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# **What is realistic and achievable in Schedule 1 applications?**

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# Sag mir wor die Blumen sind

1972 – 426,261 marriages 725,440 births (ONS)

2019 – 219,850 marriages 640,370 births (ONS)

2022 – 51% babies born to unmarried mothers (Manchester Uni.)

2021 - 3m single parent families (ONS)

2022 – 37,534 FR applications (MoJ)

2022 – 52,204 CA applicationsn (MoJ)



# Schedule 1 Orders

## Child Under 18

- (a) periodical payments;
- (b) secured periodical payments;
- (c) lump sum;
- (d) settlement of property or transfer of property

## Child over 18

- (a) periodical payments;
- (b) lump sum.



# Re Z (No.4) (Schedule 1 award) [2023] EWFC 25 - Facts

- Cobb J on 7<sup>th</sup> March 2023
- The parties had a relatively brief relationship in 2020. Daughter born October 2020. Since birth, Zoe lived with M in London while F lived in the USA. At the time of judgment F had not met Zoe.
- M did not work and had modest financial means. She accepted she had an earning capacity, but that this was limited due to her time out of work and caring responsibilities.



## Re Z - Facts

- Zoe suffers from Williams Syndrome, as a result of which she has a complex congenital heart defect and global developmental delay with speech, language and communication difficulties. She attends private nursery and is cared for by a nanny.
- During the proceedings, several interim maintenance awards and cost allowances had been made.



## Re Z - Facts

- F had actively participated in the proceedings until PTR
- Then wrote to M and the court to confirm he would no longer be participating in the proceedings. He failed to pay the final instalment on the mother's legal costs.



## Re Z - Issues

- the impact of the payer's standard of living on awards
- the concept of a household expenditure child support award (HECSA) to meet the expenses of the payee's household
- the impact of the Child Maintenance Service (CMS) formula in cases where the payer's income exceeds the statutory maximum, and
- when orders for periodical payments should be capitalised in Sched 1 cases



## Re Z - Decision

- While standard of living was not within the list of factors he was to have regard under the statute, adopted Moor J's decision in *HRH Hussein v HRH Maktoum* [2021] EWFC 94, and considered that the child's lifestyle in England should not be 'out of kilter' with that enjoyed by F
- Cobb J developed Moor J's decision in holding F's standard of living to be relevant, notwithstanding that the child had never met the father, and thus had never enjoyed the standard of living her parents had before they separated.



## Re Z - Decision

The judge adopted the concept of a HECSA as established by Mostyn J in *Collardeau-Fuchs v Fuchs* [2022] EWFC 135, [2022] All ER (D) 66 (Nov), a child maintenance award that meets the expenses of the mother's household, to the extent that she cannot cover or contribute to those expenses from her own means.



## Re Z - Decision

The judge considered that any award suggested by the CMS formula was irrelevant in Sched 1 cases where the payer's gross income exceeds the statutory maximum for the CMS calculation and applicant seeking HECSA



## Re Z - Decision

Cobb J rejected M application that the periodical payments ordered be automatically capitalised:

- F should be given the opportunity to comply with the order before automatic triggers were imposed in the event of default
- F had limited notice that the mother proposed capitalisation as part of her claim
- the periodical payments under the HECSA should not be capitalised unless necessary, given the possibility they would need to be reviewed/varied over time
- there had been no detailed thought given to how any capitalised sums would be administered, and at what cost, and
- F might wish to make representations about the method of calculation of a capitalised sum



## Re Z - Order

An order was made making provision as follows:

- a fund of £3.65m for housing plus a lump sum of £50,000 to pay for redecoration, £25,000 for further redecoration or adaptation of the property to meet the daughter's special needs and a £7,500 moving fund
- £92,402.91 pa (index-linked) for costs of a nanny until the child's ninth birthday, at which point ongoing need will be reviewed
- a HECSA at £148,250 pa (index-linked)
- nursery fees to include costs of one-to-one teaching support in school, if not provided for by the local authority



## Re Z - Order

- . £87,450.26 to clear the mother's debts
- . the cost of suitable health insurance cover for the mother and daughter in the UK and where appropriate in the USA and £5,000 pa for uninsured medical costs
- . the provision of business class flights and accommodations for the mother, a friend, a nanny and the child for visits to the US, and
- . security for the periodical payments by way of a charge/lien on the father's main home

# James v Seymour [2023] EWHC 844 (Fam)

- Mostyn J on 19<sup>th</sup> April 2023
- Final FR order in 2015
- 2 children of marriage aged 12 and 10
- Both parties had remarried
- M application to vary spousal and child maintenance. Decision Dec 2022.
- W appeal heard by Mostyn J



## J v S - Appeal Grounds

- the judge failed to follow the approach set down in leading authorities that the 'starting point' for a child maintenance calculation should be the figure given by the CMS formula up to incomes of £650,000
- the assessment of the quantum of child maintenance was too low and insufficient (or no) weight was placed on the inevitable disparity of lifestyle as a consequence
- the order as to costs was wrong



# J v S – Algo Claxon!

$$E = (G \times (1-Z)) - P - (S \div 0.55)$$



## J v S - Summary

- CMS formula provides useful guidance in incomes above threshold
- £650,000 suggested as upper limit in *CB v KB* [2019] EWFC 78
- Not applicable in HECSA cases
- *CMX v EJX (French Marriage Contract)* [2022] EWFC 136 Moor J critique discussed
- Guidance as to how to calculate Child Support Starting Point



## Sched 1 & Low to Medium Asset Cases

- *J v C [1999] 1 FLR 152, Hale J*  
*there is a further point of public policy that, where resources allow, the family obligation should be respected in such a way as to reduce, or even eliminate the need for children to be supported by public funds'*

# Low to Medium Assets – Child Welfare

*DE v AB (Financial Provision for Child)* [2012]  
2FLR 1396 Baron J

- F to pay £250,000 for the housing fund and a lump sum of £40,000
- F had to sell his house to raise money. F left with £68,000 less costs to meet his own housing needs by way of a deposit
- £250,000 would revert to the father on the child's majority, the child in question was only 2½ at the time of the appeal and so this would not happen for some 15½ years.

# Low to Medium Asset Cases

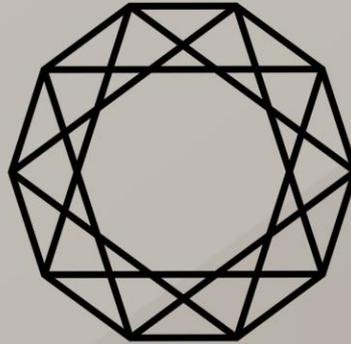
- establish the proper housing needs of the child and the primary carer;
- establish whether a further lump sum is required to refurbish the house, for costs of moving, with reference to a checklist of items required to make the house habitable;
- consider whether any further items of capital expenditure may be claimed;
- consider whether there are any capital costs which have been incurred in meeting the costs of child in birth or in maintaining the child, or which have been incurred before the making of an Order
- LSPO



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**Thank you for your attention.**

Questions?



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