Neutral Citation Number: [2019] EWHC 1713 (Fam)

Case No: 2019/0044

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
ON APPEAL FROM HHJ TOLSON Q.C.
SITTING AT THE CENTRAL FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3/7/19

Before:

MRS JUSTICE THEIS

- -

Between:

	X	**Appellant**
	- and -	
	Y	**Respondent**

- -

Mr Frank Feehan Q. C & Dr Charlotte Proudman (instructed on **Direct Access Basis**) for the **Appellant**
The Respondent appeared in Person (Ms Helen Pomeroy instructed by **Teelan & Silwal appeared in the court below and prepared the Respondent's Skeleton argument in the appeal; the Respondent attended the hearing alone as attendance was not required)**

Hearing dates: 19th June 2019 and 3rd July 2019

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Approved Judgment

This judgment is not certified as citable pursuant to PD Citation of Authorities [2001] 1 WLR 1 and FPR PD 27A para 4.3A.2

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE THEIS

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

Mrs Justice Theis DBE:

1. The court is concerned with an application by X (the father) for permission to appeal orders made by HHJ Tolson Q.C. dated 27 February 2019, although not finally approved until after a hearing on 10 May 2019. That application is opposed by Y (the mother).

2. The orders followed a two-day hearing on 26 and 27 February when the court was considering a number of applications, including the wife's financial remedy application, arrangements for the care of the parties' two children following the breakdown of their marriage and the mother's application for a non-molestation injunction. Both parties gave oral evidence and HHJ Tolson Q.C. gave judgment on 1 March 2019.

3. The parties had been married for about 24 years, they had two children. Very tragically, the eldest child of the parties, B, suffers from a genetic abnormality which means her interaction with the outside world is very limited. She requires 24-hour care in the family home, which has been adapted for her needs. Her condition is deteriorating, and her life expectancy limited. This undoubtedly creates a difficult situation for not only her parents, but also her 12 year old sibling, C. B was represented by the Official Solicitor in the proceedings as there was an issue about her care; initially whether she remained in residential care, more recently whether she remains in the care of her mother or the parents jointly. The mother works as a teaching assistant and the father is a solicitor. The main assets of the parties consisted of the family home (net equity £645,000), an investment property (net equity £268,000/£241,000), savings of £44,000 in the father's name and the wife's pension.

4. After the conclusion of the evidence the father agreed to move out of the family home. The parties had agreed the family home should remain as a home for B, for as long as she needs it. HHJ Tolson Q.C. granted the non-molestation injunction and made orders regarding the father's time with B, neither of which is challenged.

5. As to the remaining issues HHJ Tolson Q.C. accepted the mother's proposals about the time she proposed the father should spend with C and divided the capital assets which resulted in approximately a two third/one third split in favour of the mother, with a nominal order for periodical payments for the mother and the father received a 30% share of the wife's pension. The effect of the order is that the mother could remain in the family home after it was no longer required for B. HHJ Tolson Q.C. justified the departure from an equal division of assets on the basis of a number of factors, including an inheritance from the mother's side of the family that contributed to the purchase of the family home, his conclusions as to the father's earning capacity, and the needs of C to continue to have the stability of living in the family home. He also satisfied himself that the father's needs would still be met.

6. After the judgment on 1 March I was told by Mr Feehan Q.C., who appeared with Dr Proudman on behalf of the father at the permission hearing, that the draft financial remedy and children orders were sent to the court on 1 April with a covering email stating they had been agreed between the mother and the official solicitor (the latter in respect of B) but not the father, although his solicitors were copied into the email. In his supplemental judgment dated 22 May 2019 HHJ Tolson Q.C. refers to approving orders on 12 March following the judgment on 1 March, then receiving an email from

Dr Proudman, on behalf of the father, with an application for permission to appeal, and on 1 April from the mother's solicitor, Ms Silwal, with draft orders and setting out typographical errors (presumably for the March judgment) and on the same date an email from the father directly stating that he would be making observations about the judgment and draft orders.

7. The court emailed the parties on 30 April to inform them that HHJ Tolson Q.C. had fixed a hearing on 10 May. The hearing was attended by the mother's solicitor, Ms Silwal, and the father's counsel, Dr Proudman. The transcript of the hearing confirms the correction in the draft judgment for the mother's income from £10,000 to £16,700. Dr Proudman also raised the issue of liability for CGT on the transfer to the father of the jointly owned investment property and how the sum of £50 pm payable by the father for B is made; whether it is paid to the mother or into a trust account. HHJ Tolson Q.C. confirmed in relation to the CGT that it will *'lie where it falls on the order that I've already made'*, when it was drawn to his attention that it would be paid by the mother he said '*..I was giving effect to your open offer'.* HHJ Tolson Q.C. refused the application by Dr Proudman for permission to appeal for the reasons set out in his written judgment dated 22 May, this referred to the further representations that had been received by email from the mother's solicitor and the father. In that judgment he set out that the changes in the mother's income figure did not affect his assessment of the division of capital. In relation to the CGT he acknowledged the judgment was silent on the question of CGT on the investment property but stated that it was clear he was approving the mother's open offer and the liability for any CGT should rest with the father. He said he did not accept the CGT figure of £29,000. Mr Feehan now accepts it is, in fact, somewhat less than that figure.

8. The application for permission to appeal was made in March 2019. It was amended to add further grounds in June 2019, following the hearing on 10 May and judgment dated 22 May.

9. Cohen J made 3 direction orders during the progress of the father's appeal. On 27 March they included the father to file a skeleton argument by 8 April cross referenced to the bundle and judgment limited to 15 pages (inclusive of the schedule of assets used at the trial) and a bundle limited to 150 pages. On 4 April the father emailed the court to say that the skeleton argument needed to be 21 pages and *'the size of the bundle is difficult to reduce'* and *'a reduced bundle will otherwise likely lead to an injustice'.* On the same day Cohen J directed the bundle should be limited only to relevant papers, which are specifically referred to in the skeleton argument or judgment, limiting the skeleton to 20 pages and listing the matter for a permission hearing on 19 June. The Respondent was invited to file by 29 April a concise skeleton argument in reply limited to 8 pages and was not expected to attend the hearing. By order dated 1 May 2019 the time for the Respondent's skeleton argument was extended to 24 May 2019. Both parties filed addendum skeleton arguments addressing the additional grounds of appeal in the notice filed in June.

10. There was an unfortunate lack of compliance with the directions regarding the bundle and I was confronted with a bundle of over 1,000 pages, four skeleton arguments (two on behalf of each party) and no reading list. In fact, less than 100 pages of the bundle were referred to during the hearing. This meant I have had to reserve this judgment.

11. The test I have to apply is not in dispute (see R (A Child) [2019] EWCA Civ 895); is there a real prospect of success. There must be a realistic, as opposed to fanciful, prospect of success.

12. The grounds of appeal can be summarised as follows:

    (1) The judge made an improper assessment of the father's income and erred in failing to consider the disclosure made in respect of his income.

    (2) The judge failed to give sufficient weight to the sharing principle and the actual needs of the mother and C when B reaches the end of life, as a result the capital division was wrong.

    (3) There was a procedural irregularity in ordering the father to pay the mother's CGT liability on transfer of the investment property to the husband.

    (4) The judge was wrong to order the father to pay nominal maintenance for C to the wife if C takes a gap year.

    (5) The errors in the judgment highlight a number of procedural irregularities in the case, which renders the judgment unsafe.

    (6) The judge's conduct throughout the hearing gives rise to a case of bias.

    (7) The judge was wrong and there were procedural irregularities in (a) refusing to order the child arrangements between the father and C as agreed between the parties; and (b) not allowing the social worker to attend and give evidence.

13. Mr Feehan realistically focussed his submissions on (1), (2), (3), (6) and (7). He accepted (4) and (5) came within (6). He made clear the additional grounds, (3) and (7) were as a result of the hearing on 10 May. I will consider them in the same order as Mr Feehan did in his oral submissions.

Ground 1 – improper assessment of income
The learned judge made an improper assessment of the father's income and erred in failing to consider the disclosure made in respect of his income

14. The main finding Mr Feehan seeks to attack is at paragraph [20] of the judgment

> *'I return to the one item which is common ground: the charge out rate of £220 per hour. Taking this as a starting point, the father on the commission arrangements disclosed to me will himself receive between £110 and £132 each productive hour. I cannot believe that he spends fewer that four hours a day earning fees based on his hourly rate. That equates to a daily income in the range of £440 to £528. I take the mid-point, £484. Thus his weekly income capacity is not less than £2420. He will be able to work approximately 45 weeks each year. This gives him an approximate gross income of £108,900. I accept it may be much more, but I doubt very much it is less. I must allow for some expenses, but there is no evidence that he runs an office or will have anything more than travelling and other incidental*

expenses. There is no evidence that he travels far. I assess his earning potential as at least £100,000 before each tax year…'.

15. Mr Feehan's submissions focussed on two aspects of the judgment.

16. First, the complaint about the father's disclosure, which, he submits, failed to properly consider that the father had disclosed tax returns as directed, as well as bank accounts and that some of the requests made in the original questionnaire from the wife had been disallowed at an earlier hearing. So, he submits, the father was under no obligation to provide the documents the judge criticised him for not providing. In any event when he did provide some documentation on the second day the judge rejected its reliability without giving adequate reasons.

17. Second, Mr Feehan submits for the court to be able to securely draw inferences in relation to the father's earning capacity they must be properly drawn, and not lead into a reaction that says simply just because evasiveness and opacity is demonstrated there is a sound basis for concluding a larger earning capacity than the father had disclosed. He helpfully referred me to *NG v SG (Appeal: Non-Disclosure) [2011] EWHC 3270 Fam* paragraphs [6] – [10] and [16] which emphasises the need for any inferences to be properly drawn and reasonable. Mr Feehan submits there is no evidence the father was receiving monies over and above the sums disclosed in the documentation provided by the father. There was no lifestyle evidence to support a greater income or evidence of additional sums entering the father's bank accounts. He submits, as a consequence, the rough and broad-brush calculations undertaken by the judge are not securely founded on any direct or indirect evidence and as a result the finding that the father's income is actually in the region of £100,000 per annum is improperly drawn and unreasonable.

18. In their written skeleton in response the mother submits the father's ground of appeal is misconceived, as the conclusion by HHJ Tolson Q.C. was not that the father did have or ever had an income at that level and was thus hiding assets, he expressly stated in paragraph [19] of his judgment he wasn't doing so. The judge's finding related to the father's earning capacity, which they submit is based on evidence, which included evidence from the husband including (i) his replies to questionnaire with attachments, (ii) the worksheet and email produced by the father on the second day of the hearing and (iii) the father's own oral evidence. The father confirmed his hourly rate and his commission. The finding in relation to earning capacity made by the judge was, they submit, based on the number of working hours per week and the judge made a conservative estimate of 4 hours per day. The finding that the father could work more hours was part of the mother's case, as put in cross examination of the father which was based in part on an analysis from the document produced by the father on the second day. The father accepted in oral evidence he was not maximising his earning capacity.

19. Having considered the transcript of the oral evidence of the husband, together with the written documents Mr Feehan took me to during his submissions I do not consider this ground of appeal has any realistic prospect of success. The rationale that underpinned the judge's finding as to earning capacity was based on the information which largely came from the father either in his oral evidence or the documents produced by him (in the trial bundle and his oral evidence), and the judge's analysis to

underpin his finding is properly reasoned and founded on evidence that was available to him. It is clear from the judgment the finding related to earning capacity and the judge expressly concluded he was not making any findings about past earnings (see paragraph [19]). He stated he *'…must, however, make some assessment at least of the father's earning capacity in order to assess first his ability to re-house himself; and, secondly, the financial reach of the concession made by the mother. Just how much is she foregoing by way of a maintenance claim?'* [19]. The figures used for the analysis undertaken came from the husband's oral evidence when he confirmed the hourly rate set out in the documents and described the commission arrangement, depending on who the referral came from. His conclusions about the father's earning capacity was one he was fully entitled to reach on the evidence he had available to him.

Ground 2 – capital division

The learned judge erred in not giving sufficient weight to the sharing principle and the actual needs of the mother and C when B reaches end of life, thus the learned judge's capital division of assets was wrong.

20. Mr Feehan makes the following criticisms of the judgment:

    (1) At paragraph [12] the judge states *'I apply the principles of needs, compensation and sharing as well as the overarching requirement of fairness'* but errs in failing to apply the principles to the decision reached.
    (2) His rejection of the father's case for the sale of the family home 3 – 6 months after B's death as having no merit in it because he fears for C's *'mental health in such circumstances'* [36] and it is close to her school and friends. As such the mother's needs are met and she and C have stability, and the father's needs are met due to him being *'comfortably off in terms of income'* [43]
    (3) His acceptance of the mother's open offer of an outright transfer of the family home because *'the original proceeds of the property came more from her own inheritance from her parents'* of around £100,000 [37], the father can take on the mortgage of the investment property given the assessment the judge made of the father's earning capacity [38]; the father retains the savings of £44,000; the mother forgoes periodical payments which the judge calculated as £120,000 over 15 years [40] and a pension sharing order in favour of the father of 30% of the mother's pension.

21. Mr Feehan submits the judge was wrong to reject the father's proposal of selling the family home after B's death as the property has 4 – 5 bedrooms so is in excess of what the mother and C need. The mother accepted in cross examination that the property particulars put to the father could also meet the mother and C's needs. He also submits there was no evidence to support the finding that a move of property would affect C's mental health and he placed undue weight on any upset by the mother and/or C about moving home. He was, submits Mr Feehan, overly influenced by the adverse view the judge had formed of the father, which he wrongly allowed to impact upon the notion of fairness.

22. Additionally, Mr Feehan submits there was an over reliance by the judge on the contribution to the purchase price of the family home from the mother's inheritance. He relies on Ward LJ's observations in *Robson v Robson [2010] EWCA Civ 1171* at [43], in particular the fact that the more that wealth has been enjoyed, the less fair it is

that it should be ring-fenced and excluded from distribution. The home was purchased 17 years ago, there was no evidence to suggest the contribution from the mother's family was to be ringfenced and both parties regarded the family home as a joint asset. The judge rejected the evidence that the contribution from the father's family was by way of a loan, consequently the purchase of the property was partly funded by the father's family as well. These contributions have mingled and, he submits, there is no evidence to suggest the parties intentionally retained separate assets.

23. The mother's skeleton argument in response suggests the judge's reasoning for his conclusion in paragraph [36] is *'unassailable'.* It was primarily based on need but also considered the sharing principle, both the mother's contribution through her inheritance and the capitalisation of a maintenance claim. Whilst it is accepted the mother did make concessions on the suitability of the alternative properties in her oral evidence, she also stated those properties were not near C's school, and that she was concerned about the upheaval of such a move. The court is required to consider C's welfare, it had before it material in the reports from the Local Authority and Cafcass about the emotional harm C was experiencing due to the breakdown of the parents relationship. The father acknowledged the emotional impact on C in his oral evidence, albeit in the context of the family home being sold after B's death.

24. Having considered the submissions, I am satisfied permission should not be given on this ground as I do not consider it has a realistic prospect of success. The judge was entitled to reach the finding that he did in relation to need, having regard to the material he had about C's welfare and the likely distress following B's death. That consideration together with his analysis of the sharing principle and his reasons for departure, namely the contribution made by the wife's family and the capitalisation of her maintenance claim in the context of his assessment as to the husband's earning capacity were justified on the evidence. As Mr Feehan realistically accepted in oral submissions a significant part of his submissions on this ground was underpinned by permission to appeal the assessment of the father's earning capacity, which I have rejected. Whilst the judge had to re-visit his analysis of the capitalisation of maintenance claims at the hearing on 10 May (due to the error in the mother's income), having done so in his judgment dated 22 May he did not consider the division of capital needed to be adjusted.

25. Although not the subject of the appeal, I note in the financial order in the bundle there is a recital that the parties agree that the terms set out in the order are accepted in full and final satisfaction of all claims, including income. Despite that recital the order at paragraph 19 provides for a nominal maintenance order.

Ground 3 – CGT
The judge was wrong and there was a procedural irregularity in ordering the husband to pay the CGT liability on the transfer of the investment property to the wife

26. Mr Feehan submits this was not directly addressed by the judge in his judgment dated 1 March. It was only raised when the mother's solicitors sought to include this in the draft order submitted by them prior to the hearing on 10 May. Dr Proudman at the hearing on 10 May objected to it being the father's liability, asserting that the liability was £29,716 (as set out in the father's Form E). At the hearing on 19 June Mr Feehan

accepted the figure was more likely to be less than that estimate. In his judgment dated 22 May HHJ Tolson Q.C. accepted his earlier judgment was silent on CGT but stated he was, in effect, approving the mother's open offer which provided for the CGT to be payable by the father.

27. On behalf of the mother it is submitted that at paragraph [37] of the March judgment the judge states *'from that point, the position adopted by the mother as an open position within these proceedings (see pC152) is the right answer to the problem'*. They submit it was on that basis that the draft order was sent providing for the father to pay the CGT and that this position is consistent with the judgment dated 22 May.

28. I am satisfied this ground has no realistic prospect of success. The mother's open offer is in the bundle, and it makes clear the father should be responsible for any CGT liability. Whilst the CGT liability is not expressly referred to in the judgment, the mother's offer letter does and this was the basis on which the order was drafted. The issue was considered again by the judge on 10 May and he refused any change to the position. Mr Feehan submits that the way HHJ Tolson Q.C. dealt with this issue supports his contention about apparent bias, as he changed his mind about the liability for the CGT during submissions on 10 May. I do not accept that: in the March judgment he was following the proposals set out in the mother's open offer and, when his mistake was drawn to his attention in the May hearing he corrected it, so it remained consistent with his March judgment.

Ground 4 – child arrangements order

29. Mr Feehan accepted this is a relatively short point. He does not challenge the structure of the time the order sets out about the time C should spend with her father; it is the form of the order he takes issue with. The focus of the father's challenge to this is that he was not given an opportunity to make submissions about the form of this order and, in any event, in its current form there is arguably no order to enforce. Mr Feehan informed the court that on his instructions there had been no contact between the father and C since he left the home in early March.

30. On behalf of the mother it is submitted this should have been raised by the father following the judgment on 1 March. In her oral evidence the mother sought some discretion and a period of transition in case C did not wish to go. The need for this was accepted by the judge in the March judgment at paragraph [34] where he said *'...I can see a firmly worded order becoming a battleground for him as he insists on the precise letter of his entitlement under what he would see as the law of the contact order. I shall leave it to negotiation between the parties as to the level of discretion which is built in; but I have in mind a discretion to the mother to change arrangements in the light of any opposition from [C] either to a particular occasion of contact or to elements in the regime as a whole.'*

31. I do consider this ground of appeal does have some prospect of success limited only to the form of the order, namely whether the time is set out as a recital or as part of the body of the order. It is a narrow but important point. If matters remain as they are and there has been no time spent by the father with C the only option the father will have to seek to restore his relationship with C in accordance with what was agreed

between the parties is to make a fresh application to the court, as there is no obvious route to enforce a recital to an order.

Ground 5 – apparent bias
This is based on the judge's conduct during the hearing and includes the way he dealt with errors in the judgment (such as the mother's earnings) and the maintenance for C during a gap year

32. Mr Feehan submits there was a significant feeling of unfairness because of the comments made by the judge during the hearing, some of which, he submits, may give rise to regulatory issues for the father as a solicitor. In oral submissions he drew attention to the two pages of questioning of the father by the judge regarding his income and earnings. B was admitted to hospital on the afternoon of the second day, when closing submissions were due to be made. Both parents left court to attend the hospital. Mr Feehan submits the judge's refusal of Dr Proudman's request for an adjournment to enable her to take instructions prior to making submissions only added to the perception of bias against the father. He submits this perception was increased in circumstances where the judge stated at the outset of the submissions made by Dr Proudman that he did not find the father's evidence credible. He said *'…Dr Proudman, the problem is you are going to have to convince me to believe a word your client is saying. That is the problem. I do not often say that in family cases because there is often a lot to be said on both sides but it is not looking good.'* He says a little later *'So over to you, although I appreciate that is a bit of a short ball'.*

33. In their helpful skeleton argument Mr Feehan and Dr Proudman set out the parts of the transcript they rely on including remarking that Dr Proudman *'…can take instructions till the cows come home but he has had ample opportunity in the witness box to give some evidence about it',* referring to the fact that the firm the father works for as a consultant are also the father's solicitors in the case, remarking that *'..stinks really, to be honest'.* He referred to the father '*…not telling me the truth…'* and that he considered the father is *'…very controlling…',* and he referred to *'…a topic I have to raise with you [Dr Proudman] and the Solicitors Regulation Authority…'* and *'You look him in the eye and he has a sort of complete conviction that nobody can possibly doubt him. I am wondering how that plays out in his life'.*

34. The test, as set out in *Porter v Magill [2001] UKHL 67,* is whether the fair-minded informed observer, having considered the facts, would conclude that there is a real possibility that the tribunal was biased. As Davis LJ stated in *Sarabjeet Singh v Secretary of State for the Home Department [2016] EWCA Civ 492* at [35] *'…In general terms, there need be no bar on robust expression by a judge, so long as it is not indicative of a closed mind. In fact, sometimes robust expression may be positively necessary in order to displace a presumption or misapprehension, whether wilful or otherwise, on the part of an advocate or litigant on a point which has the potential to be highly material to the case.'* He goes on to emphasise the need to consider the proceedings as a whole.

35. In the written submissions of the mother she makes a number of points:

    (1) In refusing the application for an adjournment prior to submissions the judge specifically gave the parties the opportunity to amend or add to any submissions

made prior to judgment and by the end of that day it was clear the judgment would be two days later on 1 March. That opportunity was not taken up by the father, save to inform the court that he would vacate the family home by the following Monday.

(2) The interjections by the judge during the hearing should be viewed not as a demonstration of bias, but of him seeking to afford the father every opportunity to give his best evidence. For example, on day two the judge admitted documents from the father, even though they had not been seen by any of the advocates, including his own. As the judge stated, he needed to give the father *'every opportunity'.*

36. Having considered the proceedings as a whole I am not satisfied the ground of appeal alleging bias has any realistic prospect of success. The court has the benefit of a transcript of the two-day hearing, as well as the hearing on 10 May. Mr Feehan placed some reliance on the questioning of the father by the judge in relation to his income, stating he was not interested in the father's tax returns but sought annual accounts, the requirement for which had been deleted from a previous questionnaire. Those questions need to be looked at in the context of the transcript as a whole and the requirement of parties in proceedings such as these to give full and frank disclosure. The judge's intervention was after the father had given extensive evidence on the first day about his income and had then produced a print-out of *'the income position from May of last year until now..'* whilst in the witness box on the second day. It was not until the mother's counsel had asked a number of questions about his income (covering a number of pages of the transcript) and the document that had been produced did the judge then ask some questions. The cross examination of the mother's counsel had suggested that the figures in the print-out appeared to establish that the father worked only a limited number of hours per month, which despite a number of attempts the father seemed unable to properly explain or account for. The judge's questions sought to try and understand what underpinned the figures and how that related to the document the father produced on the second day. The father's answers were becoming increasingly vague, the following exchanges illustrate the point:

> [*Mother's counsel*]: *Is it your case, [father], that at your – at the height of your work in the last nine months, you worked 25 hours per month?*
> *A: The way I have been working is not…I don't have this…It's based on whatever those referrals are, whatever commission is earned, so…*
> *…*
> *Q: …Does it sound right that at your maximum in the last nine months, you worked 25 hours or thereabouts in one month?*
> *A: I can see what you're trying to say and I understand that, but I'm…*
> *Judge Tolson: [father] please. It is a question I have asked you. Please answer it?*
> *A: If you're saying I should be working more, I'm not…'*

37. During his exchanges with the father the judge sought to explain his concerns about the quality of the father's evidence and the impact that could have. After the conclusion of the evidence and during submissions the judge, in somewhat direct terms, set out his concerns about the father's evidence but making it clear his mind remained open, for example by saying to Dr Proudman *'So over to you, although I appreciate this is a bit of a short ball'*. Additionally, at the conclusion of oral

submissions the judge made it clear he would consider any additional written submissions prior to judgment. This all supports the position that he had not closed his mind. The credibility of the parties was clearly an important part of the case and he wanted to make sure the parties, in particular the father bearing in mind his concerns, had every opportunity to put any relevant information in front of the court.

38. I do not regard the way the judge dealt with the error regarding the mother's income on 10 May or the term of the nominal order for maintenance as having any realistic prospect of success either in their own right or as part of the wider bias ground. In relation to the former the judge did not just amend the figure he conducted a further exercise calculating the capitalisation of the maintenance loss for the wife to check the overall fairness of his decision. The maintenance order point was covered in the open offer letter, so came as no surprise to the father.

39. Therefore, save for the relatively limited issue in respect of Ground 4 regarding the form of the order concerning C, permission to appeal on all other grounds of appeal is refused.