

# Schedule 1 Children Act applications

Presenters: Mrs. Joanna Gillan, Dr. Charlotte Proudman

# What is Schedule 1?

- ▶ Schedule 1 to the Children Act 1989 was intended to make limited financial provision for the children of unmarried parents when they separated.
- ▶ Following the Child Support Act 1991, the CSA, (formally the CMS), has primary jurisdiction for assessing and enforcing child maintenance.
- ▶ The court has residual powers to make financial provision for the benefit of the child.

# Who is it for?

- ▶ As a result of the limitations introduced by the CMS, in practice, the main classes of applicant are often:
  - ▶ Former partners of the wealthy;
  - ▶ Former cohabittees seeking a home during a child's minority.
- ▶ This is simply because of the limited orders that the court can make under Schedule 1 (as opposed to the CMS who are primarily responsible for assessing and enforcing child maintenance).
- ▶ Case law: Most of the reported cases are in respect of high net worth parties, so making predictions in mid net worth cases is difficult.
- ▶ Mediation or ADR is an overwhelmingly good idea in these matters!

# Types of orders (a summary)

- ▶ The main types of orders that the court remains permitted to make for the benefit of children are as follows:
  - ▶ Housing;
  - ▶ Lump sum Orders;
  - ▶ Or, Periodical payments:
    - ▶ Top up orders where there is a maintenance calculation, the non-resident parent's income exceeds £156,000 gross each year if assessed under the gross income scheme or £104,000 net each year, and the court is satisfied it's appropriate.
- ▶ Where there is a disability.

# Other considerations

- ▶ See also, cases where the parties agree the terms of a child maintenance order where no calculation is in effect; and cases where the CMS have no jurisdiction due to a party's non-habitual residence within the UK.
- ▶ See also court's jurisdiction over step-children; children over 18 in education (not for housing); over 18s making their own application; Remember that the court has jurisdiction over a child over 18 years if the application was made during their minority (para 1 and 3 Schedule 1)
- ▶ See ***Dn b UD (Capital Provision) [2020] EWHC 627 (Fam)*** Williams J: A rare example of an outright capital award being made to benefit children beyond their minority as they needed financial and emotional protection, because of their vulnerability and potential dependence on F as adults. This constituted Special Circumstances (Para 3 Schedule 1)).

# Procedure for making an application

- ▶ Financial provision under Schedule 1 is a financial remedy as defined in rule 2.3 of the FPR, and the procedure for applying is governed by FPR 9.
- ▶ Form A1: for applications where the only remedy sought is for periodical payments under paragraph 1(2)(a) or (b), 2(2)(a) or 9 of Schedule 1;
- ▶ Form A: In all other cases;
- ▶ Form E1 or E2: to provide disclosure in Schedule 1 proceedings (E2 when for a variation of a PPO);
- ▶ Also consider the pre-action protocol PD9A and 3A for mediation information and assessment.
- ▶ (Post June 2018) Chapter 5 Fast track: only for periodical payments order or variation of the same.

# The considerations

- ▶ Many of the factors the court will consider are similar to the S25 checklist in matrimonial cases except that:
  - ▶ There is no specific provision to the welfare of the child being the first consideration, but it is a 'constant influence' (Re P [2003] - Thorpe LJ);
  - ▶ There is no reference to "standard of living" although in F v G [2004] EWHC 1948 (fam), Singer J reminds us that in an appropriate case, the standard of living might be the dominant feature;
  - ▶ Conduct will not generally be a consideration (A v A (1994) – M lied about children's parentage - not relevant.).

# The Orders: Housing

- ▶ The court has the power to make an order requiring a settlement or transfer of property to be made for the benefit of a child (paragraph 1(2)(d) and (e), Schedule 1). This includes the power to transfer a joint tenancy (K v K Minors: Property Transfer [1992] 2 FLR 220).
- ▶ Ward J observed that Schedule 1 gave an adult child the ability to apply only for a periodical payment order or a lump sum and not a settlement or transfer of property. He went on to say "That restriction serves to confirm that property adjustment orders should not ordinarily be made to provide benefits for the child after he has attained his independence" (see A v A [1994] 1 FLR 657, at page 661) (unless there are exceptional circumstances).
- ▶ More recently however, Williams J made outright capital provision for the benefit of the children of £650,000 each to purchase homes for them as adults (DN v UD (Sch 1 ChildrenAct: Capital Provision) [2020] EWHC 627 (Fam)). The children were aged 17 and 12 when the mother applied for periodical payments and lump sum orders. When the final hearing took place, the children were aged 19 and 14. Williams J took the view that provided an application is made before a child attains the age of 18, the court retains jurisdiction to make orders (paragraph 1(2)(a-e), Schedule 1) until the disposal of the application, even if such orders are made for the first time after the child attains the age of 18 (paragraph 42, DN v UD and paragraphs 1 and 3, Schedule 1).



# The Orders: Lump Sum

- ▶ An applicant can apply to the court at any time and on any number of occasions for a lump sum (paragraph 1(2)(c), Schedule 1). A lump sum order is not limited to, but can be made to pay liabilities or expenses:
  - ▶ Incurred in connection with the birth of the child.
  - ▶ Incurred maintaining the child.
  - ▶ Reasonably incurred before the making of the order.
    - ▶ (Paragraph 5(1), Schedule 1.)
- ▶ A lump sum order can be ordered to be made in instalments (paragraph 5(5), Schedule 1).
- ▶ **sum payment:** At the same time as ordering a lump sum payment, the court can make a charging order to secure payment of the same (section 1, Charging Orders Act 1979 (COA 1979)) and (Green v Adams [2017] EWFC 24).
- ▶ **Enforcement: charging order to secure a lump**

# The Orders: Periodical Payments

- ▶ **The court has jurisdiction where the CMS does not**
  - ▶ The CMS does not have jurisdiction in the following cases, so the court retains jurisdiction for:
    - ▶ **Stepchildren** provided that the parents were married ([paragraph 16\(2\), Schedule 1](#)) (though where this is the case, an application for a financial order rather than under [Schedule 1](#) would be more usual). There is no jurisdiction to make orders in favour of another person's child where the parties are not married ([Morgan v Hill \[2006\] EWCA Civ 1602](#), [of paragraph 38](#)).
    - ▶ Children over the age of 20 ([Child support \(Meaning of child and new calculations rules\) \(Consequential and miscellaneous amendment\) Regulations 2012 \(SI 2012/2785\)](#)) who remain in education or where other special circumstances apply ([section 35, CSA 1991](#)).
  - ▶ **Applications to the court permitted by the CSA 1991. The court has jurisdiction to make the following orders for periodical payments permitted by the CSA 1991:**
    - ▶ **Educational expenses** ([section 8\(7\), CSA 1991](#)). These include school fees and expenses directly related to education and training for a vocation, trade or profession.
    - ▶ **Costs attributable to a disability** ([section 8\(8\) and \(9\), CSA 1991](#)). The court should take a broad view of expenses associated with a **child's** disability, for example, taking into account additional help, running a car, respite care ([C v F \(Disabled Child: Maintenance Orders\) \[1998\] FLR 1](#)).
    - ▶ **Top-up orders.** These can be made provided that:
      - ▶ a maintenance calculation has been made;
      - ▶ the **non resident parent's** income exceeds £156,000 gross a year if assessed under the gross income scheme or £104,000 net a year if assessed under the net income scheme; and
      - ▶ the court is satisfied that in the circumstances of the case it is appropriate ([section 8\(6\), CSA 1991](#)).
  - ▶ **Periodical payments orders may begin from the date of the application** ([paragraph 3\(1\), Schedule 1](#)).
  - ▶ If a CMS **application** ceases to have effect and an **application** is made to the court within six months, the term of the order may commence on the date that the former calculation ceased ([paragraph 3\(7\), Schedule 1](#)).
  - ▶ The order must not, in the first instance, extend beyond a **child's** 17th birthday, unless the court thinks it right in the circumstances for the order to be made for a longer period.

# Interference with TOLATA

- ▶ Beware of the difference. TOLATA decides what share the property is held in, Schedule 1 may decide where those shares get sent (e.g. appropriate housing for the child during minority);
- ▶ *W v W* [2014] 2 FLR 321, 2 applications should be issued. TOLATA case will be the lead case? Single or split hearings?
- ▶ Conjoined not consolidated. CJ (Tolata Multi-track) or DJ. Courts with county and family jurisdictions. Bundles – PD27A or CPR PD 39A. Private or Open court.

# Costs

- ▶ **Interim lump sums for funding legal cost:** Where the court does not have jurisdiction to make periodical payments, the fact that any number of lump sum orders can be made at any time has been used to allow a party an interim lump sum to pay for legal costs. In [CF v KM \[2010\] EWHC 1754](#) ([Fam](#)) the court had no jurisdiction to make a periodical payments order so it made an order for a lump sum to cover the mother's legal costs.
- ▶ The general rule for Children Act 1989 applications that there is "no order as to **costs**" does not apply to **Schedule 1 proceedings**, so this means you could be ordered to pay the other party's **costs** in particular circumstances.

# Contact Details

- ▶ Any Questions?
- ▶ THANK YOU

**Name - Goldsmith Chambers**

**To instruct counsel, please contact:**

**Clerks: Alex Nunn and Scarlett Watkins**

**E-mail** [a.nunn@goldsmithchambers.com](mailto:a.nunn@goldsmithchambers.com) or  
[s.watkins@goldsmithchambers.com](mailto:s.watkins@goldsmithchambers.com)

**Tel: 0207 353 6802**

