

Tying Up Loose Ends - £52 million Lottery millionaire pays ex-wife £2 million

A man who won £52 million in a Lottery windfall 10 years after divorcing his ex-wife has agreed to pay her £2 million. Reputedly, she had wanted £8 million.

Many people find it hard to understand why an ex-wife, many years after separation and divorce, could have any rights to his windfall. There is no general principle which allows an ex-spouse to benefit from the other's good luck many years after divorce – after all, a lottery win 10 years after divorce can hardly be considered a “fruit of the marriage” !

There are, though, two ways in which an ex-spouse can resurrect his or her financial claims against a windfall.

One possibility - and a surprisingly frequent occurrence - is that the couple may not have entered into a financial order at the time of divorce to sever all of their financial claims against each other. A divorce ends a marriage but does *not* end financial claims ; it is imperative to get both a Decree Absolute (which renders you single again) and a financial order dealing with property, pensions and income issues if you want the certainty of a clean break and no unpleasant surprises many years down the road. On your own head be it if you get the first but not the second.

Another alternative is that the couple did have a financial order which required the husband to pay spousal maintenance for a number of years after divorce. Spousal maintenance leaves a door ajar back to court ; either party can apply to the judge to vary the amount of maintenance being paid (upwards or downwards) or to capitalise the payments. Capitalisation is common when the maintenance payer comes into capital after the divorce : a lump sum is quantified and paid to the recipient and her maintenance rights are dismissed at that point.

The sum needed to capitalise maintenance can be considerable ; it has to take into account not only the income being paid each month over the years of the maintenance order but also an inflation-proofing element so that the capital isn't eroded by the effects of time. A reasonable investment return on the capital is taken into account – a task which has become very difficult in the current economic climate!

If a sum is quantified, it is then usually argued by the payer that a discount should be applied to it to reflect the fact that “cash is king” ; this is known as the utility argument. The logic is that if you are getting the benefit of a cash sum in your hand, what you are getting is certainty, the right to do what you want with it and the right to remarry without repaying it (remarriage ends spousal maintenance rights).

It may be that in this case both parties were keen to end an ongoing spousal maintenance arrangement with a one-off payment. The moral of the story is to be sure that you get a financial order at the time of divorce and, if that order includes spousal maintenance, to remember that winning the lottery might not just mean “It could be you!” – it could also be your ex!