OUR GUEST SOLICITOR TALKS...

Camilla Thornton of Russell-Cooke talks about achieving financial independence.

Spousal maintenance on divorce is on the decline. A dependent ex-spouse is usually expected to take steps to move towards financial independence as soon as possible after divorce; the age of the 'meal ticket for life' has gone; pressure is afoot to try and bring our laws closer aligned to those of our neighbours where there is no maintenance or maintenance for just a few years and Baroness Deech has argued before the House of Lords that spousal maintenance creates a 'victim mentality' which prevents women from being seen as equals.

However, I often wonder when acting for a dependent spouse, usually a wife who is the primary carer of the parties' children and who has put her career on hold so that the husband can further his, whether they will actually achieve what is expected of them in the short or indeed longer term and so I decided to see if I could find what is happening in practice and whether dependent ex-spouses are achieving the financial independence expected of them.

I found no official research or statistics but instead an interesting paper written by two academics in 2018 entitled "Financial Remedies on Divorce: The Need for Evidence-based Reform", which had been commissioned by the Nuffield Foundation. It involved a review of some 400 financial remedy cases in 4 socio-economically different geographical locations.

The key findings of the study were that the 'clean break' culture is prevalent (only 16% of the cases studied included an award for spousal maintenance and they were all in a higher economic group), spousal maintenance orders are largely confined to cases involving dependent children and although there is geographical variation in the courts' use of spousal periodical payments, this variation may be more a product of local wealth levels and housing costs than ideological difference.

On the question of recovery after divorce, the report found that the most common family model is still that of a wife not working, or working part time and that many women incur a "motherhood penalty" in reduced earning capacity, savings and pensions during marriage and as a consequence were worse off upon divorce than their husbands, whose position on average improved.

The report concluded that financial inequality within marriage is likely to continue until the role of men and women became more equal both in terms of increased female participation in the work place and equal pay and in the sharing of the paid and unpaid labour within a marriage. Accordingly, spousal maintenance, even for joint lives, was necessary in order to mitigate this economic disparity. Further, if a clean break was the default position, economically vulnerable wives, who tend to focus on their (and their children's) immediate needs and not on their own longer-term positions would be unprotected and would only be likely to achieve financial independence with the financial support of relatives or new partners.

So how can we as family lawyers and financial advisers help our clients move forward and secure financial independence?

We cannot waive a magic wand, but we can ensure that our clients understand the financial implications of their financial settlements, both in the short and longer term and help them work out a financial plan which will give them the confidence to make informed choices and move forward towards financial independence.

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