Neutral Citation Number: [2017] EWCA Civ 270

Case No: B6/2015/1092

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM

MR JUSTICE HOLMAN

FAMILY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 11/04/2017

**Before:**

THE MASTER OF THE ROLLS

LADY JUSTICE KING
and

LORD JUSTICE MOYLAN

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**Between:**

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|  | **WILLIAM RANDALL WORK** | Appellant |
|  | **- and -** |  |
|  | **MANDY C GRAY** | Respondent |

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**Nicholas Cusworth QC, Tim Owen QC (who did not appear), Richard Castle** and **Deepak Nagpal**

(instructed by **Hughes Fowler Carruthers**) for the **Appellant**

**Tim Bishop QC, Maya Lester QC, Michael Bradley** and **Oliver Jones**

(instructed by **Payne Hicks Beach**) for the **Respondent**

Hearing dates: 7th and 8th February 2017

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Judgment Approved

**Sir Terence Etherton MR, King LJ and Moylan LJ**

Introduction

1. In this judgment, we propose to call the parties the husband and the wife, reflecting their status in the proceedings.
2. The husband appeals from the order of Holman J of 10th March 2015, which recites his decision that the husband and the wife were entitled to an equal share of the marital wealth. In doing so, the judge rejected the husband’s case that he had made a special financial contribution which justified an unequal division of that wealth in his favour.
3. This appeal provides an opportunity for this court to review the issue of special contribution and its proper scope, if any, when the court is determining a financial claim under the Matrimonial Causes Act 1973 (“the MCA 1973”).
4. The issues raised by this appeal can be summarised as follows:
5. What is the proper approach to the determination of whether a party has made a special contribution which, in the application of the sharing principle, justifies an unequal division of marital wealth;
6. Does the concept of special contribution remain valid or should it be discarded as being discriminatory;
7. Did Holman J apply the proper approach;
8. If his decision wrong, what division of the matrimonial property should have been made.

Issue (ii) was not raised below but was the subject of the wife’s Respondent’s Notice. We gave permission to the wife to make submissions on the issue at the hearing of the appeal.

1. The husband seeks an unequal division of the matrimonial property in his favour, namely 61%. The wife submits that Holman J’s decision should be upheld.
2. We are grateful for the submissions made by all counsel in this case. Mr Cusworth QC (who did not appear below) questioned whether the expression “special contribution” should be abandoned in favour of some other formulation. In *K v L (Non-Matrimonial Property: Special Contribution)* [2011] 2 FLR 980 Wilson LJ (as he then was) described the phrase as a “term of art in the law of ancillary relief” (para 20). We do not consider that there have been any significant developments since then which would warrant a change in this descriptive phrase.
3. The structure of this judgment is as follows:
4. Background;
5. The judgment of Holman J;
6. Legal context;
7. The parties’ submissions;
8. Special Contribution – its development;
9. Determination.

Background

1. At the date of the judgment the husband was aged nearly 48 and the wife nearly 46. They were both born and brought up in the USA. They met, and began living together, in 1992 and married in 1995. The marriage came to an end in 2013. There are two children of the family.
2. When the parties met they had no significant financial resources. They each had, what the judge described as, “good but modest jobs”. The husband then studied for an MBA while the wife continued to work.
3. In 1997 the husband began working for a private equity fund called Lone Star. Initially, he worked in Dallas, Texas before moving to work in Japan in 1997. The wife joined him there in 1998. The family remained living in Japan until 2005, when they moved to Hong Kong. In 2008 the husband left Lone Star and the family moved to live in England.
4. The marital wealth was all accumulated during and through the husband’s employment with Lone Star. The husband is described as having run the Lone Star office in Japan, which generated huge returns for investors and for the husband personally. His total earnings exceeded $300 million but, by the date of the hearing, the wealth totalled approximately $225 million.
5. The wife petitioned for divorce in May 2013. Between then and March 2015 the parties managed to spend nearly £3 million on legal fees and associated costs. This is, to put it bluntly, a staggering sum, reflecting, as aptly described by Holman J, “profligate and unnecessary” expenditure.

The Judgment of Holman J

1. A significant issue, addressed in detail in the judgment, was whether a post-nuptial agreement or agreements had any relevance to the determination of the wife’s financial claims. Holman J decided that the agreements did not limit or impact on the wife’s claims. This was, in part, based on his construction of the agreements but, in addition, in case this conclusion was wrong, because the wife did not have a “full appreciation of [their] implications” quoting from Lord Phillips in *Granatino v Radmacher* [2011] 1 AC 534 at para 75. There is no appeal from this aspect of the judge’s decision.
2. Having dealt with the agreements, the judge addressed the section 25 factors. He considered the factors listed in section 25(2) of the MCA 1973 before turning to the issue of special contribution.
3. Holman J accepted, by reference to *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618 and *Charman v Charman (No 4)* [2007] 1 FLR 1246, that a special contribution made by one party can have an impact on the court’s exercise of its distributive powers. From these cases he drew the following propositions (para 140):

“From the passages that I have quoted from *Miller* and *Charman*, I extract the following:

(i) The characteristics or circumstances which would result in a departure from equality have to be of a wholly exceptional nature such that it would very obviously be inconsistent with the objective of achieving fairness for them to be ignored: per Bodey J in *Lambert* but quoted with obvious approbation by Lord Nicholls of Birkenhead in *Miller* at paragraph 68.

(ii) Exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise (Lord Nicholls of Birkenhead in *Miller* at paragraph 68).

(iii) Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares (Baroness Hale of Richmond, in *Miller* at paragraph 146).

(iv) It is extremely important to avoid discrimination against the home-maker (the Court of Appeal in *Charman* at paragraphs 79 and 80).

(v) A special contribution requires a contribution by one unmatched by the other (the Court of Appeal in *Charman* at paragraph 79).

(vi) The amount of the wealth alone may be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or some other field (the Court of Appeal in *Charman* at paragraph 80). A windfall is not enough.

(vii) There is no identified threshold for such a claim to succeed (the Court of Appeal in *Charman* at paragraph 88).”

1. In paragraphs 141 and 142 Holman J described the word “genius” as “a difficult and, perhaps, unhelpful, word in this context” preferring the expression used in *Charman*, namely some “exceptional and individual quality which deserves special treatment”. He also, by reference to more being required than “hard work alone” (para 143), identified the need to ensure that the concept of special contribution is not applied in a way which is discriminatory to the home-maker.
2. In paragraph 155, whilst noting that “these cases should not be decided by comparing one with another”, Holman J contrasted the husband in the present case with the husband in *Sorrell v Sorrell* [2006] 1 FLR 497.
3. Holman J set out the facts he considered relevant to his determination between paragraphs 146 and 154. He assessed the nature and quality of the husband’s financial contribution, including its scale. The husband applied “ground breaking methodologies … to the distressed debt sector” in Japan. “He ran the Japanese office and generated huge returns”. Between 1998 and 2008 they averaged 50% per year and the total profits produced for investors was $7 billion. The husband’s total earnings exceeded $300 million. “By the time (the husband) left Lone Star, in 2008, the number of employees in Japan had risen from zero to about 400, all managed by him”. Holman J concluded (para 147): “He was, undoubtedly, very successful and performed very well at the job he was employed to do”.
4. In addition, (paras 153 and 154), the husband “did not create Lone Star. He played no part in attracting the funds from investors, which were vital to the whole enterprise. His role in the Japanese sector of the business was very important, but it was not unique, and there is, indeed, no evidence, that it could not have been performed by another”. There was, the judge decided, “an element of being in the right place at the right time”.
5. Holman J also assessed the wife’s contribution for the purposes of determining whether the husband’s contribution was “unmatched”. He focused, in particular, on the effect of her moving with the husband to live in Japan and clearly decided, for the reasons that he gave, that this was a very significant contribution in the context of this case.
6. Holman J gave very careful consideration to the issue of special contribution. He referred (para 151) to the “many interventions and discussions about the concept of special contribution, in my attempt to tease out the principled basis of the concept …”. He then said: “I have not found this aspect of the case an easy one”.
7. He concluded that the husband had not made “an unmatched special contribution of the kind and to the extent that the authorities require” (para 152) and that he had not “displayed the exceptional and individual quality that the authorities require” (para 153). The judge’s overall conclusion was set out in paragraph 156:

“Although the figures are large, I do not consider that the contributions of the husband in this case can be described as of a wholly exceptional nature, nor that it would be “very obviously” inconsistent with fairness for them to be ignored. Indeed, it would, in my view, be unjustifiably gender discriminatory to make an unequal award. This was a marriage of two strong and equal partners over 20 years. They each contributed in a range of differing, but all of them important, ways to a marriage and relationship which enriched them both, both financially and emotionally, as parents of their children and partners to each other.”

Legal Context

1. We address below the development of the concept of special contribution. At this stage we provide a summary of the broader legal context.
2. The relevant statutory provision, section 25 of the MCA 1973, is too well-known to require reciting in full. It imposes a *duty* on the court “to have regard to all the circumstances of the case” including, in particular, the matters listed in s.25(2)(a) to (h).
3. The focus in this case has been on s.25(2)(f), although Holman J also referred to s.25(2)(g). Section 25(2)(f) requires the court to have regard to:

“the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family”.

1. As Lord Hoffmann pointed out in *Piglowska v Piglowski* [1999] 1 WLR 1360 at p. 1370H:

“Section 25(2) of the Act of 1973, while listing the various matters to which particular regard should be had, does not rank them in any kind of hierarchy. Which of them will carry the most weight must depend on the particular facts of the case.”

This is the essence of what has been called the bespoke approach to the determination of financial claims which requires the court to consider what weight to give to each of the s.25 factors and all the other relevant circumstances in the individual case. The tension that this creates, between the need for a sufficient degree of certainty in the exercise by the courts of their discretionary powers and the need for sufficient flexibility to meet the justice of the individual case, has been the subject of debate over the years.

1. In the absence of further legislative guidance the jurisprudence has been developed by the courts.
2. *White v White* [2001] 2 FLR 981 was later described by Lord Nicholls in *Miller* (para 8) as having “shattered” the “glass ceiling” which had previously existed as a result of the applicant’s “reasonable requirements (being treated) as determinative of the extent of the award”.
3. The previous approach was seen to be discriminatory and unfair. In reaching this conclusion, Lord Nicholls noted how the flexibility intrinsic in the structure of the 1973 Act - as a living instrument - enables the courts to adapt the manner in which it is applied to ensure it remains an instrument of fairness. He said (p. 605H):

“Generally accepted standards of fairness in a field such as this change and develop, sometimes quite radically, over comparatively short periods of time. The discretionary powers, conferred by Parliament 30 years ago, enable the courts to recognise and respond to developments of this sort. These wide powers enable the courts to make financial provision orders in tune with current perceptions of fairness. Today there is greater awareness of the value of non-financial contributions to the welfare of the family. There is greater awareness of the extent to which one spouse's business success, achieved by much sustained hard work over many years, may have been made possible or enhanced by the family contribution of the other spouse, a contribution which also required much sustained hard work over many years. There is increased recognition that, by being at home and having and looking after young children, a wife may lose for ever the opportunity to acquire and develop her own money-earning qualifications and skills. In *Porter v Porter* [1969] 3 All ER 640, 643-644, Sachs LJ observed that discretionary powers enable the court to take into account 'the human outlook of the period in which they make their decisions'. In the exercise of these discretions 'the law is a living thing moving with the times and not a creature of dead or moribund ways of thought.'”

1. The decision in *White* is rooted in the “principle of universal application” that, in the determination of the implicit statutory objective, namely a “fair outcome” (p. 604H), there is “no place for discrimination between the husband and the wife and their respective roles” (p. 605B/C). The case created the “yardstick of equality of division” which:

“As a general guide …, should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination”: Lord Nicholls at 605G.

This was not to create “a presumption of equal division (which) would go beyond the permissible bounds of interpretation of section 25”: 606C.

1. The next major development came with *Miller*. Three principles were identified in *Miller* - need, sharing and compensation. Lord Nicholls dealt with sharing as follows (para 16):

“This “equal sharing” principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie’s observation that “husband and wife are now for all practical purposes equal partners in marriage: *R v R* [1992] 1 AC 599, 617 … When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: “unless there is good reason to the contrary”. The yardstick of equality is to be applied as an aid, not a rule”.

1. Later in his judgment (para 22) Lord Nicholls identified the “marital acquest” or the “matrimonial property” as being “the financial product of the parties’ common endeavour”.
2. Lady Hale addressed the “rationale for redistribution” starting at paragraph 137. The rationale of “*sharing of the fruits of the matrimonial partnership*” reflects the “widespread perception that marriage is a partnership of equals” (para 141). She cautions that an “equal partnership does not necessarily dictate an equal sharing of assets”, particularly because “it may have to give way to the needs of one party or the children” (para 142). However, in many cases “roughly equal sharing” will be “feasible and fair” (para 143).
3. The sharing principle is now firmly embedded and, in those cases where the resources exceed needs, the “ordinary consequence” of its application will be the equal division of matrimonial property: Wilson LJ in *K v L* at paragraph 21.

Submissions

1. The parties’ respective cases can be summarised relatively shortly.
2. The husband seeks an unequal division of the matrimonial property because, it is submitted, he has made an “unmatched” exceptional contribution justifying his being awarded 61%. When asked how he had arrived at this precise proposed division, Mr Cusworth submitted that it derives from previous decisions on special contribution. We note that it is the middle of the bracket proposed by the court in *Charman*.
3. Mr Cusworth submitted that special contribution remains a legitimate concept and one which has been approved by the House of Lords in *Miller* and by the Court of Appeal in *Charman*. However, although the concept remains valid, he suggested that greater clarity is needed from this court as to the manner in which it is to be applied because there is uncertainty over whether it requires the existence of “some special skill or some genius factor”.
4. The husband proposes that the focus should be on the contribution and not the contributor. It is, he submitted, the nature or quality of the contribution – “what has been done or the impact or value of what has been done” - which bears on the welfare of the family and not the qualities of the person making the contribution. Accordingly, when considering a financial contribution, the court should give primary weight to the quantum of the wealth generated during the marriage. The qualities of the contributor may become relevant but only as a secondary or subsidiary factor. This is because, the only assessment of quality which is “primarily relevant”, is to ascertain whether the contribution is genuinely attributable to the party and not the product of “a windfall or random good fortune”.
5. Based on these broad points, the husband proposed in his written submissions that the “correct approach”, when the court is determining whether a financial contribution justifies a departure from an equal division of the marital wealth, should be as follows:

(a) The court should first consider whether the quantum of the contribution *alone* is exceptional and thus has a quality which makes it inequitable to disregard;

(b) If the quantum alone is not sufficient, the court should consider whether there is some other quality either (i) in the manner or duration of the production or (ii) in the skill/individual quality of the contributor which renders it sufficiently exceptional to make it inequitable to disregard;

(c) The court must then assess whether any such special contribution is “unmatched” by considering whether the other party has made an equal contribution which is so significant that it would also be inequitable to disregard it.

1. Mr Cusworth followed the above, by repeating during his oral submissions, that the focus should be on the contribution and not the contributor. However, his case became rather less clear when he was asked to encapsulate his proposed test more succinctly. His response was to the effect that it would depend on: “The assets having been accumulated/generated by genuine effort or acumen deserving of recognition”. This would seem to make an assessment of the nature of the “effort or acumen” a more integral part of the exercise than was advanced in his written submissions, although Mr Cusworth sought to reiterate that it is the wealth itself which is the contribution, not how it has been generated.
2. It was submitted by the husband that, if Holman J had followed the above approach, and given proper weight to the quantum of the wealth generated by the husband by first considering quantum alone, he would have decided that the husband had made a special contribution. He was wrong when he said that special contribution “requires some exceptional and individual quality in the spouse concerned” (para 144). This, it was submitted, is contrary to what Lord Nicholls said in *Miller* when he referred to “exceptional earnings” and “the wholly exceptional nature of the earnings” (para 68).
3. Further, when considering whether the husband’s contribution was “unmatched”, Holman J should have assessed whether the wife had made “an equal (i.e. exceptional) contribution”. If he had, he would have determined that the wife had made no more than a “normal” contribution and not one sufficient to match the husband’s exceptional contribution.
4. In response to the wife’s new case on discrimination, Mr Cusworth submitted that special contribution is not discriminatory in the manner in which it is applied. He submitted that there is a clear legal basis for differential treatment, namely a substantive difference in the contributions made by the parties. Contributions are an important factor as identified, for example, by the Supreme Court in *Vince v Wyatt* [2015] 1 WLR 1228 (para 34). Further, he submitted that, because we do not have community of property but a “separate property” regime (as referred to by Lady Hale in *Miller* at paragraph 153), it would be wrong to exclude financial contributions as being able, on their own, to result in a departure from equal sharing.
5. The wife submitted that Holman J was right to determine that the husband had not made a special contribution. Mr Bishop submitted that Holman J applied the right approach, as summarised in para 140 of his judgment. Indeed, he pointed to the passage in the husband’s written submissions where it was stated that Holman J’s determination was made “on a broadly correct application of the principles”.
6. Mr Bishop further submitted that the judge was entitled to conclude that the husband had not made a contribution justifying an unequal division of the marital wealth in his favour. The husband can point to no error in the judge’s determination of fact and no error of principle. The judge correctly considered whether the husband had made a contribution which it was inequitable to disregard. He had express regard to the scale of the contribution (para 156). The judge was right to regard the word “genius” as being unhelpful but was also right to look for an exceptional and individual quality which is consistent with authority, especially *Lambert* and *Charman*. Mr Bishop would accept that it is not helpful to compare the facts of different cases but submitted that the judge’s reference to *Sorrell* was a passing reference and was preceded by the judge himself saying that cases should not be compared.
7. The judge was, he submitted, well placed to assess whether there existed such a disparity in the parties’ respective contributions as to justify his concluding that the husband had made a special contribution. Mr Bishop submitted that the husband is unfairly seeking to diminish the wife’s contributions.
8. Mr Bishop submitted that, in essence, the husband is seeking to persuade this court to replace the judge’s findings with our own and to replace the exercise of his discretion with our own when there is no valid basis for so doing.
9. Mr Bishop submitted that the new approach proposed by the husband should not be adopted. It is contrary to the authorities, which emphasise the need for there to be an exceptional and individual quality. To remove this element would, he submitted, broaden the concept unduly. The scale of the wealth is relevant as part of the court’s determination and, as set out in *Charman*, may “make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment” (para 80). However, to elevate this to a primary consideration as proposed by the husband would increase the prospect of discrimination against the home-maker.
10. He also challenged the third element of the proposed new approach, namely that, if one party has made an exceptional contribution, the court must assess whether this is matched by the other party having made an equal exceptional contribution. This, Mr Bishop submitted, is also contrary to authority. The issue is the extent of the disparity between the parties’ respective contributions, not whether they are “matched”.
11. Ms Lester advanced the wife’s case that the concept of special contribution as currently applied is discriminatory. It is the manner of its application which is discriminatory, not the legislation itself. From the Respondent’s Notice, and the wife’s written submissions, it appeared she was contending that the concept of special contribution should no longer be regarded as valid because it is discriminatory in favour of the money-maker and, as such, has an unjustified and disproportionate adverse impact on women.
12. However, it became clear during the hearing that the wife accepts that contributions can be attributed unequal weight leading to an unequal division of the marital wealth. It is simply that financial contributions *alone* should not be sufficient because of the alleged discriminatory impact. It is discriminatory against women because more home-makers are women and more money-makers are men. Lip-service is paid to the theoretical possibility of a special domestic contribution because, in reality, it is “impossible” that such ever will be found.
13. We were referred to a number of domestic and Strasbourg authorities in support of these submissions, with particular reference to Article 14 of the European Convention on Human Rights (“the Convention”) and Article 1 of the First Protocol to the Convention (“A1P1”). We address some of these below.

1. We were also referred to a number of Australian authorities, including *Hoffman v Hoffman* [2014] 51 Fam LR 568 and *Field v Smith* [2015] Fam CAFC 57. It is not necessary to set them out in detail.
2. In the former case, the Court of Appeal of the Family Court of Australia decided that there was no principle or guideline that made a financial contribution “more important – or ‘special’ – when compared against indirect contributions and, in particular, contributions to the home of the welfare of the family” (para 52). This was repeated in the latter case in which it was said (para 43):

“… the words of s. 79 do not provide endorsement for any category of contribution related to any class of property (for example, high wealth) being, by virtue of that category or class, more valuable or important than another. In each case the contributions made by the parties must be evaluated in the context of the facts particular to the case”.

Section 79 of the Australian Family Law Act 1975 requires the court to take into account (a) financial contributions to the “acquisition, conservation or improvement” of the property of the parties or either of them; (b) non-financial contributions to the acquisition, conservation or improvement of property; and (c) contributions to the welfare of the family. The Court of Appeal set aside the trial judge’s unequal division of the parties’ property. They then re-exercised the discretion and, after analysing the parties’ respective contributions in some detail, concluded that the wife’s contributions under (a), (b) and (c) should be treated as equal and lead to an equal division of the property.

Special Contribution

1. In order to put the development of the concept of special contribution in context we first, briefly, consider the issue of contributions more generally.
2. In *White* Lord Nicholls addressed the need to ensure, as referred to above, that there was no “discrimination between the husband and the wife and their respective roles” (at p. 605 B/C). The “yardstick of equality” was clearly introduced to ensure the absence of discrimination and, in particular, the need to avoid discrimination in the weight given to the parties’ respective contributions. As Lord Nicholls said (at p. 605 D/E):

“… whatever the division of labour chosen by the husband and the wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties’ contributions. This is implicit in the very language of paragraph (f) … If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.”

1. As was pointed out in *Charman* (para 64), the “origins of the yardstick lay in s.25(2) of the Act, specifically in s.25(2)(f)”. The equality of the marital partnership is reflected in the parties’ respective contributions being given equal weight. It is, therefore, the court’s approach to contributions as a factor which underpins the “ordinary consequence” of the application of the sharing principle, as referred to in *Charman* and *K v L*, namely of equal sharing of matrimonial property. The potential relevance and importance of contributions to the welfare of the family, both during and after the marriage, were also recently highlighted in *Vince v Wyatt* (paras 34/35).
2. We now turn to consider, specifically, the development of the issue of special contribution.
3. Following Lord Nicholls’ observation in *White*, that equality could be departed from for good reason, “the search was on for some reason to stop short of equal sharing”: Lady Hale in *Miller* (para 146). The first case in which the court decided that contributions could justify such a departure was *Cowan v Cowan* [2001] 2 FLR 192. Thorpe LJ decided that “fairness certainly permits, and in some cases requires, recognition of the product of the genius with which one only of the spouses may be endowed” (para 67). This proposition was conceded by counsel for the wife.
4. In *Lambert v Lambert* [2003] 1 FLR 139, the Court of Appeal reviewed *Cowan* and clearly, as identified by Lady Hale in *Miller*, retreated from the earlier decision. The appeal in *Lambert* was brought by the wife. Although her case did not challenge the principle of special contribution, and proposed only that it should be confined to the “rarest instances” (para 30), Thorpe LJ clearly considered it open to the court to “re-evaluate the whole issue” (para 46). He decided: “given the infinite variety of fact and circumstance … to mark time on a cautious acknowledgement that special contribution remains a legitimate possibility but only in exceptional circumstances” (para 46). He went on to say that: “It would both futile and dangerous even to attempt to speculate on the boundaries of the exceptional”.
5. *Lambert* followed Coleridge J’s decision of *G v G (Financial Provision: Equal Division)* [2002] 2 FLR 1143, in which he had remarked that special contribution was being raised in a large number of cases and had become similar to the conduct debates of the 1970s. Indeed, he viewed contribution as a species of conduct – the one negative and the other positive - and leading to the parties, undesirably, having to “rummage through the attic of their marriage” to enhance/diminish their respective roles.
6. In *Lambert* Bodey J, in a passage specifically endorsed by Lord Nicholls in *Miller*, said that, in order to justify a departure from equality (para 70):

“(the) characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored.”

In order to understand the context of this passage it is necessary also to quote the previous paragraph to see what characteristics or circumstances were being addressed:

“69. I agree that it is not possible to define once and for all, by way of some formulaic label, the precise characteristics of the fortune-maker (or fortune-making) required … in order that … the full contributing homemaker should receive a lesser share of the wealth than the fortune-maker”.

1. The court in *Lambert* was very conscious of “the need to guard against gender discrimination”, Thorpe LJ (para 38). He went on to say (para 45):

“Having now heard submissions, both full and reasoned, against the concept of special contribution save in the most exceptional and limited circumstances, the danger of gender discrimination resulting from a finding of special financial contribution is plain. If all that is regarded is the scale of the breadwinner’s success then discrimination is almost bound to follow since there is no equal opportunity for the homemaker to demonstrate the scale of her comparable success.”

He returned to this later, when concluding that Connell J “should not have elevated one contribution above the other, given that the two are “essentially incommensurable” (para 53).

1. Special contribution was specifically considered in the speeches of Lord Nicholls and Lady Hale in *Miller*, as part of the House of Lords’ wide-ranging review of the principles which should govern the manner in which the courts should exercise their distributive powers under s. 25 of the MCA 1973. On this issue, as referred to in *Charman*, the House was unanimous.
2. In *Miller* counsel for the husband submitted that the statute requires some evaluation of contributions (p. 625G/H) and that the “contribution to the wealth was all the husband’s” (p. 621G). Counsel for the wife submitted that there should be a deemed equal contribution and equal division absent, exceptionally, special contribution or agreement. The former should only be “in the rarest cases since it is the commodification of personality” (p. 623B/C).
3. Lord Nicholls dealt with the evaluation of contributions in paragraphs 66 to 68. After referring to the decision of *G v G*, he said:

“67 … Parties should not seek to promote a case of “special contribution” unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life.

68 This approach provides the principled answer in those cases where the earnings of one party, usually the husband, have been altogether exceptional. The question is whether earnings of this character can be regarded as a “special contribution”, and thus as a good reason for departing from equality of division. The answer is that exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise. The wholly exceptional nature of the earnings must be, to borrow a phrase more familiar in a different context, obvious and gross. Bodey J encapsulated this neatly when sitting as a judge in the Court of Appeal in *Lambert v Lambert* …” (he then quotes from para 70 of Bodey J’s judgment).

1. Lady Hale addressed “*Conduct and contributions*” in paragraphs 145 and 146. She considered that contributions should be approached “in much the same way as conduct”. After noting that a “domestic goddess self-evidently makes a “stellar” contribution” she made clear that, following *White*, domestic and financial contributions should be treated equally. Section 25(2)(f) refers not to “*accumulated wealth*” but the “*welfare of the family*”. She concluded by echoing the words in section 25(2)(g):

“… Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the *welfare of the family* that it would be inequitable to disregard it should this be taken into account in determining their shares.”

Lady Hale went on to consider that, in the case of *Miller* (a three year marriage), “there was a reason to depart from the yardstick of equality because (all the assets which accrued during the marriage) were business assets generated solely by the husband during a short marriage” (para 158).

1. The Court of Appeal returned to the issue of special contribution in *Charman*. It was a judgment of the court, whose members had particular expertise in financial remedy claims.
2. The wife, at first instance, had made a conditional concession, namely that the husband had made a special contribution justifying an unequal division. This was conditional on the “survival” of the concept in *Miller*. The Court of Appeal addressed this (para 79: see below).
3. The court set out its approach to the issue of special contribution (para 63):

“The best way for us to address Mr Singleton's attack on the judge's treatment of the husband's special contribution is to do so by reference to our interpretation of what is now the proper approach to a case of alleged special contribution, first considering the general nature of the statutory exercise. Two objectives will govern what we say. The first is to be loyal to what we understand to be the spirit as well as the letter of such guidance on the topic as has been given by the House of Lords in *White* … and *Miller* …, whether or not it is part of the reasoning behind those actual decisions. We say so because there is no doubt that, under that guidance, the House has left much for the courts to develop. The second is to express ourselves as clearly and simply as the subject allows.”

The first objective, referred to by the court in *Charman*, is clearly of particular relevance having regard to the submissions made to us in the present case.

1. The judgment in *Charman* continues with the “yardstick of equality of division”:

“64 … The origins of the yardstick lay in [s.25(2)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65) of the Act, specifically in [s.25(2)(f)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65), which refers to the parties' contributions: see the preceding argument of Lord Nicholls at p. 605D-E. The yardstick reflected a modern, non-discriminatory conclusion that the proper evaluation under [s.25(2)(f)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65) of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there was good reason for the division to be unequal. It also tallied with the overarching objective: a fair result.”

1. Special contribution is addressed in paragraphs 78 to 91. The conclusion is set out in paragraph 88:

“While the law recognises the concept of a special contribution in the generation of wealth, there is no doubt that, following the decision of this court in *Lambert*, approved and developed in *Miller*, it keeps the concept in very narrow bounds”.

1. Given the arguments deployed in the present case, paragraphs 79 and 80 bear quoting in full:

“[79] It was inevitable, so it seems to us, that the notion of a special contribution should have “survived” the decision in *Miller*. The statutory requirement in every case to consider the contributions which each party has made to the welfare of the family, as well as those which each is likely to make to it, would be inconsistent with a blanket rule that their past contributions to its welfare must be afforded equal weight. Nevertheless the difficulty attendant upon a comparison of their different contributions and the danger of its infection by discrimination against the home-maker led the House in *Miller* heavily to circumscribe the situations in which it would be appropriate to find that one party had made a special contribution, in the sense of a contribution by one unmatched by the other, which, for the purpose of the sharing principle, should lead to departure from equality. In this regard the House was unanimous. First it approved, at [67], [68] and [146], the decision of this court in *Lambert* …, in which Thorpe LJ had ventured, at [46], “a cautious acknowledgment that special contribution remains a legitimate possibility but only in exceptional circumstances”. Then it reached for the criterion by which the court determines whether a party's conduct is relevant to the enquiry and suggested that it should also be applied to identification of the linked and in effect obverse feature, namely the special contribution. When, by [s.3 of the Matrimonial and Family Proceedings Act 1984](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I69E77420E44A11DA8D70A0E70A78ED65), Parliament had recast the reference to conduct in [s.25](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65) of the Act of 1973, it had provided in [s.25(2)(g)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65) that conduct should be taken into account if it was “such that it would in the opinion of the court be inequitable to disregard it”. On one view that criterion is of fair width. In practice, however, its meaning has largely been interpreted in line with the narrow criterion for determination of the relevance of conduct set by this court prior to 1984, in particular in [*Wachtel v. Wachtel* [1973] Fam 72](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=IEF05F220E42811DA8FC2A0F0355337E9), in which, at 90C, it approved the trial judge's suggestion that conduct was relevant only if it was “obvious and gross”: indeed see the current re-affirmation of this criterion by Baroness Hale in *Miller* itself at [145]. It is therefore in the light of the very limited ability of a party to establish a case of conduct under [s.25(2)(g)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=109&crumb-action=replace&docguid=I2B1E1BF0E44911DA8D70A0E70A78ED65) that we must have regard to the statements in *Miller* both of Baroness Hale, at [146], that contributions should be approached in much the same way as conduct; and of Lord Mance, at [164], as follows:

“[S]ection 25(2)(g) recognises the difficulty and undesirability, except in egregious cases, of any attempt at assessing and weighing marital conduct. I now recognise the same difficulty in respect of marital contributions — conduct and contributions are in large measure opposite sides of a coin.”

In saying that he “now” recognised the same difficulty, Lord Mance no doubt had in mind the wider room for special contributions which, as a member of this court, he had identified in *Cowan*, at [160] and [161].

[80] The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home-maker. Nevertheless in practice, and for a self-evident reason, the claim to have made a special contribution seems so far to have arisen only in cases of substantial wealth generated by a party's success in business during the marriage. The self-evident reason is that in such cases there is substantial property over the distribution of which it is worthwhile to argue. In such cases can the amount of the wealth alone make the contribution special? Or must the focus always be upon the manner of its generation? In *Lambert* Thorpe LJ said, at [52]:

“There may be cases where the product alone justifies a conclusion of a special contribution but absent some exceptional and individual quality in the generator of the fortune a case for special contribution must be hard to establish.”

In such cases, therefore, the court will no doubt have regard to the amount of the wealth; and in some cases, perhaps including the present, its amount will be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or in some other field. Sometimes, by contrast, it will immediately be obvious that substantial wealth generated during the marriage is a windfall — the proceeds, for example, of an unanticipated sale of land for development or of an embattled take-over of a party's ailing company — which is not the product of a special contribution.”

1. The court in *Charman* declined to identify a threshold for the likely application of special contribution considering it “dangerous for us to do so” (para 88). This was because, however qualified, a guideline might lead a court not to find special contribution when it should and, of “greater concern”, that it risked encouraging a court to find a special contribution in the generation of wealth above the threshold “in circumstances in which it should not properly do so” (para 88).
2. It is also interesting to note that the threshold proposed by counsel had moved from £10 million in *Lambert* (in 2002) to between £30 and £50 million in *Charman* (in 2007). During the hearing before us Mr Cusworth, when asked to identify the level above which special contribution should be found to exist, suggested (with, it must be said, a degree of reticence) £100 million. Such variations and, indeed, the random nature of a threshold, continue to support the approach taken in *Charman* to this particular question.
3. An issue, which was the subject of some discussion during the course of the hearing before us, is whether, above a certain level, the generation of wealth does not qualify as a contribution to the welfare of the family. This was also briefly considered in *Charman*. If this was right, as the court asked in *Charman*, “how should the court treat the excess?” (para 81). The court in that case was not attracted by the submissions made by counsel which were advanced with “diffidence”. The submission that it should be retained by the wealth creator was rejected because the excess would still fall within the court’s redistributive powers although not the product of a contribution within section 25(2)(f). The submission that the excess should be divided equally, because it was not the product of a special contribution, was described as an “absurd” result. The court concluded that the wealth in that case (£131 million excluding £30 million in a trust for the children) did not “compel departure from the usual conclusion that wealth generated by a party during a marriage is the product of a contribution on his or her part to the welfare of the family” (para 81).
4. Finally, at the date of the hearing before Holman J, counsel were able to identify only three cases in the 12 years since *Lambert* in which the court had made an unequal division based on special contribution, namely *Sorrell*, *Charman* and *Cooper-Hohn v Hohn* [2015] 1 FLR 745. In the last of these, Roberts J analysed the parties’ respective contributions and decided that, in generating wealth of $6 billion (of which $4.5 billion had been donated to a charitable foundation), the husband had made a special contribution.
5. We also note that, since *Charman*, there have been a small number of reported cases in which special contribution has been advanced but rejected by the court, including *H v H* [2010] 1 FLR 1864 and *Evans v Evans* [2013] 2 FLR 999.

Determination

1. When the court has been given a broad discretion, such as that contained in s. 25 of the MCA, it is clearly important for the court to develop principles which guide the exercise of that discretion so that, as Lord Nicholls said in *Miller*, there is “an acceptable degree of consistency” (para 6). This not only assists judges when determining financial claims but also, importantly, facilitates agreement between parties to a marriage seeking to resolve the consequences of their separation and divorce. This has become particularly important with the withdrawal of legal aid and the increase in unrepresented litigants.
2. Although it is clear that the concept of special contribution, as currently applied, is potentially relevant in only a very small number of cases, we consider that, when determining the issues raised in this case, we should place significant weight on the public interest in the promotion of clarity and consistency.
3. Provided the guidance is authoritative, this applies whether or not, as the court said in *Charman*, the guidance is part of the reasoning behind the actual decision. Only to apply this approach if the guidance is part of the reasoning is too restrictive in the context of s. 25 which gives an unfettered discretion and when cases involving its application will only very occasionally reach the Supreme Court and, although more frequently, still only occasionally reach this court.
4. The public interest is reflected in the two objectives which the Court of Appeal in *Charman* said would “govern what we say” (para 63). They were, as referred to above, “to be loyal to what we understand to be the spirit as well as the letter of such guidance on the topic as has been given by the House of Lords” and, secondly, “to express ourselves as clearly and simply as the subject allows” (para 63).
5. Accordingly, absent anything since *Miller*, as further explained in *Charman*, which shows that the principles as to special contribution described in those cases are uncertain or were erroneous or have caused unfairness, we consider that we, too, should be loyal to those principles.
6. Having regard to the very small number of reported cases in which special contribution has been raised as an issue, we would suggest that the outcomes in those cases make it difficult to sustain the submission that there is uncertainty in the manner in which it is to be determined. Holman J did not find this issue easy to decide but that was, we suggest, because of the circumstances of this case, and not because of uncertainty about the principles he was applying. No other case has been referred to us as demonstrating uncertainty.
7. Subject to argument on the present appeal based on discrimination and the Convention and on developments in the corresponding Australian jurisprudence, nothing has in fact occurred in the years since *Miller* and *Charman* which shows that the principles in those cases were erroneous or have caused unfairness.
8. Another way of looking at the matter, with the same conclusion, is that there has not been demonstrated such a change in perceptions of fairness since *Miller* and *Charman* to warrant a different approach to special contribution. As the House of Lords made clear in both *White* and *Miller*, the touchstone for financial provision under s.25 of the MCA 1973 is the achievement of a fair outcome. Different people, judges included, no doubt may have different views about the fairness of the principle of special contribution but *Miller* and *Charman* provide the authoritative jurisprudence on that issue. The arguments of the wife on the issue of fairness are well understood, including, in particular, all the reasons for the basic yardstick of equality of division, the argument that recognition of a special contribution by a husband by virtue of a significant financial contribution risks commodifying the domestic contribution of a wife, that comparing the value of their contributions is comparing apples with pears, that what is relevant is the respective contributions of the husband and wife to the welfare of the family, and that fixing the level at which a financial contribution becomes a special contribution is purely arbitrary, as is the consequential unequal division of the matrimonial property.
9. All those arguments were, however, well understood and available in *Miller* and *Charman*. There is no doubt that concepts of discrimination, equality and fairness change with time, and this is reflected in the changing jurisprudence on the application of section 25 over time. In the absence, however, of any significant change in perceptions of fairness since *Miller* and *Charman*, it is not open to us to substitute any personal concepts of fairness for those reflected in the principles on special contribution laid down by the House of Lords in *Miller* and *Charman*.
10. We do not consider that the Australian cases, relied upon by the wife, assist us. The Australian legislation is differently phrased to the MCA 1973, and the Australian jurisprudence does not throw up any arguments which were not deployed or potentially available in *Miller* and *Charman*.
11. Furthermore, we do not consider that either of the developments of the principle of special contribution proposed by the parties in this case have any merit. In our view, the wife is right not to suggest that there is *no* place for the parties’ respective contributions being given unequal weight leading to an unequal division of matrimonial property. This is consistent with authority, as set out above, that there is no concept of community of family property in our jurisprudence. In addition, as was said in *Charman*, the statutory requirement to have regard to the parties’ contributions in every case “would be inconsistent with a blanket rule that their past contributions to its welfare must be afforded equal weight” (para 79). This is not to undermine the recognition that marriage is a partnership of equals nor that the “proper evaluation … of the parties’ different contributions … should generally lead to an equal division of their property”: *Charman* (para 64). It is to leave scope for an unequal division if there is *good* reason why such is required to achieve a fair outcome. We emphasise the need for a *good* reason to signify that it must be sufficiently substantial if it is not to undermine the principles set out in *Miller*.
12. In this context, the wife’s submission that special contribution requires a combination of financial and other contributions and cannot be founded on financial contribution alone has no principled basis unless this can be shown to be discriminatory. Absent discrimination, it is artificial to seek to exclude one form of contribution save in combination with another. It would also be likely to raise other issues such as whether the other form of contribution would also have to be exceptional or whether it is the combination which would have to be. This would significantly broaden the evidential inquiry undertaken by the court and be likely to take us back to the undesirable consequences referred to by Coleridge J in *G v G*. This would be inconsistent with the overriding objective and is not required for a fair outcome to be achieved.
13. The husband’s proposed test or approach would serve, at best, to complicate the analysis required when the court is considering whether a party has made a special contribution and, at worst, would unfairly elevate a financial contribution above other forms of contribution. It is also artificial to seek to separate the contribution from the contributor as, indeed, Mr Cusworth was driven to recognise during the hearing in his summary formulation of his proposed test. The word “contribution” clearly incorporates all aspects including the nature of the contribution, its consequences and the party’s role in making the contribution. The contribution has to derive from something the contributor has done. Accordingly, if the contribution does not derive from the “exceptional and individual quality” of the contributor, it could not be a special contribution.
14. We turn next to consider whether the concept of special contribution, as (we emphasise) currently applied, is discriminatory. We would suggest that the fact that there has only been one reported case since *Charman* in which special contribution has resulted in an unequal division of matrimonial property makes it difficult to sustain the submission that the manner in which it is being applied is discriminatory.
15. If the concept was being applied more broadly, there would clearly be a risk that it would be discriminatory. But, as Wilson LJ said in *K v L* (para 15).

“… the law does not abjure all discrimination. On the contrary it is of the essence of the judicial function to discriminate between different sets of facts and thus between different claims.”

What is unacceptable discrimination is explained by Lord Nicholls in *White* (p. 605). Accordingly, the mere fact that one party has made a financial contribution and the other has not is of no significance in the s. 25 exercise.

1. However, the court is still mandated to consider the parties’ respective contributions. In order to ensure fairness, for the reasons articulated, in particular, in *White* and *Miller*, the courts have confined the concept of special contribution so that it reflects a significant, substantive difference, which does not require extensive evidential investigation. Moreover, such a significant, substantive difference gives rise to a special contribution irrespective of whether the contribution has been made by the husband or the wife.
2. This is the short answer to the wife’s argument based on Article 14 of the Convention, even if, which is by no means clear, the wife is able to show that a right to financial relief on divorce falls within A1P1.
3. In support of her case on A1P1, the wife relied on the High Court decision of *NG v KR (Pre-Nuptial Contract)* [2009] 1 FLR 1478 where Baron J. stated at paragraph 103:

“I accept that A1P1 can be engaged when two individuals are litigating and, in consequence, a public body (the Court) makes an order which affects their property rights. I am clear that a transfer of property order or a lump sum is an order which is capable of affecting an individual's peaceful enjoyment of their possessions and in such circumstances the protocol is engaged. It is also evident that no person should be deprived of their property unless it is in the public interest and any transfers should only be undertaken upon the proper and fair application of law.”

1. She went on, at paragraph 104, to find that A1P1 was engaged in a “general way”. The case was appealed but the Convention and A1P1 were not referred to in the judgments of the Court of Appeal or the Supreme Court nor, it appears, were they referred to in argument. In that case, it was the wife who was claiming that her A1P1 rights were engaged as a way of resisting her husband’s application for financial relief. She was arguing that, if her pre-marital agreement with her husband was not given effect to, this would be in breach of those rights. In the present case, in contrast, it is the wife, who is seeking financial relief from her husband, who is claiming that A1P1 is engaged.
2. The wife also relied on *Ram v Ram (No 1)* [2005] 2 FLR 63 to argue that, even where she has no direct interest in the property, a “contingent or future interest” in property under an anticipated order for financial relief is sufficient to engage A1P1. At paragraph 35, the Court of Appeal stated that they “would be prepared to accept that the wife's contingent or future interest in the matrimonial property sufficiently falls within the ambit of the Convention's concern for property rights as to engage … Art 14”. They immediately went on to dismiss her claim that she had suffered discrimination. The initial observation, even if taken to be a determination, is obiter and, in addition, the analysis took place in very different factual context, namely interpreting the *Insolvency Act* 1986. It is not, therefore, clear, on the basis of the submissions before us, that A1P1 is engaged nor is it necessary for us to make such a determination.
3. Accordingly, in answer to the issue set out in paragraph 4(ii) above, the application of the concept of special contribution is confined to very narrow bounds and is not applied, in practice, in a manner which is discriminatory.
4. Having regard to our conclusions, we do not consider that, save for the observations below, it would be helpful to add to the guidance contained in *Miller* and *Charman*, which provide authoritative and clear guidance as to the circumstances and manner in which special contribution is to be applied. This remains the proper approach, in answer to the issue set out in paragraph 4(i) above.
5. Finally, we turn to consider whether Holman J’s decision was wrong.
6. In our view, Holman J accurately summarises the guidance from *Miller* and *Charman* in paragraph 140 of his judgment save that we would delete his sub-paragraph (v). The focus is on disparity of contribution and whether there is a sufficient disparity to make it inequitable to disregard. It is not on whether a contribution is “unmatched”. The latter can lead, as reflected in the husband’s submissions in this case, to the contention that, if one party has made an exceptional contribution, the court must consider whether the other party has made an equal, matching, contribution.
7. We also agree with Holman J that the use of the word “genius” is unhelpful. It is sufficient for the court to determine whether the contribution is wholly exceptional. As referred to above, this requires the court to look both at the nature of the contribution and to determine whether it derives from an exceptional and individual quality.
8. Accordingly, we consider, in answer to the issue set out in paragraph 4(iii) above, that Holman J correctly identified the approach he should take to the concept of special contribution. Was he wrong in the manner in which he applied this approach?
9. There was some debate during the hearing about the extent to which the judge was making findings of fact or engaged in an evaluative exercise or exercising a discretion. It is not altogether easy to draw a sharp line between the three elements when the court is addressing special contribution. Clearly, the last stage, when the judge decides the actual division of the marital property, is discretionary. Special contribution itself comprises in part findings of fact, as to what contributions each party has made, and in part a value judgment, namely whether one party has made such an exceptional contribution that the disparity in the parties’ respective contributions makes it inequitable to disregard the former when determining how to exercise the distributive powers under the MCA 1973. It could also be said that the latter is in part discretionary because the weight that a trial judge decides to place on the parties’ respective contributions is part of the discretionary process.
10. However, given the scope of our decision in this case, we do not propose to debate this further in this judgment. We propose simply to consider whether the husband has demonstrated that Holman J was wrong.
11. In essence, the husband contends that the judge failed to accord sufficient weight to the husband’s contribution, namely the amount generated by him over the course of 10 years, and gave excess weight to the wife’s contribution. Assessing contributions and the weight to be given to them are matters in respect of which the trial judge has significant advantages over an appellate court: see, for example, *Piglowska v Piglowski* p.1372.
12. The judge did not err in law or apply a wrong principle. Further, we do not consider that the husband has pointed to any matter which the judge failed to take into account or wrongly took into account. The husband criticises Holman J’s reference to the case of *Sorrell*. We would agree, as Holman J himself said, that the issue of special contribution should not be determined by comparing the facts of one case with another. Such comparisons are unhelpful. However, we also agree with Mr Bishop that this was no more than a passing reference and was not a key part of the judge’s reasoning.
13. In conclusion, in our view, in answer to the issue set out in paragraph 4(iv) above, the husband has failed to demonstrate that Holman J’s decision was wrong. It is clear from the judgment that he gave this issue the most detailed consideration as he did not find it, as he said, easy to determine. He carefully considered the parties’ respective contributions, including, we re-iterate, the amount of the wealth generated by the husband. He concluded that there was not such a disparity that it would be inequitable to disregard the husband’s contribution. This was a decision to which he was entitled to come and which he has fully explained.
14. Accordingly, we dismiss the appeal.