In the Family Court sitting at Maidstone Magistrates

Case number: 1680 6912 7475 1321

Neutral Citation Number: [2025] EWFC 228 (B)

This judgment was given in private. The judge has given permission for this version of the judgment to be published on condition that (irrespective of what is contained within the judgment) in any published version of this judgment the anonymity of the parties, the children, and extended members of the family, must be strictly preserved.

BETWEEN:

WR

Applicant Wife

And

HY

Respondent Husband

(Financial Remedies: Litigation Misconduct)

JUDGMENT

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1. On 6 April 2023 *R*, a 38-year-old blogger and online publisher, issued her application for a financial remedy arising upon the divorce from her husband (the respondent) *Y*, a 42-year-old carpenter. The conditional order of divorce was granted on 20 September 2023.

2. This matter was listed yesterday and today for a final hearing. The applicant was ably represented by Berry & Lambert Solicitors and George Harley, Counsel. The respondent acted in person, assisted by an interpreter.

3. The application was listed for a first appointment before Recorder Hellens on 21 July 2023. The parties had each filed and served their Forms E. The respondent's was devoid of detail and had none of the necessary attachments. The order made on that day is striking in that, as well as the usual directions being made to the financial dispute resolution appointment, the Recorder considered it necessary to include a recital directed specifically at the respondent in the following terms:

Recital to the respondent

6. UPON the court informing the respondent that he must comply with the court timetable below, and that if he does not:

a. he may be committed to prison, fined or have his assets seized,

b. the court may make adverse inferences about his assets or income in the future,

c. the court may make cost orders against him,

d. the court may not permit him to file evidence that has not been directed in accordance with court directions,

e. and at a final hearing may make final orders in relation to his assets and income, even if he does not participate in these proceedings, or attend hearings.

4. It is normal where a party has not complied with the standard directions to the first appointment for the Court to issue penal notices and perhaps to make costs orders, but it is unusual to read such detailed warnings in such stark terms on the face of an order made at the first appointment. Recorder Hellens had clearly foreseen the likely trajectory of these proceedings and sought to ward off expensive and emotionally draining problems at the first opportunity. It was, unfortunately for both of these parties, not to be.

5. That order also provided the respondent with an opportunity to raise the issue of conduct where he asserts it would be inequitable for the Court to disregard it but at paragraph 16

specifically warned the respondent that if he had improperly raised that issue, the Court could make costs orders against him where appropriate.

6. Paragraph 34 of the same order listed a financial dispute resolution appointment and recorded that that hearing MUST be effective.

7. There could be no doubt that the respondent knew what he had to do to make the next hearing effective. It is highly likely he had it spelled out to him during the hearing and he, in any event, had the directions and warnings in detail on the face of the order.

8. Despite that, the respondent failed to reply to the applicant's questionnaire and failed to comply with any of the other directions.

9. The financial dispute resolution appointment took place on 15 August 2024 before District Judge Rahman. The order made that day records that the applicant had by then spent £25,988.27 including VAT to that hearing and anticipated a further £26,800 to a final hearing. She was not far off that figure. In fact, per a Schedule of Costs on Form N260 she filed for this hearing, she had incurred £23,896 to this hearing, including VAT. In total, per her Form H1 and including likely costs of implementation of the order made following this hearing, she will have spent £54,527.77. She has already had to spend £41,820.87 and will owe £12,703.90 by the time this is all over. The total assets, including non-matrimonial assets and pensions, available for distribution in this case amounts to £508,551.82. The applicant's costs come in at 10% of what was originally available and, in such a small money case, this is disproportionate to the issues involved. As will become clear, such disproportionate costs were incurred as a result of the respondent's actions and inaction.

10. At the Financial Dispute Resolution Appointment the District Judge recorded at paragraphs 8 to 16:

> *8. UPON the court informing the respondent that he must comply with the court timetable below, and that if he does not:*

a. he may be committed to prison, fined or have his assets seized,

b. the court may make adverse inferences about his assets or income in the future,

c. the court may make cost orders against him,

d. the court may not permit him to file evidence that has not been directed in accordance with court directions,

e. and at a final hearing may make final orders in relation to his assets and income, even if he does not participate in these proceedings, or attend hearings.

9. AND UPON the court specifically explaining in simple language to the respondent (through his interpreter) the likely consequences for the respondent of failing to comply with the orders of the court as set out above, and:

a. in terms of adverse inferences,

b. and indicating to the respondent that the court is likely to prefer the position that the applicant puts forward in the event she has supported it with evidence provided in accordance with these directions.

10.AND UPON the court checking with the respondent, through his interpreter, that he understands the consequences of not complying with the orders of the court, and the respondent confirming that he does understand.

Other recitals

11. AND UPON the court noting in relation to the order made on 21.07.23, the respondent has:

a. failed to file and serve a witness statement in relation to conduct (paragraph 15);

b. failed to provide comprehensible and comprehensive replies/ supporting documentation to the questionnaire of him raised by W (paragraph 18),

c. failed to reply to W's schedule of deficiencies/ further questionnaire (paragraph 22),

d. failed to engage in the valuation of the family home (FMH) (paragraph 23),

e. failed to provide his mortgage capacity in compliance with paragraph 28,

f. failed to provide property particulars evidencing his housing need or that of the applicant (paragraph 31),

g. failed to provide a without prejudice offer (paragraph 33).

12. *AND UPON the court considering that the respondent has not put forward any good reason why he failed to comply with the orders made in this case, or to provide evidence of his income.*
13. *AND UPON the court informing the respondent that if he provides a document written in [a foreign language] to the applicant or to the court, he must also provide a certified translation of that document at his own expense.*
14. *AND UPON the court noting that the respondent has not raised a questionnaire of the applicant.*
15. *AND UPON the court noting that the respondent has not filed a statement setting out what 'bad conduct' on the part of the applicant that he seeks to rely on, and the court determining that he may not rely on the 'bad conduct' of the applicant further in these proceedings.*
16. *AND UPON the court setting out s.25 of the Matrimonial Causes Act 1973 for the respondent's benefit* and the Court set out the terms of that section on the face of the order when making directions to this final hearing.

11. Such were the respondent's failures to comply with the orders made at the first appointment that District Judge Rahman considered it necessary to attach penal notices to six directions made to prepare for this hearing, and also awarded the applicant her costs due to the respondent's failures to comply.

12. Despite those warnings and that costs order, the respondent still failed to comply with orders made and so has not filed any useful evidence in support of his case for this hearing. His Form E and financial disclosure remain severely deficient. He did file a document dated 7 February 2025, supposedly by way of a section 25 statement, but it was in fact a series of complaints and allegations made against the applicant and her family set out in an unclear and unfocussed manner and did not deal with any of the section 25 factors. It having been filed in compliance with the order, I permitted that to stand as part of the respondent's evidence.

13. Shortly prior to this hearing I was sent by Mr Harley a further document sent by the respondent to the applicant's solicitors and to the Harlow HMCTS centre for uploading to the portal. The respondent told me it was sent there on 11 March 2025. There was no permission for this document to be filed. It had not by today been uploaded to the portal. Shortly before the applicant began to give her evidence I glanced through that document to decide whether it might be relied upon. The glance alone told me that it was a further letter to the Court setting out a further series of unfocussed, unclear but obviously derogatory statements and complaints about the applicant and her family. There was no apparent useful evidence included in it and I indicated that I would be unlikely to allow it to stand as part of the respondent's evidence. It appeared to be an attempt at a conduct statement by the back door and in circumstances where the respondent had been told he had been refused permission to argue s.25(2)(g) conduct after he had failed to comply with the order made by Recorder Hellens in 2023.

14. Prior to the respondent giving evidence and during the lunchtime adjournment I read that document. It was, indeed, an attempt at a conduct statement and included no evidence relevant to the section 25 factors. Instead, it contained a litany of attacks upon the personalities and temperaments of the applicant and her family. It had as its exhibits photographs taken in the family home at unknown times showing knives on chopping boards and scissors on shelves, a toilet bowl, and a picture of the North Korean ruling family tree as the centre of a spidergraph asserting that different members of the applicant's family were akin to each of the people depicted. It also appended a series of "invoices" prepared by the respondent and directed at the applicant, her solicitors and to the Court seeking payments amounting to £351,892,000, plus a 3 year sentence of imprisonment for someone unknown but whom the respondent considered had wronged him, and further seeking provision for someone close to the respondent to return from the dead.

15. When the respondent came to giving evidence himself, I heard submissions from both parties as to whether I should permit that document to be admitted in evidence and gave a short ex tempore judgment refusing permission to the respondent to rely upon it. It was,

as I have said, filed and served without permission, contained extremely rude assertions without any foundation, and took the respondent's case nowhere. It did not explain at all to me why the respondent's position today was that he should be awarded 100% of both the matrimonial and non-matrimonial assets belonging to the applicant, including her pre-marital investments and small pension, leaving her with nothing but debt. It was a document that clearly took a lot of time to prepare and would have cost the applicant a not inconsiderable amount of money to have her solicitors read and consider. It was, in my view, a document designed to upset, harass and to run up costs unreasonably and unnecessarily. It, like the other documents filed by the respondent in these proceedings, was, in my view, financially and emotionally abusive of the applicant.

16. I was careful to consider whether the respondent understood the nature of these proceedings, understood his obligations within them, and whether there might be any capacity issues at play, but I have concluded that there were none. The respondent confirmed in his cross-examination by Mr Harley that he knew he had not complied with the orders made and had filed the documents that he had, and I understood from his responses that he had done so deliberately. He was convinced that these proceedings should focus on the reasons why the parties parenting arrangements had broken down in January 2024 and on what he repeatedly said was abuse of the parties' 6-year-old son by the applicant and her family, for which there is no evidence.

17. In fact, the respondent is the person who within the Children Act proceedings (for which a final hearing is due to take place in May 2025) is said to be potentially unsafe, with the Court ordering supervised and indirect contact between him and his son, but the respondent refusing to take it up. The parties' son has not seen the respondent since 15 January 2024. The respondent's position within these proceedings is that their son should live with him, but this seems unlikely at any time in the short to medium term where the respondent has failed to comply with the requirements in those proceedings that he undertake a parenting course, therapy and supervised contact. He has done none of those things and appears to have no intention of doing so. In those circumstances it is unlikely that the parties' son will stay with the respondent any time soon.

18. I set this all out first as I make clear that I have had regard to the fact that the respondent is a litigant in person and may not have understood the requirements of a litigant within these proceedings, but I am quite clear, having heard his evidence, that he was well aware and deliberately chose not to comply. All the judges dealing with this matter, me included, have sought to ensure that the respondent understood what he had to do and attempted to help him present his best case, notwithstanding that the law requires Courts not to give any special treatment to litigants in person, per *Barton v Wright Hassell* [2018] UKSC 12.

19. The respondent has, I find, deliberately chosen to snub the Court's authority and to turn his back against its assistance to him. He has failed to respond to the applicant's open offers, he has presented no open offers himself, and today presented me with a position not based on his needs, never mind consideration of the applicant's needs, but apparently instead one designed to punish the applicant for leaving him. The manner in which he has conducted these proceedings and has conducted himself in these proceedings, including laughing when giving evidence and at positions put to him, using crude language, attempting to argue with Mr Harley, and repeatedly making unfounded and distressing allegations against the respondent despite my telling him that, even if correct, they had no bearing on these proceedings and I was uninterested in them, was, I find, abusive of the applicant to the extent that it falls within the upper range of litigation misconduct enunciated by Mostyn J in *OG v AG* [2020] EWFC 52 and approved by Peel J in *Tsvetkov v Khayrova* [2023] EWFC 130. I deal with the impact of this below.

20. When giving his own evidence the respondent was unfocussed, unclear and unable to answer many of the questions put to him. Some he pointedly refused to answer. In those circumstances I could give little weight to either his written or his oral evidence and I found it very difficult to understand his position as to why he should receive all the assets available to these parties and the applicant should receive none.

21. In contrast, the applicant was clear, measured and calm when giving her evidence. She answered the questions honestly, was actively trying to assist the Court, and brought me to understand quite easily why she said her position was correct, namely:
    a. That the former matrimonial home should be sold with vacant possession (the respondent having to move out prior to its marketing for sale) and the net proceeds of sale divided as to 80% to her and as to 20% to the respondent. She needs a two-bed house or flat near the parties' son's school (which the respondent does not need) and that amount of money is required, together with the exercise of her maximum mortgage capacity, to ensure that she can provide a stable home for this little boy who has been through so much upheaval and loss in the last few years. With that 20% the respondent can exercise his realistic mortgage capacity and purchase himself a one or two-bedroom home which would be suitable to house him and the parties' son should he ever come to stay with the respondent.
    b. That her circa £60,000 stocks and shares investment built up during the marriage and its associated cash ISA (less than £800) should be shared equally between the parties. This would allow each of the parties to have some available cash to pay for e.g. up front conveyancing costs and repairs to the family home, and allow the respondent to move out of the family home in advance of its sale.
    c. That she should retain her circa £18,000 pension and her pre-marital and pre-relationship relatively small investments, as I do not need to invade them to meet the respondent's needs. She needs them to meet the shortfall in her income as against her outgoings while she rebuilds her earning capacity as the parties' son grows older and becomes less reliant upon her, and in circumstances where the respondent is not making and is unlikely to make any financial contribution to his son's living costs.
    d. That otherwise there should be a clean break, although I should hold back £5,000 of the net proceeds of sale payable to the respondent to pay for repairs to any damage or dilapidation he has caused to the family home since the applicant left it, and that I should award her her costs between the financial dispute resolution appointment and now as the respondent has perpetrated such litigation misconduct that she has not been able to progress the case at all, and despite her attempts to settle it, the

respondent has failed to engage, so running up costs that were entirely unreasonable and which the applicant can ill-afford to spend.

Background

22. I understand, although this was not explored in detail in either the oral or written evidence, that the parties met in [a foreign country] when the applicant was teaching English there. They married on 28 April 2014 and began their cohabitation later, on 17 October 2014. Their son was born on 9 March 2019 and they separated on 11 September 2022 when he was just 3 years old. The applicant's petition for divorce was filed on 23 January 2023. This was a marriage of some 8 years' duration during which a child was born and for whom both parents have responsibility.

23. It seems that the parties remained living in the family home following the issue of the petition, but the applicant states that the respondent's constant criticism of her and her parenting, together with what she says amounted to abusive behaviour of her, led her to leaving the home with the parties' son on 15 January 2024. They have been staying at her parents' home ever since while the respondent remains in the family home. It is fortunate that the applicant's parents had the space and willingness to allow her and the parties' son to live with them, as otherwise the assets available to these parties would be even less. The applicant paid all the outgoings on the former matrimonial home until October 2024. The respondent made no contribution to the outgoings from April 2024. The applicant has continued to pay the mortgage and buildings insurance and, despite requests, the respondent has failed to contribute. The applicant calculates the respondent's "arrears" as being £3,094.50 to February 2025.

24. The evidence before me indicates that the applicant worked throughout the relationship and marriage and made the majority of the financial contributions to the parties' lifestyle, as well as parenting and caring for the home. The respondent worked, she told me, intermittently. She said he was not really in stable employment for any long periods of

time, and had long periods of unemployment. He was self-employed for the last few years but did not work regular hours.

25. Prior to having the parties' son the applicant was earning around £50-60,000 a year but that has now reduced to £23,340 net of tax from paid employment. She receives another £2,000 p.a. in child benefit and investment income.

26. The respondent has given no details about his earnings or earning capacity, save for that he has declared £2,000 a month net of tax on his Form E / £24,000 per annum. He was required to provide copies of his tax returns. He has not done so. He said that he filed one in 2024 for 2022-2023, but has recently written to HMRC apologising for not completing his tax return for 2023-2024 (to be filed by 31 January 2025). In light of the lack of easily-obtainable documentary evidence and the manner in which he gave his evidence, I am not convinced that he has filed tax returns at all recently, nor that he has properly declared his income. As such his actual and likely earnings are completely opaque. There is no question that he can work full-time for and at such times as he might choose. I take notice of the fact that carpenters in South East England can and do earn well and if £24,000 a year really is his net income, then he is not sufficiently exploiting his earning capacity.

Computation of the assets

27. There are limited assets available to the parties in this case, of which three could be classified as marital, i.e. they were built up during the marriage:
    a. The former matrimonial home is in a town in Kent, and is a modest 3-bedroom house purchased with a £300,000 contribution from the applicant (deriving from gifts to her from her parents and from investments she made prior to the marriage) and a mortgage. It is currently worth £464,167 and has £382,572 equity therein.
    b. A Halifax cash ISA and share dealing account, the combined value of which is £60,385.63. This was built up during the marriage.
    c. Fidelity and Black Rock Investment funds belonging to the applicant and which she built up prior to the relationship. They have a combined value of £37,944.22.

d. The applicant has some £5,735 in bank accounts and the respondent has at least £373 in his. He has provided no historical bank account disclosure and his other bank account evidence has not been translated into English, contrary to the directions given. It is likely that he has more funds, but I doubt that the amount he has would materially change the outcome of this case. There is no suggestion on the applicant's behalf that he is likely to have hidden resources. The parties also have a joint account with £1,020 contained in it.
e. The respondent has a motorcycle and a minivan, together worth £14,000. Of course he needs a vehicle for his work. The applicant has a 2009 Honda Jazz worth £2,210. This will need replacing soon.
f. The applicant has £504 debt on a credit card.
g. She also has a pension with a CETV of £18,296.62.

28. As I said above, the total assets available for division are £508,551.82, of which capital liquid assets £37,944.22 is definitely non-marital in origin. The former matrimonial home had as its main source non-marital assets and the applicant has made an unmatched financial contribution in that regard, which needs to be taken into account, but only in a minor way where the division of the assets in this case will come down to meeting needs. There simply is not enough available to these parties to allow for any kind of equal share and all the assets available need to be considered, no matter their origin.

The Law

29. In deciding how to divide the assets and resources available to the parties I have to apply the relevant case law in the light of section 25 Matrimonial Causes Act 1973:

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B or 24E above 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 any child of the family who has not attained the age of eighteen.

(2) *As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A, 24B or 24E above in relation to a party to the marriage, the court shall in*

particular have regard to the following matters—

(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;

(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;

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

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

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

(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;

(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;

(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 which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

30. Since 2000 it has been clear that both parties' contributions to the marriage should be treated as of equal value, such that the assets generated during the marriage should have a starting point of equal division, with appropriate adjustments to meet need, and with a check at the conclusion of the division against the "yardstick of equality" (*White v White* [2000] UKHL 54, [2001] 1 AC 596).

31. As of 2006 and *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 WLR 1283 the division of the assets starts with sharing the marital acquest (including the former matrimonial home) and then adjusting for need. In very rare cases there will be a departure from equality to recognise either a stellar contribution by one party or otherwise a significant and quantifiable relationship-generated disadvantage that one

party has borne for the sake of the family, but this principle does not apply to most marriages.

32. Peel J, as he so often does, provides the judge with useful summaries of the relevant applicable law in his decisions, and I take the following from *ND v GD* [2021] EWFC 53:

> *45. Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail;* ***Charman v Charman [2007] EWCA Civ 503****.*
>
> *46. In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.*
>
> *47. Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary;* ***Scatliffe v Scatliffe [2017] 2 FLR 933*** *at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in* ***K v L [2011] 2 FLR 980*** *at [22] there was at that time no reported case in which the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.*
>
> ***48.*** *The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case;* ***Hart v Hart [2018] 1 FLR 1283****. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has*

been used, whether it has been mingled with the family finances and what the parties intended. I accept the submission on behalf of H that in the ordinary course of events (acknowledging, of course, that each case will turn on its own facts) the attribution of income derived from a non-marital asset towards the domestic economy will generally not convert the character of the underlying capital asset from non-marital to marital and therefore susceptible to the sharing principle; I am fortified in this analysis by the decision of Roberts J in ***WX v HX [2021] EWHC 242.***

49. *Needs are an elastic concept. They cannot be looked at in isolation. In* ***Charman (supra)*** *at [70] the court said: "The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)". Mostyn J said in* ***FF v KF [2017] EWHC 1093*** *at [18]; "The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise". To that I would add that the source of the wealth is also relevant. If, as here, it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in* ***N v F [2011] 2 FLR 533*** *at [17-19].*

Application of the Law to the present case

33. My first consideration is the welfare of the parties' 6-year-old son. He lives with the applicant and has lived with her alone since 15 January 2024. The applicant has been fortunate in that her parents have been able to assist her from time to time with his care, but they have active lives to lead and they cannot, will not, and should not have to make provision for him full-time, as the respondent asserts that they should. The respondent has made the decision not to see nor to provide financially nor emotionally for his son since that date and that is a tragedy; harmful to the entire family, but most of all to this little boy. Where the respondent maintains this stance and does not do the work recommended by Cafcass and mandated by the family court in the Children Act

proceedings, then circumstances are not likely to change. The respondent will not be providing practical nor financial care for his son, and the responsibility for that will fall on the applicant alone. This little boy needs a stable home with his mother and sufficient income into the home to make provision for his needs.

34. The income of the parties is set out above. The applicant asserts that her earning capacity can and will be more as the parties' son grows up. At the moment he suffers separation anxiety and so working during the school holidays and outside of school hours is a significant challenge for the applicant. She hopes to increase her earnings over the coming years to former levels or to increase it beyond that. In the meantime, the applicant needs to look to her investments to make up the difference between her income and her outgoings, which she quantifies as being £3,563 per calendar month after she takes on an affordable mortgage of £650 per calendar month. Her mortgage capacity evidence shows that she could borrow £124,000 and I accept that this is what she could bear.

35. The respondent's income is at least £24,000 per annum net of tax and expenses. He is, in my view, not properly exploiting his earning capacity and could earn around £10,000 more per annum net. On the basis of his current asserted income, he has a mortgage capacity of £113,900 according to a mortgage capacity report prepared at the applicant's request. The respondent himself has not provided mortgage capacity evidence in breach of orders to do so. If he were earning £30,000 net per annum, he could borrow £158,000 and if he were earning £35,000 per annum net his mortgage capacity would be as high as £187,500.

36. The capital assets and resources available to the parties are as set out above. There is no evidence that either party has any other financial resources. Neither party has any significant liabilities, although the respondent is yet to meet the costs order made against him and the applicant has outstanding legal costs to meet from these proceedings.

37. The applicant is 38-years-old and has some 29 years of working life left. The respondent is 42 years old and has some 25 years of working life left. Both parties are in good health. They had an average standard of living in the South East of England, with needs met and enough to take holidays, but there was no extravagance. Their son attends a state primary school and will continue in state education.

38. The applicant does and will continue to provide the majority of care for the parties' son. She made the bulk of the financial contribution to the parties' lives during the marriage and will continue to do so in future, although while the relationship was subsisting both parties made a likely equal contribution to the welfare and practical needs of the family.

39. The parties will, as a result of the divorce, lose any right they have to share in the other's pension income and in their estate on death. In this case, only the applicant has any pension provision and that is very small. They are both highly unlikely to die any time soon and so the question of sharing in an estate does not arise in this case.

40. Finally, although this is not a conduct case in that either party has acted in such a way towards the other during or after the relationship that their conduct would be inequitable to disregard, the respondent's litigation conduct in this matter has been deplorable. He has failed to comply with his duty of full and frank disclosure (per *Livesey (formerly Jenkins) v Jenkins* 1 AC 424) and has been, I find, deliberately opaque, obstructive and confounding in his attempts to avoid reaching a managed and reasonable outcome for both parties in this matter. His behaviour is an affront to the Court and is psychologically and financially abusive to the applicant, requiring her to pay legal fees which she should not otherwise have had to meet, and taking her to this final hearing in which he attempted to divert the focus on the issues so far as to attempt to derail the hearing.

41. If the respondent considers that he has not had the chance to put his case properly, as he complained during his oral evidence, then that is simply untrue. The Court assisted him far more than it should throughout these proceedings (which have run for almost two years now) in order to try to get him to provide the necessary disclosure so that the Court

could determine his needs, to formulate a position to help him address the applicant's case and to present his own, and to assist him to structure questions where he repeatedly failed to focus on the points necessary for the Court to understand and to determine what would be a fair division of the assets for both him and for the applicant.

42. There is no doubt in this matter that the respondent's conduct during these proceedings will sound in costs. I heard submissions on the principle prior to delivering judgment in this matter. Again, the respondent was unable to focus on why he should or should not meet the costs incurred. He reverted again to stating that he was giving the applicant what she wanted – i.e. to leave everything to him and to live with her parents forever (which is not the case at all) and refused to acknowledge that the way in which he conducted his side of the proceedings had caused costs to be run up (because the applicant's solicitors had to chase and chase him for information and deal with irrelevant and lengthy correspondence from him). Even this morning the Court has received unfocussed emails containing criticisms of the legal system itself from the respondent (the respondent frequently asserts that "this country will protect its own citizens" insinuating nationalist and exclusive attitudes running through the country's structures, which assertion I wholeheartedly reject). Such correspondence takes time to consider and address if necessary and where correspondence of this nature was sent to the applicant's solicitors, then it caused her to incur costs which were entirely unnecessary.

43. In considering the costs issue, I have borne in mind Family Procedure Rules 2010 rule 28.3 and in particular the provisions of rule 28.3(6) and (7):
(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).
(7) In deciding what order (if any) to make under paragraph (6), the court must have regard to –
(aa) any failure by a party, without good reason, to—
(i) attend a MIAM (as defined in rule 3.1); or
(ii) attend non-court dispute resolution;

(a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and

(f) the financial effect on the parties of any costs order.

(8) No offer to settle which is not an open offer to settle is admissible at any stage of the proceedings, except as provided by rule 9.17.

44. I also note the associated Practice Direction 28A at paragraph 4.4 which states:

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. This may be of particular significance in applications for variation orders and interim variation orders or other cases where there is a risk of the costs becoming disproportionate to the amounts in dispute. 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. Where an order for costs is made at an interim stage the court will not usually allow any resulting liability to be reckoned as a debt in the computation of the assets.

45. In this case the respondent has, for the reasons set out above, fallen within every provision of rule 28.3(7) (save that I have no information about his willingness to engage

in non-court dispute resolution as these proceedings began before the recent changes in the rules in that regard).

46. I have had regard to the financial effect of any costs order being made upon the respondent. The order that I propose to make will still meet his needs, although I have the power to make orders that take him beyond the ability to meet his needs where his litigation misconduct needs to be so penalised (per *WC v HC* [2022] EWFC 40 and *HD v WB* [2023] EWFC 2, both Peel J decisions).

The Order

47. In order to meet the needs of the applicant and the parties' son, the applicant will need the bulk of the equity in the family home. She originally sought for the property to be transferred to her, but recognises that in order to meet both parties' needs, it must be sold. It is plain that it needs to be sold with vacant possession and the evidence I have seen and heard is clear that it needs some work doing to it to make the property marketable. The applicant is concerned that the respondent has caused damage to the property, either deliberately or through neglect, and seeks an order that a proportion of the monies payable to him up to £5,000 will be reserved to pay for those repairs and redecoration. If there is any balance after those repairs / redecoration costs are met, then those monies will be paid over to the respondent too.

48. I have the power, when ordering a sale of property, to make consequential directions and that can include delivery up of the property to a purchaser *or any other person* to facilitate a sale with vacant possession per FPR rule 9.24(2)(a). This is not an interim sale so the question of termination of the respondent's home rights at any time other than in the making of a final order for financial provision, identified as a problem in *BR v VT* [2015] EWHC 2727 (Fam), *WS v HS* [2018] EWFC 11 and *RA v KS* [2023] EWFC 102, does not arise. In this case the respondent will deliver up possession of the family home within 6 weeks of the making of this order to the applicant so that she can inspect, repair and maintain the property ready for its sale. The applicant agrees to the respondent staying in the property until 7 May 2025. Where the respondent fails to leave by that date

then he shall pay a charge to the respondent for use and occupation of that property in the sum of £49.32 per day, that being the daily rate at a rent of £1,500 per calendar month, which I take to be the correct rate for a 3-bed house in this area of the country. That sum shall be deducted from his share of the net proceeds of sale of the family home.

49. The respondent will need funds to find somewhere else to live, and so the applicant's Halifax Share Dealing Account and associated ISA will be liquidated within 14 days of the making of this order. I note this should be in an ISA wrapper and so tax free, but if I am wrong and there is any capital gains tax to pay on the liquidation of that asset, then the CGT shall be calculated and paid (the costs of doing so shall be taken from the sums obtained from this account and so borne equally), and the net liquidated funds divided in equal shares, save that from the respondent's share the sum of £5,643 shall be deducted and paid to the applicant in satisfaction of the costs order made by District Judge Rahman.

50. Given his behaviour and attitude in these proceedings and intransigence towards the applicant, I cannot trust that the respondent will actively engage in the sale of the family home, so the applicant will have sole conduct of the sale and she shall provide the respondent with at least fortnightly updates as to its progress. The proceeds of sale shall be distributed as follows:
    (a) In redemption of the mortgage;
    (b) In payment of the conveyancer's costs;
    (c) In payment of the estate agents' costs;
    (d) As to the balance, as to 68 percent to the applicant and 32 percent to the respondent, save that from the respondent's share a sum of up to £5,000 may be deducted and paid to the applicant upon provision to the respondent of invoices and photographic evidence showing the costs of repair / redecoration of the property. Where the costs of repair and readying for sale come in at less than £5,000, then the respondent shall retain that surplus. Where the costs of repair and readying for sale come in at more than £5,000 then the applicant shall bear that extra expense.

51. On the basis of the current figures, the applicant will obtain a housing fund of £384,000 including exercising her mortgage capacity of £124,000 and the respondent a housing fund of £235,000 when exercising his mortgage capacity of £113,000.

52. With those funds and her maximum mortgage capacity the applicant can purchase a suitable 2-bed house or flat worth around £350,000 - £360,000 plus costs of sale and refurbishment near to the parties' son's school. The respondent can purchase a suitable 1-2 bedroom flat or house a bit further away, but he currently has no need to be in a school catchment and can travel to see his son, where he chooses to do so.

53. The applicant will retain her other savings and investments, her minimal pension provision and her car. She needs them in order to make ends meet pending an increase in her earning capacity. The respondent will retain his vehicles. He can take steps to increase his earning capacity immediately and make pension provision for himself.

54. The chattels in the family home can be divided in the manner in which the parties choose, but any dispute about them should be resolved by non-court means, such as arbitration on paper.

55. Otherwise, and subject to costs, the quantum of which I shall now deal with, there shall be a clean break in this matter.

This is my judgment.
Deputy District Judge Helen Brander
18 March 2025

Costs

1. Following delivery of the judgment I heard submissions on the quantum of those costs. I went through the applicant's N260 dated 12 March 2025 with the respondent and explained what each line said.

2. I dealt with the principle of costs above. The respondent shall make a contribution towards the applicant's costs incurred between financial dispute resolution appointment and now. Given his egregious conduct towards the applicant and towards the Court I consider that the assessment of those costs should be on the indemnity basis as his conduct has been so highly unreasonable.

3. The respondent's response to the question of quantum was that he had been bullied all this time and it was unfortunate that the Court had not accepted this. I asked again whether he took any issue as to the amount of costs incurred. His response was that he is unable to pay such an amount, he has no intention of paying such an amount and he sees no need to pay such an amount.

4. I disagree with all three of those contentions. He will be able to pay costs from the proceeds that he receives from the matrimonial home. He will still be able to purchase a suitable home even where he has to pay the full amount of costs, provided he exercises his mortgage capacity and chooses to work more effectively.

5. There is a need to pay these costs as he has caused the applicant to incur them. It is his actions and inaction that have resulted in these costs.

6. He may not see any need to pay them, but I do. This is the sanction that the court imposes for flouting of orders and for harassing and financially abusive behaviour that is so significant that it amounts to litigation misconduct.

7. The only figure I take issue with is the application for the QLR that was not pursued, and where it had been dealt with by District Judge Rahman. The sums there are £195 plus VAT and £184 court fee which shall be deducted from the £23,896 - £418 = £23,478 payable as indemnity costs summarily assessed today, and which shall be deducted from the respondent's share of the net proceeds of the matrimonial home.

Post-script: I provided written copies of this judgment to the parties to follow as I delivered the judgment. Prior to delivering it, I used the MS Word translate tool to translate a copy of that

judgment into the respondent's own language, which he and the interpreter confirmed he could follow and understand, notwithstanding any particular grammatical glitches that arose. Copies of both the English and the other language judgment were then uploaded to the portal.

Deputy District Judge Helen Brander
18 March 2025