IN THE CENTRAL FAMILY COURT
FINANCIAL REMEDIES COURT

BV17D00847

B E T W E E N LB (former husband) and DB (former wife)

Judgment of Deputy District Judge David Hodson
18th June 2020

Prelude

1. Family law craves finality. It is woven throughout legislation and case law. Parties involved in family law litigation want the daytime nightmare to end; not so much the fact of separation, relationship breakdown or difficult financial arrangements but the end to the litigation itself. The paying party desperately seeks the premium of a clean break, the avoidance of continued variation applications to the court and an end to dealings with the other spouse. Family law, perhaps more than any other area of law, is close to the psychological, therapeutic and psychodynamic aspects of the work and is aware of the mental health and well-being benefits of closure and moving on. Parliament recognised the need for finality in 1984, after Law Commission recommendations, with the power to impose a clean break. Judges such as Lord Justice Thorpe and others took steps to reduce the opportunities for appeals in family law cases; there are restrictive provisions on when permission is needed and will be allowed. The FDR in English law has been so successful because it has prevented many cases otherwise going on even longer with higher costs. English family law has scandalous instances of grossly disproportionate costs, at all levels of the wealth spectrum, and sensible parties seek the end of the costs haemorrhage by the finality of the dispute. All family lawyers have had cases where a party has accepted a quite disadvantageous settlement simply to bring long-running litigation to an end. And so many other instances of desperately seeking finality. Family law wants finality

2. I doubt the above would be in any way contentious amongst specialist family law practitioners and judiciary but if judicial endorsement is needed, plenty can be found across many cases. Given that I'm being asked to consider a construction upon foundations which are 40 years old, it's probably appropriate to go back 45 years and what was said by Lord Wilberforce in Ampthill Peerage case (1976) 2 WLR 777:

"It is vitally necessary that the law should provide a means for any doubts which may be raised to be resolved, and resolved at a time when witnesses and records are available. It is vitally necessary that any such doubts once disposed of should be resolved once for all and that they should not be capable of being reopened whenever, allegedly, some new material is brought to light which might have borne upon the question. How otherwise could a man's life be planned?

This policy has been in statutory form for over a century; ... This principle of finality of determination is, of course, but one strand in a more general fabric. English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. The principle which we find in the Act of 1858 is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book.

The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended.

3. Family law also spends a huge amount of time and care in respect of the start of the process. Lawyers work incredibly hard to get the right tone for the opening letter to the other party. There are good practice requirements, some also in procedural rules, about agreeing matters such as contents of a divorce petition before issuing. Every prelitigation attempt should be made to resolve through ADR including compulsory MIAMs. This work and commitment has been often practitioner led, with codes, protocols and good practice, invariably endorsed by the judiciary. But practitioners can do little about the end of the process. This requires the imposition of law. And in an area of law in which Parliament rarely treads, this means judge made law.

4. Yet certainty, predictability and clarity in family law, specifically finality in family law, is at the mercy of the English common law system. Judgments, even sentences in judgments, are picked over by lawyers to find the opportunity for claims, areas of claims, new jurisprudence and new jurisdictions. And so more litigation ensues. The strength and value of the common law in the distinctive aspect of family law, providing huge breadth of opportunity for a fair and just outcome, the adaptability to changing financial and demographic circumstances and within the vast breadth and variety of family structures and arrangements is also its weakness when it allows disorganised and potentially chaotic opportunities for arguments, which are thereby self-defeating of the very principles of family law such as the need for finality.

5. Given that finality is so fundamental, the family justice system needs to be even more cautious and careful in policing the circumstances when the shuttered door of finality is prised open. This is not the role of a mere Deputy District Judge.

But it has to inform reflections when it is submitted a particular door, which may be starting to creak open on rusty hinges, should be pushed wide open.

6. This was the context where bold propositions of law were put at a hearing before me. I'm satisfied it is appropriate for a deputy district judge to reflect on a case of 40 years ago which had no significant reliance through the economic inflations and recessions which I remember in the 1980s and 1990s or the global financial crisis of 2007 and yet has appeared in a couple of cases recently and, I am bound to observe, is being talked up at the time of the dramatic changes in finances because of the pandemic. This is not a Covid merits judgment, although it belatedly featured, but I cannot ignore that a fairly ancient head of jurisdiction is actively being discussed, almost packaged and marketed, as a pandemic remedy. I make these opening remarks only as a prelude but clearly important in the broad sweep

Factual background

7. The parties cohabited from 2002 and married February 2004 and the judge at the final hearing in 2018 understandably treated as a long marriage. The former husband is now 47 and the former wife is 57. They have a daughter who is just 10, living primarily with the mother. There have been protracted children proceedings involving substantial costs, both before the final financial hearing and ongoing. I understand there is another final hearing soon about contentious parenting arrangements

8. The parties separated in 2015 with the Form A by the former husband in February 2017, not concluded until 5 October 2018 at a final hearing, both parties represented by counsel, before Deputy District Judge O'Leary, a very experienced deputy in the central family court. The transcript of her judgment is in the bundle, I read it before the hearing, we looked at it during the hearing and I have read in the preparation of this judgment because of its importance. It is a very good judgment, given at the time to dispose of the matter quickly and allow the parties to move on. Before I turn later to the detail, in broad terms the former husband received a lump sum order of £1.74 million, perhaps about 38% of the available net assets. The judgment is quite strong in criticism of the former wife in her presentation of evidence and of her case. Although she had said she had devoted a couple of years to her preparation for the final hearing, much was last-minute. By way of one example, although there had been a single joint expert valuation of the former matrimonial home, the former wife put forward other evidence resulting in other valuations, then with the second single joint expert producing another figure and the judge giving the benefit of the doubt by taking the mean valuation. The former wife should not be complaining at the allowance given by the judge in the circumstances

9. The former husband is a professional person in employment. He had and has a continuing income, self-supporting, for the remainder of his likely working career. He had a litigation finance loan for the financial remedy proceedings and the children proceedings. The lump sum was to enable him to discharge this and to purchase a property, perhaps £1.25 million, for himself and the child.

10. The former wife had more complicated assets and they are set out in very helpful summary in the first instance judgment. I refer below on the merits of the case as to the changes which she says have subsequently occurred. But they consist of a former matrimonial home in joint names, a ski chalet in France and an interest in two commercial properties in London. The first was owned by a company in which the former wife held 95% of the shares with her mother having the remaining 5%, which were transferred to the former wife after the final hearing so she now owns the company entirely. The second property is held as to 3 parcels; residential flats, ground and basement freehold and then the lease. The basement freehold is owned by the former wife's SIPP whereas the other two parcels were owned by a company which in turn was jointly owned by the parties. The former wife received self-sufficient income from the commercial properties and other business ventures which may or may not have success. She was paying 50% of the school fees for the daughter. Crucially the judge dealt confidently with the former wife's future income as I quote below. On this basis the judge made an income clean break order.

11. I remember many years ago the practice was to dismiss all outstanding claims at the time of the final order on the basis that if there was any non-compliance of any particular term it could be enforced in its own terms. Then at some time, and I could put it no closer than perhaps 20-25 years ago, practice changed. We kept open all claims until there was complete implementation. It was debated. Why would one do so if effectively one would be pursuing enforcement on the terms of the particular element outstanding? Why might one go back to revive other s22-24 claims for enforcement purposes? There are undoubtedly some cases in which one might want to revive claims e.g. to seek a transfer of property order if there was no payment of a lump sum. So with the legal profession being inevitably cautious, the practice developed of keeping claims open, at least of the receiving party, until complete implementation. This is what occurred here.

12. The former husband has been renting, hoping to purchase. The lump sum was payable by 5 April 2019, giving a reasonable period, six months, to the former wife to raise through mortgage or selling as she chose

13. I record there has been partial payment of the lump sum. £25,000 on 28 March 2019, £30,000 on 1 April 2019, £100,000 on 21 June 2019 and the final payment of £350,000 on 10 January 2020 being a total of £505,000 leaving £1.235 million outstanding, plus interest and subject to this enforcement

Proceedings

14. On 23 October 2019, the former husband made application to enforce the outstanding payment of the lump sum. It was in conventional terms. The amount then paid was a meagre £155,000.

15. The former wife made application on 6 December 2019 and it was this which was primarily before me. It is important to look at the terms. She seeks, first clause, to set aside, make a new order or vary the terms of the O'Leary order insofar as it dismissed income claims and required payment of a lump sum. It was said that the order remains executory and it would be inequitable not to do

so, set aside and reopen, in the light of the change in circumstances since the order was made. In other words a clear change of circumstances application. She sought to stay the lump sum and, although I'm not sure if that stay was granted, enforcement has rightly not been pursued. It then said, fourth clause, that the reasons, to be amplified in a statement, were deterioration of her health undermining findings as to income needs, income and earning capacity and undermining many of the calculations of the judgment and secondly inability to raise the lump sum given the dialogue which she said the parties had been having. The former wife filed a statement at the same time which was before the court at this hearing and I have read again

16. The matter came before District Judge Gibbons on 13 January 2020. What she precisely ordered and what was therefore before me was a matter of considerable contention and quite crucially linked with the central issue of law in the application of the former wife, and therefore I deal below.

17. The former wife did a second statement dated 1 May 2020, dealing with property values, inability to sell and now introducing impact of the pandemic.

18. It was listed before me as a one-day hearing on 29 May 2020, obviously during the period of the lockdown. I had conducted some previous hearings remotely as a deputy by telephone as was preferred at that stage. I record I found them thoroughly unsatisfactory and very hard to produce a semblance of justice in my opinion. I had therefore arranged by agreement for this hearing to be via zoom, far more satisfactory, and counsels' clerk recorded and set up and I was grateful. As it happened, the hearing was very largely argument between counsel and me with little involvement of the parties. There was little need for taking of instructions on factual matters which were mostly agreed. I was not willing to adjourn until face-to-face hearings were available, and as we now know will not be available for many months. It was not possible to conclude a judgment on the day but in any event I had indicated that with a complex issue of law I needed to consider

19. Both parties were represented by specialist counsel; the former husband by counsel who had been at the final hearing before Deputy District Judge O'Leary and throughout and the former wife by counsel representing her for the first time at this hearing.

What was the hearing before me intended to be about?

20. On the face of the order, 13 January 2020, district Judge Gibbons said, clause 9, the enforcement application and the set-aside application of each party should be listed to be determined on submissions i.e. no oral evidence. It goes on to say, clause 10, that in the event the application of the former wife is not dismissed, further directions shall be considered, with an obvious cross reference back to clause 7. This says that if the court determines that there are legal grounds on which it might be appropriate to set aside or vary the final hearing order, the court will consider the evidence needed subsequently to determine that claim. In other words it seemed to me as I read the order in advance of the hearing that the matter before me was about legal grounds on the set-aside, obviously taking

account of factual basis. If there were sufficient legal grounds then there would be another hearing with more evidence. But if not so, the matter would proceed only on the enforcement. Costs were reserved to me. So this was clearly not on the face of the order a final hearing of the set-aside. It seemed a determination whether there were legal grounds whether it might be appropriate to set aside or vary.

21. However the former wife in the skeleton of her barrister, in the very first line, describes it as a summary determination, a strikeout hearing, on an oral application made by the former husband at the hearing before District Judge Gibbons. He argued that the strikeout must fail, for the reasons he set out very well in his skeleton and expounded before me. On this basis he said I should set aside the O'Leary order now and set down for another hearing to decide a substitute outcome. He disputed it was any form of summary assessment as such. It was the former husband's strikeout application which I should, effectively, strikeout. Before I deal with the issue of law of set-aside, I have to deal with the nature of the hearing before me and fundamentally whether it was a so-called strikeout application.

22. The former wife in the skeleton sets out, clauses 12-16, the power to strike out a statement of case. There is reference to FPR 4.4 and PD 4A. There is reliance by the comments by Lord Wilson in Vince v Wyatt in the Supreme Court, specifically his comments at clauses 27-28. If this was a strikeout then this might be right. But as I decided as below it wasn't. For an assessment it was necessary to go back to the DJ Gibbons hearing and analyse exactly what she was expecting and what was the intended hearing before me. We read the transcript several times during the hearing. We also went back to the reported decision of district Judge Dudderidge of W v H [2019] EWFC B19, in the separate authorities bundle and which I read in advance of the hearing.

23. A little way into the hearing, it is the district judge herself rather than the parties who raises the W v H authority as applying in this case. I'm not sure it had been in the awareness necessarily or at least presentation by either party. The district judge goes on to say that reported case had been an application to set aside an order and queried within the case whether it could be dealt with summarily. In W v H it was held that an application to set aside is not an application for a financial remedy and therefore the caveats of Vince v Wyatt and similar do not apply. Understandably the former wife's barrister seized on this direction of travel, was fully supportive although it was clear the summary assessment could not be dealt with on that day. She went on to say that it would be perfectly permissible to deal with it summarily but it would not be permission to strikeout which was a different exercise. The discussion at the district Judge Gibbons hearing then moves on to the basis of the O'Leary first instance judgment. This was all about merits, rehearsing some of the matters before me, but not about process which was the argument as to what sort of hearing was before me. But what was transparently obvious is the uncertainty in the mind of district judge Gibbons and indeed that of the former husband as to how, what procedural and legal basis, the former wife was putting her claim. There was certainly reference to Thwaite but also Barder and other opportunities in law of setting aside. The former husband was saying he didn't know what case he had to answer. Many

pages of transcript later, they return to process and whether it would be an unnecessary expense to have a preliminary hearing followed possibly by a longer hearing. Eventually, and it is a longish hearing in the circumstances, the district judge says in terms, B66: I think what the court needs to be able to do in this case is to make a determination in the way that district Judge Dudderidge did in W v H. She says time does not permit for her and it is accepted that more evidence should be brought forward on behalf of the former wife. The judge goes on to say that if the court on an analysis at the hearing determines it's going to need more evidence then it can be dealt with in a different way. The medical evidence would be taken at its highest for the purposes of that hearing before me to avoid more reports.

24. The judge concludes by saying that she is sufficiently concerned about the merits of the former wife's application to list for a day for consideration as to whether it can be dealt with summarily i.e. in the first instance it would be. She goes on to say after a hearing lasting almost 2 ½ hours and going well into lunchtime the whole thing struck her as an appeal by the back door. She said the case of the former wife should be particularised in skeleton arguments on the law.

25. So before me this is no strikeout application, the basis of the key parts of skeleton arguments in law by the former wife. Specifically it was said by district Judge Gibbons in setting down this particular hearing that it was a summary assessment, particularly in law to understand the case which the former wife was putting because at the January hearing it was certainly not clear. What particular authority was she relying in law? Did that authority stand up on the best interpretation of her case? If it did then there would be a further hearing to examine the merits in more detail on the facts. This would be primarily an issue in law on particular facts.

26. And so it turned out. We started soon after 10 AM and spent until 11:40 AM between counsel for the former wife and I on issues of law with at most 15 minutes on the particular facts. Counsel for the former husband then responded and her own case, ending arguments on law at 12:50 PM, lunch adjournment, then continuing at 1:55 PM on the facts finishing at 2:45 PM when the barrister for the former wife answered finishing at about 3:30 PM. So there was argument primarily on law.

27. In the circumstances I reject the case put by the former wife that this is a strikeout application which I should dismiss as a matter of law, especially procedural law. It was not. It was specifically contemplated by the judge fixing this hearing as a summary assessment of the merits in law of the claim by the former wife to set aside the first instance order of 2018, based on particular facts.

Thwaite and the threshold test

28. On a summary assessment of the set-aside application, has the former wife put forward sufficient, treating her evidence at its highest, for the set-aside to proceed to a full hearing? The former wife put her case in law clearly in the skeleton and precisely in the conclusion of the case. She set out the facts on which she relied in two statements, December and May. She asserted that where

there is an executory order as here i.e. it has not been fully implemented, and the circumstances when the matter comes before the court i.e. now, are inequitable as informed by section 25 then I should set aside the original order and open everything up i.e. not just the part of the order that has not been implemented. She places specific reliance on the authority of Thwaite. She says I am not required to be convinced on the basis of change of circumstances, of whatever criteria or threshold. She says there is no gateway criteria for Thwaite other than the present circumstances now being inequitable. A Thwaite set aside should not be dismissed without full and renewed consideration of s25. But even if there is a gateway stage, which was not admitted by the former wife, the inequity could be any part of the order; it doesn't need every single corner of the original order or indeed the element which has yet to be implemented in order to be inequitable. There would then have to be another section 25 hearing.

29. I state this above so that it is clear what I was being asked to decide on this application before me on the summary assessment. I spent some considerable time at the hearing checking, rechecking and then checking again on what exactly was the criteria I was being asked to use. It did change during the hearing. At times it was restated in ways which I felt were a little different from other times. I was specifically anxious to make very sure because I felt I was being asked to consider what might be regarded on the above as a very basic criteria, almost no criteria at all, for setting aside the finality of a final court order after a disputed hearing with full representation. We specifically spent time going through the interrelationship with change in circumstances. At times it was said there should be some reflection on change in circumstances but it was not the criteria and the change would only reflect in the now s25 elements. I had pondered aloud for discussion how much change? Would 10% be sufficient? Did it require 90%? I was firmly told that this mode was not appropriate and it would be reflecting on the circumstances at the time and whether they were now equitable, which I understood to be whether they would pass the s25 criteria. I have set out above the timetable of the hearing to show how long was taken by me trying to hear exactly what the former wife was saying so that I could fairly understand what criteria she was asking should be satisfied. I believe the above is a fair summary of what was put to me on her behalf. It was specific reliance on the authority of Thwaite

30. So was the position put to me the law on a set-aside on a Thwaite basis?

31. How did we get to this position on the case law? And how does that case law work alongside the other case law in respect of setting aside a final order. Can we have in effect parallel jurisprudence of powers to set aside final family court financial orders with different criteria in different circumstances?

32. Thwaite (1981) 2AER 789 was, obviously, a case of the early 1980s, 40 years ago. In circumstances where it has only been significantly used in two cases in the subsequent decades and yet relates to a very broad area of law namely setting aside a final financial order, it is right and proper to question whether a proposition in such a case should still be holding powerfully 40 years on, particularly notwithstanding the economic inflations and recessions we have had subsequently when property prices went up and down dramatically and

inequalities of final orders would have been evident. It is Court of Appeal and Lord Justice Ormerod, one of our leading family law judges. Nevertheless a court of first instance should be slow in my opinion to encourage a line of jurisprudence from historic origins unless strongly endorsed more recently.

33. In Thwaite, on marriage breakdown, the wife and children went to Australia, she undertook to return and the husband agreed to transfer his interest in the property to her within 28 days of the children returning to England so she could make a home here with them. It was a consent order, an important fact at that time in the development of the law of set-aside. She did return but before the transfer went through, she removed the children and went back to Australia in a clear child abduction, without the consent of the husband. Within six months of the original order, the husband applied to be relieved from his obligation to transfer the interest to the wife and she applied to enforce the transfer. The court of appeal held there was jurisdiction to hear an appeal from the consent order and, with the fresh evidence, power to set it aside. The court then had jurisdiction to make a new order for ancillary relief even without the consent of the wife. I pause and notice that the head note contains no reference to the classic phrase taken from this case on which reliance is now, 40 years later, much placed.

34. At p 795, Lord Justice Ormerod makes four statements about the various orders under appeal. The first relates to jurisdiction to vary a consent order which was a judicial debate at that time, and subsequently. The second refers to the husband's appeal from the requirement to transfer the interest. The judge says: *there was jurisdiction to refuse to make such an order and, in the circumstances, as found by the judge, it would have been manifestly inequitable to enforce the order*. From this it is said by the former wife in this case that I have carte blanche jurisdiction, based on this jurisprudence, to refuse an enforcement of any order if it would be inequitable to enforce. I observe the inequitable to enforce is described as manifest. Was this intended as part of the test, the gateway, the criteria or was simply Lord Justice Ormerod commenting on the extent of the inequity in this particular case if there had been enforcement? Or was the entire remark primarily about power rather than the criteria of the exercise of that power?

35. On the previous page, 794, is the often-quoted reference. *Where the order is still executory and one of the parties applies to the court to enforce the order, the court may refuse if in the circumstances prevailing at the time of the application it would be inequitable to do so*. I note this is framed in the context of enforcement, as the former husband is trying to do here. It is not explicitly the context of a set-aside although that is probably implicit. This statement doesn't seem to me to give a first instance court any clear guidance on the circumstances, particularly the test, criteria or gateway when an order should set aside. This is particularly when a couple of paragraphs later the same judge is referring to manifestly inequitable rather than simple inequitable. This doesn't look to me like an intended careful statement of law of the criteria for set-aside. In the context of the argument of the circumstances in which there is jurisdiction, power, regarding a consent order which was the live debate at the time and subsequently, it seems to me this is simply saying the court may do so, can do so and where appropriate should do so. It has the power. I don't think 40 years on

that power is any longer doubted. The matter for me is when it should be exercised.

36. In passing, in clause 18 of the former wife's barrister's skeleton there is a quote said to be from Thwaite. I've read the judgment now several times and I cannot find that quote. In fact he is quoting from clause 67 of the judgment of Munby LJ in the case of L v L, below, also in my authority's bundle, and a leading decision and analysis of the courts powers in particular circumstances to set aside court orders. That is a far more extensive judgment than mine is or could be, particularly in the context where I was given relatively limited authorities. However I would want to defer to that judgment which endeavours to be some sort of informal partial codification of where setting aside might be appropriate. I come to it later. But it seems to me that even the skeleton from the former wife wasn't directly quoting from Thwaite itself. If we are going to rely on Thwaite we must look at what it said, as I have tried above.

37. I'm also bound to observe in looking at the facts in Thwaite that they are remarkably Barder like, where a property was to be transferred to the wife for the home for the children as in Thwaite but instead of returning to Australia, this wife committed suicide (Barder (1987 2 FLR 480)). The circumstances had a similarity and the fundamental essence of the frustration of the purpose of the original order was the same. Having read Thwaite several times, the comments in the judgment could well have been restricted to what became the Barder jurisprudence, which itself is fairly clear, with specific four elements which must be present and, I would suggest, pretty uncontentious and appropriately justified. So what is there in Thwaite which we do not have in Barder? The former wife has to show Thwaite is wider than Barder given she has accepted she cannot succeed under the latter. For this we need to look at subsequent case law and then I need to consider in the context of the submissions made to me and the authorities given to me

38. It seems the first Thwaite case is about 15 years later in Benson v Benson deceased (1996) 1 FLR 692.696 when Mrs Justice Bracewell described the principle, as quoted by counsel for the former wife in the case before me: the judge has an inherent jurisdiction to make a fresh order for ancillary relief where the original order remains executory if the basis upon which it was made has fundamentally altered. But this is Barder territory. And the court in the Benson case declined to vary a final order. I don't think Benson takes us any further forward as to Thwaite criteria rather than power.

39. The former wife in her barrister's skeleton then relies upon the quote asserted in clause 18 of her skeleton to be by Lord Justice Ormerod in Thwaite but then correctly included in clause 20 as by Lord Justice Munby in L v L (2006) EWHC 956. This is an important case in the arena of set-aside. It is again revisiting the hotly debated issue of setting aside, escaping from, a consent order. It is one of those cases which are much-needed in a common law system where an authoritative judge surveys and narrates the position in law on a disputed and complicated area in a careful and methodical fashion. But even he does not seek to suggest it is comprehensive in that there are areas on which he does not opine.

But it is a case within the set-aside case law which should be given particular weight for this reason. I do so in my consideration of this case

40. Thwaite duly makes an appearance, clause 34, but not as to criteria but as to circumstances when the power of set-aside may be exercised namely the order is executory, which is uncontentious. There is argument about the means by which applications can be brought before the court which again I remember at the time as a matter of much debate between practitioners. The judge then turns to reasons for setting aside covering fraud, nondisclosure, bad legal advice, the involvement of undertakings and similar. In due course, clause 64, the judge turns to Thwaite. But he then goes on to other case law, now coming to the more important issue for this case of criteria and appropriate test.

41. There is much reference by the former wife to the phrase: it would be inequitable not to do so. It doesn't include the *manifestly* word in Thwaite. Her counsel quotes, clause 20 of the Munby skeleton from clause 67 of the L v L judgment, by saying as follows: "*Merely because an order is still executory the court does not have, any more than it has in relation to an undertaking, any general and unfettered power to adjust a final order – let alone a final consent order – merely because it thinks it just to do so. The essence of the jurisdiction is that it is just to do – it would be inequitable not to do so – because of or in the light of some significant change in the circumstances since the order was made.*"

42. I'm not sure this actually helps the case of the former wife. It explicitly says that just because it is still executory doesn't mean a general and unfettered power to adjust a final order merely because it is just to do so. Yet this is precisely what she says I should do at clause 21 of the skeleton: *all that the wife needs to prove on her application is that it would be inequitable to order a full enforcement of the balance of the lump sum, once that test is past the court is obliged to consider a fair arrangement in the exercise of discretion*. This directly follows from the Munby quote and seems to be putting forward from the Munby statement a position that any perception of inequitable, in his words *just*, allows the set-aside. He specifically said it doesn't. He made clear there was a criteria namely: *because of or in the light of some significant change in circumstances since the order was made*. This is directly linking change in circumstances to the rationale of the justice or the equitability, moreover that must be a significant change.

43. But the former husband says it is even more than that. His counsel pointed out that the above skeleton quote was selective and truncated. What the judge actually said clause 67 is as follows *Merely because an order is still executory the court does not have, any more than it has in relation to an undertaking, any general and unfettered power to adjust a final order – let alone a final consent order – merely because it thinks it just to do so. The essence of the jurisdiction is that it is just to do – it would be inequitable not to do so – because of or in the light of some significant change in the circumstances since the order was made. Whether it is enough that there should have been a "significant change of circumstances" to adopt the phrase used by Buxton LJ in Mid Suffolk District Council v Clarke [2006] EWCA Civ 71 or whether, as Bracewell J seems to have assumed in Benson v Benson (deceased) [1996] 1 FLR 692, it is necessary*

to meet the more stringent test in Barder v Caluori [1988] AC 20 namely that there has been a new event since the making of the order which invalidates the basis, or fundamental assumption, upon which the order was made, is a refinement which there is no need for me to explore here

44. Lord Justice Munby is directly querying whether the test of Thwaite set-aside is some significant change in circumstances or the stiffer test of Barder namely a new event invalidating the basis or fundamental assumption of the order. He says that he doesn't have to decide and so doesn't. But both are high thresholds: significant change in circumstances or invalidating the basis of fundamental assumption of an order. Neither entertain any opportunity for a review by merely looking at the section 25 criteria as they may be a couple of years after the final order. Like Munby LJ, I do not have to decide which test if the former wife doesn't meet the lower of the two tests. This may await another case before a higher court.

45. But the review of the case law must continue and now after almost 40 years Thwaite becomes successfully used, more precisely specifically expounded and called out as such

46. In SR v HR, (2018) EWHC 606 Mr Justice Mostyn said: *any application under the principle of Thwaite should be approached extremely cautiously and conservatively*, clause 13. This cannot be contentious

47. Mrs Justice Roberts in US v SR (2018) EWHR 3207, endorsed the above comment and said in the context of the original order: *I accept that any such revision must be contained and, so far as possible, should reflect the underlying intention of the original extraction route embodied in the 2015 mainframe order.* But this was a quite distinctive case. Mrs Justice Roberts had previously made a detailed order after difficult litigation including provision for the sale and division of a property in Moscow. Subsequently both parties invited the court to vary the order. There were suggestions that one party had frustrated the sale and marketing of the property. As she says herself in the second clause of her judgment, *the issue is the extent necessary to revisit the means by which part of the matrimonial assets can be provided in the structure of the overall finances*. This was not a contentious, litigated setting aside. It was a rearrangement of the settlement previously intended in the context where the parties both supported some rearrangement. It was also in the context where there was more than mere delay in implementing a routine property transfer order. Mrs Justice Roberts did not see herself, in my assessment, carrying out a root and branch reappraisal, s25 review, of the appropriate financial settlement on the circumstances then presented to her a couple of years after the similar exercise following a financial hearing. She was rearranging rather than reallocating. I doubt many would find this contentious. But it is not the situation before me. For what it's worth, I don't think this makes any distinctive and substantive contribution to Thwaite jurisdiction apart from endorsement of a set-aside power

48. As an additional element, Mrs Justice Roberts gave a principle of light-touch involvement on such a set-aside. At clause 85 she said as follows. *My objective is to interfere as little as possible with the outcome and net effect of my original*

mainframe order last finding a solution for each of these parties to the practical difficulties of realising value in the underlying matrimonial estate. This is not a new hearing, even an abbreviated s25. This is intervening to the least extent to produce as close to the same outcome as previously intended

49. Then there is Bezeliansky v Belianskaya (2016) EWCA 76, this time in the context of a permission to appeal, a decision by Mr Justice Moor. I comment immediately that in the matter before me, the former wife admits she is well out of time for appealing the decision of Deputy District Judge O'Leary. She had to apply to set-aside because she couldn't appeal. I therefore return to my opening remarks. Finality is of such importance to family law that the family justice system needs clear boundaries in which finality will not be final. We have the circumstances and timetables of appeals. We have Barder in exceptional circumstances with its distinctive criteria which have to be satisfied. To create new growth of set-aside is dangerous in this arena where opportunities already exist provided they are used promptly.

50. Bezeliansky was a transfer of property order from husband to wife which was not implemented. Fairly ordinary circumstance often coming before the enforcement courts within the family courts. The wife sought a variation as she had not received the property. Transfer of the property, in Moscow, had been thoroughly frustrated by the husband instead transferring the property to a third party, registering at the land Registry, and therefore being unable to implement the order. Enforcement was impossible. The judge held that the obstacles put in the way of implementation were, in very considerable part, the responsibility of the husband. So in this context, what would any family judge do, whether a mere deputy district judge or a High Court judge? Find another way to implement to bring about the same intended outcome. I suggest this is happening not infrequently in the family court where one party makes it difficult for implementation.

51. Within the central family court there has over several years been a distinct unit dealing with enforcement cases. Set up by his honour Judge Robinson and now overseen by district Judge Jenkins, about half a dozen of us, full-time and part-time but all finance specialists, deal with enforcement cases. It had been found that these cases require continuity of a particular judge, sometimes progressive action over several hearings to get to the point of satisfactory enforcement, a good understanding of the complex procedural rules and a developed understanding of the problems arising with enforcement. Having sat in this particular unit and dealt with many enforcement cases over a number of years in this very successful judicial initiative, I have come across many instances where one party frustrates implementation. So the enforcement judge finds other ways of getting to the same outcome. The proverbial different ways of skinning the cat. And so it was in that reported case by Moor J. But this is nothing to do with Thwaite set-aside criteria. It is doing justice in circumstances where one party endeavours to thwart justice. It is specifically not producing another outcome but rearranging the means to get the outcome. So I do not find this decision is creating any jurisdictional basis for setting aside. It is what happens frequently and satisfactorily by specialist family court judges at all levels dealing with enforcement against those parties who will not comply with a family court order.

52. And those are the only two post Thwaite successful cases which I was given. Both in the last few years, apparently building on a couple of sentences 40 years earlier. And on this uncertain foundation I was asked to find Thwaite gave me the power, on a summary assessment, to decide that the circumstances in the case were no longer equitable, that I should set aside the original order and set down a new, perhaps slightly abbreviated, s25 hearing to decide what should be the very different outcome now argued for by one party.

53. I also found it particularly harsh that reliance on this Thwaite criteria was in the context that it was an executory order. For if the former wife had complied with the order and any significant change in circumstances occurred thereafter, she could not then have come to the court relying on Thwaite. It would no longer be executory. All claims would by then have been dismissed with the implementation. But because she had not implemented, specifically because she had delayed and frustrated implementation according to the former husband, it was still open to her to use Thwaite. That cannot be right. It is a green light of encouragement to the obstructive party to continue their obstruction to keep open their apparent Thwaite rights. That goes against all element of family justice, without even looking to chancery precepts of clean hands. It's not for me in this judgment to redefine Thwaite going forward but it seems strongly wrong, unjust and unfair that a party can rely on it when they are the one who is in default and breach of what otherwise would have been a fully executed order at the time of the application.

54. So if I reject the submissions of the former wife that the only test, criteria or gateway is some sort of unease about the present equitability, fairness or justice of the court order in the present circumstances now prevailing, what test instead should the court be considering? Does she comply with that test even if it's not the one she herself asserts in law? If she does then she should succeed on this summary assessment

55. I am satisfied on my reading of the authorities that the test, criteria or gateway is one of the two tests described in L v L. The lower of the two tests is significant change of circumstances which I therefore use to give her the benefit of the doubt. Notably not any change: it must be significant. It might be argued that this is a slightly lower bar than manifest inequity, words used by Lord Justice Ormerod in Thwaite. I don't feel any need to go down that line of distinguishing. It's a high bar whether significant change in circumstances or manifest inequity. But Munby LJ refers to the possibility of it being a more stringent test of new event, obviously a significant change in circumstance, moreover invalidating the basis or fundamental assumption of the order. This is clearly an even higher bar. Not just a significant change in circumstance but one which goes to the whole basis on which the previous order was made. A property for one party which she no longer needs because she has abducted the children to Australia. A property for one party which she no longer needs because tragically she has committed suicide. I could go further. A property which cannot be transferred because it has been transferred to another for the purpose of frustrating. A property which cannot be transferred because both parties agree it cannot.

56. It is for another judge in another court on another day to decide authoritatively whether it is a significant change in circumstance, a manifest inequity, or a change going to the fundamental assumption of the order. But these are all high tests. For the purposes of the matter before me, I used significant change in circumstances which I think is probably the lower end of the high bars

57. But I must deal also with two other decisions, which particularly feature in the context of changes through no fault of either party, simply economic changes.

58. In Cornick (1994) 2 FLR 530, there had been a dramatic increase in the value of the husband's company so that instead of having 51% of the total value of the net assets as intended by the order, the former wife would now only be receiving 20%. She wanted leave to appeal out of time in view of this significant increase, saying it was a new event entitling the court to reopen the settlement. Mrs Justice Hale, as she then was, dismissed. She upheld Barder but where there was an asset properly valued but then substantially altered by something unforeseen and unforeseeable, that alteration itself was not a Barder event. The court should not manipulate the terms of the order for later changes in the fortune of the other. In so doing at p 536 she set out three situations. First, a proper valuation but significant changes within a relatively short period of time due to processes of price fluctuation. Secondly, a wrong value placed on the asset at the time which had it been known would have meant a different order would have been made and which is more misrepresentation or nondisclosure than Barder. Thirdly, something unforeseen or unforeseeable had happened since the hearing which was so dramatic in the impact on the value of the assets as to bring about a substantial change in the balance of the assets. She said Barder might then prevail if the other Barder criteria are met. But, she added, the natural processes of price fluctuation do not fall within this category. This reiterates the set aside on quasi-Barder criteria or standard.

59. Then in different economic times, with prices going dramatically down rather than up, was Myerson (2009) EWCA 282, not in the authorities bundle but raised by me. This case following the global financial crisis saw the value of the husband's business fall so that it was worth, in very broad terms, 20% of what it was only months earlier at the time of the financial settlement. Was this Barder? Lord Justice Thorpe refused the opportunity to set aside. He commented that very few successful applications have been reported under Barder set aside. He relied on Cornick finding this dramatic fall wasn't within the judicial criteria. I'm bound to say here, as I have elsewhere, that I felt there was a strong public policy impetus by Lord Justice Thorpe in his judgment. It seemed to be such a dramatic change in circumstances in such a short period of time but the judge knew that coming down the line would be many other claims arising from the impact of the global financial crisis at that time; the judicial anxiety about the floodgates. Whether it was a public policy judgment or strictly according to previous judicial pronouncements doesn't matter here. Set aside or appeal was not allowed in this dramatic change which was certainly not expected at the time of the financial settlement. This set the standard incredibly high for a set aside. It will be the challenge to be faced by any seeking to set aside arising from the present pandemic

60. Neither of these 2 cases give encouragement to the setting aside of final financial orders unless there are very dramatic changes and even then with little confidence of success. I suggest that they are part of the overall policy of family law to bring about as much finality as possible and only a reopening within clearly defined and very high boundaries.

61. So I must now turn to the relevant changes asserted by the former wife and whether they meet what I ascertain to be minimum criteria as described by Sir James Munby

Factual reasons for the set-aside

62. As far as I could tell, there were originally two in her statement in support of her application namely earning capacity with extra needs due to change in health and changing value of properties, with a third, the impact of the pandemic, added by her second statement in May 2020. I deal with each in turn

63. She complains of a serious deterioration in her health thereby affecting her income capacity. A medical report was produced and on the terms of the January order I should treat it as its highest for the purposes of this summary assessment. At the first instance hearing, clause 40 of the judgment, some medical evidence had been produced extremely late and without leave but the judge accepted the wife suffered from a neck condition and was in genuine pain. It was said to be degenerative. It might slow down her dynamism but the judge found it did not reduce her ability to earn a good living and it was not put in those terms by her barrister. The judge found she was a person of proven ability with capacity to make money and make business schemes pay for themselves. In other words, able continually to work at least to produce a self-sufficient income. But I remind myself this was a clean break case. Moreover a good part of her income then was managing and receiving rental from the commercial premises. It was inevitable that if any had to be sold, as was likely to fund the lump sum, then there would be less income from this source. Nevertheless it was not argued that even with a lump sum as claimed by the former husband there should not alongside it be a clean break.

64. She is now 57 and would have conventionally at most only another decade in paid employment. I accept of course that their daughter is 10 and has another decade of financial need.

65. In respect of this application a medical report was prepared by her which said that a deterioration had been profound and quick and that she could not have envisaged the relatively rapid deterioration in her symptoms at the final financial remedy hearing. It was said that she could not work in any capacity. It affected not just her neck but her lumbar spine and osteo arthritis in hands, feet and knees

66. I must take the report at its highest because of the terms on which this hearing was set up. I was surprised that in the intervening 18 months, notwithstanding this apparent worsening condition, she has been skiing albeit she says not in any health hazardous way, if that is possible, and travelled to China and elsewhere

abroad. I appreciate she may not agree with these observations. There may be good reasons why she conducted this travel. Of her own admission she said she was working six days a week up until June 2019. In December 2019 there seems to be a suggestion she was going to work three days a week the following week. In May 2020 she complained about the lack of time off. From her perspective she asserts she should not and cannot work many hours per day at her desk.

67. Nevertheless what will be her income position? The Net assets as found by the judge was in broad terms about £4.5 million. About one third represented the matrimonial home. I understand the former wife says she wants to keep this for the sake of their daughter but that is a choice she makes. There is about £650,000 in illiquid pensions. There were liabilities approaching £400,000 as part of the net asset base. But crucially and again in only broad figures, there was the ski chalet valued at about £400,000 and the commercial properties including those within businesses valued at about £2.3 million i.e. about £2.7 million. The lump sum was £1.74 million. It was a matter for the former wife how she arranged her finances after the final court order. She could have sold the former matrimonial home because it now represented an even higher proportion of her remaining assets. She could have sold the ski chalet although she says there are renovations and of course Brexit. She could have sold some of the commercial properties and consolidated the rest.

68. In other words she would have had remaining capital on which she could have lived to produce an income. She could have invested again in commercial property, indeed keeping some of the existing commercial property intact, and managed or have obtained some assistance in managing and continue to receive some rental. Although undoubtedly she has had health deterioration, it didn't seem to indicate that her entrepreneurial ventures, where the key element was her entrepreneurial spirit and innovative ideas, would be materially diminished.

69. Counsel for the former husband gave me various Duxbury figures showing that she would be able to maintain at or approaching her reasonable income needs on the capital which will now be available to her. This was in the context that the set-aside went forward to a further hearing. I didn't need to go in this direction but it did seem to me that in the context now presenting itself, where the former wife has not taken necessary steps to realise assets, she would still have capital available to produce income for her for the future but this is not a finding I need to make for this decision

70. I was not satisfied that her needs had significantly increased from the time of the final hearing due to health changes such as to warrant a complete revisiting of the entire settlement, including setting aside a clean break.

71. In any event where must be the primary income concern? It must be the financial support of their daughter. There may have been a clean break of spousal maintenance but there never can be on obligations to a child. That jurisdiction is beyond this court. If she considers she requires more because of her own lack of income, she can seek an assessment from the former husband taking into account those circumstances.

72. It was also worth noting that she is meeting 50% of the school fees and, crucially, 100% of all other associated costs and living costs, by choice. Sharing these would be a prudent and sensible measure and thereby produce more available resources for her own income needs.

73. In the context of the finding by the judge, the clean break, the lack of particular income as a vital feature of the final decision, the availability of capital still in her hands to produce an income and the opportunity to seek child support and assistance with school fees, I cannot see that this meets any form of Twaite threshold. Indeed, I have to question whether if these particular facts were known to the first instance Judge she would still have made a clean break order. In my assessment she would. One must have regard to the exceptional amount of litigation between the parties; both regarding finance and children with the latter still ongoing with high costs and a hearing soon. The judge described it as acrimonious set of proceedings with high costs consequently following. Judges have a duty under the 1984 legislation to bring about a clean break wherever possible. This duty becomes even more important in the context of acrimonious, expensive and continuous litigation. The family court brings about as much finality that is possible and whenever it can. I believe that even in the circumstances as now present themselves concerning the health of the former wife the first instance Judge would still have ordered a clean break

74. Secondly there is allegedly change in property values. I have already set out the Cornick authority above and the Myerson refusal in circumstances of dramatic change. I was being asked to look at Thwaite outside those authorities. I'm not sure I can but in any event if I do and using the lower of the two tests, what are the significant changes?

75. The former matrimonial home was put in the final balance sheet at £1.421 million. Even this was contentious at trial. There had been a single joint expert report only a month or so earlier at a figure of £1.75 million. Without permission the former wife served two lower valuations. There was no permission or authority to do so. But nevertheless the single joint expert reduced his valuation to a figure of £1.5 million. Then another joint expert was appointed who gave a figure of £1.4 million. This is litigation chaos. In the end a middle figure of £1.45 million was used. But there must be some doubt whether that was the right figure and it could have been higher or much higher. But after the final hearing, a year later, in October 2019 reputable agents were suggesting marketing at £1.44 million. So a year on there had been no change. Short of her May 2020 statement and the pandemic, there is nothing before me to come remotely close to any significant change in circumstances. In any event she can retain the property as is and still afford the lump sum on the anticipated situation at trial

76. In respect of the ski chalet, nothing was said about any change in value. But crucially there has been no attempt seemingly to market it or sell it. Here is an asset which can be sold to satisfy in part the lump sum. The former wife has seemingly not even attempted to do so.

77. There are then two separate commercial properties of which the second is in several parcels of ownership

78. The first is a property valued at trial at £1.1379 million. It was put on the market soon after trial at £1.4 million and she received offers of between £900,000 and £1.3 million. It was valued for mortgage purposes at £1.2 million in October 2019. There is no good evidence on which I can place any reliance even on a summary assessment that this is a property that has significantly changed in value.

79. The second is a property in various parcels. In total at trial they were valued at about £2.416 million. There are flats, then ground floor and basement and then the freehold title. They were valued after a single joint expert at trial respectively as £1.374 million, £817,000 and £225,000 gross. It is said there was an offer in January 2019 of £1.43 million but it's far from clear to which parcels this relates. It's hard to believe a reduction in 12 months of £1 million. It may be that it was for the flats, possibly flats with freehold title in addition. If so, as the former husband says, the figures at the trial were an underestimate. If it is the significant fall in value in only a couple of months as the former wife says, then why did she wait the better part of 12 months before applying to set aside; she acknowledges she is out of time for any appeal. She also acknowledges she is out of time for Barder. There may have been some deterioration in the condition of property but it's hard to believe this would have created such a fall in value as alleged.

80. It was said on her behalf that property rentals have been falling across the part of central London where the commercial properties are situated since 2015, leading to hardship. I have no idea and no evidence. But if they were, why was this not factored in at the final hearing? In any event at the time of the application, late 2019, without evidence how can the family court judge be treated as a meteorologist forecasting the direction of the winds of the rental market? Anyone who has practised in central London in family law finance work over several decades has seen these winds change in all directions and sometimes quite quickly.

81. The statement of the former wife sets out various purported endeavours to sell or raise funds. But these are unsatisfactory. She had 12 months from the final hearing decision until the application to this court in order to put one or both commercial properties, or parts of one commercial property, continuously on the market to sell. It's hard to understand how she can bring a case to say that over this year she had no opportunity to show real commitment to selling, mortgaging or otherwise raising funds to pay off the lump sum.

82. She says there were ongoing discussions with the former husband about the lump sum. There might have been. It's quite probable that he wanted to avoid yet more litigation and costs. Reasonable people negotiate before they litigate. But she should have been trying in parallel, at least showing good attempts in parallel, to raise funds and I can't see that happened. He cannot be prejudiced if he endeavoured to use what lawyers would call ADR to avoid litigation. It cannot work against such a party if it thereby means an order remains executory

beyond the intended implementation date, unless by specific agreement on that fact

83. Indeed it was said on behalf of the former wife that the longer a party leaves an enforcement application, the more likely it is that a new determination under s25 will be just and engaged. That cannot be right in my opinion. Family law encourages every opportunity to settle short of litigation. Talking, seeking to resolve, should never leave a party vulnerable to self prejudice.

84. So in this summary assessment, I am thoroughly unconvinced that there has been any such change in property values as to come remotely close to either of the applicable tests and circumstances of setting aside the order.

85. Then thirdly and one might think opportunistically, she sets out in her May 2020 statement the impact of the pandemic on property prices. This is a complete unknown to this court in mid-June 2020. One does not know what will happen with the residential market. If it bounces back, how quickly and how completely will that occur? In respect of office space in central London, the question is far bigger. What will be the demand after the working at home experience of lockdown? What should the court do?

86. We now have the roadmap prepared by the President which indicates that some form of remote hearing will continue throughout this year. But cases are still being resolved in FDR and final hearings across the country. There might sometimes in family law be appropriate circumstances to adjourn certain categories of cases for e.g. a major reported decision in that area which will have a dramatic impact on the case, but even then for a relatively short period. But this is real property, both residential and commercial. Family courts cannot simply adjourn all cases with real property for 12 months or more until we see conclusively what happens with the property market. Family justice has to work with what is available. We have to produce the justice with the best available.

87. It might be that if this was a final hearing going on during the pandemic a form of percentage order would have been made which of course is always far more reliable in changing markets. But this would have meant that if the residential or commercial property of the former wife had gone up in value, she would have had to have paid him more. From all I have read about her conduct of the case and the criticism of her approach by the first instance Judge I am satisfied she would not have wanted this possibility to happen. Percentage outcomes go both ways. This was a case which needed certainty. At this point in mid-June 2020 I am not convinced I should be setting aside the 2018 final order because of the present uncertainty in the property market due to the pandemic as to its medium and longer term effect. So on this further reason I am not setting aside.

88. Specifically at the moment this doesn't come anywhere close to Myerson or Cornick. It might be that in many months to come a case will come before the High Courts on the consequence of the pandemic and either or both of those cases may then be reviewed and perhaps varied or indeed overturned. But not now and not in this matter.

89. I therefore dismiss the application by the former wife to set aside, vary, dismiss or in any other way change the order apart from one minor element as to timing below. I'm satisfied that the test I should be using is either significant change of circumstances or quasi-Barder and none of the reasons are remotely close to these. Indeed I would go further and to say that it's quite likely that district Judge O'Leary on dealing with the matter again might well have come to the same or similar conclusion

90. In passing I also doubt a change in circumstances has been sufficient to satisfy s31 MCA but that was not the case put to me in any event by the former wife.

91. I have dealt with this matter at considerable length given the very wide ranging and broad submissions on law made on behalf of the former wife. This was not an application that had considerable prospect of success in my assessment with the benefit of spending much time looking at the authorities. This was the opinion tentatively expressed by district Judge Gibbons having spent 2 ½ hours looking at it in January 2020. Her instincts were right then. I would also like this opportunity to endorse the hugely important procedural decision of district judge Dudderidge of W v H as a very pragmatic, time-saving and cost saving exercise of the court management rules

92. I was asked to make a costs order by the former husband. I do including the costs reserved to me from the January hearing. Having surveyed all that went on from the final hearing until late 2019 when these cross applications were made, I am completely satisfied that the former wife should have done far more to make sure the lump sum could be paid. I believe she delayed matters, came up with artificial excuses and created difficulties overall. The criticism of her by the first instance Judge is upheld in my assessment of how this matter has subsequently proceeded. This former husband should have had his lump sum ages ago, and specifically before the impact of the pandemic, and not have had to incur these costs. So I make a costs order. I want to reduce any more costs and therefore I invite written submissions on the level of those costs and I will decide on paper and make a separate order. Could I have the quantum and any explanatory note within 14 days of delivery of this judgment with any response seven days thereafter and I will then decide and communicate directly

93. There is one area where I do vary and that must be the date of payment of course because it has expired. Moreover this court must be realistic about the present property market stagnancy, especially London commercial office space. Some large institutions are not returning until September. Many companies will be reviewing how they are placed over the summer and into the autumn. No doubt there will be some deals but as a matter of general notice it is unlikely to pick up until the autumn at the earliest. I appreciate the impact on the former husband having continually to rent but I do not believe there is anything which can otherwise be done. But equally some soundings can be taken. I therefore propose to adjourn the enforcement application to a date in mid-November, which is listed before me although to be dealt with entirely on paper by me, and I invite the former wife to serve a note 7 days in advance setting out all attempts she has made to sell, mortgage or otherwise raise funds to pay the remaining lump sum, with the opportunity for the former husband to respond 2 days in

advance in writing. I will fit in with whatever timings are preferred between the parties. This arrangement should be set out in the order which I will notify to the court office. I also reserve this matter to myself for the ongoing enforcement application and to be within the specific financial enforcement unit of the financial remedies court sitting within the central family court

94. I so order

DDJ David Hodson
18 June 2020