

B E T W E E N:

XX Applicant

- and -

XY Respondent

IMPORTANT NOTICE

The judge has given leave for this version of the judgment (but no other) to be published.

All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Ms Elizabeth Clarke (Counsel instructed by Miya Solicitors) appeared on behalf of the Applicant wife.

Ms Sassa-Ann Amaouche (Counsel instructed by Family Law in Partnership Ltd, Solicitors) appeared on behalf of the Respondent husband.

Written Judgment of His Honour Judge Edward Hess dated 21st July 2023

1. This case concerns the financial remedies' proceedings arising out of the divorce between XX (to whom I shall refer as "the wife") and XY (to whom I shall refer as "the husband").
2. The case proceeded to a final hearing over four days on 10th, 11th, 13th and 14th July 2023. I reserved judgment at the end of submissions made on 14th July 2023. I am handing down this written judgment by email on 21st July 2023. Thereafter I will invite the parties and their lawyers to draft an order which follows this judgment.
3. Both parties appeared before me by Counsel. Ms Elizabeth Clarke (Counsel instructed by Miya Solicitors) appeared on behalf of the Applicant wife. Ms Sassa-Ann Amaouche (Counsel instructed by Family Law in Partnership Ltd, Solicitors) appeared on behalf of the Respondent husband.

4. I am grateful to both Counsel for the way they have respectively conducted their cases before me, which was in equal measures helpful and skilful. Indeed both parties have been legally represented before me at a first class level; but it has, of course, come at a cost. The wife has incurred a total of £418,558 in legal costs and the husband a total of £540,849. Approaching one million pounds of family money has been spent on this dispute. It may be that both parties will want to reflect on the wisdom of their respective contributions to this costly, self-destructive and unhappy episode in their lives.

5. The court was presented with an electronic bundle running to 1,611 pages and a supplemental bundle running to 51 pages has been produced in the course of the hearing together with a number of other documents admitted during the hearing, but not included in the main bundle. I have considered all the documents presented to me, in particular I have considered:-
 - (i) A collection of applications and court orders.
 - (ii) Material from the wife including her Form E dated 23rd March 2022 and her statements dated 16th May 2023 and 7th June 2023.
 - (iii) Material from the husband including his Form E dated 22nd March 2022 and his statements dated 31st January 2023, 5th April 2023 and 7th June 2023.
 - (iv) A statement from Mr IP dated 20th June 2023.
 - (v) A statement from the parties' daughter dated 5th April 2023 together with an undated letter from her to the wife's Solicitors.
 - (vi) Material from Mr Sebastian Deckker, a surveyor from Savills acting as an SJE valuer of the family home.
 - (vii) Material from Mr Gavin Pearson, an accountant from Quantuma acting as an SJE business valuer.
 - (viii) Material from various medical experts.
 - (ix) Properly completed ES1 and ES2 documents.
 - (x) Selected correspondence and disclosure material.

6. I have also heard oral evidence from the wife and the husband and from Mr Sebastian Deckker, the parties' daughter and Mr IP, all subjected to appropriate cross-examination.

7. I have also had the benefit of full submissions from each counsel in their respective opening notes and their closing oral submissions.
8. The history of the marriage is as follows:-
- (i) The **wife is aged 73** (d.o.b. 18th September 1949). She had been married twice before she met the husband (the first marriage, to a very wealthy man in the Middle East, was possibly not one recognised in England) and had three children from these marriages: Q (now aged 49), E (now aged 47) and B (now aged 41). She was originally from Mauritius; but has lived in England for a long time and speaks fluent English. She has not had paid employment for a long time and is well past state pension age.
 - (ii) The **husband is aged 72** (d.o.b. 3rd April 1951). He had been married once before he met the wife and had one child from this marriage: H (now aged 43). He was born and brought up in Lewisham in London in England and, after a number of years as a Police Officer in Sussex and London, has had a largely successful career in the security and protection industry, specialising in the Middle East, which is ongoing; but he is also well past state pension age.
 - (iii) They met in 1989/1990, started a relationship of cohabitation in 1990/1991 and **married on 29th June 1994**.
 - (iv) The parties adopted two children in the course of the marriage, both from Mauritius. It is a sad feature of the present litigation that, while both parties appear to be devoted to both of these adopted and now adult children, the children have in different ways both become horribly entwined in their parents' disputes:-
 - (a) The parties daughter **is now aged 26** (d.o.b. 20th August 1996). Although not having fallen out with the wife as such, she appears to have sided with the husband in this financial dispute and currently lives with him in his rented accommodation. She runs a florist business started with monies gifted by the husband to her and owns a property in Dubai gifted to her by the husband. Unfortunately, largely because of her financial entwinements with the husband, it became inevitable that she would need to be a witness in this case, and be subjected to cross-examination and criticism by the wife's lawyers. I do not criticise the wife's lawyers for doing this, but I fear this will not help the relationship between mother and daughter in the future.
 - (b) The parties' son **is now aged 23** (d.o.b. 30th April 2000). He suffers from autism and a schizoaffective disorder, and his behaviour has been challenging for a long time and he has lived in care institutions for more than a decade, currently the GG Hospital. The parties disagree as to what should happen to him.

The wife would like him to live with her (and a home trial has very recently been authorised by the treating Consultant Psychiatrist, at the wife's request). The husband strongly feels that this will not work and believes it is not in his son's best interests. The parties are acrimoniously arguing about his care plan and about the validity of a Lasting Power of Attorney in favour of the wife executed some time ago, but discovered by the husband earlier this year. When the financial remedies proceedings are concluded it seems, sadly, very possible that the parties will become locked in Court of Protection litigation over their son.

- (v) From 1999 the family lived at the family home, a substantial property in West London. It has seven bedrooms and is set on a large plot, including a swimming pool and a tennis court in the garden. After nearly 25 years of occupation the wife finds it very difficult to contemplate leaving this home.
- (vi) Unfortunately, the last few years have seen a number of devastating blows to the family and what, not very long ago, seemed like a successful and very prosperous home and family (albeit dealing with the painful difficulties with their son's disabilities) has really suffered under these blows and is continuing to suffer.
- (vii) First, the wife's health took a debilitating turn for the worse. In 2018 the wife, in the words of Dr JJ, a Consultant Neurologist, writing in September 2022, had a "...*brain stem stroke which almost killed her. She has made a relatively good, though incomplete, recovery. She still has difficulties with speech and swallowing and impairment of balance. Her life expectancy is, unfortunately, greatly reduced...*". It was possible to observe some of the wife's ongoing difficulties when she gave her oral evidence. My impression is that the marriage began to deteriorate badly from about this time.
- (viii) Secondly, the husband's security and protection business, which had provided a high level of wealth for the family for a significant period of time, has been substantially affected by a number of adverse events. These include the onset of Covid (with its restrictions on international travel and thus, for a period, the need for security protection), the rise of the Taliban in Afghanistan (which has prevented the husband's business regaining its high value contracts in that country, which previously represented a significant portion of turnover) and his entanglement with two pieces of acrimonious litigation (the K litigation and the B litigation, both of which have caused reputational difficulties and, in the B litigation, the husband had to self-report himself for giving perjured evidence, which caused a retrial in the High Court). As will be discussed below, partly self-inflicted and partly inflicted through fate, these events have had a significant adverse effect on the husband's business.

- (ix) Thirdly, the husband became caught up in the affairs of a middle eastern politician, in his dispute with his wife. The fall-out from these events [redacted in this judgment but set out in the unredacted version] caused the husband to become suicidal and he has subsequently suffered substantial mental health difficulties, he began drinking significant amounts of alcohol and he had two periods as an in-patient in a mental health facility, the first in October/November 2021, the second in December 2022. He remains vulnerable and needing proper medical care. In the words of Dr VN, Consultant Psychiatrist writing on 21st April 2023, he needs to continue taking diazepam and his prognosis is guarded: *“I would hope by maintaining contact with his psychiatrist and with his counsellor he can remain well in the short term”*.
- (x) In the middle of all of this, and at least by March 2021, the marriage had broken down, and the husband texted the wife on 11th March 2021 to say that he no longer loved her and that the marriage was over, having *“been in trouble for years”*. The parties remained unhappily together at the family home until they finally separated when the husband moved into rented accommodation in Brentford on 15th October 2022. The parties’ daughter later moved from the family home to this rented accommodation to live with the husband.
- (xi) Even the Divorce proceedings have been difficult in this case. Divorce proceedings were commenced by the wife in November 2021. The husband later cross-petitioned. Decree Nisi was ordered on the husband’s cross-petition with a costs order in his favour. Decree Absolute was ordered in September 2022. The divorce costs have not yet been assessed, but the husband is asserting a claim for £5,704. To avoid further separate confrontational litigation on this subject, and in the absence of any particular challenge to this figure, I propose to make a costs order which wraps up this costs liability at this figure within my order in the financial remedies proceedings.

9. The financial remedies proceedings chronology is as follows:-

- (i) The wife issued Form A on 14th December 2021.
- (ii) Forms E were exchanged in March 2022.
- (iii) First Appointment directions were made by DJ Griffiths on 7th June 2022.
- (iv) A hearing listed as an FDR was heard by DDJ Rayner on 30th September 2022, but the case was not ready for an FDR and further directions were made on the basis that a private FDR would be heard before Ms Nicola Fox on 29th November 2022.
- (v) By the time the case first came before me for what was supposed to be a post pFDR directions hearing on 19th December 2022, the FDR had not taken place because, inter alia, of the husband’s mental health difficulties.

I made some further directions and re-scheduled the pFDR for 7th February 2023. This did take place before Ms Nicola Fox; but no agreement was reached.

- (vi) The case returned to me for post pFDR directions on 1st March 2023 and on that occasion I listed a final hearing for 10th, 11th, 13th and 14th July 2023.
- (vii) Section 25 statements were exchanged in June 2023 and the final hearing has proceeded as directed.
- (viii) I heard three days of oral evidence and one day of closing submissions and reserved judgment, which I am now handing down in writing.

10. In dealing with the claim I must, of course, consider the factors set out in **Section 25 and Section 25A Matrimonial Causes Act 1973** together with any relevant case law.

11. Section 25 Matrimonial Causes Act 1973 reads as follows:-

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring

- for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 - (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

12. Section 25A Matrimonial Causes Act 1973 reads as follows:-

- (1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1) (a), (b) or (c), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.
- (2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

13. There are a number of non-disclosure issues in this case, and I therefore propose to set out here the law on this subject, which is not controversial, and derives from a number of cases, inter alia, the Court of Appeal decision in *Moher v Moher* [2019] EWCA Civ 1482 and the Mostyn J decision in *NG v SG* [2011] EWHC 3270. From these cases the following principles can be derived:-

- (i) The court is not required to reach a specific determination as to the figure, or bracket, of undisclosed resources, but there must be a sound evidential basis for reaching a conclusion as to the scale of undisclosed assets. The Court should not be led into a knee-jerk reaction that says simply because evasiveness and opacity is demonstrated there is some vast sum salted away. This is not to say that the Court has to put a precise figure on the scale of the hidden assets, let alone to identify by reference to evidence where they are or what they comprise.
- (ii) The Court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden. But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the Court is satisfied he has not got.

- (iii) If the Court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.
- (iv) In making its judgment as to quantification the Court will first look to direct evidence such as documentation and observations made by the other party. The Court will then look to the scale of business activities and at lifestyle. Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.
- (v) The Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that than that the Court should be drawn into making an order that is unfair to the Claimant.

14. Before I turn to consider the section 25 factors I want to say something about my **overall assessment of the parties** and the extent to which I can rely on their respective evidence:-

- (i) I found the wife not to be a reliable or cooperative witness. It may be that she has been made a little weary and a little vengeful by the way that the husband has behaved in this litigation and it may be that her cognitive functioning has been dulled by the effects of her stroke; but in my view that does not adequately account for all her shortcomings as a witness. She was repeatedly truculent and unhelpful in her conduct in court. She unreasonably and combatively declined to engage at all in the assessment of her housing need and in the consideration of what might happen to the family home, saying *“I will die in that property...I would not even accept £20,000,000 for it...Of course I haven’t considered any of the properties (the husband) has put forward. I will die in [the borough of the family home] ...Why would I want to move to [nearby boroughs]Why should I go where he wants me to go”*. She repeatedly told me that she refused on principle to read any documents produced by the husband or his solicitors and told me that she did not even read her own section 25 statement before signing it (although I do not think that either of these things are likely to be wholly or perhaps even partially true, and in so far as the wife’s comments might be seen as a criticism of her own lawyers I think it highly likely that they have acted in a proper professional manner). Further, I formed the clear view that she was not telling me the truth about her Dubai bank accounts, something closer to the truth being extracted by persistent analysis and scrutiny from Ms Amaouche. Likewise, I do not accept the wife’s evidence about her jewellery. Overall, whilst she deserves due sympathy for a run of adverse life events, I have reached the conclusion that I should treat the wife’s evidence with a significant degree of caution.
- (ii) I also formed the conclusion that the husband has significant shortcomings as a witness. It is a matter of public record, which he has confirmed to me, that he deliberately perjured himself in the course of a High Court civil

trial in 2020. Of course, I give myself a *Lucas* direction and remind myself that just because somebody has lied once it does not follow that they are always lying; but I have formed the clear view that the husband has been similarly dishonest in the present proceedings, as Ms Clarke's skilful cross-examination was able to establish and his effort to tell me that he was now a reformed character in this respect after his experiences in the civil litigation were rather empty. I note, for example, that, in a moment when he was contemplating suicide in October 2021, he asked his accountant to transfer assets to a lady with whom he had had a relationship and hide this from the wife in the event of his death. I do not accept his explanations for material non-disclosure in relation to the Property Holdco transactions and have found him to have been deliberately dishonest about this. I do not accept his account of his dealings with his accountant (and regard it as significant that the husband did not call the accountant as a witness at the trial, despite my express permission to do so in my order of 1st March 2023). I do not accept his assertions about the Aston Martin motor cars. Overall, I do not consider the husband to be a reliable or honest witness and have reached the conclusion that I should treat the husband's evidence with a significant degree of caution. I note Ms Amaouche's drawing to my attention in her final submissions that the husband had expressed his "*disappointment*" to her that his own lawyers "*did not intervene to manage the intensity of the cross-examination*" in the context of his mental health medication (diazepam). In response to that, I comment that the husband was expressly given the opportunity by me to take such breaks as he wished in the course of his oral evidence (indeed we took an extended lunch break at his request in the middle of his evidence), that I saw nothing inappropriate in Ms Clarke's cross-examination and that I observed nothing which suggested to me that his answers were being affected by dizziness or tiredness caused by his medication.

- (iii) On the positive side, I was struck by the very real love and devotion that both parties have to their two adopted children. I have no doubt at all that both parties wish only the best for these children and wish to be generous to them both in personal and financial terms. On the negative side, I fear that both parties have not shrunk at times from using this factor in an attempt to assist their own cases. The wife has sought to justify her need to retain the family home by reference to their son's needs. The husband has sought to portray some of his own assets as being the children's assets. I shall deal with these matters in detail below, but want to say at this stage that I have found myself largely unconvinced by either of these attempts and have found them, on the whole, to be disingenuous and unattractive. Once the division of family assets between husband and wife has taken place it is, of course, open to each party to be as generous as they wish to their children from their own portion of the assets; but this should not be inappropriately utilised in the present dispute.

15. I now turn specifically to the **section 25 factors**.

16. The statute requires me to give first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen. In this case, neither of the children of the family are under 18, and their daughter is an independent adult; but the needs of their son, in the context of his disabilities, are one of the circumstances of the case – not my first consideration, but nonetheless in the mix of circumstances for me to consider.
17. In relation to the computational part of my task, which in this case is the bulk of my task, I have to assess the “**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**”. Some of the figures have ultimately been agreed, and I do not need to deal with some of them in detail, but I have a number of comments to make and important disputed issues to determine, which I do as follows.
18. There has been an unusual dispute about the **value of the jointly owned family home**:-
- (i) Savills, in the person of Mr Sebastian Deckker, a very experienced chartered surveyor, were instructed on a SJE basis, and he reported in August 2022 that the figure of £4,500,000 represented a fair valuation for the family home. He produced supplemental reports in October 2022 and May 2023 in which he maintained this figure. Despite a careful cross-examination by Ms Amaouche, he was not minded to move from this figure. Save for the matters discussed below, I have not identified any weakness in his analysis, which was plainly the well-considered evidence of an experienced and competent professional. Without more, this would have been a very straightforward matter for the court to accept Mr Deckker’s valuation figure.
 - (ii) In a completely separate and unilateral exercise, the husband instructed Grimshaw Estate Agents, a local Ealing agent, to carry out a market appraisal of the family home in September 2022 and they suggested an asking price of £6,500,000. They drew up particulars and were permitted to do a limited amount of marketing. From this exercise an interested buyer, Mr IP, emerged. He visited the property, spent £3,000 on a measuring survey in the context of building works he would like to execute, and made an offer of £6,000,000 to buy the property which has been formally recorded in a document dated 26th January 2023. The wife’s position on this, to some extent supported by Mr Deckker, has been that the court should be cautious about this offer and should be fearful that the offeror will walk away or reduce his offer if and when it is accepted on a subject to contract basis. Nonetheless, Mr Deckker took the view that if it is a real offer it should be accepted as being well above the true market value. The wife was suspicious that Mr IP has been in cahoots with the husband and, as a consequence of this, the husband produced a statement from Mr IP (with supporting financial and other documents) and he was

called as a live witness. There was nothing in his evidence, in my view, to suggest that Mr IP is other than entirely genuine in his presentation as a person ready, willing and able to purchase the family home forthwith for £6,000,000 and it was not the wife's case before me that her suspicions that Mr IP is in cahoots with the husband have any evidential basis. Of course, his offer is subject to changes of mind further down the line, and there is '*many a slip 'twixt cup and lip*', but Mr IP struck me as a serious minded and reliable man of some wealth (and apparently able to buy the property without a mortgage) with a clear view and, having heard his evidence, I consider it more likely than not that, given the chance, he would proceed to a purchase at £6,000,000. In these circumstances, it is inappropriate for me to proceed on the basis that the real value is £4,500,000. In the end, as Mr Deckker accepted, a property is worth what somebody is prepared to pay for it, and Mr IP is prepared to pay £6,000,000 for it.

- (iii) If it was common ground that the property was to be sold then this unusual position could be resolved by making a formulaic order which balanced between the parties the risks involved of Mr IP withdrawing or reducing his offer, but the wife's very strongly put case is that (wisely or otherwise) she wishes to retain this property as part of her portion of the family assets. It will be seen below that I have decided that there is sufficient capital in the case for this to happen and accordingly I have decided that the wife should have this property transferred to her as part of my order, but that in my calculations I have decided that I should attribute to the property a value of £6,000,000. In so doing I am far from endorsing the proposition that the wife has a reasonable need to live in a property of the size and value of the family home. The reality is that a home worth significantly less than the family home, perhaps £2,000,000, would be very adequate to meet the needs of either party, with or without one of their adult children.
- (iv) There is a substantial mortgage in the joint names of the parties which has an outstanding balance of £1,246,117. It will need to be part of my order that the wife forthwith takes over responsibility for meeting the mortgage repayments on this mortgage and finds a way of obtaining the husband's release from this mortgage by a particular date, with a sale in default. In my view it is reasonable to give the wife until 31st January 2024 to obtain this release and my order will include this deadline, with an order for sale in default of this being achieved, but with liberty to apply for an extension.
- (v) Accordingly I shall place the family home in my asset schedule at a figure of **£4,573,883** (after deducting the mortgage and notional sale costs at 3%) and I shall order that the property is transferred to the wife on the terms referred to above.

19. I next turn to the issue of the **wife's Dubai properties and related bank accounts:-**

- (i) It is common ground that the wife owns two real properties in Dubai:-
 - (a) Apartment 1; and
 - (b) Apartment 2
- (ii) It is agreed that **Apartment 1** is worth AED1,700,000, that is £374,000. It is agreed that the **net value** is this figure less sale costs at 3% less UK CGT of £31,773, that is **£331,007**. This property is held in the wife's unmarried name and it is common ground that this is her property and this figure should be entered on my asset schedule.
- (iii) It is agreed that **Apartment 2** is worth AED3,450,000, that is £759,000. It is agreed that the **net value** is this figure less sale costs at 3% less UK CGT of £147,963, that is **£588,267**. This property is held in the wife's married name and it is common ground that this is her property and this figure should be entered on my asset schedule.
- (iv) The wife's Form E made no reference to any bank accounts held by her in Dubai. The husband believed that the wife did have bank accounts in Dubai into which the rent from these properties was being paid and he asked the wife a series of questions about this in his questionnaire. The wife's response was that she knew little or nothing about the renting out of the properties (saying that a friend dealt with this and implied that there was little or no profit once service charges were paid) and asserted that "*The applicant can confirm that she does not have any account in Dubai*". This position was maintained in the response to the Schedule of Deficiencies. It was only in the few days leading up to the final hearing, and in the course of the final hearing, that information began to arrive. The first proper statements arrived mid-final hearing for an AED account in the wife's unmarried name with a Dubai bank. It was clear from the wife's oral evidence that she knew a good deal more about this account than she had previously stated and, although her evidence was evasive, there was some indication that there might be another account the same Dubai bank, or another bank in Dubai. I had the clear impression that the wife had deliberately made little or no effort to acquire the relevant information. I do not accept her evidence that her friend, under the malignant control of the husband, has prevented her obtaining this information. Further, it was clear from reading these statements that rent was regularly being paid into this account over the period covered by the statements and the balance as at 25th May 2023 (the last statement provided) was AED651,049, that is £143,231 – a very significant sum, previously not disclosed. Although the wife did little in her oral evidence to help explain this I am satisfied on a balance of probabilities that this was the rent account used for the Apartment 1 property (carrying the wife's maiden name) and that there is very likely to be another account (probably in the married name) receiving rent for the Apartment 2 property. At the time of writing this judgment there has not been any disclosure of another account. I note the exchange of emails between the Dubai bank and the wife's solicitors in the last few days; but if this matter had been properly addressed a long time ago it may

have been possible to get more information; but the court has to make a decision on the available information and it is therefore necessary for me to consider whether I should draw adverse inferences of the existence of another account against the legal tests set out above. My conclusion is that I should draw adverse inferences because I am satisfied that the wife has been engaged in non-disclosure. In assessing the quantification of funds that have been hidden, in a broad but realistic and reasonable way, I propose to find that the other account has an amount in it proportionate to the value by which the Palm Shoreline property exceeds the Apartment 1 property, i.e $3.45 / 1.7 \times \pounds 143,231 = \pounds 290,675$.

- (v) I therefore propose to find that the wife has in her Dubai accounts **£143,231** and **£290,675** and I shall include these figures in my asset schedule.

20. I next turn to the question of **chattels** (excluding the four Aston Martin motor cars, which I shall deal with separately). There is some written information on chattels in the bundle and I have heard a limited amount of oral evidence on the subject. The disputed area here is largely in relation to the wife's jewellery. She has asserted that much of it was stolen in 2018 when she was in hospital after her stroke, possibly by the husband. Having heard the oral evidence, including that of the parties' daughter, I do not accept that the husband or anybody else stole her jewellery in 2018. Having said that, it is not possible or appropriate for me to attach the values which the husband attributes to it, there being insufficient evidence of this. In the end I have decided to leave the chattels as they stand on the Form ES2 and, making the broad assumption that there is not a huge differential between the saleable value of the items retained by the husband and those retained by the wife, I shall leave them off my asset schedule altogether. For the avoidance of doubt the husband will retain ownership of the Bentley Continental on his side of the ES2 and the wife will acquire or retain ownership of the Vintage Bentley on her side of the ES2. It will be a matter for the wife whether she takes advantage of the husband's offer to sell it for her or take ownership of it herself. The contents of the family home shall be divided in specie between the parties on a fair and equal basis. The parties should try and reach an agreement on this as soon as possible.
21. I next turn to the **wife's inheritance from her deceased mother**. It is common ground that the wife's mother has died and that the wife will receive a sum of money when a property in London is sold and the proceeds divided (to which the wife is entitled to 11.11%). Counsel have put forward some putative calculations and, taking into account Inheritance Tax, I have reached the conclusion that the wife's estimate of net receipt of **£135,000** is about right and that is the figure I propose to include in my schedule.
22. The wife has funded her costs in these proceedings by taking out a sequence of **litigation loans**, all of which (save for a modest loan from her daughter Q) are hard commercial loans with interest accruing. These debts total **£466,634**, an agreed figure, which I will include in my schedule.

23. I now turn to the husband's **shareholdings in Property Holdco Limited and Property Holdco 2**, about which I make the following comments:-

- (i) It is common ground that the husband is the legal owner of 100% of the shares in Property Holdco Limited, which is a Free Zone Establishment incorporated in June 2021 in the Jebel Ali Free Zone (and whose existence therefore appears on no public register).
- (ii) It is common ground that Property Holdco Limited owns three real properties in Dubai with the following net values, from which it can be concluded that the company is worth **£2,288,072**.

Property 3, Dubai ¹	874,940
Property 4, Dubai ²	917,620
Property 5, ³	495,512
TOTAL	2288072

- (iii) Property Holdco Limited owes £1,100,000 to LT Limited, but since both companies are held 100% by the husband I have accepted Ms Clarke's submission that this loan can be disregarded in the computation exercise since it is within the power of the husband simply to waive the loan. Further, I accept Ms Clarke's submission that since Property Holdco Limited is incorporated in a tax free zone, there would be no tax levied on a liquidation of the company and sale of the properties.
- (iv) The real argument about this shareholding, for me to determine in this hearing, has been whether or not I should regard the beneficial interest in the shareholding as being held by the husband himself (as the wife argues) or, via a trust, by the parties daughter and/or son (as the husband argues). In relation to this dispute I have no hesitation in accepting the arguments put forward by the wife (which are helpfully and clearly articulated in paragraphs 11 to 14 of the wife's statement dated 16th May 2023, which is really more in the nature of a pleading). I am entirely satisfied on the evidence, and the husband more or less conceded this in his oral evidence, that whatever the husband may have thought about doing in the future, and may yet do (that is his choice), there is no trust in existence in relation to this shareholding and he is the legal and beneficial owner of it and the figure of **£2,288,072** should appear in my asset schedule in his column.
- (v) I also wish to say this. I am entirely satisfied that the husband deliberately and dishonestly sought to hide this asset from the wife and the court in the hope that he would not have to share it with the wife. I entirely agree with

¹ This property was purchased in the parties' daughter's name on 4th March 2020 and transferred into Property Holdco Limited on 27th December 2021. The figure in the table is based on a value of £902,000 less sale costs at 3% = £874,940

² This property was purchased on the husband's behalf by Mr HG in September 2017 and transferred into Property Holdco Limited on 5th December 2021. The figure in the table is based on a value of £946,000 less sale costs at 3% = £917,620

³ This property was purchased by Property Holdco Limited on 9th December 2022 figure is based on a value of £510,837 less sale costs at 3% = £495,512

Ms Clarke's submission that the total absence of any reference to this company or its underlying assets in the Form E and the deliberate misleading of the SJE Mr Pearson by the husband in league with the accountant (when Mr Pearson was pursuing the issue in the context of his valuation of the LT Ltd - see his letter dated 11th November 2022) can only be explained by the above conclusion. This was an extremely unattractive piece of litigation misconduct by the husband in which the accountant was also heavily involved.

- (vi) Some of these comments also apply to the husband's shareholding in Nouvis DMCC, but since there is an agreed valuation of this interest at the relatively modest figure of **£11,372**, I do not propose to go into any detail on this, but I shall include it in the asset schedule as the husband's asset.

24. There have been some references in the course of the hearing to the property at **Property 6 Dubai**, which is held in the legal name of the parties' daughter. It is worth £902,000 and was funded entirely by the husband (through his corporate assets). The wife might have made an application to set aside this transaction under Matrimonial Causes Act 1973, section 37. She chose not to do this and, although this decision (see paragraph 15 of the wife's statement of 16th May 2023) may have been motivated by an entirely understandable wish not to have to join the daughter as a party, it is my view that this decision closes this issue and on that basis I should not include this asset on my schedule. Ms Clarke has proposed that I should still regard this as an asset available to the husband as it is likely that the daughter would, in reality, do anything he asked of her by the husband in relation to this asset. The daughter herself rejected this proposition in her oral evidence and, in the end, I have decided that I should disregard this proposition.

25. I now turn to the husband's **shareholding in LT Limited and WR Limited**, about which I make the following comments:-

- (i) It is common ground that the husband is the legal owner of 100% of the shares in these companies.
- (ii) It is common ground that the husband should retain these assets and that the interests are worth **£870,000** and **£43,147** respectively and that these figures should be included in my schedule in the husband's column. The second of these figures is not controversial and the first of these figures, also not controversial, can be derived from paragraph 24 of Mr Pearson's updated report of 29th June 2023, which was not challenged by either party.
- (iii) For these purposes, and for the reasons discussed above in relation to Property Holdco Limited, I do not propose to add to this figure the monies due from Property Holdco Limited.
- (iv) In relation to the Directors' Loan Account in LT Limited I propose to include the figure in the same paragraph of Mr Pearson's report, that is

£151,000. I was not persuaded by the evidence that this figure should be reduced to £10,700, nor was Mr Pearson challenged on this, and the valuation of £870,000 assumes £151,000 is owed to the husband via the Director's Loan Account.

- (v) I recognise that there is some strength in Ms Amaouche's closing submission that the valuation figure for LT Limited includes a figure of £500,000 for LT Subsidiary Limited, a wholly owned subsidiary, which involves a subjective judgment which would not necessarily be achieved on a sale or break up. I do not propose to change the figure in my asset schedule on this basis, but I take the point that the husband is receiving an asset which is not cash and has risks attached to it.

26. I now turn to a disputed part of this case, the beneficial ownership of the **four Aston Martin motor cars**, in relation to which I have the following comments:-

- (i) It is common ground that, collectively, the four cars are worth **£1,005,000** (i.e. £440,000 plus £280,000 plus £110,000 plus £175,000). It is also common ground that all four were purchased by the husband between July 2019 and December 2020.
- (ii) The husband's Form E (dated 22nd March 2022) recorded these cars as being the husband's assets. Although he then declared an "intention" to pass them on to the parties' son as part of his Inheritance Tax planning, the Form E is in my view perfectly clear that, as at that date, this had not happened and they were his to dispose of as he wished. The Form E did record (perfectly properly) the creation of a Trust in 2018 (The Family Settlement No.2) of which the son was the main beneficiary, but also records that as at the date of Form E this Trust included just the £130,000 in cash which the husband had invested in it.
- (iii) Further, the Form E did not disclose the existence of any repayable loans advanced in May and December 2020 by the accountant to the husband to assist with the purchases of two of the Aston Martins.
- (iv) The husband's case has significantly developed and changed since his Form E. He asserted in his statement dated 7th June 2023 that, although the situation has "*never changed*" (see paragraph 126), these cars were in fact transferred into the Trust in the ways suggested by the previously undisclosed "Trust Accounts" which had been produced by the accountant (allegedly contemporaneously), i.e. they were transferred in the course of y/e 31st March 2020 and y/e 31st March 2021.
- (v) The statement of 7th June 2023 also explained that his Form E had not included any reference to a number of substantial loans made by the accountant to the husband in May and December 2020, which were now recorded as being £678,000 in the newly disclosed Trust Accounts, because "*this loan was to me but as trustee of the son's Trust*".

(vi) Ms Clarke suggests that these earlier transfers and loans were not true, that they were a dishonest presentation manufactured by the husband and the accountant, designed to take the Aston Martin motor cars out of the family assets for distribution between husband and wife to the detriment of the wife, and that the Trust Accounts were produced much later to support that dishonest presentation. I am entirely satisfied that she is correct to make this suggestion and I find that this is what happened. In reaching this conclusion I note the following matters which have influenced me in this regard:-

- (a) The accountant was not called to support the husband's account when he perfectly easily could have been. Accordingly he avoided being cross-examined on these controversial documents
- (b) The June 2023 presentation simply cannot be reconciled with the presentation in Form E.
- (c) There is no contemporaneous documentation recording the transfer of the car into the trust.
- (d) The allegedly contemporaneous Trust Accounts cannot be reconciled with the Trust Tax Returns actually contemporaneously filed which include no record of the transfer of assets (there is a question in the Tax Return which plainly requires that such information should be given – it was not).
- (e) To cover the criticism that the very large loans alleged to have been made by the accountant were not recorded in loan agreements, previously undisclosed 'loan agreements' were produced in the course of the final hearing. In a skilful cross-examination of the husband by Ms Clarke, during which the husband was unable to give a credible explanation of the provenance of these documents, it became clear to me that these documents were very unlikely to be contemporaneous documents, but, on a balance of probabilities, had also been dishonestly produced to support the husband's case.

(vii) The net result of all the above is that I shall regard the Aston Martin motor cars as being the husband's assets, available to him to dispose of after this case in such way as he wishes and I shall place the figure of **£1,005,000** in the husband's column in my asset schedule.

27. I now turn to another highly contentious part of this case, the husband's dealings with **The accountant**, in relation to which I have the following comments:-

(i) The accountant is a long-standing employee and close colleague of the husband and has been the finance director for LT Limited for much of this

period. They have worked together since 2008 and, I am satisfied on the evidence, are extremely close and the husband is fairly dependent on the accountant for accounting and finance matters. In 2010 the husband gifted to the accountant a 5% shareholding in LT Limited.

- (ii) On 23rd January 2020 the husband paid £3,700,000 to the accountant on the face of it in return for his surrendering his 5% shareholding in LT Limited to the husband. On the face of it, this is a very curious transaction. If this had been intended to represent a share buy out figure on a pro rata value basis then that would place a value on the company of £74,000,000, way, way above the valuation figure set out above and way above what the husband believed it to be even in the most optimistic period of his work (which had itself passed by 23rd January 2020, at which time the business was already facing the difficult loss of contracts which caused the turnover to drop by about 33% between 2017 and 2019 and a further 70% in 2020 and caused the business to become loss-making from 2018 onwards). The husband has been asked to explain this transaction and he has said in writing (and repeated to me orally) that “*there was no rhyme nor reason for the figure of £3,700,000*” and “*the figure had nothing to do with the overall value of his shareholding but was considered by both of us as a fair and realistic amount given his hard work and contribution over many years*”. I ask myself why a rational person, and a businessman as experienced as the husband, would enter into such a transaction. Why would a 95% owner pay the 5% owner much more than what appears to be the entirety of the value of the business to acquire the 5% shareholding?
- (iii) I heard a good deal of oral evidence on this subject from the husband; much of which I regarded as evasive and unconvincing. He was, for me, simply unable to explain the logic of this transaction.
- (iv) Further, Ms Clarke’s closing written submissions included this colourful passage:-

“But of course there is then the elephant in the room - The deafening silence of the witness from whom you have NOT heard; from whom you have NOT had a statement, despite permission having been given to do so - the accountant – H’s long term friend and associate. The man who is in at the heart of every transaction this husband engages in (the man, you heard yesterday, who went with the daughter to Dubai when he and H were endeavouring to set up a company in her name). - The man who, apparently, engaged in an arms length transaction for LTL to buy back his tiny, 5%, holding in LTL, for a sum vastly in excess of any possible value (by the time of the transaction of de minimis value, remembering that there had been an offer of £1m for that part of the business which generated the vast majority of turnover); The man who, apparently, drew up the trust accounts which have made such a recent appearance in this case (and which are completely inconsistent with the filed HMRC returns); - The man who, apparently, loaned H £598,000 in 2020 but when H was completing his Form E (no doubt with help from the accountant) completely forgot to mention it; - The man who H trusted in

the event of his death to effect the clandestine transfer of a property and £100,000 to a woman with whom H was in an inappropriate relationship; - The man, as we have seen, who was prepared deliberately to deceive the SJE accountant in an attempt to hide the LTL loan to Property Holdco Ltd and, thus, the valuable property assets held within it - The man who knows everything there is to know about H's financial affairs - But a man who, seemingly, has his line in the sand. Having solicitors write a letter in support of your old friend's story is one thing; signing to a statement of truth, coming to court to speak to it – that is quite another. - So perhaps it is no coincidence that the accountant has taken himself off to the depths of California while this trial is going on - We submit that the absence of the accountant is one of the most telling pieces of (non) evidence in the case - Your Honour can and should draw the inference from his unwillingness to provide a statement that the accountant knows all too well the extent of the non-disclosure and falsehoods which run through H's evidence and is just not prepared to engage further than he has already in H's attempts to deceive”

I agree with the detail and sentiment of these comments.

- (v) The recent emergence of the knowledge that it was the very large advance of monies (variously said to be £598,000, £600,000 or £668,000) from the accountant to the husband to assist with the purchase of Aston Martin cars, covered with loan agreements of recent disclosure and doubtful provenance, which perhaps throws some light on this. For me, the most likely explanation of the £3,700,000 transaction is that the husband wished to protect some money, possibly from the wife or possibly from others involved in the civil litigation, or possibly both and thought that the best way to do this was to lodge some money with the accountant with the figleaf of the 5% share transaction as cover. In reality that money, or at least a substantial portion of it, was really the husband's money being held to his order. This is one of the suggestions made by the wife in her statement / pleading dated 16th May 2023, at paragraph 27. Given that the husband was aware that this was what the wife's case would be, if he wished to counter this argument it is very curious indeed that the accountant was not called upon to give evidence to defend the situation.
- (vi) A finding to this effect seems to me to be entirely consistent with the legal principles on adverse inferences referred to above. There may be a specific and hidden agreement between the husband and the accountant to this effect, but it has not emerged so I have to do the best I can to make a broad and reasonable quantification of what the accountant still holds for the husband and include that in my asset schedule in the husband's column. Making such a broad assessment, and allowing for the fact that the accountant was entitled to something for his shares and that he has already paid back to the husband approximately £600,000 or even a little more, I propose to make the broad assessment that the accountant is holding £2,500,000 to the husband's order and that this is an asset available to the husband which should be included in my asset schedule.

28. The husband has a pension fund, which is in payment, held with **JHT Pension with a CEV of £1,333,206**. This is not a case where anybody has suggested that the pension should be subjected to a pension sharing order (and there is no PODE report) and both parties have really approached the matter on the basis that I should treat the pension CEV as being equivalent to cash and include the CEV in my asset schedule. As I think about the fair outcome here, I need to be cognisant of the fact that there will be an income tax charge as money is drawn down from the pension fund and the husband may think it fairer if that obligation is shared. This outcome would be achieved by my offering the husband the option of being subjected to a suitable pension sharing order in lieu of paying the equivalent lump sum to the wife and I shall return to this below. Indeed, a pension sharing outcome might have some upsides for the wife as well as she has no pension fund of her own. She does receive some state pension, although she appears to be receiving less by way of state pension than the husband. I was invited by Counsel to assume that, because of the date she reached state pension age, she should be able to utilise ‘substitution’ to gain the same state pension as the husband and I am not quite sure why this has not yet happened.
29. The husband has partially funded his costs in these proceedings by taking out a **litigation loan**, the balance of which is £227,922, which is a hard commercial loan with interest accruing. The husband has a number of other debts and his total indebtedness, excluding legal costs liabilities, is **£261,524** and I shall place this figure in my schedule.
30. Having made these determinations I am now able to set out my assessment of the assets and debts for distribution in this case. The situation can be summarised as follows:-

REALISABLE ASSETS/DEBTS ⁴

Joint

Family home ⁵	4,573,883
joint bank account	0
TOTAL	4573883

Wife

Real property at Apartment 1 Dubai ⁶	331,007
Real property at Apartment 2 Dubai ⁷	588,267
Dubai Bank accounts	143,471
Undisclosed Dubai Bank account in sole name	290,675
Inheritance from W's mother	135,000

⁴ All United Arab Emirates Dirham to UK Sterling currency conversions use 1AED = £0.22

⁵ This figure is based on a value of £6,000,000 less sale costs at 3% less the outstanding mortgage of £1,246,117 = £4,573,883

⁶ This figure is based on an agreed value of AED1,700,000 = £374,000 less sale costs at 3% less UK CGT of £31,773 = £331,007

⁷ This figure is based on an agreed value of AED3,450,000 = £759,000 less sale costs at 3% less UK CGT of £147,963 = £588,267

UK Bank accounts in sole name	5,953
Scottish Widows ISA	14,437
Outstanding Legal Costs ⁸	0
Debts (i.e. litigation loans and monies owed to Q daughter)	-466,634
TOTAL	1042176

Husband ⁹

100% shareholding in Property Holdco Limited ¹⁰	2,288,072
100% shareholding in Property Holdco 2	11,372
100% shareholding in LT Limited ¹¹	870,000
Director's Loan Account monies owed by LTL to H	151,000
100% shareholding in WR Limited	43,137
4 x Aston Martin motor cars	1,005,000
Monies held by the accountant to the husband's order	2,500,000
Bank accounts in sole name	1,115
JHT Pension CE (in payment)	1,333,206
Outstanding Legal Costs ¹²	-146,341
Debts (including litigation loans)	-261,524
TOTAL	7795037

31. I want to say something at this stage about the sharing principle. As a starting point in the division of capital after a long marriage it is useful to observe that fairness and equality usually ride hand in hand and that (save when an asset can properly be regarded as non-matrimonial property, which doesn't arise in this case) the court should be slow to go down the road of identifying and analysing and weighing different contributions made to the marriage.

32. In the words of Lord Nicholls in *White v White* [2000] UKHL 54:-

"...a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination".

and in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24:-

⁸ This figure is based on a total of incurred fees of £418,558, all of which have been paid

⁹ The property at Property 6, Dubai is not included in this schedule as it is owned by the parties' daughter. Nor does it include the money properly gifted into the Family No. 2 Settlement

¹⁰ This figure is based on the net value of three properties owned by the company: Property 3 Dubai (£874,940), Unit 40405, Property 4 Dubai (£917,620) and Property 6, (£495,512) = £2,288,072. I have disregarded the £1,100,000 loan owed by Property Holdco Limited to LT Limited on the grounds that H owns 100% of each.

¹¹ I have disregarded the £1,100,000 loan owed by Property Holdco Limited to LT Limited on the grounds that H owns 100% of each.

¹² This figure is based on a total of incurred fees of £540,849 less a total of fees paid of £394,508 = £146,341

“This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals...The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule.”

33. In the words of Mostyn J in *JL v SL* [2015] EWHC 360:-

“Matrimonial property is the property which the parties have built up by their joint (but inevitably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination.”

34. If I were to follow an equal division of the assets here based on my asset schedule then an equalisation lump sum to be paid by the husband to the wife of £1,089,489 would leave the parties in a mathematically equal position, as follows:-

	Wife	Husband
Own realisable assets	0	0
Family Home	4,573,883	0
Lump sum from H to W	1,089,489	-1,089,489
TOTAL ASSETS	5663372	-1089489
% ASSETS	50%	50%

35. Are there any reasons to depart from equality here?

36. I have considered **income** issues here and, although it is likely that the husband will have a greater income here from his ongoing business, Ms Clarke has very fairly, and I think appropriately in view of the age of the parties, conceded that this fact should not contribute to any different result, particularly in the context that the assessed value of the husband’s business has been taken into account in reaching an equal division. I have recognised that the value of the business has risks attached to it and the concession in relation to ongoing income differentials can fairly be seen as countering that as a factor for departing from equality. Nobody has suggested that this is a case for a periodical payments order to be made. This is plainly a clean break case.

37. In relation to the “**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**” in the context of the **standard of living** that the parties jointly enjoyed during the marriage, the **ages of the parties**, the **duration of the marriage** and the respective **contributions** of the parties I have the following observations:-

- (i) Both parties have the need to own and occupy a house in London. As

discussed above, the wife declined to engage in the exercise of assessing this need. Whilst it is of course understandable for a person to wish to continue living in a house which has been their home for many years, the court needs to make an assessment of whether this is a reasonable need in all the circumstances and can reasonably expect a party to engage in the analysis. In this case the husband suggested that it was reasonable in all the circumstances for each of the parties to own and occupy a home in London worth in the region of £2,000,000 on a mortgage-free basis. He produced a number of property particulars, including some in the borough of the family home, which the wife declined even to look at, which in my view plainly demonstrated that this was a reasonable proposition. It may be that their son's long-term future will be to remain living in care institutions, but even if (as she would wish) their son moved to live with the wife then a home purchased for £2,000,000 would provide adequate space for the wife and their son and I have not been convinced that his needs (which are of course highly controversial anyway, but taken at their highest) justify any greater housing needs for the wife. With Stamp Duty and other purchase and removal costs, a budget of £2,250,000 for housing for each party is reasonable in the circumstances of this case. Having said this, as I have said, since she feels very strongly about it and since the figures are such that it may be possible for the wife to remain in the family home, I propose to make an order transferring it to her. It is a matter for her whether she sells the family home to create an income fund to make meeting living costs more comfortable or retains it with a lesser fund of money on which to live. Either way, I do not accept that there any housing needs arguments for any departure from equality.

- (ii) Both parties have an income need for the remainder of their lives. Given what I have said about housing need above then I am satisfied that such needs can be met from capital / pensions. If the wife chooses to remain in the family home and have less income from which to meet her living costs then that is a matter for her, but my order will proceed on the basis that she could, if she so wished, downsize on housing and create a very adequate fund from which to meet her income and these needs do not justify any departure from equality.

38. Having taken into consideration all of the above matters I take the view that a **fair outcome to this case** is as follows:-

- (i) The family home will be transferred to the wife on the terms about the mortgage that I have discussed above.
- (ii) The chattels will be retained by the parties in the way discussed above.
- (iii) The other assets will remain in their existing ownership.
- (iv) The husband will pay a lump sum to the wife in the sum of £1,089,489. I propose to order that the entirety of this lump sum will be paid by 31st October 2023 (to allow a little time for realisation of assets). Interest in default at the Court judgment rate (currently 8%) will run on any unpaid

portions of this sum. If the husband wishes (at his election) to reduce the lump sum order by £666,603 and substitute for it a 50% pension sharing order of his JHT Pension then he should be allowed to do this.

(v) There will be a clean break, with both parties' income claims dismissed.

39. This is my decision and I invite counsel to produce a draft order which matches these conclusions. I will approve an agreed form of order matching this requirement without any need for a further hearing, but I will list the matter for a 30 minute mention on **21st August at 4.00pm** by way of remote CVP to ensure the drafting process does not drift, but I am hoping this hearing will not be necessary.

40. I want to express the following **provisional view about costs** in the hope that the parties will unite around my provisional view without any need for a further hearing. I take the view that both parties (for the reasons explained) have fallen short in their litigation conduct, but that the husband's misconduct has been at a significantly higher level justifying an adverse costs order despite the Part 28 starting point of no order as to costs. My provisional view is that he should make a contribution of £100,000 to the wife's costs, from which should be deducted the divorce costs order assessed at £5,704 as discussed above. The net figure should be paid by 31st October 2023 alongside the lump sum order.

41. I have no present intention for the publication of this judgment, but if either party wishes it to be published then I will consider this and also what anonymisations / redactions are to be sought as a consequence.

HHJ Edward Hess
Central Family Court
21st July 2023