**Case No: BO 10 D 10450**
**and BV 17 D 16703**

**IN THE FAMILY COURT**
**SITTING AT THE CENTRAL FAMILY COURT**

Date: 21st February 2020

**Before**:

MR. RECORDER ALLEN QC

**Between :**

**MS**

**Applicant**

**- and -**

**FS**

**Respondent**

**(No. 2: COSTS AND ANCILLARY ISSUES)**

**Mrs. Harriet Gore** (instructed by R. Spio & Co) for the **Applicant**
**Mr. Hamerton-Stove** (instructed by way of Direct Access) and subsequently
**Mr. Mark Bowman** (of Bowman & Co Litigation Solicitors) for the **Respondent**

Hearing dates: 22 - 24th July 2019, 18 - 19th November 2019, and 5th February 2020

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# JUDGMENT

1) I circulated a draft judgment on 7th February 2020 and invited written submissions on costs and other issues by 14th February 2020.

2) Both counsel provided their suggested typographical corrections as requested. I have incorporated most of these into the final version of the judgment that I formally hand down at the same time as this second judgment. Neither party made any requests for clarification or amplification (in accordance with the guidance given in *Re I (Children: Fact Finding: Clarification of Judgment)* [2019] 2 FLR 887 per King LJ).

3) The full background to the case is set out in my first judgment and will not be repeated herein.

4) Mrs. Gore filed her further submissions on 14th February 2020. On the same date Mr. Hamerton-Stove confirmed by email that he was not presently instructed in relation to any of the remaining issues but that [W] *"has today expressed an interest in so instructing me ... if I am instructed then I hope to be able to do so in the not-too-distant future."* I replied stating that I was sympathetic to the difficulties that direct access instruction could cause and therefore extended the time for his written submissions - or indeed any W may have wished to file herself - until 21st February 2020. On 20th February 2020 I received a further email from Mr. Hamerton-Stove confirming that he was no longer instructed. On 21st February 2020 I received written submissions from Bowman & Co. Litigation Solicitors newly instructed on W's behalf.[1]

5) I will deal with the remaining issues in turn.

The appropriate order for costs

6) The starting point is set out in FPR 2010 r.28.1 namely that the court may make any order as to costs *"as it thinks just".*

7) In my draft judgment I had suggested that this application was governed by FPR r.28.2. Mrs. Gore did not refer to any particular set of costs rules in her written submissions. On W's behalf it was said that the proceedings were governed by r.28.3 as they came *"within those initiated by [W's] Form A filed on 12.02.2011."* I disagree. In *Judge v Judge* [2009] 1 FLR 1287 (which was an appeal against a refusal of an application to set aside a financial order) Wilson LJ (as he then was) took the view that although the application did not come within the definition of *"ancillary relief proceedings"* (now financial remedy proceedings), it did come within the definition of *"family proceedings"*. In consequence no general rule applied and the court was able to start with a clean sheet. Further, set aside applications are now governed by r.9.9A (which came into force on 3rd October 2016)[2] and r.28.3(9) makes it expressly clear that *"financial remedy proceedings"* does not include an application under r.9.9A.

8) This is a set-aside application. As such it is not within the definition of *"financial remedy proceedings"*. As a consequence it is governed by r.28.2 which in turn applies a modified version of the CPR 1998 costs rules. Therefore neither the 'no order for costs' presumption of r.28.3 nor the 'costs *prima facie* follow the event' presumption in CPR 1998 r.44.2(2) applies. Cases so governed have colloquially become known as 'clean sheet' cases.

9) In *Gojkovic v Gojkovic (No. 2*) [1991] 2 FLR 232, Butler Sloss LJ (as she then was) in the context of considering an earlier rule and which in effect was in very similar terms to the 'clean sheet' rules stated at p236:

> "… in the Family Division there still remains the necessity for some starting point. That starting point, in my judgment, is that costs prima facie follow the event … but may be displaced much more easily than, and in circumstances which would not apply, in other divisions of the High Court."

10) In *Solomon v Solomon and Ors* [2013] EWCA Civ 1095, Ryder LJ (although refusing permission to appeal) affirmed at paragraph [22] the correctness of the approach to costs adopted in *Gojkovic (No. 2)*. There is therefore a starting point that costs 'follow the event' even in a 'clean sheet' case albeit the presumption may be somewhat 'softer'.

11) In deciding what order (if any) to make about costs I am to have regard to all the circumstances and the matters set out in r.44.2(4) and r.44.2(5). These include (i) conduct (which in turn includes

[1] Notice of Acting dated 20th February 2020.
[2] The date when the Family Procedure (Amendment No. 2) Rules 2016 came into force.

whether it was reasonable for a party to raise, pursue, or contest a particular allegation or issue, the manner in which a party has pursued or defended the case or a particular allegation or issue, and whether a party who has succeeded in the claim, in whole or in part, exaggerated its claim); and (ii) whether a party has succeeded on part of its case, even if that party has not been wholly successful.

12) It was submitted by Mrs. Gore that H should recover all of his costs notwithstanding that the Decree Absolute was not set aside because:

    a) H succeeded in proving that *inter alia* he did not sign the Acknowledgment of Service dated 30th December 2010 which was relied upon by the court when making the Decree Nisi dated 15th February 2011 and by extension the Decree Absolute dated 12th April 2011;

    b) W had acted fraudulently and had also knowingly lied on oath when she swore an Affidavit stating that H signed the Acknowledgement of Service. Further, H had established that he had no connection with 108 Walton Street which W had fraudulently asserted was his address at the relevant time;

    c) it was H's 'fall-back' position that the Decree Absolute should not be set aside;

    d) by applying for the Decree Absolute to be set aside H was not exaggerating his claim. It was trite law that *"fraud unravels all"* and applying to set aside a fraudulently obtained decree was a proper application to make;

    e) this was not a case where at any point prior to judgment W had accepted the error of her ways, conceded any issue, apologised, and/or asked the court to leave the Decree Absolute in place because the parties had *"moved on"*. In fact, it was H who, on 5th February 2020 through his counsel, had asked the court to exercise its discretion to let the Decree Absolute remain in place. By reason of the above, the fact that the Decree Absolute was not set aside was not a success on W's part but on H's part; and

    f) the issue of whether the Decree Absolute was void or voidable was not an issue that was raised by W but was one that I had first raised on the face of my order of 19th November 2019. Even after that date, W's primary position remained the same. Her counsel's fall-back position, that if the findings sought by H were made it would be a case of concealment or failure to serve the petition, was one I rejected in finding that the Decree Absolute was obtained by fraud.

13) On W's behalf (although I recognise that the submissions are based on the incorrect rules) it was submitted that:

    a) the court has no need to resort to *"CPR standards"* (I assume this means the CPR costs rules) as it will reference W's conduct within the proceedings to date. FPR r.28.3(7) mandated the court to refer to a number of different criteria;

    b) these were family proceedings where the court has discretion as to costs. The court had found litigation misconduct but should take into account the financial effect on a party of any costs order;

    c) the costs order of £3,600 (inclusive of VAT and disbursements) made in W's favour by District Judge Duddridge on 30th November 2018 was still to be satisfied. W agreed that the enforcement of this order should now be deferred to the financial remedy proceedings subject to H's claim for costs being reserved to the financial remedy proceedings;

d) making and potentially enforcing a costs order against W outside the context of a final financial order would cause her financial hardship and would potentially make her and the children homeless. The costs should therefore be deferred to be considered within the context of all the financial circumstances of the family;

e) W supported the preliminary view that I had expressed in the draft judgment that H should not receive all of his costs. This view was justified by the Decree Nisi and Absolute having being preserved; and

f) costs were wasted in July 2019 and November 2019 caused by the failure of H's solicitors to prepare a proper bundle.

14) Whether I analyse the application starting from a 'soft' presumption that costs should *prima facie* follow the event or on pure 'clean sheet' principles I maintain the provisional view that I expressed in the draft judgment that W should pay some but not all of H's costs. I do so for the following reasons:

a) I have made serious findings of fraud against W;

b) as was said on W's behalf she *"now realises that she should have taken advantage of a stay to seek a settlement and could have resolved matters by conceding the consent order could have been set aside without any admission of liability …"*;

c) H has clearly succeeded on part of his case. However he has not been wholly successful as he applied for the Decree Absolute to be set aside;

d) Mrs. Gore is right to say that H succeeded in proving that *inter alia* he did not sign the Acknowledgment of Service[3] which was relied upon by the court when making the Decree Nisi and later the Decree Absolute. However I do not consider that this justifies an order that he be awarded all his costs. It was H's case until part way through the final submissions made on his behalf that he wished for the Decree Absolute to be set aside. The (so-called) 'fall-back' position – to leave the Decree Absolute in place - only arose when I raised the question as to why H wanted the Decree Absolute to be set aside given (i) he had remarried; (ii) he had issued his own divorce petition; and (iii) the issue of whether or not the financial remedy order should be set aside was a separate one. I therefore reject the submission that the fact that the Decree Absolute was not set aside was a *"success"* on H's part;

e) the reality is that H did not need (nor when it came to it want) the Decree Absolute to be set aside. At any time after his application had been issued his solicitors could have raised this openly with W's solicitors (and later W when acting in person). However they did not do so; and

f) H's costs (and indeed W's likewise) will have increased as a result of the difficulties in both July 2019 and November 2019 caused by the failure of H's solicitors to prepare a proper bundle which (in part) caused the hearing to continue into additional days. W should not have to pay for these failings.

[3] Of the five documents I have found that H did not sign (Acknowledgement of Service dated 30th December 2010, Statement of Information for a Consent Order dated 12th February 2011, draft Consent Order dated 12th February 2011, Declaration of Solvency dated 14th May 2011, and TR1 dated 10th June 2011) it is only of course the Acknowledgment of Service that is relevant for the Decree Nisi and thereafter Absolute.

15) Whilst I note that it is said that making and potentially enforcing a costs order against W outside of the context of a final financial order would cause her financial hardship I do not consider that this is a relevant consideration. Affordability is a relevant consideration if the costs are governed by r.28.3 (by virtue of r.28.3(7)(f)). It is not if (as here) the costs are governed by r.28.2 (as there is no reference to affordability in Part 44). Further and in any event, the fact that a party may not have any obvious means to pay is not necessarily an impediment to the making of an order for costs against them. This is clear from *Joy v Joy-Morancho and Others (No 3)* [2016] 1 FLR 815 per Sir Peter Singer (sitting as a High Court Judge) at [223]. I consider that ability to pay principally goes to the issue of enforcement once a costs order is made.

16) I therefore do not consider that the issue of affordability is a reason for the issue of costs to be reserved to the financial remedy proceedings. Further, I do not consider that it would be appropriate for me to reserve the costs in any event. I am in the best position to deal with the costs having heard the final hearing and there is no suggestion that there is anything relevant to the principle of costs that will only emerge within the financial remedy proceedings. Further I do not consider that the offer by W to defer enforcement of the costs order of £3,600 made in her favour by District Judge Duddridge on 30th November 2018 is in some ways a *quid pro quo* for H's claim for costs being reserved to the financial remedy proceedings.

17) For these reasons I consider that W should pay a significant proportion (but not all) of H's costs. Doing the best I can (and I acknowledge that this is in no way scientific) W should pay 80% of these costs.

18) It was not specifically sought on W's behalf that if (as I do) I make an order for costs against her that such order not to be enforceable until the conclusion of the financial remedy proceedings. I decline make such an order both for this reason and because I know nothing of either party's financial position (and so, for example, I do not know whether the making of such an order may cause financial hardship to H).

Standard or Indemnity Basis

19) H seeks an order that his costs should be assessed on the indemnity basis. Mrs. Gore submits that this is appropriate because:

    a) of the manner in which W pursued her fraudulent activities and defended the fraudulently obtained decree. She (or someone on her behalf) wrote Mr. MRAK's witness statement in the course of the proceedings. It was said that this *"is evidence of her unrepentant but determined continuing fraudulent conduct geared towards misleading the court"*;

    b) at no time was W remorseful and *"instead of conceding any of the fraudulent action, she made matters worse by relying on the fact that she is an accountant as evidence of her integrity"*;

    c) had W conceded the fraud issue, the final hearing would have lasted less than half a day as is evident from the fact that H agreed to the Decree Absolute remaining in place if the court found that the fraud made it voidable; and

    d) the court adjourned the matter to assist the parties to come to a settlement but W failed to use the opportunity to save resources and avoid a finding of fraud.

20) No submissions were made on W's behalf in relation to this issue but no doubt it would have been said on her behalf that the costs should be assessed on the standard basis.

21) I consider that the distinction between the 'standard' and 'indemnity' basis for assessment as set out in r.44.3 (1) – (3) and PD 44 paragraphs 6.1 and 6.2 can be distilled as follows:

a) in both costs that are unreasonably incurred or which are unreasonable in amount will be disallowed;
b) on the standard basis additionally costs which are disproportionately incurred or which are disproportionate in amount will be disallowed as will those costs in relation to which the court has doubts as to whether they were reasonable or proportionate; and
c) in the case of a standard order, the onus is on the party in whose favour the order has been made. In the case of an indemnity order, the onus of showing the costs are not reasonable is on the party against whom the order has been made.

22) I further consider that a succinct expression of the test whether costs should be awarded on the indemnity basis may be found in *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson* [2002] EWCA Civ 879 per Walker LJ at [39] when he said:

> "The question will always be: is there something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs?"

23) A similar observation was made in the family law context by Mostyn J in *JM v CZ (Costs: Ex Parte Order)* [2015] 1 FLR 559 at [23]:

> "… Indemnity costs are awarded in cases only where there has been some conduct by the party liable to pay the costs which takes the case out of the norm – see in that regard *Three Rivers District Council & Ors v Governor and Company of the Bank of England* [2006] EWHC 816 (Comm), per Tomlinson J (as he then was)."

24) It should also be noted that *Excelsior* makes it clear that the pre-CPR authorities which often suggested that indemnity costs were only warranted as a punishment or where there was a need to express moral outrage were to be put aside.

25) Every case turns on its own facts and it is clear from the authorities that I have a very wide discretion in relation to this issue. I am not sure that any of the submissions made by Mrs. Gore on H's behalf are relevant to the question of the basis of assessment save for the first that I have summarised at 19) a) above. However in my judgment the test for the making of an order on the indemnity basis is satisfied in this case. I consider that W's conduct in deliberately and dishonestly obtaining a decree of divorce and a financial order and the way in which she went about doing so take the circumstances of this case of the norm.

26) I therefore direct that costs are to be assessed on the indemnity basis.

27) Neither party seeks a summary assessment (rightly in my view). I therefore direct that the costs will be subject to a detailed assessment.

28) Mrs. Gore has not sought a payment on account of H's costs pending the detailed assessment process. I shall therefore not consider this issue any further.

**Publication of the judgment**

29) On H's behalf it is said that he consents to the judgment being published on BAILII on an anonymised basis so to protect the identity of the minor children.

30) On W's behalf it is said that there is no public benefit in publication. No novel points of law have arisen. Such publication would only be punitive with the children potentially suffering financially even if their names were redacted.

31) Neither party referred me to the *Practice Guidance on Transparency in the Family Courts – Publication of Judgments* issued by Sir James Munby P (as he then was) on 16th January 2014. This guidance provides (so far as it applies to this case) that if I conclude that publication would be in the public interest (whether or not a request has been made by a party or the media) I *must* ordinarily allow it to be published. Otherwise I *may* do so whenever a party (or an accredited member of the media) applies for an order permitting publication and I conclude that permission for the judgment to be published should be given.

32) In my view this is case where publication of the judgments on an anonymised basis would be in the public interest. In reaching this decision, I have had regard to all the circumstances including the European Convention on Human Rights (and in particular Articles 6 (right to a fair hearing), 8 (respect for private and family life) and 10 (freedom of expression)).

33) I therefore ask that the parties' legal advisers to agree an anonymised version of both judgments and that these be sent to me within a period of 14 days if possible. I will then submit the approved versions for publication.

**Disclosure to third parties**

34) In my covering email to my draft judgment dated 7th February 2020 I raised with the parties that, given my findings, I needed to consider whether I should disclose the documents within these proceedings and a copy of the judgment to the Metropolitan Police and/or the Crown Prosecution Service. I asked to be addressed upon whether I had a discretion to decline to do so and, if did, whether I should exercise it in this case.

35) On H's behalf it is said that he consents to the disclosure of both the documents within these proceedings and a copy of the judgment to the Metropolitan Police and/or the Crown Prosecution Service and that the full judgment should be disclosed to W's professional regulatory body. In support of this Mrs. Gore states that W:

> " … relied on the fact that she is an [a]ccountant to persuade the court that she is a person of integrity who was telling the court the truth. This makes her dangerous to the public and creates a serious concern which makes it to be in the public interest to alert the public of her being a potential danger to her community. It is in the public interest to take any appropriate action that will protect the public from the activities of a serial unrepentant fraudster who is prepared to mislead the court in order to retain a property fraudulently transferred to [her] sole name."

36) On W's behalf it was said that the issue of reporting this judgment to the police and other third parties was a matter for my discretion. However in seeking to dissuade me from such a course of action it was submitted that:

a) my judgment finds fraud on the civil standard. There is no certainty that wrongdoing would be found by a criminal court on the criminal (higher) standard of proof;

b) the sanctions in civil proceedings are setting aside orders and costs penalties. The consent order of 25th February 2011 is to be set aside and the issue of costs is open to the court;

c) H is to be granted his remedy of setting aside the consent order. He has therefore suffered no permanent loss as a result of W's actions. The Family Court will now adjudicate applying the factors set out in MCA 1973 s25;

d) H did not seek punitive measures in his application. H's approach in now seeking disclosure to third parties is punitive and such an outcome would be disproportionate to that sought initially by him;

e) W works as an accountant. A report leading to a conviction would apart from the criminal consequences mean the loss of her income and ability to support her three dependent children (two from this marriage); and

f) no third parties were affected by W's actions and there is no risk to the community.

37) At the conclusion of the written submissions made on W's behalf under the heading of *"Wife's Plea"* was said this:

> "[W] realises that she should have taken advantage of a stay to seek a settlement and could have resolved matters by conceding the consent order could have been set aside without any admission of liability; allowing standard directions to follow for financial proceedings. The judge in these future proceedings will take heed she has two dependent children from this marriage plus an infant aged 22 months from her new Islamic marriage. If she had been forcefully advised to this effect last year the final hearing would have been avoided. She appreciates the Court has dealt with this case in great detail. Unfortunately there was other evidence she was not able to bring before the Court of text messages from a lost mobile phone, referred to in her oral evidence. The court has concluded her conduct has fallen far below what it should have been. However [W] hopes the Court will also take into consideration that she did not receive child support from the time of separation until mid-2019. A referral to the CPS/Police/professional body may lead to financial ruin and homelessness for the family. She therefore pleads with the Court to refuse such referrals."

38) Neither party directed me to any of the relevant case law on disclosure to third parties.

39) As the case before me considered both the divorce suit and an application to set aside a financial order it is probably the case that part was technically in open court and part was not.

40) As to the circumstances in which the confidentiality of the proceedings may be lost at the court's instigation, I consider that the law is as described in the following extracts from two leading textbooks:

a) '*Matrimonial Property and Finance*' by Peter Duckworth, §B1 [92]:

> "The court has a discretion to order production [of documents], which it will rarely if ever exercise in favour of a third party where a party has been compelled to produce the relevant information (as is the case with Form E, replies to questionnaire etc). On the other hand, a judgment given in the case is a quasi-public document and the court is more relaxed about a public authority keeping a copy that has come into its possession. Of course, if a party conspires with others to pervert the course of justice by, for example, leading false evidence on affidavit, this will leave him at risk of being reported to the prosecuting authorities. But there is no hard and fast rule about this: where the damage can be contained within the matrimonial proceedings, by adverse findings, costs orders and the like, it will generally be allowed to go no further."

b) '*Dictionary of Financial Remedies*' (2020 Edition), by His Honour Judge Edward Hess *et al*, p74:

"The cloak of anonymity may be wholly or partially lost if there is a particular reason arising from the conduct of a party. Where a party provides false information within the proceedings he cannot expect to retain confidentiality … Bodey J's decision in *Y v Z* [2014] EWHC 650 (Fam) illustrates, however, that a judicial decision always involves striking a balance between competing interests. There is no one-dimensional rule that 'lying equals loss of confidentiality.' Where there is a wider public interest in a public authority, for example the HMRC, receiving information disclosed within the proceedings or the transcript of a judgment based on such information the court may, of its own motion or on the application of a party or on the application of the public authority, consider whether any disclosure should be made to the public authority and in so doing will weigh the competing interests involved, and may conclude that the duty of confidentiality is outweighed by, for example, the wider public interest in the prevention of unlawful tax evasion; but in *HMRC v Charman* [2012] 2 FLR 1119 Coleridge J suggested that the power to disclose should be used *'exceptionally rarely and for very good reason'*…"

41) In *Y v Z (Disclosure to Police and Financial Conduct Authority: Publicity)* [2014] 2 FLR 1311 (referred to in paragraph 40) b) above) Bodey J stated as follows:

"[23] Perhaps the most comprehensive reflections on the various competing considerations, although completely *obiter*, are those of Charles J in *A v A; B v B* [2000] 1 FLR 701. That case was specifically about disclosure to the Inland Revenue of tax evasion, as to which the public interest considerations are different from where the wrongdoing and 'loss' can be reasonably enough remedied within the family proceedings themselves. At 737E Charles J noted that:

> '… the court does not regularly send papers to the prosecuting authorities when a litigant admits that he has lied or is found to have lied to the court … It seems to me that, with a view to promoting the public interest in a civil court having all relevant material before it, a general practice can be adopted pursuant to which the court does not report the matter to the prosecuting authorities, particularly if the person involved makes full and frank disclosure and apology. There will naturally be exceptions having regard to the nature and circumstances of the case.'

As Charles J pointed out however that pragmatic approach, which probably accords with the general experience of most who practise in this area, is much less readily applicable where the exposed criminality is 'external' to the case, such as tax evasion or defalcation of a third party's money. In such circumstances as those, he said at 739E, that he generally favoured disclosure to the appropriate authorities. There is thus a discernible and reasonably logical distinction between:

(i) those non-disclosures and lies which by their nature can be reasonably well remedied within the family proceedings, which may include by restorative financial orders and/or costs orders, or even by committal or a fine for contempt of court (subject to procedural formalities and to proof to the criminal standard); and

(ii) those which by their nature cannot be.

In the latter situation, disclosure to outside agencies may generally be seen as more likely in practice than in the former, although no sanctions can ever be ruled out in either case …

[30] … Nor is it the role of the family court proactively to disclose information which might be of interest to outside agencies, such as the police, the Revenue, regulatory bodies or employers. Given the number of skeletons which come out of cupboards in family proceedings, where would it end? As Charles J put it in *A v A; B v B* [2000] 1 FLR 701, at 741B:

> 'In my judgment, it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities, the Revenue, or other public bodies. I also accept the submission that the court is not a *"common informer".* The courts have a separate and discrete public function. In my judgment there is a strong public interest (within the strong public interest in the proper and efficient administration of justice) that the courts should limit themselves to

> carrying out their functions … and it is only when as a result of the performance of its functions a court is satisfied that an issue arises as to whether material should be disclosed in the overall public interest that it needs to consider, or should consider, that question.'
>
> [31] Clearly there are family cases where the process uncovers and the court makes findings about things so serious that a disclosure does have to be made in the public interest: for example, where findings are made as to the perpetration of a child death; or where (say) a party who is a serving policeman is found to be corrupt; or where a party who works with children is proved to be a paedophile. Weighed up within the decision to disclose is always the question of proportionality, as to which every case is different and fact-specific. …

42) In striking a balance between the competing interests in this case I consider that this is a case where the wrongdoing and 'loss' can reasonably enough be remedied within the family proceedings themselves and that this is not outweighed by any wider public interest. No third parties were affected by W's actions. I reject the submission that W is in some way *"dangerous to the public"* and/or a *"potential danger to her community"*. I also take into account the question of proportionality which includes the fact that I have not set aside the Decree Absolute. Although W has not made any apology I do not consider that in this case this detracts from (as described by Charles J in *A v A; B v B*) the *"general practice … pursuant to which the court does not report the matter to the prosecuting authorities"* particularly because the wrongdoing is not 'external' to the case. Further I take into account that this was an issue I raised to which H is said to *"consent"* rather than it being an application that was made on his behalf.

43) In the circumstances I therefore decline to direct the disclosure of the papers in this case to any third parties.

**Conclusion**

44) I ask that Mrs. Gore and W's newly appointed solicitors draft an order reflecting my two judgments for my approval as soon as reasonably practicable. The order need not list the documents that Mrs. Gore set out at paragraph 9. 1. of her written submissions. It should however (i) declare that I found the Decree Absolute dated 12th April 2011 to be voidable but declined to set it aside; (ii) set aside the financial consent order made by District Judge Middleton-Roy dated 25th February 2011; (iii) list W's application for a financial order in Form A dated 12th February 2011 for a directions hearing which is not reserved to me (and which should be listed on the first available date); and (iv) record that W shall pay 80% of H's costs to be subject to detailed assessment on the indemnity basis if not agreed.

45) I specifically decline to make any of the financial remedy directions that are sought on W's behalf as set out at paragraph 8) of the written submissions filed on her behalf. In doing so I bear in mind the following views expressed by Lady Hale in *Sharland v Sharland* [2015] 2 FLR 1367:

> [43] Finally, however, it should be emphasised that the fact that there has been misrepresentation or non-disclosure justifying the setting aside of an order does not mean that the renewed financial remedy proceedings must necessarily start from scratch. Much may remain uncontentious. It may be possible to isolate the issues to which the misrepresentation or non-disclosure relates and deal only with those. A good example of this is *Kingdon v Kingdon* [2011] 1 FLR 1409, where all the disclosed assets had been divided equally between the parties but the husband had concealed some shares which he had later sold at a considerable profit. The court left the rest of the order undisturbed but ordered a further lump sum to reflect the extent of the wife's claim to that profit. This court recently emphasised in *Vince v Wyatt (Nos 1 and 2)* … sub nom *Wyatt v Vince* [2015] 1 FLR 972 the need for active case management of financial remedy proceedings, *'which … includes promptly identifying the issues, isolating those which need full investigation and tailoring future procedure accordingly'* (para [29]). In other words, there is enormous flexibility to enable the procedure to fit the case. This applies just as much to cases of this sort as it does to any other.

46) I therefore consider that it is a matter for the judge who hears the directions appointment to case manage the application appropriately. In reaching this view I have considered r.9.9A ("*Application to set aside a financial remedy order"*) and, in particular sub-rule (5) which provides that "*Where the court decides to set aside a financial remedy order, it shall give directions for the rehearing of the financial remedy proceedings or make such other orders as may be appropriate to dispose of the application."*

47) Although I have listed this matter for a further hearing it cannot be in either parties' interests to remain in litigation. I therefore recommend to both parties that if they are unable to resolve the financial issues by agreement they strongly consider some form of (alternative) dispute resolution.

48) That is my judgment.

RECORDER NICHOLAS ALLEN QC

21st February 2020