



# **A Modern Nursery Tale - The Rising Costs of Childcare & the Separated Parent**

The unprecedented rise in the costs of living has impacted many families, in particular those with young children, and none more so than those who are, unfortunately, also separating. The big, bad wolf of this nursery tale is the increase in childcare costs.

In his March 2023 budget, the Chancellor announced an expansion of free childcare for children between nine months and two years old, providing 30 hours a week where both parents are working at least 16 hours a week, to be rolled out from April 2024.

But with most parents of small children working full-time (often to afford the costs of buying a property, particularly in London) nursery and childcare costs are a significant outlay, leaving a budget shortfall for many parents. The average full time nursery place in London costs £1,143 per month, often more than mortgage repayments. The Early Years Alliance has predicted that nursery costs will increase by 8% from April 2023.

Most families budget for the purchase of a home and their outgoings on the basis of income received by two parents in a family. Finances are stretched with inflation at a 41-year high. So how to square a circle for a parent struggling to afford childcare costs following separation?

Free childcare also applies to a single parent household, provided that each parent does not earn more than £100,000 a year. For those parents not eligible, but with escalating demands on their finances, net income may simply be insufficient to meet living expenses alongside nursery, childcare, and holiday care costs. A child maintenance assessment by CMS or agreed contribution by a payer based on CMS formula is likely to represent only a modest contribution towards the childcare costs met by the other parent, without even approaching an equal contribution.

For a parent who was at the time of separation a stay-at-home parent, working only part time, or



earning a lower salary, an application can be made for spousal maintenance. Such a parent is unlikely to be incurring full-time nursery or childcare costs. In [\*Chiva v Chiva\* \[2014\] EWCA Civ 1558](#) the husband was ordered to pay spousal maintenance to a non-working wife to include half of the nursery and childcare costs, on an interim basis.

In [\*Tattersall v Tattersall\* \[2014\]](#) spousal periodical payments were ordered to reduce to a nominal amount once the children started secondary school, in recognition of the reduced childcare costs that the wife would be required to meet to enable her to continue in her full-time career.

Separated parents may have equal or broadly equal income, but the absent parent may refuse to make less than 50% contribution, or no contribution at all, towards nursery or childcare costs. There is limited legal redress for the parent meeting the burden of childcare costs.

The wife in [\*Matthew v Matthews\* \[2013\] EWCA](#) was the higher earner and meeting childcare commitments. However, as her work was less secure, and there was a risk that she would not be working from time to time, it was held that she should receive nominal spousal maintenance for a limited period, despite her higher earnings.

If a payer of child maintenance has a gross income of more than £3,000 a week, a payee can apply for a 'top up' of what would otherwise be the maximum amount assessed by CMS. An application would be made under Schedule 1 of the Children Act 1989, and that is open to married and unmarried families.

The term 'education establishment' for the purposes of Child Support Act 1991 section 8(7) is not defined and there is no authority as to whether it would include a nursery.

In the case of [\*Barclay v van Hasbroeck\* \[2003\] All ER](#), the judge considered whether nursery fees were "school fees or payments for childcare facilities" or whether they related to both. In the context of the fact of that case, the nursery fees were school fees that the father was obliged to pay under the terms of the Order. Some support has also been given to inclusion of nursery fees by Baron J in [\*DE v AB \(financial provision for a child\)\*](#).

In cases of financial provision upon divorce, a working parent who is alone in meeting the costs of nursery or childcare, and whose spouse is also working, faces a difficult dilemma in seeking an order for contribution. There is a significant risk as to costs in pursuing an application for spousal periodical payments that are required for the sole purpose of seeking an equal or substantive contribution towards nursery and childcare costs (taking into account any free hours that may be



available). There are few authorities suggesting that this option remains largely untested and should be approached with upmost litigation caution.

However, the financial imperative in London and the Southeast in particular, is for both parents to be working full time, relying on nurseries and wrap around childcare provision. It is a modern dilemma that becomes critical for many young families, who find the breakdown of marriage magnifying their financial burden.

It was said by Roberts J in WX v HX [2021] EWHC 241 (Fam), in the context of capital contribution, that “*The overarching principle which supports fairness to both parties is that of non-discrimination*”. In the context of childcare costs, it cannot accord with that principle for there to be no readily available remedy to seek a contribution.

The discrimination may not only be on a gender basis (as the reality remains that most parents with primary care are still women), but discrimination against spouses who, whilst caring for young children also seek to maximize their earning capacity, which they must do to meet increased mortgage costs, childcare and food inflation.

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