Neutral citation: [2025] EWFC 152 (B)

IN THE CENTRAL FAMILY COURT Case No: 1664-3828-8456-9879

C

Applicant

-and-

C

Respondent

- -

Mr Nicholas Chapman (instructed by **Bross Bennett Solicitors**) for the Applicant

Mr Phillip Bowen (under the Bar Public Access Scheme) for the Respondent save 5 March 2025 when the Respondent appeared in person

Hearing dates: 13th -17th January and 5 March 2025

Draft judgment circulated to the parties – 23 May 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 2nd June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

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

Recorder Christopher Stirling:

Introduction

1. I am concerned with an application for financial remedies upon divorce. This is my written judgment following my decision and short oral reasons given at a hearing on 5 March 2025. That was itself an extra day added to a five day listing from 13-17 January 2025. The matter has overrun largely as a result of the unfortunate illness of one of counsel involved on the last two days of the original five day listing. That is

clearly nobody's fault. Given the delays in this matter I did not want to further delay the parties hearing the outcome but, given the time constraints, I made clear I would give a fuller judgment in writing setting out my full reasons. This is it.

2. For reasons that will be apparent from the below this has not been a straightforward case factually or legally.

Parties

3. The applicant husband "H" is now 56. He has been represented throughout this hearing by Mr Chapman of counsel and Bross Bennett solicitors.

4. The respondent wife "W" now 43. She currently represents herself though has had the benefit of representation by Mr Bowen of counsel under the Bar Public Access scheme for the majority of the hearing including the hearing of all the evidence between 13-16 January 2025.

5. In both cases no disrespect is intended by these abbreviations.

Marriage

6. H comes from London but is of Greek Cypriot background. He previously worked in the IT industry as a project manager, but gave this up, as I find, in about 2018. Since that time H has had involvements with property developments; a failed restaurant/take away business, M Ltd, and an ongoing involvement with a family owned hotel in London, known as C Hotel. C Hotel is owned through a limited company, C H Ltd, in which H and his sister are equal 50% shareholders. The hotel had previously been owned by H's parents. The circumstances in which H came to own C Hotel is one of the issues I must deal with.

7. W is of Russian origin where she was born and lived until the mid-1990s. At that point W came to Switzerland for her education. She remained there until she married H. W's father was in the military, the air force, of what was then the Soviet Union. There is some dispute as to the rank he rose to – whether Lieutenant Colonel or General, but nothing turns on this point. It seems he was known informally, at least to H, as "the General". Again meaning no disrespect I shall use that name as a shorthand in this judgment.

8. In any event, and subsequent to his military career, the General made significant sums of money following the demise of the Soviet Union. How he did so is unclear but that matters not. His wealth was such that he could send his daughter to be educated in Switzerland and the General and his wife (W's mother) were able to buy and live in a Chateau in France from 2003 until his wife's death in 2021. The General also had relatively significant sums of money held through off-shore structures. The precise extent of his wealth is a matter of significant dispute in this case. This matters because the General's died on 20 June 2021 and the extent of his estate, that now passes to W along with her brother, is now a significant resource in the case,

9. H and W met in Switzerland in 2003. At the time W was 21 and a student and H was 34 and an IT contractor then working in Switzerland. Given the age gap, W rather deferred to H and, in particular, in respect of financial decisions let H take the lead. In my view this is a feature, completely understandable at the outset, that continued throughout their relationship.

10. The parties married on 3 June 2008 in Cyprus after which W came to live in England with H and it is in England, and London in particular, where the parties made their married life and where they both remain. They have two children: a girl aged 15 and a boy aged 13.

11. The parties date of separation is put at 1 June 2022 albeit both parties continued to live in, and continue to this day to live in, the former matrimonial home ("the FMH").

12. Divorce proceedings started on 28 July 2022 though there was not a conditional order pronounced until 30 July 2022.

Principal Issues

13. A particular feature of this case has been the extent to which both parties, and indeed their extended families, have seen the other's case as an unwarranted attack on the inherited wealth received from their respective families. This attitude has significantly contributed to the costs and no doubt to the fact that this case has proven incapable of settlement. In my view both sides have inflated views of the family wealth of the other's family. This is particularly true of H who, it seemed to me, thought of the General as almost a Russian "oligarch". These views, and the mutual suspicion they have engendered, have become entrenched in the animosity of these proceedings.

14. A large number of issues were raised in the course of evidence and submissions. I have listened to all of these but I do not feel the need to resolve all of them. The following issues are in my view the most pertinent and those which need to be resolved prior to making any determination:
    a. The extent to which H's rental property at 27 R Avenue is matrimonial property including whether the mortgage thereon should be treated separately as a matrimonial debt;
    b. The extent to which H's interest in C H Limited is matrimonial;
    c. The extent to which H owes debts to family and friends and whether any such loans should be treated as hard loans or soft loans
    d. The extent to which the parties have any outstanding liability to Brocton Business Limited ("Brocton") (A BVI company used by the General to hold a significant part of his family wealth) and, if such liability subsists, how it is to be met;
    e. The extent of W's inheritance from the General and the extent to which she must account to her brother, if at all, in respect of what she has already received from that inheritance to date

Litigation History

15. I do not propose to set this out at any length. Formal proceedings were begun by H issuing Form A as long ago as 6 October 2022. There was an FDA before Recorder Moys on 31 January 2023 and shortly thereafter, on 27 March 2023, an MPS/LSPO hearing before DDJ Morris at which H was ordered to pay £2,000 a month to the joint account. H was also ordered to pay W's costs of that application summarily assessed in the sum of £10,831.50. These have not yet been paid and were not to be enforced until the conclusion of these proceedings. The matter did not settle at the FDR on 6 November 2023. It was initially listed for trial in July 2024. However, the case was adjourned on that occasion as there had not been at that point a conditional order in the underlying divorce suit. The trial was then listed for this hearing.

16. One of the significant feature in the litigation history is costs. H has incurred costs of £173,315, at least to the time of his Form H1, of which £172,577 have been paid. W's costs were said to be £265,581 to the date of the first PTR in May 2024. She has not filed a Form H1 for this final hearing. I have little doubt however her costs will be little shy of £300,000. Despite the issues in this case these costs are wholly disproportionate given the total value of the assets and the fact that for significant, albeit different, periods of the case, both parties have represented themselves.

Evidence

17. The evidence in this case has been voluminous, if not always enlightening. At the outset of the trial I had three bundles: a main trial bundle of 564 pages; a supplemental bundle of 600 pages and a further bundle prepared by W of 97 pages. In addition, in the course of evidence, further loose leaf documents were provided and between the close of evidence and submissions I received a further bundle of documents from W of another 165 pages. Despite the volume of this evidence there remain areas, particularly in respect of the full extent of W's inheritance from the General, where the evidence is far from comprehensive.

18. Given the volume of evidence I will only refer to those matters which I find are relevant to my decision. That does not mean that I have not taken account of other matters merely that it has not been necessary to refer to them in this judgment.

19. As far is live evidence is concerned in addition to H and W I heard from six further witnesses who gave live evidence. In respect of these additional witnesses I will deal with my impression of their evidence when dealing with the specific issues to which their evidence relates.

20. I will briefly outline my impression of H and W in giving their evidence. H was generally a confident and at first convincing witness. However, I found him prone to exaggeration especially when it came to his estimate of the wealth of the General and thus the assets that now form part of the General's Estate. One particular incident stood out: his evidence initially suggested that he had witnessed W and her family regularly returning from Switzerland with very large quantities of cash. On pressing, however, he conceded that his only direct evidence was that on one

occasion he had witnessed a small envelope of cash and assumed it had come from Switzerland. Another example was his evidence in respect of what was said to be a room at the General's flat in Moscow said to be full of extremely valuable artwork. His evidence was the this was the room in which the parties' children stayed when the family visited Moscow. He said the boys were told to be very careful in respect of these valuable paintings. Whatever advice was given to young boys it is wholly implausible they would be allowed to stay in a room that genuinely contained really valuable artworks. Further H gave the impression that he had detailed conversations with the General about financial matters but that sat uneasily with the fact the General spoke very little English and limited French and H spoke no Russian. H was also prone to minimising his own inheritance and his evidence in respect of alleged loans from his parents was in my view not entirely frank. I deal with this further below. I thus treat H's evidence with considerable caution, and look for corroboration where possible.

21. W was a much more cautious and careful witness. I generally accepted her evidence in respect of the domestic situation and the extent she relied on H in respect of information re their financial affairs. However again there were elements of her evidence that I found wholly unconvincing. This was especially so in respect of her evidence in relation to the General's estate. For example it was quite clear to me that her initial case, as given both to the authors of the tax report into the General's estate, Everfair Tax, and in her answers to questionnaire, was that whilst her brother was to retain the General's Moscow flat, and indeed the entire Russian estate this would be offset against other distributions in the Estate so the entirety of the estate was to be shared 50:50. By the time of her more recent evidence, following the line of her brother, she was saying that it was her parents wish for her brother to have the flat, and indeed the Russian estate, outright with no offsetting. I found her explanation for this change in stance, namely that her previous solicitors had not understood her instructions, implausible. I therefore again treat W's evidence with some caution and again look for corroboration where possible.

<u>Computation of Assets</u>

22. Save for the issue of debts and the extent of W's inheritance the computation of assets does not present too many difficulties and much is agreed on the ES2.

23. The FMH has an agreed equity of £1,134,998. That is based on the mortgage figure at the time of the evidence in January and I accept there have been arrears since then so the equity may now be a little less. There is an addition a separate but adjacent parcel of land. This was originally purchased for £30,000. The SJE was of the view that given its integration into the plot of the FMH and lack of independent development potential it would not have a separate value and thus gave it nil value. I agree with H's submissions that it must have some value even if in practice it would always be sold with the FMH. As the SJE did not value the FMH in aggregate with the land I propose to simply add the purchase price value of the land to the separate FMH valuation. I ignore sales costs on the land element as they would likely be offset by inflation. I accept that this is somewhat rough and ready but I am satisfied it is

appropriate. I thus give the aggregate value of the FMH and adjoining land as £1,164,998.

24. As far as the property at 27 R Avenue is concerned there is no dispute the net equity is £310,719 How I should treat this property, which H inherited from his mother, is something to which I shall return.

25. The only other real property is what are described as two derelict houses in Cyprus. These again were inherited by H and have a gross value of €6000. Approximately £5,000 after sales costs.

26. I then turn to C H Limited. This is the corporate vehicle which holds C Hotel. It also in turn wholly owns a company called D M Ltd which in turn owns a nearby plot of land used as a car park. C H Limited has been the subject of an SJE report by a forensic accountant Thomas Blake Wachner of Kreston Reeves LLP dated 1 November 2023. The SJE report in turn has been the subject of questions primarily from H. This report produces alternative valuations depending on whether C H Limited is the subject of a share sale or primarily an asset sale followed by a winding up of the company. The former provides a net value of H's 50% shareholding before CGT at £1.11 M and the latter at £1.136 M. The difference almost entirely being explained by the corporate tax treatment of the differing types of sale. Both valuations rely on the net asset basis of valuation. Unsurprisingly W contends for the higher and H for the lower figure. In fairness to H he points out that of the known offers to buy C Hotel, of which there have been a number, the majority, but not all, have been interested in buying the assets rather than the company as a going concern.

27. H also contends that there should be a further discount for sales costs. This is something he raised with the SJE in questions. The SJE in principle accepted that there would be an element of sales costs but he did not alter or revisit his valuation. H advances a figure of 5% for sales costs as to which he proposes 50% should be deducted from the net value of H's share. Mr Chapman on his behalf concedes this is an estimate without any supporting evidence. He also accepts that any sales costs would come off the gross receipts by the company prior to corporate taxation. It would not be deducted from H's net share prior to CGT. I accept that there would likely be some sales costs but it is very hard to be precise as to what they would be and I am dubious they would be as high as 5%.

28. Both parties accept that added to H's share in C H Limited must be the repayment of his Director's Loan Account. This stands at £160,657 as at the most recent accounts.

29. I am not troubled in this case with arguments as to liquidity. It was common ground in the evidence of both H and his sister, the other 50% shareholder, that they wanted to sell C H Limited as soon as possible. It is not a particularly profitable enterprise as a going concern, as the SJE report makes clear, and neither H nor his sister have any particular desire to remain involved with the business their parents built up. Indeed I suspect that but for these proceedings it would already have been sold. Given the interest shown to date in terms of firm offers to buy I am satisfied that there is a

relatively good market for the hotel and that it will sell in relatively early course. It is thus not appropriate to apply any liquidity discount.

30. The ultimate net values contended for by the parties for H's aggregate interest including his DLA is £1,042,577 by H and £1,170,667 by W. Doing the best I can I propose to take a figure of £1.1M as the value of H's interest. This takes into account an element of sales costs as referred to above and also the fact that the SJE valuation is now over a year old and there will likely be some inflation. As with all corporate valuations there is an element of approximation which I openly accept. I will return to the question as to what extent this is a matrimonial asset.

31. As to other assets these largely speak for themselves. W has significant sums in her bank accounts coming from her inheritance – in particular the sum of £941,843 (€1.134M) in a Swiss bank account with Banque Cramer. She did have a further £228,000 in a UK Barclays account until relatively recently but approximately £155,000 of that was in late November 2024, thus just before the start of this trial, paid away to her brother. This is said to be on account of his share of the General's French estate. I shall return to this when discussing the General's estate. The account now only has some £29,000 left. H's bank accounts contain very modest sums which can effectively be ignored.

32. Debts are more complicated and controversial and I shall deal with these in more detail below. The only straightforward debt is H's commercial litigation loan which stands at £61,020.

Law

General Principles

33. Beyond the well known statutory criteria in s.25 of the Matrimonial Causes Act 1973, which I of course have in mind, the general legal principles in financial remedy cases have been helpfully summarised by Peel J in ***WC v HC*** [2022] EWFC 22 as follows:

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

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

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

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

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

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

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

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

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

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

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

*xii) Needs are an elastic concept. They cannot be looked at in isolation. In **Charman (supra)** at [70] the court said:*

"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)".

xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:

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

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

*xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF** [2017] EWHC 1093 at [18];*

"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in ***N v F*** *[2011] 2 FLR 533 at [17-19]*

Matrimonial Property

34. I have also been taken to a number of other authorities on matrimonial property including those dealing with the concept of "mingling" and "matrimonialisation".

35. Of particular relevance to the issues in this case is ***ND v GD*** [2021] EWFC 53 where Peel J said:

"*48. The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; Hart v Hart [2018] 1 FLR 1283. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.* ***I accept the submission on behalf of H that in the ordinary course of events (acknowledging, of course, that each case will turn on its own facts) the attribution of income derived from a non-marital asset towards the domestic economy will generally not convert the character of the underlying capital asset from non-marital to marital and therefore susceptible to the sharing principle****; I am fortified in this analysis by the decision of Roberts J in WX v HX [2021] EWHC 242.*" (my emphasis added)

36. Further, in ***WX v HX*** [2021] EWHC 242, to which Peel J refers in ***ND V JD*****,** Roberts J dealt with the argument that if the income from a non-matrimonial assets is used for the good of the family then this renders the underlining assets matrimonial as follows:

"[*62] … Can it be said that such financial cross-fertilisation provides a foundation for an argument that H's pre-marital property had somehow become 'part of the economic life of [the] marriage … utilised, converted, sustained and enjoyed during the contribution period' ? This, it seems to me, is part of the dilemma in determining what is meant by the oft quoted process of 'mingling' non-matrimonial property with matrimonial assets. … It seems to me that the application of income generated by a capital asset (such as a commercial property portfolio) in order to sustain - in part - the domestic economy of a marriage (or, indeed to prop up the temporarily ailing fortunes of a parallel but unrelated business venture) does not thereby change the fundamental nature of that capital asset. … It stands in exactly the same position as a significant sum of money inherited by a party prior to the celebration of a marriage.* ***If those funds are invested and preserved throughout the marriage without any inroads being made into the underlying capital value, the use of interest generated in respect of those funds does not, in my judgment, impugn the fundamental nature of the inheritance as non-matrimonial property***." (my emphasis added)

37. I was also referred more generally to the Court of Appeal decision in ***Standish v Standish*** [2024] 2 FLR 966 and in particular the passages at paragraphs [160] to [166] where it was explained that the concept of matrimonialisation should be "*applied*

narrowly" but also that "*this is not a hard and fast line but remains a question of fairness"*. I am acutely aware ***Standish*** has now been argued in the Supreme Court and judgment is awaited. I doubt, however, that the final decision will significantly impact on the application of the law to this case.

38. In ***Standish*** the earlier Court of Appeal decision of ***Hart v Hart*** [2018] 1 FLR 1283 was approved. In respect of that case I was taken to the judgment of Moylan LJ at paragraph [85] where he said:

"*It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. An asset can, of course, be entirely the former, as in many cases, or entirely the latter, as in K v L. However, it is also worth repeating that an asset can be comprised both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word "reflective" because "reflect" was used by Lord Nicholls in Miller (paragraph 73) and "reflective" was used by Wilson LJ in Jones (paragraph 33).* ***When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science***." (my emphasis added)

39. I was also asked by W to consider the case of ***IX v IY*** [2018] EWHC 3053 (Fam). In her closing submissions W suggested that this case was authority for the proposition that where loans used for matrimonial purposes were secured on what otherwise was non-matrimonial property, this rendered the entirety of the underlying security matrimonial property thereafter. I can find no support for such a proposition in this authority. It would in my view be a surprising if it did. Rather, on my reading, ***IX v IY,*** supports the proposition, amongst other things, that where significant non-matrimonial capital is deployed in the course of the marriage that this may be considered an unmatched contribution capable of resulting in a departure from equality in dividing the remaining matrimonial property.

Hard/Soft Loans

40. Given the number of loans in this case it is unsurprising I have been taken to the decision of HHJ Hess in ***P v Q (Financial Remedies)*** [2022] EWFC B9 and his review of the authorities in respect of "hard" and "soft" loans therein. In particular I was referred to the summary of the factors a court may bear in mind when deciding whether any particular loan is to be considered "hard" or "soft" at paragraph [19] thereof. I, of course, bear these factors in mind.

41. However, it is perhaps important to note that HHJ Hess was not proposing some fixed formula, still less a legal test to which a particular loan should be subjected. In the law of debt, of course, there is no such distinction between "hard" and "soft" loans. The distinction is rather, or at least usually, between a loan or a gift.

42. However, in financial remedy proceedings even where there is little doubt money is advanced by way of loan that is not necessarily the end of the matter. For the court can, and often will, go on to consider when, if at all, the debt will in practice fall to be repaid. It is to the factors which a judge may bear in mind in carrying out such an

evaluative exercise that ***P v Q*** refers. Thus as to what weight any particular loan liability should bear when considering the overall exercise of the court's discretion in respect of matrimonial orders.

43. In this regard the meaning of a "hard" debt or loan is fairly straightforward – it is one that must be paid either immediately or in strict accordance with its repayment terms. Such a debt should unquestionably appear on any asset schedule. It is of course not the function of the court in financial remedies to ensure the repayment of any such unsecured debts – the Court of Appeal made such clear as long ago as its decisions in ***Mullard v Mullard*** (1982) 3 FLR 330 and reiterated the point in ***Burton v Burton*** **[1986]** 2 FLR 419. The financial remedies court is not a court of quasi-bankruptcy. The court is merely recognising a financial reality in considering the fairness of the orders it proposes to make.

44. A "soft" debt or loan can, it seems to me, have at least two possible meanings. Firstly, it can mean that the court concludes the person making the loan is never going to insist upon repayment. Thus, that though the loan is legally contractually binding, it is in practice likely to be written off or at least never pursued or enforced. This is usually because of the close family or other relationship between the parties and often, but not always, apt when the parties are parent and child. The court can thus effectively ignore the debt and remove it from the liabilities section of an asset schedule. The court must of course be a little cautious about this as its determination is not in any way binding on the parties to the loan. A creditor is in no way precluded by a finding a loan is "soft" from nonetheless pursuing the debtor spouse for repayment. However, the court is equally not bound to accept the mere say so of the debtor and creditor as to their intentions in this regard.

45. The finding of a "soft" debt or loan can however also mean something more nuanced. That is that the debt whilst ultimately intended and expected to be repaid will not in the short term be pressed or enforced. This is again usually by reason of the personal relationship between the debtor and the creditor: either because they are both members of the same wider family or are close and longstanding friends. In this regard the treatment of the debt recognises practical liquidity. In such a situation whilst the debt/loan is perhaps best not removed entirely from the balance sheet and ignored altogether, it may nonetheless be put to one side when considering the immediate funds available, for example, to meet immediate housing need. This is often how loans from close family members to fund legal fees are treated. Thus the court may conclude the loans will ultimately fall to be repaid, but just not yet. The court often need not trouble itself unduly with such loans, though it is often the case that such loans give rise to disproportionate forensic attention from the parties.

Litigants in Person

46. In answer to some of the criticisms made of her disclosure, in respect in particular of her inheritance, W relies on the fact she is a litigant in person by way of excuse for any perceived failings. In relation to litigants in person, and the extent to which allowance should be made for that fact, I have well in mind the decision of the Supreme Court in ***Barton v Wright Hassall LLP*** [2018] UKSC 12 and the judgment of Lord Sumption therein where he said this:
"[18] …Their (litigants in person) lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it

will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties…

…The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

47. It seems to me these observations apply with equal effect in the context of the Family Court and the FPR. The overriding objective in the FPR being expressed in like terms to that in the CPR. There is a universal obligation on parties in financial remedy proceedings to provide full and frank disclosure. It does not depend on the parties' representation or lack thereof. A litigant in person cannot expect to be allowed to give less by way of disclosure or be less frank in respect of their financial resources than a represented party. All the more so where the knowledge of the full extent of their resources is within their own exclusive knowledge and their spouse unlikely to have much independent knowledge, if any, of the detail. It may be a litigant in person needs some prodding or clear explanation of such duty or what it is they need to disclose but once that is done there can be no question of lower standard of disclosure applying. Failure to disclose will lead to the same inferences being drawn as discussed below.

Disclosure

48. The relevant law in cases where a spouse fails to make proper disclosure of their assets was set out by Moor J in ***Williams v Williams*** [2024] EWFC 275

"65. The Wife's case is that the Husband is hiding considerable assets. I remind myself that the burden of proof is on he or she who seeks to assert a positive case as to disputed facts, although it is for the respondent to the application to provide to the applicant and the court all the relevant information. This has been described as the duty to provide full and frank disclosure. The standard of proof is the civil standard, namely the balance of probabilities.

66. There have been a number of authorities over the years as to how the court should deal with cases involving alleged non-disclosure. In J v J [1955] P 215, Sachs J said at p227:-

> *"In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a husband has - and his wife has not - detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference - especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative."*

67. And at p229, he said:-

> *"...it is as well to state expressly something which underlies the procedure by which husbands are required in such proceedings to disclose their means to the court. Whether that disclosure is by affidavit of facts, by affidavit of documents or by evidence on oath (not least when that*

evidence is led by those representing the husband), the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject

49. However I also bear in mind the observations of Mostyn J in ***NG v SG (Appeal Non-Disclosure)*** [2012] 1 FLR 1211 at paragraph [16] thereof that any inferences drawn as a result of non-disclosure must be properly drawn and reasonable on the evidence. Vague evidence of opinion and belief as to wealth is inadmissible and the failures of disclosure in and of themselves do not support the other parties estimates of such wealth.

Open Positions

50. I now turn to the parties' positions before me. The parties open positions are set out in the table below

	H	**W**
FMH	Sell – W to have 41.24% of the proceeds of sale and H 58.76%	To be transferred to W outright with W to pay off joint mortgage
Lump Sums	None	1. £51,035 2. £175,000 to be paid to Brocton Business as contribution towards the alleged outstanding loan 3. Overage payment in respect of any net sum H receives in respect of his interest in C H Limited above £1.3M
C H Ltd	H to retain his 50%	H to retain his 50%
Other liquid assets	No order	No Order
Clean Break	Yes	Yes
Child maintenance	CMS	Not addressed
Costs	1. W not to enforce existing costs order re MPS or enforce contribution by H towards expert reports 2. W to pay a proportion of his costs	H to pay an unspecified sum in costs

Resolution of the identified Factual/Legal Issues

The extent to which H's rental property at 27 R Avenue is matrimonial property including whether the mortgage thereon should be treated as a matrimonial debt

51. 27 R Avenue was a property formerly owned by H's mother. It was transferred to H alone, mortgage free, as a gift in advance of inheritance. Whilst there was some evidence that suggested that H and W had lived there for short periods this all related to the time that the property was still owned by H's mother. Since the transfer to H, 27 R Avenue has been always been rented and the rental income paid to H. I entirely accept that the income from this rental was used by H from time to time to defray household and thus matrimonial expenditure. However, as the authorities cited above such as ***JD v HD*** and ***WX v HX*** make clear, this in and of itself is does not suffice to render 27 R Avenue matrimonial. It is in my view clearly an inherited property and not one that derives from matrimonial endeavour. It is thus, subject to what I say below about the mortgage, non-matrimonial property.

52. H, however, seeks to argue that whilst 27 R Avenue is itself non-matrimonial property the interest only mortgage thereon – in the sum of £350,744 - is a matrimonial liability. This is said to be the case because the monies raised thereon, subsequent to the transfer to H, were used to meet matrimonial outgoings in the course of the marriage. This latter factual proposition not being disputed.

53. This argument is superficially attractive but is one that I reject.

54. Firstly, it seems to me that there is something wholly artificial about separating a secured liability from the security to which it relates. Whilst I reject W's argument that the fact 27 R Avenue was used as security for a debt applied for matrimonial purposes renders it wholly matrimonial it seems she is on much stronger ground in saying that to the extent it is used as security for a matrimonial debt that element is matrimonialised. Thus both the debt and the extent of the property that secures that debt are treated as matrimonial – the one cancelling out the other. The balance of 27 R Avenue, the equity after the secured lending is repaid, remains non-matrimonial.

55. Secondly it seems to me that the position is analogous to that where part of an otherwise non-matrimonial fund is used to meet matrimonial outgoings. Once the fund is depleted it cannot be recalled or suggested that the other spouse has some direct liability in that regard. Here once the equity in what is otherwise non-matrimonial property is reduced by way of borrowing I cannot see that it should be added back in part by creating a shared matrimonial liability.

56. There is of course another way to look at this. That is, instead of labelling the liability as "matrimonial" and treating it in its entirety as a matrimonial liability separate to the non-matrimonial security, to suggest that the use of borrowing against the non-matrimonial asset is an unmatched contribution that should be taken into account in any distribution of matrimonial assets, albeit perhaps not on a pound for pound basis. This is how the court analysed matters when dealing with use of significant non-matrimonial capital assets to meet matrimonial outgoings in *X v Y.*

57. In this case however, the use of non-matrimonial property is not all one way. There are clearly balancing non-matrimonial contributions to the family finances coming

from W. For example part of the reason for the borrowing on 27 R Avenue was to repay part of the loan which H had taken from Brocton – which I deal with more fully below. Some £230,000 was applied for this purpose. However, only £120,000 was repaid directly to Brocton. The balance of the repayment at this point, £110,000, was paid to W at the General's (the sole beneficial owner of Brocton as I find) express direction. Thereafter a further £120,000 was "repaid" by a payment to W – again at the General's direction. Thus, in practice, the loan was partly written off and the parties benefitted therefrom. The total of this right off was £230,000. This was in practice an unmatched contribution by W through her family. Further, for a long period W post 2021 was supporting the family from a credit card facility with Corna Banca backed by Brocton's bank accounts with Banque Cramer. This included paying the children's school fees. That again is an unmatched contribution. It is artificial to calculate a precise running account as between the respective contributions. However, in total it seems to me that W through her family wealth contributed as much, if not more, by way of non-matched contributions to the marriage as H did by way of the 27 R Avenue mortgage: the one thus effectively cancels out the other. It is thus, on the facts of this case, inappropriate to make an *X v Y* type adjustment.

The extent to which H's interest in C H Limited is matrimonial and the treatment of the "loans" from H's parents used to acquire C Hotel

58. The circumstances in which H and his sister acquired C Hotel are relatively well documented and after some confusion the position is tolerably clear. Both the evidence of H and his mother, and indeed his sister, was consistent to the effect that it had originally been intended to gift C Hotel to H and his sister from their mother and father. However, at the time, there was concern as to H's father's health and a fear that he would die shortly after the gift was made leaving a potentially substantial inheritance tax liability. This fear was not unfounded as H's father died some four years later.

59. It was therefore decided to 'sell" C Hotel to H and his sister. The scheme arrived at was that they would create a company, C Hotel Limited, which would buy the hotel for £1.3 million. The price would come in part from a commercial loan of c£1 million from Bank of Cyprus and the balance by way of a promissory note to be paid by C H Limited within 30 days of completion in the sum of £300,000. This loan note was in fact ultimately repaid by C H Limited by way of money being lent to C H Limited by H and his sister which had in turn come from H's parents from part of the proceeds of sale they had already received for the purchase. There is thus an obviously circular element in this payment scheme.

60. In fact Bank of Cyprus, who were fully aware of the arrangement, as were the respective solicitors, insisted that some of the money they were to advance be retained as liquid funds by way of additional security – some £260,000. No doubt a little concerned that this was not an arm's length transaction. This was to be provided by H's mother and father undertaking to repay the sum of £260,000 from the purchase price. This they were to do by providing the £260,000 back to H and his sister by way of a loan who in turn would loan the sum to C H Limited to be held in a nominated account with the bank.

61. The way the transaction worked on completion of the purchase on 19 March 2010 was thus as follows. The purchase price of £1.3 million was paid to H's parents as to £1 million in cash from a Bank of Cyprus loan and £300,000 by way of a promissory note issued by C H Limited. From the £1 million received by H's parents £560,000 was loaned back to H and his sister who in turn loaned this sum to C H Limited. From this £560,000 C H Limited paid the sum due on the promissory note to H's parents, within the 30 days and thus avoiding any interest, and deposited £260,000 by way of extra security with Bank of Cyprus. The £560,000 showed thereafter as a directors' loan, from H and his sister, in C H Limited's accounts. As can be seen from the above what H's parents actually received net was £740,000. In practice they received less as all of the fees concerned with the transaction were met by the parents. I am told a further £90,000 was spent on this. So the parents ultimately received £650,000.

62. In 2013 the lending to C Hotel Limited from Bank of Cyprus was refinanced with Barclays. The sum advanced in lieu of the £1M advanced by Bank of Cyprus was only £700,000. It appears at this point the £260,000 extra security held by Bank of Cyprus was used to partly pay down the existing lending. The shortfall between what was outstanding to Bank of Cyprus, £740,000, and what Barclays would refinance, £700,000, was met from another "loan" from H's parents to H and his sister and in turn loaned to C H Limited. The total sum advanced was in fact greater than the shortfall as it amounted to €200,000 – about £170,000 at the time. I am told the extra c£130,000 was injected as liquid capital to assist the business.

63. So by 2013 H's parents had apparently loaned him and his sister £730,000. £820,000 if the legal fees are included though presumably some of those were their own fees. H now says his half of this liability, £410,000, should show as a debt that he owes his mother, his father now being dead, for the purposes of these proceedings.

64. In fact H put his lability higher than that at the outset of proceedings. For he claimed that part of this debt, £150,000, was his half share of the money due under the promissory note and thus incurred interest under that note now amounting to a further c£100,000. The promissory note was also relied upon as showing that at least part of the liability to H's parents was subject to a written agreement. Thus adding an element of formality to the loan arrangement.

65. This latter point can be refuted shortly. For as set out above the promissory note was clearly not from H and his sister to H's parents but from C H Limited to H's parents. Moreover, the promissory note has been paid by C H Ltd under its terms within the 30 days back in 2010. No interest ever accrued under it. I accept the money to pay the note had ultimately come from H's parents. The circular transaction I refer to above. However, the arrangement by which H's parents provided the money was quite separate. It was not the subject of the promissory note or indeed any other written agreement. In fact there was no written agreement at all between H's parents on the one hand and H and his sister on the other in respect of any of the advances made to H and his sister from his parents. Nor any suggestion anywhere that interest was intended by these loans. The fact that H in his evidence and

opening note, and indeed his mother and sister, in their evidence, were prepared to mischaracterise the promissory note is a matter of some significance. At the very least it shows a casualness about what the actual legal obligations, if any, were between them.

66. Since the advances referred to above, the last of which was almost 12 years ago, there have been no repayments of any sums from H or his sister to H's parents. Nor, until the instigation of these proceedings, any demand or suggestion that the money should be repaid.

67. H's father died in 2014. I specifically asked H's mother in her evidence as to how any outstanding loans were treated in his estate. She answered that there was no reference to any such loans at all. She explained this was all a family arrangement and it was thus not felt necessary to mention the loans.

68. At this stage I should perhaps comment more generally on H's mother's evidence. She was not a witness on whose evidence I can attach much weight. Not I stress because I think she was necessarily deliberately dishonest but because her antipathy towards W, which she did not seek to disguise, clearly coloured her evidence. She was very clear that W should not get any of C Hotel which she and her husband had worked so hard to build up for the benefit of their own family.

69. I also did not find her evidence convincing when she said she was now short of money and needed the sums lent repaid. There was nothing to support the suggestion H's mother was now in financial need. In this regard I note she has made a number of other gifts in advance of inheritance to both H and his sister post 2013. For example the transfer of entirety of 27 R Avenue to H in 2015. This seems at the very least odd if H's mother was genuinely short of money or needed the repayment of the sums advanced.

70. H's sister also gave evidence as to the money needing to be repaid. On this point I did not find her evidence convincing. She could point to no occasion she had separately been asked to repay any of the monies. In her written evidence she confirmed the evidence of H and her mother: thus endorsing the fiction that the promissory note evidenced an agreement between her and H on the one hand and their parents on the other. In my view she was here simply repeating the family line that the monies now needed to be repaid so as to minimise the value of H's assets in these proceedings.

71. Drawing all the strands together I am entirely satisfied that the loans made at the time of the purchase of C Hotel from H's parents to H and his sister should now be treated as "soft" loans in the sense that there is no realistic prospect of the loans ever being enforced or repaid. They should therefore effectively be excised from the list of H's liabilities in the schedule of assets. In reaching this conclusion I rely in particular on the following facts:

a. It was always the original intention to gift Chalie's Hotel to H and his sister: the purchase scheme and the creation of the loans only came about because of the concerns re inheritance tax;
b. None of the loan advances were the subject of written agreements;
c. Since the first of the advances in 2010 there have been no repayments of any of the sums said to be due and there has never been any suggestion prior to these proceedings that any sums would be, or needed to be, actually repaid;
d. There was no reference to substantial sums of money being owed to him at the time of the death of H's father in 2014;
e. If the money were now to be repaid to H's mother it would potentially incur an inheritance tax liability when eventually passed on – the very thing the family had sought all along to avoid.

72. In closing submissions on behalf of H, whilst accepting the way the evidence had come out may lead to the conclusions above in relation to the sums advanced in 2010, it was suggested the further "loan" in 2013 should be treated differently. The distinction apparently being that this was not part of the inheritance tax mitigation envisaged in 2010 but something separate. I do not accept this distinction. It seems to me that save possibly for the first point all of the other points which I set out above apply equally to this advance in 2013. In any event I do not accept, logically or factually, the further advance in 2013 can be hived off from the original scheme. It was simply more money effectively coming back to H and his sister from the money they had paid their parents in 2010. It was thus part of the same inheritance arrangement.

73. Having dealt with the manner in which H acquired C Hotel I move on to the extent H's interest therein is matrimonial. Clearly, I have found that in large part it was acquired by way of an inheritance arrangement. However, not exclusively so. Money was borrowed from commercial lenders to fund the purchase from H's parents and not all of this has come back to H via the "loans" I find to be an advance on inheritance. This commercial lending has been reduced during the marriage as a result, in part, of H's work for C H Limited during the marriage and thus as part of the matrimonial endeavour. This is thus in my view best viewed as an asset that is part matrimonial and part non-matrimonial.

74. H concedes as much. In his opening note he suggests that the matrimonial element of C H Limited should be assessed as being equivalent to the reduction in the commercial borrowing against H's share during H's ownership – in respect of H's share said to be a reduction of £364,563. It is suggested this sum should be treated as the matrimonial element of H's share. This represents about 33% of my assessment of the net value of H's 50% interest in C H Limited at £1.1 million.

75. By his closing note H had adopted a slightly different methodology. This involved calculating the matrimonial element by subtracting the loaned/gifted element from the total purchase price and working out what proportion the balance was of the whole. Here ignoring circular sums paid by H's parents, £650K of the total £1.3M was borrowed commercially. That equates to about 50%. If one then takes into account

the further £170,000 advanced by H's parents in 2013 the inherited proportion becomes £820,000 of the £1.3M or 37%. Of course, I note the advance in 2013 comes three years later when the overall value of C H Limited would likely be different.

76. W's position by contrast is to say because C H Limited was acquired in the marriage it should all be treated as matrimonial. That in my view entirely ignores the inheritance aspect and cannot be right.

77. This, in my view, is a classic example of where mathematical precision is impossible and a more impressionist approach must be taken. I accept there has been no significant development of the C Hotel site during the marriage and much of its now value represents passive growth of the underlying asset. The same is true of the car park. However, it has been maintained and preserved by H's (and his sister's) efforts during challenging periods including the COVID period where any business would come under very real stress and of course the commercial borrowing has been paid down.

78. I am of the view, recognising all the mathematical limitations of such calculation, that the 37% figure H now advances is a fair figure to take as the matrimonial element of C H Limited. That is the figure I therefore propose to use. The figure of 33% H initially proposed is too low and W's suggestion that all of C H Limited should be treated as matrimonial is too high. There must be some recognition the significant inherited/gifted, and thus non-matrimonial, element of the enterprise.. When applied to the £1.1M that I have found represents H net share in C H Limited this means the figure of £407,000 is added to the matrimonial pot in respect of H's interest in C H Limited.

The extent to which H owes other debts to family and friends and whether any such loans should be treated as hard loans or soft loans

79. I can deal with these relatively shortly. Essentially the argument is not that money has not been advanced to H but that in each case as the lenders are all friends and family of H all these loans can effectively written off as "soft loans". I do not accept this characterisation and in my view it involves a misapplication, or at least oversimplification, of HHJ Hess's judgment in ***P v Q*** above. I will deal with each of these loans in turn.

80. The first of these relates to a guarantee H gave in respect of the debts of a limited company: M Ltd. M Ltd was a company H founded in 2016 as a corporate vehicle to run a restaurant/takeaway. This was partly funded through the mortgage taken out on 27 R Avenue discussed above. The company also borrowed money from elsewhere and in particular from a Mrs O. She lent the company some £90,000 in May 2016. There can be little doubt about this sum as it is recorded in a contemporaneous written agreement. The debt is also recorded in the company

accounts of M Ltd. The loan was arranged through Mrs O's son, Mr O, a long standing and close friend of H.

81. Mr O is an insolvency practitioner. He told me in evidence that as a result of his professional experience he is familiar with the fragility of corporate start ups. It was for this reason that he insisted on the loan from his mother to M Ltd being the subject of a formal written personal guarantee from H, as the principal shareholder of M Ltd. This was drawn up at the time of the loan. The loan guarantee provides for interest on the loan. Though it is fair to say that the liability in M Ltd's accounts is shown as flat over time without any apparent provision for interest. Mrs O died in 2020. Her assets vest in her estate which is being administered by Mr O.

82. Mr O was an impressive and measured witness and I accept his evidence. He was challenged in respect of the loan and it was suggested that the money was in reality his investment in the business, made on his behalf by his mother, and in which he was going to partner with H and another. Mr O admitted that he had contemplated the possibility of becoming a partner in the business and in effect converting the loan into an investment. However, he fell out with H's other business partner and did not progress this idea. I also got the impression the restaurant was never much of a financial success. M Ltd was wound up in 2021 having in the meantime sub-let its rented restaurant premises to another company C Ltd. Mr O admitted he had been somewhat dilatory in pursuing repayment – M Ltd having been wound up in 2021 – and that this arose from a combination of Mr O not administering his mother's estate with much expedition, as stated above she died in 2020, and also being aware that any repayment from H was likely to be held up by these proceedings. For H had told him at the time of the winding up of M Ltd that repayment would have to await the ultimate sale of C Hotel. It is right that at M Ltd's winding up there was a surplus of some £80,000 odd – but H's evidence was that this was required to meet the family's then outgoings and Mr O was willing to wait for his money.

83. Mr O frankly admitted that he would be reluctant to pursue H by way of a civil action given their long standing friendship. He also volunteered in his evidence in chief that, though technically entitled to interest under the terms of the loan guarantee, he would be content with H simply repaying the £90,000 capital without interest. I asked him about this at the end of this evidence and he clarified he would have to run this past his brother, the other beneficiary of his mother's estate, but did not substantially change his position.

84. In short I accept that his loan guarantee is repayable and is a liability incurred during the marriage. The loan may be "soft" to the limited extent that Mr O may allow H some latitude, as he has done to date, in respect of the time for repayment but I doubt this would extend beyond the expected sale of C H Limited. It is certainly not "soft" to the extent it should be treated as non repayable, save for the interest element, which in my view will not be pursued and can in effect be ignored.

85. The next debt is that owed to Mr A. Mr A is a cousin of H and has been employed for some time in C Hotel. In fact the impression I got was that without Mr A the business

of C Hotel would not function. He is nonetheless paid modestly for this work. He explained he had lent money to H off and on over the years which had mostly been repaid. More recently, since 2021, the loans have not been repaid. There is now outstanding some £99,488. This has come from capital Mr A had inherited and/or build up in savings. Most of this has been post separation and is documented by formal loan agreements. This has largely been applied to H's legal fees and is thus non-matrimonial in character – both parties here effectively funding their legal fees from non-matrimonial sources. Some, £11,000, of Mr A's loans however relates to the period before separation and are thus in my view characterised as matrimonial.

86. It was suggested on behalf of W that somehow Mr A was not in a position to lend money and/or that his wages from C Hotel, which were broadly similar in amount to what he was lending H, were in fact money of H's that was being recycled and disguised as loans. I reject this. Firstly, I found Mr A to be an honest and straightforward witness. Secondly, and in my view fatally to W's hypothesis, it would involve Mr A effectively working for free as his wages would be coming straight back to H. I can see no reason he would do this. I am satisfied the money was lent and it is expected to be repaid. I again accept that given the relationship between H and Mr A that it might be said to be "soft" to the limited extent that H will be given some time to pay and of course the loans are interest free. However, it seems to me that again the money will expect to be repaid by no later than the sale of C Hotel.

87. The final lender to H is his sister Ms G. Although I found her evidence in respect of the "loans" from H's parents unconvincing for the reasons I have given above, in respect of her own more recent loans to H I accept her evidence. She states she has lent £80,500 to H which has again gone largely to legal fees and H's living expenses. The majority of these sums – some £65,500 - are clearly evidenced in bank transfers. The balance of £15,000 is said to have been made up of cash payments. Again however this is largely a non-matrimonial liability.

88. It was put to Ms G that as H's sister she would not expect repayment from H and would not pursue H for these sums. In short that the court should treat these as "soft loans" of the type that can be essentially written off. Ms G rejected this, citing her financial obligations to her own immediate family including her son, and stating that if necessary she would pursue her brother. Given the sums involved I do not believe she will simply write this sum off. I had no sense that H's sister was independently wealthy to the extent this sort of sum was de minimis. Once again to the extent she will allow H some time to pay and will not charge interest the loan might be said to be "soft" but only to this limited extent. Again, I would be surprised if she would not expect some sort of repayment by no later than the sale of C Hotel.

The extent to which the parties have any outstanding liability to Brocton Business Limited "Brocton" (A BVI company used to hold W's family wealth) and, if such liability subsists, how it is to be met

89. The origin of this liability is uncontested. On 13 April 2011 Brocton Business Limited ("Brocton") loaned H £350,000. This loan was evidenced in writing and included

interest at 4%. Until recently, it was common ground that although the loan was through the medium of Brocton it was in practice from W's father, the General. Brocton was his off shore corporate alter ego through which he held most of his liquid wealth. That the loan was effectively from the General was confirmed in both W's s.25 statement and in the written evidence of her brother, Mr B.

90. It is common ground that £120,000 of this loan was repaid to Brocton itself in 2016. This came from the mortgage of 27 R Avenue as discussed above. However, a further £110,000 was paid to the Wife at the time. This was on the express instructions of the General as shown in the evidence. From the contemporaneous text messages I have no doubt the General considered this as part repayment of the loan from Brocton.

91. A further payment of £127,500 was made in January 2018. Again, this was paid not to Brocton directly but to the Wife. Again, I am told and accept that this was done on the express instructions of the General and was to be treated as repayment of the loan. Thus in total £357,500 has been "repaid" – the £350,000 loaned plus interest. Though, of this, £237,500 has in effect been written off by the General by making clear the "repayments" should be made to W and not back to him or Brocton.

92. In her evidence W did not seriously dispute these figures, but rather relies on the fact her brother, Mr B, does not accept the money has been repaid. Mr B, in his written evidence, asserts that the payments to W were part of some "private arrangement" between W and the General and do not have the effect of discharging the debt. In his oral evidence he went further and having discovered in the original loan documentation, provided to him before his evidence, that he was shown as the sole director and shareholder of Brocton at the time of the loan, he asserted that the loan was effectively from him all along. He therefore did not accept that any payments made to W at the General's request could possibly have met the liability to Brocton and thus him. Indeed he stated that he remained the 100% beneficial owner of Brocton as he had never transferred his shares.

93. At this point I should comment on Mr B's evidence more generally. He was a most unimpressive witness. As shown by his change of tack on the Brocton loan he was willing to entirely change his evidence if he thought this supported his argument. He was extremely hostile to H and asserted he was not prepared to give any further detail about his father, the General's estate, as it had nothing to do with H. Even when I tried to gently ask him about the extent of the General's estate in Russia he was evasive and ultimately would not answer my questions.

94. Mr B gave his evidence in Russian through a translator but the need for this only came out in the course of the hearing. Mr B's witness statement was in English with no indication it had been translated. Nothing was raised at either the PTR before this hearing or the earlier PTR before the abortive hearing in June 2024 suggesting a translator would be required. However, these translation issues were not the most significant matters in respect of Mr B's evidence.

95. I found Mr B's evidence to be given in a way which was obstructive if not outright misleading and I attach very little weight to his evidence unless corroborated from other sources.

96. Mr B's arguments re the Brocton loan simply do not stand up. Whilst it may be the case that Mr B was the sole director and shareholder of Brocton at the time of the loan that clearly did not remain the case. There are certified documents from the BVI showing that as of January 2017 the General was the sole director of Brocton and declared to be the sole beneficial owner of the company. Thus, at least by the time of the last of the repayments, in 2018, the General was unquestionable the sole beneficial owner of Brocton and its sole director.

97. Further, the assets of Brocton have been treated by W and Mr B as part of their father's estate. It is also how they are treated by Banque Cramer the Swiss bank that holds Brocton's investment portfolio (its only known assets). This would not be appropriate if Mr B was the sole legal and beneficial owner of the company. In my view when Mr B was recorded as the director and shareholder he was likely only ever the bare nominee of the General. The reason for that arrangement I know not, but nor does it matter. This is entirely consistent with Mr B's original written evidence and his assertion that the loan in effect came from the General and his further assertion therein that the alleged debt was now in his view a debt of the General's estate.

98. Given my findings that the General was at all material times in de facto control of Brocton the suggestion that his instructions on repayment were merely a private arrangement outside Brocton is a legal and factual nonsense. There is no difficulty with a creditor directing a debtor to meet their obligations by a payment to a third party in lieu of payment direct to the creditor. In so doing the General was clearly acting as an agent of Brocton and his actions bind the company. It is of note that there is no suggestion, still less documentation in support, that the General was pursuing the alleged balance of this debt after 2018. I find it wholly improbable that he would not have done so had the debt been outstanding.

99. I am therefore entirely satisfied that the debt to Brocton has been repaid in full and is no longer a liability of H or indeed the parties.

100. Furthermore, there is little prospect of Brocton pursuing the debt as Brocton has now ceased to exist. It was dissolved as a BVI entity as of 4 July 2023 according to the BVI Register of Companies. It was part of W's evidence that as part of the administration of the General's estate it was intended to extract the assets from Brocton and simply allow the company itself to be dissolved. The dissolution of Brocton is consistent with that approach and entirely inconsistent with sums still being outstanding to Brocton and/or to Mr B. Whilst in theory Brocton may be capable of being restored to pursue an outstanding debt, in my view, this is in practice extremely unlikely.

The extent of W's inheritance from her father and the extent to which she must account to her brother, if at all, in respect of what she has received from that inheritance to date

101. This is in many ways the most difficult aspect of this case and one in which the disclosure from W has been, in my view, wholly inadequate. This is all the more troubling given it has always been apparent, and H does not suggest to the contrary that W's inheritance is entirely non-matrimonial and H would have no conceivable sharing claim to it. It only goes to the assets W may have to meet her needs.

102. I entirely accept the General's Estate was difficult with assets in potentially five jurisdictions: Russia, France, Spain, Switzerland and the BVI. Right at the outset of proceedings at the FDA before Recorder Moys a direction was made, as proposed by W's then counsel for "her accountant" to set out the full extent of the General's estate and the likely tax treatment thereof with estimated timescales for its realisation. The implication of this direction was that the accountant would have to hand all necessary documents at to the assets in the Estate – documents that he/she would need in dealing with any tax implications on W's behalf. It is important to note that this was *not* a direction to instruct an expert.

103. No such report was ever produced. Instead W produced a document from Everfair Limited. Everfair were not W's accountants or accountants instructed by the Estate. They are described as "tax consultants" and they produced an unimpressive document large parts of which deal with tax treatment in the UK. A jurisdiction in which by common consent the General had no assets. It is clear that the only information they had on the assets in the Estate came from what they were told by W. As argued by Mr Chapman this is a document of very limited evidential weight save what it indicates as to W's instructions to Everfair at the time. I have referred to this above in respect of what W said about offsetting of the Russian estate.

104. Instead what has come out is piecemeal disclosure of assets in the various jurisdictions. I do not propose to deal with all of the detail of this but rather summarise the position.

105. I start with the French estate as this is the most visible. I accept the notarial documents produced as being an accurate record of what the French Estate of the General – essentially the sale proceeds of the French Chateau and a French bank account with Credit Lyonnais. The net estate after tax amounted to €881,164 and under French law was to be divided equally between W and her brother, Mr B – thus €440,583.07 each.

106. The most recent notarial document, dated 9 July 2024, suggests that €620,568 had been received by W by that date. Thus in excess of W's entitlement by €179,984. There was a further sum of €260,598.13 retained in the Estate. It is said that as Mr B had no European bank account, and there were understandable difficulties transferring funds to a Russian bank account, he was not able to receive the funds. Hence the monies had been in practice paid to W in the UK. The notarial document suggests that in respect of the part of estate due to Mr B which W had

received she would pay interest at 4.47% until this was paid to Mr B. This was said to be a product of an agreement between W and Mr B which the notary recorded. I am unclear as to the alleged rational for the payment of interest. The reason advanced that Mr B could not receive his share immediately is that apparently no European bank account into which the money could be paid. This was hardly the fault of W such that she should incur a liability for interest. Further she was not in any real sense borrowing the money but rather holding it on his behalf. In my view this interest provision will not in practice be enforced and is merely an attempt by W and Mr B to minimise what W will receive from the General's estate.

107. In any event at some point, post July 2024, the remaining balance of the estate held by the notary of €260,598.14 was paid to W. In her narrative explanation, provided with her initial updating disclosure in November 2024 W explained that she had managed to repay her brother £125,000 (€146,000). Thus she owed, on her figures, a further €294,583 plus allegedly interest making a total of €307,751 (£258,614).

108. Since that time updating bank statements, provided I am told a matter of days before the start of the trial, show that W in fact paid her brother £125,000 on 15 November 2024 and a further £30,000 on 26 November 2024 – thus £155,000 (€184,450) in total. Thus presumably W states that she owes €256,133 (£215,237) now to Mr B. On the ES2 W puts the debt at £235,418 which I assume includes a figure for the alleged interest.

109. However, even on W's case there has to be offsetting for what Mr B received in Spain. Again, but only very recently notarial documents have come from Spain. These which show the net estate there – effectively two flats – has been fully realised and amounts to €110,826. This has apparently all been received by Mr B and there is no suggestion there has been any difficulty in him receiving the money. Thus adding a further question mark as to why it has been so difficult for him to receive his share of the French estate. In any event it is accepted W is entitled to a credit for 50% of what Mr B has received in Spain – thus €55,413 would be due to W. Offset against her apparent liability to Mr B in respect of France, ignoring alleged interest which I find not genuinely to be due, reduces the liability to Mr B at most to €200,720 (£168,672).

110. The largest element of the General's estate relates to his assets held through Brocton. These are essentially a portfolio of Euros, US Dollars and Equities held in a portfolio with Banque Cramer in Switzerland. Disclosure in respect of this has been fairly woeful. I am told that some bank statements were produced in early course but these were very partial. There were then produced a much more substantial cache just prior to FDR. These were provided to me in loose leaf in the course of the hearing,. These showed the portfolio, as at 19 June 2022, being worth some €2.5M. Little has been provided in updating disclosure since that time and various excuses have been proffered about W not being able to obtain information from Banque Cramer. It being suggested there were difficulties recognising her and Mr B as her father's heirs. I am rather sceptical of this. Firstly, because I have seen a power of

attorney in W's favour in respect of Brocton pre-dating the General's death. Brocton is a separate legal entity to the General and thus the General's death would not, at least on my understanding, have automatically brought such power of attorney to an end. Thus there was no legal impediment to W obtaining documents in respect of Brocton. Furthermore, it seems to me there is some force in Mr Chapman's critique on behalf of H that whenever it suits W information appears to be forthcoming from Banque Cramer but when perhaps it does not so assist these problems manifest themselves.

111. In any event it appears, from the most recent updating disclosure, that what was left in Brocton's portfolio has as of August 2024 been transferred into separate accounts for W and Mr B and the funds divided equally. W thus now has €1.1M in her own Banque Cramer account and has had this sum since August. This is slightly less than 50% of what was shown in the accounts as at June 2022. The reasons for this decline are unknown and unexplained.

112. As with so much about the General's estate this throws up a number of its own questions. If Mr B had such difficulty having a European bank account how was he able to have the Banque Cramer money transferred to him in August 2024 at about the same time as it was being said he could not receive the money from France? What was then the account of Mr B to which W was able to transfer the £155,000 in November 2024 and why was this not available earlier? Why if W had a significant Euro denominated debt to Mr B from the French estate was this not reconciled at the time of the distribution of Brocton's monies with Banque Cramer or immediately afterwards in August 2024? W suggested that the monies she holds with Banque Cramer are somehow subject to a lien or charge for what remains owing to Mr B but there is no evidence at all to support this. I simply have no satisfactory answer to these questions.

113. It was suggested by H that the General likely had other assets through his offshore structures. For example it was said that he or Brocton had previously had an account with Falcon Bank, from which the 2011 loan of £350,000 had come from, and possibly also an account with Commerzbank. W was not exactly forthcoming in answer to H's queries in this regard. Some explanation has eventually come via Banque Cramer that W's mother had had an account with Falcon Bank which had transferred into her Banque Cramer account which had in turn been paid over to the General's account after her death in 2018. This may or may not be the full answer to H's queries.

114. Overall whilst I was left with the suspicion there may be more accounts there is no clear evidence from which this can be properly inferred. Suspicion is of course not enough. Payments in Euro in the Banque Cramer account seemed at one point to me to indicate another undisclosed account possibly with Banque Cramer itself. However, in the documents received between close of evidence and submissions it is explained by Banque Cramer that these payments relate to the General's Credit Lyonnais account which is known about and disclosed within the French estate. This

is an example of W being able to obtain clear information from Banque Cramer, albeit very late in the day, when it suits her.

115. For present purposes therefore I conclude that W's share of the Brocton Assets, in effect the General's estate in the BVI and Switzerland, is represented by the sums now in her Banque Cramer account.

116. Finally, and most controversially there is the Russian estate. It was Russia where the General died and where he was undoubtedly domiciled and habitually resident at the date of his death. This would ordinarily be the jurisdiction where the General's worldwide assets would be declared and where his chattels would be deemed to be. That is not the case here, or at least does not appear to be the case. In fact W by her own admission admits that a valuable watch – the true value of which has been the subject of much debate with figures ranging between £60,000 (the figure W puts on it), SFR 656,000 (c£365,000 at then exchange rates) the price it was purchased for in 1995 and £160,000 the minimum H says it is now worth – was brought to the UK at one point after the General's death in 2021 so it would not come to the attention of the Russian authorities. I rather suspect, as is the case with many expat Russians of wealth, opaqueness from the Russian authorities is a feature and not quirk of how wealth is held.

117. Of course on W's case the Russian part of the Estate is irrelevant. For she now states that it was always her parents intention that Mr B alone should have these assets for himself and only the rest of the Estate should be shared. She relies on her disclaimer of the Russian Estate in 2021 In this regard. However, as set out above, W in both her answers to questionnaire and in her instructions to Everfair had accepted that whilst in practice Mr B would get the Russian estate this would be offset against what Mr B was to receive from the Estate elsewhere. I did not find the alleged rationale that Mr B was always intended to have more, based it is said on his latter care of his father, at all convincing. I find W's subsequent change in approach implausible, self serving and in my view likely brought about by Mr B's attempts to minimise what he sees as claims on the Estate by H. I am entirely satisfied that there will as between W and Mr B offsetting against what Mr B has received in Russia.

118. What then is the value of this offset? I have already outlined how Mr B declined to answer my questions about what value was put on the Russian estate or indeed his estimate of the value of the Russian estate. This comprises at the very least the General's apartment and any chattels including the disputed watch. The value put on the Russian estate by W somewhat varies. Her most recent evidence, supported by Mr B, is that the flat is worth c20 million roubles (£160,000). The figure for chattels varies. In the Everfair report it is put at £89,000. W now says this includes the disputed watch and some of her own mother's jewellery which W has in any event retained. In effect she now suggests the Russian estate retained by Mr B is worth no more than c£220,000.

119. H unsurprisingly contests this. He suggests the flat is worth far more given its central Moscow location within walking distance of the Kremlin. H suggested its true

worth at c£1M. Some time was spent in a rather sterile examination of alleged comparables in Moscow. There is no formal valuation before the court and I am in no position to value a flat in Moscow. It is likely H's figure is considerable exaggerated, especially given the flat from photos appears to be a little tired and in need of modernisation, but I do not doubt that it is undervalued by W and Mr B. I simply am not in a position on the evidence to come up with a meaningful value.

120. There remains the vexed question of the value of other chattels retained in Russia – whether valuable artworks or otherwise – and whether the General had any bank accounts. As set out above when dealing with the H's evidence I am sceptical there was any really valuable artwork but the aggregate value of the contents of the flat may be more than minimal. As to bank accounts W and Mr B deny the General had any Russian bank accounts stating that in his last few years the General lived of his state pension book which did not require him to have a bank account. This account of the General getting by on the Russian state pension, given the General's overall wealth and lifestyle prior to that point, I find wholly implausible. In my view there are likely other assets including bank accounts in Moscow. However as to their value I would merely be speculating.

121. Doing the best I can, given the significant gaps in the evidence, I conclude that the General's estate in Russia is worth at least twice the sum W is now said to owe Mr B. Thus it is worth in excess of £340,000. I suspect that it may be worth much more but I am not in a position to, and do not need to, make a more precise finding.

122. I also find that this sum falls to be offset against any sums received by W elsewhere. In effect eliminating any sums W is said to still owe her brother.

123. The reasons I feel able to make this limited finding on the evidence available is:

a. The fact W was allowed in the first place to receive a much larger share of the French estate in the first place;
b. The implausibility of Mr B struggling to find a European account into which his share of the French estate given:
    i. His ability to deal with and receive the Spanish estate;
    ii. The apparent fact he could easily receive his share of the General's Banque Cramer monies and apparently now has his own mirror Banque Cramer account
    iii. The fact he now seems to have an account into which W could pay £155,000 in November 2024.
c. The fact that if W owed Mr B a significant balancing Euro sum it is implausible it would not be reconciled when the Banque Cramer monies were distributed between Mr B and W in August 2024;

124. All of the above matters point to the fact that in practice no further sums are owed to Mr B by W. This is likely on the basis that there is an undisclosed offset the

most plausible basis for which is value in the Russian estate retained by Mr B. Though of course I accept there could be other undisclosed assets.

125. I am also fortified in this conclusion by the artificiality of the suggestion that W should pay interest to her brother on any sums she is said to owe. I have already commented that this seems very unfair if the genuine reason Mr B has not been able to receive funds is because he could not open a European bank account. In addition there seems to be no offsetting interest arrangement in the monies Mr B has retained in Spain. The whole arrangement reeks of artificiality and contrivance and in my view is a transparent attempt to minimise W's assets.

126. H asks me to go further and in effect add back the £152,000 W paid to Mr B in November 2024 to W's assets. Whilst I am extremely suspicious about this payment, especially given its timing, I do not feel the evidence is quite sufficient or the inference from circumstances sufficiently strong to go this far. Nor do I need to do so given the lack of any sharing claim and what I find below on needs. I thus confine the inferences I draw from W's generally deficient disclosure and the circumstances otherwise to the fact that W owes no further sums to her brother.

Discussion

127. Having made the findings I have as set out above it seems to me that the matrimonial funds and thus the resources of the parties can be represented by the tables below:

Eq in FMH	£1,164,095
37% of H's share in C Hotel	£407,000
Matrimonial debts	(101,000)
TOTAL	**£1,470,095.00**
@ 50%	**£735,048**

128. As regards H, in addition to his share of the matrimonial funds above, I find that, ignoring small amounts in his bank accounts H has the following funds available

Eq in 27 R Avenue	£310,719
63% of H's share in C Hotel	£693,000
2 properties in Cyprus	£5,000
Non-matrimonial debts	(253,008)
TOTAL	**£755,711.00**

129. As regards W, in addition to her share of the matrimonial funds, I find that, W has the following funds available

Banque Cramer Acct	£941,845

Balance in UK account	£13,011
Non-matrimonial debts	(£0)
TOTAL	**£954,856.00**

130. I now turn to the questions of needs which has taken up a remarkably brief amount of time in terms of the evidence.

Housing Need

131. Both parties will need to rehouse. Both parties have produced property particulars that suggest they will need a housing budget of c£1million. That is thus the figure I will use. Neither party has any meaningful mortgage raising capacity.

Income Need

132. There has been very little detailed evidence in this case in respect of income and budgets.

133. Neither party has revisited their budgets since Form E – when H suggested he needed c£50,000 p.a. for himself and a further £50,000 p.a. for the children and W suggested her current budget (including children) was c£68,000 p.a. now and c£104,000 going forward. Both these budgets seem to me unrealistic.

134. However, neither party addressed budgets meaningfully in their s.25 statements and it was not explored in evidence. Neither party has sought periodical payments going forward, beyond the interim provision, which is a modest £2,000 pcm which H contributes to the family outgoings, and it seems to me both parties have simply assumed that capital or future income will cover needs.

135. As to earning capacity H's evidence is that he last worked in about 2017 as an IT Project Manager but that he had to stop because of health issues. W suggests H had ceased working some time earlier in about 2011 as he had sufficient private wealth not to need to work. In this regard I prefer H's evidence as to timing but am sceptical as to causation.

136. 2017 was shortly after H had commenced his investment with M Ltd Holdings and in my view that was his likely focus. He also had by 2015 the benefit of having inherited 27 R Avenue and thus a rental income therefrom. He also had some income from C H Limited. This was unlikely enough to live on of itself but gave him the confidence to invest in M Ltd. As I have outlined above M Ltd ultimately was not a great financial success. However, by the time of M Ltd's liquidation in 2021 matters had moved on. Both W's mother and father had died and H clearly felt W's inheritance along with his own capital would suffice. A matter I feel W was, perhaps understandably, rather resentful about given H's reliance on the General's wealth to see the family through.

137. Going forward I am of the view both H and W will have an income capacity. It is likely H will as I say sell C H Limited so that will no longer be a source of income and I have treated 27 R Avenue as capital so I should not double count it as income. However, I do not doubt H could find other employment. I feel his medical position is over stated. He likely would not return to anything like the employment he had prior to 2018. The world of IT project management tends to be fast moving and H's age and lack of recent experience will likely count against him. However, I should imagine he could relatively easily find modestly paying employment at least at the c£40,000-£50000 per annum mark or perhaps above in the relatively near future should he choose to do so.

138. As to W to her credit she has developed her own yoga business. She herself has suggests she hopes to generate c£24,000 per annum net though this business going forward. She said in evidence that she has not been able to realise this with all the stress of these proceedings which I have no doubt have been all consuming. However, W struck me as resourceful and determined and I have little doubt she can develop this business going forward. The balance of her income needs will have to come from her capital essentially what is left from her inheritance and share of matrimonial assets after inheritance.

<u>Disposal</u>

139. It seems to me that after all the sound and fury of the evidence this is a case where ultimately the correct disposal is simply to divide the matrimonial property, as I have found it above, equally and allow the parties to retain their non-matrimonial property and be responsible otherwise for the debts in their own names. To effect this, given in practice H will retain his interest in C Hotel and be responsible for repayment of the various debts, including the matrimonial element thereof, the net equity in the FMH will need to be divided 63:37 in favour of W so as to produce equality of matrimonial assets.

140. In my view it is wholly impractical for W to retain the FMH and it will need to be sold. It is significantly in excess of the needs of W and the children. It is more likely the children's principal home will be with W but they will no doubt spend significant time with H. Should W have chosen to do so, as I indicated when I outlined my decision and short oral reasons in March, I would have given W the chance to buy out H. She has, in my view sensibly, declined to do so.

141. The effect of this will be to leave the parties with the following assets:

a. H:

37% of Eq in FMH	£430,715
Eq in 27 R Avenue	£310,719
H's share in C Hotel	£1,100,000

2 properties in Cyprus	£5,000
Debts	(354,008)
TOTAL	**£1,492,426.00**

b. W:

63% of Eq in FMH	£733,380
Banque Cramer Acct	£941,845
Balance in UK account	£13,011
Debts	(£0)
TOTAL	**£1,688,236.00**

142. After meeting his housing needs of c£1M this leaves H with free capital of c£492,000. This equates to a lifetime Duxbury fund producing £24,716 net per annum. Combined with his income capacity as I have found it this is sufficient to meet his needs.

143. After meeting her housing needs also of c£1M this leaves W with free capital of c£688,000. This equates to a lifetime Duxbury fund producing £25,877. Combined with her income capacity as I have found it this is sufficient in my view to meet her needs.

144. By way of cross check the total division of all assets leads to a 47:53 division in favour of W. The departure from equality being based on the way non-matrimonial property falls. As set out above I am satisfied that both parties needs are adequately met and that overall the proposed division is fair.

145. I come finally to the question of costs. This is a case where FPR 28.3 applies and the default position is no order as to costs. However the court can still make a costs order if it is of the view the conduct of one of the parties in relation to the conduct of the proceedings makes a costs order appropriate. Both parties in their open positions seek orders for costs against the other complaining of the other's conduct. As will be apparent from my judgment above, in my view, both parties conduct in these proceedings leaves something to be desired in the way they have presented their cases. Further, neither party has beaten their open offers or really come significantly close to them.

146. However, whilst I am critical of H in many respects I am of the view that the lack of transparency of W in respect of the disclosure of the General's estate has been particularly egregious and has in particular added to the length, cost and complexity of the case. Although I have had reservations about a number of witnesses including H and W, W's brother was a witness whose evidence was almost throughout unhelpful and misleading. W although not always entirely in accordance with her brother chose to call him and thus must bear some responsibility for his evidence. Additionally there has been a clear element of common cause in how their

father's estate has been presented to the court. I, of course, bear in mind that for large parts of the proceedings W has represented herself but as I set out above, and applying the reasoning of the Supreme Court in ***Barton v Wright Hassall LLP*** that does not absolve W from complying with the rules and in particular her duty of disclosure. At times, in my view, she has gone beyond simply not been forthcoming but has actively sought to mislead.

147. In the circumstances I feel that the court must mark its disapproval of this approach in some way in costs. I am conscious however that the court must consider the financial effect of any costs order and that I have found the distribution I propose above meets the parties needs there is not a large margin of leeway. I note that at present there is an unsatisfied order for costs in W's favour in respect of the MPS costs in the sum of £10,831.50. I cannot of course revisit that order. I also note that there is an order that in respect of various experts' fees that W has paid in the first instance and that she is presently entitled to a 50% contribution from H at the end of these proceedings. This amounts I understand to approximately £18,000 incurred in respect of which W is entitled to half by way of contribution.

148. In my view the correct order for costs is an order that deprives W of the benefit of these entitlements – in other words an order for costs in the exact sum that W would otherwise be entitled to by way of an offset. This does not impact on the sums available to the parties on my proposed distribution. The same practical effect, however, is reached if W undertakes not to enforce her existing entitlements to costs and contributions and on the basis W is prepared to give such an undertaking, which I am told following my decision she is, no further order for costs need be made.

149. In light of all of the above the award I propose to make is as follows:

a. The FMH together with the adjoining land shall be sold forthwith on the open market and after payment of the mortgage and sales costs the net sales proceeds shall be divided 63% to W and 37% to H so as to equalise the matrimonial property;
b. Each party shall indemnify the other for the debts in their sole name and W shall indemnify H in full respect of any liability pursued by Brocton or her brother in respect of the Brocton loan;
c. Otherwise each to retain the capital assets in their sole name and clean break
d. No order as to costs save W shall not enforce the existing costs order and shall not be entitled to insist on contribution towards the experts fee she has incurred.

150. I should add that the existing order for MPS should continue until the sale of the FMH at which point it should be discharged. I heard some evidence about what were said to be improper deductions that H had made from historic payments. H claimed he had paid these in kind in respect of other joint expenses he met. There was no application for enforcement in respect of arrears and from what I heard there was an element of six of one and half a dozen of the other in respect of these matters. I do not propose to go into the detail. However I should make clear that

going forward – that is from the hearing of the evidence in this case in January of this year I expect there to be no further deductions from the sum of £2,000 per month H is to pay into the joint account and in so far as H fails to pay this sum it shall be deducted from his share of the proceeds of sale.

151. A draft order has been circulated following my decision and informal reasons given at the hearing on 5 March and I now approve that order in the form attached herewith. I am pleased to note that the parties have in the meantime agreed the identity of estate agents and that the marketing of the FMH for sale has commenced. The parties are to be commended for such pragmatism.

152. Finally, I would wish to thank both counsel for their assistance in what has not been a straightforward case.