

MATRIMONIAL PROPERTY, NEEDS AND AGREEMENTS: THE FUTURE OF FINANCIAL ORDERS ON DIVORCE AND DISSOLUTION.

EXECUTIVE SUMMARY

INTRODUCTION

- 1.1 The Law Commission for England and Wales is an independent, non-governmental body devoted to reviewing the law and recommending reform. Our report on *Matrimonial Property, Needs and Agreements* presents our recommendations about some important aspects of the law relating to the financial aspects of divorce and of the dissolution of civil partnership. The report addresses three specific areas of that law: financial needs following divorce or dissolution, marital property agreements and non-matrimonial property. Our intention is to render elements of the law more certain and predictable, without jeopardising the protection that the law offers to those who are made vulnerable by family breakdown. Our recommendations would make the law clearer and more accessible, bringing to an end some of the uncertainty that surrounds the responsibilities people have to each other after their formal relationship has ended, and the extent to which they can make their own agreements about their financial affairs.
- 1.2 The law of financial orders on divorce and dissolution has been in a state of constant development since the enactment of the relevant statutory provisions in 1969. It would be a mistake to suppose that this Report represents an end to reform in this area of the law. It will be clear from the Report's account of developments from 1969 onwards that this is a dynamic area, constantly evolving, constantly under pressure from social change, public opinion, economic pressures and legal influence from abroad. Our Report, and the implementation of our recommendations, can only be staging posts in an ongoing journey.
- 1.3 This Executive Summary is in four parts:
 - (a) Headline conclusions and recommendations.
 - (b) The background to reform and the importance of financial needs.
 - (c) Qualifying Nuptial Agreements.
 - (d) Benefits of the proposed reform.
- 1.4 We also include, at the end of this summary, a short note on the development of the project.

HEADLINE CONCLUSIONS AND RECOMMENDATIONS

Financial needs

- 1.5 Divorce and dissolution do not bring to an end the financial responsibility of married couples and civil partners to each other. In our Report we conclude in light of our review that the underlying law relating to responsibilities of former spouses to meet each other's "financial needs" (to use the term in the statute) is not in need of statutory reform. Although the relevant legislation gives the courts a wide discretion when making awards for needs, in practice the financial orders made by the courts, and other financial settlements, tend to lead the parties to financial independence. Independence is not sudden; it is reached over a process of years, as the parties' shared lives are de-merged, to the extent that that is possible in the light of choices made within the marriage, the length of the marriage, the marital standard of living, the parties' expectation of a home, and their continued shared responsibilities.
- 1.6 We think that the objective of independence is the right one. We are therefore not advocating an overall change in the courts' approach. That is in line with the view of most of our consultees, many of whom were very keen not to detract from the courts' discretion.
- 1.7 However, we do think that action is needed. Although the law is largely well-understood by family lawyers, it is inaccessible to the general public and there is evidence that the courts in different areas of the country do not always apply the law consistently.
- 1.8 **We recommend** that the meaning of "financial needs" be clarified in guidance published by the Family Justice Council. Clarification will ensure that the term is applied consistently by the courts, reinforcing judicial best practice. It will also give people without legal representation access to a clear statement of their responsibilities and the objective of eventual independence that a financial settlement should strive to achieve.

Development of a formula

- 1.9 Some jurisdictions have gone beyond explanation and verbal clarification, producing formulae that generate guideline amounts for payment from one former spouse to another. We approach such practices with caution because they work in the context of very different legal systems. However, **we recommend** that work be done with a view to assessing whether such an aid to calculation could be devised and might be found useful. We envisage that formulae, if developed, would take the form of non-statutory guidance and would give a range of outcomes, within which the separating couple might negotiate.

Qualifying nuptial agreements

- 1.10 In recent years the courts' attitude to private financial agreements – “pre-nups” and “post-nups” - has changed and the courts are now paying far greater regard to the provisions of agreements made often many years before divorce or dissolution. But under current law the courts still have discretion as to whether the terms of such agreements are followed. That is at odds with the treatment of pre- and post-nups in many parts of the world. It is also at odds with the wishes of many couples who are looking to base their marriage on a shared understanding of the financial consequences of any future separation.
- 1.11 **We recommend** that legislation be enacted to introduce “qualifying nuptial agreements”. These would be enforceable contracts, not subject to the scrutiny of the courts, which would enable couples to make contractual arrangements about the financial consequences of divorce or dissolution. In order for an agreement to be a “qualifying” nuptial agreement, certain procedural safeguards would have to be met. Qualifying agreements could not, however, be used to contract out of “financial needs”.

THE BACKGROUND TO REFORM AND THE IMPORTANCE OF FINANCIAL NEEDS

- 1.12 Divorce and the dissolution of civil partnership almost invariably have far-reaching financial consequences. For many people this can be a time of hardship, as well as one of stress. The unravelling of jointly-made arrangements and commitments, and the sharing of property, debt and responsibility, can be extremely difficult.
- 1.13 The law gives the courts a wide discretion to make appropriate financial orders when marriages and civil partnerships are dissolved. The legislation dates back to 1969 and was drafted at a time when divorce rates were lower than they are today. It was believed that it would be both appropriate and practicable for couples to go to court and for a judge to determine the right financial outcome for them.
- 1.14 Today, things are very different. Most couples going through divorce, or the dissolution of civil partnership, do not have their financial arrangements made by a judge. Many reach a settlement with the assistance of lawyers. Some go through mediation; others make use of collaborative law negotiations, or of family law arbitration. Increasingly, many do not have access to lawyers because of the withdrawal of legal aid in this area. They do have access to the courts, but the majority nevertheless resolve their financial arrangements out of court; and we have to add that if all or even a majority of couples going through divorce or dissolution were to go to court for financial orders, the court system would be unable to cope.
- 1.15 Against that practical background, the lack of clear law is problematic. For the law to say, in effect, “it is up to the judge” may be acceptable if everyone gets to see a judge; but now that is the exception rather than the rule. There is a need for clearer and more transparent law so as to give people an indication of the sort of financial settlement that they ought to reach, as well as more certainty so that they can have confidence in the arrangements they have made.

1.16 So far as family lawyers are concerned, the law is to some extent predictable. Family lawyers are able to advise their clients on what will happen, partly through experience and partly because of judicial precedent from the higher courts. For family lawyers, there are some reasonably clear areas within the law. They are:

- (a) The parties' financial responsibilities for their children; these are the courts' "first consideration" in making financial orders between adults.
- (b) Subject to the children's needs, in practice the courts' primary concern is the financial needs of the parties – comprising capital and income, short-term and longer-term requirements. In most cases the only possible legal and practical outcome is for the parties' property, income and debts to be managed, and rearranged if necessary, so as to ensure that both parties' financial needs are met so far as that is practicable and on the basis that – as was said in a case some years ago – "there is life after divorce". Only a small proportion of cases result in orders being made for long-term periodical payments; there is a heavy emphasis on the clean break (that is, the termination of all financial responsibilities between the former spouses, save in respect of any children). Despite media focus on large awards in multi-million pound cases, the reality is that in the vast majority of divorces long-term support is not practicable. It is generally brought to an end at least when the children cease to be dependant and often before that – save in those cases where age or illness make it impracticable for one of the parties to support him or herself. That said, uncertainty is magnified by regional inconsistencies; practitioners are aware that the likelihood of long-term support being awarded varies between different parts of the country.
- (c) So long as both parties' needs are met, the courts follow the "sharing principle" so as to divide the family assets equally. However, the concept of "financial needs" is so extensive that in the majority of cases there is no room for the "sharing principle" because all the arrangements made are focused on needs. Accordingly only in a minority of cases does the sharing principle have any real application.
- (d) In those cases where sharing is relevant, property that has been inherited by or given to either party, or acquired before the marriage or civil partnership, is not generally shared. Such property is known as "non-matrimonial property"; the courts' approach to such property is a matter for discretion not a rule of law.

- (e) The courts regard agreements between the parties as important, and the Supreme Court has said that, “The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.”¹

1.17 We discuss in more detail the current law relating to financial orders in the Appendix to this Summary. It should be noted that the guidance on “financial needs” that we recommend that the Family Justice Council provide is not intended to affect the application by the family courts of the sharing and compensation principles, in the minority of cases where these are engaged.

1.18 In the light of those areas of clarity, we have examined financial needs, non-matrimonial property, and agreements made between the parties. We outlined our recommendations above, and here we say more here about financial needs and non-matrimonial property, before turning to qualifying nuptial agreements and the provisions of our draft Bill.

Financial needs

1.19 We take the view that clear guidance on financial needs would be invaluable in the vast majority of cases. This is not an area where we, or indeed many of our consultees, feel that there should be a change in the law, or in the way that discretion is exercised in the majority of cases. Guidance can provide only words, not figures, and so cannot provide a complete answer to “how much do I have to pay?” But it would enable those without legal representation – and mediators who are not legally qualified – to understand the sort of outcome that a judge would aim at, so that they can make practical arrangements offering a realistic level of support, recognising the needs and responsibilities that each party has for the future but working towards independence where that is practicable. It would also help to dispel some myths – for example, the idea that all property is invariably shared 50:50, or that former spouses may be entitled either to lifelong support in all cases, or to no support.

1.20 Guidance would also be useful for the courts, because there is some evidence of regional variations in the types of orders made. Guidance from the Family Justice Council, composed as it is of judges and practitioners and chaired by the President of the Family Division, would be able to reinforce what is regarded as best practice in the exercise of the courts’ discretion.

1.21 As to future development, we have recommended that work be done with a view to going beyond words and providing figures for the guidance of lawyers and of couples. Some jurisdictions – notably Canada – have introduced calculations that generate guidelines, which can be used as an indication of a range within which a court order might fall. Such calculations need not generate a single answer to the question “how much do I have to pay?”: they might generate a range, indicating a maximum and minimum level of support within which parties can negotiate, knowing at least that they are “on the right lines”.

¹ *Radmacher v Granatino* [2010] UKSC 42, [2011] 1 AC 534 at para [75].

- 1.22 For individuals without access to legal advice who need to know whether, for example, one should be supporting the other for five years or ten years, or whether the proceeds of sale of their house should be split 50/50 or 40/60, guidance in the form of figures as well as words could be invaluable. A formula would have to take into account, among other factors, the age of the parties and the length of their relationship, the age of their children and the length of time for which the joint responsibilities of the relationship (in particular the care of the children) were going to continue and to impact on the ability of either or both parties to support themselves. These are all factors that a judge will take into account in making orders at present, and are all factors incorporated into the calculations that have been developed in some jurisdictions.
- 1.23 Our objective is to leave the framework of the law as it is but to accept that, increasingly, people will have to make use of it without lawyers. Guidance will help. Calculations, giving an indication of a range within which a couple might negotiate, will also assist. It is very easy to dismiss such a development on the basis that no formula can capture individual circumstances, and we agree that that is true. But there is no suggestion that the law should become purely formulaic or that financial arrangements between adults can be captured solely by a formula in the way that child support is calculated under the current law. Nor is there any suggestion that orders to meet financial needs should be determined administratively by a non-judicial agency. Such calculations cannot be developed without comprehensive empirical data and dedicated work by a multi-disciplinary team. We have recommended that Government sponsor that work when the requisite research becomes available.

Non-matrimonial property

- 1.24 At the outset of our examination of non-matrimonial property we felt that the courts' practice of not sharing pre-acquired, gifted and inherited property might usefully be captured in the form of statutory rules. We also felt that statute should address the sort of issues that are likely to arise in the context of such property, for example when it is sold and replaced, or grows as a result of the investment of either party. These are issues to which the courts have not yet been able to provide clear answers.
- 1.25 We have not made any recommendations about reform relating to non-matrimonial property. Although we would have liked to recommend statutory provisions to address those situations in which the case law has not yet provided clear answers, consultation responses have demonstrated that such provisions would be unacceptably controversial. Where the parties to a marriage want to achieve certainty in advance about the continued ownership of non-matrimonial property they should be free to make contractual arrangements to that effect, without having to submit their agreements to the courts' assessment of fairness. Such contracts could also encompass other property, in particular property acquired or generated during the marriage, if the parties agree that they will not wish to share it in the event of divorce or dissolution. Equally, though, such agreements should not be able to prejudice the parties' entitlement to have their financial needs met. Accordingly we have recommended the introduction of qualifying nuptial agreements.

QUALIFYING NUPTIAL AGREEMENTS

The effect and scope of qualifying nuptial agreements

- 1.26 Pre-nuptial and post-nuptial agreements (referred to together here as “marital property agreements”) used to be extremely unusual in England and Wales. They are, by contrast, familiar in other jurisdictions. In recent years they have become more commonplace here, and lawyers have told us that they are instructed to draft them with increasing frequency. However, they cannot be enforced as contracts and they cannot take away the parties’ ability to ask the court to make financial orders nor the courts’ powers to make orders. As a result, the only way to achieve legal finality is to ask the court to make orders that reflect the terms of the agreement; and the Supreme Court has said that this should be done unless the agreement is unfair.
- 1.27 That means that people who want to make agreements in advance know that the agreement may not be enforced and that when they go to court financial orders will be made which may or may not follow the terms of the agreement, depending upon the court’s views about fairness. That in turn will depend upon issues such as the availability to the parties of legal advice, the extent to which they entered into the agreement with full awareness of its implications, the level of provision made for need, and so on. Although advisers have over recent years become more used to drafting pre- and post-nups that they think the court will uphold, they cannot say for certain what the eventual outcome will be.
- 1.28 Qualifying nuptial agreements, which we recommend would be enforceable as contracts without being subject to the courts’ assessment of fairness, offer predictability. The concept of qualifying nuptial agreements was broadly welcomed on consultation, and there is also research evidence to show that many people would welcome the introduction of a legal tool that offered them more autonomy and control.
- 1.29 However, consultees’ support for the idea was tempered by concerns about the risks involved in making arrangements for divorce or dissolution at a point when everyone intends that the marriage will continue. Pre-nuptial and indeed post-nuptial agreements envisage a situation that is not an immediate prospect and that the parties hope either will never happen (however well they know the divorce statistics) or will not happen for many years. We are very mindful of the parties’ vulnerability to optimism and, inevitably, to pressure, whether deliberate or involuntary. Accordingly, our response to those concerns is to recommend that spouses and engaged couples should not be able to make contractually enforceable agreements that deal irrevocably with their future needs for housing, childcare, an income, or any other aspects of “financial needs”.
- 1.30 That exception is fundamental to our scheme for qualifying nuptial agreements. It matches the practice in other European jurisdictions where contracts relating to the ownership of property are a straightforward matter but where it is not possible to contract out of the courts’ jurisdiction to decide issues of “maintenance” – the European term for “financial needs”. The introduction of qualifying nuptial agreements without the proviso for the protection of the parties’ needs would be very damaging.

- 1.31 Of course, it will remain open to spouses to make agreements about financial needs, but such terms will not be contractually enforceable and will be subject to the courts' scrutiny for fairness as they are at present. A qualifying nuptial agreement will not remove the parties' ability to apply for, and the courts' jurisdiction to make, financial orders to meet their financial needs.
- 1.32 Subject to that exception, provided that certain formal requirements are met, we recommend that parties should be able to make agreements that will determine issues about sharing, either providing for some or all of their property not to be shared, or for it to be shared in unequal proportions. We have particular sympathy with those who wish to ensure that inherited or gifted property, or property generated before the relationship began, will be excluded from the sharing exercise provided that the other party's needs are met and children are adequately provided for.
- 1.33 Aside from high-net-worth individuals who wish to protect wealth from sharing, qualifying nuptial agreements may be suitable for couples who are each independently able to meet their own needs; for example, couples marrying later in life. They may also be attractive where one party has specific assets to protect. That might be inherited property; equally, couples who have children from a previous relationship might be particularly keen to ensure that property is passed to those children. Others might be those who anticipate acquiring or generating wealth after marriage, perhaps as a result of individual enterprise; and couples from overseas jurisdictions where marital property agreements are commonplace. Such couples might contemplate living here only if they could put a qualifying nuptial agreement in place; couples already married abroad would be able to take advice on expressing their overseas agreement as a qualifying post-nuptial agreement here.
- 1.34 Such agreements can only be made possible by statutory reform, and our Report is accompanied by a draft Bill whose terms would put our recommendations into effect.

The formal requirements for qualifying nuptial agreements

- 1.35 Agreements will be qualifying nuptial agreements if the following requirements are met:
- (a) The agreement must be contractually valid (and able to withstand challenge on the basis of undue influence or misrepresentation, for example).
 - (b) The agreement must have been made by deed and must contain a statement signed by both parties that he or she understands that the agreement is a qualifying nuptial agreement that will partially remove the court's discretion to make financial orders.
 - (c) The agreement must not have been made within the 28 days immediately before the wedding or the celebration of civil partnership.

- (d) Both parties to the agreement must have received, at the time of the making of the agreement, disclosure of material information about the other party's financial situation.
 - (e) Both parties must have received legal advice at the time that the agreement was formed.
- 1.36 We have recommended that it should not be possible for a party to waive their rights to disclosure and legal advice.

BENEFITS OF THE PROPOSED REFORM

- 1.37 Our fundamental policy objective is to make the law of financial provision on divorce or dissolution clearer and more certain.
- 1.38 First, guidelines produced by the Family Justice Council will make the existing law on financial needs more certain, encouraging consistent application of that law, and increasing public confidence in the legal system. They will also make the law more accessible, assisting couples who wish to settle their disputes out of court, whether by negotiation or alternative dispute resolution. The number of litigants in person is likely to rise in the coming years following the reduction in the availability of legal aid and so this is an important change which will help those who represent themselves.
- 1.39 Secondly, reform of the law would allow married couples and civil partners (or those planning to enter such a relationship) to make qualifying nuptial agreements. These binding agreements, entered into before or during marriage will allow couples whose assets exceed their needs to regulate their own financial affairs on divorce or dissolution. This will allow more certain protection of family property, inheritance, and businesses. This could save couples money on divorce or dissolution if they are encouraged to follow their agreement or negotiate rather than take court action.

NOTES ON THE DEVELOPMENT OF THE PROJECT

- 1.40 In 2009 the Law Commission for England and Wales started work on a project designed to review the law relating to pre-nuptial and post-nuptial agreements. Our inquiry included consideration of the legal effects of separation agreements, made when divorce or dissolution is imminent; but our principal focus was on agreements made at a point when the relationship is intended to be permanent.
- 1.41 The project has been extended both in timeframe and in scope by significant events that have taken place during the course of our work. One was the decision of the Supreme Court in *Radmacher v Granatino*² in 2010. Another was the publication in 2011 of the final report of the *Family Justice Review*³ in which it was recommended that the whole of the law relating to the financial consequences of divorce and dissolution should be reviewed. Following discussion with us, Government's response to that Report stated that the Law

² [2010] UKSC 42, [2011] 1 AC 534.

³ D Norgrove, *Family Justice Review – Final Report* (2011).

Commission would review two significant areas of financial provision which are particularly relevant to marital property agreements, namely the law relating to financial needs and the law relating to non-matrimonial property.

- 1.42 Accordingly, as well as consulting about the law relating to marital property agreements, we published a Supplementary Consultation Paper in September 2012 in which we sought views from the public and from family law professionals about those two additional areas.
- 1.43 Our Report therefore draws upon two public consultations, as well as our own research into the law in this jurisdiction and in a number of others. We held consultation events in a number of venues, including London, Birmingham, Leeds and Cardiff. In Chapter 1 of the Report we list a number of individuals and organisations who have been of particular assistance to us; we express our gratitude here to all who responded to our consultations.
- 1.44 Alongside our Report and draft Bill we have published on our website an Impact Assessment and the responses to our two consultations.

APPENDIX TO THE EXECUTIVE SUMMARY: THE CURRENT LAW RELATING TO FINANCIAL RELIEF ON DIVORCE

- 1.1 In the Executive Summary, at paragraph 1.16 we briefly set out the law relating to financial relief on divorce or dissolution. While this topic is covered in detail in Chapter 2 of our Report we set out here, to assist those reading the Executive Summary, a brief account of the current law. The starting point is the statutes, which give us two legal tools. First, they set out a range of orders that the court can make. Second, they set out the considerations, or ideas, that the judge must have in mind when making any of these orders. We look at these in turn; then we look at the principles that have emerged from family cases in the appeal courts in the last 15 years.

The range of orders that can be made

- 1.2 The statutes provide a range of orders. The court can order lump sums to be paid, or property to be transferred. It can make an order for property to be “settled” – that is, a long term arrangement is made so that, for example, one parent lives in the family home with the children until they leave home and then the house is sold and the proceeds divided between the former spouses. The court can order periodical payments to be made; that means a series of payments for a definite or indefinite period of time, typically on a monthly basis. A wide range of orders for the sharing of pensions is available.
- 1.3 Orders can be combined, and very often are, so as to make an arrangement that works. Different ingredients in the overall settlement might be a matter for bargaining between the parties. For example, someone might prefer a larger share of the sale proceeds of the family home to a share in the ex-spouse’s pension.
- 1.4 An order for periodical payments may be varied later; for example, either party may come back to court to ask for payments to be raised or lowered or brought to an end if circumstances have changed since the order was made. Capital orders cannot normally be changed later. And once an application for a particular type of order has been dismissed by the court, no further application can be made; so there is some pressure for the parties and the court to make an arrangement that works as a package.
- 1.5 One type of package that the court has to consider, but does not have to order, is known as a “clean break”. This is the term used to describe a package of orders that brings payments to an end, whether immediately or after a defined period of time (five years, for example, on the basis that the payee cannot come back to court to ask for that period to be extended).

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- 1.6 A clean break may not mean that no provision is made for the future. It may include an order for a very large lump sum to be paid, calculated so as to provide an income for the payee, either for a defined period or for his or her lifetime. That sort of order is only possible if the payer has substantial assets.
 - 1.7 Anyone who has been through divorce or dissolution will know that although we can set out relatively tidily the range of orders that can be made, reality is more chaotic. It may not be easy to agree financial issues, whether or not lawyers are involved. Any family's finances may be quite complex, and the process of ending the relationship will probably have increased complexity. There may be debts outstanding. There will often be a mortgage on the former family home. Most importantly, there may be children, who need financial as well as emotional security.
 - 1.8 The law does not tell us what has to be paid. What it does instead is to provide a list of things that the judge must bear in mind when making orders.

The considerations to be borne in mind

- 1.9 The statutes state that in all cases, when financial orders are made on divorce or dissolution:
 - ... first consideration [must be] given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- 1.10 So the children's welfare is given pride of place. Maintenance for children is calculated by a formula, set out in the Child Support Act 1991, and so child support is not directly relevant to the financial orders that the court can make for spouses. But children need a home, and someone to look after them, and so their welfare is important when the court considers the financial circumstances, and particularly the housing situation, of their parents.
- 1.11 The statutes also provide a list of things that the judge must bear in mind. It is not an exclusive list, but presented as a list of matters that the judge must think about in particular:
 - (a) 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;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

- 1.12 The statute does not provide an objective: something to say what the financial order or orders are supposed to achieve. The courts have devised their own: before 2000 the approach taken was to make financial provision to enable the applicant to live, as nearly as possible, at the sort of level that he or she had been accustomed to during the marriage.

The principles currently informing financial relief on divorce

- 1.13 The objective of financial orders, or the principles informing the exercise of the court's power, changed in 2000 when the House of Lords' decision in *White v White* introduced the "sharing principle"; provided that the parties' needs are met, their property (with some exceptions) is to be shared equally. Further cases in the higher courts have emphasised that financial provision is a mixture of meeting needs, providing compensation, and sharing. Compensation is an idea that is not set out in the statute, although it may always have been an element of the broad concept that the courts call "needs". The courts use this word to refer to compensation for earnings or lifestyle that has been lost as a result of choices made during the marriage – for example by a high-flying lawyer who has chosen to give up her career in order to look after her children. In fact there is rarely a separate award of compensation.

- 1.14 Since that change in 2000, therefore, we can say that financial provision cases in the courts fall into two groups.

- (1) At the lower end of the scale, where the vast majority of cases lie, all that can be achieved is an order that meets the needs of the parties, because there is not enough to do any more. Indeed, in most cases there is insufficient to do that; the court and the parties are trying to "get a quart out of a pint pot". The "sharing principle" is not relevant here: there is no room for equal sharing because of the overriding problem of meeting needs.

(2) In the very wealthy cases the courts work out what the person applying for the order “needs”, by reference to his or her budget (which will be drawn up on the basis of the standard of living that person expects to maintain). If those needs are met by an award of half the matrimonial property, pursuant to the sharing principle, then no further financial award is made – the family property is simply shared, with the exception of any non-matrimonial property (discussed in the Executive Summary at paragraphs 1.16 and 1.24 to 1.25 and, in detail, in Chapter 8 of the Report).

1.15 Our recommendation that guidance be produced regarding financial needs is therefore addressed primarily to the first of these two groups: we are not recommending that such guidance should prevent the application by the court of the sharing and compensation principles.