

IN THE CENTRAL FAMILY COURT

B E T W E E N:

RN

Applicant

- and -

TT

Respondent

IMPORTANT NOTICE

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

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

Mr Uade Alukpe (Solicitor of Curling Moore, Solicitors) appeared on behalf of the Applicant.

Mr Matthew Richardson (Counsel instructed by Ian Whitbread of Wilson LLP, Solicitors) appeared on behalf of the Respondent.

Written Judgment of His Honour Judge Edward Hess dated 14th June 2024

INTRODUCTION

1. This case concerns the financial remedies proceedings arising out of the divorce between TT (to whom I shall refer as “the wife”) and RN (to whom I shall refer as “the husband”).
2. The case proceeded to a final hearing over two days on 13th and 14th June 2024.

3. Mr Uade Alukpe (Solicitor of Curling Moore, Solicitors) appeared on behalf of the Applicant husband. Mr Matthew Richardson (Counsel instructed by Wilson LLP, Solicitors) appeared on behalf of the Respondent wife.
4. The court was presented with two electronic bundles running to a combined total of 938 pages. I have considered the material presented to me, in particular I have considered:-
 - (i) A collection of applications and court orders.
 - (ii) Material from the wife including her Form E dated 14th December 2020, her answers to questionnaire which were undated and her statements dated 7th November 2022, 8th April 2024 and 23rd May 2024.
 - (iii) Material from the husband including his Form E dated and his statements dated 2nd November 2022 (in the form of an email) and 23rd May 2024.
 - (iv) Material from CS Estate Agents on property valuation issues.
 - (v) Completed ES1 and ES2 documents and an agreed chronology.
 - (vi) Selected correspondence and disclosure material.
5. I have also heard oral evidence from the wife and the husband, both subjected to cross-examination. I received written opening notes and closing oral submissions from Mr Alukpe and Mr Richardson.

THE MARRIAGE AND THE DIVORCE

6. The history of the marriage is as follows.
7. The wife is aged 51 (she was born in 1973). She is a medical doctor who currently works as a GP. She was patient, pleasant and intelligent in her presentation and appears to have worked hard over many years in her medical practice and as the primary carer to her children. In giving her evidence, she was careful, measured and precise in what she said, and I have no doubt at all that I can regard her as an honest and reliable witness. It was clear to me that she has sometimes over the years found it difficult to deal with the husband's behaviour, but I formed the overall impression that she has done her best to cope with it in an empathetic way.
8. The husband is aged 49 (he was born in 1975). He was once an occasional painter and decorator but appears not to have worked very much for quite a long time, including during the marriage and the years after and has had a troubled time in a number of ways. He has had fairly limited and intermittent involvement in his children's lives,

but my overall impression was that they are happy to see him sometimes in a limited way. He appears to have engaged in gambling over the years, although the full extent of it was difficult to assess. Although the information on this was limited, he acknowledged that he had been involved in fraudulent activity resulting in 5 months in prison in 2017. He has plainly had some mental health issues and I have seen a very brief medical report dated 2022 from a GP which records that he has a “*mixed anxiety and depression disorder*” requiring daily Sertraline tablets. He told me that he had attempted to commit suicide on three occasions and that he had gone through a “*nervous breakdown*”. He is currently assessed by the DWP as having “*limited capacity for work and work-related activity*” as a result of his mental health. From the DWP he receives Universal Credit (which includes all his rental costs) and Personal Independence Payments. In his evidence, he was sometimes confused, sometimes evasive and sometimes inappropriately vehement and I would not regard him as a wholly reliable witness.

9. The parties met in the Summer of 2002 and started a relationship in the Summer of 2003. This became a relationship of cohabitation in late 2003 when the husband moved to live with the wife in her flat (which she had owned since February 2002). They married in 2004.
10. The marriage produced two children. The first child is now aged 17 (born in 2007) and has one more year at a state school and is likely to go on to university. The second child is now aged 12 (born in 2011) and attends a state school.
11. The relationship appears already to have been in difficulties when, in June or July 2011, the wife (pregnant with the second child) discovered that the husband had been using her credit cards to conduct his gambling habit. She regarded this as the ‘last straw’ and asked him to leave her flat and indicated that the marriage was over. He duly moved out and they have been apart ever since. The wife told me that the husband, at this time, told her that if she took responsibility for the debts on her credit cards (then standing at about £34,000) he would not seek anything financially from her in the future. Although it was denied by the husband, I preferred the wife’s evidence that this conversation took place, and I shall discuss below whether this has any legal significance for my present task.
12. After these events, the wife decided to re-arrange her accommodation so that she and the children moved into her mother’s house, swapping homes so that the wife’s brother moved out into her flat and she and the children took his place at the wife’s mother’s address. This was convenient for the wife because her mother helped with child-care while she was at work as the children grew up and she remains there to this day. The brother continues to live in the wife’s flat. No rent changes hands in any formal way in either arrangement – they are simple family arrangements.
13. For whatever reason, despite their complete separation in 2011, neither husband nor wife issued divorce proceedings until the wife issued her petition in November 2017.

Decree Nisi followed in September 2018 and Decree Absolute in November 2018. At the time of the divorce in 2017-2018, there appears to have been no mention of financial remedies proceedings at all. Neither the wife nor the husband have remarried, and they both remain single.

THE FINANCIAL REMEDIES PROCEEDINGS

14. On 25th August 2020, more than nine years after the separation, the husband issued Form A, seeking a range of financial remedies. The case was allocated to Edmonton Family Court and a Form C sent out.
15. Forms E were exchanged in October 2020.
16. A First Appointment was heard by DDJ Harris in Edmonton on 18th January 2021, but the IT failed to work properly and it was re-scheduled for 26th May 2021, again before DDJ Harris. On this occasion directions were made and the case timetabled to an FDR on 17th December 2021.
17. An FDR was conducted by DJ Davies in Edmonton on 17th December 2021. On this occasion the husband was a litigant-in-person. The FDR did not produce a compromise and the case was timetabled towards a two-day final hearing commencing on 30th November 2022.
18. Amongst the directions made by DJ Davies on 17th December 2021 was that a report from an SJE PODE should be obtained to advise on the wife's pensions, such report to be produced by 15th April 2022. The parties initially instructed a PODE, Mr Clive Weir, who did produce a provisional report, but he was unable to complete a full report, and the pensions issue rather drifted. As the listed final hearing approached it was realised that there was no PODE report and the problem was raised with the court at a hearing on 28th November 2022. At this hearing in Edmonton, DJ Hussain adjourned the final hearing, re-fixing it to commence on 11th October 2023, and made a fresh direction for an SJE PODE report and directed that Mathiesons Consulting be appointed, to report by 28th February 2023. The provisional report from Mr Weir was directed to be "*superseded*".
19. Unfortunately, Mathiesons Consulting had a very great difficulty in extracting information from the wife's main pensions provider, NHS pensions, and they also were unable to produce a PODE report. It has been quite difficult to identify precisely why this happened, but I have no reason to believe that the wife can in any way be blamed for this and it has not been suggested that Mathiesons Consulting were to blame – fingers have been pointed at NHS Pensions, but (in fairness to them) I have not heard any explanation by them. It may be that there were reasons for the delay, such as the uncertainties created by the McCloud litigation judgments and/or public

sector actuarial assumption changes. In any event, nearly a year on, on 6th October 2023 in Edmonton, DJ Hussain dealt with an almost identical adjournment application and again granted it and re-fixed the final hearing to commence in the Central Family Court on 13th June 2024, with a PTR in Edmonton on 10th April 2024. She anticipated that Mathieson Consulting would now produce the report, but in fact they did not.

20. At the PTR in Edmonton on 10th April 2024 DJ Davies¹ was confronted with the situation that there was still no PODE report, Mathiesons Consulting still having been unable to extract information from NHS Pensions. This reality left the court with rather inadequate information on pensions; but he decided (in my view correctly) that, on balance, the best course was to move forward to the final hearing without a PODE report because it was depressingly clear that the information would not be available in time and it would not be proportionate to adjourn the final hearing for a third time. The court would just have to do its best without that information – and this is what I propose to do. I would like to say, however, that this should not be taken as any kind of general endorsement of the proposition that PODE reports are unnecessary – generally they are helpful to the court and a report would have been helpful here.
21. DJ Davies also made some other fairly standard directions, including for the production of property particulars and updating disclosure.
22. A final hearing has accordingly taken place before me on 13th and 14th June 2024. I completed the evidence and submissions by the end of the first court day and I have taken the second court day to write this judgment.

THE BASIC LAW

23. In dealing with the claim I must, of course, consider the factors set out in **Matrimonial Causes Act 1973, sections 25 and 25A**, together with any relevant case law.
24. Matrimonial Causes Act 1973, section 25 reads as follows:-
 - (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
 - (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the

¹ Nobody appears to have taken the point that, as the FDR judge, he perhaps should not have been dealing with a subsequent directions hearing.

marriage, the court shall in particular have regard to the following matters:-

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

25. Matrimonial Causes Act 1973, section 25A reads as follows:-

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

26. In a skilful and persuasive presentation, Mr Richardson has also directed my attention to the law on the issue of ‘delay’, in particular the analysis of this subject by Lord Wilson in *Wyatt v Vince* [2015] UKSC 14. In that case the wife had waited 31 years after separation to bring her claim, by which time the husband had improved his position from being impecunious to being a very rich man. Lord Wilson’s judgment includes a number of observations on this subject, and although the facts in *Wyatt v Vince* were a little more extreme than the present case, some of his observations are pertinent to my task and I shall accordingly cite them at some length:-

“The wife’s application faces formidable difficulties.

(a) The marital cohabitation subsisted for scarcely more than two years.

(b) It broke down 31 years ago.

(c) The standard of living enjoyed by the parties prior to the breakdown could not have been lower.

(d) The husband did not begin to create his current wealth until 13 years after the breakdown.

(e) The wife has made no contribution, direct or indirect, to its creation.

Furthermore, (f), the wife’s delay in bringing the application appears to be inordinate. She can explain the first 13 years of it: there was no point in pressing financial applications against the husband while he had no money. But what about the delay for the 14 years from say 1997 until 2011, when her application was issued? She says that, for the first several of those years, she did not realise that the husband was becoming wealthy and that, for example, his continued failure to maintain Dane led her to assume that there was no significant change in his financial circumstances. But that point takes the wife to no further than 2001 when, on becoming an adult, Dane went to live with the husband. She points to the legacy of discouragement from seeking financial provision from the husband which arose from the justices’ nominal order in 1992, from the agency’s nil assessment in 1997 and from unproductive consultations with local solicitors in 1994 and 1996. But there is no explanation for much of the more recent delay. Consistently with the potentially life-long obligations which attend a marriage, there is no time-limit for seeking orders for financial provision or property adjustment for the benefit of a spouse following divorce. Sections 23(1) and 24(1) of the 1973 Act provide that such orders may be made on granting a decree of divorce "or at any time thereafter". Yet there is a prominent strain of public policy hostile to forensic delay. The court will look critically at explanations for it; and, even irrespective of its effect upon the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant. Nevertheless it remains important to address its effect upon the respondent. In some cases, albeit not in the present, a respondent can show that he has assumed financial obligations or otherwise arranged his financial affairs in the belief that the applicant would make no claim against him and that he has done so in a way which, even if it were possible, it would not be reasonable for him to put into reverse. Sometimes, instead, he can point to factual issues of which the dimming of memories or the disappearance of witnesses over the period of the delay no longer permits accurate determination. But, were this wife’s application to proceed to substantive determination, the need for resolution of factual issues would be slight. All that is said on behalf of the husband in the present case is that the delay has deprived him of the chance of establishing that, around 1992, the wife’s financial applications were dismissed; but, as already indicated, a dismissal is so unlikely that it should be entirely discounted. Confronted

by the difficulties identified at (a) to (f) in paras 30 and 31 above, what might the wife assert so as to carry her application forward to possible success? It is, standing alone, insufficient that the husband is now so wealthy that (as has readily been agreed) he can meet whatever award, if any, might reasonably be made in her favour and there is no need for any exploration of his financial circumstances. But the wife asserts needs, both for a better home for herself and her family and, in the light of the severe limitations on her earning capacity, for a fund out of which to maintain herself for the rest of her life. These, with questionable forensic wisdom, she quantifies at £0.55m for the home and £1.35m for the fund, and thus at a total of £1.9m. Even at this stage one can say that, in the light of the negatives, an award approaching that size is out of the question. It is a dangerous fallacy, albeit currently propounded by those who favour reform along the lines of the Divorce (Financial Provision) Bill currently before the House of Lords, that the current law always requires rich men to meet the reasonable needs of their ex-wives. As Thorpe LJ said in *North v North* [2007] EWCA Civ 760, [2008] 1 FLR 158, at para 32, "... it does not follow that the respondent is inevitably responsible financially for any established needs... [h]e is not an insurer against all hazards..." In order to sustain a case of need, at any rate if made after many years of separation, a wife must show not only that the need exists but that it has been generated by her relationship with her husband: see *Miller v Miller*, *McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, para 138 (*Lady Hale*)...In *Pearce v Pearce* (1980) 1 FLR 261 the parties separated in 1969 and for nine years the wife cared single-handedly for the three children. Until 1977 the husband was an undischarged bankrupt and made no financial contribution to the running of the wife's household, which was sustained by state benefits. In 1978 the husband inherited from his father a house worth £19,000 and liquid capital of £15,000. The wife then applied for an order for a lump sum. The Court of Appeal upheld an award to her of a lump sum of £12,000. Ormrod LJ, with whom Orr LJ agreed, said, at p 264, that courts would not encourage applications long after the divorce but that the justice of the case might require an award notwithstanding a lapse of time. He continued: "One has here a husband who has never paid a penny piece for the maintenance of his former wife or his three children since, at the latest, 1969 and it means that the wife has lived in great difficulty on social security with all the responsibilities for bringing up these three girls unaided, all that length of time, so that on the merits, in my judgment, she has a strong case. Her claim on the merits certainly goes a long way to eliminating the contrary factor, the lapse of time." Ormrod LJ added, at p 266: "The husband has never attempted to discharge his obligations in relation to these three children. The whole responsibility has been placed on the wife, whose life must have been made very difficult all these years. Is there any reason whatever why, now that the husband has come into a certain amount of money, she and the children should not have the opportunity of benefiting to some extent from it?" Finally Ormrod LJ held, at p 267, that, in the light of his lack of contribution to the wife's household, the fact that the husband's capital had come to him by inheritance long after the separation was no ground for exempting it from partial redistribution to the wife and that the award gave her "an opportunity of perhaps living in something a little bit better than the poverty which she has been living in all these years". For another example of a short marriage, a substantial contribution on the part of the wife in caring for the children, a 30-year delay in her bringing her application (following an overseas divorce) and a significant capital award, see *M v L (Financial Relief After Overseas Divorce)* [2003] EWHC 328 (*Fam*), [2003] 2 FLR 425. In my view this court should direct the swift referral of the

wife's application to...a judge of the Family Division...It may however be helpful to suggest that the major issues requiring limited investigation by way of oral evidence seem at this stage to be the wife's delay on the one hand and the disparate contributions to the care of the children on the other. These are, to my mind, the two magnetic factors. They pull in opposite directions and the question may ultimately prove to be whether, in the light also of the five difficulties identified in para 30 above, the wife's delay is so potent a factor as not just to reduce but even to eliminate what might otherwise have been awarded to her by reference to contributions and possibly also to needs. Had it been relevant, as Jackson LJ considered, to ask whether the wife's application had a real prospect of success, my opinion would have been that it had a real prospect of comparatively modest success..."

SECTION 25 ANALYSIS

Welfare of a minor child

27. Important to this case is that I must give first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen. In this case both children fall into this category. It is therefore necessary for me to consider how their needs and interests will affect this case. In financial terms the wife has met all their needs throughout their lives and the husband has hardly contributed. This is very likely to continue to be the case for the remainder of their respective minorities. The husband's case involves the assertion that he needs accommodation with sufficient bedrooms to enable their need to stay overnight with him to be met. I shall consider this proposition in more detail below.

Capital Resources and the Duration of the Marriage

28. In relation to the "*property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future*" I have a number of important disputed issues to determine, which I do as follows.
29. There are no joint assets at all.
30. There is one real property, that is the wife's two-bedroom flat. In relation to this property I make the following findings:-
- (i) It was purchased by the wife in her sole name in February 2002, before the parties had met.
 - (ii) It was purchased for £132,500 with a mortgage in the wife's sole name of £119,250.

- (iii) It became the family home from the time the parties began cohabiting in November 2003 to the time of the separation in June/July 2011.
- (iv) The husband did not contribute to the purchase price and has made no financial contributions to the mortgage.
- (v) At the time the parties separated in June/July 2011 it was worth in the region of £157,500 (this figure not coming from a formal valuation, but having been produced by a sensible analysis of general house price changes over the relevant period) and the outstanding mortgage was £109,072. The net equity in the property at this time was therefore c. £43,703.
- (vi) If this case were to be decided just by the husband's sharing entitlements, an argument would be to say that his claim should be limited to one half of the net equity available at the time of separation, i.e. one half of £43,703, i.e. £21,851. This was the case put by Mr Richardson on behalf of the wife.
- (vii) The property is currently worth £250,000 (this figure comes from the SJE CS valuation and is not in dispute).
- (viii) The mortgage was paid off by the wife by monthly payments between 2002 and 2024 and there is no longer any outstanding mortgage.
- (ix) The current net equity in the property is therefore c.£242,500.
- (x) The property is occupied by the wife's brother (who is a gratuitous licensee) as it has been since 2011. It appears that he has no enforceable rights to remain there.

31. The wife has savings of £80,743 and investments of £139,496. Her only debts are an outstanding credit card balance of £115, an income tax payment on account bill due on 31st July 2024 for £26,878 and her outstanding legal costs bill of £6,331². Mr Alukpe put some different figures into the ES2 on these items, but, in answer to my questions at the beginning of the hearing, his points seemed to have little merit and he did not cross-examine the wife about any of the matters he raised and I accept the wife's case on this and reject Mr Alukpe's challenge to it. All of the savings and investments have accrued since the separation in 2011, during which time the wife has also paid off the credit card debts of c.£34,000 which then existed.

32. It was accepted at the beginning of the case by Mr Alukpe that the husband has savings of £230 and no investments and no debts apart from his outstanding legal costs bill of £27,650³. A curious part of the husband's oral evidence was his attempt to explain a significant number of entries for money coming into his Revolut bank account in the last year, which he identified as monies borrowed from unidentified

² She has incurred costs of £41,853 and paid £35,522 towards this figure.

³ He has incurred costs of £27,650 and paid not a penny towards this figure.

third parties. If that was so, it was curious that Mr Alukpe said that he had no outstanding debts and I was left with the impression that I was not being told the whole truth about these matters. I shall not, however, make any particular findings that the husband has some undisclosed monies, but nor do I accept that he has any debts to unidentified third parties.

33. I propose not to include in my asset schedule any reference to chattels. In any event the husband has not raised any claim to any particular chattels.
34. The husband has no private pension provision and, although this fact was not raised by him, may well have limited entitlement to the state pension provision in view of his poor work record.
35. The issue of the current CE values of the wife's pensions and also the extent to which they can properly be regarded as 'marital acquest' has been controversial in this case, in particular because of the absence of any PODE report for the reasons discussed above. In an opening discussion, Mr Alukpe has raised some thoughts on what their values might now be, which I need to deal with. I make the following findings on this subject:-
 - (i) The wife has produced convincing evidence of the current value of her Aviva pension. This is a defined contribution personal pension which she has accrued by continuous monthly payments from 1999 to the present. She obtained online a statement of its current CE value by going on to an online Aviva portal and (as at 16th May 2024), the valuation figure is £109,347. I reject Mr Alukpe's suggestion that this is not a reliable figure (he never pursued in cross-examination his suggestion that the wife had attempted to manipulate the figure) and I propose to adopt the figure in my asset schedule.
 - (ii) The wife has two NHS Pensions – one (in the NHS Pension 1995 Scheme) which has accrued value through contributions between 1999 and 2008 and again between 2011 and 2015 (she took time out from the scheme between 2008 and 2011 while working as a locum) and another (in the NHS Pensions 2015 Scheme) which has accrued value through contributions between 2015 and the present day. The latest official CE figures for these pensions were produced in December 2020 at £338,354 and £149,865 respectively. As discussed above, it has proved impossible to extract later figures. Mr Alukpe has suggested that these figures might now be £650,000 and £225,000 respectively, but these were really no more guesses. It is difficult to see how the 1995 Scheme pension could have risen that much in a period where there were no contributions, but it may be that the figure will have gone up a little as a result of changed actuarial assumptions. I can imagine that the 2015 Scheme will have gone up through more than three years of further service and contributions and actuarial assumptions have also changed; but again it is difficult to know what the actual figure is now. Rather than make a guess myself at a precise

up to date figure I propose to say that I would expect the figures to have risen to some extent from December 2020 to now; but probably rather less than the figures guessed at by Mr Alukpe, and considerably less in the case of the 1995 scheme.

- (iii) I have been addressed in this context on the subject of ‘marital acquest’ by Mr Richardson. In my view the relevant period for calculating the ‘duration of the marriage’, from which a marital acquest calculation should follow, is the period from the date of the parties commencing cohabitation (November 2003) to the date of permanent separation (June/July 2011): see, for example, *MB v EB* [2019] EWHC 1649. This is a period of some 7½ years. Mr Alukpe’s suggestion that the period should be extended to Decree Absolute is inconsistent with the authorities on this point and I do not accept it.
- (iv) In relation to the Aviva pension I have no actuarial information on how much of this has accrued before, during or after the marriage; but a very broad straight-line analysis⁴ suggests that of the £109,347, only 30% or £32,804 represents marital acquest.
- (v) In relation to the NHS Pension Scheme 1995, I have no actuarial information on how much of this has accrued before, during or after the marriage; but (again) a very broad straight-line analysis⁵ suggests that only about 38.5% of the value represents marital acquest. On the 2020 figure of £338,354, £130,266 might represent marital acquest.
- (vi) In relation to the NHS Pension Scheme 2015, all of it accrued after the separation so none of it is marital acquest.
- (vii) A strict mathematical answer to this case, permitting only the equal sharing of pensions accrued during the marriage, might produce for the husband a 15% pension sharing order on the Aviva Pension (worth £16,402) and a 19.25% pension sharing order on the NHS Pension Scheme 1995 (worth £65,133 at the 2020 CE valuation). The total of these two figures would be worth £81,535 or c. 74.6% of the Aviva Pension value (ignoring any increase in the NHS Pension 1995 Scheme). This compares with the wife’s open offer of a 75% pension sharing order on the Aviva pension, albeit that this might not fully reflect the increase in the value of the NHS Pension Scheme 1995.

36. Having made these determinations, I am now able to set out my assessment of the resources of the parties, the assets and debts available for distribution in this case. The situation can be summarised as follows:-

REALISABLE ASSETS/DEBTS

⁴ Assuming it has been contributed to for 25 years, 4 of which were prior to cohabitation (1999 to 2003), 7½ were during the marriage (2003 to 2011) and 13½ were post-separation accrual (2011 to the present day).

⁵ 5 years (2003 to 2008) out of an accrual period of 1999 to 2008 and 2011 to 2015) 13 years

Wife

-address of flat redacted-	242,500
Savings	80,743
Investments	139,496
Credit card debts	-115
HMRC Tax Debt	-26,878
Outstanding Legal Costs ⁶	-6,331
TOTAL	429415

Husband

Savings	230
Investments	0
Credit card debts	0
Outstanding Legal Costs ⁷	-27,650
TOTAL	-27420

PENSIONS**Wife**

Aviva Pension CE	107,347
NHS Pension Scheme 1995	338,354
NHS Pension Scheme 2015	149,514
TOTAL	595215

Husband – no pensions

37. As I have said above, a strict sharing claim by the husband, excluding assets acquired by the wife in the post-separation period, might be said to entitle him to:-

- (i) one half of the net equity of -address of flat redacted- (the family home) available at the time of separation, i.e. one half of £43,703, i.e. £21,851; and
- (ii) on the basis of the sharing of pensions accrued during the marriage, a 15% pension sharing order on the Aviva Pension and a 19.25% pension sharing order on the NHS Pension Scheme 1995.

Income

⁶ She has incurred costs of £41,853 and paid £35,522 towards this figure, leaving £6,331 outstanding.

⁷ He has incurred costs of £27,650 and paid not a penny towards this figure, leaving £27,650 outstanding.

38. In relation to *“the income, earning capacity...which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire”* the following picture emerged.
39. The husband appears to be wholly dependent upon state benefits, receiving £1,734 per month in Universal Credit (including the rental payments for his studio accommodation) and £315 per month in Personal Independence Payments. Whilst the situation may change, there was no basis upon which I could properly identify any earning capacity. He does not currently appear to be in a good place as far as work is concerned and there was no evidence before me that this is likely to change in the foreseeable future.
40. In contrast, the wife is continuing to enjoy a very good career in medicine and there is no reason to believe this will not continue for a good number of years into the future. Her main source of income is from her GP work, from which she received in y/e 5th April 2023 the sum of £149,205 per annum gross. She has two supplemental sources of income, one as serving on the -name of role redacted- (which provides £16,034 pag) and the other as -name of role redacted- (which provides £21,340). Thus, her total income is c. £188,494 pag which approximately equals £8,333 pcm net.
41. Although spousal periodical payments were formally applied for by the husband, it was made clear at the commencement of the hearing by him, and by Mr Alukpe on his behalf, that this was not part of his case, i.e. he does not seek any spousal periodical payments, i.e. that this is a case for a clean break in both directions. In this context it is of note that he has not sought any maintenance from the wife since 2011, even after he commenced proceedings in 2020 there was no interim periodical payments application.

Contributions

42. It is notable in this case that the husband’s financial contributions to the family, both during and after the marriage, have been negligible. He has contributed nothing to the capital which does exist. He has paid not a penny in child support to the wife. I am of course cognisant of the need not to discriminate between the earner and the child-carer/homemaker; but in this case the husband has really been neither. Even during the marriage, he had a limited role in looking after the children (I prefer the wife’s evidence on this to the husband’s).

Needs

43. The husband's open case before me (which had not been articulated in any open correspondence or in a statement and was unveiled on the first morning of the hearing) is that he should be entitled to the following capital provision:-
- (i) The wife's flat should be sold, and the net equity divided equally. This would produce £121,250 for the husband.
 - (ii) In addition, a lump sum representing half of all of the wife's savings and investments. This would produce £110,120 for the husband.
 - (iii) A further lump sum representing one half of the wife's annual gross income, i.e. 50% x £188,494, that is £94,247. Mr Alukpe did not really try to explain the relevance of the wife's gross income to such a lump sum.
 - (iv) This would require the wife to pay the husband £325,617 (or nearly 76% out of her total realisable assets of £429,415).
 - (v) In addition, the husband seeks 45% pension sharing orders in relation to all three of the wife's pensions.
44. In justification of this case, he suggested in oral evidence that he needed to purchase a mortgage-free flat at a cost of between £450,000 and £550,000. He did not explain how a lump sum of £325,617 would fund the purchase of a mortgage-free property at £450,000 to £550,000 to somebody with zero mortgage capacity. Further, and importantly, despite having been directed to file property particulars evidencing his housing need (as recently as the PTR hearing on 10th April 2024 – see paragraph 7(c) of the order) he only filed particulars of rental properties in support of his housing need. Surprisingly, Mr Alukpe did not seem troubled by this obvious evidential difficulty and made no effort to correct it. Mr Richardson, with some force, commented that the husband's case was not only articulated at the very last moment, but was not even properly evidenced.
45. The husband argued that he needed two spare bedrooms in any accommodation in order to permit his children to stay overnight with him. His current accommodation, a studio flat, did not allow him to do this. I understand why he said this, but the evidence suggested that it was quite unlikely that the children would wish to stay overnight with him, even if he had a spare bedroom, and he did not adequately explain why he had waited from June/July 2011 to June 2024 to articulate this suggestion, during which time the first child has nearly become an adult. Other than asserting that he had had a difficult time in his life, the husband did not explain the delay in moving things forward and Mr Alukpe did not articulate why the wife was not entitled to plan her life on the basis that no claim would be brought.
46. In relation to pensions it has been said, for example by me in *W v H* [2010] EWFC B63, that in relation to a long marriage case involving needs, whether the pensions

were accrued during the marriage or not would make little difference to the distribution of pensions; but the facts of this case are, in my view, very different from the sort of facts I was envisaging in *W v H*. Here we have a marriage in the short to medium category with the vast majority of the pensions being accrued in the post-separation period.

47. Further, in assessing the husband's needs, in my view I have to bear firmly in mind the words of Lord Wilson in *Wyatt v Vince* set out above. I remind myself of the "*prominent strain of public policy hostile to forensic delay*". I remind myself that "*the court will look critically at explanations for it*". I think this is a case where the delay "*is so potent a factor as not just to reduce but even to eliminate what might otherwise have been awarded...by reference to contributions and possibly also to needs*". Whilst in no sense a binding agreement, for me it is a factor here that the husband both told the wife that he would not make any claims against her if she took responsibility for the family debts of £34,000 and then did not actually make a claim for a decade. In the meantime, she accrued assets – if she had known he was considering making a claim she might have brought the matter to a conclusion shortly after the separation before those assets were accrued. Unlike in some of the 'delay' cases where an award was made, the husband has made no contributions at all to the family's assets. There is no case here for righting an unfairness.
48. In all the circumstances, I am not minded to attach very much weight to the husband's needs – as explained by Lord Wilson they are not relationship-generated needs. I have not been persuaded that the husband's needs should not be met in the same way as they have been since 2011 – in rented accommodation with the rent met by state benefits.
49. The wife's open position, as set out in her open offer of 5th June 2024, is that she should pay a lump sum of £35,000 and that there should be a pension sharing order of 75% of the Aviva policy. For the reasons expressed above, this offer is at or slightly above what the husband could receive on a sharing basis and is not an unreasonable pitch.

OUTCOME

50. Taking all the above matters into account. I have reached the conclusion that the correct and fair outcome to this case is along the lines contended for by Mr Richardson, with only some modest amendments. I propose to adopt the following outcome:-
- (i) The wife will pay a lump sum of £35,000 to the husband within 28 days. I propose to adopt the wife's figure, recognising that he will lose some of this to his costs liability.
 - (ii) There will be a pension sharing order of 100% of the Aviva pension. I

have concluded that this should be higher than the offered 75% on the basis that some allowance should be made for the possibility that the NHS 1995 Pension may have risen in value.

- (iii) There will otherwise be a clean break.
- (iv) There shall be liberty to apply in relation to implementation.

51. As far as costs are concerned, I propose to make no order as to costs. In reaching this conclusion I have recognised the FPR 2010 Part 28 starting point of no order as to costs. I have taken on board here Mr Richardson's comment (which has some force) on the husband's failure to engage in open negotiations, but equally the wife's open offer was late in the day and the real inhibitor to a faster resolution has been the problem over getting information on the pensions, which was neither the fault of the wife or the husband.

NEXT STEPS

52. This is my decision and I invite Mr Richardson to produce a draft order which matches these conclusions. I would expect him to give Mr Alukpe the opportunity to comment on the drafting. Any differences can be referred to me in the usual way. Can I invite a communication to me by email by Friday 21st June 2024, which will hopefully include an agreed version of the order but might be an explanation of why the draft has been controversial and not agreed. I am hoping to deal with this order without another hearing day in court.

HHJ Edward Hess
Central Family Court
14th June 2024.