Rich list divorcees — do they deserve to be there?

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The number of women on the Sunday Times Rich List has increased by almost 50% in a decade but the press reports that only two women – JK Rowling and Tamara Mellon have "*made fortunes in their own right*" – divorce being how most of the rest of the female multi millionaires have found their way onto the list. On the whole, the reporting of this has been negative – comments like "*if they haven't earned it by working they shouldn't be entitled to it*" seems to capture a popular sentiment. But it is a fair attack on those women? On divorce if a couple cannot resolve the division of their finances then they have to ask the court to adjudicate. However, not all the women on the rich list are there after drawn out acrimonious divorces. The vast majority of couples in the UK are able to resolve the breakdown of their relationships by agreement and the same is true of some of the rich list divorces. It would be naive to suggest all of these husbands happily parted with huge chunks of their wealth to their wives, especially when so much of the dirty laundry surrounding these big money divorces has been aired in public, but it is also wrong to assume that these enormous settlements are regarded as unfair across the board. The matters which the court has to have regard to in deciding how to exercise its powers on divorce are set out in the Matrimonial Causes Act 1973, section 25, and these are the same factors guiding practitioners facilitating out of court settlements. First consideration is given to the welfare of any child of the family. The idea that a child should not have a disproportionately better life with one parent than the other when it is affordable for both parents to have something broadly equivalent has to be taken into account, even in these super rich cases. If dad lives the life of a multi millionaire and the children get to enjoy this time then why shouldn't mum be able to provide the same? Other factors in the statutory list particularly relevant to these rich list divorces are:

- **the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;**
- **the standard of living enjoyed by the family before the breakdown of the marriage;**

Needs is a relative concept. As humans we distinguish 'needs' from 'wants' and need suggests necessity. In the family law context of big money divorces, needs are inextricably linked to standard of living. If couples have decided to enjoy a luxurious standard of living together during their marriage and it is affordable to for this to continue then why should one spouse be able to dictate when that lifestyle should end for the other spouse? The 2011 case of *K v L* reminds us that a spouse cannot simply elect to have a high standard of living post divorce simply because there is enough money to fund it. In that case the wife had shares worth almost £58m at the time of the divorce but the family had lived extremely modestly during their marriage. Their matrimonial home was a 4 bed semi in a London suburb worth a mere £225,000. The husband claimed an entitlement to £18m on divorce based on the sharing principle but this was refused because it did not reflect the parties' standard of living during the marriage. The family in that case had chosen to keep their wealth from family and friends so their children could enjoy a normal life. If a couple do the opposite and choose to enjoy their wealth in a very lavish and public way then why should this not continue for each of them on divorce if it is affordable?

- **the age of each party and the duration of the marriage;**

The 'gold digger' label which is bandied around suggests these high profile divorces are all from short marriages, entirely motivated by money but it is worth remembering that Slavica Ecclestone was married for 23 years, Irina Malandina for 16 years and Diana Jenkins for 10 years.

- **the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family.**

Since the judgment of Lord Nicholls in the case of *White* in 2000, judges have been directed to cross check the fairness of financial settlements on divorce against the 'yardstick of equality' to avoid discrimination between a homemaker / child carer and a breadwinner. The non-financial contribution of the parent caring for children was given proper recognition for the first time when, up until then, a wealthy husband who had gone out to work while his wife had raised their children could argue on divorce that his wife's entitlement should be restricted to her "reasonable needs". A pre-2000 divorcing wife who had not worked but had raised children could expect to receive a capital sum based on her reasonable needs, not generously interpreted, which she would be expected to deplete every year of her actuarial life on the assumption that she would spend her last pennies just before she died leaving nothing to her children. If a wife has to "earn" her entitlement on divorce, without the role of child carer being recognised as valid labour, the law would be in danger of moving towards a return to pre-2000 case law, which was discriminatory towards women. On divorce, regard always has to be given to 'all the circumstances of the case' and a factor which is going to be seen with increasing frequency is a pre or post nuptial agreement. There is a choice to be made with marriage. Parties can choose not to be married, or they can choose to be married with a pre nuptial agreement to provide certainty on marriage breakdown and to contract out of the sharing of assets. If a husband chooses to be married without a pre nuptial agreement and to live a lavish lifestyle with his wife, is it right that his wife is then criticised if she finds herself in the rich list when the marriage ends in divorce? **Emily Copson**