IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The parties and their children must not be identified by name or location, other than as set out in this version of the judgment. Their anonymity 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: [2023] EWFC 68

Case No: BV20D11362

IN THE FAMILY COURT

-

The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 5 April 2023

Before :

Mr Justice Moor

- -

Between :

DR

Applicant

-and-

UG

Respondent

- -
- -

Mr Lewis Marks KC and Mr Marcus Lazarides (instructed by Charles Russell Speechlys LLP) for the **Applicant**
Mr Tim Bishop KC and Mr Richard Sear (instructed by Stewarts Law LLP) for the **Respondent**

Hearing dates: 28th to 30th March 2023

- -

JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an application for financial remedies in Form A dated 31 July 2020, but issued on 3 August 2020. The Applicant is DR. The Respondent is UG. I propose to refer to them throughout this judgment as "the Wife" and "the Husband" respectively. I do so for the sake of convenience and mean no disrespect to either by so doing.

The relevant history

2. The Husband was born in Denmark in November 1965, so he is now aged 57. Until recently, he was a board member and the driving force behind a company based in England, known as A Co ("the trading company"). The trading company is, according to its website, a world leading manufacturer of a medical product ("the product") and, as such, its manufacturing plant is the core of its business. The company was sold last year for over £400 million. Following its sale, the Husband returned to live in Denmark.

3. The Wife was also born in Denmark in June 1973, so she is aged 49. She also now lives in Denmark with the three children of the family, having secured permission to relocate there permanently in July 2021. She is a home-maker and child-carer. Prior to the birth of the children, she had worked as a landscape architect.

4. The Husband obtained a degree in biochemistry engineering. Later, he added an MBA. In 1990, he joined a large multinational pharmaceutical company based in Denmark as a researcher. In 1995, he moved to Malaysia as the head of a technical department of that company and then as head of the household care division for South East Asia.

5. The parties met in Denmark in the Spring of 1998. The Wife says they began to cohabit in her rented flat in April 1999. The Husband says that they did not do so until 2001, in his flat. It really does not matter which is correct as it is accepted that neither had any material financial resources at the time they did so. In 1999, the Husband was appointed global divisional marketing manager. He purchased his own apartment in Denmark in July 2000. In November 2000, the husband's employer divided into two. The Husband transferred to the biotech company, X Co as a senior account director. He became a senior marketing director in 2003.

6. A family home was purchased in Denmark in April 2004 and the parties married there on 28 July 2004. They have three children. The oldest is D, who is now aged 18. [*Further details redacted.*] There are then twins, E and F, who are aged 16. [*Further details redacted.*]

7. The family moved to Austria in 2005 when the Husband was appointed as a senior sales director of X Co based in Austria. Around this time, X Co was purchasing pharmaceutical businesses, which led to the formation of XB Co in December 2006. The Husband was appointed as vice president of XB Co in January 2007. The family moved to England. The Wife and children returned to Denmark in July 2009. The Husband followed in December 2009.

8. In January 2016, XB Co (the business producing the product) was renamed A Co and the Husband was appointed Chief Executive Officer. It appears, however, that X Co had little confidence in the trading company. There is no doubt that it had a loss making research and development business. Its factory and equipment was old and inefficient. The Husband was tasked with trying to sell the business but he had no success. He therefore proposed a Management Buyout ("MBO") led by himself, but supported by the other main executives of the trading company. This was completed on 27 December 2017. As he received very nearly 70% of the shares in the trading company, he had virtually complete control over the direction and future of the business. At first sight, this looked like a poor deal for X Co, but he explained to me in oral evidence that X Co took a significant amount of cash out of the business, amounting to around £16 million and were entitled to future royalties on use of the product which he put at £70 million. The purchase price itself was, on any view, modest, albeit that X Co retained around 8% of the shareholding. The Husband says that he was initially wrong in saying that he paid £500,000 for his 69.76% shareholding, which he acquired through companies known as Y Co and G Co. He says that he now realises he paid DKK 2.8 million, or more like £310,000, out of total consideration of DKK 4 million. The other executives had the remaining shares. There has been a dispute as to how the sum of £310,000 was funded, although a mortgage was definitely taken on the family home in Denmark. The following year, the Husband also cashed in his Danica Pension, which was worth DKK 8.1 million, but he had to pay DKK 4.8 million in tax, such that he only received DKK 3.3 million. The Wife's case is that the parties put their economic futures on the line to pursue this MBO.

9. The Husband moved to England to manage the trading company in January 2018. He proceeded to make around 30% of the staff of 125 redundant, by closing the loss making research and development arm of the business. He also put in train a substantial rebuild of the factory, consolidating it onto one site from the previous two and commissioning an entirely new set of manufacturing equipment. The Wife and children followed him to England in July 2018 but the family's base was a rented property in Central London, so that the children could attend an International School, as there was no suitable school in the area where they had previously lived.

10. In August 2018, the trading company signed an amended supply agreement with its biggest customer, Q Co. It appears that it was on favourable terms, negotiated by the Husband. The business also managed to purchase significant stocks of a different type of the product at cost from another company, when the latter company ceased production. This was a source of

considerable profit to the trading company, put by the Husband at around £5 million.

11. In December 2018, M Fund, an investment fund, offered to acquire an option to purchase 51% of the trading company on terms that would have valued the entire company at £41 million. As that was only one year after the MBO, it shows a remarkable turnaround in the fortunes of the business, given that the purchase price only a year earlier for the entire company had been around £500,000. X Co rejected this offer in February 2019 and made it clear that they would invoke an anti-embarrassment clause if the business was sold before 2020. The clause would entitle X Co to 50% of the sale price, even though it only had an 8% shareholding. M Fund increased its offer to £45 million in April 2019, but again X Co was not interested and M Fund walked away from any deal.

The breakdown of the marriage

12. There is no doubt that the marriage broke down in 2019. The Husband did not leave the family home until June 2019. At the beginning of this litigation, both parties accepted June 2019 as the date for the separation but the Husband has, more recently, contended that the real date should be taken as January 2019, when the Wife said, during an argument, that the marriage was over. The children were then informed and the Husband began to look for an alternative property to rent. In April 2019, the parties sold the family home in Denmark. After discharge of the mortgage, the net proceeds of sale were DKK 1.3 million, or approximately £151,163.

13. The Husband says that, in February 2020, he negotiated further significant amendments to the contract with Q Co that secured a ten year unbreakable supply agreement at 30% higher prices along with amendments to the licencing agreements, which he says guaranteed the trading company £4 million per annum in royalties.

14. On 14 April 2020, the Wife applied to the court for permission to relocate permanently to Denmark with the children. This litigation was clearly hard fought and stressful for both parties. On 2 October 2020, after a three day hearing, an agreement was finally reached by which the Wife was given permission to relocate to Denmark with the children in July 2021. There was to be a shared care agreement whereby the children would spend nine days per fortnight with her and five with the Husband.

15. M Fund returned to the trading company in May 2020 with a third offer. On this occasion, M Fund offered to purchase 12% of the shares on the basis that the entire trading company was valued at £65 million. The offer was to buy just over 4% of the shares held by the CFO, Mr T and the 8% held by X Co. Again, X Co declined. M Fund were not interested in only buying 4% of the business, so again withdrew. The Husband had only been working three days per week for the business. He has long suffered from mental health difficulties and it was clear that the combination of the MBO and these proceedings was taking a heavy toll upon him. In July 2020, he stepped down

as CEO of the business. Mr S, another shareholder who was a party to the MBO, took over. The Husband remained as executive without portfolio, working, according to the papers in this case, one day per week. As he wished to retire, Mr T sold his 4.44% of the shares to Mr S, on the basis of a valuation for the overall trading company of £72 million, although it is not clear to me if there was any significant reduction for it being a small minority interest.

The relevant litigation

16. The Wife filed a petition for divorce on 25 June 2020 and made this application shortly thereafter. A decree nisi was pronounced on 25 January 2021. It has not yet been made absolute.

17. The parties exchanged their respective Forms E in October 2020. The Husband's Form E is dated 16 October 2020. At the time, he was still splitting his time between rented properties in Central London and a provincial city. He deposes to the fact that the parties owned 50% of a Mediterranean villa jointly with the Husband's brother and his wife. An agreement had been reached to sell the villa for €425,000 which would produce a net equity of approximately €175,000 for the parties. The rest of his disclosure shows only modest assets, amounting to only just over £250,000 plus a pension worth £98,600, other than his interest in the trading company. He said that his shareholding would reduce from 69.76% to 66.387% due to an employee share reward programme. He valued the shares at £46.7 million and said he was of the view that there would be no UK CGT on any sale due to his non-domiciled status. He added that his income had been £807,870 gross, including bonus. This was £438,041 net. He did, however, put his income for the next year at only £210,000 net. In addition, he had dividends of £393,146. He said he had to resign as CEO as he was not able to give the business his full attention due to the divorce and Children Act proceedings. He was pessimistic about the future of the trading company, referring to delays to drug trials as a result of the pandemic. He said the new plant was £4 million over budget but was necessary as the previous manufacturing facilities had been old and inefficient. There had been production failures of batches of the product in 2019, requiring this long overdue plant upgrade. He said the family had a reasonably good standard of living during the marriage, but his present levels of income had only arisen in the last few years. He said he had transformed the company which X Co had intended to close and had renegotiated contracts very favourably. He added that it would be impossible for the parties to go into the future as joint shareholders due to the acrimony of the previous year.

18. The Wife's Form E is dated 19 October 2020. At the time, she was still renting a property in London. Her net assets were only some £71,122. She said the family had enjoyed an excellent standard of living. She added that she had made a full contribution as housewife and mother. She had moved countries to benefit the Husband's career. Their entire financial futures were invested in the MBO, including by borrowing money against the free equity in their house to finance the purchase of the shares. She said that the Husband planned to sell the business in the next two years.

19. The First Directions Appointment took place before DDJ Nigel Smith on 17 November 2020. The case was to be allocated to a High Court Judge, but with a private FDR. There were two directions for reports by single joint experts. The first was to be a valuation of the trading company, by Steve Taylor of St James Valuation. The second was a report on Danish tax on realisation of the shares.

20. The valuation of Steve Taylor is dated 18 January 2021. It has become contentious, not for what it contains, but for what it does not contain. Mr Taylor valued the Husband's shareholding in the trading company at £57.8 million as at 31 December 2020, being the pro-rata value of his shares to the whole of the company, which he valued at £87 million. He did say that the business has significant potential. Indeed, if it delivered on its five year business plan, its own internal documents describe a £600 million company in 2025. He took the view that this was a reasonable aspiration, but there were significant risks that would have to be overcome and no buyer would place such a value on it at the time of Mr Taylor's report. The business had many attractive attributes, such as the security of the relationship with Q Co; a growing customer base; and a high quality product, but it had to finalise the plant overhaul by demonstrating it can produce the product at consistent quality before it can resume manufacture for sale. This objective had been put back by the failure of the first batch, but it was clear that this was due to human error. Mr Taylor considered that there was the potential to borrow £10 million to fund a dividend of £12 million, which would mean that the Husband would receive £8 million but there would be income tax on such a distribution. The company could create liquidity by a partial sale to M Fund but he did not think it wise to approach Q Co. He then opined that the Husband's interest was worth £33 million in July 2019, which would have been £48 million at the date of the report, if he had left the business at the time of the separation. The Husband intended to draw a salary of £100,000 per annum for one day of work per week. The anti-embarrassment clause had, by then, expired. The purchase was a small transaction for X Co, which had a market capitalisation at the time of c$15 billion. Mr Taylor opined that the transaction was, for the Husband, a bargain purchase. Turnover had increased from £19.3 million in 2016 to £26.7 million in 2019, before it reduced again to £22 million in 2020. Profit had gone from £1.3 million in 2016 to £6.8 million in 2019 and then £4.9 million in 2020. Mr Taylor opined that the business could have made a loss if it was not for the renegotiation of the Q Co contract (£4.4 million) and the super profit from the sales of the discontinued different type of the product (£2.5 million). The company has a blue chip customer base, which was "highly sticky", which means that it is very difficult for such companies to change suppliers, due to their patents being granted on the basis of the use of the trading company's product. Q Co accounts for 50% of revenue. The new facilities should increase production three to four fold. He did refer to the risk created by batch failures, with reference to this happening in 2019 with the old plant. The net assets were £24.9 million, of which £7.5 million was in cash but the company might need to invest a further £7 million. It only had three or four competitors. The 2025 figure of £600 million would be a multiple of 20 to profit of £30 million. Other than in relation to the Q Co contract, a high quality CEO could have done what the Husband did, but his presence will

assist a sale. Mr Lewis Marks KC, who appears on behalf of the Wife, with Mr Marcus Lazarides, points to the fact that there is no reference in this report whatsoever to the company moving into the sale of the product for specialised therapies.

21. The Husband was clearly not happy with this report. He asked approximately sixteen questions. I accept the point made by Mr Marks that these were designed to drive the valuation down, rather than anything else. Mr Taylor was basically unmoved, accepting that there were risks but saying it was hard to move away from the arms' length price negotiated between the CEO and the CFO for the CFO's 4.4% shareholding. He added that he had removed £2.5 million from the valuation due to the failure of the first batch of the product following the plant and machinery upgrade. The new plant initially worked well with successful production of the product over a significant period, commencing in April 2021. Shortly thereafter, the board approached a number of investment banks to advise as to the sale of the business. Their marketing pitches were received in June 2021. The range of indicative values went from £196 million to £393 million, very different to the figure produced by Mr Taylor.

22. Both parties made open proposals around this time. As it has turned out, both are now entirely historical but it is necessary to refer to them briefly. The Wife's proposal was dated 30 March 2021. She contended that she should receive 50% of the net proceeds of sale of the trading company, when it was eventually sold and, in the interim, the Husband should transfer 50% of his shareholding in the holding company, Y Co, to her. There should be an equal division of the dividends and a shareholders' agreement. The Husband's response was dated 14 April 2021. The Wife's proposal was entirely rejected. He contended that there was sufficient liquidity for a clean break. The letter refers to the company facing significant headwinds, some serious and recent. He said he would transfer £1 million on account to her on 20 April 2021 and would pay her a lump sum overall of £20 million. There would be a further £3 million by the end of July 2021, with the remainder to be paid by 2025. A private FDR was held before Mr Christopher Pocock QC (now KC) on 6 May 2021 but no agreement was reached. The Wife then made a further open proposal on 28 May 2021 to take 45% of the net proceeds of sale of the trading company, with security via the Y Co shares. She is criticised now by Mr Tim Bishop KC, who appears on behalf of the Husband with Mr Richard Sear, for subsequently reneging on this offer and seeking 50%. I make it clear that I reject that criticism entirely. Parties are to be encouraged to make open offers without any fear of being restricted to these offers going forward. If the offer is a good one, it should be accepted. If it is rejected, the party rejecting it can have absolutely no complaint if a higher proposal is made at a final hearing.

23. The tax report was dated 29 April 2021. It said that neither party would be treated as tax resident in Denmark until they relocate there. The shares would have been deemed disposed at fair market price when the Husband moved abroad. Although this tax would normally have been deferred, he assumed

that it had been paid in this case. It would have been very modest in any event. If so, no tax liability would exist any longer.

24. I first heard the case on 28 May 2021. I allocated the case to myself. I made what I consider to be pretty standard directions, including for statements, one of which was intended to come from the Chairman of the trading company, Mr K. In fact, he has not filed any statement but I do not draw any inferences from that at all. I directed a five day final hearing. Mr Bishop subsequently persuaded me to increase the estimate to seven days. As it turned out, the hearing itself was easily concluded within five days, but I doubt I would have been able to complete my judgment in such a timeframe so I am actually very grateful for the additional time.

25. On 4 June 2021, the Husband paid the Wife DKK 2.3 million, or approximately £270,000 from dividends and said he would continue to discharge the Wife's costs. She left for Denmark with the children in July 2021. At this point, the trading company began to experience repeated failures of its production batches of the product. Each batch takes approximately six weeks to produce and these failures were clearly serious, although I will have to decide how serious. For a long time, the cause of these batch failures, which were from the new plant and machinery, was unknown. The process to sell the company was, almost inevitably, put on hold. On 28 September 2021, the Husband withdrew his open proposal of 14 April 2021, although I am not completely certain that the two events were linked. [*Further details redacted.*] H's health then deteriorated and his medical advisor recommended that he should not engage in the financial court case for the next 4-6 months.

26. In consequence, he applied, on 7 December 2021, to adjourn the final hearing, which had been listed for April 2022. His statement in support referred to both his recent health difficulties and the significant developments in relation to the trading company. He said that the company was in a position of significant dire straits with considerable doubts about its future. It was teetering on the brink of collapse. The previous increase in value had been due to his leadership and deep understanding of the company and the industry but it had only been achieved through immense pressure and hard work. It had been made worse by the resignation of the Chief Commercial Officer and the restriction of materials and equipment from the United States Government due to the pandemic. He said that the cost of producing each batch of the product was approximately £1 million, which would generate revenue between £1.5 to £2 million, so each batch failure was very costly. He said that microbes had infected production but they still did not know how or why. There had been five consecutive failed batches and the plant was at a standstill. There would be a serious risk even if the next batch was produced successfully. They would run out of product in February 2022. Costs were running at £1.5 million per month. Saving the company must be his primary focus and only he could solve it. This latter point is seriously in issue, particularly given that he then had a breakdown, but the problem was subsequently solved.

27. At around the same time, the Wife produced a statement dated 22 December 2021 in support of an application for LSPO funding. She said that she had agreed to the adjournment of the final hearing due to the Husband's health issues and the problems with the batch failures. She said she had to give up her work as a landscape architect to support the Husband's career, as he was working long hours and was away a great deal. Notwithstanding receiving an interim lump sum in May 2021 of £235,000 and £30,000 relating to the sale of the Mediterranean property, she had run out of money. She asked for a further £170,305 in September 2021, but had received no response. She said she had no doubt about the severity of the business situation. The Husband had warned her that she would have to go to the "municipal", in other words claim benefits, yet the Husband had spent £1 million on a flat in Denmark that he had bought through Y Co.

28. On 31 December 2021, there was a very distressing incident. [*Further details redacted.*] On 17 January 2022, I vacated the original final hearing, fixed for 4 April 2022. I did, however, list the Wife's claim for maintenance pending suit and LSPO funding on 4 April. That aspect was, however, compromised and I made an order on 28 March 2022 by which the Husband would pay the Wife interim maintenance of DKK 700,000, which was approximately £80,000 and her outstanding legal fees in the sum of £46,000 as well as the children's school fees in Denmark. The application was then adjourned until 7 October 2022.

29. In March 2022, there was huge relief as the trading company managed to produce its first batch of non-infected product after approximately eight months of failed batches. External experts had been called in. They had identified two problems.. In any event, there were no further batch failures once these two problems were identified by the external experts and rectified. The Husband was, at that time, acting in person, after his previous solicitors had come off the record in March 2022. His brother wrote to the Wife's solicitors to say that, as a result of the successful production of non-infected batches of the product, the company's financial situation had stabilised and the Husband had decided to proceed with the process of selling the company. On 3 July 2022, H's brother wrote again, saying that any sale, if agreed, would be unlikely to take place before mid-August 2022, after which there would be an approval period of several weeks.

30. The matter returned to court before me on 7 July 2022. The Husband, via his brother, provided a PowerPoint presentation which was headed "Pre-Read material". It provided time-lines for the sale of the trading company and what was described as a "mechanism for securing the Wife's control of a share of the proceeds". It disclosed that, in July 2021, the investment banks had provided indicative values of the trading company of around £250 million, which had reduced to nil due to the infections but, following the remedying of those failures, initial indications from prospective bidders, received on 1 July 2022, were that the company was worth from £290 million to £350 million. This had led to several prioritised buyers. Negotiations were taking place. The hope was to sign contracts by the late summer 2022, whilst the earliest that the proceeds of sale would be received was the autumn of 2022. There

would have to be mandatory UK regulatory approval for the sale. The Husband would receive around 65% of the sale proceeds, then thought to be approximately £200 million but, it was said, he would likely need to continue to work in the company for two to two and a half years.

31. I heard the further directions appointment on 7 July 2022. The Husband appeared by video link, assisted by his brother. I reminded the parties of their obligation to keep these proceedings confidential. I made various directions for further disclosure, including an updated Form E from the Husband and a schedule of dividends he had received since April 2021 and a narrative explanation as to how they had been utilised.

32. It appears that P Co ("the purchaser"), a large international company, then decided to make an offer to acquire the trading company on the basis of an exclusivity agreement, which would exclude the other bidders from making any further offers. The Husband rejected that proposal but, on 4 August 2022, the purchaser increased its offer and the Husband accepted. Some may find it remarkable that a company can be in meltdown in March 2022, with repeated batch failures apparently threatening its very existence, but be sold for such an enormous sum only some months later. There is, however, no doubt that this is what did occur.

33. The Wife provided some updating disclosure on 16 August 2022, in which she denied that she had inherited any money from her grandmother who died thirteen years ago. Even if she had, it would have been non-matrimonial property, but I am satisfied that she did not. At the end of August 2022, the Husband agreed to provide interim provision of £500,000 to the Wife. He filed his updated Form E on 1 September 2022. He confirmed that he had suffered a nervous breakdown due to issues concerning his relationship with the children and the problems in the business. Thankfully, he made a swift recovery. He was purchasing a property in Spain. Other than his shareholding in the trading company, he deposed to assets of £1,407,501 and liabilities of £102,394. He estimated the value of his shares to be £273,387,000 net, after professional fees associated with the sale, the employee share scheme and the like. He confirmed that Y Co had purchased the apartment in Denmark where he now lives for £1.27 million, subject to a significant mortgage, and he was acquiring a boat. His dividends last year had been £1,840,691 together with a salary of £191,342. He said that it was "new strategies" since the separation in 2019 that had led to the company valuation rising so much from the SJE valuation in early 2021 to the sale in August 2022. These were decisions he had taken, which had involved a huge level of work, commitment and leadership. He did not particularise these decisions in any way at that point. I will have to make findings about this in due course.

34. The sale was completed formally in late 2022. The purchaser Press Release said that the trading company was a leader in the field of the product. Y Co received almost £275 million. A further sum of £2.1 million was retained in another of the Husband's companies, G Co, to deal with potential future obligations or, if there were none, to be distributed. As I understand it, this was not the purchaser's requirement and there is no possibility of reclaim of

any of the proceeds by the purchaser. The Husband was not required to continue to work in the business, although I note that the CEO, Mr S, and the Chief Technology Officer ("CTO"), Mr M, do continue to do so. The matter came back before me on 7 October 2022. Fortunately, the Husband was now represented by his current solicitors and counsel. He undertook to preserve not less than £125 million in a form which is readily realisable and without risk. There were various directions for disclosure, such as that he produce a full copy of the share purchase agreement with the purchaser; the tax advice that had been provided to him; a full copy of the completion statement and the like. In addition, he was to provide a letter from Grant Thornton to confirm that there would be no UK tax on the sale proceeds. I directed section 25 statements and supporting statements from witnesses.

Open Proposals

35. Both parties have made open proposals. The Husband's proposal is dated 7 December 2022. On condition that no tax is payable, he proposed that the Wife receive a lump sum of £83.3 million by 31 January 2023. This is said to be approximately 30% of the overall assets. The Wife would be responsible for any tax on receipt of the sum, although it has never been suggested that there is any appreciable risk of such tax. The Husband would continue to pay the children's school fees. There would be no child support and no order as to costs, if the offer was accepted within 28 days. The Wife's open proposal is dated 13 January 2023. It says that Grant Thornton has confirmed that there will be no tax. The award should be in DKK as the funds are held in DKK. She seeks DKK 1.089 billion, or approximately £140 million, namely half of the overall assets. She will accept any tax risk, provided the Husband has followed the advice of Grant Thornton. If he has not done so, she seeks an indemnity. It has not been suggested that he has not followed such advice, which, as I understand it, was not to return to Denmark until after he had ceased employment with the trading company. Despite the earlier statement that he would likely need to work for the company for between two and two and half years, his employment ended and he did then formally return to Denmark around Christmas 2022. The Wife says that the children's educational costs should be shared equally. She reserved the right to equitable accounting of dividend payments but fortunately I have not been troubled by any of that.

Section 25 statement

36. The Wife's section 25 statement is dated 13 January 2023. She remains in rented accommodation in Denmark. She says that she embarked on, but did not complete, a degree in construction engineering. She then worked as a marketing assistant, before doing a course in landscape architecture. Thereafter, she was employed by the planning department of a Danish Municipality. She obtained a Master of Science in Landscape Architecture but she gave up work completely on the move to Austria. She says that all the family's capital was invested in the purchase of the trading company. A mortgage was taken on their property in Denmark, which was subsequently sold. The Husband's mental health had always been fragile. She says that she

had received a little less than £1.1 million since April 2020, of which £400,000 had gone on litigation costs, even though the Husband had received net dividends of £5.3 million in that period. He had been able to purchase a flat, via Y Co, for £1,176,000 and a boat, whilst she remained in a rented property. She did receive £523,000 in August 2022. In late 2021, the Husband was telling her that the company was "on the verge of collapse". It was an exceptionally worrying time for her. The Husband had never worked with the production equipment, so it cannot have been him that fixed the problem. It was a huge relief when his brother said that they had finally managed to release a non-infected production batch. Even then, however, she had been told that it had taken a "marked toll" on the company. Neither party had brought anything substantial into the marriage. The Husband had moved from one field to another closely related field. She says that he had travelled more than 100 days per annum for long periods of the marriage. They had agreed to do whatever it required to buy the company, including borrowing around £290,000 on their house, that had previously been mortgage free and cashing in his pension at a significant tax cost. They risked everything. I will have to make a finding as to this. The purchase of the trading company was a joint marital endeavour. They discussed the trading company quite extensively during the marriage. After the separation, the Husband merely continued the role he had undertaken during the marriage. Indeed, he had handed over leadership to Mr S in July 2020. He had only been working three days per week from June 2019 and then only one day per week from July 2020. He is a skilled businessman but he is not responsible for the scientific innovations and methods deployed in the trading company. The product has not changed. the product is a critical component of specialised therapies and vaccines. She did say, in May 2021, that she would accept 45% due to her belief that he would have to continue to work in the trading company after the conclusion of the litigation, but that justification has fallen away. This marriage was, she says, a true partnership of equals. The Husband would not have been able to participate in the buy-out if she had not agreed to re-mortgage the family home.

37. The Husband's section 25 statement is also dated 13 January 2023. He contends that the dominant factor in the division of the assets is his unequal contribution in creating the enormous wealth flowing from the sale of the trading company. He adds that his shares cost £310,000 in December 2017, shortly before the breakdown of the marriage. He contends it was his visionary leadership that led to the huge sale proceeds. Moreover, he says, all but one year of this work was conducted after the breakdown of the marriage. He says that there is nothing remotely conventional about turning £310,000 into over £250 million. It was achieved as a result of his specific strategic business acumen. He claims the family home in Denmark, which was acquired for over £300,000 and sold for over £900,000 was originally funded from his pre-marital assets but I am clear nothing turns on that. They received €173,000 from the sale of the Mediterranean Villa. He then says that the parties separated in January 2019, but it took until June 2019 for him to find an alternative flat. He had originally worked in research and filed a number of patents but he had been asked to move to XB Co in January 2007. He explained how the product worked. The process is, however, extraordinarily

complicated and sensitive. the product is manufactured from another substance. The CEO of X Co did not want to continue with the business due to the investment required to develop new drugs; the risk of failure; and the cost of updating the factory. The Husband had been tasked with finding a purchaser but had failed. He had therefore said that he would buy the company in November 2017. He made the offer with the intention of abandoning drug development and only manufacturing the product. He negotiated the retention of the Q Co royalty payments when they were due to expire. He made the drug development staff redundant. The purchase was eventually completed in December 2017. He paid £310,000 for his nearly 70%. X Co retained 8%. Even after the purchase, he says he still had some savings; the remaining equity in the Danish property and the Mediterranean villa; and some stock options in X Co. He calculates that these totalled £500,000. If the business had failed, he would just have had to find another job. In the worst case scenario, Q Co would have bought the business, although it is not clear to me why they didn't in 2017. He then describes the two initiatives he made in 2018, namely the new contract with Q Co and the stock he had bought from the foreign firm that had ceased operations. He deals with the involvement of M Fund as set out earlier in this judgment. In 2019, there were further amendments to the Q Co contract, which guaranteed revenue for ten years. He had been able to play Q Co off with threats to go to a rival. He then deposes to the move of the trading company into specialised therapy in 2020. He claims the entire credit for this development. He says that, at his direction, the company began to construct new laboratory facilities to research the use of the product in specialised therapy. These facilities were completed in April 2021 at a build cost of £5 million. The idea was to sell the research to companies conducting such therapies. There had been problems during Covid of obtaining raw materials. He had resigned as CEO in 2020 but he continued to make strategic and key decisions. By 2021, the trading company was being told, by the investment banks, that the total value was between £210 million and £393 million but that was before the batch infections. He brought in external experts to fix the batch infections, after the internal investigations had failed. The experts arrived and the problem was solved by February 2022. He says that Mr S offered to resign due to his failure to resolve the issue, but the Husband refused to accept his resignation. The sale process was able to resume in April 2022 after the successful production of batches of the product. He states that it was the new strategy of working in the field of specialised therapy that was very important to the purchaser. His contract ended on 31 December 2022, so he could move back to Denmark.

Supporting witness statements

38. He filed two witness statements in support. The first was from Mr T, who, prior to his retirement, had been the Chief Financial Officer ("CFO") of the trading company. He had been employed by the company from the mid 1990s to his retirement in 2021, although he remained a non-executive director until 30 September 2022. He had been offered 5.56% of the shares on the MBO, but on the basis that his shareholding would reduce to 5% with the employee share scheme. He paid £29,000. He says that the Husband had then

negotiated a 30% increase in prices with Q Co. The Husband's approach was bullish and he achieved most of what he wanted to achieve. Again, in 2019, the Husband renegotiated the Q Co contract favourably, obtaining a ten year supply contract and a royalty stream for seventeen years. He describes these contract renegotiations as "game changers". He deals with the plant and machinery upgrade. He mentions specialised therapy briefly but, as Mr Marks points out, he does not say that the Husband was responsible for that development. He does say that the Husband was still active after he resigned as CEO. He adds that he considers the M Fund offers were fair at the time and he would have sold to M Fund and then did sell 4.44% to Mr S at a price that valued the entire company at £72 million, although I do not, of course, know if there was any discount for a minority interest included in the calculations. He ends by saying that he considered the amazing increase in value was caused by five principal reasons, one of which was being seen as having the potential to manufacture improved products in the high priority specialised therapy space. The Husband did not micro-manage but saw the bigger picture.

39. The second statement in support was dated 12 January 2023 and came from Ms DE, Vice President of Corporate Finance at X Co. She says that she believes the Husband was pivotal to the MBO. X Co had known difficult decisions needed to be taken. X Co rejected the M Fund proposals as it wanted to retain its stake so long as the Husband was involved in the trading company, due to their faith in him. The Wife accepted both statements and did not require either witness to attend for cross-examination. Indeed, Mr Marks relies on these statements as part of his case.

40. I conducted the Pre-Trial Review on 18 January 2023. I made an injunction preventing either party from revealing, in effect, the details of the case to the children. On 24 February 2023, the Husband made an on account payment to the Wife of DKK 250 million, which is approximately £29.5 million.

The schedule of assets

41. The asset schedule for this hearing is, fortunately, virtually agreed. The proceeds of the sale of the trading company is held either in cash or bonds and totals DKK 2,349,561,431, which is £280,161,705. There is approximately £3.15 million held in G Co and Y Co, which includes the Danish apartment at £1.27 million, less a mortgage of (£750,000), and the deposit on a boat of £117,000. The Husband is owed £930,072, most of which is a tax rebate due. His other assets are negative to the tune of (£356,083) mostly as a result of tax due to HMRC. He also says he has other liabilities of (£73,202) which relate to a loan he has taken out in relation to the property he has purchased in Spain. This is the single dispute between the parties. The Wife's other assets are worth £173,612. There are pensions with a value of £128,971. The combined effect of all of this is that the Wife says that the assets are £284,196,586, whereas the Husband has them at £284,123,384. In the context of this case, the difference is completely insignificant. I do, however, have to remember that the schedule does not include the effect of the recent payment of very nearly £30 million to the Wife.

The parties' respective Position Statements

42. The Position Statement filed on behalf of the Wife by Mr Marks and Mr Lazarides at the commencement of the hearing is extremely critical of the Husband's argument that there should be a departure from equality based on special-contribution, reminding me that nobody has succeeded in the claim since 2014 and arguing that it is inherently discriminatory. Turning to post-separation accrual, they remind the court that there will be no future contributions to the trading company going forward. The value generated was only achieved at considerable risk to the Wife's share, which, they say, is particularly relevant in a case where the business nearly failed during the currency of the proceedings. They strongly dispute that there was a new venture, arguing that this was not assets created after separation but assets developed after separation. They also remind me that the Husband was not working full-time during the separation and that he accepted that his ability to focus had diminished as a result of his health difficulties.

43. The Husband's Position Statement points out that, at separation, the Husband's share of the business was worth only £33 million according to Mr Taylor, whereas, when sold, it was worth over £250 million. It is argued that the difference was the move into producing the product for specialised therapies and that this was tantamount to creating a new venture. The wealth generated after the ending of the partnership is not based on common endeavour. The sharing principle does not apply after separation. It is contended that the reference to contributions in section 25 would, in effect, have been airbrushed from the statute if not considered. In relation to the specialised therapy, it is contended that state of the art laboratories were built; researchers were employed; and the documentation produced by the investment banks in relation to the sale all refer to specialised therapy as being a strong driver of value.

The law I have to apply

44. 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, but, in the context of the size of the assets in this case, that is not going to be of any significance. I must then have particular regard to the matters set out in subsection (2), 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.

45. 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."*

46. 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.

47. 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 marital partnership;
(b) Compensation for relationship generated disadvantage; and
(c) Needs balanced against ability to pay.

48. It is absolutely clear that, in this particular case, there is no need at all to consider either compensation for relationship generated disadvantage or the parties' respective needs. Any award under either head will be insignificant compared to the respective entitlements under the sharing head. I need, therefore, merely to consider the law in relation to the two reasons that the Husband says justify a departure from equality in his favour, namely special contribution and post-separation endeavour.

49. Dealing first with special contribution, I accept that the concept does still exist and that it is likely to continue to do so until the Supreme Court says otherwise (see the Court of Appeal in Work v Gray [2017] 2 FLR 1297). The availability of the concept has, however, been significantly circumscribed over the years. Three elements are necessary. These are taken from paragraph [140] of the judgment of Holman J at first instance but approved in this form in the Court of Appeal:-

> *"(a) The characteristics or circumstances which would result in a departure from equality have to be of a wholly exceptional nature such that it would very obviously be inconsistent with the objective of achieving fairness for them to be ignored;*
>
> *(b) Only if there is such a disparity in the respective contributions of the parties to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares (thus if the court completely fails to undertake a comparative evaluation of each party's respective contribution [as Baker J failed to do in XW v XH [2020] 1 FLR 1015], a finding of special contribution will be flawed); and*
>
> *(c) The amount of the wealth alone may be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or some other field. A windfall is not enough."*

50. The second potential ground that is said, by the Husband, to justify departure from equality in this case is to be found in the concept of post-separation endeavour. There have been numerous authorities that have touched on this concept and it would not be remotely proportionate to review them all. Again, I accept that the courts have recognised that wealth generated after separation may not be regarded as the fruits of the marital partnership, thus justifying a departure from equality. One such example was identified by Mostyn J in JL v SL (No 2) [2015] 1 FLR 1202 where he said at [42]:-

> "*On the other hand there will be cases where the post-separation accrual relates to a truly new venture which has no connection to the marital partnership or to the assets of the partnership. In such a case the post-separation accrual should be designated as non-matrimonial property and save in a very rare case should not be shared."*

51. I further accept that it is possible to extend this concept to a company that has simply grown and prospered since the date of the separation. Mr Bishop refers me to the decision of Moylan J in SK v WL [2011] 1 FLR 1471, where the award was 40% to reflect three years' post-separation endeavour even though the business was the same business and merely grew conventionally. I do consider this to be somewhat of an outlier, particularly as it was a case where the husband had managed to lose a substantial portion of the proceeds of sale

of the business. It is not binding upon me. Indeed, I am of the view that, twelve years later, it would not be decided in the same way. There has to be something that removes a case from the principle first espoused by the Court of Appeal in Cowan v Cowan [2001] 2 FLR 192 at [70] where Thorpe LJ said:-

> "*In this case, the reality is that the husband traded his wife's unascertained share as well as his own between separation and trial, particularly committing those undivided shares to the investment in Baco. The wife's share went on risk and she is plainly entitled to what in the event has proved to be a substantial profit.*"

52. Mr Marks postulates a number of circumstances where it will be possible to establish post-separation endeavour. He identifies cases where there is still more to do after the date of the trial to harvest the asset (eg Evans v Evans [2013 2 FLR 999); cases where there has been a long and unjustified delay in bringing the application (eg S v S [2007] 1 FLR 2120); earn-outs or lock-ins (eg where the payer has to continue to work in the business in the future, despite the sale); truly new ventures, created, he submits, without the use of matrimonial assets; or where the payee has already been bought out, at a fair price, from the asset that has subsequently increased in value. I am certainly not prepared to accept that this is an exhaustive list but it does answer the point made by Mr Bishop that, to ignore post-separation endeavour, would fall foul of the requirement in section 25 to consider the parties' respective contributions. I am further not convinced that the "truly new venture" needs to be created without the use of matrimonial assets. It will depend on the circumstances, although the assets used may be a relevant consideration as to whether the circumstance justifies departure from equality.

53. My attention was drawn to a decision of my own, CO v YZ [2020] EWFC 62 where I said at [54]:-

> *"In general, post-separation endeavour is relied on to argue for a greater share of an increased value of the assets. I have always had real reservations as to the concept for the reason that, if the assets have fallen in value, it is difficult to see why the other party should not then argue that he or she should not have to share in that fall in value. Such difficulties are avoided if the concept is severely restricted in its operation. It is, of course, a very different matter if there has been a significant delay in bringing the application, such as in Wyatt v Vince, but that is not the case here. Just as the Husband has continued to run his businesses, so the Wife has continued her contribution in caring for the four children. Moreover, she can say with some force that he has been trading her undivided share. In this particular case, I will also have to consider the very significant losses that the Husband has incurred in other business ventures since separation that the Wife had no involvement in, or even, initially, knew about."*

54. Mr Bishop relied on Cooper-Hohn v Hohn [2015] 1 FLR 745 as another example of post-separation accrual reducing the award but Mr Marks points

out that, at [184], Roberts J found that the composition of the portfolio at the date of the trial was very substantially different in terms of its makeup from its composition at the date of separation. At [185], she considered the argument that he had just been trading a vehicle that dated from the marriage, but rejected it on the basis that it was the Husband's investment eye and ability to drive change that had achieved profit demonstrably in excess of normal returns and to ignore that would, in effect, be sharing his earning capacity after the date of the marriage. Whilst I can see arguments both ways, I am clear that I will be able to deal with this case on the basis of the principles set out previously, without undue reliance on Cooper-Hohn v Hohn.

55. There are a few further matters I must mention. The first is a potential language barrier. English is not the first language of either party. I accept that both speak it excellently, but there were times in the evidence of both when I had some trouble understanding what they were saying and had to ask for the evidence to be repeated. I must, therefore, take great care in assessing their evidence, as processing information provided in a foreign language may put the participant at a disadvantage. I must guard against the very real possibility that questions or answers or both are misunderstood or, at the least, nuances and shades of different meaning are lost in the process. I have taken all this into account in assessing the evidence in this case.

56. I have decided that I should give myself a Lucas direction. There are issues in the case as to the extent to which the parties have lied to this court or, at the very least, been economical with the truth. First, I must decide the extent of any lies. If I find that there have been lies, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that other matters asserted against that witness are true. A witness may lie for many reasons. They may possibly be "*innocent*" ones. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct; or out of panic, distress or confusion. It follows that, if I find that a witness has lied, I must assess whether there is an "*innocent*" explanation for those lies. However, if I am satisfied that there is no such explanation, I can take the lies into account in my overall assessment of the facts of the case and the truth of the various allegations raised.

57. Finally, Mr Marks asks why Mr S, the CEO of the trading company after the Husband, has not been called to give evidence. It is, of course, entirely a matter for the Husband as to what evidence he calls but Mr Marks draws my attention to the decision in British Railways Board v Herrington [1972] AC 877 to the effect that a court can draw inferences from the failure to call evidence that a party might have been expected to adduce. As it has transpired, I have not found it necessary to draw an inference against the Husband in this regard and I do not do so.

The evidence that I heard

58. By the standards of these cases, the oral evidence was brief and concise. In opening, Mr Marks submitted that the case could have been dealt with on

submissions but I take the view that he was not right about that, given that I have to make findings as to the Husband's case as to post-separation endeavour. The Wife gave evidence first. She told Mr Marks that her Husband was a really good salesman. She said he thinks creatively and is very persistent and very persuasive. She was asked about the investment in the trading company and she insisted that she had been told that everything was on the line. I accept that is what she was told. She thought the stock options that he did have could only be cashed in at certain times and not in December 2017, which I am sure was correct. She said that the investment in the trading company did make her nervous as all their eggs were in one basket. She said that the thought of losing your family home was worrying, particularly as they had three children. She added that she did trust him though. She said she only became aware of the much higher value of the business when her solicitors received the email from H's brother in May 2022 but she was not surprised by the price as the £600 million figure had previously been mentioned as the aspiration for value in 2025. She was, however, surprised by the fact that a couple of months earlier, she had been told she would have to apply for benefit as everything was about to be lost. This fear of losing everything had made her extremely worried as she did not know how she would support the children. I accept all this evidence.

59. Mr Bishop then cross-examined her. She denied that the parties had enjoyed a relatively modest standard of living during the marriage, saying that the standard was not modest by Danish standards. She accepted that the majority of the marriage had been spent living in Denmark, other than 18 months in Austria, two and a half years in a provincial city in England and the time in London at the end of the marriage. She said that she moved because the Husband's job required it. She stressed that the burdens on her were higher as the Husband spent more than 100 days each year away travelling. She acknowledged that the MBO was an exciting possibility and that they were both enthusiastic. The risk was for the children. She was pretty sure the company cost DKK 5 million, which the Husband had said in his earlier statements and Form E. I accept that is what he said, but I find that the total price was actually DKK 4 million and his share was DKK 2.8 million. She added that they had raised more than £310,000 and she was told it would have ruined the family if the trading company failed, as they had nothing else. I am sure that is what she believed. If they did have other money, she did not understand why the Husband cashed in his pension and paid 60% tax to do so. She said she did not know what he would have done if she had not supported it. He would, of course, have been unable to obtain the mortgage without her agreement and, on the balance of probabilities, I find that he needed that mortgage. I cannot see why he would have taken it out if that had not been the case. Moreover, it meant that the family home was in jeopardy if his income ended.

60. Mr Bishop turned to the issue of batch contamination. She said she had discussed the severity of this risk with the Husband. She was adamant that she had not been told that there was £5 million outside the company at the time of the batch failures. I accept that evidence. She said she did not have access to his bank statements and there was nothing to indicate that amount of capital in

his first Form E. He had just told her they had nothing; that they would be going bankrupt; and she would have to apply to the Municipal for benefits. I accept all that evidence. She said she had no information about specialised therapy. Whilst she said she could not contradict what he was saying, she did wonder why Mr S was not giving evidence for him. Mr S still works for the trading company. The Husband had stepped down in 2020 but, even in 2019, he had reduced his working days to three per week. Thereafter, he worked one day per week. I am absolutely clear that the Wife was a truthful witness, doing the very best she could to assist me.

61. The Husband then gave evidence. In answer to questions from Mr Bishop, he told me that, during the marriage, they did talk about his job but the Wife was not a sounding board. He would talk but would not get dialogue back. I am minded to accept this but it makes no difference to the case. When the MBO took place, he told the Wife and X Co that the only way the business could survive would be to sack 1/3rd of the employees. He said that he bought nearly 70% of the shares and paid DKK 2.8 million. He did not accept that Mr S was doing most of the work once he became CEO, but I am clear that he cannot be right about that, particularly as he was ill for quite a bit of the relevant period. He said that there were three strands to his work for the business. The first was what he described as "strategic/visionary". The second was building good people into the organisation. The third was to undertake major negotiations. He said that, after he resigned as CEO, he was still doing between 5 and 40 hours per week. He was heavily involved if a major decision had to be taken. At the time of the MBO, there was very little specialised therapy work done in the trading company, although it may be of significance that there was some. He said that they were asked for samples by customers and they just handed them over in the hope of getting a patent at a later date. He explained that specialised therapies are disruptive technologies and gave the reasons why. There were only a handful of such drugs approved in 2018. He said that the trading company could offer specific research showing the benefit of the product in developing such therapies. The forecast is that this research will generate £8 million per annum in 2025. Turning to the purchaser, he said that the sale did not revolve around EBITDA and multiples. The trading company was a strategic acquisition for the purchaser. It was one of a number of companies they had acquired in a relatively short time-frame. The purchaser is expecting specialised therapy to work in ten to twenty years. It is hugely important and they wanted their place in the market. He added that the purchaser was not interested in the product manufacture but this cannot be correct as the Press Release says that "the product is a critical component in the manufacture of innovative products, particularly for modalities such as specialised therapies and vaccines." I simply do not see why they would want the business if it was not to manufacture the product that the purchaser could then use. After all, they can undertake the other research themselves.

62. He was then cross-examined by Mr Marks. He told me that he did start talking to an investment bank about a sale of the business at the end of 2019. He began talking to others in May 2021, which was when the trading company was approached by F Co who were interested in a potential acquisition of the trading company. The presentations of the investment banks were given in

June 2021. He was asked why they had been given completely different figures for EBITDA to those given to Mr Taylor. For example, it was said they were given £13 million for 2021 and £17.8 million for 2022, whereas Mr Taylor had been given £7.66 million and £9.3 million respectively. The Husband suggested that the business had developed between the dates when Mr Taylor received the figures in October/November 2020 and those given to the investment banks in May 2021. He said quite a lot had been going on and it was an "exploding" business, where the figures can change greatly over a short time. Even if true, he had not arranged for Mr Taylor's figures to be updated, even when he was challenging Mr Taylor after his report had been received. He did say that, in the early part of 2021, they did not know how much of the product the new plant was going to be able to produce once it was up and running, which I do accept may be a fair point. He said they did have this information by May 2021. They had not had any failed batches by then, whereas they had previously anticipated at least one or two batch failures. He accepted that the brief to the investment bankers was for an expected sale in 2021, which did not proceed due to the production line becoming contaminated. This may be relevant to the post-separation endeavour point. The sale was resuscitated in April 2022, as soon as a successful batch had been produced and it had resulted almost immediately in a number of offers to buy the company.

63. He accepted that the MBO was a risky venture, albeit with significant potential upside. He agreed that he had described it in his first Form E as "entirely risk laden". He said that there was a real risk of the business not surviving. He was confident that he would have bounced back quickly from such a set-back, but I am not confident he would have found it quite so easy despite his undoubted skill sets. This is perhaps shown by the concern he expressed for the future in 2021. He accepted that he had asked for significant clarification of the Taylor report. He denied that this was all designed to drive down the valuation, saying they were questions to clarify points, but I am clear that attempting to reduce the valuation was the main objective. The crucial question was then put to him, namely that he had not once mentioned the new venture into specialised therapy to Mr Taylor. His response was lame to say the least. He said he did not believe it was odd that Mr Taylor had not mentioned these therapies in his report, but he then said he did not know why Mr Taylor did not question them about it. I am clear as to the reason for this. Mr Taylor had not had it drawn to his attention at all, so he was unable to ask questions about it. The Husband then said it did surprise him it was not in the report. Equally, he was not surprised by the valuation as it was in line with the M Fund offers and the deal done between Mr T and Mr S. The problem with this is that the figure is so much at odds with those being put forward by the investment bankers. This was compounded by the fact that the indicative figures suggested by the bankers had not been disclosed to the Wife's advisers at the time, notwithstanding the offer he had made to settle the litigation by paying the Wife £20 million on 14 April 2021, only some two months before.

64. Mr Marks retuned to the question of the financing of the MBO. The Husband repeated that he had cashed in his pension before the MBO. He accepted he paid quite a lot of tax. The difficulty with this is that, overnight, Mr Marks

produced a document that showed that the pension was not cashed in until the following year, 2018, when 60% of the value was paid in tax. He then accepted he had got it wrong, saying he could not remember and that he was suffering from depression at the time. I really cannot understand any of this. I can just about see why he would pay all that tax if he was desperate for the 40% of the value to invest in the MBO, but I cannot understand why he would do it the following year after the MBO had completed. Again, however, it is not relevant to anything I have to decide. He accepted that he had increased the mortgage and I am clear that this can only have been because he needed the money to invest in the MBO.

65. He was then asked about the very strong wording used in late 2021 about the likely failure of the trading company. He was referred to his then solicitors' letter dated 3 December 2021, which talked about a threat to the very survival of the business. He said the batch failures had the potential, if they extended for a very long time, to be fatal. He was then referred to other expressions, such as a reference to "what future, if any" the company had. He said it was a potentially terminal threat. He was referred to his statement in support of his adjournment application which said that "there is a very real risk that the company will have to shut down". He replied that the situation was a very serious threat to the company, but he was in distress when the statement was written, by which I assume he was attempting to suggest that this was the reason for any exaggeration. He then accepted that the Wife did not know that he had £4.5 million outside the business and that she had asked for disclosure, which he had not provided. He was referred to paragraph [23] of his statement which had said that, if the trading company shares became worthless, the family would be deprived of the vast majority of their financial resources and he would be concerned that he would not be able to meet his own financial needs, let alone those of the Wife and children. It was put to him that these were threats and he responded that it was a threatening time. He said he was in distress and this was his perspective. He agreed that he had told the Wife that she would have to apply to the Municipality for state benefits. All of this does him little credit but, again, it does not go to the issues I have to decide, other than that the Wife was just as at risk from a failure of the business as he was.

66. He was asked about the report prepared for the trading company dated 9 January 2020 about specialised therapy. It was pointed out to him that he was not one of the authors of the report, which included the CTO, Mr M, and Mr S. He said that it was his idea from the beginning of 2019. He added that, in 2018, the total spent on specialised therapy in the worldwide pharmaceutical market was only $X billion out of trillions of pounds of expenditure. He said that, after the M Fund approach, he thought they should dig into this. He was again asked why he had not given this report to Mr Taylor if it was so important. His response was that Mr Taylor had full access to him and Mr S, but not everybody could see what he could see. I take the view that it is impossible to see why Mr Taylor would have asked for the report without being pointed in the right direction. The Husband denied it was withheld. Mr Marks did not really know whether to put to him that it had been deliberately withheld or that it just wasn't important. All that I can say is that, if it was as

important as the Husband contends, it was definitely withheld. Mr Marks was also able to point out that, when Mr Taylor asked, on 31 December 2020, "what else needs to be taken into account", the minutes of the subsequent meetings contain not a word about specialised therapy. The Husband's only response was that Mr Taylor dealt with what he saw as important. He said in re-examination that the January 2020 document would have been exhibited to the Board Minutes, but this was subsequently checked and it was not. He then said that the trading company's four main competitors have not gone into specialised therapy. He could not remember when such work was first included on the trading company website. Mr Marks ended his cross-examination by putting it to him that it was the same company that was acquired via the MBO that was sold to the purchaser. He said that this could not be further from the truth, as it was a totally transformed company. I will have to make a specific finding as to this. I do proceed, however, on the basis that, overall his evidence has been very significantly undermined by the various reliability issues that I have referred to above.

My conclusions – special contribution

67. I propose to deal first with the question of special contribution. I have formed the very clear view that it is not a reason for departure from equality in this case. I will consider this in the light of the tests approved by the Court of Appeal in Work v Gray. I am clear that none of the three tests is satisfied. In relation to the first test, I do not find the work of the Husband in this case to be of such a "wholly exceptional nature such that it would be obviously inconsistent with the objective of achieving fairness for (his work) to be ignored". The Husband is undoubtedly a very good businessman. Following the MBO, he was shrewd enough to see that the research and development side of the business needed to be closed, but I would have thought any accountant would have been able to tell him that it was loss making and holding the company back. Indeed, this had been raised by X Co. He did very well indeed to renegotiate the Q Co contracts twice but the first was during the marriage. He is entitled to credit for the second, but I do not see how it takes this case into the realms of special contribution. Equally, it was obvious that the plant and machinery had to be replaced with modern equipment. It may be that he was helped significantly by a slice of good fortune in being able to obtain the alternative product from overseas at a bargain price, but good fortune does not equate to special contribution.

68. Finally, of course, there is the issue of the move into specialised therapy. I have to say that I would have thought that the question of whether the product could assist with such therapies would have been a pretty obvious question to ask, given the huge benefit of the product with traditional medicines. Moreover, the evidence was that there were some enquiries about this even in 2018, with free samples being delivered to those asking. In this regard, I cannot ignore the fact that, as late as early 2021, Mr Taylor was not even told about this development. Either it was unimportant or there was a failure to give full and frank disclosure, whilst trying to get the Wife to settle for £20 million. The Husband simply cannot have it both ways. Moreover, the Husband had a strong team alongside him. His name does not appear on the

January 2020 document, which was clearly the work of others. I remind myself that, throughout this period, he was only working three days per week and, shortly thereafter, gave up the post of CEO and was only working one day per week. Whilst I accept Mr Marks' point that we have no corroboration for his contention, basically raised for the very first time in January 2023, that this was his baby, I am prepared to accept that it was his idea to investigate the potential. It is, however, obvious that it was others that actually did the work. I am also minded to take the view that the firm was in the right place at the right time. The purchaser needed a product producer. They may have paid over the odds to acquire one, but it will be the purchaser who will develop these specialised technologies, with or without the use of the product. It will not have been the Husband who will have developed them. I can see nothing sufficiently exceptional to justify this as a special contribution.

69. The second test is that there needs to have been such a disparity in the respective contributions of the parties to the welfare of the family that it would be inequitable to disregard it. Again, I cannot see how the Husband can get within this test. In terms of work alone, the slightly odd aspect is that, from 2019 onwards, he was only working three days per week and, from July 2020, he was working one day per week. Throughout much of this period, he was weighed down by this litigation and his ill health. The Wife was, throughout, looking after the three children. I also remind myself that, during the marriage, she had additional responsibilities for them, with the Husband away from home for around 100 days per annum. I do not doubt that he worked very hard whilst employed by X Co. In the early years of the buy-out, I am sure he worked equally hard and there was the added worry that the business might fail, but the Wife shared that worry. When the purchaser bought the company, they retained Mr S and Mr M. They did not retain or, so far as I am aware, even seek to retain, the Husband. Unlike some cases, they clearly did not view his future involvement as crucial to the continued prosperity of the business. It follows that, for all these reasons, I cannot see anything close to the required disparity in contributions.

70. The third test is that the amount of the wealth alone may be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or some other field. A windfall is not enough. I recognise that turning £310,000 into over £250 million was an enormous achievement, but it did not involve making billions of pounds. Moreover, I do consider that there was an element of windfall in achieving such a high price so quickly compared to the valuations of Mr Taylor, M Fund and the Mr T/Mr S transaction. I find there to have been at least an element of being in the right place at the right time when the purchaser and others decided how valuable it was to acquire a producer of the product. I make one final point. The business nearly failed in early 2022. If it had done so, there would have been nothing to share, let alone sufficient for a special contribution. It was the external consultants who spotted the problems and rectified them, not the Husband. Whilst he may have requested their involvement, I find it impossible to

believe that someone else would not have eventually done so, if batch failures had continued. It follows that special contribution is not made out.

.

My conclusions – post-separation endeavour

71. I now turn to the second aspect, the assertion that post-separation endeavour is a good reason for departure from equality. Again, I have come to the conclusion that it is not. Perhaps inevitably, I take the view that some of the points raised above in relation to special contribution apply equally in relation to post-separation endeavour.

72. I propose to consider in turn the various situations where Mr Marks says that post-separation endeavour has been held to apply, before looking to see whether there are any other reasons for applying it in this case, as I take the view that Mr Marks' list is not exhaustive.

73. Some of the situations where post-separation endeavour might be a good reason to depart from equality do not apply in this case. There is no more to do to "harvest" the asset, as it has already been sold. There is no element of earn-out or lock in as, unlike some of the trading company executives, the Husband is no longer employed there. Third, there is no question that the Wife has already been bought out. That leaves two potential reasons raised by Mr Marks, namely undue delay or the development of a truly new venture.

74. Dealing first with delay, I am prepared to take the date of separation as being January 2019 for these purposes. The sale was completed on 30 September 2022, some three and three-quarter years later. I must, however, make the point that delay works both ways. The Husband could have petitioned for divorce earlier than the Wife did so. He did not. The Wife did so in June 2020. She issued her Form A only just over a month later. Thereafter, the case followed a relatively conventional path without undue delays, with a final hearing listed in April 2022. It could equally be said that it was extremely sensible to wait until the trading company had been sold, given that a sale had been planned for a long time. Significant injustice could have been done to one party or the other if the case had been heard before a sale. The final hearing in April 2022 did have to be adjourned until March 2023 but that was certainly not the fault of the Wife. The adjournment was caused by a combination of the failures of the product batches and the Husband's ill-health. All in all, I am clear that there has not been sufficient delay in this case to justify invoking a post-separation endeavour departure from equality. In fairness, Mr Bishop did not press this ground.

75. I now turn to the nub of Mr Bishop's argument, namely that there was a truly new venture that the Husband had created and developed since the breakdown of the marriage. I am clear that there was no such new venture. The trading company was a producer of the product during the marriage and it, the company, was sold as a producer of the product. I accept entirely that the purchaser may well have viewed the product as a potentially vital component in specialised therapy, but it was the product they wanted. As the Press Release says UK-based, the trading company is a leader in the field of

solutions using the product as well as being "a highly innovative and profitable company". It goes on to say that the product is a critical component in the manufacture of innovative products, particularly for modalities such as specialised therapies and vaccines. It is not the Husband, however, who has developed new ground breaking specialised therapies. It will be the scientists at the purchaser, or other competitors, who, hopefully, will do so. It is not certain that the product will be essential to these therapies, but, if it is, the trading company will just be the producers of the product, not the producers of the specialised therapy. I have said that I am prepared to accept that the Husband first sent the trading company in this direction but, even then, the work was done by others, such as Mr M, from whom I have not heard. The purchaser, for whatever reason, did not think that the Husband was sufficiently crucial for him to be kept on after the takeover. Finally, in this regard, it seems inconceivable that a company like the purchaser would not have identified the potential of the use of the product in specialised therapy themselves, even if the Husband had not done so. If the purchaser had then attempted to buy the company on the cheap, it would have been for the investment bankers to work out why a company like the purchaser would be interested. I am confident they would have done so. The new laboratory may have assisted to a certain extent, but it is inconceivable that the purchaser does not have such facilities many times over already, or at least the capability to do the work without constraint.

76. I have indicated that I am not prepared to accept Mr Marks' submission that his identified circumstances for establishing post-separation endeavour are exhaustive. I must therefore consider whether there are any other grounds for departure in this area. I am satisfied that the three other areas in which significant changes were made to the trading company after the MBO, namely closing the research and development department, renegotiating with Q Co and rebuilding the plant and machinery, were all conceived during the marriage. The second Q Co renegotiation did come later, but I do take the view that this was just the Husband's job, for which he was very skilled and able. Thereafter, the Husband did point the company in the direction of specialised therapy, but he did not consider it sufficiently important to tell Mr Taylor. Moreover, in terms of his actual workload, he was working three days per week from 2019. From mid 2020, he was only working one day per week, after he handed over as CEO to Mr S. He frankly accepted that his health was inhibiting his performance during this period. Whilst I accept that post-separation endeavour does not require the person claiming it to have been working 100 hours per week in the business, it could certainly be said that the Husband's hands were no longer on the tiller in this case.

77. Perhaps most importantly, the argument that he was trading his spouse's undivided share is particularly relevant here. At the time of the MBO, their former matrimonial home had been charged to assist with the finance for the share purchase. The Wife thought everything they had was at stake, regardless of whether it actually was or not. They were sharing the risk. In the summer of 2021, this possibility became very real. The company could have failed with everything lost. The Wife was told she would have to go to "the Municipality". I cannot ignore the dire warnings from both the Husband to the

Wife direct and the Husband's then solicitors to the Wife's solicitors. If the company had been lost, the Wife would have been quite unable to say she should receive £16.5 million, namely one-half of the value of the business at the date of separation. There had been no ring fencing of that sum to protect her from disaster. The fact that the Husband suggested external consultants be brought in to solve the problem and avert disaster, cannot, in my view, enhance his share in such circumstances. Once the problem was solved, it appears that potential buyers were falling over themselves to acquire the business, so he cannot rely on the effort required or the responsibility incurred in the process of the sale. All in all, I conclude that any possible argument that he has in relation to post-separation endeavour fails. He has, for understandable reasons, concentrated on the new venture argument. I am quite clear that this argument, first raised substantively on 13 January 2023, fails. The business, as sold, was not a new venture. It remained first and foremost a producer of the product. It follows that the assets of the parties are to be divided equally.

78. I agree that the lump sum should be denominated in DKK. It should be based on the Husband's figure of DKK 2,382,785,841 for the overall assets, as this figure takes into account his Nykredit loan, which undoubtedly exists. I do accept that it could be said that he has already incurred the costs of purchase of the property in Spain, whereas the Wife still has to buy her properties, but such arguments are de minimis in the context of this case.

79. There are a few consequential matters I must deal with briefly. I have divided the assets equally and the Husband is no longer working. It therefore follows that the children's school fees should be paid by the parties equally. I do accept that there could still be a justification for a child periodical payments order based on the children being based with their mother but, in the circumstances of this case, I take the view that such an order would be wrong and I decline to so order.

80. In the case I did the week before I heard this case, I praised the lawyers in the case for the way in which it had been conducted. Not a cross-word had been said. I made the point that this was so refreshing for a judge. Exactly the same can be said in this case and I repeat my praise. I also make it clear that nothing more could have been said or done on behalf of either party, such was the very high quality of representation that they each had.

Postscript

81. After this judgment was handed down, I heard argument on costs. I gave an extempore judgment. I accepted that this was a case where the presumption of no order as to costs applied, but I took the view that the Wife had succeeded entirely in her case at trial, justifying a costs order in her favour. I took into consideration a number of countervailing factors, including that significant costs would have been incurred in preparing the case to a point where it could be settled. In this particular case, I accepted that it was extremely difficult to settle the litigation until after the business had been sold. I decided that an

appropriate contribution for the Husband to make towards the Wife's costs was £250,000.

Mr Justice Moor
3 April 2023