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Case No: FD15F00053

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2023

Before :

THE HONOURABLE MR JUSTICE COBB

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Between :

Jason Galbraith-Marten	**Applicant**
- and -	
Catherine De Renée	**Respondent**

- -
- -

Nicholas Wilkinson (instructed by Direct Access) for the **Applicant**
The **Respondent** in person, unrepresented

Hearing dates: 12 December 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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 child (identified only as A) 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 :

Introduction

1. The litigation between these parties has a long and troubled history. The application currently before the court was brought under Schedule 1 of the Children Act 1989 ('CA 1989'). Within these proceedings, I delivered a judgment on 22 August 2023 which is reported at [2023] EWFC 141 ('the August 2023 judgment'). By that judgment, I explained my reasons for setting aside an agreed order for periodical payments for the subject child, A; she is the only child of the Applicant ('father') and the Respondent ('mother') and is now nearly 15 years old. I directed a half-day hearing to determine again the quantum of periodical payments.

2. The August 2023 judgment should be read as a foreword to this. In the last two months, the parties have filed basic financial disclosure, together with written submissions, which I have read with care. At the hearing, I received oral argument from Mr Wilkinson on behalf of the father, and from the mother in person

3. To complete the introduction, I should add that on day before the hearing, the mother filed, or attempted to file, a renewed application under Part III ('Part III') of the Matrimonial and Family Proceedings Act 1984, seeking further financial relief pursuant to her overseas divorce from the father. The mother is subject to an Extended Civil Restraint Order ('ECRO') until October 2024, and that application has therefore not yet been issued. It was agreed that I would not deal with this purported application (and specifically the mother's permission to make it) at this hearing. I comment briefly on this further below (see §33-35).

Background

4. The mother is Australian, the father English. The parties met in August 2004, married in Australia in November 2006, and were divorced after only 17 months of marriage in 2009. A was born in the UK.

5. Post-divorce financial proceedings were concluded by agreement in Australia in 2009. The parties entered into a series of 'Binding Agreements' during 2009 following mediation. The parties were assisted in the negotiations, and in drawing up the agreements, by specialist family lawyers. The mother made an application for relief in this jurisdiction under Schedule 1 CA 1989 in August 2011; this was in fact dismissed by consent. In July 2012, the mother issued an application in Australia for a variation and/or set aside of the Binding Agreements relating to spousal maintenance, child support and capital provision. That application was dismissed in October 2012. The mother then pursued in the Federal Court her applications to set aside all of the Binding Agreements; this was rejected, and her claim that the Binding Agreements should be set aside was dismissed.

6. The mother then made an application for Part III relief in this country in 2015. This was refused by Parker J later that year; the application was described by the Judge as "unnecessary and unjustified". The mother's application for permission to appeal was refused. The mother almost immediately made an application for financial relief for A under Schedule 1 CA 1989; I refused the father's application to strike out this application: see *MG v FG (Schedule 1: Application to Strike out: Estoppel: Legal*

Costs Funding) [2016] EWHC 1964 (Fam). The mother's application was determined in June 2018 by DJ Aitken, and the father was ordered to pay the sum of £1,315 per calendar month (p.c.m.) to the mother for the benefit of A.

7. In 2019 the mother made her third Schedule 1 CA 1989 application, coupled with an application to re-open the Part III proceedings. In October 2019, Mostyn J struck out these applications, and made an ECRO of his own motion.

8. Separate proceedings under Part IV of the CA 1989 were initiated; these proceedings concluded in March 2022. The Judge determining those proceedings observed in his judgment that:

> "[The mother] has spent all of [A]'s life putting her own warped sense of reality before any care or consideration of [A]'s best interests. She has come across during these proceedings as nasty, vindictive and self-absorbed."

9. In July 2022, the mother made her fourth Schedule 1 CA 1989 application (i.e., *this* application), seeking an increase in the periodical payments for A from £1,315 p.c.m., to £4,350 p.c.m., backdated to April 2020. In October 2022, Mostyn J considered this application at a hearing and delivered a short judgment ([2022] EWFC 118) in which he said at [45] that:

> "… notwithstanding the oppressive nature of the mother's conduct towards the father, … the present level of general maintenance strikes me as too low".

The Judge was nonetheless plainly unimpressed by the mother's repetition of "unfortunate litanies of invective" in which she "recycled" many of the "same allegations" against the father and others which had been previously rejected by the courts.

10. Following the hearing in October 2022, the parties entered into negotiations which led to the making of the consent order in December 2022; this set the amount of maintenance for the parties child (A) at £2,684 p.c.m. (for the detail, see [2] of the August 2023 judgment). The figure was calculated adopting the formula used by the Child Maintenance Service (and its predecessor) which had been promulgated by Mostyn J for use in the higher value cases for many years. Mostyn J had specifically confirmed that the formula would represent a "useful guideline" in "most cases", including – inferentially – this one (see [2022] EWFC 118 at [44]).

11. In April 2023, Mostyn J delivered a judgment in *James v Seymour* [2023] EWHC 844 (Fam) ('*James v Seymour')*. In this judgment (see [36]-[39]), he expressly recognised the potential anomalies arising under the earlier crafted formula. He therefore proposed a different formula (the 'Adjusted Formula Methodology' ('AFM')) for the computation of child support for most cases where the payer's exigible income exceeds £156,000 and is less than £650,000.

12. In light of the judgment in *James v Seymour*, the father applied to set aside the December 2022 consent order; the case was allocated to me, and I received written submissions from the parties. I set aside the earlier order for periodical payments, and

substituted an interim figure adopting the *James v Seymour* formula. I explained my reasons in the August 2023 judgment. I set up a hearing for the parties to address me on the appropriate award of periodical payments for A for the longer term.

The parties' arguments

13. Mr Wilkinson contends, on behalf of the father, that the periodical payments for the benefit of A should be determined according to the AFM devised by Mostyn J and set out in the appendix to his judgment in *James v Seymour*. In summary, Mr Wilkinson argues that:

    i) In this area of the law (Schedule 1 CA 1989 maintenance claims), lawyers and litigants call for as much certainty and finality as can be achieved; in this regard, he strongly advocates for a formula-based approach to be taken to the quantum of periodical payments. He asserts that the AFM formula works well in this case, as it would in most others. He adopts Mostyn J's comments in *James v Seymour* at [35]:

    > "It obviously makes sense to seek to have simple, clear and logical guidelines to help parents settle such cases, and where they do not settle, for the Financial Remedies Court to be able to decide them consistently and efficiently";

    ii) He references the judgment in *CMX v EJX (French Marriage Contract)* [2022] EWFC 136 at [86], in which Moor J had also referred to "the beauty" of a formula-based approach to child support (it is "easy to calculate the figure, so avoiding dispute");

    iii) Unless there is a cogent reason not to adopt the formula-based approach (and he argues that there is none in this case), these applications should generally be resolved by the use of a reliable formula; to do otherwise would be to undermine the laudable objective of two of the most expert financial remedy judges of modern times, Mostyn J and Moor J. To reject the formula-based approach in favour of a broad discretion would create greater uncertainty for lawyers and litigants, and potentially open the floodgates to litigation which the formula is designed to avoid;

    iv) The *James v Seymour* formula will withstand any discretionary review, applying the checklist in paragraph 4 of Schedule 1 CA 1989.

14. The mother has filed a written document in which she makes a wide range of allegations against the father, including material non-disclosure of financial assets and "manipulation" of his finances. She pleads severe financial hardship. Her position is that she regrets consenting to the figure of £2,684 p.c.m. in December 2022, as this has left her without proper financial support for A. She asserts that she was suffering from undue financial pressure at the time of the agreement, and felt badly advised by the matrimonial solicitor who she was then instructing. She maintains that the award of periodical payments should certainly not be reduced below that which she agreed in December 2022, and asks me to restore the "calculative formula" from the December 2022 agreement.

Para 4 of Schedule 1 CA 1989 / James v Seymour

15. In deciding whether to make an award under Schedule 1 CA 1989, and if so in what manner, I am statutorily obliged to "have regard" to all of the circumstances of the case, including (per paragraph 4):

    i) the income, earning capacity, property and other financial resources which […any parent…] has or is likely to have in the foreseeable future;

    ii) the financial needs, obligations and responsibilities which […any parent…] has or is likely to have in the foreseeable future;

    iii) the financial needs of the child;

    iv) the income, earning capacity (if any), property and other financial resources of the child;

    v) any physical or mental disability of the child;

    vi) the manner in which the child was being, or was expected to be, educated or trained.

    It will be noted that 'standard of living' is not within the list of factors to which I am statutorily enjoined to have regard, and in this respect, a claim under Schedule 1 CA 1989 is unlike a claim under the Matrimonial Causes Act 1973 or the Matrimonial and Family Proceedings Act 1984.

16. In exercising my discretion under paragraph 4, I must also have regard to the welfare of A; as the Court of Appeal observed in *Re P* [2003] EWCA Civ 837 at [44]:

> "… welfare must be not just 'one of the relevant circumstances' but, in the generality of cases, a constant influence on the discretionary outcome . I say that because the purpose of the statutory exercise is to ensure for the child of parents who have never married and who have become alienated and combative, support and also protection against adult irresponsibility and selfishness , at least insofar as money and property can achieve those ends." (emphasis by underlining added).

17. Turning to the instant case, the mother's monthly income which she receives from state benefits (i.e., without any periodical payments award) is said to be £2,042.50 p.c.m.. Her simply-stated budget, referrable (in part or in the main) to A, is said to be as follows:

Item	**Figure (p.c.m.)**
Rent	2,123.33
Electricity	80
Water	50
TV licence	14.45
Housekeeping	400
Travel	50

Child's clothing	100
Insurances	103.15
Mobile / internet	100
Total	**3,020.93**
Educational Costs / School Fees	2,234.00

18. I have deliberately placed Educational Costs / School Fees (which had been included by the mother as part of A's budget) *below* the total line. Mostyn J has already ruled ([2022] EWFC 118 at [43]) that the father has no responsibility for funding private education for A, and has rejected this purported claim describing it as "untenable" and "unarguable". Indeed, Mostyn J held that it would be "fundamentally unjust" to require the father to pay for private education for A, given that (a) this type of provision was never agreed between the parties, and (b) the father's two children from his second marriage are not educated privately. It will be noted that I too had already effectively precluded the mother from running this argument at [39(ii)(b)] of my August 2023 judgment. It follows inevitably that I reject the mother's further, informal, application (contained in the narrative of her position statement) for me to "review afresh" her claim for funding for private schooling; I suspect that the mother included this sum in the hope that it would bolster her 'needs' claim for A. All that said, I take into account that there would be some minor educational costs if A had been in state education (i.e., school uniform, stationery etc.).

19. The shortfall in the mother's monthly budget for A is c.£1,000 p.c.m.. This represents A's financial 'need'. But this is only one aspect of the paragraph 4 criteria. As for the other aspects, I have had regard to the following:

    i) The mother does not work out of the home and has not done so for some time; she has an earning capacity, but it is, regrettably, some way from being effectively utilised "due to stress";

    ii) The father is a successful barrister with additional business interests. His gross annual income is at the higher end of the bracket £156,000-£650,000;

    iii) The mother rents a property; it is a small one-bedroomed apartment, albeit in one of the most expensive areas of London. The mother says that she has been served with a notice of possession under section 21 Housing Act 1988; the mother has no savings or other property;

    iv) The father is a homeowner; he estimates that his home has a value of c.£1.5-£1.65m (subject to mortgage);

    v) The mother appears to have debts (not even accounting for one or more unpaid costs orders) in the region of £38,500; the father has some savings, and some debts;

    vi) The father has a new family, with two minor children living in his household, for whom he has financial responsibility.

    These are the key features of the case which inform judicial discretion.

20. The use of an arithmetic formula as a guideline for periodical payments awards in cases like this under Schedule 1 CA 1989 can be traced back to *GW v RW* [2003] EWHC 611 (Fam) (and see also, for completeness, *Re TW & TM (Minors)* [2015] EWHC 3054 (Fam) at [7], and *CB v KB* [2019] EWFC 78). The adoption of formula was said then to be prompted by the policy of making awards of child maintenance susceptible to abrogation and replacement by a maintenance calculation by the then Child Support Agency ('CSA') (see *GW v TW* at [74]). The durability of the formula approach since 2003 can perhaps be attributed to the following:

    i) The formula is pegged to the payer's gross exigible income; this mirrors the statutory computation by the CSA and (since 2012) by the Child Maintenance Service ('CMS'), and references directly paragraph 4(1)(a) of Schedule 1 CA 1989;

    ii) It reflects the payer's responsibility to other children in his/her household (i.e., other financial obligations); this also coincides with the statutory computation by the CSA and (since 2012) by the CMS, and references directly paragraph 4(1)(b) Schedule 1 CA 1989;

    iii) The formula has been adopted by many separating parties to apparently good effect for many years; judges of the Financial Remedies Court have found it useful, and it has the advantage of achieving consistency and efficiency in decision-making;

    iv) It would be unhelpful and somewhat arbitrary if the computation of child maintenance below the CMS regime were radically different from the computation undertaken by a court under Schedule 1 CA 1989 (or section 23 of the Matrimonial Causes Act 1973);

    v) A formula provides certainty and clarity, predictability, and accessibility; it is both rational and transparent.

21. On the other hand, I suggest that there are reasons why the court should be cautious about using a formula. These reasons were not in fact discussed in this hearing or in the filed documents, as both parties supported the 'calculative' approach to financial support now and in the future. I pause here to observe that it is not insignificant that this is the only issue on which the parties are agreed. Any court will need to bear in mind that:

    i) No formula can displace the obligation on the court to undertake its statutory discretionary review when deciding how to exercise its powers, as provided for in paragraph 4 of Schedule 1 CA 1989;

    ii) The *James v Seymour* formula is not purely algorithmic; there is an element of judicial subjectivity built in to it: ("I consider that for an exigible income of £650,000 a reasonable figure of Child Support Maintenance ('CSM') for each of two children would be about £25,000. A single child would cost more, perhaps £27,000 (an 8% increase). A family unit with three children would have the benefit of economies of scale and the sharing of indirect costs suggesting that the figure for such a child should be in the region of £23,000 (a saving of 8% compared to the two-child family)" (Mostyn J at [7] of the

Appendix to the judgment in *James v Seymour*: emphasis by underlining added);

iii) The formula will inevitably create anomalies (see [14]-[19] of the Appendix to the judgment in *James v Seymour*: "That eyebrows are raised for the figures produced by a few cases near the frontier of each cohort does not mean that the rule overall is irrational": [19]);

iv) There is no obvious rationale (as far as I can tell) for fixing the maximum income level at £650,000 in the 'formula' approach.

22. Moreover, there are acknowledged areas where the formula will not be appropriate at all, such as:

i) In a case where there are four or more children for whom CSM is to be paid; (*James v Seymour* at [41]);

ii) If the exigible income is more than £650,000, (ibid.);

iii) If the father's income is largely unearned, (ibid.);

iv) If the father lives on capital, (ibid.);

v) If the court is concerned with a variation application under paragraph 6 of Schedule 1 CA 1989, where the application is founded on a "change in any of the matters to which the court was required to have regard when making the order", and where the focus will be on what the change of circumstance is, and what impact the change has on the original award; (see *James v Seymour* at [34(iii)], and [42]);

vi) Where the Schedule 1 CA 1989 claim is the 'centrepiece' of the financial dispute between the parties (not subsidiary to a claim for post-divorce financial relief for a child under the Matrimonial Causes Act 1973); in those circumstances, a Household Expenditure Child Support Award may be more appropriate (see *Collardeau-Fuchs v Fuchs* [2022] EWFC 135 at [120] - [121] and *Re Z (No.4) (Schedule 1 Award)* [2023] EWFC 25 at [21]).

Conclusion

23. The mother's application under Schedule 1 CA 1989 issued in the summer 2022 was an application to vary the June 2018 award made by DJ Aitken (£1,315 p.c.m.) and was therefore governed by paragraph 6 of Schedule 1 CA 1989; as I mentioned above (§9), the mother was initially seeking a three-fold increase in the periodical payments for A, backdated to April 2020. The court was primarily considering "any change" of circumstances; in this case, the change was ostensibly the significant rise in the father's self-employed earnings since 2018 (see Mostyn J's comments at [2022] EWFC 118 at [45]). If the parties had known then what Mostyn J was going to say in *James v Seymour* at [34(iii)] and [42] about variation applications, they would perhaps have contemplated only an increase of the 2018 award by a percentage reflected by the Retail Price Index ('RPI'): see [42]: in a variation case, "… the value of the original order adjusted by inflation should normally be used as the CSSP".

24. Thus, had the 2018 periodical payments award (£1,315 p.c.m.) been increased in December 2022 by the RPI, it would have produced an adjusted value of £1,684 p.c.m.; that figure would have increased by now to a little over £1,765 p.c.m. (percentage change: 34.21%).

25. However, in December 2022 the parties purported to apply the now obsolete guideline formula from *GW v RW, CB v KB* and others. That having been their approach, when I considered the case on the papers earlier this year, I concluded that I should, at least on an interim basis, adopt a similar method, and (applying the *James v Seymour* formula) I awarded the sum of £2,075 p.c.m. (see the August 2023 judgment at [40]). At that time, I was led to understand that the father's gross income was actually higher than I now know it to be; I also did not have access to the figure which represented the father's annual relievable pension contributions. With those revised figures factored in, the Child Support Starting Point ('CSSP') following the *James v Seymour* computation is £1,957.18 p.c.m.

26. In a Schedule 1 CA 1989 periodical payments case, the AFM set out in the Appendix to the judgment in *James v Seymour* will only be a 'loose starting point' (per [43]) for the calculation of the CSSP. I can of course choose whether to accept or reject this. On the facts of this case, it will be seen that the CSSP (applying the *James v Seymour* formula) and the 2018 award adjusted by the RPI produce figures which are in similar territory.

27. That all said, no formula can or should replace the exercise of statutory discretion mandated by paragraph 4 of Schedule 1 CA 1989. Mostyn J makes this point very clearly in *James v Seymour* at [43], and I also emphasised it at [39(i)] of my August 2023 judgment. Formula or no formula, it is incumbent on the court to review the statutory criteria in the context of 'all the circumstances' before making any award under Schedule 1 CA 1989. Furthermore, when parties present a consent order (whether based on a formula or not), the court does not merely wield a rubber stamp and make the order as requested, it has the duty to scrutinise the proposal by reference to the statutory criteria; the court has the power to refuse to make the order even though the parties may have agreed it. As Thorpe LJ said in *Xydhias v Xydhias* [1999] 1 FLR 683 in an equivalent context:

> "… The court conducts an independent assessment to enable it to discharge its statutory function to make such orders as reflect the criteria listed in section 25 of the Matrimonial Causes Act as amended …. the purpose of negotiation is not to finally determine the liability (that can only be done by the court) but to reduce the length and expense of the process by which the court carries out its function."

28. I have considered with care the written and oral arguments of the parties at the hearing on 12 December; I have examined their filed evidence with particular regard to the factors set out in paragraph 4 Schedule 1 CA 1989. I have had a firm eye on A's welfare. It is clear that the parents are in significantly disparate financial situations; the father is earning very well as a successful barrister whereas the mother is out of paid employment with no immediate prospects. The father has significant assets; the mother has significant debt. This disparity in itself warrants an award of

periodical payments for A which exceeds her basic needs which I set out at §17 above. Having regard to the foregoing, I have reached the clear conclusion that the CSSP of £1957.18 provides not just an appropriate 'starting point' (*James v Seymour* [43]) but a reasonable overall result in this case. This figure (as I mentioned above) is also within a similar territory of the figure representing the 2018 award as adjusted by the RPI. One of the benefits of adopting the *James v Seymour* formula in this case (as in other similar cases) is that it can be applied anew each fiscal year to calculate the fair quantum of periodical payments with specific reference to the payer's income reflected in his/her tax return. This is perhaps particularly valuable in a case where the payer, as here, is self-employed.

29. This case, I hope, to some extent demonstrates the inherent reliability of the AFM set out in *James v Seymour*, and underlines its potential value in cases of this kind. There is a great deal to be said for promoting higher degrees of consistency in judicial decision-making to applications under Schedule 1 CA 1989; I endorse without reservation the ambition of Mostyn J, Moor J, and others in seeking to reduce uncertainty and unpredictability of outcome for the very large numbers of unrepresented litigants who populate our Financial Remedy courts, and the very many who seek solutions away from the courts.

30. I propose to round up the monthly award of periodical payments to £1,960 p.c.m.; I shall direct the parties to calculate the father's ongoing liability for periodical payments in accordance with the *James v Seymour* formula. I intend this to be the final order in relation to financial provision for A during her minority. I acknowledge that the mother may bring an application in relation to tertiary education support at the right time; this was specifically provided for at §8.b of Mostyn J's order of 21st December 2022. That part of the order is undisturbed.

31. On the basis that the award of periodical payments is fixed at £1,960 p.c.m. for this fiscal year backdated to April 2023, the father can be deemed to have in fact paid up his obligations until April 2024; he will therefore not be obliged to make any further payment until the start of the new fiscal year, in accordance with the new computation. Indeed, it appears that there is an overpayment of the year by c.£4,450 which reflects: (a) the payments he has made to the mother for A at the previously agreed (higher) rate, and (b) three erroneous duplicate payments in October, November, and December 2023. I note that the father is prepared to write off that overpayment, deeming it to be in A's best interests that he do so.

32. I therefore propose to order that:

    i) From 1st April 2024 the father shall pay periodical payments to the mother notionally at the rate of £1,960 p.c.m.;

    ii) The amount of child maintenance payable from 1 April 2024 will be varied automatically to the figure that is calculated by applying the formula set out in *James v Seymour* to the father's gross annual income disclosed in his tax return filed for the tax year 2023-2024, and similarly year-on-year;

    iii) This determination shall set the basis of the father's obligations to maintain A until A attains the age of eighteen, in accordance with paragraph 3 of Schedule 1 CA 1989; the intention of this order is to avoid the need for any future

litigation concerning the child support that the father is to pay to the Applicant for the benefit of A;

iv) I summarily assess the father's costs at £6,000. Given that the mother made no attempt to resolve this dispute, and had resolutely set her face against any reduction in the periodical payments, I direct that she shall contribute one half of those costs, not to be enforced without leave.

Further application under Part III MFPA 1984

33. On 11 December 2023, the day before the hearing of the father's application, the mother purported to file a fresh application under Part III; the application was accompanied by considerable documentation. It transpired that seven days earlier (in purported compliance with paragraph 3.5(b) PD4B FPR 2010), the mother had given informal notice to the father of her intention to make the application, together with a brief outline of her purported case. I required the mother to give the father proper notice of the application with all of the relevant material.

34. The mother must overcome two significant hurdles before she can pursue this application:

i) The mother is still the subject of an ECRO. The terms of that order prevent her from making applications in the Court of Appeal, the High Court and the Family Court concerning any matter involving or relating to or touching upon or leading to the proceedings in which that order was made without first obtaining the permission of a permanent puisne judge of the Family Division;

ii) Part III has an inherent 'leave' stage. Section 13 of the MFPA 1984 provides that the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order. I further remind myself that one of the matters to which I would be obliged to have regard (section 16(2)(i)) is "the length of time which has elapsed since the date of the divorce, annulment or legal separation", in this case it is now more than 14 years. I am bound also to have regard to the fact that the mother has already made one failed claim under Part III.

35. I confirmed at the hearing that I would deal with the first of the 'hurdles' referred to above (i.e., consideration of permission in light of the existing ECRO) on the papers without a hearing in accordance with the rules: see paragraph 3.6 PD4B FPR 2010. Subsequent to the hearing, the mother indicated that she wished to supplement her application with more grounds and more documentary material. I have indicated to her that I will await that material before considering the application for permission. At the time of the hand down of this judgment the mother has not yet provided her additional material, and the father has not therefore had chance to respond (para.3.5, ibid).

36. I remind the mother that the last ECRO contained this provision (explicitly reflecting the terms of paragraph 3.3(b) PD4B FPR 2010):

> "… if (the mother) repeatedly makes applications for permission … which are totally without merit, the court

> may direct that if (the mother) makes any further application for permission which is totally without merit the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal."

[END]