

Matrimonial issues

Court ruling on the sharing principle when applied to post-separation earnings

The Court of Appeal has held in the recent case of *Waggott v Waggott* that a party's earning capacity is not capable of being a matrimonial asset, meaning that the sharing principle cannot be applied to post-separation earnings.

Waggott v Waggott: the financial issues

The parties in the case of *Waggott v Waggott* began living together in 1991, marrying in 2000, before divorcing in 2012. While cohabiting, the couple both worked as accountants, but in 2001 Mrs Waggott left employment to accommodate her husband's work move and, bar one brief period, had not returned to paid employment since. The couple had agreed that the capital resources, including pensions, would be split equally. However, a disagreement arose regarding the extent to which Mrs Waggott should receive additional provisions by way of maintenance, and whether she was entitled to a share in her husband's bonuses that he had achieved post-separation. The court was asked: "Is earning capacity capable of being a matrimonial asset to which the sharing principle applies?"

The judgement

It was ruled that the sharing principle cannot be applied with regard to post-separation earnings and that earning capacity did not form part of the matrimonial assets.

Mrs Waggott could only establish a claim to a continuing share of those earnings if they were necessary to meet her reasonable needs.

It was judged that any bonuses received by Mr Waggott were entirely dependent on his post-separation performance, and as such, should not be subject to the sharing principle.

Jessica Jupp, associate solicitor at K J Smith Solicitors

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