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Case Update Flyer Issue 4 **P v P [2007] EWHC 779 (Fam) – a third way**

The position outlined so recently after **S v S (2006)** and **H v H (2007)** is further complicated by a yet third approach to compensation.

Burton J in **S v S**, confined the issue of compensation in relation to damaged or lost careers to the exceptional and, effectively, side stepped the issue of compensation for future earnings loss by simply ignoring its existence.

Charles J in **H v H**, having accepted that such future earnings compensation existed, then recognised that the circumstances which would give rise to the same were more common than exceptional and suggested on top of capital equality that it required a calculation equivalent to a modest run off of reducing maintenance as its measure.

In **P v P (2007)**, Coleridge J has adopted what may be seen as an in between position. Whilst accepting there is a requirement to address the loss where on divorce one spouse has a significantly greater future earnings base than the other, the Court attempts to provide for the same under “needs” as opposed to “compensation” and cautions against a opening of a floodgate of claims to compensation akin to personal injury litigation.

Erudite as these Judgments are, they serve only to further confuse an already difficult position for advisors post **McFarlane / Miller (2006)**.

P v P [2007] EWHC 779 (Fam)

1.1 H 46 and W 47. Partnership of 14 years, including 4 years pre marital cohabitation. Twin dependent children.

1.2 H was a CEO of a bank earning £400,000 to £500,000 p.a. He was about to leave for less well remunerated employment as a self employed banking consultant in Australia (para 3).

1.3 W had given up work as a director of a recruitment agency to support the husband, an investment banker, who had worked at the time in Hong Kong. At hearing, W was operating her own design consultancy business and property search company. W was talented and energetic business woman in her own right (para 48). Her income was estimated at a profit of between £15,000 and £20,000. It was expected that she would do better in the foreseeable future.



1.4 Assets amounted to £2.9m inclusive of pensions. H had just under £1m in cash / bank reserves. The pensions, it was agreed, would be split 54% in W's favour to give equality of outcome (para 44)

1.5 Agreed that W have house sale proceeds of £447k and her own assets of £546k and also £6k pa maintenance for each of children on top of school fees and a secured fund from H's assets to ensure next few years school fees are met (par 8).

1.6. Both parties wanted a clean break. The H argued that another £275k should be provided to W, providing a £1.7m /£1.3m split in W's favour. The W's case was that £500k was needed (para 10), providing her with c.£2m.

2.1 H contended that "the main driver" of capital division should be W's and children's needs. The W's case was that, whilst her career was getting back on its feet, there should be special and extra regard to compensating the W for the loss occasioned by her career break whilst living with the H and now whilst bringing up the children (para 12).

2.2 One of children suffered from a mild form of Asperger's Syndrome and dyspraxia and it was a significant factor that the children would be in the full time care of W and the H would be in Australia (para 33).

2.3 W's budget submitted for herself and children at £77k pa. Her needs assessed by Court at £60k pa plus (para 53).

2.4 Respective past, present and future contributions were different but of equal value (para 57). "This marriage was some fourteen years in length, not the longest of marriages but the actual length is overshadowed by the fact of the wife's continuing contribution" (para 65).

3.1 There was a danger in elevating the content of the guidance in **McFarlane / Miller (2006)** to quasi statutory status. "Compensation" did not appear in the statute (para 59). Did it really add anything to "obligations and responsibilities" in **section 25 (2)**?

3.2 It was neither possible nor desirable to break up such claims into separate heads, as if they were personal injury actions. £1 gained by a spouse was a £1 loss to the other. The **section 25** balancing exercise was extremely sensitive (para 60).

3.3 "...the ceaseless craving for certainty...constantly inhabits the fertile mind of the specialist advocate", but suggestions as to calling expert evidence as to the W's loss of earnings is an approach which would be misconceived and could lead to double counting. It is not possible and would be both undesirable and costly to undertake a "what if" exercise in respect of career opportunities. Such an approach is a blind alley in front of which should be firmly planted a "no entry" sign (para 62).

4.1 Bearing in mind the **section 25** factors and, in particular, resources, needs, obligations, responsibilities, contributions, past, present and future, the aim overall was to achieve a fair outcome. W's needs and entitlement was to have enough for a home and a secure income via



the capital she already has and will have, her own very real earning capacity and the pension sharing order (para 66).

4.2 The correct order would be to provide W with £325k extra so that she retained £1.8m in value including pensions which after her re-accommodation costs would provide £1.1m and overall £50k pa investments income and her earning and childrens' maintenance (para 68).

4.3 Such an award represented a 60/40 split overall and reflects her the following factors, firstly, the parties wish to achieve finality today, secondly, the children's needs call for it, and, thirdly, H has a far greater prospect so far as longer term earnings are concerned (para 69).

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