



Neutral Citation Number: [2025] EWCA Civ 1071

Case No: CA-2024-000509

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT**  
**SITTING AT THE ROYAL COURTS OF JUSTICE**  
**Mr Justice Francis**  
**[2024] EWHC 740 (Fam)**

Strand, London, WC2A 2LL

Date: 07/08/2025

**Before:**

**LADY JUSTICE KING**  
**LORD JUSTICE MOYLAN**  
and  
**LORD JUSTICE SNOWDEN**  
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**Between:**

**JENNY ALZENA HELLIWELL**

**Claimant/  
Respondent**

**- and -**

**SIMON GRAHAM ENTWISTLE**

**Defendant/  
Appellant**

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**Deborah Bangay KC & Lydia Newman Saville** (instructed by **JMW Solicitors**) for the  
**Appellant**  
**Lord Faulks KC & Jennifer Palmer** (instructed by **Payne Hicks Beach Solicitors**) for the  
**Respondent**

Hearing date: 19 March 2025  
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## **Approved Cost Judgment**

This judgment was handed down remotely at 9am on 7 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**This is a judgment of the Court:**

1. This is the Appellant's application for costs, his appeal against the order of Francis J of 20 March 2025 having been allowed and the matter remitted to the High Court for an assessment of the Appellant's needs.
2. The Appellant seeks orders for costs as follows:
  - i) The Respondent shall pay the Appellant's costs of and associated with this appeal summarily assessed on the indemnity basis at £120,522 by **13 August 2025**.
  - ii) Paragraph 5 of the Costs Order of 20 March 2025 be set aside and the Respondent repay to the Appellant the sum of £75,000 by **13 August 2025**.
  - iii) The Respondent pay to the Appellant the costs incurred up to and including 20 March 2025, summarily assessed on the indemnity basis in the sum of £474,318 by **13 August 2025**.
3. The Respondent, whilst accepting in principle that she must pay the costs of the appeal, strongly opposes the application that any costs should be assessed on an indemnity basis and seeks to postpone/delay payment of any of the costs for which she is now liable as follows:
  - i) The Respondent shall pay the Appellant's costs of the appeal, with such costs to be the subject of a detailed assessment on the standard basis, unless the quantum of the same can be agreed and the sum shall not become payable by the Respondent until the later of the following:
    - a) In the event any application for permission to appeal is refused, 14 days after the determination of the Appellant's remitted needs assessment in the High Court; or
    - b) In the event any application for permission to appeal to the Supreme Court is granted, as determined by order of that Court following conclusion of that appeal.
  - ii) The costs of the hearings below (including the Appellant's application to set aside the costs order of 20 March 2025) shall be considered at the conclusion of the hearing to determine the Appellant's remitted needs.

*Standard or Indemnity Costs*

4. This judgment sets out the court's decision on the basis of assessment of costs.
5. The court's power to award costs is found in CPR 44.2. The court has a wide discretion in respect of costs. CPR 44.2(4) provides that in deciding what order to make the court has regard to all the circumstances, including:

“(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention and which is not an offer to which costs consequences under Part 36 apply.”

6. CPR 44.2(5) further provides:

“The conduct of the parties includes -

(a) conduct before, as well as during, the proceedings, and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue;

(d) whether a claimant who has succeeded in its claim, in whole or in part, exaggerated its claim...”

7. The court’s power to award costs to be assessed on the indemnity basis is to be found in CPR 44.3(1)(b). In *Excelsior Commercial & Industrial Holdings Ltd* [2002] EWCA Civ 879 the court held that the making of an indemnity costs order would be appropriate where the conduct of the parties, or other particular circumstances of the case, (or both), was such as to take the case “out of the norm” in a way which justifies the making of an order for indemnity costs (see Waller LJ at [39]).

8. In *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 595 Waller LJ provided further clarification. Having reiterated at [17] that the right starting point is the rules, he went on to say at [25]:

“In my view the word “norm” was not intended to reflect whether what occurred was something that happened often so that in one sense it might be seen as “normal” but was intended to reflect something outside the ordinary and reasonable conduct of proceedings. To bring a dishonest claim and to support a claim by dishonesty cannot be said to be the ordinary and reasonable conduct of proceedings.”

9. We have in mind Waller LJ’s observations and all the factors in CPR 44.2 in determining the Appellant’s application for indemnity costs.

10. The Appellant submits that the court’s conclusion that the Respondent’s failure to disclose a significant proportion of her assets amounted to fraudulent non-disclosure justifies the imposition of indemnity costs both in the Court of Appeal and below. The Appellant also highlights the fact that, at the commencement of the proceedings, he had proposed in correspondence the very outcome which will now take place, namely that

in the light of the Respondent's material non-disclosure, there should be an assessment of the Appellant's needs by reference to section 25 of the Matrimonial Causes Act 1973.

11. The Respondent "fiercely resists" such an approach, setting out features which substantially go to her proposed appeal to the Supreme Court. Those are matters which, it is said, serve to undermine the approach of the Court of Appeal and its finding that the Respondent's non-disclosure was fraudulent.

#### *Decision*

12. The judgment on the substantive appeal sets out why the court considers that the Respondent's deliberate non-disclosure in the circumstances of this case can properly be characterised as fraudulent.
13. In addition, what cannot in any event be disputed is that the Respondent deliberately failed to disclose the majority of her assets notwithstanding that she expressly warranted to the Appellant that she had made full disclosure under the terms of the agreement. She also used the copy and paste email to induce the Appellant to accept, on the basis that her disclosure would be full and frank, that he would not be able to receive legal advice from his lawyers as to that disclosure.
14. Further, and as indicated, the Respondent rejected an offer that she should forego reliance on the pre-nuptial agreement and simply agree to an assessment of the Appellant's needs by reference to section 25 of the Matrimonial Causes Act 1973. Instead, the Respondent chose to maintain, when challenged at the hearing before the judge, that her deliberate non-disclosure was not dishonest and the agreement should stand. She also advanced a number of self-interested explanations relating to her own and her father's tax affairs in an attempt to justify why she had chosen to mislead the Appellant.
15. We do not consider that such conduct can possibly be described as reasonable in relation to the use of a pre-nuptial agreement. Still less can it be regarded as the ordinary and reasonable conduct of proceedings in the Family Division. It was well "out of the norm". In our judgment, this is an entirely appropriate case in which to order costs, both at first instance and on appeal, to be assessed on an indemnity basis if not agreed.