

Section 25 of the Matrimonial Causes Act 1973

Section 25 of the Matrimonial Causes Act 1973 is arguably the most important section of legislation to practising family lawyers. It is the hook upon which we hang every single ancillary relief case – from those where the available assets do not meet each party's needs to the multimillionaire cases. It comprises the court's biggest guide to how to divide a family's money.

Judges hearing family law cases tend to be experts in their field and are used to assessing the different limbs of section 25 and applying the principles to the case at hand. When cases are reported, and the way the judges have applied the section can be analysed, it gives family lawyers the ammunition to let you know how the courts are treating the section in the context of cases like yours.

The section reads as follows.

25. Matters to which court is to have regard in deciding how to exercise its powers under sections 23, 24 and 24A.
 - (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 or 24A above and, if so, in what manner, to have regard to all 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 or 24A 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 your 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 of 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.
 - (3) As regards the exercise of the powers of the court under section 23 (1) (d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters:
 - (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

- (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b) (c) and (e) of subsection (2) above.
- (4) As regards the exercise of the powers of the court under section 23(1) (d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard:
 - (a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that the party assumed such responsibility and to the length of time for which that party discharged such responsibility;
 - (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
 - (c) to the liability of any other person to maintain the child.

In the majority of cases, it is the needs of the parties that takes precedence – particularly, the needs of the party with whom the children are to have their primary home, on the basis that the court's first consideration is the children. As the level of assets increases, the other factors come into play more heavily.

The section provides that conduct can be taken into account by the court. However, case law has established that conduct is relevant to a division of assets only if it is "gross and obvious". This has been interpreted very narrowly. Perhaps severe financial misconduct or violence affecting needs or earning capacity is relevant here, but cases where conduct will be taken into account are very rare. The fact that you, or your husband or wife had an affair or behaved badly in the marriage will have no bearing on the financial outcome of the divorce.