In the Family Court at East London, sitting at Croydon

BV18D26069

22-23 June 2021

Parties & reps

The Applicant, A, is represented by Ms Hasan, counsel, instructed by Welbeck Anin solicitors. The Respondent, R, is a litigant in person. She was represented at the trial on a direct access basis by Ms Manser, counsel.

1. The parties married in 2004, separated in 2015 and decree absolute of divorce was granted in 2019.There are 3 children of the marriage, L, M & N.

2. By virtue of a final Court Order made on 5.5.21 they live with R and have only indirect contact with A

Issues

3. The parties have bitterly contested a range of issues since they have separated. I heard reference to a dispute about the schooling of the children, which lead to a ruling that R unsuccessfully tried to appeal, leading to an as yet unpaid award of costs of £800 in A's favour. A told me that there was a shared care arrangement until 2018, when allegations were made about his conduct towards one or more of the children, since when he has not seen them much if at all. A firmly believes that one day the children will again want to spend time with him. He wants a 4 bedroomed house that will enable that to happen. He expresses a clear intention financially to support the children and recognises that they need larger accommodation than they currently have. He does not see why his own lifestyle should reduce in comfort as a result of the divorce.

4. R's perception is that A has failed adequately to support her and the children. She has recently been able to secure, via CMS, child maintenance. Her perception is that is virtually the first financial support she has received. A told me that he has appealed that CMS action and his appeal has been accepted but not yet determined. He told me that he had paid maintenance whilst R and the children had lived in rented accommodation, and the former matrimonial home (FMH) was rented out because the rental paid the mortgage on it. When R and the children moved back into the FMH in 2018, it could no longer be rented out, so he stopped paying maintenance but instead paid the mortgage on the FMH. R agrees that he has paid that mortgage.

5. In October 2020 the Court made a clear order about the evidence and disclosure required to bring this matter to an effective hearing. One or other or both of the parties has contrived not to comply with that order, so the result is that the evidence

I have is sometimes lacking. I shall do the best I can with the evidence I have before me.

6. A complains that R has failed properly to disclose her resources. Her view is that in November 2020 she delivered a bundle of disclosure as ordered by the Court in October. Her covering letter to the Court says that it contains As questionnaire, her replies, copy letters to As solicitors, and copies of the documents referred to in the letters and replies to questionnaire. I am not convinced that all of that has made its way into my bundle and has therefore not been seen by Ms Hasan, at least. R says that this is A's solicitors' fault, not a failure of disclosure.

7. It is, however, common ground that R disclosed on the day before trial a C bank account that had not previously been disclosed. It had been open since October 2019. She could – and in my view should – have disclosed the existence of this account when providing the information required of her by the order of October 2020. It should have been disclosed not less than 3 weeks before the FDR hearing in October, because para 7 of the order of February 2020 required that. It is hard to understand how R thought that an FDR could properly be conducted when she had failed to disclose the bank account which she was then using for her day to day expenditure and into which she received income from various sources.

8. Even now, I simply cannot see how much money is in the account. R explained that a C account has 'pots' so that the account holder can place money in, for example, a 'savings' or 'bills' pot. Transfers into and out of her savings pot can be seen, but she has not disclosed any records which show what sums were held in the savings pot over time. Her oral evidence to me was that there was now nothing in the savings pot.

9. The whole purpose of disclosure in financial remedy proceedings is to put the parties in the position where they can make informed offers. I was given no satisfactory explanation for the failure to disclose that account on time. A failure to disclose can raise suspicion that resources are being hidden. Disclosure of bank statements in a timely and complete way, is important because it allows parties to follow any paper trail. If a suspicious party can see the paperwork and see any evidence of transactions they wish to query, they are much more likely to accept that they can see the true financial picture and focus on negotiating a settlement. Mistrust makes it very much harder for a party to negotiate. To the extent that R has found these proceedings stressful, or dislikes A's approach, she must take a good deal of the responsibility for that.

10. I was not impressed by reliance on a non-disclosure agreement as a reason not to disclose information relating to G Ltd. R has entered into a non-disclosure agreement with a Church. She is one of the directors of G Ltd, through which is run the Church that she helped to establish. Firstly, the agreement is with the Church, not the company. Secondly, Clause 6c would have permitted her to make disclosure within these proceedings, which are themselves confidential, in any event. Very

large sums of money have flowed through the Church, and this may, as R says, all be entirely innocent and proper. She has granted a charge over two of her properties for unspecified and indeterminate sums. The point is that A simply cannot see any of that, and nor can I. R expects the Court, and A, simply to accept her word as to what happened, and as to how funds were used. I do not know, if I were to order a sale of either of the properties charged to a Mr T whether he would consent to any sale, nor whether he might demand the whole of any equity in the property. R says that the charges were granted to guarantee the Church's obligations in connection with a loan of £200k made by Mr T. The two charged properties have combined equity of less than £200k, so he might effectively be able to thwart any award to A that required the sale of the properties. I could, given Rs evidence about the charges, simply award her the whole of the equity in the properties, giving the nil value she gives for the charges to the man concerned, and weigh that in the balance – leaving her with the risk should the charge holder seek to secure any proceeds of sale. That would not be unjust to R because she says that there would be no such charge, but any other outcome relating to those properties could be unfair to A. That may be a constraint on the distribution of resources.

Law

11. It is for those who assert an allegation to prove it, on the evidence before the Court. In making my decisions I must act on the evidence which I find reliable, on the balance of probabilities.

12. That means that the onus is on someone asserting a fact to prove, on evidence, that it is more likely than not to be the case. Where I am required to determine whether a fact is true I can only determine either that the person seeking to establish the fact has satisfied that test, in which case I will conclude that the fact is proved, or that they have failed to discharge the burden, in which case I must conclude that the fact has not been proved.
13. I remind myself that a person may lie for many reasons, and therefore if I find that someone has lied about one matter it does not necessarily follow that they have lied about anything else, nor that not everything that such a person may say is necessarily untrue.

14. As to the Matrimonial Causes Act 1973:

"S25A *(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its [specified] powers…. in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.*"

"S25 *(1) It shall be the duty of the court in deciding whether to exercise its powers …. and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of a child of the family who has not attained the age of 18….*"

15. I have heard evidence from each of the parties. A wanted to tell me how he felt about the events since separation, and I allowed him to speak at length in response to questions for a time. Once he had a chance to do so, I asked him to focus more on the questions being asked. From them he became clearer and I thought him to be telling me the truth as he recalled it.

16. R had a marked tendency to expect that people would simply accept her account and was frustrated when asked why documents to prove what she was saying were not available. She was, for a solicitor markedly unclear about the status and meaning of her position as a partner in J solicitors, which is not an incorporated body. It was only when I asked her directly that she confirmed that she was a partner in the firm, a fact which is not disclosed in her Form E. She told me that she had simultaneously been employed on a full time basis by one firm of solicitors and a full time consultant with another firm, whilst still being a partner in J solicitors and also a director of H Ltd, which she has set up. She seemed genuinely shaken when I asked her whether the firms involved all knew about those arrangements, and her response did not leave me confident that she had been as candid about that as she may have been. She acknowledged not reading Court orders properly or at all and accepted that she had signed conveyancing forms she had been unclear as to her status when she did so. Whilst I felt at times that R was trying to tell me what she genuinely recalled about some matters of fact, her evidence was elusive and evasive when it came to her income, and unclear when it came to frequent sums moving between her, the Church, her sister and others.

17. I thought that an estate agent had written to her recently at an address which they held on file for her from earlier transactions was not significant.

The s25 factors:

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

18. As I have said above, R was unclear about her income. She is in the process of terminating her existing relationships with employers and her partnership with J solicitors – not that she was able to produce any documents showing any of that. Her plan is to act as a consultant solicitor (though I am unclear precisely to whom) through H Ltd which she has established for the purpose, and which is SRA registered. She has a business plan and expects to bring in £26k pa in the first year of trading, though perhaps double that, she said. She thought that in Year 2

turnover would be £100k. She expected to generate an income for herself of £20k pa in the first year and £40k from the second year. No written business plan was produced.

19. Doing the best I can from the figures before me, and the paucity of disclosure, I have concluded that R has a current and future earning capacity of £40k pa gross, which equates to a net monthly income (Table 17 At a Glance) of £2572pm. R plainly hopes that this will increase as time goes by.
20. A's income as a medical Consultant is £82kpa earned, plus typically £10k pa from independent consulting work: within a small margin, that means he has a current earning capacity of £5k pm net. R thinks he has the scope to increase his income to £150k pa gross, but there was no evidence before me on which I could reach a conclusion about that. No doubt both hope as time goes by and their professional skills and reputations are enhanced that they will improve their earning capacity.
21. There has not been compliance with the October order as to the valuation of properties, so I must do the best I can on the evidence before me. 3 of the properties have single estate agent valuations, which both counsel have adopted for their schedules. R says in her statement that each of the investment properties should be treated as having a lower value, but there are no documents supporting her belief, so I use the estate agents' valuations.
22. Property 1 (held in A's name) – has net equity of c £180k.
23. Property 2 (R's name) - net equity if sold would be c£22k. R argues in her statement that this property was acquired before the marriage and so should be disregarded from any resolution: that point was not really pursued in argument. In my judgment, the parties' resources became thoroughly intermingled during the marriage, and so falls to be considered as a matrimonial asset. In any event, this is a needs, not a sharing case.
24. Property 3 (R's name) - has net equity of c£97k.
25. I have at this stage disregarded CGT, the charges to the church member and a loan asserted to Rs sister.
26. As to the FMH, which is held in joint names, A asserts that it has a value of £654,000. Both parties accept that the value has increased since they completed their form E. I see no estate agent's valuation. R, who lives in it , suggests a range of £600,000 to £625,000, but fears that work may be needed to achieve the top of the range. Her counsel has used £625,000 for her note and asset schedule. Given that R lives in the house I prefer her estimate to A's, but the property market is strong at present, and it is in her interests to talk the value down, so I conclude on the evidence that the correct value is £625,000.
27. From that I deduct the mortgage. The advocates have slightly different figures, and I see no up to date mortgage statement. Ms Hasan has given exactly the same figure for the outstanding mortgage as she has for Property 3, so I used the figure in Ms Manser's schedule. Allowing 2% for costs of sale, leaves net equity of c£475k.
28. There are no other significant chattels or assets: after 6 years of separation, chattels will remain with the person in whose possession they now are. A drives a car worth £2k.
29. The evidence is that R has 0 mortgage capacity, though A points out that the assumptions on which the evidence is based may be wrong.
30. A has mortgage capacity of £282k.

31. I was told that A also gets £11,840 pa in tax credits, which equates to £987pm, though I have not seen evidence of that: the figure comes from the figures she gave to the mortgage broker.
32. R has no pensions. A has significant NHS pensions, with a combined CETV of c£400k. Some commentators suggest that CETVs for NHS pensions tend to undervalue their true worth compared to money purchase schemes. A pensions expert report is attached, which was not prepared in accordance with the order of the Court. It provides the only evidential basis I have for distribution of the pension assets.

    (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

33. A accepts that the children and R need a 4 bedroomed house. They are currently occupying the 2 bed FMH, though R told me a previous owner had converted a downstairs room into a 3rd bedroom and installed a shower room. M & N currently share a room. R wishes to retain the FMH and has considered the possibility of a loft extension in future. On the property particulars before me, R would need a fund of £550,000 to obtain suitable housing, plus a £15,000 fund for SDLT, moving costs, white goods and so on.
34. A asserts that he needs a 4 bedroomed house, because he hopes that the children will come to stay with him. The order of 5 May is clear: he does not need space for the children now or for the foreseeable future. Does that mean his housing need is a 1 bed property? I do not think that is appropriate for a medical Consultant having regard to the standard of living throughout the marriage. I would assess his housing need as being for a 2-bed flat. There is no evidence before me as to the value of such properties, but I would expect, with a general sense of the local property market, that with a fund of £360,000 including costs of moving etc his housing need could be met. Since he has a mortgage capacity of £282k and the income to service that level of mortgage, he needs a further £78k if his current home is to be sold. Currently his housing needs are significantly over met.
35. A owes £90k to V and £55k to W, both loans were given to help him buy his current home, and both evidenced.
36. R claims to owe her sister a significant sum in respect of her buy to let property, 3. There has been no assertion that her sister has acquired a beneficial interest in the property. The disclosure was poor as regards the numerous transactions between R and her sister, and there is a complete lack of documentary evidence in support of any loan. I do not need to draw an adverse inference on the point, because the evidence is so limited and so unclear that I decline to conclude on the evidence, that R has shown that it is more likely than not there is any outstanding loan of any sum to her sister. If I were wrong about that, I would have concluded that it was as soft a loan as it was possible to imagine, to be paid back only if and when R felt able to do so.
37. R would need to pay CGT on the disposal of Property 2 if it were sold. She prepared a calculation assuming a lower price. If it were sold at £165k and using the other information from her calculation, she would have a capital gain of £42k. From Property 3 the capital gain would be £55k. If she sold both in the same tax year, her annual allowance would reduce the total taxable capital gain to £85k. Taking CGT at

18% of the first £27k leads to a bill of £4860, plus the remaining £58k taxed at 28% a further £16,240. So, her total CGT bill would be £21,100.

38. R accepts that A has liabilities totalling £63,862 in addition to his loans from his friends.
39. R asserts liabilities, including more than £24k unpaid school fees, totalling £52,521.
40. Those sums were not challenged.
41. A asserted his income needs to be nearly £7k per month, which is not sustainable. His mortgage payments in particular are not sustainable, but neither are numerous items of expenditure. If he were to take a mortgage of £282K over 15 years that would likely cost (table 8, At a Glance) £2k per month. That makes no allowance of Child Maintenance, and the evidence before me is that he is now having some £1300pm month taken from his salary for child maintenance. Further sums are taken for fees and arrears. Even allowing for various medical bodies' fees and Professional Insurance, as a single man a comfortable lifestyle could be maintained with a monthly budget of £3700 which allows him to service a mortgage of £2000pm after child maintenance has been deducted. Arrears of child maintenance and fees will need to be met from his resources.
42. R's asserted income needs were more modestly put. She is fully entitled to pay tithes, but they come from her resources, and are not an income need. Her income needs are put at £1682pm but that does not include anything for rent or mortgage, school lunches, clothes or school fees and associated costs. Her written evidence to me was that N's school fees will be £4k per term (or £12k pa, 1k per month). M has secured a full scholarship. L has secured a partial scholarship, and her written evidence was that L's fees would be £634pm. She sought to change those figures in her oral evidence on the second day of the trial: no documents were produced.
43. If she attained net income of £2500k per month and A £5k per month, if he pays £1300 child maintenance and she gets £987 from tax credits she would have £4787pm. Taking £1682 as her income needs and £1634 for school fees, plus £200pm for packed lunches and school uniforms, all of which is pared to the bone, that would leave £1271pm for rent or mortgage. She has no mortgage capacity, and realistically could not afford a suitable property for that sum.
44. The answer is either going to be spousal maintenance, which would have to be capitalised, or a retention of the FMH to provide a home for the children in R s view

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

45. The family lived in rented accommodation by the time of their separation. Theirs was a hardworking middle-class lifestyle. There were no particular extravagances. There were disagreements about money and in particular the monies put towards the R's Church. Whilst the children have used state schools, the parties accept that they want the best for the children, and they are now all enrolled in fee paying schools.

(d) the age of each party to the marriage and the duration of the marriage;

46. A is 51, R 46. This was a marriage of nearly 11 years to separation

(e) any physical or mental disability of either of the parties to the marriage;

47. Both parties are in good health

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

48. Both have made considerable contributions both in financial and practical terms during what was a marriage of medium duration.

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

49. Aside from adverse inferences drawn, any conduct would fall to be considered in the context of costs: *OG & AG [2020] EWFC 52* considered.

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit [...] [4] which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

50. None

Decision

51. The welfare of the children is paramount. Their housing needs are imperfectly met by being in the FMH, but they are met.

52. A would have me liquidate all of the property assets. If I did that and assumed that Mr T did not seek to recover any funds, that would generate £774,653, less CGT of 21,100. After use of his mortgage capacity, that could provide R with a housing fund of £565,000 and A with a housing fund of £78k, leaving £110,553 available for distribution. The Housing needs of both parties could be met in that way. R and the children could be housed, mortgage free. A

would need to borrow and fund a mortgage, but that would mean the parties income and housing needs were met.

53. If I were to transfer 48.9% of A's 1995 pension scheme to R (she would need to consider whether she needed to set up a suitable pension vehicle to receive it), that would leave A with the greater income, though not after child maintenance, greater pension and smaller but perfectly appropriate house. In terms of assets, it would leave him with the lions share of the pension (roughly 270k from a pot of c£400k in his favour) but only about £180k out of a total real property pot (after CGT) of c£750k.

54. It would leave A with significant indebtedness, not least to V and W, and he would need a far greater share of the remaining £110,553 for that to be a fair distribution. His indebtedness is roughly 4 times greater than Rs. If he were to sell his home, that is almost exactly the balance after he would have after meeting his housing needs. Each party would need to service their remaining indebtedness for their own resources.

55. It is tempting to consider that this is a case for spousal maintenance. S25A gives an imperative for a clean break. Child maintenance is for the CMS. Do the income disparities and needs do, for the reasons given above, justify spousal maintenance? R has not been transparent about her resources. The parties' litigation history strongly suggests that a clean break and the avoidance of subsequent litigation is very desirable. Moreover, A will be left with much greater indebtedness, though the loan agreements with V and W are both said to be for 6 months from a date in 2018, so must be relatively soft loans. If, however, they demanded payment at the time that Property 1 was sold, A would not have necessarily enough of a pot to meet his housing needs. However, I would expect his mortgage capacity to increase at that point, because he already has a much larger mortgage on Property 1, and on repayment of that he should still enough capacity to meet his housing needs. However, it seems to me that to also expose him to spousal maintenance, or even the risk of an application because of nominal spousal maintenance would be unfair.

56. Would all that be fair? It would leave R with the equity in the FMH and her two investment properties. Despite Rs many litigation shortcomings, I have concluded that it would. R will be responsible for the care of the children, for housing, feeding and clothing them. Those are very significant burdens. She will have to meet their school fees, and all the extras, reliant only on such child maintenance as the CMS can provide. She has already had years when the money has been tight, and she has been, as her barrister put it, spinning plates.

57. R would have me leave her in the FMH, which leaves the mortgage needing to be paid. If, as I am told, that is £1370pm, I do not see how that can be met from current income flows.

58. If I were to leave A's home, and the equity in it, with him, that would leave him with net equity of £180K and debts of over £200k, and a mortgage he can't service. In income terms that will not work.

59. If it were sold, however, he could use the equity to repay some of his debts, rehouse into something appropriate but affordable, and then could await any proceeds of sale of the other properties that I might award. R wishes to retain the FMH for the benefit of her and the children. A cannot afford to pay the mortgage on that home and CMS deductions, so she would need to pay the mortgage and that simply could not be done unless she liquidated one or both of the investment properties and utilised the proceeds of sale.

60. For those reasons I grant R a 48.9% pension share of A's 1995 pension, make no order for spousal maintenance, leave the beneficial interest of Property 2 and Property 3 with R and Property 1 with A. It will be up to each of the parties to decide when if and how to liquidate their interest in them. I shall order the sale of the FMH but delay the sale.

61. A does not need the release of the mortgage to be able to secure his assessed housing needs: he has already secured a far larger mortgage. He does need to be released from it in, and so whilst I will order the sale of the FMH, that part of my order shall not take effect provided

    a) R is able to secure A's release from the mortgage within 2 years. That will give her a chance to get her business up and running and build her mortgage capacity. If she has not by 23.6.2023 done so, the FMH shall be sold. R shall be responsible for payment of the mortgage until either she has secured A's release from it, or the property is sold. She shall indemnify A in respect of the mortgage.

    (b) by that date, R must also, ensure payment to A of all costs awards in these proceedings, plus interest on those costs awards calculated at 4% per annum on a simple basis, pro rata from now until the costs are paid. If the property is sold, after redemption of the existing mortgage, and any arrears of it, and costs of sale, the proceeds shall be used firstly to pay any outstanding costs plus interest to A, and the balance to R.

62. If she secures his release and pays those costs and interests by 23.6.23, then FMH need not be sold and A must transfer his legal and beneficial interest in it to R.

63. That is my judgment.

64. At the conclusion of Judgment, no issues of fact or law requiring correction were raised. No applications were made for permission to appeal. There were two applications for costs by A, on which the Court heard submissions and, by agreement given the hour, reserved judgment which was delivered by way of short supplemental judgment.

65. After the hearing had concluded, Ms Manser asked for clarification as to school fees and school vouchers. As stated above, R will be responsible for meeting all school fees. Her evidence as to the cost of those fees changed between her written evidence the day before trial and her oral evidence on the second day, no documentary evidence having been provided. The distribution of resources is, as stated, predicated on the basis that it will be for her to pay the school fees. If what is meant by vouchers is the child care credits held by A in his Childcare Vouchers account, he indicated when the point was raised that those could only be used to pay for child care costs, and if not used would be lost to him. I do not know whether any of the current or previous schools allow child care vouchers to be used, but assuming that they do, those vouchers shall be used towards school fees: that will come at no cost to A but will give a benefit to R and therefore to the children.

Costs:

66. A seeks his costs of the FDR in October 2020 and relies on a Schedule of costs totalling £8468.00. He says that the FDR was wholly ineffective as such, because of Rs continued failures of disclosure, as evident from the detailed terms of the order. FPR 28.3(6) is engaged. R says that the FDR was not ineffective, points out that A has not complied with the order made that the parties should each file statements dealing with the wasted costs of

the FDR by 2 weeks before this trial, and A had not done so, and draws my attention to FPR 28.3(7), in particular (f), which provides that the Court must have regard to the financial effect on the parties of any costs order.

67. I expand on that last point a little to note that I have made robust assumptions about Rs earning capacity, given her poor disclosure and evidence, and lack of documentary evidence about her income, which may therefore expose her to greater risk on income in the short term than many litigants face. It may be that as her income picks up her benefits entitlement will reduce a little – I had no evidence before me on which I could reach that sort of conclusion, but wish R to understand that I appreciate the potential fragility of her circumstances. Further, her company, H Ltd was, she told me, used to access a Government covid related Bounceback Loan, of some £30,000. She produced no documentary evidence of that but said that she had advanced most or all of those monies to herself by way of loans, for tax reasons. That only came to light because that was the explanation she gave when asked about large sums arriving from H Ltd as revealed in the current account statements she provided the day before trial, for an account which was until then unknown to A. If those loans exist – the only evidence before me was Rs oral evidence - I presume that the loans will have to be repaid or written off (assuming that the Directors of H Ltd could properly do so in the exercise of their duties) with a tax consequence for R, at some unspecified future date. But even with those uncertainties, there was enough flex in the award, which was generous to her given the paucity of her disclosure across a wide range of issues, for her to bear an award if I considered it justified.

68. I consider that Rs conduct in the litigation in the lead up to the FDR was woeful. The C current account existed and should, by reason of the order of 27.2.20, have been disclosed to A in advance of FDR. It was not, and the only explanation I was given was that R, a solicitor, did not realise that the account needed to be disclosed. That alone justifies an award of costs. But it is clear from the order that there were really significant gaps in Rs disclosure which meant that A was deprived the opportunity to negotiate. R may reflect that she has, in the end, secured most of what she sought from these proceedings. She has managed that despite her litigation conduct. Had she been transparent and honest about her resources, it would have enabled the parties to negotiate. Her conduct deprived A of the chance to do that at FDR and R should pay the costs A incurred as a result.

69. Turning to quantum, Ms Manser challenged Counsel's fee, which I consider entirely reasonable, the time taken to prepare a bundle, the time taken to brief Counsel and the time for considering Rs replies. I am not surprised, given the gaps in disclosure, that it took 1.5 hours to brief counsel, and 2 hours for a solicitor to work through the replies, and would not reduce those costs. I do agree that 4 hours is excessive for bundle preparation. The benefit of doubt goes to the paying party, and I consider that 1 hour would be reasonable.

70. I therefore reduce the sum claimed by £900 +VAT, to £7388. R shall pay A £7388 towards his costs of the FDR, plus interest as set out above.

71. The second claim for costs was for the remainder of the proceedings. Ms Hasan relied on the matters set out in her position statement. FPR PD28A paragraph 4.5 requires A to have filed in form N260 the costs that he seeks. He has not done so. He relies on his Form H, which says that he has spent £5950 (including £1750 for counsel) between FDR and the date of his form H and a further £12,556.30 including Counsel's fees of £5000 and disbursements (which includes VAT on Counsel's fees) of £1056.30. Beyond that, I am given no means of

determining how those costs have been calculated. Ms Manser suggested that the costs application should fail, for that reason. She again relied on FPR 28.3(7) and (f) in particular. She also pointed out that whilst A was critical of R for the late delivery of her witness statement, his own was dated 14.6.21 and was therefore late, too.

72. R's witness statement was delivered the day before trial. When A's counsel prepared the case for trial, she did not know what, if any, evidence R would give. In the event, she might have asked for adjournment plus costs given the late – and even then incomplete - disclosure. It came with a host of disclosure, including bank statements for Rs current account, the existence of which should have been disclosed before FDR, with updating disclosure 4 weeks before trial. Even then, the disclosure did not reveal what funds were within the various 'pots' there might be within R's C account apart from the general pot. The statements disclosed revealed the existence of a savings pot, but not how much was or had been in it. When I asked why the parties had not complied with the order from FDR as to valuation of the properties, I was told that R did not like one of the named agents, and so had not co-operated. There was no challenge to that description of events. No application to vary the order was made, R simply treated compliance with the order as optional. R failed to make disclosure of transactions relating to her Church and/or G Ltd. As I set out above, I do not accept that was reasonable. R was a director of G Ltd, and a founding member of the Church. She might have formally asked the G Ltd to permit her to disclose into these confidential proceedings the documents, and if the Company so refused, made an application relying on the minuted decision of the Board. There was no evidence that she even considered making a request. Again, she just did what she wished to do, with scant regard for her obligations transparently to disclose her financial resources. She did all that knowing that A's case was in part that she either dissipated resources by giving them to the Church or was using the Church to conceal her resources.

73. Nor was this the only example. R has been ordered to pay towards As costs at First Appointment and, above, in respect of FDR. She has persistently failed to comply with the orders of the Court.

74. That is not all. She made no open offer to settle the proceedings until the day before trial, and then withdrew even that offer before trial began, by means of her Counsel's opening note.

75. FPR PD 28A para 4.4 says:

"*In considering the conduct of the parties for the purposes of rule 28.3(6) and (7) (including any open offers to settle), the court will have regard to the obligation of the parties to help the court to further the overriding objective (see rules 1.1 and 1.3) and will take into account the nature, importance and complexity of the issues in the case. … The court will take a broad view of conduct for the purposes of this rule and will generally conclude that to refuse openly to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a 'needs' case where the applicant litigates unreasonably resulting in the costs incurred by each party becoming disproportionate to the award made by the court*."

76. Each of the factors in FPR 28.3(7) (a), (b), (d) and (e) justify an award of costs in favour of A. Her failure to disclose the C account until the day before trial, for which there was no

satisfactory explanation, and her failure to make an open offer until the day before trial were particularly serious factors.

77. As Mostyn J said in *OG v AG [2020] EWFC 52 at [31]:*

"It is important that I enunciate this principle loud and clear: if, once the financial landscape is clear, you do not openly negotiate reasonably, then you will likely suffer a penalty in costs. This applies whether the case is big or small, or whether it is being decided by reference to needs or sharing."

78. Nonetheless, I must also weigh in the balance FPR 28.3(7)(f). This was a needs case, and money is tight. For the reasons stated above, and in para 4.4 of PD 28A so far as the failure to make an open offer are concerned, I consider that an award of costs is justified.

79. Ms Manser's arguments about the quantum of costs have real traction, given the lack of an N260. A seeks just over £18,500. I have concluded that Rs failures were so egregious that a significant award is justified. Without an N260 to assess against, I have reduced the sum more sharply than I might have done and take a rounded view. I consider that R must pay £9,000.00 towards A's costs since the FDR.

80. I ask the advocates to draw up an order capturing all of the above, and to send that to me for approval.

DJ Graham Keating

24.6.21