PUMP COURT

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Family Finance Update

Tara Lyons

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Litigation Funding

LS v PS v Q [2021] EWHC 3508 (Fam) – Roberts J

- Q (Level) applied to intervene in FR proceedings on 18th February 2021 (granted that day) as had lent W £1m and W was not paying.
- Following private FDR in February 2021 settlement reached (both parties represented with H paying for W's as funding limit had been reached, but W then became a LIP due to conflict arising):
  - Agreement provided that FMH was to be transferred to H.
  - H was to provide W with £1m for housing but on a life interest.
  - W's income claims dismissed.

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Litigation Funding

LS v PS v Q [2021] EWHC 3508 (Fam) – Roberts J

- When Q found out about terms in February 2021, it contacted ct and H's solicitors stating that it was applying to be joined.
- On that same day, H's legal team contacted the allocated s9 judge via Chambers and clerk with draft consent order.
- Nothing sent through the Court and judge not told that Q objected to making of Order and nor were Q told that draft had been sent to judge.
- On 2nd March judge e-mailed his clerk that order approved and could be lodged.
- Order then arrived at Court office and sealed on 16th March 2021.
- Q (Level) only found out when H sought to have their joinder set aside.

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Litigation Funding

LS v PS v Q [2021] EWHC 3508 (Fam) – Roberts J

- On 17th March 2021, a temporary stay on the terms of the Order granted and freezing injunction on parties.
- Q (Level) alleged that failure to inform the judge of their involvement and joinder and its objection to finalising of the Order was deliberate and a breach of duty of disclosure to an existing party to proceedings.
- Q (Level) sought disclosure of privileged material that had been produced for private FDR and they wished to use that material in the substantive set aside application and in their claims under the Insolvency Act against W.

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Litigation Funding

LS v PS v Q [2021] EWHC 3508 (Fam) – Roberts J

- Roberts J. in considering that application ruled privileged material should remain subject to the FDR privilege (PD9A para 6.2).
- Roberts J. also commented that it would be artificial to distinguish such between Court FDR and Private FDR.
- Roberts J. also commented that the FPR may need to be reconsidered in this regard in light of the importance of litigation funding and the issues raised in this case.
- PD9A r6.2 provides:

  "….evidence of anything said or of any admission made in the course of an FDR appointment will not be admissible in evidence, except at the trial of a person for an offence committed at the appointment or in the very exceptional circumstances indicated in Re: D [1993] Fam 231."

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Litigation Funding

Simon v Simon [2022] EWFC 29 & 35 – Nicholas Cusworth QC (DHCJ)

- By this stage, H's application to set aside consent order had been conceded by H and he suggested as no dispute between H and W then Q (Level) could pursue civil remedies against W and no nexus between Level's claims against W and the FR proceedings and therefore joinder not applicable.
- Level argued that parties had colluded so as to effectively make their claim unenforceable.
- Nicholas Cusworth QC granted Level's application for joinder and highlighted the two key principles in considering joinder:

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Litigation Funding

Simon v Simon [2022] EWFC 29 & 35 – Nicholas Cusworth QC (DHCJ)

1. The overriding objective; and
2. Enabling parties to be heard if their rights may be affected by a decision.

- Nicholas Cusworth QC observed that FPR r9.26B was similar to CPR r19.2(2) and therefore required similar interpretation.
- Level's rights were unquestionably capable of being affected by the terms of the consent order.
- In addition, a third party who is directly affected by an order may have it set aside or varied (CPR r40.9).

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Litigation Funding

Simon v Simon [2022] EWFC 29 & 35 – Nicholas Cusworth QC (DHCJ)

- Nicholas Cusworth declined to re-seal the consent order without considering the consequences on Level and whether these were intended by W and H.
- Level's civil claim transferred to the Family Court and to be determined after the FR application.
- Further updating disclosure was required to enable the Court to discharge its duty.
- Level would be entitled to disclosure within the proceedings but subject to an implied undertaking not to use the documents for any collateral purpose.
- If at conclusion of the FR proceedings, the civil proceedings cannot be disposed of then availability of documents for any civil proceedings may become an issue.

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Litigation Funding

Xanthopoulos v Rakshina [2022] EWFC 30 – Mostyn J.

- Two elements to this:
  - H sought a LSPO; and
  - W sought release from u/t to preserve sums held by her in a bank account (c£11m).
- Previously H had applied for and granted a LSPO for £750k intended to take him to hearing to determine jurisdiction in Children Act proceedings and the divorce and mediation.
- The day before this hearing H's solicitors had come off the record.
- H sought an order to meet his solicitors o/s costs (c£250k) & to cover future costs (c£673k) for appeal in Children Act proceedings and to conclusion of first appointment in Part III MFPA 1984 proceedings.

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Litigation Funding

Xanthopoulos v Rakshina [2022] EWFC 30 – Mostyn J.

- Mostyn J. observed that H had significantly overspent the award intended to take him to end of first appointment.
- Generally a LSPO should only be made in respect of o/s costs to solicitors where without that payment those solicitors would likely cease to act.
- Since H's solicitors had come off the record the court could not make any award in respect of their costs.
- Even if H's solicitors had stayed on the record, he doubted whether any substantive award in respect of o/s costs would have been made.

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Litigation Funding

Xanthopoulos v Rakshina [2022] EWFC 30 – Mostyn J.

- As solicitors had come off the record, H would have to instruct new solicitors and make a fresh application but in any event, it would be unlikely to make any award for future costs for H.
- Ct accepted that there it may be possible to seek a payment where basis of previous award had been undermined by a change of circumstances but only if scrutinised carefully.
- Ct also accepted it may be possible to make an order to fund an appeal but it would be exercised extremely cautiously particularly where permission to appeal had not yet been granted.
- Any application for further funding would always be considered against the consequences of previous overspending and such could lead to a refusal.

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Litigation Funding

Xanthopoulos v Rakshina [2022] EWFC 30 – Mostyn J.

- Mostyn J, was clear that funding the defence of a claim by previous solicitors was an interim lump sum (and not a LSPO) and therefore could not be ordered.

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Litigation Funding

Xanthopoulos v Rakshina [2022] EWFC 30 – Mostyn J.

- As to release of W from her u/t, he concluded that the war in Ukraine was a significant change of circumstances (Birch v Birch) and that the current u/t was too restrictive and so released her from u/t to allow her to discharge her own legal costs without having to seek H's consent or court order.
- Injunction would remain to prohibit her from dealing with account save for above.

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Litigation Funding

E v B [2021] EWFC 90 – Recorder Chandler [QC].

- W applied for interim maintenance & A v A costs allowance.
- Application under MFPA 1984 Part III.
- Evidence produced by W from 2 banks refusing to offer personal loans.
- W also produced letter from mortgage company stating that it would not be possible to source a residential mortgage in her sole name.
- W's family had assisted with her with loans for legal costs.
- W co-owned 4 properties with her mother.

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Litigation Funding

E v B [2021] EWFC 90 – Recorder Chandler [QC].

- W produced 2 litigation loan providers refusing funding but judge attached little weight as had been produced after W's *'self serving assertion'* that she could not sell the co-owned properties without her mother's consent (which ignored Ct's powers under TOLATA)
- Key points to remember:
  - Ensure that the evidential requirements are satisfied (Currey v Currey) or MCA s22ZA &PD.
  - Ensure correct time estimate for hearing (in this case estimate of 2-2.5hrs was considered '*wildly optimistic*') or at risk of hearing being adjourned and costs sanctions.

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Capacity

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

- H (52) & W (51) cohab. 1990, married 1992, separated 2019. 3 adult children (29, 25 & 21).
- Issue over H's capacity due to poor mental health & capacity report ordered which reported he had capacity but would be assisted by allowances given.
- W represented and H in person although H later sought for one of his adult daughters to be his McKenzie friend (opposed by W).
- Ground rules hearing listed to determine:
  - Appointment of McKenzie friend for H
  - Format of final hearing including any special measures
  - Participation directions
- H's poor mental health including numerous e-mails to ct, risk of harm to H, H attending ct with a knife.

PUMP COURT
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Capacity

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

Special measures applied included:

- W & H to give evidence remotely
- Ensuring H did not come into face to face contact with W and that H could seat himself away from his camera when W giving evidence.
- Requesting W turn her camera off when H addressing ct and giving evidence
- Referring to H as ‘sir’ at his request
- Allowing regular breaks
- Court to put relevant Qs to W as prepared by H
- H allowed to wear a mask covering his eyes during cross examination.

PUMP COURT
CHAMBERS

Small Money Needs Case

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

Issues in the case:

- Spousal maintenance
  - Level and term
- Appropriate percentage for PSO

Small money needs case

Liabilities- W=c£16k mostly legal fees & H=c£3.5k exceeded modest savings.

Pensions (DC)- W=c£141k & H=c£10k (no PODE report)

H on state benefits (inc PIP) of £1,248pm & W employed on £3,600pm.

PUMP COURT
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Periodical Payments

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

In considering periodical payments useful summary:

- Absent any argument about compensation (most exceptional), determined on need alone with no reference to sharing.
- In considering earning capacity, ct will consider amongst other things: age, qualifications, work history/experience, role during and after (eg care for children) relationship.
- Not usually necessary to have expert evidence as to earning capacity (Buehrlen v Buehrlen) [2017] EWHC 3643 (Fam).
- If evidence that relevant party has unreasonably chosen not to find/take up employment and/or not exploit their earning capacity then ct can make a pps order based on what it reasonable for them to be earning (Joy v Joy-Morancho [2015] EWHC 2507 (Fam).

PUMP COURT
CHAMBERS

Periodical Payments

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

In considering periodical payments useful summary:

- Ct has power to make an award which may go up (or down) .
- Common practice to order RPI or CPI if to be in force for some years but less appropriate where payer cannot rely on steady upward growth.
- Step down can be considered if payee expected to return to employment or increase earnings
  - See *inter alia,* MF v SF [2015] EWHC 1273 (Fam), D v D [2020] EWHC 857 (Fam).
  - But compare Murphy v Murphy [2014] EWHC 2263 (Fam), Aburn v Aburn [2016] EWCA Civ 72.

Observation that support (in W v H) of orthodox view (Martin-Dye) that pensions should be dealt with separately from capital assets with a view to their post retirement income producing qualities.

PUMP COURT
CHAMBERS

Periodical Payments

ND V LD (Financial Remedy: Needs) [2022] EWFC B15 – DDJ Arshad

Outcome

- As H would lose benefits if W paid pps and W did not have surplus beyond needs- immediate clean break.

BUT in relation to pensions:

- Long marriage, H prioritised W's career and earning potential over his own.
- Whilst H is not entitled to a share of W's future earnings he did not have same opportunity as W to build up pension.
- Responsibilities generated during marriage has generated need.
- Starting point of equality so 50% PSO of W's CE as at date of separation.

PUMP COURT
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Periodical Payments

A V M [2021] EWFC 89 – Mostyn J

Helpful commentary:

- *"In my judgment, the practice of leaving a nominal order in place as an insurance policy is contrary to the parliamentary instruction in s25A MCA 1973. Under s25A the court is required to exercise its discretion so as to bring about a termination of financial dependence unless it is satisfied that to do so would lead to the claimant suffering undue hardship…."*

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Periodical Payments

"To leave a nominal order in place because events may happen which might lead to the claimant suffering hardship is not consistent with the terms of s25A. The court has to do its familiar work of peering into the future and making factual findings. If it is satisfied it is more likely than not that the claimant will not suffer undue hardship if her claim for periodical payments were dismissed, then the court should have the courage of its convictions and dismiss the claim with a s25A(3) direction. It is contrary to principle to make an order requiring the respondent to act as a potential insurer in respect of remote risks which might eventuate years after the ending of the marriage."

PUMP COURT
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Periodical Payments

A V M [2021] EWFC 89 – Mostyn J

- Mostyn J referred to AJC v PJP (see below) and commented that he would have discharged the nominal order and commented:

"To my knowledge there has never been a reported case where a nominal order has been successfully enlarged."

"It is never more than a symbolic irritant."

PUMP COURT
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Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

- Nominal order made in 2012 by consent when children (now aged 14 &17) were living predominantly with W; now broadly equal share since 2015. W received greater share of capital & PSO.
- W an airline pilot lost her income as a result of pandemic and sought enlargement of nominal pps order.
- Preliminary case management hearing under r.9.20.1.
- W's application dismissed.
- Losing a job as a result of the virus when when had a job at the time of settlement a decade earlier cannot be described as a relationship generated disadvantage or even a loose causal connection.

PUMP COURT
CHAMBERS

Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

Comprehensive analysis of the history of nominal orders

- More a device than an order.
- Not sure it appears in any other jurisdiction.
- Creates much ill feeling from the paying party as a sword of Damocles.
- Many authorities on substantive orders varied up or down.
- Considered by DDJ as an order which hasn't kept up with changes in clean break requirements.
- Anecdotally, may be a London and South-East centric order.

PUMP COURT
CHAMBERS

Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

In what circumstances would they be made and then generally might they be expected to be converted:

- Where children are living primarily with one parent who is able to support themselves but children are relatively young and things may change dramatically during their minority.
- Anecdotally, may be a London and South-East centric order.
- Rare to exist outside of childcare responsibilities and beyond those years.
- Now being made less often.
- Also DDJ's view that gender bias and only a few cases where fathers with primary care have nominal order.

PUMP COURT
CHAMBERS

Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

- One case on point was North (2007) EWCA 760 in which nominal order made in 1981 (before 1984 clean break provision introduced) and W applied to enlarge in 2004
- Anecdotally practice is that enlargement only if there is a major and dramatic change in circumstances of childcare and ability to look after children.
- Invariably child centred.
- Not, in DDJ's experience a provision to protect a spouse for many years in their own right (*"a clash with the clean break imperative")*
- Strong emphasis in case law now is that variations should be linked to the paying party or at least the marital disadvantage.

PUMP COURT
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Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

- In instant case, W sought, in early 2021, to enlarge an order made in 2012 for a short term until she could again be self sufficient.
- Is a nominal order a financial emergency fund to call upon during hard times, perhaps unexpected exceptional hard times?
- Is this the intention in law?

PUMP COURT
CHAMBERS

Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

- W suggested DDJ should consider application as if ordinary variation application (as if £800pm increased to £900pm).
- DDJ disagreed.
- Whilst s31 must be considered, variation of a nominal order has intrinsically a huge difference.
- In a substantive maintenance order case, both parties aware that may go up or down (if payer's income increases or payee's income reduces) which encourages capitalisation in many cases and thus clean break- an expected state of flux.
- In variation of nominal order cases, different factors:
  - Could be a significant change;
  - It's not budgeted for;
  - Nowhere is it specified the circumstances when it may be enlarged, which adds to uncertainty- parties are entitled to know when particular payment requirement will kick in.

PUMP COURT
CHAMBERS

Enlargement of nominal orders

AJC v PJP [2021] WLUK 566 - DDJ Hodson

- In instant case, DDJ observed a nominal order made by consent when youngest was aged 6 in circumstances where youngest is now aged 14 and W has been self sufficient for some years and where change in circumstances is the economic impact of the worldwide pandemic is not a appropriate and reasonable justification for enlarging order.
- Misfortune and unexpected developments in life is the nature of life.
- Sometimes those factors arise from, are compounded by or accentuated from the foundation or circumstances of a past relationship.
- DDJ observed that in those circumstances, he could see that there might be justification for enlargement.
- Might be an argument if work position of receiving party significantly disadvantaged through relationship and so at higher risk of losing job.
- DDJ was asked to dismiss nominal order but declined to do so as order will come to end in four years and unless something very substantial occurs soon then he could not see any basis for enlargement but written judgment produced to be available for the future.

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Termination of Spousal Maintenance

DX v JX [2022] EWFC 19 - Moor J.

- Order for PPs originally made by consent in 2017 in English Court when H high earner in UAE.
- Order was for a fixed percentage of H's income.
- W was habitually resident in Luxembourg and after H had previously made an (unsuccessful) application in 2019 to vary there, W argued that Luxembourg retained exclusive jurisdiction.
- Moor J. accepted he had jurisdiction as H was seeking to vary the original English Order.
- H now back working in UK and salary drastically reduced.

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Termination of Spousal Maintenance

DX v JX [2022] EWFC 19 - Moor J.

- Moor J. concluded that:
- *"the simple fact is that the goose that laid the golden egg is no more, with significant financial consequences for both parties."*
- He concluded that W had sufficient resources to meet her needs (her income had increased and H's had decreased such that their incomes were not dissimilar) and that W had sufficient resources and that she could adjust without undue hardship to a termination of spousal support.

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Cohabitation

VV v VV [2022] EWFC 41- Peel J

- H and W 57. Met in March 2018. Dispute as to when they started cohabitation- W said Nov 2018, H Dec 2019 when parties moved into together in house in London. They became engaged in March 2019 and married January 2020 and marriage ended June 2020.
- Final hearing before Peel J. H offered lump sum of £400k (nil taking into account sums advanced for legal fees). W sought 50% of proceeds of sale of H's units in AB company ie £6m.
- A central issue was whether the units in AB were matrimonial and the length of cohabitation.

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Cohabitation

- Dealing with Cohabitation: The judge considered the law on cohabitation ***GW v RW* [2003] EWHC 611**; ***IX v IY* [2018] EWHC 3053**; ***McCartney v Mills McCartney* [2008] EWHC 401**, ***E v L* [2021] EWFC 60** adding that *"the court should also look at the parties' respective intentions when inquiring into cohabitation. Where one or both parties do not think they are in a quasi-marital arrangement, or are equivocal about it, that may weaken the cohabitation case. Where, by contrast, they both consider themselves to be in a quasi-marital arrangement, that is likely to strengthen the cohabitation case…. The essential inquiry is whether the pre-marital relationship is of such a nature as to be treated as akin to marriage."* [45-46].

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Cohabitation

- Whilst cohabitation did not require every night together, the couple only spent 164 nights together, 59 of which were on holiday.
- Parties had kept their finances separate.
- H's financial support to W and paying for holidays were acts of generosity.
- Whilst engagement might be indicator of strength of commitment it was not a separate event giving rise to sharing entitlement.

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Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

- 4 day contested final hearing
- 14/15 year relationship producing 2 children (11 & 10)
- Both parties held shares (H=c£2m net & W=c£2.1m net) in jointly owned company but shares illiquid at current time.
- Issues over ‘debt’ and ‘repaid debt’ to family.

PUMP COURT
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Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

H's 'debt'

- H's (rich) mother advanced £150k to each of her three children in 2010 (during relationship) to assist with housing- no loan documents but evidence (to ct) from M that were loans expected that would be available to support her/be repaid to her. Confirmed in oral evidence that would not pursue through litigation to recover but would adjust her will to reflect it.
- Without demand from M, H paid her £150k just prior to proceedings.

W's 'debt'

- In 2004 (prior to relationship) W received €30k to assist W with study.
- Contemporaneous document records as *'interest free loan…W will pay back at her discretion'.* W forgot about it until lead up to final hearing.

PUMP COURT
CHAMBERS

Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

Summary of principles from case law:

- Once a judge decides that a contractually binding obligation ct can properly go on to consider whether hard obligation or loan (and appear on computation schedule) or soft obligation or loan (which may, at judge's discretion be left out of schedule).
- No hard and fast rules as to whether one category or another.
- Common feature is whether, in reality, obligation will be enforced.

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Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

Factors which on their own or in combination may take the case to one side or the other include (not exhaustive):

Hard

- Whether obligation to a finance company.
- Terms of obligation have the feel of a normal commercial agreement.
- Obligation arises out of a written agreement.
- Whether there is a written demand for payment, threat of (or actual) litigation or actual or consequent intervention in FR.
- There has not been a delay in enforcing the obligation.
- Amount is such that it would be less likely creditor would waive.

PUMP COURT
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Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

Factors which on their own or in combination may take the case to one side or the other include (not exhaustive):

Soft

- Obligation to a friend or family member with whom debtor remains on good terms.
- Obligation arose informally and terms do not have feel of commercial arrangement.
- No written demand for payment despite due date having passed.
- Delay in enforcing obligation.
- Amount of money is such that more likely for creditor to waive (albeit there are examples of large sums being treated as soft obligations).

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Soft Loans & Hard Debts

P v Q [2022] Lexis Citation 14 – HHJ Hess

Conclusions

- Debt owed by W is soft and most unlikely that required to be repaid notwithstanding contemporaneous loan document.
- H's debt to mother falls into same category (and ct satisfied that H & M would be content to regard as an advance on inheritance).
- £150k paid to M would be added back to H's assets.
- Not right for ct to raise H's debt to hard debt status simply because repaid as to do so would be to reward and encourage manipulative behaviour.

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Modest Assets, Family Home, Anonymity

X v C [2022] HHJ Farquhar

- Modest asset case published as part of commitment to publish judgments at all levels. 7 year rshp. Assets comprised FMH, H's sole name (£250k), house owned by W which former H lived in (£85k), woods (£45k), W's pension (£250k), W had debts of £70k.
- On family home, court refused to to ringfence £80k deposit paid by H which he argued was pre-marital as "needs case".
- Costs order made against H for litigation misconduct.
- Application to lift anonymity refused- risk of harm to child, existence of concurrent CAO proceedings, risk H would publish judgment to cause anguish to W.

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Pensions Offsetting

A v R [2021] EWFC B102 - DDJ Davies

- H sought equal division of liquid capital, 36.91% PSO to equalise income in retirement and £40k capitalised PPs.
- H had pension just received of £225k lump sum and £70k pa.
- W sought FMH to her with reduced PSO of 26.703% using offsetting (but on tax reduced calculation only using PAG method).
- Key issue for court was how to achieve equality of pension.

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Pensions Offsetting

A v R [2021] EWFC B102 - DDJ Davies

- Ct had to decide what discount should apply for offsetting.
- PAG report suggests deduction for tax may be between 15%-30% depending on status of tax payer.
- PAG report suggests deduction for utility may be between 0%-25%.
- PODE can report on tax but adjustment for utility is a matter for the Court applying the s.25 discretion.

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Pensions Offsetting

A v R [2021] EWFC B102 - DDJ Davies

Reminder of PAG report when considering 'utility'.

- With pensions freedoms arguable utility adjustment had lost usefulness (in DC schemes and in part DB if transferred to DC) In needs cases less justification for utility adjustment.
- If assets larger and non-pension holder has income and/or capital surplus to needs then utility adjustment may apply.
- If claimant requires present capital to meet basic housing need then may weigh against utility adjustment.
- Conversely if pension holder subject to offset may lose owner-occupied housing the utility adjustment may be applicable.
- Closer parties are to retirement utility adjustment diminishes.

NB PAG report suggests that anecdotal evidence is that pensions may have been excessively adjusted for utility.

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Pensions Offsetting

A v R [2021] EWFC B102 - DDJ Davies

In the instant case, DDJ observed that:

- This is one of minority of cases in which offsetting other than by consent is appropriate.
- In cases in which a partial offset is potentially sought by either party, the PODE should routinely provide a sliding scale of percentages to achieve adjustment of 0% through 40% (and perhaps beyond) in order that Ct once it has undertaken adjustment exercise may adjust the PSO percentage accordingly.
- 18% PSO to W ordered with her retaining FMH.

PUMP COURT
CHAMBERS

Anonymity

Xanthopolous v Rakshina [2022] EWFC 30

- W's application for anonymity considered at length.
- Mostyn J considered the statute, procedural rules and authority and concluded that financial remedies cases do not attract anonymity. A focused Re S exercise of the various rights protected by articles 6, 8 and 10 leads to conclusion privacy right should overreach principle of open justice.
- The current anonymity rubric which was systematically attached, as a default condition, to all financial remedy judgments, was likely to be completely ineffective, save in relation to judgments about child maintenance. In the court's opinion the standard rubric should be changed to provide: "*This judgment was delivered in private. The judge hereby gives permission – if permission is needed – for it to be published.*"

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Anonymity

Gallagher v Gallagher [2022] EWFC 52

- Application for a reporting restriction order and anonymity.
- Reference to proceedings "in private" in FPR 27.10 and 27.11 does not impose secrecy as to facts of case, rather prevents most members of public physically attending.
- **Re S** exercise justified limited RRO to prevent naming children or means of identifying them.
- Threats of blackmail into settling the case, indirect identification of the children and distress to the parties not good reasons to ordain anonymity generally.
- Thus the interim anonymity/ RRO granted in **XZ v YZ [2022] EWFC 49** in advance of the final hearing did not remain in place.

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Costs

AA v AB [2021] EWFC B16 - Recorder Salter

- Issue over whether agreement should be upheld.
- W spent c£61K on legal fees (overall net assets-c£57k).
- H spent c£50k on legal fees (overall net assets–c£75k).
- Observed that there was too much posturing and too little realism.
- Failure by W to negotiate and to focus too much on issue regarding parties' pets; H sought costs of c£30k and was awarded £10k.

PUMP COURT
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Costs

A v M [2021] EWFC 89 - Mostyn J.

- Facts above.
- W incurred costs of £554k and H £273k.
- In calculating realisable assets, ct added back to W's side of the balance sheet £150k representing costs that she had excessively incurred.
- In a sharing case costs are not necessarily to be divided equally.
- W also ordered to pay H's costs from PTR to trial as she rejected a reasonable offer.
- Important to make realistic open offers to settle and to engage with them.
- Parties should make reasonable offers to settle throughout the case.

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Costs

Treharne v Limb [2022] EWFC 27 - Cohen J.

- Issue over post-nuptial agreement.
- Assets totalled £4m but costs incurred £650k (c£400k+ by W).
- Ct satisfied that coercive and/or controlling behaviour in this case was an example of undue pressure which may deprive party of ability to enter agreement of own free will but such not found in this case.
- It would be unfair for H to clear all of W's liabilities (including for costs) and so W left with c£70k+ owing which would have to be met from capital received (Duxbury fund).

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Costs

Azarmi-Movafagh v Bassiri-Dezfouli [2021] EWCA Civ 1184 - King, Moylan & Newey LJJ.

- At first instance H awarded £425k on a clean break basis and £200k towards legal fees (he had c£250k debt mainly for legal fees).
- W appealed seeking charge on property which was granted on first appeal.
- On second appeal CA reinstated original order.
- King LJ reviewed authorities on proper approach to outstanding legal fees in a needs case
  - Ct had wide discretion
  - Ct should consider whether costs order is appropriate and what the costs lump sum would represent if expressed as a costs order to cross check

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Costs

Azarmi-Movafagh v Bassiri-Dezfouli [2021] EWCA Civ 1184 - King, Moylan & Newey LJJ.

- In this case ct did not criticise H's litigation conduct nor level of costs.
- Without lump sum for costs, H would have to deplete his available housing fund.
- Even though order approached the level of an indemnity costs order, that dd not fetter Ct's discretion.

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Costs

Xanthopoulos v Rakshina [2022] EWFC 30 - Mostyn J.

Mostyn J. expressed view:

"In my opinion the Lord Chancellor should consider whether statutory measures could be introduced which limit the scale and rate of costs run up in these cases. Alternatively, the matter should be considered further by the Family Procedure Rule Committee. Either way steps must be taken."

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Changes in procedure

Whole raft of new rules and guidance, including:

- HHJ Hess and (now) Peel J (replacing Mostyn J)
- FRC Primary Principles Guidance (11th January 2022)
- Efficient Conduct statement (11th January 2022)
- Allocation Q's filed with application
- ES1 (Agreed composite case summary)
- ES2 (Agreed asset template)
- Guidance on Electronic Bundles
- Witness statements (President's Guidance - 10th November 2021)
- New D81

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Disregard of Procedure

WC v HC [2022] EWFC 22 - Peel J.

- W's s25 statement had "crossed the line and descended into a number of personal and prejudicial matters" against H which were not relevant to the issue being dealt with.
- Peel J. observed that it is erroneous to thing think that it will assist one's case to paint an unfavourable picture of the other party describing them in pejorative terms.
- S.25 statements should not be used as an opportunity for one party to personally attack the other; they should contain evidence.
- Court orders, PDs and statements of efficient conduct are there to be complied with.

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Disregard of Procedure

Xanthopoulos v Rakshina [2022] EWFC 30 - Mostyn J.

"This utter disregard for the relevant guidance, procedure and indeed orders is totally unacceptable. I struggle to understand the mentality of litigants and their advisers who still seem to think that guidance, procedure and orders can be blithely ignored…..

It should be understood that the deliberate flouting of orders, guidance and procedure is a form of forensic cheating and should be treated as such. Advisers should clearly understand that such non-compliance may well be regarded by the court as professional misconduct leading to a report to their regulatory body."

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Watch this space

- Changes to CGT on separation
- Law commission to review law on contempt
- Wedding law shake up

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