FINAL JUDGMENT

Case No: BM19D00009

IN THE FAMILY COURT Neutral Citation Number: [2022] EWFC 143

Birmingham County Court

Date: 8.9.22

Before:

Before Her Honour Judge McCabe

- -

Between:

X	**Applicant Wife**
- and –	
Y	**Respondent Husband**

- -
- - - - - - - - - - - - - - - - - -

Mr James Leslie for the **Applicant**
Miss Sima Najma for the **Respondent**

Hearing dates: 21,22,23,24th June, 12th July 2022

- - - - - - - - - - - - - - - - - - -

JUDGMENT

HHJ McCabe:

1. This case concerns the financial remedies proceedings arising out of the divorce between X (the Applicant Wife, to whom without any disrespect, I shall refer as "the Wife") and Y (the Respondent Husband, to whom, likewise without any disrespect, I shall refer as "the Husband"). This is a case that should have had an outcome that was both simple and obvious. Indeed, the parties would agree on the appropriate headline approach. Take the pot, and, following this 37 year marriage, with really no 'magnetic' features of any kind, divide by two and distribute accordingly, thereby well able to meet the broadly equal needs of these parties.

2. It must, therefore, be asked, how could it conceivably be possible that a staggering total of £330,000 were expended, between the parties, on costs? Why was a bundle of around 3000 pages necessary? (I might venture to suggest that, in fact, it was not) Why had this case come to a week long trial on the basis of a fight with no quarter spared?

3. The answer is also simple to state. Until the morning of the final hearing, the Husband advanced an open position that required <u>at least</u> £500,000 (so at least a third of the discernible pot) to be removed prior to the even distribution of the assets, in order to 'repay creditors' (namely the parties' son V, and the Husband's childhood friend, S) This, then, was a case which required a detailed forensic scrutiny in order to identify and quantify the matrimonial pot before answering the relatively straightforward question (after a marriage existing for 37 years) of 'in what shares should the said pot be divided'?

4. It is a great, great shame for the parties and their children that so much time, energy and money had to be expended on a separation of finances that should have been completely straightforward and easy.

Relevant Background

5. The Wife is 59 years of age and the Husband is 61. They married on 11.12.81 and separated on 20.9.19 making this a marriage of 37-38 years in length. The petition was issued on 23.10.19 and decree nisi pronounced on 6.9.21. The Form A is dated 23.10.19.

6. The Parties have three children. V is 39 years of age and I am told that he has a heart condition/defect called Tetralogy of Fallot, together with learning difficulties and a diagnosis of schizophrenia. He has lived with the Husband since the parties separated. The parties have extremely held and differing views as to why this came to pass. The Wife is clear that prior to separation she absolutely was V's primary carer.

7. A is 30 and B is 26 years of age. Very sadly for these two children they gave evidence to me. It was plainly relevant, certainly helpful, but as I observed at the time, I found it to be an extremely unfortunate thing for a child (even a grown up child) to have to give evidence, essentially against one of their parents.

8. The separation was evidently acrimonious. There has been a Section 37 freezing injunction in place throughout and a non-molestation injunction during the currency of these lengthy and heavily delayed proceedings. Originally made ex parte and then continued by consent. On the basis of the undertaking by the Wife's team to issue an application for an extension before this judgment is handed down, I have been prepared to consider her request for an extension of the non-molestation injunction.

9. I deal with this issue now. The order has been in place since September 2019, nearly three years ago now. It is presently due to expire in December. I had initially thought that that would be an appropriate approach, simply to allow the order to run its course and expire. There is a further issue in this case, however. The Husband is due to stand trial in the Crown Court for, effectively, exerting coercive control over the Wife during their relationship. This trial will, doubtless, cause tensions to heighten, even after the implementation of my order has (hopefully) been resolved.

10. I consider it appropriate, taking into account the history of this case, my findings as appear within this judgment, and taking into account all of the factors in section 42 of the Family Law Act 1996, that the non-molestation injunction should continue in its currently drafted terms until midnight on the last day of June 2023.

11. Turning to the employment history of the parties through the marriage, the Wife's position is straightforward. She works for the County council, as she has for many, many years now, and is a 'reablement officer'. The Husband's career progression is a little harder to plot. He has recently worked as a taxi driver, albeit asserting so modest an income that one would wonder why he would carry out such work. This, in any event, ceased when the parties separated. He receives a carer's allowance, I believe, for V, although this will also be modest. I do not find that such responsibilities as he has for V (taking the Husband's own case that V was well able to hold down employment at McDonalds for many years) preclude him from earning an income.

12. The Husband bought and sold a plot of land during the marriage. Much of the wealth that the parties now have would seem to have originated from this transaction whereby a profit of several hundred thousand pounds was made.

13. The Husband, in his early documents to the Court (Form E and early statement) appeared to be preparing the ground for a special contribution argument, talking of his ability in buying and selling land and his having taken on the risk /risks with this transaction / hinting at other transactions. I am satisfied that there is no such contribution (if this is indeed what was being hinted at in his early documents) .

14. Finally, with respect to the parties themselves, their health. They both have health issues, although I do not find that they are so great as to prevent them from earning sufficient income to meet their needs (although there will also be a surplus of capital assets over and above that needed to meet their housing needs so they will have an additional source where they need it) The Wife suffers with rheumatoid arthritis and the Husband with diabetes.

V

16. It would be an understatement to describe the evidence relating to the issue of V's health, much loved and plainly vulnerable adult child of the parties, as limited and unsatisfactory. I had far from a clear impression of him, his vulnerabilities, difficulties and ultimately his needs. He, it seems agreed, has physical difficulties (the Husband expressly rejected in his evidence, use of the

word disabilities) and learning difficulties, operating, I am told, at a mental capacity akin to a child of 11 years.

17. V was relevant to the issues before me in the way that the Husband put his case, originally arguing that his son was 'owed' several hundreds (the figure changed) of thousands of pounds of money that his parents were 'holding' for him.

18. I was very concerned at how this issue came to be before the Court and how it could be that V's interests (if any) might be protected, his voice being entirely absent from the proceedings. Fortunately, this issue being no longer pursued by the Husband, that particular concern abated. But V is a relevant factor and circumstance in the case. I am satisfied that my order provides for his needs, in the sense that each of his parents will be able to purchase a home that can accommodate him within it. It was plainly a source of great sadness to the Wife that she has not seen V for so long (the Husband used the language that she had "abandoned" him) but whilst I am unable to make any orders that in any sense determine where V's welfare interests might lie, I am content that my order provides for all options.

The issues

19. By the time that the evidence concluded, the issues between the parties in this case can be stated as follows:

i. Should the Husband have added to his column of assets the assets that the Wife says he has failed to disclose, being: £70k gold in the safe; £75k inherited monies from his Father (present whereabouts unknown, probably now represented by land in India); £122k paid out to relatives / a friend in 2018 (likely now in land in India); £25k paid to his brother in Canada to 'hold for him' six months prior to separation and without the Wife's consent; land in India transferred to his brother on 18.11.19 worth around £50k, and cash in the safe at the family home (between £50k to £100k);

ii. When the pot has been identified divide by two;

iii. Was the Husband's (abandoned) case with respect to the S loan a deliberate fraud by him that might be said to constitute a contempt of Court (or, indeed, a criminal offence, albeit that is plainly beyond the jurisdictional scope of this Court);

iv. Should the Husband's litigation conduct, his fraud, his late abandonment of issues, sound in costs?

20. Throughout the hearing we have used the phrase, for convenience, 'add back' with respect to this issue, although in truth it is more properly characterised as an assertion of non disclosure.

The litigation history

21. I make it clear that both Counsel instructed in this final hearing have done an exemplary job on behalf of their clients. They have very much assisted the Court and their lay clients will be assured by me that there was absolutely nothing else that could or should have been said by their Counsel on their behalf.

22. The road to the final hearing has not, however, been smooth. The first thing to note is the (very) late change of position by the Husband with respect to the monies that he asserted throughout were due and owing to be repaid to S (approximately £400,000) and the money to be 'repaid' to V (described, variously, as being between £135,000 and £325,000).

23. Now, it is correct to note that this was a very wise and sensible decision on the basis of the evidence that was before the Court. But it rendered the case absolutely 'unsettleable' until the final hearing had started, because the assertion, prior to its abandonment, removed c. £500,000 - £800,000 from the matrimonial pot. If half a million pounds is standing in the way of an agreement about the size of the matrimonial pot then it is, with assets of the size of this marriage, virtually impossible to 'bridge the gap' without risking a significant injustice.

24. By the pre-hearing review of this case, by which time there had been receipt of the Wife's solicitor's witness statement and D11 to admit additional evidence, it should have been *abundantly* clear to the Husband that he was not going to

succeed, on the balance of probability, in proving the S loan. That is the very latest that this abandonment should have occurred, in my judgment, but it is noteworthy that since February 2020 the parties had been in receipt of the handwriting report of Evelyn Gillies, handwriting expert, who had concluded that the signature of one of the alleged witnesses to the loan agreement between the Husband and S had 'probably' been written in fact by the Husband. So one might think that, in the absence of any alternative expert evidence, or evidence from S, or any other evidence helpful to the Husband's case, it should have been apparent to him then that this was a point that was 'going nowhere' evidentially for him.

25. There are several thousand pages in this bundle. Detailed questionnaires and schedules of deficiencies were necessitated by the Husband's approach to disclosure. Documents were provided by him very late in some notable instances, including on the Friday before the final hearing commenced. With three core bundles, an additional core bundle, and three supplemental bundles, it was *still* necessary for a sizeable envelope file of documents to be brought to Court on the first morning of the hearing, disclosure only having been made, electronically, the Friday before (effectively the working day before) At least one (and a significant one for his case) of these documents he had plainly had in his possession for a year and a half.

26. Such an approach to disclosure is unacceptable and causes delay and increased costs. To give one really significant and important example. The Husband was asked in the first questionnaire to set out what he had omitted from section 5 of

his Form E, namely what order he was seeking "in order that the parties might try to reach a negotiated settlement without incurring significant costs." His response? "*The respondent did try to engage with the applicant in order to try and resolve matters without resorting to legal action. She refused to negotiate. She has spent in excess of £48,000 on legal costs. However, to spend in excess of £14,000 on my legal costs and I will have to spend further monies in order to defend these proceedings. She does not appreciate how difficult it is to save money. That is why she is intent on raising some pointless enquiries, as in this document, where she is asking about transfers of sums as little as £1.22. If she appreciated the amount of sheer hard work that has gone into making and saving money as the respondent has done, she would understand how painful it is to see that money being wasted on unnecessary legal costs."*

27. This answer does a number of things. It belies the Husband's claim that his solicitors wrote his answers to questions and other documents for him (this is narrative that a legal professional would not use) It belies the Husband's claim that he did not read the Wife's documents. And it makes it much harder for the Wife's advisors to help her towards sensible settlement.

28. I am afraid that the Husband's approach, in a number of respects, has without any possible question caused a significant level of costs expenditure that would otherwise have not been incurred.

29. I should mention one additional matter. It was discovered via the NRI report that the Husband had previously held land in India (this, in fact, is the only

parcel of land that has been able to be the subject of clear documentary proof by the Wife) and that he had transferred it to his brother in breach of (and shortly after the making of) a Section 37 injunction forbidding the Husband from doing so.

30. The Husband transferred this land to his brother in Canada very shortly after the Section 37 injunction was made. The date of the orders were: ex parte made on 23.10.19, served on the same day. Return date on notice on 28.10.19 (continued by consent) and 11.12.19 (order continued amended) He transferred the land on 18.11.19.

31. The Husband's statement says that the timing of this transaction was "unfortunate" but that there was no intention to defeat the Wife's claim. His case was that he was always expected to transfer the land to his brother, that this was his late Father's wishes (he had died some years previously) and that is why he transferred it. He does not explain why his Father did not simply arrange to leave the said land to the said brother and he does not explain why he (the Husband) waited until just after separation and the issue of this application to effect the transfer. I find that in fact" he acted in full knowledge and in deliberate breach of the injunctive orders of this Court. His answer to questions on this topic was that he had not understood the terms of the order, since he was representing himself. I do not accept that, and I am confident that HHJ Williams would have made the obligations quite plain to the Husband, as a litigant in person, at the hearings.

The Witnesses: General impressions

The Wife

32. I heard first from the Applicant Wife. She had an extremely (I hope that she won't mind me saying) 'downtrodden' demeanour. I consider that she wore the life that she has endured plainly on her face and in her body language and in her spoken language. I was particularly struck by how many times she used the phrase "I was instructed to" or "we were instructed to" (talking about her and V on this occasion) This is what she said when it was being put to her that she must have known about the way in which the FMH was owned (in her sole name) because she had herself signed the TR1 document. She said "*I purely followed the instructions as I always did due to the consequences of not doing so*" She also stated "*I've just told you, I was told to go to appointments and carry out a task and I just did that due to fear of the repercussions*"

33. Her evidence, in the face of skilful cross examination, remained absolutely consistent, clear and unshakeable. She was not a sophisticated witness, she used simple and plain terms but they were, time and again, consistent in the life that she described whilst in a relationship with the Husband. She had no great understanding of financial affairs and absolutely no control whatsoever. I unhesitatingly accept her evidence about this. I was almost open mouthed when it was put to her (as this is indeed the Husband's case) that the reason that the FMH was in her sole name was because she had, several years back, insisted that this should be done and the Husband, effectively, 'gave in to her' giving

her what she wanted. This seemed so unlikely given the very convincing evidence that I had heard from her by this point that I was particularly struck by it as a proposition.

34. The Wife absolutely did not, to me, seem remotely capable of the particularly intricate fraud that she would have had to have concocted, and the lies she would have had to tell both in writing and in her oral evidence were the Husband's case to be believed.

35. Moreover, this is not simply a case of only having the Wife's word as against the Husband's. The Wife has had a degree of determination in pursuing her claim and tracking down the assets that she says exist. Where she has been convinced of something, a kernel of truth that she may have known by overhearing, (for example the existence of some land in India) she has ultimately been proved (many months and many thousands of pounds later) to be correct in her assertion.

36. I find the Wife to be credible, honest and to have given evidence that can be relied upon. She just does not possess the guile or sophistication to concoct a dishonest version nor, in my view, any reason to lie. She appears worn down by this process and simply wishing to obtain her fair share of the assets. She has tried to settle the case at each and every stage. I did not see any hint in her of a particular campaign against the Husband or desire to harm him as an end in itself. I simply saw a dogged, and exhausted, pursuit of the truth.

37. I must just deal with the point about the telephone call with respect to V's benefits. It seems plain that the Wife sought to give the impression to the person on the helpline for the benefits agency that she was in the same room as V when she was not (for he was in hospital) I don't think, however, that this places the Wife in the category of 'master manipulator' in such a way that it renders the rest of her evidence unsafe. That time was, I have no doubt, deeply traumatic. She had just left a relationship of 37 years that featured, she says, extreme control, and her son was in hospital and she was trying to put matters in place for him to return to live in her care. It is a great shame that she has not seen him now for over two years, and a source, I have no doubt, of utmost sadness to her. Her actions at this time of immense stress and strain do not, I find, render the rest of her evidence unreliable.

A

38. I was particularly keen that the children of the parties should have been spared the process of, effectively, giving evidence against their Father. I can understand why it was considered necessary, perhaps given the lack of sophistication of their Mother in particular, but I am still sorry for them that they were put in this position.

39. A, the parties' daughter gave very clear and fairly impassioned evidence. She gave very relevant evidence about the nature of the relationship between her Mother and her Father when she said:

"In all means, everything in my mother's life was controlled by my father….My mother did not have access to her own decisions financially everything was dictated by my father……She had access to the online banking when she was made to do certain tasks like transfer her wages each month, she did have a credit card where would pay for weekly shop to go to Tesco but that was really the only task she allowed to do but everything would have to go through him, the only things she would buy would be petrol and groceries….V certain tasks she allowed to do with the cards…..In our family he controlled the finances v firmly and when it was his yes it was his yes…..My mum couldn't make any decisions re her own wages or money no chance that she could make a decision ….This was fear instilled in my mother, me and both my sibs because we knew if anything out of line mum would get verbally assaulted, physically assaulted….We saw the repercussions, that's not a budget, that's someone being abused, if didn't ring to ask if could buy this extra item there would be consequences….
"

She also gave very relevant evidence about the issue of the land in India, which she described as follows:

"I can say this case been going on since the beginning, and those docs only provided last few weeks before now and the figures conveniently match all the figures in the NRI report.

Never was it said that there was a duplication this is the same land

Not at any previous hearings

First o all it was never had any land from D
He can't say these documents are valid now when earlier it was there is no land from D
Q: Are you aware there were a number of transactions E, F and so on, money given to them for it 60k to those children?
I'm aware that F also said it was to repay debts and there was no land but now changed story to say it is to buy property
I'm not denying that this was to buy land just in the first place there was never an admission that there was land at all
He's lied
It was in his documents that he said there was no land"

40. It is very, very difficult to imagine a reason that a child might put themselves in the position of having to come to Court and give such comprehensive evidence against one of their parents, unless there was a very clear motive (a motive other than telling the truth to the Court, that is) Her evidence was consistent, would not shake during cross examination, and I accept it in its entirety.

B

45. The parties' son gave evidence next. This was the most heart rending evidence of the case where he said, tearfully, "*I would like my Father to look me in the eye*" (to deny, effectively, what he was describing)

46. He gave the clearest evidence about the contents of the safe when the small group of family went to the FMH to retrieve the Wife's sentimental gold (only she says) He said:

> "*What I took back were two sentimental bangles of my mother's mother, just a fraction of what was in the safe, my father started grabbing things and taking them back I saw about 10 envelopes of cash. £50 notes in them. I didn't count all I could tell is that the envelopes were sticking out and all full of £50 notes.*
> *I would like him to look me in the eye and say nothing there. There was a huge amount there.*
> *10 envelopes 2cm thick all the 10 envelopes I saw had £50 notes in they were red."*

47. Once again, it is extremely difficult, perhaps particularly given the family dynamics in this case, to imagine that B would come to Court and repeatedly lie against his Father. I just cannot envisage how and why that would come to pass. His evidence appeared clear, consistent, and, frankly, compelling.

I accept it.

The Husband

48. The Husband was subjected to very lengthy and skilful cross examination. It is really very difficult to know how to begin to describe his evidence. He was awkward throughout, starting with the exchange: "*Anything you want to correct in the statements? I can't read your mind, when questions come I can answer them*" and ending the first day by referring to Counsel's "crap" questions and expressing his frustration with having to answer them. He also, in a low moment of his evidence, refused to acknowledge that he knew the Punjabi word for 'land' and 'rent' (he was born there and that is his first language)

49. There are just so many inconsistencies in his written evidence that it is hard, nearly impossible, in fact, to follow his versions of events. Almost every factual dispute between the parties was the subject of ever changing, and fundamentally inconsistent (sometimes opposite) versions by the Husband in the written explanations that he has provided within his statements, replies to questions and the like.

Land in India

50. To take just one example. It is the case that the Husband transferred the sum of £19,000 to G in April 2018 (there were other transfers made at the same time). The Husband was, naturally, asked some questions about this. His replies to the schedule of deficiencies, dated 28.5.21 (so some considerable time after the

separation of the parties) was: "*This was repayment of a loan to a friend in India. The respondent has requested historical bank statements to show the original loan monies being received by me some years prior, to further evidence the subsequent repayment to which this relates*." His replies to a document called 'additional questions' (also dated a long time after the parties separated) was "*£19,000 was transferred… to be sent to G. He borrowed it and never returned it. I have chased him for the outstanding monies and he says he just doesn't have it yet, as his circumstances have changed post-pandemic. My fear is he may never repay now*." Thus, the loan repayment has morphed into a loan that may never be repaid. In his third witness statement (November 2021) he states "*my 2018 bank statements show transfers made by me in April 2018 which relate to repayment of family debts*". It is not until May 2022 that there is the first admission of any land in India having been purchased (this is in the Husband's section 25 statement) and in respect of *the same £19,000* he now says *"This monies (sic) was used to buy the land in India with the Applicant's consent"*

51. It is nothing short of staggering that such entirely contradictory answers are given in legal documents prepared for the Court (at least two of them supported by a statement of truth). The answers are, moreover, provided with a degree of detail and specificity, and the promise of documents 'to follow'. They are not just contradictory; they give <u>opposite</u> versions of events. There are, very unfortunately, a reasonable number of examples such as this, where the forensic trail is impossible to follow. It would not be proportionate or appropriate to set them all out in this judgment, but I have them well in mind, due to the careful and thorough case preparation on behalf of the Wife.

52. When he was, predictably, cross examined about this example (and a good many others) the Husband's evidence became little short of farcical. He started by saying that at the time of the original statement that he made to the Court (the Section 37 response statement) in December 2019 (3 months after the parties had separated) he was so distraught at the end of the relationship that he was unable to focus on any level of detail. I would note that this is not born out by the level of detail that is in fact provided within that statement.

53. Of his subsequent documents his general approach was to blame his solicitors. I note that his current legal team is his sixth. It was not clear how many of the previous sets of solicitors would be included within his criticisms, but they ranged from 'my solicitor didn't accurately set out what I told them' to "my solicitor never asked me the question, she just put the answer in" or "the solicitor missed it out totally". He suggested that he had completely failed to read documents before signing them, he then suggested that the solicitor had only sent him the signature page, so he had never had the opportunity to read the contents. He suggested that the solicitor had written the narrative themselves, and completely mis represented the truth.

54. As officers of the Court, it is so exceptionally unlikely that a solicitor would behave in that manner (let alone more than one solicitor, let alone on repeated occasions) that I have no hesitation at all in rejecting this part of the Husband's evidence as being simply untrue. Moreover, the types of narrative contained in these documents allegedly not written by him are particularly personal and very much sound as though written by a lay person rather than a legal professional,

examples being "*poor lad*" (talking about his son) *"God only knows how many more stories she will invent*" (talking about his Wife) and "*The Applicant is talking nonsense".*

55. The reality is that the only time he ever admitted to purchasing land in India was *after* the Wife had obtained the NRI Legal Services India Land Report and could prove beyond a doubt that he had owned land. The previous versions in his documents, I find, were his attempts to mis lead the Wife and the Court.

56. The Husband was evasive, argumentative and I had to give him the warning against self-incrimination. He was a profoundly unsatisfactory witness.

57. I take one other example only with respect to credibility because it is so fundamental an issue and because it is one of the 'abandoned' points that is relevant to the issue of costs.

The 'S loan'

58. This is the £400,000 (broadly) that the Husband sought to ringfence in all of his open positions until the first day of the final hearing. This was then abandoned by him, adding a quarter of the assets back into the pot. The Husband's case is that it was always known that he would have to pay back double the amount that was borrowed. (The reason for this punitive repayment level has never been explained to my satisfaction I should note)

59. I note the following aspects to the Husband's case on this issue: i) in the Husband's Section 37 statement he makes no reference to paying back double the amount borrowed; ii) in his Form E the figure now doubles, to £400,000, and there is a loan 'agreement' that has the sum repayable in two months time; iii) For some reason, in May 2020 S paid £5k to the Husband (via V's account) Why would this happen when apparently the Husband was overdue in paying £400,000 back to S at this point? Iv) Handwriting evidence – the report that was commissioned by the Wife demonstrated that the purported signature of the witness to the loan agreement was probably in fact written by the Husband. The Husband did not put questions to the expert, obtain his own opinion, or witness evidence from either the witness (or for that matter from S) to confirm the truth of the agreement; v) A letter was purportedly sent from a solicitor on behalf of S seeking payment with proceedings being issued if no payment (30 days from November 2021) There have been no proceedings; vi) probably most damning is the evidence from S himself, obtained from him in India via the Wife and the Wife's solicitor. He was clear that he had never seen so much money, never mind loaned it to the Husband, and he was angry and upset that the suggestion had been made in this case. He was 'barely making ends meet' in India. He referred, moreover, to paying rent to the Husband with respect to his land that S was farming.

60. This whole issue, the 'evidence', the approach of the Husband, the things he has asserted about it, the way in which he has changed his position, is deeply, deeply troubling. I consider that it demonstrates that the Court has before it a party who will stop almost at nothing in order to achieve the outcome he is aiming for,

which is significantly to deny the other party their fair share of the assets upon divorce. I can see no other way of characterising this whole episode and it renders the Husband's credibility almost absent in this case.

Agreed assets

61. Following the Husband's change of position with respect to the large liabilities already mentioned, the parties are in fact surprisingly close in what they calculated the presently identifiable assets to consist of by the end of the trial.

62. These total £1,628,311 (per Wife) and £1,626,431 (per Husband) when excluding the 'add back' type argument that is being advanced by the Wife. The discrepancies come from the approach to costs of sale of the FMH (£8,500 or £12,750) and the value of the Wife's gold currently in her possession (£3,300 per W or £5,850 per H) together with different figures being given by the parties for the contents of the Husband's bank accounts at present (unusually, a higher figure provided by him of £63,411 and £46,381 by the Wife).

63. I prefer the Husband's figures with respect to these assets. The Wife was very keen to ensure that I apply updated figures to take into account the increase in the value of gold. It seems to me likely that that which she herself acknowledges having will also have increased in value and that his figure seems reasonable. The Husband has used 3% for the figure of costs of sale, which the Family Court practice recommends in the absence of 'evidence to the contrary' (there is none) It is reasonable to assume, in the context of this case in particular, that the

Husband would not provide a higher figure for his bank accounts than they actually contain.

64. These identified assets consist of:

Equity in the FMH	412,250
Equity in XX M Road	92,150
Wife bank accounts	33,061
Husband bank accounts	62,082
Joint bank accounts	547,367
Hargreaves ISA	40,083 (with the Husband) 67 (with the Wife)

65. There are then some issues between the parties as to how I should approach the matter of chattels. The Wife seeks to add in £15,000 for the value of furniture in the FMH and £3,500 for a television. The parties disagree about the appropriate values to be ascribed to their modest secondhand cars. I am going to give these issues the broad-brush approach that they warrant. Secondhand furniture (and televisions) are never worth what parties imagine. Cars don't matter in the scheme of assets such as there are in this case. To consider these issues too closely risks being utterly disproportionate. I therefore ascribe £12,000 each to the parties with respect to cars, admitted gold jewellery, furniture and the like.

Chattels	12,000 each party

66. I therefore calculate the assets to be as follows:

Total non pension assets	**1,211,060**
Wife pension	231,059
Husband pension	162,419
Total assets including pensions	**1,604,538**

The relevant law

67. It is highly relevant and necessary, in a case such as this, that I remind myself of the warning in R v Lucas [1981] QB 720 that people lie for many different reasons and that a person has lied about one thing is not necessarily probative of the fact that they are lying about other, material issues.

68. With respect to the 'add back' arguments, as we have called them, I am well aware of the case law that requires a 'wanton or feckless' dissipation element to any such approach. In fact, it seems to me that this is not a case about 'add back' but rather one about alleged non-disclosure.

69. The relevant cases, in those circumstances are, in my opinion these:

70. In Moher v Moher [2019] EWCA Civ 1482 the Court of Appeal gave the following guidance:

"*86. My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.*

87. (i) It is clearly appropriate that generally, as required by section 25, the court should seek to determine the extent of the financial resources of the non-disclosing party;

88. (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court "engage in pure speculation". As Otton LJ said in Baker v Baker, *inferences must be "properly drawn and reasonable". This was reiterated by Lady Hale in* Prest v Petrodel, *at [85]:*
"... the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are."
89. (iii) This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is "unable to quantify the extent of his undisclosed resources", to repeat what Wilson LJ said in Behzadi v Behzadi.

90. (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called "the inherent probabilities" the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both Al-Khatib v Masry *and* Ben Hashem v Al Shayif *and, in my view, it is a*

> *legitimate approach. In that respect I would not endorse what Mostyn J said in* NG v SG *at [16(vii)].*
>
> *91. This approach is both necessary and justified to limit the scope for, what ButlerSloss LJ accepted could otherwise be, a "cheat's charter". As Thorpe J said in* F v F*, although not the court's intention, better an order which may be unfair to the nondisclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in in* NG v SG*, at [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at [16(viii)], that the court must be astute to ensure that the nondiscloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations".*

71. In NG v SG (Appeal: Non-Disclosure) [2011] EWHC 3270 Mostyn J gave the following summary which I find to be very useful:

> *"Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:*
>
> *i) The Court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.*
>
> *ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the Court is satisfied he has not got.*
>
> *iii) If the Court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.*
>
> *iv) In making its judgment as to quantification the Court will first look to direct evidence such as documentation and observations made by the other party.*
>
> *v) The Court will then look to the scale of business activities and at lifestyle.*

> *vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.*
>
> *vii) The Al-Khatib v Masry technique of concluding that the non-discloser must have assets of at least twice what the Claimant is seeking should not be used as the sole metric of quantification.*
>
> *viii) The Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that than that the Court should be drawn into making an order that is unfair to the Claimant."*

72. I have these authorities in mind as I approach the issue of alleged non-disclosure in this case. I find that the Husband has been guilty of serial non-disclosure, partial disclosure, late disclosure, and where he has failed to provide the proper evidence that would prove clearly that which he asserts, I should proceed to draw inferences that are adverse to him. He has had opportunity after opportunity to provide a full, clear, readily understandable narrative with proper documents in support and he has failed to do so. On at least one provable occasion he has forged a signature of an alleged witness. It would be wholly wrong and unfair to the Wife were I not to draw some inferences on the basis of the evidence that I have heard overall.

Findings on the disputed assets

Land in India

73. I find that the Husband continues to hold land in India. It is almost impossible to identify where it might be, in whose name presently, and what its value is. I must do the best that I can. The reasons that I make this finding are: i) the land report may not have found any additional pieces of land currently in the Husband's name, but it is not completely reliable, since it is known as an admitted fact that the Husband certainly owns a share of his late Father's house (for which he is paying the whole of the electricity charges I note) and this did not show up in the report; ii) S said that he pays rent to the Husband for land in India that he farms (and, indeed, he caused (provably) £5k to be paid to the Husband, via V) on one occasion within the course of these proceedings that the Wife was able to prove; iii) The Husband transferred £122,000 to G (an agent, effectively, in India) in April 2018 and to his Uncle's children and for these transactions he has given diverse, flatly contradictory explanations, finally admitting that the money was used to buy land in India; iv) The Husband boasted to the Wife (I accept her evidence unhesitatingly) that he had managed to purchase land from the said uncle; v) the

NRI report was only able to discern land worth now £25,000, whereas the Husband himself says that he spent £122,000 on land, just that it had *vastly* dropped in value at the time he transferred it to his brother, in breach of the Section 37 injunction (no evidence provided to the Court, however, that land

has decreased in value in India to this kind of extent); vi) the Husband's purported documentary proof that he owns no land in India was apparently in his possession for around a year and a half and yet was only served on the Wife a few weeks prior to this final hearing. As a result, she has been entirely unable to make any enquiries, or to obtain evidence in rebuttal. Why would the Husband 'sit on' such utterly crucial evidence, going to such a significant issue in the case, whilst meanwhile £330,000 are being spent on costs in arguing such issues? vii) As already observed, I find that the Husband is a wholly unreliable and untruthful witness.

74. This, then, is not a case which is simply about 'I prefer this parties' evidence over that party'. The Wife has always, in all of her documents, been quite certain that the Husband owned land in India, from her own recollection of discussions heard by her own ears. She had that kernel of truth, in my judgment, in the assertions that she made, and she has been steadfast in her case, managing to discover, in the face of non-disclosure by the Husband, partial pieces, here and there, of corroborative evidence.

75. As to the quantification of that land I find that, in the absence of any reliable disclosure, it is appropriate that I apply the value of the **£122,000** that can be proved to have been transferred by the Husband to India / family members of an Indian relative because on the balance of probability I find that these transactions were to purchase land and the Husband has failed entirely to provide any reliable documentary evidence to gainsay that value.

Land Transferred to the Husband's brother

76. This inherited land should be added back into the account, having been transferred, I find, as a cynical move upon these proceedings having been commenced. The Husband says that by adding this in, *together with* the land investment of £122,000 I would be double counting. How am I to know? I can't know. The reason I can't know is because the Husband has failed to comply with his duties of disclosure and has failed to prove his case with proper documents, or to tell a truthful account to the Court. Indeed, in many documents he has flatly denied owning any land in India. This has been recorded on the face of Court orders. The value of this land was **£54,000.**

77. It remains entirely unclear (and unproved by the Husband) what he received by inheritance in 2014. It is unclear why it was 'always intended' to be his brother's, why his Father did not leave it directly to his brother, and why the Husband waited for five years before effecting transfer. None of this was ever admitted to at all by the Husband prior to the NRI report. And he is paying all of the household bills on his Father's property that he claims to co-own with 17 other people.

78. I consider this to be an asset transferred to his brother in order to defeat the Wife's claim. I consider this to be separate land from that still owned by the Husband (the £122,000 land) as the Husband continued, I find, to receive rent (that is the payment of £5,000 previously referred to) after this transfer, so it must relate to additional/other land.

79. **£54,000** in my opinion (the Husband asserted it was worth £47,000 at the time of transfer) is the correct figure to add back in this regard.

Any additional land held in India?

80. The Wife has asserted that there may well be additional land owned by the Husband in India, either purchased by him at various times and dates during the marriage, inherited by him, or having come to him in any other way. Her best 'guestimate' as to this amount is around £75,000.

81. I am afraid that this 'head of claim' as it were is simply too speculative and that were I to seek to apply any figure to this group of assets I would potentially be making a very unsafe finding. It goes beyond what I might be able to infer. The Wife's case regarding this tranche of land has a looser and vaguer quality to it, and the evidence taken as a whole is not robust. I make no additional findings with respect to any land in India.

82. It may well be that the £54,000 that I am adding back to the Husband's column in part represents some of the £75,000 or so inherited by him in any event. Because of the way he has chosen to present his case to the Court I am, sadly, unable to be clear.

The £25,000 transferred to the Husband's brother 6 months before separation

83. This, to me, falls dangerously close to the 'rummage through the attic' of the marriage that has been deprecated by the higher Courts. It is correct that the Husband has given inconsistent explanations as to this transfer (variously, loan, repayment of loan and gift) and it is plain that the Wife was i) not consulted about it and ii) did not agree that this money should be transferred.

84. It seems to me, however, that it is abundantly clear on the evidence that the Wife leaving the Husband came as a complete shock to him. I do not consider he was acting deliberately, sending money to his brother to 'hold' for him in preparation for a divorce. I do find that he was behaving selfishly and dictatorially, as he doubtless did during the marriage, but that does not fulfil the criteria for a Section 37 reversal of the transaction or an addback.

Gold and cash

85. I unhesitatingly accept the evidence of the parties' son and of the Wife. The majority of the family gold remained in the safe, with the Husband, upon separation. A quantity of cash was also stored in the safe at the family home, also remaining in the Husband's possession.

86. The Husband has retained these assets and he has failed to disclose that he has them.

87. In terms of value I must apply a broad brush. There is no evidence with respect to the gold, not even a photograph of the Wife wearing a piece of jewellery. Whilst I might (and do) accept her evidence in this regard (she was not allowed to wear it and therefore there are no photographs of her so doing) I must be extremely cautious with regard to valuing it. This is evidence based on a comprehensive list made from memory by the Wife, and it is comprehensive, but it is all denied and there is no expert evidence at all as to value.

88. I apply a value of **£40,000** to this gold, being appropriately cautious as to value, but also acknowledging that these are said to be large, and heavy pieces of jewellery. The Wife put her case at £53,000, increasing to £70,000 with updated figures, but I am more cautious, for good reason, given the lack of any expert or supporting evidence.

89. With respect to the case in the safe, I have the evidence of B which talks of at least 10 envelopes, 2cm thick and all containing red £50 notes, to his personal view.

90. Mr Leslie acknowledges the difficulty for the Court dealing with the quantification of this sum, rudimentary calculations by him having revealed that it could be as large a sum of money as £100,000 (he puts his client's case at £50,000 -£10,000).

91. It seems to me that I must be particularly cautious about this part of the Wife's case. I am going, doing the best that I can, trying to guard against potential

unfairness to either party, apply the sum of **£25,000** in respect of this part of the Wife's claim.

92. Therefore, the total amount that I add to the asset pot, in respect of 'adding back' or 'non-disclosure' (it matters not) is **£241,000.**

93. The total pot thereby becomes **£1,452,060** excluding pension pots and **£1,845,538** including them.

General dynamics of the relationship

94. It is doubtless fairly apparent from the foregoing in this judgment (but in case it is not) I make it plain that I do find as a fact that the Husband exerted almost complete financial control over the Wife for the duration of their marriage. He made the decisions, he controlled the money, she did as she was told, and she had no real, meaningful power in this area of her life or their life together.

The S "Loan"

95. It is appropriate for me to state in terms that I do not find that the Husband has proved (or come close to proving) the existence of a loan advanced to him by S. I do not, therefore, treat this as an item that needs to be deducted from the balance sheet of the marriage.

Section 25 of the Matrimonial Causes Act

96. **INCOME, EARNING CAPACITY, PROPERTY AND OTHER FINANCIAL RESOURCES.** The parties will be able to meet their needs for income from their earning capacity until they choose to retire (which may well be soon) They are likely to have a sum of money additional to that required to meet their housing needs to augment this.

97. Given the age of the parties, given their proximity to retirement (and they both have some health problems) and given the relative modesty of the pension funds and the relative closeness in value, I propose to add their pensions into the matrimonial pot and deal with them globally with all of the other assets (fully acknowledging that they are not exactly the same as assets but considering it highly unlikely to be proportionate and cost effective to make a pension sharing order in this case)

98. **NEEDS**. As is too often the case, precious little of the evidence in this case targeted such essential considerations as 'needs'.

99. The Wife put her property particulars at around £347-425k. She has a mortgage capacity of £54,000 but I really do not see that in this case there is a necessity for either of the parties to be encumbered by mortgage borrowing in order to meet their needs for housing. The Wife was pitching her claim in a modest way, a 2 or 3 bedroom semi in the area that she is choosing to locate to. She said " a

two bedroom semi for me, H probably needs a 3 bed semi as he has V with him as well."

100. The Husband, a little unattractively, put his housing needs at £140k – 180k for the Wife and £180k – 210k for him. The FMH is worth £425,000. He is clearly 'overhoused' in that but my order is likely, if he chooses to, allow him to retain this property.

101. **THE STANDARD OF LIVING** of the marriage is not a useful tool in this case. It was modest, but the Wife was entirely unaware of the monies available to them to take steps to improve this standard.

102. **AGE, DURATION** of the marriage, I have dealt with. It is a very long marriage and there is a very strong pull towards a fair share of the assets being an equal share in these circumstances.

103. **CONTRIBUTIONS** were equal.

104. **CONDUCT** per se is not relevant as a factor such as to alter my approach to division. The litigation conduct of the Husband will doubtless be the subject of an application for costs.

105. V, I have taken into account and have already indicated that I am satisfied that his ongoing needs will be met adequately by the parties from their share pursuant to the terms of this order.

My decision

106. The pot available for division is **£1,845,538.** 50% of this is £922,769.

107. If I use the figure of £922,769 as the 50% that the Applicant should achieve, and start by deducting her pension (231,059) then her bank accounts (33,061) then her Hargreaves ISA (67) and her chattels (12,000) she requires 646,582 to take her to half. If she has transferred to her the joint account monies (547,367) then the Husband would owe her a lump sum to take her up to 50% of £99,215**.**

108. Checking the maths the other way, the Husband has £241,000 (non disclosed / add back), plus 162,419 (pension) plus 12,000 (chattels) plus 412,250 (equity in the FMH) plus 92,150 (equity in M Road) plus 62,082 (bank accounts) plus 40,083 (Hargreaves ISA) minus the lump sum of 99,215 he is left with £922,769**.**

109. I should note this in terms of my order. I have chosen the manner that I predicted the parties would wish to utilise as the cleanest and neatest way of resolving matters, it requiring just two transactions as between them.

110. I am, of course, content to hear further submissions as to mechanics at the handing down of this judgment or, indeed, I would encourage the parties (it is not too late) to work together to find a mechanical resolution that each of them prefers.

111. Any applications as to costs will be heard at the handing down of judgment.

COSTS

112. This part of the judgment follows the formal handing down hearing which took place on the 12th of July.

113. It hardly came as a surprise, given the facts that were contested in this case and the findings that I made, that the Wife made an application for her costs. She urged upon me that all of her costs, or at least the vast majority of them, should be paid.

114. On her behalf it was pointed out that it is "very difficult to find any cost expenditure at all that is not referable to the Husband's dishonesty."

115. The tone was set, it was said, by the initial Section 37 injunction proceedings (in breach of which the Husband transferred land to his brother in Canada) together with the non-molestation injunction proceedings. There then proceeded, it was said, a ceaseless campaign by the Husband to obfuscate, hide the truth, deliberately lie, anything in fact that would or could lead to the Wife receiving a smaller share of the matrimonial finances than she was entitled to.

116. In essence, Mr Leslie argued, there was a wholesale campaign to evade the truth. Such a campaign garners great expense. Great and otherwise unnecessary expense. Mr Leslie suggested that, in the absence of such conduct, the likely

level of costs that would have been incurred by the Wife would have been necessitated in the region of £20,000.

117. Mr Leslie based his argument for costs on the factors set out in FPR 28.3(7) c) "whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue" and d) "the manner in which a party has pursued or responded to the application or a particular allegation or issue."

118. I pause to make clear that I am, of course, aware that, pursuant to FPR 28.3(5) the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party. I also make it clear that I consider that the manner in which the Husband has conducted this litigation means that I absolutely, applying subsections c) and d) of Rule 28.3 should be making an order for costs.

119. His determined attempts to remove approximately one third of the matrimonial pot (abandoned only on the first morning of the final hearing), his refusal to provide a clear, simple and transparent narrative, his out and out dishonesty, means that the case was i) unsettleable, for to settle would have visited upon the Wife a grave injustice and ii) far more complicated and far more expensive than it otherwise should have been.

120. I consider that a proportion of the costs that have been incurred by the Wife (and potentially by the Husband) should be 'stripped out' of the asset schedule. A large proportion of what I find to be unnecessary costs have already been paid

by the parties and thus the pot has been denuded by the expenditure. Were it not for the Husband's litigation, the pot would have been larger and the amount received by the Wife for her lump sum would have been larger.

121. As at the Wife's Form H for the final hearing, her costs were £183,397.84, with £147,297.84 having been paid. Outstanding, then, was the sum of £36,100 of costs to pay.

122. By the time of the costs schedule put before me upon the handing down of judgment the total figure contended for by the Wife was £240,000. This constituted present solicitor's costs, previous solicitors costs and a (modest) sum relating to the non-molestation proceedings.

123. I am working on the basis that all costs, save for the £36,100 outstanding to her current solicitor, have been paid by the Wife.

124. Thus, there is a sum of, approximately £200,000 that was removed from the asset schedule prior to division, already paid costs, that would otherwise have been available for distribution between the parties.

125. It seems to me that I must also be interested in how much the Husband has incurred in costs when running his case in the way that he has.

126. Miss Najma, as she has been throughout this hearing, was extremely realistic about what submissions she could reasonably make on behalf of the Husband.

She pointed out to me that there were certain factual matters that the Wife did not 'succeed on' (e.g. proving the present existence of an additional land asset in India in the region of £75,000) and some that she 'abandoned' (eg the £9,000 asserted to have been paid to K and also to L).

127. I do not consider that this alters my overall approach. The 'abandonment' of the smaller amounts was essentially a case management direction by me; I said that to litigate such issues was disproportionate against the pot size (there were others, also, that I directed the parties to think again about pursuing, unless they wished for a trial that would take three weeks to hear) The larger point, about the inheritance, was essentially found by me to be an unsafe finding to make in the sense that I did not have enough, clear evidence. It is not that I didn't believe the Wife when she claimed to have a (somewhat vague) recollection of the Husband talking about having received inheritance and purchasing land in India. Indeed, we know that he did receive at the very least his admitted share (he says 1/18th) of his Father's property (the house that he pays all of the electricity bills for).

128. The reality is that there was insufficient evidence for me to draw firm and safe conclusions about this point. That was due, I have no doubt, to the Husband's approach to disclosure.

129. It also must be noted that the issues pursued by the Wife were certainly not the issues that prevented this case having any chance of settling. I am sure that she would have taken 'a view' on them, were it not for the fact that the Husband

was doggedly trying to reduce the matrimonial pot by one third throughout. It was his approach to those issues, only abandoning them when such vast sums of money had already been spent on lawyers, that led to the sums that are so disheartening in this case.

130. I note from the Husband's Form E that he had incurred, by the date of the document, costs in the sum of £146,371, of which he had paid £112,705.

131. Thus, by the time I had an asset schedule put before me at the final hearing, it had been depleted by the sum of around £312,000 before I came to divide by two (after adding back the assets I found proved as undisclosed by the Wife).

132. Thus, in getting her 50% lump sum, the Wife was short by £150,000, arguably.

133. It seems to me that I must take this approach, as to fail to do so would be to risk double counting, since the costs have already been taken into account by me using a reduced matrimonial pot. If I simply ordered that the Husband should pay the Wife 'her costs', or a proportion of them, then there would be a clear double count.

134. I consider that the correct approach is to say that the Husband should pay two thirds of the costs that have been spent in this matter, (due, as I have said, to his unacceptable and unreasonable presentation of his case.

135. If I take the approach that the Wife's lump sum should be augmented by the amount of costs that she should not have had to 'pay towards' (in the sense that I had less available in the matrimonial pot) then 2/3 of £150,000 is £100,000. I also consider that she should have her outstanding costs paid in the sum of 2/3, so an additional £24,000.

136. Thus, I make an order that the Husband should pay the sum of £124,000 as an additional lump sum. It is clear beyond any doubt that he can meet his housing needs, comfortably, from the share of the matrimonial pot that will remain to him, even taking into account this aspect of my order.

LMC 8.9.22