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Case Number ZZ21D26652 and 1653577730677411

IN THE FAMILY COURT SITTING AT THE CENTRAL FAMILY COURT FINANCIAL REMEDIES COURT

Central Family Court
First Avenue House
42-49 High Holborn
London
WC1V 6NP

**BEFORE:
DDJ David Hodson**

B E T W E E N

TYB v CAR (Non Disclosure)

Adele Rainsford of counsel instructed by Duncan Lewis solicitors for the applicant
wife
Respondent in person

Heard on 14 and 15 December 2023

Reserved written Judgment given on 16 December 2023

Judgment

Introduction

1. What do we do with the non discloser? The person who will not give necessary details and explanation of their financial circumstances. Because when we consider what should be the fair financial arrangements on divorce, it is an essential foundation that there is proper disclosure, the facts are known. Only then fairness according to law can be applied either by the courts or via lawyers, mediators and other dispute resolution professionals. Without it is distrust. Without it lies the road to suspicion now and in years to come. Without it one party feels they have been cheated and the court process has been deceived. Without it one party may be making a mockery of the entire process which

relies, in England, on self provided disclosure. Without it, unfairness and injustice lies

2. In England we have many tools at our disposal to find out the facts. These are often deployed in bigger money cases with correspondingly higher costs. They are rarely applied in the smaller money cases, of which this might be one. It is no criticism but practitioners doing these cases are less familiar, less accustomed, to bringing out the big beasts of third-party disclosure orders and similar. If these tools haven't been used by the time of the final hearing and yet it's obvious the court doesn't have the full facts, what should be done? As here
3. In England as well we make striking use of the power of inference. By experience of the family courts and consequential experience of lifestyles from different walks of life, English family law professionals invariably get a fairly good grasp of likely levels of wealth, whether income or capital or in any other way, and therefore will make a court order in reliance and confidence. A recent authority is *Moher* 2019 EWCA 1482 including the warning: "*the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations.*" But again this is less used, less applicable in practical terms, in smaller money cases, especially when there is an adamant statement that there is no money now available. As here
4. There are other devices, such as exceptionally adjourning lump sum claims for some years pending receipt or awareness of resources, which devices are mostly very unattractive for finality. As here
5. Yet how can a family court judge with confidence write a judgment, take a decision, when the entire foundation on which that judgement might be based is unreliable, shaky ground, with real potential to produce an injustice even if the claimant is adamant there are funds somewhere. The English family courts are ultimately very practical and do not like making orders where there is more than a striking suspicion that enforcement will be an entirely fruitless exercise, including against unknown assets abroad. Again I remind myself that in very big money cases, there may be proportionate justification in spending millions of pounds pursuing a reluctant spouse around the globe by enforcement after a reasonable inference decision. But not in the vast scheme of family cases going through the family courts in England and Wales. As here.
6. This preamble sums up the problem after one day of a two-day final financial hearing. It can be stated up in a couple of sentences. A short marriage with a child almost 4 around about whom are the needs claims. The husband who according to his PR team is absolutely at the top of the world's hierarchy in sales. He admits recently earning perhaps or more, maybe much more, than £60,000 a month. He admits being involved in deals worth millions and perhaps billions and getting commission accordingly. He admits that as recent as August 2022, he spent at least £35,000 in a month on luxury entertainment and lifestyle. Yet by December 2023, the hearing, he asserts no capital, no business, income of £5000 per month and nothing more. At an FDR hearing on 31 July 2023, ineffective due to his nondisclosure when I fixed this final hearing, I said to him

then that he had a burden to show what had changed and why. The court and the wife needed to be satisfied. His disclosure subsequently has been, and continues to be, inadequate and almost contemptuous of the obligations of the family court. So we have nothing except his assertion that everything has changed.

7. He says there is minimal money especially compared to the claims of the former wife. She says she wants £550,000 capital for housing and £60,000 per annum for herself and the child. If he is right, this money is just not there and the claim is too high. Any assets from the large level of income has been spent, he says. If she is right and there has been nondisclosure, to refuse her that sort of provision for her needs, which may have been fully justifiable on his previous level of income, would be very unfair and unjust. What should a court do?
8. At the end of the first day and having heard the husband give evidence, I have satisfied myself that I am unable to produce a fair and just outcome without opportunity for more information. This is not the traditional English accusatorial position; but it's been a long time since the family court had that tradition. The duty, need, of a family justice system to have reliable information means that I cannot make a final order today, at least not yet.
9. I am consoled about the inevitable delay for 2 reasons. First, although there were delays over the spring because of the failure of the husband to give financial disclosure and comply with the court rules, the Form A was only 11 August 2022, only 16 months ago. This is fast according to many jurisdictions around the world. It's moderately fast in comparison to other cases going through the family courts. So I'm not troubled if a modest delay. Secondly the former wife herself asked for this hearing to be delayed for medical and other reasons. In a mini judgement of 4 December 2023, I refused as with the background to the case, I wanted to establish finality as soon as possible. She had asked for an adjournment for 4 or 5 months. If I had done so, she clearly wouldn't be prejudiced by this adjournment now. But it will be an adjournment on terms.
10. This is also a written judgement so that it can be disclosed in relevant parts to 3rd parties. The husband can see what is expected under English law. He has recently obtained either a Visa or English citizenship. With that step comes an acknowledgement and compliance with the laws of the adopted country. He cannot now say that he refuses to comply with certain legal requirements or won't do so if it chooses to suit him.

Brief background

11. The wife was born on 23 July 1984 and is 39. The husband was born on 27 April 1981 in the USA and is 41. They were both working in sales when they met. They married on 4 July 2017. Their child was born January 2020 and therefore almost 4. They separated in January 2020, less than 3 years, with a conditional order of divorce in July 2022.
12. The wife has some medical problems; a letter from her GP dated 24 July 2023 which I have considered and taken into account. Where there may be some spousal maintenance for a few years, given the young age of the child and

presuming funds exist, then ability to work and become self-sufficient in a few years time will be a matter then, not now.

13. The wife is now on universal credit, in short-term rented accommodation, not working because of medical condition and the age of the child who is not yet at full-time education and she has no resources of her own.
14. The separation was a source of trauma still informing what's going on. The wife alleges domestic abuse of a serious kind during the marriage; I'm not going into any more detail here. She fled the family home with their child and went to a refuge; she now has rented accommodation and her address has not been disclosed. The police were called. Criminal proceedings were commenced against the husband but he was cleared of all charges after a final hearing in the Stratford magistrates Court. But as a consequence of the domestic abuse background, he says she would not allow him to see the child. There were children proceedings, eventually a final hearing in September 2023 when the father was given Saturday contact with overnight from March 2024 and every other weekend when the child is of school age. There is no direct communication between the 2 of them. The mother had asked for special measures which the court put in place without taking any decision on the basis of her allegations. The mother says she is still traumatised and suffering physically and psychologically. The father says that he hadn't seen his child for several years and was kept out of her formative years. This has much influenced his thinking on financial provision even though I said that in law it should not.
15. The husband moved out of the rental accommodation in about April 2020. Either immediately or soon thereafter he moved into luxury rented accommodation in London, three-bedroom as described in the particulars, 33rd floor, fully serviced with additional amenities, with the rental of about £4300 per month. The family court is entitled to take reasonable notice that somebody taking this accommodation has an expectation of a level of income and corresponding level of lifestyle. He is still there. He says the rental is now being paid by his parents in advance each year but there was no evidence. In circumstances where he was earning £4000 gross per month, just risen to £5000 per month in the last few weeks, he patently cannot afford this. He says this has been a loan from his parents but there was no liability of this nature set out on his Form E of only a couple of months ago. He says he wasn't aware it should have been included but the wording of the English financial disclosure document has gone through many incarnations to make it as clear as possible to everyone using it. Given the history, I start with scepticism about any such loan. In circumstances where it has been paid from America upfront for the year, there is suspicion of a capital sum able to meet it. Otherwise why would any reasonable person stay in accommodation which costs more than their net income; he is subject to US tax on the £5000 per month. But there was much more uncertainty

Orders made.

16. Form A was 11 August 2022. The first of the first appointments was adjourned on 24 January 2023 but with specific orders for traditional disclosure. It came before the court on 3 April 2023, an experienced judge, Judge Evans-Gordon.

She recorded that the husband had failed to comply with court directions including filing Form E. We were now months behind the original timetable. He was ordered to comply. It came back before her on 5 June 2023. Still no more adequate disclosure. That order declares that he had a bank account not disclosed hitherto. He said he had no assets to speak of. Disclosure was repeated with clause 10 setting out specific financial documentation also to be supplied, along with questionnaires and other updating disclosure. It was listed for an FDR, before me on 31st July. He had not complied with previous orders. It was impossible to conduct an early neutral evaluation. I made fresh directions for disclosure but also made clear in fixing for a final hearing, 14 December 2023, that I would make an order on whatever information was then available. The husband again asserted he had had assets but nothing left now. All these hearings had reserved costs which I finalise below.

17. About 3 weeks ago, I contacted the parties to make sure the hearing was effective, for court management purposes. The wife said that she wanted the hearing adjourned. She set out certain medical difficulties and lack of disclosure. I queried what would be the benefit of an adjournment in ascertaining more disclosure. I was keen to have progress and make a final order if possible, which remained my hope throughout most of the first day of the hearing. I invited the husband to respond. He said he had changed his own plans about going back to America for Christmas in reliance and wanted to conclude and said he had nothing more to disclose. In a mini judgement of 4th December, I decided the importance of making progress where there had been difficulties in progress hitherto meant that the hearing should go ahead. The wife was able to obtain alternative legal representation with a benefit of her existing legal aid certificate and was represented by Miss Rainsford at the hearing.
18. The husband was present and unrepresented. There were special measures. I heard opening submissions and open positions of both. We had oral evidence of both. I had closing submissions and we finished at 4 o'clock. I said I would review matters overnight and if possible prepare a judgement the following day
19. At that conclusion and despite orders of the husband requiring disclosure, still I find myself woefully lacking in reliable information on which to make a confident assessment of the finances and then conduct the fairness exercise in a traditional needs-based claim. I set out where are the problems
20. Finally in this section, I record previously the wife had raised conduct allegations of domestic violence. These had not been articulated in any pleading nor were argued at trial and for the avoidance of any doubt, I do not take into account.

Instances and difficulties of the disclosure of the husband

21. I go through these in some detail in part for the sake of the husband so that he can see what should have happened including if he had had and taken good legal advice, in part for follow-up action and in part by way of general information about the judicial process. The position of the wife was clear. She said the husband has displayed a wilful refusal properly to engage with the proceedings, not complied persistently with court orders, made no apologies for violation of

court orders and not given full and proper disclosure. This has also meant delays in reaching this point along with hearings which have been frustrated and ineffective. Although he is a litigant in person, he had access to specialist family law solicitors including spending considerable amounts with them which should have included preliminary and basic advice about disclosure obligations.

22. I also record here that the Form E, the document of financial disclosure, is perceived globally as a gold standard of the requirement of comprehensive disclosure, to be compared favourably with the equivalent in Australia and a number of the US states. It is a long document, but shorter than some documents used in other jurisdictions. If there are minimal assets, it's a simple zero in most boxes. It allows some textual explanations. It requires supporting documentation to corroborate, which in a reasonable number of cases is then sufficient to go directly to settlement discussions. It has various catchall boxes so that all assets, however held and wherever held, are included. In a number of amendments since its first incarnation in the mid-1990s, it requires disclosure of changes over the previous 12 months and anticipated changes, so that it is not static. It is used in mediation and in voluntary disclosure. It is required of all parties using the family courts for resolution of financial matters. Failure to complete it satisfactorily leads to suspicions and distrust and justifiable questions being raised for more answers and more documentation. It highlights the party who is not giving full disclosure, the full facts, to allow a satisfactory settlement

Nondisclosure: significant changes in the capital position post separation

23. I appreciate that 4.1.1 of Form E asks only for significant changes in assets or income in the last 12 months. But where there has been a dramatic change in the asset position since separation and which would be unknown to the other party, there should be open disclosure and explanation. The English self corroborated disclosure process, in circumstances where much of the rest of the world uses corroboration through third parties via subpoenas, disclosure orders and similar, can only work where there is an expectation of proper and open disclosure. So where, as here, one party admits resources at the time of separation, and it remains unclear how much they were, and admits that e.g. about £230,000 has been spent and he now has no capital whatsoever, then I consider there is an obligation in law to explain. If that obligation is not complied with in the pre-final hearing process even with opportunity to do so given in orders, then there should be no surprise if the final hearing court seeks an explanation.
24. The husband says, perhaps quite rightly, he has had to incur substantial legal costs. He says he has paid about £230,000 and he owes a little less than £20,000. But we have no corroboration, no breakdown, no details of what was paid, how, when and on which to give confidence both generally and especially in the context where there have been at least 3 court orders criticising nondisclosure.
25. The husband says that it went on 3 sets of proceedings; defending the criminal case based on the allegations of the wife, immigration application and family Court proceedings. In relation to the 2nd, of which there were 2 separate applications, he thought it was about £9000 in total. Small in the context. But it was impossible for him to allocate between the other 2. In relation to the family

Court proceedings, these were primarily children proceedings concluded in September 2023. I don't know how much was in relation to financial remedy proceedings and it would have been good to have known. He was asked in questionnaires. No satisfactory answers

26. What he should have produced and I now require him to produce is a letter from his former lawyers addressed to the family Court setting out how much he has paid to them and when since January 2020, the total of the fees in relation to the criminal proceedings, the Visa proceedings, the children proceedings, the financial remedy proceedings and, if applicable, any other proceedings, and how paid e.g. cash or otherwise and in relation to the latter a brief description. I do not want to see invoices as may contain privileged content. I want a schedule. It should total something short of £250,000. Have they paid any money to him or others on his behalf? If he will not produce this, I will support a paper application by the wife for third party disclosure order against the senior partner. I agree to these particular paragraphs being sent to the senior partner in any event. This court is entitled to know how much has been spent and has gone from the family capital otherwise available. The husband should know that I am not criticising the instruction of lawyers nor criticising any quantum. I criticise that we are not told better information
27. There is a corollary which also relates to his former lawyers and where again I require information from them, preferably through him but otherwise from them direct. How did he get this money to fund them? This is linked to a question about chattels on the questionnaire. The wife asked quite rightly about a number of valuable watches, training shoes (collectors items) and other items in his pre separation possession which she expected to see under chattels in Form E. In his initial reply, the primary items, he said he sold for legal. That was an inadequate answer to an important question about where resources in this case had gone. In the follow-up questionnaire she asked for a bill of sale. He said he did not have one and sold the items for cash to pay for legal. In cross-examination he gave a curious story.
28. When at the time of the separation it was obvious he would need legal advice, he spoke to somebody in his mosque who put him in touch with the law firm. I believe he spoke with the senior partner. He said he didn't have ready resources to pay but he did have items he could sell, particularly watches. The partner said, according to the husband, that a clerk, perhaps paralegal, from the law firm would go to a watch shop with him to obtain cash. They did. The husband handed over, sold, a couple of watches and received cash and gave that cash directly to the paralegal which then presumably became money on account. He said it was a genuine shop although he couldn't remember where it was. I said that if this is a genuine transaction for consideration, there would have been a receipt, irrespective of whether for cash, but he had none. He said he went back with this paralegal on subsequent occasions and sold further watches set out on page 368 of the bundle, reply to schedule of deficiencies of the initial questionnaire. He thought the sale of the watches and other items realised about £85,000. So where did the remainder for payment of fees come from? He couldn't remember and must. We will find out from the lawyers how the balance was paid. If cash, he will have to fairly quickly work out what else was

sold and give a good explanation. If not cash, then again a good explanation. Let me repeat. This should have been produced months ago and would have been if the disclosure process had run its proper course.

29. I do not wish to cause problems for the law firm but taking many tens of thousands of pounds in cash from a client may raise SRA money laundering questions. Can the law firm at the same time confirm they are satisfied they complied with full SRA AML regulations with this client, not least a client who is receiving all his income offshore. (I am aware of a £1000 recommended cash limit but we wait to hear from the law firm.)
30. Whilst on chattels, he said he sold his trainers also to pay for legal fees. But he could not say when or where or how much. He must have some idea. I do not believe him when he says he cannot remember. This was a cherished collection of training shoes and I am sure he parted with them with reluctance. He must have an idea. I want a list of the trainers , when sold and how much each

Nondisclosure: what is a bank account?

31. The husband is paid from America. He receives money from his parents in America. Apparently the payments due to him in America are paid to his parents who then send it to him. When we looked through the account statements which were disclosed, we saw PayPal, Stripe and similar accounts used for the transfer of funds. Incoming but also outgoing. We had no idea what was happening within those accounts. The husband said they were not bank accounts and there was no obligation to disclose as a consequence.
32. Ignoring for this purpose the catchall provision of clause 2.14 of Form E namely are there any other assets not already disclosed, these forms of accounts are just as appropriate for inclusion in the Form E as traditional retail high-street bank accounts. They show transactions coming in and going out, where they have come from and what was transferred on what date in what currency and for what purpose. They must be disclosed.
33. No one seriously suggests that crypto currency should not be disclosed in the Form E even though not specifically mentioned. In a similar fashion, just because perhaps the drafting of Form E has not changed with the changing patterns of retail banking doesn't mean any form of banking or finance arrangements can thereby be excluded. So in this case it must include PayPal and Stripe and similar. In another case before me a few months ago, it was said that a Revolut account need not be disclosed. This is a finance app account used by many. Again it must be disclosed. As must any app or similar through which any transfers of money occur. Banking has gone through a revolution and will continue to do so over the next few years. The pattern may have changed. The form of statements have changed. But the essence of payments, transfers and other transactions are still the same. They must all be disclosed as part of the English family court disclosure obligations.
34. The husband said he didn't use the accounts any more as he didn't have the money. That's irrelevant. Many of these accounts, especially online and

through an app, continue in existence even if not used. So I direct that the husband produces a list of all current or closed bank or similar financial transaction accounts he has had in his name, solely or with any others or in which he has had an interest including those in the name of his companies or as a signatory since January 2020, the date of separation, and produces the statements for all of those accounts for 2022 and 2023, other than already produced, to include PayPal, Stripe and any other transactional accounts and/or for the inter country transfer of funds. This includes credit and similar cards. I am sure Judge Evans Gordon or myself on dealing with this case at an earlier stage would have made this sort of order if we had been aware of the position as we now know it. This is why preliminary hearings are intended to produce the necessary disclosure but that cannot happen if there is basic nondisclosure.

35. This also includes accounts now closed. There can be no artificial closure of accounts which therefore evades the family Court disclosure obligation.
36. He referred to accounts which are no longer used. This might mean they are closed. But I'm afraid his nondisclosure creates some suspicion and merely not using doesn't mean necessarily it is closed. So this obligation must be all accounts even if dormant.
37. Moreover in as far as his parents receive payments for him in America and then send it across, I would like to see for 2022 and 2023 the bank or similar statements showing all payments they have received for their son or his businesses and all payments they have made to him. If there have been any payments he has made to them, I want to see that as well. I'm content if the remainder is suitably redacted for privacy purposes. But by being an agent for their son, this court is entitled to see the quasi agency account.
38. The husband says he pays US tax on his US income. I want to see evidence of payments of US tax since January 2020. From what he said, it seemed he was paid gross as a self-employed person. So there should be tax due and paid.

Nondisclosure: funding of accommodation

39. Family Court financial disclosure requires a reasonable explanation of substantial and/or disproportionate income expenditure. Where the only income is £4000 per month gross of US tax and the cost of rental is maybe £4300 per month, with no other available income, the family Court and other parties are entitled to be told how the personal books are being balanced, how the exciting things in life like groceries are paid for and when the income will rise to justify this rental expense. Otherwise the court is left with a mystery.
40. The family home was rented, was luxurious as befitting the available income, and was in excess of £5000 per month. After separation, early 2020, the husband took then or a little later the property in which he is now living. This is again luxurious. It is on the 33rd floor of a serviced block in London. It is advertised as having many ancillary accommodation services. It has views. It is 3 bedrooms although he says one is relatively small. He is now paying perhaps £4300 per month. Until last month, when he asked for an increase, he had had

since September 2022 only one contract paying him £4000 gross per month for full time work, paid in the USA via his parents. But the lease had been renewed recently. Initially there was a two-year rental and the entire rent was paid upfront. I have no problem with this given his level of income as below. But to renew as he did a few months ago when his income had now been at a lower level than the rental seems surprising unless he had a reasonable and genuine expectation of a significant increase in income or, as the wife says to this court, he has income which he is not disclosing. I don't know which but it seems one of these.

41. But we were lacking disclosure about the payment for the rental recently, one year upfront, about £50,000. He said his parents lent the money but this is not shown as a debt, liability, in his Form E. I want to see evidence of that payment going from an account to the managing agents of the accommodation.
42. Moreover he gave a complicated picture of payments going back to his parents. He said this was to repay the loan. But at the same time he seemed to be saying that his parents were paying him money for daily living expenses. That makes sense because he had need. Again a good explanation of these dealings should have been given well before oral evidence at the final hearing. At the moment it comes across as inconsistent and suspicious. I have required a record of all of the transactions, payments, between the husband and his parents. This will include the tenancy. He can explain what are payments. Otherwise this court is left with reasonable suspicion there are sums held in America for him.
43. In circumstances where probably the primary claim to this court is accommodation needs of a 3 year old child for her minority, what the husband thinks is suitable for him alone is a relevant consideration for this court on what should be appropriate accommodation for the child.

Nondisclosure: explanation of dramatic change in income and similar circumstances

44. As above, the relevant box on Form E requires significant changes in the last 12 months. If the husband had done his Form E on time, this would have included the dramatic change which he said occurred in September 2022. By delaying, he might technically have just come outside that 12 month period. But I am clear that the disclosure obligations in the family Court process demand an explanation of dramatic changes especially during the period of separation when the other spouse will have less knowledge of what may have been happening. Because in this case, as the husband fully admitted to me at the July hearing, he has had a dramatic change and that needs investigation. I had told him at the July hearing that I needed to be given a very good explanation. Nothing had been forthcoming. I set out some of the problem.
45. First, the family Court gathers its financial information in whatever way it can. One is level of lifestyle expenditure. Through the bank accounts we do have, and there may be more, in August 2022 the husband spent £35,000 or more on what might be described as good standard living expenses. Restaurants, hotels, events, purchases and more. He didn't dispute. Also net of rental. This is more

than 2 years after the separation. But there was no suggestion this was any extraordinary month nor unaffordable. We could see similar fairly luxury-type items appearing in previous months. I'm entitled to presume that from the date of separation to the end of August 2022, he had income that could at least sustain this lifestyle.

46. Secondly, what can we gather about the income itself. Here we are more in the realms of speculation. Not least because the husband has not disclosed. There are no accounts for his company, XX limited. There are no accounts for his video studio project in the USA. There is no information about what income was received in any reliable way. Instead we have a series of marketing blurbs about him. He says they were written by his PR company. I'm willing to accept that. But even in the world of sales and marketing, there must be some slight brake when a person says to their PR company in terms that a blurb is simply nonsense, wildly extravagant and without any smidgen of reality. We were not told that occurred.
47. So on his website we have the following comments. [Quote redacted to prevent identification.] He has brokered over 2 billion-dollar deals over his tenure of his company which he now serves as chairman. He had worked on 200 contracts with industry leaders. In a transcript of a pod cast he was said to be making \$150,000 a month. Apple Podcasts had provided his studios with an exclusive channel for distribution. He said this was free but I doubt Apple Podcasts would have done so for any person without expectation of reaching many people. [More redacted to prevent identification.]
48. He said he wasn't paid for these pod casts. I accepted this but one does not do this sort of thing without expecting some other return through new work, new contracts and similar. I said, without any suggestion of comparison, I had produced many law articles, videos and podcasts in my solicitor career for which there'd been no or minimal payment but with the expectation that it would have produced substantial new client work coming to me, which had occurred. A means to an end. He was asking this court to accept there had been no end. No return. It is difficult to comprehend that out of those millions of viewings of his pod casts and other material on the web that he is now in a position, late 2023, only a couple of years on, with only one contract which can't afford to pay his rent.
49. I accept there would have been some impact of Covid but he made the point that the work was done entirely remotely. He was in London and his primary market had been the USA. He spoke about his remote staff in South America, self-employed. Even upon this court adopting a moderated version of the marketing by the husband of his global elite excellence, there would still be substantial income to afford the claims made by the wife for herself and the child. Even if there was no capital because it was all spent on luxury, high-end living, as the wife testified they did, there would be the income to meet her claims.
50. It was the opportunity to explain all of this, including full particulars to evidence any dramatic change, which I gave at the hearing in July. It might be that the husband has not fully comprehended the crucial importance. I hope he has now

following the hearing and this judgement. Because unless the court is given a good explanation, and I repeat it is extending the last opportunity to the husband to do so, with reasonable corroborative evidence the court will infer, as it can do under its powers, a level of income available to the husband and make an order accordingly which the wife can then enforce in England or the USA or as she chooses. It will only be the husband who has himself to blame if he continues to neglect that opportunity given to him now on several occasions.

51. I started the hearing asking him to explain what had been his level of income in broad terms in the early years of the marriage, at about the time of the separation, during the period of separation including what had happened for the dramatic change in September 2022. We were not given any sort of reliable figures. He would reasonably have known this was an issue before the court, not least as previous hearings had flagged it up. He either knew and did not say or is specifically neglectful of this detail. So he must now explain or the court will make a final order based on previous earnings. I want him to set out in narrative form what in the broadest terms was the gross of tax income he received from all sources either directly or through his companies in about 2017 or 2018. Explaining the sources in broad categories. From what work had he done to receive this? Then ditto 2020 and then 2021 and then January-September 2022. He must then explain very carefully and clearly what happened in September 2022. Why was this unexpected if it was. Why did all of the work suddenly stop? What had he done to revive, sustain and continue those contracts, commissions or arrangements? What had he done since September 22 until December 2023 to create more work and therefore income other than the present contract which was producing £4000 per month until last month when, at his request to his contractor, there was an immediate 25% increase? This is no more than would be put to an ordinary person who had maybe lost their job or had reduced hours and what they were doing to recover a previous level of income.

Nondisclosure: child support

52. The Agency has made an assessment. I'm told he has paid nothing. He complained that he had not seen his child but I said as a matter of law that was not a reason for non-payment. He complained that it was on wrong figures and I said that was a matter for an appeal or a request for a reassessment. He said he had had a liability order and I explained what that was. I said this court had no power to make a child maintenance order, and I indicated that I would not make a global order as requested by the wife. He complained that he wanted to pay his wife direct so there would be no percentage deduction. That's her choice. Like many recipients she may prefer the formality of the administration of the agency, the record of payments and similar to the slightly higher amount if paid direct.
53. I am told the arrears, more than £10,000, are still being pursued by the agency and are payable and will go to the wife. I also told the husband that if he made payments to her direct, they would not act as a credit to the agency obligation.
54. I am told that an enforcement order was made by the agency in August 2022 and they would remove the amount due from his bank account but he removed the funds from the bank account and only about £10 was recovered. If this is right, it

confirms the anxiety here about the level of nondisclosure and thereby evading what might be a fair outcome.

55. At the end of the first day of the hearing when I indicated that I would be likely taking the approach as set out in this judgement, I asked if he had any proposals for support, on the basis that he had paid nothing to the support of his daughter directly. Apparently clothes had been given on a couple of occasions, once apparently prompted by CAFCASS. He had offered cash twice via the contact centre which breached their terms. This failure over the entire life of this child to provide support for the child including for most of this period when he had very substantial remuneration is highly criticised by this court. I also observed he had spoken previously in terms of the child having private education. Again this gives an expectation of a standard for the child completely at odds with the reality of no provision whatsoever. In circumstances where he had the past wherewithal to support his daughter, I would hope he will be making an offer to pay that past support need of the child since birth and to date.
56. He offered £1000 per month, payable from first January, at the end of the hearing. I'm willing to accept as interim spousal maintenance and order accordingly. I make clear this is not based on any merits but on the offer made. I made it also clear this was independent of the agency, as above.

Conclusion and remaining matters

57. I had been asked by the wife to adjourn this hearing. I had refused because I wanted to bring about finality. One of her reasons for adjourning was that she hoped she would then get more disclosure. I myself hoped I could gain sufficient information during the hearing to give a reliable judgment. I was wrong. Although we know much more now, there is so much more we need to know where we do not have reliable information or corroboration. The wife is making a fairly substantial claim for capital and income. It may well be justifiable on what was the level of income for most of the marriage, 2017 until autumn 2022. This court is then being told everything changed. But we don't have the information to be confident that is the case. But equally I don't feel confident making the order yet. It might give rise to a real risk of injustice and unfairness. I am therefore reluctantly adjourning this final hearing part heard, and requiring information from the husband. If he won't give it by e.g. late January, I am prepared to entertain on paper an on notice application for orders against others for that disclosure. If by the end of March, we have some more information but not as comprehensive, I will wait to hear from the applicant's lawyers what they then want to do but I may list for a short hearing to review. I think what is then likely is that I would resume the final hearing and make an order based on what more information we have and what we should have had and haven't and make any inference accordingly. This is my reluctant decision
58. In relation to a couple of other elements, the parties apparently agreed to store the placenta of their child for stem cell purposes. This debt is apparently unpaid. It is either in joint names or her sole name. The husband said he will be responsible. Could her lawyers send the most recent invoices to him. He will indemnify her.

59. Next, there was damage done apparently to the former family home along with arrears of rental. At the time the wife was not working, just giving birth, and indeed it was in the immediate aftermath of the separation. Clearly the husband had the wherewithal to meet the rental and he must be liable. However it seems there has been no contact from the landlord for some time. I therefore direct that he is liable and indemnifies the wife. If he wants to dispute it if and when the landlord makes contact then that is a matter for him
60. Apparently there is or was bank accounts with the Bank of NNNN. This will be part of the disclosure as above. But the wife has recently contacted them, proactively, and discovered there may be about \$900 owing on a joint account. Perhaps wrongly and unwisely, she gave her details in circumstances where it is believed there had been no contact made by the Bank of NNNN to either party for some time. Until I know more about the account, its closure and the finances at the time of the closure, I cannot make any order. I wait to see the statements

Costs

61. I have 3 reserved costs orders and the costs of the first day of the final hearing. In relation to the last, I am reserving the costs, not least as it is part heard. If the husband is able to satisfy this court with good evidence that his financial position is as he says it is, then the costs of the work during the adjournment may be an issue but otherwise the usual no costs order may apply.
62. However on the 3 reserved costs orders, I am in no doubt both generally and specifically after this hearing that costs orders are appropriate. There was on each of those occasions, or in advance, wilful nondisclosure, non-compliance by the husband with the orders of the court and requirements of the disclosure provisions in financial remedy proceedings. The Form E when eventually received was inadequate and did not have the necessary documentation attached, including as admitted by the husband at the hearing. There was a failure to answer satisfactorily the questionnaire and then the supplemental questionnaire. There was no s25 statement. The orders made by the court on those 3 occasions were not complied with. This put the wife and her advisers to even more work. The court is absolutely clear, on many authorities, that costs will follow from non-compliance. This applies as much to unrepresented parties as represented.
63. We had the chance to look at the costs claims. I was satisfied the rates were reasonable. Indeed the husband may consider himself rather fortunate these are legal aid rates which are perhaps 1/3 of what could be the private rates of a lawyer instructed by the wife in a case such as this.
64. In respect of the hearing on 3 April 2023, the lawyers costs are £2497.15 with barristers costs of £315.90, each subject to VAT. In respect of the hearing on 5 June 2023, this is certified at £6500 but I'm told this is inclusive of VAT and the barristers fees were 315.90 + VAT. In respect of the hearing on 31 July 2023, barristers fees were £505.44 and solicitors fees were £2314.20, plus VAT.

65. I am satisfied the first and the third are reasonable. But I'm surprised at the 2nd. I'm told there was a lot of correspondence with the husband and consideration of an application for interim maintenance. I have to look at the hearing itself. In circumstances where the solicitors fees were fairly similar for the other hearings as was barristers fees, I'm willing to increase but not to the amount claimed and I will allow £3000 for the solicitors fees and the amount claimed for the barristers.
66. They must be paid by 26 January 2024 with interest to run thereafter.
67. May I please have a draft order for consideration.

DDJ David Hodson
16 December 2023