

Justin Warshaw KC

*Spousal Maintenance:
Trends and advising clients*

Brexit

16 June 2016

TURMOIL

One heroic man kept the nation entertained:

Justin Warshaw QC

This headline appeared in the Daily Mail:

“£58,000 for shoes, £50,000 for Christmas dinner and £40,000 for fur coats a YEAR - it's what I'm used to': Former model cries in court as she explains why she needs £196m from her Saudi billionaire ex

Mr Warshaw said: 'You are claiming for 55 pairs of boots and shoes, at a cost of £58,000 every year. Can you not see that that is a lot of money?'

Her budget also includes £93,739 a year on beauty treatment including 52 facials, 44 manicures and 52 massages. In addition £22,812 for beauty products including £9,400 on four bottles of face cream.

Then there is £4,000 for 15 pairs of sunglasses, two sets of ski wear and 54 pairs of shoes a year just seven of which will cost £20,965 for white tie events. Plus £26,000 for her mobile phone

The killer Question:

She insisted that she regularly visits the opera, but when asked to name another, Ms Estrada said 'The Nutcracker', which, as Mr Warshaw pointed out, is in fact a ballet.

Two central questions:

HOW MUCH?

HOW LONG?

Spousal maintenance – general approach

- Family Justice Council ‘Guidance on Financial Needs on Divorce’ 2nd edition says of *SS v NS (spousal maintenance)* [2014] EWHC 4183 (Fam) para 46:

‘When read in conjunction with the overarching guidance provided in the leading cases in the House of Lords (*Miller; McFarlane*) and in the Court of Appeal (*Flavell* and *C v C*) the Family Justice Council endorses and commends adopting this type of rigorous and disciplined approach, consistent with the overall objective identified above in paragraph 15 and the ‘gentle transition’ towards independence.

C v C [1997] 2 FLR 26 – Court of Appeal

The court cannot form its opinion that a term is appropriate without evidence to support its conclusion. Facts supported by evidence must, therefore, justify a reasonable expectation that the payee can and will become self-sufficient. Gazing into the crystal ball does not give rise to such a reasonable expectation. Hope, with or without pious exhortations to end dependency, is not enough

PAYEE'S BUDGET

V

PAYER'S MONEY

Purba [1999] EWCA Civ 1730

the essential task of the judge is not to go through these budgets item by item but to stand back and ask, what is the appropriate proportion of the husband's available income that should go to the support of the wife?

Scheeres [1999] 1 FLR 241

A conventional adjudication would be to ask in broad terms what proportion of the husband's available net salary should be earmarked for the support of the ex-wife and the dependent children. A perfectly conventional approach in a case such as this would be to say half the available net income should go to the support of the wife and the dependent children

- *H v W (cap on wife's share of bonus payments)* [2015] 1 FLR 75
- *Fields v Fields* [2015] EWHC 1670 (Fam)
- *Aburn v Aburn* [2017] 1 FLR 72

Practical priorities

1. The payer's income
2. The payee's income and/or earning capacity
3. The payee's needs
4. The payer's needs
5. Stand-back

How long?

Matthews v Matthews [2013] EWCA Civ 1874

SS v NS [2014] EWHC 4183 (Fam)

Wright v Wright [2015] EWCA Civ 201

Mills v Mills [2018] UKSC 38

SS v NS

Section 25A (2)

... for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party n 25A

In *Mostyn*:

This suggests that Parliament anticipated that a degree of not undue hardship in making the adjustment is acceptable.

How long?

Matthews v Matthews [2013] EWCA Civ 1874

SS v NS [2014] EWHC 4183 (Fam)

Wright v Wright [2015] EWCA Civ 201

Mills v Mills [2018] UKSC 38

Cummings v Fawn [2023] EWHC

30. I would suggest that this case amply demonstrates that the FRC judiciary is now asking itself the right question whenever it is suggested by an applicant that a clean break should not be imposed. That question is "Has the applicant demonstrated by clear and cogent evidence good reasons why there should not be a clean break?" and not "Has the respondent demonstrated why there should be a clean break?" I emphasise that, in order to comply with the terms of s. 25A Matrimonial Causes Act 1973, a decision not to impose a clean break must be seen very much as the exception to the rule. The onus is on the applicant distinctly to prove by clear and cogent evidence that there should not be a clean break.

Spousal maintenance: post-separation & compensation

Waggott v Waggott [2018] EWCA Civ 727

RC v JC [2020] EWHC 466 (Moor J)

TM v KM [2022] EWFC 155 (HHJ Hess)