

Update Extra

2016 Autumn Statement: impact on divorce deals

By analysing some of the measures announced by Philip Hammond in November's Autumn Statement, alongside wider expectations of the direction the economy could take in the next few years, it is possible to examine what impact the Statement is likely to have on issues of family law and on the prospects of those families who are currently in the process of dealing with a divorce.

One aspect of the Autumn Statement which may impact more positively upon those families is the decision to ban the letting fees charged by estate agents. As family law experts we see increasing numbers of families who, whilst separated, are forced to continue living in the same property. A large driver of this is the prohibitive cost of moving into rented accommodation, a part of which consists of letting fees. As the average letting fee charged in the UK, according to the Citizens Advice Bureau, is £337 (rising to over £500 in London), this decision could generate a freeing up of the funds needed to enable spouses to live independently at the same time as meeting the housing needs of their children.

In terms of taxation, there were few major changes announced. The annual decision not to increase fuel duty is unlikely to be felt keenly, if at all, by most households. A 2% increase in the standard rate of insurance premium tax, on the other hand, will directly hit the pocket of anyone who takes out any kind of insurance. In the meantime, the removal of the tax advantages of the majority of salary sacrifice schemes will mean that those employees previously benefitting from such schemes will henceforth be paying the same level of tax as those who purchase the benefits in question from their post-tax income.

The National Institute of Economic and Social Research (NIESR) has predicted that,

overall, inflation could rise as high as 4% in the second half of 2017, and it is widely expected that the price of food, driven up by as much as 5% by the post-Brexit slump in the value of the pound, will form a large part of that increase. That is not the end of the bad news in terms of family spending power. Following the Autumn Statement, the Institute for Fiscal Studies (IFS) warned that the real value of wages will still be below their 2008 levels by 2021. Nor should it be assumed that the changing economic landscape will have the most challenging impact only upon those in low income sectors. The uncertainty surrounding the access which UK financial firms will have to the European market, post-Brexit, has had a marked chilling effect upon the sector, a situation which means the historical and current earning capacity of a spouse working in finance can no longer be taken as a definitive indication of future income.

The shocks to the economy brought about by the seismic and unexpected political upheavals of 2016, as reflected in the Autumn Statement, could well lead to applications for variations in spousal maintenance. Precedent would tend to suggest that applications based on general economic turbulence will receive short shrift such as the Court of Appeal decision in *Myerson v Myerson* [2009] EWCA Civ 282, [2009] 2 FLR 147. The husband in this case sought to appeal against a consent order dating from March 2008 which divided the couple's assets 57%/43% in his favour. The basis of the appeal was that the worldwide financial crash had impacted upon the husband's share and property assets. The appeal was refused on the grounds that the 90% drop in the value of the shares which the husband held in Principle Capital Holdings Ltd, of which he was Executive Chairman, was part of the 'natural process of price fluctuation', a decision which was presumably intended to discourage a spate of such claims being made.

A brief examination of wider case law in this area would tend to indicate that

attitudes have gradually shifted away from longer term 'joint lives' maintenance orders and toward an expectation that the person receiving maintenance payments (generally the wife) should be expected to move towards supporting herself through her own earnings. Certainly, this is the principle which seems to have been applied in *Wright v Wright* [2015] EWCA Civ 201, [2015] Fam Law 523. In this case, the wife had appealed against a decision granting the husband the right to scale down his payments on the grounds of his worsening financial situation. The appeal was dismissed when HHJ Roberts found, after investigating the wife's earning capacity, that she was capable, with some training, of supporting herself without being given periodical payments.

Taken as a whole, the case law paints a complex picture. *Myerson* indicates that those making payments face little prospect of being able to vary a spousal maintenance order on the basis of wide-spread economic disruption. *Wright v Wright*, however, points toward a focus on the earning capacity and future needs of the spouse receiving maintenance, and indicates that variation orders of this kind are more likely to be successful if a specific worsening of the financial situation of the party making the payments can be demonstrated, along with a belief that the payee has some capacity to support themselves.

All of which, the economic situation and the case law, could well prompt either party to seek a variation order. Divorcees, for example, fearing ongoing stock market volatility, may trade up income claims based on bonuses or share schemes in return for the security of capital. The downside to this tactic is that the same uncertainty which impacts upon stock values might also have a chilling effect on the property market, where the higher value market has already faced pressure in recent years from the changes in stamp duty legislation, particularly in London. Further to the mention of stamp duty, another complication to this particular scenario is presented by the stamp duty surcharge of 3% on additional properties which was introduced in April 2016.

Lower wages, job uncertainty, a possibly stagnant property market and a higher cost of living will inevitably impact upon divorce deals involving maintenance payments, as both sides of any arrangement are impacted simultaneously. Whilst the recipient will need more income to cover even the most basic requirements, the party making the payments will be facing the same pressures allied to stagnating income levels. Given this it is not only vital that maintenance orders are reviewed regularly to take account of changing circumstances but also that they are reviewed with the input of professional legal guidance.

Graeme Fraser

Partner, Hunters incorporating May, May & Merrimans

Cohabitation conference

In his introductory remarks to the Family Law Cohabitation Conference held in London in November 2016, John Wilson QC promised a 'high protein' day of seminars, with 'a lot of bang for your buck'. John reminded the delegates that cohabitees had been passed over by the coalition government in 2014 when it rejected the Law Commission's recommendation of changes to existing statutes governing administration of estates and intestacy, in the form of the Inheritance (Cohabitants) Bill. The legislation would have provided for 'qualifying cohabitants' to inherit property if certain conditions were met, including either cohabitation for 2 years 'as the intestate's spouse or civil partner' if the cohabitees had had children, or for 5 years if not. Parliament had settled for the minor amendments introduced by the Inheritance and Trustees' Powers Act 2014, thus consigning the cohabitee of a person who had died intestate to the more circumscribed provisions of the Inheritance (Provision for Family and Dependents) Act 1975. With the conscious uncoupling from Europe dominating May's government, there is little appetite among ministers for legislative reform. Legal disputes involving ownership of property by, and financial provision for children born to, unmarried couples are therefore likely to grow.