Neutral citation: [2023] EWFC 250 (B)
No. 1622-1992-3128-2316

IN THE FAMILY COURT
SITTING AT THE CENTRAL FAMILY COURT

11th December 2023

BEFORE RECORDER NICHOLAS ALLEN KC

BETWEEN

FT

Applicant

and

JT

Respondent

Mr. Nicholas Wilkinson instructed on a Direct Access basis for the applicant
Mr. Thomas Haggie instructed by Charles Russell Speechlys LLP for the respondent

Hearing dates: 13th – 14th July 2023 and 11th December 2023

JUDGMENT

1) I am concerned with the final hearing of H's application in Form A dated 28th May 2021.

2) In this judgment I shall refer to the parties as 'H' and 'W'. This is just a convenient shorthand and no disrespect is intended.

3) H was represented by Mr. Nicholas Wilkinson instructed on a direct access basis. He was previously represented by DMH Stallard LLP and later by Ribet Myles. W was represented by Mr. Thomas Haggie instructed by Charles Russell Speechlys LLP. W previously instructed Allard Bailey Family Law. There are also times when both parties have acted in person.

4) I am grateful to both Mr. Wilkinson and Mr. Haggie for the quality of their written and oral submissions. Each said everything which could reasonably have been said on behalf of their respective clients.

5) This case was listed with a two-day time-estimate on 13th and 14th July 2023. This estimate was provided by Mr. Justice Mostyn at the restored FDR Appointment on 8th February 2023 when both parties were in person and confirmed by him on paper on 22nd February 2023.

6) I thought this time-estimate was likely to be inadequate. I therefore agreed with counsel at the outset of the final hearing that evidence and submissions would conclude within the two days and that I would reserve judgment. This led to a regrettable delay in my being able to circulate a draft judgment. However such is all but inevitable if a time-estimate

provides insufficient time for judicial pre-reading, consideration, and delivery of judgment.[1]

7) In advance of the final hearing and again in advance of writing this judgment I have read the filed 698-page hearing bundle. I have also reread the supplemental bundle. In addition to the orders made, Forms E, and Replies to Questionnaire, the main bundle includes written statements filed by each party and transcripts of the judgment of Recorder Genn dated 7th January 2022, and of the hearings before His Honour Judge Hess on 25th April 2023 and His Honour Judge Oliver on 12th June 2023.

8) In this judgment I shall not refer to every argument raised by the parties in their written and oral evidence or in their counsel's submissions. I have however borne all that I read and was said to me in mind.

9) Both parties gave oral evidence before me. Given the previous admissions and findings of domestic violence in this case and conscious of my obligations under FPR 2010 Part 3A and PD3AA I raised with Mr. Haggie the issue of special/protective measures as this had not been raised with me in advance of W's oral evidence. Mr. Haggie confirmed that he made no applications in this regard. However W gave her evidence shielded by a curtain and I took regular breaks during both parties' evidence.

Background

10) H is aged 38. He is a foreign national but fluent in English. He works as an investment officer/consultant for an international finance organisation. Since June 2020 he has been a short-term consultant working for their US office.

11) W is aged 41. She is a foreign national but with English her first language. She is CEO of JP business ('JP').

12) The parties met in February 2007 and began to live together shortly thereafter. They married in June 2008.

13) The parties settled in Switzerland for work purposes after their marriage. They moved to Florin in May 2009, Genovia in January 2016, and to London in 2019.

14) There are three children of the marriage – XT (12), YT (11) and ZT (3). XT attends Y preparatory school and YT will do so from September 2023. This attendance is as a result of a specific issue order to which I refer further below. ZT attends Z nursery.

15) There are ongoing Children Act proceedings (ZC 20 P 01269 and WT 20 P 00085). I have read the transcript of the judgment of Recorder Genn dated 7th January 2022 following a fact-finding hearing on 14th and 15th October 2021 and 15th December 2021. The transcript was disclosed into the financial remedy proceedings by orders of His Honour Judge Oliver made in the Children Act proceedings dated 1st June 2022 and in the financial remedy proceedings on 12th June 2023. The latter order stated that the judgment was admitted on the basis that neither party was running conduct pursuant to MCA 1973 s25(2)(g). I read the judgment on that basis.

[1] I acknowledge that at the pre-trial review before His Honour Judge Oliver on 12th June 2023 H's application to extend the time estimate of the final hearing to four days was refused.

16) There are currently interim child arrangement orders in place ('live with' W and 'spend time with' H) and a three-day welfare final hearing listed for 11th – 13th September 2023.

17) W issued a divorce petition on 27th March 2021. Decree Nisi was made on 12th May 2021 and Decree Absolute in summer 2021. It is therefore a marriage (including the additional year of cohabitation) of about 14 years.

18) Both parties are now in new relationships.

19) There is a factual dispute as to the date of the parties' separation. It is common ground that H left the FMH on 16th August 2020 and moved into rental accommodation and that the parties did not live together again thereafter. W contends that the parties separated at or around this time whereas H states this was a trial separation and contends for the date of W's divorce petition (i.e. 27th March 2021).

20) There is also a factual dispute as to whether the parties reached an overall agreement in relation to their finances as at the time of their separation. W contends they did whereas H denies this.

21) H's Form A was dated 28th May 2021. The First Appointment was heard by Deputy District Judge Butler on 6th September 2021. The first FDR Appointment was listed before District Judge Hudd on 16th December 2021 and adjourned to 14th April 2022. This hearing before His Honour Judge Hess was treated as a directions appointment.

22) On 14th April 2022 His Honour Judge Hess reallocated the case to a High Court Judge given the then potential sale of W's business, JP, for $225m to A of the B Group (an offer which had been made orally over the weekend of 11th/12th December 2021 and put in writing on 16th December 2021) of which (on H's figures which W did not strongly challenge) W would have received c. £31.582m (gross). Mr. Justice Mostyn heard a directions hearing on 1st July 2022 and the FDR Appointment on 18th October 2022 when the final hearing was listed with a time-estimate of eight days.

23) B Group collapsed in November 2022. The planned sale of W's business was therefore aborted.

24) Mr. Justice Mostyn heard a restored FDR Appointment on 8th February 2023 and gave further directions on paper on 22nd February 2023 when the case was reallocated back to District Judge level at the CFC and listed for final hearing.

25) His Honour Judge Hess heard a directions hearing on 25th April 2023 (when he discharged the order for a SJE of W's business interests first made by District Judge Hudd on 16th December 2021) and His Honour Judge Oliver heard the pre-trial review on 12th June 2023.

Open Proposals

26) The parties' respective positions as set out in their offers of 8th March 2023 (H) and 10th March 2023 (W) can be summarised as follows:

a) JP (W's business):
   i) H – H to receive 40% any net sale proceeds uncapped;
   ii) W - H to receive 16% of any net sale proceeds capped at £360,000. This is calculated as follows:

Tax valuation of W's interest in February 2021	$4,265,516.60
Less tax @ 35%	-$1,492,930.81
Net	$2,772,585.79
% accrued as marital	32%
Marital value accrued	$887,227.45
50% to W	$443,613.73
Converted to GBP	£359,327.12

b) joint assets – it is agreed that (i) these be sold (where appropriate) and divided equally; and (ii) H is to retain property/land in Florin held via a property holding company (with an agreed value of £109,500 net of sale costs) as part of his overall 50% if he so wishes;
c) sole assets (this relates principally to XP Ventures):
   i) H – divided equally;
   ii) W – retained by their current owner;
d) CPPs:
   i) H – H to pay W for the three children at CMS/*James v Seymour* [2023] EWHC 844 (Fam) rates (based on total remuneration): i.e. £15,000 pa and not backdated;
   ii) W – H to pay W for the three children at CMS/*James v Seymour* rates (based on total remuneration to include any bonus and grossed up to include notional income tax): i.e. £18,825 pa (if no school fees are paid) or £13,555 pa (if H pays half the school fees) and backdated for 12 months;
e) nursery/school fees:
   i) H – no payment;
   ii) W – H to pay half;
f) costs – both parties seek costs orders against the other.

The applicable law

27) I must apply the factors set out in MCA 1973 s25 (as amended) in deciding what orders to make pursuant to ss23 and 24. I have borne all aspects of this section in mind. The overall requirement in applying s25 is to achieve fairness (as made clear in *White v White* [2000] 2 FLR 981) with the three principles that should guide the court in trying to achieve fairness (needs, sharing, and compensation) identified in the later case of *Miller/McFarlane* [2006] 1 FLR 1186.

28) Compensation for relationship generated disadvantage does not arise in this case.

29) As to needs it was recited at paragraphs 2 and 3 respectively of the Order made by Deputy District Judge Butler at the First Appointment on 6th September 2021 that (i) neither party was claiming SPPs against the order; and (ii) both parties agreed that they could meet their own housing needs. In his oral evidence H said that he agreed to this on the basis that he assumed that a share of W's business interests would be received by him.

30) I need therefore to determine the two factual issues that arise namely (i) the date of the parties' separation; and (ii) whether they reached an agreement at that time in relation to

their finances. I shall then need to consider the law in relation to post-separation endeavour which W says justifies a departure from equality in her favour.

31) In this context I remind myself that the burden of proof is on the party who makes a particular allegation/seeks a particular finding and that the standard of proof is the balance of probabilities; no more and no less.

32) There are also several other issues that I shall also need to determine as can be seen from the summary of the parties' proposals at paragraph 26 above.

Computation

33) The difference between the parties in respect of computation principally related to W's interest in her business, JP. In the ES2 H ascribes a value of £31,582,372 (gross) – which assumes a value of $225m - whereas W states *"[s]ee s25 statement"*. I shall return to this issue when I consider the issue of post-separation endeavour.

34) There are also two far smaller valuation issues. First, H ascribes a value of £36,036 to W's interest in XP Ventures (being the investment cost) whereas W states nil. H also ascribes a value of £3,800 to the parties' joint investment in BW Ventures (again the investment cost) whereas W ascribes nil.

35) I did not hear evidence in relation to these two issues. They are both relatively *de minimis* figures and whilst one might normally resolve valuation disputes such as these by way of *Wells* sharing, the relationship between the parties in this case is such that the cost of this (in all senses) is likely to outweigh the benefit. In my view XP Ventures should be retained by W and BW Ventures should be transferred to H.

36) H has previously alleged that W holds cryptocurrency which she denied. However, this was not asserted on his behalf in the ES2 and it was confirmed by Mr. Wilkinson in opening that this was not pursued. In any event I accept the detailed explanation provided by W's solicitors on her behalf on 23rd August 2022 that she held c. $58,000 in Bitcoin in August 2020 and none by July 2022.

37) I should also record that both parties have very substantial liabilities. W owes c. £610,000 (c. £300,000 to HMRC, c. £285,000 to solicitors, and c. £25,000 on credit cards) and H owes c. £98,000 (almost all to his previous solicitors).

Date of separation

38) There is much jurisprudence on what amounts to cohabitation. The authorities include *GW v RW (Financial Provision: Departure from Equality)* [2003] 2 FLR 108 per Nicholas Mostyn QC (sitting as a Deputy High Court Judge), *McCartney v Mills McCartney* [2008] 1 FLR 1508 per Bennett J, *IX v IY (Financial Remedies: Unmatched Contributions)* [2019] 2 FLR 449 per Williams J, *E v L (Financial Remedies)* [2022] 1 FLR 952 per Mostyn J and most recently *VV v VV* [2023] 1 FLR 170 per Peel J.

39) There is less authority on what amounts to separation. However in many senses it is the obverse of cohabitation. In *MB v EB (Preliminary Issues in Financial Remedy Proceedings)* [2019] 2 FLR 899 Cohen J cited paragraph [68] of *IX v IY (Financial Remedies: Unmatched Contributions)* per Williams J where he stated that *"[w]hat the court must be looking to identify is a time at which the relationship had acquired sufficient mutuality of commitment to equate to marriage … the court must look to an accumulation of markers of marriage*

which eventually will take the relationship over the threshold into a quasi-marital relationship …" before stating at [51] *"[t]hat analysis can be applied to an attempt to define the date of the end of the marriage as much to its commencement."*

40) In *MB v EB (Preliminary Issues in Financial Remedy Proceedings)* Cohen J also observed that:

> [52] It is a truism that marriages come in all different shapes and sizes. What may be important to one couple may be trivial to another.
>
> [54] In some rare cases the definition of when parties separated can be extremely difficult. This is one such case. In most cases it is clear when one, if not both parties, to a marriage emotionally and physically disconnect from it.

41) In this context Peel J stated the following in *VV v VV* after referring to the other authorities which I have set out above:

> [45] To the above jurisprudence I would add that the court should also look at the parties' respective intentions when inquiring into cohabitation. Where one or both parties do not think they are in a quasi-marital arrangement, or are equivocal about it, that may weaken the cohabitation case. Where, by contrast, they both consider themselves to be in a quasi-marital arrangement, that is likely to strengthen the cohabitation case.
>
> [46] In the end, it is a fact-specific inquiry. Human relationships are varied and complex; they do not easily lend themselves to pigeon holing. The essential inquiry is whether the pre-marital relationship is of such a nature as to be treated as akin to marriage.

42) In *B v S (Financial Remedy: Marital Property Regime)* [2012] 2 FLR 502 Mostyn J had to determine the date of the parties' separation. He observed as follows:

> [66] The marriage fell on hard times in 2006 and from that time a cold (and sometimes not so cold) war has prevailed. H points to the fact that on six separate occasions in formal legal documents W accepted that they separated in 2006, namely her divorce petition; her Form E; her solicitor's letter containing instructions to the mediator; her affidavit in the leave to remove proceedings; the chronology prepared for her in November 2010; and her counsel's PTR Note of 14 December 2011. Mr Le Grice says these were lawyers' errors which were continuously perpetuated by her previous lawyers and which were erroneously adopted by him in his PTR Note. There has been no change of story by W; her account of how they lived has been consistent.
>
> [67] From 2006 the parties continued to live under the same roof and shared domestic services. They moved into Acre House together, and H made W a beneficiary of the Siena trust. They entertained at Acre House and went with the children on holiday together. They were certainly not separated in the *Santos v Santos* [1972] Fam 247 sense. It is invidious to try to anatomise a marriage by reference to the contentedness of the parties in order to attribute an arbitrary date to its ending. I take this marriage as having continued until December 2009 when W commenced proceedings …

43) The *"Santos sense"* is a reference to the judgment of Sachs LJ at p263 where the court was considering the meaning of the words *"living apart"* in the Divorce Reform Act 1969, re-enacted in the Matrimonial Causes Act 1973 s1(6) – in other words what was required to establish that the parties had been living apart for the purposes of the five year separation period. It was held that the relevant state of affairs did not exist *"while both parties recognise the marriage as subsisting. That involves considering attitudes of mind; and naturally the difficulty of judicially determining that attitude in a particular case may on*

occasions be great." In other words one or the other or both of the parties had to cease to recognise the marriage as subsisting for the state of affairs to exist.

44) The parties' respective dates of separation correlate with their respective cases in relation to matrimonial property / non-matrimonial property and post-separation endeavour in relation to W's business interests. H's case benefits from a later separation date and W's case benefits from an earlier such date. In other words both parties have the same motivation in relation to their evidence.

45) Having considered the totality of the parties written and oral evidence I have concluded that although there was (as W accepts) some discussions about a trial separation in July 2020 and early August 2020, by the end of August 2020 (or soon after) the parties had permanently separated. I reach this conclusion for the following reasons:

a) H gave 16th August 2020 as the date of separation at paragraph 1.5 of his Form E when represented by solicitors (DMH Stallard LLP). W gave 31st August 2020.[2] I do not accept H's evidence that the date given in his Form E was simply a reference to the date of the parties' *"physical separation"* namely the date when he moved out of the parties' home;
b) after moving out of the FMH H transferred all the utilities and similar bills (such as Virgin Media) into W's sole name. There would have been no need to do this for a trial separation;
c) as referred to further below in the context of whether or not it evidences the parties reaching an overall financial agreement, in August 2020 H received a lump sum in lieu of pension of $206,000 of which (*per* his Form E para 4.5) he *"immediately transferred 50% … to [W] as her share of the pension which I had earned while we were married"*. I consider this more likely to be consistent with an acknowledged permanent separation rather than a trial one;
d) H took on a 12-month tenancy at his new rental property;
e) both parties issued Children Act applications seeking child arrangement orders on 29th September 2020 [ZC 20 P 01269 and WT 20 P 00085]. This appears to be after mediation in relation thereto broke down. Mr. Wilkinson accepted that it is *"unusual"* for such an application to be made before a permanent separation but stated that H was *"desperate to see his children"* and so issued Children Act proceedings *"to regulate that trial separation"* and this *"does not begin to provide evidence that the marriage had "broken down irretrievably" at that stage."* I agree it is unusual for such applications to be made before permanent separation. I am fortified in my conclusion that these applications were made after separation given that paragraph 5 b of W's C100 stated *"The parties very recently separated"*. I reject as unconvincing H's suggestion in his written evidence that he was *"hoping that Court would help us fix the child arrangement issues which would lead to us reassessing our situation and our desire to keep the family together and hopefully, reconciling"*;
f) within her C100 application W made serious allegations of abuse (anger and alleged threats) against H. I reject H's oral evidence that on receipt of these allegations he could reasonably think the parties were still in a relationship because the parties' entire marriage had been a *"very conflictual relationship … and I was thinking she was taking time to think and where there was work that could be done to salvage our marriage and family"*. I do not find this credible;

[2] W also gave August 2020 as the date of separation in the evidence attached to her D11 seeking CPPs dated 10th March 2023.

g) H did not raise an issue about the date of the parties' separation in his Questionnaire (and I have not been told that it was raised in his Statement of Issues) both of which will have been prepared in advance of the First Appointment after exchange of Forms E;
h) W's then counsel's Position Statement for the First Appointment on 6th September 2021 stated (at paragraph 2) that the parties *"separated in August last year"* (although I accept of course that this is not evidence *per se*);
i) H's then counsel's Position Statement for the First Appointment also stated (at paragraph 1) that the parties *"separated in August 2020"*. Although (again) not evidence *per se* I am entitled to assume that this was both written on instructions and approved by H;
j) the first time H put the date of separation in issue was in his statement of 20th June 2022 written in response to W's statement of 7th June 2022 saying her business was very different as a consequence of events in January 2021;
k) H sent W numerous WhatsApp messages asking her to move forward with a divorce. H states he sent these because he would have preferred this to *"six months with an axe hanging over my head"* and W's unwillingness to proceed with a divorce. Such an action is not consistent with a desire to reconcile. Further, it is not unusual for a party to wish to pause between (permanent) separation and initiating divorce proceedings. This was particularly so when before the Divorce, Dissolution and Separation Act 2020 came into force in April 2022 no-fault grounds for divorce required at least two year's separation;
l) it is common ground that H returned to the FMH solely to have contact with the children after 16th August 2020;
m) I accept W's evidence that the parties only spent two occasions alone (and even then with the children) after 16th August 2020 – the first at the FMH when H said that W should be in a *"mental institution"* and the second at a playground when H said W needed to undergo *"psychological tests"*;
n) the parties arranged both child mediation and therapy sessions in August/September 2020 but these soon came to an end. It appears to be common ground that these were cancelled by W. I accept W's evidence that when the parties saw a couple's therapist in early September 2020 H detailed some of the abuse in the parties' relationship. However, the second time the parties met in therapy in the second week of September 2020 H retracted what he had previously said which caused W to stop therapy and *"all hope was lost"* as *"unless he acknowledged violence there was no going back"*;
o) at the FHDRA on 17th February 2021 supported contact was ordered. This is consistent with the parties' relationship being over rather than a trial separation. H conceded in his oral evidence that he was *"starting to feel"* the relationship was over at this time which conflicted with his previous evidence that he only felt it was over when he received W's divorce petition in late March 2021; and
p) I accept W's oral evidence that she was dating other people from November 2020 and had a new boyfriend by February 2021. Although this is not referred to in her written evidence (something of which Mr. Wilkinson was critical and challenged its veracity accordingly) I accept W's explanation that this was not something she wished to reveal/talk about in front of H particularly given W's evidence (which was not challenged on H's behalf) that he said he had some explicit photographs of her which W was concerned would be used to seek to humiliate her.

46) H fairly points to a number of text messages where W refers to a *"trial separation"*. However I have not seen a full run of WhatsApp messages between the parties so H may have 'cherry-picked' those that support his case and hence there is a danger that I do not have the full context. Further, and even if I have seen all potentially relevant WhatsApp messages, I do not take them at face value. W has been a victim of domestic violence and

coercive control as found by Recorder Genn on 7th January 2022.[3] I accept W's evidence that prior to 16th August 2020 (the date when H moved out of the property) she would often say what she felt she had to in order to seek to calm H down and deescalate the tensions between the parties and (as she said in oral evidence) at also times thereafter (and not just in order persuade H to return his key to the property). I accept that she was trying to exit a volatile relationship. Contrary to Mr. Wilkinson's suggestion that the texts are not the actions of someone wanting to separate I consider them to be (as W says) textbook examples of someone seeking to leave a relationship that at times had been abusive, one that she was seeking to exit carefully, and seeking to obtain some control.

47) I also accept that W wanted to delay formalising matters because of her concerns as to what H may say to the children. I am fortified in this conclusion by the fact that I accept W's oral evidence that it was only after the two girls had seen that H had not come for ZT's birthday on 22nd March 2021 that she decided that she would *"not cover for him anymore and that it was time to tell them … So I filed and told the girls."*

48) As Peel J observed in *VV v VV*, human relationships are complex and they do not easily lend themselves to pigeon holing. In other words the disentanglement of a relationship may not have an exact bright line. It may not therefore be possible to identify a precise date when W decided that the marriage was permanently over but even if it is not possible to identify such a date, I am satisfied that it took place far closer to the date of physical separation than the date of W's divorce petition. Even if H held subjective views to the contrary for several months subsequently (which I do not consider to be the case) the necessary qualities of a relationship did not endure over that time.

49) I shall return to the relevance of this finding below.

Agreement

50) W contends that the parties reached an overall financial agreement as at the time of their separation in August 2020. In support she relies on the fact that H produced a spreadsheet of the parties' assets on or around 1st September 2020 which W then added to and amended on or around 7th September 2020.

51) As referred to above, previously on 27th August 2020 H had transferred to W $103,700 which (*per* W) broadly equalised the parties' assets. The credit is referred to in W's bank statement as *"Your share of the pension."*

52) In her Form E at 4.5 W states that *"[w]hen we first separated, [H] and I shared spreadsheets outlining our assets. His assets were greater than mine, so he sent me half of his pension … We then had nearly identical assets. Our agreement was that going forward, he would cover his expenses and I would cover mine and the childrens …"*

[3] As recorded at [44] of the Recorder's judgment:

I should say at this stage that it is important to note that initially the father denied the allegations that were made by the mother in his response to the mother's C1 application and indeed informed the Cafcass officer interviewing for the safeguarding letter, that he believed the allegations had been fabricated in order to frustrate contact, but that through the course of the evidence, both through witness statements, his response to the Scott schedule and, importantly, his oral evidence at the fact-finding hearing, by the end, a very good deal, if not substantially the whole of what the mother alleged, had been accepted in very large part.

53) H states that no agreement was reached and the payment of $103,700 was one of *"goodwill"*.

54) The issue of whether or not an agreement was reached is of particular relevance in relation to W's business interests. These were not included on the spreadsheet. W states that this was because neither party believed those interests to have any material value and nor could they be transferred to H as they primarily comprised options at that point.

55) At the hearing before District Judge Hudd on 16th December 2021 W was directed to file and serve a statement if she sought to rely on the alleged agreement. The scope of the statement was then extended by His Honour Judge Hess on 14th April 2022.

56) Having considered the totality of the parties written and oral evidence I am not satisfied that an overall agreement was reached. This is for the following reasons:

a) many issues of actual or potential substance including child maintenance and school fees are not addressed. To put the same point another way I do not consider that there is sufficient that is material for the parties to have been so-called *Xydhias*-bound;
b) W's Form E does not assert that a binding capital agreement had been reached. At paragraph 4.5 she refers only to an agreement in relation to the meeting of expenses;
c) no Notice to Show Cause was issued on W's behalf. If W was seeking to rely on an agreement I would have expected such an application to have been issued in advance of the First Appointment listed on 6th September 2021 and for it to have been case managed accordingly from that hearing onwards (particularly given the Position Statement filed on W's behalf for that hearing stated that it was her case that on separation the parties "*reached an agreement sorting out their finances*"). When I asked Mr. Haggie about this in submissions he candidly acknowledged *"That's a good question that I don't have instructions on"*;
d) I have not seen any contemporaneous correspondence from W's previous solicitors asking why H had issued a Form A given the parties had (on her case) reached agreement;
e) I do not consider that the fact there were no discussions in respect of financial matters following August 2020 until H instructed his solicitors to file his Form A on 28th May 2021 to be evidence of agreement. If it was, I would have expected the Notice to Show Cause to have been the response. Nor do I consider that even if H was (as W asserts) *"coy"* about what he was seeking in the financial proceedings this is evidence of the same;
f) the payment of $103,700 was referred to in WhatsApp communications between the parties on 31st August 2020 when W offered to transfer the payment that had been made to her back to H. If this represented W's 50% share of the capital that had been agreed, as opposed to simply an interim arrangement, it would make no sense for W to offer to pay 'her' money back to H; and
g) I am satisfied that this payment was by way of a goodwill gesture (at a time when H had a pension and W did not) rather than in final settlement.

57) In short I accept that there was no bilateral coming together of minds in relation to the settlement of all financial claims between the parties. Further none of the legal requirements for a potentially binding separation agreement (disclosure, legal advice, understanding of the implications etc.) are made out. In respect of legal advice I accept that H was having some communication with lawyers at this stage but there is no evidence that he sought legal advice on the fairness or otherwise of any proposed overall agreement.

58) Therefore although I acknowledge (as Mr. Haggie submitted) (i) this case concerns two financially astute and intelligent characters who understand both numbers and finance; and (ii) the increased weight given by the courts to personal autonomy in *Granatino v Radmacher (Formerly Granatino)* [2010] 2 FLR 1900 and in subsequent cases these points are of little relevance given that I do not consider that an agreement was reached.

59) Even if I was wrong about this issue any agreement can only be one factor in the court's consideration of the s25 factors albeit it may be one that (*per Crossley v Crossley* [2008] 1 FLR 1467 and *S v S (Ancillary Relief)* [2009] 1 FLR 254) is of such magnetic importance that it dominates the discretionary process. Given that neither party received legal advice thereon and there was no formal process of disclosure I do not consider that it is likely to be of such importance and in any event one or both of the parties is likely to have been able to resile from the same on the grounds set out in *Edgar v Edgar* (1981) 2 FLR 19.

Post-separation endeavour

60) JP was incorporated in Florin in 2013. It is a payment platform that facilitates business payments to and from frontier markets).

61) W holds shares and options in JP Headco, a Luxembourg company which sits at the top of the group structure. Currently JP Headco has 80,273,988 issued shares, of which W holds 3,000,001 (3,000,000 Series 1 preference shares and one ordinary share). W also holds 8,933,404 vested options. She therefore holds 5.157% of the businesses and if her options were exercised she would have a fully diluted shareholding in JP Headco of 14.8658%. The options are only exercisable on the occurring of specific events and provided that W remains employed and in good standing with the company.

62) The question is whether it is fair for H to receive a share in W's business and if so the extent of that share and whether it should be capped.

Whether H should receive a share in W's business

63) At the heart of W's case is that in January 2021 the Central Bank of Xenda issued a directive which stipulated that remittances into Xenda must be paid in US dollars only. In other words, they banned the use of their local currency (the Xendan Peso) for local payments (i.e. the central function of the services offered by JP). JP therefore had the equivalent of $1.5m in Xendan Peso 'frozen' and was not able to make any remittance payments into Xenda in their local currency. W states that this severely affected the business – and that by way of example, JP's monthly revenue in December 2020 was c. $2.1m but by February 2021 this had dropped to c. $100,000 and that in 2020 JP's revenue was c. $19.9m whereas in the first half of 2021 this was down to just c. $2.5m.

64) W states that as a consequence she had to pivot JP away from Xenda and its clients based there and remodel the business entirely in order to stay afloat. She states that the business went from being focussed on Xendan exchange to a pan-continental remittance one. She lists what she describes as *"radical steps"* including changing the executive team, diversifying markets (pivoting to other countries proximate to Xenda), winning a significant new client (VR), acquiring a company (HD) in another proximate country, and a new revenue/business model (significant business development costs and small margins rather than the other way around).

65) W also relies on the need to do significant work twice – first in January 2021 and second from November 2022 after the collapse of the B Group offer to purchase JP (with bridging

finance of $47m that A had provided now owed to B Group as a debt and being pursued by its creditors).

66) H accepted in his oral evidence that the Xendan rule change in January 2021 had a significant impact on the business and that if W had not reacted the business may have collapsed. I consider this to be important. However he saw it as *"one of numerous instances where her reaction was required to keep the business on track and that there had been many during the last 8 years of marriage."* As Mr. Wilkinson put it, the work that W had to do in these other countries had all been *"seeded"* during the marriage and all W had to do was *"turn the lights on"*.

67) There have been numerous authorities that have touched on the concept of post-separation endeavour. The concept arises in the context of *"fairness"*. As Mostyn J observed in *JL v SL (No. 2) (Appeal: Non-Matrimonial Property)* [2015] 1 FLR 1202:

> [17] A key component of fairness is drawing the distinction between matrimonial and non-matrimonial property.

This led Mostyn J to state (at [18]) that an equal division of matrimonial property *"resonates with moral and philosophical values"* whereas (at [19]) the equal sharing principle *"just cannot apply to [non-matrimonial property] on any moral or fair basis."*

68) The courts have therefore recognised that wealth generated after separation may not be regarded as the fruits of the marital partnership, thus justifying a departure from equality. In *JL v SL (No. 2) (Appeal: Non-Matrimonial Property)* Mostyn J stated at [37] the phrase '*Continuum versus new ventures*' *"rightly captures the essence of the debate"* before contrasting (at [41]) *"assets which were in place at the point of separation"* with at [42]:

> … cases where the post-separation accrual relates to a truly new venture which has no connection to the marital partnership or to the assets of the partnership. In such a case the post-separation accrual should be designated as non-matrimonial property and save in a very rare case should not be shared.

69) This concept has been considered most recently in *DR v UG* [2023] EWFC 68 per Moor J. At [52] after listing the various circumstances which had been advanced on W's behalf as where it will be possible to establish post-separation endeavour including *"truly new ventures, created … without the use of matrimonial assets"* he stated that:

> I am further not convinced that the "truly new venture" needs to be created without the use of matrimonial assets. It will depend on the circumstances, although the assets used may be a relevant consideration as to whether the circumstance justifies departure from equality.

70) I also bear in mind when considering the issue of what is (or is not) matrimonial property the following observations made in *Hart v Hart* [2018] 1 FLR 1283 per Moylan LJ:

> [85] It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. An asset can, of course, be entirely the former, as in many cases, or entirely the latter, as in *K v L*. However, it is also worth repeating that an asset can comprise both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word 'reflective' because 'reflect' was used by Lord Nicholls of Birkenhead in *Miller* (at para [73]) and 'reflective' was used by Wilson LJ

in *Jones* (at para [33]). When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science.

71) Adopting the language used in *Hart* and acknowledging that this exercise is more of an art than a science I take the view that W's current business interests comprise both matrimonial and non-matrimonial property in that they are partly the product (or are reflective of) marital endeavour and partly the product (or reflective) of a source external to the marriage namely unmatched post-separation endeavour.

72) However given that the parties separated in (as I have found) August 2020 I am satisfied that the matrimonial element is a relatively small one. I accept W's evidence that I have summarised at paragraph 64) above and which she maintained during her oral evidence notwithstanding firm and focussed cross-examination from Mr. Wilkinson. I am satisfied that whether it is the executive, the business structure, the revenue model, the IT, the regulatory structure or otherwise that it is largely a different business to that which previously existed.

73) I am also satisfied that neither party considered W's business interests to be of significant value in or around August 2020. It is common ground that it was H who produced the initial draft of the spreadsheet that the parties worked through on separation and he did not include any values for W's business interests. H states in his written evidence that "*I prepared a spreadsheet for use in the discussions with the mediator that we were going to have around the interim financial arrangements during our trial separation … and I sent this to [W] on 1 September 2020 via the Google drive. She began amending the document on the same day and sent it back to me on 7 September 2020. [W] did not include her shareholding in her version of the document. The fact that it is not mentioned in her version of that document does not mean that it was agreed that she would retain that asset.*" Whilst I accept that the fact that W did not add reference to her business interests did not mean that it was accepted that W would retain the same I do consider that – particularly as H did not challenge W's additions or amendments to the spreadsheet at the time – he did not consider that W had omitted anything that then had real value given that he accepted in evidence (as he was bound to do) that he was aware of W's shareholding.

74) W disputes that the parties ever had financial mediation (the price of the same was all that she said was discussed) – whether interim or final - and that the spreadsheets were not prepared for this purpose. I do not need to resolve this issue save that I observe that if H is right in this regard then it fortifies my conclusion that if H considered the business to then have value it is more surprising that he did not challenge W's omission from the spreadsheet of any reference/value to her business interests.

75) In this context I did not find credible H's oral evidence that the reason for the omission of W's business interests from the spreadsheets and why he did not raise the same at the time was not because he did not think they then had any value but that he believed that an agreement to share any value could/would be reached separately albeit it would be *"an extremely difficult discussion"* as *"she clearly didn't want to share the business"* and that he wanted such discussions to take place after resolving the child arrangements and that to have raised it at this time *"was not the best way to stay friendly"* . In my view it is indicative of the fact that H believed it was of little or no value at that time. I therefore do no find credible his oral evidence that in August 2020 he was *"aware it had a lot of value"* – whether close to a $140m figure from July 2019 or otherwise (in fact in his oral evidence H said he thought it was a *"multiple"* of this figure – and that *"it was a big disappointment*

indeed" that W did not refer to it).

76) In my judgment the spreadsheets are more persuasive evidence than the earlier and various WhatsApp messages upon which H relies. I have the same concerns in relation to these messages that I express at paragraph 46 above and am concerned that looking at them out of context I am being asked to give them more weight than they can reasonably bear.

77) I also consider this to be more persuasive evidence than the figures set out by Mr. Wilkinson at paragraph 24 of his Position Statement which are markers derived from various funding rounds and similar and which lead him to submit that the value of the business was at least $100m before or at the date of separation.

78) In this context I accept what Mr. Haggie states at paragraph 33 of his Position Statement - and what W's solicitors wrote in their letter of 4th October 2022 - namely that there is a difference between a 'cap' figure in a convertible loan note and the value of the company as a cap is the maximum pre-money valuation at which the debt can convert to equity and represents a figure that the parties agree is the very top end of the anticipated growth for the term of the convertible note. It is therefore not an indication of current value at the time of investment but represents the maximum possible value that the parties could then realistically foresee. In other words the valuation of the company at the time of the investment is not (say) $100m or $140m but rather the cap entitles the investor to convert the cash investment into shares at a future fundraising event with the share price capped at this figure.

79) I also accept in this context that it is of relevance that (i) the references in H's Form E at paragraph 4.5 were to W's *"earning prospects"* from the business and not its capital value; (ii) there was no application for SJE evidence made on H's behalf the First Appointment on 6th September 2021 (particularly given H's oral evidence that he agreed to the recitals about being able to meet his own (capital and income) needs on the basis that would get a share of its future value); and (iii) the first time H raised the issue of value was on 16th December 2021, being four/five days after the B Group offer had been made. I also accept W's evidence that H repeatedly said to her that she should quit the business as it was likely to fail.

80) I also accept W's oral evidence that the various statements that she made to the market about her business (including, for example, on a business podcast in late 2021) were to generate investment and cannot be relied upon as an indication of true value.

81) Likewise I found W's evidence that she faced considerable difficulties as a woman of her skin colour working in the region she operated in as not what investors are looking for (in other words she is not immediately investable) and hence the need for 'puff' to keep investors interested to be credible. This also makes statements made to the market unreliable.

82) Acknowledging that the exercise I am engaged in is a somewhat artificial and arbitrary one, the combination of my findings as to the date of separation, the value of W's business interests at that time, and the differences in the business now as compared to the date of separation leads me to conclude that 35% of the value of W's present business interests (whatever that may be) can be said to be matrimonial and 65% non-matrimonial.

83) Both parties agree that the realisation of H's percentage interest should not be time limited. Mr. Haggie said in his submissions that he did not contend that a time cap was appropriate in this case because realisation is so uncertain.

Cap

84) The issue of a cap as to quantum is a difficult one conceptually. The issue usually arises in the context of SPPs and post-separation bonuses. For example in *H v W (Cap on Wife's Share of Bonus Payments)* [2015] 1 FLR 75 Eleanor King J (as she then was) allowed an appeal against an SPPs order where the District Judge had ordered W to receive an uncapped percentage of H's future bonuses on the basis that the judge had failed to identify a figure which would represent W's maximum reasonable maintenance (i.e. the cap) and that (at [40]) the *"inherent uncertainty of bonus payments provides, in part, the reason why the setting of a cap is essential in order to avoid the unintentional unfairness which may arise as a consequence of a wholly unanticipated substantial bonus paid to H. Such a payment would result in W receiving a sum substantially in excess of that which the district judge regarded as appropriate in order to maintain her maintenance at a fair level."*

85) The issue of a cap here arises in a wholly different context. It is difficult to resolve because, on the one hand, if (as I have found) part of W's business is matrimonial property to which the sharing principle applies then logically H should (in the fullness of time) receive his sharing entitlement. On the other hand it can be said that if this share has an ascertainable value now then this should be the upper limit (or cap) of H's entitlement and any growth beyond this figure should be W's and W's alone. The contrary argument to this of course is that W is trading with H's share and that she is being renumerated for her work.

86) In *Rossi v Rossi* [2007] 1 FLR 790 Nicholas Mostyn QC (as he then was) put the issue in the following way:

> [15] … On the one hand it can legitimately be argued that the party in question has traded with the other party's undivided share and so should share with that party the profit that has been generated. On the other hand it can equally convincingly be said that the second party has not contributed to the industry or endeavour that gave rise to the profit or growth and so it is unfair that the second party should share to the same extent in that profit as the first who made all the effort.

87) Whilst these comments are framed in the context of endeavour between separation and final hearing it is conceptually the same argument as to endeavour between final hearing and crystallisation save that the period of time of such endeavour is not known in relation to the latter.

88) I have not found this an easy issue to determine. However I have concluded that it would not be fair to impose a cap. As Moor J observed in *DR v UG* at [51] there has to be something that removes a case from the principle first espoused by the Court of Appeal in *Cowan v Cowan* [2001] 2 FLR 192 per Thorpe LJ at [70]:

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

89) The fact that I have found that the parties did not reach an overall agreement in August 2020 is relevant in this context. If they had it would (as Mr. Haggie submitted) added weight to an argument that W was not trading in an undivided share from then on as the

parties would have agreed that it would not be divided and so W was getting on with it for herself.

90) The capped figure (of c. £360,000) would also in reality be a wholly arbitrary one. As set out at paragraph 26 a) above and as explained in W's second statement of 1st February 2023 the figure is predicated on a valuation undertaken for tax purposes of $80,248,000 in February 2021. It is said to be W's *"best guess"* of the current value of the business (if forced to put a number on it), albeit this is purely due to similarities in various financial metrics and in reality the business is a completely different creature.

91) Even in cases where there is contemporaneous SJE evidence as to a value of a private company the courts have been at pains to emphasise (see for example *H v H* [2008] 2 FLR 2092 per Moylan J (as he then was) at [5], *Versteegh v Versteegh* [2018] 2 FLR 1417 per Lewison LJ at [185], and *Martin v Martin* [2019] 2 FLR 291 per Moylan LJ at [92]) that these valuations are very fragile. I do not even have such a valuation. I simply cannot have any confidence that a February 2021 valuation not prepared for court purposes is the current value of the company.

92) I also consider that the absence of a cap to be fair as I accept that there is some truth in the fact that H has made a number of career sacrifices to support W and that this was at least one of the reasons why the parties moved from Genovia to London in 2019 and why H left his full-time position with his employer. This is demonstrated *inter alia* by a June 2022 article in the business press in which W made clear that H had, to some extent, put his career on hold to work part-time from home, and she valued that support:

[quoted in full in the unredacted version]

93) These comments are not company or investment related and cannot therefore be contextualised as being comments made to the market.

94) I therefore accept that the business is in part the product of marital endeavour in which H supported W. I also accept that at least in part W ability to pivot the business after separation was as a result of work done during the marriage. This is of relevance both to what proportion of the business is matrimonial property (which I have already addressed) and whether or not there should be a cap on the value of that interest.

95) I also consider that the absence of a cap is required in order to meet needs. I accept Mr. Wilkinson's submission that if H's interest was capped at the figure that W contends for (or indeed any similar figure) then this would become a needs case.

96) The parties have never lived in owner-occupied accommodation during the marriage. Although H adduced a number of property particulars all of which with an asking price of £2m these provide me with little or no assistance. H accepts that he intends either to continue to rent in the short-term or cohabit with his partner of two years, who owns a flat in North London (the intention being in the medium term to rent out this property and live elsewhere).

97) I cannot consider that H's capital needs are met by reliance upon his new partner given the vulnerabilities of any (particularly relatively new) relationship and because the ability to bring a claim against her would not arise until re-marriage. H will therefore need an uncapped share in order to meet this aspect of his claim.

98) However, I consider that this uncapped receipt should be subject to a sliding percentage. Although this particular mechanism was rejected in *CG v DL* [2023] EWFC 82 (Fam) per Sir Jonathan Cohen – a case where H's business was a fund that operated investments on behalf of a small pool of investors and where H was also required to invest material amounts of his own wealth - as being (at [71]) *"unnecessarily complicated"* he also stated that:

> [70] I fully accept that the further one goes from the separation of the parties the smaller the interest W will have because what is received will have less relationship to the partnership …

99) I have therefore determined that H should share by way of *Wells* sharing as to 17.5% (i.e. one-half of 35%) in the years upto and including 2038 and 10% thereafter. I have alighted on that date and the reduced percentage thereafter on the basis that it reflects (and strikes the right balance between) further post-separation endeavour on W's part in the years ahead and the requirement for H to be able to meet the children's needs as and when they are with him (as ZT will turn 18 in 2038). In other words a smaller percentage is required to meet needs after that date.

100) I should record in this context that in his closing submissions Mr. Haggie accepted that if (as I have) I took the view that a percentage of W's business interests was matrimonial and divided this percentage in two that it would be open to me on the facts of this case to taper down from that percentage as opposed to imposing a cap.

101) In reaching this decision about a sliding percentage I have also considered Mr. Wilkinson's submission that when the parties moved to the UK W's business was ready to sell then and is ready to sell now and, but for the B Group *"hiccup"* would have been sold by now. All the work has been done. I am not satisfied that I have the evidence to reach that conclusion.

102) I should record for completeness that I do not consider that it is appropriate to consider JP to be worth $225m on the basis that (as Mr. Wilkinson submitted) this is the only offer received. I accept W's evidence that in reality this was never a real offer or one that would get regulatory approval. It was the equivalent of 26 x revenue and received shortly after W's investment banking team said the business was uninvestable. It was one based (as W said in her oral evidence) on *"ego and hubris"*. The fact that W accepted the offer, signed a SPA on 1st March 2022 and thereafter moved forward with the offer does not change this because it is inevitable that she would have sought to progress the sale in this way. Mr. Wilkinson's argument is the equivalent of someone knocking on the door of a property worth £1 million and saying that I'll pay £10 million without the funds to make good on the offer and the sale thereafter not completing. That property is not suddenly worth £10 million. Whilst of course it was said in *Versteegh v Versteegh* by Lewison LJ at [185] that *"the acid test of any valuation is exposure to the real market"* I do not accept that this means (as Mr. Wilkinson submitted) *"despite what may have happened to A at B Group, the market was prepared to pay $225m for the business"* because I do not accept that this was a *real* market.

<u>Child periodical payments</u>

103) There is a nil assessment in place in respect of CPPs as confirmed by the CMS assessment dated 14th February 2023. This was confirmed by way of a mandatory reconsideration notice dated 14th March 2023. This is because as an employee of H's employer, his income is untaxable.

104) W formally applied for CPPs by way of a D11 application notice dated 10th March 2023. On 25th April 2023 His Honour Judge Hess directed that this be dealt with at the final hearing. Both parties vested me with so-called *V v V* jurisdiction and it is agreed that W will apply for the CMS assessment to be revoked.

105) There was some dispute before me as to H's current income. It was said on his behalf that he earns $123,600 / £95,825 pa (n), the equivalent of $168,664 / £130,785 pa (g) although no tax/NIC is paid. H is on a consultancy contract which ends on 11th January 2024, after which if not extended H expects to earn around £120,000 gross / c. £75,000 net pa. On W's behalf although the figure of $123,600 pa was used this was said to equate to c. £100,488 pa. The difference is not material.

106) By way of comparison (and although the parties' respective figures are not identical they were broadly similar) W's salary in 2020 and 2021 was c. $210,000 pa (g), in 2022 was c. $265,000 pa (g) and in 2023 was c. $300,000 (g). She also received a bonus in 2020 of c. $132,000, in January 2021 (in respect of 2020) of $167,633 paid in bitcoin, in January 2022 (in respect of 2021) of $74,852 paid in bitcoin, in April 2022 (for signing the SPA with B Group) of $48,184 paid in bitcoin and £43,952 (g) in March 2023.

107) On H's figures W's net income equated to c. £200,000 (n) in 2020, c. £215,000 (n) in 2021, c. £235,000 (n) in 2022, and c. £190,000 (n) in 2023. On W's figures her current income is c. £165,000 (n).

108) On H's behalf it is said that on an income of £95,000 pa (n), which is only secure until January 2024, after rent of £60,000 pa (subject to any contribution from his partner), and nanny costs (£3,600 pa) he cannot afford CPPs of more than £15,000 pa and cannot afford school fees on top of his expenses (not least because he has agreed to pay £12,000 pa excluding interest to his former lawyers towards his liability to them).

109) In my view it is appropriate and affordable for H to pay CPPs for the three children of £18,000 pa (i.e. £6,000 pa per child).

110) W seeks that this sum be backdated for 12 months. It is said on her behalf that given the issue has been live since the First Appointment on 6th September 2021, and H has wilfully refused to pay, no injustice would be done by back-dating the effect of the order. It is said that 12 months is generous given that H should have been paying child maintenance for a much longer period.

111) I shall backdate the CPPs to 1st July 2023 to reflect the fact that had the time-estimate for the final hearing have been sufficient I would have given judgment at the end of the final hearing during that month. I do not consider that H has the available funds for the order to be backdated to an earlier date.

School fees

112) W made an application for a specific issue order in relation to the children's schooling as she wished to move the two older children from the F Academy to Y Preparatory School. This application was opposed by H but an order was made in the terms sought by His Honour Judge Oliver on 1st June 2022.

113) H accepted in his oral evidence that he had said to W that if the children continued in F Academy that he would contribute to their fees but said that this was in the context that he

would not also be paying £15,000 pa in CPPs.

114) H also said that the court agreed to the children's move to Y Preparatory School on basis that W had sold her business for $225m. However W made this application in Spring 2021 well before there was any knowledge of an offer to purchase the business.

115) As I understand it H paid all of the children's school fees in 2021/22 and all of XT's fees in 2022/23. W paid for YT in 2022/23 and no contribution was sought for ZT until a few weeks prior to the final hearing.

116) I do not consider that H has the net income to be able to pay a contribution to the children's school fees, whether this be the c. £30,000 pa that W seeks or otherwise. I reject Mr. Haggie's submission that someone with an income of c. £95,000 - 100,000 pa (n) with significant housing costs (even if shared) is in a position to pay both CPPs and contribute to private education even if it is a priority and which the court has decided should form the basis of their education. I accept that on 1st June 2022 His Honour Judge Oliver decided a specific issue order in relation to the children's education (having heard the case on 7th April 2022) but, as I understand it, this was principally an issue of welfare-related principle (i.e. whether they should be educated according to the different styles of F Academy or Y Preparatory School) rather than affordability.

117) If the children are to remain in private education then W will need to meet their fees.

Costs

118) There was some confusion over H's costs. His Form H1 suggested £154,726.50 (of which £96,186 was unpaid). However, he has also said that he has incurred c. £70,000 with his former solicitors (paid in full) of which one-third relates to the financial remedy proceedings. If this is right this would increase H's costs to c. £178,059.83. According to her Form H1 W has incurred £260,821.30 (of which £235,063.98 is unpaid). This litigation has therefore been financially ruinous for both parties.

119) I will of course consider any application that either party may wish to make to me in relation to costs. However, my provisional view – and conscious of what both parties have already said in relation to litigation conduct or otherwise - is that there is insufficient for me to depart from the 'general rule' set out in FPR 2010 r28.3(5) that the court will not make an order requiring one party to pay the costs of another party. The interim *inter partes* costs orders (i.e. the one made against H on 12th June 2023 and the one made against W on 1st July 2022) will need to be satisfied.

120) I should record for completeness that on 29th August 2023 at 3.02 pm H sent me directly by email a link to what he said was a recent video interview in which he said W contradicted her evidence as to whether she had built an entirely new business since separation. It is obviously irregular to seek to admit additional material in this way after evidence has closed and submissions made (although I do not criticise H for so acting given that he is in effect a litigant in person albeit represented by direct access counsel). Such a request would need to be the subject of a formal application (which I anticipate may well be opposed) and even if admitted the additional material would no doubt then have to be the subject of both evidence-in-chief and cross-examination. I have therefore not taken the contents of this email into account in reaching my decision.

Addendum

121) I circulated this judgment in draft on 1st September 2023 and sought suggested editorial corrections in the usual way. On 8th September 2023 one such suggestion was made.

122) On 29th September 2023 I received written submissions from both counsel in relation to the draft order and applications for costs. On 3rd October 2023 I directed a hearing to determine the same which was listed on 11th December 2023.

123) On 11th December 2023 I therefore formally handed down this judgment and finalised the draft order. In relation to costs, having considered the parties' written submissions (W sought a contribution of £40,000 and H sought there be no order for costs save for a contribution of £4,700 towards his costs of responding to W's costs application) I expressed a revised provisional view to which both parties agreed. I gave effect thereto by discharging by consent the order for costs made in H's favour of £20,000 by Mostyn J on 1st July 2022 and in W's favour of £10,000 by His Honour Judge Oliver on 12th June 2023 and otherwise made no order for costs.

124) Mr. Wilkinson sought that this judgment be published. Mr. Haggie agreed on the basis that it be appropriately anonymised given commercial sensitivities surrounding W's business. Mr. Wilkinson confirmed his agreement to this. I shall therefore publish this judgment on TNA on this basis.

125) That is my judgment.

RECORDER NICHOLAS ALLEN KC

Draft - 1st September 2023

Finalised – 11th December 2023