IN THE CENTRAL FAMILY COURT Case Number ZZ21D41439

Neutral Citation Number: [2022] EWFC 155 (B)

BETWEEN:

TM Applicant

-and-

KM Respondent

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published, but not any other version.

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.

Mr Simon Calhaem, Counsel, instructed by Forsters LLP, Solicitors, appeared on behalf of the Applicant wife.

Ms Marina Faggionato, Counsel, instructed by Withers LLP, Solicitors, appeared on behalf of the Respondent husband.

Written Judgment of His Honour Judge Edward Hess dated 2nd December 2022

INTRODUCTION

1. This case concerns the financial remedies proceedings arising out of the divorce between Ms TM (to whom I shall refer as "the wife") and Mr KM (to whom I shall refer as "the husband").

2. The case proceeded to a final hearing over five days on 28th, 29th & 30th November and 1st & 2nd December 2022.

3. Both parties appeared before me by Counsel: Mr Simon Calhaem for the wife, instructed by Forsters LLP, Solicitors, and Ms Marina Faggionato, instructed by

Withers LLP, Solicitors, appeared on behalf of the husband. Both parties have been represented by legal teams at a first class level, and both Counsel have presented their respective cases with assiduous hard work and great skill and persuasiveness.

4. This has, though, come at a high cost. The wife has incurred, in the course of these proceedings, a total of £419,894 in legal costs and the husband a total of £375,337. It is sad to note that nearly £800,000 of family money has been spent on lawyers in a case which was, from the position of an objective observer, readily settleable. As ever, it is difficult (indeed impossible) for the trial judge, who must remain unaware of the without prejudice negotiating positions and the course of the FDR, to make any meaningful assessment of why no compromise was ever reached.

5. The court was presented with an electronic bundle running to 713 pages and this was later joined by a second bundle of email exchanges running to 704 pages. A number of additional documents have been produced in the course of the final hearing. Included amongst these documents were:-

    (i) A collection of applications and court orders.

    (ii) Material from the wife including her Form E dated 12th January 2022, her answers to questionnaire dated 14th March 2022 and her narrative section 25 statement dated 7th September 2022.

    (iii) Material from the husband including his Form E dated 9th December 2021, his answers to questionnaire dated 7th March 2022 and his narrative section 25 statement dated 2nd September 2022.

    (iv) Material from various SJEs, in particular on the issue of the value of the Massachusetts property from Mr Tom Cullen and Ms Lisa Annunziata, two real estate appraisers based near the property.

    (v) Properly completed ES1 and ES2 documents.

    (vi) Selected correspondence and disclosure material.

6. I have also heard oral evidence from the wife and the husband (in attendance at court) and from Mr Cullen and Ms Annunziata (by remote video via CVP), all subjected to appropriate cross-examination.

7. I have also had the benefit of full submissions from each counsel in their respective opening notes and their closing partly written and partly oral submissions.

8. This was a trial conducted before me in a largely civil manner by both sides; but I want to make this comment about a number of remarks in the husband's written presentation which I felt crossed the line into the territory of personal pejorative

remarks about the wife and were misplaced, unnecessary and unhelpful. Parties signing statements and Solicitors drafting statements should pay proper heed to the remarks of Peel J in *WH v HC* [2022] EWFC 22: *"Parties, and their legal advisers, may be under the impression that to describe the other party in pejorative terms, and seek to paint an unfavourable picture, will assist their case. It is high time that parties and their lawyers disabuse themselves of this erroneous notion. Judges will deal with relevant evidence, and will not base decisions on alleged moral turpitude."*

THE MARRIAGE

9. The history of the marriage is as follows.

10. The wife is aged 50 (d.o.b. 1972). She currently lives in rented accommodation in a city in, England. She comes from a family with Arabic heritage, and was born in another European country, but she was brought up in the USA and resided in the USA until late 2006, only moving to England with the husband after the marriage. My overall impression is that, notwithstanding the international flavour of her life since 2006, and her dual UK and USA citizenship, her heart lies firmly in the USA. She is a pleasant, impressive, intelligent, able and educated individual, appropriately proud of having attained an MBA from Wharton Business School in Pennsylvania (thought by many, including the wife, to be the finest business school in the world), and (as I shall develop further below) had a highly successful career in the world of investment finance before 2008 in the USA (and latterly in the UK) which has not been pursued since 2008.

11. The husband is aged 48 (d.o.b. 1974). He also lives in rented accommodation in a historic city in England. He was born and brought up in England and is a British citizen. He is also a pleasant, impressive, intelligent, able and educated individual. He learned Arabic at University and he has been able to combine his language and financial skills to conduct a highly successful career in investment finance in the Middle East.

12. They met in London and started a relationship in May 2003. It is common ground that, initially, this was largely a trans-Atlantic relationship, with the wife living in New York and the husband in London and visiting each other only for such fleeting times as they could fit around their work; but it is common ground that it was a loving and intimate and emotionally committed relationship from an early stage. It is common ground that in about August 2004 the husband relocated to New York to enable him to pursue the relationship more easily. There is a dispute which I need to resolve as to whether this became a relationship of cohabitation when he arrived in New York in August 2004 (as the husband contends) or only later when they became engaged in January 2006 (as the wife contends). On that issue I want to make the following comments:-

(i) I heard a good deal of oral evidence on this subject and was shown a good number of contemporaneous communications from the 2004 to 2006 period.

(ii) In broad terms it is the wife's case that (for personal and moral reasons, and notwithstanding that they were in a loving and intimate relationship from even earlier than August 2004) she did not contemplate cohabiting with the husband prior to formal engagement and that, whilst he spent an average of two or three nights per week with her at her flat before January 2006, and sometimes as much as four, they were definitely not cohabiting as such until January 2006.

(iii) In broad terms it is the husband's case that the parties commenced full cohabitation as soon as he reached New York in August 2004. He accepts that he did rent a room for $1,000 per month in another apartment nearby from August 2004 until early 2006, but this (he says) was a formality required of him by the wife to be able to present a picture of non-cohabitation to the wife's father, who was thought to have personal, moral or possibly religious objections to pre-marital cohabitation. He told me he only actually stayed in this rented room about 15 nights in the period he rented it. In his view they were in all senses a cohabiting couple throughout this period.

(iv) In determining this issue, I have in mind a number of authorities which touch on this (for example *Kimber v Kimber* [2000] 1 FLR 383 *IX v IY* [2018] EWHC 3053, *E v L* [2021] EWFC 60 and *VV v VV* [2022] EWFC 41). The factors to be considered include the number of nights per week spent together, the existence of a committed intimate relationship and the level of financial dependency. Also, does the relationship have the characteristics of being a committed sexual, emotional, physical and psychological, relationship and did they consider themselves to be in a quasi-marital arrangement?

(v) In determining this issue the contemporaneous emails are not without ambiguity, but overall I think they are more supportive of the husband's presentation on this point, with quite a number of references by the wife to her flat being their 'home' (for example in emails dated 15th March 2005, 5th May 2005, 12th May 2005 and 25th May 2005) and the contemporaneous jokey email from the parties' friend ST saying: "*I'm sure [H] just forgot where the old apt was seeing he was only there a few times*".

(vi) My overall conclusion is that the parties did commence a relationship of cohabitation in August 2004 and that it was seamless thereafter, in due course turning into marriage. I regard the husband's overall evidence on this issue to be more persuasive and I am satisfied that they were emotionally committed to each other and sharing a home from August 2004 onwards.

13. The parties formally married in the USA on 3rd June 2006. A separate foreign marriage ceremony took place in the foreign Consulate in New York in August 2006 and the big wedding celebration took place in another country in October 2006.

14. In December 2006 the parties moved to live in London. In January 2010 they moved from London to the Middle East. In March 2011 they moved from one country in the Middle East to another. In August 2016 the wife moved back to England and the husband followed in April 2017.

15. In the course of these international moves, the marriage produced two children:-

    (i) A is aged 14 (d.o.b. 2008) and is currently a boarding pupil at a school in the city in which they live. It is expected that he will complete his secondary education there and then go on to university, possibly in the USA and possibly in the UK.

    (ii) B is aged 11 (d.o.b. 2011) and is currently a day pupil at a school in the city in which they live, but it is expected that he will start boarding in September 2023. It is anticipated that he will then move to be a boarding pupil at another school from September 2024 and will complete his secondary education there and then, like his brother, go on to university, possibly in the USA and possibly in the UK.

    (iii) Happily, both children are much loved by their parents and have good relationships with both parents and, at least in theory, the children divide their time broadly equally between the parties when not at school. This may be easier to achieve when they are both boarding pupils, but in practice my impression is that they spend more time with the wife at the moment.

16. Unfortunately, the marriage ran into real, unremediable difficulties, and the parties decided to separate, in the course of 2021; but they remained living under the same roof for the time being whilst their house sold. There is a dispute as to the precise date of 'separation' within 2021; but nothing turns on this in the context of this case and I do not propose to make any findings on this.

17. From August 2017 until May 2022 the parties both resided at the family home. This property was a large and attractive Grade II listed country property sitting in 16 acres of land with a swimming pool and tennis court. A plan for an extensive refurbishment was cancelled when the marriage ran into difficulties in 2021. The property was sold for £3,750,000 with completion taking place in May 2022. The net sale proceeds were £3,708,624 and it was agreed that each party would take £200,000 from the fund, the remainder being held in a designated joint account with HSBC. On completion both parties moved into rented accommodation, pending the determination of the financial remedies proceedings and this is where they remain.

18. Divorce proceedings were commenced on 15th September 2021. Decree Nisi was ordered on 4th November 2021. Decree Absolute awaits the outcome of the financial remedies proceedings and is not, in itself, controversial.

FINANCIAL REMEDIES PROCEEDINGS

19. The financial remedies proceedings chronology is as follows.

20. The wife issued Form A on 28th September 2021.

21. Forms E were produced in December 2021 and January 2022.

22. A First Appointment was heard by Recorder Trowell QC on 1st February 2022.

23. Questionnaires were answered in March 2022.

24. A private FDR hearing took place on 21st March 2022 before Geoffrey Kingscote QC; but, sadly, no settlement was reached.

25. A post-pFDR directions hearing took place before HHJ Gibbons on 13th May 2022. She satisfied herself that an effective FDR had occurred and timetabled the case through to a PTR and final hearing.

26. Narrative statements were exchanged in September 2022.

27. The PTR hearing was heard before me on 16th September 2022.

28. A final hearing has taken place before me on 28th, 29th, 30th November and 1st and 2nd December 2022.

SOME CORE LAW

29. In dealing with the claim I must, of course, consider the factors set out in **Section 25 and Section 25A Matrimonial Causes Act 1973** and also any relevant case law.

30. Matrimonial Causes Act 1973, Section 25 reads as follows:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(*a*), (*b*) or (*c*), 24, 24A or 24Babove in relation to a party to the marriage, the court shall in particular have regard to the following matters:-

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
(c) the standard of living enjoyed by the family before the breakdown of the marriage;
(d) the age of each party to the marriage and the duration of the marriage;
(e) any physical or mental disability of either of the parties to the marriage;
(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

31. Matrimonial Causes Act 1973, Section 25A reads as follows:-

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(*a*), (*b*) or (*c*), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

32. The interpretation of these statutory provisions has to be considered against the background of the relevant case law, and the present case calls me to have to give some thought to how the leading House of Lords authority of *Miller v. Miller; McFarlane v McFarlane* [2006] UKHL 24, in particular the speeches of Lord Nicholls and Baroness Hale, should be followed to achieve a fair outcome. Extracts from these speeches appear below.

33. Per Lord Nicholls:-

"Fairness is an elusive concept. It is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values…This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs... In most cases the search for fairness largely begins and ends at this stage…Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned. Then the wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as home-maker and child-carer…Compensation and financial needs often overlap in practice, so double-counting has to be avoided. But they are distinct concepts, and they are far from co-terminous. A claimant wife may be able to earn her own living but she may still be entitled to a measure of compensation…A third strand is sharing. This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today...This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary."

34. Per Baroness Hale:-

"So how is the court to operate the principles of fairness, equality and non-discrimination in the less straightforward cases?...there has to be some sort of rationale for the redistribution of resources from one party to another. In my view there are at least three. Any or all of them might supply such a reason, although one must be careful to avoid double counting…The most common rationale is that the relationship has generated needs which it is right that the other party should meet. In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriage… A second rationale, which is closely related to need, is compensation for relationship-generated disadvantage. Indeed, some consider that provision for need is compensation for relationship-generated disadvantage. But the economic disadvantage generated by the relationship may go beyond need, however generously interpreted. The best example is a wife, like Mrs McFarlane, who has given up what would very probably have been a lucrative and successful career. If the other party, who has been the beneficiary of the choices made during the marriage, is a high earner with a substantial surplus over what is required to meet both parties' needs, then a premium above needs can reflect that relationship-generated disadvantage. A third rationale is the sharing of the fruits of the matrimonial partnership. Of course, an equal partnership does not necessarily dictate an equal sharing of the assets….But there are many cases in which the approach of roughly equal sharing of partnership assets with no continuing claims one against the other is nowadays entirely feasible and fair… Thus far, in common with my noble and learned friend, Lord Nicholls of Birkenhead, I have identified three principles which might guide the court in making an award: need (generously interpreted), compensation, and sharing. I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance. Much will depend upon how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living."

35. In the years since 2006 the courts have become very used to applying the needs and sharing principles and it is not necessary for me to say very much about them at this stage, save to say that Lord Nicholls' words ("*When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary*") have become widely applicable in relation to matrimonial property. For example, in the words of Mostyn J in *JL v SL* [2015] EWHC 360:-

"Matrimonial property is the property which the parties have built up by their joint (but inevitably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination."

36. The present case is perhaps unusual because it engages, at least potentially, the compensation principle. I shall return to this issue, and the various authorities on it, below.

FIRST CONSIDERATION – THE WELFARE OF THE MINOR CHILDREN

37. I bear in mind that I must give first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen. In this case both children of the family are under 18. It is therefore necessary for me to consider how their respective needs and interests will affect this case.

38. It is common ground that both parties will need enough money to house, feed and provide a reasonable lifestyle for the children when in their care and I shall take this matter into account when assessing need below.

39. It is common ground that my order should contain provision for the husband to pay child periodical payments to the wife for the benefit of the children and that he should also pay all their school fees for the remainder of their secondary education.

40. There is a dispute about the quantum of child periodical payments order and its duration, which I need to resolve, and the parties agreed at the PTR hearing to an order using the methodology in *V v V* [2001] 2 FLR 799, giving me power to fix the appropriate quantum on a variation.

41. There is also a dispute about whether my order should contain a provision for university tuition fees to be paid by the husband.

PROPERTY AND OTHER FINANCIAL RESOURCES

42. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**" many of the figures are not controversial and I do not need to deal with them in detail, but there are a number of disputed issues to determine, which I do as follows.

43. The first issue relates to the US Property:-

    (i) In 2015 the property was owned and occupied by the wife's father. He then ran into some financial difficulties and it was agreed that the husband and wife would make an outright purchase of the property on the basis that the wife's father would be able to continue to live in it during his lifetime, if he so wished.

(ii) The purchase was made for $950,000 in 2015 and it continues to be held in joint names. The wife's father is now aged 91 but continues to occupy the property as his home.

(iii) It is common ground that this should be regarded as matrimonial property to be shared equally between the parties and it is common ground that its net value should be attributed to the wife's half share on the division of assets, but the parties have not been able to agree the value of the property.

(iv) I note that the wife's Form E suggested a gross value of $1,250,000 and the husband's Form E suggested a gross value of $1,332,300. Splitting the difference between these two figures at this stage may have saved a good deal of trouble and cost, but instead of doing this a direction for an SJE valuer was made at the First Appointment.

(v) Thus, Mr Tom Cullen reported as an SJE real estate appraiser on 15th March 2022 and suggested a value of $1,475,000. The wife was unhappy about this figure and (in the approved manner) quickly posed a list of written questions to test his appraisal. Unfortunately, Mr Cullen became ill and failed to answer these questions until the day before the hearing in November 2022.

(vi) In the meantime the wife made a *Daniels v Walker* application for her own valuer, which I allowed at the PTR. This allowed the admission of the written report of Ms Lisa Annunziata, another real estate appraiser, dated 26th July 2022 which suggested a value of $1,275,000.

(vii) I heard both experts giving oral evidence. I found myself more persuaded by Ms Annunziata's analysis. Mr Cullen was an engaging witness, but had to accept a number of specific avoidable errors in his written report and had to downgrade his valuation to $1,400,000, rather 'on the hoof'. It may be that he was a little distracted by his illness, but overall I felt his approach was more casual, and less reliable, than that of Ms Annunziata. The husband's Form E figure and Mr Cullen's own assessment of the general trend in local property prices between 2015 and 2022 also pointed more in the direction of Ms Annunziata's figure.

(viii) My overall conclusion is that I should assess the value of the property at $1,275,000. After conversion to UK £ at £1,080,508, and the net value is identified by a deduction of agreed notional sale costs (£32,415) and estimated tax on a disposal (£127,659), this producing a net value of £920,434. This is the figure I shall put in my schedule.

44. The next issue relates to the New York property:-

(i) This is a flat in New York City. The legal title is in the wife's sole name, she having purchased it in April 2005 for $775,000, funded by her savings

of $175,000 and a $600,000 mortgage in her sole name. She had also rented the flat before the purchase from September 2004 to April 2005.

(ii) It is common ground that this property has a gross value of $1,320,000. It is common ground that after conversion to UK £ the value is £1,118,644, and the net value is identified by a deduction of agreed figures for notional sale costs (£33,559), estimated tax on a disposal (£238,041) and the outstanding balance on the mortgage (£266,875), this producing a net figure of £580,169.

(iii) The issue here is whether it should be treated as matrimonial property (and thus strongly subject to the sharing principle) or non-matrimonial property (thus probably free from the sharing principle).

(iv) It is the wife's case that this is her property, that is has not played a central role in the marriage and that it should be treated as non-matrimonial property and not counted in the sharing process. It is the husband's case that it was central to the early part of the relationship, albeit for less than two years, and should be divided equally, like all other assets, although he is content for it to remain on the wife's side of the asset schedule after an equal division.

(v) This dispute is one reason, perhaps the main reason, why the 2004 to 2006 cohabitation issue was argued over with such ferocity. I have now made a finding that the relationship of cohabitation began in August 2004. It follows from this finding that the property was purchased during the course of the relationship and was the family home from August 2004 to December 2006 and this places it fairly persuasively (though not necessarily inevitably) in matrimonial property territory: see, again, Lord Nicholls in *Miller v. Miller; McFarlane v McFarlane* [2006] UKHL 24. I note also that the mortgage has been significantly reduced in the course of the relationship (from $600,000 in 2005 to $314,912 now) and there is evidence in the bundle of at least one contribution to the mortgage made by the husband in 2006 – in the period after 2006 the property has been let to tenants and the rental payments have gone towards making the mortgage payments.

(vi) In the end I have not at all been persuaded by the wife's arguments on this. It is part of the matrimonial acquest and to exclude this asset because of the difference in contributions to the purchase price would in my view be discriminatory. The wife's argument has the flavour of "*what's mine is mine and what's yours is half mine*". My overall view is that this property should be treated as part of the matrimonial property to which the sharing principle should apply and I propose to include this asset in my schedule at the figure of £580,169.

45. The next issue, which is in rather similar vein, is that the wife argues that at least some of her pensions and investments pre-dated the marriage and should be excluded from the assets subject to the sharing principle. The strength of this argument is

weakened by my findings in relation to the commencement of the relationship and it is not at all clear on the evidence how much of these investments should be treated as pre-dating August 2004 as opposed to a later date. Further, and also significantly, is the fact that the husband similarly accrued some of his valuable pension prior to 2004 (it is currently worth £1,023,826 and he started accruing the pension in 1999). If I were to deduct a straight-line portion of his pension (although this might not be fair because he has not accrued it on a straight-line basis, there is no evidence to assist any different calculation) this would remove a significant amount to set off against whatever the correct figures were for the wife. I find myself unattracted by the proposition (advanced by the wife) that I should deduct from one side and not the other. In my view the search for fairness here is best served, absent any detailed expert accountancy evidence and after this long marriage, by leaving in all of these assets in my schedule and subjecting them all to the sharing principle.

46. As far as the husband's restricted / deferred compensation stock is concerned, the parties have agreed a form of words whereby all those which have currently been granted (whether yet vested or not) will be sold as and when they can be and the net proceeds divided equally. This does not apply to any granted in the future. This has the consequence that these sums will be paid over a period of years (perhaps four) and if the husband leaves the bank for whatever reason and ends up forfeiting these interests (which both agree is unlikely) then the wife will also forfeit her share. This seems like a reasonable compromise and I propose to adopt it.

47. The husband accepts that there should be a pension sharing order from his pension which has the effect of equalising CEs. It is agreed that if I include all the wife's pensions in the equal division (which I will – see above) then the appropriate percentage figure for the pension sharing order will be (to two decimal points) 39.02%. I note in passing that this is not a case where there has been a PODE report commenting on the loss of benefit arising from transferring money out a defined benefit scheme, but it has been common ground that such a report was not appropriate in the circumstances and I do not intend to interfere with that decision in the context of the assets available for distribution in this case.

48. Having made these determinations I am now able to set out my assessment of the assets and debts for distribution in this case.

49. The situation can be summarised as follows:-

REALISABLE ASSETS/DEBTS

Joint

The American property[1]	920,434
Net proceeds of sale of the FMH HSBC a/c ..044	3,311,671
Joint HSBC a/c ---688	23,783
TOTAL	**4,255,888**

Wife

Bank accounts in sole name	32,616
The New York property[2]	580,169
Investments/Policies in sole name	67,928
Unpaid condo fees	-1,863
Outstanding Legal Costs [3]	-25,529
TOTAL	**653,321**

Husband

Bank accounts in sole name	5,530,886
Investments/Policies in sole name	118,614
Monies owed by KG	150,000
Vested Stock	333,527
Deferred Stock[4]	1,334,837
Tax on Stock	-627,373
Outstanding Legal Costs [5]	-41,494
TOTAL	**6,798,997**

PENSION ASSETS

Wife

401K	180,470
Pension	44,541
TOTAL	**225,011**

Husband

Pension	1,023,886
TOTAL	**1,023,886**

[1] This figure is based on a value of $1,275,000, converting to £1,080,508 less notional sale costs and US and UK tax = £920,434

[2] This figure is based on a value of $1,320,000 = £1,118,644 less notional sale costs at 3% less the outstanding mortgage of £266,875 less CGT of £238,041 = £580,169

[3] This figure is based on a total of incurred fees of £419,894 less a total of fees paid of £394,366 = £25,529

[4] Payable in tranches over a number of years

[5] This figure is based on a total of incurred fees of £375,337 less a total of fees paid of £333,843 = £41,494

50. On the basis of this asset schedule an overall equal capital division of assets would be achieved by:-

    (i) the wife receiving the American Property;

    (ii) the husband's stock being divided equally as and when received;

    (iii) the joint HSBC accounts being divided equally;

    (iv) the husband paying an equalizing lump sum of £2,092,126; and

    (v) there being a pension sharing order of 39.02% on the husband's pension; and

    (vi) otherwise assets remaining where they stand.

    Such a division, representing the application of the sharing principle, remembering that fairness and equality usually run together hand in hand, would produce the following outcome:-

	Wife	**Husband**
Own realisable assets	653,321	6,798,997
The American Property, USA	920,434	0
Equal division of joint HSBC funds	1,667,727	1,667,727
Equal division of Stock	520,495	-520,495
Lump sum from H to W	2,092,126	-2,092,126
TOTAL REALISABLE ASSETS	**5,854,103**	**5,854,103**
% REALISABLE ASSETS	**50%**	**50%**
Own pension assets	225,011	1,023,886
PSO 39.02% H to W	399,520	-399,520
TOTAL PENSION ASSETS	**624,531**	**624,366**
% PENSION ASSETS	**50%**	**50%**
TOTAL OVERALL ASSETS	**6,478,634**	**6,478,469**
% OVERALL ASSETS	**50%**	**50%**

NEEDS

51. I propose to turn next to the question of the "**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**" I have the following observations.

52. I bear in mind that, in the context of this case, it is appropriate for me to make a generous assessment of needs; but this is not (as Mr Calhaem has suggested) a case

which falls into the category of the super-rich, justifying the applicability of the sorts of comments made by Thorpe J in *F v F* [1996] 2 FCR 397 and Mostyn J in *Collardeau-Fuchs v Fuchs* [2022] EWFC 6.

53. Both parties have the need for a suitable home for themselves and the children when in their respective care. I have heard and read a good deal of evidence on this. In this context I have in my mind the **standard of living** that the parties jointly enjoyed during the marriage, and the agreeable house they lived in from 2017 to 2022. Both are looking for a good country home in the vicinity of the city in which they live or possibly further West in the context of B's attendance at boarding school. The husband contended for a mutual housing need of c. £2,000,000. The wife contended for a mutual housing need of c £3,000,000. I sensed both contentions had an element of strategic positioning rather than genuine attempts at assessing need. As ever, the selection of a home takes into account location, size, appearance, decorative state, number of bedrooms and no doubt other things and it is not for the court to select a particular property, but overall my conclusion is that a housing fund of c. £2,500,000 each (including the costs of purchase) would provide a generously suitable home for each of the parties.

54. I note that Mr Calhaem's submissions (taking their lead from the wife's Form E) threw in such items under the heading of capital need as £250,000 for renovation and decoration (of an as yet unidentified house?), £250,000 for furniture, £85,000 for old age care provision, £14,000 for graduation gifts for the children and £15,000 for funeral costs. For me, these had the feel of lawyers' strategic padding and I decline to include them under the heading of capital need. I take the same view about the asserted need of £919,427 for a second home in America – if she does remain living in the UK (and she may well not once the children have left school) then it is reasonable for her to have good holidays in the USA each year, but there is no need for the ownership of a second home.

55. Both parties have the need for a suitable amount of income for the remainder of their lives to meet a reasonable amount of spending needs for themselves and the children when in their respective care, in the context of their respective **ages**, the **duration of the marriage** and the **standard of living** that the parties jointly enjoyed during the marriage. Inevitably this case has involved the usual 'battle of the budgets'. Again, I sensed a significant element of strategic forensic positioning in the way each side put forward its figures; but this comment particularly applies here to the wife. The reality here is that this high income family did not generally live a hugely high spending lifestyle. To their credit they generally spent sensibly and saved a good deal, which is why they have a substantial amount of capital at this stage. My sense was that the wife's proposed annual expenditure budget of £331,885 for herself and the children when with her (living mortgage-free and not including any school fees) was far in excess of anything which could reasonably be described as a 'needs' budget in the context of the standard of living which had been enjoyed during the marriage.

56. On a very broad analysis, if the wife never earned another penny in her lifetime, the equal capital division discussed above would leave her with investment funds (including pensions) of just short of £4,000,000 to fund her living expenses for the remainder of her life. In very broad Duxbury terms this would provide (using At a Glance tables) an income for life of c. £175,000 per annum net. In my view it could not sensibly be argued in this case that the wife has income needs above that figure. Indeed, I would probably place the figure rather lower than this and in addition, as I shall set out in more detail below, I do not accept that it is reasonable to assume that the wife will never earn another penny in her lifetime. Further, she will have the benefit of child periodical payments to supplement her income while the children are in education.

57. I agree with and propose to follow the view expressed by Mostyn J in *CB v KB* [2019] EWFC and again in *Collardeau-Fuchs v Fuchs* [2022] EWFC 135 to the effect that "*it is pre-eminently reasonable that the wife should be required to amortise – that is to say, to spend – her Duxbury fund…After all that is what money is for."*

58. My conclusion is that the wife's sharing claim is greater than her needs claim and there is no justification, in capital or income terms, in my making additional provision for the wife based on needs.

INCOME AND COMPENSATION

59. I now turn to the question of income and consider "**the income, earning capacity…which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**" and "**whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party**" and the related question of **compensation**. I have the following comments.

60. The **husband** is a very capable individual who has earned well with the bank throughout the marriage. In the years that he worked in the Middle East he paid no income tax and this has made a big contribution to the savings held by the family. His income is paid through a range of incentive mechanisms and a good portion of his income for a particular year is decided in the January of the following year and is based on performance in the previous year. In recent years his income has been, in overall terms, the following:-

YEAR	GROSS ANNUAL INCOME
2017	$2,015,362
2018	$1,887,280

2019	$1,900,000
2020	$2,200,000
2021	$2,000,000
2022	To be confirmed in January 2023

61. The husband has taken every opportunity to suggest that this income is heading on an alarmingly downwards spiral. A key client of his died in 2021. The husband was unwell for a while in 2021 and has a bad back as well. He has informed the bank that he wants to take four weeks unpaid leave each year with his children. At age 48 he is getting to the end of his career in a young person's business. His 'book of business' has been partially distributed to others. He has been warned that the January 2023 meeting will give him bad news. It may be that there is something in some or even all of these pessimistic observations, but (as Mr Calhaem was able to establish in cross-examination) he has something of a record for making unduly pessimistic predictions and I sense some significant strategic positioning here as well. Even if his income falls to some extent in the years ahead, I don't think it is unreasonable to predict that (unless he chooses otherwise) he will most likely remain by most standards a very high earner for a significant number of years ahead. As Mr Calhaem has illustrated, even if he retires at age 60, or even age 55, he should still have been able to save a good deal of money from his substantial surplus of income over expenses, even assuming that he pays full child maintenance and child education costs.

62. I therefore turn to the **wife**'s past, present and likely future income and the related question of whether this is a case for a compensation award.

63. It has been established to my satisfaction that in the years leading up to 2007 the wife was a high earner in a not dissimilar bracket to the husband (recalling that these figures date back nearly 20 years when she was in her 30's). Her income first at an American bank in New York and then at an English bank in London was substantial:-

YEAR	**GROSS ANNUAL INCOME**
2003	$804,166
2004	$802,916
2005	$639,583
2006	£505,000
2007	£325,000

64. It is correct, as Ms Faggionato has submitted, that there was a diminution in the wife's income in 2007; but it seems to me that this was mostly attributable to her move to London in December 2006 to be with her new husband and her move from the American bank to the English bank (which was also hampered by the effects of the global financial crisis at that time). In 2008 the wife was pregnant with A, then took maternity leave and was then made redundant by the English bank and the wife has never worked in this field again. It was, for me, an unfortunate feature of the husband's presentation that he urged that I should somehow conclude from the events of 2007 and 2008 that the wife had lost her way and lost her status as a potential high

earner. I have little doubt that the wife remained a potentially high earner and the reasons for the loss of her position were first the move to London to be with the husband and secondly the arrival of her first child in 2008 and her decision to devote herself to the child-care role – both in my view relationship-generated sacrifices by the wife. If neither of these things had happened, I am satisfied that she would have remained a very high earner, probably in New York.

65. In my view the wife's ability to be a high earner was further inhibited by two further relationship-generated developments - the arrival of their second child in 2011 and the move to the Middle East between 2010 and 2016. In this context the letter sent by the husband to his employers in 2011 in the context of negotiations about his remuneration after the move between Middle East countries is, in my view, of significance. It may be that the wife had a hand in its drafting, but that doesn't detract from the point. In this letter the husband says:-

"So, we signed a 3 year contract just over 12 months ago to move from London to the Middle East, so we don't understand why, if the firm is intent on moving us early (and to a much more expensive location), we should take any reduction in benefits…[W] is not keen to remain in the Gulf with the family, so I need to be able to reasonably tell her that (a) the bank is not suddenly reducing our contract after a year when they're asking us to move again (which is how it appears) and (b) there should be an appropriate increase in housing to cover the quite different market rates for villas b/w [the Middle East countries]...Just with regards to our existing hardship payment, again this was something which we agreed on a year ago for a period of 3 years in the Middle East. If the bank decides to move us again, we don't feel we should have to suddenly forego this. Specifically also on this point, [W] has generously agreed to give up her (very successful) career on the HY trading floor and also travel to the other side of the world when her mother is suffering from cancer in America and her father is 80 years old this year. They are a very close knit family and it has not been an easy decision for her. To be honest, for a career woman like [W] being a Mom in the Gulf would not be her life choice either, she would much rather be working back in Manhattan, so there is a lot of sacrifice (particularly for her) in this move to the Gulf."

66. There is a clear indication here, in 2011, of the husband accepting that the move to the Middle East involved a hefty career sacrifice for the wife, so justifying higher pay for him. There is no indication here of his belief that she had lost her earnings touch in 2006 or 2007.

67. In the meantime, the wife set up a fabric business through a company owned by her,. It has made a little money from its trades but doesn't seem likely (even on the most favourable analysis) to bring in an income of more than £15,000 to £20,000 per annum for the wife and its current performance may be much lower than even this.

68. It was put to the wife by Ms Faggionato that she could and should now return to the investment finance world at a high level (probably inconsistently with the submission

that the wife had in fact lost her touch in 2007/2008), but the wife did not think this possible and I agree with her that this is unlikely at age 50 after 15 years out of that field, certainly not at anything like the pay levels she used to receive. It does not follow from this that she has no earning capacity at all or even no earning capacity beyond that which she could earn through her company. She is intelligent, resilient and well qualified in business, still not old and in reasonable health and her need to be devoting time to child-care is diminishing and will diminish further when B becomes a boarding pupil next year. Although there was little evidence before me targeted towards this, I would suggest that, if she so decided, it is more likely than not that the wife could find remunerative employment at perhaps £50,000 per annum gross in a business-related employment and quite possibly significantly more than that.

69. As I have already said, a combination of this earning capacity and the capital assets with which she will be left under the sharing principle means that, for me, there is no sustainable basis for any further provision based on need; but what then of a **compensation** claim?

70. Ms Faggionato has suggested on behalf of the husband that no such claim should be contemplated by the court. Mr Calhaem on behalf of the wife has contended for an award expressed in a CPI linked spousal periodical payments award of £212,668 per annum for seven years without a section 28(1A) bar. This would be worth c.£1,500,000 in capital terms.

71. A return to the core guidance set out above from the House of Lords in *Miller v. Miller; McFarlane v McFarlane* [2006] UKHL 24 (for example Lord Nicholls comment that "*Compensation and financial needs often overlap in practice, so double-counting has to be avoided. But they are distinct concepts, and they are far from co-terminous")* suggests that a compensation award can be made even where needs are fully met; but I observe that later authorities at High Court level were discouraging to compensation claims.

72. Coleridge J in *RP v RP* [2006] EWHC 3409 expressed a fear, with which I entirely agree, that the encouragement of free-standing awards for compensation may lead to "*a new methodology or approach akin to a damages claim*" where "*expert evidence should be called to establish the value of the wife's loss of earnings/earning capacity caused by her marriage!...any such approach is totally misconceived and likely to lead to double counting…it is a blind alley at the mouth of which a 'no entry' sign should now be firmly planted*"; but what if a compensation claim can be established with some clarity without expensive expert evidence?

73. Mostyn J in *SA v PA* [2014] EWHC 392, in his customarily persuasive and clear style, expressed his strong discomfort with the very principle of a compensation claim as articulated by the House of Lords in *Miller v. Miller; McFarlane v McFarlane* [2006] UKHL 24:-

" I confess that I find the theory to be extremely problematic and challenging both conceptually and legally… Let me try to explain my difficulties …compensation almost invariably denotes a payment made by a wrongdoer to a victim to make amends for harm caused by the wrongdoer to the victim. The language of the House of Lords appears to reflect this concept in that they speak of "handicap" or "sacrifice" of "suffering a loss" or "economic disadvantage". But in any usual situation where compensation is claimed the victim is not an active enthusiastic voluntary participant in the events that give rise to the claim. True, in a negligence claim contributory negligence can reduce the damages, but even there it can hardly be said that the victim was an active volunteer. Lady Hale recognises this strange aspect of this type of compensation claim in para 138 where she said "all couples throughout their lives together have to make choices about who will do what ... sometimes freely made in the interests of them both. The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation" and in para 154 where she said "the fact that she might have wanted to do this is neither here nor there"...I would have thought the free choice made by the claimant to give up work was the dominant consideration. While it was true that her decision was agreed with Mr McFarlane, the reason Mrs McFarlane gave up work was because she decided to give up work. No-one forced her to give up work. She was not browbeaten by Mr McFarlane to give up work. Her motives for giving up work seem to me to be irrelevant. Perhaps she was driven by an intense maternal instinct. Perhaps she was bored with her high-flying job and saw a life being supported by Mr McFarlane bringing up her children as more comfortable. Perhaps she wanted to do something else. Her motives seem to me to be irrelevant. At the end of the day, however, what cannot be disputed is that the reason Mrs McFarlane gave up work was because she, an intelligent liberated autonomous adult woman, decided to give up work. I cannot see how that can be characterised as a loss "suffered" by her entitling her to an award in excess of her reasonable needs."

Nonetheless, he acknowledged that he was formally bound by the House of Lords decision but sought to suggest some strict guidelines as to when a compensation award might be made. I agree with his sentiment that compensation claims are likely to be very rare and almost always delivered, if at all, in the context of an assessment of need at the most generous level; but I don't read this as meaning there can never be exceptions to this.

74. Although not a case specifically about compensation, Moylan LJ's judgment in *Waggott v Waggott* [2018] EWCA Civ 727 makes clear that the court should not value an earning capacity for sharing purposes and this in most cases has, in practical terms, a discouraging consequence for compensation claims as in many circumstances these concepts will become entwined and any court dealing with such a claim must be careful to respect the *Waggott* decision.

75. Despite this line of authorities discouraging the pursuit of compensation claims, I have found Moor J's judgment in *RC v JC* [2020] EWHC 466 to be the most resonant and applicable to the facts of the present case. In that case the court held that, prior to

the marriage, the wife had been on a clear path to becoming a partner in a magic circle Solicitors' firm and would in all probability have become a very high earner. Instead, she became a child-carer for the family on the arrival of children and her high earning prospects were accordingly extinguished by a relationship-generated sacrifice. The husband continued his high level, high earning, work through the marriage, a capital pool was duly established and it was likely that he would continue to earn at a high level for at least another four years after the court hearing. On the application of the sharing principle an equal division of assets would produce for the wife a fund of £4,850,000. This would be sufficient to meet her housing needs of £2,500,000 and income needs through a Duxbury fund (including some pensions) of £2,350,000. The court could not justify any needs-based outcome greater than the sharing outcome; but Moor J went on to consider whether it was appropriate to make a discrete compensation award, and decided to do so in the sum of £400,000 and, in so doing, expressed the following views:-

"I entirely accept that McFarlane was an unusual case where the capital was not nearly as high as in this case, whereas the Husband's income was very high. A periodical payments order was probably inevitable in McFarlane in any event, but the figure awarded of £250,000 per annum was considerably higher than need alone would justify. I accept Mr Bishop's submission that there have not been many successful claims for compensation for relationship generated disadvantage. In my view, this is, primarily, because, even if there is sufficient evidence of loss, a respondent can either argue that the applicant would never have been able to earn as much as they are going to be awarded from their share of the marital assets or that the assets and income are insufficient to do more than cover the parties' needs. Equally, I remind myself that an earning capacity is not capable of being a matrimonial asset to which the sharing principle applies. A spouse is not, therefore, entitled to share it going forward (Waggott v Waggott [2018] EWCA Civ 727). If I take the view that the Wife has satisfied me that there was relationship generated disadvantage, I am clear that I must comply with section 25A and see if I can reflect that disadvantage fairly within the capital division such that a clean break can still be achieved… Finally, I turn to compensation for relationship generated disadvantage. I have found quantification of this claim very difficult. First, I am satisfied that I should take the Husband's future working life at four years until he has attained twenty years in the partnership. His income is likely to fall during that period and he will have an obligation to maintain the children both as to their maintenance and their school fees for a considerable number of years thereafter…I have formed the very clear view that there should be a clean break in this case. The Wife has already benefited from the Husband's earnings since she gave up work until now, given my equal division of the assets. I am clear that, when I look at relationship generated disadvantage, it is the next four years that I have to consider…I have come to the conclusion that an appropriate sum to award for relationship generated disadvantage, over and above her half share of the assets, is the sum of £400,000. Whilst this could be portrayed as being an additional £100,000 per annum for the likely remainder of the Husband's time at the firm, it will be paid up front on the sale of the former matrimonial home…Exceptionally, in this case, I have found there to have been relationship generated disadvantage sufficient to justify an award of compensation. I continue to be of the view that such cases will be very much the exception rather than the rule. It is rare to be able to make the findings of fact that I have made in this case. Even having done so, I have been clear that the case remains a suitable one for a clean

break with, by the standards of such cases, a relatively modest additional award. I have already made the point that, in many of these cases, the assets will be such that any loss is already covered by the applicant's sharing claim. In other cases, the assets/income will be insufficient to justify such a claim in the first place. It follows that litigants should think long and hard before launching a claim for relationship generated disadvantage and they should not take this judgment as any sort of "green light" to do so unless the circumstances are truly exceptional."

76. In my view the present case presents very similar facts to those in *RC v JC* and I have reached the conclusion that the present case is one of those rare and truly exceptional cases where a discrete compensation award is appropriate. I have no difficulty on the facts of this case in concluding that the wife has made a relationship-generated sacrifice of her high earning career in investment finance to devote herself to supporting her husband's career choices and providing child-care for her children. I have concluded that, whilst she should be able to find reasonable work now, this is very unlikely to get her back to anything like where she would have been if she had not made that relationship-generated sacrifice. In the search for fairness, in the context of the House of Lords guidance in *Miller v. Miller; McFarlane v McFarlane*, my view is that this sacrifice should be reflected in the outcome of this case.

77. How should this compensation claim be quantified? Like Moor J, I have found this the most difficult part of the exercise. The award must reflect the fact that the wife in this case has to a significant extent benefited through the sharing exercise from the upside of her sacrifice – the accretion of capital from the husband's high earnings, including the fruits of the absence of income tax in the Middle East. I must take care not to fix the award in a way which amounts to a sharing award of the husband's high income. I bear in mind that the wife made a voluntary choice to do what she did with her career. Although a compensation claim is an income-related claim I need to bear in mind the statutory steer in favour of a clean break arising from Matrimonial Causes Act 1973, section 25A – and there is enough capital in the husband's hands to achieve this fairly. In the end I have concluded that I should broadly follow a similar route to the one adopted by Moor J in relation to the wife's compensation claim. To achieve a fair outcome I propose to add five tranches of £100,000, a total of £500,000 to the wife's award and to order that they be paid now as a lump sum on a clean break basis.

OUTCOME

78. Accordingly I propose to make the following capital orders in this case:-

    (i) The American property will be transferred to the wife. She will be responsible for the costs of the transfer and any tax consequences arising from it.

    (ii) The net proceeds of realisation of the husband's bank stock will be divided equally between the parties as and when the entitlement to realise arises. The parties have already agreed a form of words.

(iii) The joint HSBC accounts will be divided equally.

(iv) The husband will pay a lump sum made up of the equalising figure of £2,092,126 plus the additional compensation award of £500,000, i.e. a total of £2,592,126.

(v) There will be a pension sharing order of 39.02% on the husband's pension.

(vi) Otherwise the assets will remain where they stand on a clean break basis.

79. Such a division, using my asset schedule above, should produce the following outcome:-

	Wife	**Husband**
Own realisable assets	653,321	6,798,997
The American property, USA	920,434	0
Equal division of joint HSBC funds	1,667,727	1,667,727
Equal division of Stock	520,495	-520,495
Lump sum from H to W	2,592,126	-2,592,126
TOTAL REALISABLE ASSETS	**6,354,103**	**5,354,103**
% REALISABLE ASSETS	**54.3%**	**45.7%**
Own pension assets	225,011	1,023,886
PSO 39.02% H to W	399,520	-399,520
TOTAL PENSION ASSETS	**624,531**	**624,366**
% PENSION ASSETS	**50%**	**50%**
TOTAL OVERALL ASSETS	**6,978,634**	**5,978,469**
% OVERALL ASSETS	**53.9%**	**46.1%**

80. I have reached the conclusion that the reasons I have set out above amount to good justification for this fairly modest departure of equality on capital.

81. It remains for me to determine the unagreed child periodical payments order issues to which I drew attention above.

82. As far as the quantum of child periodical payments is concerned, I propose to follow the approach of Mostyn J in *CB v KB* [2019] EWFC 78 to these awards where the payer's earnings are above the CMS cap; i.e. a figure is fixed by reference to the CMS formula ignoring the cap. I am told by Counsel that it is agreed that this figure in broad terms amounts to £50,000 per annum, or £25,000 per child per annum. I propose to adopt this figure in my order. This figure will have CPI uplifts from the first anniversary and each anniversary thereafter.

83. My view is that the order should follow the orthodox pattern of continuing until the children respectively cease full-time education, including tertiary education up to a first degree and including one pre-university gap year. For periods after the completion of secondary education two thirds of this sum should be paid to the respective child directly and one third should be paid to the wife as a roofing allowance.

84. It is common ground that the husband will pay all future school fees for both children, but there is a difference of view about university tuition fees. The issue is complicated by the fact that there might very well be a difference of opinion as to whether the children should pursue their tertiary education in the UK or the USA. Typically, tuition fees are cheaper in the UK and there is usually a government loan available. In the USA tuition fees are typically much more expensive, but there are not infrequently scholarships available. Further, especially in B's case, decisions about tertiary education are some years away and the respective income positions may look very different when the time comes to make those decisions. For me to make an all-encompassing order now for the husband to pay university tuition fees, whatever they may be, I fear runs the risk of pre-judging the sensible child-focused decision which should be made at that time. In the circumstances I propose to make an order which leaves open the question of how university tuition fees are funded to be decided as and when the time arrives. I trust that these two well-educated and intelligent adults, who love their children dearly, will make sure that their differences do not in due course get in the way of the children's obvious needs to engage in suitable and good quality tertiary education.

85. This is my decision and I invite counsel to produce a draft order which matches these conclusions. I am handing this judgment down by email in the late morning of 2nd December 2022 and will reconvene the hearing at 2.00 pm, at which I trust we will be able to settle a final order.

86. I have not in this judgment specifically discussed the issue of costs, but in view of FPR 2010 Rule 28 this is a case where 'no order for costs' is the general rule and my provisional view is that neither of the respective open offers justify any departure from this general rule. Further, my provisional view is that there are no relevant conduct issues here. I will receive any further submissions on this if either party wishes to make them.

87. My provisional view is that I should publish this judgment on The National Archives in anonymised and redacted form and propose to invite Counsel to address me on this view if they wish and also to suggest what anonymisations/redactions should be executed.

HHJ Edward Hess
Central Family Court
2nd December 2022