

The draft judgment was circulated by email to the parties on 23 January 2024. The approved judgment was handed down at a hearing and circulated by email. The time and date of hand down is deemed to be 10.00 a.m. on 19 February 2024.

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IN THE FAMILY COURT AT THE CENTRAL FAMILY COURT
IN THE MATTER OF SCHEDULE 1 OF THE CHILDREN ACT 1989

Date: 19 February 2024

Neutral citation number: [2024] EWFC 63 (B)

Before : HHJ Vincent

Between :

A mother

Applicant

and

A father

Respondent

The applicant represented herself at the hearing
The husband was represented by Andrew Campbell, instructed through the Direct
Access scheme

Hearing dates: 16 and 17 January and 19 February 2024

JUDGMENT

Introduction

1. The applicant mother and respondent father were in a relationship for eleven years until their separation in September 2019. They have a son, [child C], who is soon to be twelve. I will refer to them as the mother and the father in this judgment.
2. On separation the mother and [child C] moved out of the family home, stayed with friends for a month and then went to live in a rented flat in [redacted].
3. On 3 July 2020 the father applied for a child arrangements order. That application has not yet been resolved.
4. On 8 July 2020, the mother applied under the Trustees of Land and Appointment of Trustees Act 1996 [TLATA] in respect of the family home. The application was resolved by agreement. The father paid the mother £572,000 (£500,000 to buy her share in the property, £60,000 occupational rent, and £12,000 legal costs), and she transferred her interest in the property to the father.
5. On 28 August 2020 the mother filed a C1A application alleging coercive behaviour including financial control, withholding possessions, and intimidating and harassing behaviour. Cafcass safeguarding checks found that there were no safeguarding concerns with regards to the father's contact with [child C]. With regard to an incident which resulted in the mother calling the police twice during the course of the day on 26 January 2020, a date when she was collecting belongings from the house, the safeguarding report concluded, *'this appears to be a situational incident fuelled by high emotions and dispute. There is no evidence to suggest [child C] has been exposed to ongoing domestic abuse, although is likely to have experienced conflict and animosity between his parents, especially at handovers.'*
6. On 19 October 2020 the mother notified the father through her solicitors that she was contemplating a move away from London. On 28 October 2020 the father applied for a prohibited steps order to prevent her from removing [child C] from his school at the time or to move away from their current postcode. The mother then applied to the Court for permission to relocate with [child C].
7. On 12 February 2021 the mother purchased a property in [city X] for £350,000. On 13 March 2021, the mother and [child C] moved to a flat in [area of London A], which is where they still live.

8. On 19 March 2021, Hilary Trevelyan, independent social worker in the Children Act 1989 proceedings, filed a section 7 report. She did not support the move to [city X] due to, *'inadequate current contact proposals, lack of support network or compelling reason to relocate so far away.'*
9. In June 2021 the mother indicated she was no longer pursuing a move to [city X]. Her application was formally withdrawn on 16 September 2021.
10. Sometime in 2022 the mother applied to the small claims court in respect of alleged underpayment of child maintenance payments. The claim was struck out by DDJ Reissmer on 17 November 2022 on the basis that the Court had no jurisdiction to adjudicate on child maintenance payments.
11. On 24 February 2023 the mother applied for financial provision for [child C] under schedule 1 of the Children Act 1989. This is the application listed before me for final hearing. The First Appointment was on 1 June 2023, at which time the mother was directed to file within two weeks, the evidence which should have been attached to her Form E1, and a position statement addressing her open proposal in response to the father's proposal made on 16 March 2023. She was also directed to reply to questionnaires within four weeks. The father did not receive any of these documents until after the FDR had taken place. The mother says that she did provide the documents to the Court via the bulk scanning centre at Harlow, but they were not uploaded to the portal. She provided further documents after the FDR.
12. On 29 June 2023 the mother applied without notice for a non-molestation order. The order was granted on an interim basis, but was discharged at a hearing on 9 August 2023. The Children Act proceedings and the application for a non-molestation order were to be listed for final hearing over three days. An order was made appointing a psychologist to prepare a report.
13. The Financial Dispute Resolution hearing in respect of the schedule 1 application took place on 17 August 2023.
14. [Child C] started at [school Z] in [redacted] in September 2023. He is in year 7, so has one more academic year after this one before he moves to senior school in September 2025. It is anticipated that he will go to [school Q], which is less than ten minutes' walk away from [school Z].
15. On 27 September 2023 and 13 October 2023 the mother made two separate applications to discharge or vary the direction to instruct a psychologist. Those

applications were refused by Recorder Searle on 18 October 2023. The mother applied for permission to appeal that decision.

16. On 25 October 2023 Henke J stayed the order for appointment of the psychologist pending determination of the application for permission to appeal.
17. The section 8 Children Act 1989 proceedings are ongoing. [Child C] is currently in a fairly settled routine, spending time with each of his parents. During term time he spends five nights a fortnight with his father (Wednesday to Monday). His time in school holidays is split fifty-fifty between his parents.
18. There was a pre-trial review for the schedule 1 application on 13 November 2023. This final hearing was listed for two days in January 2024.

The law

19. Schedule 1 Children Act 1989 gives the courts power to make periodical payments orders, lump sum orders, property settlement orders and property adjustment orders to, or for the benefit of, a child. These powers are ordinarily used to enable one parent of a child to secure financial assistance from the other parent where the parents have never married.
20. In deciding whether or not to make an award under schedule 1 of the Children Act 1989 the court must have regard to all of the circumstances of the case including:
 - The income, earning capacity, property and other financial resources which each parent has or is likely to have in the foreseeable future;
 - The financial needs, obligations and responsibilities of the parents;
 - The financial needs of the child;
 - The income, earning capacity, property and financial resources of the child;
 - Any physical or mental disability of the child;
 - The manner in which the child is or was expected to be educated or trained.

21. The welfare of the child is neither the court's paramount nor first consideration, but welfare will have, *'in the generality of cases, a constant influence on the discretionary outcome'*. The child is *'entitled to be brought up in circumstances which bore some sort of relationship to the father's current resources and the father's present standard of living'*, with the caveat that, *'the court must guard against unreasonable claims made on the child's behalf but with the disguised element of providing for mother's benefit rather than for the child,'* (*Re P (a child: financial provision)* [2003] EWCA Civ 837).

22. The Act provides that the court may order periodical payments to be made in some circumstances. However, pursuant to the terms of section 8 of the Child Support Act 1991, an award of periodical payments may not be made under schedule 1 of the Children Act 1989 unless a maximum child support assessment has been made by the Secretary of State, or the parties agree that the court should have jurisdiction.

23. In the absence of an award for periodical payments, the Court may not make a lump sum award which is in fact a capitalised maintenance claim:

'It is well established that the court cannot legitimately circumvent this prohibition by making a capital award which rolls up expenditure which would ordinarily be met by a periodical payments order. Put another way, the court does not have jurisdiction to make an award to meet the quotidian expenses of living; to meet, if you like, the cost of one's daily bread. It can only make an award for genuinely capital expenditure of a singular nature.'

Green v Adams (no 1) [2017] 2 FLR 1413 per Mostyn J at paragraph 4

24. Lump sum orders for items other than housing are limited to singular items of a capital nature, and should not be made so as to cure any defects in the assessment of liability for child support under the Child Support Act 1991.

25. The court cannot order payment of rent, because that amounts to periodical payments. In *Stacey v McNicholas* [2022] EWHC 278 (Fam), the father was directed to pay a lump sum to cover rental payments incurred by the mother. His appeal against this order was refused. He had been ordered to pay a lump sum in order to provide a house for mother and child, but had failed to do so. Over two years had passed. As a result, the mother could not afford to buy a property and had to rent while she waited for the father to comply with the order. This cost was held to flow directly from the father's default, and he was directed to compensate the mother accordingly.

26. Usually, the most significant element of the award in schedule 1 cases is the provision of capital for housing. The court will have to determine what accommodation is reasonable for the child in the context of available resources. The provision of capital for housing (whether made by way of lump sum or property settlement or transfer order) should be drafted in such a way that the provision reverts to the payer once the child is eighteen or has finished full-time education (*Stacey v McNicholas* [2022] EWHC 278 (Fam)).
27. Long term outright capital provision for a child should only be made in special or exceptional circumstances.
28. Provision of capital for housing can only be made on one occasion, since the statute bars more than one order by way of a property settlement or transfer order (para 1(5)(b) Schedule 1 Children Act 1989).
29. The general rule in financial remedies applications is that there will be no order for costs. That rule does not apply to applications under schedule 1. The judge is able to take into account offers that have been made, or a party's failure to negotiate, and make orders for costs in appropriate cases. Neither party has made any application for costs at this time, but it is an issue that may arise post-judgment.

The evidence

30. I have read all the documents in the bundle, which includes statements from each of the parents, financial documents, applications and orders, and some documents from other applications before the Court. I have considered the print outs from Rightmove or similar websites showing properties that each of the parties contends would be suitable for the mother and [child C] to live in. I heard evidence from each of the parents, considered their position statements and submissions made at the end of the two-day hearing.
31. The father was represented by Mr Campbell, who cross-examined the mother. The mother was assisted in Court by Mr Ahmad, Qualified Legal Representative (QLR) who had been appointed to cross-examine the father on her behalf.
32. The mother presented as highly anxious and at times extremely distressed, particularly when reflecting on her own circumstances, her fear of the impact of those circumstances on [child C]'s mental health and well-being, and what she perceived to be the father's disregard and lack of empathy for her as [child C]'s mother, and for [child C] himself.

33. Despite her anxiety and distress, and evidently having felt quite overwhelmed by the proceedings at times, she was aware and had a good understanding of the issues and relevant criteria for the Court to consider. Her witness statement and position statement were full of detail, and explained the orders that she sought and her thinking behind that. However, in respect of the lump sum for housing that she seeks, she remained quite uncertain about the amount she says she needs. Her approach seems to be to wait until the Court has determined how much the father should contribute and work from there. The difficulty is that she seemed to be contending that the Court should be looking to achieve some kind of parity between the father's standard of living and her own. That is not the approach to take in schedule 1 applications, I have to assess need. On this, other than identifying houses in which she would like to live with [child C] and which she regarded as closer to parity with the father's situation, the mother was not able to present any detail around the cost of buying or maintaining a house, and how she intended to meet those costs¹.
34. When she came to giving evidence, her answers were full, and generally consistent with what she had said in her written position statement, her earlier witness statement and correspondence. The evidence she gave was very much from her own perspective, but she was genuinely striving to give me a reliable account of her situation as she saw it.
35. I reject her evidence in one key respect; I do not accept that she purchased the [city X] property in February 2021 as an investment. I find that she bought it with the intention of moving to live there with [child C]. My reasons are as follows:
- Her explanations around the purchase of the property in [city X] shifted and were not convincing;
 - The timeline of the purchase was consistent with her actions in informing the father of her intention to move to [city X], and applying to the court to endorse her plan;
 - She has made no attempt to get income from it by renting it out;

¹ When seeking clarification of the judgment, the mother pointed me to evidence she had submitted of her previous and current electricity bills, water, phone bills, house insurance, and all living expenses which she has incurred between October 2020 and August 2023. But this did not tell me about what she anticipated the costs of purchasing the new house or maintaining it, or how she proposed to meet those costs, and from what source.

- in furtherance of her application she investigated (and caused the father to investigate, and the independent social worker to consider her proposals) schools, local amenities and what arrangements might be in place for him were she and [child C] to live in that particular house in [city X];
 - she told [child C] of her hopes they could live there. [Child C] was very clear when he spoke to the independent social worker that the house in [city X] would be *'the best house he has ever lived in'*, commented that the house had lots of storage space, was in a nice area next to a park and had lots of bedrooms and a nice living room. He told the independent social worker he really wanted to move to [city X] and thought he would have a very nice life there. The independent social worker concluded that [child C] was *'very well aware of what [his mother] wants, and is unable to separate his needs from her wishes'*.
36. The father was very softly spoken and technically precise in his answers. I formed an impression that he values precision and things being correct, and felt this responsibility when giving his evidence. His oral evidence was consistent with the witness statements he has prepared, and was borne out by the documentary evidence he has produced. I found him to be a reliable and accurate witness. His emotion was less visible, but there is no doubt that the continual litigation has over the last four years taken its toll on him.
37. Some of the things he said provoked a very strong reaction from the mother, as if he had said something really quite offensive or abusive. However, this was her response to almost any statement with which she did not agree. For example, she was upset at the suggestion that the dog that lives with her and [child C] was her dog rather than [child C]'s. She was extremely distressed when the father voiced an opinion that she did have capacity to work and therefore could have made a choice not to visit a food bank. She was extremely distressed when he said that [child C] did not need to live in [area A of London].
38. Negotiations between the parties have been hampered by the mother's mistrust of the father, her feeling that any attempts at settlement or discussion of the issues are attempts to coerce her or pressurise her, and her consequent decision not to share information with him, or enter into discussions. She did not provide him with the information that would have enabled the parties to have a meaningful FDR (she says she did send her documents to the bulk scanning centre in July 2023). On 8 January 2024 she rejected the proposals made by the father in December 2023, saying, *'I do not agree that your proposal considers [child C]'s needs, current and moving forwards. Ensuring his needs*

are met, is the fundamental purpose of my application and I find your proposal coercive towards your son.'

39. She later explained to the father that she felt by making proposals and asking her to respond with a counter-offer was simply fishing for information on the premise of seeking agreement, but his intention was to use any information gained against her in court. Her response was to withhold her own negotiating position from him. She said, *'without a final agreement on settlement, it is impossible at this stage for me to predict the financial position I will be in. Therefore, unfortunately at this stage I am unable at this stage to reasonably provide a figure of what contribution I am asking you to make and have refrained from doing so for this very reason. However, given my property in [city X] was bought as an investment, and should it be sold or no alternative rental property bought to provide an income, it would make sense for me to contribute as much financially as possible, subject to my remaining funds.'*
40. This is not an easy position to comprehend. It illustrates some of the difficulties the parties have had in resolving their dispute through negotiation, and did present a continuing difficulty at final hearing because the mother's case on the central question of housing lacked specifics.
41. It could be said that there is a power imbalance between the mother and father because of their different economic positions. He is living in a home that he owns, has a secure and stable job, and the ability to supplement his earnings with consultancy work, and he is protected from the risks of adversity in the future because he has a pension, owns property and farmland in *[place name redacted]* that he inherited from his father, owns shares in the company he works for and has savings and investments. By contrast, the mother has far less economic security and is not working. During the relationship, the father worked and the mother was principally home caring for [child C] (although she did work as a nanny for a time when [child C] was small).
42. However, the existence of an imbalance of economic power is not in itself evidence of an abuse of that power.
43. I have not seen, either within the documents I have read, or in the evidence I have heard, that the father has sought to take advantage of his relatively comfortable financial position compared to the mother, to gain power over her.
44. I must focus attention on the schedule 1 factors, and not be drawn into the parents' ongoing Children Act 1989 dispute. However, as the mother has

repeatedly raised issues from those proceedings within this application, I have read and considered the section 7 report from the independent social worker. Within that report, the social worker has set out the allegations of incidents of domestic abuse, but in her analysis did not identify domestic abuse, either during the relationship or post-separation, as a risk factor for [child C].

45. She does note that both parents agree their relationship deteriorated over time. She identifies significant issues with communication. The father is reported to say that the relationship comprised the mother *'stating things'*, and him *'accepting things'*. He said the mother was aggressive in communication and refused to discuss any options for the arrangements post-separation, except a plan for the father to move out of the family home. The mother told the social worker that the father, *'does not respond to communications he does not agree with, or will disagree with everything [the mother] says.'*
46. [Child C] is described by the s7 reporter as a child who is overloaded with, rather than protected from, adult worries and anxieties related to the conflict between his parents. The social worker had a concern that the mother could, *'conflate [child C]'s needs with her own and be quite forceful and determined to achieve what she feels is the right outcome.'* The social worker went on to say:

'When parents separate from toxic relationships it is common that there is a struggle for control. In this case, it seems that [the mother] has sought to control access to and time spent with [child C], perhaps due to feeling that [the father] was using money and accommodation as his own means of control.'
47. I have not seen evidence within these proceedings to support the mother's allegation that the father has used money and accommodation as a means of exerting control over her or [child C].
48. The mother said during the course of the hearing that the father had forced her to remain in London, by issuing an application to prevent her from leaving. She said this was an example of his attempt to control her. It could not in my view be reasonably seen as controlling or an act of coercion for the father to ask for a move away from London and from [child C]'s school to be put off, pending consideration by the Court.
49. In the event, the independent social worker gave clear reasons for not supporting the move:

'It is my view that in this case internal relocation is inherently unstable and not in [child C]'s best interests. [child C] is an anxious child currently settled in school. His relationship with his father has been tenuous since the separation. There is only a recent history of more settled contact arrangements. A move to [city X] could have long term consequences, in particular increased distance between [child C] and his father and perhaps future anger and resentment from [child C] towards his mother if the move is unsuccessful. Their lack of support network would mean that [child C] and his mother are very reliant on each other, possibly developing an increasingly intense and dependent relationship. I feel [child C] needs increased external relationships, particularly with positive male role models. If [child C] and [the mother's] relationship becomes strained in adolescence it will be valuable to have [the father] and their network close by; currently [the mother] describes having a very active and supportive network of friends who helped her following separation from [the father] and during her move to [area of London A].'

50. Following receipt of this report, the mother withdrew her application for relocation.
51. I turn now to consider each of the factors on the checklist, starting with the parties' **income, earning capacity, property and other financial resources which each parent has or is likely to have in the foreseeable future.**
52. There was no challenge to the father's evidence. He has around £2.9m in non-pension assets, comprising:
 - (i) Sole ownership of the former family home, which was previously jointly owned. He bought out the mother's share of the property and took out a mortgage to fund that. The property has equity of £1.25m;
 - (ii) Interests in property and land in *[place name redacted]*, inherited from his father in December 2019, with equity totalling £710,000. One of those properties is a house that he visits regularly as a second home;
 - (iii) Cash in bank accounts of around £40,000, and investments/shares of £640,000;
 - (iv) Unvested share options with his current employer *[name redacted]*, with an estimated value of £230,000. If he were to leave this job, then he would lose his entitlement to these unvested share options;

- (v) *[Name Redacted]* Ltd, the company he founded in 2019 is a business through which he offers ad hoc consultancy, less since he started full-time work with his current employer in 2022. It has a nominal value (he estimates £26,000 in his ES2 with liabilities of £14,000) but is more a vehicle for generating income.
53. The father has a pension of £630,000.
54. He earns £107,000 gross/£68,000 net a year as *[job title and employer's name redacted]*. He earns about £10,000 a year from his consultancy work. He receives some dividends from his investments and rent in respect of farmland in *[place name redacted]*, totalling around £8,000 a year.
55. The mother owns her property in *[City X]* mortgage-free. It has a current value of £385,000. Assuming costs of sale at around £5000, the equity is £380,000. If she sold it and first paid off debts, she would have around £365,000 in cash.
56. On any view, the mother's decision to buy the property in *[City X]* has been the source of much of her present difficulties:
- (i) it tied up £350,000 of her capital, and led to her incurring additional expenses related to cost of sale, insurance, maintenance, bills and travel;
 - (ii) it prevented her from buying a property in London for *[child C]*. I do not accept her evidence that in February 2021 she was prohibited from doing this because she needed to ring-fence £200,000 for legal fees. Had she used all or most of the £500,000 that represented her share of the equity, she would have been able to purchase a suitable property for her and *[child C]*, and save herself the expense of renting in London when she could not afford it;
 - (iii) instead she chose to rent in an expensive area of London at a cost of just under £2,000 a month, leading to her depleting the surplus £200,000 she had received following the TLATA proceedings;
 - (iv) Although she said she purchased the property as an investment, she has not made any income from it by renting it out;
 - (v) owning the property but not living in it prevented her from receiving benefits to which she might otherwise have been entitled.

57. The remainder of the £572,000 she received from the TLATA claim in 2000 has been spent. The mother has no other savings or investments to her name and has hard debts of £11,500, including credit cards, monies owed to the DWP in respect of an overpayment of universal credit, and rent arrears. At final hearing she said the rent arrears figure was larger, closer to £7,000, bringing the total debts up to around £17,000.
58. In her Form E she said that she owed her father £5,784, but told me that figure has now increased, because he has been covering her rent for the past year. While she may feel a moral obligation to repay him, there is no evidence that this debt should be treated in the same way as the 'hard debts' described above. She fairly accepts in the information given to the Court that her father pays her rent directly to the agent, and is not proposing to charge her interest or enter into any commercial arrangement with her about repayment.

Income and earning capacity

59. Currently the mother is receiving £6,500 a year in child maintenance payments and around £1,000 in child benefits. There has very recently been a reassessment to reflect an increase in the father's income since 2021, assessed at an additional £30,063 to take into account. This may lead to an increase in the monthly payments received, however I have taken £6,500 as the figure, based on the evidence before me.
60. Apart from earning a few hundred pounds overseeing a junior cricket camp in 2022, she has not worked since separation. She has not made any job applications for the past twelve months. It is right to note that she has been certified as unfit to work for certain periods during that time. In September 2023 the conditions were *'pain in previously fractured ankle and other limb pains as a result; traumatic life events'*. The most recent certificate from January 2024 cites, *'mixed anxiety and depressive disorder ongoing traumatic life events'*.
61. As well as the continuing issues from her fractured ankle, the mother says the ongoing legal proceedings have taken their toll and she has, *'spent considerable hours over the last two years acting as a litigant in person when [she] could have been retraining at home.'*
62. In a letter to the father written 9 January 2024, and confirmed in her position statement and oral evidence to me, she said that she had very recently commenced a three-month course in information, advice and guidance, and

was hoping to use these skills and her lived experience to find work. She anticipates that this is likely to be voluntary work for a charity rather than paid work, certainly in the first instance. Her particular interest is in women's charities, and in particular supporting other women in the family court.

63. Even more recently she has enrolled in a part time distance learning Open Honours Degree with the Open University, which will equate to eighteen hours of study per week, for six months of the year, for six years. She has taken out a loan for the tuition fees. Once her studies are complete, she considers it unlikely that she would immediately obtain paid work, and thinks it more likely that she would obtain work in the voluntary sector to get experience before she could look for a paid position.
64. She has considered the possibility of paid work, but only to a limited extent. She says she would like to be a PA, but says training with Pitmans or similar would cost her £2,995, which she cannot afford to pay. She needs work that allows her to parent [child C], so would require some flexibility, although he is nearly twelve and will presumably be able to make his own way to and from school, and increase his independence, in his teenage years.
65. The mother has made some enquiries into work, but has not felt able to take up any paid or voluntary work. She has extensive experience of working with children and parents. Before having [child C], and for a period of time afterwards, she had a successful career as a private nanny which included an element of being a PA. It would seem that she might well be able to work in retail, as a teaching assistant, or school administrator, or PA to a headteacher. She said her ankle injury was a factor in not applying for work, but that happened in April 2022, and is not cited on the most recent doctor's certificate as a reason that exempts her from applying for work. She was able to play cricket in 2023 – she said fit enough to bowl a ball, but not to run around. She exercises her large dog daily, by going for walks of around an hour at a time.
66. I appreciate that the mother would wish to pursue a career of her own choice that is fulfilling and inspiring to her. I also understand that her mental health at the moment is a significant factor in preventing her from working full-time.
67. If she is able to study in excess of eighteen hours a week sitting at a desk, and she is able to walk a dog, it would appear that she has both the capacity to do a desk job, and a job with an element of walking. While I understand that participating in the large number of court hearings that have taken place over the last few years has preoccupied both her mind and her time, this is not a situation that will continue. She should soon be able to look for a job.

68. The mother has put her eventual earning capacity at around £28,000 pro rata, but she does not seem to envisage being able to earn for some time.
69. The father has found two jobs which appear to me to be realistic options for the mother to work towards obtaining in the short term. The first is for a part-time PA to a husband and wife described as of ultra high net-worth (UHNW). The salary is between £29,100 and £36,900. The second is for a private PA to support the CEO of a pharmaceutical company on a salary of £14,000 for 16 hours a week or £35,000 full time. Both these jobs emphasise diary management, there is no requirement for short-hand typing. I can see that recruiters would favour candidates with particular experience in these roles, and the mother is perhaps likely to have to look at perhaps more entry level positions in the first instance.
70. Having considered all the evidence concerning the mother's capacity to work, I find that she does have a capacity, that it will need to build up as these proceedings come to an end, she puts in place arrangements that create more stability for her, has more time, and works towards recovery of her mental health. In my judgment, it is realistic to consider she could work at least a fifty-percent part time job (around eighteen hours a week) which would reasonably pay £16,000 to £18,000 a year. Together with child maintenance and child benefit she would be on around £23,500 to £25,500 a year.
71. The mother is fifty-one, so could potentially look to obtain a mortgage up to retirement age of sixty eight. However, I doubt that she would realistically be able to obtain a mortgage before she was able to evidence a history of receiving regular income sufficient to meet the payments. Given her current liabilities, I am not aware as to whether she would be able to evidence a good credit history to any prospective mortgage provider.
72. On balance, I am not satisfied that I should take a mortgage capacity into account when determining the application before me.
73. Considering **the financial needs, obligations and responsibilities of the parents**. [child C] is each of the parent's only child. Their principal responsibilities in life are to him. To house him, feed him, clothe him, provide for his education, and to support him in developing interests both in and out of school. Neither of the parents has responsibilities to any other person that conflicts with their obligations to [child C]. [child C] does not have any particular **financial needs** over and above what has been described.

74. Turning to consider specifically [child C]’s housing needs. When he is with his mother, he needs to be living in at least a two-bedroom property that is within a reasonable distance of his school, preferably on the school bus route. The property could be a flat or a house, outside space would of course be desirable given that they have a dog, but is not essential, if there were sufficient room inside for the dog. Many people in London keep dogs and do not have gardens. The current property has some outside space but the mother told me she does not go in it at all except to hose the dog down after a muddy walk. An outside passage or access to an outside tap would therefore be needed, but that might not necessarily need to be in a garden.
75. The mother has good reasons for wanting to stay living in *[area of London A]*. Since moving there nearly three years ago, she has established a network of friends, and [child C] also has friends who live locally. They live close to *[redacted]* Cricket Club where [child C] is a member and evidently both of them like the area very much. *[Area of London A]* is over five miles from school but is on a school bus route and [child C] has friends who travel on the bus with him. The mother likes the flat that she is renting, and despite her recent difficulties with rent arrears, she feels confident that she could extend the lease.
76. All these make for a desirable living space in a desirable location, but in my judgement it cannot reasonably be said that [child C] has a need to be housed in the *[area of London A]* area of London. The mother describes the father’s reasoning that led him to propose other areas of London closer to [child C]’s school as ‘*somewhat controlling*’. I disagree. The father has carried out a search based on location to the school, and its bus routes, has noted the geographical locations of other students in the school, and has visited two of the properties on the lists (one on his list, one on the mother’s). He has tried by objective means to find a property that is suitable for [child C]. The properties that he put forward are in fact very similar to properties the mother put forward back in September 2023 when first directed to carry out this exercise. She now says these are not to be taken as genuine options, but were there merely to give context to the property market as a whole.
77. The mother was distressed and indignant at the idea that a property in another area of London would be considered suitable, and very upset at the thought of being uprooted and having to move to a place where she did not know anyone and did not have networks of friends.
78. A move at this time would no doubt be a wrench, and very difficult for the mother to manage after the upheaval of the previous few years. [Child C] may

also find it difficult, although he would be remaining at the same school, with the same friends. I understand this and recognise the difficulty, but that does not translate to a concrete need for [child C] to live in a property in [*area of London A*].

79. [Child C]'s school is over five miles away and is serviced by a number of different bus routes which cover the whole of [*the relevant area of*] London. In just over eighteen months he will be going to senior school. This will likely be with a number of his friends from prep school as it is a feeder school to [*School Q*], but he will be joined by a much larger number of fellow students from all over London. He does not need to remain living in the exact place that he is living now for the rest of his school career. He needs to live in a place from which he can get to and from school relatively easily, move between his mother's and father's homes relatively easily, visit friends from school, and where they can travel to see him.
80. Having regard to the property particulars, in my judgment [child C]'s reasonable housing need are somewhere around £450,000 to £500,000. That would buy a suitable property within reasonable distance of [child C]'s school, friends, outside school activities, and his father. It would likely mean a move out of [*area of London A*].
81. [Child C] does not have an **income, earning capacity, property or his own financial resource**. [Child C] has had some health issues in the past, but he does not have a current **physical or mental disability** that is relevant to the decision I must make.
82. Despite the level of difficulty between the parents, they are in agreement about the **manner in which they expect [child C] to be educated**. They agree that he should be privately educated, they both support him in his love for cricket, and have been agreed that he should be in a choir and have music lessons.
83. The father has agreed that he will continue to pay [child C]'s school fees together with reasonable extras on the bill, including the cost of the school bus and school meals. He offers to pay additional expenses to be agreed between the parties, for example music lessons, additional tuition fees, extra-curricular activities including school trips. He considers that the mother should contribute towards school uniform, sports kit and equipment.

Conclusions

84. I have had regard to all the circumstances of the case and to each of the checklist factors.
85. The mother's current plan to be a student and to look for work only as a volunteer, is not going to enable her to provide for herself and for [child C]. While her funds are tied up in the property in [City X], she cannot buy an alternative property or meet rental payments. Her solution is for the father to breach the gap.
86. The mother proposes that the father purchases a property in [area of London A] for £750,000 plus stamp duty, and for it to revert to the father once [child C] has finished school. In the alternative, she proposes to sell her house in [City X] and seeks a contribution of around £400,000 from the father to enable her to buy a property.
87. In addition, she seeks a direction that the father contributes to the cost of structural repairs and renovations, pro rata with the percentage of his investment in the property. This is sought on the basis that the father would be investing in the property and to secure and maximise his investment, he should be required to contribute to the cost.
88. The father proposes that he contributes £125,000 to the cost of buying a home for [child C] and his mother to live in, to revert to him upon [child C] finishing his secondary education. He does not accept that he should contribute to costs of sale or to ongoing repairs and renovations.
89. The mother seeks a lump sum to cover the following expenses:
- £5,239.61 for the cost of furniture and other family items;
 - £1,000 to cover losses in respect of camping equipment kept by the father;
 - £7,695 for a car bought by the mother in September 2020;
 - £400 for expenses associated with taking [child C] to medical appointments, primarily travel, parking, snacks/lunch;
 - £19,200 for 'the difference between what rental income [M] would have had from February 2021 to February 2023;
 - £19,430 for rent from February 2023 to December 2023 which has been paid by the mother's father;
 - £14,000 (£2,000 a year for seven years to fund school uniform and other expenses relating to [child C]).
90. The father offers a lump sum of £15,000.

91. There is some dispute around school uniform, cost of extra-curricular clubs, and sporting equipment, but in the main it is agreed that the father will be paying [child C]'s school fees and extras that appear on the school bill.
92. The mother's proposal in respect of capital investment represents an over-assessment of [child C]'s housing needs, because he does not need to live in *[area of London A]*.
93. The father could in theory raise the funds to meet this need by cashing in his investments. However, it would deplete that fund very significantly, in circumstances where he is likely to need some recourse to those resources to supplement his income in order to meet his own living expenses, maintain his own home, pay maintenance to the mother in line with the child maintenance assessment, and fund [child C]'s school fees and associated expenses.
94. It is not reasonable of the mother to ask that the father changes the way he uses the house he has inherited from his father by selling it or renting it out, in order to raise funds to meet hers and [child C]'s needs.
95. The mother's proposal effectively includes a request that the father acts as insurer to compensate her for the difficulties that she has faced since separation. It is not his responsibility to meet the costs of rent she incurred as a result of putting her money into a property in *[City X]* and spending the rest. He is not required to compensate her for the time she has been out of work. He is not required to provide for other expenses of daily life over and above what he pays in child maintenance. He is not liable to compensate her father who has made rent payments on her behalf.
96. Looking forward, the mother has capacity to work that she should be expected to utilise. She cannot reasonably expect the father to provide financially for her to enable her to choose a life of study and working in the voluntary sector, rather than seeking paid employment, or using the assets she has to generate an income that would enable her to provide for herself and her son. I accept that due to having been out of the workplace for some time and due to issues with her mental health, and the need to be available to [child C], part-time work in the first instance is the most realistic option.
97. The mother may now feel tied to living in London, but she cannot reasonably blame the father for this. She and he decided together that they wished to raise their child in London. The independent social worker gave cogent reasons for not supporting a move to a place where the mother had no family or friends,

which would put difficulties in the way of [child C]’s relationship with his father, and potentially create difficulties for [child C]’s relationship with his mother. It was the mother who then withdrew her application to the Court. She may have felt that in the circumstances she had little option, but it is a misrepresentation to say that she remains prevented from living elsewhere as a result of actions taken by the father.

98. I have concluded that I should make the following orders on the application:

- (i) The father to pay a lump sum to be used to purchase a property for [child C] and his mother. The lump sum is £150,000, to revert to the father once [child C] has finished his secondary education or turned eighteen, whichever is the later date. Father proposes that a charge be put on any property purchased, expressed as a percentage of the gross purchase price. I would accept this as a means of protecting him from the inflationary reduction in the real value of a lump sum, and builds in fairness where the sale price is higher or lower than the purchase price;
- (ii) Payment outright of a lump sum of £20,000. This is to cover expenses relating to housing and to the purchase of a car;
- (iii) (by consent) payment of school fees and reasonable extras on the school bill including school meals, subscriptions (e.g. PTA, exam fees, purchase of text books, charitable donations, and the school bus). The father will also be directed to pay for extra curricular clubs, music lessons, and school trips which are part of the curriculum (e.g. geography field trips, Duke of Edinburgh);
- (iv) for additional school trips where both parents have agreed that [child C] should take part (e.g. French exchange, school skiing trip, cricket tours) the starting point would be an equal contribution from each parent.

99. I have reached my conclusions in this way. If the mother sells her property in [City X], and pays off her debts, she should be left with something in the region of £365,000. She needs around £450,000 to £500,000 to purchase a new property. The sum of £150,000 gives a cushion to cover stamp duty, immediate alterations and repairs, and moving costs. She would then be mortgage free and on an eventual salary of around £16,000 to £18,000, supplemented by child maintenance (£6,500) and child benefit (£1,000). She has put her current outgoings at £43,000, but that includes £24,000 a year in

rent. If the rent is taken away, on these figures she would be able to meet hers and [child C]'s needs.

100. The mother's proposal that the father either buys a property of up to £750,000 outright or contributes up to £400,000 of his money to an investment property demands too much. He is comfortably off, but his resources are not unlimited.

101. Even if I had assessed [child C]'s housing need at that level, I have concerns about its viability. The mother appears to have made her assessment of need in a fairly superficial way. The size of the properties she has put forward in *[area of London A]* are broadly similar in size to those put forward by the father in *[other areas in London]*, but because they are more expensive, they are likely to attract higher costs, for example stamp duty, council tax and insurance. None of this has been costed.

102. The father is to be regarded as more akin to a mortgage lender than an investor. I do not consider that he should be directed to contribute to structural repairs or renovations. Such a direction would inevitably be imprecise and lead to uncertainty as to what level of investment was required or not, and thereby the likelihood of continuing conflict. The property will belong to the mother and she will be living there. She should be responsible for renovations, repairs and its decoration. She should not have to consult the father about any of the decisions she makes in that respect, but nor should she expect him to make a financial contribution.

103. The £150,000 will return to the father only upon completed sale of the property or his being bought out. The property should not be put on the market before 1 August 2030, which will be during the summer that [child C] is due to finish secondary school. Thereafter it is difficult to predict now whether [child C] will go to university, have a gap year or not. The danger of pegging reversion of funds to what is happening to [child C] is that he may feel a sense of responsibility to make decisions that favour one parent or the other, rather than pursuing his own agenda. For example he may feel obliged to take a gap year if this means delaying sale of the home in which he and his mother are living. Other than taking judicial notice of the fact that school and university leavers are likely to depend upon their parents for housing longer than was once seen as usual, there is nothing about [child C]'s particular circumstances to tell me that there should be a delay in the return of the £150,000 to his father.

104. There is some force in the notion that the sooner these parties have no continuing financial relationship the better. The mother has six years between

now and 1 August 2030 to put her finances on a better footing, and will still have £350,000 to put towards a new home.

105. There is not a great deal of science behind the order for a lump sum of £20,000. The mother has said that she has liabilities of around £17,000. Some of those can be met from the proceeds of sale from the [City X] property if that is what she chooses to do. But that may not come immediately, and her current need is more pressing. The sum includes an amount for a car, which I find the mother does need, in order to pick [child C] up from school, watch him play matches, go to school concerts, take him to see friends or offer lifts to his friends, take him to cricket and other out of school activities. It includes an element for costs of moving, which may include short term rent pending a house being ready.

106. I have not made allowance for the remaining items on the mother's list, for the following reasons:

- Many of the items sought are really claims for elements of maintenance, including rent, and the expenses related to taking [child C] to hospital appointments;
- the father is not responsible for the costs of past or future rent. The mother does not have to be renting, but chose to tie up her money in a property in [City X]. This is a different scenario from that in *Stacey v McNicholas*;
- Schedule 1 claims do not generally include issues of division of assets upon separation as might be considered on divorce. There is no good reason to entertain such a claim in the circumstances of this case;
- whatever the reason for the mother not being able to work in the past, and however much sympathy one might have, any award must be assessed by reference to the applicable legal framework. The father is not responsible to compensate the mother for any loss of earnings she has suffered.

107. I do not consider that payment of a further £14,000 into a joint account to meet additional items of school expenditure is appropriate in all the circumstances. This is again maintenance by another name. The setting up of a joint account creates a risk of arguments over transactions made without agreement from the other party.

108. Payments for school uniform and for sports equipment are not matters that fall within schedule 1 applications; this is an application for maintenance.

‘Sports equipment’ here is likely to be related to cricket; bats, pads, helmets and bags, some of which will need replacing regularly while [child C] grows. Some of these are quite big-ticket items that may come as a birthday or Christmas present with contributions from other members of the family. I do not consider it appropriate to direct that the father should have to pay for these items. However, as with the school fees, the order may record that the father will pay two-thirds of the costs of school uniform as he proposes, and fifty percent of sports equipment.

109. So the final order would direct the father to make a lump sum payment of £20,000 to the mother, and to be prepared to invest a further sum of £150,000 into a property that she purchases for her and [child C], that sum to revert to him once [child C] has finished his secondary education.

110. I remain concerned that an order directing the father to invest £150,000 into a property for the mother and [child C] will not achieve a workable solution:

- (i) The mother and [child C] are happy in *[area of London A]* and would like to stay there. She would prefer to continue to rent her current property in an area where she feels settled and at home, than buy a house in an area that she does not know and which will put her at a remove from her existing network of support;
- (ii) I am not persuaded that the mother has properly costed out the sums needed to buy a property, do essential repairs, renovations and redecoration, nor the likely costs of maintaining a property as a home owner. There may be capital gains tax if she sells the *[City X]* house. Her position has been to look to the father to cover what she needs.

111. I have determined that nevertheless this is an order that I should direct the father to make. Doing the best I can on the evidence before me, I find that a contribution of £150,000 would meet [child C]’s housing need, and on my assessment of the mother’s resources, she would be able to sustain it. On balance it would be better for her to have the equity from *[City X]* retained in property so that she can use it for housing when [child C] is an adult. If she were to continue renting she is likely to have to dip into funds from the *[City X]* property which would then be depleted over time.

112. Ultimately, it is a choice for the mother to make, having assessed her options.

HHJ Joanna Vincent

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Approved judgment handed down: 19 February 2024

Financial Remedies Court sitting at the Central Family Court