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Case No: RS19D13188

IN THE FAMILY COURT AT BRISTOL

The Matrimonial Causes Act 1973

10th March 2023

Bristol Civil Justice Centre, 2 Redcliff St, Bristol.

Before:

HIS HONOUR JUDGE WILDBLOOD KC

Between:

CC

Applicant Wife

- and -

LC

Respondent
Husband

Judgment - 10th March 2023

Nigel Cholerton, counsel, instructed by BLB Solicitors on behalf of the wife.
The husband did not appear and was not represented.

HHJ Stephen Wildblood KC:

1. **Introduction and summary** – These are financial remedy proceedings involving modest financial resources. The husband [...] is a journalist. The wife [...] is a part-time teacher. There are three children in the primary care of the wife. The three-bedroom former matrimonial home provides adequate but not spacious accommodation for the wife and three children; it is subject to a mortgage and has been the family home since 2009 (throughout the marriage and the lives of the children). The wife says, and I accept, that, if it were to be sold, there would be no suitable accommodation that could be bought for much less than its value – especially after the additional costs of sale and moving are taken into account. Further, she says justifiably, the children have emotional, psychological and educational needs that militate against the sale of the house.
2. There are pensions which, on the limited information that has been disclosed by the husband, appear to be roughly similar in value and so, for that and other reasons that I give later, pension sharing orders are not on the agenda. There are no assets of any significance, other than the former matrimonial home and save for some limited savings that the wife holds, partly from recent inheritance; therefore, the core decision that I have to make is as to what should become of the former matrimonial home. In this judgment I explain why I have concluded that it should not be sold.
3. The difficulty in this case, as I will describe in more detail, is that the husband has refused to engage. Not only has he not attended this hearing, having sent a succinct message saying that he would not do so. He has ignored orders to disclose documents even when backed by a penal notice. He did not attend an eventual committal hearing. When, under an order made in accordance with Rule 37.7 (2) of The Family Procedure Rules 2010, the bailiffs were sent to arrest him and bring him to court, the husband still did not attend court and the bailiffs, faced with difficulties, did not arrest him. The order that I made at that ‘bailiffs’ hearing’ that he must file a statement, exhibiting financial documentation and explaining his absence at the committal hearing (also backed by a penal notice) was also ignored. With an associated penal notice, I ordered him to attend this hearing and warned him, on the face of the order, that the hearing would proceed if he did not attend. He has failed to produce any evidence about his lack of attendance at previous hearings, such as medical evidence and there is no evidence to suggest that he has any mental or physical disabilities that preclude him from engaging or attending. A consequence of the husband’s failures has been that he now bears liabilities for the wife’s costs which I will have to intertwine with the capital orders that I make because, I find, expecting the wife to enforce them separately would be unrealistic and disproportionately expensive.
4. The husband’s failures include a failure to file any evidence of his housing and other capital needs, his mortgage raising ability, his earning capacity or his intentions. Further, he has made no proposals to resolve these proceedings that I have seen. The relevant parts of his Form E, where he should have dealt with those issues, were left blank [see pages 148-152].
5. Given the developing and disproportionate burden of the costs of trying to get the husband to engage, the wife, who has been very well advised during these proceedings by her solicitor (Ms Catherine Smith) and counsel, was sensible to give

up on enforcement of the orders for disclosure and asked me to list this final hearing today instead. I agree that the listing of this hearing was the only sensible thing that could have been done. A bundle has been filed by Ms Smith and has been served on the husband (in this judgment, the numbers in square brackets represent pages within it).

6. Despite the husband's approach to this case, he has been paying maintenance to the wife and children of £1,062 p.m. and, as I explain, I will order him to continue to do so. Further, the children spend three nights a week with him. Those are important factors within this case, and I have borne them at the forefront of my mind along with other key features of this case when deciding upon the outcome of these proceedings.
7. The wife says that, even during the marriage, she did not know what the husband's financial position might be. She gave evidence at this hearing that she can only suggest that the husband's lack of engagement arises from two things: i) his wish not to reveal the extent of his financial resources and ii) his wish to continue to exercise control over her. Having now spent so much time reading, hearing and experiencing this case, I think it is highly probable that a combination of both those two things lies behind the husband's lack of engagement. I accept and find that the husband knows full well the misery that he has caused to this wife by failing to engage and that he has prolonged and deepened it deliberately. I accept the wife's evidence about the unnecessary distress that he has caused her.
8. As a result of the husband's approach to these proceedings, I have to examine the extent to which his conduct should be taken into account when deciding upon the outcome of the case as a whole. As I explain, his litigation conduct must be taken into account in relation to his liability to pay for the costs of the committal proceedings. As to the drawing of inferences, it is impossible to give any specific figure for what this husband may have underdeclared in relation to his capital. I think it highly likely that he has underdeclared it and conclude that, with such capital as he may have and the lump sum that I order in his favour, he will be able to meet his needs. If that were not so, he would have filed evidence to demonstrate his actual position. Plainly, he is not troubled at all about these proceedings. It is no part of my function in these proceedings, however, to be punitive.
9. The wife has the support of her family to whom an immense debt of gratitude is owed. I give leave to the wife to show this judgment to them and convey my admiration of their family values. If the former matrimonial home is transferred to the wife, they are prepared to assist her in taking over the mortgage on it and in funding a lump sum to the husband. The wife has a small amount of capital in her own name and can use some of that to add to the lump sum payment. The husband has costs liabilities to the wife, and I will add to them by ordering him to pay the reserved costs of the committal proceedings. The wife says that, in the light of the ages and circumstances of the children, her limited earning capacity and the needs of the family, there should not be a clean break. I agree with her.
10. Therefore, this judgment explains how I have come to the decision that the wife should pay a lump sum to the husband of £70,000. £60,000 of that will come from the wife through her parents (and I have been told that they have the ability to help her to that extent). £4,500 of that will come from the wife's savings. £5,500 of that will be

reflected in the costs orders that the husband will have to meet and which the wife will satisfy by a reduction in the lump sum, making the total that the husband will receive of £64,500.

11. I have thought very carefully about whether there should be an additional charge (or trust arrangement) over the former matrimonial home, affording the husband a further share in the property at a later stage (in legal terms, a Mesher or Martin arrangement). Having given considerable thought to that over the past few days, I have decided that there should not be.
12. The effect will be that the wife has the house in her sole name subject to the mortgage. The husband has a lump sum which will meet his needs, as I take them to be. The husband will pay the current level of maintenance and there will not be a clean break. At the hearing I was asked to order the husband to take out fresh life insurance to protect his maintenance payments; not only are there legal difficulties in relation to that (see *Milne v Milne* [1981] 2 F.L.R. 286, where the judge was held to have ordered the husband, wrongly, to take out an insurance policy and *CH v WH* [2017] EWHC 2379) but also I had no details of any such policy and the prospects of the husband co-operating with obtaining one I would assess at zero. On 10th March 2023 I received an email to the effect that that aspect of the proposals that were advanced on behalf of the wife was no longer pursued.
13. **Rule 27.5 of The Family Procedure Rules 2010** – I now wish to address the Husband directly, through this judgment.
14. LC, out of choice and despite having notice, you did not attend this hearing and a number of other hearings that preceded it. You will see what I say about that in this judgment. I need to inform you of the terms of Rule 27.5 of The Family Procedure Rules 2010. It reads as follows:
 - (1) *Where a party does not attend a hearing or directions appointment and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside*¹.
 - (2) *An application under paragraph (1) must be supported by evidence.*
 - (3) *Where an application is made under paragraph (1), the court may grant the application only if the applicant—*
 - a. *acted promptly on finding out that the court had exercised its power to enter judgment or make an order against the applicant;*
 - b. *had a good reason for not attending the hearing or directions appointment; and*
 - c. *has a reasonable prospect of success at the hearing or directions appointment.*
15. You should read the above rule and this judgment with care. Given the way that you have behaved in these proceedings, I direct that, any application that you do make under that rule must be made by 4 p.m. on Friday 24th March 2023.
16. If you should intend to issue an application for permission to appeal to the High Court (see Practice Direction 30A of those Rules, paragraph 2.1) you must do so by the same time (that is, by 4 p.m. on 24th March 2023). If you do not do so, any application

that you might make under Rule 27.5 of the Rules or for permission to appeal will be out of time and you would have to seek relief from sanctions under Part 4 of the Rules before you could proceed; you should not assume that you would be afforded such relief. I am ordering that the time for the presentation of an appellant's notice by you (or, indeed, by the Wife) is reduced from 21 days to 14 days, acting under the powers conferred on me by Rule 30.4 (2)(a) of those Rules. I do so based on your behaviour within these proceedings to date, the unnecessary costs and delay that you have generated and the effect of your past conduct on the Wife and your children.

17. It is entirely a matter for you as to whether you make any such application. You may well think it wise to take urgent legal advice if you consider that you may wish to issue any such further applications.
18. I will now give the detail of the case.
19. **Background** – The husband and wife were married on 17th July 2009. They separated ten years later, in July or August 2019. The decree nisi was made on 16th June 2020. The wife lives in the former matrimonial home in [...] Bath. The husband lives in rented accommodation [...] near Bath. The husband is aged 46, [...] and the wife is aged 42 [...]. Neither party cohabits and neither discloses any intention to do so.
20. The three children are [...] aged ten (D10), eight (D8) and five (D5). They spend time with the father on six nights a fortnight during the term-time, with the wife having the children for slightly more of the time during the holidays. There were lengthy proceedings between the parties in relation to the arrangements for the children; they were concluded by a child arrangements order that was made by the Magistrates on [...] 2022. The term-time fortnightly rota established by the order has the children staying with the father in week one on Tuesday and Friday nights and, in week two, on Tuesday nights and then from Friday after school until Monday morning; thus, amongst other things, the arrangement is geared around the husband's work commitments and the wife has the main weekday responsibilities for them.
21. The children each have additional educational needs [99]. In relation to them, the wife states through her solicitor [4]:

'D10 has just been assessed by a specialist paediatrician in relation to her suspected autistic traits (attachment 6 – a letter dated 24th November 2022 from [...] specialist paediatrician). The children have also all been affected by the separation of their parents and the Wife is mindful that they need her to be physically and emotionally available to them when they need her. Neither parent has family nearby [...] so there is little support in the event of emergency and such emergencies fall to the Wife to resolve, particularly given that the Husband prioritises his work commitments over the needs of the children. The Wife deals with all appointments, meetings and referrals in relation to the children and their SEN needs, most of which fall within normal working hours. There are three meetings with the SENCO each term, speech and language therapy sessions, weekly psychologist sessions, as well as seven after-school clubs, regular communication with the school and the usual homework requirements. The Wife deals with all of the above without input from the Husband. The Wife meets all the children's expenses, including after school clubs, residential trips, privately paid psychologist, costumes and sports clothing, school dinners,

parties, dental treatment, without additional financial input from the Husband. D10 attends [...] a Performing Arts school, paid for by the Wife, which was recommended by professionals in order to give the younger children some time during the week where they are not impacted by her unpredictable behaviour. The Wife also follows the daily routine, recommended by professionals, in relation to relaxation techniques and speech and language exercises.'

22. In her oral evidence, the wife emphasised how important it is for the children to keep their current home. She said:

'D5 has selective mutism – she cannot speak to any male. I meet with the SENCO regularly. D5 has had play therapy, but she needs a lot of nurturing. D8 has required speech and language therapy and we are correcting her speech and language slowly. D10 is my greatest concern. It has been said that she has signs of autism; her behaviour is very challenging. She has had a number of interventions; I meet the SENCO regularly and also her behavioural therapist. D10 has regular sessions with the behavioural psychologist (costing £80 a session); she has been referred to a psychologist who has written a report (costing £800). I pay for both psychologists that she sees, from my savings. They have lived in this house since birth. They can walk to school. They have friends around them, and this is important for mutism and autism. D10 would find it very upsetting to move, as would D5.'

23. **The former matrimonial home** - [...] has a value of £420,000 as agreed at the FDR before District Judge Byass in Bath. It is vested in the joint names of the parties. There is a mortgage of £131,000 in favour of the Nationwide. Thus, if sold, the net proceeds of sale would be about £277,000 [see the ES2 at page 66]. It is a semi-detached house with three bedrooms. In her Form E, the wife said: *'the family home is suitable for our needs, close to the children's primary school and within walking distance of the secondary school they will attend'* [122]

24. **The husband** - The husband works as a journalist [...] in Bath. Within his limited evidence he has said that he earns about £36,000 net a year (£35,931 – page 141). He also says that he has a 'parental loan' arrangement by which he receives £350 p.m. or £4,200 p.a. [145]. He says that a payment of 'Hargreaves Salary sacrifice' that features on his pay slips is a 'pension contribution' [141]. He says that his pension, which he says is with Scottish Widows (pension number 3691214), had a total value of about £85,000 as at 22nd April 2022 [139].

25. The husband's disclosed salary statements are at pages 244-6. They show a net payment of £2908.90 p.m. and payments to 'Hargreaves salary sacrifice' of £244.40 p.m. (or £2,932.80 p.a.). The documents relate to the first three months of 2022. I do not know what he earns currently and have no idea of his earning capacity or future employment intentions.

26. The husband pays a global sum of £1,062 a month (i.e. £12,744 p.a.) to the wife for herself and the children. That means that, if his net income is £36,000 p.a., he has a net amount of £23,256 p.a. or £1,938 p.m. after paying maintenance of £1062 a month. In addition, he has the 'parental loan' (if it continues) of £350 p.m. or £4,200 p.a.; if that is added to his income, after maintenance, he has a total of £27,456 p.a. or £2,288 p.m. He says that he has income needs of £29,520 p.a.; the figures are

incorrectly added in his Form E [147] they do not include the maintenance payment but do include rent of £15,000 p.a. I have not been able to hear any evidence from him in relation to his outgoings or needs. I assume that he is able to meet his income needs on the basis of his current payments – he is not in debt and has not suggested that he cannot manage on what he has.

27. **The wife** - The wife’s part-time work is as a reception teacher at [...]. I asked her questions about her net income and referred to the salary statement at page 346. Her total net income is as follows:

	Monthly	Annually
Work	1,352.6	
Child benefit	145	
Maintenance	1,062	
Total	£1207	£30,715.62

28. I accept that money is extremely tight for the wife and the children. I accept her evidence that she has to bear the additional expenses of the children out of what she receives. I accept that they are living to a standard where there is no money to spare. It is not necessary to descend into a detailed analysis of her monthly outgoings to identify that. In her Form E she puts her total future income needs for herself and the children at £3,480.66 p.m. [118]. I also note that, on the basis of the figures that I have set out above, the husband is left with about £2,288 a month after maintenance and the wife is left with £2,559.6. From what she has, the wife has to bear all of the additional expenses of the children and cares for them for a slightly greater amount of time. That appears to me to be fair.
29. In her position statement, the wife says: *‘The Wife currently receives global maintenance of £1,062 per month, which, according to the CMS calculator, breaks down as to £415 pcm for children maintenance, with the remainder being spousal maintenance. The Wife seeks an Order for global maintenance to continue at this level with a pound for pound reduction in the event of a CMS assessment. Her mortgage capacity, as set out..., is contingent on her income from all sources remaining at the current level.’* Therefore, she says, not only does she need that level of payment from the husband, but its continuation is also the only means by which the husband can be released from the mortgage on the property if it remains unsold.
30. Due to the responsibilities that she has and on the basis of the oral evidence that she has given on the subject, I accept that she does not have the capacity to increase her earnings and is unlikely to do so to any significant extent for at least six years, when D5 will be aged 11 and starting secondary school. Currently, she works 16 hours a week and has been with the school for 14 years [112]. In the light of the children’s education and psychological needs, the children may well be dependent upon her (and the husband) beyond their majority. I do not think that it is possible to identify a date at this stage when periodical payments might cease, and it would be speculative to set one. Therefore, this is not a case where the wife can adjust with undue hardship to the termination of her periodical payments, and I will not be ordering a clean break.
31. In her position statement, she says:

- i) *‘The Wife currently works part time. She has made enquiries of her current school and other education providers to see whether she could increase her hours or take on additional work outside normal school hours. Her current employer has confirmed that there are no additional hours or budget available (attachment 3 – page 42, a letter dated 24th February 2023 from [...] , the head-teacher). She has also struggled to find work elsewhere due to her commitments to the children (attachment 4 – p44-47, which contains messages between the wife and [...]). Despite the Child Arrangements Order stating that the responsibility for the children when sick or off school will be divided between the parents, the Husband refuses to take time off work to care for the children and therefore, not only does this impede the Wife’s ability to work more on a permanent basis, it also causes her to renege on commitments within her permanent employment and any possible supply teaching (attachment 5).*
 - ii) *‘...The Wife accepts that, as the children grow older, she may be able to work more hours as they will be less dependent on her for childcare. She does not, however, believe that she will be able to increase her hours significantly until their youngest child starts secondary school, at the earliest. She is also concerned at her ability to work full time even when the children are in secondary education, due to the need for her to continue to be available to the children due to their additional needs, and the difficulty in predicting how their needs will manifest and how they will be impacted in future.’*
32. The wife has pensions which have a value of about £109,000 [67]. Although her pensions value is £24,000 more than that given by the husband [67]:
- i) His figure is not supported by adequate disclosure (it is one of the areas where he has declined to give the disclosure that he was ordered to give).
 - ii) His ability to develop his pension in the future could not be examined properly at this hearing because of his lack of engagement.
 - iii) If the Hargreaves payment is the only pension payment that he is making, it still represents a much higher pension contribution than the wife is able to make. He pays £244.40 a month [244]. The wife pays £78.41 p.m. [346].
 - iv) Pensions are remote, in any event, given the ages of the parties.
 - v) As the husband must know (because it is raised in the papers that have been filed) the wife alleges that the husband *‘has worked for his current employer for 13 years and worked elsewhere previous to that, so it is likely that he has further pension provision not yet disclosed.’*
33. In her position statement for this hearing [3], it is said on the wife’s behalf that:
- i) *The wife’s primary concern is to ensure that she and the children have suitable housing and that she can meet the monthly outgoings on the same, as well as ensuring that their reasonable needs are met.’* She has produced details of other properties [see pages 9-37 and 249 -299] and says [3] *‘unless*

she moves away from the local area, she will struggle to find a suitable property if the former matrimonial home were sold. She wishes, therefore, to remain in the former matrimonial home to provide stability for herself and the children.'

- ii) *The Wife made enquiries of her mortgage capacity in 2022, at which point her mortgage capacity would have enabled her to remortgage for the entirety of the current mortgage, thereby releasing the Husband from the mortgage. The Husband was not in agreement to the same. The Wife has obtained updated mortgage capacity (attachment 2 – page 39, a letter dated 9th February 2023 [...]), showing that her maximum mortgage capacity is now £109,000 (on the basis that the child and spousal maintenance continue to be paid at the current rate). This falls short of the current mortgage and the Wife will need to borrow further funds from her family in order to release the Husband from the mortgage and reduces the amount of lump sum she can potentially offer the Husband.*
- iii) *It is understood that the Husband is renting a suitable property nearby [...], and that he intends to continue renting the same. No information has been received in relation to his housing proposals or mortgage capacity so the Wife cannot comment on the same.*
- iv) *In relation to her housing, the Wife proposes that she remortgages the FMH to release the Husband from his liabilities under the mortgage (borrowing from her family as necessary in order to meet any shortfall), and that she provides a lump sum of £55,000 (again, borrowed from family) in order to satisfy the Husband's claims against the FMH and to provide him with a deposit in the event that he intends to purchase a property himself. He would also be released from the mortgage on the FMH so this would not be a barrier to the Husband securing a mortgage himself.*
- v) *The Wife seeks an Order whereby there is no joint ownership of the FMH due to the Husband's history of controlling and abusive behaviour. The Wife believes that maintaining a financial link between them simply provides the Husband with a continuing opportunity to control her and the children. The Wife's parents feel strongly that the Wife remains at risk of further controlling and abusive behaviour, hence are prepared to raise funds to provide the Husband with a lump sum.'*

34. I have studied the property details that are contained in the bundle and are referred to above. I accept that there are no suitable properties in Bath that the wife could buy for much less than the former matrimonial home. There would be no point in ordering a sale if the wife is to remain living in that city and there are many reasons why a sale should not be ordered (as I have explained). There are three-bedroom houses in other areas but:

- i) I do not accept that they would provide accommodation that would meet the specific needs of these children.

- ii) I do not accept that they would meet the needs of the wife, given the complexities of the responsibilities that she has for children.
- iii) The wife would still need the majority of the sale proceeds in order to buy one of them. The whole purpose of her parents helping the wife is to enable her to stay in the current home. Absent that help and on moving to a new property, the wife would need about £300,000 to buy and move into one of these unsuitable properties. In order to do that, she would still need a mortgage of £109,000 (the maximum that she can raise) and a capital sum of £191,000 or about 70% of the equity in the home.

35. Assets - Besides the former matrimonial home the wife has very few assets and the husband has disclosed even less. The ‘ES2’ [p66] shows as follows (excluding the former matrimonial home, modest cars, house contents and pensions):

	Joint names	Husband	Wife	Comment
[...] Bank Account		318		
[Less unpaid costs order]		0		The figure for this (£1,734) relates to the order of 27.10.22 but I have taken that into account in the lump sum order and have deleted it from the schedule.
[Less credit card]		-285		
[...] Bank Account			7,612	This was in joint names. The wife says that this is the residue of an inheritance from her grandmother in about January 2023. It is now in her sole name.
[...] Bank Account			1,181	
[...] Savings			5,396	Page 344
Total		33	14189	

36. It took quite a lot of careful discussion for me to understand the amounts that are owing in legal costs. The fault is mine and not that of the wife’s legal team. However, the position is this. The wife does not owe any sums in legal costs and has paid them to date. The figures that I have seen suggest to me that the wife’s solicitors and counsel have been very considerate to the wife and reasonable in what they have charged; they could not be said to have overcharged in any respect. In relation to the order of 27th October 2022 (which I describe later but which was the FDR before District Judge Byass that failed because of the husband’s non-disclosure), the wife’s costs were £1,734, a sum that is modest and certainly reasonable. Thereafter, the wife has paid £3,783.60 for the contempt proceedings with costs being reserved at the hearings relating to them. Those costs are very modest and there is absolutely no reason why the husband should not pay them in full. The two costs figures come to about £5,500 – the figure that I referred to in the introductory part of this judgment.

37. If the wife has to pay £5,000 from her savings towards the lump sum, she will be left with about £9,000 of her own capital. It is possible that she may choose to apply an additional amount of that to alleviate her parents from paying so much towards lowering the mortgage or paying towards the lump sum themselves. But, given everything that I have heard about the demands on her and also the heavily constrained financial position that she will face, I think that she must have some capital to meet contingencies (such as psychological assistance for the children or, for instance, a car).
- 38. The wife's parents** – The wife gave evidence that her parents are not wealthy. They are both retired. They will be paying about £22,000 to lower the mortgage from £131,000 to the £109,000 that the wife can take over. In addition, they will be paying £60,000 towards the lump sum payment. That amounts to a total payment of £82,000. That is a considerable amount of money.
39. The very clear message that I have received from the wife (which I accept) is that she is desperately anxious that the husband should not retain a share in the home because she considers that he would use that share to control her. In her oral evidence, she said this:
- 'I do not want to be in a house with him having a share of it. He is heavily controlling of me. I do not think that he will ever let me move on and will want to see me trapped. I am fearful of living, for a very long-time, under his control. If he kept a share in the house, I would have to think very carefully about whether I would remain in the house. My parents are desperate for me to be independent and free from the control that I have been under for a long time. They will help find money where they can; but it is not easy for them to do that.'*
40. The wife went on to say that the payments that the parents would be making would take up most of their retirement money. She also said that, if it was the only way to secure a transfer of the house to her without the husband having a share in the property, they would be prepared to pay more than the £60,000 that I have taken into account as coming from them towards the lump sum. It is possible that they might go as far as paying a total of £75,000 but that would mean that their retirement funding was nearly all taken up by the payment.
41. It is no part of my function to engage in triangular financial resolution between the husband, wife and the wife's parents. Nor is it part of my function to draw or prey on the benevolence of the wife's parents to the maximum extent that they can access simply because they might be able to do so. The money that the parents offer, in their laudable commitment to their daughter and grandchildren, is their money. My function is to achieve a fair solution between these parties, the husband and the wife, by applying the statutory provisions of section 25 of the Matrimonial Causes Act 1973. I consider that the lump sum payment that I am ordering does that in a case dominated by need.
42. I now want to set out the full extent of this husband's litigation misconduct.
- 43. Chronology of proceedings** - The difficulties with the husband giving disclosure are not limited to these proceedings. In her Form E [123] the wife says: '*the Respondent*

has been unwilling to disclose his finances or to provide financial disclosure despite this being first required two years ago and has refused to attend mediation, thereby necessitating the increased cost associated with court proceedings.'

44. The wife issued her Form A on 14th December 2022 [72]. Forms E were due on 22nd March 2022, pursuant to the notice issued by the court on 19th January 2022 [p76]. The wife filed her Form E on 13th April 2022 [98] The husband filed his inadequate Form E on 25th April 2022 [128]. The First Directions Appointment took place on 26th April 2022 [83]; the husband was ordered to file and serve outstanding disclosure by 10th May 2022 and an FDR was listed on 26th July 2022 [83-85]. On 17th June 2022 the husband wrote, seeking an adjournment of the FDR. On 22nd July 2022 the FDR was adjourned by an order made by consent and the husband was given an additional 14 days to make the disclosure that had been ordered [87]. On 27th July 2022 notice was given that the FDR would take place on 27th October 2022.
45. The FDR on 27th October 2022 took place before District Judge Byass [93]. The husband attended in person and the wife was represented by her solicitor, Ms Smith [93]. The husband had not given the disclosure that was ordered. The Judge made an order directing the husband to give that disclosure by 25th November 2022 and attached a penal notice to the order. The order directed him to file and serve: i) all relevant attachments and accompanying documents to his Form E and ii) replies to the questionnaire of the wife, dated 7th July 2022, to include his property particulars and mortgage capacity as set out at paragraphs 4 and 5 of the order dated 26th April 2022.
46. The order was served on the husband personally on 21st November 2022 [156]. The husband failed to give the disclosure, and, on 29th November 2022 [170], the wife issued a committal application, supported by a statement dated 29th November 2022 [173].
47. By an order dated 9th January 2023 and served on the husband personally on 15th January 2023, the husband was ordered to attend the court for a hearing of the committal application before Her Honour Judge Cope on 3rd February 2023 [188 and 189]. He did not attend, and, prior to the hearing, he had informed the wife's solicitor that he would not do so [221]. Judge Cope listed the committal application before me for the hearing of the committal application on 21st February, with a time estimate of two hours. The order of 3rd February 2023 was served on the husband personally on 14th February 2023 [223]. A bench warrant was issued by Judge Cope under Rule 37.7 (2) (ibid) to secure the attendance of the husband at the hearing.
48. After attending to arrest the husband and after consultation with the police, the bailiffs did not enforce the warrant and the husband did not attend the hearing. I made the order that appears at page 233. I listed this hearing after the wife took the sensible view that the costs and delay of seeking the necessary disclosure from the husband were disproportionate to benefits of trying to do so and that the best course was to list this hearing. I agreed and did as requested. My order recorded the chronology of the husband's failure to engage [234]. In other preambles to the order, I included what had happened and how the husband had sent messages to the wife saying that he would not attend [234]. I ordered that both parties must attend this hearing. Specifically, I ordered the husband to attend and, further directed him to file a statement by 27th February 2023 giving the outstanding disclosure and exhibiting any

medical evidence that he wished to provide to explain his absence at the hearing. I attached a penal notice to the orders directed to the husband and discharged the warrant [236].

49. The order was served on the husband personally on 22nd February 2023 [237]. He has not filed the statement that was ordered or filed any documents.
50. I have seen the emails that Ms Smith sent to the husband about this hearing. There is no doubt that he knows that the hearing is listed today. The start of the hearing today was delayed until 11:15 a.m. The court officers checked and confirmed to me personally that there had been no email correspondence from the husband to say that he was not attending. Ms Smith emailed the husband to find out whether he would attend. His reply, at 11:10 a.m. was: *'Apologies. I wasn't aware. I won't be in attendance.'*
51. If the husband was seeking to suggest that he was unaware of the hearing, that is untrue. I find that he chose not to attend. I note that he has not given any reasons for his non-attendance. The order of 21st February 2023 could not have been plainer.
- 52. Why did the husband not co-operate with the proceedings?** I have already explained my findings about that. However, I want to record the evidence that I heard from the wife about it. She said:

'Either he has something that he does not want to disclose and thinks that it is worth this amount of upset to hide it. The other possibility is that he wants to be controlling of me and hopes that I will leave it if he pushes enough. I do not know of any suggestion that he has had to go to the doctor with mental health issues. I do not know of any treatment for mental health issues that he might have received when he was with me. He sometimes says that he is struggling and that is why he cannot engage in this process. I have no doubt about the fact that he loves the children and that they benefit from seeing him. He has always been quite abusive to me, but those are two separate matters. He has never said anything to me about buying a property. He has lived in rented accommodation for 1 ½ years. I just don't understand why he does not engage. I do think that he is concerned about where the children live and would want them to have a suitable home...His lack of engagement has been enormously stressful. I have had sleepless nights and worried about what would happen to us. Everyone around me has been upset by it. I would much rather have settled this in mediation. If he wants something or he sees it as being beneficial to him, only then will he engage.'

53. In her position statement, the wife says this [5]:

'The Wife asserts that, during the marriage, the Husband was secretive about his financial affairs, maintaining at least one bank account and a credit card to which the Wife was never allowed access, but which she discovered accidentally. The Wife was also aware that the Husband kept large amounts of cash for which there was no explanation given. It has been very difficult to analyse the Husband's financial position due to the sparse financial disclosure provided. There does not appear to be any logical explanation for his approach, save that he has assets that he does not wish to disclose.'

The Wife seeks repayment of her wasted costs due to the Husband's litigation conduct. Despite regular encouragement, explanation and opportunity, the Husband has repeatedly breached Court Orders in relation to his disclosure. This has created difficulties in entering into constructive negotiation as his financial position is so unclear and necessitated an application for breach of penal notice. He has repeatedly attempted to delay proceedings by seeking last minute adjournments of hearings and by failing to attend Court hearings. The Wife's costs have risen due to repeated correspondence throughout with the Husband, trying to encourage him to engage sensibly with the process. The Husband refused to engage with mediation, or voluntary disclosure requests, necessitating the Wife to make an application to the Court in the first place. Due to the Husband's approach, the Wife's costs are disproportionate to the assets in question, despite her solicitor's continued attempts to find cost effective solutions and to keep her costs within reasonable limits.

The Husband has breached the latest Order of HHJ Wildblood and failed to provide any further disclosure or explanation as set out in the Order dated 25 February 2023.

A costs order has already been made against the Husband, by District Judge Byass, and it was agreed that this would be deducted from any eventual lump sum due to the Husband upon transfer of the FMH to the Wife. The Wife would be willing to adopt a similar approach in relation to her further wasted costs, as she does not believe that the Husband would otherwise comply with a costs order. The Husband's litigation conduct and the time these proceedings have taken have made it more difficult for the Wife to borrow sufficient monies by way of mortgage to buy him out and has also impacted on her parents' ability to raise funds to assist.'

54. **Application of Section 25 of The Matrimonial Causes Act 1973** – I intend now to draw together the key features of this case by reference to the law that I have to apply under section 25(1) and (2) of the Act and the relevant case law that arises from it.
55. I have to consider all the circumstances of the case and give first consideration to the welfare of the three children whilst they remain minors. The statute refers to the welfare of the children being the first, not the paramount, consideration. Sir Roualeyn Cumming-Bruce interpreted this provision in this way in *Suter v Suter* [1987] 2 All E.R. 336 at 342b:

'I collect an intention that this consideration is to be regarded as of first importance, to be borne in mind throughout consideration of all the circumstances, including the particular circumstances specified in s25(2). But if it had been intended to be paramount, overriding all other considerations pointing to a just result, Parliament would have said so. It has not. So, I construe the section as requiring the court to consider all the circumstances, including those set out in sub-s (2), always bearing in mind the important consideration of the welfare of the children, and then try to attain a financial result which is just as between husband and wife.'

56. For the reasons that I have given I have had no difficulty in concluding that it would be manifestly contrary to the welfare of the children to direct a sale of the former matrimonial home. Further, to do so is not necessary in order to reach a solution to this case that is fair to the parties and in accordance with Section 25 (2) of the Act.

57. I have recorded the positions of both parties, insofar as I am able, in relation to the factors listed in section 25(2)(a). I find that it is highly likely that the husband has financial resources beyond those that he has chosen to reveal and his refusal to give disclosure and comply with court orders is in part related to his wish not to reveal his resources in full. I am not able to put a figure on what he may have but, I find, with the lump sum that I order in his favour, I should assume that he has enough to meet his needs both as to capital and income.
58. I have taken into account the wife's small additional savings and the fact that she has recently inherited part of those savings from her grandmother. That inheritance is not a matrimonial asset. I have ordered that the wife should increase the lump sum payment derived from her parents by £5,000 because, I consider, that additional amount is available to her and it is fair, overall, for the husband to have it. I have left her with the rest of her savings (just over £9,000) because, I foresee, she will need them.
59. I have made findings about the wife's income and expenditure and recorded what the husband has said about his. I have no current information about his income or earning capacity. Even if his income is as it was 12 months ago, I consider that the duration of this marriage, the wife's dependency on the husband that arises from it and the presence of the children are all pivotal factors. Even if the home had been sold, she would still need periodical payments from the husband in order to meet her needs. I have also considered whether there could be a deferred order for the termination of periodical payments in the wife's favour and I have concluded that there should not. The wife could not adjust without undue hardship to the termination of her dependence on the husband and it is speculative to set a date by when she must become independent, given the specific needs of the children. I have considered and applied the decision of Mostyn J in *SS v NS (Spousal Maintenance)* [2015] 2 FLR 1124 at paragraph 46 (but will not cut and paste it into this judgment).
60. In relation to the former matrimonial home, I have recognised that the lump sum payment that the husband will receive is about 25% of its net value but, in a needs-based case where the true wealth of the husband cannot be determined, I think that result is fair. The former matrimonial home cannot be treated as if it were cash in the bank. In this case, it provides important and enduring accommodation for the wife and three highly dependent children. I accept that these children have a particular need to remain in the only home that they have known. I have considered making a deferred charge or leaving a trust arrangement in place whereby the husband would receive an additional payment from the home at a later stage. I have decided that I should not do so and have taken into account, in particular the following:
- i) The desirability in this case of achieving a capital clean break and leaving the parties with no mutual capital involvement.
 - ii) The amount of the lump sum that I am ordering and the fact that, if a sale were to be ordered, the wife would still need at least 70% of the proceedings if she were to meet her needs by living in the sort of unsuitable house that I have referred to above (i.e. for about £300k).
 - iii) The inferences that I draw that the husband has more financial resources than he has disclosed and does not have any specific needs that he cannot fulfil already.
 - iv) The fact that, any share that the husband did retain, would not be realised for a considerable period (e.g., under a Mesher type order, for 13 years) and it is crystal ball gazing to say what the position would be then. The wife would

then be aged 55 and it is highly likely that her earning capacity is going to be heavily constrained for at least that period given her weekday responsibilities for the children.

- v) The inherent undesirability of a Mesher arrangement which has been rightly referred to as merely ‘putting off the evil day’. That is especially important in this case, because it is impossible to predict the extent of the dependency of the children when they achieve majority. Children do not cease to be dependent or a parental responsibility when the clock strikes midnight on their 18th birthday. Any share that the husband did then realise would probably see the wife having to face living in the sort of unsuitable accommodation that I have described.
 - vi) The absence of any evidence or suggestion that the wife is likely to cohabit or remarry in the foreseeable future.
 - vii) In a needs-based case, the absence of any evidence that the husband needs additional capital.
61. With the lump sum that I have ordered to be paid to the husband, it may be that he will be able to buy modest accommodation with a substantial mortgage. It depends on the mortgage that he can obtain, the area in which he intends to live and the size of the accommodation that he wishes to buy. I have no details of any of that. I do not know whether he will have help from relatives, as the wife has. I do not know whether there are any shared ownership schemes that might be available to him. Based on the absence of any evidence from the husband on this issue, it may well be that he is not interested in buying a property and will continue to rent and meet his housing needs in that way. If he had wanted to buy a house, he would have said so at some point over the 15 months that these proceedings have been in existence.
62. The order that I make, therefore, meets the capital and income needs of the parties both now and in the foreseeable future insofar as I can identify them. The wife will have an overall income that will just meet her needs with nothing to spare. If the husband’s income remains as he disclosed, he will be in a similar position but, since he has not placed any evidence on this issue before the court, I assume that he is satisfied that his income and capital needs will be met.
63. The standard of living of this family was reasonable while they were together, although by no means lavish. On their incomes, with a mortgage of £131,000 and three children, there was certainly no money to waste, and it is tragic that the husband has committed this family to the unnecessary expense of this litigation and the misery that has flowed from it. This is the sort of case that could and should have been resolved by mediation if both parties had committed themselves to it. Creating two households out of these finances was always going to be difficult. Due to the husband’s lack of engagement, it is now not possible to identify with any precision what his standard of living will be but, I find, it must be assumed from his lack of engagement in these proceedings, that he regards it as sufficient.
64. The wife is now aged 42 and the husband 46. It will be 13 years before D5 achieves majority and the parties will then be aged 55 and 59. How the passage of time will affect the extent of their responsibilities to these children cannot be stated, given their extensive needs. The marriage was of ten years duration but the responsibilities that arise from it will last for far longer than the mere period of marriage.
65. The children spend six nights a fortnight with the husband during term-time and longer periods of time with him during the holidays. He will continue to contribute to the children and wife financially through the maintenance that he pays. The wife

makes significant contributions to the welfare of the family by caring for the children for the rest of the time and, also, bearing the main responsibility for their educational and medical well-being. This is not a case where the contributions of either party should be regarded as outweighing those of the other on the evidence that I have read and heard. The wife did not contend that they should.

66. The issues arising in relation to conduct have required very careful thought. I have considered the following passage from the judgment of Mostyn J in *OG v AG* [2020] EWFC 52: *‘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... Second, there is the “add-back” jurisprudence. This arises where one party has wantonly and recklessly dissipated assets which would otherwise have formed part of the divisible matrimonial property...Third, there is litigation misconduct. Where proved, this should be severely penalised in costs. However, it is very difficult to conceive of any circumstances where litigation misconduct should affect the substantive disposition. Fourth, there is the evidential technique of drawing inferences as to the existence of assets from a party’s conduct in failing to give full and frank disclosure. The taking of account of such conduct is part of the process of computation rather than distribution. I endeavoured to summarise the relevant principles in NG v SG (Appeal: Non-Disclosure) [2012] 1 FLR 1211, which was generally upheld by the Court of Appeal in Moher v Moher [2019] EWCA Civ 1482. In that latter case Moylan LJ confirmed that while the court should strive to quantify the scale of undisclosed assets it is not obliged to pluck a figure from the air where even a ballpark figure is in fact evidentially impossible to establish. Plainly, it will only be in a very rare case that the court would be unable even to hazard a ballpark figure for the scale of undisclosed assets. Normally, the court would be able to make the necessary assessment of the approximate scale of the non-visible assets, which is, of course, an indispensable datum when computing the matrimonial property and applying to it the equal sharing principle.’*
67. I note that there are authorities in which a less structured approach is suggested to issues of conduct. For instance, in the judgment of Moylan LJ in *RR v CDS* [2020] EWCA Civ 1212, there are the following passages:

- i) [73] *In B v B, Connell J took into account a number of factors, including the husband's litigation misconduct, as justifying a very substantial departure from equality. The husband appealed from the district judge's order which had awarded the wife the whole of the equity in the former matrimonial home, the parties' only remaining asset. Connell J dismissed the appeal for the reasons summarised in the headnote: "... the award to the wife of the entire net value of the matrimonial home was justified by the need to house the child of the marriage to a reasonable standard. A Mesher order was not appropriate, taking into account not only the contributions of the parties, particularly the wife's ongoing contribution to the care of the child, but also the parties' conduct. The wife was entitled to rely on various aspects of the husband's conduct, including: his litigation conduct in not disclosing the removal of moneys from the jurisdiction; his actual conduct in preventing the court from having any meaningful say in the disposition of those moneys; the reality that the burden of maintaining the child was likely to rest with the mother alone; and the husband's abduction of the child. The husband's conduct was particularly relevant when considering the court's duty to give*

first consideration to the welfare of the child. Although it was appropriate for the court to look at the question of equality, and to depart from equality only if there was good reason for doing so, the court's overriding duty was to reach a solution which, in all the circumstances, was fair. Applying the s 25 criteria to the facts, the conduct and contributions of the parties, together with the desirability of a clean break order, provided good reasons for departing from equality."

- ii) *[78] ...What is important is that, whether by taking the effect of the conduct into account when determining the distribution of the parties' financial resources (both income and capital) and/or by making an order for costs, the outcome which is achieved is a fair outcome which properly reflects all the relevant circumstances and gives first consideration to the welfare of any minor children....[80] I agree with Moor J in R v B when he said that, if required to achieve a fair outcome, the court "must be entitled to prioritise the [needs of the] party who has not been guilty of such conduct". It is clear from the outcomes in M v M and B v B, as referred to above, that the financial consequences of the litigation misconduct, perhaps combined with other factors, might be such that it is fair that the innocent party is awarded all the matrimonial assets. In this respect, I also agree with Moor J's observation that an order can be made which does not meet needs because to exclude that option "would be to give a licence ... to litigate entirely unreasonably"*

68. In this case, the more compartmentalised approach suggested by Mostyn J, and the broader approach urged upon me by Mr Cholerton by drawing on the above passage from RR v CDS (ibid), lead to the same conclusion. Adopting the approach of Mostyn J (sitting in the High Court), the conduct of this husband falls squarely into the third and fourth category in the above passage. Penalising the husband in costs for his non-disclosure does not reflect the extent of his misconduct and the husband's choice to cause the misery, expense and uncertainty that have gone with his lack of engagement. His failure to give full and frank disclosure leads to two inevitable inferences – i) that he has more financial resources than he has chosen to reveal and ii) he is not troubled by how much he has after these proceedings and is satisfied that he can meet his needs and the needs of the children when they are with him. Adopting the broader approach suggested in the Court of Appeal decision of RR v CDS, taking the husband's conduct into account together with the other section 25(2) factors, the overall result is fair.

69. Loss of benefits (for instance the loss to both parties of any rights under the other's pension) does not add anything to the analysis of this case.

70. **Conclusion** - Therefore, I order:

- i) The order is subject to the obtaining of a decree absolute.
- ii) The former matrimonial home must be transferred to the wife, subject to the mortgage. The transfer must be completed by 4 p.m. on Friday 5th May 2023 (eight weeks), unless otherwise stated by the wife or her legal representatives (e.g. because there is delay in the conveyancing process).

- iii) The wife must pay to the husband a lump sum of £70,000, discounted by £5,500 in order to satisfy the husband's costs liability to the wife as set out below. The wife suggested that she could pay this to the husband within 28 days. I order that it should only be paid upon the husband having completed all such documents and having taken all such steps as shall be necessary to effect the transfer of the house and mortgage to the wife in accordance with this judgment. Thus, payment of the lump sum should be simultaneous with the completion of the house and mortgage transfers.
- iv) In the event that the husband shall fail to co-operate with the transfer of the house and mortgage to the wife, a District Judge shall sign the documents on his behalf. Conduct of the transfers to the wife shall lie with her solicitors or their nominees.
- v) The husband must continue to make periodical payments to the wife of £1,062 p.m. Any sums that he pays in child maintenance must be taken by the wife in partial satisfaction of the order. There must be a record as to how much of the periodical payments are notionally ascribed to the wife and how much to each of the children. I accept Ms Smith's calculation that £415 pm should be the child maintenance aspect of the global order; that would represent £138.33 p.m. for each child.
- vi) The periodical payments must increase annually by the annual increase in the retail price index.
- vii) The contents of the former matrimonial home must belong to the wife unless otherwise agreed. The husband must have permission to apply to the court in relation to any chattels that cannot be agreed but any such application must be brought by him by 4 p.m. on 7th April 2023. In the event of such application, the parties must set out their positions in a document not exceeding two A4 pages and I will resolve the issue on paper. Thereafter, the parties will each have the sole entitlement and ownership of all chattels (including cars) in their possession.
- viii) At the head of the order must be a notice to the husband of his rights to apply to set aside the order under Rule 27.5 of The Family Procedure Rules 2010 in the timeframe that I have set. Within the main body of the order, it must be recorded that I have reduced the time for either party to seek permission to appeal as set out in the judgment above. If the husband should issue an application under Rule 27.5, it must be stated that any such application must be listed for an attended hearing before me with a time estimate of one hour and that both parties must attend that hearing; failure to attend by the husband would lead to the dismissal of the application.
- ix) It must be recorded that the husband must pay to the wife the sum of £5,500 in relation to the costs of the hearing on 27th October 2022 and the costs of the committal proceedings. The order must also record that satisfaction of the order will be effected by the wife paying to the husband the reduced lump sum of £64,500.

- x) It must be recorded that the order is in full and final satisfaction of all rights and claims of the husband for financial provision (including periodical payments), property adjustment and pension sharing orders under the 1973 Act and that he may not make any claims under the Inheritance (Provision for Family and Dependants) Act 1975 in the event that the wife should pre-decease him.
- xi) It must be recorded that the order is in full and final satisfaction of all capital and proprietary rights and claims of the wife under the 1973 Act.

71. I would ask the wife's legal representatives to draw up the order. I think that, in the unusual circumstances of this case it would be wise for the wife's solicitors to ensure that the order and this judgment are both served personally on the husband and that there is a formal record of that service. If there are matters that I have omitted in my summary of the orders that I make (i.e. in the paragraph above), I will address those upon them being referred to me by the wife's legal representatives.

HHJ Stephen Wildblood KC
10th March 2023.