

NEWS ANALYSIS

Pandemic prompts challenges to divorce settlements

LAW

Threat of disruption after Brexit will add to more disputes, say lawyers

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Economic uncertainty in the midst of the Covid-19 pandemic, alongside the threat of an economically-disruptive Brexit, is leading to challenges of divorce settlements and maintenance payments, say lawyers.

As people across the UK lose their jobs and juggle business and living costs, many people are searching for ways to cut their outgoings. For the divorced, one option is to try to reduce payments to ex-partners or return to court to dispute financial settlements.

Some of these people — who include business owners — are using the current economic disruption to justify paying less money for their spouse's share of assets, such as a stake in a family company.

One reader who contacted the FT but asked not to be named said her ex-husband has contacted her to say that "due to Covid-19 he has had to take a 50 per cent pay cut and will therefore stop the spousal element of maintenance payments". This, she adds, is despite him earning a much higher salary today than he received when the judge initially set the maintenance rate.

She is not alone, according to lawyers, divorces are expected to keep rising in line with their long-term upward trend, and even spike higher due to the pandemic as lockdowns have amplified incompatibility in couples and wreaked havoc on the nation's marriages.

The Office for National Statistics has reported a steady rise in divorces — 107,599 divorces of opposite-sex couples in England and Wales last year, up by nearly a fifth from the 90,871 in the previous year, albeit partly explained by a backlog of cases. More than two marriages in every five end in divorce.

Alex Davies, head of family at Cripps Pemberton Greenish, a law firm, says: "Major economic shocks always lead to personal financial uncertainty and divorced or separated couples are particularly vulnerable. Family lawyers have seen a dramatic increase in cases where someone tries to change a divorce settlement and that is expected to continue as Brexit follows the pandemic."

Britain's exit from the EU is expected to depress economic activity and asset values and bring

potential disruption to key commercial sectors.

Mr Davies says maintenance payers worry about not being able to meet their obligations and the legal ramifications of defaulting, while maintenance recipients worry about how to afford their bills if the next payment doesn't arrive.

Charles Hale QC, a barrister at law firm 4PB, says Brexit has caused considerable worry. "The anxiety levels are at maximum. Add that to a double Covid lockdown and it's a perfect financial storm for many previously very successful businesses."

Asset valuations are notoriously difficult in uncertain times. Any form of international dimension in a divorce compounds the problem. Few accountants can now confidently give business valuations that will extend beyond January 2021.

Rosie Beaven, a family solicitor at law firm Trethowans, points out that market volatility means valuation reports obtained prior to March this year are likely to be out of date. "In turn, this means that any negotiations based on those valuations may need revisiting before they are formalised," she says. "For some cou-

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ples, the changes in value may mean going back to the drawing board and renegotiating their positions."

The changes in asset prices are not all negative. The increase in property prices and the stamp duty holiday are having a positive impact on financial settlements involving real estate — for example, where a family home is to be sold.

But for some businesses "values have decreased substantially due to Covid-19", says Ms Beaven. Also the pandemic may limit a business's capacity to generate cash. "Liquidity can be an issue and with it the ability to release or raise funds. The person retaining the business interest may be keen to proceed with a lower valuation while the other person may wish to hold out and see if the business value increases."

The pandemic affects not only those who are currently seeking a financial settlement but also people whose settlements were finalised in court before the pandemic and may now be in a different financial position.

"We are seeing cases where parties



FT montage; Getty, Alamy, Bloomberg

who were ordered to pay lump sums or spousal maintenance are now unable to do so due to a loss or reduction of income, plummeting asset values and tighter borrowing restrictions," says Ms Beaven.

Where this is the case, people can consider applying to the court for a variation of the order. A court order can only be varied if there is a significant change in circumstances but Covid-19 has resulted in material changes for some people, such as the loss of a job or a business failing.

However, Ms Beaven says: "Where a court order provides for lump sum payments to be paid by instalments, an application can be made to vary the timings of the payments but it is rare for the amount payable to be varied."

Others warn that while one party might wish to progress a financial separation during an economic downturn, the other party may not.

Jenna Lucas, a family law partner at Irwin Mitchell and partner in The WealthiHer Network, a group which

supports female investors, says she has seen expensive disputes over the timing of resolving financial issues. She predicts this will increase while the full impact Covid works itself out.

"Whilst courts want to achieve finality in divorce proceedings that is unlikely to be possible in more and more cases, particularly where businesses which have been impacted by Covid are concerned," says Ms Lucas.

So what happens if a maintenance payer suffers a dramatic fall in income? Should he or she just stop paying and hope for the best? No, says Mr Davies. "The law is quite clear. If a court order for maintenance has been made or the Child Maintenance Service has made an assessment, that obligation is enforceable until changed by the court."

Courts have the power to change maintenance arrangements and cancel maintenance arrears, particularly if circumstances change for the worse. If maintenance is genuinely unaffordable then a variation might well be necessary.

It is much more difficult to achieve a retrospective change to the split of assets after a divorce. During the global financial crisis of 2008 many tried and failed to rewrite their divorce settlements.

The best-known example is financier Brian Myerson; having agreed his wife could receive her settlement in cash, he retained shares in his company which stood at a healthy price at the time. Within a year the financial crisis had cut their value by 90 per cent.

Mr Davies points out that the court refused Mr Myerson's attempt to rewrite the settlement. "He had made his bargain and had to stick with it, no matter the consequences."

The courts are likely to take a similar approach today.

Divorces of opposite-sex couples increased in 2019

England and Wales (number)



Source: ONS