

## Family Law newsletter - Q1 - 2022

### **Hello and welcome to the latest Family Law newsletter.**

In this edition, we explore a case where a woman who left the family home following a divorce argued that the male, who remained in occupation, should pay her £45,000 in rental income. The first Judge had ordered the sale of the property and after challenging the outcome, the Court subsequently demanded a new hearing before a different Judge. The second article looks at the impact of the COVID-19 pandemic on business turnover and profitability in the wake of divorce settlements.

**If you would like to discuss any elements of this newsletter or for more information on a particular family law matter, please email us or contact the team on 020 8858 6971.**

### **Relationship Broken Down? Do You Understand the Legal Consequences?**



When a relationship between partners who jointly own their home breaks down, one of them may move out leaving the other in sole occupation. That is a commonplace scenario but, as a High Court case showed, it can give rise to legal and financial issues that are far from straightforward to resolve.

The case concerned a couple who together owned a house in which they were living when their relationship ended. The woman left the property but, for some years thereafter, the man remained in occupation. A Judge eventually ordered a sale of the property so that the proceeds could be divided between them.

The woman argued that the man should be required to pay her rent of about £45,000 in respect of the period during

which he had, in her absence, continued to live in the property. That sum, she asserted, should be added to her share of the proceeds of sale. However, the Judge rejected that argument on the basis that the man had not excluded her from the property or otherwise denied her legal rights of occupation.

Upholding her challenge to that outcome, the Court found that the Judge fell into legal error. She was not required to show that she had been excluded from the property in order to make good her claim for occupational rent. The correct question that the Judge should have asked himself was whether it was just in all the circumstances to require the man to pay rent. The Court ordered a fresh hearing of that issue before a different Judge.

**It is vital to source expert legal assistance in circumstances such as this. For expert advice, contact one of our experienced family law team below.**



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## Can the economic havoc wreaked by the COVID-19 pandemic justify the re-drawing of final financial orders made following a divorce?

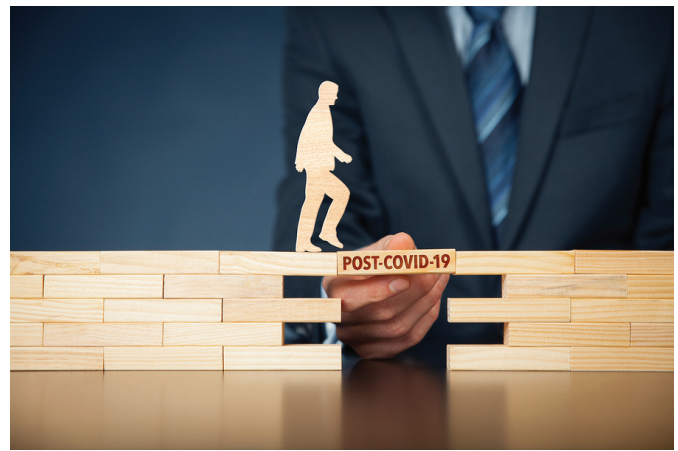
The High Court has ruled in a guideline case that the answer to that question is 'probably not'.

The case concerned a couple whose principal asset was a business in the education sector. A Judge ruled on the financial aspects of their divorce in October 2019, a few months prior to the onset of the pandemic. She ordered that, of total assets worth £4.75 million, the husband should receive 58 per cent and the wife 42 per cent.

The wife agreed that the husband should keep the business, an asset that pre-dated the marriage and which thus had, to some extent, a non-matrimonial element. The unequal division of assets was also justified by the fact that the husband's shares in the business carried an element of risk and were not comparable to cash in the bank.

The business was hit hard after COVID-19 reached these shores and schools were closed as part of the lockdown. The husband applied to set aside parts of the order on the basis that the pandemic was an unforeseen and unforeseeable event that resulted in devastating financial consequences, which invalidated the fundamental assumptions on which the order was based.

Dismissing his application, however, the Court focused on the economic impact of the intervening event, rather than its cause or nature. The damage caused to the business by the pandemic was, in the end, no different from that which might



have arisen from the 2008 global financial crisis. Although each case had to be decided on its own specific facts, the pandemic was probably not an event that could justify reopening a final judicial order.

The Court acknowledged the impact of the pandemic on the business's turnover and profitability. The initial blow had, however, been softened by its receipt of £3.1 million from the government's furlough scheme. It had also taken a low-interest £460,000 coronavirus business interruption loan and had good prospects of bouncing back from the crisis.

A reasonable person would have said in October 2019 that there was certainly a chance, which could not sensibly be ignored, that there would be an economic downturn in the next year. It was absolutely clear that the basis of the Judge's order was that the husband would be retaining assets which were risky and, for that reason, would be granted a greater than equal share of the assets.

The information contained in this newsletter is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances, please contact us.