

IN THE FAMILY COURT

Neutral Citation Number: [2024] EWFC 407 (B)

Date: 1st May 2024

Before :

District Judge Doman

Between :

WZ

Applicant

- and -

HZ

Respondent

WZ ('the Wife') in person
Annabel Barrons (instructed by **Family Law in Partnership**) for the **HZ ('the Husband')**

Hearing dates: 21st, 22nd February and 1st May 2024

APPROVED JUDGMENT

District Judge Doman:

Introduction

1. The Court is dealing with a number of applications which, together, form a second set of proceedings following a final order made by District Judge Stone, sitting at this Court, on 12th February 2021.
2. The Wife appeared in person. In the run-up to the hearing she had instructed three firms of solicitors and two separate Direct Access counsel. Although the Wife conducted the hearing herself it is clear to me that she has, in all likelihood, received some professional assistance to draft her closing submissions.
3. The Husband has been represented by Annabel Barrons, counsel, who was instructed by James Pirrie and Rory Collett of Family Law in Partnership.
4. The factor that strikes me most about this set of proceedings is that it is a very great shame that three-years after District Judge Stone tried to give these parties a final solution large parts of his order have not been put into action and the parties have spent time, money and energy litigating again. I shall set that out in greater detail in the body of this judgment.
5. During the course of this judgment I shall refer to page numbers in the hearing bundle. There were two: a core bundle and a two-volume supplemental bundle. Those page numbers in the core bundle will be in square brackets, if appropriate, and in bold and simply be a page number. Those in the supplemental bundle will be treated in the same way save that they shall have a capital S in front of it to indicate it comes from the supplemental bundle.

Preliminary issue

6. On 21st February 2024 the Wife applied to adjourn the final hearing on the basis that: first, she had yet to file her evidence and wanted a further opportunity to do so; and secondly, that she was suffering severe anxiety and depression and wished the hearing to be adjourned so that she was medically fit to participate in it. the Husband opposed the application.

7. The background to the filing of evidence was dealt with by Deputy District Judge Kumar on 19th January 2024 (beginning on **89**) in which she set a deadline for the service of the Wife's evidence as 4.00 p.m. on 2nd February 2024. Later, at paragraph 16 of her order Deputy District Judge Kumar set out directions for how the bundle and evidence are to be compiled [**93**]. The effect of that order was that the Wife was to send, by no later than 4.00 p.m. on 9th February 2024, all the documents that she wanted to be included in the hearing bundle. Deputy District Judge Kumar also directed that the Husband's solicitors shall be entitled to disregard any requests after that date.

8. It is common ground that the Wife did not comply with the orders as directed by Deputy District Judge Kumar. The Wife told me in her oral application to adjourn that she was not mentally well enough to focus on the compilation and service of evidence. This is against a background that between the hearing on 19th January 2024 and this final hearing the Wife had sent 170 emails to the Husband's solicitors, of which 119 were also sent to the Court including eight to Deputy District Judge Kumar herself and one to Deputy District Judge Solomon who adjudicated upon an earlier hearing.

Family Court Approved Judgment:

9. Additionally, the Wife had also failed to comply with Deputy District Judge Kumar's direction that if the Wife remained unrepresented at this hearing then she should file with the Court only, by 4.00 p.m. on 19th February 2024, a set of questions she would like the judge to put to the Husband in evidence.
10. Lastly, at approximately 8.30 a.m. on 21st February 2024 the Wife sent a number of emails to the Court office, each containing a number of attachments in no particular order and had not copied in the Wife's solicitors.
11. I took the first limb of the Wife's application to be an application for relief from sanctions pursuant to FPR 4.6. Save for the doctor's letter, which I will expand upon below, the application was not supported by evidence. Weighing up all of the circumstances of the case, including the factors set out in FPR 4.6(1) I determined that:
 - (1) This application had not been made promptly, the Wife having waited until she was called into the hearing to make it;
 - (2) There was not a good reason for the failure, indeed the matter had been listed since at least 31st July 2023 since when evidence could have begun to be gathered;
 - (3) The procedural history of this set of proceedings is replete with examples of the Wife failing to comply with Court orders or directions;
 - (4) Granting the application would cause the hearing to be adjourned which was contrary to the interests of the administration of justice.
12. For those reasons I refused the Wife's application for relief from sanctions save that I was going to grant her a further opportunity to re-send questions for the examination

Family Court Approved Judgment:

of the Husband to me during the lunch adjournment, her position being that she had, in fact, already sent them to the Court. In fact, the Wife did not do so, telling me that her telephone had run out of battery charge despite a member of court staff kindly lending her a charging wire over lunch. At the end of the day on 21st February 2024 I granted the Wife an extension of time until 9.00 a.m. the following day. They were not received until 10.28 a.m. on 22nd February 2024.

13. The second limb of the Wife's application to adjourn the hearing was that she was too mentally unwell for the hearing to be effective. In furtherance of her application The Wife provided a letter dated 19th February 2024 from her GP:

“I am writing regarding this lady who is registered at our practice. She is suffering with severe anxiety and depression. I am asking if her case could be adjourned for 1 month as [the Wife] advises that she is too unwell to attend Court.

With her anxiety and depression her organisational skills can be poor. She finds it hard to process information and requires time.

I would appreciate it if this could be taken into consideration.”

14. In my judgment the medical evidence was insufficient to support the Wife's application to adjourn because:

(1) She had attended Court and was not reporting that she was too unwell to remain at Court.

(2) Although she had failed to comply with Deputy District Judge Kumar's directions for the filing of her evidence she had managed to send 170 emails in the space of

Family Court Approved Judgment:

one month which did not suggest to me that the Wife was so unwell that she was not able to engage in the litigation process.

(3) An adjournment would cause a delay of roughly nine months, not the one month the GP envisaged, and that needed to be weighed into the consideration of whether to grant an adjournment or not.

(4) The Wife could not say why it is that her anxiety and depression would be relieved if the applications were left un-determined. In my judgment a far more likely resolution to the Wife's anxiety and depression which she told me had been brought about by this litigation was to have it resolved and not delayed again.

(5) The Court would require Ms Barrons on behalf of the Husband to utilise the advocates' toolkit in asking the Wife simple questions in plain language and that if the Wife did not understand a question or any aspect of the proceedings she could ask for clarification. I also made it clear that the Wife could ask for breaks if she needed to.

15. I also considered the authority of *Solanki v. Intercity Technology Ltd* [2018] EWCA Civ 101, which although a civil appeal, was one in which the Court of Appeal considered and gave guidelines as to how a Court should approach an adjournment application based on health grounds. Refusal of the Wife's application would not amount to a denial of justice, she was present and did not indicate that she could not continue but repeatedly told me, "it's up to you."

16. In exercising my discretion and for the reasons that I have set out I refused the application to adjourn the hearing on the basis of the Wife's anxiety and depression.

Family Court Approved Judgment:

17. The Wife renewed the application before the hearing began on 22nd February 2024. At this stage of the proceedings she was part heard in her evidence and had been given the usual warning not to speak to anyone about the case or her evidence twice, if not three times, on 21st February, including at the very end of the day. It was apparent that despite that warning the Wife had attempted to seek legal advice from the duty solicitors at Court who sensibly declined to act. the Wife told me that during the evening of 21st February 2024 that she had taken “too many” of her anti-anxiety medication and had felt unwell. She called an ambulance. When the ambulance arrived they advised the Wife to travel with the paramedics to the hospital for tests. The Wife declined to do so. She sought, on the morning of 22nd February, an adjournment of the hearing because she was feeling unwell.
18. The Husband opposed the application.
19. The Wife produced no evidence in support of her application. I determined that the parties would be in an even more detrimental position if the hearing was to be adjourned at this stage of proceedings which would preclude the Wife receiving any legal advice in the interim. I refused the Wife’s application. Thankfully she rallied considerably throughout 22nd February, and by the time she was asking questions of the Husband in the afternoon she was focussed, lucid and engaged in the evidence.

Background and procedural history

20. The Wife and the Husband were married for thirteen years and separated in 2018, on or around that date the Husband moved out of the former matrimonial home (“FMH”) which was in City X.

Family Court Approved Judgment:

21. The parties had one child of the family: Child A, who is now over 16-years-old and goes to school in City Y. The Wife has another child, Child B, who was always treated as a child of the family but now lives independently.
22. The application for financial remedies came before District Judge Stone on 12th February 2021, although it took until 9th June 2021 for a draft order to be sent to the Judge and was sealed by the Court [36]. That first litigation was already likely to have taken its toll on parties, their first appointment having been on 5th June 2019. District Judge Stone's judgment is at 42 of the bundle and clearly set out his analysis of the section 25 factors why it was he was making the orders he was.
23. At the time of the final hearing, in February 2021, the FMH was deemed to have a value of £982,000 with equity of £506,165, subject to a number of repairs required to be undertaken [44 at paragraph 17]. District Judge Stone assessed the Wife's housing need was £650,000 in addition to costs of moving and stamp duty [54 at paragraph 129].
24. As a result of his judgment District Judge Stone's final order provided, inter alia, for:
 - (1) The sale of the FMH; a recital to the order envisaged that the property was to be on the open market within three months and likely to achieve a sale within six months.
 - (2) All of the net proceeds of sale (expected to be *circa* £500,000) to be used to meet the Wife's housing need. If the equity fell short the Husband was to "top-up" the housing fund to ensure the Wife had £650,000 plus stamp duty and moving costs, by way of a lump-sum.

Family Court Approved Judgment:

- (3) The Husband to pay an additional lump-sum to the Wife's former solicitors, who had represented the Wife in the original financial remedy proceedings. This was not a costs order but a debt clearing exercise – District Judge Stone expected those costs to be £47,814.
 - (4) The Husband was to pay for various outgoings for the FMH pending sale including the mortgage.
 - (5) The Husband would pay periodical payments to the Wife at the following rates:
 - a. £1,500 per month pending sale of the FMH;
 - b. £3,000 per month from the sale of the FMH for three years; and,
 - c. £1,500 per month for a further two years.
 - (6) The Husband was left with his business.
25. The Wife sought to appeal District Judge Stone's order but was not granted permission to do so.
26. On April 2022 the matter returned to Court and was dealt with by District Judge Sethi for reasons that are not immediately apparent to me [S6]. District Judge Sethi's order reflected an agreement in the recitals that the Wife would apply for a decree absolute within seven days and that that her family rights restriction on the title would not end on the dissolution of the marriage and will continue until further order. Likewise, District Judge Sethi ordered that the family rights restriction would also continue if the Husband passed away.

Family Court Approved Judgment:

27. On 24th October 2022 a further application was considered by Deputy District Judge Perry [58]. Deputy District Judge Perry dispensed with the list of works that District Judge Stone thought were necessary and devised a new mechanism for them to be dealt with. He also set out provisions to try and achieve a sale of the FMH as quickly as possible including the identification of agents and conveyancers and giving both parties conduct of the sale. It is also recorded on this order that the Husband proposed dealing with the parties' issues by way of arbitration and that he would provide the Wife with £7,500 to cover her legal costs for the same. The Wife refused the arbitration offer.

28. The proceedings returned to Deputy District Judge Perry on 29th March 2023 [63] when he made orders about the consequences of the Wife's non-compliance, including that he endorsed the Husband making an application for immediate possession in the event of further non-compliance. Deputy District Judge Perry also ordered the Wife to pay £12,982.50 towards the Husband's legal costs occasioned by her non-compliance and the necessity of the application.

29. On 31st July 2023 there was a further hearing before Deputy District Judge Solomon [70]. Deputy District Judge Solomon refused the Wife's application to adjourn the hearing. She also gave sole conduct of the sale to the Husband and repeated orders obliging the Wife to co-operate with the sale of the FMH. At this stage the parties were receiving offers for the FMH in excess of £1.25 million, and Deputy District Judge Solomon endorsed that. She also reserved costs. It was at this hearing that Deputy District Judge Solomon listed this final hearing.

30. The Wife sought to appeal Deputy District Judge Solomon's order. Deputy District Judge Solomon refused permission on 31st July 2023 and the Wife renewed that

Family Court Approved Judgment:

application before a circuit judge. Her Honour Judge Karp refused permission to appeal on 5th December 2023.

31. A pre-trial review hearing was heard before Deputy District Judge Kumar on 19th January 2024.

Applications

32. The Court has before it a number of applications; they are:

(1) The Husband's application for possession of the family home and the consequential orders for the implementation of the sale.

(2) The Husband's application for the removal of the Wife's Home Rights notice.

(3) The Husband's application for a variation of spousal periodical payment orders.

(4) The Husband's application for a *Thwaite* variation of the application of the proceeds of sale of the FMH.

(5) The Wife's application for the enforcement of arrears for expenses in relation to the family home.

(6) The Wife's application for an upwards variation of the spousal periodical payments.

33. However, in relation to application (6) the Husband's legal team say they have not been served with the application. The Wife stated that it was made some months before the pre-trial review before Deputy District Judge Kumar but was unable to

produce it. She has sought to file an application dated 2nd February 2024 [S96] when she also sought to set aside Deputy District Judge Kumar's order.

The parties' positions

34. The Husband contends that the state of the matrimonial finances are very different from those District Judge Stone considered in February 2021. He contends that structure of District Judge Stone's order is this:

(1) The Husband bears the risk of the property selling poorly – he is required to top up the Wife's housing fund to £650,000 whatever the net proceeds of sale of the FMH are.

(2) The Husband is required to fund all the mortgage and household outgoings until a sale is achieved in addition to funding the Wife's ongoing maintenance.

(3) Any increase in the net proceeds of sale, whether by delay or any other reason, benefits only the Wife.

(4) Maintenance is geared around a sale of the FMH.

35. Ms Barrons therefore submits on the Husband's behalf that there is no prejudice whatsoever in the Wife delaying the sale of the FMH, that the Wife realises that and there is ample evidence to demonstrate that the Wife has actively been trying to frustrate the sale process.

Family Court Approved Judgment:

36. To resolve this the Husband suggests in furtherance to the comments made by Deputy District Judge Perry as far back as October 2022, that the Court should grant him exclusive possession of the FMH in order to effect a timely sale.
37. Secondly, it is suggested that given that it is three years since District Judge Stone made his order and that it remains executory the Court should consider exercising its discretion under the *Thwaite* jurisdiction to adjust the order in such a way as would remove from the Wife the wind-fall from the property the FMH selling at, as expected, roughly £1.3 million instead of the £982,000 District Judge Stone envisaged. The Husband accepts that the Wife's housing fund should remain crystallised at £675,000 but that any surplus should be used by him to pay the Wife's previous solicitors and spousal maintenance – possibly capitalising the latter.
38. The Husband also asks the Court to look again at spousal periodical payments because they were geared around a sale and District Judge Stone envisaged the sale would occur within a six month period of time, it would be unjust for the Husband to be obliged to pay for a further five years after the sale of the FMH. This submission, it seems to me hinges on whether or not the Court can attribute any blame for delay to a particular reason within the parties' control.
39. Lastly, the Husband says that his total costs post final order have been £210,200.87 and he seeks a contribution to those costs from the Wife in addition to the £12,982.50 costs order made by Deputy District Judge Perry in March 2023. The Husband suggest the mechanism the Court should employ is to reduce the Wife's housing fund by £131,000.70) giving her a fund of £543,999.30, for which he says she can be adequately accommodated.

40. The Husband opposes the Wife's enforcement application for arrears arising out of District Judge Stone's order on the basis that:
- (1) The Wife has not ever sent him any specific requests for payment of costs of maintenance of the FMH, only doing so until after the pre-trial review.
 - (2) He has been funding the Wife to the sum of £5,000 per month.
 - (3) The Wife has no permission to seek areas more than 12 months' old.
41. Lastly, if the Court is to consider the application on its merits the Husband would oppose the upward revision of periodical payments stating there is no evidence to support the necessity of this.
42. The Wife opposes all of the Husband's applications. She strenuously denies taking any action which frustrated the sale of the FMH, and indeed says that it is the Husband, or those who act for him, who have been unreasonable and overly demanding. Indeed, the Wife points to the fact that the Husband has had sole conduct of the sale since 31st July 2023 and no offer has been made in all of that time.
43. The Wife contends that it would be impossible, on many practical issues, for her and Child A to vacate the FMH to live elsewhere while the FMH is marketed and sold. She submits that any balance of harm test that the Court would conduct would clearly demonstrate that it falls in her favour and therefore the application should be refused. Further, the Wife submits in her closing submissions that she "estimates the sale within 2-3 months if given sole legal conduct" of the sale.
44. The Wife submits that the Husband's *Thwaite* application is misconceived and that what he seeks to do is to re-open District Judge Stone's section 25 exercise rather than

Family Court Approved Judgment:

vary an order. The Wife submits that it cannot be said that it was unforeseen that she would keep any surplus and fluctuations in property prices are in fact wholly foreseeable. For that reason too the Wife argues that all parties accepted the gearing of spousal periodical payments on the sale of the FMH, and that is simply 'rough with the smooth'.

45. It is further submitted by the Wife that whatever conclusions the Court may draw about the efforts of the parties to sell the FMH since February 2021 they would not come near to meeting the threshold for making a costs order against her. The Wife also contends that she has not been given a fair opportunity to argue against the costs.
46. In respect of her applications the Wife contends that the Husband conceded in evidence that he should pay for maintenance of the FMH which has occurred within the last twelve months. The Wife says that should be paid from the Husband's own resources and not the net proceeds of sale of the FMH. The Wife argues that her purchase of a replacement car following the writing off of her previous car was entirely reasonable and that the Husband should fund the difference from the insurance monies (£19,000) and £25,000 that District Judge Stone set out in his order.
47. In her written submissions the Wife does not argue for her upward revision of periodical payments. I understand her position to be that the spousal maintenance provisions in District Judge Stone's order should remain the same as a bare minimum but I am less clear whether an upward revision is still being pursued.

Law applicable to these applications

48. In the competing applications before the Court I will be obliged to apply a combination of statute, Family Procedure Rules and precedent or other case law. Ms

Family Court Approved Judgment:

Barrons set out the law she said applies in both her initial position statement and in her written submissions. The Wife only does so in her written submissions, including referring to case law that was not mentioned at any point during the hearing. Ideally, during submissions I would have asked both Ms Barrons and the Wife about how they say the law should be applied to the facts as I might find them, written submissions deprive the parties and the Court of that interaction.

Possession / Implementation application

49. The jurisdiction for the Court to make a possession order in financial remedy proceedings is at FPR 9.24 which sets out:

“(1) This rule applies where the court has made an order under –

- (a) Section 24A of the 1973 Act;
- (b) Section 17(2) of the 1984 Act;
- (c) Part 3 of Schedule 5 to the 2004 Act; or
- (d) Paragraph 9(4) of Schedule 7 to the 2004 Act.

(2) Where the court makes an order mention in paragraph (1), it may order any party to deliver up to the purchaser or any other person –

- (a) possession of the land, including any interest in, or right over, land;
- (b) receipt of rents or profits relating to it; or
- (c) both.”

Family Court Approved Judgment:

50. The existence and application of this rule was further considered by King LJ in *Derhalli v. Derhalli* [2021] EWCA Civ 112 in which it was held:

“The husband could have sought possession of the matrimonial home by virtue of a combination of powers under s 24A of the Matrimonial Causes Act 1973 (MCA 1973), which permits a court at any time after the making of an order for sale of a property to make such ‘consequential or supplementary provisions as the court thinks fit’ which, by FPR r 9.2(2), include an order for possession to ‘any other person’. Similarly, there is a power to vary a s 24A MCA 1973 order for sale under s 31(2)(f) MCA 1973.” [per 17]

51. The power to order possession, is a bare power, there is no other guidance of how to approach the exercise of the power, for example, listing factors that the Court should take into account. It seems to me uncontroversially, I hope, that the Court should begin to approach the exercise of its power under this rule in accordance with the overriding objective of the rules (pursuant to FPR 1).

52. In her submissions Ms Barrons suggest that although there is no authority on the subject given that in this case an order for possession would be synonymous with terminating the Wife’s rights of occupation I should conduct a balance of harm exercise from the statutory provisions in section 33 of the Family Law Act 1996 (“FLA 96”). I accept Ms Barrons’ submission on that point; and, further the commentary in the current edition of the Red Book sets out that *BR v VT* [2015] EWHC 2727 suggests that the court should consider section 33 before exercising the power.

53. The relevant statutory provisions in section 33 are thus:

Family Court Approved Judgment:

“(6) In deciding whether to exercise its powers...and if so in what manner, the court shall have regard to all the circumstances including –

- a) The housing needs and housing resources of each of the parties and of any relevant child;
- b) The financial resources of the parties;
- c) The likely effect of any order, or of any decision by the court not to exercise its powers...on the health, safety and well-being of the parties and any relevant child; and
- d) The conduct of the parties in relation to each other and otherwise.

(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to the conduct of the respondent if an order is...not made, the court shall make the order unless it appears to the court that –

- a) The respondent or relevant child is likely to suffer significant harm if the order is made; and
- b) The harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to the conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.”

54. The Wife suggests in her submissions that the Husband’s application must be taken as an application pursuant to section 31(2)(f) of the Matrimonial Causes Act 1973

(“MCA 73”), and as such section 31(7) must apply. The Wife concedes in her written submissions that no party addressed the Court on this. The obvious answer to that is this: because that is not how the Husband pursues his application. I do not believe that it is for the Court to identify the potential statutory or other basis for founding an application made by a party. The Husband has been clear under which powers he invites the Court to consider the merits of his application and the powers the Court has to dispose of it. It seems to me it would be wrong at this juncture to try and impute another avenue down which the application *could* be pursued but which was not addressed during the hearing. Therefore I do not believe that this is law which is applicable to this application.

Thwaite variation

55. The *Thwaite* jurisdiction of the Court is the power to revisit the terms of an original order and to consider its fairness so long as the terms of the original order remain executory. More detailed commentary on the history of the jurisdiction is contained in Duckworth’s *Matrimonial Property and Finance* at E4[14]. More recent authority, *Thwaite* itself having been decided in 1981, is *Bezeliensky v. Bezelienskaya* [2016] EWCA Civ 76 in which McFarlane LJ (as he then was) held at [39]:

“...given that this is a case about an executory order, it is not necessary to engage any further with the Appellant’s wider submission regarding the test where the jurisdiction may arise in other circumstances. In any event I agree with Mr Chamberlayne that the circumstances justifying intervention are likely to be met where an order remain executory as a result of one party frustrating its implementation.”

Family Court Approved Judgment:

56. Clearly, ratio from the Court of Appeal is binding authority on me. I have also been referred to two recent first instance decisions. The first is the case of *H v. W* [2023] EWFC 120, per HHJ Reardon sitting at East London Family Court. In that case, in which HHJ Reardon found that the wife had frustrated the transfer of the property sets out a useful review of the *Thwaite* jurisdiction.
57. Secondly, in her written submissions the Wife referred to the case of *AFW v. RFH* [2023] EWFC 119, per Recorder Moys sitting at Medway Family Court. It is regrettable that the Wife did not mention or raise this case during the hearing as I have had to deal with it alone after receiving submissions.

Litigation conduct and costs

58. The starting point is that the Court would have to make findings concerning litigation conduct within the meaning of section 25(2)(g) of the MCA 73, with a clean sheet.
59. *Rothschild v. de Souza* [2020] EWCA 1215 is authority for the fact that litigation misconduct may be taken into account at the substantive variation stage of the Court's decision making rather than afterwards as a costs order. It is also authority for the proposition that it is appropriate that a party's needs can be reduced by such an award in costs, per [80]:

“...I agree with Moor J in *R v B* when he said that, if required to achieve a fair outcome, the court ‘must be entitled to prioritise the [needs of the] party who has not been guilty of such conduct.’ It is clear from the outcomes in *M v M* and *B v B*,...that the financial consequences of the litigation misconduct, perhaps combined with other factors, might be such that it is fair that the innocent party is

Family Court Approved Judgment:

awarded all the matrimonial assets. In this respect, I also agree with Moor J's observation that an order can be made which does not meet needs because to exclude that option 'would be to give a licence...to litigate entirely unreasonably'."

60. Again, unfortunately, the Wife only in her written submissions referred to the case of *Dmitry Tsvetkov v. Elsinia Khayrova* [2023] EWFC 140 which she contends is authority for the proposition that the Husband's conduct argument is procedurally flawed. I think the Wife has incorrectly cited the case, and I have found it under the citation of [2023] EWFC 130. In this case Peel J did set out procedural guidance for conduct arguments. I shall consider whether or not the parties followed such guidance and if they did not to what extent there might be prejudice below.

Analysis

Evidence received

61. There are two hearing bundles, first a core bundle consisting of 330-pages and a supplemental bundle consisting of 755-pages. The Wife repeatedly asked to submit further and / or late evidence. I refused those applications. I did so pursuant to the Court's case management powers and the overriding objective contained within the Family Procedure Rules. In my judgment the Wife would have been very clear at the end of the pre-trial review conducted by Deputy District Judge Kumar of the obligations placed on her to ensure all the information she wished to place before the Court. To keep these proceedings on track and to fairly allot the Court's resources to

Family Court Approved Judgment:

each case I exercised my discretion to ensure the evidence was heard within the 2-day hearing listed.

62. I heard both the Wife and the Husband in evidence and received their respective written submissions.

Assessment of witnesses

63. The Wife gave evidence first. She was clearly upset at my refusal of her application to adjourn the hearing. I ensured that allowances were made in respect of allowing the Wife time to process information and to understand the point that was being made to her.

64. Having stepped back and considered the Wife's demeanour throughout the hearing I conclude that the Wife deliberately tried to frustrate the hearing so as to effectively 'run down the clock' to prevent the Court being in a position whereby it would not be able to make decisions. Examples of the Wife's behaviour include:

- (1) Taking a long time to turn to relevant pages in the hearing bundle when answering questions she did not like.
- (2) Declining to focus on the question put in cross-examination – on a number of occasions I told the Wife that having failed to answer the question twice I would only oblige Ms Barrons to ask it one more time before she would leave herself open to an adverse inference for not answering a straight-forward question.
- (3) Frequently and repeatedly asking the Court to determine applications, for either an adjournment or the admission of further evidence, that the Court had already ruled upon.

Family Court Approved Judgment:

- (4) Tearing out pages in the hearing bundle when being asked questions about her conduct.
 - (5) Hitting herself.
 - (6) Taking an inordinate amount of time to return from any break in the hearing – often elongating such a break by approximately 20 minutes, such that the Court was obliged to ask staff members to find her in the public toilets and ask her to come into Court.
65. Whilst I accept, of course, that these proceedings are incredibly important and stressful to the parties, the Wife's behaviour was some of the most truculent and obstructive I have seen. I am led to believe that this was deliberate on her part because when, in the afternoon of 22nd February, she questioned the Husband she demonstrated a clear and insightful grasp of the issues in the case and the evidence pertaining to them, she was focussed and calm when asking questions or clarifying points for me to ask questions on her behalf and overall she was fully engaged in the process. Considering practice directions 3A and 3AA of the FPRs I do not consider that any vulnerabilities that the Wife may have has disadvantaged her in these proceedings or led to her having an unfair hearing.
66. The behaviour and demeanour I observed is also borne out in the volume and tone of the Wife's correspondence with both the Husband's solicitors and the Court. Her tone is often combative and offensive, including when, for example the Husband's solicitors are trying to assist by reminding her of deadlines both in advance and when they are due [S516]. This has also pervaded the Wife's relationships with other professionals including the conveyancing solicitors. She has often accused professionals of a dishonesty, including the Husband's current solicitors.

Family Court Approved Judgment:

67. In contrast the Husband was patient, clear and focussed when answering his questions, both from me and the Wife directly. He made appropriate concessions about how the parties had sought to execute District Judge Stone's order. He had also taken the opportunity afforded to him in previous orders to set out his position very clearly in his written evidence, with which he was entirely consistent throughout the time he gave evidence.
68. My overall impression of the Husband was that he was incredibly frustrated by finding himself litigating many of the issues that he thought had been comprehensively dealt with by District Judge Stone and that he saw the proceedings as a further depletion of the family's finances when they were already strained. Nonetheless he was, in my assessment, genuinely trying to assist me in finding a way through the evidence and the hearing.

Fact-finding?

69. It seems to me that Ms Barrons is correct in her submission that the Court cannot properly determine the applications of either party without engaging in making some findings of fact. I agree with Ms Barrons that the Court will need to consider:
- (1) Whether the Wife obstructed the sale of the FMH from 2021 to present;
 - (2) Whether a sale of the FMH will be achievable with the Wife in occupation;
 - (3) Is District Judge Stone's 2021 order still executory;
 - (4) Could the Wife reasonably be housed in alternative accommodation pending sale of the FMH;
 - (5) What is the Wife's earning capacity;

Family Court Approved Judgment:

- (6) What are the Wife's reasonable outgoings;
- (7) How should the Wife's housing needs be met and what are they;
- (8) What is the Husband's financial position with particular reference to his business;
- (9) Has the Wife unreasonably failed to implement the pension sharing order;
- (10) How should the Husband's legal fees be met;
- (11) Has there been litigation misconduct by the Wife.

Has the Wife obstructed the sale of the FMH?

- 70. The Wife's principal evidence on this issue is set out in her second witness statement at **175**. She contends from paragraph 13 onwards that in fact it was the Husband who had been blocked the sale by unreasonably refusing to pay for maintenance of the property and when he had conduct of the sale refusing to market the property until September 2023 [paragraph 18 on **179**], although in her written submissions the Wife suggests it was marketed from April 2023. Further, the Wife says that District Judge Stone appeared to reflect in his judgement, at paragraph 144, that it might be up to a year that the FMH is sold to reflect its true value. Therefore the Wife contends that the Husband is wrong to suggest that everyone thought the property would be sold within six months.
- 71. On the questions of repairs to the FMH the Wife submitted that it was unsurprising that the FMH has been slow to sell given the amount of work needing to be undertaken. She says that those repair works have never been independently assessed and there has been a number of issues with contractors organised by the Husband for those purposes. With much of that repair work not undertaken and officially

Family Court Approved Judgment:

abandoned by Deputy District Judge Perry in October 2022 the Wife submits that it is equally unsurprising that the FMH has failed to generate market interest when it was marketed.

72. Succinctly, the Wife says:

(1) She has never objected to any marketing of the FMH save for when it has been marketed, in her view, at an undervalue.

(2) She did accept an offer of £1.32 million on 21st June 2023 and that it is not her fault that the purchasers withdrew their offer.

(3) On 5th September 2023 she agreed for the FMH to be re-marketed, and in fact always had suggested it should not have been removed from the market at all.

(4) She has not obstructed any viewings of the property save on one occasion in October 2023 when she had Covid

(5) Since July 2023 when the Husband has had sole conduct of the sale no offers have been forthcoming.

73. The difficulty I have, though, with a significant proportion of the Wife's submissions is that the documentary evidence within the supplementary bundle simply does not support them. The Husband has adopted as part of his evidence a lengthy chronology of events which the Wife is unable or unwilling to contradict save in the broadest of terms. On the issue of the works the Wife's list of required works far exceeded that ordered by District Judge Stone, an obvious example being an entire replacement jacuzzi bathtub [S561]. Even when the Husband did arrange for contractors to attend the Wife refused them access to the property on, in my judgment, spurious grounds

Family Court Approved Judgment:

that they were not jointly instructed or in some way conflicted because the Husband was paying them, or had found and engaged them.

74. However, it is the Wife's non-engagement with Court orders and professionals involved in the marketing or sale of the FMH that stands out. The Wife did not comply with Deputy District Judge Perry's Order of October 2022 to identify agents, or allow them to enter the FMH. Likewise she refused requests for a mediation or roundtable meeting. Likewise Deputy District Judge Perry's order records that she refused to attend an arbitration notwithstanding the Husband's offer to meet her legal costs [57].
75. At **S160-S165**, the estate agents make it clear that they could no longer act as a marketing agent because of the Wife's feelings and upset at being asked about marketing the property. At that stage the estate agents had not even managed to get their photographer into the property to take pictures to aid the marketing. The agent makes it clear at **166** that his firm do not have the resources to engage the Wife.
76. At **S254** the Wife sent an email on 22nd April 2023 when an offer of £1.32 million had been agreed that she thought "it's too cheap and we have agreed 1.35 between us months ago." This was an offer well in excess of that envisaged by District Judge Stone, and at this stage of the sale the advantage is all to the Wife. In my analysis the Wife was under no pressure to sell the property, she would not have needed to vacate until completion of the sale and would have had significantly more equity than District Judge Stone thought she would have. Further, the Wife could offer no credible explanation in evidence as to why the offer should have been refused.
77. It is the usual course of home buying that those making an offer to purchase will ask that the vendors take the property off the market. The Husband told me in evidence

that this is what the purchasers asked. He had understood this was agreed until 22nd April 2023. When the purchasers asked for a little more time the Wife was instructing agents to put the property back on the market notwithstanding the fact that professional advice from the agent was to allow more time [S254]. The Wife points to the fact that Deputy District Judge Solomon on 31st July 2023 permitted the property to be marketed until exchange of contracts as vindication of her position [74]. I do not accept that proposition because by 31st July 2023 the sale had fallen through, the Wife had been so rude to the conveyancing solicitors, that they refused to act any longer [S193-S194 & S215] and the parties were effectively starting again. Earlier it seems to me, that the parties were given sound marketing advice and in acting contrary to that advice the Wife cannot have been ignorant of the fact that it may cause the loss of the sale. Again, to carry on the thread of this behaviour, it has no prejudicial financial consequences to her whatsoever if the sale does fall through.

78. Another aspect of the hearing on 31st July 2023 is that Deputy District Judge Solomon gave the Husband sole conduct for the sale. This was strenuously opposed by the Wife. In the aftermath of that decision, about which she was clearly upset, I am satisfied on the balance of probabilities, that the Wife did the following:

- (1) She told the Husband's solicitor that she would change the locks [S126].
- (2) She locked or jammed the gates to the FMH to prevent estate agent accessing the property [S128].
- (3) To prevent viewings in October and November 2023 the Wife informed the agent on 21st October 2023 that she had Covid [S131].

- (4) When asked on 25th October 2023 by the Husband's solicitors to supply confirmation of her illness the Wife emailed a picture of a positive test [S137] which she had in fact obtained from the internet. Analysis by Matthew Hoyle, a Senior Digital Forensic Investigator working for CYFOR, demonstrates that the image had been created on 24th October 2022 and had been used in the press since then (San Francisco Chronicle, Washington Post, Boston 25 News and Yahoo) [S144-S152]. The Wife gave no explanation to rebut this evidence other than a simple denial. I find that the Wife has deliberately and dishonestly used a picture from the internet to bolster an untrue claim that she had Covid in order to prevent viewings of the FMH taking place.
- (5) On 22nd October 2023 the Wife by her own admission removed the 'for sale' board from outside the property [S132].
- (6) A viewing report by the agents demonstrate that to 6th January 2024 all viewings had been cancelled and none have actually taken place [S158].
- (7) On 2nd December 2023 the Wife set out in an email that she would not agree to vacant possession [S245] notwithstanding that Deputy District Judge Solomon directed at paragraph 27 that the Wife must give vacant possession not later than 24 hours before completion [75].
79. Drawing all of that evidence together I am satisfied that the Wife has been given many opportunities to co-operate with the marketing of the FMH and the only reasonable explanation that can explain her behaviour is that she has deliberately sought to frustrate and delay the sale. Until the property is sold the five year term on maintenance is not triggered, she has no housing costs and is accommodated in excess of her need.

80. I find that **the Wife has deliberately obstructed the sale of the FMH in order to manipulate the execution of District Judge Stone's order.**

Is a sale achievable with the Wife in occupation?

81. I am entirely satisfied by the clear and detailed orders of Deputy District Judges Perry and Solomon that all of the Court's powers of implementation have been considered and used in order to bring to effect the execution of District Judge Stone's order. However, given what I have outlined above, the Wife's reaction to these orders is to become more active in trying to undermine them and becoming more entrenched in her position.

82. I am also satisfied that at all stages the Husband and his solicitors have been patient with the Wife: they have often made a number of allowances for the fact she did not always have lawyers on record, although for the majority of the time she did; they have explained how and when the Wife should comply with orders. I accept Ms Barrons' submission that there is little else I can think of that they could have done to try to implement District Judge Stone's order.

83. Further, given the Wife's actions since Deputy District Judge Solomon's order, including dishonestly claiming to have caught Covid and supplying false evidence in support of that claim, I am satisfied that it is likely that the Wife will continue to disrupt and undermine efforts to achieve a sale. I accept the Husband's contention that the FMH is therefore unlikely to sell if the Wife remains in occupation.

84. Accordingly, I find that **the FMH will not likely sell with the Wife in occupation.**

Is District Judge Stone's order still executory?

Family Court Approved Judgment:

85. Plainly, a major facet of District Judge Stone's order was an order for sale of the FMH and the distribution of the proceeds of sale. In that respect it is plainly still executory and no party seriously contends otherwise.
86. On the issue of spousal maintenance, on the basis that its quantum and term were both geared to the sale of the FMH it seems to me that, as a matter of common sense, that expect of the order is still executory as well.
87. Accordingly, I find **District Judge Stone's order is still executory.**

Could the Wife reasonably be housed in alternative accommodation pending sale?

88. The Wife has contended that she cannot be housed anywhere other than the FMH pending completion of the sale and has made that clear in correspondence to the Husband's solicitors [S245]. The Wife has set out in her written submissions, but not in evidence, the combination of her own medical issues, including being assessed as unfit to work and the fact that she does not have funds for a deposit as practical impediments to her moving to alternative accommodation.
89. Importantly too, Child A lives with the Wife, and so any alternative accommodation would have to be suitable for them also.
90. Much of the argument on this point must have been a rehearsal of the argument that was before Deputy District Judge Solomon. Clearly, if the Court were to make a possession order the Wife and Child A would require alternative accommodation. The rental particulars at S138 of the bundle, I accept are suitable as interim properties for the Wife and Child A. However, in order to afford the same the Wife would need to earn an additional £1,400 per month, or have benefits in payment of the equivalent.

Family Court Approved Judgment:

91. In his submissions the Husband anticipated the argument regarding the deposit and potential shortfall: he offers to pay the sums in the first instance which can be repaid out of capital from the FMH when it is sold. That seems to me to be a practical solution that is frequently deployed in these sorts of cases.
92. Therefore I conclude that **the Wife could be reasonably accommodated in alternative accommodation pending the sale.** Whether or not the Court should order this, though, is a different question.

What is the Wife's earning capacity

93. The Wife set out in both her written and oral evidence that she considers herself vulnerable due to struggling with depression, anxiety and post-traumatic stress disorder. The letter from her GP, dated 19th February 2024 substantiates her depression and anxiety. As a result the Wife has supplied evidence that she has been assessed as having a limited capacity for work [**S700**].
94. In oral evidence the Wife told me that she had undertaken some work in the recent past. She had been a carer and worked in a school holiday club. In respect of the care work the Wife told me there were not regular hours and her payslips bear this out; crucially though, she told me that the set up was that she could choose how much she wished to work as there were always shifts available. Her P60 from the care work demonstrated that she earned £16,917.83 in the year end to 5th April 2023 – that is £1,409.82 per month. Of the payslips the most the Wife worked earned her £1,667.52 for the month, which was based on 120.75 units at £15.47 per hour. Broadly, that suggests to me that she worked six hours a day on five days of the week for that month.

95. The Wife was, in my assessment, evasive when it came to her work for the school holiday club. When taken in cross-examination to a payslip dated 11th January 2024 for £387 she was reluctant to confirm that it was for work done during the school Christmas holidays. There is no other reasonable explanation for a payment at that time. Similarly, the Wife was unable to tell me when she envisages she will be able to return to work, and when pushed she opined that when Child A finishes his university education, that that might be the right time.
96. Analysing this information it seems to me there is insufficient evidence to suggest that the Wife is totally unfit for work. At its the GP's letter suggests a one month break from litigation. It is a great shame that three years on from District Judge Stone's judgment, in which he found that she was a trained and skilled in her specific industry, that the Wife has not maximised her potential. Being realistic though, it seems to me that based on the last financial year, and absent evidence of unfitness to work the Wife's earning capacity is at least £17,000 net (or £19,000 gross) which is part-time work and excludes any work with school holiday clubs. In addition, the Wife will receive spousal periodical payments until the FMH is sold in the sum of £1,500 per month. In the short-term therefore the Wife's monthly income is £2,917 per month.
97. Accordingly, I find **the Wife has income of £2,917 per month.**

What are the Wife's reasonable outgoings?

98. The Wife set out her outgoings in her Form E2 which amounted to £5,023 per month [112]. She updated that schedule with further matters at **S575** to £6,500 per month. The Husband submits that such a schedule of outgoings is not just unreasonable but totally fanciful.

Family Court Approved Judgment:

99. I start from the point of view that unless the Wife is now in very considerable debt it simply cannot be that her true outgoings are £5,023 per month as she does not have the income to meet them. A number of the Wife's extra expenses as set out at **S575**, are simply impossible to be met, and cannot be said to be reasonable; examples of that are expenses for £100 per month for books, £100 per month for beautician appointments and £1,200-£1,500 per year for optician appointments. I did not notice the Wife use spectacles once during the hearing, nor does **S575** give any details in which the Wife seeks to justify the costs.
100. Turning to the original budget at **112**: it is clear that in time many of these items will reduce, for example it is difficult to understand how she will need £1,000 per month for housekeeping costs in addition to £1,525 for household maintenance, the dog expenses and entertainment. The other observation I have is that the Wife appears to have counted her hire purchase on her car twice: there is £300 for HP repayments and £330 for car finance.
101. Stepping back and thinking realistically around the Wife's budget I am satisfied that it is unreasonably large and I would make deductions of *circa* £2,400. This would mean the Wife's reasonable budget would amount to £2,623 per month. I consider that to be reasonable, but even if I am wrong about that the Wife would be able to afford some items I would deduct because she would have an excess of income over reasonable expenses of £293 per month. She could also use this to pay down some of the debt set out at **113**.
102. Therefore, I find **the Wife's reasonable outgoings are £2,623 per month**.

How should the Wife's housing needs be met and what are they?

Family Court Approved Judgment:

103. District Judge Stone set out that the Wife required a housing fund of £650,000 plus stamp duty and associated costs in February 2021. This, he thought, would be sufficient, stating at paragraph 129 of his judgment:

“...my view is that the upper limit of the value of the property that the wife should purchase for herself and the children would be not more than £650,000.”

[54].

And that in terms of size that it would be reasonable for the Wife to have a property with a spare bedroom to use for work but not a room always to be available for when her mother visits from her home abroad. That, in District Judge Stone’s view did not justify a fifth bedroom.

104. Since that judgment it is common ground that in fact Child B has moved out of the family home, something that was speculative in February 2021, and lives independently. Accordingly, it seems that since District Judge Stone’s judgment, the Wife’s housing need has reduced from four to three bedroom homes. In her oral evidence the Wife appeared to accept this.

105. In terms of location the Wife also accepted the proposition that the difference in house prices between City X and City Y vary significantly and that living in City Y would fulfil her desire to live closer to Child A’s school in the town. At no point in her evidence has the Wife set out the need to be tied to the immediate City X area. The ties that District Judge Stone saw in February 2021 appear to have lessened considerably.

106. The Husband supplied property particulars for City Y, some of which were put to the Wife in cross-examination. On the housing fund crystallised by District Judge Stone

the Wife would be able to purchase a considerable three or four-bedroom property of comparative size to the current FMH. Of those properties put in cross-examination at the lower end of the range, so £500,000 to £550,000, The Wife conceded that those properties met her need and that she “would make it work.” Obviously, however, I could only justifiably reduce the total housing fund if I thought it must be invaded to take account of the cost implication of the Wife’s litigation conduct having regard, for example, to the requirements that’s section 31 of the Matrimonial Causes Act 1979 might impose.

107. What is clear is that all of the Wife’s housing needs will need, still, to be funded from the net proceeds of sale of the FMH. No party has suggested it ought not. Accordingly, I find that **the Wife’s housing need is for three-bedroom accommodation and that it must be funded from the net proceeds of sale from the FMH.**

What is the Husband’s financial position, including with reference to his business

108. When District Judge Stone assessed the Husband’s financial position the Court was dealing with a business that was struggling to recover from the impact of the Covid-19 pandemic. His business was the main asset that the Husband was to walk away with from the original financial remedies proceedings.
109. The Husband has set out in his written evidence that since the February 2021 final hearing the business suffered the loss of one of its biggest customers and has struggled financially ever since. This has been amply set out in the company accounts [S407] and supported by the company’s accountants [S510]. The Wife has been sceptical about this but has not produced any evidence to the contrary nor has she been able to set out to the Court what she contends the position is; she has at times

Family Court Approved Judgment:

appeared to have suggested they were fraudulent but never, evidentially, made good this accusation to anywhere near approaching the standard that the Court would require. The position is this: the business has been making a loss for two years and is surviving due to cash reserves held in the company. This will not last much longer. The cash position in the business has been compounded by the fact that the Husband has taken money out, by way of dividend, to pay himself money to live, to support the Wife and Child A, pay tax, and also to pay his legal fees.

110. The Husband told me in evidence he hopes the business will return to profitability next year and he is working very hard to achieve that. If the Husband's aspiration is not achieved the accountants have been clear that the business will no longer be a viable concern. Assessing what has happened to the business since February 2021 it is abundantly clear that the Husband is a considerable way away from being able to achieve the £200,000 of income per year from profit from the business as District Judge Stone envisaged.
111. In my judgment the Husband deserves the credit for maintaining all of his financial obligations. Unless the business returns to profit soon he will struggle to do so for much beyond the next 12 to 18 months. Accordingly, I find **the Husband's business has not returned to profitability and is unlikely to do so until 2025 at the earliest; further, since 2021 the Husband has had to draw down capital by way of dividend to meet his financial obligations which is obviously finite. Unless the business returns to profitability in the next 18 months the family's income is going to be impacted to a devastating degree.**

Has the Wife unreasonably failed to implement the pension sharing order?

Family Court Approved Judgment:

112. District Judge Stone made a pension sharing order in which the Wife was to receive a 25% share of the Husband's pension arrangement. The costs of implementation were to be borne by the Husband [41 para 27]. In order to effect the order, the Wife needs to set up for herself a Self-Invested Personal Pension ("SIPP") for the 25% to be transferred into. In evidence she told me that she had not done so and it was unclear whether or not she would.
113. The reason for the Wife's reluctance to set up a SIPP for herself is that she holds on to the belief that either the Husband has a much larger pension than he is admitting to, or that there are other undisclosed pensions, or that the Husband has unreasonably withdrawn from his pension without permission, and so the Wife seeks a larger share of the remaining pension to compensate for that. The Wife pursued her case on that last point before District Judge Stone who was unpersuaded of it. There is no new evidence since 2021 to suggest there has been unauthorised withdrawals from the pension. The only withdrawal that has occurred happened by consent, and which was used to pay the Wife's legal fees to one set of her previous solicitors [67-68].
114. Neither in evidence nor in her written submissions has the Wife been able to point to any evidence which demonstrates that the Husband's pension is larger than he has admitted to (his updating disclosure is complete and fulsome) nor that there are any other pensions to which he is a beneficiary. The Wife does submit that it is self-evidently in her interests to implement the pension sharing order, particularly as the Husband is to pay for its implementation. I agree; and, I cannot see that there is any reasonable explanation for the delay having occurred as it has other than the Wife holding on to her belief that the Husband has improperly withdrawn funds for which

there is absolutely no evidential basis. Accordingly, I find **the Wife has unreasonably failed to implement the pension sharing order.**

How should the Husband's legal fees be met?

115. This case has had a terrible litigation history in which both parties have made a number of applications which have required a number of hearings. The Husband has been represented throughout, as is his right. Further, the Husband told me in evidence that he had to engage solicitors because, concentrated as he was on trying to return his business to profitability, he simply did not have the 'band-width' or the hours in the day to deal with the Wife's correspondence and the issues being raised from it.
116. To date I am told that the Husband's legal costs are £210,308.07 in total, divided in that £150,200.87 has been spent on the enforcement applications and £60,107.20 on the variation application. Deputy District Judge Perry made a costs order against the Wife for £12,982.50 on 29th March 2023 [69], and so that leaves the Husband liable for the balance of £197,325.57 to his solicitors. I will deal with what the Husband pursues against the Wife below. On the evidence before me there is no capital to meet those costs, to remove that amount of capital from the business either in a single lump-sum or a series of lump-sums over the next couple of years would, on balance, likely to prevent the business returning to profitability. It would also mean that there would likely be insufficient capital left in the business for the Husband to continue to meet his financial obligations.
117. The only other assets are the FMH and the Husband's pension. The net proceeds of sale of the FMH are required to (largely) meet the Wife's housing need and that has, in my judgment, a greater priority than meeting the Husband's legal costs. Accordingly, I agree with the parties that the net proceeds of sale are highly unlikely

to be able to be used to meet legal costs. That simply leaves the Husband's pension. Withdrawing the cash from the pension fund in order to meet liabilities is unattractive because there been tax consequences of doing so and it will also likely reduce the Husband's pension provision by a significant degree. However, so long as there is no prejudice to the Wife, in my view the Husband should be able to use this asset as he pleases, including to pay his legal fees. Had the parties not been in litigation this would be an option for any person who had to meet a large capital expense and had a pension that was able to release funds in this way.

118. Accordingly, I find **the only way the Husband's legal fees liability can be met is by drawing down on his pension, however, he may only do so against his 75% share of the pension.** Clearly, what is going to have to happen practically is that the capital value be obtained and if there is to be a drawdown calculation will be required to ensure the Wife's 25% share is not diluted by any drawdown subsequently.

Has there been litigation misconduct by the Wife?

119. It is the Husband's case that throughout these and the previous proceedings that the Wife's conduct of the litigation has been unreasonable to such an extent that it would be unfair for the Court to ignore it. The Wife does not believe her conduct was unreasonable.
120. When challenged in cross-examination on this point the Wife's explanations were frequently lacking. She became upset, did not focus on answering the question and on one occasion started ripping pages out of the witness bundle, screwing them up and throwing in them around the room. It was bizarre conduct. Whilst I understand, for

Family Court Approved Judgment:

the Wife, these are stressful and difficult proceedings, as the hearing progressed I could not help but contrast that with the calm and measured way in which she asked questions of the Husband and engaged with me after her evidence concluded. I am left pondering whether or not the Wife's conduct in the hearing was affected in a way calculated to try and make her appear to be struggling much more than she actually was. On balance, and taking account District Judge Stone's assessment of her as an intelligent and articulate person, I think there was a significant element of the Wife deliberately trying to make things difficult rather than simply being the manifestation of the stress of the proceedings.

121. What I saw in the hearing has been echoed in the litigation more generally and the correspondence between the parties particularly. The Wife has deluged both the Husband's solicitors and the Court with correspondence; it is not uncommon for the Wife to send up to 20 emails a day. From **S325** it can be seen that in one day alone the Wife sent the Husband's solicitors 32 emails. I can readily accept the Husband's evidence that I referred to above when he told me he simply didn't have the ability or time to deal with the constant email traffic and so was obliged to instruct his solicitors to do so on his behalf. This has undoubtedly inflated his costs to a significant degree.
122. Many of these emails have not been in spirit of constructively resolving the issues between the parties. Reading them I find they have been repetitious, deliberately obstructive, do not engage on the issue, and in many instances unreasonable in all of the circumstances. I find that there are also other elements of the Wife's litigation misconduct, namely:
 - (1) She has not complied with Court orders despite the Husband's solicitors reminding her of deadlines way ahead of them.

Family Court Approved Judgment:

(2) She behaved unreasonably and offensively when not permitted to file evidence on the morning of the first day of the hearing.

(3) She has not responded to any of the Husband's open offers.

(4) She has not made any open offers.

(5) She has refused the Husband's reasonable offers of alternative dispute resolution.

123. Taking all of these matters into account, including what amounts to conduct in the meaning of section 25(2)(g) of the Matrimonial Causes Act 1973, I conclude that **the Wife's has acted in such a way that was unreasonable, that amounts to litigation misconduct, and that it would be inequitable to ignore it.** I shall deal with how, if at all, that litigation misconduct should be taken account of below.

Remedies

124. Having made some findings of fact in relation to the parties' actions their approaches to this hearing since 2021 I shall evaluate what remedies are most appropriate for the applications that fall to be determined.

Possession of the FMH / Home Rights Notice

125. In respect of the sale of the FMH – clearly this has not yet occurred, and so it seems to me that it is incontrovertible that District Judge Stone's order on the sale of the FMH is still executory. Following the findings I have made above, much of the delay in marketing the FMH is solely due to the Wife's action or inaction. From 2021 until mid-2022 the Wife was insisting on work far in excess of that ordered by District Judge Stone and then when that work was organised she refused to allow workmen instructed by the Husband to enter the property.

Family Court Approved Judgment:

126. At the same time the Wife refused, in my judgment unreasonably, to mediate or arbitrate, even when the Husband offered to cover her legal fees [57] and did not comply with orders to identify agents or allow them to enter the property. Matters came to a head in March 2023 when the estate agents terminated their instructions after the Wife would not allow them to access the FMH and became increasingly accusatory in email messages [S160-165].
127. The parties did receive a purchase offer of £1.35m in April 2023 but when in June 2023 they asked for more time to complete the sale the Wife tried to unpick the sale and to put the FMH back on the market. That was done against professional advice from the agents to allow the purchasers more time and her own undertaking to “move quickly” if they did offer £1.35m [S254]. The Wife’s accusations and behaviour also caused the agent to refuse to act [S193-194, S215].
128. Even after the Husband was awarded sole conduct of the sale the Wife continued in her wantonly obstructive actions, namely: saying she would change the locks, locking the gates at the front of the FMH, pretending to have Covid-19, removing the ‘for sale’ board, cancelling or refusing viewings, and emailing the conveyancers informing them that she would not give vacant possession. Both Deputy District Judge Perry and Solomon have set out in lengthy and detailed orders the behaviour that has been complained of and the consequences of the Court’s powers.
129. The difficulty is essentially this: District Judge Stone’s order, with the greatest of respect to him, contains no incentive whatsoever for the Wife to co-operate with the sale of the FMH as she gets all of the net proceeds of sale and the periodical payments are geared to the sale also. This has resulted in at least sixteen months of complete

inaction, and which in my judgment the Wife has become more entrenched and has gone to more extreme attempts to actively undermine the potential sale.

130. Further difficulty is that the Wife has registered a Homes Rights Notice against the FMH. She has been asked to sign the documents to remove the Notice since June 2023 [S168]: she has refused to do this, and in her evidence to me refused to do so until the completion of the sale. She has not complied with Deputy District Judge Perry's order to sign the document which would be given to the conveyancer and not released by them until completion [60 at para 43]. I can find no good reason why the Wife unreasonably refuses to comply with that order; rather, it makes me think that once again the Wife calculates, probably rightly, that any purchaser would be put off a purchase without a guarantee that the removal of the Notice documents are with the conveyancers. Given how obstructive the Wife has been since 2021 I entertain no confidence that the Wife would willingly execute the document.

131. I do not consider it is necessary to give the Wife further time to execute the documents herself. Deputy District Judge Perry made it clear his order on 29th March 2023 that if the parties failed to comply with the completion of conveyancing documents (of which removal of the Notice was one) then section 39 of the Senior Courts Act 1973 would be invoked to allow a District Judge of this Court to execute in lieu of that party. Against the background of the Wife telling me in evidence she would not sign the document until completion, as distinct from signing the document but not allowing the conveyancer to release it until completion I am satisfied the Wife has had every opportunity to sign the Notice removal documents. Accordingly, the Court will execute that document itself forthwith.

Family Court Approved Judgment:

132. Given the Wife's intransigence and non-compliance with orders I found that the FMH will unlikely sell whilst the Wife remains in residence. In conducting the balance of harm exercise set out in section 33 of the FLA 96 it seems to me that the harm being suffered by the Husband is that he has suffered financial and emotional harm by the Wife's actions and non-compliance of orders. No orders so far have arrested the Wife's behaviour, and I conclude that the harm is "significant" within the ordinary meaning of the word and within the context of the Wife's wilful and ongoing non-compliance of orders. That, in my judgment, engages section 33(7) of the FLA 96 which requires the Court to make the order unless I conclude that the harm that the Wife and Child A are likely to suffer outweighs that harm.
133. Undoubtedly, both the Wife and Child A would suffer harm if a possession order was made, and I am satisfied that it would amount to significant harm. In her written submissions the Wife says that Child A is at a critical point of his education, and that she does not have the funds or the earning capacity to secure rental accommodation until the FMH sells. The Wife also submits that being forced to vacate the FMH would significantly exacerbate her depression, anxiety and PTSD.
134. The crux of the balancing exercises it this though: are there orders or conditions that could be put into place to ameliorate the significant harm that might be suffered by the Wife and Child A? Whereas, to the contrary, I do not consider that there are any further orders or conditions that I could put into effect which would ensure the Wife's compliance with the order for sale. The factors which ameliorate the harm likely to be suffered by the Wife and Child A are these:
- (1) The Husband could move into the property which would free capital from his own living expenses to be able to ensure a suitable property could be rented by the

Wife.

- (2) Child A, could if he chose, continue to live in the FMH. I accept that I have not conducted a welfare analysis of Child A's living arrangements in this judgment, but it seems to me that, given his age, Child A is very likely to make his own mind up as to who he lives with and when. Both parties told me in evidence he spends time with each of them.
- (3) The Husband has offered to cover the rent and deposit if this is beyond the Wife's means – which he contends should be reimbursed from the net proceeds of sale.
- (4) The Wife will still be in receipt of £1,500 per month spousal periodical payments to assist with rent.
- (5) I have found that the Wife has a short-term total income of £2,917 per month.
- (6) There is evidence that the Wife could rent suitable properties in the region of £1,350 per month upwards [**S143**], which would be within her budget.

135. I further note that the Wife has been on notice of this application for a considerable period of time and has taken no action to try to lessen the harm for herself, or to provide independent evidence of the harm she might suffer.

136. When I balance all of these factors it seems to me that the significant harm that the Wife and / or Child A will suffer if a possession order is made can be lessened when I take into account the factors set out above. Weighed against the fact that there are no conditions or factors that can lessen the significant harm being suffered by the Husband as a direct result of the Wife's refusal to co-operate with the sale of the FMH I conclude that the harm that she and Child A are likely to suffer does not outweigh

Family Court Approved Judgment:

the harm being suffered by the Husband. Accordingly, therefore, using the FLA 96 balancing exercise the Court would be required to make an order.

137. Considering my overall discretion and taking account of the overriding objective it seems to me that the Court can and should exercise its powers under FPR 9.24(2) to order the Wife to deliver up possession of the FMH and all its curtilage to the Husband. When considering when this should be done, I am conscious that Child A may have examinations at school but they will not be his final A-level examinations. However, I do not consider that it is proportionate for the parties to wait until Child A's examinations finish, in all likelihood at some point in early July, for the order to take effect. The Wife has known that this has been coming for over a year. In my judgment a period of fourteen days is reasonable so long as the Husband can provide capital for a deposit and/or stand as a rent guarantor for the Wife. I accept the Husband submission that those funds should be recoverable from the net proceeds of sale of the FMH.

Thwaite application - FMH

138. I accept that in the three years since District Judge Stone heard this case much has changed in the financial landscape of this family.
139. First, District Judge Stone expected the FMH to sell for approximately £982,000 and that there would be equity of circa £500,000. In June 2023 an offer of £1.35m was made, which would result in equity of circa £870,000. When District Judge Stone dealt with the matter he had assessed the Wife's housing need as being £650,000 plus stamp duty and moving costs which would require all of the net proceeds of sale of the FMH and a top up from the Husband. That is the rationale behind the 100%

Family Court Approved Judgment:

order. A sale of the FMH at the June 2023 offer would provide the Wife with £180,000 of capital in excess of her housing needs.

140. The Husband argues that this is not only unfair, but not what District Judge Stone anticipated at all. He says that the situation is unfair because the order obliges that, unless varied:

(1) The Wife would retain the excess capital of £180,000.

(2) The Husband would still have to pay the Wife's legal costs in the sum of £47,814 – originally ordered in this way because the Wife did not have the capital to do so.

(3) The Husband would still have to pay spousal periodical payments.

141. Secondly, District Judge Stone expected that the Husband's business would return to profitability to the tune of circa £200,000 per year. It has failed to do so and it might be a further eighteen months before it will do so. That has materially affected the capital situation of the family and looms heavy on the horizon.

142. Finally, District Judge Stone could reasonably have anticipated that his order would be complied with both in letter and spirit. It is highly unfortunate that three years on the parties are still embroiled in knotty and financially ruinous litigation.

143. The Wife in her submissions seeks to persuade me that the *Thwaite* jurisdiction is highly controversial. It is only really Mostyn J that has expressed such a view. In *H v. W* HHJ Reardon deals with the suggestion that this is a "rare jurisdiction", note, not controversial at [56] and [57] of her judgment:

“[56] In contrast, in the *Thwaite* cases (particularly *Bezeliansky*, the facts of which are similar to the facts of the present case, albeit played out on a bigger

stage) there is usually a close link between the executory nature of the order and the disaffected spouse's ability to frustrate it. This is particularly obvious in property sale or transfer cases, where, however tightly-drafted the order, the owner of the property is likely to have a number of opportunities to obstruct and delay the sale or transfer, or otherwise to diminish the value of the asset, in the pre-implementation period. The *Thwaite* jurisdiction would appear to be the only remedy available in such cases, where the change in circumstance has brought about a foreseeably disaffected spouse, rather than an unforeseeable event.

[57] For these reasons it is my view that the *Thwaite* jurisdiction does exist as a separate remedy to *Barder*. I would suggest that it may be particularly apt where:

- a) the respondent has culpably acted in such a way as to diminish the value of an asset, or otherwise to frustrate the intention behind the order;
- b) there is a link between the executory nature of the order and the change in circumstances: i.e. it is the fact that the order remains executory that has provided the respondent with the opportunity to frustrate it; and
- c) the applicant might well fail the first limb of the *Barder* test because the respondent's conduct was foreseeable."

144. Moreover, I accept Ms Barrons' submission that *H v. W* is useful because it is recent, the facts are analogous to this case and that it is a lower value case.

145. The Wife says in her written submissions that the Husband relies on *AFW v. RFH*. No one mentioned this case during the hearing. Reading the Wife's submissions it appears that she relies on the case because in that case Recorder Moys declined to exercise the Court's *Thwaite* jurisdiction but on very case specific grounds. The

Wife's wider point is that the jurisdiction can only be exercised if there has been a significant change in circumstances and it would be inequitable not to vary the order.

The other issues with *AFW v. RFH* is that in that case the person asking for the *Thwaite* jurisdiction to be invoked was also the party responsible for frustrating the order and that case dealt with a downward fluctuation of house prices as opposed to a totally unexpected excess of capital.

146. In this particular case the Husband told me in oral evidence that he hopes that if remarketed soon the FMH might sell for £1.2m to £1.25m. He is keen for there to be a sale as soon as possible so as to release him from the mortgage which is currently costing him £2,275 per month. On the figures provided to me if the FMH were to sell for £1.25m there would be equity of £760,500, so £85,500 above the Wife's housing need as assessed by District Judge Stone. If the FMH sells for £1.2m the surplus to the Wife would be £37,000.
147. In my judgment that is a significant change in circumstances because District Judge Stone did not anticipate that there would be any surplus of capital, in fact he envisaged that there would be a deficit which is why he ordered that the Husband top up the Wife's housing fund and pay her legal fees to clear debt. The fact that the order remains executory is entirely due to the Wife's frustration of District Judge Stone's and other judge's orders.
148. I am also satisfied that it would be totally inequitable not to vary the order. Any impartial observer would surely question the fairness of an order which required, in these particular circumstances, the Husband to pay the Wife's legal fees when she has had a surplus of capital from the net proceeds of sale which could pay them, or the vast majority of them. I am equally satisfied that the same observer would not

Family Court Approved Judgment:

consider it fair that a party who has frustrated the implementation of an order should benefit each month because the spousal maintenance is geared towards the sale of the FMH.

149. The Wife is, though, entirely dependent on the net proceeds of sale to produce her housing fund. As I found above, she is in need of a three-bedroom home, and I would crystallise her housing fund at £675,000 as District Judge Stone had, i.e.: £650,000 purchase plus stamp duty and moving costs. As £675,000 would meet the Wife's need and she has been the one to frustrate the order it seems fair to me that the *Thwaite* jurisdiction should be invoked to ensure that any monies over £675,000 be paid to the Husband. In my judgment this is fair and equitable because:

- (1) The Husband would still be obliged to use that surplus to pay the Wife's former solicitors the £47,814 to cover the Wife's previous legal fees.
- (2) He still has his maintenance obligations, and might give the Husband the opportunity to capitalise them.
- (3) Takes account that the Husband has had to pay spousal maintenance a rate higher than envisaged for much longer than he should have.

Costs

150. The Wife has already been ordered to pay £12,982.50 in costs by Deputy District Judge Perry which remains outstanding. She has no capital to meet that liability.

151. The Husband, relying on the Wife's litigation (mis)conduct seeks that she pay a proportion of his costs. On his Forms N260 his costs from April and May 2023 are £118,018.20, and he pursues that sum, from a total of liability of £210,308.07. That

Family Court Approved Judgment:

means that the Husband will still have to bear some £79,000 of costs on his own account.

152. In her written submissions the Wife contends that there is a procedural flaw in the pursuit of the conduct argument. I do not accept that there has been, costs have been a live issue since at least May 2023, and no prejudice has been caused to the Wife – she has not been surprised by this argument and has dealt with it extensively in her written submissions. I am entirely satisfied that the Wife’s litigation conduct has reached and significantly exceeded the threshold set by section 25(2)(g) of the MCA 73. Her conduct has been so unreasonable that it would be inequitable to ignore it.
153. The real question for the Court is whether or not to reduce the Wife’s housing fund to pay for the costs or to make a separate costs order. The greatest difficulty that I have with the latter is that I have little confidence that the Wife would comply with the costs order, leading to yet more litigation and potentially the only enforcement mechanism being a charge over the Wife’s new property. That is far from the clean break I wish to try and give these parties.
154. *Rothschild v de Souza* is good authority for the proposition that needs-based calculations can be reduced to take account of the unreasonable litigation of the receiving party. I have already found that the Wife can be reasonably accommodated in similar sized accommodation in City Y, where she said she will “make it work” for between £500,000 to £550,000. That is £100,000 less than the equivalent market price in City X. In my judgment though I cannot get away from the fact that the Wife must be provided with a housing fund. In my judgment the appropriate fund can be reduced from £675,000 to £545,000 which will ensure that she is able to

accommodate herself in a three-bedroom property in City Y. That sum should be a ‘guaranteed, come what may’ figure.

155. One attractive point from this mechanism it seems to me, is that it incentivises the Husband to try to sell the property for the best price it will fetch because any undersell will reduce the amount of capital he has available to settle the liability and costs from the Wife’s former solicitors. Further, I accept Ms Barrons’ submission is that costs for the Husband should come from the surplus above £545,000 instead of £675,000 because:

(1) It is uncertain as to what the sale price will actually be. If there were not a surplus above £675,000 then the Husband would have no funds to pay costs and the Wife would have a housing fund that is in excess of need.

(2) A surplus above £675,000 would not represent a fair portion of the Husband’s costs.

(3) The Husband would still have to pay the Wife’s legal fees and spousal maintenance.

156. Stepping back and considering the Court’s wide discretion when dealing with costs I am satisfied that both the Wife can be adequately accommodated for £545,000 and that the reduction in her housing fund is wholly justifiable on litigation conduct costs grounds alone and would represent a £130,000 contribution to the Husband’s costs, or 64.5% of his total costs. In reality that figure is further reduced by the liability to the Wife’s former solicitors.

157. In the meantime, the Husband still has to meet his costs liability to his solicitors. They cannot reasonably be expected to wait forever. I accept the Husband’s evidence

that the only real capital available to him is his pension. It is reasonable for him to use that capital to pay those costs which will still amount to nearly £80,000.

158. I would allow the Wife a further 28-day period to send to the pension trustees all the documentation they need to affect the pension share. If the Wife fails to do so I would release the Husband from his undertaking not to further draw down on his pension. From the draw down the Husband will have to sequester 25% of the total net sum for the Wife. He may use the remaining 75% as he sees fit. Contrary to the Wife's written submissions that is not a variation to the pension sharing order ordered by District Judge Stone it is simply allowing access to the cash within the pension.
159. What the Husband seeks thereafter is a time for the Wife to choose and set up a SIPP and provide the paperwork so her 25% can be transferred into it. She has so far refused to do that. Further, I do not think it would be appropriate for the Husband or the Court to do that for her. If the Wife continues not to implement the pension sharing order then the Husband says that it should lapse. The Wife contends there is no jurisdiction for such a remedy pursuant to section 31(4A) of the MCA 73.
160. Again, though, this is not a variation, it is an application to set aside the pension sharing order on the basis of executory frustration, and as set out above there is ample jurisdiction for the Court to take such action. The pension sharing order is to the Wife's benefit and I am at a loss to understand why she has not taken the action needed to implement it. That is her responsibility; the Husband and the Court cannot do that for her, still less choose a SIPP. In my judgment a six month period from drawn down would be an appropriate amount of time for the Wife to receive advice, choose a SIPP, set it up and provide the details to the Husband. It is an antithesis to

trying to move this couple on and achieve a clean break for the pension sharing order to remain outstanding for longer than that.

Variation of spousal maintenance

161. District Judge Stone's spousal maintenance order was geared around the sale of the FMH. As a direct result of the Wife frustrating the sale of the FMH, the Husband has had to pay maintenance for much longer than District Judge Stone envisaged in 2021. I remind myself also that District Judge Stone also envisaged that the Husband's business would have returned to profitability when it has not.
162. Essentially, the Husband contends that it would be totally inequitable for the five year term (from the sale of the FMH) to begin in 2024 when the Wife has deliberately frustrated the sale of the FMH. I agree with him. It was originally envisaged that the FMH would sell in six months, or thereabouts. I think that would be a fair starting point, and think it fair to imagine District Judge Stone envisaged the FMH selling in September 2021. On District Judge Stone's order there would have been three years' spousal maintenance at £3,000 per month and a final two years' spousal maintenance at £1,500 per month, terminating in September 2026.
163. As is well known spousal maintenance is to ensure that the receiving spouse is able to maintain an income level to cushion them to financial independence without undue hardship. I have found that the Wife's current reasonable outgoings are £2,623 per month and she has a short-term earning capacity of £2,917 per month. I accept though that some of her caring work fluctuates in terms of hours available and the school holiday work self-evidently only takes place during the school holidays. The Wife does not appear to have pursued a career in the skilled and potentially lucrative field that she has previously worked in. I conclude the Wife will still require some

cushioning to complete financial independence but that it is unreasonable to say that should be five years from the sale of the FMH in, say, November 2024.

164. On balance therefore I accept that it would be unfair for District Judge Stone's original five year term to begin then. I would reduce the term so that it terminates as all parties thought it would, in September 2026. That recognises not just the Husband's obligations but also the fact that the Wife does not derive a benefit from the frustration of the sale of the FMH.
165. I also consider it fair and proportionate to revisit the quantum of the maintenance in light of the findings about the Wife's earning capacity and reasonable outgoings that I have made. Taking the same starting point that the FMH should, hopefully, sell in a six month window, which will require the Wife to be accommodated elsewhere the spousal maintenance required will be higher than when she has purchased her new home and settled into that. I would therefore assess the Wife's need as requiring spousal maintenance in the sum of £1,500 per month until November 2024 when it will reduce to £1,000 per month for the remainder of the term. That is, in my judgment, a generous assessment of her needs and appropriately incentivises her to move into work.
166. At the end of the term I would put in place a section 28(1A) bar in order to give the parties a clean break from each other and to discourage further litigation.
167. Nothing about this would affect the maintenance paid for Child A.
168. Lastly, had the Wife had before the Court an extant application to revise the spousal maintenance upwards on the basis of the my findings set out above I would have dismissed the application

The Wife's enforcement application

169. In July 2023 the Wife applied to enforce the arrears that she says arise from District Judge Stone's order.
170. On issues arising out of the maintenance costs of the FMH the Husband has conceded in his evidence that any receipts for work in the previous twelve months he will settle. In my view that is a fair and reasonable position for him to take given that the only requests for payments were made by the Wife at the PTR following Deputy District Judge Kumar's 'last chance' direction, she sought no permission to go beyond twelve months and she has been in receipt of monies from the Husband of £5,000 per month all that while.
171. To that extent, on that limb of her application, the Wife is successful by consent. Those receipts appear to total £3,838.59, that should come from the Husband's share of the net proceeds of the sale of the FMH, or if there be insufficient net proceeds, be paid within 14 days of sale.
172. The second limb of the enforcement application is that the Wife seeks a capital lump sum for a car purchase. Originally, District Judge Stone thought it was reasonable for the Wife to be provided with a replacement car up to £25,000 within two years of the order. Not long after the final hearing in 2021, the Wife wrote off her previous car and persuaded the insurance company to pay her £19,000. She then took out a hire purchase scheme on a different car for a further £14,444.87; so the policy was worth £34,000. The Wife contends in her written submissions that the Husband should fund the difference between the previous car and £25,000, i.e. £6,000.

Family Court Approved Judgment:

173. The retention by the Wife of £19,000 represents 76% of the maximum £25,000 that District Judge Stone envisaged. Considering all of the circumstances of the case, including that the Wife has benefitted from frustrating the sale by way of increased spousal contributions and maintenance and the late application to enforce this cost it seems to me on balance that this limb of the Wife's application should be dismissed.

Conclusion

174. This is a regrettably long judgment, but it is necessary to deal with the applications fairly and comprehensively in order to achieve finality for these parties. This is a case which has been riddled with the Wife's deliberate and flagrant litigation misconduct which has been solely designed to frustrate the implementation of District Judge Stone's order because she knew it was financially advantageous to do so.

175. My overall conclusions and order shall be these:

(1) On the Husband's possession application:

- a) The balance of harm test pursuant to section 33 FLA 96 falls in favour of the Husband.
- b) The Wife shall give up, to the Husband, vacant possession within 14 days
- c) Enforcement of the order for possession is transferred to the High Court.

(2) On the Husband's application to remove the Wife's Home Rights Notice:

- a) The Husband shall retain sole conduct of the sale of the FMH

Family Court Approved Judgment:

- b) This Court will execute a Home Rights Removal document following judgment and is only to be used on completion.
- (3) On the Husband's application to vary spousal maintenance periodical payments:
- a) Spousal periodical payments shall terminate in September 2026
 - b) There shall be a section 21(1A) bar
 - c) In the meantime spousal periodical payments shall be paid at the rate of £1,500 per month until November 2024, and thereafter at the sum of £1,000 per month until the expiry of the term
 - d) The Husband may elect to capitalise
- (4) On the Husband's *Thwaite* application to vary capital:
- a) The Wife's housing fund crystallised at £675,000
 - b) Any surplus above £675,000 shall be paid to the Husband
 - c) From the Wife's £675,000 she shall pay £130,000 to the Husband in respect of his cost, the remaining £545,000 shall be the Wife's housing fund
 - d) Under no circumstances is the Wife's housing fund to be less than £545,000
- (5) Dealing with the implementation of the pension sharing order
- a) The Wife is to implement the pension sharing order within 28 days
 - b) The Husband must undertake to co-operate with that implementation

Family Court Approved Judgment:

- c) In default of implementation by the Wife, the Husband is released from his undertaking not to draw down his pension.
- d) If the Husband draws down a sum he must ensure 25% is preserved for the Wife and pay her on demand.
- e) If the Wife has implemented the pension sharing order then the Husband must wait until after implementation before drawing down cash.
- f) In the event that the Wife fails to implement after six months the pension sharing order shall be set aside.

(6) On the Wife's application to enforce arrears

- a) By consent, the Husband is to pay the Wife the sum of £3,838.59, payable on the sale of the FMH
- b) Balance of the application is dismissed.

(7) Costs

- a) By way of the Wife's litigation conduct, the Wife may recover his costs pursuant to section 25(2)(g) of the MCA 25
- b) The quantum of that decision is that £130,000 is to be paid towards his incurred costs of £210,000 from the Wife's share of the net proceeds of sale

176. That is my judgment.

Postscript

Family Court Approved Judgment:

177. After I had drafted the vast majority of my judgment I received further written submissions from Ms Barrons which dealt with matters that the Wife raised only in her submissions.
178. I am conscious that throughout the hearing I had told the parties there would be no more information and that submissions were limited to what I had ordered. I thought it was important to stay true to that. Therefore, I have not taken them into account but in a spirit of frankness I did have to quickly skim the document in order to understand what it was when it was initially sent to me. I have done no more than this.
179. Further during the handing down hearing I was informed in fact that at the pronouncement of the parties' decree absolute the Wife's share of the pension was crystallised at that date. The sum it was crystallised in was £108,434.68. In my judgment therefore this is the sum that should form the Wife's 25% pension share.