

JERSEY / JUDGMENT

PS v HF and SS [2008]

JRC 128 (12 August 2008)

[2008] JRC 128

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judgment

the commissioner: 1. In this case, the respondent (who was the wife) seeks to set aside a final consent order made on 22 nd February 2005 on the grounds of bad legal advice, lack of judicial scrutiny, non disclosure and supervening events, and this in order to apply for further financial relief. Background to the consent order 2. The petitioner and the respondent married in Newcastle on 11 th May 1985. The petitioner was and still is a dentist and the respondent was a dental nurse. They have two children, now aged 22 and 20 respectively. 3. In 1995/1996 the petitioner sold his dental practice in Sunderland in order to undertake a Master's degree in restorative dentistry. This was financed by the parties' downsizing the matrimonial home and living off the proceeds. In 1997, following completion of this degree, and having become disillusioned with the National Health Service, the petitioner purchased a dental practice in Jersey for £125,000, financed by a borrowing in that amount from the Royal Bank of Scotland International secured over an Allied Dunbar life assurance policy repayable in 2013 with the proceeds of that policy. The matrimonial home in Tynemouth was sold, realising a profit of £55,000 which, according to the evidence of the petitioner, was used in part to finance the move to Jersey and in part to support the family whilst the petitioner built up the practice. The family moved into rented accommodation in Jersey. 4. In 1999, the opportunity arose to purchase the property they were renting for £400,000. The petitioner was unable to raise any equity and his bank refused to give him a mortgage. However, a financial adviser was able to negotiate an endowment mortgage based on the petitioner's professional credentials and not on his practice income which, with the aid of a loan from the respondent's mother of £15,000, enabled the parties to purchase the property jointly by acquiring the shares in the company that owned the property. 5. In or about March 2000, the petitioner informed the respondent that he was struggling financially mainly because he could not afford the mortgage and therefore the property had to be sold. He intended that they would buy a smaller property in its place. The respondent did not accept that this was true, but at the time felt she had no say in the matter. At about the same time, she met the co-respondent and their relationship became intimate in October of that year. 6. The property was put on the market at an asking price of £750,000 but reduced by the petitioner over a short time span to an asking price of £550,000. The petitioner then informed the respondent that he had agreed to sell the property to his colleague M for

£500,000 by way of a private sale, thus avoiding estate agency fees, and that the property should be taken off the market. The respondent alleges that she was coerced by the petitioner to use the family solicitor, Mr Philip Syvret, for the sale and signed a letter to him agreeing that the net proceeds should be paid to the petitioner. Mr Syvret was apparently aware that the parties were in matrimonial difficulties and that following the sale, they would be living separately. He would appear to have been advising the petitioner separately on other matters, although it is not clear whether this extended to matrimonial advice. The respondent says she only met Mr Syvret at the completion meeting. 7. The sale of the matrimonial home was completed on 16 th March 2001 in favour of M, for the sum of £500,000 with the net proceeds in the sum of £90,639.30 being paid to the petitioner. From this sum, the petitioner utilised £60,813.36 to pay off his practice overdraft (£15,000) the loan due to the respondent's mother (£15,000) a loan due to his father (£5,000) and the credit card and other debts of the parties. The balance was divided equally between the parties, with the respondent receiving a cheque in the sum of £14,923.32. 8. From the date of the sale of the matrimonial home, the parties separated with the petitioner taking rented accommodation. The respondent moved in with the co-respondent with whom she still resides. From January 2001, she had started working full-time, and she sought and received no maintenance from the petitioner for herself. Initially, the children lived with the respondent but in due course they chose to live with the petitioner and were living with the petitioner at the date of the consent order in February 2005. The proceedings 9. The petitioner instituted divorce proceedings on the grounds of the respondent's adultery with the co-respondent in December 2001. On receipt of the petition, the respondent consulted Mr Barry Pickersgill and in his presence completed the acknowledgement of service (Form 4). In it, she stated that she would not be making a claim for contribution for support pending suit or after decree, but would be seeking a lump sum payment/secured provision. The respondent filed her affidavit of means on 7 th May 2002 in which she sought a capital payment only. 10. On 10 th June 2002, the petitioner filed his affidavit of means prepared by Mr Syvret, who acted for him in the matrimonial proceedings, on information provided by the petitioner. Large sections were simply left empty. The financial position of the petitioner was not complicated. His assets comprised his NHS pension, various insurance policies, bank accounts and vehicles and mobiliary effects. He derived his living from his dental practice. On tax advice, this was conducted through P Dental Services Limited which was owned by the petitioner and the respondent in equal shares. They are the two directors and the respondent is also the company secretary. Although the petitioner conducted his own practice, he shared premises and certain overheads with two other dentists (one of whom was M) through another company, LR Surgeries Limited which rendered an annual service charge but was otherwise non profit making. 11. The petitioner told us in evidence that he assumed that the accounts of P Dental Services Limited and the details of the NHS pension would be attached to his affidavit of means by Mr Syvret. They were not. However, they were provided in due course through correspondence conducted between Mr Syvret and Mrs Carol Canavan, whom the respondent had instructed in October 2002. 12. Ancillaries were first dealt with at a hearing before the Registrar on 14 th July 2004 at which the petitioner and the respondent were examined and cross-examined. The notes of Mrs Canavan show that the financial history of the marriage and the parties' financial circumstances were gone into in some

detail. Her notes also show the Registrar indicating at the close of the hearing that the policies which had value should be divided, that the proceeds of the matrimonial home had already been divided and that the value of the practice should be taken into account, although he was not amenable to ordering an immediate lump sum in favour of the respondent which would have involved the petitioner in borrowing further on his practice. The division would be decided by the Court on a day to be fixed. The parties and the Registrar understandably looked through the company P Dental Services Limited to its only asset, namely the dental practice, and referred therefore to "the practice" and "the practice accounts" respectively. For convenience we shall do the same. 13. Mrs Canavan retained Moores Rowland to value the respondent's interest in the practice for which they were given the unaudited accounts for the four financial years to 31 st May 2003. They calculated the average net profit before tax at £100,623 and the goodwill of the practice at the rounded sum of £252,000. The petitioner in turn obtained a valuation from Ian Mellors of I. M. I. C. who assessed the goodwill of the practice in the region of £165,285. 14. Following a directions hearing on 3rd November 2004, the 10 th February 2005 was fixed by the parties for the Court to deal with the division of the pension, policies and practice. The respondent filed with the Court her open position, namely that she should receive a lump sum equal to 50% of the value of all of those assets. The hearing on that date was adjourned, because of delays in the petitioner producing the draft accounts of the practice for the period ending 31 st May 2004. These accounts were produced and Moores Rowland then valued the practice at £313,357, which after deduction of the practice loan, would have left a net £202,981 of which the respondent was entitled to one half. Mrs Canavan proposed that this would be paid by the petitioner out of the practice income or from the sale proceeds of the practice, bearing in mind that the petitioner was intending to return to England. 15. The hearing was re-fixed for 21st February 2005. Bundles were filed in the usual way. The parties met in Court and agreed on a settlement on the basis that the assets would be divided equally, with the practice being sold after the younger child (then aged 17) had finished secondary education. A draft consent order was prepared, which it is clear from the notes of Mrs Canavan, she discussed with the respondent on 22nd February 2005 and to which the respondent agreed. Mr Syvret and Mrs Canavan submitted this agreement to the Registrar for his consideration and approval. The terms were expressed to be in full and final settlement of all ancillary matters and provided that that neither party would make or cause to be made any further claim against the other, including without prejudice to the generality of the foregoing claims for maintenance, contribution towards support, secure provision, lump sum or vesting the property, other than as provided for under the terms of the agreement. 16. The consent order (which we will hereafter refer to as "the consent order"), which was in the terms of the agreement, was issued on the same day and provides as follows:- (i) That the insurance policies would be divided equally between the parties; (ii) That the NHS pension (then with a cash equivalent transfer value of £160,000) would be shared between the parties equally subject to the necessary approval being obtained from the trustees. In the event that approval was not obtained for the NHS pension to be shared, then either party was at liberty to apply to the Court for a further order in respect of the NHS pension alone. (iii) Pending approval of the agreement to share the NHS pension, the order was to be stayed, with the exception of the payment of the proceeds of one policy to the respondent. In the meantime, the proceeds of

another policy were held in escrow. (iv) The petitioner's dental practice was to be sold following the date upon which the youngest child had ceased full-time secondary education for the best market price reasonably achievable. The net proceeds were to be divided equally between the parties. Net proceeds were defined as meaning the cash consideration received for the practice less:- (a) The amounts outstanding on the practice loan due to the Royal Bank of Scotland International (approximately £114,000); (b) The reasonable costs (including the legal costs) of the sale; (c) Any commission or advertising costs incurred in respect of the sale. The petitioner undertook to keep the respondent fully informed in relation to the progress towards such sale and the terms of such sale and to provide the respondent with such documentation in relation to the sale as the respondent may reasonably request. In the event of any dispute between the parties as to the arrangement or terms of the sale, either party was at liberty to apply to the Court for further directions. (v) Neither party was to apply for the decree absolute without the consent of the other, with liberty to apply to the Court if necessary. (vi) Each party was to bear their own costs. (vii) Neither party was entitled to make:- (a) Any further application under Articles 27, 28, 29 or 29A (now 31) of the Matrimonial Causes (Jersey) Law 1949 as amended nor (b) Any application for the discharge or variation of this order under Article 32 of the same Law. It was thus a final order which sought to achieve a clean break in accordance with the policy of the courts (see *P-S v C* (9 th July

2003) *Jersey Unreported*). The NHS pension 17. Following the issuing of the consent order, the parties jointly obtained the advice of counsel as to whether the pension sharing arrangement comprised in the consent order could be enforced against the trustees in England pursuant to the Welfare Reform and Pensions Act 1999. On 7 th December 2005, the Registrar ordered the parties to send a joint letter to the NHS Pensions Agency as recommended by counsel. The Pensions Agency responded on 2 nd February 2006 making it clear that if a member of the NHS Pension Scheme is divorced in a court abroad, then the above Act did not apply, and they were unable to accept any order made in the Jersey courts. 18. Faced with this impasse, the parties reached a further agreement in relation to the NHS pension that was contained within a consent order of 9 th October 2006 by which it was ordered by consent that the NHS pension would be shared between the parties equally notwithstanding the absence of formal approval from the Trustees of the NHS Pension on the petitioner undertaking to the Court:- (i) to give one month's notice to his lawyer of the date upon which receipt of his pension will commence; (ii) to do all that is necessary to ensure an immediate equal division between the parties, upon receipt, of the proceeds of the NHS pension whether by way of lump sum or by means of periodical payments or a mixture of both, and (iii) to use his best endeavours to ensure that his lawyers be provided with a contact address for him from time to time. 19. By the same consent order, half of the funds held in escrow were released to the respondent and the petitioner's application for the decree absolute was ordered to proceed unopposed. It is implicit in this consent order that the stay of the consent order of 22 nd February 2005 was lifted. Marketing of Practice 20. The petitioner marketed the practice for sale in 2006, the year in which the youngest child finished his secondary education. He received one offer

of £110,000 and two of £115,000. One offeror had initially offered the asking price of £250,000 but reduced his offer on receipt of his own accountant's advice. The petitioner took further advice from Ian Mellors. In his letter of 16 th October 2006, he advised that the ability to set up in or convert to private practice in the United Kingdom had lessened the attraction of moving to Jersey and that the highest offer of £115,000 probably reflected the true value of the practice. To sell at that sum would of course net little or no profit to either party after repayment of the practice loan. 21. Advocate Rose Colley, who was now acting for the petitioner, wrote to Mrs Canavan on 10 th November 2006 indicating that the petitioner for various reasons, including university costs for the youngest child, would prefer to carry on in practice rather than to sell at a sum for which neither party would receive any financial benefit. He was, however, willing to work to a valuation of £150,000 which would enable a small lump sum of £20,000 to be paid to the respondent. Mrs Canavan responded on 30 th November 2006 declining that offer and stating that the matter would have to be referred back to the Registrar under the liberty to apply for further directions as to the way in which this particular issue should proceed. In January 2007, Mrs Colley issued a summons seeking a variation of the consent order to allow the petitioner to continue his dental practice on the grounds that the sale value was insufficient to provide either the petitioner or the respondent with any significant profit as envisaged by the consent order over and above the repayment of the practice loan. In April 2007, the respondent instructed Advocate Philip Sinel to represent her in place of Mrs Canavan. On 1 st May 2007, the Registrar adjourned the matter of the disposal (or otherwise) of the petitioner's practice to 13 th June 2007 and by consent the petitioner was released from his obligation to sell the practice. On 13 th June 2007 the Registrar, having been informed that the respondent would be seeking to set aside the consent order, referred the resolution of all ancillary matters to the Inferior Number of the Royal Court. 22. On 25 th July 2007, the Deputy Bailiff directed that the parties file up to date affidavits of means complete with the requisite supporting documentation including accounts for the dental practice, bank statements, income tax returns and credit card statements for the past five years and that the respondent file an affidavit in support of her application. On 2 nd August 2007, the respondent issued a summons, seeking inter alia to vary or abrogate the consent order of 22 nd February 2005. On 6 th September 2007, the Deputy Bailiff further directed the parties to comply with their obligation to file up to date affidavits of means, the petitioner to file full credit card statements, gave leave for the parties to file questionnaires and to the respondent to appoint an accountant, Mr Clive Tomes, to examine and respond to the affidavit of the petitioner. 23. The instructions to Mr Tomes were very wide and in our view went beyond his expertise as an accountant. He was asked to advise on the financial disclosure of the petitioner in the original matrimonial proceedings and to consider whether the disclosure was adequate and complete so that (a) the respondent could have been properly advised of her rights on the division of the matrimonial finances and (b) the Court was in a position properly to assess whether or not it should have approved the agreement between the parties which was enshrined in the consent order. He was instructed to consider the value of and the offers received for the

dental practice and to provide his views on the effectiveness of the respondent's former lawyers, Crill Canavan. 24. Initially through affidavits filed with the court, Mr Tomes raised a number of concerns, the principal being that the practice accounts under-stated the actual earnings of the petitioner. As Mr Sinel put it in his letter of 2nd February 2008 to Mrs Colley:- "It appears to us that he is earning at least double what he has declared. This means that there are undisclosed assets of approximately £750,000 which should properly be paid to our client as part of the overall settlement". The bank account and credit card statements disclosed by the petitioner were examined carefully for evidence of the existence of other bank accounts into which these undeclared funds could have been paid. Mr Tomes prepared an extensive and probing questionnaire comprising 103 questions. This gave rise to issues of proportionality. Following a directions hearing on 10th January 2008, Clyde-Smith, Commissioner, ordered the petitioner to respond to this questionnaire by answering those questions which Mrs Colley accepted were proportionate. This left over some 17 questions which were dealt with before Clyde-Smith, Commissioner, at a further directions hearing on 29th April 2008. A number of questions were found to be disproportionate, for example:- (i) The request for support for each year's dental takings covering a period of eight years, including details of the company's standard charges, any time charges, time spent by those persons by whom charges are made, any dental charges, day-book, booking sheets, appointment books etc. In fact, this was a request for all of the underlying documentation of the practice going back eight years to enable Mr Tomes to carry out an audit of the accounts over that period. (ii) Explanations as to how the petitioner dealt with the sale proceeds of the two English properties the parties had owned and the sale of his dental practice in Sunderland, the profits generated therefrom and explanations as to how the respondent benefited therefrom. It was held unreasonable for such requests to be made in relation to transactions which took place so long ago. The Hearing 25. The hearing took place over the five days commencing the 2nd June 2008. The petitioner and respondent had filed affidavits on which they were cross examined. We also had affidavits from Mr Tomes, M and the dental receptionist who were cross examined. Grounds for setting aside the consent order 26. The consent order prevents the respondent from bringing any further application for financial relief or from applying to discharge or vary the order. It was not appealed, and therefore the Court and the parties are bound by its terms. Unless the respondent is able to have the consent order set aside, then she and the Court can only work within its terms, i.e. where there is express liberty to apply. 27. Mr Sinel sought to have the consent order set aside on behalf of the respondent on four grounds, namely bad legal advice (giving rise to a raw deal), lack of judicial scrutiny, material non disclosure and supervening events. We will take each of those grounds in turn. Bad legal advice (leading to a raw deal) 28. The respondent is clearly very aggrieved by the terms of the consent order. As Mr Sinel put it, she feels she has received no real benefit at all from the four years of cohabitation and sixteen years of marriage. She has received some £37,000 being her half share of the insurance policies which is more than offset by her legal fees, but has received nothing to date in relation to the NHS pension and her interest in the practice. The petitioner has retained all the benefit of the dental

practice, earning some £81,000 per annum, totalling the sum of £624,000 from the date of their separation. In contrast, she has earned a mere £25,000 per annum, totalling some £200,000 over the same period (although the household income of the respondent and the co-respondent was between £40,000 and £50,000). He and Mr Tomes set out a list of alleged deficiencies in the advice given by Mrs Canavan, the most serious being that she failed to make a claim for/advice on maintenance and to ensure that the respondent and the Registrar had a true picture of the petitioner's assets when the consent order was made. In essence the respondent says she had a raw deal through bad legal advice. We were not shown any correspondence in which Mrs Canavan was given an opportunity to respond to these allegations. 29. As can be seen below, we conclude that there was proper disclosure at the time of the consent order, but the difficulty for Mr Sinel is that, as pointed out by Mrs Colley at the outset of this application, there is clear English authority that as a matter of policy, bad or negligent advice can never be a ground for setting aside a consent order, save in the most exceptional cases of the cruellest injustice. The issue was considered by the English Court of Appeal in the case of *Harris v Manahan*

(1997) 1 FLR 205. In that case, it was accepted that the wife had been wronged and suffered an injustice, but Ward LJ addressed the issue in the following way:- "Mr Carden mounts a powerful argument that the law should provide a remedy for the wrong suffered by this appellant. It cannot be gainsaid that she has been wronged and that she has suffered an injustice. As between husband and wife an unfair order was made. It may, but perhaps it may not, be fully redressed by her claim against her former solicitors. This alternative remedy should, however, be as irrelevant as it is in applications to strike out an action for want of prosecution (see *Birket v James*

[1978] AC 297). This aspect of justice demands that she have a remedy against her husband. There are, however, other public policy considerations. Procedural delays and escalating costs are common scars on the face of justice. Consequently every impetus is given to encourage and to enhance early settlements of disputed claims. A conciliatory approach to find accord is the essence of good practice extolled by the Family Law Bar Association and the Solicitors Family Law Association". Lord Scarman said in *Minton v Minton* [1979] AC 593, 608 that two principles inform the modern legislation: 'One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other - of equal importance - is the principle of "the clean break". The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down'. To allow a bargain struck to be set aside is inevitably to fuel recrimination. Bitterness and anger are inevitable concomitants of the conflict which arises from contested claims. Parties suffer. So do their children. It is inevitable that the focus of recrimination will swing from the incompetent solicitor and will be heaped upon the other party even though his conduct in the negotiations may not fairly be capable of being impeached. If the policy of the law is to encourage the clean break, then the law

should also ensure that break with the past is final and that there is no turning back. This is the public interest that there be some end to litigation. The point is made by Lord Wilberforce in *The Ampthill Peerage* [1977] AC 547, 569: 'English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book ... For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud ... But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved.' That last observation bears examination. What is bad legal advice? Must it be manifestly bad legal advice? Must it be confined to legal advice opposed to the advice of other professionals? How is it to be established? Privilege will have been waived, but is it invidious that a party's solicitor and counsel be called by the other side? Mr Carden submits that in practice these are not real problems and that a case of bad legal advice is as instantly recognisable as the elephant. Yet when pressed to propose the principle which supports his submission, he is driven to assert it in terms of fairness and justice. I think it inevitable that the test be framed in those terms. It is a wide test. Justice is a multi-faceted jewel and it is precious even if it has a minor flaw. To deny justice to the wife is hard

- and to that extent justice is imperfect; but justice must also be done to the husband; to do justice to the children is paramount; to do justice to the system into which these disputes are fed is also essential. Like Connell J, I conclude, not without sympathy for the wife and not without regret that a wronged individual is again to be sacrificed on the high altar of policy, that justice demands that there be finality to this litigation and that bad legal advice should not be a ground for interfering." He concluded that only in the most exceptional case of the cruellest injustice would the public interest in the finality of litigation be put aside. This policy of the English courts was confirmed by the English Court of Appeal in *Tibbs v Dick* (1998) 2 FLR 1118 and more recently applied by Mumby J in *L v L*
- (2006) EWHC 956 (FAM) . 30. These policy considerations apply with equal force in this jurisdiction and Mr Sinel did not seek to persuade us otherwise. He did refer us to a first instance English decision *SB v SB*
- [1995] 2 FCR 62 in which a consent order appears to have been set aside on the ground of manifestly bad legal advice. The wife in that case was psychologically and emotionally disturbed and the solicitors were not specialists in family work. However it is clear that *SB v SB* is a decision made on unusual facts and does not detract from the clear policy subsequently enunciated by the English Court of Appeal in *Harris v Manahan*. Instead, Mr Sinel submitted that this case was an exceptional case of the cruellest injustice. In our

view there is no way in which this case can be so described. 31. The matrimonial home had been purchased in 1999 with close to 100% of borrowings. It was sold some two years later for £500,000 realising a profit of some £90,000. It is clear from the files of both Mr Pickersgill and Mrs Canavan that the circumstances of the sale were investigated by both lawyers and Mrs Canavan obtained copies of the petitioner's bank statements to ensure that he had indeed utilised £60,000 to pay off family debts. The balance of the sale proceeds had been divided equally. Thereafter the only material family assets were the policies, the NHS pension and the petitioner's dental practice. Under the consent order these assets were to be divided equally. The parties otherwise provided for themselves. The respondent had left the petitioner to live with the co-respondent with whom she enjoyed a household income of between £40,000 and £50,000 per year. The petitioner retained the admittedly greater practice earnings, a practice which he had agreed to sell thus allowing the respondent to realise her interest, and he maintained and supported the children. Whatever view one may have of the consent order, it simply cannot be described as constituting an exceptional case of the cruellest injustice. 32. Unlike *Harris v Manahan*, it is not at all clear to the Court that the respondent is a wronged individual for whom it should have sympathy but if she can be so described, then she is to be sacrificed on the high altar of policy, that justice demands that there be finality to litigation and that bad legal advice should not be a ground for interfering. 33. The Court is not required therefore to consider whether the respondent did indeed receive bad legal advice from Mrs Canavan. However, we wish to add this observation. At the outset of the trial, the copy of Crill Canavan's files contained in the court bundles seemed somewhat deficient, lacking for example, any attendance notes. At the end of the third day of the hearing, Mr Sinel was requested by the Court to seek out a copy of the advice given by counsel on the NHS pension. He returned the next morning and, with profuse apologies, informed the Court that in his search he had come across another file from Crill Canavan which had not previously been disclosed. It contained inter alia Mrs Canavan's attendance notes, her notes in preparation for the hearings and her notes of the evidence given on 14 th July 2004. In particular, it contained her note of the meeting before the Court on 21 st February 2005 when agreement on the equal division of the capital assets was reached and her notes of her private meeting with the respondent on nd February in which she took the respondent through the consent order. Mr Tomes had not seen these documents before setting out his criticisms of Crill Canavan and Mr Sinel could not remember whether he had seen them or not. Lack of judicial scrutiny 34. Mr Sinel first sought to argue that there had been lack of judicial scrutiny by the Registrar because the petitioner's assets had not been fully disclosed to him. In argument he accepted that this would constitute non disclosure to the Registrar as opposed to lack of scrutiny by the Registrar, but he subsequently maintained that there had been lack of scrutiny both because of non-disclosure to the Registrar and because the Registrar had not raised the issue of maintenance. 35. Consent orders were set aside on the ground of lack of judicial scrutiny in *Braid v Barnes*

[1998] JLR 15 and L v V

[2004] JRC 033 . In L v V , Bailhache, Bailiff described the duties of the Registrar as follows:-

"What then should the Registrar do? It seems to us that the Registrar should first of all always be alert to protect the interests of minor children. Those interests will clearly be affected by provisions in an agreement for custody, care and control, and access and for maintenance. They may also be affected, however, by provisions relating to lump sum payments, particularly if such payments are intended to enable a home to be acquired for the main carer and the children. But the Registrar also has a duty in a broad sense to oversee the fairness of the arrangements between the parties. He is not obliged to go down the hole like a ferret. But he should use his experience and his nose to smell out any obviously lurking rat that has been overlooked by the parties. To put it at its lowest, there must be some judicial scrutiny of an agreement before it is embodied in a consent order". 36. In *Braid v Barnes* it was not clear to the court that the Greffier Substitute had given the agreement proper consideration. In *L v V* the order had been drafted and signed by the Registrar's assistant, who had since left the department, solely from details taken from the agreement and there were no notes taken by the Registrar. There was no evidence therefore that the Greffier Substitute had applied his mind to the fairness of the agreement. By way of contrast this case was part heard before the Registrar (who heard oral evidence on 14 th July 2004). Following the directions hearing on 3 rd November 2004, the parties reached agreement in Court on the day fixed for the final hearing of the matter, namely 21 st February 2005. Bundles had been filed with the Registrar for what was due to be a contested hearing and there is nothing to suggest that the Registrar would not have read them in preparation for that hearing. We have no doubt that the Registrar applied his mind to the agreement reached between the parties. 37. The high altar of policy that justice demands that there be finality to litigation applies with equal force to criticisms of the role of the Registrar. In *L v V*, Bailhache, Bailiff cited with approval the following observations of Ward LJ in *Harris v Manahan*

(1996) 4 All England Reports 454 at page 462:- "It is important to stress the practical common sense of Balcombe J's approach. The realities of life at the Principal Registry and the Divorce County Courts are that the district judges are under inevitable pressure and the system only works because judges rely on the practitioners' help. I would, therefore, be very slow to condemn any judge for a failure to see that bad legal advice has been tendered to a party. The statutory duty on the Court cannot be ducked, but the Court is entitled to assume that parties who are sui juris and who are represented by solicitors know what they want. Officious enquiry may uncover an injustice but is more likely to disturb a delicate negotiation and produce the very costly litigation and the recrimination which conciliation is designed to avoid". The Registrar was entitled to assume that the respondent, in seeking only capital provision, had been advised by Mrs Canavan and knew what she wanted. The respondent was living with the co-respondent with whom she enjoyed a household income of £40,000 to £50,000 per year. Lack of maintenance on the facts of this case was not an obviously lurking rat that had been overlooked by the parties.

As to non disclosure we fail to see how we can blame the Registrar if assets are concealed from him. We conclude therefore that the consent order cannot be set aside on the ground of lack of judicial scrutiny. Non disclosure of material assets 38. Clearly consent orders can be set aside for non-disclosure but as finality in litigation is in the public interest, an order will only be set aside if a party's non disclosure was material, i.e. if the order made was substantially different from the order that would have been made if there had been full and frank disclosure (see *P-S v C*

[2006] JLR 463). 39. It is necessary to re-iterate the disclosure that ultimately had been made by the petitioner to the respondent prior to the consent order. As mentioned above, there were only three material assets namely the insurance policies, the NHS Pension and the practice. Details of the insurance policies and of the NHS Pension were provided in correspondence. In relation to the practice the petitioner disclosed the unaudited accounts for the four financial years ending 31 st May 2003 and the draft unaudited accounts for the financial year ending 30 th May

2004. The petitioner had also disclosed copies of his bank statements but had not been requested to produce his credit card statements. 40. Mr Sinel made much of the undoubtedly deficient nature of the petitioner's affidavit of means sworn on the 10 th June 2002. We have no reason to believe that the petitioner was not cooperating with Mr Syvret and it seems likely that as at June 2002 the accounts (or some of them) and details of the NHS Pension were not available. This could easily have been made clear in the affidavit rather than simply leaving large sections blank. In our view Mr Syvret, who had conduct of the case for the petitioner, should not have allowed it to be sworn and submitted in that form. We were referred to the following extract from *W v W (Financial Provision: Form E)* (2004) 1 FLR at 496:- "The theory behind the new procedure is that it should be possible, if the Forms E are filled in truthfully, carefully and fully, and are accompanied by all the prescribed essential documents, for the case to be tried without further enquiry or disclosure. Of course, it is idealistic to think that this actually happens in practice and in the majority of cases further enquiry is authorised. But that does not mean that the ideal is not something to be striven for. For this reason the Form E has an almost numinous status and where it is found that a party deliberately filled in a Form E falsely, or has misrepresented facts, then he must expect judicial censure and penalties in cost." We find that the petitioner was not intending to present a false picture or to misrepresent the facts. Assuming the necessary information was later provided, as it was, then the deficient nature of this affidavit of means fell to be dealt with by the Registrar by censure or costs. In our view, however, when it comes to an application to set aside a consent order on the grounds of non-disclosure, we must look at the substance of the matter, namely at what was ultimately disclosed to the respondent and the Registrar at the time of the consent order. 41. Mr Sinel and Mr Tomes also made much of the fact that the practice accounts had not been signed and indeed at a directions hearing on 6 th September 2007 the court, at his request, had ordered the petitioner to file signed accounts. However, having regard to the evidence, it is perfectly clear to us why they have not been signed. The accounts have to be signed by the directors. The only two

directors are the parties who are embroiled in acrimonious litigation. The respondent is hardly likely to approve accounts which she is alleging are false in that they do not record the petitioner's true earnings. In fact it transpired that early on in January 2003 Mr Syvret had asked Mrs Canavan for the accounts to be signed by the respondent, but even at that stage of the proceedings we can understand why the respondent may have been reluctant to do so. 42. The key suspicion of the respondent and her advisers that the practice accounts materially under-stated the petitioner's true income (i.e. that the petitioner had been diverting practice income to a non disclosed bank account) came to nothing. Mr Tomes' firm did not have any dental practices within its client base with which to compare that of the petitioner and he made his assumptions as to the petitioner's earnings on:- (i) An estimated hourly charge of £239, taken from the Jersey Dental Association's Suggested Fee Guide for 2004 and increased by the rise in the Jersey Retail Prices Index. Assuming a 30 hour working week and there being 45 working weeks in each year, he calculated that the estimated income of the petitioner in 2007 would have been £323, 037 as compared with the dental takings declared in the practice accounts of just over £200,000 per annum. This led to the conclusion as put forward by Mr Sinel in his letter dated 22 nd February 2008 that the petitioner had secreted away some £750,000. (ii) His understanding that the petitioner was a specialist dentist providing implant and other specialist services for which the charges would be significantly higher than those applied by non specialist dentists leading him to conclude that the above estimate could be considered as the absolute minimum level of income that the petitioner would be expected to generate. This assumption as to the petitioner's specialist status had been taken from the degree course he undertook in restorative dentistry in 1995/6 and on the respondent's assertion, contained in her affidavit of 31 st August 2007, that the petitioner is a specialist dentist doing full-mouth reconstructions, implants and cosmetic dentistry, which she had observed on the regular occasions that she said she had worked in the practice to help the petitioner out and cover staff illness and holidays. She alleged that the petitioner had informed her many times that he was better paid than normal dentists. 43. The petitioner's evidence was that he was not a high income grossing dentist. He had a regular family practice and did not take specialist referrals. Contrary to the assumption of Mr Tomes that the petitioner worked on an hourly charge basis, he generally worked on a fixed price basis charging £34 for an examination and £115 for a filling, only occasionally working on an hourly basis. He had done one full-mouth construction since coming to Jersey and since 1998 had placed only four implants. In the last year, he had restored five teeth. He referred implants to M. He denied that he had made the comments attributed to him by the respondent or that she had attended at the practice surgery on a sufficient number of occasions to have a reliable view of the nature of his practice. She had not of course attended since their separation in 2001. 44. The Court heard evidence from the dental receptionist employed by all three dentists, whose role for the last six years had been to answer telephone calls, make appointments, take payments from the patients and do the banking. She also dealt with ITIS and Social Security. She explained how accounts were issued by the dentists and how she dealt with the receipt of the money. The Court found

her a most impressive witness and without setting out here the detail of how she operated the systems within the practices, the Court was left in no doubt that none of the dentists would have been able, had they so wished, to divert income from the patients to another source. Wisely, her evidence was not challenged by Mr Sinel. She further confirmed the general nature of the petitioner's practice and the specialist nature of M's practice. She also told us that the other dentists, in particular M, worked longer hours. The general nature of the petitioner's practice was also confirmed by M, whose evidence was likewise unchallenged. In his evidence, Mr Tomes accepted that he had found no evidence of fraud. 45. Having heard the evidence, we find that the petitioner's practice income is properly reflected in the practice accounts and that he has not diverted income elsewhere. The suspicions of the respondent and her advisers of what can only be described as fraudulent conduct on the part of the petitioner are unfounded. 46. Having conducted what was clearly a very thorough examination of the documents disclosed by the petitioner, Mr Tomes confirmed in evidence before us that apart from one issue to which we refer below and whilst he still retained suspicions, he had not identified anything of significance or which was material which had not been disclosed by the petitioner to the respondent and the Registrar at the time of the consent order. 47. The one issue raised by Mr Tomes related to the practice accounts prepared by well known local accountants, which had been supplied to the respondent and to the Court. Mr Tomes expressed the view that it was not possible to ascertain from these accounts the true extent of the benefit derived from the practice by the petitioner. For example, he said the accounts refer to "directors' remuneration", indicating that the remuneration might have been paid to more than one director. Furthermore, even if the respondent and the Registrar had assumed that the petitioner was the only director receiving remuneration, it was necessary to have regard to the loan account, because it was by the combination of director's remuneration and drawing from the loan account that the petitioner derived benefit. In essence, in addition to supplying the accounts of the practice, he and Mr Sinel asserted that the petitioner should have provided a further document setting out the means by and extent to which he benefited from the practice. 48. In support of this submission Mr Sinel referred us to an extract from *Unlocking Matrimonial Assets on Divorce* by Sugar & Bojarski 2007 at paragraph 4.2 where they say that Form E must not only include the information and documents required by the form but also "any documents necessary to explain or clarify any of the information contained in Form E" (*W v W (Financial Provision:Form E)* [2004] 1 FLR 494). 49. We reject this submission which demeans the ability of both a solicitor and a Registrar to understand straightforward accounts. There is nothing unusual in the accounts requiring further explanation as part of the disclosure process and we find that the provision of these accounts to the respondent discharged the petitioner's disclosure obligations in relation to the practice and the benefits he derived from it. If Mrs Canavan, or the accountants she had retained, had any questions on the accounts supplied, then it was for them, acting for the respondent, to raise them. 50. Undeterred by the evidence of his own expert that (apart from this one issue) there had been no material non disclosure, Mr Sinel went on to submit that the Court should infer that the petitioner had secreted

away £323,000 as follows:- (i) £55,000 being the profit from the sale of the family property in 1997. He submitted that there was no indication from the accounts of the practice that any of this money had been lent to the practice and it could not have been spent on the move to Jersey, as one of the debts paid off out of the sale proceeds of the family matrimonial home in Jersey was £8,367 to Royscott, to discharge a loan initially in the sum of £10,000 taken out to cover moving expenses when the family moved to Jersey. It cannot have been spent, Mr Sinel argued, supporting the family because the petitioner earned £58,000 in his first year of practice. The petitioner simply says that this profit was spent on the family at a time when he and the respondent were happily married and, in the absence of records and documents which understandably had not been retained, he cannot be expected now to explain precisely how it was spent. (ii) £22,000 from the sale proceeds of the matrimonial home in Jersey, which Mr Sinel submitted the petitioner had not accounted for. It is clear to us, however, that Mrs Canavan had checked that the family debts listed as being paid by the petitioner had indeed been so paid and the petitioner's evidence to us was that his share of the balance was spent on his living expenses. (iii) £70,000 from the year 2000, in which the petitioner had earned the unusually high sum of just under £130,000 (compared to £56,000 the year before and £78,000 the year after). Out of that £130,000, Mr Sinel allowed him £60,000 for expenditure and invited us to find that he had not accounted for the balance of £70,000. Again the petitioner simply says that this income was spent on the family. (iv) £176,000 being the balance of his earnings between 2000 and 2005, after allowing for expenditure at the level the petitioner had indicated in his affidavit of means in 2002. Again Mr Sinel invited us to find that this £176,000 was unaccounted for. The petitioner informed us that trying to calculate his ongoing expenditure in 2002 when he was suddenly left on his own was a very difficult exercise. The children have since moved to live with him and again he simply says that his earnings have been spent on the family. 51. Out of this £323,000 he had invited us to infer that the petitioner had available to him, Mr Sinel sought on behalf of the respondent a lump sum of £250,000 net of the respondent's legal costs but to include her interest in the NHS pension. Mr Sinel's position effectively amounted to the proposition that unless the petitioner could explain precisely how he had spent these sums going back some ten years, the Court should infer that he had saved and secreted them elsewhere. Before the Court can properly make such adverse inferences, it has to be satisfied that the petitioner's disclosure in 2005 was not full and frank. The classic statement in this regard is that of Sax J in *J-PC v J-AF*

(1955) P215 where he said:- "In cases of this kind, where the duty of disclosure comes to lie on a husband; where a husband has - and his wife has not - detailed knowledge of his complex affairs; where a husband is fully capable of explaining and has had opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference

- especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative. The obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings - so far as such inferences can be properly drawn". 52. In *Baker v Baker* (1995) 2 FLR 829 Butler-Sloss LJ said this:- "Mr Posnansky pointed to an utterly false case and asked us to consider whether the husband was lying and what did he have to hide. If the cupboard was bare, it was in his interest to open it and display its meagre contents. But on the contrary the husband, despite his protestations to the contrary, continued to live the life of an affluent man. I agree with the submissions from Mr Posnansky that if the court finds that the husband has lied about his means, lied about other material issues, withheld documents and failed to give full and frank disclosure, it is open to the court to find beneath the false presentation, and the reasons for it are undisclosed assets." 53. In this case, despite the inadequacies of the original affidavit of means of the petitioner, we find that he had through correspondence made full and frank disclosure of his financial position, so that by the time of the consent order, as confirmed by the respondent's accountant, Mr Tomes, there was nothing material or significant that had not been disclosed. There are no gaps to fill in, lies put forward or withholding of documents. We therefore have no grounds upon which to draw the adverse inferences suggested by Mr Sinel. In any event we accept the evidence of the petitioner that the sums concerned have been spent on the family. 54. There are a number of other matters listed by Mr Sinel in his closing submissions which he argued constituted material non disclosure at the time of the consent order as follows:- (i) The sale of the matrimonial home in 2001 at an under-value. The evidence of M that this was an arm's length transaction was not challenged by Mr Sinel and no evidence was adduced on behalf of the respondent from an estate agent to support the assertion that the matrimonial home had been sold at an under-value. The matter was investigated by both Mr Pickersgill and Mrs Canavan. In any event there can be no question of it not being disclosed - the respondent was a party to the sale. (ii) The investigation of Mr Tomes did uncover certain errors in the accounts but it is clear that these errors were in no way attributable to the petitioner and he had no knowledge of them. This cannot constitute non disclosure and in any event they were not material. (iii) The petitioner's father died in 2007 and he inherited a half share in a small flat, subsequently sold for £104,000, together with some £6,000 in cash. This inheritance had not been mentioned in his 2002 affidavit of means. The question posed in the standard form was as follows:- "Specify also any asset that it is likely to be received in the foreseeable future, such as an inheritance". The petitioner was not questioned on what he knew in the period before the consent order about his father's health, life expectancy and likely estate and we do not regard the failure to mention the possibility of this inheritance in the period before the consent order as material. 55. The fact that in May 2005 the practice loan had been converted from a capital reducing loan to an interest only loan.

The existence of the loan was of course fully disclosed in the accounts and in view of the short time span to the proposed sale we do not regard this as constituting material non disclosure. Supervening events 56. *Barder v Barder*

- (1987) 1 FLR 18 is English authority (cited with approval in *P-S v C*) for the proposition that events occurring after the making of a consent order can give grounds for appeal in exceptional circumstances where it would not be just and equitable to enforce the order. There are a number of conditions including that:- (i) new events have occurred which invalidate the basis or fundamental assumption upon which the order was made so that if leave to appeal out of time were given, the appeal would be certain or very likely to succeed; (ii) the new events have occurred within a relatively short time of the order, in most cases in no more than a few months; (iii) The application should be made reasonably promptly. 57. The respondent did not proceed by way of appeal and Mr Sinel did not adduce any authority supporting his contention that supervening events can lead to a consent order being set aside outwith an appeal. Notwithstanding he submitted that the following supervening events entitle the Court to set aside the consent order:- (i) The fact that the agreement to share the NHS pension was not enforceable in the United Kingdom. However, it is clear from paragraph 2 of the consent order that this possibility was expressly foreseen by the parties, hence the building in of the provision for liberty to apply in that eventuality. Once it was ascertained that the agreement was not so enforceable, the matter was subsequently dealt with by a further consent order. (ii) Mr Sinel asserted that the petitioner had no intention to sell the practice as agreed and that he had in some way manipulated the offers received in 2006. This is based on the respondent's belief that the petitioner will take any steps to prevent her from receiving money under the consent order, even if it is at his own expense. She relied in part on a letter he wrote on 7 th September 2003 where he had made a statement to that effect. The petitioner informed us that he wrote that letter at a time of great emotional stress. The fact of the matter, however, is that the practice was placed on the market as anticipated in the consent order and there is no evidence to support the assertion that the petitioner manipulated the offers received from third parties and we reject it. Mr Sinel further argued that the apparently lower value of the practice as reflected by the offers received in 2006 was a supervening event in that it was way below the valuations expected by the parties when the consent order was entered into. However, what was agreed in 2005 was that the practice would be sold at the best market price reasonably achievable, with the proceeds being divided equally. It was consistent with the underlying basis of the agreement, namely that all of the capital assets would be divided equally. In her file note of 22 nd February 2005, Mrs Canavan makes reference to her having explained to the respondent that she could not guarantee what the practice would sell for but that it was in the interests of the petitioner to sell it for as much as possible. As it transpires, the practice does now appear to be showing interest on the part of purchasers at or around £250,000. 58. In our view, the Court cannot set aside a consent order on this ground outwith an appeal but even if leave to appeal had been granted neither event (if they can be so

described) would justify overturning the consent order.

Conclusion

59. As is clear from the above, the respondent has failed in her application to set aside the consent order on the grounds put forward. She is therefore bound by the terms of the consent order which debars her from seeking further financial relief. In making that application the respondent has incurred legal fees of some £153,000 (allowing for costs of the hearing at the same rate estimated by the petitioner) and the petitioner some £80,000 in defending it - a total of some £223,000. 60. The respondent is left with the consent order under which, in addition to a share of the NHS pension, she is still to receive her share of the practice upon which, under liberty to apply, we give further directions below, but it can be seen that the fees that have been incurred in this application are grossly disproportionate to the assets that remain to be divided under the consent order. Such expenditure has been incurred in the main on the basis of the respondent's suspicions, shared by her advisers, that the petitioner had not declared his income in the practice accounts to the extent of some £750,000. Those suspicions were based on assumptions which have proved erroneous. The respondent has thus embarked upon a speculative venture without any real evidence to support what is on any analysis a most serious allegation. The court has yet to deal with costs but this is not a "big money" case and there can be no doubt that the outcome is financially disastrous for both parties. Procedure 61. At the hearing Mrs Colley raised but did not pursue a point of procedure upon which we wish to comment. The consent order stipulated that neither party was entitled to bring a further application for ancillary relief or to apply to discharge or vary the consent order. This application was brought by the respondent by way of summons in direct defiance of the provisions of the consent order. In *de Lasala v de Lasala*

(1979) FLR Rep 223 the Privy Council expressed the opinion that where a party seeks to challenge a judgment or order that finally disposes of the issues raised between the parties, on the ground that it was obtained by fraud or mistake, the only ways of doing it are by appeal from the judgment or order to a higher court or by bringing a fresh action to have the judgment set aside. Mrs Colley did not pursue this point because of the clear desire of the parties to deal with the substance of the matter but we agree that this application should have been brought either by way of appeal from the order of the Registrar (or for leave to appeal out of time) or by way of fresh action to have the consent order set aside. Sale of practice - liberty to apply 62. The Court is left with the sale or otherwise of the practice pursuant to the liberty to apply reserved in the consent order. The practice was due to be sold in 2006 at which point the respondent would have received her share. In the ensuing period the petitioner has retained the benefit of the practice. Happily, the parties were in broad agreement as to how the Court should proceed. It is unrealistic to expect the parties to continue as shareholders and directors in P Dental Services Limited and it is preferable therefore for the respondent's interest in the practice to be acquired by the petitioner now at a valuation to be determined by the Court. The respondent takes the risk that she will

not have any share in the sale proceeds of the practice (if sold) to the extent that it realises more than the valuation fixed by the Court but as against that she would not be exposed to any share of the loss should it realise less. Furthermore she would not have the burden of the inevitable costs that would be incurred if she continued as a co-shareholder. 63. The respondent commissioned a valuation by Mazars Channel Islands Limited dated 30 th May 2008 which estimated the value of the goodwill of the practice at £263,000 (rounded). Draft accounts had been prepared for the period from 1 st April 2007 to 31 st December 2007 showing an increase in the turnover and if these were included they would value the goodwill at £281,000 (rounded). As against that, the practice has actually been marketed in the earlier part of this year and two offers of £250,000 were received (but because of these proceedings not accepted) and of course it is only through the actual marketing of an asset that its true value can be ascertained. 64. The petitioner will now be marketing the practice (if he elects to do so) with the benefit of a full year's accounts to 31 st May 2008 which will almost certainly show an increased turnover and in our view fairness dictates that we should take this into account. We determine that the fair valuation is the mid point between the offers received by the petitioner in the earlier part of this year (£250,000) and the higher valuation determined by Mazars (£281,000) namely a valuation of £265,500. 65. The consent order stipulates that from the proceeds of sale should be deducted the amount of the practice loan. The loan was originally in the sum of £125,000 secured over an Allied Dunbar life assurance policy repayable in 2013 with the proceeds of that policy. It was converted in June 2003 to a capital reducing loan and was shown in the accounts for the year ended 31 st May 2004 as standing at £114,728 and for the year ended 31 st May 2005 at £105,367. In May 2005 it was converted to an interest only loan and currently stands at £108,017. The decision to convert the loan from capital reducing to interest only was taken by the petitioner alone and since he has derived all the benefit from the practice to date, fairness dictates that the amount to be deducted from the valuation we have determined should be the amount for the loan that would now be owing if it had continued as a capital reducing loan. 66. The consent order envisaged that the respondent would receive her interest at or around the date upon which the youngest child completed his secondary education and the respondent should therefore receive interest on the amount paid to her as from that date at the Court rate (2% above the Bank of England base rate) 67. In principle, our decision therefore is as follows:- (i) By consent the respondent will transfer the whole of her interest in P Dental Services Limited to the petitioner and will resign as a director and secretary. (ii) The petitioner will pay the respondent a sum equivalent to one half of the value of the practice. We determine the value of the practice at £265,500 less the practice loan on the basis that it is capital reducing, and without any other deductions. (iii) The petitioner will pay interest on the sum or any unpaid part thereof at the Court rate from the date that the youngest child completed his secondary education until the date of payment. 68. We will need further information before these directions can be finalised and we would wish to be addressed by the parties on the form of the orders and any issues arising from them. Once the precise figure of the lump sum has been determined, we will also need to be addressed on the time that should be given

to the petitioner to pay and whether or not security should be ordered. However, our preliminary view is that there should be an immediate payment of £40,000 with the balance in two equal instalments, the first in six months' time and the second after a year. In particular, we have taken into account the fact that out of his father's inheritance, the petitioner has gifted £42,000 to his first wife with whom he has now resumed a relationship to enable her to acquire a three year lease of a property in the UK from her sister and brother in law. Some time was spent at the hearing examining the circumstances of this gift. The petitioner has a decree absolute and final consent order and felt able to deal with his assets as he wished. However, he knew full well that these proceedings were in train and that it was possible that financial orders would be made against him. Mrs Colley rightly conceded that we should proceed on the basis that those funds remained available to him. NHS Pension 69. We are bound by the terms of the two consent orders in relation to the NHS pension. However Mrs Colley informed us that that in the event of the petitioner returning to England to live, as he currently intends, then after a period of a year it would be possible for him to apply to have the pension sharing arrangement registered in England. It is in his interests to do this as that will ensure a complete separation of the party's interest in that pension. This would clearly also be in the interests of the respondent and we would be content to make such consent orders the parties may wish to put forward for our consideration in this respect. Authorities Matrimonial Causes (Jersey) Law 1949 as amended. P-S v C (9th July 2003) Jersey Unreported. Harris v Manahan (1997) 1 FLR 205. Tibbs v Dick (1998) 2 FLR 1118. L v L

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