IMPORTANT NOTICE This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the parties and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2021] EWFC B90

Case No: ZC21F04009

IN THE FAMILY COURT SITTING AT THE CENTRAL FAMILY COURT

4th November 2021

Before:

RECORDER CHANDLER

Between:

E
-and-
B

Mr Deepak Nagpal QC instructed by Penningtons Manches Cooper LLP for the applicant
Mr Richard Castle instructed by Vaitilingam Kay Ltd Solicitors for the respondent

Hearing date: 21st October 2021

HTML VERSION OF JUDGMENT

Crown Copyright ©

1. This is my judgment in the applicant wife's applications for interim maintenance and a costs allowance. These applications were made pursuant to section 14 of the Matrimonial and Family Proceedings Act 1984 and are brought within her 'Part III' claim for financial relief after an overseas divorce, leave having been granted on 12 April 2021 by Recorder Amos QC.

2. The issues between the parties boil down to the following:

(1) should I order the respondent husband to increase his voluntary payments of £1,000 pm to £3,700 pm, in addition to his payment of nursery fees and health cover; and

(2) should I make a costs allowance in the total amount of £49,500 plus VAT to cover W's legal costs up to FDR?

I deal with these points in my judgment from paragraph 12 (below).

Interim hearings

3. While the sums at issue in these applications are relatively modest, set against the value of the assets in this case (put respectively at £5.6m (W) or £2.5m (H)), or compared with the cases that typically appear in the law reports, this hearing raises a number of problems which in my experience as a part-time judge and practitioner are endemic in interim financial applications:

(i) the agreed time estimate was grossly underestimated;

(ii) the parties' witness statements for these applications were too long and too densely detailed;

(iii) while the court bundle nearly complied with the 350-page limit, once counsel's (excellent) position statements and copies of the four authorities were added, the bundle exceeded 480 pages;

(iv) the parties' expectations in terms of judicial pre-reading were unclear and/ or unreasonable; and

(v) the length of oral submissions bore no relation to the agreed time estimate.

4. In this case, it took me a total of 1 ½ hours to read the essential material, 1 hour's pre-reading and 30 minutes taken during the hearing. This comprised counsel's position statements (28 pages), the three witness statements prepared for these applications (25 pages, several of which were single spaced), and the opinion of a solely instructed expert in relation to foreign exchange controls (25 pages including answers to replies). I also scanned W's first witness statement, the parties' Forms E, the four authorities, and various other relevant documents, including earlier orders.

5. I started the hearing at 2pm and concluded it at 6pm (having released my clerk at 4.30pm). After 3 ½ hours of oral submissions and 30 minutes of judicial reading (taken during the hearing, to complete my essential reading), I had to reserve judgment and adjourn the First Appointment to a further date.

6. Making every allowance for the vagaries of litigation, where lists may collapse or individual judges might have found time to extensively pre-read into a case, the parties' <u>agreed</u> position that this hearing, comprising the two interim applications <u>and</u> a contested First Appointment, could be heard within 2 or 2 ½ hours was wildly optimistic, to the point of absurdity.

7. For too long, interim applications like these (i.e. applications for interim maintenance and/or costs allowance, or, in a more typical case, applications for maintenance pending suit and/or a legal services order) have been crow-barred into inadequate time estimates, allowing the court insufficient time to consider the papers before the hearing, or sufficient time to properly review its judgment, in the context of what are often the most hotly disputed applications in financial remedy applications. Without wishing to labour an obvious point, the court's task in an interim hearing is fundamentally different from a First Appointment or an FDR when it will be making summary decision on directions (with occasional, short judgments) or giving an indication. Just as practitioners should not receive unreasonable demands from the judiciary, so judges should not be put in the sort of position this court faced in the present case: well-being is a two-way street. Realistic time estimates must be given.

8. I note that similar observations have been made in earlier cases, in the family court and elsewhere:

   (a) "…there is a general duty on counsel and solicitors to inform the court if it is obvious that the time estimate is incorrect. Failure to do so is likely to result in the case not being heard and this plainly could have substantial costs implications" Francis J in *O'Dwyer v O'Dwyer* [2019] EWHC 1838 (Fam) at [7]

   (b) "…Under-estimation of the time required to argue applications in the Commercial Court, especially those for which the parties seek a Friday

listing, is a significant current problem. In the hope that it may do something to start to turn the tide in that regard, I wish to emphasise that a half-day hearing estimate in this court is supposed to mean that a maximum of 2½ hours will be required for all substantive argument, an oral judgment and the determination (with argument as required) of consequential matters. As a realistic rule of thumb, therefore, parties should not ask for a half-day hearing unless they are confident, having considered the matter with care, that substantive argument will be completed within 1½ hours maximum." Baker J in *Kazakhstan Kagazy & Ors v Zhunas* [2020] EWHC 128 (Comm) at [16]

9. In my judgment, this case should have been listed with a one-day time estimate. I appreciate that by their nature, these applications need to be heard at the earliest opportunity. However, that does not excuse the provision of a manifestly wrong time estimate. As it happens, I have been able to arrange time to write this judgment, in order to deal with these applications. However, in my view, parties should not be placing the court in this sort of position, or, if they do, they should be aware of the possibility of adjournment and costs sanctions.

10. In the circumstances, I have directed that this judgment should be published on BAILII. I am mindful of the encouragement of publication of judgments from all levels of judges sitting in the family court, contained in Sir James Munby's Practice Guidance of 16 January 2014, which has been repeated in Sir Andrew McFarlane's Guidance ('Confidence and Confidentiality') of 28 October 2021, which was handed down in the hiatus between this hearing and the finalisation of this judgment.

11. While the court was placed in an invidious position in this case (i.e., having to sit until 6pm, prepare a reserve judgment and adjourn the First Appointment), I would like to record my thanks to both counsel, respectively Deepak Nagpal QC for the wife and Richard Castle for the husband, for their careful and analytical written and oral submissions, without which this hearing might have taken even longer.

<u>Factual Background</u>

12. The parties are aged 40 (H) and 34 (W). They married in October 2013 in County C[1] and separated in June 2020. There is one child of the marriage, K (2 ½) who, since separation, has lived with her mother in this country. H continues to live in Country C. It is common ground that during the marriage, the parties' main base was in Country C although, to quote Mr Nagpal, "…they lived a very international lifestyle".

13. Following the parties' separation, W issued a petition for divorce in England (18 June 2020) and a Form A application for financial remedies (25 June 2020). On 20 August 2020, W agreed to a stay of her financial remedy proceedings on the basis that H would be defending her petition for divorce.

14. On 28 September 2020, H obtained a *talaq* in Country C, followed on 12 January 2021 by a Divorce Certificate from the local Marriage Registrar. That dissolved the parties' marriage and determined W's English petition and her original financial remedy application, which was ancillary to her petition. W complains that H thereby acted in bad faith.

15. The parties' positions in terms of W's financial claims following a divorce in Country C are as follows: H's case is that W is entitled to the recovery of a Dower of approximately £50,000 save that "…this was actually…paid at the outset of the marriage" [C20 § 10]. W states that she received "…two gold bars in payment of the dower at the time of the marriage [but] these were sold in May 2017 for our Italian wedding celebration" [C216 § 29].

16. On 12 February 2021, W issued her 'Part III' application for financial relief after an overseas divorce which, as Mr Nagpal notes, is her 'saving grace', given the lack of financial remedies available to her in Country C.

17. Separately, I note, on 1 July 2020, H issued an application for K's summary return to Country C, and that she should be made a ward of court. On 23 and 24 November 2020, that application was heard and refused by Alex Verdan QC, sitting as a Deputy High

---

[1] I have at the request of one of the parties agreed to anonymise all references to this country

Court judge. A prohibited steps order was made preventing K's removal from this jurisdiction.

Financial resources and incomes

18. On W's behalf, Mr Nagpal has prepared a provisional schedule of assets which puts the aggregate value of net assets at **£5.6m**. On H's behalf, Mr Castle's equivalent figure is **£2.5m** (i.e., his original figure of £1.75m plus £740k reflecting the value of H's shares in MX Ltd which had not originally been carried over into the totals).

19. The main computational issue relates to a number of investments and company shareholdings worth £3.3m (per Mr Nagpal) or *circa* £2.5m (per Mr Castle), which H asserts that he holds on informal trust for his parents.

20. In terms of income, in his Form E, H describes himself as a businessman with a net income of circa £100,000, derived from an array of investments and employments. Mr Nagpal takes issue with this figure, points out that last year H earned roughly £160,000 net, and invites this court to draw robust assumptions about H's true income. In particular, Mr Nagpal draws my attention to H's resignation from two companies (MFC and N Ltd) which took place in October and December 2020, which provided around £40,000 of H's income last year.

21. In her Form E, W describes herself as a 'researcher', but declares no earned income, apart from £6,000 pa received from her parents and state benefits of £8,843 pp including universal credit (i.e., £14,843 in total). By the date of her second statement, W acknowledged receiving a total of £5,000 (of which £1,500 was a gift) for her involvement in one project, but that the payments of £500 pm from her parents had stopped in May 2020 when she received universal credit. Mr Castle makes a number of criticisms about W's income including that she has understated her earning capacity, that her evidence in relation to the payments from her parents is inconsistent and that she should be credited with one-half of the income from the three rental properties she co-owns with her mother.

22. The status quo is that H pays £1,000 pm directly to W by way of voluntary support, and in addition pays for K's nursery and private medical cover for W and K. H calculates that the total sum (of which £12,000 pa is paid directly to W) is £34,646 pa.

<u>These applications</u>

23. On 3 June 2021, W issued an application for interim maintenance in the amount of £192,795 and a total of £68,000 for a costs allowance.

24. This remained her position until 11 October 2021 when she tempered her case to seeking £3,700 pm/ £44,400 pa by way of interim maintenance and £49,500 for a costs allowance, broken down as follows (all figures are exclusive of VAT):

    £15,000 for the First Appointment

    £25,000 for the FDR and

    <u>£9,500</u> for the interim maintenance application.

    Total £49,500

25. W's evidence in support of the applications is set out in her witness statements dated 2 June 2021 and 16 August 2021. W asserts that H has behaved in such an unconscionable way that I should draw robust assumptions about his ability to pay interim maintenance and costs allowance. She asserts that the sums she seeks for interim support for herself and K, and for a costs allowance, are reasonable and easily affordable by H, who comes from a wealthy and influential family in Country C, and who has a track record of depositing large amounts of money from Country C into English bank accounts. She points to the high standard of living enjoyed by the parties during the marriage and H's ongoing expenditure, which includes £11,779 on eating out in a recent 12-month period etc. ("…I can see that he has chosen to spend over £42,000 on rental properties… and withdrawn over £40,000 in cash") [C219 §44]. In terms of a budget, W's Form E budget is for £192,795 [C109]. This has not been updated, in spite of the change in W's open position as of 11 October 2021.

26. H's evidence in reply is set out in his witness statements dated 23 July 2021 and "undated". H states that both parties come from wealthy backgrounds, from families who are on opposite sides of the political divide in Country C. H assert that W's family has taken steps to damage his financial position. H asserts that he cannot afford to pay

any more than he does presently. In Form E, H asserts outgoings of £127,757 [C165]. Latterly he has asserted that the lion's share (£83,646 pa) of his total net income (£99,310 pa) is taken up by his existing payments of £34,646, credit card payments of £24,000 and his own costs of £25,000 pa when he travels to England to have contact with A. In relation to currency exchange controls, H relies heavily on the opinion of Ajmulal Hossain QC, to the effect that "…on the balance of probabilities" H cannot move funds from his [Country C] bank accounts to meet any interim order of this court (per Mr Castle, "the only resources available on an interim basis are those held by H in his non-Country Ci accounts and his income from ML £9,600 pa). Through counsel, H disputes that W has met the legal threshold for a costs allowance.

27. I therefore have to deal with a range of issues in determining these interim applications.

Law

28. I have heard no argument about the applicable legal principles, which are largely uncontroversial.

29. In terms of interim maintenance, I have had regard to the recent Court of Appeal's review of the law in *Rattan v Kuwad* [2021] EWCA Civ 1, and in particular the passages cited by Peel J in the learned judge's recent decision of *J v J* [2021] EWFC 78 at [35].

30. As to legal funding, the relevant guidelines were stated by the Court of Appeal in *Currey v Currey (No 2)* [2006] EWCA Civ 1338 by Wilson LJ at [20], and by Mostyn J in *Rubin v Rubin* [2014] EWHC 611 (Fam) at [13]. While the court's power to order a legal services payment order pursuant to s.22ZA of the Matrimonial Causes Act 1973 does not apply in this Part III case, there is no material difference between the s.22ZA test and what I will describe as the *Currey* test.

Interim maintenance

H's ability to pay

31. Firstly, I agree with Mr Nagpal that it is appropriate on the facts of this case to make robust assumptions about H's ability to provide financial support. While I have not

heard any evidence from the parties and am not in a position to make any findings of fact, I am satisfied on the balance of probabilities that a pattern emerges from H's actions, including the following:

(a) Having achieved a stay of W's English petition for divorce, H acted unilaterally in achieving a *talaq* in Country C. I am satisfied that W received no realistic opportunity to prevent H acting in this way;

(b) H thereby took steps to ensure that the parties' marriage was dissolved in a jurisdiction where W's financial claims are limited, and where, according to his own expert, there are restrictions on his ability to transfer funds;

(c) In response to W's Part III claim, H filed his Form E six weeks late;

(d) When it was received, H's Form E was deficient in that (i) he provided no addresses for the eleven real properties that he owns, (ii) he provided no documentary evidence in support of his assertion that assets worth £2.5m (per Mr Castle) or £3.3m (per Mr Nagpal) are held on informal trust for his parents, or his stated personal guarantees, and (iii) he has provided only limited documentary evidence in relation to his other investments;

(e) H resigned two positions of employment shortly after the parties separated (June 2020), in October 2020 and December 2020;

(f) Within the judgment of Mr Verdan QC, H was described as providing "vague and not helpful" answers about his finances which left the learned judge "with the clear impression he was not being open on the subject".

32. Secondly, I am satisfied that H has sought in his written evidence to give a misleading impression of the parties' standard of living during the marriage:

(a) My attention has been drawn to a contemporaneous email dated 30 May 2018 from W which refers to "my husband and I... looking for a 2-bedroom flat in Belgravia, Chelsea, South Ken, Kensington or Holland Park…".

(b) That email is consistent with W's evidence [C4 § 21]. It is wholly inconsistent with H's account which I consider to be misleading. At C202 § 15, H describes as "completely untrue" W's account of the parties' search for a property worth £3m to £5m in 2018. He says they were in fact looking to purchase "2 inexpensive flats for around £160,000 in Glasgow"

33. Thirdly, I accept W's evidence that H has continued to spend freely both on himself in terms of shopping and eating out, with presents for K including a pair of Dior trainers costing £410. I am left with the clear impression that H's financial position is quite different from how he has presented it; either his income is higher than stated or he has ready access to substantial funds to maintain his standard of living.

34. Fourthly, as to H's assertion that he cannot pay additional sums because of currency restrictions, I agree with Mr Nagpal that the burden of proof is upon H in this respect. Mr Hossain's report is of questionable status. It is not Part 25 compliant, and no permission has been granted for its admission as expert evidence. I have allowed H to rely on it as evidence in this hearing, without having formed any view as to its admissibility as an expert report under Part 25. I note that the agreed position had been that the parties would review the status of this order, in light of Mr Hossain's replies. However, that line of enquiry has gone cold as a result of Mr Hossain's somewhat surprising quote that his charges of dealing with those questions would involve "fees in the region of US$10,000" [E62].

35. I also agree that while the opinion of Mr Hossain identifies certain obstacles to the free movement of funds from Country C, he does not state categorically that this cannot happen. There remains the possibility of funds being transferred either for (i) 'family maintenance', supported by a certificate from the relevant embassy, or (ii) as a 'private remittance' [D12], which would involve the central [Country C] Bank exercising a discretion which Mr Hossain thinks "…is likely to be approved only if it satisfies the requirements of [Country C] law and not because it is to satisfy any order made by the English court" [D13].

36. Mr Hossain subsequently confirmed that he was not aware of any cases where the Bank has refused approval for compliance with a foreign order or a costs order [E79].

37. Having considered the report carefully, I reject H's argument that it demonstrates 'on the balance of probabilities' that H could not comply with any interim order of this court. I am not satisfied that H cannot, because of currency restrictions, comply with any interim order I might today make.

38. Having considered the matter carefully, and in all the circumstances, I reject H's case that he cannot afford to pay any more than he does presently.

W's need

39. As to W's need for maintenance, the court's task has been made more difficult by the following:

(a) I do not have any evidence of W's budget apart from her Form E budget of £192,795 [C109]. While I accept that an interim budget is not necessary in every claim (see *Rattan v Kuwad*), it would in my judgment have been helpful to have some understanding of the evidential basis for the sums W now seeks, i.e., £3,700 pm;

(b) W's evidence in terms of her actual income is at best confused. W's Form E (19 May 2021), which contains a signed statement of truth, stated that she received (i) £6,000 pa from her family [C94] which she subsequently confirmed ended in June 2020, when she first received universal credit (16 August 2021, C217), and (ii) failed to mention the sum of £5,000 she received from the project she undertook with HK in November and December 2020 [C217]. Mr Nagpal candidly explained that this was a "cock-up" because W's Form E repeated the contents of her earlier Form E prepared in her original financial remedy application. However, that does not provide a completely satisfactory answer. I note W's first witness statement (12 February 2021) asserted that she received £6,000 and universal credit of £7,748 [C16]. W's solicitors' letter of 20 May 2021 confirms W still receives the £6,000 [C21]. In short, W's evidence of her own income, in terms of support from her parents, earned income and state benefits, is surprisingly unclear;

(c) W is the co-owner of four properties in England with her mother, three of which are rented out. W accepts that she is 50% beneficial owner but states that all of the rental income is received by her mother. Mr Nagpal invites me to ignore this rental income (c. £3,000 gross) because W isn't actually receiving it but concedes that the position might have to be regularised in future. In my judgment, this is income which W is <u>entitled</u> to. The fact that W has not in the past received it, in a case where W's parents have separately been supporting W in the amount of £6,000 pa, is not easy to understand. I have been given no convincing explanation why W does not receive half of this rental income. In my judgment, it should be taken into account. Unfortunately, I have no evidence of the net value of this rental. In her evidence W states £3,000 pm is "a gross figure and assumes full occupancy… from this money my mother has to pay 25% management fees [etc]".

40. Where this leaves me in terms of quantifying W's claim for interim support is as follows:

(a) I am satisfied that H can reasonably afford to pay substantially more than he is currently paying;

(b) While I am not in a position to put a precise figure on H's income and the funds which are available for him to spend, it is clear to me that he can on an interim basis comfortably afford the sums sought, i.e., £3,700 pm;

(c) I consider that some adjustment should be made against the sum sought by W to reflect her entitlement to one half of the rental income from the three co-owned rental properties. Since I have not been provided with any helpful figures on this issue, I conclude that I must deal with the question broadly, by reducing the order by £700 to £3,000 pm, to reflect a very rough estimate of what W would receive from rental income which is said to be £3,000 gross, less 25% commission, other expenses and tax. Bearing in mind that this is an interim order, I do not propose to adjust the figure further in relation to Mr Castle's argument that W has unexercised earning capacity.

41. I order that H pays interim maintenance for the benefit of W and K in the sum of £3,000 pm, in addition to nursery fees and their health cover.

Costs allowance

42. Thus far, W has funded her substantial legal fees from loans from her family. At the end of this hearing, I received both parties' Forms H, which show the following:

	Incurred	Paid	Shortfall	Projected to FDR
W	72,518	47,933	24,585	30,000
H	44,843	40,843	4,000	27,000

43. In terms of the total sums spent in the litigation thus far, I understand that W has incurred £190,000 [C70] while H has incurred circa £179,637 [E30]).

44. In relation to W's application for a costs allowance, the issues are as follows: (i) has W met the necessary test for a costs allowance? (ii) if so, should I make an order and in what amount?

Has W met the necessary test?

45. With respect to this application, Mr Castle makes a number of powerful points: (i) W is the co-owner and 50% beneficial owner of four properties with combined net equities of £1.55m gross of CGT; (ii) W has failed to provide proper, untainted evidence of refusal from a litigation loan provider (let alone two letters); and (iii) there is no evidence that W's family (who have provided substantial loans to date) would stop providing this credit which might fall to be considered as a liability in the case.

46. Mr Nagpal responds that (i) W has in fact put forward evidence from several commercial lenders to show she 'cannot borrow the money': i.e. screen shots of personal loan applications to NatWest and HSBC, an application for a mortgage from Vantage, and applications for litigation loans to Level and Rhea (ii) W's mother 'cannot be required to charge her interest of a property', (iii) H should not be palming off his financial obligations towards his wife upon her family.

47. My conclusions are as follows:

48. Firstly, it is settled law that an applicant for a costs allowance should show that she cannot reasonably procure legal advice representation by any other means (*Currey No.2*,), including that at least one litigation loan provider has refused her application.

49. Secondly, in my judgment, W has failed to comply with this basic and generally understood requirement. Instead, she has provided the following:

(a) Applications for personal loans to HSBC and NatWest

These screen shots demonstrate the banks' refusal to offer loans based on W's declared status as 'unemployed', with monthly income of £1,237 pm. In my judgment, they do not satisfy the requirement to show that W cannot reasonably obtain a litigation loan to pay for her lawyers;

(b) Application for a mortgage

On 8 September 2020, Vantage Mortgages wrote to W stating that "…I do not believe that it will be possible to source you a residential mortgage in your sole name… I have also explored your options with regards to raising funds against the properties… We would need your Mother's consent… she would also need to be a party on the mortgage" [C64].

While that letter confirms the trite point that W's mother would need to be a party to a joint mortgage, it does not in my view provide evidence that W's application for a litigation loan secured against one of her co-owned properties would be refused.

(c) Application to Level

On 17 May 2021, the litigation loan provider Level emailed W's solicitors to ask, "… can you confirm where it is anticipated route to repayment of the loan would come from? *Is this client still against* selling the properties she jointly owns with her mother" [C68, my italics]. W's solicitors replied, stating that W "…*is unable to sell* the properties without her mother's consent/ compliance so this is not an option for repayment. The repayment would be by way of capital received as part of the overall settlement. W

already owes her parents over £170,000 and her godparents a further £20,000 in respect of legal fees" [C70].

Unsurprisingly, based upon that email, on 18 May 2021, Level refused funding "as there is no clear route to repayment of the loan" [C72].

(d) Application to Rhea Family Finance

Finally, contained within the bundle is correspondence with Rhea Family Finance [E5-E11], presented in a font so small (seemingly 3-point font) that it is only legible if enlarged by 400%. The evidential value of Rhea's refusal to lend, as with Level Finance, is in my view compromised by W's solicitors' assertion that "…our client's position is that she has a half share interest in the properties held in the joint names of her and her mother *but they are illiquid during her parent's lifetime as she would never sell without the agreement of her mother, who does not wish to sell"* (my use of italics).

50. Thirdly, I find that I can attach little, if any weight to the exchange of emails with Level and Rhea, which involves the self-serving assertion (on W's behalf) that W "could not" sell one of her co-owned properties "without her mother's consent". While W's mother presumably would prefer not to have any of the co-owned properties charged (although I have seen no direct evidence of this lady's stance), I struggle to understand how it could be said that W "is unable to sell" without her mother's consent, given the court's powers in relation to properties held subject to a trust of land: see s.14 Trusts of Land and Appointments of Trustees Act 1996.

51. Fourthly, I note in passing that it is difficult to reconcile the above emails from Level with the statement in W's third witness statement in which it is stated that:

> "I understand that Level Finance *would* have been more willing to consider lending to me if my solicitors could provide them with a bracket of potential outcome of my case. They have been unable to do to date as H has not provided full financial disclosure [C220]" (my italics)

52. In summary:

(a) I remind myself that the applicable costs regime in this Part III application involves the presumption that each party pays their own costs (FPR 28.3 and 28.3(4)(b)(ii) in particular);

(b) An applicant for a costs allowance must demonstrate that she cannot otherwise reasonably procure legal advice and representation (*Currey No. 2*);

(c) In particular, an applicant should provide evidence from at least one (and preferably two) litigation loan providers to confirm whether such funding is available;

(d) In this case, W has failed to provide such evidence. In particular, the letter from Vantage Mortgage and the screenshots from the banks relate to different issues (joint mortgage and personal loans) and the views of Level Finance and Rhea are unreliable because they were made in response to the assertion that W "cannot" realise her interest in co-owned properties without her mother's consent;

(e) This court cannot in the circumstances form a view as to (i) whether in fact W is able to raise a litigation loan, and if so (ii) on what terms, and (iii) if in the circumstances this would be reasonable.

53. I therefore dismiss W's application for a costs allowance. The question of quantification does not arise.

Order.

(i) H to pay interim maintenance in the amount of £3,000 from a date to be agreed or determined following receipt of further brief written submissions, such sum to be paid in addition to H's payments of nursery fees and the health cover;

(ii) W application for a costs allowance is dismissed;

(iii) First Appointment to be relisted first available date at counsel's convenience, to be reserved to Recorder Chandler if available; and

(iv) Any issue of costs arising from this hearing shall be dealt with at the (adjourned) First Appointment.

RECORDER CHANDLER