IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The actual identity of the parties and their children must not be identified by either name or location. The anonymity of everyone other than the lawyers 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.

Neutral Citation Number: [2022] EWFC 128

Case No: BV20D07073

IN THE FAMILY COURT

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 19 May 2022

Before :

Mr Justice Moor

- -

Between :

ARQ

Applicant

- and –

YAQ

Respondent

- -
- -

Mr Tim Bishop QC and Mr Tom Harvey for the **Applicant**
Mr Richard Todd QC and Mr Richard Sear for the **Respondent**

Hearing dates: 10th to 13th and 16th May 2022

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an application made in Form A dated 3 April 2020 by ARQ (hereafter "the Husband") for financial provision following divorce from YAQ (hereafter "the Wife"). There is also a cross-application by her in Form A dated 12 May 2020. I propose to refer to the parties respectively as the Husband and the Wife for the sake of convenience only. I do not intend any disrespect to either by so doing.

The relevant history

2. The Husband was born in Britain and is aged 69. He moved to Country C in 1976. He had an extremely successful career in business. He retired in October 2007 and has not worked since. He is currently residing at a rented property in central London.

3. The Wife was born in Country C and is aged 54. She is a homemaker and child carer. She lives at the former matrimonial home, NN which is a very substantial 18 bedroom property set in 84 acres and with a number of other properties on the estate. It now has an agreed value of £21.6 million.

4. It is necessary to give some background to the Husband's business career. This is important as the way I should deal with the wealth he had at the time he formed a settled relationship with the Wife is a significant issue in the case. He went straight from school to work in 1972 but relocated to Country C in 1976. He was granted permanent residency in Country C in 1977 and married his first wife, in 1979. He and his first wife had three children, now aged between 38 and 41. In 1980, he became a partner at Firm, F. In the mid-1980s Firm F was sold to Firm G. The Husband made C$[1]27million from this transaction. In 1993, the Husband was made Chief Executive Officer of Firm G. In the mid-1990s Firm G was acquired by Firm H. Again, the Husband made significant money from this buyout.

5. In 1992/1993, the Wife married her first husband. The wife's first husband was a colleague of the Husband at Firm H. They also had three children, now aged between 22 and 25. I am entirely satisfied that all three were children of the family.

6. In 1999, the Husband was appointed Chairman and CEO of a regional division of Firm H, before joining the Executive Board of Firm H in 2002. In 2002, he purchased a very large cattle and sheep farm known as BT in a remote area of Country C. It now covers 6,005 hectares. It was acquired in the joint names of himself and his first wife. The purchase price was C$7,096,250 but he also paid C$4,872,469 for the livestock and plant/equipment. He separated from his first wife during 2002. As part of the divorce settlement, BT was transferred into his sole name.

7. The Husband knew the Wife via her first husband. Indeed, he was the godfather of their daughter. A relationship developed between them during 2003. The Wife says that they got engaged at BT in September 2003, although the Husband denies that. At the end of 2003, the Husband was appointed to a senior position at Firm

[1] C$ is used to denote the currency of Country C.

H and had to relocate to Country D. It is clear that he convinced the Wife to relocate with him to Country D along with her three young children. She reached an agreement with her first husband, allowing the children to move to Country D. This was incorporated in a consent order in Country C dated 26 May 2004. In relation to finances, a property in Country C was transferred to the Wife. Originally, it had been acquired from her parents. At the time of transfer, it was worth C$2.75 million but was subject to a mortgage of (C$1.8 million) which the Husband subsequently paid off in October 2004. The wife's first husband also paid the Wife a lump sum of C$250,000 and maintenance of C$5,000 per month until she left for Country D, which was only a few days later. A farm was transferred to the Wife's first husband. It is abundantly clear that the Husband took on much of the financial responsibility for the three children of the Wife's first marriage, who were then only aged 7, 5 and 4. For example, the Wife was responsible for the costs of the children travelling back to Country C to spend time with their father.

8. Indeed, the Wife and her three children left for Country D in June 2004. The Husband says that they became engaged at the very end of 2005, although they were clearly committed partners at least from the time the Wife moved to Country D. They married in Country D on 19 December 2005. Their son, X, was born shortly thereafter, so he is now aged 16. Their daughter, Y, was born in 2007, so she is aged 15. X is at boarding school. Y is a day pupil.

9. In 2007, the Husband retired from Firm H and the family returned to Country C on 1 July 2008. They lived at the Wife's former matrimonial home, but spent time at BT during school holidays. I have to say that the standard of accommodation at BT was extremely basic by any standards, let alone in comparison to the standard of accommodation at NN. They decided, however, to move to England so that the children could be educated here. In 2009, NN was acquired in joint names for £9,577,480 but they did not move in immediately, as they then undertook renovations that lasted until 2011. The cost of these renovations is in dispute. The Wife says the cost was some £7 million, whereas the Husband puts the total bill at around £2.5 million. Either way, there is no doubt that the entire purchase price and the cost of the renovations was provided by the Husband. In 2010, the Husband sold a property in Country C for C$7.5 million. The Wife sold her property in Country C in April 2011 for C$5.6 million.

10. The parties moved to England to live in NN during 2010. The Husband secured dual citizenship for the children of the Wife's first marriage so that they could also attend school in England. Indeed, the Husband became UK resident on 23 June 2011 and filed tax returns here but on the basis of him retaining a domicile of choice in Country C. Whether he was entitled to do so is open to question, but HMRC appear to have accepted the position. There were occasional returns to Country C for holidays, such as at Christmas 2015/2016, weddings, and the ill-health/death of relatives. Both the Wife's parents died during this period and the Wife's first husband also died in early February 2016. It appears that each of the three children of the Wife's first marriage inherited approximately £3 million from his estate.

11. In 2016/2017, the Husband took advice from Mr P of Firm M as to tax planning. In particular, the Husband was concerned about Inheritance Tax as he was due to become deemed domiciled in this jurisdiction in April 2017. He was worried that, if he died here, his estate would have to pay approximately £32 million in UK

IHT. The Wife, on the other hand, was non-domiciled due to her domicile of origin being Country C. He was advised that, provided he transferred his assets to the Wife before he became deemed domiciled, the assets would escape UK IHT. It is abundantly clear that he then intended, once a suitable period of time had elapsed, that the Wife would place the assets in discretionary trusts in Jersey. Indeed, a Jersey firm of professional trustees, was selected. Moreover, Firm M drafted trust deeds but the trusts were not established. The Husband says that he discussed whether it was time to do so with the Wife in April 2018 but nothing happened, either then or the following year. There are a number of issues surrounding this tax planning exercise. One such issue is whether the Husband would have been able to benefit from any such trusts once they had been established. In any event, pursuant to the scheme, the Husband transferred approximately £77 million worth of assets to the Wife in March and early April 2017. They are now worth just over £80 million.

12. At the same time, accrued profits in the BT farming business were causing tax difficulties in Country C. An ingenious scheme was devised whereby these profits could be used to acquire "A" shares in the business in the name of the Wife.This would avoid the profits being taxed. In consequence, the Wife was issued 9,1534,817 non-voting A shares in the business. The Husband retained 12 ordinary shares, which carry the entire voting rights. There had been a natural disaster in 2009 at BT. In late 2019/early 2020, there was a second devastating natural disaster at the property. Unfortunately, large numbers of sheep died. The insurance claims have still not been fully settled. The farm continues in operation, operating over 6,005 hectares (14,788 acres). As at today's date, it has 4,405 commercial cattle; 511 stud cattle; and 5,790 Merino sheep. I will return to the valuation of BT later in this judgment.

13. The marriage broke down in early 2020. There was a very unfortunate incident in 2020, after which the Husband left NN permanently. I have been absolutely clear that conduct, as it is defined in section 25(2)(g) of the Matrimonial Causes Act 1973 is not relevant to this case. Indeed, I have directed that a number of conduct allegations be redacted from the Forms E and statements in the case. I do, however, need to record that the Husband was prosecuted in relation to the incident. In 2021, a court cleared him of the relevant charges following a trial at which both parties and the children gave evidence.

<u>The litigation</u>

14. The petition for divorce is dated 1 April 2020. A decree nisi was pronounced on 30 September 2020. It has not, as yet, been made absolute. The parties filed their respective Forms E on 7 August 2020. In the Husband's Form E, he deposed to net capital of £22,856,538, which consisted, largely, of half the value of NN and the land at BT, albeit that the latter has since been valued at a much higher figure. He puts his income needs at £409,400 per annum and his capital needs at £5.5 million. He describes an excellent standard of living. He says that the magnetic feature of the case is his "*overwhelming and unmatched contribution by way of pre-marital wealth*". He adds that there has been no material increase in his wealth since he retired in 2007. He said that the advice he received at the time of transferring his assets to the Wife in March/April 2017 was flawed and there was a fundamental mistake that the scheme would work. Again, I will return to this later in this judgment.

15. The Wife's Form E puts her net wealth at £83,039,015, which includes the assets transferred to her by the Husband. She puts her income, essentially from these assets, at £5.15 million. Her income needs going forward are said to be £1,766,580 per annum for herself and £585,000 for her five children. The figures include a substantial increase in the future as compared to her "current outgoings" which is largely accounted for by a figure of £707,508 per annum for "investment manager fees" to manage her portfolio of assets. She did say that the transfers to her in early 2017 occurred as a result of an estate planning exercise to take advantage of her non-dom status and she confirmed that there was discussion of establishing two offshore trusts, named Hugo and Louis. She describes the standard of living enjoyed by the parties as being very high. She makes references to NN in this regard. She says she contributed to the marriage by the proceeds of sale of her former matrimonial, albeit that the Husband had repaid the mortgage, and by reference to an inheritance she received from her parents, which she puts at C$626,000.

16. An interesting and positive development was that the parties agreed that the First Directions Appointment should go through the Arbitration process. It was heard by Nicholas Cusworth QC on 29 September 2020. He does happen also to be a deputy High Court Judge but he was not sitting as such. There is a recital in the document produced following the arbitration in which it is said that the Wife does not seek financial provision for her eldest three children. Various directions were made for SJE valuations of NN and BT, as well as in relation to tax liabilities. Mr Cusworth could not list a final hearing as he was not sitting as a judge and therefore did not have jurisdiction to do so. Both parties were to file statements as to the transfer of the assets to the Wife in early 2017.

17. On 2 November 2020, Knight Frank produced a valuation of the land at BT in the sum of C$55,180,000. It does have to be said that this was far in excess of the figure of C$19,705,000 included in the Husband's Form E.

18. The Husband's first witness statement was dated 23 November 2020. He sets out much of the history of his business career that I have already covered earlier in this judgment. He did say that he was earning C$1 million as early as 1987 and C$5 million by 1993. He owned 20% of the business prior to the Firm H buy-out. By 2002, his remuneration package was C$11 million per annum although he says that quite a large proportion of this was by way of deferred shares and stock options. He said his total assets in 2002, following his divorce from his first wife, amounted to the equivalent of £47.3 million today. By June 2004, he said the assets had increased in value to £57.225 million. The family came to the UK as they both felt the children would be better served by a British education. He then deals with the transfer of assets in April 2017. He said that he was told that he could be added as a beneficiary of the trusts after they had been established and then benefit from them, although he accepts he could not have been a beneficiary at their inception. He says he was advised of this by Mr P in a telephone call, following an email from Mr P which merely says that "beneficiaries" can subsequently be added. He has not called Mr P to give evidence. He does accept that the Wife had to hold the assets for a "reasonable" period of time before they could be placed into trust to avoid him being deemed to be the settlor. He says that the Wife understood exactly what was to happen and they had jointly selected the trustees after a "beauty" parade. There was talk of setting up trusts again in May 2018 but nothing

happened. The parties executed mutual wills to leave their respective assets to each other and the children but the Wife unilaterally changed hers to exclude him in early 2019 without his knowledge at the time. He ends the statement by saying that he had no intention to share the assets. He exhibits the file from Firm M that does make it clear that the intention was, in due course, for offshore trusts to be established to benefit the two children, X and Y.

19. The Wife's witness statement is dated 22 December 2020. She says that the marriage was entirely a relationship and partnership of equals. They could have executed a pre-nuptial agreement before they married, to protect the Husband's pre-acquired wealth, or a post-nuptial settlement at the time of the April 2017 transfers but they deliberately did not do so as the Husband agreed that "*what is mine is yours*". The estate planning exercise was entirely at the Husband's instigation. It was done for tax reasons and the lack of a post-nuptial settlement was a calculated decision. If his advisers were negligent in advising the Husband to undertake the scheme, his remedy should be against his advisers. She is clear that the Husband was advised that he should not be a beneficiary of the trusts. She asked, rhetorically, why he did not pursue the establishment of the trusts in 2018. He was only able to enter the plan due to her non-dom status. Her contribution was integral and essential.

20. A private Financial Dispute Resolution hearing also took place before Nicholas Cusworth QC on 3 February 2021. Very regrettably, no agreement was reached. Concurrent with these financial remedy proceedings, there have also been extensive proceedings in relation to the children. Indeed, I am told the proceedings in relation to Y are ongoing. The most recent order, as I understand it, was made on 27 July 2021. X was to live with both parents and spend equal time with them when not at boarding school. Both parties undertook to support and rebuild Y's relationship with her father.

21. The matter came before me for post-FDR directions on 10 February 2021. I made various directions as to add-back schedules, as the Husband was asserting unjustified excessive spending by the Wife; narrative statements; valuation evidence and the like. The Husband had formulated Chancery Division proceedings seeking recission of the transfers made to the Wife in March/April 2021 on the ground of mistake. I directed that there be a further hearing to determine a preliminary issue as to whether it was necessary to determine this dispute. There is no secret that, at the time, I had real reservations as to whether such satellite litigation was justified, given that there is full power in the Matrimonial Causes Act 1973 to redistribute assets in accordance with what is fair and just. I also directed that this final hearing be set down with a time estimate of ten days as it obviously had to cater for the Chancery Division arguments if they were to proceed.

22. Thereafter, both parties made open offers. The Husband's was first in time and is dated 24 February 2021. The letter characterises the case as being one where the Wife's award should be formulated on the basis of her reasonable needs. This is predicated on his contention that, in effect, the entirety of the assets were pre-acquired by him and therefore not matrimonial. He offered a sum of £25 million to meet the Wife's needs, on the basis that NN be sold and the net proceeds divided equally. She should then keep such part of the other assets as brought her assets to £25 million but return everything else to the Husband, although she could keep

her jewellery and cars. A sum of £25,000 per annum periodical payments per child was offered. The Wife responded in an open offer dated 26 February 2021. There should be a simple 50:50 division of everything and she would return to the Husband such proportion of the assets as would bring him up to equality but she wished to receive NN as part of her 50%.

23. On 3 June 2021, Gurr Johns valued the chattels at NN at £1,561,800 and those in the Husband's rented property at £26,500. The Wife's jewellery was valued at £277,415. Fortunately, I have not been troubled by questions relating to chattels. It is agreed that they will be divided by agreement and, if there is no agreement, the issue will be arbitrated, which is extremely sensible.

24. On 13 July 2021, the Wife's solicitors wrote a letter to the Husband inviting him to accept that the gifted assets belong in law to the Wife. The letter was sent in the run up to the hearing, listed before me on 30 July 2021, as to whether the Husband should be permitted to proceed with his claim for recission of the 2017 transfers. By then, very expensive and complicated pleadings had been drafted by some of the most experienced and able Chancery Division practitioners. As it turned out, both parties appeared to agree in their Case Summaries that, given the way that the Husband wished to argue the case, the claim for recission would have to proceed. I gave a short judgment in which I reiterated my view that the court has full powers of redistribution pursuant to the MCA 1973 but that, as the Husband wished to argue that the transfer of the legal ownership of the assets to the Wife should be rescinded such that the assets did not become matrimonial property, the claim would have to proceed. My order therefore directed that, by consent, the Husband's application for mistake and recission should be listed for hearing as part of the final hearing.

25. As it turned out, on 25 November 2021, the Husband's solicitors wrote to confirm that he did not intend to pursue his claim for mistake and recission but, rather, would advance his arguments solely in the context of the MCA 1973. He said that he continued to rely on the same factual matters. In consequence, Mr Richard Todd QC, who appears on behalf of the Wife with Mr Richard Sear, submitted to me that it must follow that the Husband accepts that the transfers had the effect of gifting these assets to the Wife without any reservation. They therefore became her property as of right, albeit subject to any MCA claim for a lump sum in the Husband's favour.

26. The Husband's second statement is dated 24 September 2021. It relates to his add-back arguments. He relies on an email that the Wife sent to Mr P of Firm M in January 2019 asking him to change her will to exclude the Husband as a beneficiary as she was intending to divorce him in a couple of months. He then asserts that, to support her needs case, the Wife has spent "*wildly and recklessly*". He contends that the total family spend in 2018 was £1,367,635. He argues that the spending rose to £1,494,681 in 2019; and £2,365,537 in 2020, excluding any legal costs or his rent. He claims this is intentional and wilful overspending.

27. The next statement filed was from a former employee of the parties at BT, namely Ms Q, dated 25 November 2021. Before referring to the statement, I have to note that a Civil Evidence Act Notice has been served by the Wife's solicitors in relation to this statement as Ms Q says she is too unwell to give evidence, even by video link. In consequence, Mr Tim Bishop QC, who appears on behalf of the

Husband with Mr Thomas Harvey, argues that I should ignore the statement completely, given that he has not been able to cross-examine the witness. In any event, at this point, I merely note that Ms Q says that she was employed at BT for 22 years from 1994. She says that the Husband and Wife spent a lot of time there from 2008/9. They were part of her family. She adds that, in her view, the Wife was an integral part of the farm and a respected member of the community. In essence, this statement is filed in support of the Wife's claim that, as a result of her involvement at the farm and the fact that the parties stayed there as a matrimonial home, BT has become matrimonialised. I am quite clear that I can deal with this on the basis of the evidence of the parties alone without needing to refer further to the evidence of Ms Q.

28. The Wife's add-back statement in reply to that of the Husband is dated 1 December 2021. She starts by saying that the money transferred to her is already hers and that, in consequence, this is not a needs case. She then says that the Husband has always been excessively frugal. NN had been neglected such that it was in serious need of repair. The budget contained in her Form E had been prepared by an accountant who had studied her bank statements to calculate her expenditure. The rise in spending from 2018 to 2019 was only £127,046. The rise the following year was largely expenditure on the children and NN. She exhibits a number of photographs of the property showing parts of it in poor condition. For example, there are pictures of damage to upstairs rooms in the main house by water ingress; damage to roofing tiles; damage to a floor due to flooding; and photographs of out buildings in poor condition. She said that she spent £120,000 in 2020 on the leaks but this was only a temporary fix and the work had to be done again. The main water pipes burst twice and flooded the kitchen, the basement and a cloakroom. The pipes needed to be replaced and the insurers refused to pay. She also had works to do to the external buildings, the courtyard and the like. The further works undertaken in 2021 cost £930,000. She added that there are other projects still to be completed. She said that it is essential to have staff to run the NN estate. She did increase their hours and their pay. She had to improve security following threats from a former employee's associates and this cost £118,000.

29. She then moved on to deal with Y's hobby of horse eventing, which has cost in total £450,000 as well as the cost of building new stables for her. Apparently, Y is riding at a high level. Her horses therefore have to be first rate and are very expensive. One cost £40,000 and her main horse cost £150,000. A saddle cost £20,000. Y needed a horsebox which cost £204,000 as she has to be able to sleep in it due to her eventing, on occasions, taking place a long way away such that she has to stay overnight. The Wife has paid for her elder son's rehabilitation at a cost of £120,000. Therapy cost £30,000. She has also had to support her other children in education. Her younger son's support came to £60,000. She replaced her Bentley as it was old and unreliable. She made the point that she has, on request, transferred over £4 million in assets to the Husband during this litigation for his expenditure, which is primarily his costs and his rent. He had, at that point, spent £586,000 more than her on the litigation. Moreover, the mistake and recission claim cost hundreds of thousands of pounds before it was withdrawn.

30. On 10 December 2021, the Husband filed his section 25 statement. He says that, by the time he began cohabiting with the Wife, he was 32 out of 35 years through

his career. He says that the Wife's adult children from her first marriage do not need her support as they inherited approximately £3 million each from their father. He accepts that his adult children will benefit from his ex-wife's estate and from his interest in BT. He says that, at the time of his first divorce, the assets were C$86 million but that excluded a significant amount of capital in Firm H shares and other employment related awards (the "POC portfolio"), which he said were worth C$54.8 million. During the hearing, we examined the documents and it appears that he was wrong about the Firm H shares as they were included at C$13.7 million. It did, however,appear that he was right that the POC portfolio was not included, although the reason is unclear. He added that, by the time the parties married, he had assets that, uprated to today's values, would be worth £155 million, which is more than the actual assets in the case. He makes much of the point that he did not transfer assets into joint names prior to 2017, other than NN, which had a special place as the parties' matrimonial home. He argues that it is a fiction to say that he intended to share his wealth in 2017. If that had been the case, the assets would have been transferred into joint names. He complains about the costs of running NN and the inequity of the Wife saying she should remain in that property, whilst she proposes that he moves into a semi-detached property, albeit in Central London. Other than one role as a non-executive director, he has not worked since 2007. He reminds the court that the value of his shares and options in Firm H collapsed during the economic crash in 2008/2009, saying the price has not remotely recovered to its 2007 levels even now. He says he will return to Country C after the children have completed their education here.

31. He complains that the Wife says she has spent around £1 million on NN without consulting him in any way. He acknowledges that it is a rare, luxurious and magnificent property. He then contends that BT hardly featured in the marriage. He had acquired it in early 2002 before he commenced a relationship with the Wife. Until July 2008, the family was in Country D and, since 2011, they have been here. He says that the Wife has only been to BT twice since then. He complains that the Wife has purchased two Bentleys in 2021 for £291,839. The assets he transferred to her in 2017 are now worth £80 million. He says he has lost five excellent investment opportunities by not having access to that money during the pandemic, claiming that he would have invested in online businesses that he foresaw would do very well, partly due to working from home. All I would say in that regard is that he made much in his evidence of not undertaking active trading but rather that he invests in stock for the very long term. He repeats his case as to add-back and adds that the Wife's spending in 2021 was £2,337,000 or around £1 million more than the family spent in 2018. He also claims that it was the Wife's failures to clear the gutters at the property that led to the ingress of water.

32. The Wife's section 25 statement is dated 10 December 2021. She repeats her case that the parties twice rejected nuptial agreements, both prior to the marriage and again at the time of the 2017 transfers, on the basis that it was a partnership of equals. She denies that the 2017 transfers were solely a tax saving scheme. She reminds the court that she had obtained a property via her first divorce that sold for C$5.6 million, albeit that the Husband had paid the mortgage off. She later inherited C$626,340 from her parents. Expenditure on NN had been neglected prior to the marriage breaking down. It is this expenditure which is largely the reason for the increase in her spending. She says that sheep farming at BT was largely her idea, although it is fair to say that the Husband produced evidence that

there were already 12,000 sheep at BT when he bought the farm. She responded to this that Merino sheep were her idea, as they had them at the farm she had owned with her first husband. Finally, she says that she contributed her non-dom status to the marriage.

33. I heard the first PTR on 20 December 2021. There had been difficulties as to the production of the valuation report of the farming business at BT. I do not consider that I need to dwell on the reasons for that but I made various directions to ensure the report was finalised in time for the hearing. In relation to the mistake and recission claim, I recorded that it was discontinued and that the letter from the Husband's solicitors dated 25 November 2021 was to be treated as a notice of discontinuance. The order went on to say that, for the avoidance of doubt, both parties remain entitled to rely on the factual matters in issue in relation to the 2017 transfers, which both parties assert are important circumstances of the case. There was to be a further PTR fixed given that the final hearing was not to commence until 9 May 2022.

Valuation evidence

34. Strutt and Parker were the Single Joint Experts instructed to value NN. Originally, they valued the property, on 23 November 2020, at £18 million. The Husband was unhappy with this valuation so he instructed Savills as his sole expert and the Wife then instructed Carter Jonas as hers. Fortunately, the end result was that the experts were able to agree a valuation for the estate on 16 February 2022 in the sum of £21,600,000. This was then followed by the report of the SJE as to the value of the stock and assets of the farming business of BT Ltd, with the final report delivered on 21 February 2022. The SJE was critical of the Husband in relation to the delay in finalising the insurance claim following the natural disaster in late 2019/early 2020. The Husband therefore filed a statement dated 25 March 2022 in which he explained his position, namely that there had been delays due to Covid-19; the fact that the Husband was not in the same country; that there were real staffing issues following the natural disaster; and that the priority had been in keeping the farm running. He also made the point that, unlike some businesses in the area, who were short of funds and had to settle quickly with the insurers, BT is cash rich and was able to play a long game. He mentioned that, following the natural disaster in 2009, he had been offered only 36 cents per C$ of damage, which many other businesses hadaccepted. He refused and eventually managed to extract an offer of 90 cents per C$. He did then question whether the working model for the farm was appropriate any longer given that there had now been two such calamitous natural disasters in eleven years. He did also say that he anticipated that the costs of rebuilding will exceed the insurance claim. He installed high quality fencing last time, which costs between C$20,000 to C$25,000 per kilometre. Two cottages and the Homestead need to be rebuilt.

35. In fact, the issue of the insurance claim has not really featured during the case. The matter has proceeded on the basis that the claim is worth a further C$1,359,786, with an additional sum of C$650,383 already having been paid. As I understand it, the first payment was primarily in relation to the value of lost livestock. Following the report of the SJE, his figures had to be incorporated into an overall valuation by a firm of accountants. The accountant's report is dated 25 April 2022. He came to the conclusion that the valuation of the shares in the company, over and above the value of the land, is C$16,510,000, on the basis of an orderly realisation by sale. He was

unable to distinguish between the two classes of shares and did not therefore ascribe any valuation to either the Husband's shares or those of the Wife. He noted that the turnover of the business had been C$7.2 million in 2019, followed by C$4.5 million in 2020 and C$1.4 million in the first 8 months of 2021. Profit levels have varied considerably with a high point of C$5.3 million and a low point of only C$15,000 but both were on the basis that the farm was not charged rent, which would, on a market value basis, have been C$1.15 million. In essence, the valuation is comprised of the net tangible assets of C$8 million and the cash at bank of C$7.1 million. An EBITDA valuation was not possible due to the huge fluctuations in the results. There is tax payable of C$3,062,475.

Tax

36. Mr Paul Huggins of Rawlinson and Hunter prepared a tax report dated 28 April 2022. On the basis that both parties are UK tax resident and they separated in April 2020, any transfers between them will be deemed to be at arms length with consequent tax consequences. The Capital Gains Tax payable on NN depends on whether it is sold or not. If it is transferred to the name of the Wife, the Capital Gains Tax payable by the Husband will be £171,381. If the property is sold, the overall CGT will be £632,956. The tax liability on a sale of the BT land will depend on the turnover of the business at the time. If the turnover is less than C$2 million, the tax liability will be C$9,179,919 on the basis of the land valuation of C$55.18 million but this liability will increase to C$18.378 million if the turnover exceeds C$2 million. There will be no CGTin the UK if the higher figure is paid in Country C, due to the double taxation treaty but the UK tax would be £5.5 million. It can be rolled over if invested into another business. Mr Huggins had been told there would be no tax in Country C on the sale of the farm business but there would be English CGT of £836,000 which could ber reduced by £100,000 if business asset disposal relief is used. The report also deals with Capital Gains Tax payable on the parties' other assets. In the Husband's case, the figures are modest. The Wife's overall gain is £799,107 but, as she is non-domiciled and the assets are held offshore, she would only be taxed on a remittance basis. Various private equity investments, namely Investment A and Investment B, would attract higher levels of tax, which has been factored into the asset schedule.

Final open proposals

37. In the run up to the hearing, both parties made further open proposals, although, on 26 April 2022, the Husband simply repeated his previous open offer. On 5 May 2022, the Wife also repeated her earlier proposal but she included figures. She calculated the net assets as being worth £133,211,348 so each party would receive £67 million. NN should be transferred to her and she would transfer her shares in BT Ltd to the Husband, providing he indemnifies her in relation to the transfer. She would then make an equalising lump sum. She calculated this as being £35,129,995 on the basis of an add-back for both her spending on one of her older children's rehab costs and the Husband's costs of the mistake/recission claim in the sum of £397,711. The Husband would then pay her costs of the claim from his share of the assets in the sum of £179,022. Finally, he would pay her £40,000 pa periodical payments for Y but the parties would share X's costs equally.

38. There is one final letter to which I must refer and that is the Husband's letter dated 29 April 2022 from his solicitors. It relates to add-back. The Husband says that

the Wife's expenditure continues to be completely out of kilter with the expenditure during the marriage. He has now discovered that she spent £1.5 million from 1 January 2022 to 12 April 2022, a period of only 3.5 months. On the basis of the 2018 level of expenditure, he seeks an add-back to the Wife's assets in a total sum of £3,391,393 of which £1,188,358 relates to 2022. He adds that the Wife has spent £908,923 on her adult children.

The Assets Schedule

39. I now turn to consider the Assets Schedule. Fortunately, other than in relation to add-back, it is almost entirely agreed. I will resolve the remaining issues later in this judgment but, in very broad terms, the position is as follows. The net equity of NN is agreed at £20,952,000 subject to Capital Gains Tax. There is a dispute as to that. If the property is sold, the total tax is (£632,956) but, if it is transferred to the Wife, the tax reduces to (£342,762). The value of the farm at BT is £20,017,264 after tax. The Husband has funds of £2,374,198, although the Wife seeks to add-back various items, particularly the costs spent on the mistake/recission claim to bring the figure to £2,900,953. He has liabilities of (£102,105). The Wife has the funds transferred to her in 2017, now worth £80,037,805. She has funds of her own of £1,095,144, although the Husband seeks to add-back excessive expenditure to bring the total to £4,293,617. She hasl liabilities of (£16,818). Finally, there are some joint assets with a value of £1,565,155 but these almost entirely consist of the contents at NN. On top of these figures, there are business and trust assets, which is basically the value of the farm business at BT in the sum of £8,567,121. The Husband's case is that the total assets should be taken at £137,146,415. The Wife says the figure should be £133,202,721.

Property Particulars

40. The parties have both produced a number of property particulars, if I decide that the case is one that should be dealt with on the basis of need. The Husband has produced particulars for the Wife in Hampshire with asking prices between £6.5 to £8 million. It is fair to say that these largely consist of substantial country houses. He has produced particulars for properties for himself in smart areas of London with asking prices between £6.3 and £7.8 million. The Wife has produced properties suitable for the Husband in London at around the £5 million mark, although I note that these particulars should be contrasted with her wish to remain in NN, worth £21.6 million. Finally, the Husband produced a schedule of what he says is a reasonable budget for the Wife in the sum of £557,710 per annum.

Costs

41. Finally, both parties' costs schedules show that very significant sums have been spent on this litigation. Whilst many courts get very exercised about the figure spent on costs, there is an argument that the parties are entitled to spend their money on whatever they like. There is no doubt, however, that the costs in this case are eye watering by virtually any standard. It should not be this way. The Husband's costs have been £2,957,239, of which he has paid £2,781,442. The Wife's costs have been £900,000 less, namely £2,041,692. She has paid the entire bill and her solicitors hold a modest amount on account. I should note that the Husband spent £397,771 on the mistake/recission claim, whilst the Wife spent £179,022 on that aspect.

The respective Position Statements

42. I should briefly refer to the respective Position Statements filed by each party at the commencement of the litigation. That of Mr Bishop QC and Mr Harvey on behalf of the Husband asserts that the magnetic feature in the case is the non-matrimonial wealth brought to the relationship by the Husband, which, they say, exceeds the current value of the assets if uprated for inflation. They add that, in June 2004, the Husband had assets worth £57.3 m. There has been little change to the composition of the assets, as, they say, the Husband still has BT and the Firm H and POC portfolios, albeit it the latter two are now in the name of the Wife. The money the Husband earned in the early years of the marriage was largely lost in the 2008 banking crisis. NN must be sold as it is exceptionally expensive to run and maintain. Their client had not transferred any assets until the deemed domicile issue arose. They accept the assets were effectively transferred but it is "manifest" that the Husband never intended to share ownership with the Wife. BT is clearly non-matrimonial as it was never placed in joint names, unlike when it was purchased in joint names with the Husband's first wife. It is a commercial farm and the properties there are barely habitable. The shares were only given to the Wife as part of the tax planning in 2017. The exchange rate has increased since the date of the marriage, such that the Husband's wealth has increased for that alone from £57 million to £94.3 million. BT has increased in value from £5.2 million to £29 million. They criticise the advice the Husband received in 2017, pointing out that there is no inheritance tax in Country C, so the Husband could have avoided any such concerns by returning there once the children had completed education. A term life policy could have covered the position in the interim. The Husband had no intention to "matrimonialise" the assets but, if he did, that does not mean that the assets should be divided equally. They therefore argue that the case should be dealt with on the basis of the Wife's reasonable needs, generously assessed. They put her housing need at £8 million and her income needs at £557,000 per annum net, which would require a Duxbury fund of £10.5 million. Having said that, they point out that the Husband's offer is £25 million not £18.5 million. They do then argue that the Wife should be penalised for her wanton and excessive spending since the breakdown of the marriage, noting that she has spent £900,000 on her adult children even though she agreed their client had no obligation towards them and that her spending this year, if annualised, would amount to £6 million.

43. The Wife's document, filed on her behalf by Mr Todd QC and Mr Sear, argues that the marriage was a partnership marriage and the assets were matrimonial from the very outset. The transfers to her in early 2017 made those assets her separate property, as there could not have been any reserved benefit to the Husband. Unless he was attempting to defraud HMRC, they must be hers (see Tinker v Tinker [1970] 1 All ER 540). The Wife could have done anything she wished with the money. She could have gambled it all away. If she had placed it in trust, there would have been no possibility of the Husband now seeking it back. It is not disputed that the Husband had significant assets when the parties began to cohabit 18 years ago, but it is argued that the parties chose not to have a pre-nuptial agreement, which would have been binding on them in Country C. They add that this is the clearest possible evidence of a partnership marriage. Whilst their client could argue that £80 million worth of the assets are now her separate property to do with as she wishes, she accepts that the previous agreement for a partnership marriage means that the assets should be divided equally. They assert that such an

equal division can only be departed from if there is something truly exceptional such as special contribution, which is not asserted by the Husband here. They add that arguments about provenance have long been consigned to history as discriminatory. The document makes much of the fact that the Husband has not called Mr P to give evidence, notwithstanding a warning from the Wife's solicitors that this would lead to a submission that adverse inferences should be drawn against him by this failure and, in particular, that the Husband could not benefit from the £80 million once he had transferred it to the Wife.

44. The document goes on to remind me that the three children of the Wife's first marriage were very much children of the family, being only 7, 5 and 3 on cohabitation. They then deal with add-back. If the Wife was to be penalised for spending money on NN, she would have to be given credit for that part of the increase in the value of the property from £18 million, when it was first valued by Strutt & Parker, to the current agreed figure of £21.6 million, referrable to her works. They add that I would have to have had valuation evidence as to the effect of the works the Wife has done on its valuation to be able to undertake such an exercise. They then assert that BT was a much loved family home. The Wife is a joint owner of the business. It would be entirely wrong to treat her less favourably as a joint owner than if she had been the Husband's mistress, when he could not have taken her shares or assets back from her. It is asserted that the Husband is re-running old Lambert [2002] EWCA Civ1685 arguments about his money-making being worth more than her role as homemaker. It is further said that the money has become very mixed and intermingled.

The Law I must apply

45. I must apply section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. It is the duty of the court to have regard to all the circumstances of the case. I must give first consideration to the welfare, while a minor, of the children of the family. I must then have particular regard to the matters set out in subsection (2). I take the view that this is often forgotten in these cases. The factors were hardly mentioned by counsel in submissions. I therefore remined myself of the matters specifically set out, namely:-

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

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

    (c) The standard of living enjoyed by the family before the breakdown of the marriage;

(d) The age of each party to the marriage and the duration of the marriage;

(e) Any physical or mental disability of either of the parties to the marriage;

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

(g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and

(h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

46. The overall requirement in applying section 25 is to achieve fairness. It was made clear in the seminal House of Lords decision of White v White [2000] UKHL 54; [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife. This was expanded upon in K v L [2012] 1 WLR 306, CA when Wilson LJ reiterated at [15]:-

> "*what is unacceptable is discrimination in the division of labour within the family, in particular between the party who earns the income and the party whose works is in the home, unpaid."*

47. He went on to say that it is the essence of the judicial function to discriminate between different sets of facts and thus between different claims. I have to say that I prefer use of the word "*differentiate"* to "*discriminate*" but it is clear what he meant.

48. In the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

(a) The sharing of matrimonial property generated by the parties during their marriage;
(b) Compensation for relationship generated disadvantage; and
(c) Needs balanced against ability to pay.

49. There is no question of compensation for relationship generated disadvantage in this case. There may, however, be an issue as to needs if I decide that the matrimonial property is either very limited or that sharing it would be insufficient to provide for either party's needs, taking into account the resources available, the standard of living enjoyed during the marriage and any other relevant matter.

50. It follows that my main task, in this case, is to assess the matrimonial property generated by the parties during the marriage, to include any settled period of cohabitation that moved seamlessly into marriage. Unlike many cases, this is

undoubtedly complicated by the transfer of assets to the Wife in early 2017. Once I have decided the extent of the matrimonial property, I must then decide in what proportions that matrimonial property should be shared. If the assets have been generated during the marriage, the likelihood now is that they will be shared equally, particularly as it is rightly not asserted in this case that there has been a special contribution. The question, however, is how to deal with assets that were not matrimonial at the outset but have become matrimonialised as a result of the actions of the parties during the marriage. It follows that, unusually, this will require a three stage process. First, I must investigate what proportion of the assets were acquired by the Husband before the marriage. Once I have done that, I must consider the extent to which they became matrimonialised. Finally, if they did become matrimonialised, I must decide in what proportions they should now be shared taking into account their provenance; the parties' approach to them; and the other relevant factors in this regard to be found in section 25.

51. I will therefore briefly consider the principles on which the courts have assessed quantification of the matrimonial property. The argument, of course, is that assets acquired before the marriage should be excluded from matrimonial property as being an "unmatched" contribution and, therefore, not be subject to the sharing principle. There are two main different approaches. The first can be described as the "broad-brush" approach and was articulated by the Court of Appeal in the case of Hart v Hart [2017] EWCA Civ 1306; [2018] 2 WLR 509, in which Moylan LJ said at Paragraph [96]:-

> *"If the court has not been able to make a specific factual demarcation but has come to the conclusion that the parties' wealth includes an element of non-matrimonial property, the court will also have to fit this determination into the section 25 discretionary exercise. The court will have to decide, adopting Wilson LJ's formulation of the broad approach in Jones, what award of such lesser percentage than 50% makes fair allowance for the parties' wealth in part comprising or reflecting the product of non-marital endeavour. In arriving at this determination, the court does not have to apply any particular mathematical or other specific methodology. The court has a discretion as to how to arrive ata fair division and can simply apply a broad assessment of the division which would affect "overall fairness". This accords with what Lord Nicholls said in Miller and, in my view, with the decision in Jones."*

52. The second approach is to undertake a detailed calculation of the non-matrimonial property and then deduct the resulting figure from the overall assets to arrive at the matrimonial assets. Inevitably, this itself can be done in a number of different ways. The two most obvious are to be found in the cases of Jones v Jones [2011] EWCA Civ 41; [2012] Fam 1 and Martin v Martin [2018] EWCA Civ 2866, although even then there are a number of variations on the theme. The essential difference between the two approaches is that, at first instance, in Martin (then reported as WM v HM [2017] EWFC 25), Mostyn J used a straight-line approach to calculate the value of the non-matrimonial property. In other words, he calculated the number of years that a company existed before the marital partnership commenced and divided it by the total length that the company has been in existence. This gives a proportion of current value that can be excluded from the matrimonial pot. It has the benefit of simplicity. It does

not require complex and expensive valuations many years after the event. Mostyn J said, memorably, that it resonated with fairness because "*how could it be said that a day's work in 1980 in creating this company was less valuable than a day's work last week?"*.

53. An alternative approach, found in the case of Jones v Jones, is to attempt to value the assets at the date the marital partnership commenced, with an appropriate uprating to that value to take account of things such as inflation that have taken place since. In Jones v Jones, the concept of the "springboard" effect was raised.

54. I was referred to the cases on "matrimonialisation" and, in particular, the analysis by Wilson LJ in K v L (above) of Lady Hale's observations in Miller that "*the importance of the source of the assets will diminish over time*". Wilson LJ concluded, at [18] that the true proposition was that "*…the importance of the source of the assets **may** diminish over time (my emphasis)".* He continued:-

> *"Three situations come to mind. (a) Over time, matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property. (b) Over time, the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or, in which, at any rate, the task of identifying its current value is too difficult. (c) The contributor of the non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as central matrimonial property".*

55. Mr Todd basically submits that, once the matrimonial property has been identified, it really can only be divided equally unless one party can establish special contribution. I cannot accept that this is correct. I am conducting a discretionary exercise and I must take into account all the relevant factors, including, in particular, the source of the funds and whether it can be said that there were unmatched contributions because some or all of the assets pre-date the marriage. This is not discrimination in favour of the money-maker as against the home-maker as I am not dealing here with money generated during the marriage. Mr Todd relied heavily on the lack of a pre-nuptial agreement but it is clear from the case of Sharp v Sharp [2017] EWCA Civ 408 that the failure to enter a pre-nuptial agreement does not result in a presumption of sharing.

56. I was referred to a number of authorities that make it clear that matrimonial property can be divided unequally, even in the absence of special contribution. In S v AG [2011] EWHC 2637 (Fam); [2012] 1 FLR 651, Mostyn said at [8]:-

> *"While matrimonial property will normally be divided equally, this is not an invariable rule. The reason for this is that sometimes the matrimonial property in question will not be the product of the endeavours of the parties within the social-economic partnership that is marriage….Sometimes one party brings assets in which become "part of the economic life of [the] marriage…utilised, converted sustained and*

enjoyed during the contribution period"….Even if there has been mingling, the original non-matrimonial source of the money often demands reflection in the award. Thus in S v S [2007] 1 FLR 1496, Burton J divided the matrimonial property 60/40 to reflect this factor."

57. Indeed, it is clear that even the matrimonial home may not be divided equally if unequal contributions to its acquisition can be demonstrated. In Vaughan v Vaughan [2007] EWCA Civ 1085; [2008] 1 FLR 1108, Wilson LJ said at [49]:-

> *"I consider that the husband's prior ownership of the home carried somewhat greater significance than either the district or circuit judge appears to have ascribed to it".*

58. I was also referred to my own decision of FB v PS [2015] EWHC 2797 (Fam); [2016] 2 FLR 697, where the matrimonial home had previously been owned by the Husband's parents and he had grown up there. I accepted that this justified a departure from equality.

The factual issues

59. There are certain factual issues that I must determine before I consider how my findings impact on the correct division of the assets in this case. The only evidence I heard was from the two parties. The first to give evidence was the Husband. He is clearly an immensely able and intelligent man, who had a stellar career, rising to the very heights of Firm H and earning very large sums of money in consequence. As with so many of the cases I hear, his determination to save tax has caused him nothing but difficulties. I find it quite remarkable that he transferred what is now £80 million to the Wife without any clear understanding of what was to happen thereafter. He accepted, in answer to questions from Mr Todd, that he made the transfers with free will and they had to be gifts to satisfy HMRC. He added, however, that the rationale was that the assets would then be put into trust by the Wife. It was clear that he expected to be able to live off the assets, even after they were placed in trust. I find that a difficult concept for a number of reasons. If it is a genuine discretionary trust, the trustees decide how to deal with the assets. A trust is definitely not a quasi-bank account of the settlor/the settlor's spouse. Moreover, in this case, there was the added complication of the position of HMRC. In answer to the discretionary trust point, the Husband said that the Protector, namely the Wife, could sack them if they did not do what the parties wanted. Whilst true, the next trustees should, in theory, also exercise their discretion appropriately. Putting assets in trust is very different from transferring them from one bank account to another.

60. He was asked about being a beneficiary himself. He said that Mr P told him he could not be a beneficiary at the time the trust was established, but he could be added later. He relied on an email from Mr P but that email only said that "further beneficiaries" could be added. If the Husband could not be a beneficiary on the date of settlement, I do not see how he could be joined later unless it was with the intention of misleading HMRC. Perhaps more importantly, it is the height of folly to transfer £80 million to a trust without having the exact legal position set out clearly and authoritatively. Moreover, he left himself with such little cash that he has had to ask the Wife to support him and pay his costs, during the currency of these proceedings. He accepted that he was not calling Mr P to give evidence,

despite the written warning of possible adverse inferences being drawn from this failure. He then said that he was not disputing that he divested himself of all his interest in the assets. I have to say that the advice received at the time in relation to the Wife's position was equally unclear. A memorandum from Firm M to her dated 20 June 2016 raises a number of issues but does seem to suggest that she can be a discretionary beneficiary, or a life tenant, so long as she remained non-domiciled. Having said that, she gave clear evidence to me that she did not wish to return to Country C even after the children finished their education, although I accept that she might have thought differently in 2016/2017. Moreover, I would have thought that it would have been necessary to consider her becoming deemed domiciled in due course. It does appear as though none of this was properly explored or considered by the parties.

61. In any event, I accept Mr Todd's submission that the Husband is now estopped from arguing that the money did not legally and beneficially become the property of the Wife. Equally, I am not going to make any findings that he acted under a mistake, given that he has abandoned the mistake/recission claim. He blithely says that he could have benefited from the money once it was placed in trust but Iam not nearly so sure. He has not called Mr P of Firm M to give evidence, despite having been warned by the Wife's solicitors that I would be invited to draw adverse inferences if he did not do so. There is therefore absolutely no evidence that the Husband could have been a beneficiary of the trusts. I take the view that he was giving the assets to the Wife without reservation of benefit as, if he had reserved benefit, the scheme would not have worked. He might, therefore, easily not have been able to be a beneficiary of the trusts. Parties must understand that saving large sums in tax comes at a price. If the Wife had transferred these assets to Jersey trusts, the money would have been gone forever.It is perhaps very fortunate for these parties that she did not do so. Moreover, if she had done so, the trustees would have decided who benefited, not the parties and certainly not the Husband. It is possible that they would have taken the viewthat it was the children who should benefit. For a man so astute in business, this whole transaction was a monumental folly.

62. Earlier in his evidence, the Husband had told me that he did not feel it necessary to have a pre-nuptial agreement or a post-nuptial agreement at the time of the 2017 transfers, as he trusted the Wife and he did not consider it necessary. He added that there was never any intention that the assets should be shared between them. Mr Todd asserts that the refusal to have a nuptial agreement is clear evidence that the parties were opting for a partnership marriage but I do not agree. The Husband meant that he considered the marriage would work but, if it did not, he trusted the Wife not to be greedy and that she would only take a fair share. Indeed, suppose the marriage had broken down after only six months. It could not possibly be suggested, at least in this jurisdiction, that the assets, including the Husband's pre-marital assets, would then all be divided equally. Mr Todd asked the Husband about the date of engagement. In this regard, I cannot accept the Husband's response. It was put to him that, on 26 September 2003, he got down on one knee at BT and proposed to the Wife. He denied this happened but I am satisfied it did. After all, in a draft letter about tax to the Country D authorities dated December 2003, his lawyer specifically refers to his fiancé (sic); that he may be getting married again; and that the Wife and her three children will join him in Country D. I accept that no engagement ring was then bought. Indeed, the ring referred to as an engagement ring appears to have been bought after the marriage and the birth

of X. I will have to factor these findings into my assessment of the date on which I should find settled cohabitation commenced.

63. There was a significant amount of evidence directed to the exact quantum of the assets brought into the marriage by the Husband. It is right to say that the documents are slightly inconsistent and confusing. There is no doubt that, on 30 June 2003, the Husband reached an agreement with his first wife as to the division of their assets. Their assets were divided on a clean break basis. A document dated 29 May 2002 shows him retaining assets of C$48.5 million, which is said to be 60% but the June 2003 agreement shows his first wife receiving/retaining C$42.4 million and the Husband C$43.64 million. The Husband is adamant that this did not include his POC portfolio or shares in Firm H, but the document does specifically refer to "*retention of his vested and non-vested work-related entitlements of approximately $13,700,000"*. Moreover, I find it difficult to understand why it would not include his Firm H assets. Having said that, Mr Bishop has taken me through his client's detailed disclosure, which certainly appears to show that, on 30 June 2004, the Husband had assets of C$139,648,065. There is also a schedule dated 29 May 2002 which shows assets of C$103,285,797. In both cases, the Firm H share options and investments are shown as being very significant. Indeed, in the 2002 schedule, they amount to C$54.8million, leaving other assets of C$48.5 million, which is close to the figure disclosed in the divorce. In the June 2004 document, the same figures are C$70.6 million for the UBS assets and C$69 million for the other assets.

64. Mr Todd asked the Husband about his earnings in Country D. He was earning US$11 million per annum from his arrival there to the date of his retirement in 2007, after which he received a basic salary of D$1 million for a year. Mr Todd categorises this as total earned income during the settled relationship of US$45 million. The Husband responded that this ignores tax and the fact that he was investing heavily in Firm H stock, on which he said he had to pay 80% tax up front but which lost all its value in the financial crisis shortly after he left Firm H. My findings are that these last years in Country D were likely to have been the Husband's best earning years of his career, given his promotion to such a position of importance. He lost a very significant share of his wealth during his first divorce and he would have been keen to have rebuilt his finances. It is impossible to do an audit but I am satisfied that there was marital accrual during this period.

65. Unlike the Husband, the Wife is not well versed in the ways of business. I felt that, at times, she did tailor her evidence to suit her case today, rather than as the position was at the time. She did, however, tell me that she got engaged to the Husband on 26 September 2003. Her description of him getting down on one knee in BT was specific and I accept that it occurred. I equally accept that she lost her maintenance entitlement from her first husband by marrying the Husband. Nevertheless, it is clear that her first husband was not a wealthy man at the time of their divorce as she only got the former matrimonial home, then worth C$2.75 million but subject to a mortgage of (C$1.75 million), although it is right to note that the property did eventually sell for C$5.6 million. The proceeds of sale were not placed into joint names, consistent with what I find the arrangements to be, namely that, other than NN, these parties kept their assets separate. The Wife did, however, contribute to the family expenses from the proceeds of sale and from the sum of C$720,000 that she inherited from her parents. She did suggest to me that the parties did their investments together, referring in particular to investments in

Investment B and Investment A, but this was not what she said in her Form E, where she said her Husband "*has historically managed family finances and I have had very limited involvement*". I prefer the account in her Form E.

66. Mr Bishop then asked her about BT. She told me that the Husband had said to her that "*this is ours*". Mr Bishop was very critical of her for this, saying that she had not mentioned this previously and it was not in her statements, which, he said, would have been the case if it was true. I do not know if this was said, but I do not consider it would mean very much even if it had been said. It is the Wife's case that BT has been matrimonialised because they stayed there during the marriage as a holiday home. I have already mentioned that the accommodation there was barely adequate. I am surprised that these parties were prepared to stay there for any length of time, even if the surroundings were wonderful. I am satisfied that they did not go there a great deal during the marriage. There was one trip whilst they were in Country D. They visited for approximately 6-7 weeks per annum during the period they were back in Country C before they moved to this country. Since they have been here, there was one trip to BT over Christmas/New Year but that is basically all. The Wife may have been there alone once or twice: she produced a schedule showing more trips than that, but the schedule proved to be inaccurate. The Wife was completely inaccurate when she said that she convinced the Husband to farm sheep there as well as cattle, as it transpired that there were some 12,000 sheep when he bought the farm. She then changed her evidence to say it was a different type of sheep that she had recommended to him. All in all, I found her evidence in relation to BT unsatisfactory.

67. I do not have a valuation for the various buildings on the farm but it is absolutely clear to me that this is a working farm. It is most certainly not a significant matrimonial home. Of the value of the land at a gross figure of C$55,180,000, I doubt the properties capable of occupation are worth more than tens of thousands of pounds. The parties did have some vague idea of building a better home there but nothing ever came of it. The Husband bought the farm as a long-term investment because he considered that the demand for meat would increase significantly, thus increasing the value of the farm equally significantly. He was entirely right, notwithstanding the two natural disasters. The farm had been owned jointly with his first wife. He did not transfer it into joint names following his second marriage. All in all, I cannot be clearer that this farm was not matrimonialised. It was purchased before the marriage and has, in essence, remained the same throughout the marriage. A very small piece of land amounting to 81 hectares, with a better property, was acquired during the marriage, but the parties have never even stayed in that property and, out of a total land of 6,000 hectares, the addition land was inconsequential. The Wife was able to point to approximately 100 km of refencing being undertaken during the marriage. I accept that the fencing was a high quality product costing between C$20,000 and C$25,000 per km but I assume this was paid for out of the farm profits. In fact, much of it was destroyed by the natural disaster and will have to be rebuilt with the aid of the insurance money.

68. The Wife was, of course, asked about the 2016/2017 transfers. Nothing that she said changed my provisional views of these transactions following the Husband's evidence. She did say that, after the money was given to her, nothing further was said about the trusts. I do not accept her evidence in this regard. I find that the Husband did mention it once in 2018 but, as he said, she fobbed him off. I do not

know whether she was considering divorce already at that point. She said she would have put the money in trust if he had asked her. For reasons that are unclear to me, he did not raise it again. She told me she did not like the lady from the trustees they selected, but I do not consider that makes any difference. She did concede that the transfers to her were pursuant to estate and trust planning. She further accepted that this was the reason why the money went into her sole name and not into joint names. She reiterated that the Husband controlled the financial side of things, which I accept. She said that she had been told that the Husband could not have been a beneficiary of the trusts. I accept that evidence as it seems inherently likely to me. She was then asked about changing her will to exclude him in early 2019. Given that the Husband had transferred the best part of £80 million to her only two years earlier, I do consider this was a very mean spirited thing to do, made worse by her not telling him. Mr Bishop, not unreasonably, asked her why she would not leave him half if this was, indeed, a partnership marriage where everything was shared. Her completely lame response was that the Husband would have contested it in any case so there was no point. I find that this action was completely inconsistent with her oral evidence, repeated on a number of occasions, that it was a partnership marriage from the very outset built on love and trust.

69. She was then asked about NN. She said that it is a lovely home and I do not doubt that. She added that she can afford to stay there so why should she have to sell it. She was asked about the expenditure she has incurred. She said that the previous owner had completely redone the roof at the property before he sold it but the sealants were inadequate and, each time she repaired the roof, there was damp ingress again. I have to say the pictures of the damp are a sorry sight and the damage is not reflective of a superb estate worth £21.6 million. Moreover, the valuer refers to the damp ingress becoming worse between his two visits. The Husband blames the guttering not being properly cleared but I find it difficult to accept that so much damage could result from that. Either way, the work needed to be done although it appears it cost £70,000 in April 2021, which is a very small portion of the total amount spent on the property. I was told the total work done in 2021 cost around £930,000. It is clear that this included some fencing for Y's horses; work to a dilapidated greenhouse; a new stable block; the fitting of security cameras; and planting trees following storm damage. I can well understand how these works would cost that sum. I accept Mr Todd's point, however, that without an expert report telling me the effect of these works on valuation, it is impossible to say that any part of this money should be added back. Moreover, with the possible exception of the stables, given that I was told there were already stables at the property, it is difficult to say that any of these works was unjustified. The Wife's defence that she could spend as she liked, as the Husband had given the money to her, is far more debatable.

70. She was then asked about her expenditure on Y's horse riding and eventing activities. I always find these arguments difficult. On the one hand, the amount spent at £450,000 is a huge sum of money. Moreover, the Husband was not informed. On the other hand, these parties have wealth of at least £130 million so why should their daughter not be able to indulge in what is, undoubtedly, a very expensive hobby. I accept that horse boxes are particularly expensive, even if the cost of £204,000 was considerably more than the figure of £120,000 to be found in the Wife's Form E.

71. The final issue was the spending on the Wife's adult children in the sum of £900,000. Again, there are arguments on both sides. The Wife has accepted that the sum of £470,000 spent on one of her older children's rehab should be added back. The Wife's adult children are not independent and are still engaged in higher education. Moreover, they were children of the family from a very early age and the Husband undoubtedly took on considerable financial responsibility for them. On the other, they inherited approximately £3 million each from their father. The Wife has accepted that the Husband should have no further responsibility for them. They are, of course, no longer minors.

72. Other than these matters, however, Mr Bishop was quite unable to put his finger on any item of expenditure that could truly be described as wanton dissipation, notwithstanding very careful consideration being given to the Wife's disclosure by his team. In many cases, it is possible to show wanton dissipation. Examples would be giving money away to a new partner; or to friends and family; or spending huge sums on gambling, drugs or prostitution. I have encountered examples of all of these types of dissipation. Sometimes, it is necessary to say that you must take your spouse as you find them; in other words, the applicant cannot seek to benefit from the successes of their spouse but not share equally in their failings. I do not even need to consider that here as, despite the very high level of expenditure, there is nothing of that sort established.

My conclusions

73. I now turn to consider how all of this should be factored into the outcome of this case. The first thing that I need to deal with is the Wife's contention that this was a partnership marriage. I reject that suggestion as having no basis in fact or law. This marriage was an entirely conventional second marriage in which the Husband brought significant assets to the marriage. The absence of a pre-nuptial agreement is not significant. We know from Sharp that the failure to enter a pre-nuptial agreement is not evidence of an intention to share. If this marriage had broken down six months after it had been celebrated, this court would undoubtedly have dealt with it on the basis of needs, albeit with additional consideration for what the Wife had lost in terms of entering the marriage. She could not possibly have mounted a claim to share equally in the Husband's pre-marital wealth. Indeed, I am clear that this remained the position immediately before the transfers to her in early 2017. After all, the Husband did not put assets in joint names, other than NN. Moreover, as the matrimonial home, NN occupied a central part in the marriage and it was entirely right that it was conveyed into joint names. Although the Husband paid for it, it became and remains matrimonial property.

74. There is, however, no doubt that the 2017 transfers changed the position. It is accepted that the Husband divested himself of his interest in the portfolio of assets that he transferred to the Wife, now worth some £80 million. There was no reservation of benefit as that would have defeated the tax saving scheme. The assets became the Wife's. The only claim that the Husband could possibly have to them, at least following the dismissal of his mistake/recission claim, is in the context of financial remedy proceedings following divorce. Moreover, that would have been lost if she had transferred the assets into trust. I do, however, reject the suggestion that this money became the Wife's separate property, entirely free of any claim by the Husband other than on a needs basis. It has long been clear in this jurisdiction that you cannot benefit from keeping assets in your sole name.

The obvious example is the money-maker who generates significant assets during the marriage but keeps them in his sole name. The home-maker's claim to share those assets is just as strong as if he had placed them in joint names. In the same way, if a money-maker transfers assets earned during the marriage into the name of the other, the money-maker can still make a sharing claim against those assets on marital breakdown. For it to be otherwise would be both discriminatory and entirely unfair.

75. As the £80 million transferred to the Wife did not become her separate assets, I must decide what it did become. Mr Bishop urges me to find that it did not become marital property. He cannot be right about that. The assets are not held by the Wife on trust for the Husband as he had to give up all interest in them for the tax saving scheme to work. The only possibility is that they became matrimonial property. I am, however, equally clear that this does not mean that this matrimonial property is automatically shared equally. I have already set out the authorities that show that matrimonial property can be shared unequally. The source of the funds must and does remain a very significant feature. It could not be otherwise. The transfer cannot automatically give the recipient a half share without consideration of the section 25 factors. To do so would be just as wrong as allowing a money-maker to keep assets earned during the marriage without sharing them with the home-maker. I reject Mr Todd's arguments that this is a return to pre-Lambert days. The distinction is that, at least in significant part, this is money that was generated before the marriage, not money generated during the marital partnership to which Lambert applies. I further reject his submission that this cannot be right as it would mean that the Wife is in a worse position than a cohabitee. I have not considered whether the transferring money-maker in that situation would have any arguments pursuant to a resulting trust, assuming there was no need to divest oneself of the money entirely for tax reasons. The point is that very different financial considerations apply depending on whether you are married or you merely cohabit. In general, marriage protects the home-maker. The fact that it may be different in this case does not make it wrong. Whatever I decide, the Wife is going to leave this marriage in an infinitely better financial position than she entered it.

76. I have already decided that the BT land is non-matrimonial. There is absolutely no justification for sharing it, given that the Wife's needs will be more than adequately covered by the end result of this litigation. I am equally clear that both parties' shares in the farming business have become matrimonial as a result of the placing of "A" shares in the Wife's name. Again, however, the source of the business, namely a pre-marital asset, is relevant, although, in the case of the shares, much of their value may well have been generated during the marital partnership.

77. I now turn to resolve the few remaining issues as to the asset schedule. The first relates to the Capital Gains Tax on NN. If I was dealing with a needs claim, I am sure I would find that NN was in excess of the Wife's reasonable needs. I am by no means clear that I would not say that she was entitled to two properties, namely a main home and a holiday home. It may be that the combined figure would get close to £20 million. It is, however, obvious that the Wife is going to exit this marriage with far in excess of £21.6 million, which is the value of NN. Indeed, the Husband's open offer is £25 million. It may be that she will not be able to afford the property's upkeep in the long term but that is a matter for her. She is very attached to the property and it should be transferred to her. It therefore follows that I should take the Capital Gains Tax at the lower figure, namely £342,762.

78. The next issue is a very minor one, namely whether I should include chattels or not. The Husband has a watch collection and art at his rental property valued in total at £28,000. I am clear these sums should be excluded. The Wife has jewellery and handbags valued at £277,415. Whilst considerably higher in value than the figure for the Husband's watch collection, I am again clear that this sum should be excluded. It might be different if the jewellery was worth millions. Moreover, I am reinforced in this conclusion by the fact that the contents of NN are worth £1,561,810. I propose to exclude those contents on the basis that they are going to be divided by agreement or, if agreement cannot be reached, by arbitration, a solution that I wholeheartedly endorse. The Husband's case is that many of those chattels were pre-marital and should therefore be his. I do not know if he is right that the majority are pre-marital or if that would mean that he would keep more than half but that is his argument and it follows that I take the view that the only fair way to deal with this is to exclude all chattels, jewellery and watches from my assessment.

79. I next turn to the issue of add-back. I have, of course, made a number of observations already as to this aspect. I am clear that I cannot describe any of the spending on either side as "wanton dissipation" of assets. The Wife has, undoubtedly, spent at a remarkable rate. It may have been, at least in part, motivated by a wish to enhance her financial claims but I cannot say what effect the spending on NN has had on its value. I am not prepared to categorise spending on one of the parties' children as "wanton dissipation", even when the other parent had not been informed. That leaves the spending on the wife's adult children.They were children of the family and were young at the date the marital partnership commenced. I am satisfied that the Husband made a significant financial commitment to them, which he honoured. It is difficult to see why he should continue to have to fund them after the breakdown of his marriage to their mother. Moreover, the Wife accepted that he should not have to do so. She therefore spent £908,923 that should have come exclusively from her share of the matrimonial resources. This figure is, though, entirely matched by the sum of £915,547, which is the difference between the Husband's spending on this litigation (£2,957,239) and that of the Wife (£2,076,202). Although he tries to justify this differentiation on the basis of him having the carriage of the litigation and the need to provide financial disclosure, there is no doubt that a considerable part of it relates to the unsuccessful mistake/recission claim that he abandoned. In any event, this litigation should not have cost £2 million, let alone £3 million. I have therefore decided to ignore all the add-back arguments on both sides and deal with this case on the basis of actual assets rather than notional ones.

80. The Wife's schedule of assets has a figure of £133,202,721. I have removed from this figure the amount of £397,771 included by her for the Husband's costs of the mistake/recission claim. I also remove a sum of £156,624 which was "loaned" by the Husband to his adult son. I do not know if it will ever be repaid but, if you have the wealth of the Husband in this case, it is perfectly reasonable to provide such a sum for your adult son. It would be just as reasonable to write that sum off. Given that the Wife has spent over £900,000 on her adult children, there really cannot be any argument about this. The resulting figure for the combined assets is £132,648,326.

81. I have already decided that the land at BT is not matrimonial and must be excluded

from this figure when calculating the matrimonial assets. This reduces the total to £112,631,062. I must then decide how these matrimonial assets should be shared. I am quite clear that there should not be an equal division. I have found the transferred assets, amounting to some £80 million to be matrimonialised but they are most certainly not matrimonial acquest in the standard sense as they were not all earned during the marital partnership. To a significant extent, this money was pre-marital and has only been matrimonialised towards the end of the marriage. I would not go as far as to say that the assets are only matrimonial as a result of a technicality because there is no doubt that the Husband intended to transfer them to the Wife and he could not reserve any benefit in them to himself. Equally, however, I cannot ignore what Mr Bishop calls "the magnetic feature", namely the pre-marital origin of most of this sum.

82. I am clear, however, that an element of the sum of £80 million is not pre-marital. At least a part of this figure was generated between the date on which the parties entering into a settled relationship that moved seamlessly into marriage and the date of the Husband's retirement. I have found that the parties became engaged in September 2003 but I am not of the view that the marital partnership should date from then. I have been referred to a number of authorities, cumulating in the recent decision of Peel J in VV v VV [2022] EWFC 41 which reviews the relevant cases succinctly. Engagement itself does not automatically mean the marital partnership has commenced. I am not sure that there was settled cohabitation during the period from September 2003 to June 2004. Perhaps most importantly, the Wife had to get either the permission of her first husband or a court order to allow her to remove the wife's adult children from Country C to Country D. She might not have been able to do so. Moreover, the Wife's first husband was still maintaining her at the rate of C$5,000 per month until the date of the relocation. I am therefore going to take the date the marital partnership commenced as being when the Wife and her adult children moved to Country D in June 2004. It just so happens that this corresponds with the agreed Chronology although I entirely accept Mr Todd's point that this is not determinative. It means that the duration of the marital partnership was 15 years and 9 months. It also follows that the Husband had three and a half years thereafter working at the top of his game in Country D for Firm H, before his retirement plus an additional D$1 million thereafter. On any view, he earned around US$40 million gross during that period.

83. I find it almost impossible to say what proportion of the £80 million was earned during that period. I accept that the Husband started work in 1972, some 32 years earlier. I do not, however, take the view that it is appropriate to say that one day worked in 1972 is equal to one day worked in 2004. When Mostyn J referred to that, he did so in the context of a single privately owned business built up over a long period. The Husband's earnings in 1972 will have been minute compared to his earnings in 2004. Moreover, he had to share at least a significant part of the earnings he had made up to 2002 with his first wife. On the other hand, he says that he paid a great deal of tax in the period since 2004 and the shares granted to him lost their value in the banking crisis. All I can do is say that I find that a part of the sum of £80 million is money that was earned during the marriage. Whilst the Wife would be entitled to an equal division of that money, it is impossible to quantify it accurately.

84. In total, I have found the matrimonial assets to be £112,631,062 although this figure combines assets in two different categories, namely those that can be

described as the matrimonial acquest and those that were matrimonialised by the tax planning exercise. I take the view that it would not be appropriate to divide the figure of £112,631,062 in two. This marriage lasted 15 years and 9 months. Whilst this is, therefore, most certainly not a short marriage, it is equally not a very long one. I simply cannot ignore the pre-marital assets brought to the marriage by the Husband, which I accept is an important feature. On the other hand, the total includes NN. It also includes earnings in Country D during the marital partnership and value generated in the BT business during the same period. I have decided that, overall, the appropriate division of the matrimonial assets is 40% to the Wife and 60% to the Husband. I propose to round the figure down very slightly so that the Wife will receive £45 million. The Husband will get £67,631,062 plus the land at BT worth £20,017,264, making a total of £87,648,326. On this basis, the overall split is 34% to the Wife and 66% to the Husband. As a cross-check, I am entirely satisfied that this is an appropriate division, taking into account all the section 25 factors. It is fair and just. It reflects both parties' contributions and all the other circumstances of the case.

85. I do not need to undertake a needs assessment as it is quite clear to me that the Wife can live very well on a sum of £45 million. I do intend to direct a transfer of NN to her. It will be up to her if she decides to keep it or not. She must transfer her shares in BT Ltd to the Husband on the basis that he provides her with a full indemnity. The Husband must pay his share of the Capital Gains Tax on the transfer of NN to the Wife. I will leave counsel to work out the details of the exact amount the Wife should pay to the Husband by way of lump sum to ensure full compliance with my judgment. The Husband will pay a further sum of £179,022 to the Wife to cover her costs of the mistake/recission claim.

86. I assume the parties have given me jurisdiction to deal with the question of Y's maintenance. The Husband will pay the sum of £30,000 per annum index linked in accordance with the CPI index, until Y completes full-time education. He does not have any earned income as he has retired but he has very significant capital wealth in excess of that of the Wife. The Wife, certainly at present, has full responsibility for all Y's costs, including her expensive eventing hobby. After Y finishes her secondary education, there will be a split in the periodicalpayments so that one third goes to the Wife and two-thirds to Y until she completes tertiary education to the end of first degree. He will also pay both children's school fees and extras appearing on the school bill. The parties will share the costs of X, given the joint lives with order, effectively paying when he is with each of them.

87. I am very grateful for the immense help I have had with this case from all those involved. Nothing more could have been said or done on behalf of either spouse.

Mr Justice Moor
18 May 2022.