IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Case No: BV16D39058

Courtroom No. 47

1st Mezzanine, Queen's Building
The Royal Courts of Justice
Strand
London
WCA 2LL

2.29pm – 4.00pm
Monday, 30th July 2018

Before:
THE HONOURABLE MR JUSTICE FRANCIS

B E T W E E N:

WG

and

HG

MR JONATHAN SOUTHGATE QC and MISS AMY KISSER (instructed by Stewarts Law LLP) appeared on behalf of the Applicant
MR MARTIN POINTER QC and MRS JENNIFER KAVANAGH (instructed by Lisa Macdonald Solicitors) appeared on behalf of the Respondent

JUDGMENT
(Draft Approved)

MR JUSTICE FRANCIS:

1. This is my judgment in the final hearing of the application by WG dated 2 March 2017 for financial provision from her husband HG. For convenience I shall refer to the parties respectively as the wife and the husband.
2. In spite of judicial control for bundles and restrictions as to the number of pages allowed now in these hearings, as I prepared this judgment, I found myself surrounded by seven lever arch files, i.e. six more than that now intended by the current Practice Direction. Before the case started, I read everything that I was asked to read, and I have now read everything in all of these lever-arch files. My failure to mention some of the micro-issues that have been thrown up during the course of this hearing does not mean that I do not have them in mind. Counsel's notes have very helpfully identified the issues which it is necessary for me to determine. I have also had regard to the various authorities which have been cited. However, I also bear very much in mind that I need to have regard to the principles established by the leading cases in the superior courts rather than the various fact-specific comments made by the first instance Judges.
3. I have also had regard to the Law Commission Report on matrimonial property, needs and agreements. What guides my decision, of course, is set out in the Matrimonial Causes Act 1973. I have regard to all the circumstances of the case the first consideration of the court being the welfare of the children while under the age of 18. I have regard to the menu of items contained in section 25. My over-arching duty is to make an order that is fair but my power to make the orders is derived from sections 23 and 24 of the Matrimonial Causes Act. Where I have had to resolve issues of fact, I have done so by reference to the ordinary balance of probabilities.

Relevant background

4. The husband is aged 53 and the wife is 50. The parties met in 2004 when the wife was employed as a nanny for the husband's son from his first marriage, X. X lives with his mother but spends significant time with his father. He attends a private senior school in London. X suffers from a rare genetic disorder which has resulted in severe developmental delay and various physical disabilities. He has significant special needs. I am told that he and the wife had a good relationship, but this has become more distant since the parties separated. X spends time with his father but makes his main home with his mother. I am told that the support that the husband makes for X comes to more than £200,000 per annum. I am told that there is also a threat made by the husband's first wife, that she may make an application pursuant to Schedule 1 of the Children Act. It seems that she may have exhausted almost all of the £2.5 million she received from the husband on their divorce. However, Mr Pointer has not sought to persuade me that the husband cannot afford to meet the wife's needs in this case, although doubtless that is caveated by an expectation that the interpretation of needs will not be extravagant.
5. There are two children of the marriage, namely Y, who was born in December 2004 and is therefore 13, and Z, who was born in December 2007 and is therefore 10. Y has just left a private prep school in Hampshire and will start at a private senior school in West Sussex in September this year. Z is still at the private prep school in Hampshire and will probably follow her sister to the private senior school in West Sussex in three years' time.
6. The children live with each of their parents on an alternative week-on-week-off basis and share the school holidays with each of their parents. Although, quite properly, I have not been troubled with the detail of the Children Act proceedings, I note that the wife spent £151,000 on those proceedings, which implies that there were bitter Children Act disputes between the parties. Obviously, it has not been my task to become involved in those

proceedings. The wife spent a further £50,000 odd on contested Family Law Act proceedings and another £20,000-odd on the divorce itself. Against this £220,000-odd on the wife's side, the husband has spent about £38,000 on those three separate issues.

7. Like their mother, the two girls are enthusiastic horse riders and I am told by the mother that they spend the majority of their spare time riding and participating in competitions.

8. This was the husband's second marriage and the wife's first marriage. In his Form E in May 2017, the husband said this:

> "When I met WG, I had just separated from my first wife. During the financial proceedings, my net realisable assets were worth £15,278,070 from which I paid £2.5 million to my first wife. My net worth when I met WG was £12,778,070. My current net worth is £17,143,176. Therefore, there has been an increase of my assets during this marriage of £4,365,106. A lot of this has been passive economic growth from my portfolio which has not been intermingled during the marriage".

9. I pause here to observe that in fact the current asset pool is now remarkably close to the number at the time of his last divorce, significant sums having been poured into a building project called 'Project A' to which I return later. The husband's Form E continued, 'My father made a lifetime gift of £1.5million to invest for the three children. I purchased three properties for the children [in a housing development in Surrey]'.

10. In their opening written submissions on behalf of the husband, Mr Pointer QC and Mrs Kavanagh said, 'It is obvious that the parties have lived, during the course of the marriage, on the resources that the husband brought to it together with the income that he was able to generate from them while the marriage continued'. They further commented that 'It is a pity that the wife has not acknowledged from the very outset that hers is a needs claim'. I agree. Whilst I recognise that cases do not necessarily and automatically fall into category of either a) sharing or b) needs, the fact is that this is a quintessential case where there has been little or no marital acquest or where, if there has been, it is a consequence of the passive growth of pre-acquired resources.

11. All of the resources in the case were brought into the marriage by the husband. The home that the parties have lived in since they were married, a property in Surrey, was purchased by the husband in 1991, some 17 years before the marriage. This is a contribution unmatched by the wife. The wife does not need to be defensive about this nor does she need to see it as a criticism, which I feel that she did.

12. In *K v L* [2011] EWCA Civ 550, Wilson LJ as he was, held that the recognition of the wife's considerable unmatched financial contribution in that case was not discriminatory. It was on the contrary, a recognition of the substantive differences in contribution. I do not doubt that, in this case, the wife has made a full contribution to this marriage in that she has always been and is a good mother to her children. I am simply stating the acknowledged facts when I say that the husband has made a financial contribution unmatched by the wife. Most, if not all, of the resources available to the husband were gifted to him by his father, FG.

13. The husband is also a beneficiary of the Will Trust created by his mother, about which I say more later, which currently provides him with a net annual income of £50,000.

14. In paragraph 18 of her section 25 statement dated 1 June 2018, the wife refers to the fact that her husband's father's family wealth is in the region of £400–500 million. The most that I can take from that, it seems to me, is that the husband may or may not inherit significant sums in due course. I cannot and should not speculate beyond that. The possibility that the husband may receive further sums later does not increase the wife's entitlement now. Given my description of this case as a needs case and given the near

agreement as to the value of the assets and liabilities, save the one significant area of dispute about alleged over-expenditure on Project A, to which I return, it is worrying if not shocking to note that the parties between them have spent considerably more that £1 million on these financial remedy proceedings. The wife's financial remedy costs currently stand at £625,000 to which needs to be added litigation loan interest of £71,000 and a litigation loan arrangement fee of £9,000. The husband's financial remedy costs currently stand at £426,000. If one adds together all of the parties' costs including Children Act and Family Law Act proceedings, the parties between them have spent almost £1.4 million on legal fees. This is the second judgment that I have written in as many weeks where the sum of the parties' costs exceeds at least one side's estimate of the housing need of one of the parties. I questioned in that judgment and I question again here whether the removal of the Calderbank regime has helped to add to the costs crisis one frequently finds in this type of case.

15. In spite of the above background, it was only late in the day that the wife acknowledged that this was essentially a needs case. In fact, the case put forward by the wife at the final hearing on the basis of need, resulted in her securing more than one half of the net assets in the case. This is not a case which could be described as 'a very big money case' but in a case such as this where there is nevertheless still substantial wealth, absent extraordinary features, I cannot see how a needs case could entitle the applicant to more than half of the assets. The fact that this is now being run as a needs case by the wife led her counsel Jonathan Southgate QC to make what I regard as a rather remarkable proposition, namely that the wife is entitled to a full indemnity in respect of all of her costs. The rationale behind this is that her costs are a debt that needs to be paid and that, in a needs case, her needs must be met. Mr Southgate agreed with me that the usual outcome in a sharing case would be each party paying his and her own respective costs. He has sought to argue here that his client could be better off than she would have been in a sharing case because the cost is a need. I return to the issue of costs and capital apportionment later in this judgment.

16. I quoted above a section of the husband's Form E where he referred to the lifetime gift of £1.5 million for the children and the fact that the husband purchased three properties in a housing development in Surrey with one property intended for each child. I believe that those properties were purchased in the joint names of the husband and the wife. In spite of the fact that these monies were plainly intended for the children, the schedule produced by the wife's legal team continued until late in the day to show these properties on the Schedule of Assets and Liabilities in this case. In fairness to the wife, as the properties are currently registered in the joint names of herself and her husband, there will be tax issues which have to be dealt with, but it is obvious to me that they are holding the properties for their children albeit not within the formal environment of a trust. Children under 18 are not allowed to own real property and there are significant costs and other consequences of operating a trust. The wife has never suggested that the husband would not honour the lifetime gift from his father for the children and it has been, in my judgment, an unnecessary diversion to spend any time at all on this issue. I am going to order that the three properties be transferred from the joint names of the husband and the wife into the sole name of the husband. I am not going to extract any formal undertaking from the husband in respect of them, but I would like it to be recited on the face of my order that the husband acknowledges that these properties will be transferred to the names of each respective child when the time is right to do so. It is not for me to suggest when that time might be, but I can well understand that the decision may be taken to wait some years after their respective 18th birthdays before the transfers are effected. The wife is, of course, entitled to be consulted about the overview as to when the transfers to the children should take place. The husband should provide the wife with an indemnity in respect of any income that may have been received in respect of these properties and which should properly appear on the wife's

tax return.

The wife's accident

17. In late 2015, when the wife was riding a horse, the horse bolted and threw her into a concrete pillar which her head struck with considerable force. The wife was airlifted to a hospital in Hampshire where she underwent an emergency craniotomy and part of her skull was replaced with a titanium plate. The wife was placed under sedation for two weeks before being transferred to a hospital in Surrey. In early 2016, the wife suffered a seizure and underwent further procedures including the insertion of a shunt into her brain. Happily, this surgery was highly successful and was regarded by the wife as being a turning point in the road to her recovery. However, the wife suffered a significant period of post-traumatic amnesia from which she emerged in late spring 2016. She had been transferred in early 2016 to the acute neurological rehabilitation unit at a hospital in London to finish her recovery.
18. The wife has made an extra-ordinarily good recovery from this catastrophic brain injury which nearly killed her. She was discharged from hospital in summer 2016 after spending approximately nine months in hospital. She continued to receive outpatient therapy in the form of occupational therapy, speech and language therapy and physiotherapy before being discharged from all those therapies in winter 2016. She had also undergone private neuropsychology therapy sessions with a clinical psychologist from summer 2016 until autumn 2017. She said, and I accept, that the sessions were invaluable in helping her cope emotionally and psychologically in this process. It is an enormous tribute to the wife's strength of character that she has emerged so successfully from this tragic injury. It is, of course, a remarkable tribute to all the medical team that have treated her.
19. At a preliminary hearing before me Mr Pointer, on behalf of the husband, sought my permission to instruct an expert to attempt to demonstrate that the wife has an impaired life expectancy. The purpose of this, of course, would be to reduce the length of the Duxbury award. I declined the application. At this final hearing, Mr Pointer has sought to persuade me that it is obvious, as he put it, that the wife has an impaired life expectancy. I do not agree that it is at all obvious, moreover the point that I made during discussion with Mr Pointer in court was this: the wife's condition could result in her needing care earlier into old age than would be the case for somebody without the injuries that she has suffered. In my judgment, it would be quite wrong to speculate; I deal with this case on the basis of the evidence.
20. A considerable amount of medical evidence was obtained in the contested Children Act proceedings. Although I have not seen the parties' statements in those proceedings, I have read all of the medical evidence. It seems that the husband, in those proceedings, was running the argument that the wife's injury had resulted in her being unable properly to care for the children. I have no doubt that this must have been a very distressing phase for the wife.
21. At a preliminary hearing before me, Mr Pointer indicated that he would be likely to want to cross examine the wife's treating clinical psychologist and probably the wife's other treating doctors on the issue of her life expectancy. In the event, he did not seek to do so; we have not had any live medical evidence during the course of this hearing.
22. Ironically, the husband is now saying that the wife has made a complete recovery, and this is one of the issues which I have to confront. That was one of the reasons for this assertion by the husband, that it reduces her spending needs in terms of staff etc. There is, it seems to me, something of a tension between the husband's assertion that the wife has made a full recovery and the assertion that she has an impaired life expectancy. As I have said, in this case I am going to act on evidence and not on speculation, nor will I act on inference or

submissions unsupported by evidence.

23. In the context of the wife's injuries, I also note that in the summer of 2017, that is a year ago from now, the husband asserted that the wife lacked capacity to conduct these proceedings. This resulted in a substantial delay while a capacity assessment was undertaken. The assessment established that she did not lack capacity and the issue has not been resurrected.

24. I set out above the details of the parties' respective costs. I do recognise and appreciate that it probably takes longer for solicitors to take instruction from the wife than it would from other clients who have not suffered the injuries that the wife has suffered. When she gave evidence in court, the wife was remarkably strong and an impressive witness. However, I can see that sometimes she takes longer to answer direct questions than other people do. I am told by her Counsel, Mr Southgate, and completely accept, that the wife's cognitive impairments have the effect of increasing her costs and it is impossible for me in the absence of evidence to say to what extent her impairments have increased her costs.

25. Another significant issue arises out of the wife's accident. She has said that she needs full-time assistance at home and, in her Form E budget, puts the cost of staff at £36,000 per annum. According to the life expectancy table in At A Glance, the wife has a life expectancy of 37.8 years. This means that the lifetime cost, unindexed, of staff for the wife on her current estimate is £1.36 million. As I raised with Mr Southgate during the course of debate in court, I am surprised that no expert report has been put before me in relation to this claimed need. I referred during argument to the example of a personal injury claim when we would receive the report of an appropriate qualified court appointed expert to deal with these sorts of claims. The wife brings her claim and she has to prove it on the balance of probabilities, the burden of proof is no different in the Family Division from other civil courts. Try as I have in reading them, I have not been able to take from the medical reports which were filed in the Children Act proceedings and which are out of date, that the wife has this need for carers for the rest of her life.

26. The wife's treating clinical psychologist has reported that a brain injury is a disability that affects people for the rest of their lives. I accept that without question. I am certain from what I have read and from what I have observed from seeing the wife that she does need some assistance. In the section 25 statement, the wife says that she has difficulty with her short-term memory and again I accept this. She said that it is important for her to have systems in place to assist her in managing her day-to-day tasks. The wife would like to have what she refers to as a 'live-in couple'. In the section 25 statement she put it as follows:

> "Since my discharge from hospital, I have had more support workers than I would have liked. This has been because the role that is required has evolved. The level of support I needed in late 2016 is certainly not the same as that which I require now. The support I need can fluctuate on a day to day basis depending on my well-being, tiredness, stress etc as well as my diary appointments/tasks. It is therefore not always a 9am to 5pm job. As such, I consider that a live-in couple would be ideal. It is the support that I am used to during the marriage and it would not feel invasive, but I need support to deal with administrative tasks during the evening, assistance with the animals at the weekend and time with the girls etc."

27. Having made that statement, the wife then refers to the fact that her solicitors have reviewed the husband's disclosure which suggests that he spent at least £114,000 on staff between April and December 2017. I accept that in the context of this case, the wife does need some

help in the house. That is not the same as saying that she needs a live-in couple for the rest of her life. Mr Southgate asked me to infer from the existing medical evidence, that her needs are identified. Moreover, he asked me to find that, given the amount of money spent by the husband on staff, the claimed amount is reasonable in any event.

The date of separation

28. The next issue which I have to deal with is the date of separation. The parties are unable to agree about this. The husband says that it was in May or June 2015. The wife says that the marriage finally came to an end in the autumn of 2016. The significance of this issue to the parties is that the wife's riding accident was in late 2015. The husband wishes to place the accident outside the marriage whereas the wife wishes to place it inside the marriage. I address below the issues as to how much difference I consider this actually makes.
29. There are some clear pointers from agreed facts that help me in relation to the issue of the date of separation. We know, from documents in the bundle, that in November 2014, the wife instructed the well-known firm of central London family lawyers, Levison Meltzer Piggot. When dealing with the chronology in the section 25 statement the wife said 'issues developed in our marriage over a number of years. From my perspective, HG became increasingly controlling and aggressive at times'. She continued by saying 'he would very much come and go as he pleased and often made excuses for why he would spend a great deal of time away from the home'. She explained that in order to try and resolve this in the relationship, they attended couples' therapy, but she said this did not work for them. She said that 'in early 2015, although I still loved HG I decided I could no longer continue living with him and I consulted Farrer & Co. In May 2015 HG instructed his solicitor to issue divorce proceedings without any prior notice to me'.
30. It is clear therefore, from everything that I have read and from the correspondence in the bundle that both the husband and the wife had instructed divorce lawyers and indeed that a process of voluntary disclosure of financial information had been contemplated. On 21 May 2015, Farrer & Co wrote to the husband's solicitors Wooley & Co about an exchange of completed Forms E with attachments. The letter continued with the suggestion of there being a round-table meeting. This much is all common ground. The wife, however, asserts that in June 2015 they decided to reconcile. Certainly, the husband did withdraw his divorce petition. The parties moved into rental accommodation in Surrey. The husband says that they were apart after the sale of their former main home in Surrey in October 2015.
31. It is clear to me that the marriage was, to say the least, in substantial difficulties by November 2014 when the wife instructed 'LMP', as they are known. The fact that the parties' respective solicitors were negotiating a timetable for settlement of financial claims as long ago as May 2015 is a further indication of a breakdown in the relationship prior to the wife's accident. I believe that it is also clear that some attempt at reconciliation was made in June 2015. In October 2015, their former home was sold. The husband says that from June 2015, when the trial reconciliation started, to the sale of their former main home in October 2015, they spent very little time together and that they were apart during the period between the sale of the former main home in October and the wife's riding accident in late 2015. During the time that the wife was in hospital, the husband visited her and was supportive of her, both financially and in terms of time. It would be a callous man indeed who would not have provided that support, even if the marriage had ended.
32. The amended particulars in the husband's new divorce petition dated 8 May 2017 contained the following averrals, which were not challenged:
    1 In May 2015 both parties instructed solicitors in respect of divorce proceedings and the petitioner prepared proceedings against the respondent

citing unreasonable behaviour.

2 The parties attempted a reconciliation in June 2015, but it was not successful, and the petitioner and the respondent spent very little time together.

3 In October 2016 the petitioner made the decision to formalise the parties' separation and instructed solicitors to begin divorce proceedings. The petitioner invited the respondent to consider a reconciliation and she rejected his requests both directly and through lawyers.

33. Naturally I accept that the particulars contained in divorce petitions are often not defended even though they are not agreed. I do not take the purely technical approach that something said in a divorce petition, if not defended, is bound to be true. However, I am dealing here with the balance of probabilities, and on balance I find the husband's evidence, in respect of the latest separation, far more clear and consistent and find it to be supported by the contemporaneous documents. Having said that, there is rarely a single point in time when somebody can say that a marriage is over. Usually, it is a gradual decline perhaps culminating with some catastrophic event such as the discovery of another relationship but that was not the case here. The way I characterise the end of this marriage is that both parties knew by the spring or summer of 2015 that the marriage was more or less over. Both of them wanted to feel that they had done their best to save the marriage and they did agree upon a period of reconciliation. That reconciliation took place in the summer of 2015 but was unsuccessful. By the time of the wife's accident in late 2015, the marriage was more or less over. However, the husband gave, as I have said, considerable financial and other support and at least some practical support during her period in hospital and her period of rehabilitation thereafter. The new home which he had purchased was visited by therapists and was found to be unsuitable for the wife in her post-accident condition. By the time that the husband petitioned in May 2017, both parties regarded the marriage as completely dead.

34. What is the practical effect of all of this and the duty of the husband to meet the wife's post-accident needs? The statute requires me to look at all the circumstances of the case. It requires me to look at the length of the marriage. It requires me to look at the needs of the parties as well, of course, as their resources. As a matter of pure and obvious fact, the accident occurred during the marriage, the parties were not divorced. It occurred at a time that the parties knew that the marriage was more or less over but when the wife was still completely financially dependent upon the husband. The husband very properly met that obligation and has continued to do so albeit, on occasions, under protest.

35. Applying the statute, as I must, but applying my discretion that I also must, I am satisfied that this accident took place during the marriage, that it occurred after the parties had more or less come to terms with the fact that the marriage was in terminal decline. If and insofar as the wife has a need arising out of the accident, and if the husband is able to afford to meet that need, I am clear that he must do so. No one else is there to do so and there is no evidence at all that the wife would receive any state provision. I do not think in these cases that it is possible to draw a line in the sand and say that if anything happens after a fixed point in time, it is nothing to do with the husband or this court. I have to make an order that is fair having regard to all the circumstances of the case and if I find that the wife has a financial need as a consequence of her accident or indeed any other need and if I find that the husband is able to meet it, then he should do so. Nor can I, in some artificial or arbitrary way, reduce the amount of support that the husband should provide for the wife on account of the fact that the marriage was almost over at the date of the accident.

Project A

36. Next, I turn to deal with what has been referred to as 'Project A'. Project A was purchased by the husband in his sole name in March 2016 for £3.49 million including stamp duty land tax. The wife said that Project A was intended to be a home for the whole family and was

purchased for that purpose. The husband says that the marriage was effectively over by the time that he purchased this property. I am not sure that anything turns on this issue. Either it was an extravagantly large purchase for one or an extravagantly large purchase for four. It was a large property with eight bedrooms, four bathrooms, four reception rooms, a separate cottage, tennis court and outbuildings. It is set in grounds of 13.9 acres and located within the protected countryside in Hampshire. The husband has spent over £2 million on very substantial alterations to the property and outbuildings. I am told that the proposed scale of the accommodation was originally intended to be 11,660 square feet. That is a very substantial property. I heard quite a lot of debate about whether the husband was intending to install either an outdoor or indoor swimming pool. A considerable amount of time and presumably money has been spent analysing this Project A. Valuing the property has not been easy because it is in such a state of incompletion.

37. The husband says that the property is on the market but has not produced property particulars, for there are none. It seems that it is probably being quietly marketed. The husband says that in due course he would intend to move into it if he cannot sell it. Strutt & Parker has valued the property at £1.5 million. This is significantly lower than its earlier valuation figure in December 2017 of £2.675 million. A reduction in value is a combination of the softening of the market and the increased build costs in relation to the property. Some £1.64 million more was spent between the dates of Mr Watson's first and second reports. Strutt & Parker reported that in its finished condition the property would be worth about £4.75 million. Numerous different ways about how to value the property have been contemplated and it seems to me that the only valuation basis that I can accept is a straightforward usual willing seller-willing buyer, in current condition. No other basis of valuation, in my judgment, is appropriate. In other words, someone buying this property would be buying with all the build costs and associated complications lying ahead of them.

38. Mr Southgate and his junior Miss Kisser complain on behalf of the wife that by the time the husband finishes the project he will have spent £8.9 million on the project resulting in a loss of £4.3 million. If the husband were to sell Project A now in its current condition for the £1.5 million recommended by Mr Watson, he will have spent £5.8 million and would suffer a loss of £4.4 million. On any basis, it seems to me that Project A has been a wasteful extravagance.

39. For a considerable amount of time, the wife's legal team were seeking to run an add-back argument in relation to the sums spent on Project A. This issue was debated at some length before me at the directions hearing on 1 May this year. It seems to me that the wife might find it difficult to establish that the expenditure on Project A was wanton in the sense of conduct that it would be inequitable to disregard. More importantly, however, in the course of argument in relation to that issue, I questioned the wisdom of running an add-back argument in what was, essentially, a needs case. In the end I made an order that the wife was to indicate in writing by 5 June this year whether she was continuing to argue add-back in this case and that if she was, she was to plead her case properly in that regard. In the event, the wife has now abandoned her add-back claim, although on more than one occasion during the hearing, it seemed to me that Mr Southgate was, on her behalf, still trying to increase the assets and liabilities in the case by reference to the sums spent on Project A.

40. I asked the parties to produce a composite schedule of assets and liabilities clearly identifying any differences between the parties. The wife's schedule contains the description 'sub-total position if Project A never purchased' and shows a figure of £3,871,360. Seeking to put this figure into the schedule of assets and liabilities seems to me to be add-back by another name and is a practice that needs to be deprecated in the light of the concession properly made on behalf of the wife in this case. The assets are what they are and there is not a pot of gold buried at the end of garden like a dog's bone with almost £4 million inside it ready to be dug up and retrieved for a later day.

41. However, I do recognise that the extent of the works done to Project A may be relevant as to a) the sum that I should order for purchasing a property for the wife and b) perhaps a more general indication on the part of the husband of his confidence about his financial position. However, I was heard to say during the course of the hearing, more than once, that if the husband goes on spending at this current rate he will be bankrupt within a few years.
42. I also pause here, to reflect on the extent to which the wife's costs may have been increased by her failure to accept at an earlier stage that hers was a needs case where the argument of that add-back was unnecessary.
43. In summary therefore, in relation to Project A, the value can be no more and no less than the figure put on it by the jointly instructed valuer in the absence of any other evidence. Speculation about what the property might be worth at some future date when works have been done and monies have been spent on it are pointless. The judicial task is to put a value on the assets at the date of the hearing and that is what I have done.
44. An issue has also risen in relation to capital gains tax on Project A. The wife asserts that losses on Project A are available to be offset against the gains on other assets. She says that the husband is living in a rented property and, accordingly, Project A cannot be his principal private residence for tax purposes unless an effective election has been made. The husband's accountants have confirmed that no such election has been made. The husband says that the position is far less clear and that there is a real risk that the VAT concession, that is a drop from 20% to 5%, is at risk if he does not evince an intention to move into the property and treat it as his principal private residence. I do not find this issue particularly helpful in terms of the task that I have to carry out in arriving at a fair result in this case.
45. One thing that is clear is this, even if the husband is able to claim CGT losses on the sale of Project A, he has to sell the property first. I accept that there is no cogent evidence that the property is being properly marketed. It may be that the husband is being less than frank with the wife and the court about his intentions in relation to this property. It is plainly a project into which he has sunk vast sums and it may very well be that he does intend to live there not just in the short term but in the long term as well. If he was saying that he cannot afford to meet the wife's reasonable needs then yes, it would come into sharper focus; but even on his view of the case, the assets in the case exceed £11 million. In the circumstances, a detailed analysis of the various Capital Gains Taxes Acts is unnecessary for the purposes of this judgment. It is agreed that the value of the CGT losses could be in the region of £500,000 which could in due course be set off against other gains as and when the husband might make them.

The husband's recent inheritance from his mother

46. The husband's mother sadly died in January 2016. The mother's will created a trust in the sum of just under £4 million in respect of the husband. It has been made clear by Rawlinson & Hunter from their letter dated 9 May 2018, that the husband is entitled to an annual income of £50,000 net. This is plainly a resource that I am entitled, indeed bound, to take into account so far as I consider it appropriate to do so. The wife seeks to include the whole of the £4 million on the asset schedule. Her stated reason for this is because the trustees of the Will Trust have a power of appointment of capital and I accept that they do have this power. I also accept Mr Southgate's submission that £50,000 is quite a low rate of return on £4 million. It works out to be about 1.25%. It is clear, of course, that I can invade non-matrimonial capital in order to meet the wife's needs claim if I need to. I shall be doing this anyway in relation to other resources because any lump sum which the husband pays to the wife will be paid from what we would term non-matrimonial resources.
47. The Will Trust, however, has an even less matrimonial character to it, since it fell in post separation. In my judgment, it is plainly wrong to include a specific figure or indeed any capital figure at all in the asset schedule for a resource which only generates income at the

moment. I recognise that the position may change and that there may be an appointment of capital; but there may not be.

48. Similarly, as already stated, I recognise that the husband is likely to receive further sums by way of gift or inheritance. It would be quite wrong for me to let this prospect affect my assessment now of the wife's needs or of his obligation to meet them.

Other issues on the schedule

49. I deal now with other issues on the schedule of assets and liabilities. It is neither necessary nor proportionate for me to address every single issue between the parties in relation to the schedule of assets and liabilities. Slightly different figures are given in respect of cash and investments. Given that the value of these assets fluctuates from day to day anyway, the difference is of no significance and no time was spent in court on this subject. For the purposes of completing the schedule below, I simply split the difference between the two positions where there are minor variations.

50. I have included chattels on the schedule because the parties have done so, but the reality is that I do not expect the wife to sell her jewellery to fund her lifestyle, nor do I expect the husband to sell his chattels to try and fund the lump sum. During the course of the hearing the parties were able to reach agreement about one or two of the more significant chattels. I expect my order to contain the usual provision that the parties are to agree a division of the chattels by a given date and that if they are unable to do so they must make an application by a later given date. In the event that there is to be, what I would describe as, an 'inelegant scrap' about such things, then I shall remit it to the Central Family Court to be heard by a District Judge. I urge the parties to apply common sense in relation to this issue or perhaps even attend mediation or arbitration rather than take up valuable court time if they really cannot reach agreement.

51. There is a minor issue in relation to the sum of £62,500 which a Mr AG owes to the husband. The wife complains that the husband has done nothing to recover it. The husband says that he has written it off as a bad debt. In the context of this case the sum is somewhat *de minimis*. However, the husband has offered to assign the benefit of the debt to the wife. I leave the parties to decide whether or not to deal with this in this way but for present purposes I have removed this money from the schedule. If the wife does take the benefit of an assignment and recovers all or any of the money, then that would be a benefit to her which would be to her credit. It would not in any sense reduce the lump sum which the husband has to pay pursuant to this order.

52. There is a property called Property B which is in the parties' joint names. It is the second home of the parties in West Sussex and has an agreed value of £1.35 million.

Property C

53. I turn next to deal with Property C. On 11 June 2018 the wife exchanged contracts to purchase Property C. At the pre-trial review which took place before me on 7 June, that is four days prior to the exchange of contracts, the wife had in fact already committed herself to the purchase of this property. It is evident from the conveyancing file, which we have now received, that the memorandum recording the offer pre-dated the pre-trial review, albeit that the wife did not exchange contracts until after the pre-trial review. The wife filed a statement dated 1 June this year in which she referred to this property and invited the husband to fund its purchase. The issue was floated before me on 7 June and I made enquiries with the husband as to whether he was prepared to assist with the purchase or not. It is of course common ground that I had no power to order him to provide an interim lump sum for this purpose even if I had thought it appropriate to do so. Plainly, in any event, I

could not form a view at that stage as to the outcome of this case since I only had a limited number of the papers and that was a preliminary hearing.

54. The purchase price of Property C is £1.55 million. The deposit of 10% is therefore £155,000. The wife has already paid this, having borrowed it. We now know that at the pre-trial review on 7 June, the wife had funds in place because she was borrowing the money that was necessary to effect the exchange of contracts, with a delayed completion until October. There is no doubt at all that the wife should have told the husband and the court about this and that her failure to do so is a serious act of non-disclosure on her part.

55. Furthermore, it is evident that there is some sort of joint venture in place between the wife and her new partner, Mr. L. Mr Pointer says that she was masquerading as Mr. L's sister for the purposes of the purchase. Certainly, emails that we have now seen support this suggestion. I have thought very carefully indeed about the impact of this issue on this case. The wife has been naturally frustrated with the lack of progress and the adjournment last year, caused by the husband's decision to question her capacity, must have been deeply frustrating for her. She sees her husband pouring millions of pounds into Project A and yet she thought of herself as being stuck in limbo without the opportunity to purchase a property. She was frustrated by the delay that was caused by the husband's assertion in mid-2017 about capacity.

56. Whilst I am not in any doubt at all that the wife knew she should have disclosed her position in relation to Property C and deliberately chose not to do so, I believe that she was so set on purchasing Property C that she decided to act in this inappropriate way. I do not take from it some deeper sense of malice or dishonesty.

57. Mr Pointer explored, in cross-examination with the wife, the reasons for the purchase of Property C. I accept that it appears to suit the wife in some respects in that it has equestrian facilities, although far greater equestrian facilities than the parties ever enjoyed in their matrimonial homes. It also has a cottage where staff could live, were she able to employ them. There are two or three barns in the grounds and it transpires that the wife's partner Mr. L is going to purchase the land with the barns on it with the intention of demolishing the barns and building houses. I have not gone deeper than this into the arrangement that he appears to have entered into, but it seems that the person who has lent money to the wife for the deposit is in some way engaged in the project.

58. I am bound to say that I became concerned at one point as to whether, as I put it colloquially, the wife has been taken for a ride in the purchase of this property. She is satisfied that she has not and so is Mr Southgate and it is no business of mine to make further enquiry beyond that.

59. I referred above to the location of the children's schools. Property C is some 30 miles from Y's senior school in West Sussex and anyone who knows the geography of that area will know that travelling along country roads such as those that separate these two addresses is far from easy. I was told, and have no reason to doubt, that it would take at least an hour to make that drive and could take considerably longer according to the time of day and the traffic. This means that the children will be subjected to two or three hours in the car each day they are not boarding, which will be most days when they are not with their father. Moreover, the property appears, from the map that I have seen, to be extremely close to Gatwick Airport. However, the wife is entitled to spend her money as she pleases, and it is not the business of the court to dictate where she should live. I do, however, find her love of this property given the circumstances, slightly curious. Mr Pointer urges me to say that this is cogent evidence of the fact that the wife and Mr. L are partners who intend to live together and who will live together. Plainly, he says, this is relevant to the quantum and/or term of any maintenance order that I make.

60. Mr Pointer complains, on behalf of the husband, that the wife has unreasonably crystallised her housing need. I agree that the wife has attempted to crystallise her housing need but if I

take the view that she has spent more on a property than I would have awarded her, I shall have no hesitation in saying that she will have to use some of her lump sum for capitalised maintenance to fund the difference. The court is not prepared to be presented in these cases with some sort of fait accompli.

61. The wife has produced the particulars for Property C. The main house has a floor space of 2,857 square feet and this could not in any sense be said to be large in the context of this case. The property has four to five bedrooms. It houses, as I have said, an equestrian facility including a riding school, which is something that the parties never enjoyed during the marriage. It has a bungalow in the grounds which the wife would like to use as accommodation for the live-in couple, to which I have referred above. The property is in an area of Surrey where the wife says she feels comfortable. She says that she cannot commence a new life surrounded by friends and associates of her husband's. I understand, and I accept that. I have no doubt that the proximity of the property to Mr. L is also a driver in the purchase, perhaps it is the main driver. I deal later in this judgment with the lump sum which I order the husband to pay to the wife in respect of her housing needs.

The assets and liabilities summarised

62. I now turn to summarise the assets and liabilities. I have addressed the various differences on the schedule above and ignored one or two tiny differences. My computation of the assets is as follows:

Project A	1,462,500
Property B	1,316,250
Property D	81,263
Property E	633,750
Property F	365,626
Property G	414,375
Property H	604,500
Bank (difference between positions averaged)	645,000
Investments (H) (difference averaged)	7,250,000
Liabilities (mainly W's costs)	(1,000,000)
Chattels	330,000
Property C deposit	155,000
TOTAL	***12,258,264***

63. As is often the case, this figure of £12.258.264 will not be an exact figure. As is evident from the table above, £7.5 million worth of the assets are contained within investment funds, ISAs and so forth. The value of these will vary minute by minute during the working day. It is enough for me to say that I compute the assets to be worth about £12 million. The husband's schedule showed the assets would be £11.6 million. The principal difference

between his schedule and the wife's, are accounted for by the Project A addback, the inheritance from the husband's mother and the CGT issue. I have addressed each of those above and the reasons for preferring the husband's presentation of the schedule in these regards.

The standard of living enjoyed during the marriage

64. As is often the case, a considerable amount of time was spent looking at the schedules of expenditure. There is no doubt at all that, during the marriage, the parties lived extremely well. The parties enjoyed two homes, a main country home and a second home called Property B which is in West Sussex, as I have just described. For most of the marriage, the main home was a property in Surrey which, I am told, is set in 235 acres and overlooking the protected countryside. It was sold for £5.75 million in 2015. The main house had four to five bedrooms but there was also a separate lake house with bedrooms and there were outbuildings. There was also stabling and a separate flat where the housekeeper and her husband resided. The property had a heated swimming pool.
65. After the main home was sold, the parties rented a property in Surrey which had a separate stable block and swimming pool. There is an issue as to whether Project A was purchased for them as a couple or for the husband on his own. This feeds back into the date of separation argument which I have already addressed in this Judgment. Either way, however, Project A is a significant property which is being subjected to an enormous amount of expenditure and this is plainly relevant to the standard of living issue, in that it reflects the standard of living that the husband thought that he would be able to maintain. I still expect, on the balance of probabilities, that the husband will do his best to retain that property and live in it.
66. At the moment, the husband is renting a property in Hampshire which I am told has 7,134 square feet. I am bound to say that the husband's assertion in the section 25 statement, that he intends to live in a much less desirable property, in the £900,000 to £1.2 million mark, has a bit of a hollow ring to it. I accept that there is an issue about the square footage of the husband's rental property but it has not been necessary for me to resolve that, as he is not going to be living there very long anyway. There is no doubt that the family employed a considerable number of staff to help with the children, the household, the garden, the grounds and other administrative paperwork.
67. The wife's budget dated 28 February 2018 comes to £228,357 per annum. The husband's budget is £53,590 per month which is about £640,000 per annum. This includes £7,500 per month for what he calls 'maintenance'.
68. The wife's legal advisors have carried out an analysis of the husband's expenditure which, they say, shows that he spent £223,264 on just personal needs in the last 12 months excluding staffing costs which they say consistently runs at £150,000 per annum. I pause here to note that this is not a case where non-disclosure is alleged by the wife. It is completely clear that the husband cannot possibly afford to continue to live at the rate that he has been doing so in the past. He simply does not have enough money and that is before I make the order that I am going to make today.

Cohabitation

69. I turn to deal with the issue of co-habitation. The husband has carried out covert surveillance of the wife and seeks to establish that she spends a considerable amount of time with her partner Mr. L. There was debate in court about the admissibility or otherwise of this surveillance report. That report was made by somebody who may or may not have been "beyond the seas" at the time of the court hearing. We did not have details of what, if any other, surveillance was carried out. This was potentially significant. We were told about two particular weeks of surveillance that had been carried out. Context needs to be

given to those weeks by knowing whether other weeks, also the subject of surveillance, will show, for example, the number of nights being the same as the author of the report had reported in the two weeks that he had chosen. Were they chosen because they provided the best results on the part of the husband rather than because they presented an average picture? Were they random weeks?

70. Mr Pointer cross-examined the wife for some time about the time that she spends with her partner and it seemed that the evidence that she was giving was broadly consistent with the evidence that Mr Pointer was seeking to establish with the surveillance report. At one point, it was thought that Mr. L himself might be coming to give evidence in court. In fact, he accidentally walked into court and then out again for a brief moment. Mr Pointer would doubtless liked to have asked him questions not only about co-habitation but about the possibility of a joint venture in relation to the purchase of the barns.

71. I told Mr Southgate that if he wanted to call Mr. L, Mr Pointer was entitled to a statement in advance so that the husband's team knew the nature of the evidence that was going to be given. Mr Southgate, wisely in my judgment, decided that this trial should not be substantially delayed, to enable Mr. L to give evidence. The delay would probably have been for some months. The wife needs to complete the purchase of the property or be in default and the latter would presumably be extremely expensive for her. She could even forfeit her deposit.

72. Although there is some murkiness about the involvement of Mr. L in the purchase of Property C, I do not believe that I would be very much better informed at the end of the evidence than I am now. As far as co-habitation is concerned, what the husband needs to establish, to put it bluntly, is that the wife will need less or should have less money because she is co-habiting. If she and her partner were living together, then I would expect her partner to be paying, for example, half of the running costs of the property. That would be entirely fair. It could also affect the wife's need for staff. In these cases, as in all cases in a civil court, and I have said this already in another context, the person who makes an allegation has to prove it on the balance of probabilities. Although it is clear to me that Mr. L is an important person in the wife's life, someone to whom she refers as boyfriend or partner, I cannot find and do not find, on the balance of probabilities, that he is or will be making a financial contribution to her life in a way that would significantly alter the provision that the wife needs from her husband.

Housing need

73. I turn next therefore, to deal with the question of housing need. As in all these cases, each side has produced housing particulars. The husband produced a series of properties ranging in price from £935,000 to £1.2 million. I thought that the wife was too dismissive of these properties and has not given them sufficient consideration. There is nothing inherently objectionable about any of these properties; they are just not as nice as the homes that the parties have lived in and not as nice as the property that the husband aspires to live in if Project A is ever completed.

74. For her part, the wife produced a series of properties below or around the £2 million mark which were substantially in excess of anything that I might have been likely to order. Of course, to her, it was all something of a charade since she had already decided to commit to the purchase of Property C. In fact, the wife's open position on housing need is for £1.8 million. The husband offers £1.3 million. One remarkable irony of these proceedings is that the difference between the parties' respective open positions on housing is £500,000, which is not much more than the wife's outstanding costs, and but a fraction of the overall costs incurred in this case.

The parties' respective open positions

75. Turning to the parties' open positions, in terms of housing, the wife says that the property at Property C is suitable for her needs and that the husband should accept this and provide the funds for it. The husband contends that a housing fund of £1.2 million will be sufficient to provide the wife with at least a four-bedroomed property with a number of acres and a swimming pool, if desired. The husband offers to pay the stamp duty land tax and other purchase costs which he rounds up to £100,000 and therefore his offer for housing is £1.3 million.
76. In the context of the sums which the parties have spent on costs, it is not significantly different from the £1.55 million that the wife requests. Although, in fact, the wife seeks a total of £1.8 million because she wants money for, as she puts it 'stamp duty, costs of purchase, moving costs and money for the furnishings and modest improvements'.
77. The really big difference between the parties' positions is in respect of capitalised maintenance. Both parties wish to deal with this case on a clean break basis. I did raise this matter with Mr Pointer at court. Given the husband's insistence that the wife either is or will shortly be co-habiting, it would have been open to the husband to seek to persuade me that I should deal with this case on the basis of a joint lives order or periodical payments. This would also have met the issue as to whether or not the wife has an impaired life expectancy which I have dealt with above. However, the husband is adamant that he wishes to secure a clean break. I think that he is right. He has had an unfortunate experience with his first wife and now he and his second wife have spent a considerable fortune on litigating this case. The litigation needs to be brought to an end.
78. The husband's offer for maintenance is an income fund of £57,000 per annum until the wife is 67, stepping down at that stage. The husband contends that this produces a Duxbury fund requirement of £1,069,126.
79. The total value of the husband's offer therefore is £2,369,126 on a clean-break basis. At the date of the husband's open offer, namely 26 April this year, the wife's outstanding costs were £475,000 of which £280,000 were in relation to the financial remedy proceedings. The husband offered to pay the wife's financial remedy costs subject to a detailed assessment. The position now, of course, is that the wife owes £926,000 in respect of her outstanding costs and litigation loan. This is almost as much as the entire Duxbury fund offered by the husband.
80. The wife seeks a total sum of £7.715 million. This is made up as £1.8 million for housing, £5 million for a fully amortising Duxbury fund and £915,000 for her litigation loan and unpaid legal fees.

Outcome

81. I have prepared a schedule that I have distributed, and which is set out above, that has assessed the assets in this case as being about £12.25 million. In addition to this the husband has the £50,000 a year income stream from his mother's Will Trust. He may or may not receive appointments from the trust and he may or may not receive further sums by the way of gift or inheritance. The wife's offer equates to a little over 64% of my computation of the assets. I regard this open position as being completely unrealistic and totally outside the bracket of possible outcomes in this case. Parties know when litigating that there is always considerable judicial discretion in these cases and it is never easy to predict which judge on which day is going to produce what outcome. This is why parties need to be realistic in settling. The wife has, in my judgment, adopted a totally unrealistic position in this case. Even if she were to have persuaded me that I could put into the schedule of the capital assets the value of the Will Trust and even if she had persuaded me,

contrary to her own concessions, that I should add back almost £4 million into the schedule on account of monies spent on Project A, she would still be seeking a disproportionate share of the assets when considered in the light of the factors set out in section 25 of the Matrimonial Causes Act which I have referred to above.

82. I have decided in respect of housing that the wife's purchase of Property C, although covert and less than honest, is within the bracket of likely outcomes in respect of her housing need. Had I been shown that property as a possible candidate for purchase during the course of this hearing, rather than presented with it as a fait accompli, I think I would have regarded it as an inappropriate purchase. It is riddled with complications in terms of planning consent in relation to the outbuildings. I am concerned that she has entered into a purchase with her reasonably new partner. I am concerned that she may have little or no control over what buildings appear at the end of her garden. I expect that it will be an expensive house to maintain. However, in terms of pure numbers, I do not think that I would have been likely to regard £1.55 million as wrong and I might well have alighted on the figure of about £1.5 million as reasonable for her housing. I note, at this point, that it is relatively comparable in value terms with the parties' second home Property B, which has an agreed value in this case of £1.35 million.

83. Accordingly, my figure for the wife's housing is £1.65 million once stamp duty land tax and other purchase costs are included. I do not agree that I should take it up to the £1.8 million sought by the wife when she wanted an additional amount for furnishing and modest improvements. I am satisfied that from the property particulars that I have seen, that £1.65 million would provide her with a fine home, money to spend on improving it and the cost of acquiring it. If she wishes to spend money on Property C then she will need to dip into her Duxbury fund and then consider releasing equity in the property in later years or perhaps selling it and trading down to a less expensive property.

84. For the reasons already set out above, I believe that this case should be resolved by way of a clean break. Although I have no doubt that Mr. L is a significant figure in the wife's personal life there is no evidence to support the suggestion that he is providing her with financial assistance or that he is likely to be doing so in the near future. The wife told me that both she and Mr. L have been "burnt", that they have children with busy lives, and they do not wish to live together. On the balance of probabilities, I accept that the wife's present intention is to live in Property C and that Mr. L will live in his own home with his children when they are with him and that the two of them will spend a considerable amount of time together.

85. Mr Pointer has asked me to approach this case on a *Fournier* basis, that is in effect that I randomly select a term during which the maintenance will be payable and then capitalise that term into a lump sum. In my judgment, that would not be fair to the wife. She has income needs which need to be met, she has no earning capacity, and she has some disabilities. The husband has invited me to deal with this by way of a clean break and on the evidence that is available to me I can only do this on the basis of the usual Duxbury tables. Duxbury is no more than a tool; it is not in any way a rule that has to be followed. It has been subjected to considerable criticism not least in the return that it assumes will be made. However, it is still the tool used by judges and family lawyers alike in these cases and nobody has sought to argue in this case that there is a better way of assessing the way to capitalise lifetime maintenance. Accordingly, I will use the Duxbury tables on a normal full-life basis.

86. My task therefore is to assess the wife's income needs. It is clear to me, as I have already said, that neither the wife nor the husband can afford to live at the rate contended for by each of them in their respective budgets. There is simply not enough money for that to be possible. The wife's budget is an unreasonable dream which cannot be afforded. I also remind myself that the statute contains the words 'can adjust without undue hardship'.

Hardship is a relative concept but, in my judgment, there is no compulsion to maintain the marital standard of living. I have been referred to numerous cases on this subject and in this case certainly do not wish to add to the jurisprudence, each case is so fact-specific. However, I agree with Mostyn J when he said in *SS v NS (Spousal Maintenance)* [2014] EWHC 4183 (Fam) that 'it is a mistake to regard the marital standard of living as the lodestar'. Similar observations were made by Moylan J, as he then was, in *BD v FD* [2016] EWHC (Fam) 594), when he said, "the use of the standard of living as the benchmark emphatically does not mean that, as referred to above, in every case needs are to be met at that level either at all or for more than a defined period…".

87. I have gone through the wife's budget carefully. Some items are obviously far too large. For example, £29,000 a year for holidays and weekend breaks. On the basis of her life expectancy of 37.8 years, that translates unindexed into almost £1.1 million for holidays and weekend breaks which she expects her husband to pay for. I have to bear in mind that the parties lived together for about 12 years and were married for about eight years. Of course, they have children together and each of the parents will be contributing towards the welfare of the children for many years to come.

88. I have decided that the husband's offer of £57,000 per year is considerably too low in this case. I think that the wife does need some help at home. She now has the accommodation to provide a home for those that are to help her. Whether she chooses to spend £36,000 a year on a couple or a significantly smaller sum for a single person must be a matter for her and her own budgeting. I accept that she needs some assistance in the house and with planning various aspects of her life but in many respects her needs are no different from any other person trying to live on a budget. This case cannot afford her claimed budget or anything like it. In my judgement, the appropriate lump sum award to generate an income for the wife is £2 million. On a Duxbury basis, this will generate approximately £90,000 a year for life. This is a very significant income by any average standard. It will be a matter for the wife how she decides to use this money. She may decide to pay for staff, she may decide to have luxurious holidays, but she will have to make choices as most people do when budgeting.

89. Accordingly, the total lump sum payable by the husband to the wife in respect of housing and capitalised maintenance will be £3.65 million.

90. I am then faced with the vexed question of what to do about the wife's litigation loan. Whilst I recognise that she has a significant debt in respect of the Family Law Act proceedings and the Children Act proceedings, it seems to me that I have to tread very carefully indeed here. The Children Act proceedings were compromised by an agreement that the children split their time more or less equally between the parents. The wife incurred very substantial costs indeed in those proceedings and the husband did not. I imagine that for both parties, those proceedings were a nightmare but for the wife, with all the difficulties she had encountered, they must have been especially difficult. I am sure that it would have been all the more difficult for her in the light of her horrific riding accident.

91. Against that, people cannot litigate on the basis that they are bound to be reimbursed for their costs. The wife has chosen to instruct one of the highest regarded and consequently one of the most expensive firms of solicitors in the country. Whilst I have no doubt that the representation has, at all times, been of the highest quality, no one enters litigation simply expecting a blank cheque. A judge, in a position as I am now in, is facing the invidious position of seeing his or her order undermined by the extent of litigation loan or costs liability. If, here, I make no provision for the wife's costs or litigation loan, then half of the Duxbury fund will be wiped out and she will be left with insufficient money to manage, according to my assessment. Doing the best that I can to recognise that her costs are excessive, to recognise that she has presented an unreasonable case in financial remedy proceedings but to recognise that her Duxbury fund cannot be completely undermined and

that the husband's offer was too low, I am going to add to the lump sum, already referred to above, an additional £400,000 which is a little bit less than half of the total sum due.

92. I note that in his offer letter the husband offered to pay the wife's costs to be assessed on a standard basis. That was an entirely reasonable offer in respect of costs when made in April this year. After a detailed assessment he might have succeeded in reducing the costs liability by about one-third and that gives me some basis for making the order that I have. The husband's open offer, seeking as it did a step-down in maintenance and starting from a low point in maintenance terms was obviously too low. However, the wife's claims are manifestly too high, and the husband's position was far closer to the likely outcome at trial.

93. The wife will, therefore, have to find some £500,000 in order to fund that part of the costs which I am not ordering the husband to pay. I recognise that this will deplete her Duxbury fund. I have very carefully considered whether this is fair. It might be said that I have assessed her needs at a given figure. If I have done that, then how can I leave her with a lower sum which, by definition, does not meet her needs? This conundrum happens in so many cases. People who engage in litigation need to know that it has a cost. The wife may choose to sell the property at some point in the future converting part of the value of it into a Duxbury fund. She may decide to use the property to generate some income rather than simply installing her own staff into it. She will have to make the sort of decisions about budget managing that other people have to make day in day out, but I am satisfied that people who adopt unreasonable positions in litigation cannot simply do so confident that there will be an indemnity for the costs of the litigation behaviour, however unreasonable it may have been.

94. The consequences of the above will be that the wife will have a Duxbury fund not of the £2 million that I intended but of about £1.5 million. This will generate for her less than £75,000 a year net, for life. This is a small fortune for most people. Parties cannot spend £1 million on their representation without being prepared to face the consequences of their decision to incur that level of expenditure.

95. Accordingly, the total amount which the husband has to pay pursuant to this order is £4.05 million. I shall hear submissions in relation to time for payment, but it does appear that the husband has the capacity to liquidate resources fairly easily from his investment portfolio. This will leave the husband with resources in the order of £8 million, a little over. In addition, he has his income from the Will Trust of £50,000 per annum plus the possibility of appointments of capital in due course from that fund. I make it clear that my Judgment leaves him free to live in Project A or not, as he chooses. For the avoidance of doubt, the wife will transfer to the husband her interest in Property D, Property B, Property E, and the properties in the housing development in Surrey. The husband will pay the cost of these transfers.

96. In relation to child support, the husband's position is that he resists any orders since there is a shared care regime and he will already be paying school fees. The reality is, in any event, that I have no jurisdiction in relation to child maintenance, absent a consent order. I invited the parties to consider whether they would agree to a nominal order which I could then vary. The husband declined and that is the end of the matter, at least for the time being. It is open to the wife to make an application to the CMS, if advised. I do not know what outcome that would produce, given the shared care arrangement, but we do know that the husband has income.

97. There will be a school fees order, namely that the husband will pay or cause to be paid the children's school fees until they complete their full-time secondary education. In the event that they proceed to tertiary education then that issue can be visited at that time. The children already have resources in their own right and may, by then, have acquired more.

98. I have endeavoured to address the issue of costs but will hear argument in respect of them if

invited to.

End of Judgment

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