

E (The Mother) v F (The Father)

Jurisdiction:	Jersey
Judge:	Judy Marie O'Sullivan
Judgment Date:	06 April 2018
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Text

[2018] JRC 067A

ROYAL COURT

(Family)

Before:

Judy Marie O'Sullivan, Registrar, Family Division

Between
E (the mother)
Applicant
and
F (the father)
Respondent

Advocate N. H. MacDonald for the first Applicant.

The Respondent appeared in person.**Authorities**

Children (Jersey) Law 2002.

Residential Tenancy (Jersey) Law 2011.

Control of Housing and Work (Residential and Employment Status)(Jersey) Regulations 2013

E -v- F (Family) [\[2013\] JRC185A](#) .

E -v- F (Family) [2014] JRC 184 .

I -v- J (Family) [\[2013\] JRC 156](#) .

I -v- J [\[2013\] \(2\) JLR Note 16](#) .

C -v- L [\[2009\] JRC165A](#) .

C -v- L [2009] JLR Note 41 .

In the matter of A and B (Matrimonial) [\[2012\] JRC 165A](#) .

Re P (Child: Financial provision) [\[2003\] 2 FLR 865](#) .

E -v- F (Family) [\[2013\] JRC185A](#) .

S -v- G [\[2003\] JRC 091A](#) .

SW -v- RC [\[2008\] EWHC 73 \(Fam\)](#) .

N v D [\[2008\] 1 FLR 1629](#) .

Probate (Jersey) Law 1998.

In re Fargus [\[1997\] JLR 89](#) .

Children Rules 2005

Family dispute — application by the mother for orders for the benefit of her children.

REASONS**THE REGISTRAR:**

1 This is an application by the applicant Mother for Schedule 1 of the Children (Jersey) Law

2002 orders for the benefit of her children, Child 1 born in 2005, Child 2 born in 2006 and Child 3 born in 2012. The respondent is the Father of the Children. The Mother was born in Country A and the father is English. The father suffers from a medical condition.

- 2 The Mother and Father never married but the Father has parental responsibility for the Children. They have a shared residence order dated the 21st November, 2017, in respect of the Children. Evidence was given about how much time each parent shares with the Children which will be dealt with later. The Mother resides in an unqualified rental property known Property 1. The Father lives in an unqualified property Property 2. They have lived in Jersey for five years.
- 3 The Mother is represented by Advocate MacDonald. The father chose to act as a litigant in person, although during the course of these Schedule 1 proceedings had Advocate Godden acting for him from time to time and then from on or about the 8th February, 2018 Steensons who filed a skeleton argument on his behalf but they were disinstructed by the father on or about the 27th February, 2018.
- 4 The parties have both filed C4 Statements of Means, open statements, affidavits and skeleton arguments and an affidavit was filed on behalf of the Mother from Roger Trower, estate agent.
- 5 The Father brought the family to Jersey in August 2012 and they have to live here for a further four and a half years before gaining "Entitled status", which would then enable them to live in Qualified, as opposed to Registered housing.

The mother's open position

- 6 The mother seeks the following orders:—

(i) the Father shall either:

(a) give exclusive occupation of Property 2 to the Mother and Children until the Children are all 18 or have completed any education (including tertiary education), whichever is the later ; or

(b) purchase another five bedroom property comparable to Property 2, with Registered status, for the Mother and Children to live in which is acceptable to the Mother until the Children are all 18 and have completed any tertiary education, whichever is the later. During the course of the proceedings, the mother asked for a lump sum of £2,500,000 to purchase a five bedroomed property in her name which would be comparable to Property 2 until the Children are all 18 and have completed any tertiary education.

Depending on the accommodation, the mother needs funds to furnish it by way

of a lump sum or included in the periodical payments.

(ii) the Father shall pay to the Mother a lump sum payment of £10,000, in order that she may purchase a car that is suitable to transport the Children to school and extracurricular activities. Initially she had sought a sum of £20,000 for a car. She wishes the car to be replaced every five years until such time as the youngest child reaches the age of 18 or completes tertiary education.

(iii) the Father shall pay to the Mother a periodical payment of £10,000 per annum, in order that the Mother and Children may travel to Country A and/or to provide financial assistance to the Mother's Maternal family to visit Jersey, until the Children are all 18 and have completed any tertiary education.

(iv) the Father shall pay to the Mother monthly maintenance payments for the Children:

(a) equating to the greater of 25% of the his net monthly income or £4,885 (subject to an annual increase in accordance with the Jersey Retail Prices Index) for so long as each of the three Children remain minors or are undertaking any full-time tertiary education; or

(b) equating to the greater of 20% of his net monthly income or £3,908 (subject to an annual increase in accordance with the Jersey Retail Prices Index) for so long as two of the Children remain minors or are undertaking any full-time tertiary education; or

(c) equating to the greater of 15% of his net monthly income or £2,345 (subject to an annual increase in accordance with the Jersey Retail Prices Index) for so long as two of the Children remain minors or are undertaking any full-time tertiary education.

In the October 2017 open position statement the figure sought was £1,308 per week.

(v) Education

(a) the Father shall pay any school fees for the Children to complete their education, so far as possible at G School, Jersey.

(b) for such time as the Children remain in private education following G School, the Father shall continue to pay any and all schools fees arising until each of the Children complete their secondary education.

(c) the Father shall pay the costs of any tertiary education for the Children.

(vi) the father provides private medical and dental insurance for the children.

The father's open position

7 This was filed by him personally. His response indicates that:—

- (i) Property 1 is perfectly suitable for the children.
- (ii) The mother's current car is a perfectly good car.
- (iii) He is paying for the year November 2016 to October 2017 “*family expenses*” of £13,410 per month which includes school fees and activities. This includes paying the mother £350 per week.
- (iv) Medical insurance and dental insurance is not necessary as he continues “*to look after the children*”
- (v) His position was therefore he was not prepared to offer any more money, Property 1 is “*perfectly good*” and private and dental care “*is not necessary*.”

However, he said that when he dies the Mother and Children can move into Property 2. He said that he does not think it “*sensible*” for the Children to terminate occupation of Property 2 when they reach the age of 18 or finish tertiary education.

Application by the mother for site visits to Property 1 and Property 2

- 8 The mother's lawyers had asked for site visits by the Court to include the attendance of Mr Roger Trower, estate agent, to view both properties to compare them. This was refused by the Father. The Mother's advocate submitted that Property 1 was inadequate generally and also by comparison to Property 2. The court was invited to draw an inference that if access was not permitted that Property 2 was refurbished to a high standard. The father had previously agreed to a site visit when represented by Advocate Godden. As a consequence the Mother's lawyers had not filed photos of Property 1 on behalf of the Mother- clearly they could not do so for Property 2. Mr Trower had provided drive-by evidence but had not been able to enter either property.
- 9 In his response to the application for a site visit, the Father accepted that “*it is a matter of fact that Property 2 is palatial compared with Property 1*” and “*it (Property 1) is vastly inferior to Property 2*.” He accepted that trying to buy another registered property will be difficult and as a consequence he said he had spoken to the landlady of Property 1 (no reference to a landlord) and he now proposed to completely renovate Property 1 to include the insulation, kitchen and bathroom to “*bring it up to palatial standards*.” by spending £30,000 to £40,000 on it. He has booked a month's worth of accommodation for the Mother and children from the 25th March, 2018, enabling the work to be done by him including ordering a kitchen from Germany and tiles. He explained the landlady has no money to renovate it and she is “*dependent on me for her sole source of income*.” He accepted that the “*real problem is in the condition of Property 1*”. He said “*The Children have the right to live at the same standard as their Father or Mother*.” He said that Property 2 has cost him £750,000 to buy — it had been a derelict bungalow— and he had to “*make it palatial*” and has spent a further £750,000 on it, costing him £1,500,000 “*to get more (money) out of it*”,

although if, as was his evidence the Children were to move into it on his death, it is not clear why he needs to get his money out. He insisted he has to have 5 bedrooms. The application for a site visit was refused given the comments made by the father. Mr Trower gave a drive-by valuation of Property 2 at £1,500,000 and Property 1 at £1,100,000. However he needed access to provide a more accurate valuation.

Property 1 and Property 2

- 10 The Father has a licence for Property 1 and he pays money for it directly to the owners of the property. Advocate MacDonald pointed out that no copy of any licence or lease has been provided by the Father to the Mother prior to the hearing despite requests to do so. The Father said that he had not done so as it was intrusive and said he had “*a right to protect myself*.” He was told by the Court to produce the Licence agreement which he duly did. It is dated August 2012 and he and family are granted non-exclusive rights of occupation. Either party can terminate the arrangements by giving 3 months' notice. The owners as Licensors are responsible for all repairs and decoration of the interior and exterior. The Father announced at Court that a new lease “*would arrive*” for 5 years and with a 6 months' notice period. Issue was taken by Mr Trower about creating a lease, and the Father said he would need to check on this. It appeared the Father was having a document created to try and bolster his position in the proceedings.
- 11 The mother says that Property 1 only has three bedrooms and a box room/study, and the Father accepted that there may be an issue about the size of the box room in classifying it as a bedroom. However on day two he said it was sufficient size for a bedroom having discussed the matter with the owners. The older children do their homework in the box room and Child 3 currently shares a bedroom with the Mother. She wants Child 3 to be able to have his own bedroom and also for the Children's Maternal relatives to be able to stay, but also a home where the Children can call home and feel happy inviting their friends around. The mother's evidence was that Property 1 is substandard accommodation, particularly by comparison to Property 2. Paint is peeling in virtually all of the rooms and it contains glass internal doors that may not meet current health and safety regulations, it is cold and not properly insulated. The mother submits that the Children are embarrassed at the condition of Property 1 and are reluctant to ask their school friends to stay, and prefer to take their friends to Property 2. Indeed Child 1 has not invited any friends to Property 1 and Child 2 has only invited two since 2012. The Father on day two of the case said that the standard of home in Property 1 is equal to Property 2 in contradiction to what he said on the previous day, although he conceded it had been allowed to get into disrepair. He sought to down play Property 2 as a property, saying it had a path down the side which is muddy and was not child friendly, stating that it was more modest than he said on day one and Property 1 was not so inadequate as he had made out. However Property 2 is the house he wants the Children and their Mother to live in after he dies, and he said he purchased it for the Children.
- 12 The Father blamed the Mother for the state of disrepair at Property 1 by not cleaning it

properly and failing to maintain it and as a consequence, “ *it (Property 1) is vastly inferior to Property 2,*” but the owners are responsible for internal as well as external repairs. The mother cannot therefore even repaint their rooms or make any lasting improvements to Property 1. The Mother said she keeps the house clean and the state of disrepair is not to do with cleanliness but the age of the property. The Father stated the owners are not in funds to do up the property; as a landlord he would have replaced the kitchen. The Father said that Property 1 is in a better location than Property 2, and he can bring it up to the level of Property 2. However he did say that Property 1 is “ *not a good place for children later in life,*” and it would be fine until Child 3 is 10 when he and the Mother gain their housing qualifications, and “ *we can move out then.*”

- 13 Mr Roger Trower, a director of Broadlands estate agency swore an affidavit on the 20th February, 2018 and gave evidence in Court. He said that Property 1 is a late 1970s property and any property built then does not comply with building standards in force today.

Lack of availability of registered property to rent or purchase

- 14 Mr Trower explained there are less than forty registered (non-qualified) properties in Jersey, the loophole having been closed in 1993. He said the demand for registered properties may increase due to more people moving to Jersey. If Property 1 changes ownership, the registered status will end. This could come about if the owners die or they have to sell the property or transfer it. This can also happen if they become insolvent. The Mother and Children can be asked to leave on three months' notice. Mr Trower gave evidence that the registered rental market is very limited, there are often no suitable registered family homes available to let in Jersey and currently there are none on the market. If the Mother and Children are no longer able to stay in Property 1 then it would be very difficult to find another registered family home to rent, if they could find one at all. They may have to go to a lodging house or a self-catering holiday apartment.
- 15 The Father said that the owners can issue a licence but this can be up to the period when he and the Mother get their housing qualifications, by which time he said “ *We can buy a house or stay there.*” Any lease would be a paper lease of nine years or less, as opposed to a contract lease passed before the Royal Court given Property 1 is subject to the Residential Tenancy (Jersey) Law 2011.
- 16 The current licence is in the father's name. He is in ill health, which will be considered below, so if he dies the licence will end. The father stated that he was taking a “ *miracle drug*” which will extend his lease of life, presumably until after he and the Mother get housing qualifications, but produced no evidence about this so the only medical evidence is that letter from his doctor as to his medical condition. If both the landlord and landlady were to die, Mr Trower gave evidence then under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 (“Housing Law”) Law the property would no longer retain its unqualified status. Thus if the Mother and the Children had to remain in Property 1 despite the Mother stating it is unsuitable, she and the Children

could find themselves having to leave with limited notice with nowhere to go. Renting a home for the Mother and Children provides little (if any) security whereas living in a home owned by the Mother or Father will provide security for the children.

- 17 The Mother believes that it would be in the Children's best interests to address the problem now, so that they can make roots in a family home and remain there for at least the next decade. The Father acknowledged that if they were evicted from Property 1 that the market is limited and he suggested they could all move to Property 2 with him as a fall back position, but would not welcome this. Children's Service had recommended he leave Property 1 in the first place i.e. not to be in a household with the Mother for the sake of the children.
- 18 Mr Trower stated that by contrast there are currently registered properties for sale. It would be very difficult to buy a five bedroomed property for as little as £1.5 million but two to three properties are available for £2.5 to £3.5 million and can attract a price of £4 million. The reason for the price is due to a premium associated with the registered status, but also because the majority of such properties have been renovated to a high standard. Broadlands has 3 registered properties on its books. The one marketed for £925,000 can be explained by damp ingress and the age of the building, so money needs to be spent on it after purchase, but there are 2 others, namely a 4 bedroom property at £3,500,000 and a five bedroomed property at £3,450,000.
- 19 The Father is in his affidavit stated that in his experience of the Jersey property market as a property investor, a property
- "with the attributes Property 1 possess, would likely cost in the region of £1.5 million to £2.5 million... the attributes I have in mind are that it should possess four bedrooms, have a garden, have a garage and have unqualified accommodation."*

In his opening remarks he said that it was not possible to buy a five bedroomed property for £1.5 million. He said if he has to buy a house it will be for £2 million, £3 million or even £4 million.

- 20 Although the Father proposes that on his death the Children and Mother relocate to Property 2, no copy of his will has been provided despite requests. The Mother says she is aware that in any case he can change his will. The Mother therefore wants the Father to provide the Children and her with possession of Property 2 now in the terms as set out in her open position or to purchase an equivalent five bedroom non-qualified home.

The mother's finances and earning capacity

- 21 The mother is from Country A. An interpreter attended Court for her. She has no income of her own. The Father normally provides her with £350 per week, although in November and

December 2017 he cut this down to £175 per month. His 2017 Accounts record this as amounting to £1,517 per month. He said the children's school meals are paid for. The Mother understands the £350 is for food, extracurricular activities for the children, running a car, maintaining the house and the garden. She said she tries to save up for activities for the children for things such as at the Arts Centre, or to enable them to go to the cinema with friends, and she goes to the charity shop for clothes and also for furniture. The girls have said to her they would like to go to the theatre or visit London like their friends from school, but she cannot afford this. The mother's evidence was that she has no money for urgent dental care.

- 22 The Mother said she had always worked in Country A. Whilst she can read English, and buys the Jersey Evening Post, she has difficulty speaking English. She has had English lessons on a one to one basis provided by the Father; he said he has spent £5,400 on private lessons, a figure she disputes. The Mother goes to the English school in the morning to practise English and to socialise and she also goes to the library. She said the Father is very negative about her abilities, but she intends to go to Highlands College in the summer and then on to the International Business school to gain a qualification for her future.
- 23 The Father says that the children start school at 8.30am, have a cooked lunch and Child 3 finishes at 3.30 so the Mother can get a job as a checkout cashier or working in Next as most women work and she has lived in Jersey for 5 years. He did not make any proposals as to what would happen during the school holidays.
- 24 The Father was disparaging about the Mother and said she could not be trusted to pay bills. The Father said the Court should be concerned about the unreasonable claims of the Mother for money. He said the Mother does not have a credit card and did say she has “*learned about money*” since being in Jersey. The evidence of the Mother was that apart from saving up to buy herself a car and pay for car insurance, which will be considered below, she said that as the Father took some of the furniture with him when he left Property 1, she had to purchase furniture from charity shops, negotiating free delivery when the shop was delivering to other homes, and she has managed to slowly build up the amount of furniture.

Capital and income of the Father

- 25 The Father is a property investor. He wanted to move to Jersey because the tax was not as punitive as the UK, and Country A was not a family friendly place. He buys apartments in Jersey in mainly prime positions. His accountant's written report states the Father had assets totalling at least £12,603,140 as at July 2017, with a property portfolio of 29 properties, excluding Property 2, of £9,098,850. The Father informed the Court he now has a property portfolio of 32 properties in Jersey. He maintains and manages them on his own which is hard work but he enjoys doing so. The balance on two accounts to support his investment portfolio was £1,994,820 at July 2017. In his affidavit he stated that he lets out

the properties on the basis that he achieves a return of 4.5 % but currently this appears to be about 2%.

- 26 His accountants in a note signed and attached to his C4 gave a predicted after tax income of £250,000 for 2017 and £272,000 in 2018 from his investments. However the Father produced a document headed 2017 family expenses he said was prepared by his accountants dated the 26th February, 2018, but not signed by them, showing property income and interests of £415,869 for 2017. His net income was £174,962 for 2017, having taken into account expenses, an average of £14,600 per month and an estimated income for 2018 of £222,890, averaging £18,600 for 2018. In 2018 his total income will increase to £503,400. From a tax viewpoint, he does not get a tax allowance if he immediately does a property up, but any alterations after 18 months are tax deductible if he lets the property out. He gets the properties to a certain standard within 18 months and after then, he does up the properties to benefit from the tax allowance. He says therefore that the “*monies should come rolling in*” in 2 to 3 years' time. Indeed the Father said his income would increase dramatically and referred to it as “*a waterfall once the buy to lets take off.*”
- 27 Property 2 is owned via his company, Company 1 Limited and his accountant states, “*the cost of land and building works at June 2017 being £1,446,097*”. He is the sole owner of the shares and is a director, so he can provide exclusive ownership of Property 2 to the Mother and children. The Father's evidence is that he has spent approximately £1,500,000 on Property 2. In his affidavit he states that if he is ordered to spend that sum to purchase a home for the Children, as opposed to continuing to pay £30,000 per annum in rent for them to live in their current home, Property 1, then “*the investment loss on such a sum would be £37,500 pounds annually (£67,500 minus rent of £30,000)*”. This is presumably on the basis of a 4% return. The Father's Affidavit continues by explaining his opposition: “*These additional funds could, and should, instead be applied to, for instance, the children's education and/or will enhance the value of assets which will ultimately be received by them*”. In other words, his view is that he would rather generate income now to provide for them in the future or school and university rather than purchasing a property for them now in which to live.
- 28 The Father wrote in his November 2017 open statement that he had appointed “*an Executor and a Protector to administer ‘The F Family Trust’*” and he had “*a firm of Trustees in mind*”. The trust provides for all the children and includes the Mother. However he has not set up such a trust, although he said he “*had got a trust organised*”. Having received promising news on the 24th January, 2018, regarding his medical condition the Father did not continue with setting up a trust. Indeed when asked why there was no trust set up now, the Father said that due to the wonder drug, he could live for another 10 to 15 years and “*there is no need to throw things into a panic.*” His concern was that once there is a trust he would lose financial control. The Mother is concerned however that he may die sooner than he thinks.
- 29 He stated the trust will hold the share transfer apartments, some cash and the shares of

Company 1 Limited and when he dies, the children and the Mother will live in Property 2. In the Father's Open Statement he states he wants to be able to afford to send his Children to university, but that the "*dark cloud*" of the Mother's "*wish list in her Open Statement could jeopardise this*". The mother submits that if for example the Father was to apportion 1.5% of his current capital (or 13% of his current income over the next five years), his Children could each have over £63,000 to fund them through tertiary education. Therefore, if the Court grants the orders sought by the Mother, then it will certainly not render tertiary education unaffordable.

Expenditure by the father

- 30 The Father states his lifestyle is modest and he uses his disposable income for the benefit of the children. The Father produced a schedule of "*family expenses*" for 2017, prepared he said by Chamber Accounting Limited in February 2018 but not signed by them, which amounted to £127,892.72 per annum, an average of £10,657 per month. There was an issue about the late production of the document which was allowed. The Father says he has done his best by his family as can be seen from the schedule. His income is £28,900 after all expenditure, spending 81.5% of his income on his family. The schedule showed expenditure for rent, utilities and phone for Property 1, plus £542 for repairs and furnishings. He pays for the tv licence, Sky tv, books and stationery, doctors, dentist and optician, clothing and shoes, school fees and charges, activities, holidays and flights, computer, an immigration charge of £811 and £988.57 for legal fees on contact.
- 31 The school fees are about £43,000 per annum. He has paid £48,500 tax. He said he is proud of the 81.5% of his net income used for the family "*... and will continue to do so.*"
- 32 The Father maintained in his open statement that his expenditure exceeds his income and will continue to do so "*until I am fully invested in rental apartments by getting them into a fit state.*"

Health of the Father

- 33 The Father produced a letter from his physician dated the 27th September 2017 that he:
- "has been diagnosed with [a medical condition]. This is not normally a diagnosis considered to be curable with standard therapy. However F is doing remarkably well to date ... However, the future is uncertain...."*
- 34 The Father stated that it is his intention that all his assets devolve on the children. He indicates that "*it is more likely my assets will be placed in Trust, the beneficiaries will be my children,*" but no trust has been set up. He does not have other dependants or living relatives beyond the Children, and his parents and his sister are dead.

Autonomy and “sextortion”

- 35 The Mother and Children are totally reliant financially on the Father. It was put to the Father that Children's Service were concerned about the level of control he had over finances around the end of 2013, and they said to give the Mother £350 per week. From his evidence as to why the trust was not set up, it is clear the Father likes to be in control of finances. The Mother says that not only does he manipulate her but he demands sexual favours in return for money. The Father said he had given the Mother extra cash but not for sexual favours. In her affidavit she states that last year he would not continue to provide any extra money or clothes unless she performed sexual favours for him. Having heard from both, I find that the Father did use his financial hold over the Mother for sex. In January 2018, heating fuel ran out and was not replaced until 19th February, 2018, during which period there was no heating. The Father says the Mother did not contact me about this which was in contradiction to what the Mother had said. As a “*doting*” mother I find that the Mother would have contacted the Father about this for the sake of the children. The Father suggested that she was extravagant with fuel and he could not believe she had got through so much fuel, which seems the reason why he withheld heating oil. He conceded that Property 1 does not have good insulation, so it got cold.
- 36 The father was very scathing about the Mother, suggesting she would not pay bills or school fees and may purchase a new Range Rover, He buys “95%” of the clothes and shoes for the Children, “*making sure they fit*”. He maintained that the Mother does not save anything, squanders money and she is incapable of budgeting. However her evidence, not challenged by the Father was that she saved up to buy and insure the car she drives and she had to buy furniture when he left Property 1. She has no credit card but has a debit card.
- 37 The Mother maintains that even when the Father does not exert undue pressure, she has to plead with him to meet any additional needs. She is left feeling enslaved, like an unpaid housekeeper or *au pair*. She considers it is in interests of all concerned, particularly the Children, if she was provided with adequate funds to meet their routine needs and permitted to retain a surplus to cover any unexpected costs, as opposed to her needing to continue to persuade the Father to provide funds. She says that the issue of money provides a source of tension between her and the Father which could be reduced by having a maintenance order. She considers that it would be preferable for the Children, as well as for her own sake to make her own decisions regarding the household “*without being beholden to F's every whim*.” At present she says she needs to plead or barter with him for any money including her ability to respond to the Children's needs swiftly or at all, for example if the unexpected costs arise such as presents for friends' birthdays. I find that the Father has exercised financial leverage on the Mother.

The mother's car

38 The Mother's car is a 15 year old, small, hatchback which is in a poor state of repair and which the Mother believes needs replacing in order to meet the Children's present needs and in the future. It cost her £1,000 at auction in about August 2016, a sum which she saved up from payments received from the Father, who was unwilling to assist her to purchase a car. She also had to save for the insurance, paying £600 up front and the rest on monthly instalments of £89. The Father's view is that if the Mother wants "*a better car, go out and get a job*". However in his affidavit he states he is prepared to consider making a payment towards a car but does not specify how much he will give, and in court stated he would like her to have a better car. The Mother pointed out that a £10,000 car is sufficient in the meantime but in due course will need to be replaced.

Schooling and education

39 The Children attend G School. The father pays the school fees, and some related activities. His 2018 Family Accounts record him paying £3,438 per month.

40 The father wants the children to go to H School, the school he attended and indeed the two girls have their name down for it. This will cost £11,500 per child per term, a total per child of about £45,000 including uniform and "jamborees" per child per annum. The Father says that Child 1 is due to start there in September 2018. He feels they will benefit from going there and may get more professional jobs. However the Mother does not want them to attend, and says that the children do not want to go to boarding school as they want "*a normal life*" and they want to attend I School. Whilst the Mother thinks he can afford to send them to H School, she does not consider this to be in their best interests to go. If this matter cannot be resolved, there will need to be a further court case to determine this. The Mother says that the Father enjoyed H School as it was an escape from his cruel mother and the Father did acknowledge his mother had been vicious to him, bullying him and being physically abusive.

41 The Father wants the Children to go to university saying it will cost £60,000 per Child to send them there in total so he does not want to spend money on a home for the Mother and Children now in order to be able to pay for university in due course. Child 3 is only 5 so that university education is some time off for him.

Holidays

42 The Mother seeks a periodical payment of £10,000 per annum in order that the Children maintain relations with their maternal grandparents, half-sister and cousins who live in Country A. In Year 1 she proposes to take them to Country A and Year 2 their family travel to Jersey. The children's only living relations apart from their Father are in Country A, but they do not have the financial means to visit the children in Jersey. The Mother says she has not seen her family in Country A for 5 years, which was clearly a sadness for her. The children communicate on Skype and are fluent in their Mother's tongue, but want to meet

their relatives and visit Country A. It is clear that the Father does not agree to the children being taken to Country A on holiday as he is concerned that they will be remain there. He says that Country A is not a signatory to the Hague Convention. This was not queried by the Mother's lawyers but it does appear that Country A is a signatory to the Convention of 25th October, 1980, on the Civil Aspects of International Child Abduction. The Father said that if she and the children go on holiday to Country A it will cost him £100,000 per child for legal fees to get them back. This court has not been asked to adjudicate on the issues of whether the Mother and Children should go to Country A on holiday. In his open position the Father acknowledges it is “*probably good that the maternal grandmother aged 60 comes to Jersey to visit the children*” and “*as with other bills I would rather pay for flights and accommodation*” as he has no confidence in the Mother arranging this. In court he acknowledged that it was important the children's Maternal family come over to Jersey to visit.

Arrangements for the children

- 43 The parties separated in 2014. This was due to domestic incidents and Children's Service advised that the Mother and Father should live apart. The Father did suggest if the Mother and Children had to leave Property 1 suddenly they could live in Property 2, which could in effect be used as 2 homes and he could put in a second kitchen, although he was not keen on this solution. The Mother says she does not want him to exert the control she said he had over her such that Children's Service advised they live apart. The Mother says he was aggressive, was very controlling, and Child 2 saw him trying to cut himself. The Children remain the subject of “Child in Need” Plans. The Father denied that he had in the past refused to see his daughters, but it was put to him he had told a JFCAS officer this who then put this in her report. Despite the shared residence order the Children spend the majority of time with the Mother, which she says is by their choice, although the Father says the Mother influences the children. He did however acknowledge the older children can be “*difficult.*” The Father acknowledges she is a doting Mother. He said as soon as there was a shared residence order she put pressure on the children to stay with her because he then proposed to cut maintenance. The Mother says the Father has no patience with the Children, sadly for him he was not shown love when he was brought up, and does not give the Children lots of affection. She said he can become stressed if the Children are with him, they can at times be scared of him but fortunately Child 1 and Child 2 will telephone her when this happens. She said the Children do not want to sleep at Property 2 due to the Father's aggression and shouting, but they prefer to take their friends to Property 2 because they are embarrassed about Property 1. He said he had not seen much of the Children since Christmas.

The Law

- 44 Schedule 1 of the Children (Jersey) Law 2002 (the “Law”), states as follows:–

“1 Orders for financial relief against parents

(1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to the child, the court may at any time make an order requiring one or more of the following –

(a) Either or both parents of a child –

(i) To make such periodical payments and for such term;

(ii) To secure such periodical payments and for such term ,

(iii) To pay such lump sum, and

(iv) To transfer such property to which the parent is or the parents are entitled ,

as may be specified in the order to the applicant for the benefit of the child or to the child personally; and

(b) a settlement to be made for the benefit of the child and to the satisfaction of the court of property to which either parent is entitled and which is specified in the order.”

Factors which the Court must consider

45 When deciding a case under Schedule 1 of the Law, the Court must have regard to all of the circumstances of the case, including those set out at paragraph 4 of Schedule 1, namely:

”(a) the income, earning capacity, property and other financial resources each [parent] has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each [parent] has or is likely to have in the foreseeable future;

(c) the financial needs of the child;

(d) the income, earning capacity (if any), property and other financial resources of the child;

(e) any physical or mental disability of the child; and

(f) the manner in which the child was being, or expected to be, educated or trained.”

There are a number of Jersey authorities regarding Schedule 1 applications. These include the case of *E -v- F (Family)* [2013] JRC185A and the cross-appeals *E -v- F (Family)* [2014] JRC 184 which upheld the original decision, the case of *I -v- J (Family)* [2013] JRC 156, a

decision of Commissioner Clyde-Smith, which has since been reported in summary in the Jersey Law review — *I -v- J* [2013] (2) JLR Note 16, the case of *C -v- L* [2009] JRC165A a decision of Registrar Obbard, which was also summarised in the Jersey Law Review — *C -v- L* [2009] JLR Note 41 and the case *In the matter of A and B (Matrimonial)* [2012] JRC 165A.

- 46 The principles adopted by the English courts as set out in the Court of Appeal case of *Re P (Child: Financial provision)* [2003] 2 FLR 865, have been adopted by the Jersey Courts namely:–

“(a) the welfare of the child while a minor, although not paramount, is naturally a very relevant consideration as one of all the circumstances of the case;

(b) the length and nature of the parents' relationship and whether the child was planned are generally of little or no relevance, since the child's needs and dependency are the same regardless of these circumstances (J -v- C (Child: Financial provision), [1999] 1 FLR 152, considered)

(c) one of the ‘financial needs of the child’, to which the court must have regard under para. 4(1)(c) of the Schedule, is to be cared for by a Mother who is in a position, both financially and generally, to provide that caring. It is well established that a child's need for a carer enables account to be taken of the caring parent's needs (*Haroutunian -v- Jennings* (1977), 1 FLR 62, **considered**; *A -v- A (A minor (Financial provision))*, [1994] 1 FLR 657, **considered**);

(d) under para. 4(1)(a) and (b), the court must take into account the parents' respective incomes, earning capacities, property and other financial resources, together with their respective financial needs, obligations and responsibilities. A child is entitled to be brought up in circumstances that bear some relationship to the Father's current resources and present standard of living (*J -v- C (Child: Financial provision)*, **per Hale, J.**);

(e) the court must, however, guard against unreasonable claims, going potentially far wider than those reasonably necessary to enable a Mother properly to support a child, made on a child's behalf but which would be for the benefit of the Mother rather than the child (J -v- C (Child: Financial provision));

(f) if the Father's resources permit and the Mother lacks significant resources of her own, she will generally need suitable accommodation for herself and the child, settled for the duration of the child's minority with reversion to the Father; a capital allowance for setting up home and for a car; and income provision (with the

child's education expenses generally paid by the Father directly to the school)];

(g) such income provision can be reviewed from time to time, according to the changing circumstances of the parties and child; and

(h) the overall result achieved by an order under Schedule 1 should be fair, just and reasonable, taking all the circumstances into account."

47 Advocate MacDonald compared the case of *E -v- F (Family)* [\[2013\] JRC185A](#) and this case. The parties in both are not married, in the *E -v- F* case there was a 7 year old whereas here there are 3 children, E was the primary carer and in this case the Children spend most of their time with their Mother. In the *E -v- F* case, F was earning £50,000 per annum and E £24,000. The Father has a much higher income than in the *E -v- F* cases, and the Mother has no earnings. F owned 3 properties with an equity of about £1,330,000. The Father has assets of £12,606,000 as at the 31st July, 2017. F was ordered to pay a lump sum of £250,000 towards the cost of accommodation and cost on purchase to include stamp duty, E having some capital of her own. F was also ordered to pay a lump sum of £10,000 toward the cost of furnishing and equipping the home. In respect of maintenance F was ordered to pay £590 per month plus school fees and half of all incurred in relation to school/educational trips, extra-curricular activities, and medical costs, not covered by the mother's medical insurance and dental fees. Advocate MacDonald said that a property for the children must bear some relationship to that of the Father and the Father interjected and said " *I agree.*"

48 In the decision of *E -v- F*, the Court's concern was maintenance of the children now as opposed to their inheritance:—

"In this present case the father has 3 properties, one of which is his home.

Advocate Heath submitted that the father's properties are his business and he needs the properties to meet his day to day living expenses even though he is making a loss on D (which she later conceded was not the case) and to build up a nest egg for financial security. However the court's concern is not as to whether he builds up a nest egg and an inheritance for A for the future (even were house prices to rise) but the welfare of A is a relevant consideration, and there is a need is to provide A with a reasonable home and adequate maintenance now."

49 In the *I -v- J* case, Commissioner Clyde -Smith endorsed the proposition that the "***prevailing trend is to meet genuine needs in a generous way wherever possible.***" He accepted at paragraph 62 in quantifying a lump sum the Court is entitled to adopt:—

"a broad —brush approach and is not required to carry out a detailed accountancy exercise. However some form of overall analysis is always

required to demonstrate, in broad terms how the figure has been reached (see *DE v AB (Financial Provision for Children)* [2011] EWHC 3729 (Fam) **at paragraph 40**). In making a lump sum order for the benefit of the child, the Court must be satisfied, ... that the father is able to pay that amount.”

50 In *Re P* (at paragraph 45) Thorpe J states:

“The starting point for the Judge should be to decide at least generically, the home the respondent must provide for the child ... but also indirectly in the care of external expenditure such as travel, education, and perhaps even holidays.”

51 In the decision of *E -v- F*, use was made of the 2000 CSA formula as a guideline for maintenance (the “CSA Guidance”), as referred to in *S -v- G* [\[2003\] JRC 091A](#). The CSA Guidance provides that a father of three should contribute 25% of his annual net income, decreasing to 20% in respect of two children and to 15% in respect of one child. Based upon the Father's projected annual income in 2018 of £272,000, as set out in his C4 according to the CSA Guidance the Mother considers he should pay maintenance of £5,666 per month, for at least the next five years until either Child 1 becomes an adult in 2023 or later if she continues to tertiary education. The level of maintenance would then be revised on the basis that maintenance is to be paid in respect of Child 2 and Child 3. However, in considering the figures provided by the Father of £174,962 for 2017 and estimated income for 2018 of £222,890, this would equate to £3,645 per month and £4,630 per month. At present, deducting school fees and rent, the Father is paying £4,540 per month. The CSA Guidance is just that and the Court must consider the matters set out at paragraph 4 of Schedule 1 of the Law and the principles set out in the *Re P (Child: Financial provision)* case.

52 In the *E -v- F* appeal case, at paragraph 50, the Court considered that the Registrar had summarised the position regarding periodical payments accurately as follows:

“i) Although the CSA Guidelines are often a useful starting point, the Court is directed by paragraph 4 of Schedule 1 to have regard to the factors listed there. The Court should not adopt a mathematical or formulaic approach but should have regard to all the relevant circumstances — see *FG v MBW (Financial Remedy for Child)* [2011] Fam Law 1334 **per Charles J**.

(ii) The Court may in a suitable case order that periodical payments be paid from capital — see *FG v MBW (supra)*; *SW v RC* [\[2008\] EWHC 73 \(Fam\)](#) **per Singer J.**

(iii) Paragraph 4 of Schedule 4 directs the Court to have regard to earning capacity as well as income and the Court can therefore have regard to earning capacity when determining the level of periodical payments for a child.”

- 53 A Court therefore has to take account of all the circumstances including “ **other financial resources**”. In *SW -v- RC* [\[2008\] EWHC 73 \(Fam\)](#) Singer J said that:–

“maintenance can be paid from accumulated capital or borrowing.”

It was submitted by the Mother that the father's annual income of £272,000 is modest by comparison to his capital assets which amount to about £12,600,000, the Father maintaining his income is £222,890. The Father's annual income equates to just 2% of his wealth whereas he said he was looking to a return of 4.5 % on his investments. The Court was asked to take account of the Father's assets and conclude that financial provision should be made beyond the level of 25% of his income.

- 54 With regard to distinguishing the needs of the Children as opposed to the Mother, in the *E - v- F* appeal it was accepted that a Court

“can properly take account of the needs of the parent with whom the children reside.”

- 55 The case of *N v D* [\[2008\] 1 FLR 1629](#) at paras 23 and 27 said:–

“23. The court has been taken to the relevant legal authorities by both counsel and I am mindful throughout that the court, in Sch 1 cases, must guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child. That said, it is also well established that the child's need for a carer enables account to be taken of the caring parent's financial needs.....

27. The court will not permit a maintenance claim in disguise for the mother's benefit. As against that, counsel for the mother submits she should be properly funded and supported in caring for S. It is not realistic simply to apportion items of the budget — some of which I have referred to above — as referable only to the child's needs because, in my judgement, financial provision must be made to the mother to enable her to meet S's needs. The mother needs for such purposes to eat, clothe herself, maintain car expenses and take the child for holidays. In relation to medical / dental / optician costs, the needs of the child are otherwise met through the father's medical insurance; the claim in the budget on this item is for the mother's medical costs and they are reasonable because she (the mother) must be sufficiently equipped and healthy in order to be able to care for S. The Court of Appeal indicates at para [43] re P that ‘a more generous approach to the calculation of the mother's allowance is not only permissible but also realistic’.

The financial consequences of the father dying

56 Detailed submissions were made on behalf of the mother about the financial consequences of the Father's death. If the Father were to predecease the Children, the Mother submits that the Children would be in a precarious position financially until any inheritance from his estate was available for distribution, hence she wants a home purchased now for the Children until they are 18 or finish full time education in order to provide security for them. In the period before a grant of probate or letters of administration is obtained, the Father's estate is in effect frozen. On notification of a person's death a bank for example will freeze their relevant accounts until a grant of probate is received. Any interference with the estate of the deceased is illegal, beyond the two limited exceptions set out in Article 23(2) of Probate (Jersey) Law 1998 (the "Probate Law") which allow only for arrangements to be made to dispose of the deceased's body and for the movable estate of deceased be placed in safe custody or otherwise preserved.

57 Article 23(1) of the Probate Law provides that:

"Subject to paragraph (2), if any person, other than a person acting in accordance with Article 19(3) or any other enactment, takes possession of or in any way administers any part of the movable estate of a deceased person without obtaining a grant, the person shall be guilty of an offence and liable to a fine or to imprisonment for a term not exceeding 12 months or to both."

58 Article 19 of the Probate Law states at paragraph (1) that:

"Subject to paragraphs (2) to (5), and save as otherwise provided by any other enactment, the production of a grant shall be necessary to establish the right to recover or receive any part of the movable estate situated in Jersey of any deceased person."

Paragraphs (2) to (5) of Article 19 of the Probate Law apply only to the Jersey situate movable estates of foreign domiciled deceased persons and are not therefore relevant to the present situation.

59 The process for obtaining a grant of probate or letters of administration can take time to complete, because an appointment must be made with the Probate Registry by the nominated executor or the person entitled according to Jersey law to apply for letters of administration to swear the requisite oath in accordance with Article 8 of the Probate Law, and the length of time it takes to obtain an appointment varies depending on the workload of the Registry. A Grant needs to be prepared and provided to the executor of administrator. Any person being appointed as an executor is required to swear an oath at that time which requires confirmation of the value of the personal estate of the deceased, wherever situate, and court stamps of commensurate value must be brought to the appointment. The rate of stamp duty to be paid is calculated on the value of the personal estate of the deceased

wherever situate at the rate of £50 per £10,000 or part thereof in respect of the first £100,000 of value; and then at the rate of £75 per £10,000 or part thereof thereafter up to £13,360,000 when the fee is capped at £100,000.

60 Because of the age of the Father and his health problems, the Children may be minors at the time of his death and they would not be able to receive his movable estate themselves, as per *In re Fergus* [1997] JLR 89. A *tuteur* would need to be appointed to hold the Children's property until they reached the age of majority. Until then, the hands of the executor/administrator would effectively be tied as he/she:

(i) could not legitimately pay expenses for the Children; and

(ii) if he/she made any payments to others, he/she would be exposed to the risk of subsequent criticism and challenge by any *tuteur* appointed in due course.

61 The Father indicated he has made a will but provided no copy of it. If the Father were to die intestate, or if there were to be no executor of his will, then there would be additional delays associated with the appointment of an administrator. None of the Children could personally fulfil that role before becoming 18 and, because there are apparently no other heirs, there may need to be hearings to appoint a Guardian *ad litem* and/or a *tuteur* before the appointment of an administrator.

62 Article 14 of the Probate Law sets out who is entitled to obtain a grant of letters of administration. Paragraph (2) provides:

“Subject to paragraphs (3), (5) and (6), where the person dies leaving a spouse, or a civil partner, as the case may be, the spouse or civil partner shall be the person entitled to the grant.”

If the Father is unmarried on death, as is currently the case, then paragraph (4) will apply which provides:

“Subject to paragraphs (5) and (6), where the person dies without leaving a spouse or civil partner, the person entitled to the grant shall be such person as may be specified or, if none, the person so entitled according to customary law.”

63 The person who would be entitled to be appointed as administrator according to customary law would be the deceased's principal heir; and where the deceased only had children this would be his eldest son, or if he does not have a son his eldest child.

64 Therefore, if the Father were to die within the next five years then his only heirs would be the Children and as none of them would be 18, they would not have capacity to be appointed as administrator or to grant a power of attorney in favour of someone else to allow that person to be appointed as administrator.

65 Article 14 of the Probate Law provides the Court with discretion in respect of who it may make a grant to in paragraphs (5) and (6) which state that:

“(5) Subject to any authorization under paragraph (6), where, in any case to which this Article applies, it appears to the Judicial Greffier to be necessary or convenient by reason of any special circumstance to make a grant to some person other than the person entitled to the grant, the Judicial Greffier –

(a) shall not be obliged to make a grant to the person entitled; and

(b) may make a grant to such person and limited in such manner as the Judicial Greffier thinks fit .

(6) Where, in any case to which this Article applies, it appears to the Inferior Number to be necessary or convenient by reason of any special circumstance, that a grant should be made to some person other than the person entitled to the grant, it may authorize the Judicial Greffier –

(a) not to make a grant to the person entitled; and

(b) to make a grant to such person and limited in such manner as it thinks fit.”

66 Accordingly, the Judicial Greffier and the Inferior Number of the Royal Court would be required to consider whether an alternative person, other than the person entitled in accordance with customary law, should be appointed as administrator or executor. This process may take time. It is not immediately apparent who would have standing other than the Children to bring such an application, in which case a guardian *ad litem* or *tuteur* would need to be appointed to allow such an application to be brought before the Royal Court.

67 Once the executor or administrator is appointed, he/she could create a separate account for the estate, from which he/she could then decide to make an advancement to the Children of their inheritance by way of a payment or transfer of assets to their *tuteur*. This process is likely to take time to complete, and the Mother submits that in the interim the Children would suffer financial hardship unless adequate provisions are made during the Father's life. The Father has refused and/or failed to disclose any will or wills in existence at the present time but in any event the Father could destroy or amend such wills that do exist at any time.

68 Whilst in his Open Position of 17th November, 2017, referred to setting up a trust in favour of the Children the Father informed the Court there is no trust set up.

Costs

69 Depending on the outcome of the hearing, the Mother is seeking costs of the hearing. As was said in the case of *E -v- F* at paragraph 85:–

“When deciding a Schedule 1 case a court has to look at the financial needs and obligations of each party which does include liabilities including legal costs.”

70 In that case the Father was ordered to pay the Mother's costs on the Schedule 1 application as to the 50% legal aid rate on a standard basis. The reason costs were awarded was because the Mother largely succeeded on her application, and due to the litigation conduct of the Father. Both the Father and Mother appealed the order, including as to costs. In case of *E -v- F* [2014] JRC 184 at paragraph 85, the Court accepted the Mother had clearly won. In addition there had been litigation misconduct by the Father which had increased costs. The Court went on to say at paragraph 90:–

“We should add that an award of costs is ‘par excellence’ a discretionary decision. The judge trying the case has by far the best feel....”

71 The Court therefore upheld the decision of the Registrar as to costs.

Decision

Property

72 It is in the Children's best interests to be provided with a secure family home before their Father's death and as soon as reasonably possible. The Father wants to live in a five bedroomed property yet he wants the Mother and Children to remain living in Property 1, having done it up, but conceded there may be an issue about the size of the box room in classifying it as a fourth bedroom. The property is too small and indeed the Father accepted the principle that “ *the Children have the right to live at the same standard as their Father or Mother.* A child is entitled to be brought up in circumstances that bear some relationship to the Father's current resources and present standard of living”. He accepts that a four bedroomed property like Property 1 would be between £1.5 to 2.5 million depending on its state. I consider that the Children and Mother should too live in a five bedroomed property, with a bedroom for each of the Children so Child 3 does not have to share a bedroom with his Mother. The Father accepted that the Children's Maternal family should visit them in Jersey, and this means a guest room for the Children's grandmother and other relatives to stay in as they do not have the means to stay elsewhere. The Father proposes they move to his five bedroomed property, Property 2 when he dies.

73 Property 1 is not suitable in terms of the actual accommodation. Furthermore because of his age and health the Father is likely to die first, and there would be problems for the

Mother and children were they to remain in Property 1 at present as the Licence agreement is between the Father and the owners. I have also considered the problem if the lessors die, or want to sell. There are also difficulties even if the Father has made provision for the Children and Mother to move into Property 2 on his death. If the Children remain at Property 1, and were then evicted it is extremely unlikely they would find anywhere else to “rent.”

- 74 A practical solution is for the Children and mother to be given exclusive occupation now of Property 2, rather than wait until he dies. The Father submits that this means his home is taken away from him. This would not render the Father homeless as he already has the licence/ lease of Property 1 in his own name, and it appears he can do Property 1 up, and according to his evidence, the owners would reduce the rent if he moved back there.
- 75 Schedule 1 of the Law states that the court may make an order that a parent pays a lump sum to the applicant for the benefit of a child or transfer such property to which the parent is entitled.
- 76 Schedule 1 also state that a settlement be made for the benefit of a child of property to which either parent is entitled. Property 2 however is owned by the company Company 1 Limited. The Father is the owner of the shares, the sole shareholder of the company and is a director, and accordingly has control of the company. The Father could require the directors to pass a resolution to provide the Children and Mother with exclusive possession to them of Property 2 until the Children are all 18 or have completed any (including tertiary education), whichever is the later and without the occupation of the Father. On the face of it the Father is not “*entitled*” to Property 2, so that solution is not possible unless the Father agrees to it and at Court made clear he did not do so.
- 77 The Mother has indicated that as an alternative the Father gives her sufficient so she can purchase a registered property that she and the children can live in until the Children are all 18 or have completed any (including tertiary education), whichever is the later with a judicial hypothec in the Father's favour. In the appeal case of *E v F* at paragraph 106 stated:

“We should add that, although it was not raised in argument, we have, before dismissing the appeal, considered whether Article 11(2)(a)(iii) of the Trusts (Jersey) Law 1984 (“the Trust Law”) — which states that a trust shall in invalid to the extent that it purports to apply directly to immovable property situated in Jersey — causes any difficulty in relation to the order made by the Registrar. We are quite satisfied that it does not. The new property will be owned absolutely by the mother. The position of the father is that he will be a creditor of the mother with the amount due becoming payable on certain events specified in the order, being secured by judicial hypothec and being repayable in a sum which reflects any increase in the value of the property. Such an order does not confer any interest in the property on the father and does not amount to a trust. We therefore do not need to consider the relationship between Article 11(2)(a)(iii) of the Trust Law and paragraph 1(1)(b) of Schedule 1, which provides that the Court may order that a settlement be

made of property to which either parent is entitled. On its face this latter provision appears to suggest that the Court could make order for the creation of a trust of immovable property and may therefore be in conflict with the Trust Law. Fortunately we can leave that issue for decision in a case where the point arises.”

78 The Father, a property investor, lives in Property 2, a newly renovated five bedroomed home which is “*palatial*.” He has spent about £1,500,000, on it but aims to make money on it. Mr Trower valued it a £1,500,000 without seeing the interior. The Father said that Property 1 is worth about £1.5 to £2.5 million, the property having a small fourth bedroomed/box room. On that basis the five bedroomed property, Property 2, which he has done up to a very high standard, may be worth around £2.5 million. The Father has the capital to be able to afford a property of £2.5 million for the Children and Mother. The balance on 2 accounts to support his investment portfolio was £1,994,820 at July 2017, but he has not provided an up to date figure so it is not clear what investments he currently has and how much is tied up in property. The Father did say in Court that if the Mother sees a property he will buy it — the property as stated in the *E -v- F* case needs to be in her name — but this may take some time. He has experience in the property market so I was informed that the Mother would welcome his experience when it comes to choosing a property. The difficulty as Mr Trower explained is the lack of registered properties on the market, so it could take time to find a suitable home to purchase and it seems from the evidence of Mr Trower, such a property would be at least £2.5 million. There is the five bedroom property on at £925,000 but Mr Trower said that monies need to be spent on doing it up. The Mother does not have the money or skill or language to employ builders to do it up, and a solution would be to purchase this property and the Father to organise the work to do it up to a “*palatial*” standard. However the likelihood is that because of the price, it is already under offer or sold. I am awarding the Mother the sum of up to £2,500,000 together with the cost of purchase which includes the stamp duty of £97,000 to purchase a five bedroomed property in her name which would be comparable to Property 2 until the Children are all 18 and have completed any tertiary education. The Father will be a creditor of the Mother and the sum will be secured by judicial hypothec. The sum is to be held in escrow by the Mother's lawyers, the father having no lawyer, so there will be the cash to purchase available as soon as a property comes on the market. Until such time as a property is purchased for the Children and Mother, the Father is to continue to pay the rental on Property 1 and to continue the licence/lease for the children and Mother so they are not rendered homeless. An application may be made to the court as to the timing and implementation of the order.

Periodical payments

79 This is not a case where the Father has refused to make provision for his children. His schedule of payments for the family makes this clear. However, in accordance with the Children Law the Mother should receive periodical payments for the benefit of the children, for a set amount. This sum should also include a carer's allowance as the Mother presently has no income and very limited, if any, earning capacity given the time which is occupied caring for the Children and her limited ability to speak English.

- 80 Until the Mother purchases a property, the Father is to continue paying the “rent” on Property 1, which is £2,489.42, and he will pay direct to the Mother for the Children the sum of £2,311 per month.
- 81 The Father's income is comparatively low at present taking into account his capital but he states it will be “*like a waterfall*” in 2 or 3 years' time, and on the return of 4.5% he is seeking on present figures, his income may increase from about £250,000 to over double that sum per annum. Bearing in mind his income is going to increase significantly, and to avoid having to come back to Court each year, I am ordering that once the Mother purchases a property, he pays a figure equating to the greater of 25% of his net monthly income or £4,800 for so long as each of the three Children remain minors or are undertaking any full-time education to include tertiary education. So long as two of the Children remain minors or are undertaking any full-time education to include tertiary education I am ordering he pays a figure equating to 20% of his net monthly income. So long as one of the Children remains a minor or is undertaking any full-time education to include tertiary education I am ordering he pays a figure equating to 15% of his net monthly income. This sum includes provision for holidays for the children and the Mother to include providing financial assistance to the Children's Maternal family to visit Jersey, until the Children are all 18 and have completed any tertiary education. In other words, the Mother will have to meet all the expenses of running the property in her name and all the other bills that the Father is currently meeting. The Father is to provide the Mother with an annual statement of his earnings to be provided by not later than the 1st February of each year. If there is a material change in circumstances of either party, there may be a review of maintenance.

Furniture and effects

- 82 The Mother did not specify what furniture and effects are required for the sum of £10,000, and it may be that this depends on the property. I presume she will need to purchase a bed for Child 3 and other furniture for his room and also for the spare room so I will allow a sum of £2,000 but it is open to her to apply for a further lump sum if necessary.

A car

- 83 The Mother currently has an old car but is now looking for a lump sum of £10,000 to purchase a car for the transportation of the Children, and occasionally their friends, to school and extracurricular activities. Because there are three children it needs to be of a sufficient size and capacity in order that three children (occasionally more) and any sporting equipment or other belongings can be safely transported. The Father can afford £10,000 and has now indicated he would be so that she has a newer and more reliable car. I am therefore ordering he pay a lump sum of £10,000 for a car.

Medical, dental and optical fees

- 84 The Father has been paying these fees for the children, so he is ordered to pay medical insurance for them and any bills not covered by that medical insurance.

Schooling

- 85 The Father is meeting the school fees and incidental costs and has agreed to continue doing so. Indeed he wants to send them to H School, which will cost significantly more, whereas I School will cost less than G School. If the parents cannot agree what school the Children should attend, and mediation is unsuccessful then an application may need to be made to Court. The Father wants to fund them going on to tertiary education. I will order he pays any school fees for the Children to complete their education, so far as possible at G School, Jersey and thereafter for the Children to remain in private education following G School, until each of the Children complete their secondary education. The Father shall pay the costs of any tertiary education for the Children.

Costs

- 86 The Father congratulated himself at the hearing on the amount of money he has saved in not instructing lawyers, and at the Case Review Hearing said he had saved £30,000 and had saved a further sum of about £60,000 to include the cost of the hearing. He said that whilst he wanted to go to mediation he did not want to pay £5,000 to £7,000 for a day plus the lawyers' fees, this from a man with assets of over £12,500,000. At the Case Review Hearings, I had reminded the parties of The Overriding objective as set out in rule 4 of the Children Rules 2005 including at (6)

“(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(b) encouraging the parties to settle their disputes through mediation, where appropriate;

(e) helping the parties to settle the whole or part of the case” .

- 87 Time had been spent trying to arrange a mediation with the Father, but this did not take place as he did not want to spend the money on it. He made enquiries of the FMJ as the last moment but was told he had left it too late.
- 88 It was submitted on behalf of the Mother that as early as July 2017 the Father had been advised to get legal advice, and the Court had also adjourned the case on four occasions for him to get legal advice, leading to additional costs incurred by the Mother, including the cost of an interpreter. The Father has “*strung along*” this case, and the Mother's lawyers

submit it was a way of wearing her down without regard to the interests of the Children. He has sacked lawyers on several occasions immediately prior to hearings which delayed matters.

- 89 The Father throughout has refused to provide a copy of the terms on which the Children and Mother were residing at Property 1, and only provided this when I insisted he do so at the hearing. He has not provided a copy of his will nor detailed information as to the Trust he said he was going to set up. He did not consider the legal authorities, which had been provided some months ago to his then advocate, Advocate Godden. The Mother submitted that his approach was adversarial and his approach made settlement impossible.
- 90 At the hearing he gave contradictory submissions and evidence, for example as to the state of Property 1. The Mother's lawyers provided a detailed analysis of the time lines in support of their submissions about the conduct of the Father in these proceedings, for example on the 28th September, 2017, the mother was told that the Father had written a will, found trustees and a suitable protector. On the 17th November 2017 he stated he was setting up the F Trust and was making provision for the Mother as well in the trust. He was provided with a bundle of the authorities on the 7th December, 2017, a hearing was adjourned and Advocate Godden reinstructed on about the 7th December, 2017. On the 4th January, 2018, he said he would have the children DNA tested and results were received which confirmed all three children were his. On the 8th February, 2018 Advocate Godden was no longer instructed and Steensons were appointed who requested an extension which was granted. His advocate said on the 12th February that the trust did not exist, despite the earlier information given, and it was accepted that the case was crying out for mediation. By the 2nd February, 2018, he was a litigant in person again. Efforts were made to agree a court bundle. The Father refused access to Property 2 and Property 1 prior to the hearing, so an application had to be made for access, which was refused because of the concessions made by the Father on day 1, which he then tried to row back from on day 2.
- 91 Often there are limited resources so a cost order will impact on the ability for the Father to pay costs, but this is not so here. The cost I am told will be £45,000 at a minimum, but will need to be taxed on a standard basis if not agreed. In the circumstance I am ordering the father pay the costs of this case, on a standard basis, to be taxed if not agreed.