

Why is My Income Relevant on Divorce?

This is a follow on article from **“Where Do I Start When Considering Finances on Divorce?”** which set out the considerations when deciding how to divide matrimonial assets on divorce. The first of the factors set out in legislation is:-

“The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future including in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.”

This factor often relates to the consideration of spousal maintenance claims on divorce including how much and for how long. The importance of this factor will also depend upon other factors including the age of the parties, the length of the marriage, available assets for distribution and whether there are children.

For many, income will be self-explanatory and evidenced by payslips and P60s. The definition of income includes bonuses and overtime and in some circumstances can also include benefits in kind. Income is more complex for those who are self-employed as their income can be extracted from a business in different ways such as salary, bonuses, dividends and benefits. In some situations accountancy advice may be needed to understand the true net position once all taxes have been deducted and taking into account fluctuations in income over a 12 month period.

Attempts to reduce income or earning capacity to defeat a spouse’s claim are frowned upon by the court. Judges are sceptical of suggestions that income will reduce going forward and evidence will need to be produced to satisfy these claims.

In addition to actual income, a court can also take into account someone’s earning capacity now and in the future. Earning capacity is individual and takes into account a person’s skillset and what employment they can realistically obtain either immediately or with training and taking into account time out of the job market raising children.

Income can also be derived from sources arising outside of employment including voluntary payments from a family member, payments under a discretionary trust and state benefits.

For further information on the factors affecting financial settlements on divorce, please see my other articles dealing with each factor in detail.