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Case No: ZC19P04078

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date of formal hand down: 24/02/2021

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Before :

THE HONOURABLE MRS JUSTICE ROBERTS

Between :

CA

Applicant

- and -

DR

Respondent

(SCHEDULE 1 CHILDREN ACT 1989: PENSION CLAIM)

Mr Peter Mitchell QC (instructed by Vardags) for the Applicant
Mr Stewart Leech QC (instructed by Payne Hicks Beach) for the Respondent

Hearing dates: 22nd and 23rd February 2021

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.

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.

Mrs Justice Roberts :

1. This is an application for financial provision for a child pursuant to Schedule 1 and s. 15 of the Children Act 1989. E is now 4 years old. Her mother, CA, is the applicant in these proceedings. Her father, DR, is the respondent. The parties were in a relationship from 2012 and shared a home together from 2014 when DR's previous marriage ended. E was born in December 2016. Their relationship ended in April 2019 at which point CA and E moved into separate accommodation on the site of the property they had been sharing. In order to respect the private nature of these proceedings, I propose to refer to the parties in this judgment as "the mother" and "the father". In so doing, I would want each of them to know that I have had the opportunity over the course of two days to see and hear each of them as individuals and as parents. The anonymity which I seek to confer on the family does not detract at all from the central role each has played in this hearing, nor the importance which I have attached to the evidence which I heard.
2. These proceedings were issued in August 2019. Following an unsuccessful attempt to settle matters at a private FDR, the matter was allocated to a High Court Judge for final hearing. That step was taken by order of District Judge Hudd at a hearing on 13 March 2020. Her order records her reasons for that allocation in these terms:-

"It is recorded that the court considers that the scale of the Respondent's resources and income (said by him to be respectively c.£189 million and £3.8 million per annum) and the Applicant's contention that the court should revisit, update and/or restate the principles set out by the Court of Appeal in Re P (a child) [2003] EWCA Civ 837 make this a case which it is appropriate to allocate to a High Court Judge."
3. That allocation has inevitably led to delay in listing this final hearing. The parties have been unable to agree the appropriate level of financial provision which should be made available for E's benefit. In addition, Mr Mitchell QC, who appears for the mother, seeks as part of that raft of provision an uplift in her budget which will enable her to make provision for her retirement in the form of a private pension. On her proposal, the father will be required to make a financial contribution to that pension fund over the course of the next 14 or 17 years through the periodical payments which he makes for E. Mr Leech QC, who represents the father, maintains that the court has no jurisdiction to make such an order.

4. It is unfortunate that there has been further delay in achieving a resolution for these parties. Their relationship as parents has been severely compromised by the acrimony amidst which their personal relationship broke down. There appears to be little effective communication between them since these proceedings were issued. Of much greater concern is the fact that E has not had any meaningful contact with her father during the entire course of these proceedings. The time has now come to put in place the financial arrangements which will enable E and her mother to move to a home of their own where they can begin to put down roots for their future. It is agreed for these purposes that they should move back to the Kent area where the mother has family and friends.
5. The background which informs the resolution of these proceedings can be simply stated.
6. The father is now 49. He has two children from a previous marriage who are now 15 and 10 years old (B and I). He has played a very full role in caring for those children over the years as a result of their mother's fragile health. He describes himself as a "hands on" father and that was certainly the impression I formed as I listened to his oral evidence. He has had the great good fortune to have generated considerable wealth as the result of his entrepreneurial activities as a younger man. Whilst he has a number of commercial activities, he is now free to organise his life as he wishes. In addition to the philanthropic causes which he espouses, he has a lifelong passion for motorsport and racing. He travels regularly to Europe to take part in races and has built up a collection of vehicles which is now worth tens of millions. His wealth, now put at c. £190 million, and the income which it generates has enabled him in these proceedings to run the so-called "millionaire's defence". Whilst he has provided a significant amount of disclosure during the course of these proceedings, he accepts in terms that he can afford to meet any reasonable order which this court might make.
7. The mother is 40 years old. She has never been married and E is her only child. She had a significant amount of involvement with B and I when she was living with the father and she describes them as "lovely children". When she started her relationship with the father, she owned a business which supplied staff for events, principally within the motor sports industry. She has not worked since she moved in with the father. Since E's birth, she has been a full-time carer for their child. She is a devoted mother who appears to have made a very significant investment in E's upbringing to date. E was a planned and

much wanted child although it is clear from the parties' evidence that her birth created a distance between them which eventually led to the breakdown of their relationship.

8. It is the mother's case that there were few, if any, financial constraints upon their spending and the lifestyle choices which they made. She points to international travel by private jet with holidays in top-end villas or the most expensive hotel suites. The father's chosen means of transport is his helicopter which he uses to get around the country and beyond for the purposes of his racing commitments. The home which they shared whilst they lived together is a substantial and impressive property in the middle of what has been described as 'Cheshire's "Golden Triangle"'. It is a Grade II-listed property which sits in about one and a half acres in the middle of a local town. It has a value of some £4.36 million and is currently the subject of a major building project which is costing somewhere in the region of £2.5 million. As a result, the father, with his two children, are currently living in a rented property, the details of which have been put before the court. He appears to be paying £12,500 per month (£150,000 per annum) for that property.
9. On separation, E and her mother moved into separate accommodation which was within the curtilage of the main property. Up to that point, it had been used as an "overspill" for the main house. It has bedroom accommodation and kitchen facilities but it appears that one of its main functions was the amenity value of the separate gym. It has not been ideal accommodation for either the mother or E and both parties agree that it will be essential to find and buy a property in Kent by the end of this summer so that E can start at her new school in the September term of this year.
10. The mother has few assets of her own and little by way of savings. She is, in reality, entirely dependent upon the father to provide financially for her and E for the foreseeable future. He accepts that obligation in principle. I propose to defer any consideration of her future earning capacity to a later stage of my judgment. At this stage I need only say that the father accepts that she should be entitled to earn in future without that income having any impact on his financial obligations to provide child support for E.

The parties' open positions

11. There is some considerable distance between the parties in terms of their headline numbers. The mother seeks a package of financial provision for herself and E which includes a housing fund of £2 million plus purchase costs, a lump sum of £380,000 to cover various expenses (including the purchase of a car), and periodical payments of £238,000 per annum to include provision for the pension to which I have already referred. The father has offered up to £1 million (inclusive) for housing, a lump sum of £60,000 for incidental expenses, and periodical payments for E (to include a carer's allowance) at the rate of £96,000 per annum. He proposes that provision is made for an appropriate car through lease payments on the basis that the mother will change her car every four years. Those payments will be met by him in addition to the maintenance she receives for E.
12. There are other peripheral aspects of the parties' proposals which I shall address in due course. The two most significant issues which I shall need to determine are how much the mother should spend on E's home and the extent of her income claims. It is agreed that E should be educated privately and F has agreed to meet her school fees.
13. Against that factual background, I turn now to the legal principles which I must apply. With the exception of what I will call 'the pension claim', these are not in issue. The law is well-established and neither Mr Mitchell QC nor Mr Leech QC sought to address me at any length about these matters.

The Law

14. Paragraph 1(1) of Schedule 1 to the Children Act 1989 sets out the range of orders which fall within the court's jurisdiction when it is determining claims made on behalf of a child of unmarried parents.

'(1) On an application made by a parent or guardian of a child the court may

–

(a) in the case of an application to the High Court make one or more of the orders mentioned in sub-paragraph (2) ...

(2) The orders referred to in sub-paragraph (1) are –

(a) an order requiring either or both parents of a child –

- (i) to make to the applicant for the benefit of the child;
or
- (ii) to make to the child himself,
such periodical payments, for such term, as may be specified in
the order;
- (b) an order requiring either or both parents of a child –
 - (i) to secure to the applicant for the benefit of the child;
or
 - (ii) to secure to the child himself,
such periodical payments, for such term, as may be specified in
the order;
- (c) an order requiring either or both parents of a child –
 - (i) to pay to the applicant for the benefit of the child; or
 - (ii) to pay to the child himself,
such lump sum as may be so specified;
- (d) an order requiring a settlement to be made for the benefit of the child,
and to the satisfaction of the court, of property –
 - (i) to which either parent is entitled (either in possession or
reversion); and
 - (ii) which is specified in the order;
- (e) an order requiring either or both parents of a child –
 - (i) to transfer to the applicant, for the benefit of the child; or
 - (ii) to transfer to the child himself,

such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.’

15. The wide discretion which is given to a court to determine the appropriate level of provision for any individual child is shaped and informed by paragraph 4 of the Schedule which is set out in these terms:-

‘4.(1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances including -

- (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;
- (f) the manner in which the child was being, or was expected to be, educated or trained.’

16. In the seminal authority of *Re P (Child: Financial Provision)* [2003] EWCA Civ 837, [2003] 2 FLR 865, the Court of Appeal established the clear principle that the ‘carer’s allowance’ which is factored into the periodical payments made to that carer for the benefit of the child is to be assessed realistically but it is wrong in principle to seek to link that assessment to the remuneration which a professional carer (such as a nanny) could expect to receive. As is clear from the judgment of Thorpe LJ at paragraph 43, the court must conduct what is essentially a broad-brush assessment based upon a judge’s expertise and experience in the specialist field of financial provision.

17. In the context of this assessment, the welfare of the particular child has to be at the forefront of a judge’s consideration as ‘a constant influence on the discretionary outcome’: see *J v C (Child: Financial Provision)* [1999] 1 FLR 152 per Hale J (as she then was).

18. As is clear from *Re P* (above), as part of ‘all the circumstances of the case’ the court is entitled to consider the social and financial circumstances of the paying party: see paragraph 49. Thus, where resources permit, there is likely to be some correlation between a paying party’s standard of living and the level of financial provision which the other parent, as carer, can expect to receive. Thorpe LJ put it in this way:

“[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.”

The applications of the relevant principles in this case

19. Those judges sitting in the Family Division who deal with these cases on a regular basis are well-equipped to exercise the statutory discretion entrusted to them by Schedule 1 of the 1989 Act. Over the years since *Re P*, cases involving very significant financial resources have been determined on a regular basis. This father has accumulated significant wealth at a relatively young age and his current lifestyle clearly reflects the absence of any real financial constraint on the choices which he makes. That said, this case is not unusual in terms of the extent of that wealth. I heard evidence from each of these parties in relation to the lifestyle which they shared during the period in which they lived together both before and after E was born. There is a clear divide between them as to the extent to which the father embraced the lifestyle which the mother describes. They are different people with different aspirations. He has the financial resources to devote much of his time to his passion for racing and motorsport. That lifestyle brings with it many of the trappings of glamour and wealth. He finds it easier to fly himself to race venues, both here and abroad, in his private helicopter. He has employees who do what might be described as the ‘leg-work’ of ensuring that his vehicles are transported to wherever they need to be at any given time. He is accommodated at these races in a ‘recreational vehicle’, or RV, which is fully equipped on site with anything he could possibly need. I am told that it cost between €800,000 and €900,000. He employs a personal assistant who looks after all the arrangements for his travel and

accommodation. When he is not travelling in his helicopter, he accepts that the demands of his business life mean that travel by private jet is the most convenient form of transport. He has taken his elder two children on occasions to race meetings. They have been a part of this lifestyle and they share the home in which this father lives for half (possibly more) of their day-to-day existence.

20. However, there is another side to the father which is reflected in his life away from the racing world. He owns what appears to be a very modest holiday home in Wales. It had been his grandmother's home and he acquired it on her death in order to preserve the simple childhood memories he had experienced growing up in those surroundings. He told me that he and his elder children frequently make the hour-or-so drive to the property at weekends in order to enjoy time there. These weekends are more often than not spent riding bicycles in the surrounding countryside.
21. The father is not a man who spends much at all on designer clothes. He told me that his appearance at this hearing was the first occasion on which he had put on a shirt with a collar for over two years. He said that he did not recognise the mother's description of his two elder children being "showered with designer gifts and clothes". He described their life with him as being 'grounded and ordinary'. He regularly cooks for them and, if they eat out, they visit local Thai and Indian restaurants. The children had not been on a long-haul holiday with him for over six years. They move perfectly happily between their own parents' two homes and I had the clear impression from the father's evidence that he provided excellent 'hands-on' care for them. He has full responsibility for the children during the time they spend in his care. He takes them to school and he supervises homework and the like when their school day ends. He prioritises healthy outdoor activities when they share leisure time together. I accept what he told me: he is not a man who would choose to spend time in the shops of Bond Street or to eat regularly in Michelin-starred restaurants. He has a beautiful home into which he is investing significant sums of money in order to provide additional storage facilities for his car collection and underground sports facilities. In many respects, he is a man of contrasts albeit one who enjoys the significant privilege of choice in terms of the life he leads.
22. The mother is clearly an intelligent woman who has many qualities. She is bright, vivacious and engaging. She is a former British athlete who plainly has the drive to achieve much in her life. She is clearly angry about the absence from E's life of her

father. She tells me that she would welcome his involvement in their lives going forwards. Each of these parents has a clear view as to why their relationship broke down and why E has lost, thus far, the potential of a relationship with her father. I do not need to say any more about these matters because they have no relevance at all to this application or the exercise of my discretion in relation to the appropriate level of financial provision for E.

23. She has described the father as “a man of incomprehensible wealth” in her written evidence. Her antenatal care was provided by the Portland Hospital in London. She flew by helicopter to and from her antenatal appointments. The parties stayed in a very expensive apartment suite in London at a cost of over £5,000 a night for a month before E’s birth in order to be near the hospital.
24. The mother describes holidays with family and friends spent in luxury resorts and villas. They shared a love of skiing and spent significant sums on their accommodation in the French Alps where they were often accompanied, at the father’s expense, by others. There were trips to London to enjoy the sights and go shopping. The mother and E would often take holidays alone to Canada, France and Marbella in Spain. They flew together at the father’s expense by private jet and he funded the cost of their accommodation on these trips. She describes eating out at the best restaurants with “fine dining and fine wines”. She points to all the amenities they enjoyed at their home in Cheshire. She has produced receipts for the purchase of designer clothing. She likes to dress in good clothes herself. She describes how E has been wearing designer clothes and footwear from her infancy. I was told that the child was given a Louis Vuitton handbag to match the mother’s own bag during one of their holidays. By way of example, she tells me that E’s first ski suit cost nearly £1,000.
25. Cars are also important to this mother. She has always driven expensive models and currently has the use of one of the father’s many Range Rovers. Her delight at being provided by the father with an Aston Martin on one of her birthdays is self-evident from the texts which she sent to her friends at the time.
26. This is the financial base line from which the mother advances her claims on E’s behalf. A frequent theme of her oral evidence was that she did not wish E to grow up feeling like “a poor relation” in the father’s family. She told me that at some point she hoped

and expected that E would be “getting on a helicopter and flying to [the father’s home in Cheshire]”. She was concerned that her daughter should not return to the home she shared with her mother and make unfavourable comparisons.

27. There is no doubt in my mind that this mother is devoted to E’s every need. She has invested a significant amount of time and energy in her efforts to ensure that E’s horizons and her educational development in particular have been expanded in every possible direction. She has espoused the Montessori philosophy in raising E and it is apparent to me that this has come at significant cost in terms of the books and equipment which have been purchased for this child. At the age of four years, E has already had classes / teaching in sign language, French, swimming, ballet, singing and piano.
28. Whilst I found her to be an essentially truthful witness who engaged openly with the court, I accept in part Mr Leech QC’s criticism that some aspects of her evidence were exaggerated. The property in which the father lives is clearly an impressive and lovely home as I have acknowledged. However, I do not accept that it had some of the separate bespoke facilities which the mother described (a separate art room, an in-built climbing wall and a designated music room). All of these activities were undertaken in the house, I have no doubt but I felt at times that there was a degree of overlay in the mother’s attempts to impress upon me quite how extraordinary her life with the father had been.
29. I found the father to be a perfectly straightforward and candid witness. He answered the questions put to him openly and honestly. I felt that he had given me a clear view of how he lives his life in each of its spheres. He is passionate about his motor racing and accepts that this aspect of his life, and its cost to maintain, is both a privilege and a luxury. His life at home with his children is lived at a different pace. He is careful not to spoil them. He wants them to understand the value of money. He is alive to the need to make appropriate financial provision for E and her mother. He sees his offer of £1 million for housing as a significant sum of money given the type of accommodation which would be available to her in Kent. He accepts that E needs a comfortable home with at least four bedrooms with decent outside space in a location where she can easily travel to school without a long commute.
30. In terms of his own relationship with E, he is less optimistic than the mother about the prospects of establishing with his youngest child the close relationship he has with his

two elder children. H maintains that he has been excluded from the outset and denied that opportunity. He sees her decision to move south to Kent (a perfectly reasonable one on any objective view) as a further obstacle in the path of regular and meaningful contact. As I have said, these are not matters which affect the exercise of my discretion in this case but I would say only this to these parents. Each has so much to offer this child in terms of the confident, healthy young person which I know they would wish her to become. I accept that the breakdown of their relationship was a damaging experience emotionally for each of them. I would encourage them to take whatever steps are necessary to ensure that E grows up with the love and care which each has demonstrated they can provide. There are, or should be, no financial impediments to ensuring that E's right to a relationship with both of her parents is restored at the earliest opportunity notwithstanding the geographical distance between their two homes.

31. That said, I turn now to consider the component elements of the mother's financial claims on behalf of their daughter. It is common ground in line with previous authorities and the guidance from higher courts that any property purchased by the father for the occupation of the mother and E will remain his property. Her rights of occupation in that home will be protected throughout the duration of E's dependency. It is agreed in this case that the property will remain available to them both as a home until E completes her first degree at university if that is the path which she chooses in life. Depending on what the future holds, the property will no longer be available as a home for either once E's minority comes to an end or, by agreement, when she reaches the age of 21 or 22, depending on the provision by the court of a gap year between her secondary and tertiary education. I will deal shortly with the duration of the father's obligation to provide that home.
32. Thus, the father is not alienating capital. He is making a financial investment. It is one which he accepts he can afford to make even if the court determines that the mother's full claim is to be met. Affordability is not in issue here but that does not mean that he should be required to sign a blank cheque in order to meet E's ongoing needs. The level of financial provision to be made has to be weighed and considered in the context of all the circumstances of the case including those set out in paragraph 4(1) of Schedule 1 to the 1989 Act including the scale of his wealth and the standard of living which that wealth sustains.

(i) Housing

33. Each of the parties has produced property particulars of the type of housing which is appropriate in this case. The mother provided examples of five separate properties in February 2020 at the same time as she indicated she wished to relocate to Kent. These range in price from £1.2 million to her preferred choice at the time which was a property costing £2 million. Two of her other properties were being offered for sale at £1.45 million and £1.75 million. In terms of size, they appear to be between 3,000 and 5,000 square feet. Some have more than 4 bedrooms. Some have land, equestrian facilities (of sorts), outbuildings and/or a swimming pool. In the main they are village-based or in the countryside away from the main towns in the county. Each appears to be a solid, comfortable family home although the style of building varies from contemporary to traditional.
34. In this context, the mother's aspirations for a 'quality' property (to adopt her description) were bench-marked, on her case, before she decided that her future lay closer to her family in Kent. At the time when the parties physically separated in April 2019, the mother identified a home in the Alderley Edge area of Cheshire which she wished to purchase as a separate home for herself and E. The property was called Broome House. The property was on the market for £2.15 million in 2019. It was a substantial property which appeared to be under development. The plans provided for the addition of a separate complex housing a swimming pool and a gym. The property had five double bedrooms (three of which had en-suite bathrooms). In addition to the usual reception rooms, there was a separate study and media room. The property appeared to be fitted out to a high specification.
35. At that point in time, the mother was asking the father to buy the property for her and E outright. In other words, she sought outright ownership of the legal title. There were clearly discussions between them at the time. The father maintains that, such was the atmosphere within their home at that point, he was desperate to achieve a physical separation. I know not what was discussed between them. He told me during the course of his oral evidence that he had not seen the house. He did not at any stage give his consent to an arrangement that the property would be acquired or transferred into the mother's sole name. What is clear from the evidence before the court is that the mother instructed a conveyancing solicitor. An email from that solicitor dated 9 April 2019

confirms that she was instructed to act in connection with the purchase of Broome House in the mother's sole name. To this end, it appears that the father did indeed provide a sum of £50,000 to secure that property. A draft Deed of Gift was prepared by the solicitor on the mother's instructions. That transaction did not proceed but the father's apparent acceptance that this was a suitable home for them both has no doubt created a certain level of expectation in this mother's mind. As the father points out, there is a significant difference in the price of property between this particular area of Cheshire and South-East Kent.

36. For the purposes of this hearing the mother has updated her property particulars. Exhibited to her witness statement, I now have the estate agents' brochures for three new properties. One (St Quentin) is available for £1.6 million. That property is described as *"an exceptional and substantial 5/6 bedroom newly built detached contemporary barn style home with triple garage & storage above, set in landscaped gardens of about an acre; located in the desirable location of Bekesbourne; near to the Polo Farm Sports Club & Golf Club; 10 year new home warranty"*. The mother told me that this was an attractive property which had the advantage of being a 'new build'. Work was ongoing with the formal landscaping outside and the developers had already started to put in a vegetable garden. Another (Flaxland Court) is offered for £1.75 million, and the third (Sandwich Lane) is being advertised for an asking price of £2 million.
37. The father produced with his written statement examples of three further properties in Kent. From the online particulars, these appear to be suitably-sized family homes ranging in price from £900,000 to £1 million. He has accepted that two of the properties he has selected are not suitable as a result of issues which were not apparent from the details provided by the estate agents. By the time we reached closing submissions, Mr Leech QC accepted on his behalf that the appropriate figure for the mother's and E's housing needs was somewhere between £1 million and £1.2 million.
38. Both parties accept that none of these individual properties will necessarily be the home which is chosen. What they need in order to move forward is an indication from the court as to the appropriate level of the housing fund which should be made available. That decision will necessarily be based upon the best available evidence. I accept that the current pandemic has probably had an effect upon the supply of properties coming onto the market. I also accept that the mother and E are moving to an area of the country

where house prices are lower than in the immediate environs of the father's home in Cheshire.

39. Taking all the evidence into account (including the property details of the father's current rental property in Macclesfield), and having listened carefully to both parties, I have reached a clear conclusion that the father's proposal is too low and the mother's too ambitious. In my judgment, a property like St Quentin, the new-build which the mother described to me in some detail following her inspection, meets most, if not all, of the requirements which the parties have between them identified. It is likely to be fairly low-maintenance and is covered in any event by a 10-year warranty. It is an attractive home which has all the accommodation which the mother requires. It has the outside space which E needs and I had the distinct impression that the mother would be happy to live there. With an asking price of £1.6 million, it exceeds the upper limit of the father's bracket by some £400,000 and falls below the mother's stated target by a similar amount. I bear in mind that the father's position is that the costs of purchase are included in his bracket whereas the mother seeks those additional costs.
40. I have decided that a housing fund of £1.6 million is the right provision for E in this case. SDLT will require a further payment of £138,750. The father will meet the additional costs of purchase. Depending on the purchase price which the parties are able to negotiate, the tax may be less with a corresponding reduction in the likely conveyancing costs. Whatever these come to on a property purchase of not more than £1.6 million, they will fall to the father's account.
41. There will be provision in my order for the substitution of a replacement property at some point in the future should the mother's circumstances change. We are looking at an arrangement which will remain in place for a number of years and it is simply not possible for the court to predict at this stage events which might influence future plans.
42. The more immediate task over the coming weeks and months will be to identify a suitable property and complete the purchase in time for the start of the new academic year in September. I agree that, if possible, E and her mother should be comfortable and settled in that home by the summer and in good time for the beginning of E's new school term.

43. The mother wishes to choose her new home without having to consult the father. It is her case that the only basis on which he should be entitled to object is that the property she has chosen does not represent a reasonable property investment. The father contends that he should be involved in choosing the property with any dispute being resolved by the court. He accepts that he will not withhold his consent unreasonably.
44. Given the state of the relationship between these parents, it is difficult to imagine how that will be an easy or constructive process. The father will, of course, be concerned to know that E's home is one where she will settle and thrive. He will wish to satisfy himself that it has all the appropriate amenities which she will need. That said, at the end of the day this property will be the mother's home for a number of years to come. It will not be the father's home. The process of choosing her home will be an important part of the mother's future happiness in that home. I have every confidence in her as E's mother to make that choice with their daughter's needs much to the forefront of her decision. The father has every right to object if there are genuine issues with the property which are likely to persuade the court that her choice represents a poor investment in financial terms. He must, of course, be kept informed in relation to the property search but I regard the prospect of a *joint* search, even on the basis that one of the father's representatives acts as his agent for these purposes, to be a recipe for discord and delay. Accordingly, subject to that caveat, I propose to leave the identification and choice of the new property to the mother although nothing would please me more than to think they might, as parents, be able to communicate effectively about that choice.
45. The mother understands that the property which the father will provide will continue to be made available for her occupation only during E's minority or dependence: see *Re P* above. In the normal course of events, the capital settlement which he will be making will come to an end on E's attaining the age of 18 years or completing her tertiary education. The mother has asked him to agree to extend her rights of occupation for a full year after E completes her full-time education. The father has agreed that she should be entitled to stay at the property until the September in the year when E finishes full-time education, whether school or university. On her behalf, Mr Mitchell QC seeks to argue that she will at that stage have to seek some form of employment which is likely to include a period of probation and/or training. I take the view that her path to work and a degree of financial independence is likely to start in one form or another long

before that point in time. I shall come to the mother's evidence about the future shortly. However, for these purposes I have reached the conclusion that there is nothing exceptional about this case. The father's obligation is to maintain a home for E and her mother whilst she remains a minor and/or in full-time education. Knowing what I do about the nurture this child is likely to receive in her formative years, it may well be that she will wish to continue in some form of education beyond her first degree. That possibility alone does not propel this case into the realms of exceptionality. I take the view that the father's offer of a period of three months after her graduation is a reasonable one. The sale of the property will be postponed until that point in time.

46. As to the terms of the mother's occupation of the property, it will be the father's responsibility to ensure that the structure is maintained in good repair. It will fall to the mother's account to pay for the day-to-day maintenance and internal decoration. This is in line with my approach that it will be her home and she will decorate the property to her taste. That cost will be reflected in her budget which I shall consider shortly and proper allowance will be made for this expense.

(ii) Additional lump sum provision

47. In addition to the purchase of a home, the mother claims further financial provision on E's behalf for the following:-

- (i) furnishing and equipping her new home;
- (ii) purchasing specialist Montessori equipment for E;
- (iii) the purchase of a new car; and
- (iv) payment of some private medical treatment for a pre-existing back condition.

48. The father has offered a lump sum of £60,000 over and above the cost of her housing for all her other expenses.

49. In relation to furnishing and equipping her home, the mother seeks a sum of £150,000. She has produced various lists and costings from John Lewis. The examples of the items she will need are by no means a comprehensive fully-costed list. She has in the main opted for well-recognised branded items. She maintains that quality and durability are

key to her choices. I bear in mind that the mother will be moving into a four or five bedroom property. As Mr Mitchell QC says, she will be starting from scratch in that she left the home she shared with the father with little of her own. She will need to buy everything from the beds and sofas to the kitchen equipment and white goods in addition to any carpets and curtains which are required. She will need to purchase electronic goods, including televisions and computers. She will need to equip her kitchen with everything down to the proverbial teaspoons. I do not consider that she will need as much as £150,000 but, in a property of this size, she will certainly need a substantial sum. I consider that a figure of £100,000 is an appropriate budget for these purposes.

50. In terms of the purchase of Montessori equipment for E, M seeks additional provision of £10,000. She told me that she has been spending money on this type of equipment since E's birth. Whilst she was slightly vague in terms of what items she needed, I had the impression that these were in the main toys designed to help a child learn (a toy kitchen, for example) and art materials to help E develop her creative skills. I take the view that this cost is more in line with recurring expenditure for E's benefit. The nature of the play and learning equipment she requires will obviously change as she grows. I have decided that it is more appropriate to reflect this expense in E's ongoing income needs. I decline to make separate capital provision for these purposes.

51. Cars are plainly important to each of these parties. The mother needs a comfortable, safe and reliable vehicle. The parties are agreed that the father should provide, or pay for, a suitable vehicle and that a replacement will be required every four years during the course of E's dependency. The mother wants a Range Rover at a cost of £110,000. The father suggests something more modest in the region of £50,000 to £60,000.

52. The father maintains that the most cost-efficient means of providing the mother with a car is to lease a new vehicle every four years thereby avoiding the financial impact of depreciation and ensuring that all maintenance and service charges are met. I agree that this is a sensible means of financing the vehicle. I was not provided with any evidence in relation to what the annual cost of this type of arrangement might be. Given that the father himself owns a number of Range Rovers (not all of them new) and given the investment which he has made over the years in his car collection, I do not consider it unreasonable for the mother to seek provision for a Range Rover or a similar vehicle for herself. If this is provided through the mechanism of a leasing arrangement, it will not

involve a significant capital outlay for the father. Rather it is an annual or monthly expense which can be met from his very substantial income resources. I consider it entirely reasonable that he should be required to meet these leasing costs for the sort of vehicle which the mother seeks up to a value of £110,000 (index-linked every four years). Whether he meets these costs separately or as part of his maintenance obligations will depend to an extent on whether she is able to set up an appropriate leasing arrangement in her sole name. I see no reason why she should not given that she will be living in a mortgage free home with a substantial level of income through the periodical payments which the father will be making for E's benefit. However, if she cannot procure the necessary leasing contract in her sole name, the obligation will lie with the father to take on that obligation for her benefit. Since neither will own the car, it matters not in my view in whose name the lease is taken out. The choice and specification of the vehicle up to the prescribed limit will be the mother's.

53. In terms of the last vehicle, the father's proposal is that it should be acquired on hire purchase in order that, if she wishes, the mother can take over the cost (and the final balloon payment) at the end of E's dependency if she so wishes. On behalf of his client, Mr Mitchell QC asks me to consider making a separate lump sum order to cover any outstanding finance on the last car when E's maintenance terminates. We are looking many years ahead at this point in time. I cannot know now what the mother's financial position might be at that stage but I am satisfied that she is not a woman who will enter this new stage of her life without having put in place a plan for her own financial self-sufficiency. The father's legal obligation is to support her and E financially until such time as their child attains her majority or ceases full-time education to the end of her first degree. I do not consider it appropriate to require him now to perpetuate his financial support beyond that point in time. Whilst it will be a matter for the parties to decide how the final vehicle is to be provided (i.e. whether on a lease or hire purchase agreement and in whose name), I am not going to require him to pay a further lump sum to extract the vehicle from that financial arrangement. I hope and expect that the arrangements which the mother will have made by that point in time will give her the opportunity, if she wishes, to keep the vehicle or acquire another.

54. There has been little evidence before the court as to the nature of the surgery which the mother requires to her back. In the circumstances through which we are living at the

present time, I do not regard the father's suggestion of joining the NHS waiting lists to be reasonable. If she has a genuine problem with her back, as appears to be the case, it will make it more difficult for her to meet the needs of an active young child. Given the relatively modest cost involved, I see no reason why the father should not pay. I propose to make provision for this expense in a sum of £9,000.

(iii) Maintenance

55. The mother's budget for herself and E is £238,000, excluding the school fees. That sum is broken down as to £42,664 which is directly referable to E's needs and the balance (£195,323) is allowance for her own expenses as E's primary carer. On behalf of the father, Mr Leech QC has criticised a number of the component elements of that budget. She has claimed a sum of £56,000 in respect of the three holidays and weekend breaks which she wishes to take each year with E. She maintains that she needs a further £34,000 per annum for her personal expenses.
56. The father has offered a total of £96,000 per annum. I have within the material which was put before the court his 'counter-budget'.
57. In a case where the resources available to the parties are of this magnitude, it would not be appropriate for me to take a blue pencil to each category of expenses claimed by the mother. I can see that there are savings to be made. She has included expenditure on running and maintaining an Aston Martin which, at the moment, she does not have. Given the generous allowance I have made for the provision of her main vehicle, this is unnecessary expenditure which is not for the father's account. She has included a generous allowance for her own and E's clothing. Life insurance and private medical cover together amount to over £10,000 per annum. Clearly these are important elements of her budget but the BUPA premiums look high to me despite the fact that they are based on comprehensive, top-of-the-range cover.
58. The main challenge to the mother's budget is the sum of £40,000 odd per annum which she wishes to apply towards building up a private pension over most of the next twenty or so years of E's dependency. The father maintains that such provision is outside the jurisdiction of a Schedule 1 claim and in any event is unreasonable. I shall return to this aspect of her claim shortly.

59. Stripping out the costs referable to the pension (for present purposes) and the Aston Martin, the mother's carer's allowance, on her figures, reduces to just over £150,000. That allowance necessarily includes an element of E's expenses insofar as it covers the outgoings in respect of the running costs of the home she will share with her mother.
60. In terms of E's budget, the mother has claimed a total of £27,325 in respect of the child's activities. This sum excludes the cost of the three holidays a year which the mother intends they should take together. It includes just under £14,500 per annum for private tuition in French, swimming, ballet, horse riding and singing. With some justification, the father has queried the need for this amount of extra-curricular activity once E is at full-time school given the opportunities which will arise for her there. The mother seeks to spend a further £8,200 each year on eating out, going to cinemas, museums and the like and visiting attractions. It seems to me that each of these two elements of her budget for E is excessive. No one would wish to prevent this little girl from taking every opportunity available to her to expand her horizons and learn new skills but, as the father points out, there are only so many waking hours in her day. She will have a very full life at her new school and the father will be making provision for extras on the school bill in any event. I see scope for appropriate reductions here and in respect of the £6,340 which she claims for miscellaneous expenses.
61. For reasons I shall explain, I propose to exclude the allowance for the pension contributions when I determine the level of periodical payments which the father will pay to the mother for E. It is agreed that the discretion which I exercise in the context of an appropriate budget for their joint household is wide and that I should paint with a broad brush. I have reached a clear conclusion that a budget of £12,500 per month or £150,000 per annum in mortgage free accommodation will provide the mother and E with a good standard of living without penalising the father for some of her more excessive requirements. Even making full allowance for the ongoing cost of E's private education, it is an expense which he can easily meet from a gross income which he accepts to be £3.8 million. He will, in addition, be meeting the costs of providing her with a car on an annual rolling basis. In my judgment, this package of financial provision will ensure that E enjoys a standard of living which reflects his own lifestyle choices and the manner in which he has chosen to live with his other two children whilst acknowledging, as I must, that these are not matrimonial claims but Schedule 1 claims

advanced on behalf of a child whose parents chose not to undertake the commitment of marriage.

62. In addition to the periodical payments, I will make an order that the father meets the school fees and reasonable extras on the school bill. There is an issue between the parties as to whether the extras should be agreed before the father is required to pay them. Given the absence of any effective communication between them, it seems to me to be an unnecessary complication to require advance agreement in relation to each and every item on the school bill over and above basic education costs. I propose to direct that any items in excess of £1,000 per term must be agreed in advance. In all other respects, provided the costs are reasonable, the father will pay without the need for the mother to clear these items in advance.
63. In terms of the duration of the periodical payments, these will be paid on an index-linked basis until the end of E's tertiary education to completion of a first degree. We are a long way off that point now. E should be entitled to a single 'gap' year between the end of her secondary education and the start of her first year at university if that is what she chooses to do. When, and if, she commences tertiary education, the payments made by the father will be divided as to two-thirds which will be payable to the mother and one-third which he will pay directly to E. The extent to which she requires further financial support at that stage will be a matter which the parents will need to discuss. The court will retain jurisdiction to resolve any ongoing dispute although I hope sincerely that further recourse to litigation will not be necessary.

The pension claim

64. I have declined to allow the mother's claim for an annual sum in excess of £40,000 and I have done so for the following reasons.
65. This claim amounts in effect to an entitlement to build up personal savings over many years of E's dependency to fund ongoing income needs at a time when the child's claims have come to an end as a matter of law. Mr Mitchell QC seeks to justify what he accepts is a novel departure by suggesting that the time has come for the court to revisit the well-honed principles which underpin the Court of Appeal's decision in *Re P*. In that case, Thorpe LJ, on behalf of the full court, was clear. Periodical payments for the benefit of a child in the context of a Schedule 1 claim were intended to be an income resource

designed to meet the child's expenses on an annual basis. His Lordship expressly ruled out the existence of any "slack to enable the recipient to fund a pension or an endowment policy or otherwise to put money away for a rainy day" (see paragraph 49).

66. Mr Leech QC relies on the further observations made in the Court of Appeal by Macur LJ in *Re A (a child)* [2014] EWCA Civ 1577. In that case, one of the questions which required the court's response was the extent to which it was permissible to allow the element of carer's allowance to reflect the future needs of the carer at the conclusion of the relevant child's dependency by reason of the benefit to the emotional welfare of the child in knowing that his or her mother was not going to be rendered "destitute". The answer from the court (Lewison LJ and Sir Stanley Burnton concurring) was "none" (paragraph 23). Explaining that response, Macur LJ said this at paragraph 19:

"The literal or purposive interpretation of Schedule 1 does not permit of the concept of sharing or compensation for the benefit of the child, nor, by the back door, financial provision and compensation for the carer beyond that element attributable to the care of the child during his minority, or other determined duration of dependency. There is no established authority to the contrary. The judgment of Lady Hale in *Gow v Grant* [2012] UKSC 29, [2012] 3 FCR 73, at paragraphs 44 – 56 which urges reform of the law to re-balance the financial consequences of relationship breakdown in cohabitation, makes this clear, as does the prevailing case law on this point: see *J v C (Child: Financial Provision)* [1999] 1 FLR, 152, at 159H; *Re P (above)* at paragraphs 40, 41 and 49; *PG v TW (above)*¹ at paragraph 105."

67. On behalf of the mother, Mr Mitchell QC submits that this court is not bound by what was said in *Re P* because, strictly speaking, Thorpe LJ's remarks were obiter. He maintains that there are public policy reasons why the burden on the state should be reduced by requiring adults to make provision for their retirement. He points to the statutory requirement which is now imposed on employers to contribute towards their employees' pension funds. He submits that, absent such provision, E's mother will be exposed to the prospect of financial destitution. Alternatively, she will be obliged to abandon her aspiration to devote all her time and energy over the next fourteen and more years towards E's nurture and care in the event she is obliged to seek employment to make provision for her own future and contends that this is not to E's benefit.

¹ *PG v TW (no 2)(Child: Financial Provision)* [2014] 1 FLR 923

68. It seems to me that this submission ignores the reality of the future and the evidence which the mother gave me in relation to her intentions in this respect. Whilst it is true that her written evidence is focussed upon her ongoing commitment to E and her wish to be available to her without the additional demands of paid employment, she acknowledges that she will inevitably need to look to her own future when E is a little older and more independent. She told me that she wants to be a good role model to E and she assured me that she had no intention of “sitting back and doing nothing”. I do not know what this mother might eventually earn or whether that income will come from employment or some form of business enterprise. She strikes me as a capable and resourceful woman and I suspect that in time, with this litigation behind her, she will want to engage in some form of financially remunerative activity if only for her own satisfaction. E is going to be at school on a full-time basis within a year or two and, however committed the mother may be to becoming part of her school community, she is going to have time on her hands. I accept that she has not worked for several years and may need some form of retraining in future. I cannot predict at this stage whether or not she will have become financially independent by the time the support she receives from the father for E comes to an end. That support will provide her with a secure platform from which to think about, and plan for, her own future. The father has agreed, quite properly, that he will not seek to reduce the level of support he provides for E in the event that the mother starts to earn an income of her own.

69. In terms of my jurisdiction to make provision for future pension contributions, I take the view that I am bound by the decisions and guidance provided in clear and definitive terms by the Court of Appeal in *Re P* and *Re A*. By his submissions in relation to policy considerations and the desirability of making provision for his client’s future needs beyond E’s dependency, Mr Mitchell QC seeks in effect to conflate, or more closely align, the law in relation to Schedule 1 claims with that applicable in matrimonial claims brought under the 1973 legislation². In the case of the latter, the court has wide statutory powers to make lifelong provision for a mother who is a former spouse both by way of income and capital provision and through the means of a specific pension sharing order. The law in the field of matrimonial claims also recognises the ability of the court, in appropriate circumstances, to make an order for spousal periodical payments which

² Matrimonial Causes Act 1973

enables a recipient to “stockpile” part of that provision for meeting future needs: see *Fields v Fields* [2015] EWHC 1670 (Fam) and *AB v FC* [2016] EWHC 3285 (Fam). This mechanism is of restricted application even in matrimonial claims but it remains available as a means of meeting needs if, for example, the paying party enjoys a very substantial income which is likely to diminish significantly, if not end altogether, in the foreseeable future during a period of time when a former spouse will remain responsible for the care of a child or children of the family.

70. The jurisdiction of the court in relation to Schedule 1 claims brought by an unmarried parent is restricted to provision encapsulated within the 1989 statute which I have set out in paragraph 14 above. However desirable the aspiration may be, and I make no comment on that in this judgment, the extension of the current law which Mr Mitchell QC invites me to endorse requires either the intervention of Parliament or a further decision of the higher appellate courts.

Costs

71. The father has been funding the mother’s costs to date. He has already paid in excess of £143,000 and has offered a further sum of £85,000 to meet the outstanding balance which is due to her solicitors. Her global costs to date are slightly less than £240,000. His offer in relation to costs will leave a sum of £12,040 outstanding. Mr Leech QC makes much complaint about the manner in which the mother has run up costs in this case. He has been critical of her decision to reject the route of arbitration which would have led to an earlier resolution of the litigation with a consequent saving of costs. He points to a failure on her part to engage in meaningful negotiation. He highlights the costs which have been incurred in relation to the pension issue which he contends was always “doomed to failure”. It was that factor, amongst others, he says, which propelled the case to a Tier 3 judge when it could, and should, have remained in the Central Family Court. He submits that the mother should either meet the shortfall in her costs from her periodical payments or enter into some form of negotiation with her solicitors.
72. I have some sympathy with those submissions, particularly in relation to the pension point, but it is equally clear that court intervention was likely to be required in any event given the gulf between the parties in terms of the level of provision sought and offered. £12,000 odd is not a significant sum in terms of this father’s resources, but it is a

contractual debt for which the mother is liable. As such it represents a financial need which she will otherwise carry into the new circumstances of her independent life with E. I would want to see her make that transition on a debt-free basis. Whilst it is a great shame that the parties were unable to settle this litigation at the private FDR which took place this time last year, I do not propose to leave her with that debt. I hope that the father will agree to clear her costs in full on the basis of a payment of £97,000. If he will not, then I will include provision for the shortfall in my order.

73. Thus by way of conclusion, my order will provide for the following:-

- (i) a sum of up to £1.6 million in respect of a housing fund together with a further sum to meet the stamp duty and conveyancing costs of acquiring the property;
- (ii) a lump sum of £109,000 to meet (i) the costs of furnishing and equipping that home, and (ii) enabling the mother to have the back surgery which she requires;
- (iii) the provision of a car every four years up to a value of £110,000, index-linked, on the basis of the mechanism I have set out in paragraph 52 above;
- (iv) periodical payments for E, to include a carer's allowance, in the sum of £150,000 per annum, index-linked, and payable during E's minority or until the conclusion of her first university degree (if later) to include a single gap year between secondary and tertiary education;
- (v) the payment of E's school fees and all reasonable extras on the school bill with items over £1,000 in any one term requiring prior agreement.

Order accordingly