Your questions answered

WHAT IS THE BARDER PRINCIPLE?

The purpose of this Stowe guide is to explain what the Barder principle is and how you would use it.

The Barder principle provides for an order of the Court to be set aside or appealed outside of the usual time limits if certain criteria apply.

Where did the Barder principle come from?

The principle comes from the sad case of Barder v Barder in 1987 in which an order was successfully appealed out of time as a result of the wife killing the children and then committing suicide within a matter of weeks of the final order being made.

In these circumstances, the court deemed that this event fundamentally undermined the basis of the order previously made.

When can you apply the Barder principle?

You can apply the principle under the following conditions:

- A new event invalidates the basis upon which the order was made
- The event occurs within a relatively short period of time

In practice, this means if an order is made by the court but then an unexpected event occurs, an application can be made to appeal the order, even if the usual time limits for appeal have passed. Such events are commonly referred to as "Barder events".

What circumstances would be considered Barder events?

Apart from the death of a party, various other events have been argued to qualify as Barder events, including changes in the value of assets, cohabitation or remarriage of a party and even changes in the law. However, relatively few have been successful. Barder events are very rare because the courts generally want to see finality to cases.

What circumstances would NOT be considered Barder events?

Despite their impact, the following change in circumstances would not be considered a Barder event.

- Redundancy

- Miscalculation of assets

- Change in value of an asset

Remarriage of one of the parties although a possible exception to this could be if it can be proven that there was already an intention to marry that had been concealed at the time the order was made

What are the timescales for using the Barder principle?

Although there is no specific timescale in which a Barder event could occur, **generally the application should be made within a few months**. Anything more than a year is likely to be unsuccessful.

Is COVID-19 a Barder event?

It is **currently unknown whether the coronavirus pandemic will be treated as a Barder Event** – only time will tell. Until a case is heard at court, there is no precedent set.

However, it is important to be aware that applications based on a change in circumstances are usually refused. **Judges are keen to ensure that a final order is a final order.** If COVID-19 becomes a Barder event, it could open the floodgates to a large number of applications, particularly for financial settlements.

Generally speaking, changes in the economy are unlikely to be seen to be a Barder event, even if they are quite dramatic as this is all part of the "natural processes of price fluctuation", according to the 2009 case of Myerson v Myerson.

How difficult is it to apply the Barder principle to a case?

As illustrated by the original case, **the Barder principle is only designed to be used in exceptional circumstances**.

The majority of applications made under this principle are unsuccessful as it is a high test to overcome.

Cases that succeed will be rare and exceptional and, generally speaking, Courts are keen to ensure the finality of litigation.

For the vast majority of people, it would not be possible to overturn the order and to make this kind of application is very risky and potentially costly.

There may be other avenues to explore before trying to establish that a Barder event has occurred. These could be misrepresentation, fraud, undue influence or a failure to make full and frank disclosure.

Choosing to apply the Barder principle, **is not a step that should be taken lightly and should only be done in consultation with legal advice.**

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit **www.stowefamilylaw.co.uk**

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