



both spousal maintenance and child maintenance. In the 2014 Judgment, I said that when the arrears of maintenance had been paid, B was to continue to pay the same amount of £X per month, the first element of which was then to be child maintenance in an amount calculated according to the CSA guidelines in England and Wales and the balance of the monthly sum was to be spousal maintenance.

4. I had intended that an Act of Court would be produced but unfortunately that never happened. If there had been an Act of Court, the terms of my judgment would have been further clarified and the present application might not have been necessary. More recently B, who was unrepresented in 2014 and has continued to be unrepresented, sought clarification of the terms of my order. He wanted to know whether the amount of the monthly payments should be varied following A's re-marriage.
5. B asked me to provide written clarification of the 2014 Judgment but I decided to hear from the parties in person. The matter came before me in the Matrimonial Interlocutory Court on 7 September 2017 when I ordered that B's request for clarification of the earlier order be deemed to be:
  - (a) an application by B to cease payment of spousal maintenance following the re-marriage of A; and
  - (b) an application by A for a review of the child maintenance payable to her.

Having regard to the circumstances in which it was necessary for the matter to come back before the Court, I ordered that there shall be no Court fees payable by either party. I gave directions for A to file a position statement, for the parties to exchange Statement of Means and for a hearing on Wednesday 1 November 2017. Unfortunately, A's second marriage broke down before the hearing but the question was still valid.

6. A applied for legal aid to enable Advocate Fooks to represent her. On 1 November 2017 Advocate Fooks advised that on the question of spousal maintenance, legal aid had been refused on merit. In relation to child maintenance, legal aid had been declined because of A's financial position. However, A's financial position had subsequently deteriorated in that her second husband had advised he would cease paying the rent on the property where A was living. Advocate Fooks therefore anticipated that a further application for legal aid to enable her to represent A on the child maintenance application would be granted as it was only a matter of time before A would be eligible for, and in receipt of, supplementary benefit. I was told there might be further proceedings issued against the second husband, the details of which proceedings were not explained to me and are not relevant.
7. In view of the complexity of the issues, Advocate Fooks was continuing to assist A in anticipation that legal aid would in due course be granted. Advocate Fooks was keen to ensure that no steps were taken that would prejudice any entitlement to supplementary benefit and had advised her client to ensure that all proper steps were taken to assess B's liability for payment of child maintenance and the quantum of such payment. Advocate Fooks had advised her client not to consent to the cessation of spousal maintenance but she did not make any legal submissions to seek to persuade me to order that spousal maintenance should continue. I had previously indicated that my preliminary view, subject to hearing submissions, was that spousal maintenance does not cease as a matter of law on re-marriage but there was a presumption that it would do so; the onus is on the party seeking its continuance to satisfy the court that, in the circumstances of a particular case, spousal maintenance should continue to be paid.
8. I decided that as the same issue has arisen previously but there are no reported judgments, it may be helpful to issue a judgment on this occasion even though I had not heard legal submissions from either of the parties. In preparing this judgment I am greatly assisted by a

skeleton argument that had been lodged by Advocate Sarah Wallis in a matter that came before the Court some 5 years ago.

9. The starting point is that the provisions for contributions for support following divorce or judicial separation are set out at Article 47 of the Matrimonial Causes Law (Guernsey) 1939 (“the 1939 Law”):

*“Where a decree for divorce, judicial separation, or nullity of marriage has been granted, the Court may, if it thinks fit, having regard to the circumstances of the case, including the financial position and conduct of the parties, order that the one party shall pay or make provision for the payment to the other party during any term not exceeding the life of such other party of such annual or other periodic sum of money for or towards the support of such other party as the Court may deem reasonable, and that the party against whom such order is made shall secure the payments to be made under such order in manner directed by the Court.”*

10. Article 19 of the 1939 Law provides for a divorced person to remarry as if the prior marriage had been dissolved by death but the Law is silent as to the effect of remarriage on the obligation to pay maintenance. Article 19(1) provides:

*(1) “When in proceedings for the dissolution of a marriage by divorce under this Law,*

*(a) a Final Order has been made therein under the provisions of Article 12 (entitled “Decrees and Final Orders”) of this Law;*

*...*

*either of the parties to the marriage may marry again as if the prior marriage had been dissolved by death.”*

11. Where Guernsey law is silent or uncertain we may look to English law for guidance in matters where our law closely follows the law of England and Wales. Modern English law does not assist because in that jurisdiction the statutory law has been amended. The Matrimonial Causes Act 1973, section 28(1), specifies that periodical payment orders and secured periodical payment orders shall not:

*“extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of, or formation of a civil partnership by, the party in whose favour the order is made”.*

12. That provision derived from section 7 of the Matrimonial Proceedings and Property Act 1970 which followed the publication by the Law Commission in 1967 of a working paper entitled *“Matrimonial and Related Proceedings: Financial Relief”*. The Law Commission had published its seminal report on the law of ancillary relief in 1969: *“Report No. 25: Family Law: Report on Financial Provision and Matrimonial Proceedings”*.

13. The 1967 Working Paper said that the remarriage of a payee’s spouse did not act so as to terminate periodical payment; it was merely a change in circumstance which might give rise to a variation. The Working Paper suggested the Law Commission should recommend that payments cease on the payee spouse’s remarriage.

14. In Paragraph 14 of its seminal Report, the Law Commission said it had thought that the recommendation made in the Working Paper would be considered controversial but it had been wrong as the suggestion met with *“almost unanimous support”*. In 1970, Parliament accepted the Law Commission’s recommendation that the law be changed.

15. The States of Deliberation has not been asked to consider the recommendation of the Law Commission or the resulting amendment to the law in England and Wales even though there have been a number of occasions since 1970 when the States has resolved to amend other aspects of the 1939 Law. Had the States acted, I am sure that the issue would have been put beyond doubt. As it is, I have to decide whether the law in Guernsey is as it was in England and Wales before 1970 and, if so, whether the Royal Court has the power to amend the Law in the absence of statutory intervention.
16. If the Royal Court had been asked in 1970 whether spousal maintenance ceases on the remarriage of the payee party, I am in no doubt that the Court would have followed the statement of English law set out in the Reports of the Law Commission.
17. That statement accorded with the Court of Appeal's decision in Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER 343 which was the leading authority at that time. That judgment illustrates the factors the courts had to consider when deciding whether to vary a maintenance order in such circumstances. The essential facts of that case were that both parties had re-married and, in the words of Asquith LJ:

*“The husband, by so doing, had assumed new financial burdens and responsibilities. The wife, on the other hand, by so doing, had secured a fresh legal right to be supported. Pro tanto the means of the husband had been “decreased” and those of the wife “increased” within s142 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, which required these factors, in particular, though not to the exclusion of others, to be taken into account when a question of varying a previous maintenance order arises.”*

18. In a concurring judgment Evershed LJ said:

*“It was forcibly and attractively argued by counsel for the wife that to compel the wife (in effect) to exchange her right to receive £400 a year gross plus her opportunity of earning an independent livelihood for the home which an impecunious doctor [her second husband, Dr Bellenden] was able to provide involved such a miscarriage of justice, and (viewed from another angle) that an order which required one of two men, equally wrongdoers (Dr Bellenden also having been divorced), to provide for two out of three of the women concerned was one which could not stand”.*

The learned judge went on to say that he expressed no view as to how he would have decided the matter at first instance. He added:

*“nor, on the other hand, do I attempt any evaluation of my own of the “pecuniary asset” which the wife has acquired in Dr Bellenden or of the pecuniary liability which the husband has undertaken by his second marriage.”*

19. Such judicial language might have been acceptable 70 years ago but no judges would express themselves in those terms today. I have cited the passages to illustrate the factors to be considered by a court if it were to seek to assess and quantify the responsibility of a former spouse to continue to maintain their divorced partner after he or she has remarried. Any attempt to draw comparisons between the respective means of a former spouse and a current spouse would likely be condemned in the 21<sup>st</sup> century.
20. Divorce is more prevalent now than 70 years ago and no longer would we refer to a divorcee as a “wrongdoer”. It is important that parties are able to move on after divorce, to form new relationships, to remarry and to make new lives for themselves. They must be free to do so in the knowledge that the former spouse has no on-going responsibility to provide maintenance except in the most exceptional of circumstances.

21. I am persuaded that when it came into force, the 1939 Law was to be interpreted in accordance with the English case law. I have considered whether, in the absence of any statutory intervention, the Royal Court could hold that the law has developed to the point that spousal maintenance ceases as a matter of law on the remarriage of the payee. In Morton v Paint 21.GLJ.61 the Court of Appeal cited the speech of Lord Lowry in C (a minor) v Director of Public Prosecutions [1996] 1 AC 1 HL(E) and offered “*some aids to navigation across an uncertainly chartered sea*” in the area of judicial law-making:
- “(1) *If the solution is doubtful, the judges should beware of imposing their own remedy.*
- (2) *Caution should prevail if Parliament has rejected opportunities of clearing up a known difficulty or has legislated, while leaving the difficulty untouched.*
- (3) *Disputed matters of social policy are less suitable areas for judicial intervention than purely legal problems.*
- (4) *Fundamental legal doctrines should not be lightly set aside.*
- (5) *Judges should not make a change unless they can achieve finality and certainty.”*
22. There is much in those aids to navigation to support the conclusion that the Royal Court can develop the law on the issue before me. The solution is not doubtful; the States have not been asked to legislate on this issue; it does not involve a fundamental legal principle; and the decision would achieve finality and certainty. However the general law of divorce is a matter of social policy. Whilst our Law of 1939 is in need of reform, judges should be slow to intervene in developing the law.
23. I am reluctant to say that in the absence of any statutory intervention the law has developed to the point where spousal maintenance ceases as a matter of law on the remarriage of the payee. I am however content to say that the modern attitude to divorce and the undesirability of drawing the comparisons between a former spouse and a current spouse described by the two Court of Appeal judges in Bellenden lead me to conclude that there must be a presumption that spousal maintenance ceases on the remarriage of the payee. The onus must fall on the payee to justify why the circumstances of his or her case are such that the presumption should be rebutted.
24. It is difficult to conceive of circumstances where the Court would order that periodical payments should continue. One example would be where the periodical payments are in substitution for a lump sum but, as Advocate Fooks pointed out, that should be apparent on the face of the order which should state the true nature of the payment.
25. Applying that legal test to the present case, nothing has been drawn to my attention to persuade me that B should be required to continue to make periodical payments of spousal maintenance to A. Of course, he will continue to be responsible for paying child maintenance but spousal maintenance must cease.
26. The quantum of child maintenance needs to be agreed. I directed the parties to agree a figure based on the CSA guidelines taking account of the husband’s current earnings adjusted by a factor to allow for the overnight contact the children have with him or if they cannot agree, they are to return to Court.

27. Regarding spousal maintenance orders, the application is a helpful reminder of why it is important to issue an Act of Court incorporating the terms of any judgment issued by the Court. Any Act of Court should include the following, as a minimum:
- 1) the amount of maintenance payable;
  - 2) the period in respect of which it is payable e.g. monthly, weekly or annually
  - 3) the date on which the first payment is to be made;
  - 4) whether payments are in advance or in arrears in respect of the period for which they are payable;
  - 5) if appropriate, the date when and the basis on which payments are to be varied e.g. on each anniversary in line with RPI increases to allow for annual inflation;
  - 6) the date when payments will cease and/or the circumstances in which payments will terminate.
28. If such an Act of Court had been prepared in respect of my judgment dated 9 January 2014, the parties might not have needed to make the present application.
29. I hope the parties have reached agreement on the amount of child maintenance to be paid. If not, either of them may contact the Greffe who will set a further hearing date on that issue alone.