



Neutral Citation Number: [2022] EWFC 197

Case No: LS20P00806

IN THE FAMILY COURT IN LEEDS

Leeds Family Court,
Westgate, Leeds, LS1 3BE

Date: 05/01/2022

Before:

HHJ SHELTON

Between:

**AB
- and -
CD**

Applicant

Respondent

**The Applicant appeared in person
Mr Rhys Taylor appeared Pro-bono via the Advocate Scheme for the Respondent**

Hearing dates: 6/7 October 2021 and 18/19 November 2021

Approved Judgment

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HHJ SHELTON

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

HHJ SHELTON:

Introduction

1. In this judgment I shall refer to the Applicant as the husband and the Respondent as the wife notwithstanding they are divorced and the husband has remarried.
2. The husband appears in person. The wife is represented by Mr Rhys Taylor, who acts pro bono.
3. (3) I am concerned with cross-applications to vary a periodical payments order in respect of the only child of the marriage, to whom I shall refer as XFR. XFR is 19. She was born severely disabled. She will be dependent on others for the rest of her life. She has always lived with and been cared for by the wife. It is agreed the husband should continue to pay periodical payments for XFR's benefit. The amount he should pay and for how long is in dispute.
4. The husband seeks the dismissal of an existing joint lives' periodical payments order in favour of the wife. He has made no application to that effect; nor hitherto has such an application been treated as having been made by him. The wife opposes any dismissal of the order. Nevertheless, I give the husband permission to make the application so I may decide the merits of it as part of this judgment.
5. The husband also seeks to enforce in these proceedings an undertaking given by the wife in earlier High Court proceedings for the settlement of capital for XFR's benefit under Schedule 1 of the Children Act 1989. Those proceedings concluded in 2017. The undertaking was given in respect of a Legal Services Payment Order made by Cobb J on 19th October 2016, which was later extended by HHJ Troy, sitting as a Judge of the High Court, on 28th February 2017. The wife was released from the terms of that undertaking by order of Sir Mark Hedley, sitting as a deputy judge of the High Court, on 12th July 2017, save for 'the sum paid in respect of Counsel's refresher for 13th July 2017' because the case settled on the first day. The wife disputes any amount is due in respect of the refresher. It was, she says, set off against an earlier liability in the same amount for which the husband was responsible under the order of 28th February 2017, and in respect of which she points to correspondence dated 5th October 2017 in the court bundle. The husband made no application to enforce the undertaking in those proceedings or since to the level of judge to whom it was given. He has made no formal application in these proceedings. I have declined to deal with it in the absence of any such application despite the order of 20th October 2020.
6. In his open proposals, the husband contends he should continue to pay periodical payments for XFR beyond her nineteenth birthday at the rate of £400 pcm until his retirement at 60. The joint lives order in favour of the wife should be dismissed now.
7. The wife seeks global periodical payments of £1,600 pcm, apportioned £1,599 to XFR and £1 to her. She proposes a review of the order in December 2022.
8. The wife's proposal for a review of the order in December 2022 arises from the inevitable change that XFR will face when she leaves her current specialist school and college in the North of England, in July 2022. At present, the choice as to where she will continue her education is between a specialist college close to home, or one some

200 miles away. XFR has recently been accepted by both. The one closer to home currently offer a day placement Monday to Friday, with XFR living at home; it is possible that she may be able to board during the week, but this is yet to be confirmed and will be subject to funding. The one further away offers a residential placement during term time.

9. A decision will have to be made in due course as to which placement best meets XFR's needs. The wife's evidence to me was that the closer one may be the preferred option because XFR's medical needs are currently met in the North of England and this placement may cause her the least disruption. However, I repeat a decision about these options is still to be made and the funding for either, yet to be confirmed.
10. The questions I must answer in this judgment are (i) the quantum and duration of the periodical payments the husband should pay for XFR; and (ii) whether I should dismiss the joint lives order in favour of the wife.

Background

11. This is uncontroversial and can be taken shortly.
12. The husband is aged 50, the wife, 44.
13. They met in January 1997, began to cohabit in 1998 and became engaged in February 1999. They married in June 2000.
14. XFR was born in 2002. The extent of her disabilities was not established at birth. I have read many reports about her in the Bundle. A consultant in clinical genetics, describes in her reports XFR having a chromosome imbalance which will remain static throughout her lifetime. The consultant writes:

“XFR requires significant support due to her developmental delay, intellectual disability, difficulties with communication and her health issues. I would not predict that XFR will improve significantly in any of these areas over time. She may make small personal achievements; however, she will not recover her development to that expected of her peers.”

Within her most recent Education, Health and Care Plan, her needs are described as follows:

“...significant learning difficulties, non-verbal speech and language difficulties, short stature, dysplastic hips, hip dysplasia of the right side, a planovaigus right foot and hip, skeletal abnormality, recurrent UTIs and dysfunctional voiding, previous a typical haemolytic uraemic syndrome, hypothyroidism, vitiligo feeding difficulties. All areas of her learning are affected, and she has complex medical issues.”

Despite all her many difficulties it is clear to me she is a delightful young lady with a sense of humour who has good relationship with all those around her, both peers and professionals.

15. In October 2002, XFR was made the beneficiary of the husband's family trust.

16. In October 2007, the parties separated. Divorce and financial remedy proceedings followed.
17. On 9th June 2009, Ryder J (as he then was) made a residence order for XFR to live with the wife and gave permission to the wife to remove XFR permanently from the jurisdiction to reside abroad. The order made detailed provision for XFR to have contact to the husband for half of all XFR's school holidays. Both the wife's parents then lived abroad.
18. On 20th August 2008, agreement was reached as to the split of capital on divorce. The husband was to pay a lump sum of £160,000 to the wife in settlement of her capital claims. A contested hearing took place as to periodical payments. The deputy district judge ordered the husband pay global periodical payments of £1,100 pcm, apportioned as to £400 to the wife on a joint lives' basis; £400 to the wife for the benefit of XFR until she attains the age of 17 or complete full time secondary education, whichever be the later, or further order; and £300 towards XFR's school fees. The wife appealed the periodical payments to Holman J. On 3rd September 2009, Holman J made an order by consent increasing the global award to £1,600 pcm but on the same terms as before: the wife and XFR's awards were both increased to £600 pcm, school fees, to £400.
19. Thereafter, the wife and XFR moved abroad. The wife told me in evidence that she used her capital settlement to pay outstanding legal fees of around £38,000 and to purchase a flat abroad for around £100,000; the balance was spent on a car and furnishings.
20. After two years, the wife and XFR returned to live in England.
21. On 14th March 2012, Pauffley J varied the terms of the order of 3rd September 2009 by consent. The husband was to continue paying global periodical payments at the rate of £1,600 pcm but apportioned £100 to the wife on a joint lives basis and £1,500 to the wife for the benefit of XFR, to continue until the first to occur of XFR's death, her attaining the age of 19, her ceasing to live with the wife or further order. The recitals to the order note the husband had paid the arrears of £900 outstanding under the order and that there may be circumstances, in light of XFR's development delay, in which it would be appropriate for periodical payments for the benefit of XFR to continue beyond her nineteenth birthday.
22. In 2015/16, the wife wrote to the husband and trustees of his family trust requesting additional financial assistance to meet XFR's escalating costs. The request was declined. The wife bought a claim under The Matrimonial Causes Act 1973, to which I have earlier referred.
23. On 12th July 2017, Sir Mark Hedley approved the settlement of £275,000 in trust for XFR to assist in the purchase of a new home for XFR that was more suitable for wife to care for XFR; and for any alterations or adaptations required to that home for XFR's benefit. The order of Pauffley J, dated 14th March 2012, as to the periodical payments payable by the husband for XFR's benefit, was varied by consent to continue in the sum of £1 per annum after her nineteenth birthday, subject to the same provisions as before. The parties were enjoined to appoint a family mediator and participate in mediation if no agreement could be reached as to continuing periodical

payments for XFR after the age of 19 in light of the financial resources then available to her. After 12th July 2017 XFR was removed as a beneficiary under the family trust referred to at paragraph [15] above.

24. Later in 2017 the wife sold her then property and moved house to one which was purchased under the terms of the trust set up on 12th July 2017.

The proceedings

25. On 21st May 2020, the husband issued an application for the downward variation of the periodical payments order made by consent by Pauffley J on 14th March 2012. The husband's income had fallen by reason of him being furloughed owing to the Covid 19 pandemic.

26. The proceedings came before District Judge Troy on 2nd October 2020. The judge's order records that from May 2020 the husband had reduced the global periodical payments from £1,600 pcm to £1,250 pcm. The wife had agreed that reduction for the months of May, June and July 2020, when she had been able to secure a 'mortgage holiday'. The only arrears in issue were for August and September 2020, which amounted to £700. The judge made an order varying the periodical payments payable for the benefit of XFR to £1,150 pcm; the existing order payable to the wife of £100 pcm was expressly preserved. The arrears were remitted. The proceedings were adjourned generally to be relisted if matters were not resolved at mediation. One of the recitals to the order records the mother's reluctance to pursue mediation when XFR would:

“not be eligible for benefits in her own right until 2022 and it would not be productive to engage in mediation before that time.”

27. On 2nd January 2021, the husband became seriously ill. He has been off work sick since but will return to work on a reduced contract shortly.
28. On 23rd February 2021, the husband made an application to the Family Court for a non-molestation order against the wife. She denied the allegations of harassment he made against her. The case was transferred to be dealt with by District Judge Troy. On 22nd April 2021, the husband's application was adjourned generally with liberty to restore; if not restored by 4 pm on 16th July 2021, the application was to be dismissed with no order as to costs. The application was not restored and was dismissed
29. Attempts at mediation failed. A co-mediation was offered on 5th July 2021. The husband was unable to attend owing to a medical appointment he had to attend. The wife was unable to attend a re-arranged mediation on 13th July 2021 owing to ill-health, and in respect of which she provided a medical report dated 7th July 2021. The husband objected to the wife attending mediation with either Mr Taylor or her mother. The bottom line is that mediation has not taken place.
30. On 21st July 2021, District Judge Troy gave directions for the filing of evidence and the listing of this matter before me on 6th/7th October 2021. He held a grounds rules hearing under the Family Procedure Rules 2010, Part 3A, whereby any questions the husband wished to ask of the wife were to be submitted in writing to be asked by me. The judge also varied the global periodical payments order to £1,000 pcm; the

periodical payments for XFR were increased from £1 to £950 pcm; the wife's were reduced from £100 to £50 pcm. The variation was to take effect from September 2021; the payments for August 2021 were to remain at £1,250 pcm. It was agreed the hearing before me should take place remotely.

31. Through nobody's fault, the hearing before me took double its original time estimate. I heard the husband's evidence on 6th/7th October 2021. It was then his case that XFR would be better off claiming Universal Credit in her own right now. The benefits system is a trap even for the wary. The Coronavirus uplift of £20 per week fell away in October 2021; it is possible that the way Universal Credit is calculated it will change again in December 2021. On 7th October 2021, I approved the obtaining of a report, on joint instruction, from the local City Council's Welfare Rights Unit. Mr Taylor kindly prepared the joint letter of instruction, dated 14th October 2021, which the husband agreed. The Unit provided its report dated 3rd November 2021. For the months of October and November 2021, I ordered the father to pay periodical payments in the global sum of £1250 (£1249 child maintenance, £1 spousal maintenance).
32. On 18th/19th November 2021, I heard the wife's evidence, with written submissions to follow by 22nd November 2021. My reserved judgment was to follow in draft.

Legal Framework

33. I start with the question of child periodical payments.
34. The Child Maintenance Service has never had any involvement in this case. From 3rd September 2009 the parties reached agreement about child periodical payments as is recorded in the various orders of the court to which I have referred above.
35. The court's powers are preserved when a child reaches the age of 19 where 'there are special circumstances which justify the making of an order...': *Matrimonial Causes Act 1973, s29(3)(b) ('MCA 1973')*.
36. Special circumstances include the disability of a child: *C v F (Disabled Child: Maintenance Orders) [1998] 2 FLR 1*.
37. When exercising its jurisdiction in respect of a child, the court is directed under s25(3) of the Act in particular to have regard to the following matters:
 - (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
 - (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of sub-paragraph (2).

38. I may have regard to the likely figure that any assessment by the Child Maintenance Service ('CMS') would calculate as being due. However, I am not bound by such figure, especially in the case of an adult child born with profound disabilities and being cared for by one of her parents: *C v F (Disabled Child: Maintenance Order) (supra)* and the observations of Thorpe LJ.
39. As Mr Taylor points out, I could make an order under Schedule 1 of the Children Act 1989. 'Special circumstances' appear again: paragraph 3(2)(b). The court must take into account the matters set out at paragraph 4 of Schedule 1. I need not repeat them here. My preference is to deal with the case under the MCA 1973 as being the Act under which the original orders were made.
40. The principles I must apply in considering a dismissal of the wife's maintenance under s31 of the MCA are set out by Mostyn J in *SS v NS [2015] 2 FLR 1124* at [46]. Sub-paragraph (x) bears quoting in full:

"x On an application to discharge a joint lives order an examination should be made of the original assumption that it was just too difficult to predict eventual independence"

So, too, does sub-paragraph (iv):

"(iv) In every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable."

41. I bear in mind the need for an 'evidence based' approach when considering whether the wife would be able to adjust without undue hardship to the termination of periodical payments: *Flavell v Flavell [1997] 1 FLR 353* and *C v C (Financial Relief: Short Marriage) [1997] 2 FLR 16*. I also take into account recent observations as to nominal maintenance orders in *AJC v PJP [2021] EWFC B25* and *A v M [2021] EWFC 89*. Each case will turn on its own facts.
42. Spousal maintenance is, I add, treated as unearned income in respect of any assessment of Universal Credit and reduces the monthly payments on a pound for pound basis.

The Evidence

43. The father gave evidence first.
44. He has re-married and has two young children by his second wife. Both children have health needs. The older child is under the care of CAMHS.
45. The family live in a substantial Grade II listed property in the South East of England, which is owned by the family trust and in respect of which the husband pays no rent or mortgage. In his statement dated 15th September 2020, the husband writes:

"As part of the agreement allowing us to live here we must maintain and improve the property."

46. The husband's wife does not work but has a property in her own name, also purchased by the trust, which she lets out and from which she receives a rental income of £800 pcm. Elsewhere in the husband's written evidence her income is put at £1,150 pcm. It is unclear whether either figure is gross or net. Regardless of which, none of her income is said to go towards family outgoings.
47. The family trust runs to several million pounds. It was formerly administered by the husband's father but he has since been replaced by the husband's sister who works alongside professional trustees.
48. The husband is an employed pilot. From October 2020 the husband accepted a 75 per cent part-time contract, as a way to avoid redundancy. The contract is dated 15th September 2020.
49. On 2nd January 2021, the husband became seriously unwell, from which he has made a 'very good recovery' according to his doctor's letter of 24th August 2021.
50. The husband is to return to work imminently.
51. His gross income to the year ending 5th April 2021 was £101,968.57, around £5,400 net pcm.
52. Post his health condition the husband received contractual and statutory sick pay. The biggest fall in his income occurred in his August 2021 payslip to £1,475 net pcm. On 22nd July 2021, he received a £100,000 critical illness payment. His evidence was that £70,000 was used to pay debts and £30,000 remains.
53. The husband has disclosed an income tax summary for 6th April 2021 to 5th April 2022. It shows a gross income for the year to be £80,000 or £4,436 net pcm per At A Glance. The husband suggests it will be closer to £4,100 pcm.
54. As at 3rd September 2021, the husband puts his current outgoings at £7,314.54 pcm rising to £7,869.45 to fund more savings. These outgoings include global periodical payments to the wife and XFR of £1,250 pcm.
55. Elsewhere in his written evidence, the husband states the wife meets the majority of the children's expenses put at £560 pcm [F30]. Different figures are given for domestic help. Reply 28 in the schedule of deficiencies states £150 pcm is spent on such help, but the schedule puts the figure at £30 pcm with an additional £40 pcm wages (unspecified). The August 2021 payslip shows £750 being deducted for savings, whereas £350 appears in the schedule. The husband also claims £400 pcm for petrol, despite the proximity of his workplace to his home. There are also restaurant costs of £100 pcm. He also seeks £188.33 depreciation for his car, recently acquired albeit second hand. Holidays are put at £300 pcm, weekend breaks, £50 pcm.
56. On my analysis of his outgoings, the husband could make economies and reduce them by at least £1,500 pcm to between £5,500 to £6,000. It will still leave a shortfall. However, on his own account, he is living in a property he struggles to afford, which comprises substantial grounds, including a tennis court and swimming pool. There is, as Mr Taylor points out, no evidence of him seeking to persuade the trust to allow him

to downsize to a smaller property. The husband's evidence to me was that if he were to leave his present home, he would have to meet rental costs in the region of £2,500 pcm. He still has access to what remains of the critical illness cover, at least for the present.

57. His open offer to pay £400 pcm is based on his own calculation of what he says would be payable at the CMS level.
58. Office copy entries for the house where the wife and XFR live confirm it was purchased for £257,000 in 2017. Its purchase price and other costs (legal expenses and stamp duty) were met from the £275,000 settled on trust for XFR under the order of 12th July 2017.
59. At the time of purchase of her house, the wife sold her previous home from which she received a net equity of £83,000.
60. Substantial adaptations have been made to her home to make it suitable for XFR. I calculate the cost of these to be around £150,000. These were financed by a local authority grant of £19,000, the wife's equity from her previous house and a mortgage obtained by the wife of around £70,000.
61. A second charge in favour of the trust is still to be executed. In early 2021, the wife notified the trustees of all the work undertaken to her home but received no response.
62. The schedule to the order of 12th July 2017 gave the wife permission to raise a mortgage against the property for alterations and adaptations, which she has done. The wife reduced the mortgage by £10,000 to preserve her benefits in October 2020. She told me the current redemption figure for her mortgage is £61,194. It is a capital and interest repayment mortgage.
63. There is now no dispute about the wife's income. It amounts to £1,623.53 pcm and is made up as follows:-

(i) Universal Credit	£880.55
(ii) Carer's Allowance	£292.93
(iii) Child Benefit	£91.65
(iv) Personal Independence Payment	£358.40
(non-mobility element)	

£1,623.53

64. These figures are less the £20 weekly coronavirus uplift that was withdrawn in October 2021. The wife currently receives £1,250 pcm, giving her a total income of £2,873.53 pcm.
65. The wife is able to earn up to £515 pcm without it affecting her benefits. However, that will change from 1st September 2022. Any benefits payable to the wife after that

time will be subject to tapering as set out at page 9 of the Welfare Rights Unit's report. She will also lose the Child Benefit or child elements within the Universal Credit from that time.

66. XFR receives direct payments from the local City Council. This year the figure was calculated at £45,610.79. In her evidence, the wife told me she had been informed she had been overpaid by £11,000. It does not have any bearing on my decision in this case. The payments must be used as directed by the City Council. These are limited to the following:
- (i) Direct payment for a personal assistant of £447.73 a week.
 - (ii) Pension for the personal assistance at £7.67 a week.
 - (iii) Annual respite paid £21,438 pa
 - (iv) Insurance stationary and PPE £171 pa.

What remains unspent over the course of the year must be returned to the Council. The monies cannot be spent on other items of expenditure. The wife has advertised for a personal assistant to help with XFR's care but without success. She does not think the situation will change. Thus, the monies remain largely unspent.

67. The wife told me in evidence she is committed to finding employment next year, when XFR takes up her further education elsewhere. The wife has completed a law degree in recent years and would like to work in that field. She is unable to do so at the moment. She is solely responsible for XFR's care when she is not at school and cannot manage to work and care for XFR at the same time. She produced diary entries of the many health appointments she is required to attend with XFR throughout the local county, sometimes several times weekly, when XFR has been unwell. I accept XFR has had additional health problems over the last two years. The wife also takes XFR to school every day and collects her every day save for Tuesdays and Thursdays.
68. The wife puts her outgoings at £3,198.24 pcm. The shortfall is £1,661.31 pcm. In his written submissions, Mr Taylor suggests the outgoings could be around £87 pcm higher, taking into account increases in council tax (£7), heating bills (£25), physiotherapy (£38), swimming (£25) and to which music lessons have been added. There are some modest reductions in home emergency cover (£5.32), the cancellation of Sky (£17,01) and horse riding (£16).
69. The husband questions the monthly payment of £60 for gardening, £37.26 for a mobile phone, £41.22 for pet insurance, £30 for pet food, £200 for petrol/diesel, £40 for a splint and £50 for physiotherapy. The wife told me she is taking the last of these expenses to a tribunal in an attempt to have the Council meet the cost. The husband also objects to the wife's mortgage being taken into account, even though such a step is permitted under the trust of 12th July 2017.
70. Upon my analysis she requires somewhere in the region of £2,800 pcm. I agree it is reasonable that she should purchase a Skoda Kodiaq, using the mobility element of the PIP and a private battery powered wheelchair for XFR. However, there are

economies the wife can make including the loss of some of XFR's activities and holidays, just as the husband can.

Discussion and analysis

71. There are a number of points to the husband's application in respect of which it is necessary I make findings. These I make on a balance of probabilities. The order in which I deal with them below does not necessarily follow the order in which they were raised before me at the hearing.
72. In so far as it is a relevant starting point (see above), I find the CMS figure on an annual income of £80,000 gross pa to be closer to that provided by Mr Taylor of £568 pcm (with pension contributions) than the £400 pcm provided by the husband.
73. I reject the husband's case that the wife is able to find a job now. In order to receive a carer's allowance, the wife must care for XFR for a minimum of 35 hours pw. I accept the wife's evidence that she does at least double that at the moment, including attending the many medical appointments for XFR, particularly over the past two years. I also accept the wife's evidence that she has tried to recruit additional help by advertising for an assistant, the cost of which would be met by XFR's direct payments from the City Council, but without success. The position may change but there is little evidence it will do so in the foreseeable future.
74. The wife, like the husband, has her own underlying health needs as outlined in GP and cardiologist's letters, which I accept. There is a limit to what she can reasonably be expected to do on top of caring for XFR.
75. I am satisfied and find the wife is committed to finding employment when XFR moves to further education. That is her evidence to me, which evidence I accept. She must start planning now how best to achieve paid employment and in what field. I encourage her to do so without delay.
76. The husband's case until the last afternoon of the hearing that XFR would be better off claiming Universal Credit in her own right now was wrong. The report from the Welfare Benefits Unit makes clear there would be a net loss to the wife and XFR's income of £175 pcm. Any claim for XFR in her own right may also result in a loss of all benefits while the separate claim was processed.
77. Similarly, I find the wife is not able to use the direct payments from the City Council for any other purpose than that set out above [60], as was the husband's earlier suggestion.
78. I repeat the purchase of the Skoda Kodiaq, using the mobility element of personal independence payment, is a reasonable decision in the circumstances of this case; likewise, the purchase of a powered wheelchair and private splints are both reasonable.
79. The husband criticises the wife's spending on XFR as being unnecessary to the point of extravagance. He points out that the trust purchased her house outright for XFR. The wife received a grant of £19,000 towards alterations and adaptations, plus the

£83,000 equity from her previous property. On top of that she took out a mortgage on her current home, nearly all of which has been spent on adaptations for XFR.

80. I was not the judge who dealt with the claim on 12th July 2017. The parties agreed the terms of the trust, which was approved by Sir Mark Hedley. It gave the wife permission to raise a mortgage against the property for alterations and adaptations. I accept her evidence she notified the trustees in writing of all the work undertaken to the property in early 2021. No complaint or criticism was raised by the trustees at the time or since.
81. There must be a reasonable limit to the adaptations and the purchases the wife makes. However, I do not find, on the evidence, the husband's criticisms of the wife installing a self-cleaning toilet for XFR or, a hot tub and the purchase of the wheelchair to be unreasonable in light of XFR's needs.
82. On behalf of the wife, it is said that until recently the award for her and XFR was fixed at £1,600. That is what she seeks to be reinstated.
83. The husband seeks to pay £400 pcm for XFR and that should be the extent of his liability to XFR: the joint lives order for the wife be ended now.

Decision

84. Both parties are, I find, exhausted by the litigation that stretches back to 2009.
85. Their relationship has almost completely broken down. The husband has only seen XFR on two separate occasions for five days in December 2020 and December 2019. He has not Facetimed her at all in 2021. These arrangements are of his choosing. In February 2021, he raised a safeguarding concern about XFR to the local authority and applied for a non-molestation order; both came to nothing. In August 2021, he again contacted the local authority to question whether the wife was fit to care for XFR if she was too unwell to attend mediation. He wants an end to this case.
86. In reaching my decision I must apply the law as I have stated it to be above. There are few reported decisions to act as a guide. I must have regard to XFR's needs in their broadest sense in light of the special circumstance of the case.
87. I have reached the conclusion the husband should pay £1,050 pcm, made up of £1,049 to XFR, £1 to the wife. Subject to any submissions to the contrary, I will express the order as an interim order. I propose to re-list the case before myself on 1st September 2022. At that point, the funding for XFR and wife will have changed, and I can better assess then whether either order I have made should continue and if so for how long and in what amount. My order is less than the wife seeks, and more than the husband wishes to pay.
88. It follows I am not satisfied that I should dismiss the wife's joint lives' order at this stage. That must await a decision on XFR's future placement and what employment the wife has already taken up or is able to take up at that time, and whether the order should continue and, if so, for how long.
89. I am satisfied no lesser order would meet XFR's needs in the meantime. It will place a strain on both the wife and the husband's budgets. However, I am satisfied such an

order is fair to both in all the circumstances. The husband has suffered a fall in income but has the balance of the critical illness proceeds, which he can use over the coming months. Both will have to make economies they would prefer not to have to make. There is only so much to go round.

90. I add my order would have been the same if I had made it under the Children Act 1989.
91. That is my judgment.

Postscript

At the hearing on 13th December 2021, it was agreed that I should bring forward a review of my order to a further case management hearing on 10th June 2022 and list a further two-day hearing before me on 14th and 15th July 2022. I made directions for the filing of further evidence and a further report, on joint instruction, from the Welfare Rights Unit of the local City Council. Having brought forward the timetable from that which was originally suggested, I thought it fair to increase the global award in my draft judgment from £1,050 pcm to £1,150 on the same terms as before. The order will continue until 15th July 2022. The increase acknowledges Mr Taylor's point of the husband's ability in the meantime to amortise what remains of his critical illness policy; my finding that the wife's needs are £2,800 pcm; and that I am making the order, at least at this stage, over a shorter period than was originally my intention. Hence, I approve the order prepared by Mr Taylor, subject to it continuing to 15th July 2022, at least at this stage. I can extend or vary it in July 2022. I have varied paragraph 8 (d) to remove the words "after XFR has settled in college". That amendment does not shut out arguments on either side as to what work the wife may be able to take up, its timing and availability, and XFR's circumstances at the time.