

Divorce and the Credit Crunch – Part 2

In the last issue of Legal News we looked at the options open to couples looking to divorce during the current economic downturn and where a “clean break” divorce may be beneficial to the more affluent party.

Here we investigate whether a divorced party can re-open a “clean-break” financial settlement after an agreement has already been reached.

A former spouse who agreed a settlement in better times may suddenly find the value of their assets at a substantially lower figure due to the financial crisis and may look to the Courts for a more equitable deal. This was the case recently in *Myerson v Myerson* where Brian Myerson attempted to re-open his settlement with his former wife after he saw a collapse in his company shareholding following the financial meltdown. The Judge however refused to allow the deal to be reviewed stating that Mr Myerson was an experienced businessman who fully understood the agreement he had entered into and which conversely did not allow for his wife to claim for any increase in his wealth. The Judge said that price fluctuations in property, shares or other assets, however extreme, was not a ground for re-opening a settlement.

Given the volatility in the housing and share markets Courts are looking ever more closely at there being a balance in any settlement between risky assets and those with a more guaranteed future value. Settlements which laden one party with all the risk will be viewed unfavourably by the Court. There needs to be a degree of fairness.

It may be possible to amend a settlement where payments from income continue to be made by one party to the other. Where a spouse has been made redundant, or had a significant reduction in salary, the Courts may order payments to be reduced. Courts may not be so willing to reduce payments where a spouse has enjoyed many years of steadily increasing bonuses, without adjustment to the settlement, only to make application for a reduction as soon as bonus payments are hit by the recession. Furthermore, as seen in the recent case of *McFarlane v McFarlane* Courts can also increase settlements. Mrs McFarlane claimed for increased maintenance from her ex-husband when his annual earnings rose to over £1 million following his rise to the top of the partnership at Deloitte. The Court agreed with Mrs McFarlane and awarded her a 40% increase in her maintenance payment, from £250,000pa to £350,000pa.

The complex nature of many financial settlements within a divorce mean that it is vital that professional advice is sought. Hodge Halsall deal with all financial aspects of a divorce and for a confidential discussion of your current situation please contact Clare Ellison (clareellison@hhlegal.co.uk) or Julia Jones (juliajones@hhlegal.co.uk) on 01704 531991.