Matrimonialisation – Distributing Property in Divorce

In July 2025, the UK Supreme Court gave its decision in the case of Standish v Standish.

This case is significant as it sets out principles as to how matrimonial property and non-matrimonial property should be treated in the event of a divorce.

It has long been established that matrimonial property should normally be shared on an equal basis unless issues of needs or compensation are engaged.

As far as matrimonial property is concerned, the Supreme Court's decision does not mark any significant development.

It dealt however with the distinction between matrimonial and non-matrimonial property, and circumstances in which non-matrimonial property may become matrimonial property by virtue of 'matrimonialisation'.If an asset is non-matrimonial it means that it has been brought into the marriage by one spouse only. For example, this could be wealth built up before the couple even met, it could be an inheritance.

The first significant part of the judgment was the clear statement by the Supreme Court that 'the time has come to make clear that non-matrimonial property should not be subject to the sharing principle'. The Supreme Court did however, acknowledge that non-matrimonial property can be subject to the principles of needs and compensation.

The second key element of the judgment dealt with how non-matrimonial property may become matrimonial property through the process of 'matrimonialisation'. The Supreme Court referred to the judgment in an earlier case in which three scenarios were set out in which it might happen:-

-over time, matrimonial property of such value has been acquired as to diminish the significance of the initial non-matrimonial property;

-over time, the non-matrimonial property has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which the task of identifying the value of the non-matrimonial property is too difficult;

-the non-matrimonial property has been invested in the purchase of a matrimonial home, and even if held in the sole name of one party, over time has been treated by the parties as a central item of matrimonial property.

The Supreme Court endorsed the above comments although it emphasized that these were not exclusive categories.

Of the above three scenarios, the second would seem to be the most problematic. When and how does matrimonialisation take place? The Supreme Court referred to it being governed by the parties' intentions and how they treat the relevant asset over a period of time.

A key evidential issue in many divorces may well therefore be whether an asset has become matrimonialised. This is likely to become the subject of detailed evidence in statements for the court setting out exactly how an asset was treated during the course of the marriage and the extent to which financial benefits were derived.

What is clear is that non-matrimonial property is not automatically matrimonialised by transferring it into joint names.

Partners contemplating marriage or already married may well want to consider entering into a pre-nuptial or post nuptial agreement in relation to their assets and finances. Whilst a court will only uphold a -nuptial agreement if it is fair and meets an individual's and their children's needs, they can provide clarity and make the parties' agreed intentions clear.

Please contact Heather Weavill at Alison Fielden & Co in relation to Family Law matters on 01285 653261.