Neutral Citation Number: [2023] EWHC 822 (KB)

Case No: QB-2020-002295

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 March 2023

Before:

HHJ COE KC
(sitting as a Judge of the High Court)

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Between:

JOANNE LEWIS	**Claimant**
- and –	
CUNNINGTONS SOLICITORS	**Defendant**

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- -

Mr J Munro (instructed by **England and Derbyshire LLP**) for the **Claimant**
Miss H Evans KC (instructed by **RPC LLP**) for the **Defendant**

Hearing dates: 15,16, 17, 18 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 31 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ COE KC:

The Claim

1. This is the claimant's claim for damages arising out of the defendant's alleged professional negligence while acting on her behalf in relation to the financial settlement reached with her former husband on divorce. The events with which I am concerned took place between 2012 and 2014. It is the claimant's case that by reason of the alleged negligence she entered into an unfair settlement agreement with her former husband, in particular she did not obtain a pension sharing order and in consequence suffered financial loss in the region of £500,000.

Background

2. The claimant, Joanne Lewis, was born in 1965 and her former husband Paul Mayne is 8 years older. Mrs Lewis had been married before and has two children born in 1982 and 1988 who were treated as children of the family by Mr Mayne throughout the relationship. Mr Mayne also has children from a previous relationship but is and was estranged from them. The couple met in 1990 and Mr Mayne moved in with the claimant in about 1991. She was renting a flat from the local authority. Mr Mayne was a police officer and had been in the force since 1988. The couple married in April 1993 and moved into police accommodation.

3. Mrs Lewis worked as a home care assistant and then began to work for Braintree District Council in about June 2003 as a Benefits Visiting Officer going out to see vulnerable people on state benefits to make sure that they were getting the right benefits and to make sure that their rent and council tax was being paid. She is still in that role. It seems that she did train on secondment to be a fraud investigator for about three or four months.

4. The marriage broke down in 2012 when Mrs Lewis discovered that her husband was having an affair with a younger woman. In consequence, she had an initial consultation with the defendant's Susan Perks on 30 May 2012 before she left the former matrimonial home in about September 2012.

5. Thereafter, following a further attendance on 5 May 2013, Mrs Lewis instructed the defendant to act for her. The written retainer is dated 16 April 2013. As far as the financial matters were concerned, it was set out in the letter that Mr Mayne earned approximately £47,000 per annum gross. He also had a business involving the development of websites. It was set out that Mr Mayne had a private pension of high value such that he would receive a lump sum of approximately £120,000 in 2014, a further lump sum of £67,000 three years thereafter and then a further lump sum together with an annual pension of £22,000. The letter set out that Mr Mayne had asked the claimant if she would accept £2,000 in full and final settlement by way of him buying the furniture and contents of the former matrimonial home. Ms Perks said that she could not advise the claimant to accept that offer "even without yet having had sight of [Mr Mayne]'s disclosure!"

6. The retainer letter also details the ways in which financial disputes might be settled namely, direct agreement between the parties, mediation, collaboration and the traditional court-based system.

7. By letter dated 7 November 2013 Ms Perks indicated to the claimant (pursuant to an enquiry from her) that she could agree a settlement directly with Mr Mayne but that if the claimant did that, Ms Perks would not be able to advise her or confirm to the claimant whether or not the terms of the settlement were fair and reasonable.

8. On 26 February 2014 the claimant wrote to Ms Perks to say that she and Mr Mayne had agreed a settlement in respect of the financial matters on divorce whereby he would pay her £62,000 (later identified as being less the sum of £11,500 already paid by Mr Mayne) on a clean break basis and with the claimant agreeing to sign over an endowment policy which was in both names valued at £15,551.73 with a maturity value of £31,000 in three years.

9. Ms Perks responded on 4 March 2014 to say that she could not comment on whether or not such agreement was fair or reasonable in the absence of financial disclosure and that she would need the claimant to sign and return a disclaimer confirming that the claimant understood that she had not been given any advice in relation to financial matters and that because there had been no financial disclosure Ms Perks "could not advise whether or not the settlement was fair and reasonable". The claimant signed the disclaimer on 11 March 2014.

10. In April 2014 Ms Perks left the defendant's employment and Ms Jill Wiggins took over the claimant's matter.

11. Prior to a consent order being drawn up to reflect the claimant's agreement with Mr Mayne, there was an exchange of statements of financial information ("SOFI"). These revealed that the cash equivalent transfer value ("CETV") of Mr Mayne's pension was £540,712.60 and he had a total capital therefore of £590,712.60. The defendant assessed that the claimant had a negative asset figure of £-4,525.03.

12. On 27 July 2014 the claimant signed a consent order and sent it to the defendant. The consent order was sealed on 14 August 2014.

13. It seems that whilst on the Internet some years later Mrs Lewis saw an advertisement offering to investigate potential claims on behalf of those who felt that their settlement on divorce may not have been fair and so she contacted "Divorce Lifeline". This is how she ultimately came to instruct solicitors to bring this professional negligence claim.

The Parties' Cases in Summary

14. At the heart of the case is a dispute between the parties as to the scope of the defendant's retainer.

15. It is the claimant's case that the settlement she reached with her husband was so obviously unfair (whether or not there had been full financial disclosure) on the basis of

what was known about Mr Mayne's pension and the parties' assets at the time that she should have been advised to apply for a pension sharing order and that Form P should have been sent to Mr Mayne or his solicitors or his pension provider. It is the claimant's case that the defendant was negligent and wrong to say that in the absence of full financial disclosure it could not advise her. This was a long marriage (20 years plus about three years cohabitation) and Mr Mayne's pension was clearly the largest asset. Moreover, the defendant knew that Mr Mayne was about to draw down the pension and that the claimant had minimal pension provision. It is the claimant's case that a court would have made a 50% pension sharing order. On the basis of the figures now agreed between the actuaries, (subject to my decisions as to the principles to be applied), Mrs Lewis's claim has a value of between £422,000 and £536,000. She received £62,500 (including payments already made by Mr Mayne) less the value of half of the endowment policy being about £7,500 at the time of the agreement or £15,000 three years thereafter. Mr Mayne had the benefit of that increase in the value of the policy. In other words, she received something in the region of 10% of the value of what she says she would have been entitled to.

16. It is also the claimant's case that she was at the time vulnerable because she was suffering from depression and stress, she had been intimidated by and was scared of Mr Mayne and he had been bullying her and putting pressure on her to settle her claim at a significant undervalue. It is argued on behalf of the claimant that she was unsophisticated and that the defendant should have been aware of the pressures she was under and that vulnerability. It is the claimant's case that the defendant knew that: the police had been called to the matrimonial home on more than one occasion; that the claimant was seen to be visibly distressed; that she said that she was scared of her former husband; and that it was apparent that he was attempting to settle at a very low sum, such that the defendant should have been fully aware of the claimant's vulnerability.

17. The defendant contends that it advised the claimant as to the parties' respective total capital and that the starting point for dividing matrimonial assets was 50-50. It also says it advised that a pension sharing order could be considered and had suggested that the proposed settlement was unlikely to be a good deal for the claimant. Thus, while the defendant's primary position is that the claimant agreed in principle to the proposed settlement without any involvement by the defendant and in the absence of financial disclosure, causing the defendant to tell the claimant that it was unable to comment on the fairness or reasonableness of the settlement, to the extent that it did owe a duty to advise in relation to the settlement, it discharged that duty. The defendant caused the claimant to sign a disclaimer, if she chose to accept the settlement and relies on that disclaimer, too.

18. The defendant argues that the claimant's instructions were specifically not to pursue full financial disclosure and that she chose what the defendant describes as "option one" from the factsheet provided to her, namely direct settlement negotiations with Mr Mayne. It submits that she knowingly signed a disclaimer recognising that she had not been given advice about a settlement and that she did not wish for there to be full and frank disclosure. It is the defendant's case that the claimant was fully aware of the disparity between the parties' assets and in particular the size of Mr Mayne's pension and that she was aware that after a long marriage a court's starting point would be a 50-50 division

and that there could be a pension sharing order. The defendant argues that its retainer was limited in scope to the implementation of the consent order and that it fulfilled that duty. The defendant denies that it owed the claimant a duty to tell her what to do.

19. The defendant further argues that even had she been advised to apply to court for a pension sharing order, the claimant had made up her mind to "get rid" of Mr Mayne and had "had enough" and would have pursued the settlement agreement in any event. The defendant relies further on the claimant indicating that she was not able to afford to pursue the matter further. The defendant also raises allegations of contributory negligence on the basis that, given the limited scope of its retainer, some liability should fall on the claimant for any unfair outcome.

20. The defendant disputes that the claimant was vulnerable or unsophisticated and further disputes that it knew or ought to have known that she was subject to any undue pressure, let alone bullying or intimidation.

Law

21. In terms of the law which applies in this case, I accept as set out below the relevant principles cited to me from the key authorities and the leading textbooks in relation to some of the issues I have to decide.

22. Of course, the claimant brings the claim and I remind myself that the burden is on her to satisfy me on the balance of probabilities in respect of the nature and scope of the duty that she was owed, that the defendant breached that duty and that in consequence of that breach, she has been caused financial loss. It is for her to establish the quantum of that loss.

23. In relation to a solicitor's duty of care and the scope of that duty I was referred to *Minkin* v *Landsberg* [2016] 1 WLR 1489 where Jackson LJ summarised the principles as follows:

    i. "A solicitor's contractual duty is to carry out the tasks which the client has instructed and the solicitor has agreed to undertake.

    ii. It is implicit in the solicitor's retainer that he/she will proffer advice which is reasonably incidental to the work that he/she is carrying out.

    iii. In determining what advice is reasonably incidental, it is necessary to have regard to all the circumstances of the case, including the character and experience of the client.

    iv. In relation to iii), it is not possible to give definitive guidance, but one can give fairly bland illustrations. An experienced businessman will not wish to pay for being told that which he/she already knows. An impoverished client will not wish to pay for advice which he/she cannot afford. An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client.

v. The solicitor and client may, by agreement, limit the duties which would otherwise form part of the solicitor's retainer. As a matter of good practice, the solicitor should confirm such agreement in writing. If the solicitor does not do so, the court may not accept that any such restriction was agreed."

24. In relation to this last principle, (v), Jackson LJ went on to say:

> "In respect of proposition (v), I am somewhat more cautious in my formulation of the principle …There are many situations in which the client cannot afford to pay for all the relevant research and advice that the solicitor would be competent to provide. In those situations, the choice may be between a limited retainer or no retainer at all".

25. In *Carradine Properties Ltd* v *D. J. Freeman & Co. (A Firm)* [1999] Lloyd's Rep. P.N. 483, Donaldson LJ stated:

> "A solicitor's duty to his client is to exercise all reasonable skill and care in and about his client's business. In deciding what he should do and what advice he should tender the scope of his retainer is undoubtedly important, but it is not decisive. If a solicitor is instructed to prepare all the documentation needed for the sale or purchase of a house, it is no part of his duty to pursue a claim by the client for unfair dismissal. But if he finds unusual covenants or planning restrictions, it may indeed be his duty to warn of the risks and dangers of buying the house at all, notwithstanding that the client has made up his mind and is not seeking advice about that. I say only that this may be his duty, because the precise scope of that duty will depend inter alia upon the extent to which the client appears to need advice. An inexperienced client will need and will be entitled to expect the solicitor to take a much broader view of the scope of his retainer and of his duties than will be the case with an experienced client."

26. According to *Flenley & Leech on Solicitors' Negligence and Liability* at section 2.32:

> "…whether a finding of negligence is finally made, particularly in those cases where it is said that the advice given on a particular occasion was inadequate, will depend on the circumstances of the particular case".

27. In *Duncan* v *Cuelenaere, Beaubier, Walters, Kendall & Fisher* [1987] 2 WLR 379 the court provided the following guidance:

> "The test to be applied where a solicitor's negligence is alleged will depend on the various circumstances: the sophistication of the client; the experience and training of the solicitor; the form and nature of the client's instructions; the specificity of those

> instructions; the nature of the action or the legal assignment; the precautions one would expect a solicitor, acting prudently and competently, to take; the course of the proceeding or assignment; and the influence of other factors beyond the control of the client and the adviser."

28. In *Pickersgill* v *Riley* [2004] PNLR 31 at [7], according to Lord Scott:

> "It is plain that when a solicitor is instructed by a client to act in a transaction, a duty of care arises. But it is also plain that the scope of that duty of care is variable. It will depend, first and foremost, upon the content of the instructions given to the solicitor by the client. It will depend also on the particular circumstances of the case. It is a duty that it is not helpful to try to describe in the abstract. The scope of the duty may vary depending on the characteristics of the client, in so far as they are apparent to the solicitor. A youthful client, unversed in business affairs, might need explanation and advice from his solicitor before entering into a commercial transaction that it would be pointless, or even sometimes an impertinence, for the solicitor to offer to an obviously experienced businessman."

29. Reverting to the decision in *Minkin* at para.32 it says:

> "The extent of a solicitor's duty to his/client is determined by his/her retainer. The starting point in every case is to ascertain what the client engaged the solicitor to do or to advise upon".

30. And at para 33:

> "The classic formulation of this principle is to be found in *Midland Bank* v *Hett Stubbs & Kemp*, a case concerning solicitors' liability for failure to register an option. Oliver J said:
>
> 'The extent of his duties depends on the terms and limits of that retainer and any duty of care to be implied must be related to what he is instructed to do.
>
> 'The extent of his duties depends on the terms and limits of that retainer and any duty of care to be implied must be related to what he is instructed to do.
>
> 'Now no doubt the duties owed by a solicitor to his client are high, in the sense that he holds himself out as practising a highly skilled and exacting profession, but I think that the court must be wary of imposing upon solicitors - or upon professional men in other spheres - duties which go beyond the scope of what they are requested and undertake to do. It may be that a particularly

> meticulous or conscientious practitioner would, in his client's general interests, take it upon himself to pursue a line of inquiry beyond the strict limits comprehended by his instructions. But that is not the test. The test is what the reasonably competent practitioner would do having regard to the standards normally adopted in his profession...'"

31. Then there is a review of various cases to that effect, Including *Credit Lyonnais* v *Russell Jones & Walker* [2002] EWHC 1310 (Ch) a case where a person:

> "...instructed solicitors in relation to the exercise of a break clause contained in a lease. The solicitors gave correct advice about serving the notice, but failed to advise about the requirement to pay…"
>
> and in which Laddie, J said:
>
> "A solicitor is not a general insurer against his client's legal problems. His duties are defined by the terms of the agreed retainer. This is the normal case although in *White* v *Jones* ... suggests that obligations may occasionally arise outside the terms of the retainer or where there is no retainer at all. Ignoring such exceptions, the solicitor only has to expend time and effort in what he has been engaged to do and for which the client has agreed to pay. He is under no general obligation to expend time and effort on issues outside the retainer. However if, in the course of doing for that which he is retained, he becomes aware of a risk or a potential risk to the client, it is his duty to inform the client. In doing that he is neither going beyond the scope of his instructions nor is he doing 'extra' work for which he is not to be paid. He is simply reporting back to the client on issues of concern which he learns of as a result of, and in the course of, carrying out his express instructions".

32. This is the case even in relation to any "reasonably incidental" matter which arises.

33. In *Minkin* it was considered that the type of thing that tends to be encompassed within the reasonably incidental concept tends to be a duty to warn or a duty to report something as in Credit Lyonnais where, if somebody becomes aware of an issue in the course of carrying out the retainer, it is his duty to inform the client of that risk, as Laddie, J. said:

> "In doing that he is neither going beyond the scope of his instructions nor is he doing extra work for which he is not to be paid, he is simply reporting back to the client".

34. Further it is clear that the solicitor's duty does not take away client autonomy, see *Page* v *Kidd & Spoor Harper Solicitors* [2021] 11 WLUK 294.

35. In relation to contributory negligence in a professional negligence claim, *Jackson & Powell on Professional Liability provides at section 11-348:*

> "Contributory negligence is rarely in issue between an unsophisticated lay client and his solicitor, and it will be unusual for there to be such a finding. In *Hondon Development Ltd* v *Powerise Investments Ltd*, the Hong Kong Court of Appeal suggested that: "contributory negligence by the client may only be successfully raised in very limited circumstances: first, where the lay client is particularly well placed to spot or correct the professional's mistake; second, where the lay client has done something quite separate, which aggravates the consequence of the professional's breach of duty."

36. In dismissing a defence of contributory negligence in *Feakins* v *Burstow*, [2005] EWHC 2441 (QB) Jack, J. held that in a claim of negligence relating to the conduct of litigation:

> "it would be rare for the claimant to be held guilty of contributory negligence."

37. In relation to the assessment of the loss of a chance, I was referred to a passage from a judgment of Lord Evershed, Master of the Rolls in *Kitchen* v *RAF Association* [1958] 1 W.L.R. 563 which provides:

> "If in a case of this kind it is plain that action could have been brought and if it had been brought it must have succeeded, the answer is easy the damaged plaintiff would then recover full amount of the damages lost by the failure to bring the action originally".

38. There is an extract to similar effect from another case *Hanif* v *Middleweeks* [2000] Lloyd's Rep PN 920.

> "If in a case of this kind it is plain that action could have been brought and if it had been brought it must have succeeded, the answer is easy the damaged plaintiff would then recover full amount of the damages lost by the failure to bring the action originally".

39. The parties essentially agree these are the principles but dispute, to some extent, their interpretation, and more significantly their applicability to this case.

The Issue I Raised

40. In the course of the hearing, I raised a query as to whether or not the defendant had asked the claimant if she was alleging that she was the victim of domestic abuse and whether

such a contention would have entitled her to the benefit of public funding. This is not an issue which was pleaded or argued on behalf of the claimant. I thought it best however to indicate that it was something I had thought about. In the event it was not pursued or raised any further and I have been helpfully reminded of the important principles distinguishing an adversarial and an inquisitorial system of determination of legal disputes in particular by reference to the case of *Satyam Enterprises Ltd* v *Burton* [2021] EWCA Civ 287 (paras. 35, 36 and 37). I must and do respect the basis upon which the case is put and I must and will decide it only on that basis. I therefore mention this issue no further and will take no account of it.

Evidence

41. I heard oral evidence from the claimant herself and from Ms Perks and Ms Wiggins on behalf of the defendant. Ms Perks gave her evidence remotely via CVP in light of some health issues. Each side had obtained its own actuarial evidence with regard to the value of Mr Mayne's pension and the parameters of the share which the claimant might have received of that pension. In the event following some further narrowing of issues in out-of-court discussions, the experts (David Lockett for the claimant and Jonathan Galbraith for the defendant) were able to agree figures on four bases depending upon my finding as to the appropriate basis. I did not therefore hear from either expert.

42. There is a very large bundle of documents although not many were referred to in the course of the hearing. I am grateful to counsel for their comprehensive skeleton arguments, case summaries, chronologies and accompanying lists of authorities. More recently (30 January 2023) the defendant's solicitors sent me a transcript of the whole hearing.

43. Mrs Lewis's first statement is at p.285 in the bundle and was made in opposition to the defendant's application to strike out her claim and/or for summary judgement. That application was heard by Deputy Master Fine on 12 February 2021 and was dismissed.

44. In that statement, Mrs Lewis sets out that she instructed the defendant to advise her on her divorce and financial settlement. She did not have any experience in legal or financial matters and so, she said she relied totally on the defendant's solicitors, Ms Perks and Ms Wiggins. She says that she did receive the letter in April 2013, but did not receive the "Resolution options" document. She said that she did not receive the four-page fact sheet setting out the usual steps in a financial remedy application. She understood that the four different methods in which she and her solicitor could approach divorce and financial settlement were described for information only and not that she was being expected to select one of the four options. She understood that there could be a mixture of methods.

45. She said that she spoke to the defendant several times and asked for advice in particular on 5 and 14 November 2013 and 11 and 18 February 2014. She felt under pressure from Mr Mayne to agree a settlement and she wanted guidance. It is her case that each time she spoke to the defendant she was told that they needed further disclosure from her former husband before they could advise whether any proposed settlement was fair. She

acknowledges that she was told that she could reach direct settlement with Mr Mayne but that, if she did that, she would then have to sign a disclaimer to the effect that she accepted that the defendant could not advise her.

46. She says that she was under a great deal of pressure from Mr Mayne, as already referred to above. She set this out in the letter to Cunningtons of 26 February 2014. Ms Perks wrote back to say that she could not advise as to whether or not any settlement was fair and asked her to sign a disclaimer confirming that the defendant did not have sufficient financial disclosure to advise and that she had not received any advice on the merits of the settlement. It is Mrs Lewis's case that she was told that she had to sign the disclaimer to progress with the divorce. She says that she did not feel that she had any choice but to sign it and proceed with the proposed settlement. Matters had been going on for almost a year (and for two years since her initial consultation) and her husband was telling her repeatedly that the deal he was proposing was the best that she would get and that if she refused it, there would be a long and costly court battle at the end of end of which she would not secure a better result.

47. It is the claimant's case that the defendant repeatedly told her that it did not have sufficient financial disclosure to advise. She was under the impression that obtaining the necessary disclosure would be a long and expensive process. She says that she was not advised of any process by which Mr Mayne could be compelled to provide disclosure or to contribute towards her living expenses or legal costs. Therefore, she said she believed that the proposed settlement was the best she was likely to obtain and there was no prospect of obtaining Mr Mayne's financial disclosure in the near future. It was on that basis that she signed and returned the disclaimer. She struck out the third paragraph because it was factually incorrect in that it was Mr Mayne's solicitors who were going to prepare the documentation.

48. She says that Ms Wiggins wrote to her in July 2014 setting out that Mr Mayne's pension had a CETV of £540,712 but that no effort was made to explain the significance of that figure to her. She spoke to Ms Wiggins on 11 July 2014 by telephone which was a brief call. She says she felt locked into the proposed settlement. Ms Wiggins told her in general terms that she should consider obtaining financial disclosure but did not advise as to how that would happen. She was told again that the defendant could not advise her whether the settlement was appropriate or not. She says that she was left with a strong impression that the defendant felt that she should proceed with the proposed settlement because they had no way of finding out whether it was reasonable or not.

49. The defendant wrote to her again on 1 August and the letter seemed to Mrs Lewis to be consistent with the information that it could not advise as to the settlement without more disclosure. Mrs Lewis said whilst she was worried about the reference to the settlement perhaps not being fair, she believed that she had already signed the consent order and the letter said that the consent order had been sent to her husband's solicitors to lodge with the court and so there was nothing to be done to change things at that stage in any event.

50. She says therefore that she agreed to the financial settlement because: she believed it was broadly fair and she would not get a better outcome by going to court; there was no

mechanism to compel her husband to provide his financial disclosure nor to get him to contribute to her legal expenses; that there was not sufficient financial disclosure to advise about whether or not the settlement was fair; that she had signed a disclaimer so that the defendant was under no obligation to advise even if they received sufficient financial disclosure to enable them to do so; and that once she had signed a consent order there was no way to change the settlement or halt the process other than to hope the judge rejected the order as being unfair.

51. In her statement Mrs Lewis goes on to say that she now understands that: she most certainly would have got a better result at court; that the defendant could have obtained financial disclosure at the outset of the matter by completing Forms P and E which are relatively simple and inexpensive processes; that the defendant could have obtained an order; that it did have sufficient information, from July 2014 at the latest, (having received the pension statement), to advise her that the settlement was seriously one-sided and clearly unfair; and that the disclaimer was no longer valid as it was based on the assumption that the defendant did not have and would not have sufficient financial disclosure to advise on the merits of the settlement.

52. She goes on to say that she would have pushed for an agreement which satisfied her claim against Mr Mayne's pension. She said she had no reason whatsoever to accept a settlement from which she retained less than 15% of the matrimonial capital and she only did so because she could not see any better option and she believed that her solicitors could not advise her.

53. Mrs Lewis's second statement (amended to deal with the allegations of contributory negligence) is at p.380A(1) of the bundle. It largely repeats her first statement. In respect of the allegations of contributory negligence she says that the warnings which the defendant contends it gave were inconsistent and confusing about what it thought she should do, but she was left with the understanding that it was not prepared to give any recommendation of any nature after she had signed the disclaimer. Mrs Lewis told me that she was overwhelmed by the amount of information she was given at various points and was emotionally drained. She felt that she was being left to make the final decision all by herself. She did not challenge the settlement even after she became aware of the value of Mr Mayne's pension because she did not think there was anything that could be done better. She felt that the settlement might not be fair but she did not know that anything could be done about that. She says that she does not think it is fair for Cunningtons to say that she should have known this settlement was so poor when it was its case and remains its case that it did not have enough information properly to advise her one way or the other.

54. In her oral evidence Mrs Lewis told me that her job as a Benefits Visiting Officer required her to have a good understanding of the range of benefits available but she would only have to take into account the income of and the fact of the state pension being available to a client. She said she was good at her job but had no experience in divorce or financial matters. In the short time she trained as a fraud investigator she did see some bundles and sensitive material prepared for court, but had not attended a hearing at the Crown Court. She considers herself to be unsophisticated in divorce matters. Mr Mayne

had controlled all the finances. She said that her husband told her "what was what" and when she spoke to the solicitor at Cunningtons, her husband told her what was to be done and she passed that on to the solicitors.

55. By reference to the claim form, she agreed that it was correct where it says that the terms of the consent order were negotiated for the claimant by the defendant. She said it was the defendant who put the consent order forward to the court and told her it was up to the judge to say if it was the correct amount. In fact, (see p.63) the claim form was amended to remove the contention that the defendant negotiated the terms of and drafted the consent order.

56. Mrs Lewis was taken to some of the documents noting her interactions with the defendant. In relation to the initial meeting, she said that she could not remember the conversation fully. Although it is not noted in the attendance note, she said that she would have told Ms Perks that her husband was bullying her because she told everybody that. She said that she did not recall giving the details of Mr Mayne's pension to Ms Perks because she did not know then what his pension was. She said she did not know how much it would be or when he would get it. She did not understand the reference in the note to "if we leave, we have no pension". She said that her husband kept anything to do with his pension at work but that she was going through the paperwork in his study including bank statements when he was away. She does not remember the reference to "Form A" (presumably Form E) in respect of voluntary disclosure. She denied knowing Mr Mayne had a high value pension. She said that her husband had not told her how much he earned but he had on one occasion shouted at her not to cook him mince ever again because he "did not earn £47,000 to eat that".

57. Mrs Lewis did not remember a great deal of the detail of what appears in the attendance note in relation to a 50-50 starting point and maintenance pending suit. She remembered being told that nobody could tell what she would get until it went to court and she was told that it would be expensive to fight but that she might get legal aid.

58. She told me she was not " in a good place" when she found out about her husband's affair. She was referred to the medical records. She said she was in tears in the defendant's office and said that she could not stop crying and shaking and Ms Perks said that she could see that Mrs Lewis was not calm for any part of the time. She was challenged about the extent to which she was prescribed both antidepressants and sleeping tablets but said that she continues to take sertraline and that she had a number of temazepam tablets a month to take when she needed them. She said she would have provided more medical records had she been asked for them and she was not trying to hide anything.

59. When she was taken to the letter from her husband at p.395 she said she did not know when the reference to money being a problem between them had "come up". She went on, however, to set out in some much greater detail than is elsewhere in the evidence the circumstances involving money and her relationship with Mr Mayne. She said that he kept her debit card and gave her money (£120 a week) for shopping and £10 a week for fuel for the car. This caused arguments between them. She thinks that she would have

passed on these details to Ms Perks because she told everybody because it was "horrific" at the time.

60. She said that in fact the police had been called 200/300 times over the years and on one occasion one of the children had called them because they were scared. She said that the information she was giving Ms Perks related to the present time and not the past. She agreed she had said that the police had had to attend three or four times, but she believed she would have said there was "nothing new" in that. She said that because her husband, in his job as a detective chief inspector for the Ministry of Defence, wrote the policy for domestic abuse, these incidents would "not look good for him" and she told me that she was required to tell the police that it was her fault because otherwise his employment would have been affected. She said that Ms Perks never asked about the historical details of the marriage.

61. She explained that there had been some joint savings including some of the claimant's own money which Mr Mayne put into a Scottish Widows account and would not return to her until she contacted Scottish Widows to get the money transferred and when she did that, her husband called her a thief. She reiterated that she was in "a state". She did not accept or believe a word of the remorse expressed by Mr Mayne in the correspondence at p.396. She said that they were only in contact when he wanted to discuss the divorce. He had offered £2,000 for the furniture and nothing else and told her that if she did not take it, she would get nothing.

62. Like many of the other documents Mrs Lewis accepted that the signature on the terms and conditions of business letter at p.404 is hers but she did not remember signing it. She does not recollect the call with Ms Perks noted at pp.405 and 407 and when she was taken to p.B94 she said agreed that it did happen "because it is written down" but could not say that she actually recalled it.

63. She said that she would tell "anyone who would listen" about her depression and the state of her marriage and although she did not recall saying that in this conversation she would have done so.

64. She said that after the separation, sometimes her husband did not pay the £300 per calendar month maintenance but she acknowledges that that is not set out in the note. She asked the solicitor to withhold the details about the police visits because Mr Mayne would be very angry and she did not want to antagonise him. She acknowledged that she probably did understand about Form E although again she does not recollect it.

65. Mrs Lewis was cross-examined at great length, in great detail and robustly. She became distressed on many occasions particularly when being asked about her relationship with her former husband. She was clearly confused at times. She was unable to recall a great many of the details of the documents and history that she was taken to. There were however some matters where she was absolutely adamant as to the accuracy of what she was saying. Some of her evidence was contradictory. She was very ready to agree a lot of points. She accepted the contents of the vast majority of the documents she was taken to, although she had no direct recollection of receiving them. She believed she would have

read the documents she received at the time of receipt even if she does not now remember doing so.

66. She was referred to the retainer letter dated 16 April 2013, which is at p.408 in the bundle. She said she remembered getting this letter and knew it was important and she would have read it carefully, but she does not actually remember, now, reading it at the time. She was absolutely adamant that she had not seen the document at p.G768 which is the "Resolution code of practice" or "Spreadsheet".

67. She said that she would not have known the details of her husband's pension at the first meeting and had to do a lot of recordings of his conversations because he would not let her see any of the financial documentation. She was not sure how she got the figures which appear at p.409 (in April 2013). She said she recorded his conversations with his girlfriend on the telephone using her MP3 player, although obviously she only heard one side of the conversation. She said that she pressed record and went out. She said she did not do this for very long and she thought there were probably five conversations in 2012/2013. This was because she was told she needed proof for adultery. It was during these conversations that her husband told Hannah, the woman with whom he was having an affair, that he had a lot of money that he would be able to give to her.

68. Mrs Lewis said she did tell the solicitor that she was making these covert recordings (again, she was adamant about this).

69. She said that whichever solicitor it was that she saw first their comment was, "oh, he's a police officer so that'll be a big pension". However, in terms of the detail of the pension, Mrs Lewis thinks that it could only have come from the recordings. She says that she only suspected that Mr Mayne had a big pension. She does not recall reading the details which are at p.409 but readily acknowledged that she was sure that she would have read it, it is just that she does not remember doing so now.

70. Again, she says that she was not asked about events earlier on in the marriage. She told me that she understood by this stage (April 2013) the importance of getting financial disclosure, but she never found out any information about the private companies with which her husband was involved.

71. Again, the gist of Mrs Lewis's evidence was that she does not recall reading the details at pp.409 and 410. She repeats that she was “in a very bad place” at the time. By reference to her own experience relating to her own practice at work, she said that she would always ring a client if they had been sent a letter to ask if they received a letter and if they understood it, especially when clients are vulnerable and had “things going on”. This did not happen with her communications from the defendant. She does not recall seeing the documents at pp.764 and 769, which set out details in respect of financial remedy proceedings and the flowchart from the Resolution Code of Practice. In respect of p.G764 however she said that if counsel (Miss Evans KC) said that it had been in the envelope, then it must have been.

72. She reiterated that she did not recall reading the details but she does remember that one of the solicitors told her that without full and frank financial disclosure, they would be unable to say whether or not the settlement was fair. She remembers filling in a form about her own finances, but she did not remember when that was. Again, she has a recollection of being told that a judge could make or reject an order based on a settlement agreement, but she does not know when that was, and she does not remember reading the letter. She agreed that she understood that pensions could be shared, but she did not recall the actual date, when she was told this or when the solicitor said it.

73. When she was taken to her answer to the defendant's Part 18 request at B 98, in which she says that she was wholly unaware up to and including 14 August 2014 that the court could make orders in relation to her husband's pension, including a pension sharing order, she said that she understood that is what she was told by the solicitor, in fact, which was that the judge in "whatever court" could decide whether or how much a pension or finances would or could be distributed. She said therefore that she thought that the answer B 98 was right because nothing was ever "set in stone". It was always "could" and not "would" that she was told. She went on to say that she thought the answer might in fact be wrong, but she did not now know what she had known then.

74. She acknowledged that the document (the retainer letter), at p.412 says, "the courts have wide powers to make orders dealing with many assets such as pensions, property, share savings and policies" and that if she had read it, then she would have known it. She then went on to say that she did not read it. She said that she was told that the court was there to help if an agreement could be reached.

75. She agreed that she would have said to the solicitor that her husband would not allow mediation to happen, but again she was unable to say when she said that. She told me that mediation would not been attractive because it would have been "torture".

76. She felt that her husband's reaction to a discussion about financial settlement would have been to tell her that she was "a silly girl" and that she should "come to her senses". She agreed, therefore, that if mediation was mentioned, she would have said "no" because the husband would not "allow" it.

77. It was apparent that Mrs Lewis had difficulty in distinguishing between conversations with Ms Perks and Ms Wiggins and could not definitely say which of the two it was that any of her conversations or interactions happened with.

78. She set out her recollection that the cost of going to court might be between £2,000-£10,000 and did not remember the figure of £25,000 when it was put to her. She agreed that she had to pay the solicitor's bills in order to continue to receive advice and paid £500 in order to discuss the correspondence from her husband in about June 2013 and she said that her sisters, Jane and Denise, were helping her with the fees.

79. She was referred to the divorce petition and indicated that the suggestion was that Mr Mayne was having an affair with somebody whose identity she did not know, and she told me that this was a condition of her husband's: that Hannah's name should not be

mentioned. She agreed that the petition in the prayer asked for a pension sharing order, but she said that that had already been ticked. It was her evidence that she had just signed it and not filled it in. She then said she thought she might have been aware about the prayer in respect of a pension sharing order. In response to the document at p.446, she said that she did not believe that her husband's lawyers were correct to say that she had agreed to the removal of that part of the prayer (the letter also refers to attachment of earnings orders) and Mrs Lewis did not recall getting that letter.

80. She said that she had reached the point where she did not know what to do anymore and was in a "terrible place". Her solicitor was telling her that she could do whatever she wanted, but the solicitor would not be able to say if it was fair or not. Mrs Lewis told me that she wanted somebody to tell her not to do what was being proposed by Mr Mayne. She said she just kept asking what she should do because she did not know what to do. In respect of her solicitor and the advice she said, "I did not have the money, and she did not have the time".

81. She could not remember much of the detail of the meeting on 5 November 2013, but she was hoping that the solicitor would tell her not to rush into anything. She then went on to say that her sisters would have paid for the legal fees.

82. There is then a letter which Cunningtons wrote to Mr Mayne's solicitors in respect of the completion of Form E. Mrs Lewis told me that for this matter to progress, she had paid the defendant's bill, albeit from an account in her daughter's name (a redundant account) because she had closed her own accounts in light of her husband's practice of taking her bank statements before she had a chance to look at them.

83. In respect of the petition, she said that she indicated that she suffered from stress (p.574) and agreed she had not referred to depression, but thought that they were "pretty much the same thing". She denied that her conversations with her former husband amounted to a negotiation but were simply him telling her what to do. She did not understand the phrase "court timetable". She did recall being told that without full and frank disclosure, the solicitor would not be able to tell her whether or not the deal, which had been agreed was a good one.

84. She told me that there must have been another phone call between 19 and 26 February (2014) because there were phrases in the proposed draft agreement that she would not understand, such as "clean break". She denied that she was making this conversation up and reiterated that she would not have worded a letter in those terms because she did not understand them. She did not recall being told that it was unlikely that she was getting a good deal, but did say that she had asked for advice about whether or not the figure was fair. She reiterated that she was told that her solicitors could not tell whether it was fair or not. They would not talk about it and she did not get any more advice. She said that she asked on a number of occasions whether or not the proposed agreement was fair and that she needed somebody to tell what to do.

85. In respect of the letter, she wrote on 26 February (the letter which she says is not in her terminology, and so she must have been told what to say), she said she was just told that

they could not say whether or not it was fair. She agreed that she signed the disclaimer, "I understand that I am going against my solicitor's advice and confirm that I wish to proceed in the absence of full financial disclosure". She agreed that the defendant had told her that she ought to get financial disclosure, but said that she had not decided to go against the advice, she just wanted somebody to tell her what to do.

86. Mrs Lewis was taken to the letter the defendant wrote to her on 3 April 2014 and again repeated that she had agreed to it and was told that if she had agreed then the solicitors could not help anymore and that "that was it". Her understanding was that once she had agreed she was unable to go back. She said that that was what she had been told, she said "I most definitely was told that. Absolutely 100%. I was told that. There was no going back once a disclaimer had been signed. I most definitely was". She could not identify whether it was Ms Perks or Ms Wiggins, who told her this. She recollected being in great distress during conversations with the solicitors and said that she would not have been able to pick either of them out "in a line-up".

87. She said she could not ask, for example, about taking the matter to court because she had been told that she could not once the disclaimer was signed.

88. Such was her mental distress; she does not even remember the change of solicitor with conduct of her case. She did not think that it would have particularly resonated with her. In her own words, "it was one lady leaving and another lady attending."

89. She was taken to the email, which she sent to Ms Wiggins on 27 May. She repeated that she would not have sought advice about this because she had already been told there was no advice to be given. She had been told that once the disclaimer was signed, she could not get advice and so in this email, she was simply informing the solicitors what had happened. She agreed that maybe she should have asked for some advice. Earlier, she told me that she felt that she had to sign the disclaimer in order to proceed with the settlement proposed. She wanted a way forward. She felt that she was constantly in tears all the time and nobody would help her.

90. It was suggested to her that if Mr Mayne was paying £300 on top of the rent (Mrs Lewis said this was only intermittently) that was not consistent with her evidence that Mr Mayne was bullying her. Mrs Lewis's reaction (a very strong reaction) to that was to say that he was trying to blackmail her into going back home and that the only way that he could do it was financially. She agreed that since it never came up and she was not asked she did not tell her solicitor about these things.

91. She agreed that the email does not suggest that she was happy or unhappy, but described herself as being resigned. She said that she had been told time and again once the disclaimer was signed, she had "no right to be unhappy or happy". She agreed that the disclaimer does not go as far as to say that she could not come back and get any more advice, but she said that her solicitor did say that.

92. She did not recollect getting the email at p.542, but agreed she would have received it and she did not remember the letter on 11 June but agreed that she would have received it.

She agreed that the letter points out at the beginning that Ms Wiggins was saying that she could not advise Mrs Lewis as to whether the terms of the consent order were fair and reasonable in the absence of financial disclosure.

93. Mrs Lewis accepted that she knew how much money she was going to get from the proposed settlement. She agreed that she filled out the SOFI. She had calculated that she had no capital. Her solicitor calculated it at a minus figure (£-4525.03). She agreed that she would have received the letters and that one of the letters informed her that Mr Mayne's total capital was £590,000. She said that that was not a very important piece of information to her at the time because she had already "signed up" and had been told that there was no going back. So, although she would absolutely have been "gutted", she had already signed something and could not go back.

94. At this point Mrs Lewis suggested that she did not know the size of Mr Mayne's capital, but she clarified that even though she was "gutted" it was not significant because she had already signed something. She went on to acknowledge that she would have known what the figure was in July 2014 and it was put to her that it would be obvious that this was significant given the disparity between her capital sum and Mr Mayne's capital sum. Mrs Lewis repeated that it was irrelevant because she had signed the disclaimer and she knew she could not go back and Cunningtons could not give her any more advice, so since she was not allowed to go back, it would not have mattered what the figures were.

95. She agreed that if it that is what is recorded, she probably would have told Ms Wiggins that she could not afford to fight her husband, but she was not sure what was meant by "he can". She went on to say, however, that her sisters would have funded the claim against him because they hated him. Her sister Jane has a business recycling IT equipment and electricals and her sister Denise has a company contracted to big supermarkets to do deep cleans all over the country. Mrs Lewis agreed that there was no hint of the possibility of funding from her sisters in the defendant's attendance note.

96. She said that she was told that the judge would be able to refuse to agree the order and she said that she hoped that the judge would do that. She agreed that the note reads that she indicated that, given that her former husband was a bully, she was "better off getting rid." She disagreed that these two features; not being able to afford to fight; and being better off "getting rid" of Mr Mayne were her motivations in doing the deal with him.

97. Mrs Lewis was asked more questions about pursuing financial disclosure and to Ms Wiggins, referring to the long marriage and a substantial pension. She said she was confused because she could not understand why things such as considering financial disclosure would be mentioned when she had already signed the disclaimer.

98. By reference to her answers to the defendant's questions in the pleadings, Mrs Lewis was referred to an answer in which she admitted that the defendant advised the claimant by telephone on 11 July 2014 to consider making an application to obtain financial disclosure from her husband. These answers were provided in 2020. Mrs Lewis was very confused and despite being shown the document would not agree that she would have

received that advice, since such advice would in her view have been pointless, given that she had signed the disclaimer.

99. She was also asked about the admission that she was advised that a pension sharing order was a possibility in light of the SOFI provided by Mr Mayne. She eventually conceded that she did not recall being advised of that, but she must have been. When it was put to her that the admissions contradict her case that she thought nothing could be done at that stage, she responded by saying that she was just trying to tell the truth as she recalled and it was not a matter of what she was prepared or not prepared to do to support her case.

100. She agreed that right at the very beginning, she was told that absolutely nothing was guaranteed, but that she could nonetheless go for 50-50. She said she could not remember the actual words that were used, but she recalled that she was told that lots of things had to be taken into consideration and that nobody could guarantee exactly "what it would work out at" and "that not every divorce is the same".

101. She had admitted that in response to written questions she was advised, "It was a long marriage; the claimant's husband had a substantial pension and a 50-50 split of matrimonial assets and a pension sharing order were possibilities". Despite the conflict in the pleadings, she repeated that she understood that she would not be entitled to 50-50, but that that would be what they would "go for" generally, but she was never told that 50% was what she would get.

102. In the responses to the defendant's part 18 request (p.98), she says that it is her case that she was wholly unaware up to and including 14 August 2014 that the court could make orders in relation to her husband's pension, including a pension sharing order. She did not accept that she was advised about being prima facie entitled to 50% of the pension on 30 May 2012 and 11 July 2014. She was cross examined to the effect that by reason of her employment, she had an awareness of financial matters. She denied that.

103. It was suggested that her claim form had been amended from the original assertion that the consent order was negotiated for the claimant by the defendant and that in fact it was she who negotiated the consent order. She said that it was her husband who told her what the settlement was to be, and she passed it on.

104. She indicated that she wanted the information about the police having to be called to the home address three or four times to be withheld because her husband would have been very angry if it had been put in any of the documents and she did not think it was necessary because the petition was based on adultery, not unreasonable behaviour.

105. She was very confused about when she knew about the size of her husband's pension, recollecting and repeating that the first solicitor she saw said "Oh, he's a police officer so that will be a big pension," which was the only time she had heard it. She said she must have got the rest from her covert recordings of her husband with his new partner to whom he was saying he had a lot of money. She became very confused in trying to answer whether the answer to question 12 on p.98 was right or wrong.

106. She said that she had told her solicitor that her ex-husband would not agree in any circumstances to mediation and, anyway, mediation would have been "torture."

107. She said that she did not recall hearing the phrase that she was “unlikely to be getting a good deal”, which is set out in the attendance note of Ms Perks. She confirmed that she had asked for advice about whether the figure was fair and said that she had said, "Is it fair? What do I do? I need somebody to tell me what to do".

108. She said, and she was clear in her evidence, that she was told repeatedly that the solicitors were unable to say whether the settlement was fair or not and that if she went ahead with it, then it was not "even up for discussion". She said the solicitors would not talk about it and she did not get any more advice. She said that she thought she should have ruled out the part of the disclaimer, which says, "I understand that I'm going against my solicitor’s advice" because there was no advice because she was told she could not be given any advice.

109. She confirmed that she emailed Ms Wiggins to ask her to set out the details of a consent order and that Ms Wiggins responded that she could not comment whether the settlement was fair and that Mrs Lewis had chosen not to enter into full and frank financial disclosure. Ms Wiggins repeated in the letter, at p.606 that she was unable to advise as to whether the agreement reached with Mr Mayne was fair and reasonable.

110. There were several points when giving her evidence (over a very long period of time) when Mrs Lewis became distressed and struggled to understand and/or respond to the question she was being asked.

111. Ms Perks confirmed her statement at p.285 in the bundle. She sets out that when she joined the defendant there was no family team in the Braintree office and she built the team up as a specialist in family law matters, including divorce and financial matters/ancillary relief.

112. She confirms that, given the passage of time, she does not remember the matter well and that her recollection is based solely on reading her attendance notes and correspondence on the file. She refers to her note of the meeting with the claimant on 30 May 2012 and says that she thinks that on the basis of that, the claimant knew that her husband had a large pension and that the starting point was that she was potentially entitled to half of it. There is another attendance note of a call with the claimant on 5 April 2013.

113. She says that Form E is usually completed by both parties to a divorce, setting out their financial position, providing financial disclosure for consideration by the other party. She said that it was standard practice for her and for the parties to provide a CETV of their pension and she would advise clients to consider instructing a pensions actuary for a more accurate forecast. She sets out that where the parties agree a settlement then a SOFI (Form D 81) is required.

114. She refers to Form P, which she says would not normally be included in the party's financial disclosure because the party would usually provide their pension CETV in

disclosure and Form P would only usually be sent to the party's pension provider "where a pension sharing order was actively being considered as part of the settlement" (para 15).

115. She says that obtaining an up-to-date and accurate value of Mr Mayne's pension would have been against the claimants' instructions which were to prepare a consent order to reflect her agreement with Mr Mayne and not to pursue an exchange of financial disclosure, which she says was against her advice. She says that without financial disclosure there is "no way" that a solicitor could say whether a financial settlement was fair or reasonable or give any accurate advice as to what form of financial settlement there should be.

116. She refers to the client care letter dated 16 April 2013. She says that her advice would include that one of the potential means of resolution would be a pension sharing order, but she cannot now remember discussing that with the claimant. She refers however to the references on the file to Mr Mayne having a large pension.

117. She says she has always been meticulous with her files and is always printed everything out and stored it on the file so she is confident that the references to a large pension are accurate and she therefore would have advised the claimant that she may have been able to obtain a pension sharing order. She refers to the court's ability to make such orders in the client care letter and in the letter to the claimant dated 7 October 2013.

118. She says that she would advise that there would be no guarantee that such an order would be made and that it would not always be the case that a pension would be shared 50-50. She says (para 23) "I note from the file that the claimant was a benefits officer at the council so she would have had a local government pension and that in reality one would only look at a pension sharing order if there was a significant disparity between the parties' pensions." She said that she knew that in this case, Mr Mayne could have argued and likely would have argued that only the pension accrued during the marriage should be considered for potential pension sharing, "If, indeed, a pension sharing order was to be considered".

119. She sets out that Mr Mayne's solicitors had requested that the prayer including reference to the pension sharing order in the petition be removed and that the claimant's instructions were to keep the financial remedy prayer in the petition.

120. It was at this point that the claimant asked whether she and Mr Mayne could agree between them as to what she would receive in the settlement and Ms Perks told her that she could do that, but she would have to sign a disclaimer, if she wanted to do that. This advice was confirmed in writing on 7 November 2013. That letter made it clear that Ms Perks would not be able to advise the claimant as to whether or not the terms of any settlement were fair and reasonable. She says that this was based on the fact that if the claimant did not want to pursue an exchange of financial information with Mr Mayne, then Ms Perks could not advise her as to settlement options or as to whether the settlement was fair because she says "I would not have all of the necessary information available to me to provide clear financial settlement advice."

121. At para 26, she sets out that there is an attendance note of the call with the claimant on 19 February 2014, after Mr Mayne had made an offer of settlement. She says she informed the claimant that she would need financial disclosure in order to advise her as to whether the offer was reasonable or if she should issue a court application for ancillary relief. Ms Perks says that it is clear from her note that she told the claimant that she would not be getting "a good deal" if she accepted Mr Mayne's offer.

122. She wrote to Mr Mayne's solicitors reminding them that "no solicitor would be able to say whether or not the offer was reasonable until he had provided financial disclosure".

123. She then refers to the claimant writing to her on 26 February, saying that the parties had agreed a settlement. Ms Perks wrote to the claimant on 4 March, reiterating that she could not comment on whether the agreed settlement was fair and reasonable, but questioning why she was to receive a lump sum only to transfer an endowment policy to Mr Mayne sometime later for half of that sum. With that letter, she enclosed the disclaimer intended to confirm that the claimant had been advised that there should be an exchange of full and frank financial disclosure and that by instructing Ms Perks not to obtain that disclosure, the claimant would be going against her advice and Ms Perks had not advised her about the reasonableness or fairness of the settlement in the absence of financial disclosure.

124. Ms Perks sets out that the disclaimer was a "standard document" which she introduced after she joined the firm because it had not been standard practice before then. She felt that in those circumstances, there was nothing to confirm that the client understood the consequences of not obtaining financial disclosure and so there was "no cover for the firm if something went wrong."

125. She says that any suggestion that the firm should have proceeded to obtain or continue trying to obtain financial disclosure in circumstances where disclaimer had been signed would be in her view, "absurd" because it would go against the client's instructions. She said that even in the absence of a disclaimer for a solicitor to request disclosure or pursue completion of a Form P "against the client's instructions" is wrong.

126. She says that while she cannot now remember what she thought at the time she is confident that she would have felt comfortable that the claimant had considered her advice and the options available and understood the implications of proceeding without financial disclosure. If they were not sure, she says she would have expected a client to contact her.

127. Ms Perks left the firm and conduct of the matter passed to Ms Wiggins. She cannot recall a specific handover meeting with Ms Wiggins in relation to this case, but is "pretty sure that at a minimum, I prepared a handover note." She repeats that she has always been meticulous with her files and has always printed and stored everything on the file. There is no handover note on the file.

128. When she was cross examined, Ms Perks was taken to the retainer letter at p.408 in the bundle. She agreed by reference to that letter that she was aware that Mr Mayne's

pension was of high value and that he was about to retire either that year or potentially the next year. She agreed there is no reference to Mr Mayne's date of birth or age, and that therefore she had not taken instructions on it. It was suggested to her that this was a very important piece of information, since as far as she was aware Mr Mayne's pension was, by a very long distance, the most valuable asset in relation to the case. She agreed with that. She agreed that her instructions were that Mrs Lewis had been bullied by her husband, but said that she thought that this was during the marriage and at the date of this letter, Mrs Lewis had moved out of the former matrimonial home. She disagreed that the bullying was carrying on saying that offering £2,000 in settlement did not automatically mean that Mr Mayne was bullying the claimant. She continued to maintain that an offer of £2,000 in light of what she knew about the pension did not necessarily mean intimidation and, based on her memory, there was no reference at the time of her formal instructions to any form of abuse or intimidation.

129. She did not agree that she needed to send the Form P to Mr Mayne's solicitors to get full details of his pension. She said she was aware of the Court of Appeal decision (*Martin-Dye* v *Martin-Dye* [2006] 1 WLR 3448) in 2006 which stated that Form P needed to be completed in any case where a pension sharing order might be made. She suggested that the defendant would seek to complete financial statements (Form E) before subsequently looking at Form P. Form E, would require a party to produce a CETV of the pension. She confirmed that it was her evidence that Form P would be used when a pension sharing order was "actively being considered as part of the settlement", but said that even in the circumstances of this case they would not jump immediately to provision of Form P in the absence of financial statements because it may very well be the case that there were other financial matters to be considered. She therefore did not accept that she ought to have served a Form P. She did not dispute that if Form P is sent to a pension provider, they would have to complete it under the Regulations.

130. It was put to her that this was a long marriage, and she said, "I think it was considered a medium-term marriage to my recollection". She maintained her view that a 20-year marriage, plus 3 years cohabitation, would be described as "medium".

131. She did not acknowledge it was imperative for the claimant to apply for and obtain a pension sharing order in the circumstances she was aware of. She said that a pension sharing order was one of the things that could be considered as part of the case.

132. She could not recall the claimant being upset about her husband's adultery with a younger woman and she did not remember the claimant saying she was intimidated or depressed. She did not remember her breaking down in tears and said that she would have put a note on the file, if that had been the case.

133. She denied that she did not need any further disclosure to advise the claimant to apply for and obtain a pension sharing order because she said she would need to know what was "in the pot" for division and that the only way to do that would be having Form Es completed. She acknowledged that Mr Mayne might not have complied with that request and that if he continued to do that, then it would be a case of issuing proceedings for ancillary relief.

134. She said that she was as certain as she could be that the fact sheet with the "options" would have gone out with the initial client care letter. She said that any hardcopy letters that were sent out, whether on that file or another file would be checked by her for the enclosures. She acknowledged that there was not a complete note of the advice that she says that she gave at paragraph 23 of her statement and said that that did not mean that she was not meticulous, but only that she had recorded the salient information.

135. She denied that when asked about reaching an agreement with Mr Mayne she should have advised Mrs Lewis to apply for and obtain a pension sharing order. She said that she did not have “all the pieces of the jigsaw puzzle”. She said she would not be able to advise if a settlement was fair or reasonable without a full picture “unless it is blatantly unreasonable". She agreed when she had noted that Mr Mayne had offered the claimant £30,000 (to “go away”) that she could have said that that would be unfair. Therefore she accepted that at the time that she wrote the letter (p.457), she was able to give advice as to whether or not the terms of the settlement were fair and reasonable in respect of a lesser lump sum, but said that, again, it still came back to needing to know the full financial position.

136. Again, she denied there was any evidence that she had any instructions to suggest Mrs Lewis was being bullied at that time. She acknowledged that Mrs Lewis was complaining that her husband was putting pressure on her and she really needed some advice in a phone call on 18 February 2014. She assumed it was a reference to him putting pressure on her to reach a financial settlement. She agreed that in the conversation the following day, the claimant told her that Mr Mayne had said that if she did not accept the settlement of £57,000, it would be bad legal advice if she was told not to. She could not recall the conversation specifically but did not accept it was wrong to say that she needed disclosure to say whether or not this offer was reasonable and said that her words in the note were "unlikely she's getting a good deal, then". She said that further on in the note, there is a reference to Mr Mayne's redundancy payment (£89,000), which is why it says, that on her advice, she had instructions to issue the application for ancillary relief.

137. She said that the note referring to being unlikely to get a good deal was not a note to herself, but something she would have said to the claimant. She said that this was the case even though she had told the claimant that she could not say whether it was reasonable.

138. She was taken to the letter that she wrote to Mr Mayne’s solicitors on 25 February 2014 and she repeated that she had no evidence at all that Mr Mayne was still intimidating or bullying Mrs Lewis and did not think there was anything wrong in telling his solicitors that she could not advise the client in the absence of full and frank financial disclosure.

139. She was referred to further correspondence where she repeated her inability to advise Mrs Lewis but did question why she was receiving a lump sum only to transfer an endowment policy to Mr Mayne, which already had a value of something in excess of £15,000. She repeated that while she questioned why she was only redeeming that lump sum she did not have the Form Es completed and did not have a full, clear picture about what was in the "pot".

140. She suggested that even now, there is not a clear picture of the finances and it is not "easy to say that Mrs Lewis would have received a proportion of Mr Mayne's pension". She acknowledged that the letter sets out "as I have not advised you as to the reasonableness or fairness of the settlement, I will need you to sign and return to me the enclosed disclaimer" and goes on, "This confirms that you understand that I have not given you any advice in relation to financial matters and accordingly because there has been no financial disclosure, I cannot advise you whether or not the settlement is fair and reasonable". Ms Perks maintained that she could not advise her without a clear picture.

141. Ms Perks confirmed that there is no handover note that she is aware of on the file and she could not remember any more than what she had put in her statement.

142. She confirmed to me that she was involved in drafting the disclaimer and that what it sets out remains her position, which is that without full and clear financial information, she could not advise at all. She confirmed that that is what she conveyed to the claimant and that the claimant would have been left in no doubt about it. She said that she did tell the claimant not to take £2,000 because even on the figures that she had, that was very, very low and that she told her that £30,000 was unlikely to be enough when the claimant had given Ms Perks figures, for example of a redundancy severance of £89,000 on a capital basis and, on her evidence, Ms Perks told Mrs Lewis that the £62,000 was unlikely to be a good deal and she agreed that that was the case "on the basis of the figures that she gave me during the conversation, yes, again in terms of capital".

143. I then heard from Ms Jill Wiggins, whose statement is at p.321. Ms Wiggins qualified as a solicitor in July 2012 and joined the defendant's family firm in April 2014. She says that she does remember the case and remembers the claimant, although she does not think she met her in person but describes her as somebody who could be "quite forthright and assertive at times and was keen for matters to progress and be finalised". She says that she never had any concerns about the claimant's understanding of matters and she did not strike Ms Wiggins as an individual who would be bullied or pressured and she was never given any indication that the claimant was vulnerable.

144. She agreed that she was aware that the starting point for a post-divorce financial settlement would be a 50-50 division of assets in the case of a long marriage.

145. She stresses the importance of financial disclosure and sets out at para 10, that she is unable properly to advise a client in the absence of full, frank and clear disclosure.

146. She sets out that the claimant understood from the outset that: Mr Mayne was financially better off than she was; that the starting point for settlement would be a 50-50 division of assets; that an application for a pension sharing order could be made, that an application to obtain financial disclosure could be made if Mr Mayne did not provide it voluntarily, and that the defendant could not advise her properly without full financial disclosure. Nonetheless, as she sets out the claimant was told twice that it was unlikely that she was getting a good deal from Mr Mayne's offers.

147. She says at para.16 that having taken over the file at the end of April 2014 it became clear that a settlement had already been agreed between the claimant and Mr Mayne, and that the claimant had been provided with the necessary and appropriate advice, including that she could not be advised properly. She says that essentially, her involvement would be tying up the loose ends because everything had been agreed. She goes on to say, however, that she did double check with the claimant that she wanted to proceed and repeated what the claimant had already been told.

148. Ms Wiggins remembers sitting in an office with Ms Perks and going through each file that she would be taking over. She says she would have read the file.

149. She said that parties coming to an agreement between themselves without involving solicitors, which helps to keep the party's costs down is becoming increasingly common. She noted the information that the claimant had been given and that Mr Mayne had been asked on numerous occasions to provide financial disclosure, but such had not been provided. In those circumstances she says that mediation is an option and another option would be to issue ancillary relief proceedings. She says that there was a referral to mediation, but it was not successful because the service could not contact the claimant because she did not engage.

150. She says that the disclaimer confirms the claimant's instructions that she did not want there to be an exchange of financial disclosure and accepted that she had not been given any advice in relation to possible settlement options.

151. Ms Wiggins reminded the claimant by email on 27 May 2014 that she was unable to advise her regarding the fairness of the settlement without proper financial disclosure. She sent a copy of the draft consent order received from Mr Mayne's solicitors to the claimant and in the accompanying letter said twice that the defendant could not advise as to whether the terms agreed were fair and reasonable in the absence of financial disclosure.

152. She then received a copy of Mr Mayne's SOFI and she sent a copy to the claimant calculating the claimant's net capital at -£4,525.03, and Mr Mayne's net capital at £590,712.60. She says that she felt that this was important because it was the first time, she had had sight of financial disclosure from Mr Mayne. She says that she had a conversation with the claimant which she thinks was on 11 July 2014 in which she reiterated that in the absence of full and frank financial disclosure, she was unable to advise her properly. She says that she reminded Mrs Lewis of the advice she had previously been given and pointed out the pension figure, indicating that the court might not make an order if it considered that the settlement was unfair or inequitable and indicating that she had concerns that the settlement was not fair or reasonable. She referred to a pension sharing order and the possibility of an actuarial report.

153. Her note sets out that the claimant said that she could not afford to fight Mr Mayne, nor did she want to. She says that she received a signed version of the consent order which she forwarded to Mr Mayne's solicitors and that on the same day, she wrote the claimant advising that she did not consider the settlement to be fair, given the size of Mr Mayne's

pension.

154. Ms Wiggins says that she remembers Mrs Lewis as an intelligent client who seemed to understand the repercussions of the agreement she was entering into and who was aware of the claim she was giving up.

155. When she was cross examined, she acknowledged that there is no note, from the handover with Ms Perks, but she would have made her own note in her own notebook. It is not on the file and the notebook is not referred to her statement.

156. She agreed she never met the claimant in person. She acknowledged she was aware that Mr Mayne's pension had a high value and that if it was not contained in the file, she acknowledged that she would have been unaware of Mr Mayne's age, although she said it would have been noted somewhere and should be on the file.

157. She acknowledged that the total attendances on the claimant between handover and the signing of the consent order would have been about 18.5 minutes.

158. She agreed that the information she had, might have suggested that Mr Mayne's pension was potentially worth £1M. She said and that whilst she was aware of the police being called in the course of the marriage, she was not aware of any ongoing similar issues. She acknowledged that she was not aware of any ongoing intimidation, but that Mrs Lewis might potentially be a domestic abuse victim. She suggested Mr Mayne might be subjecting Mrs Lewis to different sorts of pressure, not necessarily pressure to reach an agreement. She said she could not remember what was in her mind at the time that she read the file because it was over eight years ago.

159. Looking at the contents of the initial letter from the defendant setting out the details from which it could be assumed that Mr Mayne's pension might be worth £1M and that he had apparently offered Mrs Lewis £2,000 in full and final settlement, Ms Wiggins's response to the question as to whether or not the proposed settlement was outrageously unfair was that the defendant did not have the benefit of full and frank financial disclosure.

160. She acknowledged that the note of the phone call from the claimant on 18 February 2014 said that Mrs Lewis really needs some advice, and that Ms Perks, from the information file, was not in a position to give Mrs Lewis advice without full and frank disclosure.

161. She acknowledged that as at 9 July 2014, Mrs Lewis had completed her Form E and her SOFI and provided the defendant with a state pension forecast. Mr Mayne had provided his SOFI and so the value of each party's assets were known, including the fact that Mrs Lewis only had a state pension and the form indicated that she was suffering from stress. Ms Wiggins said it would not be uncommon for parties to be stressed following the breakdown of a relationship. She said that she advised Mrs Lewis of her options, including that she could pursue a pension sharing order through the courts, but that Mrs Lewis had elected to reach a direct agreement with her husband. Again, when asked if the settlement was outrageously unfair, she said that she had advised Mrs Lewis during the

telephone conversation that Ms Wiggins had concerns about the agreement and that Mrs Lewis could proceed to apply for a pension sharing order.

162. She acknowledged that the pension was by far the most valuable asset available, but that abandoning it was a matter for Mrs Lewis. She said in her evidence that she advised Mrs Lewis that she was concerned about the agreement reached and that Mrs Lewis could pursue a pension sharing order through the court. She said she advised her that the starting point for the division of assets in a matrimonial case would be 50-50 and that in the light of the size of his pension, "She should pursue and consider obtaining a pension sharing order." She then said that it was a possibility that Mrs Lewis could pursue a pension sharing order.

163. She confirmed to me by reference to the note at p.637 that she also reminded the claimant that she could not advise her whether or not the agreement was fair in the absence of full and frank disclosure. Ms Wiggins also acknowledged to me that she did not think that the settlement was a fair one, during her conversation with Mrs Lewis in July, but she did not expressly state as much in that conversation.

164. Pursuant to the further discussions between the experts, agreement was reached as to four hypothetical scenarios as to the principle of settlement set out in the table at page 224A(3). The first figure assumes equality of income only from age 60 with a percentage pension sharing order of 39.6% resulting in a figure of £427,000. In respect of the second column or scenario, this assumes an equality of income with payments from Mr Mayne for half the income until the claimant's age 60, which is a percentage pension sharing order of 39.6% plus half of £14,680 gross per annum until the claimant was aged 60, which would give a total figure of £484,000. The third column is based on equality of value (rather than equality of income) and would require a percentage pension sharing order of 50%. The figure for that would be £536,000. The fourth column, which is again based on an equality of income with payments from Mr Mayne for half of the income until the claimant's age 60, but less the lump sum agreed. That is again based on a percentage pension sharing order of 39.6% plus half of £14,680 gross per annum until the claimant's age 60 but less £62,000 and that produces a figure of £422,000.

165. Submissions

Based on the legal principles identified and the evidence set out above, Mr Munro on behalf of the claimant set out her case, as per the summary at paras. 15-16 above.

166. Mr Munro relies on the various authorities referred to, to submit that the evidence is so clear in this case that the court can be confident that a court would have made a pension sharing order and that it would have been 50%. By way of example, the case of *White* v *White* [2001] AC 596 is cited in which Lord Nicholls (at 105G) said:

> "As a general guide equality should only be departed from only if and to the extent that there is a good reason for doing so."

167. The unknown factors, it is submitted, would favour a 50-50 division rather than militate against it. Mr Mayne was retiring young. He had an interest in two companies. He clearly intended to pursue his own business and was in good health. As a retired Detective Chief Inspector, on the balance of probability he would have had a better earning capacity than the claimant. Unlike the claimant he had a new, younger partner. The information on the file suggests that he was due severance pay of £87,000 and had savings of £50,000. He had been earning £47,000 and living in free accommodation.

168. On behalf of the claimant, it was submitted that in this case, there should be no discount for loss of a chance because Mr Mayne's pension was the only really substantial matrimonial asset and this was a long marriage.

169. Looking at the figures agreed by the experts; therefore, Mr Munro submits that I should take the straightforward 50% share figure with no deduction for any lump sum received in light of what would have been identified as the claimant's needs.

As set out at paras. 17-20 above and as per para. 31 of the judgement of Jackson LJ in *Minkin,* it is the defendant's submission that the issue here is the extent of the defendant's duty to advise in circumstances where the parties had reached agreement and solicitors were being asked to put that agreement into proper form for approval by the court.

The defendant's primary submission is that this was a limited retainer, and that the limited nature of the retainer informs the scope of the duty owed as in the case of *Minkin*. She cited Jackson LJ in that case who said at para.48, on the facts of that case.

> "… I conclude that the defendant was operating under a defined and limited retainer. Her task was to re-draft the consent order, so as to set out the matters agreed between the husband and wife in a form likely to be approved by the court."

170. By reference to the retainer letter the defendant has pursued its case on the basis that the claimant "chose option one" to the exclusion of others and that therefore the defendant's scope of duty by reason of the retainer was limited to implementing the agreement which the claimant came to with Mr Mayne and that in those circumstances and in the absence of full and frank disclosure they could not advise her about the reasonableness of the settlement.

171. She relied on the passage in *Minkin* where King LJ addressed the problem of litigants in person requiring the Court to draft Orders and said at para.75:

> "In order to address this problem a number of solicitors specialising in matrimonial finance cases now offer (as they have in personal injury cases for some time), bespoke or 'unpacked' services whereby they will undertake to act for a litigant in person in relation to a discrete part of a case which is particularly

> challenging to a lay person. Most commonly in matrimonial finance cases, this is the drafting of the Form E ... or, as here, the drafting of the order. This service is invaluable to both courts and litigants alike, saving as it does court time but also stemming the increasing number of applications to the courts in relation to the working out of orders which do not accurately reflect the true intentions of one or other of the parties.
>
> There would be very serious consequences for both the courts and litigants in person generally, if solicitors were put in a position that they felt unable to accept instructions to act on a limited retainer basis for fear that what they anticipated to be a modest and relatively inexpensive drafting exercise of a document (albeit complex to a lay person) may lead to them having imposed upon them a far broader duty of care requiring them to consider, and take it upon themselves to advise on aspects of the case far beyond that which they believed themselves to have been instructed.
>
> It goes without saying that where a solicitor acts upon a limited retainer, the supporting client care letters, attendance notes and formal written retainers must be drafted with considerable care in order to reflect the client's specific instructions. It may well be with further passage of time, tried and tested formulas will be devised and used routinely by practitioners providing such a limited retainer service. In the present case the defendant, as identified by Jackson LJ, did not observe best practice having failed to set out with precision the limits of the retainer in the client care letter. Notwithstanding that error, I too am entirely satisfied that the defendant was acting under a limited retainer and carried out the work which the claimant had instructed her to undertake".

172. In terms of quantum, it is accepted on behalf the defendant that it is likely that a pension sharing order would have been made. Perhaps unsurprisingly, the defendant argues for the lowest of the experts' agreed figures as a starting point, that is, the equality of income approach rather than the equality of value approach. On behalf of the defendant, it is suggested that under the equality of value approach, Mrs Lewis would be getting a significantly greater sum by way of pension than Mr Mayne and that would be an inherently unlikely outcome in terms of what the court would have wanted to award. The defendant goes further to say that I should take from that sum, the lump sum which the claimant had received. It is accepted that deducting £62,000 "may well be over egging it" because the claimant had to give up half of the endowment policy and, therefore, the defendant argues that I should deduct sum of £55,000 and then a figure for costs which it is suggested should be £20,000. That is based on the range in the retainer letter of up to £25,000 plus disbursements. The defence pleads that the cost would have been at least £10,000.

173. The defendant goes on to say that there should be a further deduction to reflect the loss of a chance which it is submitted should be in the range of 25 to 33%, If I take the equality of income figure, but if I take the equality of value figure then given the increased speculation involved, I should make a bigger discount.

174. Consideration of Evidence and Findings of Fact

175. Given the passage of time here, Ms Perks acknowledges that she has no independent recollection other than by reference to the notes/file. Whilst Ms Wiggins said that she remembered the claimant, it is apparent that her recollection, as I find, is patchy at best. It must in any event be limited in light of the time she spent talking to the claimant. The claimant's own recollection is, as I find, more reliable since clearly the matters were more significant to her in her role as client at the time, than it would have been to the solicitors acting for very many clients. Even so, the claimant's own recollection is faulty in parts, absent in others and in some respects skewed by the significance which certain parts of the evidence have acquired over the years.

176. I have set out the claimant's responses to cross-examination at some length (paras. 47-92) because they reflect the extent of her confusion/faulty recollection but also simultaneously highlight her strongly held view of matters and her situation at the time.

177. I do find, however, that the claimant was an entirely honest witness, doing her best to help the court. She was at times very emotional. She alternated between being vague and sometimes confused and being adamant about her recollection. It was suggested to her by reference to inconsistencies in her evidence and the pleadings that she has been deliberately dishonest in order to support her case. I reject that suggestion. As I set out in my analysis below, there is a significant difference between, for example, a solicitor referring in correspondence to the court's powers to make a pension sharing order and a client's appreciation that she has been advised to make such an application. Her recollection that she was not so advised is not, as I find, undermined by any document referring only to the possibility of such an order.

178. Mrs Lewis was, as I find, entirely frank when she said in respect of very many documents to which she was taken that she could see that the document was there that it had come from her or the defendant, and that therefore she accepted that it had been sent or received, and that she would have read it. The fact that she cannot now actually remember doing so is not surprising. It would probably be more surprising if she could remember events between 2012 and 2014 in 2022 with that detail, other than by reference to the documents themselves.

179. It is apparent, and I find that having been told on very many occasions that in the absence of financial disclosure, the defendant was unable to advise her about the fairness or otherwise of the settlement that was being put forward, that Mrs Lewis took that literally. I accept her evidence that she considered that she had effectively been told that she could not seek such advice. It would be pointless, because no advice would be given.

180. I accept her evidence that she really wanted some advice and was very uncertain as to what to do, but every time she had contact with the defendant, she was told, and sometimes more than once that it could not advise her. The fact that she took that information at face value does not seem to me to be unreasonable.

181. I accept the claimant's submission that Mrs Lewis was an unsophisticated client. I accept that she had no knowledge of financial affairs. In large part, I find that that was because (and I accept her evidence on this point), her husband had not only managed all the finances, but in fact had controlled the household finances and her spending.

182. I accept the claimant's evidence that she was the victim of bullying and intimidation by her former husband and that that extended beyond the date upon which she left the matrimonial home. She did disclose to the defendant some of the information in that regard about the police being called three or four times, that she felt under pressure, that she felt she was being bullied, and that she was suffering from stress. I accept that she not only told Ms Perks and Ms Wiggins, but also that it would have been apparent to them that she was vulnerable. In this respect I agree with the conclusions of Deputy Master Fine. I had the additional advantage of seeing Mrs Lewis give her evidence and the way in which she responded to the robust and lengthy cross-examination. She became increasingly confused and her ability to comprehend what she was being asked diminished. She was visibly distressed at times.

183. I reject the evidence of Ms Perks and Ms Wiggins that the claimant would have come across as sophisticated, intelligent and assertive, or as somebody who knew what they wanted and was determined to achieve it. I accept that Ms Perks has no actual recollection of the claimant and it is perhaps therefore surprising that she makes such an assertion. Ms Wiggins recollection is bound to be affected by the passage of time and of course, she never met the claimant face-to-face.

184. I find as a fact, on the basis of the evidence I accept, that Mrs Lewis was an unsophisticated and vulnerable client and that the defendant had the information from which they either knew that or ought to have known it.

185. I find that the defendant knew (on the basis of the documentary evidence) that Mrs Lewis was complaining of being bullied and that she felt intimidated and pressurised. I find that it knew that she was suffering from stress and was likely to be suffering from depression given what she was saying about it. On the balance of probability, I find that she probably told Ms Perks and/or Ms Wiggins of that fact.

186. If Mrs Lewis was the victim of domestic abuse or controlling and coercive behaviour, it would not be surprising that she did not readily volunteer it. Any such reluctance would be reinforced not only by her own experience, but also by the fact of her husband being a police officer. She would be under more pressure not to reveal what had been going on in the matrimonial home. The fact that she asked the defendant to withhold the information she had disclosed from the court documents would not be surprising and ought not to have been surprising to a family practitioner. It supports the argument that she was being/had been bullied and intimidated rather than undermining it.

187. I accept and I find that there are some inconsistencies between the claimant's pleadings and the claimant's evidence. In light of her own difficulties in recollection and my experience of her not always being able adequately to convey what she was trying to say, it may not be surprising. However, she obtained it, I accept that the information contained in the retainer letter sent by Ms Perks sets out information about Mr Mayne's finances, which came from the claimant. Some of it may have been prompted by questioning, but I find that the claimant was aware of those details at that date.

188. I find that knowing those details is not the same as having a sufficient understanding of their consequences in terms of ancillary relief/financial remedy when it came to resolution of those matters.

189. I find that had Ms Perks actively been considering a pension sharing order, then she would have served Form P. The retainer letter/client care letter refers to the powers available to a court and does not highlight the pension sharing order, although it lists some orders which would clearly on the information she had, not be relevant to the claimant.

190. For the purposes of my decision in this case I make the finding that the claimant was unsophisticated and vulnerable, and that she had mentioned to the defendant that she was bullied and intimidated, that the police had been called to the matrimonial home and that she felt under pressure. Those features even without more are enough as I find to support the claimant's argument that the characteristics of the claimant should have informed the scope of the defendant's duty to her, and increased it so as to require the defendant to give her clear advice on the basis of the information it had and to make sure that she understood it. Asking for the information about the police being called to be withheld is not, as I find something which indicated that this was an issue that the claimant was not particularly concerned about. I find that what she was concerned about was not antagonising her husband. Indeed, some family practitioners might have identified this request as a "red flag".

191. For the sake of completeness, I should say that I reject the defendant's suggestion that the claimant behaved in an assertive way towards her husband. Her account of recording his conversations and looking through his financial documents when he was not at the house indicates the furtive nature of her investigations and supports her argument that she had to resort to such means, in order to obtain such information. The notion that the defendant should not have taken any account of this in the absence of the claimant herself asking for advice about non-molestation order is not, as I find, sustainable.

192. I reject the defendant's contention that by reason of her employment as a Benefits Visiting Officer (on a very modest salary) with a 3 to 4 month period training as a fraud investigation officer, the claimant was not unsophisticated. I found her to be an entirely unsophisticated person. I find that she had suffered with stress, depression and anxiety for which she required medication and the minute analysis of the dosage of such medication over time is unhelpful to the defendant's case. For the reasons I have set out above, I find that the claimant was doing her best to give a reliable account of what happened in her interactions with the defendant. I accept that there are gaps in her recollection and she

misremembers some things, and there are some inconsistencies, but, as I say, I found her to be honest.

193. I find that the consequence of the disclaimer in the terms that it was drafted and in the terms that Mrs Lewis was required to sign it, it did in fact cause her, not unreasonably, (given her own vulnerability and inexperience) to believe that not only could her solicitors not advise her, but she could not ask them for any advice. She was desperate as she told me, and as I accept for somebody to tell her what to do. That is particularly so not only in light of the signed disclaimer itself, but in light of the number of times that it was repeated to Mrs Lewis (at every contact as far as I can see thereafter) and indeed before the disclaimer was signed that her solicitors could not advise her as to whether the terms of the consent order were reasonable.

194. The disclaimer reads:

> "I…confirm that I have been advised that there should be an exchange of full and frank financial disclosure before my solicitors can give me any advice in relation to suitable financial settlement options.
>
> I have instructed my solicitor that I do not wish for there to be an exchange of full and frank financial disclosure and I accept that I have not been given any advice in relation to possible settlement options…
>
> I understand that I am going against my solicitor's advice and confirm that I wish to proceed in the absence of full financial disclosure."

195. I find that the defendant's case is inconsistent and contradictory as to whether in fact at this point (11th March 2014) the claimant had been given any advice as to possible settlement options. However, I reject the contention that the claimant gave positive instructions not to seek financial disclosure. Although Ms Perks says obtaining it would have been going against the claimant's instructions there is no record of such instruction. I accept the claimant's evidence set out at paras. 46 to 49 above.

196. I find that the contents of this disclaimer do not accurately reflect the position between the parties at this date. I find that the attempt to limit the defendant's responsibilities with a "one-size fits all" disclaimer was not appropriate at this stage in this case.

197. I accept the claimant's submission and I find that with a 23 year relationship and no property ownership and given that the husband's police pension was by far and away the largest asset, a court would almost as a certainty have made a pension sharing order and that the inevitable starting point (and probable finishing point) would have been an equal division of that pension fund. That likelihood was so strong that the claimant should have been advised in the clearest possible terms that that was the course she should pursue.

198. I find that the plan as at April 2013 was to try and engage with Mr Mayne or issue Form E if he did not engage, but this did not happen.

199. It is apparent from the heading of the retainer letter and the bills submitted by the defendant that it considered that its retainer related to "divorce and financial matters", and was not limited to drafting a consent order.

200. Mr Mayne had legal representation. Through his solicitors, he had requested the claimant remove the prayer for a pension sharing order (as well as the attachment of earnings order) from the petition. They were clearly fully alive to the likelihood of the making of a pension sharing order. Since as I find it would be apparent that a pension sharing order was a likelihood, Mr Mayne would have been advised about that, too.

201. I found that Ms Perks' evidence was undermined, firstly by the fact that she has no direct recollection of the claimant. Further, it seemed to me that she was overly defensive. I find it inherently implausible that an experienced family practitioner would think that the appropriate categorisation of a 20-year marriage with three years' cohabitation would be "medium-term". Ms Perks stuck fairly dogmatically to that description which, as I find, could only have been in an attempt to undermine the claimant's case that prima facie she would have been entitled to a 50-50 division of assets, including the valuable police pension. Similarly, the suggestion that a substantial part of Mr Mayne's pension was pre-marital simply does not stand up in light of the factual information which Ms Perks had at the time.

202. Of course, I recognise the importance of the authorities which stress the significance of contemporaneous documents and indeed I have found in this case that the contemporaneous documents are significant. I have found that the claimant must have told Ms Perks the details about her husband's pension for them to appear in the file note of 30 May 2012 and I accept that she was wrong about that in her oral evidence. I accept that she had some awareness of pension sharing orders prior to 14 August 2014, but the defendant's reliance on references to pension sharing orders, for example, in the original retainer letter is in my view overstated. Pension sharing orders are referred to in passing among a list of other possible orders.

203. I accept for the reasons set out that the claimant's recollection is not complete and she acknowledged the same freely. She was clear that she did not receive the fact sheet. On balance, I accept that evidence because Ms Perks' evidence that she personally checked the contents of every item of post going out for its enclosures is inherently implausible and also because it is apparent that only one page of the four was kept on the file. Ms Perks' evidence was that copies of all documents sent out were kept on file. On balance, I find that only one page was ever sent out.

204. Importantly, whilst I accept that there are errors in what the claimant has said and that she has been shown to be mistaken, in some instances, I do not find as the defendant submits that this is as a result of her deliberately downplaying her own knowledge and understanding and seeking to "point the finger" at the defendant.

Analysis

(i) Pleading Points

205. Miss Evans made submissions on behalf of the defendant in respect of holding the claimant to her pleadings. It is submitted that a formal application to amend would have to be made if the claimant wished to run a case that there was a refusal to advise in November 2013 and June 2014 and that the disclaimer was entered into on a false basis and/or was “bizarre” and should not have been put to Mrs Lewis.

206. Miss Evans further set out detailed submissions as to why I should not accept the pleaded case with regard to intimidation and bullying by Mr Mayne. The submissions are put forward on the basis that the defendant says that the pleaded case on bullying is both narrow and sparse and there is a big difference between sparse assertions that somebody has been a bully, or that the police have been called three or four times during a marriage of 20 years and the claimant's impression given in the witness box that she was a victim of domestic abuse. The defendant relies on matters coming from the claimant in oral evidence which were not pleaded including the police being called 200 to 300 times in the course of the marriage. Mrs Lewis agreed that she probably would not have told the defendant that in terms, but would have said that calling the police was "nothing new".

207. It was also in the witness box for the first time that the claimant suggested that Mr Mayne had been opening her letters and keeping them and denying her access to her bank cards. She said that she would have told Cunningtons of this because “she told everyone”. The defendant submits that in these circumstances if the claimant wished to rely on this evidence, an application to amend should have been sought and that the defendant will be prejudiced, for example by not being able to seek disclosure of police incident numbers for the calls or asking to see bank accounts.

208. I accept that not all these aspects of the evidence are pleaded, but I do not accept that pleadings should contain the evidence.

209. I do not accept that the defendant is prejudiced in this regard. As I have indicated, I accept the claimant's evidence, subject to her overall struggles with giving that evidence. If she has been a victim of domestic violence or controlling and coercive behaviour which goes beyond that which is pleaded, it would not be surprising that, until cross-examined over a long period of time and in detail, she had not volunteered the information. That is unfortunately often the case with such victims.

210. I accept Mr Munro's responses to the defendant’s submissions that the pleadings contain references to bullying and the defendant was not taken by surprise by that allegation. Similarly, the criticism of the disclaimer is pleaded.

211. I reject the defendant's argument that the claimant's claim has “morphed”. It is clear from the pleadings and it is clear from the witness statements what case is being put and the case which the defendant faces. There is no prejudice to them and there is no merit in the pleading points put forward.

212. Para 7 of the amended particulars of claim sets out that the claimant was unsophisticated, mentally unwell with depression and had been bullied by her husband. It makes it clear precisely what the claimant's case is and identifies that if she had been given the appropriate advice, she would not have agreed to the draft consent order and would have followed that advice. The particulars of negligence are properly pleaded. The loss is pleaded on the basis of a 50% pension sharing order or alternatively settlement on better terms.

213. I therefore, reject the defendant's submissions about the pleadings.

(ii) Scope of Duty

214. On behalf of the defendant in this case, it is argued that the claimant chose option one and so, as in *Minkin*, the defendant's duty was limited to implementing the settlement agreement which the claimant had reached with Mr Mayne.

215. In *Minkin* the solicitor was instructed from the outset, solely and exclusively to draft a consent order in matrimonial proceedings on terms which the client had already agreed. The client was an accountant and a sophisticated woman. She had already taken advice as to the merits of the settlement from previously instructed solicitors.

216. I find that the defendant's reliance on the "four options" in order to seek to limit the scope of their retainer is not properly arguable. The initial letter to Mrs Lewis set out the ways in which divorce and financial remedy could be resolved. These are not discrete options. It would be highly unlikely that a client would in fact be able to choose and pursue only one such option. The retainer letter was a general retainer headed "in relation to your divorce and financial matters". It was not a limited retainer at that stage. It required appropriate advice to be given to the client. Of course, the parties may try settlement between themselves, they may try mediation, they may go through Resolution. They may deal with the case through traditional court proceedings. These routes are often sequential or incremental in the sense that if direct agreement fails and mediation fails, the party may find themselves pursuing court proceedings. A party may pursue all four options, one after the other. A party may pursue some of these options simultaneously.

217. Between the first instruction and the letter of 4 March requiring Mrs Lewis to sign a disclaimer, there was a long period of time when the retainer clearly was not limited to the drafting of a consent order (as in *Minkin*) to put into an appropriate form an agreement which had already been made. During that period of time the defendant had a clear duty to advise Mrs Lewis appropriately in respect of financial matters. Mr Mayne's offers (£2,000, £30,000 £20,000, £57,000 and £62,000) were on any account, not fair. Despite a request, Form E had not been provided by him and Mrs Lewis required advice.

218. I reject the defendant's submission that this is a precise *Minkin*-type case. First of all, and as I challenged Miss Evans on the point it became apparent that the defendant's case is not that this was always an "option one" retainer. It was submitted that as pleaded by reference to p.66, there "came a time", according to the defendant, when the claimant did select option one, and that time came in November 2013, and then it seems again in

February. That is what prompted the requirement for the claimant to sign the disclaimer, the purpose of which was to make plain to the claimant, the basis on which she was contracting with the defendant. Thus, instead of considering the size of Mr Mayne's pension or any vulnerability on the part of the claimant, it is submitted on behalf of the defendant that by direct analogy with *Minkin*, "the extent of the solicitors duty to his client is determined by his retainer, and so the starting point in every case is to ascertain what the client and a engaged solicitor to do or to advise upon".

219. However, as the defendant's counsel indicated after the retainer letter, there might have been a period of time when the claimant had not chosen any particular route and when it did not appear likely that there would be a direct agreement. I make the finding that there was that period of time. The defendant argues, however, that there came a time when the claimant accepted the direct agreement approach by her conduct and at that point the retainer became a limited retainer. Thus, it is argued that the only contractual duty thereafter was to carry out the tasks agreed under the direct agreement approach and/or disclaimer together, of course, pursuant to the authorities cited above with any advice reasonably incidental to that work.

220. I reject the submission because, as I find, the scope of the duty on the defendant before Mrs Lewis came to it with the form of an agreement for settlement with Mr Mayne, was the usual broad scope of duty when advising a client in respect of divorce and financial matters. It also had the information about Mr Mayne's pension and, as set out already, I find that it should have served a Form P and it should have made it clear well before Mrs Lewis's discussions with Mr Mayne that she could expect that a court would make a pension sharing order and she could expect that the starting point for that pension sharing order would be a 50-50 split. For the reasons I have given the defendant did not need full disclosure to provide advice in those terms.

221. The difficulty in my view for the defendant in arguing that there came a time when the retainer became limited is that such a situation would be outside the application of the principles in *Minkin*. It would not be a situation in which a client approached a solicitor with specific instructions on a limited task (such as drafting the form of a consent order and not seeking advice as to the suitability of that order) but would be a scenario in which, already aware of the client's position in the absence of any agreement, the client then produces a draft of an agreement to settle and asks the solicitor to draft the form of the agreement. It seems to me in this case that what would be reasonably incidental to that work would involve a greater duty on a solicitor than simply drafting the agreement.

222. There is a duty to warn or report and advise on matters of which the solicitor is aware (as per *Crédit Lyonnais*). Following *Minkin*, the defendant here submits that despite the limited nature of the retainer (which it says was only to draft the form of the agreement), that it did warn the claimant of the fact that it was not advising about the merits of the agreement, that the agreement may be unfair and there had been no full investigation of the parties' means.

223. However, in this case the claimant had consulted and instructed solicitors on a general retainer in respect of divorce and financial matters. The defendant had acquired

information suggesting that a pension sharing order would be appropriate and indeed likely, and matters had progressed some way so that the defendant was aware that Mr Mayne was making unreasonably low offers and failing to comply with Form E. The defendant was aware that it had not served Form P. The claimant then came to it with a suggested (but not in fact agreed or finalised) settlement at which point it required her to sign the disclaimer by which (and which was reinforced orally) it indicated that it was no longer able to advise her.

224. Given the history, I find that considering the authorities and distinguishing *Minkin*, the situation between the defendant and Mrs Lewis at this point required that the reasonably incidental duties would have required it to set out at least for Mrs Lewis, a comparison between what she would receive through the proposed settlement and what she would reasonably receive if she pursued the matter to court. In short, she should have been advised that she was foregoing the opportunity to be awarded several hundreds of thousands of pounds.

225. I accept that the pension sharing order should actively have been considered as part of any financial resolution from the outset of the retainer, and thus Form P (see *Martin-Dye v Martin-Dye)* should have been sent. It could have been sent to Mr Mayne's pension provider.

226. It does not seem to me that being a member of Resolution should prevent a solicitor from serving a Form P. Mediation or other alternative dispute resolution also depends on obtaining sufficient information. The defendant's solicitors should always have had firmly at the forefront of their mind that this case required pursuit of a pension sharing order and if Mr Mayne was not being cooperative, a Form P should have been served at an early stage. That does not prevent resolution without court proceedings and it certainly does not "go straight into litigation mode". The suggestion that this would be inconsistent with the defendant's membership of Resolution is simply mis-conceived, as I find.

227. I find that when she took over, Ms Wiggins also had a duty in light of the information she had, positively to advise Mrs Lewis and in any event not to refuse to advise her. Ms Wiggins told Mrs Lewis that she could not advise her in the telephone call on 11 July 2014 and set that out in a letter. This was at a time when there had been disclosure, albeit only in the SOFI. Ms Wiggins purported limiting of her ability to advise in the absence of full and frank disclosure is based on the premise that she did not have the information to give "detailed" advice. It may be that she could not have calculated every last pound in every savings account and so on, but the essential fact of a major asset being a police pension with a value in the region of £1 million was a matter on which she could clearly have advised.

228. I find that any reasonably competent solicitor would have advised the claimant that the proposed settlement order was obviously and exorbitantly one-sided in the husband's favour, giving the claimant less than 15% of the disclosed matrimonial assets and leaving her with an inadequate financial provision in the future, and particularly in retirement. I find that she should have been told that the court would make a pension sharing order in this case and that the starting point would be 50%. The circumstances in which the court

would not have made such a pension sharing order in this case are very difficult to envisage indeed.

229. I accept the claimant's submission by reference to the authority of *Martin-Dye* v *Martin-Dye* that Form P ought to be used by solicitors in every case where a pension sharing order might be made. In this case, a pension sharing order ought to have been considered and Form P should have been used. That is, indeed, in accordance with Ms Perks' own statement and I find that she was not, as she should have been, actively considering a pension sharing order as part of any agreement in respect of Mrs Lewis's ancillary relief claim. From the beginning of the retainer, the defendant had all the information it in fact needed to realise that a pension sharing order was a likelihood, that Mrs Lewis should have been advised to pursue such an order, and that Form P should have been served.

230. It is submitted on behalf of the claimant that she was required to sign the disclaimer on the false basis that solicitors could not advise her whether the proposed settlement was fair and reasonable. As is apparent from the evidence I have set out Ms Perks and Ms Wiggins did advise Mrs Lewis. They were aware of the pension, they were aware of the prospect of a pension sharing order and its likely value, and they were in a position even in the absence of full disclosure to advise Mrs Lewis whether the proposed settlement was fair and reasonable. Not only were they in that position, but they did in fact offer advice, albeit insufficiently clear and robust advice.

231. That is not to say that I accept the claimant's submission that the claimant ought to have been instructed at that stage, not to do the deal, but should have been instructed to go and apply for a pension sharing order (although in fact in this case, I consider that the situation must come very close to an obligation positively to tell the client what to do, subject to her autonomy), but the options open to her should have been explained in the clearest possible terms so that the claimant could properly weigh up the pros and cons. In short, I find that the scope of the defendant's duty was to advise the claimant that if she agreed to the proposed settlement she would receive a net benefit of about £30,000, but if she pursued the matter to court a pension sharing order would almost certainly be made, and it would very likely be about 50% of Mr Mayne's pension, which order was likely to have a value to her in the region of £500,000.

232. Obviously, if the client is an adult with full capacity, there comes a point when her autonomy should be respected.

233. I accept that a solicitor is not there to take the client's decisions for her, or to lean on her, or to overbear her will. The client retains autonomy. However, that autonomy does not remove the need for appropriate advice to be given. That did not happen in this case.

234. I reject the defendant's submission that it was only retained to assist the claimant with formalising the agreement she made with Mr Mayne. The defendant submits that at no stage was it retained to give advice on the fairness of that agreement. Given the history of this matter and for the reasons I have indicated, I reject that submission.

(iii) Breach of Duty

235. As set out above I consider that the defendant's attempt to narrow the scope of their retainer to a *Minkin* type situation was inappropriate in this case and I reject that submission. I reject the submission that in the absence of full and frank disclosure (rather than disclosure of general points), the defendant was entitled to say that they could not advise the claimant at all. They clearly could advise her and they should have done.

236. In respect of the defendant's submission that by February and March 2014 the claimant had "clearly gone down the direct agreement route", I find that there was an agreement which had been drafted, although who had drafted it is not clear. I accept it was not the defendant. It had not been signed. It was shown to the defendant by the claimant not as a first contact, as in *Minkin* with instructions to put it into a form which would be acceptable legally and/or to the court but against the background of the initial general retainer, and importantly, the information which the defendant already had. It followed on from the correspondence and interactions in respect of the petition, the prayers in the petition and the previous offers from Mr Mayne. As at 7 November 2013 (p.457), the claimant clearly had not opted to go down "route one", but had raised with her solicitor the question of what would happen if she reached an agreement with Mr Mayne.

237. Indeed, the letter at p.451 dated 12 November, states that Ms Perks was not aware that there was any firm agreement between the parties, and that the matter needed to be discussed. On 14 November, there is a file note which says that the claimant did not agree to anything. As at 18 February 2014 Mrs Lewis was seeking an urgent appointment for advice from Ms Perks. The response on 20 February was to tell the claimant that the defendant needed to see disclosure to say whether or not the offer of £57,000 was reasonable or whether she should issue an application to court. There is then the letter of 25 February 2014, indicating that there must be a referral to mediation. Then there is the correspondence, saying that Cunningtons cannot advise the client without full and frank disclosure. This all precedes the letter from the claimant dated 26 February, setting out the terms of the proposed agreement.

238. Ms Perks at this point, said that she could only advise the claimant to make an application to the court to get financial matters dealt with. She clearly was advising the claimant about the option of going to court, but not about any likely outcome. It is apparent at this stage there was no limited retainer, that is a retainer limited only to consideration of "option one". Otherwise, this letter makes no sense. This is the case, despite the fact of Mrs Lewis having signed the disclaimer.

239. It is apparent therefore that at this stage the claimant was not being offered the advice that she should have had not only about the reasonableness of the settlement, but, more importantly, she had been required to sign a disclaimer which indicated that that her solicitors were not able to advise. It was apparent, and I find from her clear evidence that Mrs Lewis interpreted this literally and would not then have thought it was possible to ask for advice, even though she felt she needed it.

240. At this point Mr Mayne's solicitors indicated that they understood that an agreement had been reached and that the draft consent order should be drawn up.

241. The defendant responded on 4 March to say that it could not comment on whether or not any such agreement was fair or reasonable.

242. I find that the responses to the claimant and Mr Mayne's solicitors, namely that the defendant could not advise on the offer at this stage was a clear breach of duty. The defendants did have enough information to advise, even if in general terms (i.e., not down to the last penny) as to the reasonableness or otherwise of this proposed settlement. It was able to question why the claimant would be receiving a lump sum only to transfer an endowment to Mr Mayne. The defendant's response, however, was to require the claimant to sign a disclaimer accepting that she had not been given any advice in relation to possible settlement options, and that she had instructed her solicitor to prepare a consent order in the absence of that financial disclosure. The claimant signed it, on 11 March 2014 amended to refer to the fact that it was Mr Mayne solicitors who would be drawing up the consent order. As at 3 April 2014 Mr Mayne solicitors had not drafted the consent order and it was not clear as per the letter from Ms Perks dated 3 April 2014 that he was going to agree to any settlement, including the one already in draft form.

243. I reject the submission that the claimant was advised to start proceedings at the meeting on 19 February, or if it was mentioned that she understood it. I accept the claimant's evidence that she had probably come out of the meeting, thinking that she would accept the £57,000 on offer.

244. I accept that the disclaimer does not say that the claimant could "never go back". However, I accept that that was her understanding, and importantly, that her view that she could not go back was created and reinforced by the number of times she was told that the defendant could not advise her.

245. I reject the suggestion that the claimant's evidence that the information about Mr Mayne's assets not being significant was implausible. I find that she did think at that point that this information was irrelevant in light of what the defendant had told her.

246. However, it does seem to me that the defendant's position is even more difficult at this stage when it was effectively in receipt of financial disclosure identifying that Mr Mayne had significant capital. There was a failure to advise the claimant there and then. Reliance on the "option one" disclaimer situation was, as I find a clear breach of duty.

247. The defendant's submissions seek to put the responsibility for appreciating the significance of these pieces of information and the consequent need almost to advise herself on the claimant rather than on the defendant.

248. I find that Form P should have been served in the circumstances at a significantly earlier stage.

249. It was not enough as I find to refer to a pension sharing order as one of the possible orders that a court could make. It was not enough to inform the claimant of the existence

of pension sharing orders. It was not enough in the face of the information about Mr Mayne's pension to indicate that Mr Mayne's level of offers were unlikely to be fair. Mrs Lewis needed clear advice about what she could reasonably hope to achieve.

250. I accept that the claimant admitted that she was told of the possibility of a pension sharing order, but that is not the same as being advised that she could make an application for such an order, particularly after she had signed a disclaimer. I accept the force in the claimant's argument that she signed a disclaimer accepting the premise that the defendants could no longer advise her. For the reasons I have set out, I consider that the failure to advise her was negligent and requiring her to sign a disclaimer in those circumstances was not appropriate.

251. There is no note of the alleged advice about a pension sharing order despite the contents of paras 21 and 22 of Ms Perks' statement. In any event telling the claimant of the possibility of the court making such an order does not discharge the defendant's duty of care. The defendant ought to have advised at the very least that the court would make or would be extremely likely to make a pension sharing order and that it would be extremely valuable.

252. In the re-amended defence at para. 37(a) (p.124(A) the defendant specifically denies that it was under a duty to advise the claimant at any stage to apply for a 50% pension sharing order. I find that the failure to advise the claimant to do that was in breach of the defendant's duty of care. In making that denial, the defendant sets out its case that it did not so advise the defendant. I find that that failure was in breach of duty.

253. It was at this point that the matter was handed over to Ms Wiggins. Ms Wiggins had an opportunity to review the file, to identify the position which had been reached, and to consider the claimant's position properly. It seems that she simply relied on the disclaimer, and indeed on 16 May 2014 chased Mr Mayne's solicitors for the consent order.

254. On 27 May, the claimant wrote to say that it seemed that there was to be a deduction from the original agreement in respect of £11,500 paid to her by Mr Mayne. Having still not received the consent order Ms Wiggins simply reiterated on 27th May that she could not comment on whether that was a fair settlement.

255. The letter from the defendant to the claimant dated 1 August 2014, at p.645 says that Ms Wiggins has sent off the consent order, but that she does not consider the agreement to be fair. I consider this to be a significant breach of duty. She has sent off the consent order, knowing it is not fair. She has sent off the consent order on the basis that she cannot advise Mrs Lewis, even though, as I find she could have advised her. The advice should have been not to sign the consent order, but to pursue an application for a pension sharing order. The fact that Mrs Lewis could have ignored that advice does not mean it should not have been given.

256. I reject the defendant's submission that the disclaimer is inimical to a finding that the defendant owed a duty to advise on the fairness of the settlement at the time that it was

signed. The claimant had first consulted the defendant in May 2012. The retainer letter was dated 16 April 2013. The defendant had the information about Mr Mayne's pension that I have set out. It had not served Forms E or P. Mrs Lewis should have been advised about the consequences of the proposed settlement and what her options were before she decided whether or not to go ahead with it. Deploying the disclaimer before discussing the matter with the claimant was as I find a breach of duty. Of course, if after receiving that advice, Mrs Lewis had gone ahead with the proposed settlement, requiring her to sign the disclaimer (perhaps in terms which reflected the individual case circumstances) would have been perfectly appropriate.

(iv) Causation

257. I accept the submission made on behalf of the claimant in respect of causation that the claimant would have followed the advice of her solicitor had she been given it. She was, as I find vulnerable and unsophisticated. I accept her evidence that she wanted to be told what to do. Had she been advised in clear terms that she not only could, but should apply for a pension sharing order and that that was a likely outcome and that it would prima facie be a 50% share, she would have followed that advice.

258. In consequence, of course, I reject the suggestion that at this stage the claimant felt she had an option. In respect of causation, therefore, I have effectively set out what I consider would have been reasonable non-negligent advice. The claimant should have been told about her options in clear terms and by reference to sums of money. The advice certainly could have been prefaced "on the basis of the information we have so far". However, in particular, following the SOFI, which was supplied in advance of the consent order and with an awareness of Mr Mayne' age, length of service, size of pension and the information that he was soon to retire, the defendant could and should have advised the claimant in these terms.

259. First of all, I should say that Ms Wiggins, telling the claimant at that stage that a pension sharing order was "possible" was inadequate advice. A pension sharing order was as I have already indicated a likely outcome in this case. Ms Wiggins was, as I find in a position to compare and advise the claimant as to the difference to her between settlement on the proposed terms and the likely order a court would make. She did not do so.

260. It is in that context, as I find that I have to look at the claimant's response. If she had been advised about the likely remedy, she would have been granted, and its size, this would have been bound, as I find, to inform her decision about not only whether or not she could afford to fight her husband, but also whether or not the option of "getting rid of him" for a net sum in the region of £30,000 was still attractive.

261. The defendant relies on what it describes as the second "fork in the road" as at 11 July 2014, in terms of causation, where the claimant said that she could not afford to fight Mr Mayne and that she was better off getting rid of him.

262. I accept the claimant's evidence that she was not the sort of person who would have borrowed money from family, but that her family (her sisters) were ready, willing and

able to lend her the money. Again, if she had been properly advised as to what was at stake; on balance I find that her answer would have been different. The defendant's causation argument is essentially dependent upon the claimant not knowing because it did not tell her that she might achieve a financial remedy which ran into hundreds of thousands of pounds.

263. I find and I accept that she was vulnerable to bullying and intimidation by her husband, but properly advised, I do not find that she would have lacked the fortitude to pursue an appropriate settlement.

264. Having made those findings. I accept that without going to court, Mr Mayne might never have been willing to offer 50% in terms of distribution of assets. He did, however, have the benefit of legal advice and his solicitors would similarly have been aware of the likely outcome at court and would have advised him about that. I do not think that making those findings is straying into the realms of speculation. I reject the defendant's arguments that 50-50 would not have been an appropriate starting point. There were 23 years of cohabitation, including 20 years of marriage. There seem to have been only two years of pre-cohabitation pension contributions. Mr Mayne was retiring at 55 with interests in two businesses. It seems that he had other capital assets.

265. I reject the defendant's submission and find causation is made out. In particular, I take account of the fact that the claimant has brought these proceedings. She has clearly been concerned about the settlement that she reached and has made the decision to pursue the defendant. Although I appreciate that the circumstances are somewhat different, she has not shied away from litigation.

(v) Loss of a Chance

266. In terms of loss of a chance, it seems to me that further to the authorities cited above, this is a case where, had the matter gone to court, it is an almost certainty that the pension sharing order would have been made and that it would have been on a 50-50 basis. The only other potential outcome that I can imagine would be that, as matters proceeded to a hearing, Mr Mayne would have made a sufficiently improved offer to cause Mrs Lewis to be advised properly to accept it. Given the very small risk she would have been facing, such an offer would have to have been close to a 50-50 split, but I can see that, as is often the way with any litigation, a close offer without going to a hearing might have been attractive.

267. On the basis of my figures, the starting point would be £547,600 less £35,500. There would also have to be deducted an appropriate figure for costs. I accept that Mrs Lewis's impression was that the figure would be around £10,000. The retainer letter suggests a figure of £25,000. Despite Mr Mayne's apparent intransigence, the issues here were fairly straightforward, given the nature of the assets. I propose to allow a figure of £12,500 for costs which would give a total of £499,600. Had Mr Mayne made an offer of say £400,000 (approximately 80% of that figure) I can see that it is likely that Mrs Lewis would have accepted such a sum and I conclude therefore that an appropriate award for damages in this case is £400,000.

268. I accept the submission made on behalf of the claimant in respect of contributory negligence, which also informs my view on causation. See extract from Jackson and Powell cited at para.35 above.

(vi) Quantum

269. I appreciate that there are properly arguable points to be made in favour of equality of income as opposed to equality of value. However, in this case it seems to me that where Mr Mayne's pension was the only significant capital sum and no, for example, property to divide, the court on the balance of probability would have taken the equality of value approach. The circumstances here are particular and in order to achieve financial parity in those unusual circumstances, I prefer the equality of value approach.

270. I accept that there should be some deduction for the sum received which seems to have been £11,500 which would reduce the sum that she received to £50,500, but she also signed over the endowment to Mr Mayne, which was at that time, worth about £15,000, It seems to me that the appropriate deduction therefore is £35,500.

(vii) Contributory negligence

271. Finally, the defendant relies on an allegation of contributory negligence. As set out in the authorities above such a finding is relatively unusual in professional negligence cases. I accept the authorities indicate that those unusual circumstances may arise where the client is in a good or better position to make the appropriate decision. In the vast majority of cases the solicitor has by far the greater responsibility. It is the defendant's case that when looking at the question of respective responsibilities in a limited scope retainer the responsibilities on the client for the matters for which the client has agreed to carry the risk are wider. That is the basis upon which it is pleaded in the re-amended defence that Mrs Lewis contributed to her own loss by deciding to proceed with the settlement, despite the warnings that she was given, and despite knowing both about the disparity in the parties' capital, and that the starting point for the division of assets was 50-50. It is further pleaded in support of this allegation that she knew that a court could make a pension sharing order.

272. It seems to me that there is an inherent inconsistency in the defendant's argument as to primary liability and in respect of contributory negligence. The defendant also knew of all of these things. For the reasons I have given I have rejected that the scope of the retainer was limited in the way in which the defendant argues. Part of that reason is because the defendant knew exactly the same things that it suggests the claimant was responsible for. I have set out that I consider that the defendant was in breach of duty in failing properly to advise the claimant. Those findings put this case into the usual realm of professional negligence and a finding of contributory negligence would not be appropriate.

273. It seems to me that the defendant's argument on contributory negligence is bound up in the position they seek to adopt about which I asked Miss Evans early on in the proceedings. Namely, that this was "low-cost" or "budget" representation that they were

offering the claimant and that some distribution of responsibility so as to divest the defendant of some of their liability would be "fair". I reject any such suggestion. I have accepted that the extent of the duty of care is informed by the scope of the retainer. I have set out what I consider to be the defendant's duty of care in the circumstances of this case and the way in which it breached it. The cost of representation clearly will be limited by the extent of the work the solicitor is required to do, and the grade of solicitor doing it. That does not lower the standard of care imposed when carrying out the work within the remit of the retainer.

Conclusion

274. The claim succeeds and there will be judgment for the claimant in the sum of £400,000.00.