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Trends in Spousal Maintenance
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“What – right now – are the trends in spousal maintenance decisions and the impact on client advice caused by judicial inconsistency?”

The starting point for maintenance

- S.25 Matrimonial Causes Act 1973/Schedule 5, Part 5 Civil Partnership Act 2004.
- “All circumstances of the case”
- **SS v NS [2014] EWHC 4183 (Fam)**
 - Choices during the marriage have generated “hard future needs”. Duration of marriage and children are pivotal factors.
 - Only made by reference to needs save in a most exceptional case
 - Where needs are not causally connected to the marriage award should be aimed at alleviating significant hardship.
 - Transition to independence as soon as it is just and reasonable.
 - Steer in favour of extendable term as opposed to joint lives order.
 - Marital standard of living is relevant to quantum but not decisive.
 - Represent a fair proportion on the payer’s available income.
 - Where respondent’s income comprises of a base salary and discretionary bonus, award must be equivalently partitioned.
 - No criterion of exceptionality on an application to extend a term order.
 - If choice between extendable and non-extendable term is finely balance decision should normally be in favour of the economically weaker party.
 - On application to discharge joint lives orders, should examine the assumption that it was too difficult to predict eventual independence.

Recently Reported Cases (1)

- TK v AC [2023] EWHC 2958 (Fam)

- AXA v BYB (QLR: Financial Remedies) [2023] EWFC 251 (B)

- SS v IS [2023] EWHC 1544 (Fam)

- WK v GC [2023] EWFC 151

Recently Reported Cases (2)

- KG v NB [2023] EWFC 160

- AB v CD [2023] EWFC 103

- YC v ZC [2022] EWFC 137

- DK v JX [2022] EWFC 19

A trend?

- **Recent Case Law**
 - No obvious “new” trends emerging in decision making
 - Joint Lives, North v South, s.28(1A) bar
 - An increase in applications to vary?
- **Increasing Scrutiny of Needs**
 - Mechanics of needs
 - Earning Capacity
 - Income needs budget
- **Statistics**
 - Family court statistics – no data on maintenance.
 - Financial Remedy application in July to Sep 23 up 15% on the same time the previous year.
 - 70% of applications uncontested.
 - Spousal maintenance an issue in very few cases?

Impact on Client Advice (1)

- **Income Needs Budget**
 - Careful thought at outset and beyond.
- **Earning Capacity**
 - Increase of flexible/remote working.
 - Specific Examples.
- **Medical Issues**
 - Not just evidence.
 - Impact.
- **Capitalisation**
 - How will the capital award impact spousal maintenance?

Impact on Client Advice (2)

- **Housing Needs**
 - Properly pitched.
 - Impact on the merit of spousal maintenance proposals.
- **Term Bar**
 - Greater appetite for s.28(1)(a)bar.
- **Variation**
 - Variation/Discharge/Suspend.
 - Not solely an appraisal of income.
- **The Logic Check**
 - Can a proposal be justified with reference to need, affordability and the overall capital resources?



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