

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

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 concerned 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.

Neutral citation number: [2022] EWFC 75

IN THE FAMILY COURT AT BRISTOL

CLAIM No: RS17D04967

The marriage of Forida Uddin and Mohammed Alim Uddin

Date: 24th June 2022

Hearing commenced: 13th June 2022

At the Bristol Civil Justice centre, 2 Redcliff Street, Bristol

Before: HHJ Stephen Wildblood QC

BETWEEN:

MRS FORIDA UDDIN

APPLICANT

-V-

(1) MR MOHAMMED ALIM UDDIN

FIRST RESPONDENT

(2) MS RUPIA BEGUM

SECOND RESPONDENT

(3) BLUEBIRD RESTAURANT LIMITED

THIRD RESPONDENT

(4) MR MOHAMMED MUJAMIL HAQUE

FOURTH RESPONDENT

~~(5) MR KARIM MIAH (AKA ABDUL KHAHAR)~~

~~FIFTH RESPONDENT~~

~~(6) S & M PROPERTIES (TAUNTON) LIMITED~~

~~SIXTH RESPONDENT~~

(7) MRS SUME BEGUM (AKA SHUMI BEGUM)

SEVENTH RESPONDENT

(8) MR SHAKIR AHMED JUMON

EIGHTH RESPONDENT

Judgment

Kamar Uddin, counsel, for the Applicant wife, instructed by Cambridge Solicitors LLP

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

Anawar Miah, counsel, for the First Respondent husband, instructed by Ash Clifford Solicitors

Joseph Meethan, counsel, for the 2nd, 3rd, 4th, 7th and 8th Respondents, instructed by Salisbury Law

HHJ Stephen Wildblood QC:

1. **Introduction** - These are feral, unprincipled and unnecessarily expensive financial remedy proceedings. It took days for me to read the papers and has taken even more days to write this judgment. Because there are so many intertwined issues, it has been difficult to structure this judgment and so I use headings throughout it to help anyone reading it. My original judgment has been anonymised by counsel to their satisfaction and I am publishing it in that form., save that I have also anonymised the names of the two adult children of this marriage and removed the children's dates of birth.
2. In addition to the financial remedy issues, the wife also seeks declarations that the husband has beneficial interests in two properties that are held in the names of others. She asserts, also, that the husband has a controlling influence in a business operated by a company, the shares of which are owned by another third party. The two properties that are subject to the trust claims are i) 50-52 High Street, Burnham on Sea, of which the legal title is held in the sole name of the Second Respondent, Rupia Begum and ii) 4 Morland Rd, Highbridge, which is now held in the sole name of the Seventh Respondent, Sume Begum. The business is the New Chandni Restaurant which operates from 50-52 High Street, Burnham-on-Sea. The company that operates the restaurant, nominally, is the Third Respondent, Bluebird Restaurant Ltd, of which the Fourth Respondent, Mohammed Haque, is the sole shareholder; during the hearing it was revealed that another company ('Chandni Catering Ltd') has taken over Bluebird Restaurant Ltd.'s position in relation to the restaurant business, at least on a 'trial' basis. If the husband does not have an interest in the two properties (50-52 High St and 4 Morland Rd), the wife contends that he will benefit from them by way of arrangement with the property owners. The issues in the case were narrowed during a pre-trial hearing before me on 12th April 2022 and therefore some of the civil pleading that is contained in the bundle is now otiose.
3. This case, therefore, involves a husband, a wife, 5 children of the marriage, a restaurant (The New Chandni Restaurant), the company that is said to have run the restaurant (Bluebird Restaurant Ltd, the Third Respondent), the sole shareholder and director of Bluebird Restaurant Ltd (a Mr Haque, the Fourth Respondent), and the people in whom the property at 4 Morland Rd was vested at the outset of the proceedings (i.e. Ms Sume Begum, the Seventh Respondent and, formerly, Mr Shakir Jumon, the Eighth Respondent). I have put a list of the parties in a header at the top of each page of this judgment to assist anyone reading it.
4. In this judgment, where I refer to documents in which the titles of the parties from the civil proceedings have been used (e.g. 'Claimant', 'C', D1 etc), I have changed them to the abbreviations that I have referred to above and which are more suitable to proceedings that take place in the primary context of the financial remedy issues between divorced parties.
5. The trust and business issues are relevant to determining the issues under section 25(2)(a) of The Matrimonial Causes Act 1973 – see *Tebbutt v Haynes* [1981] 2 All ER 238. As Mr Justice Mostyn said in *TL v ML (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263: '*A dispute with a third party must be approached on exactly the same legal basis as if it was being determined in the Chancery Division*' or, I add, in any other court of civil jurisdiction. That, however, does not mean that the trust claims should ever have been allowed to dominate the litigation and procedure in the way that has happened in this case.
6. Because of the number of parties and representatives, I have colour coded a table, that I set out below, to give a brief description of each of the parties and their legal representatives. I have also created a table, which I attach as an appendix, of some of the many other people whose names arise in these proceedings; I have given a brief description of each such person and placed their names in alphabetical order. In this judgment, I abbreviate the Applicant wife by referring to her as 'the wife'

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

or, simply 'W'. I abbreviate the First Respondent Husband by referring to him as 'the husband' or, simply, 'H'. I abbreviate the town of Burnham-on-Sea, sometimes, by referring to it as 'Burnham' or, simply 'B-O-S'. I refer to other parties by their names or by their Respondent number (R2, R3, etc). On 12th April 2022, I struck out the wife's claims against the Fifth and Sixth Respondents and show the entries relating to them in the table below with the typing struck through; I have not changed the numbering of the Respondents, however, since this would merely cause even more confusion.

7. **Overview** - Before descending into the mass of detail in this case, I want to give an overview. Apart from the trust claims (which, as I explain, are meritless and misconceived), this case should have been simple. The husband and wife own two properties between them, First, there is the former matrimonial home, where the wife and all five children live. It is held in the husband's sole name. It is 37 St Michael's Avenue, Clevedon. It is worth about £500,000 net, if it were to be sold after repayment of a mortgage of £10k. Second, the mortgage-free previous family home (a former council house, held in the wife's sole name), 36 Beaconsfield Rd, Clevedon. Mr Miah, who has conducted the husband's case with eminent professionalism, is right to say that Capital Gains Tax would arise on a sale of 36 Beaconsfield Rd and so a net sale figure of about £230,000 is used for it in this judgment.
8. The husband works and has a secure income in the restaurant business that, as I explain in this judgment, he and his brother, Almas Uddin, control. His portrayal of himself in these proceedings as a mere employee of the business indebted to the owner, Mr Haque, has been dishonest. I find that he has a net income of at least £42,500 p.a. and can remain living rent and utility bill free above the restaurant. There was no examination of any alternative housing that he might wish to seek for himself, even though there are property particulars in the bundle. He did not give evidence of any intentions to buy a property or suggest that he had looked at any properties. The reality, I find, is that he will remain living and working at 50-52 High Street but has the use of accommodation elsewhere through his strong and united family and friendship circle.
9. The wife does not work and has a long-term responsibility to the five children, one of whom has a number of disabilities. She needs a large house to accommodate them and her husband has very limited capital (about £11,700). She needs to stay in the former matrimonial home whilst they are dependent upon her and they will not fly the nest when the clock strikes midnight on their 18th birthdays. Many of the issues that the wife has raised in these proceedings are speculative (at best), insufficiently analysed or are simply devoid of any evidential support at all. Since the wife has remarried, there are no issues in relation to periodical payments. She has no earning capacity, due to her commitment to the children and is not going to acquire one. The extreme divisions within this family, widened by this unnecessarily conflicted litigation, mean that the wife bears the major part of the parental responsibilities for the children, and will continue to do so. Because of the way that the husband has structured his income (taking a low wage from the business and drawing additional sums through a fictional loan arrangement) his child maintenance support of this family is very modest and is likely to remain so. She is going to bear the main financial burden in relation to them. In addition to the wife's overall potential costs liabilities, there would be the CGT payable by her on the sale of Beaconsfield Rd (estimated by Mr Miah, roughly, at about £25,000) and she has credit card debts of about £24,000.
10. Beyond the wife's credit card debts, both parties have debts which, as I explain, are all, *very* soft. One alleged debt (of the husband to Mr Haque, the fourth Respondent), is fictional – I find that it is not owed at all and represented money that was being taken by the husband out of the business, using Mr Haque as a conduit for the money. Therefore, this is a case where there is a matrimonial pot of about £730,000, there are five children living with their mother who has no earning capacity but who has remarried and there is a husband who has a secure income and accommodation.
11. It is the costs, a significant proportion of which have been driven by the wife's dogmatic pursuit of the speculative and unprincipled trust claims and by the husband's dishonest portrayal of his position

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

within the business, that make the discretionary decision under section 25 complex. There are inevitable applications that will be made by the 2nd, 7th, and 8th Respondents (at least) against the wife for costs in relation to the trust claims. The costs, subject to any assessment and rounded to the nearest £500, are said to total £203,500 and, by party, to be as follows:

- i) Wife – total costs £70,500 of which £49,000 has been paid, leaving £21,500 owed.
 - ii) Husband – £65,000 of which £50,000 has been paid, leaving £15,000 owed.
 - iii) Respondents 2,3,4,7 and 8 - £53,000 of which £42,500 has been paid, leaving £10.5k.
 - iv) Respondents 5 and 6: £15,000 ordered by me against the wife already on the strike out order on 12th April 2022.
12. Therefore the wife has an outstanding costs liability of £21,500 (her own costs) and £15,000 for the 5th and 6th Respondent. In addition to that £36,500, there will be costs applications from the Respondents and, without deciding the issue at this stage, I foresee that she may well have a total cost liability, including her own outstanding costs, of over £75,000 (by way of example only, *if* she should be ordered to pay about £40k to the other Respondents). At present and based on what I say in this judgment, I cannot see how she can avoid paying the costs of Rupia Begum, Sume Begum and Shakir Jumon, subject to assessment.
13. I wish to emphasise that I have given repeated warnings, both during this hearing and in the pre-trial review in April that the pursuit of the trust claims could leave at least one party ‘wiped out’ by the costs. Further, because of the arguments that were advanced at the hearing in April, that hearing should have given the wife cause to reflect very carefully about the trust case that she was arguing. The arguments that I have heard at this hearing, even in the closing speech on her behalf, showed that no heed had been taken to my warnings or to the obvious weaknesses in her trust case. Since that hearing, she has continued to invest heavily in costs, including £19,000 that has been borrowed to fund counsel for this hearing, I was told. The way that she has pursued this litigation is reminiscent of the reports of bad litigation in the 1970’s before the understanding of ‘ancillary relief’ proceedings had developed following the introduction of the legislation in section 5 of The Matrimonial Proceedings and Property Act 1970.
14. **Open offers** - The wife’s open offer in the financial remedy proceedings was as lacking in merit as her pursuit of the trust claims; she sought the two properties outright (37 St Michael’s Avenue and 36 Beaconsfield), a lump sum to discharge the small mortgage of £10k on 37 St Michael’s Avenue and two properties in Bangladesh about which there is no evidence that the husband even owns them. In her statement that was filed very shortly before the hearing she made even more unrealistic proposals [G48 – her claims were as now but also included ‘a lump sum of half the equity available from ‘52 High St and 4 Morland’].
15. The husband’s open offer only arrived in closing speeches (he had made no open offer at all before that in the 3 ½ years of this litigation to which I have been referred). When his offer did come (in closing speeches) it had obviously been guided by Mr Miah and so, unsurprisingly, it was, of course (if I may say), a clever offer. The husband’s primary case is that the wife should move back to 36 Beaconsfield Rd with 37 St Michael’s Avenue being sold to pay off debts. Realising the limitations of that primary position due to its impact on the children, Mr Miah postulated that 36 Beaconsfield might be sold and the proceeds divided so that the wife’s cost liabilities might be met and the husband has some capital released to him at this stage. Beyond that, Mr Miah further postulated, in the unusual circumstances of this case and given the wide age range of the children, the court might make a Mesher - type order in relation to 37 St Michael’s Avenue (with only the children’s ages or further order being the trigger points for sale since the wife has already remarried). A division of 80/20% (my example, not Mr Miah’s) in the wife’s favour, would leave her with £400,000 on sale at present values and the husband with £100,000 at a time when the

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

children were all adult. Further, if the wife and her husband wished to buy out the husband's share, they would be able to do so, if the order were to be drafted in the correct terms (this would require care due to potential CGT implications for the husband that might arise from a charge based order). As Mr Miah submitted, a simple solution that the wife has 37 St Michaels Avenue and the husband has Beaconsfield Rd would be unworkable now, in any event, due to costs and CGT on Beaconsfield Rd.

16. **The outcome of this judgment** – To make the job of reading this long judgment less burdensome, I wish to state now that I have had no difficulty at all in rejecting the trust claims. I have had no difficulty in dealing with the alleged debts. However, I have agonised over the division of the remaining £730,000 worth of assets because of the mess that this case has got itself into. My conclusion is that the only fair solution that is left is to direct the transfer of St Michael's Avenue to the wife, subject to the mortgage and on the Mesher basis set out above (80/20 in favour of the wife). I also direct the sale of Beaconsfield Rd. I have spent a great deal of time deciding upon the division of the net sale proceeds of that property. The figures relating to the sale proceeds of Beaconsfield Rd work out in this way:

	Wife	Husband	Overall % to wife, if 80% of St Michael's Ave added in.	Overall % to husband, if 20% of St Michael's Ave added in
50% to each	£115,000	£115,000	70.5%	29.5%
60% to H, 40% to W	£92,000	£138,000	67%	33%
75% to H, 25% to W	£57,500	£172,500	62%	38%

17. For reasons that I expand in this judgment and applying my discretion as to what, overall is fair, I have decided to impose the first of those divisions as the outcome of this case. Roughly, a 70/30 split, albeit that the husband will have to wait for his share of the former matrimonial home.
18. The parties will need to obtain advice about how much of a CGT reserve should be set aside from the sale proceeds of Beaconsfield Rd; the 50/50 division should be effected in the first instance after that reserve has been set aside. If there should be a surplus within the reserve after payment of CGT, the surplus should be divided in the same 50/50 proportions. I have not been given any information about the tenancy by which tenants occupy the property and so I will have to assume that vacant possession could be obtained. The contrary was not suggested by anyone when I raised the issue and everyone relied on the vacant possession valuation.
19. **The parties** - This is the table that I have produced of the parties:

Name	Party	Identity	Representative
Ms Forida Uddin	Applicant	Wife ('W'). She lives at the former matrimonial home, 37 St Michaels Avenue, Clevedon with the five children of the marriage, one of whom has multiple disabilities. She was born on 22 nd July 1979 (now aged 42). She describes herself as a 'housewife' in her Form E [293]. She remarried on 28 th November 2018. Her husband is Md Juniar Miah [F426]. She is a UK citizen.	Kamar Uddin
1. Mr Mohammed Alim Uddin	First Respondent	Husband ('H'). He was born on 25 th January 1975 (now aged 47). He says that he lives above the New Chandni Restaurant at 50-52 High St, Burnham-on-Sea where he works as a chef / the restaurant manager. He does not pay rent there. W says he is now married to R7 and lives with her most of the time at 4 Morland Rd (denied).	Anawar Miah
2. Ms Rupia Begum	Second Respondent	'R2'. She is the maternal niece of H. She has been the sole registered owner of the property 50-52 High St, B-O-S since 2014. The New Chandni Restaurant trades from that property. Prior to that, she and her aunt, Easmin (pronounced	Joseph Meethan

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

		Yasmin) were the registered owners of the property since 2008. The property is often referred to in the papers as ‘The High St property’. The wife suggests that the husband has a 50% interest in the property. The husband and R2 deny that he has any interest.	
3. Bluebird Restaurant Ltd	Third Respondent	‘R3’. This company was incorporated in August 2016 and purportedly started to run The New Chandni Restaurant from November 2017. Prior to that, the restaurant was run by a company called Rexvilla Ltd (Enu Miah Tazul, H’s younger brother, was the sole director and shareholder of Rexvilla Limited which has now been struck off the register – L407). It emerged during the hearing that R3 and R4 left the restaurant in October 2021 and another company called Chandni Catering Ltd took over for what is called ‘ a trial period’. That company is run by the husband’s uncle, Ashid Uddin, I was told.	Joseph Meethan
4. Mr Mohammed Mujjami Haque	Fourth Respondent	‘R4’. He is the sole director and sole shareholder of The Bluebird Restaurant Ltd. He was also an employee of Rexvilla Ltd until 2017. His 2020 statement at [222] states that he is aged 30, is the leaseholder of 50-52 High St (in fact R3 is) and pays rent to R2. He is called ‘Muj’ as a nickname. The wife suggests that the assertion that R3 and R4 run the restaurant is a sham and that the true financial and business control of the business lies with the husband.	Joseph Meethan
5. Mr Karim Miah (W says: ‘AKA Abdul Khahar’)	Fifth Respondent (no longer a party)	‘R5’. He is the sole director and shareholder of the company (R6) that owns the property from where The Spice Club Restaurant trades (10 Eastover Bridgwater). By my order of 12 th April 2022, I struck out the wife’s claims against him.	N/A
6. S & M Properties (Taunton) Ltd	Sixth Respondent	‘R6’. This company is the registered owner of 10 Eastover, Bridgwater, from where the Spice Club Restaurant trades. By my order of 12 th April 2022, I struck out the wife’s claims against this company.	N/A
7. Mrs Sume Begum / Shumi Begum	Seventh Respondent	‘R7’. She was born on 13.12.1988 [A10]. She lives at 4 Morland Rd, Highbridge, the legal title of which is now vested in her sole name. W says she is H’s wife and the mother of their children, V Uddin X [known as ‘X’] and Y Uddin Z [known as ‘Y’]. H and R7 deny this. W alleges (and H and R7 deny) that: ‘H used one of his employees [Ahmed Mosthaque] at The New Chandni Restaurant to enter into a marriage of convenience with R7 and bring her to the UK.’ R7 says that she married Ahmed Mosthaque in January 2010 and divorced him in 2015 on arrival in UK. Her statement of 18 th May 2022 says that Mr Mosthaque is the father of X and Alom Uddin (H’s younger brother) is the father of Y. The children’s birth certificates and the passports of the suggested fathers are at G32-36. Ahmed Mosthaque is often referred to as ‘Mosthaque Ahmed’ in the papers – his passport gives his correct name at G33.	Joseph Meethan
8. Mr Shakir Ahmed Jumon	Eighth Respondent	‘R8’. He is married to R7’s sister, Taslima Akhtar, and was jointly registered as the owner of 4 Morland Rd. He transferred his interest in Morland Rd to R7 in 2021 so that R7 is now the only registered owner. He works at The New Chandni Restaurant.	Joseph Meethan

20. **The trust and business claims.** Counsel for the wife said as follows in his opening:

It is W’s case that H in respect to the properties and business mentioned at (a) to (c) below (i) has beneficial interest and/or other equitable entitlement (ii) has shares or equitable interests and/or financial or proprietary entitlement from companies and business (iii) and will continue to have financial benefits from such properties, company business now and in the future. The properties and business are identified as follows:

- (a) 50-52 High Street, Burnham -on-sea TA8 1PD where the business known as The New Chandni Restaurant is operated from (commercial property)*
- (b) Bluebird Restaurant Limited trading as The New Chandni Restaurant, situated at 50-52 High Street, Burnham -on-sea TA8 1PD.*
- (c) 4 Moreland Road, Highbridge, TA9 3ET (residential property)*

21. Although that is how the wife’s case was put, in fact she does not pursue a suggestion that the husband has a beneficial entitlement in the company, Bluebird Restaurant Ltd, or the shares in it; after a day of submissions on 12th April 2022 that was the wife’s conceded

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

position in relation to the company. She asserts that the husband controls the business and its finances. Further, she asserts that the husband has undisclosed financial benefits from the company, part of which were concealed behind a sham loan agreement with the Fourth Respondent, Mr Haque.

22. Therefore, the disputed trust claims (and size of the interests that W alleges H to have) relate to 50-52 High Street, Burnham (50%) and 4 Morland Rd, where R7 and R8 live (100%) – see C10 for the wife’s statement to that effect. The Respondents involved in each claim, including the husband, deny the wife’s assertions and contend that the husband has no beneficial or financial interest in any of them.

23. In his skeleton argument for this hearing, counsel for the husband has submitted:

- *‘H denies the assertions which are tantamount to allegations involving a large number of parties engaging in a wide scale conspiracy even prior to separation all colluding to defeat the W’s financial remedy claim and on properties which even historically H had no interest in. The W did not seek to join the Respondents (R’s) as intervenors within those existing proceedings to determine the extent of any beneficial interest in property but chose to issue proceedings separately under the TOLATA with accompanying Particulars of Claim (‘PoC’) [A3-A6]... The PoC signed by retained counsel for the W does not set out the legal basis for the claims. It is not known how the claimed percentages [in relation to the two properties and R3] are calculated.’*
- *‘The burden of proof is on the W to prove her case and H (as with all the R’s) has been forced to provide fishing and disproportionately intrusive disclosure far over and above that required and relied on by the W through extensive and costly specific disclosure enquiries brought by the W. H, as with the co R’s, has made full and frank disclosure and the W does not suggest that the specific disclosure she has obtained has not been complied with. H provided a detailed statement in response to the allegations [D1-D13] as have the rest of the R’s and witnesses [D20-D29 and G1-G36 and G50-G73]. There is a general duty on the W to prove her case and she has failed to discharge her duty. It would be wrong to draw inferences adverse to the H upon inadequate facts unsupported and with insufficient proof of the standard necessary to meet the seriousness of the allegations made against him and the rest of the R’s.’*

24. In this judgment I will show why, in relation to the trust claims, I say:

- i) The procedure that has been followed in this case is misguided. In 2018, H issued his Form A in the divorce proceedings. In August 2019 the wife issued the trust proceedings by way of separate claim form. Thereafter the trust proceedings were treated as the dominant proceedings and pleadings and statements were filed within them. The case was transferred to the Business and Property Court and then to the County Court. Only in November 2021 was it transferred to the Family Court. It was then that I became involved.
- ii) It is as a result of the procedure that has been adopted and the entrenched conflict between these parties that disproportionate costs have been incurred. Further, basic procedural requirements of financial remedy proceedings have been ignored. The wife has never filed a Form A. As I have described, the husband did not make an open offer at all until I required one. The wife’s open offer was absurd. There is no statement from the wife’s current husband and there was no evidence about his circumstances at all until I required him to attend to give oral evidence. There is no documentation at all in support of the evidence that he gave. No mention at all has been made during this hearing about alternative accommodation for either party, even though evidence has been filed about it [J1-63]. The Forms E of neither party

gave full or frank disclosure. The case has been in and out of court due to procedural infighting. In relation to the trust claims the wife has never set out in any meaningful sense how it is that she seeks to justify the claims or the shares that she seeks in the two relevant properties (High St and 4 Morland Rd); for instance, the case of *Laskar v Laskar* [2008] EWCA Civ 347 (to which I refer later) has simply been ignored by her.

- iii) The trust claims are hopeless. It is simply not necessary to descend into any form of lengthy analysis of the equitable principles of resulting and constructive trusts. In relation to both properties in issue (50-52 High St and 4 Morland Rd) there is no evidence that the husband made any direct financial contribution to the purchase of either property or to mortgage payments. There is no evidence of a common intention (express, implied or imputed) that he would have a share in them – quite the reverse, since it was the very clear intention that the legal title holders would be the beneficial owners of the two properties. From the start, the trust claims as presented bore the evidential difficulty of the wife (an outsider) seeking to establish that the holders of the legal title and the husband shared beneficial interests in properties that both title holders and the husband denied; that evidential reality has not been reflected in anything that I have heard on her behalf.
25. **The marital background** is that the husband and wife were married on 5th August 1997. They have five children. E (female) is now a young adult; she works and pays the wife a small amount each month). G (male) is now an adult also; he is autistic, non-verbal and has other disabilities. The wife says (and I accept) that G ‘needs round the clock supervision and care which I provide without any respite’ [G45]. B (m) is in his mid-teens; he gave evidence which included that he intends to take up an apprenticeship relating to motor cars. C (f) is younger than B but is also in her mid-teens. D (f) is the youngest child and will not be a teenager for some years.
26. All five children live with the wife. The husband suggests that the two eldest children ‘are no longer dependent’ [G41]. He did not acknowledge the very considerable contribution that the wife is making, and will continue to make, in caring for G.
27. The husband and wife do not agree as to the date of separation; the wife says that it occurred on 3rd July 2017, the husband says it was in December 2016. The husband says in his Form E [F1] that he and the wife had been sleeping apart for 2-3 years before separation. The precise date of separation is not important, and it is not possible to state it. The separation was defined by a gradual process of the husband spending increasing amounts of time sleeping at 50-52 High St. The decree nisi was made on 6th June 2017 and it became absolute on 13th August 2018. The marriage lasted for between 19 and 20 years from the date of the ceremony until the date of separation. It was therefore a long marriage. The responsibilities that arise from it will be long-term.
28. Initially, at the start of the marriage, the parties lived in rented accommodation in Weston-super-Mare but then moved to a rented property at 110 Churchill Avenue, Clevedon. In 2004 they moved to 36 Beaconsfield Road, Clevedon; it was a council house but was bought in the sole name of the wife in November 2014 and is rented out to third parties. On 9th April 2014 the husband bought 37 St Michaels Avenue, Clevedon in his sole name; the wife, her current husband and the children live there.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

29. **The procedural history** of this case extends over 3 ½ years. The husband issued a Form A application in 2018. His Form E was filed on 26th November 2018 with the wife's being filed on 21st December 2018. On 2nd January 2019 there was a first appointment and on 22nd March 2019 the wife was given permission to join third parties. An FDR was listed before a District Judge on 11th July 2019; he recorded that the hearing could not go ahead due to the 'wife's conduct in the litigation' and so he gave directions. On 28th August 2019 the wife issued her claim form [1] in which she stated that *'the Claimant brings an action in family proceedings to claim a share of the assets held by the defendants on trust and/or tenants in common and/or joint tenancy of the properties and businesses mentioned in the attached Particulars of Claims...The Claimant seeks a declaration of the nature of the first defendant's interest in the properties and businesses...under TLATA 1996.'*
30. On 25th September 2019, a defence to the civil proceedings was filed by the husband [18]; he said that he has *'never at any time had any interest in the property or business situate at 50-52 High Street'* and denied each of the claims. On 26th September 2019 R2 filed her defence [25]; she asserted her ownership of 50-52 High Street and stated: *'I have never had a business or business interest with Mr Mohammed Alim Uddin who I believe works as an employee at Chandni Restaurant at 50-52 High St.'* On 30th September 2019, R4 (Mr Haque) filed his defence [28] in which he stated: *'I took the lease from Mrs Rupia Begum on the 1st March 2018 and have been trading as Bluebird Restaurant Ltd since that date. Mr Alim Uddin is an employee of mine who is hard working and an honest person. I pay my rent directly to Mrs Rupia Begum and Mr Uddin has no involvement in this business.'*
31. R7 filed her defence on the same day, also [33] in which she stated: *'the land purchase mentioned in Mrs Uddin's statement was bought jointly by my husband and Mr Uddin but was registered under my name and Mr Uddin, my husband's uncle....In response to the purchase of 4 Morland Rd, I purchased the property with my brother in law Shakir Jumon on April 22nd 2016 and the mortgage payments are made from our joint mortgage account. Mr Uddin has no involvement or financial interest in this property. I am a single mother of two, who is trying to keep her family happy and content...I have no involvement in the affairs of Mr Uddin or his wife.'* Also on the same day, R8 (Mr Shakir Jumon) filed his defence [35] in which he denied the claims that relate to him and stated that he and his sister-in-law bought 4 Morland Rd – *'jointly as she and I were unable to purchase any property outright on our own.'*
32. 10th January 2020, a Judge 'gave permission' to W to bring a claim under TLATA 1996 and joined R2-R8 as intervenors in the financial remedy proceedings [45]. On 19th March 2020, a judge transferred the proceedings to the Business and Property Court in Bristol [48]. In my opinion and with respect, that is where the procedure went wrong. On 15th September 2020, another Judge directed that the case should remain in the County Court [50]. The case then came before another Judge in the County Court on 18th January 2021 and 7th May 2021, when directions were given. On 24th August 2021, a Judge made further orders for discovery and in relation to costs budgets [64]; he recorded that W's costs budget was approved at £70,368 plus VAT and that the 'defendants costs budgets...are approved as stated.' On 12th November 2021, another Judge transferred the case to the Family Court, where it always belonged, and vacated the six day trial that had been listed to start before him on 4th January 2022 [68]. I then gave directions on 26th November 2021 [71] and, again, on 18th January 2022. On 12th April 2022, I heard the pre-trial review.
33. **Remarriage – Wife** - Counsel for the husband advanced a submission before the commencement of this hearing seeking to suggest that the wife's financial remedy claims were barred because of her remarriage. The submission went as follows: *'The W has not applied for a financial remedy order against H prior to her remarriage and therefore financial obligations terminate. The court cannot order a transfer of property to a party who has remarried and who had not made an*

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

application for such an order prior to that remarriage. They must make their own application (which may be a cross-application) before they remarry if they wish to seek an order in their favour.’ Reference was made to section 28(3) of The Matrimonial causes Act 1973.

34. That argument under section 28(3) had not been raised at the hearing before me on 12th April. An opportunity to raise the argument had been given by the order of DDJ Lucy Reed on 6th February 2019 [B18] but had not been taken up.
35. On receipt of the argument I called for production of the wife’s petition. It was emailed to me by the wife’s solicitor. It is dated 31st March 2017. It contains a full prayer for all forms of financial orders (each box is ticked). By reason of Rule 9.4 of The Family Procedure Rules 2010 and Jackson v Jackson [1973] 2 All ER 395 that prayer is sufficient to avoid the provisions of section 28(3) of the 1973 Act being a bar to the financial remedy claims. The wife should have issued a Form A, signalling her intention to continue with her claims but there is no bar against them and the procedure has continued over the past three years in the clear knowledge and understanding that she is pursuing her capital claims under that Act.
36. **Remarriage – Husband** - In relation to the allegation that the husband is married to R7, there are emphatic denials by both of them.
37. The wife says at C5: *‘In 2008 [the husband] informed me that he was going to Bangladesh under the pretence that he will be buying land and building a house there. In fact, the purpose of the trip was to marry the R7. [The husband] and R7 married each other around early 2009 in Bangladesh notwithstanding that [the husband] was still married to me. Although there is no marriage certificate to evidence this and [the husband] has declared on two occasions that he is not married to R7, I have provided Bangladeshi land registration documents. The documents confirm that R7 is the wife of [the husband]. I can confirm that [the husband] introduced his children with R7 by bringing them to my house on several occasions and [the husband] wanted me to accept our marriage as a polygamous marriage with Sume Begum also being his wife at the same time which I refused...[R7, Ahmed Mosthaque and the husband] have deceived the UK immigration authority and now they are seeking to deceive the court. ...R7 came to the UK under a sham marriage then divorced from the sham marriage. She knows very well the reasons for the divorce was to cut her official ties with Ahmed Mosthaque so that she can live with H which they continue to do ...I can confirm that I confronted Ahmed Mosthaque after I found out from gossip in the Bangladeshi community that H paid him to get R7 to the UK and he admitted to me that his loyalty was with H, as H had paid him a substantial amount of money. Ahmed Mosthaque then used the money he received from H to set up a restaurant in the Midlands.’*
38. The land registration documents that the wife produced are at A9. The husband is stated in the documents to be R7’s husband on the fourth line of the document at A10. At A35 there is another document relating to the property in Bangladesh; it is dated 26th April 2017 and refers to ‘Shumi Begum...husband Alim Uddin.’
39. At G60 there is what is said to be a ‘deed of amendment’ in Bengali which corrects the document at A9. There is a very poor translation of the document at G57. It states, amongst other things: *‘whereas, there’s cause cloud in your title, you want to execute a amendment deed for correction of said cloud, on your request I am being agreed for your future enjoyment and possession to execute this deed of amendment do hereby admit and undertake you the recipient of no. 2’s husband’s name has been wrongly written as Alim Uddin , which is really, it’s necessary to write your husband name. Really said Ahlim Uddin is not husband of recipient No. 2 Mrs Sumi Begum.’* The wife’s counsel emailed me after the hearing had ended to say that this document was disclosed for the first time on 8th June 2022 to the Applicant’s solicitors as an appendix to R7’s statement notwithstanding the fact

that it is dated 11th March 2020 and the Husband said that he had no knowledge of it until this hearing. That is typical of this case.

40. The husband's account about this land in Bangladesh is given in his statement at D9. He says: *'The land deed was dated 20th May 2010. I was not in Bangladesh on that date and had someone else to act as my power of attorney. The land deed is in fact dealing with the purchase of a piece of land by myself and Sume Begum from Moniruzzaman Chowdury; It is not land transferred to her by way of a dowry. I do not know why I was referred to as her husband. ...I sold my half share of the land to Taslima Akther on 5th January 2015 because the [wife] and I needed to obtain funds. My share of the land was sold to enable me to buy a car for the claimant and to pay for items to equip the current matrimonial home , 37 St Michaels Ave ...If the land was transferred to Sume Begum by way of dowry, I would not have been in a position to sell the land as I did on 5th January 2015. I produce marked MAU 6 the land document relating to the sale as well as a translation...The events leading up to the purchase of this land were as follows. I had purchased a piece of land in Bangladesh in my sole name, however the claimant did not like the piece of land and it was sold in 2010 to buy another piece of land straight away. The replacement piece of land was more than the sale price and the land was therefore purchased in the joint names of myself and Sume Begum on 20th May 2010.'*
41. At G50 there is a statement from Sume Begum (R7) who says that she is not the wife of the husband, denies that the husband is the father of her children and gives a similar account in relation to the land in Bangladesh as the husband.
42. The issues about whether the husband and the seventh Respondent are married overlap with the issues relating to whether the husband is the father of R7's two children and whether he is a part owner of 4 Morland Rd. During the course of this hearing I required the husband to give evidence that was sworn by him on the Koran to be true that: i) he has never been married to R7; ii) he is not the father of X; iii) he is not the father of Y; iv) he has never been in a sexual relationship with R7 and v) he has not been into a bedroom at 4 Morland Rd with R7. When I asked him to give that evidence on the Koran, he was extremely reluctant to do so, suggested that he was not a man of strong faith and was plainly very anxious. Although what is sometimes condensed into the description of 'demeanour in the witness box' is a very poor basis for making an assessment of truthfulness, the way a person converses is part of the everyday assessment that everyone makes when analysing what another person says. It is also part of the advice given to juries that, although they may take notes, they may find it particularly helpful to watch the witnesses and listen carefully to what they are saying. The husband did eventually give the evidence that I required of him on the Koran. R7 gave her evidence on the Koran and gave the same confirmation on those five points.
43. On two occasions I raised during the hearing whether there was any application for DNA tests to be carried out in relation to the paternity of X and Y. The second time I raised this was just before Sume Begum gave evidence. I asked Mr Meethan, her counsel, whether she understood that there might be an application for such tests to be carried out. Mr Meethan said that she did understand this and would not argue against DNA tests being obtained, if the court required them. At no point has the wife applied for such tests to be carried out or argued that they should be, even though the issue was raised. My own involvement in this issue first arose when I heard the PTR and strike out application on 12th April 2022. I ordered that Sume Begum should file further evidence, stating who the father of both children was and giving such further particulars as she could. She did so (see section G of the bundle for the three statements that she has filed since 12th April 2022).

44. I heard a large amount of evidence on this issue and will analyse it further, later in this judgment. In particular, I heard and read the evidence of the wife and the parties' son, B and I read the statements of the wife's other witnesses (all of which I refer to below). Because structuring this judgment in a multi-issue case has not easy, I have decided that I should state my conclusions on this issue of the alleged marriage between the husband and Sume Begum at this stage so a reader can have some idea of where that issue is going.
45. As a matter of law, the wife bears the burden of proof on the issues that she raised as to whether the husband has been married to Sume Begum and also as to whether the husband is the father of the two children. It has not been argued by the wife that the legal burden was transferred to the husband to show that the Bangladeshi documents of title, which record the husband as being married to Ms Begum, were wrong; further, on documentation alone, there is the purported amendment that Ms Begum has produced so recently. All parties have argued this case on the basis that the wife bears the burden of proof on these points.
46. In deciding whether the wife has fulfilled that burden, I have to apply the civil standard of proof. Although there were suggestions at times from counsel for the Respondents that there was some form of heightened civil standard that should be applied due the seriousness of the allegation, I hold, as matter of law, that I must apply the civil standard of proof, the balance of probabilities, without any form of enhancement or qualification – see, for instance, the speech of Lord Hoffman in *Re B (Children)* [2008] UKHL 35; [2008] 2 FLR 141 in which he said: *'the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not... There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not.'* When applying the civil standard of proof it is important not to compartmentalise the evidence and to maintain an overview of the evidence as a whole. I have done that.
47. Although I will examine the evidence on these issues much more, later in this judgment, I wish to record now that I do not consider that it has been proved to the civil standard of proof that the husband has been married to Sume Begum or that he is the father of her children. However, I do find that:
- i) The husband and Sume Begum have a strong and close association. He treats her as a part of his family.
 - ii) The husband told me that, at the time that the piece of land in Bangladesh was bought, he had no other capital or property anywhere in the world. The very fact that he was prepared to invest his only capital into a piece of land that was jointly owned by Sume Begum, is one example of how close the connection is. There has not been an explanation as to why her name appeared on the documents of title to that land, rather than the name of Ahmed Mosthaque. I was told that the purchase of this land was funded by the husband and Mr Mosthaque only. The husband's evidence is that the land did not form part of 'a dowry' for her. There is no suggestion that it was part of a dowry relating to her 2010 marriage to Mr Mosthaque.
 - iii) The husband has treated X as if he were a member of the husband's family. On the evidence of the husband and Sume Begum, X is the son of Ms Begum and Ahmed Mosthaque. Unlike Y, X is not said to be child of a sibling of the husband. I find that the husband does refer to X when speaking to the five children of this marriage by the Bengali word 'bha'i'. I was told that the word 'bha'i' might mean cousin or

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

brother. So, when speaking to B, the father has called X B's bha'i. A point not pursued by the wife's counsel in evidence is that X is not the cousin or brother of the five children, on the account given by the husband and Sume Begum. The blood relationship arises because Ahmed Mosthaque is the cousin of the husband's father; I have constructed a genogram of my own to visualise this and it leaves X as only a very distant relative. More importantly than terminology, is the considerable amount of evidence that X is involved in family occasions and is integrated within the husband's family network. For instance, he attends birthday parties and family meals.

- iv) The husband has slept at 4 Morland Rd. In particular, when he has needed somewhere to stay when B was with him (e.g. last summer when B was working at the restaurant) the husband and B stayed there.
 - v) The two men that the husband and Ms Begum say are the fathers of the children are closely linked to the husband. Alom Uddin is his brother and Ahmed Mosthaque worked in the restaurant with him. Neither father sees either child often on the evidence that I have heard.
48. The fact that the husband and Ms Begum have not given a full and frank account of the close relationship between them or of the husband's commitment to the two children has been an additional factor that I have considered very carefully when reaching my decision on the issue of whether they have been married and also when considering the allegations about the paternity of the two children. Both Ms Begum and the husband swore on the Koran to tell me the truth, the *whole truth*, and *nothing but the truth*. I have considered very carefully the Lucas direction in relation to lies (*R v Lucas* [1981] QB 720). I do not consider that they have given a full account of the closeness of their relationship. However, I do not consider that demonstrates that they were married or that he is the father of the children; it could just as well be explained on the basis that, in the context of this case, neither wished to admit to that closeness.
49. B and E have given evidence that they understood that X was their brother. I intend to direct that the wife may tell them that their father and Ms Sume Begum swore on the Koran that their father is not the father of X or Y. The wife may also tell the other children that the husband and Sume Begum gave that sworn evidence. If the husband, Ms Sume Begum or either of those children should ever assert that the husband is the father of the either child, I would expect their evidence in these proceedings to block that assertion. If the wife should seek a transcript of that part of the evidence of Ms Begum and the husband so that it could be referred to the police or any others involved if such an assertion were to be made, she should so apply. As I warned Ms Sume Begum, if she was not telling the truth, she would either be effectively disinheriting her children in relation to the father or risking investigation for an offence of perjury.
50. **The wife's resources and needs** - In her recent statement at G46, she says she has the following income:

Child benefit (£65.15 pw)	282.32
Child tax credit	326.20
Carer's allowance	278.80
Child maintenance	243.64
Rental income	900.00
Total	£2,030.96

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

51. In her Form E, dated 21st December 2018, she had said that her income was as follows [F119 and F120]:

Child benefit	327.16
Child tax credit	1318.29
DWP allowance for child	581.40
Carer's allowance	258.40
Child maintenance	137.48
Rental income	725.00
Total	£3,347.73

52. Thus, according to her documentation, her income has decreased quite considerably since her Form E was filed. The decrease was not explored at all during this hearing as there was such a focus on property matters. I did not hear any submissions based on budgetary factors. That was why I regarded it as important to have some understanding of the financial position of her husband.
53. The wife remarried on 28th November 2018 [G45]. Her Form E was sworn one month later (21st December 2018). It did not reveal that she had remarried. Paragraph 1.8 did not give the date of her remarriage. It stated that she was not living with a new partner; that was right because, at the time, he was still living in the USA. Paragraph 1.9 stated that she did not intend to live with a new partner within the next 6 months; that may also have been correct because she and her husband did not live together for two years. There is no mention of her remarriage elsewhere in the Form. In her oral evidence the wife told me that it was deliberate choice to omit the fact that she had remarried because her husband was not living with her at the time. That is unsatisfactory as she must well know.
54. It is plain, however, that the fact of her marriage was known to the husband by at least 6th February 2019; the remarriage is expressly referred to within the order of that date of DDJ Reed at B18. That being so, I do not understand why it was left to me to direct the attendance of the wife's husband during this hearing. The only information that I have about him comes from what he said in oral evidence and the passage in the wife's statement at G45 that Mr Miah, *'only contributes on average £100 to £150 weekly towards the home.'*
55. The evidence that Mr Md Juniar Miah gave was unsatisfactory, given that he did not produce any documents to support anything that he said. I raised that there might have to be an application for an adjournment for him to provide better evidence but no one sought one. He said:
- i) He had been living and working in the USA as an American citizen. He lived in rented accommodation there and worked in a restaurant. He has leave to remain in this country for 2 ½ years.
 - ii) He has \$7,000 (about £5,700) in the USA and £6,000 in a bank in this country. He has no other capital assets and does not have any interest in any land or property. Thus, his total capital worth is about £11,700.
 - iii) He has parents and siblings in Bangladesh whom he has been supporting by paying them about £400-450 a month. He has not been married before and does not have any children.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- iv) He lives at 37 St Michael's Avenue with the wife and children. He has a strained relationship with B but his relationship with the other children is better. Following their marriage it was always his intention to live with the wife but he was unable to do so for two years (i.e. until February 2021) due to delays in the immigration process.
 - v) He will be returning to work, for a company called Smart Systems, and will be earning about £385 pw. That is £1,668.33 p.m. He has no qualifications.
 - vi) He has given the wife a total of about £11,000 to assist her to pay counsel's fees.
56. When Mr Md Miah is working and living at the house his primary financial obligation will be to that household. If he is earning £385 pw he will have to pay more than £100-150 pw into the home. I see no reason why his income should not be expected to cover at least *more than* the rent that the wife is currently getting from 36 Beaconsfield Rd – she gets £10,800 p.a. in rent and he will be earning £20,020 p.a.
57. In her statement, the wife says that '*my daughter E also contributes approximately £60 to £70 a week.*' That sum cannot be treated as doing more than contributing to the living expenses of E; it will not create any surplus for the wife.
58. Her counsel's opening states: '*it is clear that W is not going to be able to work and G and the other 3 children will be very much dependent on W for a long-time.*' I accept that the wife does not have an earning capacity and there is no likelihood of her being able to take steps to increase that capacity (I have considered the wording of s 25(2)(a) of the 1973 Act). The husband has not suggested that she has any capacity to earn. I accept that G will be dependent upon her for a long time; I do not have any medical evidence about him but, from what I have heard and read, it appears that he will be a lifelong dependent. I accept that C will be dependent on the wife for a few more years and that D will be dependent on her for much longer. I do not accept that B will be a long-term dependent although he may live at home for the immediate future. I very much doubt that B will go to live with his father, as his father suggested, in the light of the differences in their evidence at this court hearing and the divisions that it revealed.
59. I am very surprised that this family has been able to have such access to means-tested state benefits for the period that it has. Means tested benefits were being claimed by this family when the husband and wife were living together. It appears that the husband filled out the documentation and the benefits were paid into an account in the wife's name. How means-tested benefits were paid when the wife has the investment property and income of Beaconsfield Rd, has not been investigated at this hearing.
60. Overall, on the evidence that I have heard and with such limited budgetary evidence from the wife, I consider that the wife and the children would be able to fund their lives to a reasonable standard of living if they remain at St Michael's Avenue. I do not accept that the wife needs Beaconsfield Rd in order to fund her income needs, albeit that it would make life easier for her and her husband if she did have it. Given the lack of specificity that she has provided in relation to the relevant factors under section 25 of the 1973 and her ability to meet her income needs (and the needs of the children) now that she has remarried, I do not see any basis for her claim that she should have 100% of the capital that exists in this case (i.e. both properties). I recognise that her ability to claim means tested benefits once Mr Md

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

Miah is working may well be affected, although that, again, is another area in which I have no evidence or submissions on her behalf.

61. I do think that, given the number of children and the disabilities of G, it is important that the children remain at St Michael's Avenue if they can, whilst they all remain dependent on the wife. I say that for these reasons:
- i) It has been their home since 2014 (for eight years).
 - ii) They need a big house, given their number. Fitting this family (now of seven people) into the 3-4 bedroomed former council house, Beaconsfield Rd, would be a marked change for them and would be a squash.
 - iii) G has very particular needs. Beaconsfield Rd may have been adapted to G's needs when the family lived there eight years ago. However, his needs have changed as he has grown older.
 - iv) The hostility and division that have been displayed through these chronic proceedings has led this to be a divided family. As Balcombe LJ put it in *Mullard v Mullard* (1982) 3 FLR 330, remaining in the family home will help the children weather the stresses and strains of their parents very messy divorce.
 - v) Fairness between the husband and wife can be achieved in a way that satisfies the overall aim of Section 25 of the Act if the wife remains at the property whilst the children are dependent upon her.
62. I now wish to turn to her capital position. In her sole name is 36 Beaconsfield Rd, Clevedon which is valued at £250,000 [H1 –marketing report by Connells] and is mortgage free. It was bought on 10th November 2014 for £65,500 through the right to buy scheme [D5]. It is described in the report as being a 'three/four bedroom terraced property with rear garden.' It can be seen on Google Street View as being in a traditional row of council houses and former council houses.
63. No apparent attempt was made on the wife's behalf to consider the capital gains tax that would arise on a sale of the property or upon a transfer of it to the husband. It is not the principal place of residence of the wife. It was bought about seven months after 37 St Michael's Avenue was bought. Because of the low purchase price, there has been a considerable gain even after indexation is taken into account. The parties are now divorced and, therefore, any transfers between them would not be between spouses. I agree with Mr Miah that CGT would be payable if the property were to be sold and, also that there would be likely to be CGT payable if the property were to be transferred from the wife to the husband. The only figure that I have for CGT comes from the back of an envelope calculation that Mr Miah did in his closing speech. As I stated above, he used a net figure of £230k for the sale proceeds of the property after CGT– costs of sale of £5k and CGT of £25k. I suspect that figure is about right although I cannot say more than that.
64. There is no way that the wife would be able to meet the CGT on transfer of Beaconsfield Rd to the husband together with her costs liabilities, if that property were to be transferred to the husband with her keeping St Michael's Avenue. In my opinion, she has blown that possibility due to the way that she has conducted this litigation.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

65. There is a dispute about the source of the money for the purchase of Beaconsfield Rd. The husband says that the money to buy the property was not raised from various businesses, as the wife contends, but was raised from family members. The husband says that, at the time of the purchase, he did not own any businesses and he produces documents showing refusals of mortgages from NatWest and also Lloyds TSB [D6]. As I will set out later, the husband says that he owes his brother, Enu Tazul, £40,000 for a loan received from Mr Tazul towards the purchase of Beaconsfield Rd. In the light of the husband's dishonesty about the debt that he said that he had to Mr Haque, the intermingling of money within the husband's family and business associates and the husband's dishonest portrayal of his role within the business, I do not think that anything that this husband says about his indebtedness to his family is reliable. I will say more about this later but I do not accept that Beaconsfield Rd should be treated as being saddled with any indebtedness and I do not consider that the husband or the wife should be treated as having any remaining debts that relate to it.
66. Therefore, if Beaconsfield Rd is sold and the wife remains in St Michael's Avenue, the wife will have enough income to meet her needs and there will be the sum of about £230,000 to divide.
67. In her Form E she said that she had debts of £22,132.67 [F112]. That relates to 3 ½ years ago (i.e. the date of her Form E in December 2018). Of that sum, £12,204 related to a car loan and the balance (about £10k) related to other card debts. Her section 25 statement, which is full of repeated contention about the husband, does not give any account of her current indebtedness. I had to insist that she gave some evidence about the current position on that issue. What emerged was unsatisfactory and turned on her oral evidence (which, as a whole, was also unsatisfactory, as was the husband's oral evidence). Her documentary disclosure in enclosure K suggests these credit card liabilities (to which I was not referred at all during the hearing):

MBNA	4,148.50	K31
Barclaycard	7,525.48	K35
Nat West	3,919.50	K41
M and S	2,911.53	K45
Tesco Mastercard	5,419.59	K49
Total	23,924.6	

68. Initially, in oral evidence, she said that she would not name the friends from whom she had borrowed money, and then said that she had not borrowed any from friends. She then said that she had borrowed £11,000 from her husband; I do not accept that she will have to repay that. She said that she has borrowed £100 from her sister (Shahida Miah), £3,000 from her brother in law and £1,000 from her nieces. There was no breakdown of the origins of the sums that she has paid to her solicitor in costs, although she said that she had paid on her cards. The loans from family members are soft loans.
69. None of that leaves me able to identify where the £49,000 has come from that she has paid to her solicitors. Given the order that I intend, she may be able to pay something off her credit card debts and, at least, avoid some the minimum payments. That will also enhance the ability of the wife and Mr Md Miah to fund St Michael's Avenue.
70. She says that she has no mortgage raising capacity; I accept that is so. At I-1 there is an email from a 'senior personal banker' supporting the wife's contention that she has no mortgage raising capacity. There is no evidence about the mortgage raising ability of Mr Md Miah and

so I will have to assume that he has none despite the fact that he will be earning £20k p.a. Even if he paid all of his bank savings to the wife (£11,500), that would only make a small dent in her liabilities.

71. **The Wife's oral evidence** –The wife sought to suggest that, because of the blood relationship between Ahmed Mosthaque and Sume Begum, he could not be the father of X. She suggested that 'you cannot marry your uncle.' because they would not have been permitted to marry. Whilst writing this judgment, I realised that I needed to check what the blood relationship was thought to be between Sume Begum, Ms Mosthaque and the husband. I emailed counsel to ask. I was told by counsel for the wife in an email dated 21st June 2022: '*my instructions are as far as my client is concerned, there is no blood relationship between Sume Begum, the husband and the wife, nor is there any blood relationship between Mr Mosthaque Ahmed and Sume Begum*'. The other counsel emailed me to agree. Therefore, the point that the wife was making ('you cannot marry your uncle') does not make sense in relation to the marriage between Ahmed Mosthaque and Sume Begum. Further, the fact is that she and Mr Mosthaque did marry. The wife also suggested that she knew that Alom Uddin could not be father of Y because he 'had a child two weeks ago and his wife came from Bangladesh'; that does not make sense, either.
72. She described how, on one occasion, the husband was in bed next to her in 2014. She said that she took his phone and saw that Sume Begum was texting him about G and was asking: '*how was your day?*' She said: '*I did not see much of what she was texting. When I saw my son's name, that they were talking about him, I got suspicious. She sent him 3 beautiful pictures of her. They were just like chatty saying: 'hi, how are you?' I got crazy angry. I took the phone and I showed him and I asked: 'What is going on: why are you talking to her as if she was a wife'. He snatched the phone from me. He took it so fast and looked angry and shattered. I said: 'I'm sure that she is your wife*'. The wife said that the husband saved Sume's number on his phone under a man's name, Shumon (Shumon is his cousin). The husband denies it. Although that text exchange (which I accept took place) does suggest that the husband had a sufficiently close connection with Sume Begum to be messaging with her in those terms, it does not go anywhere to show a sexual relationship between them, let alone a marriage.
73. The wife said that Sume Begum did come into the restaurant with X for D's birthday; I observe also that Sume Begum has worked in the restaurant. The wife said that the husband referred to X as his 'son.' I think it highly unlikely that the husband would announce in front of the wife that X was his biological son and, therefore, I do not accept her evidence on this point. She said that, culturally, cousins would call each other brother and sister and I accept that is so. I also accept that the husband has treated X, in particular, as if he were part of the family. I also note that, since Sume Begum is not a relative and Ahmed Mosthaque is only a distant relative, that X would only be a distant cousin at most. If Ahmed Mosthaque is the cousin of the husband's father it would mean that X would be the husband's second cousin, if Ahmed Mosthaque is the father.
74. As to the restaurant, the wife said that the husband said to her: '*this is my restaurant. We will make money there*'. In cross examination she said: '*As to the business – I did not see any of the information about the financial position of the business. He said that he was the boss. I can't be sure who owns the business.*' In my opinion, although it is understandable that the wife should not differentiate in everyday language between 'boss', 'manager' and 'owner', that differentiation should have been made within the formality of court proceedings.

75. I accept that he did say words to the effect that he was the boss of the restaurant. It adds to the picture that is clear from many quarters of the evidence that the husband managed the business with his brother Almas. It does not mean that he owned the building or the shares in Rexvilla or Bluebird Restaurant Ltd. The business, the company and the building are separate. There has been no attempt by the wife to show an understanding that they are separate. Many restaurant managers (and, indeed, some chefs) will refer to restaurants where they work as 'my restaurant'; it does not mean that they own the building from which the restaurant operates. Nor does it mean that there is no holding company. Many restaurants must operate on just that basis.
76. The wife said that the children grew up with money and that there was 'lots of money flowing around'. She was asked about this in cross examination and she accepted that, during the marriage, the family claimed state benefits, including means tested benefits (child tax credit and working tax credit). How this family managed to receive that amount of state benefits, I do not know because I do not have the necessary documentation. The wife said that the benefits were paid into a bank account in her sole name but the husband made the benefits claims. With the sort of access to money through the business that I have now been able to identify, the benefits and the rent from 36 Beaconsfield, I consider that this family must have had a standard of living that was at least reasonable, if not more.
77. The wife maintained her assertion that the husband has a 75% share in the restaurant. That is based on her understanding of the partnership share that the husband had in the former business that ran from 54 High Street. I do not accept her evidence on this point; she has not studied the existing documents with sufficient care in relation to the issues that she raises about the business, the properties or the company.
78. She considered that the husband has put the children under pressure not to give evidence. She said that, two weeks ago, he came to the home and spoke to the children in the drive way and, recently, bought a car for E. She said that he was saying in a sweet way: '*don't give evidence about daddy because if you say it, daddy will be very hurt*'. The children, she said, love their mum and their dad. I do not accept that the wife was present when the husband spoke to the children on that occasion; the wife's account comes from the children. I accept that both parents love the children and that the children have come under pressure from both of them. The wife wanted E and B to give evidence; the husband did not. The children will be well aware of that.
79. She said that she had very little knowledge about the lease on 50-52 High Street as the husband did not talk about it and just said that it was his business and that it would give the children a future. She said that she did not ask questions at the time. That has to be compared with paragraph 13 of her statement at C3 where she says that the husband 'confirmed' that '*he had bought the property...and further confirmed that he held a 75% share...in the property.*' In oral evidence she said: '*he used to say 'this is my business'*'. However, she then went on to say: '*he never disclosed anything to me. He wanted to keep everything secret*'.
80. I do not accept that the husband told her that the property, 50-52 High St, was his. The fact is that the property was not his and it never has been. The husband may well have said that the business was his and, in the sense that he and Almas control it, that would have been true.
81. In reply to questions from Mr Meethan, she said: '*He [the husband] did not mention any money that he was putting into 50-52 High St. I can't point to any sum that he did put into the property. I would*

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

have no idea where the money came from for the purchase of High St, beyond the Natwest mortgage. I don't know anything about this transaction. I do not know whether Rupia Begum and the aunt, Easmin, bought the property themselves.' To Mr Miah she said: *'I don't know whether Rupia Begum and Easmin bought the property (High St) in 2008. I have not seen the 4th statement by Rupia. I don't know how the purchase of the property was funded.'*

82. She said that she did not see Sume Begum with the husband at all. When she asked the husband whether he had married Sume, the husband told her: 'no, no, no.' She did not try to contact Ms Begum. Her children came home one time and said: 'we have a step-mother' Therefore, about six or seven years ago, she did go to the property where Sume was then living, and spoke to the neighbours, she said. She said that a neighbour told her that the husband and Sume lived there. At C8, paragraph 39, the wife says that the neighbour shouted: *'you are the ex-partner of Alim Uddin and I have been told to call the police if you harass his wife.'* I think it highly unlikely that the neighbour did say that. The account in paragraph 39 is inaccurate in any event since it suggests that this occurred in Morland Rd, when the wife's evidence is that it occurred at the previous home of Sume Begum, 15 Beale Way, Burnham-on-Sea.
83. As to Morland Rd, she said: *'I just thought, how can Sume Begum and Shakir Jumon afford to buy a house? Sume had just come back from Bangladesh'*. It is plain it is that and her belief that the husband and Sume Begum were married and had children together, rather than any study of the evidence that led her to make her assertions that the husband owns the whole beneficial interest in the property.
84. The wife was plainly very distressed about the circumstances in which she finds herself and also because she feels that the husband has formed a secret involvement with Sume Begum. I did not find her oral evidence helpful. Much of it was not accurate and suggested that she had not analysed the documents that have been filed.
85. **The husband's disclosed position** – he stated in his Form E that he had an income of £9,216 p.a [276]. In his statement at G39 he says that his current income is £1,417.99 each month, net. He says that he works for an average of 43.33 hours a week and describes himself as being at the 'pinnacle' of his employment and not able to earn more [G39]. He produces some of his P60's for the years 20/21 and 21/22 at K312-313 and some of his pay statements at K313 – K356. The pay statement at K356 relates to the four week period ending 30 April 2022 and shows a net income of £1417.99. The pay statements show that he is paid every four weeks, not monthly, therefore, his total net income would be £18,433.87 net p.a. on that basis. After paying £243.64 in child maintenance (i.e. £2923.68 p.a.), he would be left with about £15,500 net p.a. He does not pay rent for his accommodation at 50-52 High Street, nor does he pay any utility bills there. He has access to food from the restaurant also.
86. The husband's true income was something that received very little attention in cross examination that was focussed on the trust claims. It was me who called for the accounts of the company, Bluebird Restaurant Ltd and who asked the main body of questions about them. I examine those accounts later (under the heading of the company's name below). Overall I am sure (sic) that the husband has under-declared his income and that he is taking far more out of the business than he has stated.
87. In his statement, he said that he needs to be housed in a one-two bedroom property in Burnham and that a suitable property would cost between £219,950 and £250,000. He says that his borrowing capacity is very limited, given his income and liabilities. At I-4 there is a

letter from Lloyds Bank suggesting that, on the basis of an income of £19,761 and maintenance payments of £137 p.m. (sic) it would lend him £34,360. The issue of his housing needs and mortgage raising ability was not pursued at all during the hearing; I was not referred to any property details although I will set out the bundle contents on that issue later.

88. I think it highly unlikely that this husband will buy a property. He is much more likely to live within the tightly united and intermingled society of his family and work colleagues at 50-52 High St whilst using accommodation at the homes of others, including Ms Sume Begum, when he feels the need to do so.
89. He holds the former matrimonial home, 37 St Michaels Ave, Clevedon in his sole name. It was bought on 11th March 2014. It has been valued by Connells at ‘£500,000+ and an initial asking price in the region of £525,000’ [H8]. The husband says at G39 that it was bought ‘*in part by using a private mortgage of £60,000 (charged against the property) and further unsecured loans from family members. The monthly repayments were originally £2,240; as a result of the pandemic, these have been reduced to £550 and now £540 per month. I have always and continue to pay the full monthly mortgage payments. I am reliant on family members to assist me each month in paying these.*’ I have already stated that any loans that he does have are ‘very soft’.
90. The property is subject to a mortgage to a Brian and Annette Buckley. During the hearing I was handed a copy of the Land Registry document headed ‘Land Registry – Legal charge of a registered estate – CH1’, dated 11th March 2014. That document records the terms of the charge over the property in favour of Mr and Mrs Buckley. I was also handed a copy of the Official Copy of the register of title relating to this property. It records that the husband is the sole proprietor and also that there is a registered charge in favour of the Buckleys.
91. At D6 the husband says that he ‘*obtained a private mortgage from Brian Ward Buckley and his wife Annette Kathleen Buckley for £170,000 [sic] plus interest. The charge was drawn up by their solicitor Mr S Pritchard of Menmeer Shuttleworth, Bexhill. I attach, marked MAU 2, a copy of the legal charge dated 11th March 2014, Land registry Form CH1 dated 11th March 2014 and Office Copy entries in relation to 37 St Michael’s Avenue. I borrowed monies from family members to deal with the balance of the purchase monies from family members to deal with the balance ...and attach marked MAU3 copies of the two cheques from J Begum totalling £70,000 and a bank transfer from my brother’s wife of £50,000.*’
92. The wife says: ‘*there is a soft loan mortgage agreement where a payment of £2,240 is made monthly to a Mr & Mrs Buckley. The declared income of D1 namely £739.00 per month, demonstrates that there was no way he was able to meet a monthly mortgage payment of £2,240 without additional monthly income which C says was derived from the two-business interest which D1 had throughout their marriage.*’
93. There is no doubt that the mortgage exists and is a proper, hard loan that has to be repaid. The charge is recorded on the Official Copy of the register. Since the wife has never filed a Form A, she cannot have complied with Rule 9.13 (3) of the 2010 Rules and so, if necessary, I will delay the issue of the order in this case whilst that is done. The wife made this assertion about the mortgage at C2 ‘*as far as I understand, the purchase was cash from monies we had from the various businesses. But little did I know he has made a secret document to show that he had a mortgage from some friend; this is not true, this is a fictitious arrangement between H, Brian Buckley and Annette Buckley.*’ It is not ‘fictitious’ at all; her assertion is an example of her not having studied essential documents before making allegations in these proceedings.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

94. There is no current documentary evidence about the amount of the mortgage. At F421 there is a letter from Mr and Mrs Buckley, dated 21st February 2019, which reads: *‘this is to confirm that the capital balance owing on your mortgage contract regarding 37 St Michael’s Avenue, Clevedon...between you and Brian and Annette Buckley...is £50,000.’* When I asked, I was told that the mortgage now stands at about £10,000. That means that it appears that the mortgage reduced from £170k (if that be the correct figure) in 2014 to £10k in 2022 – a repayment of capital alone of £160k in eight years. Plainly, on the income that the husband has disclosed, that sum could not have been paid from his wages since the capital repayments alone would average out at £20k p.a.
95. In his Form E the husband says that he has debts of £260,909.36. In his statement at G40 he says that he owes:

Creditor	Amount	H’s reasons
A Uddin	£50,000	Deposit on f.m.h.
E Tazul	£40,000	Deposit on Beaconsfield Rd.
J Begum	£70,000	Deposit on f.m.h.
Mr Haque	£108,000	From money loaned to H by Mr Haque for mortgage payments by H.
Mr J Uddin	£8,740	For the balance of the mortgage payments.
Total	£276,740.00	

96. The husband seeks to suggest that the debts to Mr Haque and to Jalal Uddin (a work colleague) arose from money that he borrowed to pay the mortgage on St Michael’s Avenue.
97. At K492 there is a letter from Mr Haque (R4, sometimes call Hoque) in which he says that the husband is borrowing £2,000 every month from him for his mortgage repayments. He says: *‘this is to help him get through his difficult time as he is getting a divorce. This money will be paid back to me once everything is sorted. I have been making this payment since 1/3/2017 to 4/5/2020. I have stopped making payment because I am struggling to pay Alim Uddin as the pandemic has affected me a lot. The total amount that Alim owns [sic] me is hundred and eight thousand pounds [sic]. However, I have been struggling to maintain my monthly expenditure. I would sincerely appreciate Alim Uddin returns my money as soon as possible either via sale of the property or further lending.’*
98. I will set out in much more detail the evidence that Mr Haque gave about this. However, one aspect of that evidence was that Mr Haque was sure that the period in which he had been paying £2,000 p.m. was from 1st March 2017 to 4th May 2020. In his Form E, the husband sought to suggest that Mr Haque had been lending him £2,000 p.m. since March 2014, when St Michael’s Avenue was bought. Thus, not only is there an unexplained (and unexplored by W) difference in the suggested periods of the alleged loan but the evidence revealed that Mr Haque was earning no more than £1600 a month in the initial stages of the loan period that he alleges (2017 to July 2018) and did not have the resources to make any such loan. Although I set this out in detail later, Mr Haque was working part-time at the Tesco’s checkout and also as a waiter at the restaurant.
99. Another immediate aspect of the unreliability of the evidence about the Haque ‘loan’ is that the husband said in his Form E that Mr Haque was owed £82,000 in relation to it [F8]. The Form E is dated 26th November 2018 but the financial information about the loans was said

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

in the Form E to show the position as at August 2018 (see para 2.9 at F8). Payments of £2,000 a month from 1st March 2017 until August 2018 would have totalled £36,000, not £82,000.

100. One of the most painful parts of this hearing was watching Mr Haque giving his embarrassingly untruthful evidence and being faced with the documentation that shows that he was used by the husband as a conduit for the husband to draw money out of the business. There is no loan from Mr Haque or Bluebird Restaurant Ltd to the husband, of that I am satisfied so that I am sure (i.e. to the criminal standard of proof). The fact that the falsely called 'loan' was stated to be from Mr Haque to the husband and not from Bluebird Restaurant Ltd shows that the two were viewed as being interchangeable.
101. At K493 there is a letter from Jalal Uddin, dated 27th February 2019 (sic) in which he says: *'this letter is to confirm that I...help Alim Uddin...every month for his mortgage payment. I borrow [sic] Alim £460 every month to help him, to pay his mortgage...as promised this will be paid back to me once he is back on his good term again.'* The husband referred to this in his Form E [F8]. Given the state of the husband's evidence, the dishonesty of the evidence that was given in relation to the Haque 'loan' and the fact that I do not have any oral evidence from Jalal Uddin, it would be perverse to accept the existence of a loan in favour of Mr Jalal Uddin. If there is such a loan, it is very soft, I find.
102. That being so in relation to the figurehead, Mr Haque, who was given the position of nominal owner of the business in 2018, I think it highly likely that the same applies in relation to the previous nominal owner of the business, Rexvilla Ltd of whom Enu Tazul was the sole shareholder and director. Nothing that I have heard or read persuades me that there is any true loan from Enu Tazul to the husband.
103. There is another point about the husband's evidence in relation to the mortgage payments. In his statement at G41. He says that, until the pandemic, he was borrowing £2,000 p.m. from Mr Haque for the mortgage payments and £460 p.m. from Mr J Uddin. Those payments that were purported being paid to the husband by Jalal Uddin and Mr Haque totalled £2,460 p.m. and stopped in March 2020. In his statement, the husband says: *'I now pay £540 less towards the monthly mortgage payments'*. Thus, he is seeking to suggest that, on the resources that he has had, he paid £2460-£540 p.m. = £1,920 p.m. Since March 2020 his four-weekly net income has ranged between £1,278.68 p.m. [K329] and £1,417.99 [K356], with it often being no more than £1,085.24 [K339]. Thus the mortgage payments that he says that he was making exceeded his total net income, according to his disclosure. The only way in which he could have done that is by continuing to take additional money out of the business, as he did when using Mr Haque as the conduit for that stream of money.
104. I wish to emphasise that I find that, in the case of the alleged debt to Mr Haque, the evidence given by the husband and Mr Haque was dishonest. There is no other word for it.
105. **The husband's evidence about his other debts** – The evidence that the husband provided about his other debts is hopelessly inadequate and unreliable.
106. Amongst the other evidence that I have about the husband's alleged debts, are the following:
 - i) At K489 there is a letter from a Juthsna Begum (H's cousin's sister) in which she says: 'I have borrowed [she means loaned] Alim Uddin...£70,000 to purchase his house on 5th December 2012. On the sale of the property, Alim Uddin will return

the money borrowed to him'. She goes on to say that she has experienced financial hardship and has fallen into arrears on her own mortgage. Therefore, she says, '*I would sincerely appreciate Alim Uddin returns my money as soon as possible.*' Neither property was bought in 2012. The debt that she asserts is 9 ½ years old and is said to have been made by a member of the family within which there is considerable intermingling of financial interests. If any of this money had been loaned and was repaid I would not expect the husband to give a truthful account of that. I have not seen Ms Justhna Begum. At most, this is a very soft loan.

- ii) At K490 there is a letter from Almas Uddin (H's brother, who was married to Easmin) which states: '*this letter is to confirm that I...have borrowed [he means loaned] Alim Uddin £50,000 to buy his house in 37 St Michaels Ave, Clevedon. We have agreed a term that when it comes to me purchasing a house for myself, I will be asking Alim for the money I have borrowed him, to obtain money for my house deposit. I would highly appreciate if Mr Alim Uddin would be able to return the money as soon as possible.*' Almas Uddin and the husband are very tightly knitted together. The husband and Almas are the driving forces of the business. The way that their finances are run and intermingled with the business leaves me in a position where I could not possibly accept the suggestion that this husband owes money to his brother from eight years ago. Again, if he does, it is a very soft loan.
- iii) As to the suggested loan from Enu Miah Tazul [H's younger brother] of which I have already spoken, above, there is a letter at K491 which states: '*this letter is to confirm that I...will lend [sic] Alim Uddin £40,000 to buy a house in 36 Beaconsfield Rd, Clevedon...We have agreed a term that when it comes to me purchasing a house for myself, I will be asking Alim for the money I have borrowed him, to obtain money for my house deposit. However, times have severely changed over time and the global impact from the pandemic has left me in desperate need and I would be more grateful as to Alim Uddin sourcing means in returning the funds borrowed as soon as possible.*' I have already rejected the evidence of this alleged loan and said that, if I am wrong, this would be a very soft debt.

107. **Husband's oral evidence** - The husband gave extensive oral evidence. It included the following salient points:

- i) He accepted in evidence that he was the manager of the restaurant and also the chef. He referred to a conversation when he spoke to B about the restaurant. B says that the husband called himself the 'boss' of the business. The husband says that he told B that he was the manager; the difference between their evidence is unimportant as I have stated albeit that I think 'boss' is more likely.
- ii) He did not mention the Chandni Catering Ltd involvement. He said that the company that owns the business is Bluebird Restaurant. The involvement of Chandni Catering Ltd only emerged from the subsequent evidence of Mr Haque. That involvement only appeared within the documentation from the payslips of the husband which, from October 2021, have the name of Chandni Catering Ltd written in the top right corner [K350], in place of Bluebird Restaurant Ltd [K349]. Beyond that, the only other possible reference was in Mr Meethan's opening document where he said in paragraph 7: '*Counsel understands that there is currently a trial period for a sale to another company*'
- iii) He said that he has no other sources of income besides the declared wages (i.e. the £1,417.99 – K456) that are paid to him from the restaurant. I do not accept that

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

evidence for reasons that I have explained and explain further when looking at the business accounts below.

- iv) He said that Mr Haque expects him to repay the money that he has lent him. He maintained the fiction that this was a loan.
- v) In relation to the land in Bangladesh [A10], he said that this was the only property or capital asset that he had at the time of the purchase. He put something between £9-14,000 into the purchase from the sale of other land that he had there and which, he said, the wife did not like. He said that Sume Begum's name was on the document of title in relation to the land because she was in Bangladesh at the time of the purchase and Ahmed Mosthaque was not; that explanation does not bear scrutiny because the husband was also in the UK at the time of the purchase and his name appears on the documents of title. I do not have a satisfactory explanation from the husband or Ms Begum as to why Ms Begum's name appears in the documents.
- vi) He said that he has been to 4 Morland Rd but does not have any belongings there. He said that he has stayed there only a couple of times when his children were with him, because he did not have space for them in his quarters at 50-52 High St. I accept B's evidence that the husband did have belongings at the house and slept there more than just a 'couple of times'.
- vii) He said that B had been told to say what he did in his evidence and in his statement. He denied that B had ever worked for four days a week at the restaurant or been paid £200. I deal with this when considering B's evidence.
- viii) Before he managed the restaurant at 50-52 High Street there was a restaurant next door where he was in partnership with one other. That previous restaurant (at 54 High St) closed in 2003-4 as business was not very good. I see no reason not to accept that evidence –if the business had been profitable, it would have continued.
- ix) The husband said that his brother, Enu put £19k towards the purchase of 4 Morland Rd; but he (the husband) did not put anything towards the purchase.
- x) He said that, when Beaconsfield Rd was bought, he was lent £20k by his brother, Enu and £20k by Ahmed Mosthaque. Then, when Ahmed wished to buy his own property, the husband borrowed a further £20,000 from Enu to pay off the debt that he owed to Ahmed Mosthaque with the result that the overall debt to Enu became £40,000. The precise workings of this arrangement do not matter for the purposes of this judgment; the key points are that the husband did not put any money towards the purchase of Morland Rd and that any debt to Enu is very soft, in my judgment.

108. **P v Q** - In describing the debts as 'very soft' I have considered the case of P v Q [2022] EWFC B9 at paragraph 19 viii in which HHJ Hess stated, in paragraph 19:

I have looked at a number of authorities which deal wholly or partly with this point and I include the following in that category: M v B [1998] 1 FLR 53; W v W [2012] EWHC 2469; Hamilton v Hamilton [2013] EWCA Civ 13; B v B [2012] 2 FLR 22; Baines v Hedger [2008] EWHC 1587; and NR v AB [2016] EWHC 277. I have also looked at an article by Alexander Chandler (as it happens the pFDR tribunal in this case) on the subject: Family Loans an intervener claims – taking the bank of mum and dad to court [2015] Fam Law 1505. I derive the following summary of principles from this reading:-

(a) Once a judge has decided that a contractually binding obligation by a party to the marriage towards a third party exists, the court may properly wish to go on to consider whether the obligation is in the category of a hard obligation or loan, in which case it should appear on the judges' computation table, or it is in the category of a soft obligation or loan, in which case the judge may decide as an exercise of discretion to leave it out of the computation table.

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

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

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

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

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

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

109. **The overall position of the husband** – I will examine the trust claims shortly and in detail. I have already stated my conclusion that they fail. I wish to record now where that leaves the husband. I find that his income is much higher than he has admitted. For much of the time he has been paid his wage in the sum that I have stated (about £18,500 p.a. currently). In addition he has been taking at least £2,000 p.m. from the business up to the start of the pandemic. That would leave him with a combined income of £24,000 + £18,500 = £42,500 p.a. Since the beginning of the pandemic there is a lack of evidence about what he has been taking out of the business. Having seen the accounts (as I set out later) I do not see why he should not have continued at least that level of drawing from the business. The poor quality of his evidence makes that the best that I am able to say about his income.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

110. In addition, the husband will remain in control, with his brother Almas, of the business. He will have the continuing rent free accommodation at 50-52 High St and the support of family and colleagues in relation to any temporary accommodation needs. He will bear none of the wife's responsibilities for the children and will only be paying the limited amount of child maintenance that I have recorded.
111. **Evidence of alternative housing** - Enclosure J contains the property details that the parties produced to show what each might need to pay if either had to buy a property. Those produced by the wife are shaded in blue; those produced by the husband are shaded yellow. The details are as follows:

Property	Bedrooms	Price
Wife suggests for husband		
26 Station Rd, Highbridge	3	£210k
44 Grange Ave, Highbridge	3	£203k
1 Fairfield Rd, Highbridge	3	£250k
Wife suggests for herself		
140 Old Church Rd, Clevedon	5	£700k
15 Ash Hayes Drive, Nailsea	5	£575k
30 Station Rd, Nailsea	6	£650k
Husband suggests for himself		
22 Quantock Crt, Burnham	2	£220k
138 Highbridge Rd, Burnham	2	£225k
19 Burnham Rd, Highbridge	3	£250k
Husband suggests for wife		
37 Yeo Moor, Clevedon	4	£475k
Kenn Rd, Clevedon	4	£390k
Westbourne Ave, Clevedon	4	£400k

112. It is plainly not sensible for the wife to have produced details of three properties in Clevedon and Nailsea that are more expensive than the current home. I heard no oral evidence in relation to any of the above. I accept that there are properties that the husband might buy in the bracket of £205,000 to £250,000, although I think that it is very unlikely that he will choose to buy one. I also accept that there are middle-ranking houses in Clevedon that the wife would be able to buy for about £400,000 and which would provide adequate accommodation for her, G and D once the others have left home.
113. **B – oral evidence** – At C111 there is a statement from B. In it, he says that: i) he has heard the husband saying on many occasions that he is the owner of the restaurant; ii) he can confirm that his father is married to the 7th respondent; iii) the two children are the children of the 7th respondent and his father; iv) he has visited 4 Morland Rd where his father stays with his 'stepmother' and half siblings. The husband responds to this statement at D3, denying B's primary assertions.
114. In oral evidence B said that he had come to court so that the truth might be known. His mother had wanted him to come to court and his father had told him not to get involved; I believe that account.

115. He said that he had typed the main body of his statement at C111; he asked E how to structure the statement but did not know she had done one. He was cross examined on the similarities between the wording of his statement with that of E (C109). Given those similarities, I was expecting to hear B say that he had written a draft statement and a solicitor had transposed it into the statement at C111; he did not say that. Having studied the similarities in language, contention, content and font between the statements of B and E, I do not believe the account that B gave as to how his statement came to be filed in those terms. Nor do I accept that E and B did not discuss their statements together.
116. He said that he has worked at 'my Dad's restaurant'. When he finished his GSCE's last summer he worked there on Wednesdays, Thursdays, Fridays and Saturdays over the summer. He said that his father was paying him about £200 pw in cash for the work that he did as a waiter. The father denied that B was working that often at the restaurant or that he was paid £200 p.w. On that issue, I believe B.
117. He said that, when he was younger, his Dad used to dress him up and send him to the restaurant where people called him 'junior boss.' He referred to a time some years ago when he thought that *'one of the other workers, a Mr Haque, was the owner of the restaurant and I ran to the back of the restaurant and started crying and my father told me: 'Oh no, he's not the owner. I am the boss.' I am boss of restaurant'*. B said that his father said this in broken English and would say on other occasions *'this is my restaurant.'* I believe that evidence from B also. The husband said in evidence that he told B, on the occasion in question, that he was the 'manager' of the restaurant. The difference between 'boss' and 'manager' for these purposes is unimportant but, given the husband's poor English, I think that 'boss' was more likely. I accept that the husband did not tell B that he was the 'owner' of the restaurant premises. He did assert his role as the person who ran the business although I also find that he fulfilled that role in conjunction with Almas. As B said in cross examination: *'My Dad was in charge. He was the boss of the restaurant. He did not say he was the owner. He said that he was the boss. He said this a few times.'*
118. B said that Morland Rd is his brother's home - his evidence made repeated reference to X, rather than Y. He described X as his 'step-brother' although the difference between stepbrother and half-brother was merely language and his assertion was that he knew that X was his brother. In cross examination he said: *'My mum told me when I was young that my father was married to someone else and that is when I knew that X was my half-brother. I say that he is my half-brother because my dad is married to R7. No one but my mum has said that my father is married to Sume Begum.'* I accept that the source of B's information on this issue has been his mother. For reasons that I have stated, I do not accept that she had reliable evidence that Sume Begum was married to the husband or that X or Y are his children. The wife certainly believed that to be the case and, I find, has educated the children into her own beliefs. I do not blame B for this. I have already stated my findings about the alleged marriage to Sume Begum and the paternity of the two children.
119. B said that, from June / July 2021 he used to stay at 4 Morland Rd every week and would spend the night there. He said that his Dad would sleep in a room with him and then, when he went to sleep, his Dad would go to Sume Begum's room. I asked B how he knew that, and he said that he had seen his father coming out of her room when he went to the toilet. He said that he stopped going to Morland Rd in January / March of this year. The father denies that B saw him coming out of Sume's bedroom. I accept B's evidence. I accept that B had no wish to give evidence that was contrary to his father. I see no reason why he would

invent that account. I do not accept that the wife's influence would extend to the point of him doing so.

120. B said that his father was living at 4 Morland Rd, but he could not say for how long he had been doing so. He said that, at the top of the stairs there was his father's room; that was the room that he and his father occupied when they stayed. He said that, every day that he worked at the restaurant with his father, his father would take him to Morland Rd to sleep. I do not accept that B is in a position to say that the father lived at Morland Rd all the time. I find that, when the father and B were working at the restaurant, they would sleep at 4 Morland Rd as B described. There is a geographical logic to that arrangement since the restaurant is in Burnham and Morland Rd is about 1.4 miles away in Highbridge, according to Google maps. For the father to have taken B back to the home in Clevedon (and to have picked up in the morning) would have involved a journey of 18.5 miles each way.
121. **Oral evidence of Sume Begum and Shakir Jumon** – I now want to refer to what these two parties said in evidence. Sume Begum denied that her marriage to Ahmed Mosthaque was a sham. She said that the purchase in 2010 of the land in Bangladesh had been arranged by Mr Mosthaque and her father; she had no direct involvement in the purchase. She described the limited involvement that Mr Mosthaque has had with X. She says that Mr Mosthaque now lives in Birmingham and has mental health 'issues'.
122. Ms Begum was asked about the funding of her share of 4 Morland Rd. She said that her bank account at L35 shows £20k being paid out on 25th February 2016 in relation to the purchase. The down payment, in fact of £19k, came from Enu Tazul. She said that, in 2014, she had lent the husband and wife £20k. In 2016 that money was repaid to her by Enu Tazul and she used that money to buy 4 Morland Rd. There is nothing to contradict that evidence and, on that basis, it would mean that the husband did not contribute to the purchase of 4 Morland Rd. A debt was repaid (not by H or W, but by Enu Tazul) and that money was the house down payment.
123. Mr Jumon said that in evidence that he and Sume Begum saw 4 Morland Rd together and decided to buy it. He said that, altogether, he paid £20k for his share. His share came from £13k that Sume Begum held on his behalf as he is not good with money; there is no documentation that I was shown that related to this but nor was there any effective challenge to what he said. He said that another £2k came from another account and that the other £5k was from money that he owned. On the evidence there is no basis for suggesting that Mr Jumon did not pay 50% of the 'down-payment' for the property.
124. **Morland Rd** – I will deal now with 4 Morland Rd, because the issues relating to that property have been so intertwined with other issues in the case.
125. Since its purchase in 2016, this property had been held in the joint names of the seventh and Eighth Respondents. However, on 21st May 2021, it was transferred from their joint names into the sole name of the Seventh Respondent [G69] and so that, now, represents the current position in relation to its legal title. At G66 there is a copy of the current Official Copy of Register of Title, relating to it. The Eighth Respondent, Mr Jumon, says at G69 that he transferred his share of the property to Sume Begum because he wishes to start a family and wanted to be independent, financially. He says that, at the time of the transfer in May 2021, the property was worth £199,000 and there was an outstanding mortgage of about £102,000. At G69, Mr Jumon says: *'the seventh Respondent and I have a verbal agreement wherein she is to pay me the sum of £47,500 for my 50% share of the property as and when I am in a position to purchase my*

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

own property. As it stands, the seventh Respondent has paid me the sum of £10,000 and the balance of £37,500 remains outstanding.’ The payment of £10,000 can be seen being paid into his Nationwide account at G73.

126. There is a valuation of the property at H16 by Berrymans at £220-£230,000. That being so, the net value of this property to Sume Begum, taking into account the sum owed to Mr Jumon, would be £225,000, less the mortgage of £102,000, less costs of sale (about £4,000) and less the debt to Mr Jumon – a total equity of £81,000. The wife and her legal team did not address how it could be said that the evidence could support a claim that the husband had a 100% of the beneficial interest in the property – the interest that the 8th Respondent had in the property was never addressed. Given that there was no basis for challenging that Mr Jumon, at very least, had a half interest in the property and also given the limited equity in the property and the availability of Beaconsfield Rd and St Michael’s Avenue, proportionality alone should have deterred the wife from pursuing the 7th and 8th Respondents in the way that she has. It is that aspect of the claim that has sucked in the other allegations about Sume Begum, such as whether she and the husband were married.
127. At G46, the wife says: *‘I believe the First Respondent has used matrimonial assets and/or money to purchase and/or pay deposit as well as servicing the mortgage payments in respect to 4 Morland Road, Highbridge, TA9 3ET (hereinafter referred to as the “Second Property”). The Second Property was purchased in May 2016. On 4 January 2016, the First Respondent set up a Standing Order (hereinafter referred to as “SO”) of £1,000.00 to his personal account. This SO was made until 1 June 2017. I have every reason to believe that this SO was setup in order to aid the purchase of the Second Property given the said timings of the SO and the purchase of the Second Property. The Second Property was conveniently registered in the name of the Seventh and Eighth Respondent to conceal the true ownership given that the Second Property is used exclusively by the First and Seventh Respondent along with their two children.’*
128. Through her counsel’s opening, the wife says: *‘W will say that R7 and R8 were in no position to buy 4 Morland Rd...and down payment and subsequent mortgage payments were maintained by H which were proceeds of matrimonial assets diverted through R3, R8 and H’s brother, Enu Miah Tazul...W will say that Bangladesh land registry documents clearly mention H and R7 are married and the fact that H and R7 have children together who were introduced to W and her children is irrefutable evidence which confirms that H and R7 are clearly lying and it is in their interest to lie otherwise their entire case as well as their credibility is seriously damaged. It also damages R2, R3, R4-6 and R8...It’s no coincidence that Holley and Steer and Ash Clifford represented and represent H, R2 to R5 and R7 and 8. It is H who is bank rolling their defence. Holly and Steer clearly were aware who they were taking instructions from and had no choice but to bail out from representing any of the parties as clearly Mr Fleming is likely to be a key witness based on the disclosures and W will be seeking to witness summons Mr Fleming for trial, subject to the court’s permission.’*
129. At the start of the hearing, I asked whether there was a request for a witness summons to be issued for Mr Fleming to attend; I was told that there was not. None of the facts asserted by the wife in support of the husband having contributed to the purchase of 4 Morland Rd, or the mortgage on it, were substantiated in evidence.
130. In relation to the purchase of this property and beyond the assertions of the parties in statements, there is very little documentation. Whilst writing this judgment, I have searched through the bundle again to see what documents have been filed for me to consider. I do not have the conveyancing file. There has been some examination of the Lloyds bank account of Sume Begum [L30-L88 but nothing came from the questions relating to it or the highlighted payments. The standing order payments (which, in any event, are said to relate

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

to a period of 18 months only) have not been cross related to any bank accounts of the 7th and 8th Respondents and there is no evidence of any payments made by the husband to the mortgage. There is no evidence of any payment made by the husband to the purchase. Even if the loan arrangement between the husband and Enu Tazul (the £40k loan) related to money that was applied to the purchase of 4 Morland Rd, that does not lend any support to the wife's claims that the husband had an interest in the property.

131. By her statement at D26 Sume Begum says that she bought the property together with her sister's husband, Mr Shakir Jumon, because they could not afford to buy it separately. She says that she and Mr Jumon have been living there since it was bought. She lives there with her two children and Mr Jumon lives there with his wife. Sume Begum says that she works at the restaurant at 50-52 High Street and has been doing so for many years. Mr Jumon has filed a statement at D29 which gives the same account as that of R7 in relation to Morland Rd. In her pleaded defence at A50, Ms Sume Begum had said: *'In response to the purchase of 4, Morland Rd, I purchased the property with my brother in law Shakir Ahmed Jumon on April 22nd 2016 and the mortgage payments are made from our joint mortgage account. Mr Uddin has no involvement or financial interest in this property.'*
132. In his closing speech Mr Meethan submitted: *'In relation to 4 Morland Rd, the wife has never made clear what type of trust is alleged to have existed. There is no basis for saying that the husband contributed to the purchase. No case was put about a common intention. There is no basis for suggesting that there was any form of common intention that would support the wife's contentions that the husband had a beneficial interest in the property, let alone a 100% interest.'* Mr Meethan was right. There is no evidence to suggest that, if Ms Sume Begum were to dispose of 4 Morland Rd, any sums of money would be given to the husband or anyone else.
133. **Statements from witnesses called by the wife** – I now wish to record the statements that have been filed on behalf of the wife. It had been anticipated that E would give evidence but I was told that she did not wish to do so. The statements of the witnesses who did not give evidence are hearsay. Although hearsay evidence is admissible in proceedings of this nature, the court has to recollect that the evidence has not been tested in cross examination and that the court has not had the benefit of seeing the witnesses. The court has a responsibility to ensure the overall fairness of the hearing. I think it important to recollect the provisions of section 4 of The Civil Evidence Act 1995 which states:
- 1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
 - 2) Regard may be had, in particular, to the following—
 - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
 - (c) whether the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

134. At C109 there is the statement from the parties' daughter, E. She says that the husband confirmed that he is the owner of the New Chandni Restaurant and that he was married to the 7th Respondent; she does not produce any independent evidence about this and, in my opinion, this does not take her evidence further that being further, hearsay, support for the admitted position that the husband was the manager of the business.
135. E says that the two children are the children of the 7th respondent and the husband. She says that she has visited the property at 4 Morland Rd where her father stays with her stepmother and half siblings. Further she says that she has worked at the restaurant 'which had clearly shown me that he is the owner of the restaurant'. The husband has responded to her statement at D2; he denies her contentions about Morland Rd and about his relationship with R7. He says that E has not worked at the restaurant and would have been underage, in any event. The absence of oral evidence from E makes an evaluation of her statement very difficult, as hearing from B in oral evidence showed.
136. I have no evidence that E was able to investigate the legal titles to any of the properties concerned or to have an in-depth understanding of the legal ownership of the company. Her ability to say that the husband and R7 were married could not be tested and there is no evidence to demonstrate the basis of her assertion; I suspect that it is materially influenced by the wife's view about this. I see no reason to doubt her evidence, that is mirrored by B's, that she has visited 4 Morland Rd and has seen the father staying there.
137. At C112 there is a statement by Mohammed Iqbal Miah who is the wife's brother-in-law. He says that he can confirm that the husband is the owner of the New Chandni Indian Restaurant and that he has visited the restaurant many times. He says that he has been informed by others that the husband is 'putting huge amounts of money into [another person's] bank account to hide the restaurant.' At D4 the husband says that, as far as he is aware, Mohammed Miah has never visited the restaurant. He says that the account about him putting money into another person's bank account is 'a complete lie'. At D18 there is a statement from a Syed Kalam denying that he told Mr Miah that the husband was putting huge amounts of money into his bank account; Mr Kalam says that Mr Miah went to prison for fraud in 2014 and that, after they fell out, Mr Miah has made false allegations against him to 'get back at me.' Mr Kalam says that he works with the husband at the Chandni Restaurant.
138. Mr Miah came to give oral evidence. He is married to his first cousin, the wife's sister. He was referred to D18 and said that it is true that he went to prison for fraud in 2014. His assertion that the husband is the owner of the current restaurant appeared to be based on his understanding about the ownership of the previous restaurant business that had been operated by the husband in partnership with others at 54 High Street. He did not have any detailed knowledge of the legal structure of the current business and the companies that have been created. The evidence about the husband putting money into another person's account was not supported by documentation and was not reliable, in my opinion. I do not consider that his evidence took matters any further.

139. At C114 there is a statement by Ahmed Sayed who is an electrician and builder. I was told at the outset of the hearing that he has suffered a stroke and will not be giving evidence. He says that he has known the husband and wife for over a decade and has carried out work for them. He says the husband would hire him for jobs at the restaurant and would settle his bills and continues to do so. The husband says that Mr Sayed has not known him for over a decade, rather, it is the husband's brother that he has known for time [D5]. He says that the only work that Mr Sayed did at the restaurant, as far as he knows, was in relation to a manhole, on the instruction of his brother. The husband says that he has never hired Mr Sayed to do work there and has not invited him to dinner there, either. I do not consider that the statement of Mr Sayed takes matters further.
140. At C116 there is a statement by a Monwara Miah who is the wife's sister. She says that she can confirm that the husband is the owner of the restaurant. She says that during *'the matrimonial proceedings, [the husband] attended my home and assured me that he would transfer the property 37 St Michaels Ave to [the wife]. The husband further stated that he would transfer the ownership of the restaurant to their children when they are at a suitable age.'* The husband denies her contentions in his statement at D3.
141. Monwara Miah gave oral evidence. She speaks very little English and required the assistance of an interpreter. Her statement is in English. She said that her daughter or her sister, the wife, may have written my statement for her but she could not recall how the statement came to be written. Nothing of evidential value emanates from her statement or evidence, either.
142. At C118 there is a statement by a Shahida Nessa who is another of the wife's sisters. She says that she can confirm that the husband is the owner of the restaurant and says that she has visited the restaurant on many occasions with the wife where the husband invited them for dinner and birthday parties. The husband's denials in relation to this statement are at D4. In oral evidence Ms Nessa said that she knows that The New Chandni Restaurant is owned by the husband because she has visited it. She said that she had never heard of Bluebird Restaurant Ltd or Mr Haque. She said that she first knew of the husband's ownership of this business because her brother-in-law, Shaju Miah, had been in partnership with the husband in relation to the previous business that had been run from 54 High Street, Burnham. I did not find her evidence helpful.
143. At C120 there is a statement by Andrea Aug. She says that she is a care worker and has assisted in the care of G. She says that she is 'under the impression' that the husband is the owner of the restaurant as he once invited her and her husband over for a meal and did not charge for it. The husband says: *'because Mrs Aug and her husband were not presented with a bill, does not mean that I was the owner of the restaurant.'* She did not attend to give oral evidence and I do not consider that her statement took matters any further, either.
144. Overall, I found the statements that were filed on behalf of the wife were unhelpful and made assertions beyond the knowledge of the makers. There was an absence of differentiation between ownership and control of the restaurant.
145. **Law relating to trust claims** – This is how counsel for the wife put his client's case in relation to the trust claims and the financial remedy claims in his written opening:

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- *The legal basis on which C [i.e. the wife] seeks her claim for a declaration against the Defendants in respect of the properties and the business are as follows:*
- *Section 24 (1) (b) of the Matrimonial Causes Act 1973, it is within the jurisdiction of the Judge in Family proceedings to decide what are the rights and interest of all parties, not only of the intervenor, but of the husband and wife respectfully in the property which a party asserts the other party has.*
- *Tebbutt V Haynes [1981] 2 All ER 238 per Lord Denning MR at 241 [counsel then cited the relevant dicta about the court's ability to deal with trust issues in financial remedy proceedings]*
- *Jones v Kernott [2011] UKSC 53, [2012] 1 F.L.R. 45: 'To displace that presumption the court will look for proof of a tacit understanding that beneficial ownership is different from legal ownership, looking at all the evidence holistically and examining the whole course of the parties' conduct in relation to the property. All of the Justices in Jones v Kernott accepted that where a tacit agreement could not be found by a process of inference the court could impute to the parties a fair agreement which they never in fact made but which they should be taken as having made. In this case the court was completely satisfied that the husband's brother formed no common intention with either the husband or his father that beneficial ownership would be shared'*
- *C cannot point to any express trust as it is unlikely the parties will disclose the same or even confirm the existence of the same, however C will invite the court draw an inference of express agreement exists but has not been disclosed.*
- *C will rely on the principle of implied trusts namely:*
 - i) *A resulting trust which arises by way of implication in circumstances where the property is purchased in the name of the legal owner with the money of the beneficial owner,*
 - ii) *A constructive trust and the court will be invited to infer from the evidence and the course of dealing between the parties that there were common intention that the legal owners hold D1's beneficial shares in the respective assets and that the course of dealing and the bank statements all points out to the fact that the parties acted throughout in their dealings which is consistent with the fact that it was D1 who was the beneficiary of the assets and enjoyed the fruits of those assets.*
- *C says there is sufficient contemporaneous documents and the dealings of the Ds points to the fact that D1 clearly in conjunction with the other Defendants placed assets in different names so as to conceal assets which were created during the marriage and properly form part of the matrimonial assets.*
- *C says the court will be invited to infer by the course of dealings that the proportions of the assets which are in the names of the other Defendants should be taken as matrimonial assets and D1 purposely concealed the assets knowing that once the C finds out about his relationship with D7 that parties are likely to divorce, and he took pre-emptive actions to conceal his interest in the asserts as identified.*
- *It is settled law that C can expect to receive the higher of a claim calculated by reference to needs or a claim calculated by application of the sharing principle (Hart v Hart [2017] EWCA Civ 1306).*

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- *This is a needs case. The primary need is one of housing and income for C who is the primary carer of the parties' children and there one child who has profound needs.*

146. Regrettably, I think that it is extremely disappointing that the points that were made so clearly by the Respondent parties at the hearing in April about the applicable trust principles were not absorbed more carefully on behalf of the wife. The above passage shows a confusion of analysis between the law relating to constructive trusts and that relating to resulting trusts. The very short passage, cited as coming from *Jones v Kernott* (which it does not), is not a complete analysis of the law. No further arguments about the applicable law were advanced on behalf of the claimant. I have no bundle of authorities. No mention was made by the wife's counsel of *Laskar v Laskar* [2008] EWCA Civ 347 or *Marr v Collie* [2017] UKPC 17. No explanation has ever been given as to why the wife asserts the beneficial interests that she does.

147. The principles emanating from *Laskar* and *Marr v Collie* can be taken from this passage in paragraph 49 of the judgment in *Marr v Collie*:

'The Board does not consider, therefore, that Laskar is authority for the proposition that the principle in Stack v Dowden (that a conveyance into joint names indicates legal and beneficial joint tenancy unless the contrary is proved) applies only in "the domestic consumer context". Where a property is bought in the joint names of a cohabiting couple, even if that is as an investment, it does not follow inexorably that the "resulting trust solution" must provide the inevitable answer as to how its beneficial ownership is to be determined. Lord Neuberger did not intend to draw a strict line of demarcation between, on the one hand, the purchase of a family home and, on the other, the acquisition of a so-called investment property in whatever circumstances that took place. It is entirely conceivable that partners in a relationship would buy, as an investment, property which is conveyed into their joint names with the intention that the beneficial ownership should be shared equally between them, even though they contributed in different shares to the purchase. Where there is evidence to support such a conclusion, it would be both illogical and wrong to impose the resulting trust solution on the subsequent distribution of the property.'

148. In paragraph 17 of *Laskar*, Lord Neuberger had said: *'In other words this was a purchase which, at least primarily, was not in "the domestic consumer context" but in a commercial context. To my mind it would not be right to apply the reasoning in Stack v Dowden to such a case as this, where the parties primarily purchased the property as an investment for rental income and capital appreciation, even where their relationship is a familial one.'*

149. On behalf of the Respondents it is argued in relation to 50-52 High Street that this was an investment and commercial purchase. The property was bought with the intention that it would provide the restaurant with its trading premises. A commercial rent was payable. The husband and Rupia Begum (R2) were not a cohabiting couple and their finances and living arrangements were entirely separate. The wife's representatives have never responded to the contentions based on those authorities.

150. In a case that is as highly litigious as this and where there is such a conspicuous lack of focus on legal principles, the boundaries of achievability within the evidence and the incidence of costs, I am extremely reluctant to make a decision that might be taken as being based on any controversial statement of legal principles.

151. My approach is this, having considered the evidence, which I will now set out:

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- i) There is no basis for suggesting that there is an express declaration of trust in relation to either 50-52 High Street or 4 Morland Rd. None is suggested.
 - ii) There is no evidence that would support a finding of a resulting trust in relation to 50-52 High Street. The husband has not paid anything to its purchase or to the mortgage. On the basis of the passage from the case law that I have set out above, that should be the end of the wife's contentions about 50-52 High Street. I explain this further, by reference to the evidence relating to 50-52 High Street, below.
 - iii) There is no evidence that would support a finding that of a resulting trust in relation to 4 Morland Rd, for the same reasons. I have explained that already.
 - iv) There is no basis for contending that there is an express agreement, arrangement or understanding that the husband should have a share in either property. Quite the opposite (and, further, no such agreement, etc is suggested). On the evidence, it is clear that the three legal owners involved (R2, R7 and R8) intended that they should own their respective properties.
 - v) There is no basis for inferring or imputing that there was a constructive trust that might affect either property, even if the issues relating to 50-52 High Street are not confined to resulting trust principles. There is no evidence at all that it has been the husband who has enjoyed the 'fruits' of those assets. Rent has been paid for 50-52 High St by the business that is operated from it. The primary benefits of 4 Morland Rd have been enjoyed by the two owners (now the single owner, R7).
152. I have therefore examined the full range of trust principles that, conceivably, might apply and I have concluded that none of them assist the wife in her claims. In my opinion the wife's trust claims have been unprincipled and have stuck rigidly to the contentions made at the outset of these proceedings without there being any sufficient analysis of the evidence as it is has come in or the law applicable to it.
153. **50-52 High Street, Burnham-on-Sea** – I will now look in detail at the evidence relating to this property.
154. The legal title is vested in the sole name of the Second Respondent, Rupia Begum. It has been valued by Tamlyn's at £630,000 'subject to the lease to Rexvilla'. I raised with the parties that the property is no longer subject to a lease to Rexvilla but it was not thought that would make any difference.
155. At C3 the wife says that, in 2001, the husband went into partnership with Shaju Miah, Ashid Uddin (his maternal uncle) and Atiq Uddin and opened a restaurant in the name of Chandni Indian Restaurant. When the relationship between the three of them broke down, the husband bought out the other two. The wife says that the restaurant was profitable and the husband decided to move the business next door to 50-52 High Street, calling it the New Chandni Restaurant. She says that he went into business with his uncle, Ashid Uddin, again. She says that the husband told her that he had bought the property on the basis that the husband had a 75% share and Ashid Uddin had 25% [C3]. She says that it only came to her attention in the divorce proceedings that the property had been bought in the name of R2.
156. By his statement at D2 the husband denies that he is the owner of the restaurant or that he has said that he is. At D7 he says that he did go into partnership with Shaju Miah but not

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

with Ashid Uddin or Atiq Uddin. There is a statement from Ashid Uddin, agreeing with the husband, at D15. That partnership did run the Chandni restaurant at 54 High St, Burnham, he says, but it made no money. After working elsewhere for a period, the husband says, he then joined his brother, Almas, as an employee at the New Chandni Restaurant [D7]. He says that he did not state that he owned 75% of the business or that his uncle had 25% of it; Ashid Uddin agrees with the husband's evidence [D15]. He says that he has no idea how R2 and her aunt (his sister in law) bought 50-52 High Street.

157. In my opinion, the wife has not differentiated sufficiently between the business that used to be operated at 54 High Street and the current business. Further, she has not differentiated between: a) the ownership of the property; b) the ownership of the companies that, nominally, ran the business and c) the control of the business. She has assumed that the arrangements for the previous business were transferred to the new business. On balance I do not accept that the husband told her that he was a 75% owner of the new business, whatever may have been said about the business at Number 54. Further, she has not analysed with sufficient care the documents that have been produced. Those documents show that Rupia Begum (and, initially her aunt, Easmin) bought the property, the business was run, nominally, by REXVILLA Ltd and then Bluebird Restaurant Ltd but that the husband and his two brothers ENU (initially) and Almas have always been the controlling force behind the business.
158. In her first statement at D21, the Second Respondent gives an account of how she says the property was bought. By her fourth statement, she gives more detail and says:
- i) 50-52 High Street was bought, initially by her and her aunt, Easmin Nilufa Uddin (Almas's former wife), in 2008 for £450,000. The Office Copy of the register of title in relation to this purchase is at L409 and shows the purchase by R2 and the aunt for £450,000 being registered, with them having title absolute, on 3rd October 2008
 - ii) The purchase price was funded by a NatWest loan of £344,250 (she exhibits a copy of the loan agreement, dated 30th April 2008). The charge was registered against the property [L410].
 - iii) The balance of the purchase price was provided in equal shares by her and her aunt. The husband did not pay anything towards the purchase. R2 says that she provided her share of the purchase (£65,000) from her own savings and from a loan of £54,000 from another aunt, Sultana Akhter; she exhibits copies of the cheques to her statement [G21]. She says that she paid the sum of £65,000, as her share of the purchase price, to her aunt and her aunt then paid that sum and the aunt's own share of the purchase price to the solicitors.
159. In her second witness statement [D21], Rupia Begum says that her aunt, Easmin, experienced difficulties in her marriage to her husband (Almas). She says that she wanted to 'steer clear' of their issues and that she 'wanted to find a way that [she] could become the sole owner' of 50-52 High Street'. She says [D21]: *'I had an apartment in Bangladesh which is better described as 125 Kajol Shah West, Lala Digir Par, Sylhet, Bangladesh. This apartment was one that I had been given by my father. I hardly visit Bangladesh as I have very few relatives there. I had no need for this apartment, which has a cost to maintain and keep secure. It was a 3 bedroom property in a prime location in the town and was worth about £60,000 pounds in sterling value. Easmin's Husband has family in Bangladesh and we did a swap where I received the equity in the subject property and he took the apartment. I deny that profits have been coming into my account. I have received rental income from my tenant and in*

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumun.

turn my mortgage gets paid. It is correct ... that I am not part of the restaurant. I am a working professional. It is an investment for me.'

160. The TR1 in relation to this transfer of the aunt's share to R2 is at L97. It records that the aunt was also released from the NatWest charge [L98]. The transfer took place in 2014 (the copy of the TRI is not dated but the property register records R2 as having become the registered proprietor on 22.8.2014 – L170). The official copy of the register of title in the sole name of R2 at L170 records that R2 is the sole proprietor and that the property remains subject to a NatWest charge, dated 11th August 2014.
161. The conveyancing file in relation to the 2014 transaction has been disclosed. Holley and Steer were the solicitors who were instructed to act in the conveyancing procedures to effect the transfer of the property to R2. Because Holley and Steer were not on the NatWest panel of solicitors, they were not able to act in relation to the release of the NatWest charge and so Ash Clifford, solicitors, did so [L89].
162. There is an Official Copy of the register of the leasehold interest in the property that was held by Rexvilla Ltd as from 11th August 2014 at L177. It states that on 11th August 2014 a lease or underlease was created by R2 in favour of Rexvilla Limited for a period of 15 years. At L210 there is a deed of surrender, dated 6th November 2019, by which Rexvilla Limited surrendered the lease of the property to R2 for the sum of £1. A lease was then created over the property in favour of R3 (Bluebird Restaurant Ltd) on 7th November 2019 for the period of six years [L236]. The rent is £40,000 p.a. [L238].
163. In her statement at G45 the wife says: *'during our marriage [the husband] has informed me that he purchased a property, namely 50-52 High Street. ... The First Respondent confirmed that he had purchased the First Property and was very pleased with his business venture. The First Respondent further confirmed that he held 75% share and his business partner Oshid Uddin held 25% in the Property. It came to my attention later at the divorce proceedings that the First Property was purchased in the name of the First Respondent's niece who is the Second Respondent. The Second Respondent was a student at the time of the purchase and could not in any way purchase such a large property. I believe the First Respondent used the Second Respondent's name to conceal his assets and earnings as our relationship was deteriorating and the First Respondent's plan by then was to marry the Seventh Respondent.'* That, of course, is not what she said in evidence.
164. There is a letter from Holley and Steer, the conveyancing solicitors, at L411. Amongst other points, it states:
 - i) It has been the solicitors' understanding that 'throughout the period, the restaurant that is operated from the site has been managed and continues to be managed by Mrs Begum (R2) and Ms Easmin Uddin's (i.e. the aunt's) brother, Alim Uddin (i.e. H).'
 - ii) In 2014, the husband contacted them to say that Easmin wished to 'divest herself of her interest in the premises'
 - iii) The solicitor met with the aunt, Easmin Uddin in 2014 but that 'at her request the principal conduit for the instructions [in 2014] was Alim Uddin himself, with a request that correspondence be kept to a minimum.'

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

- iv) The legal costs of the transactions in 2014 were met by Rexvilla Ltd of which the director was an Enu Miah.
 - v) In the autumn of 2019 the husband, 'in his capacity as general manager for the Chandni Restaurant, advised that a decision had been taken to wind up the affairs of Rexvilla Ltd, the current leaseholder.' That led to the surrender of the lease to Rexvilla and the new lease to Bluebird Restaurant Ltd of which R4 is the 'principal shareholder and the person with significant control.'
 - vi) R4's English was not very good at the time and so the arrangements were overseen by the husband 'as general manager of the restaurant.' All costs and disbursements of the arrangement were met by 'the business'.
165. This letter is helpful in that it adds to the evidence that the property was owned by Rupia Begum and, initially, Easmin but that the control of the business lay with the Uddin brothers. Given that Rupia Begum lives and works as a teacher in London and the Uddin brothers have the experience and background in the restaurant business which they have built up over the years, that might be regarded as hardly surprising.
166. **Evidence of Rupia Begum** - I will now refer to the evidence that Rupia Begum gave. Of all the witnesses that I heard, she was the most impressive and reliable. She is a teacher and is plainly dedicated to her job and the children that she teaches. Her evidence was careful and, I consider, accurate. She became distressed, with justification, when some of the wife's more preposterous contentions were put to her. She is particularly close to her uncle, Almas, and it was obvious that the divorce between Almas and Easmin Uddin was distressing for her. She emphasised that her aunt, Easmin, is a professional and sensible woman who worked as an optometrist in Taunton.
167. She said that her brothers had helped out in the restaurant before she and Easmin bought it. When there was a possibility of buying 50-52 High Street, her family and Easmin's family discussed who might buy it. Rupia's brothers were not in a position to buy it and so, in discussion with Easmin's family and her family, they decided that she would be the one to do so. Therefore, I accept, deliberate decisions were made as to who should buy the property and those decisions were followed though. There was no intention that anyone else (such as the husband), would be the hidden owner of the property.
168. She said that, when Easmin decided to give up her share of 50-52 High Street, she also wanted to do the same. However, Almas Uddin persuaded her not to do so. She said that she told Almas: *'you sort this out and I will keep the ownership'*. She accepted that she had not been to the property for some time and had not inspected it for long before she first bought her share in it.
169. She was referred to the TRI by which the property was transferred into her sole name. At L98 the document says, at paragraph 8, that no consideration was given for the transfer to her sole name other than the release of Easmin from the Nat West charge. Counsel for the wife put to her that it did not say that the consideration was the transfer by Rupia Begum to Easmin of property in Bangladesh. I have no reason to doubt Rupia Begum's word that she did transfer property to Easmin at the time; whether that transfer should have been recorded as consideration for the transfer or whether it was something that merely took place contemporaneously, I cannot say. Certainly, I do not know nearly enough about that event to make a finding along the lines suggested to her that she had behaved in a way that was

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

either fraudulent or improper. What is crystal clear is that there is no basis for suggesting that the husband paid anything for the property to be placed in her name. Further, it is equally clear that there is no basis at all for suggesting that there was a common intention, either express, to be implied or to be imputed that the husband should have a share in the property. Rupia Begum's evidence was that Alim Uddin was not involved with her in the discussions about buying the property.

170. She said that, when Bluebird came along, she was not approached by the husband; rather, she was asked about it by Almas. She then discussed with Almas the proposal that Bluebird Restaurant Ltd should take over the lease from Rexvilla Ltd, although the husband was around during the discussions. She said that Almas needed support at the time having gone through a 'dire time' when he and Easmin divorced. That is why she gave the solicitors permission to write to the husband on her behalf at the restaurant.
171. She said that she is getting the rent for the property – it is paid. I looked at her bank account during the hearing and it shows the rent coming into the account and the NatWest charge payments going out. I noted the following, in particular:
 - i) If the payments of rent for 2017 are added up from the bank account [L274-5], the total paid is £40,000. That is, nine payments of £2,500, one of £12,500 and one of £5,000.
 - ii) For 2018 there were eight payments of £2,500 (totalling £20,000), two payments of £5,000 (total £10,000), one payment of £5,529.09, one payment of £2,000 and one payment of £500. The total that year would appear to be £38,029.09.
 - iii) I do not have a full set of payment statements for 2019 [L277] but I note the payment of £2,500. I cannot say whether the small, apparent deficit in rent paid during 2018 (about £2k) was made up in 2019.
172. As I discussed with Rupia Begum, as events have turned out, this property has proved to be a good investment for her. It was bought for £450,000 in 2008 and is now worth £630,000.
173. After Mr Haque had given his unsatisfactory evidence, Rupia Begum had to be recalled to give further evidence. In reply to my questions, she said that Almas is in control of the business with Alim, although it is mostly Almas, she said. She said that the arrangement is that she owns the building and Almas acts as her 'eyes' and looks after her interests. She was asked about the new company that has taken over from Bluebird Restaurant since October 2021, Chandni Catering Limited. She said that did not know who Chandni Catering Ltd are. She just knew that that there was a new company and she made an agreement for it to stand in the place of Bluebird Restaurant Ltd during a conversation with Almas on the phone. The extent of her dependence on Almas was plain when she said that she did not know whether the rent was paid at the full rate during the pandemic or whether there was an adjustment in relation to her interest payments; that would have been arranged by Almas, she said. Further, she was not clear who did own the fixtures and fitting – the cookers etc. She thought that she did, although the lease does not state that [and paragraph 26 of the lease 'returning the property to the landlord' at L255 does not answer the question of ownership of the contents].
174. I also asked her why it was that the lease had changed hands and the two brothers, Almas and Alim, had not taken the lease themselves given their control of the business. She said

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

that, at the time that Bluebird Restaurant Ltd took the lease both Alim and Almas had a large number of issues of their own, in particular, they were both going through divorces. I accept her evidence.

175. Accepting the evidence of Rupia Begum, as I do, it leaves matters a very long way away from the case that the wife sought to present. It means that there is no scope for the trust claims relating to 50-52 High Street on the basis of that evidence.
176. In his closing speech Mr Meethan said: *‘It was not put to Rupia Begum that the source of the purchase of this property came from the husband. It was not put to her that she had hidden money of the husband, as the wife had alleged. None of the essential parts of the wife’s claims were even put to Rupia Begum. The wife did not produce any evidence herself to found a resulting trust or, if it should be regarded as sufficient, any form of common intention’*. Mr Meethan was right. There is no evidence to suggest that, if Ms Rupia Begum were to dispose of 50-52 High Street, any sums of money would be given to the husband or anyone else.
177. **Bluebird Restaurant Ltd** - I now want to refer to some of the evidence relating to this company, the Third Respondent, before then referring to the evidence of Mr Haque in more detail.
178. The accounts for the years 2018 and 2019 are in the bundle at L284. The other accounts were not and I called for their production during the hearing. The accounting year runs to 31st August. It is not clear whether the 2018 accounts are for only part of the year; it is not stated that they are. I note that the surrender of lease by Rexvilla Ltd is dated 6th November 2019 and that the new lease to Bluebird is dated 7th November 2019. Yet the accounts for the year ending 31st August 2019 [L284] show this company (Bluebird) paying the full amount of the rent, £40,000. There is rent recorded as being paid by the company in the year to 31st August 2018; the total in that year is stated to be £12,500. I also note that accounts for 2019 and 2020 are described as ‘filleted’ on their face and are not audited; filleted accounts are filed by companies that do not opt to file their director’s report and profit and loss statement.

179. The accounts show:

	2018 Part of year?	2019	2020	2021 (draft)
Turnover	225,885	498,550	494,220	591,840
Gross profit	148,390	324,317	337,008	399,158
Net profit (loss)	16,075	(710)	(2,022)	14,059
Wages and salaries paid in year.	74,003	183,470	209,688	228,632
Fixed assets	0	3917	2,937	2,203
Current assets	47,574	65,428	95,700	255,889
Creditors	37,496	59,977	41,291	106,687
Net assets	10,078	9,368	7,346	21,405
Average number of employees	16	22	23	24

180. Mr Haque had no understanding at all of the accounts and could not answer any questions about them. In my opinion they show a developing and successful business in which the turnover has increased, despite the pandemic. The wages and salaries have also increased

(i.e. by £45,000 between 2019 and 2021, despite there being an increase of only two more employees). This is a large restaurant with 110 seats, Mr Haque told me.

181. There are tables of salaries and wages that have been paid during some months in 2018 and 2019 [L293 – L305]. Whilst preparing this judgment, I have added together the figures for total wages etc paid for each month from September 2018 to August 2019 to see whether they tally with the figure for wages and salaries in the accounts (£183,470); they do. Since that would have been a year in which Mr Haque says that he was paying the husband £2,000 it appears unlikely that these so-called loan payments were hidden in the figures for salaries and wages. The ‘loan’ payments were made by Mr Haque paying the husband from a personal account in Mr Haque’s name. As I set out below, that bank account was fed with considerable payments that were taken from the company bank account. How that featured in the company accounts I cannot say. I also cannot say whether the increase in wage payments since 2019 (the additional £45,000 that is shown as having been paid in 2021 is accounted for by a continuation of the payments of £2,000 p.m. or some other sum.
182. However the scheme was operated, I find that the husband was taking a regular additional sum of £2,000 p.m. through the vehicle of Mr Haque until the start of the pandemic when Mr Haque stopped working there. Given the state of the accounts, I think that is highly likely that at least a similar amount will have been taken by the husband thereafter. There is no reason, given the state of the accounts, for that level of additional drawing to have stopped. If it was not taken, there is no reason to suggest that it could not have been.
183. The analysis of how the company runs fits very well with my findings about this business structure. It also means that the wife would have been far better advised to focus on the finances of the company rather than trying to run (right up to the opening of this hearing, given the terms of counsel’s opening note) some form of claim that the husband owns Bluebird. The Husband has never owned Bluebird but he has used it and his close friend Mr Haque to create a charade in which it is pretended that Mr Haque is the employer and the company runs the business. That charade can be seen at D24 where Mr Haque says: *‘I am 30 years old this year [2020]. I have staff who do the work and run the restaurant itself.’*
184. I have no evidence as to why the current assets have increased so much in 2021. It looks very much as though sums are being invested in the business. There is nothing that would correlate with a debt of £108,000 that the husband might owe to the company.
185. **Mr Haque’s evidence** - I now want to refer to the evidence that Mr Haque gave.
186. He said that he first met the husband in 2010 when he came to work at the restaurant. He would then have been about 20 years old. He worked as a ‘basic waiter’ there. He said that he and his company took over from Rexvilla because *‘Enu was struggling and wanted to go to Bangladesh and Almas was in a bad place’*. He said that, at the time that Bluebird took over, the business had a turnover of about £520,000. He said that he did not pay anything for the business, including for the fittings and fixtures; he said that the only thing that he did pay for was some chicken and other foods (sic).
187. He was asked about his income, to see how he might have paid the £2,000 p.m. to the husband. He said that he stopped working in the restaurant when the pandemic began – that is in March 2020 when his so-called loan repayments to the husband ceased. He said that, until July 2018, he had been working part-time at the Tesco’s checkout as well as working in the restaurant. From part-time work at Tesco’s he had been earning £400 p.m. From the

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

restaurant he was taking £893 net (this can be seen at, for instance, L301). When answering the questions he used a higher figure for his restaurant income (£1200) based on a later rate of payment (see L305). The 'loan' repayments started in March 2017, according to him; he was sure of that. He said that the payments did not start earlier. He was asked, therefore, how he could have paid £2,000 a month when he was only earning a corrected figure of £893+£400 = £1293 p.m. and had no savings or assets of his own. He had no answer to that and merely looked about the courtroom.

188. He said that, from July 2018, he was working full time at Tesco's and would have been earning £1200 net from that together with an income from the restaurant of £1200. He would therefore have had a total income of £2,400 p.m. and, after paying £2,000 p.m., would have been left with £400 p.m. for his own living expenses (and his wife's earnings of £550 p.m. from the restaurant would not make any difference given her own living expenses). I did not believe him. Indeed, the bank statements demonstrate beyond doubt that he was not paying the husband out of his income; he was paying it by drawing money from the company bank account.
189. He was then taken to the Bluebird bank account [L306] and a payment of £3,000 that was made out of the account on 28th November 2017. He said that he had never transferred £3,000 from the company account to the husband. In fact the payment of £3,000 did go directly into the husband's account - L23 shows this.
190. I was also taken to his Lloyds bank account (****8068). In preparing this judgment I have had to spend some considerable time analysing the bank statements because no schedules were prepared of them and there was very limited cross examination about them. For the purposes of the point that I am examining the two important bank accounts are those of Bluebird Lloyds ****3760 and the 8068 account of Mr Haque. The 'loan' repayments to the husband can be seen coming out of Mr Haque's 8068 account (e.g. L357 and L358). Payments of £2,000 to account ****5654 were being made to the husband's Nationwide account [K447 and L355].
191. The table below gives examples from two pages of Mr Haque's account (8068) and the company bank account (3760) each month just how much Mr Haque was putting into his account from the company account. This then fed the payment to the husband that has been called a loan. The table is as follows:

Description	Amount	Further explanation
Page L358		
9.1.2019 – from Co bank account.	5000	
4.4.2019 – paid to MUJ	2500	'MUJ' is used also for payments from the company bank account to R4 although the statement for this date is missing from the Co. statements. R4 is called 'Muj' (as R2 said in her evidence); his middle name is Mujamil.
9.5.2019 from Co bank account.	2000	
22.5.2019 from Co bank account.	2000	
6.6.2019 from Co bank account.	2500	
6.6.2019 from Co bank account.	2000	
8.7.2019 - MUJ	3000	This can be seen coming from the company bank account at L349.
Total for 5 month period	19,000	There is then a gap in the disclosed bank accounts for both the company and R4 [see L349-350 and L358 and L363.
L363		
8.8.2019 - MUJ	2000	
9.9.2019 - MUJ	6000	From the company bank account – see L350

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

8.10.2019 - from Co bank account.	3000	
5.11.2019 - MU]	5000	
12.11.2019 from Co bank account.	1000	
3.1.2020 – MU]	3000	
5.2.2020 - MU]	3000	
Total for 6 month period	23,000	

192. It is not possible to do a full audit of the payments that Mr Haque was taking from the company, in addition to his wages. His wages were being paid into his Nationwide account [L368 – there are limited statements that have been disclosed from this account] and there are no payments into his Lloyds account (8068) that would relate to his wages [see e.g. L304]. Therefore, the payments to the husband were not being made from the bank account into which Mr Haque paid his wages.
193. The payments taken from the company did not represent payments of advance net profit, as Mr Meethan examined in his submissions; these were regular withdrawals throughout the year and there was no net profit in the year to August 2020. The total taken by Mr Haque from the company bank account in the above 11 months that I have set out in the above table was £42,000. Some of that went to the husband by way of the £2,000 p.m. payments. A small amount of it may have gone to paying company liabilities for things like ‘Gazprom Energy’ [e.g. L355], as Mr Meethan pointed out. What arrangement might have been made with Almas I cannot say. His name does not feature in Mr Haque’s bank account as far as I can see.
194. That is why I reject the suggestion of a loan that is owed to Mr Haque and why I conclude that he was used as a conduit by the husband to get money out of the business that the husband runs with his brother. A suggestion was made that part of the reason for Mr Haque lending money to the husband was because of Mr Haque’s gambling habit; it was suggested that, due to that habit which sees him spending £40-60 each fortnight, money was kept out of his reach by lending it to the husband. That, of course, is an absurd proposition given that Mr Haque was left in charge of the company bank account and was able to take so much money out of it. Further, if that had been a concern, he and his company would never have been placed in nominal charge of the company and the business or given the responsibility for paying outgoings, including the rent to R2. The gambling point came at the end of Mr Haque’s unsatisfactory evidence which, by that time, had become farcical.
195. **Section 25 factors** – This case has to be decided by applying the provisions of section 25 (1) and (2) of the 1973 Act. The welfare of the children, whilst minors, is the first consideration. However, it is not the paramount consideration: *Suter v Suter* [1987] Fam 111. The overarching requirement is to achieve a fair result by applying the factors in Section 25(2).
196. I have already stated the order that I intend to make. I have set out the financial position of the parties in the judgment above. I have also considered their needs. They both have long-term obligations and responsibilities due to the number of children and G’s disabilities. The order that I have decided to make meets the needs of both of the parents and reflects the circumstances in which they find themselves. The standard of living enjoyed by the family before the breakdown of the marriage was reasonable. This was a long marriage. At the age of 47 and in the light of the work that he does, the husband has an earning capacity that he is likely to develop within the restaurant for many years to come. I reject his suggestion that he is at the pinnacle of his earning capacity. At the age of 42 the wife will be caring for G for a long time. Neither has any relevant mental or physical disability. They have both made significant contributions and I see no basis for differentiating between them under this

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

heading. This is a needs case and, despite my findings about how they have both behaved, I consider that the issues of conduct are relevant to costs issues. 'Conduct' under section 25 (2) (g) is not a punitive provision. Nothing of relevance arises in this case under section 25(2)(h).

197. The order that I have explained above will mean that the wife and children remain living in the former matrimonial home for at least eight years. The wife and her husband will be able to buy out the husband from his share of the property if they choose to and can raise the finance. The terms of the order must give them the right to do so. The husband will be able to clear his debts and will be left with his income intact, his secure accommodation in place and he will have some capital beyond that to spend as he chooses. He will receive further capital from his share in the former matrimonial home when his children no longer need that property as their home base.

198. Therefore I order:

- i) The sale of 36, Beaconsfield Rd. After the reserve for CGT has been set aside, the remaining balance must be divided equally between the parties. The reserve must be dealt with as I have set out above.
- ii) The transfer of the former matrimonial home, 37 St Michael's Avenue, to the wife, subject to the mortgage in favour of the Buckleys and subject to the husband having a charge equivalent to 20% of the net value (being the value after deduction of the mortgage and notional costs of sale at 2% of the gross value). The wife must have credit for any capital payments to the mortgage. If it is considered that a charge would cause a liability to CGT for the husband and a trust arrangement would be more tax efficient, that must be discussed between the parties and I would expect them to agree on the most tax efficient method. The husband's share is not to be realised until the youngest child attains the age of 18, the sale of the property or further order of the court. The precise terms of this arrangement will have to be discussed between the representatives for the husband and wife. If they cannot be agreed there will have to be an application but I strongly recommend that the parties sort out any issues without coming back to court. They have wasted enough money on legal costs already.
- iii) The contents of the former matrimonial home are to be the wife's unless: a) otherwise agreed by 4 p.m. on 29th July 2022 or b) the husband makes an application by that date relating to chattels. I do not encourage any such application.
- iv) The wife's claims trust claims do stand dismissed. For the avoidance of doubt that means that her claims against R2, R3, R4, R7 and R8 are dismissed as are her civil claims against the husband. Insofar as is thought necessary, I will make declarations to record that the beneficial interests in 50-52 High Street and 4 Morland Rd follow the legal titles. The order may also record that the wife abandoned any civil claims that she made against the Third and Fourth Respondents whilst still maintaining that they must remain parties to these proceedings because of the issues that she wished to raise and did raise relating to them.
- v) All other claims for financial remedy orders between these husband and wife must be dismissed. The husband's notional claims for periodical payments against the wife must be dismissed in the usual terms. The order would have to recite that, by reason

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

of the wife's remarriage, she is no longer entitled to claim periodical payments from the husband.

- vi) Costs will either have to be agreed or the case will have to be listed, at further expense, for the issues of costs to be litigated. I do not see how the wife can avoid the claims for costs by the Second, Seventh and Eighth Respondents. I anticipate making no order for costs in relation to the Third and Fourth Respondents given the dishonest evidence of Mr Haque but I will hear Mr Meethan on that issue if he wishes to argue it. I anticipate making no order for costs as between the husband and wife but, again, will hear the representatives on that issue if necessary and proportionate.
 - vii) The wife shall have permission to inform the children that their father and Ms Sume Begum swore on the Koran that their father is not the father of X or Y and they have never married.
199. An order, with any necessary ancillary provisions, must be submitted to that effect by 4 p.m. on 8th July 2022. Any typographic errors that are found in this judgment should be communicated to me by that time and date and I will correct them if requested. Given the length and detail of this judgment I have no intention of giving any further clarification of my reasoning unless there is a very good reason demonstrated for me to do so. I intend that any applications for permission to appeal should be refused. Given the level of conflict in this case I would wish to emphasise that, as far as I am concerned, this is a final and complete judgment and I do not expect to receive further argument about matters that I have decided within it.
200. As I have made plain throughout this judgment, I consider that these proceedings are a disgraceful example of how financial remedy proceedings should not be conducted. The wife may wish to take advice about why her case was presented in this way and why so much expense has been incurred.

HHJ Stephen Wildblood QC
24th June 2022.

W is Forida Uddin. H is Alim Uddin, R2 is Rupia Begum. R3 is Bluebird Rest. Ltd. R4 is Mohammed Haque. R7 is Sume Begum. R8 is Shakir Jumon.

Appendix (others involved)

Ahmed Mosthaque	He is the former husband of R7 and is said to be the father of X. He is the cousin of H's father.
Y Uddin	The daughter of R7. R7 says that the father is Alom Uddin.
Sultana Akthar	Said by R2 to have lent her £54k to assist with purchase of 50-52 High St.
Ash Clifford	H's solicitors. Also acted for R2 in relation to the legal charge of Nat West back in 2014 relating to the transfer and re-mortgage of The High Street Property.
Andrea Aug	Witness for W. Did not give evidence.
Justhna Begum	H's cousin's sister. She says she lent H £70k to buy 37 St Michael's Ave.
Rupiah Begum	R2. Maternal niece of H.
Sume Begum	R7.
Holley and Steer Solicitors	Solicitors who acted in the purchase of 50-52 High Street.
Mohammed Haque	R4. H says he worked as a waiter at the restaurant and also works elsewhere. Sole shareholder and director of R3.
Shakir Jumon	R8. Is married to R7's sister, Taslima Akhtar.
Mohammed Iqbal Miah	Witness for W. He is the wife's brother in law. He is married to Monwara Miah
Monwara Miah	Witness for W. Wife's sister.
Shaju Miah	Said to be former partner of H at 54 High St, Burnham. His brother is Julian Miah; W says Julian was also a partner at 54 High St.
Md Junar Miah	Wife's current husband.
Shahida Nessa	Witness for W. W's sister.
X Uddin	The son of R7. R7 says that his father is Mosthaque Ahmed.
Ahmed Sayed	Electrician. Was to be witness for W.
Taslina Aktar	R7's sister.
Enu Miah Tazul	He is H's younger brother
Almas Uddin	He is the brother of H. He is about three years younger than H. H says that he is the main manager of the restaurant.
Alom Uddin	H's brother. He is younger than H.
Ashid Uddin	H's maternal uncle. Said to be former partner of H at 54 High St, Burnham. H denies having been in partnership with him.
Atiq Uddin	Said to be former partner of H at 54 High St, Burnham. H denies having been in partnership with him.
Easmin Nilufa Uddin	Former sister-in-law of H and the 'aunt in law' of R2. Was married to Almas Uddin, who is the brother of R1.
Jamal Uddin	Former work colleague of H. Says he lent H £460 pm to make mortgage payments.