Neutral Citation Number: [2020] EWHC 2127 (Fam)

Case No: BV15D15323

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Double-click to add Judgment date

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

- -

Between :

S **Applicant**

- and –

C **Respondent**

- -
- -

Mr Edward Boydell (instructed by **Miles Preston & Co**) for the applicant
Mr Simon Webster QC (instructed by **Stewarts Law**) for the respondent

Hearing dates: 20, 21, 22 and 23 July 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mrs Justice Roberts :

Introduction

1. This is an application by a former wife for a financial remedy order in respect of A who is the parties' only child. A was born in October 2013. She is 6 years old. The respondent to the application is her former husband. I propose to refer to the parties, respectively, as S and C. They have been divorced for four years and there are no remaining issues between them in relation to their financial claims against one another as spouses. Whilst it may have been a convenient shorthand to have referred to them as 'the husband' and 'the wife', it seems to me inappropriate in this case for reasons which will become apparent. Thus, in this judgment, 'S' is a reference to the applicant (former) wife and 'C' means the respondent (former) husband.

The issue for determination

2. This is an unusual application on its facts but the issue which has generated this hugely expensive litigation can be simply stated. It is this. With all matrimonial claims between them now settled, to what extent should this court exercise its jurisdiction under section 23 of the Matrimonial Causes Act 1973 so as to impose conditions on the release to the parties of a frozen fund of some £3.74 million? The provenance of that fund is the settlement / compromise of a negligence claim launched on behalf of their daughter, A, in 2016 at a time when the marriage had already broken down and the parties had been separated for a year.

3. The headline which needs to be emphasised at the outset is the enormous love and commitment which each of these parents has for their daughter and her future wellbeing. It is a matter of much sadness and regret to this court that this litigation (and the inability of these parents to find a solution for their daughter's benefit) has led to the complete breakdown of any last shreds of a co-parenting relationship. A currently spends time living with each of her parents in their homes and that is what will happen going forward long after this litigation has ended. As I listened to the evidence over the course of the last four days, it appeared to me that each looks after A during these periods in separate silos or bunkers in terms of her experience of life moving between their two homes. There is no effective communication between them in relation to her lived experience of daily life in those two homes and little, if any, knowledge or understanding of what each of these parents offers this precious child whilst she is residing in the care of the other.

4. For reasons which will become clear, there is no need for me to descend into the history of this marriage. This judgment and the reasons for my decision

need little elaboration on that front. Each of S and C are now 50 years old. They were married to one another for some five years. They separated in 2015 and divorced the following year. A consent order regulating the financial consequences of their divorce was approved by the court in May 2016. That consent order gave effect to a clean break between them. At that time the litigation in respect of A was in prospect but the outcome was unknown. Proceedings in the Queen's Bench Division were issued at the end of September 2016, some four months after the matrimonial consent order was approved in the Central Family Court in London. A specific recital in that order records that they would continue to have joint conduct of the personal injury claim and that:

> *"any settlement or award made for the benefit of the child of the family shall only be invested and applied in a manner expressly agreed between the parties in writing in advance".*

Further,

> *"At the point when any settlement or award is made, the parties shall review all payments made by them for the benefit of the child of the family to consider whether such payments should be met from the settlement or award moving forward".*

The Kingsley Napley litigation concerning A

5. The parties instructed Kingsley Napley to act on their joint behalves in relation to the litigation concerning A. I have been provided with a separate e-bundle of documents which relate to those proceedings. That material underpins to a significant extent the narrative evidence which each has set out in their statements filed in support of the financial application which is at the centre of these proceedings.

6. The claim related to the antenatal care which was provided to S during her pregnancy by a consultant obstetrician (and in reality his professional negligence insurers). Shortly after her birth, A was diagnosed with a serious genetic chromosomal disorder. Her mother, S, had a significant history of chronic neck pain caused by degenerative changes in her spine. An earlier operation to remove a disc in October 2010, some months into the marriage, had not resolved the problem. She subsequently underwent a number of medical investigations including MRI, CT SPECT scans and x-rays and was prescribed a number of different medications. When S became pregnant in the early part of 2013, the parties voiced concerns to their consultant about the potential effects of these treatments and medications on their unborn child.

7. Following her birth in October 2013, the parties were informed that A had a chromosomal disorder. In the first few months of her life, she experienced a number of problems, some of which were addressed by early surgical intervention. The prognosis at that stage was that she was likely to experience significant developmental delay "with uncertain outcome but likely lifelong care needs".

8. The claim which was subsequently issued in the Queen's Bench Division sought damages for the additional costs of bringing up a disabled child. It was framed in the context of a (the inaptly named) claim for 'wrongful birth' and was supported by a report from a renowned consultant clinical geneticist, Dr Reardon. Whilst acknowledging that it was far too early to be able to provide a reliable prognosis for A's condition and her associated needs, the claim was predicated on the basis that A's life expectancy was unlikely to be limited by her condition. Leading and junior counsel advised S and C throughout the litigation. Because A's parents were by then separated and living independent lives in separate households, C was included as a claimant because of the separate costs he was likely to incur when looking after A in his home.

9. It is clear from Dr Reardon's input during this period that most of A's medical needs going forward would be met within the NHS. He confirmed in an email that he did not envisage she would require additional private medical care. What would be required was assistance with physiotherapy, speech and language. In what I regard as an insightful observation, he said this:

> *"[A] does not need super duper care. She – and more importantly, her mother – need gentle oversight of a general nature by a kindly, rather than a highly attuned latter day paediatrician who will do every test known to man. I think the child needs no tests whatever but she – and her Mother, more so – need gentle supportive care which involves somebody giving this lady a bit of time and helping her come to terms with a life she never dreamed would befall her, and has."*

10. Negotiations proceeded with a view to resolving the claim. S and C were advised in relation to the likely quantum of the claim. With the prognosis for the future so unclear, much of that advice was based on "a rough valuation" and "a reasonable guess" on the part of their leading counsel. Clearly the cost of additional support with A's care was a central consideration. In addition it was acknowledged that there would be the costs of putting a secure roof over her head and the payment of ongoing therapies to assist her development. Alongside those considerations ran the ever-present risk of establishing liability in order to found the claim.

11. Settlement was reached in January 2019 when the insurers agreed to pay a lump sum of £5 million to S and C. It is clear that this sum was not based on

any specific calculations or projections of A's future needs. Following settlement, an issue arose as to the beneficial ownership of those funds and the extent to which either or both of A's parents should have control over the investment and use of those funds. They were advised by their legal team that the fact that damages had been quantified by broad reference to the ongoing future needs of a child did not mean that those damages were for the benefit of that child who was not a party to the proceedings. As a matter of law, A had no interest in, or entitlement to, the damages. Her parents were the claimants and their claim had proceeded on the basis that they were likely to incur additional costs over a number of years in caring for a child whose future needs were likely to be greater than those of child who had not been born with a chromosomal imbalance.

12. In order to deal with the impasse in relation to the funds it was holding, Kingsley Napley issued an application whereby the court was asked to determine the beneficial ownership of the award of £5 million. Following AN agreement that each of these parents had an entitlement to 50% of the frozen funds, and S's current claim having been issued on 29 July 2019, an order was made authorising the payment out of the Kingsley Napley funds into accounts set up by S and C. Each agreed to preserve their respective funds until the Family Court had resolved S's application for financial remedy orders. The court approved the payment out of those funds of various amounts to cover legal and other costs.

13. In September 2019 the case was transferred to the Family Division in order that it could be heard by a High Court judge. It came before me for the first time in November last year and I have dealt with it since. I was hopeful during the early part of this year that the parties would settle this litigation. This is not a case where there are very significant financial resources held by either of S or C outside their shares of the settlement award. Whilst I accept that each is beneficially entitled as of right to those funds as their own assets, each accepts that the current application has to be seen through the prism of A's future needs. S is not seeking extended or enlarged provision for herself and indeed the clean break settlement which they reached in 2016 deprives the court of jurisdiction to entertain any such claims.

14. What lies at the heart of this application and the increasingly polarised position of these parents is the issue of control. Both accept that this has informed their respective positions. Their relationship as parents has completely broken down and the proceedings have been infected with an extraordinary element of personal antagonism which should have no place in a forensic arena where their child stands at its centre. I shall need to come to the basis of these concerns shortly but the real issue which lies at the heart of the current dispute from C's perspective is whether he should be required by this

court to surrender a very significant element of his personal autonomy and responsibility as a father in order to alienate from his ownership and 'lock up' funds going forward over many years so as to preserve them for A's benefit. For perhaps understandable reasons, S has aligned herself in this litigation with her father, A's grandfather, who appears to have had a significant role in assisting financially to date. C maintains that together they have conducted something akin to a war of attrition against him which has resulted in a significant risk to the commercial viability of his business and other interests. When the matter was before me in November 2019, I made a raft of injunctions which prevented either party from disclosing to any third party save for their legal and professional advisers any commercially sensitive or private information disclosed by the other party. Each was prevented from contacting, or seeking to contact, any business or professional associates of the other. Those orders appear to have done nothing to quell the stream of invective and counter-allegations which continue to underpin the cases which the parties have advanced in this final hearing. It is as dispiriting as it is damaging to A.

The assets: computation

15. There is little issue between the parties in relation to computation and the assets available to each. Mr Boydell (who represents the applicant, S) and Mr Webster QC (who represents the respondent, C) have helpfully compiled an agreed schedule for me. It is agreed in terms of its component elements even if it diverges on some minor issues of presentation. The bottom-line figure in respect of assets directly within the control of these parties is £4.646 million. That includes the equity in the former matrimonial home in Fulham which was retained by S as part of the divorce settlement and the Kingsley Napley funds released to each but preserved pending the resolution of the current litigation. Of his 50% share of those funds, C has £1,809,940 remaining after the incidence of legal and other permitted costs. S has £1,936,217. Both parties accept that financing the security and domestic economies of the homes which they share with A will be important elements of her ongoing needs. There is a substantial first mortgage of just over £900,000 secured on the former matrimonial home in Fulham. The commercial lender has been pressing for repayment on the basis that S is no longer in employment and the insurance payments she had been receiving from her private health insurer stopped on her 50th birthday in March this year. There is a second mortgage of just under £300,000 secured against the property as a result of monies made available to S by, or through, her father.

16. Having relinquished any further claims on the property as part of the divorce settlement, C has been living in rented accommodation since he and S separated in 2015. Much complaint has been made about the expense which

he has incurred on renting properties which S contends to be in excess of his and A's reasonable needs. He intends to purchase a property for himself and A as soon as he is in a position to do so but he recognises that the timing of any acquisition is dependant to a significant extent on the outcome of these proceedings and his ability to secure his business.

17. I shall need to say more about the respondent's commercial activities in due course. In the context of this computation exercise, it is relevant to note that C is presently carrying a substantial raft of debt. In addition to various overdrafts and a consolidated credit card debt, he owes substantial legal costs to his current solicitors, Stewarts Law, in respect of unpaid costs from the divorce proceedings. In total, these liabilities amount to c. £453,000 if one ignores a family loan from his mother. Not all of this debt will need to be repaid immediately because some of it has been restructured on an instalment basis. Nevertheless, its existence is relied on by the applicant as evidence of C's financial unreliability going forward.

18. S's own financial position is also precarious in terms of some significant tax debts accrued as a result of historic tax mitigation schemes through various film partnerships. In total she currently owes HMRC a total of £483,260. She has already entered into a partial instalment agreement whereby she pays £40,000 per quarter to reduce her tax liabilities. She is being advised by tax accountants, Saffery Champness, who are attempting to negotiate a substantial reduction in those liabilities but that outcome, if it is achieved, is not in the pipeline at the moment. Aside from her interest in the home she shares with A (net equity currently just under £1.5 million[1]), she has some investments earned as part of her previous remuneration as a broker for a leading global brokerage company. These are currently worth some £221,000 and she will shortly be in a position to release value from these investments once she has negotiated what is likely to be her "exit" after an extended period of sick leave from that employment. Neither party has any significant pension provision, the combined value of the respective funds amounting to slightly over £300,000.

19. Thus, standing back from these figures, the available *liquid* funds (including equity in property) held by these parties can be summarised in this way:

	Applicant	**Respondent**
Fulham property (net)	1,480,347	
Liquid cash funds, inc 50% KN award	2,073,779	1,826,871

[1] This figure reflects both the principal mortgage of £904,345 and a second charge to Schroders of £282,808

Investments/units	517,290	
Less liabilities[2]	(528,832)	(453,399)
Monies owed by C	10,000	inc in above
TOTAL	**3,552,584**	**1,373,472**

20. Clearly, those figures include the value of S's equity in her Fulham home and are impressed prospectively with C's needs to purchase a secure home for himself and A. It is accepted that he should move out of rented accommodation and into a home of his own. The issue which dominates these proceedings is his ability to choose a home of his own, subject to mortgage funding, and the extent to which he should have access to his own funds to complete that purchase.

21. Before leaving aspects of computation, there are two further issues which need to be addressed. The first is the applicant's and A's trust interests which have only recently been disclosed in these proceedings. The second is the value and future viability of the respondent's business. Before addressing these issues, I propose to set out very briefly those aspects of the background which are relevant to this application.

22. I have already referred to the significant health issues which S had as a result of the problems with her neck and spine. Following an initial round of surgery in October 2010, she was unable to work in her previous employment as a financial broker for a leading international brokerage firm. She was then 40 years old and had up to that point enjoyed a successful career earning up to £500,000 per annum in that role. A second round of surgery in 2014 failed to correct the problem and she has not been in receipt of any earned income for the last ten years. Her employers have not yet terminated her contract of employment although she is in the early stages of securing her release on terms. Since 2010 she has been the beneficiary of a private health insurance policy which has provided her with an income of some £95,000 per annum. That income stopped in March this year on her 50th birthday.

The applicant's trust interests: the S Trust

23. With the help of her father, PS, S had acquired her first property in Redcliffe Square, London SW10. That assistance was provided, on her presentation, through a loan from Schroders. When she acquired what was to become the former matrimonial home in Fulham, that loan was rolled over and secured as

[2] Ignores family loans other than secured

a second charge on the property. C has always been aware of that loan. However, it came to light at a late stage of these proceedings that, contrary to the disclosure which S had provided in her Form E, both she and A were, in fact, discretionary beneficiaries of an offshore trust which was settled in April 2002 some eight years prior to the marriage. That trust is administered by corporate trustees based in Switzerland. It owns a BVI Trust, CHL, which is a property holding company. The Swiss trustee is the sole director of that company which is registered in Tortola. The trust is known as the [S] Trust, [S] being an abbreviated amalgamation of the names of S and her brother. The underlying value of the trust is agreed at £4 million. The beneficiaries are defined as the children and remoter issue of her paternal great-grandfather. In reality, the current beneficiaries are S, her brother, her parents and A.

24. The most recent disclosure about the trust has come from GM, a close family friend of S's family who attended S's and C's wedding. He appears to be a former banker who is now a financial consultant who has worked in the past for Schroders, the Swiss offshore trustee, and, most recently, the Swiss office of S's accountants, Saffery Champness. He wrote a letter in June this year which contained the following information:

> *"The beneficial class includes the spouses, widows and widowers of [the children and remoter issue of [the applicant's late great-grandfather]], together with other beneficiaries and charities who may be added to the beneficial class. There have been no changes to the beneficiaries since the trust's creation.*
>
> *On 16 April 2002, further funds of £1,994,985 were appointed to the [S] Trust by an Instrument of Appointment between G & S Trustee Limited and G & S Executors Limited as trustees of [the VD Settlement] and G & S Trustees (Jersey) Limited as trustees of the [S Trust]. I understand from the Instrument of Appointment that [the VD Settlement] was settled by a Greek individual called [MV]. I have never seen a copy of that trust deed, but my understanding is that it was brought to an end with the appointment of its assets to [the S Trust] and that none of its assets were provided by, or derived from, [the wife's father]."*
>
> ……..
>
> *"As the trust is an excluded property trust for UK tax purposes and it has made a number of loans to members of [the S family], these loans were made by an offshore company, [CHL], wholly owned by [the S Trust], to avoid such loans being considered UK situs trusts and thus subject to ten yearly inheritance tax charges. [CHL] is incorporated in the Cayman Islands and is administered on the trustees' behalf by [the Swiss trust corporation], another company which is part of Saffery Champness."*

……..

"As can be seen from the balance sheet of [CHL], the principal assets of the trust are loans to [the applicant's family members], in particular a loan of £2,530,031 to [S's father] whom, together with his wife, [M], we regard as our principal beneficiaries. The loans to [PS] and to his daughter, [S], have been secured over their homes. The current value of the trust's managed investment portfolio is approximately £860,000. There have been no other distributions made to [S]."

"No distributions have been made to [A] and none has been contemplated, as our primary beneficiaries remain [S's parents]."

25. The trust accounts for the year ended 5 April 2020 reveal a portfolio of loans made to S, her brother and her father in sums (respectively) of £282,808, £316,564 and £2.53 million. These appear to be property-related loans. S told me during the course of her oral evidence that her parents' property was recently on the market for sale at an asking price in excess of £3 million although I know nothing more about her father's personal financial circumstances save that he has been providing ongoing financial support to both S and A since this litigation commenced and probably before that. Both her parents are in their 80s.

26. In her Form E sworn in October 2019, S presented the Schroders' second charge on her Fulham property as *'a liability due to my father'*. There was no reference at all to the S Trust or her status (and A's) as beneficiaries of that trust. I shall need to make findings about what S did and did not know about that trust both in October 2019 and at the time of the original consent order in the divorce. Suffice it to say at this stage that C has been incensed by this omission in her disclosure. He does not seek to rely on it as a reason for attacking or impugning the 2016 consent order but he does point to this non-disclosure as clear evidence that S and her father are aligned in their intentions to mislead both him and the court in two separate pieces of litigation in relation to S's financial situation. In particular, he is aggrieved that he was told it was not possible for him to be a joint owner of the former matrimonial home in Fulham when it was acquired at the start of their married lives together because of the existence of the second Schroders charge. He had no idea at that stage that he was a potential beneficiary of the S Trust as S's spouse, nor was he aware when he was negotiating a settlement for A over a five year period that his daughter was a beneficiary of the trust.

27. The settlement between S and C reflected in the matrimonial consent order made in May 2016 was predicated on the basis that S would retain the Fulham property subject to the two loans secured upon it. There was no issue that she had provided the majority of the funding for that property but it is not in issue

that C had made a financial contribution to its renovation if not its acquisition. It had also been his family home, shared with S and their daughter. S has conceded within this litigation that she intends to approach the trustee of the S Trust with the assistance of her father to invite the waiver of that loan which will increase the equity in the property by some c.£300,000. The revelation that this trust existed at the time of the 2016 consent order and throughout the difficult negotiations concerning the settlement of the current round of litigation has been a further impediment to compromise of a claim which has now cost these parties a further £600,000.

28. Under the terms of the 2016 consent order, and in order (as he told me) to ensure continuity and security for A, C agreed to restrict his capital claims to a sum of £250,000 in total. That sum was paid to him. He, in turn, agreed to pay to S a sum of £48,000 for A's benefit together with child maintenance at £2,500 (rising to £3,000) per month. That sum included his 50% contribution towards the costs of a nanny. He also agreed to pay A's nursery fees and school fees thereafter. S was to be entitled to a nominal spousal maintenance order but that order was to cease on A's 18th birthday. She, in turn, agreed not to make any claim on his business assets. These appear to have been essentially illiquid at the time and subject to significant liabilities, as I shall explain. Thus, the essence of the 'deal' was that she would be left with the former matrimonial home in Fulham, albeit one which was subject to a substantial mortgage, and he would 'walk away' for a lump sum of £250,000 (subject to £48,000 being returned to S) and the ability to devote his time and energy to his commercial activities subject only to his ongoing financial obligations to A.

29. Towards the end of 2017 S was obliged to issue enforcement proceedings since C was nearly £6,000 in arrears of maintenance payments for A. His response, contrary to the intention expressed in the 2016 consent order, was to make an application to the CMS. In the Form E which he swore in the context of those enforcement proceedings, he stated that he was *"seeking to secure investment into the group but if a substantial commitment is not made shortly, the business is likely to fail and then I will be forced into bankruptcy"*. At that stage, a letter from his accountant/bookkeeper appeared to point to group corporate liabilities of some £1 million. It is that statement in large measure which is relied on in these proceedings by S as driving her concerns for A's future financial security in the context of C's financial position and the future contribution he will be making towards her ongoing costs. Her solution, as we will see, is to require the protective wrapper of a detailed trust arrangement around the vast majority of the funds which are now available to C. Under the terms of her current proposal, he would be required to alienate his assets for all time by transferring them to trustees. Depending on the precise terms of those trust arrangements, C would need to consult and secure the permission

of a third independent trustee before purchasing a home and/or making any financial arrangements to fund its acquisition.

30. The enforcement proceedings were compromised at the beginning of 2018 and, in June 2018, an order was made in Children Act proceedings which spelt out how A was to divide her time between her parents' two homes. Whilst the current Covid-19 pandemic has disrupted these arrangements, the impression I have from the parties that, going forward, A will be spending about one-third of her time living with her father and the remainder of her time with her mother.

The respondent's business interests: the V Group

31. C has for the last decade and more been involved in the world of motor sports and powerboat racing. He provided some form of consultancy services for Formula 1 and appears to have been reasonably successful in brokering deals which provided him with an income. At the time of the marriage, he owned his own property albeit that it was heavily mortgaged.

32. In 2012, with a partner, he set up the V Group of companies. From the evidence which I have seen, he was able to attract some high-profile individuals as early investors. It is clear that he also put a great deal of his own money into this start-up venture both in the early days and subsequently as he has tried to raise the Group's profile and brand image. C has stated that these have been reflected as shareholder loans in the company accounts. The focus of the Group's mission is the manufacture and sale of high-performance boats destined for the international security sector. He has in the past had partnership or sponsor arrangements with the likes of M and P. The business currently owns three power boats which he described to me as *"the equivalent of Formula One on water"*. I have seen photographs of these boats and have a reasonably clear understanding of the niche market into which C is pitching his company's product. The boats are subject to marine mortgages which have recently been restructured so as to leave a residual net asset value of c. £1 million. That is the sum which C told me would be available to him were he to collapse the Group at this point in time. He does not want to take this course as he believes that the Group is on the point of concluding an external funding exercise which will provide the business with an equity injection of some £20 million. If and when that investment is concluded, he has an agreement with the new shareholders that he will be entitled to withdraw his £500,000 from the company or convert that sum to an increased shareholding on preferential terms. He remains the founder and majority shareholder.

33. His disclosure in respect of his commercial interests has been the subject of some trenchant criticism from S and her legal team as this litigation has progressed and I have had to case manage this aspect of the case on more than

one occasion. C tells me that he is subject to non-disclosure clauses in his agreement with his external investor. He accepts that these clauses cannot operate so as to detract from his obligations to this court. He is verging towards paranoia in his concerns that S and/or her father will use aspects of his disclosure in these proceedings to damage his commercial interests by approaching third parties as he alleges they have done in the past. In this context he points to private and confidential information which he says they have disclosed to a disgruntled former employee of his Group so as to cause problems for him and an approach which S made to another finance provider with whom he was in negotiations to restructure his company liabilities. I shall come back to these allegations insofar as is necessary. Whatever the truth or otherwise of these allegations, I am in no doubt at all that these are his genuinely held beliefs about the ends to which he suspects S and her father will go to damage him financially. S roundly rejects these criticisms and tells me that it is in her interests for the business to succeed.

34. On behalf of S, Mr Boydell submits with some justification that the current proposal in relation to equity injection into the business has been advertised on several occasions before as being imminent. It has not happened yet despite the evidence of C that it should be completed within a matter of weeks. He tells me that he has worked tirelessly to steer the deal through to a successful conclusion. He says he has been working throughout the current pandemic restrictions to ensure a successful completion of what, for him, will represent the financial platform from which he can take the business to the next stage of its commercial development. He told me that previously the company was on the verge of concluding a contract with an Israeli security-backed consortium which had invited him to tender for the manufacture and supply of a small consignment of remotely operated powerboats. That opportunity was not pursued because it was felt that the Group would thereby be precluded from commercial opportunities in the wider Middle Eastern market. There appears to have been another potential investment from a Kuwaiti investor which did not materialise.

35. He has produced a letter addressed to his solicitors which I have given him permission to redact in terms of the identity of the current group angel investor. That letter confirms the existence of various NDAs and the importance of preserving confidentiality. The letter is dated 10 June 2020 and it has been written by the managing director "of the corporate entity which is part of an international consortium of security companies operating primarily in the Middle East and Asia Pacific regions". It speaks of another "key participant in the formation of a substantial new security investment group based in Luxembourg". It continues, *"Once operational the group is scheduled and contracted to make a series of immediate acquisitions in the security sector, the details of which are highly confidential and includes [the V*

Group]". The terms of the investment will see this entity acquire a 25% interest in the business in return for its investment of £20 million. The completion of this investment is said to be dependant on completion of due diligence and compliance across the entire investment portfolio. Whilst a date at the end of July 2020 is mentioned, it appears clear that this timetable depends on the completion of the due diligence exercise which is ongoing in relation to a number of proposed acquisitions. The letter confirms that contributions have already been made towards supporting the ongoing cashflow of the V Group pending the acquisition of shares.

36. Whilst I am prepared to accept the respondent's evidence that these negotiations are genuine and reflect the culmination of efforts he has put in to develop the business over several years, there is, as yet, no guarantee that they will be concluded successfully within weeks as he hopes. He speaks with passion and commitment about his business plans and the efforts of those around him who have assisted with the design and technical specifications of the three racing boats which are the only tangible assets currently held within the Group. He told me about the concerted efforts he has made to build the brand internationally whilst having to conduct a great deal of financial plate-spinning in order to maintain a home for himself and A and meet his ongoing commitments to her whilst she is in his care. For the first three months of this year he had the benefit of an £80,000 per annum consultancy agreement with his potential investors but that came to an end when everything was halted by the international effects of the pandemic and the subsequent lockdown. He accepts that he has had to expend the capital he recovered from the matrimonial settlement in meeting his rent and other living expenses and he acknowledges that debt has been incurred whilst he has had no discernible source of income since 2016. He recognises that this situation cannot continue for ever and he acknowledges that, absent the completion of the current investment into the V Group, he will have to seek employment after many years of self-employed entrepreneurial activity. Whether or not his confidence in this deal will ultimately prove to be misplaced, its imminence appears to be a very real prospect to C. He told me that the company was far from paralysed at the current time: his team were continuing to design and develop its product in order to secure both inward investment and a foreign government order.

37. He was cross-examined extensively by Mr Boydell in relation to the apparently static nature of the accounts he had produced for the various SPV entities which make up the Group. At the end of the day, I have to bear in mind that these are not matrimonial claims. Those have long since been disposed of and, in that context, the value of C's interest in the business is not relevant for computational purposes save for the collateral purpose of evaluating his future liquidity in terms of ongoing provision for A. C has made offers on previous occasions that he will not invest any of his assets

recovered in the Kingsley Napley litigation for the purposes of supporting his business. S clings nevertheless to concerns that his personal assets may be at risk in the event of the financial collapse of his business. There is no evidence of any personal guarantees given by C for business debts.

38. As I have recorded earlier in my judgment, these parties were making good progress with the assistance of their legal advisers towards agreeing a way forward which would have avoided this final hearing.

39. By the start of 2020, they appeared to be moving towards an open position whereby a "tripartite arrangement" would be adopted in relation to the use of the Kingsley Napley funds. This in turn gave rise to the need for some expert input in terms of how a tax efficient structure might work.

40. At the First Appointment on 23 January 2020, C made an open offer which was reflected in a written open proposal a few days later. Under this proposal, each of the parties would be free to use £1 million of their own funds towards acquiring a property or discharging mortgage finance on the Fulham property if S wished to elect to stay there. A further £500,000 would be placed by each in a fund for A's longer term benefit and the balance of the assets held by each would be theirs to use as each saw fit. Shortly thereafter, C identified a London property which he was very keen to purchase. It was being offered for sale at an asking price of £1.65 million and his offer had been accepted on the basis of a swift exchange of contracts. In the context of moving matters forward, he made an open proposal to S through her solicitors on 14 February 2020. That proposal envisaged that he would fund the total purchase costs of £1.8 million by taking a commercial mortgage of £1 million. The balance of the purchase would be funded from his share of the Kingsley Napley funds. S had already given her agreement to his use of £900,000 from those funds for the purposes of acquiring a home for himself and A. This concession was made on the basis that she would use a similar sum from her share of the proceeds to discharge the principal borrowing on her Fulham home. C had secured a formal offer of mortgage funding which would have required him to deposit with the lender sufficient funds to cover the interest payments over the five-year term of the mortgage.

41. That proposal was not agreed by S on the basis that he did not need to spend so much on a property and was tying up too much of his capital in the acquisition to the detriment of A's ongoing needs. At a hearing on 18 Match 2020, I dismissed his application for an interim release of funds for these purposes on the basis that I was not then in a position to pre-determine what would, in effect, have been the substantive issue between the parties.

42. The applicant made her open proposals on 22 May 2020. Relying on what she described as "a long history of failed business ventures", S proposed the

establishment of a trust operated by three trustees. A total of £1.5 million was to be transferred by each of the parties into two separate trusts. Of that sum, S proposed that £1 million (in terms just over £900,000) should be used to discharge the borrowing on her Fulham home. That sum would be reflected as A's interest in the Fulham property. The respondent was to have up to £1 million for his housing needs but he was not to be permitted to use any part of that sum as collateral for further borrowing. The remaining £500,000 was to be released to each party on the basis that C could choose to use 50% of that sum (i.e. £250,000) towards the purchase of his property or to retain it or in repayment of his debt. From the remaining 50%, he was required to establish a ring-fenced fund of £150,000. That fund would be preserved as a designated maintenance fund from which A's maintenance payments would be met at the rate of £2,000 per month. The only free capital which would be made available to C outside this agreement was a sum of £350,000 less any further sum up to £250,000 which he chose to invest in property *"which [he] may retain absolutely"*. In her turn, S would ring fence a sum for A to cover nanny and other costs in the sum of £150,000. She was to have the free use of £350,000.

43. Under the terms of S's proposal, the trustees would retain the ability to consent to, or refuse, any request to move house and, in the event of either forming a new relationship with a different partner, that individual would be expected to sign an appropriate waiver in respect of any rights of occupation.

44. We now have the reports from Dr Carthigesan, a consultant paediatric neurologist, who was asked to prepare a report in relation to A's future development and care needs and a report from Patricia Wass of Enable Law on tax and other ramifications. I shall come to those shortly.

The parties' positions at this hearing

45. S brings her application on behalf of A under three separate limbs:

(i) an application for a lump sum for A under s. 23(1)(f);

(ii) an application for child maintenance under s. 23(1)(d) – permitted due to A's ongoing disabilities;

(iii) an application for secured child maintenance under s. 23(1)(e).

For these purposes, she accepts that the nominal spousal maintenance order agreed as part of the 2016 consent order should now stand discharged.

The applicant's position

46. On behalf of S, Mr Boydell submits that his client's proposal of 22 May 2020 remains the right outcome in this case. He has produced some property particulars which he suggests are eminently suitable as a home for C, and A when she spends time with her father. These have been seen by C as "a red rag to a bull". They range in price from about £950,000 to £1.25 million. Whilst they are all in the area where C currently lives, they are certainly not on a par with the Fulham property in terms of space or amenity. Whilst Mr Boydell submits that he has no basis on which to claim parity with S in terms of his housing needs, C sees the presentation of this case as his former wife and father-in-law dictating to him years after their divorce how much he should be permitted to spend on housing and how he should deploy his personal finances. He currently has a girlfriend. She and her son have been living with C during the period of lockdown. I know not what the longer-term future of that relationship might be. To the extent that the proposed restriction on his future housing needs affects his personal life, C perceives this keenly as an unwarranted and inappropriate intervention when, on his case, and with mortgage assistance, he can afford to provide a much better home for himself and A.

47. Mr Boydell submits that the question of C's housing needs cannot be seen in isolation from the issue which lies at the heart of this application: what is a reasonable application of the funds deriving from the Kingsley Napley litigation ? He acknowledges that the court does not have any evidence of what those needs are likely to be going forward but he contends that the absence of that evidence does not mean she will not have additional needs both when her parents are alive and when they are not. In this context I bear in mind that the claim which these parents made only entitles them to damages in respect of the additional costs of looking after a child who has disabilities where those costs would not be incurred in respect of bringing up a child without disability. As Mr Boydell accepts, the legal basis of that claim could never have extended to a claim for future provision for A once they were no longer alive.

48. He points to the financial difficulties into which C has fallen in the past and the significant levels of debt which have arisen as a result. In terms of any future risk to funds left in C's hands he points to a number of factors which suggest the funds might be vulnerable if they are not protected within formal trust arrangements. These include his request for time to pay the lump sum he owed to S notwithstanding his receipt of the £250,000 lump sum which she had by then paid to him. He had applied to the CMS for a maintenance assessment when the 2016 order contained a recital that he would not. He had fallen into arrears with the child maintenance payments and had missed a term's nursery fees. All these defaults are said to have arisen from the ongoing delay in securing the investment funds he needed for his business but

they should flag up to this court, says Mr Boydell, the possibility of future default on the part of C in meeting his obligations to A. He points to the fact that C's position has changed in terms of what he was prepared to offer to reassure A's mother. In July 2019 as the negotiations were still ongoing, his solicitors made a proposal whereby a sum of £1.2 million would have been secured. That was the basis of the tripartite concept to which I have referred above. It was reflected again in C's offer dated 23 January 2020 made at the First Appointment in these proceedings whereby he proposed that each party should use a fund of £1 million towards housing needs with a fund of £500,000 being placed into a designated fund for A's longer term needs. Mr Boydell urges me to limit C's housing aspirations to £1 million for present purposes. He accepts that, if the V Group is successful, C is likely to be a very wealthy man and, in this event, he will be able to approach the trustees of the trust which S has proposed and seek their agreement to moving to a more expensive property.

49. As to the scheme which is to underpin the protection which S seeks for these funds, I look to the advice which the parties have received from Patricia Wass of Enable Law. That advice came in the form of a witness statement in March this year. Ms Wass is a solicitor who specialises in Court of Protection work and has significant experience of working as a professional deputy and as a trustee in cases where her clients or their children have suffered 'catastrophic brain injuries'. These cases will inevitably have involved the future management of very significant sums of money designed to compensate these claimants for future need across an estimated life span.

50. Ms Wass has advised on the basis that S and C agree as between themselves that, whilst the fund which is available is legally and beneficially theirs, it should only be used for A's benefit. That certainly represents her mother's position and it underpins her father's position. His case, and the proposals he make, are designed to ensure that A will be provided for financially both through his lifetime and after his death but that he should be left, as a father, to determine how to structure that provision. Ms Wass was asked to advise in the context of the mother's proposals that two trusts are established for A's benefit. In accordance with her proposals dated 22 May 2020, a trust of £1 million would be set up with a contribution of £500,000 from each of S and C. This trust fund (Trust A) would remain untouched until A achieves her majority in 12 years' time. The second trust of £2 million (Trust B) would be set up to deal with housing needs. On the basis of a contribution of £1 million from each of her parents, S would ask the trustees to discharge her existing mortgage on the Fulham home on the basis that the trust would thereby acquire a commensurate interest in the property which would be held for A's benefit. C would not be entitled to use any part of his £1 million as collateral or security for borrowing in connection with his purchase. He could choose to

use part of his share of the monies outside the trust to put towards a property (up to a limit of £250,000). From his remaining free capital of £250,000 he would be required to set up a maintenance fund for A of £150,000.

51. Ms Wass's proposed scheme involves the creation of a 'disability' trust which would be established under section 89B(1)(a) of the Inheritance Tax Act 1984. This would be a discretionary trust settled by both of A's parents. The tax regime which this trust would attract are more generous than that applied to a standard discretionary trust. However, as Ms Wass accepts, there is no guarantee that S and C, as settlors, would escape the potential consequences of a settlor-interested trust. Put simply, and without any intention to ignore the granular detail of the substance of her report, there is a risk that HMRC might take the view that the provision of funds to each of them towards their own and A's ongoing housing needs from the Kingsley Napley monies might be seen as a tax avoidance strategy. In S's case she will be receiving nearly £1 million to discharge her existing mortgage. In C's case, trust funds would be released to him to purchase a property in a broadly similar sum.

52. The second drawback to the trust scheme is that if income from the trust is paid to or for the benefit of A and/or if capital is paid out for her benefit whilst her parents are alive, for example on school fees, those monies could be treated as the parents' income and they would be taxed accordingly. As Ms Wass acknowledges, the calculation of what tax would become payable by the trust and the parents, as settlors, can be very complicated (paragraph 27). She says,

> *"It is possible for a trust to fall foul of both of these items of legislation, however, with careful wording and a strict application of trust funds for [A]'s benefit, it is perfectly feasible for the first issue to be avoided."*

53. She accepts that formal advice would be required before any such trust could be set up. She goes on to say this:

> *"30. One potential way around the issues posed by ITTOIA[3], which is not insignificant, is for parties to ask the High Court to Order that the funds are paid out for the benefit of [A], within whichever structure is agreed on, as in that way, it could be argued that the settlor of the trust is not either parent, rather the Court, as it is not the parents that are seeking to make the settlement, rather the Court. It is outside of my area of expertise as to whether the High Court could or would in fact do this, and whether HMRC would be content with it if they did, however I would suggest that the opinion of Counsel with a specialism in constitutional law and*

[3] Income Tax (Trading and Other Income) Act 2005

taxation is sought on tis as a potential way of navigating around one part of the problem."

54. Ms Wass responded to further questions in a subsequent letter dated 18 June 2020. Those questions had been raised by the applicant's solicitors and were predicated on the basis that "the Court seeks clarification of the advice that was given regarding the most sensible and tax efficient way that funds can be held for [A]".

55. She confirmed that if Trust A was set up, A's entitlement to disability and other means-tested benefits should remain unaffected. The trustees would retain control over investment decisions and would be assessed to tax on an ongoing basis. Neither of Trust A or Trust B would attract entry/exit charges or ten year periodic tax charges. After seven years, if both parents survive, the funds in the trusts would not fall into their estates for inheritance tax purposes although those funds would remain exposed to tax for the first three years and on a proportionate basis for up to seven years. The position in relation to capital gains tax is not as straightforward in the terms of the interests in the properties. In particular, once A is 18 years old, and in circumstances where she is entitled to occupy one or both of the properties in which her parents have an interest, there is a 'strong chance' that any local authority providing ongoing benefits for A will work from the basis that she has an interest in that property. That, in turn, may well affect her entitlement to ongoing support. To avoid this risk, the trustees would have to ensure that A was no more than a licensee with no formal rights of occupation at all. As Ms Wass points out, *"great care will need to be taken as to the exact wording for this as there are a number of cases dealing with the issue of seeking principal private dwelling relief for beneficiaries of a trust"* (para 2.4).

56. In terms of the protection which S seeks for these trust funds in terms of any future claim by a trustee in bankruptcy in the event of either party's insolvency, it appears that the funds would remain vulnerable for a period of up to five years (para 2.7). Various recitals could be incorporated into the relevant trust deed but it appears that the trust vehicle itself will not offer the sort of watertight protection which the applicant seeks.

57. Mr Boydell accepts that, in terms of the trust solution he proposes on behalf of S, he cannot produce a tax- or risk-free solution. Nevertheless, he asks me to take into account that if there are no protective measures in place (now C's primary position), there is a risk that the funds will be diminished as a result of:

    (i) a 40% inheritance tax charge if he dies;

    (ii) any claim from a trustee in bankruptcy;

(iii) the absence of the tax advantages which a s.89 trust provides;

(iv) the claims of any creditors if he dies without discharging his current liabilities.

58. He points to the further possibility that C may in future become estranged from A and/or that he may in future prioritise his personal or business needs over and above A's future needs. If he marries in the future, there could be claims against the funds were that marriage to fail in circumstances where it had generated needs on the part of any future wife or child(ren).

The respondent's position

59. In his opening position statement, Mr Webster reflects C's current position. He now seeks the dismissal of S's application for secured funding. Absent a consensual way forward, he submits on behalf of his client that the court should not be imposing orders on either party. He accepts that C has in the past been willing to find a way forward on the basis of his previous offers which fall short of a formal trust structure. However, his open position as we commenced this hearing was that the court should not make any orders in respect of the Kingsley Napley funds but should leave them in the hands of each of A's parents on the basis they could and should be trusted to look after her needs both now and in the future.

60. When I read that position document, I suspected that this stance might have been driven with a forward-looking eye to a future costs argument. I was reinforced in that view when C gave his oral evidence. When cross-examined by Mr Boydell, C appeared to accept that, in principle, he would agree to at least £1 million being held for A's benefit but the issue between them was how that money could be used. The embargo which S had placed on him being able to offer any part of that sum as collateral for mortgage funding and her insistence on the control of that fund by third party trustees had led to the negotiations breaking down. He told me in the course of his evidence,

> *"If £1 million is applied towards a property, I am very comfortable with ensuring it is ring-fenced but not to the extent that I am prohibited from buying a property with a greater value and having to refer to trustees."*

That is not a concession that the court *should* make orders, rather that it is appropriate to put in place some form of protection to ensure that these funds are preserved for A's future benefit. I say that because he went on to tell me that the court should trust him as a loving and responsible parent to take whatever measures are required in A's interests. On the basis that he is perfectly capable of making those decisions for A, he tells me that he does not need to be told by anyone else what is needed. In this context he is, of course,

referring to the trustee appointed by S and any casting vote exercised by the independent trustee who would have to determine any disputes between the parties' nominated trustees. He told me that he intends to take specialist advice after the outcome of this case and will act in the most tax efficient way to protect the fund of £1 million from any potential future claims by creditors whomsoever they might be. He accepts, on the basis of his present offer, that a smaller fund should be carved out of the Kingsley Napley funds for capitalised maintenance for A in accordance with the sums stipulated in the 2016 consent order.

61. C's wish to use and deploy his share of the settlement for A's benefit without being required to alienate the ownership of the majority of his current funds into a trust structure finds reflection in Mr Webster's opening document. In paragraph 45 and 46, he says this:

> "45. The startling irony in W's proposed outcome is that she trusts H to exercise his parental autonomy in a manner consistent with [A's] best interests when it comes to the arrangements for this treasured child's physical care. Yet she says that H cannot and should not be trusted to make decisions with his finances such that he should be deprived of his autonomy. In the tone of the censorious head-teacher H is told, in W's proposal, that W is "extremely troubled about your client's financial history and track record". She was not so troubled when it came to securing a clean break from H of course: then she was ready to trumpet his commercial prowess. W's proposal is, as already heralded at the head of this note, an outcome which would propel the financial remedy court into radically new territory. It would be one thing for a court, when first determining a substantive claim for financial remedy between divorcing spouses, to set aside some monies to meet identifiable costs for their children. Indeed, one sometimes sees, though it must be said not often if not consensual, the court carving out a school fees fund from an available pot before division.
>
> 46. But what W is asking the court to do is *not* to make that decision in the context of a wide-ranging enquiry into how the parties' wealth should be divided. Far from it; those claims were determined four years ago and W would most certainly not entertain any revisiting of that, undoubtedly favourable, distribution of resources. No, W says that the clean break of H's claims ordained by the court's order of 2016 should not be disturbed and yet still the court should move to make orders depriving H of nearly all of his current wealth."

A's needs going forward

62. As Mr Webster correctly identifies, there is currently no evidence before the court as to A's future needs. What I do know is that she has confounded the original prognosis of what those needs were likely to be when she saw Dr Reardon as a 2½ year old child. During the negotiations which led to the settlement of the Kingsley Napley litigation, leading counsel had been trying to shape the claimants' approach by anchoring quantum to an estimate of what they might be likely to spend on her care over the period of a year going forwards. Figures of between £180,000 and £200,000 per annum were suggested in respect of accommodation, care and other costs. As C told me, and Mr Boydell appeared to accept, these were no more than 'back of an envelope' numbers which had no traction in terms of an evidence base.

63. What is quite clear from all I have heard and read is that A's current costs are nowhere near that sum. Both parties agree that each will need a full-time nanny whilst A divides her time between their respective homes. That is a given. Of her specific need for various therapies, I have heard about physiotherapy, chiropractic support and speech and language support. To her very great credit, S identified a local authority funded school placement for A which appears to meet most, if not all, of her educational needs at present. There is specialist support within that school setting for which neither party is required to make any additional financial contribution. C told me about a number of additional costs which he had incurred for A without reference to her mother whilst she has spent periods of time living with him. He had the foresight to put in place at her birth a private health insurance policy which is available to cover many of these costs without reference to a pre-diagnosed condition. That is a potentially valuable resource and I accept that it was taken out with a clear eye on A's future needs and the imperative to put in place medical cover to meet part of those needs.

64. Dr Carthegisan has provided two documents to assist the court. The first is her report dated 10 October 2019; the second is a letter written on 9 March this year. As I have said, she is a consultant paediatrician who specialises in neurodevelopmental paediatrics. She knows A and has been assisting the parents by providing advice on her development. She was asked most recently what sort of support A might need in the future and whether she was likely to achieve any degree of independence. Having noted that all her needs appeared to be met through her school, the hospital and the therapies which were already in place as I have outlined them above, Dr Carthegisan said this:

> *"[A's] chromosomal condition has a variable impact on learning ability and can be extremely variable. However, it is associated with significant risk of developmental delay and learning disability but it is not possible to predict how severe this will be. I do not have enough information about*

> *tis disorder to be able to say the amount of support or ability for independent living in the long-term and it is very likely that [A] will continue to require adult support to meet her needs as an adult."*

This is the full extent of the expert evidence at this point in time. I have read all the reports about A within the material which has been placed before the court. She is an adorable child and is clearly the focus of an immense amount of love and care from each of her parents. I am entirely satisfied that both of her parents have her best interests constantly at the heart of everything they do to make this child's experience of life as happy, secure and full as it can possibly be. She is clearly a cherished and (to adopt Mr Webster's word) a precious child. Whatever the disastrous nature of their personal relationship as parents, that dynamic has not been allowed to infect their individual approaches to parenting this child. Each trusts the other to provide the physical care and emotional warmth which A needs in the other's home. Indeed, S has been pressing C to look after A for an extended period this summer so that she can attend to her ongoing medical issues.

My assessment of these parents as witnesses and my findings

65. I listened carefully to each of these parents whilst they were giving their evidence. Notwithstanding that this was a remote hearing, I was not inhibited in any way from observing them both throughout the course of the hearing as they listened to the live evidence and the submissions advanced by their respective counsel.

The applicant mother

66. I need say no more about the level of distrust and acrimony they have for each other. Whilst she was giving her evidence, and in answer to often simple factual questions put to her, S could not resist the temptation to overlay her responses with negative comments about A's father and his conduct since the end of their marriage. She says that she wants him to be successful in his commercial endeavours yet it is clear to me that she (and to a greater or lesser extent, her father) have been determined to leave no stone unturned in their collective endeavours to obtain information where it exists about the frailty of his current financial position. Whilst she may accept on an objective basis that it is in A's longer term interests for him to prosper financially, I am satisfied that she has focused her efforts on uncovering whatever may exist as an evidential pointer towards his likely insolvency. I am prepared to accept that she has done this not out of a sense of malice or ill will but because she is fearful for the future in terms of A's security and wishes to ensure that she bolts down now as much as she can of the funds which C currently holds. I did not hear from S's father and so do not make specific findings in relation to his conduct over and above what S herself told me. Whilst I am quite sure that

he and his wife are exemplary and loving grandparents to this little girl, I accept that he has aligned himself very much with his daughter in this litigation. That might be said to be no more than the understandable reaction of a father and grandfather who has little time for his former son-in-law in the aftermath of a difficult divorce. I know, for example, that PS has tried to assist in happier times and there is no doubt that he has provided unstinting support for his daughter and grandchild since the separation. However, in relation to what I might call 'litigation assistance', I am satisfied that he has assisted S in her attempts to discredit C where he can, even if for understandable reasons.

67. I make no findings that either S or her father has disclosed from these proceedings specific documents or confidential information in breach of the injunction which I made. However, to take one example, it is clear that their association with the individual referred to as Alex P has continued until very recently. Whilst the proposed visit to the S family home where she is currently staying might not have taken place, he obviously felt free to call to continue a dialogue which he had evidently been having with them. There is no basis for believing that he was a long-standing friend: quite the contrary; he was a disgruntled former employee of C's who had been fired when it was discovered he had a criminal record. Whilst I cannot know whether, or how, any approach was ever made directly to this individual by S or her father, it is clear that they did not hesitate to take advantage of an opportunity he presented to discuss C and, by implication, the state of his financial affairs insofar as it was known to him through the ongoing proceedings in Wandsworth County Court.

68. It is also accepted that S made an approach to FS, a financial provider with whom C was in negotiations in respect of restructuring the marine mortgages on the boats owned by the V Group. S told me she had been approached by friends at a party in Devon and had not initiated these enquiries on her own behalf. Nonetheless, she registered on the FS website and it is difficult to see why she might have done this if she was not seeking to elicit further information about C's financial affairs. Certainly, her actions have done nothing to persuade C that she is anything other than intent on causing him harm in the field of his commercial activities.

69. I have also considered the extent to which S is likely to have had a better grip on her financial situation than she was willing to accept during the course of her evidence. She has had many years' experience in the financial sector as a commodities broker. She was clearly very successful in that role and stressed to me at several points in her evidence that she was in a much stronger financial position than C at the time they agreed to marry. She was keen to stress to me that the equity which existed in her Fulham home represented the

fruits of her efforts in the past and not contributions flowing from him notwithstanding that it had been their family home during the marriage. She presented as being very vague about precise numbers and dates, telling me, often accurately, that the questions she was being asked related to events which had happened several years ago.

70. I am in no doubt that S has indeed found herself in a situation in which she had never expected to be, as Dr Reardon acknowledged. No one with a shred of humanity could underestimate the very significant effect on her life as A's primary carer which their child's longer term needs have, and will, present. Her capacities as a parent are, and remain, unimpeachable. I accept that she loves A dearly and has made every last effort to ensure that their daughter lacks for nothing which can be provided to assist her needs as they are currently known. Yet I believe that she has allowed her distrust and evident dislike of A's father to colour her judgment and approach to the way she has presented him and her evidence to this court.

71. In this context, I have to consider the position in relation to the S Trust and her (and A's) status as beneficiary under its terms. She professes that she knew nothing about the trust until it was revealed in the context of this litigation. Measured against the resources available to these parties in the context of the Kingsley Napley settlement funds, the trust holds assets of a broadly equivalent value. The existence of her status as a beneficiary of the trust was not disclosed in 2016 or in S's Form E sworn in October 2019. In relation to the second charge on the Fulham property, this was described as a mortgage in favour of 'Schroders Trust SA'. S's evidence in cross-examination was that she had not included a reference to the S Trust because she did not know anything about it. She told me that she always regarded it as 'Schroders money' which had come from funds which were earmarked for her parents' retirement. She denied that she had had any specific discussions with her father about the existence of the S Trust. When it was pointed out to her that GM had provided specific information in relation to the formal assignment of that debt to the BVI property holding company which now owns the debts (CHL), she accepted that she must have signed something at the time. On the morning of the third day of this hearing, that document was produced, her solicitors having written to GM to ask him to produce it.

72. The signed engrossment of that document is dated 13 December 2017. That was in the midst of the very acrimonious enforcement proceedings which S had initiated in respect of the arrears of child maintenance and nursery fees. S's father made a statement in those proceedings supporting S's case. She was a party to that assignment together with the corporate trustee and CHL. The S Trust is referred to by name as the assignor in the first paragraph of that deed

which is expressed to form part of the trust documentation. The recitals include the following information:

> "(B) The trustees from time to time of the Trust have made loans to [S] with an aggregate value (including interest accrued) at 31 December 2015 of GBP 259,557.30 (for the purposes of this Deed, and with the addition of any and all interest accrued and accruing to date, known as **'the Total Loan Sum"**).
>
> (C) The Total Loan Sum is owed by [S] to the Assignor. The understanding of the parties to this Deed is that certain parts of the Total Loan Sum are secured against a property interest owned by [S] and that it is interest-bearing in its entirety notwithstanding certain of the trustees' records.
>
> (D) This Deed is entered into to evidence the assignment by the Assignor of its rights, title and interest to, in and in relation to the Total Loan Sum to the Assignee (which, for the avoidance of doubt, shall include rights and entitlements in respect of any security taken by the Assignor in respect of the Total Loan Sum).
>
> (E) [S] is a party to this Deed to confirm that she has been notified of the assignment of the Total Loan Sum and the Assignor's associated rights and entitlements and the security rights in respect of the Total Loan Sum."

73. By paragraph 2 of the substantive provisions of the Deed, S confirms that she has been formally notified of the assignment. The Deed has been formally signed by representatives of the corporate trustee and CHL. The signatures appear to be identical but nothing turns on that as the accounts for CHL and the S Trust show that they are one and the same. It has also been signed by S in the presence of a witness.

74. S does not seek to say the signature on this document is not hers. Given the date of this document and its context, and whilst I accept that it appears to be a genuine instrument, I cannot accept S's evidence to me that she knew nothing about the existence of this trust. She may not have known chapter and verse about the trust terms but, at the very least, it is clear to me that she must have had some discussions with her father about these arrangements at the time this Deed was presented to her if not before. I do not accept that she was sufficiently financially naïve to have signed something like this without reading its contents. It concerned her home and her indebtedness to her father. It is simply not credible to think that she would not have asked him what this was about and how it might affect her. At the very least, when completing her financial disclosure in these proceedings, it should have put her on notice that there were further enquiries to be made in relation to that loan. That is the most benign interpretation which I can put on this evidence. The fact that this second mortgage was registered behind the first commercial Bank change

might suggest that the principal lender was made aware of the fact that it was a family loan behind a trust but the evidence does not enable me to go that far on the facts which I have.

75. Her evidence in relation to the units she holds as result of her employment and the various transactions she has had with her father in the context of loan repayments was also unsatisfactory. I did not have the impression that she was an entirely transparent witness in relation to these matters.

76. In terms of overall credibility, I do not find S to have been an entirely reliable witness in terms of these arrangements and, in particular, her knowledge of the trust arrangements.

77. As to her future position, S has no earned income and relies on the return which her investments are producing, currently just over £67,000 per annum gross. Her sickness pay has now stopped and, aside from unearned income, she is dependant on the disability benefit she receives on A's behalf and child benefit together with child support paid by C. Mr Boydell has calculated her annual net income to be slightly in excess of £55,000 as against an annual budget presentation of almost £170,000 for herself and A. She has known for a long time that the medical insurance payments would cease in March this year. She receives ad hoc support from her father as she has done over a number of years but it is clear that no real thought has been given as to how she will be in a position to fund her domestic economy in the Fulham home going forward. She told me about a couple of enquiries she had made locally about employment but I had the impression that this was no more than a tentative enquiry in terms of 'putting the word out' that she was looking for some form of part-time work. I accept that she is currently limited by her various medical ailments (and they are not insignificant in terms of her ability to sit for long periods of time at a desk) but I still have no clear idea of how she intends to manage financially in future. She has thought about converting the basement of her home into a separate self-contained flat which she could rent out to a tenant. I have no details about what that might cost or what it would produce once tax had been paid on the rental income. She has plainly had discussions with her father about waiving the repayment of the debt due to the S Trust. Her understanding that she is likely to achieve that waiver suggests to me that her father is in a position to influence the decisions which the corporate trustee might make in future. I accept that A has not received any direct benefit from the S Trust to date over and above those sums which have been made available to her mother for what is probably their joint benefit (said now to total £282,808). She is nonetheless a beneficiary of the trust. I know very little about the wider financial position of S's parents but it seems that me that, in the context of the present application, I cannot ignore the existence of these trust funds as a *potential* future resource of this child,

notwithstanding that the primary responsibility for her care lies with her parents. The fact that the trustee appears to be considering a request to waive almost £300,000 of secured borrowing for the benefit of S and A speaks for itself.

78. I cannot absolve S entirely of unwise spending on her own behalf in the context of the uncertainty over her own financial future. She does not seem to have applied her mind to how she will manage. Her evidence was all very vague in this territory. There does not seem to have been much of a brake in recent months in terms of expenditure on expensive long-haul holidays to the Caribbean and the Middle East notwithstanding that she does not have an income and is significantly in debt to HMRC. I entirely accept that she may well have needed a break but these holidays will not have been cheap.

The respondent father

79. C has clearly found these proceedings stressful, as I am sure has S. He could barely contain his feelings in relation to the extent to which he feels duped by S and her father in relation to the denial of any interest in the Fulham property and his former wife's status as the beneficiary of an undisclosed trust in the divorce proceedings. He believes she was complicit in an obvious attempt to deceive both him and the court. There have been obvious tensions between them in relation to the arrangements for A and the division of her time between the two households. That tension has, I find, coloured his approach to this litigation which he now plainly sees as a war of attrition to the bitter end. The fact of his default in respect of the original arrangements speaks for itself. S was obliged to issue enforcement proceedings when A's maintenance payments stopped. He says that he did not have the money to meet those commitments. I have to bear in mind that he had, by then, received a lump sum of £250,000 and he could have set aside provision from those funds to meet the payments due to A. He explained to me that he had to service the rent on a succession of rented properties in order to keep a roof over his and A's head. That is as may be but I am satisfied that he could have found cheaper accommodation given that nothing was being generated by way of income from the business. I suspect that it was his unshakeable optimism that he would deliver on the commercial investment opportunity and his wish to live in a comparable home to that which A shared with her mother which have influenced his decisions about his housing over the last few years. I am also conscious that he has a certain brand to promote in the context of his current business endeavours. He has for many years moved in the world of motor racing, on land and on sea. That is a world which is often perceived to attract a certain glamour and prestige. Whilst he told me that, in latter years at least, his standard of living has been much reduced, I suspect that his aspirations in this context may not have matched the resources available to him. There is no

doubt that, over and above the £250,000 lump sum which has been spent, he has accrued a significant raft of debt. He has now made arrangements to consolidate that debt but it was built up, in part, by expenditure at a time when he was without a visible income stream.

80. I do not doubt that he is financially committed to A. I see no basis whatsoever for Mr Boydell's concern that he may become estranged from his daughter in the future. He loves her and she him. The rather telling vignette about the nursery school fees is one example. C told me that he had made specific arrangements with the headmistress of the nursery school to pay the arrears in respect of the one term's fees in respect of which he fell behind. That arrangement had been accepted. Subsequently A's grandfather contacted the nursery and put them in funds for that term. C sees this as having been wholly unnecessary and I am sure it has informed his views about the control which S and her family will seek to exert over him in terms of the trust arrangements she is now proposing for the Kingsley Napley funds which each holds.

81. If C's business ventures are successful, and if the expected equity injection had already been paid as anticipated, I suspect that I would not have spent this last week dealing with this case. It has already absorbed an astonishing amount of the funds which would otherwise have been available to meet A's and the parties' future needs and expenses. I have concerns for *both* these parties in terms of what the future may hold. In one sense, each can only hope that things may get better in the coming months and years. C continues to cling to the investment of the time, energy and money which he has poured into the V Group in the expectation he will yet 'pull it off'. I sincerely hope for his sake (and A's) that he does. S has the security of a home to which both she and A are deeply attached. She intends to use part of her share of the settlement funds to redeem the mortgage and invest in the property to ensure it generates an income for her in the future. I know not what contribution she will be able to make to her own economy through earnings in the future. However, it is reasonably clear that she will never earn again at pre-2010 levels. She has had much support, financial and other, from her father in the past and, whatever future calls on it there may be from her parents in due course, there is a valuable trust fund of some £4 million of which she, with A, is a beneficiary along with her brother. I appreciate that those funds will reduce if and when the trust loan on her home is waived but her status as a beneficiary remains and I see little prospect of her father removing her or A as a beneficiary once these proceedings are concluded. Notwithstanding that GM has said that the trustee regards S's parents as their principal beneficiaries, there is no evidence before the court in relation to their resources outside the trust. I do not have the impression that her parents are struggling financially. PS is clearly an astute businessman who has navigated his way with the assistance of experienced financial advisers through a number of tax efficient

transactions. He is likely to have funded the creation of the S Trust whether or not this was undertaken through the intervention of a third party referred to in GM's disclosure.

82. Where, then, does this leave me in terms of a resolution of these proceedings ?

My conclusions and award

83. I do not accept the primary position advanced on behalf of C that I should make no order at all in relation to the Kingsley Napley funds and simply leave each of the parties to apply them as they see fit. In my judgment there needs to be formal mechanism for ensuring that A continues to benefit from at least a significant element of those funds. I accept that, whilst held legally and beneficially by the parties, they were always intended to ensure a stable financial base for her future. I cannot believe that C, throughout the five years during which he fought for that settlement, believed that he was going to benefit personally from any division of that award notwithstanding the circumstances of the breakdown of his marriage. I accept that he made a significant contribution towards securing those funds for A and, whilst not held now as a matter of law for her exclusive benefit, they would not have been paid over but for the needs generated by the circumstances of her birth. To the extent that those needs include a secure roof over her head, each of her parents will inevitable benefit personally. There is nothing inherently objectionable about that in principle. Indeed, it is much for A's benefit to live with each of her parents in a home they have chosen and in which they feel happy, comfortable and secure. There will always be limits in terms of what can be afforded and I have to work within the parameters of the available assets as I have found them to be.

84. I trust each of these parents to look after their daughter but I regard the history as informing, to an extent, the future. I do not know what will happen in terms of C's business and I could not justify the expense of postponing a decision for the next few months in order to see what happens. In these circumstances, I take the view that there needs to be some tax efficient ring-fencing of the settlement monies which each holds. I do not consider it appropriate to require C to alienate his ownership of these funds, or the majority of them, into a specific trust vehicle where their value to him will be expunged entirely. In my judgment such a Draconian outcome would require evidence of an egregious course of deliberate financial misconduct before it could be justified. He may have mismanaged his finances in the past to the extent of building up debts. The same might be said of S's current tax liabilities although I accept that these debts arise in a different context of tax mitigation and not as a result of discretionary expenditure. C has now restructured both his personal and commercial affairs. He has a manageable programme of debt repayment which I am satisfied he can meet going forward even without the

promised investment materialising. His evidence was that, if he liquidated the business and sold the racing boats, he was likely to clear funds of c. £1 million. Even if that is an ambitious figure reflecting some sort of commercial brand value, I am satisfied that on a liquidation he will see a financial return although I cannot determine the extent of that return. He will inevitably have to repay the outstanding debt of some £150,000 which he owes to his solicitors in terms of costs incurred in the divorce proceedings. If he does not, they will doubtless be first in the queue to sue for recovery. It is much to their credit that they have allowed him this respite for as long as they have given the visible state of his finances and the uncertain outcome of this litigation. Thereafter, if needs must, he must return to the employment market and do what he can to secure a job, just as S will, subject the limitations on her earning capacity.

85. Whilst I have considered carefully the structure of a section 89 disability trust as Ms Wass has set it out in her evidence to the court, I reject that solution for these reasons.

86. First, it will be disproportionately expensive to administer on an ongoing basis and, even if mitigated in part, it will have tax consequences for both the parties and the trustees. In particular, A's parents will be assessed in respect of both income and capital gains tax on an annual basis if monies are preserved in the trust for A's benefit until she is 18 years old, as her mother proposes, whether or not the child herself has benefitted from distributions: see her response to an email sent overnight on the penultimate day of this hearing. In addition, I accept that there are real uncertainties about how HMRC would treat co-ownership of a property between a trust maintained for A's benefit and each of the parties. HMRC may well seek to challenge the tax protection afforded by any formal trust set up as the vehicle for co-ownership of property and these parents may not have the financial resources to engage in the protracted litigation which could ensue. It is the very last thing which either needs in the circumstances of this case. Even if C's financial shoulders are then sufficiently broad to afford yet more litigation, it cannot possibly be in A's longer term interests to expose family money to that risk.

87. Secondly, and aligned with my first reason, I cannot see how such an arrangement would work effectively, or at all, given the need to interpose a third trustee between the nominations of S and C. These parties are very likely to disagree about how amalgamated funds deposited into a single trust fund should be operated. There will be a high level of conflict over the administration of those funds for so long as one party retains the right to object to the use by the other of their deployment. The professional trustee who is left in the middle to determine the appropriate exercise of the trustees' collective fiduciary powers will be in an unenviable position and probably

throughout the life of the trust. Managing these issues will only increase the costs charged by the trustees to the detriment of the underlying trust assets. Such disputes are likely to further polarise the positions of these parties. That cannot possibly be in A's best interests when what is so obviously required is some form of *rapprochement* between them as her parents. It is likely that they will share responsibility for this child for the rest of their lives given her difficulties. Whilst I accept that the provision of the Kingley Napley funds was never intended, or calculated, to extend beyond their respective lifetimes, each will need to make carefully informed decisions about their own finances if they are to secure her future for a time when she can no longer look to her parents for whatever support she will then require. There is not enough money in this case to give A the certainty of a secured future but needlessly diminishing what assets there are by requiring them to be placed into a formal trust structure with all that will bring seems to me to be counter-intuitive. Had the parties been able to settle matters by consent on this basis, I doubt that I would have stood in their way and I would have been very likely to approve a consent order. However, they are not agreed.

88. Thirdly, in my judgment there is merit in the submissions which Mr Webster makes about a fundamental unfairness to C if, in the teeth of his objections, he is to be denuded of what might be the only significant capital he will hold going forward. Just as S has her own entitlement to a family life with A free from unnecessary restrictions, so, too, does C have Article 8 rights. Those rights include the peaceful occupation of a family home which he will share with A. The court should only interfere with those rights if it is both necessary and proportionate. Financial considerations will undoubtedly dictate to an extent the type of property he can buy for himself and A but, subject to that principle, so far as possible the choice of that home should be his. Just as S will be free to form another relationship in the future, so is C entitled to carve out his future path with a partner of his choice. I would regard it as an inappropriate interference with those Art 8 rights to family life were *either* of these parties to have to seek the permission of trustees to permit a future cohabitee or spouse to share a trust property in circumstances where that course is avoidable.

89. I believe there is a middle way through this impasse which provides sufficient security to address S's concerns whilst affording C the autonomy which he seeks. It is informed by the course which these parties were considering before negotiations were abandoned.

90. I propose to make an order in the following terms:-

Child maintenance for A

(i) Child maintenance for A will be paid at the rate of £2,000 per month commencing from the date of the payment due following my order. That is the sum which S seeks and I regard it as an appropriate figure in all the circumstances of this case. Whilst I had initially considered Mr Webster's figure of £1,500 per month to be an acceptable offer, I have now reconsidered the position and propose to make an order in the sum of £2,000 per month. I do so for the following reasons.

(ii) It seems to me that fairness and consistency dictate that I should follow the terms of the May 2016 consent order as closely as I can since that order reflected both the agreement which the parties had reached between them and the terms of an order which had been endorsed by the court. In that order, agreed at a time when there was no certainty over the quantum of the Kingsley Napley claim, they had agreed that C should pay child support for A at the initial rate of £2,500 per month for the first six months rising to £3,000 per month with effect from the payment due at the end of September 2016 (para 27). It is clear that this sum included his half share of the cost of employing the nanny whom they then shared (para 11). C was also to be responsible for the nursery and school fees (para 28). The payments in respect of child support were to be index-linked in the usual way (para 30). Thus, the value of the 2016 order to S today would have been £3,323 per month or £39,876 per annum instead of £24,000 per annum which she now seeks. This lower figure is intended in part, I suspect, to reflect the fact that C will be meeting the costs of his own nanny going forwards as he did recently when A stayed with him. I accept that he can no longer rely on his mother's support and is likely to incurring nanny costs on a regular basis in future. Within the budget he exhibited to his Form E in October last year (2019), he estimated those costs to be c.£10,000 per annum. His most recent statement sworn in July 2020 suggests that a special needs-qualified nanny might be slightly more expensive[4]. S's budget prepared in February 2020 included a figure of £3,056 per month (£36,672 per annum) for nanny costs based on A spending two-thirds of her time in her mother's home. The child support of £1,500 per month which C has been paying since September 2019 was a figure agreed at a time when he had no regular salary or income. Since then he has received consultancy payments for three months. He himself accepts that if he is unable to start drawing an income from the company very shortly, he will have to look for employment. On the basis of the evidence which I heard, his expectation is that he will shortly be in a

[4] He refers to a figure of some £1,800 for 9 days cover

position to recover significant sums owed to him by the company once the inward equity investment materialises. He suggested during cross-examination that he might be able to take an annual salary of up to £200,000 once the investment materialises. If it does not and he has to seek employment elsewhere, there is no direct evidence of what he might earn but, during the course of his oral evidence, he suggested he would expect to earn a gross income of between £150,000 and £200,000 per annum. Those were the figures put to him by Mr Boydell and he told me that, although he had been out of the marketplace for a number of years, it could be "a lot higher" than that bracket. If he does nothing more than liquidate the company and sell the three boats, he expects to recover c.£1 million. Thus, it is entirely reasonable to work on the basis that he will be in a position to afford to make a greater contribution to A's expenses once he starts to receive an income. S's current offer is predicated on the basis that she will be responsible for meeting A's needs over two-thirds of the year. That suggests an annual budget of £36,000 over the course of 12 months or £3,000 per month.

(iii) Mr Webster submits that the budget advanced by S in February 2020 in respect of A's needs amounts to £4,961 per month (£59,532 per annum) inclusive of nanny costs or £1,905 per month (£22,860 per annum) without those costs. On this basis, he contends that a contribution from C of £1,500 per month (just under 80%) is reasonable given that A will be living in his home for one third of her time. I have looked carefully at S's budget for A. Whilst it includes specific costs referable to her current extra-curricular activities and holidays, it makes no provision by apportionment for the running expenses of the Fulham home for A's benefit or the cost of maintaining the car which is obviously required for ferrying her to and from her various appointments and activities. Given the encouraging progress which A has made to date which has far exceeded the earlier prognosis which her parents were warned to expect, it seems reasonable to anticipate that she will gradually expand her activities towards different horizons if that progress is maintained. It seems to me likely that her costs will inevitably increase in the homes of *each* of her parents as she gets older although I cannot at this stage predict what those costs are likely to be. In these circumstances, it seems to me that the best indicator in respect of a fair award for child maintenance is the figure settled on by her parents in 2016 as a fair and reasonable estimation of those costs (i.e. £3,000 per month reduced on a pro-rated basis to £2,000 per month). That is a budget which seems entirely appropriate to me given what I know about this child's current needs.

(iii) These payments will be index-linked on an annual basis as envisaged by the original 2016 consent order.

Security for the child maintenance payments

(iv) From C's share of the settlement monies, a sum of £150,000 will be set aside as a secured maintenance fund. C will be entitled to draw down against that fund at the rate of £24,000 per annum (£2,000 per month) between now and A's 18th birthday in order to meet the child maintenance payments. That sum will not cover the entirety of the period between now and A's majority but I am confident that, when that fund is exhausted, C's means are likely to be such that he will be in a position to pay child support from his income or to secure a top up fund. I propose to leave the mechanics of this arrangement to the parties. For example, they may consider it is more convenient if the secured fund is set up in such a way as to allow S to draw directly from the designated account on a monthly basis up to the agreed limit rather than C making the withdrawals and corresponding payments to her.

Housing funds

91. Provision in a similar amount will be made from the remaining Kingsley Napley settlement monies retained by each of S and C.

(i) A sum of £900,000 will continue to be preserved until such time as C is in a position to purchase a property of his own. I anticipate that this will occur next Spring 2021 when his current tenancy expires.

(ii) Any property he acquires (and it must be a property in this jurisdiction) will be held in his sole name and will be subject to a charge in A's favour. Because of her age, that charge may need to be held by a security trustee. The charge will be fixed in an amount which is referable to the percentage which is equal to £900,000 of the gross purchase price of that property.

(iii) C will be permitted to raise mortgage finance in order to acquire his property but the value of A's charge must not be reduced below £900,000. For these purposes, he will be entitled, if the lender so requires, to use a sum of up to £225,000 as *security* for the interest payments over a fixed term mortgage of up to 5 years provided that no part of that £225,000 is used to meet the interest. In the event that the bank draws on that security in the event of default by C in servicing the interest, he will be required to indemnify A for any such sums. Thus, he can use up to £225,000 in order to secure the mortgage by way of security for future payments but this sum will remain part of A's entitlement to £900,000 or the percentage which that sum bears to the value of the property on a subsequent sale.

(iv) The mortgage lender will wish to take a first charge over the property. A's charge will rank behind that first charge but the mortgage lender must

be informed in advance that there will be a second charge and that the purpose of that second charge is to protect the investment of settlement monies secured for her benefit which C is proposing to use towards the purchase price.

(v) For the avoidance of doubt, C is not to be permitted under the terms of my order to raise mortgage finance for any purpose in connection with a future investment in his commercial or business activities.

(vi) S will be permitted to use funds from her share of the Kingsley Napley settlement monies to redeem her existing mortgage on the Fulham property. Thereafter, any surplus held by either party in their respective shares of the Kingsley Napley settlement monies will be theirs to deal with as each sees fit. However, those funds must be preserved until a final order has been agreed and approved by the court.

92. Mr Boydell, in a written submission addressed to the court after the conclusion of the hearing on Friday, has expressed a concern that the creation of a charge through a security trustee may create a self- interested trust which has none of the tax advantages of a section 89 trust (i.e. it may be subject to an entry charge, 10 year periodic charges, and an exit charge). As explained above, there is no guarantee from Ms Wass that these charges can definitely be avoided in respect of a section 89 trust were HMRC to challenge the arrangement. The parties had both envisaged the need for further expert input before the completion of the underlying trust or charge documentation. They must now take that advice and endeavour to reach a compromise on an acceptable form of charge. In the event that there are issues which remain to be determined in respect of the form of that charge, I will hear further submissions should that prove necessary. The important distinction between the trust and charge routes is that I have determined that C should retain ownership of his share of the settlement funds subject to (i) the secured maintenance fund, and (ii) the £900,000 investment which A will make in the home she shares with her father. I propose to leave him free to make testamentary and other provision for his daughter in accordance with her needs and his financial circumstances as they may change from time to time in the future.

Security for A in the event of the death of either of her parents

93. Those same, or similar, obligations will apply to the sum of £900,000 which S will use to secure the discharge of her mortgage on the Fulham property. She may well remarry in the future. I will expect her to look to A's longer term interests in this event just as I look to C in similar circumstances. As a condition of the release of any funds to these parents, I am going to require each to put in place an acceptable form of life assurance in an agreed sum. A

will be the beneficiary of those policies and each will be responsible for the premiums on their separate policies. I am told that she was a previous beneficiary of life cover of £2 million prior to the current litigation. Because I have no evidence of the likely cost of insurance or the variables which might affect each policy, I am going to leave it with the parties and their advisers in the first instance to determine the sum to be insured. I would like to see at least £1 million in terms of life cover (i,e, a total of an additional £2 million of security in the event of both parents predeceasing A during the life of their respective policies). If they settle on a different sum having obtained estimates for such cover, I will not seek to stand in the way of such an agreement provided it is a reasonable sum in all the circumstances of the case.

94. In terms of drafting, I accept that it may take time to secure the advice which is now required. I hope this can be done before the middle of August 2020 so that I can approve the order before the start of next term. Any order will obviously need to include whatever recitals or undertakings may be necessary once advice has been taken.

95. Mr Boydell makes the point that a trust arrangement may well be required when A is 18 years old. I take the view that the situation can be reviewed if necessary at that juncture. Much will have changed in terms of both A's prognosis, her future needs, and the parties' respective financial positions. I continue to hope that, by that stage, they might be able to act as responsible parents and chart their own way forwards in terms of this lovely child.

Order accordingly