Neutral Citation Number: [2021] EWHC 1757 (Fam)

Case No: FD21F00030 / BR89D02383

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2021

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

Q	**Applicant**
- and -	
Q	**Respondent**

- -
- -

Mrs Q (Applicant) appeared in person
Samuel Davis (counsel, instructed by ADLip) for **Mr Q**

Hearing dates: 24 May 2021;
Further written submissions 1 and 8 June 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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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 children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

Introduction

1. The Applicant, Mrs Q (although long since divorced from Mr Q, I shall refer to her in this judgment as "the wife"), has presented to the court a number of applications in which she seeks a range of orders against Mr Q ("the husband"). I list them as follows:

The 'freezing injunction' (and linked) applications:

i) An application for a freezing injunction which she brings under *section 37 Senior Courts Act 1981* ('*SCA 1981*'), to restrain the husband and/or his solicitors from disposing of a sum or sums due to be paid imminently to the husband under a testamentary legacy of the husband's deceased stepfather;

ii) An application for an order against the estate of the husband's deceased stepfather requiring the executors to pay an unspecified lump sum into court; although not specified in the application I have deemed this to be made under *rule 20.2(1)(j) Family Procedure Rules 2010* ('*FPR 2010*');

iii) A deemed application[1] for an order for enforcement of alleged non-payment of spousal maintenance going back to 1990 (the wife's initial estimate was that the sum due in this regard was in the region of £91,000; her later revised figure suggested £225,000, coincidentally the approximate sum due to the husband under the testamentary legacy);

> "… there are multiple orders made by the court and High Court which have never been settled by the Respondent nor has any attempt been made in good faith by the Respondent to attempt to pay the monies owed".

Non-Molestation application

iv) An application for a non-molestation order under the *Family Law Act 1996*;

The variation and further financial remedy applications:

At the hearing on 24 May 2021, the wife intimated an intention to make further applications, and following the hearing, on 3 June, she made further formal applications for:

v) A lump sum order due to the "imminent inheritance stepfather";

vi) A "lump sum order pension sharing rights, cashed in full by the respondent";

vii) "Reinstatement (sic.) of lump sum";

[1] For expediency's sake, I have permitted the wife to pursue such an application in order to make sense of her freezing injunction application, pursuant to *rule 18.4(2)(b) of the Family Procedure Rules 2010*.

viii) An order for payment of outstanding arrears of maintenance, for which she seeks permission under *section 32 Matrimonial Causes Act 1973* ('*MCA 1973*');

ix) "Lump sum due to imminent inheritance S25 Respondent's mother" (sic.);

x) Upward variation of spousal maintenance;

A *Hadkinson* order:

xi) A *Hadkinson*[2] order; a copy of this application is in the wife's bundle of documents; it is not clear whether this has been issued, and/or when; it has not apparently been served on the husband;

Costs

xii) An application for an order for costs.

2. The wife's documentation filed in respect of the freezing injunction applications also makes reference to an "application for conspiracy at common law … He is guilty of conspiracy". This part of the application plainly makes no sense and I have considered it reasonable to ignore it. She has further purported to claim: an opportunity to amend (in an unclear way) an order made more than 15 years ago, in 2006, by Baron J; an application for "pension rights"; an application to value the contents of the former matrimonial home as at 1990; and an application that the husband should discharge a debt owed by the wife to her mother in the sum of £75,000. These applications are without any secure legal or factual foundation and I propose also to disregard them for present purposes.

3. The application(s) for the freezing order and linked applications identified in paragraph 1(i)-(iii) above are supported by witness statements dated 12 April 2021, 1 May 2021, and 10 May 2021. These applications were before me for directions on 19 April 2021; I listed the case for further hearing on 24 May 2021, at which I contemplated giving directions. The husband filed evidence in reply.

4. In the meantime, the wife issued her application for a non-molestation order; this application appears to have been provoked by a discussion which took place at the conclusion of the 19 April hearing, when Mr Brian Farmer of the Press Association (who had with my permission attended the hearing) asked if he could report the facts of this case – remarkable only because of its seemingly interminable litigation history; I heard brief submissions from the parties (neither of whom seemed opposed to this) and then indicated that he could do so, provided that there was no identification of the parties. Following the hearing, the wife contacted my clerk to indicate that she was very concerned that media reports would be published of the case naming her adult children. I reassured her that this had not been Mr Farmer's intention, nor was it authorised by me. In the event, no press report followed.

5. Before the matter was next listed, the wife made the further applications listed at §1(v)-(xi) above.

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[2] *Hadkinson v Hadkinson* [1952] 2 All ER 567

6. Having heard argument on 24 May 2021, I was satisfied that it would be neither necessary nor proportionate (having particular regard to the overriding objective in *rule 1* of the *FPR 2010*, and the guidance offered by the President of the Family Division in the *Road Ahead 2020*, see esp. *§43-49*) to adjourn the wife's applications again for further substantive hearing; I indicated this to the parties. I satisfied myself that both parties had a proper opportunity to put their case fully, and knowing that they were aware that my intention was to deal with the case finally at this stage, I deal with the applications substantively now.

7. This judgment contains no novel point of law or principle but sets out my reasons for refusing all of the wife's applications except for that at 1(x) (above) (the application for upward variation of maintenance) which I shall transfer to be heard at the appropriately located Family Court near to her home.

The hearing

8. The hearing of the applications took place on 24 May 2021; the wife appeared in person, the husband by counsel, Mr Samuel Davis, instructed on a direct access basis.

9. The presentation of the wife's case at the hearing was somewhat chaotic, aggravated no doubt by the stress of the occasion. Her written evidence contained allegations and statements which were not evidenced and which strongly indicated a high level of paranoia and delusional thinking (her statements contained extravagant claims of serious criminal conduct and acts of harassment on the part of the husband, and members of his family, which were denied by the husband). I noted that in her written evidence she referred to the fact that she felt that she was "having an emotional breakdown", and was regulating herself with undefined sedatives. This may well be a chronic problem; in her up-to-date chronology she referred to a 30 year history of taking anti-depressants. It also chimed with an earlier judgement of District Judge Wilkinson to which she referred me (March 2003) in which I saw reference to occasions when the wife has been "unwell… dependent upon painkillers…overdosed several times… It is pretty clear that her current state of mind and obsessiveness with these proceedings prevent any meaningful attempt to return to work…".

10. The recently filed material gave additional cause for concern about the wife's state of mental health. In her hard-copy bundle of documents, she had filed a recently prepared report from her GP (21 April 2021) which contains the following comments:

> "[Mrs Q] … currently suffers from severe anxiety and panic disorder mainly secondary to the stress arising from the court case[3]. She has also been extremely stressed and fearful of reprisals from her ex-husband's family. She has been unable to sleep or concentrate and a few weeks ago resorted to drinking alcohol to calm her nerves. She has a diagnosis of emotionally unstable personality disorder and has been under the care of the community mental health home treatment

[3] Interestingly at the time the GP letter was written, the application for further financial relief had only just been launched.

> team… She has had mental health problems since before the year 2000…"

11. While not unsympathetic to the wife's situation, Mr Davis perfectly properly and understandably reminded me of Lord Sumption's comments in *Barton v Wright Hassall LLP* [2018] UKSC 12 at [18] about participation in litigation of Litigants in Person:

> 'Their [LiPs] lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules.'

The point is well-made but overall I took the view in light of the comments to which I have made reference above that the wife was a vulnerable party as that term is understood in *Part 3A* of the *FPR 2010* (see *rule 3A.7(b)*) and *PD3AA para.3.1,* and made all appropriate allowances for her in her presentation of her case.

12. At the outset of the hearing, it became apparent that the wife had only just received the 14-page Position Statement of Mr Davis and had not read it. I therefore adjourned the hearing for half a day to allow her to do so, and to allow her to gather her thoughts and responses.

13. During the hearing it then became apparent that the hard-copy bundle of documents which the wife had lodged with the court had not reached me; I had been working from the E-bundle prepared on behalf of the husband. The wife was distressed by this, and concerned that I should consider the additional documents contained within her bundle (i.e., additional to those within the husband's bundle). I therefore reserved judgement at the conclusion of the hearing to give myself a chance to consider the documents in the hard copy bundle, and I confirm that I have done so.

14. I further allowed the husband – if so advised – to file any short supplementary submissions in relation to any additional documents within that bundle not otherwise available/considered at the 24 May 2021 hearing. Mr Davis filed his further submissions on 1 June 2021; the wife filed her response on 8 June 2021.

Background

15. The litigation history in this case is enormously lengthy and complex; indeed, in 2009, an experienced Deputy District Judge (DDJ Cornwell) opened his judgement with the words: "to describe this case as complex would be an understatement".

16. For present purposes, it can be summarised conveniently as follows.

17. The husband is 62 years old. He is a carpet fitter, and is now self-employed. He reports that he is not currently in good health, with a chronic shoulder injury and has been unable to work full-time in recent years. He says that he has "survived financially" but that he and his wife have managed to "scrape by" only with the support of his family. The wife is 60 years old; I know relatively little of her current financial circumstances.

I do not believe that she is in employment; I note that in her Form E filed in 2009, she declared her 'occupation' to be 'registered disabled'.

18. The parties were married in 1982. Divorce proceedings were instituted in 1989, and the parties separated in January 1990. They had two children. Decree Absolute was pronounced on 3 April 1991. The financial remedy proceedings which followed the divorce were enormously and bitterly contentious.

19. The first financial remedy order contained within my bundle is dated 13 March 1990, in which an order for maintenance pending suit was made (this order corresponds with the dates in the wife's chronology); this was the subject of an immediate appeal, and that appears to have set the tone for much of what followed. Piecing together the history from the orders which I have seen, I note the following:

    i) On 20 February 1991 a transfer of property order was made; I believe that this was done at the wife's behest on an emergency basis in order to avoid possible creditors of the husband;

    ii) Following a three-day contested final financial remedy hearing in June 1991 before HHJ Hargrove, a transfer of property order in relation to the matrimonial home was made/confirmed (in favour of the wife) together with periodical payments orders in respect of the wife and two minor children;

    iii) There then followed a lull in the financial remedy litigation of about 10 years (albeit that there were proceedings in relation to the children). The financial remedy litigation was resurrected in 2002 and was pursued by the wife in earnest thereafter;

    iv) In September 2002, DJ Wilkinson dismissed the wife's application for a lump sum payment ("[Mrs Q] has chosen this time to make her application and it should be determined upon its merit at this stage… Everything is against this application.")

    v) In 2003, the financial remedy proceedings were transferred to the High Court following one of the many appeals;

    vi) On 6 October 2005 an order was made by Baron J, varying the 1991 periodical payments order in favour of the wife, and making orders under *Schedule 1* of the *Children Act 1989* in favour of the two children of the family;

    vii) In January 2006, the wife applied to Baron J for a variation of the 6 October 2005 order (this was refused); an order was nonetheless made to effect enforcement of the arrears of periodical payments owed in respect of the children, and an order for costs was made against the husband;

    viii) Various enforcement orders were made during 2006, including a charging order against the husband's property; this was predictably followed by an application for enforcement of the charging order;

ix) Later in 2006, the husband was declared bankrupt; he applied for downward variation of the periodical payments obligations though was unsuccessful in that endeavour;

x) In 2007, before Baron J, the wife failed in her attempt to annul the husband's bankruptcy; her application for enforcement of a charge secured against the husband's property was adjourned; the wife sought a reference to the Director of Public Prosecutions in relation to alleged perjury on the part of the husband (this was not acted upon); she sought a direction for the papers to be disclosed to HMRC (this application was dismissed); she sought an application to vary the maintenance payable to the remaining minor child (this application was dismissed); the husband sought remission of arrears of maintenance (this application was also dismissed); Baron J was critical of the husband's domestic spending which she described as "completely foolhardy";

xi) The copy orders in my bundle reveal that multiple hearings took place in the period between 2007 and 2009. In October 2009 DDJ Cornwell removed from the original maintenance order the obligation on the husband to increase the rate of periodical payments automatically by reference to the Retail Prices Index; the husband's application for downward variation was refused as was the wife's application for upward variation. In his judgement he referred to the husband as providing "wholly believable" documentary evidence supporting his "entirely convincing" oral evidence; the husband was described as a "believable witness"; (I may add that HHJ Hargrove in 1991 had not been similarly impressed by the husband – "entirely unconvincing…verging upon ludicrous");

xii) Later in 2009, the wife issued a judgement summons to seek to enforce the arrears of periodical payments; materially, her application to enforce the arrears accruing more than 12 months previously was refused (HHJ Hayward Smith QC); in February 2010, the court indicated that it was satisfied that the husband was indebted to the wife in the sum of more than £14,000, and in March 2010 the husband was committed to prison for six months for failure to pay the judgement debt; the committal order was suspended on the basis that he was to pay the outstanding amount by 1 May 2010; there is no dispute that the husband did make the said payment;

xiii) Following those extensive skirmishes, the only continuing obligation between the parties is a joint lives periodical payment's order £225 per month. The wife accepts that there has been no default in payment of these sums since 2010.

20. I note that it was recorded that by 2009, the financial remedy proceedings had been listed before approximately 16 different judges at all tiers. By the time of this most recent hearing, the tally must be well over 20. The husband alleges that since the final hearing of the financial remedy application the wife has made more than 65 court applications, not including those currently before the court.

The wife's case: financial remedy

21. Acknowledging what I have already said about her vulnerability (see §9-11 above) the wife is an articulate woman, who has prepared detailed written evidence, and schedules of her financial claims (reflecting comprehensive alleged outstanding sums due to her)

going back over more than 30 years. She has a great deal to say about the husband; following the hearing, pursuant to my direction for a three page note to address any points arising in the documents filed by the wife which were not available at the hearing, the wife filed a further short note with more than 40 pages of exhibits.

22. Generally, the wife has a deeply held belief that she has been grossly financially wronged following the breakdown of her marriage, and is now entitled to significant recompense from the husband; she aspires to achieve this from the husband's inheritance from his stepfather.

23. Her schedule "monies owed" purportedly reveals significant sums of money which she says are due to her going back to March 1990; indeed, the entirety of her claim for alleged non-payment or under-payment of periodical payments for herself and for the children, pursuant to court order, save for a claim for interest, relates to the period between 1990 and 2007.

24. The wife seems to suggest in her statements that she is pursuing a judgment debt, not enforcement of the original periodical payments order(s). This is supported by the fact that the wife seeks accruing interest.

25. In her most recent submission (filed after the hearing), she indicates that she wishes to make a claim for a lump sum payment "as a result of the joint lives order dated 21 June 1991", a lump sum payment from the retirement annuity taken out jointly by both parties, upward variation of maintenance, and a lump sum payment "due to imminent inheritance from [the husband's] mother."

The husband's case: financial remedy

26. The husband denies that he owes any sums to the wife other than those sums of monthly maintenance. He maintains that all financial claims against each other have been long since despatched and accuses her of being opportunistic in making further unfounded claims for financial relief simply because he now stands to inherit from his deceased stepfather. He points to the fact that a court has already refused her application for arrears of maintenance for the period 12 months prior to December 2009, and avers that he has conscientiously made the required monthly payments of periodical payments without default since 2010. He has produced bank statements which appear to demonstrate this.

27. He says that he has had to re-mortgage his home three times in order to pay the substantial legal fees incurred in the financial remedy proceedings during the early 2000s, and confirms that in 2006 he and his wife were declared bankrupt as they could not meet their mortgage obligations. His home was repossessed in 2007, since which time he has been living in rented accommodation. He points out that the wife was entitled to retain the former matrimonial home at the conclusion of the marriage.

28. He refers to having had to report the wife to the police for threatening, insulting, and harassing conduct; he states that in 2012 the wife was arrested and received a caution.

29. His witness statement contains this passage in its concluding section:

> "It is … distressing that after 11 years of relative peace, [Mrs Q] has, upon learning of my imminent good fortune, decided to re-open the litigation and issue a raft of fresh applications. Given their serious and wide-ranging nature, it has been necessary to take the appropriate legal advice and instruct counsel… This has only served to put us under further unnecessary financial strain."

Conclusion on the financial remedy applications

30. On all the information presented to me, I have reached the clear conclusion that the wife has failed to make good her claim for a freezing injunction or associated claim against the third party. The onus is and has been on her to show that it is likely that she will recover a capital sum or property at any final hearing, and that there is a danger that the court's order may be undermined by the husband removing funds out of the court's reach. In my judgment, the wife has fallen far short of showing (indeed she has barely made out a case at all) that she will succeed in her claim for either an order for a lump sum, or for the payment of arrears of periodical payments (or in her application for leave for such a claim). I am satisfied that it is therefore not "just and convenient" that the court should make such an order (*section 37 SCA 1981*). I say so for the following reasons.

31. First, the wife is not in my judgment entitled to a lump sum. She applied for a lump sum order in September 2002, and this claim failed; it is worth again noting that DJ Wilkinson considered then that "everything" was stacked against that application at that time. The District Judge, it is clear, had specifically taken into account then the prospects of inheritance of the husband when he made his decision. The District Judge did not adjourn the application for a lump sum as he could have done had he thought that the husband's financial situation would materially improve by the receipt of an inheritance or otherwise. The wife did not appeal this order and (insofar as it may be relevant) cannot now show that the fact that the husband is to receive his inheritance was not foreseen. For this reason, I consider that the wife fails in all her various claims (in different permutations) for a lump sum order (as identified in 1(v), (vi), (vii), (ix) above).

32. Secondly, she has not made out a legitimate case to recover or enforce arrears of periodical payments (see §1(iii) and §1(viii)):

    i) the issue of enforcement of arrears of maintenance which pre-date 2009 is *res judicata*; her claim in this regard was dismissed by HHJ Hayward Smith QC in December 2009;

    ii) in any event, the wife should not now be granted leave under *section 32 MCA 1973* in my judgement to pursue at this stage any arrears of periodical payments which pre-date the 2010 order;

    iii) the husband is not in fact in arrears of periodical payments further to the last order in 2010; indeed, the wife does not contend that he is.

33. As to §32(i) above, the position is clear. On 1 December 2009, as I mentioned above at §19(xii), HHJ Hayward Smith QC considered an identical application by the wife for

permission to enforce arrears dating back many years (even then) and refused the wife permission to do so. That order captured all of the arrears which are claimed within the wife's present applications. That order was not appealed. This is, therefore, a matter which has already been decided and the wife is estopped from raising the claim again. HHJ Hayward Smith QC directed that the outstanding liability at that time was a sum a little over £14,000 which – it is not disputed – the husband paid.

34. As to §32(ii), I have had regard to the statutory provision, namely *section 32* of the *MCA 1973* which provides as follows:

> *"*A person shall not be entitled to enforce through the High Court or [the family court] the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun."

35. Within this context, Sir John Donaldson MR in *Russell v Russell* [1986] 1 FLR 465 said this:

> "… the rule of practice in relation to the non-enforcement of 'stale arrears' dates from the days of the ecclesiastical courts (see *Kerr v Kerr* [1897] 2 QB 439 at p. 443), when bank accounts and savings were no doubt much rarer than they are today and maintenance orders were literally a hand (or pocket) to mouth matter. The philosophy underlying the rule must therefore have been that if the complainant waited a year to seek enforcement of the order, she did not need the money, or at least had managed well enough without it, and the husband might reasonably regard the liability as something which he could forget about. This is not to say that the rule has changed in modern times when a wife might reasonably live on her savings for a period and expect to be reimbursed by a single large payment. However, it does point to the fact that the courts should take account of the extent to which the complainant has sought to assert her rights."

36. Insofar as the wife seeks to enforce a judgment debt (i.e., arrears which have been crystallised as a debt under an enforcement order) she is barred, under *Section 24(1)* of the *Limitation Act 1980* which provides that 'an action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable'. Further, and insofar as the wife seeks to recover interest, she is debarred under *Section 24(2)* of the *Limitation Act 1980* which provides that 'no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due'. The wife cannot, therefore, pursue any interest which accrued more than 6 years after (any) crystallised judgment debt.

37. Thirdly, the wife has also claimed alleged arrears of financial provision for the children of the marriage; it is notable that Baron J made the order under *Schedule 1* of the *Children Act 1989* – both children were intervenors and parties before the court in 2006. It is therefore in my judgement for the adult children to pursue any alleged arrears owed to them, not for the wife.

38. As to §32(iii), Mr Davis argues with considerable force that had the wife wished to pursue any aspect of her claim for a lump sum or indeed a sum to reflect the arrears of periodical payments (not otherwise captured by the order of HHJ Hayward Smith QC), she should have done so in the course of the extensive litigation prior to 2010. He points to the case of *Henderson v Henderson* [1843] 67 ER 313 where Sir James Wigram said:

> "…where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter[s] which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time." (emphasis by underlining added).

39. Mr Davis is, in my judgement, right when he argues that insofar as a freezing order is sought to preserve assets which would otherwise be dissipated with a view to defeating the wife's claim, it is doomed to failure given that the wife's purported claim for payment of arrears of periodical payments is itself hopeless.

40. Thus, I have reached the view that the wife has no proper claim which is amenable to the protection offered by a freezing injunction under the *SCA 1981*. As Roberts J made clear in *C v C & another* [2015] EWHC 2795 at §105, even if I had wanted to, I could not use the inherent jurisdiction to make good, any perceived deficiencies or lacunae in a case brought under the *SCA 1981*; nor could I deem the application to be one brought under *section 37 MCA 1973* under which the wife would have the additional burden of showing that the husband is 'with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property' (*Section 37(2)(a)*). It cannot be said that the husband is about to deal with his inheritance in any manner as he has not yet received it. Any application under *section 37 MCA 1973* would have, therefore, failed on its own terms.

41. Quite apart from all the difficulties already listed above, the application for a freezing injunction is also highly problematic because:

i) The application is not supported by affidavit evidence, as it should be under *paragraph 3.1* of *PD 20A FPR 2010*. Moreover, *FPR PD20A, paragraph 3.3* requires that the evidence filed in support of a freezing injunction application must set out the facts on which the applicant relies for the application being made against the respondent, including all material facts of which the court should be made aware. The wife's statements make a number of sweeping allegations and refer in detail to the historic issues between the parties. They do not, I find, set out facts which justify the making of a freezing injunction;

ii) The wife has not shown 'clear evidence of unjustified dealing with assets giving rise to the conclusion that there is a solid risk of dissipation of the assets to the applicant's prejudice' per Mostyn J in *UL v BK (Freezing Orders: Safeguards: Standard Examples)* [2013] EWHC 1735 (Fam).

42. For essentially the same reasons, I reject the wife's purported application for a freezing order against the third party: the estate of the husband's stepfather. This is a jurisdiction which should be exercised with extreme caution (see Roberts J at §150 in *C v C and Another*: see above), and the wife comes nowhere near close to satisfy me that I should do so.

43. The wife's financial claims in §1(i)-(iii), (v)-(ix) are in my judgment ill-conceived and opportunistic. They will be dismissed. I am satisfied that there is no proper basis for allowing them to proceed further.

The non-molestation application

44. The wife's application for a non-molestation order is dated 27 April 2021. She sets out her case as follows:

> "That [Mr Q] and [his partner] are not allowed to: contact the press or any associations thereof to include TV and any government body, professional regulatory bodies to include photos to mention, or identify or try to identify [Mrs Q] [or their adult children and/or families].
>
> To stay away from all persons mentioned in order to protect my sons from professional ruination and myself from very real harm which has been noted on my medical records, yesterday … I have been ordered by Cobb J, 19.4.21 to produce schedules of monies owed and at this hearing, Mr. T and his wife suggested the story was sold."

45. Later in the same application form, Mrs Q records as follows:

> "[Mr. T] kept criminal code in 1991 and has told me that I am a nobody and a nothing and it will only cost a fix for a druggi (sic.) to shut me up. Serious Crime Squad, international drug ring, imprisoned maximum security prison, Lyon, France 1990 Dutch and Morocco" (sic.)

46. The application was considered on 14 May 2021 by Sir Jonathan Cohen, who made an interim order against both parties restraining publication of information from these proceedings and doubling the time estimate for the hearing on 24 May 2021 in order to accommodate this additional application.

47. Subsequently, the wife wrote to me email seeking to adjourn the non-molestation application to a date beyond 24 May 2021. I considered her e-mail informally, and indicated that I was minded to do so, mainly because of the perceived pressures on the list on 24 May (on that day I was also to be the Urgent Applications Judge; cases with a time estimate of more than one hour are not usually listed in this court). However, at the hearing, Mr Davis persuasively argued that the matter should not be adjourned and should not have been considered informally in correspondence without reference to the husband. He is quite right about that. He further convincingly argued that the wife is not prejudiced by the application proceeding on 24 May (the wife had specifically requested this in her witness statement), whereas the husband (given the costs involved) would be prejudiced by it being adjourned. He submitted that the application should indeed be disposed of there and then. I indicated that I would indeed review my informal determination, and advised the parties of this. Coincidentally, while I was considering this judgment, the Court of Appeal handed down the judgement in the case of *Re M (Applications by e-mail)* [2021] EWCA Civ 806, in which Peter Jackson LJ at §43 and §45 said of *Part 18.4 / 18.9 FPR 2010*:

> "§43: This framework allows the court to accept and consider applications made without a formal application notice and to make orders without a hearing. It is desirable, at a time when the courts are under considerable pressure of work and where remote case management hearings have become common, for these powers to be used flexibly in the interests of justice and, in the Family Court, in the interests of children. To this end, the court must distinguish applications that can appropriately be made without an application notice from applications that should, because of the importance of the issue or for some other reason, be made by formal notice. The fact that it has given a general permission for applications to be made by email obviously does not prevent it from requiring an application notice to be filed in a specific instance. …
>
> §45 The essential point is that, whatever form an application takes and whether or not there is a hearing, the same standards of procedural fairness apply. The fact that an application is made by email or decided without a hearing does not mean that it should receive less careful scrutiny. On the contrary, a judge considering an application on the papers must be alert to ensure that the rules and orders of the court have been followed and that the process is as procedurally fair as if the parties were present in person."

48. On this application Mr Davis argues that *Section 42* of the *Family Law Act 1996* does not provide the correct remedy for the wife (if she is entitled to a remedy at all). He points to the fact that the statutory definition of a non-molestation order is an order

containing a provision to either (1) prohibit a person from molesting another person or (2) prohibit a person from molesting a relevant child. The wife's application seeks to restrain the husband from contacting the press generally (about any matter) or specifically from identifying the wife or the parties' adult children (to the press). I accept Mr Davis' argument that despite the wide ambit of interpretation afforded to the term 'molestation' it cannot be said to include the contacting of the press generally. The wife's statement(s) provide no evidence to support her assertion that there is any risk of publication (from the husband) or that such publication will result in or amount to molestation. The wife is able to seek an order, pursuant to *Section 12(1)(e)* of the *Administration of Justice Act 1960* prohibiting the publication of information from these private proceedings. That is the wife's proper remedy, should the evidence support it, which it does not. None of the issues canvassed in the wife's evidence justifies or calls for a non-molestation order, and I refuse the same and discharge the existing order, which I am satisfied was made on an incomplete appraisal of the facts.

49. So far as the wife seeks orders in relation to the parties' children, I accept Mr Davis' further submission that the application is deficient. Both the children are now independent adults, and the wife is not able to seek orders on their behalf. Indeed, it is not apparent that the parties' children are either aware or supportive of the fact that the wife is seeking injunctive relief on their behalf. As a result, there is no evidence before the court that they are at risk of molestation or that they would want a non-molestation order restraining their father.

Hadkinson order

50. There is a purported application for a *Hadkinson* order in the wife's hard-copy bundle of documents; I am not sure that this has ever been issued let alone served. However, it seems prudent to deal with it.

51. I propose to indicate now that on the information which I have seen the wife has not demonstrated to my satisfaction (or at all) that the husband is in contempt of court; although she has made some sweeping statements to that effect she has not particularised the same. Nor has she demonstrated that any contempt is wilful – a necessary ingredient of the test before the application could be favourably treated. I propose to refuse this application, or purported application, now.

Conclusion

52. It will be apparent from all that I have said above that I regard the vast majority of the wife's applications (I specifically make no comment about the upward variation application) as hopeless, unsupported by evidence, and without proper jurisdictional basis. In so far as they have been launched in a manner which is procedurally deficient, I have been prepared to offer the wife reasonable latitude given her vulnerabilities discussed above.

53. I propose to certify the application for the freezing order and the non-molestation order as totally without merit. I will adjourn the application for an upward variation of the maintenance order and re-list it for directions before a District Judge sitting at the Family Court proximate to the wife's home. Mr Davis is invited to draw orders to that effect.

54. The husband has indicated that he seeks an order for costs, which he asks to be summarily assessed in the sum of a little over £3,000. Mr Davis has essentially set out his case for a costs order in writing. In an effort to minimise any further financial burden on the parties, I am prepared to receive submissions in reply from the wife in writing within seven days; the husband may reply if so advised within seven days thereafter.

55. That is my judgment.