Neutral Citation Number: [2021] EWFC 60 (Fam)

Case No: BV20D05031

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2021

Before :

MR JUSTICE MOSTYN

- -

Between :

E	**Applicant**
- and -	
L	**Respondent**

- -
- -

Michael Glaser QC and **Ewan Murray** (instructed by **W Legal Limited**) for the **Applicant**
Simon Webster QC (instructed by **Katz Partners**) for the **Respondent**

Hearing dates: 28 June – 1 July 2021

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Approved Judgment

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MR JUSTICE MOSTYN

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This judgment was delivered in private. The judge gives leave for this anonymised version of the judgment to be published. In no report or publication of this judgment may the identities of the parties be revealed. Breach of this restriction will amount to a contempt of court.

Mr Justice Mostyn:

1. I have before me an application for financial remedies following divorce brought by E ("the wife") against L ("the husband").

2. The husband is aged 66, and the wife is aged 61. The husband had a previous long-term relationship with X, with whom he had three children. They separated in 2015 after 27 years of cohabitation. The children are now all adults. The wife has not previously been married or in a long-term relationship.

3. The parties agree that their relationship began in December 2015; although they met for the first time in 1987 but subsequently lost touch. The husband began providing the wife with monthly financial support (between £5,500 and £10,000) immediately following the start of their relationship. However, there is some dispute about when they commenced cohabitation. The wife says that the parties began to cohabit in January 2016, but the husband says there was no cohabitation before the marriage.

4. The parties became engaged in September 2016, and married on 20 June 2017. The wife says they finally separated in December 2019. The husband says the final separation occurred in October 2019, albeit that the parties had previously separated twice, in Spring 2018 (for two months) and in winter 2018/2019 (for nearly four months).

5. Following separation, the husband reduced his monthly financial support to the wife to £2,500 in January 2020. The wife issued her divorce petition and application for a financial remedy in March 2020. Decree nisi was pronounced in October 2020. After an unsuccessful private FDR appointment, I heard the wife's application from 28 June to 1 July 2021.

6. Since separation, the wife has lived in a flat in West London, a property she bought in 2002. It was until recently mortgage-free, the husband having given the wife circa £630,000 to pay off the mortgage in March 2019, but the wife has now taken a fresh mortgage on the property in order to fund the legal costs of these proceedings. The husband lives at F House, in Wiltshire, an attractive country house in which he used to live with X. As a result of the financial agreement he reached with X upon their separation, F House is now owned by the husband's three children, although the husband has the benefit of a lease over the property for the next 21 years. He lives there with his son (aged 28).

7. The wife is a housewife. In her 20s she did some modelling, and in her 30s she was briefly the proprietor of a lingerie, nightwear and swimwear shop in West London, before being employed by her father at a hotel he owned in West London. In her 40s, she began working in the antiques industry, and did that until 2012 (although from 2003-2007 she worked only part time as a result of medical issues). Since 2012, the wife's income (aside from the allowance from the husband) has come from letting an investment property of which she owns a short lease, also in West London, which she bought in 2006.

8. The husband is a highly successful production manager for live music events, specialising in audio and visual effects. The husband has reached the pinnacle of a career in this industry, demonstrated by the fact that he and his business partner, MX,

worked with a well-known artist on their 2017-19 world tour, which was one of the highest grossing concert tours of all time. The husband's other current major client is G, with whom he has worked since 1986, but over the course of his career he has worked with some of the biggest names in music.

9. The husband has an interest in six businesses, through which he provides the audio-visual equipment for music events. Three of those entities are American: Company A, Company B and Company C. These entities have been settled into a trust, The Z Trust, although the husband accepts that the trust assets may be treated as being his for the purposes of the wife's application. The other three are British: Company D, Company E, and Company F, liquidated in December 2020.

10. The husband's interest in each company is as follows:

    i) Company E: 45%

    ii) Company F: 25% (MX holds 25%) – liquidated in December 2020

    iii) Company D: 49% (MX hold 49%)

    iv) Company C: 100%

    v) Company B: 100% (effectively)

    vi) Company A: 100% (effectively)

11. Much of the disagreement between the parties in this case has been over the value that should be ascribed to Company A, the overwhelmingly important business entity in which considerable value reposes. I deal with the valuation controversies below. The value of the husband's interests in the other companies is a mere £365,000 and of no relevance to the outcome of this case.

12. The wife's open position is that she should be paid a lump sum of £5.5 million. This was her calculation of half of the marital acquest, which was based on the valuations provided by the Single Joint Expert, Roger Isaacs.

13. The husband took strong exception to the evidence of Mr Isaacs, and I allowed him to adduce his own accountancy evidence from Mr Steve Taylor. In order to maintain equality of arms I allowed the wife to adduce her own accountancy evidence from Ms Fiona Hotston Moore. All three experts gave evidence before me in a video hot-tub session. I record that they were all highly professional witnesses, fully in command of the figures, who expressed their opinions, both in writing and orally, fluently and convincingly.

14. The husband's open position was that he should pay the wife a lump sum of £600,000.

15. The extent of the difference between the parties is extraordinary. It seems to be the product of imprecision within the case-law combined with intransigence and dogmatism by the parties in the pursuit and defence of the claim. The husband's costs amount to £451,000 and the wife's to £436,000. Nearly £900,000 in costs has been incurred in a case where the husband says that his liability is two-thirds of that amount, and where the overall assets I have found to be about £9.2m.

16. Why is there such a gulf between the parties?

17. The main reason is that the husband has maintained from the start that because of the short duration of this childless marriage, this is not a case for equal sharing of the marital acquest but one where the wife should be confined to very conservatively assessed needs.

Childlessness

18. In his impressive skeleton argument Mr Webster QC wrote:

> 'There is a consistency of judicial reservation about the sharing principle applying to assets generated over a short **childless** marriage that sings out from [the] authorities. It is to be remembered that the concept of sharing is a judicial construct, just as are the concepts of matrimonial and non-matrimonial property terms of art, developed and considered in the quest for a fair outcome. The judicial strait jacket may tend to limit the ambit of discretion in long marriage cases or cases where children have been born to the parties. But the short, **childless** marriage remains a factual matrix where the concept of sharing may well appear alien to or otherwise wholly at odds with any independent, objective appraisal of fairness.
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> We say that the factual matrix of this case is a paradigm example of a case where the sharing of marital acquest, if indeed there is, on proper analysis, any acquest, is unjustified. This is a husband who, in his autumn years, through this marriage continued in a business in which he has worked for the whole of his adult life. The foundation of that business, the continuation of that business during this short, **childless** marriage had nothing to do with the joint endeavours of the parties.' (Emphasis added)

19. I note that in this short passage alone Mr Webster mentioned the childlessness of the marriage three times. I asked Mr Webster why the absence of children should, in a short marriage case, militate against an equal sharing of the marital acquest. He pointed to *Sharp v Sharp* [2017] EWCA Civ 408 at [97] where McFarlane LJ stated:

> 'The inescapable conclusion from this analysis of the speeches in *Miller*, in terms of the possibility of some alteration from, rather than a strict application of, the equal sharing principle in relation to short, childless marriages, where both spouses have largely been in full-time employment and where only some of their finances have been pooled, is that fairness may require a reduction from a full 50% share or the exclusion of some property from the 50% calculation. Of the five members of the Judicial Committee, only Lord Nicholls suggested a contrary view and even on his analysis the potential for some form of relaxation can be seen.'

20. In *XW v XH* [2019] EWCA Civ 2262 Moylan LJ, while seeking determinedly to limit this exception to the equal sharing principle, seemingly accepted, with barely concealed distaste, that it might apply in a short marriage case which was childless. He stated:

> '141. Returning to *Miller*, in my view, the substantive focus of Lady Hale's observations, at [147] to [153], is short, childless, marriages. However, even if she left open that they *might* apply in other than such marriages, we can now see that to apply them in those cases would be discriminatory in the same way that special contribution initially risked being applied in a way which would have significantly undermined the progress made by *White*.
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> 142. Whilst there may be elements within the above paragraphs in *Miller* which are capable of a broader interpretation, I am persuaded that they do not *require* this court to take that approach. I acknowledge, in this discretionary area, that it would be unwise to close doors to the notion that fairness might leave scope for the court to decide not to effect an equal division of marital assets because of a particular factor or combination of factors in an individual case. However, as a matter of general principle, I find it hard to envisage how, in other than short, childless marriages fairness would be achieved if the existence of "business assets" was the basis for justifying an other than equal division.
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> …
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> 145. Accordingly, it is evident that a broader application of a different approach to a marital asset merely because it was a "business" asset would be, as was identified in *Charman*, at [83], "deeply discriminatory" and would, therefore, "gravely undermine the sharing principle". The effect would be the same whether property is excluded from the sharing principle, because it is not treated as marital property, or whether the sharing principle is not applied to such property so as to divide it equally. Indeed, it would seem to me likely to be rare for sufficient wealth to have been generated other than through "business efforts and acumen" for the determinative principle to be sharing rather than need. This is why I have concluded that the application of a different approach to business assets, in other than short, childless marriages, would result in the sharing principle being undermined in the same way identified in *Charman* and, accordingly, that the judge was wrong to take this factor into account, at [239].'

21. I have struggled with the logic underpinning this exception. Why should it make any difference, if there is to be an exception to the equal sharing principle for short marriages, whether the parties had children or not? I put this to Mr Webster and his response was:

> 'The reason it exists is because when one tries to take a step back, you say to yourself fairness is ultimately what we're arriving at. Is it fair in the circumstances of a short childless marriage? As Holman J says, having children changes everything.'

22. I put to Mr Webster that whilst this might be true when it came to the application of the needs principle, it surely could not make any difference at all in the application of the sharing principle. The sharing principle looks at the value accrued during the span of the marital relationship and, deeming the parties' incommensurable contributions to that accrual to be of equal worth, divides that value equally. Why should the presence of a child make a difference?

23. I admit to being taken aback by Mr Webster's response, which was:

> 'The having of children denotes a completely different category of commitment.'

24. I have to say that I fundamentally disagree with this, and I said so at the time. Mr Webster then sought to downplay that factor and focused on the shortness of the marriage as being the key reason for applying an exception to the equal sharing principle. I will address that point later. For the moment I shall stick with this factor of childlessness.

25. In my decision of *NB v MI* [2021] EWHC 224 (Fam) I analysed the law concerning capacity to marry, and in so doing I considered the attributes of valid matrimony. At [25] I stated:

> 'The notion that the procreation of children is a chief end of marriage was discredited long ago. In *Baxter v Baxter* [1948] AC 274 Viscount Jowitt LC said at 286:
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> > "Again, the insistence on the procreation of children as one of the principal ends, if not the principal end, of marriage requires examination. It is indisputable that the institution of marriage generally is not necessary for the procreation of children; nor does it appear to be a principal end of marriage as understood in Christendom, which, as Lord Penzance said in *Hyde v. Hyde* (1866) L R 1 P & D 130, 133 "may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others." As regards the phraseology of the marriage service in the Prayer Book, this House in the recent case of *Weatherley v. Weatherley* [1947] A C 628, 633 pointed out the dangers of too strict a reliance upon these words. In any view of Christian marriage the essence of the matter, as it seems to me, is that the children, if there be any, should be born into a family, as that word is understood in Christendom generally, and in the case of a marriage between spouses of a particular faith that they should be brought up and nurtured in that faith. But this is not the same thing as saying that a marriage is not consummated

> unless children are procreated or that procreation of children is the principal end of marriage."
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> And at 288 he cited an old text:
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> "It seems to me that the true view of the matter is expressed in Lord Stair's Institutions, 1681 ed., book I., tit. 4, para. 6. That learned and distinguished author put the matter thus: 'So then, it is not the consent of marriage as it relateth to the procreation of children that is requisite; for it may consist, though the woman be far beyond that date; but it is the consent, whereby ariseth that conjugal society, which may have the conjunction of bodies as well as of minds, as the general end of the institution of marriage, is the solace and satisfaction of man.' I am content to adopt these words as my own."
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> I too would adopt those words, save that nowadays a conjugal society does not necessarily require a conjunction of bodies.'

26. Earlier at [15] I said:

> 'In *X City Council v MB, NM and MAB* Munby J at [62] helpfully reminded us of *Briggs v Morgan* (1820) 3 Phill Ecc 325 at 331-332, where Sir William Scott said it may be that a marriage "at a time of life when the passions are subdued" is "contracted only for comfortable society", the spouses being "fairly left to just reflection and more placid gratifications". Needless to say, these are all perfectly valid marriages.'

27. The reason that we do not attempt an evaluation of the quality or attributes of a marriage is, as Moylan LJ has explained, that to do so risks subconscious discrimination. It was for this very reason, as will be seen, that Lord Nicholls in *Miller* [2006] UKHL 24 at [18] and [19] condemned as heretical my opinion in *GW v RW* [2003] 2 FLR 108 that in order to have equal validity with a financial contribution, a domestic contribution needed to be earned over time. For that view, as well as for the concept of fledging (to which I will turn below), I freely admit my error and figuratively hold my hand in the flames.

28. In applying the sharing principle it is not merely invidious, but extremely dangerous, for the court to attempt an evaluation of the quality of a marriage or of the arrangements made within it, as to do so will almost inevitably trigger subconscious discriminatory practices. It is for this reason that the doctrine of special contribution has to all intents and purposes been consigned to history. When the court is undertaking the application of the sharing principle it should start and almost invariably finish with the proposition that a marriage is a marriage. In *The matter of X (A Child)* [2018] EWFC 15 (which was not a financial remedy case) the relationship of the married couple was described as being neither sexual nor cohabitative. Sir James Munby P was categorical that the marriage was a marriage. At [7] he held:

> 'There can be no question of the marriage being a sham. In short, the marriage is a marriage. The fact that it is platonic, and without a sexual component, is, as a matter of long-established law, neither here nor there and in truth no concern of the judges or of the State. One needs look no further than Nigel Nicholson's Portrait of a Marriage, his acclaimed account of the unusual marriage of his parents, Vita Sackville-West and Harold Nicholson, to see how happy and fulfilling a marriage, more or less conventional, more or less unconventional, can be. But it is really none of our business. As the first Elizabeth put it, we should not make windows into people's souls.'

29. In my judgment for the court to start asking why there are no children, and whether this denotes a lesser extent of commitment to the relationship, is to make windows into people's souls, and should be avoided at all costs.

30. It is not clear to me from where this factor of childlessness derives. An analysis of *Miller* shows that childlessness is not part of the reasoning of Baroness Hale and Lord Mance. It is true that the Miller marriage was childless. At [41] Lord Nicholls referred to the absence of children, but recorded that the couple had been trying for one and that Mrs Miller had suffered a miscarriage. No one suggested that this sad failure denoted 'a completely different category of commitment'.

31. Childlessness was not a reason that the House of Lords upheld the unequal division of the acquest in that case.

32. In her speech at [143] Baroness Hale referred to the decision of the Court of Appeal in *Foster v Foster* and remarked that that was a "comparatively short childless marriage". At [158] she observed, unfavourably, that in the old days the Court of Appeal had supported an approach in short childless marriages of putting the applicant back in the position she would have been had the marriage not taken place. Beyond these mere observations there is no reference to this factor at all. It is completely absent from the section of her speech entitled "*The source of the assets and the length of the marriage*" ([148] – [153]).

33. It is therefore unclear to me how this factor crept into para 97 of *Sharp*, from where it was reluctantly reiterated in paras 141, 142 and 145 of *XW v XH*.

34. In my judgment this factor should be banished from any consideration of whether there should be a departure from the application of the equal sharing principle. Whatever may be the true construction of that section of Baroness Hale's speech, it does not include bringing into consideration the childlessness of the marriage, if that were the case.

Shortness of the marriage

35. In the section of her speech entitled "*The source of the assets and the length of the marriage*" Baroness Hale referred to the opinion, held by some commentators and judges, that the size of a non-business partner's share of the acquest should be linked to the length of the marriage. She cited, for example, John Eekelar's article "Asset Distribution on Divorce - the Durational Element" (2001) 117 LQR 552 as well as my own decision in *GW v RW* ([147]). At [150] she considered business or investment

assets which have been generated solely or mainly by the efforts of one party. These, she said at [151], were viewed by some as not being family assets in the way that the home, its contents and savings were family assets. They may have been generated in a very short time and their value may be speculative and their possession risky. In contrast, domestic contributions "take time to mature into contributions to the welfare of the family"; and they cannot be shown to have contributed to the acquisition of these assets.

36. Having recited these arguments, Baroness Hale at [152] stated that they were irrelevant in the great majority of cases. However, in a very small number of cases where these non-family assets were generated over a short period of time a departure from equality may be justified. A good example would be a genuine dual career family where the spouses had pooled assets for the benefit of the family but retained separately and solely non-family assets. She cautioned that one should be careful not to take this approach too far. It may well not look fair or sensible at the end of a relationship, and there could well be injustice if a dual career spouse ended up worse off than a domestic spouse who had only or mainly worked inside the home.

37. It is clear that Baroness Hale intended the tiny minority of cases where this exception might apply to be confined to short marriages, normally between genuine dual earners. However, she explained at [158] that in assessing Mrs Miller's "share in the considerable increase of the husband's wealth during the marriage … there was a reason to depart from the yardstick of equality because those were business assets generated solely by the husband during a short marriage". Mrs Miller was not a dual-earner.

38. The other reason for departure from the equal sharing principle was, of course, that at the time that relationship started Mr Miller was already a very rich man: see [157] ("the second reason").

39. Lord Mance agreed that this short-marriage exception might apply in a small minority of cases. At [169] he stated:

> 'More fundamentally, to allow the duration of a marriage as a relevant factor would cater for the considerations that, while some people may make a large amount of money in a short time, the nature of their work or other factors may mean that they do not do so at a consistent rate over their lives as a whole or for more than a short period of their lives, and furthermore, as Baroness Hale has pointed out, that there may be long-term risks in relation to non-business-partnership, non-family assets which remain with those directly involved in generating them. The longer the marriage, the less likely these are to be significant considerations. In a short marriage, the timing of which may or may not coincide with a period of significant increase in the value of non-business-partnership, non-family assets, such considerations argue in favour of some further flexibility in the application of the yardstick of equality of division. I see force in and would agree with the views expressed by Baroness Hale in paragraphs 152-153 of her judgment to the effect that the duration of a marriage, mentioned expressly in section 25(2)(d) of the Act, cannot be discounted as a relevant factor.'

40. He too was of the view that the exception was only likely to apply where both partners are "financially active, and independently so": [170].

41. He too recognised a further reason for departure from equality was that at the time of the marriage Mr Miller was already a very rich man. At [173] he stated:

> 'In the present case, Mr Miller already had, at the marriage date, real connections in the form of the Jupiter funds which he later took to New Star and real prospects under the gentleman's agreement made with Mr Duffield of acquiring, as he subsequently did, valuable shares in New Star. I would regard these as real contributions brought into the marriage, which should on any view be taken into account accordingly.'

42. Lord Nicholls completely disagreed with the notion that the creation by a money-making spouse of "non-family" assets during a short marriage should give rise to an exception to the principle of the equal sharing of the acquest. At [17] he stated:

> 'This [equal sharing] principle is applicable as much to short marriages as to long marriages: see *Foster v Foster* [2003] EWCA Civ 565; [2003] 2 FLR 299, 305, para 19 per Hale LJ. A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership.'

And at [19]:

> 'I am unable to agree with this approach [of treating domestic contributions as accruing over time]. This approach would mean that on the breakdown of a short marriage the money-earner would have a head start over the home-maker and child-carer. To confine the *White* approach to the 'fruits of a long marital partnership' would be to re-introduce precisely the sort of discrimination the *White* case [2001] 1 AC 596 was intended to negate.'

43. As explained above, I now figuratively hold my hand in the flames and recant. There is absolutely no logical reason to draw a distinction between an accrual over a short period and an accrual over a long period. As Lord Nicholls pointed out, the statutory factor of the duration of the marriage will be reflected in the nature of things by the fact that in a short marriage the accrual will almost inevitably be less than in a longer marriage.

44. However, there is no doubting that a majority of the Judicial Committee did recognise a possible exception for non-family assets generated by one spouse alone during a short marriage where those assets have been kept separate and where both spouses have been financially and independently active. It is for this reason that the Court of Appeal in *Sharp* acknowledged the exception. And it is for this reason that, with obvious distaste, Moylan LJ likewise acknowledged it in *XW v XH* at [141] – [145]. However, I consider his pronouncement at [140] to be crucial:

> '…in my view, what Lady Hale described in *Miller*, as the post-*White* "search … for some reason to stop short of equal sharing, especially in 'big money' cases where the capital had largely been generated by the breadwinner's efforts and enterprise", at [146], has diminished because of the developed appreciation, based on many decisions especially at first instance, that the straightforward application of the sharing principle to the marital property achieves a fair outcome. This is what, in my view, Lord Wilson meant when he referred to the "proper approach" and the "ordinary" application of the sharing principle: *Scatliffe v Scatliffe*, at [25(x)].'

And that we should keep at the forefront of our minds his comment in [145]:

> '…it is evident that a broader application of a different approach to a marital asset merely because it was a 'business' asset would be, as was identified in *Charman*, at [83], 'deeply discriminatory' and would, therefore, 'gravely undermine the sharing principle''.'

45. In *Sharp*, McFarlane LJ accepted at [75] that the exception would only apply in a "fringe of cases". I would go further and say that Lady Hale herself acknowledged the great rarity of the exception. Moylan LJ has made it clear that it will only be capable of being legitimately invoked in vanishingly remote circumstances. For my part I would say (as I have said before when talking about the rarity of sharing of non-matrimonial property) that a case where there can be a legitimate non-discriminatory unequal sharing of matrimonial property earned in a short marriage will be as rare as a white leopard. I have said "earned" to draw a distinction between money generated during a marriage and an asset brought into a marriage which has been "matrimonialised", such as a dwelling used as a matrimonial home. I accept that the law recognises the possibility of unequal sharing of such an asset: see *Vaughan v Vaughan* [2010] EWCA Civ 349 at [49] per Wilson LJ.

46. The reason for the rarity is obvious. The exception is founded on the notion that the value of the contributions made by one spouse during a short marriage in generating "business assets" is worth more than the value of the contributions made by the other spouse during that period. Like the now discredited doctrine of special contribution this notion gives rise to the Orwellian oxymoron that all contributions are equal but some are more equal than others. It is very difficult to escape the conclusion that discriminatory forces are underpinning this notion. Hence the need to confine its application to extremely rare situations.

47. This is not to say the second reason in *Miller* may not be a valid ground for departure from the equal sharing principle. Lord Mance was clear that the concept of "fledging" which I had introduced in *GW v RW* was of doubtful legitimacy: [171], [172]. This sought to attribute a notional capital value to a developed career, existing higher earnings and an established earning capacity brought into a marriage. It was formally overruled by the Court of Appeal in *Jones v Jones* at [26].

48. However, as Lord Mance pointed out at [173]:

> '…where at the beginning (or end) of the marriage an actual transaction is under way or in view which in due course yields a considerable new asset, there is no difficulty in principle (even if there may be some difficulty in valuation) in accepting that part of that asset may have to be excluded from any assessment of the matrimonial *acquest* or included in what the parties brought into the marriage.'

49. This exercise does not conceptually involve a departure from the principle of equality of division of the marital assets. Rather, it excludes some of the assets from the acquest because that part represents the fruits of a pre-relationship project. Although the reasoning is not very specific it is clear to me that this was the predominant rationale why Mrs Miller's award did not equate to half of the acquest. Lord Nicholls at [69] and Baroness Hale at [157] contented themselves with describing Mr Miller as being a very rich man when the couple married. Lord Mance however spelled out how this second reason worked, saying at [173]:

> 'In the present case, Mr Miller already had, at the marriage date, real connections in the form of the Jupiter funds which he later took to New Star and real prospects under the gentleman's agreement made with Mr Duffield of acquiring, as he subsequently did, valuable shares in New Star. I would regard these as real contributions brought into the marriage, which should on any view be taken into account accordingly.'

50. This is plainly a legitimate technique to apply in any case, but most particularly in a short marriage case where the connections and transactions happened relatively recently and have not faded into the past with the result that the fruits of the transaction became "matrimonialised".

Valuation

51. I now turn to the valuation of Company A, and I start with some basic principles.

52. A valuation of a business (which is not based on the market value of the net assets) has been described as "fragile". This is because there are so many subjective factors in use by the person giving the valuation opinion. In *Versteegh v Versteegh* [2018] EWCA Civ 1050 Lewison LJ encapsulated judicial concern stating at [185]:

> 'The valuation of private companies is a matter of no little difficulty. In *H v H* [2008] EWHC 935 (Fam), [2008] 2 FLR 2092 Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash

> is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see *A v A* [2004] EWHC 2818 (Fam), [2006] 2 FLR 115 at [61] – [62]; *D v D* [2007] EWHC 278 (Fam) (both decisions of Charles J).'

53. In similar vein in *Miller* Lord Nicholls stated at [26]:

> '… the 'equal sharing' principle might suggest that each of the party's assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility. The costs involved can quickly become disproportionate.'

54. In this case for the various valuation dates the accountants have generally adopted the same valuation technique, namely multiplicand times multiplier, where the multiplicand is the reasonably foreseeable future maintainable earnings, and the multiplier is the estimate of how many years of earnings a notional purchaser would pay for. The product is known as the enterprise value. A valuation is therefore no more than a guess, admittedly an educated and informed guess, about a hypothetical future (albeit proximate) event. That future proximate event is the fictitious purchase of the thing being valued by a bona fide purchaser at arm's length who is fully informed of all relevant facts and matters.

55. It is an iron principle of pure valuation theory that when advancing a historic valuation of an item the valuer has to be transported back in time to the date of that valuation and must formulate his/her opinion about the future maintainable earnings (the multiplicand), as well as the multiplier, using only the data available at that time. The valuer is not allowed to use actual knowledge of subsequent events to influence, let alone determine, the historic valuation being undertaken.

56. In contrast, as I will explain, in financial remedy cases actual knowledge of subsequent events is generally used in order to fix a historic value of the asset in question. This is regarded by valuation purists as little short of heresy.

57. In *SK v WL* [2010] EWHC 3768 (Fam) Moylan J was faced with a claim by the husband that a large amount of value had accrued post-separation. The separation had occurred six years before the trial. In that period the business had been developed and sold very successfully. It was submitted on behalf of the husband that when valuing the business at the date of separation the court had to stand in the shoes of a valuer on that date and form the valuation opinion in reliance on the data that existed on that date and without regard to the subsequent events. Moylan J rejected this submission. He held:

> '27. Thirdly, the accountants were, among other matters, instructed by the parties to value PCo as at the date of separation (September 2004). Putting to one side the question of whether this exercise was justified in any event, the accountants were instructed, and/or felt constrained, to undertake this exercise without taking into account what happened to PCo thereafter -

> save that WA used management accounts to the end of October 2004.
>
> 28. I expressed surprise, at what appeared to me to be a blinkered approach, at the commencement of the hearing and again during the parties' final submissions. In response, Mr Anelay questioned the whole validity of this artificial process. Mr Mostyn submitted the approach taken by the accountants was justified, or even necessitated, by accountancy orthodoxy. In his closing submissions he referred me to one authority in support of this proposition, *Holt v. Inland Revenue Commissioners* [1953] 1 WLR 1488. The case concerned the valuation of shares in a private company for the purposes of estate duty. The principles applicable to such a valuation exercise had been settled by the House of Lords in *Inland Revenue Commissioners v. Crossman* [1937] AC 26.
>
> 29. In *Holt*, Danckwerts J remarked on the exercise which he was required to undertake in the following terms:
>
> "The result is that I must enter a dim world peopled by the indeterminate spirits of fictitious or unborn sales. It is necessary to assume the prophetic vision of a prospective purchaser at the moment of the death of the deceased and firmly to reject the wisdom which might be provided by the knowledge of subsequent events."
>
> He shortly thereafter referred to the accountants' opinions as being "guesswork, though of course intelligent guesswork".
>
> 30. I do not see why the Family Division should enter the "dim world" identified by Danckwerts J. Valuations, when required, should be based on real and known events. This approach ensures that valuations are more likely to be closer to the reality of any given situation than the result achieved by ignoring known history. It is difficult also to see how the latter approach, of ignoring known facts, could be consistent with the court's obligation to achieve a fair outcome based on the factors set out in section 25 of the Matrimonial Causes Act 1973. As Wilson LJ said in *White v. Withers* [2010] 1 FLR 859, if the court is to discharge its **duty** (I emphasise) under the Act, it must be "furnished with true information about the parties' resources".'

58. The willingness of the Family Court "to embrace the wisdom which might be provided by the knowledge of subsequent events" is illustrated in a number of cases.

59. In *Jones v Jones* [2011] EWCA Civ 41 Wilson LJ twice doubled the agreed historic valuation of the business. One doubling was referable to the company being pregnant with a springboard. That was not a subsequent event. However, the other doubling was referable to the movement in the FTSE All Share Oil and Gas Producers Index. It was an application of passive growth, which was unquestionably a post-valuation event.

60. In *Robertson v Robertson* [2016] EWHC 613 (Fam) Holman J was faced with an historic valuation of the ASOS shares at the time that the parties commenced their cohabitation, adjusted for passive growth, of around £4 million. Those shares were at the date of trial worth £140 million net of latent tax. Therefore it was submitted on behalf of the wife that virtually all of the value of those shares was matrimonial property. However, having regard to subsequent events, as well as to the overall justice of the case, Holman J held at [63]:

> 'In my view, not as an accountancy exercise, but in the exercise of broad judicial discretion, the only fair way to treat the remaining pre-existing shares (and the three Wimbledon investment properties) is to treat them as to half as the personal non-matrimonial property of the husband, and as to half as the matrimonial property of the parties to be evenly shared.'

61. In *WL v HL* [2017] EWHC 147 (Fam) (which shall remain unreported) I used post-valuation-date knowledge in reaching my decision about historic value. I stated:

> '41. I agree with Mr Justice Moylan in *SK v WL* [2010] EWHC 3768 (Fam) that it is not merely legitimate but is realistic and right to use hindsight when making in family proceedings a historic valuation. Mr Chamberlayne QC rightly says that in any event the pass has been sold in this regard when we uprate a historic figure with passive growth. For passive growth is obviously a post valuation event.
>
> 42. It must be remembered that in this respect the court is exercising a pure discretion and whilst the case of *Jones v Jones* supplies a valuable guideline (that is to say it indicates the direction of travel), it is not supplying a tramline (that is to say a predetermined destination). And, as I have already stated, *Jones v Jones* is a good exemplar of the exercise of discretion in that the doubling of the initial figure £2 million to £4 million seems to be based more on instinctive feelings of fairness rather than being referable to any particular piece of evidence.'

62. In *WM v HM* [2017] EWFC 25 I rejected the SJE's historic valuation of the business at the time that the parties formed their relationship. In order to calculate what I considered was a fair value of what the husband brought into the marriage I plotted a linear apportionment working back in time from the current value of the business. Manifestly, such an approach used the knowledge of subsequent events, and as such would fall to be condemned as seriously heretical by orthodox valuation purists. My decision was however upheld in the Court of Appeal sub nom *Martin v Martin* [2018] EWCA Civ 2866. Moylan LJ stated:

> '126. The judge adopted the straight line approach for the clear reasons expressed in his judgment. As he said in paragraph 14: "the evidence is certainly not confined to a strict black-letter accountancy exercise. It involves a holistic, necessarily retrospective, appraisal of all the facts and then the application of a subjective conception of fairness, overlaid by a legal

> analysis". I would also agree, as did Mr Pointer, with Mostyn J's analysis of the exercise in which he was engaged, at paragraph 21, which, in my view, mirrors the "fair overall allowance" test referred to in *Jones v Jones*:
>
> "… my evaluative assessment of what element of the present value of the business should be treated as existing at the time the relationship started and which is therefore certainly to be characterised as non-matrimonial."
>
> This approach seems to me to be entirely consistent with the principles I have referred to above.
>
> 127. Whilst it would be an improper fetter on a judge's discretionary powers to elevate this approach above others, I agree with Mostyn J's general observation about "the beneficial side effect of eliminating arid, abstruse and expensive black-letter accountancy valuations of a company many years earlier at the start of the marriage". I also agree that, as he said, it "resonates with fairness" because it takes an overarching view of the weight to be attributed to the husband's contributions to the business throughout its existence. I would add that it is also an approach which would be consistent with the overriding objective not least because it would save expense by limiting the scope for expensive and time consuming investigations of the development of a business. It may be too frequent a refrain in this judgment but the court is engaged on a broad analysis of fairness.'

63. Blinding oneself to the knowledge of subsequent events, whilst conforming to the purity of valuation theory, obviously risks serious injustice. It must never be forgotten that the exercise has as its endgame a calculation which results in an award of hard cash to the claimant. Consider this case. One of the valuation dates was January 2016, shortly after the parties began their committed relationship. The SJE, Mr Isaacs, calculated future maintainable annual earnings on that date at $751,000. He did this by taking a weighted average of the adjusted income of 2013 ($2.349 million), 2014 ($784,000) and 2015 ($196,000).

64. Mr Isaacs therefore stood in the shoes of a fictitious purchaser in January 2016 who said to himself "based on the last three years' results, I think this business will produce $750,000 annually in the future". Having regard to the nature of the business Mr Isaacs was of the view that the fictitious purchaser would then have been prepared to pay upfront three years of these future profits, giving rise to a valuation of $2.2 million.

65. We now know that a prediction in January 2016 of $750,000 future maintainable earnings would have been completely wrong. With the benefit of hindsight we know that in 2016 the net earnings were minus $666,000; in 2017 they were $3 million; and in 2018 they were $5 million. If the fictitious purchaser and vendor could somehow have known this in January 2016 then the payment upfront of three years' earnings would have resulted in a price of $7.3m, more than three times the blindfolded valuation.

66. I regard it as unreal, and a likely source of real injustice, for calculations to be undertaken to work out the scale of acquest (and thence the wife's award), on historic figures which with hindsight are shown to be completely wrong. It is not consistent with "a broad analysis of fairness".

67. I turn to the question of what is being captured by a capitalisation of earnings of a business. I remind myself that in *Jones v Jones* at [25(b)] Wilson LJ stated:

> "In truth the judge was placing a substantial capital value on the husband as a person; I am convinced that such is no function of the divorce court".

In *Waggott v Waggott* [2018] EWCA Civ 727 at [121] – [128] Moylan LJ roundly dismissed the notion that an earning capacity is capable of being a matrimonial asset to which the sharing principle applies.

68. In my judgment, this important principle must be firmly held in mind when considering a valuation based on a capitalisation of future maintainable earnings. The court must ask itself whether, and if so to what extent, the assessment of future earnings depends on the participation of the respondent. If the evidence is that the future participation of the respondent is indispensable, the court must ask itself whether the valuation is, at least in part, of the respondent as a person.

69. In this case Mr Isaacs has a valuation of the net assets of Company A at the present time of just under $7 million. His equity valuation of the company is $16.5 million. I asked him what the difference of $9.5 million represented, and his answer was "goodwill". Goodwill is the price that a purchaser will pay for a business over and above the value of its net assets. It is an intangible asset and is normally described as being the value of the reputation of the business. However, in this case the figure plainly incorporates, to some extent, a capital value of the husband as a person. This is because the accountants agree that were the husband and MX not prepared to be involved in the sale of the business and to offer themselves in a consultancy role for a period after completion of the sale, then the business would have no saleable enterprise value and would only be worth the value of its net assets. In contrast, if the husband and MX agreed not to set up in competition after the sale, to endorse the purchaser as their nominated successor, and to be available on call for a period following the sale, then there would be a "good chance" of a successful sale being agreed at a much higher figure than the value of the net assets.

70. When I come to assess the value of the business to be included in the marital acquest in this case I am not going to be hidebound by pure valuation theory but will instead be making "a broad analysis of fairness".

71. Finally, I turn to the question of the point in time when the clock stops for the purposes of calculating the acquest.

72. In *Cowan v. Cowan* [2002] Fam 97 at [70] Thorpe LJ stated:

> 'The assessment of assets must be at the date of trial or appeal. The language of the statute requires that. Exceptions to that rule are rare and probably confined to cases where one party has

> deliberately or recklessly wasted assets in anticipation of trial. In this case the reality is that the husband traded his wife's unascertained share as well as his own between separation and trial, particularly committing those undivided shares to the investment in Baco. The wife's share went on risk and she is plainly entitled to what in the event has proved to be a substantial profit.'

At [132] – [135] Mance LJ agreed, pointing out that to take the date of trial as the end date was traditional. It is true that in *Miller* Lord Mance (as he had become) at [174] appeared to change his mind and suggested that it was natural to look at the period until separation. However, this was a passing comment. The subject was not addressed by any of the other members of the Committee.

73. In my view there are already in this field too many uncertainties and subjective variables. The law needs to be transparent, accessible, readily comprehensible and should propound simple and straightforward principles. In my experience convention and tradition dictate that save in cases where there has been undue delay between the separation and the placing of the matter for trial before the court, the end date for the purposes of calculation of the acquest should be the date of trial. This rule of thumb should apply forcefully to assets in place at the point of separation which have shifted in value between then and trial. For new assets, such as earnings made during separation, I would apply the yardstick in *Rossi v Rossi* [2006] EWHC 1482 (Fam) at [24.4] where I stated: "I would not allow a post-separation bonus to be classed as non-matrimonial unless it related to a period which commenced at least 12 months after the separation".

Findings

74. I now set out my findings.

75. The start date for the purposes of calculation of the acquest will be January 2016. By then the parties were in a very serious committed relationship. It was not then, as Mr Webster QC put it, merely one of boyfriend and girlfriend. It was far more than that. It may not have been traditional in its functioning in that there was not conventional cohabitation; the wife did not move in lock, stock and barrel to F House. But it was, as Mr Glaser QC rightly says, from that point a committed sexual, emotional, physical and psychological, if somewhat itinerant, relationship. In my judgment that is the appropriate point in time at which the acquest begins to arise.

76. The endpoint should be the present time, the time of trial. There is in my judgment no good reason to depart from the traditional and conventional terminus. Although the parties' relationship came to an end in December 2019 there has been no unjustified delay by the wife in bringing her claim before the court. In that period the greater part of her share of the acquest has been traded with by the husband and put on risk.

77. The acquest that arose in the period January 2016 to June 2021 should be divided equally. In my judgment there is no good reason, at all, to depart from equality in the division. This case is not a white leopard.

78. Counsel have helpfully agreed a workbook containing a schedule of the acquest, which deals with all the assets with the exception of the increase in value during the acquest period of the enterprise value of the business. The agreed workbook has three versions of the schedule on which to work.

79. In my judgment, the right version to use is the one entitled "summary of acquest – surplus".

80. This version includes in the acquest the increase in the surplus assets held by the business during the acquest period but does not include the increase in the enterprise value in that period. In line with the approach of counsel I will first calculate the increase in value of the surplus assets and then I shall calculate the increase in the enterprise value of the business. I will then add together the two results to get the total increase in the business's equity value in the acquest period. To be clear, the enterprise value of the business and the value of its goodwill are not the same thing. The former is the product of the multiplication (see para 54 above). The latter is the figure arrived at by subtracting the total net assets from the equity value (see para 69 above). The equity value is the enterprise value plus only the surplus assets.

81. I first deal with certain points of dispute that arise on the surplus assets schedule.

82. Mr Glaser would seek to include on the schedule a <u>negative</u> figure of £453,741, being the husband's net liquid position in 2016. He says that the acquest should be calculated by taking the husband's starting point as being underwater to this extent. This approach has mathematical and balance sheet accuracy. If, for example, a fictitious husband started a relationship £100,000 overdrawn and then in the next three years received annual bonuses of £700,000, which he put in his bank account so that at the end of the three-year period he had £2 million in the bank, it would be correct to say that he had generated during the marriage £2.1 million. But in the real world, the man on the Clapham omnibus, the anthropomorphic conception of justice who is the spokesman of the fair and reasonable man, would surely disagree and say that what the parties had made during the marriage was £2 million. That was the sum that was up for division. I therefore reject Mr Glaser's submission.

83. Swiftly changing horses after successfully resisting this artifice, Mr Webster seeks to argue that the acquest calculation should reflect a downward shift in the net asset value of the four minor companies as per the following table:

		31/12/2015	31/10/2020	accrual ($)	accrual (£)	H's share
Company B	$	256,957	(184,714)	(441,671)	(316,228)	(316,228)
Company C	£	(36,452)	(27,968)		8,484	8,484
Company D	£	682,716	(18,248)		(700,964)	(343,472)
Company E	£	62,238	595,810		533,572	240,107
total shift in net assets						(411,109)

84. Here, I think that the spokesman for the reasonable man would again disagree that this figure should be fed into the calculation to reduce the divisible amount. If the assets and liabilities of the four companies were held by the husband personally there would be no question but that the shift would be taken into account in the calculation. But these

assets and liabilities are held in corporate wrappers. In the real world the husband is not going to be personally liable for any deficit.

85. The downward shift will therefore not feature in the calculation of the acquest.

86. Excluding Company A, the schedule shows that the acquest is £867,501, of which £444,980 is held by the wife and £422,521 held by the husband.

87. I therefore turn to the main business, Company A. The first step is to work out the increase in the surplus assets of the business during the acquest period. I agree with Mr Webster's calculations. These compute that the increase is $4,424,000 or £3,167,496. In order to extract any funds the husband would have to pay, according to Mr Isaacs, US tax of 36%. That is a reasonable rate to take in circumstances where the husband intends to carry on working for and in the business. However, the premise of the calculation I am undertaking is that the husband is selling the business. In that hypothetical scenario the tax rate will be 20%. Therefore, that is the tax rate to use. This leads to a net increase in the surplus assets during the acquest period of £2,533,996.

88. I turn to the increase in the enterprise value during the acquest period. I set out a table which records the competing valuation figures of the experts at the start and end of the acquest period as well as the relevant increases.

	Jan 2016			**Apr 2021**		
$000	Mr Isaacs	Ms Hotston Moore	Mr Taylor	Mr Isaacs	Ms Hotston Moore	Mr Taylor
Maintainable Earnings (A)	751	1,107	2,027	4,424	3,979	2,027
Multiple (midpoint) (B)	3	3	2.5	3	2.5	2.5
Enterprise value (A) x (B) = (C)	2,253	3,321	5,067	11,772	9,948	5,068
Surplus assets (D)	0	553	472	4,819	4,193	4,896
Equity value (C) + (D) = (E)	2,253	3,874	5,539	16,591	14,141	9,964
Value of net assets (F)	783	783	783	6,991	6,991	6,991
Goodwill (E) – (F)	1,470	3,091	4,756	9,600	7,150	2,973

Increases over acquest period

$000	Mr Isaacs	Ms Hotston Moore	Mr Taylor
Enterprise value	9,519	6,627	0
Surplus assets	4,819	3,640	4,424
Value of company	14,338	10,267	4,425
Net assets	6,208	6,208	6,208
Goodwill	8,130	4,059	(1,783)

89. Mr Taylor's view is that there has been no increase in the enterprise value over the acquest period. He took the same figure for future maintainable earnings at the start and the end. That figure for future maintainable earnings was calculated by taking the simple average of the earnings of the business for the seven year period 2013 – 2019

inclusive. This approach has the merit of capturing the pre-well-known artist years, as well as the years of very high earnings from that source (2017 – 2019).

90. On this basis Mr Taylor's calculation for the enterprise value of the business at January 2016 is $5,067,000. In my judgment that is the reasonable figure to take. For the reasons I have set out above I do not accept that the figures calculated by Mr Isaacs and Ms Hotston Moore are fair for the purposes of the exercise I am undertaking. They have been invalidated by hindsight.

91. I turn to the present enterprise value of the business. Having heard the husband give evidence I am satisfied that he has been somewhat guarded in his presentation and that his pessimism about the future is forensically influenced. Of course the pandemic has been disastrous for events such as festivals and concerts, but everyone is working towards a resumption of business as normal at the soonest opportunity. When that opportunity comes there will be an explosion of activity on so many fronts, including in the public performance of music. I therefore do not accept that a figure as low as $2 million would be agreed as the likely multiplicand by a fictitious purchaser and a fictitious seller. Here I think that Mr Isaacs and Ms Hotston Moore are more realistic. Their figures for future maintainable earnings are respectively just under $4.5 million and just under $4 million. They respectively use multipliers of 3 and 2.5. These produce enterprise values respectively of just over $11.8 million and just under $10 million. The simple average is $10,860,000.

92. In my opinion this figure of $10,860,000 is a reasonable starting figure. But it needs to be substantially discounted for four reasons.

93. First, no one knows how the pandemic is going to play out and whether in fact a resumption of normal life, including the staging of concerts and festivals, will actually happen soon. So there is a great deal of uncertainty about the future, specifically about if and when revenue will start to resume and in what amount. The quantum depends on whether the well-known artist undertakes another tour to follow the previous one, which was one of the biggest the world has ever seen. The evidence I have about this from the husband is somewhat partisan and contrived, emphasising the newfound domesticity of the well-known artist. I think it quite likely that the well-known artist would wish to tour again when the pandemic is over.

94. Second, it is likely that for any future tour MX will insist on sharing the proceeds, probably by demanding that the revenue is all paid into Company D. There was clear evidence given to me that MX has been making intimations to this effect. In the past MX seems to have worked extremely hard to secure the video contract, and to implement its obligations, but for no reward at all. It is extremely difficult to understand.

95. Third, if any enterprise value were to be actually saleable there would need to be a great deal of post-sale toil by the husband (and for that matter MX) to ensure an orderly handover and the preservation and promotion of the skills and reputation of the business. Mr Glaser accepted that this would amount to post-separation endeavour which should be reflected, he suggested, by a 25% discount of the increase in value of the goodwill. I regard this concession as a step in the right direction. However, I do not see why the discount should be related merely to the increase in the value of goodwill

and confined only to this factor. In my judgment, the discount should be applied to the present enterprise value of the business, and should be related to all four factors.

96. Fourth, it is clear to me that a part of the future maintainable earnings represents the fruit of the husband's personal earning capacity which would be unlikely to be acquired or reproduced by the purchaser. There is no doubt that to some extent the success of this business depends on the husband's personal skill and attributes. That indefinable quality cannot be monetised because, as stated above, it is impermissible and wrong to seek to place a capital value on the husband as a person.

97. In my judgment the overall discount to reflect all four factors is properly set at 45%. For sure, that is a subjective figure, but it is the one that I arrive at following a broad, discretionary, analysis of fairness. Applying that discount to the averaged figure of $10,860,000 gives a figure of $5,973,000. I have taken for the January 2016 start figure the sum of $5,067,500 (see above at para 90). Therefore the increase is $906,000 or £647,000. Net of tax at 20% the figure becomes £518,000.

98. The overall increase in the equity value of the business during the acquest period is therefore £ 2,533,996 + £518,000 = £ 3,051,996.

Disposition

99. When I add this figure to the husband's side of the acquest ledger I see that he has marital property totalling £3,474,517. The wife, as before, has £444,980. The total is £3,919,497. 50% of that is £ 1,959,749. Deducting the amount that the wife has already leaves a balance to be paid by way of a lump sum by the husband to the wife of £1,514,769 which I round to £1,515,000.

100. I am satisfied that the husband can extract this sum from the business without any difficulty. I accept Mr Glaser's submissions and calculations on this point. However, I will hear submissions as to the time in which to pay if this cannot be agreed.

101. The payment of the lump sum will, of course, be on the clean break basis.

102. On payment of the lump sum the wife will be left with £1.59 million outside her home in West London. That flat has been her home for many years. I do not accept that after a marriage of this brief duration needs have been generated which entitle her to a significant upgrade in her accommodation. She and her dog had lived there happily for years before the husband came into her life. I agree with Mr Webster that the teaching of the authorities is that the duration of the marriage impacts forcefully and directly on the assessment of need. The wife's stated ambition to achieve a significantly better accommodation is not a reasonable need after a marriage of this short duration.

103. In order to get the flat back into good shape I estimate that the wife will need to spend at least £50,000. She would therefore have £1.54 million as a Duxbury fund. This would give her an annual net spendable index-linked income of just over £90,000 (ignoring any state pension, where I have not been told whether she has an entitlement to one). In my judgment this is a very ample sum to meet her revenue needs and will enable her to live comfortably (as well as keeping and riding her horse, the purchase of which I judge to be completely reasonable).

104. Although it is scarcely relevant I calculate that on the assumptions mentioned above the overall assets net of tax are about £9.2 million, of which the wife will end up with about £2 million (21%) and the husband with £7.2 million (79%).

105. I confirm that in reaching my decision I have exercised a general discretion and have taken into account all the matters mentioned in ss.25(2) and 25A of the Matrimonial Causes Act 1973. I have sought to take into account all the relevant case-law. My disposition is the result of a broad analysis of fairness.

106. This judgment does not deal with the dispute between the parties about chattels. If the parties cannot agree this matter then that dispute is to be heard by a District Judge in the Central Family Court exercising specifically preserved powers under s.24 of the Matrimonial Causes Act 1973. Thus, the court will determine that dispute by exercising a discretion rather than being confined to proprietary rights.

107. Nor does this judgment deal with the question of costs. If the parties do not agree the question of costs then I will determine the matter. I will be looking most carefully to see if the parties have fully complied with the obligation to negotiate openly and reasonably pursuant to FPR PD 28A para 4.4. I will also be considering the parties' conduct, in the case of the wife by reading and photographing the husband's private, and in some instances privileged, documents on his computer (as she admits) and in the case of the husband not only by seeking to run a formal s.25(2)(g) conduct case against the wife based on her snooping, but by running a disguised conduct case whereby he has, in the words of Alexander Pope, been 'willing to wound but afraid to strike' by insidiously seeking at every turn to rubbish the quality of the marriage. This is a practice which is all too common and which must stop.

108. I refused to allow the husband's formal conduct case to proceed once it had been established that had the husband sued the wife in the County Court for breach of confidence the damages would probably have been no more than a couple of thousand pounds. In such circumstances it would have been in my judgment completely disproportionate and a misuse of the court's time for the matter to have been allowed to proceed. I indicated in my ruling that I would, however, consider the husband's complaints and the wife's defences in the costs phase of the proceedings.

109. That is my judgment. I set out in the appendix the calculations used in reaching my conclusions.

APPENDIX

Para 86

H marital property		
American property	342,817	
Banks	225,363	
Debts	(212,774)	
UK pension	67,115	
	422,521	X
W marital property		
Flat	370,270	
Banks and cash	376,923	
debts	(302,213)	
	444,980	Y
Total	867,501	

Para 87

Increase in surplus assets		
Apr 21 ($)	4,896,000	
Jan 16 ($)	(472,000)	Z
increase ($)	4,424,000	
increase (£)	3,167,496	
tax (20%)	(633,499)	
net increase (£)	2,533,996	A

Para 90

EV in Jan 2016		
FME Jan 16 $	2,027,000	
Multiplier	2.5	
EV in Jan 2016	5,067,500	
say	5,067,000	B

Paras 91 and 97

EV increase		
R. Isaacs EV	11,772,000	
F. Hotston Moore EV	9,948,000	
Average	10,860,000	
45% discount	(4,887,000)	
adjusted EV	5,973,000	C
less start figure (B)	(5,067,000)	
increase $	906,000	
increase £	647,143	(at $1.40 = £1)
less 20% tax	(129,429)	
net increase	517,714	
say	518,000	D

Para 98

Total Company A increase		
increase surplus assets (A)	2,533,996	
increase EV (D)	518,000	
Total increase	3,051,996	E

Para 99

H previous (X)	422,521	
add Company A increase (E)	3,051,996	
	3,474,517	F
W previous (Y)	444,980	
adjusted total	3,919,497	G
50%	1,959,749	L
less (Y)	(444,980)	
lump sum	1,514,769	
say	1,515,000	J

Paras 102 and 103

W assets (L)	1,959,749	
less Flat	(370,270)	
	1,589,479	
say	1,590,000	
less refurb Flat	(50,000)	
	1,540,000	
Duxbury calculation p.a.	90,047	

Para 104

Calculation total assets		
H marital property (F)	3,474,517	
add minor companies	364,880	
add net starting surplus (Z)	269,714	(after tax at 20% and in £)
add starting EV (B)	2,895,429	(after tax at 20% and in £)
add pre-marital pensions	1,750,000	
H total assets	8,754,540	
W total assets (Y)	444,980	(no non-marital assets)
Total assets	9,199,520	K

Calculation % receipt	
W receives overall (L)	1,959,749
%	21%
H retains (K-L)	7,239,772
%	79%