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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

B

Petitioner:

and

S

Respondent:

ROONEY J

Anonymity

[1] In order to protect the identity of the children referred to in this judgment, I direct that no report of this matter should reveal the names of the children or the adult members of their family. The anonymity of the children must be strictly preserved.

Introduction

[2] The Petitioner wife (hereinafter 'B') is now aged 47. The respondent husband (hereinafter 'S') is aged 55. The parties were married just in excess of twenty years ago. There was no pre-marital cohabitation. After a period of fifteen years, the parties separated. Accordingly, it is a mid-term marriage.

[3] There are two children of the marriage, 'D' who is now aged seventeen and 'Y' who is now aged ten. 'D' is currently studying at a grammar school in Belfast and is in her lower sixth year. 'Y' is in primary six and is hoping to progress to grammar school in the near future.

[4] B is currently dating but is not cohabitating. She resides in rental accommodation. S currently resides in the former matrimonial home. He is employed at a local university and is understood to be single.

[5] B issued a divorce petition dated 4 May 2016 grounded on the respondent's alleged unreasonable behaviour. B issued a second divorce petition based on two

years separation dated 16 November 2018. The court directed that the respondent should file an acknowledgement of service in respect of the second divorce petition. A Decree Nisi was granted by the court on 23 June 2022.

[6] B issued an ancillary relief summons dated 20 May 2016 seeking a periodical payments order; a secure provision order; a lump sum order; a property adjustment order in relation to a properties situated in north Antrim area and in England and a pension sharing order pursuant to Article 26A of the Matrimonial Causes (Northern Ireland) Order 1978 as amended by the Welfare Reform and Pensions (Northern Ireland) Order 1999 and the Family Proceedings (Amended No.2) Rules (Northern Ireland) 2005 or Articles 27B and 27C of the Matrimonial Causes (Northern Ireland) Order 1978 as amended by the Pensions (Northern Ireland) Order 1995.

[7] The ancillary relief proceedings came before Master Sweeney for a financial dispute resolution hearing (FDR) on 21 December 2017. Unfortunately, agreement was not reached. Proceedings were then listed before Master Bell in June 2021, who declined to transfer the matter to the Judge. This application was renewed to me and I agreed to hear both the divorce and ancillary relief proceedings together. A complicating feature in the proceedings related to the potential implications of a Sharia Divorce which prompted a consolidation of all matters for final determination by the High Court.

[8] During the course of the marriage, B was employed in a number of jobs to support herself and her children. It was clear from B's evidence that at various times she worked long hours in various occupations, whilst simultaneously caring for the children and looking after the home. B's 2020/2021 tax calculations showed a total income of £18,665. However, B now asserts that her income and earning potential/capacity has significantly decreased since the Covid pandemic. In particular, in 2020 she lost the benefit of a job which she had held for ten years previously.

[9] S is employed by a local university. Discovery reveals an income of approximately £2,400 per month.

[10] B is currently in receipt of Child Benefit, Universal Credit and child maintenance. During the course of the proceedings, it was revealed that S had been in receipt of and retained Child Benefit in respect of one of the children.

[11] The principal matrimonial assets are not substantial and consist of the following:

(i) A matrimonial home situated in the north Antrim area. As stated, S currently resides in the matrimonial home. An updated valuation of the property suggests a range in the region of £164,950 to £169,950. On 31 January 2022, the balance of the mortgage on the property was £62,274. If the average valuation is assessed at £167,450, the equity in the property is £105,175.

(ii) The parties owned two properties purchased during the course of the marriage in England. Following sale of both properties, funds are held on account totalling £16,734, although this figure remains under investigation.

(iii) S has two pensions, to include the University's superannuation pension scheme with CETV of £188,367 as at 5 January 2022 and a HSC pension scheme with CETV of £50,790 as at 15 February 2022. B has three pension schemes with a CETV of £10,350, £9,405 and £17,140 respectively with regard to each scheme as at January 2022 approximately.

[12] B claims that she owes £10,000 to a mutual friend of the family as a result of a loan provided to B upon separation to allow her to secure rental property and to furnish same. As considered in detail below, B has considerable outstanding legal debts.

The Statutory Framework

[13] The statutory jurisdiction of the court to deal with ancillary relief applications is found in Part III of the Matrimonial Causes (Northern Ireland) Order 1978 (hereinafter "the 1978 Order") under the heading "Financial Relief for Parties to Marriage and Children of Family."

[14] On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, Article 25 of the 1978 Order deals with the financial provision orders in connection with divorce proceedings. Article 26 deals with property adjustment orders, pension sharing orders (26A, 26B and 26C) and pension compensation sharing orders (26D, 26E and 26F).

[15] Article 27 of the 1978 Order is a key provision. It provides as follows -

> "27.—(1) It shall be the duty of the court in deciding whether to exercise its powers under Article 25, 26, 26A or 26D 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 18.
>
> (2) As regards the exercise of the powers of the court under Article 25(1)(a), (b) or (c), Article 26, 26A or 26D 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 of 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."

[16] In England and Wales, the equivalent provision to Article 27 of the 1978 Order is Section 25A(1) of the Matrimonial Causes Act 1978. The House of Lords in *Millar v Millar, McFarlane v McFarlane (Millar v McFarlane)* [2006] UKHL 24 set out a number of clear principles that must be followed when interpreting this statutory provision. Firstly, the statutory consideration relating to the welfare of the children must be strictly observed. Secondly, the principles established by the House of Lords in *White v White* [2001] AC 596, such as fairness, non-discrimination and the yardstick of equality remain relevant and significant.

[17] In *White v White,* at pages 608-9, Lord Nicholls made the following comments in respect of the checklist factors listed in Section 25 of the Matrimonial Causes Act 1978 [Article 27 of the 1978 Order]:

> "Clearly, and this is well recognised, there is some overlap between the factors listed in section 25(2). In a particular case there may be other matters to be taken into account as well. But the end product of this

> assessment of financial needs should be seen, and treated by the court, for what it is: only one of the several factors to which the court is to have particular regard. This is so, whether the end product is labelled financial needs or reasonable requirements. In deciding what would be a fair outcome the court must also have regard to other factors such as the available resources and the parties' contributions. In following this approach the court will be doing no more than giving effect to the statutory scheme."

[18] This is a lower value case. The importance of addressing needs, rather than pursuing equal sharing of assets, in lower value cases was considered by Baroness Hale in *Millar/McFarlane* at para 136 as follows:

> "136. Thus were the principles of fairness and non-discrimination and the 'yardstick of equality' established [in White]. But the House was careful to point out (see p 605f) that the yardstick of equality did not inevitably mean equality of result. It was a standard against which the outcome of the section 25 exercise was to be checked. In any event, except in those cases where the present assets can be divided and each can live independently at roughly the same standard of living, equality of outcome is difficult both to define and to achieve. Giving half the present assets to the breadwinner achieves a very different outcome from giving half the assets to the homemaker with children."

[19] In *Miller/McFarlane*, the House of Lords went further in its consideration of the said three principles as being the rationale for financial provision contained in the 1978 Act [1978 Order]. The principles refer to (i) meeting the needs of the parties and that fairness demands that the assets of the parties should be divided so as to meet their housing and financial needs; (ii) compensation, which is aimed at redressing any significant prospective disparity between the parties; (iii) sharing, derived from the basic concept of equality permeating a marriage. As stated by Baroness Hale at paragraph 142, 144:

> "142. Of course, an equal partnership does not necessarily dictate an equal sharing of the assets. In particular, it may have to give way to the needs of one party or the children. Too strict an adherence to equal sharing and the clean break can lead to a rapid decrease in the primary carer's standard of living and a rapid increase in the breadwinner's. The breadwinner's unimpaired and unimpeded earning capacity is a powerful resource which can frequently repair any loss

of capital after an unequal distribution: see, e.g., the observations of Munby J in B v B (Mesher Order) [2002] EWHC 3106 (Fam); [2003] 2 FLR 285. Recognising this is one reason why English law has been so successful in retaining a home for the children…

144. …In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living."

[20] For the purpose of this decision, it is not necessary to give an exhaustive analysis of the relevant case law. Each case is different. It is clear that the statutory framework gives a court a wide discretion and it has been devised to suit the differing circumstances of individual cases. However, it is worth repeating the dicta of Charles J in *G v G* [2012] 2 FLR 48, when having reviewed the earlier authorities, he stated as follows;

"136. What I take from this guidance on the approach to the statutory task is that the objective of achieving a fair result (assessed by reference to the words of the statute and the rationales for their application identified by the House of Lords):

(i) is not met by an approach that seeks to achieve a dependence for life (or until remarriage) for the payee spouse to fund a lifestyle equivalent to that enjoyed during the marriage (or parity if that level is not affordable for two households), but

(ii) is met by an approach that recognises that the aim is independence and self-sufficiency based on all the financial resources that are available to the parties. From that it follows that:

(iii) generally, the marital partnership does not survive as a basis for the sharing of future resources (whether earned or unearned). But, and they are important buts:

(a) the lifestyle enjoyed during the marriage sets a level or benchmark that is relevant to the assessment of the level of the independent lifestyles to be enjoyed by the parties,

(b) the length of the marriage is relevant to determining the period for which that level of lifestyle is to be enjoyed by the payee (so long as this is affordable by the payer), and so also, if there is to be a return to a lesser standard of living for the payee, the period over which that transition should take place,

(c) if the marriage is short, this supports the conclusion that the award should be directed to providing a transition over an appropriate period for the payee spouse to either a lower long term standard of living than that enjoyed during the marriage, or to one that is not contributed to by the other spouse,

(d) the marriage, and the choices made by the parties during it, may have generated needs or disadvantages in attaining and funding self-sufficient independence that (i) should be compensated, and (ii) make continuing dependence / provision fair,

(e) the most common source of a continuing relationship generated need or disadvantage is the birth of children and their care,

(f) a continuing relationship generated need is often reflected in a continuing contribution to the day to day care of the children of the relationship, that contribution being recognised by the continuing financial contribution of the paying spouse (which is a continuing contribution to the day to day care of the children),

(g) the choices made by the parties as to the care of their children are an important factor in determining how that care should be provided and shared both by reference to day to day care and the funding of the independent households, and

(h) the provisions of s. 25A must be taken into account."

Application of the Statutory Provision

(i) Welfare of the Children

[21] As stated, there are two children of the family. B is the primary carer and this is reflected by a residence order granted in her favour by HHJ Kinney on 9 September 2019 after a contested hearing. A contact order was also made in favour of S. B contends that, based on her role as the primary carer, there should be a departure from equal shares in her favour. B argues that the children's welfare must be the key consideration for the court. The children need stability and security. The needs of the children are met by their mother on a day-to-day basis which has been particularly difficult and onerous since the separation. In the course of her evidence, B gave a graphic account as to the difficulties she has encountered in meeting the financial needs of the children. The court was impressed with B's evidence and had no reason to doubt the veracity of the accounts given by her regarding the difficulties encountered in meeting the children's financial, personal and social needs.

(ii) Income and Earning Capacity

[22] Details of the parties' income have been detailed above. I agree with the contention made on behalf of the Petitioner that there is a clear disparity both in terms of their income but also their earning potential and capacity. I accept B's evidence that her income has decreased significantly since the FDR hearing and the onset of the pandemic. B remains the primary carer for the children. Consequentially, her financial position remains uncertain and it unlikely that her earning capacity will increase in the foreseeable future. In contrast, S's employment is stable, his income is greater than that of his wife and, unlike his wife, he has only one job. In the course of his evidence, it was clear that S was extremely careful in the management of his finances and steadfastly determined not to go into debt.

(iii) Financial Needs, Obligations and Responsibilities of the Parties

[23] Mr Cleland BL, Counsel for B, submits that first and foremost the court should respectfully focus on the financial needs of B and the children. In particular, he states that B's housing needs are not appropriately met and should be prioritised. At present B and the children live in rented accommodation. He asserts that B and the children need the stability of their own home, if possible. At present, B has modest borrowing capacity and, therefore, requires sufficient capital provision to allow her an opportunity to purchase a suitable home proximate to the children's schools. In contrast, it is argued that the Respondent has a very clear borrowing capacity and would be in a position to either re-mortgage the matrimonial home, or alternatively purchase a new home. During the course of her evidence, as highlighted above, B graphically impressed upon the court financial burden imposed on her in providing for the children on a daily basis, to include food,

clothing, pocket money, leisure activities, school fees, school uniforms and school meals.

(iv) The Standard of Living Enjoyed by the Family prior to Breakdown of the Marriage

[24] On the basis of the evidence of both parties, it was clear that they enjoyed a reasonable standard of living prior to separation.

(v) The Age of Each Party to the Marriage and Duration of the Marriage

[25] B is aged 47 years old and S is aged 55 years old. This is a mid-term marriage of fifteen years duration.

(vi) Any Physical or Mental Disability of the Parties to the Marriage

[26] In her evidence, B identified relevant health issues. The court is concerned that some of B's health issues may impact on her earning potential and capacity. It is hoped that the health issues will not detrimentally impact on B's provision of care for her children. In his evidence, S confirmed that he was in good health.

(vii) Contribution which each of the Parties has made to the Welfare of the Family

[27] From the evidence of both parties, it was clear that during the course of the marriage they both worked hard to generate income which permitted them to purchase the matrimonial home and provide the financial means to look after the children and themselves. Whereas S held one job, B spent long hours holding down various jobs in order to contribute to the welfare of the family. Although the matrimonial home was a pre-acquired asset by S, it is open to the court to take into consideration the duration of the marriage and the fact that the property was used as a family home for the children and his wife. For this reason, including the contributions made by B, the fact that the asset was acquired pre-marriage is not considered to be a relevant factor in the overall assessment.

(viii) Conduct of the Parties

[28] The court does not consider the conduct of the parties to be a relevant consideration.

(ix) Value of any Benefit which by reason of the Dissolution of the Marriage a Party may lose

[29] It is clear that each party would lose spousal pension rights in respect of each other's pension.

Consideration of the Key Issues and Evidence

[30] At the commencement of the ancillary relief proceedings, the court encouraged the parties to engage in constructive negotiations. To the considerable

credit of both parties, agreement was reached on many of the substantial issues as detailed in the following terms. Firstly, having heard the evidence of B on the basis of her second divorce petition on two years separation with S's consent, the court granted a Decree Nisi with an order that the Respondent pays half of the Petitioner's costs. The first divorce petition dated 4 May 2016 was dismissed with no order as to costs. It was also agreed that B would extract the Decree Absolute upon the court's final order in respect of the ancillary relief proceedings.

[31] Secondly, with regard to the Sharia Divorce the following was agreed:

(i) B would agree to a recital in the final order that all aspects of the finances pertaining the breakdown of the marriage had been dealt with, including B's dowry. All proceedings in Iran would cease and written confirmation would be provided and included as a recital within the court order.

(ii) The parties would undertake to the court to provide unconditional consent to making an appointment with and to attend the Islamic Centre to progress the religious aspect of the divorce. This could be done either in London or Dublin and, if possible, remote attendance should be agreed.

(iii) Upon extraction of the Decree Absolute, the parties would give an undertaking to the court to provide unconditional consent to making an appointment with the Iranian Embassy in London or Dublin and to attend at the same time to formally/officially secure registration of Iranian/Islamic divorce. Both parties would undertake to properly complete all paperwork and to take whatever steps necessary to ensure that this is progressed as soon as possible. The costs, if any, shall be split equally between the parties. The final financial arrangement is to be made conditional/contingent upon the husband's compliance.

(iv) There shall be a recital within the court order that the parties may live at all future times apart from one another and free from the other's control as if he or she were unmarried and at such places as he or she may from time to time choose and engage in any business he or she may think proper without any interference from the other. S was to give an undertaking that he would not ban his Petitioner wife leaving Iran, should she choose to visit.

(v) Thirdly, with regard to the finances, the following was agreed -

  (a) In default of the court transferring the former matrimonial home to the wife, the parties agreed that the wife (B) should receive 65% of the equity in the home. The timescale for payment was agreed. Sale in default of payment was agreed subject to the appointment of an agent. If the parties were unable to agree an estate agent, this matter would be decided by the court. Any remaining equity in the property will be held in trust for B, to revert to S if he complies with the Sharia Divorce conditions as specified above.

(b) B was to retain the net proceeds of the sale of the properties in England in the sum of £16,734.07.

(c) S would pay B a lump sum reflecting -

(i) half of the costs of the application to seek leave to issue a second petition; and

(ii) half of the costs for the second petition.

The monies were to be payable within twelve weeks of the date of the court order

(d) The parties agreed a pension sharing order of 30·77% in respect of S's University pension. The costs of implementation are to be deducted from the fund, if possible on an equal basis. The wife's legal team was to draft the requisite orders and send same to the trustees of the pension fund.

(e) Any ISAs/Stakeholder accounts for the children shall be held jointly in trust until the children each reach the age of eighteen.

(f) S is to pay child maintenance by agreement or in default as assessed by the Child Maintenance Service.

(g) Each party shall sign any necessary documentation to give effect to the terms of any order made. In default of S signing any necessary forms, the court shall be at liberty to do so pursuant to Section 33 of the Judicature (Northern Ireland) Act 1978.

(h) Save for the contested issues considered below, each party shall otherwise retain all assets/liability in their name on a "clean break" basis, subject to S providing B with the child's piano. Each party shall be solely responsible for their own death/liabilities. Interest was to accrue at the rate of 4% in default of payment within the time scale allocated by the court to any lump sums payable to the wife.

Contested Issues

[32] The parties were unable to agree the following:

(a) That there should be a provision of periodical payments for spousal maintenance in light of the disparity of the financial positions of the parties. In the alternative, B sought a lump sum within a specified time limit in which the lump sum was to be paid.

(b) That B's legal costs should be paid by S.

(c) That, in the event that the parties cannot agree on an estate agent, the court would identify the appropriate agent in the final order.

Spousal Maintenance or a Clean Break

[33] The court, in its decision whether or not to make an order for periodical payments and, if so, in what sum, must have regard to the needs of the parties and the ability of the paying party to meet the needs of the other party. One important principle established in *McFarlane v McFarlane* is that periodical payments are not limited to maintenance but can include provision for compensation so as to reflect any capital imbalance between the parties.

[34] In *SS v NS (Spousal Maintenance)* [2014] EWHC 4183 (Fam) [46], Mostyn J stated as follows:

> "(i) A spousal maintenance award is properly made where the evidence shows that choices made during the marriage have generated hard future needs on the part of the claimant. Here the duration of the marriage and the presence of children are pivotal factors.
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> (ii) An award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies.
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> (iii) Where the needs in question are not causally connected to the marriage the award should generally be aimed at alleviating significant hardship.
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> (iv) In every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable.
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> (v) If the choice between an extendable term and a joint lives order is finely balanced the statutory steer should militate in favour of the former.
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> (vi) The marital standard of living is relevant to the quantum of spousal maintenance but is not

decisive. That standard should be carefully weighed against the desired objective of eventual independence.

vii) The essential task of the judge is not merely to examine the individual items in the claimant's income budget but also to stand back and to look at the global total and to ask if it represents a fair proportion of the Respondent's available income that should go to the support of the claimant."

[35] I have reflected carefully on the evidence given by the parties at the hearing. Since the breakup of the marriage, it is my view that B has suffered particular hardship in her efforts to look after the children of the marriage and also herself. In particular, it is noted that her health has deteriorated. B has been obliged to engage in strict financial management which has, on occasions, resulted in B missing meals. A particular bone of contention between the parties was the decision made by B to send D to a fee-paying school. S stated that if B insisted on private schooling she should have responsibility for paying school fees even if she did not have the resources to pay for them.

[36] The court was most impressed with B's evidence. It was clear that during the course of the marriage and after the termination of the marriage, B has and continues to make considerable sacrifices for her children. As emphasised above, pursuant to Article 27 of the Matrimonial Causes (Northern Ireland) Order 1978, the duty of the court is to put the welfare of the child first. The maintenance for the children will be considerable. D is seventeen and Y is ten. It is anticipated that the children will go to university. Even when the children have grown up and are continuing their education, as often happens, they are likely to remain living at home for some years which can clearly impact on the housing needs of the parent with care (see *Vaughan v Vaughan* [2007] EWCA Civ 1085).

[37] I have reflected on and taken into consideration B's deterioration in health and her reduction in earning capacity. Having regard to all the circumstances of the case and the evidence of the parties, it is my view that a spousal maintenance award should be made. The issue for determination will be the duration of the payments and the relevant amount of each payment. In deciding on the duration of any order the court must consider the statutory steer towards the termination of obligations at the earliest point which is just and reasonable. However, termination should only occur if the payee can adjust to it without undue hardship.

[38] Pursuant to Article 27A of the 1978 Order the court is under an obligation to consider the possibility of a clean break in an attempt to maintain a balance of fairness between the parties.

[39] In *Miller v Miller; McFarlane v McFarlane* in relation to s.25A MCA 1973 [Article 27A 1978 Order], Lord Nicholls stated as follows at paragraph 38:

> "38. In one respect the object of section 25A(1) is abundantly clear. The subsection is expressed in general terms. It is apt to refer as much to a periodical payments order made to provide compensation as it is to an order made to meet financial needs. But, expressly, section 25A(1) is not intended to bring about an unfair result. Under section 25A(1) the goal the court is required to have in mind is that the parties' mutual financial obligations should end as soon as the court considers just and reasonable.
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> 39. Section 25A(2) is focused more specifically. It is concerned with the termination of one party's 'financial dependence' on the other 'without undue hardship.' These references to financial dependence and hardship are apt when applied to a periodical payments order making provision for the payee's financial needs. They are hardly apt when applied to a periodical payments order whose object is to furnish compensation in respect of future economic disparity arising from the division of functions adopted by the parties during their marriage. If the claimant is owed compensation, and capital assets are not available, it is difficult to see why the social desirability of a clean break should be sufficient reason for depriving the claimant of that compensation."

[40] Having given careful consideration to the above dicta in light of the circumstances of this case, it is my view that it would be just and reasonable to bring the parties' financial obligations to an end and that the Respondent makes a lump sum payment of £30,000 rather than spousal maintenance over a period of time. I will hear the parties in respect of the date on which the said lump sum payment should be made and whether the said sum or part of it shall be paid by instalments.

The Issue of Legal Costs

[41] The court has been advised that B has accrued considerable legal costs. This is particularly concerning since, after B pays the legal costs, it is likely that she will have little left following division of the assets. B is legal aided but subject to the statutory charge. S is a personal litigant.

[42] Regarding all claims for a financial remedy, the general rule is that there will no order as to costs.

[43] A court should not make an order in such a way, whether by an added lump sum or enhanced periodical payments, to give effect to a costs order by the back door (see *W v H (Divorce Financial Remedies)* [2020] EWFC B10.)

[44] The "no order" principle does not apply to appeals (*Judge v Judge* [2008] EWCA Civ. 1458; jurisdiction disputes (*Charbatly v Shagroon* [2013] EWHC 3756 (Fam); interim periodical payments or any other form of interim remedy.

[45] A costs order may be made at any stage of the case where a party's litigation conduct (whether before or during the proceedings) justifies it. (See *Norris v Norris* [2003] EWCA Civ. 1084). In Duckworth's 'Matrimonial Property and Finance' (update 43) at B [151], the learned author provides details as to what amounts to relevant "conduct." The distinction between "natural" costs of financial remedy litigation and increased costs caused by the conduct of one party was highlighted by Mostyn QC, sitting as a Deputy High Court Judge in *W v W (Financial Provision: Form E)* [2003] EWHC 2254 (Fam). Litigation conduct may consist of non-disclosure, intransigence, refusal to negotiate, misleading the court and misstatement of assets.

[46] Having heard the evidence and the submissions made S and counsel on behalf of B, I am not convinced that the above illustrations apply in this particular case. It is regrettable that many of the financial matters which were agreed just prior to the hearing were not capable of resolution some time ago. S is a personal litigant. The court notes that S is an articulate and intelligent individual who candidly stated that he represented himself in order to save costs. To his credit, S did engage in meaningful and constructive negotiations at the direction of the court and was able to agree many of the financial matters as discussed above.

[47] For the reasons given, there is no basis upon which to depart from the general rule, namely, that there will no order as to costs.

Appointment of an Estate Agent

[48] It is hoped that, following delivery of this judgment, the parties will agree on the appointment of an estate agent. If not, the court will make an appropriate order following brief submissions by the parties.