Case No: BV20D10701
Neutral Citation Number [2023] EWFC 4

IN THE FAMILY COURT AT MEDWAY

Date: 12 January 2023

Before :

Recorder Laura Moys

- -

Between :

A former wife — **Applicant**

- and -

A former husband — **Respondent**

- -

Hearing dates: 5, 6 and 7 December 2022

- -

JUDGMENT

Introduction and assets

1. I have had to resolve a financial remedy dispute between a divorced couple – a former wife (the applicant - aged 57) and a former husband (the respondent - aged 59) - after the breakdown of a marriage that had lasted for some 30 years.

2. The applicant has been represented by counsel, Ms Driver. The respondent has represented himself, assisted by his McKenzie Friend (the respondent's Coptic Orthodox Priest and close friend).

3. The assets comprise (in the main):

i. The equity in the former matrimonial home in [a town in Buckinghamshire] that is registered in the parties' joint names (£569,844 net after redemption of the mortgage, notional costs of sale, and estimated CGT);

ii. Bank account balances and investments in a mixture of the parties' joint and sole names (c.£582,706, *excluding* an estimated amount the applicant alleges is held by the respondent in undisclosed accounts in Egypt);

iii. The respondent's inherited interest in a block of flats in Cairo which he holds jointly with his mother and sister. At the most, the applicant asserts that the respondent's interest in the Cairo flats has a gross value of around £160,000. The respondent accepts he has inherited an interest in the flats but says that, from a practical perspective, the interest is illiquid and should be valued at nil;

And

iv. Jewellery gifted by the applicant's mother as well as jewellery purchased by the respondent during the marriage. Each party alleges that the other has possession of the jewellery. The value is in dispute but lies somewhere between £20,000 and £30,000. As the jewellery is "missing" (and there are no photographs or independent descriptions of it) it has not been possible to order a valuation of it.

4. Leaving aside the assets allegedly held by the respondent in Egypt and the jewellery, The 'non-disputed' (and non-pension) assets total **£1,152,550**.

5. The applicant works as a manager for a County Council earning c.£40k net a year. The respondent is a former consultant obstetrician and gynaecologist who has not worked since around 2013 (the applicant says 2012 rather than 2013, but nothing turns on this).

6. The respondent relies on a number of asserted health conditions in support of his case that he has no earning capacity; the applicant disputes the existence and/or severity of those medical conditions.

7. The applicant has a pension with a CEV of **£280,453** and I have the benefit of a pension report from Golding Smith and Partners dated 20 June 2022 that advises as to the percentage of the applicant's pension required to be transferred to the respondent to equalise income from aged 67.

8. The respondent has no pension, it being his position that the cash savings and investments in his name, those held in the applicant's name and those in the parties' joint names, were always intended to be 'his pension'. He asserts that the parties decided during the marriage that it was preferable for the respondent to have greater 'take home' pay each month than to pay into an NHS pension. The applicant does not agree with this version of events.

The respondent's position and his behaviour during this hearing

9. Looking to the future, from an asset base of between £1.15m and £1.4m (depending on what I conclude about the disputed assets) and a modest pension fund, both parties will need a home to live in and a way of meeting their (reasonable) daily outgoings both now and into their retirement years. The

applicant also has a liability for outstanding legal fees as well as a small tax bill which will need to be paid in due course.

10. Even taking into account that there are factual disputes in relation to the value and liquidity of what I am going to refer to as the respondent's 'Egyptian assets', and as to the location and value of jewellery, this is a straightforward case of the kind that family court judges grapple with every day up and down the country.

11. This case could - and should - have settled long ago without the need for costly, protracted, and acrimonious litigation.

12. Unfortunately, I find that the respondent's unreasonable and hostile attitude (both in terms of the position he adopts in the proceedings and his behaviour towards the court and court orders) means that there was no conceivable chance of these proceedings settling without a contested hearing. The respondent has also behaved in a way that has made this hearing very much more difficult than was warranted.

13. Decree absolute was granted on 23 September 2021. The divorce proceedings were bitterly contested by the respondent and required a final hearing before HHJ Robinson in the summer of last year. Notwithstanding the decree absolute, it is the respondent's view that the parties are still married to this day.

14. In his position statement for this hearing the respondent writes "**I defend the proceedings substantively as my wife and I are still married till [*sic*] today under Egyptian law and will continue to be married indefinitely…UK courts have no jurisdiction [in] the financial proceedings under section 5(2)(b) of the Domicile and Matrimonial Proceedings Act 1973, as both my wife and I are Egyptian nationals domiciled in Egypt".** In his closing submissions the respondent states **"I request with love and respect that my beloved wife…return to our family marital home for reconciliation as I love and miss her very much".**

15. Linked to the respondent's assertion that the parties are still married and (he says) the English court lacks jurisdiction to deal with their financial affairs, it is the respondent's position that the applicant should return to live with him in the family home and resume their former married life together.

16. Despite my efforts to encourage the respondent to focus on the financial issues that I am tasked with determining, he has remained preoccupied throughout this hearing with his desire for the applicant to return to the relationship. He is of the view that the applicant has been manipulated by her solicitors and the English court to end the marriage. He fundamentally refuses to accept that his relationship with the applicant is over and that she does not want to be with him.

17. It is important contextually that I pause at this juncture to record that HHJ Robinson made findings in the course of the divorce proceedings that the respondent was "obsessive" in his behaviour towards the applicant during the marriage, taking **"…an excessive controlling concern for her every move…"**, that he physically assaulted her during the marriage, and that his controlling and emotionally abusive behaviour resulted in the applicant feeling "frightened" of the respondent. The marriage ended with the applicant fleeing in the middle of the afternoon from her workplace [p.29 §30] and moving into a women's refuge.

18. Although inconsistent with his own position as to jurisdiction, the respondent *does* ask the court to exercise its jurisdiction under the Matrimonial Causes Act in order

to (i) a transfer of all of the applicant's solely-owned assets to him; (ii) transfer of all of the jointly-held assets to him; (iii) make a pension-sharing order in his favour; and (iv) make an order that the applicant pay him spousal maintenance for their joint lives.

19. The respondent argues that the applicant's needs can be met by her simply resuming cohabitation with him as his wife.

20. The respondent further argues that he was **"…the sole contributor of our family finances throughout the marriage"** and that his asserted greater (financial) contributions justify him having 100% of the liquid capital assets. He further alleges that any funds held in the applicant's sole name are being held by her 'on trust' for him, on the basis that he was the 'breadwinner' during the marriage.

21. The applicant seeks a broadly equal division of the matrimonial assets, with the respondent retaining the alleged Egyptian assets. She seeks additional lump sums in respect of, *inter alia*, a costs order made at the hearing before HHJ Robinson which the respondent then paid out of joint funds and for the return of jewellery. In her open offer W sought to retain her pension but she now agrees there should be a pension sharing order.

22. Against this backdrop, it is not difficult to see why HHJ Robinson dispensed with the requirement for an FDR and listed the case for final determination.

23. As to the respondent's litigation behaviour, I am sorry to say that he has continued to behave in this hearing in the same way he behaved in the PTR hearing before me on 14 October and during the trial before HHJ Robinson in June 2021.

24. This hearing has been punctuated by frequent angry outbursts from the respondent who took to shouting at and over me and the applicant's counsel on numerous occasions and to interrupting the applicant when she was giving her evidence as well as attempting to speak to her directly during the hearing (including using this as an opportunity to tell her that he 'loves' her and to ask her to return to the marriage).

25. Within a few moments of starting the first day of the hearing the respondent became disruptive and disrespectful, accusing the court of being "thieving and corrupt", of "ignoring evidence", and alleging that "…racist English judges do not accept another country's jurisdiction".

26. When I briefly put the respondent on mute so that I could explain that his behaviour was unacceptable and to warn him of the consequences of continuing to address the court in that manner, the respondent wrote an offensive comment towards me on a post-it-note and held it up to his computer screen so as to be able to insult me silently.

27. In consequence of the respondent's behaviour - and very much as a last resort (the respondent having ignored several warnings from me as well as having been given a short break in the proceedings to calm down and reflect) - I removed the respondent from the hearing for two short periods. First, between 12pm and 1pm on the first day (on the basis that the respondent could rejoin the hearing at 2pm after the lunch break provided that his conduct improved (unfortunately, it did not); and, secondly, from 2pm on the first day for the remainder of the afternoon, the respondent's behaviour having continued to be completely inappropriate.

28. As HHJ Robinson observed [p.26 §15] of the respondent's conduct in June 2021, **"there has to be a balance between the right to a fair trial and the examination of the evidence and the conduct of the hearing, the respect due to be shown to the court and…[the risk of] the use of examination to continue abusive or controlling behaviour".**

29. Had the respondent been permitted to remain in the hearing whilst behaving in the way that he did, not only would it have prevented me from being able to hear, examine and understand the oral evidence, but it would have enabled the respondent to use the court hearing as a forum to abuse the applicant by intimidating her when she was giving her evidence and by making inappropriate and emotive remarks.

30. The respondent's Article 6 rights do not give him *carte blanche* to behave in an aggressive and disruptive manner in court, still less to use litigation to perpetuate domestic abuse. I remind myself that *both parties* – and not just the respondent - have the right to a fair trial, and I determined that the respondent's behaviour in court – if allowed to continue – would have adversely impacted on the ability of the applicant to give her 'best' evidence.

31. Whilst this hearing was dealing with financial remedies and not, for example, applications under the Family Law Act, the court still has a duty (see FPR r.3A and PD3AA) to consider, *inter alia*, whether a party's participation in the proceedings, or the quality of their evidence, might be diminished by reason of vulnerability (and, if so, whether to make one or more participation directions).

32. Having already determined at the PTR that the respondent would not be permitted to personally cross-examine the applicant, the objective of that direction would have been thwarted had the respondent been permitted to continue to speak directly to the applicant in the hearing and to interrupt her evidence with inappropriate commentary.

33. Moreover, I had also made a participation direction that required the respondent to turn off his video camera whilst the applicant was giving her evidence so that the applicant would only be able to see me and her counsel, replicating as far as I could the arrangements that I would have put in place in a physical court room where the applicant would have been seated behind a screen. I emphasised to the respondent that the purpose of this direction was to ensure everyone felt comfortable in the hearing and to avoid any suggestion that the applicant's evidence had been negatively impacted by her stated concerns about the respondent. I reassured the respondent that this step would not play any part in my decision as to financial matters.

34. However, despite this direction and my explanation, the respondent turned his camera on and off and on again at times during the applicant's evidence which had the effect of him suddenly appearing on the screen without warning when she was speaking. This was - unsurprisingly in circumstances where there are findings that the respondent has controlled and abused the applicant during the marriage – upsetting and unsettling for her. It was also disruptive as I had to repeatedly pause the evidence in order to ask the respondent to turn off his camera.

35. I have set this out in order to explain why simply muting the respondent during the applicant's evidence (a lesser step than removing him entirely) ultimately became insufficient to ensure a fair hearing could take place, because the respondent then used non-verbal communication to disrupt the proceedings

instead (he also continued to make insulting notes and hold them up to the camera). I was left with no choice but to exclude the respondent from the hearing altogether during the remainder of the applicant's evidence.

36. In order to mitigate the impact of the respondent's behaviour (and of my decision to remove him from the hearing at certain stages) on the fairness of the trial I took the following steps:

    i. I offered for the respondent's McKenzie friend to remain in the hearing as an observer should the respondent wish him to do so. I did this in the hope that it would provide some reassurance to the respondent as to the fairness of the process because it would enable him to have a close friend observing the hearing and reporting back to him. The respondent refused this offer and expressly told his McKenzie friend that under no circumstances was he to remain in the hearing if the respondent was not also allowed to be present;

    ii. I directed that a careful note be taken of the answers given by the applicant to the respondent's questions during the period when the respondent was excluded from the hearing (which questions I put to the applicant myself, in line with the participation directions I had made at the PTR). I then ensured that the note of the applicant's answers was provided to the respondent at the end of the first day of the hearing and I made arrangements to start the second day of the hearing later (11am) to give the respondent the chance to digest the answers and write a maximum of 25 follow up questions which I then put to the applicant (the respondent having been permitted to attend the hearing again on day 2). This resulted in the applicant's evidence being 'part heard' overnight on the first day and in her having to give evidence over a longer period than the respondent, but I determined that this was a necessary and unavoidable adjustment to make to ensure that the respondent had the best opportunity of fairly participating (and notwithstanding that he had been removed only as a consequence of his own behaviour).

    iii. There having been no cooperation whatsoever by the respondent in agreeing an ES2 schedule of assets with the applicant's solicitor in advance of the hearing (the respondent refused even to acknowledge receipt of the draft ES2 despite the direction I had made at the PTR), and the respondent having failed to provide a complete run of updating disclosure for all of his accounts, the respondent then complained during the hearing that he disagreed with the figures inserted on the schedule for his bank balances and investments and asked me to adopt figures contained in a 'competing' ES2 that he had drafted. I gave each party a deadline of 4pm on 7 December to provide me with independent documentary evidence of the most recent balance for any accounts/investments that were in dispute, making it clear that I intended to use the most recent figure for which there was independent evidence (such as a screenshot of a balance from an online banking account). Having complained bitterly that he would be unable to obtain the evidence in that tight timeframe, the respondent was in fact able to provide me with updating documents by the evening of 6 December. The date of the documents provided by him shows that they were in his possession before the start of the final hearing and so it is entirely unclear to me why he did not serve them on the applicant's solicitor earlier as this would have avoided unnecessary debate over bank balance figures. Nonetheless, this direction avoided the need for further oral evidence on the issue of bank account balances and thus reduced the amount of time either party was required to be in the witness box.

37. When the respondent gave his evidence he used the process as an opportunity to make speeches venting his grievances towards the court, me, HHJ Robinson, and the applicant's legal advisors. He frequently either failed to answer a question at all or would take the court down an irrelevant side track for several minutes. For example, when Ms Driver asked the respondent why he had failed to file a statement dealing with the issue of his Egyptian inheritance (as had been directed by HHJ Robinson in April 2022), the respondent became very agitated telling me that the hearing in April was a "fake hearing", that HHJ Robinson had no jurisdiction to make the order, and that he had not agreed to the applicant being involved in a valuation exercise because her lawyer would "bribe the agent" (quite apart from the total absence of evidence for any of these serious allegations, the question he had been asked had nothing to do with valuations anyway, and the respondent has still failed to provide any cogent explanation for not complying with the direction to file a statement).

38. I warned the respondent on more than one occasion that there was a risk that if he continued to refuse to answer questions and/or respond with bombastic outbursts, I might find that his behaviour in evidence was evasive and this might impact on my assessment of his credibility when resolving disputed factual issues. Unfortunately, my warning was not heeded in any way.

39. With the agreement of the parties I sat until 5.30pm on the second day in order to complete the respondent's oral evidence (having started later in the morning for the reasons set out above) but I directed that the applicant's counsel should complete her questions within that timeframe and that I was not prepared to allow the respondent's oral evidence to go into a second day.

40. Whilst I acknowledge that the respondent's lengthy (and often irrelevant) responses to questions meant that Ms Driver struggled to obtain a clear answer from the respondent, and that cross-examination of the respondent also took longer than she had originally estimated, in my judgment this was not a good reason to permit the respondent to give oral evidence over an excessively long period of time, taking up the remainder of the trial time estimate that had been reserved for submissions and judgment writing. I indicated to both parties that Ms Driver should put her questions simply, sticking to the timeframe set aside for evidence, and that if the respondent chose to waste time by continuing to avoid the questions or by being disruptive I would be inclined to simply take that into account in my overall assessment of his evidence.

41. I make it clear I am entirely satisfied that the respondent understood the applicant's case and had had a chance to set out what he wanted to say in respect of all disputed issues. I also observe that the respondent had filed a 26 page position statement in advance of the hearing (in breach of my earlier direction limiting position statements to 10 pages) in which he went into considerable detail addressing the allegations and arguments that had been made by the applicant, and that I also allowed the parties to each file written closing arguments in which the respondent had a further opportunity to set out his case.

My assessment of the quality of the parties' oral evidence

42. The only witnesses that have given oral evidence are the applicant and the respondent.

43. In assessing their oral evidence - and in making findings about disputed issues - I have reminded myself, *inter alia*, of the following:

i. Human memories are rarely (if ever) a neat and perfect record to be plucked from a 'filing cabinet' at will; memories evolve over time and are affected by external factors such as being required to retell an event in a statement for proceedings, or reading documents in which other people have described the same event in a different way.

ii. The process of litigation (particularly protracted family litigation in which emotions are running high) may alter or influence a party's perception of an event or allegation. The fact that a witness has given inconsistent or changing descriptions in the retelling does not of itself mean that a witness is being untruthful; likewise, a consistent account is not *invariably* an accurate account because a party's recollection can be both steadfast and honest but nonetheless mistaken.

iii. In general terms, it is safer to rely on independent written evidence (better still if it is contemporaneous with the event in dispute) than to rely on a witness's memory alone. This may be particularly so if the disputed event happened a long time ago and/or where witnesses have a personal stake in the outcome of proceedings.

iv. It is dangerous to place too much emphasis on a witness's demeanour in assessing the quality and credibility of their evidence. Some people are very good at giving evidence and can come across in a pleasant and plausible way. Other people find court proceedings very stressful and may become defensive when challenged. There are many reasons why individuals present in a certain way – for example, cultural, personal, or emotional – and it is important not to assume that a difficult or challenging witness is being untruthful *simply* because of the way they behave.

44. I am alive to the risk of the respondent's poor behaviour in court distracting me from the issues in dispute. Whilst I am entitled to take into account his behaviour where relevant (for example if I consider he has deliberately evaded a question without good reason) I have been careful to ensure that I have not allowed his challenging behaviour to prevent me giving his evidence and arguments appropriate consideration; nor have I automatically adopted the applicant's position or accepted her arguments simply because I have found the respondent to be unreasonable. I decided to reserve judgment and to set out my decision in writing after a period of break and extended reflection in order to ensure I did not allow the drama of the respondent's behaviour in the court room to unconsciously influence my decision on what is a fair financial outcome.

45. Both parties in this case accuse the other of lying about the whereabouts of the jewellery. I have reminded myself that witnesses can tell lies for a number of different reasons and the fact they have lied about one issue does not automatically mean that all of their evidence is not worthy of belief. A lie is not, on its own, evidence of 'guilt'.

46. The burden of establishing a disputed fact lies with the person asserting it. That person must prove the fact to the 'civil' standard -that is, on the balance of probabilities. This is not an especially high standard – I simply have to be satisfied that it is 'more likely' that not that something happened/did not happen. I do not have to be 'sure' or to expel every single doubt.

47. In reaching a determination I have to have regard to all the written and oral evidence and to the way each piece of this large jigsaw fits (or, as the case may be, does not fit) together. Inherent probabilities (or improbabilities) can also help me to reach a conclusion.

48. I have already described the manner in which the respondent gave his evidence. In my judgment, the respondent is fixated with the idea that these financial proceedings involve the English court overstepping its jurisdiction as well as preventing the applicant from returning to the marriage (and that the applicant's legal team are acting in bad faith and preventing the applicant from 'seeing the light' and resuming the relationship). This fixation means that the respondent has largely focussed on progressing his own agenda at every opportunity through lengthy and embittered speeches, rather than assisting me by answering questions in a straightforward manner.

49. The respondent's extreme position has also meant he has been unwilling to make sensible concessions lest he be taken to have agreed with anything at all being asserted on behalf of the applicant. This has been so even in the face of clear documentary evidence supporting the applicant's case.

50. For example, at one stage Ms Driver asked the respondent about the state of his mother's health and the respondent initially said she was in 'excellent health'. When Ms Driver reminded the respondent that his case throughout proceedings up to this point has been that his mother (who is in her nineties) is suffering with dementia, the respondent attempted to persuade me that, as a doctor, he had used the word 'dementia' purely to describe the official medical condition that his mother has been diagnosed with but that he did not mean to suggest her health was impaired in any way.

51. To emphasise his point, the respondent then produced a photograph of his mother during the hearing and held it up to me, insisting that his mother was in perfect health and asking me to look at the photograph. Ms Driver then took the respondent to his Form E [p.115] where the respondent had written that his mother suffered from 'severe dementia" and asserted that he was paying her care home fees and medical treatment and also had control of her finances as she is "…unable to care financially for herself". At this point, instead of simply accepting that there was an obvious contradiction between his written and oral evidence, the respondent claimed that his mother's dementia had 'improved' since he filed his Form E such that it is now what he called "minimal dementia". He went on to say that his mother had felt "imprisoned" in the UK (when she was living with the respondent and applicant) and that her health has much improved now she has returned to Egypt. He then deflected the question, taking his answer off on a tangent complaining of his mother's treatment when in the UK and resuming his theme of having been 'wronged' by the English legal system.

52. On another occasion when Ms Driver asked the respondent why he had not complied with the court's order to file a statement setting out his understanding of his Egyptian inheritance, the respondent embarked on a tirade about HHJ Robinson, accusing the judge of having had no jurisdiction to make the order in the first place.

53. The respondent was not a remotely helpful or straightforward witness and I have formed the view that I must treat the respondent's evidence with considerable caution where it is not corroborated with independent documentary evidence.

54. By contrast, I found the applicant to be helpful, patient, and thoughtful. Many of the questions posed of the applicant by the respondent were repetitive – for example she was asked a number of questions that were in reality different ways of asking the same thing about a building in Cairo that had previously been owned by her grandfather and about why she had placed her engagement ring in a safety deposit box.

55. Despite having been in the witness box for a considerable period of time, the applicant did not allow her admitted frustration with the some of the respondent's questions to prevent her from answering questions and she did her best to give straightforward answers. At one stage (when asked about transfers of money between accounts) she was careful to explain that a sum of £24,000 had been spent in part on legal fees and in part to purchase a car, emphasising that she was unclear precisely what had been spent on each. I formed the view that she wanted to make sure she did not inadvertently give the impression all the money had gone on legal fees. This was an example of the applicant taking care to be precise and helpful.

56. Where there is a dispute of fact between the applicant and respondent that cannot be resolved by independent evidence, I have generally preferred the account of the applicant whom I found to be a more credible witness.

Evidence relied on, issues for determination and my findings

57. By way of structure, I am going to address the issues that I have had to determine using the framework of s.25 of the Matrimonial Causes Act and dealing with each issue under the heading that I consider it best corresponds with.

58. I have considered the 'core' bundle for this hearing that runs to 335 pages. The core bundle was prepared by the applicant's solicitor without input from the respondent because the respondent refused to cooperate with the applicant's solicitor and chose not to respond to his emails enclosing a draft index.

59. For the avoidance of doubt, I reject the respondent's assertion that the applicant's solicitor has acted in bad faith in the preparation of the bundle or tried to avoid documents being placed into the bundle that the respondent would have wished to have included. I am entirely satisfied that the respondent had every opportunity to set out which documents he wished to have included and that due to his unjustified grievance against the applicant's legal team he has deliberately chosen not to engage in the exercise that was mandated at the PTR.

60. In addition to the 'core' bundle, at the PTR I gave the parties permission to file up to 50 pages each of additional material, in the event of any disagreement arising about the contents of the 'core' bundle [p.68 §34].

61. The respondent applied for permission to appeal my case management order but was not successful.

62. In defiance, the respondent then emailed court staff (on a number of occasions) with an 'alternative' bundle running to 508 pages, accompanied by various unsupported allegations about the applicant's solicitor. In addition to this alternative bundle, he also filed a second 'supplemental bundle' of 56 pages as well as a 26 page 'case summary' document.

63. After hearing argument on the first morning of the hearing, I refused to admit the 508 page alternative bundle, but I did allow the respondent to rely on select pages

from that bundle that had already been filed as either attachments to Form E or replies to questionnaire (and which the applicant and her counsel were already familiar with), most notably a number of medical letters. Ms Driver did not object to that course of action.

64. I also allowed the respondent to rely on his 56 (as opposed to the directed 50) page supplemental bundle and on his 26 page case summary, although I excluded from consideration the valuation reports that the respondent had enclosed within his 56 page bundle which he had obtained unilaterally since the PTR and for which he had no permission (I will discuss this further when dealing with the issue of the respondent's Egyptian assets).

65. I allowed both parties to send me updated bank and investment statements in the course of the hearing in order to resolve a disagreement that had arisen with regards to the asset schedule (as I have described above, this disagreement came about because the respondent refused to cooperate over the preparation of a joint document so I had been presented with competing versions).

66. I have also read the parties' written closing submissions set to me by email.

67. After the close of the evidence, and over a number of days following receipt of closing submissions, the respondent continued to send unsolicited correspondence to the court for my attention.

68. On 9 December the respondent emailed me directly at my Chambers' address (which he had seemingly obtained through his own research) with the original 508 page alternative bundle that I had already refused to admit, together with a number of additional written submissions (34 numbered paragraphs) set out in the body of the email. This direct and unsolicited contact was in breach of an earlier order of DDJ Landes at [p.49] where she directed that **"neither party is to make contact directly with any judge who has heard or will hear this case, other than through their appointed legal representative (if any)…".**

69. In that email, the respondent informed me that **"The Justice Secretary and the UK parliament has been informed [as] to the racial discrimination, false representation, abuse, defamation, forgery and dishonesty that I was subjected to by my wife's representatives and Judges including yourself…".** He added **"As discussed this case will be a public opinion problem world wide".**

70. On 5 December (during the hearing itself) the respondent also emailed the court bundle and his alternative bundle to the Secretary of State for Justice, The Rt Hon Dominic Raab MP, complaining about having been excluded from the hearing. Mr Raab is not the respondent's MP, and I had already warned the respondent at the PTR that he must not send court documents to third parties without permission (at the PTR the respondent had threatened to send documents to an Egyptian television channel). The respondent ignored this warning.

71. I have not taken into account the additional unsolicited material emailed to me/the court by the respondent. The parties had the benefit of a two-hour PTR hearing in October at which I made detailed directions in respect of the evidence permitted at this hearing in order to ensure both parties would understand the other's case and that I would be able to determine the relevant issues in a proportionate way in the time frame available. The parties have also had many months to prepare for this hearing and there is no justification for the respondent seeking to admit

material very late in the day and after the evidence has concluded or to have a greater opportunity to make submissions than the opportunity I afforded to the applicant.

72. It goes without saying that I have not been able to refer to every single piece of evidence or argument that I have read or heard. The fact I do not expressly refer to a particular piece of evidence or a specific argument does not mean I was unaware of it or have not taken it into account. I intend to highlight only those matters that are particularly relevant to explain my conclusions on disputed issues or which are required to enable the parties to understand my decision.

S.25 factors and findings

The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire

73. As far as income is concerned, there is no dispute that the applicant earns £3,485 a month net in a managerial role at [a County Council].

74. In her s.25 statement [p.201 §5] the applicant says that she intends to retire at the age of 60 and that **"…my current job is very stressful, and I am planning to find a lower-level job for my last years of employment, closer to wherever I live as soon as the case is over".** She says that she has been adversely affected by the protracted litigation (both the matrimonial and financial proceedings) between herself and the respondent and that **"…even when they are behind me my emotional and psychological health will remain scarred and will take years to overcome".**

75. Whilst the applicant has not relied on any medical evidence, she relies on the findings of HHJ Robinson regarding the effect of the respondent's behaviour on her both during the marriage and in the aftermath of the parties' separation, as is described in his judgment at [p.29].

76. Although the parties have now been separated for a number of years and are divorced, I accept that the respondent's behaviour has continued to cause distress to the applicant. For example, it is quite clear from his written documents and behaviour in this hearing that the respondent still does not accept that the relationship is over and continues to pester and pressurise the applicant into returning to the marriage at any opportunity.

77. Whilst the applicant has continued to work for [a County Council], she is now living outside of [a town in Buckinghamshire] at an address that has not been disclosed to the respondent and so she now has to commute from her new address to her place of work which adds a further physical toll. She told me in her oral evidence (and I accept) that she would have preferred to remain in [the town in Buckinghamshire] but for the obsessive behaviour of the respondent which has prevented her from feeling safe there.

78. Despite having drafted some 193 initial questions that he wished me to ask of the applicant (of which I put around 80, with 25 follow up questions, having removed or rephrased any questions I considered to be inappropriate), the respondent has

also never challenged the applicant's assertion that she would like to gradually reduce her work commitments.

79. It is to the applicant's credit that she has maintained her managerial role throughout these proceedings, including when housed temporarily in a women's refuge and also after having had to move away from [the town in Buckinghamshire]. I have no doubt that the applicant wants to continue to work for as long as she is able to, but that she has also found the last three years of litigation exhausting and a considerable emotional toll.

80. I consider it reasonable that between now and retirement she may wish to take on a position with less responsibility that may be marginally less well remunerated and that, ideally, she would like a job closer to where she will be living (or that can be done from home).

81. I find that on the evidence before me the applicant is capable of working to state retirement age of 67 but that it is not unreasonable to expect that she will take on a less well remunerated role in due course for the reasons described.

82. As far as the respondent is concerned, it is accepted that he has not worked since at least 2013. He was briefly re-registered as a doctor during the Covid-19 pandemic as part of a government drive to encourage medical practitioners to return to the profession, but he did not in fact practise during that period.

83. The applicant asserts that the respondent stopped undertaking locum work after an interpersonal disagreement with managers at a particular hospital and that he has chosen not to work ever since. The respondent's case is that he has a number of diagnosed health conditions that have rendered him, in his own words, 'housebound' since either 2019 [his response to questionnaire at p.161] or September 2020 [p.224, respondent's s.25 statement].

84. I have had regard to the medical letters provided by the respondent at what had been pages [D/10-D/15] of his alternative bundle and the respondent was also asked about his health through cross-examination by Ms Driver.

85. With reference to the letter from the respondent's GP dated 31 August 2021, I accept that the respondent has a significant knee condition (including a full tear to the anterior cruciate ligament and lateral tibiofemoral osteoarthritis) and that as a consequence he has used crutches since September 2020 and has been prescribed pain medication. The respondent's GP has referred him to a consultant, the clinical lead for knee surgery, to discuss knee replacement surgery.

86. However, it is also the case that the respondent has had to manage difficulties with his knee for many years, including during the years when he was still working as a hospital doctor.

87. When the respondent saw the consultant in October 2020, the letter arising from that consultation explained that **"…I last saw [the respondent] some four years ago or so with his left knee problem when he had meniscal tears both medially and laterally. He elected to manage himself non-operatively and was doing very well until a couple of weeks ago when he twisted the knee and has had ongoing pain…this has improved over the past couple of weeks"**. It continues **"…He is keen to continue managing his knee non-operatively which I think is entirely reasonable. His pain is not a great feature at present".**

88. When the respondent went for a follow-up appointment with the consultant in December 2021 it appeared – from what the respondent reported to the consultant – that his condition had deteriorated. The respondent told the consultant that he "…sleeps on the ground floor and very rarely goes upstairs". The consultant opined that the respondent would 'in time' require a knee replacement and suggested seeing him again in two months' time for a Durolane injection. The respondent was advised that he would need to get his BMI below 40 (having been 45.5 at the date of that appointment) in order to be added to the NHS waiting list for knee surgery.

89. Under cross-examination the respondent was asked why he wanted to remain in the family home which is a property with two floors if he struggles to climb stairs. The respondent told me that his medical condition had "…changed quite a lot" (for the better) since the December 2021 letter from the consultant, and that **"…I am using crutches and I can go up and down stairs and I am waiting for a knee operation and then I will be even fitter than yourself".** He added that if he "got [his] money back" (this is a reference to his assertion that the applicant is keeping all of his money on trust for him in her accounts) he would be able to have the operation done privately "…tomorrow", because unlike the NHS criteria, a private hospital would not require him to get his BMI below 40.

90. When asked whether he had been given the recommended Durolane injection, and why he had not provided any more recent medical letters (the most recent being the December 2021 letter that is now about a year out of date) the respondent told me that his GP had recommended he use ibuprofen gel and that had helped a lot with the inflammation such that he had not *required* the injection.

91. In response to the applicant's proposed housing particulars for him, the respondent rejected the suggestion that he live in a bungalow or ground floor apartment, telling me that he does not feel safe **"…except for on the second floor of my house"**, adding that he always puts on a burglar alarm whenever he goes upstairs in case of a break in.

92. I found the respondent's evidence about his mobility and health needs contradictory and unsatisfactory.

93. On the one hand, I accept he does have a real knee condition that he has lived with for a number of years and that he meets the criteria for knee replacement surgery, save for the issue of his current weight (and the respondent's evidence is that the latter would not be an issue if he paid privately). On the other hand, the respondent himself told me that his condition is being managed with painkillers and anti-inflammatories and that he would prefer to delay surgery for as long as possible. He is confident that were he to have surgery, his mobility would considerably improve.

94. Moreover, I do not accept that the respondent is 'housebound', or that he has been 'housebound' (in the sense of being physically unable to leave the house) 'since 2019' (or 2020, depending which of the respondent's documents is to be preferred).

95. I note, in particular, that:

    i. The respondent was able to attend the hearing of the contested divorce in Canterbury in person in the summer of 2021;

ii. The respondent leaves the house to go to church regularly. In October, the respondent was in Manchester, as shown by a transaction on his bank account statement and as was accepted by the respondent in cross-examination (when the transaction was pointed out to him, he said "Brilliant, excellent" and smiled ruefully as though he was reluctantly impressed that Ms Driver had caught him out. The respondent now accepts he had gone to stay with his McKenzie friend;

iii. I found the respondent's oral evidence that "someone" (whom he declined to name) had driven him to Manchester and that there was a different (unparticularised) time when he "didn't leave the home for three months" to be unconvincing and a recent invention in response to being caught out about the Manchester trip;

iv. The respondent's report to his consultant about sleeping on the ground floor and rarely going upstairs is the opposite of his evidence to me that he is scared to sleep on the ground floor and requires a property with stairs. There is a clear risk that the respondent just says whatever he wants depending on what version benefits his case at any particular time;

v. The respondent was evasive when he was asked about whether he could drive. Instead of just answering Ms Driver's question, the respondent gave evidence about a time he had been arrested (as a result of - as he sees it – 'false' allegations by the applicant) and proceeded to tell me that he is "…severely claustrophobic" and had collapsed in the police cell. He said he "cannot sit on small seats on aeroplanes" and has to be upgraded to First Class (telling me about a pilot friend who arranges free upgrades). When pressed, he said that he could not drive as he "…cannot bend [his] leg for long periods of time". However, later on in his oral evidence, when confronted by the evidence that he had been in Manchester in October, he said that "I can't remember if I said I don't drive…", and then explained that he drives an automatic vehicle which means he does not have to use his left leg anyway;

vi. When I asked the respondent to provide me with up-to-date bank balance documentation the respondent told me he does not use online banking and has to physically obtain bank statements from the bank (which I find must mean that he leaves the house to do this, as he did not tell me that he asks anyone else to obtain his statements for him);

vii. If the respondent's mobility issues (alone or combined with his other health problems) were such as to render him unable to leave the house, it is likely he would qualify for state support in the form of Personal Independence Payment. The respondent does not appear to have applied for any benefits associated with his health. Given that the respondent is someone who is perfectly capable of setting out his position in detailed written documentation for the court and who has been preoccupied throughout proceedings with ensuring his 'rights' – as he sees them - are safeguarded and promoted, I find that had the respondent been suffering with a level of physical disability that would entitle him to state benefits he would have applied to be assessed for those benefits.

96. As far as the respondent's other health conditions are concerned, I accept he has suffered with liver damage for years (he accepted that during the marriage he would go for regular check-ups, accompanied by the applicant). I also accept that his liver damage is now advanced, although unhelpfully the respondent has not provided any evidence about his liver function that is more recent or more detailed than the short summary in the August 2021 GP letter.

97. It is clear from the GP letter at [p.305] that the respondent was (in August 2021) awaiting a follow up appointment at the hepatology unit at [his local] hospital but

he has not provided any evidence from that appointment. On the basis of the written documentation provided, I accept that the respondent has advanced liver scarring and that this condition will require ongoing management. However, I am not prepared to accept that it interferes with his life to the extent that he is 'housebound' or that it renders him unable to work in *any* capacity whatsoever.

98. I accept the point made by Ms Driver in cross-examination that the respondent is a highly educated and eloquent man who is computer literate and who has chosen to spend considerable time preparing his detailed written documents in support of his case. He could apply those skills to future employment in some form. This might potentially include an administrative job where the respondent could work from home using email and video calls if necessary.

99. I also do not accept that the remainder of the respondent's medical conditions – whether individually or collectively – prevent him from being able to work *at all*. The respondent has hypothyroidism, but this is being treated with daily Thyroxine. He has ocular hypotension which is treated with daily eye drops. His asthma is described by the GP as "well controlled for now with the use of regular inhalers" [p.305] and he is overweight, but "trying hard to lose weight" [p.305].

100. Significantly, DDJ Landes (in October 2021) directed that the respondent was to file, by 23 December 2021, **"a report from his treating consultant, setting out his diagnosis and the date thereof, and his prognosis and treatment options".** The only document filed by the respondent after this order was made is the December 2021 letter from his consultant regarding the respondent's knee. That letter does not mention any of the respondent's other conditions and he has not provided any report that attests to an inability to work.

101. The respondent told me that he had filed a 'medical report' and alleged that the applicant's solicitor had deliberately chosen not to put that report in the bundle. He told me it was in his 508 page alternative bundle and gave me the page reference. On closer inspection (as I gave the respondent an opportunity to locate this document given its potential significance, and despite my earlier ruling about the alternative bundle) the document the respondent was referring to was not a medical report at all but written submissions *by the respondent* in which he had made a number statements about his health. It goes without saying that this is not independent medical evidence of the kind directed by DDJ Landes, even if the respondent is himself a doctor.

102. I *do* accept that the respondent's health means that he is not capable of returning to practice as a hospital consultant. Whilst the applicant did not suggest that the respondent should do so, I find that in any event the respondent's health and age, together with the number of years since he left the medical profession, as well as the highly physical and mentally demanding role of a consultant in obstetrics and gynaecology mean that it is unrealistic to expect the respondent to return to his previous employment or to earn the sorts of sums he was capable of earning doing locum work as a consultant during the marriage.

103. The applicant suggested through cross-examination that the respondent could work in healthcare in a less senior and/or less physically demanding role. Ms Driver pointed out that as part of the respondent's general medical training he is trained to take blood and to administer injections. She suggested that there are supporting clinical roles within the NHS or in private practice that the respondent is capable of, such as working in a phlebotomy clinic or vaccination clinic.

104. I was struck by the fact that the respondent's answer to this was to express surprise and disbelief that the applicant would consider it 'appropriate' that someone who had been a senior consultant could return to work in what he considers to be a far less prestigious role. He did not raise any objection based on health grounds; rather, he told me **"I was a senior consultant and if you look at my CV it is quite striking…I am accredited for laparoscopic surgery and [although] I have not touched a tummy or a patient since 2014 [I was a] top class of consultant and you would have to book me [many months in advance]…I worked from the Channel Islands up to Carlisle, from Middlesborough to Wigan."** He asked, incredulously, whether Ms Driver was suggesting he could work as "a nurse", saying "it is inappropriate to speak with a consultant [like that]" and asking Ms Driver whether, as a barrister, she would want to work as a "porter".

105. I found that the respondent's principal objection to considering other clinical (and non-clinical) roles was his perception that those roles are 'beneath' him. I am quite satisfied that the respondent's education and experience include transferrable skills that he could and should be deploying in a paid capacity. Although the respondent has not worked for a number of years, the parties have been separated since 2019 and I do not accept that the respondent's health has prevented him from even considering alternative employment in all the time that has passed since then. I find that the respondent has not wanted to work and has accordingly made no effort to look into the ways in which he could return to some form of work. The respondent has instead chosen to make this litigation his "full time job".

106. It is difficult to assess with precision how much the respondent could earn from future paid employment. The applicant has not provided me with evidence of the salary she says the respondent could earn in future employment in any of the roles she suggested. The respondent has not provided any evidence of this either because he does not accept he is capable of working at all.

107. Doing the best I can using Table 23 of the 2022-2023 'At a Glance' (comparable salaries with 2022-2023 tax rates) I note that the national living wage for 2023 is £19,760 or £9.50 p/h. The salary for a newly qualified nurse is £25,655 gross p.a. and for a newly-qualified junior doctor is £28,243 gross. An experienced nurse can earn in excess of £40,000 gross.

108. Whilst the respondent does not *have* to take up a clinical position, and I accept that he may require some retraining and the cost of registration were he to return to some form of clinical practice, I find that the respondent could work in a clinical setting in one of the roles suggested by the applicant (such as phlebotomist), a role in which he would earn more than the 'living' wage but less than a registered and experienced nurse.

109. Alternatively, he could work in an administrative capacity for the NHS or in a private non-medical setting such as a bank or commercial enterprise or for a local authority. I find it likely that the respondent could earn somewhere between £25,000 and £35,000 gross p.a. building up gradually from part-time to full time over the next couple of years. This equates to around £21k-£27k net p.a. or £1,750 to £2,250 net a month.

110. In addition, the applicant has proposed that the respondent have a pension sharing order equalising pension income from aged 67. This would produce gross pension income per party of £9,644.10 p.a. or c.£804 a month.

111. I gave the respondent permission at the PTR to write to the single joint expert that had prepared the pension report and to ask the expert what pension sharing order would be required to equalise pensions at aged 60 (and what income that would produce). In the event, the respondent declined to instruct the expert to provide further written advice. I conclude that the respondent has not felt it necessary to instruct the pension expert to carry out a further calculation because he is not concerned about the level of pension he would receive at 60.

112. Because the respondent has not written to the expert, I have no calculation based on the respondent retiring at aged 60. In any event, I find it unlikely that the respondent will need to stop work at 60; if his knee continues to cause him difficulty it is likely that he will have the recommended surgery and he has told me in his own words how confident he is that surgery would be successful and leave him pain free.

113. At the moment the respondent's conditions are all well managed. As a doctor, the respondent is in a good position to advocate for the appropriate treatments for himself and understands the recommendations that have been made by his doctors.

114. The applicant alleges that the respondent also has income available to him by renting out the Cairo flats. It is convenient at this point to deal with what (if anything) is owned by the respondent in Egypt.

The Egyptian assets

115. As long ago as 20 October 2021 [p.44] DDJ Landes directed that the parties should "…file and exchange with each other by 4pm on 27 November 2021 brief written statements of no more than 4 sides of A4 setting out their understanding as to the inheritance entitlement of family members upon the death while intestate of a parent under Egyptian law and procedure". The order stated that this was to "…avoid the unnecessary instruction of a single joint expert on this issue".

116. The Deputy District Judge no doubt hoped that the case would settle and/or that the cost of single joint expert evidence might be avoided if there could be a measure of agreement (or compromise) as to the position regarding the respondent's inheritance.

117. The context for this is that the respondent's father died intestate in 2016. The parties agree that under Egyptian law there are automatic rules governing inheritance by family members in those circumstances. The court evidently hoped that the parties might be able to agree on the general principles, even if they could not agree on specifics, as was made clear by the wording of DDJ Landes' order which stated that the parties were not to "…rehearse details of their specific entitlements as they argue them…".

118. The applicant filed her statement in accordance with that direction. The respondent did not file a statement.

119. On 13 April 2022 HHJ Robinson [p.53] made a further direction extending time for the respondent to file the statement directed by DDJ Landes and attaching a penal notice to that order. He also made an 'unless' order, the upshot of which was that if the respondent failed to file a statement the applicant would be permitted to file (on her sole instruction) a report from a legal expert of her choice setting out the relevant law and practice in respect of inheritance in Egypt.

120. The respondent again failed to file a statement. Therefore, the applicant obtained, filed and served the report of Egyptian lawyer Mr Youssef Ibrahim p.263] in accordance with HHJ Robinson's direction.

121. Shortly before the PTR, the respondent disclosed, attached to his s.25 narrative statement, an alternative report he had obtained from a different Egyptian lawyer, Mr Mohamad Hussain Mohamad Abdul Monem.

122. I did not give the respondent permission to rely on that report which he had obtained late in the day, without prior permission, and in breach of the careful case management directions made by DDJ Landes and HHJ Robinson at earlier hearings.

123. I have no doubt that had the respondent engaged with the issue early on as he was supposed to, and had he cooperated with the directions by providing a statement on the issue of inheritance, and had there *still* been a dispute about the operation of Egyptian law after receipt of that statement, the court would have directed single joint expert evidence on this issue and not a separate report from each party.

124. As the respondent did not engage, the court directed that the applicant could obtain her own legal opinion and gave her permission to rely on it. There was and is no justification for the instruction of more than one expert dealing with the same issue. I determined that it was unnecessary for there to be evidence from Mr Monem as well as Mr Ibrahim in the circumstances I have outlined and with reference to FPR r.25.4. Instead, I directed that the respondent could pose written questions of Mr Ibrahim in the first instance if he needed to clarify any aspect of his report [p.67 §15].

125. The respondent did not send any questions to Mr Ibrahim and has not sought to call Mr Ibrahim to give oral evidence. Instead, and again without permission (or even applying for permission), the respondent approached Mr Monem for an updated report and then sought to admit it under cover of his 56 page supplemental bundle in advance of the final hearing. I refused to allow the respondent to rely on that report, having failed to raise any written questions of Mr Ibrahim or to have made any attempt whatsoever to comply with my case management directions. I had also made expressly clear in my order [p.67 §13] that neither party was to adduce any further evidence on the issue of ownership of the Cairo flats and the respondent's actions were in direct contravention of that order.

126. Moreover, much of the updated report of Mr Monem purports to deal with the question of whether or not the English court had jurisdiction for the divorce proceedings, an issue which is no longer relevant.

127. As to the issue of value, at the PTR I directed that there should be a single joint expert valuation of the Cairo flats and I made directions as to the mechanism through which an expert should be chosen and a letter of instruction drafted [p.67 §11]. I made a further order that if the respondent did not cooperate with the directions, the applicant would be permitted to rely on a solely instructed valuation report from Global Appraisal Tech dated 7 July 2022.

128. At the time of the PTR (October 2022) this case had been ongoing since July 2021, a year and three months. I determined that it would not be in the interests of justice to lose the final hearing date already listed before me in December and the case management directions that I made were aimed at ensuring that there

would be valuation evidence in time for the final hearing to go ahead as planned. My preference had been for the valuation to be undertaken by a single joint expert, but in view of the respondent's previous lack of engagement with directions I gave the applicant permission to rely on the Global Appraisal Tech report in default of compliance by the respondent with the direction to instruct a SJE.

129. Again, the respondent did not cooperate. Instead, the respondent approached an alternative agent – Mr Hamdy Shalaby – for a valuation and inserted the valuation report into his 56 page supplemental bundle. I did not consider that it was necessary for there to be valuation evidence from two alternative valuers and as the respondent had again failed – without any justification – to comply with the direction for single joint expert evidence I refused him permission to adduce the report at trial. The respondent has had sight of the report from Global Appraisal Tech for five months, and was aware at the PTR that if he did not cooperate with the instruction for a single joint expert I intended to consider only the valuation evidence contained within that report. The respondent chose not to cooperate and that is the consequence.

130. I intend to deal with the issue of the Cairo flats in two stages. First, the question of whether or not the respondent has inherited an interest in the flats and-if so – the extent of that interest. Secondly, I will consider the issue of value.

131. The respondent's position on inheritance is confusing and at times contradictory. At §41 of his case summary for this hearing he says "Following my father's death there was no inheritance in property". However, further on in the same paragraph (and later at §42) the respondent's position appears to be that his inheritance has not been notarised in accordance with the formalities required under Egyptian law and that his ownership is 'incomplete' – in other words that it has not vested or is not in possession.

132. At §43 he refers to his mother being "…the owner with the largest share", which is actually broadly consistent with the applicant's case – relying on the opinion of Mr Youssef – which is that the respondent's father's half share of the flats had passed 1/8 to the respondent's mother which she then held together with her own original 50% share which would make her the beneficiary with the largest share. Mr Youssef advised that the remainder of the estate was divided 2/3 to the respondent and 1/3 to his sister, because under Egyptian Islamic law the male heir automatically inherits twice as much as a female heir.

133. The respondent does not appear to disagree with the general principle as to the division of the estate under Islamic law. He writes at §44 of his position statement "The norm in Egypt is such that death and inheritance certificates state the names of the heirs and confines/restrict [*sic*] their percentage share of inheritance". In other words, he agrees that in accordance with Egyptian law inheritance is by set, pre-ordained share.

134. At [p.232] is a certified English translation of a document called 'Death and Inheritance Certificate' obtained by the respondent. The document records the respondent as having been the person who applied for the death certificate. The document states that the respondent's father's inheritance **"…is confined to his wife…who is entitled to one eight of the inheritance and his adult son and daughter, [the respondent] and [the respondent's sister] who are entitled to the remainder of the inheritance as they are the principle [sic] lineages, giving the male twice the share of the female".**

135. There is a slightly different English translation of this same document provided by the applicant at [p.170]. The respondent spent some time arguing that Mr Ibrahim had attempted to "mislead" (the respondent's word) the court by 'intentionally' changing the meaning of the original Arabic. His complaint is that the translation at [p.170] contains the words "…the devolution of his estate…" whereas the document at [p.232] does not.

136. It is correct that the translations are different but, having read them several times, I find that the overall meaning is the same in both documents. Whether one says that the estate 'devolved' to the deceased's widow and his offspring, or that the inheritance is 'confined' to the deceased's widow and two offspring, the meaning is the same. It is not in dispute that the respondent's mother, the respondent, and his sister were the only heirs and in my judgment that is what that part of the document is driving at, whichever translation is adopted. Translation is in many ways an art not a science and it carries an element of subjectivity on the part of the translator. I am not persuaded that either translation is to be 'preferred' or that there is any material difference between the two in the context of the issues I have to decide.

137. Significantly, I find that the key part of the document is the section referring to the entitlement of the respondent, his mother, and his sister, to pre-ordained and set shares. That section is the same in both translations and is entirely consistent with the opinion of Mr Ibrahim.

138. In his oral evidence the respondent was asked why he had not disclosed the document at [p.232] earlier in proceedings (for example, in his replies to questionnaire at p.154 the respondent had said **"I do not have the Egyptian estate probate of my Egyptian father who died many years ago in Egypt"**) the respondent launched into a complicated tale in which he sought to persuade me that he didn't have the document at the time of his replies to questionnaire or, alternatively, that the death certificate is a different form "…on yellow paper".

139. At one stage in this description the respondent said that the applicant knew that the form was a different document on yellow paper because **"…my wife has seen it and she knows".** I asked the respondent at what point he says the applicant saw the document, as given that the applicant had left the family home in 2019 this answer suggested she had seen it prior to leaving the home and that, therefore, the respondent must have had the form in his possession for some time and certainly prior to drafting his Form E and replies to questionnaire. The respondent then backtracked and told me that his mother had had the document when she lived with them in England and that she had then taken it to Cairo when she left the UK and that he had asked her to email it to him but she refused to do so.

140. This answer is not consistent with what the respondent said in his replies to questionnaire. If the truth was that the respondent no longer had a copy of the document in his possession and had asked his mother to provide it but she had refused to email it, I do not understand why the respondent would not have said that in his replies. Instead, the response given by the respondent was that he did not have the document, with no further details given.

141. Ms Driver suggested to the respondent that he had been 'caught out' when the applicant was herself able to produce a copy of the Death and Inheritance Certificate, having made her own enquiries of the authorities in Egypt, and that the respondent had not expected the applicant to be able to uncover details about his inheritance. The respondent then told me that it was "illegal" for the applicant to

have produced the Death and Inheritance Certificate, and that she had "…damaged the children and our life and robbed me of £90,000 [this is a reference to what the applicant has spent on legal fees]" and that she had been "…digging illegally".

142. I find that the respondent has not given full and frank disclosure of his inheritance entitlement following the death of his father and has done his utmost to obfuscate and prevent the court having a clear picture.

143. I am fortified in this conclusion when I consider that the respondent also had the opportunity earlier in proceedings to provide a signed authority (the draft that was sent to him is at [p.261]) consenting to the release of information regarding any land or property (including bank accounts) that he has an interest in and that the respondent then refused to sign the letter of authority, complaining again that the English court had 'no jurisdiction' [I refer to the respondent's email at p.262].

144. I find that had the respondent had 'nothing to hide', he could and should have cooperated with the applicant's legal team in order to ensure that the court had a clear understanding of what he had (or had not) inherited. I infer from his refusal to cooperate that he wanted to hide his true entitlement from the court and the applicant.

145. Moreover, I note that it was the respondent who is listed on the Death and Inheritance Certificate as being the person who applied for that certificate. The respondent told me that this was because in Egyptian culture "…the son is the one who does things not the mother or the sister". In other words, by his own admission the respondent took charge in sorting out his father's financial and administrative affairs after his death - not his mother or sister - and I find that the respondent could have obtained the documentary evidence sought by the court with ease had he chosen to do so.

146. I find that as a starting point, on the death of his father in 2016 the respondent (together with his mother and sister) collectively inherited the respondent's father's 50% share of the Cairo flats in the proportions advised by Mr Ibrahim. This means that the respondent inherited 2/3 of the remaining 7/8 of the 50% share.

147. I also find that the respondent, his mother, and his sister inherited the residue of his father's estate in the same proportions. The respondent has not provided any details or documentary evidence as to what was in his father's estate other than the flats, but I find that it is more likely than not that his father would have had at least one bank account with cash in it. I find it inherently improbable that the respondent's father could be a man who attained the age of 90 and owned a block of flats in Cairo but did not hold a bank account and had no other assets whatsoever or who died 'penniless' as the respondent sought to persuade me in oral evidence.

148. As to the nature of the respondent's interest in the flats, it is accepted by the applicant that the respondent is not currently registered as a legal (co)owner and that his interest is held collectively with his mother and sister.

149. It is also agreed that there would need to be a measure of cooperation between the respondent, his mother, and his sister in a notarisation process and that a fee would have to be paid (the parties disagree on what the registration fee is – the applicant says it is around £2,000 and the respondent says it is significantly more than this). The respondent says there is no intention to register/notarise because

there is no benefit to him of doing this and it costs money to do so. His view is that the flats are 'worthless' because of the existence of lifetime leases (under the Egyptian "Old Leases Law") in favour of tenants who remain in occupation paying only nominal rent and that in those circumstances the cost of a notarisation process would outweigh the value of the interest (an interest that the respondent denied having in the first place, an assertion I have already rejected).

150. The applicant suggested through Ms Driver that the respondent and his mother and sister could agree to financially compensate the tenants in order to persuade them to forfeit the lifetime leases and make way for a sale of the building to, e.g., developers. I have no expert or independent evidence on this issue, although it is not in dispute that this is what the applicant's grandfather did with a similar block of flats in Egypt. It is also not in dispute that the Cairo flats are located in a prestigious and desirable area.

151. I also note that of the ten flats in the block, flat 2 was originally occupied by the respondent's mother but is now unoccupied, because his mother is in a nursing home. I reject the respondent's implausible oral evidence that she only stays at the nursing home at night, living in the flat in the day. This is also inconsistent with what he said in Form E about his mother's severe dementia and the nursing home care she requires. Flat 4 is used by the respondent's sister when she visits Egypt, but she lives full time in England where she is an academic at [a University]. Flats 9 and 10 are untenanted and are empty. They are the flats that the applicant and respondent used when in Egypt as a couple.

152. In other words, a significant number of the flats in the block are not subject to long leases in favour of third parties and I have not been provided with any evidence from the respondent that those flats could not be sold (provided the respondent and his sister and mother agree). Given that the respondent accepts he has a good relationship with his sister, and given his mother is in her 90s and in a nursing home (and the applicant controls her financial affairs), I accept the applicant's case that it is likely the respondent and his sister will arrange to either sell or lease those flats in due course. I find they are a resource available to the respondent.

153. As far as selling the whole block is concerned, I find it likely that the respondent and his sister will cooperate to achieve the best financial return available to them. It may well be that they choose to wait until after the death of the respondent's mother because, as it stands, they will inherit her 50% (2/3 to the respondent and 1/3 to his sister) and then they will collectively own the entire building. The respondent's interest in the flats is not immediately liquid because the notarisation process needs to take place, but it is within the respondent's power to cooperate with his family to take these steps and I find these administrative steps will more likely than not be taken in due course.

154. I do however consider that there is uncertainty with regards to the ultimate financial return on the respondent's interest because it is not clear on the evidence available to me how easy it will be to "pay off" the tenants and at what price, or how long this process might take. I have also found that the respondent and his sister may not wish to do this immediately and may prefer to wait until the respondent's mother passes away in the foreseeable future (his mother being in her 90s).

155. I note that the valuation report from Global Appraisal Tech (which was a drive-by valuation because the respondent refused access to the valuer) specifically states

[p.181] that the value does *not* take into account legal obligations or liabilities towards third parties such as leases and so I do not have any evidence of the impact of the lifetime leases on value or what it might cost to persuade the tenants to vacate.

156. Doing the best I can with the evidence available to me, and given that neither party has sought to obtain expert evidence as to the discount that should be applied taking into account the lifetime leases, I find as follows:

i. Of the ten flats, I find there are four flats that are not subject to third party obligations (because the leases granted for those flats are in favour of the husband and his sister and mother and they are not occupied by third parties).

ii. The total area of the entire block of flats is 1,800 square metres [p.186]. I can see from the GAT report that there are 6 floors in the block and each floor is 300 metres squared. I do not know the size of each individual flat but I have not been told that any of the flats differ in size and so it appears from the evidence supplied to me that each flat is the same square footage. I have no evidence of the square footage of the common parts of the building but doing the best I can with the evidence available to me I am going to apportion one tenth of 1,800 square metres to each flat as there are ten flats. This equates to 180 square metres per flat.

iii. Using the valuation method of 6,700 EGP per square metre used in the GAT valuation report [p.186], the total value of the four flats that are not subject to lifetime leases to third parties is therefore EGP (6,700 x 180) x 4, which is 4,824,000 Egyptian pounds or £159,192 Sterling at the current exchange rate (1EGP = £0.033).

iv. 50% of the £159,192 (£79,596) is owned by the respondent's mother. Of the remaining 50% (£79,596), 1/8 is also owned by his mother (£9,949.5). The final 7/8 are owned by the respondent and his sister 2/3 and 1/3 respectively. This means the gross value of the respondent's current interest is, in my judgment, **£46,431**.

157. I am not going to apply any further discount for sale costs and tax because I have ignored, for the purpose of calculating his interest, the value of the other flats that are subject to the third-party leases. Given that there are steps that the respondent and his sister are likely to take in the future to crystallise those interests (balanced against the uncertainty and cost of doing so) I do not consider it appropriate to make any further deduction when calculating a notional value for the respondent's Egyptian assets.

158. The respondent's inheritance comes from a source external to the marriage. Whilst the applicant and respondent stayed in flats 9 and 10 during their time in Egypt (and, at one stage, flat 2) they did not personally hold leases for those flats and I do not consider that by living in them for periods of time that action was capable of 'matrimonialising' them. I consider that the respondent's inheritance is non-matrimonial, and that the starting point is that the applicant is not entitled to share in it unless justified by need. They are, of course, resources available to the respondent to be taken into account when looking at his own needs and I must also have regard to them when reflecting on what is a fair outcome overall.

159. I also accept that the same four flats could provide a rental income to the respondent. Using the same methodology that I have applied to valuing the four flats, I will take the estimated market rent of EGP 40 per square metre used in the

GAT report and assume that each flat is 180 square metres. This equates to market rent of £238 per month per flat. The four flats that are not encumbered with the third-party leases could generate rent of £950 a month in total of which the respondent's share (according to the inheritance rules) would be **£277 a month**.

160. I also consider it likely that the respondent continues to hold cash in a bank account or accounts in Egypt. I accept the applicant's evidence that before she left the family home she knew that the respondent's Egyptian accounts contained around **£45,455** [p.167 §10]. I also accept that the respondent withdrew a total of 560,000 Egyptian Pounds (by way of liquidating two bonds and withdrawing cash) on 13 October 2019 as set out in the letter from the National Bank of Egypt at [p.199] without the applicant's agreement and that he has not given any satisfactory explanation for what he has done with this money. This equates to **£18,480** at today's exchange rate.

161. I agree that the respondent has failed to take reasonable steps to obtain statements for his account or accounts in Egypt and I consider that he has deliberately concealed these assets from the court.

162. Although I do not have documentary evidence of precisely what is held by the respondent in accounts in Egypt, adopting the principles expressed by the Court of Appeal in *Moher v Moher* [2019] EWCA Civ 1482 I consider that I am entitled to draw an adverse inference from the failure of the respondent to disclose evidence of the balances in the accounts. I infer that the respondent must hold at least **£63,935** in accounts in Egypt. I find that this sum is matrimonial because the respondent's own case is that his Egyptian accounts do not contain any inherited money and so it follows that the sums I find to be in the accounts were generated by the parties' efforts during the marriage and are matrimonial.

163. The respondent also gave oral evidence about how much he earned when working during the marriage and told me that the parties would take cash sums from England and deposit them in Egypt and vice versa which is consistent with my finding that the money in the accounts comes from money earned during the marriage.

164. Ms Driver has invited me to add a notional amount for interest accruing on savings in Egypt from the date of separation. I have no independent evidence of the appropriate interest rate to apply (in her questionnaire the applicant suggested it was 15% p.a. gross but I do not know if that is the case now). Moreover, if the sums were brought to the UK they would likely be subject to tax on the interest if tax had not already been paid in Egypt. I therefore decline to add an additional sum for interest.

The former family home

165. I determined at the PTR that the gross market value for the former family home would be the average of the market appraisals obtained by the applicant, namely **£683,333.** The reason for this was as follows.

166. At the First Appointment the court made detailed provision for the instruction of estate agents to value the family home. The respondent criticised the estate agents that the applicant had proposed in advance of the hearing and so was permitted, by 12 November 2021, to select five of his own choice of which the applicant was

to choose three. In default of him nominating any agents the order provided that the court would select three of the *applicant's* proposed agents.

167. The respondent appealed against the part of the case management order that had stated that he was not to be in occupation of the property during the visits by the estate agents. He was successful in respect of his appeal against that provision, and the appellate Judge (HHJ Farquhar) determined that the respondent would be permitted to remain in the property whilst in-person valuations were carried out.

168. Despite all this, by 12 November the respondent had still failed to comply with the direction for valuation of the home and so the issue was dealt with again at the case management hearing before HHJ Robinson on 13 April 2022 [p.59 §11]. At §14 of the case management order the respondent was directed not to obstruct the agents' attendance at the family home, in default of which the applicant [§15] had permission to restore the application to court.

169. The respondent resolutely refused to liaise with the applicant's solicitor over the planned attendances at the property by the instructed agents and did not respond to the agents' own communications to him. When one of the agents attended on 8 June 2022 the respondent spat in the agent's face. The respondent denies doing so, but I accept the evidence contained in the email from the estate agent at [p.211] having assessed that evidence in the context of my own observation of the respondent throughout this hearing as someone capable of being very aggressive, disrespectful, and rude when he perceives that things are not going his way.

170. Rather than incur the expense of yet another court hearing, the applicant instructed her solicitor to ask the same estate agents to do drive-by valuations instead.

171. When the issue came before me at the PTR in October 2022, with the final hearing less than eight weeks away, I had no confidence whatsoever that were I to direct a single joint expert valuation of the family home (or any further valuation of the family home involving entry by the agent/s into the home) the respondent would cooperate. I considered it more likely than not that the respondent would ignore any direction to absent himself for the valuation or to permit the valuer/s access. I determined that it would not be in the interests of justice to require the applicant to spend further money in legal fees pursuing another valuation and so I determined that the average figure would be used.

172. The respondent now complains that the average figure is too high but (if that turns out to be right, and I acknowledge that a property is only worth what someone is prepared to pay for it) this is a situation of the respondent's own making because he has deliberately obstructed the valuation process.

173. I will deduct notional sale costs (estate agents' commission and conveyancing fees) at 3%. After redeeming the mortgage and paying the early repayment penalty I find that the equity in the family home is **£569,844**.

Bank accounts and investments

174. I resolved the dispute between the parties about their updated bank account and investment balances by directing that the parties obtain documentary evidence of the up-to-date figures and provide them to me prior to judgment. I have compared the documents sent by each party and the amended schedule prepared by the applicant's solicitor and I find the account/investments to be as follows:

i. The applicant has bank account balances in her sole name of **£10,127** and investments in her sole name of **£181,983**.

ii. The respondent has bank account balances in his sole name of **£7,973** and investments in his sole name of **£127,102** (this is separate and in addition to what he holds in Egyptian accounts per my earlier finding).

iii. The parties have joint bank account balances of **£255,521.**

175. I consider that all of these accounts and investments contain matrimonial funds. I reject the respondent's assertion that the money is non-matrimonial because he 'earned' it as being unprincipled and simply wrong in law.

176. Both parties worked during the marriage at various times earning different amounts but they both made a full and equal contribution in their respective roles.

177. When the applicant was not working, or when she was in a less well-paid job than the respondent, she was nonetheless making a full contribution to the welfare of the family by supporting the respondent and caring for their children.

178. The law does not discriminate between the 'homemaker' and the 'breadwinner' and, in any event, both parties worked and contributed as best they could to the household economy. When the respondent gave up work in 2013 he benefitted from the applicant's salary as she continued to work after that time.

Pensions

179. The respondent has no pension. The applicant has a pension with with a CEV of **£280,543**. I have the benefit of a pension report which I have referred to earlier in this judgment when dealing with income.

180. The respondent argued that the money held in joint bank accounts and investments, as well as sums in the applicant's name, should be seen as 'his' pension. It does not appear to be in dispute that the respondent chose not to enrol in a pension scheme when he was working and that he preferred to have greater take home pay, some of which has resulted in the savings and investments built up during the marriage. But whether or not this was a joint decision during the marriage does not take this case any further in a situation in which both parties say that the respondent should have the benefit of a pension sharing order equalising income from pension on retirement and where I find that the sums in the bank accounts and investments are matrimonial. I observe that, in any event, it is common for spouses to make financial arrangements during a marriage that can no longer be sustained or afforded on separation.

The jewellery

181. The parties agree that they own jewellery which they say is worth between £20,000 (the respondent) and £30,000 (the applicant). They each rely on insurance documents in support of their case as to valuation. The respondent's documents are at [p.259] and the applicant's are at [p.250].

182. I do not find either of their documents conclusive on the issue of value because the £30,000 referred to on the Direct Line documentation (dated 10/10/2022) refers to 'valuables' in general without specifying what those valuables are.

Likewise, the respondent's documentation (dated 2014) also refers to 'valuables' of £20,000 out of total home contents insured at £50,000. I also consider it likely that the jewellery may have a value for insurance purposes that is higher than its open market resale value.

183. On the other hand, the applicant's documentation is more recent, and although the policy is in her name the respondent accepts he was the one who processed the insurance application and therefore he must have had some good reason for increasing the limit from £20,000 to £30,000 for 'valuables'.

184. I have also not heard any evidence about any other valuables individually insured by the parties other than the jewellery.

185. I find on the basis of the evidence before me that the jewellery is worth in the region of £25,000.

186. The parties agree that the jewellery is a mixture of items purchased by the respondent during the marriage and items gifted to the applicant by her family prior to marriage and also after marriage. The applicant told me that around half of the jewellery came from her family and the respondent did not challenge this assertion. She considered that the 'half' that was from her family was more valuable than the 'half' that was purchased by the respondent, but she accepted she did not have evidence of the value of individual pieces.

187. It is also agreed that the jewellery was hidden in four locations in the family home: in a cupboard upstairs, behind a drawer in the kitchen, behind a skirting board, and in the living room underneath a two-seater sofa that needed two people to lift it out of the way to gain access.

188. I heard lengthy evidence from both parties about the whereabouts of the jewellery and I have also considered what they each say in their written evidence.

189. I find it more likely than not that the respondent has the jewellery, either somewhere in the family home or in a location that he has not disclosed to the applicant. I make this finding, *inter alia*, for the following reasons:

i. The respondent has remained in occupation of the family home since the summer of 2019 when the applicant left the relationship. He had a greater opportunity to have access to the jewellery than the applicant;

ii. The applicant has only returned to the family home on two occasions since separation. Once in July 2019 and once in October 2021. On those occasions I accept she had limited time to look for the jewellery and her priority was to grab clothes and necessary personal items (having fled to a refuge in the middle of the working day with none of her belongings). On the first occasion, her mother-in-law was present in the property and I find it unlikely that she would have tried to remove the jewellery in the presence of the respondent's mother. On the second occasion she was accompanied by the police to collect winter clothing and there was very limited time for her to do so because the respondent had changed the locks on the property and much time was wasted calling a locksmith.

iii. I find that the respondent has tried to hide assets from the court (the money in Egyptian accounts) and to obstruct the court's enquiry into his financial resources (the Cairo flats) whereas the applicant has been helpful and open about her

financial position. I find the applicant to be a more credible witness than the respondent.

iv. I accept the applicant's evidence that the reason she opened a safety deposit box on separation was to deposit her engagement ring as she was moving into a women's refuge and was concerned about the safety of valuable items when moving into a communal setting. I reject the respondent's case that the safety deposit box was intended by the applicant to hold the missing jewellery.

190. I find that one half of the value of £25,000 (**£12,500**) is non-matrimonial, having originated from the applicant's family and been gifted to the applicant. I find that the other half (**£12,500**) is matrimonial.

Liabilities

191. The applicant has outstanding legal fees of £23,193. She also estimates tax to be paid on the joint savings/investments of just under £800. The respondent has no liabilities.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

192. The parties are of a similar age and are each living as separated persons. Whilst the applicant has continued to provide financial support to their adult son, their son is now 30 years of age and is a hospital doctor living independently with his girlfriend. I do not consider that the financial maintenance of the parties' adult son is a 'need' of the applicant's going forward. I am of the same view in respect of the parties' adult daughter, who is now aged 27.

193. On the face of it, the parties have the same needs with regards to housing and income.

194. A complicating feature when assessing the applicant's housing need is the fact that, due to the abuse she suffered from the respondent, her current address is confidential and she does not wish to provide the respondent with specifics as to where she intends to purchase a house in the future. She has provided property particulars for [a commuter town in Hertfordshire] for herself and [a town in Buckinghamshire] for the husband. She does not have a connection to [the town in Hertfordshire], but told me it is a straightforward commute from there to her place of work and that the particulars are an example of what it costs to purchase a suitable property within a reasonable commute of her job.

195. The applicant accepted that [the town in Hertfordshire she had identified] is an expensive area, and more expensive than [the location of the former family home]. She told me she would have preferred to live in [Buckinghamshire], as she did not want to spend all of whatever capital she receives at the end of these proceedings on housing, but said that she has had to move away from [the area] because of the respondent's behaviour towards her.

196. I accept that it is reasonable for the applicant to live somewhere other than the [area of the former family home]. The respondent continues to be convinced that the applicant should resume the marriage and I can entirely understand why the applicant wants to make a fresh start in a new area away from the respondent.

197. However, I do not consider that the new area *needs* to be [the particular commuter town in Hertfordshire]. It would have been more helpful had the applicant provided me with a spread of particulars for different locations within a radius of her work so that I could get a feel for what those different locations cost. The location she has chosen is a desirable market town with a fast commute into London and I take judicial notice of the fact that prices in [the commuter town] are comparatively high.

198. I have also accepted the applicant's case that she wishes to reduce her working commitments between now and retirement and that she would prefer to move jobs to a location closer to wherever she ends up living. This would seem to me to dilute the importance of commuting to [the Buckinghamshire town] in any event.

199. Whilst the respondent asserts that the properties proposed for him by the applicant [p.294] are all in what he described as 'cheaper' areas of [the Buckinghamshire town] to the location of the family home (and the applicant appeared to accept this) I note that the property particulars are for three bedroom properties and neither party 'needs' three bedrooms. It may be that the respondent could find a nicer location in [the Buckinghamshire town] if he looked for a smaller property. Again, it would have been more helpful to have had a spread of particulars in different locations rather than only two in [the same area]. As the respondent wants to stay in the family home he has declined to provide any alternative particulars for either party which is equally unhelpful.

200. I also do not accept that the respondent should fulfil his housing needs by moving to Egypt into a flat costing c.£60k as suggested, in the alternative, by the applicant [p.294]. I accept that the respondent has made his life in England and that whilst he may wish (as he told me in oral evidence) to ultimately return to Egypt in his very last years of life and (as he told me) to be buried there, I consider he is entitled to continue to live in England for the foreseeable future if he wants to.

201. However, I do not accept that the respondent needs to remain in the family home. The family home is a substantial detached property that far exceeds either party's needs.

202. In consideration of all the evidence I have heard and read on the issue of housing needs, I find that each party needs a **housing fund of £415,000**, to include purchase at £400,000, stamp duty of £7,500, and a further £7,500 for conveyancing and moving costs.

203. I also find that the parties have equal income needs on the basis that they each have a need to be rehoused in purchased accommodation without a mortgage, of a similar nature and size, and given that neither is responsible for a dependant within their home.

204. The applicant's proposed income budget is at [p.4] of her supplemental bundle. She claims a need for £6,173 a month. Whilst the respondent did not ask questions about the applicant's budget I have nonetheless scrutinised it myself and there are items claimed which I do not consider likely to be ongoing needs after these proceedings have concluded.

205. If the applicant does not have a mortgage or rent to pay she will not need £1,000 a month for that expense. The £500 for dental works 'over the next year' appears to me to be a capital expense rather than an ongoing monthly expense. Whilst it is commendable that the applicant wants to spend £390 a month on charitable

donations, this is not an expense that can reasonably be afforded on the income available to the parties. The estimated £1,500 for ongoing legal fees will no longer be applicable. I consider that a more reasonable figure for the applicant's budget is £2,500 a month.

206. I take the view that £2,500 a month is also a reasonable income need for the respondent. As I have said, there is no reason why the parties will not have equivalent needs going forward or why they should not both enjoy a broadly commensurate standard of living.

The standard of living enjoyed by the family before the breakdown of the marriage.

207. The parties enjoyed a good, comfortable standard of living. At one stage the respondent was a hospital consultant earning in excess of £100,000 per year and the parties owned a detached property in one of the more expensive parts of [the Buckinghamshire town]. They have been able to amass significant savings.

The age of each party to the marriage and the duration of the marriage.

208. The applicant is 57 and the respondent is 59. This was a very long marriage of 30 years.

Any physical or mental disability of either of the parties to the marriage.

209. I have already dealt with the issue of the respondent's health and the effect of the respondent's behaviour on the applicant in dealing with income and earning capacity.

The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.

210. Both parties made full and equal contributions over a long marriage. The children are now grown up and capable of being financially independent.

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.

211. I am going to deal with the issue of litigation conduct in the context of costs at the end of my judgment.

212. I have found that the respondent withdrew Egyptian investments for his sole use in October 2019 but I have already included those sums within the figures for my findings about his Egyptian accounts.

213. Likewise, I find that the respondent has retained the jewellery but I intend to deal with the value of that asset as part of the overall division.

214. Each party has complained that the other withdrew sums from their joint Barclays account. It appears common ground that the respondent withdrew £8,000 more than the applicant over the period 2019-2020. Some of this was used to pay the mortgage on the former family home. The respondent has transferred £7,860 to

his sister, but the applicant is owed £7,500 from her brother. Sensibly, the applicant has decided to no longer pursue an 'add back' case with regard to sums spent from the joint Barclays account.

215. The respondent was ordered to pay £30,000 to the applicant as a costs order at the conclusion of the divorce proceedings. I am told he paid this from joint savings. I consider that it would be inequitable not to address this fact in the overall division of the assets

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.

216. The parties agree that a pension sharing order should be made.

217. The respondent seeks a maintenance order on the basis that he says he cannot work and had the parties continued to live together he would have been able to live off the interest from all of their savings and investments. I will deal with this aspect of the case when setting out my decision.

Discussion and decision

218. The legal principles to be applied are not controversial. I outline them briefly for the parties' benefit as follows (relying on the helpful summary of Mr Justice Peel in *WC v HC* [2022] EWFC 22):

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

ii. Fairness means that there is no place for discrimination between husband and wife and their respective roles.

iii. In evaluating what is 'fair', the court has a broad discretion but is required to have regard to the s25 criteria, first consideration being given to any minor child of the family.

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

v. In accordance with case law, the three essential strands that I must draw together are described as 'needs', 'compensation' and 'sharing': Miller; McFarlane.

vi. In practice, successful compensation arguments are very rare: see the comments of Peel J in *WC v HC* (referring to *RC v JC* [2020] EWHC 466) as well as the reference to 'exceptionality' in the recent first instance decision of HHJ Hess in *TM v KM* [2022] EWFC 155.

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

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

ix. In accordance with the sharing principle, as a starting point the parties are ordinarily entitled to an *equal* division of the marital assets whereas non-marital assets are usually retained by the party to whom they belong unless there is a good reason to the contrary. In practice, 'needs' is usually the only justification for a former spouse sharing in non-matrimonial assets.

x. The court's characterisation of assets as being either 'matrimonial' or 'non-matrimonial' is not always straightforward and the evaluation must be carried out with the 'degree of particularity or generality appropriate in each case'; *Hart v Hart* [2018] 1 FLR 1283.

xi. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party.

xii. Needs are often said to be an 'elastic' concept. They cannot be looked at in isolation from the other s.25 factors. The standard of living during the marriage is relevant (although not determinative).

219. The starting point in this case is that matrimonial assets should be divided equally.

220. A significant proportion of the matrimonial assets are tied up in the value of the former family home. The respondent does not need to continue living in the family home and it must be sold in order to release equity to be divided with the applicant. The applicant will have sole conduct of the sale because I have no confidence that the respondent will cooperate with the sale process.

221. The net sale proceeds *after deduction of any* CGT are to be divided equally which will mean each party receives around **£284,922** from the proceeds of sale.

222. From the respondent's share of the net proceeds of sale, the respondent shall pay the applicant £15,000 representing 50% of the costs order paid out of joint funds. This means that from the net sale proceeds the applicant will be left with **£299,922** and the respondent **£269,922**.

223. This sum of £15,000 should be paid to the applicant directly by the conveyancing solicitor from the respondent's share of the proceeds of sale prior to the balance being distributed to the respondent to avoid any enforcement issues.

224. The respondent will retain the savings and investments in his own name as well as the matrimonial money in Egyptian bank accounts, in total **£199,010**.

225. The applicant will retain the savings and investments in her own name, in total **£192,110**

226. The £255,521 held in the parties' joint names is to be divided as follows. An equal division would provide each party with **£127,760**. However, the respondent must pay the applicant (from his share) (i) £12,500 being the value of non-matrimonial jewellery held by the respondent; and (ii) £6,250 being 50% of the value of the matrimonial jewellery held by the respondent. In total, **£18,750**. Alternatively, I

give the respondent the option of returning the non-matrimonial jewellery to the respondent within 14 days – that is to say by 4pm on 26 January 2023. If the non-matrimonial jewellery is returned, then the sum to be paid to the applicant will reduce to **£6,250**. I consider that to ease enforcement of my order the sums due to the applicant as set out in this paragraph should be deducted directly from the respondent's share in the joint account and paid to her directly before equal division of the remaining balance. The parties may provide a copy of the court order to the bank to ease this process.

227. The net effect of my decision is as follows:

	Applicant	**Respondent**
50% net proceeds of FMH	£284,922	£284,922
Applicant's sole accounts/investments	£192,110	
Sum re costs order	£15,000	-£15,000
Respondent's sole accounts/investments		£199,010
Joint savings and investments	£146,510	£109,010
Jewellery retained by respondent (unless non-matrimonial portion returned in accordance with alternative mechanism at §226)		£25,000
TOTAL	**£638,542**	**£602,942**

228. In other words, the effect of my decision is a broadly equal division of matrimonial assets. The slightly higher figure on the applicant's side of the balance sheet above is justified by the issue of the costs order from the divorce proceedings and the non-matrimonial nature of a proportion of the jewellery. Moreover, the applicant has continued to work post-separation and an element of the funds in her sole accounts is non-matrimonial having been earned post-separation. I consider that the modest difference in the parties' overall net positions in favour of the applicant adequately takes into account these factors whilst also acknowledging that the respondent has continued to discharge the mortgage on the former family home and that the respondent also has the benefit of his Egyptian inheritance.

229. Between now and sale of the former family home the respondent shall discharge the interest element of the mortgage. This is fair as he is living in the property and the applicant is in rental accommodation which she is paying for.

230. Each party's housing needs **(£415,000)** can be met with this broadly equal share of the matrimonial assets.

231. The parties will be left with significant surplus capital after meeting their capital needs. They can use this as they choose, including to top up income prior to and in retirement. The respondent will have surplus capital of nearly £200,000 after meeting his housing needs (and before taking into account the interest in the Cairo flats). The applicant will have just over £200,000, but she will need to discharge her legal fees debt and tax bill from this sum.

232. As the applicant's needs can be met from the division of the matrimonial assets that I have outlined, there is no need for the applicant to share in the respondent's

Egyptian inheritance which will be retained by him as a resource to deploy as he chooses.

233. I further order that there should be a pension sharing order in favour of the respondent in the sum of 49.2% of the applicant's pension fund so as to equalise pension income from age 67. This will provide the respondent and applicant with gross pension income of £9,644.10 a year each from age 67. The administrative costs associated with implementing the pension sharing order should be shared equally.

234. Between now and retirement age of 67, the applicant will meet her income needs from employment. The respondent is *capable* of also meeting his income needs from a combination of employment (once he is exploiting his full earning capacity in accordance with my findings) and rental income from the Cairo flats. Prior to (re)commencing work, the respondent will have surplus savings (after housing needs are met) which he can deploy to meet his income needs.

235. The respondent does not need maintenance from the applicant and in all the circumstances of this case it is highly desirable that there should be an immediate clean break terminating all financial ties between the parties and that is what I shall order.

Costs

236. The starting point for costs in financial remedy proceedings is that each party should bear their own costs. By FPR 2010 28.3(6) the court may depart from the starting point and make a costs order against one, or other, or both parties. Factors to be taken into account are listed at 28.3(7) and include: any open offer to settle made by a party; whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; the manner in which a party has pursued or responded to the application or a particular allegation or issue; any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and the financial effect on the parties of any costs order.

237. Rule 4.4 of Practice Direction 28A states that:

"The court will take a broad view of conduct for the purposes of this rule and will generally conclude that to refuse openly to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a 'needs' case where the applicant litigates unreasonably resulting in the costs incurred by each party becoming disproportionate to the award made by the court."

238. I am quite satisfied that the length and cost of these proceedings has been increased by virtue of the respondent's intransigent and wholly unreasonable position (seeking, in effect, 100% of the liquid assets) and the manner in which he has conducted himself during the litigation, including ignoring court orders and refusing to cooperate sensibly and reasonably with the applicant's solicitor.

239. Equally, I take into account that the applicant did not make an open offer until 21 November 2022 and that much time was also spent during this hearing (and in the preparation for this hearing) on the issue of the Cairo flats notwithstanding that they are inherited and of relatively modest value in comparison with the value of the matrimonial assets (although the respondent played his part in the delay caused

by exploring this issue by refusing to cooperate with disclosure and the valuation in the first place).

240. Overall, I consider it fair that the respondent pay a contribution towards the applicant's costs.

241. I intend to summarily assess costs. It is not in either party's interest for there to be a further costly hearing to assess costs and I have no confidence that the respondent will agree a sensible figure with the applicant.

242. The applicant's total actual costs to date are £58,593 according to the Form H and I have also had regard to the N260 at [p.331]. I am going to summarily assess the contribution to be made by the respondent to the applicant in the sum of **£30,000** inclusive of VAT. This sum is to be paid to the applicant directly from the respondent's share of the joint account in accordance with the mechanism outlined at §226 above.

243. I have already noted that the respondent will be left with a surplus of capital after his reasonable capital needs are met. To the extent that the £30,000 costs order reduces the savings that would otherwise have been available to the respondent to top up his income between now and obtaining employment, this is purely as a consequence of the respondent's unreasonable approach to this litigation.

244. As Francis J observed in *WG v HG* [2018] EWFC 70 [with my emphasis]:

> *"It might be said that I have assessed…needs at a given figure. If I have done that, then how can I leave [that party] with a lower sum which, by definition, does not meet [their] needs? This conundrum happens in so many cases. People who engage in litigation need to know that it has a cost. [They] … will have to make the sort of decisions about budget managing that other people have to make day in day out, but* ***I am satisfied that people who adopt unreasonable positions in litigation cannot simply do so confident that there will be an indemnity for the costs of the litigation behaviour, however unreasonable it may have been.****"*

245. The same approach was taken more recently by Peel J in *VV v VV* [2022] EWFC 46. Endorsing the principle set out in that judgment at [§12], I accept that the respondent may need to economise as a consequence of the costs order I have made, but this is a matter for him and is entirely the result of his own litigation behaviour.

Chattels

246. As part of her closing written submissions the applicant sought a number of items from the family home set out on a schedule, asserting that the respondent has retained items of china and silverware and asking that she have various other items on the basis the respondent can retain the china and the silverware. It is not clear to me what the respondent's position is regarding these items and the applicant did not deal with the issue of chattels in her s.25 statement or in oral evidence. On her form E the applicant has only itemised "china" valued at £500 and "silverware" valued at £500 and so it follows that all the additional items on her schedule must individually be worth less than £500.

247. In these circumstances I am not prepared to make an order in respect of individual disputed items at this stage. The applicant's *personal* effects (such as clothing, cosmetics etc) should be returned to her on a date to be agreed within the next 28 days (she may use a trusted third party to collect them from the family home). The contents of the home should otherwise be divided equally. If the parties cannot agree on the division of home contents then either of them will need to make a formal application within the next 56 days. In the absence of any application the contents will remain in the possession of the person that currently has them.

Post-Script – publication of this judgment

248. After circulating my decision in draft the respondent objected to publication of my final judgment in anonymised form. The applicant does not oppose publication.

249. The respondent's principal objection is that he considers it unfair that I have criticised him for sending case material to third parties in the course of these proceedings in circumstances where I have raised the possibility of the judgment being published.

250. There is a significant difference between the dissemination by one party of select material relating to the proceedings (chosen and presented from the perspective of that party alone) and the publication of a judgment summarising all the key evidence on which a decision has been based and explaining - impartially and accurately - the reasons for the decision.

251. There is considerable public interest in being able to read about the processes of the financial remedy court at work in a modest asset case such as this, and the public interest in having an accurate understanding of how financial remedy cases are decided increases in circumstances where the respondent has taken and threatened to take unilateral steps to influence public opinion in a partisan and inaccurate way.

252. I am satisfied that the publication of my judgment in anonymised form adequately balances the right of the parties to a private life whilst promoting transparency in the accurate and balanced reporting of financial remedy cases.