

Neutral Citation Number: [2024] EWFC 135 (B)

Case No: 1676-3129-5104-5533

IN THE FAMILY COURT AT BRENTFORD

Alexandra Road,
Brentford, TW8 0JJ

Date: 26 April 2024

Before :

His Honour Judge Willans

Between :

CH ("the wife")

Applicant

- and -

TH ("the husband")

Respondent

Anton J. Eriera (instructed by **Beverley Morris & Co**) for the **Applicant**
Rosanne Godfrey-Lockwood (instructed by **Irwin Mitchell**) for the **Respondent**

Hearing dates: 21-22 March

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

His Honour Judge Willans :

Introductory Points

1. This reserved judgment is provided following a 2-day financial remedy final hearing. I have considered the documents contained within three separate hearing bundles¹; the additional documents passed to me on the morning of the first day of the hearing²; written opening position documents and closing submissions from counsel for each party, together with the live evidence of each party.
2. Neither party had permission to exceed the page restriction found within FPR 2010 PD27A, indeed both were obliged to comply with the same explicitly within the FDR Order of 14 September 2023 [30] and yet the documents provided exceed the same to a factor close to 4. The bundle non-compliance was not the only failure to comply with Court directions in this case³. This judgment has enough disputed issues to resolve without being weighed down with admonishments to either/both parties, however it is necessary to make clear the impact that such non-compliance has on both the preparation for and hearing of a case of this nature. The issues posed by the above non-compliance led to delay in the case commencing. It was necessary to reverse the normal order of live evidence, with the husband going first. It was necessary to fix a rigid hearing template to ensure submissions, at least, could be completed. Notwithstanding these efforts this failed to rescue the hearing. In hindsight this was an inescapable consequence of the need for last minute consideration of documents and a changing evidential landscape as the evidence was probed. The consequent fall-out was that neither final submissions nor judgment could be entertained within the hearing as I would normally have wished to do. I have subsequently received written submissions on about 8 April 2024.
3. I do not intend to, nor could I, refer to all the documents placed before me, within this judgment. I do though keep all of the information in mind and I reference a particular selection of evidence (documentary and live) which has helped shape my decision-making process. In this judgment I refer to the parties as the husband and the wife. No discourtesy is intended. I refer to the children of the marriage by the initials N⁴ and R. Elsewhere when discussing various assets/properties I will use labels and shorthand. References to [XX] are to pages in the core bundle; [SBXX] to the supplementary bundle and [WXX] to the wife's supplementary bundle. All numbers reflect the pdf page number save in the case of the wife's bundle which use an old-style Bates system.

The issues in the case

4. The underpinning issue for me is to find a fair outcome having regard to the factors in section 25 Matrimonial Causes Act 1973 ("section 25") and to the extent relevant the strands of sharing, needs and compensation. The parties are in factual dispute as to a number of discreet issues which will be considered below but which particularly include: (i) the husband's earning level/earning capacity; (ii) the parties' respective housing needs; (iii) the use to which previous sale proceeds were put by the wife; (iv) whether the wife retains an interest in a property she claims to have transferred to her father; (v) the parties'

¹ Core bundle; supplementary bundle; and applicant's supplementary bundle (1169 pages in total)

² Applicant ES2; Property particulars for the RH; A net effect projection of the AW's open proposal; CGT calculations, and an updating bank statement re a Barclays Loan Account.

³ By way of example, I only received the AW's narrative section 25 statement on the morning of the hearing, her supplemental bundle having been uploaded overnight on the previous day.

⁴ N is an adult in his first year at University; R will turn 14 this summer.

respective liabilities and borrowing capacities. There are additionally a number of disputes which do not require determination to come to a fair outcome whatever the stance of each party in such regard.

The proposals

5. Each party has put forward open proposals for my consideration. It is challenging to compare and contrast these offers giving the widely competing views as to the resources available. Any outcome will reflect the key properties referenced by the parties. I summarise these assets as follows:
- **CR:** This is the property in which the wife and children continue to live. It has a rented annex. Inclusive of annex the property has agreed equity (after normal deductions) of £343,811
 - **AR:** This is mixed commercial/residential property. The husband works from the commercial premises and until recently lived in the residential part. Taken globally the property has net equity (after deductions) of between £302,628 and £313,358 depending on the view I take as to the CGT payable on sale.
 - **X:** This property appears to have an agreed value/equity of £40,000. The issue is as to whether it is owned by the wife or her father, and if the latter whether the wife has received a sum equal to the equity or remains owed the same.
 - **RR:** This property was sold in August 2021 [146] with net proceeds of £195,887. There is an issue as to the purpose to which these funds have been put. The wife sold the property and argued the funds have been both justifiably and entirely spent.
6. Having regard to the above the wife argues [W3] she should receive **CR** [£343,811] and a lump sum of £207,600, that the husband should be responsible for some joint debts (c.£19k) and any overdrafts on the joint accounts (this appears to be minimal if anything) on a clean break basis. There should be no pension sharing.
7. The husband argues [11] **CR** should go to the wife, and **AR** should go to him (with mortgage responsibility being removed in respect of the transferred property). In addition, the wife should pay him a lump sum of £76,987, the joint accounts should largely be divided as proposed by the wife but the joint debts should be shared. There should be a pension sharing order in respect of wife's pension at 50% CETV.

Background

8. The wife is aged 43 and the husband 40. They have been in a relationship for most of their adult life having married in 2001. Their children are aged 19 and 13, respectively. The parties separated in about September 2020 after nearly 19 years of marriage.
9. The wife works in the banking sector. The father works in the personal grooming / body modification industry. The wife is an employee whereas the father is responsible for running a business (previously in partnership with the wife although she was not actively involved in the day-to-day activities of the business). The nature of the husband's business is that he both operates personally out of the premises by providing services but also 'rent's chairs' in the establishment to independent operators whether on a daily charge or commission basis

or both. The business turnover is thus a combination of his own efforts and the return on third party activity. It seems clear the husband has over time moved from a focus on personal grooming to the point where his activity is now exclusively body modification. It appears the partnership was terminated in April 2022 and I understand the husband has traded on a self-employed basis since that time.

10. The parties' purchased **CR** from the husband's parents. I am told it was his family home in his childhood. They managed this by selling a jointly owned property and raising a mortgage. The husband argues there was a level of discount offered by his parents on sale. The property is a 3-bedroom property but has a separate 1-bedroom adjoining annex. The annex is rented. These properties have separate title numbers but it is suggested by the wife that it would be impractical to sell the annex as a separate property. It appears **AR** was purchased in around 2012/13 using a deposit and mortgage. The residential element of the property has historically been rented albeit with a shortfall against the mortgage which has had to be made up by the parties. The rental is said to have been paid into the parties' joint account. The commercial element of the property has housed the husband's business since purchase. **RR** is said to have been purchased in 2014 as an investment property. It was sold in August 2021. It is agreed **X** was to be transferred to the wife's father for a sum of £40,000 and that the proceeds would be used to settle family debts. It is agreed the property remains in the name of the wife however she claims no sum remains owing from her father and that when practicable the property will be transferred as intended.
11. The husband accepts the business receives a significant element of its income in cash but claims this was previously passed to the wife who would bank the funds and who would be responsible for the business (and personal) annual returns of both husband and wife. As such the husband asserts the wife was familiar with the turnover of the business and the filed accounts. Within his evidence the husband describes the wife's role as controlling in this regard.
12. R has been schooled privately since September 2021.
13. The wife issued her divorce application in November 2022. I am told the conditional order will have been granted on 28 March 2024. The Form A was issued on 13 February 2023. Whilst conduct is not formally raised in these proceedings, I have been asked to note the fact that a non-molestation order was obtained against the husband in April 2023. This order was continued by agreement and no findings have been made. The wife is currently applying to extend the order. The Court held a first appointment on 15 May 2023 and an FDR on 14 September 2023.

Legal Principles

14. I am seeking to find a fair outcome applying the strands of needs, sharing and compensation.
15. To the extent I am required to make findings of fact I will do so applying the balance of probabilities; I will have regard to all the available evidence; I will base my assessment on evidence not anecdote or speculation, and; the burden of proof will entirely rest on the party making the allegation.
16. There are allegations of non-disclosure. I remind myself of the obligation on each party to provide full and frank disclosure and the consequent challenge for the Court where this is not provided and the Court is left to fill an evidential gap created by non-disclosure. In such cases the Court retains an obligation to assess resources but does so restricted by the

decision making of the culpable party. Faced by this the Court will likely err in favour of the non-offending party and the culpable party cannot complain if in doing so the Court falls into error and incorrectly assesses what is the reality. However, in conducting this assessment the Court does not have the freedom to fill the gap in a wholly unconstrained manner. Any assessment must be based on reasonable inferences and assumptions flowing from the available evidence.

17. The Court must first compute the asset base available for distribution. Having done that the Court can formulate a fair outcome by reference the factors found in section 25 Matrimonial Causes Act 1973. I will return to those factors and bear in mind that the first consideration of the Court is the needs of a child of the family whilst a minor.
18. The parties' advocate for a clean break and this should be the outcome reached by the Court unless to order so would cause undue hardship to a party in adjusting to the same.
19. I am asked to consider debts owed to friends and family. These are non-commercial debts and require the Court to consider first whether the debt exists but second whether if so, the obligation is likely to be enforced. Each case will have its own features but I bear in mind the helpful observations of HHJ Hess in *P v Q (Financial Remedies) [2022] EWFC 89 [at §19(x)]*:
 - (a) *Once a judge has decided that a contractually binding obligation by a party to the marriage towards a third party exists, the court may properly wish to go on to consider whether the obligation is in the category of a hard obligation or loan, in which case it should appear on the judges' computation table, or it is in the category of a soft obligation or loan, in which case the judge may decide as an exercise of discretion to leave it out of the computation table.*
 - (b) *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.*
 - (c) *A common feature of these cases is that the analysis targets whether or not it is likely in reality that the obligation will be enforced.*
 - (d) *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.*
 - (e) *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.*
 - (f) *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; or*
 - (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 being soft obligations.*
- (g) *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*

20. I am asked to consider family support as a likely future resource. I must keep in mind that this is a case in which any support would be wholly gratuitous in character. I have in mind the observations of Peel J. in *WC v HC (Financial Remedies)* [2022] EWFC 22 at [§23]. The relevant part for this case is as follows:

- (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 in **Luckwell v Limata** [2014] EWHC 502 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** [2017] EWCA Civ 1545.*
- (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 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 was then) said in **TL v ML** [2005] EWHC 2860 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 record 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."*

The resolution of significant disputed matters

The nature of the party's financial relationship

21. Each party alleges financially controlling behaviour on the part of the other. Financial control is recognised as an important aspect of domestic abuse within PD12J and elsewhere but not all forms of financial interaction which might be described as controlling meet that test. In many relationships one or both parties struggle to manage or control their spending with the other exercising a degree of control to ensure the family finances do not suffer. Whilst being a form of control this does not merit judicial criticism per se. In this case the husband alleges control in the form of the wife's control and management of the formal financial records of the family, i.e., tax returns. In this case the wife alleges financial control in the form of a lack of support and actions taken which have come to financially harm the wife's finances, i.e., in not making child maintenance payments or mortgage payments. She alleges the husband has threatened to 'financially destroy' her and has acted accordingly.
22. I have been able to resolve this aspect of the case with relative ease and do so as a preliminary to the wider question of the individual party's financial circumstances as it tends to inform that process of analysis.
- I am satisfied the wife 'controlled' much of the parties' formal financial affairs during the relationship. The parties agree this. I do not consider this to have been 'controlling behaviour.' It seems to me clear this simply reflects the wife's greater acumen in this area. She is employed within the financial industry and on my assessment has a much greater grasp and ability in such regard. The husband appeared to me to be far less suited to financial management. It was a perfectly natural role for her to take and particularly so given the parties operated the husband's business affair through a partnership. That she was responsible for completing and filing returns for both of them is neither surprising nor concerning. I heard evidence as to this continuing post separation and indeed a surprising state of affairs under which the husband could not file a recent tax return because the wife

had already done so on his behalf and it would seem likely without his knowledge or consent. I agree this step was inappropriate for obvious reasons, particularly given the fact the wife could not possibly know the components required to be included within the return. I did not find her account of the reason for doing so to be correct but I was not satisfied that in doing so she was acting with an intention to control or cause harm. The return she filed was after all one which in broad terms fitted with the records on which the husband has come to rely. It is a surprising part of the evidence but not one that has informed me as to issues of control.

- In the case of the husband, it seems likely, perhaps even agreed, that issues of non-support raised by the wife are correct. The issue however is as to whether the husband was in fact well placed to provide the support required at that time in the light of the impact of the covid pandemic on his business interests. It will also be appropriate to reflect on the related issue of **RR** and family borrowing when considering this point given these were separate resources that flowed into the family finances at the same point in time and, on the wife's case, have come to be used to meet significant elements of the deficit in support that she raises against the husband. I will return to this topic below.

23. However, in overview I am not of the opinion this is a case which merits any further detailed analysis as to 'controlling behaviour.' I do not find this to amount to conduct that cannot be fairly disregarded.

The husband's earning capacity

24. This was the most significant evidential issue placed before me. There is a fundamental disagreement between the parties as to the husband's earning levels and this shapes their approach as to what is a fair outcome in this case. It is sensible to outline the parameters of the dispute. Within her opening position the wife put the husband's income at ('at least') £206,000 per annum. In closing this was reduced to a 'ballpark present and/or future income and/or earning capacity of £170,000-180,000 per annum'. My clear sense from the calculations which underlie this argument is that these figures are gross and prior to deduction of likely business costs and/or taxation. Reflecting this point and assuming a business cost of 15% (I received no evidence at all on business costs but there plainly will be costs associated with running the premises in which the business operates) this would translate to a **net** income of around £85,000 per annum (using the revised figures). In contrast the husband was somewhat opaque as to his own estimate of his earning position. He accepted a historic income of about £75,000 gross per annum; noted (and seemed to agree) the wife stated he had earned about the same as her prior to separation (hence around £60,000 gross) and estimated a likely return to earning around £35,000 in the foreseeable future after a difficult period following the Covid Pandemic. When examined he accepted a potential in excess of this and figures of over £50,000 and around £70,000 were put and not entirely rejected. He made the point that the wife was responsible for tax returns which broadly support his contention as to recent earnings.
25. On pre-reading my sense of the wife's case was that the husband was now earning at around £200,000 per annum, would continue to do so and had in fact been doing so for some time. I did not understand her case to be based on an anticipated increase in income into the future. Her case was based on a cash-based business which was producing an income which was not fully disclosed to the tax authorities. However, in the course of the hearing it became apparent this was not in fact her case. As noted above she accepted his income levels approximated her own prior to separation and went onto make clear she was

estimating (she would say from an informed position) the likely income potential from the business as now constituted. I note the wife did give evidence as to the husband having received an income in excess of that claimed within the recent Post-Covid past and drew attention to the incongruity of this being the case whilst claiming Universal Credit but for the avoidance of doubt this argument fell far short of the figures claimed above.

26. By submissions it was clear the wife was premising her case on (1) the likely gross income of the husband calculated by extrapolating from the hourly return on particular pieces of work undertaken by him to reach a daily return. This was then multiplied by a 7-day week and a 46-week year to reach an estimated personal earning level of £80,500 per annum; (2) the likely return on two 'rented chairs' applying an estimate of the likely earning of each independent worker and the prospective commission paid by each to the husband. When multiplied as above this produced an annualised return for the husband of £92,000 per annum. It is the combination of the two which set the forecast income for the husband at around £172,000 per annum.
27. These calculations reflected:
- Evidence of the piece work rate for individual items of work
 - Evidence as to whether a daily rate or commission was charged
 - Evidence as to the actual commission set for an individual worker
 - Evidence as to the experience and reputation of a particular worker
 - Evidence as to the opening hours of the premises.

I do not intend to detail all of this evidence but will reference it below.

28. In assessing this aspect of the evidence, I make clear I was not much impressed by either of the parties and felt I was not being provided with an accurate assessment of either historic or likely future income. I have found it hard to reach clear conclusions given the approach taken by both parties however I have reached a conclusion which I consider on balance reflects a likely band in which income has historically sat and will likely return in due course (if it has not already done so).
29. In §25 I have referenced what appeared to me to be a subtle but notable change on the part of the wife as to when the claimed income levels commenced or would likely commence. I have reviewed all the evidence and accept at no point does she explicitly reference income at the claimed levels at any particular historic point. However, that was the strong sense of the evidence until the wife was asked to consider the implications were that true given her role in the partnership and involvement in the provision of the accounts for the business. My sense was that it was at that point that the wife modified her position. As a consequence, I do not in fact have any direct evidence to support a contention of the very high levels of income (a net return at around £170,000 would equate to a gross income close to £450,000) claimed by the wife and must limit my assessment to her case based on the period since separation.
30. In my assessment the wife's case as to the husband's earning capacity is not borne out by the evidence; is entirely speculative, and; does little more than serve to support her case before me. I am not impressed by this part of her case. I make the following points:

- As noted above the figures claimed are almost certainly put forward on a gross basis and must for my purposes be subjected to taxation and deduction of reasonable business expenses. I have addressed this point above. I simply cannot proceed on the basis that the husband will not declare his income and thus will have the benefit of that part of the return that should be paid in tax. I cannot structure a final and fair outcome in this case based upon both an expectation and requirement for tax evasion. The Court will always work with net figures. Furthermore, once the wife modified her case as to this earning level being post her involvement with the business it became one based not on actual non-disclosure of income to the tax authorities but likely non-disclosure to the tax authorities. The wife explicitly at no point said in any given year (pre-termination of her role with the business) the husband earned materially more than was disclosed to the tax authorities. It would be entirely wrong to therefore find he is likely to do this in the future.
- I make the above observation noting there is an argument as to the period between September 2022 and March 2023 and as to whether that period fits with the husband's case. I also note the point made as to the husband claiming Universal Credit at a time when he had income from the business. However, these points, whilst they may have some general purchase on credibility, say little if anything as to the claimed level of income put forward by the wife. The figure for this period ended up as less than £20,000 (an annualised income of less than £40,000). It was surprising and somewhat unfortunate that a significant part of the banked funds upon which the husband was questioned came from family funds rather than work – a point which the wife readily accepted when she gave her own evidence.
- Being as generous as one could be this evidence whilst potentially supporting an income level of around £30-40,000 fell very far short of the case ultimately put.
- But this case was also entirely unsupported by surrounding features that one might have expected were the husband earning at anything like the level claimed by the wife. This was not a case in which the wife pointed to a luxurious lifestyle on the part of the husband or particular expenditures wholly inconsistent with his claimed position. Subject to some modest evidence as to vehicles during the relationship there was no evidence of luxurious living during the relationship.
- It was further undermined by the reliance the husband has had on family support. I accept such a step could be taken strategically to paint a false picture but, in this case, it fits with the broader evidence available to me.
- I do not accept the extrapolation applied or some of the specific arguments advanced by the wife in relation to the return from third party workers. I disagree with her contention that the husband simply would not have reduced the commission for a particular worker and not charged him a daily chair rate. In my assessment it is both plausible and likely that a different approach may be taken dependent on the worker. This is essentially a business calculation. It may be better to accept a commission only (and indeed lower commission) from a highly skilled professional who works from multiple outlets and could at any time choose to work elsewhere. After all, 30% of something is better than 50% of nothing. In contrast in the case of a less experienced individual it is entirely plausible that the focus would be on a fixed chair price rather than a commission-based approach. Ultimately a business calculation will be undertaken to determine the best way of maximising income from a given individual. For my part I did not assess the husband as having a

particularly obvious business acumen and so his assessment might differ from others.

- My decision making is impacted by an unhelpfully high level of speculation. However, this is informed by the history. I accept the husband was previously earning at a gross level of about £75,000. I also accept that the Covid Pandemic would have had a significant impact on this personal case business. I entirely accept the income during this period was substantially reduced. I also note the husband has now materially changed the focus of the business. It is likely over time this will reach a settled position. Doing the best I can I consider it unlikely the husband's income will settle at a level of £35,000 per annum. In my assessment the combination of his own efforts and those of third parties will push this to a higher level. Yet I cannot find a safe foundation for an outcome anywhere near that proposed by the wife. For my part and on the available information I cannot assess the husband's likely gross income as being any greater than £80,000 per annum in the foreseeable future. I would get to this figure (although there are various permutations for doing so) in the following way: (a) income from husband at about £40,000 gross per annum; (b) Income from rented chair with fixed daily rate of £100 per day at 4 days a week, hence £400pw / £20,000 per annum, and; (c) Income from commission from a separate more skilled operative at 30% of £80,000 per annum, i.e. £24,000 per annum. In my assessment this sum would be associated with some business expenses and for these purposes I apply a 15% rate leaving a net turnover of about £71,500, which after taxation reduces to about £48,000 per annum. I note this broadly accords with a return to the earning level prior to separation and Covid. It is noteworthy that on his own efforts alone the husband would have a net income closer to £27,000.
- On the information available to me I consider the husband has a likely earning capacity of about £48,000 per annum net.

Housing needs

31. Housing need must be understood as being a flexible concept which is broadly set having regard to the standard of living of the parties and the available resources. More often than not the available resources will not be sufficient to meet the full needs of both parties whilst giving first consideration to the needs of the children in respect of their housing need with their primary carer. But it is important to understand 'need' is intended to be an elastic concept and not an assessment of the bare minimum that would meet the housing requirement. Given this understanding there is an onus on both parties to inform the Court as to the likely cost of replacement properties within the band set by the 'housing need.' This process is not adversarial but inquisitorial. The Court is seeking a fair outcome. It is not for the Court to be presented with two stark options and a choice to pick one or the other. The Court should be provided with information which fairly covers the position in question and information as to the position proposed by each party. Thus, the Court can assess the positions put forward and reach a fair outcome. It will nearly always be the case that when parties take starkly opposed positions there exists a sensible middle ground that may supply the answer to the question of a fair outcome. Yet neither party provides the Court with the necessary information to reach a clear position. What should a Court do in such circumstances? In my judgment it is a position facing the Court in this case. The answer is the Court will be entitled to draw reasonable inferences and apply them in a measured and sensible manner in reaching a conclusion. As with the issue of non-disclosure noted above it

will not be open to a party to later complain if they have chosen not to provide the Court with all the information they might have done.

32. In this case a clear starting position is to look at **CR**. It is the home in which the family lived during the marriage; in which the children were raised and in which the wife continues to live. It is a 3-bedroom property. There is an annex but it provides no housing facilities to the main house. The main house has been valued at £600,000 [198]. In reaching this conclusion the expert has identified properties in the locality sold at about the same price which support this conclusion [202]. This is a sensible starting position whether or not it is the finishing position. It might be logically thought that the housing need is for no more than a 3-bedroom property and that the same would cost no more than about £600,000.
33. Faced by this the wife argued as follows: (a) Appropriate accommodation for her should be 4-bedroom and in her locality which will cost between £900,000 to £1,250,000 [W: D1-D6]; (b) However, in the circumstances **CR** will be appropriate for her and meet her needs; (c) The properties proposed by the husband for her whilst proximate to where she lives are known to be areas of anti-social behaviour and are unsuitable for her and the children; (d) The husband is unlikely to have contact with the children and needs no more than a 1-2 bedroom property. This would cost around £175,000 – £200,000.
34. In contrast the husband argued: (a) the wife needs a 3-bedroom property and proximate to **CR** (within 1 mile) this could be obtained for between £400,000 – 450,000; (b) that he has an equivalent need to that of the wife and his housing need is thus the same as above; (c) he rejects those properties identified for him by the wife based on their locality and other features evident from the particulars. He disputes he has any lesser bedroom need than the wife.
35. I have reached the following conclusions:
 - I fundamentally accept the wife has a greater housing need than the husband in respect of bedrooms. She is the primary carer for the younger child and the older child continues to return to the home on a very regular basis. Whilst I would hope the relationship between the husband and the child further improves, the evidence at this time suggests it is unlikely the older child will materially stay with the husband and the relationship with the younger child continues to be rebuilt.
 - This leads me to conclude there is a current basis for the argument that the wife requires 3-bedrooms whereas the husband would have his needs met in a 2-bedroom property. I do not accept the wife needs 4-bedrooms. I struggle to understand the basis for a claim for an additional room for a separate office when she neither has that now (or has had it) and on her proposal will not have it (she wishes to keep a 3-bedroom property). The relevance to housing need of the annex is also lost on me. It is entirely an argument as to whether the wife has a need for an investment to bring in income given the property provides her with no housing benefit in its own right.
 - I consider the wife's alternative properties are of no meaningful assistance at all. I am unsure who considered I would be assisted by being shown 4-bedroom properties in a plainly more expensive local area. I struggle to understand how anyone thought my assessment of housing need would be in any way shaped by these properties. I might just have well been shown a property in Mayfair for all the assistance these properties have given me. I do not need to be shown property

details to know there will be available bigger and more expensive properties in a particular area.

- In reaching my conclusions I am conscious that the wife's current needs include housing N. Given his age and growing independence it is likely this responsibility will be a diminishing one and it is reasonable to consider this will likely end within the next 3 or so years on his completing university. This does not change my assessment as to her needs but it does mean she can be expected to perhaps look at a property with a smaller third room which is to be used occasionally by a visitor (and perhaps as an office otherwise).
- I have borne in mind the properties identified by the husband in the area at a lower sale price. I tend to agree with the wife that these are plainly less attractive properties. I am reluctant to accept the somewhat exaggerated evidence of the wife as to the levels of crime in those areas (I consider it is implausible there is a stabbing/murder in the area every week as suggested) but I do agree they are at the lower end of the market. They provide 3-bedrooms but appear to be ex-council accommodation. I do not intend to criticise the properties at an individual level but they are markedly below the family home. That is not to say they do not provide me with some assistance in the case (see below).
- In the circumstances that face me I consider the evidence tells me that the housing needs of the wife are certainly no more than £600,000 (**CR**) but above £450,000 (i.e., in excess of those proposed by the husband). In my judgment on balance there are likely properties (3-bed) which sit within the band in which these properties are on the boundary. In my assessment the wife has a housing need of between £500-550,000 (£525,000 for the purpose of this judgment).
- I accept the response of the husband to those properties put forward by the wife for him. They include cash-only and auction properties. One is a 1-bed property. They did not help me assess the likely cost of meeting his housing need. In my assessment those properties put forward by the husband for the wife come closer to his need. However, they are 3-bedroom rather than 2-bedroom. But they are also in an area in which the wife would not want either of the children to stay. Doing the best I can I consider these points balance out and that a somewhat smaller property closer to the right location would nonetheless justify a comparable price of between £400,00-450,000. I assess the husband's housing need below that of the wife at £425,000.
- I should make it clear that I have not been assisted in assessing the husband's housing by the value of the annex (£150,000). The photographs indicate it is an extremely compact property.

36. The wife has a housing need of £525,000 whereas the husband has a need at £425,000.

RR and X

37. It is not in dispute **RR** has been sold or that of the proceeds a considerable part has been used on school fees. The parties are in dispute as to £76,000 of the proceeds. The wife has produced a schedule in which she identifies a range of payments which total this sum and thus explain why it is no longer available. For my part it is tolerably clear this schedule does not item a sum which was ring fenced and used for the purposes set out on the schedule. Rather this is the wife identifying payments made during the period which total the relevant

sum. I do not intend to provide a detailed analysis on this point. There is a danger of the Court being asked to conduct an audit of family spending. I am satisfied the monies have been spent and that (a) they are no longer available, and (b) that there are no grounds for an add-back argument based on reckless spending. However, this conclusion comes with some broader consequences for the case. In reaching this conclusion I have particularly borne in mind the following:

- In my assessment this was a family who in reality had some comfort in their day-to-day life pre-separation. Both earned well and there were additional receipts from rented property. They were able to fund private schooling and had investment properties both in this country and overseas.
- It seems likely that the combination of separation and Covid had a particular impact on this family. I accept the husband's income will have been hit and the separation would have added a further strain on resources. Yet outgoings will not have materially changed.
- As such the investment property was sold rather than retained. This is a clear indication of the acceptance of financial strain.
- Further both parties came to borrow or accept support from family.
- All of the above explain both why the property was sold and why the monies have come to be spent.
- This finding does somewhat negate the challenge raised by the wife as to lack of support from the husband. These findings support the notion that his capacity to support was diminished in the circumstances. I accept his business was particularly impacted by Covid.
- I also bear in mind that of the non-school fee's expenditure explained by the wife, about 1/3 or £25,000 was used on home improvement. I do not criticise this but it is somewhat difficult to make the case she makes against the husband whilst making this decision. I appreciate there are other spending decisions within the questionnaire process which support this observation.
- I accept the proceeds are not available for distribution. I consider to the extent these have been spent this must be regarded as a joint contribution by the parents. The husband cannot have his part spent but then face a criticism of lack of financial support.

38. The position in relation to X is clear in that the parties agreed the property was to be sold to the father for £40,000 and that the proceeds were to be used to settle debts. The wife claims of the proceeds £20,000 was applied to settle monies lent by the family with the balance being transferred by a series of payments in the following period. She claims the property would have been transferred but for the inability of both her father and her to be in the relevant jurisdiction at the same time. The husband is poorly placed to challenge the claimed payments made but rests his case on the fact the property is still in the name of the wife. He argues that this should mean the equity remains with her and is available for distribution.

39. Having regard to all the circumstances, including the impact Covid would have had on procedural steps to transfer the property, I on balance favour the wife's case as to why the property has not been transferred. The husband relies on the fact the property has not in fact been transferred but that does not necessarily support his contention in the light of all the evidence. Secondly, and in the light of my earlier findings as to family support I accept of the sum £20,000 has effectively been off set against monies previously given. That leaves a balance figure of £20,000. The wife has evidenced sums received and taken together these do total to the sum in question. Whilst this is somewhat more balanced, I do prefer the wife's case. I am not assisted by any evidence beyond the evidence of the wife and the essential suspicion of the husband. But this does not mean I accept all family transactions are to be viewed as akin to commercial lending. I will return to this but there is a difference between a specified agreement relating to the transfer of a property and more generalised support.
40. I will deal with the balance of issues within the section 25 analysis, to which I now turn.

Section 25 Analysis

41. In my conclusions I will explain how the needs of the child shape my outcome. For the time being I specifically concentrate on the section 25 factors.

Resources

42. I have resolved the chief resource-based issues already within this judgment. I now summarise as follows:

Item	Applicable Figure	Note
CR	355,389	⁵
AR	313,358	⁶
H's income	48,000 net pa	As per finding
W's income	43,000 net pa	⁷

43. I have not had regard to current bank balances which are modest, close to balance and likely to be fluctuating on a day-to-day basis. The joint accounts appear to balance to close to £0. I have not separately added the only investment (the wife's share scheme) as I heard evidence that this was received in January 2024 [SB921]. I have not included cars as they are required for use value and in any event, there are counterbalancing liabilities.
44. In addition to the above a rent is paid on both the **CR** annex and the residential premises at **AR**. In both cases the rent is used to support the mortgage on the property. In the case of **AR**, the rent is £1800 per month and this leaves a shortfall of about £300pm on the mortgage. I have struggled to locate the up-to-date mortgage statement for **CR** but it appears to be an interest only mortgage which in 2022 was costing about £1,000 per month. This will have increased with interest rate increases in recent times. The annex appears to have been rented for about £1,000 per month although there a number of contradictory accounts. It plainly assists with the mortgage on the property whatever the updated figures. The availability of each resource stream depends on the maintenance of the asset in question.

⁵ I do not deduct the early redemption payment which ended in September 2022 [SB18]

⁶ I prefer the wife's figure which includes an allowance for Private Residence Relief [W: D171]

⁷ As per ES2

45. The wife has pension rights valued at about £184,000 CETV. The husband has no rights. Given the length of the marriage it seems clear these were accrued during the relationship.
46. The parties' benefit from availability of existing mortgages. These globally total around £530,000. I am doubtful the parties could readily obtain the same now were they to now apply. It is clear the wife has a gross income of no more than £55,000 [83 + child benefit]. Using a multiplier of 3.5 x income would produce a mortgage capacity of no more than £200,000. I have assessed the husband to have a slightly better earning capacity but his position is complicated by his recent accounts, which show a significantly lower level of income, and by his dependence on third parties to generate this income. It seems to me his mortgage capacity at this point would be severely compromised but even with time it would not much exceed the level set for the wife. I bear in mind the mortgage capacity report obtained for the husband [192] which bears out this point. The parties are both young and have the potential of a full mortgage length available to them. The wife works in banking and has shown a historic ability to obtain financing which may assist her beyond that which might be expected.
47. On their own evidence each has been able to borrow from family. Beyond knowing they have borrowed I have no evidence as to the financial health of the various family members or their own responsibilities and needs. Neither party provided me with information as to the others family that might shape my understanding of the capacity or willingness to be a source of future bounty. The husband did though volunteer that his family would be able and willing to provide future financial support and spoke of them being able to provide £250,000 if needed. This has led to the wife submitting that I should rely on this figure to underpin the husband's fair exit from their financial circumstances. It is said his family will (1) settle his debts and (2) leave him with the foundation for a replacement property purchase. His evidence was that he 'can rely upon them to make the proposals work' and 'whatever it takes they are there to help.' When probed as to the sum of £250,000 he responded his mother 'will clear what is needed, she will help with the mortgage' but 'it is not my money to ask for...'.
48. In approaching this case I am hesitant in using this limited piece of evidence to provide a life raft for this family. It is undocumented and there is no evidential confirmation from the family member. It sits somewhat uncomfortably with the fact of commercial borrowing undertaken by the father and whilst there is evidence of family support (noted above) this is in a different league to the sums proposed here. I listened to the husband when he gave this evidence and whilst I recognise the apparent frank nature of the 'admission' it did not strike me as evidence on which I should place particular reliance. It is noteworthy that it formed no part of the offers in this case which is puzzling given the open manner in which the evidence was given. This was not a case of evidence being extracted forensically but I felt a somewhat unconsidered observation by the husband. I consider, given the history, that there may be future generosity from both families but I consider it would be unsafe and likely to generate an unfair outcome were I to centrally base the future housing resource of either party on supposition as to what this might be.
49. It is sensible to observe that I have found immediate capital resources of about £669,000 [§42] and a global housing need of about £950,000 [§36]. I calculate such housing would incur additional stamp duty of £22,500⁸. On this broad assessment the difference is requisite borrowing of £303,500. This would appear to be an achievable outcome given my assessment of individual mortgage capacity above even allowing for liabilities as discussed below.

⁸ Stamp duty being 5% in excess of £250,000 and here that is 5% of £450,000

Needs and responsibilities

50. Budgets were not examined during the live evidence. The husband puts his income needs in Form E at about £55,000 [56]. I note this does include ongoing debt liability at £300 per month. It importantly includes a mortgage cost of £1,760 per month (£21,120). This is not consistent with **AR** which has a net cost of £300pm having regard to the rent paid or the likely cost of a mortgage at about £200,000 (see above). At even 5% per annum a £200,000 repayment mortgage over 25 years would cost under £16,000⁹. Absent debts the husband can in my judgment meet these expenses without further detailed consideration. I am confident further savings could be made if required.
51. The wife [306] provided a budget with a suggested income need of £250,000 per annum. In my assessment this was not, is not and will not be her level of expenditure. It is a wholly unhelpful document. It should not be thought in a case of this nature that the Court will thus be compelled to conduct a line-by-line review in the hope that in any event a significant sum will remain after pruning. This would be wholly wrong. There is a duty of candour on a party and this document fails any test of reasonableness. That this is so can be seen from the inclusion of figures for 'Go Karting,' 'Water Rafting' and 'Sky Diving.' I need say no more. In my judgment there is no reason to believe that the wife cannot meet her reasonable needs from her income as set out above.
52. I am asked to make provision for school fees in my decision. The wife has provided a schedule for N's future private schooling calculated at almost £81,000. The logic of her proposal is premised in part on this sum being paid from the lump sum received. This sum includes for both fees and extras. The claim for an award of this nature was first made in the wife's open proposals provided one day before the final hearing. I note N entered private education in 2021 after the parties separated (he followed his older brother in doing so) but in general terms I fail to see how this was a financial decision which was consistent with the parties' resources as I now find them to be. The annual school fees as above are around £25,000. This is in excess of 25% of the global net income of both parties and were it to be funded from income would drive a coach and horses through their ability to meet regular income needs. Absent family support it would have similar impact on housing affordability were it to be taken out prior to a property being purchased.
53. I have reached the conclusion that this must be seen as a luxury which can only be maintained by agreement between the parties and not consequent upon a Court division of the resources. It may be that this is an area in which family support is forthcoming and bridges the gap between resources and need. But I do not consider I can fairly resolve this case between the parties after having removed this item from the asset schedule.
54. The ES2 before me identifies significant disagreement as to the indebtedness of the parties. Approaching this issue on a maximal basis one would have the following:
- Joint debts: £72,534
 - Husband: £85,432
 - Wife: £122,843

Thus, a total maximum debt level of £280,809. This does not include the mortgages secured against the respective properties. Of this sum a staggering £158,697 (or 56.5%) reflects familial/non-commercial debt.

⁹ At a Glance

55. I have reached the clear conclusion I should disregard this aspect of the debt for the purposes of this judgment. This is not to say such support has not been provided. In the case of both families there is bank account evidence showing significant sums being received. As I have noted above the family circumstances and the fact, they have rather over extended themselves explains why this has turned out to be the case.
56. I have reflected upon *P v Q* (§26) and the helpful indicators suggested there. I am not bound by this decision. The real issue is as to whether in reality the debt, if it so, will be enforced. I have concluded the factors identified there support my conclusion. In my assessment there are none of those features identified at (e) save perhaps the amounts in question. However, I bear in mind that these sums are but part of the broad support offered by the family. It is clear to me none of the contributors could have had a firm foundation on which to base the belief the sum could be repaid without destabilising the housing of the party (and children) in respect of who they have a direct interest. This is not a case with spare resources looking for a use to which they might be put. In contrast most if not all of the features at (f) apply save for perhaps with respect to delay. My strong sense and conclusion is that these funds have been offered without a firm commitment to repay and whilst I accept there may have been an understanding that they would be paid, if possible, I do not find any agreement was reached which suggested the funds would be paid no matter what happens.
57. I should make clear that close to £55,000 of the sum is stated as being money ‘borrowed from the children’. I received no evidence to make out this claim and the wife did not pursue it at the hearing. I should also make it clear that there is no third-party evidence from any of the ‘lenders’ which might cause me to recast my assessment. It is quite clear that were I to provide for these debts (not including the children debt) then any workable outcome would disappear or be disproportionately unfair in its application. I of course bear in mind the evidence of the husband as to likely future family support. This adds weight to my conclusion. On any reasonable basis future support is likely to come second to the discharge of existing indebtedness.
58. That being the case the residual claimed commercial indebtedness reduces as follows:
- Joint: £18,813
 - Husband: £68,252
 - Wife: £35,047
59. The husband’s debt is largely his litigation loan (£55,000). He includes a figure for CGT on **RR**. I am unclear why that remains owing given the property was sold around 3 years ago and should have already been dealt with within his accounts. In any event it is a relatively small sum. The balance is a credit card. I once again note the husband’s evidence as to family support and it must be a reasonable conclusion to reach on balance that there will be some further support and logically this can be applied to this indebtedness. I therefore conclude this debt can be brought within reasonable bands if not discharged altogether.
60. The wife’s debts are lower and relate to credit cards and a loan related to her car. She of course retains the asset of the car. There was evidence as to how her credit card debt (MBNA) accrued but no agreement or compelling evidence either way to resolve the dispute. There was also reference to a new debt with Barclays which was said to be related to litigation concerning the tenant at **AR**.
61. Turning to the joint debts it seems agreed the accountancy fees are business related and should in principle rest with the husband given his ongoing role with the business.

62. In final review I have found it almost impossible to conclude whether debts held by one party should or should not be the responsibility of the other. I accept these debts exist and are owing. However, a combination of the confused evidence and the lack of clarity around transactions together with the intersection with familial lending makes it difficult to pinpoint the origin source for each debt. I am also not helped by the fact these issues are only lightly touched upon in both the written and live evidence.

Standard of living

63. These parties appear to have enjoyed a comfortable standard of living without obvious luxuries. They holidayed and there is evidence of some spending on vehicles but no real evidence to cause the Court to modify its assessment. It is plain the parties' have had to and will continue to have to constrain their spending as compared to when they lived together. However, that is an almost inevitable consequence of family breakdown.

Age of parties and duration of marriage

64. Noted above. This was a long marriage and the assets under consideration have entirely accrued during that period.

Disability

65. The husband has provided some evidence as to poor health which is not accepted by the wife. Having considered this point I do not consider the case is one in which he is actively suggesting the outcome requires a resolution of this dispute. I do not intend to do so. The wife referenced both PTSD and ongoing therapy as a result of alleged domestic abuse. The difficulty with this line of argument was that conduct was not raised and no findings have been made at a previous Court hearings. In any event she continues to work and it is unclear to me how it is said this impacts on the resolution of this case.

Contributions

66. As a starting principle it is trite to observe the Court will proceed on the basis that after a long marriage the parties should be taken to have made equal contributions irrespective of whether that contribution was by working or otherwise supporting the family. This is the reality of married life and there is no good reason to place a premium on certain forms of contribution over others. In substantial measure that must be the case in respect of this long marriage.

67. However, the wife argued within her statement, albeit less so within the live hearing, as to a lack of support from the husband leading her to bear responsibilities which he should have been responsible for. On my assessment it is difficult to see the evidential foundation for this prior to separation in late 2020. Thereafter the assessment is complicated by the impact of the Covid Pandemic on the family finances. It seems clear the husband's contribution thereafter was not what the wife would have expected. However, there is a significant distinction between ability to pay and willingness to do so. I am not persuaded this was a case in which the husband's position was unchanged leaving him free but unwilling to offer support. In my assessment there is good evidence, including the tax returns filed by the wife which plainly demonstrate the difficulty facing the husband. It may of course be that some level of animus shaped support but it is undeniably the case that greater factors were also in play. As I have noted above this necessitated not only the sale of the matrimonial investment property and X, but also the full use of these resources to keep the family afloat.

Elsewhere I note the criticism of the husband in moving into the residential property at **AR** and moving the tenant out. This left a gap in resources and this plainly impacted on the wife. Yet this was a consequence of a different housing need on separation and one way or another the family resource was bound to take a hit from a need to finance two properties rather than one.

68. In my assessment I accept one will find a level of unequal contribution within the last four years and one may find an occasional failure on the part of the husband to support within his ability fully and properly but in my assessment taken in the round this is not evidence which has material impact on a fair division of resources after a lengthy relationship. Stepping back and reviewing the situation in the round this would amount to elements of under support rather than a consistent history of the same.

Conduct

69. As above each party specifically accepted conduct was not an issue for the Court. The husband complains about the wife's litigation conduct with regard to procedural compliance. The wife complains as to non-disclosure. I have dealt with this above and procedural misconduct is a matter for costs if at all. I have addressed the issue of 'controlling' behaviour earlier in this judgment. It has no impact on the ultimate resolution of this case.

Lost benefits

70. This is almost always a reference to pension rights. There are no other relevant matters. I have identified the rights above.

<h3>Conclusions</h3>

71. In my judgment the Court can find a resolution to this case which fairly distributes the resources whilst ensuring needs are appropriately met. The solution I find does give first consideration to R in ensuring he is left in suitable and secure housing and in circumstances in which his key needs are being met. For reasons given this decision does not prioritise his private education but this does not amount to an abdication of the responsibility on the Court to have first consideration to his needs. In considering his needs I have not disregarded a need for a relationship with his father and the opportunity to repair this to include spending time with his father overnight. The children will benefit if they see both parents have an opportunity to successfully prosper post-separation. An outcome which leaves one parent unsatisfactorily provided for or an unacceptable distinction between the living standards of the child's parents does have potential negative impact on a child of the family.
72. In this case I do not ignore the resources that are in place but might be lost and thereafter not recovered. The annex at **CR** provides a valuable support to the wife. **AR** has a 4-bedroom maisonette and there is evidence of a potential for it to be segregated into two separate flats [W: C5]. It might therefore offer both a housing opportunity for the husband together with a resource to meet costs. In addition, I have calculated the husband's income resource with reference to his ability to maintain his business and this will require premises from which to operate. It seems clear to me the flexibility available to the Court is enhanced if these resources can be maintained.

73. I consider the principal need is to divide the net assets to allow both parties to house or re-house themselves. I have set out their needs and the resources available in such regard. As far as their income needs are concerned the same are manageable if debts can be brought down to a sensible level or removed altogether.
74. I have reached the following conclusions:
- The wife should keep **CR** including the annex (subject to the mortgage)
 - The husband should keep **AR**, both commercial and residential elements (subject to the mortgage)
 - The personal debts shall remain where they are. I consider the husband should be responsible for his own and joint debts. It seems likely these predominantly relate to the business and property that he will keep. In any event having regard to my view as to family support there are reasons to believe he is better placed to take on this debt. A further reason relates to the balance of mortgage indebtedness held by each party with the husband holding a far lower level of debt but a higher return on the rental from **AR** in contrast to **CR**. The net effect is that the husband ends with debts at close to £87,000 but subject to my views on family support. His evidence would suggest this might markedly improve. In contrast the wife would have debts at about £35,000, which whilst high are manageable. Any further redistribution would be unfair.
75. I consider the pension fund should be divided equally. It was accrued out of the marriage and there is no principled reason for it not to be shared. On my assessment of earning capacity each party is equally placed to further build their pension towards retirement.
76. This outcome will provide both parties with housing. The wife will be over housed in that **CR** exceeds her needs but the equity comprised in that property reflects a fair sharing of the resources. The income on the annex will help maintain the position. The mortgage is interest only so a time will come when the wife needs to move on. This has the benefit of giving the child stability. I can see no reason this should require the husband to be removed from the mortgage as (see below) he will already have housing provision with an extant mortgage. In reality if this outcome proves unmanageable then the wife has the option of moving into the level of property identified above with a mortgage within her capacity and at the same time clearing the debts noted above.
77. The husband will preserve a property which enables him to maintain his business. This underpins my evaluation of his income and sale of that property would have potentially unforeseen consequences which might make the outcome unfair. It seems to me he can move into the associated property, continue to rent it, or carve it up to allow a mix of the two. If he rents it then this will help with his replacement housing costs. If he carves it up then the rental will reduce and his position will more closely approximate that of the wife and be closer in line with my assessment of his housing need.
78. Reflecting the equity on the properties alone this equates to a split 355,389 / 313,358 or 53%/47% (W/H). This is a modest departure from equality which is wholly explained and justified by the somewhat greater housing needs of the wife. I do not lose sight of the differential debts which at first glance are balanced as to 35,047 / 87,065 (W/H) but I consider that having regard to likely family support this difference will considerably narrow and will be such as to not markedly skew the ultimate % division. This is reinforced when

one brings into the account the pension sharing provision, albeit I appreciate this cannot be treated in entirely the same manner.

79. This outcome leaves each party with a broadly similar net income. Whilst the husband has a somewhat higher income and might over time improve his position it is also right to note that his position is more precarious and history has evidenced periods when his business interests have not succeeded. Furthermore, he is significantly dependent on his connections in terms of third-party activity within his business. In my judgment the ultimate income balance is also fair.
80. My conclusion entirely respects my first duty to consider R (although I consider the outcome is also one which is positive for N). He will be housed in stable accommodation and his main living needs will be met. I have not considered it appropriate to meet school fees for the reasons given. I was asked to consider ordering a lump sum to meet future child maintenance. I do not consider that appropriate. There is no reason as to why child maintenance should not be approached in a conventional manner.
81. In my assessment the outcome above is fair and has regard to the strands of needs and sharing. Compensation has no role in my outcome. The departure from equality is small and reasoned. In my assessment each of the proposals put forward would lead to a most unfair and unbalanced outcome. I do appreciate they were each premised on facts which have been found not to exist.
82. I agree there should be a clean break. I consider the parties can adjust without hardship. I consider ongoing financial connections (other than by reference to R) would be positively unhelpful.
83. This completes my judgment.
84. I will send this judgment to counsel; it can be shared with their lay and professional clients. I fear I have lost the date which I provisionally indicated might be available to hand down this judgment. In any event I now intend to hand down on 26 April 2024 at 2pm. This will have a time estimate of 15 minutes but see below.
85. I require counsel to do the following by 4pm on 23 April 2024:
 - Notify me of any corrections to this judgment; identify any justified requests for clarification, and; provide a draft order
 - Inform me whether or not the hearing will be attended. If so, the hearing will proceed on a remote basis unless I direct otherwise.
 - On the basis that this judgment will likely be published identify their position as to anonymization – I would ask for appropriately focused submissions to enable me to conduct the appropriate scrutiny in this regard – see *Xanthopoulos v Rakshina [2022] EWFC 30*. The stylistic approach I have used likely means the obvious issue will relate to the identification of the parties on the front page but if there were other matters, I would like these identified.
 - I will address this point in advance of the hearing
86. If there is no need or wish to attend the handing down then I would be content for the handing down to be unattended. I will need to know if a longer hearing is required but I will

then proceed to hand down only on this occasion. I appreciate the parties may have a view as to costs but if it helps my provisional view is that the outcome in this case sits most comfortably with no order as to costs. I make this observation to assist not fetter the parties.

Additional Points

87. I received a response from counsel addressing all the points noted in §85 above. I will address each in turn as is appropriate:

i) **Corrections:** No corrections were proposed on behalf of the husband. The wife sought to correct the level of indebtedness set out at §58 above. I am reminded the wife's debts should be set at £11,330 more than that stated to reflect additional legal fees set out within form H1 and closing submissions. I am also asked to correct the figure for the husband on the basis that it should be reduced by £4,192 to reflect a figure for CGT payable on RR which I had questioned as to continuing liability. I note both of these points but for reasons given below they do not cause me to change my ultimate judgment.

ii) **Clarification:** Both parties have sought clarification as follows:

The husband: (i) Did I intend for CR to be sold if the wife could not remove the husband from the mortgage? (ii) should the wife be providing confirmation that she paid the CGT on RR and if not, should she be giving an indemnity against the same? (iii) Should the wife be responsible for the recent accountant debts given this was on her instruction and included her own accounts? (iv) Did I intend the husband to be responsible for the joint Barclays Business Loan given this is said to have been used to remove a tenant from AR and rental was being paid to the wife? Further the funds were used for both parties and should be shared equally?

The wife: (i) Did I intend the husband to be responsible for the mortgage and outgoings on AR pending transfer and should he indemnify the wife in such regard? (ii) Should AR be sold if the wife cannot be removed from the mortgage? (iii) Should all joint accounts be closed with the husband being responsible for the balance sum (positive or negative)? Should any joint liability payable by the husband be secured against AR as protection in default of payment of the same?

My response is as follows, and I bear in mind clarification is not an opportunity to reargue a case:

a) I did not intend either property to be sold in the event of a failure to obtain the release of the other (whether with respect to AR or CR). I consider I dealt with this at §76-77. In my judgment the preservation of AR and CR provides each party with housing. My judgment was not premised on a need to sell and replace. If I had considered it appropriate to obtain release then it would have been mutual. In any event I do not require a release, although I expect each party to use their best endeavours to achieve this outcome. My sense of the parties is that they want very much to move forward without being attached in any way and so will likely do their best.

b) As to CGT I did express doubt as to whether this is payable still and I do not recall any evidence to help me on the subject. The husband claims the wife states it has been paid. In my judgment she should provide the husband

within 28 days a statement of the CGT paid on sale of the property. However, if a sum remains payable by the husband, then in my judgment this should be his responsibility. The sum if modest, I included it in my assessment and I do not consider my analysis of the use to which the funds was put shifts responsibility to the wife.

- c) I do expect both parties to be responsible for the costs including mortgage and outgoings on the property they retain. This should have effect from the date my judgment was handed down. They should indemnify the other accordingly.
- d) I do consider the husband should be responsible for all joint accounts. The ES2 suggested the balance figure was modest. These need not be closed but should be transferred to the husband or closed. In either case the husband is responsible for the overall balance.
- e) I do not intend to revise the reasoning set out in my judgment as to responsibility for debts. As such the husband is responsible for the joint debts. I note the gap between debt responsibility has likely narrowed (with the wife's debt being about £11,000 more and the husband's debt being about £4,000 less – the CGT). But I explained how this was fair in the light of the parties' respective positions and in the light of the husband's evidence as to likely familial support which would cover any difference.
- f) I did not intend any of these debts to be secured against AR but I did intend the husband to indemnify the wife.

This completes the clarification of my judgment.

- iii) **Anonymisation.** The husband was neutral on this issue. The wife provided submissions as to why the judgment should be anonymised. I have considered these with appropriate care. In reaching this decision I have had regard to *Xanthopoulos v Rakshina* [2022] EWFC 30 and have had particular focus on §103 therein which draws attention to a need for the 'ultimate balancing test'. I naturally reflect on the guidelines given by Lord Neuberger MR in *H v News Group Newspapers Ltd* [2011] EWCA Civ 42. I have closely scrutinised the reasons given. I note this judgment has not been redacted as to the details of the case and I am asked to simply remove the parties' names. I bear in mind that were I not to redact the names then it would likely lead to the identification of the children of the families, one of who is a minor. I do not consider there is any essential public interest in knowing who the people behind this judgment are although there is a strong public interest in the publication of the substance such a judgment to inform the public as to the approach taken by the Court to such applications. I take account of all the points raised by the wife and agree a number of these points sound in favour of a level of redaction.
- iv) I consider the ultimate balance is in favour of a substantial publication of this decision but with the names of the parties redacted from the front sheet and with a rubric making clear that no publication should be made which identifies the parties or any child of the relationship.

His Honour Judge Willans