



Pushing the Court on Asset Splits

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How far can you push the court over standard splits in asset division such as 50:50 or 60:40, including factors such as children, short marriages, needs and contributions?

- S.25(1) MCA 1973
 - Court must have regard to all circumstances of the case.
- Robson v Robson [2010] EWCA Civ 1171
 - Not in hierarchical order or order of importance. Each factor must be given its due weight.
- White v White [2000] 2 FLR 981
 - Good reasons for a court to depart from an equal division of capital
- Miller; Macfarlane
- A v L [2012] 1 FLR 958
 - Can a departure on basis of earning capacity be justified if PP order in place?
- Sharp v Sharp [2017] EWCA Civ 408
 - “A fringe of cases may lie outside the equal sharing principle”

Common Scenarios



- Needs underpins all.
- Vast majority of cases that **significantly** depart from equality, needs have driven the % split.
- E.g. “Primary Carers”. Needs generated by decisions made in the marriage can be a rationale for adjusting parties' resources.
- Fairness does not mean financial equality.

Case Law

- **QW v GH [2025] EWFC 19 (B)**
 - 65.5:34.5 in favour of H
 - *No reason to depart from equality in dividing the core Equity that is a matrimonial resource....departure from equality of division of the global Equity was justifiable because of the Wife's responsibility for the delay."*
- **KD v SD [2024] EWFC 334 (B)**
 - 78:22 split in favour of H.
 - *"There needs to be a radical departure from equality in favour of the Husband. This is because the Husband has since November 2020 been the sole carer for the children. He is and will continue to be responsible for meeting their day-to day needs. The marriage is relatively short, and the husband has been the main contributor financially. I bear in mind however that the starting point is that the matrimonial home is an asset to be shared"*

Case Law

- **RM v WP [2024] EWFC 191 (B)**
 - 65:35 split in favour of H.
 - *“As a starting point in the division of capital after a long marriage it is useful to observe that fairness and equality usually ride hand in hand and that matrimonial property will usually be divided equally.....the court in its search for fairness, should reflect on all the section 25 factors, and in circumstances such as this, should not disregard the unmatched contributions of one party and also the length of the occupation of a particular property as a family home”*
- **NW v BH [2024] EWFC 118 (B)**
 - 76:24 in favour of W
 - *“An element of the departure from equality will be needs drive, and an element will reflect that I am going to provide for a clean break in circumstances where I can see things are going to be very tight for the wife”*
- **BI v EN [2024] EWFC 200 (Fam)**
 - 74:26 in favour of H
 - *“So, I must weigh the fairness to the Husband of the court upholding the contract which I find that this couple have understood and accepted through their long marriage, against the contributions of the wife over that same period, and whether these can properly be met by an aware which does not include any element of sharing”.*

Case Law

- **WW v XX [2024] EWFC 330 (B)**
 - 62:38 in favour of H
 - *“I have reduced the equality of the lump sum payment to reflect the difference between copper-bottomed and risk laden assets.....in view of the general unavailability of assets other than the company I consider this to be a reasonable departure from equality”.*
- **Mainwaring v Bailey [2024] EWHC 2296 (Fam)**
 - 65:35 split in favour of W
 - *“HHJ Furness KC.....looked at both parties’ needs, including their housing needs, fairly. He acknowledged that there was a discrepancy in relation to outcome for the parties and that was largely due to the costs the Appellant had incurred in contesting the civil claim. It had been the Appellant’s choice to contest that claim.”*

Practical Considerations – examples

Special Contribution

- Form E – be clear and keep options open
- Permission to file a statement?
- Early involvement of Counsel
- Manage expectations – DR v UG (H's efforts turning £310k into over £250m did not pass the test)

Needs Generally

- Form E – careful thought at outset and beyond
- Credible not ambitious
- Right and fair that relationship generated needs should be met by the other party if **resources permit**
- Capital v income
- Manage expectations

Any Questions?

jmw