Re A (Schedule 1, Overspend, Costs clawback)

No Substantial Judicial Treatment

Court
Family Court

Judgment Date
21 March 2022

Case No: ZC20P04033

Family Court Sitting in the Central Family Court

[2022] EWFC 21, 2022 WL 00845800

Before: Recorder Chandler QC

Date: 21 March 2022

Hearing dates: 21-23 February 2022

Representation

Charles Hale QC instructed by Dawson Cornwell for the Applicant.
Nikki Saxton instructed by Malcolm C Foy solicitors for the Respondent.

Anonymised Judgment

Recorder Chandler QC

[A] Overview

1. The parties are M ("Mother") and F ("Father"), who are the parents of A, who was born on a date in 2020. This is the anonymised version of my judgment, originally handed down on 3 March 2022, in which I have redacted certain details (including A's date of birth) to minimise the risk of jigsaw identification of the parties or their child.

2. The application before the court is the Mother's application for financial provision for A, dated 3 June 2020, which sought the following, pursuant to Schedule 1 to the Children Act 1989 :

(1) periodical payments, including interim orders;
(2) settlement of property; and
(3) lump sums in relation to sums incurred in the upbringing of A.

This court has jurisdiction to deal with periodical payments as a result of a maximum Child Maintenance Service assessment, which the court can 'top up' (cf. *Dickson v Rennie [2014] EWHC 4306 (Fam)* , s.8(6) of the Child Support Act 1991).

3. The Mother has been represented at this final hearing by Charles Hale QC and Dawson Cornwell solicitors, neither of whom appeared at any previous hearings on behalf of M. The Father has been represented throughout by Nikki Saxton of counsel and Malcolm C Foy solicitors. I am grateful to both counsel for their written submissions and for their assistance during the hearing.

[B] Issues

4. It is to the credit of both parties and their advisers that they had by 28 July 2021 been able to compromise most issues. Specifically, the parties have agreed that the Father will provide the following financial provision for A:

(1) a housing fund of £1.35m to purchase a new property which will be occupied by the Mother and A on a reversionary basis, i.e., when A attains the age of 18 or completes full-time education, up to first undergraduate degree, the property will be sold, and the proceeds will revert to the Father;
(2) an (outright) lump sum of £75,000 to the Mother to furnish the new property;
(3) £96,000 pa child maintenance on the agreed basis that this sum includes an element of the Mother's own outgoings, i.e., what has traditionally been described as a "carer's allowance", with such payments secured by life insurance;
(4) the Father will repay the finance on the Mother's current car by April 2022 and then, on a four-yearly basis, commencing April 2025, will pay additional sums of £45,000 less the trade-in value of the existing car, to enable her to purchase a replacement car;
(5) the Father will fund A's education costs at nursery and private school including reasonable extras to include two school trips a year;
(6) the Father will arrange for the installation of a standard electric gate at the new property, once agreed, to make the property secure; and

In addition, the parties will enter into cross-undertakings in relation to confidentiality.

5. Accordingly, the parties have agreed a financial package which in my judgment generously meets A's housing need, his educational costs, maintenance including a carer's allowance, with the additional benefit of a replacement car every four years.

6. It might be thought that a package of this nature would satisfy all claims that could be made on behalf of a child who is not yet two years old.

7. In fact, there are five issues between the parties, of which the first two are the most significant, both in financial terms, and because they turn on the application of issues of principle, namely:

(1) Should the Father clear all of the Mother's liabilities, however they may have arisen, because it is in the best interests of A that his mother should at the conclusion of this case be debt free? and

(2) Should the Father pay additional periodical payments to the Mother, on top of the agreed sum of £96,000 pa, to enable Mother to employ a nanny (or other regular child care), on the basis that (i) this will provide the Mother with some needed respite or wraparound care, related to her health problems, and/ or (ii) the nanny will enable the Mother to rebuild her career so that she can work towards achieving financial independence when the Father's financial support comes to an end.

8. In outline, the five issues are as follows:

> *Firstly* , the Mother seeks a lump sum of *circa* **£316,133** to pay all of her liabilities, which can be broken down into two broad categories, (a) personal debt, including debt owed to financial institutions and monies loaned from family members, and (b) unpaid legal costs, owed principally to her former advisers, Messrs Howard Kennedy;
>
> *Secondly* , the Mother seeks additional periodical payments of **£36,000 pa** (reducing to £24,000 when A starts school) which are earmarked for a nanny, until A's 18th birthday, with a review clause when he is eleven years old;
>
> *Thirdly* , the Mother seeks a lump sum in the amount of *circa* **£9,000** to cover a prospective operation to remedy two gynaecological problems;

Fourthly , the Mother seeks further lump sums of circa **£13,000** relating to security and moving costs for her new property; and

Fifthly and finally, the parties disagree as to when the agreed periodical payments order of £8,000 pm should start.

[C] The parties' positions

9. The parties' positions on these five issues are as follows:

(i) Debts

10. The Mother's case is that all of her debts should be cleared by the Father, comprising personal debt of *circa* £165,633 and legal fees of circa £150,600 (**£316,133** in total). Her evidence is that her liabilities have arisen in relation to the birth and upbringing of A; that by the date of her Form E1 (27 August 2020), when A was four months old) she had already accumulated personal debt of £50,000. She states that, sixteen months on, her personal debt now stands at circa £165,533, comprising:

(a) £49,643 which is owed to financial institutions (£26,000 redemption figure for HSBC loan, £23,643 credit card debt);
(b) £106,890 which is owed to family members, of which £89,800 has been advanced from the savings of her maternal grandparents who are both in their 80s, and £17,090 has been advanced by her sister's fiancé; and
(c) £9,000 which she originally said was owed to her company, by way of a director's loan. It emerged in evidence that the Mother has already paid back this loan, but she nevertheless seeks reimbursement of this sum from the Father.

11. In addition to this mountain of personal debt, which has arisen while the Mother has been in receipt of £5,000 pm of interim child maintenance, the Mother states that her unpaid legal fees stand *circa* **£150,600** , of which

(a) £128,603 is owed to her former solicitors and counsel, and
(b) £22,000 is owed to her present solicitors, Dawson Cornwall and counsel. This reflects the totality of the Mother's unpaid costs.

12. These unpaid amounts have been incurred on top of the legal costs already paid by the Father in the total amount of £269,000 by way of two costs allowance orders and some other contributions.

13. I appreciate that first class legal advice is expensive. I also accept that this case has not run smoothly and that there have, to date, been five attended hearings before this three-day final hearing. The Mother makes some complaint about the Father's disclosure having been late and incomplete which is reflected in two modest costs orders which were made against him on 15 September 2020, and, in respect of an issue relating to car insurance, 21 April 2021. However, taking all of those points into account, the Mother's overall costs are at a staggering level, in the context of a Schedule 1 application in which she has no personal claim against the Father, save to the extent that she can pursue a carer's allowance.

14. The parties Forms H1 show the following amounts:

(a) the Mother has incurred a total of £433,227 (of which £149,119 was said to be outstanding). The true figure for the Mother's costs appears to be slightly higher (c. £435,000) by reference to an email received from Howard Kennedy during the hearing which put the unpaid costs at £150,600, which I have adopted in my figures. Separately £22,000 is owed to Dawson Cornwall;
(b) The Father has incurred £201,702 (of which £39,150 is outstanding).

15. Later in this judgment I shall try to explain how the Mother's personal and legal fee debts have built up. The Father's case, in outline, is that the Mother's personal debt has increased because of her reckless and irresponsible overspend. The Father objects in principle to picking up the tab for this excessive spending. As to unpaid costs, the Father's case is that the Mother's legal costs have been incurred because she has chosen to be represented by Leading Counsel at every hearing while the Father has been represented by junior counsel, albeit (if I can use the term) a leading junior, she pursued an appeal against the interim maintenance order, largely unsuccessfully (costing circa £69,557) and Howard Kennedy's costs are £60,000 more than the projected budget at the second costs allowance hearing on 28 July 2021. Neither party has been able to furnish this court with an explanation for this over-spend in projected costs. I approach this final issue (the additional £60,000) with some caution since I have not heard an explanation from Howard Kennedy. It may be that they can explain why their fees were ultimately higher than the figures presented to court during the costs allowance hearing.

16. It is also fair at this point to observe that the Mother's present advisers are not responsible for any of this overspend. The Mother first instructed Dawson Cornwall on 24 September 2021. It is common ground that the partner with conduct has brought her client's case to final hearing under budget (for less than the projected costs) and without a full file of papers from her predecessors (who exercised a lien).

17. While the Father makes those objections in principle, he has openly proposed payment of a total of **£139,815** , comprising two lump sums to the Mother: (a) a lump sum of £50,000

(originally offered in the amount of £100,000) to provide the Mother with a fund to spend as she sees fit, which might include occasional child care; and (b) a contribution of £89,815 towards the Mother's unpaid costs (the calculation of which is explained in the Father's open proposal), but on the basis that the sum of £89,815 is offset by the agreed child maintenance of £8,000 pm being docked by £500 pm to £7,500 until the sum of £89,815 is repaid. By my reckoning, this would take 15 years.

(ii) Nanny

18. The Mother seeks £36,000 pa for a nanny, reducing to £24,000 when he starts school, payable during A's minority (i.e., until he is 18), index linked, with a "review clause when A turns …11"). This is not how she has always put her case. In her first open proposal dated 12 March 2021, the Mother sought that these sums (then sought at £24,000 pa) should continue until the completion of *tertiary* education (with a review at 11), whereby the Mother would continue to receive these payments, earmarked for a nanny, if A attended university.

19. The Mother's case for childcare has been advanced on two main bases: (i) she requires support because of her need for respite care. This in part relates to her health problems, whereby she states that she is regularly in disabling pain so that she needs support in looking after A; (ii) she needs the help of a nanny so she can build up her career and, in due course, support herself when child maintenance comes to an end (" *The reality is, I cannot progress my career which I need to fall back on if I do not have practical assistance with A";* the Mother's Second Witness Statement, 18 January 2022).

20. The Father objects in principle to paying additional periodical payments. He does not dispute that the Mother needs occasional respite care but says that those costs can be met from the agreed child maintenance payments. He has agreed to pay A's nursery fees, which he suggests can start now, for as many hours as the Mother sees fit, which will afford the Mother further respite. He makes the point that his three elder children have never had a nanny (although he acknowledges that his household does employ a housekeeper). The Father has made a limited concession of offering a lump sum of £50,000 which the Mother can spend as she sees fit, including occasional childcare, it being stated in the Father's open proposal that " *...he does not accept that your client has made out any case for him to fund childcare… but can accept that an element of casual babysitting would be reasonable and has not been specifically addressed in the agreed budget* ".

(iii) Operation

21. The Mother seeks £9,621 to pay for her planned operation. The Father objects to making any payment and through counsel questions whether the Mother either needs or intends to undergo this operation.

(iv) Lump sums referable to the house

22. The Mother seeks a total of £13,000, comprising £8,920 for CCTV and £2,770 for an alarm to be installed in her new home, and £1,500 for moving costs, relating to her new home. The

Father makes no proposal, on the basis that the Mother either does not need these or can pay them from her other resources.

(v) Start date

23. The Mother seeks that the maintenance order of £8,000 should start now while the Father proposes it should start when the Mother has purchased her new home.

Net effect

24. The net effect, i.e., how far the parties' open proposals are apart, is as follows:

25. In terms of capital/ lump sum payments, the Mother seeks in total *circa* £316,133 whereas the Father offers £139,815. The parties are accordingly apart by approximately £176,418. However, the true difference may be greater. While the mother has offered an undertaking to pursue a 'solicitor and own client' assessment with Howard Kennedy with a view to reducing her fees, she proposes that the Father should fund the costs of this exercise, since he would exclusively obtain any benefit from a reduction in the bill. While the Father has offered £139,815, he proposes that £89,815 should be recouped over time by docking the agreed amount of child maintenance by £500 pm until that amount is notionally repaid.

26. While the level of child maintenance has been agreed (including a carer's allowance) there is a difference is £42,000 pa between the parties' open proposals. The Mother seeks additional periodical payments of £36,000 pa, reducing to £24,000 when A starts school, payable until A is 18 with a review clause when he is 11. That would involve total child maintenance payments, initially of £132,000 pm. The Father seeks, by reference to his capital offer, a reduction of £500 pm which would reduce child maintenance down to £90,000 pm.

[D] Hearing

27. I heard this final hearing remotely on 21, 22 and 23 February 2021.

28. I was allocated a half day for judicial reading. I heard the Mother's oral evidence from 2pm Monday 21st until 3pm on Tuesday 22nd and the Father's oral evidence from 3pm to 4.30pm on Tuesday. I hear closing submissions on Wednesday 23rd and at 1.30pm began my preparation of this reserved judgment.

29. There were some problems with the technology, although I am satisfied that these were overcome and that both parties have received a full and fair hearing. On Monday, both Ms Saxton and I heard a diverting echo on the audio, which apparently was not heard in Mr Hale's room (where the Mother and her solicitor were also located). Despite this problem, I had no difficulty

hearing the Mother's evidence. On Tuesday morning, one hour was lost due to connectivity issues. Consequently, the original template, which commendably allowed me the third day to write and deliver this judgment, was not kept to, for no fault of either counsel, and I had to reserve judgment.

[E] Factual background

30. In this application, both parties have filed lengthy witness statements. The Mother's statements dated 3 June 2020 and 19 January 2022 are, respectively, 11 pages and 20 pages long. The Father's statements dated 30 June 2020 and 18 January 2022 are both 12 pages long. In addition, both party's solicitors have filed witness statements in relation to the issue of costs allowances. I have read these statements and in addition have heard the oral evidence of both parties.

The child (A)

31. On behalf of the Mother, Mr Hale reminds me that while this is a financial application, it is made pursuant to the Children Act 1989 and that I should put A's best interests at the centre of this case. I accept that submission. A is approaching his 2nd birthday. He is described by the Mother as a " *…curious, funny, active, inquisitive little boy… full of energy* ".

32. It has not been suggested on either party's behalf that A has any special or unusual needs. I proceed on the basis that A, like all children, needs a secure and loving home, where his physical, emotional and educational needs are met.

The Mother

33. M presently lives in a property she co-owns with her own mother.

34. The Mother originally worked as a bank cashier but was off work for extended periods due to a variety of health problems which included tumours in her kidneys and a benign tumour in her pelvis. The Mother states that she still suffers from poor health whereby she needs to an operation relating to two gynaecological problems. The Mother has described in her statement the disabling pain caused when her condition 'flares up':

> "I feel chronic fatigue, I am bedbound, I feel sick, I have no energy, so I am lethargic and to top it all off, I am doubled over in pain due to the cramping. During this time, I am unable to get up out of bed, let alone care for A. I can't pick him up, which means I couldn't lift him in or out of his highchair… I can't bathe him, I can't lift him in or out of his pushchair or

> car seat meaning that even if I could muster the energy to go out, we are effectively trapped because I can't safely take him anywhere…"

35. Following her conviction for an offence which involved a short, suspended custodial sentence, the Mother lost her job as a cashier. Because of this conviction, she could not return to her job in banking.

36. The Mother then incorporated a company and for the past 3 ½ years has worked as an online brand ambassador. The Mother describes herself an 'influencer' and an 'Instagram influencer'. This involves the Mother posting photos and videos of herself online with sponsored branding products, on social media sites such as Instagram (where she has many followers) and YouTube, and on her own website. The business model involves the Mother receiving commission payments (customers click through the Mother's social media sites and purchase products) and also payments in kind from her brands. The Mother is also involved in a business which sells healing objects which appears to generate a modest turnover in the region of £300 per month.

37. In her Form E1 (27 August 2020) the Mother declared assets of circa £92,000 and liabilities of £50,000. She declared a total earned income from her work as influencer of £2,000, received by way of dividends, for the past twelve months, projected to increase to £2,500 per annum.

38. I have seen the profit and loss account for M's company for the year to 31 October 2019. This shows turnover of £15,667 and net profit of £2,395.

39. For reasons which are unclear, the profit and loss for the year to 31 October 2020 has not been produced. The Mother's solicitors stated, on instructions, that " *As [M's company] has an exemption for filing full accounts… she doesn't have to file a profit and loss account… accordingly there is no profit and loss account to provide you* ". In my view, the first assertion is correct (because the company would presumably be classified as a micro-entity which is exempted from filing a profit and loss); the second is incorrect (I do not accept that there would have been no profit and loss account prepared). It is now accepted on all sides that even micro-entities such as the Mother's company must prepare annual profit and loss accounts.

40. It is regrettable that I do not have the profit and loss account for the year to October 2020, if only to get a clearer view as to whether the Mother's business has generated any meaningful profit or in any way grown. I shall return to the lack of evidence about the Mother's business, and the lack of anything approaching a business plan, in due course.

The Father

41. The Father is a high net worth individual and a high earner. He lives with his wife and children. In his Form E1 (1 September 2020), the Father declared capital assets of £13.8m and

net income of £3.5m. In his written submissions, Mr Hale asserts that in 2020/21, the Father's net income was in fact double this amount, i.e., £7m net.

42. While the difference between £3.5m net and £7m net speaks for itself; in my judgment it makes no difference to this case or my decision on the issues. The Father can plainly afford to pay the sums which the Mother openly seeks, whether or not his net income is £3.5m or £7m. The issue in this case is not affordability. The Father could afford to pay any order I might reasonably make under Schedule 1 . At the case management conference on 28 July 2021, DJ Hudd declined to order the Father to make any further disclosure as to his income and capital position, on the basis that it was neither "proportionate nor necessary". I respectfully agree with the Learned Judge's case management decision on this point.

The Mother's pregnancy

43. It is common ground that the parties had a friendly relationship for several years before A was conceived in 2019. I do not need to resolve the factual dispute between the parties as to the duration of their sexual relationship: on any view, it was a short one. The Mother discovered she was pregnant in August 2019 and informed the Father in November 2019.

44. The Mother subsequently conducted an interview where she confirmed that she was pregnant, and that F was the father. The Mother's pregnancy and the Father's paternity thereby became public knowledge. The Mother's case is that she went public after she was unexpectedly photographed on holiday, and that she discussed her pregnancy because of the wider public interest in someone with her health problems being able against the odds to conceive.

45. By this stage, the parties' friendship had ended. The Father was very unhappy about the Mother's actions in the media. I acknowledge that this must have been a difficult and painful time for all concerned: for the Mother, who faced the prospect of bringing up her first child without the involvement of a father figure; for the Father, who had to admit his infidelity to his long-term partner who is the mother of his elder children; thirdly, to the Father's partner, who I am sure was devastated. I note that the Father and his partner have since married and remain together.

46. The Father plays no part in A's life. He has made it clear in his evidence that he does not feel that he can play any part in A's life. While this is regrettable, to his credit, he has now (albeit after some delay) fully acknowledged his financial commitments towards A.

Proceedings

47. The proceedings effectively began before A was born. On 25 March 2020, the Mother's former solicitors wrote to the Father's solicitors and proposed an exchange of Forms E1.

48. On 11 April 2020, Howard Kennedy sent a list of "interim needs' which is broken down into capital items ('core needs') and income outgoings. The list of core needs runs to £36,940 and

the stated interim needs were *circa* £12,000 (I have seen a schedule which puts the outgoings at £11,956 pm and also £12,024 pm).

49. The Mother's 'core needs' document included a number of luxury items including a "hospital bag" (in fact, a Louis Vuitton bag) for £2,310 and a "changing bag" (by Fendi) for £1,350. The interim needs schedule included £2,000 pm for a nanny, an entertainment budget of £1,650 pm and a total of £1,525 pm for clothes, hair, beauty treatments, nails and cosmetics.

50. This court recognises that having a baby for the first time involves a host of unexpected expenses. This court also recognises that there is no reason why a woman in the Mother's position should be overly parsimonious given the wealth of the Father. However, it cannot in my view reasonably be said that the interests of any baby or young child extends to the purchase of Louis Vuitton or Fendi luggage. In my judgment, the solicitors letters sent on the Mother's behalf do not read well and suggest that the Mother was as interested in achieving the luxury lifestyle she had always aspired to, as much as she was focused on what would be needed for her impending maternity, however generously that concept might be interpreted. I shall return in due course to the reasonableness of the Mother's stance and her approach in these proceedings.

51. In short order following A's birth, the Father's paternity was confirmed by DNA test, the Mother obtained a maximum CMS assessment, and her Schedule 1 application was issued (3 June 2020).

Interim hearing

52. The Mother's application for interim support dated 3 June 2020 was heard within five weeks of issue, on 7-8 July 2020.

53. The Mother sought (a) an interim lump sum £36,000, to purchase and/ or reimburse her for the items even though she had acquired some at nil cost, such a pram), (b) interim maintenance of £11,956 pm, (c) a lump sum of £69,000 to purchase a Mercedes GLE and (d) £137,139 as a costs allowance. The Mother's interim capital claim (her 'core needs' schedule) remained for circa £36,000 although she had produced a revised schedule which highlighted items, she had acquired through her influencing at nil cost (in yellow) and other items she had paid for (in green).

Interim maintenance hearing

54. Following a two-day hearing at which the Mother was represented by leading counsel and the Father by Ms Saxton, DDJ Morris ordered (a) interim maintenance of £5,000 pm including £400 for a car lease, (b) a lump sum of £5,000, and (c) a costs allowance of £130,000. The court expressly refused to include the costs of a nanny in its assessment of interim maintenance.

55. The Mother was plainly very disappointed by this interim decision, to the extent that she sought permission to appeal, which was refused by DDJ Morris but was then granted by HHJ Wright at a subsequent permission hearing on 10 December 2020 at which the Father was not

represented. The Mother was granted permission to appeal (a) the level of interim maintenance, (b) the decision in relation to a car and (c) the decision in relation to 'baby needs' (i.e., what was originally described as 'core costs').

56. Following the interim hearing, the parties exchanged Forms E1 (27 August 2020 and 1 September 2020). Attached to the Mother's document was a new, fuller schedule of outgoings and capital needs, which had been prepared by Pennywise Consultants Ltd, who I note describe themselves as "*… financial lifestyle analysts who specialise in creating and challenging lifestyle and household budgets* ". The resulting schedule presents a budget (curiously described as "Future Budget Estimate for [M]", given that this is a Schedule 1 claim) of £212,419 pa (£17,701 pm) with capital costs of £292,756.

Appeal

57. The Mother's appeal was heard by HHJ Wright on 12 January 2021. The outcome was as follows:

(a) The Mother's appeal in relation to interim maintenance (whereby she sought an increase from £5,000 to £11,956) was dismissed;
(b) The Mother's appeal in relation to a lump sum for the car (seeking £61,000) was dismissed;
(c) The Mother's appeal in relation to 'baby costs'/ 'care costs' was allowed to the extent of £3,000 (the Mother had sought £33,252).

58. The cost of this appeal was £69,557. At the conclusion of the appeal, the Mother sought permission to pursue a second appeal, which was refused.

59. The parties disagree about whether the Mother's appeal was "wholly unsuccessful" (per Mr Saxton) or 'technically successful' in that one ground succeeded (per Mr Hale). The Mother's evidence was that "I don't think we lost the appeal". I have to say that I disagree with Mr Hale and the Mother on this. An appeal which cost nearly £70,000 which achieves a modest increment of £3,000 can only properly be described as disproportionate and unsuccessful in my view.

60. I agree with Ms Saxton that the Mother was fortunate that the Father did not pursue an order for costs. Shortly before the appeal (23 December 2020) he made a *Calderbank* offer (the privilege of which has been waived by both parties) which was significantly better than the outcome on appeal, i.e., £7,000 pm, a further £15,000 lump sum and paying the Mother's costs of the appeal. I have seen this letter (a) because Calderbank offers can be made in Schedule 1 proceedings, and (b) because both parties have waived the privilege that would normally attach to this letter.

61. The Father's objection to paying all of the Mother's costs arises in the context of this (as I consider it) failed appeal, costing nearly £70,000. It also arises in the context of the over-spend between the original projected costs budget and the ultimate bill, of circa £60,000.

[F] The Mother's "overspend"

62. The Mother's case is that £5,000 pm has always been insufficient to meet A's needs. I accept that an interim maintenance order does not necessarily have to be the final word when it comes to expense that have been incurred before a final hearing, and that I can revisit the Mother's spending, either by backdating a final order or by making a lump sum order so that debt can be repaid. I recognise that the court's function at an interim hearing is different from its function at a final hearing, when oral evidence will be heard.

63. The Mother asserts that the Father tacitly recognised that the interim order was insufficient because he offered £7,000 pm in his December 2020 Calderbank and has now agreed a figure of £8,000 pm as a final order. I accept that the Father has now offered £8,000 pm (based, he would say, on a different factual premise, including that the Mother will be in her new property). I do not accept that the Father's offers mean that he concedes that the *interim order* was inadequate.

64. How much the Mother has spent in the twenty months between May 2020 and January 2022 is analysed in a helpful spreadsheet prepared by Ms Saxton which does not appear to be factually in dispute by Mr Hale.

65. In this period, the Mother received:

<u>Maintenance and other income</u> Maintenance from the Father	£113,000
Cash repaid by family members	£3,108
Drawings from her company	<u>£9,000</u>
Sub-total	£125,108
<u>Borrowed funds</u> Advances from her grandparents	£90,300
Advances from sister's partner	£17,090

Personal HSBC loan	£25,000
Credit card payments	£25,681
Total	£158,071
Adjustments Less car payments (£330pm)	(£3,600)
Less balance in Lloyd's account	(£7,803)
Total	**£271,776**
Divide by 20 months	£13,588

66. Put more simply, over the past twenty months, the Mother's *average* spending has been over £13,500 pm. That is £8,500 pm *more* than the interim award, funded largely by the Mother taking on borrowing, from her grandparents (£90,300), her sister's partner (£17,090) and from financial institutions by way of a loan and credit cards (£50,681).

67. What the Mother has spent these sums on, can be explained as follows:

(a) Firstly, the Mother has paid for childcare throughout A's life, even though this was specifically disallowed by DDJ Morris and HHJ Wright who commented " *I am clear however, on an interim basis, there is no justification for awarding childcare costs* ". This was initially provided by M's own mother, who she paid £2,000 pm for seven months (May to December 2020). From January 2021 she paid a professional nanny, initially at the rate of £2,550 (February to August 2021) and more recently at £3,000 pm. The total cost of this childcare, which was not included in the assessment of her interim budget, was **£48,900** ;
(b) Secondly, the Mother has spent significant sums on shopping, including for clothes, toys and other items. I have calculated that in a *single* day, (7 January 2022) the Mother spent over £4,000 in twenty- three transactions on clothes, toys and groceries. Ms Saxton has produced a schedule that shows that in the two months before this final hearing (December 2021 and January 2022) the Mother spent a total of £47,449 (i.e., nearly £24,000 each month). When asked about this extraordinary level of expenditure, the Mother's response was as follows:

> "It wasn't enough on the interim. Is he [A] meant to still play? He has development needs. Come on! I can't just leave him with clothes that don't fit him or toys that don't stimulate him. And there's a sale in January"

When Ms Saxton asked if the Mother knew that she was spending beyond the interim award and the Father had made it clear that he was not going to 'backfill' her debts, the Mother replied:

> "Yes, I knew that. I do believe that he [the Father] is trying to punish me… He knows that the maintenance is too low. He knows about the debts that I've incurred. He just continues [to punish me]"
> "[The Father] doesn't wish to pay for many things, which is sad"

(c) Thirdly, in November 2020, the Mother paid for five members of her own family (herself, her sister, her mother and two children including A) to fly business class to [country X] for an 11-day holiday. She says that her sister and mother repaid her for the flights, in cash and in kind, and that she paid £8,000 for hotel accommodation. The Mother's case is that, overall, her net spend was £11,000 for this holiday. When asked about this holiday, the Mother's response was forthright: " *I felt we needed a holiday* ". The Father's case is that the Mother not only paid for her family to fly to [country X], but in fact she also paid for their accommodation. The Mother denied this and said that £8,000 was the cost of her room with A. That explanation was undermined by her later production (through her solicitors) of a hotel invoice showing that her hotel cost was c. £3,553. In my judgment, the invoice produced by the Mother supports the Father's case, i.e. that the Mother paid for her sister and mother's business class flights and also their stay at the hotel. In my view, the Mother paid for her family in the expectation that the Father would ultimately pick up the tab. I also note that, during this holiday in [country X], the Mother was still paying her own mother £2,000 pm for childcare;
(d) Fourthly, the Mother took what she describes as a 'business trip' to [country Y], in May 2021 in order to promote a dental centre in [country Y]. Her mother accompanied her on this trip where the Mother spent £6,500 on a villa. The Mother justified this trip because it arose in the context of a contractual relationship to promote the dental centre and build her connection with a company which has produced modest turnover for her business
(e) Fifthly, in the same month the Mother travelled with her family to [country Z], where she was photographed and (as she put it) created content for her online presence. The Mother

states she spent "£9,000 to £10,000" on this trip but that it was accounted as a business expense.

68. I shall return to the reasonableness of the Mother's expenditure and the extent to which this expenditure was for the benefit A in due course.

[G] Credibility of witnesses

69. I shall start with the Mother.

70. I make the following allowances in the Mother's favour:

(a) Being cross-examined is rarely an easy experience, particularly so in a case such as this where emotive issues are being raised, relating to a single mother's claim for financial support for a young child. I cannot say if cross-examination was made more or less difficult because it was conducted remotely. But I can see that the Mother did not find it a comfortable experience;
(b) The Mother became emotional on a handful of occasions, such that I had to rise so that she could compose herself. I accept that the Mother found some parts of the cross-examination upsetting;
(c) I also accept that the Mother found some questions confusing and difficult to answer.

71. However, having listened carefully to the Mother's evidence, I regret to say that I found her evidence wanting in several respects. She generally found it very difficult to give a straight answer; she argued with counsel, asked questions back and, in my judgment, sought wherever possible to argue her case rather than give simple, straightforward answers.

72. The Mother showed a remarkable lack of insight in relation to her own spending. On several occasions, she sought to answer a question by going onto the attack. When asked about whether she was worried about overspending, she acknowledged she was worried but then said "*… that really upset me – the fact that [F] doesn't want to provide the same level of support for his other children* ". When she was asked about the detail of what she spent, she said that she had the unforeseen expense of having to buy an unexpected number of breast pumps, along with stimulating toys and new clothes for A. Those answers were not, to my mind, remotely credible,

given the enormous sums at stake. When asked about spending £47,449 in the two months before the final hearing, she said the Father was trying to " *punish her* ".

73. While it may serve the Mother's purpose to see herself as the victim in this case, I cannot see any proper basis for suggesting that the Father has sought to 'punish' her or deny her proper financial support. In my judgment, this is a fantasy on the Mother's part which enables her to avoid responsibility for her actions, which amount to spending money as if it was going out of fashion.

74. The Mother's evidence in relation to her health raises a number of questions. I accept that the Mother suffers from a series of health problems, although the medical evidence is limited to a short GP letter. In her witness statement she describes flare ups last " *between 7-12 days* " including a recent example which "… *commenced on 10th January* [2022] *and I am still in pain 8 days on. I feel chronic fatigue. I am bed bound. I feel sick, I have no energy* ". The natural meaning of those words, in my judgment, is that the Mother had been very ill for that week to the extent of being 'bed bound'. However, during her oral evidence, the Mother admitted that she had been active on *all* of those days, going shopping on each day and spending a total of £7,311.

75. I also bear in mind that the Mother does not have a good track record when it comes to telling the truth.

76. The Mother has a conviction for benefit fraud relating to misappropriate of £21,000. When she was asked about it, she said "… *I think you'll find I was very sick at [the Bank at the time] … I filled out a form incorrectly* " and that her parents at that time " *were going through a divorce* ". She admitted taking a holiday to Las Vegas and Les Arcs at around that time but denied that these were funded with the wrongly claimed benefits. She said to counsel " *I find it upsetting you're using this [her conviction]* ". In my view, the Mother was seeking to evade any responsibility for her conviction, to the extent that she appeared to be looking for sympathy by reference to her ill health or her parents' divorce. I regret to say I do not consider that the Mother's answers in relation to her conviction were either truthful or straightforward.

77. I do not suggest that because someone has lied in one part of their life (or been found guilty of benefit fraud) that this means they are otherwise an unreliable witness (cf. *R v Lucas [1981]*

QB 720). However, the Mother's criminal conviction, and her unsatisfactory replies in relation to it, are relevant factors in my overall assessment of credibility.

78. The Mother also accepted that she misled the press in relation to A, including in relation to when she discovered she was pregnant and the Father's involvement in choosing his name. She described this as " *not telling the full truth* ". That also was an unimpressive answer where, in my judgment, the Mother was seeking to avoid responsibility for her actions. I was similarly unimpressed by her answers in relation to her own witness statement where she said that " *In November 2019, I was stunned to learn that I was 21 weeks pregnant* ". In fact, the Mother had taken a pregnancy test which was positive in August 2019. I do not accept the Mother's explanation that when she used the word 'stunned' she was referring to the period of 21 weeks.

79. My overall conclusion is I must treat the Mother's evidence with great deal of caution. I do not accept that she either tried or did give this court an honest and clear account of the background. In my judgment, the Mother she said whatever she felt would best advance her claim.

The Father

80. The Father by contrast was a perfectly straightforward witness. He gave his answers in an even and thoughtful tone. He answered every question clearly, explained his position, and made appropriate concessions. He did not argue with counsel but freely agreed that he could and should have resolved the housing fund earlier in the proceedings, to the extent of offering an apology on that issue to the Mother.

81. The Father's evidence about his friendship with the Mother was believable and his answers about A demonstrated commendable maturity: He acknowledged the difficulties the Mother faced: " *I also agree that being a single mum is very hard and she needs time to herself. But I'd like to know that she has a plan [for why she wants a nanny]* "

82. The Father's evidence in relation to the Mother's debts and the need for a nanny was balanced and demonstrated a grounded and reasonable approach to life. " *She needs to be accountable for her actions in some of the things she has done* ", " *In this world you can't just rack up debt and expect that someone else will pick that up. I cannot be held accountable for this bad decision taking* ".

83. In my judgment, in relation to A, the Father expressed what I consider to be genuine regret that he cannot presently play a role in A's life.

84. The Father was in my judgment an entirely truthful witness. I conclude that wherever the evidence of the parties is in conflict I must prefer the evidence of the Father.

[H] Law

85. In his closing submissions, Mr Hale reminded me that while this is a financial application, it is also a Children Act application, and submitted that I should keep A clearly in mind at all times. I agree.

Statute

86. Paragraph 4 (1) of Schedule 1 to the Children Act 1989 sets out the matters to which I should have regard. Of these six factors, in my judgment, the following are relevant (here I paraphrase) (a) the income, earning capacity, property and other financial resources of each party, (b) the financial needs of the parties, (c) the child's financial needs and (f) the manner in which the child is expected to be educated. Neither party has asserted that (e) or (f) apply: A does not have his own resources and he does not suffer from any disabilities I should take into account.

87. Both counsel in their written submissions have referred to case of *Re P (A Child) [2003] 2 FLR 865* . In my judgment, a survey of the relevant legal principles starts with the earlier decision of Hale J in *J v C (Child: Financial Provision) [1999] 1 FLR 152* , which was approved by the Court of Appeal in *Re P* .

J v C

88. In *J v C* , Hale J (as she then was) conducted a magisterial review of the court's Schedule 1 powers and put flesh on the somewhat bare bones of the statute. I remind myself of the following points that emerge from Hale J's judgment

(a) No great weight should be attached to the fact that a child's birth was unplanned, or his parents showed a lack of commitment to each other:

> "…I do not consider that any great weight should be attached either to the circumstances of T's birth or to the length or quality of her parents' relationship. There is nothing in the private law provisions to distinguish between different children on such grounds. The policy of the Child Support Act 1991 was that people who had children should support them, whether or not those were wanted children. As a

> general proposition children should not suffer because their parents are irresponsible or uncaring towards them…" (at p.154)

(b) While a child's welfare does not feature in the checklist of statutory factors, it must be one of the relevant factors

> "…in cases under the Children Act 1989 the welfare of the child concerned, even if neither the paramount nor the first consideration, must be one of the relevant circumstances to be taken into account when assessing whether and how to order provision." (at p.156)

(c) A child's needs obviously include a home, full-time care, provision for his daily needs and may include some financial provision for the parent as a carer's allowance

> "… Paragraph 4 (1)(c) requires me next to consider the financial needs of the child. Mr Karsten (on behalf of the father) accepts that the concept of reasonable requirements is just as appropriate under this heading as it is in the matrimonial context, although of course we are looking at T's requirements rather than those of anyone else. This is the nub of the case. The child obviously requires a home; full-time care; provision for her food and other day-to-day requirements, such as clothes, toys, books and transport. It has long been established that a child's need for a carer enables account to be taken of the caring parent's needs…" (at p. 159)

(d) The court must guard against unreasonable claims which are made for the parent's benefit and not the child:

> "…I accept of course that one must guard against any use of an application such as this as 'gold digging' on the part of the mother. This is a pejorative phrase which it is easy for advocates to use. The point can only be that one has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child. I accept that entirely." (at p.159)

(e) A child is entitled to be brought up 'in circumstances which bear some sort of relationship' with the other parent's resources and standard of living:

> I also agree with his Honour Judge Collins in H v P *[1993] Fam Law 151* that the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living…" (at p.160)

Re P

89. In *Re P* , the Court of Appeal followed *J v C* and held that (i) "in the generality of cases" a child's welfare must be not only relevant but "a constant influence" on outcome (Thorpe LJ at [44]), (ii) when it comes to the assessment of income needs "…the court should discourage undue bickering over budgets. What is required is a broad common-sense" approach (Thorpe LJ at [47]), and (iii) in relation to the carer's allowance, a 'more generous' approach is endorsed (Thorpe LJ at [43]). Per Bodey J:

> [48] … there is an inevitable tension between the two propositions, both correct in law, first that the applicant has no personal entitlement, secondly, that she is entitled to an allowance as the child's primary carer. Balancing this tension may be difficult in individual cases. In my judgment, the mother's entitlement to an allowance as the primary carer (an expression which I stress) may be checked but not diminished by the absence of any direct claim in law.
>
> [49] … the court must recognise the responsibility, and often the sacrifice, of the unmarried parent (generally the mother) who is to be the primary carer for the child, perhaps the exclusive carer if the absent parent disassociates from the child. In order to discharge this responsibility the carer must have control of a budget that reflects her position and the position of the father, both social and financial. On the one hand she should not be burdened with unnecessary financial anxiety or have to resort to parsimony when the other parent chooses to live lavishly. On the other hand whatever is provided is there to be spent at the expiration of the year for which it is provided. There can be no slack to enable the recipient to fund a pension or an endowment policy or otherwise to put money away for a rainy day. In some cases it may be appropriate for the court to expect the mother to keep relatively detailed accounts of her outgoings and expenditure in the first and then in succeeding years of receipt.

90. On the facts of Re P, the Mother was awarded a (reversionary) housing budget of £1m, refurbishment of £100k and periodical payments (to include a carer's allowance) of £70,000 pa less state benefits was ordered.

Other Authorities

91. In relation to the court's power to award lump sums, I remind myself that the courts have interpreted broadly the power to order lump sums "…incurred in connection with the birth or maintenance of a child" (para 5(1), Schedule 1). Examples of this broad approach include internal redecoration of a property (Re P), provision of a car on a rolling-basis (*PG v TW (No 2) [2012] EWHC 836 (Fam)*), reimbursing legal costs (*R v F [2011] 2 FLR 991*) and clearing part of the mother's debts, (*Morgan v Hill [2006] EWCA Civ 1602*) which may include credit card debt (*Re MM [2014] EWCA Civ 76*).

92. Ms Saxton relied on the following authorities:

(a) *PG v TW (No. 2) (Child: Financial Provision) [2014] 1 FLR 923* , where HHJ Horowitz QC underlined the point that 'the entire focus is on the needs of the child and not the parent as the recipient directly or indirectly save in her role as carer'
(b) *F v G (Child: Family Provision) [2004] EWHC 1848 (Fam)* , which dealt with the question of which parent should pay for an agreed provision of a nanny. The learned judge determined the responsibility should be with the mother, with the cost reflected in periodical payments;
(c) *GN v MA [2015] EWHC 3939* , in which Bodey J commented that "[27] …the mother must act responsibly in the stewardship of the monies that are paid for C's benefit. She is not entitled to assume that a court will countenance her unmerited applications by declining to award costs against her";
(d) *BC v DE [2016] EWHC 1806 (Fam)* as an example of where the mother's counsel "sensibly abandoned" a claim in relation to part of a costs bill which had not been awarded at an earlier hearing;

93. Mr Hale in closing referred me to *Re MM (A Child) [2014] EWCA Civ 276* as an example of a case in which (at first instance) a mother's debts had been cleared.

[I] Conclusions

(i) Lump sum to meet personal debt

94. I accept that the Mother should not be held to the interim order of £5,000 pm and that it would be fair to make allowance for the following:

(a) The interim order did not include any allowance for a holiday;

(b) The interim order did not make any allowance for childcare;
(c) The court is naturally sympathetic to a party who, having made some reasonable attempt to comply with an interim order, has been unable to keep to the order or faced unanticipated costs; and
(d) Finally, given the wealth of the Father, this is not a case where I need to be overly prescriptive in terms of the Mother's outgoings.

95. However, it does not follow that the Mother should have *carte blanche* to spend whatever she liked, or should have acted on the assumption or home that this court would order the Father to pay all of her debts, including amounts which have been unreasonably incurred.

96. I accept Ms Saxton's submission that the Mother has not made any attempt to moderate her spending or to manage her finances reasonably.

97. I was particularly troubled by the pattern of the Mother's spending on holidays, and in the past two months. I am satisfied that the Mother has spent extravagantly, for the benefit of herself and her family as for A, in the expectation (or hope) that the Father would pick up the tab. The Mother has in my judgment shown no insight into the sheer recklessness of her behaviour, at a time where the interim order was for £5,000 pm and she knew that the Father took issue with bailing her out.

98. Doing the best I can on the information before me, I have decided that a fair approach involves backdating the agreed child maintenance of £8,000 pm to the start of proceedings. This provides the Mother with an additional £3,000 per month (a lump sum payment of £60,000 (i.e., 20 months x £3,000)) which in my judgment generously meets A's and her own reasonable needs for holidays, some childcare costs and other unanticipated expense. In my judgment, this approach draws the line between a generous assessment of reasonable needs and unreasonable and extravagant overspending.

99. I accept Ms Saxton's submission that the following comment of Bodey J in *GN v MA [2015] EWHC 3939 (Fam) at [14]* is directly on point:

> "…it should not be thought by her that the solution is simply to spend above her means, running up debts so as to be able to come back to the court for lump sums for C, or for increased maintenance with which to service the debts… It is the mother's duty to C so to adjust her lifestyle as to bring him up within the budget and not to create for herself the stress of continuing debt from now on."

100. While I agree with Mr Hale that A's best interests are a constant influence on the exercise of my discretion, I disagree with his submission that it follows that the Mother must be debt

free. That in my judgment would mean that a litigant such as the Mother is free to spend wildly, making no attempt to moderate her discretionary spending on items such as shopping and holidays, in the expectation that the other party (assuming he is as wealthy as the Father) will ultimately pick up the tab.

101. In my judgment, this case exemplifies the tendency of some applicants in Schedule 1 claims to cherry pick one part of Hale J's judgment in *J v C* (the need for " *some sort of relationship with the father's present resources* ") and to ignore another ("… *guarding against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child* ").

102. My backdating of maintenance produced a figure of £60,000, which will mean that the Mother is in a position to clear her hard liabilities with the bank and credit card (£49,463 in total) with a modest sum left. It will mean that she is not in a position to repay her elderly grandparents or her sister's fiancé.

103. I have not heard from the Mother's grandparents, but I have read an email which describes their advances of money as their life savings which should not be regarded as a soft loan. Reference is made in that email to an interest rate. It is little short of heart-breaking to think that a couple in their 80s have advanced to the Mother several thousand pounds per month, so that she could largely fritter it away on discretionary shopping and holidays. While I have sympathy for the Mother's grandparents and the fiancé of her sister, the responsibility lies with the Mother and not the Father. It will be a matter for the Mother to discuss with her grandparents and her sister's fiancé over what period she can make savings from her income to repay these debts. Putting it simply, the Mother has behaved in an extraordinarily reckless way. Ms Saxton has described her behaviour as gambling. I would suggest that her behaviour, particularly in relation to the [country X] holiday and her spending in the two months, is reminiscent of someone who has won the Pools.

104. I dismiss the Mother's case that she needed to spend £13,500 pm for A. I have made what I consider to be a generous allowance up to £8,000 pm to cover the costs which were not catered for by DDJ Morris or HHJ Wright.

Legal fees

105. This part of M's case raises a number of complex issues.

106. Firstly, Schedule 1 applications come under the 'clean sheet' approach to costs. However, in cases such as this, where the applicant has only modest assets and the respondent is wealthy, a costs order is often made in favour of the applicant.

107. Secondly, the Mother's costs in this case are extraordinarily high, which include the costs of an appeal which in my judgment was unsuccessful (circa £70,000) and what has been described as an over-spent between the budgeted costs and the final bill (£60,000).

108. Thirdly, the Mother intends to pursue a solicitor and own client assessment against her former solicitors. I am not in a position to have formed any view as to how the 'overspend' of £60,000 has arisen. I accept that Howard Kennedy may have a reasonable explanation. The Mother has sought that the Father should fund this assessment on the basis that he will benefit from any upside.

109. Fourthly, Ms Saxton makes a number of powerful submissions to the effect that the Father should not have to pay for either the appeal or the overspend. She submits that while the Father will partially meet the Mother's costs but that this should be reflected by the docking of the (agreed) child maintenance at £500 pm. In support for this proposition, Ms Saxton relies on *GN v MA* at [22], although in my judgment that paragraph refers only to recoupment as a possibility. I do not read the judgment as containing guidance that provides clear support for the proposition of what I have described as 'docking' child maintenance.

110. Fifthly, against this, Mr Hale's overarching point is that it would clearly not be in A's interests for his mother to face insolvency (which might ensue if Howard Kennedy are not paid) or for the agreed sum of £8,000 pm to be reduced, which would materially reduce the Mother's household income and her ability to support A.

111. While I have sympathy with Ms Saxton's submissions, and I agree that the Father should not in principle have had to pay the costs of the appeal or the overspend, my overarching point is that the Mother's hard liabilities have to be paid, and the only way that this can happen is by the Father paying these. I draw a distinction in this case between hard debt (which must be paid in order to avoid insolvency) and family debt (which I consider, on the balance of probabilities, does not involve that risk), despite the wording of the grandparent's email (which states the advances should not be considered 'soft loans').

112. I order that *in the first instance* the Father will therefore pay all of the Mother's costs. However, this will be subject to the following two provisos:

(1) Firstly, I accept the Mother's undertaking to pursue a solicitor and own client assessment, but this will depend on whether the Father wishes to fund this.
(2) Secondly, the costs order will be subject to a claw-back provision, not to be enforced without leave, to be calculated as follows: £69,557 (the Mother's appeal costs) plus £60,000 (the overspend of the Mother's legal fees) less whatever sum is reduced on a solicitor and own client taxation. This clawback provision will stand discharged if it is not pursued before A's eleventh birthday.

113. The purpose of this clawback is twofold: firstly, it quantifies that amount of the Mother's costs which the Father should not, in my judgment, have had to pay; Secondly, it means that should this matter ever return to court, the Father would at least in theory be able to return to the question of costs. This might, for example, be raised by way of offset if the Mother pursues further lump sums in future. That in my judgment will restore some semblance of responsibility

and proportionality to these proceedings, in a way which does not directly impact on the income available to meet A's needs.

Nanny

114. The Mother's case for additional periodical payments is put on two bases: firstly, to provide for childcare costs; secondly, to enable her to restart her career.

115. As to the first, I have allowed for some element of reimbursing the childcare costs in the lump sum of £60,000, while not accepting the Mother's evidence in relation to the amount she has incurred.

116. I am satisfied in future that the Mother's need for childcare will only be occasional and can be afforded out of the agreed child maintenance of £8,000 pm. I also take the view that the time has now come for the Mother to take steps to put A into a nursery, to assist with his development and socialisation before he starts school in September 2024. The Mother in her evidence acknowledged that A can go to nursery "but not yet and not full time". In my view, steps should be taken to start A in nursery sooner rather than later and the very fact of attending nursery will afford the Mother some of the respite care she needs.

117. As to the second argument, I consider that a claim for maintenance which is earmarked for a parent's career development falls on the wrong side of the line between a claim which is for the benefit of a child (permissible), and which is for the benefit of a parent (impermissible). In any event, if I am wrong about that, the Mother has comprehensively failed to set out her case as to how her job as an influencer produces any meaningful income, or how it might produce any meaningful income.

118. On that point, I bear in mind that the Mother has had fair warning about needing to get her case into some sort of order. I have within the bundle a transcript of HHJ Wright's judgment. I note that the following was said in relation to the Mother's request for additional periodical payments for a nanny (then in the amount of £2,000 pm): the Learned Judge commented that by the time of the FDR "…[the Mother] should be able to put forward a clear plan as to how she proposes to generate an income which would justify child care costs in the amount she has claimed". In the event, no plan has been put forward and I do not even have the 2020 profit and loss account.

119. This court has no difficulty with someone pursuing a career as an influencer, assuming that actually is a viable business which generates income. However, the evidence that is before me suggests that the Mother's career as an influencer is wholly unsustainable from a financial point of view. The profit and loss account for 2019 shows a miniscule income. The Mother's evidence about how the costs of her holiday in [country Y] generates content and other income is, in my judgment, no more than voodoo economics: significant sums were spent on a luxury hotel leading to extremely modest amounts received by way of turnover, while occasionally

items are received in kind. The Mother has not demonstrated that her business is either viable or income producing.

120. I dismiss the Mother's application for additional maintenance payments for a nanny both as a matter of law or, if I am wrong about that, on the facts.

Other lump sums

121. In light of my findings about Mother's credibility, and the lack of independent medical evidence that supports the need for these two operations, I find that I am unable to accept the Mother's case in full in relation to the need for operations or the need for security at her new property.

122. The Mother's evidence about operations is contained in two quotations from October 2020]. I have received no medical evidence to suggest either operation is required. I agree with Ms Saxton's point that it is inexplicable why, if these operations were needed, they have not been undertaken already, given the Mother's use of funds.

123. Similarly, I am unable to find on balance of probabilities that the Mother needs the added security on her new property which are quoted in the amount of £13,000 (save for the electric gates which the Father has agreed to meet)

124. I will however order the Father to pay a lump sum of £1,500 to cover moving costs.

Start Date

125. Finally, in relation to the start date, I order that the sum of £8,000 will start immediately.

Conclusion

126. I endorse the agreed terms identified at paragraph 4 (above);

127. In relation to the five issues before me, I order as follows:

(i) The Father shall pay to the Mother £61,500, of which £60,000 is by way of backdated maintenance at £8,000 pm, and £1,500 is for moving costs, which will enable the Mother to pay her personal loan and credit cards;
(ii) I dismiss the Mother's claim for additional periodical payments for a nanny;
(iii) I otherwise dismiss the Mother's claim for additional lump sums;
(iv) The Father shall pay Mother's unpaid legal fees which is subject to the two caveats I have described at paragraph 112 (above), i.e.
(1) in relation to the solicitor and own client assessment, and (2) the clawback provision which is not to be enforced without leave);
(v) The periodical payments of £8,000 pm shall start immediately;
(vi) I also make no order for costs

128. I conclude by urging the Mother to take urgent steps to stop spending money she doesn't have. I observed during the hearing that at the present rate it will only be a matter of time before she is insolvent, regardless of what orders I make.

129. As a result of my order, the Mother will leave court free of 'hard' debt but indebted to her grandparents and her sister's fiancé. This is regrettable but in my judgment she has only herself to blame for this. I hope for benefit of A that Mother can restore some balance to her own life and put financial affairs on even keel.

[J] Postscript

130. I circulated a draft of this judgment on 25 February 2022 on the basis that any corrections and typos should be identified by 4pm on 2 March 2022, so that I could hand it down on 3 March 2022 in an unanonymised form, with a view to putting up an anonymised version on BAILII by mid-March 2022.

131. On 27 February 2022, Ms Saxton proposed a number of amendments and requested that my judgment should be amended to cover two points:

> "(1) The agreed basis on which the home is to be held which F has always expressed as the standard schedule 1 basis and Mother's solicitors have accepted. Those are set out in his open offers and include the additional triggers listed in the standard precedents. ; and (2) A request that the payments to the institutions are paid directly.

132. On 28 February 2022, Mr Hale made further amendments and drew my attention to points arising in relation to what he describes as the "costs order", and "…in respect of the £50k offer of child care fund from the father". I shall deal with these as points (3) and (4).

133. I am grateful to both counsel for their amendments and corrections which I have largely adopted.

134. My response to the two further points raised by Ms Saxton are as follows:

(1) How the property should be held

This should either have been agreed before the final hearing or raised during the hearing, in the presence of the parties. It is unacceptable in my view to introduce entirely new issues during the hiatus between a draft judgment being circulated and the judgment being handed down, without good reason. The whole purpose of Standard Orders is to reduce or eliminate disputes like this. I refuse to deal with this issue now. If it cannot be agreed, the matter will either have to be arbitrated or will have to return to court;

(2) Should the lump sum be paid directly to creditors?

Similarly, in my view, this issue should in my view either have been agreed in advance or raised during the hearing. I refuse to deal with it, save to comment that I am aware that in financial remedy applications between husband and wife there is normally no jurisdiction to order payments to a third party (see *Burton v Burton [1986] 2 FLR 419*). I am unaware if the same applies in Schedule 1 applications, or if there are relevant exceptions. If it cannot be agreed, the matter will either have to be arbitrated or will have to return to court.

135. My response to the two further points raised by Mr Hale are as follows:

(3) The 'costs order'

While I hoped that my draft judgment was sufficiently clear on this issue, I would like to emphasise that I am *not* ordering the Mother to pay any of the Father's costs. Nor am I varying or going back on the order made on the appeal that there should be no order as to costs. I am making provision for the Father to pay *all* of the Mother's costs, subject (inter alia) to what I would describe as a potential *clawback* in relation to the

Mother's appeal costs and what has been described as the 'overspend' on the Mother's costs. This will only be enforced with leave. On any such application the court would exercise its discretion which would inevitably involve a consideration of A's best interests. Accordingly, in my view it does not infringe or "deter" (to use Mr Hale's word) any future application the Mother might bring. Rather it seeks to restore a semblance of proportionality to this case. I have formed the clear view that it would be unfair for the Father to pay, without any hope of recourse, the Mother's costs of an appeal which was substantially unsuccessful, or to pay the 'overspend'. I have made this clawback provision instead of docking the child maintenance by £500 pm. I accept Mr Hale's point that my judgment needed to express this clawback more clearly (and so have amended paragraph 113(2), above). However, I do not accept the suggestion that this provision was improperly made or is inconsistent with earlier orders. As to Mr Hale's submission that, since I did not raise this clawback as a possibility during the hearing, I should now hear further submissions, I disagree for the following reasons: firstly, I have already heard Mr Hale's submissions in relation to costs more generally (i.e. that it is in the interests of A that all of his mother's debts are cleared); secondly, the order I make will only be enforced with leave, so that the Mother would have an opportunity to argue that she should not bear any responsibility for her costs of the appeal, and in relation to her former lawyers' overspend; thirdly, I have applied the overriding objective;

(4) The Father's open proposal of £50,000

I am fully aware that the Father made this open proposal, which I have described in detail (paragraph 17, above). However, I have resolved this case on a different basis, whereby the agreed level of child maintenance of £8,000 pm has been backdated. In my judgment, the parties' open proposals provide the court with guidelines and not tramlines. I hope that I have explained my rationale fully within this judgment.

Second postscript (21 March 2022)

136. I have now received counsel's very helpful submissions in relation to anonymisation which I have in large part adopted.

