

# **4 PAPER BUILDINGS**

## **Financial Remedies Seminar**

**3 CPD – BTM/CHLS**

1<sup>st</sup> May 2014

### **CHAIR**

**Charles Hale QC**

### **TOPICS & SPEAKERS:**

**Cost orders and Funding in Financial Remedies Cases  
Stephen Lyon**

**Considerations from Young v Young  
Rex Howling QC**

**An FDR – practical guidance- Deal or No Deal  
Julia Townend, Harry Nosworthy & Michael Sternberg QC MCI Arb**

**MPS and LSO applications – practical guidance – Money, Money, Money  
Harry Gates, Nicholas Fairbank & Michael Sternberg QC MCI Arb**



## 4 Paper Buildings

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## **Section 1**

### **4 Paper Buildings: About Us**

## About Us

4PB has a distinguished history as a leading set of specialist family law barristers providing practical, expert legal advice, and including effective and assured advocacy, in all practice areas of family law. Our size, practice range, reputation and expertise are unrivalled and mark us out as unique amongst our competitors.

### What the market says:

Chambers has won a large number of prestigious awards, including leading legal publisher, Jordan's 'Family Law Chambers of the Year Award' in 2013 & 2011. Our work has been recognised by leading legal directories like the Legal 500 and Chambers & Partners as representing excellence, with 29 members recommended in all areas of family law.

Chambers & Partners 2014 "This set houses a wealth of talent and has firmly established itself as a leading set for family law." Solicitors say of the barristers that they are "very innovative in their approach and very holistic in their advice"

### What we do:

We specialise in family law, and any relevant area of law that relates to family matters. Our barristers deal with all aspects of the law connected with relationship breakdown, including separation, divorce, civil partnerships, and their financial consequences, such as matrimonial finance, ancillary relief, family financial settlements, such as money and property.

We are also known for our work in child law, such as Children Act proceedings, and in children-related conflicts and disputes, such as child care, residence and contact issues, the international movement of children, and visitation rights to/for children living abroad.

Many of the most serious, sensitive and significant family cases are undertaken by members of 4PB, from all sections of society, and instructions are received from clients ranging from government departments and local authorities, to individuals, ranging from celebrities, to parents trying to prevent children from being taken into care.

### Causes we support

A kidspace provides a child centred support service for children who are experiencing family breakdown. They run workshops specifically designed for children aged 7 - 16 and use creative and innovative activities in their workshops to encourage children to express their feelings.



### The London Legal Support Trust

Each year a team of walkers from chambers enters the London Legal Walk to raise money for the London Legal Support Trust, the Free Representation Unit and the Bar Pro Bono Unit.

These agencies do a fantastic job in preventing homelessness, resolving debt problems, gaining care for the elderly and disabled and fighting exploitation.

This year the 4PB team raised just over £2000.

## Inside Chambers

We are well located in attractive premises in an historic building in the Inner Temple. The Royal Courts of Justice, the Principal Registry of the Family Division and other London courts are easily accessible.

Communication is central to our ethos. Clerks can connect solicitors and counsel anywhere in the world by telephone. Conference facilities can be made available at short notice to clients needing urgent face to face advice. Telephone and Skype conferences are also available.

Chambers has a well-integrated and extensive network of legal information resources, both electronic and in traditional law library form, with online access to both all major legal databases and to the outstanding facilities offered by the Inns of Court.

## The Clerking and Administrative Team

Michael Reeves leads a dynamic, dedicated, and well-organised clerking team. As the interface between client and barrister, our clerks always seek to provide a quick response to any query.

Chambers 2014 particularly praises the clerking team "They have the best clerks in the business - their clerking is head and shoulders above the rest"

Clare Bello, our excellent practice manager, is responsible for the administration, financial management, premises and facilities, IT and aspects of marketing.

## BarMark as a sign of excellence

We were one of the first sets in the country to receive the Bar Council's quality assurance mark, BarMark, as a seal of excellence, which we continue to demonstrate in both administration and advocacy in our work as specialist family lawyers.

## Memberships

Our barristers play a leading role in the development of our profession, and family law generally, through their membership of various specialist associations, including both the Family Law Bar Association and the Association of Lawyers for Children.

Members are also active in the Employment Law Bar Association and the Employment Lawyers' Association.

They are also active in the Commonwealth Legal Association, International Bar Association, and the International Academy of Matrimonial Lawyers.

Several members are also actively involved in the Bar Council either as elected members or as co-opted specialist advisers.

## Publications and Continuing Professional Development

Our barristers write regularly for the legal, specialist, local authority and mainstream <http://www.4pb.com/media>, and provide insightful, practical, and relevant lectures of topical interest to solicitors, both in private practice or in-house, regional Resolution committees and family law groups.

Chambers has also established its own annual lecture series providing essential legal and procedural updates, as well as networking opportunities to meet our barristers on a more informal basis.

## Equality and Diversity

Chambers is committed to equality of opportunity and to compliance with the Bar Standards Board's Equality and Diversity Code. Everyone who comes into contact with Chambers are treated on merit and are not discriminated against on the grounds of their ethnic or national origin, nationality, citizenship, age, sex, sexual orientation, marital status, disability, religion or political persuasion. To view a copy of our Equality and Diversity Policy please [click here](#).

## Complaints and Discipline

Barristers and staff at 4PB always strive to maintain the highest standards of service. However, there may be occasions when a client is disappointed with our service. We take any cause for dissatisfaction seriously and it is our policy to investigate fully any complaint in accordance with BSB requirements. We aim to learn from any mistakes so as to improve our service in the future. To download our Complaints Policy, please [click here](#).

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## **Section 2**

### **Cost Orders & Funding in Financial Remedies Cases**

**Stephen Lyon**

## COSTS ORDERS AND FUNDING IN FINANCIAL REMEDIES CASES

### *S22ZA and S22ZB MATRIMONIAL CAUSES ACT 1973*

#### Introduction

1. Two important sections were inserted into the Matrimonial Causes Act 1973 from 1<sup>st</sup> April 2013 under *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 7) Order 2013 ('LASPO')*.
  
2. The new provisions seek to:
  - Institute a new statutory regime which enables a financially stronger party to a marriage to pay the weaker applicant an amount for the purpose of enabling the applicant to obtain legal services for the purpose of the proceedings
  - Amend section 24(A)(1) MCA 1973. The court can now *back* an order for the provision of legal services with an order for the sale of real and personal property.
  - End the need for the provision of 'Currey' orders (*Currey v Currey (No 2)* [2006] EWCA Civ 1338) which provided for costs allowances (whilst mirroring much of the guidance).
  
3. S22ZB outlines the matters which the court must take into account when deciding the application, including:
  - a. the relative means of the parties;
  - b. the subject matter of the proceedings;
  - c. the applicant's conduct; and
  - d. the effect which the order is likely to have on the paying party. **The court may not make such an order unless it is satisfied that the applicant would not**

**otherwise reasonably be able to obtain appropriate legal advice for the purpose of the proceedings.**

4. The new provisions seek to address difficulties which various cases have sought to address, best articulated by Wilson J (as he was then) in *Sears Tooth (a Firm) v Payne Hicks Beach (a Firm)* [1997] 2 FLR 116 [3]:

*‘...how can a spouse, usually a wife, who is ineligible for legal aid but who has negligible capital, secure legal advice and representation in order to pursue her rights against her husband, particularly one who is litigious or obstructive or whose financial circumstances are complex and unclear?’*

#### **The Old Cases – A reminder of how we got here**

5. The new provisions do seek to codify ‘costs allowance’ case law, which has developed in the context of applications for MPS,
6. *A v A (Maintenance Pending Suit: Provision for Legal Fees)* [2001] 1 FLR 377 was perhaps the starting point. Holman J ordered maintenance payments to include £4,000 per month towards legal costs, which were to be backdated to the discharge of the wife’s public funding certificate. Holman J determined that:
- The costs of matrimonial proceedings were not in a distinct category to the wife’s other expenses, and in fact they represented her most pressing need.
  - The definition of ‘maintenance’ in s22 MCA 1973 was wide enough to include legal expenses for financial proceedings, referred to as a ‘costs allowance’
  - The costs allowance was not a ‘costs order’
  - The test was one of ‘reasonableness’
  - Article 6 rights must be considered, which required an ‘equality of arms’. With regard to the decision in *Airey v Ireland* [1979] 2 EHRR 305, appearing in person does not guarantee the right to a fair trial.

7. The principles in *A v A* were reinforced by *G v G (Maintenance Pending Suit: Costs)* [2003] Fam Law 93 and *Mimwalla v Mimwalla* [2004] EWHC 2823, [2005] 1 FLR 771.
8. In *TL v ML and Others (Ancillary Relief: Claim Against Assets of Extended Family)* [2005] EWHC 2860 Nicholas Mostyn QC (as he then was) summarised the principles which had emerged since *A v A*. In order to satisfy the court in making an order, the applicant did not need to show that his/her situation was 'exceptional', simply that he/she [128]:
  - Had no assets
  - Could not raise a litigation loan
  - Could not persuade his/her solicitors to enter into a Sears Tooth agreement
  - The second and third requirements necessitated the applicant to prove a negative in each instance
  - A simple letter from at least 2 banks would suffice as evidence that the applicant was unable to raise a litigation loan
  - In terms of the Sears Tooth agreement, a simple statement from the applicant's solicitors stating that they were not prepared to enter into such an agreement should ordinarily suffice
  - The application, if made before the FDR, should fund the applicant up to that stage
  - A fairly detailed estimate of costs which are expected to be incurred, should be produced
9. In *Moses-Taiga v Moses Taiga* [2005] EWCA Civ 1013, [2006] 1 FLR 1074 it was held that it would only be in an *exceptional* cases in which an order for maintenance pending suit would include a costs allowance.
10. However, all the authorities on costs allowances were reviewed by Wilson LJ (as he was) in *Currey v Currey (No 2)* [2006] EWCA Civ 1338, [2007] 1 FLR 946:
  - The principles which are applicable in determining whether costs allowances for legal services should be ordered are no different whether the application is made under s22 or s31 MCA 1973.

- The overarching test is whether the applicant can demonstrate that he/she cannot reasonably procure legal advice and representation by any other means, such as by way of loan whether directly or indirectly, a charge over ultimate capital recovery, or by public funding [20];
- Other factors may come into play which will on occasion lead the court to decline the application, despite the applicant's demonstration inclining towards its making;
- The subject matter of the proceedings will always be relevant in deciding the application;
- As far as it is possible for it to be assessed, (at such an early stage of the proceedings), the reasonableness of the applicant's stance will also be relevant.

#### **COSTS ALLOWANCES UNDER SCHEDULE 1 CHILDREN ACT 1989**

11. Analogous case law has developed under Schedule 1 of the Children Act, which allows for applicants to seek interim lump sums and/or periodical payments in relation to applications under s 8 and Schedule 1 Children Act 1989. The court's jurisdiction to make such orders is set in the case of *CF v CM (Financial Provision for Child: Costs of Legal Proceedings)* [2010] EWHC 1754 (Fam) (see below).
12. The test outlined in *Currey* applies/remains when considering the merits of the application under Schedule 1 for costs funding.
13. In, *G v G (Child Maintenance: Interim Costs Provision)* [2010] 2 FLR 1264 an unmarried mother of 3 children made an application under Schedule 1 against the children's father. Within those proceedings, the mother sought an interim periodical payments order to cover her legal fees.
14. Moylan J awarded the mother an interim maintenance award of £40,000 per annum to cover her legal fees. The father sought to rely on the decision of Bennett J in *W v J (Child: Variation of Financial Provision)* [2004] 2 FLR 300, in which the judge had held that the court had no jurisdiction under Schedule 1 to include a provision for legal

fees. Bennett J considered that the mother was, in reality, seeking a benefit to herself rather than the child. Moylan J had no difficulty in dismissing that decision on its facts.

15. Moylan J did however, seek to raise the additional hurdle for applications brought on an interim basis. Such applications should only be made where, he said ***‘the court’s intervention is manifestly required’***. That wording is not found anywhere in Schedule 1, paragraph 9 (*or for that matter in the new statutory provisions*), which simply states that the court may make an interim order ‘at such times and for such term as the Court thinks fit.’ Is the ‘manifestly required’ test a gloss on the statute? Or is it in fact a necessary bar to speculative applications? (See Wilson LJ in *Currey* and the impermissible judicial gloss of *exceptionality?*).

16. In *CF v CM* Charles J was persuaded to make the lump sum order providing for the mother’s costs of both sets of proceedings. He applied *G v G (Child Maintenance: Interim Costs Provision)* and found that he had jurisdiction to make provision for the mother’s Schedule 1 costs. As for her s.8 costs importantly, he said at para.36:

*‘.....the investigatory element of s. 8 proceedings founds the conclusion that a provision directed to funding some or all of the costs of a parent can be for the benefit of the child because it would promote the result that the court is fully informed as to all relevant factors and views. So, for example, in my view, the "equality of arms" point can apply in s. 8 proceedings just as it has been found to warrant a provision for costs in Schedule 1 proceedings.’*(My emphasis).

17. The judge then considered whether he had jurisdiction to make the order on an interim basis. Schedule 1, para. 1(3) states that the powers to make lump sum and periodical payments orders ‘may be exercised at any time’. Charles J found that the wording of para.1(3) is wide enough to allow the courts make a lump sum order on an interim basis.

18. See also Bodey J in *R v F (Schedule One: Child Maintenance: Mother’s Costs of Contact Proceedings)* [2011] 2 FLR 991. The mother had already been awarded £70,000 per annum periodical payments for the child, but made an application for an increase to fund pending contact proceedings brought by the father. The mother argued that without the

increase she would be unable to have legal representation for a 5 day hearing. The father argued that the mother was solely responsible for the contact problems and should have no funding.

19. The mother was awarded £113,000 under Schedule 1 to cover her legal costs in the CA proceedings, already incurred. It was for the benefit of the child that she be represented and, despite judicial criticism, her position in the litigation was sufficiently reasonable to justify an award. Her future costs were ordered to be dealt with incrementally with a lump sum £25,000 of the estimated £95,000 to be paid straight away.
20. It was anticipated that applications under Schedule 1 would not be affected by the new statutory provisions. However, see the case of *Rubin* (below).

## **LEGAL SERVICES PROVISION ORDERS ('LSPOS') UNDER THE NEW PROVISIONS**

### **Section 22ZA**

21. Under s22ZA (3): **The court must not make an order under this section unless it is satisfied that, without that amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.**
22. s22ZA(4) states that, for the purposes of s22ZA(3), the court must be satisfied that:
  - a) The applicant is not reasonably able to secure a loan to pay for the services,
  - b) The applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
23. Under s22ZA(5) the legal services order may be made for either a specific period or a specific purpose in the proceedings.

### **Section 22ZB**

24. S22ZB Sets out the matters to which the court must have regard in deciding how to exercise power under s22ZA. When considering whether to make or vary an order under section 22ZA, the court must have regard to:
- a. The income earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future;
  - b. The financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future;
  - c. The subject matter of the proceedings, including the matters in issue in them;
  - d. Whether the paying party is legally represented in the proceedings (*Query why this should actually matter if he/she can afford to be but chooses not to be??*);
  - e. Any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise (*Important new provision which dovetails with the mandatory mediation provisions and the overriding objective of DR before litigation*);
  - f. The applicant's conduct in the proceedings (*Query, what would this apply to?? DV?*);
  - g. Any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party.
25. In subsection (1)(a) 'earning capacity' includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the party paying to take steps to acquire (*an interesting addition*).
26. For the purpose of subsection (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to:
- i) Cause undue hardship to the paying party; or
  - ii) Prevent the paying party from obtaining legal services for the purpose of the proceedings.

## THE EFFECT OF THE NEW PROVISIONS

27. At first blush, it appears as though the new provisions serve merely to codify the requirements set out in *Currey*, save for the removal of the requirement to prove ineligibility for legal aid.
28. However, a problematic question for practitioners upon these provisions coming into force was whether the principles outlined in previous case law would continue to be applicable. For example, would Mostyn's guidance in *TL v ML* regarding the provision of 2 letters from banks and a statement from solicitors remain applicable?
29. There have been a number of cases since the provisions came into force which help to clarify the court's approach:

## RECENT CASES

*BN v MA* [2013] EWHC 4250 (Fam)

30. In this case the W's application was rejected. Of significance was the fact of the W and H having entered into a pre-marital agreement, which featured as an important factor in the judge's dismissal of the application. The following points are of note:
- Although W's offers from litigation loan suppliers came with hefty interest rates, they were still offers nonetheless. The W therefore did not satisfy the criteria laid out in s22ZA (4)(a);
  - In light of the apparent validity of the pre-marital agreement, the W's application in her Form A for a wide range of financial remedies was unlikely to succeed. A refusal to award a LSPO flowed in part from that consideration (*reasonableness?*);

- The interrelation between the principles outlined in case law prior to April 1<sup>st</sup> 2013 and the new provisions is simply that the new provisions codify the principles which were laid out in the previous authorities;

Makaraskaya v Korzhagin [2013] EWHC 4393 (Fam)

31. W had previously obtained an LSPO to the sum of £40,200 in an application before King J. The costs were in respect of a 3 day preliminary hearing which was subsequently vacated.

32. The W claimed, in a subsequent hearing before Moylan J, for a further sum of £52k in order for her to fund her costs up to FDR. The claim was dismissed for the following reasons:

- The W was claiming the £52k on top of the £40,200 already ordered by King J. As the 3-day hearing had come out, this sum was still available to W. It was found that this amount was more than ample to fund the Wife's costs up to the point of FDR
- It was not appropriate to consider the funding of the proceedings beyond the FDR at this stage.
- The Wife was seeking to backdate the order of King J. As this application was dismissed earlier, it was not open to the court to re-open an issue which King J had already determined.

A v A, Exeter County Court (February 2014)

33. This case was heard by His Honour Judge Tyzack QC. Although being only heard at County Court level, it raises some interesting points in relation to applications for LSPOs.
34. This was a marriage of 7 years' duration. H was 41 and W 55. W had previously run a beauty business, but upon it becoming bankrupt, the parties decided that W should concentrate her efforts on renovating and improving the family home. There were no children of the marriage, although W had a grown up son and daughter from a previous relationship.
35. H earned £150k pa through his role in a financial services business, his interest in which was worth over £1.1m. He also owned the matrimonial home and a holiday home in France, which had been purchased in the course of the marriage. At the point of separation, W had neither assets nor income. She also had the credit disadvantage brought about by her earlier bankruptcy.
36. W initially obtained a non-molestation order under the Family Law Act. She was legally aided for this application. On the return date the order was repeated and recitals were made which protected W's interim financial position.
37. Unfortunately W was not able to have her legal aid certificate extended in order to cover the costs of the substantial financial proceedings. Her solicitors had not had previous experience of making an application under s22ZA. She was also unable to enter into a Sears Tooth agreement with them, as it was contrary to their firm's policy. She therefore was advised that there was little option but for her to apply for a LSPO.
38. Bearing in mind the guidance of Mostyn J in TL v ML, the solicitors advised W to apply to banks for a loans, and in the event of her not having success, produce correspondence from at least 2 banks confirming this position.
39. W had difficulty in obtaining correspondence in writing from the three high street banks she applied to; the letters she eventually procured from the banks merely stated that W's

application had not met their criteria. W made an application to a litigation loan company which also failed, as she had no available security.

40. The W applied to a firm of solicitors who advertised their willingness to provide litigation loans. However, one of the conditions of the provision of the loan was that W would have to instruct a solicitor from that firm, should she wish to apply to them. Considering W was happy with her current solicitors, the other firms' only offices were in London and Manchester, and W was based in Devon, she did not wish to change her representation.

41. W issued her application under s22ZA for an LSPO, setting out as evidence the five applications for funding which she had made. The application was heard, and refused at the FDA hearing by a Deputy District Judge, for the following reasons:

- i) The level of costs W had already incurred were too high (£12,600, of which W had paid £8,250 from family help and savings)
- ii) W had not produced sufficient evidence of her discussions with the litigation loan fund nor her conversation with the solicitors' firm.
- iii) The W could not rely on not wanting to change representation as a reason for not accepting litigation funding from the other solicitors' firm. It was too far stretched to state that her Article 6 rights were impeded by not being able to choose her representation.
- iv) The judge was therefore not satisfied that W was not reasonably able to obtain legal services. It was considered that W might have to obtain a Sears Tooth Agreement with another solicitors' firm.
- v) W was ordered to pay H's costs of the application, to be assessed by the judge at FDR.

42. W appealed, and her appeal was granted and dealt with by HHJ Tyzack QC. He was satisfied that the judge at first instance had not given satisfactory consideration to W's case:

- i) It was wrong to have stated that W had been offered a litigation loan from the other firm of solicitors. It had been stated to her that she would have to instruct a solicitor from the firm, and after which W's application for a litigation loan would be considered.
- ii) The judge was reminded of Mr Justice Neuberger's statement in *Maltez v Lewis* [1999] All ER (D) 425: '*it has always been the fundamental right of every citizen to be represented by solicitors of his or her choice.*' That case was dealt with in reference to the CPR, but there was similar provision in the overriding objective in the FPR.
- iii) Neuberger J also stated that there were several instances in which this fundamental right would be qualified. HHJ Tyzack QC did not consider that this case fell within one of these situations. Therefore W had a right to representation of her choice, and the DDJ had dealt with the Article 6 point wrongly.
- iv) On the question of W's evidence, HHJ Tyzack QC accepted that it was difficult to obtain written information from banks and lending companies. However, the better practice might be for the applicant to file a full statement and H could have then made his arguments in response at the first hearing.
- v) H had argued that W could have found a firm of solicitors who were willing to act on a Sears Tooth agreement. The judge stated that this may well be the case, but that this point was irrelevant: there is the initial right to choice of representation, and secondly, if an applicant was obliged to continue searching until they found a firm who would enter a Sears Tooth agreement then no applications under s22ZA would ever be successful.

- vi) The judge at first instance cited what she considered to be W's high costs as part of her reasoning. The current approach would have been to have allowed the application, and then to award an amount for costs deemed to be more reasonable.
- vii) When dealing with applications for LSPOs it is necessary to deal with s22ZB and not only the provisions of s22ZA.

Rubin v Rubin [2014] EWHC 611 (Fam)

- 43. Christopher Hames of 4 Paper Buildings acted for the Husband in this matter in which Mostyn J laid out the applicable principles in applications under s22ZA. The case involved a W's application for an LSPO for financial remedy proceedings, as well as her application under s15 and Schedule 1 Children Act 1989 for the costs incurred in Hague proceedings concerning the parties' two children.
- 44. The parties were married for 3 years, and there were 2 children born of the relationship. W was English and H American. The family were living in California and had all travelled over to England in the Autumn of 2012 to visit W's family and friends. On the day of their intended return to the USA in October 2012, W refused to allow the children to return.
- 45. H remained for the most time in England with the family, seeking reconciliation with W. W issued divorce proceedings in London in May 2013. She filed both Form A seeking financial remedies, and also sought a Residence Order under s8 Children Act 1989. H in turn filed for divorce in California in June 2013. The parties exchanged voluntary Forms E and attempted mediation which was not successful. W incurred costs of £7,268.
- 46. H issued Hague Proceedings in July 2013. The matter was heard by Hogg J who found that the children had been wrongfully retained and ordered their summary return to California. W incurred costs of £21,700 in respect of the Hague Proceedings. W made an

application under s15 and Schedule 1 Children Act 1989 for her costs in the Hague Proceedings. She had also made an application for an LSPO payment in respect of the financial remedies proceedings. H volunteered during the course of the final hearing in the Hague proceedings to pay for W's counsel's fee of £6,000. The family returned to on 17<sup>th</sup> February 2014.

47. W, on return to California, filed a response to H's divorce petition and an application for her to relocate back to England. H applied for the English proceedings to be stayed. The proceedings, save for W's application for an LSO, were stayed by DDJ Elliot on the 28<sup>th</sup> February 2014. W sought the balance of £15,700 in respect of the balance of her costs for the Hague Proceedings, and £7,268 in respect of her application for an LSPO.

48. Mostyn J dealt with the application for the LSPO first, followed by W's application for costs under s15 and Schedule 1 Children Act 1989. The following principles emerged from the judgment [Para 13]:

- i) "When considering the overall merits of the application for a LSPO the court is required to have regard to all the matters mentioned in s22ZB(1);
- ii) Without derogating from that requirement, the ability of the respondent to pay should be judged by reference to the principles summarised in *TL v ML* [2005] EWHC 2860 (Fam) [2006] 1 FCR 465 [2006] 1 FLR 1263 at para 124 (iv) and (v);
- iii) Where the claim for substantive relief appears doubtful, whether by virtue of a challenge to the jurisdiction, or otherwise having regard to its subject matter, the court should judge the application with caution. The more doubtful it is, the more cautious it should be;
- iv) In determining whether the applicant can reasonably obtain funding from another source the court would be unlikely to expect him/her to sell or charge his/her home or to deplete a modest fund of savings. This aspect is however highly fact-specific. If the home is of such a value that it appears likely that it will be sold at the conclusion of the proceedings then it may well be reasonable to expect the applicant to charge her interest in it;
- v) Evidence of refusals by two commercial lenders of repute will normally dispose of any issue under s22ZA(4)(a) whether a litigation loan is or is not available;

- vi) In determining under s22ZA(4)(b) whether a Sears Tooth arrangement can be entered into a statement of refusal by the applicant's solicitors should normally answer the question.
- vii) If a litigation loan is offered at a very high rate of interest it would be unlikely to be reasonable to expect the applicant to take it unless the Respondent offered an undertaking to meet that interest, if the court later considered it just so to order (*Query, or apply an add-back argument??*);
- viii) The order should normally contain an undertaking by the applicant that she will repay to the respondent such part of the amount ordered if, and to the extent that, the court is of the opinion, when considering costs at the conclusion of the proceedings, that she ought to do so. If such an undertaking is refused the court will want to think twice before making the order (*where is this in the statute though?*).
- ix) The court should make clear in its ruling or judgment which of the legal services mentioned in s22ZA(10) the payment is for; it is not however necessary to spell this out in the order. A LSPO may be made for the purposes, in particular, of advice and assistance in the form of representation and any form of dispute resolution, including mediation. Thus the power may be exercised before any financial remedy proceedings have been commenced in order to finance any form of alternative dispute resolution, which plainly would include arbitration proceedings (*a very important additional guidance ??*);
- x) Generally speaking, the court should not fund the applicant beyond the FDR, but the court should readily grant a hearing date for further funding to be fixed shortly after the FDR (*crucial if there is not to be an interregnum in representation*);
- xi) When ordering costs funding for a specified period, monthly installments are to be preferred to a single lump sum payment. Monthly payments are more readily susceptible to variation under s22ZA(8) should circumstances change;
- xii) If the application for a LSPO seeks an award including the costs of that very application the court should bear in mind s22ZA(9) whereby a party's bill of costs in assessment proceedings is treated as reduced by the amount of any LSPO made in his or her favour (*no double counting now!*);
- xiii) A LSPO is designated as an interim order and is to be made under the Part 18 procedure (see FPR rule 9.7(1)(da) and (2)). 14 days' notice must be given (see FPR rule 18.8(b)(i) and PD9A para 12.1). The application must be supported by written evidence (see FPR rule 18.8(2) and PD9A para 12.2). That evidence must

not only address the matters in s22ZB(1)-(3) but must include a detailed estimate of the costs both incurred and to be incurred. If the application seeks a hearing sooner than 14 days from the date of issue of the application pursuant to FPR rule 18.8(4) then the written evidence in support must explain why it is fair and just that the time should be abridged.

49. In making an order for payment the court must be satisfied that without it the applicant would not be reasonably able to obtain appropriate legal services for the proceedings. In this principle, Mostyn J found, the exercise looks to the future. It must not therefore supplant the principles in CPR Part 44 regarding awards of costs. An LSPO should only be awarded to cover historic unpaid costs where *'the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings.'*
50. Mostyn J considered that the same principle, albeit modified, should apply in applications for costs made under Schedule 1 Children Act 1989. Therefore, in consideration of the W seeking to recover costs in a situation where on both fronts there was to be no further substantive litigation, she fell foul of this principle.
51. H's permission to appeal was granted and Mostyn J found that DDJ Elliot had no basis on which to exempt the W's application for the LSPO from the stay. If a divorce petition is or stayed then any applications ancillary to it are also dismissed or stayed. An application for an LSO is an interim application which is dependent upon the continuance of the main suit. It being stayed would automatically stay any such ancillary or interim application as well as any interim orders. H's appeal was therefore allowed and W's applications dismissed.
52. Mostyn J quoted in his judgment the observations made by Holman J in *Kinderis v Kineriene* [2013] EWHC 4149 (Fam) on the problems faced by parents in this country obtaining legal aid in cases of alleged international children abduction. Mostyn J highlighted the tension which exists between these difficulties, and the policy considerations which were raised in *Rubin*.

## COMPETING ECHR PROVISIONS IN APPLICATIONS FOR LSPOS

53. The tension highlighted by Mostyn J in *Rubin* also represents a very real difficulty in competing Convention rights in financial remedies cases.
54. The Applicant, of course, has the Article 6 right to a fair trial, a major component of which is the necessity of an ‘equality of arms’. However, despite the decision of HHJ Tyzack QC in *A v A* there is a question over whether a litigant has a free choice of legal representation, if he/she is unable to pay, *R (on the application of Taylor) v Westminster Magistrates Court* [2009] EWHC 1498 (Admin).
55. Although in the context of financial remedies cases there has been a variegated reaction by the courts to this line of argument, the Respondent in turn is able to rely on Article 1 of the First Protocol<sup>1</sup> which provides for the peaceful enjoyment of possessions, save where in the public interest and as provided by law, where the state deems necessary ‘to control the use of property in accordance with the general interest.’

## RESOLUTION AND “ICEBERG” – A NEW LITIGATION LOAN PRODUCT

56. Various commercial litigation funders have been in the market for some time.
57. Of interest to practitioners will be the news that Resolution has joined forces with Iceberg Client Credit to offer members exclusive access to a new loan product, to help their clients fund their proceedings.
58. Client Credit is designed around the needs of the client: there are no application fees, the loans are unsecured, the partnership provides clients with preferential drawdown rates and, if you are a Resolution member, opening an account is quick and simple. The client is provided with an online payment account from which fee notes are paid was they fall

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<sup>1</sup> See *Wilson v First Country Trust Limited* [2003] UKHL 40 (Lord Nicholls’ obiter observations at para 106), *Charman v Charman (No 2)* [2006] EWHC 1879 [Coleridge J at para 126], *NG v KR (Pre-Nuptial contract)* [2008] EWHC 1532 (Fam) [2009] (Baron J at para 135)

- due. Credit agreements include an initial default limit but there is no pre-set credit limit.
59. Loans are usually repaid from the settlement and, by working together, Iceberg and Resolution members are able to identify clients for whom costs can be met from the anticipated award. Insurance is now available and with premiums of 2.5% Resolution members can insure against a shortfall in the settlement value as compared with costs, with no additional burden to their firms.
60. Other loan products are available to help fund proceedings, but Client Credit is aimed chiefly at clients on low to medium incomes, who may not otherwise have access to finance until after the terms of their separation are finalised.
61. Resolution members who wish to find out more can visit:  
[www.clientcredit.co.uk/index.php/resolution](http://www.clientcredit.co.uk/index.php/resolution).

#### **FINALLY – EXCESSIVE COSTS – A WARNING**

*Chai v Peng* [2014] EWHC 750 (Fam)

62. The W's application for MPS was heard by Mr Justice Holman in a case involving a marriage of over 20 years which had produced 5 (now adult) children. H was 74 and the W 68. H was considerably wealthy and living in Malaysia. W was living in England with apparently no access to funds aside earlier monies which H had paid to her.
63. Despite the proceedings being brought a year before this hearing, there had already been litigation in Canada and Malaysia as well as in this jurisdiction. Matters were still at the stage at what the judge termed 'preliminary skirmishes' but there had been costs incurred already of over £1,600,000. 920k plus 567k only in England. £100k on costs. Legal funding – has to consider any other way in which W can obtain funding – no assets over which she can give security, she might be able to obtain a litigation loan but does not have one at the moment.

64. The comments of Holman J highlight judicial concerns over the costs to courts in expensive financial remedy proceedings:

- Despite neither party being a British citizen nor paying taxes in England, they had had 6 full days in court, which at a cost of £2,355 was staggeringly small in relation to their legal fees, the Wife's alone being £55k for the discreet MPS hearing. [6] 'Very serious issues ought to arise as to just how much time of an English court these parties should be able to take up on these preliminary skirmishes.'
- The judge stated that in consideration of the overriding objective in rule 1 FPR 2010 to deal with cases fairly, expeditiously and proportionately and in particular in considering the allocation of resources to other cases, the costs in this case were 'eye-watering' and had already spiralled out of control, and the matter was 'squeezing out the many needy litigants who need precious court time to recover their children from abduction or seek their return from care or other such issues.'
- Ten days had been set aside in October 2014 for the court to consider whether the case should be heard in England or in Malaysia. [7] 'If that (today's hearing costs) is the level of fees for a one day hearing on maintenance pending suit, the thought of the cost of the projected ten-day hearing in October is little short of mind boggling.'
- Holman J stated at [8]: *I mention all these matters in order to try to reinforce in the minds of the parties and their advisers, who are of the highest quality imaginable, the utmost importance of getting this case under control....Phenomenal costs are being spent, a phenomenal amount of court time worldwide has already been taken up, and very long delays are in contemplation when, as I have said, what is really needed is for the parties – together of course with their legal advisers – to sit down together and negotiate.'*

## Some Questions for Consideration

- Will funding be available for the new requirement to attend a Mediation Information and Assessment Meeting (MIAM) before making an application for financial remedies?
- Will costs allowances extend to other forms of DR? If not will that provide an exemption for the FM1?
- Arbitration and funding? Stand alone applications?
- Will the requirement for full notice on full evidence mean that only the obvious *winning* applications will be brought?
- Is the level of evidence required itself costs generating?

## THE AMENDMENTS TO THE MATRIMONIAL CAUSES ACT 1973

The following are the consequential amendments.

### Section 22ZA

#### Orders for payment in respect of legal services

- 1) In proceedings for divorce, nullity of marriage or judicial separation, the court may make an order or orders requiring one party to the marriage to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- 2) The court may also make such an order or orders in proceedings under this Part for financial relief in connection with proceedings for divorce, nullity of marriage or judicial separation
- 3) The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- 4) For the purposes of subsection (3), the court must be satisfied, in particular, that—
  - (a) the applicant is not reasonably able to secure a loan to pay for the services, and
  - (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
- 5) An order under this section may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a

specified period or for the purposes of a specified part of the proceedings.

- 6) An order under this section may—
  - a) provide for the payment of all or part of the amount by installments of specified amounts, and
  - b) require the installments to be secured to the satisfaction of the court.
- 7) An order under this section may direct that payment of all or part of the amount is to be deferred.
- 8) The court may at any time in the proceedings vary an order made under this section if it considers that there has been a material change of circumstances since the order was made.
- 9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings.
- 10) In this section “legal services”, in relation to proceedings, means the following types of services—
  - a) providing advice as to how the law applies in the particular circumstances,
  - b) providing advice and assistance in relation to the proceedings
  - c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
  - d) providing advice and assistance in relation to the enforcement of decisions in the

proceedings or as part of the settlement or resolution of the dispute, and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.

(11) In subsections (5) and (6) “specified” means specified in the order concerned.

## **Section 22ZB**

### **Matters to which court is to have regard in deciding how to exercise power under section 22ZA**

- 1) When considering whether to make or vary an order under section 22ZA, the court must have regard to—
  - a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,
  - b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
  - c) the subject matter of the proceedings, including the matters in issue in them,
  - d) whether the paying party is legally represented in the proceedings
  - e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
  - f) the applicant’s conduct in relation to the proceedings

- g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and
  - h) the effect of the order or variation on the paying party.
- 2) In subsection (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.
- 3) For the purposes of subsection (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—
  - (a) cause undue hardship to the paying party, or
  - (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.
- 4) The Lord Chancellor may by order amend this section by adding to, omitting or varying the matters mentioned in subsections (1) to (3).
- 5) An order under subsection (4) must be made by statutory instrument.
- 6) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- 7) In this section “legal services” has the same meaning as in section 22ZA.”

## Section 24A Matrimonial Causes Act 1973

### Orders for sale of property

- (1) Where the court makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion
- (2) Any order made under subsection (1) above may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include—
  - a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
  - b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.
- 3) Where an order is made under subsection (1) above on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.
- 4) Where an order is made under subsection (1) above, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified
- 5) Where an order under subsection (1) above contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical

payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of or formation of a civil partnership by that person

- 6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 25(1) below.

Stephen Lyon

assisted by Alyssa Howard



## **Section 3**

**Considerations from Young v Young**

**Rex Howling QC**



**YOUNG V YOUNG  
[2013] EWHC 3637 (Fam)**

OTHERWISE:  
AMBITION V DENIAL

# Young v Young [2012] EWHC 138 (Fam) [2012] 2 FLR 470

- Mostyn J'S decision re passport heard on 3<sup>rd</sup> February 2012
- Passport retained by Court until judgment on 22<sup>nd</sup> November 2014 [see para 187]
- There is a limited jurisdiction to make passport orders post judgment, particularly when linked to an enforcement order: *B v B (Injunction: Restraint on Leaving Jurisdiction)* [1997] 2 FLR 148 p 154B-E

# Young v Young [2013] EWHC 34 (Fam) [2014] 1 FLR 269

- Moor J's decision of 13<sup>th</sup> January 2013 to imprison Scot Young for contempt for 6 months
- Serves 3 months
- Provides limited disclosure in August 2013
- Contempt never purged



# The Latest Judgment

- Please use the link below to connect to the Judgment handed down by Moor J on 22<sup>nd</sup> November 2013

URL:

*<http://www.bailii.org/ew/cases/EWHC/Fam/2013/3637.html>*

# Analysis already available in the public domain

- Questions of Case Management and Costs: Young v Young by David Burrows Jan [2014] Fam Law
- Family Law Hub: Young v Young: The Outcome by Philip Cayford QC and Anthony Geadah
- Young v Young: An Analysis of the Judgment by Thomas Dudley



## My Involvement

- Telephone call from Michael Reeves 5.30 pm on 11<sup>th</sup> October 2013
- First 3 bundles arrive 14<sup>th</sup> October 2013
- Trial starts 28<sup>th</sup> October 2013 with 30 plus bundles [number grew thereafter on an almost daily basis!]
- Judgment given 22<sup>nd</sup> November 2013

# What Can Be Learned 1 Or No Surprises Here

- Judicial continuity provided opportunity for consistent case management
- Identify the issues early
- Decide what evidence is needed to deal with each identified issue
- Decide what evidence needs to be obtained
- Search and Seizure Orders: ensure that the material obtained is actually analysed
- Maintain a consistent legal team

## What Can Be Learned 2

- Plan how the available litigation funding is going to be applied
- Changing experts before a report has been obtained duplicates costs
- Ensure that all the available evidence is before the Court
- Do not fetter the legal team
- Advance a case which is supported by the available evidence
- Ensure that the without prejudice correspondence is available

## What Can Be Learned 3: The Media

- Publicity campaigns do not put pressure on Judges
- Media attention for the sake of it can and will backfire
- Addressing the Press without input from your legal team is unhelpful
- A Press presence in Court is something which we are going to have to get more used to

# Litigation Funding 1

- Section 58 of the Courts and Legal Services Act 1990 (as amended) provides that:-
  - (1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.

## Litigation Funding 2

- 58 (2) provides that:-
  - (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and
  - (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

## Litigation Funding 3

- Section 58A provides that:-
  - (1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—
    - (a) criminal proceedings, apart from proceedings under section 82 of the Environmental Protection Act 1990; and
    - (b) family proceedings.

# Litigation Funding 4

- (2) In subsection (1) “family proceedings” means proceedings under any one or more of the following—
- (a) The Matrimonial Causes Act 1973;
  - (b) The Adoption and Children Act 2002;
  - (c) The Domestic Proceedings and Magistrates’ Courts Act 1978;
  - (d) Part III of the Matrimonial and Family Proceedings Act 1984;
  - (e) Parts I, II and IV of the Children Act 1989;
  - (f) Parts 4 and 4A of the Family Law Act 1996;

## Litigation Funding 5

- (fa) Chapter 2 of Part 2 of the Civil Partnership Act 2004 (proceedings for dissolution etc. of civil partnership);
- (fb) Schedule 5 to the 2004 Act (financial relief in the High Court or a county court etc.);
- (fc) Schedule 6 to the 2004 Act (financial relief in magistrates' courts etc.);
- (fd) Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership);  
and
- (g) the inherent jurisdiction of the High Court in relation to children.

## Litigation Funding 6

- Rule 44.18 of the CPR provides that:-
  - (1) The fact that a party has entered into a damages-based agreement will not affect the making of any order for costs which otherwise would be made in favour of that party.
  - (2) Where costs are to be assessed in favour of a party who has entered into a damages-based agreement –
    - (a) the party's recoverable costs will be assessed in accordance with rule 44.3; and
    - (b) the party may not recover by way of costs more than the total amount payable by that party under the damages-based agreement for legal services provided under that agreement.

## Litigation Funding 7: Conclusions

- No CFA with lawyers in family proceedings
- Appears that lay client may enter into CFA with litigation funders provided no legal uplift
- Costs recovery limited to the agreed legal costs
- Litigation Funding appears to be an important tool but its future use in family proceedings remains unclear after this case



## What Was Achieved

- A lump sum order for £20 million
- A costs order of £5 million
- Arrears of maintenance of £1,347,500
- Judgment Interest of 8%

## What Now?

- Para 182: “I realise that the Wife will have difficulties in enforcing my order”
- In essence, Mrs Young needs to start the discovery process again in order to enforce
- Another Search and Seizure Order?
- Funding?
- Pyrrhic victory?



## Conclusions

- Too much time and money spent revisiting the same issues and evidence
- Insufficient judicial continuity during the early stages of the litigation
- Disjointed strategic thinking because of the involvement of too many different lawyers
- A classic example of the application of the principle of adverse inference



## **Section 4**

**An FDR – practical guidance  
Deal or No Deal**

**Julia Townend, Harry Nosworthy  
& Michael Sternberg QC MCI Arb**



The parties had married in Hamburg in 1998. Eva sold her client list from the escort agency to a competitor in Hamburg prior to the parties' move to England in 2004. The parties separated in late 2012. Unfortunately Eva has been suffering from depression for the past few years due to missing Hamburg and the breakdown of the relationship. She has been seeing a counsellor in London since 2011.

Since the parties moved to England in 2004 Eva has been entirely dependent on Willoughby's income. Throughout the marriage the parties had a very high standard of living, often travelling around the world in the family yacht, dressing only in the finest designers and frequently attending hot air ballooning conventions. She has a passion for hot air ballooning (a hobby which she has had since she was a teenager) and spent some of the early years of the marriage teaching Willoughby how to fly. Eva was emphatically encouraged to spend several hundreds of thousands pounds a year in the marriage by H on art work so she became a celebrity in international art circles where entry remains only possible by purchasing lavishly and regularly. If she ceases to buy art at her current level, she will lose prestige badly and her social life will be heavily curtailed which will add to her depression. H also encouraged her to indulge her hobby of collecting vintage wine with a significant annual outlay but here there is no celebrity aspect.

The parties have been working hard to settle matters through their lawyers prior to FDR. The capital and pensions division is agreed although it is accepted that the parties will invest all their respective capital in non-income producing assets. The issue of maintenance is a sticking point on which the parties seek a judicial indication.

A detailed and thorough schedule of income needs has been prepared on behalf of Eva, but in summary she states that she requires the following on an **annual** basis:

<p><i>Utility bills: £5,000</i></p> <p><i>Gardening/Cleaning/Chef: £20,000</i></p> <p><i>Food: £4,000</i></p> <p><i>Driver: £26,000</i></p> <p><i>Clothing and shoes: £120,000</i></p> <p><i>Private counselling: £15,000</i></p>
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*New car: £50,000*  
*Wines and spirits: £50,000*  
*Beauty treatments: £6,000*  
*Hot air ballooning (equipment, insurance, licence etc): £300,000*  
*Outlay on artwork: £250,000*  
*Entertainment: £24,000*  
*International travel: £30,000*  
*Holidays including yacht and crew hire: £100,000*

**Total needs: £1,000,000 per annum**

**RELEVANT AUTHORITIES RELIED UPON BY COUNSEL<sup>2</sup>**

*(the relevant principles in summary form to be relied upon either expressly or by implication)*

**H v W [2014] EWHC 4105 (Fam)**

*This was an appeal in financial remedies proceedings against an award in favour of a wife which included 25% of the husband's future bonuses. Appeal allowed and a cap imposed on the bonuses of £20,000 per annum.*

*King J was not satisfied that the District Judge had fallen into error by 'sharing' the husband's future income as opposed to utilising it to address needs. Due to the District Judge's inability to quantify the husband's bonuses he was driven to using a percentage to 'top up' the wife's basic maintenance. Such an approach could not be said to be in itself wrong. However, the District Judge should have identified a figure to meet the wife's maximum reasonable maintenance entitlement and imposed a cap.*

*King J identified the proper approach to bonuses as being to calculate two figures, one for ordinary expenditure and another for additional, discretionary items which will vary from year and are not reflected in the annual budget. A monthly order could then be made for a fair sum to be paid from salary and the balance to be expressed as a percentage of bonus.*

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<sup>2</sup> Neutral citations used

## **H v H [2014] EWHC 760 (Fam)**

*This was a husband's application to terminate a joint lives periodical payments order of £150,000 per annum which had been made in favour of the wife in 2006. The husband intended to retire at the age of 56 (in 2015) and sought to terminate the existing order. Midway through the trial the wife sought a lump sum of £2.6 million on the husband's retirement in 2015 or later if he did not retire by that date. Coleridge J ordered the husband to pay the wife a lump sum of £400,000 on his retirement.*

*The wife's case was largely based on her contention that she had made a considerable sacrifice by giving up work, allowing the husband to generate very significant assets. Coleridge J held that this was a case in which the compensation element should be recognised. Coleridge J stated that there could be no hard and fast rule in respect of weight to be given to compensation but it was right to do so in this case. The Judge recognised the compensation element in this case in four ways (as well as increasing her needs by an extra £10,000):*

- 1. The Judge attributed only £500,000 of the equity in the wife's home as part of her long-term income fund (and only ascribed to it an annual return of 3.75% net per annum). He did not assume she should have recourse to the actual capital in the way a Duxbury calculation would contemplate.*
- 2. The Judge took the whole of the wife's £1 million savings on the same annual basis of 3.75% (a medium level return in his judgment) and not a fully amortised capital basis.*
- 3. The Judge did not factor in any step down at a later date.*
- 4. The Judge ignored in the calculation any extra savings which the wife may make between now and when the husband actually retires.*

*Coleridge J agreed with the recent pronouncements about the dangers inherent in attributing special weight to compensation arguments but noted that there remain a very small number of cases where compensation is obvious and to ignore it and approach it on a simplistic 'needs' basis does not do full justice to a wife who has sacrificed the added security of generating her own substantial earning capacity.*

## **SA v PA (Pre-marital agreement: Compensation) [2014] EWHC 392 (Fam)**

*This was a case in which the husband contended the parties were bound by a Dutch pre-marital agreement. Most relevant for the exercise was the wife's argument for a compensatory payment by virtue of her having given up a high powered career. Mostyn J did not regard this case as a compensation case.*

*Mostyn J held that it was hard to identify any case where compensation had been separately reflected as a premium or additional element. He concluded that there were now four principles concerning a compensation claim in light of the authorities:*

- 1. It will only be in a very rare and exceptional case where the principle will be capable of being successfully invoked.*
- 2. Such a case will be one where the court can say without any speculation, i.e. 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.*

*3. 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.*

*4. 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 to be reflected by a premium or additional element on top of the needs based award.*

*It was Mostyn J's firm belief that save in highly exceptional cases an award for periodical payments should be assessed by reference to the principle of need alone.*

### **S v S [2008] EWHC 519 (Fam)**

*This was an unsuccessful appeal by a husband against what were then ancillary relief orders. A key issue in the appeal was whether the wife's housing costs should include an element which would enable her to purchase a property large enough to accommodate her horses. The husband argued that the original order placed too much weight on the need for the wife to maintain her horses and lifestyle at the expense of the husband's expectations.*

*Sir Mark Potter, as President of the Family Division, concluded that the case was peculiarly one for the feel of the District Judge in the particular circumstances. It was an unusual case in which the wife's talent with and love for horses had been a prominent and accepted feature of the parties' lives during the marriage.*



## **Section 5**

**MPS and LSO applications – practical guidance**

**Money, Money, Money**

**Harry Gates, Nicholas Fairbank  
& Michael Sternberg QC MCI Arb**

## June Wolfman – and – Lofty Wolfman

The parties were married in 2000 in Nashville, Tennessee.

This is the hearing of June's application for MPS and for a Legal Services Payment Order. Lofty opposes both applications. Meanwhile he is seeking a stay of June's divorce suit on *forum non conveniens* grounds. He has issued his own divorce proceedings first in time in S Africa, of which country he is a citizen.

June is aged 39 and is a US citizen and the mother of the parties' three children aged 14, 12 and 9. They have lived in London for the last three years in a large house in Cheyne Walk, Chelsea, owned jointly by Lofty and his father. June has worked as a singer in the past but has not worked since the family moved from Nashville, Tennessee a decade ago.

Lofty, aged 50, is an elite professional gambler and has historically been the 'breadwinner'. Generally, this has proved extremely lucrative, although from time to time H has made very significant losses and has had to be bailed out by his father, a wealthy shipping tycoon. In January, Lofty was ejected from a Mayfair casino for card-counting and has been barred from every major gambling establishment in London for the time being.

On the basis the children's school fees continue to be paid from an offshore trust, June seeks orders that H pay £10,000 pcm, plus a further £100,000 for legal services going forward and £30,000 for costs already incurred. Her interim budget and schedule of legal costs are attached. She has £10,000 in savings of her own but her solicitors will not accept a *Sears Tooth* charge. Lofty has produced some evidence that June could borrow from an online lender called dosh.com at an interest rate of 365% pa.

Lofty offers nothing. He has filed a very short narrative statement (Forms E have not yet been exchanged) but no bank statements since January.

June Wolfman – and – Lofty Wolfman

**June Wolfman Interim Budget**

<b><u>ITEM</u></b>	<b><u>COST pcm</u></b> <i>(To be paid directly)</i>
School fees / Housing costs / utilities (including mobile phones)	
Additional educational costs including tutoring / line-dancing lessons for the children	£800
Nanny	£1200
Housekeeper	£800
Groceries / Household expenses (Ocado account)	£800
Food (USA Food store account)	£1000
Food (Fresh)	£600
Straight Rye Whiskey	£130
Medical expenses / Opticians	£750
Hairdressers / Manicures / Pedicures	£500
Chauffeur	£1300
Car expenses (petrol / repairs and maintenance / congestion charge)	£750
Harbour Club membership	£350
Country Music Association VIP membership	£150
Apple iTunes	£150
Stetson hat / Boots and spurs – care and upkeep	£100
Tropical fish tank	£400
Banjo – insurance and repair	£250
<b>Total</b>	<b>£10,030</b>

June Wolfman – and – Lofty Wolfman

Schedules of Mrs Wolfman's Legal Costs

**COSTS INCURRED**

**£**

**Verdan, Cohen & Swift LLP:**

Advice and case preparation for application for MPS / LSPO, (including total 7.5 hours consultation):

Partner (17 hours at £400 per hour)	£6,800
Associate (16.5 hours at £200 per hour)	£3,300
Paralegal (8.5 hours at £125 per hour)	£1,080
Disbursements (far too detailed for counsel ever to read)	£2,000

**Total** **£12,910**

**Counsel**

Reading, conference (3 hours) and written advice, on application for MPS / LSPO	£2,350
Attendance at court	£2,850

**Total** **£5,200**

**Honor Shanti Chakra (therapeutic support worker)**

Attendance at consultations and court hearing (15 hours)	£1,500
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**Steyn, Botha, and du Plessis LLP (South African solicitors)**

Advice and preparation in respect of South African divorce proceedings	£3,600
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***TOTAL*** ***£24,962***

***Inclusive of VAT at 20%*** ***£29,955***

**ESTIMATED FUTURE COSTS (up to FDA hearing)** **£**

**Verdan, Cohen & Swift LLP:**

Preparation of FDA documents, including estimated 12 hours consultation:	
Partner (21.5 hours at £400 per hour)	£8,600
Associate (18 hours at £200 per hour)	£3,600
Paralegal (32 hours at £125 per hour)	£4,000
Disbursements (far too detailed for counsel ever to read)	£3,000

**Total** **£19,200**

**Counsel (Leading)**

Reading, consultation (3 hours), preparation for and attendance at FDA hearing **£10,500**

**Counsel (Junior)**

Reading, consultation (3 hours), preparation for and attendance at FDA hearing **£6,000**

**Honor Shanti Chakra (therapeutic support worker)**

Attendance at consultations and court hearing (18 hours) **£1,800**

**Steyn, Botha, and du Plessis LLP (South African solicitors)**

Attendance at South African divorce proceedings **£2,400**

***TOTAL*** **£39,900**

**Estimated costs up to FDA Inclusive of VAT at 20%** **£47,880**

**Estimated cost of forum dispute inclusive of VAT at 20%** **c.£50,000**

**GRAND TOTAL** **£97,880**



## **Section 6**

### **Profiles of the Speakers**



## Charles Hale QC

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.'

Legal 500 2013

### 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

### 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. 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 Partner and being one of only 5 family barrister 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

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

### Directories

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](#)

Ranked in 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.'

Recommended as a Leading Junior in the areas of Children Law and Family Law (including divorce and ancillary relief)

#### [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."

Recommended as a leading Family Junior in [Chambers & Partners 2013](#)

(Band 1)

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

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in [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.

Recommended as a Leading Junior for Children and Matrimonial Finance in [Chambers and 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'.

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in [The Legal 500 2011](#)

Charles Hale is a popular choice among many of London's leading solicitors. He is equally adept at children and matrimonial finance work. Sources note that "his jovial character enables him to forge strong relationships with clients."

Recommended as a Leading Junior [Chambers and Partners 2011](#)

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in [The Legal 500 2010](#)

Charles Hale who undertakes both leave-to-remove cases and matrimonial finance matters. Hale is "a tremendously hard-working barrister who always has a very keen sense of his cases."

Recommended as a Leading Junior [Chambers and Partners 2010](#)

The 'brilliant' Charles Hale is recommended as a 'pleasure to work with'.

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in [The Legal 500 2009](#)

Charles Hale brings his "straight-talking approach" and "excellent attention to detail" to a practice that combines children-related matters with matrimonial finance work. He is regularly briefed, as is a "careful, vigorous and balanced advocate."

Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in [Chambers and Partners 2009](#)

Charles has a broad practice embracing public and private law ancillary relief and child abduction. "Clients love him", reported one solicitor, "because he is one of the few barristers prepared to give them a little TLC"

Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in [Chambers and Partners 2008](#)

Charles Hale is known primarily for his children work, although he does have a sound financial practice. "Exceptionally helpful and reassuring", he is a "delightful fellow."

Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in [Chambers and Partners 2007](#)

## Practice areas

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

## Direct Access

- Direct Access

## Awards



### Family Law

Awards 2012

JUNIOR BARRISTER  
OF THE YEAR

## Cases

MB v GK [2014]

[2014] EWHC 963 (Fam)

N v C [2013]

[2013] EWHC 399 (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

Re G (A Minor) (Interim Care Order: Residential Assessment)

[2005] Daily Cases

Re G (A Minor) (Interim Care Order: Residential Assessment)

[2006] 1 AC 576

Re G (Interim Care Order: Residential Assessment)

[2004] 1 FLR 876

B County Council v L & Ors (2002)

[2002] EWHC 2327 (Fam)

Michael Andrew Gayle v Julie Nwamara Gayle (2001)

[2001] EWCA Civ 1910

Re L (Removal from Jurisdiction: Holiday)

[2001] 1 FLR 241



**Stephen Lyon**

## Experience

Year of Call: 1987

## Qualifications

Stephen has recently been admitted to the Chartered Institute of Arbitrators.

## Education

LLB (Hons) (Nottingham)

## Languages

German

## Appointments

MCI Arb

## Profile

Stephen has a wide range of expertise in all areas of family law, from leading child care cases to complex ancillary relief disputes. Although family law is Stephen's specialist area of practice, his background includes extensive experience in both civil law and criminal law, which gives him highly developed skills as an advocate.

Stephen's principal specialism is ancillary relief, in which he has built up a successful practice built upon a reputation for incisive analysis and, where appropriate, robust advocacy. His civil expertise lends itself well to "big money" cases in which he is able to demonstrate a rigorous and structured approach to complex financial issues.

Stephen has been described by the legal press as "approachable and dependable". He is in great demand by leading family solicitors both in London and the regions and as a consequence enjoys a nationwide reputation as a leading family lawyer. Stephen places great importance on an open and friendly relationship with both solicitors and lay clients, and is a firm believer in providing a service which is practical, realistic, and tailored to meet the needs of individual clients.

Stephen is an active participant in the continuing education of solicitors, by way of lectures and seminars.

## Professional Memberships

Family Law Bar Association  
Affiliate Member of Resolution  
Chartered Institute of Arbitrators

## Practice areas

- Financial Remedies
- Private Law

## Dispute resolution

- Collaborative Lawyer
- Arbitration

## Direct Access

- Direct Access

## Cases

O v P (2011)

[2011] EWHC 2425 (Fam)

Re G (A Child) (2006)

[2006] EWCA Civ 348

Margot Alison Clarke v Christopher Michael Harlowe (2005)

LTL 31/8/2005

Re ET (Serious Injuries: Standard of Proof) (2003)

[2003] 2 FLR 1205

Kean v Kean

[2002] 2 FLR 28

Medway Council v British Broadcasting Corporation (2001)

[2002] 1 FLR 104

Re C (Children) (Residential Assessment)

[2001] 3 FCR 164



## 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)  
Polytechnic 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 received 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

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



## 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 2012

### Experience

Year of Call: 1975  
Year of Silk: 2008

### Education

MA LLM (Cantab) MCI Arb  
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 a 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

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





**Harry Nosworthy**

## Experience

Year of Call: 2010

## Education

BA (Hons) (Exeter)

LLB (Hons)

BVC (Outstanding)

Jules Thorn Scholar (Middle Temple)

## Profile

Harry has a broad practice covering all areas of family law with a particular emphasis on matrimonial finance and trust of land work. He is also regularly instructed in all types of children disputes including protracted contact cases and relocation cases.

Harry also provides witness training to local authorities and is a regular contributor to family law week.

Outside work Harry enjoys playing cricket and is representing the Bar of England Wales Cricket Club at this year's Lawyers'; Cricket World Cup in India.

## Professional Memberships

Family Law Bar Association

Middle Temple

## Practice areas

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

## Cases

London Borough of Ealing V Connors [2013]

[2013] EWHC 3493 (Fam)



## Julia Townend

### Experience

Year of Call: 2011

### Education

University of Cambridge (Law)

Kaplan Law School, London (Bar Professional Training Course)

Kaplan Law School Advocacy Scholar 2010-11

Inner Temple Pupils' Advocacy Prize 2011-2012

### Languages

Conversational French

### Profile

Julia has been a member of chambers since successfully completing her pupillage at 4 Paper Buildings in 2012. She was supervised by Charles Hale, Sally Bradley and Christopher Hames and won the Inner Temple advocacy prize for pupils. During her first six months of pupillage she attended the Court of Appeal with counsel representing the successful appellant father in *A v B and C [2012] EWCA Civ 285*.

Julia's practice encompasses all aspects of family law and she has extensive experience representing clients at all court levels. Her particular interests include financial remedies cases and all private law children matters (including leave to remove applications).

Julia assisted Alex Verdan QC in the Supreme Court in *Re B (A Child) [2013] UKSC 33* and contributed to a webinar discussion on the case. She also worked as part of the team representing the child (TM) in the matter of *LC (Children) [2013] UKSC 221*. She has recently been led by Jonathan Cohen QC in the High Court in proceedings involving serious allegations of fabricated and induced illness. She has experience advising on and drafting special guardianship order funding policies.

Prior to commencing pupillage she was involved in an interactive teaching project at HM YOI Feltham and assisted a Partner of a large wealth management and financial planning group.

Julia has represented individuals in a number of cases pro bono, including through the Free Representation Unit. She has also been a member of the Inner Temple Junior Bar Association Committee for the past two years. Julia regularly presents lectures and seminars and provides witness training to professionals.

In her spare time Julia enjoys running and travel (having trekked in the Andes, climbed Mount Toubkal - the highest mountain in North Africa, and explored the Great Wall of China).

### Professional Memberships

Family Law Bar Association

Inner Temple

### Practice areas

- Financial Remedies
- Private Law

- Public Law
- International
- Court of Protection

## Cases

In the matter of B (A Child) [2013]  
[2013] UKSC 33



## Nicholas Fairbank

Nicholas specialises in matrimonial finance, advising and representing in substantial asset and complex cases involving trusts, foreign assets, ante-nuptial agreements, inherited wealth, TOLATA and Inheritance Act claims.

### Experience

Year of Call: 1996

### Education

MA (Cantab)

C.P.E

### Profile

Nicholas advises and represents at all stages of proceedings, both pre- and post-issue, and is often instructed in cases where detailed forensic analysis is required. He has a ready familiarity with all aspects of finance. He is respected as much for his effective advocacy both in court and on paper as for his clear explanations and good interactions with clients. Nicholas also undertakes private law children disputes.

Specialist areas:

- business and associated company law issues
- high value cases
- foreign assets
- discretionary and offshore trusts
- capacity issues
- matrimonial and non-matrimonial assets, including inherited wealth
- insolvency (personal and corporate) and its consequences
- ante-nuptial agreements
- specialist pensions issues
- freezing orders and setting aside dispositions
- TOLATA claims
- Inheritance Act claims

Nicholas also accepts work under the Direct Public Access Scheme.

In his spare time Nicholas enjoys playing the piano, tennis and hillwalking.

### Professional Memberships

Family Law Bar Association

South Eastern Circuit

### Practice areas

- [Financial Remedies](#)

- [Private Law](#)

## **Direct Access**

- [Direct Access](#)

## **Cases**

Arif v Anwar & Anor [2013]  
[2013] EWHC 624 (Fam)

RE H (2004)  
[2004] EWHC 1628 (Fam)

Regentford Ltd v Thanet District Council (2004)  
[2004] EWHC 246 (Admin); [2004] RA 113 : (2004) 101(11) LSG 35 : [2004] NPC 25 : Times, March 4, 2004

R V Canterbury Crown Court, Ex Parte Regetford Ltd (2000)  
[2001] HRLR 18 : [2001] ACD 40 : Times, February 6,

Mountjoy V Mountjoy (1997)  
AC9000183



## Harry Gates

Harry's practice encompasses all aspects of family law, but with an emphasis on financial remedies and private law children disputes.

### Experience

Year of Call: 2001

### Education

BA (Hons) LLB (Hons)  
Newcastle University  
City University  
Qualified Collaborative Lawyer

### Languages

French, Spanish

### Profile

Harry is equally comfortable with both money and children work and can therefore offer a comprehensive service if required. Harry has extensive experience across the spectrum of financial disputes, including those brought under Schedule 1 or TLATA 1996, claims with an international element, and those involving trusts or company assets. Harry is also regularly instructed in all types of private law children disputes, including leave to remove cases.

Harry is a trained collaborative lawyer, FLBA member and frequent lecturer to practitioners.

### Professional Memberships

Family Law Bar Association  
South Eastern Circuit  
Lincoln's Inn  
Affiliate Member of Resolution

### Practice areas

- Financial Remedies
- Private Law
- International

### Dispute resolution

- Collaborative Lawyer

### Direct Access

- Direct Access





## **Section 7**

### **Members List**

## Barristers

4 Paper Buildings has an 'unrivalled collection of senior and junior barristers in the field. Predominantly known for its children work, but also has some 'really excellent people for matrimonial finance cases'. Legal 500 2011

## 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



**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



**Christopher Hames**  
Call: 1987



**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



**Alison Grief**  
Call: 1990



**David Bedingfield**  
Call: 1991



**John Tughan**  
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



**Greg Davies**  
Call: 2005



**Samantha Woodham**  
Call: 2006



**Laura Morley**  
Call: 2006



**Nicola Wallace**  
Call: 2006



**Michael Gratton**  
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**  
Call: 1986  
Door Tenant



**Susan Baldock**  
Call: 1988  
Door Tenant



**Elizabeth Couch**  
Call: 2003  
Door Tenant



**Belle Turner**  
Call: 2003  
Door Tenant