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Case No: FD19F00071

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/02/2021

Before :

THE HON. MR JUSTICE COHEN

- -

Between :

AG	**Applicant**
- and -	
VD	**Respondent**

Deborah Bangay QC & Katherine Cook (instructed by **Penningtons Manches Cooper**) for the **Applicant**
Justin Warshaw QC & Kyra Cornwall (instructed by **Mishcon de Reya**) for the **Respondent**

Hearing dates: 18 – 27 January 2021

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cohen :

Introduction

1. I have been dealing with an application pursuant to Part III Matrimonial and Family Proceedings Act 1984 by AG ("the wife – W") for financial relief following the breakdown of her marriage to VD ("the husband – H") and a divorce in Russia.

2. The summary facts can be quickly set out. W is aged 51 and has a daughter S who is aged 17. H is aged 56 and has four children by previous relationships. Both parties have had previous marriages.

3. They met in 2008 and co-habited from 2009, marrying in Russia in 2010. Until then they had only lived in Russia.

4. Their marriage was to a significant extent spent apart because in 2010, as I find at H's instigation, the family moved to England but H's business interests mainly kept him in Russia. For tax purposes he had to spend no more than 90 days a year in England and not less than 180 days a year in Russia, but his business commitments meant he was often in England much less than that.

5. On H's case the marriage came to an end, apart from an attempted reconciliation in 2016, on 1 April 2014. On W's case the marriage came to an end in 2017.

6. It is common ground that H was a wealthy man when they met. It is H's case that in 2011 he placed the vast majority of his assets in a Curacao Foundation ("the Foundation") and that since then he has owned very little himself. It is W's case that during the marriage H became financially even more successful. Thus it is that the parties have set the stage for a titanic battle about the ownership of assets and marital accrual. W has sought to make a sharing claim whilst H argues that the court in Russia, in which country they were divorced and where financial proceedings first took place, made a fair and reasonable award and that W is entitled to nothing more.

7. A quick glance at the asset schedules shows graphically how far the parties are apart. W claims that the marital assets are £29m (throughout this judgment I shall use round figures) of which H owns £26.5m and W £2.5m (being broadly her half interest in the matrimonial home). H claims that after repayment of the sums that he has borrowed from the Foundation he is worth -£6m and before repayment the total assets are only £7.6m of which he possesses £2.9m and W £4.6m.

8. The parties have lost all perspective of what this case is really about. They have each made arguments which I regard as unsustainable. They have sought to argue every point available to them and have thus between them expended some £2.1m on costs and have deluged the court with material far in excess of what is permitted either by rules for good practice or orders of the court. On the other hand, the requirements for an agreed chronology and schedule of assets have been ignored. The way that the case has been run has added to the difficulty of the judicial exercise.

The History in more detail

9. H has made his career in construction and property development. He was living in Moscow, having originated from what is now Ukraine, by the time he and W met in St Petersburg, where she lived. He was by then financially successful and in 2006 had sold his shares in a company developing a residential complex for in excess of $20m. This was just one of a number of enterprises in which he was involved but much the most financially remunerative.

10. In April 2008, when the parties met, H was working as Deputy Head of National Projects in Moscow. That position did not inhibit him from being involved in his own private enterprises. W was working as manager of a fashion retail company in St Petersburg.

11. The couple very quickly fell in love and in late 2008 H rented a larger and smarter flat in St Petersburg for W to move into, paid her rent, provided her with a large allowance and paid S's nursery and then school fees. W has calculated that the benefits that she was at that time receiving from H amounted to $20-25k pm. From then on W has been financially dependent upon H.

12. In mid 2009 the parties agreed that W would sever her ties with St Petersburg and move with S to live with H in Moscow. On a date unspecified in the second half of 2009 the parties became engaged to marry.

13. By the end of 2009 the parties had agreed to move to London. Neither party had any connection with England nor spoke the language. W had no assets of her own of any significance and the motive was plainly financial in order to best protect H's wealth. In January 2010 the family visited London and they arranged through Coutts Bank that W would obtain a UK Tier 1 investor visa. She named H and S as her dependents. The arrangement was done in this way as it would have been difficult for H, who was then working for government in an important role in construction and reconstruction, to be seen to be making such an application. H instructed his lawyer to draw up a loan agreement which he then required W to sign for the £1m that he provided to W to obtain the visa. She had no legal advice at the time and did as H asked. At that stage the parties were still only engaged rather than married.

14. In August 2010 the parties married in St Petersburg and bought a flat in London NW8. It cost £2.95m and the 10% deposit was paid in equal shares, W's portion coming from the £1m provided by H for the investor visa. On purchase they moved into the property and W and S have lived in London ever since that time.

15. In November 2010 H entered into a Principal Party Agreement (PPA) with a trust company (which I abbreviate to "U") giving U control over 16 of H's companies. This was one of a number of documents which I shall examine in more detail later in this judgment. Another raft of very important documents were entered into in July 2011. The trust acted as director of a private Foundation ("the Foundation") at the request of H and which was used to make monies available to H.

16. H's business life continued in Russia in both the public sphere and as a private developer. Companies with which he was connected engaged in both private developments and obtained Russian government contracts for construction projects.

17. In February 2012 H entered into the first of a series of loan agreements with a BVI company "MI" whereby funds held within the Foundation were made available to H by way of loan. It is H's case that he has to date borrowed a little over £13.5m in various tranches against a loan facility of £15m. Although all these loans have repayment dates, many of which have passed, H accepts that it is highly unlikely that any of the loans will be called in during his lifetime.

18. Loans were used to purchase a property in Cyprus in 2012 in the name of a Foundation company for €730k and a property in Majorca in the name of another such company later in the same year for €3.05m.

19. The assets held within the Foundation were enlarged from time to time as other entities were placed under that umbrella and as projects carried out by companies were brought to a conclusion and money returned to the Foundation and reinvested. It was thus that the second matrimonial home in The Bishops Avenue, London was purchased in 2013 in joint names for £8.65m, the whole of the purchase price (£9.2m inclusive of SDLT and other expenses) being produced in tranches by way of loans from the Foundation, save for the last £1.7m which came from a private development carried out by H with Foundation funds.

20. In January 2013 the shares in one of the Foundation companies were transferred to W to enable her to take out a lease through the company for premises off Harley Street from which W could set up a medical beautician business called LMS. H invested heavily in the business, including by way of a loan to W in the sum of £200k.

21. In early 2014 H fell out with the Russian government and had to leave Russia at short notice. He was threatened with criminal charges and lost much of his remaining Russian assets. The rift was later partially healed but for a period H was under significant financial strain.

22. On 1 April 2014 H, W and S were in Majorca for H's 50th birthday and H and W had an argument. For reasons that I will come on to, I am satisfied that this date did not mark the end of the marital partnership. H asserts that from this time on, the relationship between him and W was purely as friends.

23. At the end of 2014 the first matrimonial home was sold and the net proceeds of sale were split so that each party received £757k.

24. In early 2015 W incorporated MM, a high-end fashion retailer. Within a couple of months she transferred her shareholding to her sister. She said that it was always her intention that the business should be transferred to her sister as it was a method to give her the right of free movement under the Schengen Agreement. H invested €100k into the project.

25. Whenever the date of separation, W has remained in the matrimonial home with S. S is in her last year at school and will then move on to an English university, having already received a number of offers. H continues to spend the majority of his time in Russia but spends some time in England where he has rented a flat.

When did the marriage end?

26. On 16 March 2017 W issued a divorce petition in England. It was not served until much later. H relies heavily on its contents which include the assertion that the separation was 2 years prior. W denies ever saying such a thing and that the lawyers instructed on her behalf, but not by her, put that in without her instruction. As a result of a successful application made by H to me, the relevant parts of the solicitor's file have been made available. In their different ways they provide some support for each party.

27. The files show that there is no evidence that W ever had any communication, direct or indirect, with the lawyers. Her only contact was through an intermediary who she said advised her that it was much easier to get a divorce on the ground of separation than adultery and who charged her an extortionate sum for providing a non-existent service. All the communication with the solicitors was through this middle-man.

28. The solicitors' file refers to '3 years', 'no sex' and 'no communication'. Communications between the intermediary and solicitors refer in two places to a separation for the past 2 years. The intermediary approved the draft petition and it was signed on her behalf. W said that she was given no explanation of it and that her English was not good enough to enable her to understand its contents.

29. It is also relevant in this context to refer to W's application for a non-molestation order which refers to a reconciliation in 2016. If there had not been a separation, says H, there could not have been a reconciliation.

30. This is all very valuable ammunition for H. He says that it accords with his case that they separated following the argument in April 2014. But, the reality of the situation is much better judged by the communications and contact that the parties were having between themselves in the period 2014-2017. This is particularly significant in the context of a couple who spent most of their time apart in any event.

31. After the argument on 1 April 2014 in Majorca, W and S returned to England for the commencement of S's summer school term. They then went to Majorca as usual for the summer holidays and shared the Majorca home with H for some 8 weeks between July-September 2014, being the entirety of the summer school holidays. During that time they celebrated their wedding anniversary and, the following day, S's birthday. In December 2014 H and W spent a week together in Italy, mainly at a spa hotel. They shared a bedroom.

32. In May 2015 H was in London for W's birthday. He said he considered it was his duty to be with her for her birthday. As usual, he sent her white roses and treated her to dinner.

33. It was in February/March 2016 that H made his investment into W's Majorca business. He agrees that in April 2016 they attempted a reconciliation. They spent W's birthday together and I accept that he gave her a large sum of money to buy jewellery. In June 2016 he sent her his proposal for them to enjoy a holiday together in the sun in Thailand, Abu Dhabi or Miami over Christmas. In July 2016 they were together for what turned out to be H's father's last birthday, again sharing a bedroom.

34. The following year they were together again both for H's birthday and W's birthday in April/May respectively. Later in 2017 W went to Odessa to attend H's father's funeral with H. Once again they spent a significant part of the summer school holiday in Majorca.

35. Notwithstanding the row in April 2014 and arguments from time to time about money at a difficult time for H financially, it is clear to me that the parties still saw themselves as a couple. Their messages are generally of an affectionate nature. There are photographs of them presenting as a couple having a happy time. To the outside world, there had been little if any change in their domestic arrangements or the time that they spent together. There was no discussion between them before 2017 of separation or divorce, concepts with which they both had experience.

36. The parties disagree as to whether they were intimate between 2014-2017, but it is plain, contrary to H's statement, that they shared a bedroom on many occasions.

37. It is accepted by H that he continued to pay a monthly allowance of the equivalent of about £400-£500 to W's parents until March 2018 and to W in a much greater sum until July 2017.

38. It is clear to me that notwithstanding what might have been said in legal documents in 2017, the marriage did not come and was not perceived by either of them to have come to an end until a date in 2017. I therefore treat this as a marriage which endured between 2009-2017.

Legal proceedings

39. W says that she attempted to serve her divorce petition on H in England and that he evaded service. I am not satisfied that H did seek to avoid service. After all, W could always have served H at the birthday celebrations in London or in Majorca when they were there if that is what she wanted to happen. My surmise is that the proceedings were not served because there seemed no great urgency, there was no definite decision to divorce, and because W's main concern was to have her petition ready to serve in the event that she got wind that H was issuing in Russia.

40. In December 2017 H issued his divorce petition in Russia. In a series of letters to the Russian court W sought to have the proceedings adjourned to attempt a reconciliation. She accepts that this was a ruse as she was trying to win a jurisdiction race. On 21 March 2018 her petition was served on H by email, but it was too late as the following day the marriage was dissolved in Russia. W accepted defeat and her English petition was dismissed by consent.

41. In September 2018 H issued his application for financial relief in the Russian courts but he in turn did not immediately serve W. However, he instructed a London firm of solicitors to seek an undertaking from W that she should not sell the Majorca property. Through her then solicitors, W offered assurances to preserve the proceeds of sale of the Majorca villa within its holding company save for the payment of her housing expenses in London, various other expenditure including S's school fees, payment of her legal costs and an allowance of £15k pm. Her letter did not receive a reply.

42. It is not clear to me exactly when W became aware of the financial proceedings that H had issued in Russia, although it was plainly prior to 23 January 2019, when she was represented. But, W must have been aware that H might issue such proceedings and I am satisfied that she entered into the transactions to which I now refer, in an attempt to remove from the distributive powers of the Russian court the assets held by her outside England.

    i) On 23 October 2018 she gifted to her mother the small flat in St Petersburg which S's father had bought for W. The flat is occupied by W's sister and for some of the year by W's parents. H spent some significant sums of money (he says $20-30k), on refurbishing the flat. But bearing in mind that it is of modest value, now put at £60k, and was owned by W well before she ever met H, I cannot regard the asset as being of any significance to what I have to determine.

    ii) In late December 2018 W sold the Majorca property for €3.53m net. W did not tell H of what she was doing but he learnt of what she had in mind from the gardener. He did not seek to block the sale. He had no reason to think that if she did sell the property, she would not comply with the offer that she had made in solicitors' correspondence. However, what she did instead, was rather than keeping the money within the company she transferred it in tranches to her own private account.

    iii) In March 2019 W purported to sell the MM shop to an employee for €49k inclusive of stock. H suggests that this sale is a sham. The purchaser has not paid the price and bearing in mind the very substantial sums invested in the business, H says that the only explanation of the very modest price must be that it remains the property of W. W is now engaged in legal proceedings against the purchaser. I regard W's business acumen as being very limited and I accept that the project has been a financial disaster (my words, not hers) and that W no longer has an interest in it.

43. On the other hand, in February 2019 H bought a replacement property in Cyprus in his own name which he immediately declared to be held by him on trust for his son ND. He accepted that this transaction would give the observer every cause to think that H was doing exactly what he accuses W of doing, namely seeking to divest ownership before the Russian proceedings were heard.

44. The Russian proceedings were heard in July 2019. The effect of them was as follows:

    i) The London matrimonial home and the shares in the Majorcan company which held the Majorcan property were to be divided 50/50. Of course by that time a significant part of the Majorca proceeds had been spent.

    ii) H's claim on the St Petersburg flat and for the return of the loan of £1m (investors visa) plus interest of over £280k (as at that date) was dismissed.

    iii) Some other minor assets were to be divided equally.

    iv) No form of continuing provision, whether by way of maintenance or otherwise, was provided for W or S.

45. As I understand to be normally the case in Russia, no account was taken of assets held in entities not owned by the parties so that H's business activities and all his funds which had been transferred into the Foundation did not enter the equation. H calculates that the effect of the order was to leave W with about £4m, being half the value of the London home and half the Majorca home, on the (false) assumption that the proceeds had been preserved.

46. H has obtained permission to appeal the order dismissing the application for the return of the investor visa money by way of a retrial. That retrial is to be heard very shortly. If he succeeds, the value of W's award from the Russian court will reduce by some £1.3m plus penalties accruing at 0.1% per day.

47. W's response to the Russian order was to apply for permission under Part III, which I granted.

The purpose of Part III

48. I have well in mind the principles set out in *Agbaje v Agbaje* [2010] UKSC 13 and *Zimina v Zimin* [2017] EWCA Civ 1429 which I summarise as follows:

The Supreme Court in *Agbaje* made clear that the court must have regard to the *legislative purpose* of Part III whenever it is considering exercising its powers, namely:

[71] To take up some of the points made in the preceding paragraphs, the proper approach to Part III simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, ***which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England****…(emphasis added).*

[72] It is not the purpose of Part III to allow a spouse (usually, in current conditions, the wife) with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases. There is no condition of exceptionality for the purposes of section 16, but it will not usually be a case for an order under Part III where the wife had a right to apply for financial relief under the foreign law, and an award was made in the foreign country. In such cases mere disparity between that award and what would be awarded on an English divorce will certainly be insufficient to trigger the application of Part III. Nor is hardship or injustice (much less serious injustice) a condition of the exercise of the jurisdiction, but if either factor is present, it may make it appropriate, in the light of all the circumstances, for an order to be made, and may affect the nature of the provision ordered. Of course, the court will not lightly characterise foreign law, or the order of a foreign court, as unjust.

[73] The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice. The following general principles should be applied. First, primary consideration must be given to the welfare of any children of the marriage. This can cut both ways as the children may be being supported by the foreign spouse. Second,

it will never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse. Subject to these principles, the court has a broad discretion. The reasons why it was appropriate for an order to be made in England are among the circumstances to be taken into account in deciding what order should be made. ***Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings****. The full procedure for granting ancillary relief after an English divorce does not apply in Part III cases. The conditions which can be attached to leave, together with the court's case management powers, can be used to define the issues and to limit the evidence to be filed, as was done by Munby J in this case. This enables the jurisdiction to be tailored to the needs of the individual case, so that the grant of leave does not inevitably trigger a full blown claim for all forms of ancillary relief.*

49. The principles established in Agbaje have since been summarised by the Court of Appeal in Zimina v Zimin at *[47]:*

i) The legislative purpose is to alleviate the adverse consequence of no, or no adequate financial provision having been made by a foreign court in a situation where there are substantial connections with England.

ii) The duties under section 16 and section 17 together impose two interrelated duties i.e. to consider whether "in all the circumstances of the case" England and Wales is an appropriate venue and, secondly, whether an order should be made "having regard to all the circumstances" including the matters in section 25(2)(a)-(h) of the Matrimonial Causes Act 1973.

iii) Part III cannot be used to 'top up' foreign provision in order to make it equate to an English award; it follows that mere disparity will be insufficient to 'trigger' the application of Part III.

iv) No element of exceptionality is required and neither injustice nor hardships are preconditions. The order need not be the minimum amount required to avoid injustice.

v) In considering quantum the court has a broad discretion subject to three principles:

a. Primary consideration is to be given to the needs of any children;

b. It is never appropriate to make an order which gives a claimant more than she would have been awarded had all the proceedings taken place within this jurisdiction;

c. ***Where possible the order should have the result that provision is made for the reasonable needs of each spouse.***

50. I turn to consider whether England and Wales is the appropriate venue for the application and first consider the connection which the parties have respectively to England and to Russia, being the first two matters set out at section 16(2) of the Act.

51. The parties decided in 2010 to leave Russia for England. They have had their main home here since then. They bought their own property in London. They took out British citizenship. W and S have lived nowhere else during the last decade. Indeed, W has not visited Russia since 2015. S has had nearly all her education in England.

52. Neither party speaks much English and they communicate in Russian with each other. They have retained their Russian citizenship and H has spent much more time in Russia than in England. He does not own his own home in Russia and he stays in a rented flat in Moscow.

53. W's family lives in Russia, H's in Ukraine and Russia but their wealth, according to H, is in neither country. H has been at pains to dispossess himself of ownership of his Russian assets of any significance. H's business activities are largely in Russia and Germany but conducted through entities which he says that he does not own but which are owned by ND.

54. The Russian order did not lead to any redistribution of the family assets. It has not been complied with in any way of which I have been told - s.12(2)(e).

55. H says that W could and should have claimed within the Russian proceedings. Her case is that this would have been futile as most of H's assets would have been excluded from the court's scrutiny and/or would remain in the current ownership. On the other hand, there is property in this country which would satisfy the large part of her claim - s.12(2)(g).

56. The effect of the Russian order in the current circumstances would be to give W one half of the value of the matrimonial home (i.e. about £2.5m) from which she would be expected to repay one half of the proceeds of sale of the villa (approx. £1.5m) so as to leave her with just £1m to house herself and S and to live off. I appreciate that H will say that this is W's fault for having spent the Majorcan proceeds, but that is the reality, unless I were to find, which I do not, that the Majorcan money should be added back. If H's appeal to recover £1.3m plus penalties for the sum loaned for the investor visa and penalties succeeds, W and S will be left with nothing either to live in or to live off.

57. H says that this is a Russian case and that the English court should not interfere. I disagree. W has long severed her links with Russia and the entirety of the parties married life has been spent in England. I regard there as being 'substantial connection with England', certainly greater than with Russia and it is appropriate for an order to be made by this court. As I have made plain, the Russian order does and did not provide adequately for the needs of W and S.

H's business activities

58. H says that he established his investment business in 1992 and by 1998 had created a public construction and investment organisation practicing in the Moscow region. The details of his subsequent activities are set out at length in his first statement and are summarised at a schedule that appears at D276. Although headed "Investment and Profit 2005-2019" the schedule sets out business activities which with one exception produced profit only in the period up to 2014.

59. What is particularly striking about the schedule is that almost half of H's wealth is said to have come from one project, a housing complex known as KK which produced some $20.6m paid over three years into the Bank of Cyprus. H says that it was these funds which were the source of the £1m for W's investor visa and indirectly for the purchase of the second matrimonial home at £8.5m plus costs. This project was completed and paid for by 2009.

60. The second biggest profit earner was KP, producing some $7.6m. This was the result of a project into which H invested some $7m before the parties met and the profit was received in 2012 after they had met. Two garage developments produced $2.4m over a period of time up to 2008.

61. It is unnecessary to go through H's statement and schedule in great detail. W makes the fair point that H's disclosure makes it impossible for the figures to be challenged because there is an absence of underlying documents. That said, none of the figures have been challenged and they show, on the face of it, that the majority of H's wealth was earned before 2010 and insofar as it was created afterwards was largely done on the back of investment made before 2010. While some of the profits did come in after the parties had set up as a couple, it was the minority of what H has made.

62. A large amount of time and money has been spent on W's attempt to show that there has been a significant marital acquest. Unless W's share of that acquest exceeds a needs-based award she will not receive a sharing award.

63. W has sought the assistance of Ms Hall of Smith and Williamson. I have seen her "report" albeit it is not evidence as I refused to allow expert evidence. It was provided to me by W and as I made clear its status does not amount to it being more than an aide memoire for W's legal team to cross examine H. Both it and the evidence I have heard confirm to me that I was right not to permit the instruction of a SJE to value the acquest. I formed that view for a number of reasons.

64. A fundamental difficulty with the exercise is one that arises commonly with property development businesses. As one project is completed, the proceeds are gradually re-invested in another venture. Projects often take many years from the acquisition of land/buildings until development is completed. H had been a property developer long before he met W. If traced back, a significant but unquantifiable amount of the current value of all his projects would be found to originate from previous projects. Those in turn would have originated from projects before then. Much of what now exists will, if traced back, be found to originate pre-marriage. It is impossible for the court to do any sort of reliable assessment.

65. W accepts this, but says that it is as a result of H's failure to give proper disclosure. I agree that H's disclosure of documents relating to his business interests, including those which he has placed in the Foundation, has been very poor. I do not for one moment accept that he could not have produced much more and his saying that he has tried but that the Foundation or his son have been uncooperative is a smoke screen. But, even if he had produced information, I am confident that I would be still left with the problem set out in the preceding paragraphs.

66. Ms Hall's attempt to calculate the value of the marital acquest by looking at the profit that has been obtained during the marriage fails, in my view, to ask the right

questions. This is not a criticism because she is doing the best that she can, but the profit is built on the bedrock of what has been invested and the investment is a combination of old money, i.e. pre-marital money, together with new money earned by the use of old money. It is an exercise that is doomed to failure.

67. A further problem is that some of the profit that has been earned during the marriage has been used to fund the purchase of the matrimonial home and the Majorcan property. These are assets which I am fully taking into account in my award. Their value rests with the parties. If I was to adopt the approach of Ms Hall without taking into account this factor I would be double counting.

68. W, in effect, asks me to disregard H's schedule, but, it sets out in tabular form what is to be found in H's statement. W does not challenge what H has said about his premarital endeavours but says that he has earned much more since then.

69. I cannot be satisfied that sufficient has either been earned or preserved during the marriage to entitle W to the making of a sharing award. While I am satisfied that H did earn income and make profits during the marriage, a large amount was spent by H and W on property in London, Majorca and Cyprus. Big sums were put into what turned out to be failed investments. A very high standard of living was maintained. These will have only reduced what might otherwise have been an acquest. Whatever the deficiencies in H's disclosure, the bedrock for any conclusion of a significant acquest is absent.

The move to London

70. In his statement H said this:

> "Shortly after our marriage, we decided to move together as a family to London. It was W's idea and initiative to move initially … She always told me that she was attracted by the idea of 'marrying a foreigner' and she wanted an international lifestyle".

71. I reject this evidence. When I asked H why it was that he came to England, he said that he came as it had the most comfortable investment programme, there were greater opportunities in the UK, and London was the best financial capital in the world. It was a good place to live and to educate all the children. That evidence I accept, and I do not know why in his statement he sought to attribute the move to W.

72. He said that as of 2010 he had no problems with the Russian government but could see what was happening to people who fell out with it. I accept the evidence that H moved most of his assets to the trust to distance himself in the eyes of the Russian government from them and for the same reason subsequently Russian assets were placed in ND's name.

73. The relevance of this is that it establishes that H's argument, to use my words, that W made her bed in London and now must lie in it, is not properly based.

The Foundation

74. In July 2011 U established the Foundation in Curacao.

75. This had been preceded by a Principal Party Agreement (PPA) made between H (described as the Principal) and U which declared that:

"The Principal is the ultimate beneficial owner of the entities listed…"

The agreement was effective from November 2010 and provided that U had entered into a management agreement with each listed company. The companies made subject to the PPA are set out, being 16 in number, mostly incorporated in the BVI and Cyprus.

76. The management agreement which was also made in July 2011 described H as the Principal and as the beneficial and/or legal owner of the Foundation. It provided for U to provide management and directorship services to the company in respect of the entities placed within the Foundation. The management agreement contained the provision that the Principal (H) undertook to notify U before parting in any way with his direct or indirect beneficial interest in the Foundation and that any new Principal had to declare in writing his agreement to the provisions. No amendment of the agreement was permitted unless in writing and signed by the parties to it. H accepts that he has never provided U with any document saying that he was parting with his interest and nor has ND entered into agreement with U.

77. In a further document entered into simultaneously, H authorised ND to give instructions to U "on my behalf until such time as I have communicated otherwise in writing". It is clear and accepted that following the setting up of the Foundation H remained the ultimate beneficial owner of assets placed within it.

78. H told me that apart from 3 companies in Russia in which he had an interest, all his companies were put by him into the Foundation.

79. It was H's understanding, agreed by ND, that in 2015 H transferred the beneficial interest in the entities within the trust to ND but this is not supported by the only document from that time that H can produce. On 31 July H wrote as "mandator" what he describes as a letter of wishes in which he:

"Instructs and authorises U as holder of the founder rights and sole board member of the Foundation in case of **my death or physical or mental incapacity** to act … to follow and accept any and/or joint instructions regarding the Foundation and its assets from … ND". (emphasis added)

80. There has never been any document that H can produce which actually vests the interest that H has in the entities in any other person. The fact that the correspondence from U describes ND as the "only discretionary beneficiary" takes the matter no further. It is not what any document shows.

81. In considering the Foundation it is important also to consider the events of 2012 when it is clearly shown that H had intended to transfer all his interest in the Foundation assets to W. ND never questioned it. The letter from U makes it clear that the instructions to reassign the benefit came from H direct to U. That it did not happen is not the point; it shows where the control rested.

82. H continued with his business activity in Russia and he says that his hope had been to sell up in Russia by about 2014. However, in 2013 he was threatened with criminal proceedings by the Russian state and only in 2015 was the threat removed when he agreed to handover the Russian businesses to the state. W accepts that the period 2013-2015 was a very difficult time financially for H.

83. Between 2012-November 2020 H has received loans from MI Ltd (a company within the Foundation) to the tune of some £13.4m. He has the facility to draw £15m. H accepts that he will never be required to repay the loans in his lifetime.

84. He estimated, through ND, that exclusive of the loans to him there remained in the Foundation some £17.5-£19.2m but which he says is now reduced to some £13m.

85. I asked H how it was that he foresaw he would meet his needs for the rest of his life. He said that he hoped to get back to earning a good income from construction projects in Russia but he accepted that if that was not sufficient to meet his needs he would ask ND to borrow further from MI and I have no doubt that funds would be made available to him. He did not demur from this proposition and there has been no suggestion that at any time a request by him for funds has been denied.

86. H says that there have been no distributions from the Foundation. H has had his loans from MI and ND has had loans from another company within the Foundation of about £1.5m. But, H says, there have only been loans, not distributions.

87. I do not accept that this is accurate:

    i) Three houses have been purchased with the use of funds from the Foundation, namely the Majorca property (held in the name of a company wholly owned by W), the matrimonial home (in joint names) and property in Cyprus (in H's name).

    ii) The matrimonial home was funded by way of loan, but placed in the name of the parties, save for the last £1.7m received from the sale of an apartment at the Savoy Hotel which H had developed with Foundation money.

    iii) All three properties and/or the loans used for their purchase appear on the books of the Foundation as assets held by it.

88. If further evidence of control of/resource to the Foundation is needed, I refer to the making of loans to H's cohabitee, which he says will not be repaid, and the investment in the Russian restaurant at his instigation.

89. H repaid into his loan account £850k from his Coutts portfolio when that was liquidated in 2018 and he claims to have repaid £700k following the sale of the first London home which monies were then used (I do not know in what form) for the German construction projects. Mysteriously, this latter transaction does not appear on the schedule produced of the loan account.

90. In a telling comment, the managing director of U wrote to H's solicitors who were seeking information about the correct legal position of H's relationship with the Foundation that "I remove the reference to the fact that the mandator 'has ultimate

control over the structure' since, **strictly speaking**, this rests with the Foundation board" (emphasis added). This seems to me to be a right and proper acceptance that H as the mandator, is in the position to call the shots and expect them to be complied with.

91. I accept, as the letter says also that ND overviews the "day to day operations of the assets in the Foundation", but I do not accept that he does that other than under his father's direction.

92. It is unnecessary for me to go through the remainder of the documentation. I find it incredible and reject the contention that H has gifted the majority of his wealth to ND.

93. I am of the clear view that H remains both the beneficial owner and the controller through the agency of ND of the funds and assets within the Foundation. I have no doubt that they are available to him as and when he wishes to call upon them.

The German venture

94. In 2015 a construction venture was commenced to take place in Germany. It was facilitated by AS, the son of friends of H and W, and much time has been spent on trying to work out who the main participant and controller has been of what are now 5 projects. H says that ND is the owner and that he has done no more than provide the benefit of his experience and advice when his son was dealing with the outside world.

95. I heard evidence both from AS and ND on this. I refuse to be drawn into any finding about their conduct towards each other and the business. There has been a major falling out between AS and ND and there are legal proceedings taking place in Germany between them.

96. I do not think it is necessary for me to spend significant time on this. It is clear to me that H does have an interest in the business. There is a raft of correspondence showing him to be far more closely involved in it than he asserts and H says that £700k of the proceeds of the sale of the first matrimonial home ended up with SC Ltd which ND describes as his company. In turn SC then loaned these monies to VLI. This is one of two companies (the other is VLM) which bears the initials of H.

97. H's fingerprints are over much of the German activity, including significant decision-making about agreements with contractors, financial models, negotiations with co-partners and employees etc.

98. The reason that it is unnecessary for me to spend too much time on this is because the profits of the business which are estimated by AS at €9.6m are substantially overstated, omitting as they do:

    i) Corporate taxes at 20-25%

    ii) AS's claimed commission of 15%

    and include over €1m in respect of a project which has stalled and which will produce little return. Further there appears to be double-counting of the return of two projects.

99. ND puts the value of the venture pre-tax at a more modest €4.7m to be divided between the shareholders plus €1.7m of interest on the loans made by the Foundation. ND claims that his shareholding is in the range 67-95% depending on the project and that H has no shareholding.

100. I do not accept ND's evidence that his father has no interest and I can see no reason why H's expertise is said to be unrewarded and why H should not be sharing in the receipt of the interest on the loans which emanate from his funds.

101. I regard ND's evidence as to value as more likely to be accurate than that of AS in the light of the matters set out at 98 above and that in consequence the total profits will not exceed about half the figure quoted by AS. They are in some way to be divided between H and ND. They are not sufficient to make a difference to the outcome of the case.

Russian projects

102. When H left Russia in 2014 he transferred three companies to ND, the important ones being OF and AO. ND's case is that neither project has yet become near to completion. I am satisfied that H would not have transferred them to ND if he did not feel that there was the prospect of real value accruing and I have no doubt that when H resumes his business activities in Russia these will be high on his agenda.

103. I think it very likely that H does retain an interest in these companies but I have no basis upon which I can begin to put a figure, let alone a high figure. In particular I am told that the major development at OF is stalled.

W's use of resources

104. H rightly points out that W has run through an enormous sum of money. That includes:

i) £757k received in December 2014 following the sale of the first London home;

ii) £779k received between 2015-2016 on the redemption of the government bonds;

iii) £3.18m being the sterling equivalent of the proceeds of sale of the Majorca villa received in December 2018-early 2019;

iv) Very substantial transfers made by H to W's account over the years but in particular up to July 2017 when save for the payment of S's school fees and a small allowance and his share of the costs of the matrimonial home he ceased payments to W.

105. It is a little difficult for H to make complaint about the use of resources by W which he provided himself. This covers all the payments above except the Majorca property. H says that he knew from the outset that W was a big spender, yet he continued to provide her with the funds set out above. He has not asked her to account for them at any time and nor has he sought to limit her expenditure. He was happy to indulge her.

106. W claims that she lost £500k in the Majorcan shop venture. There are no documents that enable me to put any sort of figure on it but it is important to recall that H was fully aware of the venture and indeed invested in it himself.

107. LMS has been even more of a drain. According to her statement, H invested £354k in the business (inclusive of the £200k loan) and W has spent another £360k. It is quite impossible to assess the accuracy of these figures. Her director's loan account shows a balance due to her of £591k. The accounts show that the accumulated losses of the business exceed £1m. It was clear from the evidence that W is clueless as to the financial operation of the business and relies on someone to tell her. She has just put in money whenever the manager has said it was needed. W's estimate is that they have lost £600k in the business, but I think that this is likely to be a significant underestimate as the accounts and W's own statement suggest a larger figure.

108. W has paid nearly £1m towards her own costs. Adding together that and the sums put by her towards her business activities produce a total of somewhere between £2-3m which explains much of what has gone.

109. There is a dispute between the parties about the extent of H's financial provision for W and S since the end of 2014, when the proceeds of the first London home were split and H encountered choppy waters financially. In the 3 years before then, the schedule produced by W shows H making an average "allowance" of just under £500k pa.

110. Thereafter, in the period January 2015-July 2017 H's payments averaged £130k pa and were then further reduced, being largely limited to payment of S's school fees and allowance and the expenses of the home, initially in full but then reduced to half, plus £132k for W (a figure which it is not clear to me is agreed or disputed).

111. I set out these figures not to castigate H for the reduced level of support but to explain to a significant extent how the money set out in paragraph 104 has been utilised. I do not think that W has made any proper attempt to limit her expenditure but the extent of gratuitous overspend is substantially overstated by H.

112. H says that I should add back a significant element of the money that W has received and spent. Whilst I regard her expenditure and use of funds as irresponsible I need to be very cautious before adding back money which is no longer available when I am making a needs-based award. I must also bear in mind that the bulk of the money has gone on either costs or business ventures of which H was fully aware and participated in at the outset. He knew she was extravagant when he married her. To use the words of Moor J in *MAP v MFP* [2015] EWHC 627, a spouse must take his or her partner as he or she finds them. I regard some of the expenditure as irresponsible but not "wanton dissipation of assets" to use the phrase found in *Norris v Norris* [2003]1 FLR 1142.

113. In determining that W's use of funds should not attract an add back I must also bear in mind that H's expenditure has not been subject to the same scrutiny as that of W, but I do observe that he has invested some £2.6m into a top-end Russian restaurant in London. That money seems largely to have gone. Bad investment decisions are not solely taken by W. I have no doubt that both H's restaurant and W's medical

beautician business have also been very adversely affected by the pandemic and subsequent lockdown. They can hardly be blamed for that.

The assets of the parties

114. In the parties' joint names is the matrimonial home, where W lives with S. It comprises 3 very large bedrooms and 4,158 sq. ft. It is in one of the most expensive roads in London. I had to hear the evidence of the valuers, the SJE saying a value of £5m and an expert instructed by H saying £6m. These figures came as a nasty shock to the parties who had spent so much more on the property, buying it as they did as a new build for £8.65m some 8 years ago.

115. I give greater weight to the evidence of Mr Mason, the SJE, because he has seen the property as it is, rather than in 2012 when Mr Smith saw it, and because he is the one who has found and analysed all the comparable property particulars. That said, I do not understand why it is that he has valued the property at a lesser rate per square foot than he does the 3 properties which he considers to be most approximate in terms of presentation and which he describes as "justification for a similar rate" of £ per sq. ft. Applying the average of what those 3 properties have sold for namely, £1277 per sq. ft, rather than £1203 per sq. ft which Mr Mason used, would produce a value of £5.3m and that is the figure upon which I shall work. This will produce a net of costs of sale figure of about **£5.14m [£2.57m each]**.

116. I exclude the properties in Russia respectively occupied by H's mother (but held in H's name) and W's sister (previously held in W's name). Neither property is immediately available and both have very modest values.

117. W has a surplus of other assets over liabilities after paying her outstanding costs of **£95k**. Thus I take W's assets as being **£2.66m**.

118. I do not attribute a fixed value to W's jewellery or handbag collection or the household chattels. W has jewellery which has been valued at approximately £260k and a collection of handbags which H assesses, perhaps rightly, at around £80k. Notwithstanding her financial difficulties W thought it was appropriate to buy herself a ring in February 2020 for €17k and a few months later bought herself a Rolex watch for €38k, which in the witness box for the first time she said was refunded to her by an admirer who wanted to make a present.

119. I accept that these are realisable assets but in a case of this nature, I do not regard it as reasonable to say that W's needs should be met in that way. I can however bear them in mind to the extent of having the comfort that if W cannot live within the budget that I notionally provide she has it as a resource to which she can turn.

120. H has his share of the matrimonial home **[£2.57m**] and I include the Cyprus property as an asset available to him. His explanation of placing it in the name of his son to help him obtain a Cypriot passport when he had already obtained one as his father's dependent was unconvincing. Further, H provided all the funds for the purchase at the time that the financial proceedings were ongoing and it is hard to see how the transaction might not be set aside if that relief was sought. Its net value is taken at **£687k**.

121. H owes his solicitors some £170k, leaving him with assets exclusive of the Foundation and business assets of **£3.087m**.

122. I find that H is the beneficial owner of the Foundation and has access to its assets. There is remaining in the Foundation exclusive of the monies already loaned to him assets worth some £17-19m, albeit recently revised down by ND to £13m, largely by writing off the restaurant loan and by currency movements. I think it probable that the value lies within the bracket first given but that there is a substantial amount of current illiquidity.

123. I also find him to have an interest in the German and Russian businesses in a sum that I cannot determine.

124. H was confident about his financial future and his ability to access funds as required. I am sure that his confidence was justified.

125. W says that by reason of H's inadequate disclosure I should draw robust and adverse inferences. I have made it clear that I am satisfied that H does have both business interests and access to assets which he has not disclosed but inferences need to have a proper factual substratum. As I hope that I have shown, I am not satisfied that I can or should infer that these are so significant or that H is so wealthy that W's case as to her needs should be assessed at the upper end of the bracket as I am asked to do.

Offers

126. W seeks a transfer of the home and a lump sum of £3.8m. She calculates that this will provide her with £174k pa on a Duxbury basis. She can adjust if she wishes by downsizing and increasing her income budget.

127. H offers to forego all repayments due to him but only if his offer of W retaining her half of the home, and nothing more, is accepted.

W's needs

128. W is very keen to stay in the property and my award may not force her to sell the property immediately but I do not regard it as being reasonable in terms of meeting her needs against the background of what is not a long marriage and when within a fairly short time her daughter will be taking steps towards independence.

129. In the best traditions of this case both parties put in particulars at the two extremes. W proposed properties on the market at well in excess of £4m and H proposed properties at under £1.5m. In their different ways both were inappropriate. I asked the parties at the outset to produce up to 6 particulars of properties in the middle range of between £2-£3.5m. which they did at the end of the case.

130. I accept that it would be reasonable for W to live in a purpose-built apartment building in a good and safe area of Hampstead/Highgate. She will need a 3 bedroomed property, as she now has, but I do not see the requirement for her to have the facility of a swimming pool/gym within the development, although many such developments may provide that.

131. I have studied the various particulars put before me at the end of the trial. H's are all less than half the size of the current home. They are in less attractive areas than those in which the parties have lived in London. They are simply too downmarket to be appropriate to this case. W's particulars are of properties which are smaller and slightly less attractively situated than the current home. She does not put them forward as what she wants, which is to stay where she is.

132. I conclude that a proper sum for W's housing is £3m plus expenses of purchase, moving, setting up and SDLT which I calculate at a total of **£3.4m**. In reaching that figure I also bear in mind that £3m was the price of the previous matrimonial home.

133. Both H and W put forward budgets for themselves at around £250k pa, in W's case reduced from an eye-watering sum originally sought of over £860k pa. H makes the fair point that he is paying not only for a rented flat in London but also for half the cost of the matrimonial home (which has a very expensive service charge of around £50k pa) and support for one ex-wife and one daughter. I accept H's evidence that the amount that he spends on himself is relatively modest.

134. I bear in mind that this is not a long marriage and that W did not bring money in to the marriage. The standard of living was very high but this cannot be allowed to predominate over other factors. H accepted S as a child of the family but she will leave school in 6 months' time.

135. W is aged only 51. However, I cannot find that she has a significant earning capacity. She came to England at H's instance. She gave up her job in Russia. Her English is heavily accented and she is plainly not confident in the use of the language. She used an interpreter throughout her evidence although she understood a certain amount of what was said in English and corrected the interpreter on several occasions.

136. She would not easily find a job in England and nor would it be appropriate for me to find that she will or should return to Russia. If she does obtain a job it is most likely to be working in some high-end Russian retail outfit but I would anticipate that the competition for such jobs would be very high. I cannot do otherwise than to say that if she wishes to live at a higher level than that which my budget permits it will be up to her to find a way of doing so. But, my award must be sufficient to meet what I deem her reasonable needs to be on a lifelong basis without making the assumption that she can so contribute.

137. Weighing everything up I reach the conclusion that I should take her needs as requiring receipt of £100k pa which produces a capital sum on Duxbury tables of **£2.06m**. This will require therefore the payment of a lump sum of **£320k** in addition to the transfer of the matrimonial home.

138. I am satisfied that the making an order of this size does not impinge upon H's ability properly to meet his own needs. Unaffordability has not been part of his case. Making this transfer and payment is well within his ability.

139. It will take time to sell the matrimonial home. The expert evidence was that it would appeal to an international clientele and the pandemic has frozen that market. It would be highly optimistic to think that it will sell before next year.

140. I require H to pay the service charge and, if separate, the buildings insurance until 1 September 2022 or earlier sale. I am not going to reinstate a requirement to pay further spousal payments as I am making no deduction from the award to represent the balances held by W in her accounts. Upon sale there will be a clean break.

141. The meeting of S's needs is not straightforward. H has said that he will comply and pay whatever sum I regard as reasonable without the need for an order. I do not intend to suggest that he would not do so, but I do have to bear in mind that there are not assets in this country that W can have recourse to in the event of any default.

142. H responsibly accepts his liability to pay the school fees for her two remaining terms and thereafter to pay for her tuition and living expenses at university. I order that in addition he pay periodical payments to S in the sum of £24k pa (as he has offered) of which 50% shall be paid direct to S and the balance to W from the time that S starts at university.

143. Russian Proceedings: H is still intending to pursue the retrial within the Russian proceedings. As I am making a needs-based award, it is necessary for me to direct that H must provide an indemnity and/or pay a lump sum equal to the amount of any award against W that he obtains in Russia. It would plainly not be appropriate for a needs-based award to be reduced by H's pursuit for the return of the investors visa loan. Likewise, it would be inappropriate to leave H with the ability to claim for the monies loaned to W's businesses.

Conduct of the litigation

144. I stated at the start of this judgment this case has been conducted as if the rules for efficient conduct have never been devised. To give only a limited number of examples:

    i) Until I required it at the end of the first week I was given no chronology.

    ii) Each party has provided their own schedule of assets. Unnecessary time has been spent trying to analyse the differences.

    iii) H's statements are respectively nearer 40 and 50 pages in length regardless of the limit of 25 provided in PD 27A.

    iv) Most egregious of all, I gave permission for one core bundle and one library bundle per side. I have been provided with two core bundles and, unforgivably, 11 library bundles many of them containing well over 500 pages and hard to manoeuvre. They include nearly 2,000 pages of bank statements which have never even been opened in the hearing.

145. I regard the conduct of the litigation as self-indulgent. There has been no attempt, so far as I can observe, to limit the parties. At an early stage when refusing the application for a SJE accountants' report on marital acquest, I made it clear that it seemed to me that this award was very likely to be one based on needs. This fell on stony ground. W has insisted on pursuing a sharing claim; H has sought to argue that assets which in my judgment are plainly a resource available to him are in fact controlled by his son. His insistence on sticking to the terms of the Russian court

order when it plainly does not permit W's needs to be met was unreasonable. Between the parties and their advisers, they have made what should have been a relatively straightforward judicial exercise one that has been wasteful of court time and the parties' resources.

146. In making my comments I do not intend in any way to suggest that counsel and solicitors have done anything other than represent their clients with the utmost skill but conducting this case has been reminiscent of a visit to a museum.

147. To take this to its extreme, I was asked to resolve a dispute about six works of art, the most expensive valued at £7k. By the end of the case only 5 were in dispute. There is no doubt that H was the art collector and bearing in mind that W will be retaining the bulk of the contents of the home by both number and value I direct that H shall have the 5 pictures which remain in dispute.