Neutral Citation Number: [2021] EWFC 72

Case No: LS20P01640

IN THE FAMILY COURT in LEEDS
SITTING AT THE ROYAL COURTS OF JUSTICE
IN THE MATTER OF SCHEDULE 1 CHILDREN ACT 1989

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/08/2021

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

X	**Applicant**
- and -	
Y	**Respondent**

- -

Re Z (No.2) (Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision)

- -

James Roberts QC (instructed by **Hunters Law LLP**) for the Applicant (mother)
Marina Faggionato & Janine McGuigan (instructed by **Mills & Reeve LLP**) for the Respondent (father)

Hearing dates: 20 July 2021

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Approved Judgment

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. These are *Schedule 1 Children Act 1989* proceedings concerning Zoe, who is now aged 8 months.

2. This judgment follows my earlier judgment, *Re Z (Schedule 1: Legal Costs Funding Order; Interim Financial Provision)* [2020] EWFC 80, which I delivered in November 2020; the earlier judgment should be read alongside this for context. The proceedings have now reached First Appointment, and my decision is required in relation to the following:

   i) Case management to prepare the case for a private Financial Dispute Resolution (FDR) appointment; agreement has been reached at the hearing as to the identity of the private FDR judge, and a date has been proposed; there is a dispute as to the requirement on the father to answer the mother's questionnaire;

   ii) The mother's application for an upward variation of the maintenance provision for Zoe (which I ordered in November 2020), to reflect:

      a) increased nanny costs (at £9,038 per month, in contrast to the £5,600, reducing to £4,000, per month which I awarded in November 2020),

      and

      b) increased cleaner/housekeeper costs (£2,200, compared with £1,200 which I awarded in November 2020);

   iii) The mother's application for further costs provision to cover the shortfall in the costs liability following a welfare/medical hearing concerning Zoe; the sum claimed is £52,088;

   iv) The mother's application for a further legal funding order within the *Schedule 1* proceedings to cover the period between now and the FDR; she seeks £62,000;

   v) The mother's application for a further legal funding order to cover the costs of work relating to *section 8* issues (specifically, legally-supported mediation, or proceedings); she seeks an award of £5,500 per month in this regard over the next six months;

   vi) The mother's application for an interim lump sum (by way of costs provision) in the sum of £25,000 to reimburse her own father in respect of an alleged loan.

   The applications listed at (ii), (v) and (vi) were considered by Mostyn J, at a Case Management Hearing on 10 June 2021; he made some interim provision but otherwise deferred the decision-making on these applications to me at this hearing.

3. I received characteristically able written and oral submissions from Mr Roberts QC and Ms Faggionato, to whom I am grateful. I was presented with a considerable volume of documentary evidence which I read. I was able to give the case longer than the hour provided for, but was nonetheless obliged to reserve judgment.

4. Following the hearing, I received an important e-mail from Mr Roberts to which Ms Faggionato, having taken instructions, replied. I deal with this exchange at §55-56 below.

5. I wish to record my disquiet at the fact that a figure approaching £500,000 has been spent on this *Schedule 1* litigation already, which has only just reached First Appointment; it is proposed that a further £130,000 will be spent over the next few months in preparation for the private FDR.

Background

6. The relevant background history as of November 2020 is set out in my earlier judgment ([2020] EWFC 80) at [3] to [13], and I do not propose to repeat it here. Following this judgment, the mother apparently had a disagreement with her stepmother and moved from the North-East of England to London; she has rented a property in the vicinity of Regent's Park (as she had originally aspired to do: see [18] of [2020] EWFC 80). This property costs her £6,000p.c.m., which is more than the £4,750p.c.m. which I had allowed her "to rent a reasonable apartment in a desirable part of London for herself, Zoe and the nanny (with possibly one spare room)" ([48]). In her recently filed evidence, she said that it was simply "not possible" to find suitable accommodation in London for £4,750p.c.m.: "I conducted a thorough search of properties in this price bracket, and they were all unsuitable". She has continued to employ the same nanny/maternity nurse.

7. In February 2021, Zoe was diagnosed with heart disease; this was specifically confirmed in the following month to be 'Williams Syndrome'. Inevitably both parents were shocked and distressed by this news and remain understandably anxious. Both researched optimal treatment options for Zoe here and in the USA. The mother firmly favoured a treatment programme offered privately by an expert surgical team at Stanford University, USA; the father advocated the expert surgical team at Great Ormond Street Hospital, London.

8. On or about 3 June 2021, the mother made applications in relation to the welfare/medical issue (outlined in §7 above), and in relation to further financial support. The issue of treatment was resolved, following a four-day hearing, before the President of the Family Division (29 June – 2 July 2021) (I refer to this as the 'welfare/medical' hearing); he directed that the team at Great Ormond Street should undertake the procedure. This surgery is now imminent. I have resolved that I should if at all possible deal with all financial issues between the parties at this hearing to spare them a return to court at an otherwise stressful time.

9. During the welfare/medical hearing, the President floated the idea that Zoe could or should become a ward of court; further written submissions have been called for on this topic.

10. On 10 June 2021, Mostyn J gave case management directions on the welfare/medical issue and on the mother's claim for additional financial relief; he made some interim awards, pending this hearing, including:

    i) An award of £22,000 to part-fund the mother's welfare/medical application (on the basis that the mother's solicitors would deploy toward the welfare/medical

costs the balance of the funding which I had earlier awarded for the main *Schedule 1* application of £33,151.20, which was being held in the Hunters' client account);

ii) An award of £20,000 to fund her representation through to the First Appointment (a period of one month) in these *Schedule 1* proceedings; (Mr Roberts advised me that Hunters in fact have overspent in this period, and have billed the mother £44,000 since 10 June, so that the mother could present her case in relation to the overspend in the welfare/medical case, and prepare her new *Schedule 1* funding application);

iii) An award of £5,000 to cover *section 8* issues (it was not clear to me precisely what *section 8* issues had arisen on which costs were likely to be expended in this period);

iv) The sum of £10,000 to cover additional childcare costs (over and above the c.£6,000 which the father had agreed to pay).

(i) Case Management: First Appointment

11. I have considered routine directions to progress the case to FDR; all but one is uncontroversial.

12. The parties have exchanged questionnaires. The mother agrees to answer the father's questionnaire; the questions are entirely reasonable. The father objects to answering the mother's questionnaire; the questionnaire contains 11 questions all directed to issues of the father's lifestyle, and how it is funded (probing the extent of personal and/or business expense).

13. To set the father's objections in context, he confirmed in correspondence in December 2020 (and repeated in his Form E1 filed in December 2020) that he would be running a 'Millionaire's Defence'[1] in this case; pausing here, I alluded in my earlier judgment to my surprise that he was not then apparently doing so: see [19] of [2020] EWFC 80. Mills & Reeve (for the father) wrote to Hunters (for the mother) on 18.12.20, thus: "There is no need, therefore, for [the mother] to use her legal budget on a forensic analysis of [the father]'s assets and income. The parties' focus can instead be on determining [Zoe's] realistic long-term needs and how best to meet them".

14. Mr Roberts argued that, notwithstanding the way in which the father is now choosing to run his case, it would be useful to know some of the detail of the father's spending – on holidays, travel, routine daily expenditure – to illuminate / contrast with the mother's case; some of these details, he suggested, could "sit in the judge's mind" when considering the mother's claims in respect of financial support for Zoe.

15. Ms Faggionato argued that as the father is running the 'Millionaire's Defence' in this case there is no value to either party in putting the father to the trouble and expense of answering detailed questions and producing significant further disclosure. She argued:

> "M's entire questionnaire is a fishing exercise intended to allow her to try and draw comparisons between the (vast)

[1] *Thyssen-Bornemisza v Thyssen-Bornemisza (No 2)* [1985] Fam 1, [1985] FLR 1069

> provision she seeks for herself and the lifestyle that F affords for himself having worked extremely hard to do so. It is also an opportunity for her lawyers to charge F thousands of pounds to consider and then challenge his disclosure. Perpetuation of the litigation seems to be M's goal, to make the case so costly for F that he accedes to whatever she demands".

16. She points out that the case is more likely to be about private education than the use of private jets; just because the father flies from time to time on private jets, she suggests, does not mean that Zoe should too. Ms Faggionato relied on the judgment of Macur LJ in *Re A* [2014] EWCA Civ 1577 in which it was confirmed that the 'Millionaire's Defence' survived "to some degree" in *Schedule 1* cases:

> "[19] The literal or purposive interpretation of *Sch 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".
>
> "[20] This is not to say that 'the millionaire's defence' survives intact. I accept the argument made that 'the black letter of the law', whether referring to *Sch 1(4)(a)* and *(b)* of the *CA 1989* and/or *Part 9* of the *Family Procedure Rules 2010* (*FPR 2010*) (where applicable), requires a party to provide information relating to assets and liabilities … However, I do not accept that this enables a court to disregard the 'overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved', including so far as is practicable expedition, proportionate response and allocation of court resources and the saving of expense: see *FPR 2010, r 1.1*. The judicial exercise engaged in determining a *Sch 1* application in circumstances of significant wealth will be unlikely to call for a detailed examination of financial resources".

17. I am satisfied that the father has given adequate disclosure thus far, and given the way in which he now presents his case, I do not regard it as proportionate let alone necessary to require him to answer questions about his holidays, travel, his domestic help, his business expenditure, his credit card expenditure, and how much he has paid his American attorneys.

18. However, in order to set some context for the claim (and conscious that the Covid-19 pandemic will inevitably have had a short-term and probably a long-term impact on the father's business interests), I will nonetheless require the father to answer Q.10:

> "Provide a brief letter from [name], the Respondent Father's accountants, setting out the Respondent Father's gross and net income over the last three tax years".

> This will do no more or less than provide, as Macur LJ contemplated, a very broad marker by which to understand (at least in part) the term 'Millionaire's Defence' in this case.

(ii) Mother's application for an upward variation of the maintenance provision

19. *Generally*: I described the mother's claim in November 2020 as "overvalued, and in some respects unrealistic" (see [45] [2020 EWFC 80). By way of example, I referenced there her claim for £1,000 for child's clothing allowance and her comment that "£1,000 per month will buy only one or two items of clothing [for Zoe] each month". When fixing the interim maintenance award in November, I said that my focus was

> "… 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." (See [2020] EWFC 80 at [43]).

I indicated (at [46]) that the award of maintenance:

> "… 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".

20. *Increase in nanny provision*: At the hearing in November, I accepted the mother's case for the cost of nanny provision without question ([2020] EWFC 80 at [49]); the mother was adjusting at that time to first-time motherhood, and I was satisfied that Zoe would benefit from the attention of an experienced maternity nurse. I fixed this claim at £5,600p.c.m. reducing after three months to £4,000p.c.m. in accordance with the mother's then presented case that the nanny would reduce her hours. In fact, when Zoe's heart condition was diagnosed in February 2021, the nanny's hours were not reduced. The father, to his credit, continued to pay at the full rate, increasing to c.£6,000 ("He appreciates the importance of [the nanny] to [the mother] and [Zoe] at the moment". Letter from Mills & Reeve to Hunters: 30.3.2021[2]). The mother now asserts that she needs to expend £9,038p.c.m. on nanny provision for the time being; she illustrates this by reference to sums already paid. She calculates her claim as: £290 per day for 6 days per week / £580 per day on public holidays. On the basis that there are 9 bank holidays in 2021 this would total £108,460 per annum or an average monthly cost of £9,038.33p.c.m. for 2021. The mother's case is that the current nanny is irreplaceable given Zoe's current age and special health needs:

> "… there is a true loving bond between [the nanny] and [Zoe]. I can see it in how they interact. [Zoe] giggles whilst looking into [the nanny's] face, and [Zoe] enjoys being held

[2] There is some dispute about whether he has ***actually*** paid at this rate, but I note that he has agreed to do so.

> by her, and will position herself so that she has as much skin-to-skin contact with [the nanny] as she can get. [The nanny] brings happiness to [Zoe] above and beyond helping me meet her care needs".

21. Ms Faggionato accepts on the father's behalf that given the mother's vulnerable and anxious presentation at present, coupled with the forthcoming surgery, it is in Zoe's best interests for the current nanny (who is in fact a maternity nurse, accustomed to being engaged for relatively limited periods in family homes in the period immediately post-birth) to remain in place for a further period (measured in months at the outside). However, she argues that there is no clinical reason why the full-time childcare support already available to the mother should be extended. There appears to be no clinical reason why the nanny should not be entitled to take the breaks to which she is entitled. The mother is not otherwise engaged in work and has the assistance of a regular cleaner.

22. I recognise that the next few months, while Zoe undergoes major surgery and recuperates, are likely to be stressful for the mother, and she (and Zoe) would benefit materially from enhanced practical and emotional support at home; I expect this current need to be temporary, and a more proportionate/cost-effective housekeeping/nanny provision can be arranged for the medium and longer term, post-recovery. I consider that it is reasonable for the mother to continue to employ the current nanny, and although the monthly outlay is extremely high (by any standard), I propose to allow the additional cost of the nanny until the FDR. The mother's budget going forward beyond that date should be tailored to include nanny provision at a more conventional cost.

23. *Increase in domestic help*: The mother further seeks an increase in the monthly costs for domestic help in the sum of £2,200p.c.m.; this is a proposed increase from the £1,200p.c.m., which I ordered as part of the £9,612p.c.m. interim monthly provision in November 2020. This was explained in correspondence:

> "… the housekeeper charges £20 an hour. [The mother] is currently only able to buy 60 hours of help a month but requires a further 50 hours to enable [the housekeeper] to cook and help with the significant loads of laundry and cleaning that is generated by the fact that [the mother] is unable to keep on top of this, due to caring for [Zoe]. This would cost a further £1,000, requiring a total budget of £2,200 per month".

24. In her witness statement she says "I need another 50 hours of help a month at a cost of £1,000 to ensure that [Zoe's] home is clean and tidy. This will buy around 27.5 hours of time a week".

25. I find no justification on the mother's evidence for her to increase (either significantly or at all) her domestic cleaning budget at the father's expense. The mother currently rents a three-bed apartment; she already benefits from 14 hours per week cleaning (in addition to full-time professional childcare from the nanny – see above); in my judgment, this is more than sufficient for the mother and her daughter at this stage. I propose to reject this claim.

(iii) Mother's application for further costs provision to cover a shortfall following the welfare/medical hearing

26. The mother claims an award of £52,088 to cover an overspend in the funding of the welfare/medical hearing. The reason for the overspend is said (by Mr Roberts) to be attributable to the fact that:

    i) The hearing was listed before the President of the Family Division for 2 days; when Mostyn J considered the interim award to cover the costs he worked on that assumption; the hearing actually took the best part of 4 days;

    ii) The 'multiplier' was significant, given that experienced leading and junior counsel were instructed on behalf of the mother (as they were on behalf of the father) for this hearing.

27. Ms Faggionato blames the over-spend on:

    i) The disproportionate quantity of evidence prepared and filed (at a late stage) by the mother in support of her "doomed" application;

    ii) The haphazard way in which the application was prepared (Ms Faggionato points to the fact that the President was critical of the failure of the mother's legal team to file material evidence in support of her claim);

    iii) The unhelpful involvement of the maternal grandfather ('MGF'), who was plainly active in the litigation (I have in mind what the President said at [54] of his judgment, and the contents of the Supplemental Bundle prepared for this hearing, with his numerous e-mails, some of which reflect poorly on him in my view) and, as the bills of costs reveal, an additional demand on the professional/billed time of the mother's solicitors;

    iv) The mindset of the mother's legal team which was cavalier (my word not hers) about the orders of the court providing for legal funding.

28. It appears that by the Case Management Hearing in the welfare/medical hearing before Mostyn J on 10 June 2021, the mother's projected costs were going to be c.£80,000 to run that application through to full hearing; Mostyn J provided for these costs as follows:

    i) The mother's alleged borrowing of £25,000 from her father (see below);

    ii) Together with £33,151, being the unspent balance of the sum allocated (by my earlier order) to the *Schedule 1* proceedings; this was re-allocated by Mostyn J to fund this welfare/medical application;

    iii) A further sum of £22,000 awarded by Mostyn J.

29. The mother overspent on this sum to the tune of £52,088; thus, it will be clear that the mother incurred £132,000 costs on her failed welfare/medical application.

30. I should add that against that background, it is a point of further concern to me that the mother's solicitors now ask for:

i) a *further* £62,000 to cover the costs of preparing for the FDR (see below),

together with

ii) a possible £42,000 to cover a short hearing to deal with possible wardship of Zoe (see §9 above and §48 below);

and

iii) shortly before the hearing, I was further advised that the mother's solicitors had overspent to the tune of £24,000 as against the £20,000 allowed by Mostyn J.

31. Before addressing the detail of this aspect of the claim, I would like to make one point of general importance. In *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)*'), I said this at [22]:

> "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". (Emphasis by underlining added).

I repeated the point in my earlier judgment in these proceedings ([2020] EWFC 80) at [30]. Mr Roberts predictably referenced these comments in his submissions.

32. Let me say at once that I do not resile from the comments which I made in those earlier judgments; I meant them sincerely. However, I must confess to being dismayed to discover that the solicitors in this case have billed the mother sums significantly in excess of the amount which I awarded to cover the costs of the *Schedule 1* litigation, and which Mostyn J ordered in relation to welfare/medical litigation; they can only have assumed that this overspend would be retrospectively authorised by the court. They were not entitled to make that assumption.

33. Indeed, this called to mind the prophesy offered by leading counsel for the father instructed at the November 2020 hearing, at the point when I was fixing the original legal funding costs award 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" ([2020] EWFC 80 at [24], and see also [35]).

It is noted by Mr Roberts that while the father's counsel expressed herself in those judgmental terms several months ago, as events have turned out, the father's costs have risen exponentially (and indeed considerably in excess of the mother's) in the period since those comments were made.

34. If I had thought that my comments in *Re F* and in the earlier judgment in this case would have the effect of encouraging the mother's solicitors, or indeed any solicitors in similar cases, to assume that they had *carte blanche* to bill their clients as they choose, I would not have made the comments, or I may have expressed myself differently. In November 2020, I set a budget within which I expected the mother's solicitors to work. I did so having regard to a number of factors including:

    i) the issues in the case,

    ii) the ball-park likely value of the claims,

    iii) my recognition that this is a 'big money' *Schedule 1* claim,

    iv) the father's current and projected costs (see Theis J at [21] in *PG v TW (No.1) (Child: Financial Provision: Legal Funding)* [2014] 1 FLR 508)[3], and

    v) the professional standing of the lawyers instructed.

    I cross-checked my assessment with what I considered to be reasonable and proportionate in all the circumstances. I expected – as all judges would expect – that the lawyers in the case would conscientiously work within the budget which I had set. Sadly, I sense that they have not tried very hard to do so.

35. I earlier expressed my concerns about "the mother's very considerable bills of costs to date" ([35] of [2020] EWFC 80); it will be remembered that £41,400 had apparently been incurred in costs in the limited three-week period immediately before Zoe was born (see [1](ii) of [2020] EWFC 80). The predilection for charging out billable hours at a significant, I suggest disproportionate, rate has continued. Ms Faggionato argues [position statement for this hearing §14]:

> "It is becoming clear that the significant sums awarded towards M's legal costs to date have not only encouraged M to litigate, but to do so unreasonably. This cannot continue".

36. The mother's solicitors claim that they have had to incur costs significantly in excess of those awarded because the father has failed to engage constructively in the litigation; he has made no timely offers. Be that as it may, they have put the court in a difficult situation, having shown, in my judgment, insufficient restraint when accumulating their billable hours since the last hearing, notwithstanding my comments (referenced above). This is not the mother's fault entirely (though the attention she seeks from her lawyers will of course have an impact on the costs incurred), and I am sure that her representation should not be compromised at this stage. That said, I am not prepared for my legal funding orders, and the rationale which lies behind them, simply to be disregarded.

[3] See again [33] of [2020] EWFC 80

37. Looking at the extent of the overspend, and having regard to the arguments of the parties summarised above, I find that:

    i) additional costs were inevitable in the welfare/medical case given the unexpected prolongation of the hearing by two days;

    ii) it is likely that additional and unnecessary costs were incurred as a result of the MGF's direct engagement with the process, and his contacts with the mother's solicitors;

    iii) the mother's solicitors paid insufficient regard to the financial parameters set by the court.

    I therefore propose to allow the mother to recover at this stage *two thirds* of the sum claimed by way of overspending (£34,724); this award will be reduced by a further 30% (£10,417) for a notional standard assessment. This leaves an award of £24,307.

(iv) Legal Funding order. First Appointment to FDR

38. I had previously awarded the mother £65,000 by way of legal funding order to cover the period from November 2020 up to and including the FDR (see [2020] EWFC 80 at [35]). In relation to this sum, it is notable that by 10 June 2021, the mother had expended £31,000 (nearly one-half of the allowed sum before reaching First Appointment). Having re-allocated the balance to cover the welfare/medical hearing costs, the mother was awarded a further £20,000 by Mostyn J on 10 June within the *Schedule 1* proceedings to cover her costs to the First Appointment (which sum has itself been overspent, see §30(iii) above).

39. The mother now seeks further costs to conclusion of FDR £62,280. This means that by the FDR, the mother's *Schedule 1* legal fees will have been more than double what I allowed for eight months ago.

40. The father's projected costs are £70,000 between now and the FDR. While the mother's costs have been significant to date, and she projects a further significant spend prior to FDR, it is not irrelevant (when considering the context of her spend) that the father has spent c.£190,000 since the last hearing.

41. While I remain concerned about the spiralling costs of this litigation, in particular in light of what I have earlier said about the levels of billing, given the level of the father's projected expenditure over the upcoming period, I am prepared to allow the mother a further sum of £60,000 by way of legal funding order to cover her costs to FDR. Any potential overspend will require prior court authorisation, or will otherwise need to be accepted at the solicitor's risk.

(v) Legal Funding Order: section 8 CA 1989 issues

42. In November 2020, the mother asserted a need for nearly £95,000 (a similar amount to the projected *Schedule 1* costs) in anticipated legal costs for *section 8* welfare proceedings; at that stage there was no real indication of any significant dispute between the parties; the medical issues had not come to light. I awarded the mother £25,000.

43. The mother advises that this sum has now been spent. She gives this explanation:

> "… we reached an agreement on [Zoe's] surname on 14 April[4], discussed mediation, early this year we discussed the prospect of [Zoe] and I visiting [State A], which was not possible due to [Zoe's] health and the commitments on our time around this. We also discussed at length indirect contact, and touched on nursery plans".

44. That explanation does not, to my mind, reveal a good return for the money spent. The mother now seeks an award of £5,500p.c.m. to cover 'welfare' issues; this sum, it is said, "anticipates both correspondence and mediation". Mr Roberts submitted:

> "Issues to be resolved include finalisation of the name change, indirect contact, direct contact (US and London) and a parenting plan. Again, without funding Hunters will not be prepared to act".

45. As I have already mentioned, I believe that the name change has been finalised; the mother says so herself. Indirect and direct contact are plainly important but until Zoe has recovered from her operation, and the arrangements for global travel ease somewhat, direct contact is not likely to be a significant issue, at least until after the FDR. Indirect contact has taken place, and I detect no issue of principle about its resumption.

46. I had encouraged the parties to mediate on welfare issues, and there is apparent willingness on both sides to do so. The father has proposed lawyer-assisted mediation; although Mr Roberts was, I felt, somewhat disparaging of the 'lawyer-assisted' element ("it is F who insists upon lawyer assisted mediation"), it seems to me (from a history that precedes Zoe's birth and has continued since then) that, sad though it is to reflect, this couple will not venture very far without turning to their lawyers for advice.

47. In my judgment, a proportionate sum to cover the ongoing costs of dealing with welfare issues at this stage would be £1,500p.c.m. (for lawyers' fees). The father should cover his half of the costs of the mediator, plus the mother's half share of that cost.

48. On the morning of the hearing, the mother's solicitors sent through a schedule of projected costs in the event that the parties were to litigate over whether Zoe should be made a ward of court (a tentative suggestion floated by the President of the Family Division at the welfare/medical hearing). The mother's solicitors indicate that her costs would be £42,000 for a short hearing (with written submissions) on this issue (less than half of this sum if the issue is dealt with on written submissions alone). I would like to place a marker at this stage (without hearing detailed argument) that £42,000 seems an excessive sum to cover the cost of preparing for a hearing on this limited issue. I have not formally been asked to make an award specifically in relation to this element, but, in the absence of agreement, I am prepared to consider brief (1-page A4) further written submissions from both counsel, when it is known whether an oral hearing before the President is required. They can address me on *whether* I should make an award in respect of this, and if so *in what sum*.

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[4] This was all but agreed in November 2020, so it is unclear why it took a further five months to agree the incorporation or otherwise of the hyphen in the double-barrelled name.

(vi) Interim lump sum to repay loan to her father (£25,000)

49. On her application form D11, the mother asserted a claim in the sum of £25,000 in order to reimburse her own father (MGF) in respect of an alleged loan; this loan was said to have been made in order for her to obtain legal advice in relation to the welfare/medical issue. This loan was further specifically referenced in her sworn evidence (in both her sixth and seventh statements). In the most recent (seventh) statement, signed one week before the hearing, she said there that "my overwhelming concern is the £25,000 I owe my father" (§36), and went on to say this at §43/44:

> "My father lent me £25,000 in early June to fund the best interests' application to the first hearing on 10 June. … I know from comments made at the hearing on 10 June by [the father's] team that they think this email[5] did not communicate strongly enough that this payment needs to be repaid to him on 20 July 2021.
>
> My father has gone above and beyond for me and [Zoe] in the last few months. He has been our rock. The understanding between me and my father was that he would allow me to borrow £25,000 from him, on the basis that I would ask the court for repayment of this on 20 July. He is expecting to be repaid then. If this court does not assist me, this will put a strain on my relationship with my father, and add to the significant stress and worry I am already shouldering."

50. Mr Roberts had, plainly on instructions from his client and adopting the unambiguous narrative from the mother's application form and witness statements, included this passage in his position statement for this hearing at §41:

> "In the circumstances M found herself in she had no choice but to approach her father for the loan of sums to commence the best interests[6] application. If proof were needed Hunters were unable to carry out further work on this and incur counsel's fees without sums on account, this is it. M was forced to approach her father on the basis that the £25,000 he lent would be repaid to him…. The funds were borrowed to pay costs in respect of an urgent application the funding provision for which would not have been capable of getting before a court.
>
> This issue (among others) is putting an unnecessary strain upon M's relationship with her family at a time when she needs it most".

51. Emails from the MGF had been included in the evidential disclosure which included the following:

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[5] The e-mail of 3 June 2021, referenced below at §51
[6] Welfare/medical

> [e-mail MGF to mother: 3 June 2021] "…further to the recent loans that I have given you I know we discussed this on the telephone but I want to make it abundantly clear there will be no more money from my account to support you on this case and I sincerely hope that I'll be able to get repayment of this as discussed after the case has been heard conditional upon the outcome being in favour of you travelling to America in the event that you are not successful then I will require the money back when you gain access to the funds you have in America at the Chase bank. Love Dad"
>
> [e-mail MGF to mother: 12 July 2021] "…further to my email [on 3 June], as discussed, I want to make it crystal clear that in my email below I referred to Chase bank on the assumption that you would be successful in [Zoe's] health application and therefore when you went to America you would repay me immediately. As this is not the case, please can you repay this £25k I loaned you on the basis that if [Zoe's] health application was unsuccessful, you would be asking the court for an order than I am repaid on 20 July.

52. In *inter partes* correspondence (9 July 2021), Hunters wrote to Mills & Reeve as follows:

> "[The mother] does say that her father requires immediate repayment, and that accordingly the request should be made to the court."

53. In the chronology of key events prepared by Hunters for this hearing, by the date 30 May 2021, it is recorded:

> "M's father [name] lends her £25,000 to fund a conference with Counsel and to fund the best interests' application to the Directions Hearing".

54. At the hearing, Mr Roberts was at pains to emphasise that the existence of this sizeable debt had caused an "enormous strain" in the relationship between the mother and her father (MGF) (see §49 above). I may add that (even before I knew the truth about the 'loan') I found it very hard to accept that submission, given the very active role which the MGF played in the welfare/medical hearing, in respect of which the loan had ostensibly been paid to cover the costs. During the hearing, I asked Mr Roberts if he could tell me how the MGF had raised the sum of £25,000, as the answer to that question may have affected whether I was disposed to allow this as part of the mother's costs' claim. He was unable to do so.

55. It was with considerable surprise, therefore, that in the evening of 20 July, a few hours after the conclusion of the hearing, I received an e-mail from Mr Roberts (via my clerk) which contained this passage:

> "Following the conclusion of the hearing today, my client informed me and her solicitors that her father did not in fact

> lend to her the £25,000 that was used to fund the best interests' application to the CMC, despite this being stated in her D11 dated 3 June 2021, and her 6th and 7th statements."

Mr Roberts went on in the e-mail to explain the provenance of two payments to Hunters amounting to £25,000 which purportedly represented the loan; it is unnecessary for me to rehearse that detail here, but it did not amount to the mother's repeatedly stated case that she was indebted to her father, the MGF, in this sum claimed. The mother's case now is that the MGF had in fact loaned her only £8,500.

56. Ms Faggionato took instructions from her client, and replied to Mr Roberts' e-mail a few days later, indicating that she and her solicitors had learned of this development with "significant disquiet", and indicating that, from their perspective, it:

> "… [called] into question … M's bona fides in all that she says and has said to the court, and raising serious questions as to how Hunters came to present her case the way that they have".

Ms Faggionato referenced several documents generated by or on behalf of the mother in which she referred to the loan, some of which I have quoted above.

57. I regard it as a matter of very great seriousness that the mother has misled the court in this way. I find that she did so deliberately. Had it been inadvertent, she would surely not have been able to sit through the hearing before me without attempting to correct, even at that last moment, the misleading picture which Mr Roberts was, on instructions, presenting to the court. In deceiving the court, and the father, she has inflicted material damage to her credibility, and has caused me to question whether she can be relied upon in respect of other aspects of her claim. I have felt compelled to look with yet greater care at her claims for financial relief from the father, and the statements she makes in support.

58. Ms Faggionato invites me to treat the falsehood as evidence of perjury and take relevant action. Although the false statements were made in witness statements, at a time when the mother knew the statements to be false or did not believe them to be true, I am not satisfied that the 'statement of truth' appended to the end of the statement ("I believe that the facts stated in this statement are true") can be said to be "on oath" for the purposes of *section 1* the *Perjury Act 1911*; that said, the statements may well be caught by *section 5* of the *1911 Act* ('false statements without oath'). I am not inclined to take the matter beyond what I have already said in §57 above; the mother corrected the falsehood before I adjudicated upon it, and in my judgement the interests of justice would not be served by exposing the mother at this time to further satellite litigation.

59. Suffice it to say, that I shall refuse the mother's claim in respect of any alleged debt owed to the MGF. I am far from satisfied as to the existence of the loan at all, or as to the extent/value of the loan. I reject the submission that the loan has caused a strain in the relationship between the MGF and the mother, and am not satisfied that, even if the loan exists, it would be right to prioritise the repayment of the loan to the MGF at this stage.

Conclusion

60. For the reasons which I have set out above, the order I propose to make is as follows:

    i) I shall increase the nanny costs to £9,038 per month until the FDR given Zoe's particular current and post-operative medical needs; this award is made on the clear basis that I expect that these costs will reduce significantly when Zoe has recovered from her surgery and a nanny (rather than maternity nurse) can be employed on a more commercially sensible basis;

    ii) I do not propose to increase the allowance in respect of the mother's domestic cleaner / housekeeper;

    iii) I shall award the sum of £24,307 to reflect (in part) the shortfall in the costs incurred in pursuing the welfare/medical issues;

    iv) I shall award the mother £60,000 to cover her costs to FDR;

    v) I shall make a monthly award of £1,500 to cover *section 8* issues (father to fund both parties' contributions to any mediation);

    vi) I shall make no award in respect of the alleged loan from the MGF

61. I have not been addressed on costs of this hearing. Ms Faggionato has put down a marker that her client will seek a costs order in his favour (or more accurately, the disallowance of the mother's costs) in relation to that aspect of the welfare/medical case costs which pertain to the alleged £25,000 family loan; she has a powerful case in this regard. I would be inclined to accede to this argument, but will give Mr Roberts seven days in which to object, in which case he may file brief written submissions.

62. I was provided with a copy of the judgment of the President of the Family Division, delivered on 2 July at the conclusion of the welfare/medical hearing. I have referenced this above. In that judgment, he made these observations at [14]:

> "I do not think it can be argued that it is profoundly contrary to [Zoe's] best interests for her parents to be so at odds with each other about, as it seems to me, everything and out of communication with each other, other than to exchange short messages, which are the opposite of being friendly. … they are playing themselves out in a wholly negative way, which can only be profoundly against the best interests of their baby. This dysfunctionality, this conflict in their relationship, needs addressing for the benefit of their baby. They have got years ahead of them of needing to be in touch. She needs them working together to support her as she gets on with the very difficult life of a child growing up with this condition".

    I encourage the parties to reflect carefully on these comments, which I adopt and reproduce in this judgment to remind them, as they approach and engage with the FDR, what is called for in this case for the benefit of Zoe.

63. That is my judgment.