Case No: ZZ21D77072

IN THE FAMILY COURT SITTING AT
THE ROYAL COURTS OF JUSTICE
Neutral Citation Number: [2024] EWHC 3478 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 November 2024

Before :

Mr Geoffrey Kingscote KC
(sitting as a Deputy High Court Judge)

- -

AF

Applicant

- and –

GF

Respondent

- -
- -

Deborah Bangay KC and Georgina Howitt (instructed by RWK Goodman) for the applicant
Richard Sear KC (instructed by Burges Salmon) for the respondent

Hearing date: 30 May 2024 to 7 June 2024

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Judgment

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

A Introduction

1. This is the application by the wife for financial remedies made in October 2021 at the end of the parties' marriage. I refer to the parties as W (Wife) and H (Husband). I intend no disrespect to them with that abbreviation. W is represented by Deborah Bangay KC and Georgina Howitt, instructed by Natalie Lemonides of RWK Goodman. H is represented by Richard Sear KC and Sarah Hoskinson of Burges Salmon. I am grateful to all counsel and solicitors for their assistance to me in determining this case.

2. The case is complex, and this judgment is lengthy. Papers far exceed the recommended bundle length, but I saw no other realistic option in the case management exercise, and, in fact, many have been referred to and used by the parties, and by me in judgment. Legal fees are extremely high at more than £1.6m, out of a total asset base that, on the parties' figures at the beginning of the trial, was no more than £10m to £13m. The level of fees is accounted for by the complexity of the assets in the case and the requirement for detailed expert evidence dealing, in particular, with the dramatic decline in the value of business assets during the proceedings.

3. The key issues in this case relate to quantification of the assets, including the value of H's business interests, and the extent to which H's pre-marital assets should be taken into account in the final outcome.

B The parties

4. The parties are both British. W is now aged 52; H is aged 62. This is a third marriage for W and a second for H. There are no children of the marriage. H has a son, C, by his first marriage, who is now aged 30.

5. The parties met in 2011. H was going through a divorce at the time. They cohabited from December 2011, married in July 2017 and separated in the Autumn of 2021 after a 10 year relationship.

6. W lives in a property that she purchased in her sole name in early 2022. She says she began cohabiting with a Mr D in March/April 2024 when she says their relationship

was “formalised”. They had been in a more informal relationship since the end of 2021. W is currently the Managing Director at Leumadair Contract Management (a pseudonym), trading as Blue Leumadair, running the operational side of the business.

7. H lives in the parties’ former home. He is engaged to Ms M and he intends to marry again after decree absolute. H disclosed in the trial that Ms M is independently affluent. H is a non-habitual tax resident in a European country. He pays no income tax. H is an investment manager.

C Background: Leumadair

8. One of the key issues in the case concerns the value of H’s business interests. H has worked in investment management for more than thirty years. He is the chief executive of Leumadair Investment Management Ltd (Leumadair Investment Advice). His colleague, Mr Q, who also gave evidence at trial, is the chair.

9. In 2007 H and Mr Q set up what I will describe as Fund 1. It is an open-ended unit trust . It invests in a portfolio of interests. The fund is open to institutional and professional investors, primarily pension funds, which are seeking reasonably stable long-term income. It has a portfolio with a Net Asset Value (NAV) of £410m in September 2023.

10. Since 2007 two further funds have been established, both during the course of the marriage. The first which I will describe as Fund 2 was established in 2017 as another open-ended unit-trust. Its investment policy was to invest in businesses with latent development potential with a view to increasing value. The second which I will describe as Fund 3, a further open-ended unit trust set up in 2018. It invests in another type of portfolio.

11. The funds have independent valuers who review the internal valuations undertaken by management. The current valuers are Evelyn Partners. The funds have boards consisting of three independent members, H and Mr Q. They are regulated by the relevant financial authority in another jurisdiction.

12. Other than a modest interest in Fund 2 and Fund 3, H does not have an interest in the funds themselves. The parties’ wealth derives from H’s interest in the companies that provide advisory and investment advice to the funds. Collectively they are referred to as the Leumadair interests and comprise the following:

    a. Leumadair Investment Advice.
    b. First Leumadair Investment Management Ltd (First Leumadair Investment).
    c. Second Leumadair Investment Management Ltd (Second Leumadair Investment).

13. Leumadair Investment Advice provides investment advice to all three funds. H and Mr Q each have a 50% interest. That company, set up in 2012, receives advisory fees from the three funds that are largely set at a level to meet its costs. Currently, Leumadair Investment Advice pays H a consultancy fee of £360,000 pa though that fee has been noticeably higher in the past.

14. First Leumadair Investment, set up in 2008, provides management services for Fund 1. H has a 40.85% interest in First Leumadair Investment directly and a further 5% indirectly through H's current personal service company (current personal service company). First Leumadair Investment's income is made up of periodic fees calculated at approximately 0.91% of the NAV of Fund 1 [EB55], and performance fees calculated at 15% of any annual increase in the fund NAV above the SONIA (Sterling overnight indexed average) rate plus 1%.

15. Second Leumadair Investment, incorporated in October 2015, has five directors, including H and Mr Q. H and Mr Q each have a 50% interest. Second Leumadair Investment's income also consists of periodic fees (charged at different rates for the five different classes of units), but overall the percentage is approximately 0.61-0.68% [EB45]) of the NAV; and performance fees, paid at 15% of the annual increase in the NAV above a hurdle rate of 5% for Fund 2 and 6% for Fund 3.

16. Second Leumadair Investment and First Leumadair Investment declare dividends which are paid to H and Mr Q based on their profits. H's income was paid into a previous personal service company (previous personal service company) but is now paid into his current personal service company.

17. The pre-marital history is as follows. Fund 1 was launched in 2008. So too was First Leumadair Investment. The strategy behind that fund was developed by H in 2007.

18. In 2010 governmental changes to planning regulations facilitated the implementation of the development strategy. That year H and Mr Q worked on implementing the strategy. In his written evidence H stated that there were three drivers of growth in value to Fund 1: implementation of the strategy leading to enhanced value and thus a more attractive investment opportunity; further investment from small investors that increased the fund size and reduced the cost of capital (ie the Weighted Average Cost of Capital, or WACC) and improvements to the profitability of the businesses themselves.

19. In May 2011 Fund 1 purchased a company and its assets: three businesses. W had been the general manager across those businesses. This was how the parties met. Leumadair had previously used another company to run the businesses but within a few months H and Mr Q asked W to run all the businesses. She remains the managing director of Blue Leumadair whose remit is to manage the operations of the businesses.

20. Mr Isaacs valued First Leumadair Investment as at December 2011, the date of the start of cohabitation, on a discounted cash flow (DCF) basis at £15.438m. That valuation methodology requires a calculation of the economic benefit of the company by reference to its forecasted cash flow and then applying an appropriate risk-adjusted discount rate.

21. The plan to develop the businesses required, of course, implementation. It is W's case that she was in charge of developing all of the businesses and that her contributions to the development of the businesses effectively matrimonialised all the Leumadair interests.

22. By 2021 17 businesses had been developed, with W as the MD of Blue Leumadair. The NAV of Fund 1 was £600m in September 2021 [EB1204].

23. There are three current Leumadair brands. W has been involved only with Blue Leumadair.

24. The Leumadair businesses continued to do well for a number of years. But they have found recent trading conditions more difficult leading to a substantial reduction in value that I set out later in the judgment.

25. There are two other relevant companies, both service companies in which H has a 100% interest: the current personal service company and the previous personal service company. H's current service company was incorporated in 2019, and is the vehicle through which H draws his income. It has an agreed value of c £3m including a 5% shareholding in First Leumadair Investment.

26. H's previous personal service company was incorporated in 2013. H is the sole director and shareholder. That company holds H's primary residence through a subsidiary company.

27. It was through the previous personal service company that H received funds credited to his Director's Loan Account [SB106] through a tax scheme of £8.15m in the tax years 2013/14 to 2016/17.

28. The valuation of the previous personal service company is not agreed: the parties disagree as to whether or not the tax liability should be counted as a personal liability or as a liability of the previous personal service company. The parties also disagree as to the cost that will be incurred in obtaining the "habitation licence" that H's European Property requires.

D The marriage and its breakdown

29. The parties' relationship began in May 2011. Initially, they shared a home in Oxfordshire before purchasing and renovating another property in Oxfordshire. During these proceedings, W said she was upset to learn that the property was in H's sole name. Nothing turns on that point as it appears to be accepted that this was the family home and is a fully matrimonial asset though H says that position is generous to W. That property was sold in 2022.

30. In 2013 H set up the previous personal services company. In the following year he entered into a tax planning scheme.

31. In 2014 W purchased a property near the then family home for occupation by her mother. W continues to pay the mortgage. In 2015 the parties purchased their first home abroad, that they later sold. Through a company, a plot was purchased a plot for a second property in 2016, demolished the existing home and constructed, at a cost of c €7m in total, another property, where H still lives. The foreign property portfolio was completed with the purchase of a ski chalet in France.

32. H became tax resident in another European jurisdiction in 2020. W says that the idea was that W, who remained managing the holiday businesses, would commute between England and the other European jurisdiction. H moved to the other European jurisdiction in 2020 during the pandemic leaving W in England awaiting anterior cruciate ligature surgery; she joined him in September 2020.

33. The relationship deteriorated and the parties separated in the Autumn of 2021. W has not been to H's primary residence, I understand, since then. H remains there and would like to retain the property.

34. W petitioned for divorce in November 2021. W says that she learned that the family home and H's European Property were in H's name (or in the case of the latter, a company owned by H) rather than joint names and felt insecure. She therefore wanted to purchase a property in her sole name and bought her current home near one of the sites where she was working in early 2022 for £1.2m. W says that the property was an emergency stop gap that she now regrets. It is fair to say that Mr D's family home (he is separated from his wife) is nearby, and that may well have been an incentive to move but she told me, and I accept, that Mr D did not see her current home in advance of its purchase.

35. The purchase of her current home was completed with the benefit of a bridging loan. The family home was sold in 2022 and the funds used to redeem the loan. At this time, H purchased through his service company a Yacht for £1.8m using £900k cash in the service company and £900k of debt, a purchase he did not bring to W's attention at the time. I can well understand why W felt aggrieved that the purchase of her home was financed with a bridging loan whilst H spent rather more money on a new boat at the same time.

E These proceedings.

36. W filed her petition and form A on 17 November 2021. At the First Appointment Recorder Campbell KC ordered an SJE report on H's Leumadair business interests including the value of the interests as at the date of cohabitation in December 2011.

37. The first SJE report dated 28 November 2022 valued the Leumadair business interests, after restatement in January 2023, at c. £17.3m [EB/846].

38. A private FDR conducted in January 2023 was unsuccessful and the case was allocated to me in June 2023 and a directions hearing was fixed in June 2023. I made fairly standard directions including an updating SJE report. However, there was an important agreement regarding payment of a lump sum for W to reflect the value of chattels at H's European Property which H now seeks to vary.

39. In October 2023 W made an application for MPS and release of funds for legal fees that was resolved by agreement and recorded by me as a consent order on 31 October 2023. £130,000 was released for interim maintenance needs and £200,000 for legal fees. H is very critical of that application and seeks reattribution of the £130,000 less the amount which still remains in the wife's Lloyds bank account.

40. The updating report of the SJE was received on 31 January 2024. It demonstrated a collapse in the value of H's Leumadair interests to £2.779m in total, a drop of 85%. W made an application to rely on a report by an alternative valuer, Kate Hart, at the first PTR on 15 February 2024. That was rather late, clearly, but given the scale of the reduction in value of the assets I acceded to the application which, ultimately, at that hearing, was not opposed by H. Ms Hart largely agreed with the valuation methodology of Mr Isaacs with a range of values initially, at £4.3m to £5.4m though she later revised that number downwards. She and Mr Isaacs have worked hard to help the court. A second PTR took place on 30 April 2024.

41. On day one of the hearing, I made the following determinations

    a. W should not be allowed to adduce a unilateral drive-by valuation of a property that was (i) the subject of a hitherto unchallenged SJE report and (ii) would have resulted in reneging on an agreement reached between the parties at the first PTR on 15 February 2024.

    b. W's claim for an "addback" of sums spent by H on the purchase and running of a recently sold Yacht should be limited to those sums that were set out in her written evidence in her s 25 statements and statement in response to H's statement in February 2024, namely £617,000.

c. I acceded to W's application to adduce photographs of chattels to deal with H's case that W had removed substantial numbers of chattels from the parties' English property when she relocated in 2022.

F The law

42. There was no disagreement between the parties as to the law that I should apply. The general principles have been summarised by Peel J in *WC v HC* [2022] EWHC 22. I cannot improve on the summary, though it needs augmentation to deal with the case of *Standish v Standish* [2024] EWCA Civ 567. I repeat the summary here

i) As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution; **Charman v Charman** [**2007] EWCA Civ 503.**

ii) The objective of the court is to achieve an outcome which ought to be "as fair as possible in all the circumstances"; per Lord Nicholls at 983H in **White v White [2000] 2 FLR 981**.

iii) There is no place for discrimination between husband and wife and their respective roles; **White v White** at 989C.

iv) In an evaluation of fairness, the court is required to have regard to the s25 criteria, first consideration being given to any child of the family.

v) S25A is a powerful encouragement towards a clean break, as explained by Baroness Hale at [133] of **Miller v Miller; McFarlane v McFarlane [2006] 1 FLR 1186.**

vi) The three essential principles at play are needs, compensation and sharing; **Miller; McFarlane**.

vii) In practice, compensation is a very rare creature indeed. Since **Miller; McFarlane** it has only been applied in one first instance reported case at a final hearing of financial remedies, a decision of Moor J in **RC v JC [2020] EWHC 466** (although there are one or two examples of its use on variation applications).

viii) Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail; **Charman v Charman.**

ix) In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

x) Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary; **Scatliffe v Scatliffe [2017] 2 FLR 933** at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in **K v L [2011] 2 FLR 980** at [22] there was at that time no reported case in which

the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.

xi) The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; **Hart v Hart [2018] 1 FLR 1283**. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.

xii) Needs are an elastic concept. They cannot be looked at in isolation. In **Charman (supra)** at [70] the court said:
"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)".

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

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

xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF [2017] EWHC 1093** at [18];
"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh

that factor in the balance. Mostyn J made a similar observation in **N v F** [2011] 2 FLR 533 at [17-19].

43. In this case there are three areas of law of particular importance:
    a. The addback jurisprudence.
    b. The fragility of company valuations.
    c. Matrimonialisation of non-marital assets.

(a) Addback jurisprudence

44. Both parties have advocated that I should add back, or reattribute, assets to the other party. I can see no substantive difference between the meaning of reattribution and addback. As Moor J makes clear in *MAP v MFP* [2015] EWHC 627 arguments regarding addbacks come down to an issue of conduct under s 25 (2)(g) MCA 1973, namely "conduct that it would in the opinion of the court be inequitable to disregard". Such conduct must be "gross and obvious" and for an add-back to succeed, the court must be satisfied of "wanton dissipation of assets".

45. My task, adopting the wording of Moor J in *MAP v MFP* at para [68] is:
"*to determine whether or not there was dissipation with a wanton element that justifies intervention by the court. Findings as to motivation are clearly very important. I do, however, accept that a spouse cannot take advantage of all the good characteristics of his or her partner whilst disavowing the bad characteristics. To put it colloquially, you have to take your spouse as you find him or her*".

(b) Valuations of companies

46. The substantial fall in value of the Leumadair interests highlights the fragility of company valuations. Case law has repeatedly highlighted that fragility. In *Versteegh v Versteegh* [2018] 2 FLR 1417, Lewison LJ stated at [185]:

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

A [2004] EWHC 2818 (Fam), [2006] 2 FLR 115 at [61] – [62]; D v D [2007] EWHC 278 (Fam) (both decisions of Charles J).

47. In *Versteegh* King LJ made the following observations in relation to the valuation exercise.

> *"121. The issue for the judge was whether there was a sufficiently sound basis from which he could reach a probable valuation for computation purposes.*
>
> *134. It is undoubtedly far more satisfactory for all concerned if a court can, with sufficient confidence, settle on a valuation of a business to the necessary standard of proof, that is to say the balance of probabilities. Not to do so is unsatisfactory for the applicant (still often the wife) and is often equally frustrating for the respondent (husband) particularly if the result is, as in this case, the making of a Wells order.*
>
> *135. Notwithstanding the disadvantages of the present situation, considerable unfairness can be caused to either, or both, parties if the approach is to be that in a sharing case, there is an absolute requirement on the court to settle on a valuation (come what may) and that, if the variables render such a valuation to be particularly friable, the court should simply adopt a conservative figure."*

(c) Matrimonialisation

48. The parties have adopted competing positions on the question of whether or not the Leumadair assets have all been matrimonialised. W says that her work in developing the business has effectively matrimonialised all the Leumadair interests, two of which were started after the marriage. H says that the level of pre-marital value in First Leumadair Investment means that the Leumadair interests cannot be said to be fully matrimonial.

49. The law on marital and non-marital property and the concept of "matrimonialisation" has been further elaborated upon in the recent authority of *Standish v Standish* [2024] EWCA Civ 567. Moylan LJ in that decision quoted Lord Nicholls in *Miller v McFarlane* [2006] UKHL 24:

> *"[26] This difference in treatment of matrimonial property and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon. Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day ...*

[27] Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case."

50. The court distinguishes between matrimonial property, i.e. those assets generated by the joint endeavours of the parties, and non-matrimonial property. The sharing principle does not apply, according to *Standish* at [100], to non-matrimonial property. As Moylan LJ stated at [85] of *Hart v Hart* [2017] EWCA Civ 1306 assets can be the product of both non-marital contribution by one party and marital endeavour.

"an asset can comprise both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word "reflective" because "reflects" was used by Lord Nicholls in [Miller], at para 73 and "reflective" was used by Wilson LJ in the Jones case [2012] Fam 1, para 33. When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science."

51. The evaluation of the extent to which an asset has been so blended is described as an "art". It follows that the court has discretion as to how to divide those blended assets to reach a fair outcome. Moylan LJ stated at [96] of *Hart v Hart*.

"The court will have to decide, adopting Wilson LJ's formulation of the broad approach in Jones, what award of such lesser percentage than 50% makes fair allowance for the parties' wealth in part comprising or reflecting the product of non-marital endeavour. In arriving at this determination, the court does not have to apply any particular mathematical or other specific methodology. The court has a discretion as to how to arrive at a fair division and can simply apply a broad assessment of the division which would affect "overall fairness". This accords with what Lord Nicholls said in Miller and, in my view, with the decision in Jones."

52. In *Standish* at [149] Moylan LJ emphasised that:

"in the application of the sharing principle, the source of an asset is the critical factor and not title."

53. In *Standish* Moylan LJ has given further guidance on the concept of matrimonialisation, and, arguably, has narrowed its applicability.

"160 I now turn to the issue of matrimonialisation. As submitted by Mr Bishop, the underlying principle is that fairness may require or justify treating property, which was not purely the product of the parties' joint endeavours, as matrimonial property and, therefore, within the scope of the sharing principle. I should make clear that this is not to depart from what was said in Hart and other cases about the court's approach to determining whether the parties' assets include assets which might be said to comprise or reflect the product of non-marital endeavour. It is about when an asset or assets
which were at one stage non-marital property might be included within the sharing principle. The general issue is when this might apply and the specific issue is whether the judge was right to decide that it applied to the 2017 Assets and to Ardenside Angus.

...
163. In my view, therefore, it would be helpful to make clear, expressly, that the concept of matrimonialisation should be applied narrowly. This is not a hard and fast line but remains a question of fairness, reflecting, as Wilson LJ said in K v L at [18], that "the importance of the [non-marital] source of [an asset or assets] may diminish over time". With some diffidence, I would propose the following slight reformulation of the situations to which Wilson LJ referred in K v L, having regard to the developments that have taken place since that decision as follows: (a) The percentage of the parties' assets (or of an asset), which were or which might be said to comprise or reflect the product of non-marital endeavour, is not sufficiently significant to justify an evidential investigation and/or an other than equal division of the wealth; (b) The extent to which and the manner in which non-matrimonial property has been mixed with matrimonial property mean that, in fairness, it should be included within the sharing principle; and (c) Non-marital property has been used in the purchase of the former matrimonial home, an asset which typically stands in a category of its own.

164. In the first example, the sharing principle would apply in conventional form. In (c), the court will typically conclude that the former matrimonial home should be shared equally although this is not inevitable as shown by cases such as FB v PS.

165 The example in (b) requires a more nuanced approach similar to that referred to in Hart, at [96], when the evidence does not establish a clear dividing line between matrimonial and non-matrimonial property. As Mostyn J said in JL v SL (No 1) at [18], the underlying question is whether the asset or assets "should have the same character as those assets built up by their joint endeavours during the marriage, with the consequence that they should be shared ... on divorce". I have deleted the word equally because that was simply a reference to what the District Judge had done in that case. Does fairness require or justify the asset being included within the sharing principle?

166. The conclusion that it does, however, does not mean that it must be shared equally. The submission by Mr Todd that, once an asset is matrimonialised and treated as matrimonial property, it must be shared equally is unsupported by any authority and would be contrary to the objective of a fair outcome. This is because, again as Mostyn J said in JL v SL (No 1) at [19], it may be that the "non-matrimonial source of the moneys in question" remains "a relevant consideration". In its evaluation of all the relevant factors in the situation described in (b) above, it would be perverse if the court could not decide that the non-matrimonial source, in whole or in part, of an asset treated as matrimonial property could not justify an other than equal division. Another way of putting it, repeating what I said in Hart, at [86]:

167. "The court will have to decide, adopting Wilson LJ's formulation of the broad approach in Jones, what award of such lesser percentage than 50% makes fair allowance for the parties' wealth in part comprising or reflecting the product of non-marital endeavour".

54. I have applied these principles in my decisions below.

H The hearing: the witnesses

55. W was cautious and measured in her evidence, save in relation to the issue of her employment, and the possibility of losing it, when she became clearly quite emotional. The level of her commitment to the Leumadair business, and to growing value for investors, was unusual and striking. She is very much a hands-on Managing Director. I get the impression that she is anxious about losing her employment.

56. It was clear that W has found these proceedings stressful and difficult. I felt that her oral evidence, on occasion, reflected a particular agenda: she repeated a phrase "the lifestyle I had grown accustomed to", in rather a rehearsed way. I am not sure that she was as upfront about her relationship with Mr D, as she might have been, and her relationship with him was probably at least a factor in her move, but this is not a relevant consideration for the court.

57. W was criticised, repeatedly, including for non-disclosure, particularly in relation to her mother's property in the form E. But she corrected that very early on in proceedings and H was fully aware of its existence. Her evidence as to her financial position was clear.

58. Overall I consider that W was trying to assist me and was a credible witness.

59. In his evidence H gave the impression of being a rather more confident and outgoing individual than W. He has quite firm views, particularly about the HMRC, and a suggestion that he should bribe someone to obtain a habitation licence for his

European Property , as I set out later in the judgment. It is clear that he has found the court proceedings tortuous. He feels frustrated particularly by the failure to progress his first open offer.

60. In oral evidence H presented as someone trying to assist the court. But it is fair to say that I did not have as clear a view of a number of aspects of the financial position as I would have liked. His written presentation has not been, to my mind, as full and frank, or timely, as it should have been. H has not provided sufficient clarity of his financial position at various stages of these proceedings. His form E had a number of notable omissions which, in aggregate, make it a rather unsatisfactory document. He failed to:

    a. disclose the existence of the company Leumadair Investment.
    b. provide figures for the valuation of the business when he should, in my view, simply have put "TBC".
    c. refer to the purchase of the Yacht.
    d. provide a sufficiently clear explanation of his income.

61. The summary total for the form E was put at minus £3.5m. Given that H's asset base was more than £20m at the time, I did not consider it a propitious start to the litigation. Whilst H's oral evidence was truthful, I have found aspects of his evidence, overall, unsatisfactory.

62. Mr Q is H's business partner. He is a serious and honest man, rather less of an optimist than H, and his evidence was transparent and clear. I accept his evidence completely.

63. Mr Q was of particular assistance in relation to an issue that was, initially, important, namely whether W should have shares in Leumadair Investment, Second Leumadair Investment and First Leumadair Investment. He confirmed that the regulatory authorities for those businesses required W to have appropriate financial and investment qualifications.

I The open offers

64. The evolution of the open proposals is indicative of the fluidity of the assets in the case, the change of the parties' approaches, and the range of possible final outcomes.

65. H made a proposal in person in advance of proceedings in February 2022. He had limited legal advice and did not ultimately seek to claim privilege over this proposal but made it clear that it was not capable of acceptance in his written evidence, and indeed it had long been superseded.

66. The proposal provided for an equal division of non-company capital assets with W to retain their English home, H to retain his European Property and the value of other assets to be divided. H was to take responsibility for a potentially very large tax liability that continues to loom large in this case. H estimated the value of W's award to be about £4.5m- £4.6m. Importantly, he agreed that, on "sale of the businesses", he would pay to W 50% of the amounts that he received.

67. Mr Sear urged me not to feel in any way constrained by that proposal, reminding me of paragraph [22] of *DR v UG* [2023] EWFC 68 where Moor J stated that:

"Parties are to be encouraged to make open offers without any fear of being restricted to these offers going forward. If the offer is a good one, it should be accepted. If it is rejected, the party rejecting it can have absolutely no complaint if a higher proposal is made at a final hearing."

68. W sought corroboration of the figures in H's proposals, discussions ceased, and proceedings commenced. H is critical of W's initial response to the proposal where he said she described it as "pie in the sky". That phrase was not put to W in evidence.

69. The parties then both made open offers after the private FDR at a time when the asset base appeared to be c. £27m. H proposed that W retain their English home, the proceeds of sale of their property in France and that he pay, over 12 months, total lump sums of £1.75m. In addition, he proposed a *Wells v Wells* sharing scenario whereby he was to pay 10% of the proceeds of the sums that he would receive on sale of two of the three investment funds, Fund 1 and Fund 2. He proposed that W remain employed by the Leumadair entities.

70. W sought an equal sharing of Leumadair Investment and Second Leumadair Investment whilst leaving H with First Leumadair Investment. That division included either transfer of 50% of shares in Second Leumadair Investment and Leumadair Investment or payment of 50% of the net sale proceeds of the companies on realisation.

71. H withdrew his offer on 27 November 2023, aware of the impending reduction to the value of the Leumadair entities and W followed suit on 13 February 2024 following the updated SJE valuation.

72. Final open proposals for trial were made very late. W's proposal was not in fact received until the eve of trial. By that time, the asset schedule had become more complex because both parties advocated for reattribution of funds already spent by the other.

73. H's offer made on 24 May 2024 was for an approximately equal division of the non-Leumadair assets, as he calculated them, including a ring-fenced sum for the payment of a substantial tax liability. In relation to the Leumadair interests he sought either:

    a. To pay to W a lump sum of £1.4m over 2 years representing 50% of the valuation ascribed by Roger Isaacs; or
    b. 15% of the net performance fees and 15% of the net proceeds of sale of Second Leumadair Investment, First Leumadair Investment and Leumadair Investment.

74. The *Wells* division was very much H's secondary position.

75. In court H repeated his earlier assurance that W could remain working for Leumadair. He proposed that a tax liability be taken into account at c. £6m but did not initially volunteer any reimbursement in the event that monies were saved. I expressed my reservations about that approach during the trial and it was modified by closing submissions.

76. In her open offer made on 29 May 2024, W also proposed an equal division of the non-Leumadair interests, again on her calculations. As to the Leumadair interests she sought a transfer of 50% of the shares in all three companies. W accepted that the tax liability be taken into account, albeit at the figure of c. £5.5m with reimbursement of half of any savings.

77. H's final closing proposal was modified slightly to reduce the tax liability figure with the possibility of amendment (reimbursement/claw-back) if the number changed within a particular time-frame.

78. In her closing submissions, after H's closing submissions, W amended her open proposal to seek a clean break. She sought:
    a. An equal division of the non- Leumadair assets on the basis of a ring-fenced tax liability, this time quantified at £4.45m, but with no reimbursement in the event that savings could be made.
    b. A lump sum payment equivalent to 50% of the value of the Leumadair assets using the valuation reached by Kate Hart on the basis of planned and potential redevelopments.

I Computation

79. In broad terms, the parties' respective positions in closing submissions for the non-pension assets were £9.15m for H and £12.58m for W. There was agreement on a number of issues: the sale proceeds of two properties at £1.68m in total; H's direct interests in the Leumadair funds at £534k; and the value of W's current home.

80. There were, though, a significant number of disputes upon which I have to adjudicate. I set them out below.

a. The value of W's mother property.
b. The value of chattels at the family home and in H's European Property.
c. The ownership of a boat.
d. Reattribution arguments regarding:
    i. Maintenance payments of £113,000 made to W following an application for MPS in October 2023.
    ii. The difference in legal fees.
    iii. The purchase of the Yacht.
e. Loans to various family members and friends.
f. The value of H's European Property and the cost of obtaining a habitation licence.
g. The level of the tax liability owed by H or H's previous personal service company and the resultant value of H's previous personal service company.
h. The value of the Leumadair interests.

(a) W's mother's property

81. The property was valued by an SJE, James Caroll, at £650,000. No questions were asked of Mr Caroll after his report and at the first PTR in February 2024 it was agreed by the parties that the value would be agreed at £650,000. I did not permit W to adduce a unilaterally obtained drive-by valuation in support of her assertion that the property was overvalued. The value that I shall use, therefore, is £650,000, as the parties had agreed.

82. W owes £143k to H's previous personal service company in relation to the purchase of the property. It is acknowledged that it features as an asset of the previous personal service company and will need to be dealt with arithmetically. I leave it to the parties as how best to deal with that issue.

(b) The chattels at the family home and H's European Property.

83. Much time was spent dealing with the contents of the family home and their value. H's position was that I should take the value of the family home contents that W retained as £500,000 or otherwise vary the agreement recorded in the June 2023 order ("the June 2023 agreement"). That agreement provided that:

> "13. In respect of the chattels at H's European Property, the parties have agreed that:

(a) Mr Isaacs shall be instructed to exclude the value of chattels (£430,000) from H's personal service company updating valuation provided for below;
(b) The Respondent shall pay a lump sum to the applicant of £250,000 in additional to any lump sum/final award by the court at trial."

84. W argued that I should enforce the agreement and, effectively, ascribe no value to the family home chattels.

85. I set out the background briefly. The family home was sold in March 2022. W had vacated earlier having purchased her current home in February 2022. H was living in his European Property. The parties exchanged a number of text messages. In one dated 1 April 2022 [SB/802] H wrote that the purchaser was to pay £7k for "all the furniture we have left in the house, office and garden house as well as the bedroom bed base and bedroom furniture and the 5 TVs". Items were also removed by H to his European Property. W removed chattels from the family home: 6 people in 3 small vans completed the task.

86. Prior to the directions hearing in June 2023 W sought a valuation of the chattels at H's European Property. H initially sought to value W's chattels in her current home but ultimately did not pursue this. At the hearing in June 2023 H agreed to a value of £500,000 being ascribed to the value of chattels at his European Property. The order made in June 2023 reflected that agreement and the payment of £250,000 to W in addition to any award.

87. To my mind the family home was an attractive property appropriately but not luxuriously furnished. I have not been provided with a full inventory. There were no particularly valuable chattels in my view. I have seen photos of the property and of the contents. W had purported to photograph everything she took. She did not do so, in fact, but the omissions struck me as minor. The furniture was pleasant and appropriate, rather than obviously valuable. There is a big difference between H's European Property and the family home.

88. There is precious little evidence in relation to the valuations of any of the chattels. As I say, I did not receive a full inventory. H did not provide a schedule of the items that he says make up the £500,000 value of the family home contents. At the PTRs he did not seek a valuation of chattels removed from the family home (though the ES2 has a reference to the figure of £500,000 in H's column for family home chattels).

89. I pause here to record that I have insurance values for the contents and note that the figure for the contents of H's European Property is £468k whilst the figure for the family home is more than twice as high at £1.06m. I do not know the reason for the difference, but it is striking that the value ascribed to the chattels at the family home is so high compared to those at H's European Property.

90. However, in my judgment H has failed to demonstrate that the family home chattels have a value of £500,000 or indeed any particular value. But there was *some* value, inevitably. I consider how to deal with the June 2023 agreement later in the judgment.

(c) The Boat

91. The parties do not agree on the value I should ascribe to the sale proceeds of a boat, in the asset schedule. It has been sold. H says that he has a half interest in the proceeds with his son, C, and that, after (an agreed) deduction of £55,022, his interest stands at £90,476. W says that H owns the entirety of the proceeds of sale of £234,798.

92. The boat was purchased in 2018. H has said, throughout these proceedings, that it is a jointly held asset with his son. In his form E, H put his interest at 50%. In her form E W said she did not know the ownership structure of the boat.

93. In support of his assertions as to ownership, H produced insurance documents dated May 2018, and a Bill of Sale dated 16 November 2021.

94. The insurance documents identified C as co-owner. But they also used the phrase "not applicable" in setting out C's financial interest in the boat. It is accepted that C made no financial contribution to it. W says that the form was completed simply to allow C to drive the boat.

95. The Bill of Sale is dated 16 November 2021, the month after separation. It provided that H would transfer 50% of the shares in the boat to C. It is not signed by H but there are two witnesses, a shipbroker and his receptionist. H should have signed that document but did not do so for reasons that are not clear. W described the document as "bogus", but that assertion has not been pleaded properly in my view. H explained that the document was prepared to formally transfer 50% to C to ensure that C could use the boat without fear it would be impounded. He said he did not know of the divorce petition at the time.

96. In February 2022 H made the first offer to W which included the value of the boat in its entirety. It did not say that H had a half interest. H says he was desperate to negotiate with W and it would have been rather "indecorous" of him to bring the November 2021 transfer to her attention and so rile her.

97. In my view, the ownership of this boat has been pretty fluid – it is a family asset. The preponderance of the evidence is that H was the sole beneficial owner up until November 2021 when he attempted to, and possibly did, transfer 50% of the shares in the boat to C. But he held himself out as the sole owner in negotiations in 2022, even though he was acutely aware of the Bill of Sale. He did not want to jeopardise negotiations. But, had the boat always been treated as a joint asset with C, W would

not have been perturbed by a reference to H having just 50% of the value. During the marriage, up to separation in October 2021, the boat was H's sole property. Even if H did divest himself of half the value of the boat, post separation, in my judgment fairness requires that I use the entire value of the proceeds in the asset schedule. I adopt the figure of £234,798,

(d)(i) Addbacks: maintenance

98. H has sought an addback of £113k to reflect what he says are unnecessary payments of maintenance made pursuant to an order dated October 2023. W opposes any addback.

99. This allegation is a species of conduct and H must demonstrate wanton dissipation. H has not identified any transactions that he considers amount to such dissipation other than the purchase of half a golf-simulator. W's income at the time was about £7,800 net pcm and her budget, according to her form E, much higher at £338,000 pa. So, there was, on W's case, a substantial shortfall. But more than this, H was spending very considerable sums himself. In his form E he put his budget figure at £364,000 pa but Miss Bangay KC and Miss Howitt have demonstrated that the actual level of expenditure well exceeded this figure. Most notably, H spent more than £1.8m on the purchase, through his current personal service company, of a Yacht in January 2022, a purchase on which more than £600,000 was ultimately lost.

100. I do not consider that this sum of £113,000 should be added back because I do not consider that H has demonstrated that any of her expenditure has been wanton.

(ii) Addback for difference in legal fees.

101. H seeks a reattribution of 25% of W's fees or £223,000. The case has been very expensive for both parties. Legal fees stand at £892,000 for W and £705,000 for H. However, that apparent difference of £187,000 is not particularly instructive as a) H does not pay VAT, so the correct comparable is W's non-VAT total of £743,000; b) H has paid the SJE fees of £117,000 (according to H, more according to W); but c) W has paid the costs of Ms Hart at £89,000. I found Ms Hart's reports helpful. Once those costs are accounted for, the difference is actually much lower at about £66,000.

102. One key reason for the difference in costs is choice of representation by counsel. W has been represented by Leading Counsel throughout and also junior counsel at trial. Mr Sear became a silk during the proceedings. I do not consider W's choice of counsel to be unreasonable. This is a complex case, particularly in relation to the valuation of the Leumadair interests. The papers run to more than 2,000 pages in total. H's presentation of his finances has been sub-optimal since the form E, which was an unhelpful document. His evidence as to a number of important issues, up to and including the trial, notably the tax liability of the previous personal service company,

the sums due for the habitation licence, and the chattels at the family home was also not as clear as it should have been.

103. H relies on the decision of HHJ Hess in *YC v ZC* [2022] EWFC 137. I note in that case W's fees were £463k compared to those of H at £159k, a rather starker difference than in this case. In this case in my judgment there should be no reattribution for differences in legal fees.

(iii) The Yacht

104. The most important addback concerns the purchase and sale of the Yacht, a boat that was purchased by H through his current personal service company in 2022, and sold the following year. W seeks a reattribution of £617,000, representing the loss incurred on the sale and purchase. That figure was calculated by deducting the sale price of £1.2m from the SJE valuation in the current personal service company accounts of £1.817m [E/29]. On day 1 of the trial, I excluded argument about reattribution for running costs which I did not consider had been pleaded with sufficient notice or clarity to H. H opposes any reattribution.

105. The facts are as follows:

a. H completed the purchase of the boat for £1.5m in early 2022. An additional £316,000 was incurred for VAT. The SJE recorded the value as £1.817m in the current personal service company's accounts.
b. The purchase was financed with cash of c. £900k and debt of c. £900k.
c. H says that he intended to use the boat for chartering purposes with guests being taken out for reasonably short periods of time.
d. H told me, and I accept his evidence, that he spent only 8 days personally on the boat. He did not spend his time sailing around the Mediterranean after its purchase.
e. H generated a plan, of sorts, for chartering on Christmas Day 2021 though it was not produced to the court.
f. The protocol required to establish a commercial venture was, H said, "huge" and time consuming. He employed somebody to help with the process.
g. There was a substantial backlog in obtaining the MCA (Marine and Coastguard Agency) coding; it was expected to be 5 to 8 weeks but took 8 months which meant that H lost the Summer 2022 revenue.
h. H did not actually have any charters at all, but I find he was not as transparent to W about the charters as he should have been.
i. The boat was sold in 2023 at £1.2m at a time when liquidity was limited and the value of the Leumadair interests was reducing.
j. Of the £617,000, approximately £300,000 reflected a reduction in the value of the boat; the remainder consisted of costs of sale and purchase.

106. H did not notify W of the purchase of the Yacht. She discovered it through a perusal of Companies House documents. It did not feature in H's form E. I consider that the boat should have been referred to expressly in the document, rather than being indirectly included as an asset of the current personal service company. This purchase, in the midst of financial remedy proceedings, proved to be very unwise. I get the impression that it was a poorly thought-through decision with limited planning.

107. However, I do not consider that the purchase was done with any intention other than to charter out the boat. It was intended to be a company asset that generated income. H did not spend the Summer sailing around the Mediterranean. H can be criticised for making an extremely poor investment and the timing was insensitive and rather thoughtless. H was not transparent about the purchase itself or his failure to generate charters. But I remind myself of the high test in *MAP v MPF* and the observation that the parties have to take their husband or wife as they find them.

108. H is a businessman and an entrepreneur. As a couple they enjoyed a very high standard of living from which both benefitted. They ran three lovely homes during the marriage and had access to boats and expensive cars. H has made substantial amounts of money before the marriage and, with W by his side, during the marriage. Unlike the husband in *MAP v MPF*, H's expenditure was in my judgment an unwise investment of a business nature, not the frittering of funds.

109. In my judgment I do not consider that the high threshold required by the authorities is met and I do not add back these monies.

Loans to Ms M

110. The competing positions are as follows: H puts his loans to Ms M at £77,824, a figure consisting of cash of £57,000 and £20,824 made in payments on Ms H's behalf. He set out that figure in correspondence dated 16 May 2024 at [SB2/288]. W argues for the figure of £125,825. In cross examination of H, Ms Bangay KC and Ms Howitt relied upon a schedule they had produced that demonstrated total loans were, in fact, £105,000 to which the £20,825 should be added. H quickly conceded the accuracy of that schedule. Based on that evidence I conclude that the sums owed are £125,825. H disclosed that Ms M had substantial resources of her own in cross examination of £2m so would have liquidity to repay those funds.

111. For completeness I ascribe no value to Ms L's loan which was not referred to in evidence.

Loan from W's mother

112. W's mother has loaned c. £40,000 to W. W says that this is repayable; H says it is a soft loan and should be excluded from the asset schedule. There is, clearly, a fluid

financial arrangement between W and her mother. W points out that these are fully evidenced loans and require repayment. H says that they should be ignored as they are effectively offset by the fact that W pays her mother's mortgage. There is a superficial attraction to H's arguments but, in my view these funds, which W's mother requires to meet her own financial needs, should be repaid. In my judgment the liability is included.

Other debts

113. I have included W's tax liability. I do not include debts relating to the boiler and the hotel costs.

H's European Propertyand the habitation licence

114. The SJE, Peter Densham, valued H's European Property at €8.4m with a habitation licence and €7.5m without a habitation licence. The parties agree that I adopt the higher value. The issue then is the costs that I should include for the obtaining of the habitation licence itself. W says H has failed to prove that any costs would be payable and urges that I use the figure of £0. H has provided, with his statement in response, a schedule identifying expenses of c. £458,000 and this is the figure he advocates.

115. A habitation licence is required to sell a property in the jurisdiction in which it is sited and is granted by the local planning authority. The parties have known about the lack of licence, and the slowness of obtaining it, since September 2021 [SB2:286]. Since separation, H has been responsible for dealing with the process as sole legal owner and occupant. The SJE reports are dated September 2022 and December 2023. There is no additional information about the costs of the licence in the second report.

116. In 2022 there appears to have been more activity in relation to the licence. According to the email from a builder, he was told by the project architect that local planning authority was intending to inspect. It then appears that the architect was told that the licence could be obtained if H paid a bribe of €30,000. H, quite properly, refused to do so. But that meant, it appears, that he was then stuck in a backlog. H has discussed the issue of the bribe, with a certain amount of anger, with the ambassador and his MP. He would be "damned" if he was going to bribe. I accept that evidence.

117. H told me that an application had been made to the local planning authority. Applications are made in two parts: the first concerns utilities and health and safety, and the second, buildings regulations, which may require a site visit. The relevant information has been supplied for the first, together with the appropriate declaration by builder and architect. The second part is more problematic, and it is in relation to the buildings regulations, and the site visit that the bribe arose. H says that he has now delegated the job of obtaining the licence to the aforementioned builder but understands from conversations that a site visit is imminent.

118. Mr Densham's report stated that the licence was not obtained because of several issues: (a) water features (the rill); (b) access stairs to the machine room; (c) garage construction; and (d) basement patio door and windows.

119. In his statement in response to W's s25 statement, for the first time, H provided an "estimate of schedule of restoration" produced by the builder at [S1122] totalling €536,000 of which €436,000 was the cost of works and €100,000 VAT. That was the first attempt at quantification. The evidence should have been produced much earlier.

120. My order of 30 April 2024 provided that H was to provide all relevant supporting documents as to the cost of the habitation licence for his European Property, said by him to be €500,000 together with all relevant previous correspondence, including with local planning authority, on this issue to date. The documents produced were scanty: an email with the garden designer who provided further information explaining that the removal of the rill feature and the surrounding soft landscaping was a significant undertaking and costs were high, together with some correspondence.

121. Given the importance of this issue, the documents in support are sub-optimal.

122. The SJE notes that works need to be carried out in order to obtain the habitation licence. However, I am not satisfied on the evidence that the schedule of works relied upon by H will actually be required by the local planning authority, particularly given that they have not attended the property. It was beholden on H to obtain satisfactory evidence rather than leaving the process to the builder. I accept that the process appears murky and bureaucratic. But it would be quite unfair in my view, in the absence of persuasive evidence, to ascribe a cost figure as high as £458,000. I have examined the schedule itself and, in my judgment, the expenses that are associated with the basement lightwell, window, and garden walls are clearly set out and relatively modest but some of the other figures are substantial, very large (reinstate paving/rill/structures after issue of habitation licence put at €250,000) and lacking in detail. By including the more clearly identified costs, and taking a more broad-brush approach to others, in my judgment the appropriate figure for works required for the habitation licence should be put at £200,000. This is a somewhat arbitrary figure but takes account of a) the agreed expert evidence that works are required; b) the poor nature of the evidence produced by H, but also c) the substantial difference between the value of the property with and without a habitation licence.

Tax liabilities

123. The issue here is the extent of the tax liabilities owed by H/his previous personal service company: W argues that I should adopt the figure of £4.45m outright without the possibility of a reimbursement in the event of H making any savings. H proposes that I use the figure of £5.574m.

124. In 2013 H and his previous personal service company embarked on a tax minimisation scheme [SB853]. The scheme resulted in credits to H's DLA with the previous personal service company of £8.15m between 2013 and 2017. The funds were used to refurbish the family home, build H's European Property and to finance a donation to H's school. Initially, the HMRC determined that it was not a notifiable scheme under the provisions of the GAAR (General Anti Abuse Regulations) legislation. However, in 2016/2017 the HMRC opened enquiries into H and his previous personal service company arguing that the tax planning scheme did not work and the credit to H's DLA should be treated as taxable income. That meant that credits to H's DLA would incur PAYE and NIC, together with interest and penalties but would be offset by consequential reductions in corporation tax. In 2019 the HMRC proposed an "indicative settlement figure" to H's previous personal service company of £4.57m, which H did not accept.

125. H is not the "principal debtor" in relation to investigation of the scheme; that person was "Mr A", but H agreed to be bound by the decision regarding "Mr A". The tribunal appeals were withdrawn in 2023: "Mr A" had capitulated.

126. In his form E, H put his tax liability figure at £8m but said that the figure was estimated and "TBC". He exhibited the £4.572m HMRC settlement proposal, and provided a helpful summary from his tax adviser, suggesting that a figure of £5m "might be in the right ball-park". On 7 November 2022 the HMRC issued Accelerated Payment Notices for £4.447m. Those APNs were confirmed on 2 February 2024 [SB2/106] but appear to include an NIC liability of £318,133 which has since been cancelled because it is out of time, thereby reducing the APN figure, on my calculations, to c £4.15m in total. H did make a proposal to pay £4.447m towards the tax liability on 5 March 2024 financed as to £2m by a remortgage of his European Property [SB2/118] though this included a s. 455 tax refund.

127. In evidence, H explained that he had not set aside funds for the tax liability since 2019 notwithstanding that since 2019 the tax liability has increased because of interest by c. £1.5m. There appeared to be two reasons for H's decision: first, because he hoped to trade out of any liability at a time when the business was making money, and second, because he disagrees, strongly, with the decision of the HMRC that he should pay tax. He contrasted his level of knowledge favourably with the rather less knowledgeable "Mr A".

128. The legal advice that H has received has been rather slow to be produced but on 6 June 2024 an email was received from H's tax advisor in which he noted that H had "legitimate reasons" which could form the basis of an appeal. Those reasons included drawing a distinction between the very tightly drafted commercial terms of the tax scheme and other schemes and the possibility that tax might be charged at dividend rather than income tax rates. The tax advisor also said that pushing for an appeal

might drive the HMRC to change their litigation strategy. It is clear that H is working hard with legal advisers, notably King's Counsel, to try to reduce or minimise the tax liability. He intends both to raise funds to meet the APN and to appeal them. He explained that he could borrow from Ms M and/or raise a mortgage. He also stated that he was launching a new fund that he hoped would be successful and generate liquidity.

129. H is clearly going to appeal. He feels strongly that he is in the right and has, according to his own oral evidence, a more financially knowledgeable and sophisticated approach to finances than "Mr A". His tax advisor's email says that "[H's] personal professional experience is such that he was able to level a much more informed and credible scrutiny when deciding which contracts to sign and investments to make – he wasn't unquestionably susceptible to some 'pre-packed black-box solution' ". It is fair to say that H's desire to appeal the HMRC finding came across much more strongly in oral evidence than in written evidence. Mr Sear KC said that the appeal had been advertised in H's "time to pay proposal" to the HMRC in March 2024, but this was not an obvious reference, and the appeal did not feature in the position statement or proposals.

130. Initially, W's position was that H's tax liability be taken at £5.518m with an equal sharing of any savings. In closing, W proposed that a figure of £4.45m be adopted, based upon the original indicative settlement figure from the HMRC of £4.572m. She did not seek a sharing of any reimbursement.

131. H's written proposal was that the tax liability be taken at £5.574m (after deduction of the s 455 tax refund). In closing submissions, he moved from his original open position to propose a possible sharing of savings provided they fell within a 5 year window.

132. Both parties' offers require me to quantify the tax liability. In doing so, I have regards to all the evidence I have read and heard, and the following points in particular, which guide me towards my decision:

a. H made a recent proposal of £4.449m (actually less, after the s 455 refund).
b. The APN notices are, I calculate, for a figure of £4.15m, though if I am wrong about this, at £4.447m they remain well below the £5.574m figure suggested by Mr Sear KC.
c. H chose to reject the indicative settlement proposal of £4.57m in 2019.
d. H has never chosen to save any funds to pay the liability or made an offer to the HMRC until this year suggesting a level of confidence that he will not have meet the liability.
e. And, most importantly, H is planning to appeal the APNs and he considers, and therefore I consider, that he has some prospects of success. He has a much greater level of understanding than does Mr A.

133. I do not consider, on the balance of probabilities, that H will pay £5.574m towards this liability. Given the factors listed above, and his zeal for an appeal, I consider that he is likely to pay a figure rather closer to the APN/offers. Doing the best I can, I take £4.75m as the appropriate figure. That figure includes the entirety of the sums due including the £55,033 figure described as "H's estimate TBC" on Mr Sear KC's schedule.

H's business interests

134. H's businesses are management and advisory companies. They have limited assets. The experts agree they should be valued on an income basis: their values lie in their future income streams. Those streams are generated through periodic fees, calculated by reference to the value of the funds, and performance fees, calculated by reference to the growth in value of the funds above a particular hurdle rate. The quantum of both streams therefore depends upon the value of the underlying funds, their rate of growth, and the charges made to investors. Calculating future income streams depends upon the experts making a large number of assumptions about the future performance of the funds, the fees that are charged and the costs of the businesses. What appear to be modest changes to those assumptions can have a substantial impact. The factor that the experts agree has had the most substantial impact on the reduction in value of the underlying funds is the increase in the cost of capital, the Weighted Average Cost of Capital, or WACC.

135. As I have set out above, the values of H's Leumadair interests have reduced very significantly during these proceedings. H now urges me to adopt the value of £2.779m, the figure in Mr Isaacs' second report. W argues that I should take the value of £4.845m, the figure calculated by Ms Hart in her final report on the basis of planned and potential developments.

136. I set out the recent chronology of the business valuations below.

137. Mr Isaacs' unchallenged 2011 Discounted Cash Flow (DCF) valuation of First Leumadair Investment was £15.438m, a value that was the result of the happy confluence of stable, long-term low interest rates and a high expected rate of growth. The DCF valuation is one that converts future cash flows into a current single capital value by applying a discount. Essentially, it reflects the latent future income streams of the business.

138. In his first report dated 28 November 2022, Mr Isaacs valued H's interest in the Leumadair entities at £19.4m [EB78]. He restated those figures in answer to clarificatory questions at £17.3m. They are set out in the table below (the figures are in thousands of pounds).

	£000s
Second Leumadair Investment (50%)	6,858
First Leumadair Investment (40.85%)	9,875
Leumadair Investment (50%)	619
Total	17,352

139. The business environment became more challenging following the date of that report. In his s 25 statement, H identified three key reasons for the reduction in the value of the NAVs of the underlying funds: the increase in interest rates and the impact that had on performance fees; the impact of investor confidence because of the funds' failures to meet EBITDA target; and the loss of important investors.

140. The most significant change to value was the decision of the Boards of the respective funds, (and there is no criticism here), to increase the WACC, with a substantial knock-on effect to the value of the fund. In very simple terms, the higher the rate of WACC, the lower the value of the fund.

141. Mr Isaacs' updating report dated January 2024 set out a substantial reduction in the value of H's Leumadair interests which he calculated as follows:

Second Leumadair Investment (50%)	2,114
First Leumadair Investment (40.85%)	469
Leumadair Investment (50%)	196
Total	2,779

142. Mr Isaacs identified the key reason for the reduction in value as being the declining value of two of the funds, Fund 2 and Fund 1 and the reducing growth rate of Fund 3. A further contributory factor was a reduction in the periodic fees rate, reflecting a change in the make-up of the percentages charged to new investors.

143. The NAV of Fund 1 fell from £619.5m to £410.4m between the first and second reports, with a further decrease of £71.5m forecast over the next 2 years. The key driver for the reduction was in the increase in WACC from 9% to 10.15%. The performance fees for Second Leumadair Investment and First Leumadair Investment reduced as a consequence of the declining funds values, with no performance fees forecast to be payable at all for First Leumadair Investment.

144. As explained above, faced with an 85% reduction in value, W sought the expert advice of Ms Hart.

145. In her report, Ms Hart endorsed the valuation methodology of Mr Isaacs and broadly agreed with his figures. However, in contrast to Mr Isaacs she took account, not just of *planned* development projects, which Mr Isaacs had included, but also three *potential* development projects that are currently at very early stages and awaiting planning or on hold.

146. A further difference between the approaches of Ms Hart and Mr Isaacs was their adoption of a different rate of increase to the main expenses of First Leumadair Investment and Second Leumadair Investment, the costs recharged to Leumadair Investment. Ms Hart used 2% compared to 5% by Mr Isaacs.

147. Ms Hart's comparative figures can be summarised as follows

	Planned	Potential
Second Leumadair Investment (50%)	3,209	4,066
First Leumadair Investment (40.85%)	896	1,124
Leumadair Investment (50%)	225	225
Total	4,330	5,415

148. The accountants then produced a statement of agreement and disagreement in which they highlighted the fragility of the valuations in this case and noted that the key difference between their approaches related to inflation.

149. The experts' warnings as to the valuation exercise were strongly worded. They emphasised that whilst valuations of private companies are inexact, the valuations here had to be treated with particular caution because they (the valuers) had to make a large number of assumptions about the future performance of funds.

150. Notwithstanding that warning, both parties are both keen for me to make a finding and both seek a clean break on the basis of a lump sum that fairly shares the value of the business interests.

151. Ms Hart then produced a further helpful analysis in which she modified her calculations to take fair account of some of Mr Isaacs' comments on inflation. In particular, she adopted the rate of inflation of 5% now, with a reducing rate over time. Her figures included both planned and potential developments and are set out below.

	Planned	Potential
Second Leumadair Investment (50%)	2,825	3,674
First Leumadair Investment (40.85%)	712	946

Leumadair Investment (50%)	225	225
Total	3,762	4,845

152. W advocates that I adopt Ms Hart's figure on the basis of planned *and* potential developments, namely £4.845m. H argues for Mr Isaacs' figure of £2.779m. I consider the evidence.

153. In oral evidence Mr Q was rather more sanguine about the prospects of Leumadair than was H.

154. H was optimistic about a fourth, entirely non-marital fund that he hoped would be able to piggyback off the three other funds.

155. Mr Q said that:

a. Fund 1 was a mature fund where the yield was disappointing relative to budget; this year will be marginally better than the last, but it needed to generate greater returns.
b. In Fund 2 there was a cessation of the development of new businesses because of the high cost of construction and the model used was not generating the return required. There is a plan to sell one of the developments.
c. Fund 3 was trading consistently with budget but the wider context for the businesses in this fund was challenging

156. Mr Q felt confident that fund Fund 3 was a sustainable long term income source: for Fund 2 he had medium term good hopes; Fund 1 was challenging. There is no current plan to sell. Overall, though, both Mr Q and H were slightly more cautiously optimistic about Leumadair's fortunes in their oral evidence than, in my view, was expressed in the written evidence.

157. One of the key differences between the approach of the experts related to factoring into the valuation of potential developments. Ms Hart included potential developments in her valuation, whilst they were excluded by Mr Isaacs for the following reasons: (a) the timing and extent of the developments was uncertain due to cash flow constraints and recent increases in construction costs; and (b) the developments relied upon planning permission and financing being obtained, and construction costs falling or returns increasing to a position of financial viability. The evidence from Mr Q supported the views of Mr Isaacs. Having considered all the evidence, I consider that I should exclude potential developments from the valuation exercise.

158. I therefore consider that the two competing valuations I should consider are Mr Isaacs' valuation of £2.779m and Ms Hart's valuation based on planned, rather than

potential developments, of £3.762m. I should say I found both reports to be impressive. The temptation might be simply to calculate the mean, but two factors lead me to accept the valuation of Ms Hart over that of Mr Issacs: first, she has already accommodated aspects of Mr Isaacs' views on inflation in her updated report; second, the generally measured, but cautiously positive approach, particularly of H in evidence, leads me to adopt a slightly more optimistic and higher value. In coming to my decision, I apply the principles in *Versteegh*.

159. I bear in mind the warnings given by Mr Isaacs and Ms Hart as to the fragility of the valuation exercise. But I have considered the parties' joint wishes for me to make a finding, and I have also considered, carefully, all the written and oral evidence. In my view I do have a sufficiently sound basis to reach an appropriate valuation. In my judgment the valuation of the Leumadair interests should be taken at the valuation produced by Ms Hart on a planned, but not potential development, basis.

160. The business valuation, therefore, is the following

Second Leumadair Investment (50%)	50%	2,825
First Leumadair Investment (40.85%)	40.85%	712
Leumadair Investment (50%)	50%	225
Total		3,762

H's current personal service company

161. H is the sole director and shareholder of his current personal service company and the company receives his income. The company has an agreed net asset value of £3m.

H's previous personal service company

162. The company is valued on a net asset basis. Having resolved the question of tax liability, I adopt the methodology of Mr Isaacs and Mr Sear KC in relation to presentation of the tax liability. I use Mr Isaacs' value on the basis of the higher value for H's European Property, a figure of £4.724m at [EB940] but deduct a tax figure of £4.75m rather than the figure of £5.574m employed by Mr Sear KC. The value is therefore minus £26,000.

163. The parties have agreed to ignore pensions. H has a fund of c.£1.04m, W of c. £518,000. I do not include the value of household contents on either side.

Total assets

164. The total non-pension assets, therefore, as agreed or found be me, are set out below. They stand at £10.215m.

ASSETS			
	W	**H**	**TOTAL**
Proceeds of The Family Home	586,328	586,328	1,172,656
H's European Property (incl in H's previous personal service company)			
Proceeds of the ski chalet	257,504	257,504	515,008
W's current residence	970,000		970,000
W's mother's home	320,000		320,000
Bank accounts	16,772	40,696	57,468
H's investments (Fund 2 & Fund 3)		534,604	534,604
Chattels			0
Land Rover		ignore	
Boat		234,798	234,798
Boat 2		13,800	13,800
Other			
Fidelity		25,969	25,969
JL Loan		0	0
Ms M Loan		125,825	125,825
Marriage settlement		0	0
Monies on account	230,822		230,822
Reattributions			
Reattributions to W	0		0
Reattributions to H		0	0
Liabilities			
Habitation Licence		(200,000)	(200,000)
Personal liability re tax scheme			
Debt to mother	(40,950)		(40,950)
Loan re property	(143,672)		(143,672)
Tax debt	(2,900)		(2,900)
Outstanding Costs	(236,956)	(195,331)	(432,287)
Current personal service company		3,005,653	3,005,653
Previous personal service company		(26,000)	(26,000)
Previous personal service company DLA		93,002	93,002
Pensions (excluded)	-	-	-
NON-LEUMADAIR TOTAL	**1,956,948**	**4,496,848**	**6,453,796**
Leumadair			
Second Leumadair Investment		2,825,000	2,825,000
First Leumadair Investment		712,000	712,000
Leumadair Investment		225,000	225,000
TOTAL	**1,956,948**	**8,258,848**	**10,215,796**

Incomes

165. This is a clean break case so precision in relation to incomes is not crucial.

166. W currently earns £180,000 pa. She considers that she is underpaid. She requested a pay increase to £275,000 in 2022 but this was rejected. In evidence she estimated her role to be worth £300,000. W was concerned that it would be difficult for her to remain employed at Leumadair. She reports to Mr Q, rather than H. H confirmed, and I accept, that he would give an undertaking not to actively seek to terminate her employment. H noted that there were concerns on the board about management of Leumadair, particularly in relation to costs, so there was no guarantee that she would remain in post indefinitely. Mr Q struck me as someone who was completely honest and I have no doubt that he will treat W fairly. Even though H is frustrated by this process I do not believe that H holds ill-will towards W.

167. H's income is much more unpredictable and much more difficult to calculate. His form E figure of £486,000, which set out his drawings from his current personal service company, did not reflect the entirety of his access to income. The experts gave very fluctuating figures that were inconsistent: Mr Isaacs' ranged from c. £334,000 to £877,000 in different years, Ms Hart between c. £515,000 and £1.036m.

168. Mr Sear KC suggested a figure of £1m be taken as the going rate for his work in the market. Ms Bangay KC cross-examined H effectively with schedules of income and expenditure which suggested that his income certainly in 2021 and 2022 was considerably higher than £1m and closer to £1.5m to £2m. The dividends received from his current personal service company were £1.5m in 2021 and £974,000 in 2022. I think a conservative figure now can be taken at £1m gross and net, but this may well increase.

J Distributions and conclusion.

169. Having calculated the assets, I now turn to distribution.

170. In closing submissions both parties proposed an equal division of the capital assets on a clean break basis using their own figures for the assets. Both parties sought a clean break now as their preferred (H), or only (W), option. There is a statutory steer towards a clean break, and, in my judgment, a clean break is by far the better outcome for these parties. I therefore do not consider H's secondary proposal of ongoing involvement in detail.

171. W no longer seeks to retain shares in the Leumadair entities. I should add that I would not have ordered a transfer in any event: W does not have the relevant qualifications to hold shares in these advisory and management companies and effecting their

transfer would have been extremely problematic not least because the Boards would not have approved the transfer.

172. In the open positions at the outset of the trial, the issues of matrimonialisation and pre-marital contributions were most acutely raised in relation to the quantification of W's ongoing share of Leumadair interests. H proposed, as an alternative to an immediate clean break, that W should receive 15% of the future performance fees, after deduction of his salary, and 15% of the proceeds of sale of the Leumadair interests. That percentage was chosen to reflect H's pre-marital contributions.

173. But by closing submissions, when both parties advocated an equal division of all assets, the importance of issues concerning matrimonialisation and pre-marital assets had diminished.

174. However, the parties have adopted competing positions on the issue of matrimonialisation and I consider it necessary to determine that issue in order to come to a fair outcome. Ms Bangay KC and Ms Howitt have asserted that the Leumadair interests have been fully matrimonialised by virtue of W's work done during the marriage in realising the value of the Leumadair interests. Mr Sear KC argues that I should not treat any of the Leumadair interests as fully matrimonialised.

175. The non- Leumadair assets, in my judgment, are fully matrimonial since they consist in large part of the parties' homes, or the sale proceeds of their homes. They will be divided equally.

176. The background to the Leumadair interests, however, is the 2011 DCF value of First Leumadair Investment, a figure of £15.438m, that has never been challenged. That value reflected latent future income streams. The business strategy for developing the businesses had been in place as from 2007, and the 2011 valuation reflected the likely success of the plan, and the very beneficial economic conditions at the time.

177. Mr Sear KC says that those income streams have been "harvested". Ms Bangay KC and Ms Howitt say that the assertion is "nonsense": the income streams actually have to be earned each year and that was done by the parties as a partnership during their relationship. Ms Bangay KC and Ms Howitt point to the very substantial growth in value of the underlying fund, Fund 1, during the marriage until separation. The graph at [E637] identifies the growth in value of Fund 1 from less than £100m in 2011 to more than £600m, though that figure has now reduced to c £410m.

178. When W gave her evidence, I was struck by just how committed W was, and is, to her work: it is more than just a job to her. She takes great pride in her achievements and has had notable success. When she took over the running of the businesses she worked, I accept, prodigious hours. Clearly, as MD of Blue Leumadair she would

have had a leadership role in the implementation of the plan. She was integral to it. Indeed, all the developments were undertaken under her watch.

179. But I do not consider that the developments came about solely because of her role. The evidence of Mr Q, whom I found compelling and unbiased, was that this was part of a "collective drive". There was a team of people who would have effected implementation and it required (a) the ownership of the businesses in the first place and (b) the finances to carry it out. W had a limited involvement in securing finance. She accepted that the strategy was developed by H alone.

180. I remind myself that in her first open proposal W had excluded from sharing First Leumadair Investment in its entirety. That was, in part, a reflection, or acceptance, that First Leumadair Investment was arguably of a less matrimonial nature than the other business assets. But I do not ascribe too much weight to that offer given *DR v UG*.

181. In my judgment First Leumadair Investment falls within the second category of assets identified by Moylan LJ, in *Standish* at [163], a category where the "extent and manner in which non-matrimonial property has been mixed with matrimonial property mean that in fairness" it (the property) should be included within the sharing principle.

182. Mr Sear KC urges me to find that the other Leumadair interests, Leumadair Investment and Second Leumadair Investment, should also not be considered to be matrimonial, primarily on the basis of a reflection of the level of pre-marital contribution by H. However, I note that these companies were started during the relationship and in my judgment these are fully matrimonialised,

183. The question is then how, fairly, should First Leumadair Investment be divided when it is not fully matrimonial. As *Standish* makes clear at [166] the court is not obliged to divide the asset equally: such a rule would be perverse. I therefore have to consider what award of less than 50% makes fair allowance for its non-marital source.

184. I bear in mind the following facts:
    a. The DCF value of First Leumadair Investment on marriage was £15.438m. Its current value, as I find, is £712,000, a very substantial reduction.
    b. W oversaw the development of all the businesses.
    c. H donated £5m to his former school during the marriage, part of the "harvesting" of value.
    d. The strategy for the business was developed in 2007, and First Leumadair Investment and Fund 1 were started in 2008.
    e. The open position of H was a 50/50 division of First Leumadair Investment. But this proposal was on H's own figures.

185. In my judgment, taking all the evidence into account, it is fair to divide the value of First Leumadair Investment as to 75% to H and 25% to W. Such division is a modest departure from equality of division of the asset but pays some regard to the pre-marital source of the asset.

186. The assets that I have identified as matrimonial will be shared equally between the parties.

187. I was not addressed on any issues as to discount of the value of business assets on the basis of illiquidity. The value of the business assets is about 25% of the total asset base, and I do not consider in all the circumstances of the case, including H's unwise expenditure on the Yacht, that any discount is appropriate.

188. In my judgment therefore:
    a. The matrimonial assets as calculated will be divided equally. That includes the value of Leumadair Investment and Second Leumadair Investment.
    b. First Leumadair Investment will be divided as to 25% to W and 75% to H.

189. As part of her award W will retain the entirety of the net proceeds of sale of the ski chalet and the family home. In addition, H will pay two lump sums to W:
    a. A lump sum of £426,118 to equalise the non-business assets.
    b. A lump sum of £1.7m to reflect W's entitlement to the Leumadair assets.

190. I set out the result in tabular form.

ASSETS			
	W	**H**	**TOTAL**
Proceeds of The family home H's European Property (incl in H's previous personal service company)	1,172,656		1,172,656
Proceeds of the ski chalet	515,008		515,008
W's current residence	970,000		970,000
W's mother's home	320,000		320,000
Bank accounts	16,772	40,696	57,468
H's investments (Fund 2 & Fund 3)		534,604	534,604
Chattels			0
Land Rover		ignore	
Boat		234,798	234,798
Boat 2		13,800	13,800
Other			
Fidelity		25,969	25,969
JL Loan		0	0
Ms M Loan		125,825	125,825
Marriage settlement		0	0

Monies on account	230,822		230,822
Reattributions			
Reattributions to W	0		0
Reattributions to H		0	0
Liabilities			
Habitation Licence		(200,000)	(200,000)
Personal liability re tax scheme			
Debt to mother	(40,950)		(40,950)
Loan re property	(143,672)		(143,672)
Tax debt	(2,900)		(2,900)
Outstanding Costs	(236,956)	(195,331)	(432,287)
Current personal service company		3,005,653	3,005,653
Previous personal service company		(26,000)	(26,000)
Previous personal service company DLA		93,002	93,002
Pensions (excluded)	-	-	-
NON-LEUMADAIR TOTAL	**2,800,780**	**3,653,016**	**6,453,796**
Equalising lump sum	**426,118**	**(426,118)**	
TOTAL NON-LEUMADAIR	**3,226,898**	**3,226,898**	
Leumadair			
Second Leumadair Investment		2,825,000	2,825,000
First Leumadair Investment		712,000	712,000
Leumadair Investment		225,000	225,000
LEUMADAIR LUMP SUM 50% of LEUMADAIR INVESTMENT and SECOND LEUMADAIR INVESTMENT, 25% of FIRST LEUMADAIR INVESTMENT	1,703,000	(1,703,000)	0
TOTAL	**4,929,898**	**5,285,898**	**10,215,796**

191. The final issue is the £250,000 lump sum that it was agreed, and recorded on the order of 22 June 2023, should be paid at the end of the trial in addition to W's award. Notwithstanding that agreement, I have reservations about the fairness of that lump sum when a) I have very little evidence in relation to the actual values of chattels; b) the wife retained the majority of the chattels at the family home; c), the agreement was reached when the assets were much greater, the total non-pension assets having declined by £27m to £10.2m, and d) H entered into the agreement, he says, and I accept, to narrow the issues. I have taken all the evidence into consideration. In my judgment the change of financial circumstances, and all the other factors set out above, mean that I can and should vary the agreement to ensure fairness between the parties. In my judgment H should pay an additional £150,000. It is a somewhat arbitrary number but fairly reflects the evidence and circumstances.

192. H has sought a period of 2 years to make these payments. He has limited liquidity – save for possibly borrowing funds off Ms H, a third party – but a high income of £1m. In addition, of course, he could always choose to sell H's European Property, though I accept that he will need to obtain the habitation licence first.

193. W will receive the residual net proceeds of sale of the family and ski chalet forthwith which will provide some liquidity. I conclude that H should have 24 months to make the payments: the first 50% of the lump sum shall be paid within 12 months and the residual within 2 years. Interest pending payment will be charged at 4% which I consider a reasonable rate of interest in the current financial climate.

194. I consider that H should pay W's costs for the disclosure application made on paper and the application made in April 2024 for costs. Both were necessary applications. I do not consider that he should meet the costs incurred in November 2023.

195. H should undertake, for as long as W is employed by Leumadair Contract Management/Blue Leumadair not to take any steps to interfere with her employment or to bring about the termination of her contract of employment.

196. I have not specifically addressed each section 25 factor but all have been considered, as appropriate, within the body of the judgment. The award meets both parties' capital and income needs and is a fair reflection of the parties' contributions.

197. That is my judgment