Two recent cases have shown the jurisdictional difficulties which can face an applicant under Schedule 1 of the Children Act 1989.

In *B v R* [2009] EWHC 2026 (Fam), [2010] 1 FLR 563 the mother and child had gone to live in France after the parents’ relationship broke down. The mother obtained a French order for child maintenance but, according to her, the father paid nothing under that order. Later, the mother applied in England for an order under Schedule 1. The father took no part in those proceedings. He was ordered to pay a lump sum of £42,219, equivalent to the total arrears under the French order, and thereafter periodical payments of £767 pm until the child ceased full-time education. The father failed to make any of those payments. Almost 2 years after the English order had been made the mother applied to increase the periodical payments and for her secured periodical payments and property adjustment order application to be restored. The father sought to appeal the original order. Hogg J allowed the father’s appeal, holding that under Schedule 1, para 14 of the Children Act 1989 the court could make a periodical payments order or a secured periodical payments order, but it had no power to make a lump sum or a property adjustment order. At paragraph 23 she said:

“...the court is empowered to make one or both of the orders mentioned in para 1(2)(a) and (b) against the parent living in England and Wales. Paragraph 1(2)(a) refers to the making of an order for periodical payments, and para 1(2)(b) to the making of an order for secured periodical payments. There is no mention of the making of an order for lump sum payment, or a property adjustment order for the benefit of the child.”

In *M v V (Child Maintenance: Jurisdiction: Brussels I)* [2010] EWHC 1453 (Fam) [2011] 1 FLR 109 the parents had made an agreement in which the French father acknowledged paternity and agreed financial and practical arrangements with the Algerian mother. The agreement recorded that the mother did not ‘intend to petition the English courts seeking a financial settlement’. It was incorporated into an order of the French court, following a joint application by the parents. The agreement was never fully implemented, but the father’s total monthly contributions substantially exceeded what had been agreed. When the mother applied in England for an order under Schedule
1 the father challenged the jurisdiction of the English court. Sir Nicholas Wall held that Article 23 of Brussels I applied. The parties had agreed that the French courts should have exclusive jurisdiction and that prevented the mother applying to the English courts:

“If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either: (a) in writing or evidenced in writing...”.

What these cases show is the importance of choosing carefully in which jurisdiction one brings such proceedings. Practitioners should therefore note that foreign domicile or agreement may limit or completely deny the jurisdiction of the English courts to provide relief under Schedule 1.