



Maintenance obligations of high earners

On 18 June 2009, Judgement was given in the sequel to the famous case of Miller and MacFarlane, which was dealt with by the House of Lords in 2006. The original case, together with White and White are the only 2 financial cases to have gone to the House of Lords in recent memory.

Briefly, the House of Lords had overruled the Court of Appeal, who in turn had overruled a lower Judge about whether or not Mrs MacFarlane should have a 5 year time limit placed on her maintenance. (Then £250,000 pa out of earnings of about £750,000).

Mr MacFarlane, a leading Partner in the International Accountancy firm of Deloitte, had very substantial earnings and the House of Lords made it clear that Mrs MacFarlane was not limited to meeting her generous needs from his income, but was also entitled to have sufficient to start saving towards the day when maintenance could be terminated.

The case was famous for introducing the ideas firstly of compensation, particularly where the wife has, as Mrs MacFarlane had, taken a decision to give up her own career with International Law Firm, Freshfields and, secondly, sharing the fruits of spade work during the marriage after its breakdown.

The case has come back to Court because Mrs MacFarlane was seeking an increase in her maintenance, rather than because Mr MacFarlane **wished** to try and terminate his obligations, or reduce them.

The outcome was that Mrs MacFarlane's maintenance was to continue, but only up until Mr MacFarlane's planned retirement date at age 55 in May 2015.

The Judge's approach was to take each party's needs (very) generously interpreted at £150,000 per annum each; with child maintenance fixed at £75,000 per annum for 3 children; with school fees; an allowance of £40,000 for the husband's new child; and one or 2 other sundry matters from Mr MacFarlane's income, and to then slice the surplus income and provide Mrs MacFarlane with decreasing shares from it.

To reintroduce an element of risk sharing, even the base amount however was to be fixed by reference to a percentage, so that the overall outcome was 40% of net earnings up to £750,000, 20% on any surplus up to £1,000,000 and 10% of any surplus over and above that (the husband's earnings for the past 3 years available had been around £900,000, £1,000,000 and £1,100,000, after tax).

It must be borne in mind that the parties had shared capital equally. The wife had gone back to work now the children were older and was re-training as a Patent Lawyer. The husband's career was now supported by a new wife. This was a long marriage. The parties housing needs were well met. The husband's second wife was also a high earner and Partner at Deloitte, but this did not impact on the husband's generous budget he was allowed, in addition to which there was an allowance for his new child.

Despite Mrs MacFarlane being perhaps the most deserving of wives, having given up a career which might have matched the husband's, there was no achievement, or even consideration of equal sharing of the surplus income over and above need.

As ever there are a number of questions left unanswered. In relation to marriages where the wife has not given up a career, is it fair she should receive less by way of maintenance support? In cases where capital division has not been equal is there less reason to provide any share in surplus income? Certainly viewing income as a straightforward capital asset to be divided post-separation, remains a long way away from the reality that will be faced in the Courts once needs are met and as ever the Court is aiming towards a clean break.

Advice in any maintenance case is of course crucial. For further information, please contact [Mike Spencer](mailto:enquiries@actons.co.uk) on **0115 9 100 200** or email enquiries@actons.co.uk