DISCUSSION NOTE ON INTERVENORS

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Intervenor Cases

- Increasing numbers of families pursue multi-generational living, often involving parents financing or building an annex at their adult child's matrimonial home
- Situations where contributions are undocumented, leading to disputes about whether money was a gift, a loan, or an investment creating a beneficial interest
- People often have to rely on financial support from family members in order to get on the housing ladder, what happens when there is a dispute about whether this is a gift or a loan, or a beneficial interest?
- When the adult child later divorces, disputes frequently arise over whether the parent has a beneficial or equitable interest in the property, requiring them to be joined as an intervenor in the financial remedy proceedings.
- These cases blend family law with property and trust law principles under TOLATA 1996.

Case study - money is lent

Tracey and Jon started renting a house together in 2020, they were struggling to get on the housing market. On their wedding day on 15 May 2020, Jon's mother said she would help them to purchase a property and after the wedding they purchased their first home in February 2021. They used £25,000 that was provided by Jon's mother and step-father in order to purchase the family home. The family home was purchased as joint tenants which was recorded on the TR1. In 2022, Tracey had an affair and left Jon

Jon issues divorce proceedings. On his form E he stipulates that his mother and step-father need to be repaid the £25,000 plus interest before the net proceeds of sale are divided. Tracey says this is a nonsense, the £25,000 was a wedding gift to both parties and the money is not due to be returned. Jon's family feel very strongly about this and want their

money back they seek to intervene in proceedings- saying this money was a loan and they want it back.

Questions:

Do Jon's mother and step-father have a beneficial interest in the family home?

On the information that we have, they would struggle to assert an interest. There is no evidence that there was an intention to create a beneficial interest. The evidence is that this was a gift. Jon could argue that this was a contribution from his side of the family in any event, but if this is a needs case that is unlikely to hold much weight and Tracey would argue it was a wedding gift to them both.

If Jon's mother and step-father had a deed drawn up, which had been witnessed and executed by all parties stating that the intention was they would have, for example, a 10% interest in the property this would of course be different, as they would be able to evidence that the intention was they would have an interest in the family home. Although the property being purchased as joint tenants would be a presumption they would need to rebut with this evidence and the burden would be on them to prove it – they would have stronger evidence to do so. Further, there is no evidence of this case about repayment or indeed how much interest they say was intended to be paid.

Jon's step-father says he never agreed to "gift" any money, and as the money came from a joint account he is adamant this money was a loan. How would the court deal with this issue?

This would be a matter of evidence from all parties as to whether there was a loan agreement in place. The case is weakened by Peter's mother stating that she would gift the money at the wedding, his step-father may say that he was not party to this discussion. It would come down to the parties' evidence ultimately but further the court would need to consider, if indeed it were a loan whether it was a hard or soft loan and consider the principles considered below.

Do Jon's mother and step-father need to be joined to proceedings?

If there is no evidence of any beneficial interest, it is likely that the court could deal with this issue with Peter's mother and step-father as witnesses. They could provide statements and give oral evidence. If the court wanted to ensure their monies were repaid directly to them, then they could be joined for the purposes of the final order, if the court felt that was necessary.

What's the likely outcome in this case?

Given the information provided, it is likely that the court would find this was a gift. At best, if it were to be considered a soft loan it is unlikely that the court would include it within the asset schedule.

Case Law:

P v Q [2022] EWFC B9
HHJ Hess

Brief background:

In 2007 H's mother advanced £150,000 to each of her children following the sale of her business. There was no discussion about repayments. In June 2020 the husband paid his mother back the sum of £150,000. The wife objected to the removal of £150,000 from the asset schedule. In the same case, the wife (prior to the marriage) had received 30,000 euros from her father. A document had been provided by the father dealing with the arrangement in fairly loose terms with no repayment date and save for if an urgent demand was made she could pay it back at her discretion. No repayment was made and no demand was made either.

HHJ Hess considered both transactions and provided helpful guidance in respect of the same as follows:

Summary of principles:

(a) Once a judge has decided that a contractually binding obligation by a party to the marriage towards a third party exists, the court may consider whether the obligation is in the category of a hard obligation or loan, in which case it should appear on the judges' computation table. Or it is in the category of a soft obligation or loan, in which case the judge may decide as an exercise of discretion to leave it out of the computation table.

(b) There is no hard or fast test as to when an obligation or loan will fall into one category or another, and the cases reveal a wide variety of circumstances, which cause a particular obligation or loan to fall on one side or other of the line.

(c) A common feature of these cases is that the analysis targets whether it is likely in reality that the obligation will be enforced.

(d) Features which have fallen for relevant consideration (but are not intended to be an exhaustive list)

(e) For hard obligations:

- the fact that it is an obligation to a finance company;
- that the terms of the obligation have the feel of a normal commercial arrangement;
- that the obligation arises out of a written agreement;
- that there is a written demand for payment, a threat of litigation or actual litigation or actual or consequent intervention in the financial remedies proceedings;
- that there has not been a delay in enforcing the obligation; and
- that the amount of money is such that it would be less likely for a creditor to be likely to waive the obligation either wholly or partly.

(f) For soft obligations:

- an obligation to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship;
- the obligation arose informally and the terms of the obligation does not have the feel of a normal commercial arrangement;
- there has been no written demand for payment despite the due date having passed;
- there has been a delay in enforcing the obligation; or
- the amount of money is such that it would be more likely for the creditor to be likely to waive the obligation either wholly or partly, albeit that the amount of money involved is not necessarily decisive, and there are examples of large amounts of money being treated as being soft obligations.

(g) It is for the judge to determine looking at all of these factors, what is the appropriate determination in the promotion of a fair outcome.

HHJ Hess determined that the wife's "loan' would be removed from the schedule and the £150,000 paid to H's mother would be added back to the schedule in order to achieve

fairness between the parties. He found that husband's primary focus to repay was motivated by the divorce and not wanting wife to share half of it.

AB v CD & Ors [2025] EWFC 958

Background: this case involved four parties, (1) AB the wife, (2) CD the husband and (3) EF (husband's mother) and (4) GH, husband's brother. This judgment also deals with the issue of shares which is outside the scope of today's discussion but also dealt with the issue of a loan in respect of the family business.

The husband was a registered owner of Blacksmith Caravan Park and the adjoining family home at Blacksmith House. In January 2006 a loan agreement was allegedly entered into between husband and his mother for £251,142 to assist with this purchase. The wife said there was no loan or it had since been waived, the husband's initial case was the alleged loan was statute barred but changed position on the morning of the trial and supported his mother's position. The mother's position was that the loan must be repaid.

HHJ Williams was not satisfied with any of the parties' evidence. He found the husband and his mother were also at times dishonest. The judge focused on the need for contemporaneous evidence and documentation. He found that the sum of £251,142 was paid to the husband due to accounting documents from the time.

However, the loan agreement was not legally enforceable for the following reasons:

a. The 2008 Letter states that the sum of £251,142 comprised several amounts from WINNIPEG, The X-6 and X-5. There is no breakdown of who paid what.

b. It is not disputed that at the time of the Alleged Loan -

i. WINNIPEG was owned equally by EF-H, EF and GH;

ii. The X-6 was owned solely by GH; and

iii. GH was a one third partner in X-5.

c. Unsurprisingly having regard to the time that has now elapsed, EF was unable in her oral evidence to say how much of the Alleged Loan was owed to GH.

d. EF has failed to establish what, if any, amount of the Alleged Loan was paid by and therefore, owed to her and/or EF-H personally.

124. Even if I am wrong about that, and EF was able to establish that the Alleged Loan is owed to her/EF-H personally, I find for the following reasons that it is very much a soft loan, which AN will not be required to repay at the conclusion of the financial remedy proceedings for the following primary reasons:

a. CD failed to mention the Alleged Loan as a liability in his Form E.

b. In his oral evidence, CD said for the first time that he had received text messages from EF asking when the Alleged Loan would be repaid. Any such texts messages were plainly relevant and ought to have been disclosed, but they were not. I draw an adverse inference that CD failed to disclose these alleged text messages because he did not receive them, and EF did not before the commencement of these proceedings ever seek repayment of the Alleged Loan.

c. CD claimed in his oral evidence that he was struggling financially to repay the Alleged Loan. He also claimed that his parents knew that he was struggling financially, although that is of course entirely inconsistent with his claim that EF was pressing him for repayment via text messages. In any event –

i. In his Form E, CD stated that *"[AB] has demanded large sums of money from me which has significantly depleted the savings I had. I believe that this can be seen from the bank statements that have been provided."*

ii. In his oral evidence, CD did not seriously dispute that he had the sum of £156,000 in his Barclays Bank account at the commencement of the financial Page **44** of **46**d. e. remedy proceedings.

iii. In his oral evidence, CD did not seriously dispute that at the commencement of the financial remedy proceedings he owned a Range Rover valued at £90,000.

iv. In his oral evidence, CD accepted that his updating financial disclosure showed that he had transferred the total sum of £60,940 from his bank accounts to JY. He denied that JY was his new partner, but rather a friend, who was looking after the BLACKSMITH Caravan Park for him.

v. It is clear that, since the time of the Alleged Loan, CD has been able to generate a very significant income from which he has chosen to pay for expensive family holidays, luxury motor vehicles, accrue substantial savings,

and make large payments to a friend, rather than making any repayments towards the Alleged Loan.

EF's failure to demand repayment of the Alleged Loan prior to the commencement of these proceedings combined with CD's failure to make any repayments of the Alleged Loan in the almost 20 years since BLACKSMITH was purchased (and despite having the financial means to do so), makes it inherently unlikely that CD will be obliged to repay the Alleged Loan following the conclusion of these proceedings.

Top tips for this type of case:

- contemporaneous documentary evidence is key;
- determine whether you need to join someone or not;
- if a third party likely to be involved should be part of NCDR process- costs are a key issue here;
- cost v benefit analysis.

Case Study- parent moves in

Tom and Emily have been married for 20 years. They have one child, Ronnie who is 13. Emily's mum Pat has had recent health problems and she is looking to relocate closer to the couple.

Tom and Emily suggest that Pat could live with them, but in a granny-annex attached to their house so everyone can remain living independently. Pat agrees to this idea and sells her house for £250,000. The building works take some time and so Pat lives with the parties until the annex is completed. She uses £200,000 of her money building the annex.

After 2 years living all together, Tom and Emily decide to separate. The divorce drags on and Tom is pushing for a sale. Pat is concerned about where she will live. She would like to remain living with her daughter but Emily does not think that she will be able to afford a house big enough. Pat has invested almost all of her money into the annex. She is advised that she should consider intervening in the financial remedy proceedings.

Question: Do you think that Pat will establish a beneficial interest in the property? If so, what might she expect to get back? All of her money? A percentage to reflect include her whole investment?

Answer: Pat will likely establish an interest in the annex. It is not clear how the parties dealt with the building of the annex, whether it has a separate title, separate power, mains etc. It would likely need to be valued as a whole and separately to assist with negotiations.

It is likely that Margaret will conclude this case with a percentage of the net proceeds of sale but it will unlikely result in her recouping the entirety of her contributions.

Case: HX v WX [2025] EWFC 338

The case concerned a dispute arising within financial remedy proceedings following the separation of HX (husband) and WX (wife). The central issue involved the wife's 92 year old mother in law, referred to as IX, who intervened to assert a beneficial interest in the former matrimonial home.

Parent's Contribution and Living Arrangements

In 2020, IX sold her own cottage and contributed approximately £176,000 toward the construction of a self contained annexe at the couple's property.

This arrangement was based on an agreed understanding that she would receive a "home for life", meaning she would be able to live on the property indefinitely.

- IX moved into the annexe the following year and lived there until relationships deteriorated after the couple's separation.
- Following the breakdown of relations, IX claimed she had spent over £211,000 in total and asserted that she was entitled not only to continued occupation but also to a beneficial share of the wider property.
- Her claim was based on proprietary estoppel, asserting:
    - Assurance: that both HX and WX represented she would have a lifelong home and interest,

- Detriment: she sold her home and invested substantial funds,
- Unconscionability: it would be unfair for the couple to retain the benefit of her investment without recognising her interest.

During proceedings, H (HX) conceded that IX had a life interest in the annexe but disputed that she held any ownership share in the wider property. WX did not concede any ownership share either, requiring the court to determine whether IX had an equitable interest.

Judgment:

The court applied the TL v ML [2005] EWHC 2860 (Fam) framework for intervenor claims and used the three-part proprietary estoppel test (assurance, detriment, unconscionability). The judge accepted that all elements of the estoppel were made out based on the evidence.

Rather than reimbursing IX for the full financial outlay, the court crafted a remedy grounded in fairness and proportionality. Expert evidence showed her contribution enhanced the value of the overall property by £100,000, and on that basis she was awarded an 18% beneficial interest, alongside her right to occupy for life. The parties subsequently concluded matters by consent following the court's judgment.

Top Tips

Evidence is critical.

Intervenor claims succeed or fail based on:

- Emails, messages, or statements reflecting intentions.
- Proof of financial contributions.
- Evidence of reliance (e.g., selling their own home to fund annex construction).To establish proprietary estoppel, the parent must show detriment—such as selling their home, significant expenditure, or borrowing at commercial rates.
- Encourage clients to create written agreements before annex construction or parental investment.
- Timing of FDR/pFDR
- Collect documentary evidence early (bank transfers, emails, planning documents).

- Valuation Evidence Must Be Robust- these claims can be legally and procedurally complicated and does not turn on broad discretion.
- Intervenor litigation can trigger cost orders, especially where one party's conduct is unreasonable.
- Prepare for blended family law + property law arguments—use valuation experts.
- Consider alternative dispute resolution to avoid costly contested hearings- use Calderbank offers where appropriate.

Costs

The usual rule that each party pays their own costs does not apply to third party interventions. This is why it is imperative to keep an eye on the risks at all stages. There is of course always the courts discretion but the reality is that in the majority of cases costs will follow the event. I have had cases where there has been practically nothing left in the pot once the third party has had their share plus costs.

Recent cases:

KI (Applicant husband) v SI (Respondent wife) (Sham trusts and intervenor proceedings in financial remedy claims) [2026] EWFC 73 (B)- sham trusts – not citable.

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