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Family Briefing

When the gravy train stops –
applications to vary under section 31 of
the Matrimonial Causes Act 1973

A guide to the case law.



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When the husband is a big earner and the wife is not and they get

divorced, there may well be a periodical payments order – perhaps on their joint lives ie with no end date, to terminate on death of one party, remarriage or the court making an order terminating payments - emanating from the husband's income towards the wife. With the flux of time, this may be a thorn in the husband's side and he may be keen to see an end in sight.

Where there is a huge disparity in income – or where she has been a homemaker or has retired from work – then a no term periodical payments order gives a wife a safety net but there is lurking danger if she has not set money aside for the lean years because she may face a very tough situation if the husband applies to stop the periodical payments when he decides to retire.

If a man retires early, the divorced wife may perceive his decision to be a lifestyle choice and a possible mechanism for the avoidance of supporting her in the long term. She will have become accustomed to the husband commanding a high salary - but although there is a groundswell of opinion that wives should strive to become independent there remain many wives who cannot achieve such independence easily or at all.

The answer for them is to save during the years of plenty to provide for the lean years.

Of course any periodical payments order is onerous for the divorced husband and he will want a term order so that there is a guillotine at some time on the periodical payments – but if the balance of the case, when looking at surrounding circumstances – tips in favour of the payee then the preferred solution by the court may be to make a nominal periodical payments order to leave the door open to the wife to come back to court if the husband seeks another career and has another income stream.

The wife's needs are to be generously interpreted: Miller/McFarlane (2006) 1 FLR 1186 HL.

The court's power to vary under section 31 of the Matrimonial Causes Act 1973 applies only to orders requiring the payment of income to another, and orders for sale of property. There is no jurisdiction to vary capital order.

The court has an ongoing statutory duty to consider whether the payee can adjust to periodical payments terminating without undue hardship: *Boylan v Boylan* (1988) 1 FLR 282 but it must be fair and where the husband has been a creative or resourceful breadwinner while pursuing his career and remains in good health, the answer may be to make a reduction with nominal periodical payments order but no term.

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