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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	07/31210
	Delivered:	11/12/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION  
(MATRIMONIAL OFFICE)

Between:

EVELYN McPHILLIPS

Petitioner

and

NOEL McPHILLIPS

Respondent

Ms Adele O'Grady KC and Ms Maire Kelly (instructed by Tiernans Solicitors) for the  
Respondent/Appellant

Ms Nessa Murnaghan (solicitor of Murnaghan & Fee Solicitors) for the  
Respondent/Petitioner

McLAUGHLIN J

*Introduction*

[1] This is an appeal against a costs order made by Master Moore on 5 March 2025. The Master's order was made on foot of a summons for consequential directions pursuant to Article 25(6) and/or Article 26(4) of the Matrimonial Causes (Northern Ireland) Order 1978 ("the 1978 Order"). By previous order dated 25 February 2025, Master Moore ordered that the wife pay the costs of the summons, together with further costs to be determined at a review hearing on 5 March 2025. The order made by Master Moore on 5 March 2025 was in the following terms:

"IT IS ORDERED that the Respondent wife is to pay the Petitioner costs in the fixed sum of £1,000 plus VAT, to include outlay."

[2] The wife was the petitioner in the original ancillary relief proceedings, but the respondent to the application for consequential directions. She is also the

respondent to this appeal. The husband was the applicant for consequential directions and the appellant in this appeal. In order to avoid confusion, I will refer to the parties as the “husband” and the “wife”. The husband appeals against the order of 5 March 2025 on the ground that the sum of £1,000 plus VAT does not represent fair remuneration for professional fees associated with the application for consequential directions.

[3] The husband was represented by Ms Adele O’Grady KC and Ms Maire Kelly BL, instructed by Tiernans Solicitors. The wife was represented by Ms Nessa Murnaghan, Murnaghan & Fee Solicitors. I am grateful to all legal representatives for the helpful and constructive manner in which the appeal was presented. It was submitted on behalf of the husband that the issue of the appropriate remuneration rates was of broader importance to legal practitioners in Northern Ireland generally and to those working in the Family Division in particular.

[4] For the reasons set out below, I have not found it necessary to conduct a taxation exercise in order to determine this appeal. My decision is to uphold the decision of the Master for reasons unrelated to remuneration rates. This judgment should not therefore be interpreted as determining appropriate rates for professional remuneration in an application for consequential directions or similar proceedings.

[5] As set out below, the application for consequential directions resolved without the need for a contested hearing before the Master. It was not therefore necessary for the Master to reach detailed conclusions of fact and the wife did not file any replying affidavit evidence. The appeal therefore proceeded on the basis of the affidavit evidence which had been filed on behalf of the husband in support of the application for consequential directions, together with some additional facts and materials which were submitted by agreement. The facts set out below are therefore based upon the evidence and agreed facts presented on the appeal.

### *Background*

[6] On 20 September 2022, the High Court entered a consent order embodying the terms of a matrimonial agreement reached between the parties on foot of an application for ancillary relief by the wife. The primary matrimonial assets were the former matrimonial home at Newtownbutler, Co Fermanagh (“the home”), together with adjacent lands compromised in Folio FE119 (“the lands”). At the time of the agreement and the events relevant to these proceedings, the wife remained resident in the home along with the children of the marriage. The matrimonial agreement provided for the sale of both the home and the lands, through a jointly appointed agent with the net proceeds of sale to be divided equally between the husband and wife. The husband’s solicitor was to have carriage of the sale and the wife was entitled to remain in possession, pending completion. The agreement also provided that both parties should have liberty to apply for the purposes of enforcement

(clause 19). The relevant portion of clause 1 of the consent order provided as follows:

“(1) ... The parties nominate Smyth Leslie & Co, Estate Agents, to market the property. The parties shall each provide all necessary co-operation in and about the marketing and sale of the property. The property shall be marketed for sale with an asking price recommended by the selling agent. The property shall be sold at a price recommended by the selling agent. Neither party will refuse any reasonable purchase offer and shall be guided by the selling agent as to what amounts to a reasonable offer ...”

[7] The core obligations upon the parties were therefore to co-operate in the sale, to agree upon an offer and otherwise to act upon the professional advice of the agent as to whether or not a purchase offer was reasonable. While not stated expressly, it is implicit in the agreement that, in the event of disagreement between the parties as to whether or not a purchase offer should be accepted, the view of the agent was to guide the parties. While the agreement does not go so far as to provide that the agent's opinion was determinative, it is clear that his view was to be central to an assessment of the reasonableness of the conduct of either party in the event of disagreement about a sale. His view would also be central to any application for consequential directions or if enforcement was sought pursuant to the liberty to apply provision. Accordingly, in the event of disagreement between the parties, it was of central importance that the views of the agent should be obtained. Unless and until the agent had advised that a purchase offer was a reasonable one which should be accepted, it is difficult to see how a refusal by either party to accept the offer could be regarded as so unreasonable as to amount to a breach of the terms of the consent order. Pending such advice, either party would be entitled to expect that the default position would apply namely that *“the property shall be marketed for sale at a price recommended by the selling agent”* and that they would each be obliged to co-operate in the marketing process. It is also implicit in the agreement that the agent would exercise independent professional judgment as to the reasonableness of any offer (whether in terms of price or conditions) and also whether marketing efforts should continue before reaching a view upon the reasonableness of any offer.

[8] The home and the lands were placed on the market for sale on 6 October 2023. On 30 November 2023, formal offers of £180,000 for the home and £140,000 for the lands were received from a prospective purchaser (“KR”). I understand that the offers were mutually conditional upon acceptance of the other offer. Both parties were willing to accept the offer of £140,000 in respect of the lands. It appears that this offer (and possibly the offer in respect of the home) had been made by KR prior to formal marketing of the property. In an email dated 16 August 2023, the wife's solicitor wrote to the husband's solicitor confirming *“My client is agreeable to the sale*

*of the yard ... to [KR] at the price of £140,000, subject to the terms of the settlement agreement reached between my client and [the husband]."*

[9] The key issue between the parties was therefore whether or not KR's offer of £180,000 in respect of the home should be accepted.

[10] The remaining chronology is important to the issue of costs. The summary below emerges from a combination of the correspondence, the evidence before the Master, the court record and submissions made during the appeal hearing.

30 November 2023 The agent advised both solicitors that KR's offer was the best offer at that time. His email to the solicitors stated that he had informed KR that the "*offer is being submitted to yourselves for discussion and consultation with your respective clients and I will revert to him in due course.*" The agent, therefore, stopped short of advising that this was a reasonable offer which should be accepted at that time. He simply invited instructions from the parties.

1 December 2023 The husband informed both the wife and the agent that he was willing to accept KR's offer. His solicitor asked the wife's solicitor to confirm whether she was agreeable to accepting the offer and stated, "*In the event this is not agreed, we intend to refer this matter back to the Master to seek approval.*" It is of note that the husband's correspondence did not refer to the opinion of the agent about the reasonableness of the offer.

12 December 2023 The husband's solicitor requested an update from the wife's solicitor on her attitude to the offer from KR.

8 January 2024 The husband's solicitor wrote to the wife's solicitor expressing disappointment that they had not received confirmation about whether the wife was willing to accept KR's offer. The letter stated, "*We therefore write to put you on notice that unless we receive a satisfactory response within 7 days from the date hereof, we intend on issuing an application for consequential directions and will seek the cost of this application from your client.*" It is again of note that the correspondence makes no reference to whether the husband had sought the views of the agent about whether marketing should continue or whether the offer should be accepted.

17 January 2024 The wife's solicitor wrote to the husband's solicitor stating that the agent had informed her of renewed interest in the home with a prospective viewing. The letter states, "*... in the circumstances, I would suggest that it would be appropriate for [the*

*agent] to continue with viewings in order to establish if any increased offers are made."*

19 January 2024 The agent confirmed that there had been several enquiries since the Christmas break which he was pursuing and that a viewing of the home had been arranged for 22 January 2024.

31 January 2024 The agent confirmed by email that no further offers had been received following the viewing, that he was awaiting communications from another party who had expressed an interest and that he would "*keep you informed of any further developments.*"

7 February 2024 The agent informed the husband's solicitor that there had been no further offers since the viewing, that he would continue to follow up with the interested party, that he had been in touch with a different party who had previously expressed interest but there had been no developments to date. The email concludes, "*Will be keeping you posted.*"

7 February 2024 The husband's solicitor swore an affidavit which was later used in support of the application for consequential directions. The affidavit contains the following averments:

5. ... The offer [of KR] in respect of both property and the lands has been recommended to the parties by Smyth Leslie Estate Agents.
6. Both the petitioner and the respondent have confirmed acceptance of the offer for the lands in the sum of £140,000. The petitioner has, however, failed to respond to the offer in respect of the property.
7. On 1 December 2023, 12 December 2023 and 5 January 2024, I issued correspondence to the petitioner's solicitor ... [correspondence exhibited].
8. The petitioner is not engaging with the agreed sale of the property ..... The petitioner has to date not complied with the terms of the court order.
9. In the circumstances, there is no alternative but to refer this matter back to court and seek such

further order or other consequential directions as the court deems necessary.”

[emphasis added]

4 March 2024 The husband’s solicitor requested an update from the agent as to whether there were any further developments on the sale of the home.

5 March 2024 The agent responded, *“No further developments to report on this at the moment. It’s all gone a bit quiet and no fresh interest or viewings in the last month.”*

3 April 2024 Summons and affidavit for consequential directions issued in central office of the High Court. Both documents were signed by the husband’s solicitor and are dated 7 February 2024.

[11] The application for directions involved eight separate appearances before the Master and were dealt with by both Deputy Master Glover and Master Moore. A brief overview of the various appearances is as follows:

28 May 2024 **[Deputy Master Glover]** The application was opened to the Master. The wife requested that the property be marketed by an alternative estate agent and also requested a longer adjournment to seek alternative accommodation. The Master stated that she did not propose to “unpick the agreement.” She was advised that discussions would continue in parallel.

18 June 2024 **[Deputy Master Glover]** The Master was informed that the wife had now agreed to accept KR’s offer in respect of the sale of the home. The Master adjourned the matter over the long vacation to facilitate progress with the conveyance.

1 October 2024 **[Deputy Master Glover]:** The wife indicated she needed more time to find alternative accommodation. The Master allowed only a short adjournment for matters and negotiations to continue.

6 November 2024 **[Master Moore].** The case opened again to the Master. Master Moore adjourned the application for a short period of time to facilitate completion.

4 December 2024 **[Master Moore].** A further adjournment was allowed to facilitate completion of the sale.

28 January 2025

**[Master Moore].** The Master was advised that completion had almost been achieved. The delay in completion was due to a delay in obtaining an effluent discharge consent from the Department for Infrastructure. There was no suggestion that either party was to blame for this delay. The Master was advised that the costs of the proceedings would be an issue. The Master directed an exchange of position papers. Completion of the sale to KR occurred on 7 February 2025.

25 February 2025

**[Master Moore].** The husband made an application for the costs of the consequential directions application. The wife submitted that she had not been in breach of the agreement. The Master held that the wife would be liable to pay costs. He asked for a schedule of the husband's costs and indicated that quantum would be decided at the next review.

5 March 2025

**[Master Moore].** Final order awarding costs of £1,000 plus VAT against the wife.

### *Submissions of the Parties*

[12] On behalf of the husband it was submitted that the wife was in breach of the consent order by failing to agree the offer from KR for the sale of the home. It was submitted that her failure to do so justified issuing the application for consequential directions in the course of which she accepted the offer. The majority of the husband's submissions related to the Master's approach to the assessment of costs and the quantum of the costs award rather than his decision to award costs. On the issue of quantum, it was submitted that counsel was entitled to a brief fee for the consequential directions application, together with additional fees for drafting and appearances at each review hearing. It was submitted that these should be assessed at least in accordance with the scale approved by the Taxing Master for interlocutory hearings.

[13] On behalf of the wife, it was submitted that she had never been in breach of the consent order. It was submitted that at the time the application for consequential directions was commenced, viewings had recently taken place through the agent and that it had been reasonable for her to await a further period of time before deciding whether or not KR's offer should be accepted. She did not consider that proceedings were necessary as the marketing process was ongoing. Reference was also made to the agent's facilitation of ongoing marketing by following up expressions of interest, which continued until late April 2024. It was also submitted that once proceedings had commenced, the wife did not delay unreasonably in accepting KR's offer and that she had never failed to co-operate in the marketing or conveyancing process. She communicated her acceptance of KR's offer in advance of the second review hearing on 17 June 2024. It was also pointed out that the husband's solicitor had carriage of the conveyance. Any delay in completing the

conveyance was due to the absence of a departmental consent for effluent discharge, for which neither party was responsible. No evidence was provided on behalf of the husband that the delay between the wife's acceptance of KR's offer in June 2024 and completion of the sale in February 2025 was due to any action or inaction on the wife's part. Indeed, it was pointed out that the progress of the transaction had been kept under careful review by the Master and that the wife's requests for additional time to find alternative accommodation had been refused. Notwithstanding the wife's position that she did not breach the consent order, she did not request that the costs order should be varied and confirmed her willingness to make a contribution of £1,000 + VAT towards the husband's costs.

### *Consideration*

[14] The power of the court to make an order for consequential directions pursuant to Article 25(6) and/or 26(4) of the 1978 Order applies where the court has previously made an order for financial provision in connection with divorce proceedings or a property adjustment order under Part III of that Order. The court's powers under both provisions include giving "directions requiring the disposal of any property." There are many reasons why it may be necessary for a court to give consequential directions on the disposal of property or other provision in a court order for financial provision and/or property adjustment. There may have been material changes in the circumstances of the parties which affect their ability to implement the terms. Where property adjustment orders have been made, there may be difficulties in completing a sale (eg issues of title or conveyancing) which may have been unexpected, or there may simply be non-compliance by one or other party. The important point is that an application for consequential directions need not necessarily involve fault or non-compliance by one of the parties to the proceedings. There may be many legitimate reasons why further court involvement is necessary, even where both parties have acted in good faith. The costs associated with such applications must therefore be approached in light of the facts of the case and the context in which the application is brought. The general principles governing the award of costs are those provided for in Order 62, rule 3 of the Court of Judicature (NI) Rules 1980, namely that no person shall recover costs unless in accordance with an order of the court (rule 3(2)); that if the court decides to make an award of costs, they shall "follow the event" unless the court considers that some other order should be made in the circumstances of the case (rule 3(3)) and that where costs are ordered to be taxed, they should be taxed on the standard basis, unless the court considers that they should be taxed on an indemnity basis (rule 3(4)).

[15] As appears from the above chronology, the application for consequential directions was initiated by the husband on the basis that he wished to sell to KR, whereas the wife had not agreed to the offer. The express basis for the application was that the wife was in breach of the consent order by failing to accept the offer. This is stated expressly in the grounding affidavit sworn by the husband's solicitor. The "event" which the husband relied upon for the purposes of the costs application

was the wife's agreement to accept KR's offer, which was communicated on 17 June 2024. For the reasons set out below, I do not accept that the wife was in breach of the consent order, either on the date the proceedings were prepared (7 February 2024) or on the date when they were filed (3 April 2024). Accordingly, I do not accept that her later acceptance of the offer amounted to an "event" for the purposes of Order 62, Rule 3(3). However, even if it could constitute the event, I consider that an alternative costs order is appropriate in the circumstances of the case.

[16] The consequential directions application was signed by the husband's solicitor on 7 February 2024 and her supporting affidavit was sworn on the same date. For reasons which were not clear, the email exchange between the husband's solicitor and the agent dated 4 March/5 March 2024 was included within the exhibits to that affidavit. It is not possible for the solicitor to have sworn an affidavit on 7 February 2024 which exhibits correspondence dated 5 March 2024. Clearly, there has been some error or other irregularity in the preparation of that affidavit. In common with all of the correspondence between the parties and the agent, the email exchange is marked "Exhibit 2" in manuscript. It clearly formed part of the exhibits to the affidavit and was not simply added to the appeal bundle by agreement. No explanation has been provided for this discrepancy. Whatever the explanation might be, the application and affidavit were not presented to the High Court until 3 April 2024, as both documents bear that date stamp.

[17] No further evidence is available to the court regarding events or the conduct of the parties between the advice of the agent on 5 March 2024 that he had no further developments to report and the date proceedings were presented to the High Court on 3 April 2024. By conducting a comparison between the above chronology and the averments contained at paras [5] – [9] of the affidavit of the husband's solicitor, it is clear that the affidavit presents a less than complete picture of events. It was averred (at para 5) that the offer in respect of the sale of the home to KR "*has been recommended to the parties by Smyth Leslie Estate Agents.*" I do not accept that this accurately reflected the agent's position, either on the date of swearing (7 February 2024) or on the date of filing (3 April 2024). On the same date the affidavit was sworn (7 February 2024), the agent provided an email update to the husband's solicitor about the viewings which had taken place a fortnight previously and stated that he intended to follow up on the matter and that he "*will be keeping you posted.*" The agent's statement falls far short of a recommendation to accept the offer from KR. The affidavit also omits to make any reference to the potential interest in the property which emerged in January 2024 and which had resulted in a viewing on 22 January 2024 from a new party. That was a highly material omission as the new interest was clearly known to the solicitor on the date the affidavit was sworn, since she emailed the agent that day for an update about the viewing. Similarly, it is not clear how or why the husband's solicitor averred (at para 6) that the wife had "*failed to respond to the offer in respect of the property.*" That averment is clearly incorrect. The wife had made her position clear in open correspondence dated 17 January 2024 and addressed to the husband's solicitor that there had been renewed interest in the property and that, in her view, it was appropriate for viewings to continue in order

to establish whether any increased offers were made. Indeed, on 31 January 2024, the husband's solicitor copied the wife's solicitor to an email addressed to the agent seeking an update following the viewing on 22 January 2024. She was clearly aware that the wife had responded to the offer by suggesting continued marketing. It is therefore entirely unclear why the solicitor has averred that the wife did not respond to the offer.

[18] For a similar reason, I also consider that the solicitor's averments (at paragraph 9) that the wife was "*not engaging with the agreed sale of the property*]" and that she "*has to date not complied with the terms of the court order*" are not accurate and present a picture of events which is less than complete. Not only is it clear that the wife was engaging in the agreed process by facilitating the viewings arranged by the agent, but that agent had not offered an opinion on whether KR's offer was a reasonable one which should be accepted. Unless and until that opinion had been provided to both parties, I do not consider it could properly be argued that she was in breach of the consent order. The solicitor has not explained how or why she was of the view that the wife had failed to comply.

[19] The evidence which was included in the affidavit ends in March 2024 and says nothing about the agent's view after at the date of proceedings. The evidence which is available March 2024 is consistent with the agent supporting ongoing marketing of the property, insofar as he continually informed the parties that he would keep them updated about any new interest or the position of those parties who had previously expressed an interest. There is no evidence that he ever expressed the view that KR's offer was a reasonable one which should be accepted. The fact that the agent appeared to favour continued marketing is also supported by the submissions made during the appeal hearing. I was informed by both parties that it was an "*agreed fact*" that on 24 April 2024, the estate agent had confirmed that there was still possible interest in the sale of the home. It was also agreed that on 1 May 2024, the agent confirmed that the potential new interest had come to nothing. In light of this agreed evidence, is not clear how it could possibly be correct that the wife had failed to comply with the agreement by not accepting KR's offer.

[20] For all of these reasons, I do not consider that the evidence presented to the court provides a complete or accurate reflection of the position of the parties either on the date the affidavit was sworn or on the date proceedings were issued. In simple terms, the agreed position of both parties was that the agent had continued to market the property with the possibility of fresh interest until late April 2024. This was three weeks after the proceedings had been commenced and eleven weeks after the husband's solicitor swore an affidavit averring that the wife was not engaging in the agreed sale process and was in breach of the consent order. The only available evidence of the agent's views was the "*agreed fact*" that on 1 May 2024, he had indicated that the potential new interest had come to nothing.

[21] In this case, the purpose for which the application for consequential directions was made was alleged to be the wife's breach of the agreement by failing to accept

KR's offer in circumstances which were unreasonable. The agreement provided expressly the mechanism by which the reasonableness of a party's position should be assessed, namely the advice of the independent estate agent that the offer was reasonable and should be accepted. On any reading of the evidence, which was available to the court, this crucial issue was simply not addressed. Rather than seeking an opinion from the agent as to whether or not the offer of KR represented a reasonable offer at any given point in time, the husband simply proceeded to issue this application and asserted his own opinion as to the wife's unreasonableness. When the husband's solicitor did ask for an update, the agent invariably responded that he would keep the parties advised as to any future interest. In my view, this was a fatal omission on the part of the husband in applying for consequential directions on the asserted basis that the wife was in breach of the agreement. Unless and until the agent had advised that the offer of KR was a reasonable offer in the circumstances I do not consider that there was a proper basis upon which the husband could be justified in seeking consequential directions from the court as to the disposal of the property on the ground that the wife was in breach of the agreement. On the contrary, I consider that she was entitled to expect that the default position would apply, namely that marketing would continue for as long as Mr Smyth considered it reasonable to do so. In my view, that is precisely what the wife did and that she acted in accordance with the agreement.

[22] As a result of all of the above, I have extreme misgivings about the necessity for these proceedings and I reject the submission that the wife was in breach of the agreement, when the proceedings were issued on 3 April 2025. On the date of the affidavit (7 February 2025) I consider that the evidence falls even further short of establishing a breach on the part of the wife. On that very same day, the husband's solicitor wrote to the agent seeking an update following the viewing on 22 January 2025 and was informed that he would be keeping her posted. In my view, it cannot conceivably be contended that the wife was in breach on that date.

[23] In my view, for all of the reasons set out above, there was considerable force in the submission that the wife should not be penalised in costs at all. The proceedings were commenced on the basis that the wife had been in breach of the agreement and I reject that submission. It is also clear that this was not a case in which something unexpected had occurred during the sale process for which the further intervention of the court was appropriate. As regards the costs order, I must therefore do my best to do justice between the parties. I acknowledge that there was a period of approximately two months between commencement of proceedings in April 2024 and confirmation by the wife at the second review hearing in June 2024 that she would accept KR's offer. However, it is clear that during at least some of this period interest in the property remained and that it was not until 1 May 2024 that the agent confirmed this had come to nothing. It is difficult for the court to assess the reasonableness or otherwise of the wife's conduct in the absence of clearer evidence of the agent's opinion for the remainder of this period. Clearly, the Master considered that an award of costs was appropriate in principle and he appears to have regarded the delay by the wife in confirming her position during this period to

have been unreasonable to some degree. However, the basis for any such conclusion is not clear. I do note that Master Moore did not have conduct of the proceedings during the period in which some delay might have been attributed to the wife. Thereafter, the conveyancing process was handled by the husband's solicitor. While the wife did request a further period of time to find alternative property, this request was refused and the chronology of court review hearings suggests that the conveyancing process continued in its normal course until completion in February 2025, as soon as the discharge consent was available. There does not therefore appear to be any evidence that the wife unreasonably interfered with or otherwise delayed the conveyancing process during any period after June 2024.

[24] On the appeal, the husband/appellant submitted that the wife had not made a cross-appeal against the order for costs. While this is correct, an appeal to the High Court from a decision of the Master is a complete rehearing on the merits. Accordingly, a cross-appeal is not necessary. The court has full power to determine the issue of costs afresh.. I do not therefore attach any significance to the absence of a cross-appeal.

[25] Stepping back and looking at the matter in the round, I consider that the appropriate outcome is to affirm the order of the Master below. In doing so, I am prepared to make the assumption that that the Master is likely to have concluded that there was some degree of unreasonable delay on the part of the wife in confirming acceptance of KR's offer after proceedings had been commenced and I am not prepared to disturb that assessment. I also note the position adopted by the wife on appeal namely that she remains willing to make a contribution of £1,000 + VAT towards the husband's costs of the proceedings. In affirming the Master's order, I wish to make clear that I do not make any finding as to the propriety of the Master's assessment of costs as a reflection of the work undertaken by the husband's legal representatives in connection with the consequential directions application. Rather, my decision is based upon the finding that the wife was not in breach of the agreement at the time proceedings were commenced and that any liability for costs is only attributable to a period of subsequent delay in confirming acceptance of KR's offer. For the avoidance of any doubt, I will vary the order to the extent only that the liability of the wife should be recorded as being a contribution to the husband's costs of the consequential directions application.

[26] In conclusion, I also wish to make two further matters clear. First, I found the content of the affidavit of the husband's solicitor to be unsatisfactory for all of the reasons set out above. If I had been pressed to do so and if I had been presented with more detailed evidence, I may have considered exercising the court's powers to make an order under Order 62, rule 10 to disallow some of the husband's costs or to penalise the husband for some of the wife's costs. However, I was not invited to do so and I will not therefore make any such order. It is sufficient to say that in any case it is incumbent upon a solicitor to ensure that any affidavit filed in court is accurate to the best of their information and belief at the date it is sworn. If there is a delay between swearing and filing and there have been material changes in

circumstances during that period, the affidavit should either not be filed or it should be supplemented by further evidence to ensure that the court has a complete and accurate picture of material events. Second, if I had felt it necessary to conduct a taxation exercise, I may very well have been persuaded as to the merits of an increase in the amount allowed by the Master. However, I make no comment upon what the appropriate amount of costs might have been in those circumstances. Insofar as this appeal was brought on the basis that it raised a point of importance on quantification, I have decided the case on a different basis. Any issue about the appropriate method for taxing costs in proceedings of this nature can be dealt with in a different case where there is no issue of principle about the propriety or necessity for the proceedings in the first instance.