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1667-3016-3239-2944**

IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Wednesday, 3 April 2024

BEFORE:

**RECORDER RHYS TAYLOR
(In Private)**

BETWEEN:

KFK

Applicant

-and-

DQD

Respondent

Ms Katherine Kelsey (Bross Bennett) appeared for the applicant

Ms Julia Townend (Osbornes) appeared for the respondent

Hearing dates 19 – 23 February

This judgment was handed down remotely on 3 April 2024 at 4pm by circulation to the parties or their legal representatives by email.

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THE RECORDER

Introduction

1. The husband's application for financial remedies concerns what is to happen to a property in London with a net equity of about £552,000.
2. Each party asserts that the other has significant wealth in China which should inform how the £552,000 here is to be distributed.
3. Each says that the other is lying. For reasons which I shall expand upon shortly, I am unable to accept significant elements of either party's account, on the balance of probabilities. There may be shards of truth in what each has to say, but standing back and surveying the wide canvass, each party is unconvincing in the manner in which they advance their case.
4. This leaves me with the task of sifting through a significant amount of highly contested documentary and oral evidence to establish what can be relied upon in the shifting sands of this case.
5. My order is that the property should be sold and, once the service charge arrears are top-sliced, the net proceeds should be divided 64/36 in the husband's favour, on a clean break basis.

Representation

6. The applicant husband, KFK, is represented by Bross Bennett LLP who instruct Ms Katherine Kelsey. The respondent wife, DQD, is represented by Osbornes Solicitors who instruct Ms Julia Townend. I shall refer to the applicant as "the husband" and the respondent as "the wife".
7. I would like to commend the manner in which this case has been presented. Ms Kelsey and Ms Townend have each been meticulous in their preparation and have advanced their respective client's cases helpfully, attractively and skilfully.
8. This case, in its presentation, has been document heavy. There was a core bundle and, with permission, a supplemental bundle. I have read the contents of the agreed

reading list, but there were many other documents beyond that list which have the potential for relevance.

9. Counsel collaborated on a schedule of evidence by reference to the statement of issues. The schedule has five columns. Under each separate issue the columns have respectively (1) briefly identified each relevant document pertinent to that issue; (2) provided its pagination reference; (3) given a neutral explanation of where the document fits in with the issue; (4) identified who produced the document and (5) explained when the document was first disclosed. I can see that nothing short of a herculean effort has gone into preparing such a document which provides an essential guide to the court. Counsel has my special thanks for this very helpful approach.
10. I have in mind all of the documentation, but it would not be proportionate to refer to every document that I have been taken to. I will refer only to the documents that have chiefly guided me to my determinations in what will already be, I am afraid of necessity, a long judgment.

Parties' evidence and its translation

11. Each party gave their evidence via a translator. Whilst the husband is essentially fluent in English, he is more confident speaking in Mandarin. In the latter parts of his oral evidence the husband elected to speak in English but wished the translator to remain on hand in case of difficulties with nuance. The wife gave her evidence entirely through the medium of Mandarin.

Background to the case

12. The parties met in 2007 and later formed a relationship. The parties did not cohabit prior to marriage. The parties married on the 16 October 2012. It was a second marriage for both of them. Each has an adult child from their former marriages. The husband is 44 and the wife is 56.
13. The parties separated in June 2021 (according to the husband) or March 2022 (according to the wife). The exact date is disputed. An application for divorce was issued on the 16 May 2022, a conditional order was made on the 28 October 2022

and a final order of divorce was made on the 12 December 2022. The husband issued an application for financial remedies on the 9 November 2022.

14. Shortly after the parties were married the husband moved to the UK. He was followed shortly by the wife and her son.
15. Between 2008 and 2022, the husband's parents, [redacted], advanced significant sums of money to the husband and the wife. There is debate as to whether this was by way of loan, the husband's case being that the money provided would be repaid to the husband's parents should they require. In Chinese currency CNY 4,652,500 was advanced during this time. Additionally, £941,807 was advanced.
16. The husband and his parents now say that they require £100,000 back to help them meet living and medical costs. This is also said to be justification for the repatriation of about £96,000 between March and August 2022 to the husband's parents in China. The husband seeks a top slicing of £100,000 from the matrimonial pot to repay his parents to assist with their living and medical costs. I was told that the husband's parents have each not enjoyed good health and have required medical interventions and care in China, much of which they have had to finance themselves.
17. Despite the stated need for money, the husband's father advanced eight sums between October 2022 and June 2023 which amounted to £30,000. These are said to be loans. The husband's mother advanced CNY 50,000 which was, again, said to have the character of a loan.
18. The husband's parents' money has assisted the parties acquire property in the UK. [Flatacre] is the main liquid asset in this case. It was purchased from the sale of a previous property, the funds of which had come from the husband's parents. In more recent times they advanced about £150,000 to cover the costs of a lease extension on [Flatacre].
19. In 2019, the husband acquired a property at [Westacre]. This property was sold in June 2021 and the husband received £233,751 in net proceeds. It will be noted that it was many months later that the husband paid £96,000 to his father, between March and August 2022. It will be recalled that the divorce application was made in May 2022.

20. It is agreed between the parties that the wife co-owns a property known as [Eastacre Two]. The wife's interest is now agreed to be 50% and the value of her interest to be £343,139. [Eastacre Two] is the wife's mother's home. The wife's mother [redacted] is in her early 80s and is in good health. It is agreed that this asset, although its value is significant in the scales of this case, is illiquid. The time and manner it took for the beneficial interest to be agreed at 50% is an issue of credibility raised by the husband against the wife.
21. The most factually contentious issue in the case is whether the wife has a beneficial ownership of the proceeds of sale of a property known as [Eastacre One]. I shall describe the position in respect of [Eastacre One] in more detail shortly.
22. In short, [Eastacre One] was held legally by four people: the wife, her mother, the wife's sister and the wife's niece. The wife says that this title registration was a mistake and that in 2009, the beneficial ownership was rectified by the said four people agreeing in writing to what amounts to a declaration of trust that [Eastacre One] is owned beneficially wholly by the wife's mother.
23. The husband says that the "2009 agreement" is not genuine and that, in fact, the legal owners of [Eastacre One] had a long standing oral agreement that they would own the beneficial interest of [Eastacre One] in third shares between the wife, her mother and the wife's sister and niece as one unit (although at one other stage he described the property as being owned by the wife's mother and father as one together being one of the three co-owners).
24. [Eastacre One] was sold in 2021. The husband asserts that a sum broadly equal to a one third share of the sale price was transferred to the wife, in a series of payments by her mother at around the time of sale. The parties cannot agree on the sale price (there appear to be different sales documents, one draft and one executed, with different figures) and also the character of the funds advanced to her.
25. It is the wife's case that the money was advanced to her only as a nominee, so that she could invest outside of China on behalf of her mother. Once the divorce petition was served, a significant sum was very quickly repatriated by the wife to her mother. The husband says that this asserted third share should be "added back" against the wife when I compute what assets each have in their names.

My impression of the parties

26. I am afraid to say that neither made a favourable impression on me.
27. The husband had been difficult about disclosing the contents of his AMEX and HSBC credit card statements. The husband's case is that the contents of his credit card statements are not relevant. I disagree with him. When ordered to disclose his credit card statements, he then selectively redacted a small but material number of entries. It was his case that he did this to hide the address where he is living. The wife says the pattern of spending is suggestive of him being settled in another relationship where he has permitted a second card holder and that his housing needs will have been, and will continue to be, met by his current arrangements.
28. The husband refused to give his address or say who he was living with. He stated, for the first time, that his unwillingness to give the address was on account of his family being pursued by triad gangs organised by his ex-wife following his first divorce. He also said that the wife in this case had subjected him to domestic abuse, although this had not previously been raised by him with police or asserted in the case, before he said it in evidence.
29. The redactions included what was obviously a second plane ticket to Iceland. When cross-examined about this he was difficult and evasive. I was left with a clear impression that I was not being told the truth and that the husband was deliberately choosing to try and hide things from the court. I was not clear why the plane ticket redaction was made. Later in evidence he accepted that he had gone to Iceland with someone.
30. Over and over again, the husband refused to answer simple and straightforward questions on the basis that the reply would reveal third-party information which was confidential, and his friends did not want to get involved in this matter. From where I was sitting it looked very much as if the husband was only willing to reveal selected information and was hiding where and who he was living with for no good reason other than his own perceived litigation advantage. It has had the opposite effect as by these endeavours I am left with an unfavourable impression of a witness who appears to be being less than full and frank.

31. The husband has an interest in some companies. This includes a 34% share in a company known as [UK Company One]. He had not produced full trading accounts which I find to be deliberately unhelpful. I accept that the most recent order required him to produce full trading accounts “if they exist”, but I simply do not accept that a business of this complexity, with commercial shareholders, loan arrangements and who are otherwise unrelated would be unable to produce a more helpful picture than the statutory micro-accounts. The husband asserted that as the majority shareholder did not want to sell, the business had no capital value. It may well be that the husband’s interest in the business, properly analysed, amounts to no more for this court’s purposes than as an income producing asset. But the husband’s defiance and unhelpfulness about giving the court more detail left me with a clear impression of someone who was prepared to go into the witness box with less than full and frank disclosure and to seek to “tough it out” with unsatisfactory answers.
32. As I will explain, the timing of the husband’s story about the return of the £96,000 to his father did not ring true with the documents or the chronology.
33. I also do not find, as I will explain, his account of the wife receiving a one third share of [Eastacre One] to be convincing when analysed next to the contemporaneous documents.
34. Standing back, I find his account to be in many respects self-serving and unsatisfactory. Quite simply, having heard his oral evidence and having carefully considered the documents, I do not believe him on the key issues in the case. In many instances he puts his case forcefully and with a degree of energy which the issues may, in truth, not have warranted.
35. The husband’s father gave evidence remotely from China. He was there to support his son. Whilst he and his wife may not have enjoyed good health as of late, I do not accept the central premise of his evidence. The husband’s father would have it that he was someone who was not really wealthy, but had enjoyed some modest success in property. The scale of wealth was unquantified and unsupported by any documentary evidence. Having acquired capital he would have the court believe that he has transferred it all to his son, such that he no longer had enough money to meet medical bills and living costs at a level to which he has become accustomed. The

timing of the payments, as I will explain, sits uncomfortably with this story and I cannot accept, on the balance of probabilities, that the husband's father has spent his last penny on his son.

36. I also find the wife to be an unsatisfactory witness. It took three schedules of deficiencies to extract full and frank disclosure out of her. The information had to be chased down over and over again until proper disclosure was provided. It would be fair to say that, but for the efforts of the husband's legal team, the court would have been left in the gloam and unable to see a clear picture concerning the wife's financial arrangements.
37. The wife's final answers to the third schedule of deficiencies revealed bank statements which, prior to this stage, had not included "counterparty" information making it almost impossible to work out to whom payments were being made to. Once the counterparty information was available, the history of transactions between the wife and her mother in respect of funds from [Eastacre One] came into plain sight for the first time.
38. I do not accept the wife's mitigation that the husband had been guilty of similarly poor bank disclosure lacking counterparty information. The duty of full and frank disclosure is owed to the court and not to be horse-traded or watered-down by perceived disclosure failures by the other side. Further, Form E disclosure in the ordinary course is by mutual exchange. The lack of counterparty information was also particularly material in the presentation of the wife's case.
39. In her replies to the third schedule of deficiencies, the wife sought to assert that it was the bank's fault that she had not provided bank accounts with full counterparty information from the outset. She said in a reply, which she confirmed to be true in evidence, that the bank had provided bank statements on different occasions and that this must explain the discrepancy as to why some bank statements originally had counterparty information and others did not. The bank statements with and without counterparty information were checked and it was clear that they had all been obtained on the same date in February 2023. I find this to be a serious lack of candour on the wife's part.

40. The 2009 agreement was not mentioned until the wife's reply to the third schedule of deficiencies. The wife asserted at the PTR that she was simply unable to obtain the original from her mother in China. Despite her protestations, HHJ Evans-Gordon required her to do her best to produce it at the final hearing. The original of the 2009 agreement was produced on day one of the final hearing. By her late production of the document, itself only introduced into argument very late on in the proceedings, the wife has deprived the husband of the opportunity to have this document forensically examined. I do not accept that photographs which were supplied in November were a satisfactory alternative. Given that the wife had been calculating and dishonest about the manner in which other important evidence has had to be obtained from her, I find this to be troubling and unhelpful to the wife's case.
41. The wife was also guilty of her own unhelpful redactions. An issue in the case is whether the wife had received any funds from her first divorce which she has secretly kept. There has been a rather tortuous hunt for the relevant documents, described by Ms Townend as a "wild goose chase". When a Hong Kong divorce petition from the wife's first divorce was eventually produced, the address of where the wife and her first husband had lived together and the wife's first husband's address as at the date of the petition was redacted.
42. Given that the issue was whether he was a successful businessman at the time of divorce or had fallen on hard times, the address where the then parties had lived and his address at the point of issue were clearly pertinent. But, just as the husband assumed it was his right to decide what would be relevant for the court when redacting his bank statements, the wife asserted that this was private third-party information and not relevant. I do not agree.
43. Despite having found all three witnesses to be unsatisfactory, I want to mention two things, which I hold in the scales.
- 43.1. The husband's father was extremely reluctant to give evidence about his medical interventions. He said he was a very private person. I sensed that in respect of all three witnesses that they placed a high premium on their privacy and found the proceedings excruciating. This may well be a cultural issue and I am alert to the manner in which it may colour the appearance of "the

reluctant witness". I have that at the forefront of my mind when considering my impression of the parties. Even making this allowance, I remain unsatisfied that they were willing to tell me a truthful account.

43.2. I also noted that when the husband gave evidence in English, he sounded more measured and reflective. It may be that the translation of Mandarin made the husband sound more strident than he was in English. When assessing the quality of his evidence I am content to give the husband the benefit of the doubt and assess him as the less strident witness. That said, I still do not believe much of his account.

43.3. I have assumed that if the wife could speak English, the stridency of her oral evidence would similarly have been toned down.

Statement of issues and the parties' rival positions

44. As noted at the start of this judgment, the case is really about what is to happen to the £552,000 equity in [Flatacre].

45. Each side raises a plethora of issues which seek to demonstrate the other's wealth and lack of need of some or all of the equity in [Flatacre].

46. The husband says he should take [Flatacre] outright. The wife says that it should be sold and the net equity divided as to her 66% and as to the husband 34%. They agree a clean break. Each says they should retain the contents of [Flatacre], save for the other's personal belongings.

47. There is a joint service charge liability on [Flatacre] of £14,478. This figure is substantially made up of arrears and, if not paid, risks the lease being forfeited.

48. The agreed statement of issues has five essential parts to it. First, the wife's alleged misleading behaviour. Second, the husband's alleged misleading behaviour. Third, findings as to computation, resources available to the parties and/or unmatched contributions made by the parties which largely flow from the findings at the first and second stage. Fourth, more conventional points are raised about needs, income and earning capacity. Finally, and drawing the threads together, resolution of the competing figures on the ES2.

49. In opening, the ES2 was a vista of yellow, flagging innumerable disputes about matters large and small, including the date when balances on accounts should be taken, the value of some chattels, and cash alleged to have been removed from a safe. Very sensibly, counsel resolved the more granular aspects of the ES2 with pragmatism, leaving me to deal with the material issues.

Procedural history and issues

50. As I have already noted, it took a questionnaire and three schedules of deficiencies to extract the wife's disclosure. The length of time it took to disclose key documents, or key documents in the correct format showing the relevant information, reflects very poorly upon her.
51. At the commencement of proceedings, the wife instructed a different firm of solicitors. There was a dispute about what had been ordered at the first appointment which was only eventually resolved with the obtaining of a transcript of the first appointment. It may be that the wife was not served well by her first firm of solicitors. I can see that there were technical issues which were taken by her solicitor in error as to what had been ordered at the first appointment. I have allowed for these problems, which may not reflect on the wife at all. But even making a generous allowance for problems with her representation from the outset, until she changed to her current firm of solicitors, her approach has been unsatisfactory. The refusal until the eleventh hour to hand over relevant documents in the correct format does not sit in the lap of her first solicitor and the wife only has herself to blame for this.
52. To compound the unsatisfactory position, once the bank statements with full counterparty information were disclosed at the end of November 2023, the wife raised, for the first time in her replies to the third schedule of deficiencies, an alleged agreement said to have been executed in 2009. A copy of the 2009 agreement was provided in Mandarin. The husband's solicitors were quite rightly sceptical about this very late development and in an email dated the 8 December 2023, the husband's solicitors stated, "Please confirm that the original agreement will be made available for inspection so my client may consider whether he seeks to instruct a SJE

to forensically examine the document and report on its authenticity. Subject to confirmation, arrangements for inspection can be made.”

53. The wife was difficult about producing the original and her offer at PTR for the document to be examined in China did not meet the gravamen of the husband’s legitimate concerns at this stage. Given the amount of money involved in dispute in this case, it would have been disproportionate and difficult to get a third party in China to forensically examine the document.
54. By the time of the PTR before HHJ Evans-Gordon on the 11 January 2024, the original 2009 agreement had still not been produced.
55. The following recitals and orders, in particular, were made by HHJ Evans-Gordon:
 - 55.1. “[8] The parties are put on notice that if they do not provide the disclosure directed herein the court may be invited to draw adverse inferences.
 - 55.2. “[9] The respondent has confirmed that she has elected not to file any evidence from her mother in accordance with paragraph 15 of the order of District Judge Hudd made on the 7 August 2023.
 - 55.3. “[13] In respect of paragraph 17 [re the 2009 agreement] the respondent has stated that the original is in her mother’s possession and will not be released to her. The court heard those submissions but made the orders herein. The court invited the respondent to endeavour to provide photographs if it remains her case at the final hearing that she is only able to provide photographs of the document; the respondent’s compliance with this order will be an issue for the trial judge [*n.b. the wife had provided a Mandarin copy of the 2009 agreement in replies to the third schedule of deficiencies at this stage. Nothing turns on this additional request for a photo.*]
 - 55.4. “[17] The respondent shall produce by 10am on day one of the final hearing the original agreement purportedly dated 19 September 2009 attached to reply 4 of her replies dated 29 November 2023, alternatively, a copy of each page of the original agreement.”

56. The wife attended the first day of the hearing on the 19 February 2024 with the original copy of the 2009 agreement. By her late production of this agreement, even if technically permitted by the PTR, the husband has been denied the opportunity to forensically examine the alleged 2009 document as to its authenticity. I shall deal with the consequences of this when I resolve the question of the beneficial ownership of the proceeds of [Eastacre One] shortly.
57. I should note that the husband was also required to deal with a questionnaire and a schedule of deficiencies. There were further disclosure orders made against the husband at the PTR, albeit some of those related to either fresh questions or issues which had not been pursued with vigour or at all before.

The law

Approach to determining primary facts

58. The burden of proof rests on the party seeking to assert a fact. I have to determine the case on the balance of probabilities. Is it more likely than not that an asserted fact is proved?
59. The decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence. I take into account a wide range of matters including my assessment of credibility of the witnesses, documents and inferences which can be drawn from the evidence. I must consider each piece of evidence in the context of all of the other evidence.
60. Findings of fact must be based on evidence not speculation. Evidence-based findings of fact may include inferences that can be properly drawn from the evidence and not on suspicion or speculation: *Re A (A Child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12 [2011] 1FLR 1817. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors.
61. In determining whether a party has discharged the burden upon it, the court looks at what has been described as “the broad canvas” of the evidence before it. The court

takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence.

62. The evidence of the parties is of utmost importance. It is essential that I form a clear assessment of credibility and reliability. I am entitled to place weight on the evidence and impression that the parties have made upon me.
63. I remind myself that demeanour is an uncertain guide in assessing the reliability of evidence and that far more important is the substance of the evidence given, its internal consistency with contemporaneous documents and inherent probabilities. That said, the family court is still permitted to have regard to the demeanour of witnesses when there is little by way of other contemporaneous documents. I remind myself to guard against an assessment solely by virtue of the parties' behaviour in the witness box.
64. This is a case where I also give myself a *Lucas* direction and remind myself that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything. I have in mind the guidance provided most recently in *Re A, B and C (Children)* [2021] EWCA Civ 451, [2022] 1 FLR 329.
65. I accept entirely that just because a party has lied that does not necessarily prove the primary case against a party.

Non-disclosure

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

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

- (i) The court is duty bound to consider the process of drawing adverse inferences whether funds have been hidden.
- (ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.
- (iii) If the court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.
- (iv) In making its judgment as to quantification the court will first look to direct evidence such as documentation and observations made by the other party.
- (v) The court will then look to the scale of business activities and at lifestyle.
- (vi) Vague evidence of reputation or the opinions or beliefs of third parties are inadmissible in the exercise.”

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

The statutory criteria

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

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

70. s.25(1) provides:

“It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B and 24E above and, if so, in what manner, to have regard to all of the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.”

71. s.25(2) provides:

“As regards the exercise of the powers of the court under section 23(1) (a), (b) or (c), 24, 24A, 24B and 24E above in relation to a party to the marriage, the court shall in particular have regard to the following matters:

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

72. s.25A(1) provides:

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

73. When applying these sections, caselaw establishes that the party in the position of claimant in financial remedy proceedings is entitled to the greater of their claim as referenced by a sharing or needs analysis. This case is principally concerned with needs.

The primacy of housing considerations

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

“In all these cases it is one of the paramount considerations, in applying the section 25 criteria, to endeavour to stretch what is available to cover the need for each for a home, particularly where there are young children involved. Obviously the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit of lesser importance that the other parent should have a home of his own where the children can enjoy contact time with him. Of course there are cases where there is not enough to provide a home for either. Of course there are cases where there is only enough to provide for one. But in any case where there is, by stretch and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome.”

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

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

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

Treatment of debts

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

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

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

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

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

likely for a creditor to be likely to waive the obligation either wholly or partly.

Factors which may on their own or in combination point the judge towards the conclusion that an obligation is in the category of soft include: (1) it is an obligation to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship; (2) the obligation arose informally and the terms of the obligation do not have the feel of a normal commercial arrangement; (3) there has been no written demand for payment despite the due date having passed; (4) there has been a delay in enforcing the obligation; (5) the amount of money is such that it would be more likely for the creditor to be likely to waive the obligation either wholly or partly, albeit that the amount of money involved is not necessarily decisive, and there are examples in the authorities of large amounts of money being treated as soft loan obligations.

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

The starting position with property ownership

78. In England and Wales there is a presumption in the “domestic consumer context” that the beneficial ownership of a property (i.e. who *really* owns it) will follow the legal title. Presumptions are evidential starting points and can be displaced by actual evidence in a case. The “domestic consumer context” is generally taken to mean parties to an intimate relationship. The wife, her mother, her sister and her niece, whilst family, do not fall within that category. There can be arguments in English law about the starting point of beneficial ownership concerning wider family members who acquire property together.

79. Ms Townsend sought to persuade me that it would not be appropriate to approach the question of [Eastacre One]’s beneficial ownership using English property law principles, as different law and norms apply in China. I do not agree.
80. The legal title to [Eastacre One] is held by four people. I do not have any expert evidence as to how property law applies in China. I am not seeking to make any *in rem* order against a Chinese property (which has, in any event, been sold). I am simply required to determine a notional value between the parties to an English divorce when computing assets. I am entitled to apply English law principles.
81. In this instance, for reasons which I shall explain shortly, that means that the starting point is that the wife was a one quarter owner of the value of [Eastacre One]. The burden is upon the wife to demonstrate otherwise.

How wider family resources should be treated

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

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

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

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

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

[67] ...

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

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

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

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

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

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

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

83. In *Gadhavi v Gadhavi* [2015] EWCA Civ 520 the Court of Appeal partially upheld a decision of HHJ O’Dwyer in finding that a property in India held in the husband’s mother’s name would be a resource available to him (albeit the valuation of the property was not supported by the evidence and would have to be remitted for further consideration).

Presumption of advancement

84. Snell’s Equity (34th ed) notes at 25-007 that:

“The rationale of the presumption of advancement has changed over time, and some of the older cases applying the presumption may be out of line with the current understanding of its purpose. It used to apply most strongly among family members where B was legally dependant upon A so that A had a moral duty to support or advance B. This explains the formal categories where the presumption has applied. These are transactions from father to child and husband to wife. Nowadays, it is recognised that the rationale of the presumption is broader and the court may be prepared to draw inferences of A’s intentions to make a gift to B in situations outside the formal categories where the presumption applied. So the court may be prepared to draw an inference that a transaction between members of a household or family was intended as a gift when that accords with common social experience.

The evidential weight attached to the formal presumption of advancement is now less definite than it once was and it varies from case to case. The Equality Act 2010 abolished the presumption of advancement between husband and wife since it

involved unlawful discrimination. But the relevant provision of the Equality Act 2010 has not yet been brought into effect so that in principle the formal presumption remains in force. It may be however that this will not make much substantive difference to the relative positions of husbands and wives. Aside from the Equality Act 2010, the approach in recent cases has been to strive to determine the real intentions of the parties. It may only resort to formal presumptions where the direct evidence of those intentions is absent and a default rule is needed. Where modern experience indicates that the presumption does not provide any firm rational basis for presuming an intention to make a gift between parties in the position of A and B, then it may only be of slight probative value.”

85. Snell continues at 25-009:

“The formal presumption of advancement applies to transfers from a father to his child. ... Similarly, if a father buys property and has it put in the name of his son or daughter, prima facie it is a gift to the child. The presumption can apply even where the child is no longer a minor, since the rationale of the presumption is no longer confined to cases where the parent has a duty to provide for the child.

Traditionally, it was held that the formal presumption of advancement did not apply to a transaction from mother to child since mothers were not under an obligation to provide for their children. This is unlikely to be followed nowadays. Even aside from the formal presumption, the inference would be readily drawn that a gift or a contribution to the child’s maintenance was intended, even when the child was an adult. It would be particularly strong where a widowed mother was providing for her child.”

Findings by reference to the statement of issues

Issue 1(a) Whether the wife has retained and failed to disclose her share of the sale proceeds from [Eastacre One]

The status of the 2009 agreement. Should my starting point be to treat it as an authentic document?

86. There has been significant argument about how I should treat the status of the 2009 agreement.
87. Ms Townend's case is that the starting point is that the 2009 agreement should be treated as a binding declaration of trust as to beneficial ownership and if the husband wishes to have it set aside, a case of sham should have, in effect, been formally pleaded. Ms Townend suggested that an option for the husband would have been to apply for an adjournment for the document to be forensically examined. I do not consider that such a step would have furthered the overriding objective.
88. Ms Kelsey denied that this would be necessary or fair, given that the original document was only produced on day one of the final hearing. Ms Kelsey said the late production of the document (in the context of previous non-disclosure of bank statements) is highly suspicious and that I should find, on the balance of probabilities, it is not genuine.
89. FPR 22.16 provides that "(1) A party to whom a document is disclosed is deemed to admit the authenticity of that document unless notice is served by that party the party wishes the document to be proved at the final hearing."
90. By FPR 22.16(2) "A notice to prove a document must be served – (a) by the latest date for serving witness statements; or (b) within 7 days beginning with the date of the *service of the document*, whichever is later." (my emphasis)
91. I intimated that, subject to further submissions, I proposed to treat the document's authenticity as not admitted.
92. Ms Townend makes the following points in reply, which includes helpful cross reference to the CPR position and caselaw:
- 92.1. CPR PD 32, para 27.2 provides that "all documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless (1) the court orders otherwise; or (2) a party gives written notice of objection to the admissibility of particular documents."

- 92.2. FPR 21.1 “A party discloses a document by stating that the document exists or has existed.” Her point is that the 2009 agreement was “disclosed”, according to the FPR, on the 22 November 2023. Her technical point is that the complaint made against the wife is that the 2009 agreement document has not been available for *inspection*.
- 92.3. The scheme of FPR 22.16 is that a party is deemed to admit the authenticity of the document *disclosed* unless a notice pursuant to the rule is served. Ms Townend submits that the husband’s solicitor’s email on the 8 December 2023 (noted above) was no more than speculative as to whether the husband was going to contend that the document was not authentic. The challenge to authenticity in the husband’s s.25 statement was exchanged simultaneously with the wife’s statement and so she could not respond.
- 92.4. The civil cases in the White Book under the comparable CPR rule 32.19 include *McGann v Bisping* [2017] EWHC 2951. This said the following about the requirement for a notice to prove the document, “This is a mandatory provision, the purpose of which is to ensure that the parties and the court know, beyond question, whether the authenticity of any given document is a matter in dispute. Merely putting the other party to proof in a Statement of Case of the authenticity of the document does not satisfy the requirements of the rule: see *Mumford v HMRC*. Nor are those requirements satisfied by a challenge made in a witness statement. Such a challenge would, in any event, be likely to come after the date specified in [the rule] for the giving of notice, and so be too late for the issue to be dealt with satisfactorily in the witness statements of the other party.”
- 92.5. Ms Townend, fairly and properly acknowledges that there is provision in CPR, applying the well-known *Denton* principles, to allow an authenticity challenge notwithstanding the requirement to formally serve a notice.
- 92.6. Ms Townend further submits that even if I allow the authenticity challenge to proceed, *the husband needs to set out why he* contends the document is not authentic. Reference is made to *Lazarus Estates Ltd v Beasley* [1956] EWCA

Civ 6, where Lord Denning stated, “The court is careful not to find fraud unless it is distinctly pleaded and proved...”

92.7. Ms Townend submits that an application to have the document forensically examined would be appropriate. As I have already stated, I do not see how this could have been done with the original document turning up on day one of a five day final hearing and the offer to have it examined in China at the PTR was wholly impractical and disproportionate to this case.

92.8. Various other contentions are made and I have them all in mind.

93. The notes to the 2023 White Book under CPR 32.19 include the following, “In *McGann*, in his opening statement served two days before the start of trial the claimant took the point that by operation of r 32.19(1) the defendant (D), having not served the required notice within the required time limit stated in r 32(19)(2), was deemed to have admitted the authenticity of certain documents. D had neither applied under r 3.2(a) for an extension of time for service of the notice under the rule, nor made any application under r 3.9 for relief from sanctions. The trial judge ruled that, in the circumstances, the rule should not have effect for which the claimant contended (paras 17 to 26). *The justice of the case required a different result. Both sides had been preparing for trial on the shared assumption that the authenticity of the documents was in issue.*” (My emphasis)

94. Whilst no formal FPR 22.16 notice was served upon the wife, it was made, in my judgment, plain enough to her legal representatives since the email on the 8 December 2023 that the authenticity of the document was in issue. This would have also been obvious at the PTR. I do not consider that it would have been fair to require a notice to be served when the document was only actually brought to court on day one of a final hearing.

95. Whilst the document may have been technically “disclosed” in late November 2023, the FPR 22.16(2) provides seven days from the “service” of the document which in my judgment is more than to simply say that it exists. The husband had no time to serve the notice with the document turning up on day one. An adjournment for examination would have been catastrophic in listing and costs terms.

96. If I am required, of my own motion, to give relief from sanctions for failure to serve a notice, then bearing in mind the overriding objective and the factors FPR 4.6, I would readily do so. However, it is not even obvious to me that I am required to take this procedural step in circumstances where the husband does not appear to be in breach of FPR 22.16(2). He had seven days from the date of *service* of the document.
97. I note that the wording of the CPR PD 32, para 27.2 refers to “*documents in bundles* which have been *agreed* for use at a hearing”. The original 2009 agreement was not in the bundle as it was only made available for inspection on day one. The wife knew it was contentious, that is why she was being asked to go to the trouble to obtain it from China.
98. I also contrast the uncompromising tone of the extract from the judgment in *McGann* cited by Ms Townend and repeated above, with the actual outcome where the strict CPR rule was not applied, the notes to the *White Book* noting that, “The justice of the case required a different result. Both sides had been preparing for trial on the shared assumption that the authenticity of the documents was in issue.”
99. I am of the view that the wife could have been left in no doubt following the 8 December email and the PTR that the authenticity of the document was challenged.
100. I do not consider by her “door of the court” production of the document, the wife should be able to call foul for the lack of a notice. My approach accords with the justice of this case. My starting point is that the authenticity of the document is not accepted.
101. The burden of proof is therefore upon the wife to prove that it is authentic. It is not for the husband to demonstrate that it is not authentic.

Having determined that the starting point is that the 2009 document is not accepted as authentic, how do I determine whether the wife is a beneficial owner of the proceeds of [Eastacre One]?

102. In 2008, the wife's family received some compensation consequent upon the compulsory purchase of a property they then owned. Her statement is unclear as to the precise beneficial ownership of that property. At [CB263] there is reference to "a property which my family owned" and also to "the owners signing an agreement agreeing to move out in exchange for monetary compensation." The wife's statement also references "My late father used this compensation to purchase [Eastacre One]" but this last reference is not necessarily indicative of ownership, but is also consistent with a reference to what he did with the "owners" money. With that compensation, [Eastacre One] was purchased. The property was placed into four names, the wife says, by accident. Her evidence is that the Chinese equivalent of the Land Registry accidentally registered the property in four names on the basis that these were the names which were on some other official documentation, akin to a Chinese version of a Council Tax or polling record, at a previous property which was demolished and compensation paid. This was her mother, sister, niece and herself.
103. I have seen no document or expert evidence to assist me in understanding how this may have come about. From an English law point of view, the only perspective I can bring to bear and in circumstances where I have found the wife's evidence to be unsatisfactory in a number of respects, this sounds an improbable account.
104. I also find it odd that the supposed 2009 agreement contains a fairly detailed narrative account to the background as to why the agreement was being arrived at. From an English perspective, a bald statement of the beneficial shares would have sufficed. I know nothing about the practice of drafting agreements in China and I do not have any expert evidence to assist me. It just seems materially and suspiciously convenient to me, in circumstances where the wife has, by her actions and evidence elsewhere in this case, made it difficult for the court to accept the truth of much of what she says.
105. The wife's father died in 2017. [Eastacre One] was sold in 2021. There was no expert evidence before me about how Chinese conveyancing transactions work, but it appears agreed that a series of staged payments were made between April 2021 and October 2021, which effected the legal transfer.

106. The wife's Form E is dated the 21 December 2022 which is more than 12 months after the sale was transacted. Viewed from this perspective the wife was not required to make any disclosure on her Form E about her co-ownership of [Eastacre One], as it was already a historic transaction.
107. The husband's statement at [CB240] sets out a table which shows a series of money transfers in 2021 which occurred [redacted] between one of the co-purchasers of [Eastacre One], and the wife's mother and also, the wife and her mother. Adopting an exchange rate of £1 = CNY 0.11, [a co-purchaser of Eastacre One] paid the wife's mother about £880,000 between April 2021 and October 2021. However, the wife also received between July 2021 and December 2021 a sum of £458,786. The wife says that this table is misleading, and I will return to her objections shortly.
108. The husband's case is that the sale price of [Eastacre One] was CNY 12,500,000. He has produced a WeChat message which the wife accepts she sent to the husband on the 9 April 2021. This is the day before [a co-purchaser of Eastacre One] made their first stage payment.
109. The WeChat message shows two pictures of a draft sales agreement and also attaches a Word document of the agreement. The draft has been translated and it suggests a sales price of CNY 12,500,000. This draft sales agreement does not accord with the executed sales agreement which suggests a sales price of CNY 8,000,000.
110. The husband says that it is common practice in China for there to be more than one sales contract. He says that conventionally the official one will be lower than the true one as it is common practice for buyers and sellers to try and reduce tax costs associated with the transaction. There is no expert evidence to support this proposition.
111. If I accept the husband's case that the sale price was CNY 12,500,000 then he submits that the net figure paid to the wife is broadly one third of CNY 12,500,000. He says this accords with his understanding of a long-held family agreement on the wife's side of the family that the net equity in [Eastacre One] would be divided three ways. There is no document in support of a three-way split.

112. As I have noted, the husband has given his evidence in ways which leave me in the unhappy position that I feel I cannot rely upon what he says unless his evidence is firmly corroborated by the contemporaneous documents.
113. The executed agreement has a sale price of CNY 8,000,000. Exhibit III to the executed agreement has a payment schedule which provides for a payment of CNY 1,000,000 before signing of the contract, then CNY 3,700,000 by the 16 September 2021, then CNY 900,000 by the 30 October 2021 and CNY 2,400,000 "...by way of loan. Party B [purchaser] entrusts the lending bank [translation said "back" which is agreed to be a typographical error] to transfer the real estate price directly to Party A's [seller] account at the time of lending. The transfer time would depend on when the bank lends the money."
114. I have been provided with an extract of an English translation of the wife's mother's bank account. It is not a clean run of debits and credits over several months, rather it appears to have been selected by reference to entries which have been made by [a co-purchaser of Eastacre One].
115. Save for a very modest sum of CNY 2,178 which amounts to about £239, the payments shown into this account extract match almost identically the payment schedule on the executed agreement. The CNY 900,000 is actually CNY 930,000 into the bank account and the later payment of CNY 2,400,000 on the schedule is correspondingly reduced to CNY 2,370,000.

The authenticity of a bank record produced at the hearing

116. To confound matters still further, there was a disagreement in the hearing about the quality of the translation of the mother's bank account extract.
117. On the translation in the reciprocal account name column all entries say "[a co-purchaser of Eastacre One]" which is the name of one of the co-owners. Ms Townend sought support for her case on the basis that the executed agreement clearly anticipates the last stage payment coming direct from the bank and not from the purchaser.

118. A Chinese version of the document was produced by the wife in the hearing. It appeared from that document that the English translation was missing a column on the far right of the document. Each side had a translator present. They agreed that the last entry on the schedule of payments referenced a “Personal second-hand property mortgage loan”. I was told by Ms Townend (upon instruction) that the official translators of the documents in the bundle had missed off the end column.
119. Ms Kelsey submitted that the official translation only included [a co-purchaser of Eastacre One] and that I should not stray outside of the official translation and should ignore the words which reference “mortgage” and “loan” in the document which had been produced.
120. After the hearing Ms Kelsey also drew to my attention the fact that the version of the Chinese document (mother’s bank extracts) produced at the hearing was not the same document that had been disclosed in the wife’s schedule of deficiencies.
121. Whilst the hearing had formally ended, I accept that this was an issue of real substance in this highly contentious case and Ms Townend took the opportunity to reply fully. There has been no procedural unfairness in this regard. It is almost never appropriate for an evidential submission like this to be made via email after the end of the hearing. This was a wholly exceptional instance, in my judgment, where it was proper for this issue to be flagged to me after the hearing.
122. I have carefully looked at both documents. They are different documents. It is possible to discern an inexpert “Tippex style” redaction of certain features to the formally disclosed document such as the account number and possibly “query time”. I remind myself that the wife has been calculating as to the manner in which she has presented other documents.
123. The formally disclosed document has some kind of seal on it which ends in [redacted]. The document produced in the hearing also has some similar “Tippex style” redactions, but they are clearly different to the other disclosed document and the seal number is different ending [redacted], as well as having the additional column (headed “Abstract”) which includes a reference to the words “mortgage/loan”.

124. Ms Kelsey submits this conflict between the documents burnishes her submission that no reliance should be placed on the additional column where these words are referenced. Ms Townend submits that I should treat the document produced in the hearing as authentic but that if I have concerns, I should consider a raft of further disclosure which includes trying to get a mortgage document from [a co-purchaser of Eastacre One] or the bank should be written to on a joint basis.
125. Making further orders for disclosure against third parties in China after this hearing has ended feels like launching into the abyss. I am not even prepared to peer over the edge.
126. Having carefully studied both documents, it seems to me, and on the balance of probabilities I so find, that the wife has, for reasons best known to herself, produced two sets of documents here. That is, of course, what she did with her own statements. Someone has messed about with the Tippex on both of them. Whilst not put to the wife explicitly (the point having arisen post hearing), the most obvious conclusion is that this might have been the wife herself.
127. Despite my being on high alert for subterfuge, I do not see anything which would cause me not to accept the authenticity of the version with an additional column which has one reference which includes the words loan/mortgage. The “Tippex style” redactions do not impact upon what looks in appearance a genuine additional column.
128. Ms Kelsey could not have done anything more for her client in this regard, but I am ultimately persuaded that I should take the document produced at the hearing into account. This, of course, ties in with the executed agreement.

Overall view on issue 1(a)

129. Whilst I accept that there was a draft contract sent by the wife the day before the first stage payment was made, this draft was not the final executed agreement. The executed agreement matches, to a very high degree, the payments I see going into the wife’s mother’s account. The reference to loan/mortgage in the untranslated document tends to support that this came from the bank, even though the reciprocal account column says [a co-purchaser of Eastacre One]. It seems to me that, on the

balance of probabilities, I am left with a sale price of CNY 8,000,000 which ties in with the wife's mother's bank statements.

130. Even if I am wrong to proceed in the manner in which I have, I am firmly of the view that the tying in of the actual figures alone (with the words mortgage and loan excised, as Ms Kelsey would wish) is enough to persuade me that the official price was CNY 8,000,000. The appearance of the name [a co-purchaser of Eastacre One] for the last entry rather than a bank is not enough to deflect me from this conclusion. Ms Townend suggested that perhaps [a co-purchaser of Eastacre One] might have been referenced as an agent on behalf of the mortgage advance which had been taken in his name. That might be an explanation for the presentation of the document. I simply do not know. I am conducting the case on the balance of probabilities, relying on documents translated from Chinese. I accept that in this titanic dispute over documents, there may be some ragged edges.
131. I am unable to say what the reasons were for the draft at CNY 12,500,000 but, on the balance of probabilities, the husband has not persuaded me that this was the sale price.
132. The husband's theory that the net sum standing in the wife's account amounts to about a one third of the sale price of CNY 12,500,000 is further undermined by the payment of CNY 180,000 on the 1 September 2021. The husband needs that CNY 180,000 to be part of a payment from the wife's mother to the wife of her third share. However, it seems (and as I will explain shortly when dealing with another point in the statement of issues) this CNY 180,000 was in fact due to a transaction related to a [Chinese Associate Three].
133. The husband's forcefully held theory that he has discovered one third of CNY 12,500,000 is a construct which, on the balance of probabilities, simply does not add up or sit with the most likely contemporary documents as I have found them to be.
134. The husband issued a divorce petition on the 16 May 2022. The wife responded to the husband's petition on the 31 May 2022. Between the 8 June and the 29 June 2022 the wife made six transfers to her mother totalling about £331,476. That is very suspicious.

135. The wife's forcefully advanced views do not persuade me either. The wife has done much damage to her credibility with the manner and timing of her disclosure. Full and frank disclosure of bank statements with counterparty information was far too long coming and it reflects poorly on the wife. When it arrived, the 2009 agreement was presented for the first time in November 2023. The wife has also told an egregious and demonstrable untruth in the witness box (that bank statements with and without counterparty information were obtained on different days and the presentation was down to the bank and not the wife).
136. I am not persuaded that the 2009 agreement should be the operative instrument in untangling this part of the case.
137. I have already described the sorry history of its late appearance, timed when the wife *had* to reveal key transactions with her mother. The document was never accepted as genuine and the presentation of the original was too late for the wife to try and prove that it was a genuine document. As stated above, my starting point is that document is not accepted as genuine. That being the case the burden of proof, in my judgment, falls upon the wife, as the person propounding the document, to prove that it is genuine.
138. Looking at the broad canvass of the case, I do not find that the wife has discharged that burden to prove that it is genuine:
- 138.1. The "door of the court" timing of availability for inspection is hugely unhelpful. The wife said she probably could not get the document to HHJ Evans-Gordon, but ultimately she did obtain it.
- 138.2. The wife is guilty of egregious non-disclosure necessitating three schedules of deficiencies and has given dishonest evidence about counterparty evidence elsewhere in this case.
- 138.3. The convenient way in which the 2009 agreement appears to tell a full narrative account which suits the wife now is highly suspicious.
- 138.4. The wife's story about accidentally ending up on the legal title is inherently improbable and delivered in circumstances where I find the wife to be an

untrustworthy witness. The wife has no independent or expert evidence to explain how such a mistake might have occurred in China.

- 138.5. The wife was also paid a significant amount of money around the time [Eastacre One] was sold, even if it was not a one third of CNY 12,500,000. Days after the wife had responded to the divorce petition, she commenced a series of transactions returning about £331,476 to her mother. It looks like the urgent movement of money out of her name.
- 138.6. The wife and her mother have had many years to correct the legal title. The wife has been back to China on a number of occasions. The fact that the legal title was not tidied up over many years is yet another brick in the wall against the wife's case.
- 138.7. The wife is already a co-owner of another property, [Eastacre Two], with her mother (which I shall describe shortly below). There is nothing inherently improbable about the wife and her mother sharing the ownership of the property, with the mother advancing capital for the wife's benefit. I do not need to fall back on the presumption of advancement to make good that point.
- 138.8. The wife was less than full and frank about the size of her beneficial ownership of [Eastacre Two] until very late on in the proceedings, when her hand was forced by the SJE requiring a Chinese Land Registry to be provided (see below). She is calculating in her approach when it comes to describing her property ownership.
139. If I am wrong in my approach on the starting point and burden of proof relating to the authenticity of the 2009 agreement, I would go further and also find, on the balance of probabilities, that this is not a genuine document.
140. I do not accept that it would be fair, in the circumstances of this case, for the wife to be able to complain about not having a formally pleaded case when the procedural quagmire the court faced was created by her and it was clear enough the case she was facing.

141. I am entitled to say that the wife has failed to persuade me, on the balance of probabilities, that she is not the one quarter owner of the property which sold for CNY 8,000,000 (£880,000 ÷ 4 = £220,000). I do so mindful that this is not strictly a case “in the domestic consumer context” (see my legal analysis above) but the presumption of equity following the law seems, in my judgment, the appropriate approach here. There is unclear evidence from the wife about the beneficial ownership of [Eastacre One], but it is suggestive that it was owned by the family and I have decided against the wife’s primary case that the 2009 agreement should be adopted. There has to be some starting point and this accords best with the evidence, unclear though it is, that I have.
142. How is the court to square the wife’s ownership of £220,000 with the fact that the wife actually transferred back £331,476 in the immediate aftermath of the divorce petition having been served?
143. Ms Townend told me that the husband’s schedule of transactions [CB240] between the wife and her mother was a “cherry picked” selection of payments which suited his case. There is some force in this and Ms Townend prepared an Excel schedule for me showing a wider range of payments than the one at [CB240]. The wife confirmed the schedule of transactions to be true and accurate.
144. I have already said that there may be shards of truth in the wife’s case. I am afraid that it sits in her lap that they are so hard to divine. Ms Townend advanced a case that all, or nearly all, of the transactions between the wife’s mother and the wife were the wife investing on behalf of her mother. She submitted that the fact that one does not see transactions until the time when [Eastacre One] was sold is down to the fact that it was only at this point her mother had enough money to require transfers to her. Prior to this point it was the wife’s case that she had been assisting her mother with small investments but that she was able to do this via having access to her mother’s account. Once the sums became bigger she required some third-party device to be able to authenticate larger transactions, at least that is how I understood her evidence.
145. It seems to me, on the balance of probabilities, that there is nothing inconsistent with receiving a quarter share of the sale proceeds of [Eastacre One] and the wife also

investing in the West on behalf of her mother. The wife has given various figures in Form E and replies. The tangled mess of the wife's figures is almost impossible to unravel.

146. There is a difference of just over £100,000 (£111,476) between the one quarter share of the value of [Eastacre One] proceeds and the £331,476 she paid back to her mother. Doing the best I can with a competing set of figures, I am going to say that just over £50,000 should be treated as the wife's mother's investment money returned to her and £50,000 as being the wife's which she has "parked" with her mother. This results in a notional add back of £220,000 + £50,000 = £270,000.
147. I am afraid that is the best I can do in highly contested circumstances where I do not believe either party and the transactions in the immediate aftermath of the divorce petition appear very suspicious.
148. At the FDR on the 7 August 2023 DJ Hudd provided for the following at paragraph [15] of her order, "The respondent has permission to file and serve a statement from her mother dealing with all loans and the terms of the loan and the interests in the [Eastacre Two] property by 4pm on the 18 December 2023." Before HHJ Evans-Gordon at the PTR the wife confirmed and it is recited on the face of the order at paragraph [9] that she has elected not to file any evidence from her mother. It is a matter for the wife how she chooses to present her case. I was told of no practical or medical reason why the wife's mother could not give evidence. The husband's father gave evidence via a remote link. Given the case being advanced and the alleged sums involved, the wife's mother's silence is surprising.
149. There was some evidence about who had collected the rent on [Eastacre One]. For a period, it appears mother collected it solely. It was said this was for convenience and at other points it may have been collected by others. I do not find this aspect helpful when surveying the overall canvass.
150. I am acutely aware that I have found the 2009 agreement not to be authentic (whatever the forensic starting point) but have accepted the Chinese bank document produced in the hearing with the right-hand column reference to the word "mortgage/loan". I have carefully and anxiously weighed all of the evidence that I have heard and studied the competing documents with great care. That is my

considered conclusion on the balance of probabilities in this case. I do not consider that the authenticity of the two documents have to hang together.

Issue 1(b). Whether the wife has been deliberately misleading in respect of her interest in [Eastacre Two]

151. In her original Form E the wife asserted in box 2.14 (not box 2.2 as is required) that she had “property in China purchased with my mother in 2001 before marriage. I am 25% owner of the property. (My mother is currently living in the property).”
152. The wife was later required to fill out the information in the correct format and provided a supplementary box 2.2. This provided the address for the property, [Eastacre Two], repeated that she was only a 25% owner and stated that the value was “to be determined”.
153. There is a suggestion that the wife was evasive about a valuation being obtained but the documents in that respect have not been released by the wife’s previous solicitor. I would not be at all surprised if she was evasive as this sits with how she has conducted herself elsewhere in this case. Later, on or about the 23 November 2023, a Chinese SJE was appointed and they required that the [Chinese] Real Estate Register was produced as part of the valuation exercise. The husband had previously requested this in his questionnaire and three subsequent schedules of deficiencies. The register clearly shows the wife being recorded as a 50% owner.
154. In an email dated the 9 October 2023 the wife’s solicitors stated, “My client has also decided to concede the argument about her beneficial interest, appreciating the additional expense this argument will create. Therefore my client’s interest in this property is equivalent to 50%.” I note that this concession was made prior to the SJE being formally instructed.
155. The wife has sought to portray her concession as being businesslike and helpful. I do not see it in that way. The wife declined in the first instance to even give the address. From the outset she asserted a 25% beneficial ownership. Only much later did she make the concession which should have been made from the outset. The register information was only obtained, despite repeated requests from the husband, once the SJE required it to be produced.

156. Whilst nothing of substance turns on this point now, it having been conceded, it does demonstrate the wife's capacity to tell misleading accounts about property ownership in China. This reflects badly upon her, has incurred increased costs and makes her assertions about [Eastacre One] (above) less believable (I make plain that this point is one of many I have listed above in coming to my decision about [Eastacre One]).

Issue 1(c). Whether the wife has undisclosed assets retained by her following her first divorce

157. The wife was divorced in or about 2009. The wife took her young son and went to live with her parents in a modest property.

158. In his Form E the husband asserts, "[DQD] has been married previously. She always told me she received no assets on her divorce and no maintenance payments for either herself or my step-son. I have supported [DQD] and throughout our marriage and also spent approximately £300,000 supporting my step-son without her making any financial contribution. I now understand that [DQD] has significant assets in China and that provision was also made on her divorce for child maintenance to be paid."

159. The husband expands upon his thesis in his s.25 statement stating "[DQD's] divorce took place during our relationship. She told me this concluded on terms she would receive no financial support for herself or her son, and that she retained no assets. I never properly understood this as [DQD] was married to a very successful and wealthy businessman. She said they had lived in a mansion house in [China] with a chauffeur, nannies, and housekeeping staff, but that when a relationship ends, she believed that it was wrong to "ask for money." She said the assets she had given up included the [Chinese] mansion worth £6m, a 10% equity stake in [a Chinese private hospital] and a property in [redacted] London. If [DQD] did give up assets to this value, it seems to me that this could only be because she retained valuable other assets. Given the way in which [DQD] has pursued her claims within these proceedings which involve limited assets, I find it very hard to believe she simply walked away from a wealthy husband, with whom she shared a child, with nothing."

160. Given the length of time which has elapsed since the end of the wife's first divorce and given that the parties' marriage proceeded on the basis that the wife did not have any assets from her first marriage, the burden of establishing anything here is firmly in the husband's lap. His reasoning set out above appears to me to be scant justification for what Ms Townend has described as a "wild goose chase", which the husband instigated in pursuit of his forcefully held opinions about this issue.
161. On the balance of probabilities, I do not find that the husband has proved the wife had assets from her first marriage. Her case is that her previously successful first husband had hit hard times by the time of the divorce. Whilst this argument was only advanced for the first time in Ms Townend's note, it is consistent with how these parties conducted their marriage.
162. It is often said that it is not the role of the family court to conduct a "rummage in the attic" of a failed marriage. Here I am being invited to conduct an archaeological excavation on a *former* marriage. I am not prepared to do so. The ground has closed over.
163. I need say little more about this save that the husband has wasted his time on this wild goose chase, but the wife has also managed to be difficult and unhelpful about this issue, further diminishing her standing before the court.
164. I am not going to recite the whole chronology which included correspondence with the first husband's then divorce lawyer, but most notably the wife eventually produced a petition with the then parties' marital address and the address of her first husband redacted out.
165. Given that it was the husband's case that the wife's previous husband lived in a £6m mansion, the address might have been thought to be obviously relevant. I do not accept the wife's case that this was private third-party information which was not relevant to the hearing. It was not her right to redact this document. It was sent on the 2 January 2024 and it was open to the husband to invite HHJ Evans-Gordon at the PTR on the 11 January 2024 to require a clean copy to be provided if it was key to all of this. But the burden of proof rests on the husband and he has not come near persuading me that the wife had assets from her first divorce.

166. I decline the husband's invitation to make an adverse inference that the wife had significant assets arising out of her first marriage. That simply does not sit with her moving back to her parents' house or the manner in which the parties conducted their marriage.

Issue 1(d). Whether the wife has any undisclosed bank accounts and investments in China (including a China Merchants bank account)

167. The husband had a particular concern about an undisclosed bank statement which goes back to a transaction identified in 2011. After some initial uncertainty, it appears that the issue related to the account numbers being updated down the years. This particular issue boils away.

168. The husband remains dissatisfied with the quality of the wife's screenshot disclosure of other Chinese accounts such that he is uncertain whether he has a full picture of all of her investment accounts.

169. On the balance of probabilities, I am not persuaded that the wife has hidden anything on this account.

Issue 1(e). Whether the wife has undisclosed jewellery (including diamonds and Rolex watches)

170. Taken at its highest, the resolution of these issues is not going to be material to my decision. The ES2 references the possibility of three Rolex watches, one which has an agreed value of £880. There may be a couple of diamond rings.

171. I decline to make any findings in this regard and if indeed the wife has them, she can keep them.

Issue 1(f). The whereabouts of the balance of the £137,751 proceeds of sale of [Westacre] (beyond the £96k transferred to the husband's father)

172. [Westacre] was purchased on the 7 May 2019. The husband says that this was with a loan from his father for £142,000. The wife says that it was purchased with matrimonial funds. Given the findings I make below about the bounty which has

emanated from the husband's father, I do not consider that I need to resolve this particular difference between the parties.

173. [Westacre] was sold on the 18 June 2021 for £238,000. Between March 2022 and August 2022, £96,000 was transferred to the husband's father in six payments.

174. It will be recalled that there is a dispute between the parties as to the date when they separated:

174.1. The wife says that the actual separation was realised after she returned from China towards the end of March 2022, having been away in China visiting family since the summer of 2021 (which included a delay and then an extension of the trip).

174.2. The husband's case is that the parties had not lived together since June 2021 and that shortly prior to the wife's return he left the family home at [Flatacre], with divorce proceedings being commenced in May 2022.

175. Given that both parties have demonstrated a capacity to be less than truthful with me, this is not altogether straightforward to decide who I believe. Ultimately on this issue, I prefer the evidence of the wife. The petition in May 2022 is closer to the wife's posited March 2022 separation date. Further, the rapid return of funds over a few months between March 2022 and August 2022 would sit more logically with this picture.

176. It is the husband's case that this money was only ever a loan from his parents and that he returned the £96,000 on account of their need for medical treatment and living expenses. This sits very uncomfortably with a number of features of the case:

176.1. Whilst denying that he is wealthy, the husband's father and/or mother have between 2008 and 2022 transferred to the husband (and occasionally the wife) sums in the order of about £1.4M. This to me suggests that the husband's father is a man of means. It seems inherently improbable in this case that someone who has been shrewd enough to amass enough capital to be able to make those sorts of advances, to have at the same time been

naive enough to transfer all of their savings into the hands of their son who lives on another continent.

- 176.2. Added to this, the husband's father stated that he had medical treatments in or about December 2021. Even allowing for some latitude for the settling of private medical invoices and costs of aftercare, why did the husband wait until March 2022 to commence payments to his father? The net proceeds were available for payment from June 2001. The obvious answer seems to be that he is trying to get money out of his account at the time that he is issuing his divorce application.
- 176.3. It is the husband's case that his parents only require the repayment of a further sum of £100,000 in order to meet living and medical costs.
- 176.4. Further sums, as already described, have been advanced to the husband by his parents since the return of the £96,000.
177. Piecing this all together, and having listened very carefully to the husband's father and the husband on this point, I am not persuaded by them. The husband's father provided no independent evidence of his current means and, whilst he probably has had surgery in China, I do not consider given the timings in particular, that the £96,000 was required for this. I find that the £96,000 will be returned to the husband in due course, after these proceedings are finished. The £100,000 is another device to try and reduce the husband's asset position before the court.
178. The husband says that the balance of the funds from the sale of [Westacre] has been applied to investments, legal fees and living expenses. This seems only too likely given the current costs which the husband has incurred (£162,115) and the lifestyle he has carried on with in the absence of obvious high levels of income during the time from separation to now.

Issue 1(g). Whether the husband has failed to disclose a beneficial interest in property in China, namely:

- (i) [Eastacre Three]*
- (ii) [Eastacre Four]*

179. [Eastacre Four] is a residence in a rural area in China. The origins of the wife's forcefully held views about this property relate to the fact that she says the husband was on the household register as living there in or about 2010. I take this to be akin to a Council Tax or polling record. By associating him with this property to this limited extent, she builds on her views noting that the property was redeveloped and that the husband must have an interest in the resultant property or, if it is to be compulsorily demolished by the state, then in the proceeds of compensation. The husband says this is his uncle's property. The husband's father accepts that he assisted his brother with redevelopment but denies either he or the husband have any beneficial share in it.
180. The timing of how the wife's case develops in this regard is not without note. Having denied ownership of property in China in his replies, the case is then taken up by the wife with vigour on filing of s.25 statements.
181. I am told that the wife did not even put [Eastacre Four] or [Eastacre Three] in her columns of the ES2 at the first appointment or the PTR. That is not in and of itself fatal. I accept that ES2s are often "living documents" during the course of litigation. It would be most unfortunate if parties were to think that every change to an ES2 will be held against them at a final hearing. There may be very good reason for a late development and particularisation of new assets.
182. I do not see that good reason here. The hard assertion that the husband has these two properties, adding an alleged value of about £1M on to the ES2 comes about very late in the day, only once the wife has had to make a concession about her 50% ownership of [Eastacre Two] and after the disclosure of the counterparty bank statements revealed her dealing with her mother in respect of [Eastacre One].
183. The case in respect of [Eastacre Three] is equally as far-fetched. This is the husband's parents' home. The wife would have it that following a series of property transactions, including the sale of a factory, the husband acquired equity which he carried forward into making a contribution into his parents' property. It is a confused account and I am not satisfied, on the balance of probabilities, that the husband has any such interest.

184. I note that there is some WeChat chatter between the parties said to be relevant, but it does not really assist me in resolving these issues.

Issue 1(h). In relation to the husband's UK business interests:

(i) *Has the husband provided full and frank disclosure in relation to his disclosed UK business interests, namely [UK Company One], [UK Company Two]?*

(ii) *Has the husband provided full and frank disclosure in relation to his links to other UK businesses [redacted]?*

(iii) *The value of the husband's interests in his disclosed UK business interests, namely [UK Company One], and [UK Company Two]*

185. The husband is a 34% owner of [UK Company One]. He invested an amount back in 2012. The parties cannot agree whether that was £58,000 (the husband) or £160,000 (the wife). I do not need to resolve that. The fact remains the husband has a 34% share in [UK Company One]. Micro-entity statutory accounts to year end 31 December 2022 suggest a capital value of £253,416 of the whole enterprise.

186. The husband has been tricky about disclosure. The court's disapproval does not blow only one way in this case. He has not supplied trading accounts, despite HHJ Evans-Godon requiring him to do so if they exist. The husband has disclosed a shareholders' agreement dated the 26 October 2012. There were three shareholders at that stage. It appears that the husband had an active director's loan account until about 2023.

187. Whilst the three shareholders may have been known to each other, the court does not accept that the husband could not have provided more useful information as to its trading position, if not actual full trading accounts, at least something which would allow these three investors to keep track of where they were in respect of each other and their obligations and rights in respect of the company. I simply do not accept that this has all been conducted on the back of an envelope. Data would have been required to construct the published micro-entity accounts.

188. The major shareholder has sent an email saying that as the company is not for sale there is no valuation. Combined with the other calculated ways in which the husband has sought to hide information from the court (in particular the wholly unjustified

redactions from the credit card statements), I am left with the clear impression that the husband is not wanting to be helpful about the valuation of this company.

189. He values it as zero on the ES2 and invites the court to treat it as an income producing asset. The wife seeks to conduct her own valuation based on what she says was understood to be agreed as a multiplier of five times net profit. She is not an expert, and in any event, I cannot accept her evidence as reliable. The 34% of £253,416 would be £86,161.
190. Until relatively recently the husband has enjoyed both dividend payments and been able to draw on his director's loan account. If it is right that the director's loan has now expired, the husband is left merely with dividends, which he suggests are agreed to be in the order of £9,600 per annum.
191. The wife never made a Part 25 application to have the husband's shareholding valued. It probably was not proportionate to do so. Ms Kelsey is probably right in saying that the [UK Company One] shareholding, properly analysed for this financial remedy application, should be treated as no more than an income producing asset. Ms Kelsey is correct to remind me that any valuation would necessarily be fragile. It is illiquid as well.
192. But I am left, notwithstanding Ms Kelsey's analysis, with a very unfavourable impression as to how the husband has treated his disclosure obligations here.
193. [UK Company Two] is wholly owned by the husband. It was a vehicle through which he invested in property and renovation. He started out with other shareholders in 2016 but eventually the shares were transferred to him for various reasons.
194. The year end February 2023 micro-accounts show a liability of about -£72,719. The husband asserts a reduced figure of -£25,942 which I think is the balance now owing on a Covid bounce back loan. The husband would like to return to property renovation if he had the capital to do so, but without a capital injection he cannot. I do not see that this company has any value. I am going to treat this company as insolvent and ascribe a zero valuation to it.

195. One of the previous fellow shareholders in [UK Company Two] was someone called [Chinese Associate One]. The husband alleges that he owes [Chinese Associate One] £50,000. He says the initial shareholders each put up £50,000, but that [Chinese Associate One] has yet to have their sum returned. This is a separate point in the schedule of issues, but I flag it here as the “[Chinese Associate One]” issue is clearly tied up with this company.
196. The husband’s position in respect of [other UK businesses] were that they were something to do with the purchase of luxury watches/goods for export to China, where he may also have been able to secure some kind of tax advantage. Whilst he may not have provided full and frank disclosure here, the impression I got from his oral evidence was this was something of an occasional “side hustle” and unlikely, on the balance of probabilities, to be the repository of any material amount of hidden capital.

Issue 1(i). In relation to the husband’s alleged business interests in China:

- (i) *Has the husband provided full and frank disclosure?*
- (ii) *Does the husband have interests in, or associated with [Chinese Company One], [Chinese Company Two], [Chinese Company Three] and others.*

197. [Chinese Company One] and [Chinese Company Two] are referenced in the husband’s first divorce. The wife is also guilty of rummaging for artefacts here. The husband says these companies closed in 2010. There is no other evidence to suggest otherwise.

198. [Chinese Company Three] has not formed a central part in the case and I am unable to make any findings about it. I doubt there is anything doing here.

Issue 1(j). Whether the husband has other disclosed assets (bank accounts and luxury investments)

199. The wife complains about the possibility of undisclosed vehicles and possibly two luxury watches. The husband says that he trades in watches from time to time and that this would not be for his personal benefit.

200. The husband's disclosure has not been perfect in this case and his solicitor had to send an addendum to his Form E with missing accounts. Even at the PTR, the wife was chasing documents, although the husband says that some of these requests were fresh and had not been pursued, or not pursued with vigour, before.
201. This is an already (necessarily) long judgment. I do not propose to spend time making findings about luxury watches. Even if the wife were correct, and I am not necessarily saying that she is, I do not consider in the parameters of this case that the determination of these issues would be material to my decision.
202. There is a suggestion of an undisclosed investment account. I do not have satisfactory material to make a finding about that.

Issue 2(a). Whether the wife's bank accounts and investments (including the East Money Investment) belong 100% to her (i.e. not shared with her mother)

203. The wife has given a range of different suggestions as to what money in her accounts belongs to her and what belongs to her mother. It is her case that she has been investing on behalf of her mother since about 2017. There were some Chinese accounts with modest balances which were not properly evidenced in her Form E. I do not consider the case turns on these.
204. At 2.14 of her Form E the wife suggests that a further account in China with East Money had about £67,000 in it, of which about £38,000 belonged to her mother. In her reply to the second schedule of deficiencies she asserted that about £48,000 belonged to her mother. Once the third schedule of deficiencies had been provided, the much larger transactions between the wife and her mother came into view for the first time; although shortly after the wife had replied to the divorce application, she transferred a large sum of money to her mother. Her figures will not sit still and the wife makes it almost impossible to make an accurate forensic assessment.
205. As indicated above, applying a rough and ready approach from the money over and above the one quarter share value of [Eastacre One], I am going to treat £50,000 as belonging to the wife, with the balance of just over £50,000 belonging to her mother. In doing broad and rough justice here, I intend this to include accounts both here and in China. The state of the wife's presentation prevents me from being more accurate.

If the wife is disappointed with my approach she may wish to reflect on her egregious non-disclosure, dishonesty and ever-changing range of figures and ask herself what else a court is to do with the mess she has presented in this regard. I am treating the money in the wife's English accounts as all belonging to the wife.

Issue 2(b) Whether the husband's parents are an ongoing resource available to the husband

206. I have in mind:

206.1. The "family resources" tests set out by Peel J in *WC v HC* (quoted above);

206.2. The presumption of advancement;

206.3. *P v Q* and the manner in which the court is able to look to see whether a loan is hard or soft; and

206.4. The findings I have made that I do not believe the husband and his father when they say that the husband's parents have spent all of their money on the husband by way of loan and that they required £96,000 back to meet living and medical expenses. Adopting my approach to this issue I am also not persuaded that the husband's parents require a further £100,000 to be repaid to them now.

207. I consider that the husband's parents are likely to provide further assistance to the husband going forwards. The £96,000 monies from the balance of proceeds from [Westacre], I will treat as being "in the pot".

208. I am unclear precisely what the size and shape of further support will be. I accept that the husband's father in particular will be in a position to refuse to provide support to the husband if he thought, whether reasonably or otherwise, that it was going to provide the wife with some kind of advantage in this litigation. But once this litigation fades into the rear-view mirror, I expect the position will change. I find bounty of a capital nature is likely to be forthcoming at some point in the future. This is likely to be enough to plug the gap between the husband's reasonable housing need, factoring in what he can finance with his own money and mortgage.

209. I am not sure that I actually need to resolve the debate as to whether the very significant sums advanced by the husband's parents over the years are by way of loan or gift. It seems to me that the presumption of advancement does have some bearing here and I can assume as my starting point that the money advanced by the husband's parents was intended as a gift. But if I am wrong about that and the money is by way of some kind of family arrangement falling short of an absolute gift, requiring repayment of some of the money "if required", it is so soft as to make the difference between outright gift or soft family arrangement/loan to be practically indistinguishable for my purposes.

Issue 2(c). Whether the proceeds of sale of [Westacre] transferred to the husband's father post separation will be likely returned to him post proceedings

210. I have already had the opportunity to express my finding about this. I do not accept that the timing of the return of the £96,000 fits with the need for the husband's parents to pay medical bills. The timing is far more consistent with the commencement of the divorce. I find this money will be returned to the husband.

Issue 2(d). Whether the husband is cohabiting which provides an ongoing resource

211. The husband's redactions to his credit card statements are very unsatisfactory from my point of view. He will not give his address or say who he is living with.

212. There is some local spending in the UK when the husband was known to be in China. The husband gave an account of a family friend who is a student having lost £40,000 in a scam and so he gave her access to some of his apps which would deliver food, which in turn are linked to his credit card account. It sounded far-fetched and unbelievable.

213. There are two DVLA payments which match precisely the cost of a UK driving theory test and then the actual test. The husband sought to brazen this out by saying that this was him updating his large vehicle driving licence. I do not believe him.

214. The husband gave disgraceful evidence about the redactions to what was obviously a second flight to Iceland. He later admitted he had gone with someone, perhaps

having forgotten how difficult he had been earlier in his evidence about admitting this. It reflects very poorly indeed on him.

215. The date of separation is contested. The contemporaneous documents with movements of money out of the UK tend to support the wife's account for the date of separation.
216. It seems to me that the husband is, on the balance of probabilities, and with the court taking a rightly adverse view about his credit card evidence, redactions and defiantly unhelpful oral evidence, cohabiting.
217. I do not have any evidence to assist me, however, as to where this might be, how secure the relationship is, the means of his partner or the tenure and security of the accommodation in which they reside. It is the husband's fault I do not have that information.

Issue 3(a). Whether the funds advanced by the husband's parents to the husband and the family generally from 2008 to date constitute hard loans, soft loans or gifts

218. I have already covered this above.
219. I simply add that even post-separation more funds have been advanced by the husband's parents. These are said to be £30,000 from his father and about £5,500 from his mother. These will have the same character as the earlier advances.
220. The husband's ability to call upon these funds further undermines his case that he returned the £96,000 as it was needed by his parents for medical and living costs. Further, I do not consider that the £35,500 should be deducted from the £96,000 which the husband returned to his parents. These sums, in my judgment, are further advances.

Issue 3(b) Whether the funds advanced "post-separation" by the wife's mother and the wife's son constitute soft loans or gifts ["" inserted by the court]

221. The wife is said to owe her mother £42,018 and her son £41,459.
222. I do not expect for a moment that either the wife's mother or son will sue for any money said to be owing. Post-separation it strikes me as unlikely that either the

wife's mother or son would choose to gift money as they would no doubt be astute enough to only be prepared to advance a loan. The loan agreements do not particularly assist me, given everything else that is wrong with this case.

223. I expect, on the balance of probabilities, these monies are loans but soft in nature. The wife says that there is disquiet with her mother as she has had to spend money which the mother regards as hers. I do not think for one moment that the wife's elderly mother in China will sue her daughter in England for monies said to be owing.
224. It is most unfortunate that the wife's son has been caught up in this, but he is not going to sue his mother either. If the wife chooses to repay her son from her share of the order I make, that will be a matter for her.
225. There is a transaction between the wife, her mother and the husband's friend, [Chinese Associate Three], which is said to have some significance. Most importantly for me I can see an extract from the wife's bank statement which shows her mother transferring CYN 180,000 on the 1 September 2021 but on the same day the wife transferring £178,000 on to [Chinese Associate Three]. The husband asserts the CNY 180,000 forms part of the wife's share of the third share in the sale proceeds of [Eastacre One] (above) but this transaction would rather suggest it related to something else. This undermines the husband's attempts to "cherry pick" figures to fit his case. I have dealt with this above and will not cover the same ground again.
226. The wife says that she was asked by the husband to borrow money from her mother to pay [Chinese Associate Three] and that the husband has not repaid this sum. The fact that the wife was willing to assist with a money transaction at this point in time supports my finding that the parties did not separate until March 2022. I doubt with the self-evident temperature of these proceedings that any such assistance would have been forthcoming post-separation. I have recorded the statement of issue in italics above, but I have put "post-separation" in quotes as this payment occurred, in my judgment, whilst the marriage subsisted.
227. The wife has produced a WeChat message between the husband and the wife on the 31 August 2021, the day before the wife produced a loan document dated 1

September 2021 between mother and daughter, said to be for the purposes of paying [Chinese Associate Three]. This document, it seems to me, is likely to be little more than forensic window dressing.

228. The husband says that far from being an advancement of a sum to [Chinese Associate Three], it is related to a currency transaction which involved [Chinese Associate Three] paying the husband's father £20,000 on the 31 August. Given this payment the day before, it seems to me, on the balance of probabilities, that this was in the nature of a currency exchange of some sort. I cannot make complete sense of it all, but I am not persuaded by the wife's account, on the balance of probabilities.

Issue 3(c). In relation to funds which the husband alleges are repayable to [Chinese Associate One]:

- (i) The quantum of funds advanced;*
- (ii) Whether the alleged debtor is [UK Company Two] or the husband personally; and*
- (iii) Whether any funds constitute hard loans, soft loans or gifts*

229. This issue was mentioned above in relation to [UK Company Two]. It seems that all the original investors put in about £50,000.

230. [Chinese Associate One] ceased to be involved many years ago and the husband says that [Chinese Associate One] allowed him to defer the repayment of £50,000, which he then used to assist with the development of [Westacre].

231. The wife says that this is not a personal loan but a loan that the company owes to [Chinese Associate One]. The wife, on the balance of probabilities, is probably right about that. But there is a more fundamental point, namely, that the £50,000 was not repaid when [Westacre] was sold. If it was a live debt, that would have been the moment for repayment. There is no loan agreement either. I am not factoring this into my calculations.

Issue 3(d). In relation to the funds advanced post-separation in November 2023 which the husband alleges are repayable to [Chinese Associate Two]:

- (i) The quantum of funds advanced; and*
- (ii) Whether any funds advanced constitute hard loans, soft loan or gifts*

232. There is a loan agreement dated the 18 November 2023 for CNY 500,000 (£55,000) between the husband and [Chinese Associate Two]. The wife says that [Chinese Associate Two] is one of the husband's best friends.
233. I note that the interest rate on the agreement is said to be 10% compounded annually. This appears to be an almost extortionate rate of interest to be charging a friend. I find that improbable and it smacks of window dressing.
234. These are in a category of soft loan. The husband can repay it from his share of the order I make, if he feels as strongly about this as he says.

Issues (4) – (7). Composite of s.25 issues

235. These issues relate to conventional s.25 issues such as income and earning capacity, borrowing capacity, needs and contributions. Neither seeks periodical payments from the other.
236. On the facts of this case, I do not consider it necessary or proportionate to conduct a contributions analysis. Most of the money has come from the husband's side of the family. Despite the voluminous issues which these parties have been able to stack up, this is a modest money case and I propose to view it through the prism of needs. The husband, through his family, has made an unmatched financial contribution, but it simply forms part of the backdrop in this case.
237. Given that neither party is seeking periodical payments I do not need to unduly trouble myself with an extensive income and earning capacity analysis.
238. The husband is younger, confident and more prosperous. There is no reason why he cannot have gainful employment or self-employment. The husband has been entrepreneurial down the years. The husband is training for some kind of finance role and I have no doubt that he will be easily able to meet his needs with a combination of whatever he earns, supplemented by whatever support he may get from his family in the future, which I have dealt with above.
239. My assessment is that he will be able to earn between £30,000 and £50,000 per annum should he choose to do so, with a combination of employed earnings, his dividends and whatever entrepreneurial activity he decides to engage in.

240. Even since his separation, the husband has managed to enjoy several overseas trips, including Iceland, the Far East and several European destinations including Chamonix (which the husband was very anxious to emphasise was much better value out of season, perhaps having a brief moment of self-awareness of how all of this might be sounding to the court). His spending includes Fortnum & Mason, Harrods and Harvey Nichols.
241. The wife is older, has less of a solid employment history having spent much of her time in the UK caring for her son (a child of the family). Whilst she has not properly evidenced it in a way which would have been expected, she may well have physical and mental health issues. The wife struck me, if she will forgive me, as worn and adrift. She is in receipt of a Chinese pension of about £3,500 per annum.
242. There are many curious features to this case. Why the wife does not seek spousal maintenance is one of them. On the face of it, it is not obvious to me how she will afford to live. Her outgoings are suggested in her Form E at £2,400 per month. The husband wonders whether the wife will return to China.
243. In any event, I have to accept that the wife is not seeking periodical payments and that on any analysis, even if she got all that she is asking for, she would not have enough to rehouse and live off capital. I can see there is some force in the suggestion that the wife might return to China, but that is not how she puts her case.
244. Each posit property particulars given the funds available here. The husband seeks a one-bed flat in the region of about £500,000. He says the wife can rehouse in a one-bed flat for £400,000. The wife asserts one-bed shared ownership properties for the husband in the region of £184,000.
245. It is agreed the wife has no mortgage capacity.
246. The husband has filed a self-serving mortgage capacity document which includes his son's university costs as an outgoing, in order to get to a mortgage capacity of zero. I was told of no compelling reasons why the husband has an obligation to finance his adult son's university costs. The husband may choose to, but his first obligation is to himself and the wife. The court does recognise, however, that the husband does have commercial personal loans (in the order of about £78,000) at the moment which

would need to be cleared before he is able to obtain a mortgage. I would assess that if he uses some of the capital from the court's order to settle his commercial debts, he is likely to have a mortgage capacity in the order of, say, £120,000 in the relatively near future. I have taken this as a multiple of £30,000 per annum and so it may well be that the figure could be higher once the husband has fully deployed his earning capacity.

The court's computation of assets

247. Drawing all the threads of this together the court is left with the following computation of assets:

	H	W	Comment
[Eastacre Two]		343,139	Illiquid
[Flatacre]	276,450	276,450	
Bank accounts	1,876	27,999	
Investments	16,683	474	
Business assets	0	0	Income asset only
Chattels	0	0	Ignored
Money held by parents	96,000	270,000	
Liabilities	-91,028	-26,126	Commercial only
Service charge	-7,239	-7,239	
Total	292,741	884,697	1,177,439
	24.86%	75.14%	

248. I have flagged the service charge arrears as a separate head as they are a joint liability which will have to be dealt with in order to preserve the asset.

249. The current division of assets looks more favourable to the wife than it really is. All are agreed that the £343,139 in [Eastacre Two] is wholly illiquid on the basis that this is tied up in the wife's mother's home and that whilst she is old, she is in good health. The husband's business assets are also being treated as income producing only.

250. With [Eastacre Two] removed from the schedule, the global assets are £834,300, with the wife holding net £541,558 and the husband holding £292,741, or a 64.91% to a 35.09% division.

The court's determination

251. If the net proceeds of [Flatacre] are divided 64/36 in the husband's favour (with the proceeds being top-sliced to clear the joint service charge arrears), then each party will have enough to rehouse modestly.
252. The parties' needs are for a one-bedroomed flat which can be met on the basis of the particulars I have seen between £400,000 and £500,000. I am going to say needs can be met in the parish of £450,000, but clearly choices can be made under or over that mark.
253. The husband will be able to combine his £370,147 (for which see table below) with a mortgage capacity, his relative youth and whatever support he gets from his parents which I have found he will have. That will meet his needs.
254. He is cohabiting somewhere at the moment, although as I have stated above, I am unaware of the terms of that occupation. He does have a roof over his head in any event. The husband may have to remain where he is, or rent for a bit until he is able to develop and deploy his mortgage capacity as I have found it to be. He may have to reduce his international travel and trips to high-end stores. However, I am satisfied with a bit of application he will be fine, and his housing and income needs will be met.
255. The wife will be able to rehouse at £450,000, but of necessity without mortgage or family support, beyond the return of money which I have found is beneficially owned by her and which I find will be returned to her. Subject to the size of flat she chooses to purchase, she may retain a small capital sum which will help meet her living costs for the time being. My departure from mathematical equality is driven by the needs as I perceive them in this case.
256. [Flatacre] is to be sold. If there is any conveyancing complication meaning that the service charge arrears cannot come out of the proceeds, my order will require each to contribute half of the arrears prior to sale. I shall leave it to counsel to determine the neatest way this obligation can lawfully be imposed on both of them.

257. There shall be a clean break in life and death upon compliance with the terms of the order.
258. My decision results in an overall division of liquid assets as follows:

	H	W	Comment
[Eastacre Two]			343,139 Illiquid
[Flatacre]	353,856	199,044	
Bank accounts	1,876	27,999	
Investments	16,683	474	
Business assets	0	0	Income asset only
Chattels	0	0	Ignored
Money held by parents	96,000	270,000	
Liabilities	-91,028	-26,126	Commercial only
Service charge	-7,239	-7,239	
Total	370,147	464,152	834,300
	44.37%	55.63%	

Chattels

259. The parties shall each be entitled to retain their personal items. By this I mean their clothes and effects, personal papers, personal tech and phones.
260. Each contend for the contents of [Flatacre]. The overriding objective includes the requirement to allot an appropriate share of the court's resources to the dispute, whilst taking into account the need to allot resources to other cases. This case has now had its fair share of judicial time.
261. I am going to give the parties 28 days to resolve the contents between them. I urge them to see the big picture and to seek an amicable resolution. Either party is at liberty to restore the subject of chattels to me (I reserve to myself) within 35 days.
262. I make plain, if returned to me, that I reserve the option of requiring all disputed items to be sold on eBay or the like, with the parties each being free to bid for items or to enjoy a 50/50 division of whatever net sum is produced from the sale.

Costs

263. The husband's total costs are £162,115. The wife's total costs are £119,691. The combined costs of this dispute amounts to £281,806. This is about 33.7% of the net liquid assets.

264. I make no criticism of the current legal representatives in this case. I have watched them patiently and professionally put their respective client's forcefully held views to the court. This has been the cost of forcefully held views.
265. FPR 28.3 provides the starting point is no order as to costs in an application for a financial remedy, but the court may make another order where it considers it appropriate to do so.
266. Taken individually, each party has indulged in behaviour which would in the ordinary course be likely to have the court reaching for FPR 28.3(6) and (7). But nothing about this case has been ordinary. I am not going to recite all of the criticisms I have already made of each of the parties.
267. My provisional view is to say no order as to costs. The poor behaviour on each side is symbiotic. If either side wishes to make written representations, they must do so within 7 days.

Closing observation

268. My closing observation is to note that from the 29 April 2024 there are a raft of amendments to the Family Procedure Rules coming into effect concerning Non-Court Dispute Resolution. They are to be found in The Family Procedure (Amendment No 2) Rules 2023 (No 1324). Their aim is to encourage a culture change in the manner in which disputes between family members are resolved.
269. How much sorrow and cost might these parties have spared themselves if they had each been willing to approach things differently?
270. This is my judgment.

Recorder Rhys Taylor

3 April 2024