St.Mary's
FAMILY LAW SPECIALISTS

# Financial Remedies Case Law Update


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**An appeal arising from financial remedy proceedings concerning a final order made in the Husband's absence following his failure to engage with proceedings. The Husband sought relief from sanctions to enable him to bring an appeal out of time, challenged the final order and sought to rely on new evidence.**

FG v BN (Appeal out of time) [2026] EWFC 101 (B)

### Factual background

This appeal arose from financial remedy proceedings concerning a final order made by District Judge Hartley on 16th January 2025. The parties, aged 74 (H) and 58 (W), married in 1997 and separated in 2023. Their marriage was 26 ½ years in duration. They had one adult child. W worked as a teacher/private tutor and H, a retired solicitor, worked as a part-time tribunal judge.

In March 2024, W issued financial remedy proceedings. She complied with each of the relevant directions including filing her Form E on time. H failed to do so. In July 2024, further directions were agreed. The next hearing was listed as an FDR, however, the order specifically stated, should H fail to comply, a final hearing would occur in its place. His solicitor, supported by a GP letter, attributed his initial non-compliance to a deterioration in his mental health.

H subsequently failed to provide updating disclosure, exchange questionnaires or comply with any of the agreed directions. Accordingly, the next hearing, listed on 16 January 2025, was converted from an FDR to a final hearing. In advance of this, W filed a s.25 statement, supported by property particulars and evidence of mortgage raising capacity.

### The final hearing

Neither H nor his legal representatives attended the hearing, leaving the court to determine the application in his absence. Unlike civil proceedings, the trial judge could not simply enter judgement in default and was required to undertake the two-stage exercise of computation and fair distribution under *Charman v Charman* [2007] EWCA Civ 503. However, under *Moher v Moher* [2019] EWCA Civ 1482, the trial judge was able to draw properly founded and reasonable adverse inferences from H's failure to provide disclosure provided she avoided speculation or disproportionate investigation and ensured that non-disclosure did not result in a more favourable outcome for the defaulting party.

Ultimately, the judge handed down a short judgement, noting the "significant difficulty" she faced in computing the assets. The net assets were valued at in excess of £1.9 million, including approximately £550,000 of inferred assets and an inference that H's pension exceeded £700,000.

The final order awarded W £900,000, comprising the net equity in two properties and a balancing lump sum, with a clean break. The award was provided on a "needs" basis, including a £700,000 housing fund and £200,000 income fund, while H retained his more valuable pension provision. The result was broadly equal as to net capital, but the overall division of aggregate resources and pensions, inclusive of the adverse inferences, was in H's favour.

### Following the final order

H was notified of the final order on 23rd January 2025 and, under FPR 30.4 (2), had a period of 21 days to appeal. That deadline expired on 6th February 2025 without an appeal being lodged.

Instead, on 10th February 2025, H served a Form E and subsequently applied to set aside the order, relying principally on his mental health difficulties and alleged inaccuracies in the financial information before the trial court. Around May 2025, he changed solicitors and in July 2025 he obtained a transcript of the judgment.

During the intervening period, W took steps to implement the final order, including seeking to sell the property. By the time of the appeal, difficulties in selling the property meant that its likely sale price was significantly below the value originally adopted by the court. W nevertheless sought to preserve the final order.

### The husband's case

In late 2025, H sought relief from sanctions on the grounds of his concerns regarding his former solicitors' advice prior to May 2025, his mental health difficulties and delays in obtaining a transcript.

If relief were granted, further issues arose as to:

- whether H could appeal on the basis that the trial judge erred in her computation, assessment of the parties' financial needs, and application of the sharing principle;
- whether further evidence could be admitted under the *Ladd v Marshall* [1954] EWCA Civ 1 principles; and
- whether the final order should be stayed pending appeal.

The appeal judge noted the lack of succinctness in H's documentation and submissions, for example in providing a skeleton argument 2.5 times longer than the judgement under appeal, which unnecessarily increased the time required for the hearing.

### The wife's case

W sought to refuse relief from sanctions on the basis that the appeal was out of time, relying on H's extensive history of non-compliance and the fact that he was legally represented and legally trained. She further submitted that the appeal and any new evidence should be refused as H had "no real prospect of success" (FPR 30.3(7)). Although she accepted that the trial judge's computation of assets was imperfect, she maintained that the adverse inferences drawn were properly made and that the judge had not fallen into error.

### The law

H sought permission to appeal out of time, more than ten months after the expiry of the 21-day appeal period. The appeal judge considered the factors set out at FPR Pt.4.6, as set out below:

1. On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –
    a. the interests of the administration of justice;
    b. whether the application for relief has been made promptly;
    c. whether the failure to comply was intentional;
    d. whether there is a good explanation for the failure;
    e. the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol;

f. whether the failure to comply was caused by the party or the party's legal representative;
g. whether the hearing date or the likely hearing date can still be met if relief is granted;
h. the effect which the failure to comply had on each party; and
i. the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.

The appeal judge confirmed, citing *TRC v NS* [2024] EWHC 80 (Fam), that the three-stage test in *Denton & Ors v TH White Ltd and another* [2014] EWCA Civ 906 provides the applicable framework for relief from sanctions and applied each of these stages to his assessment.

**The 'Denton test'**

First stage: Seriousness and significance of failure to comply

The appeal judge considered H's 10½ month delay to be a serious and significant failure to comply with the appeal deadline. The court noted that while a court may, under *Lockwood v Greenbaum* [2022] EWHC 845 (Fam), adopt a permissive approach to delays of several weeks, where justified and causing no significant prejudice, a delay of 10½ months was of an entirely different magnitude.

Second stage: Why the default occurred?

H put forward three explanations for his delay: his mental health difficulties, concerns about his former solicitors and delays in obtaining the judgement transcript and legal advice.
The appeal judge accepted that the medical evidence demonstrated a significant deterioration in H's mental health, which affected his ability to engage with the proceedings. However, he considered this alongside H's continued professional functioning and his failure to provide substantial medial evidence at the relevant time.

On the issue of H's criticism of his former solicitors, the appeal judge noted the difficulty in assessing these criticisms without access to the solicitors' file. However, what was clear from the correspondence between H and his solicitors was that they had repeatedly sought information from H without receiving a response. Ultimately, it was clear that the professional relationship between them, had, by May 2025, broken down.

Finally, there were clear delays in obtaining the judgment transcript and in instructing counsel. The transcript was obtained on 22 July 2025, despite being sought in April 2025. H asserted that the instruction of counsel had been delayed as a result of a lack of availability over the summer period.

Stage 3: All the circumstances of the case

The appeal judge considered eight of the listed relevant circumstances under FPR 4.6 including:

*Pt. 4.6 "…all the circumstances": Any merit of the appeal.*

The appeal judge concluded that the appeal was neither obviously strong nor obviously weak. Some of H's grounds had merit, particularly those concerning the calculation of the assets and his contention that the adverse inferences drawn by the trial judge were too broad. However, other grounds were considered unpersuasive, including H's challenge to the trial judge's assessment of W's financial needs and the value attributed to the property.
Additionally, many of H's grounds depended upon the admission of new evidence. H faced an uphill struggle in obtaining permission to adduce this, as he had previously been ordered to provide this but failed to do so.

The appeal judge also considered the practical position concerning the property. W's inability to sell the property meant that it was likely to sell for substantially less than the £900,000 valuation adopted at trial. This reduced the force of H's argument that the outcome at trial was sufficiently erroneous to justify appellate intervention.

*Pt 4.6 (1)(a) 'the interests of the administration of justice'*

The appeal judge also emphasised the importance of finality, particularly given the substantial delay. The judge distinguished this case from those where long delays had been permitted, as they involved exceptional circumstances or orders that were impossible to implement.

*Pt 4.6 (1)(c) & (d) 'whether the failure to comply was intentional' and "…whether there is a good explanation for the failure"*

The appeal judge found that H's mental health difficulties provided some explanation for his failure to engage but did not fully excuse his non-compliance or account for the 10 ½ month delay. His ability to instruct solicitors immediately following the final hearing, continue to engage in a professional role and personally pursue the transcript were all relevant factors when assessing the extent to which his difficulties explained his failure to comply.

The judge accepted that H had provided a good explanation for approximately the first six months of the delay from February to late July/ early August 2025. However, the subsequent four-month period was largely unexplained. H's reliance on the unavailability of counsel during the summer period did not adequately account for this further delay. The judge ultimately regarded it "wholly unacceptable" that the period of reasonably explained delay was followed by a four-month period of inadequately explained delay.

*Pt 4.6 (1)(e) "…the extent to which the party in default has complied with other rules…"*

Although H relied upon the conduct of his former solicitors, the appeal judge noted his longstanding failure to comply with directions, both before the final hearing and in the appeal itself. Of particular note, H failed to serve his appeal documents on W within the required seven days (FPR 30.4(4)), instead serving them two months late.

*Pt 4.6 (1)(h) & (i) "…the effect which the failure to comply had on each party" and "…the effect which the granting of relief would have on each party…"*

The continuing appeal had prolonged the dispute and left both parties facing ongoing uncertainty, with W particularly affected by difficulties in implementing the final order. The delay in resolving the appeal therefore had a continuing practical and financial impact on the parties.

The appeal judge also considered the consequences of granting relief. Permission would have the effect of reopening or prolonging the proceedings, resulting in further delay and additional costs. It would also afford H a further opportunity to litigate matters which he had failed to engage with fully during the original proceedings. These factors weighed against granting relief, particularly given the prejudice already caused to W by the continued uncertainty and delay.

## Conclusion

The appeal judge ultimately held that, although H had a good reason for the delay up to late July/early August 2025, there was no adequate explanation for the further four months delay. Significant weight was placed on that unexplained delay, H's longstanding history of non-compliance and the importance of finality in litigation. While the judge accepted that the medical evidence established a link between H's mental health difficulties and his ability to engage with proceedings, he concluded it did not fully explain or excuse his failure to comply with the relevant directions or the 10 ½ month delay. Having regard to all the circumstances, the judge concluded that relief from sanctions should not be granted and accordingly dismissed the appeal.

In light of the dismissal of the appeal, it was unnecessary to determine H's application to adduce further financial information or to stay the final order. The question of costs was reserved.


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