The Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

Neutral Citation Number: [2025] CIGC (Fam) 7

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION **CAUSE NO: FAM 263 OF 2020**

BETWEEN:	**BL**	**APPLICANT**
AND:	**JM**	**RESPONDENT**

Appearances: **Ms. Laura Hatfield & Ms. Amandy Jimenez from Bedell Cristin Cayman Partnership for the Applicant**
The Respondent in person

Before: **Hon. Mr. Justice Richard Williams**

Heard: **1-2 April 2025**

Date of Circulation of Draft Judgment: **2 May 2025**

Applicant's comments received: **26 May 2025**

Respondent's Comments received: **9 June 2025**

Date of Judgment: **9 June 2025**

Schedule 1 Children Act - Application to set aside consent order on basis of irregularity - Party giving an undertaking in proceedings to put in place an arrangement that the Court does not have the jurisdiction to order - Jurisdiction of Summary Court to hear property transfer applications made pursuant to Schedule 1 Children Act

JUDGMENT

[2025] CIGC (Fam) 7 BL v JM - Judgment

The Parties

1. This is the hearing to determine the Amended Summons filed by the Respondent, JM, aged 62. JM is an experienced commercial litigator, admitted to the Cayman Bar in 1994 and becoming a Kings Counsel in 2017. He was a Senior Partner and Managing Partner of an established international law firm before his retirement from that firm in March 2018. The Applicant is BL, aged 40. BL was a law student with a part-time job at Cayman Airways when the parties met. From about 2010, BL has not been in meaningful employment, and JM provided her and the children with a comfortable lifestyle during their relationship. The parties met in 2009 and later commenced a relationship. They started to cohabit after the birth of their son in 2015. They were never married. They have two children, a son aged 9 and a daughter aged 4.

2. I hope that the parties will not be offended if I hereafter refer to them, for convenience, as the father and the mother.

The Application

3. In the Amended Summons[1] the father seeks an order that the Consent Order made on 9 February 2021 ("the Order") be declared null and void and of no effect and set aside in its entirety. He states his *"belief/understanding"* that the procedure under which the Order was made is governed by the provisions of GCR Order 42, r5A and that the provisions were not complied with. He says that the Order must be set aside as a consequence of *"Williams J's clear and incurable breaches of the provisions of the GCRS and other relevant legal propositions"*. In addition, if the Order is set aside, in the Amended Summons, he seeks an order pursuant to s.140(1) Registered Land Law (2018 Revision) directing the Registrar of Lands to rectify the Land Register for the property at Registration Section: South Sound Block 15E, Parcel 50 ("the Property") to show that he is the proprietor of the Property. The hearing has proceeded on the basis that the latter order sought in the Amended Summons will be considered at a later date, after this Reserved Judgment has been handed down if, and only if, an order is made to set aside the Order.

[1]It does not appear that the Amended Summons has been properly filed. The only filed copy of the Amended Summons is one headed "Draft Amended Summons" which was filed as an attachment to the Consent Order dated 21 March 2025 which granted leave to file the Amended Summons. No point has been taken by taken by the mother in relation to the 'filing'.

Application - GCR Order 2, Rule 2(2) – Grounds of objection to be stated in the Summons

4. At the mention hearing held on 3 February 2025, the father was informed by the Court that the initial Summons dated 3 December 2024[2] was deficient as it did not comply with Grand Court Rules ("GCR") O.2, r.2(2). That Summons did not state the grounds of objection. It seems that the father felt that he could ignore that direction and the relevant Rule as evidenced by the content of his Fifth Affirmation affirmed on 7 February 2025, only four days after the hearing. The father did file an Amended Summons, but it contained other details and not the grounds of objection. At paragraph 3 in that Affirmation, the father wrote:

> *"I intend this affirmation to fulfil the requirements of GCR Ord 2, rule 2 which requires that the grounds of objection to a Court Order must be stated."*

He seemingly chose not to add at the end of his above comment of intent that the Rule goes on to state that the *"grounds of objection must be stated in the summons…"*. This was a rather unusual approach to be taken in relation to compliance with the GCRs and a direction of the Court by a party seeking to set aside an order based on a contention that a rule in the GCRs had not been strictly adhered to.

5. In the submissions made on behalf of the mother, she reiterates that GCR O.2, r.2(2) was brought to the parties' attention by the Court at the February 2025 hearing and that the Minute of Order provided by the Court to the parties set out that the Summons should be amended by 7 February 2025. The mother contends that it is a *"mandatory requirement"* to include that detail in the Summons. It is submitted that the Court has the power under Part 1.6(3)(1) of the Rules to *"exclude an issue from consideration"*. The mother makes reference to and relies upon, Practice Circular 1 of 2014 "Requirement for Strict Compliance with Court Orders Made in the Family Division of the Grand Court" which requires strict compliance by parties to proceedings with orders of the Court (including interlocutory case management directions) *"… to the letter and on time"*.[3]

6. The father responds that it *"almost beggars belief"* that the mother and her advisors continue with an *"absurd proposition"* to press for his present application to be set aside because he has not set out the grounds in a Summons. He says that the grounds are comprehensively set out in his Fifth

[2]The Summons was filed and issued on 27 December 2024.
[3]Paragraph 3 in the Practice Direction - as per Sir James Munby at page 6 of his 7th View from the President's Chambers, January 2014.

and Sixth Affirmations and Written Submissions and that he sees no merit in *"cutting and pasting"* that material into a Summons. He says that if he were to do that he could *"think of no greater disregard for the overriding objective to deal with the matter in an expeditious and economical way"*. Of course, providing the amount of detail that would result from a cutting and pasting exercise of the content in the affidavits/affirmations is not what is intended by the Rule, complying with the Rule requires only a succinct list of the ground(s) of objection. The father refers to Note 2/1/3 in the Supreme Court Practice 1999 where the authors states:

> *"The authorities, taken as a whole, show that O.2, r.1 should be applied liberally in order, so far as is reasonable and proper, to prevent injustice being caused to one party* ***BY MINDLESS ADHERENCE TO TECHNICALITIES IN THE RULES OF PROCEDURE***[4]*."*

7. The purpose of the Rule is to concisely inform the other party, in the face of the Summons, about what grounds of objection they have to meet and address. The Rule does not intend the party to rehearse the arguments supporting the grounds in the Summons. If the father's approach was to be commended, then there would be no reason to include r.2(2). I accept that the father is correct when he says that the grounds which he relies upon can be found by reading through two of his affirmations. However, as the grounds were not, as they should have been and were directed to have been, set out in the Amended Summons, the mother has had to read through seventeen pages of narrative evidence in affirmations to extract with certainty from them what the grounds might be rather than reading them set out briefly in a Summons.

8. I carefully considered the submissions made by the parties in relation to the father's non-compliance with the Court's February 2025 direction and in relation to him filing a Summons and later Amended Summons which do not comply with the obligation placed upon him by GCR O.2, r.2. I do so in the context where the father is a very experienced litigator who would be expected to have knowledge of the GCRs. Even if I were to disregard his in-depth legal knowledge and litigation experience, I am also conscious that in ***Barton v Wright Hassall LLP*** [2018] UKSC 12 the Supreme Court held by a narrow majority that litigants in person have to comply with the rules of court in the same way as legally represented parties. In that case Barton, a litigant in person, issued proceedings against his former solicitors for negligence. He served those proceedings on

[4]This is an extract from paragraph 8 in the father's Further Written Submission with his use of capital letters, bolding and underlining.

their solicitors by email, one day before the validity of the claim form was to expire. Under the Civil Procedure Rules service by email is only effective if the recipient has indicated in writing that they are willing to accept service by email. The defendant's solicitors had not done so, although they had emailed Barton to say that they were instructed by the defendant. Accordingly, Barton's service was ineffective, his claim form expired, and his claim became statute barred. Barton made an application for the steps he had already taken to be deemed good service (under CPR 6.15). The Supreme Court had to decide whether there was a good reason to deem the steps that Barton had already taken to bring the claim to the attention of the defendant to be good service. By a majority of three to two, the Supreme Court dismissed Barton's appeal. Lord Sumption stated at paragraph 18 concerning litigants in person:

> *"In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties... Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take[5]."*

9. At paragraph 12 in the Leave to Appeal Judgment delivered on 24 October 2024 in ***T v R*** Cause No: 201-0029, after setting out the above details concerning the ***Barton*** case I stated:

> *"I see no reason why the same approach should not apply in a case before the Family Division in the Grand Court."* Such an approach is consistent with Mostyn J's Judgment at paragraph 29 in the Family Division case of ***Susan Maria Clarke v Richard Walter Clarke*** *Case No FA-2022-000188 (28/10/2022).*

[5]My emphasis by underlining.

Conclusion - GCR Order 2, Rule 2(2) – Grounds of objection not stated in the Summons

10. The father has not strictly complied with GCR O.2, r.2, nor, unfortunately, has the father viewed there to be an obligation to comply with a Court direction concerning an amended summons being filed with its content complying with the Rule. At the very least, this can be characterised as an unattractive approach to litigation for any party to take, especially in light of Practice Circular No 1 of 2014. However, I am satisfied that the mother has not been prejudiced by the father taking the course that he has chosen to adopt as she has been able to deduce what the grounds of objection are by conducting a review of some of his filed and served affirmation evidence. I accept that she may have been inconvenienced by the failure to set out the grounds concisely in a summons. Although no application was made for me to deal with this issue as a preliminary point, having regard to the Overriding Objective, if one had been made, I would have found that there would be no benefit for either party to be gained by the hearing and determination of the matter not proceeding at this time and being further delayed. In all the circumstances of this case, I am satisfied that it was right to permit the father to fully present his application at the hearing and I do not dismiss the application based on his non-compliance with the requirement to state the grounds of objection in a summons. That said, future non-compliance with Court directions could very well have consequences.[6]

The historical and procedural background

11. To put the application into context, it is necessary to look at the factual and procedural background in more detail than one might ordinarily do when determining the issues for determination which have been raised by the father.

12. In 2016 the father moved to Hong Kong to open an office for his then law firm. The mother stayed behind in Grand Cayman with their first-born child and she said that she and the child travelled to see the father in Hong Kong *"every other month"*. The father struggled with alcohol and depression, and it appears that his firm relocated him back to the Cayman Islands. He retired from that firm shortly after his return on the date set for his retirement under his firm's partnership deed.

13. In February 2018 the mother left the home with the child. The father entered a residential treatment program which was initially successful as he stayed sober for about six months. The drink issue remerged around the time that the parties' second child was born in June 2019. The mother again

[6]Practice Circular No.1/2014 paragraphs 2 and 3.

left the home for a month. The mother says that the father made it clear to her that he intended to transfer the family home to her solely for her benefit. She says that she had told him about her unease as *"his life partner"* and mother of his two youngest children due to the fact that they were not married and that she could be *"displaced"* from the home. She stated that:

> *"In an attempt to reassure me and provide me with security, the Respondent made a Will dated December 17, 2018 in which he bequeathed the House to me solely and for my sole benefit."*

14. The strain arising from the Covid-19 lockdown caused tensions between the parties. After granting *Ex parte* Protection Orders on 27 May 2020, the Summary Court resolved the Protection from Violence Law proceedings brought by the mother by accepting undertakings from the father on 25 June 2020. The father's undertakings included one by which he agreed, until 27 May 2021, not to return to the family home save by agreement in writing between the parties or order of the Court. Therefore, the undertaking he gave which is recorded in the Order that he now seeks to set aside is not the first one that he has given in these proceedings and, putting aside his undoubted legal knowledge, this means he would have been aware of what an undertaking was and the consequences of providing an undertaking.

15. Later in 2020 the father's physical health seriously deteriorated due to his alcohol intake issues and falls he had on 15 and 16 November 2020. The mother says that after she was told about the father's falls on 16 November 2020 by one of the father's work colleagues, she visited him in hospital. The father had to be airlifted to a hospital in Miami to be assessed to see whether he was a suitable candidate for a liver transplant. He was not successful, and he was not placed on the transplant list. The mother says that she then took on the role as the father's domestic caregiver, with the father taking her up on her offer that he move into the guest quarters at the former family home. The father said that the offer was made on the basis that he pay all of the expenses of running the former family home. The father says that he hired a full-time nurse to care for him between December 2020 to April 2021. The mother refutes that, saying that she arranged for external care initially for 4, increased to 6, hours a day.

16. The mother said that the father told her that, due to his conduct towards her and due to her care of him, he wished to provide her with security. She said that he told her that he wanted to transfer the

Property to her *"outright"* instead of bequeathing it to her in his Will[7]. The mother said that the father then attempted to transfer the Property to her, but drew back on that as he did not want to pay the stamp duty of around CI$70,000 that would be applicable because they were unmarried. She said that the father sought other alternatives for the transfer and *"discovered that one way to effect the Transfer without paying Stamp Duty was pursuant to the Children Act…"*.

17. On 17 September 2020, the mother filed a C1 application in the Summary Court for a Financial Provision Order pursuant to Schedule 1 of the Children Law (as it was then). In the Form C1 she stated that they had been in a relationship for eight years, reiterating that they began to cohabit in 2015. She stated therein that she had been *"wholly reliant"* on the father for financial support and that she was the primary carer of their two children. In the form she mentioned the Protection Order proceedings and the fact that the father had given undertakings. However, when reading the detail in the Form C1, it appears that she had made some errors concerning the dates. The mother stated that at the time when the undertakings were given it was ordered that the father would pay (i) maintenance for the benefit of the children in the sum of $5,000 per month; (ii) the children's school fees; and (iii) reasonable school costs *"until 27 May 2021 or until an obligation for support is determined pursuant to any other law"*. She added that she had been struggling to *"make ends meet"* since the Order was made and that it was causing her *"considerable stress and embarrassment"*. She said that the maintenance order did not provide *"the children or me"* with an appropriate level of financial security. In the Form C1 she said that she was making the application:

> *"to ensure that the children and I secure appropriate housing and that I receive the appropriate level of maintenance in light of the children's day-to-day outgoings living in the Cayman Islands, the standard of living they have enjoyed thus far and given (the father's) substantial financial means."*

She also indicated that she would have to consider making an application for a legal costs allowance order to fund her application. She then made comment about the concerns she had about the risk that the father's conduct may pose to the children, and she said that she expected any future contact to continue to be supervised. I note that this application was filed at a time when the parties were living in separate housing and before she was informed on 16 November 2020 about the decline in the father's health.

[7] See paragraph 13 above.

18. The first hearing of the C1 application came before Magistrate Gunn on 6 November 2020. Neither party attended that hearing. The Learned Magistrate noted that an application was being made for a property transfer order. Having noted that, she ordered that the matter be transferred to the Grand Court, presumably on the basis that she felt that the Summary Court did not have the jurisdiction to make such orders pursuant to a Schedule 1 application.[8] Again, I note that the date of the hearing and of the resultant transfer of proceedings order was before the mother had been informed of the father's health predicament on 16 November 2020.

19. It appears from the content in the Form C1 that the parties did not have a healthy relationship at that time. From the mother's evidence contained in her Affidavit sworn on 11 June 2024, it appears that she was saying that the father moved from the hospital and back to the former family home under her care in December 2020 and after the date of the hearing. I also noticed that in her evidence she says that *"thereafter"* him moving back into the family home and when under her care that he said that he wanted to transfer the said property to her outright. Again, she said in the Affidavit that it was after he returned to the home under her care that he *"attempted"* to carry out a transfer, but pulled back because of the stamp duty.[9] In the Affidavit, the mother said that it was the father who *"discovered"* that one way that the transfer could be affected without paying stamp duty was pursuant to the Children Act ("the Act") and that as a result the transfer was executed in this way. However, as is shown by the Transfer Order application filed in the Summary Court, the mother actually made an application pursuant to Schedule 1 for a property transfer even before she said that she took on the care of the father and before she said that the father had discovered that to be an option.

20. The Summary Court file was shown to me on 6 November 2020 by the Family Proceedings Unit ("the FPU"). On the same day I instructed the FPU to open a Grand Court file and fix the matter for a mention hearing before me. My Personal Assistant reached out to the attorneys who she believed were on the record for the parties. KSG Law replied on 17 November 2020:

> *"We are no longer instructed by (the father) in this matter. I don't think we ever filed a notice of appearance although we did correspond with the Court and McGrath Tonner. I understand that (the father) has suffered a bad fall over the weekend and I am not sure if*

[8]See footnote at paragraph 106 below concerning the Summary Court jurisdiction to hear Schedule 1 property transfer applications.
[9]See paragraph 16 above.

he will be capable of responding this week but as a courtesy to all we will try and obtain an update as soon as possible. I do believe that (the mother) is aware of the situation as well."

The *"fall"* seems to be the same one that the mother mentioned she had been told about on 16 November 2020.[10]

21. On 24 November 2020, my Personal Assistant wrote to KSG Law seeking an update about the father and about the proposed mention hearing dates. In that email she wrote:

"Ideally, would also be grateful for a contact email for (the father) in the absence of his not having Counsel on the record."

KSG Law promptly replied to that email indicating that they had received a rejection email from the one email address for the father which they had, adding that they were trying to obtain *"whatever new one"* he had. The attorney confirmed that he had spoken to the father and that he would soon be released from hospital and that the father was seeking to have the hearing set for 21 or 22 January 2021.

22. On 31 December 2020, Ms. Lakeman from McGrath Tonner sent an email to the Civil Registry headed *"consent order"*. I note that her email was not copied to the father. I do not know the reason for that, but I am conscious that this was only a month after the Court had been seeking the provision of an email address for him from the firm of attorneys who appeared to be assisting him at that time and that his then attorneys were not able to provide an email address because they did not have an active one for him.[11] Attached to the email was a draft Consent Order. The preamble included the following wording:

*"**UPON** the matter been dealt with administratively;"*

as well as:

*"**AND UPON** the parties by their signatures consenting to an Order in the following terms;"*

The draft Consent Order contained the following one provision:

[10]See paragraph 15 above.
[11]See paragraph 20 above.

*"**IT IS HEREBY ORDERED BY CONSENT** that:*

1. *In satisfaction of her application for a transfer of property, the respondent shall transfer the property situate at South Sound Block 15E Parcel 50 to the applicant absolutely."*

Importantly, both parties had signed that draft Consent Order, and it was endorsed as being filed by McGrath Tonner.

23. On 5 January 2021, Cassandra Cole (Executive Officer/Cashier–Civil Registry Department wrote to McGrath Tonner about the draft order stating:

"Please have the Grand Court number placed on the document, in addition the signatures of the parties should not be on the same page of the Judge's signature line. That format is when the Clerk of the Court is signing."

24. On 7 January 2021, McGrath Tonner sent an email, attaching a revised signed Oorder in the format that was requested. They said in the email:

"We would be grateful if the same could be placed before the Honourable Court for approval and look forward to receiving a sealed copy at your earliest convenience."

The attorneys, again, did not copy that email into the father.

25. On 15 January 2021, my Personal Assistant appropriately sent an email to McGrath Tonner and to KSG Law and in that she wrote:

"I am confused as to why the draft Consent Order has not also been signed by the attorneys on record."

On the same day, McGrath Tonner replied by email, which they copied into KSG Law, in which indicated that it was their *"understanding"* that the father was now acting in person. To that email they attached a copy of a revised Consent Order signed by McGrath Tonner. Mr. Kennedy from KSG Law also emailed the Court on that day indicating that the father had not formally removed them from the record and, therefore, they would need to sign the order or be removed from the record prior to the order being signed by the Judge. He indicated that he would be taking immediate steps to contact the father and requested the Judge to give him time to do that.

26. On 20 January 2021, my Personal Assistant again wrote to KSG Law asking whether there was any update. Within the hour, KSG Law replied by email and copied in McGrath Tonner. In that email they said that *"unfortunately"* there was no update, but then added:

> *"As background (the father) suffered a very serious fall at the end of last year and was flown to Miami. Those injuries were on top of a number of personal issues that (the father) is dealing with as evident from the evidence in these proceedings and those before the Summary Court. He has returned from Miami late last year and quarantined at his home (which has a granny flat) under the care of (the mother). I understand he may now be in hospital but his phone is not working and he is not responding to emails.*
>
> *All I can add is that his last instructions to us were very much at odds with the Consent Order presented and given his vulnerability and the influence of (the mother) on his recovery I would respectfully suggest that it would be prudent for all if (the father) was to confirm his intentions and state of mind to the judge directly."*

27. In the 20 January 2021 email, reference is made to evidence filed in the Grand Court and the Summary Court. Prior to 2024, in the files which are before me, the only pleadings were the above-mentioned C1 application which sets out the reasons for making the application which mentions (and exhibits) the Protection Orders made against the father, and undertakings given by the father in May 2020. Paragraph 8 in the C1 does state that the mother has been concerned about the father's *"potential for volatile behaviour as evidenced by his previous conduct, his excessive alcohol consumption, and the risk he could pose to the children",* but save for that, the earlier filed pleadings do not provide detail about *"the personal issues"* that the father was *"dealing with"*. The only evidential statement in the file was the mother's form C10 Statement of Means with exhibited financial disclosure. However, the mother's affidavit evidence in the Protection Order proceedings was exhibited to the father's second affirmation which was affirmed on 8 April 2024.

28. I cannot recollect if the 20 January 2021 email was shown to me at the time. However, it is evident that I was concerned about who was presenting the father's case and making decisions about the draft Order, as my Personal Assistant emailed both McGrath Tonner and KSG Law on 27 January 2021 and said:

> *"Based on the attached email, I think it is prudent to hear from (the father) as no Notice to Act in person has been filed and either the matter must be listed on a Family Mention Day*

to approve the Consent Order, or (the father) needs to file and serve his Notice and make clear his desire to have the Consent Order presented for the Judge's consideration."

That email from my Personal Assistant followed the receipt of an email sent earlier in the day by McGrath Tonner (copied into KSG Law) to which they said they were attaching correspondence in which KSG Law confirm they were no longer instructed in the matter. In the email, they sought an update about the status of their client's application and whether the Court had made any directions in relation to it.

29. On 28 January 2021, KSG Law emailed the Court (not copied to McGrath Tonner) and attached a Notice of Intention to Act in Person on behalf of the father. Unfortunately, the Notice which was attached contained the details of the Summary Court proceedings cause number rather than the Grand Court cause number. KSG Law were notified of that error by an email from my Personal Assistant sent out on the same day. However, there is now before the Court a Notice of Intention to Act in Person signed by the father dated 27 January 2021 and filed on 28 January 2021 showing the correct cause number. The Notice of Acting in Person confirmed to the Court that the father, a very experienced litigator in the Cayman Islands, had decided that he no longer required legal representation and that he would now be conducting the matter himself, including the ongoing review and possible refinement of the content in the draft consent order. This view was later fortified when I received the revised Order signed by him which addressed my previously expressed jurisdictional concerns about the content in the first draft of the Order and the question about his desire to have the Order presented to the Judge for his consideration.[12] My above view was also fortified when the father then actively engaged in the proceedings when he corresponded with my Personal Assistant.[13]

30. It was at that stage that the initial draft Consent Order signed by the parties was placed before me. As with all such draft Consent Orders, I reviewed it to see whether, exercising my judicial discretion, I was willing to approve it. Having conducted that exercise, I was not willing to accede to the parties' apparent wish for me to approve their Order. Accordingly, I gave instructions to my Personal Assistant to write to the parties about that draft Order to explain why I would not approve it and to highlight what they might wish to do to put into effect the outcome they had been seeking

[12]See paragraph 28 above.
[13]See paragraph 42 below.

in the rejected draft Order. I expected my Personal Assistant to communicate the following comments in writing to both parties. She sent an email addressed only to McGrath Tonner dated 5 February 2021 regarding the draft Consent Order in which she said that I had reviewed the file and *"comments as follows"*:

> *"Under Schedule 1 a non-resident parent may be expected to provide a home to the resident parent until the child is 18. The property will not be transferred outright to the resident parent, rather, it will be held on trust until a future triggering event, such as the child reaching 18 (or later if agreed by the parties). At this triggering event, the property would revert to the non—resident parent.*
>
> *One option might be to have the property transfer in the preamble (not a part of the Order itself)."*[14]

In circumstances where the Court could not make an order for the type of property transfer that the parties sought in the draft order, although one course of action might have been for the parties to record that their agreement or that their intention was that the property would be transferred by the father by him providing an undertaking to transfer the Property, that was not a suggestion made or communicated from the Court to the parties at the time.

31. On my instructions, to assist the parties, my Personal Assistant attached to that email an extract from the publication "Applications under Schedule 1 to the Children Act 1989" which was published by "Family Law" a published text that was produced by all Members of Garden Court, Family Law Chambers. The pertinent part of the extract at Chapter 2, paragraph 2.2 stated:

> *"There are no powers to order an outright transfer of property to the primary carer, or the payment of a lump sum to purchase a property in the sole name of the primary carer. It is settled on terms for the use of the child and primary carer until the child attains 18 or completes tertiary education when it reverts."*

32. As I was not willing to approve the draft Consent Order which would have resulted in me making an order that I did not have the jurisdiction to make, my Personal Assistant also informed the parties, in her 5 February 2021 email, that the matter would need to come in for a mention hearing. It is now apparent that despite my Personal Assistant properly trying to obtain a contact email for

[14] My emphasis by underlining.

the father one was not forthcoming, even from his former attorneys who had been corresponding with her up until the end of January 2021. It is patently obvious from her 5 February 2021 email[15] sent to Ms. Lakeman, that my Personal Assistant was acutely aware of the obligation to have the said email, and its contents, provided to both parties. In the same email she wrote:

> *"Will need to have the following[16] also provided to (the father). If you have an up-to-date email address, kindly provide on reply or forwarding of this email to him, with thanks."*

33. In those circumstances, the father is wrong to state in his evidence in his Sixth Affirmation that these were *"private communications"* between the Judge and McGrath Tonner. He is wrong to state that there was *"collusion"*[17] or *"fraternisation"*[18] between the Judge and McGrath Tonner. He is also wrong to suggest in that Affirmation that it was I who suggested *"the undertaking route"* which the parties themselves adopted in the later approved Order.

34. On 9 February 2021, McGrath Tonner emailed my Personal Assistant and copied the email to the father[19]. In that email they wrote:

> *"We write in respect of the above matter and further to the email below[20] providing comments from the Honourable Justice Williams in relation to the draft order. For ease, we have copied in (the father) who is acting in person on this matter.*[21]
>
> *We attach hereto a copy of the amended draft order which has been signed by both parties and our firm. We should be grateful if this could be placed before Justice Williams.*
>
> *With regards to a mention date, we should be grateful if you would confirm the Court's availability for a hearing either later this month or early March."*

35. This email confirms that the 5 February 2021 email from my Personal Assistant to Ms. Lakeman containing my comments about the draft Consent Order with the attachment, was included in the email chain which was copied into the father at the latest on 9 February 2021,[22] the same date that

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[15] See paragraph 30 above.
[16] The *"following"* relates to my comments which are set out in paragraph 30 above.
[17] See paragraph 44 below.
[18] See paragraph 43 below.
[19] It is evident that this is the father's email address, as the father sent an email to the Court using that email address on 10 February 2021.
[20] The email from my Personal Assistant sent on 5 February 2021.
[21] My emphasis by underlining.
[22] A copy of the email chain was provided to the parties at the outset of the hearing.

the Order signed by both parties was submitted. Therefore, I do not accept the comment made in paragraph 5 of the father's Sixth Affirmation that he was *"never given a copy of Ms. Miller's email by the Respondent"*. However, it does not appear that the attachment to the 5 February 2021 email was sent in the 9 February 2021 email chain, so the father many be correct to say in the same paragraph that he does not accept that he received that.

36. Importantly, the Order which was attached to the 9 February 2021 email from McGrath Tonner was signed by both parties. The preamble to the Order stated:

> *"UPON the matter being dealt with administratively;*
>
> *AND UPON the parties by their signatures consenting to an order in the following terms;*
>
> *AND UPON the respondent undertaking to transfer to the applicant absolutely all his legal estate and beneficial interest in the property situated at South Sound Block 15E Parcel 50 within 14 days of the date of this order."*

The order part of the draft Order contained only one provision, the following order:

> *"IT IS HEREBY ORDERED BY CONSENT that:*
>
> 1. *The outstanding aspects of the Applicant's Schedule 1 claim are adjourned to be dealt with in chambers."*

37. The father says that at the time he signed the Order, *"as a litigant in person not familiar with the provisions of the Children Act seriously physically or mentally ill"*, he was unaware of the *"complete lack"* of the Court's jurisdiction to make orders for the benefit of anyone other than the children under the Act. Upon reading the Order, I was of the view at the time that both parties had seen the email sent by my Personal Assistant on 5 February 2021 or, at the very least, were aware of its content. I say that because the submitted new draft of the Order, which both parties had signed and which they both, by their signatures, were requesting the Court to approve without the need for them to appear, clearly addressed the content of the email. That revised draft of the Order reflected the parties' recognition that they must remove the property transfer provision as being an actual order made by the Court and instead it reflected their agreement to replace such an order by them now informing the Court in the preamble in the Order that the father now wished to give an undertaking to transfer the property *"absolutely"* to the mother. I note that the parties did not simply record it as being an agreement to transfer in the preamble, which is what I had suggested to be a

possible option in the 5 February 2021 email sent by my Personal Assistant. They chose to deal with it by means of an undertaking from the father, which indicated to the Court their desire to still proceed with a voluntarily outright transfer of the Property, even though I had made them aware that I refused to order an outright transfer order due to a lack of jurisdiction.

38. When I consider such orders, I do not carry out a 'rubber stamping exercise'. That was vividly illustrated by my approach to the first signed draft of the Order which had been submitted to me and which I refused to approve on the papers.[23] The Order had it recorded in its recital that *"the matter"* was *"dealt with administratively"*. Historically, that wording used to frequently appear in family consent orders. I accept that it is not the proper wording, as the exercise actually carried out is one undertaken upon the parties requesting the Judge to consider the consent order on the papers without the need for a hearing. The Judge reviews the Court file as well as the draft order and then exercises his judicial discretion to determine whether it is an appropriate and fair order to approve. That is precisely what was done in this case when the Court declined to approve the initial Order signed by the parties and highlighted the lack of jurisdiction to the parties. The Court then reviewed the revised Order signed by both parties, the content of which indicated that the parties had 'taken on board' the observations which I had made about the earlier declined draft. The approach adopted by the Court is akin to the one outlined by Segal J in the Financial Services Division at paragraph 8 in his judgment ***In the Matter of Trina Solar Limited*** [2017] (2) CILR 12 where he stated:

> *"...(ii) There are two ways in which consent orders can be made. Either administratively, using the procedure established by GCR O.42, r.5A and O.42, r.1(4), where the Clerk of the Court is authorized to sign the order, or by an application to the judge. If the latter course is chosen, it is open to the court to make the order without a hearing*[24] *(see para. B1.1 of the FSD Guide, 2nd ed. (2015)). Of course, the FSD Guide also states (at para. B1.5(a)) that "consent orders must be submitted to the assigned Judge for approval and signature." So it appears that as regards FSD matters, all orders will be signed by the judge and so technically there is no need to come within the listed categories in r.5A(2).*
>
> *(iii) In the present case, in accordance with FSD practice, the order was submitted to me for approval and signature. On the basis that the parties were in agreement and the order was appropriately drafted (making the time for and consequences of payment perfectly*

[23] See paragraph 30 above.
[24] My emphasis by underlining.

clear) it seemed to me, without of course the jurisdiction issue having been raised, appropriate to sign and make the order."

39. I agree with the mother's concession made at the hearing, despite she and her attorneys using the term *"administratively"* on occasion since the Order was approved, that the wording used by the parties in the preamble in their signed Order stating that the matter was *"dealt with administratively"* was incorrect and technically may be viewed as being an irregularity. I find that, in the circumstances of this case, such an irregularity does not nullify the Order.

40. Having reviewed the file and having in mind the fact that I had rightly pointed out the jurisdictional issue to the parties, I did not feel it was necessary for me to interfere with the voluntary arrangement that the parties were informing the Court that they wished to put in place about the Property transfer by means of an undertaking. The undertaking in the Order simply recorded the father's promise to put in place the arrangement that they had wanted to put in place in the first draft and which they still wished to make. It was not the Court ordering the transfer. As the parties had agreed what they wanted to do about the Property Transfer application as evidenced by the giving of an undertaking without the Court making any order for a transfer, when considering the submitted Order in the context of the C1 Schedule 1 application, it was evident that the mother's application to *"receive the appropriate level of maintenance in light of the children's day-to-day outgoings…"*[25] still required determination. Accordingly, it was appropriate for me to approve the only order that was being sought by the parties in their draft order, which was to adjourn those outstanding parts of the application. I approved and signed that Order on 9 February 2021. That direction, the only provision set out in the order part of the Order, was not one suggested by me in the 5 February 2021 email sent by my Personal Assistant but was a standard and appropriate case management direction requested by the parties.

41. Although I had not mentioned the option of undertakings in the email transmitted by my Personal Assistant on 5 February 2021, I feel that I should herein record that I was not surprised when I received a draft Order which included an undertaking to transfer the Property in its preamble. That undertaking reflected what the parties had attempted to achieve concerning the Property transfer in the earlier submitted draft Order and it enabled them to put that arrangement in place. It is clear

[25]Paragraph 7 in the C1 Application form.

that the undertaking is consistent with what the father has since said in parts of his evidence about what he wanted to happen to the Property after he had considered the issue[26]and recognised that the Court could not make the order that he and the mother had sought in the earlier draft Order. The undertaking which the father gave and recorded in the preamble of the Order which he signed adopts a mechanism that is frequently used in family law financial cases. The decision of McCombe LJ at paragraphs 29 and 31 in the Court of Appeal decision in ***Alicea Helen Birch v James William Hamilton Birch*** [2015] EWCA Civ 833 deals with the very common situation that arises where an undertaking is given because the Court does not have the jurisdiction in ancillary relief cases to make orders releasing a party from mortgage covenants or indemnifying liability under that mortgage. In that case, unlike the matter before me, a property transfer was actually ordered by the Court and the undertaking related only to the arrangement about the mortgage post transfer and it enabled the transfer order to be agreed and made. McCombe LJ stated:

> *"29. It was not argued before us that the court in this case could not/should not have made an order for sale under section 24A in such circumstances as an adjunct to or fall back from the provision in paragraph 4.3. However, it is clear to me that the 1973 Act contains no power that would have made it possible for the court to make any order, analogous to the paragraph 4.3 undertaking, requiring as it does a party to endeavour to secure the release of the other party from mortgage covenants and to indemnify him from liability under them. Accordingly, I do not consider that an order under section 24A could have been made in this case in terms of the undertaking in paragraph 4.4 following a failure to comply with the undertaking in paragraph 4.3.*
>
> *30. Of course, even if there was no such power, it is a recognised process of consent orders of this type to make arrangements, by way of undertakings by one or more of the parties, for matters outside the powers of the court under the 1973 Act. Such undertakings are "enforceable as effectively as direct orders": see per Lord Brandon of Oakbrook in* Livesey v Jenkins *[1985] AC 424 at 444F-H. The undertakings are an essential part of the bricks and mortar with which the edifice of such financial orders are constructed.*
>
> *31. It was, therefore, undoubtedly within the power of the court to extract and/or accept such undertakings as these[27], without which the order for property transfer would not be made. In the present case, it is clear beyond peradventure that this property order in favour of the Wife would not have been made absent the undertakings now in issue. It is not suggested that an*

[26]See paragraph 52-56 below.
[27] My emphasis by underlining.

order in a form incorporating the proposed variation was a realistic possibility when the parties were before the court for the final hearing, during the course of which the essential terms of the consent order were negotiated."

The Supreme Court in their ruling in the appeal, ***Birch v Birch*** *[2017] UKSC 53* did not depart from the above thinking.

42. On 10 February 2021, the father emailed my Personal Assistant. The father indicated that the offered 4 March 2021 date as a date for a mention hearing worked for him. He did not request the Court to desist from processing the draft Consent Order which he had signed and of which he was aware, from the email copied into him on 9 February 2021, I had been asked to approve.[28] I note that the father stressed his professional title when he signed off on that email:

"Regards, (his name) QC."

The father was engaging in the proceedings and, although that was now as a litigant in person, he seemingly wished to remind the Court about his legal expertise when doing so.

43. On 11 February 2021, my Personal Assistant sent out the sealed Order by email to the father and to McGrath Tonner. The father now takes great issue with how the Order which he signed was arrived at and approved by the Court, despite the fact that he and his recent attorney (who had informed the Court at that time that the email address which the father had provided to them was non-responsive) had failed to provide the Court with his then current contact details. The father, after expressing his opinion that the Judge had displayed a *"somewhat alarming display of ineptitude,"* went on to make his views patently clear when he wrote at paragraph 16, in his Affirmation affirmed on 7 February 2025:

"McGrath Tonner's conduct in this matter <u>is also</u>[29] beyond egregious. For a firm which claims to be one of the pre-eminent "Family Law" firms in the Cayman Islands and whose Senior Partner is apparently the Chairman of the "Family Law Association" for them not to ensure that I was copied in on the <u>fraternisation</u>[30] between them and Williams J. in relation to the wording of the Consent Order at a time when they well knew how ill I was

[28]By 10 February 2021, he was clearly aware of my comments contained in the 5 February 2021 email.
[29]My emphasis by underlining.
[30]My emphasis by underlining.

is reprehensible and professional misconduct which I'll be taking up with the appropriate bodies responsible for regulating the conduct of attorneys in the Cayman Islands."

44. Although I accept that the father is now representing himself in emotionally challenging proceedings, his rather intemperate language directed towards the Judge and a firm of attorneys at various stages of his written evidence is unattractive and, at best, exaggerated. Even if his interpretation of the GCRs and their application to the facts in the case are correct (which they are not), the rather graphic language directed by him towards a Judge is not what one would expect from a very experienced litigator member of the Cayman Islands Inner Bar who should recognise it as being inappropriate, especially in non-Family Law proceedings. A review of the chronology and of the content in all the emails being exchanged around January/February 2021 as well as the father's own evidence about why he signed the Order and what his understanding and reasoning was at the time as to why he signed it[31]make his serious allegations that (i) there was *"collusion"*[32] between the Judge and the mother's attorneys; (ii) the Judge and the attorneys have conducted themselves in an *"egregious"* manner; and (iii) they have been *"fraternising"* between each other to be unfounded.

45. In the abovementioned 11 February 2021 email sent by my Personal Assistant, she informed the parties that the C1 Form was listed for a mention hearing on 4 March 2021. Neither party attended the mention hearing fixed for 4 March 2021. If the parties had attended, I may have transferred the Schedule 1 periodical payments proceedings back to the Summary Court where they had initially been correctly issued or I may have transferred the matter back to Richards J who had substantial previous conduct of the s.10 child arrangements and Schedule 1 financial proceedings and she could then decide whether to retain or transfer back to the Summary Court.

46. The father clearly accepted that he had voluntarily given the undertaking and wished the outright transfer to take place as, at no time,[33] did he seek to vary or discharge his undertaking. The father's conduct shortly thereafter was consistent with his wish for there to be such a transfer (which he had undertaken to make), because he signed the transfer form on 11 March 2021 and thereby conveyed

[31]See paragraphs 52-56 herein.
[32]Paragraph 20 of the father's Affirmation sworn on 7 February 2024.
[33]The father could have done so at the 4 March 2021 mention hearing if he did not agree with the undertaking that he had signed. On 10 February 2021, the father had indicated in his email that the date for the mention hearing worked for him, but he did not to attend that hearing.

the Property outright to the mother. The transfer did not occur because the Court had ordered it. The transfer only occurred because the father wanted the outright transfer to happen, he indicated that in his undertaking in the preamble of the Order, and then consistent with that he went on to sign the Land Registry Transfer form. Until the latter end of 2024, his actions post him signing the Order were consistent with what he intended and agreed to, for the reasons he gave which are outlined at paragraphs 52-56 below. There is a need for finality in financial proceedings and agreements and as highlighted at paragraph 15 in the Court of Appeal decision in ***Birch,*** Lord Oliver of Aylmerton stated in ***Dinch v Dinch*** (*1987) 8 FLR Part 2 162, 173:*

> *"If the conclusion is that what was intended was a final and conclusive once-for-all financial settlement, either overall or in relation to a particular property, then it must follow that that precludes any further claim to relief in relation to that property."*

47. The father's case is that he was unaware of the email of 5 February 2021[34]which contained my comments about the first draft of the Order and which my Personal Assistant sent to the mother's then attorney with a request that they share the email with the father or, because she did not have an active contact email address for him at that time,[35]they provide her with his contact details. The father said he first became aware of the communications when he saw an email from Ms. Brooks KC sent on 6 November 2024. He says that it was only then that he *"realised"* that the communications were *"improper"* and that *"for so many reasons"* the Administrative Approval Procedure was *"improperly used".* The mother states in her evidence that she printed a copy of the 5 February 2021 email when she gave him the revised draft of the Consent Order which he then signed on 9 February 2021. I note that the mother's attorney emailed her on 8 February and attached a copy of the revised Consent Order and informed her that the father would need to sign it. For reasons set out at paragraph 38 above, on the balance of probabilities, I find that the mother did provide him with a copy of the 5 February 2021 email, but I am unable to find whether she also provided him with a copy of the attachment to that email.[36] Even if I am wrong in reaching the above conclusion about the provision of the email, it is clear that the father was provided with a copy of the 5 February 2021 email on 9 February 2021 as it was included in a chain of emails sent

[34]As stated in the father's submissions and in his email to Justice Carter's Personal Assistant on 7 November 2024 in which he wrote: *"Prior to the receipt of Ms. Brook's email and its attachments I was unaware of Justice Williams' Secretary's email of 5 February 2021 and the role that he played in fashioning the Consent Order which was made on 9 February 2021."*
[35]See paragraph 30 above.
[36]See paragraph 31 above.

by McGrath Tonner to my Personal Assistant and copied into the father at his active email address.[37] Therefore, the father has had a copy of the relevant communication from at least 9 February 2021, and he would have been aware of its content at that time and not for the first time from the content in Ms. Brooks' email sent three and three quarters years later.

48. The Family Division proceedings then went dormant, but in 2022 the father commenced proceedings against the mother in the Civil Division. On 15 July 2022, the father filed a Writ of Summons with Statement of Claim in Civil Cause G152-2022. The proceedings concerned the financial dealings between the parties between 2019 and March 2022. Those still ongoing proceedings are for a claim totalling $520,000 related to three loans that the father says he has made to the mother and related to three motor vehicles. Those civil proceedings are not related to the Property transfer to the mother.

49. Although civil proceedings had been initiated by the father in July 2022, the Children Act proceedings only became active again on 9 January 2024 when Cayman Family Law filed a Notice of Appointment to act on behalf of the father. On the same day they filed an application for a shared residence order, defined contact order and more general specific issue orders. On 17 January 2024, the parties submitted a Consent Directions Order for the Judge to approve *"administratively"* which permitted them to go directly to mediation without the need for an attendance before the Judge.

50. The mother filed a Form C9 on 13 February 2024 relating to her Schedule 1 application for child periodical payments. On 27 February 2024, Richards J accepted undertakings from the parties relating to child arrangements and she made two contact orders. The Learned Judge also gave directions in relation to the Schedule 1 child periodical payments application. She listed a Schedule 1 hearing to commence on 1 May 2024 with a one to three day time estimate, it appears, to come on before her. Although no Notice is in the Court file, it appears that Cayman Family Law had ceased acting for the father in late March/early April 2024.

51. It is in the father's 67-page Affirmation sworn on 8 April 2024, which contains his evidence concerning the mother's Schedule 1 child maintenance application, where the Court reads about why he agreed to an outright Property transfer and about the concerns that he now has relating to

[37] See paragraphs 34-35 above.

the mother's conduct post him signing the 2021 Property transfer forms. One of the grounds upon which he therein says he is resisting her application for child maintenance is his contention that he has already made significant provision for the children's maintenance for years to come due to the transfer. He said that the mother was aiming to:

> *"keep hoarded...as much of the equity in the House that I had transferred to her specifically to be applied for the children's maintenance."*

In the Affirmation, the father wrongly refers to there being a *"Transfer Order"* because, as already highlighted, the Court refused to make such an order and he simply gave an undertaking to make an outright transfer to the mother. Be that as it may, he says that:

> *"...pursuant to the Transfer Order, (the mother) must have recourse to utilise the equity in the House and demonstrate that the equity in the House has been fully utilised and totally expended* ***for the benefit of the children*** *before she looks to me to make further contributions towards the children's maintenance."*

His argument in the Affirmation appears to be that by making the Property transfer, which occurred at a time that he was vulnerable when the mother was "*perpetuating … her overall scheme*", he should not be required to pay separate maintenance payments *"for years to come"* and the need for anything else to be spent *"at any time in the future"* on the children's accommodation needs has been eliminated. The father may be partly correct because, as a consequence of him effecting the transfer, he had met some of the overlapping expenses which courts usually include in their calculations when assessing the amount of maintenance to be paid.[38] Also, due to the outright transfer, the father had enabled the mother, who as a parent is also responsible for financially meeting the children's needs, to have a larger disposable income to apply to meeting the children's needs because the big ticket expenditure/outgoing item, namely rent or mortgage payments, would not apply to her. He said that the mother *"totally wrongly"* believes that when he made the transfer to her that he was conferring the benefit of the transfer to her and that, as he claims that the transfer was for the benefit of the children, she has no beneficial interest in the Property but rather holds it as trustee for the benefit for the children. If, of course, that is what the father intended, then the

[38]As highlighted in ***AL v NL*** Fam 194 of 2012 (Judgment dated 25 September 2020), in ***AK v TK*** 39 of 2015 (Judgment delivered on 7 February 2027) and in ***Cooper v Ebanks*** Fam 34 of 2023 (Judgment delivered on 27 March 2025), there may well be some overlap in the children's needs between the expenditure that was clearly solely for the children and household expenditure that benefited both the mother and the children, but which enabled them to have adequate homes with both parents.

parties should have submitted a consent order with terms pursuant to paragraph 1(2)(e) of Schedule 1 rather than (i) the initial draft Order seeking an outright transfer to the mother which I refused to make, or (ii) the second draft order containing the father's undertaking to make an outright transfer to the mother. If an outright transfer of the Property was not his intention, then he should not have signed the Land Registry Transfer Form in the following month. As an experienced attorney he would know what the purpose of that form was and what the consequence of signing that form would be.

52. Importantly at paragraph 53 and at footnote 46 in the Affirmation, the father was making it patently clear that for the benefit of the children he consciously made the outright transfer of the property to the mother. He wrote the following at paragraph 53:

> *"….. I was also contemplating what position to take in relation to the (mother's) application for a property transfer order and for periodical payments for the children under schedule one paragraph 1(2) (a) and (e) of the Children Act which were then pending in these proceedings….. I therefore decided to take the significant and generous step of transferring the House, which at that time was worth USD1.25 million and which was mortgage – free and unencumbered by any charges, outright[39] to the applicant to be held by her but for the benefit of the children. I did so to satisfy my obligation to contribute to the maintenance of the children by providing complete financial security for them in the coming years."*

Significantly at the footnote 46 which referred to paragraph 53 he wrote:

> *"I describe it as being generous because the (mother) would never have obtained outright transfer of the House if I hadn't decided to make the Transfer[40] because without my consent, the most that she could have hoped to have obtained by way of a Court Order would have been a settlement of property order whereby the H would have been settled on her for the duration of the children's minority only with a reversion of ownership back to me when the obtained majority; see Re P (child) [2003] Civ 837."*

53. At paragraph 54 in his 8 April 2024 Affirmation the father went on to say:

[39]My emphasis by underlining.
[40]My emphasis by underlining.

"So in January 2021, just before I effected the Addition, the Applicant and I agreed that I would transfer the house to her and we entered into the Transfer Order on 9 February 2021 by which, upon me undertaking to transfer her House to her, the property transfer application was disposed of and the outstanding aspects of her Schedule 1 claims were adjourned."

He again wrongly states that they entered into a *"Transfer Order"* on 9 February 2021, although he does accurately accept that he gave an undertaking to transfer the Property.

54. At paragraph 55 and 56 in the Affirmation the father stated:

"55. By effecting the Transfer, I ensured that the children would have secure accommodation and it meant that the Applicant could access the equity in the House when she got a job and was able to obtain a mortgage secured by the House and then use the mortgage proceeds for the children's maintenance for years to come. Alternatively, it gave the (mother) the option of selling the House and downsizing to a smaller less expensive property and using the surplus equity created by the sale for the children's maintenance for years to come. In the further alternative, it also gave her the option of selling the House and moving into rental accommodation and investing the whole of the sale proceeds and using it for the children's maintenance and education for the years to come.

56. What the Transfer did not do, was to allow the Applicant to retain the benefit of the equity in the House for her own benefit and not use it for the children's benefit which is, of course, exactly what she is now doing by bringing on her renewed application for maintenance to require me to pay yet further substantial sums by way of maintenance for the children without utilising the equity in the House as it was always intended she would do."

55. At paragraph 5 and 6 in the father's Affirmation sworn on 29 April 2024 the father said:

"5.…At the time I made the Transfer I had no reason to believe that the (mother) would not act in the best interests of the children in relation to her custodianship of the House and the equity in it for the benefit of the children so I made an outright transfer of the house to her rather than settle it on trust to her with a reversion back to me when the children

attained their majority which would have been the most that the applicant could have persuaded the court to order. [41]

6. In the circumstances, ***I chose not to settle the House on trust with reversion back to me*** *because I had agreed with the Applicant that she could have access to the equity in it to utilise it for the children's maintenance going forward and at the time I had no reason to suppose that the Applicant would not do that. Obviously, if I had retained a reversion back to me, the applicant would have had to return the house back to me (or my estate) when the children attained their majority,* ***but by making an outright transfer instead, I gave the applicant total flexibility as to how she choose to use the house and the equity in it*** *but of course always having regard to her over-riding duty to use the House and the equity in it in the best interests of the children."*

56. The excerpts from the father's Affirmation sworn on 8 April 2024 and from his Affirmation sworn on 29 April 2024 both set out above herein provide great insight into why, at the time, the father voluntarily gave his undertaking to transfer the Property outright to the mother and why he chose not to settle the Property on trust with reversion back to him. The Affirmations show that he was able to and did carefully consider the various options available concerning the Property and that he was aware that he had the option, which a Court would have had the jurisdiction to order, to agree a transfer of the Property to the mother but only on the basis that there would be a reversion to him when the children reached majority. The father sets out his knowledgeable understanding of the Court's lack of jurisdiction to make outright transfer orders and his explanation that this restriction is why he proceeded with the transfer arrangement in the manner that he did. I note that the Affirmations were sworn around seven months before he filed his belated initial Summons in the proceedings now before me. The excerpts show that he consciously, at the time, transferred the Property outright to the mother and his reasoning for doing that. It is evident that, at the time that he affirmed the affirmations, the father was not arguing about the approach taken by the Court in 2021, as it is clear that what happened at that time was consistent with his wishes and intention which were clearly espoused in the two affirmations.

57. It is clear from the above excerpts from these affirmations that the father's concern was not about what Court process led to him giving his undertaking, or about how it came to be recorded in the

[41] My emphasis by underlining.

Order or about how he effected the transfer. The dispute, that he expands upon in these affirmations, is not that he did not intend there to be an outright transfer to the mother thereby giving her the flexibility to use the equity in the Property in the manner she saw fit with no reversion back to him when the children reach majority, but it is that he did so believing that the mother would use the Property to meet the children's needs without the need for him to pay child maintenance payments. His concerns related to the mother's conduct and the catalyst was her reinstating her periodical payments application in circumstances where his understanding was that by making the transfer he had met his obligation to contribute to the children's maintenance for years to come and until such time as the equity in the house had been totally exhausted by being expended on the children's maintenance.

58. On 16 May 2024, only one day before a directions hearing, McGrath Tonner wrote to the mother to inform her that it was no longer possible for the Firm to continue acting for her. This position was taken by them because of the substance of serious allegations made by the father against the Firm which had been set out in a nine-page letter sent by him to the Firm. Although the Firm stated that the allegations were *"wholly without merit"*, it felt that they were being placed in a position of *"hopeless and irredeemable conflict"* especially as the father had suggested that he proposed to commence proceedings against the Firm and to apply to join the Firm in proceedings against the mother.

59. On 17 May 2024, the Children Act proceedings came on before Richards J. McGrath Tonner successfully applied for leave to come off the record and a directions hearing was fixed for 20 June 2024.

60. On 21 May 2024, very shortly after McGrath Tonner came off the record, the father filed an Originating Summons in Civil Cause Number G 141-2024 seeking an order under s.140(1) of the Registered Land Act for rectification of the Proprietorship Register for the Property to show that the mother holds the Property as trustee for the two children. Those proceedings are still ongoing.

61. On 18 June 2024, the mother wrote to the Listing Officer indicating that, due to Mr. McGrath having to come off the record, she had found a new attorney to represent her. The mother told the Listing Officer that the attorney needed time to read the material, and that she was therefore

applying for an adjournment of the hearing. The father indicated in an email on 19 June 2024, apparently referring to her former attorney:

> *"Can you make sure that he knows that he will be being paid with the proceeds of crime and that I will come after him like a dog who's bone he has taken."*

The hearing was refixed for 20 June 2024 but unfortunately Richard's J ended up not being available on that day. Despite a series of emails between the parties and the Listing Officer there was a delay in arriving at a convenient new hearing date.

62. On 26 September 2024, the father wrote to Richards J's Personal Assistant. He informed her about the civil proceedings he had issued against the mother in Cause G2022-0152. He also informed her that he had sent a Listing Form to McGrath Tonner concerning a hearing of a Summons for leave to amend his Statement of Claim. He said that McGrath Tonner had previously asked for Cause G2022-0152 to be joined or consolidated with the family proceedings, but he was of the view that there could not be a formal joint consolidation because they needed to proceed under different procedural rules. He said that he recognised that there would be advantages to the two sets of proceedings being dealt with by Richards J. With that in mind, he wrote that he was seeking to have the Summons in the civil matter listed to be dealt with at family proceedings directions hearing. The father also informed Richards J's Personal Assistant that he had instituted civil proceedings against the mother in Cause No. G2024-0141. He said that he felt that those civil proceedings dealt with matters which were relevant to an overlap with issues that would be needed to be determined in the family law proceedings. He said that he would be seeking to have Cause 141 joined or consolidated with the family proceedings and seeking directions to be given at the next family proceedings hearing. He indicated that he had no opposition to the hearing being listed in the week commencing 4 November 2024. Eventually, on 8 October 2024, after even further correspondence had been exchanged between the parties, Richards J's Personal Assistant and the Listing Officer(s), a hearing was fixed in the family matter for 5 and 6 November 2024.

63. On 8, 14 and 29 October 2024, the father wrote to the Court reiterating that he wished the Summons in G 152 of 2024 to be listed to be heard at the upcoming November 2024 hearing. On 1 November 2024, the mother confirmed that her new attorney was Ms. Sheridan Brooks KC. It appears that Richards J was not available to hear the matter, as the hearing was then listed to come before Carter

J on 5 November 2024. It seems that the hearing matter could not go ahead due to a Court closure and, on 6 November 2024, Carter J's Personal Assistant wrote to the parties saying:

> *"As you know, Justice Richards KC had previously heard this matter, and it is anticipated that she will hear the final hearing. However, as Justice Richards KC is currently engaged in the trial before the Criminal Court, Justice Carter will preside over the directions hearing. The Court suggests Wednesday, 20 November 2024 for Directions hearing. If this date is not convenient, the matter will return to Richards J who will advise of the date in December for directions."*

64. On 6 November 2024, Ms. Brooks KC wrote to the Court indicating that she would be available for a directions hearing on 20 November 2024 but stated that she had requested my Personal Assistant to make me aware of the history of the matter. She also wrote to the father, copying in Carter J's Personal Assistant (Ms. Robinson) and my Personal Assistant, stating that:

> *"Prior to the Consent Order being administratively approved, there was correspondence between the McGrath Tonner, the (father) and Williams J regarding the wording of the Order and it appears that the issue of having the property transferred to the (mother) absolutely, rather than on trust on behalf the children were specifically dealt with resulted in the (father)* ***undertaking*** *(not being order to) transfer the property "****absolutely****" to the applicant."*

She highlighted that it is the outstanding aspects of the Schedule 1 claim that her client now seeks the Court to determine, and she expressed her view that I was best suited to deal with the current issues.

65. On the same day my Personal Assistant informed the parties and Carter J's Personal Assistant that I was out of the jurisdiction until 25 November 2024. However, later on the same day, without any consultation with me or my Personal Assistant, Carter J's Personal Assistant wrote the following to the parties and copied in my Personal Assistant:

> *"....Please see the below from the judge: "The matter was put before this Court in an effort to assist Richards J. by giving directions before the hearing of the applications. It appears that counsel and (the father) both believe the matter would be more easily resolved before Williams J for the reasons outlined in Ms. Brooks' email. In those circumstances, and*

having consulted Richards J., The court will have the matter transmitted back to Williams J who can set a date convenient to the court and the parties.

In light of the above, please disregard the date offered by Carter J (20 November). Ms Miller will confirm a date in due course for the matter to be listed before Williams J."

66. On 7 November 2024, the father wrote to Mrs. Robinson, copying in the mother and my Personal Assistant. He said that did not agree with Carter J's reported comment that he had indicated that the matter would be more easily resolved before me. He said that, prior to the above email from Ms. Brooks KC, he had not been aware of the 5 February email from my Personal Assistant and:

"the role (Williams J) played in fashioning the Consent Order which was made on 9 February 2021".

He said he wanted to consider what role I should play in the matter going forward given my *"earlier involvement"*. He commented upon the involvement of Richards J in the proceedings and said that she:

"has had extensive involvement in ALL aspects of this matter (both the contact and maintenance aspects) which is why I questioned why it was being transferred to Justice Carter."

67. On 7 November 2024, my Personal Assistant wrote to Mrs. Robinson referring to the fact that she had previously informed her that I was away until 25 November 2024 and stated that she would seek my directions upon my return to the jurisdiction.

68. On 20 November 2024, the father sent a detailed and lengthy email to Mrs. Robinson which he copied into my Personal Assistant. That email set out, for the first time, his present challenge to the Consent Order and how it was made. It is, of course, improper for a party to argue his case or make submissions in correspondence sent to the Court especially if the intention is that the Judge will see the same, and therefore I do not repeat the detail of that email herein. The father indicated in his email that he now did not have an issue with the matter coming on before me, but he felt that he should point out his contentions in relation to the Order to enable me to consider my position.

69. On 17 December 2024, the father sent a further email to Mrs. Robinson. He wrote not only concerning these family proceedings but also about the abovementioned two civil actions G2022-

0152 and G2022-0141. In the email he referred to the initial Summons which was filed in the application presently before me.[42] He understandably requested that the Summons be determined before anything else is done.

70. On 17 December 2024, I informed Mrs. Robinson that I had read the emails which I have detailed above. I told her that I was concerned that the cases were *"drifting"* and that I would *"grab (the bull by) the horn"*, at least in relation to the father's challenge to the Order approved in the Schedule 1 proceedings. I suggested that the wider Schedule 1 proceedings which the father had highlighted that Richards J had had a long involvement with, remain with that Judge at that time. I added that the two sets of civil proceedings should not be transferred to me, but that they should remain in the Civil Division. I said that the challenge to the Order was a discrete issue and I felt that it should, at least in the first instance, come before me for case management as I had been the Judge who had approved it. I instructed my Personal Assistant to write to the parties to inform them that I had read the emails and to make clear that I regarded myself as being seized of only the proceedings relating to the father's Summons challenging the Order. I told her to inform the parties that the father's Summons should be listed for a mention hearing on 16 January 2025.

71. It appears that, on 15 January 2025, the father attempted to provide the Court with *inter parte* correspondence because on that day my Personal Assistant wrote to him to inform him that that was not appropriate and that he should cease from doing it. She also informed him that I would not be shown his email.

72. The matter came before me on 16 January 2025. At the hearing, the father indicated that he sought leave to amend the Summons to include an application about the rectification of the Land Register to occur if his application to set aside the Order was successful. I provided some directions in relation to the amending of that Summons. On the premise that the Summons was going to be amended, I also gave directions to a hearing of the Summons on 1 April 2025. I indicated to the parties that the Schedule 1 periodical payments application would not be case managed until a decision had been made concerning the father's challenge to the Consent Order. I highlighted that I, at that time, would consider whether the Schedule 1 periodical payments application should continue before Richards J. In light of that indication the father did not seek to pursue an application

[42]In the email he said that the Summons was *"issued"* before the email, but it appears not to have been filed/accepted on the filing portal until 27 December 2024.

to stay the wider Schedule 1 proceedings. In relation to the civil proceedings G2024-0141, the father indicated that he would not be seeking to progress that matter until the conclusion of the current family proceedings. The father said that he was content for the Judge to inform the Civil Registry that they did not need to list his Summons for leave to amend the Originating Summons in that civil matter. However, in his comments made after his review of the draft version of this Judgment, the father indicated that the civil proceedings should be dealt with at the Applicant's periodical payments hearing.

73. It appears that, on or around 31 January 2025, the father had inappropriately written to my Personal Assistant. On that day I instructed her to share my following comments with the parties:

> *"It is not appropriate for party to write to a Judge (even via the Judge's PA) and rehearse their case. It is not appropriate for the issues raised in the email case (sic) by correspondence. If a party has an application to make about an upcoming hearing then they should apply for a mention hearing and that is the way that they seek directions from the court. That said, on this occasion, on my own motion, I list this matter for a mention hearing at 9:30 AM on Monday, 3 February 2025".*

74. At the hearing on 3 February, as highlighted above[43]the father was informed that he needed to file an Amended Summons as his Summons did not contain the grounds of objection.[44] The Court indicated that it wanted to deal with all issues surrounding the challenged Order and in light of that, the Court accepted that the parties might want to provide more information than that already set out in their affidavits and affirmations. Further directions were given to the 1 April 2025 hearing which was extended to a two-day hearing due to the detailed factual background. The directions were complied with. However, the father filed Further Written Submissions on 31 March 2025 which were not provided for in the directions, but I was willing to receive and read them hoping that it would shorten the time used for oral submissions at the hearing.

The Hearing

75. The father's application set out in paragraph 1 in his Amended Summons was heard on 1 April 2025. At the hearing the parties agreed that they would rely upon the content of their various affidavits and affirmations as being their evidence and that they did not wish there to be any oral

[43]See paragraphs 4-10 above.
[44]The mother did not agree to waive the pleading requirement at GCR O.2(f).

evidence. Oral submissions were made at the hearing which were recorded. The second day allocated for the hearing was not required. I adjourned for a reserved judgment to be provided. This is my reserved Written Judgment. When determining the issues dealt with in this Judgment, I have considered the parties' written and oral submissions made as well as the content in their affidavits/affirmations and exhibits.

Application - GCR Order 2, Rule 2(2) – Delay

76. The mother submits that the father's application to set aside the Order for irregularity, an order which she does not agree was made improperly, should not in any event be allowed as it has not been made within a reasonable time and because the father has taken fresh steps after he became aware of the irregularity. The Order was made on 9 February 2021 and the present application was made on 27 December 2024, so over three years and ten months later.

77. When the father received the Order after it was sealed he did not seek to challenge the content of the Order nor the fact that it had been approved on the papers. He did not seek a discharge of his undertaking. He did not seek to challenge the Order about four weeks later at a mention hearing held on 4 March 2021 which he did not attend. In fact, he did the opposite. He voluntarily took a significant active step pursuant to his undertaking recorded in the Order when, on 11 March 2021, he signed the transfer form for the outright transfer of the Property to the mother. The father did not seek to challenge the Consent Order when he took the next step in the Children Act proceedings after Cayman Family Law came on the record to represent him on 8 January 2024 and when he issued a Form C3. In the Form C3 the father sought s.10 child arrangement orders. He did not seek to challenge the Order at the time that the mother filed a Form C9 on 13 February 2024 restoring her Schedule 1 application for child maintenance or when directions were given by Richards J in relation to both the financial Schedule 1 and s.10 child arrangements proceedings on 27 February 2024. In fact, in the affirmations filed in April 2024 concerning those Children Act proceedings,[45] the father set out his accurate understanding relating to transfer orders that could and could not be made in Schedule 1 proceedings and his reasons why he still agreed to make an outright transfer to the mother. At no time has the father sought to appeal the Order.

[45] For example, see paragraphs 52-56 above.

78. The father when countering the delay issue states that he could *"find no record"* of the emails having been sent to him before he signed the Order and that he was *"totally unaware"* of the communications when he signed the Order. He said that he was unaware of the email of 5 February 2021 which contained my comments about the first draft of the Order, and he first became aware of the communications when he saw an email from Ms. Brooks KC sent on 6 November 2024. I have already found in this Judgment that this is an incorrect assertion.[46]

79. When addressing the delay issue the father states that since 28 January 2021 he has been a litigant in person. That is not strictly correct because on 8 January 2024 Cayman Family Law filed a Notice of Appointment to represent him in Children Act proceedings. An application for child arrangement s.10 orders was filed on his behalf by those attorneys on 9 January 2024. On 13 February 2024 the mother restored the adjourned Schedule 1 periodical payment proceedings by filing a Form C9 Application. The parents' applications came before Richards J on 27 February 2024. In her Order, the Learned Judge made s.10 child orders and gave directions concerning the Schedule 1 proceedings. Cayman Family Law represented the father's interests at the s.2 and Schedule 1 proceedings at that hearing. I note that, at a time when the Schedule 1 proceedings had been restored and at a time when the father had legal representation, no step was then taken by the father to challenge the Order. There is no Notice on file to inform when Cayman Family Law came off the record, but it appears that they did so before the father filed his Second affirmation on 8 April 2024. The father said that they came off the record because he did not wish them to be retained in relation to the Schedule 1 proceedings and because the s.10 proceedings had concluded with a Consent Order.

80. The father raises his ill-health when trying to address the delay. He states that from at least 2017 he has suffered from alcohol abuse disorder, which he says has seriously affected his ability to give any detailed consideration to the issues which he might have been able to raise earlier than December 2024 when he filed his Summons to set aside the Order. The Inpatient Physician Notes dated 15 January 2021 refer to his liver conditions caused by his alcohol use disorder and to his *"major depressive disorder"* but also record that he was *"alert and rational"*. The content of his affirmation evidence set out and commented upon at paragraphs 52-56 above illustrates that he was able to, and did, think carefully about the terms of the Order at the time, and that the undertaking recorded in the preamble in the Order reflected what arrangement he wished to put in place relating

[46]See paragraphs 35 and 47 above.

to the Property, despite realising that it was a departure from the orders that the Court had the jurisdiction to make. From the wording in his affirmations he, at the time when he signed the Order, understood the jurisdictional reason why he was offering an undertaking and his reasoning for agreeing to the *"absolute"* transfer. These affirmations were sworn around seven months before the father brought the present application. I note, at paragraph 6 in his first affirmation affirmed on 6 February 2024 that the father stated that he was sober until a relapse in June 2022 and that he had been sober since March 2023 when his health improved. However, I also note that on 15 July 2022 the father, who was unrepresented at the time, felt able and had sufficient understanding and mental insight to initiate civil proceedings against the mother by filing a Writ of Summons with Statement of Claim in Civil Cause G2022-0152.[47] I also note that on 21 May 2024, also almost seven months before he filed his Summons to set aside the Order, the father also had sufficient understanding to initiate civil proceedings against the mother by filing the Originating Summons in Civil Cause Number G2024-0141.[48]

81. I am satisfied that the father clearly had the mental capacity to file the present proceedings well before December 2024. In fact, it is evident that: (i) about a week before the signed initial draft of the Order was filed; (ii) about 12 days before the father's Notice of Acting in Person removing KSG as his attorneys was filed; and (iii) about 25 days before the signed Order which the Court approved was filed the medical report was indicating that the father was alert and rational.

82. As already highlighted herein the father is a very experienced senior litigator. Although he was representing himself in Children Act proceedings, he would, from his many years in practice, have amassed considerable knowledge about the Grand Court Rules. In February 2021 he knew what detail was contained in the preamble and in the order parts of the Order which he signed. If the Order was as he argues sealed by means of a purely administrative procedure, he would be expected to have known the GCR governing that and could have either refused to sign the Order, sought a discharge of the undertaking, or made a challenge to the sealed order based on irregularity within a reasonable time frame. Instead, the father, consistent with his undertaking recorded in the preamble in the Order, took the next step when he signed the Land Registry Property Transfer Form. The father did not require any experience of family law work to realise at the time of his

[47]See paragraph 46 above.
[48]See paragraph 56 above.

signing and the submission of the second draft of the Order in early 2021 that he was a litigant in person and that if an administrative procedure had been adopted that may make the Order irregular.

83. The case law on delay is clear that four years would not be a reasonable period of time. In ***Reynolds v Coleman*** (1887) 36ChD, 453 (CA) it was held to be too late after a year to set aside service out of the jurisdiction. In ***Pontin v Wood*** [1962] 1 QB 594 four months was held to be too late to apply to set aside service of a writ claiming *"damages for personal injuries"*. There is nothing extraordinary in this case which would make a departure from the above time period to four years to be deemed a reasonable period of time.

84. The Court of Appeal were at pains to point out in ***Birch*** that the cardinal principle of final orders being final in order to achieve finality is a long and correctly held principle which the family courts have been right to be alive to in order to achieve finality. This is a factor when one considers the delay and the need for finality concerning the arrangement that the parties agreed to in relation to the transfer of the Property, and the fact that shortly after the father gave his undertaking, they both processed the transfer documentation. In the circumstances of this case, a period of just under four years is not reasonable. On that basis I dismiss the application made by the father in his Amended Summons. However, just in case it is determined that I am wrong in dismissing for delay, I still go on in this Judgment to further consider the merits of the father's application.

The father's position

85. The initial Summons which led to the present Amended Summons was filed in November 2024 at a time when the father had for quite some time prior been expressing a considerable number of historical grievances about his wide-ranging financial dealings with the mother. He has only latterly sought to challenge the Order itself and his transfer of the Property. Despite him giving and then complying with an undertaking to transfer the Property *"absolutely"* to the mother, he is aggrieved as he feels that she has since dealt with the Property in a manner which he feels is not consistent with the interests of the children and because she has renewed an application for periodical payments from him. The father almost four years later seeks to now challenge the Order he signed which contained his undertaking based upon his newly raised criticism about the manner in which the Order was approved.

86. The father contends that *"there can be no argument"* that the Property transfer application was disposed of by the Order and that the Court's order was an order transferring the Property. The father says that because the Order contained his undertaking to transfer the Property to the mother and because it directed that the outstanding aspects of the Schedule 1 claim were adjourned to be dealt with in Chambers. He adds that:

> *"...it goes without saying, that the Consent Order dealt with and disposed of the Property Transfer Application and any attempt to now argue to the contrary flies in the face of logic."*

87. The father says that the fact it was an undertaking that was recorded in the Order means that the nature of the undertaking changes from a promise to a part of the Order and therefore the Property transfer is a part of the Order. Although I accept that by the father giving the undertaking which was recorded in the preamble of the signed Order there was obviously no need for the parties to argue, or for the Court to further consider the mother's Property transfer claim, I do not agree that the 'honed in' direction adjourning only the outstanding aspects of the Schedule 1 application supports a contention that:

> *"Williams J's order was an order transferring the Property."*

As highlighted by me back in February 2021 and as was clearly understood by the father[49]at that time when he signed both the Order and the transfer form to put into effect his wish for an outright transfer of the Property to the mother, the Grand Court does not have the jurisdiction to make an order transferring the Property to the mother in Schedule 1 proceedings. As the father characterises the order made by the Court as being a property transfer order made by the Court and not simply a direction adjourning proceedings, he contends that it is *"obvious"* that the Order was made *"improperly"* and is therefore *"irregular"* and:

> *"**must** be declared null and void and set aside in its entirety."*

88. As highlighted at paragraph 3 above the father argues that the procedure which was adopted to process the Order was an administrative one and is therefore governed by the provisions of GCR

[49]As per his earlier understanding as to limits to the Court's jurisdiction under Schedule 1 set out in his two April 2024 affirmations.

O.42, r.5A. He contends that that Rule applies to proceedings brought under the Act. He refers to r.2.1 of the Children Act (Grand Court) Rules, 2013 which provides:

> *"2.1. Application of other rules*
>
> > *"(1) Subject to the provisions of these Rules and of any enactment, the Grand Court Rules shall apply, with the necessary modifications, to family proceedings in the Grand Court.*
> > *(2) For the purposes of paragraph (1), any provision of these Rules authorising or requiring anything to be done in Children Act (as amended and revised) Rule 2.2 Children Act (Grand Court) Rules (2024 Consolidation) Page 10 Consolidated as at 31st December, 2023 c proceedings shall be treated as if it were, in the case of proceedings pending in the Grand Court, a provision of the Rules of the Grand Court.*
> > *(3) Subject to the provisions of these Rules and of any enactment, the Children Act (Forms) Rules (as amended and revised) shall apply, with the necessary modifications, to proceedings under these Rules."*

89. The father submits that it is *"trite law"* that all judgments and orders not expressly provided for in GCR O.42, r.5A(2) can only be made if the parties appear before a Judge at a hearing fixed for the determination of the application and cannot use the *"Administrative Approval Procedure"*. The father submits that in the Order, the Court made an order against a parent for financial provision under Schedule 1 of the Act, and that such an order would not be included under GCR O.42, r.5A(2).

90. The father states that *"bizarrely and completely nonsensically"* it may be contended by the mother that the Order did not deal with or dispose of the Property Transfer application. He referred to the fact that the Summary Court had transferred the proceedings to the Grand Court as they involved a Property Transfer Application. He said that prior to the making of the Order *"in clear and flagrant breach"* of Practice Direction No.2 of 2014, there were communications between the Applicant's attorneys and me:

> *"as to the form of order which the learned Judge indicated he would be prepared to make to deal with the Property Transfer Application."*

91. The father's evidence set out at paragraph 8 in his affirmation sworn on 7 February 2025 states:

> *"As if it was not enough for Williams J to confound his failures to observe the **mandatory requirements** of GCR O42, r5A, his failure to ensure that his direction contained in his secretary's email of 5 February 2021 that I be put on notice of the communications which were*

taking place between him and McGrath Tonner in relation to the wording of the Consent Order is unconscionable. Although McGrath, may must be ascribed the majority of the responsibility for me being excluded from their ex-parte exchanges with Williams J, after having been given a direction that I should be informed about them, Williams J.'s failure to ensure that his direction had been complied with is Judicial Incompetence and a fundamental reason as to why the Consent Order should be set aside. That failure led to the obvious and deliberate breach by McGrath Tonner and the Applicant of the provisions of PD No.2 of 2014 prior to the making of the Consent Order and, is, to put it at its lowest, unfortunate. In this affirmation, I will refrain from describing what it could be described as at its highest."

92. The father goes on to say that he executed that order which was drafted by McGrath Tonner and which he says, in bold print and underlined at paragraph 9 in the same Affirmation, was:

"incorporating the wording which had been suggested by Williams J."

In fact, in the email sent out by my Personal Assistant, I did not suggest the wording to be used nor that there could be an undertaking given. When refusing to approve the initial signed draft order in which the parties had asked me to order that there be an outright property transfer to the mother my Personal Assistant shared my following comment in her email:

"One option might be to have the property transfer in the preamble (not a part of the Order itself)." [50]

93. Although no concern was raised by the father in the period from February 2021 to, at the earliest, the middle of November 2024,[51] he places great reliance on the fact that he was a litigant in person at that time. He says that the making of the Order does not comply with GCR O.42, r.5A(4) as the Administrative Approval Procedure cannot be used when either party is a litigant in person. He says in his Affirmation affirmed on 7 February 2025, in support of his application that the Order should be declared null and void and be set aside, that the GCR provision is:

*"**mandatory** and **has to be complied with** before the Administrative Approval Procedure can be resorted to, which of course it was not."*

[50] My emphasis by underlining.
[51] First mentioned in his email to Mrs. Robinson on 20 November 2020.

94. The father also highlighted GCR O.42, r.5A(3) which states that a Consent Order must be indorsed by attorneys acting for each party and it was only indorsed by McGrath Tonner as he was unrepresented. He contends that is a *"mandatory"* provision.

95. The father refers to the statements made by Segal J in judgment in ***Trina Solar Limited*** delivered in December 2020 at paragraphs 86 and 87 where Segal J states:

> *"86. I accept the dissenting Shareholder's submission that the Court does not have the power to disapply GCR O.62, r 18(1)…. In my view, GCR O.62 r17 does not give the Court the power to override and ignore the specific terms and directions set out in GCR O62, r18(1) ….GCR O62, r18(1) is in mandatory terms ….;*
>
> *87…. "I have a great deal of sympathy with the sentiments …… But it is not open to a judge of this Court to change the law and ignore the clear and mandatory terms of the GCR's."*

96. The father also refers to the judgment of Kawaley J ***In The Matter of Atom Holdings*** dated 8 March 2023 where the Learned Judge commented at paragraph 16 in relation to GCR O.2:

> *"I had never previously considered that Order 2 could be deployed to contend, in effect, that the Court possessed inherent jurisdiction to dispense with requirement of any rule so that the use of "shall" should in all cases be construed as having directory as opposed to mandatory effect. It was impossible to accept so broad a proposition."*

97. The father concludes that:

> *"In a somewhat alarming display of ineptitude, Williams J., after liaising with McGrath Tonner and excluding me from the communications passing between them, breached or ignored not one but three of the provisions of GCR Ord 42, r5A when he made a consent order."*

The mother's position

98. The mother contends that recitals do not form part of what the Court has ordered if the recital consists of an obligation on a party which the Court does not have the jurisdiction to make. In support of this contention the mother refers to the extract from Chapter 23.43 of Rayden and Jackson on Divorce Issue 35 and the English High Court Family Division case of ***BSA v NVT*** [2020] EWHC 2960 (Fam). In that case the parties, parents of two children, had a consent order

outlining financial provisions including a housing fund for the mother. The father failed to provide the housing fund prompting the mother to seek enforcement of the order. The father appealed challenging the enforcement of recitals in the consent order. He argued that the matters said to have been breached by the father were recitals to the relevant consent order and were not terms ordered by the court itself. He added that they only established contractual terms which might be enforceable in civil proceedings. He went on to say that those matters went beyond the allowable orders the court might make in Schedule 1 proceedings. In ***BSA***, Williams J considered precedents which indicated that recitals can be enforced as if they were part of the formal order and, if they align with the Court's jurisdiction, to make similar orders. Williams J found that the recital regarding the housing fund fell within the Court's power to settle property for the benefit of the child under Schedule 1 when he stated at paragraph 37 in his judgment:

> *"The recital to the December 2018 order fell squarely within what was lawfully permissible under Schedule 1. I accept the submissions made by the mother that this analysis accords with Chapter 24.43 of Rayden and Jackson on Divorce which states that, "where an order of the court consists in part of a recital containing an agreement imposing an obligation on a party, and in part an order, the recital may be enforced provided the court would have had jurisdiction to make an order in like terms."* [52]

Therefore, it is clear that consent order recitals are enforceable in the same manner as formal orders if they align with the Court's jurisdiction. The Court does have discretion to enforce recitals that fall within its power to make similar orders.

99. The mother rightly highlights, consistent with what I had communicated in February 2021, that the Court does not have the jurisdiction, in Schedule 1 proceedings, to make an order transferring a property outright from one parent to another. Therefore, she rightly contends that the Court could not make an order in the terms of the undertaking given by the father which was recorded in the recital in the Order. She is right when she submits that this means that the undertaking *"cannot and does not form part of what the Court ordered"*. She rightly states that what the Court ordered was the adjournment of the father's application made pursuant to Schedule 1 for periodical payments.[53] The mother correctly asserts that there was no need to pursue a property transfer application as the father had agreed to transfer the Property to her. The mother states that, if the Order were to be set

[52] My emphasis by underlining.
[53] See paragraphs 36, 40 and 87 above.

aside, it would only be the adjournment provision relating to periodical payments which would become null and void.

100. When I reach the above conclusions I note the father's below comments. He says in relation to the mother's contentions that:

> *"The unreality of these propositions almost defies description and flies in the face of Supreme Court authority."*

The father argues that the only jurisdiction the Court had to dismiss or deal with the Property transfer application was under Schedule 1, and that the Court must put the parties back in the position that they were in before the Court *"wrongfully"* made the Order. He states that a property adjustment order was sought in the Form C9 Schedule 1 application made by her and that he gave his undertakings in those proceedings and he did not make a freestanding voluntary transfer. The father contends that it is a *"preposterous submission"* and *"non-sensical and flying in the face of logic"* to argue that the Court did not deal with the Property transfer application but only adjourned the periodical payments application. He said that the mother and her advisers must have informed the Stamp Duty Commissioner that the transfer was made by the Order to enable her to pay zero stamp duty, and that if she is now arguing that the transfer was not made pursuant to the Consent Order, she has defrauded the Cayman Islands Government in relation to duty that should have been paid. Of course, whether or not the mother has failed to pay stamp duty which she should have paid if she informed the Commissioner that the transfer was a request by the father to make the transfer pursuant to the Act,[54] is not a matter for this Court to determine. Whatever statements may have since been made by the parties in affidavits/affirmations or to other persons does not mean that there should be a finding that the transfer which the father undertook to make and processed was made pursuant to the Court's jurisdiction under Schedule 1. The Court made it abundantly clear at the time that it would not order such a transfer as it did not have the jurisdiction to do that. If the parties have post the Order misrepresented in official Land Registry forms/pleadings that the Court made an order for the transfer or if the Stamp Duty Commissioner has wrongly reached such a conclusion after reviewing the Order, that does not change the fact that the Court did not make that Order. The Court only approved the Order as it was not an order for the transfer of the Property but

[54]The Transfer Form RL1 signed by the parties includes the typed entry that the transfer is *"Pursuant to the Consent Order made by the Grand Court in Fam 263 of 2020"*.

reflected the father adopting the well-trodden course seen in many family law cases[55] where the Court does not have the jurisdiction to make certain orders namely, by giving an undertaking to enable the arrangement the parties then still wished to put in place to proceed.

101. The father highlights, when addressing the mother's submissions, a comment in the mother's affidavits which she says that the transfer was done *"as a part of the Schedule 1 Children Act proceedings"*. He also highlights comments made by her former attorney, Ms. Brooks KC in an email sent on 6 November 2024 when she said that the transfer was:

> *"pursuant to my undertaking in recital to the consent order"* and that: *"the property transfer application was dealt with by the consent order."*

The father highlights the wording in the first draft of the consent order which the Court refused to approve which stated that the transfer in that order was in satisfaction of an application for a transfer of property. However, that is irrelevant because, at that stage, both parties appeared to wrongly hold the belief that the Court had the jurisdiction to make the transfer order which they were both inviting the Court to approve in that errant draft.

102. The Mother says that the father, despite his legal qualifications and experience, should be treated as being a litigant in person and, therefore, the Court did not have the power to make the Order pursuant to GCR Order 42, Rule 5A. However, even if the father is right in saying that the Order was approved adopting the administrative procedure and even if the father's initial summons had been filed in a reasonable timeframe, that does not necessarily mean that such an irregularity would result in the Order being set aside. The Court when considering the circumstances of the case may have regard to the extensive legal experience that the father can be expected to have an in-depth knowledge of the GCRs which are the Rules upon which he grounds his challenge to the Order. The Court should also consider what was the order made. Was it only an order to adjourn the periodical payments application or does the undertaking which the father gave for him to do something that the Court did not have the jurisdiction to order him to do, which was recorded in the preamble to the Order, become part of the order to such an extent that it would be in effect discharged, in circumstances where the father complied with his undertaking well over three years ago? I have found that the order made was only a case management order. I have found that I exercised my discretion when making the order and therefore it falls within the type of order

[55] See paragraph 41 above and the Court of Appeal ruling in ***Birch***.

highlighted by Segal J in ***In the Matter of Trina Solar Limited***[56] and it was an order made administratively and so GCR Rule 5A does not apply.

103. Interestingly, the majority of the GCRs do not apply to the majority of Family Law cases heard in the Grand Court. This is because GCR O1, r. (4) provides that, save for a few rules set out therein, the GCRSs shall not apply to any proceedings which are governed by the Matrimonial Causes Rules (2005 Revision). Those proceedings would include property transfer orders where the Court must have regard *"first of all"* to any relevant child's interests. I, of course, accept that the Matrimonial Causes Rules do not apply to these Children Act proceedings. I note that Part 2 Preliminary of the Children Act Rules, under the heading "*Application of Other Rules*" provides:

> *2.1. (1) Subject to the provisions of these Rules and of any enactment, the Grand Court Rules shall apply, with the necessary modifications, to family proceedings in the Grand Court.*
>
> *(2) For the purposes of paragraph (1), any provision of these Rules authorising or requiring anything to be done in Children Act (as amended and revised) proceedings shall be treated as if it were, in the case of proceedings pending in the Grand Court, a provision of the Rules of the Grand Court.*
>
> *(3) Subject to the provisions of these Rules and of any enactment, the Children Act (Forms) Rules (as amended and revised) shall apply, with the necessary modifications, to proceedings under these Rules.*

104. The mother highlights Section 86 of the Act which states that the Rules Committee may make rules for giving effect to the Act. She then refers to Rule 1.5 in the Children Act (Grand Court) Rules (2024 Consolidation) which is headed "*Court's duty to manage cases*." Rule 1.5 mandates that the Court must further the overriding objective by actively managing cases. Rule 1.5 (2) (f) states that active case management includes "*helping the parties to settle the whole or part of the case."* That is precisely what the Court did after reviewing the first draft consent order and then offering suggestions to the parties to enable them to record the transfer arrangement that they were seeking in that draft. Rule 1.5 (2) (j) states that active case management includes dealing with the case without the parties needing to attend at court. Again, this is precisely what the Court did when it approved the latter draft order on the papers which contained the agreed order to adjourn the

[56] See paragraph 38 above

periodical payments Schedule 1 application[57] and which recorded in its preamble that the father was undertaking to transfer "*absolutely"* the property to the mother. It is rightly submitted that the powers of the Family Court under Rule 1.5 and 1.6(3) are equivalent to those adopted by Judges sitting in the Financial Services Division under the FSD Guide and which Segal J relied upon when finding that the Court could approve an order without a hearing and when he distinguished such an approach to the administrative approach which is taken when a non-judge is processing an order.[58]

Conclusion

105. For the reason given above, I do not make the orders sought by the father in the Amended Summons. I do not find that the Order should be declared null and void and of no effect nor that it be set aside.

Costs

106. In their email dated 26 May 2025, to which the mother's attorneys attached their comments concerning the draft judgment, they stated that they would "*appreciate it"* if I included my views on costs in the final version of the Judgment. In their skeleton argument they wrote *"As the Court had previously indicated to the parties that it will reserve judgment in this matter after the hearing of the Application on 1 & 2 April 2025 the Applicant would submit that submissions on costs would more appropriately be made once judgment is delivered.*" Therefore, the parties should submit any written submissions they wish to make in relation to costs within 14 days of the circulation of this Judgment. I will consider any costs application, if made, on the papers. I dispense with the need for a costs summons to be filed.

Foot note – Jurisdiction of the Summary Court to determine applications for property transfer orders brought under Schedule 1 of the Act

107. These proceedings involve an unmarried couple and therefore would ordinarily have been heard in the Summary Court where the Schedule 1 proceedings were correctly initially issued. As noted at paragraph 18 above, the Learned Magistrate transferred the proceedings to the Grand Court seemingly because she felt that the Summary Court did not have the jurisdiction to deal with the transfer applications. There appears to be an incorrect belief that such matters cannot be heard in

[57] Rule 1.6 (3) (c) provides that the court is able to adjourn a hearing as one of its general powers of case management.
[58] See paragraphs 38 and 103 above.

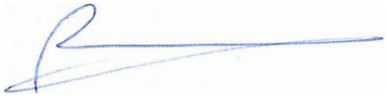
the Summary Court. This has likely arisen due to the inaccurate wording that is found in the Form C9 - Supplement for an application for financial provision for a child or variation of financial provision for a child. At paragraph 1 in that Form it states "*Applications concerning transfer of property, settlement of property or secured periodical payments can only be heard in the Grand Court."* This Form mirrors the form created and used in England and Wales. In that jurisdiction, paragraph 1 in Schedule 1 restricts the making of property transfer orders to only the High Court or to a County Court. Schedule 1 in our Children Act provides that "*the court*" can make a number of orders set out in paragraph 2 (which includes a transfer of property order). In the Interpretation Section of the Act "*court*" means the Grand Court or the Summary Court. Therefore, despite the incorrect wording in Form C9, both the Summary Court and the Grand Court may receive applications for and make property transfers orders brought pursuant to Schedule 1. The Form C9 needs to be amended to reflect that.

Footnote - Directions about the ongoing Schedule 1 proceedings

108. There remains the live proceedings concerning the restored Schedule 1 periodical payments application made by the mother. Those proceedings were correctly initially filed and issued in the Summary Court, consistent with the Children Law (Allocation of Proceedings) Order, 2013.[59] Due to the circumstances set out in paragraph 107 above, the periodical payment application was also transferred to the Grand Court. If I was seized of the periodical payments application, because the property transfer proceedings have concluded and because no periodical payments orders have been made in the Grand Court, I would likely have remitted the Schedule 1 proceedings back to the Summary Court.[60] However, it is evident that although I have been the Judge seized of the Property transfer application due to my involvement in 2021 when I approved the Order approving the 2021 Order and due to the father's present Amended Summons to set aside the Order, Richards J is seized of both the periodical payments and fairly recently determined s.10 Children Act applications. I note that the Learned Judge gave directions to a final hearing in relation to the periodical payments which was listed to come before her, but that hearing did not proceed on the allocated date. Therefore, rather than usurping Richards J's 'hands on' management of the matter, I believe it to be appropriate that I now remit the remaining Children Act matters back to Richards J for her to

[59]Pursuant to the Children Law (Allocation of Proceedings) Order, 2013, Schedule 1 (and s.10) applications under the Act involving unmarried parents are ordinarily brought and dealt with in the Summary Court.
[60]Pursuant to Order 7 in the Children Law (Allocation of Proceedings) Order, which enables the Grand Court to transfer back proceedings to the Summary Court which had been transferred to the Grand Court if the reason cited by the Magistrate as the reason for the transfer no longer applies.

decide whether she wishes to retain the matter or possibly remit to the Summary Court. It appears that the s.10 'child arrangement' proceedings which came before Richards J have concluded with orders made by her. With that in mind, Richards J would be best able to also indicate, if she deems it appropriate to do so, whether, if those s.10 proceedings were to be restored at later proceedings, that future applications relating to her s.10 orders, as well as the outstanding periodical payments applications, should now be dealt with in the Summary Court.



Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT