How influential is parental wealth on divorce?

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The future financial landscape for millennials is, to put it mildly, rocky. For the vast majority, house owning is out of reach and with that many fear the prospect of 'long term financial security'.

The Resolution Foundation, a think tank dedicated to improving families' standard of living, say there is good news on the horizon. A report produced by the Foundation in June last year found that £11 trillion of wealth is currently in the hands of the ageing baby boomer generation. Millennials are set to benefit hugely from inheritance.

The issue of inheritance was at the forefront of a recent family law case (Hayat Alireza v Hossam Radwan [2017] EWCA Civ1545). The husband had wealth of around £16 million – the majority of which had originated from his inheritance. Although the wife by contrast had little in the way of assets in her own name, the High Court Judge found that the wife’s future inheritance prospects from her wealthy father were so significant (and certain as a result of forced heirship rules in Saudi Arabia) that her financial needs arising from the marriage were accordingly limited. As a result the wife was granted only an entitlement to occupy a flat in London owned by the husband’s family until the children had grown up or she got remarried. Although she was awarded a capitalised maintenance fund for her assessed income needs and maintenance for the three children, she did not receive any property in her own name (nor any money with which to acquire a home of her own).

The Court of Appeal did not agree with this approach. Instead, the appeal Judges were clear that the wife’s future inheritance prospects did not diminish the financial claims she had flowing from the marriage. This meant that her husband had an obligation to provide sufficient funds to enable her to buy a home for her and the children outright. They observed that leaving the wife’s future in the hands of a series of men (her husband, and thereafter a future husband of her father) ‘sat uncomfortably with contemporary mores’ and significantly impacted upon her personal autonomy in contrast to her former husband who had already remarried and started a second family.

As a general trend, not just inheritance but also the wider issues of parental support and family money have become increasingly prevalent features in divorce disputes. We have seen from case law that in addition to parents, other third parties (such as siblings as well as trustees and beneficiaries) are more regularly being drawn into disputes in a bid to attack or protect assets depending which side of the fence they sit. Recent case law indicates that, for the time being, the family court continues to take a more robust approach to the availability of trust assets to meet needs (than to inheritance or parental largesse), especially if the beneficiary spouse has an ongoing expectation of benefit. Persuasive evidential factors include historical patterns of distribution and the likely future actions of the trustees. However, as inheritance becomes a more significant proportion of family wealth, the approach of the divorce court is likely to develop.

Against this backdrop, there is no surprise that the spectre of divorce is an increasingly relevant factor when it comes to inheritance planning. This is already a thorny enough issue for those fortunate enough to have wealth to pass onto the next generation; one predictable consequence of this development is the notable increase in the requirement by the senior generation and trustees for their offspring/beneficiaries to have pre-nuptial or post-nuptial agreements as part of their prudent estate planning.

Alternatively there is the less dynastically minded approach advocated by Sting who in 2014 famously announced that he did not intend to leave anything to his six children, as he was busy spending it all now, or Bill Gates who has said in the past that leaving his kids massive amounts of money would be of no favour to them. However for the vast majority of millennials, they are depending on older generational gratuity to help meet their long-term family housing requirement. Whilst case law confirms that the family court will respect the provenance of wealth when deciding whether particular assets should be shared between spouses on divorce, it is also clear that the court’s quest to achieve a fair outcome by ensuring that the financial needs of each spouse are met will trump any contention that non-marital (ie pre-acquired or inherited) wealth should be left out of account.