

GUEST ARTICLE: Divorce Doesn't Always Assume Assets Are Split 50-50

Kate Hamilton, Russell-Cooke, Partner, 19 October 2016



A high-profile case involving a rich tycoon who owns the legendary Ivy restaurant in London prompts a number of thoughts about what will be the division of any assets he has with his spouse.

Divorce remains a regular item for comment on these pages particularly where wealthy couples are involved. A recent story about a high-profile couple prompts following comments from Kate Hamilton, a partner at UK law firm Russell-Cooke. As always, the editors welcome readers' views and contributions such as these, although they don't necessarily endorse all the comments made. Email the editor at tom.burroughes@wealthbriefing.com

Ivy tycoon Richard Caring and his wife Jacqui are reportedly heading for a divorce. The report that Richard has met someone else which some may of course say is the instigator of the breakdown, is an irrelevant factor when looking to divide their substantial wealth. The considerable issue of how their estimated £700 million asset base should be divided is something that both of them will now have to consider. The question is how they will divide it.

When a couple have been married for a long time, and certainly as long as the 45-year marriage enjoyed by the Carings, the guiding principle is to share equally their assets. This has not always been the case, the principle only being established in 2000, due to a case called White heard in the Supreme Court.

Jacqui Caring apparently gave up her modelling career only three days after they initially met, however the case of White very clearly established that a wife should not be disadvantaged by giving up her career to become a homemaker, bring up children and support her husband. She should find herself in exactly the same financial position as her husband upon any divorce. Marriage is a partnership and a husband and wife are deemed to contribute to that partnership equally, even when they carry out different roles within it. Only if a husband can argue some exceptional contribution may an unequal division occur.

45 years is a long marriage by anyone's standards. Together they have accumulated huge wealth and enjoyed a standard of living throughout their marriage that regardless of divorce will undoubtedly continue. In short, there is more than enough money to go around and a vast excess on top.

The process of quantifying and then sharing their assets will be complex. They will be held in complex structures, companies, trusts and perhaps held in many different jurisdictions. Understanding and possibly unravelling these structures using tax, trust and company advice and dealing with the actual mechanics involved in the division, can often take much longer than deciding what the percentage of the division should be.

These multimillionaire divorces are often reported widely in the media and with growing calls for transparency in the family courts there is no doubt that if the Carings decided to issue court proceedings to resolve their financial split, every aspect of their finances and potentially their relationship would be scrutinised by a court and if the right circumstances exist, by the public if their hearings end up being heard with the media present.

Perhaps they will be the exception. It is hoped that after 45 years of marriage, two children and building up such a substantial business portfolio, they will not play out their financial settlement in front of the world's media and not, as many other embittered separating couples do, invoke the court system.

They will need expert advisors at every turn and the same level of scrutiny into their financial affairs as would be applied by a court. This is especially so for a wife with less knowledge of the financial assets, but there are many other forums in which they could settle their finances without having the publicity, cost, delay and lengthy timescales that sometimes occur in court proceedings. It is well known that cases of this size can float around the court system for years and legal fees can spiral out of control.

Unlike the commercial law world, the use of arbitration is a recent addition to the various forums that a couple can utilise. Arbitration is binding but its key is the role that the couple play in the process. They have far more control over issues such as choosing the arbitrator, appointing the necessary experts, setting their timescale and it is all done in a confidential forum. Most importantly – is a process driven and guided by them, not by the courts.

Equally, working together with their respective lawyers in a constructive way, perhaps through a collaboration process can be a way to pursue a mutual wish to separate speedily and in a dignified way, without spending millions of pounds on legal fees. With complex asset structures the need to retain autonomy of your assets in the process, rather than hand over the decision making process to strangers is important. To have a forum which can make the best use of the myriad advisors that would be needed to help unravel and divide the assets, rather than arguing every point large or small, can only assist with maintaining the relationship of a couple. This for the Carings, and in particular their continued links to each other due to their two children, must be better than two years spent in the court system. It is not for everyone and some couples will always need court, perhaps due to lack of trust between them, but it is not the only route for a couple even when the assets are likely to be this substantial and complex.

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