St John's
CHAMBERS

Financial remedy update (February to May 2018)

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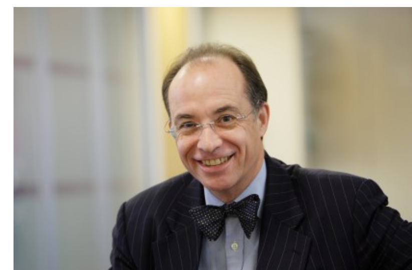
The article continues Christopher's regular reviews of the more important recent financial remedy cases, this one covering the period from February to May 2018.



The usual *pot pourri* includes the CA having (finally? and perhaps unsurprisingly) given the quietus to the future sharing of earning capacity (at least directly), and apparently siding with the impressionistic approach against the formulaic in addressing the origin of assets for division.

Maintenance and sharing

The important decision in ***Waggott v Waggott*** **[2018] EWCA Civ 727** had been awaited with interest. The parties had agreed to divide their assets including pensions equally after a 21 year relationship. The bone of contention was ongoing maintenance. H was 53, W 47. There was one child of 12 in 2016. Separation was in 2012. Both parties had been accountants but W had not worked since 2002/3. H's net income in 2014 was £3.7m but being largely bonus etc was not necessarily sustainable. W sought a tapering share of bonuses earned to 2019 and £190K pa for life. H contended W should obtain employment and offered a share of deferred remuneration in 2014 and 2015 and tapering maintenance for 5 years (£80K x 3 yrs, £50K x 2 yrs) with a clean break. The trial judge did not feel it fair to bring W's projected comparatively modest earnings into account given the scale of H's earnings, assessed W's needs at £175,000

[1] [1] I acknowledge the assistance of a pupil Sophie Smith-Holland in preparing this article

pa and attributed an income of £60,000 to £3.5m of free capital (a net return of 1.75%, although the judge subsequently revised the assumed rate of return to 2.25% net on the basis of *H v H* (2015) and also reduced W's housing needs by £0.5m when she moved to Cheshire, thus increasing the free capital). He did not feel W could adjust to termination of maintenance without undue hardship. He awarded her 25% of the bonus received in 2014 and 12.5% of the 2015 bonus. He rejected the compensation argument holding the award made exceeded any loss W might have sustained through loss of her career. W appealed and H cross-appealed. Although this was a 'big money' case (£16.4m), Moylan LJ was keen to consider how the issues impacted on a broader range of cases, reflecting the need to secure consistency across decisions so as to inform and assist settlement in cases by articulating applicable principles with clarity and predictability. The answer to the question whether the award was "fair" must have a principled basis of sufficient substance to explain why it was or was not. Having reviewed the authorities in detail he rejected W's arguments:

(a) *that an earning capacity developed during the marriage was an asset to be shared within the sharing principle, giving W a continued entitlement to sharing in H's income*. To thus extend the sharing principle would fundamentally undermine the court's ability to achieve a clean break. Case law explained why it was neither desirable nor practical to capitalise the value of an earning capacity, or to attribute that value to the period of the marriage. The marital partnership does not stay alive to share future resources (*Miller*). There were practical difficulties in assessing what proportion should be shared and for how long and in what future circumstances;

(b) *that it was unfair to require W to meet her income needs from income generated by her 'sharing' capital award when H would be able to meet his needs from earned income.* Again this would undermine the clean break and always give an applicant a claim for an additional award to meet income needs. It is essential to assess need before establishing whether sharing will meet need. The assessment of need is flexible and may be affected by the respondent's earning capacity, which may influence whether the applicant's capital is to be amortised in full, in part, or at all. No definitive outcome can be mandated, and must depend on all the s.25 factors. Income generated by the capital will go to meet need. The rate of return will need to be assessed by reference to the period over which needs are to be met. No specific rate of return can

be prescribed but the *Duxbury* model has advantages as a starting point. However it is important, to avoid inconsistency, that the court uses the same model for assessing return whether it is assessing an award by application of the need principle or whether a sharing award is sufficient to meet needs

(c) *that compensation applies not only when the applicant suffers a financial disadvantage but also when the other spouse sustains a financial advantage (viz enhanced earnings) during the marriage which has produced a surplus over needs*. W's contention was contrary to established authority. Compensation as a claim was not to be encouraged but Moylan LJ set out some of the necessary evidential criteria. In this case the income W had lost was more than compensated for by the award received.

In the circumstances W's appeal was dismissed but H's cross appeal was allowed. The judge's determination of whether to impose a term maintenance order focused too narrowly *in considering only* whether W would be able to earn the shortfall between her income needs and the amount generated by her free capital, whereas the question should be whether it was fair for her to deploy some of her capital to meet her needs. "This broader consideration was required both so as properly to address the question of undue hardship and also so as to give proper weight to the clean break principle". Maintenance would continue to 1st March 2021 with a s.28(1A) bar. W should have to access up to 21% of her free capital (10% of her total award including housing and pension) to make up the shortfall, leaving her with £3.6m free capital. Thus W would be able "to adjust without undue hardship" to the termination of maintenance

Pre-nuptial agreements

In **KA v MA (Pre-nuptial Agreement - Needs) [2018] EWHC 499 (Fam)** Roberts J considered a pre-nuptial agreement in the context of W's needs based claim for financial remedies on divorce. The broad terms of the agreement were that W would receive a lump sum of £600,000 and maintenance of £24,000 pa, for life (with no right to capitalise). Roberts J considered the test in paragraph 75 of *Radmacher* [2010] UKSC 42, whilst recognising that the agreement predated that decision: *"The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."* Roberts J found that H was adamant there

would be no marriage without a clear agreement from W to enter into a pre-nuptial agreement and W was aware that this was a condition of their marriage. The parties agreed to be bound by its terms and had received legal advice; including W having been advised that she would be "substantially better off" in claims under either the 1973 Act and/or the 1989 Acts. W said that she felt under immense pressure to sign the agreement but Roberts J held that H's position of principle that there would be no marriage absent a signed prenuptial agreement was not capable of constituting duress or exploitation of a dominant position. In the circumstances the judge could not disregard the agreement entirely as having no legal consequence or significance in terms of outcome in the case. She then considered W's needs in the light of her findings in relation to the pre-nuptial agreement and in the context of fairness. She assessed W's housing needs to be £1.35m and income needs to realistically be £100,000 per annum, giving a total award of £2.95m less £220K she already had.

Versteegh v Versteegh [2018] EWCA Civ 1050 concerned a pre-marital agreement (PMA) for separation of property signed the day before the wedding in Sweden and without independent advice but fully in compliance with what Swedish law required. The judge had rejected W's evidence as to her understanding of its effect finding she had a full appreciation of its implications. While legal advice is 'desirable' it is not essential and if it is clear to the court that the party understands the implications of the agreement and intended that the agreement should govern the financial consequences in the event of divorce, that is sufficient to give effect to the agreement. When a PMA is signed in a country where they are commonplace, simply drafted and generally signed without legal advice or disclosure, it is not right to add a gloss to *Radmacher* so that a spouse would be regarded as lacking the necessary appreciation of the consequences absent legal advice that some of the countries, where the parties might choose to live, might operate a discretionary system. H did not seek to enforce the agreement in full and conceded an element of sharing. The resources greatly exceeded those required to meet need. A significant part of the assets were pre-marital. H's company was created by him and operated within a trust structure. Despite £2m spent on experts the judge was unable to assess the business' value or future liquidity. He ordered that W receive 50% of the non-business assets (£51.4m against H's offer of £38m) and the 23.41% share in the business assets offered by H. The CA upheld this *Wells* order *in specie* (as opposed to a lump sum order) although accepting it as having

disadvantages. A "modification of the sharing principle" was justified by an effective PMA and to reflect the non-matrimonial assets in a more general way as part of the totality of the discretionary exercise, and given the lack of a clear value for the business. The court's approach (para 95) adopted the Moylan ("impressionistic") approach (cf *Hart v Hart*) rather than the Mostyn formulaic approach in the division of the marital assets. Lewison LJ makes some useful comments about PMAs at para 178-183.

Procedure

On 28.02.18 the President issued guidance entitled "***Jurisdiction of the Family Court: Allocation of cases within the family court to High Court Judge level and transfer of cases from the family court to the High Court***". Paragraph 30 makes clear that cases should only be heard in the High Court in very limited and exceptional circumstances. A complex or difficult case should be re-allocated for hearing in the Family Court by a "judge of High Court level" or, if appropriate, a judge of the Family Division, but still in the Family Court. It was said to be "virtually impossible to conceive of a divorce or financial remedy case which needs to be transferred from the family court to the High Court". It was stressed that FPR 5.4 provides that where both the Family Court and the High Court have jurisdiction to deal with a matter, the proceedings relating to that matter must be started in the family court, unless proceedings relating to the same parties are already being heard in the High Court, or any rule, other enactment or Practice Direction provides otherwise or the court otherwise directs. Para 24 states that freezing order applications should always be heard in the Family Court, normally at District Judge level, but may be allocated to a judge of High Court level.

All these points were reiterated by Mostyn J in ***VS v RE*** **[2018] EWFC 30**, a Schedule 1 case in which enforcement proceedings were commenced in the High Court with a view to securing a freezing order and obtaining an order for sale of property subject to a charging order. This was wrong (although half a dozen High Court judges including Mostyn J had failed to spot it during the currency of the case). Attention was drawn to s.31E(1)(a) of the 1984 Act "In any proceedings in the family court, the court may make any order … which could be made by the High Court if the proceedings were in the

High Court." The Family Court must be recognised as the sole forum for resolution of all family cases save for those specified in the Schedule to the President's Guidance.

***S v S* [2018] EWHC 627 (Fam**) is really a decision on its facts, but it is a reminder that notwithstanding that this was a financial remedies case, rather than a matter concerning children, the guidelines set out in *Re Z (Children) (Care Proceedings: Review of Findings)* (2015) provide a principled framework for a judge, faced with an application to re-open findings of fact, as opposed to applying the narrower *Ladd v Marshall* principles governing the admission of fresh evidence on an appeal. H's application was dismissed.

An interesting difference of interpretation of the rules has emerged between Mostyn J and Cobb J. In *BR v VT* [2015] EWHC 2727 (Fam) the former held that an interim order for sale could be made in financial remedy proceedings where the circumstances justified it, pursuant to FPR 20.2(1)(c)(v). This is a view he has maintained in ***SR v HR* [2018] EWHC 606 (Fam)** notwithstanding the contrary view of Cobb J in ***WS v HS* [2018] EWFC 11**. In the latter case a DJ had ordered sale of the FMH prior even to the First Appointment. H had recently lost a well paid job and was living on state benefits in their second home. It was agreed the FMH, subject to a mortgage and still occupied by W and 2 school age children, would be sold. The question was when. An offer had been made which H wanted to accept but W contended was at an undervalue and the daughter should be allowed to finish her A levels. Cobb J allowed W's appeal. FPR 9.7 does not include, in the interim relief for which it provides, an order for sale. S.24A orders can only be made ancillary to orders under s.23 or 24 which cannot be enforced before decree absolute. FPR 20 (interim remedies) was a procedural provision which could not grant a jurisdiction barred by the statute, nor could any inherent jurisdiction fill the perceived gap. However there is jurisdiction under s.17 MWPA 1882 and ss.13, 14 TOLATA 1996, which would also enable the court to make an order for vacant possession (but no such applications had been made). FPR 20 does not give jurisdiction to order possession which would require an application under s.33 FLA 1996 and the court undertaking a s.33(6) exercise, but in any event where, as here, W was a joint owner s.33 would not permit the court to terminate her right to occupy (and further would not terminate her beneficial or legal interest). Moreover such a draconian jurisdiction should not be exercised on a deemed application rather than a formal

application pursuant to the rules. If the r.20 jurisdiction were engaged H would first have to establish a "good reason" before the court embarked on the discretionary exercise, when there might well be merit in deferring the decision on sale until the totality of the issues within the financial remedy application could be considered in the round. A sale could pre-empt the ultimate decisions.

In ***SR v HR*** Mostyn J maintains his previous position but concedes that until a higher court resolves the issue such applications should be made pursuant to Part 18 under MWPA 1882 (or perhaps ToLATA 1996, although he did not mention it) in cases of joint ownership.

This case concerned final capital orders concerning the sale and sharing of 3 properties made in 2012 and 2013, but never implemented. An implementation order was made which W purported to appeal. HHJ Sharpe granted leave to appeal that order (and possibly the earlier substantive orders). He then made clear he was not exercising an appellate function but, because the original order was executory, purported to set aside the original orders and on 4th October 2017 made a new order. However on 22nd September H had been made bankrupt. The new order significantly altered the economic impact of the substantive orders of 2012 and 2013 resulting in £46,000 of value being taken from H and given to W. H appealed with the support of his trustee in bankruptcy. Perhaps relevantly neither H nor W were represented on the appeal before Mostyn J (although the trustee was). Mostyn J rejected the basis upon which the judge had acted. He stressed that final capital orders are not susceptible to variation (with minimal exceptions eg lump sums by instalments) or discharge by a court of first instance, save upon the conventional basis upon which an order may be set aside, now governed by FPR 2010 9A and PD9A (fraud, mistake, or supervening event where no error of the court is alleged). In Mostyn J's view certainly mere delay in implementing a routine property adjustment order could never amount to a ground for set aside under rule 9.9A.

The judge had relied on *Thwaite v Thwaite* [1982] Fam 1 to hold that where a court refuses to enforce the order if it is inequitable to do so, it is open to the court to determine the matter afresh. Mostyn J disagreed. Referring to Ormrod LJ in *Thwaite* when he said:

> "Where the order is still executory, as in the present case, and one of the parties applies to the court to enforce the order, the court may refuse if, in the circumstances prevailing at the time of the application, it would be inequitable to do so: *Mullins v. Howell* (1879) 11 Ch D 763 and *Purcell v. F. C. Trigell Ltd.* [1971] 1 QB 358, 366, 367. Where the consent order derives its legal effect from the contract, this is equivalent to refusing a decree of specific performance; where the legal effect derives from the order itself the court has jurisdiction over its own orders: per Sir George Jessel M.R. in *Mullins v. Howell* (1879) 11 Ch D 763, 766."

Mostyn J argued that the two cases cited dealt only with the court's control of interlocutory orders and were not sound authority for a loophole to the prohibition of the discharge of a non-variable final capital order. However, he does not go on to refer to the passage in *Thwaite* (at page 9F) where Ormrod LJ observes:

> "The judge was entitled, in his discretion, to make a new order for ancillary relief in favour of the wife, notwithstanding the refusal of the wife to consent to his doing so. His jurisdiction arose, not from the liberty to apply as he held, but from the fact that the wife's original application for ancillary relief was still before the court and awaiting adjudication. It had not been dismissed since the conveyance had never been executed, so that that part of [the order] by which her application was dismissed, had never come into effect."

The relevant point, it is suggested, is that Ormrod LJ said that the judge "was entitled, in his discretion, to make <u>a new order for ancillary relief</u> in favour of the wife, notwithstanding the refusal of the wife to consent to his doing so."

Likewise Bracewell J in *Benson v Benson (Deceased)* [1996] 1 FLR 692 at 696 said that:

> "…the judge has an inherent jurisdiction <u>to make a fresh order for ancillary relief where the original order remains executory</u>" albeit she added "if the basis upon which it was made has fundamentally changed"

But that condition (in effect a *Barder* condition) appears not to have been accepted by Munby in *L v L* [2008] 1 FLR 26 as binding and was rejected by Lord Wilson in *Birch v*

Birch [2017] UKSC 53. Nevertheless, it does seem to be the case, as Munby J (as he then was) said in *L v L* that:

> "Merely because an order is still executory the court does not have, any more than it has in relation to an undertaking, any general and unfettered power to adjust a final order – let alone a final consent order – merely because it thinks it just to do so. The essence of the jurisdiction is that it is just to do – it would be inequitable not to do so – *because of* or *in the light of* some significant change in the circumstances since the order was made."(his emphasis)

And Lord Wilson appears to have adopted that test too in *Birch*.

In *Bezeliansky v Bezelianskaya* [2016] EWCA Civ 76 Moor J had made a new order when it became apparent that the wife could not sensibly receive the Moscow property and he substituted the Paris property and made consequential orders. The Court of Appeal upheld him, citing both the passages from *Thwaite* set out above, holding that it was further settled law that the judge was entitled, in his discretion, to make a new order for ancillary relief in favour of the wife, and applying Munby J's approach in *L v L* but applying also the condition that it would be inequitable to enforce the original order (per McFarlane LJ at [39]). *Bezeliansky* is not mentioned by Mostyn J.

In *HR v SR* Mostyn J further asks (in the context of that case):

> "Instead of making a direct replacement could Judge Sharpe have said to the wife: I will, pursuant to *Thwaite*, decline to enforce your obligation to pay the husband 70% of the equity in the Haulfryn property provided that you agree to pay him 20% instead? In my judgment that would be quite unacceptable. It would amount to a blatant circumvention of the statutory prohibition on variation."

This stems from Lord Wilson in *Birch* (para 5) where he explains how a court may release a party from an undertaking providing they provide an alternative – a form of barter which may change the substance of the obligations. Given that this would be legitimate to influence the exercise of the discretionary jurisdiction identified in *Birch* to discharge the undertaking, would it not, where there has been a change in

circumstance and enforcement of the original order would be inequitable, be a legitimate factor in exercising the power identified in *Thwaite*?

There was a further reason not to allow the wife's application in *HR v SR* namely the loss of £46,000 to trustee and Mostyn J evidently felt that it would be contrary to policy to deprive the creditors (mainly HMRC) of that resource.

The extent to which final orders may be revisited therefore seems to require some appellate guidance.

Undertakings

The status of undertakings in contempt cases was considered in *Hart v Hart* (below) while the jurisdiction to discharge an undertaking discussed in *Birch* featured again in ***A v A* [2018] EWHC 340 (Fam)** where after a long marriage, during which significant wealth was generated, a consent order was made in 2011 predicated on the sale of the FMH and a Spanish property and division of the proceeds. H advanced a deposit and funded a mortgage for W to buy a house and paid PPs pending the sales, from the proceeds of which W would repay him. 6 years later the properties had not sold and had reduced in value while W's debt to H was increasing (thus significantly reducing her expected capital on sale). H's business had meanwhile prospered. At first instance W's application for release from the undertaking was allowed in respect of the repayment of the mortgage instalments and maintenance on condition that if she received more than £1.74m from the sales she should use the surplus to repay H. Cohen J allowed H's appeal in part, concluding (1) that there did not have to be a change of circumstance equivalent to *Barder* or to *Myerson* to permit a release from an undertaking, but (2) the fact of a significant change of circumstance did not necessarily lead to release but was merely the gateway to consideration of the all the circumstances. (3) The fact of the original agreement was very relevant especially where it had been partially implemented, H had honoured it and did so in the expectation of W repaying him. Any change to the agreement and release should be kept to the minimum necessary to avoid serious hardship or injustice. (4) As part of the assessment of fairness it was appropriate to include H's improved fortune (5). If W were released there would need to be replacement undertakings. Cohen J invited further submissions but suggested W

having to access her pension or the equity in her home, or H's maintenance payments reducing.

Part 25 and "necessity"

In ***Buehrlen v Buehrlen*** **[2017] EWHC 3643 (Fam)** the parties had agreed the instruction of a single joint employment expert to determine W's earning capacity. The DJ refused to approve the consent order as she was not satisfied that the expert was '*necessary to assist the court to resolve the proceedings'* (FPR 2010 rule 25.4(3)). HHJ Scarratt refused H's appeal, W having changed her position. The availability of employment or suitable employment were matters for cross-examination after provision of job adverts and examples of salaries. On the question of "necessity" the judge relied on *Re TG* [2013] EWCA (Civ) 5; and *Re HL* [2013] EWCA (Civ) 655 which despite being children cases were relevant as to the definition of "necessity". The expert report was not necessary; judges make an assessment of earning capacity "every single day of the week".

Sentence for contempt

Another couple of judgments following on from the CA decision [2017] EWCA Civ 1306 in ***Hart v Hart*** last year are reported at **[2018] EWHC 548 (Fam**) and **[2018] EWHC 549 (Fam).** H had been unco-operative and obstructive during the original proceedings and his disclosure and evidence was unsatisfactory. W had been seeking to enforce the judgments in particular in respect of the transfer to her of a company which H had persistently obstructed and frustrated in the ways particularised in the judgments. This was W's application for committal. H was in breach of an undertaking and orders to provide information and documentation to enable W to manage the company, which the judge found was motivated by a wish to demonstrate his resentment against W about the financial orders that were made in the proceedings in her favour. He had sought, deliberately, to obstruct her in the efficient running of the company. The first judgment analyses the breaches and concludes that W had "easily" proved the breaches to the criminal standard. The second judgment addresses sentence, considers the nature and gravity of the contempt, and applying the factors identified in *Crystal Mews Ltd v Metterick and Others* [2005] EWHC 3087 (Ch) found:

i) W had been seriously prejudiced by H's actions.
ii) H had not acted under pressure, but out of a wish to put W under pressure due to his dissatisfaction with the outcome of the substantive proceedings.
iii) His breaches were deliberate and sustained.
iv) The breaches lay at a high level of culpability. They were persistent, damaging, motivated, continuing in part and H had shown no remorse at all, all of which were serious aggravating factors. His contempt had caused deliberate financial and emotional harm to W (s. 143 Criminal Justice Act 2003).
v) He was solely responsible for the breaches that he had committed and any guilt that his sister and their company (against whom proceedings were adjourned) might bear did not detract from that of H.
vi) He had not co-operated in these enforcement proceedings and did not appear to recognise the seriousness of what he had done.

Despite his age (83), ill health, his last minute partial satisfaction of some non-provision of bank statements, and previous good character and social contributions, his contempt merited immediate imprisonment including 9 months punitive element on each of three breaches to run concurrently and an additional 5 months coercive element (concurrent but additional to the punitive element) on two breaches which remained outstanding. H agreed to pay W £100,000 costs.

The CA **[2018] EWCA Civ 1053** rejected H's appeal both against the committal and the underlying orders. W conceded the appeal against the committal for breach of the undertaking for pragmatic reasons (and it added nothing to the sentence). Although H contended the undertaking had been outwith the power of the court to accept Moylan LJ observed that undertakings are frequently and properly given in respect of matters the court cannot order (*Livesey v Jenkins*) and H could not anyway appeal against an undertaking given to the court. As *Birch v Birch* made clear an undertaking can only be discharged on application and H had made no such application. The court was not *functus officio* once the substantive financial order was made (in 2015) but retains the power to make orders for the purposes of enforcing or procuring the effective implementation of its substantive order. It has wide powers to make orders for "interim remedies" under FPR 20.2 and section 37 Senior Courts Act 1981 both before and after judgment (r.20.3(1)(b)). The orders were "supportive or ancillary" to the wife's

substantive rights under the June 2015 order (*Goyal v Goyal*). H was required to deliver up documents, which he had no right to retain, to the person who was entitled to them, namely W who was the sole director (and shareholder) of the company. This was not piercing the company veil. *Petrodel* was not applicable. No criticism could be made of the fact or length of the immediate custodial sentence.

Conflict of Laws

In ***Villiers v Villiers* [2018] EWCA Civ 1120** the CA upheld Parker J and found the English court had jurisdiction to entertain W's s.27 application for maintenance despite a Scottish court being seised of the writ of divorce, but where no financial claim had been made in Scotland. Jurisdiction in respect of intra-UK maintenance applications is governed by Arts 12 and 13 of Regulation 4/2009 as applied by the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011. The two sets of proceedings were not related actions within the meaning of art.13. *N v N (Stay of Maintenance Proceedings)* [2012] EWHC 4282 (Fam) was therefore overruled. Further, "in immediate need of financial assistance" in.s.27 was interpreted as meaning 'in current need' and did not import any requirement of urgency.

Publicity

***Bloom v Bloom* [2017] EWFC B110** was the third judgment of Nicholas Cusworth QC. [2017] EWFC B108 dealt with the ownership of a property involving W's parents. [2017] EWFC B109 was the subsequent financial remedy proceedings resolved on a needs basis. In the course of these proceedings the judge made significant adverse findings against H of fraud and systematic deception. W successfully sought to have the judgments published in un-anonymised terms and forwarded on to relevant public authorities or permission to release them. The judge held that the starting point is that judgments shall not be open to inspection by any person without the permission of the court [FPR 2010, rule 29.12]. In exercising its discretion, the court must undertake a balancing exercise of the competing considerations to be weighed on the facts of each case [*S v S (Judgment in Chambers: Disclosure)* [1997] 2 FLR 774] between encouraging full and frank disclosure within FR proceedings and the exposure of financial propriety and the prosecution of misconduct. The judge identified factors in favour of publication

including his failure to comply with his duty of disclosure and his limited admissions (so that he had not incriminated himself) and much of the material was already public; the gravity of his criminal conduct and the involvement of innocent third parties whose loss could not be remedied within the proceedings; and that publication would demonstrate by example that parties cannot easily hide the truth within financial remedy proceedings. Reports to the authorities were justified by the seriousness of H's conduct and the plain public interest in protecting potential victims from his schemes insofar as possible'

Miscellaneous

Haden-Cave's decision in December 2016 of *AAZ v BBZ and Others (Financial Remedies: Sharing Principle: Special Contribution)* [2018] 1 FLR 153 continues to reverberate as Mrs Akhmedova seeks to enforce the £450m judgment awarded to her. In ***Anthony Kerman v Akhmedova*** **[2018] EWCA Civ 307** the Court of Appeal rejected H's former solicitor's appeal against the orders Hadden-Cave J had made, requiring him to give evidence about the whereabouts of the assets, in a judgment that addresses the scope of legal professional privilege, the procedure where a professional adviser is summonsed by the court and the scope of tipping-off orders. It also confirmed that in leaving open (in the usual way) the prospect of further relief under the Matrimonial Causes Act 1973 until full compliance, the original order had the effect of keeping the proceedings on foot (for if there were no "proceedings" there was no jurisdiction to summons a witness under s.31G Matrimonial & Family Proceedings Act 1984 and FPR Pt 24). In ***Akhmedova v Akhmedov (1) Woodblade Lts (2) Cotor Investment SA (3) and others*** **[2018] EWFC 23** Haddon-Cave J granted W relief including joinder and enforcement against additional parties and extension of a freezing order as she chases the assets round the world attempting to overcome H's obstructive and obfuscatory tactics.

EA v NA [2018] EWHC 583 (Fam) is a decision of Keehan J illustrating the reasoning process when seeking a declaration under the Presumption of Death Act 2013.

Maughan v Wilmot [2018] EWHC 273 (Fam) was the latest instalment in the litigation which started with a petition in 1997. The CA last year dismissed H's challenge to service by email out of the jurisdiction and in this judgment Mostyn J

backdated and capitalised periodical payments for the duration of tertiary education of one child, refused to remit arrears for the older children, ordered payment of these sums and costs from frozen assets, the freezing order continuing, and made injunctions against H. Although not apparent from the judgment an extended civil restraint order was also made.

***Wall v Munday* [2018] EWHC 879 (Ch)** was not a financial remedies case but represents a warning about failing to resolve all issues after divorce. The parties had been married and purchased a property together. When they divorced in 1974 some issues were resolved but not the ownership of the house in which H remained, insuring and maintaining it, extending the property and subsequently paying off the mortgage. When he died the parties remained joint tenants so the house passed to W. H's estate's claim that the settlement after the divorce had included the house failed, but their fall back position that there had been severance of the joint tenancy succeeded. An argument that there was an agreement to be implied or imputed that the shares were altered in H's favour also failed. Applying the principles in *Jones v Kernott* and *Barnes v Phillips* the judge on appeal concluded that the court should have regard to "the whole course of dealing between them" in order to resolve whether there had been a change of intention, as well as the appropriate shares if there had. However, given the lack of communication between the parties, it would have been impossible for the trial judge to reach the conclusion that an agreement between the parties to vary their beneficial interests was to be inferred. The judge went on to consider an appeal on costs where each party had failed to some extent and applied Ward LJ's test in *Day v Day* as to who had to write the cheque. While costs would follow the event, the mix of outcomes justified a 40% discount from full recovery by the estate.

Standard Financial Orders

On 15th May the President issued an update to his Guidance on Standard Financial and Enforcement Orders (addendum no. 2) with accompanying ZIP file: https://www.judiciary.gov.uk/publications/practice-guidance-standard-financial-and-enforcement-orders/