

Section 25 Part 1

Section 25: Matrimonial Causes Act 1973

Remarkably, the main Act of Parliament dealing with matrimonial finance on divorce is the Act of 1973. If you are trying to understand our divorce finance law this is the place to start.

I am going to provide a broad outline.

The most important section is section 25 of that Act. Judges refer to it at all final hearings. The section is entitled:

“Matters to which the court is to have regard in deciding how to exercise its powers...”

Here’s the main part of the section. Don’t read the whole thing now. Just skim through it. It is here for reference:

“It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters—

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.”

Let’s run through the factors in section 25 in turn and see the effect they can have in a typical case.

(1) Consider the first bit of the section. It is easy to overlook. It says the court is to have regard to “all the circumstances of the case”. That gives the court a pretty wide

discretion. A good example of something which the court might consider under this heading is an agreement which was reached between the parties as to how the finances were to be dealt with. Agreements are a topic which I am going to consider separately (Video: Agreements).

The next factor is that “first consideration” is to be given to any child of the family who has not reached the age of 18. Two points in relation to this:

- Firstly a court will be looking at how old the children actually are. If the children are 16 and 17 for example and living with their mother, the court may give some weight to that, when it is deciding how to divide up the assets. It will take into account however, that in theory they will soon according to the law be adults and responsible for themselves. On the other hand, if the children are 2 and 3 and are living with their mother, the children’s needs are likely to be of more weight in assessing how to divide the assets, because they will be dependent on their parents for much longer.
- A second point is that the court will take into account any child maintenance which is being paid by the “non-resident parent”. A common mistake people make is that they think that the family court can make an order for child maintenance. It is not surprising that people make this mistake because the Matrimonial Causes Act still includes the power to make an order for periodical payments for a child of the family. That power is however, very limited and generally speaking only applies where the non-resident parent is earning a very significant weekly wage. (See video: child maintenance).

(a) Income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future.

Income: this will include all income from employment, benefits and savings. There are often difficult income disputes where one of the parties is self-employed. A common example is where the Husband is a builder or tradesman. In such a case it is often said that the Husband is doing work for “cash in hand”. In other words the true income is not shown in his accounts and his income is higher.

Judges are used to dealing with this sort of dispute. Many judges will not go behind the tax returns which the Husband has provided to the revenue. On the other hand some judges will accept that there may be some flexibility in the Husband’s earnings.

It is important to take account of what the net incomes actually are. A bald statement that so and so earns gross £50,000 a year is not helpful. You need to look at what they receive after tax. Account also needs to be taken of the fact that paying child maintenance will reduce the net income of a non-resident parent.