

Approved Judgment

27. The Wife has applied to strike out Temur’s counter-claim on the basis that (a) he has no standing to seek relief in respect of her funding arrangements or (b) he has no grounds in fact or law for asserting that those arrangements are unlawful or contrary to public policy. Mr Gourgey QC submitted that Temur’s applications were nakedly tactical manoeuvres intended to gain an advantage over the Wife by discovering how much funding she has and the terms on which it was provided. Temur’s strategy was to prevent the Wife from instructing solicitors funded by or on behalf of Burford Capital with the result that she would be unable to pursue her claim against him and the Husband. The suggestion that public policy required the Wife to be deprived of the funding she needed in order to pursue enforcement of this court’s orders and that the interests of justice were served by leaving her without the means of unravelling Temur and the Husband’s dishonest schemes to frustrate and evade those orders turned both justice and the public interest on their heads.
28. Mr Gourgey QC submitted that this court should not, by analogy with the prohibition on conditional funding arrangements in family proceedings, embark upon the road towards the creation of a rule of public policy forbidding third-party litigation funding in family proceedings. That was not a matter for the court where Parliament had chosen not to enact and/or bring into force rules relating to third-party funding. This was particularly undesirable in circumstances where litigation funding by professional funders, adhering to a Code of Conduct, has been sanctioned and approved in this jurisdiction as facilitating access to justice and as being unlikely to corrupt the same.

Strike-Out: The Law

29. Rule 4.4 of the Family Procedure Rules 2010 [“the FPR”] provides in relevant part that:

(1) [...] [T]he court may strike out a statement of case if it appears to the court -

a) that the statement of case discloses no reasonable grounds for bringing or defending the application;

b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings [...]

Practice Direction 4A - Striking Out a Statement of Case contains within paragraph 2.1 examples of cases which the court may conclude that an application falls within r 4.4(1)(a) as follows:

a) those which set out no facts indicating what the application is about;

b) those which are incoherent and make no sense;

c) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable application against the respondent.

30. The language of FPR r 4.4 (1) mirrors the language of r 3.4(2) of the Civil Procedure Rules 1998 [“the CPR”] and should be interpreted analogously (paragraph 20 of Wyatt v Vince [2015] UKSC 14 per Lord Wilson). Wyatt and Vince is also authority for the proposition that (a) the three sets of facts set out in paragraph 2.1 of Practice Direction 4A exemplify the limited reach of r 4.4(1)(a) which must be construed without reference