...] so, I don’t think that I could say... because it isn’t really from that angle (Ms Ennis).

It’s [important] [...] making sure that you, you know... not ‘spouse’, ‘husband’ and ‘wife’. So, I suppose that you’d have those in the back of your head, and you’d be aware of that, umm, to ensure, you know, that you’re being accurate and not causing any offence (Ms Main).

Mr. Kennedy also emphasised how using terminology of this nature in the context of civil partnership could “confus[e] the issue”.

That said, it should also be recognised that, on occasion, the practitioners used the word ‘husband’ when seeking to describe the more highly remunerated partner. In this way, they still subconsciously associated being the earner with being the ‘man’, and they were resorting to a problematic labelling of behaviour as gendered. Consider, for instance, Ms Irvine’s description of a same-sex matter that she had worked on, where there had been a:

Husband earning... well, I say ‘husband’ because I’m talking about the dominant party, but the ‘breadwinner’ was earning significantly more (Ms Irvine).

This reversion to traditional roles sits well with the solicitors’ responses concerning how they would go about dealing with a new civil partnership case, which I will now examine.

Asking the same questions

In terms of the conduct of their initial meetings with clients, the practitioners most frequently claimed that there was no marked distinction in what they would ask their civil partner and married (heterosexual) clients. Ms Boyce, for instance, stated that her preparation for a meeting with a same-sex client would be, “the same as any family client”. Consider these further accounts:

I would say that the concerns are very similar to those that happen on divorce [...] You know, ‘can I claim anything against the house?’, ‘what’s going to happen about my monthly income?’ (Ms Boyce).

The issues for me were very similar, the arguments were very [...] usual and typical (Mr. Derrick).

That the solicitors should adopt an approach based on matrimonial work, and not account for difference, accords with clients Caroline and Jennifer’s reports of seeking legal advice:

She asked me the general questions about, umm, umm, how long I’ve been married, what’s the relationship been like [...] The normal sort of questions that, you know, a solicitor would ask a married couple (Caroline).

What people will do is not explore... you know, perhaps out of embarrassment, or lack of knowledge, [they] won’t necessarily ask any additional questions to find out if there’s a difference. So, you know, if somebody doesn’t do that, you’re not going to volunteer anything that you perceive, because you don’t know whether it’s relevant, when you’re talking to somebody whose time is being charged at god knows what by the hour (Jennifer).

Jennifer’s response is striking, because it suggests that solicitors are asking the (wrong) questions and that, whilst their focus has been on sameness, this may be

inappropriate. The client's impression moreover sits compatibly with Calhoun's (2000: 34) point that lesbians and gay men feel obliged to present themselves in accordance with heterosexuality as a, "condition of access to the public sphere". A repercussion is that they are denied the possibility to tell their legal representatives new stories about their relationships, with the potential of their more "democratized, flexible model" of domestic life going unrealised (Weeks, 2004: 161).

The practitioners generally adopted a directed (heteronormative) approach to advising their civil partner clients. This was evident in that, for example, they stated that:

You need to say to them at a fairly early stage, you know, 'this is the stuff that courts look at, and so let's try to focus on this and you know, yes I know that that's really important to you, but it's not going to make any difference' (Mr. Arnold).

I wouldn't do that any differently between heterosexual and same-sex couples. You know, you sit this side of the desk and you so easily just get into the script. You just throw it at them (Ms Field).

I think, for a lot of clients, that they will tell you a lot about their current situation, umm, and I have to say to them sometimes, 'well, that doesn't matter' or, 'that's not going to be taken into account' (Ms Gale).

These narratives indicate that legal actors have been working to, "legitimate[e] some parts of human experiences, and denying the relevance of others" (Sarat and Felstiner, 1995: 147)). Likewise, they support Harding's (2011) observation of the way that "legal knowledge" excludes other forms of knowledge, and Smart's (1989) argument that legal professionals disqualify alternative accounts in favour of "legal relevances".

Conversely, a few practitioners did report that there would be a disparity in how they would conduct meetings with a civil partner client. For instance, Ms Field opined that:

If you're trying to argue [...] from the point of view of a gay man who hasn't, you know... who says, 'well, I've stayed at home and looked after it', I think that [...] you've got to prove that more [...] I'm thinking of my own prejudices, you know, what I would, perhaps, for a female client just assume and wouldn't think... but, you know, from a, you know, a same-sex client, I would question them quite carefully about what they did (Ms Field).

This comment is of note on three bases: firstly, because of Ms Field's admission of her own prejudices that men do not do housework; secondly, because it indicates that a man performing the role of the 'typical' housewife has not done enough to obtain an equivalent award; and thirdly, because of the inference that legal actors tend not to ask wives "carefully about what they did" (because assumptions are made about the tasks that a housewife performs). Other stories of difference featured:

Fact-finding is different on the basis that the relationship would have been different, or the things that were relevant in that relationship would have been different (Mr. Henry).

Don't ask same-sex couples exactly the same questions as you would ask, err, heterosexual couples. Umm, or when you do ask them questions, ensure that they're as open as possible, so that they don't feel that, actually, you've stereotyped them into a box of heterosexual couples (Ms Gale).

As to how his questions would vary, Mr. Henry struggled to explain, ultimately considering the main disparity to be the lack of children (as returned to in the discussion below). Ms Gale's responses were, in fact, contradictory, given that she proceeded to state that civil partners are "no different" to heterosexual couples.

Overall, it appears that there are, in practice, understood to be few differences between conducting advisory meetings with civil partner clients, and advising heterosexual partners on divorce. In light of a relative shortage of experience of civil partnership cases and a lack of case law, the solicitors placed emphasis on a sameness approach between same and different-sex relationships. This is apparent from the account of Ms Boyce that:

One is more tentative, because there isn't that body of case law behind you, so it's not as if you can put your finger on something and say, 'look, this has happened before and we're really sure about this, because this has gone to the Supreme Court' [...] But, my advice is generally based on all of the matrimonial work that I have done before for heterosexual... because, you know, the factors are so similar in the way that it's been drafted, that's what we're basing it on (Ms Boyce).

The practitioner's account confirms the common law's preoccupation with precedent. It shows how the solicitors have sought to include same-sex matters within their previously developed knowledge base from heterosexual divorce proceedings. In so doing, and by focusing on the things that 'matter', they were fitting their same-sex clients into the heteronormative mould. Linking back to the discussion in chapter 2, what we see is little evidence of Fraser's (2012) equality of recognition (or, indeed, Baker *et al*'s (2004) dimension of respect and recognition). Whereas that ascribes value to diversity, what is occurring is a misrecognition of the ways that same-sex relationships can be different. Being "rendered invisible" is the core of 'misrecognition' for Fraser (2003), and it reduces the potential for challenging the gendered relational norms. Furthermore, the solicitors' approach was incompatible with Ettelbrick's (1989) understanding of "justice", under which lesbian and gay couples are recognised and supported in spite of their differences from the "dominant culture".³⁰ Yet, the approach again corresponds with the strategies adopted by the solicitors for arguing their lesbian and gay clients' cases, which I will proceed to explore.

Arguing on the basis of gendered stereotypes

Prior to considering the tactics employed to present same-sex matters, I will set out the practitioners' reports of what has been happening in different-sex cases. This is because the way that they construct their cases will be driven by what they perceive that the courts will want to hear. In this respect, Ms Boyce contended that:

³⁰ See chapter 1.

You've got to be expecting that the judge is going to be dealing with it as a divorce case, because that is what they know, that is what you know (Ms Boyce).

That assertion accords with O'Donovan's (1993: 64) argument that lawyers will present their clients as though they are performing an "appropriate social role" as a "normal member of society". Bearing out my arguments in chapter 2, the solicitors highlighted how divorce matters have centred around ideas of there being distinct roles for men and women within a marriage, with a patterning of status taking place. Ms Gale noted a desire amongst the judiciary to "protect" wives, presumably as a result of their 'feminine' vulnerability. On the contrary, men remaining at home were viewed as being treated less favourably. This not only ties in with the notion of the providing 'masculine' man, but also a claim by Ms Field that it is easier for the courts to work out what amounts to a "contribution" to the welfare of the family when it is done by a woman (given that, "it's just what we're used to").

These understandings of heterosexual cases must be borne in mind when considering accounts of same-sex matters due to assertions such as that:

I would just literally apply all of the principles that I do already. I really don't think that I would do anything differently at all. I wouldn't, because the law is being applied across the board, so I wouldn't look to do anything different (Ms Clarke).

I will get a divorce case out and say, 'the facts are similar in terms of length of relationship, disparity of wealth, why don't you apply them?' (Ms Irvine).

Mr. Kennedy similarly stressed how the case of *Lawrence* had demonstrated to him that "the rules are exactly the same" because it had referred to the heterosexual case law. Ms Gale adopted a less confident line, discussing how she would provide civil partner clients with a "cautionary note". Nevertheless, the nature of that note was that:

‘We’re going to have to advise you on the basis of what it would look like on a heterosexual relationship, umm, until a bigger bank of case law is increased’ (Ms Gale).

Certainly, client Debbie was advised on that basis when she sought legal advice, and when the solicitor had explained her position by using fictional scenarios concerning himself and his wife.

The indications from the data are that practitioners are reverting back to heteronormative assumptions when dealing with civil partnerships and, particularly, to ideas of masculinity and femininity. It may be predictable that they should adopt this approach, especially given that (as a number of solicitors mentioned) the court forms are now the same. Even so, it works against the ideas that lesbian and gay identities can challenge the fixed categories of ‘man’ and ‘woman’, and that formalised same-sex relationships might, “destabilise the gendered definition of marriage for everyone” (Hunter, 1991: 12). It seems that Graff’s (1997: 137) prediction that gay and lesbian partners would be treated as, “equal partners, neither having more historical authority” has not necessarily come to fruition. Moreover, the professional interviews support the legal pluralist idea of law not only reflecting, but also sustaining, patterns of ‘normality’,³¹ and Smart’s (1992) portrayal of law as a gendering strategy. By this, I mean that the law encourages the adoption of gendered subject positions and identities (a notion that links with O’Donovan’s (1993) argument that family law and its discourse constructs a gendered “story”).

Consider Anthony’s account of the conduct of his matter:

That was their argument, that I wouldn’t have been earning what I earn had he not supported me, and they also made an argument that we’d been accustomed to a joint lifestyle and it was therefore okay for my ex to continue with that lifestyle without working [...] My ex’s representation said, ‘[he’s] the woman, he gave up work, he brought up the children, and we’re going to run the case based on that’ [...] In court, their side tried to imply that I didn’t do anything,

³¹ See chapter 2.

and that I literally would walk in an I would have my slippers at the door and supper on the table (Anthony).

The client did not personally view that his partner had helped to bolster his earning capacity, although one wonders whether he would have adopted the same view had the relationship endured. I further recognise that an interview with Anthony's partner may have told a different story to the one that that he conveyed, but this could not be achieved for practical reasons in the context of this study. Nonetheless, the client described how his ex-partner's representatives had used the fact that their client had not worked during the relationship to their favour, portraying him as a 'homemaker' (and Mr. Arnold, Anthony's solicitor, reported similarly). This was in relation to a household where there were no children, and where a cleaner had been employed. In setting out how the legal actors, at least on one side, were, "posturing that one's a man, one's a woman", the client detailed how his case was constructed to accord with a binary familial model. In a similar vein, he set out how their submissions related back to heteronormative notions of ('feminine') economic dependency and conceptions of joint living, which seem less compatible with suggestions of greater financial separateness amongst same-sex partners.³² Anthony felt that he and his ex-partner had been "pigeonholed" to fit the existing framework. He opined that the case law that is applied should not be based on heterosexuals, as same-sex couples are "different".

As to the arguments made on Anthony's behalf, it was contended that the parties should be treated on the basis of their lack of gender difference:

We didn't run it on the other side saying that I was the man, I was the 'breadwinner' [...] We tried to neutralise that and just say, 'we're two blokes [...] he needs to get a job' (Anthony).

³² See further chapter 4, and chapter 7, where the narratives relating to same-sex finances will be analysed.

The way that we presented it was simply that [...] he's got a number of language skills, you know, he's capable of earning a decent amount of money (Mr. Arnold).

The discourse used by Anthony is problematic, as he expressed the need for his ex-partner to work specifically by reason that he is male. In fact, both quotations replicate what I have contended to be the most persuasive interpretation of *Lawrence*.³³ Anthony's representatives adopted the formal equality based argument that both parties should be judged according to pervasive notions of masculinity. Therefore, in one way or another, the practitioners were unable to transcend heteronormative ideas about gender.

The same observation might be made regarding the legal advice received by Isaac. In his case, the stress did not seem to have been on his ex-partner's domestic contributions (although the client perceived these as having been relatively 'equal' between them). However, in accordance with the arguments made on Anthony's partner's behalf, the client described having been informed that:

I was being seen [by the other side] as the 'breadwinner', he was being seen as the [...] other party within the relationship that didn't have the funds [...] [The solicitor] referred to things like 'family court' and, you know, 'this is how it works for heterosexual couples', 'well, we're not a heterosexual couple' [...] I think that really, you know, the divorce blueprint that they had been working with for, you know, decades, she was trying to fit that into, umm, a gay couple's lifestyle, and it doesn't work [...] The divorce process [...] it hasn't grown as society has changed (Isaac).

It is significant that Isaac should emphasise the different nature of same-sex relationships in the face of a sameness centred practitioner approach. The intimation is that a level of resistance has been maintained to this legal heteronormativity, although legal actors may not be hearing or responding to it.

³³ See chapter 2.

Isaac perceived the adoption of a “one size fits all” attitude in terms of financial relief, and this was consistent with a point raised by solicitor Ms Boyce concerning:

The risk that things will just be very much done as rote in terms of that, ‘well, I’ve dealt with 3,000 divorce cases and now I’m starting to deal with civil partnerships, and this seems to fit the mould of what I’ve dealt with before’. [...] There’s going to be a lot of match-up with the way that divorce cases have been dealt with as to the way that civil partnerships will be dealt with (Ms Boyce).

Isaac explained how it had been submitted on his partner’s behalf (as will often be the case in relation to wives in heterosexual matters) that he had become accustomed to the funding of a “luxury lifestyle” during the relationship, and that he now sought to continue it. This signals that, in response to my second research question, legal actors have, at least to some degree, been applying the heteronormative assumptions of financial dependency in civil partnership cases.³⁴ Isaac found such arguments “difficult”, given that the scenario involved two men. The client’s response here, once more, harks back to ideas about masculinity. There are, in fact, indications that these ideas could be attributed to his legal advisor (at least, to an extent), with the client elucidating how:

She said, within the first hour, ‘you have just been used’, umm, and [...] we discussed why he wouldn’t go out to work, and why he wasn’t prepared to bring money into the family unit (Isaac).

The discourse suggests that the practitioner may have adopted an inflammatory attitude to encourage the client to pursue the matter further.

Pulling together the strands of my argument, in Anthony and Isaac’s matters, the financially weaker side placed greater weight on a binary construction of roles. Conversely, the more moneyed side, particularly in Anthony’s case, put stronger emphasis on the point that both partners were, as men, able to provide for themselves.

³⁴ Although see further discussion of this issue in chapter 7.

The binary line of argument ties in to solicitor assertions, such as that made by Ms Field (albeit with reference to a younger man with an older ex-partner), that there is a “temptation” to present a same-sex matter in a ‘breadwinner’/ ‘homemaker’ fashion. She proceeded to set out how she would argue on a lesser earning client’s behalf that, “I’ve supported you, I’ve ironed your shirts”. In this way, the solicitor was explaining how she would draw upon heteronormative constructs of gendered inequalities to obtain a favourable result for her client, this leading to the greater assimilation of same-sex partners into the mainstream.

Turning to the lesbian clients interviewed, traditional gender roles featured most heavily in Debbie’s account. She set out how her ex-partner had argued throughout the proceedings that she had been the ‘breadwinner’, even though Debbie had also worked part-time. This alludes to the heterosexual tendency to dismiss wives’ earnings as “pin money”, and solicitor Mr. Henry claimed that, in his cases, one partner was often earning the “meaningful” amount of money (Harkness *et al*, 1997). Although Debbie acknowledged that she had performed the majority of the domestic chores, she felt that there had been an over-emphasis by the legal actors on, “whether you’re the wife or the husband”. The client’s view of the court proceedings was remarkable:

[The legal advisors] speak on your behalf, and that’s it. I can’t actually then go and say to the judge [...] ‘can I tell you about this?’ There was no approachability. And then, when we got out back into that, sort of, waiting room area, yeah, I said to [ex-partner], ‘did you understand any of that?’, and she went, ‘no’, ‘nor me’ [...] I was just like, ‘what are they saying’, yeah? I felt out of my league, completely out of my depth (Debbie).

She expresses the opinion here that, as a client, you lose control of your case to lawyers (Harding, 2011). To take this further, whilst Smart (1984: 160) argues that lawyers “translate” matters into “legally recognisable categories”, that occurred to such an extent that the client’s conflict became unrecognisable to her. That point was additionally implied by Jennifer, who felt that her solicitors:

See that they have a job to do, and they will take instructions from me
[regardless of] whether I'm fully understanding of what to tell them (Jennifer).

As to the practitioners themselves, Mr. Derrick recounted how the opposing party in a lesbian matter that he had worked on had submitted that the principles of sharing, compensation and needs were all applicable, on the basis that their client had been the 'homemaker'. In this way, they were arguing for an award that included the element of substantive equality introduced by *Miller/ McFarlane*. It might be noted that, even in different-sex couples, there have been relatively few cases in which the concept of compensation has performed an independent role in the court's deliberations (Miles and Probert, 2009). It may be surprising that it should feature in relation to same-sex couples, given that the parties are subjected to the same gendered expectations.³⁵ This is even more so in the context of a childless case, where the compensation argument is more difficult to run. Of course, I am not arguing here that there necessarily cannot be a more vulnerable party within a same-sex relationship, and I refer back to my discussion of Fineman's (2008) work in chapter 2. However, the roles performed by each partner may be based more on, "autonomy and choice", being less constrained by external rules (Weeks, 2007: 187).

Mr. Derrick described how, in the lesbian case that he had advised on, the other party had been portrayed as performing a 'feminine' supportive role, and this approach was repeated in other practitioner accounts:

If you're acting for that side of the partnership that has stayed at home, perhaps you may want to start saying things that make it sound similar to the *White* scenario [...] One would want to emphasise those features that are on the feminine side, if you like. So, for example, 'oh, she cared for the elderly grandmother', 'oh, she did something in a caring role', or, 'she was nurturing something' (Ms Boyce).

As regards this association of women with caring, we find further evidence in Ms James's description of a case with shared childcare subsequent to dissolution.

³⁵ Although see further discussion of the issue of maintenance in chapter 7.

Linking in with the discussion in chapter 7, she set out how there had been a disparity in salary between the women concerned, although the court had permitted a clean break. The solicitor felt that:

That would not be allowed to happen if they were straight. Two young children... the judge would say, 'no, we want nominal maintenance', at least. Especially at our local court [...] but not for lesbians, apparently (Ms James).

She believed that the outcome was reached because the court was confident that both parties, being women, "would look after the children". This was as opposed to the position where the man is more closely associated with 'masculine' providing, and the woman with 'feminine' caring. In this way, assumptions still seem to have been made about the women by reason of femininity, with neither partner being treated as the money-earner. That said, the lower earner in Ms James's matter was apparently not conceived of as vulnerable, as tends to occur in relation to female partners in heterosexual relationships. There are hints of lesbians almost being treated as 'not-women', in the sense of notions of traditional dependent femininity (which perhaps help to back up Calhoun's (2000) assertion of lesbians being viewed as "ungendered"). This speaks to a point raised by Ms Irvine, albeit in relation to a dispute under the Trusts of Land and Appointment of Trustees Act 1996 on the death of her client's lesbian partner, that she had had a significant amount of work to do to prove dependency.

More broadly, though, the solicitors appeared to have been working to construct their clients' cases to fit with heteronormative ideas about gender roles in relationships. This is in spite of contentions, such as those made by Weeks (2004: 159), that non-heterosexual people are "in the vanguard". As is set out above, it was asserted that 'queerness' entails, "innovation and support for gender nonconformity" (Green, 2010: 429).³⁶ My questionnaire data support this, suggesting that subsisting same-sex relationships hold radical potential. Yet, at the point of dissolution, civil partnerships, whilst initially appearing to have brought about an increase in legal equality, have simultaneously facilitated the imposition of a model based on heterosexual power

³⁶ See chapter 1.

relations (with the radical potential of formalised same-sex relationships correspondingly diminishing). I will now interrogate the way in which the idea of equality featured within my interviewees' narratives, focusing on the interlinked understandings of equality between same and opposite-sex couples, and between the partners themselves.

'Equality' as sameness of treatment

In respect of their narratives around equality between same and different-sex partners, the solicitors' emphasis was again on formal equality, or sameness of treatment:

The Law Society course now requires you to do diversity training [...] People are so conscious of that that they won't, you know, that... 'we must treat this exactly the same' [...] We went to see the leading counsel [...] and he was saying, 'look, you know, judges are so keen to show that there's equality that it's going to be no different from a married case' (Mr. Arnold).

They have exactly the same expectations, lifestyle, jobs. They're no different, no different at all. So, of course they should have the, umm, same, umm, treatment (Ms Ennis).

Ms Boyce even went so far as to suggest that, were she to do anything different to heterosexual couples, she feared being accused of prejudice (implying that she did not have the courage to do so). The notion of formal equality likewise featured strongly in the client accounts, with respondents failing to recognise the heteronormativity of the frameworks into which inclusion was sought (Harding, 2011). For example, they stated that:

It doesn't matter whether you're gay or straight, you should be treated exactly the same (Caroline).

It's a milestone for gay and lesbian couples to be treated the same, to be treated the same in the eyes of the law. I feel that that's really important (Isaac).

My findings in this respect are consistent with Denike's (2010: 148) assertion of the abandonment of queer critiques of the family in favour of access to "privileges of the state". By attaining inclusion based on rationalising of this nature, lesbians and gay men may seem to become supporters of heterosexual marital values.³⁷ This reduces their potential to raise questions about the way that gender works in relationships.

Moving on to consider what equality means in addressing potential economic inequalities on relationship breakdown, it was contended that, even with respect to civil partnerships:

Equality isn't that they each keep what they've got. It's joining everything that they both own, whether it's in their name or their sole name, and putting it in a pot and then dividing it (Ms Boyce).

I can't see that [...] the concept of sharing would be any different after a long relationship (Mr. Henry).

The solicitors were arguably neglecting to notice the financial separateness that may be more common, and the lesser degree to which it may be appropriate to transfer property between partners on civil partnership dissolution. There was little suggestion, in this respect, that the lawyers had the insight to recognise that the marriage frame of sharing does not always work with same-sex relationships. In fact, despite my indications in chapter 5 (which I will elaborate on below) that many civil partners have not necessarily been expecting to share what they bring in financially, Ms James reported a number of "relatively half/ half" outcomes. Furthermore, client Isaac was advised that his ex-partner may be entitled to 50% of the assets had he not agreed to pay a sum in settlement ("under the terms of marriage"), and this was the outcome in Anthony's matter, albeit that he had opposed this division less than the apportionment of 'future' assets. Mr. Derrick also described how, in a lesbian matter that he had advised on, there had been a 55/ 45% division in his client's favour. The solicitor gave reason for a near-50/ 50 division using a substantive conception of

³⁷ As indicated in chapter 1.

equality, explaining that it had put the financially weaker party in a stronger position (which he considered “fair”, given the substantial length of the relationship).

It should be acknowledged that a number of the solicitors cited relationship length to be a determining factor, with shorter relationships being approached more on a basis of reflecting the pre-relationship financial status of the parties. As to the more substantial relationships, though, Mr. Arnold considered that:

The door’s shut, for the time being at least, for doing anything but 50/ 50 [...] Most of our cases are not many tens of millions and the reality is that, in the courts on a day-to-day basis, most judges are not interested in arguments about an unequal division (Mr. Arnold).

Despite the solicitor’s claims about his caseload, Mr. Arnold still deals with relatively large money matters, and his comments should be considered as against those of solicitors working on more ‘everyday’ cases. Ms Lane, for example, viewed it to be rare to come across a case where the assets are divided 50/ 50, as a result of needs. Even so, she stated that she would seek to negotiate cases to get to a position as near to 50/ 50 as possible (and this seems consistent with Hitchings’s (2010) point that the ‘big money’ principles have been given weight in larger value everyday cases). A *White*-based approach to equality still seems, at least to an extent, to be having influence, and this might be difficult to justify in relationships where there is no especially vulnerable party.

In fact, it might seem easier to rationalise this ratio of division in a same-sex partnership where the parties have earned and contributed approximately the same amount, as was acknowledged by Ms Field. Therefore, under the appropriate circumstances, this outcome could be reached as a result of a consciousness of dual earning. As opposed to this, however, the clients and solicitors alike commonly relied on a wider discourse of formal equality between same and different-sex couples. It may be little wonder that this is occurring, given that the legislative and policy history of the 2004 Act privileged such conceptions of equality.³⁸ Even so, this

³⁸ As is set out in chapter 1.

understanding is unlikely to offer the kind of radical change that we might have wished to have been catalysed by formalised same-sex relationships. Indeed, the sameness-centred approach might be criticised for omitting to envision more transformative models of family. I proceed by turning to the way that differences between dissolution and divorce featured in the participants' accounts, and addressing the extent to which they have signalled any change to the legal approach towards financial relief.

Discourses of difference

The differences raised in the interviews centred around the following issues: incongruence in the circumstances of same and different-sex cases; a desire amongst lesbian and gay clients to sort out their relationship disputes on their own terms, and to settle (rather than leaving resolution to legal professionals); and a difference in approach to relationship finances. I will consider these in turn, arguing that, whilst disparities were not reflected in the solicitors' approaches to asset division on the whole, a preference towards self-ordering indicated some degree of client resistance.

Divergent factual matrices

The main (interrelated) dissimilarities observed by the solicitors between same and different-sex matters concerned the partners' more similar employment statuses, their sharing of household tasks, and the common absence of children. In terms initially of civil partners' working lives, and corresponding with my questionnaire findings in chapter 4, it was described how:

Most of the clients would generally be in employment without huge gaps between their incomes, whereas I think... thinking, umm, to, err, heterosexual cases [...] there is quite a big gap [...] Most of them are, sort of, from the same professional or class background (Ms Field).

I think that, certainly, the salary base may be higher. So, therefore, actually, even if there may be a big differential between one and the other, the one that

doesn't earn as much still earns enough. So, it's not... it's not as if there's the need that there might be (Ms James).

It is perhaps striking that it was the two lesbian solicitors that highlighted these differences. That said, echoing the last sentiment, Mr. Henry also mentioned that it may be more difficult for same-sex partners to prove needs. The question raised there was whether the courts would be willing, in a civil partnership matter, to adjust capital to recognise the greater need of one party solely by reference to inequality of income or earning capacity, with this not having been caused by sacrifice, or prejudice in the employment market due to gender. It was relevant that Mr. Henry, in particular, should have been the one to address this point, given that he felt that the majority of the matters that he worked on were classified as 'needs' cases, despite having assets spanning up to £10 million. The inference may be that, in relation to same-sex relationships, the practitioner conceived of needs in a more restrictive sense compared with how generously the term has been interpreted in matrimonial proceedings.

Yet, this issue was not noted more widely, with heteronormative assumptions and arguments frequently being drawn upon. Ms Irvine, for instance, considered that, in the civil partnership cases that she had worked on, there had been a 'breadwinner' and supporting 'homemaker'. Whilst this may have been reflective of the facts of those individual cases, she expressed that:

I think that those situations arise regardless of gender if there is financial security [...] The ability to look after the dog or cats, to spend time with elderly relatives, to run the home [...] I think that wealth gives you choices that you don't otherwise have (Ms Irvine).

It is interesting that the solicitor should make that contention when my questionnaire results suggested that gross household income had little impact on domestic division. She ultimately viewed same-sex matters as being, "conventional" in terms of disparity in wealth and income between the partners, and the responses of Mr. Henry and Mr. Norris were in agreement. This suggests, in addressing my second research question,

that legal actors are indeed applying heteronormative assumptions of the gendered division of labour to same-sex relationships, even though they may not be applicable.

In fact, those solicitor accounts stood against my client sample, where six interviewees had, for a significant portion of their relationship, held jobs of a similar level to their partners. This proportion resembles my questionnaire finding that 63.8% of respondents had the same occupational status as their partner. For ease of reference as to the interviewees' occupations, see appendix H. Edward and his partner held identical professional positions (although his partner was more senior), Jennifer and hers were both public sector workers, and Freddie and his partner worked as managers, also within the public sector. George and his partner worked full-time within the community and personal services industry, and Heather was a professional whilst her partner worked in education (prior to becoming self-employed). Bill and his partner had reasonably paid jobs in professional industries for over half of their relationship, although his partner was subsequently dismissed for criminal activity, and was unemployed for two years before obtaining part-time work. It is likely that the relatively widespread finding of similar employment statuses ties in with the absence of children in the clients' households. This explanation did feature in six of the solicitor accounts, with Mr. Arnold stating that:

It does seem to be that, once there's a child [...] it's a lot easier to get into gender stereotypes (Mr. Arnold).

A minority of practitioners additionally perceived that the more frequent absence of a single 'breadwinner' was mirrored by the lack of a single 'homemaker'. Ms James, for instance, viewed that her clients had considered their home as being run "jointly". Depictions of the sharing of housework featured more regularly in the client accounts, though, with there being reports such as that:

Things like laundry, we would do together. You know, whoever would just put a whites wash on, or a colours, you know... we'd go out and put it on the line. So, you know, both of us would be involved in that [...] The gardening, umm... we both enjoyed the garden very much and, umm... we both did gardening (Jennifer).

Cleaning we both shared responsibility for, as no one wants to clean, do they? (Isaac).

Dishwasher loading and emptying, whoever came first would be the person to do it (Anthony).

These descriptions pointed towards Kurdek's (1993) "equality" pattern, under which the parties are as likely as one another to do the housework.³⁹ Solicitor Mr. Derrick did make reference to the, "equal division of labour around the house" in a matter that he had worked on, although he stated that one partner would shop a bit more and the other would cook. That perception resembles a "balance" pattern, where the parties are responsible for the same number of different tasks (Kurdek, 1993). This pattern similarly featured in client Heather's account:

She did the, umm, shopping and most of the cooking, probably 90... 95% of the cooking. I tidied up and, err, did the washing up, or loaded the dishwasher, unloaded the dishwasher, you know. I did all of the laundry... so, I would strip the beds and do, you know, the washing and drying. Umm, so we sort of split what was left of the domestic chores between us. And, I think that we just sort of fell into those chores, because they were things that neither of us minded doing. She liked cooking, I didn't. I didn't mind doing the washing up, I didn't mind doing the laundry, so I sort of took that on board (Heather).

Alongside personal preference, Heather described how the arrangement had been motivated by the idea of "equality" in relationships. That comment accords with Patterson *et al*'s (2004) suggestion that lesbian couples prioritise ideas about ideal divisions of labour.

³⁹ See chapter 4.

Less common amongst the clients' responses were reflections that tasks had been apportioned in conformance with traditional gender roles, although Edward did state that:

I was much more, you know, likely to cook and decide what colour we were repainting the rooms, and he would do the more practical DIY stuff, umm, which he quite enjoyed (Edward).

On top of this, there were relatively few descriptions that more closely matched a "segregation" type pattern. George claimed that his partner did not do anything around the house, and Freddie emphasised that he had done the majority of tasks, albeit that his partner would help to prepare food and tidy away. Notably, however, Freddie emphasised that he had been "happy" with that arrangement, and the same was true of Debbie, who perceived that she had conducted the cooking and cleaning in exchange for having worked part-time. In this way, there were indications that the roles may have been selected by the partners (rather than societally imposed), which signifies greater equality of working and learning (Baker *et al*, 2004).

In relation to caring work, whilst none of these clients reported having cared for children or elderly relatives, a number stressed having looked after pets. Debbie viewed herself as having been the only person that cared for the dogs within the household, and George perceived that he had taken sole care of their cats. On the other hand, Heather and Jennifer considered that they and their ex-partners had looked after their pet cats jointly. Their accounts work against suggestions of one partner necessarily conducting the caring work, as has frequently occurred in heterosexual relationships. Not only this, but they are again in harmony with the idea of equal sharing under Baker *et al*'s (2004) working and learning dimension. Turning to the practitioners, several had advised on matters where children had been present. In a similar vein, two reported the care work as having being shared, at least in the context of lesbian relationships:

They were raising this little child, and they managed it quite well because they were both [academics], and they both paid for the childcare and, you know, they spent joint quality time (Ms Ennis).

They shared care of the children [...] as much as you can do, 50/ 50 [...]
Within lesbian relationships, it's the norm (Ms James).

Having stated this, though, Ms James went on to assure sameness by highlighting that she had advised civil partners who were in more "traditional" relationships, where one had stayed at home. In this way, her response reverted to heteronormative familial arrangements.

It might seem that, given the less clear cut and distinctive 'breadwinning'/'homemaking' role patterns (recognised by some solicitors and evinced in the client accounts), the adoption of the principles and assumptions developed in the matrimonial case law are more difficult to justify in civil partnership matters. This is especially the case given that they have been developed to address the disadvantaged position of the stay-at-home housewife. Nevertheless, it is interesting that, whilst the solicitors raised differences in the factual matrices, they did not seem generally to have translated into a disparity in how same-sex matters have been approached and argued. Legal actors are broadly not responding to the ways in which lesbians and gay cases diverge from the 'norm', which mark their relative equality of condition in comparison to different-sex couples. This lessens their potential to instigate movement from stereotypes of traditionally gendered roles.

A preference for resolving on their own terms, and against litigation

A further difference observed by the practitioners was that lesbian and gay clients have tended to have a more developed idea of how their matter should be resolved. Ms Field set out how:

Often, they'll come and they'll give me a mathematical calculation of what they've paid. And I don't usually get that on a dispute, a marriage... you know, on a heterosexual case [...] I'll say, 'it's not actually quite like that, the court isn't going to approach it on that basis'. Umm, I don't know, do you think that it's because... do you think it's because people understand what

marriage is? Do you think it's so part of the culture that marriage means sharing, whereas civil partnership... I don't know (Ms Field).

Ms Field hinted that the term 'civil partnership' might carry alternative connotations to the sharing approach widely associated with marriage.⁴⁰ Her report of the clients' attitudes may, once more, speak to their relative financial separateness, and that notion is supported by the following reflections on same-sex matters:

There's definitely been more of an air of, 'we're going our own way, we need to divide our assets and get on with our own lives'. Whereas, when you see a wife who has, perhaps, been working part-time and is very dependent on her husband's income, you get a very different feel (Ms Clarke).

When they break up, they say [...] 'we've done everything separately and independently, so we'll carry on doing that. You've had more money than me, and you always will. I've always had less money than you, and I always will' (Ms James).

Ms James went on to describe having advised her clients that they could obtain a greater proportion of assets under the law, but how they had not wanted her advice. There was further evidence for this suggestion in the client data:

I was quite steeled against the solicitors' advice [...] I'd kind of, in my head, already started thinking about what I thought was fair, rather than what was legally allowable [...] I just really didn't want a bad energy around it, so I had to be very robust in my own head about what I thought was right [...] I wanted to know that, down the line, I could say that I'd taken financially what I thought was, you know, respectful and polite, and realistic, not just what I could (Edward).

Edward had consequently agreed to the transfer of a figure that would simply enable to him to relocate, this amounting to a lot less than half of value of the parties' flat. In

⁴⁰ This touches on the discussion in chapter 5.

so doing, he had resisted the possibility that the dissolution should become adversarial, or that the other side should be pushed for a better outcome.

Indeed, practitioners Ms James and Mr. Norris set out how their civil partnership matters had tended not to litigate. To this extent, in beginning to answer my third research question, the introduction of formalised relationships has not necessarily brought about the greater engagement of lesbians and gay men with the law.

Regarding Mr. Norris, none of his same-sex cases (which amounted to around 5% of his caseload) had been pursued through the courts, whilst approximately 10% of his heterosexual cases went to final hearing. It should be highlighted that one of the 10 clients that I interviewed did proceed to final hearing, and that three had ongoing matters.⁴¹ Then again, people who have been involved in difficult proceedings may be more likely to agree to participate in a study such as mine. Consistently with the two solicitors' accounts, it was detailed how:

I deal with some very acrimonious divorces and, at the moment, I haven't dealt with a terribly [...] acrimonious civil partnership (Ms Clarke).

I think in comparison, we did settle the money issue very fast. If this was an opposite-sex couple, no we wouldn't have [...] What I did find is that the finances, every time you got the letter, 'okay' (Ms Ennis).

The indication is that, whilst heteronormative conceptions of gender have been carried over into civil partnership matters, gay men and lesbians are providing some resistance to the imposition of heterosexual norms on their relationships. The clients' apparent preferences in this respect are consistent with governmental 'nudges' in the direction of mediation, private ordering and avoiding lengthy family law disputes (under, for example, the Children and Families Act 2014). That said, the number of new private law cases was up 23% in July 2015 from the same month in 2014, signalling that the government has not managed to get enough litigants to turn to mediation (Smith, 2015).

⁴¹ As can be seen at appendix H.

The possible trend identified may be explained on a number of bases. Firstly, it might be traced back to a point, made by Mr. Henry, about the way that the presence of children can cause a separation to become more conflicted (as the parties are obliged to continue to deal with one another on parenting related issues). Seemingly, given that children are more often absent in same-sex matters, this takes some of the ‘heat’ out. Secondly, it could reflect a contention, made by Ms James, that her civil partner clients were, “happy” with each other’s domestic contributions (as against labour division often being, “a straight couple problem”). A third driving factor for same-sex couples preferring to work things out for themselves is likely to be the longstanding subcultural importance of former partners within lesbian and gay kinship networks (Weeks *et al*, 2001; Van Eeden-Moorefield *et al*, 2011). On this note, Weinstock (2004) identified the need to develop and maintain non-heterosexual identities, and the shared experience of marginalisation, as supporting the relationships between lesbians and their ex-partners. A fourth explanation is the historical exclusion of lesbians and gay men from family law (and this “lack” of law is also identified as a “problem” by Harding (2011)).

Fifthly, the partners’ disinclination to pursue their matters through the legal system may have been exacerbated by their wider cynicism (picked up on by the solicitors) relating to ‘law’. Consider these statements:

I think that their expectations of the law were a lot lower than maybe a heterosexual client, that the law wasn’t going to do anything to help them [...]
I think, actually, that both of the clients that I dealt with individually were fairly skeptical about the law in general. They weren’t big fans of it. Umm, maybe that’s been informed by the historical treatment of same-sex relationships by the law (Mr. Derrick).

There’s a study that says that something like 80% of people who... straight people who break up, the first people that they go and see is a solicitor. It’s really high, and I would say that it’s much lower for homosexual break-ups. I think that the first person that they go to is not a solicitor. Umm, possibly the last... possibly the last. Because, really, we’re not... we’ve not been seen as their friends. And, the law hasn’t been seen as particularly friendly [...] I

think that civil partners generally do now... they do because they, umm... they know that they have to do something legal. Something legal happened, and they know that something legal has to happen [...] It's not because they want to argue about everything, they just want a bit of help (Ms James).

Those claims are reminiscent of the work of Harding (2011), which argues, in terms of lesbian parenting, that mothers will often work around legal presumptions and create their own rules.

In fact, Ms James and Ms Field considered that civil partner clients are most comfortable when dealing with a lesbian or gay solicitor. There was an impression that a commonality of sexuality helped to bridge the gap between clients and 'law'. This was similarly reflected in the partners' narratives:

[Choosing Mr. Arnold, a gay solicitor] was about not having the barrier of difference in sexuality [...] There's just an empathy that you can... when you say something, you can work... you have the same, let's say, foundational mentality, or whatever. And if the solicitor had been straight, I would have probably been being prejudiced against the solicitor thinking that the solicitor would be prejudiced to me (Anthony).

[The solicitor] was shocked that, you know, he wanted an open relationship, and that he wanted continual sex with other people [...] but, you know, if that had been a gay solicitor- a gay man especially, or a gay man working in a solicitors dealing with dissolution- he'd have said, 'I totally understand what's going on here'. And, there would have been a lot more tea and sympathy [...] I guess what I now know is that I think that I would have preferred to have met someone who was far more sympathetic to what has happened within, you know, that lifestyle. Err, and that could understand, rather than being clinical about it (Isaac).

It is possible that the extensive heterosexuality across the solicitors' profession and judiciary has influenced same-sex partners' decisions to settle, by reason of their unfamiliarity with lesbian and gay lives. Around 97% of those responding to a

question in the Law Society's (2014: 10) practising certificate holder survey identified as heterosexual, whilst this figure was closer to 98% amongst recommendations for judicial appointment from October 2013 to March 2014 (Judicial Appointments Commission, 2014). In terms of judicial demographics, the advanced age of the judiciary was also raised as an issue, with even solicitor Ms Irvine voicing that the legal profession is, "run by people who have very old-fashioned concepts". Client Debbie viewed that:

I should imagine my granddad, yeah, had he still been alive today, would probably not be as accepting of gay people as probably, like, my mum would be, do you know what I mean? Yeah, so, like, I think that the age of the judge probably went against me (Debbie).

Therefore, it seems that a lesser tendency of same-sex partners to litigate their matters may, at least in part, relate to their difficult relationship with 'law' and legal actors. However, there appear to have been additional factors at play in lesbian and gay men's avoidance of solicitors, and these suggest that they may have a different approach to financial relief to that which has developed through the 'big money' case law. I will move on to examine the ways in which my interview participants' views diverged from this approach in the context of civil partnership matters.

A different approach to finance and relationship breakdown

Regarding the issue of financial division, a few practitioners reported having encountered clients that were not seeking sameness of treatment to different-sex partners. For instance, it was reported that:

Some do have a high expectation that they're going to get different treatment, but then you tell them, 'fine, it isn't' (Ms Ennis).

There's a lot of media hype around same-sex marriages and same-sex relationships. And then, so, people almost have a pre-conception that they will be dealt with differently. Umm, and I think that that's probably one of the most important facts, really, to home in on quite early, is to make it clear that,

in the majority, the law has sought to almost mirror what has been the position for marriages for some time (Mr. Kennedy).

It is striking that, despite their clients' expressions of a desire for difference, both of these solicitors reported having responded with assertions centring around sameness. Notably, this emphasis did not always feature, with some practitioners stressing it only to be appropriate to adopt a sameness approach where the facts are directly analogous. Ms Gale, for example, only considered it possible to treat lesbian and gay couples the same as heterosexual couples without children. That said, of course, arguments focusing on sameness were adopted in relation to the childless clients discussed above. Moreover, one has to wonder, given the previous assertions about the routine application of the heteronormative framework, to what extent the practitioners would recognise the circumstances of the cases before them as non-identical.

Practitioner Ms Field did, however, pose criticism of the application of a 50/ 50 ratio of apportionment in same-sex matters, contending that:

You're imposing this heterosexual model on [people's relationships] and saying [...] 'we're going to assume that you started as a sharing relationship, and then give us reasons why we shouldn't think that' (Ms Field).

Client Anthony likewise perceived it to be "unequal" that a "heterosexual stereotype" is being applied. Whilst Rowlingson and Joseph (2010), in their study of 80 different-sex couples, found that an arrangement of "sharing" was generally considered to be what "would" and "should" happen on relationship breakdown, this is not necessarily true of same-sex partners. The indication here, in response to both my first and third research questions, was of an alternative approach to finance on relationship breakdown. Ms James elaborated that same-sex partners' views of equality often do not match those of solicitors:

Equality of outcome... they don't get that. That's not something that civil partners think about. Whereas, it's very much in the mind of, I think, straight

married couples. They get ‘equality of outcome’ much quicker [...] My civil partner clients... ‘why is that fair? Why would that be fair?’ (Ms James).

I interpret her to have meant, by “equality of outcome”, the eliminating of material imbalance between the parties by way of a transfer of funds from the more, to the less, wealthy individual.

The solicitor’s assertion of differing attitudes was supported by client Debbie, who disapproved of the legal approach that had been adopted in her matter. Consider her account of how the 50/ 50 division of the proceeds of the sale of their property was reached:

If two people came in and they said, you know, we’ve got a biscuit here and we’ve got to share it, ‘well, cut it in half. Have half each, perfect’. But, the fact that one person brought... contributed towards, you know, the majority of that biscuit, and the other person... like, one person had put in 9 pence, the other one had put in a penny to buy this 10p biscuit, then that wasn’t kind of mentioned, was it? [...] I just think that, sometimes, it’s what you put into it [...] If you’ve put this in, then you’re entitled to that percentage out (Debbie).

She was referring to the contribution of her inheritance towards the purchase of the home, which she felt was not adequately reflected in the asset apportionment. Debbie held perceptions of ‘fairness’ which focused on the relationship finances, and which she viewed as being more important than equality, in the sense that it was conceived of in *White*. It may, of course, be the case that such perceptions are also held by heterosexual people that bring the greater quantity of money into their relationship. This is given that the 50/ 50 approach to division is a legal construct that replaced a less generous approach to the economically weaker party. Indeed, Dowding (2009: 225) claimed that parties in different-sex divorce cases “may require some persuading” that the outcome in their case was “balanced and just”. Yet, the indication within my data is that these opinions may be more common in same-sex matters.

Anthony further contended that:

I think that equality should be based on- in my view now, I would have thought differently had I not gone through this process- on what is accrued or disaccrued during the relationship, so your contribution or detraction in financial terms. It's interesting because, in the end, it all becomes about money [...] Whichever way you shape equality, the measuring stick needs to change. Maybe it needs to change so that you're two individuals and then you look at the circumstances of the individuals, not hoping that one is perceived as a man or a woman (Anthony).

It can only be imagined that Anthony's views were shaped by his beliefs of his partner's lack of economic and domestic activity, as well as the substantial earnings that he personally had brought into the relationship. Nevertheless, his response works contrary to the idea, described by Burgoyne (1990), that all assets should be shared, regardless of who contributed what to the household. It goes against the notion, in the heterosexual case law, that the parties' different contributions should each be regarded as no less valuable than the other (unless one of their contributions was financially "stellar" (*Cowan v Cowan* [2001] 2 FLR 192)). Not only this, but his understanding lacks any recognition of the non-financial ways that people can contribute to relationships. On the contrary, Heather stressed that work outside of the economic sphere was of value (although she was unsure as to how it would be quantified). All the same, the client described having settled her own matter by presenting her ex-partner with a list of what they both put into the property financially.

Amongst other clients, understandings of equality were more nuanced. Edward considered that financial relief outcomes should be determined by what the partners understood their formalised relationship to be about. He explained that:

If it really is a civil agreement... it's just about you, you know, being each other's next of kin and having some emotional bond then, you know, you should probably split up and no one should lose anything that they brought into the relationship. But, I think that if you do feel that it's akin to a marriage [...] and you're contributing all that you have, as it were, to that relationship,

and then you split up, you need... there needs to be some preservation.
(Edward).

The client deemed it appropriate for there to be a two-tiered approach, depending on how 'marriage-like' the partners considered their relationship to be. Whilst it was established in chapter 5 that some clients did view their civil partnerships as being like a marriage, I also identified a number as having sought to formalise their relationship for practical reasons. Edward regarded it more persuasive for those practically driven parties to walk out of their relationships with what they brought in (thus respecting the parties' autonomy).

The emphasis placed by the clients on financial contributions is, once more, likely to be at least partially reflective of their lack of children. It may be that non-financial contributions would be viewed as more relevant in the minority of same-sex matters where children are involved, and my intention is not to argue that those who have made sacrifices to care should not receive financial support on relationship breakdown. However, what was evident from the client accounts was that the ways that they conceived of equality were often incongruous with those of the solicitors (and that heteronormative assumptions and constructs seem to have been applied by legal actors even where children were not present). It appears to be the case, from this study, that lesbians and gay men are eschewing the redistributive practices developed in the key case law in favour of a focus on the individual economic circumstances prior to and during the relationship. It is tempting to view the partners' preferences in this respect as a function of their relatively similar income or earning potential. That said, it may be more likely to reflect pre-civil partnership approaches to relationship breakdown and the previous lack of legal support on same-sex relationship breakdown. As those in same-sex relationships find that they are no longer positioned outside of the law, approaches to money management in legally recognised same-sex relationships may change.

As it stands, though, the partners' focus might be considered problematic for two reasons. Firstly, the fact that the clients tended to place less weight on non-financial contributions seems to imply there to be greater scope to argue financial contributions as a reason for greater departure from the 'yardstick'. This consequence might be

criticised, by reason that it, “overlooks deeper structural, gendered economic inequalities” (Monk, 2015: 191). Secondly, I recognise that the clients’ thinking works against Ellman’s (2003) contention that, in view of the already “inherently uncertain” nature of financial relief outcomes, it is important that there is clarity and consistency.⁴² Still, I argue that recognising the divergent attitudes of same-sex partners helps to instigate a movement away from the unthinking and universal application of a heteronormative model. It could open up new critical dialogues concerning the existing frameworks not only in the same-sex context, but also in relation to divorce matters, given that many different-sex relationships are also lived non-normatively.

Conclusion

The solicitors observed some disparities in their experiences of same and different-sex matters, thereby *prima facie* appearing to generate innovative potential. That said, those observations have had little impact on the way that they have approached and argued their civil partnership cases. As a result of their lack of familiarity with civil partnership, legal actors, when addressing financial relief on relationship breakdown, have been placing a stress on sameness of treatment and formal equality between same and different-sex couples. Returning to my second research question, they have been constructing lesbian and gay cases as being identical to married ones. This may be unsurprising, given both that the formal legal frameworks surrounding civil partnership dissolution are very similar to the legal approach to (different-sex) divorce, and that the common law has a preoccupation with precedent. The approach is, though, in tension with the fact that same-sex partners, given their lack of gender disparity, hold “unique possibilities for the construction of egalitarian relationships” (Weeks, 2004: 159).

⁴² It is acknowledged (and was highlighted to me in a conversation on 23rd September 2014 with R. Leckey) that the greater the need that is created for individual circumstances to be investigated, the more it may become necessary to instruct lawyers, and the less feasible it may be for parties to resolve matters for themselves.

The strategy of encouraging the adoption of subject positions based on traditional gendered power relations is presently being extended into civil partnership proceedings, and the law of financial relief is working to reproduce traditional heterosexual behaviour as the norm.⁴³ Particularly, through adhering to notions of equal division as they appear in the key heterosexual cases, practitioners are reverting to heteronormative models that draw on assumptions of necessary imbalance in relationships. This is significant, given that lesbians and gay men often do not experience such imbalance in their domestic lives, consequent to which dissolution matters hold the potential to pose novel challenges to the law. I argue that understandings of legal equality need to shift so as to enable lesbian and gay lifestyles to undermine normative power relations in the area of the family, and to allow everyone the same capacity impact on their environment (Baker *et al*, 2004; Cooper, 2000; 2004).

The presence of a politics around gender subordination in the development of redistributive rules poses questions about the unmediated application of those rules to same-sex relationships (Leckey, 2013). Yet, practitioners are not attributing lesbians and gay men with equality of recognition, and are generally not responding to the ways in which lesbian and gay clients are different, despite client efforts to highlight such difference. Those efforts would appear to indicate that a level of resistance has been retained to the imposition of heterosexual relational norms, although the potential transformative effects of this are being blunted in practice. Lesbian and gay couples' apparent preferences for settling their family law disputes, rather than litigating, may signal some capacity still to help to challenge social and legal constructions about the gendered nature of roles in intimate relationships (helping to answer my first and third research questions). Even so, as same-sex partners adapt to the position of being 'inside' the law, and the emphasis on formal equality that this has entailed, their attitudes in this respect may change. Chapter 7 also identifies somewhat of a shift in terms of the approach towards 'future' assets. When opting to engage with the law, though, same-sex relationships are predominantly being assimilated into the marriage model. This risks leaving essentialist assumptions about male and female roles intact, and causes underlying critiques of the way that gender

⁴³ This supports the notion, in chapter 2, of heteronormativity as regulatory.

works in marriage to become “marginalized, even silenced” (Polikoff, 1993: 1549). As far as women are concerned, it fails to interrupt the persistence of the ideology of domesticity, under which nurturing and caring are normatively assigned to them. Indeed, it reduces the capacity of same-sex relationships to expose, denaturalise and dismantle such historical constructions of gender that marriage has centred around, so as to alter contemporary understandings of gender in all formalised relationships.

Chapter 7- In(ter)dependency

This chapter explores my interviewees' responses concerning finances, given observations that money has been treated as, "a virtual index of inequality within heterosexual couples" (Heaphy *et al*, 2013: 107). My engagement with the issue has in mind the discussion in chapter 6, which suggests that a focus on sameness can cause difficulty, moulding same-sex relationships into heteronormative patterns. This can result in the overlooking of aspects that are not compatible with the 'ideal'. Part of the assumption that might be made when adopting this line of thinking is that, given that they are no different to heterosexual couples, gay and lesbian partners seek to merge their finances in a way that is promoted by "modern marriage" (Burgoyne and Routh, 2001). I will argue here that my data indicate this not to be true amongst my client interview sample.

I begin by situating my research in relation to the existing literature on same-sex finances, a discussion that is foreshadowed by the briefer coverage of this material in chapters 1 and 4. I will move on to examine pre-separation financial arrangements, continuing with the theme of identifying disparities observed by the practitioners between same and different-sex partners.⁴⁴ I will contend that, as is suggested in the literature, some of the solicitors, and a number of the clients, conveyed relative balance as to how money was managed. Their narratives moreover depicted arrangements of relative individualism in terms of asset holding, which might be viewed as creating less financially dependent relationships (Elizabeth, 2001). This is significant in terms of same-sex couples as, not only is one partner not already more vulnerable than the other because of their gender, but the partners also seem to retain a level of financial resilience. That being the case, the redistributive practices of family law may be less appropriate.

I then address the position post-separation and, in seeking to answer my third research question, I contend that the parties' pre-existing arrangements, alongside a lacking sense of futurity, feed into their greater objection to maintenance and pension sharing. Of relevance is the fact that those awards are based on heteronormative notions of

⁴⁴ See also chapter 6.

‘feminine’ dependency. In fact, there does appear to be some transformation occurring in relation to these ‘future’ assets, in that some practitioners expressed a hesitation as to the applicability of this type of award to lesbian and gay couples. In this way, whilst factual dissimilarities may not have translated into changes in the ways that same-sex cases are presented, or in the application of sharing,⁴⁵ they may be impacting the kinds of awards that are made. Legal actors appear more reluctant to apply the assumption of financial dependency, with the different values of same-sex couples seemingly being reflected. In a society where women are frequently still viewed as necessarily being reliant on their husbands on an ongoing basis, my interview findings signal some potential to move away from such traditional gender stereotypes (helping to answer my first research question).

Existing literature on same-sex finances: how and why

It has previously been asserted that, in the context of same-sex relationships, “there are no long standing rules about money. The slate is blank” (Marcus, 1998: 179). That being the case, research has suggested that, although often merging their finances to some degree, lesbian and gay couples are more likely to keep separate finances than heterosexual partners (Mendola, 1980; Blumstein and Schwartz, 1983). Weeks *et al* (2001) and Dunne (1997) have contended that same-sex partners tend to contribute equally to household outgoings but, otherwise, hold their money in sole accounts. More recently, Burgoyne *et al* (2011) and Heaphy *et al* (2013) similarly observed a preference amongst same-sex partners against pooling all of their money, and how lesbians and gay men draw on the value of independence in accounting for the handling of money in their relationships. In conjunction with this, they revealed that financial decision-making has been perceived as a “shared activity”, with same-sex descriptions being, “very different from the typical picture of married heterosexuals, where an economic ‘division of labour’ along stereotypical gender lines is much more common” (Burgoyne *et al*, 2011: 699). Indeed, Burgoyne’s (1990) earlier work has indicated that, in different-sex relationships, men tend to have more economic power and greater control over money (meaning that they have more say in how money is used).

⁴⁵ See chapter 6.

Lesbian women have particularly been said to wish to, “avoid extreme financial imbalances and value self-sufficiency”, having been exposed to the logic of the provider role in relationships with fathers or possibly ex-husbands (Clarke *et al*, 2005: 358). In this way, their decisions about merging finances are arguably influenced by heteropatriarchy and experiences of power imbalance (Martinac, 1998). This idea ties in with radical feminist resistance against dependency and the oppressive institution of sexuality. It has been asserted, in this respect, that the lesbian, “acts in accordance with her inner compulsion to be a more complete and freer human being than her society [...] cares to allow her”, and that she is forced to evolve her patterns of living, learning about, “the essential aloneness of life” (Radicalesbians, 1973: 240). Correspondingly, Traies (2014: 214) has identified (albeit by reference to older lesbians) a “fiercely independent mindset” that extends beyond the financial, encompassing an ability to support oneself in a wider sense.

More generally, a mentality amongst same-sex partners that favours less heteronormative financial patterns might be explained by the stress, placed by participants in Rolfe and Peel’s (2011) study, on the perceived value of creativity, and of their difference from the dominant frameworks. We might additionally note Weeks *et al*’s (2001: 100) claim that, “separate financial lives can be symbolic of the ethic of co-independence which underlies the operation of same-sex relationships”.⁴⁶ However, Burns *et al* (2008) have since pointed out the difficulty of concluding whether this approach to money management reflects that ethic or, alternatively, more practical concerns. This is given that it is only relatively recently that same-sex couples have been provided with legal assistance for disentangling their finances on relationship breakdown. I will move on to interrogate the ways in which these explanations feature in my participants’ accounts, as well the extent to which their discourse evinces these models of greater independence and balance more broadly.

Pre-separation finances

Regarding financial arrangements prior to separation, this discussion addresses two

⁴⁶ See also chapter 4.

main points: firstly, how the domestic finances have been conducted (including bill payment and the making of financial decisions); and, secondly, how the parties' money has been held. I will argue that, in accordance with the previous literature, financial contributions tended to be viewed by the clients as being fairly equal, particularly in terms of the quantity paid and of the degree of co-operation between partners. Although one partner has often carried out the task of physically taking control of bill payment, this does not map onto accounts of traditional gendered power relations. I will then explain that a degree of separateness was common amongst my interviewees' accounts of same-sex financial arrangements. Consequently, there has not been the same interdependency and interconnectedness that the courts have aimed to address in their financial relief awards.

A more balanced approach towards financial management

In terms of the settling of everyday domestic expenses, a few practitioners claimed that their same-sex clients had made more 'equal' financial contributions to the relationship than heterosexual couples. For instance, there were reports that:

They shared everything equally, all [of] the bills (Ms Ennis).

They were both bringing money into the household, and they both shared responsibility equally (Mr. Kennedy).

Mr. Kennedy's account, referring to client Bill, was supported by Bill's description of the early years of his relationship (with the exception that he had contributed less to the mortgage, because he had put more money into the property initially). Indeed, the partners' responses themselves more regularly featured this balanced approach. Their depictions seem to evince a form of equality of power because, as against this more egalitarian approach, men have traditionally paid more in heterosexual couples (Baker *et al*, 2004). Thereby, they have sustained power over their wives. In fact, a number of solicitors drew upon that heteronormative arrangement in describing their caseload as a whole, with Ms Irvine employing the language of "dominance".

As to how the balance played out within the clients' households, explanations

included that:

The mortgage was solely in my name, but [...] he thought that he must pay half, for whatever reason [...] whereas, you know, with my current partner, he... you know, obviously, my earnings are at one end, and most people's earnings are at the other end of the scale. And so, umm, what I agreed with my current partner, very early on, is that he pays a proportional representation of what he can afford (Isaac).

It was everything 50/ 50, down the middle [...] Neither of us carried the other (Freddie).

The idea of splitting in half recalls the responses to my questionnaire,⁴⁷ and Edward likewise set out how he and his partner would “match” expenditure “50/ 50”. This was irrespective of the fact that, being a more junior worker within the same profession, Edward was earning less. He did, though, express some dissatisfaction at this, reiterating Burgoyne's (2008) point that making the same contribution to expenses can disadvantage the partner with the lower income. Returning to Freddie, the client proceeded to set out how the arrangement between himself and his partner had been, “just how we operated” in a relationship where they were earning fairly equal amounts. An emphasis on the partners having earned at around the same level featured in six of the client interviews. This might be contrasted with the position in different-sex relationships, where a wife's earnings have traditionally been viewed less seriously than her husband's. It has, in fact, been found that there is still a 19.1% pay gap between women and men (Office for National Statistics, 2014a).

Alternatively to the system of the partners paying half for the same items, an arrangement under which the partners each paid for different items (as was also identified in my questionnaire results) was described. Heather set out how she had put a greater proportion of her earnings towards paying the bills, whilst her partner had bought the food, and Debbie and Edward detailed how:

⁴⁷ As to which, see chapter 4.

She paid all of the bills [...] so my money didn't go towards the gas and the electricity and the grocery shopping, but my money was just always kept in the bedside drawer, 'let's go for a meal, yeah?', 'okay, let's take £50 out, we'll go and have a nice meal', you know. 'Let's go out for the day, we'll go to the [location] Safari Park' (Debbie).

He'd paid off the mortgage, but [...] I'd paid for the windows to be redone, the gardening to be done (Edward).

It should be acknowledged that, although Edward's contribution in this sense was of the lesser quantity, the client felt that this had had a "disempowering" impact.

In their accounts of who took charge of ensuring that the domestic outgoings were met, the accounts provided were less balanced. For example, Heather set out how:

She wasn't interested in that in the slightest, so what I did was, umm, I set up a joint account and we both transferred money in every month into that. And then, all of the bills went out of that every month. Umm, but she had no idea, really, what the bills were (Heather).

This report reflects a contention, made by Mr. Norris, that one partner (usually the highest earner) will frequently keep the other party ignorant of the household finances. In fact, Heather stressed how she had been happy with the arrangement, as her professional background had meant that she would be best suited to the task (this reiterating a finding by Skogrand *et al* (2011) amongst different-sex couples who self-identified as having "great" marriages). The client's sentiment suggests the presence of Baker *et al*'s (2004) 'working and learning' dimension of equality of condition, given that she was able to pursue her own talents.

Conversely, a few clients detailed having been obliged to take control of the finances as a result of their partner's reckless attitude to money, or lack of financial resources. Those accounts fit well with an observation by Heaphy *et al* (2013: 116) that, amongst their (younger) interviewees, "the person who [had] incurred the debt often gave up control of their finances to the partner who has avoided debt". Within my

sample, one wonders to what extent perceptions were influenced by having consulted solicitors, particularly given the fact that the clients consistently presented themselves as having adopted this managing role (as opposed to their partner having done so). Not only this, but it is recognised once more that the clients' views were most likely impacted by the emotional experience of civil partnership dissolution, and that it helps psychologically to 'paint' oneself positively and the other side negatively (Day Sclater, 1998). Nevertheless, consider the stories of Freddie and Bill:

He was freer with his credit card than I was and, umm, I did open his credit card statements, but simply because he didn't. And, we had a file system, that everyone's bank account print-offs went into files, and I would open them and file them, umm, because he didn't look at things [...] Looking back, I was maybe too much of a parent, but then he was too much of a... what's the... the terminology is... he was a victim and I was a rescuer (Freddie).

He never knew what his balance was [...] He would secretly buy stuff on the internet, and things would... clothes... he had a bit of a... oh dear, if I think about it, the number of clothes... I mean, a man doesn't really need the number of clothes that he has [...] I think that he would buy a lot of things on his credit card and run up and not clear his debts. And so, it would just rack up (Bill).

Mr. Kennedy reiterated how there had been a difference in mindset between his client and his ex-partner, which led to Bill taking control of settling the domestic expenses. It is noteworthy that the client, as the sole earner within his relationship for some time, should do this, as it would seem to go against the notion of delegation of bill paying.⁴⁸ In a similar vein, it runs contrary to Burns *et al*'s (2008) finding that lower earners in same-sex couples conduct more of the everyday management of money. In terms of Freddie, the portrayal of his role as the financial protector echoes a finding by Heaphy *et al* (2013). In recounting stories of this nature, they emphasised that partners with this kind of arrangement do not neatly map onto traditional gendered power relations (as it is unclear whether the 'responsible' financial party is in the

⁴⁸ As discussed in chapter 4.

privileged or burdened position) (Heaphy *et al*, 2013).

Despite having taken responsibility for the system of financial management, however, Freddie claimed that he would still speak to his partner about the system that had been adopted. This stress on the notion of the partners talking financial matters through with one another was present in the clients' accounts more widely. The finding ties in with my discussion in chapter 4, as well as with ideas of equality of power, which entail an aspect of cooperation and democracy (Baker *et al*, 2004). Yet, it stands in contrast to Vogler's (2009) suggestion that relationship finances tend to be a "taboo subject" that couples in Western societies dislike talking about. Jennifer explained how:

[Ex-partner] was quite good at, you know, sitting down and going through bills, and working out where money was [...] We'd sit there on a Saturday morning adding up our receipts [...] and she'd work out what she'd spent, and I'd work out what I spent, and then we'd add it up and do the sums and, you know, we'd split the difference (Jennifer).

This description was repeated by practitioner Ms James, who viewed that her clients would quite "painstakingly" work out who had spent what and reimburse one another. That said, it was incongruous with other solicitors' reports that:

No proper record's kept of who paid for what [...] They are in love, and not worried about 'I'm paying half, you're paying half' (Ms Irvine).

This more heteronormative account draws on strategies of formal equality and the language of romance.⁴⁹

The clients' reports of financial decision-making, which mainly centred around the purchase of large items, correspondingly portrayed arrangements of discussion and collaboration.⁵⁰ This is in comparison to financial decision-making in heterosexual

⁴⁹ As discussed in chapter 5.

⁵⁰ In accordance with my questionnaire findings in chapter 4.

couples, which has tended to be viewed as a more ‘masculine’ pursuit (Edgell, 1980). Anthony, despite being the sole earner in his relationship, considered that the purchase of their properties had been joint decisions, and claimed that he would consult his partner about buying other physical assets, such as vehicles and televisions. In a similar vein, Edward stated that he and his partner would talk about purchasing items such as computers or holidays and “make a decision together”. Heather, from a slightly different perspective, reflected that:

I suppose that we just had different roles [...] I mean, she would quite often say, ‘oh, this is what I want’, and I would potentially say, ‘well, that’s a bit too much, is there a slightly cheaper model?’ (Heather).

Even so, there is clearly still an element of cooperation within that account that runs counter to Ms Irvine’s (more sameness focused) perception of the ‘breadwinning’ partner taking control of deciding, for instance, “we’re having this house, we’re having this car”. In compliance with the practitioner’s perception, though, client Debbie reported her greater earning ex-partner as having made, “all of the financial decisions”. The client explained how:

She’d just go out and buy a new TV, but, umm, it would never be, like, a £200 TV, it would probably be, like, a £1,200 TV, and I’d come back and I’d go, ‘oh my god, how big is that?’, ‘I just fell in love with it’. And, I’d go, ‘okay’, yeah, but then she would always class it as, like, she’d bought it (Debbie).

It is unclear whether Debbie viewed that her partner had felt that she had purchased the items because she had been out to acquire them alone, or whether this was because the purchases were funded out of her earnings. If the latter, the statement stands against a prior assertion by the client that neither of them had seen her partner’s earnings as being “mine” and “yours”, with both of them conceiving of it as “our money”. That earlier contention echoes a suggestion that money is often perceived as belonging to the “partnership” or “team”, made in the context of different-sex couples (Bennett *et al*, 2012). We might perceive there to be a conflict between the two powerful norms identified by Burgoyne (1990) that, firstly, the earner of money “owns” that money, and, secondly, that money is to be shared within

families (with the family constituting a unit). I shall, at this point, proceed to consider the extent to which norms of this nature were drawn upon in my participants' accounts.

More distinct financial arrangements and greater independence

Amongst my sample, Debbie was the only client to express the idea of the commonality of the finances. That said, eight clients had pooled their money with their partner's to some degree within their relationship. This statistic is close to my questionnaire finding that 76.2% of those respondents that were in a civil partnership had a joint account with their partner. Edward and his partner pooled their funds to the greatest extent, with each putting most of their salaries into a joint account (although retaining separate savings accounts). Their reasoning for doing so was that:

We had an offset mortgage initially, which meant that it was beneficial to put all of the money into one account, because that offset the interest from the mortgage (Edward).

That being the case, the client focused on the practical aspects of having a joint account. This is as opposed to Bennett and Sung's (2013: 704) different-sex interviewees, who had more commonly referred to reasons of "trust and sharing". Solicitors Ms Ennis and Ms Gale likewise reported having worked on same-sex matters where:

They both worked, you know, child was in a nursery, and they had a joint account. Their wages went into that joint account and everything was distributed (Ms Ennis).

Prior to the civil partnership, a very large amount of money was transferred from sole hands into joint hands [...] because they wanted to show to the other that their assets were joint assets, that they could use it both as their own pot of money (Ms Gale).

Ms Gale observed that, in both of the lesbian cases that she had advised on, the

finances were “mixed” although, in the gay relationship that she had dealt with, the joint account was used for the settlement of bills alone. Only one of these lesbian relationships had entailed a difference in the partners’ asset levels. She asserted a gendered difference which was also identified in my questionnaire results.⁵¹

Similarly to this second scenario, Jennifer set out how she and her partner had used a joint account to cover direct debits and standing orders, alongside having had their own personal accounts for their individual spending (and this report matches the most common arrangement described by Heaphy *et al* (2013)). Anthony and his partner had also had a joint account for bills, as well as copies of the two credit cards that were in his name (for the purchase of items such as groceries). He had had his own account into which his salary was paid on top of that. The client did not feel that his personal account was a, “‘this is my money, you can’t touch it’ type scenario”, but that was presumably because that account was used to pay off the credit cards. Bill reported that, when his partner was in employment:

We both had our individual bank accounts and, umm, we had two joint accounts. One was... one was to serve the domestic things [...] so, shopping, council tax, water, electricity rates [...] and then, the other was what we called the ‘mortgage account’. Because we had contributed differently, umm, we kept that separate (Bill).

Of course, in relation to the domestic account, Bill had eventually had to pay extra subsequent to his partner losing his job.

Freddie and his partner, although not having had an account in their joint names, had used an account that was solely in his name as their ‘bills account’. This way of organising the household finances mirrored a point raised by Ms Field that often:

One person has paid everything out of their account and the other person gives them a cheque or a standing order (Ms Field).

⁵¹ See chapter 4.

It would likewise seem to reflect a finding by Heaphy *et al* (2013: 114) concerning the relative commonness of, “situations where there was no meshing of accounts”, but nevertheless a, “virtual commitment to jointness”. On the other hand, after having covered the bills, Freddie explained how he and his partner were able to spend as they saw fit (considering this “a “personal thing”), and how the two had retained separate credit cards.

As against the more joint approaches, there were several accounts of a greater separation of finances, such as that:

He had his account and I had my account, and all of the direct debits came out of mine (George).

We never had anything that was joint, really, [it] was all single, it was all in my name (Caroline).

Such descriptions might seem contrary to Evertsson and Nyman’s (2014) argument that individualised systems of financial organisation still generate merged perceptions of money and expenditure. They additionally work against Bennett and Sung’s (2013: 714) observation, amongst different-sex partners, of a “strong message of togetherness in financial affairs”, and the normative conception (referred to above) about money belonging to the family. In fact, all 10 of the clients reported the existence of solely held bank accounts within their household, albeit with some utilising these more than others.⁵² The practitioners similarly reported the presence of separate accounts as being a noteworthy feature of their gay and lesbian cases, backing up both the existing literature and my finding as to the comparative lack of financial merging in same-sex relationships.⁵³ This is relevant in the context of financial relief as, whilst sharing may be most applicable where income is pooled, it will be less pertinent where it is not.

By way of an illustration of the arrangements described, it was commented that:

⁵² This proportion was even higher than the 90.2% figure for my questionnaire respondents.

⁵³ See chapter 4.

Once [heterosexual couples] have been married for a period of time, [their] finances... intermingle and there are more joint accounts, properties are more jointly held, most of the assets are joint. Whereas, in the civil partnership cases that we've seen [...] the bank accounts have been separate (Mr. Derrick).

They just had separate accounts. I don't think that they had a joint account [...] Most people have at least one account that is joint, really, in heterosexual cases (Ms Boyce).

Ms Field, in the same way, considered same-sex partners to have “clear boundaries” when it comes to finances, which she viewed as being a consequence of the fact that, historically, they “couldn't not be separate legally”. This speaks to the above point that it may be that the historical lack of legal and financial protection on the breakdown of same-sex relationships has mediated against any desire for stronger financial merging in same-sex couples. On a related note, Clarke *et al* (2005: 357) emphasised, prior to the 2004 Act coming into force, that, “pooling can involve considerable risk for lesbian and gay couples because the law as it currently stands offers them little help in dividing up joint assets when a relationship ends”. Obviously, this remains the case for cohabiting couples. It may be that, as same-sex partners become more familiar with the implications of formalised relationships, there will be a change in their financial behaviour.

Nonetheless, Ms Field proceeded to discuss a case concerning an older lesbian couple where they had been unaware of their partner's financial circumstances, and:

We had to go through this rather torturous exchange of information just to get to the, 'it should be 50/ 50' [...] The ones who've kept things separately may [...] want a little bit more convincing. (Ms Field).

It is striking here that the 50/ 50 asset division framework should have been applied, given that Ms Field had noted a clear difference in circumstances as against her heterosexual caseload. This reiterates the point made, in chapter 6, about the

imposition of heteronormative assumptions, and disparities not translating into a change in legal actors' approach. Ms Field did highlight that the separateness of the parties' financial arrangements must be a factor that the court would take into account. Yet, her thinking still seems difficult to reconcile with Ms James's claim that:

Keeping things very separate [...] that's much more common, I think, in lesbian and gay relationships than straight ones, I think. Umm, which makes it interesting legally, of course. It's much easier to separate them out (Ms James).

It should be recognised, in contrast to the notion of separateness being a distinguishing feature of same-sex partnerships, that Mr. Norris and Ms Lane stressed that there had been a reduction in asset intermingling amongst all relationships. This ties in with the emphasis on formal equality and sameness identified in chapters 5 and 6. Mr. Norris attributed the trend to the visibility of pre- and post-nuptial agreements in the press, as well as to parties' possible previous exposure to asset division on formalised relationship breakdown. In relation to this previous exposure, practitioners will have seen an increase in the number of clients who have been married more than once, and remarriage has been cited as a trigger for adjustment in practices of money management (Goode *et al*, 1998). Even where their money was more physically separated, though, the clients' reports did not necessarily entail a lack of financial dependency. For instance, it was set out how:

She was dependent on me, and I was dependent on my credit cards (Caroline).

This narrative accords with Bennett and Sung's (2013) observation of a variation in the degree of financial 'jointness' amongst their heterosexual interviewees without a joint account.

That said, four of the clients did highlight their independence from their partner in their relationship, and three practitioners perceived the same of their lesbian and gay clients. Assertions of this nature were moderately rarer amongst my civil partner

interviewees than they were within my questionnaire.⁵⁴ It was voiced, for instance, that:

I would say that I always managed to support myself financially, umm, because even though I had periods when I was claiming unemployment benefits, other times, you know... I'd always got, you know, my share of the rent, or the mortgage, or whatever. So, [ex-partner] never had to financially support me (Jennifer).

We weren't, kind of, dependent on each other's income (Edward).

That Edward should have perceived his relationship in this way is interesting, given that the money in his household had been pooled to the greatest extent (although, of course, both partners were well-paid professionals). The clients' assertions are significant, given that a key concern of feminist campaigners has been to bring women to a position of not having to depend on their partner's resources to meet their needs (see, for example, London Women's Liberation Campaign for Legal and Financial Independence and the Rights of Women, 1979). In offering an answer to my first research question, the suggestion is that same-sex relationships, displaying a lower level of interdependency, could work to show different-sex couples that there are ways of existing in relationships beyond the traditional pattern. They remain as against the "social reality" of a lack of female self-sufficiency within heterosexual relationships, and it is contended that a wider recognition of this raises the potential to challenge this position of necessary 'feminine' dependency (Lewis, 2001). It is once more acknowledged that none of my interviewees had children, and that children impact how independently partners view, and retain, their finances.⁵⁵ Nevertheless, I argue that my findings may not relate simply to that aspect of the clients' factual matrices, but that they might indicate some kind of more political, non-normative way of being.

In fact, it may be that this way of being has contributed towards the voicing of

⁵⁴ 54.4% of participants agreed with the relevant statement there.

⁵⁵ See chapter 4.

dissatisfaction, amongst gay and lesbian clients, at the prospect of having to pay more ‘future’ based items post-separation. A conflict might be observed with the legal position that civil partnership breakdown entitles you to claim against all of your partner’s assets, both currently in their possession and otherwise. It is to that position that I will now turn.

Post-separation finances

In terms of the law concerning different-sex relationship breakdown, ongoing periodical payments were, at least traditionally, ordered fairly readily in favour of wives (especially where the payee was the primary carer of children (Cowell, 2014)). Indeed, in *Miller/ McFarlane*,⁵⁶ the House of Lords deemed the Court of Appeal wrong to have required Mrs. McFarlane to justify continuing periodical payments, considering that the burden should be on the husband to justify any reduction. This arguably worked to encourage the continuing ‘feminine’ reliance and vulnerability of women (Deech, 2009). It has, in recent years, been stressed that setting a specific term for these kinds of payments is preferable (*L v. L* [2012] 1 FLR 1283). In a similar vein, Mostyn J. in *SS v. NS* [2015] 2 FLR 1124 emphasised that the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable, with a degree of (not undue) hardship in making the transition to independence being acceptable. The Court of Appeal has, moreover, suggested that divorcees with children over the age of seven should work, albeit in relation to a case where the husband was approaching retirement (*Wright v. Wright* [2015] Fam Law 523).

Yet, lengthy orders are still being made: of the 369 divorce court files examined in Woodward and Sefton’s (2014: 20, 23) study (and the 46 cases in which periodical payments were awarded), payments were potentially for life in 14 cases, with payments in a further eight cases being for a term of 10 years or more. Not only this, but the Supreme Court’s ruling in *Vince v. Wyatt* [2015] 1 FLR 972, where a wife was given permission to pursue a financial claim issued 18 years after their divorce, appears to affirm that the judiciary are still working on the basis of women’s ongoing

⁵⁶ As discussed in chapter 2.

financial dependency. Awards involving a pension sharing element appear to be made moderately more frequently, with this being a feature in 13.8% of Woodward and Sefton's (2014: ix, 25) sample files (as against such orders being made in 10% of divorces in 2008 (Ministry of Justice, 2009: 97)). Whilst still relatively rare, it has been suggested that the number of these orders has been on the rise, with retirement funds sometimes being the household's most substantial assets where homes have decreased in value (Beckford, 2012).

On examination of the queer literature, however, it becomes apparent that the use of these 'future' based awards may be more problematic with regard to same-sex couples. Edelman (2004) argues that, whilst the figure of "the Child" constrains politics towards future orientation, 'queerness' is positioned and defined by its separation from reproductive acts (and, therefore, by being future-negating). In his "antisocial" critique, Edelman (2004) has asserted that queer forms of sociality offer the possibility of moving beyond the temporality and obligations of heterosexuality. He coins the term "sinthomosexual" (referring to those who "choose [...] not to choose the Child") to set out how "the Child" can be jeopardised, and other sexual realities facilitated (Edelman, 2004: 31). It is acknowledged here that it has, conversely, been contended that, when children are placed in the care of same-sex partners, the future can become a more pressing concern (Goodfellow, 2015). Still, Halberstam (2005) has argued that the absence of forward-facing narratives amongst lesbians and gay men extends beyond more practical explanations such as the mere focus on "the Child" and "reproductive temporality". She proposes "queer time", under which, "futures can be imagined according to the logistics that lie outside of [...] paradigmatic [heteronormative] markers of life experience" (Halberstam, 2005: 2). Halberstam (2005: 2) contends that this time emerged most notably as a result of the AIDS epidemic, and that, "the constantly diminishing future [had] create[d] a new emphasis on the here, the present, the now". Consequently, it carries with it the potential to live in a way that is unscripted by the conventional stress on longevity.

In this section, I will investigate the extent to which this viewpoint is reflected in the clients' narratives, and in the practitioners' approaches to financial relief. I will argue (in helping to answer my third research question) that the partners themselves voiced objections to the division of 'future' assets, even where they were relatively satisfied

with the approach taken towards current assets. This view appears to have fed into the ultimate outcomes on financial relief in civil partnership matters, which may be the result of the clients' preference towards settling on their own terms.⁵⁷ Thereby, an aspect of transformation has been signalled in terms of the types of awards that are being made with respect to same-sex partners.

Maintenance

The indications in the data were that maintenance was viewed to be less suited to civil partnership matters than to different-sex cases. Ms Field considered that her lesbian and gay clients would “flip” at the mention of ongoing payments, whilst Mr. Arnold referred to it as having been the most disputed issue in Anthony's case, and the biggest issue in relation to his same-sex matters more broadly. The solicitor remarked that:

You say to a gay client, ‘you might well have to pay maintenance as well’ and, I have to say, people sort of drop to the floor [...] The concept of ongoing maintenance, my experience of civil partnership cases is that they find that really hard [...] Whilst [heterosexual partners] may not like it, they're not wholly surprised that that's what they have to do, and so they don't kick up a fuss about it. And indeed, you know, there are a fair few men in the heterosexual context that say, you know, ‘I will always look after you’, and they're very generous in terms of their ongoing support. I've not experienced that at all in civil partnership (Mr. Arnold).

Objections to the applicability of awards of this nature were made on a number of bases.⁵⁸ Firstly, tying in with Ms James's point above about the ease with which assets can be apportioned out, Mr. Arnold contended there to be more scope for arguing for little or no maintenance where the partners have kept their assets separate. He explained this as being because:

⁵⁷ As identified in chapter 6.

⁵⁸ Including several of the differences between same and different-sex matters that have been set out in this, and the previous, chapter.

It's a lot easier to say, 'they've managed on that'... whereas, if they're both spending out of joint accounts, it's impossible to know, really, who's done what (Mr. Arnold).

Secondly, Ms Field observed that, given that the partners will tend to have jobs of a similar level of seniority, there is not usually such a discrepancy of incomes as to justify a maintenance order. This links in with a view raised by Mr. Henry that *Miller/ McFarlane* is difficult to apply to lesbian and gay matters. Although considering that the precedents on maintenance were not simple for heterosexual couples, Mr. Henry indicated that a civil partnership would be less likely to have the *McFarlane* scenario of, "a mother looking after young children, giving up a career".

Thirdly, issues were raised about the non-, or lesser, working party's ability to work. This was particularly the case concerning to men, which is reflective of notions of 'masculine' 'breadwinning'. In fact, this point was stressed by Anthony and Isaac, in relation to whom maintenance claims had arisen. It may be significant that they specifically should have been subject to such claims, given that they had perceived their cases as having been constructed to the greatest extent in a heteronormative 'breadwinner'/'homemaker' fashion. It would seem to correspond with that construction that this more substantive head should come into play where one partner has been presented as more, and one as less, vulnerable. That said, it should also be recognised that the clients' ex-partners had been dependent on their income and that, of course, maintenance can only be awarded where the payee's earnings are high enough to enable them to make such payments.

In any event, Anthony viewed his case as having centred around a scenario of "two blokes".⁵⁹ Accordingly, he set out how:

They mentioned maintenance and I nearly swallowed my teeth, and [solicitor] just said, 'that's highly likely' [...] I found that a little bit of a bitter pill to swallow, somebody not working, and they wanted £5,000 a month net [...]

⁵⁹ As has been set out in chapter 6.

Where you've got two people [...] that are educated or capable individuals, I don't think that you should... unless there's clear evidence that somebody's got a need, like a disability, a real medical or physical need... why wouldn't you draw a line and move forward? (Anthony).

He felt that the possibility of a maintenance award had only arisen because his ex-partner's legal representatives had adopted the argument that he had been "the woman" of the relationship. Therefore, Anthony was associating maintenance with 'feminine' dependency and vulnerability (whilst he personally viewed his ex-partner as a 'masculine' man who could support himself). Likewise, Isaac perceived that he and his partner, as men, could "both go and earn a fairly decent wage", as opposed to any notion of his partner being a 'feminine' dependent. The opposition in Anthony's matter had argued that a maintenance order should be made on a joint lives basis, given the vast difference in incomes of the parties. Whilst an order was eventually made, it was at a lower level than had been sought by the client's ex-partner. The provision was to cover a four-year period, to enable Anthony's ex-partner to "reestablish" himself, thereby still placing emphasis on his ability to work. The order was made without the possibility of reapplication, which Mr. Arnold considered was unusual in the context of his (mainly different-sex) caseload.

Fourthly, Mr. Arnold repeated the point as to the absence of children (reverting back to the thinking of Edelman (2004)), and this was also discussed by Anthony. Given that there were no children in his household, the client considered that maintenance payment was inappropriate in the circumstances of his relationship. Isaac, who avoided the outcome by settling his matter, similarly found the prospect difficult on that basis:

I didn't want to be in a position where I was supporting him financially after the divorce. So, a childcare type arrangement, although obviously we didn't have a child, but a judge could have said 'well, I'm sorry, you've got to support him' (Isaac).

That said, Mr. Arnold recognised that, even where children were present, same-sex partners still "don't seem to like" paying maintenance. Furthermore, it was recounted

by Ms James how she had experienced an acceptance at court of a clean break where children had been present.⁶⁰ Therefore, it seems that there may be more factors at play than the issue of children alone. With this in mind, fifthly, Ms Clarke explained that, in the same-sex cases that she had worked on, there had not been an anticipation that one partner would maintain the other. She rationalised this as being because the parties had had an, “independent spirit”, which harks back to the suggestions of the independent mindset of lesbians discussed above. In support of Ms Clarke’s explanation, Ms James set out how maintenance is:

Not really a prevailing view or right. Nobody sees it like that, yet [...] I think that [same-sex partners] see ourselves as quite independent within our relationships. I don’t think... I don’t think that I would expect for my partner to support me if I... if we broke up. There’s not that expectation, I think, even with children [...] They come with that in mind, and I say, ‘well, actually, you’d be entitled to umm... you’ve been the primary carer for years, your earning capacity is dented, you need more money. You can’t borrow as much money, you could get more’. ‘I don’t want it’, very, very, very firm (Ms James).

Ms James’s narrative backs the implication from Halberstam’s (2005) work that a lack of expectation of maintenance amongst same-sex clients goes beyond the simplistic explanation of the absence of children. The solicitor’s use of the word “yet” is interesting, as it indicates that the position may be altering. That this may be the case seems to hinge on the question as to whether same-sex couples’ lack of willingness to engage beyond the present has been a function of oppression, rather than a positive choice. In terms of this idea of oppression, it has been argued that time and future, as articulated through heteronormative temporality, has worked to “punish” queer sexualities, foreclosing their imaginaries of futurity (Goltz, 2010). Given that same-sex partners have historically been positioned in opposition to the very concept of the future, it may be unsurprising that longevity should be devalued in lesbian and gay culture (Edelman, 2004). I have argued in this thesis so far, though, that the discourse of formal equality and sameness surrounding the introduction of the

⁶⁰ See chapter 6.

civil partnership (and, more recently, same-sex marriage) has been working to bring same-sex partners within heteronormativity. That being so, and particularly with there having been some accompanying emphasis placed on future-based notions such as commitment,⁶¹ it is possible that same-sex partners may become less negative about the future over time.

Nonetheless, maintenance orders are still being resorted to in some gay and lesbian cases. This may be as a consequence of the stress placed (by a few practitioners) on sameness between lesbian and gay and different-sex cases even in relation to the current position. For instance, it was stated that:

I think that that sort of issue would be really, really similar, because you have either been maintained by your partner or your husband or your wife or you haven't. If you need that, you need it (Ms Boyce).

Despite this, there appears to have been a disinclination to make these orders on a longer-term basis. That being the case, addressing my second research question, legal actors appear to have been shying away, in this respect, from applying heteronormative assumptions concerning financial dependency. Mr. Arnold's wider experience of the 10 dissolution matters that he had worked on was that they had tended to entail short-term maintenance, where maintenance had been awarded (and this was true of Anthony's matter). Similarly, Mr. Derrick reported having reached a settlement in a lengthy lesbian relationship case where there was a maintenance element, although for a term that was non-extendable. This was in compliance with a steer, provided by the Financial Dispute Resolution judge, that it was what she would have done. This example supports a contention, made by Mr. Henry, that, "I doubt that there would be many" civil partnerships that result in orders for joint lives, and his indication that ongoing maintenance will less readily be awarded in same-sex cases than in different-sex ones. He considered that the transfer of money between lesbian and gay partners:

⁶¹ As identified in chapter 5.

Could be reflected in different ways. It could be done through pension sharing (Mr. Henry).

I will move on to consider the extent to which this other type of ‘future’ based award has been a feature of civil partnership matters.

Pension sharing

The data gathered likewise signal a lesser frequency of pension sharing orders in the context of civil partnership financial relief. In the case of Bill, Mr. Kennedy advised that the other side would be unlikely, were the matter to proceed to court, to obtain a portion of the client’s pension. Drawing back to the discussion in chapter 6, this was rationalised on the basis of the argument that Bill’s ex-partner had not contributed towards the pension. It is appreciated that he had lost his job as a result of his own criminal activity (as opposed to an agreement being made between the partners that he would stay at home), although the pension was ring-fenced to a greater degree than will often occur in opposite-sex cases. Moreover, Ms James perceived that, in the same-sex relationships that she had dealt with, there had been some “inequalities” around pensions, but that the judge had not intervened. She was unconvinced that the same would have happened in a heterosexual matter, although deemed the comparison a difficult one, given that most straight couples have children. Indeed, returning to the issue of children, Ms Gale also felt that pension sharing orders will be most appropriate where children are present, which may account for a lesser occurrence of these awards in same-sex cases. She explained her comment by reason that:

The woman may have gone part-time, or may have given up work. Umm, she will have probably given up, therefore, building a greater pension (Ms Gale).

In this respect, Woodward and Sefton (2014: 45) similarly identified that pension sharing orders were much more likely in (heterosexual) divorce matters where there are children of any age.

However, the client responses once more contained hints of a non-normative way of

being in relation to futurity that could instead be used to account for the lack of pension sharing. Turning to Anthony, although his pension was something that he had considered prior to entering into the civil partnership, the client confessed that:

If I'm brutally honest, I felt that I shouldn't have split it [...] I really thought, 'no, I shouldn't have to do this [...] [an asset that] I can't draw down on [...] for many years, that should be mine and mine alone' (Anthony).

He felt that it was equally "stupid" that his partner should have an entitlement to a bonus that he had not yet been paid, and shares in his employer vesting some time in the future. Attitudes of this nature may have played into the Court of Appeal's decision to reverse the order relating to the deferred compensation scheme in *Lawrence*. Correspondingly, Isaac viewed it to be "really unfair" when he was advised that he might lose a portion of his pension to his ex-partner. It is striking that such opposition should have been voiced, given Woodward and Sefton's (2014: x, 156) claim that the issue of pensions has not been viewed as particularly contentious for heterosexual clients. That this should be the case may bear connection to Rowlingson and Joseph's (2010) finding that, when different-sex partners thought about pension income, they tended to see it in the same way as current income (although it is important that their study focused on intact relationships). Such thinking stands against the lack of forward-moving lesbian and gay narratives identified by Halberstam (2005).

In a similar vein, the infrequency of pension sharing may additionally be a consequence of the lack of expectation again voiced by the financially weaker parties as to their entitlement to such an award. For example, Edward set out how:

The advice from the solicitors was [...] 'you could go for half of the pension if you wanted to', which was not something that I ever wanted to do (Edward).

It might appear surprising that the client was in receipt of this advice at all, given not only that he was the youngest within the sample and that the relationship had only lasted for eight years, but also that he had worked within the same profession as his ex-partner. Yet, his response sits well with a comment made by Ms James that:

I've never done a pension sharing civil partner case. Never. They just don't... there's very much a reluctance to take what the other one's accrued. I mean, that's quite a lot of... really, out of twenty, you'd think that one would, but no. So, there's not that same sense of entitlement. They think that it's fair, they're happy (Ms James).

Ms James indicated that, situating themselves outside of the heteronormative paradigm of dependency, her same-sex clients simply did not seek to pursue this sort of claim.

That said, pension orders are (as with maintenance) still being made on civil partnership dissolution, with Ms Ennis stressing that the approach to be adopted is to treat this issue "exactly the same" as on divorce. In fact, Mr. Kennedy set out how a client had been "horrified" to hear that there was a potential claim of this nature, and how his role had entailed having to explain to her that the law in relation to civil partnership was essentially the same as that for marriage. This particular practitioner's account reiterates the sameness of treatment point expanded on in chapter 6, and the notion of the imposition of the heteronormative framework. Ms Field further described a lesbian case that she was presently working on where:

I'm saying, 'divide [both of their pensions] equally, because that will produce a fair result' (Ms Field).

In that matter, however, the partners had been together for a fairly long time (15 years). Not only this, but one partner had been in her fifties and the other in her seventies, so each would have had a limited future earning capacity. In this way, the solicitor's advice would seem to be in line with Woodward and Sefton's (2014: xi) finding that pension orders are strongly associated with older couples. The pensions were also some of the partners' most significant assets, with one being worth around three quarters of a million pounds and the other being worth a million.

Anthony had additionally had to accept, in the end, that he was being obliged to share his pension. Seemingly employing a needs-based rationale for this, he explained that

this had been on the basis that his ex-partner would otherwise have had no pension provision (although he emphasised feeling that this had been his own fault). Whilst it may again seem relevant that the remedy should have been applied in Anthony's case, given the binary way in which his relationship was presented,⁶² it is recognised that he was the highest earning client, and so would most likely have had the largest pension 'pot' to divide. Indeed, solicitor Ms Irvine asserted that pensions will regularly be an issue where there is wealth involved, and that is reflected in Woodward and Sefton's (2014: xi) finding that pension orders have been associated with a relatively wealthy socio-economic group. As well as this, Anthony's partner was *de facto* not building up his own pension during the relationship, which had lasted for 16 years.⁶³ It may be the case that, in same-sex cases, pension sharing only occurs in these more extreme scenarios.

In summary, in different-sex relationships, there has been a relatively widespread acceptance of longer term ('feminine') reliance on the financial support of a ('masculine') partner. As against this, suggestions of pension sharing, alongside maintenance provision, have been to the surprise of lesbian and gay clients. I have acknowledged that there might be practical reasons why, in civil partnership matters, it may seem less appropriate to apply these substantive remedies. On top of this, though, the clients' reactions to the division of assets of this nature, particularly concerning their independence and lack of willingness to engage beyond the present, appear to have had an impact on how financial relief matters are playing out. The indication is that a division of 'future' based assets is featuring less regularly in lesbian and gay cases and that, where they are made, it may be on a more restricted basis. Recognition of the finding is significant, as it carries the possibility of bringing about a shift away from viewing formalised relationships as necessarily entailing polar opposite, dependent/ provider, positions.

⁶² See chapter 6.

⁶³ See appendix H.

Conclusion

This chapter has sustained the discussion, in chapter 6, identifying the ways in which same-sex case circumstances can differ to heterosexual matters, in this instance with respect to financial conduct. Fewer solicitors noted a balance in terms of household expenditure than was described by the clients, although they commonly acknowledged the lesser occurrence of jointly held finances in lesbian and gay relationships (with nearly half in total doing so). The consequence of this, tying back in to the previous chapter, has not necessarily been a reluctance to approach their cases on the basis of a heteronormative, 50/ 50, asset division ratio. Yet, such disparities in the facts seem to have had a part to play in the less frequent imposition of maintenance payments and pension sharing in civil partnership dissolution matters. In this way, although Ms Boyce might be correct in her assertion that civil partners are entitled to claim against all of the assets,⁶⁴ this is seemingly not what has often been taking place in reality.

In response to my third research question, the preference amongst the clients was for opting out of the more substantive, ‘future’ based remedies that were introduced to address heteronormative imbalances within relationships. In fact, this preference also seems to have been reflected in the outcomes on financial relief. This is likely to be an upshot of the tendency amongst lesbians and gay men to wish to settle their own matters.⁶⁵ On top of this, however, there are hints of a reluctance by the solicitors to apply a binary-based framework that runs contrary to client attitudes and expectations. Should it be the case that, in this respect, practitioners are taking into account the ways in which same-sex partners are different, this would seem to indicate a level of equality of respect and recognition (Baker *et al*, 2004). It could additionally go some way towards moving away from the imposition of gender stereotypes on all relationships (which assists in answering my first and second research questions).

That said, lesbians’ and gay men’s negativity towards the future, alongside their preferences towards settling (and its association with a distrust of legal actors), may

⁶⁴ See chapter 6.

⁶⁵ Identified in chapter 6.

change over time. This is particularly the case as same-sex partners are further incorporated into the realms of legal recognition, and heteronormativity, through the adoption of a sameness-based approach between same and different-sex couples. Consequently, this thesis is timely, aiming to highlight the potential held by lesbian and gay relationships to transform heteronormativity in the financial relief context before that potential is lost. That is not to say, of course, that the approaches of same-sex clients to asset division have necessarily been ideal. A shift away from the apportionment of 'future' assets works to favour the higher earning party in the relationship, and it may often be that the existing assets are not enough to strengthen the position of the financially weaker party. It is not my intention to sacrifice those who do stay at home and look after the children in service of an egalitarian or dual earner normativity. Nevertheless, my findings offer food for thought around whether the law's presuppositions about necessary dependency are applicable to the modern day non-normative couple. This is important because the law is still conveying messages about the way to 'do' family.⁶⁶

⁶⁶ See chapter 2.

Chapter 8- Conclusions

In chapter 1, I set out how there has been a rise in the number of jurisdictions that have created frameworks for the formal recognition of same-sex relationships. This being the case, I emphasised the importance of examining what happens at the end of same-sex relationships, and how the law comes into play in that event. In the thesis as a whole, I have proceeded to conduct my examination of this issue through pursuing three central research questions: how can same-sex relationships, in light of civil partnerships (and, by extension, same-sex marriage) help to challenge social and legal constructions about the gendered nature of roles in intimate relationships? To what extent do solicitors construct the issues and legal framework as being identical in civil partnerships to (different-sex) divorce cases? How do lesbians and gay men understand and experience the law of financial relief? Therefore, I have both considered the impact that incorporation into formal regulatory domains has had on same-sex couples and, in the reverse, I have explored the wider impact of including lesbians and gay men into those domains. In this concluding chapter, I will bring together the threads of my arguments to provide answers to my research questions. As part of this, I will be revisiting the two main (interlinked) theoretical concepts that I have engaged with, equality and heteronormativity. In making an original, empirical contribution to the assimilation/ transformation debate,⁶⁷ I argue that whilst intact same-sex relationships still hold the potential to radically transform relational lives, that potential is lessened where partners come to 'law' (where formal equality has been stressed). Given the different ways in which same-sex partners have conducted their domestic lives, this thesis indicates that we should reconsider how we approach implementing lesbian and gay 'equality'.

Summary of findings

In chapter 2, I asserted that the key (heterosexual) financial relief cases have naturalised traits that perpetuate the oppression of women. The courts have been unable to transcend heteronormative assumptions about families, and the concept of equality has been used to sustain a dichotomy of roles. Consequently, gendered

⁶⁷ See chapter 1.

behaviour has been reproduced as the norm. I did acknowledge, however, that the judiciary have been attempting to address the real material and structural realities of gender-based advantage and disadvantage in family living. Their intention has been to attribute additional value to the previously undervalued work that was traditionally (and in the cases of *White* and *Miller/ McFarlane*, in actuality) performed by women. That being the case, I recognised that it is arguable that, in the cases in question, there was little else that the courts were able to do. Same-sex partnerships appeared to offer new opportunities in this respect. Given that the family lives of lesbian and gay partners are not structured around pre-existing gender scripts, they seemed to hold a potential to break away from this heteronormative framework. Yet, legal practice and the interpretation of legal principles have meant that any challenge that they have posed to social and legal constructions about the gendered nature of roles in intimate relationships has not been as successful as it might have been. Not only this, but it seems that gendered norms might even have been solidified by the practice of legal actors in civil partnership matters.

As to why this might be, in chapter 1, I detailed how the legislation introducing civil partnership and, more recently, same-sex marriage had been accompanied by a rhetoric of rights, sameness, and ultimately formal equality. Adopting this strategy risks ignoring the ways in which same-sex relationships can be different, and the respects in which they may provide better models for all relationships. It does not attribute them with equality of respect and recognition, celebrating their diversity (Baker *et al*, 2004). In the quantitative element of my project, I identified that lesbians and gay men have greater equality of condition in their partnerships than different-sex couples.⁶⁸ This is in the sense that caring work is shared more equally, partners are more able to pursue those household tasks that they find satisfying, and democracy and cooperation are favoured both domestically and financially. I am not suggesting that same-sex couples are completely free of gendered societal pressures. However, their relationships could help to encourage more egalitarian ways of caring, and of conducting housework, within wider society. Inequalities around the division of household labour in heterosexual relationships have proven an obstacle in achieving any form of gender symmetry (Crompton, 2009). As this work is less

⁶⁸ As well as, to a lesser extent, in chapters 6 and 7.

frequently conducted by one partner alone in gay and lesbian relationships, those relationships have held the possibility of showing that there is not one gender that is more suited to caring labour. The impact of this could be powerful, helping to break the association between women and domesticity (which assists in addressing my first research question).

Nevertheless, that association has operated as a key component of capitalist modes of production,⁶⁹ and a question that I have posed has been to what extent it is possible to do something aspirational in the context of an exploitative model. Chapters 5 and 6 illustrate this difficulty, with the solicitors (and sometimes the clients) placing an emphasis on formal equality between same and different-sex couples. For instance, the practitioners placed a stress on the more heteronormative romantic motivations for wishing to enter into a civil partnership, whilst simultaneously overlooking aspects of same-sex relationships that do not conform to this heteronormative ‘ideal’.

Differences have frequently disappeared, with legal assumptions being applied that are based on traditional marriage and divorce (Auchmuty, 2015). Furthermore, where divergence has been noted, these have often not translated into a difference in approach to financial relief matters. This is despite marriage’s gendered history, and the fact that the rationale of the (heterosexual) law of financial relief is to remedy the position of the stay at home carer (Leckey, 2013). The fact that an approach underpinned by this rationale should be applied to same-sex partners is striking, because they will often be dual earning.⁷⁰

My data suggest that legal actors are presenting their clients’ lives in accordance with the language of relevance and legal issues. Therefore, perhaps it is more in subsisting, rather than separating, same-sex relationships that potential for transformation is held. In fact, whilst the law of financial relief of England and Wales has been lauded for its flexibility, it appears on examination to entail that practitioners adopt a fairly formulaic approach. Solicitors are driving the questions in their meetings with lesbian and gay clients, with those questions being the same as those posed to heterosexual divorcing partners. Additionally, they are not encouraging (or

⁶⁹ As was explained in chapter 1.

⁷⁰ As was observed in chapter 4.

hearing) answers that do not fit into the gendered script. It may be the case that practitioners feel a time pressure to keep their meetings ‘on track’ as a result of their busy caseloads. The clients likewise seemed reluctant to develop their conversations with their advisors, having an awareness of being against the clock, and of the solicitors billing for their time. Nonetheless, in answering my second research question, the consequence is that the factual matrices of same-sex partners are being constructed to accord with ideas of traditional masculinity and femininity. Lesbians and gay men are being assimilated into heterosexual relational norms and, as gendered assumptions are carried across, family law risks missing the complex messiness of real lives. This is of concern not only to same-sex couples, but also to different-sex relationships that are lived non-normatively. The finding fits with my own, relatively pessimistic, hypothesis that it is tricky to make significant inroads into an existing model where an approach derived from formal equality is adopted.

The suggestion in chapter 6 is that, where representing the financially disadvantaged lesbian or gay partner, legal actors will still place stress on the binary construction of roles. The parties are presented in accordance with the breadwinning/ homemaking familial model, reinforcing ideas about the gendered division of labour and financial dependency. Conversely, practitioners acting for the financially stronger partner have emphasised the lack of gender disparity between the parties. I argued in chapter 2 that this is perhaps the most convincing account of what occurred in *Lawrence*. I find this approach problematic too, as the parties appear to be judged in accordance with their adherence to gendered expectations. In terms of men, especially, I have observed an expectation that they should go out and earn for themselves, which is compatible with traditional ideas of masculinity. Such expectations seem to be lessening the relative equality of condition experienced by same-sex partners (which stands against the idea that lesbians and gay men could bring about greater equality of condition across wider society). Specifically, they go against Baker *et al*’s (2004) notion of equal working and learning, given that they do not encourage a sharing of the benefits and burdens of work and care. That is important, due to the normative messages that the law continues to convey about family life. Holding men to notions of masculinity appears, moreover, to run counter to conceptions of equality of power in two ways. Firstly, it suggests that people do not have the same capacity to impact on their environment, as their life options are still restricted to those assigned to their

gender. Secondly, omitting to break the association between men and economic work (and women and the home) signals little possibility for broader change to the heteronormative ordering of society.

The (heterosexual) case law continues to be of considerable influence. This may be predictable, given that the dissolution framework is almost identical to that for different-sex divorce. Indeed, it might seem fairly inevitable within a system that works on the basis of statute and its interpretation by the courts (with the common law being preoccupied with precedent). Analogies are drawn in the context of, “a web of consistent, coherent and predictable doctrine using classifications” (Fineman, 2013: 113). As part of the adversarial process, those with nonconforming experiences become homogenised and standardised as they are subjected to ‘law’, and the stories that are told fall within structured legal narratives. Even where there is a mismatch between the frameworks, such as in the context of adultery, the practitioners placed some emphasis on the similarity of behaviour of same and different-sex couples, and a desire was expressed for sameness of treatment. In this way, Barker’s (2006) contentions of the transgressive potential of gay (and lesbian) non-monogamy may not appear to be coming to fruition. The indications in this respect sit uneasily with Resolution’s (2015a) concern of allowing people to divorce without blame. However, in fact, several of the clients themselves spoke in favour of the adoption of an adultery-like basis (albeit that their understanding of adultery notably moved beyond a specific focus on the sexual act itself). In these instances, the partners failed to recognise the heteronormativity of the framework into which they were seeking inclusion, and omitted to be critical of the assimilatory implications.

Then again, in chapter 6, a level of resistance was noted, with a determination being reported for same-sex partners to settle on their own terms, rather than leaving their matters to be resolved by legal actors. In this way, and in turning to my third research question, although the introduction of formalised relationships has brought about their greater engagement with the law, lesbians and gay men are reluctant to engage with it in any protracted way. This speaks to a number of issues, not least their historical status as ‘outsiders’ in relation to the law, and their consequent distrust of lawyers. On top of this, though, same-sex partners are approaching financial division in a manner that runs contrary to the ways in which the courts have redressed economic

power imbalances in relationships. My findings here make an original contribution to knowledge, in that they are beginning to address a gap in the existing knowledge on the post-breakdown practices of same-sex partners. The suggestion in my study is that lesbians and gay men are shunning the normative approach of 50/ 50 division in favour of financial settlements that reflect the financial contributions made by the parties during the relationship. In this respect, the marriage frame of sharing does not appear to always work with civil partnerships. I have argued that lawyers have been reluctant to argue this, based on the principles of formal equality. That said, it is questionable whether it would be appropriate for an approach that focuses entirely on individual economic circumstances to be applied to all relationships. A movement in this direction could herald a return to the days of valuing financial earning over other forms of familial contribution at a time when, *de facto*, women are still conducting the greater proportion of domestic work in different-sex relationships (George, 2012). The richer party, who will more often than not be the man, seems to be the one that would benefit if couples were judged against gay or lesbian ‘norms’.

In addition, my data suggest that there has been a shift, in the context of same-sex relationships, concerning the substantive elements of ongoing maintenance and pension sharing. This supports a further aspect of my hypothesis that the legal recognition of same-sex couples may carry with it some, albeit perhaps fewer, transformative effects (and helps to tackle my first research question). I conclude, as initially predicted, that what is happening is not quite as simple as the contrasting assimilation/ transformation arguments may lead us to believe. Instead, a combination of both the reproduction and, to a limited extent, subversion of (heterosexual) marital norms is taking place. I contended in chapter 7 that a movement away from maintenance and pension sharing is likely to tie in to the greater separation of finances within same-sex couples (with a more widespread reliance on strategies of partial pooling and independent money management), a more common absence of children, and a lesser degree of dependency between partners. Not only this, but I identified a potential link to the lack of futurity raised by Halberstam (2005) as constituting a central part of lesbian and gay non-normative ways of being. In fact, more individualised ways of managing money have been suggested to be gaining in popularity amongst all relationships (Pahl, 2005). This, in itself, has been criticised, on the basis that separating finances can result in gender

inequalities generated in the labour market being translated into inequalities in the household (Kan and Laurie, 2010: 5). Nonetheless, it means that the legal approach to this issue in relation to same-sex couples is of broader relevance.

An emphasis on financial autonomy and a norm of independence may begin to be favoured in the law of financial relief, especially as more lesbian and gay matters are litigated. Concerns have been voiced against any such development, however, given that the less frequent apportionment of ‘future’ assets leads to financially weaker parties being less well compensated on relationship breakdown. Family law has been described as entailing the weighing of the competing values of promoting personal financial autonomy and providing legal protection for the economically disadvantaged (Barlow, 2009). Arguably, a shift towards such individualism weighs too heavily on the former side of this balancing exercise. This poses difficulties in a setting of continuing gender inequalities, with women, and above all those with children, suffering from any such change in legal approach (Bennett, 2013). In this respect, whilst the potential transgressive impact of same-sex relationship recognition has featured heavily in feminist arguments,⁷¹ it may seem unlikely to offer the kinds of gender role transformations that have been hoped for.

I am not, in this thesis, arguing that the approaches of same-sex partners to financial relief are necessarily the most appropriate ones. Lesbians and gay men can, of course, still find themselves suffering economic disadvantage in their relationships that needs to be redressed. This is despite them having a greater choice as to how to organise their lives because of the lack of gender scripts. Furthermore, on a wider scale, society has not reached a gender-neutral utopian state. Women, at present, are constrained by structural issues in society to perform domestic work, often leading to their financial deprivation. It is conceded that the law of financial relief alone cannot remedy this, and that the problem might be better addressed by the introduction of more favourable employment conditions. For example, it would most likely assist were there to be a bridging of the gender pay gap, bringing about equal pay for equivalent work. Even so, whether equality in wage rates would make a significant difference to the performance of gender roles is unclear. This is especially the case

⁷¹ As was set out in chapter 1.

given evidence that women have expressed that they like caring work (albeit with this expression not having been made on a level playing field) (Houston and Marks, 2005)). Women might also be helped into the workplace through the offering of more flexible working and support with childcare. In the Scandinavian countries, for instance, women are allowed long periods of part-time work following childbirth to encourage them back into the workplace. However, these policies have notably been encouraging them to behave differently to men in terms of their employment patterns, which seems to tacitly endorse gender differenced in the home (Scott and Dex, 2009). Additionally, it appears that more needs to be done to encourage men to provide care. Sweden provides a good example of this having been relatively effective, with ‘daddy leave’ having increased from the point of its introduction in 1995, rising to a 17% take-up by 2003 (Scott and Dex, 2009: 54). The UK has not yet attained any such position. Whilst section 117 of the recent Children and Families Act 2014 brought about a right to shared parental leave, the caring role of mothers is still prioritised (given the need for maternal consent to access this leave) (Mitchell, 2015). It may be that further developments in this direction could pose a weightier challenge to the status quo.

Nevertheless, I argue that the law of financial relief is operating systematically on the basis of crude stereotypes of the distinct positions of masculinity and femininity. This contributes towards the reproduction of patterned familial roles. Same-sex partners, who often do not fit the heterosexual ‘mould’ in the ways in which they operate within the home and the economic sphere, offer clear illustrations of the law’s attempts to do this. Therefore, they have presented an opportunity to open up dialogues about the widespread, unthinking application of a heteronormative model. The experiences of lesbians and gay men, as explored in this thesis, are valuable to critical legal scholarship, helping to bring forward analysis of the way that the law constructs and organises. I have contended that this is particularly important because legal classifications have consequences in ‘real world’ lived lives. Yet, same-sex partners who have entered into a formalised relationship, and which has subsequently broken down, seem already to have been positioned to be intelligible within this framework of heteronormativity. Little consideration has been given to what a queer politics of separating might entail, or what a more suitable approach to lesbian and gay ‘equality’ might be, given the divergent ways in which same-sex couples conduct

their familial lives. My thesis makes an original contribution in asserting that, within this context, we have a duty to imagine legal structures that would work in a different way from straightforward formal equality.

As a result of the fact that different-sex partners (especially) do not presently experience significant equality of condition, I concede that it may seem difficult to hang a law of financial relief too heavily on notions of autonomy and choice. However, as against the current system, I argue that a better way of approaching financial relief cases would be to look carefully at the lives of the parties in each case, and to give due regard to whether they have adopted a more ‘non-scripted’ lifestyle. Such an approach would be preferable to the removal of the existing discretion and the introduction of a more formulaic, community of property based system. That is because, whilst allowing legal actors less scope as to how to construct their matters, I conceive that such a system may, in itself, be based on heteronormative understandings. The law should seek to recognise the varying ‘realities’ of those that come before it, rather than confining them within the roles to which it assigns them. I contend that the question needs to be posed, in each case, as to what degree there was dependency between the partners within their relationship. Moreover, consideration needs to be given to whether the parties to a matter can really be placed into monolithic gendered categories in the setting of a multiplicity of possible identities. In this way, my purpose is to challenge existing assumptions about family living, and to reopen critiques of the way that gender works in marriage.

Limitations and possibilities for future research

Whilst this thesis has facilitated an exploration of the research questions set out above, it is important to recognise the limitations of this study and the potential for future research. As to these limitations, I firstly acknowledge that there may seem to be a tension between using heteronormativity as a framework for conducting my research and, at the same time, it being a key finding of the research. In this respect, I did not approach my empirical work as a chance to project any notions of heteronormativity onto my participants, nor specifically to encourage them to offer their personal understandings of heteronormativity. My semi-structured interviews allowed the participants to generate their own narratives, which revealed pervasive

heteronormativity in their experiences of dissolution. That is not to say, though, that the data do not generate other findings on top of this, and I may analyse those using a different lens in future projects. My focus on gendered categories in this thesis does not mean that I have neglected to be aware of the institution of the family and its role in wider society. Secondly, I recognise that relying on the narrative of one side of a relationship dispute to extrapolate how the law constructs couples might appear problematic, by reason that the partners' accounts may well contradict one another. Interviewing both parties would have facilitated more comprehensive storytelling, as it would have enabled comparisons of the partners' evaluations. This was not practical, however, for the reasons set out in chapter 3.

Furthermore, it is noted that the size of the sample in my qualitative project was fairly small. Whilst I have previously emphasised the difficulties experienced in recruiting participants, given the minimal number of people who were eligible (and/ or willing) to take part in this study, a larger sample size may offer firmer conclusions as to what is happening 'on the ground'. One aspect of this limitation of my particular research was that I was able to recruit only four female clients. This made it somewhat difficult to draw comparisons between genders, and may consequently lead to an accusation of conflating gay and lesbian experiences (although there were, conversely, more lesbian than gay male respondents to my quantitative study). There may be more fine-grained distinctions between the experiences of gay male and lesbian partners, and this sort of exploration could provide a basis for future study. Drawing upon a larger sample of interviewees would be likely to have the added benefit of generating participants with children. Of course, none of the clients interviewed for this research had children (or other significant caring responsibilities). Similarly, the solicitors interviewed had relatively little experience of civil partnership matters involving children. As a result, it has been hard to identify whether any differences in approach to relationship finances was a function of the lack of children, rather than of being in a same-sex couple. There are hints that there is more to it than this, which raise questions for further research going forward.

As well as this, I highlighted in chapters 6 and 7 that same-sex partners' preference for settling their financial relief matters, and their resistance to compensation and maintenance, may change over time. It might be that these attitudes reflect pre-civil

partnership approaches to relationship breakdown, stemming from a period when there was an absence of legal support for lesbians and gay men on the breakdown of their relationships. As same-sex partners become accustomed to being ‘inside’ the law, and as they become more familiar with the financial implications of entering into a civil partnership, their opposition to the current system of redistribution (and their understandings of equality) may shift. That is particularly the case given that the rules on exiting a relationship can work to condition parties’ options and decisions during the course of a relationship (Halley, 2011). Not only this, but it may be that the legal recognition of lesbian and gay relationships (and the associated notions of ‘togetherness’) may encourage them to see those relationships as more of a ‘unit’ than they did beforehand. That could work to bring about a greater merging of finances than has occurred previously (although this may be counteracted by the abovementioned increase in the holding of separate finances across all relationships). The assumptions around financial interdependency that are inherent in legally recognised partnerships, and the consequent reduction in welfare to support those in lesbian and gay relationships, might also require same-sex couples to rethink their money management practices. Therefore, additional (and perhaps more longitudinal) research is needed to explore the degree to which the legal recognition of same-sex relationships changes the ways that same-sex couples conduct their everyday lives.

Finally in relation specifically to lesbian and gay relationships, this project leaves somewhat open the question as to what impact the introduction of same-sex marriage will have. In this respect, my thesis should be read as a snapshot at a particular point in the history of the legal recognition same-sex couples. Same-sex marriage has been introduced since I began the research, with the first same-sex divorces having taken place a year later again (after my data collection phase). Of course, as the dissolution framework is the same as that for same-sex divorce, we are given no reason to think that the tensions that I have identified will not similarly be carried over. Still, whilst the discourse of civil partnership has focused on sameness and ‘equality’, civil partnership is distinctly and purposely not marriage. Now that it is only one option for same-sex partners, the issue arises as to whether civil partnership cases will begin to be treated any differently to matters concerning marriages where financial relief is being considered. It could potentially be argued that those who enter into a civil partnership in the present day have chosen this institution over marriage, and so that

the financial relief principles can be interpreted differently. The problem with this, of course, would be that it could work to contribute towards an even greater strengthening of the heteronormativity associated with marriage, and with civil partners again being treated as ‘outsiders’. Investigation is required into the reasons why some people are still specifically opting for civil partnership.

More widely, my research has revealed a lack of current data as to how couples tend to hold their finances, and the degree of twenty-first century financial ‘jointness’. Recent studies on financial autonomy have tended to be relatively small scale and qualitative in nature (for instance, Bennett and Sung, 2013, interviewed men and women in thirty male-female couples). A larger scale, quantitative study would be helpful to explore the extent to which money is pooled and, indeed, individualised in intimate relationships. Ascertaining such detail is important, particularly in the context of the existing system of financial relief, where allocative measures have operated to impose a distribution thought to be just by some external standard informed by how the spouses are expected to have acted during their relationship (Leckey, 2013). In fact, scholars such as Fineman (2013) have urged would-be reformers to reduce the potential of unintended consequences in family law matters by grounding their analyses in people’s experiences. Such research could moreover shed light on the degree to which money is viewed, within the modern day couple, as belonging to the partnership or, alternatively, as belonging to the person that earns it. It may seem that only in the event of a common consensus towards the former should the law of financial relief continue to entail the inclusion of all assets into the matrimonial ‘pot’. It has, though, been asserted that the law in this area is not intended to reflect the desires of spouses, with Herring (2005) suggesting that financial settlements should be viewed as “unfair” from the partners’ perspectives. It may seem necessary, in this respect, to give further consideration to what the justifications for the distribution of assets imposed on relationship breakdown both are and should be. I argue that civil partnership offers the possibility of instigating these conversations.

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Appendix A. Division of labour in same-sex relationships questionnaire

1. Gender	<p>a) What is your gender? Male <input type="checkbox"/> Female <input type="checkbox"/> Other <input type="checkbox"/></p> <p>b) What is the gender of your partner? Male <input type="checkbox"/> Female <input type="checkbox"/> Other <input type="checkbox"/></p>
2. Race	<p>How would you describe your race/ ethnicity?</p> <p>White British <input type="checkbox"/></p> <p>White Irish <input type="checkbox"/></p> <p>White Other <input type="checkbox"/></p> <p>Mixed (White and Asian) <input type="checkbox"/></p> <p>Mixed (White and Black African) <input type="checkbox"/></p> <p>Mixed (White and Black Caribbean) <input type="checkbox"/></p> <p>Mixed Other <input type="checkbox"/></p> <p>Black African <input type="checkbox"/></p> <p>Black Caribbean <input type="checkbox"/></p> <p>Black Other <input type="checkbox"/></p> <p>Bangladeshi <input type="checkbox"/></p> <p>Chinese <input type="checkbox"/></p> <p>Indian <input type="checkbox"/></p> <p>Pakistani <input type="checkbox"/></p> <p>Asian Other <input type="checkbox"/></p> <p>Other (please specify) _____</p>
3. Disability	<p>Would you describe yourself as having a disability? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
4. Religion	<p>Which of the following best describes your religion/ belief?</p> <p><input type="checkbox"/> No Religion <input type="checkbox"/> Jewish</p> <p><input type="checkbox"/> Buddhist <input type="checkbox"/> Muslim</p> <p><input type="checkbox"/> Christian (all denominations) <input type="checkbox"/> Sikh</p> <p><input type="checkbox"/> Hindu <input type="checkbox"/> Other (please specify) _____</p>
5. Sexual orientation	<p>Which of the following best describes your sexual orientation?</p> <p><input type="checkbox"/> Bisexual <input type="checkbox"/> Gay</p> <p><input type="checkbox"/> Heterosexual <input type="checkbox"/> Lesbian</p> <p><input type="checkbox"/> Other (please specify) _____</p>

6. Where you live	Which country do you live in?	
	<input type="checkbox"/> England	<input type="checkbox"/> Wales
	<input type="checkbox"/> Scotland	<input type="checkbox"/> Northern Ireland
	<input type="checkbox"/> Other (please specify) _____	
7. Relationship status	Which of the following best describes your relationship status?	
	<input type="checkbox"/> Married	<input type="checkbox"/> Single
	<input type="checkbox"/> In a civil partnership	<input type="checkbox"/> Divorced/ separated
	<input type="checkbox"/> Cohabiting	<input type="checkbox"/> Widowed
8. Social class	How would you describe your social class?	
	<input type="checkbox"/> Middle class	<input type="checkbox"/> Working class
	<input type="checkbox"/> Other (please specify) _____	
9. Political views	Which political party did you vote for in the last general election?	
	<input type="checkbox"/> Conservative	<input type="checkbox"/> Liberal Democrat <input type="checkbox"/> Labour
	<input type="checkbox"/> Other (please specify) _____	
10. Occupation	Which of the following best describes your and your partner's occupational status?	
	You	Your partner
	<input type="checkbox"/> Working full-time	<input type="checkbox"/>
	<input type="checkbox"/> Working part-time	<input type="checkbox"/>
	<input type="checkbox"/> Retired	<input type="checkbox"/>
	<input type="checkbox"/> Unemployed	<input type="checkbox"/>
	<input type="checkbox"/> Full-time carer	<input type="checkbox"/>
	<input type="checkbox"/> Student	<input type="checkbox"/>
	<input type="checkbox"/> Other	<input type="checkbox"/>
	If other, please specify _____	
11. Educational qualifications	What is your and your partner's highest educational qualification?	
	You	Your partner
	<input type="checkbox"/> PhD	<input type="checkbox"/>
	<input type="checkbox"/> Master's degree (e.g. MA, MSc)	<input type="checkbox"/>
	<input type="checkbox"/> Undergraduate degree (e.g. BA, BSc, LLB)	<input type="checkbox"/>
	<input type="checkbox"/> Professional qualification (e.g. teaching, accountancy, solicitor)	<input type="checkbox"/>
	<input type="checkbox"/> Vocational qualification (e.g. HND)	<input type="checkbox"/>
	<input type="checkbox"/> A-levels or equivalent	<input type="checkbox"/>
	<input type="checkbox"/> GCSEs or equivalent	<input type="checkbox"/>

No qualifications	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>
If other, please specify	<hr/>	

12.
Children

a) Do you and/ or your partner have children?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b) If yes, do any of them live with you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c) If yes, who would you say does the majority of the childcare?				
<input type="checkbox"/> Me	<input type="checkbox"/> My partner	<input type="checkbox"/> My partner and I care equally	<input type="checkbox"/> Other	
If other, please specify		<hr/>		

13.
Housework

Who performs the following tasks in your household?

	Always me	Mostly me	Equally shared	Mostly my partner	Always my partner	N/A
Car/ vehicle maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Caring for a sick family member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dishwashing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General cleaning (e.g. kitchen and bathroom)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grocery shopping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hoovering	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ironing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laundry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paying bills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Making financial decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you have answered that yourself and your partner equally share any household tasks, please provide details as to how you go about doing so

14. Domestic staff	Do you employ any help within the home, such as a cleaner, a nanny or an au pair?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
15. Household finances	Please provide a figure for the approximate gross (before tax) annual income for your household	_____			
16. Main earner	Would you consider yourself or your partner to be the main earner within your relationship?				
	Myself <input type="checkbox"/>	My partner <input type="checkbox"/>	Neither <input type="checkbox"/>		
	If neither, please give details _____				
17. Banking and shared finances	a) Do you and your partner retain separate bank accounts?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	b) Do you and your partner have a joint bank account?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	c) Please describe how you divide or share household income and expenditure _____				

18. Finally, please indicate your views about the following statements							
	Strongly agree	Agree	Slightly agree	Neither agree nor disagree	Slightly disagree	Disagree	Strongly disagree
My partner and I share household tasks equally	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My partner and I share equally in money earning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My partner and I never argue about domestic chores	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Same-sex couples share household tasks more	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

equally than different-sex couples							
My partner and I made a conscious decision to divide household tasks unequally	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The division of household tasks in my relationship is unfair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Most household tasks are done by me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I am happy with the division of household tasks within my relationship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My partner and I always discuss major financial decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My partner and I are financially independent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Gender in intimate relationships: a socio-legal study
Questionnaire information sheet

Aims of the research

This project, conducted by Charlotte Bendall (PhD candidate at the University of Birmingham), and supervised by Dr. Rosie Harding (Senior Lecturer at the University of Birmingham), explores how civil partnerships and same-sex marriage can help to challenge society and the law's ideas about gender roles in relationships.

The study is focusing upon how the issue of gender is dealt with by solicitors in the context of civil partnership dissolution. It will be examining the compatibility of solicitors' understandings of the lifestyles of same-sex couples, and the ways that lesbian and gay clients present their relationships to their solicitors, with lived reality. A comparison exercise will be conducted between data obtained through solicitor and client interviewing and the findings of an online questionnaire.

Invitation

You are being invited to consider taking part in this questionnaire study. Before you decide whether or not you wish to do so, it is important for you to understand why the research is being done and what it will involve. Please do take the time to read this information carefully.

The questionnaire will take around 15 minutes to complete and will relate to such matters as the division of household labour and money earning within your relationship.

Do I have to take part?

You are free to decide whether or not you wish to take part.

What are the benefits of taking part?

Participation could be beneficial in terms of providing an opportunity for you to express your views about, and share your experiences of, home life. Your views will hold significant weight within the context of this study.

Am I free to withdraw from the study?

Yes, you are able to withdraw from the questionnaire at any point up to submission of the final page. However, once you have submitted, it will no longer be possible for you to do so, as there will be no mechanism to facilitate the location of your response. Questionnaires that have only been partially completed will not be analysed.

What if there is a problem?

If you have a concern about any aspect of this study, you should contact the researcher using the details set out below. She will do her best to answer your questions.

If you remain unhappy about the research and/ or wish to raise a complaint, please write to Dr. Rosie Harding, also at Birmingham Law School. You may alternatively contact her by e-mail at [REDACTED] or by phone on [REDACTED].

How will information about me be used?

The researcher will prepare an analysis of findings that will be presented at conferences relating to gender and family law, as well as published in a journal article. The findings will ultimately be used in order to produce the researcher's PhD thesis, which she plans to convert into a book. Quotes from your questionnaire responses may be used in conjunction with pseudonyms.

Who will have access to information about me?

Your anonymity will be protected at all times, both during and after this study, and identifiable data will not be shared. Paper copies of the questionnaire data will be stored securely and indefinitely for the purposes of future research. Electronic copies of the same will be stored on a password-protected laptop computer.

Who is funding the research?

The researcher's PhD is being funded by way of a scholarship at Birmingham Law School.

Will I receive any feedback after the questionnaire?

You will be provided with the opportunity to supply your e-mail address. Should you choose to do so, the address will subsequently be kept separately from your questionnaire data. Once the project is finished, the researcher will e-mail you with a summary of the findings.

Contact for further information

If you have any questions, please contact Charlotte Bendall by e-mail at [REDACTED]. You can also write to her at Birmingham Law School, University of Birmingham, Edgbaston, Birmingham, B15 2TT.

Gender in intimate relationships: a socio-legal study

Client interview information sheet

Aims of the research

This project, conducted by Charlotte Bendall (PhD candidate at the University of Birmingham), and supervised by Dr. Rosie Harding (Senior Lecturer at the University of Birmingham), explores how civil partnerships and same-sex marriage can help to challenge society and the law's ideas about gender roles in relationships.

The study is focusing upon how the issue of gender is dealt with by solicitors in the context of civil partnership dissolution. It will be looking particularly at the extent to which traditional notions of female 'homemaking' and male 'breadwinning' have tended to feature, as well as what it means to be a 'husband' or a 'wife' within civil partnerships.

The research will also be examining whether gay and lesbian clients perceive there to be expectations upon them in terms of how they present their lifestyles to their solicitor, and asking whether their presentation in this regard accurately reflects the reality of their relationships. Data obtained in the interviews will be compared against the findings of an online questionnaire being conducted by the same researcher into the division of household labour in same-sex relationships.

Invitation

You are being invited to consider taking part in the research study on the basis that you are a client that is currently consulting, or has recently consulted, a solicitor in relation to the dissolution of your civil partnership.

Before you decide whether or not you wish to take part, it is important for you to understand why the research is being done and what it will involve. Please do take the time to read this information sheet carefully. Ask the researcher if there is anything that is unclear or if you would like more information.

Engaging in this particular aspect of the study involves participating in an interview with the researcher. The interview will last for approximately one hour, although it may take longer, depending on how much you say. The questions will relate to such matters as the division of household labour within your relationship pre-separation and your anticipated future arrangements.

Do I have to take part?

You are free to decide whether or not you wish to take part.

If I take part, what do I have to do?

Interviews will take place at a mutually agreed location. They will be held subsequently to your meeting/s with your solicitor and will provide you with an opportunity to reflect back.

Prior to participation, you will be asked to sign a copy of the enclosed consent form.

What are the benefits of taking part?

Participation could be beneficial in terms of providing an opportunity for you to express your views about, and share your experiences of, civil partnership and the dissolution thereof. Your views will hold significant weight within the context of this study.

What are the risks of taking part?

Given that there is a strong possibility that you are going through a difficult and emotional time in your life, there is the potential that participating in the interview might risk upsetting you further. The researcher will be able to supply you with contact details of support organisations if you should so wish.

Am I free to withdraw from the study?

Yes, you are able to withdraw from the study at any point and without implication. You may withdraw either verbally during the interview itself, or afterwards by contacting the researcher by e-mail.

What if there is a problem?

If you have a concern about any aspect of this study, you should contact the researcher using the details set out below. She will do her best to answer your questions.

If you remain unhappy about the research and/ or wish to raise a complaint about any aspect of the way that you have been approached or treated during the course of the study please write to Dr. Rosie Harding, also at Birmingham Law School. You may alternatively contact her by e-mail at [REDACTED] or by phone on [REDACTED].

How will information about me be used?

The interviews will be audio-recorded. Upon their completion, the researcher will personally transcribe them. All identifiable information, including places, occupations and names, will be removed during the transcription process.

The researcher will prepare a summary of findings that will be presented at conferences relating to gender and family law, as well as published in a journal article. The findings will ultimately be used in order to produce the researcher's PhD thesis, which she plans to convert into a book. Quotes from interviews may be used in conjunction with pseudonyms, if you consent to this.

Who will have access to information about me?

Your anonymity will be protected at all times, both during and after this study, and identifiable data will not be shared. Everything said within the interview will be kept confidential. Only the researcher will hear the entirety of the audio recording of your interview, although she may play excerpts from it to her supervisor. If you consent, audio recordings and transcripts will be retained for a period of 10 years as per the University of Birmingham code of practice on research. If you do not consent to this storage, audio recordings and transcripts will be destroyed at the end of this research project, when the researcher no longer needs access to the data.

In the event of you making a disclosure relating to criminal behaviour, confidentiality will only be preserved so far as the law permits. In addition, if an interview reveals

that you or another person that you identify in the interview is in significant and immediate danger, the researcher will be obliged to take action in response to that disclosure.

Who is funding the research?

The researcher's PhD is being funded by way of a scholarship at Birmingham Law School.

Will I receive any feedback after the interview?

The researcher will seek to obtain your e-mail address, which she will subsequently keep separately from your interview data. Once the project is finished, the researcher will e-mail you with a summary of the findings.

Contact for further information

If you have any questions, please contact Charlotte Bendall by e-mail at [REDACTED]. You can also write to her at Birmingham Law School, University of Birmingham, Edgbaston, Birmingham, B15 2TT.

Appendix D. Solicitor interview schedule

General practice:

1. Can you tell me a bit about your background in matrimonial disputes?
2. How many civil partnership dissolution matters have you worked on so far?
3. Of those, what has the range of household income and assets been?

Cases of client/s ‘matched up’ with solicitor (if applicable) or, alternatively, civil partnership cases worked on to date:

1. Can you tell me a bit about this case/ these cases (e.g. what was the length of the relationship; were there any children)?
2. Is it/ are they progressing towards settlement and, if so, what is this settlement likely to look like? Otherwise, if a final order has been obtained, what does that look like?
3. (If solicitor was ‘matched up’ with a client) how does the division of assets in this matter compare against those reached in the other civil partnership cases that you have dealt with?
4. How does the division compare against those reached within the opposite-sex cases that you have worked on?

Division of household labour and finances:

1. In the civil partnership matters that you have worked on so far, have you observed any patterns in terms of the division of household labour/ caring and money earning?
2. Are these patterns applicable both to your lesbian and your gay clients?
3. How do these patterns compare against those arrangements made by your straight clients?
4. How about the way that the household finances are dealt with, have you noticed any patterns there (e.g. have the civil partner clients that you’ve had been more likely to retain separate bank accounts/ less likely to have joint ones)?

Differences/ similarities between civil partnership and marriage:

1. Why do you think that people choose to enter into civil partnerships?
2. How do you think civil partnership compares to marriage?

3. What about from your perspective in a dissolution context, do you approach these matters any differently?
4. Have you perceived any difference in expectations with regard to your civil partner clients (by comparison to your straight clients)?
5. Are there any differences between what the terms 'husband' and 'wife' mean within the contexts of civil partnership and marriage?

'Equality' and fairness within the civil partnership context:

1. 'Equality' has clearly been a key theme within the law of ancillary relief in recent years. Can you tell me a bit about what 'equality' means to you in the civil partnership scenario?
2. Does a 50/ 50 split of the assets tend to be an appropriate solution to a civil partnership matter (and why)?
3. Alternatively, are there more persuasive reasons to provide civil partners simply with what they brought into the partnership when it comes to asset division? If so, why?
4. What sort of factors do you think need to be taken into account when deciding what a fair settlement might be in relation to a civil partnership?
5. Returning to this notion of 'equality', can you tell me what it would mean to you to treat civil partners 'equally' to married spouses when it comes to ancillary relief?

Are there any further points that you'd like to cover in relation to this topic?

Appendix E. Client interview schedule

General relationship details:

1. Can you start by telling me a bit about your relationship (e.g. length, any children)?
2. Can you tell me why you and your partner chose to enter into a civil partnership?
3. Can you tell me a little about why the relationship broke down?

Household finances:

1. Were both you and your partner working during the relationship (and, if so, can you tell me a bit about your jobs, working hours, etc.)?
2. What was your level of household income?
3. Can you tell me a bit about how you and your partner organised the household finances?
4. Who made the financial decisions/ took charge of the bills? Did you and your partner discuss such things?
5. Did you and your partner hold joint bank accounts?
6. To what degree did you consider yourself to be financially in/ dependent?

Division of household labour:

1. Can you tell me a bit about how household chores were apportioned out within your relationship (e.g. cooking, cleaning, dish washing, shopping, laundry, DIY, gardening, caring for a sick family member)?
2. Did you and your partner make an active decision to apportion the chores in this way?
3. Did you and your partner hire any help, such as a cleaner or a gardener?
4. Who cared for your children (if applicable)?
5. Can you tell me what the arrangements are going forward in relation to childcare?

Developments post-separation:

1. Can you tell me what stage you've reached in your legal proceedings?
2. Are you and your partner making progress towards settlement and, if so, what is this settlement likely to look like? Alternatively, if a final order has been obtained, what does it look like?

3. Did you ever consider, prior to entering into the civil partnership, what the implications would be if the relationship were to break down (in terms of the finances and assets)?
4. If so, does the legal advice that you are receiving match what you had previously thought?
5. What do you think a fair solution to your matter would be?

Dealings with solicitor:

1. Did you have any pre-conceptions as to how the meeting with your solicitor would go?
2. Did the meeting go in the way that you thought that it would?
3. Was there anything that you were surprised that the solicitor needed to know?
4. You may be aware that 'equality' has been a key theme within divorce law in recent years. Can you tell me what it means to you to treat civil partners 'equally' (both to each other and to heterosexual couples)?
5. Do you feel that your experience of seeking legal advice has impacted upon your views in this regard?
6. Did you ultimately feel that your solicitor seemed to have a good grasp of what family life is like for civil partners?

Are there any further points that you'd like to cover in relation to this topic?

Appendix F. Demographic information form for interviews

Name: _____

1. Gender	a) What is your gender?	Male:	<input type="checkbox"/>	Female:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
	b) What is the gender of your partner?	Male:	<input type="checkbox"/>	Female:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
2. Age	How old are you? _____ years						
3. Race	How would you describe your race/ethnicity?						
	White British	<input type="checkbox"/>					
	White Irish	<input type="checkbox"/>					
	White Other	<input type="checkbox"/>					
	Mixed (White and Black Caribbean)	<input type="checkbox"/>					
	Mixed (White and Black African)	<input type="checkbox"/>					
	Mixed (White and Asian)	<input type="checkbox"/>					
	Mixed Other	<input type="checkbox"/>					
	Black African	<input type="checkbox"/>					
	Black Caribbean	<input type="checkbox"/>					
	Black Other	<input type="checkbox"/>					
	Indian	<input type="checkbox"/>					
	Pakistani	<input type="checkbox"/>					
	Bangladeshi	<input type="checkbox"/>					
	Asian Other	<input type="checkbox"/>					
Chinese Other (please specify)	<input type="checkbox"/>						
4. Disability	Would you describe yourself as having a disability?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
5. Religion	Which of the following best describes your religion/belief?						
	<input type="checkbox"/> No Religion	<input type="checkbox"/> Christian (all denominations)					
	<input type="checkbox"/> Buddhist	<input type="checkbox"/> Hindu					
	<input type="checkbox"/> Jewish	<input type="checkbox"/> Muslim					
	<input type="checkbox"/> Sikh	<input type="checkbox"/> Any Other Religion (please specify):					

6. Sexual Orientation	Which of the following best describes your sexual orientation?						
	<input type="checkbox"/> Bisexual	<input type="checkbox"/> Gay	<input type="checkbox"/> Heterosexual	<input type="checkbox"/> Lesbian			
	<input type="checkbox"/> Other (please specify) _____						
7. Where you live	Which country do you live in? _____						
8. Social Class	How would you describe your social class?						
	<input type="checkbox"/> Middle Class	<input type="checkbox"/> Working Class					
	<input type="checkbox"/> Other (please specify) _____						
9. Political views	Which political party did you vote for in the last general election?						
	<input type="checkbox"/> Conservative	<input type="checkbox"/> Liberal Democrat	<input type="checkbox"/> Labour				
	<input type="checkbox"/> Other (please specify) _____						

Appendix G. Client consent form

Consent form – client interview

Title of project: Gender in intimate relationships: A socio-legal study

Name of researcher: Charlotte Bendall (supervised by Dr. Rosie Harding)

Please tick box:

		Yes	No
1	I confirm that I have read and understand the information sheet for the above study entitled 'Client interview information sheet' and have had the opportunity to ask questions.	<input type="checkbox"/>	<input type="checkbox"/>
2	I understand that my participation is voluntary and that I am free to withdraw at any time.	<input type="checkbox"/>	<input type="checkbox"/>
3	I agree to take part in this study.	<input type="checkbox"/>	<input type="checkbox"/>
4	I agree to my interview with the researcher being digitally recorded.	<input type="checkbox"/>	<input type="checkbox"/>
5	I understand that the data collected about me during this study will be anonymised before it is submitted for publication.	<input type="checkbox"/>	<input type="checkbox"/>
6	I agree that anonymised quotes can be used.	<input type="checkbox"/>	<input type="checkbox"/>
7	I agree to allow the data collected to be used in future research projects.	<input type="checkbox"/>	<input type="checkbox"/>
8	I agree that audio recordings may be confidentially stored for 10 years.	<input type="checkbox"/>	<input type="checkbox"/>
9	I agree that an anonymised transcript of the interview may be confidentially stored for 10 years.	<input type="checkbox"/>	<input type="checkbox"/>

Name of participant

Date

Signature

Researcher

Date

Signature

1 for Participant, 1 for Researcher

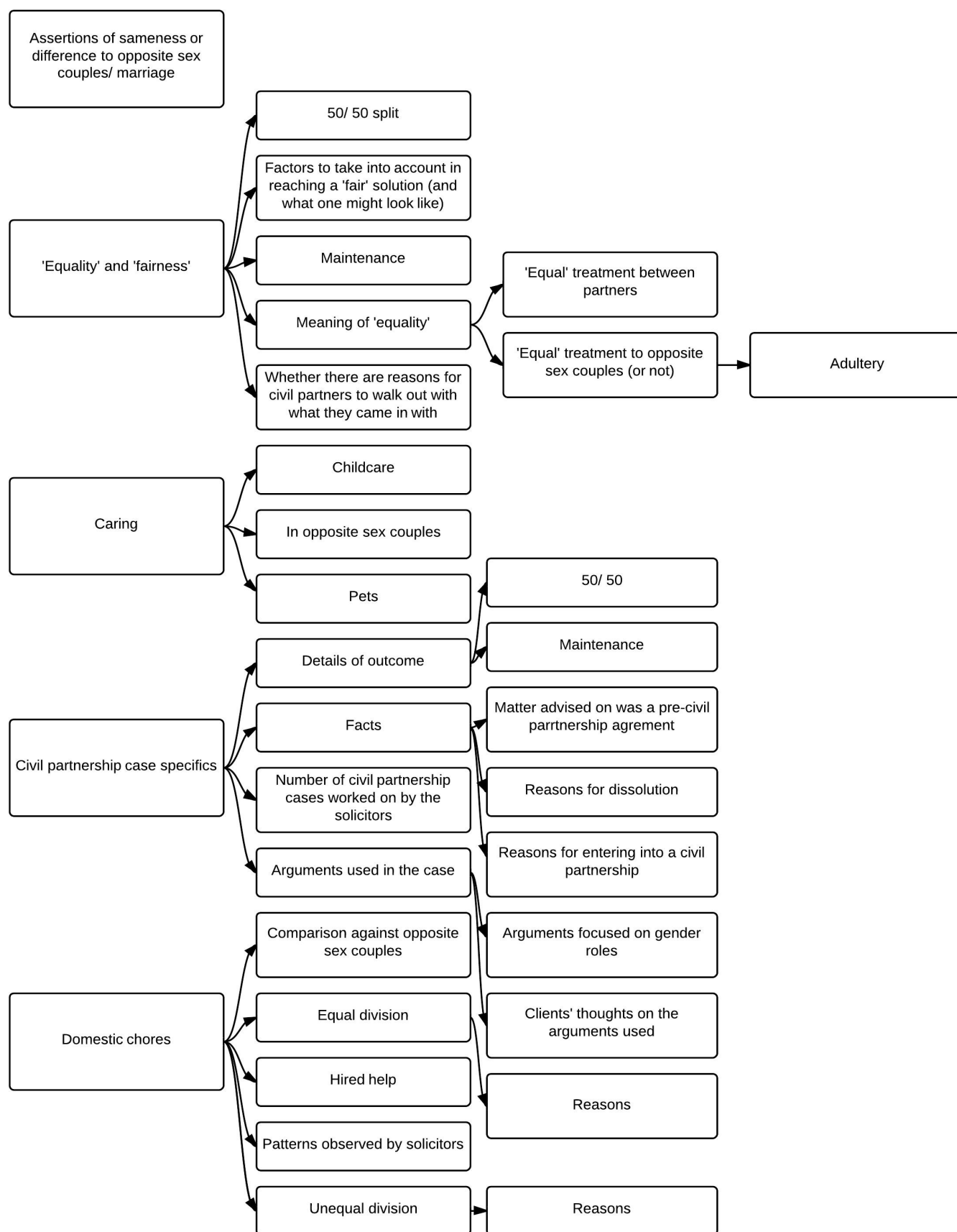
Appendix H. Table of clients' basic relationship details						
Client name	Length of relationship	Main earner in their relationship	Client's category of occupation*	Client's ex-partner's category of occupation	Extent of assets (where described in detail)	Outcome of asset division
Anthony	16 years	Anthony	Financial services (high earner)	N/A (unemployed)	"Significant assets": three properties and some land, pension, savings and investments.	50/ 50 split of assets, with a pension sharing order and maintenance for four years (matter went to final hearing).
Bill	16 years	Both partners prior to Bill's ex-partner losing his job, then subsequently Bill	Professional	Professional	Owned a property and "were comfortably off".	N/A – matter was ongoing.
Caroline	Just over a year	Caroline	Financial services (low earner)	N/A (on long-term sick leave)	"No money", credit card debt and a property mortgaged in client's name.	Ex-partner took back items (e.g. CDs and DVDs) that she had brought into the house (parties settled without proceedings).
Debbie	11 years	Debbie's ex-partner	Community and personal services (part-time)	Education	Owned a property, and client also argued that her wife had a £1	50/ 50 split of the proceeds of sale of the property (parties

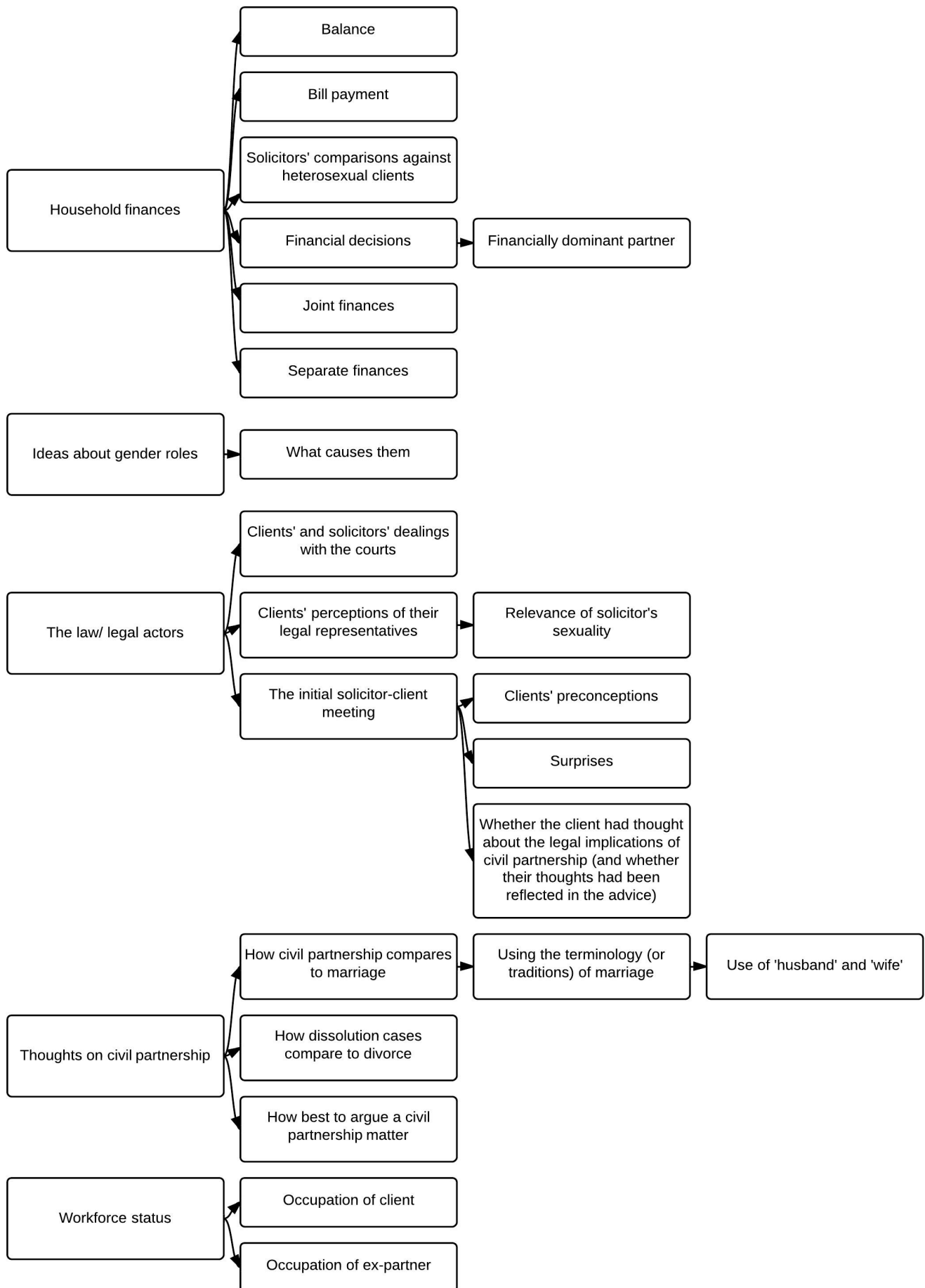
* Occupations were categorised into 'community and personal services' (spanning caring, cleaning and hospitality), 'education', 'financial services' (encompassing banking, insurance and investment management), 'government', 'manufacturing', and 'professional services' (requiring specialist training, such as being a doctor or a lawyer). Employment was on a full-time basis, unless otherwise indicated. Interviewees were often reluctant to disclose details of their salary, although I have indicated where they referred to them as being particularly low or high.

					million trust fund (although documentary evidence could not be found).	settled at the Final Dispute Resolution hearing).
Edward	8 years	Both partners (although Edward's ex-partner earned a little more)	Professional	Professional	Owned a mortgage-free property, pensions and savings.	Client agreed, without proceedings, to the transfer of a figure that would enable him to relocate (which was, "a lot less than half of the flat"), and ex-partner remained in the property.
Freddie	5.5 years	Both partners	Government	Government	Owned a property (for which the deposit was paid for by client, having previously sold a flat), ex-partner owned a rental flat from prior to the relationship and had debt.	Money in joint account was split 50/50, ex-partner signed over the property to client and retained his rental flat (parties settled without proceedings).
George	6 years	Both partners	Community and personal services (low earner)	Community and personal services (low earner)	Owned a property, otherwise "only peanuts".	N/A- matter was ongoing.
Heather	14 years	Both partners prior to Heather's ex-partner becoming self-employed, then Heather	Professional	Education, then real estate	Owned a property and lived, "not a privileged lifestyle, but we didn't do without much". Ex-partner had obtained	Client calculated (without proceedings) what each had paid into the property. It was agreed that ex-

					property to pursue a new venture, which client had invested in.	partner could retain any profits on the work-related property, but that client would obtain her investment back.
Isaac	6 years	Isaac	Financial services (high earner)	Manufacturing (low earner)	Owned a property (for which client paid for the deposit), pension, and ex-partner had debt.	Client agreed (without proceedings) to pay a £20,000 sum towards ex-partner's debt.
Jennifer	25 years	Both partners	Government	Government	Owned a property (but, "it wasn't very expensive").	N/A- matter was ongoing.

Appendix I. Trees of nodes generated in NVivo





Appendix J. Tables of positive chi-square results from the questionnaire

Whether the respondent and their partner had the same occupational status by whether or not there are children present in the respondent's household

		Children present	Children not present	Total
Partners have the same occupational status	Count	33	152	185
	Expected count	43.4	141.6	
	%	48.5	68.5	63.8
Partners have a different occupational status	Count	35	70	105
	Expected count	24.6	80.4	
	%	51.5	31.5	36.2
N (=100%)		68	222	290
		Value	df	Sig
Chi-square test		8.960	1	0.003

Who does the majority of the childcare in the respondent's household by who the 'main earner' is

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I do the majority of the caring	Count	4	14	8	26
	Expected count	8.9	11.3	5.8	
	%	17.4	48.3	53.3	38.8
My partner and I care equally	Count	8	11	5	24
	Expected count	8.2	10.4	5.4	
	%	34.8	37.9	33.3	35.8
My partner does the majority of the caring	Count	11	4	2	17
	Expected count	5.8	7.4	3.8	
	%	47.8	13.8	13.3	25.4
N (=100%)		23	29	15	67
		Value	df	Sig	
Chi-square test		11.232	4	0.024	

Who cares for a sick family member in the respondent's household by who the 'main earner' is

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I do the majority of the caring	Count	11	22	7	40
	Expected count	15.4	15.1	9.5	
	%	16.2	32.8	16.7	22.6
My partner and I care equally	Count	46	43	30	119
	Expected count	45.7	45	28.2	
	%	67.6	64.2	71.4	67.2
My partner does the majority of the caring	Count	11	2	5	18
	Expected count	6.9	6.8	4.3	
	%	16.2	3	11.9	10.2
N (=100%)		68	67	42	177
		Value	df	Sig	
Chi-square test		11.144	4	0.025	

Who does the laundry in the respondent's household by the respondent's gender

		Male	Female	Total
I always do the laundry	Count	12	26	38
	Expected count	10.8	27.2	
	%	14.5	12.5	13.1
I mostly do the laundry	Count	24	45	69
	Expected count	19.7	49.3	
	%	28.9	21.6	23.7
My partner and I equally share the laundry	Count	25	87	112
	Expected count	31.9	80.1	
	%	30.1	41.8	38.5
My partner mostly does the laundry	Count	14	44	58
	Expected count	16.5	41.5	
	%	16.9	21.2	19.9
My partner always does the laundry	Count	8	6	14
	Expected count	4	10	
	%	9.6	2.9	4.8
N (=100%)		83	208	291
		Value	df	Sig
Chi-square test		9.785	4	0.044

Who does the dishwashing by whether or not there are any children present in the respondent's household

		Children present	Children not present	Total
I always do the dishwashing	Count	5	14	19
	Expected count	4.4	14.6	
	%	7.4	6.2	6.4
I mostly do the dishwashing	Count	9	60	69
	Expected count	15.9	53.1	
	%	13.2	26.4	23.4
My partner and I equally share the dishwashing	Count	41	92	133
	Expected count	30.7	102.3	
	%	60.3	40.5	45.1
My partner mostly does the dishwashing	Count	13	49	62
	Expected count	14.3	47.7	
	%	19.1	21.6	21
My partner always does the dishwashing	Count	0	12	12
	Expected count	2.8	9.2	12
	%	0	5.3	4.1
N (=100%)		68	227	295
		Value	df	Sig
Chi-square test		12.291	4	0.015

Who does the grocery shopping by whether or not there are any children present in the respondent's household

		Children present	Children not present	Total
I do the grocery shopping	Count	30	72	102
	Expected count	24.5	77.5	
	%	42.3	32	34.5
My partner and I equally share the grocery shopping	Count	22	112	134
	Expected count	32.1	101.9	
	%	31	49.8	45.3
My partner does the grocery shopping	Count	19	41	60
	Expected count	14.1	45.6	
	%	26.8	3	20.3
N (=100%)		71	225	296
		Value	df	Sig
Chi-square test		7.798	2	0.020

Who does the grocery shopping in the respondent's household by the respondent's relationship status

		In a civil partnership/ marriage	Cohabiting	Total
I always do the grocery shopping	Count	16	10	26
	Expected count	12	14	
	%	12.2	6.5	9.1
I mostly do the grocery shopping	Count	40	32	72
	Expected count	33.1	38.9	
	%	30.5	20.8	25.3
My partner and I equally share the grocery shopping	Count	46	83	129
	Expected count	59.3	69.7	
	%	35.1	53.9	45.3
My partner mostly does the grocery shopping	Count	28	26	54
	Expected count	24.8	29.2	
	%	21.4	16.9	18.9
My partner always does the grocery shopping	Count	1	3	4
	Expected count	1.8	2.2	4
	%	0.8	1.9	1.4
N (=100%)		131	154	285
		Value	df	Sig
Chi-square test		12.183	4	0.016

Who does the grocery shopping by whether or not the respondent's occupational status is the same as their partner's

		Same occupational status	Different occupational status	Total
I always do the grocery shopping	Count	9	17	26
	Expected count	16.5	9.5	
	%	4.9	16.2	9.1
I mostly do the grocery shopping	Count	45	28	73
	Expected count	46.3	26.7	
	%	24.7	26.7	25.4
My partner and I equally share the grocery shopping	Count	88	41	129
	Expected count	81.8	47.2	
	%	48.4	39	44.9
My partner mostly does the grocery shopping	Count	38	17	55
	Expected count	34.9	20.1	
	%	20.9	16.2	19.2
My partner always does the grocery shopping	Count	2	2	4
	Expected count	2.5	1.5	4
	%	1.1	1.9	1.4
N (=100%)		182	105	287
		Value	df	Sig
Chi-square test		11.750	4	0.019

Who does the cooking by whether or not the respondent's occupational status is the same as their partner's

		Same occupational status	Different occupational status	Total
I always do the cooking	Count	12	12	24
	Expected count	15.4	8.6	
	%	6.5	11.5	8.3
I mostly do the cooking	Count	45	38	83
	Expected count	53.1	29.9	
	%	24.3	36.5	28.7
My partner and I equally share the cooking	Count	71	25	96
	Expected count	61.5	34.5	
	%	38.4	24	33.2
My partner mostly does the cooking	Count	47	26	73
	Expected count	46.7	26.3	
	%	25.4	25	25.3
My partner always does the cooking	Count	10	3	13
	Expected count	8.3	4.7	
	%	5.4	2.9	4.5
N (=100%)		185	104	289
		Value	df	Sig
Chi-square test		10.570	4	0.032

Who does the vacuuming by whether or not the respondent's occupational status is the same as their partner's

		Same occupational status	Different occupational status	Total
I always do the vacuuming	Count	21	9	30
	Expected count	18.8	11.2	
	%	12.4	8.9	11.1
I mostly do the vacuuming	Count	39	23	62
	Expected count	38.9	23.1	
	%	22.9	22.8	22.9
My partner and I equally share the vacuuming	Count	66	28	94
	Expected count	59	35	
	%	38.8	27.7	34.7
My partner mostly does the vacuuming	Count	41	34	75
	Expected count	47	28	
	%	24.1	33.7	27.7
My partner always does the vacuuming	Count	3	7	10
	Expected count	6.3	3.7	
	%	1.8	6.9	3.7
N (=100%)		170	101	271
		Value	df	Sig
Chi-square test		9.598	4	0.048

Who does the vacuuming in the respondent's household by who the 'main earner' is

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I always do the vacuuming	Count	8	16	7	24
	Expected count	11.1	11.9	8.1	
	%	8.2	15.4	9.9	8.3
I mostly do the vacuuming	Count	22	33	7	62
	Expected count	22.1	23.7	16.2	
	%	22.7	31.7	9.9	22.8
My partner and I equally share the vacuuming	Count	34	22	35	91
	Expected count	32.5	34.8	23.8	
	%	35.1	21.2	49.3	33.5
My partner mostly does the vacuuming	Count	27	28	22	77
	Expected count	27.5	29.4	20.1	
	%	27.8	26.9	31	28.3
My partner always does the vacuuming	Count	6	5	0	11
	Expected count	3.9	4.2	2.9	
	%	6.2	4.8	0.0	4
N (=100%)		97	104	71	272
		Value	df	Sig	
Chi-square test		25.781	8	0.001	

Who conducts the general cleaning by who the 'main earner' is in the respondent's household

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I do the general cleaning	Count	21	43	14	78
	Expected count	27.7	30.1	20.2	
	%	21	39.4	19.2	27.7
The general cleaning is equally shared	Count	46	45	43	134
	Expected count	47.5	51.8	34.7	
	%	46	41.3	58.9	47.5
My partner does the general cleaning	Count	33	21	16	70
	Expected count	24.8	27.1	18.1	
	%	33	19.3	21.9	24.8
N (=100%)		100	109	73	282
		Value	df	Sig	
Chi-square test		16.209	4	0.003	

Whether domestic help is employed by whether or not the respondent's gross household income falls within the tenth decile

		Income falls within the ninth decile or lower	Income falls within the tenth decile	Total
Domestic help is employed	Count	7	49	56
	Expected count	23.6	32.4	
	%	6.6	33.8	22.3
Domestic help is not employed	Count	99	96	195
	Expected count	82.4	112.6	
	%	93.4	66.2	77.7
N (=100%)		106	145	251
		Value	df	Sig
Chi-square test		26.117	1	0.000

Whether domestic help is employed by the respondent's social class

		Middle class	Working class	Total
Domestic help is employed	Count	51	4	55
	Expected count	40.9	14.1	
	%	24.9	5.6	19.9
Domestic help is not employed	Count	154	67	221
	Expected count	164.1	56.9	
	%	75.1	94.4	80.1
N (=100%)		205	71	276
		Value	df	Sig
Chi-square test		12.240	1	0.000

Whether domestic help is employed by whether or not there are any children present in the respondent's household

		Children present	Children not present	Total
Domestic help is employed	Count	27	33	60
	Expected count	14.5	45.5	
	%	38	14.8	20.4
Domestic help is not employed	Count	44	190	234
	Expected count	56.5	177.5	
	%	62	85.2	79.6
N (=100%)		71	223	294
		Value	df	Sig
Chi-square test		17.891	1	0.000

Whether domestic help is employed by the respondent's relationship status

		In a civil partnership/ marriage	Cohabiting	Total
Domestic help is employed	Count	34	24	58
	Expected count	26.5	31.5	
	%	26.2	15.6	20.4
Domestic help is not employed	Count	96	130	226
	Expected count	103.5	122.5	
	%	73.8	84.4	79.6
N (=100%)		130	154	284
		Value	df	Sig
Chi-square test		4.846	1	0.028

Presence or absence of a joint bank account by the respondent's gender

		Male	Female	Total
Partners have a joint bank account	Count	34	123	157
	Expected count	44.9	112.1	
	%	42	60.9	55.5
Partners do not have a joint bank account	Count	47	79	126
	Expected count	36.1	89.9	
	%	58	39.1	44.5
N (=100%)		81	202	283
		Value	df	Sig
Chi-square test		8.375	1	0.004

Presence or absence of a joint bank account by whether or not there are any children present in the respondent's household

		Children present	Children not present	Total
Partners have a joint bank account	Count	45	113	158
	Expected count	37.1	120.9	
	%	67.2	51.8	55.4
Partners do not have a joint bank account	Count	22	105	127
	Expected count	29.9	97.1	
	%	32.8	48.2	44.6
N (=100%)		67	218	285
		Value	df	Sig
Chi-square test		4.875	1	0.027

Presence or absence of a joint bank account by whether or not the respondent's gross household income falls within the tenth decile

		Income falls within the ninth decile or lower	Income falls within the tenth decile	Total
Partners have a joint bank account	Count	43	99	142
	Expected count	60	82	
	%	41.3	69.7	57.7
Partners do not have a joint bank account	Count	61	43	104
	Expected count	44	60	
	%	58.7	30.3	42.3
N (=100%)		104	142	246
		Value	df	Sig
Chi-square test		19.802	1	0.000

Presence or absence of a joint bank account by the respondent's social class

		Middle class	Working class	Total
Partners have a joint bank account	Count	126	22	148
	Expected count	111	37	
	%	62.7	32.8	55.2
Partners do not have a joint bank account	Count	75	45	120
	Expected count	90	30	
	%	37.3	67.2	44.8
N (=100%)		201	67	268
		Value	df	Sig
Chi-square test		18.108	1	0.000

Presence or absence of a joint bank account by the respondent's relationship status

		In a civil partnership/ marriage	Cohabiting	Total
Partners have a joint bank account	Count	96	60	156
	Expected count	71	85	
	%	76.2	39.7	56.3
Partners do not have a joint bank account	Count	30	91	121
	Expected count	55	66	
	%	23.8	60.3	43.7
N (=100%)		126	151	277
		Value	df	Sig
Chi-square test		37.106	1	0.000

Presence or absence of separate bank accounts by the respondent's relationship status

		In a civil partnership/ marriage	Cohabiting	Total
Partners have separate accounts	Count	107	145	252
	Expected count	116.1	135.9	
	%	82.9	96	90
Partners do not have separate accounts	Count	22	6	28
	Expected count	12.9	15.1	
	%	17.1	4	10
N (=100%)		129	151	280
		Value	df	Sig
Chi-square test		13.226	1	0.000

Who pays the bills in the respondent's household by who the 'main earner' is

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I always pay the bills	Count	26	6	7	39
	Expected count	14	14.8	10.1	
	%	25	5.5	9.3	13.5
I mostly pay the bills	Count	32	14	13	59
	Expected count	21.2	22.5	15.3	
	%	30.8	12.7	17.3	20.4
My partner and I equally share the bill paying	Count	33	53	41	127
	Expected count	45.7	48.3	33	
	%	31.7	48.2	54.7	43.9
My partner mostly pays the bills	Count	11	28	14	53
	Expected count	19.1	20.2	13.8	
	%	10.6	25.5	18.7	18.3
My partner always pays the bills	Count	2	9	0	11
	Expected count	4	4.2	2.9	
	%	1.9	8.2	0	3.8
N (=100%)		104	110	75	289
		Value	df	Sig	
Chi-square test		47.185	8	0.000	

Who pays the bills in the respondent's household by the respondent's social class

		Middle class	Working class	Total
I always pay the bills	Count	25	15	40
	Expected count	29.9	10.1	
	%	12	21.1	14.3
I mostly pay the bills	Count	41	15	56
	Expected count	41.8	14.2	
	%	19.6	21.1	20
My partner and I equally share the bill paying	Count	102	21	123
	Expected count	91.8	31.2	
	%	48.8	29.6	43.9
My partner mostly pays the bills	Count	34	18	52
	Expected count	38.8	13.2	
	%	16.3	25.4	18.6
My partner always pays the bills	Count	7	2	9
	Expected count	6.7	2.3	
	%	3.3	2.8	3.2
N (=100%)		209	71	280
		Value	df	Sig
Chi-square test		10.038	4	0.040

Who makes the financial decisions in the respondent's household by the respondent's social class

		Middle class	Working class	Total
I always make the financial decisions	Count	9	6	15
	Expected count	11.2	3.8	
	%	4.3	8.5	5.4
I mostly make the financial decisions	Count	28	13	41
	Expected count	30.6	10.4	
	%	13.4	18.3	14.6
My partner and I equally share the financial decision-making	Count	147	38	185
	Expected count	138.1	46.9	
	%	70.3	53.5	66.1
My partner mostly makes the financial decisions	Count	21	9	30
	Expected count	22.4	7.6	
	%	10	12.7	10.7
My partner always makes the financial decisions	Count	4	5	9
	Expected count	6.7	2.3	
	%	1.9	7	3.2
N (=100%)		209	71	280
		Value	df	Sig
Chi-square test		9.518	4	0.049

Who makes the financial decisions in the respondent's household by who the 'main earner' is

		I am the 'main earner'	My partner is the 'main earner'	Neither of us is the 'main earner'	Total
I make the financial decisions	Count	40	8	11	59
	Expected count	21.1	22.3	15.6	
	%	38.5	7.3	14.3	20.3
My partner and I equally share the financial decision-making	Count	56	77	59	192
	Expected count	68.6	72.6	50.8	
	%	53.8	70	76.7	66
My partner makes the financial decisions	Count	8	25	7	40
	Expected count	14.3	15.1	10.6	
	%	7.7	22.7	9.1	13.7
N (=100%)		104	110	77	291
		Value	df	Sig	
Chi-square test		41.854	4	0.000	

Appendix K. Tables of positive t-test results from the questionnaire

Comparing the females and males						
Gender						
Variable		<u>Females</u> (n=207)	<u>Males</u> (n=84)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
Same-sex couples share household tasks more equally than different-sex couples	M SD	3.02 (1.424)	3.54 (1.524)	2.746	289	0.006

Comparing those with children in the household and those without						
Gender						
Variable		<u>With children</u> (n=71)	<u>Without children</u> (n= 222)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I made a conscious decision to share household tasks unequally	M SD	4.54 (1.811)	5.09 (1.795)	-2.262	291	0.024

Comparing those currently in a civil partnership/ marriage and those cohabiting						
Gender						
Variable		<u>In a civil partnership/ marriage</u> (n=130)	<u>Cohabiting</u> (n=155)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I share household tasks equally	M SD	3.15 (1.845)	2.66 (1.543)	2.432	252.154	0.016

Comparing partners both working full-time and partners not both working full-time						
Gender						
Variable		<u>Both working full-time</u> (n=156)	<u>Not both working full-time</u> (n=133)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I are financially independent	M SD	3.10 (1.804)	3.89 (2.012)	-3.497	267.783	0.001

Comparing those with children in the household and those without						
Gender						
Variable		<u>With children</u> (n=70)	<u>Without children</u> (n= 223)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I are financially independent	M SD	4.24 (1.821)	3.22 (1.907)	3.974	291	0.000

Comparing those currently in a civil partnership/ marriage and those cohabiting						
Gender						
Variable		<u>In a civil partnership/ marriage</u> (n=130)	<u>Cohabiting</u> (n=155)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I are financially independent	M SD	3.93 (1.985)	3.11 (1.800)	3.659	283	0.000

Comparing those with children in the household and those without						
Gender						
Variable		<u>With children</u> (n=71)	<u>Without children</u> (n= 223)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I always discuss major financial decisions	M SD	1.52 (0.876)	1.81 (1.278)	-2.124	172.125	0.035

Comparing those currently in a civil partnership/ marriage and those cohabiting						
Gender						
Variable		<u>In a civil partnership/ marriage</u> (n=131)	<u>Cohabiting</u> (n=155)	<u>t</u>	<u>df</u>	<u>Two-tailed p</u>
My partner and I always discuss major financial decisions	M SD	1.54 (1.040)	1.89 (1.302)	-2.468	284	0.014