Neutral Citation Number: [2023] EWFC 215

Case No: ZZ20D46323

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 December 2023

Before :

MR JUSTICE PEEL

- -

Between :

HO

Applicant

- and -

TL

Respondent

- -
- -

Duncan Brooks KC (instructed by **Harbottle & Lewis LLP**) for the **Applicant**
Patrick Chamberlayne KC (instructed by **Payne Hicks Beach**) for the **Respondent**

Hearing dates: 8-13 November 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 1 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE PEEL

Judgment Approved by the court for handing down

Mr Justice Peel :

1. I shall refer to the parties as W (wife) and H (husband).

Offers and Costs

2. It is common ground that H shall retain the family business. His first proposal on 1 December 2022 offered W a total sum in her hands (including her own assets) of about £6.5m, which he modified to about £5.9m on 25 October 2023. On 2 December 2022, W sought a total of £17.2m, which she modified to £12.3m in her s25 statement in September 2023, and reduced again to £10.9m on 25 October 2023.

3. At trial therefore the difference between the parties was about £5m (£10.9m v £5.9m). The combined costs are about £1.55m, nearly a third of the disputed sum, which rather speaks for itself.

The witnesses

4. I heard from H, W and the SJE business valuer, Mr Andrew Caldwell. It was sad to see the antipathy between the parties, which I am convinced has been significantly exacerbated by these proceedings which commenced as long ago as September 2021. W was at times visibly emotional, but I am sure H, although more collected, has also been impacted by the litigation and the breakdown of the marriage. The children, I am told, have suffered, and in my judgment a clean break is vital. For W, there is a tangible sense of loss as she exits the marriage, the family business and the lifestyle. As to their evidence generally, I felt that at times W was a little unrealistic about the lost marital standard of living which she wants to replicate as much as possible. H was somewhat evasive and legalistic about his trust interests, deferring to the trustees' "brick wall" replies without focusing on the realities of what is needed here.

The background

5. H is nearly 49 years old. W is 56. She has been diagnosed with a number of health issues.

6. They met in London in 2002 at a time when H was working in banking, and W in asset management. They married in September 2003 and separated in August 2020, so that this was a marriage of some 17 years. Their three children are 19, 18 and 16 years old.

7. During the marriage, they were based mainly in Country A, living in City A, which allowed them easy access to their Country B business interests. They also spent time at their home in Country C, and travelled extensively for business and pleasure. The children were educated in Country A until they reached 13 when they attended boarding school in England.

8. Currently, H divides his time between Country D, Country C and Country B. W lives in rented accommodation in London SW7 at a cost of £120,000 pa, having relocated to England shortly after separation.

9. In 2005, the parties co-founded a hotel group centred in Country B, known as Company M. W's family member invested in the business and holds a minority stake. Although

the business has had a variety of interests, its core is a luxury beachfront hotel on an island (Country B). The original funding was provided by H's family, and W added thereto with assets of her own. W describes the business as a way of life for them, which I consider to be an accurate assessment. It was the centre of the marriage and the family. Broadly, W was responsible for sales and marketing, and H oversaw operations. They worked together on strategy, ideas, and general decision making. I am satisfied that it has taken a great deal of hard work by both of them to build the business over many years.

10. In 2017, the business was placed in one of H's family trusts (now renamed Trust X) and W was added as a beneficiary. Through the trust structure, H and W own 90.25% of the business, and W's family member 9.75%.

11. The parties received a combined total of £240,000pa by way of consultancy income from the business. Additionally, in the last 7 years the total dividends paid from the business to the owning trust was about $1m, or approximately $150,000pa. H says that for the year Jan 2019 to Jan 2020 (the last full year before separation), the family's personal expenditure was just over £500,000, and he produces a schedule to corroborate that figure. In addition to these sums, I am satisfied that the business met certain expenses direct, such as first class and business flights where the foreign travel might be deemed to be for research purposes, occasional holidays, life insurance, health insurance and some miscellaneous smaller items.

12. It strikes me that this is not the whole picture of the lifestyle enjoyed by the parties. They had during the marriage the use and enjoyment of magnificent properties and opportunities which cannot readily be measured in economic terms. They used their homes in Country A and Country C. They travelled internationally. They used the luxury hotels owned by the business for personal enjoyment and pleasure, enjoying all the facilities and activities. This enabled them to entertain and mix with wealthy guests who invited them for reciprocal holidays. Their house in City A is cheap by English standards but is on a prestigious estate, with ample room and facilities. The classical property in Country C, to which they are both attached, is spectacular, but again modest in value. It has land on which there is a farm and winery, and was used by the family for frequent entertaining. They had the benefit of full-time staff at their properties; for example, the cost of staffing the property in Country C is about £50,000 pa.

Source of wealth

13. There is no doubt that H entered the marriage with far greater resources than W. Counsel on his behalf has presented a table demonstrating to my satisfaction that (using current values), his pre-owned trust interests, ownership of a flat in London, part ownership of the property in Country C (he later bought out his brother in 2015), and a property in Country D, have a present day value of £7.295m.

14. W entered the marriage with a property in London, investments and pensions with, again, a combined present-day value of £1.366m.

15. During the marriage H's parents contributed a further approximately £4.1m to assist in establishing and growing the business.

16. H also points to loans made to him by one of his family trusts (Trust Z), of which the funds derived from his parents, to fund property purchases during the marriage:

i) £500,000 to purchase a property in City A, in Country A, in 2014, next door to a property bought in W's name in 2006.

ii) £1.35m to buy a flat in London in 2015.

iii) €1.15m to enable H to buy out his brother's half share of the property in Country C in 2016.

iv) £500,000 to enable the two properties in Country A to be converted into one large family home.

v) Sums to assist the business (in this instance distributions rather than loans):

a) £150,000 in 2008 after a fire.

b) £150,000 in 2009 after a fire.

c) £100,000 during the Covid pandemic.

vi) £1.2m to buy a property in Country D in 2019.

The loans by the trust to H were subject to formal agreements. The trust in turn borrowed the funds commercially from a bank. The loan to H to purchase the flat referred to at ii) above is secured against the property, and carries interest. The others are unsecured, interest free and repayable on demand, although H told me the expectation is that they are expected to be repaid on sale of the relevant properties for which monies were advanced.

17. There is no doubt that the bedrock of the parties' wealth was laid by H's greater pre-marital wealth and extra-marital capital injections by H's family, all of which far exceeded W's pre-marital assets. The total sums can be tabulated as follows:

Husband	
Pre-owned personal wealth	£7.295m
Parental contributions	£4.1m
Trust loans	£4.45m
Trust distributions	£400,000
Total	**£16,145,000**

Wife	
Pre-owned assets	**£1,366,000**

18. On the other hand, the monies on H's side which were originally non-marital in nature, largely went into the family business and family properties. It is my task to assess the extent to which those sums have, over time, acquired a marital nature such that they are now subject to the sharing principle.

Computation: the approach

19. As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution; **Charman v Charman** [**2007] EWCA Civ 503.** Turning to computation first, there are three disputed areas:

i) Value of the family business.

ii) Accessibility of H's trusts interests.

iii) A handful of more minor issues.

Computation: the business valuation

20. The relevant legal principles seem to me to be as follows.

21. First, it is for the court to determine the value, not the expert.

22. Second, valuations of private companies can be fragile and uncertain. In **Versteegh v Versteegh [2018] EWCA Civ 1050** Lewison LJ said at para 185:

> "The valuation of private companies is a matter of no little difficulty. In *H v H* [2008] EWHC 935 (Fam), [2008] 2 FLR 2092 Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap-shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see *A v A* [2004] EWHC 2818 (Fam), [2006] 2 FLR 115 at [61] – [62]; *D v D* [2007] EWHC 278 (Fam) (both decisions of Charles J)."

23. Third, I suggest that the reliability of a valuation will depend on a number of factors such as: (i) whether there are applicable comparables, (ii) how "niche" the business is, (iii) whether the business is to be valued on a net asset basis (for example a property company) or one of the recognised income approaches (such as EBITDA or DCF), (iv) the extent of the parties' interests, and accordingly their level of control, (v) the extent of third party interests, (vi) the relevance of any shareholders' agreements, (vii) whether there is a realistic market for sale, (viii) the volatility or otherwise of the figures, (ix) the reliability of forecasts, and (x) whether the assumptions underpinning the valuation are seriously in dispute.

24. Fourth, in practice the choices for the court will be, per Moylan LJ in **Martin v Martin [2018] EWCA Civ 2866** at para 93: (i) "fix" a value; (ii) order the asset to be sold; and iii) divide the asset in specie. The latter option (divide the aspect in specie) is commonly referred to as Wells sharing (**Wells v Wells [2002] EWCA Civ 476)**.

25. Fifth, whether a business should be retained by one party, or sold, or divided in specie will depend on the facts of each case. Relevant features will include whether the business was founded during the marriage or pre-owned, whether it has its origins in one party's non-marital wealth, whether the parties were both involved in its strategy and operation, the ownership structure of the business, whether Wells sharing is practical or realistic given that it will usually continue to tie the parties together to some extent, and how to ensure a fair allocation of all the resources in any given case.

26. Sixth, as was pointed out in **Wells (supra), Versteegh (supra)** and **Martin (supra)**, there is a difference in quality between copper-bottomed assets and illiquid/risk-laden assets. As Moylan said LJ at para 93 of **Martin (supra):**

> "The court has to assess the weight which can be placed on the value even when using a fixed value for the purpose of determining the award to make. This applies both to the amount and to the structure of the award, issues which are interconnected, so that the overall allocation of the parties' assets by application of the sharing principle also effects a fair balance of risk and illiquidity between the parties. Again, I emphasise, this is not to mandate a particular structure but to draw attention to the need to address this issue when the court is deciding how to exercise its discretionary powers so as to achieve an outcome that is fair to both parties. I would also add that the assessment of the weight which can be placed on a valuation is not a mathematical exercise but a broad evaluative exercise to be undertaken by the judge".

27. Seventh, when deciding how to reflect the illiquidity or risk in a private company, the court has three choices:

i) The business valuation may incorporate a discount for factors such as lack of control, lack of marketability, and lack of risk. This is particularly common where a party has a minority holding, or otherwise does not have overall control, and there are relevant third-party interests. In such circumstances, the court may simply adopt the business valuation as reflecting these matters. This I term an "accountancy discount".

ii) To step back when conducting the s25 exercise and, in the exercise of its discretion, to allocate the resources in such a way as to reflect illiquidity and risk. Conventionally, that would be to allocate to the party retaining the business a greater share of the overall assets to provide a fair balance. As Bodey J said in **Chai v Peng and Others [2017] EWHC 792 (Fam)** at para 140:

> "It is a familiar approach to depart from equality of outcome where one party (usually the wife) is to receive cash, while the other party (usually the husband) is to retain the illiquid business assets with all the risks (and possible advantages) involved".

It will be for the court to determine whether, and to what extent, to reflect this aspect in what might be a termed a "court discount". Of particular relevance, it seems to me, is whether the illiquid (or less liquid) business represents the principal asset in the case, in which event the distinction between liquid/illiquid assets may be sharper and require particular attention, or whether it is a relatively modest part of the overall assets.

iii) The court might, in the right case, take both the valuation, which includes an accountancy discount, and apply a further court discount i.e. an amalgam of (i) and (ii). Moylan LJ in **Martin (supra)** at para 94 considered that this would not be double counting: "…this is not…to take realisation difficulties into account twice". It will all depend on the case. If, for example, the accountancy valuation includes a discount for a minority holding, but it is clear that there is no possibility of realisation of interest in the future by sale or otherwise, it seems to me that it would not be unfair to further take that factor into account when allocating assets.

28. I heard from Mr Caldwell. He was impressive. His written reports are clear, as was his oral testimony. He was balanced, collected and even handed. All attempts by the parties to take him to higher figures (per W) or lower figures (per H) if anything reinforced the good sense of his report and valuation.

29. He valued the business on the Discounted Cash Flow basis, adopting a discount rate of 20.3%, whilst considering, but discarding, alternative valuation methods. He produced reports in July 2022, September 2023 and October 2023. He has replied to numerous detailed questions.

30. He puts the value at $11.688m. I understand that to be a net figure as I am told the ownership structure would not generate any tax in the event of a sale. He accepted that there is a lack of direct comparable sales to act as a cross check, but an EBITDA valuation is in the same ballpark. He told me that this is a figure which he reaches on a willing buyer/willing seller basis. He said there is no meaningful liquidity in the business; it has no distributable cash above its business needs.

31. He did not apply any discount for lack of marketability. In his view, although the market is niche, there may well be acquisitive hotel groups or other prospective purchasers out there who would be interested. He told me he thinks the business is quite an attractive proposition.

32. Although he acknowledges that future maintainable earnings are based on forecasts, and therefore subject to crises which have befallen the business in the past, including Covid, local terrorism and natural disasters (such as three cyclones in 17 years), he estimates sustainable dividends for the parties' 90.25% going forward as:

a) $200,000 in 2023

b) $1m from 2024

c) $1.5m from 2027.

33. Mr Caldwell assesses an appropriate combined salary for the work of H and W at $450,000 pa. If H runs the business by himself, he would need to pay a market salary of $225,000 to replace W's skill and experience.

34. There are a number of areas of dispute which I must resolve.

Issue 1

35. First, there is a plot of land which has been earmarked by the business for a separate private residence development. It was considered in 2013 but not progressed, as it was not thought to be viable. A residential development is high risk in Country B, there is no freehold tenure on the land, and there is no evidence that planning would be granted. It is in a conservation area which complicates the position. The parties cannot agree precisely on the size of the area; either 2.5 or 4.5 hectares. A property valuer has reported in the alternative and put the value at either $107,000 or $167,000. The SJE has incorporated the lower figure (subject to a 30% discount). The figure is de minimis and I propose simply to split the difference (allowing the 30% discount), which must be added to the SJE business figure of $11.688m. That gives a total of $11,709,000.

Issue 2

36. At the other end of the island from the main hotel is what is known as Hotel N, a much smaller site with 10 units requiring refurbishment, and a main centre which needs to be completely replaced. It was bought in 2018 for $978,000. The parties intended to open a hotel there in 2024. It was planned to be a different offering from the main hotel; smaller, less premium, with fewer facilities. Mr Caldwell proceeded on that basis and factored in potential revenue from the proposed development. Shortly after he first reported, H told him that it was unworkable for funding and other reasons, and that he did not intend to go through with the development. That had a knock-on effect for the report which was predicated on the assumption that Hotel N should be included as an income-generative prospect. The consequence was that the business valuation dropped from $12,784,108 to the current figure, a reduction in value of about $1m. Mr Caldwell has valued Hotel N at the net asset figure attributable in the accounts of $295,878 rather than on an income approach.

37. To redevelop the site would require up to about $1.5m of investment. To attribute a higher value than $295,878 would, in my judgment, be speculative. Investment and energy must be devoted to the project. The timescale is unclear, funding may be difficult to secure, and there are the usual risks associated with developments of this nature.

38. At the start of the trial, both parties wanted to retain Hotel N. In her evidence, W told me, with some emotion, that having heard H in the witness box she felt that it would be difficult for her to take on Hotel N. In her view, H would not treat her well, and would make her life too difficult. She told me it would be too big a risk for her. I observed the ill-will between the parties. Time, and the conclusion of the proceedings, might be a mitigating factor in the future, but there is at present no love lost between them. H fears that their personal warfare could turn into corporate warfare if W were to set up a nearby hotel. I bear in mind that the children have suffered as a result of the breakdown of the marriage. For their sake, in my judgment a clean break in every sense is desirable. The relationship between their parents risks, I consider, continuing to be poisonous if they are locked in commercial competition on the same small island (Country B), looking towards similar markets and working with the same agents.

39. I was told on W's behalf by counsel in closing that W does not formally abandon her claim for Hotel N, but would understand if I decided not to transfer Hotel N to her. In the end, I have decided that it is appropriate for H to retain it so as to ensure as definitive a separation as possible, in personal, financial and commercial terms.

Issue 3

40. The SJE has prepared his final figures on the assumption of 60% hotel occupancy rates; that is an increase from 55% in his first report. W contends that 65% occupancy is more realistic, which would increase the value, whereas H contends for 55%, which would decrease the value. The difference is significant; about $2m each way.

41. Mr Caldwell was cross examined on this issue at some length by both parties. He says that the 10-year forecast is occupancy at 55%, and that between 2015 and 2019 the actual occupancy rate was 50-56%. He recognises it was 67% in 2022, but says that was due to carry over from Covid, and in any event these were Country A tourists who pay less than Americans and Europeans. In 2023, the average occupancy rate was 57%. This included February, March, and part of April when the hotel was struck by a cyclone/tropical storm, and numbers were low as a result of closures, but it was low season and the forecasted occupancy was not much higher; in any event, if one excludes those three months, the average is about 60%. It is because of the updated 2023 information that Mr Caldwell revised his assumption from 55% to 60%. It was suggested to him that he should have carried out a weighted average on a monthly basis which, so it was said, would have captured higher room rates in high season. But he was never asked to do this in his reports, it was put for the first time when he was in the witness box, and in any event, I consider that his approach of doing annual averages fairly captures the highs and lows.

42. Having heard the SJE, H and W, I am satisfied that it is appropriate to take a 60% occupancy rate.

Issue 4

43. On one occasion, about two years ago, a management/consultancy charge of $240,000pa was paid to Company O (an underlying management company within the ownership structure) by a company in Country B which operates the hotel. By that process local corporation tax in Country B was reduced. The scheme was then suspended because of legal requirements by the Country B Central Bank for a formal consultancy contract to be prepared. It is no longer an allowable deduction, such that the profitability of the business has been reduced. The SJE has based his figures on this assumption, but if the assumption is incorrect, and the scheme can be resurrected, the value increases by about $800,000.

44. H told me that attempts to find an alternative scheme, or to make the previous scheme compliant, have so far failed. W considers that a way will be found. I cannot make a definitive finding on this. It seems to me that there is a possibility that an arrangement will be found, but as with much else in the hotel business there is no certainty.

Issue 5

45. Mr Caldwell's assumptions are based on annual insurance costs of about $90,000pa. H tells me that as a result of the cyclone/tropical storm earlier this year, the premium will now increase to $250,000. Mr Caldwell agreed that, if so, the valuation would decrease. It seems possible that there will be increased insurance costs, but I had limited evidence on this and cannot definitively say by how much.

Issue 6

46. The business made an insurance claim of $850,000 arising out of the cyclone/tropical

storm earlier this year. The cost of at least some of the repairs has already been incurred (H told me that £350,000 remained to be paid) so that a successful claim could, it seems to me, amount to additional funds receivable by the business which might add to the value thereof. The problem is that it is unclear to what extent it may succeed. The insurers have offered $150,000. H thinks it may go to arbitration. Again, for me to assess what sum might be receivable risks entering into speculation.

Issue 7

47. H seeks a discount of 1/3rd on the business value to reflect risk and liquidity issues. He says: there is no real market for sale; there are no distributable cash reserves; the business is not diversified, consisting of one hotel; it carries a number of risks, including political instability, terrorism, fires and cyclones; there are question marks about the long-term future of tourism in the area.

48. Undoubtedly, there are inherent risks. But to my mind these are not sufficient to justify any accountancy valuation discount for the following reasons:

    i) Mr Caldwell addressed his mind to this very issue and has not applied any discount for marketability or other issues. He explained to me in oral evidence why he did not do so. Essentially, he considers the business to be potentially attractive to a purchaser, and the third-party minority interest is less than 10% of the whole such that there is no impact on overall control of the business.

    ii) Although a substantial asset, the business is only part of the overall wealth. It is not the only significant resource. This is not a case such as **Wells v Wells** where it was far and away the biggest asset.

    iii) It is H's choice to retain it. It is open to him to sell it.

    However, I consider that the risks associated with the business, in terms of both capital value and future income, can be taken into account as part of the overall s25 dispositive exercise, even if not as a direct valuation discount, albeit in my judgment the impact on the overall disposition should be relatively modest. In other words, it may be susceptible to a court discount, but not an accountancy discount.

49. I conclude that the value of the business is $11,709,000; the sterling equivalent is £9,597,541. In reaching this conclusion, I have taken into account the variables referred to above (e.g. the consultancy arrangement, the insurance claim and higher insurance costs), which are uncertain and largely balance each other out.

Computation: the trusts

50. At issue between the parties is the accessibility of H's trust interests.

51. I approach the legal principles as follows:

i) The test as set out in **Charman v Charman [2005] EWCA Civ 1606** at para 13 is: "…whether the trustee would be likely to advance the capital immediately or in the foreseeable future".

ii) The court brings "a judicious mixture of worldly realism and of respect for the legal effects of trusts, the legal duties of trustees and, in the case of off-shore trusts, the jurisdictions of off-shore courts" (per Sir Mark Potter P in **Charman v Charman (No.4) [2007] 1 FLR 1246, CA** at para 57).

iii) "The question is not one of control of resources; it is one of access to them"; per Lewison LJ in **Whaley v Whaley [2011] EWCA Civ 617** at para 113.

iv) The court must look at the facts realistically; **Whaley (supra)** at para 114.

v) "The court will not put undue pressure on trustees to exercise their discretion in a particular way, but may frame an order which affords "judicious encouragement" to provide one spouse with the means to comply with the court's view of the justice of the case: Thomas v Thomas [1995] 2 FLR 668"; **Whaley (supra)** at para 114 ibid.

vi) Continuing at para 114, Lewison LJ, referring to what was said in Thomas, stated that what would *not* be undue pressure would be if:

   a) The interests of the other beneficiaries would not be appreciably damaged; and

   b) The court decides that it would be reasonable for the husband to seek to persuade trustees to release more capital to enable him to make proper financial provision for his former wife.

vii) In the same paragraph, Lewison LJ added that "…if the court makes such an order the trustees are not bound to comply with the husband's request; but it is plainly proper for the trustees to take it into account…and commonly it will be decisive", citing Lewin on Trusts 18th ed.

viii) The court is not bound to accept the say so of trustees; **SR v CR [2009] 2 FLR 1083** per Singer J at para 60.

ix) Although overseas trustees may reasonably wish not to submit to the jurisdiction of the court, "it is hard to see why participation by the trustees in a helpful or meaningful way in the court's inquiry qua witness could be construed as a submission to the jurisdiction"; **BJ v MJ (Financial Remedy: Overseas Trusts) [2011 EWHC 2708 (Fam)** per Mostyn J at para 21.

x) The ordinary rule of evidence is that the court is entitled to draw adverse inferences from the absence and/or silence of a witness who might be expected to have material evidence to give on an issue on the action; **Wisnieswki (a Minor) v Central Manchester Health Authority [1998] EWCA Civ 596,** as applied by Moor J in **R v B [2017] EWFC 33**. In **Manzi v King's College Hospital NHS Foundation Trust [2018] EWCA Civ 1882** Sir Ernest Ryder SPT made plain that there is no obligation to draw an adverse inference; instead,

the court has the discretion to do so. Whether it should will depend on the facts of the case; at the very least, the judge might be less inclined to attach full weight to what the trustees say if they decline to attend qua witness when they could offer considerable assistance on a particular issue.

xi) Relevant factors when determining whether the **Charman** test is met include:

a) The nature and purpose of the trusts. Trust documents, including settlement deeds and letters of wishes, will be informative, but so too may be evidence within the family as to the working of the trust, and their expectations therefrom.

b) Whether the husband or wife is a main or principal beneficiary, or merely one among many minor beneficiaries of similar standing.

c) Whether distributions to a party would appreciably damage other beneficiaries.

d) The history of distributions or loans to a party, including how often they have been made, for what purpose, and whether requests for funds have been turned down. Where loans have been made, the terms of repayment and security may require scrutiny.

e) The value of the overall trust funds, and the quantum of monies sought to be provided from that source.

f) Whether the trust funds are fully liquid (e.g. in investment portfolios) or tied up in private businesses and potentially difficult to realise.

g) Whether the beneficiary has a close relationship with the trustees (or, protector, should there be one).

h) The extent of explanation, information and documentation provided by the trustees, and whether they declined to attend court in a witness capacity.

52. In this case, there are three relevant trusts, all managed by professional corporate trustees and all subject to Country E or Country D Law:

i) Trust X.

ii) Trust Y.

iii) Trust Z.

Trust deeds have been provided by solicitors for the trustees in respect of (i) and (iii). As for (ii), trust deeds have not been provided, but a report on the trust has been supplied by the solicitors.

Trust X

53. Trust X owns 90.25% of the hotel business; it has no other assets. The original trust (under a different name) was settled by H's mother in 2006. H was named as the principal beneficiary, and his children as additional beneficiaries. In 2017, W was added as a beneficiary. On the face of it, it qualifies as a nuptial settlement under English law and is therefore capable of variation under s24(1)(c) of the Matrimonial Causes Act 1973. As a protective/enforcement measure, W applied for variation of the settlement, and invites the court to adjourn the application until any award I make is implemented. H has not quarrelled with that approach.

54. Trust X (and therefore the business) was funded by:

    i) £3,135,931 and £948,942 (total £4,084,873) from H's mother via Trust Z of which she was a beneficiary.

    ii) £564,408 from W, partly from securing a loan against her property, and partly from cashing in investments.

    W's family member has also invested in the business, as reflected by his shareholding.

55. The value of the trust is 90.25% value of the business. There is no dispute that it is a resource within the meaning of s25(2)(a) of the Matrimonial Causes Act 1973. H will retain it via the trust, and W will be removed as beneficiary. I do not therefore consider I need delve into the background material and correspondence exchanges with the trust's solicitors.

    Trust Y

56. This fully discretionary trust (both as to capital and income) was settled by H's father in 2002 upon the sale of his business. The trust deed has not been provided, but I am told there is a wide class of beneficiaries, including H. I assume his mother was also a beneficiary as I am told she derived some benefit from the trust during her lifetime. The value is about £2.25m in cash after recent sale of a commercial property.

57. By letter of wishes on 16 September 2002, H's father requested that after the death of himself and his wife, the trust fund be divided into equal shares for the benefit of H and his brother. He died many years ago, and his wife (H's mother) in November 2022. On current figures, a notional 50% allocation to H is £1.125m.

58. The trustees, via solicitors' correspondence, have stated that: the trust is dynastic; any request by a beneficiary would be given due consideration, taking account of the interests of other beneficiaries; it is not the case they would be duty-bound to provide any sums requested. That seems to me to be an unexceptional summary of their duties and powers, but I will need to consider what their likely approach would be if requested to provide funding to H.

    Trust Z

59. Trust Z was settled by H's grandmother in 1975. It too is a fully discretionary trust, with the class of beneficiaries consisting of H, his brother, their two half siblings, and remoter issue. A letter of wishes from H's father dated 16 September 2002 requests as follows:

i) There is reference to a "General Fund" which is no longer relevant and which I shall ignore.

ii) 60% of the fund be attributed to H's mother, which on her death would be added to the children's fund.

iii) The balance (the children's fund) be divided into four parts, as to 38% to H and his brother, and 12% to their half siblings.

iv) Upon reaching the age of 33, each of the principal beneficiaries could receive "2 ½ % of their earmarked fund".

v) He recommended a risk profile as to 20% high risk, and 80% a secure and diversified portfolio. He referred to a possible Country F project as high-risk.

vi) "In general terms it is my wish that no further inroads should be made into the capital of each of my children's, stepchildren's and grandchildren's funds and such capital should remain intact for the whole of their lifetimes…. At each generation, the parent should be able to advise the trustees to remove the restriction on capital advances for their children but not so as to allow them to release further capital for themselves".

60. As a consequence of the death of H's mother in November 2022, the children's fund earmarked for H, his brother and half siblings has increased by the amount of his late mother's earmarked portion. H was asked about this in the witness box. He was at best confused, and at worst evasive. He denied that he had seen the letters of wishes for this trust and Trust Y, but accepted that copies were kept in a cupboard in the property in Country C; this did not really make sense to me, although I add that W appears to have obtained copies herself after separation and asked questions of H without disclosing the fact that she had the documents, contrary to well-established **Imerman** principles. H seemed reluctant to acknowledge the obvious, namely a greater sum potentially available to him as discretionary beneficiary in a substantial trust as a result of his mother's death. He repeatedly told me that it is a discretionary trust, which is self-evident, as if that fact alone meant his interest was unaffected by his mother's death. I am satisfied he had always known he would benefit upon his mother's death in that his notional allocation would increase. To say, as he did, that he thought her death had no impact on the trust was little short of ridiculous. W told me, and I accept, that it was well known within the family what would happen, in general terms, on H's mother's death. She also told me that it was well understood the trusts were there to support the family which, at one level, is a statement of the obvious, but I did not detect H truly acknowledging this.

61. I made orders on 19 December 2022 and 21 March 2023 for H to explain the impact of the death of his mother on the trust and the notional allocations to beneficiaries, and to use his best endeavours to obtain such information from the trustees. On 24 February 2023, solicitors for the trustees stated in short terms that "The Trustee does not consider that your mother's death affects your interest in the trust". Although that might have been technically correct, given the discretionary terms of the trust, it was a less than full response. On 6 April 2023 the trustees responded through solicitors confirming (as I understand by a plain reading of the letter) that, if the letter of wishes were to be followed, H would have a 38% notional allocation in the combined whole fund (the

reference in the letter to 40% seems to have been a mistake). I cannot see any reason why that would not happen.

62. The total fund is about £27m. That comprises:

    i) £20.9m marketable investments.

    ii) £2.2m other receivables.

    iii) £10m loans including the c£4.45m paid to H.

    iv) -£6.1m of commercial loans.

63. I am satisfied (not least because H himself said so through counsel) that prior to his mother's death, his notional part of the trust fund was about £5.25m, from which he had received loans (but not outright distributions) of £4.45m, leaving about £800,000 of unused funds notionally allocated to him.

64. Now, as a result of his mother's death, I am satisfied that his notional 38% share is about £10.26m. After deducting the £4.45m of loans already received by him, his "headroom" of unapplied funds forming part of his notional allocation is about £5.8m. I say "notional" as the trustees may decide not to effect a formal partition or sub-fund arrangement, but the principles are clear. In passing, I note that H has in the past received distributions of £400,000 which might reduce the notional sum of £10.26m, but the figure is relatively modest in the context of the case, and no clear evidence was provided by H or the trustees on this.

65. H was notably confused about the figures in his evidence about his notional allocation, suggesting that it might be less because his mother had drawn on her allocated share before death. I did not understand this, and in any event, it is for H and the trustees to provide clarity on the figures if there is any doubt.

66. In terms of the likelihood of making funds available, solicitors for the trustees have stated in a number of letters:

    i) Any notional allocation does not give a beneficiary any specific right or entitlement, nor any ability to procure distribution from the trustees. The fact that the value of the fund has increased does not mean there will be any additional lending or any distribution to H.

    ii) The trust is discretionary and dynastic. Any request by a beneficiary would be given due consideration, taking account of the interests of other beneficiaries, but they would not be duty bound to provide any sums requested.

    iii) On 6 April 2023 they said that: "Any request by [H] to receive a distribution or further loan…is therefore very likely to be refused on account of the funds he has borrowed and which remain outstanding".

    iv) In late October or early November the corporate trustees changed from Trustee 1 to Trustee 2. On 3 November 2023, they said: "It follows that any request by [H] for a distribution from the Trust would have to be considered by the trustee of the Trust taking into account all these factors and any other relevant factors at the time". Plainly, there is a significant difference between that general

summary, and the specific, negative approach to provision of funds to H contained in the letter of 6 April 2023.

Trust conclusions

67. In my judgment, 50% of the Trust Y fund, and 38% of the Trust Z fund, should be treated by me as notionally allocated to H, and a resource available to him. I say this for the following reasons:

i) The two letters of wishes (one for each trust) expressly request a notional allocation of this nature. That is not the same as distribution; it is simply to treat the allocation of each trust as earmarked for H. The trustees are not bound to give effect to this in a formal way (e.g. by the creation of sub-funds) but I see nothing exceptional in treating the funds as desired by H's father. It seems to me that I should be realistic about this.

ii) Both trusts are fully discretionary, and unless a distribution or loan would be clearly inappropriate (e.g. requested for an unsuitable purpose) and/or would be prejudicial to the interests of other beneficiaries, I cannot see why the trustees would not be willing to entertain such a request.

iii) Trust Z includes a clause at para 11 pursuant to which the trustees, when exercising their powers in favour of one particular person, are authorised to ignore entirely the interests of other interested persons. Thus, if they were to make distributions or loans to H, they are authorised to do so regardless of the interests of other beneficiaries. There was, I note, a similar provision in **Whaley** (supra).

iv) Liquid funds are available within the trusts. There are no issues about the realisability of trust funds.

v) H has not received past distributions or loans from Trust Y but:

a) He has never requested sums from this trust, nor, it seems to me, did he ever have need of funds from this source as he had ample resources from elsewhere.

b) It is only recently that his mother died so as to enable the notional allocation in H's favour to be attributed.

c) The trust asset was a commercial property, not readily realisable. It has now been sold.

vi) H has received loans from Trust Z of about £4.45m, and distributions of £400,000.

vii) H told me he has never been turned down when he asked for funds.

viii) The trustees have never demanded repayment of the loans made to H and they are, save in one instance, unsecured. It is of note, for example, that the Country A property has recently been sold, but no loan repayment has been required by the trustees. The one exception to this is £100,000 repaid from the sale of H's previous Country D property towards the £1.2m loan for his current property, which was a small proportion of the net proceeds, and I note that of the proceeds

of sale of the previous property, a sum of £150,000 was applied to the parties' son's racing season rather than, for example, towards the loan. Further, in none of the correspondence have the trustees said they expect repayment of the outstanding loans.

ix) The fact that the letter of wishes in 2002 referred to a potential project in Country F as high-risk is not particularly illuminating. The current hotel business has been established for many years, has a capital value, and H's mother was willing to provide substantial funding for it. I see no reason why the trustees would not regard the hotel business as suitable security if required.

x) Protecting the capital value of the trust is a relevant consideration for the trustees. A loan structure (perhaps fully secured) may be appropriate in their view. As long as any future loans have the comfort of being capable of repayment by H from his resources if demanded, the trustees should be reasonably confident on that score. Whether H uses any such monies to pay W her lump sum award, or to backfill his own requirements after realising the award from assets in his own name will be a matter between him and the trustees.

xi) The increased sum notionally allocated since the death of his mother means that there is greater collateral available should the trustees wish to borrow monies from a commercial lender as they have done in the past.

xii) In my judgment, to act in this way would not impinge upon other relevant beneficiaries, essentially H's children. If done on a loan basis the capital value will be secure. And it is hard to see why assisting their father in resolving the divorce and financial issues with their mother would be inimical to their interests.

xiii) My clear sense is that H wants and intends to keep (i) a flat in London, (ii) his flat in Country D, (iii) the property in Country C and (iv) the business. He will find a way to pay W, and in reality, to retain such assets, he will need assistance from the trust. I am confident he expects he will receive such assistance.

xiv) There is a considerable difference between the letters from solicitors for the trustees on 6 April 2023 and 3 November 2023. The former says any request by H is "very likely to be refused"; the latter is more guarded, saying it would be "considered by the trustee". No explanation or clarification has been given for these different approaches.

xv) The trustees did not attend court as witnesses even though they were invited to do so by a letter from H's solicitors dated 10 October 2023 which expressly made clear that both parties accepted the trustees would not be treated as submitting to the jurisdiction of the court. In my view, attendance by the trustees as witness would have been helpful, not least to explain the difference between the letters of 6 April 2023 and 3 November 2023. I see no reason why I should simply accept what is said by the trustees' solicitors about non-advancement of funds to H at face value.

68. In their written communications via solicitors, the trustees have been very careful not in any way to be seen to fetter their discretion. That is perfectly reasonable. But in my judgment, they would, if requested, be willing to assist H and advance monies from either or both trusts. Such sums could be a significant portion of the notionally allocated

funds. I am satisfied that the **Charman** test is satisfied, and these should be treated as accessible resources. I am also satisfied that to frame an order in such a way as to require H to realise sums, potentially from the trusts, would not cross the boundary into improper pressure as referred to in **Thomas (supra)**.

Other computation issues

69. Dealing swiftly with other computation issues:

i) I reject the submission that W's costs, which are about £230,000 more than H's, should be reattributed on her side as was done in **A v M [2021] EWFC 89**. I have seen nothing to suggest that the level of work done on behalf of W was unreasonable, and it is not for me to try and carry out an audit of how and why solicitor/client costs were incurred. I note that for some of the relevant time, W, unlike H, has been subject to VAT which reduces the true disparity. Although I accept that this addback technique is available, in my judgment it is best deployed where it leaps from the page. That is not the case here.

ii) I will take W's figure for costs of sale on the property in Country A.

iii) I take off CGT on the sale of W's London property, as the tax evidence is that it can be offset against losses elsewhere.

iv) I include the costs of sale figure contended for by W on her London property.

v) I will take the figures for W's Barclays bank account and credit card as at the date of exchange of disclosure, rather than subsequent updates. To do otherwise would require updating all figures.

vi) I will deduct notional tax from W's pension as it seems likely to me that in due course tax will be payable (except on any tax-free lump sum).

vii) I adopt H's figure for costs of sale on the property in Country C.

viii) I ignore the value of H's scrapped aeroplanes; he was asked no questions on this topic.

Conclusions on the resources

70. I find that the resources are as follows:

W assets in sole name	£826,715
W's pensions	£206,127
H's assets in sole name	£404,607
H's pension	£17,875
The hotel business	£9,597,541
Allocation to H 50% Trust Y	£1,129,932
Allocation to H 38% Trust Z	£10,263,679
	£22,446,476

Sharing principle

71. Where the result suggested by the needs principle is an award greater than the result

suggested by the sharing principle, the former shall in principle prevail; **Charman (supra)**. It is therefore necessary for me to consider the extent of the assets which are fully matrimonial, and therefore to be divided equally. The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; **Hart v Hart [2018] 1 FLR 1283**.

72. It seems to me that the following assets, albeit sourced with monies provided on H's side, should be regarded as fully matrimonial and therefore prima facie susceptible to equal division:

i) The business. It was co-founded and co-owned, and built from scratch during the marriage. It was at the heart of family life for many years. It was run jointly. W and H are both beneficiaries of the trust which is the ownership vehicle. In an attendance note provided by the trustees dated 2 February 2021, H appears to have acknowledged that the business should be treated as a joint asset.

ii) The Country C property. It, too, was at the heart of the family life and treated very much as a family home.

iii) The Country C winery/farm business which is part and parcel of the Country C property.

iv) The Country A property which was their primary home.

73. In reaching these conclusions, I also bear in mind the length of the marriage, the full contributions made by the parties during the marriage, and the fact that W applied much of her own pre-marital wealth to the family economy.

74. Thus, the equal sharing principle can be tabulated as follows:

i)	Country A property	£567,966
ii)	Country C property	£585,007
iii)	Country C farm company	£780,552
iv)	Hotel business	£9,597,541
	Total	**£11,531,066**
	50%	**£5,765,533**

75. To that should be added the proceeds of W's London property (£476,859), and her pensions (£206,127) which are non-marital on her side. Accordingly, her entitlement under the sharing principle is:

Equal share of marital resources	£5,765,533
Proceeds of her London property	£476,859
Pensions	£206,127
Total	**£6,448,519**

W's earning capacity

76. W has experience and skills. She is, however, 56 years old. She told me, and I accept, that she is exhausted after two careers. Her priority is to stabilise the family. She wants to be able to travel the world, as she did during the marriage, which would prevent her from holding down a full-time job. H suggests she could obtain a well-paid marketing job at up to £120,000pa. In my view, that is unrealistic. Indeed, in my judgment the most that can and should be ascribed to her is modestly-paid part time employment in a field which is congenial to her.

Needs

77. In **WC v HC [2022] EWFC 22** I said this about needs at para 21 (xii) – (xvi):

xii) Needs are an elastic concept. They cannot be looked at in isolation. In **Charman (supra)** at [70] the court said:

> "The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b)); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c)); of the age of each party (half of s.25(2)(d)); and of any physical or mental disability of either of them (s.25(2)(e))".

xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:

> "In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e. "standard of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle."

xiv) In **Miller/McFarlane** Baroness Hale referred to setting needs "at a level as close as possible to the standard of living which they enjoyed during the marriage". A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example, **G v G [2012] 2 FLR 48** and **BD v FD [2017] 1 FLR 1420.**

xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF [2017] EWHC 1093** at [18];

> "The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in **N v F [2011] 2 FLR 533** at [17-19].

78. The use of the standard of living as a benchmark will depend on all the facts of the case. The longer the duration for which needs are to be met in the future, the more likely it is that the court will not assess those needs at the marital standard of living throughout that period; **BD v FD [2017] 1 FLR 1420** at paras 118, 119, and 122.

79. I was referred to comments of Mostyn J in **SS v NS [2014] EWHC 14:**

> "The essential task of the judge is not merely to examine the individual items in the claimant's budget but also to stand back and look at the global total and to ask if it represents a fair proportion of the respondent's available income that should go to the support of the claimant".

That, however, concerned a case of ongoing spousal periodical payments. I do not think an approach by way of share of income is as pertinent where a clean break on the basis of a whole life Duxbury award is envisaged.

80. Finally, I observe, for it is an issue in this case, that at para 31(b) of **Y v Y [2012] EWHC 2063 (Fam)** Baron J said this:

> "When a marriage breaks down I doubt, in the normal course of events, that it will be unreasonable for a "country" spouse to seek to live in London or some other part of England and Wales"

I would add that on marriage breakdown it is not unreasonable per se for a spouse to wish to move from one country to another. It will all depend on the facts.

81. W seeks a total of £10.9m, broken down into a housing fund of £5.6m and capitalised maintenance of £5.3m as follows:

i) For housing, including costs of purchase and refurbishment:

a) £4m for a property in Central London.

b) £1m for a holiday home in Country C.

c) £600,000 for a property in Country A.

Total **£5.6m**

ii) For income needs, £250,000pa which converts into a Duxbury lump sum of **£5.3m**.

82. As to London housing, W puts forward property particulars in SW7 in a range between £3.5m and £3.85m. H, by contrast, puts forward properties in Fulham and the Home Counties at up to £1.75m which are of a similar size but in cheaper locations. The fund for housing in Country C which W suggests is higher than the value of the property in Country C as a result of her intending to purchase in a different area; H puts forward properties in Country C at about €200,000. The figure advanced by W for the Country

A property is the same as the value of the marital home in City A.

83. I have taken all matters into account when considering housing. In my judgment, the claim for three properties is manifestly excessive. The family had two homes during the marriage (Country A and Country C) with a combined worth of about £1.2m. To seek properties in those countries as well as a £4m home in London is untenable. It is W's choice to come to London, and in principle it is not unreasonable for her to do so. She has friends and family here, and all the children are studying at school or university in England or Country D. She feels safe and secure here. The difficulty, it seems to me, is that she is endeavouring, as far as possible, to replicate her previous lifestyle in Country C and Country A while in addition having what she says would be her number one priority, a family home for her and all the children in London, which she intends to have as her permanent home. She cannot have it all. By choosing to input so much of her award into a £4m property in London, it is inevitable that her ability to spend as freely as she would like will be curtailed. She is electing to prioritise housing over lifestyle; that seems to me to be the inevitable consequence of her decision to move to London. Had she elected to make her main base in, say, Country A, she would have had far greater funds available for a second home and her income requirements.

84. As is usual, I do not have property particulars between those put forward by the parties. I have decided that an appropriate total housing fund is £3.25m, inclusive of costs, taxes and refurbishment. Whether she invests all of that sum in a London property, or part of it in a second property abroad, is of course for her to decide.

85. I will not allow an additional sum for a car as she already has a Mini, a sports car and a classic car.

86. Turning to income needs, her Form E budget is £487,567. Her case at trial is £250,000pa. I bear in mind the marital standard of living, and I consider her likely expenditure will be higher in the next few years while the children still make a base with her. But the marriage has come to an end and circumstances have changed; her housing sum is so much greater than the value of the marital homes that her income needs are necessarily circumscribed. I also consider that the housing sum contains within it the possibility, if she chooses, of selling a property and/or trading down to release funds when she gets much older. She will not have to, but it is open to her to do so up to a figure of, in my view, about £750,000 (leaving £2.5m on current figures for her subsequent property). On balance, it seems to me that an appropriate figure for her income needs is £250,000pa until she is age 65, decreasing by 20% thereafter. That, per a Capitalise calculation, is about £4.5m. Should she choose to spend some of that on housing (main home and, if she wishes, a second home), that is a matter for her; it is not for me to dictate how she in fact spends her money. If she does release funds from her property in due course (perhaps £750,000) as I have suggested, then she will be able to spend more on her income needs.

87. Accordingly, her total financial needs are:

i) Housing £3.25m

ii) Capitalised income needs £4.5m

£7.75m

88. She has £1,032,842 in her own name (net assets and pensions). By agreement Company P, a beach site in Country G valued at £45,000 ($55,000), will be transferred to her by agreement so that she will have £1,077,842. The required lump sum to be paid by H is therefore **£6,672,158**.

89. I am satisfied that it is reasonable to give H some time to raise the monies, but he must pay a proper level of support in the interim, including the costs of W's rented accommodation. As it happens, the lease on W's current rented property expires in July 2024 and she intends to extend it for a year to about July 2025, at which point she would like to buy a property.

90. H and the trustees will need to consider how best to meet the sums ordered. On my findings, there is no reason why it cannot be done reasonably swiftly. Of course, the sooner the monies are paid, the sooner the interim provision will cease. I will order H to pay:

    i) £3,250,000 by 31 October 2024.

    ii) £3,422,158 by 31 March 2025.

    Judgment interest will run on any unpaid sums.

91. I will further order as follows:

    i) For the avoidance of doubt the lump sums (not one lump sum payable in two instalments) are to be paid in cash, and shall not include transfer of property in part payment unless agreed between the parties.

    ii) Upon receipt of the sums, W shall be removed from the trust.

    iii) H shall pay £370,000 pa (the £250,000 pa income need which I have determined, and the £120,000 pa rent for the property occupied by W) by way of interim maintenance, to be reduced pro rata by payment of the second lump sum (the first being required to buy a house). This interim maintenance shall replace all additional/incidental costs met by H/the trusts/the business for W.

    iv) Company P shall be transferred to W forthwith.

    v) W's health insurance shall be novated to her.

    vi) Child maintenance shall be paid at £20,000pa per child, on the basis that 1/3rd thereof from the time of leaving secondary school shall be paid to W, and the balance to the child direct. These sums shall increase in accordance with CPI, capped at 5%. They shall cease upon end of tertiary education.

    vii) H shall be responsible for school fees and extras on the school bills, as well as university tuition costs and maintenance. I anticipate he will continue to procure payments from the Trust X.

viii) W's application for variation of Trust X as a nuptial settlement is adjourned, to be dismissed upon payment in full of the sums due.

ix) W will transfer her interest in the Country C farm company to H forthwith.

x) W shall forthwith resign from any involvement with the Company M Group and there shall be the usual cross-indemnities.

xi) Chattels shall be divided by agreement, on the basis that any items received by each party from their respective families shall be retained by them.

92. I am satisfied that H is able to meet the sums ordered. He can, on my findings, raise funds from the following sources:

i) Sale of the business (£9,597,541).

ii) About £5m from the headroom of his notional allocation in Trust Z and about £1m from his notional allocation in Trust Y. These sums can be made available by way of loans, and H has capital against which such sums can be secured and/or be repaid, notably the business.

iii) £650,000 from his share of his late mother's which is being marketed for sale.

iv) Potentially, H's various property interests given that there is no indication that repayment of the loans of £4.45m will be demanded.

93. I am satisfied that the overall award of £7.75m is fair. H will retain the balance of about £14.7m. W's award is about 34.5% of the overall resources of £22,446,476. It was only after the proceedings started that H's mother died. If one were to deduct from £22,446,746 (i) the monies passing from H's mother's Trust Z interest into H's notionally allocated trust share, about £5m, (ii) the notional allocation to H of 50% of Trust Y, about £1.125m and (iii) H's directly received inheritance from his mother, about £850,000, being his share of her properties in Country D and Country H, the total sum for the overall resources reduces to about £15.5m. The figure which I have awarded W, £7.75m, is about 50% thereof. It is about £1.3m more than the figure which she is entitled to on the sharing principle.

94. This overall split of resources in H's favour is a proper reflection of what seem to me to be the main features of the case:

i) The standard of living enjoyed by the family;

ii) The length of the marriage, and W's age and limited earning capacity;

iii) W's needs for a secure property and whole life Duxbury fund;

iv) The very substantial funds (over £16m) emanating from H's side of the family without which none of this would have been possible;

v) The fact that, on my findings, over £10m of resources (out of a total of £22,466,765) are non-marital on H's side; and

vi) To a lesser degree of significance, the greater risk attached to the business asset than other assets in this case. I accept that H has chosen to retain it, and can sell it, but the nature of the business contrasts with the hard cash which W will have.

95. Finally, I have at all times had in mind the s25 criteria, and I have considered, and evaluated, all the evidence and submissions in the round.