



Neutral Citation Number: [2022] EWFC 41

Case No: TA20J00001

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 May 2022

Before :

MR JUSTICE PEEL

Between :

VV

Applicant

- and -

VV

Respondent

Brent Molyneux QC and Petra Teacher (instructed by Sears Tooth Solicitors) for the
Applicant

Justin Warshaw QC and Kyra Cornwall (instructed by Michelmores LLP) for the
Respondent

Hearing dates: 17-23 March 2022

Approved Judgment

Mr Justice Peel :

Introduction

1. The parties were married for no more than about 5 months, and have no children. They are both in their fifties. Such cases should be easy to resolve. Not so here; the parties have litigated bitterly, at enormous cost and in minute forensic detail for over a year and a half. The principal issues in these financial remedy proceedings are:
 - i) The extent of pre-marital cohabitation.
 - ii) Linked to (i), the extent to which the sharing principle applies to H's assets.
 - iii) Whether H is guilty of misconduct in having sold part of his entitlement to units in a company prior to their release to him, and having concealed the same from W and the court.
 - iv) Whether W is guilty of misconduct, in having prevented the release to H of his units in the company at the opening of the official market in such units.
 - v) W's needs.
2. The wide range of issues is reflected in the parties' legal costs:
 - i) W's costs are £619,000, of which £237,000 is unpaid.
 - ii) H's costs are £616,000, of which £5,000 is unpaid.
3. I am very grateful to counsel whose mastery of the detail has been impressive, and who have navigated me through the issues clearly, arguing their respective cases expertly.

The evidence

4. The written evidence in this case is vast. The bundles consist of over 5000 pages, including numerous narrative statements which (particularly in W's case) are exhaustively detailed.
5. I heard from H and W. H was moderate and essentially honest in his evidence. He accepted, as he had to, that he been guilty of non-disclosure of pre-listing unit sales during the proceedings, for which he gave certain explanations. He was generally clear and composed, only showing a flash of anger when saying, as he sees it, that W's conduct has caused him huge financial loss. W was rather less satisfactory. She had a tendency not to answer the question, heading off on tangents, and was clearly irritated by the lines of questioning. Her mistrust of H, who she considers to have betrayed her, was almost palpable. She is charming and articulate, but at times she was a little histrionic. None of this is to say that she was deliberately dishonest. But I felt that she embellished or exaggerated so as to put a more persuasive slant on her case. Where there was a direct conflict of evidence, I preferred H's account.
6. I sensed also that H and W had very different perceptions of events and conversations. They are polar opposite personalities; the one logical, the other creative and artistic.

Their perspectives of the sweep of their relationship did not align. It is my task to determine, objectively, where the facts lie.

Proposals

7. The parties' respective proposals are as follows:
 - i) H offers a lump sum of £400,000 on a clean break basis but, given the sums of money already advanced by him to W for legal fees on account of the said sum, his proposal is in effect nil.
 - ii) W seeks 50% of the remaining units and the proceeds of sale of units to date. That is over £6m gross, less any tax payable.

The background

8. H and W are 57 years old. H is a citizen of the United States, currently living on the West Coast of the United States. W is of Scandinavian origin, living in London. They did not have children together.
9. H has degrees in electrical engineering, computer science and mathematics. His career has been spent in the software industry. He has, I am satisfied, a significant reputation in the sector. W is a classically trained musician and composer of considerable repute. She has had a wide-ranging international career. In recent years she has transitioned from performing to composing and arranging.
10. They met on a Eurostar train in March 2018 and their relationship developed, although H was living in the USA and W in the UK. W says they started cohabiting in November 2018, H says it was December 2019. I shall return to this aspect in more detail.
11. On 11 July 2018, H contacted a former colleague who was working at AB Company, a start-up specialising in the use and application of digital technology. H was introduced to the senior leadership and in due course offered a position there. His role was to build and operate the research and engineering team, operating between the West Coast of America and Europe. He had an alternative offer in the same sector but elected to join AB Company, opting for the potential upside (but also greater risk) of equity in the new business ahead of the well paid security of the alternative role.
12. I am quite sure that H secured the job because of his long experience, proven track record and knowledge of the tech industry. It seems to me, contrary to W's presentation, that her involvement in H's decision to join AB Company was minimal; little more than general encouragement during a relationship which was at a relatively early stage and, on any view, had not progressed to cohabitation. By the time H accepted the job in August 2018, they had only met over a handful of days in March 2018, and for a weekend in Switzerland in June 2018. W had minimal knowledge or understanding of the tech world. The contemporaneous messages show W being supportive but not particularly engaged or involved in the process: "Well I hope you get the job you want," and "Hope it all works out the way you want it to" are examples. I accept H's evidence that they talked about his job options, but not at great length. W sets some store by her role in introducing H to a relative of hers who worked in an unrelated part of the technology sector. He did not seem to me, from what I heard, to have had particularly

relevant credentials. Their telephone conversation on 21 July 2018 lasted 10 minutes according to H, or 30 minutes according to what W was told; either way, I accept that it had no bearing on H joining AB Company. W, who did not participate in the call, seemed to me to exaggerate its importance. I find that H's decision to start employment at AB Company was his alone, and not a joint one; he did all the research and had all the experience in that field. He weighed up the advantages and disadvantages with little or no reliance upon W's views. This was not a joint decision, but a unilateral one.

13. On 12 August 2018, H was formally offered employment at AB Company. On 15 August 2018, H signed a contract with AB Company and started working there on 4 September 2018. His base salary was \$400,000pa gross. He was awarded the right to acquire 600,000 units in the company, subject to working at AB Company for a period of 1 year, and vesting over 4 years. The units were required to be valued professionally for the purpose of his employment contract; the attributed value was \$0.42 per unit. The nature of the business lent itself to the prospect of very substantial value, if successfully listed, but equally the risk of complete failure. On 15 February 2019, H became entitled to the right to acquire 1.6 million units (subject to the 1 year service period backdated to August 2018, and the 4 year vesting period), including the original 600,000, to reflect the fact that his role was significantly greater than originally envisaged; again, the value was specified in the employment contract.
14. H sold his home and moved into rented accommodation at Flat H local to the AB Company offices in August 2018, before moving locally to Flat F (also rented) in June 2019. He continued to live in the USA until December 2019.
15. On 22 March 2019, H and W became engaged in Italy, H having asked W's father for permission to marry her over Christmas 2018. H bought W an engagement ring for £125,000.
16. After approximately a year at AB Company, H says that the founder became envious of H's status in the company and with key investors. He began to restrict H's role. In an agreement reached in September 2019, it was decided that H would leave. I have no reason to doubt H's evidence that his departure was generally amicable, despite W's suggestion to the contrary.
17. On 22 October 2019, a separation agreement for H's departure was reached under which he was entitled to acquire 700,000 units upon the start-up listing; fewer than the 1.6m to which he was entitled under his contracts, but not subject to vesting periods. The listing date had not by then been set.
18. On 8 November 2019, H's employment with AB Company formally came to an end.
19. From November 2019 to August 2020, H unsuccessfully attempted to develop his own start-up venture with a partner. In August 2020, he joined another tech company as a senior director where he has remained ever since.
20. In December 2019, the parties moved into a property in Kensington, London. H relinquished his tenancy in the USA. W moved out of her London flat. On 25 January 2020, they married in London. The marriage became fraught almost immediately, although I am satisfied that it did not finally end until June 2020. Thus, the total period of cohabitation and marriage was no more than about 7 months (December 2019 to June

2020), according to H, or 19 months (November 2018 to June 2020), according to W. The significance of the timespan is that during the period of cohabitation asserted by W, H was working at AB Company and earning the right to acquire units in the company. Thus, she says, some or all of the units became matrimonial in nature.

21. I accept that in general terms, during and after H's employment with AB Company, he did not know, and could not know, what the value of the business, and his units, would become. As he said to me, nine out of ten start-ups in the sector fail. There was no intrinsic value, but a potentially spectacular upside in the event of a successful listing, which of course is why he joined AB Company in the first place. He told me that when he joined, he thought there was a one in ten chance of success, but after he had been at the company for a few months he thought it was more like a one in four to one in six chance.
22. The financial remedy proceedings started with H's Form A on 25 August 2020. In his Form E dated 29 November 2020, H asserted that the AB Company units were of nil value, with no real market, highly speculative and, in reality, notional paper value only: "There is currently no market for these units, so that they can neither be sold, nor a more accurate valuation easily obtained." I accept that H did not know at that time, or at the First Appointment in December 2020, whether or when AB Company would list, and that H considered any value to be highly speculative, although doubtless he harboured hopes that it would come good.
23. W asserts that H must have known by then that his claim of a nil value was falsely understated based on previous rounds of fundraising that took place at a value of about \$1 per unit, and, later, about \$4 per unit. I accept, however, as H says, that (i) there would have been plenty of undisclosed conditions in the fundraising making it impossible to assess true value, (ii) the fundraising would have been fuelled by a speculative PR drive and (iii) for investors, this was one of many bets that they would have placed on start-up ventures in the hope that a few would convert remote chance of success into spectacular gains; it was not, therefore, a market value in the traditional sense. Further, messages from the AB Company founder to W in November 2020 expressly differentiated between the price stated for investors and the price stated for employees.
24. W also says that there existed a pre-listing market for the units in AB Company of which, on her case, H must have been aware; on exchanges, options on units in AB Company would, in theory, have valued H's holding at over \$100m. However, I am satisfied that the position was not that simple:
 - i) Online market-places did not entitle H to pre-sell his right to acquire 700,000 units. They were artificial options markets created by the exchanges under which (a) the exchange created and offered the option to buy a unit, (b) a purchaser would buy the option at a particular price and (c) the option could be sold. These markets operated bubbles, with limited liquidity and plenty of hype. They were open to anybody. The prices exchanged were not indicative of the value of the company; they were bets or trading games. All of this was very different from a market for the sale of employees' or investors' contractual entitlements. H was aware of these markets, but they did not enable him to deal with his contractual entitlement to acquire units.

- ii) H, I accept, was not aware of a pre-sales market in contractually entitled rights to acquire units until he was told about one by a colleague. He described this as a revelation, and I am confident that he was truthful. Pre-sales is not strictly the right description as H had nothing he could sell unless and until he received units upon listing of AB Company. The structure was for monies to be paid to the prospective owner of the units (H) who would generate an IOU in favour of the payer to transfer units upon listing. The transaction would be conducted through an independent broker. In practice, only a handful of trades could be done in this way because they represented a liability until listing. Trading volumes were small, not indicative of a market value but generated by a fear of missing out.
25. Having become aware of the existence of a pre-sales market, H decided to diversify risk by pre-selling some of his prospective entitlement. For the first time, he was aware of the possibility of realising actual value prior to listing. This seems to me to have reflected a prudent approach by H who, with his knowledge of the sector, feared that the units might in fact be worthless. He was not a particularly wealthy man, and had no reason to gamble all his units on a successful listing, and unknown price at listing. H told me, and I accept, that this was intended to be a hedge against the company being unsuccessful.
26. H wanted to keep the transactions secret from AB Company's founder who would have seen it as a vote of no confidence and, H suspected, might have sought to make things difficult for H. And although H believed (and had legal advice to this effect) that his contractual entitlement was rock solid under the separation agreement of October 2019, there was scope for the founder to challenge, delay, and tie H up in legal proceedings.
27. I am confident that H wanted, as far as possible, also to conceal the pre-sales from W prior to listing so as to avoid others (particularly the founder) becoming aware of his actions. H's concerns about W's intentions had some foundation, as is now clear. The disclosure process has established that between Autumn 2020 and early Summer 2021, W was in direct telephone and message communication with the AB Company's founder because she was concerned about H's financial presentation. The founder told her that for H to claim the units were worthless was a deceit. He recommended that she should take steps to prevent the release of the units to H. He encouraged her to interfere in H's contractual entitlement:
- i) In breach of her undoubted duty of confidentiality, W showed the founder a screenshot of the relevant part of H's Form E describing the units.
 - ii) In early 2021, the founder told W that the AB Company listing would take place "imminently".
 - iii) Just over a week later, W said to the founder that she would prefer "AB Company to pay [the units] to me" and that "[H] will settle if he thinks we are freezing".
 - iv) The founder then told W that upon listing AB Company would have to "disburse" H's units, absent a court order, and suggested that W apply to the English court for disclosure and to freeze the units.

- v) The founder then told W that “in principle” H’s units would have to be released upon listing, that W needed to obtain orders and “If you can prevent [H] from acquiring the units, it will be much easier for you to negotiate a settlement”. On the same day he told W that on listing “[H] can sell these units on exchanges and receive tens of millions of dollars, or even a hundred million dollars, who knows!!”. In a further message he suggested an “opening salvo” whereby W’s lawyers write a letter “stating that the ownership is unclear and there is an ongoing court case...It should certainly slow things down a bit” and later “...you gotta start throwing some obstacles out...”. Further messages that day included “...you gotta stop him getting them in the first place” and again recommending that W’s lawyers write to AB Company.
 - vi) The communications continued in similar vein thereafter, with the founder emphasising the urgency. He suggested that W write to AB Company’s counsel, which is precisely what her lawyers did the next day.
 - vii) W and the founder continued to communicate privately. The way W described H was liable to raise the temperature with the founder, saying for example that “I told you [H] is going to try and take the credit for building the engineering team.”
 - viii) H then learned from a third party that W had been in touch with the founder. Subsequent messages show how concerned H was about this.
 - ix) The founder messaged W: “Hey, do you have any evidence that he has tried to sell the units already”.
 - x) It appears that with the benefit of hindsight, W now recognises that the founder was acting out of ulterior motives, and had a clear interest in the units not being released to H. Messages confirm that the founder wanted to control the release of units, and limit supply, so as to keep the price high. The founder saw an opportunity to drag things out rather than release units to H. W says in her written evidence that “I suspect [he] was looking for any reason not to release units to [H]”, “I believe [he] had his own motives for not releasing [H’s] units” and it was not in the founder’s interests “to release them all in one go and I was used in order to further this wider agenda”. Orally, she told me that she was used by him. The founder, a man of unpredictable nature, saw all of this this as an opportunity to disadvantage H, and gain advantage for himself. The simple reality, as I see it, is that W’s actions gave the founder just the excuse he was looking for.
 - xi) Although H was aware of W being in discussions with the founder, the exchanges demonstrating the extent of their involvement were not disclosed by W until January 2022.
28. Over an 11 week period in early 2021, H pre-sold his prospective entitlement to receive 438,732 units. There were 22 transactions in total for which H received \$11,531,991 gross. The prices ranged from \$10.5 to \$85 per unit. These were significant sums and indicative of H attempting to lock in substantial value. I do not regard H’s actions as irrational, and there is nothing before me to suggest he was endeavouring to defeat W’s claims by deliberately selling at an undervalue so as to defeat W’s claims. Anything of

the sort would have been completely illogical as it would have caused him loss as well. I accept H's evidence that he could not have pre-sold at a higher price; the prices he secured were the best available to him for each counterpart transaction.

29. H did not disclose any of these transactions either to W or to the Court during that period. Nor did he disclose the bank account into which he had deposited the proceeds. He did not set out his actions in correspondence, answers to questionnaire or updating disclosure. He did not refer to it in an open proposal during this period. During this period, his solicitors wrote that "There is no evidence whatsoever to suggest that our client....is disposing of the units in a clandestine manner"; in fact, he had been doing just that. H's solicitors assured W's solicitors of full disclosure. It was not until the day before a hearing before me on 28 July 2021 that he disclosed having made pre-sales, albeit comprehensive detail was lacking. What he had previously instructed his solicitors to write was false. Even after 28 July 2021, it took time to extract from H the precise sequence of events in respect of the pre-sales. He appears to have considered (albeit not ultimately carried through) faking documents to conceal or distort the fact of pre-sales having taken place.
30. H's stated concern, which I accept, was that W might "make mischief" by telling the founder what he was doing and attempt to thwart the pre-sales at a time when he thought this might be his only chance to monetise his unit entitlement. However, the duty of disclosure is absolute and fundamental. If he had concerns, he should have restored the matter to court. He should not have disregarded basic principles and I am quite sure that he knew that what he was doing was wrong. His failure to tell W, and the court, the whole truth, was deplorable.
31. The listing of AB Company took place in late Spring 2021. H knew that the value would likely peak on the first day. Immediately upon the listing, the price of the units fluctuated between \$450 and \$700 which, in theory, would have valued H's 700,000 units (ignoring the pre-sales) at \$315m-\$490m. Within a matter of weeks, it had plummeted and now stands at \$22.54.
32. H told me that he would have sold 25% of his original holding, i.e 175,000, at once, from which he would have realised, at a price of \$450, \$78.75m gross. I have no reason to doubt that in principle he would have sold a significant chunk of his units, and his estimate seemed reasonable to me.
33. In fact, he was unable to sell any of the units upon listing because (i) W through solicitors had written directly to AB Company beforehand and (ii) W had communicated directly with the founder beforehand, the combination of which led to AB Company blocking the release of units to H. The units were not released on the listing day. The sequence of events is as follows (and I refer directly to only a few of the many communications so as to give a flavour):
 - i) The founder, as I have set out above, had actively encouraged W to take steps to freeze the units and/or instruct her lawyers to write to AB Company requesting non-release. He had his own reasons, and W now acknowledges that she was being "played". W was aware of the potential scale of wealth available to H on listing (the founder had mentioned \$100m). The fact is that she informed the founder of what was happening in the divorce, and gave him the opportunity to manoeuvre against H.

- ii) In Spring 2021, and quite clearly as a result of W's conversations with the founder, W's lawyers wrote to AB Company, referring to the divorce proceedings in London and requesting that they not release the units to H pending resolution of the financial claims. This critical letter was inexplicably not copied to H's solicitors. Neither they, nor H, knew anything of this approach, a matter for which W apologised in her written evidence, although in her oral evidence she told me she thought she did nothing wrong. It was not in fact seen by H until July 2021. This letter strikes me as a very surprising one to have sent at all, let alone on a unilateral basis. It brought into their private divorce dispute a company in an overseas jurisdiction, beyond the territorial reach of this court, where H was no longer employed, in circumstances where very significant sums of money were at stake, at a particularly delicate stage, and only a matter of weeks before the intended listing.
- iii) Following their receipt of this letter, AB Company's general counsel emailed H that AB Company had been contacted by W's solicitors and "the AB Company Foundation cannot distribute the AB Company units at issue until a joint authorisation from both parties, or a valid court order, is presented to us." That was the first time that H became aware of the step which had been taken by W.
- iv) The next day, H's solicitors wrote to AB Company seeking, in robust terms, confirmation that the units would be released, that W's request should be ignored and that there was no lawful restriction against release.
- v) By return, general counsel for AB Company wrote to both parties requiring joint authority for disposition of the units and, absent that, AB Company would block the release of the units.
- vi) Thereafter, H's solicitors wrote to AB Company stating that the units should be released absent injunction from the English court obtained by W.
- vii) AB Company then wrote to the parties advising them that henceforth they must communicate through outside counsel.
- viii) That same day, H wrote directly to AB Company's general counsel seeking confirmation that his units would be released to him.
- ix) Six days before the AB Company listing, W's solicitors expressly stated that she would not consent to release of the units without appropriate safeguards being put in place, although the specifics of the undertakings sought were not spelled out. She threatened to seek a freezing injunction, but did not in fact do so, although that would have been, in my view, the appropriate course of action to take.
- x) H's reply of the same date rejected any suggestion that he was attempting to defeat W's claims, but said that he would inform W of the proceeds of sale of any of the units, provided that W signed a confidentiality agreement.
- xi) On the listing date, W sought agreement that (a) the units be held by a third party custodian, (b) access be given to two nominated lawyers and (c) H must give 14 days advance notice of any intention to dispose of the units. H replied rejecting

any justification for the safeguards sought. W in oral evidence (and set out in correspondence at the time) told me that she was not trying to prevent H having control of, or disposing of, the units, but wanted only to be able to trace them as a “paper trail.” I cannot accept that presentation. It is clear that she was seeking substantive relief, in injunctive terms, essentially to ensure that she had an element of control over the units. H told me, and I accept, that any of the measures sought by W would have resulted in delay, and stymied his ability to sell instantly. As he said, he could see millions of dollars haemorrhaging by the minute. He thought W was attempting to push him into a corner for the purposes of a financial settlement.

- xii) On listing day, W’s solicitors raised the stakes by writing to AB Company that W “would have no hesitation in seeking damages in the event that the units are released without her agreement and she suffers losses as a result”.
- xiii) AB Company replied saying that as they were now “in the middle of a dispute”, they were referring the matter to their lawyers in Europe where jurisdiction apparently lay.
- xiv) H told me, and I accept, that almost until the last minute he still thought AB Company would release the units. He understood his contractual entitlement to be airtight.
- xv) Unbeknown to H, after the listing date W’s solicitors wrote to AB Company’s lawyers at their European office requesting a continuing non-release of the units and stating that “as a matter of English law...” W was “...legally entitled to a share in the units” which strikes me as a somewhat elliptical analysis, not differentiating between property rights and the right to claim distributive awards under the MCA 1973. That request was repeated a few days later, repeating the threat to hold AB Company liable for damages.
- xvi) Nine days after the AB Company listing, H’s solicitors wrote seeking confirmation from W that the units could be released. She declined.
- xvii) H then emailed the founder saying: “I find AB Company’s decision to withhold my units, while releasing others, with zero legal basis, and in apparent collusion with [W] and her attorney unconscionable. It has caused me huge economic loss.....”. He sought negotiations with the founder, but also threatened proceedings.
- xviii) H started legal proceedings against AB Company for breach of contract in both the USA and Europe.
- xix) Settlement discussions took place between about over a week in early summer 2021 (including a direct call between H and the founder), and headline terms were agreed.
- xx) W then in correspondence sought disclosure of H’s units, including whether any had been sold.

- xxi) In reply, H through solicitors stated that he would give full disclosure but required a confidentiality agreement from W. W replied by denying that she had “acted improperly” and that “our client has not acted unlawfully nor has she breached confidentiality”. That was false; she had disclosed part of H’s Form E to the founder and discussed the case with him.
- xxii) Some weeks later, W signed an undertaking which included the words: “I have not breached and will not breach the implied duty of confidentiality in matrimonial proceedings...”. This too was false.
- xxiii) At no time did W seek a freezing order in this country prior to, or immediately after, the listing date. The first time she made such an application was on 14 July 2021, heard by me on 28 July 2021 and dismissed.
34. W says she was suspicious of H, and aware of the existence of a pre-sales market, although she had at that time no evidence that H had in fact undertaken any pre-sales. But I am bound to say that I regard her chosen course of action, to approach the founder and AB Company, and prevent the release of units to H, without any court authorisation, as singularly ill-judged.
35. The final compromise agreement between H and AB Company makes plain that the units had been withheld because of W’s threatened legal action. By the terms of the agreement, H was entitled to 750,000 units (50,000 more than his previous entitlement), but receivable in equal tranches over 12 months (rather than all at once). All units were to be held by a secure third party trading entity. By then, the unit value had dropped sharply. The benefit to H of the agreement was retention of the right to acquire units; the benefit to the founder was a staggered release schedule.
36. By late Summer 2021, all 750,000 units were placed in the third party trading entity pursuant to the settlement agreement between H and AB Company. They have been released in monthly tranches as stipulated by the compromise agreement.
37. As a consequence of the non-release of units, H was unable to fulfil his IOU obligations in respect of pre-sales of 438,732 units. The holders of the units were consequently unable to cash out at the huge price available on listing day. H was forced to enter into discussions and negotiations with the payers. Litigation was threatened. H has been able to honour some of the pre-sales; others have been unwound by agreed refunds, at an overall loss to H of \$4.9m

The assets

38. The net asset base (ignoring chattels and jewellery, but including H’s unit entitlement and taking account of notional tax) is as follows:

W real property	£663,455
W liquid assets	-£240,450 (I ignore her engagement ring)
H real property	£1,612,291
H liquid assets	£6,206,144 (I split the parties’ small difference)
H pension	£349,055
H units	<u>£3,211,259</u>
	£11,801,754

- i) In addition, H holds a number of unvested shares, the grants of which vest between 2022 and 2025 and are subject to conventional conditions. If H were able to realise them all today, they would be worth £6,228,921 gross. But he cannot. They are a contingent resource, not guaranteed. In the circumstances of this case, I treat them as a “below the line” asset; a potential resource, but not guaranteed. It is common ground that they are entirely non-matrimonial in nature, and there is no question of them being shared on a Wells basis as might otherwise be appropriate.
- ii) Further, (a) I have taken the unit value of \$22.58 at the time of sending out the draft judgment rather than a lower value during trial, and (b) the tax figures on the schedule ignore any tax mitigation through payments offshore prior to decree absolute to meet any award.

Income

39. H’s income comprising salary, bonus, options, and dividend is about \$2m pa net. W’s income is negligible, as it was before she met H. The evidence showed that in the 2 years before the start of their relationship her turnover was £9,068 and £195. I am satisfied that her prospects of earning significant sums are remote (the limited wealth available to her after a career of over 30 years suggests she has never been a high earner). It seems to me that she should be able to develop some earning capacity with her great musical skill and talent, but it will probably not be at any more than a modest level.

Cohabitation: the Law

40. The origin of the cohabitation jurisprudence (so far as relevant to the sharing principle) lies in the decision of Deputy High Court Judge Nicholas Mostyn QC (as he then was) in **GW v RW [2003] EWHC 611** at para 33 where he said: “Thus in my judgment where a relationship moves seamlessly from cohabitation to marriage without any major alteration in the way the couple live, it is unreal and artificial to treat the periods differently.” Those dicta have stood the test of time. Of course, the purpose is to ensure that (i) there is no discrimination between the home maker and the earner during that period of cohabitation, just as there is no room for discrimination between the spousal roles during marriage and (ii) to avoid alighting upon an artificially short period of marriage.
41. In **IX v IY [2018] [2018] EWHC 3053** at para 68, Williams J described cohabitation as where “prior to the formal commencement of marriage, the parties had entered into the sort of partnership involving the mutual support, working together, rights and obligations which may be indistinguishable from those which arise when parties begin to live together after marriage”. In the same paragraph he said: “The mere fact that parties begin to spend time in each other’s homes does not of itself, it seems to me, equate to marriage. In situations such as this, the court must look to an accumulation of markers of marriage which eventually will take the relationship over the threshold into a quasi-marital relationship.”

42. In **McCartney v Mills McCartney [2008] EWHC 401** at para 55, Bennett J said: “Cohabitation, moving seamlessly into and beyond marriage, normally involves in my judgment a mutual commitment by two parties to make their lives together both in emotional and practical terms. Cohabitation is normally but not necessarily in one location. There is often a pooling of resources, both in money and property terms.” At para 62, Bennett J added: “I am prepared to accept that the wife and the husband from 1999 to the date of their marriage spent many, many nights together, holidayed together and became engaged. They had a very close relationship. But that does not, in my judgment, in the circumstances of this case, equate with a settled, committed relationship moving seamlessly into marriage.”
43. In **E v L [2021] EWFC 60**, a case which W submits is similar to this one, Mostyn J added 18 months of cohabitation to the length of the marriage, saying:
- “It may not have been traditional in its functioning in that there was not conventional cohabitation; the wife did not move in lock, stock and barrel to F House. But it was, as Mr Glaser QC rightly says, from that point a committed sexual, emotional, physical and psychological, if somewhat itinerant, relationship.”
44. I agree with Mostyn J at para 28 of **E v L** that it is dangerous for the court to evaluate the quality of a marriage, although it seems to me that where cohabitation is in dispute, the court may need to inquire to an extent into the state of the relationship when evaluating the durability and permanence of the alleged cohabitation.
45. To the above jurisprudence I would add that the court should also look at the parties’ respective intentions when inquiring into cohabitation. Where one or both parties do not think they are in a quasi-marital arrangement, or are equivocal about it, that may weaken the cohabitation case. Where, by contrast, they both consider themselves to be in a quasi-marital arrangement, that is likely to strengthen the cohabitation case.
46. In the end, it is a fact specific inquiry. Human relationships are varied and complex; they do not easily lend themselves to pigeon holing. The essential inquiry is whether the pre-marital relationship is of such a nature as to be treated as akin to marriage.

Engagement: the Law

47. In **Miller; MacFarlane [2006] UKHL 24** Baroness Hale said this of marital acquest at para 149:
- “Is the 'matrimonial property' to consist of everything acquired during the marriage (which should probably include periods of pre-marital cohabitation and engagement), or might a distinction be drawn between 'family' and other assets? “
48. The reference to “engagement” might suggest that everything acquired after engagement constitutes marital property, regardless of whether parties were cohabiting or not. However:
- i) Baroness Hale was not laying down an immutable law, as W’s counsel accepted. It must surely depend on the circumstances. It is unlikely, for example, that a lengthy period of engagement, with few or no indicators of cohabitation, would justify an entitlement to assets accrued pre-marriage. It is hard to see how

engagement without mutual commitment and shared lives akin to a marital relationship would come close to justifying an equal share (or any share) of assets built up between the date of engagement and the date of marriage. In my view, engagement may be an indicator of the strength of the commitment and shared life, and may be an evidential factor pointing towards a period of cohabitation, but it should not ordinarily be seen as a separate event which by itself gives rise to a sharing entitlement.

- ii) I am not aware of any reported case where the mere fact of engagement generated a sharing entitlement, regardless of cohabitation. In **McCartney v Mills McCartney [2008] EWHC 401** Bennett J did not so find. And in **Miller** itself, where the parties did not cohabit but became engaged some time before marriage, there is no suggestion in the House of Lords judgment that their ratio decidendi took into account the period between engagement and marriage as giving rise to a sharing entitlement. On the contrary, Lord Nicholls expressly referred to the increase in the husband's wealth "during the marriage" at para 71, and did not refer to any increase in value post-engagement.

Cohabitation and engagement; conclusions

49. The picture became clear during oral evidence. H and W fell in love. H in particular, in my view, was swept off his feet by W's creativity, free spirit, glamour and connections and wanted to make a life with her; he was introduced to a world which he had never experienced before, where W had a number of well known, rich and international friends. They dreamt of a future together. They discussed where they would live. They talked of buying properties in the USA or London or Northern Europe, although they never did so. They were a couple, going out together, holidaying and travelling together. But there were formidable logistical obstacles to their hopes and aspirations. H was living and working in the West Coast of America. His family and friends were there. W was living and working in London. W did not like the city where H lived in the USA, and H could not work in London. Throughout their relationship, they struggled to find a permanent, solid modus operandi for their relationship. H would spend time with W at her London flat when transiting to AB Company's European offices. W would travel on occasions to the USA and spend time in H's rented house. They tried to make things work. Various options were considered; for example, H said in a message on 27 May 2019: "I want to be with you. If you can't make your career work coming here each month, I will start looking for a job in London". H wanted W to feel involved in finding a suitable property in the USA which she would want to come and visit, and making H's rental property more homely; in that way, he hoped they would spend more time together. It was only towards the end of 2019, when H's employment with AB Company came to an end, that a way forward opened up, enabling him to leave the USA. H gave up his rental and moved to London. W left her own flat. In December 2019 they moved together into a rented flat in Kensington, London, before marrying in January 2020. This was more than a casual boyfriend/girlfriend relationship, but I am satisfied that the enduring solidity of cohabitation did not truly take place until December 2019. I need, however, to consider this overarching finding in a little more detail given its centrality to the case presented to me.
50. Having met on Eurostar on 23 March 2018, the next day in Paris and on 26 March 2018 in London, I accept that the relationship progressed swiftly, albeit they only met once more (in June 2018 for a weekend in Switzerland) before H signed his employment

contract in August 2018. They were in contact every day. By July 2018 they treated each other as boyfriend/girlfriend and expressed mutual love. Over time they met each other's family. They were committed to each other and in love, anticipating a life together. As H said in a Valentine's Day card: "I can't imagine a future without you." They became engaged in March 2019.

51. H says there was no shared daily life or cohabitation. W's centre was her flat in London, and H's was in the USA where he lived at Flat H until June 2019 and thereafter Flat F; they spent time together, but were not in a state of permanent cohabitation. W by contrast says that this was a committed, shared life from November 2018 with time divided between the USA and London; a relationship with all the markers of cohabitation. I prefer H's assessment.
52. In my judgment, there may have been a difference in perception between the parties. It seems to me that W embraced the relationship as something more profound, and more akin to a marital relationship, than H. The messages show H's frustration at what he felt was W's demanding nature; on 12 May 2019 he said, "This just doesn't feel like a partnership, a relationship" and at the end of May 2019 H referred to it as a "fragile relationship". This was more than the occasional tiff; my sense was that they had different views about the underlying durability of the relationship.
53. The messages show how the parties were subject to gravitational pulls by their own lives which involved friends, family, contacts, networks, and careers in different countries. As W said on 21 November 2018 "Am being pulled in many directions". She told me that she put her career on the back burner, devoting herself to H, reducing her work activities by about 90%. I thought that was an exaggerated presentation. The various messages show that she was still creating, developing ideas, travelling, writing scripts, attending events and networking. She and H had separate lives with separate interests and commitments. I accept that she worked less, but it remained a major part of her life; unsurprisingly so, given her love of music which shone through in her evidence.
54. Although cohabitation does not require as a necessary condition spending every night, or almost every night, together under the same roof, particularly when a relationship straddles international boundaries, nevertheless the evidence shows that (apart from one or two disputes about dates), between 1 November 2018 and 31 October 2019, which is broadly the span of time between W's asserted start of cohabitation and H's, they spent time together as follows:
 - i) 50 nights in London at W's property
 - ii) 55 nights in the USA at H's properties (Flat F and Flat H).
 - iii) 59 nights on holiday.

That is a total of 164 nights together, about 45% of the one year period. Excluding holidays, they spent about 28% of their time together (105 nights) at their respective properties. Insofar as there was a pattern, H stayed in London for weekends when transiting between the USA and Europe, and W would go for fewer, but longer periods to the USA. I accept that neither left large quantities of possessions in the other's house, although some of their belongings remained in situ. The composite schedule showing

where they were demonstrates clearly that it was only from November 2019 that they spent a sustained period of time together.

55. Although it was disputed, I accept H's evidence that when in London he was able to use a key to W's flat from about November 2018, but W did not give him a key to the block's main entrance (despite his requests for her to do so) which meant that, to all intents and purposes, he could not come and go freely. His account was corroborated by an exchange of messages in February 2019 in which he expressed frustration at being locked out and W seemed to express reluctance (for whatever reason) that he should have a complete set. In the USA, H gave W a key which she could use when she was there.
56. It was only in November/December 2019 that H gave up the tenancy on his property in the USA and moved to London. They chose to move into a new rented property rather than live at W's flat. To my mind, this was a clear dividing line. H was leaving the USA where he had always lived, and W was moving out of her long standing flat. As H said on 27 November 2019: "You are right. I'm scared leaving everything I've known country, family, work behind to start a new life with you-someone I've only known less than two years and never lived a month together with," words which to my mind resonate with impending cohabitation, and a new settled life together, rather than historic cohabitation as W suggests.
57. I do not accept W's description that she "managed" H's properties in the USA when she in fact spent only 55 nights out of 365 there. Similarly, I reject the suggestion that she was a full time housewife between November 2018 and November 2019 when their time together at their respective properties in the USA and London was 105 nights out of 365; not insignificant, but not evidence of domestic solidity. In general, I felt she exaggerated her role.
58. It is of some relevance, in my judgment, that W spent little time in the USA while H lived at Flat H. She says that she found it too small and too dark. H, eager to find an arrangement which worked for W, was willing to look for an alternative property with which she would be satisfied, although he himself was content with Flat H. Even after H signed up to a new property at Flat F in June 2019, W only went 3 times (the same number of visits as to Flat H). In other words, she chose not to spend time with H in the USA for much of the relevant period. As she said in a message to H on 25 April 2019 "I'm just not moving to [the USA]". True, she helped furnish Flat H and Flat F with decorative items such as lamps, side tables, bedding, and a sofa, but I do not view that as part of a settled state of cohabitation. The suggestion that she made all the choices, and took all the decisions, was not made out on the evidence. H was paying, and W consulted with H on almost all purchases. Similarly, she helped H look for a different property to rent, and assisted H in moving in his things (but was not exclusively responsible, as she suggested), but that is just as consistent with a relationship of boyfriend/girlfriend, or even friends, as it is cohabitation. Overall, I felt that W exaggerated her involvement in these matters. The fact is, W did not really want to live in the USA; I thought her oral evidence to me to the contrary was unconvincing. She also made it clear to H that she would not live in Europe. I formed the impression that long term W would only have accepted living permanently together in London.
59. W made much of H moving his Steinway piano into Flat H on 9 March 2019, her case being that he did so to enable her to play it and gave it to her as a present. W's Form E

did not declare it to be one of her possessions, although replies to questionnaire did. I accept H's evidence that it had been in storage for 20 years, he moved it out of storage in November 2018, he wanted to sell it, and it made far more sense for it to be on display for possible purchasers to come and view it.

60. Throughout the messages, one can see discussion between the parties about homes, and buying properties (in Europe, London, and/or the USA). H was cross examined at length about looking at properties or property particulars. They talked about where they might live together; they daydreamed. At one point, H put down a deposit on a London property, which fell through in March 2019. At times, the ideas were untenable; H was not particularly wealthy and could not afford some of the property particulars. In the event, however, they did not buy a property, nor move into one together.
61. Nor did they mingle their finances which remained entirely separate, although H largely supported W. From October 2018 onwards, H gave W \$4,000-\$5,600pm (and on one occasion \$8,000), and paid for some additional items such as £7,000 to repair W's car, £4,700 on the management fees on W's property and \$10,000 towards a music studio upgrade. These were because W repeatedly told H (quite truthfully) that she needed money, could not support herself, was "broke" and "stuck financially." She told me in evidence that she was very stressed financially; she had only £100 in her bank account at the start of the relationship. H gave her money because she requested it. The total financial support before the parties' marriage, according to W, came to about £118,000. W also had use of H's credit cards, although, on the evidence, they were used only minimally for her personal expenses. But they did not have joint accounts, or acquire joint assets. I accept that W had had similar financial arrangements with previous partners which partly informed why H made financial subventions; he was replacing the monies received by W in a previous relationship. That is not to criticise either of them, it is simply how it was.
62. In addition, H paid for all holidays and meals out, and bought W gifts and an expensive engagement ring. These, in my judgment, were the acts of a man showing generosity towards his girlfriend, and not by themselves indicative of cohabitation.
63. According to W, almost immediately after the marriage H relapsed into regular drinking and became aggressive and bullying. She learned that he had been married twice, not once as she had understood. She discovered that he had concealed details of a criminal conviction and alcohol rehabilitation. It seems to me that the marriage went downhill rapidly, such that H moved out for a period of time in March/April 2020. In my judgment, this begs the question of why this had not been apparent to W before, to which the probable answer is that they had not lived together until late 2019. It was only when they truly cohabited, and shared their lives, that their incompatibility became all too obvious.
64. Overall, I take the view that cohabitation did not start until December 2019, when H left the USA for good, and the parties moved into a new rented home in London together. Until then they had been in a committed relationship where they spent time together, were supportive and affectionate, and shared dreams and ideas, but which fell short of cohabitation equating to marital norms.

65. Nor do I regard the fact of engagement, although a relevant factor when considering the extent of the mutual commitment and shared life in the circumstances of this case, as by itself giving rise to a sharing claim.

Sharing

66. On my findings, the parties did not live together until after (i) H started employment with AB Company, (ii) H completed the requisite 1 year of service with AB Company to become entitled to a right to acquire units, (iii) H ceased his employment with AB Company and (iv) the compromise agreement between H and AB Company following his departure. Thus, the units, or proceeds of units were not, and are not, marital assets and W is not entitled to share in them.
67. W's counsel submitted that W should also receive 50% of H's options in a technology start up, of which the vested part therefore may be worth, according to H, up to \$400,000. I reject that submission. Although H knew the people involved, and had discussions from early 2019 onwards, he became Board Adviser and received his options after the marriage had ended. In my judgment, no sharing claim lies.
68. There are no other assets to which W lays a sharing claim.

Conduct: the Law

69. In **OG v AG [2020] EWFC 52** Mostyn J identified 4 situations where conduct is relevant:
- (i) Very rarely, personal misconduct during or after the marriage
 - (ii) The add back jurisprudence where there has been wanton dissipation by a party
 - (iii) Litigation misconduct which is usually penalised in costs but can in rare cases sound in the award
 - (iv) Lack of full and frank disclosure leading to adverse inferences
70. In respect of the first heading, Mostyn J said this:
- “34. Conduct rears its head in financial remedy cases in four distinct scenarios. First, there is gross and obvious personal misconduct meted out by one party against the other, normally, but not necessarily, during the marriage. The House of Lords in *Miller v Miller* [\[2006\] UKHL 24](#), [\[2006\] 2 AC 618](#) confirmed that such conduct will only be taken into account in very rare circumstances. The authorities clearly indicate that such conduct would only be reflected where there is a financial consequence to its impact. In one case the husband had stabbed the wife and the wound had impaired her earning capacity. The impact of such conduct was properly reflected in the discretionary disposition made in the wife's favour. Mrs Miller alleged that Mr Miller had unjustifiably ended the marriage discarding her in favour of another woman. Therefore, she argued that Mr Miller should not be permitted to argue that their marriage was short. This argument was rejected by the House of Lords which held that the conduct in question, although greatly distressing to Mrs Miller, should not find independent reflection in the court's decision.

35. The conduct under this head, can extend, obviously, to economic misconduct such as is alleged in this case. If one party economically oppresses the other for selfish or malicious reasons then, provided the high standard of “inequitable to disregard” is met, it may be reflected in the substantive award.”

Husband’s alleged conduct

71. H sold part of his entitlement to units prior to release day. H failed to disclose this to W or the court. I accept that his reason was because of concerns that W would speak to the founder, who might seek to interfere with a smooth realisation of value. As it transpired, his concerns were well founded but, whatever the reason, he should have informed W and the court. I regard his failure to disclose these matters to W or the court as litigation misconduct, which would ordinarily sound in costs. However, I am satisfied that H, in pre-selling units, was acting, as he saw it, prudently. He was not a man of vast wealth, and it was logical to attempt to hedge the outcome of the listing. To secure \$11m in advance of the listing was not such gross and obvious misconduct as to enter into the reckoning. There is nothing to suggest he pre-sold at an undervalue. The prices quoted online (which in theory suggest he sold at between 71% and 88% lower than the marked price) were not realistic market figures, and in any event, it is not clear whether the prices quoted were for the type of markets in which H undertook the pre-sales. H could only sell at prices which purchasers would pay. Although he concealed the fact of pre-sales, I do not think that they were carried out to defeat W’s claims. Apart from anything else, it was not in his own interests to sell at a below achievable price. All the monies went into an account which has been disclosed, and upon which he has not drawn save to meet his, and W’s, legal fees; there is no suggestion that H has concealed monies. Insofar as W says that had he not pre-sold, H would have been able to sell the units at higher prices upon implementation of the staggered compromise agreement, (i) that argument melts away because of W’s own conduct in preventing sale at listing and (ii) had it not been for the need to refund purchasers, the prices would have been broadly similar.

Wife’s alleged conduct

72. In my judgment:

- i) W’s behaviour in communicating with the founder behind H’s back, was gross and obvious conduct which the court is entitled to take into account. She knowingly followed the founder’s suggestion that her solicitors to write to AB Company, as a result of which AB Company refused to release H’s units on the listing date. She was aware of the nature of the units and the potential value. She knew H had a contractual entitlement. She may have been motivated by concern that she did not fully understand H’s holding of units. She may not have intended directly to cause loss. She may have been “played” by the founder. But, regardless, she was undoubtedly reckless in her interference with H’s contractual rights. At the very least, she should have applied to the court rather than act unilaterally.
- ii) I am satisfied that had she not behaved in this way, H would have been able to sell 25% of this total holding (175,000 units) for about \$450 per unit, and could have secured in the region of \$78,750,000. Based on today’s price, they would be worth \$2.8m, which indicates a loss of about \$76m. Although I cannot be

absolutely confident of precisely how many units H would have sold, and at what price, these figures seem to me to be a reasonable estimate, albeit tax would have been payable. Overall, in my judgment, W directly caused H financial loss running into tens of millions of dollars.

- iii) Although H pleads a further head of damage, namely the loss attributable to repaying purchasers of pre-sales, I am not satisfied that this should be laid at W's door as, in my judgment, he should not have undertaken such pre-sales without first notifying her.
- iv) I decline to find that W's conduct should also be measured in terms of H's legal fees relating to the compromise agreement. I am in no position to judge to what extent those fees were necessary or reasonable.
- v) W submits that the evidence shows (as I accept it does) the enthusiasm of the founder to try and slow down the release of units, making life difficult for early investors and employees. So, goes the argument, even without W's involvement the release of H's units would have been delayed i.e there is no causation referable to W. But there is not a scintilla of evidence that, until W's communications with the founder started, he intended to take such steps in respect of H who had been such a prominent part of the team. On the contrary, there are numerous messages between W and the founder in which the founder told W that H would receive his units on listing day absent her taking action. The only issue H faced (other than W's interference) was KYC confirmation which was resolved before listing. H's contract was solid. In any event, it is known that at least some employees did receive their units immediately so that the picture is far from as clear-cut as W would have it.
- vi) W said to me that because she did not seek or obtain a freezing order, there was nothing to prevent H receiving his units and she cannot be held responsible for their non-release. I felt that was unpersuasive. The units would, on the balance of evidence, have been released to H until W instructed her lawyers to write to AB Company, demanding non-release and threatening a damages claim if they were released. Such letters gave the founder exactly what he wanted, the opportunity to slow down release for his own purposes, precisely as he had indicated in the message in which he suggested that a solicitor's letter would "slow things down". W's actions played directly into the founder's hands.

73. If I am wrong in my analysis of W's sharing claim, I am satisfied that any such claim would be comfortably outweighed by her misconduct in causing H financial losses in the tens of millions of dollars.

Needs

74. There has been almost no focus on W's needs claim during the hearing. The applicable law is clear and, in my judgment, neatly summarised by Mostyn J in **FF v KF [2017] EWHC 1093** at [18];

"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

75. Taking the relationship as a whole, my impression of the standard of living is that it was close to W's description as "luxurious", travelling first class or business between the USA and London, designer clothes, expensive eating out, use of H's Porsche Cayenne, 5 star hotels, and high-end holidays. H was willing and able to spoil W. It is of some relevance in assessing needs that W was largely dependent upon H from October 2018 onwards, receiving £117,000 in one year, in addition to H funding the lifestyle described above. I also take the view that although H has provided W with £4,000 per month during the course of these proceedings, that was arguably a low figure in the context of the case. True, the marriage was short, but H is wealthy and has a high income whereas W, by contrast, has modest resources and a limited earning capacity. W's conduct is also a factor. It seems to me that had H's wealth been much greater, as it would have been absent her behaviour, then her needs based award would likely have been higher than that which I propose to make. I also bear in mind that H has already paid W £400,000 which has been spent on her legal costs.
76. W makes no claim for capital needs beyond payment of her £60,000 mortgage which would enable her to retain her London flat mortgage free. In my judgment, she is right not to do so. This was a pre-owned flat which comfortably meets her housing requirements.
77. She has net indebtedness of £237,000. This is a result of costs which, H submits, is entirely her own responsibility and he should not be expected to make any further contribution. My view is that I should deal with W's needs, and then consider any costs applications. In principle, however, I do not consider it right to leave her with this level of indebtedness which she cannot pay absent selling her flat.
78. Her Form E presents a required budget of £229,094pa (including £31,932pa of work related expenses). As a comparison, H's budget (excluding mortgage) is \$321,960 which is about £243,000pa. I accept that her earning capacity is relatively modest, and she seems never to have earned great sums. Her career focus lessened somewhat during the relationship, but not as much as she said. She can, I am sure, with her charisma, and skill, deploy her talents to generate some income which I put at about £15,000pa net. I accept that her age counts against her, and it will take her a while to rebuild her earning capacity, but she retains the ability to take positive steps to revitalise her earnings.
79. I conclude that W's reasonable needs payable by H are:
- i) £60,000 to redeem her mortgage.
 - ii) £237,000 to clear her net liabilities.
 - iii) £450,000 which is £150,000pa for 3 years by way of rehabilitative maintenance (3 years is a little longer than the full length of the parties' relationship from March 2018 to June 2020). Although I do not regard a Duxbury award as appropriate given the brevity of the marriage, such a sum produces about £30,000pa on a Duxbury basis.

That is a total of £747,000 which I shall round up to £750,000.

Conclusion

80. H shall therefore pay W £750,000, having, I bear in mind, already paid her £400,000 which has been swallowed up by costs. Stepping back, and looking at all the s25 criteria in the round, I am satisfied that this is a fair outcome. W will exit this short childless marriage debt free and with total assets of about £1.2m (her pre-owned, non-marital property at £750,000 and £450,000 capitalised maintenance) out of about £11.8m (plus unvested shares notionally worth over £6m gross), of which H's assets are, on my findings, entirely non-marital.
81. H shall retain the piano which he owned before the marriage. He shall also retain the portable safe, from which W must be permitted to remove her own documents or possessions by appropriate arrangements. An issue arose towards the end of the hearing about items of W's jewellery which may have gone missing, and I invite counsel to agree a way forward.
82. Any application for costs should be made to me on paper in the first instance.