Neutral Citation Number: [2018] EWFC 59

Case No:

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice.

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 September 2018

Before :

THE HONOURABLE MR JUSTICE BAKER

- -

Between :

R	**Applicant**
- and -	
K	**Respondent**

- -
- -

Timothy Bishop QC and Katherine Cook (instructed by **Payne Hicks Beach**) for the **Applicant**
Martin Pointer QC and Judith Murray (instructed by **Penningtons Manches**) for the **Respondent**

Hearing dates: 26 – 28, February, 2, 5 – 9, 27 March, 18 April 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE BAKER

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MR JUSTICE BAKER :

(1) Introduction

1. This judgment is delivered in matrimonial proceedings in which the wife is seeking a financial remedies order against her former husband after a marriage of 25 years during which three children, all now in their late teens or early 20s, were born. During the marriage, the family enjoyed a luxurious lifestyle as a result of the husband's successful property development business. But latterly his business has run into difficulties and he alleges that he now has liabilities which significantly exceed the family's assets. The central issue in the case is whether the husband, and his business associates who gave evidence at the hearing before me, have fabricated or exaggerated those liabilities in an attempt to defeat the wife's claim.

2. In his opening note at the start of the hearing, Mr Martin Pointer QC for the husband described this as a vexing case in which the costs incurred have been disproportionate to the resources of the parties. It is indeed vexing and the parties have been represented at considerable cost by leading and junior counsel and well-known specialist family solicitors (although for a period earlier in the proceedings the husband represented himself). The wife's case is that the costs have been greatly increased by the husband's failure to comply with his obligations to give full and frank disclosure. Such documents as have been produced by the husband, and latterly by his business associates claiming to be his creditors, have been produced in a piecemeal fashion. This has caused considerable difficulties, not only for those representing the parties and in particular the wife, but also for the court. Preparation of this judgment has been delayed in part because of other commitments but also because of the need to go through all the documents that have been produced in an effort to piece together the evidence to establish whether the wife's allegation that the husband has fabricated or exaggerated his debts has been made out.

3. This judgment is arranged the following sections:

   (1) Introduction

   (2) Background

   (3) The issues

   (4) Disclosure

   (5) The liability to Mr X

   (6) Did the husband show the June 2016 Statement of Assets and Liabilities to Mr Y?

   (7) The alleged liability to C Finance and associated entities

      a) Evidence concerning dealings between 2007 and 2010

      b) Documents downloaded from the wife's computer

c) Disclosure in correspondence from HKH Kenwright and Cox

d) Assignments, the statutory declaration, and "Heads of Terms"

e) Mr K's "statements"

f) Mr K's oral evidence

g) Mr S's evidence

h) MO's evidence

(8) Lifestyle and dissipation of wealth

(9) The parties' closing submissions

a) Schedules of assets and liabilities

b) The wife's submissions

c) The husband's submissions

(10) Conclusions and final order.

(2) Background

4. Both parties were born in Iran in 1966 and are thus 52 years old this year. Both moved to live in the UK when they were children, the wife when she was aged 10, the husband when he went to boarding school in this country aged 13. The husband's father, whom the husband describes as an entrepreneurial man, still lives in Iran. It is the wife's case that her father-in-law has property and business interests in that country and that the husband himself has some involvement in those or other business interests there. The husband denies that this is so, having only visited Iran four times since 1979.

5. The parties met in 1986 when, according to the wife, she was a student nurse earning approximately £300 per month and the husband was unemployed and living in a house owned by his father in West London. The husband's evidence is that when they met he had a job as a car salesman. They were married in 1990. At that point, they had little money and no other assets, save that the wife had inherited her late mother's jewellery. The husband obtained work in a Mercedes dealership and after a few years set up his own business as a car dealer specialising in Smart cars. The wife trained and worked as a midwife but ceased paid employment in 1994 when she became pregnant. Subsequently she gave birth to three children, two girls and a boy, in 1994, 1996 and 1998 respectively.

6. It was while the wife was pregnant with their first child that the couple purchased their first property, described by the wife as a modest three-bedroom house. It was in a poor state of repair and, with the assistance of some financial support from the husband's father, the couple carried out repairs and refurbishment. At around the

same time, the husband moved from the motor trade into property development, doing up and selling properties. It is clear that he was successful in this business and the parties' financial position was transformed. It is the wife's case that she assisted the husband in the interior decoration and furnishing the properties, and also entertained the husband's business associates and investors. She asserts that through her friends and acquaintances he made some important business contacts. The wife herself did not have any paid employment again, save for a brief period when she operated two children's clothing shops which did not make a profit and had to be closed.

7. In 2001, the parties sold the first property and purchased what was to become last matrimonial home in West London, which was purchased for £1.45m, subject to a mortgage of £1m. It was conveyed into the husband's sole name. The husband's business continued to prosper. In 2003, the parties acquired a property in the South of France as a holiday home. In 2008, the husband acquired a flat in Knightsbridge. In the same year he formed a company as a vehicle for his property business, the shares held 51% by the husband, 49% by the wife.

8. The parties enjoyed a luxurious lifestyle spending substantial sums on holidays, restaurants, artwork, clothes, jewellery and other accessories. I shall return to the matter of their lifestyle later in this judgment. In her oral evidence, the wife describes the husband as having been "an amazing provider … an extraordinarily successful man who's managed to make our life bigger and better … an extremely clever guy, he's done well in business." But it is the husband's case that the business, and the family's lifestyle, was built on borrowed money. He contends that he and the wife lived beyond their means in a way that could only be sustained if he continued selling properties at a profit or borrowing against his development projects in a rising market.

9. In July 2008, a company hereafter referred to as "C Finance" registered in Panama, was given a charge on the matrimonial home. Correspondence eventually disclosed in these proceedings suggests that this coincided with a loan of £250,000 from C Finance to the husband which, in addition to earlier loans allegedly made by that company, took his indebtedness to them to a figure of £1.1m. It is the husband's case that he had been introduced to the company by a business associate, acting as a broker, hereafter referred to as MO. It is the wife's case that at the time she knew nothing about the loans or the charge.

10. According to documents produced at a late stage in the hearing before me, the charge on the matrimonial home in favour of C Finance was cancelled in 2011. The circumstances in which it was cancelled are a matter of dispute between the witnesses who gave evidence before me. A copy of the application to cancel the entry on the Land Registry charges register was produced. It purported to show that the application to cancel the charge on the matrimonial home had been made by C Finance via a firm of solicitors based in Hampshire, called Daltons, on 14 December 2011. A copy of the Land Registry's cancellation of the charge on form DS1 was also produced, dated 6 December 2011 and executed by Wayne Stebbings on behalf of C Finance. Witnesses representing C Finance who gave evidence before me stated that no one on behalf of that company had authorised the removal of the charge. It was asserted that this had been carried out by the husband fraudulently.

11. In the next few years, the husband, operating through a number of companies, embarked on a series of further property development projects on a larger scale than

before, in prime locations in London – they are referred to hereafter as "the Mayfair property", "A House" and "D House and Cottage". In due course, a well-known businessman, hereafter referred to as "Mr X", became a joint venture partner of the husband through complex company structures, and invested in these three projects. It is the husband's case now that, unbeknownst to Mr X, he was also obtaining financial support for the three projects in the form of loans from C Finance and its associated company, hereafter referred to as "U Properties". I say that it is his case "now" because, as described below, the husband failed to disclose the existence of his dealings with C Finance and U Properties until a late stage in the proceedings.

12. In 2013, the husband acquired another property in the South of France for the purposes of development. In 2015, he acquired the adjoining property for the same purpose. In that year, the husband took further loans from Mr X. I shall consider the evidence about those loans later in the judgment.

13. In June 2016, the wife discovered that the husband was having an affair with another woman, hereafter referred to as Ms AZ. On 23 June 2016, the parties separated and the husband moved to a rented apartment in Mayfair. The wife's evidence was that the circumstances of the breakdown of the marriage were particularly upsetting for her and the children, who resented the fact that their father had abandoned them for another family (Ms AZ apparently has children of a similar age).

14. On 27 June 2016, the husband sent an email to the wife, headed "Private and Confidential" in the following terms:

> "Hope you are well under the circumstances and sorry for all that's happened and pain that I have caused. I have attached a list of our assets and liabilities.
>
> Of course I am happy in the very near future to explain in detail all the balances along with documentary evidence to confirm the same.
>
> This info is for your use and your advisers. May I request that you keep this info private for us only at present and any explanation you need I will be happy to discuss.
>
> I give you my assurance that my intentions are fully to ensure that you and our children are fully supported and safeguarded. We can document all the information to agree a commercial arrangement whilst we are deciding all other matters."

Appended to the email was a one-page document headed "Statement of Assets and Liabilities with Income/Expenditure". This document has featured prominently in the hearing before me and I shall consider its contents and meaning later in this judgment.

15. It is the wife's case that immediately following the separation, notwithstanding the assurances given in the email dated 27 June 2016, the husband limited her access to funds and cut off support for the children, whilst at the same time maintaining his own luxurious lifestyle and spending freely on Ms AZ and her family.

16. On 8 September 2016, the wife filed a petition for divorce under s.1(2)(b) of the Matrimonial Causes Act 1973, accompanied by an application for a non-molestation

order against Ms AZ. This latter application, which arose out of a series of altercations also involving some of the children of the family and Ms AZ and her children, was resolved on the basis of cross-undertakings by Ms AZ and the wife. The petition included allegations of an improper association between the husband and Ms AZ. On 22 September, the husband filed an acknowledgement of service indicating that he did not intend to defend the petition but denying the allegation of an improper association. The altercations involving Ms AZ and her children, and the reference in the divorce petition to the relationship between the husband and Ms AZ, caused a significant deterioration in relations between the parties. The husband alleged in oral evidence that an implication of an adulterous relationship would have placed Ms AZ's life in danger in her country of origin.

17. The wife's petition included a claim for the full range of financial remedy orders and, on 26 September 2016, she filed a Form A. In November 2016, the husband significantly reduced the sums he had been paying to the wife. Thereafter, he paid £10,000 per month plus some of the outgoings on the matrimonial home. On 6 January 2017, both parties filed Forms E. As considered below, there were considerable differences between the husband's disclosure in his Form E and the statement of assets and liabilities served on the wife on 27 June 2016. On 17 January 2017, the wife filed an application for maintenance pending suit ("MPS") and the first appointment took place three days later on 20 January. The order made at that hearing included (a) an order listing the matter variously for a hearing of an FDR, the MPS application, and a final hearing; (b) an order for the instruction of Ms Faye Hall of Smith and Williamson as a single joint expert to report on the value of the husband's business interests and the wife's interest in the company Z Ltd, the liquidity of, and the sustainable income available from, those business interests, and tax liabilities on the disposal of the business interests and properties; (c) a recital that the husband agreed to provide the single joint expert with all information sought by the expert and to use his best endeavours to ensure that his agent did the same; (d) an order granting permission for the instruction of a further single joint expert, Gurr Johns, to value the contents of the matrimonial home, any art held in storage, and the art removed by the husband in 2016, the husband agreeing to use his best endeavours to make it available for valuation; (e) an order that the parties respond to questionnaires by 13 March; and (f) a recital that the parties agreed that the matrimonial home would be taken as £9.5m for the purposes of the FDR. The parties also agreed that the divorce should proceed on the basis proposed by the wife provided Ms AZ's name was excluded from the proceedings.

18. The husband failed to honour his agreement to provide information for the purposes of Ms Hall's report, and also failed to respond to the wife's questionnaire. As a result, the matter returned to court on 6 April 2017 on further applications by the wife. On that occasion, Roberts J made various orders, including fixing a hearing of the MPS application for later that month, orders endorsed with a penal notice requiring that the husband provide certain information concerning his business interests as particularised in the order by 24 April, and further information concerning the properties as particularised in the order by 18 April. She also made a costs order against the husband.

19. By this stage, the husband was asserting that he was suffering from a serious liquidity crisis. In his statement under s.25 (not filed until the first morning of the hearing

before me as described below), he asserted that the property market was falling, that his London development projects faced difficulties (in particular, the Mayfair property which, though completed, was three years late and £3 million over budget), the development of the two French villas was also delayed and over budget, and there was no scope for further borrowing. It is the wife's case that the husband's assertions that he was in financial difficulty have been fabricated or at least grossly exaggerated to present a false forensic picture to this court. She asserts that he has continued to maintain his lifestyle at the same level as before. On 7 April 2017, however, HMRC sent a letter before action to the husband warning him that they intended to start bankruptcy action against him because of an unpaid debt of £59,700. According to subsequent correspondence with HMRC, the husband made a series of payments in the following months, but a sum of over £26,000 remained outstanding.

20. Decree nisi was granted on 11 April 2017. On 18 April, the husband served replies to the wife's questionnaire.

21. On 25 April 2017, a firm of solicitors called HKH Kenwright and Cox, writing on behalf of C Finance and U Properties, wrote to the husband concerning sums allegedly outstanding under loans made by the companies to him and his companies. The husband's current and future contingent liabilities to the two companies was said to exceed £19m. The purpose of the letter was stated as being threefold: (1) a demand that the husband reinstate on the charges register for the former matrimonial home the legal charge dated 26 June 2008 in favour of C Finance which, it was asserted, the husband had "fraudulently caused to be removed in December 2011", alternatively to provide C Finance with equivalent security; (2) a request that husband set out details of the liabilities to the two companies, provide up-to-date financial information concerning the properties and projects to which the liabilities related, identify how the interests in the properties and projects were held and confirm that he would give notice to the companies before selling or disposing of those interests; and (3) a request for an explanation as to what, if anything, he had told the wife about the liabilities and the charge, the context for this request being that the companies had recently become aware of the divorce proceedings. The letter proceeded to set out an account of the history of transactions between the husband and C Finance and U Properties. I shall return to that history below. In addition, the letter warned that it was likely to be necessary for C Finance and U Properties to give the wife formal notification of the liabilities and charge and possibly to apply for permission to intervene in the divorce proceedings. In a further warning, the solicitors on behalf of C Finance and U Properties stated that, "in default of a satisfactory response, our clients will consider all appropriate options, including (i) notifying your investment partners of the liabilities, (ii) commencing proceedings to reinstate the charge and/or other relief in relation to the liabilities …, (iii) apply for appropriate injunctive relief, and (iv) apply to intervene your divorce proceedings." At that stage, the husband did not disclose this letter, or any information relating to the transactions mentioned therein, to the wife or the court.

22. On 26 April, the hearing of the MPS application took place before me. Under the interim order following that hearing, the husband was obliged to pay maintenance pending suit and thereafter interim periodical payments in the sum of £40,000 per month, being £27,000 for the wife and £13,000 for the children. The payments were backdated to January 2017, when the application for maintenance pending suit had

been made. In the event, the husband did not comply with that order. As at 18 April 2018, there were very substantial arrears, which were particularised in a document prepared by the wife's team, amounting to £358,765. Of the total of £480,000 due between April 2017 and April 2018, the husband had paid only £121,235. In addition, under the interim order, the husband was also obliged to pay arrears which had accrued in the period between the application and hearing in April 2017, amounting to £108,000. With interest at 8%, the total sum outstanding under the order as at 18 April 2018 amounted to between £483,000 and £485,000, depending on the method of calculation of interest.

23. On 9 May 2017, HKH Kenwright and Cox sent a further letter to the husband, marked without prejudice, reiterating their case that C Finance had "unanswerable grounds for reinstating the charge over [the matrimonial home] which you fraudulently caused to be removed from the register". They stated, however, that they understood from MO that the husband may be reluctant for his co-investors (meaning, presumably, Mr X) to learn of their clients' involvement and that it may be undesirable for him to reinstate the charge and admit the fraud he had committed in the context of his ongoing divorce proceedings. They indicated that, in the circumstances, their clients were willing to forbear from enforcing the reinstatement of the charge and notifying the husband's co-investors of their involvement on condition that he provide satisfactory alternative security for his present and future liabilities, for example by registering charges over the properties or over his shares in his company. Copies of further correspondence were produced during the hearing which purported to show solicitors on behalf of C Finance and U Properties continuing to apply pressure on the husband to make further arrangements for the repayment of the sums it was said he owed to the companies.

24. On 25 July 2017, the wife had applied for enforcement of payment of the arrears, which at that date stood at just under £200,000, coupled with a further application for disclosure of information, including details of the sale of assets including a Princess 42 boat and a Rolls-Royce, and for an injunction preventing him from selling further assets without her knowledge. At a hearing before Roberts J on the following day, 26 July, at which the husband appeared acting in person, the FDR was adjourned until November as a result of the deficiencies in the husband's disclosure. The order recorded that the husband informed the court that the boat had been sold for about £178,000 and the proceeds used to pay a loan from Mr X of about £135,000 with the balance being put towards mortgage instalments on the matrimonial home, and that the Rolls-Royce was in the process of being sold for £180,000 and the proceeds used to pay a second loan from Mr X of about £140,000 with a view to the balance being used to pay Ms Hall's fees. The judge listed the enforcement application for a further hearing in August 2017 and directed the husband to disclose all relevant documents supporting his assertions as to the sale of the boat and Rolls-Royce and the loans from Mr. X. The judge varied the order of 26 April so as to provide for the husband to pay the total fees of the single joint experts. The husband undertook that, if he intended to apply for a variation of the MPS order, he would file an application by 2 August, which he duly did a few days later.

25. In a letter dated 4 August 2017 but not received until 12 August 2017, HKH Kenwright and Cox wrote to the wife on behalf of C Finance and U Properties, asserting that the husband was indebted to the companies to the sum of £13m, with

further liabilities arising out of a profit share agreement. The substantive terms of the letter were as follows:

> "We are instructed by our client in connection with the monies which our clients have loaned to [the husband] and [his group of companies] since 2007. The monies were advanced … To fund various property development projects. We understand that you have acted as company secretary for [the group of companies] and are currently engaged in divorce proceedings with [the husband]. Our clients estimate [the husband's] total current liabilities to them in respect of the loans to exceed £13m … with a further estimated excess of £6m in profit share agreements on the investments. The funds loaned to [the husband] include the loan guaranteed by legal charge on the charges register for [the matrimonial home]. [The husband] has unlawfully cured the removal of the legal charge dated 26 June 2008 in favour of C Finance in December 2011. Many unsuccessful attempts have been made to persuade [him] to provide a summary of his present and future liabilities and take steps to give our clients comfort that such liabilities will be satisfied. Due to [the husband's] past actions, particularly in relation to the unlawful removal of our client's legal charge …, As well as your ongoing divorce proceedings, our clients are understandably anxious to have the interest formally acknowledged and protected. You are required to confirm within seven days of this letter your intention to reinstate our client's legal charge …. Failing this, this letter serves to notify you of our clients' imminent intention to bring proceedings seeking appropriate relief, including but not limited to security over the underlying assets which [the group of companies] is invested in, as well as to apply to intervene your divorce proceedings to protect our clients' interest in [the matrimonial home]."

26. It is the wife's case that this was the first time she was aware of any alleged liabilities of this sort. There had been no reference to the existence of a debt to C Finance or any associated company in the June 2016 voluntary Statement of Assets and Liabilities, or in the husband's Form E, or the replies to questionnaire, or in the course of the MPS proceedings. It is further her case that there had been no reference to this debt in the disclosure to and conversations with the single joint expert.

27. The hearing of the enforcement application took place before Roberts J on 11 August 2017. The husband again represented himself at the hearing. At the conclusion of the hearing, the judge made an order pursuant to FPR r.20.2(1)(c)(v) for the sale of various chattels, including the Rolls-Royce, with the wife to have conduct of the sale (except of the Rolls-Royce) and the net proceeds to be applied to discharge, first, the husband's obligations under the MPS order, then outstanding costs orders, then any sums owed to the SJEs, with any balance remaining to be divided equally between the parties. The judge further ordered the sale of the husband's Knightsbridge flat with the net proceeds to be utilised for the same ends, save that any remaining balance was to be held by the wife's solicitors until further order. The order further provided that the husband was not to be heard on his application to vary the MPS order unless he complied with certain requirements stipulated in the order, including disclosure of updating financial information and details of his travel outside the jurisdiction in the preceding 12 months. By a separate order made on the same day, Roberts J made a freezing injunction in standard terms preventing the husband disposing of or dealing with the matrimonial home, the three properties in the South of France, any other

motor vehicles in which he had an interest, all of his works of art and his guns, save for those items subject to the interim order for sale made at the hearing. The injunction recorded that the husband gave an undertaking not to dispose of or charge his interest in the Mayfair development property and to keep the wife informed of the marketing of that property.

28. In an email dated 6 September to the wife's solicitors, in answer to queries about the letter sent to her by HKH Kenwright and Cox, the husband had asserted that the debt to C Finance had been taken into account in his "workings" supplied to the SJE. In the email, he said that "they", meaning C Finance, had got nervous because of the way the wife had conducted herself and her threats to take him "to the cleaners", adding that he was

> "trying to deal with this and calm the situation. It is a genuine debt but I am concerned about the way they seem to be acting. Please keep me informed so that no damage is caused from their side to our family situation."

29. On 19 September 2017, Ms Hall produced her report on the value of the husband's business interests. She valued the husband's business interests before personal tax at £11.8m. All parties now agree that this report does not represent an accurate valuation of those interests. The parties are agreed that the principal reason for this is that the husband had failed to disclose significant details of his financial position. They disagree, however, as to what those details were. On 16 October, the wife's lawyers submitted questions seeking clarification of aspects of Ms Hall's report.

30. Meanwhile, according to email correspondence produced during the hearing, negotiations were continuing between solicitors acting for the husband and for C Finance and U Properties, resulting in a document entitled "Heads of Terms" signed by the husband on 16 October 2017. I shall consider this document and others produced at around the same time, later in this judgment.

31. At a further hearing in November 2017, Cohen J extended the interim order of sale to include other works of art, providing that the proceeds of sale should be applied slightly differently, namely the first £100,000 to be divided between the parties on the basis that the husband's share be utilised towards debt of £76,000 which he asserted was owed to HMRC, with the balance of the proceeds to be applied in accordance with the order of 11 August. The freezing injunction remained in force. An FDR the following month failed to lead to any resolution of the parties' dispute. On 1 December, Ms Hall filed a supplemental report in answer to the questions posed on behalf of the wife. On 12 January 2018, the wife filed a ***Daniels v Walker*** application, seeking permission to rely on a report by Mark Gillespie of FTI Consulting in respect of the husband's business interests on the basis that there was a very substantial dispute as to the value of those assets. On 15 January, the wife served a schedule of deficiencies in the husband's disclosure and a further questionnaire. At a hearing on 16 January, at which the husband was represented by junior counsel, I allowed the wife's ***Daniels v Walker*** application and gave consequential directions obligating the husband to provide information to Mr Gillespie and directing an experts' meeting. I also made an order directing the husband to reply to the wife's schedule of deficiencies and further questionnaire. At the same hearing, being informed that the earlier valuation of the matrimonial home was no longer agreed, I provided for the appointment of a single valuer to value the property. I also gave directions for (a) the

filing of statements by four witnesses on behalf of the husband, provided they were filed by 29 January, (b) the preparation of a Scott schedule on behalf of the wife detailing any sums that she claimed by way of "add back" (i.e. on the basis of excessive expenditure by the husband), (c) the preparation of a schedule of art works in the parties' possession at that date, (d) updated s.25 statements by both parties, including detailed disclosure particularised in the order (bank statements, business accounts, evidence of liabilities etc), and (e) directions for the hearing including the preparation of bundles to be agreed if possible. The parties were unable to agree the identity of the valuer of the matrimonial home and at a further hearing I directed that it be carried out by John D Wood.

32. On 30 January 2018, an application was made by solicitors on behalf of the husband seeking a limited variation of the freezing order for the purposes of obtaining a loan for legal representation. Lenders approached to provide a loan had requested an assignment of any share ordered by the court to be paid to him in the proceeds of sale of the matrimonial home, the Knightsbridge flat, and the three properties in the South of France. On 31 January, I amended the freezing order as requested. On the same day, the husband having failed to comply with my order that he reply to the wife's schedule of deficiencies and further questionnaire or with my order that he prepare a schedule of art works, the wife's solicitors filed an application for a penal notice to be attached to those orders. The husband's solicitors sought a variation in the earlier directions, which I approved without the imposition at that stage of a penal notice.

33. On 2 February 2018, HMRC presented a petition for bankruptcy against the husband in the Central London County Court, in respect of outstanding tax in the sum of £26,399.19. On the same date, the wife's solicitors filed a Scott Schedule particularising items of expenditure which, it was asserted, had been dissipated by the husband and which the wife argued should be "added back" to any lump sum awarded to her by the court at the conclusion of the proceedings. It was asserted that between January 2015 and July 2017, he spent a total of £402,000 on his former girlfriend, Ms AZ. The schedule listed in detail specific expenses on holidays, restaurants, clothes, jewellery, shoes, and other luxury items. It was asserted that he had disposed of four family assets, including the Princess 42 boat, the Rolls-Royce, a Mercedes and a Land Rover, total value £524,925. It was further asserted that the husband had dissipated significant sums raised by loans from Mr X, totalling approximately £375,000. It was further contended that he had depleted a collateral bank account securing the mortgage by the sum of £740,000. Including other sums unaccounted for, and subject to any explanation provided by the husband, it was asserted in the schedule that the total sum dissipated was in excess of £8.5m.

34. On 5 February, the husband through his solicitors filed replies to the schedule of deficiencies and a schedule of art in the possession of the family. On 12 February, they filed a response to the "add back" Scott Schedule. On 19 February, John D Wood delivered their report estimating the value of the matrimonial home as being £4.8m.

Also on 19 February, Mr Gillespie of FTI Consulting filed his report as to the value of the husband's business assets on behalf of the wife. He valued the husband's business interests before personal tax at £14.7m. Like Ms Hall, Mr Gillespie summarised the complicated structures through which the husband's business interests in the three London development projects were held and managed. He identified that Mr X had invested in those projects although he noted that the agreement as to the allocation of

profits between him and the husband were in some cases unsupported by written documentation. He noted that, in addition to the business assets, the husband had stated that he has a number of liabilities, including several personal loans from Mr X and additional liabilities to C Finance and U Properties. He recorded that the husband had promised that information about those latter loans would be provided in the witness statement but added that, at the date of his report, however, no such statement had been provided. Both parties agree, albeit for different reasons, that the information provided to Mr Gillespie was incomplete and/or inaccurate and that, as a result, his report does not reflect a reliable valuation of the husband's business assets.

35. On 22 February, HKH Kenwright and Cox, solicitors, filed an application on behalf of C Finance and U Properties to be joined as intervenors in the financial remedy proceedings.

36. On 23 February 2018, the Friday before the trial was due to begin (with a reading day) on the following Monday, the husband's solicitors sought an extension of time for the filing of the statements from four witnesses for which permission had been given in the order of 16 January. In fact, the statements produced were from five witnesses – (1) the husband's sister, (2) a friend of the husband, hereafter referred to as "Mr M", who asserted that a number of art works in the matrimonial home were in fact loaned by him to the husband, (3) Mr X, (4) Mr Y, who is finance director of Mr X's company and responsible for managing his personal and business investments, and (5) a man hereafter referred to as "Mr K", who asserted in his statement that he was the director of C Finance and associated companies to which, he claimed, the husband was indebted to the sum of just under £14m. The statements from Mr X and Mr Y had been served on the wife's lawyers on 20 February, but the statement from Mr K was not served until late in the afternoon of 23 February. In addition to the five statements, the husband's solicitors also served a number of other documents on 23 February, which purported to support his case as to the existence of a loan owed to C Finance and its associated companies. It was claimed that the reason for the very late disclosure was that the hoped-for funding for the husband's legal representation did not materialise until 1 February 2018, (when a litigation loan of £425,000 was agreed). As a result, his solicitors could not start work until after that date, and a huge amount of work had been necessary in preparing and taking the statements.

37. On 26 February 2018, the first day of the hearing before me, listed as a reading day, both parties filed statements under s.25. In his statement, the husband calculated his liabilities as follows (a) £12.4m to Mr X, (b) just under £9m to C Finance, (c) £488,000 under his litigation funding loan, (d) £80,000 to his sister, (e) £35,000 to his friend Mr M, and (f) other immediate liabilities of £315,000. These last-named liabilities included debts to HMRC, part of which has been repaid since the hearing from funds frozen under the order of 11 August 2017. Both parties exhibited a number of documents to their statements. Among the documents exhibited by the wife were a number of emails sent by the husband from her computer concerning his business activities.

38. On 27 February, HKH Kenwright and Cox wrote again to the wife's solicitors, this time in the following terms:

> "Our clients have decided to withdraw their application to be joined to the named proceedings. The principal reason for their having done so is the applicant's

> contention that it will be possible to determine our clients' claims without adjourning the final hearing. The risk that the court might accept this contention is not one that our clients are prepared to run. Our clients' claims are highly valuable and include proprietary claims in respect of (i) [the matrimonial home] and (ii) the profits made on the property development projects known as [A House, D House and the Mayfair property]. It would obviously be inappropriate for such claims to be determined without our clients being afforded a proper opportunity to plead and evidence them.
>
> Our clients will now take steps to reinstate the register charge over [the matrimonial home] and to bring their claims against the respondent and the companies in which he and the applicant are interested. It should go without saying that their rights to bring such claims are reserved and cannot in any way be prejudiced by their decision not intervene the above-then proceedings. In this regard, we would remind you that the orders made by the Court in the above-then proceedings cannot affect the proprietary interests of non-parties: see e.g. ***Fisher Meredith LLP v JH*** [2012] EWHC 408 (Fam) at [50] – [52]. Nor can the Court properly make order that would prejudice the creditors of the companies in which the applicant and the respondent are interested."

39. The hearing started on 20 February 2018. In their opening submissions, counsel for the wife (Mr Timothy Bishop QC and Miss Katherine Cook) and for the husband (Mr Martin Pointer QC and Miss Judith Murray) presented their respective schedules of assets and liabilities. The wife's schedule assessed the parties' joint net assets to be worth approximately £3.6m, of which £3m were attributed to the husband and £600,000 to the wife. This calculation was based on a valuation of the matrimonial home of £4.8m and included a figure for the wife's "addback" claim of £1.2m. It included the husband's liabilities to Mr X and some of his other immediate liabilities, including the debts to HMRC, but not the alleged liabilities owed to the husband's sister, his friend Mr M, or C Finance. The husband's schedule asserted that the parties had net liabilities of approximately £1.33m, with the husband's net liabilities assessed at just under £1.5m and the wife's net assets at £156,000. The basis for this calculation differed from the wife's schedule in a number of respects. The valuation of the matrimonial home was £9.5m (that being the figure given at a much earlier stage of the proceedings). The schedule included different valuations for the parties' art collection and unlike the wife's schedule included the parties' jewellery, the husband's jewellery being valued at £94,000 and the wife's at £789,000. Most importantly, the liabilities included, in addition to those owed to Mr X, sums said to be owed to the husband's sister, his friend Mr M and C Finance. The figure given in the schedule for the liability to C Finance was just under £9m.

40. In his opening presentation, Mr Bishop objected to the admission of Mr K's statement, describing what had happened as being "an ambush". After considering the matter, I rejected his objection and admitted the statement and other documents. The hearing proceeded with the wife giving evidence, followed by the husband, whose evidence extended over four days. On 7 March, some further documents were disclosed by HKH Kenwright and Cox, the solicitors acting for C Finance, replying to questions posed on behalf of the wife. Those solicitors said that they were under no obligation to provide information which was privileged and subject to confidentiality, that no members of the husband's family or business associates are associated in any

way with C Finance or its associated companies and that the only dealing the companies have had with the family is the loans they have made to them. The solicitors provided "selected email communications between the husband and entities within the group of companies related to the loans and profit share agreements". On 9 March, which was originally intended to be the last day of the hearing, Mr X gave evidence by telephone, the husband and wife were briefly recalled, and then Mr Y gave evidence in court. It was anticipated that Mr K would then be called into court, but when his moment arrived, he was not present. After hearing submissions, I agreed to adjourn the application for a further hearing a few weeks later.

41. The hearing resumed on 27 March. In the intervening period, a further statement and an affidavit from Mr K had been served, together with a statement from MO and a further statement from a man, hereafter referred to as "Mr S", who was said to be working for C Finance. In addition, further documents were produced by HKH Kenwright and Cox, including a letter, apparently signed by Mr K, confirming that Mr S "is fully authorised to represent C Finance and U Properties in court proceedings in my absence". On 27 March, Mr K was not present and an application was made for his evidence to be taken by video link. This application was again opposed but allowed by the court. I proceeded to hear his evidence, followed by that of Mr S and MO. The hearing was then adjourned for submissions in writing, supplemented by oral submissions at a further hearing on 18 April. Judgment was then reserved.

42. The preparation of this judgment has involved analysing and comparing the many documents produced during the proceedings in the piecemeal fashion described above. Documents produced and considered at an early stage in the hearing have had to be re-evaluated in the context of further documents disclosed and evidence given at a later stage. This has been a particularly difficult and time-consuming exercise. I have been very conscious that the wife's case is that the husband has fabricated the extent of his liabilities – in other words, lied to the court. It is incumbent on any judge faced with such a serious allegation to consider all the evidence carefully, bearing in mind the potential consequences of finding the allegation proved.

(3) The issues

43. At the outset of the hearing, counsel for the wife summarised the issues for the court to determine as follows:

(1) the computation of the resources available for distribution between the parties, including the potential future value of the business interests over and above the agreed views of the experts as to current value, the value of the parties' art collection and other valuables and the extent of the husband's liabilities;

(2) whether or not there should be an "add back" to reflect the husband's dissipation of assets and/or money unaccounted for;

(3) how should the future realised value of the property developments be shared between the parties and what mechanism should be put in place to ensure that the wife's prospective share is safeguarded;

(4) the allocation of the non-business assets between the parties;

(5) the parties' income and capital needs;

(6) whether there should be a clean break and if so, at what point;

(7) whether periodical payment should be paid for the children while they remain in full-time education;

(8) the proper assessment of the husband's litigation conduct;

(9) the treatment of outstanding cost orders and arrears of maintenance pending suit; and

(10) costs.

As the hearing proceeded, however, one issue increasingly dominated the evidence and focus of the enquiry, namely the true extent of the husband's liabilities. If the liabilities are on the scale claimed by husband himself, he is insolvent – indeed, he is indebted to the sum of several million pounds – and all the other issues identified by the wife's lawyers are of limited relevance.

44. On behalf of the wife, Mr Bishop argued in opening that the husband was a very shrewd operator in the world of high-end residential property development and as a result of his business success, substantial wealth could be generated during the marriage enabling the family to enjoy an excellent lifestyle. He made it clear that the wife did not accept the alleged liabilities to C Finance and complained that the husband's litigation conduct had caused difficult computational issues. He accepted, however, that the reduction in value of the matrimonial home, coupled with the clarification of the high level of indebtedness to Mr X, meant that the current picture was a far cry from the lifestyle which the parties had lived during the marriage. He submitted that a realistic solution would be for the matrimonial home to be sold and the proceeds of sale and collateral accounts transferred to her to provide a housing fund. He proposed that other assets, including the three French properties and linked collateral accounts, be transferred to her to enable her to pay her debts and provide an interim income fund. He further proposed that the husband should pay the wife a series of lump sums equivalent to 50% of the net sums received by him on the completion and realisation of the three London development projects. On behalf of the husband, no open offer or detailed proposal was advanced at the start of the hearing. It was submitted that the outcome of the case would have to be a clean break between the parties, although it was acknowledged that the court would have to consider whether the clean break could be immediate or should be deferred to await the completion of the projects.

(4) Disclosure

45. Before turning to consider in detail the evidence concerning the husband's alleged liabilities, it is necessary to look at the unusual way in which those details emerged in the course of the proceedings.

46. The first disclosure carried out by the husband was the one-page "Statement of Asset and Liabilities with Income/Expenditure" exhibited to the email sent to the wife on 27 June 2016. In that document, he set out his financial position in the following way: (1) a balance sheet of liabilities and assets; (2) a list headed "Cash Investments in Development Transactions"; and (3) a list of "Committed/Regular Monthly Expenditure".

47. The assets identified consisted of bank balances and deposit accounts, properties, art collection, and cars. The bank balances, including deposit accounts, were said to be approx. £3.5m. The five properties listed included the matrimonial home in London, valued at £9.5m, the Knightsbridge flat valued at £1.6m, and the three properties in the South of France, two of which were valued at €7m (£5,840,000) and the third at €2m (£1,670,000), although the husband added in a footnote that in order to achieve €14m for the two larger properties "an additional €3m will be spent within the next 12 months". The art collection was valued at approximately £1m. Nine cars were listed with a total value said to be £863,000, and a Princess 42 yacht valued at £250,000. The total assets therefore amounted to just over £30 million. The liabilities listed comprised credit cards of approximately £20,000, four bank loans linked to properties, namely the matrimonial home (£4.7m), the Knightsbridge flat (just over £1m) and two of the South of France properties (£1.1m and £0.9m respectively), and further loans in respect of five of the cars totalling approximately £400,000, making total liabilities approximately £8.24m. Deducting that sum from the total assets left a figure described as a "surplus at this date" of £21,892,546.

48. In the separate table below the assets and liabilities balance sheet, headed "Cash Investments in Development Transactions", three properties were identified (A House, D House and Cottage, and the Mayfair property). A figure of £6,351,262 was inserted next to these properties, with the following breakdown provided - £3,855,376, £1,170,886, and £1,325,000. It was stated that the expected profit was between £5 million and £10 million and the table concluded: "Total £11,351,262 - £16,351,262." Neither of these latter figures appeared in the list of assets in the upper half of the page.

49. The third list on the page, headed "Committed/Regular Monthly Expenditure" included mortgage payments of £29,396, housekeeping of £10,000, school fees of £1150, "children/other commitments" £3000 and "irregular expenditure/holidays" £5000, plus other payments, all totalling £51,992.

50. As stated above, in the covering email, the husband had said that the "info" in the Statement of Assets and Liabilities had been "for your use and your advisers". In oral evidence, he maintained that, in using the word "advisers", he had meant friends rather than legal advisers. He further pointed out that the date at the top of the schedule was "May 2016" whereas the email enclosing it had been sent on 27 June 2016.

51. The husband's Form E, filed just over 6 months after the voluntary disclosure in the 27 June 2016 email, gave a significantly different picture of his financial position. The figure given for the equity in the matrimonial home (£4.75 m) was roughly equivalent to that portrayed in the earlier document, although the sums given for the market value and outstanding mortgage were significantly higher (£11m and just under £6m respectively). Similarly, the equity in the Knightsbridge flat was roughly

equivalent, although the sums given for both the market value and outstanding mortgage were lower. The value given for the French properties was notably lower, being expressed as the current value, with a qualification that two of the properties were under development and would require investment of €2m over the next 12 months. The valuation given for the art collection was also lower (£902,582), as was that given for the cars and boat (£642,346), although other chattels - the contents of the former matrimonial home and watches - which had not appeared in the voluntary disclosure were included in the form E. The value of the various bank accounts and other bank investments was several hundred thousand pounds less than in the voluntary disclosure. The most significant variation, however, concerned the development transactions. Whereas in his voluntary disclosure the husband had estimated his interest in the three properties (A House, D House, and the Mayfair property) as approximately £6.35m, with an expected profit of between £5m and £10m, he stated in his Form E that he held shares or an "equitable interest" in three companies involved in developing the three properties and estimated the value of his shares or interest in those companies at £4.35m. Of even greater significance was his assertion, not mentioned in his voluntary disclosure six months earlier, of liabilities in the form of loans owed to a well-known businessman, thereafter referred to as "Mr X" totalling just over £10m. In an annex to the Form E, it was asserted that the loan arrangements with Mr X had been made to enable the husband and his companies to participate in the three property development projects, together with the development of the French villas "and for cash flow purposes to meet personal and business expenses". It is notable that the Form E did not refer to any other loan arrangements save for those involving Mr X.

52. The "bottom line" in the Form E was therefore completely different from that contained in the "Statement of Assets and Liabilities with Income/Expenditure" six months earlier. In June 2016, the husband had asserted that the family's assets were around £20m, and his investments in development transactions were worth £6.3 million with an anticipated profit of between £5m and £10m. The Form E, however, asserted that the value of his assets less liabilities was £6m.

53. This apparent fall in the net value of his assets was not reflected in the husband's assessment of his future income needs, which he estimated in his Form E to be £334,000 per annum. At the same time, he drew attention to concerns raised through solicitors about the wife's "wanton and reckless spending".

54. In a questionnaire submitted following the filing of his Form E, the husband was asked by the wife's solicitors to explain the discrepancy between the figures in the Form E and those in the June 2016 Statement of Assets and Liabilities in which there was no reference to the liability to Mr X. He replied that the earlier Statement "was an informal document prepared by the respondent without legal advice at an early stage to provide a broad overview, and contained errors and omissions. At that early stage, before having taken legal advice, the respondent felt uncomfortable discussing the extent of his liabilities to Mr X." On behalf of the wife, it was submitted at the hearing before me that between the voluntary disclosure in June 2016 and the filing of the Form E in January 2017, there had been a significant breakdown in the parties' relationship and that, by the time the Form E was filed, the husband was fully engaged in seeking to minimise the wife's financial remedies claim.

55. Neither the June 2016 Schedule, nor the husband's Form E, referred to any liabilities to C Finance or U Properties. As described above, it was only in the latter months of 2017 that these alleged liabilities came to light in these proceedings. It was only in giving his answers shortly before the hearing to questions posed by the wife's expert, Mr Gillespie of FTI Consulting, that the husband asserted that a series of loans had been made between 2011 and 2014 totalling £8,996,194 from U Properties, and that the loans had subsequently been refinanced by a profit share agreement relating to the three development properties A House, D House and Cottage and the Mayfair property. He asserted that the amount outstanding remained £8,996,194. No profits had yet been generated because the properties remained unsold. He estimated the values of the three properties as follows:

    a) A House - £40m, although the property was said to be 2.5 years from completion and not yet being marketed;

    b) D House and Cottage - £40m, although this property would take 3 years to complete after financing and was not yet being marketed;

    c) The Mayfair property – being marketed at £30m with no offers, and valued by the husband at £24m. The costs of the development, originally projected at £19m, had overrun to £24m. A sale at its estimated value would therefore generate no profit. Indeed, £30m was described as its "break even" point.

    The husband further asserted that the profits once generated would be divided as follows:

    a) A House – (i) initial return of capital of £5.9m to the husband, £17.2m to Mr X (ii) then to satisfy Mr X's preferred return (iii) the balance to be split 60% to the husband, 40% to Mr X. Mr X's preferred return would be on his personal investment and would not reduce the husband's liabilities to Mr X under the personal loans.

    b) D House and Cottage – H's profit is limited to 50% after Mr X's preferred return.

    c) The Mayfair property – the husband also has a liability for a late delivery penalty, estimated at approximately £1.5m. H's profits is limited to 20% after Mr X's preferred return and after the penalty clause.

56. Mr Gillespie asked the husband whether Mr X was aware of the alleged loans from C Finance. He replied that "these loans related to my private funding arrangements and to ensure confidentiality I have not discussed nor had reason to discuss them with Mr X. By the same token, whilst Mr X is a wealthy man, I have not questioned from where he is sourcing his funds, whether this is his personal funds or a third party lender." In a letter sent on 21 February, five days before the start of the hearing, the husband's solicitors warned that the wife "should think very carefully before following through on her threat on using information disclosed by the husband to approach Mr X."

57. Unsurprisingly, the discrepancies between the June 2016 Schedule, and the Form E, and the husband's position at trial, featured prominently in the case advanced on behalf of the wife both in cross-examination and in closing submissions. The husband had anticipated this in his s.25 statement filed on the first morning of the hearing. In that statement filed, he gave this explanation:

> "My hope, initially, was to reach an agreement regarding our finances through informal negotiations. In June 2016 I prepared for [the wife] a draft, one-page asset schedule. [She] has, throughout these proceedings, sought to rely heavily on this. As one might expect from a document prepared before I had legal advice … it contained errors and was incomplete … [She] has focused on the fact that the statement did not make provision for my loans from Mr X (which in May 2016 were the £5m facility and the €1.1m villa loan). This is disingenuous, as [she] was present at our home in France when he and I agreed the £5 million facility in June 2015 and thanked him personally for the loan during our dinner … that evening …. This was an omission from the schedule, but … my (sadly optimistic) thinking was to repay Mr X quickly (given the high interest rate) with refinancing from the completed villas and receipts/profits from [the Mayfair property], and that we would not then need to dip into our assets to repay him. The schedule did not explicitly refer to C Finance, but, as it was a summary schedule, I stated my investments in each of the three projects, totalling £6.3m after deducting the sum I would need to repay my funding partner when the project exited, i.e. c £8m (the revised SJE valuation for these assets is £14m)."

58. In his oral evidence, the husband stated that the schedule sent to the wife on 27 June 2016 was a draft which had been prepared a few weeks earlier in May 2016 as part of a pitching exercise to raise further funds from equity partners and joint venture partners. When it was put to him in cross-examination by Mr Bishop that he had no interest at all in overstating his assets in the schedule, he replied:

> "It is something that I did. I was very overwhelmed by the situation. This was not for [my wife]. This was an internal thing. It was a start. It was a pitch form – a start .... It wasn't designed to go to anybody. It was just at the time even I was in a very difficult place … and I wasn't thinking straight. I was – I was hoping that I could actually perhaps even reconsider our life, so I just send that with a covering letter. It's not from July or June. It was in May in a rough format."

His evidence continued as follows:

> "Judge: Is this a true reflection of your financial position on 27 June 2016?
>
> Husband: No.
>
> Judge: Why did you send your wife a document that did not represent the true financial position?
>
> Husband: Out of haste and I was wrong.
>
> …

Judge: …Out of haste isn't an answer, is it? What you mean by 'out of haste'?

Husband: I was under a lot of emotional issues at the time. I was between a rock and a hard stone when I say haste, and I didn't know how [my wife] would react and how I needed to best address it, and that's what I'm trying to say. Maybe haste is the wrong word but …

Judge: What do you mean you didn't know how [she] would react?...

Husband: Having known [her], she …, As has transpired today, she doesn't believe anything, and in fact after today she is doubting these facts. This was, as I said, it was for a – a pitch idea. Wrongly or rightly, it was my business decision to make this in this way and I …

Judge: When you sent … this document, did you know it was an overstatement of your financial position?

Husband: I did.

Judge: Why did you send your wife a document that overstated your financial position?

Husband: I was wrong because it's a wrong – wrong thing to do.

Judge: Forgive me, that doesn't answer my question: why did you do it?

Husband: I just sent it."

59. Continuing his questioning, Mr Bishop suggested that it made "zero sense" to send the wife a document which overstated his financial position by over £8m. To this, the husband replied that the wife

> "knew about MO and how he was involved with me in property. She likes to think she wasn't aware. She also knew about Mr X's £5 million loan which she thanked him over dinner in October. I would have thought that she was aware of these facts …."

When Mr Bishop observed that, if the wife knew about the loans, there was all the more reason to put them in the document, the husband reiterated his assertion that the document had not been prepared for her. Mr Bishop suggested that the document contained information that would be of no interest to prospective investors or business partners, such as details of his credit card liabilities, the value of his art collection, and the cost of his expenditure on his children. The husband responded that such information was needed so that prospective investors could work out his affordability.

60. The husband was then asked about the explanation given in his s.25 statement filed eight days before his oral evidence. Mr Bishop drew attention to the fact that in that document he had stated that "in June 2016 I prepared for [my wife] a draft one-page asset schedule", whereas in his oral evidence it was his case that the document had been part of a pitch for equity partners. The questioning continued:

"Counsel: How do you explain that inconsistency?

Husband: I think it gets back to the inconsistency this whole – the whole of this issue has. I was – I was not thinking straight on this form at the time. I had so many fires to put out, so many family issues and so many business issues in (inaudible).

Counsel: To come back to my question, last Monday you say it's a one-page document prepared for [the wife] for negotiations. Yesterday you said it was part of a package for equity partners. Which one of those answers is true?

Husband: Part of a package or the pitch."

Challenged further about this, the husband added:

"Husband: That's what it should have said.

Counsel: That's what it should have said? So why didn't it?

Husband: I don't have an answer for that. It was wrong."

61. A little later, Mr Bishop returned to the explanation for the June 2016 schedule given in the husband's s.25 statement. He noted that the husband had asserted the reason for not mentioning Mr X in that schedule had been because he hoped to be able to repay the loans out of the proceeds of sale of the French villas and the Mayfair property. Mr Bishop asserted that this made no sense because the husband had included 100% of the value of the villas in the schedule and, if he was anticipating having to repay from that source, he could not possibly have left Mr X's debt off the schedule. The husband retorted that he had left the debt off the schedule because

"I hadn't disclosed where my equity of the deals were in London and, wrongly or rightly, that was my business decision and that's why I did it that way."

At another point in the cross-examination, Mr Bishop pointed out that the SJE, Ms Hall, had valued his interest in the three property developments at £11.8m. There was no reference to any liabilities to C Finance. The husband maintained that he had mentioned his "equity partner" in email correspondence with Ms Hall and her team. Mr Bishop then enquired why, on receiving the report, he had failed to remind her of the equity partner.

"Mr Bishop: Did you write a letter to Ms Hall saying 'you've forgotten a huge liability. I've got an equity partner or someone who has loaned me £9 million?'

Husband: For all the reasons again that I've been saying most of the day, for the same reason. As I hadn't disclosed it to (inaudible), I was very concerned and I still am very concerned and hence, I was, knowing about the debt, I was trying to keep and spin as many plates as possible while I'm trying to get out."

(5) The liability to Mr X

62. Statements were filed on behalf of the husband by Mr X and his financial director Mr Y. Both men subsequently gave oral evidence at the hearing. Both were impressive witnesses whose evidence was entirely credible.

63. Mr X is a well-known and successful businessman who, having sold his business for a substantial sum, became involved in commercial property on a substantial scale. In his relatively brief statement, Mr X described how he had met the husband and wife socially some years ago and that in due course this connection led to his decision to invest in projects being undertaken by the husband and subsequently making personal loans. The detailed evidence about the financial relationship between Mr X and the husband was provided by Mr Y. Mr Y's evidence was that Mr X's loans and investment with the husband represent a very small proportion of his overall lending and business activity. Mr Y explained that over the past 10 years, he has routinely been involved in arranging loans to business contacts and friends of Mr X. In his statement, he explained that many of the loans made by Mr X to his friends are advanced in the knowledge that they carry a risk and are made on a basis which he would not normally accept in a strict business context. He therefore fully expects the loans to be repaid in the same good faith as they have been extended.

64. In his statement Mr Y described in some detail the property investments that Mr X has made in joint business ventures with the husband. It is unnecessary for the purposes of this judgment to set out the details of those ventures. The following summary is sufficient. With regard to D House and Cottage, Mr X and the husband have invested approximately £5 million each. They have also agreed that Mr X would receive a "preferred return" of 15% per annum on his equity before any division of profit with the husband. Mr Y explained that this figure is based on the level of return that Mr X would reasonably expect to obtain by investing in private equity ventures. Under this arrangement, he will receive the first £4,273,000 of any return from D House. Mr Y added, however, that as a result of delays in completing the project, it has been "effectively mothballed" and significant additional bank funding will be required to complete it. With regard to the Mayfair property, Mr Y advised that the equity in the property is held as to 20% by the husband and 80% by a company owned by Mr X's family trust. The husband is the developer of the property but there have been significant delays. Under the building contract, there is a penalty fee which requires the husband's company, and the husband as guarantor, to pay £10,000 per week for every week the project overruns the timetable. At the stage of practical completion of the development, the penalty fee ceased to accrue but by then it had exceeded £1.5m. At present, the property is on the market for £32m, although the professional valuation is no more than £25m. If sold at that price, however, the project would make a loss. With regard to A House, Mr Y advised that Mr X and the husband are co-investors in the development, and that their respective shares are £18.5m and £6m. As with D House, it has been agreed that Mr X will receive a preferred return on his equity at 15% per annum. Mr Y advised that at present, this equates to around £11m. Given the escalating cost of the project, Mr Y expressed the view that the prospect of the husband ever getting any return of even his embedded equity of £6m would depend upon the property selling for a price in excess of £55m. With a current valuation of £42.5 million, Mr Y considered that any profit would be at best marginal and it was possible that the project would make a loss.

65. The overall impression from Mr Y's evidence was that it was unlikely that the husband would recover substantial sums from his investments in the three London properties.

66. In addition to his investments in property ventures initiated by the husband, Mr X has made a series of substantial personal loans to the husband over the past four years. As at 31 January 2018, the total sum owed by the husband to Mr X was £12,431,422.16.

67. Full details of the loans were set out in Mr Y's statement and can be summarised as follows. The first loan, described as the "Villa facility" was agreed in November 2014 and was made to assist the husband to acquire one of the French properties listed above (described as "French property 2"), adjacent to another property ("French property 1") which the husband already owned. He believed that the development of the two properties together represented a good investment opportunity. The second loan, of £5m, was agreed in September 2015. £2m was to be utilised as "seed capital" of future developments, a further £2m to enable the husband to finalise the development of his villas in France, and the balance to clear specific debts and obligations. At that time, it was thought that the husband had about £4.8m equity in A House and Mr X took security over that equity for the £5m loan. Mr Y stressed, however, that repayment of the loan is not conditional on A House being developed successfully. If the loan is not repaid, and the husband's equity in A House is insufficient, the loan will be enforced against his personal assets. A third loan of £1.8m was advanced in May 2016. It was expressed as being for a 10 month term and thus due to be repaid by March 2017. Mr X took security for this loan against the husband's interest in the Mayfair property. As stated above, that property is on the market for sale, but again Mr Y emphasised that repayment of the loan is not conditional on the sale of the property and if necessary would be enforceable against the husband's personal assets. A fourth loan, in the sum of £1.35m, was advanced in October 2016. By this stage, the divorce proceedings were under way and, as demonstrated in email exchanges exhibited by Mr Y to his statement (although not previously disclosed by the husband in these proceedings), Mr X and Mr Y had become concerned about the husband's financial position and his extravagant spending. They advanced the money, however mainly because they realised that completing the Mayfair development project was the main impetus for the husband's request for the loan and, as completion of that project was, in Mr Y's phrase, "the first liquidity event on the horizon", they realised that the husband needed help to complete the project in order to maximise their prospects of receiving repayment for the earlier loans. This loan was again secured against the husband's interest in the Mayfair property. Statements made by the husband and Mr Y in their email exchanges in October 2016 are relied on heavily by the wife's counsel in support of their interpretation of the husband's financial position and are considered in more detail below.

68. In his statement, Mr Y described how the husband subsequently came back to Mr X on further occasions requesting more financial help. Two short-term loans in the sum of £125,000 each were advanced pending the sale of specific assets which were secured against the loans, namely the husband's boat and his Rolls-Royce. Those assets were sold and the loan is repaid. Subsequently, the husband requested further loans but Mr X and Mr Y declined these requests. Mr Y has exhibited to his statement

emails passing between him and the husband about these requests which are considered further below.

69. In summary, Mr Y's evidence was that the total value of the personal loans owed to Mr X by the husband as at 31 January 2018 were as follows:

FACILITY	GBP/EUR	DATE	RATE	PRINCIPAL	FEES	INTEREST	TOTAL
£5m	GBP	30.9.15	15% pa	£5,000,000	Nil	£1,764,464.52	£6,764,464.52
£1.8M	GBP	27.5.16	1.25%pm	£1,800,000	£36,000	£492,424.15	£2,328,424.15
£1.35	GBP	21.10.16	1.25%pm	£1,382,080	Nil	£339,299.01	£1,721,379.27
TOTAL				**£8,182,080.26**	**£36,000**	**£2,596,187.68**	**£10,814,267.94**
Villa facility	EUR	11.11.14	15% pa	€ 1,138,235.41	Nil	€ 710,818,73	€ 1,849,054.15
TOTAL GBP (EUR @ spot rate 1.1256)				**£9,177,563.39**	**£36,000**	**£3,217,858.77**	**£12,431,422.16**

In his statement, Mr Y stated that he anticipates the husband will repay the loans to Mr X from the following funds (1) 100% of his receipts from the Mayfair property, (2) the value of the husband's stake in D House and A House, although both projects are said to be at least two years from completion, and (3) any balance from the future refinancing of the husband's villas in France, once they have been redeveloped. Mr Y adds, however, that ultimately the loans are personal liabilities owed by the husband which can be enforced against other properties belonging to the husband and wife, including the matrimonial home.

70. Amongst the document appended to Mr Y's statement was an exchange of emails passing between the husband and Mr Y on 20 October 2016. In the first, Mr Y stated:

> "we are being asked to further increase our already significant exposure to you and specifically to the financial success of the [3 London development] projects. Unfortunately, whether you like it or not, [your wife] is inextricably linked to these loan arrangements and is ultimately liable for 50% of the debt if the projects go wrong as, notwithstanding whether you contend she has any rights over the equity in those projects, repayment would presumably have to be made from the liquidation of marital assets in the event that there was a shortfall. The fact that she is evidently oblivious to these loans is therefore of some concern given the seemingly irrevocable breakdown of your marriage. As I mentioned it is not inconceivable that in the light of ignorance of these debts, she might contest their legitimacy or even suggest that this is some degree of collusion between us in an effort to deprive her of value to which she is entitled.
>
> I understand that you believe she does have a degree of visibility through the fact that you have provided an assets statement (which I've seen) which discloses your net equity in the three developments but the fact is she has no idea about either the extent of the debt or the identity of the lender; which as you know concerns us deeply."

Mr Y asked for some form of assurance that, by not fully informing the wife about the debts, "this does not in any way compromise our ability to recover all amounts due from you." To this, the husband replied 30 minutes later in these terms:

> "I confirm that I acknowledged the loans from Mr X to me and that, whilst [my wife] is not fully aware of the whole amounts, she clearly knows that [he] gave me £5m to help with business and purchase of villas in France and development of the same. I have also sent an email from my lawyers which gives further comfort. I also acknowledge that if our two business deals do not make any profit at all and after I pay back the £3m from [the Mayfair property] next year upon sale, any shortfall will be taken from mine and [her] marital assets. That is why on my schedule I have separated the two amounts, right side as family assets, the lower left is business."

71. The email exchanges between the husband and Mr Y continued over the next few days. In addition, it is plain from the emails that they had at least one conversation during this period. In an email dated 21 October 2016, Mr Y set out detailed terms on which Mr X would be prepared to advance further money to the husband. He reiterated that he and Mr X would far prefer it if the wife was fully appraised of the situation but stated that the husband specifically requested that Mr Y should not speak to her. He added:

> "your lawyers have given me a specific assurance that by not fully informing [the wife] this does not in any way compromise our ability to recover all amounts due from you both and that the loans from Mr X would not be set aside and will be taken into account in the computation of their joint net assets. We have of course relied on this advice in agreeing to provide further support but it is imperative that [she] is fully informed and that this is done at the first available opportunity."

In addition, Mr Y attached this further condition to the proposed additional financial support:

> "… the mechanics of the above arrangement will involve very close scrutiny by Mr X's family office and we will in effect manage your cash flows and monitor your bank accounts over the course of the next six months or so, and this will require you to be fully … open and transparent. In particular you would have to undertake not to secure any further borrowings of any sort or pledge any assets to a third party and we will necessarily operate on an open book basis in terms of our scrutiny of your affairs, including your bank and credit card statements"

The course of these negotiations did not proceed smoothly. On 25 October 2016, Mr Y sent a further email withdrawing the offer of further financial support. His reasons for doing so were explained as follows:

> "the reality of the situation is that despite us making it clear that we would provide that support on the condition that your expenditure was moderated and controlled, you continue to live beyond your means in the almost blasé expectation that we will mop up after you, while all the time increasing the risk for Mr X. The lease on the flat that you only made us aware of yesterday is a case in point as this seems under the circumstances to be hideously over the top and unnecessary."

In response, the husband acknowledged that it seemed that he was living beyond his means, but assured Mr Y that this was far from the reality. He also stated that he had been "fully transparent on all my financial matters" with Mr X and Mr Y. After further negotiations, the offer of further support was renewed by Mr Y in an email dated 27 October:

> "… we are prepared to give you a further reprieve but this comes with conditions. Firstly, you must comply fully with the terms of the agreement you signed up to last Friday, including being completely open and transparent with regard to your financial affairs and rapidly accelerating the sale of specific assets in order to repay a proportion of your debts to Mr X. Secondly, you must … radically reappraise your lifestyle choices in an effort to reduce your unnecessary outgoings, including where feasible surrendering the leases on some of your cars; which again you committed to do when we met last week. Thirdly, you agree that we will jointly re-appraise the basis of our joint ventures on A House and D House …."

72. Mr Y's statement also exhibits further emails passing between him and the husband in April 2017 in which the husband sought further financial support. Those emails concluded with the husband asking "any chance of any money please?" to which Mr Y replied "stop hassling me please".

73. In his oral evidence, (given by telephone), Mr X stressed that they had insisted on complete financial transparency. He described how, as the divorce proceedings continued, the husband had been

> "constantly on the phone, needing money. I felt that, if I didn't help him, the wife would have no money, the banks would foreclose and the whole thing would become a lot worse. In the end, I lost patience and said 'no more', but even then I lent more money against things like the boat and Rolls-Royce. I've spent the last years in a desperately unhappy situation, a friend has let me down."

Later in his evidence, he said that he had got the impression that the husband is so short of money that he was "robbing Peter to pay Paul". He added, however:

> "I do not believe he would deliberately mislead me. I think he'd be aware of the consequences."

Asked whether he would lend further money, he replied it would depend on whether he was satisfied about the security offered for the loan. If so, he would be willing to help. He thought that, if the husband was successful with the three property developments, he would get himself out of the problems.

(6) Did the husband show the June 2016 statement of assets and liabilities to Mr Y?

74. At this point, I address one important aspect of evidence, described by Mr Bishop as "the smoking gun".

75. As quoted above, in the course of his email to the husband dated 20 October 2016, Mr Y had said:

> "I understand that you believe she [i.e. the wife] does have a degree of visibility through the fact that **you have provided an assets statement (which I've seen) which discloses your net equity in the three developments** but the fact is she has no idea about either the extent of the debt or the identity of the lender; which as you know concerns us deeply." [my emphasis]

In his reply, as quoted above, the husband had said inter alia:

> "I also acknowledge that if our two business deals do not make any profit at all and after I pay back the £3m from [the Mayfair property] next year upon sale, any shortfall will be taken from mine and [her] marital assets. That is why **on my schedule I have separated the two amounts, right side as family assets, the lower left is business**" [my emphasis].

76. In cross-examination of the husband, Mr Bishop pointed out that, in his email on 20 October 2016, the husband had sought to reassure Mr Y, Mr X's financial director, that the wife was aware of the existence of the liabilities and had done so by reference to a document described by Mr Y as an asset statement which, in Mr Y's words, "discloses your net equity in the three developments, but the fact is she has no idea about either the extent of the debt or the identity of the lender …." At one point, the husband said that he was "pretty sure" the document he had shown to Mr Y was the Statement of Assets and Liabilities sent to the wife in June 2016. The following exchange took place during the course of his cross-examination:

> "Mr Bishop: … whatever document it was, Mr Y thought that it showed your net equity in the development, three developments, that's what he thought it showed, doesn't it?
>
> Husband: Well, yes.
>
> Mr Bishop: Which discloses your net equity, the document that he'd seen your net equity in the three developments, that's what Mr Y thought, was it true?
>
> Husband: What he thought?
>
> Mr Bishop: Was it true that it showed your net equity in the three developments?
>
> Husband: It, it showed, it showed my net equity, but it didn't take into consideration Mr X's loans.
>
> Mr Bishop: Well then, this would be no reassurance to him at all. You see, the only way that this schedule, which you showed him, could offer reassurance is if it makes provision for Mr X's loans, you must understand that?
>
> Husband: No … I think I again answered, rightly or wrongly I haven't disclosed it, and that's the worry I have, even today standing here.

> Mr Bishop: So not only do you include, give [the wife] a schedule for the purpose of discussions with her, you rely on the same schedule to give Mr X's right-hand man reassurance that there has been disclosure of his debts, that's the truth?
>
> Husband: I haven't disclosed the debt but I showed him this, the form which included C Finance … In my mind it was always coming from the villas and the extra money in [inaudible - presumably the Mayfair property] and not for the equity in the deals. It was from the loans that I had, and uplifted the two villas."

77. Mr Bishop then put it to him that he had failed to disclose the email exchanges passing between him and Mr Y, including the emails dated 20 October 2016, which had only been produced as an exhibit to Mr Y's statement served shortly before the hearing. After some prevarication, the husband accepted that this was the case, adding "I've explained why I've been very careful to handle this delicate situation that I put myself in". He acknowledged that, in an email sent to Mr Y on 25 October 2016, he had said that he had been fully transparent in all financial matters and that this had not been correct. He agreed that he knew that full transparency was required by Mr X and Mr Y and said that he had not been transparent from the start. When Mr Bishop suggested that for him to lie to Mr X and Mr Y would be "commercial suicide" husband replied "which is where I am the moment". Mr Bishop asserted that he would never take that risk. The husband replied that he had taken that risk and was "deep under water".

78. Cross-examined about the statement of assets and liabilities sent to the wife on 27 June 2016, Mr Y said that he'd seen a document like this but wasn't sure if this was it. He said that he had no idea why Mr X's debt was not reflected in the document. He agreed with Mr Bishop that the figures in the document were consistent with the loans having been deducted. He agreed that, had the document shown to him not taken account of the loans owed to Mr X, he would have said so.

79. Having carefully considered that evidence, I am satisfied, to a high degree of probability, that the statement of assets and liabilities sent the wife on 27 June 2016 was indeed the document subsequently shown to Mr Y.

(7) The alleged liability to C Finance and associated entities

80. I have spent a considerable amount of time trying to piece together the information which was gradually disclosed during the proceedings concerning the dealings between the husband and C Finance and associated companies. In doing so, I have been considerably assisted by a chronology prepared by Mr Pointer and Miss Murray in support of their closing submissions. That document summarises the sources of evidence and attempts to demonstrate a full history of the transactions. In seeking to do so, however, it inevitably draws attention to gaps in that evidence. The documents disclosed by solicitors acting on behalf of C Finance during the hearing were piecemeal documents which in my judgement did not give anything approaching a complete picture of the alleged transactions. There were isolated copy emails and odd pages of bank statements. In some cases, the statements had been seemingly redacted

to remove certain details, for example a bank statement purporting to show a transfer of funds from an account held by C Finance did not include the name of the bank, the sort code or equivalent identification, the number of the account, or the name of the account holder save for one word "C…." (the first word in the name of the company).

(a) Evidence concerning dealings between 2007 and 2010

81. It is alleged that in about 2007, C Finance, who had been introduced to the husband by MO, had lent about £1 million towards the development of a property in London SW7.

82. The documents disclosed by solicitors on behalf of C Finance include a number of emails concerning a series of transactions in 2007-8 which led to the charge being registered on the parties' matrimonial home. During these transactions, the lawyer acting for C Finance was one Anthony Preston who, I was told during the hearing, has subsequently been struck off the roll. Having carefully considered the documents said to support it, I have reached the firm conclusion that the court has not been provided with the full picture. The documents disclosed do, however, provide some limited insight into what was going on. I give the following examples.

(1) In an email dated 24 June 2008, Mr Preston advised C Finance that enquiries prior to the execution of the charge had revealed "nothing untoward is shown but [the husband's] wife resides with him at the property. I will arrange for her to sign a waiver of her right vis-à-vis yourselves." In the email dated the following day, however, he informed his clients that the husband "now tells me that his wife does not live at the property with him, therefore I have not sought the deed of postponement from her. I have no way of knowing whether this is true or not." At all material times, the wife resided at the matrimonial home. She may have moved out of the property for a period while renovations were carried out, but this did not affect her rights to be informed of a charge registered on the property. If Mr Preston was accurately reporting what he had been told, it follows that the husband misled him.

(2) After the charge was executed and registered, a further series of emails indicated that Mr Preston on behalf of C Finance started possession proceedings at the end of 2008 because the husband had failed to make these payments. Those proceedings led to a possession order being made in respect of the matrimonial home in October 2009. In the event, however, the order was not enforced after the husband raised money from other sources. The emails disclosed are manifestly only a fraction of the documents which must have come into existence at this time.

(3) The emails during the possession proceedings show Mr Preston telling the husband on more than one occasion that he was acting for C Finance and that the husband should obtain legal advice from another lawyer. The emails also show Mr Preston warning his clients that the charge on the matrimonial home may not provide adequate security for the loans and that, when conducting negotiations, everything should be recorded in writing and marked without prejudice and subject to contract. At one point he warned them: "my firmest advice is not to have any discussions with him and to let matters take their course", meaning presumably to allow the property to be repossessed. In

another email (January 2010) Mr Preston reported to his clients that "as usual the story changes from day to day" and "it all seems rather far-fetched". He again repeated his advice to "go for possession now".

(4) Then on 18 March 2010, someone called "Miguel" from C Finance emailed Mr Preston informing him that they had received £75,000 from solicitors called Daltons in respect of the matrimonial home. Mr Preston retorted that he was concerned that funds had been sent to them direct by the husband's solicitors when they knew that he was instructed. He asked on what basis the fund had been paid and whether the possession order was going to be enforced. He sent a chasing email a few weeks later. Thereafter, the series of emails disclosed comes to an end.

83. Manifestly only a fraction of the relevant documents from the period 2007 to 2010 have been disclosed. It is impossible to draw any conclusions as to the true nature of the relationship between C Finance and the husband at this stage. It is clear, however, that relations deteriorated to a significant extent, that C Finance started proceedings to enforce their charge and got as far as obtaining a possession order, and that they were warned by their solicitor that there were grounds for thinking the husband was unreliable. Despite these difficulties, however, subsequent documents produced by C Finance in the course of the hearing suggest that, by 2011, only 18 months later, MO was again arranging further loans, this time connected with the acquisition and development of the Mayfair property. Once again, however, the very limited disclosure impedes a full understanding of the arrangement and in some respects, raises more questions than it answers. For example, in an email dated 9 August 2011, the husband wrote to MO saying:

> "Further to our numerous conversations with you. I hope you have had confirmation for people I represent on [the Mayfair property] that they are happy for your people to loan me £265k form [sic] the potential profit on [the Mayfair property]. With that in mind could you please organise transfer of the above sum to my account as I have an exchange on Friday 11th."

The following day, the husband sent a further email to MO, headed "French deal", in these terms:

> "Further to our telephone conversation I confirm ther [sic] £265k loan os [sic] to be taken from the share of [the Mayfair property] along with the 2.5% interest per 28 days. This money is loaned to me with the blessing of the part owners of [the Mayfair property] and I will pay them back from my father and you take from their profit of [the Mayfair property] when sold."

In the chronology appended by the husband's counsel to their closing submissions, it is asserted that these emails are evidence that there was a loan of £265,000 for the Mayfair property. On the face of it, however, it seems rather that money was taken from the potential profit in the Mayfair property and put towards a French property transaction. It is also notable that the husband was informing MO that he would receive financial support in some form from his father, whom the wife asserts to have substantial assets in Iran.

(b) Documents downloaded from the wife's computer

84. Exhibited to the wife's s.25 statement were various emails and other documents downloaded from her computer, referring to various property transactions in which the husband had been involved. Few if any of these documents have been disclosed by the husband and relatively few of them were cited in the course of the hearing. They include a series of emails concerning a dispute that arose between the husband and the property investment company through which Mr X had originally provided financial support. I am conscious that this court has not been provided with the full picture concerning that company and the dispute which subsequently arose between Mr X and one of his colleagues, Ms E. I must therefore tread carefully when analysing this material. The emails show that the husband was challenged by Ms E and the company's "Head of Legal" about information he had provided concerning transactions involving the Mayfair property. Most of the emails disclosed were copied to Mr Y. It would be disproportionate to set out the exchanges at length. Notably, however, the long series of questions included a number of enquiries about the husband's relationship with U Properties. It was asserted that the husband's company K Co and U Properties "are one and the same", an assertion which the husband strenuously denied in a further email, as he has throughout these proceedings. In his lengthy reply responding to the various questions, the husband insisted that U Properties was nothing to do with him and forwarded an email from a lawyer who had acted for U Properties at the time of the acquisition of the Mayfair property in 2011 which confirmed that there was nothing to suggest any connection between U Properties and the husband. Confusingly, that lawyer was Mr Dalton who, as mentioned above, had acted for the husband in 2010 during the negotiations after C Finance obtained the possession order against the matrimonial home.

85. The Head of Legal also raised the following query:

> "We would require to know the ultimate owner of U Properties as this is our requirement under current KYC rules. Your lawyers advised our lawyer by phone at the time that it was [V]. I will ask them to confirm.

"V" is a well-known Russian oligarch. In reply, the husband said:

> "I am no expert on KYC rules but surely this is a question for [your] lawyers at the time. Are you telling me they did not do their job? Please also do not refer to 'my lawyer' if you mean U Properties lawyer."

In the emails disclosed, the husband does not answer the question as to the ultimate owner of U properties. He does not mention Mr K and does not deny the assertion about V. At another point in the heated exchanges of email, there is an allegation that the husband threatened to "break the fingers" of Ms E, an allegation strenuously denied in a further email.

86. None of these matters was explored extensively in oral evidence so the court must be very careful before drawing any conclusions. What is clear, however, is that Mr Y, who is Mr X's principal adviser, was aware of a relationship between the husband and U Properties, and that in 2014, relations between the husband and the investment company in which Mr X was a partner became strained amidst concerns about the reliability of information provided by the husband. Despite those concerns, however, Mr X has proceeded to advance substantial additional sums to the husband as detailed above.

87. This material provides further grounds for concluding that the court has not been provided with full disclosure concerning the complex business relationship between the husband and C Finance.

(c) Disclosure in correspondence from HKH Kenwright and Cox

88. At a late stage in the proceedings, a series of letters sent by HKH Kenwright and Cox to the husband was produced, starting with the letter dated 25 April 2017 referred to above. In that letter, the history of the dealings which were said to give rise to the current liabilities was summarised. First, it was asserted that in 2008, loans by C Finance to the husband, amounting to approximately £2.4m, had been secured by a charge on the matrimonial home. The charge had been removed in circumstances in 2011. It was asserted that C Finance were unaware that it had been removed and that "the obvious inference" was that the husband had forged, or procured the forging of, the relevant DS1 form. It was further asserted that on 20 April 2014, the husband had admitted orally to MO that he had dishonestly procured the removal of the charge. In the circumstances, the solicitors declared that C Finance was clearly entitled to apply to rectify the register to reinstate the charge. They added, however, that "if you would prefer not to re-register the charge (whether in view of your ongoing divorce proceedings or for any other reason), our clients will be willing to consider accepting alternative security provided it is of greater or equivalent value to the charge." The total personal liability of the husband to C Finance secured by the charge was said to amount at 31 March 2017 to £4,631,878.

89. With regard to the liabilities said to have been incurred in respect of D House and Cottage, the account given in the letter of 25 April 2017 was as follows. C Finance had loaned the husband personally a total of £6.18m for the purposes of financing the purchase and development by his company of the properties. The loan had been on the basis that, upon the sale of properties, he would repay the capital together with 75% of any profits he made. The properties were then sold to a group of investors (including the husband and/or one or more of his companies) which the husband had brought together. He had agreed his liability to C Finance in respect of this transaction in the sum of £1,378,787, on the basis that he would also pay C Finance 50% of any profits made by him or his companies from an onward sale by the investor group. Under a deed of assignment dated 22 August 2016, he had then assigned to C Finance his interest in a loan agreement between himself and his company, amounting to £7,350,866.

90. With regard to the liabilities said to have been incurred in respect of A House, the account given in the letter 25 April 2017 was as follows. It was said that, in or around April 2014, the husband had approached MO and asked him to obtain a bridging loan of £1 million from C Finance and to procure their agreement to defer enforcing their entitlement to repayment following the sale of D House and Cottage to his investment group. C Finance and U Properties had agreed to provide a bridging loan on that basis on terms that, upon the sale of A House, the husband would repay the principal sum of £1 million, the sums owed in respect of D House and Cottage, and 50% of any profit made on the A House project. Under that agreement, U Properties had duly loaned the sum of £1 million on 22 April 2014, by way of a transfer from Daltons solicitors.

91. With regard to the liabilities said to have been incurred in respect of the Mayfair property, it was asserted in the letter of 25 April 2017 that the husband had initially approached MO in early 2011; that U Properties ultimately purchased the property in February 2011 for a price of £5 million; that the husband had agreed that he and U Properties would share equally in the profits made by selling the property onto a group of investors whom he brought together; that U Properties had loaned him the sum of £50,000 in August 2011 to assist in funding that investment; that the onward sale had been completed in March 2012 for a price of £7.5 million; that U Properties had agreed that the husband should receive £187,000 of its profit entitlement from the sale by way of a further loan, thereby increasing his debt to them in relation to the Mayfair property to £437,000; that this was on the basis that on any further sale of the property he would repay U Properties the sum of £437,000 together with 50% of any profits which he received from the transaction.

92. The documents subsequently disclosed by HKH Kenwright and Cox included some emails and pages of bank statements which provide some support for some of the assertions made in these letters. On any view, however, the court has not been provided with a full disclosure of the full run of emails or bank statements or other relevant documents.

(d) Assignments, the statutory declaration, and "Heads of Terms"

93. Despite repeated inquiries by the wife's lawyers, very few documents about the alleged arrangements with C Finance were disclosed until shortly before the start of the hearing, in some instances on the evening of Friday 23 February 2018, at the end of the working week before Monday 26 February, the date fixed for the start of the hearing. On that date, the husband's solicitors served a statement from Mr K, who described himself as the director of C Finance and U Properties. Attached to the statement were various copy documents, including a deed of assignment dated 2012, under which U Properties assigned to K Co its interest in two contracts relating to D House and Cottage in consideration of the payment of a sum of £3.75m, described as the "deposit" and a further sum of £3m described as the "price". It was submitted by Mr Bishop that the documents exhibited were manifestly insufficient evidence of the genuineness of the alleged transactions. The most obvious deficiency was any form of loan agreement. I shall consider the details of that statement, and the documents exhibited with it, later in this judgment.

94. In addition to Mr K's statement, the husband's solicitors also served a number of other documents shortly before the hearing, which purported to support his case as to the existence of a loan owed to C Finance and its associated companies. The documents included another deed of assignment dated 22 August 2016 (i.e. about 8 weeks after the husband's voluntary disclosure in the Statement of Assets and Liabilities) between the husband, C Finance and the husband's company, which recited that C Finance had lent £6.18m to the husband as a contribution to financing the development by his company of D House and Cottage, that the husband had lent £7.35m to his company as a "facility agreement" and that he had now agreed to assign all his interest in the £7.35m debt and the facility agreement to C Finance on the terms set out in the deed. Another document disclosed on 23 February was a statutory declaration executed by the husband in October 2017 on behalf of himself and his company stating inter alia that (1) they had received loans from U Properties of £8,996,194 ("the Lender Capital") particularised in a schedule as being (a) £7,558,787

in four instalments between May 2012 and December 2014 and utilised for the acquisition of D House and Cottage, (b) £1m in April 2014 used for the acquisition of A House, and (c) £437,407 in two instalments in August 2011 and March 2012 used for the acquisition of the Mayfair property; (2) that the loan would be assigned to a company linked to U Properties called H Holdings Ltd and that they had agreed "to formalise the loans in a new loan agreement"; (3) that they agreed to transfer their entire shareholding of various named companies which held the three properties to a trust company the shares in which would be held in trust 50% for themselves and 50% for H Holdings Ltd; (4) they agreed to ensure the securitisation and repayment of the Lender Capital to H Holdings Ltd prior to any other distribution of the proceeds of sale of the properties; (5) they agreed to create a legal charge over 100% of the shares in the trust company and their companies holding the shares and rights in the three properties in favour of H Holdings Ltd for the amount of the Lender Capital; and (6) they declared that none of the three companies nor their companies holding the rights and interest in the properties was the subject of any claims in matrimonial or other proceedings. Although the copy of this "statutory declaration" disclosed into the proceedings had been signed by the husband, it is undated and unsigned by Mr K or anyone else associated with H Holdings Ltd or C Finance. In a letter dated 6 February 2018, after they were re-instructed, the husband's solicitors stated that, so far as he was aware, the loans had not been assigned as asserted in the "statutory declaration" and the husband had neither received nor executed any new loan agreements. The precise status of this "statutory declaration" is therefore unclear.

95. In a letter to the wife's solicitors dated 5 March 2018, Mr Gillespie stated that, in the company documents disclosed to him, there was no reference to the husband or his companies having a liability to C Finance or U Properties. Furthermore, he had not identified in those documents any assignment of benefits or obligations to C Finance or U Properties. The documents did discuss assignments of various loans between the husband and his companies, Mr X and two other banks.

96. In the course of the hearing, on 7 March 2018, further documents were produced, purporting to come from C Finance, including one headed "Heads of Terms Subject to Contract". The participants were said to be the husband and his company and H Holdings Ltd, and the document was signed by the husband and Mr K "authorised by an acting on behalf of H Holdings Ltd". The purpose of the document was stated to be as follows:

> "K Co have taken a loan from C Finance SA of £8,996,194 as set out in Schedule 1. In accordance with their agreement with C Finance in relation to lender's security, K Co and H Holdings Ltd have agreed to transfer the shareholding of properties purchased with the proceeds of these loans into a trust company (the JVCo), and to provide C Finance with a charge over the shares of the JVCo. C Finance has in turn allowed K Co and H Holdings Ltd to hold the assets jointly to develop and sell for a profit. To execute this agreement and understanding, K Co will undertake to transfer the direct or indirect holding of the property companies as per Schedule 2 which are the respective owners of the properties as per Schedule 3 into the newly formed JVCo."

The document stated that the participants, K Co and H Holdings Ltd, would each hold 50% of the issued share capital in the JVCo. Under the heading "Security", it was stated that "H Holdings Ltd or C Finance SA is to take a charge over 100% of the

shares in the newly formed JVCo". The document included a list of declared accepted third-party debt on the properties and a separate list of declared accepted third party interests on the properties. Neither Mr X nor any company associated with him is identified in either list. Under the heading "Matrimonial and Others", it was stated:

> "K Co to provide statutory declaration that the property companies and properties are not subject to any matrimonial divorce claims or other legal proceedings."

97. Under cross-examination by Mr Bishop, the husband agreed that none of the actions proposed within the Heads of Terms document had taken place. Mr Bishop put it to him that the agreement recorded in the document was a breach of the freezing order made by Roberts J on 11 August 2017 and also of the terms on which the further loans had been advanced by Mr Y on behalf of Mr X. The husband responded by pointing out that he had no legal representation at that stage, that all he was doing was "formalising historic loans", that he had acted under pressure from those involved in C Finance, and he was trying to keep everybody calm. Later, Mr Bishop asked why it had been necessary to create the "Heads of Terms" document bearing in mind that a deed of assignment of loan had been executed by him, K Co and C Finance in August 2016. The husband replied that "they", meaning C Finance, had not been satisfied that the assignment protected their position. When Mr Bishop asked why Mr K had not mentioned either the assignment or the statutory declaration in his statement, the husband was unable to provide an explanation. When Mr Bishop asked why, if there had been a genuine assignment to C Finance of a debt of over £7m owed by the husband to K Co, there was no reference to any liability to C Finance in K Co's records, the husband retorted that the company was a one-man band and it was in his head and that as a silent equity partner it did not come up in the company accounts.

98. One striking omission from the disclosure was any written loan agreement. In his oral evidence, MO said that a written loan agreement was not needed where the terms of the agreement were clearly set out in an exchange of emails. It was his evidence that any loan arrangement would be evidenced in that way. It is notable, however, that whilst some emails have been produced which appear to provide support for some of the lead transactions, there is not a complete run of emails, in particular in respect of any of the transactions relating to the three London develop and properties. It is therefore difficult to see how any agreement could indeed be proved from the documents produced to this court.

(e) Mr K's "statements"

99. In his first statement filed on 23 February, as mentioned above, Mr K described himself as the director of both C Finance and U Properties. He asserted that the husband had no shareholding or interest in C Finance or any of its associated companies whose main activity was "real estate and general investments, conducted internationally including in South Africa, the UAE and the UK, making investments in both ownership and secured lending formats". As stated above, he claimed that the total sum then owed was £13.9m, which in a simple table in the statement was broken down as follows:

> **Summary**
>
> **Principals outstanding**

Personal loans	£2,041,579
[Mayfair property]	250,000
D House	6,180,000
A House	1,000,000
Total principals	**£9,471,579**
Current interest and profit share outstanding	
Personal loan	£2,867,478
[Mayfair property]	187,407
D House	1,378,787
A House	0
Total interest/profits	**£4,433,672**
Total	**£13,905,251**

In his statement, Mr K asserted that under terms agreed with the husband, C Finance "will receive repayment from [the husband] of the principal sums in the above table totalling £13,905,251 upon the sale of the three property development projects. C will also receive a 50% share of [the husband]'s share of any profits from these developments. Under terms agreed with [the husband], C Finance will receive payment from them on the personal loans with the accrued interest upon sale of [the matrimonial home]."

100. In his statement, Mr K proceeded to outline brief details of the alleged loans. He stated that C Finance had started working with the husband in 2007, having been introduced "by an independent broker, MO", adding that "MO continues to be a point of contact for both C Finance and [the husband] in relation to the communications and management of the various loans". In respect of the Mayfair property, he asserted that sums totalling £5.1m had been loaned on several occasions in 2011 and 2012, all made via Daltons solicitors. He asserted that the secured principal had been repaid, but the profit share and a side loan remained outstanding. The terms of the deal had been that C Finance would purchase the property and thereafter the husband's investor group would purchase it from C Finance for redevelopment at a profit. A similar arrangement had been agreed with regards to D House. The sum of £6.1m had been loaned on three dates in 2012, again via D Solicitors, with profits to be split 75/25 in C Finance's favour. An adjoining property, D Cottage, had been added later. The statement continues: "By December 2012, the completions of the purchases were done in [the husband's] name to allow him to control both projects and arrange bank finance. In May 2014, the sale of the property into [the husband's] investor group fell through. It was agreed by [him] with C Finance that both parties would own 50% of the profit share moving forward once C Finance is repaid in full, which [the husband] would look for replacement investors." It was asserted that, at present, the whole sum invested by C Finance in D House and Cottage, plus projected profit share, remains

outstanding. In respect of A House, the statement merely said that the loan of £1m had been advanced in April 2014 "from C Finance's lending accounts".

101. So far as the alleged personal loans were concerned, the statement from Mr K contained a simple list of the dates and sums individually lent, and on a few occasions repaid, giving the total principal outstanding as £2,041,579 and interest of £2,867,478. It was asserted that the loans had been advanced from C Finance's lending accounts as well as group companies related to C Finance. Mr K added that the loans had been made with the wife's knowledge, adding that MO had told him that he had met the wife on several occasions and that the husband had confirmed that she had consented to the loans. Those loans were secured against the matrimonial home by a registered legal charge in favour of C Finance which had subsequently been removed "without the consent of C Finance". According to Mr K's statement, the husband told him that "this removal via a DS1 form was a mistake on his and his solicitors' part", that the wife was aware of the communications about this, and that the husband had subsequently agreed to provide personal guarantees for the repayment of the loans.

102. There were a number of exhibits to Mr K's statement, but the documents fell far short of a comprehensive disclosure of a record of the transactions alleged in the statement. Those documents that were produced were in some instances strikingly informal, e.g. an email from the husband to MO and a colleague simply requesting them to send £1m to lawyers acting for the exchange on A House, and giving details for an electronic bank transfer.

103. In a second statement dated 14 March 2018, Mr K explained that he had made himself available to give evidence on 8 March 2018 and on the afternoon of 9 March but, when his oral evidence had not been reached by late afternoon that day, he had to resume his Friday prayers and thus was not available when called. He further stated that, on the date on which the resumed hearing had been listed, he would be attending a long-planned family celebration in South Africa and was therefore unable to attend the hearing in person, although he was able and willing to give evidence by video link. In his second statement, Mr K exhibited a letter dated 8 March 2018 authorising Mr S to represent his companies in his absence. He explained that Mr S was a consultant who had originally been engaged on an investment project in which U Properties was co-investor and subsequently had been engaged by C Finance since 2017 on a monthly basis to implement security with the husband for his outstanding liabilities. He was therefore completely familiar with the husband's dealings with the company. Mr K added that he had authorised Mr S to collate for his approval information and documentation from company records for the first draft of Mr K's first statement, and to provide the answers to questions and supporting documents provided before the first hearing. So far as I am aware, the existence of Mr S, and his role in C Finance's affairs, had not been mentioned before Mr K's second statement was filed.

104. On the day before the resumed hearing on 27 March, Mr K swore an affidavit in which he said:

> "unfortunately I do not have a home in the UK and, since learning of these proceedings in early February, I have made it clear to my legal representatives that I will not be available to travel to London to give evidence."

In passing, I note that his statement that he had learnt of these proceedings in early February was seemingly inconsistent with the earlier documents, notably the letter dated 12 August 2017 sent to the wife by HKH on behalf of C Finance in which they refer to the ongoing divorce proceedings. It is conceivable, however, that by "proceedings" he meant "the hearing". In addition, however, the inference that he had not been available to give evidence in London at any point after early February was seemingly inconsistent with the assertion in his second statement that he had been available to give evidence on Friday, 8 March until obliged to leave to continue his religious observances.

105. In his affidavit, Mr K proceeded:

> "Up until the point at which we learned that matrimonial hearings were taking place, [the husband] had been working with Mr S to arrive at an acceptable solution to provide security to our loans. We had seemingly been making progress with [the husband] including the signing of a heads of terms, and were hence understandably upset to learn that the final hearing to matrimonial proceedings were underway …."

He added:

> "I must clarify that the statements were authored by Mr S on my instruction with input from MO as they were in possession of all the facts and history of transactions, as well as evidence of the transaction …. Mr S and MO are considerably more valuable for examination as they are best positioned to answer questions on the history of the loans, the terms, and the evidence is available, as I do not engage in the day-to-day management."

(f) Mr K's oral evidence

106. Mr K gave evidence by video link. Although his first statement had contained a summary of the transactions alleged to have taken place between his companies and the husband, it quickly became apparent that Mr K had no personal knowledge of any transactions. His oral evidence amounted to little more than the following. (1) He and his family own the beneficial interest in C Finance and its associated companies. (2) The husband has no interest in those companies. (3) Mr K and his companies have many investments across the world. (4) Mr K and his companies have invested in a number of the husband's development projects and lent money on other occasions to the husband. (5) Mr K was unaware of the details of those transactions and referred all inquiries to Mr S, whom he has engaged to act on his behalf in respect of those transactions.

107. In cross-examination, the extent of Mr K's ignorance about the details of the alleged transactions was fully exposed.

108. He repeatedly referred Mr Bishop's enquiries to Mr S. He said that Mr S was someone in whom he had complete confidence to deal with matters involving C Finance and U properties without consulting him. He described MO as a broker and said he could not answer for him. He said that MO had brokered deals with Mr S and he had not got involved. In respect of transactions in 2012, he believed that it would have been he who had been involved, but it was a long time ago. At that stage, he had

acted through a lawyer who had arranged for the matrimonial home to be taken as collateral. He assumed that there would be a loan agreement between those lawyers acting on his behalf and the husband, although he was not sure if there was such an agreement. He was unaware of any transactions involving a property known as P Lofts. When asked whether C Finance had accounts with a conventional balance sheet and profit and loss account, he replied "possibly" and referred the question to Mr S. He was also unclear whether there would be a written profit share agreement, adding that he had hundreds of agreements all over the world and he could not recall any specific one. He was unfamiliar with the details of the bank accounts, and unable to recall the reason behind the execution of the deed of assignment. He was not sure of the amount he was owed by the husband and again referred that question to Mr S. He stated that "you have to speculate to accumulate. You've got to take a gamble - that's how money is made." He denied, however, that the alleged transactions were a fraud saying that he was not on trial.

109. At one point in his cross-examination, Mr K said he was not sure who the solicitors HKH Kenwright and Cox represented and said he had never had any dealings with a man called Mr M, the solicitor who has signed the letters from HKH Kenwright and Cox,disclosed in these proceedings.

110. It therefore became manifestly plain during Mr K's evidence that he was not the true author of the statements he had signed. The real author was Mr S, as became clear from his oral evidence which followed immediately afterwards.

(g) Mr S's evidence

111. The existence of Mr S, and his alleged role in the transactions between C Finance and the husband, was not disclosed until a very late stage in the hearing when the letter of authorisation dated 7 March 2018 was disclosed and the statements dated 14 March 2018 signed by Mr K, MO and Mr S were filed. In his statement, Mr S confirmed that he had been engaged as described by Mr K. He said that, from April 2017 to date, he had been responsible for instructing the solicitors HKH Kenwright and Cox in relation to correspondence with the husband and wife and their representatives regarding the loans to ensure that the loans were secured and recognised in the divorce proceedings. It had been he who collated information for Mr K's first statement, the documents exhibited thereto, and the further documents subsequently disclosed in answer to the questions raised by the wife's representatives. When he attended to give all evidence, he produced further documents not previously disclosed.

112. In oral evidence, Mr S confirmed that he had no direct knowledge of events before March 2017, apart from certain correspondence in 2014. He described the process in which he had been engaged as part of an effort to correct issues between the husband and his lenders, and said that he had been one of the first to point out that those issues were far from ideal. There were no traditional structured loan agreements, just many communications between the parties which the lawyers said amounted to a contract. In the event that the parties were going through litigation, it would be difficult to justify why there was no title loan agreement. It was therefore Mr S's evidence that, when he became involved in these matters, he set about arranging a more formal structure to be put in place. To that end, HKH Kenwright and Cox were instructed to draft the statutory declaration and the heads of terms document.

113. Mr Bishop queried why that particular firm of solicitors had been used for a dispute involving several millions of pounds. Mr S replied that the solicitor at that firm, Mr Mian, had worked with MO on other matters. In addition, Mr S said that he believed that Mr Mian has worked for Mr K on other projects. He said that the KYC process had been carried out between Mr K and Mr Mian, and that in 2017, Mr K had authorised Mr Mian to take instructions from him in dealing with the husband.

114. There was therefore a conflict of evidence between Mr K and Mr S about whether Mr K had had dealings with Mr Mian. Mr S said that Mr K had carried out the KYC checks with Mr Mian and had authorised Mr Mian to take instructions from him, Mr S, in 2017. Mr K said he was not sure who HKH Kenwright and Cox represented and had never had dealings with Mr Mian.

(h) MO's evidence

115. In his statement, which was signed at a late stage in the hearing on 14 March 2018, MO described himself as an independent broker and intermediary who had acted in that capacity on a number of loans and equity investments between the husband and C Finance and associated properties since 2007. He described how he had introduced Mr K as an investor in earlier property development projects undertaken by the husband. He said that Mr K relied on his judgement and did not deal with the husband directly. It was MO's evidence that he had visited the husband and the wife on many occasions at their home in West London and also in the South of France. The wife has always been courteous and welcoming towards him.

116. This evidence contrasted with that given by the wife at an earlier stage in the hearing when she had asserted that he used to visit the matrimonial home and she was concerned about allowing him to the property. She said that he used to bring bags of cash which she was told was for paying the Polish builders. She said that she had never spoken to MO and he had never stayed in the property in the South of France, and she said that, if anything, she was scared of him.

117. When he came to give evidence, MO described himself as being "insulted" by the false allegation that he had regularly brought cash to the husband in bags ("it's a complete and utter lie"). He denied ever handling cash or holding money on the husband's behalf, insisting that he is a self-made entrepreneur in his own right who has never worked for the husband. He said that after the wife had given evidence at the hearing, the husband had phoned him and said: "please don't get upset, [my wife] has turned round and told some lies about you". In his evidence, the husband admitted that he had telephoned MO and told him that the wife had made this allegation during her oral evidence. MO's evidence was that he and the wife had been on good terms during the marriage – he said that she had stayed at his home in Dubai on occasions during the previous ten years.

118. In his statement, MO gave brief details of loans and investments by C Finance and associated companies which he said he had brokered for the husband, including a loan of £250,000 in August 2011 in relation to the Mayfair property, "acquisition funding" from U Properties totalling £6.18 million for the purchase of D House and Cottage in 2012, and a loan of £1m in relation to A House in 2014, none of which has been repaid. He said that he had also brokered other personal loans made to the husband which remain outstanding. He described the process in these terms:

> "By the time of the investments in [the three London development properties], I had long experience of working with [the husband] and, at that time, a level of trust had been established. The terms of the loans and investments were agreed and modified over time in meetings and emails. Once all loans had been made and [the husband] had finalised his joint-venture agreement with his partners, the arrangements were enshrined in documentation drawn up for this purpose. As Mr K has detailed in the bank statements provided, the source of funds for each advance would be C Finance or other group companies (selected based on their convenience for the transfer itself). As the transfers would generally be made with funds being paid through solicitors, the path of the money is clear and well documented … Mr X was not aware of our involvement in funding [the husband's] share of the three deals …. This does not surprise me at all, as it is in my experience is not an uncommon practice in property deals to keep funding arrangements private from joint venture partners."

119. In his statement, MO stated that the removal of the charge on the matrimonial home undermined the strength of C Finance's security and was the trigger for the company to put in place more formal arrangements to protect their investment, including the deed of assignment executed in August 2016. MO added that in 2017, C Finance had engaged Mr S, a consultant, to work directly for Mr K with new solicitors HKH Kenwright and Cox "to ensure that the loans were disclosed in the divorce proceedings and that replacement security in lieu of the charge that had been removed was put in place". In his oral evidence, he said that C Finance did not remove the charge. He said that the husband had told him that it had been removed by mistake by his lawyer, Mr Dalton, but MO asserted that the husband and wife had presented the forms to the Land Registry.

120. MO explained that his relationship with Mr K was built on trust, adding that he himself did not come from a formal business background and was self-made. He said that the loan agreements were fully documented by emails. In answer to a question from Mr Bishop, he said that "100% he would expect the husband to have the emails – all the loan transactions would have an email chain to show the contract, especially if acting for Mr K." MO said that every email had been produced.

(8) Lifestyle and dissipation of wealth

121. In her statement, the wife asserted that she and the husband had been fortunate to live a luxurious lifestyle for many years during the marriage. They lived in a substantial property in West London and had a three-bedroom duplex apartment in the South of France where they had boat moorings and kept a Princess 42 motor yacht. They had a valuable art collection, with works by a number of well-known modern artists. They had nine or more expensive cars, including a Rolls-Royce Phantom, a Lamborghini and a Ferrari, many with personalised number plates. They employed staff, including housekeepers and drivers, at both their London and France homes. They would spend seven weeks in the south of France every summer and would, according to the wife, often hire a large yacht to cruise around the Cote D'Azur and over to Corsica. They often travelled to the holiday home by private chartered jet which allowed them to transport their dogs. The wife further asserts that they spent "a fortune" on holidays. They would travel long distance for the October half term holidays to places such as

Dubai or India. At Christmas they would travel to Florida or the Caribbean. At the February half term, they went skiing in Courchevel. At Easter, they would often travel to the United States or Mexico. They also enjoyed mini break holidays in New York, Paris and Cannes. When travelling, they always stayed in luxury hotels. Both in London and abroad, they frequently ate out at the best restaurants, and the husband was a member of well-known nightclubs. The husband would purchase expensive jewellery, handbags and clothes for the wife. They spent considerable sums on their children. In her statement, the wife said: "our children have wanted for nothing and we have provided them with luxury cars and parties". All three children were privately educated. The two younger children are currently in further education. The oldest daughter has been trying to pursue a career in the music business. To assist this, the husband has spent considerable sums of money - perhaps as much as $1m. The parties also spent considerable sums on charitable donations.

122. It is the wife's case that the parties' standard of living has been very high for approximately the last 15 years prior to the breakdown of the marriage and that it did not fluctuate during the cycle of each of the husband's development projects. Although he disputed some of the figures in his oral evidence, the husband broadly accepted that the wife's characterisation of their lifestyle during the marriage was correct.

123. The wife also asserts that the husband has continued his lifestyle since the separation in a way that is inconsistent with his assertions that he is suffering from a cash flow crisis. She relies, for example, on his decision to rent an apartment in Mayfair at a cost of £9,500 per month, rather than live in his existing smaller Knightsbridge flat. Having obtained disclosure of his passport and evidence of his British Airways flights since separation, she points to travel to a variety of destinations across the world, including Mykonos, Ibiza, the Maldives, Biarritz, Luxembourg, Necker Island, Beirut and Spain, and that he travels every weekend to their holiday home in the South of France. On one occasion he spent a significant sum in connection with a dinner party for Ms AZ – the wife's representatives suggest £130,000, but the husband's evidence was that there has been double counting and the sum spent was only £60,00. The husband rejected Mr Bishop's assertion that it had been a wedding ceremony, but described it as a "celebration of love". Although his relationship with Ms AZ has come to an end, the wife asserts that he is now in a relationship with another woman with whom he travels frequently. For her part, the wife said in her statement that she was now in a relationship with another man although has no intentions of cohabiting or remarrying. On behalf of the wife, it is asserted that the husband's behaviour is totally inconsistent with his assertions that he has liabilities valued at many millions of pounds and is wholly unreasonable given his failure to comply with the maintenance pending suit order. In addition, he has failed to maintain the matrimonial home - for example, failing to pay for repairs to the boiler so that the house was without heating for several months over the last winter.

124. On behalf of the wife, a Scott schedule was prepared setting out details of the husband's expenditure after the separation. It was contended that he has realised a significant amount of assets and disposed of the proceeds but failed to comply with his obligations under the MPS order. After receiving the husband's response to the schedule, the wife revised downwards the value of the excessive spending, but the

sum asserted was still considerable. The following details were put to the husband in cross-examination and not substantially denied by him:

Re-mortgage of Knightsbridge property in August 2016	£392,000
Loan from Mr X in October 2016	£1,350,000
Sale proceeds from Princess 42 yacht in July 2017	£184,000
Sale proceeds Rolls-Royce	£170,000
Sale proceeds of Mercedes	£132,000
Sale proceeds of Range Rover	£28,000
Loan from sister	£85,000
Loan from friend Mr M	£35,000
Further overdraft	£104,000

This totals about £2.48m received by the husband since August 2016. In addition, at the date of the breakdown of the marriage in June 2016, he had over £1.72m in his bank accounts, according to the asset schedule disclosed in June 2016. It was said in submissions on the wife's behalf that the husband therefore got through about £4.2m in the two years or so since the parties' separation. Mr Bishop submitted that the wife has seen relatively little of that money. In all the circumstances, he argued that a figure of £1.2m should be included by way of "add back" in the calculation of any award made to the wife. In addition, the wife seeks payment of the outstanding MPS arrears. The husband is very substantially in arrears of the MPS order and, whilst he has paid some of the overheads on the matrimonial home, other bills, including utilities and mortgage, have on occasions gone unpaid.

125. In his oral evidence, the husband did not really dispute the wife's assertion as to the level of spending during the marriage. In his statement he said that he had never sought to underplay the details of the lifestyle which they eventually came to enjoy as a family. He described himself as a wholly self-made man who had been able to build up an extremely comfortable lifestyle for himself and his family in the course of the marriage through his sheer determination and hard work. It was his case, however, that the family finances had unfortunately become hugely overstretched and funded by ever increasing borrowing. He maintained that he had tried to impress upon the wife that she needed to make economies but she refused to compromise her expenditure, proceeding to buy dresses, shoes and other expensive items. He said that, when he protested as to whether she needed another Herve Leger dress, she replied: "Go to hell, it is not a matter of I need, it's a matter of I want", or words to that effect. In her evidence, the wife denied that the husband had ever asked her to economise.

126. So far as his own expenditure was concerned, the husband maintained that he had tightened his belt. He did not accept the allegations that he had dissipated assets. He asserted that a considerable amount of the sums spent by him had been expended on the wife. When it was put to him that he could have moved into his Knightsbridge flat rather than take on another apartment in St James's, he replied that the Knightsbridge

flat was too small ("it's 44m, a man would go insane if he had to live there with the pressures that I have") and that he needed somewhere to park his cars. He conceded that since the breakdown of the marriage, he had purchased a Tesla motorcar for £130,000 but insisted that this was a sensible course because it was relatively cheap to run. He accepted that he had travelled to various parts of the world as alleged by the wife and also agreed that he was continuing to fly to the South of France on most weekends, even during the hearing. When Mr Bishop put to him that renting an apartment in St James's and going to France most weekends were not the actions of a man who was trying to cut back on his lifestyle, he replied:

> "actually far from it. Staying in London is very costly for me at the weekends, whether you go out … to Annabel's or you go to Novikov or you go to any of these places … which I haven't been recently. Once you go there, you know, you have to spend a fair amount on drinks."

(9) The parties' closing submissions

(a) Schedules of assets and liabilities

127. As stated above, the parties had filed contrasting schedules of assets at the outset of the hearing. In closing submissions, Mr Bishop and Miss Cook presented a revised schedule of assets which in summary was as follows:

ITEM	W	H	TOTAL
Matrimonial home - equity		859,906	859,906
French property 1 - equity	-61,902	-61,902	-123,804
French property 2 - equity	7,503	7,503	15,006
French property 3 -equity	165,431	165,431	330,863
Knightsbridge flat - equity		-36,836	-36,836
Joint bank accounts	-7,047	-7,047	-14,094
W's assets and liabilities	-1,025,488		-1,025,488
H's assets and liabilities		-712,884	-712,884
W's addback claim		1,200,000	1,200,000
Joint chattels incl cars & art	266,943	266,943	533,886
LIQUID ASSETS	**-654,560**	**1,681,114**	**1,026,554**
H'S BUSINESS INTERESTS			
D House and Cottage			
Company 1	1,127,000	1,127,000	2,300,000
Company 2		4,600,000	4,600,000
A House		6,000,000	6,000,000
Mayfair property		1,900,000	1,900,000
TOTAL BUSINESS ASSETS	**1,127,000**	**13,673,000**	**14,800,000**
H's pension		47,155	47,155

H'S LOANS			
From Mr X		-12,445,690	-12,445,690
From Mr M		0	0
From sister		0	0
From C Finance/U Properties		0	0
TOTAL INC MR X LOANS	**472,440**	**2,955,579**	**3,428,019**

Mr Bishop and Miss Cook provided the following explanatory notes for this schedule:

(1) The value given for the equity in the matrimonial home was based on what they describe as a market value of £5m, slightly higher than that given by the SJE John D Wood of £4.8m.

(2) The valuation for the first two French properties (i.e. not the holiday home) are current values. It is accepted that, were substantial sums to be spent in upgrading the properties, assuming planning permission be obtained, the valuations would be higher. In approximate figures, the market value of each property as at May 2017 was €750,000 but it was asserted that, if €1.07m was spent on improvements to each property, they would each be worth €3m. It was acknowledged that there were issues with planning permission to be resolved.

(3) The Knightsbridge property valuation was based on a gross value of £895,000 given by Savills in February 2017, although it is now on the market at £1.2m.

(4) The substantial sums given for the parties' liabilities are largely attributed in each case to the outstanding legal fees and their respective legal loans.

(5) The figure for chattels includes art valued at just under £300,000 which was the figure originally given by the husband, although he now asserts that some of the art belongs to his friend Mr M and was only displayed at the matrimonial home on loan.

(6) As set out above, the wife's schedule includes a sum of £1.2m for addback.

(7) The valuation of the husband's assets is taken from Mr Gillespie's report.

(8) Manifestly, the wife's valuation of the assets is based on her central argument that, although the loans from Mr X were genuine, the alleged indebtedness to C Finance is fictitious.

128. On behalf of the husband, Mr Pointer and Ms Murray challenged a number of these figures. I have recast their schedule in a way that facilitates comparison with the wife's schedule above.

ITEM	W	H	TOTAL
Matrimonial home - equity		487,983	487,983
French property 1 - equity	-73,311	-73,311	-146,622
French property 2 - equity	-73,386	-73,386	-146,772
French property 3 - equity	231,909	231,909	463,818
Knightsbridge flat - equity		-41,312	-41.312
Joint bank accounts	-6,911	-6,911	-13,822
W's liabilities	-893,433		-893,433
H's bank balances		-27,490	-27,490
H's misc liabilities		-749,037	-749,0377
W's addback claim		0	0
Cars		234,586	234,586
Art		169,000	169,000
Contents of matr home	125,000	125,000	250,000
Jewellery/watches/handbags	789,000	94,000	883,000
LIQUID ASSETS	**98,868**	**371,031**	**469,899**
H'S BUSINESS INTERESTS			
D House and Cottage		6,900,000	6,900,000
A House		6,000,000	6,000,000
Mayfair property		300,000	300,000
TOTAL BUSINESS ASSETS		**13,200,000**	**13,200,000**
H's pension		47,155	47,155
H'S LOANS			
From Mr X		-12,788,459	-12,788,459
From Mr M		-35,000	-35,000
From sister		-80,379	-80,379
From C Finance/U Properties		-8,996,194	-8,996,194
TOTAL LOANS		**-21,900,032**	**-21,990,032**
TOTAL INC ALL LOANS	**98,868**	**-8,281,846**	**-8,182,878**

129. Mr Pointer and Miss Murray add the following comments on this schedule:

(1) The court must proceed on the basis of the valuation of the matrimonial home by John D Wood of £4.8m, confirmed in March 2018.

(2) The wife's representatives have overestimated the value of the collateral accounts linked to the mortgage on the matrimonial home, so that the net equity is lower than given in the wife's schedule.

(3) There is a similar discrepancy on the collateral accounts linked to the French properties.

(4) The husband has allowed higher costs of sale for the matrimonial home and, in particular, the French properties (7%, as opposed to the 3% allowed by the wife).

(5) The wife's calculations ignore the contractual provision for liquidated damages in the event of a delay in the completion of the Mayfair property development. The husband's evidence was that, if the property is sold for only £25m, there will inevitably be a claim for liquidated damages, calculated at £1.6m.

(6) It is only reasonable to take into account the wife's jewellery and handbag collection, valued variously at over £750,000 and in correspondence considerably higher. They submit that, given the overall financial circumstances, the inclusion of chattels with a significant value is important.

(7) They invite the court to accept the evidence of Mr M, who was not required to give oral evidence, that the works of art presented by him to the family were loaned and not given.

(8) The wife's representatives have simply ignored the husband's loans from his sister and friend Mr M. It is the husband's case that these are substantial sums which need to be repaid.

The principal difference, of course, concerns the alleged liabilities to C Finance.

(b) The wife's submissions

130. On behalf of the wife, Mr Bishop and Miss Cook in their closing submissions reiterated the proposal they have put forward at the outset of the hearing, contending that the arguments for such an outcome had grown stronger as a result of the evidence.

131. **Housing** - It is proposed that the matrimonial home should be sold, with the wife having sole conduct of the sale, and that she should receive the entire net proceeds of sale, and that the collateral accounts should also be transferred to her. In addition, it is argued that the three French properties should be transferred to the wife along with the linked collateral accounts. Mr Bishop argued that the husband should be obliged to indemnify the wife for any outstanding debts on the properties, including any tax liabilities, over and above the mortgages. It is pointed out that the husband had not provided any updating disclosure as to the value of outstanding liabilities on the French properties. The wife proposes that the husband should be allowed to retain the Knightsbridge flat which would, if necessary, provide him with a home.

132. Assuming that the wife remains liable for all of her debts, including the litigation loan, the net sum available to her following the sale of the matrimonial home and the three French properties will be very small. The calculation set out in the closing submissions filed by Mr Bishop and Miss Cook is as follows:

	£
Equity in matrimonial home and collateral accounts	859,906
Equity in French property 1	- 123,805

Equity in French property 2	15,006
Equity in French property 3	330,863
Wife's liabilities (principally legal fees/Novitas loan)	- 1,025,488
Net total	**56,483**

Mr Bishop submits that the sum is plainly completely inadequate to meet her housing needs. The wife's only hope is that the sale of the properties is achieved at higher values than estimated by the SJE so as to provide her with sufficient money to end up with a modest home in London and a small income fund. There is neither the money nor the time to complete the proposed repairs or refurbishment of the matrimonial home which must be sold as it is and as soon as possible to prevent repossession and negative equity.

133. **Chattels** – It is proposed that the wife should retain her cars, a Jeep currently in France, and all personalised number plates which she will then sell, with the husband retaining his other vehicles. The art collection, which the wife contends to be jointly owned and not loaned by any other person, should be divided, enabling the husband to use his share to meet his liabilities as summarised above, including his legal fees and debts to HMRC. The wife also proposes that each party should keep their own jewellery and other accessories.

134. **The husband's business interests** – Under the wife's proposals, the husband would retain his business interests. But it is contended on behalf of the wife that in the longer term she should receive a series of lump sums equivalent to 50% of the net sums received by the husband from the monies eventually realised following the completion of the three development projects in London – A House, D House and Cottage and the Mayfair property. In addition, it is contended that the following sums should also be paid to the wife out of the net profits received by the husband from three development projects (a) all arrears owed under the MPS order and costs orders made against the husband and (b) a payment equivalent to 50% of the sum of £1.2m claimed by way of "addback".

135. Mr Bishop recognises that the loans said to have been made by Mr X are genuine and concedes that, provided it is confirmed in writing by Mr X or his agent that a payment is committed to be made to him by the husband from the net sums received following the completion and realisation of the three development projects in partial or complete discharge of the loans identified by Mr X, then the husband should be entitled to deduct such payment from the computation of the net receipts before payment to the wife of her 50% share. Mr Bishop insists, however, that the husband should be obliged to indemnify the wife for any liability she is found to have incurred to Mr X. In the event that the husband refuses to give an undertaking to that effect, Mr Bishop asks for a reverse contingent lump sum to cover any potential liability. Mr Bishop submits that, given the husband's conduct to date, "watertight security and safeguards" will have to be put in place to prevent him removing any further interest from these projects so as to defeat the wife's claims. These safeguards should include full disclosure obligations in relation to the progress of the three developments and the process of realising the profits. It is submitted that any dispute as to the amount of each individual lump sum should be determined by this court in due course.

136. **Periodical payments** – So far as future maintenance is concerned, the wife seeks child maintenance for the youngest child at £3000 per calendar month, and interim periodical payments for herself at the rate of £10,000 per month until she has received as a minimum the sum of £1.6m from the sale of the matrimonial home and French properties. Thereafter, the wife should be entitled to nominal periodical payments until she has received her final lump sum, but the term of the period payments should be extendable.

137. Mr Bishop and Miss Cook complain forcefully about the husband's approach to this litigation which they describe as "catch me if you can". Until closing submissions, there had been no open offer nor any hint of a proposal as to how the wife's claim should be met. Having provided voluntary disclosure to the wife at an early stage in the proceedings in June 2016, the husband has subsequently concealed his true financial position from the court.

138. Mr Bishop and Miss Cook submit, rightly, that the principal computational issue for the court is the treatment of the husband's assertions that he has a substantial liability to C Finance and/or U Properties. On this issue, the wife's primary position is that the court should conclude that, on a balance of probabilities, no such liability exists. In the alternative, if the court is satisfied that the husband does owe money to either of those companies, either by way of outstanding loans or profit share arrangement, it is submitted on behalf the wife that such sums will not be payable or enforceable until the completion and realisation of the three London development projects. As a result, the only impact on the outcome proposed on behalf the wife would be to reduce her share in the net proceeds following realisation of those developments. It should not affect the transfer to her of the matrimonial home or the three French properties.

139. As set out above, a central feature of Mr Bishop's cross-examination of the husband concerned the statement of assets and liabilities sent to the wife on 27 June 2016. In closing submissions, Mr Bishop submitted that the husband's evidence on this issue had been dishonest. In particular, it was untrue that the purpose of the document was part of a package for a pitch to future investors and joint venture partners. In the covering email enclosing the statement of assets, the husband made clear that he recognised that the document would be scrutinised by the wife's advisers. In his s.25 statement, served on the first day of the hearing, the husband asserted that he had prepared this document in June 2016 for the wife. He did not state that the document was prepared as a pitch for future investors. The assertion that the document was prepared as a pitch for future investors was first made by the husband during his evidence in chief. In cross-examination, the husband was unable to account for his failure to provide this explanation before he went in the witness box. Furthermore, an examination of the document shows that it must have been intended for the wife and her advisers. The contents of the document are clearly relevant to the wife and the division of the matrimonial assets. It would make no sense to tell potential investors about the husband's credit card debts, school fees obligations and art collection.

140. The husband's case is that the statement of assets and liabilities voluntarily disclosed in June 2016 overstated the net value of his assets by over £9m. Although no creditor is identified by name in the document, it is his case that the calculations take into account sums owed to C Finance and U Properties but not the sums owed to Mr X. Mr Bishop makes a number of powerful submissions in response to the husband's case on this issue.

141. First, he submits that husbands generally, and this husband in particular, never overstate their assets in voluntary disclosure at the outset of divorce proceedings. The email expressly said that the Statement was for the use of the wife and her advisers, and the husband must have realised, as Mr Bishop put it, that lawyers would be all over the document.

142. Secondly, he submits that it would have been madness for the husband to overstate his financial position to the extent it is claimed – by exaggerating the value of his assets by £8.5m. Any deal based on such a misleading statement would have been very unfavourable to him.

143. Thirdly, at several points the husband has asserted that the wife was aware that he had been loaned money by Mr X. It made no sense for him to exclude the liability in his net calculation included in the June 2016 statement.

144. Fourthly, Mr Bishop submits that the independent evidence concerning the history of the loans made by Mr X to the husband supports the argument that the June 2016 statement was a broadly accurate summary of the husband's financial position at that point. Whilst the document does not mention Mr X by name, his debts are reflected in the figures contained in the document for the husband's equity interests in the three London development properties. Mr Bishop relies on the evidence of Mr Y and in particular his schedule of the husband's liabilities to Mr X under his personal loans set out at paragraph 69 above. As at June 2016, the Villa facility had been in existence for about 19 months and Mr Bishop and Miss Cook calculate that the sum outstanding under that facility was then £1.1m. At the same date, the loan of £5m had been in existence for about nine months and had therefore incurred interest (at 15% per annum) of about £562,500. The loan of £1.8m had only been advanced a month before the June 2016 voluntary disclosure and had therefore only incurred a small amount of interest. Mr Bishop therefore submits that, as at 27 June 2016, the total sum owed to Mr X under the personal loans, including interest, was £8.4m. Deducting this figure from the value of the husband's equity in the three London developments (£14.8m), one arrives at a figure of £6.4m. The figure given in the June 2016 statement of assets was £6.35 million. Mr Bishop submits that this reconciliation plainly supports the wife's case that the figures set out in the June 2016 statement took into account the debt owed to Mr X under the personal loans than outstanding. He submits that it would be an unbelievable coincidence if the deduction of some other debt, for example the debt which the husband claims to be owed to C Finance, resulted in a net residual amount of the same sum as the deduction of the actual debts to Mr X which are now known to have existed at that date.

145. Fifthly, Mr Bishop submits that the husband's evidence in support of his case that the loans owed to Mr X were not taken into account in the June 2016 statement of assets was utterly implausible. He characterises the husband's oral evidence on this issue, which is quoted at some length above, as comprising him standing in the witness box for a long time saying nothing.

146. Finally, Mr Bishop relies on the fact that the husband showed the June 2016 statement of assets to Mr X in the course of the negotiations in October 2016. Mr Bishop submits that this is extremely significant because the husband would never have shown the document to Mr Y in the course of seeking a further loan if it did not truly make provision for the sums already owed to Mr X. Furthermore, Mr Bishop submits

that Mr Y's statement in his email to the husband dated 20 October 2016 (" I understand that you believe she does have a degree of visibility through the fact that you have provided an asset statement (which I've seen) which discloses your net equity in the three developments but the fact is she has no idea about either the extent of the debt or the identity of the lender") demonstrates that the husband had asserted to Mr Y that the valuation of the husband's interest in the three London development properties given in the June 2016 statement of assets was net of the sums owed to Mr X under the personal loans.

147. The husband's case is that, notwithstanding Mr Y's insistence on full transparency and candour, and his own assurances ("I have been fully transparent on all my financial matters with you"), the assets that he was offering as security for Mr X's loan had already been pledged to C Finance. The wife's case is that the husband is therefore a self-confessed liar - the question is whether he has lied to Mr X or to this court. It is a central plank of Mr Bishop's case that the husband would never have misled Mr X and Mr Y in the way that he now claims he did. Given the context of their commercial relationship, Mr Bishop submits that this is "inconceivable, even for someone as dishonest, unscrupulous and adventurous as the husband". Lying to Mr X and leaving him without any security for his debts would be, in Mr Bishop's phrase, "financial suicide for the husband and would expose him to action for both breach of contract and fraud". Given that these assertions are made in the context of bitterly-contested divorce proceedings in which the husband is seeking to defeat or restrict the wife's claim for financial remedies, Mr Bishop and Miss Cook submit that it is much more plausible that the husband is lying to this court about the existence of the debt to C Finance.

148. It is their case on behalf of the wife that, in his Form E, the husband double counted his indebtedness to Mr X with the deliberate aim of defeating or reducing the wife's financial remedy claim and, when he became aware that this was likely to be exposed after the interlocutory hearings in these proceedings, he was obliged to come up with an explanation and therefore fabricated a liability to C Finance, a company with whom he had had previous dealings. Within his Form E, he stated that he had "made loan arrangements, to allow me and my companies to participate in the above property development projects" and gave details of the indebtedness to Mr X. It is submitted that there was simply no good reason for his failure to refer at all to any indebtedness to C Finance or U Properties in his Form E, nor at the hearings of the first appointment, the MPS application, or the freezing order application, or in any documents filed in connection with those hearings. Even after the assertion of indebtedness to C Finance has been made, the disclosure of evidence about it was, in Mr Bishop's words, "very sketchy".

149. Mr Bishop and Miss Cook submit that it is significant that neither Ms Hall nor Mr Gillespie in their initial examination of the documents produced by the husband was able to find any reference to C Finance at all. Even after Mr Gillespie expressly asked for documentation about C Finance, the information disclosed to him and to Miss Hall was extremely limited. Mr Bishop submits that it is extraordinary that there are no loan agreements relating to any of the sums said to be owed by the husband to C Finance. Any lender would want complete clarity as to the arrangements for repayment, interest and security. Mr Bishop contends that the absence of such evidence is a potent factor in assessing the likelihood of the true existence of the

loans, particularly in the light of the scale of the debt which the husband maintains is owed to that company. He further submits that the explanation provided by MO in his oral evidence – that contracts are not needed because the terms are sufficiently contained in an exchange of emails – is wholly implausible. In any event, he argues that it provides no explanation in this case because, despite requests, no such emails have been produced. Mr Bishop makes a similar submission about the absence of any written agreement, or evidence of any agreement, concerning the alleged joint venture arrangements between the husband and C Finance and associated companies. In answer to Mr Gillespie in February 2018, the husband asserted that the original security for the loans from C Finance and U Properties "lay against" the three London development properties, but that since 2014 "the current security is the joint venture agreement … on the basis that C Finance would participate in the profits". Mr Bishop relies on the fact that no copy of the joint venture agreement has ever been produced, and such documents as have been produced are either inconsistent or incomplete (for example, the so-called "statutory declaration" from October 2017).

150. It is asserted on behalf of C Finance that the husband's liabilities to the company were secured by a charge on the matrimonial home, that the charge was removed without their permission, and that it should now be restored. Mr Bishop submits that the suggestion that the charge was removed without the knowledge of C Finance is completely implausible, that the obvious explanation was that it was removed by C Finance when it was no longer required, and that the assertion that it should now be restored is part of the fiction which is now being put forward. Mr Bishop highlights other odd features of the C Finance aspect of the case – that, despite allegedly advancing millions of pounds, they have done nothing to recover the money; that some of the solicitors they have engaged do not have the appearance of professionals engaged in high finance work; that C Finance applied to intervene in the proceedings on the day before the hearing was due to start, and then changed their minds the following day, and that the alleged director and proprietor of the company seemed to know little if anything about the details of the business with the husband.

151. Turning to the documents eventually produced by the husband, or rather by those representing C Finance, and relied on by the husband as evidence of the genuineness of the liabilities to that company, Mr Bishop and Miss Cook make the following submissions. With regard to the 2012 deed of assignment, exhibited without explanation to Mr K's statement, they point out that the SJE found no reference to the assignment in K Co's books, and that the document was not referred to by either the husband or MO. In respect of the October 2016 assignment, they point out again that no reference to it was found in K Co's books by either Miss Hall or Mr Gillespie, nor was it referred to in Mr K's statement, even though he purports to be a signatory. Mr Bishop submits that the timing of this assignment, occurring just after the parties' separation and the worsening of their relationship, is very suspicious. Similar points are made about the statutory declaration - never mentioned to the experts, nor in the statement drafted for by Mr K to sign. Mr Bishop submits that it is unclear why such a document will be required if the August 2016 assignment was genuine. As for the "Heads of Terms" document eventually produced by solicitors acting for C Finance, it is again pointed out that no reference to the document was found in K Co's records, nor was it mentioned by the husband at any point prior to his oral evidence, nor by Mr K in his statement. Mr Bishop further points out that none of the terms provided in the document have been carried out. Finally, in respect of the isolated emails from

various dates in the last five years relied on as further evidence of the liabilities said to exist towards C Finance, Mr Bishop submits that the court cannot attach any weight to isolated emails which are no more than fragments of the correspondence.

152. Mr Bishop submits that the absence of contemporaneous evidence, where it is reasonable to expect such evidence to exist, is another factor pointing strongly towards a finding that the loans alleged to have been made by C Finance are not authentic. He relies on the observation of Lord Sumption in *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34 at paragraph 45:

> "The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing. I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is."

153. Looking to the future, Mr Bishop and Miss Cook submit that the parties face very different prospects. They describe the wife's position as immensely vulnerable and entirely static, with no meaningful earning capacity and thus dependent on whatever remedy she receives at the end of these proceedings. In contrast, the husband's position is dynamic. Not only does he have the opportunity to proceed with his ongoing property developments, but in addition he has over the years earned substantial fees in relation to other property transactions, with a proven earning capacity on a contractual basis as a project manager. In addition, it is the wife's case that she believes that the husband had business connections and interests elsewhere in the world - France, Singapore, Malaysia and Iran, where she asserts that his father owns many properties - although she has been unable to produce further evidence about these connections and interests. Mr Bishop described the husband's oral evidence as having compounded the picture of a man unwilling to economise, who treats the need to live prudently as something of a joke. In contrast, the wife has been left in difficult financial circumstances with no guaranteed means of support. Mr Bishop submitted that the husband had added to the wife's financial difficulties by causing hugely inflated legal fees as a result of his ever-changing and, on Mr Bishop's case, essentially dishonest presentation of his means, his failure to obey court orders, and his late and very incomplete introduction of evidence. It is therefore submitted that the court can safely conclude that he is a man who has dissipated assets and that this dissipation should be reflected in the distribution of what is left. This underpins the wife's argument in support of "addback". I shall consider that issue separately below.

154. Mr Bishop and Miss Cook acknowledge the existence of pending bankruptcy proceedings, which have been registered against the title of the matrimonial home. They rely on the well-established principle, however, that, where bankruptcy proceedings are pending, this court retains its full powers to make a lump sum and/or

property adjustment order against the party who is at risk of becoming bankrupt: *Mullard v Mullard* (1982) 3 FLR 330. They acknowledge that the making of a bankruptcy order prior to the making of a financial remedies order would curtail the range of remedies available to the court in that, whilst a lump sum order may still be made, and thereby becomes a proveable debt in the bankruptcy, no property adjustment order is permitted. Where a property adjustment order is made prior to a bankruptcy order, the trustee in bankruptcy takes the property subject to the transferee's equitable interest under the order so that the transferee is entitled to enforce the transfer of property order against the trustee: *Mountney v Treherne* [2002] EWCA Civ 1174. Mr Bishop and Miss Cook accept that the fact that transfer of property which has been made in compliance with a property adjustment order does not per se prevent that transfer from being a settlement of property at undervalue and thus fall within s.339 of the Insolvency Act 1986. It is submitted, however, that in practice the likelihood of the transaction being set aside under that provision is very low, for the reasons explained in *Hill v Haines* [2007] EWCA Civ 1284.

155. At the conclusion of his oral submissions, Mr Bishop submitted in the alternative that, if the court was ultimately minded to leave the business assets with the husband completely, given all the difficulties and complexities that would be involved in seeking to maintain an interest for the wife in those assets, there was all the more reason to give her the matrimonial home and the French properties now.

(c) The husband's submissions

156. It is notable that no open offer was made by the husband to settle the wife's financial remedy claim prior to the start of the hearing. It was only in closing submissions that a proposal on behalf of the husband was put forward.

157. Mr Pointer and Miss Murray accept that, after a long marriage which resulted in three children, the starting point is that there should be an equal division of the matrimonial assets. It is further accepted that all existing assets in this case can be categorised as matrimonial. They submit, however, that in practice the overall asset position is negative so that careful thought is required as to how to meet each party's needs. Furthermore, the court must avoid making an order that could be set aside in the bankruptcy proceedings. It was accepted that the court will want to see that the wife is housed. It was recognised that if possible that the new property should be in the area of west London where she has lived for many years. It was submitted, however, that the property would have to be considerably smaller than the former matrimonial home. Although it was recognised that the wife has a revenue requirement, it was submitted that it is difficult to see how this can be provided when the husband has no income.

158. On that basis, the husband's proposal was as follows:

(1) the former matrimonial home be sold and the net proceeds of sale divided equally;

(2) the collateral accounts linked to the mortgages to be divided equally;

(3) each party to pay their legal costs from their share of the proceeds of sale;

(4) the husband to retain the Knightsbridge property, which, it was submitted, at present has a negative equity;

(5) the wife to receive the net proceeds of sale of the French holiday home, which, after redemption of the outstanding mortgage and repayment of the collateral loan from the proceeds of the collateral investment, would leave her with about £525,000;

(6) the husband to retain the other two French properties which, in their current condition, each have a negative equity of in excess of £100,000;

(7) the husband to retain all his business interests and liabilities - it is submitted that on current figures the liabilities amount to £13.2m including the liquidated damages incurred by reason of the delaying completion of the Mayfair property development, but it is acknowledged that if the projects are completed the husband may ultimately make a profit from those activities;

(8) the husband to retain the art collection, with the remaining contents of the matrimonial home to be auctioned and divided equally;

(9) the husband to indemnify the wife in respect of all liabilities owed to C Finance and Mr X;

(10) each party to be otherwise responsible for his or her other liabilities;

(11) the wife's other claims to be dismissed, including periodical payments and her claim for an order enforcing the MPS arrears;

(12) no order as to costs, including as to the costs of the suit.

159. Mr Pointer and Miss Murray invite the court to reject the wife's characterisation of their client's approach to this litigation. They challenge the picture put forward of a man who has adopted a cavalier and irresponsible approach to his obligations. They submit that the presentation of his case has been significantly prejudiced by his being obliged to represent himself for a prolonged period. His inability to obtain representation was attributable to the making of the freezing order on 11 August 2017, the failure of that order to make any provision for his legal costs until amended by my order on 31 January 2018, and difficulties experienced in obtaining a legal funding loan, with applications being refused on two occasions before a loan was eventually granted in February 2018. It was submitted that, for these reasons, the husband was only able to begin preparing his case 15 days before the final hearing and, as a result, his case was significantly prejudiced, not least because it turned to a considerable extent on evidence from third parties which was beyond his control.

160. On the principal issue between the parties, Mr Pointer and Miss Murray invite the court to conclude that the husband's alleged liabilities to C Finance and associated companies are genuine. They submit that there is no evidence that the husband has any interest in C Finance or the associated companies. The original documents evidencing the incorporation and ownership of the property is well vouched for by the solicitor, Mr Mian in correspondence produced during the hearing, and no questions were asked about those documents. The wife's assertion that C Finance was holding

money on behalf the husband was unsupported by any evidence. The fact that C Finance went so far as to obtain a possession order in respect of the matrimonial home in 2009 is inconsistent with the suggestion that the husband was himself the source of the funds provided by that company. Mr Pointer and Ms Murray concede that Mr K was not a very impressive witness, but they suggest that this was because he suffered from a failing common to rich men that he did not know the detail of his financial affairs, having entrusted the management to others. In contrast, they submit that Mr S was an impressive witness and that MO was obviously his own man, with assets of his own, who was not just doing the husband's bidding. Mr Pointer and Miss Murray acknowledge the absence of formal loan agreement documentation at the time the alleged liabilities were incurred, but submit that this was how the business was conducted. They urge the court to avoid what they characterised as an inappropriate Anglo-Saxon perspective. The absence of formality in respect of all the loans demonstrates how common this modus operandi is. In oral submissions Mr Pointer observed that funding arrangements involving Muslims have to be structured in a way that does not demonstrate interest, which was another reason why no formal written loan agreements were executed.

161. Mr Pointer invited the court to conclude that there was nothing to support the wife's evidence that MO had regularly provided the husband with large quantities of cash. He submitted that, even if this evidence was true, it had nothing to do with the property transactions under consideration in this case. He submitted that it was fanciful to say that that evidence proves that the husband has money offshore.

162. Looking at the history of the husband's previous property developments, it is submitted by Mr Pointer and Miss Murray that the level of profits was plainly insufficient to fund the purchase of the three London development properties - the Mayfair property, A House, and D House and Cottage – without assistance from outside investors. Mr Pointer submitted that the total gross profits over the period of 20 years plus has been £7.75 million gross, amounting to under £6 million after tax. They submit that, given the accepted evidence as to the family's standard of living, it is clear that the husband must have had independent financial backing to support the three London property developments. They submit that the source of that backing was Mr K. The evidence, in the form of emails and bank statements, demonstrate that the loans from C Finance and associated companies all predate, and were all plainly made to facilitate, the purchase of the three properties. In contrast, the loans from Mr X all occurred sometime after those properties were acquired. The wife had failed to demonstrate how the husband had afforded the very substantial sums invested in the three London development properties. The funds invested in the properties must come from somewhere and Mr Pointer submitted that there is sufficient evidence to conclude that the source of those funds was C Finance and associated companies.

163. Mr Pointer and Miss Murray accept that the husband was reticent about naming C Finance and the associated companies in his disclosure, but submit that this was unsurprising. For understandable reasons, the husband wanted to keep the extent of his liabilities to those companies a secret from Mr X. Although Mr X and Mr Y may have realised that they did not know the full picture of the husband's financial position, and although Mr Y certainly knew that the husband had connections with a company called U Properties, they were unaware of the C Finance loans and the extent of his liabilities. Given the wife's behaviour after discovering the affair and the

breakdown of the marriage, the husband was understandably concerned about the risk that she would pass on to Mr X any details that were disclosed to her.

164. Mr Pointer and Ms Murray submit that the court can confidently make the following findings concerning the husband's liabilities:

(1) He has been in business with C Finance and U Properties since 2007.

(2) At one stage his indebtedness to those companies led them to take a charge on the matrimonial home.

(3) When he defaulted on the payments secured by that charge, C Finance started court proceedings and obtained a possession order. At a later date, the charge was removed (Mr Pointer acknowledges that there is a conflict between the husband and those purporting to represent C Finance as to the circumstances in which the charge was removed from the matrimonial home. He submits, however, this does not undermine the proposition that the debt secured on the property was genuine).

(4) Subsequently, the husband and C Finance resumed business activities.

(5) Bank statements produced by C Finance demonstrate transfers to the husband in excess of £7 million in 2011 and 2012. The fact that there are gaps in the emails and other documents disclosed did not matter when it was plain from the bank statements disclosed that money had been transferred to the husband from C Finance and U Properties.

(6) There is no evidence that those monies have been repaid and the indebtedness will be enforced in due course through the civil courts if necessary.

165. Mr Pointer and Miss Murray submit that this is typical of the husband's way of doing business. Taking risks has enabled him to make good profits in the past. When borrowing money from C Finance, and subsequently from Mr X, he clearly believed that he would be able to repay the debts having developed and refinanced the properties. For various reasons, in particular the drift in the high-end property market, and some difficulties with builders, this has not happened.

166. As for the statement of assets and liabilities voluntarily disclosed in June 2016, Mr Pointer and Miss Murray submit that it is not a formal disclosure by Form E and unsurprisingly contains a number of errors which were subsequently corrected. They submit that it is not unknown for husbands to overstate resources in these circumstances, for a variety of reasons. In this case, they rely on the husband's explanation that the statement had been prepared for pitching to potential investors, pointing out that it was dated "May 2016" and not sent to the wife until 27 June, several weeks later. The absence of any identification of business creditors is consistent with the document being intended as a pitch.

167. Central to the husband's case as advanced at the hearing is his assertion that the calculations in the statement of assets and liabilities sent to the wife in June 2016 take into account the alleged liabilities to C Finance but not those owed to Mr X. Mr Pointer and Ms Murray submit that a careful study of the arithmetic demonstrates that, in setting out the figures for the three London development properties in that

statement, the husband deducted the sums borrowed from C Finance and not those borrowed from Mr X. Drawing on figures given at various points by the husband and in the documents disclosed on behalf of C Finance, they put forward the following calculation:

A House:	husband's interest	4,855,376
	Loan from C Finance	1,000,000
	Net value of husband's interest	**3,855,376**
D House/Cottage	husband's interest	7,350,886
	Loan from C Finance	6,180.000
	Net value of husband's interest	**1,170,886**
Mayfair property:	husband's interest	**1,325,000**

It is submitted that these figures match those in the June 2016 statement of assets and liabilities and that the totality of the documents ultimately disclosed demonstrate that the calculation set out in that statement was based on a deduction of the liabilities to C Finance and associated companies and not those owed to Mr X.

168. Mr Pointer and Miss Murray submit that the arrears under the MPS order should not be enforced or otherwise taken into account in the final order. They assert that, at the hearing of the MPS application, the wife was clearly not frank with the court in respect of her knowledge of the husband's straitened financial circumstances. To her knowledge the husband was at that stage paying all the costs of running the former matrimonial home, totalling over £20,000 per month, plus a further £10,000 per month for discretionary spending. In addition, he was paying the youngest child's school fees and allowances to all three children totalling £3,400 per month. The wife was also aware that the husband had not at that stage sold a property for several years and owed money to Mr X. The level of MPS claimed and ordered was never manageable. Furthermore, the husband's representatives complain that the subsequent orders made by Roberts J on 11 August 2017 and Cohen J in November 2017 on the wife's application for enforcement of the MPS order, including orders for interim sale of chattels, were outwith the court's jurisdiction: *WS v HS* [2018] EWFC 11. The husband made an application to vary the MPS order on 2 August 2017 which was listed to be heard at the final hearing. In the circumstances, it is accepted on behalf of the husband that, given the financial constraints and the parties' respective needs, there are insufficient resources to adjust the final determination either way, although it is argued that the wife's pursuit of MPS at an unjustifiable level has led to unnecessary and wasted costs. In addition to their complaints concerning the wife's MPS claim, Mr Pointer and Miss Murray point to other examples of what they assert is litigation conduct on the part of the wife which should be taken into account by the court in considering her application. Complaint is made about the very late preparation of the bundles, which hampered the strenuous efforts by the husband's legal team to get up to speed with the case in the few days available before the hearing; the failure to file her s.25 statement before the first day of the hearing; and

the late disclosure of material on the wife's computer relevant to the husband's finances, including evidence that the husband had dealt in the past with U Properties.

(d) Addback

169. I am grateful to Mr Pointer and Ms Murray for their helpful summary of the case law concerning the appropriate treatment of claims that, when determining an application for financial remedies, the court should add back into the calculation monies dissipated by one of the spouses.

170. The starting point is the decision in ***Martin v Martin*** [1976] Fam 225 in which Cairns LJ at p342 stated

> "a spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably"

In ***Norris v Norris*** [2002] EWHC 2996 (Fam), Bennett J stated (at paragraph 77):

> "A spouse can, of course, spend his or her money as he or she chooses, but it is only fair to add back into that spouse's assets the amount by which he or she recklessly depletes the assets and thus potentially disadvantages the other spouse within ancillary relief proceedings."

In ***Vaughan v Vaughan*** [2008] 1 FLR 1108, Wilson LJ in the Court of Appeal cited both ***Martin*** and ***Norris*** with approval and observed:

> "The only caveats are that a notional redistribution has to be conducted very cautiously, by reference only to clear evidence of dissipation (in which there is a wanton element) …."

In ***BJ v MJ (Financial Remedy: Overseas Trusts)*** [2011] EWHC 2708 (Fam), Mostyn J gave this warning:

> "Although intellectually pure, the problem with this technique is that it does not recreate any actual money. It is in truth a process of penalisation. In my judgement it should be applied very cautiously indeed and only where dissipation is demonstrably wanton."

Most recently, Moor J in ***MAP v MFP (Financial Remedies: Addback)*** [2015] EWHC 627 (Fam), having summarised the authorities, added this qualification:

> " … a spouse cannot take advantage of all the good characteristics of his or her partner whilst disavowing the bad characteristics. To put it colloquially, you have to take your spouse as you find him or her."

On the facts of that case, Moor J noted that the husband had not overspent to reduce the wife's claim, but rather, in part, because he could not prevent himself from doing it as a result of his flawed character (in that case, his drug addiction) and also because of his "obsession with perfection". Although the husband had spent money on cocaine and prostitutes, the judge concluded that, whilst his expenditure had been morally culpable and irresponsible, it was not deliberate or wanton dissipation.

171. On behalf of the husband, Mr Pointer and Miss Murray submit that the husband's behaviour in this case falls into the same category – irresponsible, but not deliberate or wanton dissipation. Mr Bishop and Miss Cook, on the other hand, submit that it was manifestly both deliberate and wanton dissipation, at a time when the husband was conspicuously failing to comply with his obligations under the MPS order.

172. Mr Bishop added that the evidence of the husband's dissipation of assets and wanton expenditure was not merely relevant to the submission about "addback". Given that this is now a "needs case", it would be perfectly reasonable for the court, where one party has dissipated millions of pounds, to give priority to meeting the needs of the other. There is, submitted Mr Bishop, no rebutting the fact that the husband has "torn through £4.2 million." Equally, he submits, there is no justification for remitting the arrears owed by the husband. The wife's situation is very grave. She has no earning capacity and is dependent on the court for financial security. She is responsible for two children. On the other hand, the husband's position is completely different. He has an earning capacity and a track record of success, and has property developments still outstanding.

(10) Conclusions and final order

173. In reaching my conclusions, I start by assessing the credibility of the various witnesses who gave evidence before me. The wife was a straightforward and honest witness. It is understandable that she feels extremely bitter about the breakdown of her marriage and her husband's behaviour but I did not think that her bitterness led her to give evidence that was either false or exaggerated. She is understandably deeply concerned about the future but realises the need to economise and adjust to a different lifestyle. I accept her evidence as truthful.

174. In contrast, the husband was a poor witness. As extracts from the transcripts of his evidence quoted above show, under Mr Bishop's relentless but fair cross examination he was at times simply unable to answer questions about his behaviour. His evidence about the June 2016 statement of assets and liabilities was striking – he was unable to provide a coherent account as to why he would send to the wife from whom he was recently separated a summary of his financial position that exaggerated his wealth to the tune of several million pounds. His final explanation in oral evidence – that it was part of a pitch for future investors – was not mentioned until he went into the witness box. It was not suggested in correspondence, nor in any of the documents filed on his behalf, including his s. 25 statement filed on the first day of the hearing. It was a simple explanation and, if true, it is difficult to see why it was not put forward earlier. In fact, in his s.25 statement, he had confirmed that the document was prepared for the wife and her advisers as stated in the email sent to her on 27 June 2016, an explanation he withdrew in the witness box. As the transcript of his evidence set out above demonstrates, he was unable to explain why.

175. I take into account the fact that the husband was in the witness box giving evidence over several days and that he was suffering from a heavy cold. Making all allowances, however, I conclude that he was an unreliable witness and, at times, an untruthful one.

176. I accept the submission made by Mr Bishop and Miss Cook that the husband's attitude to the court process in these proceedings has been cavalier and irresponsible. I find that on occasions he has shown little regard for court orders or court rules. Whilst it is undoubtedly true that the presentation of his case was to a certain extent affected by the fact that he was for some time acting in person, I do not accept Mr Pointer's submission that he was, as a result significantly prejudiced. Any competent man of business such as the husband ought to be able to comply with court rules, for example as to the disclosure of documents. His failure to comply with his obligations to give full and frank disclosure has been deliberate and wilful. If any party has suffered as a result of his lack of representation, it is the wife, who has had to respond to documents being produced in dribs and drabs and at the last minute. Of course, those representing the husband latterly have had to do a great deal of work in a short period of time. I am extremely grateful to all counsel and their instructing solicitors for all that they have done. But the principal blame for the difficulties in presenting and adjudicating on this case lies with the husband and his failure to give full and frank disclosure. I agree with Mr Bishop and Miss Cook that his approach to this litigation can be summed up in the phrase "catch me if you can".

177. I have already made some comments about the other witnesses, but it is necessary to draw those threads together at this stage. Mr X and Mr Y were both manifestly truthful and reliable witnesses. They are shrewd and successful businessman – in Mr X's case, highly successful – and their assessment of the husband is one which carries considerable weight with this court.

178. The contrast between, on the one hand, Mr X and Mr Y and, on the other, the trio of witnesses who gave evidence about the husband's alleged liabilities to C Finance could hardly be greater. None of the three witnesses was reliable. Mr K was literally a useless witness in these proceedings since he had nothing useful to say at all about the alleged transactions. The way in which this evidence was put before the court, through the mouth of a man whom had no knowledge of it significantly undermines its credibility. This court deplores the way in which the witness statements purporting to set out the evidence given by witnesses related to C Finance were drafted and put before the court. It is manifestly wrong and misleading for a statement to be signed by a witness who is unable to attest to the truth of its contents. By putting the information concerning the alleged transactions with the husband in a statement signed by a man purporting to be "the director of C Finance and U Properties", those responsible for drafting the document (not, I stress, the solicitors acting for the husband in these proceedings) were manifestly seeking to add a false authority to that information. In fact, having heard his oral evidence, I am not persuaded that Mr K is indeed the director of C Finance or U Properties. Who exactly is behind those companies - whether it be the Russian oligarch mentioned at one point in the papers, or somebody else - is unclear, and this court is certainly not going to speculate further about that.

179. Mr S was certainly better prepared to answer questions in his oral evidence, but his role with the company only started after the alleged loans had been made. As a result, he was unable to give direct evidence about those transactions for which, of course, no formal contractual documents exist. Furthermore, it seems that he had prepared the paperwork and the documents produced for the court, including Mr K's "statements", and the misleading way in which that task was undertaken casts considerable doubt on Mr S's credibility.

180. MO described himself as someone who did not come from a conventional business background. That is neither here nor there. Many successful businessmen are unconventional. But MO's evidence was more than merely unconventional. It was implausible and unreliable. I do not accept his assertion that formal loan agreements in the circumstances are unnecessary or that contracts can be proved simply by an exchange of emails. If that were remotely true, one would have expected a full run of emails to be produced. They were not. Equally, if MO's explanation were true, it would not have been necessary for C Finance and its representatives to have rushed round drafting ex post facto documents such as the statutory declaration and "Heads of Terms".

181. There was an important conflict of evidence between MO and the wife which is necessary to resolve. It was MO's evidence that he and the wife were on cordial terms and socialise together on a number of occasions. The wife disagrees, saying, in effect, that she was reluctant to allow him in the house. She further alleges that MO regularly delivered quantities of cash to the husband. MO emphatically denies that allegation. I have no hesitation in accepting the evidence of the wife. It follows that MO has lied to this court on that matter and that lie casts doubt on the rest of his evidence. Furthermore, it strongly suggests that there were other business activities between the husband and MO about which this court has not been informed.

182. In his closing submissions, Mr Bishop suggested that the importation of sums of cash from offshore was indicative of someone who has set up an offshore structure from which he wishes to benefit without having to reveal their existence. That is speculation which cannot form the basis of a finding by the court. But I accept Mr Bishop's submission that, on any view, there are several aspects of husband's relationship with C Finance, its associated companies and the various individuals said to be linked to those companies, including MO, which are obscure and have not been disclosed either to the wife or to this court. One example is the development of another property in London, P Lofts, which the limited disclosure suggested had involved transactions between the husband and C Finance although Mr K, Mr S and MO seemed to have little, if any, knowledge about it.

183. The evidence concerning the loans allegedly made by C Finance to the husband was wholly implausible. The series of documents (assignments of loans, the draft statutory declaration that was never executed, the "Heads of Terms" that have never been implemented) gradually disclosed in the latter stage of the proceedings – not by the husband but by persons said to be acting for C Finance – do not provide a coherent presentation of a genuine arrangement. If there had been genuine loans on the scale alleged from C Finance to the husband of K Co, the SJE Ms Hall and the wife's expert Mr Gillespie would surely have found some reference to them in the records. They found nothing at all.

184. The absence of any or any substantial or reliable contemporaneous records of the alleged loans is a telling feature. I reject the assertion by MO that a written loan agreement is unnecessary in these circumstances. I accept Mr Bishop's submission that any lender in these circumstances, particularly given the size of the alleged loans, would want complete clarity as to the arrangements for repayment, interest and security. Such arrangements should be set out in a loan agreement. MO's explanation that it would be sufficient for the loans to be evidenced by an exchange of emails is implausible, certainly given the size of the loans alleged in this case. Furthermore, if

this explanation was correct, one would expect the husband and C Finance to be able to produce the relevant emails. The fact that they were not produced demonstrates that MO's explanation was entirely bogus and provides further support for Mr Bishop's submission. In addition, if there were genuine loans made by C Finance and associated companies to the husband and his company, there would unquestionably be some record in the company's books. Neither the SJE, Miss Hall, nor the wife's expert accountant Mr Gillespie unearthed any such document. The very thin documents that have eventually been produced fall far short of providing reliable and proper support for the husband's assertions.

185. I am unable to resolve the mystery as to who removed the charge on the matrimonial home. Those representing C Finance insisted that it was removed without their knowledge or consent by the husband acting fraudulently. They were unable, however, to produce any documentary evidence to support that assertion, which, if true, would mean that the husband had committed a serious criminal offence. The husband's case is that it was indeed removed at the direction of C Finance. The picture is clouded further by the fact that the solicitor who removed it, purporting to act on behalf of C Finance, also acted on occasions for the husband, including at one stage in negotiations concerning the possession order. It is, however, not necessary for this court to reach any conclusion about what happened. The evidence about this matter, however, gives further support to the wife's case that the court has not been given the full picture about the relationship between C Finance and the husband.

186. Mr Pointer submitted that the arithmetic supports the husband's contention that the summary of his business interests in the June 2016 statement of assets and liabilities took into account the alleged loans from C Finance and not the loans from Mr X. Mr Pointer submitted that the arithmetical calculations put forward on behalf of the wife's contrary case are wrong. If he is right, this would provide some support for the claim that the C Finance loans were genuine. Having carefully considered the rival calculations, however, I find that Mr Pointer is mistaken in submitting that the arithmetic in the calculations put forward on behalf of the wife does not add up. I accept Mr Bishop's submissions, as set out above, that the extent of the husband's indebtedness to Mr X in May/June 2016 is consistent with the summary of his business assets in the statement of assets and liabilities sent to the wife on 27 June 2016.

187. I find that the statement of assets and liabilities provided by the husband to the wife on 27 June 2016 included a broadly accurate summary of the value of his interests in the three London development properties as at that date. Although the marriage had broken down, relations between the parties had not deteriorated to the level to which they fell a few months later. In his covering email enclosing the statement, the husband described himself as being sorry for all that had happened and for the pain that he had caused, said that he would be happy in the very near future to explain in detail all the balances and provide documentary evidence, and added that the information in the statement of assets was for the use of the wife and her advisers. Manifestly, the husband was referring to the wife's legal advisers, and his attempts to suggest otherwise in his oral evidence were disingenuous. By the time of his Form E, however, relations between the parties had deteriorated and the husband's attitude to the wife, and her claim for financial remedies, had hardened.

188. I find that the sums then owed to Mr X under the personal loans were taken into account by the husband in the figures he gave to the wife in the June 2016 statement of assets and liabilities. I accept all of Mr Bishop's submissions on that issue. In particular, I accept the submission that husbands generally, and this husband in particular, never overstate the assets in voluntary disclosure at the outset of divorce proceedings and that it would have been madness for the husband to overstate his financial position to the extent now claimed because any deal based on that disclosure would have been very unfavourable to him. I also accepted the submission that the husband would never have shown the document to Mr Y in the course of seeking a further loan, as I am satisfied he did if it did not truly make provision for the sums already owed to Mr X. It follows that the husband's assertions in his Form E, in particular his claim that the sums owed to Mr X under the personal loan should be deducted from the value of his business interests, were a deliberate attempt to mislead the wife and the court as to his true financial position.

189. Drawing all these threads together, I have reached a firm conclusion that the loans alleged to been made by C Finance are a fiction. The truth is, as Mr Bishop put it to the husband in cross-examination, that he has procured the assistance of his acquaintances and offshore associates to try to create evidence to defeat the wife's claim. I accept that sums may have been transferred from C Finance and U Properties to the husband but not under the loan agreements alleged by the husband and the other witnesses. Something else was going on. I am not going to speculate what it was. It is sufficient merely to conclude that the assertion that the husband owes substantial sums to C Finance under the alleged loan agreements is untrue. I accept Mr Pointer's submission that the husband may have had additional funding to support the three projects but not his submission that it was provided by C Finance.

190. I am satisfied that the husband's London development projects, and the French villa developments, have run into some difficulties and delays and that this has affected the husband's likely profits from those ventures. I accept, for example, Mr Pointer and Miss Murray's submissions concerning liquidated damages. On the other hand, I also accept the wife's evidence that the husband has been involved in business ventures elsewhere which he has not disclosed. If Mr Pointer's submissions are correct, his client has behaved foolishly, spending money on an unaffordable scale in the Panglossian belief that things will be all right in the end. That is not the man described in the wife's evidence as quoted above ("an amazing provider … an extraordinarily successful man who's managed to make our life bigger and better … an extremely clever guy"). Her view seems to be shared by others. Although I am quite sure that the full picture of the husband's involvement with C Finance has been deliberately concealed from the court, it is evident the shadowy people behind that company have been involved in business activities of some kind with him over a period of 10 years, and have maintained their involvement even after he defaulted on payments to an extent that obliged them to obtain a possession order against his property. Plainly, they do not regard him as a fool, but rather as a man with whom it is worthwhile to do business. That view is shared by Mr X. He has continued to advance money to the husband, despite a series of difficulties, including some that arose in 2014 as demonstrated in the documents downloaded from the wife's computer, and has continued to do so until relatively recently. As noted above, at the end of his oral evidence, when asked whether he would lend further money, Mr X replied it would depend on whether he was satisfied about the security offered for the loan. If so, he

would be willing to help. He thought that, if the husband was successful with the three property developments, he would get himself out of his problems.

191. I am satisfied that the husband has spent money on himself in a cavalier fashion and failed to comply with his obligations to support the wife under the MPS order which, I am satisfied, was an obligation he was well able to afford. I am wholly unpersuaded by Mr Pointer's arguments that the level of MPS was wrong. I find that the husband could have paid the MPS at any point but chose not to do so, preferring to spend the money on himself.

192. In all the circumstances, the order will be in outline as follows (I shall require assistance from counsel and their instructing solicitors as to the precise terms).

(1) The matrimonial home shall be sold and the net proceeds, together with the balance of collateral accounts, paid to the wife.

(2) The holiday home in France will be sold and the net proceeds of that sale, together with the balance of the collateral accounts relating to that property, shall also be paid to the wife.

(3) On the basis of the figures set out in the parties' respective schedules of assets, that will provide the wife with about £950,000, which will be insufficient to meet her liabilities (consisting principally of her litigation costs), let alone enable her to buy alternative accommodation. She will only have sufficient funds for another house if (a) the matrimonial home and/or the French holiday home sell for a price higher than the valuations in the evidence filed in these proceedings, and/or (b) she is willing to sell some of her chattels, in particular her jewellery, and/or (c) a costs order is made against the husband (as to which, see below).

(4) The two other French properties shall be transferred into the husband's name. Both properties need to be renovated in order to maximise their potential value. The best prospect of achieving that is if they are left in the hands of the husband to develop, using the resources which, I find, he has available but not fully disclosed. The Knightsbridge property shall also be transferred to the husband, subject to the sums outstanding on mortgage. The husband shall indemnify the wife against any future liabilities in respect of those properties.

(5) Chattels – unless divided by agreement, the parties' various cars will all be sold and the proceeds divided equally between the parties. So far is the art is concerned, I accept that Mr M is the owner of a number of paintings previously displayed on the walls of the matrimonial home and now, apparently, at the husband's flat. The other paintings shall be divided by agreement. In the absence of agreement, they too shall be sold and the proceeds divided equally. The contents of the matrimonial home shall be treated in the same way - either divided by agreement, or, in the absence of agreement, sold and the proceeds shared. Each party shall be entitled to retain his or her jewellery, handbags and other accessories and personal items.

(6) It is accepted that the husband's business interests were matrimonial assets and therefore fall to be taken into account. On the other hand, all parties accept that this is a "needs case". In the statement of assets and liabilities sent to the wife in

June 2016, the husband gave a valuation for his interest in the three London development properties (which, as I have found, was calculated after deduction of the sums owed under Mr X's loans) at approximately £6.3m but stated that his expected profits were between £5m and £10m. In the final schedule of assets submitted on behalf the wife (the details of which are not accepted by those representing the husband), his interest is said to be worth £14.8m, less sums owed to Mr X of approximately £12.5m. I also accept Mr Pointer and Miss Murray's submission that liquidated damages in the sum of £1.6m for the Mayfair property development must also be deducted. On these figures, the current value of the husband's interest in the three development properties is only about £700,000. The precise value of his current interest is uncertain, given the current vagaries of the London property market. On the other hand, I accept the argument that, if allowed to complete the projects, the husband is likely to make a profit. That is why Mr X has continued to support him and, potentially, is willing to provide further support in future. I therefore agree with Mr Bishop's proposal that, on completion of the outstanding building projects - in France and London - the husband should pay a lump sum to the wife. Mr Bishop proposes a process by which the precise valuation of that lump sum should be assessed when each project is completed, and recognises that, for that to happen, there will have to be a tightly drawn order and careful monitoring of the husband's ongoing activities. Given the history of these proceedings, however, it seems inevitable that such a process would condemn the parties to expensive ongoing litigation so that any lump sum ultimately recovered would be consumed in further costs. In those circumstances, notwithstanding the uncertainties about the future, it is much better in my judgment to fix a lump sum now for the husband to pay by a certain date.

(7) Before fixing that sum, however, I turn to two other aspects of the wife's claim - arrears of MPS and "addback". As set out above, I am unpersuaded by Mr Pointer's arguments that the level of MPS was wrong and that the court should now remit the arrears. I find that the husband could have paid the MPS at any point but chose not to do so, preferring to spend the money on himself. In fixing the level of any lump sum, therefore, I must take into account the fact that the arrears of MPS stood at the level of £358,765 at the date when submissions were delivered and are presumably now higher still. With interest, the figure would be close to half a million pounds, although Mr Pointer submits, relying on the decision of Mostyn J in ***Re TW*** [2015] EWHC 3054 (Fam) at paragraph 17, that interest is not recoverable on arrears of maintenance. The question then arises whether the lump sum should also take into account the claim for "addback". I conclude that the facts of this case are materially different from those in ***MAP v MFP (Financial Remedies: Addback)***. In my judgment, the husband's conduct in this case was wanton and deliberate dissipation of assets at a point when he should have been paying maintenance to the wife. But if I were to include the figure claimed for addback, as well as the full arrears of MPS, there would in all probability be an element of double recovery. If the husband had paid the sums due under the MPS order, he would not have been able to spend money on himself in the same wanton way. Accordingly, in this case, I do not think it appropriate to take the figure claimed for "addback" into account as well as the MPS arrears when assessing the appropriate level of the lump sum.

(8) In calculating the appropriate level of lump sum, I take into account all the circumstances and in particular the following factors (a) the length of the marriage, (b) the fact that the business assets were matrimonial assets, (c) the fact that the husband has not provided full disclosure of his financial resources, (d) his record of success in business and his resourceful character (e) the fact that the wife has little, if any, earning capacity, (f) the parties' respective needs, and (g) the arrears of MPS. All these factors point towards a substantial lump sum being awarded. On the other hand, I take into account the fact that the completion of the project will be undertaken by the husband alone after the marriage. I also bear in mind Mr Bishop's observation that one needs to be realistic. It would be unwise to fix the lump sum at a level that the husband would lose any incentive to complete the projects. In the June 2016 statement of assets and liabilities, the husband estimated his likely profit from the development of the three London properties at between £5m and £10m. Since that date, his liabilities to Mr X have increased by £4m. In addition, the value of high-end property in London has fallen. On the other hand, the husband will also retain the two French properties on which he hopes to make a profit, although there are planning issues outstanding.

(9) Taking all these factors into account, I conclude that the husband should pay the wife a lump sum of £2m on or before 1 September 2021, with interest to accrue if not paid by that date. That gives the husband three years to complete the London and French projects and realise his profit. Both parties will be at liberty to apply to vary that date, either bringing it forward or pushing it back, if the circumstances so justify. The figure represents a reasonable share of the husband's potential profit on the five property projects and will give the wife capital to invest which will provide her with an income sufficient to meet her needs, although not to support the lifestyle she enjoyed during the marriage.

(10) As for maintenance, pending payment of the lump sum, I order the husband to pay periodical payments for the youngest child at the rate of £3,000 per month, until he ceases full-time education or further order. I further order him to pay periodical payments for the wife at the rate of £10,000 per month until payment of the lump sum as ordered above or further order, with provision for the term to be extended on further application to the court. That sum is considerably less than ordered under the MPS order and is close to the sum offered by the husband at that stage. It is designed both to reflect the wife's acceptance that she needs to economise and to provide the husband with greater flexibility to complete the development projects.

At present, I am undecided as to what order should be made for costs in the light of my decision. I will be grateful if counsel would supply brief written submissions on that issue.

193. As stated above, this is only an outline of the order I propose to make, and I will be very grateful for further assistance from counsel as to the precise terms of the order. I apprehend there will be a number of supplementary points which counsel will wish to raise when this judgment is formally handed down.