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**A Good Divorce Lawyer Can Help You Establish Financial Independence**

If you have little or no control over the family purse strings, you can be left financially out on your ear in the event of marital breakdown. However, as a High Court ruling showed, a good divorce lawyer can move remarkably quickly to help you establish your financial independence.

The case concerned a couple who enjoyed a high-spending lifestyle, living in a grand house with the husband's parents. The wife did not own any part of the property, and businesses owned by the husband and his parents were the chief source of the family's wealth. After the couple's marriage broke down, the wife's continued presence in the house created a very difficult environment for all concerned.

The rival valuations that the couple put on the marital assets were some measure of the level of disagreement between them. The wife suggested that they were worth about £23 million, whereas the husband contended for a figure in the region of £8 million, also asserting that the assets were illiquid and not readily accessible.

Whilst living under the same roof, the couple had become embroiled in increasingly bitter and expensive divorce proceedings. The wife said that the husband had given her £500 a week as spending money and that her credit cards had been stopped. The personalised number plate of her high-end car had, she said, been sold and replaced by an ordinary number.

Pending a final resolution of the financial aspects of their divorce, the wife applied for interim maintenance and periodical payment orders so that she could meet her reasonable needs and, in particular, move out of the house and establish herself independently elsewhere.

Ruling on the matter, the Court directed the husband to pay her £13,333 a month – £160,000 a year – to cover a wide variety of outgoings. They ranged from £5,000 a month to rent a suitable property, £8,000 for a holiday and £7,500 a year for shoes, clothing and accessories. The overall figure was, however, significantly lower than that for which the wife had contended.

The husband was also ordered to contribute £433,700 towards the wife's legal costs of the divorce proceedings and £150,000 in respect of her costs run up in other litigation concerning the couple's two children. Urging the couple to resolve their differences by negotiation, the Court warned that their already very substantial legal costs bills would otherwise only escalate.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.

**Partner Note**

*DR v ES [2022] EWFC 62*

**Can a Man Who Is Not a Child's Biological Father Still Have Parental Responsibility?**

Even if a man has been conclusively proved, by DNA evidence, not to be the father of a child, it remains possible for him to retain parental responsibility for that child. The High Court made that important point in a decision that clarified the law.

A mother was granted a declaration that a man was not the father of her child. In the light of DNA evidence that definitively disproved his paternity, he did not contest that part of her case. What he did oppose, however, was the mother's application to discharge his parental responsibility for the child.

Ruling on the issue, the Court noted that the question of whether a man is the father of a child is one of biological fact. Parental responsibility, on the other hand, is a legal status. Section 4(2A) of the Children Act 1989 states that a person who has acquired parental responsibility for a child shall cease to have that responsibility only if the court so orders.

On a true interpretation of that provision, the Court found that a removal of parental responsibility is not the automatic consequence of a declaration of non-paternity. In deciding whether the man should retain his parental responsibility, the welfare of the child was the paramount consideration. Having ruled on the point of principle, the Court adjourned consideration of the mother's substantive application to a further hearing.

We can advise you on all aspects of family law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*A Local Authority v SB and Others [2022] EWFC 111*

**Disappointed Polar Cruise Couple Triumph in Breach of Contract Claim**

Almost everyone has returned from a holiday feeling deeply disappointed, but a right to compensation by no means necessarily follows. However, in one case, a couple whose £20,000 polar cruise fell sadly short of their expectations successfully took a stand on their legal rights.

The adventurous couple booked a cruise that should have taken them through the celebrated Northwest Passage. However, the route through the Canadian polar waterways, connecting the Atlantic and Pacific Oceans, proved impassable as sea ice closed in. A different route was taken, but the couple were bitterly disappointed to visit none of the places, and see none of the things, that they had most wanted to experience.

Seeking their money back, they launched proceedings against the travel firm through which they had booked the cruise. Following a nine-day trial, however, a judge rejected their claim and ordered them to pay the firm's £60,000 legal costs. Whilst accepting that a significant proportion of the services for which the couple had contracted had not been provided, he found that the firm was not at fault. The change of route was due to unusual and unforeseeable circumstances beyond the firm's control.

Allowing the couple's appeal against that outcome, the High Court found that the judge erred in law in his contractual analysis and his reading of the relevant part of the Package Travel, Package Holidays and Package Tours Regulations 1992. The Court found, crucially, that the detailed travel itinerary that the couple were given prior to the cruise formed a term of their contract with the firm.

In upholding the couple's breach of contract claim, the Court emphasised that it was not disturbing the judge's factual findings. There was no criticism of the attempts made by the firm and its agents to deliver the cruise in difficult circumstances. The question of what relief should be granted to the couple in the light of the Court's ruling would be considered at a further hearing, if not agreed.

We can help you to pursue your consumer rights in the event that you have a problem with a product or service you have purchased. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Sherman and Another v Reader Offers Ltd [2023] EWHC 524 (KB)*

**Ex-Couple Spend an 'Absurd' £5 Million Plus Litigating About Their Child**

Disputes between separated couples as to how their children should be provided for can, in the absence of compromise, sadly reach epic proportions. That was certainly so in one extraordinary case in which a couple spent over £5 million between them litigating over the future of their son.

The couple, who were not formally married, lived a remarkably lavish lifestyle during their long relationship. They viewed the birth of their longed-for child, following IVF treatment, as a miracle. Their separation, however, raised the curtain on relentless litigation concerning the boy. Their expenditure on legal costs was estimated to amount to more than £60,000 for each month of his young life.

The dispute entered a new chapter when the mother sought a carer's allowance and financial provision for the child from the immensely wealthy father. Ruling on the matter, the High Court found that the litigation arose almost entirely from the father's relentless, unsympathetic and oppressive conduct. Whilst clearly having exceptional business acumen, he had shown almost no emotional intelligence.

The Court noted that the child was apparently thriving. However, if he were to learn in later life that his parents had – at such completely absurd cost – spent their entire time arguing about him, he would be appalled. Such a discovery might prompt him to simply walk away from both of them when he was old enough to do so.

The father was, amongst other things, directed to provide for his child by paying the mother £125,000 a year and to arrange the purchase of a property for her and their son to live in at a price of up to £4 million. Urging the former couple to draw a line under the litigation and reach some sort of rapprochement, the Court emphasised that their child's best hope of a secure future lay in having two loving parents.

Situations such as this can be avoided, with the right legal advisors in place. Contact us for expert guidance.

**Partner Note**

*A v V [2022] EWHC 3501 (Fam)*

**Mental Capacity and Divorce – High Court Ends 'Empty Husk' Marriage**

Only those with the mental capacity to make important decisions for themselves can consent to marriage – or divorce. However, as a High Court ruling made plain, it is in no one's best interests for the law to maintain a marriage that has become no more than an empty husk.

The case involved a couple whose marriage was already under considerable strain when the husband sustained a severe brain injury. Prolonged and expensive divorce proceedings followed but, more than 15 years on, they remained married. They had barely seen each other during much of that period.

With the support of a close friend, the husband sought a decree nisi. His petition was initially resisted by the wife, who was concerned that the dissolution of the marriage would be financially disadvantageous to her and, particularly, to the couple's adult children. However, she withdrew her opposition at the end of the court hearing.

Ruling on the matter, the Court had no doubt that the husband lacked capacity to consent to a divorce. Formerly a charismatic and energetic man, his condition had sadly deteriorated to the point where even the most rudimentary decisions were beyond him. He lived a largely reclusive life and there had been little, if any, contact between him and the wife for well over a decade.

Given such a long estrangement, the Court observed that the core features of what constitutes a marriage had evaporated. There was something inevitably corrosive of the status and importance of the institution of marriage in preserving a legal framework which, for both of them, had become a mere empty vessel.

The prevailing evidence indicated that, at a time when he still had decision-making capacity, the husband regarded the marriage as having irretrievably broken down. The wife, too, had come to regard the marriage as at an end. To maintain the status quo in those circumstances would risk demeaning all involved. Reaching the very clear conclusion that a divorce was in the husband's best interests, the Court found that a decree nisi was a necessary step that had been avoided for far too long.

We can advise you on all aspects of divorce law. Contact **<<CONTACT DETAILS>>**.

**Partner Note**

*D v S. Court of Protection [2023] EWFC 23*

**Setting Up Business in a Garden Outhouse? Make Sure You Read This First**

One of the social effects of the COVID-19 pandemic was the creation of a fashion for householders to operate businesses from outhouses in their gardens. However, an important tribunal ruling underlined the legal hazards of such a course.

In response to the pandemic, a couple began running a beauty therapy business in a wooden cabin in their back garden. They said that they only subsequently became aware that planning permission was required to allow the cabin's commercial use. Their retrospective application for planning permission was successful.

That, however, was not the end of the matter: their property's title deeds included a restrictive covenant which forbade its use for any trade, business or profession or for any purpose other than that of a single private dwelling. Faced with that difficulty, the couple applied to the First-tier Tribunal (FTT) for the covenant to be modified so that they could continue to run their business.

The woman asserted that the covenant took away her right to earn a living. She said that she was constrained by the pandemic to relocate the business to the cabin and that she had a medical condition which prevented her working elsewhere. Unless the covenant were modified, she would be out of work and reliant on benefits.

Three of the couple's neighbours, however, vehemently objected to the proposed modification. Their concerns focused on such matters as vehicle parking, loss of privacy and impact on property values. The dispute had given rise to such strong feelings that the local police force had sought a resolution.

Ruling on the matter, the FTT found that the cabin's business use in accordance with the planning permission was reasonable. The covenant was not intended to prevent residents occasionally working from home, alone on a laptop in a spare room. It did not prohibit all activity with a commercial purpose. Low-level business use of an existing building for small-scale business purposes was generally consistent with a residential neighbourhood.

In rejecting the couple's application, however, the FTT noted that the covenant had been in place for only about 10 years, since the couple bought their newly built home. There was evidence that the neighbourhood's developer had brought the covenant to purchasers' attention and explained its purpose.

Homebuyers were offered the opportunity to move into a controlled environment where the appearance of the neighbourhood would remain the same and non-domestic uses would be prohibited. The covenant ensured its preservation as a pleasant place to live.

Every property in the neighbourhood had the potential to be put to business use and, were the covenant modified, objectors feared that would represent the thin end of the wedge, creating a damaging precedent. Overall, the FTT found that the covenant provided a high degree of protection to the amenity of the neighbourhood's residents and secured for them a practical benefit of substantial advantage. Given that finding, the FTT had no jurisdiction to grant the modification sought.

It is vital to fully understand the legal implications of restrictive covenants before making any changes to your property or its use. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Hodgson and Another v Cook and Others [2023] UKUT 41 (LC)*

**The Shortage of Secure Accommodation for Children is a National Scandal**

The shocking lack of secure accommodation for children in crisis is nothing short of a national scandal. The High Court powerfully made that point in the case of a deeply troubled teenager who was accommodated, inappropriately, in a hospital's mental health unit because there was nowhere else for her to go.

The girl was not in need of medical treatment and there was agreement on all sides that the unit – where she lived amongst mainly adult mental health patients, some of whom exhibited risky behaviours – was not the place for her. A nationwide hunt for the secure accommodation she needed had, however, yielded a complete blank.

When her case came before the Court, statistics showed that there were 62 children awaiting placement in secure accommodation in England and Wales. There was, however, only one vacancy. The Court did not mince words in describing that chronic and longstanding shortage as scandalous and shocking.

The local authority that bore parental responsibility for the girl, who was in care, had searched high and low for an appropriate placement and had done all that it reasonably could to meet its statutory duty. However, all involved in the case agreed that her behaviour, wellbeing, and even her life were potentially at risk if she were not suitably accommodated.

Although she was better off in the hospital than on the streets, it was both tragic and unacceptable that she should be confined in such an inappropriate environment. Patients requiring medical treatment needed the NHS bed that she occupied. There was good reason for the hospital's considerable reluctance to keep her there and it could not be compelled to do so.

The hospital had, with difficulty, been persuaded to accommodate her for one more week but was very unlikely to agree to any further extension of her stay. That, the Court noted, placed the local authority under considerable pressure to continue its quest for a suitable placement in earnest.

The Court emphasised that it was no part of its role to investigate the funding or other causes of the shortage, or to discern where responsibility for it lay. It observed, however, that the immense cost of the case, and numerous others like it, would have been avoided had public authorities not failed in their duty to provide sufficient secure accommodation for children in need.

**Partner Note**

*A County Council v A and Others [2022] EWHC 3572 (Fam)*

**Wife's Death Six Months After Divorce Settlement Triggers Guideline Ruling**

Financial settlements reached by divorcing couples are binding – but what if they are based on assumptions that are fundamentally undermined by subsequent events? A judge addressed that issue in the case of a woman who succumbed to cancer just six months after coming to terms with her ex-husband.

Following their divorce, the couple finalised a settlement whereby their capital assets were split roughly equally. An agreed pension sharing order (PSO) was made under which she received just over half of his occupational pension, which was worth over £1 million. She was unaware at the time that she had terminal cancer.

By her will, she bequeathed death benefits arising from her share of the pension to her adult children, who were estranged from the husband. He applied to set aside the PSO in its entirety on the basis that the income with which it was designed to provide her was no longer required. The children, acting as executors of their mother's estate, resisted the application.

Ruling on the matter, the judge found that the principal purpose of the PSO was to ensure that both husband and wife, who were in their sixties, had sufficient incomes during their retirement. That was their intention and, had it been known at the time that the wife had only months to live, the same pension share would not have been agreed. On that basis the PSO had to be set aside.

Her need for a pension income no longer existed. However, the judge ruled that the pension also represented a capital asset of which she had earned a share during the 38-year marriage. He directed that 25 per cent of the pension should pass into her estate for the benefit of the children. The remainder would meet the husband's income needs. That, the judge found, represented a fair outcome.

For advice regarding any aspect of divorce or wills, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Goodyear v Executors of the Estate of Goodyear [2022] EWFC 96*

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