

ENGLAND AND WALES / JUDGMENT

DR v ES and Ors (Further LSPO Application)

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Neutral Citation Number: [2026] EWFC 15 IN THE FAMILY COURT SITTING AT THE ROYAL COURTS OF JUSTICE Before: MR JUSTICE MACDONALD

- ----- Between: DR
- and - ES -and- JS KS
- -----
- ----- Case No: ZZ21D47299 Royal Courts of Justice Strand, London, WC2A 2LL Date: 30/01/2026 Applicant First Respondent Second Respondents Mr James Ewins KC and Mr Andrew Campbell (instructed by Hughes Fowler Carruthers) for the Applicant Mr Richard Sear KC (instructed by Farrers) for the Respondent The Second Respondents did not appear and were not represented Hearing dates: 20 January 2026
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 30 January 2026 by circulation to the parties or their representatives by e-mail. MR JUSTICE MACDONALD This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court. MR JUSTICE MACDONALD Approved Judgment Mr Justice MacDonald:

INTRODUCTION

Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 1. The court has before it an application by DR (hereafter “the wife”), represented by Mr James Ewins of King’s Counsel and Mr Andrew Campbell of counsel, for a further legal services payment order (hereafter “LSPO”) in the context of long running financial remedy proceedings between the wife and ES (hereafter “the husband”), represented by Mr Richard Sear of King’s Counsel. The principle of an LSPO is not in dispute but the parties disagree as to the appropriate quantum and the terms of the implementation of the order. The second respondents are the husband’s parents, JS and KS. They were not in attendance at the LSPO hearing.

BACKGROUND

2. 3. 4. 5. 6. The background to the matter and the asset position can be stated relatively shortly for the purposes of determining this interim issue. The husband is in his early 40s and the wife is in her late 30s. The parties married in August 2008 and separated in early 2021. Following their arranged marriage, the parties moved into the husband's family home with his parents, where his parents still reside. Both the husband and the wife currently live in rented accommodation. The parties have two children, L and M. After the parties separated there were protracted and highly acrimonious proceedings with respect to the children under the Children Act 1989. The parties have now established a good working relationship with respect to co-parenting. In 2012 the wife was diagnosed with relapsing-remitting multiple sclerosis. These financial remedies proceedings have also been protracted, with the First Appointment having taken place as long ago as September 2021. There are essentially two matrimonial assets in this case. First, Y Ltd (hereafter "Y"), which is a property owning company. Second, the husband's one-third share holding in X Ltd (hereafter "X"), which is also a property owning company, the other shareholders in which are the husband's parents. At the outset of these proceedings, the husband asserted that he shared the beneficial ownership of Y with his parents, the husband and his parents contending that, from the moment of its incorporation in 2004, the husband held his share in the company on trust for himself and his parents in equal shares. This alleged position only became apparent to the wife at the point the husband completed and served his Form E in 2021, in response to the wife's application for a financial remedy order. Within this context, the husband entered into a buy-back arrangement with his parents in respect of his interest for which he received £1,298,930 resulting, the husband and his parents contended, in the husband's parents being the legal and beneficial owners of Y in its entirety. The husband's case with respect to the beneficial ownership of Y necessitated a preliminary issue hearing to determine that question and the husband's parents were joined as respondents. From 9 to 13 October 2023, the preliminary issue hearing was heard by Francis J. Francis J handed down judgment on 9 July 2024, in which he held that the husband owned 100% of the beneficial interest in Y (see DR v ES & Ors MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15

[2024] EWFC 176). The husband and his parents were ordered to pay the costs of the preliminary issue jointly and severally. Permission to appeal was refused by King LJ on 14 April 2025. 7. In his judgment, having observed at [18] that the husband's father is a man "very much motivated by money", Francis J observed as follows regarding the litigation tactics adopted by the husband's parents: "[62] It became clear to me that there is real resentment that... the wife is seeking a financial remedy order based on this costly standard of living, seeking capital that is "[S] money". [H's parents] have done what they can to deny the wife access to funds, even to pay her own legal fees. I am afraid that I believe that [H's parents] have done here what they did in the s8 proceedings and "closed ranks" with their son to defeat, or certainly substantially curtail, the wife's claims. Their behaviour in relation to the children was truly shocking. I say "they", but I very much formed the

impression that [H's mother] has little choice but to obey her husband [H's father] on such matters." 8. 9. Within the foregoing context, a jointly instructed valuation of Y has been undertaken by Kate Hart, Chartered Accountant. Her report arrives at a valuation for Y of £8.77M gross or £6.67M net of CGT. With respect to the question of liquidity, Ms Hart concludes that the only source of liquidity for Y appears to be the Y properties and that whilst these may be a source of liquidity in the future, they will be so only once the associated debt has been paid down. Ms Hart was also instructed to value the husband's share holding in X. She values X at £56.6M and, acknowledging that the question of any minority discount is a matter for the court, values the husband's interest at £18.87M gross or £14.3M net of CGT. With respect to the question of liquidity, Ms Hart concludes that it is possible that in the short term X could request associate companies repay some of the monies owed to it and, in the medium and longer term, could generate liquidity from the X Properties by borrowing against or selling part of the property portfolio. The properties held by each of Y and X are not complex, being made up of a portfolio of London residential and commercial properties, the values of which have been determined for the purpose of these proceedings. In the foregoing circumstances, net of liabilities, the matrimonial assets in this case are as follows: Asset Wife Husband Bank Accounts £6,933 £580 Y (100%) X (33%) - - £6,667,330 £14,340,324 MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 Pensions Chattels - - £2,381 £8,800 Liabilities (£301,880) (2,716,265) NET TOTAL (£294,947) £18,303,150 £18,008,203 10. The wife's open proposal seeks a needs based award comprising a lump sum of £8.6M, together with her outstanding costs, and periodical payments (including school fees) to meet her needs and the needs of the children when spending time with her. The husband has not to date made an open offer. In the circumstances, as matters stand, this case is proceeding towards a PTR before Trowell J on 26 March 2026 and a final hearing before Trowell J on 5 May 2026 with a time estimate of 7 days. 11. Three previous LSPO orders have been made in favour of the wife in this case. Those orders were as follows: i) ii) iii) The order of Francis J dated 24 February 2022 arising from a hearing on 20 January 2022 in which LSPO provision was made in the sum of £433,700 in respect of the financial remedy proceedings and £150,000 in respect of the proceedings under the Children Act 1989 (see DR v ES [2022] EWFC 62). The order of Francis J of 1 December 2022 following hearings on 14, 16 and 30 September 2022 and 1 December 2022 in which LSPO provision was made in the sum of a further £50,000 for the financial remedy proceedings and £391,000 for the proceedings under the Children Act 1989. The order of Francis J of 1 May 2024 at a hearing following shortly after judgment was handed down on the preliminary issue in which LSPO provision was made of £736,000 (of which £78,000 was for discharging the wife's outstanding costs in the proceedings under the Children Act 1989).

12. Within the foregoing context, by her application dated 5 January 2026, the wife seeks a further LSPO in the sum of £726,246.46, comprising the following sums: Outstanding costs as at 5 January 2026 £164,998.65 Estimated costs from 5 January to 20 January 2026 (after

funds on account) £72,739.81 Estimated costs from 20 January 2026 to the PTR £97,534.00 MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 Estimated costs from the PTR to the conclusion of the final hearing £390,990.00 TOTAL £726,262.46 13. Dealing with these figures in a little more detail, the figure of £164,998.65 for outstanding costs as at 5 January 2026 is comprised of £62,099.25 in excess of the £135,000 provided by the LSPO made by Francis J on 1 May 2024 and £102,899.40 comprising the costs of the adjourned pFDR in December 2025 and the preparation of the wife's third LSPO application.

14. With respect to the £62,099.25 in excess of the LSPO order of 1 May 2024, the wife contends that this arose in consequence of (i) the case not proceeding, contrary to the expectation of Francis J, relatively quickly to a pFDR; (ii) a failure by the husband to comply with the LSPO, necessitating a further detailed order; (iii) the adjournment of the January 2025 pFDR to a date in June 2025, which in turn was vacated on 23 May 2025 after the husband asserted he could not meet the costs of the expert; (iv) the effect of the order of 30 June 2025, resetting the progress of the case by replacing the directions originally made at the first appointment in September 2021 and recast on 27 June 2024; (v) a delay by the husband providing information to the single joint expert, delaying in turn the pFDR until 18 December 2025, a year later than anticipated. With respect to these outstanding costs, the wife's solicitor, Renato Labi, further deposes in a statement endorsed with a statement of truth, that his firm will not act on credit and is not prepared to continue to act if their outstanding bills are not paid, particularly given the historic litigation conduct of the husband and his parents as noted by Francis J in his judgment on the preliminary issue.
15. With respect to the sums for the estimated future costs contained in the table above, with respect to the figure of £72,739.81 for costs from 5 January to 20 January 2026 (after funds on account), Mr Ewins submits that part of this sum has already been paid and that, therefore, it would not be appropriate to reduce it. The wife seeks for the remaining sums, amounting to £488,524 to be paid in instalments and what has been described as a "pound for pound" provision that ensures the husband does not pay his own legal advisers in greater amounts and / or sooner than he discharges his liability under the LSPO.
16. With respect to the question of affordability, Mr Ewins and Mr Campbell remind the court that, on the unchallenged evidence of Ms Hart, the husband has net assets of £18M. In this context, Mr Ewins and Mr Campbell submit that the husband has long been on notice that, if the matter did not settle, the wife would need legal funding up to and including the final hearing. In his judgment dealing with the first LSPO on 24 February 2022 in DR v ES [2022] EWFC 62 at [5], Francis J made clear his views regarding the appropriate duration of funding provision for the wife in his case: MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 "[5]... It was suggested to me that my order would last only until the FDR. Well, I hope that this case will settle at the FDR, it should, and I will say a little bit more about that in a moment, but if it does not, it would be quite wrong for the funding, either of maintenance funding or legal fees funding, to be cut

off at that date. Of course, it is open to either party to apply for a variation of the order that I am going to make today, but the reality is that the cost of making and preparing for and pursuing that application would almost certainly outweigh the benefit that either party might derive from making that application.” 17. 18. 19. On 30 June 2025, the application now before the court was notified to the husband. Mr Ewins and Mr Campbell submit that, notwithstanding this, the husband has taken no steps to ascertain what liquid funds he can obtain to fund the wife’s reasonable costs, only announcing at the outset of this hearing that he intends to meet with the bank to explore the option of borrowing further money against his assets. In the circumstances, and again where, on the unchallenged evidence of Ms Hart, the husband has net assets of £18M, Mr Ewins and Mr Campbell submit it is not open to the husband to contend that he has no available resources to pay a further LSPO. During the course of his submissions, Mr Ewins contended that there should be a “waterfall” provision in the order which provides for the funds raised by the husband in that way to be spent, in order of descending priority, first on security for MPS, second on LSPO provision and third on the funding of the husband’s costs, with a prohibition on the use of the funds for any other purpose. As I noted at the outset of this judgment, the principle of a further LSPO is not now in issue. As early as his statement dated 18 January 2022, in response to the wife’s first application for an LSPO, the husband acknowledged at [48] that the wife was entitled to legal advice and must be represented going forward. Whilst the husband did not respond to the wife’s fourth LSPO application after it was issued, during the course of the hearing Mr Sear advanced the following position in his Note on behalf of the husband and during the course of his oral submissions. Overarching Mr Sear’s submissions on behalf of the husband as to quantum is his contention that it is not possible to identify resources from which the husband can readily raise funds to pay the wife under an LSPO in the timescales required having regard to the date of the final hearing. Against this, and as I have noted, at the outset of the hearing the husband indicated that he intends to meet with the bank on 26 January 2026 to begin the process of exploring what further funds can be raised by way of a loan against his interests. Mr Sear reminds the court that, in circumstances where the husband also seeks by this route to discharge the outstanding costs owing to his own solicitors, this will result in a reduction in the assets available for distribution at the final hearing by whatever further borrowing may be taken.

20. With respect to the wife’s outstanding costs of £164,998.95 the husband contends that these must be seen in the context of Francis J having, by the LSPO he granted on 1 May 2024, set a budget, with the wife having made no subsequent application to vary that order, of which £135,000 was awarded for the period 27 June 2024 to the conclusion of the FDR, plus a sum awarded to cover costs to be incurred by the wife to a directions hearing on 27 June 2024 of £31,000. Mr Sear submits that the decisions of Mostyn J in *Rubin v Rubin* [2014] EWHC 611 (Fam), Cobb J in *BC v DE*

- [2016] 1 WLR 4720 and Holman J in LKH v TQA AL Z (Interim Maintenance and MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 Costs Funding) [2018] EWHC 1214 (Fam) support the submission that, on the facts of this case, it would not be appropriate for the LSPO to fund historic costs and historic costs that represent an overspend on the budget set by the LSPO of 1 May 2024. 21. As to the matters relied on by the wife to justify the spending in excess of the amount awarded on 1 May 2024 as summarised above, Mr Sear submits that an exercise that involves consideration of those factors plainly amounts to a surrogate inter partes costs exercise. Mr Sear submits that the wife's lawyers should have treated the sum allowed by Francis J as the limit of what, in the absence of an application to vary, the wife could reasonably spend. Mr Sear contends on behalf of the husband that the matters set out in Mr Labi's statement do not add up to the kind of exceptional case in which historic costs can be encompassed within an LSPO. If the court is not with him on that point, and relying on the decision of Cobb J (as he then was) in Re Z (No. 2) (Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision) [2021] EWFC 72, Mr Sear submits that the wife should only be allowed to recoup a portion of the sum overspent.
22. With respect to the future costs, the principle of an LSPO not being in dispute and subject to the question of affordability, on behalf of the husband, Mr Sear conceded during his oral submissions that sums for the estimated future costs contained in the table above, with respect to the figure of £72,739.81 for costs from 5 January to 20 January 2026 (after funds on account) has already been incurred but submits that a reduction should nonetheless be applied equal to the reduction applied by Francis J when making the LSPO on 1 May 2024.
23. With respect to the figures for estimated costs from 20 January 2026 to the PTR of £97,534 and from the PTR to the conclusion of the final hearing of £390,990, Mr Sear submits that the wife's proposed expenditure on solicitors' costs is excessive having regard to (i) the preparation of the case already and (ii) the acknowledgment that there will be some significant expenditure immediately prior to the hearing and at the hearing. For this reason, Mr Sear submits that a reduction of 33% is appropriate up until the PTR and 25% thereafter. Mr Sear further submits that this is not a case in which the wife requires leading and junior counsel, having regard to the issues involved. Accordingly, Mr Sear submits that the wife should be permitted funding sufficient to cover leading counsel's fees for the PTR and final hearing at the level the husband is paying his own unaccompanied Silk, amounting to a total of £127,200.
24. Within the foregoing context, Mr Sear submits that, again subject to the submissions with respect to affordability, the appropriate figure for an LSPO covering the period to the end of the final hearing excludes costs already incurred and totals £388,257, as against the sum contended for by the wife of £488,524 plus her outstanding costs. Mr Sear further contends that the provision sought by the wife in the LSPO by which the funds due under that order would be paid in instalments so as to that ensure the husband does not pay his own legal advisers in greater amounts and / or sooner than he discharges his liability under the LSPO,

amount to an oppressive and unfair debarring order and that any application for Hadkinson relief should be made on notice and in the proper form. RELEVANT LAW MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 25. Section 22ZA of the Matrimonial Causes Act 1973 as amended provides as follows (reflecting the formulation approved in the decision of the Court of Appeal in Currey v Currey (No2) [2006] EWCA Civ 1338 at [20]): “Orders for payment in respect of legal services

- (1) In proceedings for divorce, nullity of marriage or judicial separation, the court may make an order or orders requiring one party to the marriage to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- (2) The court may also make such an order or orders in proceedings under this Part for financial relief in connection with proceedings for divorce, nullity of marriage or judicial separation.
- (3) The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- (4) For the purposes of subsection (3), the court must be satisfied, in particular, that—
 - (a) the applicant is not reasonably able to secure a loan to pay for the services, and
 - (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
- (5) An order under this section may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.
- (6) An order under this section may—
 - (a) provide for the payment of all or part of the amount by instalments of specified amounts, and
 - (b) require the instalments to be secured to the satisfaction of the court.
- (7) An order under this section may direct that payment of all or part of the amount is to be deferred.
- (8) The court may at any time in the proceedings vary an order made under this section if it considers that there has been a material change of circumstances since the order was made.
- (9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings. MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15

- (10) In this section “legal services”, in relation to proceedings, means the following types of services—
- (a) providing advice as to how the law applies in the particular circumstances,
 - (b) providing advice and assistance in relation to the proceedings,
 - (c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
 - (d) providing advice and assistance in relation to the enforcement of decisions in the proceedings or as part of the settlement or resolution of the dispute, and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.
- (11) In subsections (5) and (6) “specified” means specified in the order concerned.” 26. Section 22ZB of the Matrimonial Causes Act 1973 as amended further provides as follows with respect to the matters to which the court is to have regard when considering an application under s.22ZA of the 1973 Act: “Matters to which court is to have regard in deciding how to exercise power under section 22ZA
- (1) When considering whether to make or vary an order under section 22ZA, the court must have regard to—
 - (a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
 - (c) the subject matter of the proceedings, including the matters in issue in them,
 - (d) whether the paying party is legally represented in the proceedings,
 - (e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
 - (f) the applicant's conduct in relation to the proceedings,
 - (g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15
 - (h) the effect of the order or variation on the paying party.
- (2) In subsection (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.

- (3) For the purposes of subsection (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—
 - (a) cause undue hardship to the paying party, or
 - (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.
- (4) The Lord Chancellor may by order amend this section by adding to, omitting or varying the matters mentioned in subsections (1) to (3).
- (5) An order under subsection (4) must be made by statutory instrument.
- (6) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section “legal services” has the same meaning as in section 22ZA.” 27. In *Rubin v Rubin*, Mostyn J provided his well-known and comprehensive summary of the principles governing the operation of the statutory provisions set out above. I can do no better than to set out the terms of paragraph [13] of Mostyn J’s judgment in full: “[13] I have recently had to deal with a flurry of such applications and there is no reason to suppose that courts up and down the country are not doing likewise. Therefore it may be helpful and convenient if I were to set out my attempt to summarise the applicable principles both substantive and procedural.
 - i) When considering the overall merits of the application for a LSPO the court is required to have regard to all the matters mentioned in s22ZB(1) - (3). ii) Without derogating from that requirement, the ability of the respondent to pay should be judged by reference to the principles summarised in *TL v ML* [2005] EWHC 2860 (Fam) [2006] 1 FCR 465 [2006] 1 FLR 1263 at para 124 (iv) and (v), where it was stated: ‘iv) Where the affidavit or Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee. MR JUSTICE MACDONALD Approved Judgment *Dr v ES and Ors* (Further LSPO Application) [2026] EWFC 15
 - v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial.’ iii) Where the claim for substantive relief appears doubtful, whether by virtue of a challenge to the jurisdiction, or otherwise having regard to its subject matter, the court should judge the application with caution. The more doubtful it is, the more cautious it should be. iv) The court cannot make an order unless it is satisfied that without the payment the applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future. It is important that the jurisdiction is not used to outflank or

supplant the powers and principles governing an award of costs in CPR Part

44. It is not a surrogate inter partes costs jurisdiction. Thus a LSPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings.
- v) In determining whether the applicant can reasonably obtain funding from another source the court would be unlikely to expect her to sell or charge her home or to deplete a modest fund of savings. This aspect is however highly fact-specific. If the home is of such a value that it appears likely that it will be sold at the conclusion of the proceedings then it may well be reasonable to expect the applicant to charge her interest in it. vi) Evidence of refusals by two commercial lenders of repute will normally dispose of any issue under s22ZA(4)(a) whether a litigation loan is or is not available. vii) In determining under s22ZA(4)(b) whether a Sears Tooth arrangement can be entered into a statement of refusal by the applicant's solicitors should normally answer the question. viii) If a litigation loan is offered at a very high rate of interest it would be unlikely to be reasonable to expect the applicant to take it unless the respondent offered an undertaking to meet that interest, if the court later considered it just so to order. ix) The order should normally contain an undertaking by the applicant that she will repay to the respondent such part of the amount ordered if, and to the extent that, the court is of the opinion, when considering costs at the conclusion of the proceedings, that she ought to do so. If such an undertaking is refused the court will want to think twice before making the order.
- x) The court should make clear in its ruling or judgment which of the legal services mentioned in s22ZA(10) the payment is for; it is not however necessary to spell this out in the order. A LSPO may be made for the MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 purposes, in particular, of advice and assistance in the form of representation and any form of dispute resolution, including mediation. Thus the power may be exercised before any financial remedy proceedings have been commenced in order to finance any form of alternative dispute resolution, which plainly would include arbitration proceedings. xi) Generally speaking, the court should not fund the applicant beyond the FDR, but the court should readily grant a hearing date for further funding to be fixed shortly after the FDR. This is a better course than ordering a sum for the whole proceedings of which part is deferred under s22ZA(7). The court will be better placed to assess accurately the true costs of taking the matter to trial after a failed FDR when the final hearing is relatively imminent, and the issues to be tried are more clearly defined. xii) When ordering costs funding for a specified period, monthly instalments are to be preferred to a single lump sum payment. It is true that a single payment avoids anxiety on the part of the applicant as to whether the monthly sums will actually be paid as well as the annoyance inflicted on the respondent in having to make monthly payments. However, monthly payments more accurately reflects what would happen if the applicant were paying her lawyers from her own resources, and very likely will mirror the position of the respondent.

If both sets of lawyers are having their fees met monthly this puts them on an equal footing both in the conduct of the case and in any dialogue about settlement. Further, monthly payments are more readily susceptible to variation under s22ZA(8) should circumstances change. xiii) If the application for a LSPO seeks an award including the costs of that very application the court should bear in mind s22ZA(9) whereby a party's bill of costs in assessment proceedings is treated as reduced by the amount of any LSPO made in his or her favour. Thus, if an LSPO is made in an amount which includes the anticipated costs of that very application for the LSPO, then an order for the costs of that application will not bite save to the extent that the actual costs of the application may exceed such part of the LSPO as is referable thereto. xiv) A LSPO is designated as an interim order and is to be made under the Part 18 procedure (see FPR rule 9.7(1)(da) and (2)). 14 days' notice must be given (see FPR rule 18.8(b)(i) and PD9A para 12.1). The application must be supported by written evidence (see FPR rule 18.8(2) and PD9A para 12.2). That evidence must not only address the matters in s22ZB(1)-(3) but must include a detailed estimate of the costs both incurred and to be incurred. If the application seeks a hearing sooner than 14 days from the date of issue of the application pursuant to FPR rule 18.8(4) then the written evidence in support must explain why it is fair and just that the time should be abridged.” 28. In this case, as now in many others, a particular feature of the submissions received by the court concerned the extent to which it is permissible for costs already incurred ahead of the application for an LSPO to be encompassed in any LSPO made by the MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 29. 30. 31. 32. court. There are no Court of Appeal authorities dealing with this question and the first instance authorities evidence different approaches by the Judges of the Division. The terms of s.22ZA(1) provide that the court has jurisdiction to award an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings. Beginning with *Mostyn J in Rubin v Rubin*, and as I have noted, His Lordship held in that 2014 decision that, given the manifest undesirability of an LSPO being used to outflank or supplant the powers and principles governing an award of costs in CPR Part 44, an LSPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings. Francis J this case (see *DR v ES* [2022] EWFC 62) agreed to encompass within the LSPO historic costs owed to the wife’s solicitors. Within that context, Francis J determined that historic costs should be provided for in circumstances where if the debt was not paid there was “a serious risk that they will not continue to act”. Francis J observed that “Both counsel properly agree that I have the jurisdiction to deal with this, both in terms of a lump sum to clear previous costs incurred if I think it is appropriate, and to deal with future costs to be incurred.” In *BC v DE* [2016] EWHC 1806 sub nom *Re F (A Child)(Financial Provision: Legal Costs Funding)* [2016] 1 WLR 4720, Cobb J drew a distinction between an order in respect of the historic costs of proceedings which have already concluded (which was the position *Mostyn J* was dealing with in *Rubin*), and historic costs already reasonably and legitimately incurred within ongoing proceedings, recognising as he did that: “[22]... However, for as long as any client has incurred significant outstanding legal costs with his or

her solicitor, there is no doubt but that they become bound (“beholden” per Mr Harker, see para 9 above) to each other by the debt; this may well impact on the freedom of, and relative strengths within, their professional relationship. Further, the solicitor may feel constrained in taking what may be important steps in relation, for instance, to discovery, or in relation to exploring parallel non-court dispute resolution. The debt may materially influence the client’s stance on possible settlement, and the solicitor’s advice in relation to the same: a client - without independent resources - is in a vulnerable position, and may be more inclined to accept a settlement that is less than fair simply because of the concerns about litigation debt. This would not be in the interests of this, or any, child in Schedule 1 proceedings. A level playing field may not be achieved where, on the one side, the solicitor and client are “beholden” to each other by significant debt, whereas on the other there is an abundance of litigation funding. Though there is an increasingly familiar and commendable practice of lawyers acting pro bono in cases before the family courts, particularly where public funding provision previously available has been withdrawn, legal service providers, including solicitors and barristers, are not charities, nor are they credit-agents. It is neither fair nor reasonable to expect solicitors and the Bar to offer unsecured interest-free credit in MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 order to undertake their work; there is indeed a solid reason for lawyers not to have a financial interest in the outcome of family law litigation.” 33. In LKH v QA AL Z (Interim Maintenance and Costs Funding) [2018] EWHC 1214 (Fam) Holman J noted, in comments that were obiter in circumstances where the statute did not apply on the facts in that case, that s.22ZA looks forward to the obtaining of legal services and not backwards to legal services already obtained. In these circumstances, and recalling the observation of Mostyn J on this issue in Rubin, Holman J considered that an LSPO that covers historic costs should be made only very sparingly indeed. On the question of whether the court can be satisfied that, without an award to cover historic unpaid costs, the applicant would not reasonably be able to obtain in the future appropriate legal services for the proceedings, Holman J took the following approach at [28]: “Mrs Carew Pole submitted that if Payne Hicks Beach are not relatively swiftly paid all their outstanding costs they would not continue to act for this client, even if there is an appropriate award of monthly payments to cover future costs. With the utmost respect to Mrs Carew Pole, I cannot accept that as a matter of submission. If a partner of Payne Hicks Beach had made a clear and unequivocal witness statement, to be publicly relied upon, to the effect that they would now, to quote Mostyn J. “down tools” or, to use another metaphor, pull the plug on their client unless the past costs are rapidly paid, even if the future costs are provided for, then I would have to consider that. But it would in my view be a regrettable and regressive development in this class of expensive family litigation. I am not prepared to assume, on the basis of a submission, that this very distinguished firm would act in that way.” 34. In Re Z (A Child)(Schedule 1: Legal Costs Funding Order; Interim Financial Provision) [2020] EWFC 80 Cobb J was concerned with an application for legal funding in proceedings under Schedule 1 of the Children Act 1989 in which the mother claimed as part of the LSPO historic legal costs owed to two firms who were no longer instructed by her, or where work was paused due to active litigation

against the solicitor in question. Having reminded himself of the need, articulated by Mostyn J in Rubin, to ensure that any award made under an LSPO does not have the effect of outflanking or supplanting the powers contained in CPR Part 44 to make orders for costs, Cobb J declined to encompass within the LSPO the historic costs owed to firms no longer acting for the mother. Cobb J was not satisfied that without payment of those historic costs the mother would not be able to obtain appropriate legal services for the proceedings going forward. In encompassing within the LSPO historic costs to the firm that the mother continued to instruct, Cobb J repeated his view expressed in Re F (A Child)(Financial Provision: Legal Costs Funding) that: “I am satisfied that there is no other legitimate or accessible funding stream, and this firm should not carry a significant debt in working for the mother unpaid; the firm is not a charity, nor it is a credit agent, and, as in Re F, I am of the view that it is neither fair nor reasonable to expect the firm, and chosen counsel, to offer unsecured interest-free credit in order to undertake their work. In this respect, I am concerned that the mother and Hunters should not become bound or ‘beholden’ to each other by the existing debt; MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 35. 36. the position of the mother vis-à-vis Hunters is closer to that which I described at [22] of Re F (above).” The husband contends that it is relevant in determining the question of whether the LSPO should encompass costs already incurred that the wife exceeded the budget set in respect of the last LSPO in this case. As I noted in DH v RH (LSPO and MPS Applications) [2023] EWFC 111 (a case that, as Mr Ewins pointed out during the hearing, is distinguished from this case on the facts), in Re Z (No.2)(Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision) Cobb J, whilst not resiling from his comments in earlier authorities that legal service providers, including solicitors and barristers, are not charities, nor are they credit-agents, and that is neither fair nor reasonable to expect solicitors and the bar to offer unsecured interest-free credit in order to undertake their work, made clear that an LSPO is not a licence for lawyers to bill as they choose: “If I had thought that my comments in Re F and in the earlier judgment in this case would have the effect of encouraging the mother’s solicitors, or indeed any solicitors in similar cases, to assume that they had carte blanche to bill their clients as they choose, I would not have made the comments, or I may have expressed myself differently.” Finally, with respect to the manner in which the LSPO falls to be implemented, in DH v RH (LSPO and MPS Applications) I further noted that s. 22ZA of the Matrimonial Causes Act 1973 makes clear that in granting an LSPO the court, pursuant to s.22ZA(5), maintains a high degree of control over the type of legal services, the period over which they are provided and the purpose for which they are provided. Further, as I also noted, pursuant to s. 22ZA(6), the court may provide that the amount awarded to obtain legal services may be paid in instalments secured to the satisfaction of the court, s. 22ZA(7) allows the court to defer all or part of the payment and s.22ZA(8) empowers the court to vary the LSPO consequent on a material change of circumstances since the order was made. Mostyn J made clear in Rubin that the court should make clear in its ruling or judgment which of the legal services mentioned in s22ZA(10) the payment is for. DISCUSSION 37. Having regard to the careful submissions of leading and junior counsel, and the information set forth in the

hearing bundle, I am satisfied that an LSPO should be made in favour of the wife in the following terms: i) ii) iii) iv) The husband shall fund the wife's outstanding costs as at 5 January 2026 in the sum of £107,250; The husband shall fund the wife's costs from 5 January to 20 January 2026 (after funds on account) in the sum of £47,320; The husband shall fund the wife's costs from 20 January 2026 to the PTR in the sum of £73,200; The husband shall fund the wife's costs from the PTR to the conclusion of the final hearing in the sum of £332,350. MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 38. 39. 40. 41. 42. v) vi) The funds raised by the husband to satisfy the LSPO shall be applied, in order of descending priority, first on security for MPS, second on LSPO provision and third on the funding of the husband's costs, with a prohibition on the use of the funds for any other purpose. The funds due under the LSPO shall be paid in instalments and the husband shall ensure that he does not pay his own legal advisers in greater amounts and / or sooner than he discharges his liability under the LSPO. My reasons for so deciding are as follows. In determining the application before the court I have, as I am required to do, had regard to all the matters mentioned in s 22ZB(1)–(3). I am satisfied in this case, as is conceded in effect by the husband, that without the payment the wife would not reasonably be able to obtain appropriate legal services for the proceedings. I am further satisfied that the husband is able to afford to fund the wife's reasonable legal costs under an LSPO. Whilst the court does not have before it definitive confirmation that the husband will be able to borrow against his interests, I bear in mind that, albeit on some occasions late, the husband has met the previous LSPOs notwithstanding his asset position being broadly similar to the position that pertains today. Whilst Mr Sear submits that it is not possible to identify resources from which the husband can readily raise funds to pay the wife under an LSPO in the timescales required having regard to the date of the final hearing, at the outset of the hearing the husband indicated that he intends to meet with the bank on 26 January 2026 to begin the process of exploring what further funds can be raised by way of a loan against his interests. Those interests comprise net assets of £18M. In the circumstances, I consider the award I make by way of LSPO to be affordable for the husband. On balance, I am satisfied that the LSPO should encompass a portion of the costs already incurred by the wife. First, this is the approach that has been taken in this case historically. Francis J determined that historic costs should be provided for in circumstances where if the debt was not paid there was "a serious risk that they will not continue to act". Having regard to the statement of evidence of the wife's solicitor, I am satisfied that that position has not changed. Second, the husband has stated his intention to clear his own outstanding costs using the loan he intends to secure against his assets in order to fund the LSPO. Whilst he is perfectly entitled to do this from assets in his name that have not yet been the subject of distribution, to leave the wife with outstanding costs to her solicitors in these circumstances would, in my judgement, increase the risk of offending against the principle of equality of arms. As Cobb J noted in BC v DE, a level playing field may not be achieved where, on the one side, the solicitor and client are "beholden" to each other by significant debt, whereas on the other there is an abundance of litigation funding. In this context, the husband's stated intention to use some of the money raised to discharge his current costs

liability tends to support the argument that the LSPO should encompass the wife's outstanding costs liability. I acknowledge that LSPOs encompassing historic costs should only be made sparingly and only on proper evidence that the applicant's lawyers will refuse to act unless the historic costs are MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 43. 44. 45. paid, notwithstanding the grant of an LSPO. Once again, however, unlike the position that pertained before this court in DH v RH (LSPO and MPS Applications) there is evidence in the proper form in this case to prove the assertion that, notwithstanding the making of an LSPO to provide for their fees moving forward to final hearing, the wife's solicitors will still not act for the wife unless their historic fees are paid. This creates the risk identified by Cobb J in BC v DE, if the husband settles his outstanding costs from the monies to be raised against his assets but the wife is left with hers unpaid. Against these matters, it is the case that the wife exceeded the budget arrived at by Francis J in May 2024. Whilst, as noted by Francis J in 2022, it may be prudent to avoid the expense of a variation application, the corollary of that is the need to pay close attention to staying within the bounds of the budget allowed by the court under the LSPO that is granted. As Cobb J noted in Re Z (No.2)(Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision), an LSPO does not provide carte blanche to incur costs well beyond the funds provided for in the order. In circumstances where the costs already incurred represent an overspend when compared to the budget set by the LSPO, and where the award of costs already incurred occurs outside the confines of the inter partes costs regime, I am satisfied that the wife should only receive a portion of the overspend. Doing the best I can on a broad basis, and having regard to the factors that are prayed in aid by Mr Ewins and Mr Campbell as justifying the overspend, I am satisfied that the appropriate figure is £107,250. Turning to the question of future costs to the final hearing, as I have noted, Mr Sear conceded during his oral submissions that sums for the estimated future costs contained in the table above, with respect to the figure of £72,739.81 for costs from 5 January to 20 January 2026 (after funds on account) has already been incurred but submitted that a reduction should nonetheless be applied. Again, adopting a necessarily broad approach to the issue, I am satisfied that it is appropriate to reduce the figure for costs incurred over the period of 15 days to £47,320. For the figures for costs up to the PTR, and from the PTR to final hearing, the costs estimate of 5 January 2026 does not descend into specificity. Against this, I am mindful that the history of this case demonstrates that those representing the wife have had to work hard to extract from the husband and his parents the information and material that is required to move this matter forward. The husband still has not made an open offer in the proceedings, even though the decision on the preliminary issue of the beneficial ownership of Y was determined in July 2025 after the husband had unsuccessfully sought to claim he shared the beneficial interest with his parents. Ahead of this hearing, the husband only announced his intention to meet with the bank on the morning of the hearing. I am further mindful of the findings of Francis J regarding the obstructive behaviour of the second respondents in this case to date. In this context, the statement in the husband's Note for this hearing that "it should come as no surprise to W that his case will be that litigation against his parents is unconscionable and

he remains dependent on the sums they are prepared to provide.” does not fill the court with confidence that the wife’s task is going to get any easier moving forward. In the circumstances, I am satisfied that it is proper to take into account of, as Mr Ewins put it in submissions, “the likely task the wife will face when considering the reasonableness of the future costs sought by way of LSPO.” MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 46. 47. 48. 49. 50. Having reviewed the schedules, and having regard to the directions that remain outstanding, the work outlined in the estimate to for the work up to PTR appears broadly reasonable, albeit a significant amount of work has already been done in these proceedings such that some reduction is appropriate. For example, the expert valuation evidence is concluded, there will be limited need for further narrative statements and the level of updating disclosure will be confined. Against this, I am not able to accept that it is appropriate that the wife should be deprived of the services of junior counsel in the lead up to and during the final hearing. In circumstances where the husband is represented by King’s Counsel, it is appropriate to have parity of representation. In addition, I accept that in this case it is Mr Campbell who has what might be termed the ‘institutional memory’ in respect of proceedings that have been on foot since 2021. In these circumstances, it would not be appropriate or fair to deprive the wife of the services of a leader and a junior in this case, particularly as the proceedings reach their most important stage. In the foregoing context, with respect to the work from 20 January 2026 to the PTR, I am satisfied that a figure of £73,200 is appropriate. With respect to the work between the PTR and the end of the final hearing, Mr Sear properly concedes that there will be some significant expenditure immediately prior to the hearing and at the hearing. Accordingly, with respect to the costs from the PTR to the conclusion of the final hearing the appropriate sum is, in my judgement, £332,350. This means the court will make an LSPO award in the total sum £154,570 with respect to costs already incurred (comprising £107,250 for costs outstanding as at 5 January 2026 and £47,320 comprising costs incurred from 5 January to 20 January 2026 after funds on account) and £405,550 in respect of future costs to the end of the final hearing. The total quantum of the LSPO is therefore £560,120. Finally, with respect to the payment regime, it was apparently uncontroversial during the hearing that the funds raised by the husband to satisfy the LSPO should be applied, in descending order, first on security for MPS, second on LSPO provision and third on the funding of the husband’s costs, with a prohibition on the use of the funds for any other purpose. I will include that provision in the order. I am further satisfied that the order should provide for the funds due under the LSPO to be paid in instalments and should require the husband to ensure that he does not pay his own legal advisers in greater amounts and / or sooner than he discharges his liability under the LSPO. That latter provision is no more than a device to better ensure equality of arms in the context of it being the husband who is the source of the funds that ensure the wife’s continued legal representation and who could, if he wished to be obstructive, deploy generous funds to allow his representatives to complete work whilst holding back funds to prevent the wife’s representatives from doing the same. The order the wife seeks also has echoes in a similar provision contained by way of undertaking given by the husband in the order of Francis J of

23 August 2024. In light of the history of this matter as summarised in this judgment, I am satisfied that it is appropriate to place in the order this provision governing payment under the powers provided by s.22ZA of the 1973 Act.

CONCLUSION

MR JUSTICE MACDONALD Approved Judgment Dr v ES and Ors (Further LSPO Application) [2026] EWFC 15 51. In these proceedings, the parties have already incurred some £2M of legal costs between them. This is in addition to the some £1.5M in costs the parties spent on the proceedings in respect of the children under the Children Act 1989. The husband's parents' costs run to some £800,000. To say that the litigation in this case has been financially devastating for the family is almost an understatement. Within this context, the court must be given pause before it authorises a further and large amount to be spent in costs. I am, however, for the reasons I have given, satisfied that the court should make an order as follows having regard to the circumstances set out in s. 22ZB of the 1973 Act: i) ii) iii) iv) v) vi) The husband shall fund the wife's outstanding costs as at 5 January 2026 in the sum of £107,250. The husband shall fund the wife's costs from 5 January to 20 January 2026 (after funds on account) in the sum of £47,320. The husband shall fund the wife's costs from 20 January 2026 to the PTR in the sum of £73,200. The husband shall fund the wife's costs from the PTR to the conclusion of the final hearing in the sum of £332,350. The funds raised by the husband to satisfy the LSPO shall be applied, in order of descending priority, first on security for MPS, second on LSPO provision and third on the funding of the husband's costs, with a prohibition on the use of the funds for any other purpose. The funds due under the LSPO shall be paid in instalments and the husband shall ensure that he does not pay his own legal advisers in greater amounts and / or sooner than he discharges his liability under the LSPO. 52. The husband should appreciate that if he or his parents act in relation to this litigation in an obstructive manner going forward, or if he fails now to engage in good faith in the steps that need to be taken in order to bring this matter to a satisfactory resolution, the court may be invited to revisit the question of funding under the LSPO. I will ask counsel to draft an order accordingly.

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