

Appendix 1: Comparative powers

Powers	Ancillary relief	Schedule 1	TOLATA
Checklist of factors	<u>MCA 1973, s 25(2)</u>	<u>CA 1989, Sch 1, para. 4</u>	Common law overlaid with <u>TOLATA 1996, s 15</u> (intentions, purposes, welfare of minor, secured creditor).
The court's approach	"Quasi-inquisitorial" (See <i>Parra v Parra</i> [2003] 1 FLR 942 at [22])	<i>Ditto (AR)</i>	Particulars of claim should contain concise statement of facts relied upon. Limited scope to go outside pleaded case ²¹ .
Sale	Yes	Yes	Yes
Property adjustment	Yes - Wide and flexible powers including transfer, charge (<i>Mesher, Martin</i>) etc.	No – but property can be settled for benefit of a child (once only)	No - Declarations as to ownership; Account and inquiry (i.e. exercise of trustees functions)
Lump sums	Yes – e.g. free-standing, instalment, paid by way of capitalisation	Yes – to meet liabilities or expenses incurred in maintaining child	No - save for certain exceptions ²²
Maintenance	Yes - MPS, term maintenance, with or without s. 28(1A) bar, un-termed (joint lives).	Yes (child maintenance/ carer's allowance) although in practice severely curtailed by Child Support Act 1991	No – 'palimony' is an alien concept ²³
Legal funding	Yes - Legal services order (MCA S. 22ZA)	Yes – costs allowance where jurisdiction to award pps, otherwise interim lump sums ²⁴	No
Pension orders	Pension attachment and/ or sharing orders	No	No

²¹ *Uppal v Uppal* [2006] EWCA Civ 1595 at [20]

²² Where it is required to satisfy the equity in a proprietary estoppel claim, the court remedies are more flexible and may extend to a lump sum order in a case of proprietary estoppel: *Jennings v Rice* [2003] 1 FCR 501 C received £200,000. The parties may also agree to resolve their differences with a lump sum payment, recorded in a *Tomlin* order.

²³ *Windeler v Whitehall* [1990] 2 FLR 505

²⁴ See distillation of relevant principles in *MG and JG v JF (Child Maintenance: Costs Allowance)* [2016] 1 FLR 424