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No. 1656-5881-2752-0327

IN THE FAMILY COURT AT DARTFORD

Home Gardens
Dartford
Kent
DA1 1DX

Date: 23 May 2024

BEFORE:

RECORDER RHYS TAYLOR
(In Private)

BETWEEN:

NW

Applicant

-and-

BH

Respondent

Mr Philip Perrins (Stowe Family Law LLP) appeared for the applicant

Mr Julian Reed (Lawyery Solicitors) appeared for the respondent
(Mr Reed withdrew after a draft of this judgment was circulated)

Hearing dates 9 April 2024 – 15 April 2024

This judgment was handed down remotely on 23 May 2024 at 2.30pm by circulation to the parties or their legal representatives by email.

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THE RECORDER

Introduction

1. This is the final determination of NW's application for financial remedies dated 4 August 2022. For convenience I shall refer to NW as "the wife". I shall refer to the respondent, BH, as "the husband".
2. I have to resolve a series of factual contentions about alleged historic family loans and inheritance. There are also several companies for me to consider. I have to determine who I believe.
3. I have to determine the valuation of a property. The valuation of the property issue has been advanced notwithstanding that its gross value was agreed as being £1.1M at a pre-trial review a few weeks before this final hearing.
4. Having computed the net assets which are available, I must then determine a fair division of them. My first consideration is the welfare, whilst minors, of the parties' children, Child 2 (aged 11), Child 3 (aged 10), and Child 4 (aged 7). There is also a child of the family, Child 1, who is 19.
5. Some of the assets are held in a company which is owned with a third party, adding a further dimension as to how the assets are to be allocated by my redistribution.
6. In summary, I find the husband and his supporters to be far removed from the truth. I can accept little of what he says unless backed up by reliable documentary evidence. Much of the documentary evidence, key parts of which are prepared by his accountant, is unreliable or apt to mislead.
7. I find the husband's ever-changing proposals to be divorced from the realities of the likely outcome.
8. This is a case which will be determined by reference to the needs principle. In the first instance, the wife, as the primary carer, and the children need a home in which to live in. There is not enough to go around.
9. In summary I have determined:

- 9.1. The family home shall be delivered up to the wife with vacant possession within 28 days of the date of this judgment. The family home shall be delivered up in good order. Pending the sale, the wife shall be entitled to occupy the family home if she so wishes.
 - 9.2. The wife shall market the property for sale and from the net proceeds pay the husband £100,000. The wife will retain the balance.
 - 9.3. The wife will be solely responsible for marketing the property for sale, subject to the supervision of the court if required. Any unreasonable applications made by the husband concerning the manner of the wife's management of the sale process will be met with costs orders.
 - 9.4. The wife will transfer her shares in ABC Properties Ltd to the husband upon his providing an undertaking to indemnify her in respect of any historic loans with the husband's mother, and of her dealings with any of the companies in which she has been a director acting as his nominee, including ABC Properties Ltd. If an indemnity is not forthcoming by way of undertaking, I shall order one.
 - 9.5. Upon the delivery up of the family home to the wife in good condition, there shall be a clean break. I am expressly keeping the wife's claims for a lump sum open until the property has been returned to her in good condition.
10. For the reasons I give below, this roughly equates to a 75.76% to 24.24% division in favour of the wife on a net pot which I compute to be about £595,236.

Representation

11. The wife is represented by Mr Philip Perrins, instructed by Stowe Family Law LLP. The husband is represented by Mr Julian Reed, instructed by Lawyery Ltd Solicitors. I am grateful for the assistance I have had from the Bar. Each counsel prepared clear and helpful opening notes and other documents which have assisted the court. Each counsel has done everything they could for their client.
12. This case has been document-heavy. I have been greatly assisted by the schedules which cross-referenced all relevant documents appearing on the schedule of issues. I reference the key documents, as I have found them to be, only in this judgment.

Background

13. The parties commenced cohabitation in 2008, married in 2018 and separated in 2021.
14. Child 1, the wife's son from a previous relationship, became a child of the family and three other children followed. Child 2 shows great promise as a footballer and has a youth contract with a professional football team.
15. Divorce proceedings were issued on 23 March 2022 and a decree nisi was granted on 16 May 2023.
16. The parties have lived in four houses during their marriage. The houses play an important role in understanding the chronology and key financial transactions in this case.
17. Prior to the parties meeting, the husband had become the sole legal owner of B Close. The legal title had been acquired by his father in 2002 and transferred to the husband in 2005. At the time the parties decided to live together, B Close was rented out. The parties decided to pool their resources and refurbish B Close into their first family home.
18. The husband has had a variety of occupations and business endeavours during the material time I am concerned with. In the months or years (the exact period is not relevant for my purposes) leading up to 2011, the husband owned a bar in [London Borough A]. The business was not prospering and by 2011 creditors were putting the husband under strain. B Close was in jeopardy.
19. It was at around this point that the husband's father placed a charge on B Close. The husband said that this was done by his father to "protect his [father's] money" from "vultures". The husband was adamant that his father retained a beneficial share in B Close and that he was entitled to protect his interest with the charge. It is the wife's case that the charge was merely a protective device to shield the husband's equity in B Close from the "creditor wagons which were circling" at this time.
20. At this stage, the wife's father appears to have stepped in. He is a man of business and appears to have put his lawyers at the husband's disposal. Further, by way of loan to the husband, he met some of the husband's business debts. A sum in the order of about £44,000 plus legal costs appears to have been lent. I do not know what the legal costs amounted to.

21. The husband says that he owned a property in Dubai at the time and that he sold this in order to repay the wife's father. I have seen no documents in support of this alleged transaction.
22. The parties next moved to C Way. This was a property which was purchased by the wife's parents in the first instance. C Way was near to the wife's parents' home, although the property may have been spotted first by the husband. The property was on the market as a repossessed property.
23. The wife's parents spent £295,071 on it in April 2013. At that stage it was a 10-year old townhouse. The fact of it having been repossessed meant that there was work to do on the property. There is a dispute as to how much was spent configuring the property to the parties' requirements. The husband emphasises the extent of the works whilst the wife points to the fact that there is a limit to how much can be spent on a non-extendable modern townhouse.
24. This debate forms the backdrop as to whether, at this point in the chronology, the parties borrowed £125,000 from the husband's parents to do up C Way and repay the wife's parents for assisting the husband with his business difficulties.
25. The husband's transactions with his parents are often described in these case papers as being with his mother. Sadly, his father died unexpectedly in April 2017. When obtaining historical bank statements for these proceedings, the husband's mother has obtained a run of statements which have since been placed into her sole name. However, at the material time the bank account was the husband's parents' joint account.
26. In June 2013, B Close was sold. The exact destination of all the sale proceeds remains unclear but some or all were paid to the husband's parents' account, pursuant to the charge that the husband's father had registered in 2011. This would appear to have kept the proceeds off the radar of the creditors. On 4 June 2013 there is a deposit into the husband's parents' account for £80,000, referenced "[name of solicitors]". This appears to be the solicitors who conducted the sale of B Close.
27. There follows a series of payments from the husband's parents to the wife's parents being £20,000 on 21 June 2013, £15,000 on 4 July 2013, £25,000 on 24 September 2013,

£25,000 on 25 September 2013. In total £85,000 is paid to the wife's parents in these transactions.

28. The wife stated in evidence that the husband's parents would not assist the husband when he was in business difficulties and that was why her father stepped in. Her case is that these payments amounting to £85,000 are a repayment of the funds to her father which he paid either to fend-off creditors or pay legal fees associated with the resolution of the husband's business difficulties.
29. The husband's case is that the wife's parents pressurised his parents to pay them the £85,000 to help cover the purchase costs of C Way and that the parties borrowed a further £40,000 from his parents for its renovation.
30. On the balance of probabilities, the £85,000 fits more comfortably with the repayment of the £44,000 plus legal costs which the wife's father had stumped up earlier. At this stage in the chronology, the parties had not yet purchased C Way from the wife's parents, which did not happen until December 2013.
31. I also have no documentary evidence of the repayment of the wife's father from the sale of a property in Dubai. The contemporary documents tend to support that the payments moving between the parties' parents was for the resolution of the husband's business difficulties.
32. The parties lived with the wife's parents whilst C Way was refurbished.
33. In December 2013, C Way was purchased by the parties from the wife's parents. It was sold to them at a cost of £250,000. They were only able to raise a mortgage of £188,000 and so the deposit was gifted by the wife's parents. If prices had remained static, and I have no evidence of property price movements at the time, the combination of the reduced sale price and gifted/forgiven deposit meant that the parties benefitted in the order of about £107,000.
34. The husband states that all the capital in the case has emanated from him or his family in one way or another. The wife has protested that her parents' assistance with a discounted purchase price of C Way had real capital value. Her protestations here had a ring of truth

to them and burnish my view that the £85,000 was for the repayment of the husband's business debts and legal costs rather than an advance downpayment on C Way.

35. A payment was made for £20,000 from the husband's parents on 29 April 2013. There are further payments of £10,000 on 15 May 2013, 2 x £5,000 cheques on 23 May 2013 and 2 x £5,000 cheques on 1 August 2013. However, there are also payments coming back from the husband into his parents' account in the sum of £15,000 (£5,000 on 10 June 2013, £5,000 on 11 June 2013 and £5,000 on 12 June 2013).
36. It is nigh on impossible to make complete sense of the numerous transactions which flow to and from the husband and his parents, and latterly his mother only. The best I can say is that, on the balance of probabilities, the husband and his mother do not make out a £125,000 loan at this stage in the chronology. That has some significance, as I will explain shortly.
37. Attached to the husband's mother's second statement is a document prepared by the family accountant, Mr E (more about him to follow). The schedule shows a series of transactions paid out to the husband or to the wife's parents. The figure amounts to £125,000, but for the reasons I have expressed above, a very significant part of this appears, on the balance of probabilities, to be a loan repayment to the wife's father. The £125,000 loan was not mentioned in the husband's mother's first statement, which is surprising. The £125,000 loan figure is a chimera. This has significance.
38. After the failure of the husband's bar in [London Borough A], he developed a business, which I think had previously been run by his father, conducting specialised window cleaning of tall industrial buildings in and around London. This involves abseiling down the side of buildings, often at unsocial hours. In 2014, XYZ Ltd was incorporated to conduct this business. From 2014 until 2018, the wife was the sole shareholder and director, despite it really being the husband's business, which he was directing. Thereafter, the husband transferred the company into his name and the wife was added as a "ghost employee" for "tax purposes".
39. Following a collapse of the husband's bar business, money was tight in the family household. The wife decided to set up her own clothing retail business. She specialised in what she calls "fast fashion" with items being paraded on social media by "influencers" and then quickly sourced to meet a short-term demand for that particular look.

40. The wife set up a business called DEF Ltd. This was done with a business partner. For a time, this business enjoyed some success. Later (in or about 2019, I think) the business partners incorporated another company called GHI Ltd. I am not clear why another company was set up, but it was engaged in similar activities. The wife needed to earn money and said in evidence that, “you did not get to live with [H] for nothing”.
41. In 2015 another company was incorporated, called ABC Properties Ltd. This was to be a vehicle for the husband to develop and/or rent out properties. The wife’s name was used on incorporation, even though he was the real driving force behind the business. He said that this was because he had a poor credit rating due to the bar collapse. The husband did briefly become a director of ABC Properties Ltd. The appointment of the husband as a director and his resignation occurred within the proceedings, and following separation, when the husband removed the wife and appointed himself. This was reversed when it was pointed out to him that these actions were fraudulent.
42. On the occasion of ABC Properties Ltd being set up, the husband’s parents lent the parties the sum of £150,000 so that it had some working capital. The status of the repayment of this loan is a key issue in the case and needs to be considered alongside the earlier £125,000 noted above. I will deal with this shortly.
43. Within a short period of time, the husband’s long-standing childhood friend, Mr B also became a director and 50% shareholder, having invested in the company.
44. The parties stayed in [London Borough B] for about three years, but the husband yearned for a return to Kent. Aside from his other occupations, the husband also planned to make money by renovating properties, living in them, and then crystallising the resultant gain with the benefit of his Principal Private Residence exemption.
45. The third property the parties acquired was S Close. This was acquired in 2016. It was held in the wife’s name only. The works were very substantial. The husband stated that the extent of the refurbishment was akin to knocking the property down and starting over again. The works were intended to convert and extend the property into a fully modernised five-bedroomed family home.
46. In April 2017, the husband’s father died unexpectedly. He was a man of means, which included some property interests in Dubai. I have not been shown a will nor proper estate

accounts. The manner in which his estate was then shared with his family, including the husband, is difficult to divine from the disclosed documents.

47. The husband has provided an extract from an HSBC account in his name, showing the receipt of £543,343 from “Dubai Courts”. The husband stated, if I have understood this correctly, that this was a payment from the Dubai Courts as they did not recognise the rights of the husband’s mother, as a woman, to inherit the money. The husband reflected that perhaps he might have dealt with this differently. He stated that he should have honoured his mother and that the money, or at least half of, it should have gone to her. The money, however, went mainly to him. The HSBC extract only shows the receipt of the funds and unhelpfully the husband has not provided the bank statements which show where this money went.
48. Instead, the husband has provided a document entitled “Inheritance Disbursements”. This shows the receipt of the £543,343 and entries purporting to show how the funds were disbursed. I do not have the original bank accounts to check the veracity of these payments.
49. The document, along with several others which the husband seeks to rely on in support of his case, was prepared by someone called Mr E. Mr E works for a firm of accountants, [A Firm of Accountants Ltd]. Mr E has provided accounting services to the husband on a personal basis, in particular for this case. I shall say a little more about Mr E shortly. Suffice to say at this stage, he does not possess any professional accreditation. Had he done so, I would want to hear submissions about whether I should provide for my judgment to be disclosed to his professional regulator.
50. A significant amount of the disbursements show payments being made to the husband’s siblings. I was told there was just under £100,000 paid to his sister and about £164,000 paid to his brother. After having deducted disbursements, there is a figure of £238,086 left over. This is entitled “Balance used for [S] Road [sic]”. This is a key figure asserted by the husband as representing his inheritance expenditure on S Close, which he says should be ringfenced out of the court’s computation of assets available for distribution.
51. There is a second schedule, again prepared by Mr E, entitled “[H’s mother] loan/[S] Road [sic] Disbursements”. It asserts £215,000 payments in from the husband’s mother by way of loan, build costs of £273,127, with an additional column entitled “Build Cash EXP”

amounting to £155,860. The combined costs of the S Close project, according to this document, was £428,987.

52. In addition to the inheritance argument advanced by the husband, another key contention in this application is whether his mother lent the parties £185,000 to assist with the works on S Close.
53. Attached to her third statement, the husband's mother produces a schedule of payments from her account which amounts to £185,000. These are cross-referenced to the two accounts from which the money is asserted to have been paid. The payments commence on 15 April 2017 and end in September 2019.
54. If one takes the total S Close project costs (as asserted by the "[H's mother] loan/[S] Road [sic] Disbursements" document advanced by the husband but prepared by Mr E) of £428,987 and deducts the loan of £185,000, there is left a balance of £243,987. The figures do not tally precisely with the £238,086, but are within a not dissimilar parish.
55. However, curiuser and curiuser, the loan column in the "[H's mother] loan/[S] Road [sic] Disbursements" amounts, as I have noted, to £215,000. This would generate a rival inheritance figure of £428,987 - £215,000 = £213,987. Doing the best I can, I cannot make any sense of this discrepancy.
56. The parties married on the 20 June 2018.
57. The parties had a short period of separation in or about September 2019, but later reconciled before their final separation in 2021.
58. I heard much evidence from the husband's mother and the husband about their relationship of trust down the years. I was told on several occasions that there was no need for written agreements as the husband's family trusted one another.
59. Within the papers there is a document entitled "Family Loan Agreement" dated 30 September 2019. This coincides with the period of the parties' brief separation in 2019. It is signed by the husband and his mother. It is not signed by the wife. This is curious and invites suspicion about what on earth is going on, given that S Close was in the wife's name only and there is reference to a property in the agreement. It is for the

sum of £185,000, noting the borrower will make repayment “in full upon re-mortgage or sale of property”. The property is not identified.

60. The husband’s mother accepted in evidence that there had been a row between the parties and that she and the husband then went and signed the agreement. This vignette shines something of a light on the motivations, priorities and character of the husband and his mother.
61. In 2021 the parties sold S Close and acquired O Avenue. This was another “doer upper”. Contrary to the written agreement, I have noted above that the £185,000 was not repaid on the sale of S Close. It was the husband and his mother’s evidence that they orally agreed to “roll over” the loan into O Avenue. On this occasion, the variation, the husband would have it, was executed orally.
62. In the years after the incorporation of ABC Properties Ltd, properties were acquired in its name. At the time of these proceedings there were three properties, namely D Street, G House and E Street.
63. The most valuable of these three properties was D Street and the valuation of this property has been a source of great contention in the final hearing, despite the fact that its value was agreed at a pre-trial review before me on 4 March 2024, when each party was represented by counsel (albeit, I accept, Mr Reed was yet to be instructed by the husband at that stage). I will explain the detail of these contentions shortly.
64. Whilst at the material times, the shareholders and directors of ABC Properties Ltd were Mr B and the wife, the wife was merely a nominee and the husband was greatly concerned with the affairs of the business.
65. The business required capital support and so mortgages and charges were secured against the property, including from Mr B himself.
66. Whether the husband’s parents were repaid their £150,000 founding capital is another hinge issue in this case. As I have said, the £150,000 was advanced in July 2015. It appears to be agreed that £25,000 was repaid on or about 4 November 2015. The contention relates to what of the balance was then repaid and how this was reported in the accounts of ABC Properties Ltd. This I shall deal with in more detail shortly.

67. I should briefly mention Aunt E's bungalow. Aunt E was an elderly member of the husband's family. The husband's parents made a bungalow available for her to live in. They spent money doing it up. It is said by the wife that some of the expenditures posted to the "[S] Road [sic] Disbursements" on a true analysis, relate to Aunt E's bungalow. The husband's mother moved and/or had some work done to her property at a similar time as well, it is alleged.
68. The husband has a minority interest in a company known as [An Estate Agent] Ltd. He said that he lent a friend about £15,000 and has taken a 15% share in the business until it is repaid to him. This is one part of the case which I do not think requires much exploration.
69. A company called CDE Property Investments Ltd was incorporated in or about 2019. The husband spoke of it being like a trust, set up to protect his mother's money. There had been plans to use it as a vehicle for property development. Plans changed and two chalet lodges were acquired. One lodge has been sold and I think the other has been put up for sale.
70. As I will explain shortly, the account given to me by the husband and Mr E is not one I am able to accept. It reflects very poorly on Mr E that he has conducted himself in the manner in which he has. CDE Property Investment Ltd is not a key asset on the balance sheet. I am afraid to say, however, that the shenanigans which have gone on with it have the illumination of a searchlight, when I come to assess the credibility of the husband and Mr E.
71. The parties' relationship ended badly. There have been Children Act applications and Family Law Act applications. I know very little indeed about all of this, save to note that I don't think any formal injunction was ordered against the husband. Each allege that the other has indulged in vicious unpleasantness, sometimes enlisting the assistance of violent and/or intimidating third parties. I make plain that, other than vague oral suggestions before me, none of this has been set out in a way that I could remotely make sense of any of it, still less make findings about it.
72. The limited extent to which it appears relevant is that these parties are agreed they need new lives away from each other. It was upon this rock that my enquiry about the possibility of a *Mesher* order foundered.

73. Mr Perrins stated that the wife had been approached by the husband during a break for lunch during the hearing. I offered special measures, making it plain this was on a “no findings” basis. My offer was declined. Mr Reed invited me to put that matter out of my mind and I am pleased to do so. The suggestion of an incident (I do not put it as high as an allegation) has zero bearing on anything I have to say about this case.

Procedural history

74. The Form A was issued on 4 August 2022 and a First Appointment followed on 22 November 2022.
75. The husband’s mother later made an application to be joined to the proceedings, alleging that she was owed money and that, by reason of the background which I have described, she had acquired a beneficial interest in the parties’ property at O Avenue.
76. The DDJ’s order of 7 June 2023 records at Paragraph 9, “[H’s mother] shall be joined as the second respondent for the sole purpose of determining the issue as to her asserted interest in the family home and the extent to which she is owed money by the parties either individually or through their respective businesses”. Conventional *TL v ML* style directions were provided for.
77. There was also provision made for the properties held by ABC Properties Ltd to be valued by way of taking an average of two market appraisals.
78. A Single Joint Accountant was also provided for to value the parties’ respective interest in the companies I have described, to analyse inter-company transfers and to look at the most tax-efficient way of liquidating ABC Properties Ltd.
79. A conventional timetable was directed which should have resulted in a report on 8 September 2023.
80. Mr E was also directed to file a statement. The ambit of his statement was expressly limited by the order for him to address:
- 80.1. (a) The release of company bank statements and other financial records/dates to the applicant in respect of DEF Ltd and GHI Trading Ltd;

- 80.2. (b) The first respondent's involvement with CDE Property Investments Ltd to include when he resigned as a director and the confirmation statement is dated November 2022; and
- 80.3. (c) The need for liquidation or otherwise of DEF Ltd or GHI Trading Ltd.
81. The FDR was dispensed with "given the factual issues in dispute between the parties and [H's mother]".
82. The matter was set down for a final hearing with a time estimate of five days on the first available date after 3 November 2023, with a PTR in advance of the hearing.
83. Pausing there, it has proved extremely difficult to find five days of judicial time at district or circuit judge level to hear a financial remedies matter. The listing of five days commencing on 9 April 2024 was a precious resource.
84. The application came before me at a remote pre-trial review on 4 March 2024. Compliance with directions were in a sorry state.
85. The husband's mother had purported to file a pleading about her ownership of the parties' home. Taken at its absolute highest, it did not, in fact, assert a beneficial interest. The husband's mother's interest in the proceedings, properly analysed, was no more than a witness in support of the husband that he or the parties owed her £185,000.
86. I directed that the husband's mother be removed as a party, applying FPR 9.26B(2). I considered that it was not desirable for her to be a party to the proceedings. I acceded to Mr Perrins' application to add a rider that I reserved the right to have her re-joined on the question of the costs of her intervention, if that later became relevant.
87. The SJE report which had been directed to be filed by 8 September 2023 had still not been filed. Worse, the letter of instruction remained outstanding. Two things appeared plain to me at this juncture.
- 87.1. First, the case was infected with procedural malaise. I had no confidence that if I adjourned the precious five-day listing for another attempt at compliance with the direction for a SJE, I could expect prompt and proportionate compliance.

- 87.2. Second, I was of the firm view that such were the factual contentions between the parties, and such was the state of the paperwork, a SJE was likely to struggle to provide a “conventional report”. What was required were judicial determinations having surveyed the wide canvass, whether by reference to the evidence available or, in the absence of satisfactory evidence, judicial inference.
88. Balancing these factors and applying the overriding objective, I determined that, as the direction had not been complied with, the final hearing would proceed in the absence of the SJE report.
89. Both parties were represented by counsel at the PTR, although Mr Reed had yet to come into the case. The following recital was recorded on the face of the order “[D] Street” at [address], ... has an agreed valuation of £1,100,000 for the purpose of the final hearing”.
90. Various other directions, including for a tax report, were made to ready the case for final hearing to commence on 9 April 2024. The directions required tight compliance for the hearing to commence as provided.
91. I received an email from Mr Perrins on 5 April 2024, which noted slippage in the timetable stating, “The main issues are (a) H is not ready to exchange s.25 Statements; and (b) the tax report on ABC is still awaited – I understand that there was a delay in H’s part of the payment and the expert went away before it was released”. He continues, “The knock-on effect is that until we have exchanged s.25 statements it has not been possible to finalise the core and exhibit bundles, let alone the preliminary documents”.
92. I am told that the s.25 statements were eventually exchanged on the afternoon of Saturday 6 April 2024. This procedural malaise, which I had recognised at the PTR, meant that all of the conventional “last minute” directions for notes, etc. were thrown out of kilter.
93. Mr Reed emailed me on Monday 8 April expressing concern as to how the hearing was even able to progress, given the consequential delay to the preparation time required for a five-day hearing.
94. There followed shortly an email from Mr Perrins on behalf of both counsel, inviting me to delay the commencement of the hearing by one day to allow for proper preparation

time, given the delays (which I should add did not sit in the lap of the lawyers). On this basis and applying the overriding objective, I agreed to start a day later.

95. The loss of a day has meant that the timetable has had to be condensed into four days and everyone has had to work under more time pressure. My scheduled “judgment preparation and delivery time” flew out of the window.
96. At the start of the hearing, Mr Reed advanced an oral “*Daniels v Walker* style” application to introduce a surveyor’s report which had been unilaterally obtained by or on behalf of the husband, which valued D Street at £800,000. I say “*Daniel v Walker* style” as there was no previous report, rather a formally recorded agreement, arrived at between the parties on the basis of previous evidence which had been obtained. The application was made orally only. There was no D11 with a supporting witness statement or any evidence as to how this report had been obtained.
97. To say that this placed the court on the horns of a dilemma would be an understatement. The court was entitled to hold the parties to the agreed figure of £1.1M, which had been made through counsel four weeks previously. Mr Perrins and his client were entitled to prepare for the final hearing on this basis.
98. Balanced against that, the overriding objective requires me to deal with cases justly and the substantive law applicable here requires me to compute the assets. Bearing in mind these competing considerations, I indicated that I would not deal with the application at the outset, but would allow the evidence to be heard and the application to be determined prior to closing.
99. As I will explain in more detail shortly, in the event I determined against Mr Reed’s application and held the parties to the £1.1M which they agreed at the PTR.
100. I am anxious that it should be regarded as wholly exceptional that I was even prepared to entertain such an application, made at the commencement of the hearing and without proper compliance with Part 18. I would not want the steps I took on the very particular facts of this case to be any encouragement whatsoever that it is generally appropriate to make such late and procedurally non-compliant applications. In this case my steps were designed to ensure that justice was done and seen to be done. Whilst the husband may be

disappointed with my determination, I want him to understand that I allowed an unconventional application to proceed at the last minute in attempt to be fair to him.

101. As I will describe shortly, the failure of the application is no small measure down to the manner in which the husband himself has conducted himself over this issue.
102. At the PTR, the court also invited Mr B to set out his position in respect of ABC Properties Ltd, as it was unclear to what extent he agreed a sale of ABC Properties Ltd's assets. Mr B sent a letter from his solicitor dated 10 April 2024.
103. It is apparent that he does agree to the sale of the properties held by ABC Properties Ltd, provided that the charges he holds against the company are properly discharged upon realisation of company assets. He sets out terms for the sale of the properties. It seems to me that, as the husband and Mr B will end up as co-owners of this company, I need not concern myself with that detail. If they cannot come to terms, they will each be able to consider what company law remedies they have against each other (something which this court is not concerned with in this hearing).

The parties' open positions

104. The wife made an open offer dated 18 January 2024. The wife sought:
 - 104.1. Transfer of the FMH at O Avenue into her sole name;
 - 104.2. The wife to transfer her shares in ABC Properties Ltd to the husband;
 - 104.3. The husband to release the wife from her personal guarantee under the ABC Properties Ltd loan agreement with Lloyds Bank;
 - 104.4. The husband to indemnify the wife against any claims from the husband's mother for alleged historical loans;
 - 104.5. Thereafter the parties to each retain the assets and liabilities in their sole names;
 - 104.6. No order as to costs.
105. The husband made an open offer dated 20 February 2024. The husband sought:
 - 105.1. Transfer of the FMH at O Avenue into his sole name;

- 105.2. The husband's mother to register a charge against O Avenue for £185,000 plus "an additional £100,000 representing our Client's loans for his legal fees, subject to any additional loans he will further have";
- 105.3. The wife to retain her interest in ABC Properties Ltd, DEF Ltd and GHI Ltd;
- 105.4. Clean break;
- 105.5. No order as to costs.
106. The narrative of the husband's letter placed the net value of the wife's shares in ABC Properties Ltd at £398,566. This was said to be "her share, based on their own accountant's valuation and Haart's valuation of [D] Street". I should add that Haart are a firm of estate agents who had provided a marketing appraisal at £1.1M pursuant to an earlier court direction.
107. It will be apparent from this offer that, until very recently, the husband was perfectly content to hold the parties to the £1.1M, provided it was the wife who took the risk of the sale price of D Street.
108. On 8 April 2024, the husband made a further offer. This advocated a clean break upon the husband's payment of £230,000 to the wife and upon her transferring to him O Avenue and the wife's share in ABC Properties Ltd. This revised offer was upon the basis "Our client has just received a RICS valuation for [D] Street at £800,000, which brings the book value of this company at £34,461".
109. In closing the husband submitted that if the wife believed D Street was worth £1.1M, she should have it.

My impression of the parties and witnesses

The wife

110. The wife made some material omissions from her Form E, in particular by not disclosing her interest in GHI Ltd. The wife is interested in beauty and during the course of the divorce has purchased for herself a hydro-facial machine which cost £1,847. Given the financial strain that she is under, that purchase may be categorised as imprudent.

111. The wife married the husband and has allowed herself to be used during the marriage as a nominee in a number of his business enterprises so that his name is not apparent, although he is really in control.
112. That said, and whilst the wife may not be a saint, I believed her on the substance of the evidence she gave before me. The failures on her Form E I accept were mistakes or carelessness, rather than an intention to mislead.
113. The wife spoke of the difficulties she has faced since separation, the family support she has required and the humiliation of having attempted purchases at Aldi being declined because she did not have enough money in her account.
114. She gave evidence about the fact that DEF Ltd and GHI Ltd are dormant and how she would like to have them liquidated. She denied that she was hiding stock in third-party warehouses. I believe her. She stated that given the rapidly changing demands in a “fast fashion” business, old stock would be of no value in any event. I agree with her. I do not accept that she has tried to hide money in China and payments made to Chinese companies would have been proper business expenses.
115. I believe the wife when she says that the husband’s parents would not assist him when he was having business difficulties with the bar. I accept that her parents helped the husband out at this time, albeit they were repaid later. As I have already commented, there was a real ring of truth in the wife’s protestations that she had made a capital contribution to the marriage via the discount to purchase price which was forthcoming from her parents on the purchase of C Way.
116. I accept that the wife was not party to any loan agreement for £185,000, whether written or oral. The timing of the written agreement looks very much timed to coincide with the parties’ period of brief separation in or about September 2019.
117. Mr Reed sought to criticise the wife about the manner in which she had referenced a company which her brother and father are involved with. I do not consider anything turns on this.
118. On any points of dispute between the parties, I am inclined to prefer the account of the wife.

The husband

119. An unfortunate feature of this case is that on many of the statements, on each side, the required statement of truth as mandated in FPR PD17A was not complied with. Statements variously had no statement of truth or the “old style” statement of truth which did not draw attention of the attester the potential consequences for failing to tell the truth.
120. Given the serious allegations which were being made by each party, I required each statement to be individually confirmed, subject to corrections, and for each witness to confirm that they understood the solemnity of what they were doing and the meaning of the contemporary statement of truth. I asked each witness to confirm that if the proper statement of truth had been at the foot of the document they were propounding, they would have signed it.
121. Things did not get off to a promising start for the husband. When he came to give evidence, he appeared to be reticent to confirm the statements in the manner which I have described. Variously I was told, “I would not have signed”, “some things are out of date”, “I’ve changed my lawyers”, “I thought the lawyers took the weight off my shoulders”, “I do not understand the document” and “I cannot read”. As to the latter, Mr Reed interjected and explained that the husband could read but that he does not read well.
122. The issue of the husband’s ability to read had never previously been in issue, no directions to accommodate any difficulty were ever asked for and there was not a shred of compliance with FPR PD17A 4.1. I was left with the impression that the husband was able to read well enough but that he was choosing to pray in aid the lack of highly developed reading skills as some kind of justification for what then followed.
123. The husband referred to the hearing as a waste of everyone’s time and money. He suggested that the resolution to many of the questions being asked was to look at Companies House website. He referred to the situation being “an out of control divorce”, without any apparent reflection on the hand which he may have played in bringing us to that pass.
124. He referred to CDE Property Investment Ltd, a company I will describe shortly, as having been set up to act like a trust. It was designed to protect family money from situations

like today. Everyone wanted a piece of his dad's money. He asked rhetorically, again in relation to CDE Property Investment Ltd, "is it a crime to protect family assets?" The husband used the word "vulture" or "vultures" on a few occasions.

125. He stated that the documentation was too much to read and stated "do you want me to be honest?" before going on to state that he had given everything over to the accountants and lawyers.
126. It was put to him that he traded in cash with his window cleaning business. The husband stated that he was never paid in cash now, unlike "in the good old days". I inferred from this that the husband was a man who had previously traded in cash and was willing to do so to present a false picture to HMRC and others who may need to understand his financial circumstances.
127. The quality of his replies to questionnaire and replies to schedule of deficiencies were probed. When asked to supply up-to-date budgets, cash flows and projections for the full financial year to 31 January 2023 and for the year to 31 January 2024 in respect of his principal trading company, the husband had replied in writing "it is the Respondent's position that requiring this is not commensurate to its purpose". Mr Perrins, fairly, in my judgment, asked the husband whether in replying in such a manner he was choosing to "stick two fingers up at the court and the wife".
128. The lack of willingness to co-operate with such basic information confirms, in my judgment, my earlier case management decision to proceed without the SJE valuer. How was a SJE valuer supposed to provide a valuation where the husband had set his face against co-operation by refusing basic information about his business?
129. Several other answers were replied with "see above" in circumstances where an intricate pick-through the previous replies left the reader none the wiser as to what the answer was supposed to be.
130. When ordered to provide bank statements for his principal trading company, XYZ Ltd (it being the wife's case that it was used as a personal "cash cow") the husband replied, "it is the Respondent's position that the Company's internal dealings are irrelevant to this proceeding [sic]".

131. Mr Perrins deployed language which the husband could not fail to understand. In more old-fashioned terms here and elsewhere, the husband was contumacious in his attitude to his disclosure obligations.
132. The husband accepted that he had operated as a shadow director and made reference to his having included the wife as a “ghost” employee on the books of XYZ Ltd. The financial accounts suggested that she was not the only ghost employee.
133. In place of providing bank statements to show disbursement on the S Close project and how his father’s inheritance was distributed, the husband supplied his own schedules. As I will explain shortly, these schedules were often inaccurate to the point of being misleading.
134. The schedules had been prepared by Mr E, the accountant with no professional qualifications I mentioned earlier. The husband sought to deny his responsibility for the presentation of the figures by saying that Mr E had prepared them on his behalf. The schedules were the responsibility of the husband to confirm as they were exhibited to his statements, the confirmation of which I have already dealt with above.
135. Agreements to pass money around the husband’s family were said to be done verbally and “all on trust”. The exception to this being the September 2019 agreement when the husband and his mother drew up an agreement to coincide with the parties’ brief separation.
136. My having discharged the SJE, at the PTR I resurrected some previously struck-out questions which would have otherwise been dealt with by the expert. These were not dealt with in a manner which was helpful enough. I did not have a full run of the director’s loan accounts for relevant companies.
137. After separation, the husband has stayed in luxury hotels here and abroad. Sometimes for an extended period. The husband’s case for staying in expensive hotels in England were hard to comprehend. I have already indicated I am making no finding about the various serious allegations the parties made against each other – the case was not set up for this and I do not have the evidence to do so, even if they were relevant – but one of the husband’s justifications for staying in expensive hotels was that he was hiding from

groups of people who were following him and trying to intimidate him. I was unable to understand why this necessitated stays in expensive London hotels.

138. The husband gave some explanations for stays in London which I do accept, for instance having a meeting in London with an early appointment the following morning, which he claimed as a business expense.
139. The husband spent £1,000 on a night in The Box, Soho on the occasion of a friend's birthday. The husband was taken to several entries involving spa treatment and the purchase of luxury branded clothes.
140. It is instructive to cross-reference H's pleaded case that he earns £12,000 per annum. The lifestyle and expenditure which the husband has enjoyed post separation is wholly inconsistent with his stated earnings. The husband sought to say that he is in debt to his mother. That is not good enough. I do not accept that the husband would be spending in the manner in which he does if he does not consider that he would have the means to finance it.
141. It follows from what I have said above that I find the husband to be an unsatisfactory witness. I am not satisfied that he was telling me the truth on many occasions. As I have stated, where the wife and husband are in disagreement, I prefer the evidence of the wife.
142. His attitudes and presentation in evidence displayed a deeply entrenched world view which is starkly at odds with objective reality and the facts as I have found them to be.

The husband's mother

143. The husband's mother also gave evidence. She attended in support of her son. Her statement exhibited a schedule which was also exhibited by the husband in his statement. They had clearly been conferring.
144. Her intervention within the proceedings was ill thought out and, as it turns out, wholly unjustified.
145. In her statement dated 30 January 2023 the husband's mother states, "[S] Close needed improvements so I lent [H] and [W] a series of amounts from 2017 to 2019, totalling £185,000, all clearly specified as loans every time I transfer money to them". This

statement is not accurate. There are two advances only on 17 and 21 May 2018, respectively for £15,000 and £10,000, which are marked as loans. The rest are not so marked.

146. The husband's mother accepted that the parties had had a "bust up" in or about September 2019 and that in respect of the loan agreement, "they had had a row and we went and signed it". I am left somewhat confused by this step as, if the loan was property related, the property at S Close was in the wife's name, but she does not appear as a party to the agreement.
147. Overall, I got the impression that the husband's mother had been prevailed upon by her forceful son to support his case. Her involvement in the 2019 agreement does not reflect well upon her, in my judgment. Her doomed intervention was ill conceived. Her suggestion that all loans were clearly specified as such is wrong.
148. I do not consider her to be reliable in a number of respects. Where she differs from the wife I prefer the evidence of the wife.

Mr E

149. Mr E was the last to give evidence. As I outlined above, the remit of his evidence was strictly limited by the earlier case management directions given.
150. I acceded to Mr Perrins' submission that it was not necessary for Mr E to be cross-examined on the contents of the schedules which he had prepared on behalf of the husband. They were not his evidence, even if he had had a hand in putting them together. They were for the husband to deal with.
151. When Mr E went into the witness box and confirmed his name and professional address, I asked him about his professional accreditation. Rather than simply tell me that he was not a professionally accredited accountant, he sought to justify his position claiming that he had undertaken a course of study some years previously but had not passed all of the exams. Further, he claimed not to require a professional accreditation as he was working under the supervision of a qualified accountant.
152. Rather than confining himself to the ambit of what he was directed to cover in his statement, Mr E frequently went wider than required. His constant refrain was that, "I am

only trying to be helpful”. It seemed to me that on the occasions when he strayed outside of what he was required to answer, it always appeared to be to the apparent detriment of the wife.

153. Mr E claimed that he had had no assistance in preparing his witness statement and that was all his own work. When taken to the end of his statement which stated “Mezzle Law¹, Solicitors for [H]”, he tried to duck and weave, stating that the appearance of the husband’s solicitor’s name was simply related to the signature of the document and he maintained that he had had no assistance in preparing the contents of this statement. I am afraid that I do not believe him.
154. What Mr E had to say was very closely aligned to what the husband would want him to say. I further note the collaboration between Mr E and the husband in respect of the preparation of schedules, however inept they are. I simply do not believe Mr E when he says he was merely trying to be helpful, unless by that he means helpful to the husband.
155. Mr E would have it that when it came to DEF Ltd and GHI Ltd he only ever took instructions from the wife. When taken to messages from the wife’s fellow shareholder and director, it was clear that this was not the case. He refused to change his position by trying to dance on a pin head as to what “instructions” amounted to. He was making a fool of himself at this point.
156. Mr E also gave evidence which was contrary to what others in the same firm had said about the wife’s business arrangements. An email from a Ms J, from the same firm of Mr E, dated 6 June 2023 records in respect of the GHI Ltd trading accounts, “I understand from our conversations, due to there being lots of returns/damaged/obsolete stock this is substantially lower than the cost price”. A key plank of Mr E’s evidence was that he thought that wife had stock somewhere which still had value.
157. CDE Property Investments Ltd is not a key asset in the case. The manner in which the husband and Mr E gave evidence about it is, however, as I have already commented, brightly illuminating.

¹ The solicitors acting for the husband at the time. The fee earner in question later moved to Lawyery and the husband’s instructions followed.

158. Mr E's account is materially at odds, at times, with the contemporaneous documents. Mr E would have it that the instruction to set up the company came from the husband's mother, but the emails show that it was the husband. Mr E claims that the husband remained listed as a shareholder and director by mistake stating, "this is purely a misunderstanding as we thought [H] was to be included just as he had been in all their companies". Mr E goes on to explain that the rectification was "left unattended for a while".
159. I note that the 2023 Companies House Confirmation Statement does record a transfer of shares on 7 June 2019, but the date on which this was executed was 29 November 2022, after the parties had separated. Ditto the husband's termination as a director. Ditto his cessation as being a person with significant control.
160. By contrast, the company accounts for CDE Property Investments Ltd have the husband as a director until year end 2021. Mr E would have it that the husband's appearance on the financial statement was purely down to an internal administrative error due to the software he was using. I have not been provided with a copy of the stock transfer form.
161. I am afraid that I simply do not believe Mr E. It seems to me that to "protect my dad's money" from "vultures", the husband decided, after separation, to put some distance between himself and his ownership and directorship of CDE Property Investments Ltd and that he has enlisted Mr E to back-date the alleged transfer and resignation to meet his present litigation needs.
162. Mr E was pleased to tell me a little about his charitable endeavours in the community. Whatever else may be said about Mr E, in terms of his conduct in this case, had he been an accredited professional, I would have sought submissions as to whether this judgment should be placed before his regulator.

The law

Approach to determining primary facts

163. The burden of proof rests on the party seeking to assert a fact. I have to determine the case on the balance of probabilities. Is it more likely than not that an asserted fact is proved?

164. The decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence. I take into account a wide range of matters including my assessment of credibility of the witnesses, documents and inferences which can be drawn from the evidence. I must consider each piece of evidence in the context of all of the other evidence.
165. Findings of fact must be based on evidence not speculation. Evidence-based findings of fact may include inferences that can be properly drawn from the evidence and not on suspicion or speculation: *Re A (A Child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12 [2011] 1FLR 1817. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors.
166. In determining whether a party has discharged the burden upon it, the court looks at what has been described as “the broad canvas” of the evidence before it. The court takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence.
167. The evidence of the parties is of utmost importance. It is essential that I form a clear assessment of credibility and reliability. I am entitled to place weight on the evidence and impression that the parties have made upon me.
168. I remind myself that demeanour is an uncertain guide in assessing the reliability of evidence and that far more important is the substance of the evidence given, its internal consistency with contemporaneous documents and inherent probabilities. That said, the family court is still permitted to have regard to the demeanour of witnesses when there is little by way of other contemporaneous documents. I remind myself to guard against an assessment solely by virtue of the parties’ behaviour in the witness box.
169. This is a case where I also give myself a *Lucas* direction and remind myself that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness has lied about some matters does not mean that he or she has lied

about everything. I have in mind the guidance provided most recently in *Re A, B and C (Children)* [2021] EWCA Civ 451, [2022] 1 FLR 329.

170. I accept entirely that just because a party has lied that does not necessarily prove the primary case against a party.

Non-disclosure

171. Where a party does not play by the rules the court is at liberty to draw adverse inferences, provided the evidence warrants it. In *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 [16] Mostyn J stated:

“Where the court is satisfied that the disclosure given by one party has been materially deficient then:

- (i) The court is duty bound to consider the process of drawing adverse inferences whether funds have been hidden.
- (ii) 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.
- (v) The court will then look to the scale of business activities and at lifestyle.
- (vi) Vague evidence of reputation or the opinions or beliefs of third parties are inadmissible in the exercise.”

172. This guidance is developed and augmented by *Moher v Moher* [2019] EWCA Civ 1482 where the Court of Appeal made it clear that quantification is not necessary where the offender has made it impossible for the court to attempt any estimate.

The statutory criteria

173. Once the court has determined the asset base it must go on to consider how the assets may be divided justly. I am required to do that fairly.

174. I must apply sections 25(1), (2) and s.25A of the Matrimonial Causes Act 1973.

175. s.25(1) provides:

“It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B and 24E above and, if so, in what manner, to have regard to all of 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.”

176. s.25(2) provides:

“As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A, 24B and 24E 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 to make in the foreseeable future 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.”

177. s.25A(1) provides:

“Where on or after the making of a divorce or nullity of marriage order the court decides to exercise its power under s.23(1)(a), (b) or (c), 24, 24A, 24B or 24E 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 as to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable.”

178. A helpful summary of how to apply these sections is to be found in the judgment of Peel J in *WC v HC (Financial Remedies)* [2022] EWFC 22, [2022] 2 FLR 1110 at [21]

‘The general law which I apply is as follows:

(i) As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution; *Charman v Charman (No 4)* [2007] EWCA Civ 503, [2007] 2 FLR 1246.

(ii) The objective of the court is to achieve an outcome which ought to be “as fair as is possible in all the circumstances”; per Lord Nicholls of Birkenhead in *White v White* [2001] 1 AC 596, [2000] 2 FLR 981, at 599 and 983H respectively.

(iii) There is no place for discrimination between husband and wife and their respective roles; *White v White* at [2001] 1 AC 596, [2000] 2 FLR 981, at 605 and 989C respectively.

(iv) In an evaluation of fairness, the court is required to have regard to the s 25 criteria, first consideration being given to any child of the family.

(v) Section 25A ... is a powerful encouragement towards a clean break, as explained by Baroness Hale of Richmond in *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186 at para [133].

(vi) The three essential principles at play are needs, compensation and sharing; *Miller; McFarlane*.

(vii) In practice, compensation is a very rare creature indeed. Since *Miller; McFarlane* it has only been applied in one first instance reported case at a final hearing of financial remedies, a decision of Moor J in *RC v JC* [2020] EWHC 466 (although there are one or two examples of its use on variation applications).

(viii) Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail; *Charman v Charman (No 4)*.

(ix) In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

(x) Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary; *Scatliffe v Scatliffe* [2017] 2 FLR 933 at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in *K v L* [2011] 2 FLR 980 at [22] there was at that time no reported case in which the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.

(xi) The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; *Hart v Hart* [2017] EWCA

Civ 1306, [2018] 1 FLR 1283. Usually, non-marital wealth has one or more of three origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.

(xii) Needs are an elastic concept. They cannot be looked at in isolation. In *Charman v Charman* (No 4) [2007] EWCA Civ 503, [2007] 1 FLR 1246, at para [70] the court said:

“The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)”.

(xiii) The Family Justice Council in its *Guidance on Financial Needs on Divorce* (April 2018) has stated that:

“27. In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e “standard of living”) the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties’ lifestyle.”

(xiv) In *Miller/McFarlane* [2006] 1 FLR 1186 Baroness Hale of Richmond referred to setting needs “at a level as close as possible to the standard of living which they enjoyed during the marriage”. A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is

relevant to the assessment of needs: for example, *G v G (Financial Remedies: Short Marriage: Trust Assets)* [2012] 2 FLR 48 and *BD v FD (Financial Remedies: Needs)* [2017] 1 FLR 1420.

(xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in *FF v KF* [2017] EWHC 1093 at [18]:

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

(xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in *N v F* [2011] 2 FLR 533 at [17-19].’

179. This case is principally concerned with needs.

The primacy of housing considerations

180. I have in mind the comments of Thorpe LJ in *M v B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 53, namely:

“In all these cases it is one of the paramount considerations, in applying the section 25 criteria, to endeavour to stretch what is available to cover the need for 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 of lesser importance that the other parent should have a home of his own where the children can enjoy 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 for 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.”

181. Balanced against these comments I remind myself of the words of Lord Hoffman in *Piglowska v Piglowski* [1999] UKHL 27, having noted the above case, and stating:

“This is a useful guideline to judges dealing with cases of a similar kind. But to cite the case as if it laid down some rule that both spouses invariably have a right to purchased accommodation is a misuse of authority.”

182. More recently, in *Butler v Butler* [2023] EWHC 2453 (Fam) Moor J stated that the fact a court concludes that a case is a ‘needs’ case does not mean that it must make an order that satisfies both parties’ needs. There may be insufficient assets to satisfy the needs of either party, let alone both.

Mesher orders

183. The Dictionary of Financial Remedies (Class Legal, 2024) provides a neat summary of the law relating to *Mesher* orders, which I adopt as my own legal direction in that respect:

“The typical *Mesher* order divides the equity 50:50 but other percentages are possible. Either way it creates (or perpetuates) a tenancy in common in the stated proportions. Note that a *Mesher* order will not be adopted in every case where there is an imbalance in the division of capital (*Tattersall v Tattersall (Ancillary Relief) (Need: Departure from Equality)* [2013] EWCA Civ 774); indeed, the Court of Appeal has recently confirmed that whilst such orders remain a ‘useful tool in certain Ltd circumstances’, it is only rarely that the advantages will outweigh the disadvantages of an order which maintains a financial connection between the parties (*Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1884 at [41]). Credit is often given to the primary carer of children for their ongoing contributions (*S v B (Ancillary Relief: Costs)* [2004] EWHC 2089 (Fam); *B v B (Mesher Order)* [2002] EWHC 3106 (Fam)), and conversely misconduct by the prospective recipient has also resulted in refusal of a *Mesher* order (*B v B* [2002] 1 FLR 555, approved by COA in *Rothschild v De Souza* [2020] EWCA Civ 1215). *Mesher* orders are most commonly seen in cases where assets are limited (see e.g. *Uddin v Uddin & Ors* [2022] EWFC 75); where resources permit, consideration

should be given to provision of housing which is owned outright (*Alireza v Radwan* [2017] EWCA Civ 1545).”

Treatment of debts

184. HHJ Hess provides a helpful analysis as to how to characterise debts - hard or soft - and then take into account debts, in the case of *P v Q (Financial Remedies)* [2022] EWFC 89, stating at [19x]:

“There is not in the authorities any hard or fast test as to when an obligation or loan will fall into one category or another, and the cases reveal a wide variety of circumstances which cause a particular obligation or loan to fall on one side or other of the line.

A common feature of these cases is that the analysis targets whether or not it is likely that the obligation will be enforced.

Features which have fallen for consideration to take the case on one side of the line or another include the following and I make it clear that this is not intended to be an exhaustive list.

Factors which on their own or in combination point the judge towards the conclusion that an obligation is in the category of a hard obligation include (1) the fact that it is an obligation to a finance company; (2) that the terms of the obligation have the feel of a normal commercial arrangement; (3) that the obligation arises out of a written agreement; (4) that there is a written demand for payment, a threat of litigation or actual litigation or actual or consequent intervention in the financial remedies proceedings; (5) that there has not been a delay in enforcing the obligation; and (6) that the amount of money is such that it would be less likely for a creditor to be likely to waive the obligation either wholly or partly.

Factors which may on their own or in combination point the judge towards the conclusion that an obligation is in the category of soft include: (1) it is an obligation to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship; (2) the obligation arose informally and the terms of the obligation do not have the

feel of a normal commercial arrangement; (3) there has been no written demand for payment despite the due date having passed; (4) there has been a delay in enforcing the obligation; (5) the amount of money is such that it would be more likely for the creditor to be likely to waive the obligation either wholly or partly, albeit that the amount of money involved is not necessarily decisive, and there are examples in the authorities of large amounts of money being treated as soft loan obligations.

It may be that there are some factors in a particular case which fall on one side of the line and other factors which fall on the other side of the line, and it is for the judge to determine, looking at all of these factors, and maybe other matters, what the appropriate determinations to make in a particular case in the promotion of a fair outcome.”

How wider family resources should be treated

185. In *WC v HC (Financial Remedies)* [2022] EWFC 22, [2022] 2 FLR 1110 at [23] Peel J, refers to his earlier analysis when sitting as a Deputy Judge of the High Court in *M v M (Financial Remedies)* [2020] EWFC 41, [2020] 2 FLR 1048 about resources meaning from the wider family.

“[65] Should a court inquire into the willingness of the wider family to assist one or both spouses?

[66] To my mind there are two main categories of cases:

- (i) Where a spouse has an interest in an asset together with other family members, and the court frames its order so as to ‘judiciously encourage’ the other family members to assist in extraction by the spouse of value referable to his or her interest. The court should not cross the boundary of improper pressure in so doing. This is the so-called *Thomas v Thomas* doctrine (*Thomas v Thomas* [1995] 2 FLR 668). Importantly, it applies when the spouse has an actual interest in an asset shared with third parties (e.g. family) but is confronted by liquidity difficulties.

- (ii) Where family members, who are gratuitous donors, are willing to make funds available by gift or loan to the relevant spouse. In this instance, the spouse has no legal or beneficial interest; it is a pure act of generosity for a person under no obligation to do so.

[67] ...

[68] [In respect of the second category] I apply the following principles:

- (i) The starting point is that there is absolutely no obligation on a third-party family member to provide funds from his or her personal resources. As Holman J vividly said *Luckwell v Limata* [2014] EWHC 502 (Fam), [2014] 2 FLR 168, at para [6]: “I wish to stress with the utmost clarity that neither the wife’s father nor her mother are under the slightest legal obligation whatsoever to pay a single penny to, or for, their daughter, nor their grandchildren, nor, still less, their son-in-law.” This statement is wholly consistent with law and fairness. The court’s function is to distribute the parties’ resources, not the resources of wider families; see paras [66] and [67] of *Alireza v Radwan and Others* [2017] EWCA Civ 1545, [2017] 4 WLR 206, [2018] 1 FLR 1333.
- (ii) That said, on occasions wider family members may show themselves prepared to assist, willingly and under no pressure from the court to do so. Two distinct scenarios spring to mind:
 - (a) Whether a spouse’s family will be likely, if requested, to come to his or her aid in meeting specific needs personal to the spouse in question and;
 - (b) Whether a spouse’s family will be likely, if requested, to come to his or her aid in making a payment to the other spouse to assist in bringing financial remedy proceedings to a conclusion.
- (iii) The first scenario is not uncommon. If the means are available, the wider family, although under no legal obligation to do so, may willingly help with buying a house or meeting income needs if the alternative is homelessness and penury. But the evidence of willingness to do so must be clear. Mere speculation, or optimistic assumption, is insufficient.

- (iv) The second scenario is rarer, for obvious reasons, although it can unlock cases and bring about settlement. For example, the family of a spouse may offer to pay the receiving spouse a lump sum to avoid sale of the marital home. Again, in my judgment, there must be clear evidence to justify such a finding. Speculation and optimistic assumption will not suffice.
- (v) The court should not place pressure on the third party who is perfectly entitled to decline to provide support. As Deputy High Court Judge Nicholas Mostyn QC (as he then was) said in *TL v ML (Ancillary Relief: Claim Against Assets of Extended Family)*[2005] EWHC 2860 (Fam), [2006] 1 FLR 1263, at para [101]:

“The correct view must be this. If the court is satisfied on the balance of probabilities that an outsider will provide money to meet an award that a party cannot meet from his absolute property then the court can, if it is fair to do so, make an award on that footing. But if it is clear that the outsider, being a person who has only historically supplied bounty, will not, reasonably or unreasonably. Come to the aid of the payer then there is precious little the court can do about it.”

The judge was there addressing the second of my suggested two scenarios, but in my view his remarks apply with equal force to the first scenario.

- (vi) In either scenario, where the evidence shows, to the requisite standard of proof, that third-party family members will likely provide financial support to one or other of the spouses, that, in my judgment constitutes a resource that a court is entitled to take into account. To do otherwise would be artificial. As to the sort of evidence which the court will evaluate when deciding upon the likelihood of future assistance:
 - (a) Usually the court will look to see whether bounty has been provided in the past, in what quantity and over what amounts of time, as evidence of a pattern.
 - (b) Additionally, the court can look at specific offers of long-term future financial support made to a spouse before or after marital breakdown.

- (c) Offers of interim provision to tide the spouse over with assistance towards legal fees and income needs during the period of litigation will be of very limited evidential relevance to the question of whether long-term future support will be forthcoming. Usually such payments are transitory in nature, designed to assist the recipient spouse with the demands of the litigation.
- (d) Absent clear evidence establishing (i) a track recorder of historic payment and/or (ii) reliable representations of future subvention, the court will be hard pressed to be satisfied of this class of resource.”

Statement of issues

- 186. I must determine the following issues as a prelude to exercising my discretionary powers of re-distribution:
 - 186.1. The value of D Street in light of the husband’s “*Daniels v Walker* style” application.
 - 186.2. Whether the husband’s mother is owed £185,000.
 - 186.3. The status of a payment of £125,000 paid to the husband’s mother by the wife on 26 January 2016.
 - 186.4. The status of the loan on the ABC Properties Ltd director’s loan account.
 - 186.5. If any loans are owed to the husband’s mother, how should they be characterised on the soft loan vs. hard loan continuum?
 - 186.6. What is the status of loans advanced to either party since separation?
 - 186.7. Was a loan made by the husband’s mother to the wife cleared in 2018?
 - 186.8. What inheritance has the husband introduced to the marriage following his father’s death in 2018?
 - 186.9. What is the net value of ABC Properties Ltd?
 - 186.10. What is the net value of XYZ Ltd?

186.11. What is the net value of [Estate Agent] Ltd?

186.12. What is the net value of DEF Ltd and GHI Ltd?

187. These issues neatly break down into four categories, namely (a) D Street, (b) loan issues, (c) inheritance and (d) company valuation issues.

D Street Valuation

188. I determined the husband's "*Daniels v Walker* style" application just before closing. I then gave the parties a little time to gather their thoughts prior to closing, in light of my determination. With time against us, I gave quick summary reasons for my refusal of the application, indicating that I would expand upon my reasoning in my final judgment.

189. My summary oral reasons were:

189.1. The figure of £1.1M had been agreed at the PTR when both parties had been represented by counsel. I am entitled to hold the parties to this concession made about four weeks prior to the final hearing.

189.2. I do not know the circumstances of how the surveyor's report was obtained in the absence of a properly submitted D11. I indicated that, whilst I was aware of the figure from the open offer, I was not going to read the report unless I allowed the application.

189.3. As I will explain in a little more detail shortly, I do not consider that the wife was properly consulted about the drop in the marketing price.

189.4. I had to bear in mind the overriding objective and that if I allowed the application, it would almost inevitably lead to the wife seeking an adjournment for her to make her own valuation application. The overriding objective requires the court, *inter alia*, to deal with the case justly, which includes, so far as practicable, to ensure that parties are on an equal footing, save expense, and to allot an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

190. I made plain when giving my short reasons that the valuation I was alighting upon I would regard as a "fragile" figure. Ultimately D Street will sell for what it sells for. It

may ultimately be a lower (or indeed higher) price than this court is proceeding with. But I am required to do the best I can in ascribing a figure for the purposes of this litigation. I remain clear-sighted that it is a fragile figure.

191. My fuller reasons require me to explain a little of the background as to how we have arrived at this point. At the hearing on 7 June 2023, the DDJ gave directions which provided a mechanism for the identification for two marketing agents to be selected to appraise D Street and an average was to be taken of both figures.
192. In the event only Haart came forward with an appraisal on 13 February 2024. This stated, “Having reviewed the results from our demand calculator, local market intelligence reports and comparable examples of both local sales and properties current on the market, our recommended guide marketing price as agreed with you is £1.1M. We believe this will secure you the best sale price for your property ... As soon as you give us the go-ahead to market your property, we will go all-out to generate the maximum activity. After all, the more viewings we do, the better the opportunity we have to achieve – or even exceed – your target price.”
193. I am unsure whether the figure of £1.1M was actually agreed with Haart or, if it was agreed, how that came about. It may be that the letter is using something of a pro-forma. Nothing turns on this in my determination, however it was arrived at £1.1M was the marketing figure of the agent.
194. As I have noted, there followed thereafter an offer on 20 February 2024 from the husband based upon the gross price of £1.1M. More importantly, at the PTR on 4 March 2024 the parties, with the assistance of counsel, agreed a figure of £1.1M and it is recorded as a recital in the order. Save in the most exceptional of circumstances, courts and parties should be entitled to regard such concessions, freely given with the assistance of expert advice, to be binding and determinative upon everyone as the case progresses.
195. The wife gave oral evidence that D Street ended upon being marketed very shortly after the Haart valuation had been provided. The circumstances of it going on to the market are a little unclear. The wife told me that the D Street valuation was sent to the husband. Upon receipt he contacted Mr S at Haart. As he was not a formal director of ABC Properties Ltd it was not his place to do so, although I accept that this is how the parties

had conducted themselves in the marriage. The wife told me that she received a call from Mr S asking “who is [H]?” and she explained.

196. Although I accept that this is only hearsay evidence, the wife told me that Mr S had said that the husband had protested to him that the property was not worth £1.1M, but closer to £650,000. The wife had countered Mr S about the husband’s views on valuation. The husband had asked that it be marketed immediately. This was not the husband’s formal instruction to give, albeit, as I have said, I accept that he was probably used to “calling the shots” with what happened with ABC Properties Ltd.
197. The property was placed on Rightmove at £1.1M, although the photos had yet to be finalised when it was first posted.
198. D Street is a House in Multiple Occupancy (HMO) and it is managed by an agent called A Property Management. Two people concerned with A Property Management were individuals called Laura and Lucy. Laura, Lucy, Mr B, and the parties were all on a WhatsApp chat group so that they could easily communicate about property issues. At around the time D Street was being first marketed, the husband had an argument with Laura and Lucy about the valuation at £1.1M. It was not really their responsibility (A Property Management was not part of Haart). Nevertheless, the husband appears to have been asserting that Laura and/or Lucy thought the property was worth no more than £650,000 based, I think, on their earlier assessments.
199. There were two early offers. Someone called R, who I think was known to Laura and Lucy, offered £550,000 before D Street was marketed on 13 March 2024, and on 20 March 2024 he increased his offer to £700,000. It appears that R may have been an investor in the HMO sector. His offer may have been opportunistic, I simply do not know. The wife referred to the £550,000 offer as embarrassing.
200. I have been taken to a series of emails and WhatsApp exchanges. On 13 March 2024, Mr B emailed Mr D at Haart (copying in the wife) stating, “Please keep us both on any emails. Please inform us with any offers. When will you be listing it on Rightmove etc. I’m a little miffed as to how you got a 1.1 million valuation? What price will you be listing it for?”

201. Mr D replied later stating, “I am working on an increased offer from [R]. I am hoping to hear from him later today. The property is online and is being advertised at £1.1m. In regards to the valuation, I will ask [Mr S] to contact you to discuss.”
202. On 20 March Mr D emails Mr B again to record the increased offer from R also stating, “we have mentioned the property to various investors who have not taken any interest unfortunately”.
203. There appears to be the possibility of another viewing noted on 27 March 2024 with the prospective viewer having questions. The wife replies to Mr D, “The majority of this has already been provided to you in the past from [A Property] Management. Please proceed with the viewing. Additionally we are still awaiting professional images to be taken internally and externally, this continued delay is unacceptable.” Mr B chips in by way of a reply stating, “I agree with [W] – this is a fine property to market. The rental yields speak for themselves. We have done extensive work to maintain it, if you feel like you do more have the investor reach needed please let us know now [sic]. To walk in and say its worth at least 1.1m and then cut to 950k within 2 weeks does worry me.”
204. On 29 March 2024 at 13.56 the wife emailed Mr D stating, “Why has the property been dropped from £1.1m to £950k? I did not agree this?” Mr D replies, “[Mr S] changed the price. I’ll speak with him and find out who authorised the price change”.
205. The wife has yet to receive a comprehensive reply to that question.
206. Switching from emails to some screenshots of WhatsApp messages, I have pieced together the following. There are two separate threads. One between “[Mr S] Estate Agent” and what appears to be Mr B and then a second between Mr B and the wife. On or about Saturday 30 March 2024 the wife messages Mr B, “I had no idea...if we were going to drop would have said £1m – the pics are shocking and don’t show a true reflection of the building. I’m just really pissed off with Haart to be honest”.
207. There are some earlier messages between Mr B and “[Mr S] Estate Agent”. The day stamps suggest that the messages are the Monday before 30 March, being 25 March 2024. “[Mr S] Estate Agent” messages to Mr B, “Morning mate, no viewings further yet, I am waiting for the professional photographer to let me know when he can do it this week. I

think the property should be on for £950k”. Mr B replies “OK” and the estate agent asks, “Let me know if you and [W] are happy to amend the price”. Mr B replies “Yes please”.

208. When giving her evidence, the wife suggested that the husband had brought to bear an influence upon Mr B, getting him to reduce the price without reference to the wife. The husband denies this.
209. I have to say that the situation looks very peculiar. A figure of £1.1M is agreed and then, before the marketing photos are properly uploaded, the agent is seeking to reduce the value. Mr B, who in emails was saying what a great property D Street was, then appears to go behind the wife’s back and agrees a reduction without reference to her.
210. I do not need to make definitive findings here. The wide canvass I survey is a little chaotic with Mr B (the husband’s childhood friend) saying different things to the wife on email than he is saying to the estate agent in a WhatsApp chat. I am sufficiently troubled and confused by the exchanges that I consider I can place little or no weight on the marketing process.
211. I also note a document in the husband’s updating disclosure which I expect has been prepared by Mr E. It is a balance sheet of ABC Properties Ltd as at 31 July 2023, albeit “revalued” to take into account an increase on D Street post this date. At least, I think that is what the document is doing (as the figures do not quite tie up). The July 2023 figure for D Street appears to be based upon a Lloyds’ valuation as at 30 November 2021 which was then £1M. I have not seen the 2021 Lloyds valuation. In closing Mr Reed submitted that the £1M figure was a total of the three properties in ABC Properties Ltd in 2021. That is not how I read the document, which has a separate figure next to each property without a cumulative total in the near left column.
212. A combination of Mr Reed’s wish to introduce a surveyor’s report which was said to be materially at odds with the PTR agreed figure, combined with his outline description of a marketing process which was at odds with the PTR value, persuaded me that, in order to do justice to the husband, I should exceptionally allow Mr Reed to advance his arguments.
213. Having heard the evidence, I was in a much stronger position to be confident that, whatever has happened during the marketing process, it was sufficiently irregular and

did not include the wife to a sufficient extent to persuade me not to place any reliance upon it.

214. That left the surveyor's report, advanced without the cover of a formal D11 setting out reasons which are not fanciful why it should be entertained, given the previous and recent concession at £1.1M.
215. The open offer disclosed the surveyor figure of £800,000 and from Mr Reed's oral submissions, I know that the report has been prepared by a chartered surveyor. I do not consider the appearance of the £800,000 in an open offer to be evidence in the case. It was evidence creep, trying to inveigle the figure into the proceedings before the court had determined whether it would give permission. I am not moved by inveigling. Behind that, I know nothing of the circumstances of the obtaining of the report nor the husband's involvement in the process.
216. I have in mind the well-known case of *Daniels v Walker* [2000] 1 WLR 1382 and Peel J's recent articulation of how to approach such applications in the case of *GA v EL* [2023] EWFC 187, in particular paragraphs [25] to [28], with particular attention drawn to "the overall justice to the parties in the context of the litigation". Whilst there was not a previous SJE report, I am approaching matters in the same way, treating the agreed figure as being akin to the SJE valuation. If anything, a formally recorded concession as to value should be even harder to dislodge than a SJE figure.
217. Mr Reed sought to persuade me that, because the wife had not detailed in her s.25 statement the marketing history I have just described, she was somehow guilty of a failure of full and frank disclosure. I was taken to various passages in *Livesay (Formerly Jenkins) v Jenkins* [1985] FLR 813, *Sharland v Sharland* [2015] 2 FLR 1367 and *SK v WL (Ancillary Relief Post-Separation Accrual)* [2011] 1 FLR 1471. I do not accept these submissions. They are addressing a different situation. I do not consider that the cases assist me with the context I am addressing. The wife has done nothing wrong by relying on the figure which was agreed at the PTR.
218. The fact she had to give oral evidence about the course of marketing and produce emails and screenshots is more down to the fact that the husband was, exceptionally, being shown an indulgence by the court in being allowed to proceed on the first day (actually, the second day, as we lost the first day due to the husband's delays) with an application

at all. He was in the position of supplicant in this regard and the criticism of the wife was not justified.

219. I am left then with Mr Reed urging me to accept a surveyor's report without any formal application and information that would ordinarily be associated with it. This in circumstances when I am already on high alert as to the husband's apparent unjustified intervention in the marketing process of D Street.
220. Drawing on the words cited by Mr Reed from *SK v WL*, "the reality of the situation" is that the valuation figure was agreed at PTR, the circumstances of the marketing and rapid price drop are highly contentious, and the husband has made a late oral application at the start of a final hearing, without even dignifying it with a D11 and supporting written evidence.
221. Anarchy would reign if litigants were routinely allowed to simply turn up on the first (or second) day of a final hearing and demand that the court admit new valuation evidence seeking to undo concessions made only weeks before.
222. The overall justice of this case, I am afraid for the husband, is that I am not going to allow his application, for the brief reasons given orally during the hearing which is supplemented, as I promised I would, with these further reasons now.

Loans

223. There are a series of transactions which are said to amount to loans which should weigh in the scales of computation. It is convenient to deal with all loan issues together, although not all are actually related to one another.
224. The alleged loan for £185,000 from the husband's mother to the parties:
 - 224.1. As I have already described, this is said to relate to works undertaken to S Close.
 - 224.2. By the time of the PTR, no one in the husband's mother's team had actually exhibited to either of her two previous statements a full cross-referenced list of the figures with dates and bank accounts amounting to the £185,000. That this essential explanation had yet to be given is astonishing. I gave permission for

yet another statement from the husband's mother so that she had an opportunity to set out her case that she was owed £185,000.

- 224.3. An exhibit to the husband's mother's second statement shows a series of payments between April 2017 and September 2019 which amount to £185,000. They are cross-referenced to bank statements from where the payments are said to have been made. I do not have a full set of accounts showing these and must rely on the statement.
- 224.4. Whilst payments may have been made, I have to consider whether they were loans or something else. The payments largely occur after the husband's father died at the end of April 2017. The payments are equally consistent with a distribution of an estate.
- 224.5. The wife does accept that the parties did borrow £30,000 in 2018. There is an HSBC account in the husband's name which shows two payments. One is on 17 May 2018 and the other 21 May 2018. Each are marked "[mother] loan" and come from an account bearing the name of the husband's mother. The first is for £15,000 and the second is for £10,000. The wife's statement [535/5] refers to a loan of £30,000 whereas the figures appear to amount to £25,000. I cannot square this small discrepancy which I do not consider to be material. These are the only two references which contain "[mother] loan" in the bank transfer.
- 224.6. It is the wife's case that her parents transferred £20,000 to her on 3 May 2019, which she transferred to the husband with the express purpose of his repaying a large part of the loan to his mother. I have not been able to find the bank statement in support of this, but as I have found the wife to be essentially truthful and the date is precise, I am accepting on the balance of probabilities that this is correct.
- 224.7. The wife denies that all of the loan advance (whether £30,000 or £25,000) was on account of renovations with various other personal payments or cash being disbursed from this sum. This included some minor cosmetic procedure for the husband. I am inclined to accept what she says in this regard.

- 224.8. I have already made reference to the 2019 loan agreement. It is a strange document for the reasons I have given. In fact, contrary to the express terms of the alleged loan, the money was not repaid on the sale of S Close but allegedly “rolled over” into O Avenue, albeit not covered off by a further agreement.
- 224.9. The loan schedule which amounts to £185,000 [SB106] can be contrasted with a more detailed account of alleged loan advances and S Road [sic] Disbursements at [SB112]. What is quite obvious is that not all of the alleged loan advances at [SB112] match with the figures alleged to amount to the £185,000 loan at [SB106]. A particularly obvious figure is a payment on 4 June 2018 in the sum of £80,000, referenced in the detailed account as a loan in from the husband’s mother. Why does that not feature in the other schedule? It is almost impossible to make sense of it all.
- 224.10. What is apparent is that around this time, the husband’s siblings also had significant advances to them. These are not marked as loans. The precise differences in accounting between the siblings would be disproportionate to dwell upon in this judgment. The siblings may not have all had the same amounts but, on the balance of probabilities, I am not satisfied that the £185,000 is made out as a loan when it seems more likely that a substantial amount was probably the distribution of his father’s estate. Matters are not made any easier for the court to unravel when presented with schedules prepared by Mr E, rather than the actual bank statements themselves.
- 224.11. Further burnishing my views that the schedule is a construct, I can see that there is reference on 18 and 20 September 2019 in the detailed schedule to “[Mother] Bungalow” each in the sum of £5,000. These are placed in the husband’s mother loan column, but this was nothing to do with the parties. The bungalow was the property owned by the husband’s mother in which Aunt E lived.
- 224.12. The husband and his mother (and his father, when he was alive) were in the habit of making frequent large transfers between them. Trying to make sense of them all now is confounding and something of a fool’s errand.
- 224.13. Standing back,

- 224.13.1. the lack of proper disclosure of all supporting bank statements,
- 224.13.2. the unsatisfactory schedules prepared by Mr E which conflict and, in some material instances, are obviously wrong,
- 224.13.3. the fact that the payments fell in at a time broadly in line with receipt of a likely family inheritance (for which the husband's siblings also received money),
- 224.13.4. the curious and unsatisfactory features to the alleged family loan agreement, which in any event was not complied with and not refreshed when O Avenue was purchased, and
- 224.13.5. my nervousness about being able to accept anything that the husband or his mother tell me, all coalesce to leave me in a position where I am not satisfied, on the balance of probabilities, that the husband and/or his mother have made their case that there is £185,000 owing for repayment of a loan.

225. The status of the payment of £125,000 paid to the husband's mother by the wife on 26 January 2016.

225.1. It will be recalled that, when looking back to distant events in 2013, I was not persuaded that there was a £125,000 loan arising at that time. The £125,000 is a construct and I have described the various ways in which it is open to challenge. The husband's mother would have liked my finding to have gone the other way so that she could pin the £125,000 paid by the wife on 26 January 2016 on an earlier loan rather than in repayment of a later sum which was borrowed when ABC Properties Ltd was set up.

225.2. Despite the lamentable record keeping on behalf of ABC Properties Ltd (for which I hold the wife partly responsible, as she is a director), it is my finding that the £125,000 payment was a repayment of a balancing sum of a loan of £150,000 which had been advanced by the husband's parents on or about 9 July 2015 to provide some working capital when the company was set up.

- 225.3. It is not contentious that on or about 4 November 2015, a sum of £25,000 was repaid to the husband's mother and that was recorded in the accounts of ABC Properties Ltd.
- 225.4. What, then, is the status of a payment made by the wife on 26 January 2016 to the husband's parents? This is not recorded in the accounts of ABC Properties Ltd and so the husband says it cannot have anything to do with the company.
- 225.5. Having found that there was no £125,000 loan going back to 2013, the most obvious inference, on the balance of probabilities, is that the sum was for repayment of the outstanding £125,000 loan, despite the formal accounting irregularities. There was no other posited reason why £125,000 would be being paid by the wife at this stage in the chronology.
- 225.6. Heading off on another fool's errand, I note that the husband has attached to his Form E competing and conflicting loan accounts for year end 31 January 2022 for ABC Properties Ltd.
- 225.7. One notes the loan of £150,000 and the repayment of £25,000 in November 2015, leaving a balance of £125,000. The second notes the loan of £150,000 and then shows three repayments of £25,000 on 4 November 2015, £10,000 on 13 April 2017 and £4,000 on 14 April 2017. This shows an outstanding amount of £111,000.
- 225.8. In her first statement the husband's mother states "...I lent £150,000 and to date I am owed an outstanding amount of £111,000. The company has acknowledged this loan in all their financial documents and made partial payments". In her second statement, the husband's mother changes her position and asserts that the April 2017 payment was posted as £4,000 in error, when in fact it should have been posted as being £40,000. This means, per her second statement, her alleged outstanding loan was £75,000. It was fairly pointed out by Mr Perrins that the husband's mother did not appear to know how much money she was owed. Given that they are not insubstantial sums, I agree that, on the balance of probabilities, the husband's mother should have known whether the sum was £111,000 or £75,000. I detect the handiwork of Mr E with the incompetently constructed loan account mis-posting an alleged £40,000 as £4,000. But the

more profound point is that the husband's mother appears to be simply signing off statements with figures put before her, rather than having any real grasp of what she asserts she is owed.

- 225.9. None of the foregoing incompetence, unearthing the difference between £111,000 and £75,000, puts a glove on why there are, in fact, two loan accounts for the same period with different figures, each appended to the husband's Form E. The second would have it that £125,000 is owed to the husband's mother. Here I have a sense that I may be confronting something altogether more troubling than pure incompetence.
- 225.10. My anxieties are heightened when reviewing some of the core bank statements behind these alleged transactions. Whilst I can see payments of £10,000 and £40,000 on 13 and 18 April 2017, coming from ABC Properties Ltd into the husband's parents account, on 18 and 19 April 2017 £25,000 is paid out respectively, recycling the £50,000 payment from ABC Properties Ltd, via his parents and on to the husband.
- 225.11. As is so often the position in this case, efforts to make sense of the figures are met with the reward of yet more mirrors and yet more corridors.
- 225.12. Standing back, I believe the wife on the essentials. I do not trust the honesty or competence of Mr E. I do not believe the husband. The husband's mother is in the unhappy position of being dragged into this by her son and feels she must support him, even if that requires her to confirm things which are not true. So often the judge's refuge is back in the contemporaneous documents, but I cannot rely on those here either.
- 225.13. Having found that the wife had repaid the £125,000 on behalf of the company in January 2016, it follows that my way out of this maze is to determine that there were no loans repayable in April 2017. This is misleading accounting for reasons which may be impossible to divine definitively, but may dwell in the realms of the husband choosing to have obscure and hard to follow business dealings.

225.14. I am very much alive to the fact that the wife is the director and that, to some extent, she must bear responsibility for the state of the accounts. Whilst the wife is a fellow director of the ABC Properties Ltd with Mr B, I have not lost sight of the fact that she is, to all intents and purposes, a nominee of the husband in this regard. I rather sense she will have been a small voice faced when ranged against the combined machinations of the husband and Mr E.

226. The status of the ABC Properties Ltd director's loan account.

226.1. This sub-heading is largely dealt with by my findings above about the £125,000.

226.2. However, there is a further aspect to this. If the wife paid £125,000 from her own funds, then arguably ABC Properties Ltd owes her £125,000.

226.3. Mr Perrins' submissions live in the real world and in opening urged upon me the simplicity of his case on behalf of the wife. By contending for the equity in the family home and leaving the husband with the equity in ABC Properties Ltd, he would neatly side-step, if I accede to all or some of his case, problems in the realisation of equity out of ABC Properties Ltd which also involve the interests of an un-joined third party, Mr B. It was not his instructions to concede that his client was not due a loan repayment of £125,000, on account of her having paid this to settle the company's indebtedness with the husband's mother. However, he wisely recognised that his way forward with "least traction" was not to include the repayment of the £125,000 from ABC Properties Ltd, with all of the implications that would have for involving a third party.

226.4. In fact, I think I go further. It seems to me that the loan accounts here are shoddy. Both of them. They do not represent a true and fair picture. That may be incompetence or dishonesty. It may be a bit of both. Mr Perrins referred to the husband as a "ducker and a weaver." I agree with that analysis.

226.5. The £125,000 which the wife paid to the husband's mother came from the proceeds of sale of C Way. It will be recalled that the wife held the legal title to this property in her sole name. The beneficial ownership of this property has not been placed under the microscope during this hearing, nor did it need to be. The parties bought and sold property as a couple, sometimes putting the legal title in

the wife's name. Nothing turns on this. Whilst there was no detailed argument about it, standing back, the money was most likely paid by the wife at the behest of the husband for and on behalf of the company as its agent. The organisation of the husband's personal and business affairs has at times been chaotic. The money should have been recorded as a loan repayment from the company, but it was not. That does not mean that the wife becomes the beneficial owner of the money and entitled to the repayment of a £125,000 loan from the company which she has advanced to it. Even if I am wrong, the procedural and costs implications of trying to extract a loan from this company which involves a third party would make this a disproportionate endeavour. Mr Perrins is correct in identifying the path with "least traction" as practically the only way forward here, even if that is not precisely his client's case.

227. If any loans are to the husband's mother, how should they be characterised on the soft vs hard loan continuum?

227.1. Entwined in the endless cycle of payments back and forth between the husband and his mother, I do not rule out the possibility, notwithstanding my findings thus far, that the husband may owe his mother something.

227.2. Mr Reed suggested that I could rule out any consideration of the presumption of advancement on the basis that from time to time loans have been made and then repaid. I agree with Mr Reed's analysis in this respect.

227.3. The impression I got was that the husband and his mother are closely aligned in this litigation and on very good terms with one another. I have no way of knowing the scale of the husband's mother's net worth, but she did not strike me as bereft. I expect she lives comfortably but not opulently. As I will touch on again in a moment, the husband's mother has advanced significant sums to the husband during the course of this litigation. She has had the capacity to do so.

227.4. My view on any pre-separation loans, if any remain extant and have fallen through the cracks of my preceding findings, is that they are soft and unlikely on the balance of probabilities to be repayable by the husband. They will form no further part in my deliberations.

228. Post-separation loans to each party:

228.1. W has spent £166,160.04 on this litigation. H has spent £138,835.56. This is lamentable. I do not criticise the wife for the costs differential. She was entitled to instruct lawyers of repute and the husband has given her the runaround.

228.2. The Form ES2 discloses that the husband owes his mother £138,540 for “Living and litigation costs”. The wife owes £226,975.

228.3. Each party has had supportive families who have been in a position to provide such assistance. These figures are soft on each side. There is simply not the slack available here to make any provision for repayment. I do not think for one moment either party will face any enforcement from their families.

Inheritance

229. In addition to the £185,000 alleged loan to the husband’s mother, which I have not found to be made out, on the balance of probabilities, the husband seeks to ring-fence £238,086 on account of it having been inherited money which he spent on the refurbishment of S Close.

230. Turning again to the supplementary bundle. I have before me two schedules prepared by Mr E. The first is entitled “Inheritance Disbursements” and shows how the receipt of about £550,000 has been divided in the family. This exercise having been undertaken, there is left a figure of £238,086.70.

231. The £238,086 is noted as “Balance used for S Road [sic]”.

232. There is then a second schedule to which I have already made reference. It is called “[H’s mother] Loan/S Road [sic] Disbursements”. There are a number of mis-posts to Aunt E’s bungalow, money to the husband’s brother, a wedding photographer, skip hire (which may have been for the husband’s mother’s home) and £500 cash in Oxford Circus. The total figure at the end is £213,988.34 which does not balance with the £238,086.70 on the earlier schedule. As I stated earlier, I cannot fathom the difference.

233. I am content to accept that a significant figure in the order of about, say, £200,000 has been disbursed by the husband on S Close. I do not need to be precise. I shall weigh the

significance of that non-matrimonial contribution when I determine how the assets available to the parties should be distributed.

Company valuation issues

ABC Properties Ltd

234. What is the net value of the wife's share in ABC Properties Ltd?

234.1. At the PTR I provided for a tax report to assist in understanding the net value of ABC Properties Ltd. One of the reasons why the preparations for the final hearing were so delayed and chaotic was that the husband was late in paying his share of the accountant's fee. The accountant was then on holiday. It took longer than it might otherwise have done to get the report released once the husband had settled his share.

234.2. I am grateful to Mr Perrins for his analysis of the report and transposing a complicated set of moving parts from the report into an easy to digest summary of how things now appear. I adopt it with one important caveat.

ABC Properties Limited analysis	
D Steet	£1,100,000
Costs of sale	(£33,000)
Net equity	£1,067,000
	£1,067,000
G House	£200,000
Costs of sale	(£6,000)
Net equity	£194,000
	£194,000
E Street	£140,000
Costs of sale	(£4,200)
Net equity	£135,800
	£135,800
Sub-total	£1,396,800
Lloyds loan *5244	(£590,000)
Loyds loan *5234	(£24,652)
HSBC/Moorcroft	(£33,591)
	£748,557
Mr B	(£258,400)
XYZ loan	(£107,480)
Net equity	£382,677
Corp tax at 25%	(£95,669)
	£287,008
CGT 20%	(£57,402)
Total net equity	£229,606
50% net equity	£114,803
XYZ loan add back	£107,480
W share & XYZ loan	£222,283

234.3. By way of narrative explanation, working from the top down, the net value of the three properties in ABC Properties Ltd are provided for. I have already dealt in some detail with the valuation, albeit fragile, of D Street. The valuation of the other two properties are not contentious. There is a secured charge by Mr B for loans he has provided to the company. The husband asserts a loan due back to XYZ Ltd in the sum of £107,480. I will deal with the XYZ Ltd loan in a little more detail below.

234.4. Corporation tax is provided for and CGT on realisation of the assets leaves a total net equity of £229,606, the wife's share being half of that at £114,803. Given that the company is basically comprised of property assets, I doubt very much whether a SJE valuer would have been able to add anything to this analysis.

234.5. The loan due to XYZ Ltd is not as quite straightforward as provided for in the schedule. Whilst the existence of the loan is not in dispute, the loan belongs not to the husband but to XYZ Ltd, a separate legal entity, albeit one which is wholly owned by the husband. It is not as simple as adding the £107,480 back against the husband personally. The treatment of the £107,480 depends on a proper analysis of XYZ Ltd, which I turn to now.

What is the net value of XYZ Ltd?

235. XYZ Ltd:

235.1. The turnover of XYZ Ltd to year end 2020 was £202,232 and to year end 2021 it was £167,969. The year end is 31 January. The largest head of costs was £148,915 and £137,047 respectively. Net profit was £11,425 and £1,363.

235.2. In 2021, the accounts note the presence of seven employees, although from the evidence it is clear that the husband is in the habit of having “ghost” employees, such as the wife. This is a dishonest presentation of the accounts and enables the husband to dishonestly evade tax.

235.3. The accounting period changed in 2022 to 10 October 2022 and so it is more difficult to make a meaningful comparison with previous years. For the eight months between January 2022 and October 2022, turnover is posted as £77,481 and with other costs there is now shown a net loss of £28,243. As an extremely crude way-marker (accepting that turnover and costs may not be smooth over an accounting period) the $\frac{£77,481}{8} \times 12 = £116,221$. There are now two employees noted.

235.4. The capital and reserves on the balance sheet for year end 2021 are £124,651 but for (the new) year-end 2022, this figure has reduced to £51,385.

235.5. It is the husband’s case that he enjoys an income of £12,000 per annum.

235.6. The husband would have it that times are hard. He described the impact of the ULEZ charges in London making life more difficult. He stated that he had re-structured his business so that he was largely using sub-contractors in order to cascade some of the costs back on to them. Whilst accepting that ULEZ may

have made things more complicated for people who need to drive through London for their work, I am unconvinced by the husband's account. The husband's work is highly specialised. I consider that I am entitled to take judicial notice of the fact that there are plenty of tall buildings in London.

- 235.7. The difficulty for the court and husband is that, by his dishonesty elsewhere in the case, it is very difficult to take anything he says at face value. His accountant is formally [A firm of accountants] Ltd, but due to illness of the principal in the firm, it has been, in effect, Mr E, an employee of the firm.
- 235.8. When I juxtapose the lifestyle which the respondent enjoys, which I have already described, I am left with a firm finding that I am being lied to about the respondent's income. Whilst I apply the test of the balance of probabilities, I am confident to a very high degree that I am being lied to.
- 235.9. The husband's lifestyle I have described is completely at odds with what he says to me on oath. I am entitled to infer income which I am not being told about and I am not required to quantify that, if, by the respondent's lies on oath to this court, I am unable to quantify precisely.
- 235.10. The respondent's lifestyle is of someone with access to significantly more income. Whilst I cannot quantify precisely, the husband seems to be prosperous enough to be able to afford multiple expensive hotel stays here and abroad, to spend £1,000 on a night out in Box, Soho and to be a frequent purchaser of designer clothing. Most would regard the husband as being very comfortably provided for by his income.
- 235.11. When factoring in his legal costs, I am unconvinced by the respondent's protestations that this has all been borrowed from the husband's mother. Whilst there may be a level of borrowing for his lifestyle from his mother, it seems to me that the husband has access to funds way beyond what can be accounted for by his mother's purse.
- 235.12. On 30 September 2023, the husband's brother changed the name of a company he owns to a name similar to XYZ Ltd. The husband was unable to assist the

court why this had occurred. I do not need to rely on this fact to found the inference, as I do, that I am being told a pack of lies.

235.13. But what am to do about XYZ Ltd? Is it a valuable capital asset, of which the ABC Properties Ltd loan is a constituent part? Do I even accept that the alleged loan from ABC Properties to XYZ Ltd is genuine? Or should I treat XYZ Ltd an income producing asset from which the husband derives his lifestyle?

235.14. It seems to me that, properly analysed, XYZ Ltd, for the purpose of these proceedings, is best treated as an income producing asset. If I am not looking at XYZ Ltd as a capital asset, then, if the loan from XYZ Ltd to ABC Properties Ltd is genuine, this is “lost in the noise” and not something which I should be properly including as capital available to the husband in my computational exercise.

235.15. I am alive to the fact that I might also be being lied to about the alleged inter-company loan. In which event, the value of the wife’s share in the company would increase by half of £107,480, and the tax figures would change as well. Given the broad justice I am going to have to administer here, that is something that everyone is going to have to live with. I remind myself we are dealing with a fragile figure in any event.

235.16. Glancing into the rear-view mirror, I am fortified by the case management decision made at the PTR, to give up on efforts to obtain an SJE valuation. Sitting from the vantage point of where I do, able to survey the broad canvas of the entire evidence, I consider that any SJE would have been placed in a nigh on impossible position.

235.17. Any analysis of [XYZ2] Ltd adds nothing to my conclusions above.

[Estate Agent] Ltd

236. [Estate Agent] Ltd:

236.1. This an estate agency run by a friend of the husband, Mr M. His friend set this up when he lost his job a few years back.

236.2. The husband has made an advance to Mr M of £15,000, which he said was a loan, albeit secured through a 15% shareholding in the company. He says that once he has had his £15,000 repaid to him, he will return the shares. I am not going to dwell upon the exact status of this arrangement, and whether it is an investment or a loan. It is relatively small money.

236.3. The husband says that he has had about £4,000 returned to him, leaving an investment/loan of about £11,000 outstanding.

236.4. I agree with Mr Reed that that aspect of the case does not lead to a pot of gold.

DEF Ltd, GHI Ltd and the lodge

237. DEF Ltd and GHI Ltd.

238. I can take this very shortly. I have listened to the evidence of the parties and to Mr E on this point.

239. I believe the wife. I do not think for a moment that there is hidden stock, diverted funds to China, or some business waiting in the wings to be resurrected. This was a small business which had some modest success in the past but which has ceased trading and does not have any net value which can be meaningfully ascribed to the matrimonial pot.

240. In fact, it appears that there are debts associated with the two companies, on account of “Covid loans” having been taken out when such facilities were available during the coronavirus pandemic back in 2020/2021. As the companies are to be liquidated, these are debts which the wife is unlikely to have to repay personally, as I was not told about any personal guarantee. If it turns out she is on the hook in some way, then I am afraid she is going to have to come to terms with her creditor in that respect. I do not regard this as a key aspect of the case.

241. Where the evidence of the wife and Mr E conflict about what became of bank statements in relation to these companies, I prefer the evidence of the wife.

242. I do not find, on the balance of probabilities, that there is any lip bar or microneedling business run by the wife. She may have posted some activity on social media about this, but that does not amount to any viable business in my judgment.

243. I do not have the material to determine that the wife has any interest in a property known as [the lodge], which, on the balance of probabilities, is owned by other members of the wife's family.

Garage

244. After the hearing was over, I was sent an email from Mr Perrins which suggests that the husband may have a previously undisclosed garage in his name. Mr Reed objected to my considering this as it was after the hearing. The issue had not been canvassed in oral evidence.

245. I do not think it would be fair to the husband to take this into consideration now and it would be disproportionate to reconvene the hearing for this matter to be canvassed. The curtain must come down.

Computation of assets, income and earning capacity

246. After all the sound and fury associated with this case, I am left with the following assets available for distribution:

Assets	H	W	
FMH	318,281	318,281	
ABC		114,803	
Liabilities	-70,496	-85,634	
Total	247,785	347,450	595,236
	41.63%	58.37%	

247. The above is on the basis that I am treating, as I have noted, the ABC Properties Ltd valuation as fragile.

248. The loan owed to XYZ Ltd from ABC (which H contends for) will impact the tax payable in a liquidation of ABC.

249. As I have explained above, I do not treat XYZ Ltd as having a capital value. I treat it as an income producing asset, about which I consider I am being lied to in terms of the resources H is able to draw from it. His lifestyle is completely at odds with what I am being told and I do not trust him to have kept an accurate record of his business dealings, or to have dealt in cash, if given the opportunity (which I accept may be less than "in the good old days").

250. The wife presently earns about £8,280 working part time as an administrator. The wife is also in receipt of Universal Credit which includes a rental element which does not meet all of her rental costs. The total figure comes to £21,828 and some Child Benefit.
251. By my award in this case, the wife will have capital in excess of £16,000. My understanding is that she will have no more than six months after receipt of cash within which to apply capital in excess of £16,000 to purchase another house. Six months after the sale of O Avenue, the wife will become disqualified from Universal Credit on account of having too much capital.
252. In my judgment, the wife has shown herself to be a resourceful and entrepreneurial individual in the past. I expect that when these proceedings are over, she will have to make efforts to increase her income. Her earning capacity will, in my judgment, remain stymied for some time to come by reason of her caring responsibilities for the parties' three minor children, aged 11, 10 and 7. In particular there is lots of running about associated with Child 2's football commitments. I expect that within a year or so she will be earning in the order of at least £25,000 per annum gross in a type of employment that is compatible with her important role as the primary carer of the children.
253. I have not lost sight of the fact that the child arrangements for the children have been the subject of contention between these parties. I do not know the rights and wrongs of all of that. All I do know is that the husband is presently permitted limited contact at a contact centre and, at the moment, that is not being exercised. Things may change but we are where we are at the moment. The wife is presently the primary carer.

The parties' needs

254. The wife contends for a four-bedroomed property, which I agree is required. I have been provided with property particulars for detached, semi-detached and link-detached properties in the region of £550,000 to £575,000. The wife pitches her needs at £575,000.
255. The husband's housing particulars are ill thought out and are either higher than the wife's figures or much lower. I do not find the husband's particulars of any assistance.

256. There is nothing particularly unreasonable about the particulars which the wife advances, save that I am having to make a primary disposition to these parties out of an extremely tight pot.
257. Despite what some might regard as the forensic provocations of the husband's antics within these proceedings, I do not lose sight of my duty to be fair to him in the primary disposition to make to him.
258. It is in this context that I find myself in the position of having to cut the wife's cloth more sparingly than she would wish. With a £575,000 purchase comes increased stamp duty. The wife also asks for a £10,000 furnishing fund. Not unreasonable in and of itself, but I do not think I can stretch that far when holding the scales of fairness in the balance. The wife also asks for £25,000 to buy a new car. Again, £25,000 is not an unreasonable sum for a family car, if that is within the budget of the purchaser. I am afraid that this is way beyond the budget of what is available here. Many people have to get by with second-hand and less than ideal cars, and that is what I am afraid the wife is going to have to do here.
259. At the start of the case, I allowed the wife to update her litigation loan. This was despite Mr Reed's objections. In my judgment, this is a hard cost associated with litigation and it would be unfair not to allow it to be brought up to date. Mr Perrins' note had the figure of £39,438 "plus further interest tbc". The actual total, rather miserably, comes to £63,891. The parties each have other personal hard debts which will need to be settled.
260. The applicant asserts an income need of £76,927.20, including child related costs. £20,400 of that relates to mortgage costs, which is not a realistic estimate of what the wife is going to be paying in a new property. This brings the figure down to £56,527 per annum, say £60,000 with more modest mortgage finance factored in. This may not be unreasonable bearing in mind the parties' previous standard of living. However, the parties are going to have to adjust to a new normal which will be much leaner than their previous standard of living. The wife, I am afraid, is going to have to live on a much tighter budget.
261. The husband's budget is harder to make sense of. In an analysis of his bank statements, I think he is asserting basic outgoings over a 13-month period of about £98,058, but with various loans and legal costs factored in, his outgoings over a 13-month period are in the

order of about £214,498. Even if I have that wrong, my approach to the husband's outgoings is to survey the wide canvass of his lifestyle post-separation in concluding that he manages to live at a very high standard.

262. I am also clear and so find that the husband will be difficult about making spousal maintenance payments, given his strongly held views about protecting his money from "vultures" and his capacity to misrepresent his gross earnings. This is a case for a clean break, where an element of the departure from equality will be needs driven, and an element will reflect that I am going to provide for a clean break in circumstances where I can see things are going to be very tight for the wife. The structure of the wife's offer recognises the reality of this situation, albeit I understand that the wife puts it only upon the basis that I accede to all of her capital demands. In my primary disposition, I can not accede to the full extent of the wife's demands, but I do see the wisdom in the structure of her approach.
263. I am acutely conscious that I am trimming the primary carer's housing budget without particulars in front of me within the range I am going to provide for. I have not done my own sleuthing on Rightmove. What I can observe is that the lower end of the wife's bracket was £550,000. I am entitled to take the view that there will be properties which are either four-bed terraced, or less nicely appointed, or in a slightly less desirable area which can be secured for £500,000. This is not in a completely alien parish to the low end of the wife's £550,000. This has the advantage of keeping the Stamp Duty at a lower level as well. My determination is that the wife will simply have to meet her housing needs at £500,000. I do so as I am trying to be fair to both parties in my approach.
264. Mr Reed sought to criticise the wife for not having explored the shared ownership market. This was on the back of a letter from the husband's side written on the eve of the commencement of the hearing. I would not allow Mr Reed to make this criticism. Whilst I accept that Mr Reed had come into the case late and was doing what he could to advance his client's case, the time for raising such points was in compliance to the directions which asked for property particulars some months ago. In any event, I do not consider that this is a case for shared ownership for the children of this marriage.
265. The husband has housing needs which I must weigh in the balance. However, as the non-primary carer, his needs must be subservient to the first needs of his children. It seems

from the limited information I have heard about the child arrangements, we are some way off overnight stays. Even if I have misunderstood the position, or it turns out to be more optimistic, my finding is that, with the limited pot which is available here, I must put the children first in terms of their primary residence.

266. The husband submits that he has no mortgage capacity. If that is correct, then he may well have to meet his housing needs in the rented sector for the foreseeable future.

My award

267. Mr Perrins helpfully summarised his “needs pitch” in his skeleton argument. In closing, he invited me to consider that but allow for the increased interest on the litigation loan. I set out in tabular form my determinations, next to what Mr Perrins’ has asked for:

W needs	W case	Court
O Avenue	636,563	636,563
H lump sum	0	-100,000
Housing fund	-575,000	-500,000
SDLT	-16,250	-3,750
Costs etc	-2,500	-2,500
Furnishing	-10,000	-5,000
Car	-25,000	-5,000
W Capital needs	-628,750	-516,250
W debts (ex parents)		
Litigation loan	-63,891	-63,891
HSBC loan	-9,213	-9,213
Credit card	-5,734	-5,734
Next	-3,040	-3,040
Very	-985	-985
Argos	-250	-250
o/s costs per H1	-2,521	-2,521
Total	-85,634	-85,634
Capital after repayment of debts	-77,821	-65,321

268. Mr Perrins accepted that the wife will be able to stretch to a modest mortgage in the order of about £50,000. The mortgage capacity report suggests no more than £55,500. It can be seen that on the sale of O Avenue (which the wife agrees to), I am providing £100,000 to the husband.

269. Clearly on the figures, I have provided for things are very tight and some hard choices about the housing, car and debt repayment may have to be made. Whilst I do not make my award in the expectation that the wife’s parents will necessarily step in and make up

the shortfall, I am mindful of the fact that they have shown their ability and willingness to assist where necessary.

270. The difficult balance I have to strike is between Mr Perrins' case, summarised by him as "needs, needs, needs", and the fact that the husband should have something out of this marriage.
271. I am totally unimpressed by the husband's implication that this might be treated as a "short marriage".
272. I am also unpersuaded by the husband's inheritance ring-fencing arguments. The highest judicial utterance in this area is that an inheritance will carry "little wight, if any" if needs cannot be met without recourse to the inherited property. I have firmly in mind the analysis to be found in *S v AG (Financial Orders: Lottery Prize)* [2012] 1 FLR 651, *FB v PS* [2016] 2 FLR 697 and *D v D (Financial Remedies: Pre-Marital Agreement and Unequal Shares)* [2020] 2 FLR 662. I do weigh the husband's inheritance contribution in the scales, whilst not forgetting the gift from the wife's parents when they purchased C Way at a substantial discount.
273. About the only thing the parties were able to agree on in this case was that my enquiry about a *Mesher* was not appropriate in this case. Having listened carefully to all of the evidence, I accept that joint submission. There is simply too much contention here for such an arrangement to work.
274. The wife takes a substantial departure from equality on the basis of needs and due to the fact that she is accepting a clean break. Capital division is properly at the top end of the bracket in this case. The clean break is ordered in circumstances where the husband has very significant resources at his disposal allowing a lifestyle, which is completely at odds with his declared income.
275. My overall primary disposition is set out in tabular form as follows:

Determination	H	W	
FMH		636,563	
ABC	114,803		
Liabilities	-70,496	-85,634	
Lump sum	100,000	-100,000	
Total	144,307	450,929	595,236
	24.24%	75.76%	

Costs and ancillary matters

276. I can see no reason why the wife should not have residence or at least control of the family home pending sale. She says that the husband does not live there all of the time and spends time at his mother's. I accept that. He will be difficult about everything and so I am going to put the wife in the driving seat, with the caveats I note in the introduction to this judgment.
277. Save for the husband's clothes, personal effects, papers, phone and personal tech, he is to leave the contents in the home pending sale. If the parties remain in dispute about these issues, I will resolve them in a summary manner at a later date.
278. I would ask for a draft order by 4pm on the 24 May 2024. If the suggested undertaking as to indemnities is not forthcoming, I shall make an order imposing an indemnity in like terms, pursuant to *CH v WH* [2017] EWHC 2379.
279. My provisional view on costs is that the husband cannot conduct himself in the manner in which he has done in this litigation and there be no consequences. I have in mind FPR 28.3(5) which has as a starting point no order as to costs in financial remedy proceedings. By FPR 28.3(6) and (7) that starting point can be departed from. It will be apparent from my judgment that I do not consider that the husband has been reasonable in the manner in which he has conducted this litigation. However, I must also take into the financial effect of any costs order. The husband has a much more limited pot from my primary disposition and so my preliminary view on costs is to limit any order to £20,000. I also have in mind that the wife is having her litigation loan cleared by my primary disposition.
280. If either party seeks to persuade me from my provisional view, I would ask for written submissions.
281. This is my judgment.

RECORDER RHYS TAYLOR

23 MAY 2024