Neutral Citation Number: [2022] EWFC 137

IN THE CENTRAL FAMILY COURT

B E T W E E N :

YC Applicant

- and -

ZC Respondent

Mr Peter Newman (instructed by Osbornes Solicitors) appeared on behalf of the Applicant Husband.

Mr Justin Warshaw KC (instructed by JMW Solicitors) appeared on behalf of the Respondent Wife.

WRITTEN JUDGMENT OF HIS HONOUR JUDGE EDWARD HESS HANDED DOWN TO THE PARTIES BY EMAIL ON 17th OCTOBER 2022

Introduction

1. This case concerns the financial remedies proceedings arising from the divorce proceedings between Mrs C (to whom I shall refer in this judgment as "the wife") and Mr C (to whom I shall refer in this judgment as "the husband").

2. This final hearing in the financial remedies proceedings came before me over three days on 4th, 5th and 6th October 2022.

3. The Husband appeared before me by Counsel, Mr Peter Newman (instructed by Osbornes Solicitors). The wife appeared before me by Leading Counsel, Mr Justin Warshaw KC (instructed by JMW Solicitors).

4. Both parties were legally represented before me at a high level in terms of forensic skill and assiduous hard work; but it has come at a huge cost. The wife has incurred total legal fees of £463,331. The husband has incurred total legal fees of £159,044. The total amounts spent by the parties, but in particular by the wife, in this not particularly large or complex case, are depressingly disproportionate and I shall make some further comments below on this subject.

5. I shall first set out in a little detail a history of the events which have led up to this hearing.

The marriage and the Divorce

6. The husband was born in April 1962 and is, therefore, now aged 60. He is a businessman and entrepreneur. My impression of him is that he is a driven character with an addictive personality - his character carries with it the plus side of entrepreneurial energy (and he has had some success in this regard) and the minus side of a tendency to engage in addictive activities and to take personal and financial risks and live life 'close to the line'.

7. The wife was born in October 1963 and is, therefore, now aged just 59. Her role in the marriage was largely as a home-maker and she has not had paid employment for a very long time (save in a largely notional capacity within the husband's business in a way which provided tax advantages). My impression of her is that she is a colourful, generous and expansive character, but with a tendency to financial indiscipline and poor decision-making.

8. The parties met in 1983, became engaged in 1985, began cohabiting in early 1988 and married in May 1988. On any view this was a very long relationship and marriage.

9. There are two children of the marriage (who are both adopted, but nothing here turns on this fact and both children are dearly loved by both parties). They are:-

   (i) A daughter, who is now aged 21.

   (ii) A son, who is now aged 19.

   Neither child remains in education and both are in work, though both continue to receive some (voluntary but generous) financial support from the husband.

10. Until July 2019 the parties were living with the children in the family home. .

11. Both parties have suffered some apparently quite serious health problems:-

    (i) The husband had some significant cardiac issues in early 2019. This triggered an insurance payout of £450,000 in June 2019 (the use of which has caused large arguments here – see below); but this does not appear to have prevented the husband from continuing with his work since then. I note that in answer to a formal question "*In the event that the applicant seeks to rely on the health conditions identified at paragraph 1.11 of his Form E, please provide a letter from his treating physician, setting out his diagnosis, prognosis, treatment plan and the impact of his conditions on his ability to work*" the husband replied on 22nd November 2021 "*The applicant will not be relying on his health conditions, save as it relates to the insurance payment that has been dissipated by the respondent*" and (despite some comments made by him during the hearing) has not subsequently provided any independent medical evidence in support of any suggestion that he imminently needs to retire on health grounds.

    (ii) The wife has suffered from some long term and difficult health issues and more recently has suffered with some cancer issues, some anxiety/stress/depression issues and most recently a seizure episode which is being investigated as a possible Transient Ischaemic Attack. Notwithstanding these difficulties she presented in the witness box as a person of some resilience.

12. On 28th July 2019 the wife discovered a 'burner' mobile telephone which, on inspection, revealed that the husband had very regularly been secretly visiting prostitutes in the months and years leading up to that point. This discovery very understandably caused major distress for the wife and the shadow of the discovery and its consequences continues to this day to resonate in the parties' acrimonious dealings with each other. The husband immediately evinced a degree of remorse for his behaviour and quickly sought to remedy the situation by leaving the family home and attending a month long general addiction programme at the Priory Clinic followed by a shorter sex addiction programme at the Paula Hall Clinic, although the wife was later convinced that these attendances were no more than insincere 'window dressing'. A brief attempt at a reconciliation in October/November 2019, following these attendances, was not successful and the parties have lived separately since then, the wife remaining in the family home, initially with the children and then on her own. The husband rented accommodation in London for some time, but more recently has occupied the parties' holiday home in Spain. The husband has a new non-cohabiting partner who lives in London. The wife remains single.

13. In the immediate aftermath of the July 2019 'burner' mobile telephone discovery the wife transferred the entirety of the £450,000 out of the parties' joint account into a mixture of

her own account and accounts of the children. In the period after that, all this money has been dissipated. These events, and the allegations and counter-allegations arising out of them, have made the prosecution of the financial remedies proceedings yet more acrimonious than they might otherwise have been.

14. The wife issued divorce proceedings on 29th July 2020.

15. Decree Nisi was ordered on 29th January 2021. Decree Absolute awaits the outcome of the financial remedies proceedings and is not, in itself controversial.

The financial remedies proceedings

16. On 3rd November 2020 the husband issued a Form A.

17. The proceedings have not gone as quickly or as smoothly as they should have done.

18. There have been four hearings dealing with, essentially, First Appointment type directions (on 5th February 2021, 11th May 2021, 1st September 2021 and 2nd February 2022).

19. There have been three abortive attempts to conduct an FDR (on 1st October 2021, 14th January 2022 and 25th May 2022). In each case the FDR did not take place largely because of positions or actions taken by the wife.

20. I decided on 25th May 2022 that enough was enough and that the case really needed to be determined and thus listed the case for trial. As is recorded on the face of my order for that day, I urged the parties nonetheless to engage in some form of non-court dispute resolution such as a private FDR before trial; but these thoughts appear to have fallen on deaf ears and a depressing feature of this case is that it has reached trial without any of the normal structured attempts at settlement.

21. It would be right and fair for me to acknowledge that, to some extent, the wife's health issues have contributed to this depressing chronology, including the aborted FDRs. It is part of the picture and I do not make light of it. I do not accept, however, that this adequately excuses or explains the wife's failure to engage properly in negotiation over a long period. Having seen her giving oral evidence I have the very clear impression that her mindset is that she has preferred to incur a grossly disproportionate level of legal

costs pursuing combative litigation without any real care for the effect of this on the remaining pool of assets and its ability to meet both parties' future needs. I have the clear impression that she feels justified in conducting herself in this way, seeing it as a just punishment for the sins of the husband; but she cannot expect fully to escape from the financial consequences of this decision-making.

22. I shall mention one incident in this context. On 19th April 2022 an order for sale of a property owned by the parties was made by consent. This was an obviously sensible step to take because this property was standing empty and its sale enabled a sum of more than £1,000,000 to be used to reduce the mortgage on the family home, the interest on which was having a draining effect on the parties' resources. A buyer was found and was ready to proceed, but the wife actively sought to renege on the previous consent order at the hearing before me on 25th May 2022 and, even after I ruled against her on that, she was sufficiently slow in executing the documents on the sale that I had to sign them on her behalf under Senior Courts Act 1981, section 39. Her issues with anxiety/stress/depression may have contributed to her failures here, but, again, it is not an adequate explanation or excuse.

23. To add to this depressingly self-destructive picture, both parties and their legal teams have engaged in relentless and destructive warfare against the other in terms of conduct allegations. I do not exempt the husband from this criticism; but one egregious example of the lack of restraint is the inclusion in the wife's narrative section 25 statement of large tranches of allegations of coercive and controlling behaviour by the husband during the marriage, notwithstanding the consensual prior directions orders which made clear that this issue was not being pursued. The comments of Peel J in *WC v HC* [2022] EWFC 22 have resonance here: "*Parties, and their legal advisers, may be under the impression that to describe the other party in pejorative terms, and seek to paint an unfavourable picture, will assist their case. It is high time that parties and their lawyers disabuse themselves of this erroneous notion*". Of course I am not privy to the privileged conversations between the wife and her Solicitors, and it is difficult for a trial judge to know exactly the cause of such a matter, but it is on any view hugely disappointing to note that a Solicitor, who was well aware of the consensual prior directions on conduct allegations, would draft a statement in this way or would fail to prevent a statement to be presented with these contents.

24. Against this litigation background I have dealt with the case at a PTR hearing on 5th September 2022 and a final hearing on 4th, 5th and 6th October 2022. At the conclusion of submissions, I indicated that I would produce a written judgment at the earliest opportunity, which I now do.

25. In the course of this hearing I have been invited to use an electronic bundle running to 1,421 pages. Amongst the documents in the bundle are:-

(i) A collection of applications and orders.

(ii) Material from the wife including her Form E dated 5th April 2021, her Replies dated 10th September 2021, conduct statements dated 10th September 2021 and 22nd December 2021 and a narrative section 25 statement dated 30th September 2022.

(iii) Material from the husband including his Form E dated 1st February 2021, his Replies dated 22nd November 2021, a conduct statement dated 17th September 2021 and a narrative section 25 statement dated 28th September 2022.

(iv) Various property valuation evidence.

(v) Material from Ms Kate Hart, the SJE Accountant from Quantuma Advisory Limited, including her original report and two supplemental contributions.

(vi) Various property particulars evidencing housing need.

(vii) A PODE report from Ms Caroline Bayliss of Excalibur Actuaries Limited.

26. I have also heard oral evidence from Ms Kate Hart and from both the wife and the husband, all subjected to cross-examination.

27. I have also had the benefit of receiving full oral and written submissions from both Counsel.

General law on financial remedies applications

28. In dealing with the financial remedies applications, I must, of course, consider the factors set out in Matrimonial Causes Act 1973, Sections 25 and Section 25A, together with any relevant case law.

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

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

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

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

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

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

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

the termination of his or her financial dependence on the other party.

31. I shall refer to certain case law as I consider the different factors which arise here; but propose to deal with the section 25 factors as follows.

Analysis of Capital

32. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future"** a significant number of issues are agreed, but I need to comment upon or determine a number of important disputed subjects.

33. The first topic here is the value of the business. In essence it is a business which is the entrepreneurial initiative of the husband and is run by him as managing director.. The legal structure of the business has a number of complications (with a number of dormant companies); but for present purposes it is unnecessary to go further than to note that the wife and the husband own 50% each of the shares in a holding company which itself owns 100% of the shares in the company which is in essence the trading operation and where any value which exists actually lies. It is common ground that all the holding company shares (together with the other shares she holds in dormant operations) should be transferred to the husband from the wife under a property adjustment order such that, whatever else happens, the husband will become the sole owner of the business.

34. Ms Kate Hart has carried out a careful valuation exercise of the trading operation and concluded that if it was sold as a going concern its value would be based on an asset based valuation of £317,262. I note that £144,408 out of the £317,262 worth of assets on the balance sheet consists of the husband's Director's Loan Account so, to him, that would rather depress the value of the shares. Further, Ms Hart accepted that to a significant extent the husband's personal presence in the business was an important part of its success, such that selling it on his retirement as a going concern may have its difficulties. A valuation on an EBITDA x Multiplier basis would, in Ms Hart's view, produce a lower result, hence her reliance on the asset based valuation. Her EBITDA calculation produces a relatively low figure, notwithstanding an estimated maintainable turnover of £2,230,000 per annum – the business appears to exist on fairly modest margins with high business expenses. There was no credible evidence of any serious attempt by the husband to sell the business as a going concern and, on a balance of probabilities, my view is that it is likely that he will continue to run the business for the foreseeable future such that it is more appropriate for me to treat it in my analysis here as an income producing asset rather than as a capital asset. I shall build into my assessment the income the business is likely to produce (and, of course, it may perform better or worse than expected). I do not ignore the possibility that, one day, he may be able to sell

it as a going concern, but for the present and foreseeable future it is in my view not appropriate to treat this business as a realisable asset.

35. The substantive challenge by Mr Warshaw to Ms Hart's analysis was not to query any of her accountancy methodology or conclusions, but to assert that her findings were of no particular help because the husband has routinely 'skimmed' cash from the business for many years, perhaps to the extent of £20,000 per month, and that the husband's presentation of the real business income figures to Ms Hart, as well as his presentation of the profit figures to HMRC, were hugely fraudulent. This assertion is vehemently denied by the husband. I have given this matter very careful consideration and, it must be said, there is some evidence which points in the direction of Mr Warshaw's case. It is clear that the household did operate on 'cash' for many purposes for many years – for example it was accepted that there was c £40,000 in cash in the house when the marriage finally broke down, it was accepted that one of their daughter's school friends in 2013 discovered more than £10,000 in cash in her school gym bag in 2013 which was placed there in error by the husband and it was accepted that the parties paid private school fees in cash for some years (apparently and understandably to the alarm of the school bursar). The question I have to answer, however, is whether (having heard both parties' written and oral accounts of this) this was cash which was legitimately drawn for spending from properly accounted places or was cash 'skimmed' from the business in a dishonest way amounting to unlawful tax evasion. Ms Hart found nothing in her investigation to enable her to conclude that tax evasion was occurring, though accepted that her investigation fell short of an 'audit'. Mr Warshaw pursued an argument to the effect that the parties' lifestyle (private school fees, large mortgage, expensive holidays, Bentley and Land Rover motor cars etc.) pointed in the direction of dishonest conduct, and I found some force in his submissions to this effect; but on the other hand the danger in this approach is that there were better years in the business when a high lifestyle was affordable and there was also use of capital (pension drawdowns, director's loan account drawings, borrowings) the combination of which perhaps makes it difficult to draw a clear conclusion from a lifestyle versus tax return declared income comparison in any particular year. Further, as we discussed in the course of oral submissions, a conclusion that the cash lifestyle was part of a fraudulent and long-standing tax evasion scheme might lead to a reference by me of this business to the HMRC (I have received helpful submissions on this from both counsel, citing cases such as *A v A; B v B* [2000] 1 FLR 701, *S v S* [1997] 2 FLR 774 and *Y v Z* [2014] 2 FLR 1311) under which the husband may be the main target, but the wife might also be tainted, causing her not to be immune from recoupment by HMRC of unpaid tax in the civil or even criminal courts, representing the benefits that she has gained from what has happened. On balance, whilst there are areas of uncertainty here, I have concluded that it has not been established on a balance of probabilities that the unorthodox use of cash by this family fell into the category of dishonest tax evasion and I therefore propose to accept the evidence of Ms Hart about the business and to reject the case advanced by Mr Warshaw to the effect that the parties were engaged in longstanding and substantial fraudulent tax evasion.

36. The next topic I have to cover relates to the removal by the wife of the **£450,000 health insurance monies** from the parties' joint account into her own account and the children's accounts and the subsequent dissipation of this money.

37. The removal of all of the £450,000 from the joint account came within 48 hours of the discovery of the 'burner' mobile telephone and the bitter dispute which ensued, in which the marriage was left in tatters, leading to the husband's departure from the family home on 28th July 2019. It was plainly an emotional time for both parties. The wife told me (and I accept her evidence on this) that the husband told her that he had spent £300,000 on prostitutes and, in a damage-limitation exercise, invited her to take £300,000 out of the account as compensation – indeed I accept that his text message of 30th July 2019 supports this version of events. It may be that he had in fact spent rather less than this on prostitutes (the nature of the transactions and lack of records making it very difficult to come up with an accurate assessment of the sum), but I am satisfied that this was what the husband told the wife at the time when he was in a state of emotional turmoil and remorse and hoping the marriage might be saved. Plainly, whether it was £300,000 or a lesser sum, he spent a substantial amount of money on prostitutes prior to 28th July 2019.

38. The argument pursued by Mr Newman is not so much targeted at the initial movement of £450,000 by the wife from the joint account to elsewhere, but more at what happened to it afterwards. Having read the written material on this, and heard the oral evidence, I have reached the following conclusions about this on a balance of probabilities:-

    (i) All of the money has been spent and none is left. I have not been persuaded that other family members are secretly holding on to sums of money on the wife's behalf or that the wife has significant cash held secretly in her home.

    (ii) A significant portion of the money was taken by the wife from the bank as cash (c.£150,000) and spent. Some of the spending was on routine day to day matters. Other parts of the spending, I think probably the majority, was on luxuries and unnecessary purchases – expensive jewellery and clothes, expensive hotels and meals out, a huge number of taxi fares. The wife's own oral evidence contained many examples of concessions on this and she was expressly unrepentant. She regarded the money as having been given to her in compensation for the husband's behaviour and her mindset was, in her own words: "*I was reckless, yes, but it was my money…I was an aggrieved wife. I spent a lot on clothes and indulged my children. I was pissed off with my husband…It was my money to do with what I thought fit…I stayed at the Hotel de Paris in Monaco at more than £1,000 per night…I spent £10,000 on bangles at the Harrods store at the airport….I spent £2,000 on a leather jacket*". It is not possible to inventorise this spending with any degree of precision, but a large amount of money was undoubtedly dissipated in the spirit of vengeance against the husband's use of prostitutes. In reaching this conclusion I should also note that in the period since the separation the husband has also not obviously economised in his life-style

spending. Whilst his spending was less scrutinised in the hearing than that of the wife, I think that he did make some spending decisions which were consistent with a fairly high post-separation life-style and it is also correct to note that he has not paid any maintenance to the wife since separation and has not (at all) honoured the obligation imposed upon him (by consent) in the order of Recorder Campbell KC dated 19th April 2022 to pay maintenance of £1,500 per month subsequent to the completion of the sale of the property in June 2022.

(iii) A large amount of the money was spent by the wife on legal costs, either channeled through her brother or paid directly. I shall return to this issue below.

(iv) Some of the money (£150,000) was initially placed in the children's accounts and later withdrawn from them and spent in exactly the same way as the other money. Mr Warshaw has sought to persuade me that I should regard the money taken back from the children as a loan of monies that should be regarded as binding and enforceable – and the wife has produced a pro forma loan agreement to support that argument. I do not accept the wife's case on this. I have not been persuaded that the taking back of monies lodged in the children's respective accounts amounted to the advance of a loan by them. My conclusion is that the money at all times remained the property of the wife and was parked in the children's account as cover if she was pushed by the husband and the money was retaken as and when she felt she needed it. Even if I am wrong about, and that there is an argument for saying these are enforceable debts, I am satisfied that it is fanciful to think that the children will pursue legal proceedings against their mother for the return of the monies – the wife accepted in her oral evidence that such a scenario was highly unlikely and I agree, these are at best very soft debts which are very unlikely ever to be pursued. Whilst the children are not formally bound by this decision (since they are not parties to this case) I think it highly unlikely that they will ever seek to argue that the money parked fairly briefly in their accounts really was their property for which they can demand its return.

(v) Some of the money (£103,000) was sent to the **wife's brother,** , for safekeeping. He returned some of it to the wife when she needed it for 'living expenses'. He then paid a large number of the wife's Solicitors' bills in sums which in total substantially outweigh what he was given for safekeeping. On the wife's case a full account has been given by him in a document (p.614 in the bundle) which reconciles the transactions and concludes that the wife owes him £99,807. I have not been persuaded that this accounting document is inaccurate, indeed I find on a balance of probabilities that it represents a genuine and accurate assessment of the situation. I have not been persuaded that the wife's brother retains any money by way of safekeeping. In the course of the evidence I heard a good deal about the wife's purchase of a Patek Philippe watch for £63,000 from her brother. Mr Newman sought to persuade me that it was a sham transaction. Even if it was at the time a sham transaction, the wife's case (which I accept) is that she returned the watch to her brother and, in effect, the transaction (if it ever existed) was cancelled and the £63,000 allegedly paid for the watch was diverted towards

paying her Solicitors' bills. My conclusion is that the watch purchase was, in the context of this case, something of a red herring; though the fact that it was ever contemplated does cast some light on the wife's financial indiscipline. I am satisfied that the wife does have to repay her brother the money owed to him and that this cannot be properly regarded as a soft debt.

39. I accept the wife's evidence that she has **borrowed money from her mother** over a period of time in order to meet her living expenses and now owes her £102,400. I am satisfied that the wife does have to repay her mother and that this cannot be properly regarded as a soft debt.

40. I should say that in analysing whether the debts referred to above are **hard debts or soft debts**, and in deciding whether they should be included in the asset schedule for redistribution, I have had in mind the factors which I discussed in my judgment in *P v Q (Financial Remedies)* [2022] EWFC B9.

41. I have considered whether it would be appropriate to make any adjustments to the asset schedule in one direction or another to reflect the events discussed above by way of a 'Norris Add-Back', following the jurisprudence of *Norris v Norris* [2002] EWHC 2996. I have decided (subject to the considerations about legal costs below) that it would, on balance, not be appropriate to make any adjustment. Both parties have made some poor decisions, as described above, and I have decided that the fairest way of dealing with them is to treat them as having broadly cancelled each other out. It is a story which does not reflect very well on either of them.

42. I now turn to the **analysis of legal costs spending**:-

    (i) The wife has incurred legal costs of **£463,331** to a sequence of Solicitors, including Mayfair Rise, Mishcon De Reya and JMW. Of this sum, £154,416 remains outstanding and due to Mishcon De Reya and there is no indication that they are minded not to enforce this liability.

    (ii) The husband has incurred legal costs of **£159,044**, all to Osbornes Solicitors, all of which has been paid.

    (iii) There is a difference in the spending on legal costs between the parties of **£304,287**. It is very difficult to see on the facts of this case why the tasks of the wife's legal representatives were any more burdensome than those of the husband. Further, it is difficult to understand how a sensible decision-maker would elect to spend costs of £463,331 to contest a case of the size of this case, where the money really being argued about (i.e. the difference between the parties' real cases) was in all probability less than this sum. On the face of it, it seems to be a grossly

disproportionate level of costs for this case. That the task could properly have been done for a much lower figure is evident from the husband's costs figures.

(iv) As ever in these cases, it is difficult for a judge looking from the outside (and thus without knowledge of privileged communications between Solicitor and client and without being permitted to read privileged attendance notes) to know whether the real fault for this grossly disproportionate spending lay with the wife or her Solicitors, or perhaps a combination of the two; but to the husband (who had no way of controlling the level of spending) the result is much the same – he has to look on, powerless and aghast, as the bills rise.

(v) Mr Newman has powerfully argued on behalf of the husband that some adjustment should be made to the asset schedule to reflect that difference. In his words:-

"There can be little doubt that W's spending on legal fees has been excessive...This court will be well aware that, while family proceedings are not subject to capping (as is routine in the civil courts), there is a clear direction of travel towards controlling the costs of any application…In an uneventful case, in practice the 'no order' principle is applied simply by 'top-slicing' the parties' legal fees…from the overall assets and then sharing what remains by way of a 'net effect' mathematical exercise. However that is merely a sensible structural way of putting the 'no order' principle into practice….However, as the court has no power to make orders transferring debts, the court self-evidently has the power to leave a party with their debt, without factoring it into the 'net effect' calculations. This is routinely the approach taken to debts incurred post-separation from which one party has seen no benefit, or so-called 'soft' debts where the court has inferred that repayment is unlikely to be required…. It is therefore submitted that the courts have a power to make adjustments for unreasonably incurred legal fees, and the present-day authors of 'At-a-Glance' appear to agree: "Where there is a striking disparity in the costs each party incurs, the court may, when fairly calculating the relevant assets, disregard unpaid costs and/or add back costs already paid".

(vi) There is, in my view, ample authority for Mr Newman's proposition and I take the view that it is proper for a court so to adjust the asset schedule appropriately to achieve a fair outcome if the facts of a particular case point in that direction:-

(a) In *WG v HG* [2018] EWFC 845 Francis J noted: "*People who engage in litigation need to know that it has a cost….She will have to make the sort of decisions about budget managing that other people have to make day in day out, but I am satisfied that people who adopt unreasonable positions in litigation cannot simply do so confident that there will be an indemnity for the costs of the litigation behaviour, however unreasonable it may have been."*

(b) In *RH v RH* [2007] EWHC 396 Singer J 'added back' a sum into the computation of assets so as to balance the parties legal fees spending. One party had spent £265,000 and the other had spent £486,000 and he noted: "…*if one party profligately runs up for him or herself a grossly disproportionate costs liability, then, if it is fully taken into account, the effect (in a case resolved by equal or other proportional redistribution) is to saddle the party who has expended less with an automatic contribution of half the disparity*."

(c) In *LS v JS* [2012] EWHC 2960, Mostyn J described a decision not to top-slice a husband's costs as 'unconventional' following the introduction of the 'no order' principle, but "*there would seem to be no reason why it should be not be adopted where warranted*".

(d) In *A v M* [2021] EWFC 89 Mostyn J dealt with a situation where one party had incurred an excessive £544,000 and the other £273,000 by adding back £150,000 to the high-spending party's assets in the court's asset schedule.

(e) In *Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1184, in a scenario where the relevant debt relied upon related to different proceedings altogether between the same parties in which the court had expressly made no order for costs on the merits in the other proceedings, King LJ in the Court of Appeal noted that "*the judge should have firmly in mind what the order which they propose to make by way of additional lump sum to meet a party's costs would represent if expressed in terms of an order for costs. To do this would act as a cross check of the fairness of the proposed order."*

(vii) From an analysis of these authorities I reach the following general conclusions as to how this sort of situation should be approached by the court:-

(a) Where one party has incurred legal costs at a sensible and moderate level and the other has incurred legal costs at a grossly disproportionate level, the simple inclusion of both debts in the court's asset schedule (whether already paid or yet to be paid) is likely to be unfair to the sensible and moderate spender, as the distribution exercise (whether on needs or on sharing principles), although not expressed in those terms, can in reality amount to something very similar to an inter partes costs order, apparently breaching the spirit of the no order for costs starting point under FPR 2010, Rule 28.3(5).

(b) The court should be slow to allow the grossly disproportionate spender (and the solicitors representing such a person) to feel that there is no check on legal costs spending. A proportionality assessment taking into account the costs being incurred in the context of what is in reality at stake in the dispute is surely an essential requirement at all stages and an incumbent duty on Solicitors acting in these cases to which they should address their minds fully and regularly. Indeed, the Protocol annexed to FPR 2010 PD 9A expressly requires parties to have in mind: "*The principle of proportionality must be*

borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute."

(c) In obvious cases, and absent any proper explanation for the differential in spending, the court can deal with any unfairness arising from the differential in legal costs spending by making an adjustment in the court's asset schedule before distribution, for example by excluding a portion of the over-spender's unpaid costs and/or adding back a portion of the over-spender's costs already paid, thus appropriately penalising the over-spender without actually making an inter partes order for costs.

(d) Any such exercise needs to be carried out with a careful eye on issues relating to need; but in the right circumstances a party can be expected to receive an award which meets their needs at a lower level than might otherwise have been the case. In the words of Francis J: "*People who engage in litigation need to know that it has a cost."*

(viii) Applying this analysis to the facts of this case I have reached the clear view that the wife's incurring of £463,331 in legal costs in the context of the level of assets in this case was grossly disproportionate spending and she must bear a burden for this poor decision-making. In the search for fairness, and taking a broad view, I have accordingly decided to add back the sum of £200,000 on to the wife's side of the court's asset schedule. I have not added the full sum (i.e. just over £300,000) in recognition of the fact that the wife has had some changes of Solicitor which may not entirely have been of her making (and the new Solicitors will have had to spend time reading into the case) and also in recognition that her health issues may have had some effect on this situation.

43. I now turn to the topic of **pensions**:-

(i) On the basis of the information in the PODE report from Ms Caroline Bayliss of Excalibur Actuaries Limited dated 16th May 2022, the pension issues in this case had seemed relatively straightforward. All the pensions (the husband's pension with Royal London then worth £413,820 and with Scottish Widows then worth £88,471 and the wife's pension with Prudential then worth £57,832) are all Defined Contribution schemes and the PODE report had identified that a pension sharing order of c.45% on both the husband's pension schemes (or c.55% on just the Royal London scheme, described by the PODE as being 'more easily implemented') would have produced an equal incomes outcome, giving both parties a total income of £20,484 at their respective age 67. Absent the further information referred to below I would probably have been inclined to follow this recommendation and to make a pension sharing order accordingly.

(ii) I might have made an adjustment to the figures, having been told at the hearing that the husband's pension with Royal London was now worth £326,764, that his

pension with Scottish Widows was now worth £79,796 (both down) and the wife's pension with Prudential was now worth £62,158 (up slightly).

(iii) On the first day of the hearing, however, I was informed by Mr Newman that the husband had recently discovered that his Royal London pension has the benefit of an old style guaranteed annuity rate of 9.45% such that, if he converted the fund of £326,764 into an annuity now, he would receive an immediate income of £30,898 per annum on a single life level payment basis. At the time of the PODE report the purchase of a single life level payment basis would have produced, according to the report, an annuity return of 4.417% per annum; but this was before recent political/market events have caused a rise in gilt rates and a linked rise in annuity rates such that the equivalent figure now would be somewhere between 6% and 6.5% – it is of course anybody's guess at the time of writing as to where these figures will move in the foreseeable future. Accordingly, in the search for fairness, my view is that I should enhance the value of the Royal London pension policy in my asset schedule by 1.5 times to reflect its real value, hence I shall enter a figure of £490,146 rather than £326,764.

(iv) The discovery of the guaranteed annuity rate has substantially undermined the conclusions of the PODE report. Not only is the figurework for the production of an equal incomes outcome largely redundant; but also it must be noted that making a pension sharing order against a pension with a guaranteed annuity rate is hugely destructive to its real value - the portion externally transferred to another pension scheme would simply lose the hugely advantageous guaranteed annuity rate in the transfer – and a pension sharing order is not thus an attractive option.

(v) It is sobering to consider how much money would needlessly have been thrown away by my making a 55% pension sharing order against the Royal London pension. An investigation exercise independent of this case may be worth carrying out to discover why it was that the existence of the guaranteed annuity rate was not discovered by the PODE. I am unaware who was at fault. Should the PODE have been given this information by the husband? Should the PODE have been given this information by the pension administrators? What questions should have been asked of the pension administrators which were not asked? Whoever was responsible for this, for the purposes of this case the 'equal incomes' conclusions of the PODE report now have to be treated as largely unhelpful.

(vi) Mr Warshaw has suggested that in these circumstances I should consider making a pension attachment order; but I need to have in mind the downsides of such an order in terms of uncertainty. I have ultimately decided that its disadvantages outweigh its advantages. The wife would be dependent on the husband's decision as to when an annuity was taken (there is no power to order that he takes it any particular time) and, if he died early, the annuity and the wife's share of the annuity would die with him. Further, there may be tax issues if he took the annuity at the same time as he continued to earn above the higher tax rate threshold. Further, such an order would also be subject to future variation

applications and, in view of the way this litigation has proceeded, I am wary of setting up a situation which might end up in more litigation. Mr Newman has suggested the payment of a lump sum in cash (or a different distribution of cash resources to create a Duxbury fund for the wife) may be the best way of dealing with this. I have in the end favoured this way forward, though not using Mr Newman's suggested figure of £150,000 for these purposes.

44. Having made these determinations I am now able to set out my assessment of the assets and debts for potential distribution in this case as follows:-

REALISABLE ASSETS/DEBTS

Joint

The family home[1]	2,151,565
The property in Spain[2]	416,263
Joint bank accounts (Coutts Bank and Caixa Bank)	2,132
TOTAL	**2,569,960**

Wife

Bank accounts in sole name (Halifax)	173
Amex credit card debt	-10,370
Halifax Clarity Mastercard (in credit)	1,006
Debt to HMRC for late filing of tax return	-5,008
CGT debt to HMRC on sale of the property in Bushey	-68,638
Monies owed to the parties' daughter	0
Monies owed to the parties' son	0
Monies owed to the wife's mother)	-102,400
Monies owed to the wife's brother)	-99,807
Monies owed to the dentist	-10,000
Outstanding legal costs[3]	-154,416
Add-Back representing excessive spending on legal costs	200,000
TOTAL	**-249,460**

Husband

[1] This figure is based on an agreed value of £2,850,000 less the outstanding mortgage of £525,942 less costs of sale at 2.5% less a SDLT liability (held over from when the property was purchased) of £101,243 = £2,151,565. There may also be an unidentified CGT liability on the husband's share as he has not been living there since 2019.
[2] This figure is based on an agreed value of £450,662 less costs of sale at 3% less an estimated CGT liability of £20,879 = £416,263
[3] The wife has incurred legal costs of £463,331 to a sequence of Solicitors, including Mayfair Rise, Mishcon De Reya and JMW. Of this sum, £154,416 remains outstanding and due to Mishcon De Reya.

Bank accounts in sole name (Metrobank & Monzo Bank)	65,697
ABRDN shares	1,191
Amex credit card debt	-2,559
MBNA Visa credit card debt	-14,268
CGT debt to HMRC on sale of the Bushey property	-68,638
Outstanding service charge on Spanish property	-3,412
Level litigation loan[4]	-147,965
Outstanding legal costs[5]	0
TOTAL	**-169,954**

PENSION ASSETS

Wife

Prudential Defined Contribution Pension CE	62,158
TOTAL	**62,158**

Husband

Royal London Defined Contribution Pension CE	490,146
Scottish Widows Defined Contribution Pension CE	79,796
TOTAL	**569,942**

BUSINESS ASSETS (NOTIONAL VALUE, BUT UNLIKELY TO BE SOLD)

Joint

Shares in the Group of Companies	317,262
TOTAL	**317,262**

Analysis of Income

45. In relation to "**the income, earning capacity…which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**" and in relation to "**whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient**

[4] This loan has an outstanding balance of £147,965, but has a very high interest rate attached to it (18% on one part and19.8% on another part) and will quickly rise if not paid

[5] The husband has incurred legal costs of £159,044, all to Osbornes Solicitors, all of which has been paid. Most of this sum has been paid to Osbornes from the Level Litigation funding loan.

to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party", I have the following observations:-

(i) The wife has not worked in paid employment for a considerable period of time and she has a number of health issues which I have mentioned above and is aged 59. It is not been a part of the husband's case to argue that she has an earning capacity and it is appropriate for me to treat her as somebody without any or any significant earning capacity and she is some years away from being eligible for any state pension (her state pension age is 67 in October 2030).

(ii) The wife currently only has projected pension income at age 67 from her Prudential scheme of £2,274 per annum plus state pension.

(iii) The husband does have some health issues, but (as I have referred to above) he has expressly not sought to adduce any medical evidence to justify any inability to work in the foreseeable future and I think it is reasonable for me to assess this case on the basis that it is reasonably likely that he will be able to continue working as the managing director of the business until his state pension age of 67 in April 2029 and then retire at that stage. In my view the fairest way of treating Ms Hart's report is for me to conclude that it is, on a balance of probabilities, likely that the husband could (if he so chose) pay himself a salary of £100,000 per annum gross within the business during the remaining years of his working life. There may also be some scope in due course for him to pay himself some dividends as well, but reducing the director's loan account may be a priority. Using At a Glance figures an annual gross income of £100,000 should translate into a net income of c.£63,661 or c.£5,305 pcm net.

(iv) Absent an ongoing spousal periodical payments order or a suitable Duxbury fund created by a lump sum order or a pension sharing order, it is difficult to reach the conclusion that the wife will, at any time, be able to adjust without undue hardship to the termination of her financial dependence on the husband.

Analysis of Sharing and Needs Principles

46. I want to say something at this stage about **the sharing principle**. As a starting point in the division of capital after a long marriage it is useful to observe that **fairness and equality usually ride hand in hand** and that (save when an asset can properly be regarded as non-matrimonial property) the court should be slow to go down the road of identifying and analysing and weighing different contributions made to the marriage.

After this very long marriage there are no assets here which can be identified as non-matrimonial.

47. In the words of Lord Nicholls in *White v White* [2000] UKHL 54:-

"…a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination".

and in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24:-

"This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals…The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

48. In the words of Mostyn J in JL v SL [2015] EWHC 360:-

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

49. One obvious reason to depart from equality is that one party needs more capital for a particular reason and, in this context, I shall consider the parties' needs.

50. In relation to the "**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**", which of course have to be considered in the context of the **standard of living that the parties jointly enjoyed during the marriage, the ages of the parties** and **the duration of the marriage,** I have the following observations:-

(i) Both parties have a need for a home. Housing needs barely featured in the course of the evidence and submissions in this case; but I can identify no reason why their housing needs should be any different from each other. Each have put forward property particulars and the range is £875,000 to £1,250,000 and SDLT and other purchase costs will be payable on their respective purchases. As ever,

the range in these prices represents a range of factors such as size, location and attractiveness, but whilst the upper end of this range may be more representative of how the parties have lived during the marriage (though still well short of even that), it may be that each of the parties will have to be looking towards the bottom end of this range, or perhaps even a little lower, as a result of a combination of high legal costs and poor spending decisions in the past. I am satisfied that housing at the bottom end of the range, or even a little lower, would not fall short of meeting essential housing need for either party.

(ii) Both parties have an income need and there is no obvious reason for thinking that one party has a higher income need than the other. As is often the case in these disputes, the income needs figures advanced on each side bear very little relationship to the amount of income actually available. On my analysis the only earned income available going forward is (until 2029) the husband's earned income (which I have assessed at £63,661 per annum net or £5,305 pcm net). The only income (from 2029 onwards) is the annuity income on the respective pensions, which will, on any view, be a significant diminution in the earned income figure. Yet the income needs figures put forward are, respectively, £76,860 per annum or £6,405 pcm for the wife and £108,000 per annum or £9,000 pcm for the husband. The simple truth is that neither party is likely to be able to live at the level which they may previously have enjoyed.

(iii) Given the respective earning capacities, the limitations on pension sharing orders here and the desirability of not leaving open income orders which are capable of giving rise to future variation applications, I think there is a strong justification for a departure from equality here based on the provision of an adequate Duxbury fund for the wife to use as her source of income in the years ahead, on top of her housing need, and I take the view that this is the solution which sits most easily here with the court's duties under Matrimonial Causes Act 1973, section 25A to bring about a clean break. Whilst I could make a spousal periodical payments order, the acrimonious litigation spending in this case makes it unattractive for me to leave open a position where there could be further litigation, for example on a spousal periodical payments variation application or a future capitalisation argument. Using At a Glance Duxbury tables (the figures for a female aged 59) I have concluded that it is reasonable for me to say that the wife has a need for a Duxbury fund of something in the region of £421,000 providing an income for life (including her state pension) of £30,000 per annum on top of her housing needs. Part of this could be from pension funds (provided I avoid a pension sharing order on the Royal London policy). In assessing a division which meets the wife's housing and income needs I have in mind my comments above about a litigant who overspends on legal costs having to meet needs at a lower level than might otherwise be the case and I am cognisant of the fact that £200,000 is included on the wife's side of the asset schedule which is notional rather than actual. I am also cognisant that, as far as the figures allow it, part of the Duxbury fund can be treated as being provided for out of the wife's notional half share of

the assets – she "*should be required to amortise, that is to say, to spend, her Duxbury fund*": see Mostyn J in *CB v KB* [2020] 1 FLR 795.

Open positions

51. Accordingly, I now turn to the parties' respective open positions.

52. The **husband's open position** is that:-

(i) The family home shall be sold forthwith and the net proceeds (after deducting the costs of sale, the mortgage redemption, the SDLT liability, any CGT liability and the husband's Level litigation loan) shall be divided equally.

(ii) The wife shall transfer to the husband all her interest in the Spanish property.

(iii) The joint bank accounts shall be divided equally.

(iv) The wife shall transfer to the husband all her interests in the companies.

(v) The husband will pay a lump sum of £469,082 to the wife.

(vi) The chattels in the family home shall be divided by agreement.

(vii) There should be a clean break.

Using my asset schedule above, and treating the companies as an income producing asset and therefore leaving it outside the schedule, this would produce the following outcome:-

REALISABLE ASSETS/DEBTS	**Wife**	**Husband**
The family home	1,001,800	1,001,800
The property in Spain	0	416,263
Joint bank accounts (Coutts and Caixa)	1,066	1,066
Own assets	-249,460	-169,954
Level litigation loan paid off	0	147,965
Lump sum to W	469,082	-469,082
TOTAL ASSETS	**1,222,488**	**928,058**
PENSIONS		
Own pensions	62,158	569,942
OVERALL TOTAL ASSETS	**1,284,646**	**1,498,000**
% OVERALL TOTAL ASSETS	**46%**	**54%**

53. It is immediately to be noted that this would leave the husband with significantly more capital overall, with the benefit of a valuable guaranteed annuity on his larger pension fund and an ongoing earned income of £100,000 per annum gross (compared with the wife's zero income). Buying a property at the bottom end of the range discussed above, the wife would be left without adequate income. This seems a long way from meeting the test of fairness.

54. The **wife's open position** is that:-

(i) The family home at shall be sold (not forthwith, but commencing in January 2023) and the net proceeds (after deducting the costs of sale, the mortgage redemption, the SDLT liability and any CGT liability) paid into a 'capital fund'.

(ii) The Spanish property should be sold and the net proceeds (after sale costs and tax) shall be combined with the family home sale proceeds in the 'capital fund'.

(iii) The joint bank accounts shall be divided equally.

(iv) The wife shall transfer to the husband all her interests in the companies.

(v) From the 'capital fund' the wife will receive the first £665,067, the husband the next £237,398, the wife the next £1,450,000 and the husband the balance (which on these figures would be £215,363.

(vi) The chattels in the family home shall be divided by agreement.

(vii) There will be RPI index linked spousal periodical payments at £20,000 per annum paid by the husband to the wife until the husband's 67th birthday, without a section 28(1A) bar on its extension.

(viii) There will be a pension sharing order of 100% of the husband's Scottish Widows pension and a 44% pension attachment order in relation to the husband's Royal London pensions.

Using my asset schedule above, and treating the companies as an income producing asset and therefore leaving it outside the schedule, this would produce the following outcome:-

REALISABLE ASSETS/DEBTS	**Wife**	**Husband**
Division of the 'capital fund'	2,115,067	452,761
Joint bank accounts (Coutts and Caixa)	1,066	1,066
Own assets	-249,460	-169,954
TOTAL ASSETS	**1,866,673**	**283,873**
PENSIONS		

Own pensions	62,158	569,942
Pension Sharing Order	79,796	-79,796
Pension Attachment Order	215,664	-215,664
TOTAL PENSION ASSETS	**357,618**	**274,482**
TOTAL OVERALL ASSETS	**2,224,291**	**558,355**
% OVERALL TOTAL ASSETS	**80%**	**20%**

55. It is immediately to be noted that this leaves the wife with substantially greater capital and with the husband both unable to house himself and subject to a long term spousal maintenance order. Again, this seems a long way from meeting the test of fairness - in the opposite direction.

Outcome

56. I propose to bear in mind all of the above principles and factors in analysing what orders the court should now make to promote a fair outcome in this case.

57. For me, the guiding principles relevant here are as follows:-

(i) In capital terms (having made the capital adjustments on the wife's legal costs spending and the husband's guaranteed annuity) I should have one eye firmly on a starting point of equality. I shall not attribute any immediate capital value to the business because I am treating it primarily as an income producing asset rather than an immediately saleable capital asset, albeit that it might be saleable some years down the line, albeit with the problem that if the husband retires he will not be part of an ongoing business; but all the wife's interest in the business should be passed to the husband in the most tax efficient way.

(ii) Since the husband would like to have the Spanish property as his in a division of the assets I consider it is appropriate for me to allow him to do this. This solution avoids another complicated transaction and all the uncertainty that arises out of that. It will, in due course, be open to him to sell it if he so wishes and he will take any advantage from a sale at a better than expected value and any disadvantage from a sale at a worse than expected value. If he decides to sell the Spanish property and concentrate on an English house purchase then, perhaps with a little short-term borrowing, he should be able to meet his housing need at the level discussed above.

(iii) I think there is a strong justification for a departure for equality based on the provision of an adequate Duxbury fund for the wife to use as her source of income in the years ahead on top of her housing need at the level discussed above.

(iv) I take the view that there is enough capital here for me to adjust the received portions in order for me to make a clean break order. This is the solution which sits most easily here with the court's duties under Matrimonial Causes Act 1973, section 25A.

(v) I am not inclined to avoid making a pension sharing order against the husband's Royal London pension because of the destruction that would cause to its value; but there is no reason why his other pension should not be subject to a pension sharing order to even out the respective pension funds as far as is sensible.

(vi) It is necessary for me to make some provision for the immediate future, pending the sale of the family home. I consider that the only way of meeting these needs is for me to require the husband to meet the essential outgoings on the family home and to give the wife some income pending the sale of the home.

58. Weighing all of these matters up, I propose to make an order which includes the following provision:-

(i) The wife shall transfer to the husband all her interest in the Spanish property.

(ii) The family home shall be sold at the best price reasonably attainable and the net proceeds (after deducting the costs of sale, the mortgage redemption, the SDLT liability and any CGT liability) shall be divided as to 76% to the wife and 24% to the husband.

(iii) The joint bank accounts shall be divided equally.

(iv) The wife shall transfer to the husband all her interests in the companies.

(v) The chattels in the family home shall be divided by agreement.

(vi) There will be a 100% pension sharing order in relation to the husband's Scottish Widows pension.

(vii) There will be a clean break on the completion of the sale of the family home. Pending completion of the sale the husband will pay the monthly mortgage payments and the other utility bills as and when they fall due plus MPS/interim spousal periodical payments of £1,000 per month in advance, commencing on 1st November 2022.

(viii) There will be no orders as to costs. In my view neither open offer came very close to being a fair outcome to the case and in this respect I cannot criticise or favour one party any more than the other.

59. Using my asset schedule above, and treating PCP as an income producing asset and therefore leaving it outside the schedule, this would produce the following outcome:-

REALISABLE ASSETS/DEBTS	**Wife**	**Husband**
The family home	1,635,189	516,376
The property in Spain	0	416,263
Joint bank accounts (Coutts and Caixa)	1,066	1,066
Own assets	-249,460	-169,954
TOTAL ASSETS	**1,386,795**	**763,751**
PENSIONS		
Own pensions	62,158	569,942
Pension Sharing Order	79,796	-79,796
TOTAL PENSIONS	**141,954**	**490,146**
OVERALL TOTAL ASSETS	**1,528,749**	**1,253,897**
% OVERALL TOTAL ASSETS	**55%**	**45%**

Details of my order

60. I have been asked to determine a number of specific questions about the detail of my order:-

(i) I have been asked to consider whether the husband should give an indemnity to the wife in relation to an investigation into one of the businesses. I am not inclined to require that of him. Both parties stood to gain by the arrangement which then proved not to be lawful and, if any further obligations arise, which seems relatively unlikely as the impression I have is that the matter is probably now dealt with, the obligations should fall equally between the parties.

(ii) I have been asked to consider whether the husband should give an indemnity to the wife in relation to the transfer of the business to the husband. I consider that he should give such an indemnity for the payment of any Capital Gains Tax on the transfer, but only on the basis that the presentation to the HMRC is on the basis of the valuation report by Ms Hart. If she felt obliged to present a different picture to the HMRC, and the tax liability ended up being commensurately higher, then I consider that the parties should be equally liable for any additional liability. I consider that the husband should be responsible for meeting any unpaid tax on pre-transfer dividends attributed to the wife.

(iii) I have been asked to consider whether the husband should give an indemnity to the wife in relation to the insurance claim made by the wife in relation to a stolen

motor car. I note that such a claim was made, and I have no reason to believe it was not genuine, but if anything arises in this category it should fall equally between the parties.

(iv) I consider it sensible for arrangements to be made for the wife to be able (if she continues to fund it) to have access to the benefits under the Aviva Health Insurance policy.

Arrangements to complete this case

61. I am sending out this judgment to the parties on 17th October 2022 by email. I am hoping and expecting that the lawyers will, without very much delay, be able to turn the contents of this judgment into an order whose form is agreed. In case this is not possible I shall list the case for a mention by way of CVP/Teams at **9.45 a.m. on Tuesday 8th November 2022**. I am not expecting the parties to be represented by Counsel at this hearing (though they can be) but I will need to be told why the drafting process has not been completed. Of course, if I have received an approved an order in the meantime then this hearing can be vacated.

62. I am minded to publish a version of this judgment on TNA / BAILII. Unless there is a disagreement between the parties I am minded to do this on an anonymised and redacted basis so the parties cannot be identified. I would be grateful to receive from Counsel either an agreed anonymised/redacted form of the judgment or, absent agreement, the written views the parties may have on this issue.

HHJ Edward Hess
Central Family Court
17th October 2022