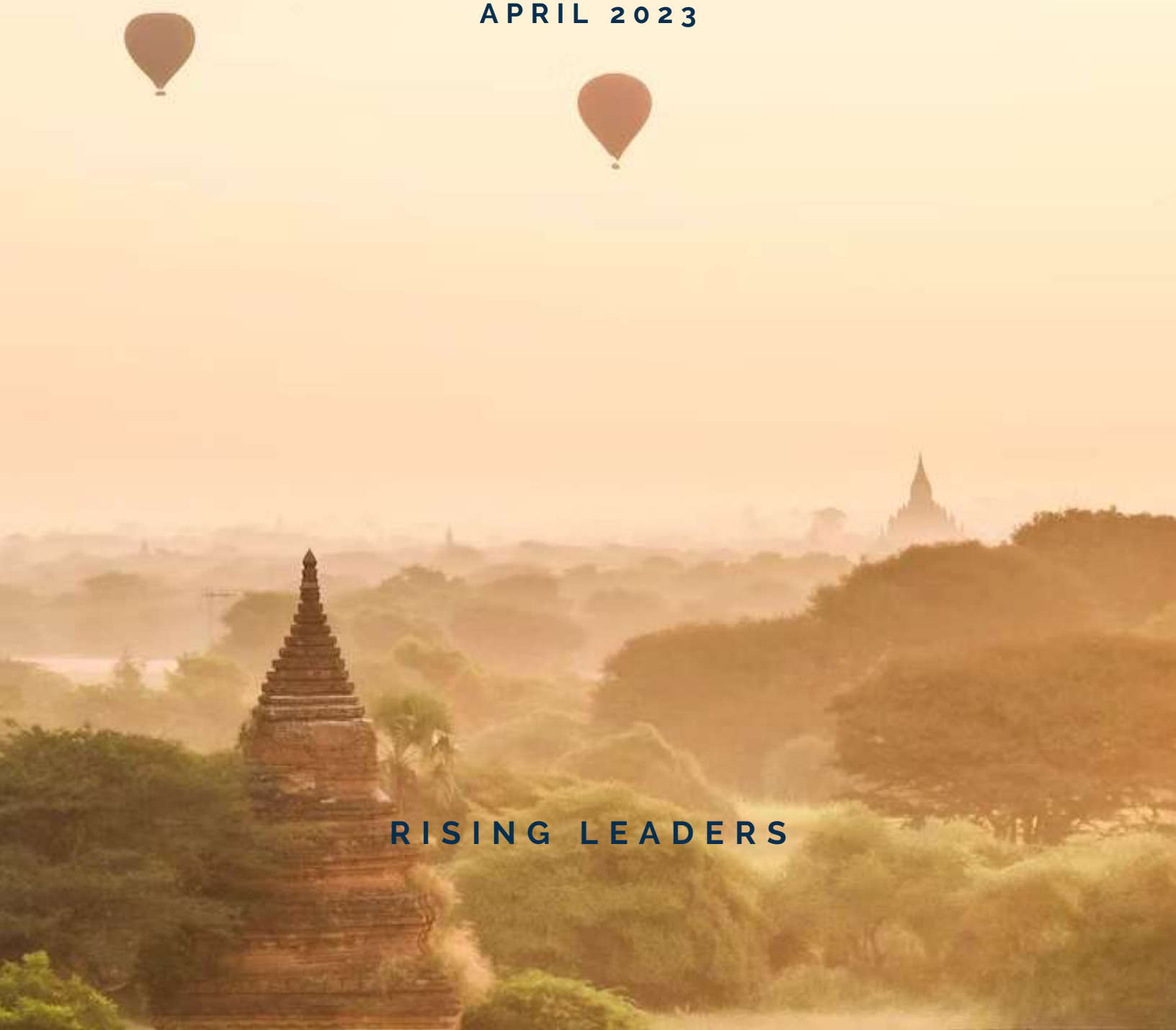
PRIVATE CLIENT
GLOBAL ELITE

THE MONTH

APRIL 2023



RISING LEADERS

The Month is a monthly magazine with key takeaways and content driven by our Private Client Global Elite community.

We welcome ideas and contributions from members of our Global Elite Membership group. If you are interested to contribute please contact **Francesca Ffiske** (fffiske@alm.com)

For more information about membership with the Global Elite contact **Rachael Mowle** (rmowle@alm.com)

For information about our events, or if you need help registering, contact **Rachael Toovey** (rtoovey@alm.com)

For information about partnering with us contact **Ellie Donohoe** (edonohoe@alm.com)

For general enquiries contact **Rhiannon Winter Van Ross** (rvanross@alm.com)

We love hosting fifty of our Rising Leaders at our Brunch this month.

"Excellent guest list of high calibre colleagues in the industry and agenda of topical issues affecting the private wealth sector."

"It was very different from other events (in a good way). The atmosphere was relaxed and personal, much more that I am used to from other events. I think that was for a big part due to the great introductory session that set the tone and was very well done."

"I liked the lively discussions and my impression was that a lot of participants were speaking very openly on the different topics. I also liked the mixture of professional and personal topics."

"Really enjoyable morning. Lots to think about and a great networking group."

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EDITOR NOTE

FRANCESCA FFISKE

We had great fun last week with fifty of our Rising Leaders at a brunch in London, where we discussed the fact that they are the **'squeezed generation**': in between young children and aging parents, young trainees and older partners, in between two very different mentalities about the work place.

They discussed that, while it is easier than it used to be to have boundaries around work, the new generation are even more unafraid to ask for what they want - flexibility, and a good work-life balance. This means that our Rising Leaders (mostly new partners or senior associates), end up having to carry the slack for those more junior than themselves, as well as working as hard as ever for more senior partners.

They discussed some tips to help maintain their own boundaries as the 'bridge':

- Make us of delayed send - people needn't know that you are available late (even if you are).
- Do not answer the phone to clients in the middle of the night - just say you're unavailable and don't say why.
- Blocking notifications and emails when you actually can! Go away and actually be able to switch off - have a system where your emails can be handed over.
- Have a work phone and a personal phone and never let the twain meet...
- Lawyers are naturally independent and individual, but make use the team around you. Have a sense of camaraderie. Team ethos where you have each others' backs.
- Ask for what we want - if you don't ask you don't get.

We spoke with some of our Rising Leaders in this edition - through interviews and viewpoints around the industry. With huge thanks to our contributors for taking time out of their 'squeezed' days to write something for us!

2023

Rising Leaders Leadership Brunch
London, 20th April 2023

Private Client Exchange Bermuda
Rosewood Hotel, Bermuda, 9-10 July 2023

Minds of the Future Exchange
Terre Blanche, 14-16 September 2023

Trust & Estates Litigation Forum
La Mamounia, Marrakesh, 20-22 September 2023

Private Client Exchange France
Chateau Saint-Martin, 5-6 October 2023

International Private Client Forum
Villa d'Este, 15-18 November 2023

Private Client Exchange UK
Cliveden House, UK, 30 November - 1 December

IN THE SPOTLIGHT: EMMA HOLLAND

Emma advises beneficiaries, trustees, and other fiduciaries on trust disputes both onshore and in numerous offshore jurisdictions. Emma also specialises in probate disputes, including when conflicts of private international law arise, and disputes overseen by the Court of Protection.

What is keeping you busy at the moment?
Currently, I'm working on a response to an application in the Court of Protection for a significant lifetime gift and statutory will. I'm also advising on applications, both here and offshore, in respect of removing fiduciaries - trustees, protectors and executors. I generally have a good mix of trust, probate and Court of Protection/ capacity focussed work.

What do you enjoy most about working at Stewarts?
I know it sounds clichéd but it really is the people I work with. Back in 2017, I was the first person to join James [Price] when he started the team and because of that I've been lucky to have some say in who we have recruited. Although there are now 13 of us, it feels like the team has grown very organically. I have also really enjoyed working with talented colleagues in our family, commercial litigation, insolvency, tax, injury and arbitration departments, where matters require their input. The firm is very forward looking and as a result seems to attract dynamic people who look outside the box in terms of developing new practice areas and being innovative (for example, on funding of disputes), which makes it an exciting place to be.

What kind of litigator are you?
You would have to ask my opponents but I hope they would say that I am tough but fair: I don't want to be known as someone who takes cheap shots or is unduly aggressive. The private wealth industry is a small world and reputation is important. I am often told that I have a great attention for detail, which I've always felt was important because being on top of the details can give you the edge both in terms of developing strategy and also giving your clients confidence that you really understand the issues at hand.

What is the most important lesson you have learnt so far in your career?
To really add value, you must not be afraid to tell your client when their approach is misguided or to disillusion them if they have an unduly over-optimistic view of their prospects of success. That said, in the types of dispute I deal with, clients are often experiencing emotional turmoil and being able to empathise and show that you really understand what matters to them is just as important. (Sorry, I think that is more than one lesson!)

What piece of advice would you give your trainee-self?
Don't spend too much time or energy theorising about your career path. Instead, take up the opportunities presented to you, do a good job and other doors will open.

Have you ever had an embarrassing moment at work?
I'm sure I've had many but I've blocked them out! One I do recall is flying to Switzerland for a meeting with clients and multiple lawyers to finalise a hotly debated trust restructuring. My luggage went missing in transit – fortunately I had used my hand luggage to carry the final bound agreements. Less fortunately, because it was a Sunday and the

meeting was not until the next day, I was wearing a very casual ensemble including some polka dot trousers. At the meeting the next day, I overheard someone commenting that it would have been nice if I had bothered to change out of my pyjamas. (Nowadays I doubt anybody would have commented as since the pandemic everyone's attire is generally far more casual.)

How do you deal with the stress involved with litigation?
Probably akin to most litigators, I don't mind working under pressure and often actually enjoy the associated adrenaline kick. Easier said than done, but I also try really hard to keep things in perspective. An ability to keep a cool head is part of the job description. Having been on the beach in Sri Lanka in 2004 on the day the tsunami hit, I know that even when you have a really bad day in the office, it could be worse! ■

WHAT ARE THE RISING LEADERS IN OUR NETWORK READING?

SHOULD I STAY OR SHOULD I GO

THE FUTURE OF THE REMITTANCE BASIS

Sophie Dworetzsky, Charles Russell Speechlys

While the title may be trying a little too strenuously to introduce levity – and song titles – to seemingly arid tax matters, the future of the remittance basis has arguably never been more pertinent.

As we are all too aware, the remittance basis is a political football, and a rather topical one at that.

How did we get here?
By way of very brief history, the remittance basis has its origins in the very introduction of income tax in 1799, in so far as those resident in the UK were only taxed on income arising abroad if that income was received in the UK.

By 1914 the remittance basis was amended so that it only applied to non domiciled, or non ordinarily resident individuals.

The only permanent is change
The remittance basis has of course undergone a number of evolutions and changes since 19i4, notably in 2008 when the remittance basis charge was introduced, and most recently in 2017 when the concept of deemed domicile was introduced. By way of brief recap, a resident non domiciliary (RND) will become deemed domiciled for tax purposes after 15 out of 20 years of tax residence, whereupon they will be taxed on the arising basis for all directly received income and gains, wherever arising.

Protected trusts, established before deemed domicile and carefully managed thereafter, offer an ongoing modified form of the remittance basis, but only while assets remain in trust and only with extremely careful management.

To say the current rules governing the remittance basis, deemed domicile and the concept of protected trusts are complex is an understatement, but they remain critically important not just for RNDs, but in showing stability in the UK tax system.

What is the remittance basis?
In brief, an RND is taxed on offshore income and gains remitted onshore (hence the remittance basis) and UK source income on the arising basis.

When deemed domiciled, they are taxed on worldwide income on the arising basis save, generally, for offshore income and gains received and retained within protected trusts.

Current debate
The Labour Party has said that if it forms the next government, the government will abolish non domicile status, it is not clear what it might be replaced with, potentially a tax break for shorter term residents. In terms of timing, the latest that an election can be called is 2024.

While there was no mention of any changes to non domicile status and the remittance basis in the most recent Budget, one cannot dismiss the possibility that if the current government, or a Conservative government, remains in power, some form of review of or change to the remittance basis will be announced.

It is notable that there was a request for the government to publish details earlier this year of whether it had considered scrapping non domicile status ahead of the Autumn Statement in 2022.
It is also notable that a research paper published in September 2022 entitled 'Reforming the non-dom regime: revenue estimates'concluded that abolition of the regime would raise £3.2 bn a year.

While it is impossible to be clear on the analysis, it is clear that RNDs contribute not only in direct tax terms but also indirect tax terms and revenue generation in the UK. At least as importantly the RND regime is an element of the UK remaining an inviting place for wealth creators and the wealthy to live,

and to do business.

The estimation that abolishing non-domicile status would raise £3.2bn needs to be looked at incredibly carefully in that context.

Why does it matter?

Aside from the fact that RNDs are important wealth creators, there are rather more subtle aspects.
It is ever more important that the UK shows it is outward facing, globally minded and welcoming to those who wish to contribute. This has been hampered by the failure to replace investor visas with anything equivalent, and it is important that those who wish to come to the UK do not feel that they are unwelcome and perceived as simply taking advantage of the remittance basis.

Endless attacking the remittance basis and rendering it uncertain does nothing to add to the appeal of the UK as a place for wealth creators to establish themselves.

Competition

It is also important to remember that there are a number of competing regimes, most notably Italy and Portugal have their own permutations of the remittance basis.

If we wish to remain a jurisdiction that remains attractive to the world and wealth creators, we need to ensure those considering the UK as a base have certainty as to the rules that will apply to them, and some level of comfort that they will not be pilloried for not paying their fair share.

What might happen

Any prognostications as to what might happen are of course just speculation.
However, there are some options which spring to mind:

1. A review of the remittance basis and non-domicile regime;
2. A change of the 15 year deemed domicile horizon to e.g. 12 years;
3. A grandfathering of existing structures; or
4. None or a combination of the above.

It is important that whatever next steps are, whether now or after the next election, that the UK remains and is seen to remain a welcoming jurisdiction for RNDs, and that there can be certainty and stability so that those planning to establish themselves in the UK know that the rules are not unreliable, uncertain and overly complicated. ■

IN THE SPOTLIGHT: KATIE HOOPER

Katie is a Partner of Mourant Ozannes (Jersey) LLP and an Advocate of the Royal Court of Jersey in our Litigation & Dispute Resolution practice. She has experience in a broad spectrum of litigation matters, including contentious trusts and private client, insolvency, banking and professional negligence.

Tell us about something interesting you are working on at the moment.
I am working on an interesting, high-stakes mistake case at the moment, which raises a common but difficult question about the extent to which the court can modify the transaction in question under Jersey's statutory mistake provisions- the court has some flexibility but cannot rewrite history so there is often a delicate balance to be struck in such applications. In my experience, the more complicated the initial structuring, the more difficult are the legal and conceptual issues and barriers arising on any mistake application, and this case is fertile ground in that regard.

What is your definition of a good leader?
There are so many different leadership styles which can work well but, to my mind, a good leader is someone with emotional intelligence who can read and understand the context and situation before them and adapt their approach accordingly. They are someone who understands that they have agency to make a difference and takes the responsibility of that seriously.

Have you had a mentor in your career and, if so, what is the most important thing they have taught you?
I have been very lucky to have had a number of people who have informally mentored me over the years. Together, they have taught me the importance of self-acceptance and self-belief as the foundation of leadership, coupled with the need to always maintain a growth mindset- there is always room for self-development, no matter one's role, experience, seniority and/or age!

If you could change one thing about the legal profession, what would it be and why?
Gender balance at senior and partnership level. Progress is being made but slowly. As to why this is important, it is difficult to know where to start and how to summarise what parity would mean. To give a short answer, the profession and organisations within it would all be more successful with greater diversity at the table, to shape them, their culture and ethos.

If you could have any superpower, what would it be and why?
I know that I should answer this with some far-reaching ambition in mind but, keeping it real after the school run this morning, I would like the power to answer the simultaneous questions of my three children in a way which satisfies them and doesn't provoke 10 sub-questions!

If you could eat one food for the rest of your life, what would it be and why?
My mum's coffee cake. She would make this whenever I returned from university and it evokes lovely memories.

What's your favourite song to sing in the shower?
Journey's Don't Stop Believin'; – it's a classic. It is also my go-to karaoke song.

If you could travel anywhere in the world, where would you go to and why?
I have this rather dull propensity to revisit places I love instead of branching out. Being true to

that, I would go to Taormina, Sicily, because it is where I got married and is one of my favourite places in the world. In terms of a place I have never been before, I would go to Argentina, for the wine, food and landscape. Also, being Welsh, there is just something compelling to me about the notion of eating a Welsh cake across the world in Welsh Patagonia!

If you had a time machine, where and when would you go first?
I always wished that I had met my paternal grandfather but, having had a hard, working life as a miner in South Wales, he died young, well before I was born, so I think the first thing I would do is go back in time to have a cup of tea and a chat with my Tad-cu (that's Welsh for grandfather!). ■

WHERE ARE THE RISING LEADERS IN OUR NETWORK EATING?

CONDUCT IN FINANCIAL REMEDY CASES

Flora Harragin, Farrer & Co

When considering the appropriate division of a couple's financial resources upon divorce, the court takes into account the factors listed in s 25 of the Matrimonial Causes Act 1973. This includes "the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it" (s 25(2)(g)). However, that is all the guidance that the statute provides. It is therefore necessary to look to case law to establish how the courts apply this s 25 factor and assess what, if any. impact conduct might have on an overall award.

Although clients are often keen to raise matters which they consider to be "conduct", the court will only consider conduct when it would be inequitable to disregard it. In practice, this is a high hurdle, as demonstrated by some of the examples provided below.

This column will consider both financial and non-financial conduct. A future column will consider litigation misconduct and the circumstances in which a failure to negotiate can constitute conduct.

Financial conduct

Conduct which has the effect of dissipating the marital asset base is conduct which can be taken into account by the courts when determining how the assets should be divided. This principle was made clear by Cairns LJ in Martin v Martin [1976] Fam. 335 where he stated at para 629:

"a spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to had he behaved reasonably."

Where financial conduct is run as an argument by one of the parties, that party usually seeks for the dissipated funds to be "added back" to the asset schedule. The term "add back" was first used in the case of Norris v Norris [2002] EWHC 2996, [2003] 1 FLR 1142 where Bennett J added back £250,000 of overspend to the husband's assets.

"Why should the wife be disadvantaged in the split of the assets by the husband's reckless expenditure? A spouse can, of course, spend his or her money as he or she chooses, but it is only fair to add back into that spouse's assets the amount by which he or she recklessly depletes the assets and thus potentially disadvantages the other spouse within ancillary relief proceedings" (at para 77).

The concept was further considered by the Court of Appeal in Vaughan v Vaughan [2007] EWCA Civ 1085, [2008] 1 FLR 1108 where the husband had dissipated wealth by gambling. The Court of Appeal considered the circumstances in which one party's dissipation of assets should be taken into consideration by the courts and ultimately determined that £100,000 should be added back. However, Wilson LJ highlighted that caution should be adopted before the court adds back to the asset schedule money that no longer exists and stated that there must be "clear evidence

of dissipation (in which there is a wanton element)".There is therefore a two-stage test; (i) there must be evidence of dissipation, and (ii) the dissipation must have had a wanton element.

Evidence of dissipation
If conduct is to be run as an argument by one of the parties, they should refer to it in s 4.4 of the Form E, even if full details cannot be supplied until the other party's disclosure has been received. Full evidence of the expenditure will also need to be obtained. In a complex case, it may be necessary to instruct a forensic accountant if a tracing exercise needs to be carried out.

Wanton element
The case of F v F (Financial Remedies: Premarital Wealth) [2012] EWHC 438 (Fam), [2012] 2 FLR 1212 demonstrates the requirement for wanton dissipation. In that case, the husband had made substantial lifetime gifts to four children from his previous marriage. Macur J held it was entirely reasonable for him to do so at a time when he was making provision for his younger children and his wife. The gifts did not adversely impact upon the high standard of marital lifestyle.

"For the avoidance of doubt I make clear that the wife has not discharged the burden of proving any alienation of matrimonial funds by the husband with the intention of defeating or reducing her claim, nor of wanton and reckless behaviour..."

Finally, even where conduct may appear to be wanton and reckless, the court may not consider it to be so, because of the particular characteristics of that individual. In the case of MAP v MFP (Financial Remedies: Add-Back) [2015] EWHC 627 (Fam), [2016] 1 FLR 70 the wife alleged that the husband was spending £6,000 a week on drugs (cocaine) and further large sums on prostitution. Moor J held that whilst the husband's spending, particularly on drugs and prostitution, was morally culpable, it was not deliberate or wanton dissipation within the meaning formulated by the authorities. He had not overspent to reduce the wife's claim. It was down to his flawed character. A spouse had to take his or her partner as he or she found them. He said the following:

"Many very successful people are flawed. This is true of this husband. I have decided that it would be wrong to allow the wife to take advantage of the husband's great abilities that enabled him to make such a success of the company while not taking the financial hit from his personality flaw that led to his cocaine addiction and his inability to rid himself of the habit. It may have been morally culpable. Overall, it was irresponsible. But I find that this was not deliberate or wanton dissipation."

Add back and needs
The Court of Appeal in Vaughan (see above) made the point that if the money has been spent (not hidden), then it is an error to take it into account when looking at the offending party's ability to meet his housing needs, as he does not, in fact, have access to those funds. Wilson LJ stated that when the court considers reattribution, it must ensure that the figure to be added back "does not extend to treatment of the sums we attribute to a spouse as cash which he can deploy in meeting his needs, for example in the purchase of accommodation".

However, the court has taken a more robust approach to add back in the context of over-spending on legal costs (see for example YC v ZC [2022] EWFC 137) and so it is important to bear this in mind when deciding whether or not to pursue conduct in a particular case.

Non-financial conduct
Although non-financial conduct features less than financial conduct, there are examples of it impacting upon the division of a couple's finances upon divorce in the authorities. Once again, the conduct must be inequitable to disregard as per the statute, and the following examples highlight the height of this hurdle.

In the case of H v H (financial relief: attempted murder as conduct) [2005] EWHC 2911, [2006] 1 FLR 990, the husband had been convicted of attempted murder of the wife after he carried out a violent attack on her in front of children. The husband was sentenced to 12 years' imprisonment. Coleridge J found that this was conduct at the very top of the scale. In deciding how to reflect this conduct when dividing the parties' assets, the judge considered the conduct to be a magnifying factor when considering the wife's position, thereby placing the wife's needs as a much higher priority than those of the husband.

In the case of FRB v DCA (No 2) [2020] EWHC 754 (Fam) the court considered whether, in allowing the husband to bring up a child in the belief that he was the natural father (when he was not), the wife was guilty of conduct that it was inequitable to disregard. Cohen J concluded that her actions did amount to conduct so egregious that it would be inequitable to disregard, but how it should be taken into account was a much more difficult issue. He accepted that it could have the effect of reducing the wife's award and also that reflecting in financial terms the cost of the emotional damage to the husband of the sort

inflicted by the wife was like comparing apples and pears. Ultimately, he found that the husband's disclosure had been seriously deficient and that there were undisclosed, unquantified assets. He determined that he would not try to put a monetary figure on the husband's undisclosed assets, but equally would not reduce the wife's award by giving her a lower percentage of the disclosed assets as to do so would be a double jeopardy.

Most recently, in VV v VV [2022] EWFC 41, [2023] 1 FLR 170, Peel J found that by communicating with the founder of the company for whom the husband worked in an effort to prevent or delay the release of units to the husband, the wife was guilty of gross and obvious conduct which the court was entitled to take into account. The wife's conduct was a factor considered by the judge when assessing the wife's needs.

When considering the appropriate division of a couple's financial resources upon divorce, the court takes into account the factors listed in s 25 of the Matrimonial Causes Act 1973. This includes "the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it" (s 25(2)(g)). However, that is all the guidance that the statute provides. It is therefore necessary to look to case law to establish how the courts apply this s 25 factor and assess what if any impact conduct might have on an overall award.

Last month we considered both financial and non-financial conduct. This month we will consider litigation misconduct and the circumstances in which a failure to negotiate can constitute conduct, before touching on recent developments in relation to excessive spending on costs.

Litigation misconduct

Litigation misconduct can also be taken into account under s 25(2)(g). It is usually penalised in costs but can, in rare circumstances, impact the overall award.

The general rule in financial remedy proceedings is that there should be no order as to costs (r 28.3(5) of the FPR 2010). However the court may depart from the general rule where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (see r 28.3(6)).

Rule 28.3(7) sets out the factors which the court must take into account when considering whether the conduct of a party during the proceedings justifies a departure from the general rule. Those factors include failure to comply with the FPR or court orders, unreasonably pursuing particular issues, or any other aspect of a party's conduct in relation to proceedings which the court considers relevant.

Recent examples of litigation misconduct can be found in the cases of HD v WB [2023] EWFC 2 in which the husband was penalised for unreasonably pursuing a case that a prenuptial agreement should be disregarded and DP v EP (conduct: economic abuse: needs) [2023] EWFC 6, in which the judge found the wife's presentation of her case to be dishonest. In the latter case, even though the wife had already been penalised for her conduct during the marriage by the unequal division of the assets in the husband's favour, the judge also made an order for costs against her.

Rule 28.3(7) also requires the court to consider the financial effect on the parties of any costs order, but as stated by Moor J in R v B and others [2017] EWFC 33:

"The conduct may be so serious that it prevents the court from satisfying both parties' needs. If so, the court must be entitled to prioritise the party who has not been guilty of such conduct."

The court must be entitled to prioritise the needs of the party who has not been guilty of conduct and in TT v CDS [2020] EWCA Civ 1215, [2021] 1 FLR 996 the Court of Appeal held that it was not unfair for the party who is guilty of misconduct ultimately to receive a sum less than his or her needs would otherwise demand.

Failure to negotiate

For a number of years, judges have become increasingly frustrated at the costs incurred in financial remedy cases. In order to try and focus parties on settlement and limit the costs being incurred, in May 2019, McFarlane P amended para 4.4 of PD 28A, adding that when considering conduct during the proceedings, the court will generally conclude that refusing openly to negotiate reasonably and responsibly amounts to conduct for which the court will consider making a costs order.

Since its introduction in May 2019 a number of cases have considered the impact of this paragraph. One such example is MB v EB (No 2) [2019] EWHC 3676, [2020] 1 FLR 1086. The parties were embroiled in litigation for 2 years. By the time of the final hearing the costs totalled circa £1.25m which was regarded as "grossly disproportionate" to the issues in the

case. Cohen J considered the open offers which had been made by the parties. He was critical of the husband for failing to engage in open negotiations; had there been a sensible (or any) response to the wife's offer there would have been a quick resolution of the case. Even though the husband's claim was based on his needs, he limited the sum payable by the wife in respect of his costs, so that the husband had to meet some of his costs from his needs award.

Although para 4.4 of PD 28A does not strictly apply to interim applications, in LM v DM (Costs Ruling) [2021] EWFC 28, [2022] 1 FLR 393 Mostyn applied the same principles when considering applications for maintenance pending suit and a legal services payment order. The applicant was successful in her applications, but she had made no serious attempt to negotiate reasonably on an open basis beyond setting out her position in a witness statement. The applicant was subsequently deprived of 50 per cent of the costs award that the judge would have otherwise made in her favour. In giving his short judgment, Mostyn J stated, "Litigants must learn that they will suffer a cost penalty if they do not negotiate openly and reasonably".

Incurring excessive costs

Two recent decisions, the judgment of HHJ Hess in YC v ZC [2022] EWFC 137 and the judgment of DDJ Hodson in P v P (treatment of costs in sharing cases) [2022] EWFC 158 have considered the court's approach where one party has unreasonably incurred considerably more in legal fees than the other.

In both cases, the court dealt with the unfairness that arose from the differential in legal costs spending by making an adjustment in the court's asset schedule before distribution, either by excluding a portion of the overspender's unpaid costs or adding back a portion of the overspender's costs already paid, in order to penalise the overspender. HHJ Hess made clear that in the right circumstances a party could expect to receive an award which meets their needs at a lower level than might otherwise have been the case as a result of overspending on legal costs.

In his judgment, DDJ Hodson describes spending on excessive costs as an advance, on account of the party's entitlement, and distinguishes it from the add-back jurisprudence which needs to meet the hurdle of "wanton dissipation".

Although not strictly conduct, these latest developments highlight for all litigants the need to spend proportionately on costs. No longer can parties invade marital savings, confident that they will be "lost in the wash", by the time of the final settlement or hearing. ■

IN THE SPOTLIGHT: MICHAEL RUTILI

Michael Rutili is a Partner in the Private Wealth team at Stephenson Harwood and is based in London. Michael is a multilingual lawyer and a trusted adviser to numerous, mostly European, private clients, their families and businesses. He specialises in tax, estate planning and succession matters.

Why did you become a lawyer?
I initially studied law as a back-up in case my intended career as an international affairs journalist or in the diplomatic service did not work out! At the time, I knew very few lawyers and had no idea what 'private client' work entailed. Nevertheless, some very inspiring mentors I was lucky enough to meet early on encouraged me to train a solicitor and then to specialise in my field which meant my initial plans quickly went out of the window. And the rest, as they say, is history! I have never once looked back.

What is your proudest professional moment?
In early 2021, I took the plunge and left my previous firm after more than ten years (and in the middle of a global pandemic)! The gamble has definitely paid off and the team is going from strength to strength. I am now proud to be working alongside some of the leading practitioners in the private client field (who also happen to be the best colleagues you could ask for on a personal level).

What is keeping you busy at the moment?
An interesting mix of complex international estate planning for a number of well-known entrepreneurial families and trying to resolve some tricky tax issues for some very mobile clients. Enough to keep boredom at bay!

What changes do you expect to see in your practice over the next year?
The last few years have reminded private client lawyers the importance of hoping for the best and planning for the worst. We will not be able to forget that mantra quite yet. Clients are going to expect us to be more responsive, creative and proactive than ever before.

Who is the most inspiring person you have ever met or worked with?
My grandfather. He arrived in the UK from post-war Italy with broken English. He quickly became a successful engineer and later managing director. He was still travelling all over the world and learning about every new piece of technology well into his late eighties. He taught the younger generations in my family the importance of being resourceful, living life to the full and broadening one's horizons day after day.

What is your favourite snack when you are in late from the office?
Cheese. And I never have nightmares!

What do you do to relax?
Music, long walks and planning trips to new destinations!

What is your favourite song to sing in the shower?
The neighbours are glad I stick to thinking about the day ahead rather than singing!

What is the most unusual job you have ever had and what did you learn from it?
My first one – gardener! Attention to detail but without going as far as not being able to see the wood for the trees (no pun intended...)

What is the best piece of advice you have ever received?
Listen to the silence. It has so much to say. ■

Q&A: TANJA SCHIENKE-OHLETZ SITS DOWN WITH RUTH JUNIUS-MORAWE TO DISCUSS THE DIFFERENCE BETWEEN THE BRITISH AND GERMAN PRACTICES

Ruth Junius-Morawe is German lawyer and associate at Flick Gocke Schaumburg (FGS) in Frankfurt. Due to the international focus of FGS, the firm offers its associates the opportunity to spend some time abroad working at a befriended law firm – to experience the work in a different jurisdiction, to improve foreign language skills, to grow an international network and to make valuable personal experience abroad. Ruth spends her three months secondment at the tax trust and succession team of Charles Russell Speechlys (CRS) in London. FGS partner Tanja Schienke-Ohletz is interviewing her seconded associate Ruth for The Month:

Tanja: Ruth, working in London - what are the main differences to working in a German law firm?

Ruth: Firstly, you start work a little later, which is very pleasant. And of course, everyone here is on a first-name basis. On the other hand, the German offices are larger and there is often a separate office for each employee - a luxury that is unimaginable in London. But of course, a shared office also has many advantages, especially if you are new to the team and can learn a lot from the exchange with your colleagues. Oh, and even the bustling commute to work - London just seems full of people all the time. It's an impressive experience. And with regard to the organisation of the law firm the level of professional staff apart from fee earners is also higher here (e.g., business development, strategy, training, events, assistance and client care). My impression is that in Germany, a lot is still handled directly and only by the partners.

Tanja: What is different in the private client's business in London?

Ruth: It is certainly difficult to give a general answer and of course my insight in three months cannot be comprehensive. The structure of the mandates is of course very diverse in both countries. More than in Germany, however, the various partners here seem to have specialised in different market areas, whether geographically (domestic, overseas, far and middle east) or in terms of content (family, succession, property, tax, planning and disputes).

Tanja: What are you doing in the London office of CRS? Describe a typical business day in London?

Ruth: My day starts with an exciting bike ride over very crowded bike lanes to work after dropping my kids off at nursery (childcare in London is terribly expensive, but in our case also very professional and well done). Many colleagues arrive at the office around half past nine. You have a coffee or, of course, tea and off you go. My client work is very mixed, there are a few purely British matters with colleagues here and an increasing number of British/German matters in which I handle the German part and coordinate with other German colleagues. Essentially, however, it will be the same as in Germany: emails, phone calls, drafting and revising documents, team meetings, etc. Yet what is always added here is internal training for the more junior colleagues and very professional compliance and IT training on a fairly broad scale for all fee earners and professionals. My office day ends with picking up the kids from nursery and then the rest must be done from home after bedtime - even in London, life as a working parent is quite exhausting here and there.

Tanja: What can the Germans learn from the UK law / advice / business?

Ruth: What I really like is the amount of open communication about company figures, hours, turnover, recruiting and acquisition. My impression is that as an associate you can learn a lot about the entrepreneurial side of our business. Networking is also something that is done more widely here, not only with other advisors, but also specifically with alumni, for example. And in terms of diversity, things are much more advanced here. I find London very exemplary and horizon-expanding, especially in this respect. Ethnic, cultural and personal differences are dealt with very warmly and naturally. Greetings on various religious holidays, support and very open communication about parental leave or other obligations besides work are just one example.

Tanja: Where can we work together? Where are the links between UK/Germany (global mobility/Germans in the UK remittance base interesting tool)

Ruth: There is a broad base of client matters with both UK and German aspects. Often it is not obvious at first glance, but after some discussions and internal presentations, a whole range of issues have emerged which are now being worked on by CRS and FGS. Often the reason lies in the international mobility of our private clients. Multiple citizenships, cross-border marriages, assets in different countries, professional and private stays or moves abroad. But also targeted use of the advantages of the other jurisdiction (taxwise e.g. UK remittance base, but also the different legal framework conditions for e.g. divorces in UK and Germany).

Tanja: Give examples which cross border cases you dealt with?

Ruth: There are complicated probate cases with assets in Germany, succession planning where a separate will has to be drawn up for German assets. British-German prenuptial agreements and, finally, applications for a German passport that has not been used for a long time in order to be able to continue to be a free EU citizen. So quite a wide spread and very varied and above all with many different lovely colleagues here at CRS.

Tanja: What will you miss the most after returning to Germany?

Ruth: I find the mixture of high technical and organisational professionalism with the informal personal interaction (of course with the unmistakable British humour) very enriching. The great canteen at CRS is also exemplary of this. It is used every day by employees of all levels and even turns into a pub about every two months and provides for fun evenings among colleagues. And I would love to take a piece of British liberalism and humour with me. ■

ATTORNEY AND EXECUTOR COSTS: WHAT ARE THE RULES, AND CAN COSTS BE CHALLENGED?

Joseph De Lacey, Farrer & Co

Charities may sometimes find that an estate of which they are a beneficiary is saddled with an alleged debt owed to (i) the testator's attorney under an LPA (Lasting Power of Attorney) or (ii) the executors. What rights do attorneys and executors have to charge for their time, and what can a charity do to challenge their costs?

Attorneys

- Without express authority under an LPA, an attorney is not entitled to charge for time spent. They may claim for expenses, however.
- The Mental Capacity Act 2005, as supplemented by the Code of Practice, does not authorise attorneys to charge for time spent, and, as fiduciaries, attorneys are not entitled to charge for time spent, unless the donor has agreed in advance.
- Where the donor has given authority to charge for time spent, the authority should be provided for in the document recording their appointment, ie, LPA. This is rather unusual however and will only normally apply where a very wealthy donor appoints a professional to act as their attorney.
- The position with Deputies (ie, persons appointed by the Court of Protection to act for someone lacking capacity) is usually different, and they will normally be authorised to be paid for time spent. This can be checked by looking at the Court of Protection Order confirming the appointment of the Deputy.

Executors

- The position is similar with regard to executors and administrators of estates. So executors and administrators are generally not entitled to charge for anything other than out of pocket expenses.
- As with LPAs, the will might provide that the executor can charge for their time however.
- Where the will appoints trustees of a will trust, the lack of a charging clause may not prohibit the trustee for charging for their time. If the trustee who is appointed acts in a professional capacity (ie, he is a professional trustee), he can charge reasonable remuneration for any services provided if all co-trustees agree (he cannot charge if he is a sole trustee).
- Executors and administrators may, however, of course instruct solicitors (and other professionals) to provide advice on the administration of an estate and may pay for that advice out of the estate.

So how does this affect charities?

- If on the death of the donor, there is an alleged debt to an attorney, and that debt reduces the benefit to the charity, the charity might seek to challenge the debt if the charity considers that the attorney had no right to charge for their time. The same principle applies to executor costs.
- How will the charity find out if there are any attorney / executor costs? The best course is for the charity to seek copies of the estate accounts

accounts from the executor / administrator. Any refusal might be met by a reference to the executor's / administrator's duty to account to the beneficiaries.

- As a first step, the charity should write to the executor of the donor's estate, and alert them to the costs which the charity seeks to challenge, as the right to challenge debts allegedly owed by the deceased will vest in the executor.
- If the executor refuses to consider such a challenge, for example because the executor was the attorney / executor who has incurred the charges, then the charity might seek the removal of that executor, and the replacement of the executor with a professional administrator.
- The grounds of that application might be the conflict of interest between the executor's interest (and duty) in recovering debts of the estate, and the interest of the executor in seeing that purported debt paid to him personally.
- A cost benefit analysis will need to be undertaken to ascertain if a challenge is worth the time and costs to the charity.

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