



Neutral Citation Number: [2020] EWFC 80

Case No: LS20P01640

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/11/2020

Before:

THE HONOURABLE MR JUSTICE COBB

Between:

X
- and -
Y

Applicant

Respondent

Re Z (Schedule 1: Legal Costs Funding Order; Interim Financial Provision)

James Roberts QC and William Tyzack (instructed by **Hunters Law LLP**) for the Applicant
Alexis Campbell QC (instructed by **Mills & Reeve LLP**) for the Respondent

Hearing dates: 12 November 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

1. At the time of the hearing, Zoe¹ was just three weeks old. Yet even at her very young age, she is already the subject of contentious litigation between her parents in two jurisdictions – in England, and in the United States of America.
2. The interim applications before the English Court, on which my determination is required, are brought within the context of proceedings under *Schedule 1 Children Act 1989* ('CA 1989') which were launched by her mother when Zoe was one day old. The mother seeks:
 - i) A legal costs funding order in relation to *Schedule 1* and *section 8 CA 1989* proceedings;
 - ii) Interim financial provision for Zoe (*Schedule 1, para.1(3) CA 1989*).

For the purposes of this determination, the parties have filed statements of evidence, and I have received helpful submissions from leading counsel. I have heard no oral evidence.

Background

3. The mother is British, in her late 20s; she is an interior designer by training and experience. The father is American, and in his late 40s; he lives mainly between two homes, one in 'State A' and a second home in 'State B', both of which are on the west coast of the USA. The father has signed a statutory declaration acknowledging his parentage of Zoe; he is extremely wealthy, with assets which are evidenced to be in the region of \$130m (net), and a monthly income of c.\$0.9m (net). He lives in a home in State A which is valued at \$35m. Neither party has previously been married.
4. The parties first met in or about 2017. They met again in late 2019 when the mother was then living in New York. Their relationship developed swiftly in early 2020, and the mother moved to live with the father initially in State B and then they moved to his home in State A; the lifestyle which the couple enjoyed in that period reflected the father's remarkable wealth. The parties discussed marriage; in February 2020, the father formally asked the mother's father for the mother's hand in marriage. At about that time, the mother became pregnant. In the weeks which followed, the relationship swiftly deteriorated. It is unnecessary to record the cross-allegations on which I have made no adjudication, save that it is relevant to record that the mother appeared to spend lavishly on the father's credit card, purchasing luxury items. The mother's case is that this was encouraged by him and matched his own opulent spending ("he almost instructed me in the art of high spending"); the father disputes this, asserting that the mother was greedy. He claims that he tried many times in vain to limit her profligacy, and it was her extravagance which irredeemably strained the relationship.
5. In January (the father recalls it was April) 2020, the mother gave up her apartment in New York; she maintains that the father effectively terminated the lease and disposed of her possessions. Having lived together for several weeks, in about March/April, the father proposed that the parties should live separately, albeit reasonably close within

¹ Zoe is not her real name.

the same neighbourhood in State A; he suggested that the mother and the baby should move to live in a rented luxury seafront villa (c.3,100sqft.), which I shall call for the purposes of this judgment ‘Beach Villa’. The monthly rent for Beach Villa was \$15,000, a figure which the mother uses now as a benchmark for what she says are her current reasonable accommodation needs with Zoe.

6. On 16 July 2020, the mother left State A, and travelled to the father’s home in State B, before returning (without prior notice to the father) to England on or about 28 July. She wrote to the father on the following day (‘the 29 July e-mail’) in these terms:

“I had to make the agonising decision to return to England where I feel safe and have emotional support from my family.

... both yourself and my family in England are super important to me. At this present time, I need them as much as I need you. I know that you have offered me the most wonderful financial help (night nurse, full time nanny, a safe and beautiful home and so much more) which I am so grateful for and realise how important that all is (thank you). Right now, more importantly I need the emotional support of both you and my family.

... I need to be nurtured and supported emotionally and physically by my family. [Zoe] needs this too. I am devastated about our romantic relationship ending and for this reason need my family around me”.

The mother returned to the North East of England, to the home of her father and stepmother, where she is indeed currently still living.

7. For a period of time after the mother’s return to the UK, the parties appeared to be involved, through their lawyers both in this country and in the USA, in negotiations to enter some form of pre-nuptial settlement, with the prospect of reconciliation and marriage. There is some dispute about whether those discussions were conducted under the privilege of ‘without prejudice’ protection; the mother says that they were not. The father maintains that they were, by operation of the law of State B (where the negotiations were being conducted in part). The simple fact is that the details have been shared with me; they contain proposals that the father make significant financial provision for the mother and Zoe, including a property at \$15,000pcm rent, an \$120,000 annual tax free allowance, lease arrangement for a Range Rover car, and a nanny (\$60,000p.a.). On 2 September, the father proposed to lodge \$200,000 with the mother’s lawyers as “an advance of living expenses for [the mother] in contemplation of her returning to [State B] so the parties can continue in good faith with completing the Agreement”. The mother’s lawyer replied: “if the \$200,000 is not put in [the mother’s] UK counsel’s account by 4 September 2020 there will be no further discussions”. The sum was not paid; the mother did not return to the USA; the discussions came to nought.
8. On or about 14 September 2020, the father issued proceedings in State A, seeking anticipatory adjudications on paternity, custody and child support; he was clear that

he took this step to ensure that State A was seized of jurisdiction in relation to welfare and financial issues relevant to the yet unborn child (Zoe). The proceedings were ultimately served on the mother, and a hearing date was fixed for 5 November 2020. Later that month, the father offered \$10,000 to cover the costs associated with Zoe's birth, and then \$10,000 per month for the mother thereafter.

9. On 17 September, the mother sent the father an e-mail requesting that he pay £90,600 towards "her initial expenses for giving birth and caring for [Zoe]". On 20 September, the father replied to this request as follows:

"If I will agree to move to the US, then I will bend over backwards to be beyond generous in the future... If you accept my offer, and avoid the prolonged and expensive legal battle, we can move on depositing the money. Any challenge to the jurisdiction will start a legal fight and dissolve the offer".

10. In late October, Zoe was born. As I mentioned above, on the following day, the mother launched proceedings in England; she sought an urgent hearing (in advance of the 5 November hearing in State A) before me as the Family Division Liaison Judge for the North Eastern Circuit, and I was able to accommodate a short hearing on 27 October. I then set up this hearing, in order to determine interim issues.
11. Finally, by way of background, I should add that on 27 October, the father's solicitors wrote to the mother's solicitors (i) proposing to provide a Statutory Declaration so that he could be registered as the father on the birth certificate, and (ii) discussing name choice. On the following day, the mother registered Zoe's birth, but did so without registering the father's details. She registered Zoe with her surname only. The mother has subsequently confirmed that she will arrange for the father's details to be added to the birth certificate, and has said² that she will "consider whether she will agree to [Zoe's] surname being changed [to the double-barrelled name incorporating the surnames of the mother and father] when she is feeling better". As things stand, it appears that the dispute between the parties is narrowing to whether the surnames of the mother and father should be connected by a hyphen.
12. The mother has made clear that she wishes to "encourage and facilitate" [the father's] relationship with [Zoe]: she concludes her last filed statement before this hearing with the phrase "[the father] is welcome to come and visit [Zoe] whenever he wishes". The maternal grandfather has offered for the father to stay with him in order to facilitate contact. The mother has indicated a wish to engage in settlement negotiations on all welfare matters. This is very promising.
13. The proceedings in the USA, in State A, have been stayed for the time being, with a review date in mid-March 2021.

The mother's case

14. The mother makes claims under five main headings. Although I have been provided with a range of calculations of her claims in the various documents filed (i.e. the

² Correspondence: 29.10.20

witness statements, schedules and other supporting documents), at the hearing on 12 November Mr Roberts QC and Mr Tyzack invited me to work on the following figures for the purposes of my decision:

Legal costs

- i) Outstanding and unmet legal costs incurred with firms who are either no longer actively instructed here and in the United States, or whose work is paused pending this litigation: £71,219³;
- ii) Legal costs already incurred with her current solicitors, Hunters: £86,434 as at the date of the hearing⁴; it is notable that £41,400 in costs was incurred in a three-week period before Zoe was born;
- iii) Ongoing/future legal costs provision
 - a) in relation to *Schedule 1* proceedings, the sum of £94,878 up to Financial Dispute Resolution Appointment ('FDR'); and
 - b) in relation to *section 8 CA 1989* issues, the sum of £94,806 up to any Dispute Resolution Appointment ('DRA');

instructing her chosen firm, Hunters, and retained counsel;

Interim financial support

- iv) Costs of setting up a home for Zoe in England; assessed at
 - a) £78,000 for furniture, desktop computer, appliances, relocation and setting up costs;
 - b) £19,500 rental deposit on the new home for Zoe and the mother;
 - v) Interim maintenance at the rate of £31,396 per month.
15. The sums claimed above are expressed to be net (I believe) of two sums already paid by the father to the mother or on her behalf:
- i) \$30,000 (said to be c.£22,400⁵) which, I was advised, had been paid to the mother in two or three instalments⁶; this sum will apparently largely be applied to discharging a debt to the mother's own father (who had himself discharged a debt to a lawyer in State A) from whom she had borrowed money;

³ £54,439 to the English lawyers, £14,639 to the US lawyers in State B, and £2,141 to the US lawyers in State A.

⁴ I am advised that this includes the solicitor costs and counsel's fees for the hearing on 12 November 2020

⁵ At the exchange rate in force at the date of the conversion;

⁶ This figure is taken from the mother's last statement; I believe that this is made up of \$20,000 received on 30 September; (\$10,000 for birth expenses, and \$10,000 allowance for October's allowance) together with \$10,000 for November's allowance.

- ii) A further sum of £22,400 which the father has recently paid to settle an invoice at Hunters together with a fee incurred by the instruction of counsel; this sum is reflected on the Form H.
16. The mother claims that without legal costs funding provision, she will be unable to fund this litigation. She has deposed in her second statement to the unavailability of a *Sears Tooth* arrangement, and/or litigation loans, in this case.
17. As to interim financial support, the mother claims that Zoe is entitled to be provided for, to a standard of living broadly equivalent to that which she would have enjoyed had the parents remained together in the USA, which the father currently enjoys, and/or specifically which is referable to the standard of living which the father had *offered* to the mother when the mother and Zoe were still in the USA, and/or which was contemplated under a version of the proposed pre-nuptial agreement. The mother has provided the details of the accommodation at Beach Villa, as illustrative of the standard of accommodation which she maintains that, in better times, the father had contemplated would be suitable for her and Zoe. She points to the fact that the father has four private chefs to whom she notes, for the week for which we have a financial report (week ending 23.10.20), the father paid \$14,000 (though it is not clear at what frequency this payment recurs).
18. The mother proposes to live in London, not in the North East of England, and seeks accommodation for herself and Zoe in the capital. She has supplied property sample particulars to support her claim, seeking a rental allowance in the region of c.£9,500 per month; these properties are in Chester Place, Regents Park, NW1 (a Grade I listed Nash Terrace residence); Paddington Gardens, W2; and a penthouse apartment in St. John's Wood, NW8. She claims the cost of a full-time nanny and a high-performance car.
19. The mother, through counsel, is scornful of the father for not running a 'millionaires defence', and challenges the accuracy of the evidence he presents about his fluctuating fortune during the last year.

The father's case

20. Although he had issued proceedings in State A in the USA before Zoe's birth, the father accepts that Zoe is habitually resident in England and that this court should exercise jurisdiction in relation to Zoe. Jurisdiction is not in issue.
21. Under the five heads of claim outlined above, the father's position is as follows:
- i) Legal costs incurred with firms no longer actively instructed both here and in the United States; the father observes that the mother has used at least \$10,000 which he had provided for her birthing arrangements to defray legal costs, and makes no offer;
 - ii) Legal costs already incurred with current solicitors, Hunters; the father has paid £22,400 and makes no further offer;
 - iii) Ongoing/future legal costs provision in relation to *Schedule 1* and *section 8 CA 1989* issues; the father offers £10,000 per month;

- iv) Costs of setting up a home in England; the father offers nothing;
 - v) Interim maintenance: the father offers £10,000 per month.
22. In arguing that this represents reasonable interim provision, the father emphasises the shortness of the relationship, and argues that consistent with her history of alleged extravagant spending at his expense during the relationship, the mother has presented an exorbitant claim before the court. He alludes to the fact that in early autumn 2020 the mother had been, duplicitously (my word not his), negotiating an apparent reconciliation and financial package while instructing Hunters to pursue financial claims in England. The father disputes the mother's wish or need to live in London, asserting that she is being 'impulsive', and that she could or should remain close to her family in the North East of England for the time being which is, after all, what she craved as she left the USA; in this regard he points to the content of the 29 July 2020 e-mail (see [6] above). He proposes that she can rent suitable property close to her father and stepmother in the North East for £2,000-£2,300pcm. The father argues that the mother's plan to relocate to London is also tactical, in order to elevate the value of her claim. He disputes the need for her to have a full-time nanny for Zoe, when the mother does not work. The father has highlighted various aspects of the mother's claimed living expenses as revealing of the mother's excessive ambition in these proceedings.
23. The father asserts a financial 'liquidity' issue, asserting that his assets are "highly leveraged, illiquid and volatile"; he points to the fact that in this exceptional year (2020), his asset base has at times been significantly reduced in value. He claims not to have access to unrestricted cash flow and currently his outgoings outstrip his income.
24. Miss Campbell QC particularly urges caution in relation the future costs allowance, concerned that legal costs could easily spiral "out of control" at the rates claimed by the mother and her legal team. She describes the mother's current and prospective legal costs as 'eye-watering', and expresses her client's anxiety that allowing the mother's claim in its entirety will give her a wholly undesirable licence, indeed an encouragement, to litigate.

Discussion (1): Legal Costs Funding Order; incurred costs

25. In approaching the mother's claims for a legal costs funding order, I have had particular regard to the decisions of *Rubin v Rubin* [2014] EWHC 611 (Fam); [2014] 2 FLR 1018; *Currey v Currey (No.2)* [2007] 1 FLR 946, and *BC v DE* [2016] EWHC 1806 (Fam), *sub nom Re F (A Child)(Financial Provision: Legal Costs Funding)* [2016] 1 WLR 4720: ('*Re F (A child) (Financial Provision)*').
26. First, I consider the mother's claim for £71,219 (see [14](i) above) reflecting the costs incurred by her with firms whose active work has now ceased, or been effectively paused. In considering this aspect of the claim, I remind myself of the need to ensure that any award should not have the effect of "outflank[ing] or supplant[ing]"⁷ the powers contained in *CPR Part 44* to make orders for costs. Paragraph [13](iv) of *Rubin* repays rehearsal here:

⁷ Mostyn J in *Rubin* at [13](iv)

“The court cannot make an order unless it is satisfied that without the payment the applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future. It is important that the jurisdiction is not used to outflank or supplant the powers and principles governing an award of costs in *CPR Part 44*. It is not a surrogate *inter partes* costs jurisdiction. Thus a LSPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings”. (emphasis by underlining added).

27. I have had further regard to what I said in *Re F (A child) (Financial Provision)*; there I recited the law applicable on such applications at [11]-[16]. Having then reviewed the arguments of counsel in that case, I said this at [22]:

“My concern is to ensure that the mother and father have equality of arms, and equal access to justice in this case. I do not, as Mr. Turner sought to persuade me, treat equality of arms as "equality of payments" – a suggestion that, £ for £, the father should ensure that the mother is more or less equally provided for in relation to her costs as he is. However, for as long as any client has incurred significant outstanding legal costs with his or her solicitor, there is no doubt but that they become bound ("beholden" per Mr. Harker, see [9] above) to each other by the debt; this may well impact on the freedom of, and relative strengths within, their professional relationship. Further, the solicitor may feel constrained in taking what may be important steps in relation, for instance, to discovery, or in relation to exploring parallel non-court dispute resolution. The debt may materially influence the client's stance on possible settlement, and the solicitor's advice in relation to the same: a client – without independent resources – is in a vulnerable position, and may be more inclined to accept a settlement that is less than fair simply because of the concerns about litigation debt. This would not be in the interests of this, or any, child in *Schedule 1* proceedings. A level playing field may not be achieved where, on the one side, the solicitor and client are 'beholden' to each other by significant debt, whereas on the other there is an abundance of litigation funding. Though there is an increasingly familiar and commendable practice of lawyers acting *pro bono* in cases before the family courts, particularly where public funding provision previously available has been withdrawn, legal service providers, including solicitors and barristers, are not charities, nor are they credit-agents. It is neither fair nor reasonable to expect solicitors and the bar to offer unsecured interest-free credit in order to undertake their

work; there is indeed a solid reason for lawyers not to have a financial interest in the outcome of family law litigation”.

28. I added at [24], and at [26]:

“[24] In *Rubin*, Mostyn J was not considering legal costs funding in ongoing proceedings; he was dealing with truly 'historic' costs which had arisen in two separate sets of proceedings (i.e. divorce and child abduction), which had, importantly, *concluded*. The financial proceedings had been stayed (proceedings were now ongoing in California), and the mother and children had returned to California, pursuant to orders made by Hogg J under the *Hague Convention 1980*. There was, as Mostyn J observed, no further litigation in this country, and no litigation in prospect. I consider that Mostyn J was right to reject a legal costs funding application as a vehicle to recoup the costs of either or both of these concluded claims. But that type of application is distinguishable from the type of situation here, where the legal costs funding claim arises in relation to costs reasonably and legitimately incurred within ongoing proceedings prior to the determination of the legal costs funding application.”

“[26] I would not regard it as necessary for an applicant to demonstrate that his or her solicitor has actually 'downed tools' or *will* do so before he or she could legitimately make an application for a legal costs funding order where 'historic' costs have been incurred. Such an approach could be problematic. I agree with the essence of Mostyn J's approach – namely that a clear case would need to be shown that the solicitors are reaching the end of their tolerance – but the approach described in [16] of *Rubin* ought not to be applied too strictly, otherwise it would work materially to the disadvantage of the honourable solicitor who is prepared to soldier on (perhaps somewhat against their better commercial judgment) for the good of the client or the case.”

29. In my judgment, it is not necessary for the mother's debts to legal firms *other* than Hunters to be settled in order for her to maintain her current representation; as Hunters have made clear in recent correspondence, the mother “has no immediate need for onward funding to cover the cost of instructing a ...lawyer [in State A]”. In this particular regard, I consider that the mother's claim is similar (albeit not identical) to the 'historic' costs claim in *Rubin*, and I do not find that, without the payment to these firms, the mother will not reasonably be able to obtain appropriate legal services for the proceedings going forward. While Mr Roberts was right to argue that the mother should not be saddled with large debts at this point, he rightly and fairly conceded that if the costs incurred by firms other than Hunters are not met at this stage, the mother's current and future representation will not be in jeopardy. As it happens, I should add that I do find it hard to understand the mother's case that her

English lawyers ran up costs in excess of £34,000 for working on the US agreement, which was more than *double* the figure of \$18,683 being charged to the mother by lawyers in State B. The burden was surely on the US lawyers, not the English solicitors given that it related to the negotiation of an agreement that would have been performed entirely in State B?

30. The firm, Hunters, are in a different category from these other firms, given their position as the mother's *currently* instructed firm. I am satisfied that there is no other legitimate or accessible funding stream, and this firm should *not* carry a significant debt in working for the mother unpaid; the firm is not a charity, nor it is a credit agent, and, as in *Re F*, I am of the view that it is neither fair nor reasonable to expect the firm, and chosen counsel, to offer unsecured interest-free credit in order to undertake their work. In this respect, I am concerned that the mother and Hunters should not become bound or 'beholden' to each other by the existing debt; the position of the mother vis-à-vis Hunters is closer to that which I described at [22] of *Re F* (above). Mr Hood, in a letter to the mother dated 22 October said this:

"I hope that at the cost allowance hearing, an order will be made that [the father] pays you a sum of money to settle this invoice, and any further invoice we raise between now and the costs allowance hearing. If this is not the case, we will not be able to do any further work for you unless you are able to raise money elsewhere to fund our fees. I appreciate that this is extremely unlikely. If the funding application is successful, this firm will be prepared to represent you and carry out work on your behalf, but only to the extent that the ordered costs funding meets our fees".

31. This provides a sufficiently clear case that the firm has reached its tolerance. I am prepared to award the mother the sum claimed of £86,434, less 30% reduction for a notional standard assessment: £60,504.

Discussion (2): Legal Costs allowance; Future costs

32. I must be satisfied that the mother cannot reasonably obtain legal advice and representation at the appropriate level of expertise by any other means than an order (see again *Rubin* [13](iv) cited at [26] above).
33. It is material, in assessing the mother's reasonable costs going forward to take the father's current and projected costs as a benchmark (see Theis J at [21] in *PG v TW (No.1) (Child: Financial Provision: Legal Funding)* [2014] 1 FLR 508). It is notable that the father's Form H for this hearing shows costs incurred of c.£51,000 which is about 40% of the mother's costs at c.£128,000.
34. In relation to ongoing/future legal costs provision with Hunters, and to allow for the instruction of counsel, I assess her need under the two heads of claim as follows.
35. *Schedule 1 claim*: I was struck by the mother's very considerable bills of costs to date, particularly when compared with the costs incurred by the father (see above). There is merit in Miss Campbell's submission in urging caution against making an award which *encourages* the mother to litigate. In exercising my discretion, I consider that a

discounted sum should be allowed to the mother for her future *Schedule 1* costs, in part to reflect the lower bills of the father, and I have concluded that she should receive £65,000 in this regard. This should take her to FDR in, say, 6 months' time. I shall direct that this is paid in six instalments.

36. *Section 8 proceedings*: I simply do not understand the mother's claim for nearly £95,000 (a similar amount to the projected *Schedule 1* bill) in anticipated legal costs for *section 8* proceedings, when at present there is no real indication of any significant dispute between the parties. It is, in my judgment, as surprising a claim as it is unwarranted. In this regard, I note that:
- i) The mother has indicated her willingness to correct the birth certificate to reflect the parentage of the father;
 - ii) Any dispute over Zoe's surname appears now to have narrowed to a question over the insertion of a hyphen between the surnames of the mother and father; I trust that with good sense this will not be litigated;
 - iii) The mother is apparently keen to facilitate contact between Zoe and her father here and in the USA. Even if the precise arrangements cannot be agreed, I would very much hope that this can be satisfactorily resolved by the parties through mediation, and/or with the assistance of lawyers; there is no apparent justiciable issue, or issue of principle, at stake in this regard.

I note that the father offered some time ago - on 9 October - to engage in mediation in relation to the full range of issues; he also offered to pay the mediator's fees and provide the mother with some upfront legal fees for her 'representation' at mediation. The mother has apparently declined this.

37. The sum which I am prepared to allow the mother under this head, namely £25,000, should more than amply cover the cost of inter-solicitor correspondence / negotiation on *section 8* matters. Should any issue be referred for mediation, I do not envisage that the mother will be required to contribute to the cost, given that the father accepts the responsibility for this (see [36] above).
38. In the circumstances, the father shall be ordered to make six separate monthly instalments towards the mother's legal costs of £15,000 pcm.
39. *Deduction for notional standard assessment*: I have made a deduction of 30% from the *incurred* legal costs incurred ([31] above) to reflect a notional standard basis of assessment. In this case, I have taken a broad view about whether the costs are reasonably incurred, reasonable in amount and proportionate to the matters in issue, recognising that any costs which are disproportionate in amount may be disallowed or reduced, even if they were reasonably or necessarily incurred (*CPR 44.3(2)(a)* and *PD 44.6.2*), and on the basis that the court would resolve any doubt in favour of the paying party (*CPR 44.3(2)(b)*).

Discussion (3): Costs of setting up a home for Zoe in England;

40. I am satisfied that the mother will require a sum to relocate and set up a home for herself and Zoe in London. The acquisition of furniture, computer, and appliances

will be needed for the short-term as well as for the long-term, and will not therefore need be claimed again on Zoe's move into her more permanent home. The mother has assessed this as an aggregate figure of £78,000. I considered that the relocation and set up (handyman) costs at £9,000 were excessive, and assess the appropriate total claim in this regard as £70,000.

41. I will allow the mother a further sum of up to £15,000 (payable by the father directly to the landlord) by way of deposit on the rental property for herself and Zoe.

Discussion (4): Interim financial provision for Zoe

42. *General points:* In approaching the issue of interim financial provision for Zoe, I have first considered the matters to which I am obliged to have regard, within the wider review, under *paragraph 4 of Schedule 1 CA 1989*, including in particular the income, earning capacity, property and other financial resources which the mother and the father have or are likely to have in the foreseeable future; the financial needs, obligations and responsibilities of the parents now and in the foreseeable future, and the financial needs of the child. I bear in mind the extraordinary wealth of the father, and his luxurious standard of living, and the importance (and fairness) for Zoe in being raised by her mother in an environment which bears at least some relation to that.
43. I am not of course making a final decision, and some adjustments may need to be made to the award which I make now when the longer-term picture is in focus. At present, my attention is primarily on achieving suitable temporary accommodation for Zoe and her mother, and fixing a reasonable household budget for them. In the latter regard, I have had one eye to the factors set out by Thorpe LJ in *Re P (Child: Financial Provision)* [2003] 2 FLR 865 at [45]-[49] and his exhortation to a "broad common sense assessment" ([47]) of the rival budgets presented by the parties. Given the facts and circumstances of this case I was struck by the following passage from his judgment in that case:

[49] "... 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".

Bodey J, sitting as an additional judge of the Court of Appeal, in the same case said this:

[77] "In considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and categorisations of specific items making up opposing budgetary presentations. Rather, the court should do its best to achieve a

fair and realistic outcome by the application of broad common sense to the overall circumstances of the particular case”.

44. This is, in many respects, a somewhat unusual case. At only a few weeks’ old, there is no sense in which Zoe has become accustomed to a certain standard of living. Indeed, at present, she will not have any appreciation of ‘standard of living’ at all, let alone any potential or perceived disparity in her parents’ standards of living. While I have learned a great deal about the father’s opulence, I have no real sense of the mother’s standard of living before she met the father, or her family’s standard of living. But maintaining my focus on Zoe, I bear much in mind that at present the mother has the sole care of the parties’ only child, Zoe, who undoubtedly must be properly provided for.
45. The mother has presented a claim at this hearing which in my judgment is overvalued, and in some respects unrealistic. A flavour of what I mean may be given by the mother’s demand for 21 hours of domestic cleaning per week (in addition to a full time nanny); I was surprised too by the following passage in the mother’s statement which was also of a piece with other (in my assessment) magnified claims:

“... £1,000 per month will buy only one or two items of clothing [for Zoe] each month. [Zoe] will not be able to be dressed in lovely quality clothing for £1,000 per month”.

This was all consistent with her proposal that she should live at one of the most exclusive addresses in the whole of London, and drive a high-performance car to take Zoe to ‘appointments and do the groceries’ (see below).

46. My award under this head is therefore designed to achieve a good-to-luxurious lifestyle for Zoe (and therefore the mother) in London, where the mother wishes to live, with full time nanny support. For the next 6 months or so, this, it seems to me does justice to the case.
47. *Provision for rent:* The father has proposed a practical solution that, for the time being at least, the mother could or should continue to live in the North East where she can benefit from family support; he draws on the 29 July e-mail (see [6]) above). However, it is not the mother’s wish to remain in the North East, and I take the view that her desire to return to live in London at this stage is reasonable, and not (as he argued) impulsive. Until returning to her father in July 2020, the mother had not lived in the North East for over ten years; she had chosen to live in the capital in the past in her adult life, she has friends and some family there. Her mother is said to be “in the process of moving to London”. Interestingly, in her 29 July e-mail to the father (referenced above) the mother spoke of the parties renting a home together “in London” before returning to the USA. A strong theme of her rationale for being in London, contained in her evidence and urged on me by Mr Roberts, is that the mother believes that it will be easier for the father to visit London to spend regular time with Zoe, than it would be for him to travel to, and stay in, the North East for this purpose.
48. In the past, I am told the mother lived variously in Chelsea, Marylebone, and St. John’s Wood. I am unpersuaded that the mother should have the facility to rent a property at c.£9,500 per calendar month for herself and Zoe. The mother’s proposals

are in my judgment significantly in excess of what she and Zoe reasonably need. The parties have not presented rental comparables for properties less exclusive than Regents Park / St Johns Wood and its ilk. Accordingly, I have worked for present purposes on the premise that the mother would need no less than £4,750pcm to rent a reasonable apartment in a desirable part of London for herself, Zoe and the nanny (with possibly one spare room). If the mother is able to make small but significant economies from the overall budget which she has presented (and which, in most respects, I have accepted) she should be able to afford a little more by way of rental allowance, enhancing her rental options.

49. *Nanny*: Although the mother has worked in the past, and plainly has an earning potential, she is not currently working, and has no immediate plans to work. She nonetheless claims the cost of a full-time nanny, currently at £1,400 per week (reducing to £1,000 in February 2021). On balance, I am inclined to accept this expense; I do so in part because I note that the father himself had considered that the expense of a night nurse was justifiable when the plan was for the mother and Zoe to live in the USA, and had paid the deposit to secure such a service; he had also offered her a nanny. The father appears to accept that he has quite a significant corps of staff tending to him. Overall, I consider that the mother is entitled to benefit from support in London in her care of Zoe at this stage at the rate claimed.
50. *Car*: The mother claims the lease costs of a car “to take [Zoe] to appointments and to do grocery shopping”. She has selected a Range Rover sport as her chosen vehicle, as “this is the make and type of car I drove in [the USA], and it is the make and type of car we discussed in the [American] negotiations”; it has an on-the-road sale price tag of c.£70-75,000. The father proposes that the mother will not need a car at all and can rely on taxis. I reject both their cases. I am of the view that the mother will need a good quality car, but living in London and for the purposes identified, she will not need such a large or powerful car for Zoe as a high performance Range Rover sport; her leasehold car costs can properly and reasonably be met within a somewhat smaller allowance.
51. Faithful to the requirement on me to apply a ‘broad brush’ to the computation of an interim budget, I have not computed every figure in the schedule but have reached the view that the monthly figure should be:
- i) £4,750 for rent (from 1 January 2021);
- ii) £9,600pcm for other expenses with effect from January 2021. Without descending any further into the detail of the assessment I can indicate my overall conclusions comparable with the claim and the response, as follows:

	<i>Item</i>	<i>Mother's claim</i>	<i>Father's proposal</i>	<i>Allowed</i>
1	Housing (other than rent)	940	770	800
2	Food & household	1550	1050	1450
3	Clothes & footwear	2500	1000	1000
4	Other expenses	192	192	192
5	Domestic help (other than nanny)	2,200	1,200	1,200
6	Car	1,963	0	1,200
7	Personal expenditure	2,600	1,150	1,250

8	Entertainment, hobbies etc	3,020	2,520	2,520
	Total	14,965	7,882	9,612

- iii) The mother accepts that for the months of November and December 2020, while she continues to reside with her family, she has no accommodation or domestic help costs ([1] and [5] above), and lower miscellaneous, car and entertainment costs ([4], [6] and [8] above). Therefore, for these two months, there will of course be no provision for rent, and I shall fix the allowance at £5,600;
- iv) A further £5,600pcm for the nanny (this expense reduces to £4,000 from mid-February 2021, and the interim provision shall reduce accordingly).

Order

52. I shall require the mother to give the undertaking which she has offered to the court (contemplated in *Rubin* at [13](ix)) to repay to the father such part of the amount awarded in respect of the costs allowance if, and to the extent that, she ought to do so at the conclusion of the proceedings.
53. I shall require the father to give an undertaking forthwith to take out suitable life insurance on himself for the benefit of Zoe, and health insurance for the mother and Zoe. I have not included this in the list of interim expenses of the mother as the father has indicated that he will deal with this directly.
54. To draw the threads together, I propose to make the following awards:
- i) Legal costs incurred with firms no longer actively instructed, or whose work is paused, both here and in the United States; **I propose to make no award**
- ii) Legal costs already incurred with current solicitors, Hunters; **£60,504 this shall be paid by 10 December 2020**;
- iii) Ongoing/future legal costs provision in relation to *Schedule 1* and *section 8 CA 1989* issues with Hunters, and counsel; £90,000 this shall be paid at the rate of **£15,000 per month over the next six months**;

Interim financial support

- iv) Costs of setting up a home for Zoe in England: I propose to allow the mother **the sum of £70,000** (see [40] above). I propose to allow her up to **£15,000 for a deposit** on a rented flat (see [41] above); the deposit will be payable by the father directly to the lessor of the property.
- v) Interim maintenance; I propose to allow her the following:
- Until 1 January 2021:*
- a) **Nanny: £5,600** (see [49] above);
- b) **Other expenses: £5,600** (see [51](iii) above);

From 1 January 2021:

- c) **Rent: £4,750 pcm** (see [48] and [51](i) above);
- d) **Nanny: £5,600** until mid-February, and then reducing to £4,000 to reflect her shorter hours (see [49] above);
- e) Other expenses (as per the table at [51](ii) above): **£9,612 pcm**.

These sums shall be paid monthly in advance by standing order on the first day of each month. Appropriate credits should be given for any payments made for November.

- 55. I have already directed the exchange of Forms E. I shall invite counsel to draw an order, and/or make representations as to appropriate further or other directions in relation to the substantive claim, and shall consider those at a short hearing if required.
- 56. That is my judgment.