

Neutral Citation No: [2026] NIMaster 4

Ref: [2026]NIMaster 4

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 21/66505

Delivered: 27/02/2026

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION
PROBATE AND MATRIMONIAL

BETWEEN:

M

Petitioner

v

L

Respondent

Ms Murray (instructed by Sheridan Leonard) for the Petitioner
Ms Robinson (instructed by McIlvenny Law) for the Respondent

COSTS RULING

MASTER MOORE

Introduction

[1] The husband has applied for a costs order in respect of contested ancillary relief proceedings. I issued a written judgment regarding the distribution of matrimonial finances on 4 February 2026 and directed that the parties each file a short submission together with any inter-partes correspondence relevant to the costs' arguments. I have carefully considered this correspondence and explored the relevant authorities with counsel, before delivering an ex-tempore decision on 25 February 2026. The detailed reasons are set out below.

[2] The parties are requested to consider the terms of this judgment and to inform the Matrimonial Office in writing within one week as to whether there is any reason why the judgment should not be published on the Judiciary NI website or as to

whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale, then it may be published in its present form.

[3] The primary asset for division in the ancillary relief proceedings is the equity in the former matrimonial home in Newtownabbey. The house was revalued before the hearing at £200,000, meaning that the available equity was approximately £133,000. For the reasons set out in my judgment, I concluded that the equity in this property should be distributed on the basis of a 75:25 division in favour of the wife, meaning that in order to achieve a clean break the wife would have to pay a lump sum of £33,250 to meet the husband's lower percentage interest. It was also an important factor in my decision that the wife should be allowed 12 months to gather up this lump sum payment, failing which the house would have to be sold.

The husband's case on costs

[4] The husband argued that he should be entitled to his costs from the date of the FDR hearing before Master Sweeney for the following reasons:

- (i) He had accepted the indication given by Master Sweeney at the FDR hearing, which he understood to be a lump sum of £33,232. His counsel, Ms Murray, submitted that he had achieved a better outcome at the final hearing.
- (ii) That during the course of proceedings he had made several settlement offers including an offer in November 2024, shortly before the FDR hearing, that he would accept £25,000 in order to settle the case. He submits that the wife did not make any realistic offer during the course of the proceedings and that costs have now been incurred, which could reasonably have been avoided.
- (iii) Following the FDR hearing, he had sent a detailed *Calderbank* letter dated 25 February 2025. In that letter the husband offered to accept £30,000, a lower amount than the Master's indication, provided payment was made within 12 weeks. The wife did not respond to this letter and in circumstances where the wife was now required to pay a higher lump sum, she should meet the further costs, in accordance with the principles set out in *Calderbank v Calderbank* [1975] 3 All ER 333 (and the other authorities specifically listed in the husband's letter).

[5] At the time when the *Calderbank* letter was sent in February 2025 the husband's costs were £6,692 to include counsel's fees, outlay and VAT. The further costs incurred post-FDR by the husband are approximately £15,000.

The wife's position on costs

[6] On behalf of the wife Ms Robinson argued that costs should not be awarded to the husband, for reasons which I have summarised as follows:

- (i) That the husband had not improved on the FDR indication. Counsel submitted that the indication given by Master Sweeney was that the equity should be divided 70:30 in favour of the wife, whereas I had ordered that the distribution should be 75:25, meaning that the wife secured a better percentage outcome following the contested hearing. Ms Robinson pointed out that the husband's percentage of the equity was reduced and the resultant lump sum had marginally increased only because the property value had appreciated by £20,000 during the 12-month period from the FDR to the final hearing. Furthermore since 2020, it was relevant that the husband had not made any payments towards the mortgage, whereas the wife had battled to reduce the loan and increase the equity.
- (ii) The wife had not been in a position to offer a lump sum as her financial circumstances were hampered firstly, by the husband's continued refusal to agree to a re-mortgage at a more affordable interest rate and secondly, that the reduced calculation of his monthly child maintenance payment was based on wholly inaccurate information provided to CMS by the husband. If these matters had been properly and fairly addressed by the husband, then the wife could have approached the case differently.
- (iii) This is a needs case where the wife has had primary care of the two minor children since the parties separated in early 2023. If the wife is ordered to pay costs to the husband in addition to meeting her own legal costs, then this could tip the balance to the point where she would be forced to sell the house now. Given that the final order reflected the importance of keeping the children in their own home, a sale forced by additional costs' obligations would defeat the court's approach to balancing the needs and ensuring a fair distribution of the assets to meet those needs.

The law: Costs orders in ancillary relief proceedings

[7] Given the respective arguments raised by counsel in relation to the general conduct of this case and the *Calderbank* offer, it is worthwhile summarising the relevant principles applicable to a costs' application following a contested ancillary relief hearing. The husband's *Calderbank* letter dated 25 February 2025 refers to several well-known English authorities including *Gojkovic v Gojkovic (No.2)* [1991] 2 FLR 233 and *A v A (Costs Appeals)* [1996] 1 FLR 14.

[8] Although there are many similarities between law and practice for ancillary relief proceedings in Northern Ireland and those applicable in England, the rules in respect of costs are different. Under the current rules in England a *Calderbank* offer is no longer permitted in financial remedies cases (except in respect of appeals). The general rule is that costs are not awarded, although recent decisions from the Financial Remedies Court suggest an increased willingness, even in small money

cases, to scrutinise the conduct of the litigation where costs may have been unreasonably incurred.

[9] In Northern Ireland, Rule 1.4 of the Family Proceedings Rules (NI) 1996 provides that the Rules of the Supreme Court shall apply to the practice and procedure of family proceedings in the High Court. So, in relation to costs applications, the discretionary powers of the court are set out in Order 62. Order 62 Rule 3(3) provides that:

“If the court in the exercise of its discretion sees fit to make any order as to costs of any proceedings, the court shall order the costs to follow the event, except when it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

[10] The jurisdictional differences and relevant authorities were helpfully surveyed by Mr Justice Gillen in the cases of *Graham v Graham* [2003] NIFam 14 and *H v W* [2006] NIFam 16. In the 2005 (unreported) decision of *McM v McM*, Master Redpath addressed the circumstances in which the refusal of a *Calderbank* offer during an ancillary relief case, could result in a costs penalty.

[11] The following principles are clearly highlighted in the Northern Ireland authorities:

- (i) The court retains an unfettered, wide discretion in respect of any costs order, including to award costs in ancillary relief cases.
- (ii) There is a positive obligation on parties to openly negotiate, to make genuine efforts to settle and to undertake all reasonable financial enquiries to ensure that any settlement proposals are realistic.
- (iii) A *Calderbank* offer can be legitimately employed in ancillary relief cases.
- (iv) A costs order can still be made in a “small money” case or a “needs” case, but the court should be careful to consider any impact costs might have on the outcome of the substantive ancillary relief application.

[12] The Overriding Objective also applies to the conduct of ancillary relief proceedings and this is clearly referenced in the current Ancillary Relief Guidance Notes. In every case which progresses to the FDR hearing, the parties will be informed by the Matrimonial Master that a costs penalty might potentially arise if the case proceeds further to a contested evidential hearing. The prospect of an application for costs should not come as a surprise at the conclusion of the case.

Consideration

The outcome of the contested ancillary relief

[13] The first question to address in this costs' application is whether the husband did in fact secure a better outcome at the hearing. In percentage terms the husband's 25% share following the contested hearing was clearly not an improvement on Master Sweeney's FDR indication of 30%. I agree with Ms Robinson's point that even though the lump sum now works out at marginally higher figure (by £18), that is only by virtue of the increased property valuation and the wife's continued efforts to reduce the loan, neither of which was contributed to by the husband. My final determination reflected that the housing needs of the minor children were an important consideration and that fairness required that the wife should be allowed sufficient time (up to one calendar year) to raise a lump sum of £33,250. I am therefore satisfied that the wife did achieve a better outcome at the hearing.

The settlement offers and the husband's Calderbank offer

[14] The parties' respective approaches to negotiation, the settlement offers made and the husband's *Calderbank* letter are relevant to the question of costs in this case. Following the hearing I directed that the parties lodge the relevant correspondence regarding any settlement proposals made and any complaints about the wife being tied into the mortgage. It is clear from this correspondence that over the course of these proceedings the husband made a number of conditional proposals, which indicated some willingness to settle the case. For example, he made an offer to settle for £25,000 in November 2024, although this offer was quickly withdrawn. At the FDR hearing and again in advance of the hearing before me, the husband's lawyers had argued for a 60:40% split of the equity. Although his negotiation position changed and wasn't entirely conciliatory, in the latter stages of the case he did put forward objectively reasonable settlement offers.

[15] The wife's proposals both for the FDR hearing and the final hearing were presented in terms of taking over the mortgage, with no lump sum payment, or agreeing to a Mesher Order with a lengthy deferral of any financial payment to the husband.

[16] Ms Robinson made the point that the husband had refused to remortgage, meaning that the wife was left solely paying the mortgage on a high interest rate. Coupled with no spousal maintenance and limited child support, she believed she had no ability to produce a lump sum. In the substantive case, I accepted the argument that following separation the wife and children were not adequately supported by the husband, which justified the significant departure from equality. I did not accept the wife's argument for a Mesher Order, which I considered to be unrealistic and would not achieve a fair outcome. The husband's housing needs were also relevant to achieving a fair outcome and a clean break was required.

[17] Having carefully reviewed the inter-partes correspondence and the chronology of the case, I noted that the remortgage issue had not been formally raised in correspondence by the wife since October 2022. If indeed this was a barrier to resolution of the case, then it is surprising that the issue was not followed up by the wife.

[18] At the hearing, the husband's counsel had argued that there had been litigation misconduct by the wife which should be taken into account under Article 27(2)(g) of the Matrimonial Causes (Northern Ireland) Order 1978. I was not persuaded that the wife's conduct was such that it would be inequitable to disregard it when deciding on the division of the assets, although I did question the true extent of the wife's financial enquiries. I have not seen an agreed note of the FDR hearing, but I understand that Master Sweeney also expressed the concern that the wife had not properly explored her maximum level of borrowing.

[19] In the recent case of *HO v TL* [2023] EWFC 216 Peel J, who is the lead judge in the Financial Remedies Court in England, outlined the potential costs risks to a party who has failed to properly negotiate:

"The authorities make plain that a costs order may be made even if it reduces the needs as found by the court. These comments apply particularly to big money cases, although I take the view that in smaller value cases the court should also be willing in the right case, to make an award of costs even if only in a modest amount, to register condemnation of the party whose open proposals are far removed from the eventual outcome. The message must get across that although the starting point is no order as to costs, the courts are increasingly willing to depart from that so as to do justice to the party who has been put to unnecessary costs by the other party's overstated proposals."

In this costs application, now having the benefit of subsequently reviewing the correspondence and chronology of the ancillary relief case, I do not consider that the wife's approach to negotiation or the resolution of the case was realistic.

[20] Turning to the husband's *Calderbank* offer, Ms Robinson conceded that the wife did not reply to the letter at all. No reasonable justification has been given for the lack of response to this carefully worded correspondence or indeed to earlier settlement offers. In this letter the husband offered to accept £30,000, which was appreciably less than my assessment of his entitlement following the contested hearing. Applying the conventional *Calderbank* principles, Ms Murray argued that some penalty must arise and she was firmly instructed to seek an order that the wife meet all the husband's costs from the date of the FDR hearing.

[21] *Calderbank* offers can provide an effective and legitimate tactic in contested ancillary relief cases in this jurisdiction. They must be carefully considered by the parties. In *Graham v Graham*, the Northern Ireland court approved the following passage from Singer J in *A v A (Costs Appeals)* [1996] 1 FLR 14, which I consider applies equally in this case:

“The lesson of this case, which litigants and lawyers alike must recognise and give effect to it, is that just because ancillary applications have to be conducted and prepared in the fraught emotional atmosphere that so often and understandably exists after marriage and its breakdown, nevertheless that does not mean common sense and commercial realities can be allowed to fly out of the window. A spouse who does not respond constructively to a *Calderbank* offer, whether a good offer as in this case or only one that is bad or indifferent, stymies whatever chance there is of settlement. Such a spouse cannot with impunity expect immunity from responsibility for that.”

[22] I requested details of the additional costs incurred by both parties and was informed that the husband’s costs following the FDR hearing were in the region of £15,000. I pointed out that these costs were significantly higher than the wife’s costs for the same period. As neither party has the benefit of Legal Aid funding the overall costs for these protracted proceedings on both sides will consume a significant proportion of the modest matrimonial assets.

Conclusion

[23] In my decision on the ancillary relief application I observed that this is a case where both parties would benefit from a clean break financially and to move on from the acrimony which has been evident in this case. Although I have concluded that the wife did achieve a better percentage outcome at the hearing, I also find that she could have resolved the case at an earlier stage by taking a more realistic, proactive approach to negotiation. Reasonable settlement offers were refused and the lower monetary proposal set out in the *Calderbank* letter appears to have been entirely ignored by the wife. For those reasons the husband was justified in moving this application for costs.

[24] There are three available options in respect of making an order in respect of the costs which have been incurred from the FDR hearing. “No order as to costs”, whereby both parties simply meet their own legal costs, would be unfair on the husband, who attempted to settle the case and made a *Calderbank* offer after the FDR hearing. Against that, an order for “costs to follow the event” could potentially

undermine the outcome of the ancillary relief case and result in the forced sale of the home. The third option is a partial award or fixed amount of costs.

[25] The court retains a wide discretion, and the practical effect of any costs' award must be considered carefully. In *H v W* [2006] NIFam 16, Mr Justice Gillen stated at para 8(c):

“In a needs-based approach, the court must be wary to ensure that an award of costs does not become disproportionate to the effect of the order made. If this wife was to bear her own costs, I believe it would have a disproportionate effect on the award that I have made and would render her needs inappropriately provided for.”

[26] In this case, it is particularly important to ensure that an order for costs against the wife does not undermine the objective of fairly distributing the equity in the house, while also giving the wife and children a reasonable chance to stay in their home.

[27] Two important factors in the final 75:25 percentage distribution of the equity were firstly, the housing needs of the children and secondly, the husband's demonstrable lack of adequate financial support for his wife and children over the lengthy six-year period since separation. Given the overall circumstances of the case, which is a “needs” case involving two minor children and modest matrimonial assets, I am of the view that the appropriate costs order is that the wife should only pay part of the husband's costs incurred since the date of the unanswered *Calderbank* letter. In exercising my discretion, I have also taken into account that any higher award of costs could potentially result in the forced sale of the home.

[28] With these considerations in mind I will therefore make an order pursuant to Order 62 Rule 3(3) that the wife pay the fixed sum of £3,000 plus VAT towards the husband's costs. I will allow some time for these costs to be discharged by the wife. I consider that fairness requires this payment to be made to the husband's solicitors on or before 4 February 2027.