Neutral citation: [2023] EWFC 251 (B)
1668-1805-7795-4390

IN THE FINANCIAL REMEDIES COURT
SITTING AT THE CENTRAL FAMILY COURT

BEFORE:

RECORDER RHYS TAYLOR
(In Private)

BETWEEN:

AXA

Applicant

-and-

BYB

Respondent

The Applicant appeared in person

Ms Naomh Gallagher acted as a court appointed Qualified Legal Representative to cross-examine the Respondent

Mr Barnett-Thoung-Holland appeared for the Respondent (on Public Access basis)

JUDGMENT DATED 18 DECEMBER 2023

Contents

THE RECORDER:

Introduction

The key issues the court must determine

1. The wife's ("W") application for financial remedies dated 16 November 2022 turns on four key issues:

    1.1. Does W own a 100% or 50% beneficial share of a flat in London which is registered in her sole name?

    1.2. Does the husband ("H") own the beneficial interest in the proceeds of sale of a property in Tehran, which was held in his sole name?

    1.3. How should the significant debt held by each of the parties be treated by the court?

    1.4. How are housing needs to be met and who should live in the former matrimonial home pending its sale?

The appointment of a Qualified Legal Representative in this case

2. In this case, a Qualified Legal Representative ("QLR") was appointed under Part 4B of the Matrimonial and Family Proceedings Act 1984. I am told this is the first case involving a QLR to be heard in the Financial Remedies Court at the Central Family Court.

3. The QLR appointment in this case happened at the eleventh-hour prior to the final hearing. The QLR is based at a chambers in Manchester.

4. I shall say a little more about the QLR provisions shortly.

Representation

5. Throughout the course of these proceedings the parties have variously had the assistance of solicitors either on the record or on an "unbundled" ad hoc basis. Neither had a solicitor on the record by the time of the final hearing.

6. W appeared in person throughout the hearing which lasted four days from the 7 until the 10 November 2023.

7. Mr Barnett-Thoung-Holland appeared on a Public Access basis for H.

8. The QLR was provided for by order of DDJ Todd at the pre-trial review in light of the fact that W was acting in person and there had been allegations of abuse made in proceedings under Part IV of the Family Law Act 1996 and cross allegations of domestic abuse made in the pending Children Act 1989 proceedings. In fact, a Non-Molestation Order had previously been in place against H, but had not been renewed upon its expiry after having been in force for one year. These factors formed the backdrop to the court's decision to appoint a QLR.

9. Ms Naomh Gallagher accepted a QLR appointment just days before the final hearing commenced. As I have already stated, Ms Gallagher is based in a chambers in Manchester. All attempts to secure a QLR in the South-East failed. It speaks highly of Ms Gallagher's professionalism that she was prepared to accept this appointment when the current fee structure does not provide for travel or overnight accommodation expenses.

10. Both Mr Barnett-Thoung-Holland and Ms Gallagher have the court's sincere thanks for the manner in which they conducted their different roles in this difficult case. Each conducted their role in a considered, calm and incisive manner. Mr Barnett-Thoung-Holland could not have done anything more for his client. The criticisms I have about H's case are directed at him alone and do not represent in any way the skilful way in which Mr Barnett-Thoung-Holland sought to advance the case he was required to put. I am also grateful to him for the schedule of key issues and cross references which he provided for me in closing. It has been of great assistance in marshalling this judgment.

Background

11. The parties commenced cohabitation in America on the 30 September 2017 and were married on the 6 October 2017, W having followed H on an intending spousal visa. This visa required marriage within a short window time after W's arrival in the States.

12. The parties have one child together. A is currently aged three and a half.

13. The marriage ended on the 11 September 2022 when W left the former matrimonial home with A.

14. W petitioned for divorce on the 8 October 2022. The Form ES1 suggested that no decree nisi had been granted. In fact, following some inquiries made by the court, it is apparent that the decree nisi was granted on the 4 May 2023.

15. W issued her application for financial remedies on the 16 November 2022. The FDR was on the 12 July 2023 and the PTR on the 2 October 2023.

16. H resides in the former matrimonial home in London ("FMH") The parties fixed a five-year mortgage deal, one and half years' ago and so have another three and a half years on a relatively favourable interest rate. The mortgage costs currently £2,049 pcm and the service charge is £183 pcm.

17. A attends a private nursery about 5 minutes' walk from the FMH. A has another 9 months before she will attend primary school. W is very strongly of the opinion that the nursery has been important stability for A during the parties' separation. The fees when A joined the nursey were £1,262.04 per month. That figure has now increased slightly. I am told it would cost a further £12,380.94 for A to complete her nursey education over the next nine months. There are outstanding fees at the date of the hearing of £2,912.55, bringing the total due to £15,293.49. There is however a deposit of £1,262 on account, bringing the amount actually payable to £14,031. W says this is very important for A and H says that it is unaffordable.

18. After leaving the FMH W went to live at her parents' home , which is about 30 minutes' drive away. She has had to rely upon their charity in order to keep A housed.

19. W is aged 36. H is aged 41.

20. W is a mathematics teacher who works 3 days a week. Her current net income is £19,501.12. This is supplemented by CMS payments which have recently been revised down to £7,915.92 per annum. W also receives Child Benefit in the sum of £1,152.

21. W wishes to generate additional income streams. W is training to be an Integrated Health Practitioner. This involves a course of study online over a period of about 6 months. W is understandably presently distracted from this endeavour by these proceedings. W also has an ambition to sell water purifying devices which can be plumbed into drinking water

supplies in homes. The units cost about £5,000 each and in the first instance W would hope to earn a profit of about £300 from each unit she can sell.

22. H works in finance as Head of Financial Modelling in a well-known company. He is not required to have an accountancy qualification for this role but many comparable roles in his sector might require such qualification. This makes his employability in the sector less attractive. Following a period of redundancy, it took a little while to secure this role. H hopes in the future to study for an accountancy qualification. H earns £62,718 net per annum in this role. H pays CMS at a rate of £7,915 per annum. H recently secured a reduction in the amount payable on account of his having to pay for supervised sessions of contact on a weekly basis.

23. Aside from the modest equity in the FMH, there are two key assets in this case.

24. W is the registered as the sole legal owner of [a second property] ("the second property")

    24.1. It has an agreed gross value of £287,500 and a net value in the order of £50,000 once mortgage, notional costs of sale, and an early redemption penalty are taken into account.

    24.2. H says it is worth just over £50,000 and W says it is worth just under but the precise amount is not material to my decision.

    24.3. W says that she co-owns the second property with her brother as beneficial tenants in common in equal shares. She relies on a document entitled "ownership agreement" dated 15 October 2015 which is signed by her, her brother and her father. It refers to it being co-owned "in equal parts."

    24.4. It is W's case that she and her brother were jointly gifted about £50,000 by their father and they purchased the second property as an investment together, subject to mortgage. The property was placed in her name as her brother was a student at the time and unlikely to be able to secure mortgage finance easily.

    24.5. H seeks to impugn the authenticity of the agreement.

    24.6. An alternative argument made by W is that, even if the agreement was not valid for some reason, she and her brother had a common intention to co-own and they have

acted to their detriment in reliance upon such a common intention, thereby giving her brother an equitable interest in the second property under a constructive trust.

24.7. A spreadsheet was produced by W which had originally been created by H, she says, to enable her and her brother to account for property costs between them. H denies the character of the spreadsheet and says that it shows what money W had borrowed from her brother and that it does not impact upon the question of beneficial ownership.

24.8. The effect of this argument makes £25,000 worth of difference, dependent upon whether W is the 100% or 50% beneficial owner.

24.9. W's brother lives in the second property with his family. He pays a rent to the legal owners, adjusted slightly to account for the fact that he is also a 50% beneficial owner. There are cladding issues with the block, which may make sale difficult.

25. Until May 2022 H held the legal title to an Iranian property ("the Iranian property").

25.1. This property has been held by H since 26 December 2007.

25.2. It is H's case that the Iranian property was received by his mother as part of a divorce settlement. H stated that in Iran women get nothing on divorce but that his father decided to give her the property anyway. However, H stated that his mother was anxious about being a newly divorced women in Iran holding sole legal title to a property. For this reason it was conveyed into his name for him to hold on behalf of his mother. H states that the day before the property was conveyed into his name he executed a power of attorney in favour of his mother giving her control and what amounted, in effect, to ownership rights over the property.

25.3. H further states that in 2022 his mother decided of her own accord to sell the Iranian property and she received the net proceeds, which were less than £10,000.

25.4. W says that the parties visited Tehran in about 2019 and visited the property. It is a substantial apartment. H had always said that it was his property. The sale occurred during a particularly difficult period in the marriage when the parties were contemplating whether the relationship could be saved.

25.5. W says that H is the beneficial owner of the proceeds of sale of the Iranian property and that he is hiding them to put them beyond the reach of a financial settlement or order. W says that H always said that the property was his and that she does not accept the property would have sold for such a low figure.

26. I have not been told the exact details concerning the end of the marriage and separation. I am aware that there was a non-molestation injunction which was obtained without notice in the first instance and then later renewed without a contested hearing.

27. At one point H was arrested but not charged for offences relating to coercive and controlling behaviour. When the police declined to take immediate action against W for perverting the course of justice, H made an application within the Children Act proceedings for documents to be disclosed so that he could attempt to mount a private prosecution. H told me in evidence that he did this when he had the benefit of legal representation. When asked whether he thought his actions were reasonable in this respect, he said that he thought that they were.

28. In an attempt to tidy up loose ends during the hearing, I invited the parties to resolve sharing of family photos. H informed the court that he had deleted all photos of mother and child, save for the ones in hospital at birth. This is a vindictive and irredeemable thing to have done.

29. W was anxious about the possibility of the existence and use of intimate photographs taken during the marriage. I required both parties to give cross undertakings that all such material in their possession had been destroyed. The warning for breach of an undertaking was clearly spelt out by the court.

30. Both parties now have significant unsecured debt. Some of this relates to the costs of legal representation in the contested children proceedings. I will deal with this in a little more detail below.

My impression of the parties

31. I find W to be straightforward and largely consistent in the evidence which she gave. I will address a specific inconsistency when I deal with the second property shortly, but having listened carefully to W's explanations I accept them and find her to be a credible

and honest witness. Her account squares most sensibly with the documentation. Where there is a dispute between H and W, I prefer W's version of events.

32. W's brother and father also came and gave evidence about the second property. They were cross-examined about the documents and other matters, including the status of the loans which had been advanced to W. They came across as helpful and truthful people and I accept their evidence.

33. I was particularly impressed about a point of evidence given by the brother concerning a PDF document (the electronic version of the agreement) having allegedly lost its metadata. As I will explain shortly, I do not accept H's case that the brother has deliberately removed the metadata from the PDF, in order to hide the real date of the document. H tried hard to juxtapose his allegations of missing metadata with the fact that the brother works in computers and has a PhD in computer science. There is actually no independent or reliable evidence before the court about missing metadata. When various assertions were put to the brother about metadata loss or change, he was unguarded, helpful and readily accepted that as data is processed through different computers metadata may change.

34. I am afraid that I have formed an unfavourable impression of H. H's case in respect of the second property does not bear scrutiny when considered alongside the documents. I found him to have taken an extremely tactical stance with the second property in a misguided and dishonest attempt to reduce the share of the assets which W will receive from the matrimonial pot and to gain an unfair advantage for himself.

35. As I will explain when I come to deal with the Iranian property, H also appeared to me to be developing his story as he went along in his oral evidence. His embellishments rather had the opposite effect than he must have intended, because I would have expected them to be in his statement and for them to have been put to W in cross-examination.

36. The Iranian property is the trickier of the two contentious properties to deal with. I can place little reliance on any of the documents, as I cannot properly understand their precise legal effect without some reliable expert Iranian evidence on their effect.

37. But having confidently come to the conclusion that H is dishonest and wrong about what he is saying in respect of the second property, I carry that knowledge into the scales when

I consider whether he has discharged the burden of proof which is upon him in respect of the Iranian property.

38. It seems to me that if he is not telling the truth about one property for the plain reason that he is trying to reduce W's financial remedy claim, I can weigh that in the scales when considering the inherent likelihood that he is telling the truth about the other property.

39. H has been tactical, guarded and unhelpful in answering the key written question which he could have easily answered had he wanted to furnish the court with a full and frank account of his dealings. In oral evidence he was defiant and arrogant about this stance.

40. H's attempt, apparently whilst legally represented, to seek the disclosure of documents out of Children Act Proceedings, so that he could try to mount a private prosecution informs me that he is not approaching matters reasonably. His destruction of precious mother and child photos adds further colour to the unfavourable impression I have formed. Further, he has also somehow managed to gain possession of W's valuable engagement ring and has it stored in a safe deposit box, refusing to return it to her.

41. Not only has H sought to mislead the court but he has had the audacity to blame W for the proceedings and to suggest that he would have reasonably come to terms with her if only she had been less litigious. Given the manner in which he has conducted himself within these proceedings this is nonsense. The word gaslighting is apposite here.

The parties' open positions

42. Neither party provided a formal open offer. Mr Barnett-Holland-Thoung helpfully summarises the positions in the note he prepared on behalf of H.

W's position

43. W suggests the following:

43.1. The FMH be sold and 100% of the net proceeds be paid to her.

43.2. H to sell the Iranian property/use his assets abroad to live comfortably.

43.3. Alternatively, W to move back into the FMH and remain there with A until A attains her majority, in which event H could have a 50% share of the value of the FMH.

43.4. W to have her valuable jewellery returned to her.

44. W, being unrepresented, did not have a clearly articulated case for periodical payments. W produced an outdated schedule of outgoings which she accepted was based upon the parties' former standard of living and which was now wholly unattainable. The budget was looked at during her evidence and she reduced the figures to £5,201 pcm, or £62,412 pa. Standing back and surveying the global economy in this case, even that appears to be high in my judgment. Both parties will have to cut their cloth to the available resources and I assess, as I am entitled to do without conducting a line-by-line "hacking through the trees" analysis, that her reasonable budget should be set at £4,000 pcm, or £48,000 pa,

45. W's income is comprised her salary of £19,501, CMS of £7,915 and Child Benefit of £1,152. This is a total of £28,568. W currently works three days a week as a maths teacher. As I have already noted, W hopes to develop other income streams as an Integrated Health Practitioner and salesperson of expensive water purifiers. Whilst I have found W to be an honest witness, I am left with the impression that she is perhaps being a little unrealistic about how she can make best economic use of the other two days in her working week. Whilst no formal evidence was given about the demand for maths teachers, it seems to me more likely that W's more realistic and stable option would be to seek a five day a week teaching role. That would bring her to an income of about £31,400 pa earned income. It seems to me that by the start of the next academic year, if not before, W can be treated as having that kind of earning capacity. W must do all she can to urgently maximise her earning capacity.

46. If W has an earning capacity of £31,400, when combined with CMS of £7,915 and Child Benefit of £1,152, she would have a total income of £40,467.

47. It can be seen, whether part or full time, if W had been properly represented at the final hearing, she would have advanced a clear need for substantive maintenance, subject to H's ability to pay. A is very young and I do not have a crystal ball to be able to see by

when, if at all, W will have been able to attain financial independence during A's minority.

H's position

48. H constructs his offer and net effect calculation by ascribing to W 100% of the second property as if it were available to her as cash. He further limited the liabilities which are to be brought into account by removing costs associated with the children proceedings and what he describes as soft loans from family and a friend. He allows for no value to be ascribed to the Iranian property and deducts to the full extent his significant credit card debts.

49. Approaching matters as he does, he calculates that this would entitle him to 75% of the net proceeds of the FMH, whilst he retains his greater pensions and has the benefit of a clean break.

50. I will not spend further time setting out H's position as I reject it. This is due to the primary findings of fact I am going to make about the ownership of the second property and the Iranian property.

The law

Approach to determining primary facts

51. The burden of proof rests on the party seeking to assert a fact. I have to determine the case on the balance of probabilities. Is it more likely than not that an asserted fact is proved?

52. It was very properly conceded by Mr Barnett-Thoung-Holland that in respect of the Iranian property the burden of proof rested upon H. For the avoidance of doubt, had this proper concession not been made, this would be my determination in any event. As the sole holder of the legal title to the property I start with the presumption that he was also the sole beneficial owner. The presumption can be rebutted with what Mostyn J once memorably described as the "sunshine of hard facts", but it falls to H to illuminate the picture and to explain himself adequately.

53. The decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence. I survey the broad canvass. I take into account a wide range of matters including my assessment of credibility of the witnesses, documents and inferences which can be drawn from the evidence. I must consider each piece of evidence in the context of all of the other evidence.

54. The evidence of the parties is of utmost importance. It is essential that I form a clear assessment of credibility and reliability. I am entitled to place weight on the evidence and impression that the parties have made upon me.

55. I remind myself that demeanour is an uncertain guide in assessing the reliability of evidence and that far more important is the substance of the evidence given, its internal consistency with contemporaneous documents and inherent probabilities. That said, the family court is still permitted to have regard to the demeanour of witnesses when there is little by way of other contemporaneous documents. I remind myself to guard against an assessment solely by virtue of the parties' behaviour in the witness box.

56. This is a case where I also give myself a *Lucas* direction and remind myself that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress and the fact that a witnesses has lied about some matters does not mean that he or she has lied about everything. I have in mind the guidance provided most recently in *Re A, B and C (Children)* [2021] EWCA Civ 451, [2022] 1 FLR 329.

57. I accept entirely that just because a party has lied that does not necessarily prove the primary case against a party.

58. Given the background of cross allegations of domestic abuse I had firmly in mind FPR PD 3A.2A and that either party's participation in the proceedings and their evidence may be diminished by reason of their vulnerability. I provided participation directions for separate waiting areas and a screen in court to help alleviate this vulnerability.

How to deal with non-disclosure

59. In determining this application, I must first determine what assets exist and, if possible, do the best I can to place a value on them. However, where a party does not play by the

rules the court is at liberty to draw adverse inferences, provided the evidence warrants it. In *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 [16] Mostyn J stated:

"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 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 are inadmissible in the exercise."

60. This guidance is developed and augmented by *Moher v Moher* [2019] EWCA Civ 1482 where the Court of Appeal made it clear that quantification is not necessary where the offender has made it impossible for the court to attempt any estimate.

The statutory criteria

61. Once the court has determined the asset base it must go on to consider how the assets may be divided justly. I am required to do that fairly.

62. I must apply sections 25(1), (2) and s.25A of the Matrimonial Causes Act 1973.

63. s.25(1) provides:

"It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B and 24E above and, if so, in what manner, to

have regard to all of 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."

64. s.25(2) provides:

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

a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court to 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 to make in the foreseeable future 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.

65. s.25A(1) provides:

> "Where on or after the making of a divorce or nullity of marriage order the court decides to exercise its power under s.23(1)(a), (b) or (c), 24, 24A, 24B or 24E 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 as to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable."

66. When applying these sections, caselaw establishes that the party in the position of claimant in financial remedy proceedings is entitled to the greater of their claim as referenced by a sharing or needs analysis. This case involves needs and is principally concerned with needs.

The primacy of housing considerations

67. I have in mind the comments of Thorpe LJ in *M v B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 53, namely

> "In all these cases it is one of the paramount considerations, in applying the section 25 criteria, to endeavour to stretch what is available to cover the need for each for a home, particularly where there are young children involved. Obviously the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit of lesser importance that the other parent should have a home of his own where the children can enjoy contact time with him. Of course there are cases where there is not enough to provide a home for either. Of course there are cases where there is only enough to provide for one. But in any case where there is, by stretch and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome."

68. Balanced against these comments I remind myself of the words of Lord Hoffman in *Piglowska v Piglowski* [1999] UKHL 27, having noted the above case, and stating:

> "This is a useful guideline to judges dealing with cases of a similar kind. But to cite the case as if it laid down some rule that both spouses invariably have a right to purchased accommodation is a misuse of authority."

69. More recently, in *Butler v Butler* [2023] EWHC 2453 (Fam) Moor J stated that the fact a court concludes that a case is a 'needs' case does not mean that it must make an order that satisfies both parties' needs. There may be insufficient assets to satisfy the needs of either party, let alone both.

Mesher orders

70. The Dictionary of Financial Remedies (Class Legal, 2023) provides a neat summary of the law relating to *Mesher* orders, which I adopt as my own legal direction in that respect:

> "The typical *Mesher* order divides the equity 50:50 but other percentages are possible. Either way it creates (or perpetuates) a tenancy in common in the stated proportions. Note that a *Mesher* order will not be adopted in every case where there is an imbalance in the division of capital (*Tattersall v Tattersall (Ancillary Relief) (Need: Departure from Equality)* [2013] EWCA Civ 774); indeed, the Court of Appeal has recently confirmed that whilst such orders remain a 'useful tool in certain limited circumstances', it is only rarely that the advantages will outweigh the disadvantages of an order which maintains a financial connection between the parties (*Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1884 at [41]). Credit is often given to the primary carer of children for their ongoing contributions (*S v B (Ancillary Relief: Costs)* [2004] EWHC 2089 (Fam); *B v B (Mesher Order)* [2002] EWHC 3106 (Fam)), and conversely misconduct by the prospective recipient has also resulted in refusal of a *Mesher* order (*B v B* [2002] 1 FLR 555, approved by COA in *Rothschild v De Souza* [2020] EWCA Civ 1215). *Mesher* orders are most commonly seen in cases where assets are limited (see e.g. *Uddin v Uddin & Ors* [2022] EWFC 75); where resources permit, consideration should be given to provision of housing which is owned outright (*Alireza v Radwan* [2017] EWCA Civ 1545)."

Treatment of debts.

71. HHJ Hess provides a helpful analysis as to how to characterise debts - hard or soft - and then take into account debts, in the case of *P v Q (Financial Remedies)* [2022] EWFC 89, stating:

> "There is not in the authorities any hard or fast test as to when an obligation or loan will fall into one category or another, and the cases reveal a wide variety of circumstances which cause a particular obligation or loan to fall on one side or other of the line.
>
> A common feature of these cases is that the analysis targets whether or not it is likely that the obligation will be enforced.
>
> Features which have fallen for consideration to take the case on one side of the line or another include the following and I make it clear that this is not intended to be an exhaustive list.
>
> Factors which on their own or in combination point the judge towards the conclusion that an obligation is in the category of a hard obligation include (1) the fact that it is an obligation to a finance company; (2) that the terms of the obligation have the feel of a normal commercial arrangement; (3) that the obligation arises out of a written agreement; (4) that there is a written demand for payment, a threat of litigation or actual litigation or actual or consequent intervention in the financial remedies proceedings; (5) that there has not been a delay in enforcing the obligation; and (6) that the amount of money is such that it would be less likely for a creditor to be likely to waive the obligation either wholly or partly.
>
> Factors which may on their own or in combination point the judge towards the conclusion that an obligation is in the category of soft include: (1) it is an obligation to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship; (2) the obligation arose informally and the terms of the obligation do not have the feel of a normal commercial arrangement; (3) there has been no written demand for payment despite the due date having passed; (4) there has been a delay in enforcing the obligation; (5) the amount of money is such that it would be more likely for the creditor to be likely to waive the obligation

> either wholly or partly, albeit that the amount of money involved is not necessarily decisive, and there are examples in the authorities of large amounts of money being treated as soft loan obligations.
>
> It may be that there are some factors in a particular case which fall on one side of the line and other factors which fall on the other side of the line, and it is for the judge to determine, looking at all of these factors, and maybe other matters, what the appropriate determinations to make in a particular case in the promotion of a fair outcome."

Spousal maintenance

71. When it comes to consideration of issues relating to maintenance I have in mind the relevant principles, helpfully summarised by Mostyn J in *SS v NS (Spousal Maintenance)* [2014] EWHC (Fam), [2015] 2 FLR 1124 at [46].

The involvement of a Qualified Legal Representative

72. The relevant provisions concerning the appointment of a Qualified Legal Representative ("QLR") are to be found in Part 4B of the Matrimonial and Family Proceedings Act 1984 ("MFPA"), ss 31Q – 31Z (inserted by s.65 Domestic Abuse Act 2021), FPR PD 3AB and Statutory Guidance issued by the Lord Chanceller pursuant to s.31Y of the MFPA. The Statutory Guidance describes the role and duties of the court appointed QLR.

73. The Statutory Guidance is conveniently located in the Family Court Practice 2023 (Part V) as the last Practice Direction of 2022. It is also easily accessible with an online search.

74. These provisions apply to proceedings commenced after 21 July 2022 (PD3AB 1.5).

75. The overarching scheme of Part 4B of the MFPA is to prohibit perpetrators or alleged perpetrators of abuse from personally cross-examining their victims or alleged victims in family proceedings. The prohibition (where automatic) also applies in reverse or may apply in reserve (where discretionary), to prevent a victim from having to cross-examine his or her alleged abuser.

76. A QLR is defined by s.31W(8)(b) of the MFPA as "a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which

constitutes the exercise of a right of audience (within the meaning of that Act) in family proceedings". However, my understanding is that the term "QLR" in this context often appears to be used in practice to refer not just to any lawyer qualified to exercise a right of audience, but one appointed by the court to conduct cross-examination where a party is prohibited from doing so. The statutory definition appears wider than how it is commonly referenced.

77. Under s.31W MFPA a staged approach is taken to the decision to appoint a court appointed QLR. If one of the mandatory prohibitions on cross-examination apply (ss.31R, 31S, 31T) or a discretionary prohibition is ordered (s.31U) the court must first consider whether there is a satisfactory alternative means for cross-examination or the obtaining of evidence which might have been given via cross-examination (s 31W(2)).

78. If there is no satisfactory alternative the court must then invite *the party* "to arrange for a [QLR] to act for the party for the purpose of cross-examining the witness". In this context, the term QLR simply refers to a legal representative of the relevant party's choosing with rights of audience. In theory, it seems to me, the party may instruct a legal representative to deal only with the cross-examination which has been prohibited. In practice, the extent of the role which the legal representative is instructed to undertake will be a matter for discussion between the party and the lawyer in accordance with the standard provisions of the BSB Handbook or SRA Code of Conduct. This sits in contrast to the role of a court appointed QLR who is not instructed by or responsible to the prohibited party, and whose role is necessarily very limited. The role of any legal representative instructed by a party will necessarily be broader than that of a court appointed QLR by virtue of such instruction, as it must include taking instructions and client confidentiality. An instructed legal representative will also be expected to cross-examine on the party's full case, speak with the other side on behalf of their client as required, and draft orders, unless specifically and unusually instructed by their client not to do so.

79. A litigant in person who cannot afford a lawyer to represent them generally, I suspect, will also not in the ordinary course of events be able to afford to appoint a QLR to conduct even a more limited role in respect of cross-examination. It may be that the requirements of s.31W(3) and (4) can be satisfied by brief judicial inquiry at a case management/ground rules hearing. It is well known that there are a limited pool of

advocates prepared to act as QLRs appointed by the court and extended time spent complying with s.31W(3) and (4) may be valuable time lost in seeking out and engaging a court appointed QLR. By FPR PD3AB paragraph 2.3 the court can dispense with the requirement for the parties to complete EX740/1 forms.

80. If there is no satisfactory alternative (s.31(2)) and the party cannot appoint their own QLR (s.31W (3) and (4)) then "The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a [QLR] appointed by the court to represent the interests of the party" (s.31W(5)). It is in these circumstances that the court will be looking to those advocates whose names are retained on official local court directories of lawyers who are registered with HMCTS to conduct this sort of work. Such advocates are required to have undertaken some form of vulnerable witness advocacy training (the exemplar being the FLBA training course) or to have committed to undertake such training within six months of having their name placed on the HMCTS list of QLRs.

81. In this case, the route to the appointment of a QLR by the court was under s.31W(5), a discretionary prohibition under s.31U being appropriate.

82. The role of the court appointed QLR is helpfully described in section 2 of the Statutory Guidance.

83. Outside of the remit of the court appointed QLR, it seems to me, are the following:

    83.1. Taking instructions (as opposed to eliciting information from a party).

    83.2. Asserting client confidentiality.

    83.3. Representing the party within proceedings beyond conducting a cross-examination on "the essence" of the party's case which "may have significant impact" (Statutory Guidance paragraph 3.1, quoting Sir James Munby P in *Re S-W (Children) (Care Proceedings: Final care order at case management hearing)* [2015] EWCA Civ 27 at [57]).

    83.4. Negotiating with another lawyer "on behalf of" the party whose case they will be putting.

83.5. Making closing submissions.

83.6. Drafting court orders.

84. During the hearing, the court needed to remain vigilant as to the limited role that Ms Gallagher was entitled to play.

85. The Statutory Guidance and PD3AB 5.3 suggest that a satisfactory alternative does not include the court itself conducting the cross-examination on behalf of a party.

86. However, the "President's View" dated July 2023 states at paragraph 16 that it is "both dispiriting and very concerning that the QLR scheme established by the Ministry of Justice (MOJ) to implement Part 4B seems unable to attract anything like sufficient numbers of advocates to act as a QLR in individual cases". The President goes on to suggest at paragraph 20 that the overriding objective may require the court to conduct the cross-examination.

87. Needs must, but I would have found it uncomfortable to perform that role in this case, given the findings I have been driven to make. H might well have had occasion to feel a sense of unfairness if the case put to him by the judge "descending into the arena" was the case which that same judge found to be proved against him.

88. PD3AB 8 and paragraph 2.3.2 of the statutory guidance provides for the termination of the appointment of a QLR. I would like to make an observation about that arising out of this case. The pool of potential court appointed QLRs is comprised of many junior members of the Bar. Not unreasonably, Ms Gallagher was keen to know what the case was about so that she could satisfy herself that the issues lay within her professional competence. This was entirely proper and something which all members of the Bar are obliged to consider. However absent an appointment as the QLR, for data protection reasons, it was not possible for the bundle to be shared with her in advance of her appointment. My judicial assurance was required to make clear that I would discharge the appointment in the event that the case was considered to be outside of Ms Gallagher's competence.

89. The court's experience with this novel species of advocate for the family court is that there is need for judicial awareness and input in the run up to any hearing in which a QLR has been appointed.

Issues I must determine

90. In addition to the four key issues I identified at the start of this judgment, I need to consider six further issues:

    90.1. Having determined beneficial ownership of the second property, the proceeds of the Iranian property and the context of the parties' personal indebtedness, how should the capital available to the parties be shared?

    90.2. What spousal maintenance should be paid by H to W?

    90.3. Who retains the contents of the FMH?

    90.4. Who should have ownership of W's jewellery? Presently some of it is held by H in a safe deposit box and he is refusing to return it to W, including her engagement ring, upon the basis that it represents a "family investment".

    90.5. Should financial provision be made for A to complete her nursey education privately?

    90.6. What, if anything, should I do with the parties' modest pensions?

Ownership of the second property

91. The background to the ownership dispute at the second property is set out above.

92. It is my judgment that the "ownership agreement" conclusively resolves the ownership issue in W's favour.

93. Having listened to H's various arguments, I am unpersuaded by them for the following reasons:

    93.1. At the first appointment on 17 April 2023 W was ordered by DDJ Todd to obtain a complete copy of the conveyancing file in respect of her purchase of the second property. This was to be done on a joint basis. W was later ordered by

DDJ Gill on the 12 July 2023 to explain the background to the ownership agreement and why the original of this is not available and what steps she had taken to find it. The background to this is that H was asserting that the document is a recent fabrication created as a sham for the purposes of these proceedings. H does not accept that it was signed on the 15 October 2015. He further notes the peculiarity that it is expressly signed in advance of the purchase date of the 6 November 2015.

93.2. I accept that at first blush the signing date may appear peculiar, but on balance it seems to me more likely to have been signed at an exchange of contracts prior to completion. It would be a staggering mistake to seek to falsify a document and get the dates the wrong way around in this way. On the contrary, the sequencing of the dates, in this case, helps persuade me of the document's authenticity.

93.3. W's evidence was that she had tried to chase the conveyancing solicitor but that no one had come back to her. She had forwarded her letter to the conveyancing solicitor to H's then solicitors. This was not quite the joint instruction which the court order provided for, but I am satisfied that W thought she had done what was required of her by forwarding the letter. Her evidence that no one had come back her despite some chasing sounded all too believable.

93.4. In her replies to H's questionnaire W stated that her brother holds the original copy and that he was in the process of finding the original copy "… but seems to have misplaced it during a move".

93.5. In oral evidence it became apparent that W and her brother keep a lever arch file at their parent's house, in which they store all documents relating to the second property. The filing sounded a bit chaotic. W thought from time-to-time documents from it were lost or purged. However, W's brother stated in his oral evidence, with a degree of confidence, that he thought that the original copy of the agreement was in the file.

93.6. The brother's oral evidence did sit uncomfortably alongside W's written answer and at first blush might suggest that there was a reluctance for the original document to be produced. I note that W has been living in her parent's house

where the file is stored. The apparent inconsistency caused me a moment's pause. However, after careful reflection I am not persuaded that this is evidence of deliberate concealment of the original document. I accept that it is a misunderstanding between W and brother and does not impact on the view I take about their overall honesty when I consider their evidence in the round.

93.7. In all other respects I have found W, her brother and father to be straightforward and honest witnesses. As I have already noted above, W's brother readily accepted metadata changes may occur to PDF documents and was open and helpful in his approach to the cross-examination questions put to him.

93.8. Further, the Excel spreadsheet which was produced seemed to me to be typical of an account being kept between co-owners rather than a record of loans advanced. H sought to say that the brother had been making payments in the nature of loans when W was living in the States, but this did not account for payments made before and after W was in the States. There was also a reference to a contribution to a kitchen appliance from the W's parents. The document was shared during the marriage and created by H as he is good with spreadsheets.

93.9. H also sought to downplay the spreadsheet by saying that he only inputted figures from W which she told him to and that he did not even know whether they were accurate. This seemed to be a nonsensical criticism. When the parties were together, they worked together on this document with W reading the figures from accounts off her phone and H inputted them. By seeking to undermine the very data which had been inputted I was left with a clear impression of H protesting just a little too much.

93.10. W and her brother also gave evidence that, further to the agreement in which they agreed to share profit and costs associated with the agreement, the brother agreed to contribute half of the additional costs of W's stamp duty when the FMH was purchased as she was a second property owner. Whilst I accept that this is an odd approach to matters, it can be argued that W's purchase of the family home is nothing to do with the second property, but they were both

adamant that this had happened and I believe them. This would date the agreement significantly prior to the breakdown of the marriage.

93.11. Even if I have been completely hoodwinked about the provenance of this document, and I do not think for a moment that I have been, I infer a clear common intention to co-own the second property as evidenced by the spreadsheet accounting and the brother's half payment of the increased element of W's stamp duty. The payments make good the detriment required to found a common intention constructive trust. However, this is very much an alternative to my primary finding that the document was genuine and determinative as to beneficial ownership.

93.12. H was also adamant that the metadata on the PDF version of the agreement which he had been supplied by W had been erased. He produced no document or expert evidence which made good on this point. When the point was put to W's brother, he readily accepted that metadata on electronic documents can change as they are processed on different computers. H also said, without any expert evidence to support such a proposition, that the metadata had been removed in such a way that only someone who is expert in computers would be able to do this. Having carefully prepared the ground in this way, supported by no expert evidence whatsoever, he then took the opportunity to remind the court that the brother has a PhD in computer science and works in computers. I consider this to be a determined and dishonest attempt to persuade the court that the agreement is not genuine. I am not falling for this one bit. H's behaviour in this regard reflects very poorly on him and causes me to doubt his credibility generally.

Ownership of the Iranian property and its proceeds of sale

94. The key problem I have with the Iranian property is that I do not have any expert evidence about how things work or how the law will apply in Iran. Each party gave competing views about how this or that works in Iran and I have no way of resolving those disputes.

95. Acting without the assistance of lawyers, the parties each exchanged two Forms E. The first at the commencement of proceedings and the second at the point of updating disclosure. It was the second Forms E which appeared in the bundle, but I was told that

insofar as disclosures about the Iranian property were concerned, they were in identical form. The short point is that H did not disclose any interest in the Iranian property, despite having held the legal title to it from 2007 to 2022.

96. W asked in her questionnaire "The Respondent has a property in Tehran … Please explain why this property has not been disclosed. What is the reason for this? If the property has been sold without notifying the Applicant please explain where the net proceeds have been placed".

97. H answered, "The Respondent does not have any property other than the family home".

98. W raised a deficiency in respect of this answer by repeating the question a second time. H's reply was "The same question is being repeated, please see response given above."

99. These replies are far from satisfactory, demonstrate an unwillingness to give full and frank disclosure and if left there would have left the court with a wholly misleading impression. These replies, I am afraid, combine with other unsatisfactory features of H's evidence which I have already remarked upon to create a picture of someone who is being unhelpful and who I do not believe.

100. When H gave his evidence, he stated that when his mother had sold the Iranian property W had congratulated her on the sale. I am not sure why this would be the case. I do note, however, that this was not in his statement. If it was important enough to be mentioned in his oral evidence, why was it not in his statement? Why was such a key point not being put to W? Later in his evidence, warming to his theme, H explained that both he and W had congratulated his mother on the sale. This evidence had the same calculating edge to it as did H's earlier assertion in elsewhere, that only a computer expert could remove the metadata on the agreement PDF. I do not believe his account in this regard.

101. In response to H's stonewalling W obtained some official documents from Iran. This and all other Iranian documents produced by either party were later translated into English. The first is a document which is some kind of deed to the Iranian property which shows the history of transactions in respect of it. It is possible to trace back ownership to 1999. The document shows that the legal title came into H's possession on the 26 December 2007 for a sale price of 60,000,000 Rials.

102. I need to say a little about exchange rates in Iran. I was told by the parties that there are different exchange rates adopted for different purposes within Iran. The difference in part relates to problems with importing into Iran due to sanctions from some other nations. It is agreed that the official rate which is to be found on typical websites via Google will not necessarily be the actual rate of exchange which is adopted or understood when trading locally.

103. W also says that the official price on the deed will not be the market price that was paid. W says that this is because there is a custom in Iran of lowering the sale price on the official documents with a view to reducing the liability for something akin to Iranian stamp duty. H does not accept this.

104. Whilst I have preferred W's evidence over H's at most points where they are in conflict, this is more difficult because without some objective assistance I cannot objectively test or understand how things actually work in Iran.

105. W has also produced a sale document for the Iranian property dated 30 May 2022. This shows a sale price of 3,094,959,754 Rials. H asserts this results in a GPB value of about £6,000.

106. W has also produced a letter from an Iranian attorney in which it seeks to explain how land transactions in Iran work and to make good her point about official documentation being at an undervalue. This document has not been produced on a single joint expert basis and so I am uncomfortable in placing any significant reliance upon it.

107. W also produced what she described as a Red Book valuation dated 30 August 2023 in which the valuer asserts that the value is 205,000,000,000 Rials. Again, this is not on a single joint valuation basis and given the level of uncertainty I am unable to place any significant reliance upon it.

108. W has also produced a document from an "Accounting and Auditing Expert" dated 21 September 2023 which converts 205,000,000,000 Rials into GPB £525,210. Again, this is not on a joint basis.

109. I am left in the unhappy position of having a determination to make where the parties respectively assert a value ranging from about £6,000 to £525,000 for this key asset.

110. The Red Book valuation and "Accounting and Auditing Expert" I approach with extreme caution as they have not been provided for on a joint basis. I do, however, note that I have found W to be a truthful and credible witness and so I instinctively doubt that she would be deliberating producing documents which are designed to actively mislead the court.

111. For his part H produced in reply a power of attorney document which is dated 25 December 2007 and so appears to have been executed the day before the Iranian property was transferred into his name. His mother is appointed as the attorney. The power of attorney document, says H, is corroboration of his account that the Iranian property was never meant to be his beneficially and that he was simply holding the legal title for his mother. His evidence went so far, if I have understood it correctly, to assert that his mother was the actual beneficial owner of the Iranian property.

112. Whilst a power of attorney document, as this court understands them, would invest the power of control in dealing with a property, it does not invest beneficial ownership. I have not been provided with any independent and objective expert evidence as to whether a power of attorney works in a different way in Iran. So, to my mind, applying my understanding as to how powers of attorney work, the granting of such a power is as consistent with control as it is ownership. As H was not based in Iran it may well have been the case he would want his mother, who was living in Iran, to have control over the asset on his behalf.

113. W made some glancing suggestions that the power of attorney was in fact a sham document, designed to mislead the court. I do not consider that argument was developed fully enough or that I have enough material on which to make such a finding.

114. H also produced a letter from the Iranian Central Bank confirming that he has no Iranian bank accounts. That does not necessarily assist me as if he was trying to hide the net proceeds of sale the most logical thing to do would be to leave it in his mother's account, a point I will return to shortly.

115. H also produced a letter from a Notary Public dated 10 August 2023. Unhelpfully, the parties cannot even agree on the status of such a figure in Iran and the authority with which they can pronounce on matters. I have no way of resolving this myself. The Notary's letter is addressed to H's mother. I was told that in order to obtain it H's mother

travelled from Turkey where she now lives in order to obtain this document. The document references H's mother in stating "Based on your statement" the property was purchased in the 6 December 2007. I cannot make sense of that date as other dates reference the 26 December 2007.

116. H has also provided a letter dated 3 September 2023 from "The Judiciary" in Iran which discloses that H does not hold any property in Iran. This may be true at the date it was provided but it does not address the issue of the property which was sold on the 30 May 2022.

117. I note that H's mother put herself to some trouble to obtain the Notary letter. There was absolutely no suggestion from H that he would not have been able to secure his mother's assistance in explaining more fully what has gone on here. H went so far as to imply she would have been willing to give evidence, but did not state why there was no witness statement from her (the court cautioned him at the moment it appeared he was at risk of breaching legal professional privilege in what he was about to say).

118. Ultimately, H had some explaining to do here. A property was in his name. It had been in his name since 2007. It ceased to be in his name in 2022 when the parties were having severe marital difficulties and the end of the marriage was clearly foreseeable. He gave a guarded, calculated and unhelpful written answer when asked to explain himself. An unclear and unsatisfactory explanation was only forthcoming once W had been put to the trouble of proving his legal title and sale herself. I find that H has deliberately failed to give me a full and frank explanation. He has provided lots of smoke and mirrors, but what he had failed to do is to provide a bank statement showing how much the property was sold for and where the money went. Given his mother's apparent willingness to assist, this, I am afraid must sit in his lap. There was no suggestion by H she would not have produced the bank statement.

119. The burden of proof is on H in this regard. He was the holder of the legal title from 2007 until 2022 and so it fell to him to give a full and proper explanation of what has happened here. It is agreed, and in any event I so find, that the presumption here is that the beneficial ownership will follow the legal title. The court therefore presumes that he is the beneficial owner of the sale proceeds unless he is able to discharge the evidential burden on him. He has failed to do so in circumstances where he has been unhelpful and chosen not to

provide the court with the documentation which was in his power to do so. This is in a context where I have found him to be attempting to wilfully mislead the court in respect of the second property. I have found him to be an unsatisfactory witness.

120. It is in these circumstances that H fails to discharge the evidential burden which is upon him and it is therefore the court's finding that he was the beneficial owner of the funds of the property when it was sold in May 2022 and that he has failed to provide satisfactory evidence of what has become of them. There is a suggestion by H that his mother may have purchased a property in Turkey with the money but given that it seems I cannot place reliance on him as a truthful witness, I do not accept this evidence, absent cogent documentary support. I do not consider his mother holding a power of attorney to be evidence that she was also the beneficial owner.

121. The quantification of the proceeds is an even thornier issue. I have a bracket of between about £6,000 and £500,000. As a general point, even though I tread with extreme caution with the Iranian documents which were not secured in a joint basis, I find W to be a helpful and truthful witness. I do not think that she would be deliberately producing false documents to the court. But I still tread with caution.

122. It also seems inherently unlikely to me that a flat in Tehran, notwithstanding Iran's economic and political status, would sell for as little as £6,000. I do not rest my decision on this point alone but it is a factor in the mix when I consider this difficult point.

123. *Moher* informs me that I do not need to strain to find a valuation if in all the circumstances it is impossible for me to do so. It would have been so easy for H to show me a copy of his mother's bank account (who has otherwise been keen to assist him), but he has chosen not to do so. All of the difficulties here are of H's own making.

The parties' indebtedness

124. Each party has significant unsecured debt.

125. W contends that she has debts of £122,674 (my having excluded a student loan of £16,350 on the basis that this is not a debt which relates to the marriage nor which needs to be repaid with any sense of urgency). This would be broken down into £79,820 to family and friends and £42,854 to commercial entities, including lawyers.

W family and friends

126. W has executed two loan agreements with family. One is with her parents for £50,000 on an interest free basis, repayable on the 30 December 2024. In fact, by the time of hearing about £54,221 had been advanced by her parents and I accept that this is all in the character of a loan and not a gift.

127. A second loan agreement is with her brother for £14,000 which is to be repaid by the 10 December 2025. W submits that her brother has actually had to borrow about £10,000 from HSBC and has paid £4,000 from his own savings. Whilst I accept that this was first mentioned in W's position statement and confirmed in her oral evidence, I accept this account. She must pay an additional sum by way of interest to cover the cost of the loan.

128. There is a third loan agreement which W has executed with a friend for £7,500. This is repayable by the 15 November 2023. This was to assist with nursey fees. In her evidence W was acutely anxious that this is repaid urgently as she told me it is savings from a friend who will require the money back for expenditure on her own child.

129. W's father and brother gave evidence before me. I found them to be straightforward and helpful. Whilst there may be a bit of flex with the timing of repayments, I am satisfied that this is not largesse which either man can simply gift to W. They will need to money back at some point and the brother has borrowed on commercial terms in order to be able to advance this sum.

130. Applying the factors in *P v Q* these can be viewed as softer than a commercial debt and in respect of the due date for repayment to family, do not reach end dates for a little while.

131. The loan from the friend is a bit harder. The money has been advanced due to a friendship rather than a familial bond and the money is required back now. I find that W will feel rightly compelled to repay this sum as a matter of urgency.

W Commercial debts

132. The commercial debts break down, doing the best I can, as follows:

    132.1. £6,781 - bank loan

    132.2. £2,638 - credit card

132.3. £2,912 - overdue nursey fees

132.4. £10,792 - to an employment law solicitor in respect of a failed employment law claim.

132.5. £19,731 - outstanding in respect of legal fees within these proceedings

132.6. £42,854 - total

133. The first three debts here require no further elaboration. They must be repaid. The employment advice debt is legally in W's name. W made a claim which was ultimately unsuccessful. Her evidence, which I accept, was that it was a joint decision within the marriage as to whether to "go for it" in respect of the claim. W told me that she did not control the purse strings in the marriage and that she would not have been able to make a decision to pursue such litigation without H's permission. W also told me that once the litigation had been unsuccessful H refused to assist further with the outstanding debt, despite having been very "on board" with legal bills during the life of employment law litigation prior to its ultimate failure. To the extent that it makes any difference to the decision I am going to make, this is a matrimonial debt. The firm of solicitors has issued proceedings for the recovery of the debt.

134. The financial remedy legal fees were constructed from two sets of invoices which came about as the solicitor from whom W has obtained "unbundled" legal services moved firms. W did not have a Form H1 at the start of the hearing, despite there being an order for her to provide one. W produced one during the hearing and the unpaid costs came to £16,795, which is a little less than the actual invoices. The presentation here was a bit chaotic but frankly the difference between the figures is not particularly material here.

W debts overall

135. I need to approach W's debts with some caution as the parties have also been engaged in children litigation. W said that much of the loans from her parents and brother were used towards paying legal fees. If that amounts to about £68,000 and the headline figure on W's Form H1 came to £40,270, it would follow that about £28,000 has been spent on children litigation. The children litigation has its own costs provisions and I need to steer clear of making some kind of children costs order by the back door, with the repayment

of debt. I make clear I have this point very much in mind in the distribution I am going to order.

H debts

136. H has about £70,000 worth of commercial debts. Most are credit cards but H also has finance arrangement for his car. There will be an element of legal costs within this debt and W makes a general complaint about his lifestyle and the level of his discretionary spending. He is currently funding this debt from his income.

137. H also appears to have borrowed £32,787 from an associate called Seth Mottaghinejad. W is suspicious about the authenticity of this as this debt has grown significantly during the course of this litigation. That might be consistent with H borrowing for legal costs. I do not have enough material to determine this one way or another and it makes no difference to my approach. For the purposes of my distributive order, I have assumed that it is a debt repayable to an associate or friend.

Computation of assets and liabilities

138. Aside from jewellery, which I shall deal with separately, the assets appear as follows:

    138.1. W 50% share in the second property, say - £25,000

    138.2. Equity in FMH, say - £100,000

    138.3. Proceeds from Iranian property - *x*

    138.4. W liabilities - £122,674 (of which about £28,000 will be as a result of costs in children proceedings)

    138.5. H liabilities - £101,600

139. It will be painfully apparent that in net terms there is actually no equity, save for what is available from the Iranian proceeds, which H has ensured I am somewhat in the dark about.

140. H has £86,983 in pensions, made up from three funds with Legal & General £14,887, Pension Bee, £46,770 and The Vanguard Group, £25,326. W has pensions of £28,844, which comprise a Teacher's pension of £25,111 and an Aviva pension of £3,734.

My determination on division of capital

141. The court's first consideration is the welfare of A when applying the s.25(2) criteria. I must do what I can to ensure that she is properly housed if it is possible to do so. I do not consider it is appropriate to leave W (A's main caregiver) and A requiring the charity of her parents to have a roof over their heads.

142. W's interest in the second property is not going to assist her. It is an illiquid asset. Her brother has lived in the property for some time and even if W tried to force a sale there are cladding issues. I consider W's interest in the second property to be a "below the line" asset akin to long term savings or a pension.

143. I am therefore going to transfer all of H's legal and beneficial interest in the FMH to W, subject to mortgage. H can have four weeks to vacate the property. Mr Barnett-Thoung-Holland did not disagree with a four-week period when I asked about timings in the event I was going to order H to leave.

144. W will assume responsibility for the mortgage from the payment which is due in her first clear month of her occupation. For example, if H leaves in mid-January 2024 and the payment was due on the 25th of the month, H will make that payment and W will be responsible for the next payment.

145. This solution comes with qualifications, however. W must release H from the mortgage 6 months before the next mortgage fix is due for review. I was told the fix, at a favourable rate of interest, will run for about another 3.5 years and on that basis H will have to be released from his mortgage covenant within 3 years. If that is not the case the property must be immediately marketed for sale with W having sole conduct of sale. So, I am imposing a deferred and contingent order for sale. This will give W and A the opportunity, I am afraid it is no more than that, of trying to cobble finances together to stay in the FMH whilst the mortgage fix will be at a comparable cost of rental properties I was shown in Underground Fare Zones 4 and 5 which W might otherwise have to rent.

146. This will enable A to continue in her nursey and also be in a good catchment area for state primary schools.

147. H is going to have to rent a property. I accept W's case that H does not need to live central to London. He works from home and commutes into London or Basingstoke for meetings as and when required. He sees A one a week on a supervised basis and he can commute for that as well. His rental costs outside, but within commuting distance of, London can be reduced to between £900 and £1,000 pcm.

148. If this feels like rough justice, H only has himself to blame. He has the beneficial ownership of an undisclosed sum of money somewhere. Even taking an extremely conservative approach and a massive discount from W's valuation figure, I expect H will be able to reduce his debt and get back on his feet with what he has hidden from the court.

149. Having used his hidden monies to reduce debt, H will have more income to be in a position to afford the periodical payments I am going to order.

150. There is little point in making a lump sum order against assets which H is hiding. I expect he will carry on in the manner in which he has done to date and W will be wasting her time in trying to chase shadows. I will, however, not dismiss W's lump sum claims until H has complied with the terms of my order.

151. W is not getting a free pass by any stretch. She has pressing commercial debts, with one creditor (the employment solicitor) having issued proceedings. It may be that W will end up with a charging order against the FMH and it will have to be sold sooner in order to settle her indebtedness to third parties. That is, I am afraid, the melancholy consequence of debt and beyond the scope of what I can do anything about. It will be what it will be. What I am doing is giving W the chance to have a roof over her head if she can sort out her finances. W is going to have to come to terms with her family about when the debts will be repayable. If she cannot then she may have to sell earlier.

152. I remind myself that W did canvass the possibility of a 50/50 split of the equity in the FMH. I am not attracted by that outcome. Having made the findings that I have about the Iranian property proceeds, W can have 100% of the equity. This is not a 50/50 case. W is the primary care giver and the assets are extremely modest. Even without the Iranian property finding W would be entitled to a significant departure from equality on the basis of needs and her ongoing contributions to the welfare of A. I have in mind Moor J's comments in *Butler* that I am not obliged to meet the needs of both parties if it is not possible to do so.

153. Further, I remind myself that bad behaviour may disentitle someone from a *Mesher* order they might otherwise have reasonably argued for. With the background to this matter and the way in which H has chosen to conduct himself generally, I do not want this man to have any further unnecessary presence and potential for control in W's life.

154. So far as pensions are concerned, I do not propose to make any adjustment in the first instance, but I do make the following two observations:

    154.1. I am going to invite submissions on costs. Under s.28.3(7)(f) I am required to look at the financial effect on the parties of any costs order. No doubt H will submit that he does not have any money with which to settle any costs order I may consider making. The Vanguard Group pension of £25,326 is, in one sense, just money (albeit its receipt will be deferred). It would be ordinary for a costs order to be settled within 14 days. However, the justice of the case may mean that it cannot be settled within 14 days, but it would still be appropriate for a costs order to be settled in some way rather than not at all. I consider that a pension sharing order may, unusually on the particular facts of this case, be a vehicle through which any costs order which I may make can be settled. W's costs in the financial remedy proceedings were about £40,000. A pension share equal to about £25,000 might be comparable to the kind of figure a court would order taking into account that even if H had chosen to conduct himself honourably within these proceedings, W would still have had some costs getting to an FDR. I shall await any further written submissions about costs, but it will come as no surprise that I am considering some costs consequences for the manner in which H has conducted this litigation.

    154.2. I am troubled by H's destruction of photos of W and A. It tells me something about how unpleasant this man has the potential to be. He will no doubt be annoyed with my decision and I can see the potential for what he might do to the FMH and its contents which I will be requiring him to leave behind. I am not going to order a dismissal of W's lump sum or pension claims until H has complied with the terms of my order. If I am later told he has destroyed, hidden or refused to return chattels which I have ordered to be given to W, of the many enforcement mechanisms I intend to keep at my disposal is the ability to make a lump sum order or deprive him of further pension assets. The pensions are the

only assets within the jurisdiction I can easily make an order in respect of. I have in mind the case of *Amin v Amin* [2017] EWCA Civ 1114 where Moylan J's (as he then was) decision to leave open pension claims as an aid to possible enforcement was upheld by the Court of Appeal. Once there has been compliance with the terms of this order with an orderly handover of the FMH and the contents in good condition, the pension claim (but subject also to my costs' determination) and lump sum claims can be dismissed. This approach is without prejudice to the other enforcement mechanisms which may be brought to bear against him.

Spousal maintenance

155. In evidence W took a scythe to her budget and reduced it to £5,200 from a much higher budget which represented her life when married. I accept that it is very painful process. I am afraid I am going to have to make further reductions to a figure of £4,000 pcm or £48,000 pa.

156. I have assessed W's earning capacity at £31,400 as a full-time teacher. To this there can be added £7,915 CMS and child benefit of £1,152. This will leave W with £40,467. She will have a shortfall of about £8,000 pa or £666 pcm.

157. H's case is that he is carrying so much debt he cannot afford to pay spousal maintenance. Having found that H has hidden assets abroad which he can use to reduce his indebtedness, I do not share that view.

158. H's net salary is about £62,718 and from this he must pay the CMS of £7,915, leaving him with £54,803. Taking out his debt servicing on the basis that I find he will use his hidden assets to bring those under control, reducing his housing down to £1,500 (rent of, say £950 + bills) and making necessary economies to discretionary spending, I find, surveying the woods rather than the trees, that H's outgoings can be reduced to about £3,800 pcm, or £45,600. This leaves him with about £9,000 clear pcm.

159. In my judgment, a spousal periodical payments rounded up to £700 pcm would be appropriate. I am not going beyond needs. I am well aware that the mathematics above takes me to £666 pcm but that is with very significant cuts being made and there are always unexpected expenditures to contend with. £700 is the correct needs based sum.

160. Recently H has succeeded in reducing his CMS by including his supervision costs for when he sees A. He is also citing monthly contact costs of £1,150 in his outgoings. The supervision is based on a CAFCASS recommendation. W says that H is determined to reduce his payments to her in any which way he can and this reduction is such an example. Her solution is to have global order so that if H is able to reduce CMS still further, the spousal maintenance can adjust to the level which the court has determined to be the globally appropriate figure.

161. So, based on £700 pcm with CMS currently at £660 pcm, the global figure is £1,360. If the CMS reduces further then that is global figure which will be required. This will commence from 1 January 2024.

162. The £700 element will be subject to CPI adjustments on an annual basis, but capped at 5% bearing in mind the current inflationary pressures in the economy and that wage rises do not always match inflation. I am trying to do justice to both parties here. I do not think it appropriate to index link the full global sum as the CMS element will have the potential to rise with H's wage increases in any event.

163. I do not have a crystal ball. I cannot see here when W will attain independence without suffering undue hardship. I am going to order a term until the later of 31 August after A has completed her secondary education or 18th birthday. I do not consider a s.28(1A) bar appropriate at this stage. The most I can say at this stage is that it may be appropriate for there to be a review with consideration of a step-down at the point that A commences secondary school. But matters will have to be looked at in the future. At present even if W deploys her full earning capacity she will still have a shortfall unless she progresses within the leadership structure of education or makes good with one of her proposed alternative careers.

164. I have not lost sight of the fact that W is not presently in receipt of her full earning capacity. However, there is a limit here to the bricks I can make without straw. She is going to have to do what she can and seek to increase her earning capacity as a matter of urgency.

Contents of the FMH

165. As H is going into the rented sector, unless he chooses to deploy his hidden assets to buy another property, he can move to a furnished property.

166. The ownership of the contents of the FMH are to be transferred forthwith to W, save only for H's personal items (such as clothes and personal papers). H can prepare a schedule of personal items which he would like to take from the FMH and serve that schedule upon W. There should be column saying why he wants to take a particular item. W can reply stating what she agrees or disagrees with.

167. I make plain, this is not an opportunity to debate the contents of the FMH which I am transferring to W outright as she needs them in order to provide a furnished home for A. The only provision I am making for is for H to retain his personal items.

168. H has 7 days to serve the schedule and if he fails to do so he shall not be permitted to take anything save for his clothes and personal papers. W has to reply within 7 days and if she fails to do so then H will be entitled to take everything on his list, provided it is only a personal item. Nothing is going to be removed until I have approved the list, which shall be sent to be me as soon as it has been completed.

169. I do not require a further hearing in order to be able to do this. Written submissions alone will be proportionate and further the overriding objective here. I have in mind the approach taken by Lieven J in *Mother v Father* [2022] EWHC 3107 (Fam) and the extra judicial comments of Peel J in "The Financial Remedies Court: A Year in Review" [2023] 3 FRJ 170 in this regard [for the benefit of the parties this is available free to access on a Google search, if they wish to read it]. This is a very small issue and a resolution via schedule only is proportionate to the extremely limited issues which may be left standing if the parties are unable to agree what personal items H may remove.

Jewellery

170. W's case is that she holds jewellery to the value of £16,450. H says it is worth £26,450. There have been no valuations provided but as I have preferred W's evidence over H's in every respect, I am going to go with her figure.

171. Rather unattractively, and entirely in keeping with the manner in which H has chosen to conduct himself generally towards W, he has retained her eternity ring (£1,000), a Piaget ring (£1,900), an engagement ring (£8,200) and a Tennis Necklace (£3,250). He confirmed on oath that these items are kept safely in a safe deposit box. I adopt W's figures where not agreed. H asserted that these were family investments and, adopting a phrase from Holman J, not merely for W's adornment. The retention of the engagement ring sits very comfortably with the behaviour of a man who would destroy the pictures of mother and baby.

172. The jewellery held by H amounts to £13,350. To this can be added the items in W's possession of £16,450. The total is notionally £29,800 although they may in fact sell for less.

173. My order is that H is to return the eternity ring, Piaget ring, engagement ring and tennis necklace within 7 days. If he fails to do so the lump sum and the pension claim will remain open as a possible avenue to me. I declare, for the avoidance of doubt that the jewellery belongs entirely to W.

174. W accepts that she cannot afford to retain her jewellery. The economics of this situation simply do not allow for it. W will have to sell the items and balance the money to repay her friend to the extent possible, manage pressing commercial debts and to ensure that A can complete her nursery education.

A's nursery

175. Given the economics here the only way A will be able to attend nursey is if W sells her jewellery. I accept this is a ghastly outcome but we are where we are. Whilst upset in the hearing about this she appeared to be accepting of this. It seems to me that the desire to retain jewellery to pass to A is less important that keeping her in a place where she has found stability and security during these terribly difficult times.

176. This matter is reserved to me. I make plain that if H does not return the jewellery this will blight A's chance of staying in nursey. I will consider in that event all enforcement mechanisms, including making an increased spousal maintenance order so that he will be paying the shortfall of missing nursey fees, occasioned by his refusal to comply with my order.

177. He will no doubt be aware that a failure to pay maintenance as ordered can result in a swift return to court with an attachment of earnings order being made directly against his employer.

178. This is my judgment.

LATER

Chattels

179. The parties have submitted a schedule, setting out their differences on a minor amount of "personal items". In particular, there are two rugs, identified as Rug#2 and Rug#3 which H seeks to take with him as a personal item. W disputes the factual basis on which H says they are personal to him. My determination is that the rugs shall be the absolute property of W. I regard such furnishings as going wider than simply "personal property" and they should be available to be used to furnish the FMH. If I was required to resolve factual issues between the parties here, I would prefer W's account.

180. I note Rug#1 and Rug#4 are offered to H if he wants them. If he does not make arrangements within 28 days to collect Rug#1 and Rug#4 they shall become the absolute property of W.

181. H seeks the return of his collection of Starbucks mugs but W says that she does not have them. I make no order in this regard. I am also unable to make any further order about small items of unparticularised jewellery or a certificate which accompanies the Cartier Love Bracelet.

Service charge

182. A service charge bill for the FMH has been issued and must be settled by the 25 December 2023. It covers the period 25 December 2023 to June 2024. Whilst this is a prospective bill, I am going to require H to settle it before the 25 December 2023. W is in a desperate financial situation, in large measure brought about having to deal with this litigation which H has made more difficult and expensive than it should have been.

183. The court's ability to make further lump sum orders or a pension sharing order shall remain open until this is paid. W shall take responsibility for service charges from June 2024 onwards.

Vacant possession

184. H shall vacate the FMH and return all keys (and share any necessary passcodes and the like) to W by 4pm on the 12 January 2024 (the draft of this judgment was first circulated to the parties on 11 December 2023).

Costs

185. W invites me to consider a costs order. In a note she describes the expensive nightmare that this litigation has been and asks me to consider making an order for the payment of cash to her now.

186. Mr Barnett-Thoung-Holland has submitted a heroic set of written submissions on costs which my brief summary cannot do justice to. It is written advocacy of the highest order.

187. He reminds me of the presumption within and structure of FPR 28.3 and that to make a costs order is a departure from the norm. He submits that it was agreed from the outset of the final hearing that s.25(2)(g) was not in play. He makes a general point about H's compliance with rules and direction. He very properly submits that I should not make a costs order just because I have formed a low opinion of H, for the various reasons I have recited above. I make plain that I do not do so. Given that credibility was a key issue in determining certain aspects of the substantive application, it was necessary for me to cover the ground that I have in coming to my views about the parties. However, I agree entirely that having a low opinion of a party, in and of itself, is not a reason to make a costs order. I am reminded that H has returned many hundreds of electronic photos which were not destroyed (the destroyed pictures being mother and baby pictures, save for when they were first in hospital at birth). I am asked to make that point express, and I am pleased to do so.

188. I am reminded by him that I articulated a "moment's pause" when considering W's credibility on an issue and that the date on a document appeared peculiar at first blush. It

is also submitted that a key issue was determined upon the basis that H had failed to discharge an evidential presumption rather than having lost in more concrete terms.

189. Mr Barnett-Thoung-Holland invites me to make no order as to costs, but in the event that I am against him, to temper the quantum by reference to the limited costs which would have arisen for W between FDR and final hearing, bearing in mind she has been in receipt of unbundled services and then acted as a litigant in person at the final hearing.

190. It is suggested any costs order should be no more than £6,600 and that I cannot look back to costs generated at earlier stages in the proceedings. I have checked the earlier orders, and they provide for costs in the application, so costs are at large.

191. Finally, Mr Barnett-Thoung-Holland submits that it would be an abuse of process for me to make a pension sharing order in lieu of a costs order in more conventional terms.

192. Mr Barnett-Thoung-Holland could not have said anything more for his client and has impressively set out his position. However, Mr Barnett-Thoung-Holland can only make bricks with the straw that he has.

193. This was not a conventional final hearing where there was a difference of view about the exercise of the s.25 discretion. This case hinged on two crunch issues which were always going to have a binary outcome. From the outset H knew what the position was, but has chosen to put W through this upsetting and expensive process. On the two binary issues he has lost, for the reasons which I have given.

194. I bear in mind that the starting point under FPR 28.3 is no order as to costs. However under FPR 28.3(6) I may make an order due to the conduct of a party within the proceedings. FPR 28.3(7) provides me with a list of factors which I can take into account.

195. I agree that FPR 28.3(7)(a) and (b) are not in play. However, I do consider FPR 28.3(7)(c), (d) and (e) are in play. I do not consider that it was reasonable for H to contest the ownership of W's property with her brother. He knew all along what the position was. I do not think that my pausing for a moment's reflection alters that fact one jot. Secondly, H has been evasive and unhelpful in the manner in which he was required to answer questions about the property in his name. Conducting litigation in this manner should have consequences.

196. I am mindful of the limited amount of obvious capital within this jurisdiction against which W could enforce a costs order.

197. Paragraph 9.6 of the Law Commission's paper on "Enforcement of Family Financial Orders" (Law Com No 370) makes reference to the case of *Blight v Brewster* [2012] EWHC 165 (Ch) and the novel way in which enforcement of a judgment debt was made against a pension. At 9.7 it states, "We encourage practitioners and the judiciary to promote and share innovative ideas as to how existing powers can be used regardless of the implementation of our recommendations." I do not consider that the manner of my costs order is an abuse of process. My order goes with the grain of the what the Law Commission commends.

198. It seems to me that by making a pension sharing order against H, in lieu of a costs order which H would ordinarily have to settle within 14 days, I am granting H an indulgence. He is getting "time to pay" writ large, as W will not be able to benefit from the pension share for many years to come.

199. As I noted in my judgment above, W's costs are about £40,000. Costs have been "in the application" throughout. If H had not decided to litigate two such bad points, it may well be that matters could have been settled at a much earlier stage. However, W would still have had some costs. As noted above, the Vanguard pension has about £25,000 worth of value. Once the lump sum has been drawn, the balance will be subject to tax at the recipient's marginal rate, thereby reducing the headline figure.

200. I have in mind FPR 28.3(f) and the financial effect on the parties. This can be paid by H and it will not prevent his re-housing. From W's perspective, this is better than nothing. There is nothing else I can meaningfully make an order against.

201. I am going to order a 100% pension sharing order (H to pay 100% of the costs of implementation) in respect of the Vanguard pension and the costs order shall be that "There is no order as to costs save that the court made a 100% pension sharing order over H's Vanguard pension and has required H to pay promptly any costs of implementation in order to satisfy the costs liability." H's capital and pension clean break will also be dependant upon compliance with this.

202. Further, there shall be an order in the terms as provided by the option at Template Order 95(b)(iv) to prevent H's dealing with the pension in the meantime.

LATER AGAIN

203. A draft of my costs' determination was shared with the parties.

204. Mr Barnett-Thoung-Holland has pointed out a fact of which I was not aware. The Vanguard pension is in fact a 401k pension scheme based in the US. As such I do not have jurisdiction to make a pension sharing order in respect of it. He suggests I make a different pension sharing order over a different scheme (54.1% of Pension Bee) which is based in this jurisdiction for an amount which is equivalent to what I have already provided for in respect of the Vanguard pension. I am content to do as he suggests on account of settlement of H's costs liability.

205. The reason I was not aware of the status of the Vanguard pension is due to the way in which H presented his case. His s.25 statement says at paragraph 21, "My total pension assets amount to £87,397.97 which I will be eligible to withdraw from in 2050." His Form E, paragraph 2.13 in the bundle makes reference only to his Legal and General pension, with a CE of £14,887. The total value of his pensions are noted at 2.13 as being £87,397.97 but there is no explanation as to what other pensions are held. H's pensions are listed separately on the ES2 but there is no hint as to the character of the Vanguard pension.

206. Had I been made aware during the hearing that there was a 401k pension which may be accessed early, albeit with potentially punitive tax consequences for early receipt, that net sum would have been at the forefront of my mind in terms of lump sum provision for W. The desperate need for some liquidity trumps tax consequences in my books.

207. Having been made aware by Mr Barnett-Thoung-Holland that the Vanguard pension is likely to be accessible now, albeit with tax consequences, I sent an email to the parties noting the following:

    207.1. Paragraph 21 of the H's statement contains an assertion which is not true.

207.2. I was minded to make a lump sum order that H pay to W 75% of the net value of the Vanguard pension within 21 days, backed with the usual interest in default provisions.

207.3. I am entitled to make further provision as this late development comes about as a result of an untruth which I have only just been made aware of.

207.4. The parties had a tight window in which to make any representations about this.

208. Mr Barnett-Thoung-Holland makes the following points, which could not be improved upon orally, in reply:

208.1. H did not lie at paragraph 21, "While the statement asserts that he would not be eligible to withdraw from his pensions until 2050, he would suffer tax implications from the drawing of the Vanguard fund."

208.1.1. Once again, Mr Barnett-Thoung-Holland has an unenviable task. I have quoted above verbatim what H said in his s.25 statement. He makes no reference to the fact that he may be able to get early receipt but only with tax consequences.

208.1.2. It is a bald assertion that the pensions cannot be accessed until 2050 and given the way in which the case developed, that assertion was not unpicked until I proposed to make an order against the Vanguard pension on account of costs.

208.2. The issue of pensions was not explored in detail "given the position that was taken by both sides on pension at the time."

208.2.1. I have little doubt that if H had complied with his duty of full and frank disclosure the discussion would have been different at the hearing.

208.2.2. Aside from how W may have put her case, this court would have seized upon the chance of some liquidity to assist with the very pressing financial situation W finds herself in.

208.2.3. It is plain that the sale of jewellery may not meet all of the commercial pressures bearing down on W.

208.2.4. The lack of detailed discussion about the Vanguard pension in the hearing is down to H's lack proper disclosure and he only has himself to blame.

208.3. I should not condemn H for being dishonest at this stage due to exchanges over email after the hearing and that a further hearing will be required in order for fairness to prevail.

208.3.1. First, I have already made findings about H as a result of the evidence I have heard.

208.3.2. Second, I make plain that the lump sum order I am making is not in any way a knee-jerk reaction to my discovering that paragraph 21 of H's statement did not represent an accurate picture of the liquidity available in this case.

208.3.3. As I will explain below, my order is based on assisting W, the primary carer of A, in meeting her pressing commercial problems in circumstances where I have found that H will be able to resolve his commercial issues with the money which he has or had in Iran and about which I have already made findings. My approach here has nothing to do with any dishonesty on H's part.

208.3.4. There is no need for another hearing. Applying the overriding objective and the approach as described at paragraph [169] above, I consider I am well placed to fairly make the decision I am making without the need for a further hearing.

208.3.5. There needs to be finality to this litigation. To allow a further hearing would be to indulge a non-discloser at the expense of another case being able to be heard and it would delay the urgent resolution which W requires.

208.4. The court was not addressed on the tax implications of a withdrawal from the Vanguard policy and H does not know what his net figure will be.

208.4.1. This concern can be met by the wording of my order will require H to pay a lump sum equivalent to 75% of the net value of the fund. If there are taxes to pay, as I expect (but do not know) there will be, H is only required to pay 75% of the net fund, taxes having been taken into account.

208.4.2. My order cannot be for a precise amount. I will require H to disclose to W all documents associated with the drawdown and retention or payment of tax forthwith upon receipt. In this way W will be able to understand the figure she is receiving.

208.5. H does not accept "the findings of the court." H is well advised.

208.6. H would wish to have provision to put some of any potential drawdown towards his own hard debts, " … as he is left in a dramatic financial situation as a result of the court's orders. He would ask that he could have at least some credit towards that."

208.6.1. This is contrary to my finding that H has a significant and undisclosed sum hidden away as a result of the sale of his property in Iran.

208.6.2. In any event, the court is leaving H with 25% of the net drawdown figure. I note that the submission has inherent within it that H intends to access this money, contrary to his assertion that it was illiquid until 2050. He appears to be willing to wear the tax consequences on draw down.

208.7. Having made costs provision via a pension share in the way in which I have described, "…the approach taken to distributing the Vanguard pension is effectively a point relating to an entirely new issue on pension share. The extent of W's capital need had already been satisfied by way of the original judgment."

208.7.1. I am not making any pension sharing order in respect of the Vanguard pension. I am making a lump sum order, having been lately alerted to the availability of liquid capital which I was previously unaware of.

208.7.2. W's finances are a blackhole of problems and my judgment requires the sale of jewellery for her to try and scrape together enough to avoid sinking. I am clear that after any deductions of tax, 75% of the net value of this asset will provide a relatively modest sum, which will be immediately swallowed up in loan repayments as described above, including the debt to the employment solicitor which I have found to be a matrimonial debt and sums due on account of A's nursery. W also has an extremely tight few months ahead as she seeks to fully deploy her earning capacity.

208.7.3. By contrast, H has a significant and undisclosed sum hidden away which can go to meet his needs. I have all the s.25(2) factors in mind.

208.7.4. The "original judgment" remains in draft form and even if it had been formally handed down, I would have been entitled to revise my judgment pending the sealing of the order (*Re L and B (Children)* [2013] UKSC 8).

208.7.5. I am only adding this addendum due to the very late disclosure by H that the Vanguard sum is not illiquid. I know more than enough about the parties and their finances, and applying the overriding objective, to be able to make this modest addendum to my decision without the need for a further hearing (see also paragraph [169] above). It would be an affront to fairness to do otherwise.

208.8. Lastly and in the alternative, Mr Barnett-Thoung-Holland asks for a realistic time for payment, given that the Christmas break is almost upon us, the funds are in another jurisdiction and H will be dependant upon the co-operation of a third party to access the funds.

208.8.1. I have also received an email in reply from W stating that H has drawn money from the Vanguard online account before and that this will be an easy transaction to make.

208.8.2. I remain of the view that the 75% of the net value should be paid to W within 21 days of this judgment, but I am content to say that interest at the High Court judgment rate will not run until 35 days from the date of this judgment.

209. Finally, W notes that there is a restriction on the FMH mortgage account which she wishes to have lifted forthwith. W required the restriction in the first place so that each party would have to agree to any further steps in relation to the mortgage. I agree that this restriction must now be lifted as H will have no legal or beneficial entitlement to the property. His protections in respect of the mortgage are to be found in the court order. Can I please ask Mr Barnett-Thoung-Holland to reflect that in the draft order.

RECORDER RHYS TAYLOR

18 DECEMBER 2023