APPROVED ANONYMIZED JUDGMENT

Neutral citation: [2024] EWFC 32 (B)

IN THE FINANCIAL REMEDIES COURT SITTING IN LEEDS **LS23D00001**

BETWEEN

A S

APPLICANT

AND

R S

RESPONDENT

1. This is my third reserved judgment in this case which follows from the handing down of my judgment (the "Costs Judgment") to decide the question of the cost regime to be applied following the dismissal of the Applicant's request for leave under Part III Matrimonial and Family Proceedings Act 1984 (i.e. whether the "no order" presumption under FPR 28.3 or the "clean sheet" methodology should apply to such cases).

2. Again, the Applicant is represented by Mr Bickerdike and the Respondent Miss Barrons.

3. At the handing down of the Costs Judgment I fully anticipated there would be lengthy submissions as to whether a cost award should be made in principle and if so the assessment of such costs. What I did not anticipate, at least before receiving the written submissions, is that the Applicant would submit that a further novel point of law was involved, such that, almost the entirety of the time allowed was taken up with submissions leaving no time for an extempore judgment.

4. The issues I now need to decide are whether a cost award should be made at all and if so the assessment of those costs (and whether such assessment should be on a standard or indemnity basis).

5. Miss Barrons submits that the Respondent should be entitled to his costs. Mr Bickerdike resists this but does not go so far as to submit that the Applicant should be entitled to her costs.

6 As will be seen I have made several observations as to the application of the rules (both the FPR and CPR) and the various inconsistencies which I have identified which arise almost, if not entirely, from the manner in which FPR rule 28 is drafted with reference to CPR 44 so as to incorporate the same *save as to exceptions*. I have long considered this to be a confusing and unfortunate approach. Family lawyers would be better served by a freestanding all-encompassing rule within the FPR obviating the need to cross- refer to the CPR. I do urge that this can be considered by Rules Committee and revisited.

The Principle of the Award

7 In accordance with the Costs Judgment, I take my starting point as follows;

8 Firstly, pursuant to FPR 2010 28.1 the Court may at any time make such order as to costs as it thinks just - this is of universal application to both costs in Financial Remedy proceedings and costs in other Family Proceedings generally.

9 Secondly, having decided that FPR 28.3 does not apply to this case the general rule under FPR 28.1 is to be read in conjunction with FPR 28.2 as to the application of other rules in particular CPR 44.2. Subject to some exceptions, when considering the liability for cost, the Court should apply the general rule in CPR 44.2 using a "clean sheet" following *Judge v Judge [2009] 1 FLR 1287* and *Baker v Rowe [2010] 1FLR 761*.

10 Thirdly, that when applying both the FPR 2010 and the CPR 1998 the Court must "seek to give effect to the Overriding Objective" which, in itself, identifies a procedural code "enabling the court to deal with cases justly".

11 However, there is a nuanced approach in the application of the overriding objective as between both sets of rules.

12 In the FPR 2010 the overriding objective is a requirement…

to deal with cases justly having regard to any welfare issues involved.

Whereas in the CPR 1998 the overriding objective is a requirement:

to deal with cases justly and at a proportionate cost.

13 I shall return to the impact of the Overriding Objective later in this judgment when dealing with the parties' submissions on proportionality.

The Parties' Submissions

Should costs follow the event?

14 Mr Bickerdike accepts that there is a "soft starting point" that costs follow the event but submits just this is subject to the Court's "very wide discretion" and that this starting point can be displaced "much more easily" in a family law context than in other fields.

15 In fact, FPR 28.2(1) specifically excepts CPR 44.2(2) (costs follow the event) from consideration *in all family proceedings* (whether Financial Remedy or otherwise).

16 Miss Barrons rightly acknowledges that this general presumption or "rule" is strictly dis-applied by FPR 28.2(1) but goes on to submit that the Court retains a wide discretion citing *Solomon v Solomon [2013] EWCA Civ 1095* and *Gojkoviv v Gojkovic (No2) [1991] 2 FLR 233* in support of a prima facie presumption that costs will follow the event.

17 In my experience this commonly accepted approach is so often accepted at face value by busy judges that it is not questioned. Having revisited *Judge v Judge* and *Baker v Rowe* perhaps the position is not so clear cut? Further, Ryder J's judgment in *Solomon* must be tempered by the fact that he was neither referred to, nor did he consider *Judge v Judge* and *Baker v Rowe* nor the detailed provisions of FPR 2010 rule 28 as a whole.

18 However, it is beyond the scope of this judgment to embark on further analysis in circumstances where both counsel accept the proposition; the cases cited are binding on me; and the "soft starting point" continues to be applied routinely and without question (for example see Mostyn J in *LM v DM 2021 EWFC* which was not cited to me but could not be more clear on the point).

19 In this case the Respondent has, unquestionably succeeded having secured the outright dismissal of the Applicant's claims.

20 Having considered the general rule, I turn to consider the specific provisions of CPR 44.2(4) and Counsel's submissions on the same.

21 I note that the rule is drafted in mandatory terms such that the Court *will* have regard to such considerations.

22 The first is "all circumstances" which gives the court a wide discretion to tailor its approach to the individual case. Otherwise, the specific factors which the court *is required* to consider are as follows:

44.2 (4) (a) – The Conduct of the Parties.

23 CPR 44.2(5) gives examples of the conduct which should be included under this heading. The list is not exhaustive. Miss Barron's has invited me to consider specifically 44.2(5)(b) as to whether it was reasonable for her client to contest the application and CPR 44.2(5)(c) as to the manner in which the Applicant has pursued her case.

24 In simple terms Miss Barron's submits that the Respondent was clearly vindicated in his opposition to the application given my decision that this should be dismissed.

25 Miss Barrons relies on my findings that the arguments raised by the Applicant in the leave application were neither sustainable nor reasonable given her conduct of the Malaysian proceedings. I do not propose to revisit those matters in detail - they are set out in Miss Barrons' skeleton. In particular, Miss Barrons cites the Applicant's considered decision not to engage in the Malaysian proceedings, the criticisms made of Judge Peters (which I have found to be misplaced) and her mis-guided submissions in respect of the treatment of the third-party interests.

44.2 (4) (b) - whether a party has succeeded on part of its case, even if that party has not been wholly successful

26 I cannot help but observe the tension which is created by the provisions of FPR 28.2 which excludes CPR 44.2 (2) (the general rule that the unsuccessful party will pay the costs of the successful party) but does not exclude CPR 44.2 (4) which requires in mandatory terms that the court *will* have regard as to whether a party has succeeded on part of its case even if that party has not been wholly successful.

27 One can understand why this provision was included in the CPR as a separate provision since the court is also entitled to take into account whether a party has succeeded on the whole of their case, but in the Family Court it creates yet another unfortunate difficulty. As a matter of logic surely it cannot be right, at least for the purposes of FPR 28.2 that the court is specifically directed to disregard the fact that a party has been wholly successful but *must* take into account that a party has been partly successful? Nevertheless, as currently drafted, that is what the rules require that the Court should do.

28 This problem does not arise in Financial Remedy Proceedings as FPR 28.3 does specifically exclude CPR 44.2(4) from consideration so that in financial remedy proceedings by the interaction and combination of the overarching provisions of FPR 28.2 (which I have taken to be of general application because the reference therein is to "proceedings" and not "family proceedings") and FPR 28.3 the consideration of both success and partial success are excluded.

29 As Miss Barrons points out the Respondent was wholly successful in opposing the Applicant's application and the Applicant did not succeed on any part of her case. Mr Bickerdike is silent on this point suggesting he concedes that he has no answer to it? A fortiori the Respondent has also succeeded on part of his case, and I am required to take this into account.

44.2 (4) (c) - any admissible offered to settle made by party which is drawn to the court's attention, and which is not an offer to which cost consequences under Part 36 apply.

30 Ms Barrons submits that the Respondent has achieved a better outcome than his Calderbank offer made on 10 May 2023.

31 In addition, that the Respondent has also achieved a better outcome than the Applicant's open response dated 17th May.

32 Mr Bickerdike makes number of submissions with regard to the offer dated 10th May.

33 Firstly, that although the Respondent was prepared to accede to the application for leave this was only subject to conditions and that the conditions which the Respondent sought to attach were in the gift of the Court in the exercise of its case management powers and not a matter for the parties.

34 Whilst this is correct is not the whole answer for the following reasons.

35 In view of what has gone before it is entirely likely that I or any other judge would have acceded to those conditions if both parties were in agreement and urging them upon the Court - even that the condition that the FDR should be dispensed with.

36 The Respondent's conditions were clearly designed to minimise the cost of proceeding with the full-blown application for Financial Remedy, with all the usual preparation and case management stages, in circumstances where much work had already been undertaken in Malaysia in the recent past. In my judgment the Respondent was rightly concerned about opening the floodgates of litigation that had previously been so acrimonious, and financially ruinous for this family.

37 In any event the Applicant was prepared to agree to 3 out of the 5 conditions.

38 The Respondent had a right to be heard on the question of leave (even if initially refused on paper) and therefore if the Court was not minded to impose those conditions then the Respondent could have withdrawn his consent and run his case accordingly. This surely must make it even more likely that the Court would have agreed to those conditions?

39 Secondly, Mr Bikerdike submits that, by his willingness to concede the argument on leave, albeit subject to conditions, the Respondent clearly saw sufficient force or merit in the application and that he cannot credibly contend that it was unreasonable for the Applicant to run her case - the reasonableness or otherwise of her applying being a matter of "obvious relevance".

40 I disagree. The whole intention behind the Respondent's conditional offer was to ensure that there would be a swift and proportionate determination of the issues. If his conditions had been accepted it was his hope and expectation that the preparation for, and hearing of, a full-blown financial remedy application would not have been significantly different to the expense and time taken in connection with the opposition to leave. This does not amount to a concession that there was any merit in the Applicant's case.

41 I am satisfied that the offer made on 10th May was a genuine attempt to settle and it is right that I should have regard to it.

42 As to the consideration of the Applicant's response dated 17th May 2023 I do note, in fairness to her that the Applicant's offer was not rejected out of hand. The substantive difference would appear to be the Applicant's insistence upon full-blown forms E including all exhibits. This was against a background where the Applicant maintains that there had not been full and frank disclosure whereas I found in my original judgment that the Respondent had provided such disclosure, at least to the requisite standard, in the Malaysian proceedings.

43 As to dispensing with the FDR the Applicant simply asserts "we believe that the case is suitable for an FDR hearing rather than being set down". As such her approach is consistent with the rules and she can hardly be criticised for that. I suspect that if agreement had been reached with regard to the exchange Forms E that the Applicant would have been willing to

revisit this or at least leave it as a matter for the Court; she does not appear to make the listing of an FDR a “dealbreaker”. I repeat my earlier observation that if the Court had insisted on an FDR then the Respondent could have simply withdrawn his consent on leave.

44 I am therefore satisfied, and it is right that I should record, that the Applicant’s open letter dated 17 May 2023 was also a genuine attempt to engage.

45 Should the Respondent’s wholesale rejection of that in the letter dated 19 May 2023 simply due to his unwillingness to provide exhibits to an updated From E be considered unreasonable? I take into account that the Respondent’s solicitors refer to the 157-page statement already filed in the Malaysian proceedings and the expectation that many documents required for the Form E were likely to be readily found within that document rendering their identification and collation relatively straight forward.

46 In hindsight, it probably would have been easier for the Respondent simply to provide a full-blown Form E with all exhibits. On the other hand, at the same time, it is arguable that the Applicant could reasonably have relied upon the Malaysian statement instead as providing the requisite disclosure of the supporting documents. Given I have found in my first judgment that sufficient disclosure was given I am satisfied that the Respondent’s approach was reasonable.

47 I am not sure if, by paragraph 9 of his skeleton Mr Bickerdike submits that the Applicant was not given the requisite time to consider the Calderbank? The timing is such that the Applicant would have had 14 days within which to consider and respond the offer which is sufficient.

48 As to Mr Bickerdike’s submission that the Applicant is only at risk of costs incurred 14 days after the Calderbank offer I would say as follows.

49 It is entirely right that, when the Calderbank regime was in force in ancillary relief proceedings, the best opportunity which a respondent would have to protect themselves on costs would be to make a Calderbank offer to deal with all aspects of the claim at the soonest opportunity.

50 If thereafter a respondent failed to beat their own Calderbank offer it would be of no consequence. If they did beat it then the Applicant would be at risk of costs incurred 14 days thereafter.

51 A Calderbank offer would be used in substantive proceedings to deal with all aspects of the claim including perhaps periodical payments, property adjustment orders, pension sharing orders et cetera all of varying degrees of complexity.

52 Applications under Part III are not like that. Instead, the outcome is binary in its nature and permits only one outcome. In this case the Respondent engaged to oppose the application from the outset, and he was wholly successful. To suggest that his ability to recover costs should somehow then be limited by making a Calderbank offer which would have provided more favourable terms for the Applicant and which he has beaten is surely a nonsense? Otherwise, he would have been better simply making no offer at all.

53 I pause here to observe that strictly speaking, the "new" provisions of PD 28A paragraph 4.4 as to the obligation to negotiate openly only apply to Financial Remedy Proceedings (although I accept it is not attractive to suggest that in other cases the parties are relieved of the obligation to negotiate simply because of what is probably a gap in the rules).

50 I also take account of the fact that the making of a Calderbank offer is only one of the considerations. I can attach such weight to it as I see fit (as with the Applicant's open response dated 17th May 2023).

51 Finally on the consideration of the Calderbank correspondence, as I understand paragraph 9 of Mr Bickerdike's submissions he contends that the applicant needed information as to the costs incurred before considering it and that such information would be "critical to the claim".

52 Given he has submitted, and it is accepted as a matter of common practice, that the maker of the Calderbank offer would only have been entitled to their costs 14 days from the making of the offer how can it be argued that it was critical for the Applicant to have been informed of the costs incurred prior to that time? This would have been relevant if the payment of such costs was a condition of and part of the offer but not otherwise. Quite simply the Applicant was not at risk of those costs as part of the Calderbank procedure and consequently it was surely a matter of indifference to her as to what they might be.

53 If I am wrong about this and the Applicant did consider the provision of that information was in some way fundamental and critical then she could have sought to clarify this with the Respondent's solicitors. She did not do so.

54 In my judgment the Applicant cannot properly rely upon the lack of this information in opposition to the making of a cost award against her. In any event the Calderbank exchange is but one part of the jigsaw and the weight which I attach to it is in my discretion.

Standard or Indemnity Costs?

55 Whilst the fact that a party has beaten their own offer, whether this is an open offer or a Calderbank offer, is clear evidence that they were negotiating reasonably I do not agree with the submission made by Ms Barrons that the Respondent's treatment of the WPSATC offers in this case should automatically lead to consideration of an award of costs on an indemnity basis. I have taken full account of the cases cited *Reid Minty v Taylor [2001] EWCA Civ 1723*, *Epsom College v Pierse Contracting Southern Limited [2011] EWCA Civ 1449 and F & C Alternative Investments (Holdings) Ltd v Berthelemy (2012)*.

56 If anything, in my judgment these authorities actually assist the Applicant in resisting an award for indemnity costs. It is made clear that before indemnity costs are awarded the case in question must fall "outside the norm" and that the conduct must be unreasonable "to a high degree". I note that in *Epsom College v Pierse Contracting Southern Limited* College the

Court observed that a case deserving of indemnity costs was described as “a rare case indeed”.

57 As I have already noted the Applicant did engage with the offer and both parties were exploring what terms of compromise were likely to find approval with the Court in terms of its case management.

58 In my judgment the Applicant’s conduct falls short of a “high degree” of unreasonable conduct and any cost will be awarded on the standard basis. That said, from a practical point of view the difference in the test between the two awards will rarely be of significance in family cases.

The Impact upon the Applicant of making an Award.

59 Mr Bickerdike addresses this in his skeleton, Miss Barron’s does not. It is not one of the specific factors identified under CPR 1998 44.2 but arguably is properly taken into account as part of “all the circumstances” under CPR 1998 44.2 (4) and in recognition that the list of items at CPR 1998 44.2(4)(a) and (b) and (c) is non-exhaustive?

60 In addition, although I have already found in the Costs Judgment that FPR 2010 28.3 does not apply to this case, I do note that FPR 2010 28.3(f) requires the Court to take into account the financial effect on the parties of any costs order.

61 It could be said that the lack of this provision in FPR 28.2 was specifically considered by the Rules Committee and that, in addition to incorporating most of the provisions of CPR Part 44 into FPR 28.2 the committee could have chosen to include an additional and separate provision similar to FPR 2010 28.3(f). It would appear the Committee elected not to do so? On balance, however I am satisfied that this was just another “unforeseen consequence” and that the court should properly take into account the effect on the Applicant as part of “all circumstances” but as part of the three-stage test I have suggested at paragraph 65 below and not as to the principle of an award.

62 There is a further tension in the rules insofar as it is surely difficult, if not impossible, to assess the impact of the making of an award for costs unless the court also takes account of how much those costs may be? It is trite to observe that paying party may be able to afford £1000 in costs but not 10,000 (or in this case the £42,000 which is sought).

63 When assessing costs in civil proceedings under CPR 44.4 the impact on the paying party is not a factor. At least this makes the provisions of the CPR internally consistent insofar as the impact on the paying party is neither a factor when it comes to the principle of costs under 44.2 nor their assessment under 44.4.

64 As well as the overarching consideration of “all circumstances” the saving provision, at least for the party at risk, may be found in CPR 1998 44.2(6)(a) and/or (b) (which is incorporated

into FPR 28.2) which includes the option for the court to direct payment of "*a proportion of another party's costs*" or "*a stated amount in respect of another party's costs*".

65 This being the case I am satisfied that the correct approach in Family Proceedings governed by the clean sheet approach is as follows:

- That the Court should not be directly concerned as the impact upon the paying party when considering the principle of the award (even though this may form part of "all the circumstances")

- That the court should also ignore the impact upon the paying party when assessing the reasonableness and proportionality of the receiving party's costs.

- But that the Court should then consider whether as part of all the circumstances it is appropriate to direct that the paying party should in fact only pay a proportion of those costs which may obviously include a nil contribution.

66 It may be that this approach has already been identified and approved in other cases, but it is not apparent from the cases which have been cited to me.

67 I recognise that any award will eat into the housing fund available for the Applicant and the children. Coupled with the need to meet her own cost this will cause a further inevitable hardship. Mr Bickerdike suggests that if the Malaysian award did "just about ensure" that she would be able to meet her reasonable future housing needs and that the Malaysian award "was predicated on that being the case" that any further order costs now would detract from that and might even have the effect of wholly undermining the rationale upon which it was predicated.

68 I do, however take specific account of those cases in which costs orders been made reflecting the Court's unhappiness with a party's conduct even in when such orders have intruded upon that parties' needs - I have in mind in particular the comments of Peel J in *VV v VV (No 2) [2023] 1 FLR and HD v WD [2023] 2 FLR*.

69 When considering whether the Applicant should pay a proportion of the costs or a stated amount it is right that I should also balance against that the impact upon the Respondent of not making an award. (By analogy FPR 28.3(f) refers to the financial effect *on the parties* of any costs order). Happily, for him he is in a stronger financial position, particularly now in income terms, and does not have to provide a permanent home for the children. If therefore he is to bear his own costs or a proportion of them then manifestly he would be in a financial position to do so without causing *hardship*.

The nature of the application.

70 This is the "novel point" which Mr Bickerdike has invited me to consider; to what extent, if any, does an application for leave under Part III stand differently to other applications and cases. He submits that in this case very unusually in the context of an application for leave the applicant finds herself at risk of an order for costs been made against her. He explains that he considers this unusual because in the "vast majority of cases in this sphere" applications for leave are determined "administratively" without any notice to the

respondent whatsoever, still less with their active involvement at the leave stage. Whilst he accepts that the Court had an overall discretion to list the hearing of the leave application on notice he urges me to take into account that the Applicant had no influence over my decision and yet the consequences are that she is now exposed on costs in a manner which she would not have been had her application for the been dealt with administratively.

71 He submits that this consideration alone places the instant case outside the sphere or generality of cases.

72 Neither Counsel were able to cite any authority and unfortunately the reports in what may be regarded as the leading cases of Agbaje v Akinnoye Agbaje [2010] HKSC 13, Treversa v Freddi [2011] EWCA Civ 81 and Potanina v Potanin [2021] EWCA Civ 702 are silent on the point (with the decision of the Supreme Court in Potanina v Potanin yet to be handed down at the time of preparation of this judgment - although this may be available when this judgment is handed down in which case I reserve the right to revisit this decision).

73 Also, whilst I cannot recollect whether Mr Bickerdike made this submission in terms, it cannot be overlooked that if leave had been granted, whether administratively or after a contested hearing, then it is unlikely that an award of costs would have been made in any substantive proceedings thereafter as they would have been by the general rule under FPR 28.3. (Although one may speculate as to whether the Applicant would have sought her costs of the leave application, against the Respondent if she had been successful?)

74 There is perhaps some analogy to be drawn to other cases when the court needs to make a decision on a “preliminary issue” before moving onto the substantive case. For example, in either a Bader or Thwaite type application or in cases involving interveners where costs are certainly at large.

75 Mr Bickerdike’s submission on this point is predicated upon the basis that, following my decision to list the leave application, the Applicant was somehow bound to see it through.

76 This, of course is not correct. Following the decision to list the application on notice the Applicant had every opportunity to consider and evaluate again the strengths of her case and all the competing factors - including the possibility of adverse cost consequences. At the very least there was going to be a substantial increase in her own costs. She had all the evidence available to her when embarking on her application which I had when making the decision. She made a fully informed decision and elected to continue.

77 For this reason, I am not satisfied that contested application for leave falls into a unique category when it comes to costs simply because most cases of this type are dealt with administratively. The Applicant had the ultimate control over the progression of the case. She chose to see this through, and she lost.

My decision on the principle of the award.

78 I begin by reminding myself that although proportionality is a specific factor to consider when applying the overriding objective in civil proceedings it is not included as part of the overriding objective in family proceedings. Nevertheless CPR 44.4(1) is included under FPR

28.2 (insofar as it is not one of the excluded provisions) and this does require when deciding the amount of costs on the standard basis that the court will consider whether such costs were

proportionately and reasonably incurred; or

proportionate and reasonable in amount

79 Pulling all the factors together and reminding myself that that the court may make "such order as to costs as it thinks fit" I am satisfied that the Applicant should pay the Respondent costs. I summarise my reasons as follows:

80 Of magnetic importance is that the Applicant elected to continue with the case and failed on the fundamental and binary issue as to whether leave should be granted or not. It cannot be ignored that the Respondent has succeeded on the entirety of his case.

81 The Calderbank offers far from determine my decision but on balance *tend* to support the making of a cost award in favour of the Respondent and certainly do not detract from that in any way.

82 That the adverse impact on the Applicant of making an award should not be determinative as to principal but if I am to take this into account at all then it should be after the assessment of such costs by considering whether the Applicant should be directed to pay only a proportion or stated amount of such costs.

83 That the "unique" nature of the leave application does not of itself mean that an award should not be made.

84 This leads consideration now of the assessment of those costs which I am going to approach on an entirely summary basis without a detailed consideration of each and every aspect of the N260. Given the detail of foregoing analysis and having taken into account the relevant factors under CPR 44.4(3) I am satisfied that I am entitled to do so without further justification or clarification. This is what a summary exercise entails. That said, it is not random or unprincipled exercise. It is not a metaphorical wet finger sticking up in a stiff breeze. It is instead a considered and measured approach as to what is fair in all circumstances of this case based upon years of experience both in practice and as a Judge

85 The Respondent has served a cost schedule in which the total costs claimed are £45,264.

86 In his written submissions Mr Bickerdike reserved his position as to further "detailed" submissions to be made should the court decide the issue of costs in principle in the Respondent's favour. He points to alleged prejudice in terms of the timing of the service of the N260 whilst accepting that this has been served in accordance with the rules. Despite this he was able to make submissions to me at the hearing. On a like-for-like basis he invited me to take account of the fact that the Respondent's costs stood at some £19,000 and in contrast and the Respondent's costs were disproportionate. He urges that this was a straightforward Part III application in Leeds and did not justify the retention of London lawyers and further that attendances at hearings did not require the support of instructing

solicitors given the seniority of Counsel employed. He also drew a direct comparison between Mr Sirikanda's and Miss Baronns' fees and his own which in each case was broadly double.

87 It is clear that the difference between the costs incurred on each side arise primarily because of the different rates of charging and not because, it would appear, due to significant differences in the time spent on the case. I make that comment without detailed reference to the N260 on behalf of the Applicant and so without detailed consideration of the work undertaken by her team but simply because the Respondent's rates are broadly double, and he has spent twice as much so the time spent must be similar.

88 It is entirely a matter for the Respondent as to which lawyers he uses, and I can understand why he has continued with PHB when they represented him in the Children Act proceedings. However, this does not mean that is necessarily fair for the Applicant to be obliged to meet those higher costs. I agree with Mr Bikerdike, that in terms of this Part III application there was nothing inherently complicated which required the retention of "High Powered" lawyers.

89 At a local level the application could probably have been covered with costs in the region of 20 – 25,000 (as shown by the Applicant's own costs) which would have been proportionate and reasonable in amount.

90 Taking into account at this stage (i.e. the quantification stage) the impact on the Applicant, and therefore indirectly upon the children, in terms of the available housing fund whilst balanced against the Respondent's manifest ability to meet any shortfall I am satisfied it is appropriate to direct the Applicant to pay a round sum of £10,000 as a *stated amount* of the of the Respondents costs. Such an award is consistent with recognition of the outcome of the case (informed by all the detailed considerations above) whilst taking into account that the Applicant will not only have this to pay but also her own costs which will then mean that she has to find something in the region of £30,000 in respect of these proceedings from the money which would otherwise be available to her for rehousing (whilst in my judgement, to be clear still leaving her with a sufficient fund to meet that objective).

91 Although this was not a consideration affecting this outcome it does have a neat symmetry insofar as the Respondent will then have some £30 – 35,000 to pay so there is a broad degree of equivalence.

Publication

92 As the parties are aware I have been asked to consider publication of this and the earlier judgments. Mr Bikerdike has indicated that he may wish to be heard on that point. I am not entirely sure that it is a matter for the parties. Any judgment will, of course be suitably anonymized and I am quite content if they so require that counsel can satisfy themselves as to that anonymization before publication.

93 If, however Mr Bickerdike can point to a rule or authority which requires that I should take his submissions into account before doing so I will consider that and obviously Miss Barrons'

should then be given the opportunity to respond - but only if I feel that there is any substance in Mr Bickerdikes's submission. The last thing I want to do is subject the parties to further costs and I am satisfied that, by adopting this filter, the Respondent will not be exposed as to any initial costs, and it will therefore remain entirely a matter for the Applicant as to whether she wishes to make any submissions on this point or not. If she intends to make submissions I require that the Applicant should do so within seven days in order that this can be considered at the handing down of the judgment.

Foot note

94 The Judgment in *Potanina v Potanin [2024] UKSC* has now just been published. There is nothing in that judgment which has caused me to revisit any part of this judgment. I would simply observe, to reinforce my rejection of Mr Bikerdike's submission that leave applications occupy a special place when it comes to costs the fact that in *Potanina* both Lord Leggat and Lord Briggs giving the dissenting judgment bemoan the cost implications of protracted litigation and Lord Briggs refers to the need for parties to approach the case proportionately, "*coupled perhaps with condign cost penalties for those who ignore those exhortations" (para 123)*. This certainly contemplates a regime in which costs orders may be made.

16th February 2024

District Judge Troy