



Schedule 1 Children Act 1989 applications; and
a focus on the recent judgment in *James v
Seymour* (2023) EWHC 844 (fam)

Scott Sharp

What is a
Schedule 1
claim?

* Financial provisions for a childs needs upon separation of unmarried parents;

- Educational expenses
- Costs attributable to disability
- Top up orders
- Periodical payments
- Property Orders
- Lump sum payment

Jurisdiction

* Child Support Act 1991: State has primary jurisdiction for maintenance via Child Maintenance Services (CMS)

* The CMS does not have jurisdiction where;

- one of the parties or the child are not habitually resident in the UK (§44, CSA 1991), so the court retains jurisdiction.

- Stepchildren provided that the parents were married.

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, at para 38).

- Children over the age of 20 who remain in education or where other special circumstances apply (§ 55, CSA 1991).

- In excess of the Statutory maximum being £156,000.00

The Court retain jurisdiction in the above scenario's.

Jurisdiction - Brexit

- * The UK left the EU on 31 January 2020
- * The transition period ended on 31 December 2020
- * For applications made under *Schedule 1* before the end of the Brexit transition period (11pm on 31 December 2020) jurisdiction is determined and continues to be governed by *Council Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations* (EU Maintenance Regulation)

Jurisdiction – Post-Brexit

* No bespoke family law arrangement was negotiated with the EU!!

* The UK has reverted to the relevant Hague Conventions where these cover (broadly) the same areas, or the existing domestic common law and statutory rules that currently apply in cross-border cases involving non-EU countries

* *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Hague Convention)*

This contains no general maintenance jurisdiction rules and no rules for assessing priority between competing jurisdictions.

Van den Boogaard v
Laumen (C-220/95)
EU:C:1997:91 (27 February
1997)

'It follows that a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Convention if its purpose is to ensure the former spouse's maintenance'

<https://www.bailii.org/eu/cases/EUECJ/1997/C22095.html>

Schedule 1 Applications: Jurisdiction

* For applications under paragraph 1 of Schedule 1, jurisdiction under paragraph 14 is based on the habitual residence or domicile in England and Wales of the following persons, on the date of the application:-

- a parent of the child;
- a guardian or Special guardian of the child;
- a person named in a child arrangements order as a person with whom the child is to live; or
- the child.

* For applications under paragraph 2 (over 18) of Schedule 1, jurisdiction under paragraph 14 is based on the habitual residence or domicile in England and Wales of the applicant or respondent parent on the date of the application.

Practical point

* Because of the limitations introduced by the CMS, in practice, the main classes of applicant under Schedule 1 are now:

- Former partners of the wealthy.
- Former co-habitees seeking a home during a child's minority.

Scope to make orders

The court's jurisdiction is based on the child being under 18 at the date of the application. Paragraph 1 of Schedule 1 is directed to the date of the application, not to the date of the order.

Once the court's jurisdiction has been invoked, the right to have the application determined has accrued

(UD v DN (Sch 1, Children Act 1989: Capital Provision) [2021] EWCA Civ 1947).

Scope to make order - continued

The court can also make orders under Schedule 1 when making, varying or discharging provisions in a CAO with respect to the living arrangements of a child, even if no application has been made to the court (*paragraph 1(6), Schedule 1*). This is also true in wardship proceedings (*paragraph 1(7), Schedule 1*).

Chapter 4 or
Chapter 5 (fast-
track)

* An application for a financial remedy under *Schedule 1* issued on or after 4 June 2018 must be dealt with under *FPR 9.12 to 9.17* (Chapter 4 standard procedure) unless:

- The remedy sought is only an order for periodical payments under paragraph 1(2)(a) or (b), 2(2)(a) or 9 of *Schedule 1*.
- The application is for variation of a periodical payments order.
- In these cases, a shortened procedure applies, in which there is no FDR under *FPR 9.18 to 9.23* (Chapter 5 fast-track procedure).

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

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

Re Z

1. 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

2 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.

3 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.

4 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

James v
Seymour [2023]
EWHC 844
(Fam)

1. CMS formula provides useful guidance in incomes above threshold
 2. £650,000 suggested as upper limit in *CB v KB* [2019] EWFC 78
 3. Not applicable in HECSA cases
 4. *CMX v EJX (French Marriage Contract)* [2022] EWFC 136
Moor J critique discussed
- * Guidance as to how to calculate Child Support Starting Point

James v Seymour [2023]

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

Exigible Income – (Gross income x (1- reducing factor)) –
pension payments – (School fees/extra currently paid ÷
0.55)

OR

<https://financialremediesjournal.com/content/james-v-seymour-the-calculator.51f895c001e34ca0b9f98c6530412c3b.htm>

James v Seymour [2023]

Mostyn also makes clear in his judgment that this is a 'starting place' and hopes it will be used by parties to settle the growing number of top up child maintenance cases. He also recognises that even this new, refined, formula, is not suitable for every situation and in particular says he does not expect it to apply where:

1. There are 4 or more children
2. The exigible income is over £650,000
3. The paying party income is largely unearned or
4. The paying party has no income and lives on capital.

Lower 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

Costs

The "no order as to costs" rule does not apply to *Schedule 1* applications and *Calderbank* offers may be made.

Be aware of the risks of costs, including appropriate timings of offers and adverse costs.

Questions?

Feel free to email me;
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