

In Kars v Brown and others

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In Kars v Brown and others [2026] EWHC 31 (Fam), the High Court (Family Division) held that the laws of intestacy failed to make reasonable financial provision for a former spouse where matrimonial finance proceedings had abated on death and ordered substantive capital provision under the Inheritance (Provision for Family and Dependants) Act 1975 ('1975 Act').

The decision confirms that, even following decree absolute, a former spouse may succeed under the 1975 Act where 'nothing' on intestacy is unreasonable in the circumstances, and that the Family Division may determine disputed beneficial interests in real property where necessary to identify the net estate.

3PB's analysis

The applicant and the deceased had been married for 18 years. The decree absolute was pronounced in 2019 before the financial remedy proceedings had been issued. Those proceedings were eventually commenced in February 2020. A FDR was listed but proved ineffective due to the deceased's continuing failure to provide the necessary disclosure which resulted in a costs order being made against him. Before the adjourned FDR could be heard, Mr Lamb died intestate, leaving the applicant without any financial provision.

The applicant brought a claim under the 1975 Act as a former spouse. Ms Kars was unable to benefit from the time-limited enhanced maintenance standard as prescribed by section 14 of the IA 1975 Act. Indeed, it was ironic that it was Ms Kars, through instructed solicitors, that applied for the decree absolute before financial proceedings had been issued.

The central issue was whether the intestacy rules provided reasonable financial provision for the applicant, assessed through the fact sensitive exercise required by section 3 1975 Act. The Family Division had little difficulty concluding that they did not.

A significant part of the dispute concerned the beneficial ownership of 47 Princes Street, the most valuable asset said to form part of the net estate, and which was already the subject of separate possession proceedings by Ms Kars in the County Court at Southend, in which it was counterclaimed that the estate held the entire beneficial interest. Both the applicant and the administrator of the estate asserted full beneficial ownership of 47 Princes Street.

Counsel for the first and second respondents argued that the High Court could not resolve the beneficial interest issue within the 1975 Act proceedings. The High Court rejected that argument and went further, holding that it was both permissible and necessary for the Family Division to determine beneficial ownership as part of identifying the net estate for 1975 Act purposes.

Mr Uddin further contended that it was an abuse of process for the applicant to maintain that the beneficial ownership of 47 Princes Street fell to be determined within the High Court 1975 Act proceedings. However, Mrs Justice Lieven had already rejected that very abuse of process argument in March 2025. In those circumstances, the attempt by Mr Uddin to revive or re-characterise the same point was, ironically, the only step which risked engaging abuse of process concerns, at least in the author's view.

Two features of the judgment are of particular interest. First, the High Court rejected any suggestion that decree absolute, or a substantial period of post-separation living apart, was determinative. The marriage had been long. The financial relationship between the parties had not been conclusively unwound. The absence of a final order meant that the applicant's claims arising out of the marriage had never been resolved. The section 3 analysis therefore remained anchored in substance rather than status, with the Family Division focusing on needs, resources, and obligations rather than formal labels.

Secondly, the history of the matrimonial finance proceedings is relevant to section 3(1)(d). Disclosure failings during those proceedings informed the assessment of the deceased's obligations and responsibilities. Where matrimonial finance has abated on death, the court is not required to ignore what went before. On the contrary, the way financial matters were left unresolved, including any failures properly to disclose assets, may form part of the factual matrix against which reasonable provision is judged.

Allegations of hidden assets and failures of disclosure are regrettably not uncommon in matrimonial finance proceedings. Such allegations arose in the financial remedy proceedings between Mr Lamb and Ms Kars. The deceased asserted that Ms Kars held assets in the Republic of Türkiye, whilst she in turn alleged that he had concealed various

assets. During cross-examination, the deceased's own disclosure deficiencies became apparent. A particularly striking moment occurred when the administrator, Mr Brown, confirmed that he had sold a unique Humber Super Snipe which Mr Lamb had failed to disclose in his Form E and had asserted in his replies to questionnaire that he no longer owned.

Ms Naomi Davey determined that the estate owned a 50% beneficial interest in 47 Princes Street the value of which was approximately £120,000 she then ordered that interest was transferred to the applicant thereby making capital provision. This secured the applicant's greatest need which was housing.

It is also notable what the respondents did not argue. No case was advanced that the applicant's housing need should be met by way of a life interest or right to occupy rather than outright capital transfer. That was a surprising omission. Had a life interest solution been squarely put forward by the respondents, the outcome might have looked very different. Instead, the Family Division concluded that outright transfer was the appropriate mechanism to secure housing.

This in turn raises an interesting comparative point. On one view, the applicant obtained more under the 1975 Act than she might have done on a divorce fiction analysis. However, that comparison is necessarily artificial. Had the FDR taken place as planned, or had the matrimonial proceedings concluded before death, it is highly likely that further assets would have been drawn into the matrimonial pot. By the time of the final hearing, those assets had long since disappeared. In any event, if she was the surviving spouse or was able to make use of section 14 she would have not been restricted to the maintenance standard.

Impact of the decision

For practitioners, the decision carries several practical lessons. First, where matrimonial finance abates on death without a final order, a former spouse should not be written off. An IA 1975 claim may still succeed on maintenance, and 'nothing' on intestacy may plainly be unreasonable, particularly following a long marriage.

Secondly, the length of time the parties have been physically separated is not a trump card. Section 3 remains a holistic and fact-sensitive exercise. Long separation does not automatically neutralise the financial consequences of a long marriage.

Thirdly, the conduct and history of matrimonial finance proceedings matter. Disclosure failings in matrimonial proceedings and unresolved obligations can feed directly into the section 3(1)(d) analysis.

Fourthly, the Family Division's jurisdiction should not be underestimated. Where necessary to identify the net estate, the High Court can determine disputed beneficial interests in property, even where related proceedings exist elsewhere. Bringing a 1975 Act claim in those circumstances is not, without more, an abuse of process.

Finally, the case illustrates the importance of stepping back from entrenched positions and advancing sensible alternative arguments. The first and second respondents largely adopted and continued the adversarial stance their father had taken during the matrimonial finance proceedings, rather than reassessing matters objectively in the context of the 1975 Act claim. They failed to advance any realistic alternative case to their primary position of outright denial.

Had they offered, or at least argued for, a life interest in the remaining 50% beneficial interest in 47 Princes Street, the outcome may well have been materially different. Instead, the litigation appeared to be driven by the residue of matrimonial bitterness, a course which ultimately proved counterproductive to their own interests including that of the other beneficiaries under the rules of intestacy.

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