Neutral Citation Number: [2023] EWHC 3531 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. ZC20D00018

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 6 November 2023

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

AT	Deemed Applicant
- and -	
BT	Deemed Respondent

MR T BISHOP KC and MRS J KAVANAGH (instructed by Thomas Mansfield Solicitors) appeared on behalf of the Deemed Applicant.

MR S LEECH KC and MR J RAINER (instructed by Payne Hicks Beach LLP) appeared on behalf of the Deemed Respondent.

J U D G M E N T

MR JUSTICE FRANCIS:

1 The parties to these financial remedy proceedings are AT and BT. For the sake of convenience, and meaning no discourtesy to either, I shall, in this Judgment, refer to the parties respectively as "the wife" and "the husband".

2 By a Form A dated 21 January 2021, the husband made an application for a financial remedy order. At an earlier directions hearing I ordered that, since, in reality, the wife was the person seeking financial provision from the husband, the wife should henceforth be treated as the applicant. I suggest that consideration should usually be given at an early directions hearing to such an order in the relatively unusual cases where the person who makes the first application is, in reality, the respondent to the financial remedy application.

3 In these contested financial remedy proceedings, the wife has incurred costs of £833,295 and the husband has incurred costs of £904,352. There have been contested and very difficult proceedings between the parties in respect of their children and, in those proceedings, the wife has incurred costs of £570,000 and the husband incurred costs of £550,658. Accordingly, the parties have, together, incurred costs which stand, globally, at £2,858,305.

4 This case raises issues not only of computation but of the proper approach of the court to the sharing principle and to the principle of compensation. In essence, the husband maintains that this is a pure needs case and the wife asserts that this is a full sharing case.

5 As is usual in these cases, there are many relatively minor issues between the parties which need to be resolved, but the headline difference between the parties is that the wife seeks a lump sum of £9.145 million and the husband offers a lump sum of £3.545 million. In addition, it is agreed that the wife will retain a property in Country X referred to by everybody in this case as "SB", a property with an agreed value of £195,000, which I round down to £190,000 having taken off the notional costs of sale.

6 The fundamental differences between the parties may be summarised thus. The wife asserts that significant sums held in trust are, in reality, assets to which the husband has access, and that they should form part of the sharing principle for which she contends. The wife seeks an equal sharing of the assets which she asserts form part of the computational exercise. While the wife agrees that some of the assets are non-matrimonial in character, she contends that the pre-marital assets have become, to use her counsel's phrase, "matrimonialised". Moreover, she contends that, to the extent to which the doctrine of pre-acquired assets might usually justify a departure from equality, that departure is rebutted by the application of the doctrine of compensation.

7 The husband asserts the sums held in trust are non-matrimonial assets and should not form part of the court's computation and, in any event, he contends that this is a needs case and that the wife's claim should be approached on that basis. He relies in particular on the fact that a significant part of the portfolio does not form part of the matrimonial assets because they were pre-acquired by him. I should say when, as I have just stated, the husband asserts that the sums held in trust are non-matrimonial, it is common ground that the N Trust itself, to which I shall return, is a nuptial settlement. The husband's case, however, is that that trust is a generational trust which is there for the benefit of his children and their descendants, and it is in that context that I have suggested that he has characterised it as non-matrimonial.

8 I shall deal with matters in this *ex tempore* Judgment under the following headings: (a) The Applicable Law; (b) Background and Chronology; (c) The Children; (d) The Parties; (e) The

Former Family Home; (f) The Date Cohabitation Commenced; (g) The Antenuptial Contract; (h) The Assets and Liabilities, and then I will go on to consider, respectively, the wife's case and the husband's case, and, after that, discussion to inform the parties of my decision.

9 The wife has been represented by Mr Tim Bishop KC and Jennifer Kavanagh, instructed by Thomas Mansfield Solicitors. The husband has been represented by Stuart Leech KC and Joe Rainer, instructed by Payne Hicks Beach. I would like to thank all counsel, and of course the solicitors working so hard behind the scenes for the way that they have presented this case to the court.

1 0 During the course of this hearing, I have heard oral evidence from the wife, the husband, ET (the husband's brother), two valuers of the former family home, namely Mr White, the jointly instructed valuer, and Mr French, instructed by the wife, and finally from the jointly instructed accountant, Sofia Thomas.

The Applicable Law

1 1 This application is made, of course, pursuant to the Matrimonial Causes Act 1973. Section 25 of that Act provides as follows:

> "Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 [F2, 24A, 24B and 24E].
>
> (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 [F3, 24A [F4, 24B or 24E]] above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
>
> (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 [F5 , 24A [F6, 24B or 24E]] above in relation to a party to the marriage, the court shall in particular have regard to the following matters—
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
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> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
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> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (d) the age of each party to the marriage and the duration of the marriage;
>
> (e) any physical or mental disability of either of the parties to the marriage;
>
> (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the

family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit F7 . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters—

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

(e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.

(4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—

(a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child."

1 2 This very familiar section provides the court with a wide discretion. Section 25 has proved to be remarkably adept at moulding itself to suit the current perception of fairness. Since the seminal case of *White v White* in 2000, the principle of the yardstick of equality has been the bedrock in seeking to achieve a fair outcome between divorcing spouses. The starting point is, of course, that the court's first consideration is the welfare of any children whilst under the age of eighteen.

1 3 Numerous judicial constructs have appeared over the years, in a way to try and shape or mould section 25. In the seminal case of *Miller v Miller*: *McFarlane v McFarlane*, Lord Nicholls in the House of Lords said, and I quote:

> "… fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party."

1 4 He continued:

> "In most cases the search for fairness … ends [there, as] In most cases the available assets are insufficient to provide adequately for the needs for two homes."

1 5 In referring to compensation as he did, Lord Nicholls articulated that he was talking about compensation for economic disadvantage caused by the way the parties conducted their marriage, for example, where the wife has given up a career to look after children. In this case, as I shall address later in this Judgment, the wife asserts that a fair outcome requires her to be compensated for what she asserts to be her marriage-generated disadvantage.

1 6 In a case where, such as here, there are disputes of fact allied to a challenge of a party's honesty, it is important for me to remind myself of the rule in the case of *R v Lucas* [1981] QB 720, which was adopted in the Family Court in *A County Council v K, D and L*. The principle is that if the court concludes that a witness has lied about one matter, it does not follow that they have lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.

The Background

1 7 The wife is aged fifty-three and the husband is sixty-one. They are both nationals of Country X, although the wife identifies as being a national of country Y and the husband has dual foreign nationality. The wife asserts that cohabitation began in 2003. The husband asserts that cohabitation began in late 2005 or early 2006. As I shall explain later in this Judgment, the wife contends that there was a substantial accrual of assets between 2003 and 2006, an accrual in which she expects to share equally. This is why the issue of the date of cohabitation has loomed large in this case because it is, understandably, perceived by the parties as being relevant to the accrual of capital during the disputed years.

1 8 The parties were married in Country X on 8 December 2007. They signed an ante-nuptial contract the previous day. The husband asserts that this contract is of central importance in terms of the principles that I should now apply to the financial remedy claim. The wife asserts that, for numerous reasons, in particular that she was required to sign it the day before her wedding, the contract should be of no effect.

1 9 This was a second marriage for both parties. The wife had no children from her first marriage. The husband has three children from his first marriage, who are now aged, respectively, thirty-one, twenty-six and twenty-five. They are now more or less financially independent, but they do have some importance to my consideration in that the husband

asserts that he has made what he calls "generational provision" for them through the medium of a trust, a subject to which I return later in this Judgment.

20 The wife was some four months pregnant when the parties married. It was a difficult pregnancy for her and she contends that her state of health is also a relevant feature of the approach which I should take to the antenuptial contract. Happily, the parties' first child, LT, although some seven weeks premature, was safely delivered in March 2008 and has enjoyed a healthy childhood. She is now fifteen years old and lives with her father in the parties' former family home.

21 The parties' son, VT, was born in March 2010, and so he is now thirteen. He also lives with his father at the parties' former family home.

22 There were bitterly contested proceedings in respect of the children. It is neither appropriate nor necessary for me to say very much at all about the tragic dispute between these parents regarding their children. The contested Children Act proceedings came before Keehan J in March and April 2022 and, on 1 April 2022, he ordered that the children shall live with their father and that there should be no contact between the mother and VT until the beginning of May 2022. Thereafter, contact between the mother and VT was to be for three hours on the first Friday of each month, such contact to be supervised by an independent social worker. The mother was not otherwise to have contact with VT, not even telephone contact. So far as LT was concerned, the judge ordered that there should only be indirect contact, by email, although there could be telephone contact at LT's request. A number of prohibited steps orders were made against the wife to which a penal notice was attached.

23 The Judgment and the orders made by Keehan J must have been devastating for the wife. The judge made significant findings against her during the course of his twenty-six page Judgment. He found the wife to be a liar on a number of important issues, and of course he reminded himself of the rule in *R v Lucas* to which I have already referred, and to a number of authorities which have followed that landmark decision.

24 To what I regard as his very considerable credit, the husband told Keehan J that, in spite of the very serious findings which were made against the wife, the last thing that he wanted was to keep VT away from his mother. The husband also expressed the hope that LT would be reconciled with her mother. As I shall set out later, this issue is relevant to the subject of the wife's housing needs.

25 The family has plainly been devastated by what has happened and it is a rare case where an experienced judge makes an order which, in effect, prevents a parent from having what might be regarded as a normal relationship with their children post-divorce. In short, Keehan J made a finding that the wife represented a real risk of harm to both children. The husband asserts forcefully through his counsel that these financial proceedings have, at times, felt like a continuation of the wife's campaign against the husband. The husband contends that the wife has adopted a position that erased any possibility of settlement, refusing to compromise on the most anodyne issues. Her pursuit of disclosure, he says through Mr Leech, has been unrelenting.

26 Complaint is made on behalf of the husband that, following service of the husband's updating disclosure of August 2023, his solicitors wrote to the wife's solicitors encouraging discussions on an open or without prejudice basis. I am told that no response was received to that request. Whilst I should not know anything about an attempt to have without prejudice negotiations, the failure by the wife to respond to this invitation to negotiate is unfortunate and may, in due course, be relevant to any costs application that may be made.

2 7 Since the demise of the *Calderbank* principle, judges of this division have made clear time and again that the parties have a duty to negotiate, and that the court will not hesitate to use their powers to make costs orders where that is appropriate.

2 8 I am clear in my view that, in these proceedings, I must make findings based on my own perception of the witnesses and their evidence. Of course the findings which Keehan J made, and in particular his order, are an essential part of the background to this case. In these financial proceedings, however, I shall only make findings of dishonesty based on what I have read, seen and heard in these proceedings, and I will not do so simply because another judge in other proceedings made those findings in very different circumstances.

2 9 However, I would like to say this about both of the parties in these proceedings. Both of them have behaved with dignity and calmness at all times in my court, and I pay tribute to that given my knowledge of the background, particularly of the Children Act proceedings. I had expected that there would be many obvious tensions. No judge should ever underestimate the pressure that is on litigants in these kind of proceedings, particularly when that is set against the background of what they have both already been through. Sometimes, both the husband and the wife, when giving evidence, were given to answer direct questions in a narrative and indirect way and, on occasions, more particularly the wife than the husband, she was prone to ramble in her answers and to give answers that were not relevant to the question.

3 0 The wife qualified as an accountant with Firm Y and was recruited into a top private equity house called FTO in Country X at the beginning of 1997. At this point, the wife was twenty-seven years old. The parties met in Country X where they were both working for FTO. It is the wife's case that, by the end of 2002, she was already engaged in a serious relationship with the husband. She says that they commenced cohabitation shortly thereafter, in 2003.

3 1 The husband agrees and acknowledges that the wife was a very successful member of the FTO team. At the time she was the youngest ever partner and the highest paid woman ever in the company. It is common ground that the wife was required to give up her position in 2007 because the partners at FTO were concerned about the conflict of interests arising from her engagement to the husband, who, by this time, was working as a senior executive at a rival private equity business called BTI. It is also important to note, in this context, that the husband was one of the founding partners of FTO; plainly FTO would have been unhappy about his departure to a rival private equity house.

3 2 As I have recorded above, the wife became pregnant and, in fact, the date of the wedding was brought forward because the wife wanted any children that they might have to be born in wedlock. As I have already recorded above, the wife had a difficult pregnancy, although, thankfully, LT was safely delivered in March 2008.

3 3 The parties' son, VT, was born in March 2010 and the following year, in 2011, the family relocated to England.

3 4 Thus there are three key events as far as the cessation of the wife's career is concerned. First, she had to leave FTO because of her relationship with the husband. Secondly, she had a difficult pregnancy, then a baby to look after, and LT was, of course, still a toddler when VT was born exactly two years after LT. Thirdly, the family's relocation to England still further impacted upon her career.

3 5 Mr Leech took some time in his cross-examination of the wife trying to assert that the wife had decided to leave her employment, that this is something that she wanted. As I said to him at the time, it seems to me unimportant whether the wife wanted to go back to work, but could not because of the husband's move to BTI, or whether the wife chose not to go back to work in order to look after their child, and in due course their children. It is, in my judgement, an important feature of this case that the wife's career, which had been on an immensely successful trajectory, was brought to a halt in 2007.

3 6 I turn to some of the authorities in relation to compensation later in this Judgment, but any analysis of this case must conclude that the wife terminated what was already a glittering career at the age of only thirty-seven, for reasons directly connected with her relationship with the husband. I do not criticise anybody about this, it is simply a fact, and an important mainstay of the wife's case.

3 7 Sometimes in compensation cases one is faced with what are, frankly, speculative assertions. This is not a case of somebody having had a good school career and a good degree, with good prospects; this is a case of somebody with a proven track record of excellence and achievements where her career was brought to a grinding halt for reasons entirely connected with the marriage. In my judgement if this is not marriage-generated disadvantage, then that concept has no place in our law. Given that this concept was identified by Lord Nicholls in *Miller* and *McFarlane*, to ignore compensation in this case would, in my judgement, be an affront to the proper application of the compensation principle.

3 8 It is asserted on behalf of the wife by her counsel that, and I quote:

> "In all, [the wife] sacrificed her major career to support [the husband] in his career and to care for the family. But for that sacrifice, it is likely that she would now have very substantial wealth held in her own name, generated over the past sixteen years using her valuable skills."

3 9 It is important to bear in mind that in this case, as in almost all aspects of family and civil law, judges work on the basis of the balance of probabilities, in other words, is it more likely than not that something would have happened? I have no difficulty in finding that it is more likely than not that, but for the sacrifices referred to above, the wife would now have very substantial wealth held in her own name. This, as I have said, is not speculation.

4 0 How I should address this issue of compensation is something that I cannot fully articulate until I have dealt with the other headline issues and, in particular, that of computation.

4 1 When the parties relocated to England in 2011, they initially lived in a town west of London. In July 2014, they moved to the family home, where the husband and the children still live. From 2018 to 2020 the wife lived abroad with the children, both of whom had previously attended school H in London. During this time, the husband remained at the family home as he was working in London.

4 2 It will be obvious from what I have already said above about the Children Act proceedings, that the end of this marriage was a very difficult time for everyone in the family. The end of the marriage had been described in these proceedings as very acrimonious. On the basis of what I have read, I suspect that is something of an underestimate. This acrimony, I forcefully suggest, must now stop, and it is something that frames the decision that I have come to and which I will communicate to the parties shortly. It is, in my judgement, essential that I now aim to draw a line underneath all proceedings between them.

4 3 This has caused me considerable difficulty because there are all sorts of known unknowns and unknown unknowns. In a case such as this where there are all sorts of tax unknowns, I would usually take the route of indemnities or holding money in Escrow to meet the possibility of further possible liabilities. I deal with the detail about all of that later, but I am quite determined that this family now needs some peace. The parties need to be able to look forward to their future without having to have constant correspondence passing between their solicitors. I mean this with no disrespect to the solicitors at all, but solicitors' time is expensive and I do not blame the lawyers at all for the extent of the costs in this case, it has been a difficult case, but it is not only now a question of it is necessary to save the parties money in terms of what they are spending on their lawyers, but they must be spared further acrimony and litigation. Moreover, I do not see how the children can begin to heal, for healing is what they need, until the overlay of the litigation has passed.

4 4 The husband, as I have mentioned already, very fairly expressed the hope that the wife's relationship with the children can be repaired. I am sure that, so far as the wife is concerned, there is absolutely nothing more important in her life than this. I dare say that, following the judgment of Keehan J, she has had a lot to reflect on and to learn, and it is not for me to speculate in these financial proceedings whether she has put herself along that curve of learning or not, but I am quite sure that it is hard for anything to start to improve in this case until all of these proceedings are over.

4 5 It is inevitable, when I take that approach though, that I am going to have to take some risks with the future figures, by which I mean that there are financial uncertainties regarding computation. There is enough money in this case for me to be able to do that in a way which I believe is fair. Fairness is, of course, always the goal. Fairness in this case, I am very clear, has to include a clean break, a clear end to the litigation between the husband and the wife, which will mean that they will not have to spend time with their solicitors, it will mean they will not have to be waiting upon contingent tax liabilities, only for the husband, for example, to have to make an explanation to the wife that this tax or that tax is due and for questions to be raised about it. There has been mutual mistrust and it is time for all of this to end and for the parties to go their separate ways. They will, of course, always be the mother and the father, respectively, to LT and VT.

4 6 In 2020, the wife moved back to England, and she and the children moved into a private rented property not far from the family home. The wife issued divorce proceedings on 23 January 2020. There were competing divorce proceedings brought by the husband in Country Y. In due course the husband conceded this jurisdictional battle and Deputy District Judge Stewart made a consent order to this effect on 15 January 2021. I dare say that one of the reasons why the husband wanted proceedings abroad was because he perceived there would be a financial advantage to him in that course. I make no criticism of him if that was indeed his motivation. It is, I suppose, the way of things in acrimonious divorces; the parties are going to choose the jurisdiction which they think is best going to suit their position. In any event, the husband conceded the jurisdictional battle as I have said and at least the parties were spared that fight as well.

4 7 *Decree nisi* was pronounced on 14 August 2021, but has not yet been made absolute. The parties have asked that I list this matter for declaration of *decree absolute* forthwith, and I have indicated that, provided this is with the consent of both parties, I am willing to do this. That is something for counsel to address me on either at the end of this Judgment or in email correspondence over the course of the next few days, but it does seem to me that there are potentially considerable tax advantages in a *decree absolute* now being pronounced. It is

obvious that this couple is going to be divorced and, from my perspective, I think I should say the sooner the better, and I say that with no disrespect to either the husband or the wife.

4 8 Following the conclusion of the Children Act proceedings, the children have lived with their father in the former family home, since April 2022, and the wife lives, at the moment, in private rented accommodation. Astonishingly, her rent is in arrears in the sum of approximately £28,000. Plainly, this needs to be addressed forthwith. Given the millions, that I have referred to above, spent by the parties on legal fees in this case, it is, to me, beyond remarkable that this most basic of needs remains unpaid.

4 9 The wife is not in paid employment and, as I have said, she gave up a position in private equity in 2007. I do not doubt that she has an earning capacity of some kind but, at the age of fifty-three and having been out of the private equity market for decades, I find that she does not have any effective earning capacity in that role. Any income that she will be able to produce now would be modest in the context of this case, although not in the context of an ordinary average standard of living, but I do find that the wife has an earning capacity for, say, fourteen years or so, on the basis that her normal retirement age would be sixty-seven. This earning capacity will, in my judgement, make little difference to any assessment of her needs. I proceed on the basis that if the wife goes out to work and earns money, that is money that is hers in addition to whatever she has in these proceedings. If and when I get to a needs-based assessment, I am not going to include in that any earning capacity. As the parties will shortly realise, when I give my decision, I have not approached this case purely on a needs basis.

5 0 The husband will be sixty-one tomorrow. He lives in the former family home with LT and VT. The property is registered in the joint names of the husband and the wife, and it is agreed that the property should be transferred into the husband's sole name. There is a dispute about the value of the property to which I will turn shortly.

5 1 The husband is, by profession, an accountant, and he has had a very successful career in the private equity market. When he and the wife married, he was aged forty-five and had already been able to amass a considerable amount of capital. There has been a great deal of debate in this case about whether this capital has been "matrimonialised" . I will return to the issue of his pre-acquired wealth when addressing the issue of computation.

5 2 At present, the husband has four income-generating responsibilities. He earns £74,000 a year gross in his capacity as a non-executive director of Group A. He earns £12,000 a year as an advisor to B Limited, plus he earned £10,000 a year as an advisor to CTX, albeit in evidence he told me had now resigned. He anticipates earning £20,000 as a non-executive director of OQ. Thus his total gross income from employment, including B Limited and OQ, is £116,000 a year.

5 3 Even without the huge burden of the cost of these legal proceedings, plainly, the husband spends far more than the net income which he would have from a gross of £96,000 per annum. He has substantial capital on which he can draw of course, to which I will turn shortly. Moreover, he is a sophisticated and skilful presence in the private equity market and will doubtless have all sorts of various capital rewards if and when any of his various investments succeed. In particular, being in private equity, he will have the benefit in the future of carried interest, usually referred to as "carry".

5 4 This case has not required much analysis of the husband's future income or earning capacity. The wife, sensibly, does not make a claim in relation to his future income.

5 5 There is a duty in every case on the court to achieve a clean break between divorcing spouses where that is possible. Sadly, in the overwhelming majority of cases where there are children, that is not possible. Here, however, there is no doubt that there is sufficient capital to enable a clean break. I cannot think of many cases where a clean break is more desirable than it is in this one. These parties have been engaged in draining litigation both from an expense and an emotional perspective. I am, as I said, determined that the order that I make will bring an end to litigation between the parties. They, and the children, must have that.

5 6 I return to the issue of the date of cohabitation. On behalf of the wife, Mr Bishop invites me to find that the parties cohabited from 2003 and that the sharing principle is engaged from that date. I am bound to say that I frequently find in these types of cases that the parties, through their advocates, invite the court to find that there was an exact date when an exclusive relationship, a committed relationship, a loving relationship, call it what you will, commenced, or when cohabitation commenced, and, accordingly, an exact date when the sharing principle is engaged. Most of the time, life is rarely that simple. Living together, commitment, exclusivity of the relationship, love, all take time to develop. In many cases, the date is regarded as crucial because, as here, it would entitle the claimant to contend for a larger share of the available capital by reference to the sharing principle. In this case, the wife contends that the earlier date of cohabitation that she puts forward would entitle her to share in the carry in what is called BTI Fund 1.

5 7 Furthermore, I often find in these cases that the advocates contend for an absolute approach. In other words, they say, "It is a sharing case", or, "It is a needs case". The reality is that many cases involve a blend of both of these principles, as well, as here, the principle of compensation. I remind myself that the statute (section 25) requires me to have regard to all the circumstances of the case. This, I suggest, is a deliberately broad piece of drafting which enables the judge to do what the judge feels is fair. As Lord Nicholls famously observed in Miller v Miller; McFarlane v McFarlane, fairness is an elusive concept.

5 8 I have been reminded by counsel of the familiar cases on the issue of cohabitation. There is no benefit, in this *ex tempore* Judgment, in me trawling through the authorities that are well-known to the lawyers. I have read the authorities which have been put in the bundle by counsel and I have regard to them. What is clear is that to count, pre-marital cohabitation must:

> "… move seamlessly to marriage without any major alteration in the way the couple lives."

5 9 As Bennett J remarked in the *McCartney* case:

> "Cohabitation … normally involves … a mutual commitment by two parties to make their lives together both in emotional and practical terms. Cohabitation is normally, but not necessarily, in one location. There is often a pooling of resources, both in money and property terms."

6 0 I could recite any number of first instance decisions which, in essence, repeat this principle. I agree with the comments of Peel J made in *VV v VV*, where he said that where the date of cohabitation is in dispute:

> "… the court should look at the parties' respective intentions when inquiring into the cohabitation. Where one or both parties do not think they are in a quasi-marital arrangements, or are equivocal about it, that may weaken the cohabitation case."

With respect, I adopt those principles.

6 1 I agree with the submission made by Mr Leech on behalf of the husband that the onus is on the wife to prove cohabitation on a particular date. Although I have said above that it is often difficult to decide exactly at what point a relationship became committed, permanent, exclusive, or what other word is used to describe such a situation, I recognise that I have to decide between the competing positions put forward respectively by the husband and the wife.

6 2 The husband contends that the parties formed their "quasi-marital relationship of cohabitation" in late 2005/early 2006. I recognise that the issue is potentially significant in identifying pre-marital and post-marital assets, or in deciding which of the assets in the case are potentially subject to the sharing principle.

6 3 It is useful to set out some basic agreed facts. It is clear that the husband moved out of his previous family home in 2002. He had previously been married to M. The wife in this case, i.e. AT, contends that the husband lived mainly at his father's home, and only occasionally stayed with the wife. Importantly, in my judgement, it is common ground that the husband was still attempting to see whether he could salvage his marriage with M. I accept his evidence that he felt guilty about leaving M and the three children. Indeed, the wife in this case has given evidence saying that she wanted to be sure that the relationship between the husband and M was over before she became heavily involved. The wife expressed considerable irritation, if not anger, when she found out that the husband had, for the third time, moved back in with M to see whether he could resurrect their failing marriage. Moreover, the husband went on holiday with M and the children in 2004, much to the annoyance of the wife, since he was there, not only with M, but with their children as well, by which I mean M and the husband's children.

6 4 The divorce was not finalised until May 2006. It is clear on the evidence that I have heard from the husband, who I found gave compelling evidence about this, that he was also seeing other women in the period between leaving M and commencing his relationship in a fully committed way with the wife in this case. Of course, only the husband would be able to give evidence about his relationships with other women, but I find as a fact that he was truthful when he said that there were occasions when he did see other women. I find as a fact that the husband and the wife did not move in together in a committed stable relationship in 2003.

6 5 In cross-examining the husband, Mr Bishop forced the husband to concede that he was an unreliable historian in terms of some of the relevant dates. The husband frankly admitted that he had got some of his dates wrong. Mr Bishop pointed to six factual errors that he says the husband made in terms of dates. He met the wife in 1996, not 1998. He joined BTI in 2004 not 2003. He purchased LC in 2006, not 2005. He said that the wife was pregnant in 2007, not 2006. Considerable reliance is placed on the fact that J (his daughter from his marriage to M) was wearing a blue bracelet in a particular photograph. I am afraid that I am not quite sure where that takes the argument for the wife.

6 6 I note that, in her Form E, dated April 2021, the wife says:

> "From around 2005 I assisted BT with the care and upbringing of his three children as they spent alternate weekends and holidays in our care."

6 7 If, as the wife now asserts, she was cohabiting with the husband in 2003, why was she only helping to look after the children after 2005? Moreover, if cohabitation commenced in 2002, why was this secret while both parties were working at FTO, moreover, being kept secret for another three years when the husband was working at BTI? I accept that it is extremely unlikely also that the husband would have taken the wife to stay at his father's property, given that his father was disappointed that the relationship with M had ended and his father disapproved of his new relationship. I do not mean to imply there was anything specific about the wife in saying that the father disapproved, simply that he disapproved that the husband was in a new relationship.

6 8 Whilst, of course, it is possible that the husband and the wife, as the wife contends, and the husband's children, could have stayed at his father's property and not told him, I think this is extremely unlikely, and I do not think that the husband is the sort of person who would have wanted to deceive his father in that way, and I find that it did not happen.

6 9 I also note that the husband went on a trip to Paris with M sometime between October and December 2004. This attempt to save his marriage with M is, I find, inconsistent with him having been in a relationship of cohabitation with the wife since 2002.

7 0 The wife's attempt to set an earlier date for cohabitation was based significantly on a series of photographs. The wife contended that she went on holiday with the husband and his children in 2003. I have looked very carefully at the photographs which have been produced.

7 1 The husband's daughter from his first marriage, J, was born on 26 May 1998. In 2003, she would have been just five years old. It seems to me that it is most unlikely that she was so tall that her head was at the level of the wife's chest as shown in one of the photographs. I have had the advantage of looking at the wedding photographs, and this is one of the dates of which we can be completely certain; it was December 2007. It is, I find, impossible to say that J is four years older in the wedding photographs than she was at the trip that is referred to which was to the husband's father's holiday apartment, which the wife says was 2003, and the husband says was 2005.

7 2 I also find it extremely unlikely that, in the photographs, C, the husband's son from his first marriage, born in October 1992, was as tall as he looks in the photographs at the age of only eleven.

7 3 I make it clear, however, that I am not just relying on this photographic evidence. To do so would be to place too much reliance on photographs. What impressed me the most in arriving at this decision was the clear and, in my judgement, honest way that the husband gave his evidence. It is unnecessary for me to find whether the wife is mistaken or if she is being dishonest in saying that the relationship was already fully committed by the summer of 2003, if not before. I have observed the husband and the wife giving evidence. I have read the papers. I make my decision based on what I have read and what I have seen. This is not to sidestep for a moment the findings of the judge in the Children Act proceedings, however, I regard it as essential that my assessment of the witnesses and their reliability is mine and is not based on findings in other proceedings.

7 4 I also note that there is no evidence of the parties mingling their finances until the purchase of a property in Country X, that is the SB property, which was purchased in 2006. I also note that although the husband settled the B Trust in 2004, the wife was only added as a beneficiary in 2008.

7 5 Accordingly, I find that the husband's account in relation to the issue of cohabitation is far more reliable than that provided by the wife, and I find that cohabitation commenced in late 2005/early 2006.

7 6 The former family home is, as I have said, registered in the joint names of the husband and the wife. The husband lives there with LT and VT. It is said to have been agreed that the property should be transferred into the sole name of the husband. Given all that the children have endured, I have no doubt that stability is in their best interests, and I remind myself that the children are the first consideration of the court. The property is located in a desirable London suburb. It is a modern detached house, spread over three floors, comprising five double bedrooms and four bathrooms, a large reception room, family room and garage, which has a large garden backing on to a Golf Course, and so it affords fine views and is in a peaceful location. The property is described as being in excellent condition.

7 7 The issue about the property is its value. The wife asserts that it has a value of £4.1 million. The husband asserts that it has a value of £3.8 million. In these bigger money cases it is relatively unusual to have to call evidence as to the value. It is easy to suggest in most cases that the sensible thing to do when there are professional valuations is to split the difference. Splitting the difference is always unscientific and is often unattractive, but it is, after all, a reflection of the fact that a property is, at the end of the day, worth whatever somebody is prepared to pay for it, nothing more and nothing less. The only way to test that is to put the property on the market. There was no suggestion that, in this case, the property should be marketed. Similarly, this is not one of those houses where one can simply look at others of the same type in the same road and determine the value by reference to recent market activity.

7 8 The relevance of the decision that I have to make about the value of the property is of course that if the husband is to keep it, the less it is worth, the more the husband will have of other assets if I was to approach this case in percentage terms. Of course, the reverse happens in respect of the wife, in other words, the more it is worth, the more that she would have to have to balance the fact that it has been transferred to the husband. Accordingly, this approach becomes significant if I am dealing with this case on a percentage basis.

7 9 The parties were unable to agree on a point between the two valuations, and so I heard oral evidence from both valuers. I heard first from Stuart White of BGW McDaniel. He is the jointly instructed valuer and he estimates the market value of the property to be £3.8 million. He was asked in cross-examination by Mr Bishop whether he had researched comparables. I am afraid to say that I felt that Mr White came to court ill-prepared. He had scant evidence about comparable properties and he readily agreed with the suggestion put to him by Mr Bishop, on behalf of the wife, that there had not been many sales recently with which he could work. It is the duty of the valuer to explain how they arrive at their valuation. Whilst I have no doubt that Mr White was an honest witness, doing the best that he could in the circumstances, I felt that his evidence was poorly researched and he really did not have much of an answer for some of the important questions put to him by Mr Bishop. Nevertheless, I respect Mr White's opinion as the jointly instructed valuer and I would be likely to follow the opinion of the jointly instructed valuer unless there is substantial reason to take a contrary view.

8 0 In this case, there is, in my judgement, a substantial reason to take a contrary view. I found the evidence of Mr Oliver French of Knight Frank to be compelling, properly reasoned and justified by reference to objectively verifiable criteria. Although employed to provide an expert opinion on behalf of the wife, Mr French makes clear in his report, and I accept, that he is aware of his duties to the court. His duty is to give an honest opinion to the court and not to support the wife's case. He arrives at a price per square foot for this property, measuring it against sales of other properties in a similar location. I am afraid I have to say that Mr White failed to explain how he arrived at his valuation by reference to the price per square foot. Moreover, Mr White frankly admitted that his comparables were less than perfect, and that an offer of £4 million in 2019 might have affected his valuation.

8 1 I recognise, of course, it is often said valuation is an art and not a science. I recognise that it is difficult to value a property of this kind because there are not others of a similar kind which have recently been sold. As it was put in court, this is not one of a type of terraced properties in a street in London where they can look at what was achieved by the sale of one down the road of a similar type. I recognise that there is always bound to be a margin of error. In fact, I would not call it a margin of error at all, I would call it a margin of opinion. After all, you do not know what you are going to get for a property until someone comes along and buys it.

8 2 However, having heard the evidence of both valuers, I have no difficulty at all in finding that Mr French presented a reasoned, persuasive and thoroughly professional assessment of the value of this property. Of course, as I have said, the only way in reality to test the value is to market it. That is not going to happen, so I have to do the best that I can with the expert opinions that I have had in court. I unhesitatingly prefer the evidence of Mr French of Knight Frank and I find that the value for the purposes of this case is £4.1 million, as he has advised.

8 3 I turn now to the antenuptial contract. As I recorded in the introductory part of this Judgment, on 7 December 2007, i.e. the day before the wedding, the parties signed an antenuptial contract. The contract provided that there would be no community of property and no community of profit and loss between the parties. I accept, as did the wife, that it is commonplace for relatively wealthy people in civil law jurisdictions such as Country X to enter into such agreements, or contracts. It is obvious from everything that I have said about the wife's success in the private equity world that she is intelligent, well-educated, incisive and has the ability to understand company documents and absorb information quickly. However, she is not and never has been a lawyer.

8 4 The husband asserts that the point of the antenuptial contract was to protect pre-marital wealth. Furthermore, I accept that it is a useful document in terms of identifying pre-marital assets. The parties visited a notary called Mr D, and the husband correctly asserts that the events leading up to the signing of the agreement are clear from Mr D's attendance notes and emails. Moreover, I accept that the antenuptial contract clarifies what was pre-marital and therefore being excluded. The clear intention of the antenuptial contract was to exclude the husband's FTO interests from the sharing principle.

8 5 The husband asserts that there is no evidence that the wife was under undue pressure. I have been referred to numerous authorities and I have regard to them without laboriously trawling through them all in this *ex tempore* Judgment. I accept that it is not as simple as saying that the antenuptial contract was signed the day before the wedding, since of course the wife had been engaged in the discussion process about the antenuptial contract prior to this. However, the fact is that, when she signed it, she was four months pregnant and she knew that her earning capacity would have been damaged, perhaps fatally, by the fact that she

could no longer work in the private equity world, in this sector, in Country X. So the pressure to which the wife was being subjected was:
(1) Four months pregnant.
(2) Leaving her position in private equity in Country X.
(3) Getting married tomorrow.

8 6 In my judgement, that plainly amounts to undue pressure. I want to make it clear that I am not criticising the husband in saying that. I am not suggesting that the husband was being overbearing or acting inappropriately, I am merely reciting the simple facts of the pressure which the wife was placed under at this time. As Mr Bishop put it, "the guests had all assembled from various parts of the world, presents had been given out, the wedding was ready to go tomorrow". What was anyone in that situation to do? Of course, this was the culmination of a process. I recognise that this was not something that was simply thrust into the wife's hands the day before the wedding, but it seems to me that the circumstances to which I have referred are highly relevant when I think about and make a judgement about the appropriateness of holding the parties to the terms of this antenuptial contract.

8 7 The antenuptial contract is a part of the overall background of the case which is relevant to the exercise of my discretion, and I am not going to act as if it never existed, I am simply saying at this stage that I am not in a position where I am going to say that it is contractually enforceable, because, in my judgement, it is not.

8 8 It is, in my judgement, wrong to treat this as a binding contract in the circumstances to which I have referred. When one looks at the numerous authorities on the subject of pre-marital agreements or at the draft legislation that was at one time being put forward in relation to prenuptial agreements in this country, there has been a thread running through the principles applicable, and that thread is about pressure, timing and independent advice. I have already referred to the pressures that I have identified and it is my judgement that those pressures break the thread that runs through those principles to which I have adverted.

8 9 I am going to deal now with the contested issues on the final spreadsheet. As is now obvious in the light of what I have said, I rule in favour of the wife in relation to the value of the family home. I accept the evidence of Knight Frank and assess the value of the property at £4.1 million, and of course there then will be deducted from that the notional costs of sale as is conventional.

9 0 I reject the wife's case in relation to the sums which it is said the husband holds for ET. I heard evidence from ET, the husband's brother. It seemed to me that he was a thoroughly honest witness. The wife has contested various accounts that the husband says are held for his brother, ET. I am completely satisfied that the husband and his brother were not in cahoots, as the wife puts it, trying to do the wife down, but were doing their very best to tell the truth to the court on this issue, and so when I go through the schedule I find in favour of the husband in relation to the joint accounts and the money that he says that he holds for ET.

9 1 The major computational issue in this case relates to the N Trust which, in the accounts for the year ending 5 April 2023, shows a balance of just short of £7 million, and I am, for the purposes of this Judgment, rounding that number to £7 million. Obviously, the figure may well now be slightly different from that because we are now in November of 2023.

9 2 The husband contends that this trust was settled in 2011 for the benefit of the parties and for all five of his children, that is three with M and two with AT, and the descendants of those children. The husband maintains that the trust was not used to benefit the parties during the marriage and that no distributions have ever been requested from or made by the trustees,

save for two on-paper distributions made to clear tax liabilities, allocated to the husband rather than to the trust. There has, however, been the benefit of a €2.5 million loan to enable the parties to purchase a property abroad. The trustees considered the request for a loan and resolved that it was in the interests of the beneficiaries to make it. I also have regard to the husband's very frank and fair concession which was that, "If my other money has been transferred, the trustees would assist to help me meet my living costs".

9 3 I do not doubt that the husband's plan was to settle this trust for the benefit of his children, all five of them, and their descendants, but the fact is that things change in life, and what has changed in the lives of this couple is this divorce, and it has been an expensive business, not only in terms of the legal fees payable, but in terms of the fact that now two homes have to be provided where, before, it was only one. This is not a trust that was put in place centuries ago.

9 4 The trust is administered by professional trustees in Jersey. The trustees were invited to provide a witness statement in this case, but declined to do so.

9 5 The husband referred to the N Trust as a generational settlement. With respect to him, it is plainly wrong to regard this as some kind of dynastic settlement given that it was settled by him only twelve years ago. I accept as correct the husband's evidence that the intention of this trust was to provide for his children and their descendants but, as I have said, the circumstances for this family have changed dramatically and, frankly, from where he was in 2011, unrecognisably. When this trust was created, I am sure that it was not envisaged by the husband that his marriage to AT would end in failure and that there would be contested proceedings of the kind that I am now adjudicating upon and that he and his wife, as she still is, would have had to endure the battles that they have endured for the past two years.

9 6 It is common ground that the N Trust is a nuptial settlement and that I have the power to vary it. I am not going to make any variation of the trust for a number of reasons. First of all, I have not been asked to. Secondly, the trustees have not been served with any notice of any application to vary. What I am going to do is to make the award that I make and leave it to the parties, and I suppose primarily the husband, to see what is the most efficient way for him to effect the payment that I am going to order him to make. If, in due course, the parties decided that it would be appropriate for there to be a variation of the N Trust in order to mitigate tax liabilities, so long as it is agreed and so long as the mitigation is lawful, I would be likely to accede to it, and I am going to require the wife, as she has offered through Mr Bishop, to give an undertaking to take all steps that she is reasonably called upon to make to help to mitigate the incidents of tax arising in this case. It is not the task of the court to try and save the parties tax, but I am likely to approve any route that they want to take which is tax-efficient for them, provided that it is agreed and provided that it is lawful.

9 7 I have had considerable difficulty in working out how I should treat contingent tax liabilities in this case. Usually, I would probably take the route of an indemnity or an escrow account or an undertaking to repay. In many respects, that is the fairest way of dealing with things because it provides mathematical certainty. I have already said that I am not prepared to take any route in this case that provides scope for continuing argument. If there is one thing I think that all of us in this court, and those attending remotely, would be likely to agree on, it is that AT and BT need some peace, they need freedom from litigation and so do their children. And so I balance the certainty of the route of indemnities, cross-undertakings and so forth against the certainty of peace, and it is my judgement that, in this case, I should and I must take some risks in relation to not getting the tax figures right, because those risks buy that peace, provided I can make sure that my award gives enough to the wife and leaves

enough for the husband to meet what they are likely to need in the future. I am satisfied in this case that I can achieve that.

9 8 It is well known that within the context of divorce proceedings untaxed sums can be paid by a non-domiciled spouse to an ex-spouse offshore and then returned to the jurisdiction of England and Wales free of any tax liability. Plainly this has to be done after *decree absolute*, and I have already indicated that I am prepared to expedite the *decree absolute*. I do not regard the function of this court to go out of its way to save tax for the parties but, as I have said, if they come up with a sensible legal and consensual scheme that mitigates the tax consequences, then I would not wish to stand in their way. It may be sensible for the husband to make payments offshore immediately after *decree absolute* has been declared. There was some discussion in court about the possibility that the exemption offered by HMRC about tax in the instance of divorce might be altered. At the moment, the practice is still there and there is nothing I have heard that persuades me that the situation is about to change. If it did change, however, it might be something that would entitle the husband to return to court in normal circumstances. I am setting out here and now that I do not want anybody to return to court in this case, according to what tax events might happen in the future, and that is the way that I am dealing with this case.

9 9 I turn then to the schedule, and the alterations that I have to make. I am looking at the highlighted yellow parts, which is where the disputes are. The family home I now put in at £4.1 million. The "ET money", if I can call it that, is now showing at a nil balance, and the same applies to the sums on the second page, which is the £468,000-odd that the wife has disputed as being in reality her husband's and not ET's, and the £108,000-odd which it was suggested is the husband's father's, but, again, I accept the evidence on that point. Indeed, it was not really a point that was taken in the course of the hearing.

1 0 0 I then turn to the other disputed amounts. There is an amount of £13,000-odd which plainly, in the light of my findings about ET, again, that is to be removed from the schedule. By far the most significant issue here is the N Trust. Before I say what I am going to do with that, I return now to the issue of compensation.

1 0 1 Sometimes in these cases one sees counsel pleading, almost as if in a tortious claim for loss of earnings following a road accident or similar. In my judgement, that is rarely the right approach because we are not dealing with a civil claim in tort, we are dealing with the exercise of a very wide discretion by a judge. The way that I have decided to deal with this is to bring on schedule all of the assets in the case. In other words, I bring on schedule the pre-acquired wealth. Whether or not it has been "matrimonialised", to use that word again, the fact is that what the husband started with is something that I am now bringing on schedule because I think that is a proper way of dealing with the compensation principle, and, similarly, I am going to treat all of the N money as being on schedule. But, to balance the way that I have dealt with that, which would appear to be unduly generous to the wife's presentation, I am going to put all of the tax figures in on the basis that this is the tax that will be due if this trust was wound up.

1 0 2 Now, I appreciate that there are some risks that I am taking here. The risk is that I put in far too much tax because Mr Bishop may say to me, "Well, he is not going to pay all that tax because he is going to pay some of the money offshore", and I have already said I encourage him to pay the money offshore, insofar as to do so is legal, and I am going to require the wife to undertake to assist him in that, but it seems to me that what I am doing in achieving this is balancing things in a way that I regard as fair and I regard as finite, and so I bring on schedule the roughly £7 million that N is worth, but then I also bring on schedule the

roughly £3.15 million of tax, if it is wound up, and I bring on the £2.175 million of loan as well which is already worked out into the figures.

1 0 3 I am going to ask counsel to check my figures after they have received this Judgment and it is probably something they are not going to be able to do necessarily just while they are in court now, they are doubtless going to want to go away and sort out the figures, but the result that I get to, having re-worked the schedule on the basis that I have just identified, is that the net asset figure is £13,789,582.

1 0 4 Having arrived at that number, which, as I say, takes risks in terms of tax, brings trust money on schedule, brings pre-acquired money on schedule, but because that works significantly in one way, it works significantly in the husband's favour because I am taking off all the tax which might be due even though a lot of it will not be due. On the other hand, I am bringing it all on schedule to recognise that, in terms of the way to deal with compensation, it is fair for me to say that money that might otherwise have been left off schedule is being brought on schedule, and I am going to take from that a straightforward fifty/fifty approach and, according to my calculations, and, again, I will have to ask counsel to check that, the total amount of money with which the wife should be left is £6,894.791, that is just under £6.9 million.

1 0 5 Obviously, adjustments are going to have to be made to take account of the fact that the wife is to keep the SB property (£190,000 net). That is going to have to be worked in, as is the amount of money she owes in respect of costs.

1 0 6 The claim put forward by the wife, through Mr Bishop, is £5 million for a *Duxbury* award, which is slightly rounded down because Mr Bishop properly recognises that to contend for more than half the assets in the case would be unconscionable, plus Mr Bishop contends for a property fund of £3.5 million, so the total amount of money being sought by the wife was therefore about £8.5 million. In fact, the lump sum she was seeking to take account of other liabilities was £9.145 million. According to my maths, the wife is going to be left with just under £6.9 million on the order that I am going to make.

1 0 7 I then have a look and see whether that sum meets her reasonable needs. Reasonable needs is a very fluid concept. I am going to say very little in a sense now about needs because of the way that I have dealt with this case because it seems to me, put bluntly, that it is impossible for anybody to contend that £6.9 million is not enough money; it plainly is.

1 0 8 Dealing with the question of housing, the husband put forward a number of properties, most of which were flats or apartments. They were extremely well-presented flats in a good area and in good condition, but it seems to me that it would be wrong, in the context of this case, for the husband to live in the former family home, which I have described, which is in no sense a lavish mansion, but it is a very fine detached property in an excellent location, with the wife living in an apartment. The damage to this family I have described already as catastrophic. If the children see that their mother is in an apartment, I think that there is a serious risk that she might look a bit like "a poor relation", and I think that is wrong for them and I think that that is wrong for the wife. Of course, it is entirely up to the wife how she decides to spend her money, but it seems to me that her housing need is not less than about £2.5 million. I think that it was put rather high by Mr Bishop when dealing with it on a needs basis.

1 0 9 So far as the wife's budget is concerned, I am afraid I am very critical of it. It is really dangerous for budgets to be presented containing incorrect figures because it contaminates everything. Because this is a case that I am not potentially dealing with on a needs basis, I

do not need to say very much about it, but I do have to cross-check the award that I have made to make sure that it meets her needs. The wife's budget, in a sense it seems a *de minimis* example, but the amount claimed by her of £350-odd a month for television, internet and downloaded films and so forth is an extraordinary figure to be able to put in. As I commented with a slight touch of irony, judges these days do know how to use the internet, and it is just perplexing to me that somebody can put in figures which are either plainly wrong or where somebody is paying far more than they need to for a particular service.

1 1 0 This is not a case where I need to descend into a discussion about "shoes and handbags and holidays"; ultimately it is up to the wife to spend the money the way that she wants to, but she was contending for £230,000 a year for life. Well, if I just look at what my award is, it is £6.9 million, rounding it for the moment, if she spends, say, £2.5 million on a house, then she has more than over £4 million remaining, and I have no doubt that that is enough money to provide for her handsomely for the rest of her life. I note that, for a fifty-three-year-old woman, according to the *Duxbury* tables, this sum will generate for her, £175,000 a year for life, and it seems to me that that is a very significant income indeed, and it would be quite wrong for it to be contended that this will not meet her income needs.

1 1 1 I then look of course at what the husband has left. Well, I am requiring him to pay a larger lump sum than he was hoping to have to pay, but I say this: I have brought all of the N money into account, but I have put all of it in taxed at 45 per cent. The reality, I recognise, is that he will not pay 45 per cent on all of it, or possibly on any of it, because the money that he is going to pay to the wife, as I understand it – he will need to take advice on this – is going to be paid offshore, once we have had *decree absolute*, and then it will be received by the wife tax-free, and so, using that, whether it is a loophole or a mechanism, provided it is a legal one, and at the moment we all believe that it is, he will be able to mitigate tax very significantly and be significantly better off as a result of my award than a first glance will appear to give him on a breakdown of the schedule.

1 1 2 The wife will have, as I have indicated, just under £6.9 million. The husband will have, at the very least, the same amount. However, the reality is he will have much more than that if the tax is dealt with as expected.

1 1 3 This, it seems to me, provides fairness for the parties. It gives the husband significantly more than the wife, for the tax reasons that I have set out. It means that there is no further prospect, no further need, for further litigation between the husband and the wife because there will be no claims for tax, there will be no Escrow funds and no indemnities to worry and argue about. Obviously, this is on a clean break basis, there will be no income award and I have a very open mind at the moment in so far as the issue of costs is concerned. At the moment, my award works on the basis that the wife will have her costs paid, so I have netted it all out, but, in due course, it may be that one or other party will be asking me to make a costs award. Obviously, I cannot and will not know anything about any without prejudice offers that might have been made, but I am obviously going to wait until any application which might be made.

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