

In light of Mr Justice Moor's decision, how far can you push the court with "relationship-generated disadvantage" arguments?

Three Strands



- Needs
- Sharing



- Compensation

Miller v Miller; McFarlane v McFarlane
[2006] UKHL 24

'In McFarlane, there has been an equal division of property [...]. This was not enough to provide for needs or compensate for disadvantage. The main family asset is the husband's very substantial earning power, generated over a lengthy marriage in which the couple deliberately chose that the wife should devote herself to home and family and the husband to work and career.' [154]

VB v JP [2008] EWHC 112 (Fam)

“... where a continuing award of periodic payments is necessary and the wife has plainly sacrificed her own earning capacity, compensation will rarely be amenable to consideration as a separate element in the sense of a premium susceptible of calculation with any precision. [...] any element of compensation is best dealt with by a generous assessment of her continuing needs unrestricted by purely budgetary considerations” [59]

B v S (Financial Remedy: Marital Property Regime) [2012] EWHC 265 Fam

[73] The capital division in this case will be determined by application of the familiar distributive principles of sharing and need. The principle of compensation is not applicable, and, as I have observed before, is likely only to be applicable in the exceptional kind of case exemplified by *McFarlane*

S.A v P.A [2014] EWHC 392 (Fam)

'[18] I confess that I find the theory to be extremely problematic and challenging both conceptually and legally. It would seem that I am not alone.'

[22] ... what cannot be disputed is that the reason Mrs McFarlane gave up work was because she, an intelligent liberated autonomous adult woman, decided to give up work. I cannot see how that can be characterised as a loss "suffered" by her entitling her to an award in excess of her reasonable needs.'

[24] “... involves making an award in hard money based on a guess founded on a vision that events that did happen, did not happen, and events that did not happen, did.”

H v H (Financial remedies) [2014] ***EWCA Civ 1523***

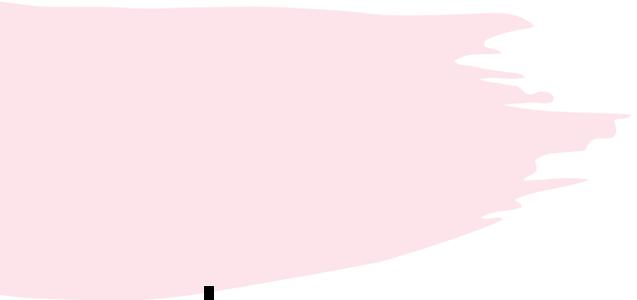
- 2nd Variation of a 2006 pps order for £90k; subsequently increased in 2007 by consent to \$150K after McFarlane
- Coleridge J at first instance: *“This case does retain a tangible, obvious compensation element which deserves recognition one way or another even at this stage. It has been factored in up to now and there is no reason why it should simply be ignored.”*
- Ryder LJ approves without useful comment

RC v JC [2020] EWHC 466 (Fam)

- H 48, solicitor on £1m net pa – 4 years left!
- W 45, working as assistant solicitor, moved in-house in 2007 redundant 2016
- 2 children, 10 and 8
- Marriage/cohab 2007 to 2018
- £10 million total assets

Law applied

- McFarlane
- Waggott v Waggott [2018] EWCA Civ 727
“I remind myself that an earning capacity is not capable of being a matrimonial asset to which the sharing principle applies” [36]
- No other compensation cases cited



I accept that it is unusual to find significant relationship generated disadvantage that may lead to a claim for compensation, but I am clear that this is one such case. [53]

“Findings”

- I do not have a crystal ball and I cannot speculate. I cannot be sure whether the Wife would have become a partner at the firm, but I can say that she stood a very good chance [50]
- The Wife did, therefore, give up the chance, as opposed to the certainty, of far higher remuneration [53]
- Rather than return full-time, she chose to give up her legal career. At the very least, the Husband went along with that decision.[53]

Outcome

- 50% of the assets - £5m – meets W's needs
- Assessment on basis of whole life Duxbury –
“The relationship-generated disadvantage is relevant to this aspect as well” [63]
- £100,000 pa for 4 years referable to finding re H's future at firm
- Capitalised at £400,000
- W gets £800,000 more than H