

Neutral Citation Number: [2024] EWFC 255 (B)

Case No: 1679-5746-6684-5153

IN THE FAMILY COURT AT BRENTFORD

Alexandra Road,
Brentford, TW8 0JJ

Date: 6 September 2024

Before :

HIS HONOUR JUDGE WILLANS

Between :

V

Applicant

- and -

V

Respondent

**Ayesha Hasan (instructed by MB Law Limited Solicitors) for the Applicant
The Respondent appeared as a litigant in person**

Hearing dates: 4-6 September 2024

JUDGMENT

His Honour Judge Willans:

Introduction

1. I provide this judgment at the conclusion of a three-day final hearing in financial remedy proceedings. I will refer to the applicant wife as “the Applicant” and the respondent husband, as “the Respondent.” No discourtesy is intended by using these labels.
2. The Applicant was represented and the Respondent represented himself. I have received two bundles; position documents from each party and respective offer proposals. I take all of this into account in reaching this decision alongside the live evidence of each party and the focused final submissions made on behalf of each party.
3. This was an attended hearing and no specific participation directions were required. The Respondent questioned the Applicant in an appropriate and courteous manner.

What is this case about?

4. This case is substantially focused on the computation of the assets available for distribution and the approach that should be taken to some of these assets once established. Both parties approach the case on the basis that determination should be seen through the prism of the sharing principle and that there is no need to enhance the distribution to reflect needs. Compensation is not raised as relevant to the distribution. The evidence placed before me reflected this focus. I am asked to order a clean break by both parties.

Legal Principles

5. I can deal with this in relatively short order. My search is for a fair outcome having regard to the strands of sharing, needs and compensation (as are judged relevant). I will shape my assessment having regard to the factors laid out in section 25 Matrimonial Causes Act. I should consider the ordering of a clean break save where a party could not adjust to this impact without undue hardship.
6. I will go onto consider the question of matrimonial assets and those which fall outside of this description. In general terms those assets which are not matrimonial in character may not fall to be shared save in circumstances in which the strand of needs demands the same.
7. There are many authorities which seek to address the question as to sharing or not of income and other assets accrued following the date of separation of the parties. Distinctions can be taken as to situations of passive growth and the ultimate source of the resource which may have grown post-separation. In the case of income accrued after separation (and this might be by bonuses or conventional income or returns) consideration has been given as to whether there is a point which can be fixed after which income is judged to be no longer matrimonial in character. All cases of course turn on their facts. In one case a period of 12 months at least was said to

be required before income became non-matrimonial. However, I have to caution myself against fixing an arbitrary point.

A short background account

8. I will give further detail on specific aspects of the dispute below but for now summarise the background as follows:
- i) The Applicant is aged 42 and the Respondent 46. They married in 2006. There are two teenage children of the marriage. There is a difference of view as to whether the parties separated in 2019 or 2021. It is agreed the parties physically separated in 2021. A conditional order of divorce was made on 3 August 2023.
 - ii) The children live with their mother and will likely continue to do so. There has been no litigation under the Children Act 1989. The children spend time with their father.
 - iii) The parties own two properties in this jurisdiction. On physical separation the Applicant remained with the children in the FMH, "FMH." The Respondent moved out into the second property which had previously been rented. I will refer to this as "HA." Both remain in these properties which are each mortgaged.
 - iv) Both parties work. The Applicant is a teacher. The Respondent was employed in the IT sector but was made redundant earlier this year. In addition, for the last few years he has operated two business enterprises. One is an IT related business and the other relates to the mortgage market.
 - v) The parties have a strong association with India and retain family connections in that jurisdiction. The Respondent's father died in 2009. His mother remains living in India. I have been taken to nine (9) separate properties in India. They are a mix of residential, commercial, and agricultural land. At the heart of this dispute has been a disagreement as to: (a) the extent to which these properties are assets owned by the Respondent; (b) their respective values, and; (c) the extent to which they should be subject to any part of the ultimate distribution given the inherited nature of some of these. I will provide greater detail below. The Respondent's aunt died in 2022 and left her estate to the Respondent. It is agreed this comprised a property in India (this is one of the nine properties above) and a sum of about £60,000. The Respondent agrees he transferred the £60,000 to his sister, along with £15,000 of his own funds in 2023. He claims this was in pursuit of wishes expressed by his aunt. This is a matter of dispute.
 - v) These proceedings commenced by a Form A in March 2023. A first appointment took place on 11 July 2023 and an unsuccessful FDR appointment on 9 January 2024. At the first appointment directions were given as to the process for obtaining valuations of the Indian property. Unfortunately, this process entered a stalemate and the matter returned to

Court on 10 October 2023 when the Court directed experts to value the properties. These valuations are within the hearing bundle. The Respondent does not accept the majority of these valuations.

The evidence given by each party

9. I will address this through my analysis of the disputed matters below. The evidence did not stray far beyond these issues and to the extent it did, it does not require detailed repetition within this judgment.
10. Whilst I may not agree with the case put by each party, I did not find either party to be essentially dishonest or evasive. I have some issues with the accuracy of the Respondent's evidence but also note he was very frank in some regards and made significant concessions (e.g., as to a particular Indian property and the 'gold'). My essential conclusion was that both parties have allowed their viewpoint to impact on the shaping of their evidence. To an extent this has caused their evidence to have elements of unreliability. But this is not a case in which their presentation of evidence fundamentally undermines the credibility of that evidence.

My computation of the available resources (resolving matters in dispute)

11. In this section I will set out my evaluation of the available resources contained within the matrimonial pot available for distribution. I will follow the scheme set out within the ES2 filed by the parties. To the extent required I will resolve any disputes arising in respect of each asset and will explain why it is I have taken that view. I will identify the appropriate figure to be applied with respect to each asset.

1. The FMH

There is a modest dispute on the ES2 as to the appropriate figure to apply in this regard. I accept the expert valuation range of between £475-500k and use the mid-point of £487.5k. It is right to deduct the mortgage, costs of sale and ERP (as contended by the Applicant). Leading to a net figure of £333,945. I heard no evidence on this issue. 333,945

2. HA

The only issue in this regard is as to whether there should be a deduction for CGT. This is suggested by the Respondent to total £20,743. In the absence of an appropriate calculation in the light of the uncertainty with which the Respondent approached his own personal tax position I do not consider it safe to rely on such a figure. I therefore approve the figure proposed by the Applicant. I heard no evidence on this issue. 160,500

INDIAN ASSETS

Within this section I use the shorthand for each asset used within the hearing. I apply an exchange rate of £1 = 110 rupee.

The valuation evidence

The Applicant relies upon values derived from reports commissioned from single joint experts. The Respondent disputes these valuations generally and for a number of discrete reasons. I have reached the conclusion I should proceed on the basis of the valuations for the reasons set out below. I note this has less relevance with regard to some of the properties given my ultimate conclusions in such regard. My reasons are as follows:

- 1) The valuation process was set by the Court at the First Directions Appointment. A conventional approach was taken under which the Applicant supplied three valuers and the Respondent was to select from the same. This fell into dispute and the Applicant was required to apply for the resolution of the dispute. At a hearing on 10 October 2023 the Court determined this issue approving the valuer appointed. The Respondent was present at the hearing. The decision was not appealed. The upshot was two identified valuers.
- 2) The Respondent complains the valuer is not geographically proximate to all properties, although he is close to some. I note this point but consider it has limited merit. It is clear the valuation process has a degree of formula within it and I can see no reason to believe the valuer was in any way hindered in his valuation due to the fact he was based over 100 miles from a given property. In any event these were issues for the hearing noted above.
- 3) The Respondent loosely throws around allegations of collusion and improper conduct on the behalf of the valuer. He (or his mother) has quite improperly placed pressure on the valuer to withdraw his valuation outside of the Court process. Such behaviour is regrettable and wholly outside good practice. I made the same clear at the hearing. It has not caused the valuer to act as sought. For the avoidance of doubt there is no evidence of such collusion or improper behaviour. The foundation for collusion was that the valuer is based in the same city from which the Applicant derives. This is the most tenuous of basis on which to allege collusion. I appreciate the Respondent disagrees with the valuation but that will often be the case and does not justify the actions of

the Respondent. I will give permission for this part of my judgment to be shared with the valuers to allow them to defend the spurious claims brought against them in India.

- 4) The Respondent sets up an alternative valuation which was attached to his original Form E. The difficulty with this approach is that it was the very fact of disagreement at the Form E / 1st Appointment stage which led to the single expert direction. The Respondent reserves the right to challenge the valuation but I am not persuaded I should rely on the valuation previously adopted by the Respondent over that ordered independently.
- 5) The Respondent sets up an alternative 'Circle or Guideline rate' which produces a lower valuation. However, the expert has addressed this in responses to questions. He explains this is a minimum rate of valuation set for tax purposes but is normally below the market rate. He references available resources which make this very clear. I accept this distinction which makes clear the 'Circle Rate' is a baseline valuation and does not assist me.

I therefore proceed as per the valuation evidence but this is not the end of the matter

Plot 27

This is a parcel of undeveloped land. It was purchased by the Respondent during the marriage and is agreed as being matrimonial in nature. I adopt the expert valuation.

40,397

WTC Noida / Plot 924 / Plot 925

I group these three properties together in the light of the consensus reached during the hearing and the impact the same has on distribution.

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In summary each are residential development units. It is agreed there is a current litigation dispute arising out of the fact the developer has discontinued their involvement with the project (I do not need to detail the niceties of this dispute which is extraneous to this family and involves multiple investors in units within the developments). There is a difference of view between the parties as to the likelihood of this impasse being resolved. The Respondent considers the investment is lost and the value is therefore £0. The Applicant is more optimistic and would rely on the valuation reports.

The valuer values as follows: Noida: £47,522 and Plot 924 and 925

(which are identical) £38,181 each. Thus, a total of £123,884.

It is not disputed that Noida is matrimonial having been an investment of the Respondent during the marriage. It is not in dispute the Respondent inherited 924 on the death of his aunt in 2022 after the party's separation. It is not in dispute he co-owns 925 with his mother although I accept, he made no material contribution to the purchase. Allowing for a half share in 925 the global value reduces to £104,793.

The parties reached a sensible compromise in this regard under which the Respondent will transfer Noida to the Applicant subject to which the assets will not form part of the calculation. I congratulate them for this agreement which removes any requirement on my part to assess the risk associated with the project. Either the Respondent is right and neither party will benefit from these assets or the Applicant will be right and she will take 45% of the global value. This is fair given the source of the resources.

I therefore apply a figure of £0 to the assets for the purpose of the computation of assets.

Hotel A / N Lodge

I group these together as they raise similar points, and the resolution of the same should lead to equivalent outcomes. 19,602

These properties are geographically proximate to each other and are leased property sitting on the land of a Railway Corporation. These properties have been within the Respondent's family for a number of generations, initially in the hands of the respondent's grandmother.

The Respondent says this is not his property (it is if anyone's his mother's) but that it has no value as there are actual possession proceedings brought by the Railway to recover the land.

The Applicant challenges this account and claims the Respondent has a quarter interest as the same passed to him under Indian intestacy rules on the death of his father in 2009.

The Applicant also raises a quasi-constructive trust claim based upon her efforts in developing the property at Hotel A. The Respondent claims such development preceded his father's death.

The valuer gives the following values. Hotel A: £245,454; N Lodge: £381,818. This produces a global figure of £627,272, a quarter

interest in which is £156,818.

I have reached the following conclusions:

- 1) I do not consider the arguments made by the Applicant as to contributions has real traction on the outcome to this question. In my assessment these efforts at most were time limited and likely to be viewed as simply part of mutual family support. It further raises problematic issues as to the fact other interested parties are not intervenors in this case and have not put their own independent case before the Court. I appreciate in submissions the point was made that this established the general contributions of the Applicant into the marriage. However, this is a case in which it is clear to me the applicant made equal if different contributions and there is no need to establish this point in order to make this case good.
- 2) The parties disagree as to the status of the construction of Hotel A at the date of death of the father. It is surprising neither could provide any corroborative evidence for their position. I do not consider the delay in running the hotel until 2015 helps me in determining the issue. This is a matter for the Applicant to prove and on balance I am not satisfied she has done so. In any event I am far from clear this materially impacts on the outcome.

I am troubled by argument as the intestacy principles said to apply in India. I acknowledge elsewhere the Respondent accepts this to be the case (see below) but there is no documentary evidence to assist me as to the ownership rights with regard to this property at the date of the father's decease (subject to point below). If at that time the property were in the joint name of the Respondent's parents then these rules may not apply. However, there is evidence that the property was never transferred after the death of the grandmother. It seems she may remain the leasee on the documentation albeit the Respondent's parents went on to occupy following her death. The issue I have with this possibility (which seems likely) is that on her death the interest would likely follow the same intestacy rules leading to the asset being shared between the Respondent's father and his 7 siblings (as to 1/8 each). On his death his 1/8 would then be shared in 1/32 interests between his wife and children. If this is correct the Respondent's interest would be £19,602. I do not agree I can assume this asset comprised the father's 1/8 with other assets going to relevant siblings. There

is no evidence for the same.

- 3) I draw nothing from the fact the hotel was given the name of the party's daughter. This tells me something about family behaviours but nothing about ownership.
- 4) I bear in mind the respondent's mother continues to occupy the property. I accept the respondent has derived no funds from the operation of the hotel. I find no evidence to suggest the Respondent has acted on or treated the property as being his (whether as to 1/4 or 1/32).

On balance I consider these assets will have likely passed under intestacy rules but I limit the Respondent's interest to the lower figure above and bear in mind his mother's ongoing relationship with the property. I also bear in mind the fact there is ongoing litigation in this regard. However, it is far from clear this will materially impact this interest given the length of time the land has been occupied by the family; the reality that this dispute involves a large number of 'tenants' and the fact the current litigation seems to involve the railway seeking to recover the licence fees paid by the family from the federal State to which the monies were paid. If these funds are successfully recovered from the State, then it would appear the claim for eviction based on non-payment would fade away. If not recovered then it would seem the licence fees were in fact paid.

Agricultural Land

I accept the Respondent's account that this is agricultural land worked by various individuals and a level of return and produce is provided from this to his mother. I accept he receives no direct benefit from the land. 192,181

There is no dispute the Respondent has a 1/3 interest in the larger parcel of land. There is disagreement as to whether this passed under intestacy rules or as a transfer from his mother following his father's death. On balance it would appear the latter is more likely given the Respondent has a 1/3 not 1/4 interest. However not much turns on this distinction. His interest has been valued at £192,181. For the reasons given above I prefer this figure to the alternative proposed by the Respondent.

House 29/5

This is a property which is from time to time occupied by the Respondent's mother. It is a family home purchased by the Respondent's father in 1992. It is now agreed this likely passed to the Respondent as to 1/4 interest by way of intestacy on the death of his father. He, and his siblings, entered into a deed of relinquishment in 2012 formally passing their interests to their mother. There is a dispute as to whether the Applicant was informed as to this at the time.

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It has been given a value of £113,636 which reduces to £28,409 when parcelled into quarters.

I have reached the conclusion this should not be treated as matrimonial property. I accept this was relinquished in 2012 and I accept the basis for doing so which was to secure the rights of the Respondent's mother in the property. Having regard to all the circumstances of the case this was an understandable step which was plainly not taken to defeat or limit the Applicant's future claims. That the Respondent may not have told the Applicant is an issue between them but does not shape my understanding of the transaction. I accept it is now more than a decade since the Respondent gave up any interest in the property. It should have a value of £0 for this computation.

Service Station

This is a business owned and run by the Respondent's mother. It has been valued but is now conceded not to be matrimonial. I say no more.

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Gold

The parties have sensibly resolved this point on the basis the Applicant will be entitled to this and it forms no part of the calculation. I need say no more.

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Add back of £75,000 paid to sister

It is accepted £75,000 was paid to the Respondent's sister in 2023. It is accepted that of this, £60,000 was part of the estate left by the aunt. The balance was £15,000 of the Respondent's own money. I accept these funds were transferred to assist the sister with purchase of a property.

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Whilst the history of this account has not been entirely consistent, I accept the basic proposition that the inherited funds were given to the sister in the light of views expressed by the aunt. In any

event these were inherited assets which accrued post separation and it is difficult to see how they would fall to be shared given the date of receipt and the fact this case has no needs component. In the light of the global assets in this case I am not willing to criticise the Respondent for supporting his sister in this manner. I reflect on the fact he has preserved very considerable savings at the same time which are available for distribution. This is plainly not a case in which he has acted in a material manner to dispose or dissipate assets in advance of this adjudication. On balance I do not intend to add-back.

Chattels

In my assessment there is nothing of note once the gold is resolved, The remaining items (cars and furniture) are in use, are of modest value and should not be included in any calculation. 0

Bank Accounts and Investments (1)

On the basis there was no examination or challenge in this regard I use the figures in the schedule as follows: 35,270

- 1) Applicant: £17,390
- 2) Joint: £6,083
- 3) Respondent (exc next section below): £12,247

Thus, a total of £35,270

Bank Accounts and Investments (2)

In addition, the respondent has accrued bank account balances of £746,212 from running the business interests set out in §7(iv) above. He confirmed the following: 429,991

- 1) These funds can be extracted from the business after payment of Corporation Tax and subject to any dividend tax that will be payable on the same.
- 2) He has not worked since February 2024 and so received no income subject to income tax in the course of this year. He expects to look for and obtain employment in the period after October 2024.
- 3) He considers these funds should fall outside of the marital acquest as deriving from work since separation. He would look to preserve the same for retirement or later use. The funds appear to comprise his entire revenue (after expenses)

from this recent period given he was also employed and living off the income from the same.

The question of sharing will be dealt with below. But it is clear I must attempt to place a net (post-tax) value on the same in any event. I accept the evidence of the Respondent as to there being a modest level of sums due to third parties and a Corporation Tax liability on the profits obtaining in the last period. I intend to apply a global figure of £65,000 to this in the light of the evidence received and having regard to a degree of uncertainty as to exact levels of liability. This reduces the funds to a net figure of £680,000 (rounded).

If the Respondent returns to employment, then it is highly likely his income will place his higher marginal rate of tax at the higher level (40%). As such were these funds drawn as dividends then they would accrue tax liability at 33.75%. This rate would rise to 39.35% if the global sum received takes the Respondent into the additional rate of tax (on income 45%).

Plainly the tax liability can be reduced by delayed or episodic extraction. At the same time this may not be possible to meet the needs of my judgment as far as any payment to the Applicant is concerned. In my assessment the correct and fair way to assess the likely tax is as follows:

- 1) I assume the funds will likely be drawn in three tranches of £230,000 [2024/25] / £225,000 [2025/26] / £225,000 [2026/27]. Of course, any funds left with the Respondent can be drawn in such manner as he sees fit.
- 2) In my assessment any funds drawn will fall to be taxed at higher and then additional rate as the lower rate will be covered by income.
- 3) On the evidence I have heard I accept a likely gross income from employment of £50,000. For simplicity I will apply a dividend rate of 33.75% to the first £100,000 of dividends (at which point global income hits £150,000) and at a rate of 39.35% on the balance.
- 4) This means the net receipt for each of the three years would be £145,095 / £142,063 / £142,063. I cannot and do not attempt to allow for changes in tax regime. Globally this is a net receipt of £429,991. Subject to further argument this is the figure I use.

Investments & Policies

There was no examination on this point and so I use the figure proposed by the relevant holder. In this case the figures are for the Applicant: £5,413, and for the Respondent: £75,946. This totals £81,359. 81,359

Pensions

Subject to a date of accrual argument the Applicant has pensions with CETV value of £85,733 and the Respondent £154,105. This totals CETV £239,838. 239,838 (CETV)

Liabilities

The Respondent has a child maintenance liability to the Respondent of £5,849. This is obviously not a legitimate deduction from the computation otherwise the Applicant would be effectively contributing to her own payments to the % extent she shares from the matrimonial pot. I ignore this and the liability remains to be met. (20,872)

The Applicant has commercial debts of £17,572. There was no examination on the same and I accept these. She has familial borrowing of £8,300. I do not allow the sum of £5,000 of assistance given by a brother so that the Applicant and children could visit India. This was no necessary borrowing. I allow the balance on the evidence received. She also claims legal fees for India. I am not willing to allow these but choose to leave this to be resolved in India. I therefore allow liabilities of £20,872

12. That completes the computation. Bringing the above together one has a global matrimonial asset base available for distribution of £1,272,373 together with pension rights of £239,838 (CETV). I remind myself I have excluded the gold and those properties subject to the separate agreement as above.

The parties' respective positions

13. In simple terms the Applicant seeks a 50/50 share albeit her calculation includes items which I have assessed as not falling within the distribution. However, on such a share she would take a gross sum of £657,058 (which after settlement of debts would leave her with 50% of the net figure, i.e., £636,186). On her case this would comprise the equity in the FMH (£333,945), her own savings (£17,390) and investments (£5,413) together with a balance figure of £279,438. She would additionally take a pension share to equalise pensions.

14. The Respondent argues the Applicant should have those items identified above minus the balance figure. This would amount to £356,748. He does not provide for her debts to be met and argues there should be no pension sharing due to date of accrual. I note this sum would after liabilities equate to £335,876 and would equate to a share of the identified assets of about 26%.

Section 25

15. The children live with the Applicant and whilst the obligations in such regards will have changed as they have aged, this nonetheless will continue for a number of years to come. Their need for a comfortable home and to have their needs met does fall mostly on the Applicant. It seems she is managing to meet these needs. I heard evidence as to the role of the Respondent but felt this did not assist me greatly. Whilst the children do not spend time overnight with him, they live very close to each other and retain a meaningful relationship. They are of an age where strict contact plans are not sensible.
16. I have identified the parties' capital resources above. I have also received information as to their mortgage capacities but cannot conceive of circumstances under which they should not each be able to be mortgage free based on a sharing approach to the assets. I note their pension rights but judge these are relatively modest and will need significant addition to provide a comfortable life in retirement based on these funds alone.
17. I note the party's income resources. The Applicant is employed and there are no real grounds for assuming this will materially change in the foreseeable future. I judge she will continue to receive income of around £40,000 net from all sources including from renting space in her home. I have not allowed for child support but this should be payable into the future and will further supplement this sum. In the case of the Respondent his business activities make any assessment challenging. But it is clear he has a real earning potential that significantly exceeds that of the Applicant. This is shown by his ability to accrue business income savings in recent times. I struggle to see his income as falling below £100,000 a year (from all sources) with a likely net income of no less than £60,000 per annum. The parties agree there should be a clean break and no arguments have been made as to capitalisation of spousal periodical payments. I judge the clean break has real value to the Respondent.
18. I have dealt with liabilities already. They are modest in the context of the broad financial picture. Each party has a housing need. This is no more than the FMH and this is how the Applicant puts her case. Whilst I accept the Respondent does not have the children overnight, having regard to the assets and the bigger picture it seems only fair that each should have broadly similar housing expectations into the future. This does not cause me to skew the distribution and so is of limited if any material impact. I bear in mind the responsibility that will continue with respect to the children. I have no grounds for believing the Respondent will not be willing to offer support to the children as they enter further education although I note the dispute as to recent support.

19. The parties enjoyed a comfortable standard of living towards the end of their marriage although it appears finances were strained in the early part of the marriage. That is not an unusual state of affairs.
20. I have noted the age of the parties and the duration of the marriage. This should be viewed as a marriage of significant duration having regard to its length and the enduring responsibility arising with respect to the children. The parties are still relatively young.
21. There are no relevant disabilities.
22. I judge each party has made equal contributions during the marriage. These will have been in different form but they are not such as to grant one a greater interest over the other. Within the statements there is appears to be an attempt to draw me into an accounting exercise both during the marriage and in the period following separation. I am not willing to be drawn into such evaluation. It has no purpose or benefit on the facts of the case.
23. It is a matter of fact that the Respondent has worked hard since separation and has been able to accrue significant 'savings.' I accept from the evidence he has significantly enhanced his pension rights in the same period. But this was a period when the Applicant continued to care for the family. Further although child support was calculated it had no regard to the very significant sums being obtained and banked from business interests. For the avoidance of doubt the Applicant has shared no part of the business income by way of child support.
24. This is not a conduct case. I have heard no evidence to support such a contention.
25. I am mindful of the pension rights. These are the principal rights which will be lost on divorce.

My conclusions

26. I start by recording those matters which are agreed and need to be part of the final order. The Applicant will receive the Noida property which will need to be transferred to her. Given the fact it is India I consider I need to make provision for a default payment if this is not done within 1 year and it can be shown the Respondent has not used his best endeavours to achieve the same. The default will be the valuation given by the valuer. I appreciate that on transfer this property may transpire to have no value. The Applicant should also have transferred to her the joint locker referred to in the evidence and the gold (which is said to be housed within). The Applicant will retain her own assets and the joint accounts will be closed and divided equally. If the joint balance has moved to a degree, then the change will be shared. Neither party should now act unilaterally to deplete the funds save for regular payments which are timed to come out of that account prior to closure.
27. The Respondent shall transfer the FMH to the Applicant. The Applicant will transfer her interest in HA to the Respondent.

28. Should there be a further balance payment? I first extract the following assets to which I consider arguments can be made: (1) Hotel A/N Lodge [19,602]; (2) the Agricultural land [192,181]; (3) the business funds [429,991]. Together these total £641,774. The balance of the matrimonial fund is £630,600 (rounded) which divided by 2 would be £315,300. As things stand on transfer of the FMH the Applicant with her own assets and debts would have nearly £336,000.
29. In my assessment this is not a fair outcome having regard to all the circumstances of the case and does not properly reflect the sharing strand properly applied on the facts of the case. I note it would reopen the question of a needs-based calculation given the net effect.
30. I have regard to the authorities which relate to the acquisition of assets and the impact of assets accrued post-separation. In my assessment there is a strong argument to leave out of this assessment the interest in Hotel A / N Lodge. The circumstances of the interest are such as to merit such an approach. This is inherited property (albeit during the marriage) but has relatively low value and is complicated by the multiple other parties with likely interest in the property and the occupation of the mother within the property. To add this to the Respondent's assets as suggested would not be a fair approach. I do not consider it is an asset with value readily available to the Respondent.
31. In the case of the agricultural land, I have regard to the circumstances of receipt; the history of the land and its use since receipt. It may be challenging for the Respondent to realise this value. But it is his asset and it has value. It was received during the marriage and some time ago. To fairly reflect these points, I intend to apply a 50% discount to this asset. It will thus be in the calculation at £96,905.
32. I take a different approach on the question of the funds held in the business accounts. These have arisen in a period not very long after separation. I consider the date of separation in this case was in mid-2021. I accept the Applicant's evidence that physical separation in the home was at first something which had occurred on a number of occasions and there remained prospects of full reconciliation. I accept matrimonial life did not end at that point. I accept it was in 2021 that the marriage finally ended. Viewed in this way this fund has accrued over a period of less than 3 years after separation. This was during a period when the Applicant continued to meet the principle needs of the children. No reference to these funds was made when child support was calculated. Finally in accepting a clean break the Applicant is in reality accepting the possibility (which cannot be discounted) of the Respondent continuing to work and earn at similar levels. In my judgment all of these factors taken together warrant the funds being brought into the assessment.
33. I therefore consider the matrimonial fund for distribution is [1,272,373 - 96,905 - 19,602] £1,155,866 (after debts allowed for). The Applicant should receive half of this or £577,933 plus the sum for liabilities (20,872) equalling £598,805.
34. By my calculation, the sum of £577,933 equates to 45.42%. Standing back this is a fair and balanced departure from equality having regard to all the circumstances of

the case. It permits a clean break.

35. As to pensions I intend to make an order for a pension share as sought by the Applicant. The conclusion I have reached with regards to the business funds has equal purchase on the pension accrual. As such there will be a pension share to equalise the funds.
36. The respondent will need to make a lump sum payment to the Applicant of [598,805 (which is the £577,933 in §34 above plus the liabilities of £20,872) - 339,000] £259,805. This should be paid as to £145,000 within 2 months and the balance payable no later than 30 April 2025.
37. I consider this is a fair outcome and one which will allow each party the opportunity to proceed with appropriate comfort into a life after divorce.

Clarification

38. I handed this decision down on 6 September 2024. The time for appealing the order runs from that date. I explained to the Respondent the appeal process and he elected to reflect on the decision rather than ask for permission to appeal. I asked for draft orders to be filed and gave permission for corrections to be suggested and for any suggestions on redaction and clarification to be raised.
39. The Respondent has raised a suggested error in my calculation as set out in the extract from his email correspondence:

I believe there is an error in the financial calculations. The balance amount from the Applicant's bank account (£17,390) and Applicant's investment (£5,413) has not been deducted. Additionally, half of the balance amount (£3,042) is not deducted from the joint accounts.(total amount £6083). I should also be liable for half of the Applicant's liabilities, which amount to £20,872, meaning my share would be £10,436. Based on these adjustments, the Total Payable should be: £577,933 - £339,000 - £17,390 - £5,413 -£3042 + £10,436 = £223,524.

I observe this clarification relates to my final calculation at §36 and the preceding arithmetic.

40. In considering the division of the available matrimonial fund and the structure for the Applicant to receive half allowance must be given for the funds she currently holds. This will comprise a first part of her share. My response to the request for clarification is as follows:
 - i) I accept an error has entered my calculation. I agree there must be deducted from the sum payable to the Applicant those funds already in her possession. This comprises her bank account balance (£17,390) and investments (£5,413).
 - ii) I also accept allowance must be given for the joint account. Given this is a variable sum it is better to exclude this from payment scheme altogether and simply state it will be closed and the balance paid to each party in equal shares. I therefore deduct it from the global sum with the effect this further

reduces the sum payable by half of the difference being £3,042 as claimed by the Respondent. Instead the order will now provide for her to recover half of the balance which currently stands at this level.

- iii) Neither of these points change the sum due to the Applicant.
- iv) Finally I deal with the Applicant's indebtedness. The purpose of the order is to deduct this from the assets to be shared before the distribution takes place. Given the identified assets are to be shared equally (this is after the deductions otherwise set out within the order) the effect is for the deduction to be shared between the parties equally. This was my intention. I can see no arithmetic difference between deducting the full sum off before distribution (so each share 50%) and the Respondent paying a sum equal to half to the Applicant after distribution. Given this is the Applicant's indebtedness she should have the full amount in order to settle the debt. I do not amend in this regard.
- v) This means the net sum payable is [598,805 (which is the 577,933 in §34 above plus the liabilities of 20,872) - 339,000 - 17,390 - 5,413 - 3,042] = £233,960. It will be immediately noted this differs from the sum proposed by the Respondent by half the indebtedness of the Applicant which reinforces my point above. In addition the parties separately share the joint balance. I will make the amendment on the second lump sum tranche.

41. This concludes my clarification. I have approved the orders accordingly.

His Honour Judge Willans