Neutral Citation Number: [2024] EWHC 2869 (Fam)

Case No: FD17F00068

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

12th November 2024

Before :

SIMON COLTON KC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

GH **Applicant**

- and -

H **Respondent**

- -
- -

Tom Harvey (instructed by **Withers LLP**) for the **Applicant**

The Respondent in person

Hearing date: 30 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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

Mr Simon Colton KC:

Introduction

1. This matter comes back before me in circumstances where the Wife obtained an interim charging order on 22 April 2024. At the hearing on 30 October 2024, on the Wife's application, I decided to make that order final.

2. In the course of reaching my decision, and following the hearing prior to approving the sealing of an order, I identified three issues which struck me as requiring fuller reasons. These concerned:

    i) Whether a charging order can be made, on the application of a party to the marriage, in respect of sums which, under a final order following financial proceedings, are due to be paid to a third party – namely, the child of the marriage;

    ii) Whether interest had accrued on periodical payments which had been ordered but gone unpaid; and

    iii) Whether the fixed costs regime in CPR 45 applies to the making of a final charging order in family proceedings and, if so, the circumstances in which the court can and should order otherwise.

3. At the hearing, I gave brief oral reasons for my decision, while indicating that, in certain respects, I would give more detailed reasons in writing. I set out below those reasons.

The facts

4. On 10 December 2018, Roberts J made a final order (the '**Roberts J Principal Order**') following financial proceedings under s.23 of the Matrimonial Causes Act 1973 (the '**1973 Act**'). The order was headed: '*In the Family Court sitting at the Royal Courts of Justice*'. Among other matters, that order dealt with certain properties belonging to the parties defined as '**Flat 5A**' and '**Flat 5D**'. So far as material for present purposes, that order included the following:

> *"**IT IS ORDERED (BY CONSENT) (with effect from Decree Absolute):***
>
> ***Lump Sum Orders***
>
> *24. The respondent shall pay to the applicant the following lump sums:*
>
> *a. £1m within 3 months of the date of this Order;*
>
> *b. £1.1m by 4pm on 19 June 2023, or in the event of the respondent's death prior to 19 June 2023, payable by his estate forthwith upon his death; and*
>
> *in the event the respondent fails to procure the 5D Licences within 3 months of the transfer of Flat 5D to the applicant,*

he shall pay to the applicant a lump sum of £60,000 on the date 3 months after the transfer of the property fell due.

25. If the respondent fails to pay all or any part of the lump sums due by the payment date, simple interest shall accrue on the remaining balance of the lump sum(s) at the rate applicable for the time being to a High Court judgment debt.

…

Spousal periodical payments order with non-extendable term

33 From the 1st day of the month immediately following the receipt of the first lump sum in accordance with paragraph 24.a above the respondent shall pay to the applicant periodical payments at the rate of £50,000 per annum, payable three-monthly in advance. The periodical payments shall end upon the respondent making the second lump payment to the applicant in accordance with paragraph 24.b above, following which the applicant's claims for periodical payments and secured periodical payments shall be dismissed, and it is directed that upon the expiry of this term:

i. the applicant shall not be entitled to make any further application in relation to the marriage for an order under the Matrimonial Causes Act 1973 section 23(1)(a) or (b) for periodical payments or secured periodical payments;

ii. pursuant to the Matrimonial Causes Act 1973 section 28(1A), the applicant may not apply for an order to extend this term; and

iii. the applicant shall not be entitled on the respondent's later death to apply for an order under the Inheritance (Provision for Family and Dependants) Act 1975, section 2.

Child periodical payments order

34. By agreement between the parties the respondent shall pay to the applicant periodical payments for benefit of [Child]. Payments shall be at the rate of £25,000 per annum, payable three-monthly in advance. Payments shall start on the 1st day of the month immediately following the receipt of the first lump sum in accordance with paragraph 24.a above, and shall end on [Child] ceasing her full-time tertiary education to first degree level, including a gap year (provided the respondent agrees how [Child] shall spend her gap year such agreement not to be unreasonably withheld), and on the basis that once [Child] completes secondary education the sum then being paid shall be paid as to 1/3 to the applicant and 2/3 directly to [Child]."

5. Under the Roberts J Principal Order, payment of the lump sum of £1.1 million due on 19 June 2023 (the '**Lump Sum**') was secured by a mortgage over Flat 5A which is the Husband's home. Following non-payment of the Lump Sum by the due date, there was correspondence between the parties, and then on 15 August 2023 the Wife issued a claim for possession of Flat 5A, in reliance on the mortgage. On 6 October 2023, DJ Sterlini sitting at the County Court at Clerkenwell and Shoreditch, ordered the Husband to give the Wife possession of Flat 5A on or before 20 October 2023, and gave judgment in the sum of £1.1 million. The Husband sought, but was refused, permission to appeal that order, and has now abandoned any further attempt to obtain such permission to appeal.

6. Meanwhile, on 3 October 2023, the Husband issued an application to vary the date for payment of the Lump Sum to 30 June 2024. Subsequently, that application was amended to seek an extension of the date for payment of the Lump Sum to 30 June 2025. The matter was listed before me for directions on 27 November 2023. At a further hearing on 7 December 2023, I dismissed the application: [2023] EWFC 235.

7. On 9 January 2024, the Wife made an application "*for an order for such method of enforcement as the court may consider appropriate*", pursuant to FPR 33.3(2)(b). That application was issued by the court on 31 January 2024, but through an error the standard directions, envisaged by FPR 33.3(3), were not made. Rather, a hearing was fixed for 22 April 2024, without requiring the Husband to complete a financial statement or produce any documents.

8. On 17 April 2024, the Husband sought to vacate the hearing fixed for 22 April 2024 on health grounds. I rejected that application. On 18 April 2024, the Husband served notice that he would now be acting in person. However, he failed to attend the hearing on 22 April 2024, saying he was at a hospital.

9. On 22 April 2024, I made an interim charging order, charging the interest of the Husband in Flat 5A, in the sum of £159,244.10. This sum did not include the Lump Sum (which, as explained above, was already secured by a mortgage over Flat 5A), but was made up of interest on the Lump Sum; costs orders which had gone unsatisfied; interest; and the Wife's costs to date of the enforcement application.

10. My order directed that the application would be listed for a further hearing before me on the first available date after 20 May 2024. In the usual way, I directed that the Husband and any other relevant persons be served with the order, and that if the Husband or any other person objected to the court making a final order they should file evidence at least 7 days before the hearing. In the event, no evidence was served by any person.

11. As I have already indicated, at the hearing I was satisfied in all the circumstances that I should make a final charging order.

Issue 1: A charging order in respect of sums to be paid to the child?

12. As set out at paragraph 4 above, by agreement between the parties and by order of the court, the periodical payments for the benefit of the parties' daughter were

set at £25,000 per annum, and once she completed her secondary education these were to be "*paid as to 1/3 to the applicant and 2/3 directly to [Child]*". The parties' daughter completed her secondary education earlier this year, and so this provision now has effect, and part of the arrears which the Wife seeks to charge are arrears payable directly to the parties' daughter.

13. I asked Mr Harvey whether I had the power to make a charging order to secure sums payable to a third party. Mr Harvey submitted that it was open to the Wife to obtain a charging order over such sums, even though the sums are not payable to her.

    i) Mr Harvey noted that paragraph 34 of the Roberts J Principal Order was introduced by the language "*By agreement between the parties…*".

    ii) In the context of applications for a charging order, FPR 40.2 defines a creditor as (with emphasis added):

    > *"the person to whom payment of a sum of money is due under a judgment or order or a person who is entitled to enforce such a judgment or order"*

    iii) Mr Harvey showed me the summary in Family Court Practice 2024 (the '**Red Book**') which says at paragraph 3.1317, under 'Essentials 8: Financial Remedies – Enforcement' that "*Where a party fails to comply with the order(s) that have been made the other party may apply to the court to enforce*" (my emphasis).

    iv) As a matter of policy, Mr Harvey suggested this was the right answer: it would be undesirable for the daughter to have to pursue her father for payment of unpaid sums, bringing her directly into the ongoing financial dispute between her parents.

14. On the basis of those brief submissions, I accepted the argument that it was within my power to make a charging order in respect of the sums payable to the parties' daughter.

15. After the hearing, however, I discovered that there were additional relevant materials which might have a bearing on this question. In particular:

    i) For the purposes of charging orders, the definition of a 'creditor' is in s.1(1) of the Charging Orders Act 1979 (the '**1979 Act**'), which provides:

    > *"Where, under a judgment or order of the High Court or the family court or the county court, a person (the 'debtor') is required to pay a sum of money to another person (the 'creditor') then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Act imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order."*

ii) I note that this statutory definition of a 'creditor' is not as extensive as the definition given in FPR 40.2, extending only to the person to whom money is due.

iii) The commentary in the Red Book to this section states:

> *"'**to another person**' (s 1(1))—A charging order cannot be made to secure an order to pay into court (Ward v Shakeshaft [1860] 1 Dr & Sm 269) or an order to settle a sum of money for the benefit of a child (Re N (a child) (payments for the benefit of child) [2009] 1 FLR 1442, FD – although in that case the court achieved virtually the same result by granting an injunction."*

iv) *Ward v Shakeshaft* provides slender support for the proposition stated. The headnote in the English Reports (62 ER 381) notes that "*The only question in this suit, which was for foreclosure, was as to the costs of some of the Defendants who had disclaimed*". As there explained, John Broadhurst had been made a defendant as having an interest in the subject-matter of the suit, in respect of a decree which he had obtained as the next friend of Mary Broadhurst against the plaintiff's mortgagor, Enoch Gerrard, by which decree certain monies were ordered to be paid to the credit of the cause of Mr Gerrard. Mr Broadhurst sought his costs of being made a defendant, on the basis that he never claimed an interest in the property, and (in any event) he disclaimed it, and if he had been approached before being made a defendant he would have disclaimed all interest. His counsel, Mr Jessel, argued that Mr Broadhurst was not a Judgment Creditor within the meaning of s.18 of the Judgments Act 1838 (the '**1838 Act**'). The report records that the Vice-Chancellor, Sir R T Kindersley, held:

> *"The Defendant, Broadhurst, being made a party, filed an answer, by which he stated that he never claimed and now disclaimed all interest in the matters in question, and further went on to say that no application was ever made to him before the bill was filed. That was true; and it being proposed to dismiss him without costs, he objected, and the question was whether his disclaimer was sufficient. [It appeared to His Honor, inasmuch as he never had and never claimed any interest and disclaimed by his answer, he was entitled to his costs.]"*

v) I do not find here authority for the proposition that a charging order cannot be made to secure an order to pay into court. But, even if it were authority for this, I would not be sure that the same principle applies in family proceedings. I note that although CPR 70.1(2)(d) provides that a 'judgment or order for the payment of money' in CPR Parts 71 to 73 "*does not include a judgment or order for the payment of money into court*", that language of restriction is specifically omitted in family proceedings by virtue of FPR 33.2.

vi) As for the other authority cited in the commentary, in *In re N (A Child) (Financial Provision: Dependency)* [2009] EWHC 11 (Fam), [2009] 1

WLR 1621, [2009] 1 FLR 1442, Munby J had to consider the position where a father was ordered to settle on the mother the sum of £220,000 for the benefit of the child. The mother was bound to use that sum to purchase a property to house herself and the child until he reached the age of 21 or completed tertiary education. At [56], Munby J held:

> *"In relation to a charging order, the short and conclusive point remains that which I identified at the hearing on 15 May 2006. So far as concerns the sum of £220,000 the order made by District Judge Roberts was not, within the meaning of section 1(1) of the Charging Orders Act 1979, an order 'where... a person... is required to pay a sum of money to another person'. The order did not require the father to pay £220,000 to the mother – indeed, that is, no doubt, the very reason why the mother has applied to have the words 'by paying the mother the sum of £220,000' inserted in the order. It was an order that the father 'settle' that sum 'on the mother... for the benefit of the child'. Such an order is not, in my judgment, an order of the kind to which alone section 1(1) applies. Mr Cronshaw was not able to point to any statutory provision or other authority in support of his argument and I am not aware of any. Section 1(1) is quite precise in its terms. It does not apply to all forms of order requiring someone to pay or provide a sum of money and it does not, in my judgment, apply to an order of the kind which I am concerned with here."*

vii) Although this decision is cited in the Red Book commentary as relating to the words "*to another person*", it seems to me that this decision actually relates to different language in s.1 of the 1979 Act, namely "*to pay a sum of money*". Munby J did not hold that the order fell outside the scope of the 1979 Act because the order provided for value to go to the mother for the benefit of the child; rather, Munby J held that the order fell outside the scope because what was ordered was not to pay a sum of money.

16. I am unaware of any other authorities which might cast a light on the question whether a person (A) can apply for a charging order under the 1979 Act against a debtor (B), where B owes money to a third party (C). However, having reflected further on this matter, I remain of the view that I do have the power, on the Wife's application, to grant a charging order in respect of sums which the Husband was ordered to pay to the parties' daughter. I reach that view for the following summary reasons:

i) The 1979 Act does not, in my judgment, prescribe who may apply for a charging order. S.1(1) of the 1979 Act defines who constitutes a 'creditor' – and that would not include the Wife in respect of sums to be paid to the parties' child – but the 1979 Act nowhere provides that only creditors, as there defined, may apply for a charging order. On the contrary, such limitation might be regarded as inconsistent with s.1(4) which begins: "*Where a person applies to the High Court for a charging order…*" (emphasis added).

ii) FPR 40.3 provides: "*This Chapter applies to an application by a creditor for a charging order under section 1 of the 1979 Act*". Taking this at face value, one might think that 'creditor' here has the same meaning as 'creditor' in s.1 of the 1979 Act – and, therefore, applications may only be made by the person to whom a sum of money is to be paid. However, this rule must be read in the context of FPR 40.2: "*In this Part… 'creditor' means the person to whom payment of a sum of money is due under a judgment or order or a person who is entitled to enforce such a judgment or order*". FPD 40A para 1.1 states that "*A person who is entitled to enforce such a judgment or order would include a court officer who is able to take enforcement proceedings by virtue of rule 32.33*", but I do not read that as limiting the scope of persons who are entitled to enforce.

iii) If the 1979 Act did limit the scope of potential applicants, then that scope could not be extended via a rule of court. However, as I have held, in my judgment the 1979 Act does not provide such a limit.

iv) For the reasons I have given above, I do not consider that any authority I have identified requires me to decide otherwise.

v) As a matter of policy, there is good reason why someone in the position of the Wife should be permitted to enforce debts owed, pursuant to a court order she has obtained, by a person in the position of the Husband. As Mr Harvey submitted, it would be undesirable to require such enforcement action to be brought by the daughter herself.

17. For these expanded reasons, I concluded (and conclude) that the final charging order could extend to cover sums which the Husband has been ordered to pay to the parties' child.

Issue 2: Interest on periodical payments?

18. The sum which I was asked to approve to be included in the final charging order included a little over £2,900 by way of interest due on arrears of spousal maintenance, and a little over £200 due on arrears of child maintenance. I understood, and indeed I explained to the Husband at the hearing, that these sums had accrued (and would continue to accrue) under the 1838 Act. Mr Harvey, Counsel for the Wife, did not suggest otherwise, nor indicate that there was any doubt about the matter.

19. After the hearing, however, before I approved the order for sealing, it occurred to me that I might have gone astray in this regard. As noted at paragraph 4 above, the Roberts J Principal Order, under which the arrears had accrued, was headed: '*In the Family Court sitting at the Royal Courts of Justice*'. As Mostyn J held in *TW & TM (Minors)* [2015] EWHC 3054 (Fam), [2016] 2 FLR 1386 at [17]-[19], by reason of s.74(5B) of the County Courts Act 1984 (the '**1984 Act**') and art.2(4) of the County Courts (Interest on Judgment Debts) Order 1991 (the '**1991 Order**'), interest does not accrue on orders for periodical payments made in the Family Court. The County Courts (Interest on Judgment Debts) (Amendment) Order 2019 has subsequently amended art.2 of the 1991 Order, but not in a manner which affects the conclusion of Mostyn J.

20. I drew my concerns to the attention of Mr Harvey after the hearing. His response, was to the effect that (i) if the Roberts J Principal Order was indeed made in the Family Court, then he accepted that interest would not have accrued on arrears of spousal maintenance or child maintenance, but (ii) having obtained, after the hearing, a clip of applications and orders made in these proceedings, which he now produced, it appeared that the order was in fact made in the Family Division.

21. I invited the Husband to make any submissions he wished on this new material. He made no submissions on the factual or legal questions involved.

22. The clip of orders tells a confused tale.

    i) On 11 April 2017, these proceedings were begun in the Family Court.

    ii) On 13 July 2017, an application was made for a freezing order under s.37 of the 1973 Act. The application referenced the Family Court sitting at the High Court of Justice, but bore the seal of the Family Division. That same day, in addition to making a freezing order -which I have not seen, but whose existence can be inferred from the clip – Roberts J made a directions order, headed '*In the High Court of Justice, Family Division*'. One of these directions was: "*The proceedings are transferred to the High Court and allocated to Mrs Justice Roberts*". In light of *Tobias v Tobias* [2017] EWFC 46, [2017] 4 WLR 146, which had been decided only a couple of weeks earlier, it seems unlikely that the transfer to the High Court related directly to the application for a freezing order.

    iii) On 8 August 2017, and again on 3 October 2017, further orders were made, each headed '*In the High Court of Justice, Family Division*'. The orders in August bore both High Court and Family Court case numbers; the order in October bore only the Family Court case number.

    iv) On 15 January 2018, there was an order headed '*In the Family Court at Central Family Court, sitting at the Royal Courts of Justice*', which began: "*Before Mrs Justice Roberts sitting in the Family Division...*". This bore a Family Court case number.

    v) Thereafter, all orders were headed '*In the Family Court*', with the Family Court case number, without reference to the Family Division, up to and including the Roberts J Principal Order.

23. Following the Roberts J Principal Order, the next identifiable order, an order of 28 February 2019, was again headed '*In the High Court of Justice, Family Division*' and bore a High Court case number. The order of 23 June 2020 was headed '*In the Family Court*' with a Family Court case number; the order of 22 January 2021 was headed '*In the High Court of Justice, Family Division*' with a Family Court case number; and, reflecting my understanding of the position at the time, my orders of 27 November and 7 December 2023 were headed '*In the Family Court*', with Family Court case numbers.

24. It is obviously unsatisfactory that there is uncertainty as to the jurisdiction in which the Roberts J Principal Order was made. As the President's Guidance

(Jurisdiction of the Family Court: Allocation of Cases Within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court) states at paragraphs 7 and 9:

> *"7. Because puisne judges of the Family Division, the President of the Family Division, and section 9 judges can, and do, sit both in the Family Division and in the family court, it is important always to be clear as to whether, in a particular case, they are sitting in the Family Division or in the family court….*
>
> *9. It is particularly important, when a case is being heard by a judge of High Court level, that the order should accurately record whether the judge is sitting in the High Court or in the family court. If the judge is sitting in the family court, the order must be headed 'In the Family Court sitting at …' and not 'In the High Court of Justice Family Division.' This is so whether the judge is sitting in the Royal Courts of Justice or anywhere else. Accordingly, when the judge is sitting in the Royal Courts of Justice, but in the family court rather than the High Court, the order must be headed "'In the Family Court sitting at the Royal Courts of Justice'…."*

25. Doing the best I can, I conclude that – despite its heading – the Roberts J Principal Order was made in the High Court. Roberts J had transferred the proceedings to the High Court in July 2017, and the proceedings were never re-transferred to the Family Court. The variable headings on the different orders demonstrate, in my judgment, an unfortunate lack of attention to the matter by the parties and their legal representatives, rather than any conscious judicial decision, after July 2017, to re-transfer the proceedings to the Family Court. This means that a number of subsequent orders bore the wrong heading.

26. Since the Roberts J Principal Order was made in the High Court, there is then the question whether interest accrued on the unpaid periodical payments. Mr Harvey was unaware of any case which decides this issue. In *Mann v Mann (No.2)* [2016] EWHC 314 (Fam), [2016] Fam 281, Roberts J identified the issue at [157], but did not need to decide the point.

27. The Red Book commentary at paragraph 3.2302[1] states:

> *"However, interest cannot be claimed on arrears of maintenance payments: Re TW & TM (Minors) (Child Maintenance: Jurisdiction and Departure from Formula) [2015] EWHC 3054 (Fam) at [16]–[19]. The rationale is that MCA 1973, s 23(6) explicitly provides for interest on lump sums that are not paid and makes no such provision for interest on arrears of child maintenance. The same logic extends to orders for child maintenance made under ChA 1989, Sch 1."*

28. This seems to me to be a mis-reading of the decision in *TW & TM (Minors)* and of s.23(6) of the 1973 Act.

i) First, s.23(6) of the 1973 Act provides that the court may order interest on a lump sum "*until the date when payment of it is due*". S.23(6) does not provide for late payment interest – i.e, interest after the date when payment is due. S.23(6) was introduced by the Administration of Justice Act 1982 to reverse the effect of *Preston v Preston* [1982] Fam 17 where the Court of Appeal held that, under s.23 as then in force, the court lacked the power to award interest on a lump sum before such sum became due and payable: see *H v H* [2005] EWHC (Fam) 1513, [2006] 1 FLR 327 at [9]. But where a lump sum is ordered and goes unpaid on its due date, interest from that date accrues by virtue of s.17 of the 1838 Act: *Preston v Preston* (Ormrod LJ at 29G; Brandon LJ at 38C); *H v H* at [9].

ii) Second, what *TW & TM (Minors)* decides is only that, as set out in art.2(4) of the 1991 Order, in the Family Court, "*interest shall only be payable on an order for the payment of not less than £5,000 as a lump sum whether or not the payment is by instalments*". The 1991 Order reversed the previous position that interest was not recoverable on County Court judgments, essentially because the common law did not provide for interest on judgment debts and the 1838 Act, which introduced interest on judgment debts, pre-dated the creation of the County Courts such that County Court judgments are not judgments within the meaning of the 1838 Act: see the decision of the Court of Appeal in *Burrows v Burrows* (The Times, 10 March 1981), following *R v County Court Judge of Essex and Clarke* (1887) 18 QBD 704. Neither *TW & TM (Minors)*, nor art.2(4) of the 1991 Order, says anything about the position in respect of orders made in the Family Division.

29. There was at one time uncertainty as to whether any judgments in the Family Division fell within the scope of s.17 of the 1838 Act, but that position was no longer tenable following *K v K (Divorce Costs: Interest)* [1977] Fam 39 (Denning MR at 49B-C; Stephenson LJ at 52H) – as recognised in both *Preston v Preston* and *H v H*.

30. In my judgment, the position now is straightforward: the Roberts J Principal Order, made by a judge sitting in the Family Division of the High Court, requiring the Husband to make certain periodical payments to the Wife, and to their child, gave rise to judgment debts within the meaning of the 1838 Act. When those sums fell due but were not paid, interest began to accrue at 8% per annum under s.17 of the 1838 Act.

31. The Husband invited me to exercise my discretion to waive any interest that had accrued on the outstanding spousal and child maintenance payments, but I decline to do so. The Wife has been kept out of the sums to which she is entitled, by the Husband, for no good reason. In the circumstances of the case overall (which I consider further at paragraphs 66 to 69 below) I consider the fair outcome is that the Husband should be liable for interest, and the final charging order should reflect that.

32. For these reasons, the final charging order includes a sum representing interest on the periodical payments.

Issue 3: Fixed costs?

33. The Wife sought her costs of the charging order application, in the sum of £23,165 plus VAT. However, it occurred to me that this raised the question whether, by reason of FPR 28.2, the Wife was limited to recovering fixed costs of just £110.

34. Shortly before the hearing, I flagged this issue with Mr Harvey so that he could consider the issues raised by this point. At the hearing, Mr Harvey told me that this was the first occasion on which he could recall such a point being taken. His brief researches before the hearing had turned up no authority on the point.

The procedural framework

35. FPR 28.1 provides that "*The court may at any time make such order as to costs as it thinks just*". FPR 28.2 provides that, subject to certain modifications which are not relevant here, "*Subject to rule 28.3, Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3), 46 and 47 and rule 45.8 of the CPR apply to costs in proceedings…*". FPR 28.3 does not apply to enforcement proceedings.

36. Part 45 of the Civil Procedure Rules provides for a regime of fixed costs. Prior to the entry into force of the Civil Procedure (Amendment No.2) Rules 2023 on 1 October 2023, CPR 45.8, to which FPR 28.2 refers, provided:

> *"Table 5 shows the amount to be allowed in respect of legal representatives' costs in the circumstances mentioned. The amounts shown in Table 4 are to be allowed in addition, if applicable."*

37. So far as material, Table 5 provided:

Table 5 Fixed Enforcement Costs

…	
On the making of a final charging order under rule 73.10(6A)(a), 73.10(7)(a) or 73.10A(3)(a)	*£110.00*
	The court may also allow reasonable disbursements in respect of search fees and the registration of the order.
…	

38. Table 4, to which CPR 45.8 referred, provided:

Table 4 Miscellaneous Fixed Costs

For service by a party of any document other than the claim form required to be served personally including preparing and copying a certificate of service for each individual served	*£15.00*

Where service by an alternative method or at an alternative place is permitted by an order under rule 6.15 for each individual served	*£53.25*
Where a document is served out of the jurisdiction—	
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	*£68.25*
(b) in any other place	*£77.00*

39. On 1 October 2023, the Civil Procedure (Amendment No.2) Rules 2023 came into force. These contain transitional provisions in rule 2:

> *"(1) Subject to paragraphs (2) and (3), in so far as any amendment made by these Rules applies to—*
>
> *(a) allocation;*
>
> *(b) assignment to a complexity band;*
>
> *(c) directions in the fast track or the intermediate track; or*
>
> *(d) costs,*
>
> *those amendments only apply to a claim where proceedings are issued on or after 1st October 2023.*
>
> *(2) The amendments referred to in paragraph (1) only apply—*
>
> *(a) to a claim which includes a claim for personal injuries, other than a disease claim, where the cause of action accrues on or after 1st October 2023; or*
>
> *(b) to a claim for personal injuries, which includes a disease claim, in respect of which no letter of claim has been sent before 1st October 2023.*
>
> *(3) This rule does not apply to the amendments made by rule 9(3)(b)(i) or rule 16(1) and (6) of these Rules, nor to Section II of Part 45 in Schedule 3 to these Rules."*

40. I understand the effect of sub-rule 2(3) ("*This rule does not apply…*") to be that, for those amendments which are covered by that sub-rule, the amendments take effect from 1 October 2023 – even where the proceedings were issued earlier.

41. Within the amendments referred to in sub-rule 2(3) are those in "*Section II of Part 45 in Schedule 3 to these Rules*". Section II of (new) Part 45 deals with 'Commencement, Entry of Judgment and Enforcement'. It includes rules numbered CPR 45.16 to CPR 45.23. (New) CPR 45.23 is in identical terms to (old) CPR 45.8, save that it cross-refers to (new) Table 7, in identical terms to (old) Table 5, and to (new) Table 6, in identical terms to (old) Table 4.

42. In Section I of Part 45 in Schedule 3 there is a new CPR 45.8. This deals with the costs of pre-action and interim applications in cases covered by Section VI (fixed costs in the fast track), Section VII (fixed costs in the intermediate track), or Section VIII (claims for noise induced hearing loss). None of this appears to have anything to do with family proceedings.

43. The upshot is that FPR 28.2 continues to provide that CPR 45.8 applies to costs of family proceedings. However:

    i) (Old) CPR 45.8 no longer has effect. It has been replaced by CPR 45.23, which takes effect even for proceedings issued before 1 October 2023.

    ii) (New) CPR 45.8 has effect for proceedings issued on or after 1 October 2023. But (a) that is not this case, and (b) (new) CPR 45.8 has no apparent connection to family proceedings.

The consequence of the failure to amend the cross-reference to CPR 45.8

44. Mr Harvey argued that if (old) CPR 45.8 does not apply to these proceedings because it has been replaced, and (new) CPR 45.8 does not provide for fixed costs on enforcement, then I should decide that there is no applicable fixed costs regime, and award costs on usual principles.

45. I do not accept that submission. It seems to me that what has happened is that the Family Procedure Rules have not kept pace with amendments to the Civil Procedure Rules. In my judgment, I should read the reference in FPR 28.2 to "*rule 45.8 of the CPR*" as if it reads, since 1 October 2023, "*rule 45.23 of the CPR*".

The applicability of the fixed costs regime to charging orders made in family proceedings

46. The next point relates to whether the fixed costs regime applies at all to final charging orders in family proceedings. In other words, is it possible that – although other rows of the table under CPR 45.23 continue to apply in family proceedings – the row relating to final charging orders does not?

47. As set out in paragraph 37 above, the fixed sum of £110 is said to be recoverable "*on the making of a final charging order under rule 73.10(6A)(a), 73.10(7)(a) or 73.10A(3)(a)*". However, in family proceedings, CPR 73 does not have any application: FPR 33.25 provides that where charging orders are sought in family proceedings, FPR 40 applies.

48. It is certainly conceivable that the fixed costs rules applicable to final charging orders in civil proceedings do not apply to final charging orders made in family proceedings. In terms of the underlying policy, there are potentially significant differences between enforcement of family financial orders and enforcement of financial orders in the civil sphere. As the Law Commission observed in 2015 in its consultation paper (no.219) '*Enforcement of Family Financial Orders*' at para 1.24:

> *"It has been clear to us from the outset, starting with the 2010 consultation response from the Family Law Bar Association, that specific considerations arise in the family law context that are not relevant generally in civil debt collection. Family financial orders are almost always related specifically to financial need; non-payment impacts upon the ability of adults to house themselves and make ends meet and, even more importantly, upon the health and well-being of children. Liability is generated by personal commitment (that is, marriage or having children), even though that commitment may now have been renounced. The amount a person is liable to pay is determined, whether by order or agreement between the parties, in family proceedings in which the parties are obliged to give each other full and frank disclosure of their financial circumstances. And liability has been determined by ability to pay amongst other factors."*

49. However, at least until 2016, charging orders in family proceedings followed the same procedure as in civil cases, and the same fixed costs regime applied. Until 1 April 2016, FPR 33.25 provided that CPR 73 applied in family proceedings, with certain modifications. Accordingly, if a final charging order was made in family proceedings, it would be made under what was then CPR 73.8. And, if the order was made by the court simply "*confirming that the charge imposed by the interim charging order shall continue, with or without modification*" – i.e., under what was then CPR 73.8(2)(a) – then, by virtue of Table 5 under CPR 45.8, the fixed costs regime would apply. This would be the case whether the interim charging order had originally been made following an application under FPR 33.3(2)(a) specifying this method of enforcement, or under FPR 33.3(2)(b), seeking "*such method of enforcement as the court may consider appropriate*".

50. The rules changed with effect from 6 April 2016. The Civil Procedure (Amendment) Rules 2016 took effect then, varying the process for obtaining charging orders in civil cases. On the same day, the Family Procedure (Amendment) Rules 2016 came into effect. These rules inserted a new FPR 40 setting out the procedures to be followed where an application is made for a charging order to enforce a family financial order. The Explanatory Memorandum for these latter Rules stated:

> *"7.3 The majority of the provisions in these Rules relate to the procedure to be followed on certain enforcement applications. Prior to the coming into force of these Rules, the FPR 2010 did not make freestanding provision for the procedures to be followed when applying for an attachment of earnings order, a charging order, a stop notice or a stop order. Instead, the FPR 2010 applied provisions of the Civil Procedure Rules 1998 ('the CPR 1998') or the predecessor County Court Rules 1984 (which were preserved in Schedule 2 to the CPR 1998) on these matters, with modifications.*
>
> *7.4 The CPR 1998 are being amended to make new provision for attachment of earnings orders and charging orders.*

> *Those new provisions are being made in part to reflect the fact that Her Majesty's Courts and Tribunals Service ('HMCTS') will be largely centralising its handling of applications for such orders into a limited number of 'County Court Money Claims Centres'. Applications for such orders made in family proceedings, to which the FPR 2010 apply, are not being centralised.*
>
> *7.5 In light of the changes to the CPR 1998, this opportunity has been taken to draft new, freestanding provisions in respect of applications for such orders for the FPR 2010. These Rules insert new Parts 39 and 40 into the FPR 2010. The new provisions set out how applications should be dealt with in the family court and High Court in family proceedings. Largely, the new Parts reflect the provisions that were in place before these Rules came into force, but the wording of the provisions has been simplified and modernised. The wording has also been modified as appropriate to reflect operational practice in the courts. Where the procedure to be followed under the FPR 2010 is intended to mirror that to be followed under the revised CPR 1998, the wording of the FPR 2010 largely mirrors that used in the revised CPR 1998."*

51. The Explanatory Memorandum made no reference to any changes to the costs regime applicable to charging orders. It was not suggested that there was an intention to change the costs that would be payable if such an order were made. However, the consequence of the amendments was that although FPR 28.2 continued to refer to CPR 45.8 – and Table 5 under CPR 45.8 continued to refer to "*the making of a final charging order*" and to refer to all the CPR provisions by which such an order might take place by the court simply "*confirming that the charge imposed by the interim charging order shall continue, with or without modification*" – none of the references to CPR provisions in Table 5 were apt in the context of family proceedings, where the equivalent rule had become FPR 40.8(2)(a).

52. The question is then: was a deliberate decision made in 2016, when amending the Family Procedure Rules to insert FPR 40, to do away with the fixed costs regime applicable to final charging orders? Or, was it an oversight that although (i) FPR 28.2 referred to CPR 45.8 and (ii) Table 5 below CPR 45.8 included fixed costs for final charging orders, the rules to which the relevant row of Table 5 referred, being part of CPR 73 and not part of FPR 40, were no longer apt? In my judgment, the latter conclusion is the correct one. There was no intention, by a side-wind, to do away with the fixed costs regime as it applied to final charging orders.

53. Drawing the threads together, in my judgment, the fixed amounts now set out in Tables 6 and 7 under CPR 45.22 and CPR 45.23, apply to the making of a final charging order under FPR 40.8(2)(a).

54. I observe in passing that it is not clear to me whether my conclusion matches common practice.

i) The standard form of order (Standard Family Order 4.12: Final Charging Order) makes no reference to fixed costs. It provides at paragraph 12:

> *"12. The interest of the respondent in the asset[s] described in the schedule below shall stand charged with payment of the sum of £[amount] including interest to [date], together with any further interest becoming due at the rate of £[amount] from [date], and the costs of this application [summarily assessed at £[amount] (inclusive of VAT and disbursements)] / [to be subject to detailed assessment on the [standard] / [indemnity] basis if not agreed by [date and time]]."*

ii) On the other hand, the Red Book, in its commentary to FPR 40.8 notes:

> *"**Costs**—Fixed costs of £110 are specified in CPR 1998, r 45.6* [sic]. *Courts may also (and normally will) allow Land Registry fees as disbursements, but it is not appropriate to seek the fee for an advocate attending the hearing – this is included in the fixed costs."*

The relevance of the court's general discretion

55. Next, Mr Harvey argued that, even if the fixed costs regime applied in principle, in any event this rule was subject to the general rule in FPR 28.1: "*The court may at any time make such order as it thinks just*". I accept that submission, but only so far as it goes.

56. I cannot read FPR 28.1 as giving a general, unfettered discretion as to costs, for that would render otiose the remaining rules of FPR 28 (and, in particular, FPR 28.2). Rather, in the context of FPR 28.2 and CPR 45.23, it seems to me that the starting point must be the fixed costs regime provided for in CPR 45.23, but subject to the power of the court to order otherwise.

57. In the old Part 45, that power was expressed in CPR 45.1: "*This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of legal representatives' charges*". In the new Part 45, similar provision is made in CPR 45.16: "*In any case to which this Section applies, unless the court orders otherwise, the only costs allowed in respect of a legal representative's charges are those specified in this Section*". Neither of those provisions is mentioned in FPR 28.2 as applying in family proceedings, but, by virtue of FPR 28.1, it seems to me that the same principles should nonetheless apply. In my judgment, the court can disapply the fixed costs regime, by ordering otherwise, if the court thinks it just to do so.

58. There appears to be limited authority as to the circumstances in which it will be just to 'order otherwise'. In *Amber Construction Services Ltd v London Interspace HG Ltd* [2007] EWHC 3042 (TCC), proceedings had been brought to enforce an adjudication award. Under CPR 45.3, where the only claim was for a specified sum of money, and the defendant paid the money claimed together with fixed commencement costs within 14 days of being served, the defendant was not liable for any further costs "*unless the court orders otherwise*". Akenhead J held:

"23. Thus in both Rules 45.1 and 45.3 it is clear that the court retains a discretion to 'order otherwise'. Thus, in appropriate cases, the court retains its discretion to order such costs as are appropriate. That said, the fixed cost regime applies, so to speak, in default if the court does not otherwise order. CPR 45 recognises that many sets of proceedings brought in court will be in the nature of debt collection exercises. Many such claims will not involve the use of independent solicitors but will be handled internally by the claimants in question. In many such cases the claimants will not incur significant costs and may well not want to incur further costs arguing that they are entitled to more than the fixed amounts. CPR 45 applies amounts and formulas to determine what the fixed costs are in any case. Thus, in a claim such as the present, where the value of the claim exceeded £5,000, the fixed cost is £100.

...

25. However, in this case, it is wholly appropriate for the court to exercise its discretion to order costs at a greater level than the costs fixed by CPR 45. My reasons are as follows:

(i) This court has recognised the importance of a summary and prompt procedure to secure enforcement of adjudicators' decisions properly reached.

(ii) In this case, some four weeks elapsed after the issue of the adjudicators' decisions before the enforcement proceedings were issued.

(iii) In their letter dated 17 October 2007, the claimant's solicitors gave very clear warning that, unless the sum due under Mr Price's decision was paid promptly, proceedings would be commenced without further notice.

(iv) In correspondence, the defendant's solicitors made it clear in effect that they would not pay primarily because, they argued, the adjudicator did not have jurisdiction. They were thus putting forward an apparently comprehensible defence to any enforcement proceedings.

(v) Even in the 'without prejudice save as to costs' letter, it was made clear that the offer did not recognise that the sum which Mr Price had decided was due was payable.

(vi) It can have come as no surprise that proceedings were issued. A party which makes a 'without prejudice save

as to costs' offer is not entitled in some way to have it responded to or to assume that threatened proceedings against it will or might be withheld. It would be different if the without prejudice correspondence had revealed some agreement by which the claimant undertook, at least temporarily, not to issue proceedings. That is certainly not the case here.

(vii) The defendant's argument that the claimant has acted 'secretively' in incurring substantial costs in preparing for its without notice application and its proceedings in general is without foundation. Glovers wrote in terms on 17 October 2007 that, if the amount due pursuant to Mr Price's decision was not paid promptly, proceedings would be commenced in the High Court without further notice. The defendant obviously knew that Glovers were involved and they knew, because they had been so warned, that proceedings could be commenced at any time without further notice, particularly given that its solicitors had put forward a potential defence, and it must or should have appreciated that significant costs could be incurred if High Court proceedings were issued. They could have ascertained, as was likely, that, if the proceedings were commenced in the TCC, the TCC practice as contained in their Guide would or could be followed. That is exactly what happened.

(viii) The procedure, set out in para 9.2 of the TCC Guide (Second Edition, First Revision, October 2007), appears to have been followed substantially by Glovers. The Part 7 Claim Form needed to be accompanied by particulars of claim and the Part 24 application needed to be accompanied by a witness statement which exhibited, at least, the construction contract and the relevant adjudication documents. This procedure is now the norm for adjudication enforcement proceedings.

(ix) It is inevitable in those circumstances that the costs will exceed by a very substantial amount the fixed costs called for in CPR 45.

(x) It would not be fair to limit a successful claimant which complied with the steps called for in the Rules and the Guide. The claimant was justified in issuing proceedings and a Part 24 application following a threatened defence and an unqualified admission on the part of the defendant after issue."

59. In *Chedington Events Ltd v Brake* [2024] EWHC 384 (Ch), [2024] 4 WLR 22, HHJ Matthews cited the judgment of Akenhead J in *Amber Construction* and continued:

> *"20. The FRC* [Fixed Recoverable Cost] *for a final TPDO* [Third Party Debt Order] *is appropriate for what Akenhead J calls 'debt collection exercises'. These will include cases where there is no dispute that there is a debt due from the third party to the judgment debtor, and where there is no substantive opposition to the making of the final TPDO. In the present case, however, the whole process has been fought tooth and nail by the defendants. Every possible obstacle has been thrown in the way of the claimant. Because every step has been vigorously challenged, the claimant has been required to deal with each procedural step fully and carefully. As a result, counsel has been fully involved.*
>
> *21. In fairness to the defendants, I should say that these are not new tactics on their part. The claimant has not been taken by surprise. And I make clear that, as a matter of procedural law, the defendants are entitled to challenge the steps taken by the claimant to enforce its judgment if they consider that they have grounds. If they are right, and the claimant is not entitled to the final order, that is all well and good. But, as Scarman LJ once said, in a quite different context, if you 'act out the part of Hampden, you have got to be right': R v Reid [1973] 1 WLR 1283, 1289. So, if they are wrong, and have put the claimant to considerable expense to obtain the order it sought, then the court is likely to 'order otherwise', and make an order for the payment of substantive costs under Part 44. That is this case, and in light of the procedural history, and indeed all the circumstances, I will indeed 'order otherwise'."*

60. The 2016 Law Commission Report '*Enforcement of Family Financial Orders*' (No. 370) (published after the amendment to the Family Procedure Rules described in paragraph 50 above) considered the application of the fixed costs regime, especially in the context of orders obtained following a general enforcement application (FPR 33.2(b)).

    i) At paragraph 5.67, the Law Commission observed:

> *"As noted above, there is some confusion as to whether fixed costs apply on a general enforcement application. For example, if the application results in a third party debt order being made, do the fixed costs for an application for a third party debt order apply? The current position is unclear. We do not consider it would be fair for the fixed costs for specific methods of enforcement to apply. Those fixed costs are based on the steps required for those specific applications,*

> *which will not be replicated on a general enforcement application. The course of a general enforcement application is not easy to predict as a great deal depends on the level of cooperation from the debtor. For example, cross examination may or may not be required, the court may or may not need to exercise its powers to make information requests or information orders. For that reason, we suggest that either no fixed costs apply or a new fixed cost designed for the general enforcement application is provided. However, we consider it likely that the court would often need to depart from any fixed costs scheme on a general enforcement application."*

ii) At paragraph 16.8 of the report, the Law Commission cited FPR 28.1, and at paragraph 16.10 recommended:

> *"We recommend that the costs rules that apply on the enforcement of family financial orders should be consolidated, so that there is a stand-alone set of costs rules in the Family Procedure Rules 2010."*

iii) The Law Commission then considered the consultation responses concerning the fixed costs regime, and concluded at paragraph 16.29:

> *"We are not minded to recommend the abolition of fixed costs in enforcement proceedings as we recognise that fixed costs form part of a wider policy aimed at ensuring that costs are proportionate to any given application. However, we consider an amendment to the Family Procedure Rules 2010 to include the same explicit power to depart from fixed costs as is in the Civil Procedure Rules 1998 should be made. An explicit power would provide clarity and may focus the court's attention on whether a costs order other than for fixed costs is appropriate."*

iv) These recommendations of the Law Commission have not been adopted.

61. In my judgment, any decision of the court in family proceedings to 'order otherwise' must be respectful of the policy to which FPR 28.2 and CPR 45.23 give effect. A fixed costs regime ought to provide certainty, and spare the parties the costs of arguing about costs. By fixing those costs at a low level (here, £110), the rule also spares the debtor from incurring further substantial sums – bearing in mind that, in most cases, the debtor will presumably be failing to pay because they are in financial difficulties, rather than because they have disdain for court orders or a desire to be obstructive towards the creditor. A court ought not to be too ready to disapply such a regime.

62. Mr Harvey advanced a number of arguments as to why, in the context of family proceedings generally, it would often or usually be just to 'order otherwise'. He noted that what is often sought to be enforced is periodical payments which are continuing to accrue; it is therefore necessary to provide updating evidence which is not generally needed in the context of a charging order for a judgment debt in

the civil sphere. He also noted that in family proceedings permission is required if a person seeks to enforce payment of arrears which fell due more than twelve months before proceedings to enforce the payment are begun: s.32 of the 1973 Act. That can have the effect of forcing an applicant's hand, encouraging them to make an application even when in civil proceedings they might be more patient before incurring the costs of applying to enforce.

63. It seems to me that these matters can be relevant to the question whether to 'order otherwise', but matters to which I should give only limited weight: I must assume that the usual circumstances of family financial orders were in the draughtsperson's mind when deciding that CPR 45.8 (or, now, CPR 45.23) would apply in family proceedings.

64. Mr Harvey also pointed to the conduct of the Husband since the time the interim charging order was made: the Husband did not concede the application; and did not serve any evidence to oppose it. The Wife's solicitors repeatedly wrote to him but – with the exception of providing some dates to avoid for the final hearing – the Husband did not engage in their requests that he explain how and when he would pay the sums he owes. However, these points do not seem to me to support the Wife's case for an 'order otherwise': the Husband's inaction did not increase the Wife's costs, nor, indeed, does such inaction take this case outside the norm for final charging orders.

65. Mr Harvey made the point that, since the enforcement application had begun by way of a general enforcement application, the interim charging order had been made following a hearing, and not – as would be usual under CPR 73 or FPR 40.4 – as a without notice application, dealt with by the court on the papers. It seems to me that that is a factor which I can take into account when deciding whether to make an 'order otherwise', but only insofar as costs were incurred up to the making of the interim charging order. Where, as here, events since the making of the interim charging order were essentially as straightforward as they can be in any charging order case – service of the documents on the relevant parties; non-engagement by the debtor, with no evidence served in response; and then a short final hearing – the mere fact that the process began by way of a general enforcement application would not seem to me to disturb the underlying policy of the fixed costs regime, after the interim order was made.

66. On the other hand, I considered that Mr Harvey was on rather stronger ground with other submissions which focused specifically on the circumstances of this case.

    i) Mr Harvey submitted that this was a case of deliberate non-payment by the Husband. The Husband agreed in December 2018 to pay a lump sum of £1.1 million to the Wife in June 2023. He had 4½ years thereafter to arrange his affairs but instead, as I held in my judgment in this case last December, the Husband took commercial risks, including lending significant sums (in excess of the Lump Sum owed) to companies of which he is the 100% shareholder. That was a choice the Husband made, preferring to take the risk over other options available to him (including marketing Flat 5A for sale). Moreover, at the hearing before me last December, the Husband made an open offer to pay £1.1 million to the Wife in February 2024, in full and

final settlement. Despite this indication that the Husband could pay, no money has been paid at all – even by way of part-payment.

ii) Mr Harvey also submitted that I should have regard to the history of this matter. This is the third enforcement application the Wife has had to bring. The Wife's first application was made on 25 January 2019; that had the desired effect, and Roberts J ordered on 28 February 2019 that it be adjourned with liberty to restore, and that the Husband pay the Wife's costs of the application. The Wife's second application was issued on 19 May 2020. Again Roberts J ordered that the Husband pay the Wife's costs of the application.

iii) There was a history of last minute attempts by the Husband to avoid orders being made against him. In addition to the open offer referred to at sub-paragraph i) above, the Husband had sought to postpone the hearing on 22 April 2024 without any good reason. This risk of unforeseen last-minute complications in the application had justified an unusually long (½ a day) time estimate for the present hearing.

iv) Outside these proceedings, the Husband has been obstructing the Wife's attempts to enforce the debts he owes, in the context of possession proceedings. More than a year after the Husband should have given possession of Flat 5A to the Wife, pursuant to a court order, he has failed to do so.

v) Overall, Mr Harvey submitted that the charging order application is made in the context of the Husband showing a complete disregard for his financial obligations, or the orders of both this court and the court which granted the possession order.

67. I note that Mr Harvey did not advance a case that the Wife needed the money she seeks to obtain via the charging order. Had there been evidence of such need, I can see that this might have been an additional factor of some weight in favour of 'ordering otherwise'.

68. In his submissions in response, the Husband objected to this characterisation of his conduct, and said it was inappropriate to criticise him. He said he had acted honourably, he just needed time to pay. He did not think it fair that he was being asked to pay sums, including for the maintenance of his daughter, when his daughter (now aged 19) had not had contact with him for three years. He suggested that it was really the Wife's lawyers driving this enforcement application, and that he objected to paying, indirectly, for their fees. Overall, he submitted that the recoverable costs had been fixed at £110, and that is all that should be awarded.

69. Taking all the matters in the round, I considered that the conduct of the Husband, as described at paragraph 66 above, amply justified making an 'order otherwise' to disapply the fixed costs regime. I ordered that the Wife recover her costs of the application, assessed on the indemnity basis. I accepted the submissions of Mr Harvey that the long history of the Husband's obstructive behaviour took this case well outside the norm.

Conclusion

70. For these extended reasons, I made a final charging order, confirming that the charge imposed by the interim charging order continues in a sum of £245,569.07 plus interest accruing. I also awarded costs assessed in the sum of £22,500 plus VAT, to which the charging order also applies.