

Intervenors in Family Finance

By [Amy Beddis](#), 3PB Barristers and [Lucia Mills](#), Legal Director, [Birketts](#)

Amy Beddis and Lucia Mills focus on the issues of third-party intervention within financial remedy proceedings - with a practical focus on loans. This often raises its head when there has been financial support from parents or grandparents when couples are starting out, or indeed where families have been gifted or loaned money to complete renovation works, help out with mortgage repayments.

Intervenors

Amy is joint head of the family finance team and is often instructed in cases involving intervenors, she also lectures on the subject. Lucia Mills is a Legal Director in the Property Disputes team at Birketts LLP specialising in applications under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), Lucia's work focuses on resolving trusts of land disputes, cohabitation disputes and representing third parties within financial remedy proceedings.

Loan or gift?

Q: My client has advised me that he gave money to his daughter and her husband to buy their first home. They were asked to sign a Deed of Gift but it was always understood that this would be repaid once they were more financially stable. Is there anything he can do?

A: It is common in this situation for a lender to require the paying parent to sign a Deed of Gift where there is a mortgage. Often parties consider it harmless and just part of the process however this signed document can be relied upon by that adult child and their spouse. Furthermore, there is a presumption of advancement which applies to a parent and child. This presumption is not absolute and can be rebutted however the onus will be on the parent to set out clear evidence that this was a loan, not a gift. This evidence could include details of any plan to repay the sum, or even evidence of repayments already made. Witness evidence is helpful from other family members who were present during these discussions. Have the parents done this with another child and the monies were repaid? Is there a precedent for this kind of behaviour?

It is also important to closely examine the financial circumstances of the paying parent. Was this "gift/loan" a significant amount of money and disproportionate to their resources?

Even if you are able to establish the money was a loan rather than a gift, you will need to consider whether it was a “hard or soft loan”. This distinction will have an impact on the remedy you might achieve at court as the judge will have to determine how the capital should be factored into the settlement in the fairest way possible, reflective of the parties’ true financial circumstances and intentions.

The case *P v Q (Financial Remedies)* [2022] EWFC B9 gives such much needed guidance on this distinction. A classic sign to be aware of with “soft loans” is that there is little expectation that it will be repaid in the near future. This will often present itself in cases where your client is unable to give you precise details as to length of term and repayment amounts. Furthermore, there is no written documentation of those terms. This is in contrast to a traditional “hard loan” where there are strict parameters and an expectation that it will be repaid in the immediate future. Traditionally you would see a “hard loan” as a mortgage from a bank or a credit card scheme however in some family situations some written measures will be put in place which will reinforce your client’s case that this “loan” should be repaid to your client and factored into the matrimonial case.

You will also need to examine with your client what steps they have taken to call in the debt. If your client is willing to take formal action to enforce their position, this will assist them in trying to persuade the court to view the monies as a “hard loan”.

If you will need to give your client realistic advice as to their prospects if all the evidence suggests that there were no real terms as to repayment, no documentation to support the loan and if they will not realistically take formal action to enforce the loan.

Top tips for Solicitors

- Take a full background of events from your client at the beginning to include any discussions had between the parties prior to money being given and thereafter.
- Consider witness statements from family members who were privy to the agreement.
- Obtain documentary evidence of financial contributions, agreements or any works carried out this could be bank statements, loan agreements, invoices and potentially the conveyancing file.
- Consider registering a restriction against the title to protect your client’s interest.
- Consider civil mediation as an effective way of settling your client’s claim.

Top tips for court

- Procedure- think about this issue prior to the FDA;
- Consider the directions you need- is this a case for a separate hearing or would an FDR be a more cost-effective first approach (noting that the usual procedure is for a separate hearing);
- Consider all forms of NCDR- early neutral evaluation on the papers (getting advice from independent counsel); pFDR or arbitration;
- Evidence- what have you got, what is missing?
- Is the third-party a witness or do they need to be joined?
- Are they asserting an interest or simply repayment?
- Costs- cases with intervenors mean that costs are a live issue, the usual starting point does not apply in these cases- undertake a full costs/benefit analysis and get advice at an early stage- get your counsel on board early;

October 2025

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