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Case No. ZZ19D94646

IN THE FAMILY COURT

Royal Courts of Justice  
Strand, London, WC2AA 2LL

***“DDR v BDR (Financial Remedies, Beneficial Ownership and Insolvency)”***

Before:

ALEXANDER CHANDLER KC

Sitting as a High Court Judge pursuant to s. 9 of the Senior Courts Act 1981

Hearing on 2,4,7 and 8 October 2024

Judgment 8 October 2024

B E T W E E N:

**‘DDR’**

Applicant

- and -

**‘BDR’**

Respondent

\_\_\_\_\_

MR GREG WILLIAMS (instructed by Allard Bailey Family Law), who appeared on behalf  
of the Applicant on a *pro bono* basis

The RESPONDENT represented himself.

\_\_\_\_\_

## INTRODUCTION

1. The family court does not normally have to resolve issues of beneficial ownership between divorcing spouses.
2. In most financial remedy claims, a declaration as to the parties' equitable interests would be: "...of very little value... it simply adds confusion and trouble and achieves nothing" (*Fielding v Fielding* [1977] 1 WLR 1146, per Ormrod LJ). A claim for financial remedies should normally "...be determined within the four corners of the Matrimonial Causes Act and on the application of the statutory criteria there set out", not by reference to equitable interest (*Prazic v Prazic* [2006] EWCA Civ 497, per Thorpe LJ at [25])
3. In *Tsvetkov v Khayrova* [2023] EWFC 130, Peel J summarised the position as follows:

"...ordinarily, in financial remedy proceedings, it matters little as between a husband and wife in whose name an asset is beneficially held. The court has wide dispositive powers to adjust ownership as part of its overall determination of the fair outcome. An exception to this general proposition is where a third party [intervenor] asserts a beneficial interest..."
4. This case involves a further exception to the general rule, arising because of the bankruptcy of the party who solely owns the parties' former matrimonial home.
5. This is my judgment in an application for financial remedies dated 22 July 2020. The applicant, DDR ("*the Wife*") asserts, as a preliminary issue, that she is entitled to a 50% beneficial interest in the family home. The respondent, BDR ("*the Husband*") is the sole legal owner of the said property, which is a modest, two-bedroom property in London ("*the family home*").
6. On 9 July 2019 the Husband was declared bankrupt following his presentation of a debtor's petition. Mr Duncan Lyle and Mr Nigel Fox of Baker Tilly creditor services were duly appointed as the Husband's trustees in bankruptcy, initially on a joint basis although Mr Lyle has been the sole trustee since 27 April 2021 [249].

7. The effect of a bankruptcy order is that the bankrupt's estate, as defined by s.283 of the Insolvency Act 1986), vests with his trustee in bankruptcy (s.306). When the bankruptcy is discharged, which normally takes place after a year (s. 279), and in the Husband's case took place on 9 July 2020, the bankrupt is released from all bankruptcy debts (s.281). Save that under what is sometimes called the 'use it or lose it' rule (s 283A), the trustee in bankruptcy has three years from the date of the order to realise the bankrupt's interest in his home.
8. On 6 October 2020 and again on 30 June 2022, Mr Lyle issued applications for sale and vacant possession at the County Court at Central London ("*the county court*") [26]. It is common ground between the parties in this case (the Wife and the Husband) that a valid application for sale has thereby been issued within the statutory timescale. That application was adjourned generally, pending the outcome of the Wife's application to annul the bankruptcy, based on allegations of non-disclosure.
9. On 28 February 2024, the Wife's annulment application was dismissed, and she was ordered to pay the trustee in bankruptcy's costs in the amount of £14,055. As far as I am aware the application for sale has not yet been restored. But that may not be necessary; it is agreed between the parties in this case that the family home will be sold.

*The crux of this case*

10. The essential question, which in effect involves a preliminary issue, is as follows: at the date of the bankruptcy, was the Husband the sole beneficial owner of the family home or did he hold it on trust (or subject an estoppel) in equal shares with the Wife. Looked at another way, can the trustee in bankruptcy now recover against 100% or 50% of the net equity in the family home?

*Complexity*

11. This is a complicated case, involving a consideration of three areas of law: insolvency, trusts of land and financial remedies. On 17 February 2023, Recorder Vickers sitting in the East London Family Court, with the permission of Peel J, allocated the financial remedy proceedings and the Wife's annulment application to be heard by a High Court judge sitting in the Family Court. Peel J subsequently heard three case management hearing, on 5 April 2023 (when the annulment application was remitted back to the

county court), 18 March 2024 and 9 April 2024. This case was then allocated to me, sitting as a Judge of the High Court pursuant to s.9(1) of the Senior Courts Act 1981, for a pre-trial review on 4 September 2024 and to hear this four-day final hearing.

12. This judgment effectively falls into two parts:

(1) *Firstly*, concerning the beneficial ownership in the family home. This issue turns on equitable principles and trusts of land. While this is not an intervenor case, in that no third parties have been joined, the following guidance of Nicholas Mostyn QC (as he was then) sitting as a Deputy High Court Judge in *TL v ML* [2005] EWHC 2860 (Fam)) is apposite:

“...the task of the Judge determining a dispute as to ownership... is of course completely different in nature to the familiar discretionary exercise between spouses... [it] must be approached on exactly the same legal basis as if it were being determined in the Chancery Division”;

(2) *Secondly*, following my declaration of beneficial ownership, what would be a fair distribution of assets, applying the discretionary law of financial remedies and in particular the factors at s.25 of the Matrimonial Causes Act 1973.

#### *The value of this claim and proportionality*

13. While the combination of issues and the collision of different areas of law in this case is unusual, this is also a modest asset case. Regrettably, it has taken an inordinate amount of time to reach its conclusion. The parties have in effect been locked into attritional combat for over four years. This final hearing is the *tenth* hearing in the financial remedy claim. That figure does not include the other hearings in the Wife’s successful applications for occupation orders and non-molestation orders, and her unsuccessful application to annul the bankruptcy.

#### **FINANCIAL RESOURCES**

14. The current value of the parties’ assets and liabilities is set out in a composite ES2 schedule which was filed and served on 3 October 2024. I took the Husband through

the figures on the first morning of the hearing and the Husband confirmed that he agreed with the figures save for one credit card debt of the Wife's which he challenged.

15. The only material asset in the case is the family home which was an agreed market value of £440,000. The mortgage balances as at February 2024 were £98,561 and £23,658, a total of £122,219. Deducting costs of sale at 2% (£8,800) produces net equity of £308,980. In the absence of a more up to date redemption figure for the mortgages, I propose to adopt a net value of **£310,000** (i.e. £1,120 more) to broadly reflect their mortgage repayment since February 2024.
16. Both parties have modest bank balances (Husband £143; Wife £2,589).
17. The most recent figure for the Husband's bankruptcy debt is £229,089, although this was recorded in a recital to the order of 18 March 2024 [63] and is accordingly five months out of date. Roughly one third of this amount represents the total amount of the creditors' original debts (£78,487 as at 9 July 2019); the balancing two-thirds represents statutory interest at 8% and the professional costs and legal costs of the trustee in bankruptcy etc. I do not have a current figure for the overall debt but note that roughly £2,600 additional interest will have accrued together with the five months of ongoing costs of the insolvency which include the attendance of a noting brief at this hearing. Doing the best I can on limited information, I adopt a rough figure of **£235,000**. However, that figure will include the costs order payable by the Wife in the amount of £14,055. To avoid double counting that debt, I assess the bankruptcy debts at **£220,945**.
18. The Husband declares no other debts although in his oral evidence he asserted that he is still bound to repay a sum of "£7,000 to £8,000" to his uncle [Mr X], arising from Mr X's payment of the deposit in 2004. However, as I shall explain later on, I reject the Husband's assertion that he owes any sum to Mr X.
19. The Wife's liabilities amount to **£16,408**, comprising the unpaid costs order from the county court for £14,055, and £2,403 owing on a credit card.
20. By way of overview of the impact of the parties' contentions on the figures:

- (a) The Wife's case, based upon a declaration of 50% beneficial ownership, is that the net assets in this case are worth £141,323, i.e.

Wife's 50% of family home	£155,000
Wife's bank balances	£2,589
Wife's liabilities	(£16,408)
Husband's 50% of family home (£155,000 less £235,000)	Zero
Husband's bank balances	£143
<b>Total (per Wife)</b>	<b>£141,323</b>

- (b) The Husband's case, based upon the position (and starting position in law) that he is the sole beneficial owner of the family home, is as follows:

Total equity in family home	£310,000
Bankruptcy debts (£235,000) net of W's costs order of £14,055	(£220,945)
Wife's bank balances	£2,589
Wife's liabilities	(£16,408)
Husband's bank balances	£143
<b>Total (per Husband)</b>	<b>£75,379</b>

## OPEN PROPOSALS

### *Wife's proposal*

21. The Wife's open proposal is that she should exit this marriage with her 50% share of the family home, i.e.

- (a) The Wife would exit this marriage with:

50% from net proceeds of sale	£155,000
Wife's bank balances	£2,589
Wife's liabilities	<u>(£16,408)</u>
<b>Net</b>	<b>£141,181</b>

- (b) The Husband would therefore exit with practically nothing because his 50% interest in the family home would be received by the trustee in bankruptcy, leaving only his very modest bank balances and his modest pension.

*Husband's proposal*

22. The Husband's proposal is that the bankruptcy debt should be met from the entire equity in the family home, which as a matter of law, is the court's starting point (i.e. the presumption of any inquiry into beneficial ownership is that the legal owner is also the beneficial owner: *Stack v Dowden* [2007] UKHL 17 per Baroness Hale at [56]). That would mean debts of £220,945 would be met from net equity of £310,000, leaving £89,055.
23. During these proceedings, his proposal has changed, from offering the Wife all of the residue, to 50% and finally 30% which is the position he has advanced before me. He has explained that he has reduced his offer because the Wife has caused this litigation to be delayed during which his debts have mounted. A 30% share of the residual net assets would involve:
- (a) the Wife receiving 30% of £89,055 = £26,716, to add to her bank balances of £2,589 and her debts of £16,408, meaning that she would exit with *circa* **£12,897** net;
  - (b) the Husband receiving 70% of £89,055 = £62,338 + his own bank balances of £143 = **£62,481**.

*The creditors' position*

24. In law, as in most other walks of life, there is no such thing as a free lunch. It follows that if I find in favour of the Wife, a significant price would be paid by the Husband's creditors, in that the bankruptcy debts of £220,945 cannot be met from 50% of the net equity (£155,000). The effect is that the Husband's 50% interest would be applied to the trustee's costs and the balance would be divided *pari passu* between the creditors.
25. It follows that, in fairness to the creditors, this court must apply the law (i.e. constructive trust or proprietary estoppel principles) correctly when it comes to determining whether

or not the Wife has a beneficial interest in the family home. It would be impermissible for this court to adopt, for reasons of convenience, a discretionary approach with the objective of maximising the available assets for the spouses at the cost of the creditors

26. The trustee in bankruptcy has had notice of these financial remedy proceedings. On 18 March 2024, Peel J granted permission for the trustee in bankruptcy to be joined as a party [63 §10]. Mr Lyle has not sought to be joined, and has not lodged any written submissions, although he has instructed a noting brief to attend.

### **APPLICATION, REPRESENTATION, CONDUCT OF THE HEARING**

27. Both parties have acted in person for much of the last four years. The Wife initially instructed Edwards Duthie solicitors, and then a *McKenzie* friend. Since the spring 2024 has been represented on a *pro bono* basis. The Husband initially instructed Alcott Solicitors but has mainly represented himself.
28. At this final hearing, the Wife has been ably represented by Mr Greg Williams of counsel and Ms Louise Allard of Allard Bailey Family Law on a *pro bono* basis. Mr Williams took on this case in the spring of 2024 from a colleague in chambers. He drafted points of claim dated 15 April 2024 [290-297] and appeared as counsel at the PTR and four-day final hearing before me. When Mr Williams first became involved in this case, the litigation had been running for over three years in a somewhat unfocused and unproductive way. He has put the Wife's case into order, for which the court is very grateful. I hope the Wife appreciates how fortunate she has been to be represented to such a high standard by specialist counsel.
29. The Husband has continued to act in person. During this final hearing, he has at all times behaved in a courteous way and I was in particular assisted by his succinct closing submissions. But in terms of the preliminary issue relating to beneficial ownership, this court is fully aware of the inevitable difficulties faced by any litigant in person when it comes to legal issues. In addition, by reason of the Wife's vulnerabilities and the allegations of domestic abuse, participation directions were made in this case whereby, the Husband was prevented from cross-examining the Wife directly and was required



to lodge his cross-examination questions in advance, which he did. A qualified legal representative could not be appointed in this case because the application pre-dated the effective date for introduction of that scheme on 21 July 2022.

30. I have in the circumstances taken the following steps to seek to ameliorate the inequality of arms which arises before the Wife has legal representation while the Husband has not:

(a) I have explained the procedure to the Husband as clearly as I could at every stage;

(b) I took a permissive approach to the Husband's written questions to the Wife and allowed several questions which in my judgment were of limited if any relevance including the breakdown of the marriage and the Wife's relationship with the Husband's family. Where I drew the line related to issues of conduct (which I ruled out as a preliminary issue) and in relation to questions touching on the welfare of the children;

(c) Following the Husband's oral evidence, I briefly recalled the Wife to give evidence to deal with some of the questions raised in a second set of questions by the Husband;

(d) The order of closing speeches was reversed, so that the Husband would be able to respond to Mr Williams' submissions.

31. However, I am under no illusions that the root problem remains. While a litigant in person may in some cases be able to advance a reasonably coherent case in financial remedies claim, in relation what might be 'fair' or 'needed', it is inevitably more difficult to articulate a position in relation to more esoteric concepts such as 'common intention', 'detrimental reliance' or 'constructive trust'.

32. Without the benefit of legal advice, the Husband filed a lengthy narrative statement instead of a defence, whereby I do not have his point by point response to the component parts of the Wife's case. Both parties have to some extent become distracted by allegations of misconduct. The Husband's position statement for this hearing

concentrates almost exclusively on issues of conduct (see below) at the expense of beneficial ownership. The net effect is that where legal aid is unavailable, a party cannot pay for representation or procure it on a *pro bono* basis, the judge has somehow to make sense of the mass of material which has been filed by the parties without a clear sense of what are the relevant issues and what evidence might prove the point either way.

*Final hearing*

33. In advance of final hearing, I received and read the relevant parts of the following:
- (1) Trial bundle of 734 pages, permission having earlier been given to file bundle longer than 350 pages;
  - (2) Mr Williams helpful skeleton argument (16 pages) and authorities bundle (379 pages)
  - (3) Husband's position statement (3 pages) and draft questions (3 pages)
34. This final hearing was conducted remotely on Teams and was attended by the following:
- (a) On Wife's side, Mr Williams, his pupil, and a solicitor from Allard Bailey (initially Ms Allard);
  - (b) The Husband in person; and
  - (c) A noting brief instructed by trustee in bankruptcy.
35. The first day of final hearing (2 October) was my reading day. On the second (4 October), I heard the evidence of Wife and part of evidence of Husband. On the third day (7 October) I heard the balance of Husband's evidence and closing submissions. Fourth day (8 October) considered and written this judgment.
36. On the morning of 4 October, I made two preliminary rulings:
- (1) Firstly, I refused the Wife's request for permission to sit next to, and be assisted by, her McKenzie Friend, on the basis that she now had the assistance of counsel and solicitor.

(2) Secondly, I dealt with conduct. Both parties in this case have raised numerous allegations of conduct against the other in one or another of their witness statements. At no stage in any of the previous nine hearings have directions been made in relation to conduct. I gave the parties the opportunity to request permission to rely on conduct further to Peel J's guidance in *Tsvetkov v Khayrova* [2023] EWFC 1300. Both parties confirmed that they were not relying on conduct. To my mind, that was sensible and correct. My preliminary view is that none of the allegations overcame the 'high hurdle' set in law, as recently upheld in *N v J* [2024] EWFC 184). I therefore excluded any allegation of conduct from the issues in this case. I record that Mr Williams has not sought to argue that the Husband's bankruptcy *per se* amounted to conduct it would be inequitable to disregard.

37. During the hearing, I permitted Mr Williams to introduce a supplemental bundle of documents relating to a 2005 remortgage, which he explained had already been disclosed but omitted from the bundle (48 pages). The Husband did not object and these documents (which were referred to only twice) were helpful in my understanding of the case.

## **FACTUAL BACKGROUND**

### *Ages of parties and duration of marriage*

38. Both parties are 44 years old.

39. They entered into a legally binding marriage on 8 October 2004, having days earlier entered into an Islamic marriage. The parties separated on or about 20 September 2017 following an incident when the Husband was arrested but released without charge. The relevant duration of the marriage from marriage to final separation is accordingly roughly 13 years, and the parties have been separated for 7 years.

### *Children of the marriage*

40. There are two children of the marriage. 'L' is now 18 years old while 'M' is now 12. Since the parties' separation, both girls have lived with their mother at the family home, and they have had little, if any, contact with their father.
41. 'L' has recently started university although the Wife does not want to reveal at which institution. The Child Maintenance Service has been involved. I do not have the current figure but understand that it is approximately £120 per month, referable to 'M' only. The Husband's open proposal involved a discharge of that assessment. I explained to the Husband that this court does not have that power, leaving aside the lack of any obvious merit in that request.

*Purchase of the family home*

42. The family home was purchased in the Husband's sole legal ownership on 20 August 2004, some six weeks before the parties married. The Wife asserts that her father had spoken to the Husband and insisted that he proceed with the intended purchase:

“...The property was bought in no small part because my father insisted the Respondent had to have the family home...before he would agree to the marriage” [328]
43. The purchase price was £184,000, which was funded as follows:
  - (a) a mortgage in the Husband's sole name with Mortgage Express for £165,910 [319];
  - (b) and a deposit which had been advanced by the Husband's uncle, Mr X.
44. As to the amount of the deposit, the Husband has asserted that Mr X advanced £25,000 by way of deposit (see [120], [127], [300]). The Wife accepts that Mr X funded the deposit but asserts the Husband had previously referred to a figure of £10,000 (see [290] [328]). From the witness box, the Husband said, “I believe it was around £10,000 to £15,000”.
45. In my judgment, the most reliable evidence is set out in the contemporaneous written evidence, i.e. the Mortgage Express application form dated 10 June 2004 [312] which gives a purchase price of £184,000 and mortgage of £165,500. The difference is

£18,500, which I take to be the sum advanced by Mr X. I shall consider below the question of whether the advance was on the basis of a loan or gift.

*Initial discussions around financial contributions*

46. It is common ground that at the start of their marriage the parties discussed what sums the Wife should be paying to the Husband. The Husband's own evidence is that he said as follows to the Wife:

“...if we are to marry and have the house to ourselves [as opposed to renting out a room to a lodger] I would require help... financial planning is important. She agreed and we later that year got married. Everything was fine for around six/ seven months, and she helped with £400/ £500 per calendar month towards bills...” [234]

47. The Wife gives a similar account, although she asserts that this was less of a discussion and more a case of the Husband telling the Wife what to pay:

“...Right from the start of the marriage I was made to understand that because the family home was our joint home, it was our joint financial responsibility... I was told that not only must I pay toward the mortgage and all the food and household shopping, I had also to work to repay the deposit... I was expected to contribute to the mortgage from November 2004 and I have done so ever since...” [329 §9];

“... He said from beginning that in order to keep everything running I would have to give him £500 per month and I was responsible for all of the food shopping while he would maintain the household bills... I just went by what I was told. I didn't ask to see anything” (oral evidence)

48. I have within the bundle a set of the Wife's bank statements which show that within a month of getting married she complied with the Husband's request and set up a standing order for £500 pm in the Husband's favour (e.g. £500 pm from 1 November 2004 [391]).

49. At the time of the parties' marriage, the Husband was working for HSBC while the Wife was working part-time as a teaching assistant and in retail with Thomas Pink. I do

not have the figures for the parties' net incomes in 2004, but it seems likely that the Husband's net income was greater than the Wife's at that stage. I have a figure for the mortgage, of £786 pm [312], whereby as a result of the Husband's 'discussion', I am satisfied that from the outset the Husband required the Wife to make a substantial contribution to household expenses which accounted for more than half of the mortgage payment.

#### *Re-mortgage*

50. Four months after the parties' marriage, the Husband took steps to re-mortgage the family home. The original Mortgage Express mortgage was replaced by two mortgages with HSBC, copies of which appears in the Supplemental Bundle.
51. The following points are of particular significance with this re-mortgage:
52. *First*, the mortgage was substantially increased from circa £165,910. One part of the HSBC mortgage, account no. 54176375, was for £170,000 [S6], the other ('additional borrowing') HSBC mortgage account no. 64176332 for £41,000 [S13], indicating a total of £211,000. It is common ground between the parties that it was possible to increase the mortgage because both parties' incomes were taken into account.
53. The difference between £165,910 and £211,000 is £44,090 although that figure might not capture the fees involved in re-mortgaging etc. In these proceedings, the Wife has asserted that the mortgage increased by £44,000 [225] whereas the Husband has said that "...we jointly borrowed around £40k for home improvements" [234].
54. In terms of contemporaneous documentation, I have seen an HSBC statement which demonstrates the receipt of £38,914.45 into the Husband's bank account on 22 February 2005, from which he paid £5,000 to the Wife on 28 February 2005, and retained the balance, he says, for various items including household improvements, although the Wife disputes that the Husband spent much money on the house. I note on 1 March 2005 that he paid £7,500 to Fortnum and Mason [189]. I am not in a position to trace through exactly what happened to the re-mortgage payments, but I am satisfied on the balance of probabilities that the Husband retained the lion's share of these monies, i.e. all but £5,000 which was paid to the Wife.

55. *Second*, the Wife was added as a party to the mortgage, and she signed the HSBC mortgage deeds, but her name was not added to the legal title for the family home.
56. The parties again give differing accounts of how this came to take place:
- (a) The Husband has said that "...we both decided to change the mortgage... and at the same time jointly borrowed around 40k for home improvements" [234];
  - (b) The Wife has said  
"...the relevant documents were put in front of me for signature with no explanation and I was simply told to sign and was not allowed to read them. The Respondent simply said he was my husband and I should trust him. A Muslim wife does not challenge her husband" [329 § 12]  
  
"...Throughout the marriage I was never privy to anything about financial matters. I was always told I was too stupid to understand and that as his wife I should just sign and refrain from asking questions" [332 § 23]

*Financial contributions post-2005*

57. The Wife's standing order for £500 per month to the Husband continued until 31 October 2005 [413], where the amount reduced to £100 pm, from 30 November 2005 [145] until 30 August 2006 [436]. The Wife has explained that her contribution reduced because she went on maternity leave prior to the birth of 'L' on 19 December 2005.
58. The Wife's monthly payment then stopped, while she remained at home with 'L', until two large payments in the 2008, in the amount of £1,741 on 12 June 2008 and £3,000 on 14 July 2008 [206]. The Wife then resumed monthly payments, generally described on the bank transfers as "ref MORTGAGE" from 29 October 2010 onwards, although the amount has varied from £150 pm (e.g. 5 June 2014 [522]) to £1,500 (e.g. 11 April 2022 [454]). The general pattern from June 2011 onwards is that the Wife has transferred to the Husband monthly sums in or around £500.

59. For the record, the sum totals of the evidenced transfers from the Wife's bank account to the Husband's, from November 2004 (shortly after they married) until February 2018 (shortly after they separated) is £36,681, in 87 transactions.
60. On 15 July 2016, shortly before the parties separated, the Husband wrote a document which set out what the Wife "need[s] to pay" [231]. The total is £590.06 which includes 50% of the mortgage (£280 against £559 total payment) and other household bills. The Husband wrote this down as "your share".
61. In the seven years since the parties separated, the Wife has solely discharged the mortgage on an interest and capital basis, although she has also had exclusive possession of the property with the parties' children. I am sorry to record that the relationship between the Husband and his daughters has broken down completely, but I am not in a position to form any view as to how this has happened. While the interests of minor children are as a matter of statute my first consideration, in this case I am not dealing with their welfare.

*First steps in litigation*

62. Wife first obtained occupation order and non-molestation order on 3 October 2017 [11]. This has been renewed on several occasions and remains in place. On 25 October 2017 Wife applied for home rights. Her evidence is that until speaking to her then-solicitors, she had not been aware family home remained in Husband's sole ownership [90].
63. The parties then involved in child arrangements order which concluded 20 November 2018. Have not seen copy of order but understand that both girls have remained living with their mother at the family home and they do not see their father.

*Bankruptcy order*

64. On 8 July 2019 Husband presented a debtor's petition for bankruptcy. A bankruptcy order was made the following day. While I do not have the statement of account from that time, I can see from the subsequent statement of account dated 18 May 2022 [266] that the creditors' claims (proven and unproven) stood at around £78,487 of which £67,487 was owed to financial institutions ranging from a debt recovery service to various banks and credit agencies. That debt of £78,487 has risen substantially as a



result of statutory interest at 8% and the costs and legal fees incurred by the trustee in bankruptcy.

*Financial remedy proceedings*

65. Following the making of a decree nisi on 20 May 2020, the Wife issued her Form A on 22 July 2020 and the parties exchanged Forms E (in fact, Form E1 in the Wife's case). Wife's Form E1 is undated while the Husband's Form E is dated 8 October 2020.
66. Unusually, and somewhat strangely, on 9 November 2020, the Husband filed a "response" to the Wife's Form E1 at [127-138]. There was, in my judgment, no proper basis to file such a response.
67. Shortly thereafter a First Appointment took place before DDJ Emmerson sitting in the Family Court at East London [14]. The court directed the Wife to return to the Husband his original documents and listed the matter for FDR. That FDR, listed before DDJ Fox on 19 February 2021, appears to have been largely ineffective [18]. The court recorded the trustee in bankruptcy's representation that the family home vested with him and made provision for the Wife to satisfy herself as to the veracity of the Husband's debts.
68. A second FDR, before DJ Wright, on 31 December 2021 was also ineffective, seemingly because of a lack of court notice [24]. A third attempt at an FDR, before DDJ Pathak, was ineffective because neither party had provided updating documentation, or assisted the court with a bundle etc [29]. The matter was then listed for final hearing with a 1 day time estimate.
69. On 17 February 2023 the case came before Recorder Vickers. By that stage the Wife has applied to the county court to annul the bankruptcy, based upon her assertions that the Husband had failed to disclose assets in Bangladesh or in all of his bank accounts. The learned judge allocated the case to be heard by a High Court judge, seemingly on the basis that a single judge might deal both with the financial remedy and insolvency issues. In the event Peel J remitted the annulment application, which, as I have noted above, was dismissed by DJ Hart on 28 February 2024 [61].

*Main factual issues between the parties*

70. In this case there is no agreed list of issues, and the Husband has, quite understandably, struggled to articulate his defence to the preliminary issue. In my judgment, in relation to the first stage (beneficial ownership) the main issues are (1) common intention, (2) detriment, (3) quantification. In relation to the second issue (distribution) I have regard to the s.25 criteria with the overarching objective of a fair outcome. In a case involving such modest assets a magnetic factor is likely to involve a consideration of needs.

## LAW

71. As to first stage of case, the legal principles are now well established and are not seriously in question in this case: the leading case in relation to what Baroness Hale described as the ‘domestic consumer context’ (as opposed to more commercial property arrangements) is *Stack v Dowden* [2007] UKHL 17, which establishes the following:
- (a) There is a presumption that equity follows law, whereby starting point Husband as sole legal owner is the beneficial owner;
  - (b) Conversely, burden of proof is upon party, in this case the Wife, who contends otherwise;
72. In the subsequent Privy Council case of *Abbott v Abbott* [2007] UKPC 53, Baroness Hale opined at [4] that “...it is now clear that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases”. While that case involved an issue of Antigua and Barbuda law, in which there is no equivalent of the Matrimonial Causes Act 1973, in my judgment the learned Baroness’s views apply more generally to the (English) court’s approach to the determination of issues of beneficial interest in within the ‘domestic consumer context’. In other words, the burden of proof in this case is upon the Wife to demonstrate a common intention of shared ownership, which can be either be express or implied, upon which she acted to her detriment;
73. Where an interest is established, in terms of quantification, I should look firstly for evidence of common intention (express or implied), but in a case where inferences cannot properly be drawn from the evidence, exceptionally the court may have to fall

back on ‘imputing’ what it considers to be fair shares (*Jones v Kernott* [2011] UKSC 53).

74. The Wife’s claim can also, I accept, be analysed according to tenets of proprietary estoppel although I am unpersuaded any useful purpose is served by examining the case in that way. There is considerable overlap between constituent elements of constructive trust and proprietary estoppel argument. The main difference relates to the available remedies. However, the Wife in this case does not seek any different remedy under proprietary estoppel than under a constructive trust argument.
75. Finally, Mr Williams helpful skeleton argument sets out the basis of an overriding interest argument. In relation to this I remain unconvinced that this is necessary for me to consider this aspect in detail. If I conclude that the Wife has a 50% interest in the basis of a constructive trust argument, I am unconvinced that I separately need to consider if that interest somehow overrides that of the trustee in bankruptcy, in a case where both parties and the trustee in bankruptcy agree that the family home should be sold. I note that the Wife’s claim to an overriding interest is based upon her occupation of the family home. However, this seems to be a somewhat ‘belt and braces’ argument that probably adds little to the consideration of constructive trust principles.
76. As to the second stage of this case, I apply the law as set out in Part II of the Matrimonial Causes Act 1973. My overarching objective is a fair outcome, having regard to the factors at s.25, and the guidance of the higher courts in cases such as *White* [2001] 1 AC 596 and *Miller; McFarlane* [2006] UKHL 24.

## **CREDIBILITY**

### *The Wife*

77. I first heard evidence first from the Wife, who visibly found it difficult to give evidence even with the protection of participation directions. At one stage I had to rise because she was becoming visibly upset in order to allow her ten minutes to compose herself. She was able to get through the remainder of the cross-examination, although it was often uncomfortable to listen to her evidence, because of her obvious distress.

78. However, I am satisfied that she answered every question to the best of her ability. I was impressed by the clear and succinct way she responded. Her oral evidence was consistent with her written evidence, and she did not exaggerate or deviate from the question, even where the precise meaning of the question was unclear. I am satisfied that the Wife was a truthful witness whose evidence I can rely upon.

#### *The Husband*

79. I then heard the Husband's evidence. I have already acknowledged the difficulties the Husband has faced in this case as a litigant in person. I have considerable sympathy for any non-lawyer having to deal with unfamiliar concepts of law (and in particular the component elements of a constructive trust) without the benefit of legal advice or even a McKenzie friend. However, in my judgment, that appreciation of the Husband's difficult position as a self-represented party should not colour my assessment of him as a witness.

80. I also appreciate the difficulties involved in recalling events of up to twenty years ago. I bear in mind the guidance of Leggatt LJ (as he then was) in *Gestmin SGPS SA v Credit Suisse UK* [2013] EWHC 3560 (Comm), to the extent that human memory is fallible, that recollection of events does not involve a 'light bulb moment' but is more fluid and malleable, whereby memories are constantly rewritten, and can be affected by powerful biases including the impact of contentious litigation. I bear in mind that, as a matter of principle, a witness may lie for many reasons and the fact he has lied on one point does not mean that his evidence is generally mendacious (*R v Lucas* [1981] QB 720).

81. The Husband came across as an intelligent man who has what is sometimes described as the gift of the gab, meaning that he talks confidently, persuasively and is mentally quick on his feet. To his credit, he answered every question posed by Mr Williams, but he had a tendency to talk around the subject and give lengthy, self-justifying answers.

82. However, I regret to say that his evidence was very poor when it came to issue the Wife's financial contributions to the family home. I have already set out in this judgment the evidence of the payments by the Wife to the Husband which began in

November 2004 and concluded in February 2018. The total amount is £36,681 in 87 separate transactions, many of which are described as 'ref MORTGAGE'.

83. The Husband was taken to the following extracts from his own witness statements:
- (a) Form E, 8 October 2020 "Paid all mortgage payment from 2004-2017 – paid £1,150 per month (total paid £151,800)" [120]
  - (b) Witness statement in Family Law Act 1996 proceedings, 15 June 2021 "...The irony to this story, I had married and invited applicant to my home, paid all her share of expenses, utility, mortgage, vehicle cost and much more. Applicant's deception and lies resulting in being in possession of my items including roof over by [sic] head" [146]
  - (c) Response to Wife's Form E, "...she never contributed any amounts towards the mortgage or the homeowner loan during our marriage. The only contribution from the applicant was for the first 5/6 month of the marriage..." [128]
  - (d) Witness statement in insolvency proceedings, "...I had no financial help or support from [the Wife] during the thirteen years of marriage other than few payments as and when" [219]
  - (e) S.25 statement "...The claim to pay towards the mortgage or any household expenses is false, and I will look to prove this during my hearing. I have never known her to make any such payments until the separation..." [301].
84. Mr Williams put each of these passages to the Husband, asserting that the Husband had lied about the Wife's financial contribution. The Husband disputed that he had lied. He told me, variously, "maybe the wording is wrong", "maybe when I said 'all' I might have meant 'some'", "I don't believe I lied. Maybe I was misunderstood in terms of what I had written", "It's not a lie. As far as I'm concerned there wasn't any contribution made except for some contributions she made by way of irregular payments which were not fully contributed to the mortgage".

85. He took issue with the regularity of the payments, even though I have evidence of 87 transactions including many payments for the amount of £500 pm.
86. The Husband's oral evidence on these points lacked credibility and was not believable. In my judgment, the Husband had been caught out in several lies which he made advanced with the objective of minimising the Wife's financial contribution to the family home. I was not impressed by his attempt to defend his position by drawing the distinction between 'regular' and 'irregular' payments, or his attempt to dilute the significance of the Wife's contributions because these might have included an amount of tax credit as opposed to earned salary. In my view, faced by his earlier statements which in my judgment are impossible to reconcile with the bank statements of actual payments, the Husband ducked and dived and sought to avoid responsibility.
87. My overall view is that the Husband has been willing in these proceedings to say whatever suited his purpose, regardless of whether or not his evidence was truthful. While that does not mean that everything he told me was unreliable, I conclude that I have to treat his evidence on key issues such as the parties' common intention with great caution. I conclude that where the parties' evidence is in dispute, and where I am not assisted by contemporaneous documentation, that I should generally prefer what the Wife has told me.
88. I was also left with the impression that the Husband is not only intelligent and eloquent but also manipulative. In my view the Husband came across precisely as the Wife has asserted, as a man who is used to getting his own way who will say or do whatever it takes to achieve that objective. I mention this with particular reference to the Wife's assertion that the Husband told her what to pay and insisted that she should sign documents without allowing her the opportunity to read what they were about. I consider those assertions proven.
89. At the end of the Husband's evidence, he became emotional and made a number of statements about having never denied the Wife's claim and only ever caring about the Wife and the children. Mr Williams, understandably, relies upon these statements in his closing submissions. He asserts that the Husband at the eleventh hour effectively admitted the Wife's claim to a beneficial interest. However, on this point I am not

persuaded. Having considered this case carefully, it would be fairer in my view to proceed to consider whether the Wife's case is made out, without placing reliance on what the Husband said in a heightened emotive state, at the end of a lengthy cross-examination.

## **RESOLUTION OF FIRST STAGE (BENEFICIAL OWNERSHIP)**

### *Findings of fact*

90. In his closing submissions, Mr Williams invites me to make eleven findings of fact, on the balance of probabilities. Without intending any criticism of counsel, in my view there is no need to consider quite so many. I bear in mind the burden of proof which in terms of beneficial ownership is upon the Wife and I conclude that I am satisfied as to the following:

### *Relevant context*

91. The fact that the parties married does not mean that the Wife thereby acquired a beneficial interest on marriage. I recognise that the concept of 'beneficial ownership' at common law is distinctly different from the concept of 'matrimonial property' in financial remedies. Nevertheless, the fact of the parties' marriage provides relevant context for an examination of beneficial ownership in that:

- (1) The parties thereby entered into a committed relationship;
- (2) The parties intended to start a family;
- (3) The Husband purchased the family home shortly before the parties married, with the intention – which was shared with the Wife – that this would become their family home and the home of any children they would subsequently have; and
- (4) While the Husband is correct to point out that the process of acquiring the family home had taken several months prior to completion, I accept the Wife's evidence that discussions had taken place between her father and the Husband relating to the Husband purchasing a property as a family home.

*Common intention - implied*

92. Having carefully considered the evidence in this case, I am satisfied on the balance of probabilities that the Husband and Wife commonly intended joint ownership of the family home.
93. I conclude that this common interest can primarily be inferred from the parties' actions leading up to the re-mortgage in February 2005. I infer this from the following:
- (1) In February 2005, at the Husband's instigation, the mortgage loan was transferred into the parties' joint names whereby the Wife became jointly and severally liable for its payment along with the Husband;
  - (2) The Husband thereby used the Wife's income to obtain a higher mortgage which she would be jointly responsible with him to repay;
  - (3) The Husband procured a release of at least £38,914, of which only £5,000 was paid to the Wife and the balance retained by the Husband. I am not persuaded that the Husband used most of those funds for home improvements;
  - (4) The Husband insisted that the Wife should pay to him regular amounts of £500 pm which amounted to more than one half of the mortgage, in spite of what appears to have been the Wife's lower earned income.
  - (5) I accept the Wife's evidence that the Husband demanded that she make this payment and that he demanded she sign the re-mortgage application forms without allowing her the opportunity to consider their contents; and
  - (6) In my judgment the Husband, who came across as an intelligent and eloquent, took advantage of the Wife by insisting that she should sign up to the mortgage debt without the family home also being transferred into the parties' joint ownership. In all the circumstances of the case, equity requires the Wife's interest to be recognised.



*Common intention - express*

94. As to the Wife's case that a common intention was expressly discussed, in my judgment no clear agreement was reached between the parties because the Husband went out of his way to avoid giving clear and understandable information to the Wife. I have already found that he took advantage of the Wife, and I find as proven the Wife's assertion that "The Respondent simply said he was my husband and I should trust him. A Muslim wife does not challenge her husband" [329 § 12].
95. In my judgment, however, an express common intention nevertheless arose by virtue of the parties' express discussions relating to the Husband's requirement that the Wife should make regular payments in the amount of £500 per month, and his requirement that the Wife should join with him in re-mortgaging the family home, thereby taking on the responsibility of the debt. I accept that the Husband frequently referred to the family home as "our home". While in some cases that might not relate to beneficial ownership, in this case, considered as part of the evidence more generally, I accept that his term was intended to indicate to the Wife that she was a joint owner of the property. I accept the Wife's evidence that she trusted the Husband and only realised that the family home was not held in the parties' joint names following the parties' separation.
96. In my judgment this situation is comparable to the cases which are sometimes described as 'excuse cases', formerly under s.30 of the Law of Property Act 1925 and latterly under s.14 of the Trusts of Land and Appointment of Trustees Act 1996 (e.g. *Grant v Edwards* [1986] EWCA Civ 4), in that the Husband in my judgment gained the Wife's confidence, the Wife trusted him, and the Husband abused that trust by conniving an outcome whereby the Wife took on a share of the mortgage debt without gaining any legal interest in the family home.

*Detrimental reliance*

97. I am satisfied that the evidence of the Wife's payments to the Husband were largely referable to the mortgage and go beyond what a spouse might reasonably be contributing to shared expenses in a case where, as I have found, the Husband's income initially exceeded the Wife's and where the sum of £500 pm represented more than half of the mortgage cost.

98. I am further satisfied that by becoming jointly and severally liable under the (re)mortgage the Wife from February 2005 changed her position and acted to her detriment.

*Quantification*

99. Having established an interest, the question arises as to the quantification of the Wife's interest in the family home. On this issue, I note there was no express discussion about the precise share, in a case where, as I have found, the Husband has behaved in an untrustworthy way, where he has sought to take advantage of the Wife.
100. The Husband's case is that he has made a greater financial contribution by virtue of finding the property, obtaining the mortgage (originally in his sole name) and procuring the mortgage advance from Mr X.
101. Against that, the mortgage has been in joint names since February 2005 and while the Wife did not make a financial contribution every month, her ability to so contribute was affected by the fact that for extended periods she was not in employment due to giving birth and raising the parties' children. I remind myself that, in the words of Baroness Hale in *Stack v Dowden*, I should adopt a 'holistic approach' to the quantification of beneficial interest, surveying the course of dealing between the parties, and that I can
- “[69] ...draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally”.
102. Most particularly I bear in mind the actual amounts paid by the Wife and in particular the terms of the Husband's demand for the Wife to pay a half “share” in his document dated 15 July 2016 [231]. I remind myself that I am not conducting a retrospective exercise, which might take into account the Wife's substantial payments post-separation. The issue is what was the Wife's beneficial interest at the date of the bankruptcy order. While I accept that there were periods of time where the Wife did not make a financial contribution, which in my judgment related to the Wife performing more domestic roles such as bringing up the parties' children, I am satisfied that an inference can be drawn from the parties actions, including the monthly amount required

by the Husband and the Husband's demand for the Wife to pay £500 per month, that the parties should be held to a common intention of equal beneficial ownership.

103. If I am wrong about that, I would have imputed an equal share on the facts of this case.
104. I therefore declare that the Husband holds the family home on constructive trust for the benefit of the Husband and the Wife in equal 50% shares. As a matter of law, the Husband's interest falls into the hands of the trustee in bankruptcy. However, the trustee in bankruptcy has no claim against the Wife's 50%.
105. To the extent that issues of overriding interest might arise, I confirm that the Wife has at all material times been in actual occupation of the family home.
106. That concludes the first stage of this judgment. I now turn to a consideration of the parties' financial remedy claims.

## **RESOLUTION OF SECOND STAGE (FINANCIAL REMEDIES)**

### S. 25(1)

107. My first consideration is the minor children of the family, i.e. 'M' (12). While 'L' is no longer a minor, I appreciate that children generally do not magically become independent at 18 and, as in this case, sometimes remain living at home while they attend tertiary education. In this case, I accept the Wife's case that both girls are living with her and that their interests relevant to this case are to be accommodated, ideally in an owned property.

### s. 25(2)(a)

108. In terms of the assets available to the parties it follows that I have found, as the Wife has submitted, the following

Wife's 50% of family home	£155,000
Wife's bank balances	£2,589
Wife's liabilities	(£16,408)

Husband's 50% of family home (£155,000 less £235,000)	Zero
Husband's bank balances	£143
<b>Total (per Wife)</b>	<b>£141,323</b>

*Finding of fact in relation to the Husband's alleged debt*

109. During his oral evidence the Husband asserted that he owed “between £7k and £8k” to Mr X, referable to what he describes as a ‘gentleman’s agreement’ dating back to 2004. The Husband asserts that some monies were repaid to Mr X from the remortgage in 2005, although he was unable to give me a precise figure. I note that Mr X had not sought to prove that debt in the Husband’s bankruptcy. There is no evidence to support the assertion that the Husband owes his uncle any sum and I note the Husband made no reference to any debt to Mr X in his Form E [106]. On the issue of whether the Husband owes any sums to Mr X, I bear in mind the following:

- (a) There is no loan agreement;
- (b) No evidence whatsoever has been advanced of any sum being owed;
- (c) It is now 20 years since the monies were advanced;
- (d) There is no evidence of Mr X having called in the debt, most notably, during the bankruptcy proceedings, as recorded in an attendance note dated 18 November 2019
- (e) I bear in mind my conclusions as to the Husband’s credibility and I conclude that I dismiss the Husband’s assertion that he owes any funds to Mr X referable to the deposit. I am satisfied that the advance was originally made either by way of gift or soft loan. But if the latter that Mr X, who according to the Husband is a man of some wealth (and owns the property in which the Husband rents) has written off any expectation of being repaid.

110. This is not an income case. Both parties seek a clean break, and I do not have any jurisdiction to deal with child maintenance. However, I record that the Wife works as a

teaching assistant earning £1,414 pm. She receives tax credits and child benefit which takes her total monthly income to £2,094 pm. In my judgment the Wife is reasonably exercising her earning capacity, based around the practical needs of the parties' children.

111. The Husband earns £1,150 pm working part-time as a customer service assistant and receives state benefits of £825 pm for housing benefit; total £1,978 pm. Mr Williams submits with some justification that there is no obvious reason why the Husband does not increase his income. That may well be the case. I have already referred to the Husband's obvious intelligence. However, I do not consider myself in a position to reach any finding of fact as to his future earning level.

s.25(b)

112. The parties' primary capital need it to be accommodated. I have in mind the time honoured guidance of Thorpe LJ in *M v B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 53:

“...In all these cases it is one of the paramount considerations, in applying the s 25 criteria, to endeavour to stretch what is available to cover the need of each for a home, particularly where there are young children involved. Obviously, the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit it is of lesser importance, that the other parent should have a home of his own where the children can enjoy their contact time with him. Of course, there are cases where there is not enough to provide a home for either. Of course, there are cases where there is only enough to provide one. But in any case, where there is, by stretch and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome”

113. While that decision dates back to the legal dark ages, i.e. prior to *White v White*, in my judgment the guidance remains good law.

*Wife's housing need*

114. As to housing need, the Wife's evidence is that she cannot afford to remain living in the area of the family home and would look to rehouse in Essex for between £240,000 and £275,000 [339]. She has produced property particulars, to which I have not been referred during the hearing, from [597]. I accept that it is reasonable for the Wife to look for 3 bedroom property in Essex, and that the cheapest three bedroom properties she has evidenced have asking prices of £260,000. I take judicial notice of the possibility that properties are often bought at less than the asking price but bear in mind that some purchase costs will have to be paid by way of conveyancing etc.
115. I conclude that with a degree of stretching the Wife should be able to find somewhere suitable for £260,000 inclusive of purchase costs.
116. The Wife's mortgage capacity evidence is set out at between [577 and 585] involving quotes of £52,500, £58,530 and £125,250. While I understand the Wife's reluctance to maximise her mortgage capacity, in my judgment she will need to do so in order to purchase a property. There is simply not enough capital in this case otherwise. The higher quote for £125,250 relates to an illustration from the Skipton Building Society [578]. It involves a 25 year term, initially costing £769 pm. That compares to the current mortgage on the family home of circa £793 pm [94]. In my judgment it is reasonable for the Wife to obtain.
117. Accordingly, the Wife's need in terms of rehousing herself and the children of the family is as follows:

Housing	£260,000
Mortgage capacity	<u>(£125,250)</u>
Shortfall	£134,750

118. In addition, the Wife will also need to repay her liabilities of £16,408, making a total of £151,158.
119. Against that the Wife has bank balances of £2,589 whereby the shortfall is £148,569 which I will round up to **£149,000**.

*Husband's housing need*

120. The Husband also needs secure housing. However, he states that he will not be able to purchase another property any time soon [299]. He has been living in a property owned by Mr X where his housing costs are met through housing benefit. While the Husband naturally wishes to rebuild his financial position, whereby any sums received might be saved ultimately for a deposit, the prospect of rehousing seems to be a dim one, at least until he has increased his working hours and income.
121. In my judgment this is one of those cases, as contemplated by Thorpe LJ, where there is only enough to provide for one party to rehouse.

#### *Determination*

122. In the circumstances I order as follows:
- (a) from the net proceeds of sale of the family home, the Husband's 50% will be recovered by the trustee in bankruptcy. As to the Wife's 50% beneficial entitlement, estimated at £155,000, (i) the first £149,000 shall be paid to the Wife and any surplus shall be split equally between the Husband and the Wife. Following the Husband's discharge from his bankruptcy, my understanding is that he will be entitled to retain any such monies, free from claim by the trustee in bankruptcy;
  - (b) On my assessment of the figures this will mean that the Wife exits the marriage with  $£149,000 + £2,589 - £16,408 = £135,181$ . If the family home sells for more than the agreed market price, any additional amount (referable to the Wife's 50% share) shall be shared equally between the parties.
  - (c) By contrast the Husband will exit the marriage with  $(£155,000 - £149,000) = £6,000 + £143 = £6,143$ , with a half share of any surplus (see above).

#### *The Husband's pension*

123. It is correct to note that he will also retain his pension which is illiquid and has a very modest cash equivalent value (£22,881 as at 30 September 2020 [109]), although this is illiquid and in reality, will provide very little by way of pension income in due course. It would be wrong as a matter of law to add the cash equivalent value to the Husband's small share of assets. I remind myself of *Maskell v Maskell* [2001] EWCA Civ 858, per

Thorpe LJ at [6]) in which Thorpe LJ criticised “...the seemingly somewhat elementary mistake of confusing present capital with a right to financial benefits on retirement”

*Other s.25 factors*

124. In my judgment, there is no need to go through each of the other s.25 factors although I confirm that I have had regard to them. I have already set out the parties’ ages, the duration of this marriage. The standard of living was in my judgment a modest one.
125. To the extent that the Wife’s claim is not made out in terms of needs, Mr Williams submits that I can take into account the contributions she has made to raising the parties’ children and her future contributions. I am unconvinced about the need to deal with this argument. In any event, I recall guidance from Mostyn J that such arguments about future contributions to the upbringing of children is ‘untenable’ (*A v M* [2021] EWFC 89 at [17]).

**Outcome**

126. Accordingly, my judgment is as follows:
- (1) In relation to the first stage, I declare that at time of bankruptcy order, the Husband held the family home on constructive trust for the benefit of the Husband and the Wife in equal shares;
  - (2) In relation to the second, there will be an immediate order for sale of the family home. As to the division of net equity, the Husband’s 50% will be received by trustee in bankruptcy, and the Wife’s 50% will be divided so that the first £149,000 is received by her with any surplus divided equally between the parties.
  - (3) There will be an immediate clean break between the parties on the basis that the Child Maintenance Service is dealing with issues of child maintenance.
127. Finally, this is, perhaps uniquely, a judgment in which no reference has been made to legal costs. Neither side owes any sums because they have acted in main in person or with assistance on a *pro bono* basis.



128. There is accordingly no issue in relation to costs. I close this judgment by repeating the court's gratitude to Mr Williams and Ms Allard, which such assistance this final hearing would have been all but unmanageable.

129. That is my judgment.

**8 October 2024**