4 PAPER BUILDINGS

Financial Remedies Seminar: New Dimensions

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CHAIR:

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4 Paper Buildings

Section 1

4 Paper Buildings: About Us

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About Us

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We are:

- An historic London chambers housing 73 expert family barristers
- Steeped in Inns of Court legal tradition with cutting-edge knowledge and technology
- Recommended as leaders in our field by the main legal directories, Chambers & Partners and The Legal 500

We offer advice, representation and dispute resolution services in all areas of family law:

- Divorce
- Civil partnership dissolution
- Finances and property on divorce or civil partnership dissolution
- Children's arrangements after parents separate
- Children proceedings involving a Local Authority
- Child abduction and wrongful retention
- International family law
- Agreements
- Cohabitants' claims (trusts of land cases)
- Financial arrangements for children
- Domestic abuse
- Assisted conception and reproduction
- Publicity
- Inquests

What people say about 4PB:

Chambers & Partners 2015
4 Paper Buildings is a renowned set of chambers dealing with the most complex children law proceedings. Both private and public law matters are accounted for, and members are expert in everything from paternity disputes to international abduction, parental authority, and serious injury to children cases.

Members of the public, local authorities and solicitors all beat a path to its door in order to avail themselves of the superior representation on offer here.

The set also has four experienced silks and a number of juniors who handle financial work. They have been involved in leading recent cases, including Young v Young.

Client service: Led by Michael Reeves, "the clerks are immensely helpful. They are realistic and honest and always try to do what they can."

The Legal 500 - 2014
4 Paper Buildings is 'one of the best family law sets', and one of the few chambers in London that has real strength in depth in children law

as well as family finance work. It is also adept at handling cases with an international dimension, and Court of Protection work, meaning 'there is a good barrister available for all types of family disputes'.

The 'polite and efficient' clerks' room 'always provides good service'. Senior clerk Michael Reeves and first junior Paul Hennessy are often singled out.

4 Paper Buildings is 'the leading children law set' providing a 'first-rate service' and 'an exceptional group of experienced, thoughtful and intelligent barristers'.

It has expertise in domestic and international children disputes, as well as public and private law. In 2013, members represented parties involved in three major children law decisions in the Supreme Court, including the first appeal to the Supreme Court in a Hague Convention case.

4 Paper Buildings won The Legal 500 Family Law Set of the Year in 2014

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Section 2

Delay – The unanswered questions

Jonathan Cohen QC MCIArb

DELAY – THE UNANSWERED QUESTIONS

1. *Wyatt v Vince* [2015 1 FLR 972] What did the SC decide?

- An application for financial remedy cannot be struck out as there is no jurisdiction to do so. The court has a duty to consider all the circumstances.

- Thus, delay cannot be a knock-out blow.

So what is relevance of delay?

2. *Sections 23(1) and 24(1) of the 1973 Act provide that orders may be made on granting a decree of divorce "or at any time thereafter". Yet, there is a prominent strain of public policy hostile to forensic delay. The court will look critically at explanations for it; and even irrespective of its effect upon the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant. Nevertheless it remains important to address is effect upon the respondent. In some cases.. a respondent can show he has assumed financial obligations or otherwise arranged his financial affairs in the belief that the applicant would make no claim against him and he has done so in a way which, even if it were possible, it would not be reasonable for him to put into reverse.*[para 32]

3. *Pearce* (1980) 1 FLR 261: a lump sum order made 10 years after divorce. H ordered to provide W with a sum to permit her to re-house from a recent inheritance. However, clear that ratio was largely fact that H had not at any time maintained the children during the interim.

See also other old cases at 5.5 of Jackson's Matrimonial Finance 9th edition.

4. <u>*M v L*</u> (2003) 2 FLR 425: W applied under Part III having divorced in South Africa 30 years before. Throughout the period H had made some financial provision to W until he ceased as a result of a bank error. W applied and was awarded a 50% interest in the property in which she lived which was owned by H and a lump sum to represent capitalised maintenance. Critical factors were W's need and dependency on H.

5. *Rossi* [2007] 1 FLR 790: This case is interesting in its consideration of the link between delay and post-separation accrual. In paragraph 24:

> "24.1 *The statute requires all the assets to be valued at the date of trial.*
>
> 24.2 *For the purpose of establishing the matrimonial property in respect of which the yardstick of equality will apply, the value of assets brought into the marriage by gift and inheritance .... together with passive economic growth on those assets, should be excluded as non-matrimonial property.*
>
> 24.3 *Assets acquired or created by one party after separation may qualify as non-matrimonial property if it can be said the property in question was acquired or created by a party by virtue of his personal industry, and not by use of an asset which has been created during the marriage and in respect of which the other party can validly asset an unascertained share. Obviously passive economic growth on matrimonial property that arises after separation will not qualify as non-matrimonial property.*
>
> 24.7 *In deciding whether a non-matrimonial post separation accrual should be shared and, if so, in what proportions, the court will consider among other things whether the applicant had proceeded diligently with her claim; whether the party that has the benefit of accrual has treated the other party fairly during the period of separation; .....*
>
> 25. *In some cases delay will receive at least some reflection by the characterisation of assets acquired after separation as non-matrimonial. But as I have tried to explain above, this is by no means an invariable consequence. The question is whether delay per se should be reflected in the exercise of the discretion.*

32. *While of course no rigid rule can be expressed for the infinite variety of facts that arise in ancillary relief cases I would have thought generally speaking that it would be very difficult for a party to be allowed successfully to prosecute an ancillary relief claim initiated more than 6 years after the date of the petition for divorce unless there was a very good reason for the delay. I agree whole-heartedly with the statement of Wood J. in Chambers that: where a marriage has irretrievably broken down, the parties are to be encouraged to deal with all outstanding issues as reasonably expeditiously and succinctly as possible."*

All the above is obiter. The Judge found all W's assets represented non-matrimonial post-separation accrual and that H had no needs based claim.

So, how does the court deal with a case where H has traded with a matrimonial asset but enhanced its value?

6. *S v S* [2006] EWHC 2339: A 10 year separation after a 20 year marriage/cohabitation: Singer J.

86. *At any time after separation if W had instituted divorce proceedings she would have been entitled to invite the court dealing with her ancillary relief claims to take into account the value and to some degree the potential of H's shareholding in YD and subsequently T Ltd. But as the years have passed since then it seems to me that it has become less and less fair that she should be entitled to ask for a share in that potential having regard to what she will receive in tangible assets. That H could himself have taken the initiative earlier but chose not to do so does not make such an entitlement any fairer.*

109. *I agree with Mr Cusworth's submission that the hearing date is when ordinarily the parties' finances should be scrutinised and assessed, but I also agree with Mostyn in Rossi "that Lord Mance was approbating emphatically the principle that independent endeavour after separation which is productive of money or property should be reflected in the division of assets".*

111. *I have given the shares weight in the balancing exercise to what I regard as an appropriately constrained extent by having regard both to the approximate value of H's separation date holding of YD shares and to the fact that in my view what he has since built on the back of that*

asset has involved only incident use of those shares and the business then conducted by that company which has been unmatched by any contribution on the part of W since the effective end of the marriage. I have also paid regard to what is described as the passive economic growth which must have been added over the relevant 10 years to those shares and to the underlying business conducted by H by reference to two published measures of economic growth in prices and share valuations.

We thus see the precursor of what happened in *Jones.*

7. *Jones v Jones* [2011] 1 FLR 1723: At the date of marriage H was sole owner of a company which was valued as at the date of the marriage. The Court of Appeal held that the valuation failed to reflect the latent potential of the business which the court then doubled and to that applied an index to represent the relevant percentage increase in the appropriate FTSE index to that value so as to represent the presumed passive economic growth.

This was of course a pre-marriage asset case rather than one of post-separation accrual.

8. *Cooper-Hohn* [2015] 1FLR 745: There is a long discussion of the law in relation to post-separation accrual at paragraphs 147-183.

At paragraph 181-3 Roberts J having referred to Jones said

It seems to me that an analogous approach is just as apt in relation to passive growth as contrasted with contributions (ie activity undertaken by one of the spouses but not the other) made after the marriage has effectively come to an end.

9. *B v B* (unreported) Judgment delivered 23 April 2015. Parties married 1984. Separated 2002. Negotiations 2003-2005 which involved a partial settlement including transfers to W of FMH and payment of lump sum to clear mortgage and transfer to H of W's share

in company. The Judge found the agreement to be incomplete and without full disclosure. No explanation of delay prior to W's application in 2013.

10. Judge ignored the value of the company which had been fixed by SJE for 2002 and 2005. Accepted that H's offer of just over 500k amply met W's needs but made an award of 30% of current value of company on an entitlement basis. W had had no involvement in company since 1990. Permission to appeal is being sought.

11. **Conclusions:**

(i) Delay in itself is relevant. It is more relevant if payer can be shown to have acted to his detriment in making arrangements which cannot reasonably be unpicked.

(ii) What is "delay"? Very unlikely that a period of less than about 2 years post-separation and then compliance with court directions could amount to delay.

(iii) Whether or not delay, post-separation accrual remains a valid argument.

(iv) In any discussion of post-separation accrual passive economic growth must be allowed for and for the unmatched contribution argument to run it is likely that it will need to be shown that some new step has been taken in relation to the business to produce the increase in value.

(v) Delay can change a case of entitlement to one of need.

(vi) *Jones* can be applied to post-separation accrual as much as it can to pre-marital assets.

(vii) The court must take the value of the assets at the date of trial. That does not mean that it cannot have regard to what they were at the date of separation.

(viii) If the relevant asset comes into existence post-separation then entitlement will not run.

JONATHAN COHEN Q.C.
4 Paper Buildings

May 2015

Section 3

Compensation for a relationship generated disadvantage. Does it still have a place in financial order proceedings?

Christopher Hames QC

Compensation for a relationship generated disadvantage. Does it still have any place in financial order proceedings?

Christopher Hames QC
4 Paper Buildings

MCA 1973

- Section 25 (2)
- Section 25A
- Section 28

Miller, McFarlane, [2006] 1 FLR 1186

- 'Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage.' per Lord Nicholls

- ‘In particular, I consider a periodical payments order may be made for the purpose of affording compensation to the other party as well as meeting financial needs. It would be extraordinary if this were not so. If one party's earning capacity has been advantaged at the expense of the other party during the marriage it would be extraordinary if, where necessary, the court could not order the advantaged party to pay compensation to the other out of his enhanced earnings when he receives them. It would be most unfair if absence of capital assets were regarded as cancelling his obligation to pay compensation in respect of a continuing economic advantage he has obtained from the marriage’

- ‘But the wife's claim for compensation stands differently. Her compensation claim is not needs-related; it is loss-related. So the compensation element of her claim is not directly affected by the use she makes of her resources’ per Lord Nicholls

- ‘In *McFarlane*, there has been an equal division of property, but this largely consisted of homes which can be characterised as family assets. This was not enough to provide for needs or compensate for disadvantage. The main family asset is the husband's very substantial earning power, generated over a lengthy marriage in which the couple deliberately chose that the wife should devote herself to home and family and the husband to work and career.

Cont..

Cont..

The wife is undoubtedly entitled to generous income provision for herself and for the sake of their children, including sums which will enable her to provide for her own old age and insure the husband's life. She is also entitled to a share in the very large surplus, on the principles both of sharing the fruits of the matrimonial partnership and of compensation for the comparable position which she might have been in had she not compromised her own career for the sake of them all. The fact that she might have wanted to do this is neither here nor there. Most breadwinners want to go on breadwinning. The fact that they enjoy their work does not disentitle them to a proper share in the fruits of their labours.' per Lady Hale

VB v JP [2008] 1 FLR 742

- 'First, it is at the exit of the marriage and in relation to the division/redistribution of the family assets that the consideration of the element of compensation immediately arises, but as a feature of the concept of fairness rather than as a head of claim in its own right.

VB v JP [2008] 1 FLR 742

- Second, on the exit from the marriage, the partnership ends and in ordinary circumstances a wife has no right or expectation of continuing economic parity ("sharing") unless and to the extent that consideration of her needs, or compensation for relationship generated disadvantage so require. A clean break is to be encouraged wherever possible.

VB v JP [2008] 1 FLR 742

- Third, in big-money cases, where the matrimonial assets are sufficient for a clean break to be achieved, a wife with ordinary career prospects is likely to have been compensated by an equal division of the assets and consideration of how the wife's career might have progressed is unnecessary and should be avoided. Where, however, that is not the case and the parties accept or the court decides that fairness can only be achieved by an award of continuing periodical payments in respect of a wife's maintenance, then the matter of compensation in respect of relationship generated disadvantage requires consideration, again as a strand or element of fairness.

VB v JP [2008] 1 FLR 742

- Fourth, in cases other than big-money cases where a continuing award of periodic payments is necessary and the wife has plainly sacrificed her own earning capacity, compensation will rarely be amenable to consideration as a separate element in the sense of a premium susceptible of calculation with any precision. Where it is necessary to provide ongoing periodical payments for the wife after the division of capital assets insufficient to cover her future maintenance needs, any element of compensation is best dealt with by a generous assessment of her continuing needs unrestricted by purely budgetary considerations, in the light of the contribution of the wife to the marriage and the broad effect of the sacrifice of her own earning capacity upon her ability to provide for her own needs following the end of the matrimonial partnership.' per Potter P

McFarlane [2009] 2 FLR 1322

- 'So, an approach that isolates the principle of compensation and seeks to treat it in an equivalent manner to a damages claim is incorrect. This means that an approach that seeks to quantify what the wife would have earned and be earning and provides that the husband pays her that in compensation would be wrong. This goes back to the general point I have made earlier that it is the consequences of the choices that have been made that are of central importance and the focus should be on a fair distribution and allocation of the relevant resources they have produced.' per Charles J

SA v PA (Pre-Marital Agreement: Compensation)[2014] 2 FLR 1028

- 18 year marriage: 4 children, W 48 H 50
- H magic circle solicitor earning £600k net;
- W gave up a job in law firm but no discernable track record
- Non-pension assets £3.8m; pension assets £1.14m – H have to retire in 5 years
- Dutch pre-marital agreement

SA v PA (Pre-Marital Agreement: Compensation)[2014] 2 FLR 1028

- Compensation claim rejected.
- W awarded periodical payments of £127k for extendable term of 5 years based on: needs of £100k, less earning capacity of £16k net, plus 'stockpile' payment of £43k which saved over 5 years would create £217k which with W's other assets produce 'Duxbury' figure and clean break on H's assumed retirement date.

The 4 difficulties of Mostyn J

1. Victim - choice: is there a loss suffered?
2. Counter-factual: why re-write history?
3. Arbitrary
4. Impossible to calculate the "premium"

'36] Obviously I am bound by the decision of the House of Lords. However, in the light of the later authorities, I think that the principles concerning a compensation claim can properly be expressed as follows:

(i)It will only be in a very rare and exceptional case where the principle will be capable of being successfully invoked.

(ii)Such a case will be one where the court can say without any speculation, ie with almost near certainty, that the claimant gave up a very high earning career which had it not been foregone would have led to earnings at least equivalent to that presently enjoyed by the respondent.

(iii)Such a high earning career will have been practised by the claimant over an appreciable period during the marriage. Proof of this track-record is key.

(iv)Once these findings have been made compensation will be reflected by fixing the periodical payments award (or the multiplicand if this aspect is being capitalised by *Duxbury*) towards the top end of the discretionary bracket applicable for a needs assessment on the facts of the case. Compensation ought not be reflected by a premium or additional element on top of the needs based award.'

H v H [2014] EWCA Civ 1523

- On appeal from H v H (Periodical Payments: Variation: Clean Break) [2014] EWHC 760 (Fam), [2014] 1338
- 2005 maintenance order of £90k increased in 2007 to £150k to reflect compensation

H v H [2014] EWCA Civ 1523

- H applied to terminate payments on retirement in 2015; W sought capitalisation.
- Coleridge J: "This case does retain a tangible, obvious compensation element which deserves recognition one way or another even at this stage. It has been factored in up to now and there is no reason why it should simply be ignored".

H v H [2014] EWCA Civ 1523

- He recognised the compensation element by: only attributing £500k out of equity in her home as income fund; not amortising this sum or savings; no step down; and ignoring future savings.
- He ordered 400k lump sum on retirement

Appeal allowed and case remitted. Ryder LJ

- Judge wrong to take 3.75% net as rate of return to be applied to W's funds
- On compensation issue:

- 'It is tempting to enter into the debate and express a clear view about it and the application of the principle to cases of this kind. To do so would be wrong in a case where the judge at first instance accepted without reservation that this is a compensation case and that decision is not appealed to this court with the consequence that the debate to which I have referred has not been argued before this court, it has merely been flagged as a background issue of some significance.'

- 'What is of relevance to this court is whether the judge having decided that this is a compensation case marked that fact by following through his decision. Complaint is made that the judge's treatment of the wife's home and savings did precisely what he said he would not do. If this is a compensation case, requiring the wife to use part of her capital fund that arguably represents the benefit she had obtained from the application of the compensation principle by downsizing is to re-create the detriment that compensation is meant to provide for unless there is an adequate comparison of the position of the parties such that on the husband's retirement their income and asset positions remain fairly distributed. To do otherwise is to discriminate against the wife because she is not the income earner.'

'I have no problem with the judge saying that he applied the compensation principle in the way that he did i.e. by the four ways he identified, the key element of which was the important aspect of non amortisation of the capital fund. What I question is whether that was adequate given the overall asset distribution between the parties (the element that regrettably is opaque so that I cannot express a view) and the arguably discriminatory nature of the requirement on the wife to downsize.'

- 'My point is that the court needs to undertake a more sophisticated exercise than was undertaken here in order to avoid discriminating against a wife who is entitled to compensation.'

Radmacher (formerly Granatino)v Granatino [2010] 2 FLR 1900

- 'The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.'
- It is '… needs and compensation which can most readily render it unfair to hold the parties to an ante-nuptial contract'

Divorce (Financial Provision) Bill

Received 3rd reading on 18 March 2015 in House of Lords

'**15 Periodical payments and lump sums**

(1) An order for periodical payments made under this Act may only be for a definite period, not exceeding three years.

Divorce (Financial Provision) Bill

(2) The court shall not make an order for periodical payments or a lump sum unless the order is justified by the principles set out in this section and it is satisfied that an order for transfer of property under section 4 would be inappropriate or insufficient to satisfy the requirements of this section.'

The 'principles' do not expressly include compensation.

Section 4

Big News on Pensions

Michael Sternberg QC MCIArb
&
Michael Drake of Collyer Bristow

WHITE PAPER CONFERENCE – 15 APRIL 2015

A brief review of the new pension changes – and some thoughts on their impact on us, and on our clients

Some surprising statistics – from two interesting surveys by Scottish Widows and the International Longevity Centre UK, and some government numbers.

Some headlines

The number of people aged over 60 (and so above the retirement age!) getting divorced will increase by more than 40% in just over 30 years.

And the number of people aged over 100 will rise from 14,000 now to 114,000 in 2037, according to the ONS.

Almost 85% of divorced women are failing to consider pensions as part of their settlement.

The established preference for women is taking the family home, especially when there are children involved – and given their emotional attachment - whereas they may be better off downsizing. And very often the pension pot was split, without assessing the wife's need to received more than half in order to create the same level of income in retirement ignoring that she may have no earning capacity to enable her to continue to grow her share.

So if all this is true or even partly true - it does raise the question – are family lawyers doing their job – and are the courts – in their inquisitorial role – also doing enough – and are IFA's sufficiently involved and properly consulted when they should be?

There is also what I think is a government statistic or "observation" that the "average pension pot amounts to around £30,000"; which may surprise some of you …

In the midst of this we now have the new legislation which arrived on 6 April – and we need to dovetail the impact of that into our advice.

And so …

They call it the "pensions shake up of a generation" – "freedom of choice for millions" – "millions" - really? - but is the industry ready for this?

Until now hundreds of thousands of pensioners have been exchanging their savings for a lifetime annuity at the age of 65. Now this requirement is lifted for many and savers will have the opportunity to cash in so-called "Defined Contribution" pension pots from the age of 55 or to buy an annuity, or keep their funds invested for income drawdown or buy an innovative retirement income product.

And now, as you will know, following the latest announcement, those already enjoying annuities will also be able to sell them – on the market - and enjoy the liquidity. What the market's reaction will be I am not sure!

The simplistic picture is of course of millions waiting to make the most of the cash option, to spend their retirement savings on luxury sports cars. However, it is unlikely to be as simple as that, and accessing the benefits may be difficult, costly and slow.

There will be many important points to bear in mind, but certainly one is that pension providers **do not have to make the route to this level of freedom available to their customer**, so customers may have to move their pensions elsewhere in order to cash in. A number of providers are very resistant to offering these options it seems.

One commentator is quoted as saying "pension providers face a monumental challenge to get in shape for the new rules".

As we all know, even conventional pension transfers often already take months, and documents are posted backwards and forwards, because, I gather, the pensions industry still apparently prefer paper based communications over digital.

It is in practice highly unlikely that most providers will be deciding to offer the new flexi access drawdown facilities in April, and those that do may well be charging heavily for the privilege, which could be a discouraging prospect.

Commentators, including Pensions Minister, Steve Webb, appear to acknowledge that there will be delays, confusion and different approaches. A Sunday Times survey in March said only 5 out of 11 providers surveyed were offering complete drawdown freedom; others are planning to impose a variety of controls and limits. Some do not have terms in place yet - this may now, just, be changing.

Tax

Savers will also have to bear in mind the tax consequences which were less well trailed, and will be unattractive to many.

Apart from the 25%, which is of course already commutable without tax liability, the balance of any amounts cashed in will be taxed at the marginal rate. In many cases this may push clients into the 40% or 45% bracket.

And a further warning – tax coding may not be up to dealing neatly with this! HMRC may treat a one off withdrawal as if it is going to be repeated every month ("the month 1" basis) – requiring reclaims to be made.

It is essential that our clients are made fully aware of the tax penalties before they withdraw funds.

In addition to taxes, there may well be exit penalties.

Many pension policies (both new and old) carry exit charges if you leave before the policy's normal retirement age, which is typically 60 or 65.

Apparently a recent report found that about £800m of savings held by those aged 55 and over carried exit charges of 10%. So transfer penalties could be another very significant factor.

Charging structures are likely to be complex – making comparisons difficult. Some details are now emerging from some providers.

And hidden benefits …

Also bear in mind that some pension provisions have valuable benefits hidden in the small print. These may include the ability to take out more than 25% of the fund as tax-free cash, or guaranteed annuity rates for income, index-linked increases - benefits such as these could be lost on transfer, or withdrawal.

We must ensure that our clients get good independent professional advice - and check the small print.

It seems that the FCA will also be proposing (or imposing!) protection for savers by requiring providers to ask suitable questions – about health, understanding of the tax issues, etc. I wonder how effective this will be.

Note:

Some schemes – for example the Uniformed Services – are extremely complex and a failure to understand all their benefits would be serious.

Timing

Advisers tell us that it may well take between 6-12 weeks to transfer pensions funds safely, checking that no benefits are lost or penalties are incurred.

On this basis savers who want to access their pension under the new rules will be advised to start the process as soon as possible.

Rumour has it that there is an emergence of firms specialising in negligence claims arising from poor pensions advice on divorce. Anyone heard of e.g. Neglect Assist?

A little more detail …

Defined Benefit and Final Salary Pensions

First, to be clear, these new flexibilities do not apply to Defined Benefit or Final Salary pension schemes. To access the new freedoms a Defined Benefit scheme will have to be transferred to a Defined Contribution pension and again clients will need good professional advice on this; it may often be far preferable to keep funds in a gold plated final salary pension scheme. One adviser I talked to was very cautious about the risks of such a transfer and could easily visualize negligence claims arising if it went wrong, whatever caveats they had expressed.

Defined Contribution/Money Purchase Schemes and SIPPs

From 6 April, on reaching the age of 55 a saver is now able to take the whole of their DC/MP/SIPP fund as a lump sum – whether they should do so is a quite separate matter.

You will all know that until then it is only permissible to take a maximum of up to 25% of the fund out as a lump sum. That will be tax-free, but the remainder has to be used to generate a pension income.

The new option in place of capped and flexible drawdown will be called “flexi access drawdown” which will allow savers to take the pension without any maximum limit.

They will also have the new option of taking individual lump sum payments, the first 25% of which will be tax-free. The remainder will be subject to income tax. These have been christened “Uncrystallised Funds Pension Lump Sums” or UFPLS for short!

As I say, by whichever route, the balance of the funds taken out will be taxed at the marginal rate of income tax, so for example for a client who is normally a 20% tax payer, then taking a big amount from the SIPP could push him or her into the 40% or 45% bracket for that year which means they will lose vastly more of their pension fund than they will wish.

Bear in mind too, that the cash withdrawals can be made in stages to mitigate the tax consequences.

Again – and I will continue to emphasise this - the calculations need to be carefully addressed and professional advice may well be essential.

Also, bear in mind that if a client takes out **any income under the new flexi access drawdown option**, then the amount of money they can pay into a money purchase pension like a SIPP will be reduced to £10,000 annually (as opposed to £40,000 at present). If they take just the 25% tax-free lump sum but no income, then the amount they can pay in will not be reduced.

However, as I read it, the onus will be on the individual to tell the administrators of all their pension schemes if they do take flexi access drawdown, so they will all know that the annual allowance limit has been triggered. One can easily see this being "overlooked". Will it be picked up later by HMRC – I wonder?

Different rules will apply for those **already in capped drawdown or flexible drawdown** and you will need to look at these carefully to assess what the limit of any contributions may be.

So far as annuities are concerned, as I say, they will be sellable, tax free, on the secondary market (at fair values?) but the insurers will need to give their consent to sales and this is by no means a certainty in every case, and joint life annuities will need joint consent. Several insurance giants are being cautious about this option. It may be an attractive option for many but by no means all. And there will be risks.

In summary – at 55 or over, then from 6 April 2015 savers have far more flexibility about what they can do with these schemes. If they take the tax-free lump sum and no more, they will be able to continue contributing up to £40,000 each tax year. Taking more than that will reduce the annual contribution limit for the SIPP to £10,000.

When they decide to take the remainder of the pension fund as income, there will be far more options. They will be able to decide to take a regular income from the fund, or take the money out in lump sums and invest it elsewhere, or use some or all of the pension to buy an annuity if preferred, although the requirement to do so has been removed. Tax hits will of course need to be factored in – but can be staggered.

For most the biggest risk of not buying an annuity with the remaining fund after the 25% tax-free lump sum has been taken will of course be that the fund may expire before you do! But "blended solutions" combining an annuity with other drawdown options may well become more popular.

So do not discount annuities altogether, but they do lack flexibility. Not that this level of financial advice is our responsibility – indeed we must of course stand back from it.

There will also be some greater flexibility regarding the level of annuity payment charges as a saver gets older, and if your client is thinking about an annuity then – again - you will need more professional advice on the options.

The implementation of these new freedoms is likely to cause challenges, hiccups, uncertainties and unexpected hidden costs.

As I say, it appears that most insurers are not readily set up to deliver cash to savers whenever they want it, and that in practice savers should expect fees whether for set up, transfer or payments from their account.

Charging structures are not yet in place, but are likely to be similar to those operative in flexible drawdown arrangements where providers currently charged fixed annual fees up to £2-300 per annum. These are costs which will be most keenly felt by those with more modest funds, but pension providers will see a lot of chargeable transactions on the horizon, many of which will carry considerable admin time and effort and requite accurate advice and they will not be doing this for free.

We also need to bear in mind that over the coming months there will be a range of new innovative "products" developing, with greater flexibility and more competitive charges. So – no huge rush!

Let's also look briefly at the Lifetime Allowance and the protection provided

The lifetime allowance with which you'll be familiar I am sure, was introduced in April 2006 and initially set at £1.5m. It increased over the following four years to £1.8m but from April 2012 it was reduced back to £1.5m, and has now been reduced further to £1.25m from April 2014. And depending on what happens next month, it looks like reducing further to £1m in April 2016, and indexed from 2018. A "tax on thrift"! (And there may be further tinkering in this area to come.

This is the maximum size of a private pension pot that will attract tax relief.

Whilst it seems quite high, a long-serving individual in a final salary pension scheme, or somebody with a pension pot now in their 50s of around £700-£800k could still exceed this limit at age 65.

You will therefore need to consider whether any of your clients will in due course face a possible tax charge as a result of the benefits they have accrued, or as a result of the pension sharing order to be made in their favour. Particularly care needs to be taken for clients who may have breached the lifetime allowance by the time they reach retirement age.

There are one or two quite complex options available to enable protection to be maintained and extended, depending on the levels of withdrawals and/or additional contributions. Clients may have the ability to build up benefits within the annual allowance parameters - and so from our perspective, there may be a tax efficient asset to split – and it may also be capable of being grown, prior to splitting. Investigate with advice.

Bear in mind that there may be various further consultations and possible variations of this over the next year or two, but you need to examine this issue carefully and watch for any changes.

Of course any financial adviser should have an ongoing responsibility to establish whether a client should apply for transitional protection and consider what other options may be available, but family lawyers also need to be very aware of the issues.

For those clients who have not contributed for a while, and may be keen on a tax break, bear in mind also the carry back/forward provisions to add to pots; more limited than they used to be but still useful. Certainly you can pay in £40k for the current year and carry back 3 years at £50k – so a payment into a scheme of £190k may be an attractive option. Get advice!

Savers in the private sector or in a funded public sector scheme will also be able to transfer from a Defined Benefit Pension Scheme to a Defined Contribution one if they want to, meaning they can benefit from the changes.

Those in unfunded public sector schemes will not be able to transfer.

This, it is estimated, brings a further 18m people into the flexible withdrawal options. However, as I have already mentioned, this is dangerous territory, and great care will need to be taken.

Small pots

If the value of an individual's pension provision is less than £30k then the full value can be commuted as a lump sum, 25% of which is tax-free and the balance of 75% taxed at marginal rates of tax. This has been increased from £18k – this is not available until after age 60.

Regardless of the value of an individual overall pension provision if the value of an individual arrangement is less than £10k (previously £2k) then the fund can be commuted for a lump sum – 25% tax-free – the balance at marginal rates. This can be applied up to three personal pension small pots whereas previously restricted to two.

These changes are in place and may be useful in cases where you are sweeping up a series of a small pensions for clients and trying to simplify their finances.

In summary

It is important to recognise the limitations of the new rules.

Only savers over the age of 55 with a Money Purchase/Defined Contribution/SIPP pension will be able to enjoy the flexibility with their pension fund.

Those with a final salary/Defined benefit pension scheme will first have to transfer into a Defined Contribution/Money Purchase plan to enjoy that flexibility, and even these plans are not required to offer the full range of new options

And remember - transferring to another scheme just to achieve this flexibility is not a step to take lightly, and anyone contemplating a transfer out of a final salary plan will be well advised to take professional advice. There may be significant charges to be met, and generous benefits to be lost. A thorough understanding of the existing benefits needs to be established before the advantages of the flexibility obtained by a transfer out can be fully set in context.

There may also be major penalties from moving before normal retirement age.

And watch for the high charges that some pension providers continue to impose. A small difference in the level of scheme charges can make a significant impact on the value of the pension at retirement.

Public Sector Pension Scheme Changes

April 2015 will also see some important changes to the public sector pension schemes that will have implications now for pension sharing orders negotiated over the next few months. The key date is in fact 1 April 2015 – no comment.

Fundamental changes to public sector schemes have been planned for several years, and understandably for scheme administrators and policy makers, the emphasis has been upon the impact on current members. Much of the details have been planned and communicated but regrettably that does not yet apply to the area of pension sharing. However the Local Government Pension Scheme went through this process in April 2014, and that provides us with some indication of what is likely to happen with other schemes.

Two important lessons can be taken from the LGPS experience:

- Key technical details concerning pension sharing only emerged days before the new scheme was implemented with others following the implementation date.

- There was an important departure from previous practice concerning benefits allocated to pension credit members.

There is therefore now likely to be a period of uncertainty concerning non-LGPS public sector pensions, and enquiries from advisers do not seem to be producing substantive responses.

I will not attempt to address the detail of this, but broadly the LGPS switched to being a "Career Average Revalued Earnings" (CARE) scheme, and other public sector schemes seem likely to follow this precedent, and effectively provide pension credit benefits to align with the new CARE basis, irrespective of the original member's benefits. If so, this will have implications for pension sharing orders in the future.

It will be important therefore that pension sharing calculations are done on the appropriate basis; otherwise the intended objectives are unlikely to be met. The process is not helped by the fact that broadly schemes have four months within which to fully implement pension sharing orders, so that gap may also present problems.

That is all I propose to say about public sector schemes, but again it will be absolutely crucial for you to obtain specialist expert advice on the scheme as and when you are faced with a pension sharing order relating to them.

A couple of points on State Pensions …

The current basic State Pension for a single person is £133.10 per week (£5,881.20 per annum), but many people also receive an earnings related top-up referred to as the State Second Pension or State Earnings Related Pension.

Just to complicate matters further, a new flat rate State Pension will be introduced on 6 April **2016** which is expected to be around £155 per week.

The new system will eventually bring an end to earnings related top-up payments. When the single tier pension is introduced, anyone who has already built up a national insurance record will have a "starting amount" which includes the basic pensions and top-ups that they are entitled to. If your starting amount is more than £155 this will be protected.

The Government has an online calculator than can help you work out what you might receive from the State at Gov.uk/calculate-state-pension.

This will of course now need to be plugged into our calculations and projections – although At a Glance may help us!

A note on delaying your state pension

If you retire before April 2016 deferring payment of your State Pension may be a sensible move. Anyone who puts off claiming their State Pension before then will benefit from an annual uplift in payments of 10.4%.

So a deferral could boost payments considerably. Ensure your clients look at the calculations when relevant, and seek advice if in doubt.

Even if your client has to live off the income from company pension or savings while deferring, this could still be a good plan financially. It could more than double the rate available by securing a lifetime inflation linked income through buying an annuity.

But the calculations are complex so please - do seek professional advice.

For those reaching State Pension age after 2016 this is not such a good idea. The deferral rate will then be cut back to 5.8% when the new single tier State Pension is introduced.

Pension Death Tax – new inheritance planning options

There are now significant changes applying to lump sums paid following the death of a pensioner.

First, from 6 April 2016 benefits paid as a lump sum or as a pension to a beneficiary following **the death of a saver before their 75th birthday** will be completely free of tax.

Second, **if the date of death is after the pensioner's 75th birthday**, then benefits paid from that date to 5 April 2016 will be subject to tax at 45% and from 6 April 2016 will be at the marginal rate of tax of the recipient.

Third, a crucial change is that **any beneficiary** will be able to take the pension option after death, not just a spouse or children under the age of 23.

So there will be 3 clear options for a beneficiary – especially from next year:

(a) Draw the whole fund as a lump sum – subject to tax at 45%, reducing to the marginal rate next year.

(b) Take a regular income through annuity or income drawdown, taxed on the same basis.

(c) Take periodic lump sums, through income, taxed on the same basis.

Fourth, note the scope to pass ISAs down through the family also; more flexibility again.

These changes raise the question of whether retirees should now spend their pension pots or whether they might consider leaving them untouched to pass them down to the next generation free from inheritance tax, and instead use other assets to support their retirement.

They may also encourage people to make additional contributions to their pension funds knowing these can now be passed on.

They may also affect investment decisions. If a retiree is not going to use their pension fund to generate income, or at least not all of their income then all or part of the fund could be invested in growth assets for future generations.

Whilst this will not always be directly relevant to family lawyers, clearly it is something which we need to bear in mind in advising our clients on the way forward and in some cases certainly it will affect their approach to formulating proposals and in negotiation.

There will also be implications for the holders of Defined Benefit Schemes, which were typically the most desirable type of scheme. In those schemes, on the death of the pension holder, the income would usually be paid to the spouse, but it then dies with the spouse and the next generation can receive nothing.

If the same amount was transferred to a personal pension pot it could be passed down to the family, so there may be a case for transferring benefits out of a Defined Benefit Scheme at retirement into a Personal Pension Scheme, to achieve this option. As I have already said, this is complex and any move out of a Defined Benefit Scheme introduces serious investment risks – some advisers are very concerned at the implications of giving guidance along these lines, because of the potential sacrifice of a guaranteed income in retirement and the greater investment risk inherent in a Personal Pension Scheme.

However, there could still be a significant attraction in this option for some families.

In summary, to take advantage of these new rules, the tax planning and the investment decisions need to be co-ordinated, and we need to have an eye on that issue ourselves, so that we can know when to recommend further advice to our clients.

Note: And we must remind clients who plan to do this to complete the necessary “death benefit nomination forms”!

Annuity on death

Specifically, in relation to annuities, it was announced that from April 2015 payments from certain kinds of annuities that pay out income after you die (joint life and guaranteed annuities) will be tax-free when paid to a beneficiary if the original policyholder dies below age 75. So instead of paying the 55% rate of tax when passing on their pension, people who die under 75 with Defined Contribution Pensions can from April 2015 pass on their unused pension as a lump sum to a person of their choice, tax-free.

For those who die over the age of 75 with unspent Defined Contribution Pensions, they can pass this on to a person of their choice who will be able to take it as a lump sum taxed at 45% or as income and pay their normal rate of income tax.

Life Cover

It will occur to you that these options could provide us with an alternative route to life cover to secure maintenance provisions; they may well constitute an asset of the estate which can be earmarked to provide that. However, care will be needed.

Minimum Pension Age

Currently individuals cannot commence taking pension before age 55 unless they have a "protected retirement age" but this is set to increase; the age will increase to 57 from 2028 and it is then expected to be tied to 10 years before State Pension age. However, a recent consultation paper goes further – should it be tied to five years before State Pension age?

This will not apply to public sector schemes for firefighters, police and armed forces.

This could have an implication where a term maintenance order was written to age 55 with the expectation that pension income could commence from this age.

Free Guidance Available!

According to the Sunday Times, in March, the Free Pension Guidance Service was threatening to descend into chaos, on the basis that when they last enquired inadequate numbers of staff seem to be employed with limited training and there is huge demand already. However, this past weekend they have been far kinder about the quality of the service.

The original 'offer' in the Budget was that "free impartial face to face advice" would be offered.

However it is now clear that anyone seeking advice will be entitled to only one 45 minute telephone session (although the chats do last longer it seems). Not much to plan your entire

retirement strategy, especially with someone offering little or no expertise and brief training – and it will only be guidance – not advice, which is of course strictly regulated.

The details of the new service called "Pension Wise" have now been released and it is up and running – although telephone consultations may involve a long wait it seems. There are many issues which are entirely unclear about how it will operate and whether it will be sufficiently capable to cope with the intricacies of people's differing personal circumstances, life expectancies and complex finances.

The Treasury has estimated that about 300 specialists, through the Pensions Advisory Service and the CAB will provide the guidance from April, but staff recruitment has to date apparently been very low. Whether the newly hired advisers will be able to provide "best guidance" must be a matter of concern.

There is also a website: pension-wise.gov.uk (030 0330 1001) to assist.

So who is eligible for telephone guidance?

This will apparently be focused on savers with Defined Contribution Pension savings, either a workplace Money Purchase plan or a personal pension, and they should be 55 or over or near retirement.

In theory, younger applicants may be eligible, but those who have only Defined Benefit Schemes such as final salary schemes will not be able to use the service.

The guidance will be given over the telephone, by the Pensions Advisory Service, whilst the CAB will offer face-to-face sessions in some of its 405 offices across the UK. It has not yet provided full details of how many staff it will employ, nor presumably how well trained they will be.

There is a genuine concern amongst experts that these specialist advisers might well not be sufficiently qualified to give the necessary guidance. Somebody checked the original job adverts and they did not appear to require previous pensions experience.

Estimates suggest that half a million customers have already tried to access the service.

Customers will be required to book an appointment to receive either phone based or face-to-face guidance, and will, as I say, get only one 45 minute session (although this is to be kept under review). They can be pre-booked now, and we are told there is adequate capacity. Some commentators however, are predicting delays of several months before later applicants will get a session.

As I say, bear in mind that "Guidance" is not the same as regulated financial advice. The guidance has to cover the tax issues, life expectancy in retirement, and the issues arising from that, but probably basic concepts rather than regulated financial advice.

No investment recommendations will be made nor share or annuity tips.

Apart from the shortage of specialists and a lack of expertise, there have also been warnings about the possibility of scams, and the need to protect against conmen pretending to be part of Pension Wise.

Scammers are apparently already cold calling people promising to unlock their pensions before the April rules come into effect, and luring them with extremely high value returns on dubious investments…..

We are hearing a great deal about scams, frauds, selling mailing lists to provide access to cold callers who will pressurise elderly – or not so elderly pensioners.

We need to warn our clients.

This is serious; it is "open season for scammers". The Action Fraud hotline is 0300 123 2040.

So – some of the key concerns for family lawyers

1. We must identify the issues clearly – what types of pensions or annuities are we dealing with. What are their values, what are the ages of the parties, what is the likely structure of the financial solution to the case, what is the timing involved, what obvious or hidden risks may be involved in an transfer arrangements, and what options are offered by the specific providers in each case? (These will vary). We also need to see the clear distinction between guidance we can give and regulated financial advice which we cannot. Enough to be going on with?

2. To achieve this we will almost certainly need competent professional advice at an early stage. The rules may seem attractive and flexible, and in many respects they are, but there are significant complications as I hope I have already identified. It will be essential to look at the entire financial picture, to decide the best way forward. Drawing capital from the pension fund may be attractive in creating additional liquidity, but in many situations it will be the last resort and if there are other liquid assets available, serious care need to be taken before the decisions are made.

3. So how do we tackle the issues of liquidity in the case? For example, can further liquidity be sensibly obtained by drawing down on pension funds – and over what period of time? Superficially this could be very tempting and could for example, open up the prospect of finding the cash to buy two homes, which might have looked

impossible previously. But what are the other options and the downsides? What are the tax consequences, charges and timetable for this? Would this be the most effective use of the pension fund? Is it value for money? Much will depend on the 'other wealth' of the parties – liquidating a pension might be attractive – but huge care will be needed.

4. Also, if there are issues arising about the extent to which a pension can or should be treated as a liquid asset in assessing a fair division – then the pros and cons – the risks – the tax implications – the inheritance factors – will all need to be considered and presented – and argued. How is the fund to be valued? On the assumption of an immediate total withdrawal, or on the assumption of planned tax mitigating staggered withdrawals?

Note:

The judgement of Nicholas Francis QC in *SJ v. RA* [2014] EWHC 4054 (Fam) – para. 83; raises an issue on possible judicial interpretation of this new regime (but is only one early view).

5. In many cases we will need – vitally - to decide whether we should seek individual private advice for our clients, or whether a single joint expert, perhaps operating collaboratively, may be able to assist both in preparing a report which identifies all the options and offers advice to both parties without creating any conflict. In some situations that may well be possible – in others there may well be a conflict of interest between the parties if different options are available.

We have all had to make similar calls in considering whether we should appoint an accountant to advise our client privately, or whether we should agree simply to a single joint expert, but this situation is slightly different.

First, the right financial adviser may expect and hope to have a long-term involvement with our client, assuming they can assist them in making decisions in advance of any financial agreement and then follow those through with guidance in the subsequent months and years.

Second, it is unlikely that a jointly appointed expert will be able to or indeed wish to carry through that responsibility and certainly not for both parties, so this issue needs to be addressed at a fairly early stage.

My discussions with several advisers who have acted as SJEs indicate that they accept the need for this division of roles. Put simply, an independent pension report

cannot properly or easily contain sufficiently sophisticated discrete advice on the best options for each of the parties.

So – whilst we may well need to appoint experts jointly to provide valuations, projections of likely income, assess percentages for equalising income at certain ages and so forth, as we do at present, this is a different skill. The individual guidance for our clients from a separate 'personal' professional financial adviser may well be crucial in increasing numbers of cases.

6. We will I think have to get used to asking a wider range of questions in our request for a pension sharing report – and to receiving more complex and more wide ranging answers – and paying more for this. The experts will understand the vastly increased range of options, and whilst they will have to limit the scope of their reports and maintain a neutral stance, they may well feel compelled to offer some guidance to the parties on the possibly preferred way forward, if only to ensure they avoid disaster – and that the expert avoids accusations of negligence. We will also have to distinguish clearly between the independent neutral advice – and what our client may need to understand about their specific concerns.

7. We will need to understand very clearly the likely additional charges and fees that may be involved, which could in some cases be substantial. Who is to pay these, when will they be payable, how clearly will they be quantified from the outset?

8. The inheritance options will be far more attractive now – we will need to understand enough about them to build them into our advice. Our private tax and trust colleagues may need to consider the real detail. IFAs will play a greater role but we too <u>have</u> to be aware of the issues and pitfalls. If for example, a husband bequeaths a pension fund to beneficiary children, then remarries, he may well be leaving the scheme trustees to exercise their discretion between his children and his second wife. What will be the outcome?

9. We may need to look to consider if the new inheritance rules can, for example, provide life cover to secure future maintenance on the death of the payer by leaving the pension fund to them? There are a range of issues and risks but it may be an option. I think we will need to understand better the approach that may be taken by fund trustees exercising their discretion in these cases.

10. If our client is contemplating a transfer of a Defined Benefit Scheme to a Defined Contribution Scheme, we will need very careful guidance on understanding what the implications of that will be, what benefits may be lost; how long the process might take and again, what hidden charges may be involved.

11. It also occurs to me that if valuable funds and annuities can now be passed down through Wills effectively – and until 75, tax free, and later, still tax efficiently – then could this offer an interesting alternative to pension splitting in some cases?

    Is it not also a potentially useful tool for separating cohabitees – who cannot pension split? Especially if the law evolves to give them greater rights, or if they simply want to create a fairer solution – for themselves or for children. With careful drafting and planning there are more options here for us I think.

12. We will need to look carefully at whether the funds in the case need protection. We have typically been used to regarding pensions as "a safe asset", but as I have identified that is no longer the case, given the flexibility, at or after age 55, to drawdown all the capital, albeit with a tax consequence. We must be aware of that. I will say a brief word about this in a moment.

In summary, yes there is increased flexibility – but there are also a significant number of hidden problems, uncertainties, and charges, as well as scope for losing benefits hidden in the small print and seriously damaging future pension income flows.

The HMRC paper concludes that they expect around 130,000 individuals a year to access their pension flexibility – they add that "these changes are not expected to have an impact on family formation, stability or breakdown." However, as I said, it seems that Pension Wise may have had 500,000 enquiries already.

A recent comment from Hargreaves Lansdown, suggested that £5 billion will be drained from pension funds in the coming months.

We shall see.

A final word …

Injunctions – a brief footnote:

As I have mentioned, one of the concerns in the context of the new legislation will surely be the possibility that a pensioner can withdraw substantial sums from a pension fund once aged 55, quite probably incurring tax liabilities, and diluting or entirely destroying a substantial family asset. Hitherto, as practitioners we have felt these funds to be "safe" assets in the sense that they could not easily be touched other than perhaps the 25% commutation amount, if the pensioner is over 55, but that will no longer be the case. Care will have to be taken in these situations and either undertakings requested, confirmatory letters to the pension fund administrators delivered, or if the circumstances justify it, freezing injunctions obtained.

At present, it seems unlikely that such a withdrawal could be an 'overnight job'. It will take time, admin and fees, and many providers will not be ready at all to offer the options. Nevertheless we must all be alive to the risks.

In this context, the difficulty we face now is the series of recent judgments, in particular the judgment of Mr Justice Mostyn in *ND v. KP* (2011) EWHC 457 (Fam), in which he set out in considerable detail the statements of principle which apply in relation to applications for freezing orders.

There are, as you all know two routes available – either Section 37 of the MCA 1973 or the inherent jurisdiction, but Mostyn J emphasised in his judgment that the tests are not now materially different.

The first principle is that fundamentally a freezing order should not be granted unless there is a good case put before the court, supported by objective facts, with a likelihood of the movement or dissipation or spiriting away or salting away or squirrelling away or making a disposition of or the transfer of assets with the intention of defeating a claim.

The second principle is that no order should be made in civil proceedings without notice to the other side unless there is very good reason for departing from the general rule that notice must be given, for example where to give notice might defeat the ends of justice. An interim order in the form of an injunction without notice is an "exceptional remedy".

The third principle is that if an ex parte application is made then the applicant has a high duty of candour – a principle well established in a series of cases, and if it is breached, then the order is likely to be discharged.

Given these guidelines with which you will doubtless be familiar, it has become a much more rigorous process to obtain a freezing order, and in the context in which we are discussing, where there may be no obvious anticipation that a pension fund would be raided, and if for example there are other assets which have significant value and which are "safe" then the option may be one that will have to be given very cautious consideration.

In the recent judgment in *MD v. KP* Mostyn made the following observations:

> *"Those submissions in my view expose the real motive behind the wife's application which was to obtain a freeze over the husband's assets for no reason other than that it would be desirable to keep them preserved until trial. But that, as I have explained is not the law in this country."*

Given the likely pace of the process, there may be time to request undertakings and act only if they are refused, but as the systems become more streamlined, time may be shorter.

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April 2015

Section 5

Jurisdiction and Part III:

Knock-out blows in international money cases

Charles Hale QC
Rex Howling QC
Michael Gration
Henry Clayton

AA V BB [2014] EWHC 4210

04/11/2014

Barrister

Charles Hale QC
Henry Clayton

Court

High Court Family Division (but note, permission to appeal to the Court of Appeal has been granted)

Summary

Judgment of Moylan J involving a complex multi-jurisdictional procedural history, analysis of Articles 12 and 13 of Council regulation No 4/2009 'the Maintenance Regulations' and the law on setting aside the grant of leave in Part III claims

Background

The husband was aged 62 and the wife was aged 57. They were both born in Kosovo and married there in 1981. They had four children, aged between 20 and 33. The marriage lasted approximately 20 years. The parties moved to Slovenia in 1991. The wife and children moved to England in 2008 and have remained since. The husband moved to Dubai in 2010 and has remained there since. The finances in the case were unclear but the wife estimated on the basis of news sources that the husband was worth approximately €68 million and she produced evidence that assets were located in a number of jurisdictions. The parties' marriage was dissolved in Slovenia on 9 November 2011.

In or around 2008 the wife removed €5 million from an account in the parties' joint names in Austria. The husband initiated proceedings to recover that sum. On appeal in Austria the wife was allowed to retain the sum.

Slovenia – Procedural Background
In June 2008 the wife began divorce proceedings. She also sought maintenance for the two younger children. In December 2008 the wife made a separate claim to establish both the scope of, and the parties' respective shares in, their joint assets. In October 2009 the wife included in her June 2008 application a claim for maintenance for herself. In September 2010, the wife withdrew her claim for maintenance for herself and also withdrew her claim for maintenance for the elder of the two children for whom she had claimed called DD. The husband expressly agreed with this at a hearing in September 2010 and for this reason the court stopped proceedings. This was recorded in the judgment of the Ljubljana District Court in November 2011.

On 10 May 2011, the Ljubljana District Court gave its decision and a partial judgment in respect of the wife's December 2008 claim. The court dismissed the wife's claim in respect

of all assets which were not located in Slovenia. The husband was ordered to pay a lump sum to the wife of €290,000. The court indicated that it had no jurisdiction to deal with the parties' assets located outside Slovenia. The wife appealed but the judgment was upheld. The husband also appealed on the grounds that the assets included assets held by companies – as in Prest. The husband was successful and the case was remitted to the lower court.

In June 2011, the husband commenced proceedings in Slovenia to recover the €2.6 million sum removed from the parties' account in Austria. This claim was ongoing when the case came before Moylan J.

England and Wales - Procedural Background

On 3 October 2013 Eleanor King J (as she then was) gave the wife leave to apply for financial remedy orders under section 14 of the Matrimonial and Family Proceedings act 1984. The application was made, in accordance with the rules, without notice. Eleanor King J gave directions – Forms E and listing a FA for 5 March 2014. Following leave being granted, the wife made an application for financial remedy orders for herself and for the parties' youngest child.

The husband issued two applications. The first application sought to adjourn the wife's application and to stay the provisions of Eleanor King J's orders. The second application sought that the leave granted be set aside and/or struck out and that the wife's application be stayed on the basis of the Maintenance Regulation (Council regulation No 4/2009).

Section 6

Profiles

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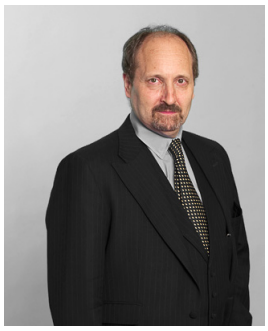

Michael Sternberg QC

Michael Sternberg QC's outstanding practice continues to cover both complex international children matters and ancillary relief cases. Sources say: "He is everything one could want in a QC. Intelligent, precise and thoughtful, he is a joy to work with." Recommended as a Leading Silk in both Children and Matrimonial Finance in Chambers and Partners

Experience

Year of Call: 1975
Year of Silk: 2008

Education

MA LLM (Cantab) MCIArb
Fellow of the International Academy of International Lawyers
Fully Qualified Family Law Arbitrator
Qualified Collaborative Lawyer
Qualified Mediator
Fellow of the Royal Society of Arts

Appointments

Bencher of the Honourable Society of Gray's Inn 2013

Profile

Michael Sternberg's practice covers the two main areas of family work - financial remedy and child cases. He has a substantial practice in high-value financial cases and is instructed by a number of the top London firms. He regards negotiation as of great importance in getting the best result in the speediest time at the lowest cost to the client. So many of his cases settle avoiding the costs and publicity of what would otherwise be high profile contests. The financial work involves not only the latest developments in family law, but also a high degree of expertise in company law and valuation, farming divorce cases, prenuptial agreements, tax law and cases where there is a conflict of jurisdiction.

Unusually Michael also has extensive experience in difficult child cases. He was instructed consistently in the past not only by the Official Solicitor, and Cafcass Legal, but also by local authorities in highly demanding cases in the High Court, Court of Appeal and House of Lords, which have raised difficult questions of fact and law.

Michael is an expert in contests between England and Wales and other jurisdictions as to which should decide the divorce – both in respect of Brussels II (revised) and generally – also in relation to injunctions to prevent a party from proceeding with divorce in a foreign jurisdiction. He has lectured on the topic.

Michael has acted as an advocate to the court in a series of reported decisions. He succeeded against the UK Government in relation to a breaches of Articles 8 and 12 of the ECHR, on behalf of a post-operative transsexual, heard by the Grand Chamber in Strasbourg (I v UK [2002] 2 FLR 518). Michael was previously listed as a leading junior in the relatively small list of practitioners in London within The Legal

500 since 2001. Chambers Guide to the UK Legal Profession also for many years rated him as one of the few leading juniors. Michael is a member of the Family Law Bar Association and he was the Assistant Secretary from 1986 – 1988.

Michael is also the author of two chapters in David Davidson's book "Pensions and Marriage Breakdown " 3rd Edition (published by the Law Society in 2005).

Michael was in 2009 nominated by the Chairman of the Bar to chair a joint tribunal set up by the Bar Council and the Law Society / OSS to resolve major dispute between a leading junior Barrister and a prominent firm of solicitors.

Michael was one of only 3 Leading Counsel to be invited to appear as a principal speaker on issues of spousal support after divorce, at the Butterworths Lexis Nexis Matrimonial Finance and Divorce National Conference on 28th April 2010.

On 4th February 2011 Michael chaired a day conference on advanced financial remedy topics at the RAF Club attended by over 100 solicitors at which 5 QC's spoke. He chaired a similar financial remedy day conference for the White Paper Company in January 2013 and twice in January and April 2014.

Michael is a Qualified Mediator and Collaborative lawyer. In September 2011 he attended the first course run by The Chartered Institute of Arbitrators to become one of the first Family Law Arbitrators.

In March 2013 Michael chaired Lexis Nexis webinar on all aspects of ADR.

Michael is the Chair of the Trustees of the Three Faith Forum – the country's leading active interfaith charitable agency, which since 1997 has been generating understanding, goodwill and friendship between Muslims, Christians and Jews, as well as people of other faiths and in the wider society.

Professional Memberships

Family Law Bar Association
International Academy of Matrimonial Lawyers
Three Faiths Forum Legal Group (founder member)
Gray's Inn
Inner Temple
Affiliate Member of Resolution

Directories

Highly recommended by peers for his work on both high-level matrimonial finance disputes and contentious children law matters.
Expertise: "He's very proactive. If you've got a case on with Michael you know all the t's will be crossed and the i's will be dotted. He's very demanding of his solicitors and he's excellent in his preparation."
Chambers & Partners 2015

'He has a substantial practice in high-value financial remedy cases.'
The Legal 500 2014
Recommended as a Leading Family Silk

Comes much recommended for his broad-ranging family law practice and draws much praise for his work in both high-value ancillary relief matters and complex child cases.

Expertise: "An excellent QC to work with. He's very meticulous, provides lots of feedback and works well as part of a team."
Chambers & Partner 2014

The "meticulous" Michael Sternberg QC has a broad family law practice and is highly rated for his work in both the children law and matrimonial finance spheres. He is regularly instructed in high-value ancillary relief cases and complex child abduction matters, and is an accredited mediator and collaborative lawyer.
Recommended as a Leading Family Silk in Chambers & Partners **2013** -

'If battle is required', Michael Sternberg QC is 'your chosen gladiator'.
Recommended as a Leading Family Silk in The Legal 500 **2012**

Michael Sternberg QC's outstanding practice continues to cover both complex international children matters and ancillary relief cases. Sources say: "He is everything one could want in a QC. Intelligent, precise and thoughtful, he is a joy to work with."
Recommended as a Leading Silk in both Children and Matrimonial Finance in Chambers and Partners **2012**

Michael Sternberg QC 'thinks outside the box and is a great strategist'.
Recommended as a Leading Family Silk in The Legal 500 **2011**

Michael Sternberg QC now focuses primarily on matrimonial finance work and is often instructed in cases with cross-jurisdictional issues. Commentators note that "he thinks out detailed strategies and is always popular with clients."
Recommended as a Leading Silk in Chambers and Partners**2011**

Michael Sternberg QC has a mixed practice but won most support from the market for his children work. His recent cases include D v D, R v R, and S v S, all of which were contested children and ancillary relief cases where millions of pounds were at stake.

Recommended as a Leading Silk in Chambers and Partners **2010**

Michael Sternberg QC 'provides a first-class service and often comes up with creative solutions to difficult problems'.
Recommended as a Leading Family Silk in The Legal 500 **2010**

New silk Michael Sternberg QC is a "meticulous and detailed" barrister who carries out both ancillary relief and children-related matters. He has a particular interest in cases with an international dimension.
Recommended as a Leading Family Silk in the area of Children in Chambers & Partners **2009**

Michael Sternberg QC who has 'excellent attention to detail', and is 'very good at cross-examination'.
Recommended as a Leading Family Silk in The Legal 500 **2009**

Michael Sternberg is "first choice for anything with an international dimension - be it Hague Convention, forum shopping or money matters." He is still best known for his varied work with children.
Recommended as a leading junior in Family/Children in Chambers & Partners **2008**

Michael Sternberg has a more varied practice and undertakes a mixture of both children and finance work. He is "particularly supportive of clients and is extremely conscientious" managing to maintain a "delightful manner in the most difficult cases."
Recommended as a leading junior in Family/Children in Chambers & Partners **2007**

Michael is also recommended as a Family Leading Junior in The Legal 500 **2006**

Practice areas

- Financial Remedies
- Private Law

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator
- Arbitration

Direct Access

- Direct Access

Cases

Re M (A Child) Sub Nom Re M (Adoption: International Adoption Trade) (2003)
[2003] EWHC 219 (Fam)

Field v Field
[2003] 1 FLR 376

I v United Kingdom
[2002] 2 FLR 518

Re B (Adoption by one Natural Parent to Exclusion of other)
[2001] 1 FLR 589

Re AGN (Adoption: Foreign Adoption)
[2000] 2 FLR 431

Re AMR (Adoption: Procedure)
[1999] 2 FLR 807

Re M (Sexual Abuse Allegations: Interviewing Techniques)
[1999] 2 FLR 92

Re S (Removal from Jurisdiction)
[1999] 1 FLR 850

S v S (Judgment in Chambers: Disclosure)
[1997] 1 WLR 1621

Re M (Petition to European Commission of Human Rights)
[1997] 1 FLR 755

Note H v H (Residence Order: Leave to Remove from Jurisdiction)
[1995] 1 FLR 529

R v Plymouth Justices Ex Parte W

[1993] 2 FLR 777

Re F (A Minor) (Blood Tests: Parental Rights)
[1993] 3 WLR 369

Re F (A Minor: Paternity Test)
[1993] 1 FLR 598

H v H (Financial Provision: Capital Allowance)
[1993] 2 FLR 335

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Jonathan Cohen QC

Marvellous to work with and a true heavyweight; he commands great respect in court. He has immense knowledge of the law, and a perceptive and focused approach with clients.'
Legal 500 2014

Experience
Year of Call: 1974
Year of Silk: 1997

Education
BA (Kent)

Appointments
Recorder
Deputy High Court Judge (Family Division)
President of the Mental Health Review Tribunal

Profile
Jonathan has been Head of Chambers 2003-2012. He acts in difficult financial cases and is praised for his measured, strategic and commercial approach. His children practice encompasses both public and private law cases. He acts also in professional negligence cases arising out of family work. He sits as a Judge in both children and money cases and acts in and conducts out of court discussions and settlement meetings. His very wide experience is called upon by clients from all over the country.

Professional Memberships
Fellow of International Academy of Matrimonial Lawyers
Family Law Bar Association
Professional Negligence Bar Association
Member of the Chartered Institute of Arbitrators

Directories

Lauded for his skill in the field of very high-value financial disputes. He regularly handles cases with complex jurisdictional matters attached to them.
Expertise: "Jonathan combines a fierce intellect with a depth of experience and a quiet authority. He commands the respect of his clients, peers and the judiciary."
Chambers & Partners 2015

Jonathan Cohen QC ‘He has immense knowledge of the law, and a perceptive and focused approach with clients.’

'Marvellous to work with and a true heavyweight; he commands great respect in court.'

Recommended as a Leading Family Silk in the areas of Children Law and Family Law (including divorce and financial remedy)
Legal 500 2014

In addition to having a highly esteemed matrimonial finance practice, Cohen is also noted for his wealth of experience in serious children cases.

Expertise: "Sometimes it's difficult to justify the cost of a silk, but he's worth every penny."
Chambers & Partners 2014

'Excellent advocate', Jonathan Cohen QC has 'a good grasp of the complexities'. He attracts praise for his 'reassuring nature'.
Recommended as a Leading Family Silk in the areas of Children Law and Family Law (including divorce and ancillary relief)
Legal 500 2013

Jonathan Cohen QCis a "wonderful" family law practitioner and a deputy High Court judge in the family division. Highly adept at children cases, he is further noted for his matrimonial finance practice, and is an expert in high-value ancillary relief cases.
Recommended as a Leading Family Silk in Chambers & Partners 2013

Jonathan Cohen QC has ‘a calm, reassuring manner that endears him to court and clients alike’.
Legal 500 2012
Recommended as a leading Silk in the areas of Children and Family (divorce and ancillary relief) Law

Jonathan Cohen QC is one of the set's few matrimonial finance specialists. He also handles children work, and solicitors go to him "for those cases where you really need the judge to listen to the strength and simplicity of your main points."
Recommended as a Leading Family Silk in Chambers & Partners 2012

Head of chambers Jonathan Cohen QC is a highly experienced silk with a mixed finance and children practice. He earns the respect of judges with his measured and strategic approach.
Recommended as a Leading Family Silk in Chambers & Partners 2011

Jonathan Cohen QC is ‘highly intelligent, numerate and commercial’
Recommended in Legal 500 2011 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief).

Jonathan Cohen QC is popular, he is "a thorough and effective financial specialist".
Recommended as a Leading Family Silk in Chambers & Partners 2010

Recommended in Legal 500 2010 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief).

Jonathan Cohen QC is part of a sizeable contingent of members at the set who receive briefs in both financial and children-related matters. Commentators note that he "doesn't have the aggression of some barristers," deciding instead to deploy a "steady and clear" style of advocacy: "When he speaks people listen."
Recommended as a Leading Family Silk in the areas of Children and Matrimonial Finance in Chambers & Partners 2009.

The 'formidable' Jonathan Cohen QC
Recommended in the Legal 500 2009 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family (including divorce and ancillary relief).

As head of chambers, Jonathan Cohen QC epitomises the set in being best known for his work with children but also having a respected practice in matrimonial finances. “A very civilised man who relates well to prickly clients,” in the courtroom he is “a good and convincing advocate who is excellent at persuading judges of the rightness of his cause.”
Recommended as a Leading Family Silk in the areas of Children and Matrimonial Finance in Chambers & Partners 2008 Jonathan Cohen QC is also recommended in The Legal 500 2008 as a Leading Family Silk.

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator
- Arbitration

Direct Access

- Direct Access

Cases

Re BK-S (Children) (Expert Evidence & Probability) sub nom BK-S v Hampshire County Council & Ors (2015)
[2015] EWCA Civ 442

Re B (A Child) (2013)
[2013] EWCA 964

D v D (2012)
[2012] EWCA Civ 1641

L v L [2011]
[2011] EWHC 2207 (Fam)

Re B (Children) (2009)
[2009] EWCA Civ 1499

Hvorostovsky v Hvorostovsky (2009)
[2009] 2 FLR 1574 : [2009] 3 FCR 650 : [2009] Fam Law 1019 : (2009) 106(31) LSG 18 : (2009) 153(30) SJLB 28 : [2009] EWCA Civ 791

I v I (2009)
[2009] EWCA Civ 412

I v I (Ancillary Relief: Disclosure)
[2008] EWHC 1167 (Fam)

RE C (DIVORCE: FINANCIAL RELIEF) [2007] EWHC 1911 (Fam)
[2008] 1 FLR 625

S v S (ANCILLARY RELIEF: IMPORTANCE OF FDR) [2007] EWHC 1975 (Fam)
[2008] 1 FLR 944

Re D (Paternity)
FLR 2007 2 26

Re X (Emergency Protection Orders)
[2006] 2 FLR 701

Prazic v Prazic
[2006] 2 FLR 1128

Re G (A Minor) (Interim Care Order: Residential Assessment)
[2005] Daily Cases

H v H (Lump Sum: Interest Payable)
[2006] 1 FLR 327

S v B (Ancillary Relief: Costs)
[2005] 1 FLR 474

Re G (Interim Care Order: Residential Assessment)
[2004] 1 FLR 876

Re C (Welfare of Child: Immunisation)
[2003] 2 FLR 1095

North Yorkshire County Council v SA
[2003] 2 FLR 849

Re C (Welfare of Child: Immunisation)
[2003] 2 FLR 1167

M v L (Financial Relief After Overseas Divorce)
[2003] 2 FLR 425

Parra v Parra
[2003] 1 FLR 942

A v Times Newspapers Ltd
[2003] 1 FLR 689

B County Council v L & Ors (2002)
[2002] EWHC 2327 (Fam)

Re B (Care Proceedings: Diplomatic Immunity)
[2003] 1 FLR 241

Re B (A Child) (Care Proceedings: Diplomatic Immunity)
[2203] 2 WLR 168

Re B (A Child) (Care Proceedings: Diplomatic Immunity)
[2003] Fam 16

P v P (Financial Provision: Clean Break: Costs Schedule and Schedule to Judgement)
[2002] 2 FLR 1075

Westbury v Sampson
[2002] 1 FLR 166

Re G (Care Proceedings: Spilt Trials)
[2001] 1 FLR 872

Re B-M (A Child) (Adoption) (2000)
LTL 25/7/2000 EXTEMPORE

N v N (Jurisdiction: Pre-Nuptial Agreement)
[1999] 2 FLR 745

Piglowska v Piglowski
[1999] 1 WLR 1360

Piglowska v Piglowski
[1999] 2 FLR 763

C v C (Financial Relief: Short Marriage)
[1997] 2 FLR 26

Re AW (Adoption Application)
[1993] 1 FLR 62

M v Lambeth Borough Council (No. 3)
[1985] FLR 1167

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Christopher Hames QC

"Brilliant for complex, difficult cases. Great on the attention to detail, he's very thorough, good with clients and highly personable."
Chambers and Partners 2015

Experience
Year of Call: 1987
Year of Silk: 2015

Education
LLB Hons (Sheffield)
Qualified Collaborative Lawyer

Profile
Christopher has developed a specialist family law practice dealing mainly with difficult international issues. He acts in cases involving both children and finance.

His work covers:

- Hague Convention and non-Hague abduction of children
- Jurisdictional disputes involving divorce and finance
- Wardship involving abduction, the stranding and abandonment of parents and forcible separation of children from parents
- Matrimonial finance particularly cases with an international element, third party interests or criminal confiscation/restraint orders
- Permanent and temporary external and internal relocations of children
- BIIR applications
- Schedule 1 and TOLATA cases
- International adoption, particularly to USA

Professional Memberships
Family Law Bar Association
Affiliate Member of Resolution
Inner Temple
Reviewer for Bar Pro Bono Unit

Directories
Maintains a strong private law children practice, and works in cases relating to residence, relocation and abduction in both Hague and non-Hague jurisdictions.

Expertise: "Brilliant for complex, difficult cases. Great on the attention to detail, he's very thorough, good with clients and highly personable."

Recent work: Instructed before the High Court in a case pertaining to the abduction of five children by their father.

Chambers & Partners 2015

Maintains a fine track in cases concerning cross-jurisdictional issues, child abduction, adoption, abandoned spouses and lawful relocation.

Expertise: "Has excellent knowledge of all areas of family law matters."

Recent work: Recently handled child abduction proceedings in the High Court involving five children, three of whom were returned to Spain.

Chambers & Partners 2014

Christopher Hames focuses his international family law practice on cases concerning child abduction, relocation and cross-jurisdictional disputes. Commentators note that "he cuts straight through to the issues" of the most complex of cases.
Recommended as a Leading Family Junior Chambers & Partners **2013**

Christopher Hames comes highly recommended for his expertise in cross-jurisdictional children expertise. Sources say: "He is a very safe pair of hands and is excellent with clients." Hames is much in demand.
Recommended as a Leading Family Junior Chambers and Partners **2012**

Christopher Hames is highly regarded for cross-jurisdictional children work.
Recommended as a Leading Family Junior in Chambers and Partners **2011**

Christopher Hames, who is praised for his handling of Children Act matters.
Recommended as a Leading Family Junior in Chambers and Partners **2010**

Practice areas

- Financial Remedies
- Private Law
- International

Dispute resolution

- Collaborative Lawyer
- Early Neutral Evaluator

Direct Access

- Direct Access

Cases

Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal) [2015]
[2015] EWCA Civ 26

Cambra v Jones & Jones [2014]
[2014] EWHC 2264 (Fam)

B v B [2014]
[2014] EWHC 1804 (Fam)

LC v RRL & Others [2014]
[2014] EWFC 8

TF v PJ [2014]
[2014] EWHC 1780 (Fam)

Re F (A Child) (2014)
[2014] EWCA Civ 275

Rubin v Rubin [2014]
[2014] EWHC 611 (Fam)

Re LC (Children) (2014)
[2014] UKSC 1

HM Solicitor General committal to prision of J. Jones for alleged contempt of Court
[2014] 1 FLR 852; [2013] EWHC 2579 (Fam)

Re LC (Children) (2013)
[2013] EWCA Civ 1058

LCG v RL [2013]
[2014] 1 FLR 307; [2013] EWHC 1383 (Fam)

CB v CB [2013]

[2014] 1FLR 663; [2013] EWHC 2092 (Fam)

VK v JV [2012]
[2013] 2 FLR 237; [2012] EWHC 4033 (Fam)

Re J (Children) [2012]
[2012] EWCA Civ 1511

Re O (Children)
[2011] 2 FLR 1307 : [2011] 1 FCR 363 : [2011] Fam Law 452 : (2011) 108(9) LSG 19; [2011] EWCA Civ 128

Re K (Children) (2009)
[2010] 1 FLR 782; [2009] EWCA Civ 986

Stodgell v Stodgell (2009)
[2009] EWCA Civ 243; (2009) 2 FLR 244

T v (1) B (2) Revenue & Customs Prosecutions Office (2008)
[2008] EWHC 3000 (Fam); (2009) 1 FLR 1231

Re P (Children) (2006)
[2006] EWHC 2410 (Fam)

X v X (Crown Prosecution Service Intervening)
[2005] 2 FLR 487

Re MCA; HM Customs and Excise Commissioners and Long v A and A

(1) HM Customs & Excise (2) Richard Long v (1) MCA (2) JMA : JMA v MCA & Richard Long (Intervenor) (2002)
[2002] EWHC 611 (Admin); (2002) 2 FLR 274

Re R (Children) (Sexual Abuse: Standard of Proof)
[2001] 1 FCR 86

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Charles Hale QC

"Charles is the ultimate negotiator. If there is a good deal to get, he will get it."
"When he speaks people are drawn to what he says; he's a very persuasive and powerful advocate. His bedside manner is great, and he captures the trust of a client instantly."
Chambers & Partners 2015

Experience

Year of Call: 1992
Year of Silk: 2014

Education

LLB (Hons)
Blackstone Scholar
Middle Temple

Appointments

Elected member of the Bar Council of England and Wales 2002 - 2012

Profile

Charles was appointed to the rank of Queens Counsel in 2014. He is a family advocate with particular expertise in all aspects of matrimonial finance and Schedule 1 (financial remedies) and private law children work. He is regularly instructed in international family disputes, leave to remove and child abduction cases involving international law, Brussels I and II and international treaties. He has provided advice and Affidavits of Laws in French and Australian divorce cases and international pre-nuptual agreements. In domestic cases, Charles has a reputation for dealing with the most complex matters involving financial disputes as well as intractable and alienated parent cases, vulnerable adult/child cases and also cases arising out of same sex/alternative family disputes.

Awarded the Family Law Junior of the Year in 2012 by Jordans, Ranked in Band 1 for both children and finance by Chambers and Partners and being one of only 5 family Barristers listed in their Top 100 Barristers list, Charles was one of the few recognised leading juniors in both matrimonial finance and children work, a practice he continues now as Leading Counsel.

Professional Memberships

Member of the International Association of Matrimonial Lawyers (IAML)
Family Law Bar Association
Association of Lawyers for Children
South Eastern Circuit
Middle Temple

Directories

Deals with both very high-value matrimonial finance proceedings and complex children law matters. He is regularly sought out for cases

pertaining to cross-border children disputes and for his advice to alternative families.
Expertise: "Charles is the ultimate negotiator. If there is a good deal to get, he will get it." "When he speaks people are drawn to what he says; he's a very persuasive and powerful advocate. His bedside manner is great, and he captures the trust of a client instantly."

Chambers & Partners 2015 - New Silk

Charles Hale QC - 'A very accomplished advocate and a calm port in stormy seas.' 'Meticulous in preparation and a master of cross-examination.'
The Legal 500 2014

Charles Hale is a family practitioner who is a master at both matrimonial finance and children related cases. He is regularly instructed by leading London and national solicitors and has handled cases of the utmost complexity and sensitivity such as A, B and C (2012), a matter concerning the relationship of a gay birth father to a child of lesbian mothers. Other recent matters of note include Re T (Children), which raised a very significant point in respect of costs in children proceedings involving local authorities. "A very smooth operator with clients, he shows an empathy and understanding of their emotional issues which is second to none. Clients are made to feel that he is really part of the fight."
Chambers 100 List UK Bar
The Chambers Bar 100 ranks the top barristers practising at the Bar of England and Wales.

Elicits much acclaim for his work on both the matrimonial finance and children law sides, and is routinely sought out for his strengths on high-value divorce cases and large-scale cross-jurisdictional children disputes.

Expertise:"His delivery is well judged and he is very easy to work with. He inspires a lot of confidence."

Recent work: Hale acted on behalf of the Grandparents Association in a widely publicised Supreme Court appeal regarding the liability of a local authority to pay the costs of a party to care proceedings.
Chambers & Partners 2014
Band 1 for both Children and Matrimonial Finance

The 'very personable' Charles Hale is 'one of the very few senior juniors around who can tackle both financial remedy and children cases with equal facility'. 'He is meticulous in preparation and a master of cross-examination.'
The Legal 500 2013

Charles Hale climbs the rankings for both children law and matrimonial finance matters, and receives strong plaudits for his work pertaining to international children disputes and high net worth divorces. Sources reveal that he "never takes a bad point," while adding that he is a "smart advocate" who is "good at finding solutions to intractable problems."
Chambers & Partners 2013 - Band 1

The 'impressive' Charles Hale, who is 'a number-one choice for complicated children cases as well as financial issues'.
The Legal 500 2012

Charles Hale "is very good at both money and children cases," and is thus a popular choice amongst solicitors for cases that contain both elements. He has a "very conciliatory approach and is extremely popular with clients," say sources.
Chambers & Partners 2012

Charles Hale is an 'exceptional performer' who is 'outstanding at both children and money work'. Charles Hale is 'a formidable advocate, particularly in cross-examination '.
The Legal 500 2011

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International
- Court of Protection

Dispute resolution

- Early Neutral Evaluator

Direct Access

- Direct Access

Awards

Family Law Awards 2012
JUNIOR BARRISTER OF THE YEAR

Cases

B v B [2015]
[2015] EWHC 210 (Fam)

SB v MB (Costs) [2014]
[2014] EWHC 3721 (Fam)

AA V BB 2014
2014 EWHC 4210

MB v GK [2014]
[2014] EWHC 963 (Fam)

T (Children) [2012]
[2012] UKSC 36

A v B and C [2012]
[2012] EWCA Civ 285

Re R (A Child) sub nom DE L v H (2009)
[2010] 1 FLR 1229 : [2010] Fam Law 328 : [2009] EWHC 3074 (Fam)

De L v H [2009]
[2009] EWHC 3074 (Fam); [2010] 1 FLR 1229

D v S sub nom Re E (A Minor) (DOB 19 May 2000) : S v D (2008)
[2008] EWHC 363 (Fam); (2008) 2 FLR 293

Hammerton v Hammerton (2007)
[2007] EWCA Civ 248

Re G (Interim Care Order: Residential Assessment)
[2006] 1 FLR 601

B County Council v L & Ors (2002)
[2002] EWHC 2327 (Fam)

Michael Andrew Gayle v Julie Nwamara Gayle (2001)
[2001] EWCA Civ 1910

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Rex Howling QC

Rex wishes to maintain a broad practice in silk and is particularly well suited to multi-issue cases.

Experience

Year of Call: 1991
Year of Silk: 2011

Education

Charterhouse School (1974-1979)
University of Sussex (Biochemistry) (1979-1982)
Britannia Royal Naval College, Dartmouth (1982)
Polytechic of Central London: Diploma in Law (1989)
Bar Finals (1991)

Languages

Basic French

Appointments

FLBA committee member

Profile

Rex enjoys a broad family practice. He has most recently gained a strong following and reputation as a care practitioner but this has not detracted from his core skills as both an ancillary relief and private law children specialist. He particularly enjoys cases with either an international element, such as relocation cases, or legally or factually complicated ones which require an eye for detail and careful analysis.

Rex also practices in civil work, particularly those areas which can loosely be considered to have a family or financial element to them, such as trusts, wills and probate.

Rex prides himself on being hardworking and thorough with a keen awareness for the need for careful strategic and tactical planning. His catch phrase is “careful planning prevents a poor performance”. He is well liked by solicitors and respected for his strong people skills. He believes that a robust sense of humour and re-assuring manner are vital tools in any family case.

In the recent case of Young v Young, Rex recieved praise from J Moor: “92. I also wish to pay tribute to Mr Howling QC and Miss Johal who have appeared on behalf of the Wife, ably supported by their instructing solicitors. This case has been as complex as any this Division has ever encountered. They took on the case at the last minute yet have managed to become completely conversant with the huge volume of paperwork. The case was presented to me with great ability. Nothing more could have been said or done on their client’s behalf.`’

Professional Memberships

Family Law Bar Association
Bar Yacht Club
Middle Temple
Association of Lawyers for Children
Resolution

Directories

Recommended as a Children Law Leading New Silk in The Legal 500 2011

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International
- Court of Protection

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator

Direct Access

- Direct Access

Cases

A (A Child) [2015]
[2015] EWCA Civ 162-1

X-N (A Child) [2014]
[2014] EWCA Civ 1775

Mann v Mann [2014]
[2014] EWCA Civ 1674

Re X-N (A Child) (2014)
AC9401624

Harrow London Borough Council v (1) Zainab Rasul (2) Mohammed Afzal (3) Farah Afzal (Through Her Childrens Guardian) (4) Nazma Rasul (5) Ali Rasul (2014)
[2014] EWHC 3837 (Fam)

In the matter of P (A Child) (2013)
[2013] EWHC 4048 (Fam)

Michelle Danique Young v Scot Gordon Young (2013)
[2013] EWHC 3637 (Fam)

LA v (1) MF (2) CY (3) RN (4) N (2013)
[2013] EWHC 1433 (Fam)

Re C (Children) (2012)
AC9700974

B v B [2012]
[2012] EWHC 1924 (fam)

Re R (Children) (2011)
[2011] EWCA Civ 1795

Sylvia Henry v News Group Newspapers Ltd (2011)
[2011] EWHC 296 (QB)

W (A Child) (2010)
[2010] EWCA Civ 1535

LBH (LOCAL AUTHORITY) v (1) KJ (MOTHER) (2) IH (A CHILD BY HIS GUARDIAN CJ) (2007)
AC0116013

Re K (A Child)
[2007] EWHC 544 (Fam) ; (2007) 1 WLR 2531 : (2007) 2 FLR 326 : Times, April 20, 2007; AC9901177

Re W (A Child) (2005)
[2005] EWCA Civ 649

A v. A (Shared Residence)
[2004] 1 FLR 1195

Re A (Contact:Seperate Representation)
[2001] 1 FLR 715

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Michael Gration

"He is a towering presence, both literally and figuratively, who is very strong on jurisidictional points and has a very good client manner."
Chambers & Partners 2015

Experience

Year of Call: 2007

Education

Bar Vocational Course, Inns of Court School of Law 2006-2007
LLB (Hons) Brunel University, 2005

Profile

Michael specialises in cases involving the international movement of children, appearing regularly in the High Court and the Court of Appeal in cases involving (but not limited to) Hague and non-Hague abduction, jurisdictional disputes, the recognition and enforcement of orders (pursuant to Brussels II revised and the 1996 Hague Convention), relocation (both internal and external) and forced marriage.

Over the past three years Michael has appeared in the UK Supreme Court on four occasions, in cases involving a diverse range of issues from the human rights implications of government immigration policy (*R (on the application of Quila and another) and R (on the application of Bibi and another v Secretary of State for the Home Department* [2011] UKSC 45) to jurisdictional issues concerning children and the application of the 1980 Hague Convention (*In the matter of A (Children) (AP)* [2013] UKSC 60, *In the Matter of KL (A Child)* [2013] UKSC 75 and *In the matter of LC (Children)* [2014] UKSC 1).

Michael has also been part of a team instructed by the reunite International Child Abduction Centre that haslodged submissions with the European Court of Human Rights (CASE OF X v. LATVIA *(Application no. 27853/09)*) and the United States Supreme Court (*Lozano v Alvarez* – appeal judgment at 697 F.3d 41 (2d Cir. 2012)). In a European context, he is currently representing the applicant in a case that is pending before the European Court of Human Rights and represents the father in only the second family case to be referred by England and Wales to the Court of Justice for the European Union (on appeal from the judgment in *Re S (Jurisdiction: Prorogation)* [2013] EWHC 647 (Fam), [2013] 2 FLR 1584).

A full list of reported cases can be accessed via the link at the top of the page.

In addition to his Court practice Michael regularly lectures on the international movement of children, including to the ALC Annual Conference and the Centre for Family Law and Practice. He has also lectured police forces, legal practitioners and the judiciary on forced marriage and the issues surrounding such applications.

Michael has written a number of articles on aspects of child abduction and forced marriage, and together with Anne-Marie Hutchinson OBE and Teertha Gupta QC he co-authors the chapter on forced marriage in ‘Child Case Management Practice’.

Professional Memberships

FLBA
ALC

Directories

A rising presence among juniors at the Family Bar who handles complex international children law cases, including those concerning abductions, relocations and forced marriages in Hague and non-Hague jurisdictions.

Expertise: "He is a towering presence, both literally and figuratively, who is very strong on jurisidictional points and has a very good client manner."

Chambers & Partners 2015

Continues to go from strength to strength in the children law arena and is being increasingly sought after to handle cases concerning international abduction, international and domestic relocation, and forced marriage.

Expertise: "He has a quality of practice that is well beyond his call. He is loved by judges, is a delightful opponent and is forensically really mature."

Recent work: Acted for the biological mother in connection with a case concerning two children conceived by insemination by an anonymous donor during the parties' lesbian relationship. During the course of the proceedings that followed, the shared residence order previously granted to the non-biological mother had been discharged. The mother appealed, and the order was overturned.

Chambers & Partners 2014

Michael Gration has an increasing profile in the children law arena, handling international cases including Hague and non-Hague abduction and complex forced marriage cases. Sources suggest that he is "a star in the making."
Recommended as a Leading Family Junior in Chambers & Partners **2013**

Practice areas

- Private Law
- International
- Court of Protection

Awards

Family Law Awards 2012
YOUNG BARRISTER OF THE YEAR

Cases

Sanchez v Oboz and Oboz [2015]
[2015] EWHC 235 (Fam)

Re S (A Child) (Abduction: Hearing The Child) sub nom AM v AS (2014)
[2014] EWCA Civ 1557

SB v MB (Costs) [2014]
[2014] EWHC 3721 (Fam)

Re M-D (A Child) (2014)
[2014] EWCA Civ 1363

In the Matter of K (A Child) (Northern Ireland) [2014]
[2014] UKSC 29

Re K (A Child) (2014)
[2014] UKSC 29

TF v PJ [2014]
[2014] EWHC 1780 (Fam)

MD v CT (2014)
[2014] EWHC 871 (Fam)

Re F (A Child) (2014)
[2014] EWCA Civ 275

Re KL (A Child) [2013]
[2013] UKSC 75

In the matter of A (Children) (2013)
[2013] UKSC 60

DL (Appellant) v EL (Respondent) & (1) Reunite International Child Abduction Centre (2) Centre for family law and practice (Interveners) (2013)
[2013] EWCA Civ 865

LCG v RL [2013]
[2014] 1 FLR 307; [2013] EWHC 1383 (Fam)

DL v EL (Hague Abduction Convention - Effect of Reversal of Return Order on Appeal) [2012]
[2013] EWHC 49 (Fam)

Re G (Children) (2012)
[2012] EWCA Civ 1434

Re C (A Child) (2012)
[2012] EWCA Civ 1144

AJ (Appellant) v JJ (First Respondent) & (1) KK (2) JAJ (3) JUJ (By Their Solicitor NH) (Interveners) (2011)
[2011] EWCA Civ 1448

J v J (Relinquishment of Jurisdiction) (2011)
[2012] 1 FLR 1259 : [2012] Fam Law 399; [2011] EWHC 3255 (Fam)

(1) Diego Andres Aguilar Quila & Amber Aguilar (2) Shakira Bibi & Suhyal Mohammed (Appellants) v Secretary of State for the home department (Respondent) & (1) Advice on individual rights in Europe (Aire Centre) (2) Southall Black Sisters & Henna Foundation (Interveners) (2011)
[2011] UKSC 45; [2012] 1 AC 621 : [2011] 3 WLR 836 : [2012] 1 All ER 1011 : [2012] 1 FLR 788 : [2011] 3 FCR 575 : [2012] HRLR 2 : [2011] UKHRR 1347 : 33 BHRC 381 : [2012] Imm AR 135 : [2011] INLR 698 : [2012] Fam Law 21 : (2011) 108(41) LSG 15 : (2011) 155(39) SJLB 31 : Times, October 20, 2011

Aguilar Quila and Amber Aguilar (2) Bibi and Mohammed (Appellants) V Secretary of State for The Home Department (Respondent) & (1) Advice on individual rights in Europe (Aire Centre) (2) Southall Black Sisters and Henna Foundation (Interveners) (2010
[2010] EWCA Civ 1482

Chief Constable and AA v YK & 5 ORS
[2010] EWHC 2438 (Fam)

B v I (Forced Marriage)
[2010] 1 FLR 1721 : [2010] Fam Law 348

C v H (Abduction: Consent) (2009)
[2009] EWHC 2660 (Fam) (2010) 1 FLR 225

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Henry Clayton

Experience
Year of Call: 2007

Education
University of Oxford (Modern History)
BPP law school (BVC)

Profile

Henry's practice focuses on the financial consequences of divorce and the breakdown of cohabiting relationships, financial disputes relating to children or incapacitated adults, and disputes concerning living or other specific arrangements for children. He is a tenacious advocate with a keen eye for detail and a thorough understanding of business and finance.

Henry is known for his technical understanding of corporate financial structures, and is in demand from clients seeking a barrister with a good understanding of the commercial world. Before being called to the bar, Henry worked for a commercial law firm. He regularly represents clients in cases with international dimensions and has a comprehensive understanding of multi-jurisdictional disputes.

In addition to matrimonial and civil partnership financial cases, Henry advises and represents unmarried couples and parents in relation to financial disputes. He also has considerable experience in more unusual financial matters such as child maintenance appeals, insolvency, varying foreign court orders and costs cases.

Henry also represents parents in cases concerning domestic and international arrangements for their children including relocation cases, and has a reputation for dealing sensitively but robustly with difficult contact cases and those where there are allegations of harm. Henry has a burgeoning practice in financial matters involving litigation in the Court of Protection.

Away from work Henry is a keen tennis player and footballer.

Professional Memberships
FLBA
Middle Temple

Practice areas
- Financial Remedies
- Private Law
- International
- Court of Protection

Direct Access
- Direct Access

Cases

AA V BB 2014
2014 EWHC 4210

Re E (A Child) [2011]
[2011] EWHC 3521 (Fam)

Mekarska v Ruiz and Boyden [2011]
[2011] EWHC 913 (Fam)

Section 7

Members of 4 Paper Buildings

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Barristers

4 Paper Buildings is ‘one of the best family law sets’, and one of the few chambers in London that has real strength in depth in children law as well as family finance work. It is also adept at handling cases with an International dimension, and Court of Protection work, meaning ‘there is a good barrister available for all types of family disputes’.
The Legal 500 2014

Barristers

Alex Verdan QC
Call: 1987 | Silk: 2006
Head of Chambers

Jonathan Cohen QC
Call: 1974 | Silk: 1997

Baroness Scotland QC
Call: 1977 | Silk: 1991

Henry Setright QC
Call: 1979 | Silk: 2001

Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006

Kate Branigan QC
Call: 1985 | Silk: 2006

Jo Delahunty QC
Call: 1986 | Silk: 2006

Michael Sternberg QC
Call: 1975 | Silk: 2008

Catherine Wood QC
Call: 1985 | Silk: 2011

Rex Howling QC
Call: 1991 | Silk: 2011

Teertha Gupta QC
Call: 1990 | Silk: 2012

David Williams QC
Call: 1990 | Silk: 2013

Charles Hale QC
Call: 1992 | Silk: 2014

Christopher Hames QC
Call: 1987 | Silk: 2015

Alison Grief QC
Call: 1990 | Silk: 2015

John Tughan QC
Call: 1991 | Silk: 2015

Brian Jubb
Call: 1971

Amanda Barrington-Smyth
Call: 1972

Robin Barda
Call: 1975

Dermot Main Thompson
Call: 1977

Jane Rayson
Call: 1982

Mark Johnstone
Call: 1984

Elizabeth Coleman
Call: 1985

Alistair G Perkins
Call: 1986

Stephen Lyon
Call: 1987

James Shaw
Call: 1988

Mark Jarman
Call: 1989

Sally Bradley
Call: 1989

Barbara Mills
Call: 1990

Joy Brereton
Call: 1990

Joanne Brown
Call: 1990

Sam King
Call: 1990

David Bedingfield
Call: 1991

Cyrus Larizadeh
Call: 1992

Michael Simon
Call: 1992

Justin Ageros
Call: 1993

Rob Littlewood
Call: 1993

Paul Hepher
Call: 1994

Cliona Papazian
Call: 1994

Judith Murray
Call: 1994

Ruth Kirby
Call: 1994

Sarah Lewis
Call: 1995

Nicholas Fairbank
Call: 1996

James Copley
Call: 1997

Justine Johnston
Call: 1997

Oliver Jones
Call: 1998

Lucy Cheetham
Call: 1999

Hassan Khan
Call: 1999

Cleo Perry
Call: 2000

Harry Gates
Call: 2001

Rebecca Foulkes
Call: 2001

Katie Wood
Call: 2001

Rhiannon Lloyd
Call: 2002

Kate Van Rol
Call: 2002

Ceri White
Call: 2002

Matthew Persson
Call: 2003

Dorothea Gartland
Call: 2004

Francesca Dowse
Call: 2004

Greg Davies
Call: 2005

Samantha Woodham
Call: 2006

Laura Morley
Call: 2006

Nicola Wallace
Call: 2006

Michael Gration
Call: 2007

Jacqueline Renton
Call: 2007

Andrew Powell
Call: 2008

Henry Clayton
Call: 2007

Sophie Connors
Call: 2009

Michael Edwards
Call: 2010

Harry Nosworthy
Call: 2010

Rachel Chisholm
Call: 2010

Jonathan Evans
Call: 2010

Julia Townend
Call: 2011

Zoe Taylor
Call: 2011

Door Tenants

Paul Hopkins QC
Call: 1989 | Silk: 2009
Door Tenant

Professor Marilyn Freeman PhD
Call: 1986
Door Tenant

Susan Baldock
Call: 1988
Door Tenant

Elizabeth Couch
Call: 2003
Door Tenant

Belle Turner
Call: 2003
Door Tenant

Pupils

Eleanor Howard
Call: 2012

Alastair Miles Martey
Call: 2012

Indu Kumar
Call: 2012

Shabana Saleem
Call: 2014