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Neutral Citation Number: [2023] EWFC 332 (B)

IN THE FAMILY COURT AT SUSSEX - BRIGHTON

MATRIMONIAL CAUSES ACT 1973

B E T W E E N : -

X

Applicant

and

D

Respondent

JUDGMENT

HHJ Farquhar

1. This is an application for Financial Remedies brought by the Applicant against the Respondent following the breakdown of their short marriage. The Applicant has been represented by Mr Perrins, counsel and the Respondent has represented himself, as he has throughout these proceedings.
2. In order to prepare for this hearing, I have read the relevant documents within the bundle together with the opening documents prepared on behalf of each party as well as the closing submissions prepared by the Respondent. The only two witnesses that I have heard from are the parties themselves. There are many issues that have been raised by the parties upon which I will not comment within this judgment. This does not mean that I have not considered those issues but rather that I have concluded that they will not impact upon the decisions that I need to make in this case.

3. **Factual Background.** This is undoubtedly a case involving a short marriage. The parties married in March 2019 and separated in June 2019 when the Applicant left the former matrimonial home. The parties are not agreed as to the nature of the relationship prior to that but cohabitation did not commence before February 2019 although they were in a relationship for a period in the region of 2 ½ years. There is one child of the family, known as C, who was born in June 2019. The parties were engaged in protracted Children Act proceedings which culminated in an order made by HHJ Earley on 26th of January 2022 whereby there is a shared care arrangement on a 50-50 basis with C spending part of each week with each parent on a rolling 2,2,3 pattern. This results in there being no liability to pay any child maintenance through the CMS.
4. The parties each petitioned for divorce and the matter proceeded upon the Respondent's petition which was issued on 16th December 2020 with Decree Nisi being pronounced in March 2022. This application was commenced in the Central Family Court, London on 4th May 2021 under the Applicant's petition which was subsequently dismissed. There was a hearing before Deputy District Judge Nicholes on 7 July 2022 to consider the impact of the dismissal on these proceedings and it was held that all documents filed should be treated as having been filed within the Respondent's petition. There have been several other hearings including a Legal Services Payment Order granted on 29th June 2021, whereafter the proceedings were transferred to Brighton on the direction of HHJ Oliver on 12th August 2021. The First Appointment was heard on 9th February 2022 and the FDR took place on 7th December 2022. There was a Pre-Trial Review hearing before myself on 16th March 2023 against which the Respondent filed an appeal which was dismissed by Sir Jonathan Cohen, sitting as a High Court Judge on 26 April 2023.
5. **The Applicant.** The Applicant is now aged 54 and is living in rented accommodation in Hove together with the child of the parties when he is with her, although in her evidence she stated that she has been served with a notice to vacate in August 2023. It has subsequently transpired that this is not the case and there is no evidence that a formal notice has been served. The Applicant previously lived and worked in London in various employments and was the owner of her own property in the Brighton area having moved here some 15 years ago. The property was sold some time ago and the Applicant stated that due to leasehold issues there was little or no equity. The upshot is that the Applicant has no assets.
6. The Applicant has had various previous employments, but her aim is to earn a living from music. In the recent past she has worked as a piano teacher and also assisted in the Respondent's business, as well as being part of a musical group. The Applicant has recently attempted to establish a new business which provides both concerts on a monthly basis and an online product which has just been released and through which the Applicant hopes to establish a reasonable income. The income to date from her

composing efforts has been minimal. The Respondent pays £2000 per month by way of voluntary maintenance. The Applicant is also in receipt of benefits.

7. **The Respondent.** The Respondent is aged 59 and lives in a magnificent property which he runs as a business. He also has significant other property assets which are now held in two separate companies as set out below. The Respondent has three elder children from a previous relationship, two of whom are still in full-time study and the other is training as an accountant. He is still supporting his adult daughters financially to the tune of approximately £45,000 per annum.

8. There is no doubt that the Respondent has been devastated by the separation of the parties and he has made allegations that this was a sham marriage as well as claiming that the Applicant “abducted” the child of the parties. I have previously made orders that these issues cannot be considered as conduct to be taken into account within these proceedings following the findings of HHJ Earley in the Children Act proceedings. Findings were made that refute the possibility of this being a sham marriage and it is clear that the Applicant took the child to live in Hove in June 2019 and he was seeing his father on a regular basis within seven days. It is impossible to imagine that this could be considered “abduction” although it is a phrase that the Respondent repeatedly uses within the documentation for this case.

9. **The Assets.**

10. The near totality of the assets is held by way of properties. These are held either in the name of the Respondent himself, or in two separate companies, namely Company A and Company B. There are issues between the parties in relation to the correct net figure as a result of the incidence of taxation but there is no dispute as to the value of the properties. A decision was taken that it was not necessary to obtain an updated valuation in relation to each of the properties (there are in excess of 30 properties) but that the valuations that had been previously obtained for various purposes would be sufficient. These valuations date back to 2020 or 2021 in some cases.

11. The net valuations of these properties prior to any tax considerations are as follows:

	Applicant	Respondent
a. The Respondent	£2,690,613	£2,690,613
b. Company A	£6,875,880	£3,859,796
c. Company B	<u>£2,003,050</u>	<u>£ 0</u>
Total	£11,569,543	£6,550,409

12. The Applicant states that there are also assets in various bank accounts totalling £365,284 and in particular one held by Company B with a present balance of £92,863. The Respondent does not consider that he has any access to any of these funds as they

are either held by the companies themselves and/or hold deposits from the tenants. The only other asset of note is the Respondent's pension with a cash equivalent of £75,052 as at January 2023.

13. **The Parties' Positions**

14. **The Applicant.** The Order sought by the Applicant is one whereby she receives a lump sum totalling £530,000 to cover her housing needs including Stamp Duty, purchase costs, moving costs and sufficient funds to furnish and equip the property. Further lump sums are required to pay the litigation loan, £15,000 to purchase a suitable car and a further sum to repay her liabilities. The Applicant also seeks a sum of £12,000 for her immediate housing need as she stated that she is due to be evicted from her rented accommodation in August 2023. In fact, it seems unlikely that she will be subject to any action immediately, although that could occur in due course. The total for the lump sum sought is one of £690,690. At the commencement of the hearing, Counsel on behalf of the Applicant stated that the sums sought by way of a lump sum could be easily afforded by the Respondent and that it was likely that no further order other than a lump sum would be required. As set out below this position was altered by the end of the hearing, and the Applicant now seeks a s.37 Matrimonial Causes Act order in relation to Deeds of Assignment and Trust relating to Company B.
15. The Applicant also seeks spousal periodical payments at the rate of £3,209 per month until September 2023 and thereafter £2500 per month until C finishes his secondary education without a s.28(1A) bar on the term.
16. The rationale of the Applicant is that she requires a property for herself and the child of the family and that such a property should be mortgage free. This can only occur if her liabilities are paid in full as if they were not then the total housing fund would reduce. It is argued on behalf of the Applicant that the sum sought for housing is a modest amount as it would permit a property of £475,000 to be purchased in the Hove area. This would be a two-bedroom apartment/flat. The requirement for periodical payments is due to the fact that she would not be able to cover the costs of herself and C without such support.
17. **The Respondent.** It is strongly argued by the Respondent that the outright capital orders sought by the Applicant are both wrong in principle and ones that cannot be afforded without drastic financial consequences. The strength of the Respondent's position can be seen from the opening paragraph of his closing note which reads as follows:

“Should the Judge accept the claims as submitted by the Applicant the Respondent will either:

- ignore the Order, to protect the welfare of his vulnerable tenants from being made homeless, in which case the parties will be back yet again before court at a later date when the Applicant seeks enforcement.*
- Seek to appeal, for which the Respondent seeks consent*
- go into Voluntary Administration and the Administrators are likely to opt to sell the business rather than liquidate Company A, as it is easier and quicker for them and will save up to circa £6.3 million in tax bills.”*

18. In his oral evidence the Respondent went one step further when he stated *“if the order threatens the lives of people I will appeal. If I do not succeed then I would go into voluntary liquidation, or probably go to jail.”* The reference to threatening the lives of people is that the Respondent states that if he has to sell any of his properties then this would put the lives of the tenants at risk – as an example he states in his written evidence that *“One of our tenants has made it very clear that she would rather die than have to move out.* In his response to the LSPO application he stated *“Tenants” will probably die prematurely from the trauma.”* The closing submissions of the Respondent also stated that by making the order sought by the Applicant *“the Judge would be complicit in making numerous vulnerable people homeless, with some likely to lose the will to live.”* As can be seen, the Respondent puts his case in a highly emotive way.
19. It is the argument of the Respondent that this is a case involving a short marriage and he will do everything that is required to ensure that the parties’ child, C, is securely housed. To that end he proposes that Company B purchases a property selected by the Applicant at an asking price of no more than £475,000 which will be thereafter let to C (via a Trustee) until he is 21 and the Applicant will also reside in the property. There will be a budget of £25,000 to spend on furnishings and the property will be fully maintained by the company throughout the term of the tenancy. The Respondent added in closing that if this is not possible for whatever reason the Respondent will gift to the Applicant a sum of £530,000, indexed linked, within a month to enable her to have the funds to purchase herself a home.
20. The Company would also be responsible for all of the utility bills until the child reaches the age of 21. The Respondent has already agreed within the Children Act proceedings to meet the costs of private education for C, which at present will amount to £8,000pa but will certainly increase as he gets older. In order to ensure that the Applicant has a vehicle he offers to transfer a VW Polo car which is presently used by another family member.
21. The Respondent states that this is not an appropriate case for spousal periodical payments, but he would pay child periodical payments at the sum of £3,142 per annum or £238pm. This figure is calculated by reference to the Child Poverty Action

Group who have estimated that the average cost of raising a child in the UK for the first 18 years is £102,627 and the Respondent has taken half of this figure due to the child only spending half of his time with the Applicant.

22. The Respondent also offers a pension share of 100% of his Legal and General policy. He proposes that in one years' time the Applicant could draw down 25% of the pension and use this to purchase a car as an upgrade to the car he is offering which would meet her needs for the first year or so.
23. In relation to any other capital payments, the Respondent offers to pay the two debts in the name of the Applicant in the sum of just over £20,000. Thereafter it is his view that it would be wrong in principle for him to be ordered to pay the legal costs by way of the loans that the Applicant has obtained or her other debts. He suggests that the more appropriate step would be for the Applicant to apply for her own bankruptcy so that she could start afresh. In his closing note he states: "*Better that, than the court making the Respondent pay her debts and him being forced into Administration, given his huge responsibilities to house [a number] people, many of whom are vulnerable.*"

24. **The Law**

25. I do not intend to set out the law in any great detail. The objective of the Court in any Financial Remedy case is to achieve an outcome that is "as fair as possible in all the circumstances" (per *White v White* [2000] 2 FLR 981). In an evaluation of fairness, the Court must take into account the criteria set out in s.25 Matrimonial Causes Act 1973. In this case there is an emphasis upon the duration of the marriage as it is certainly a 'short marriage' case, but the Court must consider all of the factors and at all times first consideration must be given to the welfare of the child, as set out in s.25 (1) MCA 1973.
26. The Court is encouraged to achieve a clean break between the parties when it is appropriate. This is a 'needs' case and the concepts of 'sharing' and 'compensation' which are set out in many of the leading authorities play no role.
27. The issue of how to treat 'Needs' was set out by Peel J in **WC v HC 2022 EWFC 22**
Paragraph 21:
*"Needs are an elastic concept. They cannot be looked at in isolation. In Charman [2007] EWCA Civ 503 at [70] the court said:
"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)).
xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:
"In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e "standard*

of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle."

*xiv) In **Miller/McFarlane** Baroness Hale referred to setting needs "at a level as close as possible to the standard of living which they enjoyed during the marriage". A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example, **G v G [2012] 2 FLR 48** and **BD v FD [2017] 1 FLR 1420**.*

*xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF [2017] EWHC 1093** at [18];*

"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

*xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in **N v F [2011] 2 FLR 533** at [17-19]."*

28. The impact of the fact that this is a short marriage must be considered both in terms of the capital claim and the claim for continued periodical payments. The law relating to the impact of a short marriage will be set out below when considering the relevant points.

29. **The Issues to be Resolved.**

30. The amount of documentation that has been generated in this case is huge, but the issues that require a resolution by this Court in order to achieve a fair outcome are in fact minimal. They were set out in the opening note by Mr Perrins and I accept that these are the relevant issues:

- a. How should the Court provide for the housing needs of the Applicant and C? Should this be by way of a capital sum or by provision of accommodation in the manner suggested by the Respondent until the child is aged 21?
- b. What are the Applicant's other capital needs and how should they be met?
- c. What are the Applicant's reasonable income needs and how should these be met?
- d. Is either party guilty of litigation conduct and, if so, what is the impact of the same upon the outcome of the application?

31. **Impression Formed of the Parties**

32. It is suggested by Mr Perrins on behalf of the Applicant that it is vital for the Court to reach a view as to the credibility of the parties. In the vast majority of cases I would agree with his approach. However, in this case despite the huge amount of

documentation and heat that has been generated between the parties there are in fact very limited questions of fact in dispute between the parties.

33. I have had sight of the judgment of HHJ Earley in the Children Act proceedings as it has been admitted into this case. Her Honour made observations as to the parties and their demeanour in court in paragraphs 9 to 12 of that judgment which I do not repeat. I echo her views.
34. In particular there can be no doubt that the Respondent approaches this case in an extremely highly emotional manner which has been exhibited within much of his written documents and correspondence as well as his demeanour in court. This has included being upset to the extent that he was literally bawling in tears during the Case Management hearing before myself when I initially held that his 69 page s.25 statement would not be admitted into evidence and that he would have to prepare a shorter and more measured statement. His language has throughout been emotive, and he continues to view everything in this case through a particularly extreme lens. There are no shades of grey in his approach.
35. The Applicant also has a jaundiced view of the relationship of the parties as set out in the Children Act judgment. In some ways her evidence is somewhat unrealistic as is made clear in the paragraphs below when dealing with her income. The Applicant finds it hard to consider that she has been anything other than “successful” in her musical career when in fact she has never managed to earn sufficient income to support herself in full.
36. I do not intend to say any more about the demeanour of the parties save expressly as set out below.

37. The Income of the Applicant

38. The Applicant states that she is presently achieving her earning capacity through her efforts in a self-employed role. The Respondent is clear that the Applicant could earn a significantly larger income if she entered the employment market.
39. The Applicant wishes to earn her income from music. She states that she has a diploma in composing although it is not clear if she ever completed that course. She was a pianist and singer for 15 years and she has written music for a film. She ran a musical group for 10 years and in her words she “has a lot of experience and talent as a composer and singer.” When asked about her earnings from composing she says that they are limited to approximately £3000, or possibly less, although she added that she is “a good composer”.
40. The present project of the Applicant involves monthly performances which are now sold out at which the Applicant states that she receives a gross of £800 which nets

down to £420 per concert. There are also small more personal performances held with six people at a time. As at the date when she was giving her evidence, she had launched an online product with a subscription rate of £5.00 per month. After four days she had received one subscriber.

41. The aim of the Applicant is to earn a net profit of £12,000 over the first year and she is confident that there will be a huge increase in online services in the second year leading to a more substantial income. The Applicant states that it is hugely beneficial to her to continue as self-employed bearing in mind the flexibility that she requires due to the 2,2,3 schedule agreed between the parties in relation to caring for C, and that it would be difficult to obtain employed work to fit around such a schedule. The Respondent has always offered to provide a greater share of the care for C, but I am satisfied that it is appropriate that each of the parties provide the care that has been agreed within the Children Act proceedings.
42. The Respondent is scathing about the prospects of the Applicant in her aim to be financially successful in her present business. He states that the Applicant worked within the musical group for 10 years and that was not successful and in his closing submissions states that it would be inappropriate to enable the Applicant *“to continue in her narcissistic driven wish to pursue a career as a music composer which she has been doing for some 10 years with no qualifications or commercial success. The Applicant is very capable and could easily be in gainful employment and support herself financially.”* He added that the Applicant *“admitted in court that she had never even applied, let alone be interviewed for a job for decades. This is despite the court receiving evidence that she has been claiming benefits for many years, and according to the Respondent since at least 2014.”*
43. The Respondent is of the view that the Applicant could earn in the region of £30,000 per annum as she is good at sales and has excellent IT skills. The Respondent suggested that the Applicant could work for a friend in his property business and indeed at one point he has suggested that the Applicant could take over the management of his business. The latter suggestion is clearly a non-starter for many reasons and I suspect it was just suggested as an indicator that the Respondent had confidence in the abilities of the Applicant.
44. The reality is that the Applicant has been attempting to earn an income through music for many years but has not been successful to date. The Court is not able to predict what success she may have with her new business, but it is possible that it may be “successful”. In terms of considering the income earning capacity of an individual the term “successful” can only refer to the income that is produced and no other definition of success can be relevant.
45. It is accepted that the self-employed model is one that is more suited to the flexibility required for the childcare provisions that each of these parties have agreed to be

appropriate for their child. In all the circumstances, I am satisfied that at present the commercial efforts of the Applicant are appropriately being used to attempt to fully satisfy the earning capacity of the Applicant. However, that must be a time-limited project and if the Applicant has not achieved an income of at least £24,000 per annum within the next 12 months then it would be expected that she would obtain paid employment.

46. It is difficult to be precise as to the level of income that the Applicant could achieve in any paid employment bearing in mind her childcare responsibilities but as the Respondent sets out, there are significant numbers of jobs at present which permit working from home and the employment market in general is significantly more open to flexibility than it was pre-pandemic. As there is no employment record to work on in the past as the Applicant has been self-employed for over 15 years there may be some resistance to employing such an individual, but this could be overcome at some point bearing in mind the abilities and skills of the Applicant. I am satisfied that it is reasonable to assume a gross income of between £24,000 and £30,000 would be one that the Applicant could achieve in some 12 months' time especially as C will be in full-time education by that stage.

47. The Income of the Respondent

48. The earning capacity of the Respondent is a complex issue. He receives income from his ownership of the business as well as his interest in Company A (which owns 23 properties) which can generate an income as well as dividends and a potential interest in Company B, although the Respondent states that this is now all vested for the benefit of his four children.
49. It is the evidence of the Respondent that he has a lower net income than the Applicant at present although he stated in his oral evidence that he hopes that this would improve. He attributes the low income due to the tax changes which mean that mortgage payments can no longer be deducted as an allowable expense for private landlords, which is the reason why all of his property ownership is now held by limited companies. He further blames this litigation and in particular the application for a Legal Services Order for causing significant business disruption as he was not able to restructure his substantial business debts following those applications.
50. The Respondent has not set out his income in a clear manner. He states that he has disclosed everything, and he frequently refers to providing some 10,000 pages of documents to the Applicant which he states would explain his position in full. That is an unhelpful approach, and it is not for the Applicant to ferret through all of the documentation to try to make sense of the Respondent's income.

51. The tax returns that have been disclosed by the Respondent within these proceedings, as analysed within Mr Perrins' opening note, reveal the following figures over the past 5 years:

	Year	Income	Tax	Total Net
a.	2017/18	£517,939	£152,418	£365,520
b.	2018/19	£572,465	£198,209	£374,255
c.	2019/20	£545,245	£200,412	£344,832
d.	2020/21	£704,353	£288,534	£415,819
e.	2021/22	£702,426	£287,836	£414,589

52. The starting point must be the Respondent's Form E. In that document which is dated 23rd February 2022 he states that his net income for the next 12 months would be £120,000 per annum or £10,000 per month. The other most relevant document is the Respondent's tax return for the year to 5th April 2022 which as set out above indicates total tax paid in the sum of £287,836. This would equate to an income in excess of £415,000. In circumstances where the financial position is opaque the Court will consider the history as one of the better indicators of what is likely to be the present position. The figure set out in the Respondent's Form E should cover the period up to February 2023 which is only 3 months prior to this hearing.
53. In his oral evidence the Respondent stated that from that net income one needs to deduct all of the interest upon the mortgages which HMRC no longer allows to be deducted. However, that ignores the incorporation for the properties which has occurred precisely to permit such interest payments to be an allowable business expense. The Respondent has simply provided no evidence to explain any significant drop in his income other than to point to an increase in interest rates which will have an impact upon the business income. To offset that there could also be increases in rent paid to the companies for the properties, but no evidence has been provided in relation to that.
54. Is there any outward sign of a substantial reduction in the Respondent's income? The Respondent states that he still pays some £45,000 per annum for his two daughters who are still in education, and he is also paying £2000 per month to the Applicant. He has not needed to sell the yacht or the Bentley or Jaguar motor cars and was still able to afford a skiing trip with his family earlier this year. There is simply nothing upon which the court can base a decision that the Respondent's income is substantially reduced or, to use his words, now less than the income of the Applicant. The finding of the court must be that the income of the Respondent is at least in the region of £120,000 per annum net.
- 55. The Liabilities of the Applicant**

56. These are set out in full within the Schedule of Assets (ES2) and the figures themselves are not disputed by the Respondent save that he considers that the debt to the Applicant's sister has already been repaid. The total indebtedness claimed by the Applicant totals £133,690. The Respondent submits that there are two further debts;
- | | |
|----------------------------|---------|
| a. The Applicant's parents | £15,000 |
| b. A former sub tenant | £700 |
57. The figure in relation to the Applicant's parents relates to a deposit that it is said they provided for a flat for the Applicant. The figure for the sub tenant relates to the deposit that he provided when he was renting in the Applicant's property. On the basis that these sums are not sought by the Applicant and no evidence in relation to the enforceability of these debts has been provided, I am satisfied that they are not legally enforceable debts and as such need not be taken into account within these proceedings.
58. There is a liability to Payplan in the sum of £33,225. It is accepted that this relates to debts which were in existence prior to the parties' relationship. The Applicant also accepts that there is a possibility that Payplan may accept a lesser sum if she was in a position to offer the same.
59. The Applicant has no less than six credit cards with total indebtedness of £15,113. There has been no evidence provided as to when these debts were incurred although it is noted that the Applicant's Form E only refers to one credit card with any balance upon it in a total sum of £2,507. It is assumed therefore that the other balances have occurred in the 18 months following that date.
60. The Applicant has debts to two individuals in the sum of £11,900 to [a friend] and £8,418 to the Applicant's sister. These both relate to legal fees which were spent during the contentious Children Act proceedings. The Respondent in his final submissions stated that he would be willing to meet these two liabilities which were total in the region of £20,000.
61. The other liabilities set out by the Applicant relate to legal fees with her Ampla Litigation Loan now standing at a figure of £58,908 and there is a further £5,527 outstanding to her solicitors. The interest on the Litigation Loan is extraordinarily high at 22% and will continue to accrue until it is paid in full. The Respondent makes complaint that he had not been informed of the increase in the Litigation Loan and that he considered that it was still in the region of £38,000. The Applicant states that the Respondent was put on notice on 8th December 2022 of the costs that the Applicant would face if the matter went to trial including the increase of this loan.
62. The Applicant argues that the liabilities in her name are hard debts and must be paid prior to being able to purchase a property as otherwise it would eat into any housing

fund made available to her. The Respondent suggests that these liabilities are indicative of the financial conduct of the Applicant in that she will continue to run up liabilities whatever her financial situation. It is with that in mind that he states it is to her advantage to be made bankrupt which would have the helpful side effect that the Applicant would find it difficult to obtain credit and consequently avoid any further debt.

63. The Housing Needs of the Applicant

64. It is accepted by all that the Applicant and the child of the parties require appropriate housing. There is disagreement as to how this should be funded but not to the cost of that housing. The case of the Applicant is based upon being able to purchase a property for a sum in the region of £475,000. This would be sufficient to purchase a two-bedroom flat in Hove. The Respondent agrees this budget.

65. The Applicant submits that this is a conservative figure, bearing in mind the overall assets in the case. In his oral evidence the Respondent states that such a figure would meet the needs of C, and he did not accept that it was towards the middle to bottom of the market. He accepted that there are more expensive two-bedroom flats, and he considered the figure of £475,000 to be proportionate and appropriate. He added that he agreed that the Applicant could have asked for a property which would be more expensive.

66. I am satisfied that the type of accommodation which could be purchased for the sum of £475,000 in Hove is very much at the bottom end of what the Applicant could have sought bearing in mind the overall assets in the case and the frankly fabulous property in which C resides with the Respondent.

67. On balance, I do not disagree with the overall view of the parties that the Applicant could have sought a property for a larger sum but the figure of £475,000 is not inappropriate although at the bottom end of what she should be expected to reside in when all of the circumstances of the case are considered.

68. Computation of the Assets

69. The assets as set out above are not agreed. In the vast majority of Financial Remedy cases it is vital to ascertain a reasonably precise figure for the overall assets in order to be able to consider a fair distribution between the parties. That is on the basis that to be able to consider how to apply the sharing principle, the Court must be aware as to the total assets which are available to be “shared”. It is accepted that this is not a sharing case due to the shortness of this marriage and that the appropriate approach is to consider how the needs of the Applicant are to be met.

70. In such circumstances it would not be proportionate or appropriate to carry out a detailed forensic exercise in computing the overall assets so long as it is accepted that there are sufficient funds from which the needs of the Applicant can be met. The totality of the lump sum claimed by the Applicant is one of £690,690 and on any analysis of the overall assets that is a sum that can be met, albeit that the Respondent would dispute that this could occur without a wholesale destruction of the asset base.
71. The two main differences between the parties in terms of the overall assets relate firstly to Company B and then as to the incidence of taxation on the properties held by Company A.
72. **Company B.** This company holds title to 4 properties with net equity in the region of £2 million. The history of the company is that it was incorporated in February 2017 with the Respondent holding 52 ‘A’ shares. The Respondent stated that ‘B’ & ‘C’ shares were issued with 16 to his eldest son and 32 held by him as trustee for his two daughters who were then under the age of 18. In 2020 following the birth of C, a further 16 ‘D’ shares were issued and again these are held on trust by the Respondent. He stated that the company originally held some £500,000 worth of property which was subsequently increased to £1 million and then to £2 million. The £2 million used for the purchase of these properties was provided by the Respondent to the company and was subject to a loan agreement.
73. In June 2021 the Respondent entered into a Deed of Assignment and a Deed of Trust by which the Respondent understood he was transferring the benefit of that loan to his children. There has been some consideration of the Deed of Assignment within the hearing and in cross examination the Respondent stated that he was advised by his accountants in relation to these documents in order to avoid inheritance tax. The issue of setting aside those Deeds was raised within the hearing and the Respondent stated that *“if this could be done then I would be able to access the assets of [Company B] without paying any tax.... It would ease up my cash flow crisis.”* The Respondent accepted that if the agreement did not exist then the company would owe him £2 million and it could be paid back to him. He also accepted that the company could sell a property or mortgage one in order to repay him.
74. I am satisfied that the assets of this company should be included in the overall figure as they were certainly fully under the control of the Respondent at the commencement of these proceedings, and it would be unrealistic not to take them into account at present. However, bearing in mind all of the other assets that are available, I am satisfied that the inclusion of the assets of this company would make no overall impact upon the capital claim of the Applicant.
75. **Incidence of Taxation.** There has been little if no analysis of this issue during the hearing. The figure of £3 million by which they are apart is referable to the differing tax treatment of the properties which were previously held by the Respondent through

an LLP but are now held within Company A. The reality is that there are swings and roundabouts in terms of the financial effect of incorporation as the figures paid towards mortgages would be allowable, but the impact of CGT is likely to be higher. As with the assets of Company B I am satisfied that it is not necessary to consider the impact of this issue as the properties held by Company A are not going to be required to be sold to realise sufficient capital for the Applicant to be paid and the overall assets are undoubtedly sufficient to meet her claim. It is simply not proportionate to conduct any further analysis on this issue.

76. Duration of Marriage

77. There is only one real factual dispute between the parties. That is as to the length of their relationship which should be considered as a committed relationship. It is agreed that the parties married in March 2019 and that cohabitation only commenced at the earliest in the previous month in February 2019. It is the Applicant's case that there was a serious and committed relationship between the two from November 2016 onwards. The Respondent disputes this by stating that the Applicant refused to let him sleep over at her flat and very rarely did she agree to sleep over at his apartment. The Respondent states that cohabitation only commenced at the date of marriage itself

78. In *VV v VV [2023] 1FLR 170* Peel J (as per the head note) stated that “*Where a relationship moved seamlessly from cohabitation to marriage without any major alteration in the way the couple lived, it was unreal and artificial to treat the periods differently. Cohabitation moving seamlessly into and beyond marriage normally involved a mutual commitment by two parties to make their lives together both in emotional and practical terms. It was dangerous for the court to evaluate the quality of a marriage, however, where cohabitation was in dispute the court had to enquire to an extent into the state of the relationship when evaluating the durability and permanence of the alleged cohabitation. In addition, the Court had to look at the parties’ respective intentions when enquiring into cohabitation and whether they consider themselves to be in a quasi-marital arrangement.*”

79. In terms of the commitment to the relationship the parties did agree to go to European City A in 2018 for artificial insemination to take place. This is as strong evidence as one can find of an intention to continue a committed relationship. The Respondent suggests in very strong terms that this was all a ploy by the Applicant. The Respondent set out in paragraph 2.71 of his s.25 statement that “*I feel I was truly used by [the Applicant] to enable her to have a baby, using my money to achieve this at the clinic in [European City A] and then taking our baby away from me as if I was just the anonymous sperm donor that she had really wanted.*” This is not consistent with the judgment of HHJ Earley in the Children Act proceedings which have been admitted to these proceedings in which Her Honour found that the Applicant “*loved him and wanted the relationship to work.*”

80. This was an unusual relationship between a mature couple who decided jointly to have a child. They each had their own lives and continued to live those lives relatively independently of each other either until the marriage in March 2019 or alternatively very shortly before that date. The difference of one month is neither here nor there. The parties were in a committed relationship prior to that albeit one that did not lead to any substantial premarital cohabitation. It was the parties' intention to marry and that is what occurred. For the purposes of this decision the case concerns a relationship to which each party committed in their own way, but the period of cohabitation is no longer than 3 to 4 months.

81. Conclusions

82. How should the Housing Needs of the Applicant be met?

83. This is the major point of dispute between the parties. The Applicant is adamant that the only reasonable method that can be used to provide her housing needs is by way of the Respondent paying her a lump sum to permit her to purchase a mortgage free property. The Respondent is, if possible, even more adamant that the only fair outcome is one that requires him to provide a property for the Applicant and the child of the family during the child's minority and no more.

84. The basis of this dispute is down to the short duration of the marriage. As I have found above this was a committed relationship as indicated by the joint decision to go to European City A for IVF treatment although the maximum period of cohabitation and marriage is one of four months. The Respondent has argued that in such circumstances the appropriate approach of the court would be one that is akin to the jurisdiction in a Sch 1 Children Act case whereby the Court is restricted to ordering one parent to provide the property purely for the benefit of the child and then it would revert to the payer once that child reaches majority.

85. I must apply the principles set out within the Matrimonial Causes Act 1973 and not those which apply within the Children Act 1989. It was stated in *McCartney v Mills* *McCartney [2008] 1 FLR 1508* that in a short marriage case it is "*legitimate to look at the claimants needs more conservatively than in a long marriage, because the standard of living that had a bearing on assessment of need had been enjoyed for a shorter period*". In considering a case with such a short marriage the sharing principle does not have any effect as there can be little or no 'marital acquest'. The reality is that the Respondent brought all of the capital assets into the marriage and there was no growth that can be measurable within those assets during the 3 to 4 months of this marriage.

86. There is no hard and fast rule to state that a party's housing needs must be met by way of capital. There are many cases in which it has been decided that a rented property is sufficient. The guiding principle is to decide whether it is appropriate for a house to

be purchased or for one to be provided in the method suggested by the Respondent by considering all of the section 25 factors. In the case of *FF v KF [2017] EWHC 1093* Mostyn J stated that an assessment of needs is driven mainly by the scale of the payer's wealth, the marriage length, the applicant's age and health and the marital standard of living – although the latter cannot dominate the exercise. The main rule he added must be that the needs claimed must be causally connected to the marriage.

87. The case of *C v C (Financial Relief: Short Marriage) [1997] 2 FLR 26* remains a relevant authority although the reference to reasonable requirements no longer resonates following the seminal decision in *White v White*. The Court of Appeal considered the issue as to whether in a short marriage of 9 ½ months it was appropriate to order a lump sum to provide for the wife's housing or whether a property should be settled upon her for that purpose. The judge at first instance rejected the trust argument as is set out on page 40: "*The marriage has had the effect of causing long-term prejudice to the wife's earning capacity and financial affairs. Bearing in mind all the circumstances, including the effect of the marriage on the wife, the contribution she has made and will make to the childcare, and the resources which the husband has and is likely to have in the future, it would in my view be wholly unreasonable for her to be given merely a limited interest in the property.*" Ward LJ approved that decision and stated "*For my part I cannot see how that choice of alternatives can be said to have been plainly wrongly made by the judge and I would not interfere with it.*"
88. In this particular case it seems to me that the predominant factors are:
- a. There is a child of the family that is a product of the marriage (I note that the Respondent suggests he is not a product of the marriage because he was conceived prior to the marriage but that is not an argument that has any merit). This has a huge impact upon the claim as the Act states that "*first consideration must be given to the welfare while a minor of any child of the family who has not attained the age of 18*".
 - b. The financial resources of the Respondent are such that the sums sought by the Applicant amount to a relatively small percentage of his overall wealth.
 - c. The age of the parties – the Applicant is in her mid-50s and has a low earning capacity meaning that she is unlikely to be able to attain the resources herself to be able to afford her own property.
 - d. The contributions of the parties. These contributions include future contributions to the welfare of the child. The Applicant will be providing 50% of the childcare following the order that was agreed within the Children Act proceedings and this will impact upon her ability to earn. It also means that she has made a full contribution and will continue to do so.
89. I make it plain that there are no issues of conduct to be taken into account when considering the capital outcome within this case.

90. It is the view of the Respondent that it would be unfair to make a capital order in favour of the Applicant. This is on the basis that it was an extremely short marriage, and that the Applicant has proved herself to be financially profligate in the past. He posits that if she was to obtain her own accommodation it will only be a matter of time before she accrues further debt, and this will be charged to the house. He is of the view that it would be better for her to start afresh by making herself bankrupt and alleviating herself of all the debt and that bankruptcy is not too damaging when an individual does not own a property. He added in closing that the Applicant stated in her evidence that her credit rating was currently too low for her to be able to rent property which caused him to comment that whether she goes bankrupt or not will make little difference to her ongoing ability to obtain credit.
91. In her oral evidence the Applicant stated that she would find it very difficult for the Respondent to have control over her living arrangements. There followed a pause after the Applicant stating this before she added “*very difficult - in the context of what I have experienced this would be a very difficult situation, the principle of being controlled by his company*”. I accept the evidence of the Applicant in this regard that even if an independent third party was to be managing the property it would still be under the overall control of the Respondent which would place a significant toll upon the mental well-being of the Applicant in the circumstances of this case. This is highlighted by the approach adopted by the Respondent which can only be described as lacking any empathy for the Applicant and one which would not encourage her to consider that he would be a hands-off landlord.
92. The other basis upon which the Respondent objects relates to his view that he is not financially able to provide the Applicant with the lump sum that is sought. This is set out within paragraph 24 of his closing submissions which read as follows “*the Respondent has submitted circa 10,000 pages of financial evidence that shows that if the respondent’s claim is allowed, then he will either have to sell the business or liquidate [Company A]. It is not possible to re-mortgage the property to raise further monies to meet the Applicant’s claim (either buying her a property or meeting her debts). The Respondent considers these property assets are “unavailable”, and the welfare implications on vulnerable tenants is considered wholly unacceptable and completely disproportional given it was a three month marriage. It is not acceptable for the judge just to determine the respondent must pay the applicant the claim she is making, given the judge has been made fully aware of the implications of making such an order. By so doing, the Respondent considers the judge would be complicit in making numerous vulnerable people homeless, with some likely to lose the will to live.*”
93. In terms of the law that has to be applied in any case such as this the welfare implications of tenants are not issues which will be in the forefront of the mind of the court. Further, if a tenanted property had to be sold then there is no reason why it

could not be sold with the tenancy continuing meaning that they would not need to be evicted in any event. The final comment to make in relation to the Respondent's suggested inability to meet any lump sum that may be ordered is simply that it cannot be correct when the Respondent has assets which, even he considers to be worth £6.5 million and, on my finding, there is a further £2 million in Company B to be added to that figure.

94. The offer that is put forward by the Respondent is predicated upon the company being able to raise funds required to purchase and furnish a property at precisely the sum sought by the Applicant. This is inconsistent with then stating that the Respondent would not be able to fund such a capital purchase. Further, in his closing arguments the Respondent states that *“should the new home provided by [Company B] ever not be made available to the Applicant until [C] is 21, for whatever reason, then the Respondent must gift to the Applicant £530,000 (index linked to the Nationwide Property Index from the date of the Order) within one month to enable her to have the funds to purchase herself a home.”* The Respondent did not explain how such funds could be made available within such a short period but that he would be unable to meet the capital claim sought by the Applicant.
95. It will be vital for C that throughout his minority the well-being of his mother is maintained, and I am satisfied that that would not be able to occur if they were living in a house which was still under the overall control of the Respondent. There is more than sufficient capital in this case to justify the sum that is sought by the Applicant and in those circumstances the form of order that is sought by the Applicant is entirely appropriate.
96. The total sum sought by the Applicant to meet her housing needs is one of £530,000. This breaks down as £475,000 for the purchase of the property together with £55,000 to cover Stamp Duty, other purchase costs, moving costs and sufficient funds to fully furnish and equip the property for herself and C. As set out above the Respondent does not demur from the figure of £475,000 for the property and agrees the stamp duty at £11,250. He considered that a budget of £25,000 for furnishing and equipment would be sufficient.
97. The property that is to be purchased is a two bedroomed flat which will not take a huge amount of expenditure to furnish. I agree with the figure set out by the Respondent is one that would be more than sufficient to appropriately fit out such a property. It is stated that the Applicant does not have large amounts of furniture to move from her present property and consequently the moving costs will not be great. There will be solicitor's costs to include but all of these incidentals are unlikely to exceed £10,000. This makes a total of £521,250 and this will be the lump sum awarded for the Applicant's housing fund.

98. Neither party is advocating for a Mesher Order in this case save that in closing the Respondent indicated that if the Court did not agree with his view that Company B should purchase a property for the Applicant and C then he considered it should be purchased on a Mesher basis. This was not his preferred option. It is appropriate for me to consider whether such an order should be made. The opening note prepared by Mr Perrins on behalf of the Applicant sets out five reasons why it would be inappropriate to make such an order. I agree with the reasons set out and simply repeat the same:
- a. The Applicant has a limited ability to generate her own capital before the normal trigger events would occur.
 - b. The Applicant will be 68 years old when C turns 18 and would likely require capital at that stage if the property was sold.
 - c. The Respondent has substantial capital and will not be substantially disadvantaged by no capital being returned to him.
 - d. The level of acrimony between the parties militates against the ongoing relationship which would be created under such an order, with the risk of further disputes between the parties.
 - e. The Applicant's future contribution to the family in bringing up the child should be recognised and reflected in the award.

99. There will be no charge back to the Respondent in relation to this property. The Respondent raised the possibility that by the time that C is 21 that the Applicant would have inherited substantial wealth from her parents. It is possible that that will be the case but there can be no certainty that such funds would ever be available, and the Court cannot work upon the basis that this will occur. In any event it is noted that the Applicant has not had smooth relationships with her parents over the years with there being a period where she did not speak to her father for eight years and she is now not on good terms with her mother.

100. Other Capital Needs

101. The Applicant seeks a further capital sum to redeem all of her liabilities which are set out above and including her outstanding costs and Litigation Loan. The Applicant seeks two further sums being a car fund in the sum of £15,000 and £12,000 to meet her immediate housing needs as she is due to vacate her present rented accommodation in August 2023. The total sum sought is one of £169,690.
102. The Respondent objects to any capital sum being awarded for these liabilities in principle and upon grounds of fairness. He fairly points out that some of these debts were incurred prior to the marriage and it would be wrong for him to be responsible for such debts. Secondly he correctly states that the rules in relation to Financial Remedy proceedings is that there should be no order as to costs between the parties and if he is ordered to make such a lump sum it will have the effect of him having paid the Applicant's costs, and I would add that he would also be paying some of the

costs that she incurred during the Children Act proceedings as they were sums that she obtained from her sister and her friend. The Respondent states that these arguments support his assertion that the appropriate step is for the Applicant to apply for bankruptcy which will remove her debts, the Respondent stating that this had previously been considered by the Applicant. In her oral evidence the Applicant stated that the possibility of bankruptcy was discussed shortly after C was born and on occasion when Payplan called her about the money she owed. The argument put forward by the Applicant is straightforward. It is stated that unless these debts are paid then it will negate the award of any housing fund because the Applicant would simply not be in a position to buy any appropriate accommodation for herself and C as she has no mortgage capacity and would not be able to service these debts out of income.

103. The Applicant refers to the case of *S v B (Ancillary Relief Costs) [2005] FLR 474* in which the wife, following a 3 year marriage which produced one child who was aged 3 at the date of the hearing, received a lump sum which was sufficient to repay her debts, including costs as well as purchase a property. On appeal Wilson J (as he then was) stated at paragraph 26 “*when the Judge came to determine any issue as to costs, he bore well in mind what he had done, the judge was fully justified in adding into the lump sum payable by the husband the wife’s outstanding costs referable to the financial proceedings. Indeed, it was the only realistic solution open to him.*” Wilson J added at paragraph 24 that “*He was right to take costs into account.*” There was a charge upon the house provided to the wife which was referable to costs that were unreasonably incurred as a result of the actions of the wife. I note that this case was decided before the present costs rules came into effect.
104. This issue has been considered by the Court of Appeal more recently in *Azarmi-Movafagh v Bassiri-Dezfouli [2021] EWCA Civ 1184*. In this case the trial judge ordered that the Husband should receive an additional £200,000 in addition to his housing needs of £425,000 to cover his debts which were mainly attributable to the costs of both Children Act and Financial Remedy proceedings. The Court of Appeal accepted that this had the effect of the wife paying all of the Husband’s costs, indeed it would amount to a higher figure than if an order for costs was made as there was no assessment which would have reduced the overall figure allowed. King LJ stated at paragraph 63;

“It is undoubtedly the case that there is no specific rule requiring the first instance judge to carry out an analysis by reference to the principles applicable to costs orders and in my judgment to do so would not be compatible with the wide discretion of the judge to determine the extent of a party’s needs and the extent to which they should be met. Having said that, in my judgment in cases where it is argued that an order substantially in excess of the sum required to meet a party’s assessed needs is sought in order to settle the outstanding costs (or debts referable to costs) of that party, the judge should:

- i) *Consider whether in any event the case is one in which consideration should be given as to the making of an order for costs under FPR 28(6) and (7) in particular by reference to FPR PD 28 para 4.4;*
- ii) *Whilst not carrying out a full costs analysis, the judge should have firmly in mind what the order which they propose to make by way of additional lump sum to meet a party's costs would represent if expressed in terms of an order for costs. To do this would act as a cross check of the fairness of the proposed order.”*

105. I am satisfied that the only way in which the Applicant will be in a position to purchase a property is for these liabilities also to be met by way of a lump sum. I have set out above all of the reasons why I have rejected the arguments of the Respondent in relation to a property being settled upon the Applicant for the benefit of the child and if these liabilities are not met then the Respondent's arguments would succeed through the back door. I accept that in doing so this has the impact of the Respondent paying the costs of the Applicant but there is simply no alternative.
106. If it is held that the Applicant has any liability to pay costs to the Respondent then the appropriate method of this occurring would be as was ordered in *S v B above* whereby there was a charge on the wife's property in relation to part of her costs which the Husband had been ordered to pay by way of the lump sum. This aspect is considered below.
107. **Car.** The Applicant seeks a £15,000 sum with which to purchase a car, as she does not own one at present and it would be very helpful in assisting with the transporting of C between the parties and for generally transporting him to other events. The Respondent offers to provide the Applicant with a VW Polo (2004 reg) which is presently used by his son. As an alternative he offers for there to be a pension sharing order to the Applicant of 100% of his pension and she could draw down the tax free 25% in 12 months when she is 55 and upgrade the car he is offering to provide at present.
108. This issue echoes that of the property in which the Applicant and C would live. It is the aim of the Applicant to be free of any control of the Respondent and if she were to be limited to have to accept the car that is provided directly from the Respondent then she would still be within his sphere of control. That would be an acceptable position if the funds to purchase a car were not available, but that is not the position. I am satisfied that it is entirely reasonable and appropriate for the Applicant to receive a lump sum sufficient to purchase a car.
109. I note that in his oral evidence the Respondent stated that he considered that “£15,000 for a car is not extravagant”. I agree with that sentiment in the context of this case. It is an appropriate sum and one that she be included in the overall lump sum to be awarded.

110. **Rental Fund.** The Applicant is presently in rented accommodation and has stated that she has been served notice that she will have to vacate the property in August 2023. It does not appear that this is necessarily the case as no notice has been provided. There would be insufficient time between now and August 2023 for the Respondent to provide a capital lump sum for the purchase of a new property let alone the purchase of the property so, if the Applicant is evicted a new tenancy would have to be sought. The Applicant seeks a lump sum of £12,000 to permit her to enter into such a tenancy to tide her over until she is able to purchase herself a home.
111. The Respondent offers to pay the deposit on any appropriate new home of the Applicant's choice and to enter into a rental guarantee as he has previously offered and is recorded in the order of Deputy District Judge Nicholes dated 7th July 2022. I have no doubt whatsoever that the Respondent would abide by such an offer as he would do anything that he could for C. In fact, I suspect that it would be cheaper for the Respondent to accept the offer put forward by the Applicant, but I also accept that in matters that touch on C's welfare the Respondent is not driven by cost.
112. In a case where the litigation has been as fiercely contested as between these parties it is appropriate to reduce the amount of continued involvement each has in the life of the other. The Applicant would consider any input from the Respondent in this regard as an interference in her life. The appropriate way forward on this point is for the sum to be included in the capital order, if it is proved that the Applicant is indeed going to be evicted from the property in the very near future. If it is the case that the Applicant will be able to remain in the property for the next 4 months or so then this sum will not be required.
113. Post script – Further submissions were received from the parties after the initial delivery of this judgment as to the need for the rental fund and the decision was made that as the Applicant had moved into alternative property and there was no evidence that she could not remain there until such time as the lump sum would be paid, then the Respondent is not required to make this lump sum payment.
- 114. Payment of the Lump Sum**
115. The Applicant seeks payment of certain items forthwith. These are the Ampla Litigation Loan as the interest will continue to rise at the rate of 22% and the monies of the rental fund as the Applicant stated that this is required forthwith. There are sufficient funds to cover these amounts in bank accounts to which the Respondent has access. There will be an order to pay the sum required to discharge the Ampla loan within 21 days. The Respondent is to pay interest on any late payment at the judgment rate save for the element that relates to the Ampla loan which will attract interest of 22%.

116. The remainder of the lump sum will require a longer period of time as the Respondent will need to obtain funding, by way of a mortgage on property or alternatively by selling a property. This is discussed below. On the basis that funds will be available to the Respondent from Company B I consider that these can be raised relatively swiftly as the 4 properties owned by the company are all mortgage free. The lump sum is to be paid by 30th November 2023. Interest at the judgment rate will apply to any late payment. There must be a mechanism whereby the Respondent only has to fund the amount which is required to satisfy the debt to Payplan, if they accept a discounted figure.

117. The ability to meet any Capital Award

118. In his opening note Mr Perrins stated that whilst the Respondent had taken steps to transfer properties into a company and assign assets to that company: *“For today’s purposes the Applicant adopts an approach similar to that of Mrs Prest (a reference to the case of Prest v Petrodel) (in relation to the Partnership and the Company B properties) given that these properties were originally purchased by the Respondent and in his sole name and he has therefore capitalised the relevant companies, namely: the arrangements in respect of the legal ownership of these properties has changed within the course of these proceedings, but the beneficial ownership remains with the Respondent and he will be expected to meet his obligations under any order from the totality of his resources and the court will not therefore be misled by appearances.”* At a later point (paragraph 35) Mr Perrins states *“if the Applicant does not comply with the court’s order,.... The Applicant would be entitled to seek to set aside the transfer of properties from personal ownership (through the LLP) to Company A, should that be necessary..... The Applicant need not do this ahead of time at the final hearing. It is incumbent upon the Respondent to comply with the court’s order rather than for the Applicant to seek and obtain security or enforcement in advance.”*

119. The Respondent made it clear in his s.25 statement which is dated 6th February 2023 that he did not consider that he was in a position to meet any capital payment. He stated: *“I am not in a position to make any capital payments to the Applicant either for purchasing her a home or for paying off her non-marital debts and legal fees, without either selling the business or effectively liquidating Company A. If a Court does order me to make a capital payment or meet her costs, I will need to seek leave to appeal to try and prevent frail vulnerable tenants being evicted.”* The Respondent repeated these views within his oral evidence.

120. However, on the last day of the hearing the Applicant filed an application for an order setting aside the Deed of Assignment and the Deed of Trust in relation to Company B. The application seeks as follows:

“1. An order setting aside(a) the Deed of Assignment dated 03.06.2021 and (b) Trust Deed dated 03.06.2021 which purport to assign the Respondent’s interest in Company B under his directors loan account, current account or similar in the sum of £2,252,465 as at the accounting period ended 30.04.2021.

2. These documents were executed by the Respondent after issue of the Applicant’s Form A dated 30.04.2021 with the intention of defeating the Applicant’s claims for financial relief by preventing relief being granted or reducing the amount of relief or frustrating or impeding the enforcement of any order awarding such relief.

3. The purported effect of the deeds is to reduce the amount of funds available to the Respondent to meet the Applicant’s needs.”

121. The submissions on behalf of the Applicant were to the effect that this application had not been filed previously as they had considered that it was not required because the Respondent has sufficient assets to comply with any order but that having heard the evidence it was considered necessary to make the application.

122. The law is set out within s.37 (2) Matrimonial Causes Act 1973. It states:

“Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first mentioned person(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, ; c if it is satisfied, in a case where an order has been obtained by the Applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition.”

123. This application concerns the position set out in s.37(2)(b) but I set out the test for s.37(2)(c) as well to understand what could occur once an order has been made. As at the date of the application no order had been made.

124. Further definitions are provided within the Act as follows:

“(4) Any disposition made by the other party to the proceedings for financial relief in question is a reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was made for valuable consideration to a person who, at the time of the disposition acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant’s claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied – (a) in a case falling within subsection (2)(a) or (b) above, that the dispositional are other dealing would have the consequence, or in a case

falling within subsection (2) (c), that the disposition has had the consequence, of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief."

125. It is important to consider the timeline in relation to these Deeds. The company, Company B was incorporated in 2017. The Respondent states that he had taken advice as to the best method to avoid substantial inheritance tax and that the advice included the Deed of Assignment and Deed of Trust. This advice was provided in or about 2017. The parties' relationship continued from 2016 through to 2019 when they married and subsequently separated on 28th June 2019. The parties each issued Petitions for Divorce with the Applicant's being issued in July 2020 and the Respondent's in December 2020. The Applicant commenced the Financial Remedy proceedings by issuing a Form A on 4th May 2021, it being dated 30th April 2021.
126. The Applicant issued a Legal Services Payment Order application on 30th April 2021 for which a hearing notice was issued on 7th May 2021 for the hearing which took place before Deputy District Judge Mehta on 29th June 2021. The Respondent was also active within these proceedings at that stage as he filed his own application on 13th May 2021 in which he sought the matter to be transferred from the Central Family Court in London to Brighton. In his application he stated "*The matter is not complex, nor does it raise difficult issues. Our marriage was extremely short, lasting only three months, therefore it will be confined to meeting my wife's needs rather than assessing my net asset worth.*"
127. The Applicant filed a 5 page statement in support of her Legal Services Order application in which she refers to substantial assets owned by the Respondent including classic cars a large number of properties as well as the business. This was also dated 30th April 2021. The Respondent who was, and still is, a litigant in person filed a 16 page statement in response to the Applicant's application which is dated 14th June 2021. The statement of the Respondent includes the following comments:
"1. The only realisable asset I had is an Aston Martin worth £30,000 which I gifted to [the Applicant] soon after receipt of this application in the hope that she would then withdraw her application..... I do not have other realisable resources to meet the costs of this L S O.... I am suffering a cash flow crisis caused by the pandemic, which has significantly reduced my rental income. My cash shortage has been exacerbated by having to pay £138,506 in fees so my son can be raised equally by both his parents.
6. I set up a family investment company in 2017 for succession purposes, which is owned by my four children, and has four properties. That company last year made a loss of £100,000 and is still not operating on a positive cash flow basis."

128. It was within this context that on 3rd June 2021 the Deed of Assignment and the Deed of Trust were executed. There can be no doubt that the application for financial remedy and the Legal Services Payment Order would have been on the mind of the Respondent as at the date when these Deeds were executed as the statement of the Applicant had already been received, the Notice of Hearing had been served and the Respondent would have been preparing his statement in advance of this date.
129. In considering the test within s.37 MCA 1973 there can be no doubt that this is a reviewable disposition as it was simply a gift, and no valuable consideration was provided. It occurred within the 3 year period set out in s.37(5) meaning that there is a presumption that the disposition was made with the intention of defeating the claim of the Applicant.
130. Has the Respondent rebutted this presumption? He states that the transaction was not made with that intention but was simply following tax advice that he had been provided. The difficulty with that argument is that he states that the advice was provided in 2017 yet this transaction did not take place until June 2021. He states that this is coincidental. I am satisfied that the one issue that was dominating the Respondent's life at the time and has done so ever since is this litigation. He made it clear within his statement filed 11 days after this transaction that he did not have the available resources to meet the Legal Services Order that was sought by the Applicant, and he fully understood the importance of no capital being available to him. I am satisfied on the balance of probabilities that one of the intentions of the Respondent in signing the Deeds of Assignment and Deeds of Trust at this time was to attempt to defeat the Applicant's claim. I accept that there was also an intention by the Respondent to avoid tax. It is not necessary that the malign intention was the only purpose behind the transaction but simply that it was one of the motives. The Respondent is not able to rebut the presumption in relation to these dispositions.
131. It is correctly submitted by the Applicant that the Respondent has on many occasions indicated his consent to this application. The note that I have of his oral evidence on the issue is as follows: *"If I had to buy the Applicant a house in her own name I will be bankrupt and homeless. I will first try to appeal and if that is not successful I will appoint an administrator to meet her claim. I suspect he will sell the business. It would be a tragic day for me and I am trying to see different ways for that to happen. We have looked at Company B. That is in the judge's decision. It would resolve that problem. I could then effectively sell the Company property."* He also stated that *"if this could be undone then I would be able to access the assets of Company B without paying any tax It would ease up my cash flow crisis. I accept if the agreement did not exist then the company would owe me £2 million and they could loan it to me."* In his written closing submissions, the Respondent stated; *"Should the Judge have the power to undo these agreements dated 3rd June 2021, the Respondent would welcome it as it would then enable him to draw down up to £2 million of this original loan to*

Company B." The Respondent, following the hearing, sent an email to the court which appears to indicate that he does not agree to the transactions being set aside.

132. I am satisfied that the issue as to whether the Respondent consents to the application or not cannot impact upon my decision as to whether to grant the application. There is nothing within the statute to state that if the parties consent, then that is a factor to be taken into account. At no point did the Respondent accept that his intention in completing the transactions was to defeat the Applicant's claim and consequently the issue of consent takes the matter no further.
133. The sole question that remains to be considered is whether if the dispositions were set aside '*financial relief or different financial relief*' would be granted to the Applicant. It was the Applicant's case at the start of the hearing that there are sufficient assets to meet her claim which totals just under £700,000. The Applicant states that the Respondent is worth in excess of £11 million and the evidence of the Respondent is that he considers that he is worth £6.5 million. Whichever view of the overall assets is correct there is sufficient to meet the totality of the Applicant's claim. The Respondent has made it clear by his words and deeds that he will oppose any application to enforce in due course and he states that he does not have the ability to raise these funds and that there would be a catastrophic effect upon all of his assets. On the basis of what the Respondent has repeatedly stated he would do if the Applicant was successful then I have no doubt whatsoever that it is his intention to do all that he can to avoid the payment of the lump sum which is ordered within this judgment.
134. Does this amount to satisfying s.37(2)(b) MCA 1973 in terms of "*different financial relief would be granted to the applicant*"? The quantum of the lump sum that will be ordered will not alter were the transactions to be set aside or not. In his closing submissions on behalf of the Applicant, Mr Perrins stated that it was still the Applicant's case that the Respondent has sufficient assets from which the order sought could be satisfied. I agree with that submission.
135. The difficulty will be on enforcement as the Respondent has already made clear his intention to oppose the enforcement of any Order for a capital lump sum. This is on the basis that the vast majority of the rental properties are now held by limited companies (A and B) and there are significant debts that are placed upon those properties. The most notable of these are the loans to Bank 1 in a combined sum of £5.7m and there is also a charge to Bank 2 in the sum of £1.4m which is secured on certain properties. It is argued that it would not be possible to either sell or further charge one individual property as the charge sits upon them all collectively. There would also be difficulties in enforcing any order against the business as it is very much a niche property and would undoubtedly be difficult to sell. I am satisfied that any enforcement application will not be straightforward if the transactions were not set aside. The Respondent has already accepted that if the transactions were set aside, he would be able to satisfy the claim that is sought on behalf of the Applicant.
136. Is it necessary for the Court to wait for the Respondent to raise these particular arguments once an enforcement application is made or does the present situation amount to '*different financial relief*'? I am satisfied that the term '*financial relief*' includes the whole process that is involved in the application from start to end. In this case that has included the Legal Services Order at the outset of the proceedings and

will conclude, if the transactions are not set aside, with contested enforcement applications. To that extent there will be *different financial relief* if the transaction is set aside as there will not be a need for any hearings, excluding the appeal which the Respondent has already signposted will occur, subsequent to this judgment. The order that I make will remain the same in terms of the amount of the lump sum, but the overall proceedings will undoubtedly be different if the transactions are set aside and upon that basis, I am satisfied that there is jurisdiction to make the order sought in the application.

137. Further, the timing of the lump sum would vary if the transactions were not set aside. The Respondent, having already accepted that if the transactions were set aside then he would be able to meet the capital claim of the Applicant, would find it difficult to argue otherwise in any subsequent hearing. As such the order can be satisfied within a period just in excess of four months as set out above. If there was a need to re-arrange the major charges to Bank 1 or Bank 2, or consider how funds could be released from the business the process would be significantly prolonged. This would result in the order for the lump sum having to be delayed which would amount to ‘*different financial relief*’ as it would keep the Applicant out of the funds that would be otherwise awarded to her for a longer period.
138. In deciding to make the setting aside order now, rather than after any future application, the overriding objective is being followed. It is inevitable that an application would need to be made in due course and this will entail further expense on behalf of the parties, and it would be an inappropriate further use of the Court’s resources. I further note the points made by Mr Perrins in an email to the Court following the hearing in which he pre-empts any points that the Respondent may take on an appeal on this point. I accept the points made, but it is not for me to comment further upon those, as they would be an issue for the Appeal Court to consider, should any appeal be made in due course.
139. The Deed of Assignment and the Deed of Trust shall both be set aside. This has the effect of the Respondent being free to access substantial funds from Company B, and certainly sufficient to satisfy the Order for the lump sum that has been made.

140. Should there be an Order for Costs against either party?

141. The general rule for Financial Remedy proceedings is that there will be no order as to costs unless it falls within one of the exceptions set out within FPR 28.3 (6) & (7). The rules set out as follows:
- a. FPR28.3 (6) *The Court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (either before or during them);*
 - b. FPR 28.3(7) states:

‘In deciding what order (if any) to make under paragraph (6) the court must have regard to—

(a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue.

(e) any other aspect of a party’s conduct in relation to the proceedings which the Court considers relevant; and

(f) the financial effect on the parties of any costs order.’

- c. The Court must also take into account FPR PD28A para 4.4 which states : *“In considering the conduct of the parties for the purposes of rule 28.3 (6) and (7) (including any open offer to settle) the Court will have regard to the obligation of the parties to help the Court to further the overriding objectives, and will take into account the nature, importance and complexity of issues in the case. This may be of particular significance in applications for variation orders and interim variation orders or other cases where there is a risk of the costs becoming disproportionate to the amounts in dispute. The court will take a broad view of conduct for the purposes of this rule and will generally conclude that to refuse openly to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a ‘needs’ case where the applicant litigates unreasonably resulting in the costs incurred by each party becoming disproportionate to the award made by the court. Where an order for costs is made at an interim stage the court will not usually allow any resulting liability to be reckoned as a debt in the computation of the assets.”*

142. The Respondent argues that the original Legal Services Order was obtained by misrepresentation, that the Applicant’s solicitors have run up wholly disproportionate costs and have acted inappropriately throughout. He adds that the LSO caused him not to be able to fix the Bank 1 loan and that the interest rate has increased causing a further £200,000 to be paid each year. He also points out that he has paid the Legal Services Orders dated 29th June 2021 and 9th February 2022. The figures awarded are variously referred to as being £67,000 or £70,000. The sums referred to in the two orders total £54,160 but there may be other sums of which I am not aware. Finally,

the Respondent would add that by including the Applicant's costs in the lump sum, he is paying all of her costs. This is certainly correct as set out above.

143. The Applicant seeks an order for costs herself for the following reasons:
- a. The Respondent delayed proceedings by obtaining a transfer from the Central Family Court to Brighton – there is no evidence at all to support this suggestion.
 - b. The Respondent failed to complete his Form E correctly.
 - c. The Respondent filed a huge amount of documentation – 53 appendices to the Form E with over 1500 pages. The Respondent states he has disclosed some 10,000 pages.
 - d. The Respondent was unreasonable in not agreeing to proceed on an alternate case number once the Applicant's Petition was dismissed.
 - e. The Respondent raised hopeless conduct issues including sham marriage and abduction.
 - f. The Respondent frequently makes reference to without prejudice information causing further work for the Applicant's solicitors.
 - g. The Respondent sends excessive amounts of e-mails – as an example there were 52 e-mails in the 2 weeks prior to the final hearing and 16 overnight from 10th -11th May 2023.
 - h. Failure to negotiate reasonably by failing to accept the capital need of the Applicant.
144. The overall position of the Applicant is that the Respondent has acted in a totally unrestrained and intransigent manner throughout the proceedings in a manner that has significantly driven up the Applicant's costs.
145. **Should a costs order be made in favour of the Respondent?** It is noted that there have not been any costs orders made against the Applicant at any of the previous hearings, with the only costs order being one in the Applicant's favour at the LSO hearing in June 2021. This does not indicate that at any particular point the Court considered that the litigation behaviour of the Applicant at the time was such that merited such an order. There is simply nothing to justify any criticism of the application for the LSO or the impact that the order may have had upon the Respondent.
146. I note the overall costs of the Applicant are now in the sum of £106,388. This is a huge figure but by no means out of kilter with the level of costs which is regularly incurred in cases of this nature and complexity. The Respondent's argument that the Applicant has been utilising costs needlessly in the case is simply not merited. There is no basis for the Court to make a costs order against the Applicant.
147. **Should a costs order be made against the Respondent?** There have been many occasions upon which the Respondent has referred to an uneven playing field between

himself as a litigant in person and the Applicant who is represented. He also adds that he is not familiar with how things should be done within these proceedings and that he has done all that he could to comply with orders.

148. I do not accept that it would be appropriate to make any costs order against the Respondent due to the delays in the proceedings. He did contest the transfer of the financial remedy proceedings from one petition to the other but it is noted that Deputy District Judge Nicholes did not make a costs order on that occasion. Further, there is no basis upon which the Court could criticise the Respondent for the matter being transferred from London to Brighton. There is no evidence to suggest that this was down to any action on the part of the Respondent. Further, this is clearly a case that should have been commenced in Sussex and should be heard in Sussex.
149. The two areas in which I consider that there is legitimate criticism of the Respondent is in terms of negotiating reasonably and his ‘unrestrained and intransigent’ approach to litigation. I am satisfied that these amount to points covered by FPR 28(7)(3) c) and d) and paragraph 4.4 of PD28A as set out above. The case is one in which it was always likely that the Applicant would receive a capital sum to purchase her own accommodation and the Respondent has steadfastly refused to accept this point. This has undoubtedly increased the costs that have been incurred.
150. The unboundaried approach of the Respondent has also added to the costs of the Applicant and should be recognised by way of a costs order. Examples of this include:
 - a. The disclosure – I accept the phraseology of Mr Perrins of ‘dumping’ of 10,000 pages of documents – in an unacceptable and disorganised fashion. This creates more costs as the Applicant’s lawyers are duty bound to consider such documents.
 - b. The huge number of e-mails sent to the Applicant’s solicitor.
 - c. The approach of the Respondent was exemplified in his closing submissions when he stated: “***H** believes this loan agreement of 5 April 2017 was disclosed to **W** within his 10,000 plus pages of disclosure. **H** would welcome if Dean Wilson could confirm whether this was the case and if so, perhaps they could kindly bring their copy of the original loan document to court before final submissions are made at 11am on 18 May (as an LIP under huge stress, I do not have the time to find the documents at this juncture, having been up most of the night writing this document).*” this again is placing work, and therefore costs, upon the Applicant’s side in an unreasonable fashion.
 - d. The raising of conduct in relation to the ‘abduction’ and the ‘sham marriage’ were never going to be successful and substantial costs were incurred in relation to those points.

151. If the order had not been one which had the effect of the Respondent paying the costs of the Applicant then I would have made a costs order in any event. This would not be for the full amount of the Applicant's costs but for a substantial proportion which I would assess upon a summary basis in the sum of £30,000. This has the effect of reducing the 'overpayment' by the Respondent in that sum.

152. Spousal Periodical Payments

153. The Applicant seeks for an order for spousal periodical payments in the sum of £3,209pm until September 2003 and thereafter £2,500pm until C finishes secondary education. The Respondent states that it is wrong in principle for the Court to consider any order due to the extremely short marriage.

154. The Law on Spousal Periodical Payments

155. The Matrimonial Causes Act 1973 sets out the position in s.25A:

“(1) Where on or after the making of a divorce ... The court decides to exercise its powersin favour of a party to the marriage, it shall be the duty of the court to consider whether it was appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after making the order as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made only for such term as would in the opinion of the court would be sufficient to enable a party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the making of a divorce..... If the court considers that no continuing obligation should be imposed on either party to make periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make them further application in relation to the marriage for an order.”

156. The approach to be taken by a court was set out by Mostyn J in **SS v NS (Spousal Maintenance) [2015 2 FLR 1124]**. I set out the process of that case:

(i) *“A spousal maintenance award was properly made where the evidence showed that choices made during the marriage generated hard future needs on the part of the claimant. The duration of the marriage and the presence of children were pivotal factors.*

- (ii) *An award should only be made by reference to needs, save in the most exceptional case where it could be said that the sharing or compensation principle applied.*
- (iii) *Where the needs in question were not causally connected to the marriage the award should generally be aimed at alleviating significant hardship.*
- (iv) *In every case, the court must consider the termination of spousal maintenance with a transition to independence as soon as it was just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence was acceptable.*
- (v) *If the choice between an extendable term and a joint lives order is finely balanced the statutory steer should militate in favour of the former.*
- (vi) *The marital standard of living was relevant to the quantum of spousal maintenance but was not decisive. That standard should be carefully weighed against the desired objective of eventual independence.*
- (vii) *The essential task of the judge was not really to examine the individual items in the claimant's income budget but to stand back and look at the global total and to ask if it represented a fair proportion of the respondent's available income that should go to the support of the claimant.*
- (viii) *Where the respondent's income salary and a discretionary bonus the claimant's award may be equivalent partitioned.*
- (ix) *There was no criterion of exceptionality on an application to extend a term order.*
- (x) *On an application to discharge a joint lives order, an examination should be made of the original assumption that it was just too difficult to predict eventual independence.*
- (xi) *If the choice between an extendable and non-extendable term was finely balanced, the decision should normally be in favour of the economically weaker party."*

157. On behalf of the Applicant Mr Perrins referred to a number of cases in which spousal periodical payments have been awarded after a short marriage:

- a. ***C v C (Financial Relief: Short Marriage) [1997] 2 FLR 26.*** The parties met in August 1991 and married in March 1992. As at the date of the marriage the wife was pregnant (the Husband in that case attempted to argue unsuccessfully that the wife became pregnant as part of a well-planned scheme to have her debts paid by him) and the child was born in October 1992. The parties separated in December 1992 making this a marriage of just over nine months. There was an order for spousal periodical payments in the sum of £19,500 per

annum on a joint lives basis. On appeal, Ward LJ upheld the order on the basis that appropriateness depended on all the s.25 checklist criteria including the welfare of the child and it was not appropriate simply to presume that the imposition of the term whenever there was a short-term marriage. There was so much uncertainty in the wife's position that it would not have been appropriate to impose a term.

- b. *S v B (Ancillary Relief: Costs) [2005] 1 FLR 474* . In this case the parties were married for less than three years and there was one child of the family aged three at the time of the hearing. The Wife was earning £16,000 per annum. The Husband had previously been a merchant banker earning large sums but had been made redundant and been out of employment for previous years. An order for nominal periodical payments was made for a term of 10 years. The order was upheld on appeal by Wilson J although he stated he would have dismissed the application and he added that the circumstances to vary the order were unlikely to arise.
- c. *AB v FC (Short Marriage: Needs: Stockpiling) [2018] 1 FLR 965*. This involved a 19 month marriage with a 22 month old child at date of the hearing. There was little capital, but the husband was a Premier League footballer with an income of approximately £1 million per annum. The Wife was a beautician but at the time of the hearing had no income and limited earning capacity. An order for periodical payments made to include sufficient funds for the wife to be able to stockpile money to purchase a property in due course.

158. Application of the Principles to this case.

159. This is undoubtedly a short marriage. However, there are other factors to consider. The most pertinent in this case appear to be:

- a) The fact that there is a young child who will share his time equally between the parties on a 2,2,3 rotation. Whilst C is a much wanted and loved child, he also will cause hard future needs on behalf of the Applicant.
- b) The income of the Respondent is far in excess of any earning capacity of the Applicant.
- c) The standard of living during the marriage was good but clearly short lived. The disparity of the position going forward is relevant. C will be living in comparative wealth whilst with the Respondent and he will also be attending private schools, which in themselves generate greater income needs.
- d) The age of the Applicant is such that she will not be in a position to have sufficient time to ever build up capital or sufficient time to build up any career if her business is not a commercial success.

- e) The Applicant (as well as the Respondent) will be making a substantial contribution for years to come in terms of the care that she is providing for C whilst he is spending time with her.

160. The overall monthly income of the Applicant at present is stated to be £1,463.33 in Universal Credit, £91.00 Child Benefit, £2,000 in payments made by the Respondent and £428.33 income from her business. The total is £3,982.66 per month. The CMS calculation will be nil due to the equality of time that the child spends with each parent. The schedule of outgoings produced by the Applicant is in the sum of £5,352pm which reduces to £4,453 pm once the liabilities are cleared as they will be pursuant to this Order. The Applicant's position is that after this hearing the Universal Credit will be lost. Her present income would be £519.33pm (her income plus Child Benefit) leaving a shortfall of £3,934pm. The Applicant states that she can cover some of this by an increase in her income and seeks £3,209 until September 2023 when C commences school and £2,500pm thereafter until C ceases secondary education.
161. There were no questions raised in cross examination of the outgoings of the Applicant. The questions were written by the Respondent in advance of the hearing and put to the Applicant by myself in compliance with FPR 3A. It is submitted on behalf of the Applicant that this means that the Court must accept the Applicant's budget without any variation being permitted. The Respondent states that he did not set out any questions on the Applicant's budget as he was of the view that spousal periodical payments would not be permitted due to the shortness of the marriage. I accept entirely that I did not add any questions on the issue of the budget, but I do not consider that I do not have the ability to scrutinise the budget to consider if it is appropriate. As is set out in *SS v NS above* "*the essential task of the judge was not merely to examine the individual items in the claimants income budget but also to stand back and look at the global total and to ask if it represented a fair proportion of the respondents available income that should go to the support of the claimant.*"
162. There are many items that are set out in the Applicant's budget which may not be required at all eg decorations at £140pm, burglar alarm maintenance at £10pm, plants/lawnmowers at £20pm. There are other expenses that are higher than would be reasonable eg £130pm for repairs, £120pm on treatments £370pm on clothing for herself and C. I do not intend to go through the figures line by line but the Court must consider the overall expenditure in line with all of the circumstances of the case.
163. The Respondent submits he would pay child periodical payments in the sum of £261.83pm on the basis that CPAG calculate this to be half the average cost of raising a child. This is an irrelevant figure as no child is 'average' and C most certainly is not. He will be spending half of his time with the Respondent in a magnificent property, he will be attending private schools and socialising with other children from families with similar backgrounds. His father will no doubt take him on holidays, including

ski-ing holidays as he does with his other children. There is nothing in C's life with the Respondent that can be considered 'average' and consequently the figure calculated by CPAG cannot even amount to a starting point in a case such as this.

164. I have assessed the earning capacity of the Applicant to be in the region of £24,000-£30,000 in due course. This equates to approximately £1,700-£2,000pm net. Even if the outgoing needs of the Applicant are considered to be exaggerated in the schedule, I am satisfied that attempting to live on her earned income plus child benefit would lead to undue hardship and as such the Applicant has a need for periodical payments. An overall figure in the region of £4,000pm would not be inappropriate in the Applicant's position. This would require an additional monthly figure ranging from £1,909 to £2,209 (after including the £91pm child benefit).
165. The assessment that I have made of the Respondent's income is one of £10,000pm net. I am satisfied that he has the ability to meet a substantial claim for periodical payments if it is appropriate. He has been paying the sum of £2,000pm on a voluntary basis.
166. In all of the circumstances of this case I am satisfied that there should be spousal periodical payments in the sum of £2,000pm. There is no basis for a greater figure for the very short period between now and September 2023 as sought by the Applicant. This reflects the needs of the Applicant that have been generated by the marriage.
- 167. Can the Court impose a term for the periodical payments?**
168. The order sought by the Applicant is one of periodical payments until C is 18 or ceases full time secondary education with no s.28(1A) bar on extending the term. At that point the Applicant will be 66-68 years old and the Respondent will be aged between 71 and 73, depending at what age C finishes secondary education. Is there sufficient information before the Court to decide that the term can be terminated prior to such a date? I am satisfied that such evidence is not available. The height of the Applicant's earning capacity is put at £30,000 and that simply would not meet her reasonable needs whilst C is in his minority. The hardship that would be suffered if periodical payments were terminated would undoubtedly be sufficiently severe to be considered 'undue'. I am also satisfied that on the basis of the manner in which the Respondent earns his income that this is likely to continue beyond a normal working age and as such he would be able to maintain the payments up until the age of 73. As such I am in agreement with the Applicant that the order should run to the date sought.
169. **Should a s.28(1A) Bar be imposed?** It is the need to care for C that generates the hard need for the Applicant. This was, by any measure, an extremely short marriage. It would not be fair or reasonable for any periodical payments order to continue beyond the need generated by the child and as such I am satisfied that it is appropriate

to impose a bar upon extending the term beyond the child attaining the age of 18 or ceasing secondary full-time education, whichever is the earlier.

170. **Should the Judgment be Anonymised?**

171. I have received written submissions from each of the parties in relation to the issue of anonymisation. I will not set out their submissions at this point save to say that they are both of the view that it is appropriate for the judgment to be published in anonymous form. This is a matter of law to be decided by the Court and is not simply an issue that can be agreed between the parties.

172. In *X v C [2022] EWFC 79* I considered this issue and stated that the law in this area is in a state of flux and it caused significant difficulties for judges at District Judge and Circuit Judge level as there is disagreement on the High Court bench as to the correct legal approach. There have been a number of developments since that date:

- a. The Publication in May 2023 of the report of the Financial Remedies Group of the Transparency Implementation Group set up by the President of the Family Division – a group which was chaired by myself.
- b. The National Lead Judge for Financial Remedies, Peel J, handed down the judgment of *Tsvetkov v Khayrova [2023] EWFC 130* on 4th August 2023.
- c. *Augousti v Matharu [2023] EWHC 1900* was handed down on 10th August 2023 by Mostyn J, as his final judgment before retirement.

173. The recommendations of the TIG report considered all issues of transparency and were not limited to the issue of anonymity. On this issue the recommendation was that the default position should be one of anonymisation but that there would be cases in which such a presumption would not be upheld. These are mere recommendations of a report and as stated by Peel J in *T v K* (above) they do not carry the weight of law. I do not consider that the conclusions of the report can assist in considering how to approach this matter. As is made clear by the report; “it is not for the group to adjudicate upon the law; that is the remit of the Court of Appeal.”

174. In *T v K*, Peel J set out his understanding of the approach taken by Mostyn J in his judgments on the matter but held that his provisional view was that he should follow the decisions of the Court of Appeal in *Clibbery v Allen [2002] Fam261* and *Lykiardopulo v Lykiardopulo [2011] 1 FLR 1427* that cases concerning financial remedies were not reportable absent a Court order. In fact, in that case, it was held that the litigation misconduct of one of the parties was of the utmost gravity such that it was not appropriate to anonymise the judgment. Peel J stated that that he makes no comment as to whether the approach of Mostyn J was correct or not.

175. In *Augousti*, Mostyn J specifically considered the nature of the decisions of the Court of Appeal and held that the ‘*ratio decidendi*’ (rationale for the decision) was not that

all financial remedy decisions are non-reportable absent a Court order. He set out in full the basis upon which he reached that conclusion including by reference to an article by Sir James Munby and I mean no disrespect in not setting out his reasoning.

176. The position is now no clearer for judges at District Judge and Circuit Judge level than it was 12 months ago. The reality is that it continues to be the case that nearly all financial remedy judgments that are published are done so anonymously, save for those of Mostyn J, and where the accepted exceptions apply. Further, there is no comment made as to the basis of the decision to anonymise in more or less all published judgments. I do not profess to having read every financial remedy judgement but the only other judgment that I can recall making any reference to the issue at all is that of Recorder Moys in *AFW v RFH [2023] EWFC 119*.
177. As a consequence, I can only repeat what I set out in *X v C above* that in order to consider the question of anonymising the judgment I must perform a “*focussed fact-specific Re S exercise of balancing the Art 6, 8 and 10 rights*” in order to consider whether to make a reporting restriction order/anonymity order. This was set out by Lord Steyn in paragraph 17 of In *Re S (A Child) [2005] 1AC 593* : “*First, neither article has as such precedence over the other. Second, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test*”.
178. The arguments in favour of anonymity which were set out by Counsel for the Applicant included the following:
 - a. *W's (and H's) and the child's right to privacy;*
 - b. *The sensitive nature of the information provided under compulsion;*
 - c. *Naming the parents and setting out other information about them and their resources will inevitably lead to the identification of the child, which is not in his best interests;*
 - d. *C is at the very heart of this case and his parents have already been through highly contested Children Act 1989 proceedings and these Financial Remedy proceedings, this increases the significance of the child's Article 8 rights and the child can only be adversely affected by any greater publicity and commotion surrounding the parents'*

separation. It can only cause further interference with the child's right to respect for private and family life;

e. These parties are not famous and there is no media interest in this case, which reduces the weight that should be attached to the requirement that the parties should be named;

f. Moreover, naming the parties and setting out, by references to the individuals in this case, their internal distresses is not essential to understanding the approach of the court in applying the law to the particular facts of this case;

g. A greater understanding of how the FRC operates and how the law is applied in needs cases and short marriage cases through the publication of the judgment can still be achieved through publication in an anonymised form.

179. The Respondent, in his submissions, echoed the points set out by Mr Perrins and added that if the judgment was not to be anonymised then the financial revelations would probably impact the Respondent's business.

180. I note that Mostyn J repeated his view in *Augousti* that just because a child is involved in a case that this would be a sufficient justification to anonymise a judgment at paragraph 79: "*The logical destination of her argument is that every financial remedy case where there are children who might be sufficiently mature to be able to read a judgement about their parents financial remedy dispute, and who might be distressed as a result, should as a class be subjected to blanket secrecy. This argument is completely misconceived. Many people who litigate about money in the civil courts have children who might well be distressed to read about their parents litigation online. That is not a reason for holding the cases in secret.*"

181. The reality in this case is that there have been fully contested Children Act proceedings in which serious allegations of abduction and a sham marriage have been made by the Respondent. Neither of those allegations were proved. It would be incredibly harmful to the child to hear of such allegations. I do not agree with the suggestion by Mostyn J that the maturity of the child is relevant. The reality is that any judgment which is not anonymized can be seen by any peer of the child or more likely any parent of any peer. This would lead to inevitable discussions between parents at the school gate in which undoubtedly the children would become involved.

It is not necessary for the child themselves to be the individual that reads the judgement for any harm to follow.

182. The Article 8 rights of the child and the parties are of great significance in this case as they have both found the proceedings as a whole extraordinarily stressful and distressing. I am satisfied that if they were named then this would add substantially to their stress.
183. The argument in relation to the Respondent's business is not as strong as the Article 8 rights that must be protected if possible. I do see that there may be some adverse impact upon the business and his ability to raise capital if the judgement was published in a non-anonymized fashion. That in turn could have an adverse impact upon the child as the capital is required in order to provide a property for the child and the Applicant.
184. It is correct that there has been and is unlikely to be any particular interest from the press or media in this case and there is no pressing call by any party to utilise their article 10 rights. I am satisfied that the balancing exercise in this case falls in favour of anonymising the judgement as the article 8 rights to family life are of greater significance than the article 10 rights. In the circumstances of this case that is the proportionate outcome utilising that as the cross check.
185. I then have to consider whether this is one of those cases in which there has been such conduct which would justify a refusal to anonymise the judgment. I have set out above my findings in relation to the Deed of Assignment in which I held that it was part of the thinking of the Respondent that it would reduce the availability of capital and as such that must amount to misconduct. However, it is not within the same realm as the levels of misconduct that have been referred to in previous cases in which it has been decided to be inappropriate to anonymise the judgment and in particular it does not come near the level of allegations which were proved in **T v K** referred to above.
186. As a result, I am satisfied that the judgement should be published in an anonymised form. I would add that if permission to appeal is granted and the matter is heard on appeal then it is most likely that the hearing would be in public following the wording of FPR PD30B 2.1 and there would be no anonymisation. That would be a matter for any appeal Court to consider.

Postscript. The Respondent fully complied with the order and all of the payments were made. There has been no appeal to date, but it was still the Respondent's stated intention that the decision will be appealed.

His Honour Judge Farquhar

31st July 2023