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Lifestyle and “need”

How does the marital lifestyle of the parties frame “need” e.g. if the parties were financially cautious an accrued wealth due to frugality?

How does the marital lifestyle (of a father) frame the need of a child born to a third party woman?

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“Financial needs are relative. Standards of living vary. In assessing financial needs, a court will have regard to a person's age, health and accustomed standard of living. The court may also have regard to the available pool of resources.”

White v White [2001] 1 AC 596, Lord Nicholls at paragraph 36

Relationship between marital lifestyle and needs

1. Both factors are set out in s.25(2) MCA 1973. The Court must have particular regard, *inter alia* to:
 - a. The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (s.25(2)(b)); and
 - b. The standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c)).
2. Not forgetting of course the Court's **first** consideration, namely the welfare whilst a minor of any child of the family who has not attained the age of eighteen (s.25(1)).
3. As to the interplay between the various s.25(2) factors generally, see Lord Nicholls in White v White [2001] 1 AC 596 (at pages 608-9):

“Clearly, and this is well recognised, there is some overlap between the factors listed in section 25(2). In a particular case there may be other matters to be taken into account as well. But the end product of this assessment of financial needs should be seen, and treated by the court, for what it is: only one of the several factors to which the court is to have particular regard. This is so, whether the end product is labelled financial needs or reasonable requirements. In deciding what would be a fair outcome the court must also have regard to other factors such as the available resources and the parties' contributions. In following this approach the court will be doing no more than giving effect to the statutory scheme.”

4. However, rather than needs being but one of several factors to which the Court is to have particular regard, in the majority of cases, the issue of needs dominates all other factors. Or in other words, a consideration of the other s.25(2) factors is simply part and parcel of the Court’s assessment of needs.

5. As set out in the Family Justice Council’s ‘Guidance on “Financial Needs” on Divorce¹’ at paragraphs 9 and 10:

“[9]...When assessing “needs” courts will have regard, in particular, to the matters set out in section 25(2)...

[10] Each of these checklist factors might, in an appropriate case, have a bearing on the parties’ needs – their nature, their extent, their sources – and the resources that might be available to meet them....”

¹ Published in June 2016 - <https://www.judiciary.gov.uk/wp-content/uploads/2013/04/guidance-on-financial-needs-on-divorce-june-2016-2.pdf>

6. The elasticity of needs as a concept means there must be some starting point. In considering an appropriate standard of living post-divorce, it is natural and principled to have regard to how the parties lived during the course of the marriage.

7. Baroness Hale in Miller v Miller; McFarland v McFarlane [[2006] UK HL 24:

“In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living enjoyed during the marriage...”

8. In Z v A [2012] EWHC 1434 (Fam), Coleridge J held that, after a consideration of the available assets, when assessing the parties’ needs, the standard of living was the “*next most significant factor in the determination*”.

9. In S v S [2014] EWHC 4732 (Fam), Bodey J held that the wife’s award should enable her to:

“continue not in the same way as before the marriage broke down, but to have a standard of life which bears a proper relation to that to which she has been accustomed and to that of the husband.”

10. In Rapp v Sarre [2016] EWCA Civ 93, the wife’s budget was considered by the trial judge to be reasonable in light of the parties’

standard of living and the available assets. The Court of Appeal held that need is a flexible concept and the trial judge was entitled to take account of the parties high standard of living during the marriage.

11. Charles J in G v G (Short Marriage: Trust Assets) [2012] 2 FLR 48:

“...the lifestyle enjoyed during the marriage sets a level or benchmark that is relevant to the assessment of the independent lifestyles enjoyed by the parties”

12. Moylan J in BD v FD [2016] EWHC 594 (Fam):

“In my view, the starting point for the assessment of needs is the standard of living during the course of the marriage. This was the view expressed by the Law Commission in its 2014 report, Matrimonial Property, Needs and Agreements (Law Com. No 343) (para 2.34/2.35) in respect of “very wealthy cases”: “needs are still assessed primarily by reference to the marital standard of living”. This does not mean that it is either a ceiling or a floor but, as Mr Howard agreed during the course of his submissions, it provides a benchmark or starting point against which to assess needs.”

13. Mostyn J in SS v NS (Spousal Maintenance) [2015] 2 FLR 1124:

“The marital standard of living is relevant to the quantum of spousal maintenance, but is not decisive. That standard should be carefully weighed against the desired objective of eventual independence”

but

“it is a mistake to regard the marital standard of living as the lodestar.”

14. Whether “starting point”, “benchmark” or “lodestar” (or not) there is a direct link between the marital standard of living on the one hand and needs on the other.

Cases requiring a departure from the marital standard of living

15. There are a number of instances set out in the reported cases in which the Court have departed from the starting point or ‘benchmark’ of marital standard of living when assessing the parties needs.

(a) There is not enough to go around

16. It is axiomatic (but worth restating) that aligning need to the marital standard of living is often impossible in low value cases, when there is not enough to go around. Where the parties’ joint income just about ran the family home with not much left to go around, it is unlikely that both parties, upon divorce, can continue to run their lives as they did whilst married.

17. The Court cannot just consider the needs of the payee: the needs of **both** parties must be taken into account. Moor J in *A v L (Departure from Equality: Needs)* [2012] 1 FRL 985:

“I entirely accept that needs can justify a departure from equality but, if the court is to do so, it is necessary to consider the needs of both parties. I equally accept that disparity in earning capacity can justify departure, but again this has to be considered in the context of the needs of both parties not just the wife.”

(b) The parties have agreed otherwise

18. There is little doubt that the existence of a pre- or post-nuptial agreement will act as a limiting factor in the assessment of needs relative to the parties’ standard of living. If the purpose of a marital agreement is to ‘ringfence’ pre-acquired assets, or assets brought into the marriage by one party only (assets which are otherwise used to maintain the standard of living *during* the marriage), it is clear that the expectation is that the receiving party will no longer be able to rely on those assets to meet *future* income needs.
19. It was acknowledged in the judgments of all the ‘big’ pre-/post-nup cases that the awards made to the receiving spouses were substantially lower than that which they would have received in the absence of a marital agreement, and where the marital standard of living would otherwise have had a greater impact.
20. In *MacLeod v MacLeod* [2008] UKPC 64 and *Radmacher (formerly Granatino) v Granatino* [2010] UKSC 42, the receiving party’s needs as a *spouse* (both in terms of housing and income) were, to a large extent, deemed to have already been determined between the parties as a result of their pre- and post-marital agreements.

21. In *MacLeod*, to the extent the marital agreement did not provide sufficient resources for the wife to meet *all* of her needs (including the needs of the children when they were with her), the Privy Council elected to settle further provision on the wife, but only during the children’s dependency.
22. In *Luckwell v Limata* [2014] 2 FLR 168, the effect of the pre-marital agreement meant that the husband was unable to meet his needs *at all*, the judgment recording that whilst the wife and children were living in a marital home worth £6.7m and the wife having an income of c.£100,000pa, the husband was in a “*predicament of real need*”. Until he used some of his litigation loan to rent a property, he was effectively homeless, sleeping in any spare rooms at his mother’s hotel or on friends’ sofas. He had been made redundant, had very few qualifications, was working part-time for minimum wage and was in substantial debt (largely due to legal fees).
23. Whilst the Court adjusted the capital to ensure the husband’s *basic* need for a home when the children were with him were met, any residual capital retained by him following his ‘downsizing’ when the *children* were no longer minor children (55% of the property purchased to be purchased for £900,000) bears no resemblance to the marital standard of living or the standard of living that would continue to be enjoyed by the wife post-separation.
24. See also *H v H* [2016] EWFC B81 (His Honour Judge Booth) 4 March 2016, where a combination of a pre-marital agreement, a very short marriage and (in all likelihood) an element litigation conduct provided the wife with nothing at all.

(c) Short Marriage

25. No practitioner can forget the facts of *McCartney v Mills McCartney* [2008] 1 FLR 1508 in which, after a four year marriage, the wife’s budget at trial was stated to be £3.25m per annum, including just under £500,000pa on holidays and £185,000 to maintain a private helicopter. They were pruned by Bennett J to £600,000pa:

“[240] In my judgment, this will allow the wife to adapt to a standard of living that she could expect as a self-sufficient woman. In my judgment, after a short marriage to a very wealthy man it is unfair to expect that she should continue to live at the same ‘rate’ as during the marriage. Such an expectation is completely unrealistic...”

26. Charles J in *H v H* [2007] 2 FLR 548 at [96(ii)(e)]

“(e) the provision awarded should enable a gentle transition for the party who made the domestic contribution from the standard of living enjoyed during the marriage to the standard that she could expect as a self-sufficient woman (see Baroness Hale at paragraph 158, in the context of the Miller case) and in my view the length of the marriage and the role of an ex- wife as the primary caretaker of the children of the marriage would be factors to be taken into account in determining the amount of the provision to meet that transition.”

27. Coleridge J in *M v L* [2003] 2 FLR 425 at paragraph 42:

“Nowadays a young spouse at the end of a short marriage, and in the situation in which this wife found herself in 1973 (even with young children), would normally be expected to take proper steps to make him or herself financially independent to a significant extent within a reasonable time so that by the time the children were adult the requirement for support would have at least diminished if not wholly disappeared...”

28. Mostyn J in SS v NS (Spousal Maintenance) [2015] 2 FLR 1124 at paragraph 30

“...It is hard to see how a relationship has generated needs in the case of a short childless marriage, although that is not impossible.”

29. In contrast, Holman J in Murphy v Murphy [2014] EWHC 2263 at paragraph 35:

“What, frankly, the arguments by the husband overlook is that the having of children changes everything. Of course this wife could never have expected a “meal ticket for life” on the basis of six years of marriage and two years of cohabitation if there had been no children....But the fact of having children, and their obvious dependence in this particular case on their mother for their care, changes everything, as I have said. The economic impact on this wife is likely to endure not only until they leave school but, indeed, for the rest of her life.”

(d) The parties have lived frugally

30. In BD v FD [2016] 1 FLR 1186, the wife’s case was that, during the marriage, the husband had been mean and had unreasonably restricted the marital standard of living to a level below that which was appropriate bearing in mind the husband’s resources. It was an 11-year marriage with four children. The average household annual income was found to be approximately £250,000pa. The husband sought to capitalise PP at a rate of £150,000pa whereas the W sought £500,000pa.

31. Moylan J made it clear that, just because the husband could *afford* a better standard of living, this did not justify a greater award for the wife and he assessed her reasonable income needs at £175,000pa.

32. In K v L [2011] EWCA Civ 550 the modest standard of living led by the couple had a profound impact upon the husband's claims. Despite a 21-year marriage, the husband was awarded £5m out of total assets of approximately £59m. The principal assets were the wife's shares in a family business worth £57m. Those shares had grown passively during the marriage and had not been intermingled with matrimonial property. The couple had lived modestly: the family home was worth approximately £300,000 and their annual expenditure was in the region of £80,000. An award to the husband of £5m more than met his needs and was therefore held to include an element of sharing.

(e) Increase in post-separation income

33. In *B v B (Ancillary Relief: Post-Separation Income)* [2010] 2 FLR 1214 the marital standard of living had not adjusted to the increase in the husband’s income in the later years of the marriage.

34. As stated by Moylan J at paragraph 24:

“The parties have enjoyed, relative to the resources available to them in recent years, a comparatively modest lifestyle. They have clearly been prudent in their response to the arrival of wealth and in general terms have only gradually increased their living expenses.”

And at paragraph 12:

“The wife and the children have remained living at the former matrimonial home. In many respects the family’s standard of living has not reflected the change in the level of the husband’s income, save that they purchased this property in 2007.”

35. The wife presented a budget of £250,000pa. The husband’s budget for the wife was £95,000. Moylan J awarded the wife £120,000pa on a capitalised basis.

(f) Decrease in post-separation income

36. In *Fields v Fields* [2016] 1 FLR 1186, where it was anticipated that

the husband’s income would reduce in the future, it was accepted that the wife was entitled to some form of pension or stockpiling provision. The ‘stockpiled’ element was to be saved and ringfenced. This would ensure it was available for future needs and could be identified and taken into account if or when the husband's income dropped and he sought to reduce the level of periodical payments or discharge them altogether. The wife was awarded global periodical payments of £370,000pa, including £25,000pa per child index-linked and a stockpiling provision for of £100,000pa

37. In AB v FC [2016] EWHC 3285, the husband was a premiership footballer. It was accepted that the husband’s income (currently about £1m per annum net) would change at the end of his playing career.

38. It was also an extremely short marriage (19 months), but one in which the parties had enjoyed a very high standard of living. Roberts J at paragraph 7:

“Whilst it is not necessary to go into any great detail, I am satisfied that the standard of living which they enjoyed over the course of their marriage was high. That much is borne out by the fact that ... there is virtually no capital in the case despite the level at which H was earning. Both parties accept that they lived life to the full with virtually no constraints on their ability to indulge themselves in terms of discretionary spending on clothes, holidays and (if I may be forgiven for describing it as such) the paraphernalia which so often features in these lifestyle choices.”

39. Given the lack of capital, Roberts J took the view that it was not

unreasonable to allow the wife to stockpile a portion of the sums she received in order to divert those sums towards the discharge of a mortgage liability.

40. Notwithstanding the length of the marriage, W had many years of intensive child-rearing in front of her and she was entitled to find that contribution reflected in the award made for her.

41. The husband was to pay to the wife periodical payments at the rate of £164,000 per annum. In addition to child periodical payments of £36,000pa (index linked) the global amount paid to wife would be £200,000pa.

42. If the Court in *Fields* and *AB v FC* increased the level of PP to take into account a future reduction in the husband’s income, bear in mind the same factor can *reduce* the overall award if the Court is looking to capitalise.

43. In *N v N (Ancillary Relief)* [2010] 2 FLR 1093, the wife asserted that income needs were (a rather precise) £177,707.24, which she told Charles J had been carefully calculated. The husband accepted that this level of expenditure would be commensurate with their lifestyle in the later years of the marriage when his earnings were very high.

44. Charles J at paragraph 124:

“The wife's position is, therefore, that she should have a lump sum calculated on an amortised basis that will provide her with a standard of living that matches the standard enjoyed by the parties

during the years when the husband's earnings were at their height. She quantifies that at £4.35m, and she would pay her outstanding costs and indebtedness from that figure as well as consequential costs of the purchase of a home in London, leaving approximately £4m. This equates to a Duxbury sum for an income of £178,000 pa for a woman of 54. For an income of £163,000 she would need a Duxbury sum of about £3.6m.”

45. However, the judge’s view expressed at paragraph 126 was that:

“...it seems to me that a claim based on the proposition that it would be fair for the wife to receive a lump sum that on an amortised basis would enable her to lead a lifestyle equivalent to that enjoyed by the parties when the husband was a high earner irrespective of what:

- a. the husband may be earning in the future (before and after retirement);*
- b. the husband's capital position; and*
- c. the plans, and expectations of the parties concerning retirement were, is flawed.”*

46. The wife’s capitalised fund was therefore calculated on the basis that the wife would require between £110,000pa and £125,000pa and that she could downsize her home in future to assist with meeting those income needs.

(g) To allow for exceptional expenditure

47. Notwithstanding Mrs Mills McCartney’s pasting before Bennett J, he still permitted her to include within her annual budget £50,000 for charitable activities and donations. At paragraph 238:

“Whatever else may be said about the wife, her devotion to her charities is very impressive. Over many years, and in particular during the marriage, the wife was very generous in her charitable giving and did much work on behalf of her selected charities. She very much wants to continue along this path. The husband too, was, and continues to be, generous to charities. I do not think therefore that he can legitimately complain if the wife’ budget includes such a sum”

48. In S v S [2008] 2 FLR 113, both parties had an interest in horses, had kept horses during the marriage and the wife was a keen rider. At first instance, the district judge awarded the wife sufficient funds to enable her to maintain the marital lifestyle including the cost of keeping the horses. The husband appealed but Sir Mark Potter agreed with the district judge, as set out in the headnote:

“Whereas it would have been unreasonable to have awarded the wife sufficient means to enable her to keep up her life with horses if the parties’ means had been insufficient to permit the husband comfortably to accommodate such spending, so long as the husband’s income was well able to permit him to continue to finance an aspect of the wife’s life that had been integral to the marriage, such an award was not unfair. However, if the husband were to be made redundant or he retired, the horses would become an unjustifiable extravagance; the wife should plan accordingly”

49. In AR v AR (Treatment of Inherited Wealth) [2012] 2 FLR 1, Moylan J ‘uplifted’ the *Duxbury* fund to take into account of future, exceptional expenditure. At paragraph 73:

“Taking all the evidence into account, in my judgment, a reasonable annual income need for the wife is £115,000. This would meet her regular annual income needs, but does not encompass what I have described as discretionary expenditure, individual items not being included as part of her regular expenditure.”

This is illustrated in the quantum set out at paragraph 100:

“The wife's housing need as described above is in the sum of £1.1 million. A simple Duxbury sum for an annual income of £115,000 would be £2.5 million. To enable the wife to spend additional sums as described above and to give her an additional measure of financial security, I propose to increase the latter sum to £3.2 million.”

(h) Transition to independence

50. Roberts J at paragraph 77 of *AB v FC*:

“It has to be borne carefully in mind that there is an inter-relationship between the level at which future needs will be assessed and the period during which a court is likely to find those needs should be met by the paying former spouse. The longer the period, the more likely it is that the court will decline to assess those needs on the basis of a standard of living which replicates that enjoyed during the marriage.”

51. The Law Commission’s objective (endorsed by the FCJ’s Guidance published in June 2016) is a post-separation transition to independence. Echoing Baroness Hale in *Miller; McFarlane* at paragraph 144:

“...In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living.”

52. In *BD v FD*, Moylan J observed at paragraph 116:

“Usually, due to finite resources, it will not be possible for the marital standard of living to be maintained. Additionally, it may well not be fair for the applicant spouse to have his or her needs provided for at this level either at all or for longer than a defined period (i.e. not for life) due, for example, to the length of the marriage.”

53. In *G v G*, Charles J stated at paragraph 36:

“What I take from this guidance on the approach to the statutory task is that the objective of achieving a fair result (assessed by reference to the words of the statute and the rationales for their application identified by the House of Lords):

h) is not met by an approach that seeks to achieve a dependence for life (or until re- marriage) for the payee spouse to fund a lifestyle equivalent to that enjoyed during the marriage (or parity if that level is not affordable for two households), but

ii) is met by an approach that recognises that the aim is independence and self-sufficiency based on all the financial resources that are available to the parties. From that it follows that:

iii) generally, the marital partnership does not survive as a basis for the sharing of future resources (whether earned or unearned). But, and they are important but:

a) the lifestyle enjoyed during the marriage sets a level or benchmark that is relevant to the assessment of the level of the independent lifestyles to be enjoyed by the parties,

b) the length of the marriage is relevant to determining the period for which that level of lifestyle is to be enjoyed by the payee (so long as this is affordable by the payer), and so also, if there is to be a return to a lesser standard of living for the payee, the period over which that transition should take place,

c) if the marriage is short, this supports the conclusion that the award should be directed to providing a transition over an appropriate period for the payee spouse to either a lower long term standard of living than that enjoyed during the marriage, or to one that is not contributed to by the other spouse,

d) the marriage, and the choices made by the parties during it, may have generated needs or disadvantages in attaining and funding self-sufficient independence that (i) should be compensated, and (ii) make continuing dependence / provision fair,

e) the most common source of a continuing relationship generated need or disadvantage is the birth of children and their care,

f) a continuing relationship generated need is often reflected in a continuing contribution to the day to day care of the children of the relationship, that contribution being recognised by the continuing financial contribution of the paying spouse (which is a continuing contribution to the day to day care of the children),

g) the choices made by the parties as to the care of their children are an important factor in determining how that care should be provided and shared both by reference to day to day care and the funding of the independent households, and

h) the provisions of s. 25A must be taken into account.”

54. Quite apart from the argument that the marital partnership does not stay alive for the purpose of sharing future income, there are policy reasons for a the ‘statutory steer’ to a clean break. Per Baroness Hale at para 133 of Miller; McFarlane:

“Section 25A is a powerful encouragement towards securing the court’s objective by way of lump sum and capital adjustment (which now includes pension sharing) rather than by continuing periodical payments. This is good practical sense. Periodical payments are a continuing source of stress for both parties. They are also insecure. With the best will in the world, the paying party may fall on hard times and be unable to keep them up. Nor is the best will in the world always evident between formerly married people. It is also the logical consequence of the retreat from the principle of the life-long obligation. Independent finances and self-sufficiency are the aims. Nevertheless, section 25A does not tell us what the outcome of the exercise required by section 25 should be. It is mainly directed at how that outcome should be put into effect.”

55. The aspiration of transition to independence is not limited to the lower value cases. In Juffali v Juffali [2016] EWHC 1684, the wife asserted the marital standard of living was “stratospheric”. She sought global provision of £196.5m on the basis of a housing fund of £62.8m then a fund for capitalised maintenance of £127m. This

was based on income needs including £2.1m for travel, £1.02m for clothing (including £116,000 for handbags), £495,000 for cars and £225,500 for staff.

56. Roberts J assessed the wife’s expenditure needs at £2.5m per annum, to include £500,000pa for her clothing and other personal costs. There would be a gradual step down so that the wife’s expenditure requirements would halve at the age of 75 and be capitalised with a lump sum of £44.3m.

57. In her assessment of needs, Roberts J took into account the following principles set out at paragraph 79:

“(i) The first consideration in any assessment of needs must be the welfare of any minor child or children of the family.

“(ii) After that, the principal factors which are likely to impact on the court’s assessment of needs are: (i) the length of the marriage; (ii) the length of the period, following the end of the marriage, during which the applicant spouse will be making contributions to the welfare of the family; (iii) the standard of living during the marriage; (iv) the age of the applicant; and (v) the available resources as defined by section 25(2)(a).

“(iii) There is an inter-relationship between the level at which future needs will be assessed and the period during which a court finds those needs should be met by the paying former spouse. The longer that period, the more likely it is that a court will not assess those needs on the basis throughout of a standard of living which replicates that enjoyed during the currency of the marriage.

(iv) *In this context, it is entirely principled in terms of approach for the court to assess its award on the basis that needs, both in relation to housing and income, will reduce in future in an appropriate case.”*

and income, will reduce in future in an appropriate case.

58. Roberts J held there was no question of the wife having any realistic entitlement to an annual income which replicated the “stratospheric” (wife’s term) marital standard of living during the marriage. The judge concluded that there had to come a point at which the connection between the wife’s former marital standard of living and her future needs became sufficiently tenuous to contemplate breaking that link.

And finally...

The relevance of the father’s standard of living in a case brought under Schedule 1 Children Act 1989?

59. When considering *whether* to make an order under Schedule 1 at all and if so *in what manner* the court shall take into account “all the circumstances” - para 4(1) Sch 1. These shall include include:-

- a. The income, earning capacity, property and other financial resources a parent has or is likely to have in the foreseeable future - para 4(1)(a) Sch1;

- a. The financial needs, obligations and responsibilities a parent has or is likely to have in the foreseeable future - para 4(1)(b) Sch1;
- b. The financial needs of the child - para 4(1)(c) Sch1;
- c. The income, earning capacity (if any), property and other financial resources of the child - para 4(1)(d) Sch1;
- d. Any physical or mental disability of the child - para 4(1)(e) Sch1;
- e. The manner in which the child was being, or was expected to be, educated or trained - para 4(1)(f) Sch1.

60. Unlike s.25 MCA 1973, there is there is no statutory duty to consider the parties’ conduct, standard of living or the duration of their relationship.

61. However, where a father is wealthy, a long relationship *may* be relevant in that it has accustomed a child to a particular standard of living. : *N v D* [2008] 1 FLR 1629 at paragraph 23:

“It is correct that the length of relationship is not in itself significant under Sch 1 for two reasons: the child has his or her needs in any event (however long the parents were together) and also Sch 1 makes no reference to consideration of the length of the relationship. The length of the relationship, however, is relevant here, I believe, in relation to the way S has been brought up and has become accustomed to be cared for. She has always been independently educated and has had, to her parents’ credit, generally a comfortable lifestyle. This is linked too to standard of

living. The parties will not have the standard of living, now they have separated, that they would have had had they remained together.”

62. Singer J at paragraphs 34 and 35 of *F v G (Child: Financial Provision)* [2005] 1 FLR 261:

“[34] In some cases, but not this, the standard of living enjoyed by child (and mother) during lengthy pre-separation cohabitation lasting, say, into the child's early teens could, I suggest, promote the standard of living so long enjoyed by the child to the position of an important, if not the dominant, feature of the case. Here the duration of cohabitation lasted far less long, but during their relationship both before and after the birth of S the parents lived in a way where little expense was spared and generous indulgences were frequent.

[35] To the extent that this approach may run contrary to the factor isolated by Bodey J at para [76] of his judgment in Re P (Child: Financial Provision) [2003] EWCA Civ 837, [2003] 2 WLR 865, [2003] 2 FLR 865 (that 'considerations as to the length and nature of the parents' relationship and whether or not the child was planned are generally of little if any relevance, since the child's needs and dependency are the same regardless') I suggest that the justification may be that the extent to which the unit of primary carer and child have become accustomed to a particular level of lifestyle can impact legitimately on an evaluation of the child's needs, reasonably to be viewed against his or her history.”

63. These cases suggest that, in order to maintain a standard of living approximate to the wealthy father's, the child (or the mother) must demonstrate they became accustomed to that standard of living

over a lengthy relationship. However, a father’s wealth and the standard of living he continues to enjoy with a family can be considered in isolation as a relevant factor.

64. Hale J at page 160A of J v C (Child: Financial Provision) [1999] 1 FLR 152:

“I also agree with his Honour Judge Collins in H v P that the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living. Parents are responsible for their children throughout their dependency. The fact that such riches as they have come after the breakup of the relationship cannot affect that. This case is not the same as Phillips v Peace where the parents came from two very different backgrounds, or what in the olden days used to be called 'stations in life'. These two parents are reasonably equivalent.”

65. HHJ Barnett in H v C [2009] 2 FLR 1540 at paragraph 60:

“I have had the advantage of seeing and hearing the mother give evidence and I have been able to form a very clear view of her standards and those she wishes for the children. The last thing she would want is for the children to be spoilt by excessive wealth or to adopt 'glitzy' lifestyles. What, however, she does want for the them, and what for no good reason the children have not had and enjoyed in the past, is a standard and style of living that shows some reflection of and relationship to their father's wealth. In my judgment, that is a wholly reasonable aspiration.”

66. Illuminating guidance was provided by Macur LJ as to the approach in a case with an *extremely* wealthy father. See paragraph 21 of Re A (A Child: Financial Provision) [2015] 2 FLR 625

“The extent of the non-residential parent's wealth may still inform reasonableness of budgetary claims as well as ability to pay; that is, for example, the child of a wealthy man may well expect to be dressed in designer rather than high street store clothes. However, that is not to say that the court may dispense with any budget and sanction an award supportive of a lavish lifestyle devoid of context to the relevant child's circumstances as is argued on behalf of this appellant. The court is responsible for ensuring appropriate financial support for the child and must confine the aspect of the carer's allowance within the award to its legitimate purpose. The most casual analysis of a proposed budgetary allowance for a five-year-old child which includes membership of Annabel's nightclub reveals the exaggeration of the claim to compensate or benefit the previous partner in their own right and not as carer for the child”.

67. Notwithstanding the Court of Appeal's reluctance to accept the concept of a ceiling, there is however a natural and logical limit to a child's needs, as can be demonstrated by the judgment of Macur LJ above in Re A.

68. In the resumed case involving the same parents GN v MA [2015] EWHC 3939 (Fam), Bodey J confirmed that the child's needs would be capped at the previously ordered rate of £204,000pa (the mother wanted £780,000pa), despite describing the father's wealth in the following terms:-

“It is impossible to know the reality of his lifestyle, save to say that his family, the royal family, appears to rank pretty clearly among the super-rich and that as a senior member of that family he moves naturally within a world of opulence (the mother’s word) where there is effectively little if anything which he cannot have, or have the use of.”

69. However extreme the wealth of the father, in contrast to the matrimonial ‘stockpiling’ cases, the future needs of a carer beyond the child’s dependency plays no part in the calculation of a Schedule 1 award: Macur J in Re A above at paragraph 19:

“The literal or purposive interpretation of Sch 1 does not permit of the concept of sharing or compensation for the benefit of the child, nor, by the back door, financial provision and compensation for the carer beyond that element attributable to the care of the child during his minority, or other determined duration of dependency. There is no established authority to the contrary.”

Samantha Hillas

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