

## Debunking Common Myths About Divorce and Financial Settlements

[Nick Coffey]

Hello and welcome to this episode of TW Law Talk from Taylor Walton Solicitors. I'm Nick Coffey, broadcaster and family mediator, and in this episode, we're going to be looking at some myths surrounding finances in family and divorce law. Divorce can be complicated, and it can become even more complex if you're not fully informed and well advised.

The myths we're going to explore today go to the very heart of divorce and separation and hopefully by the end of this episode you'll have a much clearer insight into some of the pitfalls you could avoid in your own situation. Joining me here in the offices of Taylor Walton in St. Albans is Olive McCarthy. Olive is a partner in the family law department and is also a family law arbitrator.

Olive, hello.

[Olive McCarthy]

Hello.

[Nick Coffey]

And we're delighted to have one of the country's top family law barristers with us too.

Perican Tahir is a family law specialist from 1 King's Benchwalk and she has a particular knowledge of family finance. Perican, hello.

[Perican Tahir]

Hello.

[Nick Coffey]

So much to go through here. And just to give a bit of background, when we talk about divorce and if you're in a situation where you're separating and potentially then divorcing, that there are two strands aren't there? You've got the children's side, the family side, arrangements for the children, and you've got the finance side as well.

And today we're going to be debunking some of the big myths around finance because I'm guessing that when a client first comes to you, and we've all done it, we've all made that first call and we all knew nothing when we made that first call, people do come to you with some of these myths on their shoulders.

[Olive McCarthy]

Yeah, I think that's right. I think people, for whatever reason, whether they've known someone who's been divorced or a family member who's been divorced, or even as I often hear their friend down the pub told them, they will arrive with various misconceptions about how finances are resolved. Often that might be played out in EastEnders, for example,

they'll say, well, surely, I'm the person at home with the children, therefore I must get 75-80%.

[Nick Coffey]

Or he had an affair, therefore I get everything.

[Olive McCarthy]

Absolutely. And, you know, in this country, we don't punish people for the reasons for divorce. And of course, we now have the no fault divorce procedure as of April 22.

And the reasons for the divorce are no longer mentioned. It's simply that the marriage has broken down and they've got irreconcilable differences.

[Nick Coffey]

Obviously, Perican, divorce can be very adversarial, especially once it reaches your doorstep and we're heading into litigation and court. In terms of those two strands I mentioned, finances can be particularly adversarial because you're dealing in numbers. So perhaps, you know, a little less guilt in terms of your children, you're dealing in funds and assets.

That can become very heated, can't it?

[Perican Tahir]

It certainly can. What we've also got to bear in mind is that under the Children Act, the courts treat the children's welfare as their paramount consideration. Whereas when we're dealing with matrimonial finance under section 25, the children are the court's first consideration.

But that nuance in the definition is actually very important in that, yes, the children are the court's first consideration, but that is not to say that the party's own respective financial needs are not as important and are a significant consideration when considering all of the circumstances of the case.

[Nick Coffey]

I feel there's a whole other episode in terms of litigation and the options available. I don't want to do a deep dive into that today, but before we talk about these myths, perhaps we can just look at what the options are in terms of what we call non-court dispute resolutions. So, options outside of court, of which you are one as an arbitrator, and then options within court.

Do you want to just sort of rattle us through the options that anyone listening to this might have if they're looking at trying to find a financial settlement?

[Olive McCarthy]

Okay. So when someone comes to see me, I normally go through the process, but additionally, I will say, look, there are many ways to deal with essentially the financial disclosure part, which is the exchange of documentation that allows both parties to understand each other's financial position and allows their representatives, if they both have one, and they're not obliged to, but allows everybody to understand what the financial landscape is. Traditionally, that was always done through solicitors exchanging that

documentation and subsequently completing the Form E financial statement, which is the document we use at court when we're in court proceedings.

[Nick Coffey]

And it's quite a scary document.

[Olive McCarthy]

It's a scary document. It's something like 27 pages double-sided, although not every page will apply. So traditionally, that was through solicitors and mediation gained a lot of support, and that's where the parties attend a mediator who doesn't have to be a lawyer but sometimes will be a family specialist lawyer.

And that person is impartial, doesn't advise either of the parties, but will facilitate discussions, the exchange of financial disclosure, look at options in terms of financial settlement and where appropriate will say, look, you need to have some legal advice on this point of principle or point of law. In contrast to mediation, collaborative law came about in I think maybe 2000. And it came originally from the States.

And that's where the parties will sit down with their respective collaboratively trained lawyers. And the four of them will all agree, we're going to sort this out without going to court.

[Nick Coffey]

Lawyers being nice to each other.

[Olive McCarthy]

Lawyers being nice to each other, actually working together, no lines in the sand. We are, you know, like friends in a series of four-way meetings, and look to an objective that both the parties agree is going to anchor them to the process. Usually this will be something like, we want to be friends after all of this.

We're not fixated on whether I get 50-50 or 60-40. Our objective is to make sure that we can parent our children in a united fashion and the children will see that we are able to resolve conflict between us and prioritise them.

[Nick Coffey]

And we can move on with our lives, because if you look at the average age of divorce, 35, 40, 45, you could still have another 40 or even 50 years left on this mortal coil to enjoy the rest of your life.

[Olive McCarthy]

Yes, absolutely. I often say to my clients, look, at the end of the day, you may no longer love each other, but what you had was something that produced your children. And you want to be able to sit at their graduation together so that the children get to have both their parents there without worrying about how they are with each other.

Collaborative law has been praised as the least painful way to divorce. I've seen clients leave a collaborative session where they've reached agreement and even though they weren't on

the best of terms at the beginning, they've left the room arm in arm, and one has dropped the other off at the station to go back to work. It's a really great process.

I have a lot of faith in collaborative law. Additionally, you have arbitration and that's considered to be like private court proceedings. So, the parties will elect who they want to run the arbitration and make the ultimate decision.

[Nick Coffey]

And that decision is binding?

[Olive McCarthy]

That decision is binding once it's converted into a court order. And because it's been through an arbitration process, it will become a court order.

[Nick Coffey]

And in terms of hiring your person for the day, your arbitrator, there's also a private FDR option. Do you do these yourself, Perican?

[Perican Tahir]

I haven't sat as a private FDR judge.

[Nick Coffey]

But you hire your judge, and tell me what happens then.

[Perican Tahir]

Absolutely. So private FDRs are, the full term is a private financial dispute resolution appointment. And a private occasion is one where the parties themselves, in consultation with their lawyers, will select a matrimonial finance specialist that could either be a practicing barrister or it could be a retired judge who will advise the parties in exactly the same ways as if one were to participate in a court-based FDR. The date is selected by the parties and the venue is typically either in the party's barrister's chambers or the judges' chambers or even actually at the solicitor's offices, which may be more comfortable and familiar to the parties and of course convenient.

The whole day is set up as if it were exactly the same as a court-based FDR, albeit that your identified judge, whoever that may be, is at the party's disposal for the entire day and is able to advise and assist on their negotiations and hopefully bringing matters to settlement.

[Nick Coffey]

And give an indication.

[Perican Tahir]

And give an indication. Forgive me, yes. So, the process is exactly the same as a court-led one where the identified judge will give an indication.

So we'll hear full submissions and full arguments from both parties' respective representatives as to the particular proposals that they are wishing to advance and the judge will give an indication, a detailed indication, one which includes both a narrative explanation, caveated entirely in law so that the parties are fully understanding the basis of the indication and then a net effect. So, this isn't just a net effect based on the capital

division but it's also an effect in terms of the income and the party's respective income needs and how that is to be met going forward.

[Nick Coffey]

And of course, the benefit of, whether it's private FDR, arbitration, mediation, collaborative law, is that it is meant to be less adversarial, less formal, less court-like and give you perhaps more of an option to find a resolution together without being told what the answer is. And briefly in three steps, Olive, the court process is what?

[Olive McCarthy]

After the issue of the application you have a first appointment and that is a hearing where if you've been through your disclosure, which you should have done, then you have the opportunity to raise questions if there is information or documentation outstanding and a judge will say which of those questions are reasonable and relevant and which have no need to be answered. Sometimes that first appointment can be used as what is the second appointment, a financial dispute resolution appointment which Perican has referred to and that is a without-prejudice appointment where you have the opportunity to put to the judge your respective positions and the judge will consider what they would do if the matter were before them on a final hearing basis. The idea is to give the parties some steer as to what the issues are, what's relevant and what settlement might look like, although it's only on a summary of the circumstances.

The parties will use that opportunity to try and negotiate a settlement.

[Nick Coffey]

And hopefully avoid going to a third hearing which is very, very, very expensive.

[Olive McCarthy]

It's very expensive, it's very stressful and the costs, certainly in most cases, will outweigh the benefit in the long run. Therefore, there is a lot of support and encouragement to try and agree at the FDR, not least because at that point in time you're getting the benefit of a member of the judiciary giving you an indication, which is not going to be far off in reality, it's not going to be far from what a judge will do at final hearing. So, it's a good opportunity and I would say, and Perican might disagree with me, but I would say 80% or more cases will settle at FDR or just after for those reasons.

[Nick Coffey]

It's just not worth it financially often to pursue it that far.

[Perican Tahir]

May I just add a couple of points to what Olive mentioned in terms of the procedure. So at the first appointment stage Olive quite rightly said that actually the court will typically determine any outstanding disclosure issues, but importantly the additional issues that are going to be determined at that stage is whether there is a need for any expert input and a lot of cases nowadays have, for instance, business assets or pension assets or complicated financial structures that are going to need the input of a single joint expert and so that first appointment stage, although may on the periphery or certainly for a lay person looking in, be quite procedural, actually it underpins the way the evidence develops and the way in which the issues are going to be identified, for the purposes of then having a successful and

informed financial dispute resolution hearing which is the second stage. So actually, the first appointment stage, albeit perhaps seemingly quite a simple stage of the process, can actually underpin the way in which matters are then developed to settlement hopefully.

[Nick Coffey]

Now I want to head towards the second half of this podcast, and we are going to go through these five myths which are actually linked to what we're talking about here. I've got a bit of an unfair question for you Perican and it's a bit like asking a turkey to explain why Christmas is amazing, okay, it's that kind of task. What I'm going to say to you is you're a barrister, you're a litigator and in large inverted commas you enjoy that process, it's what you do, but I think it's also worth at this point explaining that court isn't fun, it is arduous, it's actually pretty tough and pretty unpleasant or it can be pretty tough and pretty unpleasant, and while it is necessary in many cases and valid in many cases, if you can stay out of court it is for the best for your own well-being and that of your children. Asking a barrister to say that, as I say, is a little bit unfair but you've been in that system, you can talk about it first-hand.

[Perican Tahir]

I have to say I entirely agree with that sentiment because although yes, litigation is what I do, going to court is what I do, it's what I've done for 21 years, be that as it may, the advent of alternative dispute resolution and this non-court based resolution is something that I say is so much better. I don't think there is a single barrister that practices in matrimonial finance that is going to say otherwise. The court process, unfortunately, in this country is under enormous amounts of pressure which means that not only is the uncertainty element of it for parties which is incredibly stressful, that is almost amplified by virtue of the delay.

There is an enormous amount of delay in the court process which means not only is more money spent on litigation because the longer that parties are litigating the more expensive it becomes but also that the amount of pressure, emotional stress, familial stress that is then amplified again as a consequence, is something that we as lawyers do accept is indicative of why the court process isn't necessarily right for everybody.

[Nick Coffey]

And the children know about that conflict even if both parents are being very good and not even mentioning it. It is there isn't it?

[Perican Tahir]

Absolutely. I mean I think it would be absolutely foolish of anyone to think that children can be completely protected from the process because ultimately their parents don't agree about something and the issues upon which they don't agree have an absolute integral impact on where these children perhaps are going to live. Are they going to remain at the schools in which they were previously at?

Are they going to be able to spend the same amount or the same quality of time with both parents because of the impact of the financial outcome on them? So, with the best will in the world, as far as acrimony and wishing to limit acrimony despite the fact that parents are litigating, children are inevitably going to be impacted.

[Nick Coffey]

And you remind me of a line that I often use in mediation. You're talking about the parents not agreeing. There's a very famous, very well-respected family therapist called Gill Gorell Barnes and when she had very very conflictual couples in her room her line was 'I'm here because your children need you to agree'.

And that can be quite a salutary line in moments. And of course, what these alternative dispute resolution processes allow, as you hint there, there is a backlog. It frees up court space to look at those cases which are really crucial.

[Perican Tahir]

Absolutely and I think what parties need to always bear in mind is that complex children matters are always going to be the court's priority and so even though financial issues between two litigating parties is very important, they need to remember that they will not be prioritised and therefore exacerbating the delay in their particular case being resolved.

[Nick Coffey]

So, we've done the groundwork. We've looked at the basics of financial remedy, of discussing proposals for financial settlements in the case of divorce. Shall we do some of these myths and shall we try and dispel them?

And let's start with perhaps the most common one. We're married and therefore everything is split equally. It's 50-50 down the line.

[Olive McCarthy]

Yes, it is. Well, we'd like it to be, but it isn't necessarily.

[Nick Coffey]

We'd all be out of a job if it was that easy.

[Olive McCarthy]

Absolutely. I think the starting point is that we do look at what happens if you divide the matrimonial assets equally. We look at whether that will cater for each party's accommodation and income needs, prioritising the needs of the children, as Perican said earlier.

However, there'll often be a departure from equality where there are arguments advanced by either party as to contributions, conduct.

[Nick Coffey]

Inheritance.

[Olive McCarthy]

Inheritance, so pre-acquired assets, post-separation accrual. There are various arguments that will warrant a departure from equality and working out which assets are matrimonial, which assets are non-matrimonial is often half the battle at the beginning.

[Nick Coffey]

Perican, why can't we just have a spreadsheet? Why can't we have like an online thing where we type numbers in, and we say what we've got. We say what's in the pot, this

famous pot we hear spoken about and there's a formula, formula that you barristers and lawyers and judges and government have put in place, and we just hit the button.

It says it's 56-44% the split.

[Perican Tahir]

Well, the beauty of section 25 of the Matrimonial Causes Act is that it is enormously discretionary. So, each case has got to be decided on its own facts. So unfortunately, we can't plug in some numbers and expect the formula to spit out the answer as you've described.

So, the underpinning phraseology of our statute is all the circumstances of the case, and it then goes on to list a whole host of actually fairly logical factors that deal with the circumstances of each individual case. The age of the parties, the duration of the marriage, any particular disabilities that exist during the marriage, significantly what the party's needs are, what their specific resources are, what their income needs are and their earning capacity.

[Nick Coffey]

And their future earning capacity.

[Perican Tahir]

And their future earning capacity. So, in fact, one of the difficulties that we always have as practitioners in this area is projecting not only what somebody's current financial resources, either by way of capital or income is, but also then looking at projecting it forward. So, for the court to then make certain assumptions based on the history, the current, and then looking forward in terms of resolving those elements.

[Nick Coffey]

Because of course, you've got situations where, for example, one of the parents, often the mum, let's be honest, has stayed at home to look after the children and therefore may not have income at that moment in time. But because you're then looking to fund two households out of the same income, may have to look to go back to work.

[Perican Tahir]

Absolutely. So I think when I first started out in practice, and I'm sure that Olive will echo this, there used to be a very common outcome when it was the mother at home or the wife at home who had perhaps never had a career or sacrificed a career in order to support the rise of husband's career and has stayed at home raising the children, therefore forfeited a career of her own and therefore an earning capacity of her own.

Historically, courts used to endorse what was called a joint lives maintenance order. So in other words, placing the financial burden upon the financially stronger party to support the less strong party, typically, as you've said, the mother, in terms of assisting them on the road to independent living, but with absolutely no requirement that there was ever going to be a natural break in that support. And the tide has changed quite significantly.

And there is, and I'm sure a lot of individuals that are going through this will hear the name of Mr. Justice Mostyn resounding in their ears. But he was pretty symbolic, I suppose, in



assisting the change in the tide quite significantly to the expectation that there is to be adjustment to independent living quite quickly.

[Nick Coffey]

And hardship.

[Perican Tahir]

And hardship. Although not undue, so the language is not undue hardship, but hardship nonetheless, in that one's marriage can't be considered as being the lodestar to the future financial resources when you are independent and no longer married.

[Nick Coffey]

Can I have permission to ask you potentially a difficult question? Depends on what it is, doesn't it?

[Perican Tahir]

EEK, maybe.

[Nick Coffey]

We're talking about split here. We're talking about, you know, 50-50 being the starting point. What do you see?

What is the range that you see? Is there a point that it doesn't go beyond? So, for example, do you never see 90-10?

Do you never see 80-20? Or do you see everything?

[Perican Tahir]

I think, unfortunately, I wish there was a really simple answer to that. You absolutely see everything. I think the difficulty in this particular area of law is that one cannot pigeonhole assets, and one cannot pigeonhole people.

And so, what might be very important to one particular individual is not necessarily as important to another individual in a different case. So, let me give you an example. Anecdotally, you may have a husband who is particularly keen on maintaining and retaining a business that he has developed for the duration of the marriage, may even be a business that has been handed to him from his family.

[Nick Coffey]

Like his other baby almost.

[Perican Tahir]

Like his other baby. Or in fact, maybe his first baby and his actual baby. And so, he may well be willing to take a financial hit as far as capital that may be more readily available.

[Nick Coffey]

Like a house.

[Perican Tahir]

Or money in a bank or money in investments that are more easily available by way of liquidating them without particular difficulty. And so in those circumstances, you may well find that he will be willing to negotiate, perhaps on the basis of almost like a nuisance payment, to pay off his wife with a much more generous order than one where he was perhaps a little bit more ambivalent about his business and therefore not willing to do that.

[Nick Coffey]

Because he thinks there's value in the business. If he protects it, he'll be better off. And doesn't this also speak, Olive, of a key part of all financial discussions?

It's pragmatism.

[Olive McCarthy]

Yeah, absolutely. I think, you know, what's important to one person asset-wise or an outcome, will be different to another. And as Perican said, there isn't a formulaic approach that you have, for example, with child maintenance.

Far easier where a paying parent earns less than £156,000 gross per annum. You can plug all the figures into the calculator on the government website and out pops a figure. That is the easiest part, I would say, in family law.

We don't have that with resolving the financial part of the divorce. It's going to be pursuant to the section 25 factors and then adjusting where need dictates for one party.

[Nick Coffey]

And Perican, you mentioned businesses there and that perhaps gives us scope to just very quickly touch on another big myth, which is that, you know, my business assets will not be taken into account by the court. You said that it can be taken into account in negotiations. One step further on, the court can do the same, can't it?

[Perican Tahir]

Absolutely. A business is an asset, nonetheless. And so, it is entirely wrong to think that just because you have a business that it is simply distinct and separate from the other assets of the marriage.

It absolutely will feature. It is not only a potential capital resource in the case, it is a strong potential source of income. It could result in there being the ability to include and generate shares that may not only have a capital value to them if they were transferred to the other spouse, but also income generating aspects to it.

[Nick Coffey]

But if you've got a business worth, I don't know, half a million pounds, but it's only worth that hypothetically, if one day you sell it and it continues on the same trajectory, how can you factor that in? Because it's one thing to have half a million pounds worth of equity in your house and there it is. If we sell the house tomorrow, it will realise that sum, but my business, who knows if it will ever realise that value?

[Perican Tahir]

I think the point that you've made is quite a complicated one, because if a business has the potential to be worth something in the future, that does not fall part of necessarily the scope of the court within financial remedy proceedings. Every asset that appears on an asset schedule is the asset as at the date of trial.

[Nick Coffey]

Like a snapshot.

[Perican Tahir]

Like a snapshot. And one of the reasons, and the strong reason for this is that for any asset to have a future latent value, a future value, it requires an individual to continue working. And one thing that everyone needs to bear in mind when going through financial remedy proceedings is that the partnership, in other words, your ability to share, ends at the point of divorce.

You are not entitled to sharing in post-separation accruals or somebody's post-separation endeavours within, for instance, a business, unless there is a specific need for you to do so.

[Nick Coffey]

So, what if, for example, say it takes three years for proceedings to happen. It's been a long journey. Lots has gone on.

A business was worth, I don't know, £100,000 at the point of divorce. And then it's had an amazing year. It's conquered America, I don't know, and it's suddenly worth a million.

Are you saying that that new value cannot be taken into account?

[Perican Tahir]

I'm not saying it can't be. I'm saying it would obviously depend on all the circumstances of the case.

But any future, any value that has been generated post-separation will be considered a non-matrimonial asset that is then only brought into the division of assets, so to speak, if there is a need for it to be brought in. There's an argument, typically brought in by the other spouse, whereby they would lay claim on any post-separation accrual of that business because they will be arguing that, but for the contribution made by them to supporting, typically, the husband's endeavours in that business, that it has been because of that that the business has then gone on to do what it's done post-separation. So therein lies an element of significant complication, when the court is looking at ascribing evaluation to the matrimonial element and then perhaps if there is an argument to exclude any non-matrimonial element, as to how much of that non-matrimonial element can in fact be excluded.

Forgive the tongue-tie.

[Nick Coffey]

And this is where you earn your money because it's very, very complicated. Olive, let's move on to a really important myth and it's probably a double myth here actually. So, bear with me on this.

The first is in effect that there is a huge difference between divorce proceedings and financial remedy and sorting out a financial settlement. There are two different processes and that leads on to this big myth, which is that if you get your final order, as we call it now, the decree absolute, as you might be more used to hearing it called, that's it. There can be no more claims on my money.

[Olive McCarthy]

Yeah, I think that has become increasingly a popular myth brought about, I would say, because people are able to and are encouraged to do their own divorce on the court portal. So, to be clear, the final order on divorce or decree absolute, as we used to call it, just dissolves the marriage. So, it means you are no longer each other's next of kin and you're no longer each other's spouse.

So, any widow or widower benefits won't pass to the other. But that doesn't resolve the finances. All financial claims remain open between the parties until they are closed.

And in order to close them, you've got to open them. So just because you are divorced doesn't mean that you don't have to deal with the finances. And if you don't deal with them sooner rather than later, you can end up in a situation where you may have done better because you might have received an inheritance or you might have won the lottery.

I mean, you need to play it to win it. But if you do, and you win it, then you have assets that are yet to be divided between you and your ex-spouse.

[Nick Coffey]

And you mentioned being in it to win it, which makes me think of Dale Winton. But I'm also thinking of another Dale here because it's a key case, isn't there?

[Olive McCarthy]

Did you see how I did that?

[Nick Coffey]

Yeah, you did it and I did it and we did it together and this has really hit home, hasn't it?

[Olive McCarthy]

Yeah, absolutely. I mean, there's a case that I think even Joe Public will say they know about. The parties were married for not that long, actually, maybe five, six years.

They had one child together and a stepchild.

[Nick Coffey]

This is Dale Vince.

[Olive McCarthy]

Yes, and they didn't have a lot by way of assets, and they divorced. And I think they had an agreement that they weren't going to pursue anything from each other because they didn't have anything. But it never was ratified with a court order.

And then I think Mr. did very well, green technology, I believe, wind turbines, wind power, football club, all sorts of things, fabulous stuff like that. And was then faced with a financial

claim by Mrs. because she wasn't able to meet her needs at that time. And he had enough money to be able to assist her in meeting her needs.

So, I think after 19 years, she did receive something in the region of £300,000.

[Nick Coffey]

A chunk of money, yes, even though it was 20 years after they broke up. And it's possibly worth mentioning at this point that if you do agree a financial settlement and you put that in a consent order, which ordinarily would be written up by a lawyer, that has to go in front of a judge to sign it off. But that is not the same as going to court.

[Olive McCarthy]

Correct. So, the ideal route, as most good family solicitors will advise, is that the parties will agree the financial division between them, whether that's through the use of non-court dispute resolution options or whether they happen to do that together and have a system in ratifying their agreement. A consent order is the document that will be drafted, and both parties will sign where they've agreed together in whatever process.

That is then submitted to the court. Nowadays, I upload it onto a court portal and will go before a judge in their box work for the judge to have a look at to see whether that agreement, in contrast to the financial statement form that they both complete, a D81, whether that is fair. And on the basis of that paperwork, the judge will say yay or nay.

And if it's a yay, then they have their court order. When you go through court proceedings, you're looking for that order effectively. Hopefully, you can still do it by agreement in the court proceedings process.

But if you go all the way to a final hearing, and I would say probably 5% to 10% of cases that are issued go to final hearing, probably less now, then you're going to achieve an order that the judge has imposed on you both, not one that you have taken ownership of and you have agreed together.

[Nick Coffey]

You'll be told what to do. And just anecdotally on the D81, don't underestimate that, because I've heard a lot of evidence where people have gone all the way down the process. They've fought, they've done their mediations, their court, they've done it all.

They've done a consent order and they've fallen out over the details on the D81. You're nodding, Perican, you think that's the last easy step. That can really trip you up, can't it?

[Perican Tahir]

Absolutely. I think that parties think that they can be pretty slapdash, if I can put it in that way, as to the scant information that's provided within that. But I think that actually, what people should be under no misconceptions about, is that is an incredibly important document.

I think a lot of importance is placed upon the actual terms of the consent order, but the consent order has absolutely no legs without the supporting D81 and without the supporting financial information. If, of course, parties are not straightforward in their

financial disclosure and straightforward in the information they provide within that document, that could be fatal to the enforceability of the consent order.

[Nick Coffey]

Two more myths that I want to rattle through here. And when I say I, in this next example, I'm using it for dramatic effect, not because it's my story, okay? I have left my wife, you see, I'm not saying this is me, and I have had an affair, right, and I have a new partner and I don't want to give my wife a lot of money and therefore my partner becomes my conduit and I give her money that I've got in my savings.

I transfer stuff to my partner and therefore it is no longer in the marital pot.

[Perican Tahir]

Good try. Afraid to say that you wouldn't be the first person to have tried that, and you will not be the first person to fail at that. There are safeguards within our statute that prevent those sorts of transactions being fatal or in any way diminishing the assets available to the court.

So, the court has the power to set aside transactions that were made within the last three years. And therefore, typically, that ought to be sufficient protection for a spouse who would otherwise fall foul of precisely the steps that you are describing.

[Nick Coffey]

The three years is a fair chunk of time, isn't it?

[Perican Tahir]

The three years is pretty good. I mean, I think we still have to bear in mind that, of course, some people have quite prolonged periods of separation. And so, again, the court may be able to remedy certain issues, such as set aside with what is called ad back arguments, but that might be a completely different podcast.

[Nick Coffey]

I was about to say that there's so many different podcasts that I can think of here, not least the next question, which I'm going to ask you to answer in about 30 seconds, but which is a whole episode in its own right. Imagine that we're not married. We've lived together for more than two years.

Common law husband and wife, a common term, which I believe doesn't actually technically exist. Do I have the same rights? Do I still fall under section 25 of the Marital Causes Act?

What are my rights if I'm not actually married?

[Olive McCarthy]

Your rights if you're not married tend to fall under trust and property law. So there is no such thing as common law husband or wife. But I think where that phrase has developed from is under the Inheritance Provision for Family Independence Act 1975.

And that is where somebody has been living with a person that they're not married to. They die. And in the previous two years, they were dependent upon them.

So having not been left anything to them in their estate, they're able to make a claim as a dependent. And I think that's where the term common law husband and wife has derived from. But it doesn't exist.

It is one true myth.

[Nick Coffey]

And therefore, if you find yourself in a situation of separation, you are not governed by the same laws and rules.

[Olive McCarthy]

You're not governed by the Matrimonial Causes Act. You are governed by property and trust law. So you need to have a specialist family solicitor who is capable of dealing with matters under the Trust of Land and Appointment of Trustees Act, also known colloquially as TLATA.

And also, obviously, financial provision under Schedule 1 of the Children Act 1989.

[Nick Coffey]

And breathe. I think that we could go on, I mean, quite literally for hours and days, talking about the complexities of a financial remedy. The summary for me of all of the above, is don't play fast and loose with your financial future.

If you are in a separation, and I've said this quite a few times while we've been recording these episodes, the aim is not to say, come to Taylor Walton, come to Olive, come to Tamara, go see Perican. But ultimately, you're talking about your future and the future of your children. And of course, there's the kitchen table.

And sometimes people do really sort stuff out around the kitchen table, although then you've got the risk of whether one or other party is being influenced unduly in those discussions. But fundamentally, get the right advice from the right lawyer and go through the processes you've discussed there, whether that's in court or out. But these rules and these processes are so complex that you need the right advice.

[Perican Tahir]

I agree. I think what we see certainly anecdotally is that people that have perhaps attempted around the kitchen table style negotiations and have fallen foul of one party exerting the undue pressure, or perhaps not being entirely frank. Because of course, what we can't also sanction against is that typically you find that certain marriages are based on one party controlling the finances rather than the other. And in those circumstances, it's whether or not the spouse has had no visibility, has had no control, is actually doing the right thing by sitting around the kitchen table and hopefully trying to preserve their relationship for the sake of then, not a proper and fair financial resolution.

[Nick Coffey]

Absolutely. I feel like we may have gone over time here, but I don't feel a single minute or second has been wasted. It's been really, really fascinating.

Perican, let me spell your name. That's P-E-R-I-C-A-N. Perican, we can find you at 1 King's Bench Walk, is that right?

[Perican Tahir]

That's correct.

[Nick Coffey]

The website is?

[Perican Tahir]

www.1kbw.co.uk

[Nick Coffey]

And your surname is spelled T-A-H-I-R. And Taylor Walton, of course, at taylorwalton.co.uk for the website. And Olive, your email address is?

[Olive McCarthy]

olive.mccarthy@taylorwalton.co.uk

[Nick Coffey]

You've both been brilliant. I feel like we should do this again. I feel like we've barely even scratched the surface. If you're enjoying these podcast episodes, do click on follow.

That way you'll be notified of all future episodes. For now, from me, Nick Coffey and Olive and Perican, it's goodbye.

[Perican Tahir]

Goodbye.

[Olive McCarthy]

Goodbye.

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