

## **Financial Separation Agreements**

Couples who have separated but may not yet be ready to divorce, often want to enter into an Agreement that deals with their financial claims. Problems can then arise when one party wants to change from that Agreement when there are then divorce proceedings at a later stage.

The Court's approach to Agreements entered into following separation has changed very little over the years.

On deciding that the parties have reached an Agreement that they should be held to, the Court has to consider the principles set out in a case called *Edgar v Edgar* (1980).

In that case, the husband was a multi-millionaire. He and his wife had entered into a financial Agreement (a Deed of Separation). His wife later started divorce proceedings and sought an additional capital sum from him, to what had agreed in the Deed of Separation. She claimed that she had originally promised not to seek more capital, despite the advice of her lawyers, because she had felt overpowered by her husband's wealth and position, and was frightened of losing the four children of the family.

The Court held the wife to the original Agreement. In summary, they explained that when deciding the weight to be given to an Agreement, the Court should take into account the following:

- The parties conduct leading up to the Agreement;
- Their subsequent conduct;
- The circumstances surrounding the making of the Agreement, such as undue pressure by one party on the other;
- Exploitation by one party of a dominant position;
- The inadequate knowledge of one party (for example poor legal advice);
- Any unforeseen or overlooked change in the circumstances existing at the date of the Agreement.

The Court made it clear that it was also important to take into account the general proposition that formal Agreements, properly and fairly arrived at with competent legal advice, should not be displaced, unless there are good and substantial grounds for concluding that an injustice would be done by holding the parties to the terms of their Agreement.

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