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# Newsletter

## Maintenance after divorce - how much and for how long?

Nothing in family law is guaranteed; there is no cast-iron certainty, no failsafe system of predicting or planning for a particular outcome to a client's case. I attended a course recently, at which two top Queen's Counsel argued a fictional case; one for the husband, and the other for the wife. Two senior Judges listened to the QC's speeches. The Judges each then gave their judgments, based on what they had heard. One Judge found in favour of the wife, the other, for the husband. They had both heard exactly the same facts, yet they came to totally different decisions. This is what I have to deal with every day in my practice - uncertainty of outcome.

Since 1984, Judges have a duty to consider severing all financial ties between husband/wife after a divorce. The concept of maintenance 'for life' was up until that point, commonplace. Post 1984, Judges have to

consider '...whether it would be appropriate to require payments to be ...made only for such term as would in the opinion of the Court be sufficient to enable the party in whose favour the Order is made to adjust without undue hardship to the termination of his/her financial dependence on the other party.' Note the wording of this clause refers to *undue hardship*. Thus, the party receiving the maintenance could suffer some 'hardship' as long as it was not 'undue hardship'.

Many people believe that after divorce there is an obligation to ensure that both parties enjoy the same level of income. Many people perceive that if one party in the marriage has worked part-time, to fit in around children's schooling for example, that this status quo should invariably continue when the children have ceased school, and are no longer dependent. There is also a perception that if one party cohabits with a new partner, the maintenance liability

of the other ex-spouse will automatically terminate. These are all common misconceptions, or traps for the unwary.

The ability to become self-sufficient by exploiting an earning capacity which has lain dormant during the years of bringing up a young family, and re-training for new job skills are issues which I discuss with my clients at an early point in any financial application during divorce proceedings. These are significant factors which may sway a Judge to set a limit upon the number of years for which maintenance should be paid.

The significance of a cohabitee is not the automatic end to a maintenance obligation, which most think that it is. It is just one of a number of issues a Judge will consider.

This means that in every case, the unique facts particular to that couple are what will decide a case, one way or the other.



Thus, it is not possible to predict with certainty what a Judge on any given day will determine is fair in all the circumstances. The answer is surely clear – don't take a gamble on what the Judge may or may not decide. Use Collaborative Law for a tailor-made solution which suits *your* circumstances, and long-term goals.

For further information, contact:

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collaborative

## Elderly care v. family inheritance?

We frequently meet clients who are concerned about the prospect of spending all their savings on paying for care in their old age, leaving little or no inheritance for their families. Even though leaving an inheritance may not be a priority, questions of how they are to fund their care without being a burden on their family, but whilst maintaining their independence, need to be answered.

Making a decision to move into a care home is difficult. Statistically, one in three

women and one in four men will require some form of long term care. The average cost of care in a residential home is about £25,000 per year, whilst the annual fees for nursing home care average about £35,000.

If a local authority agrees that care is required, they will assess the physical needs of the individual to determine the type of care that is appropriate. The ability to pay for that care is then assessed to establish the contributions that the individual will be liable for. This is based on a means test and it is rare that there is no contribution to pay. The State will only pay for the very poorest people.

If there is a shortfall of funds to pay for the care, this must be met from assets. Options to meet fees currently include renting or selling the home, cash deposits, purchase of an impaired life annuity, constructing an investment portfolio, pre-funding, regular premium contracts and the purchase of a deferred annuity. Specialist advice is essential before taking steps to follow any of these options.

It seems there is no end to the extent to which local authorities can access assets. Even though the Government recently published a Green Paper proposing several funding

options, the position remains uncertain. It is clear that the State cannot afford to bear the nation's care costs, making it increasingly important for our expanding ageing population to seek expert legal and financial advice.

Rarely can we offer any quick fixes or easy solutions. However, we are happy to discuss what best suits your needs and circumstances. If you would like to do this, please contact:

**Sarah Lee**  
Member of the Society of Trust and Estate Practitioners (STEP)  
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## New Immigration Rules for non-European Union students

The UK Border Agency (UKBA) have introduced new rules for students and their family members making applications under Tier 4 of the Points Based System. The new rules include the following:-

1. The student will not be able to work more than 20 hours per week during term time when they are following a degree level course or a foundation degree course.

2. The student will not be able to work more than 10 hours per week where they are following a course of study below degree level (excluding a foundation degree course).

3. For family members the new immigration rules include the following:-

a. The family member will not be able to work if the Tier 4 student has been granted permission to study in the UK for less than 12 months.

b. The family member will not be able to work if the Tier 4 student is following a course of study below degree level.

If any further information is required regarding students or for any other aspect of the UK immigration system please contact Sohan Sidhu either by telephone on 01284 763333 or by email.

**Sohan Sidhu**  
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## MUST MY CHILDREN INHERIT?

Under English Law, a testator is free to leave by Will his or her estate to whomever he or she pleases, including leaving everything to charity.

In a recent case, an elderly mother left her estate of £500,000 jointly between two charities. She was widowed, and had one daughter, who she had rarely seen since her daughter left home at 17. Her daughter had known for some time that she had been excluded from her mother's Will. However, when her mother died she made a claim against the estate.

Under the Inheritance (Provision for Family and Dependants) Act 1975, a dependent of the deceased can make a claim for a provision out the estate, on the ground that the testator did not make a reasonable financial provision for the applicant. When deciding whether to make a provision for the applicant, the Court must follow guidelines, which include:

- The financial resources and needs of the applicant, and other beneficiaries;
- The deceased's moral obligations towards the applicant, and other beneficiaries;
- The size of the estate;
- The physical or mental disability of any applicant or other beneficiary;
- Anything that may be relevant, including the conduct of the applicant.

The daughter, who was in her early forties, was married with five children, lived in a Council house and had lived on benefits for most of her life. The Judge awarded the daughter £50,000.

The daughter wanted more, and appealed the decision of the Judge. The Charities also appealed on the basis that there should have been no award made to the daughter.

On appeal, the Judge decided that the fact that the daughter was in a difficult financial position was only one of the factors to be considered. The fact that the mother had made a conscious decision to disinherit her daughter, and that the daughter knew of this, was also important. The Appeal Judge decided that the first Judge was wrong in awarding the daughter anything out of the estate.

This does not mean that it is impossible for a disgruntled child, or other dependent to make a case against an estate if they have been excluded from a Will. However, if a testator has a clear intention to disinherit someone, their wishes will carry great weight.

This case illustrates that to ensure that your wishes are carried out, it is extremely important to make a clear and comprehensive Will. Please contact us for a free initial meeting to discuss your wishes, without obligation.

**Julie McDonald**  
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## HOME SWEET HOME

First time buyers of residential property will welcome the Government's latest initiative to encourage the younger generation in taking their first steps on the property ladder.

Since 24 March 2010, legislation within the Finance Bill 2010 introduced relief from land tax payments - Stamp Duty - on properties transferred to first time buyers up to a value of £250,000.

The time period given by the Government for this relief is from 25 March 2010 until 25 March 2012.

In order to qualify for this relief, the first time buyers must confirm that they will be occupying the new property themselves as their main or only home, and that they have never owned a similar interest in property anywhere in the whole world!

As a reminder, the current stamp duty rates are 0% for

first time buyers up to £250,000; 0% for purchasers up to a value of £125,000; 1% up to a value of £250,000; 3% up to a property value of £500,000. Thereafter 4% applies to property purchases over £500,000, but up to £1M. From April 2011, a fifth band will be introduced and anyone buying a property costing more than £1M will pay 5%.

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