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Spousal Maintenance Claims
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“What is realistic and achievable in spousal maintenance claims, and how drastic must the change of circumstances be to vary upwards or downwards?”

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

Variation

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

- KG v NB [2023] EWFC 160

- AB v CD [2023] EWFC 103

- WK v GC [2023] EWFC 151

Recently Reported Cases

Useful themes

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

- YC v ZC [2022] EWFC 137

Evidencing an application for Variation

- **Income Needs Budget**
 - Careful thought at outset and beyond.
 - Credible not ambitious.
 - Not solely an appraisal of income.
- **Earning Capacity**
 - Increase of flexible/remote working.
 - Gradual return to work/graduated provision.
 - Specific examples of any health issues/barriers to work.
- **Housing Needs**
 - Interplay between housing needs and income needs.
 - Impact on the merit of spousal maintenance proposals.

Realistic and achievable?

- **Variation?**
 - Variation/Discharge/Suspend.
 - Court's powers are not limited.
- **Term Bar**
 - Greater appetite for s.28(1)(a)bar.
 - Step-down in payments prior to end of term.
- **Capitalisation**
 - Can or should provision be capitalised?
- **The Logic Check**
 - Can a proposal be justified with reference to need, affordability and the overall capital resources?



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