

Financial Resolution Advice – Mr and Mrs Jones

Introduction

1. I am asked to advise on the financial options available to Mr and Mrs Jones following the breakdown of their marriage. Neither has issued a petition for divorce and thus far they have agreed occupation of the home and contact for the children.
2. The parties have been married 9 years, with 4 years pre-marital cohabitation. Mr Jones is 46 and Mrs Jones 44. They have 3 children, aged 9, 7, and 4. Mr Jones left the former matrimonial home (“FMH”) in October 2010 and moved into rented accommodation. Mrs Jones remained in the FMH with the children. By agreement Mr Jones sees the children for staying contact every weekend.
3. Both parties work. Mr Jones is self-employed owning a cabinet making company with declared net income of £24,000 pa, although Mrs Jones says that last year he had a decent year which she says means about £10,000 more. He is also moving premises so she suggests he is probably doing well. Mrs Jones is also self-employed, working part time hours but in the main she looks after the children. Her income is increased by child benefit, working and child tax credit and some income from a lodger. She also receives £550 from Mr Jones for child maintenance. Both parties' outgoings exceed their income. Mr Jones has numerous credit card debts and Mrs Jones has taken on a joint bank loan. Both have small pensions.

Guidelines

4. This advice is being given on the basis of what a judge is likely to do if presented with the information provided by the parties. Decisions of the courts are primarily based on statutory guidelines but also on the common law (decisions handed down in previously decided cases).
5. The most relevant statutory guidelines are set out in Section 25 of the Matrimonial Causes Act 1973. This criteria includes the circumstances of the case, the welfare of the children

(who are the first consideration of the Court), the financial resources of the parties including their income and earning capacity, including what they could reasonably earn, and their future prospects. The court also considers the parties' financial needs, obligations and responsibilities, the standard of living during the marriage, the ages of the parties, the duration of the marriage and any cohabitation.

6. In every marriage there will be financial contributions, non-financial contributions and possible future contributions to be considered. Financial contributions will include the earnings of both parties throughout the marriage, capital provided by them, income from investments and any inheritance from which the family has benefited. Non-financial contributions (such as caring for the children of the family and maintaining the marital home) will be given the same weight and importance as financial contributions. Therefore the Court will not discriminate where one party of the marriage has continued to work and the other has stayed at home to care for the children. Future contributions will be relevant in a situation where one party is caring for the children when the other works. The longer the dependency of the children, the greater the significance of this factor.
7. When considering the s.25 criteria, it is important to remember that every case turns on its own facts and that all of the above guidelines and considerations must be taken in account. It should also be noted that the Court retains a wide discretion when making decisions in relation to ancillary relief proceedings.

The Parties Assets

8. The parties have limited assets save for the FMH. Their pensions are small and would be ignored by the court. They have no significant savings. The contents of the FMH are with Mrs Jones, and it would seem wise for them to stay there, unless there is anything of significant or sentimental value to Mr Jones.

Former Matrimonial Home at 1 High Street

9. The main asset is the FMH which is the home of Mrs Jones and most importantly, of the three children. It is worth between £230,000 and £240,000, but has a mortgage secured

upon it in the sum of £160,000. At present Mrs Jones is paying the £634 mortgage instalments on an interest only basis. The parties each estimate the equity and come to different figures (I do not know how unless there is a mortgage penalty). However, it is likely that there is equity of about £70,000 at most. I would advise asking a couple of estate agents to give their opinions and then work it out deducting 2.5% of that figure for the costs of sale to make sure.

10. Mrs Jones would like to remain in the property with the children, and Mr Jones has indicated that he too would like this outcome if he can receive some pay out; alternatively he says it should be sold.

11. Mrs Jones's needs for housing with 3 children will take priority. Selling the FMH will not allow her to rehouse herself and the children as any proceeds of sale will be insufficient to buy another property and her mortgage capacity is likely to be very limited at present. Selling the FMH may release a lump sum to Mr Jones but would leave Mrs Jones and the children without a secure roof over their heads which is not desirable. Nor is there any way to give Mr Jones a lump sum now. Mrs Jones does not appear in any position to raise additional sums on the mortgage and taking on a loan would be unwise.

12. Therefore, I am of the opinion that a judge would not order the sale of the FMH. It would be preserved as a home for Mrs Jones and the children on strict terms, and it would order that a payment is made to Mr Jones at a later date. The court can do this in one of two ways-

- i. The house is transferred to Mrs Jones and the court orders a charge in favour of Mr Jones to be placed on the property for a fixed sum, or for a percentage of the net proceeds of sale when it is sold. The house would then be sold on the first of a number of events occurring, such as when the youngest child reaches 18 or finishes full time education, or if Mrs Jones remarries or cohabits for a fixed period, or if Mrs Jones dies. This would mean that Mr Jones is no longer a joint owner of the house and he may be able to purchase another one. Mrs Jones should use her best endeavours to release Mr Jones from the mortgage. However, I think it unlikely at present that Mrs Jones could release Mr Jones from the mortgage, and whilst she would be responsible for the

payments, his name would remain on it. Therefore Mr Jones would retain an interest in the house by way of a charge, but would have to wait to realise it.

- ii. Alternatively, the parties could jointly own the FMH under the terms of a trust, so that both parties own the FMH in fixed shares. The trust comes to an end on similar terms to those set out above, ie, children 18 etc. At that point the trust comes to an end, the FMH would be sold and the parties receive their shares. This order requires Mr Jones to remain on the title deeds and therefore may make purchasing another rehouse more problematic.

Quantifying Mr Jones's share of the FMH

13. In order to quantify Mr Jones's share of the FMH a number of factors need to be considered. In particular, the parties earnings and earning capacities, their future contributions and their business assets.

14. A good starting point is that the parties have made equal contributions to the marriage, whether by working or looking after the home and the family, and no doubt a combination of both. Their contributions will continue to be equal to some extent in that Mrs Jones will look after the children, and that Mr Jones will pay child support. However, there has already been an advantage to Mr Jones in that he has been building up his business whilst Mrs Jones has been looking after the children. His income is greater, his business has assets and may have a capital value. If there is a dispute as to his actual income or the value of the business he will need to provide his accounts to clarify the situation. This will also apply in the future, and given that the youngest child is only 4, I think Mr Jones's financial advantage will continue for a number of years. Mrs Jones will of course be able to build up her business in the next few years, but it will be quite some time before she catches up and is off benefits.

15. As far as the parties respective businesses are concerned a clean break between Mr and Mrs Jones is no doubt desired. However, I think this will come at a cost to Mr Jones's share of the FMH. Furthermore, Mrs Jones will continue to pay the mortgage interest on their

behalf, may well make payments to the capital in the future and is likely to be responsible (unless they agree otherwise) for the upkeep and maintenance of the FMH.

16. Therefore, the presumption of a 50/50 split has to be varied. Given that their youngest child is only 4, I am the opinion that the charge or share (by way of trust) to Mr Jones is likely to be between 20-30%.

17. It is possible to include a provision that Mr Jones's share can be bought out early, should Mrs Jones acquire the funds to do that, or she cohabits or remarries and they agree that the house should not be sold.

Spousal maintenance

18. When a family separates and the children are so young, it is usual for there to be a spousal maintenance order in Mrs Jones's favour for a nominal sum, rather than dismissing it outright. For example, the order would read that Mr Jones is to pay Mrs Jones 5 pence per year with the proviso that the court can be invited to increase the sum in future should the appropriate circumstances arise.

Child Maintenance

19. The level of child maintenance is reasonable and allows Mrs Jones to remain in the house. The parties should consider agreeing some method of increasing it in the years to come. An annual increase means there are no big hikes a few years down the line. Also both should bear in mind that children's needs change and there may be one off bills that may need to be shared.

Future incomes/lump sums

20. There is mention of Mrs Jones having some inheritance due to her now. If this does appear and is significant, then it should be taken into account.

Debts

21. Finally, there are debts. The parties seem to have each taken on responsibility for different debts. Given their incomes and responsibilities it seems sensible that Mr Jones takes the larger share.

September 2012