Neutral Citation Number: [2024] EWFC 115

Case No: ZC20P04047

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London
Date: 15 May 2024

Before:

MR RICHARD HARRISON KC
Sitting as a Deputy High Court Judge

Re C (A Child) (Financial Provision: Non-disclosure)

BETWEEN:

LO — Applicant

and

RO — Respondent

Ms Alexis Campbell KC (instructed by **AFP Bloom LLP**) on behalf of the **Applicant**
Mr Simon Calhaem (instructed by **AMZ Law**) appeared on behalf of the **Respondent**

Hearing dates: 11, 12, 13, 14 and 15 March 2024

Approved Judgment

This judgment was handed down remotely by email.
The time of hand-down is deemed to be 2pm on 15 May 2024

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and

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

MR RICHARD HARRISON KC:

Introduction

1. This is an application under schedule 1 of the Children Act 1989. It concerns a girl called C who was born on 7 July 2014 and is now aged 9 ¾.

2. For convenience, I shall refer to the parties as 'the mother' and 'the father'. I do not intend any disrespect to either of them by so doing.

3. The parties' positions in these proceedings are completely polarised. The mother seeks the following provision for C:

    (a) £1,815,000 as a housing fund to purchase a property costing up to £1.7m on the basis of a trust, with the property reverting to the father (at the latest) at the conclusion of C's tertiary education.
    (b) £113,500 to fund moving expenses and furniture.
    (c) £311,490 as a single lump sum to fund the cost of C's private education for the next 9 years.
    (d) £1,040,000 as a further lump sum to cover C's maintenance for 9 years at the rate of £115,556 per annum.
    (e) £495,747 to discharge the mother's liabilities.

    The total sought by the mother is £3,775,987 of which £1,700,000 would be invested in a property which would eventually be recovered by the father or his estate.

4. By contrast, the father's case is that he should make no capital payment at all. Instead, he should pay child maintenance at the rate of £500 per month until the later of C turning 18 or completing her tertiary education.

5. Each party denies having any material assets and each asserts that the other party is substantially wealthy.

6. The stark contrast in their respective positions has resulted in the litigation being bitterly fought. Proceedings have now been ongoing since July 2020 (approaching four years). C is caught in the middle of this rancorous dispute.

Background

7. The father is a Lebanese national now aged 65 years. He was married to Ms A (I believe they are now divorced). Apart from C, he has six other children including five from his marriage to Ms A. He either has or had another wife called B who is the mother of his sixth child. While I am unsure whether he remains married to B, I do not believe that their relationship is ongoing.

8. The mother is now aged 49 years. Her family originates from Lebanon. She was born in Nigeria and holds British Overseas Citizenship. She has applied for full British nationality, but this application has yet to be determined.

9. The mother is the oldest of three siblings. She had a privileged upbringing. Her father was a wealthy businessman. From the age of six she was educated at a boarding school in Switzerland. In 1989, aged fifteen, she was sent to school in England. She has lived in this country since that time. Her two siblings were also privately educated at schools in Scotland and England.

10. Before the mother completed her education, her father purchased a luxurious six-bedroom apartment in Portman Square which was used by the family during the holidays.

11. During the 1990s, the mother's father moved from Nigeria to Angola where he had established a steel and manufacturing company, SMC Group, and in which he ultimately came to hold a majority interest.

12. On 25 January 2010 the mother's father died in an aeroplane crash. This shocking event had a devastating impact upon the family, both personally and financially. It also gave rise to a dispute, which remains the subject of ongoing litigation, between the mother and her siblings and one of her uncles in connection with her father's estate. I do not know the full detail of this dispute, but part of it concerns the ownership and control of the shares in the business previously owned by the mother's late father.

13. The parties met for the first time in the Autumn of 2013 in Lebanon. Although this was their first meeting, the father had enjoyed a good relationship with members of the mother's family. He had been a friend of the mother's late father. He also came from the same village in Lebanon as the mother's maternal family.

14. The meeting took place at the X Hotel in Beirut which was owned by the father. The mother had decided to approach the father to seek his assistance in connection with the dispute with her uncle. The mother hoped that the father would be able to intervene in the dispute and persuade her uncle to come to an amicable agreement. The parties ended the meeting agreeing to meet again in London.

15. Soon afterwards, the parties met in London as planned. They spent the night together at the Hilton Hotel where the father was staying. C was conceived as a result of this liaison. On the mother's case, they spent the next few days together. She asserts that the father told her that he had separated from his wife, suggested marriage and spoke about buying a property in London. Save that I find it unlikely that the father went so far as to suggest marriage, I broadly accept the mother's evidence. Although her account was wholly denied by the father in his written evidence, his position shifted during cross-examination.

16. In November 2013 the mother discovered that she was pregnant. Her evidence, which I accept, is that she contacted the father to let him know, speaking to him at a time when she was in Lebanon. The father responded by offering her a substantial sum of money to have an abortion. Her case is that he told her that were she to keep the baby, '*he would show me side of [him] that I did not know*'. Whilst it is unlikely that the mother is now able to recall verbatim the content of that conversation, I accept that he did say something to that effect in order to put pressure on the mother to terminate the pregnancy.

17. The mother's evidence, which again I accept, is that before returning to England she made contact with the mayor of the father's home village to ask him to speak to the

father. She then received a message from the father's wife to the effect that if she were to keep the baby and seek financial support from the father, she (the wife) would try to take the child away from her. The mother thus returned to London without achieving any commitment of financial support from the father.

18. On 7 December 2013 the father signed an irrevocable power of attorney in connection with his family home in Beirut in favour of his wife. I consider below the significance of this transaction and other transfers of assets which have taken place.

19. C was born in July 2014.

20. Following the birth, the mother suffered from post-natal depression and was diagnosed with a low thyroid condition and an autoimmune disorder.

21. C also suffered from poor health in the early stages of her life. She had multiple visits to the accident and emergency department and was diagnosed with a low immune system. She also contracted scarlet fever and other viruses.

22. After C was born, the mother (as I accept) contacted the father every year asking him to visit and for financial assistance. The father deflected her approaches with false promises. On one occasion, she encountered him in the street in London and he refused to acknowledge her.

23. Prior to C's birth, after failing to obtain assurances from the father that he would support her, the mother contacted her brother. He had given up his career in law in order to take over the running of his late father's business in Angola (the business which was subject to the dispute with the mother's uncle). The mother's brother agreed to assist her financially and honoured his promise to do so for several years.

24. With her brother's financial support, the mother was able to bring up C in an expensive part of London and to enrol C at a private school. In her oral evidence the mother said that her brother, as well as paying her rent (which cost up to £1,400 per week) and C's schooling expenses, would send her approximately £6,000 to £8,000 each month for her general living expenses.

25. In 2019 the position changed. The mother's brother was forced to close down the factory in Angola. He fell out with the mother and, as a result, ceased his financial support.

26. Inevitably this cessation of support had a dramatic effect on the mother's financial situation. She attempted to make contact with the father through his brother in order to seek his assistance, but to no avail.

27. On 15 October 2019, the mother's then solicitors wrote to the father asking whether he accepted that he was C's biological father, inviting him to agree to a DNA test if not, and inviting his proposals for financial support. The letter was sent by WhatsApp to the father's mobile telephone and its receipt was confirmed by the two blue ticks on the application. The father did not respond.

28. The mother had inherited assets from her father which notionally were valuable. In reality, as I address in more detail below, for a combination of reasons including the

economic and political climate in Angola and the dispute with her uncle, she was unable to access any of these. She found herself in a position where she was accumulating debt and having to rely upon the generosity of friends to manage day-to-day. She fell into arrears with the school fees. Eventually, the arrears reached a level at which C was forced to leave the school where she had been since her early childhood. For the last term of the 2022/2023 school year she did not attend school at all. Since September 2022 she has been attending a state primary school in Kensington.

29. Since August 2021 the mother and C have been living in a studio apartment owned by a company of which her uncle (a different uncle from the one against whom she has been litigating) is a shareholder. She has access to a second studio apartment which is used to store her belongings. She has been unable to pay rent and significant arrears have built up. The company has brought possession proceedings. These have been adjourned on a number of occasions. I am informed, however, that on 3 April 2023 an order for possession was made at Wandsworth County Court, the terms of which require the mother to give up the apartment by 17 April 2023. The mother's financial difficulties led, at one stage, to her electricity supply being disconnected and a pay-as-you-go meter being installed.

The litigation

30. The mother issued her schedule 1 application on 3 July 2020.

31. On 6 October 2020, DDJ Morris dealt with a first appointment on the papers. She listed a hearing to take place remotely on 21 December 2020. The order recorded that among matters to be dealt with at that hearing were questions of paternity, service and the future conduct of the proceedings including the need for a Financial Dispute Resolution appointment ('FDR'). The order provided that it should be served by post at the father's last known address and that he should be notified of the hearing by WhatsApp.

32. On 21 December 2020, the application was dealt with by DJ Hudd. The father, having been made aware of the proceedings, had instructed solicitors and was represented at the hearing by counsel. He did not attend personally; the order records that no application had been made to excuse his attendance and he was directed personally to attend all future hearings. The order, which was backed with a penal notice, also contained the following directions:

    (a) A requirement for the father to provide an email address for service in the event that his solicitors ceased to act for him, with permission to the mother to serve documents at that address;
    (b) The mother to serve a letter from her solicitors setting out her immigration status and that of the child by 4 January 2021;
    (c) Provision for DNA testing by Cellmark diagnostics or another approved tester in England and Wales, with a direction that absent compliance by the father with the testing the court might assume his paternity for the purposes of the proceedings;
    (d) The father to file and serve a Form E by 29 March 2021;
    (e) A mention was listed on 24 March 2021 and a hearing to determine the mother's legal funding application on 23 April 2021.

33. On 24 March 2021, the matter again came before DJ Hudd. The father did not attend and was not represented, his solicitors having by then ceased to act for him. The order recorded that the father had failed to comply with the previous orders requiring him to undergo DNA testing and to provide an email address for service. The court proceeded to make a declaration of paternity. It also made an order for substituted service by WhatsApp.

34. On 21 April 2021 DDJ Fox made an order for interim periodical payments at the rate of £110,000 per annum. She also made a school fees order and an order for legal funding. The order contains recitals as to inferences to be drawn from the father's failure to file a Form E or financial disclosure. Directions were given timetabling the matter for further hearings including a FDR.

35. On 29 June 2021, in the light of the father's ongoing failure to engage with the proceedings and his non-compliance with court orders, HHJ Harris vacated the FDR and listed the matter for a final hearing on 6 September 2021, although in the event this hearing came to be relisted on 2 November 2021.

36. On 2 November 2021, the final hearing came before DJ Mulkis. The father, once again, did not attend the hearing. He had failed to comply with the court's previous orders. The order records that as a result of his non-compliance with financial orders he had arrears in the total sum of £177,919. In his absence the court ordered him to pay a lump sum of £1,928,750 to enable the purchase of a home on trust for the benefit of the child. He was also ordered to pay a further lump sum of £1,351,490 to meet the education and maintenance needs of the child.

37. These orders led the to the father's re-engagement. On 30 December 2021, he filed an application to set aside the final order and all other orders made after 21 December 2020 on the ground that he had been unable to participate in the proceedings as a result of a serious deterioration in his mental health. He maintained his previous denial of paternity in respect of C.

38. In his set aside application the father stated that shortly after the making of the order dated 21 December 2020 he had suffered from '*a serious mental breakdown which has prevented him from further engaging in these proceedings (as well as his usual day to day life and activities)*' and that he only learned of the final order on or shortly before Christmas Day 2021 '*soon after he was able to return home from therapy*'.

39. On 4 March 2022 HHJ Hess gave directions for DNA testing and timetabled the matter to a further hearing.

40. On 19 July 2022 HHJ Hess set aside the orders of DJ Mulkis and DDJ Fox. He made an interim order for the father to pay child periodical payments at the rate of £1,250 per month and an order for him to pay £50,000 in respect of costs. Further directions were given.

41. HHJ Hess dealt with a further direction's hearing on 15 September 2022 and then conducted a FDR on 30 January 2023. This did not result in settlement. The proceedings were listed for a further interim hearing on 17 May 2023.

42. On 16 May 2023, without attendance and by consent, Recorder Allen KC vacated the hearing listed to take place the following day and gave further directions. The matter was relisted for a further hearing on 1 August 2023.

43. On 31 July 2023 (i.e. the day before the hearing) the mother made an application for various orders, including:

    (a) the joinder to the proceedings of the father's wife, his two sons J and H and a Nigerian company to which I shall refer as Property Services Ltd;
    (b) freezing orders against the father, his wife and his two sons;
    (c) an order setting aside the transfers of properties by the father to his wife and his two sons.

44. On 1 August 2023, DDJ Butler joined to the proceedings the father's wife and sons and Property Services Ltd. He made an order for legal funding. He also made a freezing order. He gave various other directions including provision for the proceedings to be transferred to the High Court, subject to the approval of Peel J.

45. The father then sought to appeal the order of 1 August 2023 and applied for a stay.

46. On 4 October 2023, HHJ Evans-Gordon granted a stay, listed the appeal and gave directions including for the filing of points of claim and points of defence.

47. In the meantime, the matter came to be considered by Peel J, who gave approval to the case being transferred to be heard at High Court level.

48. On 31 October 2023, the matter came before me. I set aside the order joining the various third parties. The mother had filed points of claim in which she averred that various transfers of assets to the father's wife and sons should be set aside. Her points of claim did not, however, seek to challenge the ownership of those assets. A recital to my order records the mother's intention to make a set aside application under s 423 of the Insolvency Act 1986 and I gave directions in anticipation of that application being issued.

49. On 20 November 2023, HHJ Evans-Gordon made an order allowing the appeal against the legal funding order made on 1 August 2023. She refused a renewed application by the mother for legal funding. She made an order for costs against the mother to be summarily assessed on a subsequent occasion.

50. On 11 December 2023, I discharged the freezing order previously made on 1 August 2023 for reasons I gave in an *ex tempore* judgment. I made an order for costs against the mother to be summarily assessed at the final hearing. I refused an oral application for further legal funding and gave various other directions.

Evidence

51. In addition to the substantial written evidence before me, I heard oral evidence from the mother and the father and from Nigerian lawyers instructed by each of the parties.

52. I found the mother to be mainly truthful as a witness, although her evidence was somewhat chaotic in its presentation (this was caused in part by the fact that she has acted in person for periods of time). The mother is hugely distrustful of the father and feels a deep sense of grievance about his failure to provide her with anything other than very modest financial support in circumstances where she firmly believes that he has very considerable resources and could easily afford to support her and C at a high level. Her animosity towards the father has prevented her from adopting a realistic approach in relation to C's needs and has resulted in her presenting a case which, in my view, is exaggerated.

53. I also consider that there are aspects of the mother's evidence where has not been frank with the court, in particular in relation to her current housing situation and her access to legal funding.

54. The mother has been living in a property owned by her uncle's company. She has accrued substantial rent arrears. At various hearings she has asserted that as a result of possession proceedings brought by her uncle she was about to be evicted. To date, however, this has not come to pass. The possession proceedings have been repeatedly adjourned. I have been informed that at the most recent hearing in the Wandsworth County Court a possession order was in fact made which will require her to leave the property by 17 April 2024. Despite this, I do not believe it is likely that the uncle will in fact seek to enforce his order and make the mother and C homeless. As well as making his flat available to her, he has also provided the mother with ad hoc financial support and, as far as I am aware, he continues to do so. This is not consistent with the notion that he is about to evict her onto the street. I think it is likely that the uncle is deeply unhappy at having to house his niece rent-free for a prolonged period of time and that he has brought the proceedings in order to demonstrate that his charity cannot be relied upon.

55. I do not consider that the mother's evidence in relation to her ability to obtain legal funding is at all satisfactory. She has made applications for legal funding and asserted that she has no means of funding representation in these proceedings other than by obtaining funding from the father. Her inability to pay for her solicitors has led to her acting in person for periods of time. In the run up to the final hearing, however, the mother has been able to procure a form of litigation loan in the sum of £136,292 from a lender, to whom she was introduced by a friend of hers. The lender is not the mother's friend and I consider it highly unlikely that he would have advanced such a large sum to her without any assurance of repayment. It is likely, in my view, that in order to obtain this loan the mother will have prevailed upon an unidentified third party to provide Mr Forte with a guarantee. My suspicion is that the third party in question is likely to be the mother's uncle; whomever it may, I do not consider that the mother has been entirely open and honest as to the means by which she obtained this loan.

56. In my judgement, the deficiencies in the mother's evidence stem from a desire on her part to present her case, as she sees it, in the best possible light. She is loath to make concessions which she perceives might harm her case and result in the father getting away without paying her what she considers he ought to pay. I do not, however, find (as the father wishes me to) that I can infer from the mother's lack of frankness that she has access to a significant pool of assets from which she could meet C's needs or that she currently has an earning capacity.

57. Having observed the mother carefully, it was obvious to me that the proceedings have taken a toll upon her. She has, in my view, been living and litigating under enormously stressful circumstances of financial insecurity which have forced her to rely upon the good-will of others to meet her needs and have obliged her to remove C from a private school at which she was thriving.

58. Although the mother has not been entirely frank and her claims are tainted by exaggeration, I have reached the conclusion that she has been truthful in relation to the most important aspects of her evidence: the history of her relationship with the father and her own lack of resources. I am unable to accept the father's suggestion that she has doggedly pursued this application despite her ability to access resources running to several millions of pounds. I consider it inconceivable that she would have allowed arears to build up at her daughter's school to an extent that she has been required to leave the school if that were the case; nor would the mother have chosen to live in a wholly inadequate studio flat if she could afford otherwise or if she had the ability to generate a significant income.

59. So far at the father is concerned, I regret to say that I found him to be dishonest as a witness.

60. English is not the father's first language and he gave his oral evidence with the assistance of an interpreter. Nevertheless, he understands and speaks English sufficiently well that he responded in English to some of the questions which were put to him without calling for the interpreter's assistance. There were a number of instances when his oral evidence was directly in conflict with his written evidence (which he had adopted in examination-in-chief on oath). There were occasions when he avoided answering questions which were put to him by giving answers which were not on point or intended to deflect (*"I don't know", "I don't remember", "maybe", "if you say so", "I don't care"*). Some of his answers were laced with sarcasm and at times he gave the impression that he found the process amusing, smiling or even laughing as he gave his evidence. During a break in his evidence which followed a period of cross-examination in which he had been caught out in a serious lie relating to his mental health (see below), it was made known to me that he left the witness box and approached the mother who was sitting with her legal team in the court room. He spoke to her volubly to the extent that a member of court staff intervened to ask him to leave the courtroom. Upon the resumption of the hearing, the father told me that he had asked the mother for her forgiveness. He did not volunteer what he considered that she needed to forgive.

61. My overall impression of the father is that he is self-centred and manipulative. He has enjoyed considerable success in business during his life and he is accustomed to getting his own way. He has no empathy for the mother and appears to take no responsibility for the fact that it was through his own actions (just as much as hers) that C came to be conceived. He has provided C with minimal financial support and shown little or no concern for her welfare.

62. The most troubling aspect of the father's evidence concerns the case he mounted in support of his application to set aside the final order previously made by DJ Mulkis. In the father's first witness statement dated 30 December 2021, he sought to explain his failure to engage in the proceedings by reference to his mental health. He related that he

had been suffering from depression for a number of years. This, he said, had become worse as a result of his business difficulties; in 2020 his mental health declined still further after a number of loved ones were killed in an explosion in Beirut harbour. On his case, he was '*toppled over the edge*' following the issue of these proceedings and the revelation that he might have a child with a woman he hardly knew who was claiming substantial sums of money from him. On the father's evidence, this revelation coupled with the service of proceedings caused him '*unbearable anxiety*' such that he '*ended up falling into a deep and rather frightening mental state where [he] began having suicidal thoughts and plans*'. As a consequence, on his case, he was referred by his wife and other family members to a psychiatrist and received psychiatric treatment from a Dr F and his team for approximately a year while staying at his country residence located in a remote village in Lebanon. According to the father's evidence he was not able to return to his Beirut home until 24 December 2021.

63. The father's case as to his mental health was supported by a written report from Dr F, which the father exhibited to his witness statement. In his oral evidence the father said that the report was '*100% true*' but also that he had not read it. In the report, Dr F set out that the father had been under his '*direct supervision*' since 27 December 2020, having been admitted into the psychiatrist's care by members of his family. The psychiatrist said that he had been working alongside a team of therapists providing the father with intensive psychiatric treatment. He expressed the opinion that, based upon information provided the father's wife and daughter and his own assessment and observations of the father, he was '*left in no doubt that [the father] was suffering from symptoms of a psychiatric illness clinically consistent with various causes (but the trigger of which appears to have been the realisation that he may have a child with a past acquaintance).*' He opined that the father's symptoms were consistent with a major depressive disorder and not easily fabricated. He considered that the father had not been fit to engage in legal proceedings, especially when the subject matter of those proceedings had been the trigger for his mental breakdown.

64. Dr F stated that as a result of the father's condition he had advised him to spend time away from his regular surroundings and as a consequence (in the absence, for Covid reasons, of an available place at a specialised centre) the father had stayed at his countryside home; the psychiatrist said that he had allocated a member of his team to stay with the father at all times. On the father's evidence, this had remained the position until 24 December 2021 (approximately a year later).

65. The father claimed in his statement that on his return to his home, his wife handed him various documents relating to the proceedings, including the order of DJ Mulkis. He then made contact with his solicitors in England and consequently the set aside application was issued on his behalf on 30 December 2021 (i.e. six days later).

66. The father's evidence as to his mental health and inability to take part in the proceedings was obviously key to procuring the setting aside of DJ Mulkis's order.

67. During the course of the oral evidence a very different picture emerged from that set out by the father in his witness statement.

68. First of all, as I have recorded above, I find that the father's evidence that he first learned of C's existence at around the time these proceedings were initiated is untrue. Both he

and his wife were made aware of the pregnancy in 2013; the mother was in regular contact with him after C was born. Thus, one of the asserted triggers for the collapse in his mental health was false.

69. More significantly, during the course of cross-examination, it emerged that the suggestion that the father had been confined to quarters in his country house in a remote village for about a year was wholly false. On the contrary, as the father accepted in his oral evidence, over the period in question he had travelled to Nigeria on a regular basis to visit his sons, '*maybe*' as often as every week. Indeed, on 28 January 2021 (about a month after the date upon which the father had allegedly become confined in his Lebanese country house) his former solicitors wrote to Cellmark Diagnostics in connection with proposed DNA testing. They stated that the father was in Lagos and provided a Nigerian telephone number for him. I am entirely satisfied that his solicitors would not have made this positive assertion as to the father's whereabouts unless it was based upon their current instructions and was true. I do not accept the suggestion put forward by the father in re-examination that the letter might have been written on the basis of historic instructions given by him the previous month. In any event, as I have said, the father himself accepted in cross-examination that he was travelling to Nigeria in that period, before appearing to back-track after the significance of this admission dawned upon him. On 26 October 2021 documents were served upon the father's wife at his matrimonial home. She completed a notification slip stating that '*My husband resides abroad and I am not aware of the date of his return*.' This further corroborates the fact that the father was in Nigeria at that time and not staying at his country home.

70. It follows from what I have set out above that the father procured the setting aside of DJ Mulkis's order by fraud. He presented an entirely false case to the court supported by a psychiatric report, the content of which was untrue.

71. Apart from the father's false presentation as to his previous non-engagement with the proceedings, there are other aspects of his evidence which were clearly untrue. In his written evidence (paragraph 17 of his first statement), the father denied the mother's allegation that on their first meeting he told her that he was planning to travel to London or to buy a property in London. He went so far as to say '*I have never in my life considered buying a property in London and neither did I ever intend on meeting*', a stance he initially maintained in cross-examination. As the cross-examination developed, however, the father admitted that he had indeed been involved in looking for property in London with the mother. Pressed as to the parts of London where he had been looking, he said '*anywhere… at that time I was a multimillionaire. I had millions*'. In response to the suggestion that he could have afforded a property costing £4 million, he responded '*maybe £24 million or £55 million. I don't care*' (this response was intended to be sarcastic, but also revealed that he had very substantial wealth at that time). He later said that he had been to London three or four times, looking to buy property.

72. At paragraph 26 of his first statement, the father claimed that after the night he spent with the mother which led to C's conception, he did not then hear from her for another two years. In cross-examination, the father initially denied that the mother had contacted him upon discovering her pregnancy. When pressed, however, he then accepted that '*maybe*' she had called him '*many times*'. He later said that she had called him '*maybe 30 times, even 40 if you like*' and spoke about feeling ashamed about his marital

infidelity. Similarly, it was put to the father that following C's birth she had been unwell and the mother had called him '*many times*' seeking his help to find out what was wrong with her. He first denied this, before saying '*I don't know. Maybe. There is nothing wrong with our family*'. He then reverted to his denial in voluble and emphatic terms '*I swear no'; 'No I swear by Allah*'.

73. Another area where the father's evidence has been riddled with inconsistencies concerns his residence. In his Form E dated 16 July 2022 the father stated that his '*present residence*' was an apartment ('his FMH') previously owned by him which he had transferred to his wife. He said he lived there with his wife, his son and his daughter. This is also the address he gave in his first two witness statements (his second being dated 25 January 2023). In his third and fourth witness statements he gave as his address a property in the village of Jwaye where he claimed to have stayed for most of 2021 (although he did not provide the actual address of the property). At the start of his oral evidence, when asked to state his address, he sought clarification as to whether he should provide his address in Lebanon or Nigeria. Later in his oral evidence, he suggested that he had ceased living in his FMH in 2020 as he felt ashamed about having fathered C. He then sought to clarify that '*maybe*' he had moved out in 2021 save for periods when his wife was not staying at the property. When asked to explain why he had filed statements giving this as his address if he no longer lived there, he said '*tomorrow it's my home*'. I found the father's evidence wholly unconvincing. I find that throughout these proceedings he has continued to have the use of his FMH as his main home, notwithstanding his divorce and the transfer of the property to his wife. He has also had the use of a country home.

74. When the father travels to Nigeria he has the use of a rented property in Lagos, which has been his home there for many years. So far as the Lagos home is concerned, the father produced a document which he said was a Notice to Quit in respect of the property. The notice, however, referred to a neighbouring property which the father said in evidence was the home of his landlord. In my judgement, this notice was not a genuine document; it was concocted by the father to give the false impression that his financial situation was so precarious that he was at risk of eviction from his Nigerian home. In his replies to questionnaire the father was asked to provide the address of the property where he stays in Nigeria. He avoided the question, giving the answer '*The respondent stays with family members in Nigeria*'. This answer was untrue.

75. I have set out above some of the more striking examples of the false evidence given by the father. They are not the only examples. I have given myself a *Lucas* direction and reminded myself that a witness may lie for a number of reasons including a desire to bolster a case which is true. The mere fact that he may lie about one or even several matters does not mean that I should reject the whole of his evidence. Telling a lie in relation to a factual matter in dispute does not necessarily mean that the other party's case is true. A lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth: *Re H-C (Children)* [2016] EWCA Civ 136 at paragraphs 97 to 100.

76. Ultimately, I have come to the conclusion that the father's motivation for lying has been to conceal his true financial position in order to defeat the mother's claims. His lies have been so extensive and so serious that I am unable to attach any weight to his evidence unless corroborated by other reliable evidence. The false case which he deployed to set

aside the previous final order was a calculated fraud part of which involved the production of a psychiatric report containing false information. This requires me to be sceptical of written documents produced by him to support his case. Where the father's evidence conflicts with that of the mother, I generally prefer her evidence.

77. I heard oral evidence from the mother's Nigerian lawyer, Mr Caxton-Martins. I though he was a helpful witness and accept his evidence.

78. I also heard oral evidence from the father's Nigerian lawyer, Mr Shoyedi. I found him somewhat less convincing than Mr Caxton-Martins. I find it troubling that he exhibited to his statement the alleged Notice to Quit produced by the father without commenting on the fact that it plainly related to a different property. He does not hold himself out as an expert valuer of property and I consider that he may have over-stepped the mark in passing comment upon valuations obtained on behalf of the mother. I do, however, accept the evidence he gave in relation to the transfer of the Property Services Ltd shares by the father to his sons and the circumstances which led to a long delay before the transfers were properly registered.

Legal Framework

79. The mother's application is brought pursuant to schedule 1 of the Children Act 1989. This empowers the court to make a range of orders for the benefit of the child and is most typically deployed to provide for housing and maintenance. In exercising its discretion under schedule 1, the court is required to have regard to paragraph 4 of the schedule which provides as follows:

> 'In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances including—
>
> (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
> (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
> (c) the financial needs of the child;
> (d) the income, earning capacity (if any), property and other financial resources of the child;
> (e) any physical or mental disability of the child;
> (f) the manner in which the child was being, or was expected to be, educated or trained.

80. In his recent decision, *Y v Z* [2024] EWFC 4, Peel J summarised the key principles to be drawn from the authorities in which schedule 1 has been considered as follows:

> "i) The main orders which Schedule 1 entitles me to make are:
>
> a. Settlement of property, which invariably will be on a trust, licence or lease arrangement such that the payer retains ownership thereof, and the payee is entitled to occupy with the children during their minority,

or until conclusion of tertiary education; **Re A [2015] 2 FLR 625** and **UD v DN [2021] EWCA Civ 1947**.
b. Lump sum or sums for the likes of furniture, car, and clearing debts.
c. Child maintenance (secured or unsecured).

ii) Each such order, by the wording of the statute must be "for the benefit of the child", or made direct to the child (which will be very rare).

iii) The court shall have regard to the matters set out at para 4 of Schedule 1 in the exercise of its discretion.

iv) Although para 4 does not expressly refer to the welfare of the child, in the generality of cases welfare will be a constant influence on the discretionary outcome; **Re P [2003] EWCA Civ 837** at para 44.

v) Nor does para 4 refer expressly to standard of living, although in my judgment that is likely to be a highly material factor in many cases, particularly those which fall into the so-called "big money" category.

vi) In **Al Maktoum (supra)** at para 91, Moor J suggested that "…the children should be able to have a lifestyle that is not entirely out of kilter with that enjoyed by them in Dubai and that enjoyed by [the father] and his family". In **Collardeau-Fuchs v Fuchs [2022] EWFC 135** at para 119, Mostyn J observed that standard of living before breakdown of the relationship "… should not however be allowed to dominate the picture as there will be many children, particularly children dealt with under Sch 1, who will not have experienced a standard of living within a functioning relationship either because the liaison between the parents was very brief, or because the child was born after the relationship had come to an end". In my judgment the relevance of the standard of living during the relationship, and the standard of living of each party after the end of the relationship, will vary from case to case, and, as was said at para 21 of **Re A (supra)**, will have to be seen in context.

vii) The court will ordinarily determine the claims in sequence as to (a) property, (b) lump sum or sums, and (c) child maintenance; **Re P (supra)** at para 45.

viii) The court deals with property first because, as stated at para 22 of **Re A (supra),** "The nature of the child's home environment provides the obvious base line from which to consider commensurate levels of maintenance and is as good as any other".

ix) Child maintenance can be interpreted sufficiently broadly to include elements referable to the claimant in his/her capacity as the child's carer; **Re P (supra)** at paras 48-49. For many years this proposition, or concept, was known as the carer's allowance. More recently, at para 129 of **Fuchs (supra)** Mostyn J has suggested referring to it as a Household Expenditure Child Support Award [HECSA]. Whatever terminology is applied, the principle is clear, although its application is highly discretionary. It is not always easy to draw a bright line between budgetary items to which the

claimant has no entitlement as being exclusively personal to him/her, and personal items which may reasonably be claimed as being necessary to discharge the carer's duties, including items which help sustain the carer's physical/emotional welfare; **Re P (supra)** at para 81. The court "… has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child"; **J v C (supra)** at 159H.

x) The court should "not generally attach weight to the risk that the father may reduce or withdraw his support when the child comes of age (or ceases education or training) thereby obliging the child to adapt to a lower lifestyle at that time"; **Re P (supra)** at para 77(iii).

xi) In general (and particularly in the bigger money cases), the court is entitled to paint with a broad brush and will not ordinarily need to descend into a line-by-line budgetary analysis; **Re P (supra)** at para 77(i) and **Fuchs (supra)** at para 129(f).

xii) Ultimately, "the overall result… should be fair, just and reasonable taking into account all of the circumstances"; **Re P (supra)** at para 76(viii)

81. I have been referred to the decision of Mostyn J in *Seymour v James* [2023] EWHC 844 (Fam). He held that the Child Support Agency formula '*provides a useful and logical starting point*' in relation to applications for child maintenance where the income of the payer exceeds the statutory ceiling of £156,000 for the purposes of the Child Support Act but is less than £650,000. The formula was not, however, relevant in cases where the court was being asked to make what he had previously described in *Fuchs* as a 'Household Expenditure Child Support Award or HECSA'. He proceeded to hold, however, that in certain respects the formula required some adjustment and provided a table at the conclusion of his judgment setting out the outcome in different scenarios on the basis of the adjusted formula.

82. In *Y v Z* Peel J described the table as '*helpful but not determinative*'. He observed that it is of no application in the following categories of case:

a. The child maintenance claim includes a HECSA or carer's allowance (most typically, in Schedule 1 cases);
b. Where there are four or more relevant children;
c. Where the payer's income is largely unearned;
d. Where the payer lives largely off capital;
e. Where the payer's gross earned income exceeds £650,000 pa.

In my judgement, the table is also of no application in cases where the payer has failed to provide full and frank disclosure of his assets, leaving the court in the invidious position of having to draw inferences as to his ability to pay.

83. My attention has been drawn to *Al-Khatib v Masry* [2002] 1 FLR 1053 and *NG v SG (Appeal Non-Disclosure)* [2012] 1 FLR 1211 as to the court's ability to draw adverse inferences from a party's material non-disclosure. In the second of these cases, Mostyn J

conducted a review of the relevant authorities and summarised the position at paragraph 16 of his judgment as follows:

> 'Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:
>
> (i) The court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.
> (ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.
> (iii) If the court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.
> (iv) In making its judgment as to quantification the court will first look to direct evidence such as documentation and observations made by the other party.
> (v) The court will then look to the scale of business activities and at lifestyle.
> (vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.
> (vii) The *Al-Khatib v Masry* technique of concluding that the non-discloser must have assets of at least twice what the claimant is seeking should not be used as the sole metric of quantification.
> (viii) The court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that the court should be drawn into making an order that is unfair to the claimant.'

84. The *Al-Khatib v Masry* technique described by Mostyn J arose in the context of proceedings under the Matrimonial Causes Act 1973 ('the 1973 Act'). Its equivalent in schedule 1 proceedings would be to draw the interference that the respondent has resources of a scale whereby they can meet without difficulty the award sought by the applicant. Although Mostyn J suggested that this should not be used as the sole metric of quantification, in *Moher v Moher* [2020] 1 FLR 225, the Court of Appeal declined to endorse this proposition and instead made clear that the court is not *required* in all circumstances to attempt to quantify the assets of a non-disclosing party: the extent of that party's non-disclosure may make reliable quantification, even on a very broad basis, impossible or the exercise may be disproportionate. The court must always be astute to ensure that the non-disclosing party does not achieve a better outcome by virtue of their non-disclosure; to do otherwise would amount to a 'cheat's charter': see *Moher* at paragraphs 90 and 91.

85. Ms Campbell KC has referred me to *AZ v FM (Capitalisation of Child Maintenance)* [2021] 2 FLR 1371 where Mostyn J held that the court has jurisdiction under the 1973 Act to make a lump sum order by way of commutation of future child periodical payments. He emphasised, however, that it would rarely be appropriate to exercise this jurisdiction holding at paragraph 58:

'I make clear that although I am satisfied the jurisdiction exists, and that in this case the trial judge was entitled to exercise it, it will remain a very rare bird indeed. In this case the Child Support Act 1991 did not apply as the husband was habitually resident in the USA. The combination of: (1) incessant litigation, on which the trial judge found the husband thrived, (2) repeated defaults on the part of the husband with the maintenance obligation, and (3) the age of the child and the relatively short period until the maintenance liability expired, all militated strongly in favour of a capitalisation and the ending of financial links between the parties. In the overwhelming majority of cases, however, the risks and uncertainties inherent in capitalisation will lead the court, where it has jurisdiction, to make, or continue, a traditional order for periodic payments. In most cases where the court is considering a variation of a child maintenance order the Child Support Act 1991 will potentially apply in the sense that it would be open to either party to apply for a statutory assessment under the Act, replacing the order, once 12 months had expired following the making of the order. As a general principle, it would not be a proper exercise of the court's powers to capitalise periodical maintenance and to abrogate that right. Therefore, it seems to me that capitalisation could only properly be considered where the 1991 Act could not apply, because, for example, one of the parents or the child is habitually resident overseas, or because the child is over 19.'

The parties' resources and their incomes and earning capacities

86. I turn now to consider the financial resources and the incomes and earning capacities of each of the parties.

<u>The mother</u>

87. In her Form E1 dated 16 September 2020 the mother set out that she had assets with a total value of just under £9m. These assets comprised principally (i) a one third interest in land in Angola (c.£2.56m), (ii) 20% of the shares in SMC Group (c.£6.1m), and (iii) an interest in her late father's chattels (c.£333K).

88. On the basis of the mother's Form E1 presentation, the father submits that, on her own case, she has very substantial means and that this alone is a reason to refuse her application.

89. The figures in the Form E1 cannot, however, be considered devoid of the context in which they were set out. Within the document itself, the mother made clear that (i) her figure for the value of the land was based upon a 2018 valuation; (ii) her shares were illiquid, the company was not operating due to Covid and the general state of the economy in Angola, and despite attempts to sell no buyer had been found; and (iii) the chattels had been seized by her uncle in Beirut and were subject to an ongoing dispute.

90. In the mother's witness statement dated 30 September 2020, she provided further information about the assets to which she had referred in her Form E1, making clear that all of them were currently inaccessible to her. Despite being marketed for $40m no offers at all had been received to buy the business; she considered that the Angolan land would be difficult to sell even if her siblings agreed to a sale; the chattels were subject to an ongoing dispute.

91. In her second Form E1 dated 13 May 2022 the mother again referred to the Angolan land, ascribing to it the same value as previously. She described herself, however, as having merely a 'potential' interest and made reference to ongoing possession proceedings. She said that the ownership of the land remained in dispute. She did not in this second Form E1 make any reference to the Angolan shares. As for her late father's chattels, she said that they had been the subject of a determination by the Lebanese court and were in the ownership of her uncle.

92. In her most recent Form E dated 26 July 2022 the mother did not identify having an interest in any of the assets originating from her father's estate. She said that she had lost ownership of the furniture and the land to her uncle as a result of legal action he had taken. The company, SMC Group, had been wound up. In her statement dated 26 January 2023 she provided an account which was inconsistent with that Form E. Drawing upon her replies to questionnaire, she said that (i) despite bringing proceedings, she had failed to recover the furniture claimed by uncle; (ii) the land in Angola was controlled by her brother (not her uncle) and was subject to a substantial mortgage; her brother had double-crossed her; and (iii) whether or not the Angolan company had any prospect of being sold was '*wholly indeterminate*'; in the event of a sale, the shareholders would not receive anything like the sum previously cited; the factory was closed and the machinery unusable.

93. The mother's case as to her inability to access assets inherited from her father is consistent with the father's own evidence. At paragraph 16 of his first statement he described that on their first meeting, the mother relayed to him that her uncle had taken over many of her father's assets and that she was struggling and had no money at all. At paragraph 30, he provides corroboration for the mother's case that for a period of time she received financial support from her brother before the two of them had a falling out; the father says that he heard this independently from the mother's mother.

94. Taking into account all of the evidence, I have come to the conclusion that, despite the inconsistencies in her evidence, the mother does not have any assets of substance. She notionally had interests or potential interests in the assets referred to in her initial Form E1, but was unable to realise these and now appears to have lost any realistic prospect of doing so in the foreseeable future or at all.

95. The mother does, however, have very substantial debts. She set out in the Form ES2 with which I was provided at the commencement of the hearing the following liabilities:

    (a) Rent arrears: £98,000;
    (b) Council tax arrears: £1,138;
    (c) School fees arrears: £60,000;
    (d) Loans to friends: £42,748;
    (e) Owing for medical bills: £5,000;
    (f) Owed to immigration lawyer: £5,000;
    (g) Owed to Lebanese lawyer, Jean Baroudi: £26,421;
    (h) Litigation loan from the lender: £136,292;
    (i) Owed to Pennington Manches Cooper: £57,828
    (j) Owed to BloomBudd LLP: £36,320

Total: £495,747

I will adopt this figure and not the slightly higher figure put forward on the mother's behalf in a new version of Form ES2 provided with her closing submissions. The figures do not include any additional costs she may owe to her current solicitors. Her Form H1 records overall costs of £329,390 of which £167,411 have been paid (I am unsure whether the source of the costs paid includes the litigation loan from Mr Forte). The figures above do not include sums owed by the mother to the father by virtue of costs orders which have been made against her.

96. An aspect of the mother's evidence which has not been satisfactory concerns her immigration position. According to the mother's first statement (paragraph 26) in 2019 she had already sought immigration advice from Penningtons Manches Cooper, although as at 30 September 2020 they had been unable to progress matters due to unpaid legal fees. On 21 December 2020 an order was made requiring her by 4 January 2021 to serve a letter from her solicitors setting out her immigration status and that of the child. This was not complied with (although at some point in the early part of 2021 the father's solicitors came off the record and he ceased to participate in the proceedings). In December 2021 a payment of £1,031.20 was made to the Home Office. On 8 December 2022, the mother (by then instructing Levison Melzer Pigott in relation to these proceedings) filed replies to questionnaire in which she stated that she had made an application for indefinite leave to remain in the UK which was being processed by the Home Office. She said she was unable to work, but that once granted indefinite leave to remain she would seek suitable employment. In her statement dated 26 January 2023 the mother said that she owed her immigration solicitors £5,000 and that her immigration situation was 'pending' with the Home Office (the delayed resolution being caused by Covid).

97. At some stage the mother instructed new solicitors (Chambers solicitors) to deal with immigration matters on her behalf (the date of their instruction is unclear to me). At my request, enquiries were made with them to establish the position. They communicated that the only applications made by them are (a) an application for British citizenship on behalf of C submitted on 30 November 2021 and approved on 26 January 2023, and (b) an application for British citizenship on behalf of the mother submitted on 10 October 2023 which remains pending and which is likely to be resolved by the end of this year. The author of the letter said that so far as he was aware the mother had not made an application for indefinite leave to remain. As a British Overseas Citizen, she has no right to work in the UK. The mother explains that the payment of £1,031.20 was made in connection with the renewal of her British Overseas Passport and/or that of C (although I have not heard submissions about this, I do not think it can be correct; so far as I am aware the status of a British Overseas Citizen is recognised by the grant of a certificate as opposed to a designated passport; moreover, the fee seems high if relates solely to the renewal of two passports).

98. The evidence is clearly unsatisfactory. The father invites me to find that at some stage the mother did indeed apply for indefinite leave to remain in the UK (as she previously said) and I should infer from her failure to provide proper disclosure that her application was successful and that she has accordingly been able to work in the UK for some time. Having considered the matter carefully, I am unable to make that finding. In my view, if such an application had been made it is highly unlikely that the mother's present

immigration solicitors would not know about it as there would be no reason for her to have concealed it from them and it might be relevant to her application for British citizenship. Moreover, if the mother had the ability to apply for full British nationality, there would have been no reason instead to apply indefinite leave to remain. In my judgement, the mother's previous assertions that she did apply for indefinite leave to remain are likely to have been mistakes on her part. I suspect she is also mistaken about the payment to the Home Office; this is more likely to have been made in connection with C's application for British citizenship.

99. In any event, I am entirely satisfied that the mother has not been working. Her immigration lawyer's best estimate is that her outstanding application is likely to be determined within a similar timescale to C's, that is approximately 14 months. On that basis the mother can expect a resolution by the end of this year after which she should be in a position to work.

100. As for the mother's future earning capacity, this is very difficult for me to assess. She is aged 49 has not worked for a number of years. She will also have ongoing commitments to C. On the other hand, she struck me as being a talented and resourceful person. In her first statement she said that one option she had considered was setting up a small property management company. Without access to capital, she is likely to find this difficult although she may well be able to persuade a friend or family member to invest in such a venture. Although the evidence I have in relation to this issue is very limited, my best estimate is that within approximately 12 months from now she should be in a position to earn at least £30,000 per annum net, probably by obtaining employment or potentially by pursuing the option upon which she previously alighted.

The father

101. The most significant issue in the case concerns the assets of the father. On his case, the limited assets he owns have little value. The mother strongly disputes the father's case. She describes him as '*a successful businessman who owns property and his business interests worldwide, including in Africa and Lebanon*'. On her case, he has taken steps to ensure that substantial assets have been transferred into the names of others to avoid his creditors and in particular to avoid having to pay her any substantial sums.

102. As I have recorded above, given my findings about the father's credibility generally, I have given myself a *Lucas* direction.

103. The burden of proof for establishing that the father has substantial assets rests on the mother. The standard of proof is the balance of probabilities. Any findings of fact I make can only be based upon evidence and inferences which I can properly draw from the evidence, having regard to the authorities about non-disclosure to which I have referred above. Mere suspicion is not sufficient.

104. The written evidence contains a number of contradictions as to the father's assets. Before recording my conclusions, I shall set out chronologically some of the evidence relating to the father's assets. As will be apparent, the father's case has evolved. Instead of providing a full, frank and clear account at the outset of the proceedings, he has drip-fed information to the mother in response to information and documents which lawyers instructed on her behalf have been able to obtain about his financial position.

105. In his Form E dated 16 July 2022, the father averred that his assets had little value and comprised the following:

(a) A 10% interest in Plot ***8, Jwaya, Tyr, Lebanon: value $3,500;
(b) An 11.6% interest in Plot ***3, Jwaya, Tyr, Lebanon: value $4,300;
(c) A 100% interest in Plot ***8, Debaal, Tyr, Lebanon: value $121,250;
(d) No bank accounts at all;
(e) No investments;
(f) A car worth $20,000.

106. The father said in his Form E that he held the legal title to (but no beneficial interest in) the following two properties:

(a) 60% of the shares in Property [title number], Ras Beirut, Beirut. This is property is in fact a hotel known as the Y Hotel. The father ascribed a value to the 60% interest of $1,150,000 but said that he had transferred the whole of his interest to his sons J and H on 30 December 2016. This, he said, had been done pursuant to a written instrument which entitled him to receive the income from the hotel for life but not the capital.

(b) 100% of Property [title number], Ras Beirut, Beirut. This too is a hotel, known as The X Hotel. The father ascribed a value to the property of $2,500,000. He said that he had sold the property in 2016 but that there was an ongoing dispute with the buyer which has been the subject of litigation in Lebanon since 2016.

107. On his Form E case, therefore, his total net worth amounted to $129,050 plus the car. He also averred that his only income is the sum of $4,500 per month (received in cash) by virtue of his limited residual interest in Y Hotel.

108. On 23 January 2023 the father filed a statement in which he explained his sporadic compliance with the interim periodical payments order made by HHJ Hess. He said that he faced great difficulties as a result of the economic crisis in Lebanon which made it '*practically impossible*' for funds deposited in a Lebanese bank account to be transferred abroad. Thus, he said, he had been driven to seek assistance from his sons to make the payments on his behalf as '*an absolute last resort*'; they had agreed to do so with reluctance.

109. In the mother's statement dated 26 January 2023, she placed reliance upon a report which she had obtained, identifying that the father had owned 13 plots of land in Lebanon, including hotels, which had been transferred to members of his family in 2021. Such assets included:

(a) The Y Hotel, transferred to the father's son in or around December 2021;
(b) Funds transferred in April 2021 into an HSBC account in the name of his wife;
(c) The father's matrimonial home which had been 'sold' to his wife in December 2021;
(d) 7 plots of land which had been transferred to his wife in April 2021.

110. The mother further relied upon information obtained in Nigeria set out in an affidavit from Mr Lawrence-Omole Olukayede, a senior associate in the law firm Adeptum Caxton-Martins Agbor & Segun. Mr Olukayede set out the results of investigations conducted on the mother's behalf. These had revealed that the father was a director and the registered owner of 50% of the shares in Property Services Ltd. The company was involved in property development and management. It owned various subsidiaries, which in turn owned and managed several large buildings in Nigeria (five named buildings were identified). The substantial rental income generated was collected by the father's son, J. One of the properties allegedly owned by Property Services Ltd was a building called B Tower – 'B' being the name of one of the father's wives. A valuation report obtained on behalf of the mother attributed a value of $4,510,000 to this property alone. Another Property Services Ltd asset was said to be a property called C Tower.

111. The mother also placed reliance upon the father's lifestyle and expenditure which, on her case, was inconsistent with the notion that he was a man of limited means living off $54,000 per annum. As she said, the father has incurred substantial costs in these proceedings. The limited bank statements produced by him do not cover his day-to-day expenditure or show receipts of income. He continued to live in his matrimonial home in Beirut and as well as enjoying the benefit of a large country home in South Lebanon. The mother further said that the father travels regularly between London, Dubai, Paris, Qatar and Nigeria. He attends events and holds extravagant parties. He has previously posted on social media that he hired an aeroplane at personal expense plus 1,000 hotel rooms to transport stranded people from Nigeria to Lebanon during the Covid pandemic.

112. On 26 January 2023 (the same date as the mother's statement), the father served his replies to her questionnaire. The father said that he had executed an irrevocable power of attorney to give effect to the transfer of the X hotel. However, the third-party purchaser had left Lebanon and made no payments in accordance with the contract. The father asserted that given the documents he had executed, he did not own the property '*in principle*'; he had issued proceedings for the cancellation of the sale and power of attorney on the basis of the third party's fraud. He described his prospects of success as precarious as he had previously confirmed receipt of the purchase price without in fact having received it. In support of his account, the father produced a letter from his Lebanese attorney, Mr Saab.

113. In a statement dated 31 July 2023 the mother provided further information about the father's assets. Based upon information obtained by her Lebanese lawyer, Mr Jean Baroudi, she averred that as at July 2021 the father continued to own 100% of the Y Hotel and the land on which it was situated; she asserted on the basis of a valuation she had obtained that the land was worth $6,000,000, far more than the sum averred by the father in his Form E. The transfer of the property to the sons had taken place in December 2021, at around the same time as the father's application to set aside the final order, and not (as claimed by the father) in December 2016. In a second statement dated 31 July 2023 (made in support of her application for a freezing order), the mother responded to evidence previously provided by the father that he had made various transfers of assets to members of his family in 2013, 2015 and 2016. She reiterated that the information obtained by Mr Baroudi demonstrated that those assets had been transferred in either April or December 2021.

114. In response to the mother's assertions as to his ownership of assets in Nigeria, the father filed an affidavit dated 16 October 2023 from Mr Gbolahan Lateef Shoyedi, the principal partner in a firm of solicitors which acts on behalf of the father and his family. So far as Property Services Ltd is concerned, Mr Shoyedi explained that the father had previously owned 50% of the shares. By virtue of a company resolution dated 18 October 2012, Mr Shoyedi had been instructed to transfer the father's shares into the names of his two sons, J and H. Although the instruments of transfer had been duly executed, the processing and filing of these documents could not be completed by the Nigerian Corporate Affairs Commission as a result of unpaid taxes. Mr Shoyedi also deposed to the fact that the property, B Tower, had been sold in 2009. Mr Gbolahan acknowledged that Property Services Ltd owned C Tower. He disputed a valuation of the property at $4,510,000 (I do not believe I have seen this valuation) describing the figure as arbitrary and ignoring various factors affecting the Nigerian property market.

115. Mr Shoyedi also addressed a property in Lagos, where the father stays from time to time when he is in Nigeria. He said that the father was the tenant (not the owner) of the property. He exhibited a document said to be a Notice to Quit in respect of this property; this, he said, had been served on the father on 30 March 2023 by the solicitors to the landlord.

116. The father filed a further statement dated 27 October 2023 which also responded to the mother's allegations about his ownership of assets. He stated that he had disposed of his 50% shareholding in Property Services Ltd to his sons in 2012; since then, his sons had managed the company and collected the rents. He made clear that B Tower was not owned by Property Services Ltd. He said that he had previously had an indirect interest in the property by virtue of a sub-lease held by a different company; that sublease had been assigned to a third party in 2009 and the company had not been active for many years. The father denied that either he or Property Services Ltd had interests in other properties identified in the report which the mother had produced, save that he acknowledged that the company owned C Tower. He described the Lagos home as a '*family rented property*' in respect of which a Notice to Quit had been served.

117. So far as the Lebanese properties are concerned, the father made clear in his statement dated 27 October 2023 that as a matter of Lebanese law, the mechanism by which properties are transferred involves the execution of an irrevocable power of attorney. He reaffirmed his position that the relevant powers of attorney had been executed in favour of his wife Ms A in 2013, 2015 and 2016, but acknowledged that the transfers had not been formally registered until April and December 2021. With the exception of the marital home (worth $1.115 million, according to a valuation he had obtained), he described the values of the other properties transferred to his wife as 'trivial'. He said that he was currently going through a divorce and that as part of the financial settlement he and his wife had agreed that she would complete the registration of the properties which had been subject to the powers of attorney.

118. The father said that he had executed a power of attorney in favour of his sons in respect of Y Hotel on 30 December 2016. He added that '*following the family dispute*', the transfer of property had been registered by his sons on 22 December 2021. He said that the property had been valued on his behalf at $4.73m.

119. The father said he had given one of his sons, G, a plot of land in recompense for the loan of $100,000 to assist him in connection with the litigation concerning the X Hotel. The father described the economic crisis in Lebanon and referred to the collapse in the banking system. He said that the banks were restricting withdrawals of more than $300 per month and that it was virtually impossible to make international transfers.

120. As for the X Hotel, the father said he had agreed a sale for $6 million in 2019 (different from the figure given in his replies to questionnaire), but instead of going through the sale had led to litigation. He said that it was not possible for him to liquidate this asset, which he had recently had valued at $4.6 million.

121. In her fourth statement dated 6 December 2023 the mother responded to the father's evidence. She exhibited two sale contracts executed before a notary on 23 April 2019 which appeared to show that The X Hotel had been sold for $6m (not $9m). She averred, based upon what is recited in the first sale contract, that the sum of $3m had been paid to the father. She also averred, based upon an application made by the purchaser of the hotel, that the outstanding $3 million had been paid into court. The mother also provided a letter from her Lebanese solicitor, Mr Baroudi, stating that there are currently no restrictions in Lebanon preventing the transfer of funds overseas. The mother claimed to be 'aware' (although did not identify the basis for her awareness) that the father had deposited millions into accounts in his wife's name in Jersey. She provided a further affidavit from Mr Afolabi Caxton-Martins, a Nigerian lawyer, to the effect that the father continued to hold 50% of the shares in Property Services Ltd.

122. More recently the mother produced an 'acknowledgement' document also executed before the notary on 23 April 2019. This was signed by the father and his two children in their capacity as owners of the company, X (Lebanon) S.A.R.L. It appears to be an assignment to the purchaser of the hotel of all of its fixtures and furnishings.

123. In a statement dated 6 March 2024, the father said that notwithstanding what is recorded in the sale contract produced by the mother, he did not in fact receive the $3 million consideration. He continued to be in the middle of litigation in connection with the sale.

124. I now set out my conclusions in relation to the father's assets.

Property Services Ltd

125. It is clear from the evidence provided by Mr Shoyedi that in 2012 the father executed a document in order to transfer his 50% shareholding in Property Services Ltd to his sons J and H. I have no basis for rejecting Mr Shoyedi's evidence about this. It is corroborated by the special resolution of the company dated 18 October 2012, which I accept is a genuine document, and the letter from Guaranty Trust Bank Limited which makes clear that the father's son J has been running the operation of the company bank account since 2012. I also accept Mr Shoyedi's evidence that it was not possible to register the transfer at that time as a result of unpaid taxes. The transfer has only recently been registered. These proceedings are likely to have motivated the father and his sons to cause the position to be regularised.

126. In 2012, the parties had not even met and thus this transfer was made for reasons wholly unconnected to these proceedings. In my judgement, the most likely reason for the

transaction was succession planning. On a balance of probabilities, I consider that the father had reached a stage in life where he no longer wished to work full time in the business and preferred to base himself primarily in Lebanon. On the father's own case, at that time he remained substantially wealthy and so parting with this business was unlikely to have had a material impact upon his overall situation.

127. The father's sons H and J were aged 24 and 17. I consider it unlikely that the father intended to cede complete control of the business to them at a stage in their lives when they will have been inexperienced in business. In my view, it is likely that he continued to pay a substantial role as an adviser to his sons on a part-time basis and as a director of the company, travelling to and from Nigeria when it suited him. His oral evidence was that he 'advises' his sons in connection with the business. Notwithstanding the fact that he became based mainly in Lebanon, he retained a home in Lagos where he was able to stay whenever he travelled there.

128. The father has continued to travel to Nigeria on a regular and frequent basis. I reject his evidence that this has mainly been for the purpose of visiting his family or undertaking charity. I consider it likely that he has been spending time in Nigeria in connection with his ongoing role in the business.

129. The father's own case is that his travel to Nigeria is funded by his sons. He also said for the first time in his oral evidence that they provide him with the use of a Nigerian credit card in order to meet his expenses there. His sons have, on his case, been willing to fund his legal fees, his travel to England and even to pay child maintenance on his behalf. In my judgement, such financial support is not provided to him as a form of charity. I consider it more likely than not that the father has reached an informal agreement with his sons that they will provide him with such financial support as he may need from time to time in consideration for the fact that he has gifted them a valuable business and continues to devote a considerable amount of his time towards ensuring that it is successful.

The father's former matrimonial home

130. The father executed a power of attorney over this property in favour of his wife on 7 December 2013, very shortly after the mother had contacted him to inform him about her pregnancy. In my judgement, the most likely explanation for taking this step was to protect the property from any potential claim which the mother might bring against him, in circumstances where he had responded to the mother's approach to him by rejecting her.

131. I am prepared to accept that the execution of a power of attorney is a method by which property transfers are given effect in Lebanon. It is notable, however, that no steps were taken to register the transfer until much later. In my judgement, the reason for this is that the power of attorney had been executed as a precautionary measure. The father did not necessarily intend to divest himself of his interest in the property at that stage.

132. On the father's case, in the context of much later divorce proceedings between him and his wife, he agreed with his wife that she could complete the registration of this and other property transfers in respect of which he claims that he had previously executed powers of attorney. I reject the father's evidence about the existence of other powers of attorney.

He has not produced any powers of attorney other than those relating to his matrimonial home and the Y Hotel (see below). Various other properties have been registered as having been 'sold' to the father's wife (and in one case to his son G) on 13 April 2021. In the father's Form E he stated that he owed the property transferred to G, despite the fact that it had already been registered in G's name.

133. Even if it were true that the various powers of attorney had been executed some time previously, the fact that in the context of divorce the father and his wife later came to a separate agreement about the registration of the transfers indicates that, whatever may have been the position as a matter of Lebanese law, the initial execution of the powers of attorney did not have the effect *in fact* of causing the father to divest himself of his interests in property. For so long as he retained possession of the powers of attorney, it was open to him to deploy them at any time or to disregard them. The father's wife did not sign the powers of attorney and there is no evidence that she knew of their existence before the time they came to be registered.

134. The transfer of the father's 50% interest in his matrimonial home was not registered until 8 December 2021. In my judgement, the decision to proceed with the transfer of the home at that stage was entirely connected to these proceedings. The father and his wife knew about the final order made by DJ Mulkis and had decided to make an application to have it set aside. In that context, he wished to divest himself of his assets in order to be able to present himself to the English court as a person who did not own any property of significance. The earlier registrations on 13 April 2021 took place shortly after the court had made a declaration of paternity and were also made to reduce the father's assets for the purposes of these proceedings. I do not accept that the transfers took place in the context of a financial settlement reached between the father and his wife in connection with divorce proceedings, which had yet to be issued, although it is highly likely that the father's wife will have insisted upon the home being placed in her name in circumstances where the father's infidelity had brought a degree of jeopardy to her situation. It is also noteworthy that the notion that the father was capable in 2021 of negotiating a divorce settlement is wholly inconsistent with his case that his mental health was such that he was living in confinement and under constant supervision in a remote village.

135. I am prepared to accept that the registration of the transfer of the father's 50% interest in his FMH has had the effect that the property is now owned legally and beneficially by the father's wife. In my judgement, the father would not have allowed such a transfer to take place unless he was satisfied that he had sufficient other resources to meet his needs, including if necessary the purchase of an alternative suitable property for himself. The existence of such resources has not been disclosed.

Y Hotel

136. The father executed a power of attorney over this property in favour of his sons on 30 December 2016.

137. Contrary to the father's written evidence, there is nothing in the power of attorney which has the effect of conferring upon him a life interest in the income from the hotel. There was no obvious reason for the father to transfer the ownership of the hotel to J and H in 2016. They were living in Nigeria and were consequently unable to play a meaningful role in the running of a Beirut hotel. If the father had genuinely intended the transfer to

be effective, there was no reason for his sons not to proceed to have it registered immediately.

138. In my judgement, the most likely explanation for the execution of the power of attorney at the time was that the father wanted to ensure that the property was protected against any potential claims which might be brought against him by the mother. As I have found, the mother had continued to be in contact with the father following C's birth and the potential for her to bring a claim against him is likely to have caused him anxiety. No doubt, the father intended in due course to pass on this valuable property to his children but it makes no sense for him have made such a valuable gift in favour of just two of them, prioritising their inheritance over their siblings (including his youngest daughter who has significant medical needs).

139. The power of attorney was a document which the father signed but which his sons did not have to sign. Its execution meant that the father was able to hang on to the document and deploy it at a time of his choosing. In the event, the transfer was not registered until 22 December 2021, in the father's own words '*following the family dispute*'. In my judgement, the timing of the registration is consistent with the father's decision at that stage to apply to set aside the order of DJ Mulkis. The father's evidence is that the transfer was given effect on the basis of an undocumented agreement that the father would continue to benefit from the income derived from the hotel business – the father says that this amounts to $54,000 per annum, but this figure is completely uncorroborated. On the father's own case, the property is worth $4.5m (more on the mother's case). In my judgement, it is highly improbable that he would have divested himself of an asset of such value unless he was satisfied that he had sufficient other resources to meet his needs and/or in due course to provide to his other children. Moreover, whatever may be the legal effect of the transfer, it is the father and not his sons who will continue to derive benefit from the income which the hotel produces for the remainder of his life.

The X Hotel

140. The father's oral evidence was that he purchased this property for $9m and spent some $2m on its refurbishment. I believe that the acquisition took place after he moved from Nigeria to Lebanon in around 2012. According to the letter provided by Mr Saab, the hotel occupies several floors and has 63 rooms as well as various other amenities.

141. On the father's case the physical hotel building is or was owned by him. A company called X (Lebanon) S.A.R.L., owned by him and his children H and K, held a licence to operate the hotel. The company appears to have owned the hotel fixtures and furnishings.

142. The father's case in relation to this hotel has been inconsistent. In his Form E, he said that it had been sold in 2016 and denied having any interest in it. He did not state that he was owed any money in connection with the sale.

143. In the father's replies to questionnaire, he provided an explanation in relation to the sale which is not consistent with his Form E (he later reaffirmed the veracity of this account in his fourth statement dated 6 March 2024). He said that he had entered into a contract for the sale of the hotel with a third party in exchange for $9 million, payable in three

tranches. He said that he had executed a power of attorney to enable the transfer to take place, but that following its execution the third party had left Lebanon and made no payments in accordance with the contract. He said that given his execution of the power of attorney he no longer owned the hotel, but that he had issued proceedings to cancel the sale and the power of attorney on the grounds of fraud by the third party. He stated that he had previously confirmed receipt of the purchase price, even though this was not the case, '*in order to speed up the transaction*'.

144. As I have noted above, the father supported his account with the letter from Mr Saab. Mr Saab set out that in 2018, a Mr F (who previously worked in the hotel) had entered into an investment contract with the hotel operating company for the sum of $300,000 per annum. In 2019, Mr F had offered to buy the property for $9 million. He and the father reached an oral agreement in relation to this sale whereby the following would be paid: $3 million upon the signing of the contract; a further $3 million in October 2019; and a final $3 million in May 2020. Mr Saab said that based upon this oral agreement, the father assigned ownership of the hotel and concluded two contracts before the notary public. He later learned that he had been the victim of fraud as Mr F left Lebanon without paying. Two lawsuits had been filed in order to set aside the transfer of property and to cancel the contract for sale. The conduct of the cases had been delayed because of Covid. Mr Saab does not profess to have any personal knowledge of the matters he relates (save for the fact that the lawsuits have been filed); his narrative is based upon the father's instructions.

145. The mother, as a result of enquiries made on her behalf, has been able to produce two contracts relating to the sale of the hotel, both dated 23 April 2019 and signed in front of a notary public.

146. The first contract provides for the sale of a 50% interest in the property (1,200 out of 2,400 shares) by the father to Mr F. The contract records that the father owned all 2,400 shares and that he had sold 1,200 of these to Mr F in return for the sum of $3,000,000. It specifies the following: '*The seller declared that he received the amount from the purchaser upon the signature of this contract*'.

147. The second contract relates to the other 1,200 shares in the hotel. This is described as a 'Promise of Sale Agreement'. It cross-refers to the first contract for sale and, in effect, obliges the father to sell to Mr F his remaining 50% interest if Mr F should elect to purchase it within twelve months. The consideration for the second tranche of 1,200 shares is also expressed to be $3,000,000.

148. As stated above, the conclusion of these two contracts has resulted in litigation between the father and Mr F. In addition to the claims brought by the father, according to a document obtained from the Lebanese Court dated 13 March 2024, proceedings were initiated by Mr F on 21 May 2021. In essence, it appears that Mr F wishes to exercise his contractual option to purchase the second tranche of 1,200 shares in the hotel. To that end, he has issued a summons accompanied by a cheque for $3,000,000 with the object of compelling the transfer to him of those shares.

149. The father has produced a copy of a summons filed on his behalf on 10 June 2019 and an interim judgment dated 5 December 2023. His case within the Lebanese proceedings appears to be that the contracts which he signed in front of the notary are not a reflection

of the true position in that (i) the sale price he agreed with Mr F was $9 million, not $6 million and (ii) contrary to what was recorded, he had not in fact received the sum of $3 million in respect of which he acknowledged receipt under the first contract. In his oral evidence, the father asserted that it was in fact the case that Mr F had in fact been acting in a representative capacity on behalf of an Iraqi citizen. As a result of the Syria / Iraq war, this person has insisted upon reducing the price by $3 million to $6 million. Neither the Iraqi citizen nor this asserted request for a reduction is mentioned in the source documents I have seen.

150. In cross-examination, it was put to the father that (contrary to his elaborate and contradictory explanations) the simple position was that he was unwilling to sell the hotel for $6 million. The father again denied having received any consideration from the purchaser. He also retorted that the hotel had cost him $11 million to buy and have refurbished. He later emphasised (inconsistently with his Form E case that he no longer owned the property): '*This is my hotel. I'm not selling the hotel unless someone gives me cash*'. He also said: '*I'm not giving my hotel to anybody'*. He sought to explain the fact that contracts recorded a lower price than the agreed $9 million by suggesting this might have been done to minimise taxes payable.

151. The father is a highly experienced businessman. I consider it wholly implausible that he would have signed a contract acknowledging receipt of the sum of $3 million if that money had not in fact been received by him. I cannot see any reason why he would have done something so obviously foolish. His asserted motive '*to speed up the transaction*' makes no sense at all. In my judgement, it is more likely than not that the father did indeed receive $3 million in respect of the first tranche of shares. I find that he has retained this sum and failed to declare it within the proceedings. The probability is that it has been deposited into an undisclosed bank account.

152. I do consider it more plausible that the father may have chosen to sign contracts which, in order to minimise tax, did not reflect the full value of the sale price he had agreed for the hotel. The dispute between the father and the purchaser may well have been caused by the latter's failure to honour an undocumented side promise to pay an additional $3 million, although I do not have sufficient evidence to allow me to make such a finding. What is apparent from the documents I have seen is that the purchaser wishes to proceed to buy the second tranche of shares for $3 million, but the father is unwilling to allow that transaction to proceed. The father's stance in this respect is wholly inconsistent with his asserted financial situation. If his financial circumstances were as precarious as he claims, he would surely be pressing to receive such a substantial sum of money. His unwillingness to do so suggests that he considers the shares are worth more.

Undisclosed assets

153. I am entirely satisfied that the father has failed to disclose his true financial position in order to frustrate the mother's claims against him.

154. I do not believe that the father would have divested himself of valuable assets to his wife and, in particular, two of his children without retaining substantial other assets to enable him to meet his own needs and/or in due course make equivalent provision for his other children. I am satisfied that, contrary to his denials, the contract for sale of the X Hotel correctly records the fact that the father did receive the sum of $3,000,000 in connection

with the sale. The whereabouts of that sum has not been disclosed, but most likely it has been deposited into a bank account to which the father has access.

155. As is usually the case when a litigant has failed to disclose assets, the court is placed in a very difficult position in attempting to estimate his overall net worth. In those circumstances, I am entitled to infer that had he revealed the true position, this would demonstrate that he could afford without difficulty to meet the mother's claims. Although I am not required to do so, I consider that, given the material available to me, I should nevertheless attempt broadly to estimate the overall scale of his resources as this has some relevance to my evaluation of the reasonableness of the mother's asserted needs for C.

156. My best estimate is that his overall net worth can be counted in millions of pounds but probably not tens of millions: a high seven-figure or perhaps a low eight-figure sum. He has retained $3 million from the sale of X and is entitled to receive at least a further $3 million. He was previously able to spend $11 million buying and refurbishing the hotel and is unlikely to have expended such a sum without having substantial other resources upon which to fall back. His willingness to transfer valuable assets to just some of his children is consistent with his having retained other assets of at least equivalent value. I have been put in the position of having to come to an imprecise estimate as a result of the father's non-disclosure; if I have over-estimated his position, to echo the words of Munby J in *Al-Khatib v Masry*, he only has himself to blame.

157. In reaching the conclusion that the father's overall worth does not lie in a higher ballpark, I bear in mind that his primary matrimonial home in Beirut (in which he previously held a 50% interest) was valued on the mother's behalf at just over $1.5 million; his flat in Lagos is a rented property, not owned by him and his country home also appears to be rented (although without disclosure of the address this is not something which the mother has been able to verify); the hotels in which he has or has had interests appear to be successful mid-range hotels, not luxurious five-star establishments. I also take judicial notice of the fact that the present conflict in the Middle East and the economic crisis in Lebanon are likely to have caused properties in Lebanon to become depressed in value.

158. In estimating the father's net worth, I have not taken into account the values of 50% of his FMH, the Y Hotel or other assets which he has transferred to family members. Had he not made those transfers, his overall net worth would be higher. Despite the transfer of the Y Hotel he continues to derive a valuable benefit from it.

159. Although I have found that the transfer of the father's FMH and other less valuable assets to the father's wife were motivated by a desire to protect the assets from the mother's claims, I do consider it likely that the father's wife would have been able to make a claim against those assets in any event (certainly his FMH) in the context of her divorce from the father. As I have found, however, the father does continue to enjoy the use of his FMH as a home when he chooses.

160. I also find that the father's income is likely to be very substantially higher than his asserted $54,000 per annum. According to the evidence obtained by the mother, the Y and X Hotels are worth similar amounts. The father has previously been able to license the operation of the latter for $300,000 per annum which suggests that the profits it can

generate are substantially higher. I consider it unlikely that the profits of Y (to which on the father's own case he remains entitled) would be very substantially lower, although the father has not disclosed any accounts or other documents which would allow me to assess these reliably. In addition to the income the father is able to draw from Y, he receives significant financial support from his sons. As I have found, this is likely to be paid pursuant to an informal arrangement reached with them in connection with the transfer of his shares in Property Services Ltd.

161. The father has a lifestyle which involves frequent travel and meeting the running costs of three homes. He has the benefit of members of staff including a maid and a driver. His daughter has been privately educated just as her older siblings have been. She receives private medical treatment for epilepsy. His oral evidence was that travel agents in Beirut are willing to afford him credit to purchase a number of flights each year.

162. I am unable to accept that the father has no active bank account and runs his entire economy in cash. Even if he were unable to operate an account in Lebanon, he would surely be able to do so in another jurisdiction. I find that he has withheld disclosure of bank accounts as these would reveal information unhelpful to his case about his lifestyle and overall financial situation. Despite admitting in evidence that he has the use of a credit card, the statements have never been disclosed for similar reasons.

163. In the absence of proper disclosure from the father, my best estimate is that he has access to income from all sources running to several hundreds of thousand pounds per annum.

164. The father has a liability to his solicitors. He has incurred costs of £212,252 of which just £32,155 has been paid. His own case is that this liability will be met by his sons.

Needs

165. Paragraph 4 of schedule 1 requires me to consider the financial needs, responsibilities and obligations of both parties as well as C's financial needs.

166. The father has substantial needs and obligations which, absent proper disclosure, it is difficult for me to quantify. I am, however, satisfied that he will be able to meet these from his own income and resources notwithstanding the orders I propose to make.

167. Although the statute requires me to give consideration to the mother's needs, these have less significance in the exercise of the court's discretion than the needs of C herself. Ultimately the court's power is confined to making orders for the benefit of C. The mother is not entitled to pursue claims for capital or income other than in that context. Although her claims for maintenance can include allowance to meet elements of her own expenditure not directly referable to C, the court *'... has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child*' (see above).

168. The mother has needs which are personal to her which in due course she will be able to meet from her own income. At present, she has no earning capacity and I have found that this will remain the case for the next year.

169. C's primary need is for a secure home. The mother wishes to live in Knightsbridge and has put forward particulars two and three bedroom properties costing up to £1.75 million. The properties she has selected are mainly in Knightsbridge or Chelsea. I do not, however, think it is reasonable to expect the father to fund accommodation in what are among the most expensive parts of one of the most expensive cities in the world. Knightsbridge as a location has more to do with the mother's aspirations than meeting C's needs.

170. C's current primary school is located between Gloucester Road and South Kensington. She only has another four terms of primary education before she will start at secondary school, which may be some distance away from her current school. Children at secondary school often travel significant distances to go to school.

171. I think it is reasonable for the mother and C to live in a desirable part of London from which Kensington can be easily accessed by public transport, but not an area which would be described by estate agents as 'ultra-prime'. It will be a matter for the mother to choose where she lives but I have in mind an area such as Fulham. I consider that a suitable property would be a good-sized two-bedroomed flat, close to public transport, with some outdoor space.

172. Ms Campbell accepted in submissions that if I came to the conclusion that the property should not be in Knightsbridge, I was entitled to take judicial notice of the value of property in other areas. Having done so, and erring on the side of generosity, I am satisfied that the mother will be able to obtain appropriate accommodation with a housing budget of £1,000,000 inclusive of costs of purchase. A budget of that size will allow the mother to buy somewhere for around £950,000 and will give her a wide range of options.

173. The property will be bought under an arrangement which ensures that it will revert to the father upon C attaining the age of 18 or completing her full-time tertiary education (first degree only) and including a gap year. Provided the father is willing to co-operate in the purchase, he may elect whether the property is bought under a trust or on the basis of a long lease. In default of such co-operation, the father will pay the mother a lump sum of £1 million and the property will be bought in the mother's name from that fund on the basis that she will hold the property in trust for the father; any surplus after the purchase will be returned to the father. The terms of any trust (or other structure) should incorporate the following provisions:

    (a) The determining events, pursuant to which the property will revert to the father, shall be:

        (i) The later of C attaining the age of 18 and six months or the completion of her full-time tertiary education (first degree only, with provision for a gap year).
        (ii) The death of C or the mother.
        (iii) Further order of the court.

    The mother must undertake to notify the father in the event of her remarriage or co-habitation or if, for any reason, C's main home ceases to be with her. These will not be automatic determining events; it will be a matter for the father

whether, absent agreement, he wishes to apply to the court for the structure to be determined.

(b) The choice of property will be the mother's. The father will, however, have a right of veto if her choice is a poor investment (e.g. it would not be reasonable for the mother to choose a property with a very short lease).
(c) The mother will be responsible for the usual household outgoings including service charges, council tax and contents insurance; the father will be responsible for buildings insurance.
(d) The mother will be responsible for internal repairs and decoration. Any structural repairs will be the father's responsibility.
(e) The mother may elect to move property once on the basis that the costs of sale and purchase will be met from the equity in the initial property acquired. Any new property will be held on the same terms. The costs of any subsequent moves must be funded by the mother from her own resources.
(f) If the father defaults on his obligations in respect of repairs and buildings costs, the mother may meet these costs and recoup any sums expended from the equity in the property when the lease comes to be determined. Interest shall accrue on such sums at the judgment rate.

174. The mother will need to furnish and potentially decorate the property and I propose to allow an additional £100,000 for these purposes and moving costs, which will be paid as a lump sum.

175. The mother will need to continue to rent for a period of, say, six months before completing on a purchase and I will allow a further sum of £24,000 for this purpose (a £1,000 pm increase on her current rent). This additional sum will increase by £4,000 for every month beyond which the father defaults in making the payments for housing due under this order.

176. The mother has incurred substantial debts, mainly as a result of the father's failure to provide her and C with adequate financial support. It is not in C's interests that she should be burdened by high levels of debt. The loan from the lender and the sums owed to previous family solicitors relate to the costs of these proceedings and I will consider these separately in the context of any applications for costs which may be made. Her remaining liabilities come to £265,307, which I round down to £265,000.

177. C's income needs are more difficult to quantify. With her Form E1, the mother produced a budget for herself and C in the total sum of £410,630 per annum (£305,630 pa after deducting the figures for rent and school fees). The expenses directly referable to C were said to be £97,000 including school fees. I consider this budget to be divorced from reality and have found it of little assistance in assessing the amount of periodical payments which the father should pay.

178. The figure for child maintenance sought by the mother is £115,556 per annum. She has arrived at this figure via an illogical route. Her starting point has been to take the figure of £1,040,000 being the total maintenance fund which was awarded to her by DJ Mulkis in November 2021. She has then divided this figure by nine on the basis that C is now aged nine and will therefore be eighteen in nine years' time. It is not clear how DJ Mulkis arrived at his figure but at that time C was aged nearly seven and a half and the

fund was intended to cover her maintenance for a period in excess of 10 years. I assume therefore that he assessed the correct figure for maintenance to be £100,000 per annum.

179. Having found that the father procured the setting aside of DJ Mulkis's order by fraud, there is an argument that the right course now would be to restore his order. It has not, however, been suggested that this is the approach I should adopt; I am not dealing with an application to set aside the order setting aside the earlier order. Accordingly, I consider that the right course is for me to exercise my discretion afresh.

180. In quantifying C's needs I need to take into consideration the father's circumstances. As I have recorded above, my assessment is that he is very wealthy, but not stratospherically so. He has significant financial commitments including in relation to his daughter by his wife.

181. I consider it reasonable for C to be privately educated at secondary level in a day school. The father's other children have benefitted from private education (albeit in jurisdictions where this is less expensive) and C has been at a private school for the majority of her life in education. She has just over one more year left of primary school and I am not convinced that it is appropriate for her to have to move schools now in circumstances when she will then face a further move a year later. Thereafter, she will have seven years' worth of secondary education.

182. The amount of any school fees will of course depend upon where C goes to school which is impossible to predict. She will need to sit exams and may find it difficult to obtain a place at all. Should she obtain a place, the fees will depend upon the particular school she attends. I take judicial notice of the real possibility that school fees may rise after the next general election if VAT is charged upon them, although it has been reported in this context that a number of schools may avoid passing on the full extent of any such rise to the parents. I have also taken judicial notice of the fees currently charged by some of the well-known London day schools for girls (the range of current fees charged appears to be between £7,500 and £10,000 per term).

183. My starting point is that a reasonable budget for school fees plus extras if C were starting at private school next year would be £27,000 per annum. Such a budget would be sufficient to meet the school fees and extras towards the lower end of the range. I will assume that by the time C starts school fees may have increased by 15% and will allow for 3% increases thereafter. On that basis, I calculate the fees are likely to be:

Year 7:	£31,050
Year 8:	£31,982
Year 9:	£32,941
Year 10:	£33,929
Year 11:	£34,947
Year 12:	£35,995
Year 13:	£37,075

The total of those sums comes to £237,919, which I round up to £240,000.

184. To the extent that the fees end up being more than this sum, they should be met by the mother from the general child maintenance (see below) or from her own earnings. I am

conscious of the fact historically school fees inflation has tended to be significantly higher than 3% per annum. However, I am going to provide for the fees to be paid by the father in advance as a single lump sum and so the mother may be able to negotiate a discount by paying in advance. Alternatively, if the lump sum is invested in an interest-bearing account, this will mitigate any rises in the fees.

185. Having regard to the fact that he will be meeting C's school fees, I consider that a reasonable sum for the father to pay by way of child maintenance is £84,000 per annum (which ordinarily would be index linked by reference to the CPI). A budget of this size will enable C to be brought up in circumstances which are not 'out of kilter' with the father's lifestyle. It will allow the mother and C to live comfortably, but not luxuriously compared with the standards of living likely to be enjoyed by the families of other children at the type of school C will attend. As well as covering the usual household outgoings, this budget will be sufficient to cover food, other household products, clothing, entertainment and transport for C and, at a relatively modest level, for the mother. The mother should be able to employ a cleaner and, on occasion, a babysitter. The mother and C should be able to enjoy holidays, albeit at a more modest level than that for which she contended in her Form E.

186. The sum of £84,000 per annum equates very roughly the level of support previously received by the mother from her brother (albeit its value today will have decreased as a result of inflation). In cross-examination the mother estimated that she currently needs £6,000 to £7,000 per month, not including rent, school fees and certain expenses such as holidays (which she cannot currently take while her immigration position is unresolved). She then revised the figure upwards to £7,000 to £8,000 per month.

187. Having found that the mother will be in a position to work in approximately one year's time, I have considered whether the maintenance should at that stage be reduced. In my judgement, it would be inappropriate to do so. Although the budget of £84,000 includes what is sometimes described as a 'carer's allowance', it will not cover other expenditure which she may reasonably wish to incur but which should not be the responsibility of the father. Additionally, in circumstances where the mother will be left without a home when her entitlement to occupy the home comes to an end, she should be able to save money which she earns so that she can house herself when the time comes. I do, however, consider it reasonable for the mother to cover from her earnings any shortfall in the maintenance arising as a result of inflation.

188. In circumstances where (i) the father has been an erratic payer, (ii) he has breached court orders, (iii) he has previously failed to engage in the proceedings, (iv) he has lied and taken steps to defeat the mother's claims, and (v) he resides in a jurisdiction or jurisdictions where enforcement will be difficult, I consider that this falls into the category of rare cases in which it is appropriate to order the future periodical payments and school fees to be commuted as a single lump sum to cover the period until C attains the age of eighteen. As this large sum is to be paid in advance and without any reduction for accelerated receipt, I consider it fair not make provision for estimated inflation but to require the mother to meet any increases in expenditure referable to inflation from her own income. I therefore calculate the payment due on a straight-line basis as follows:

7 years x school fees = £240,000

8 years + 3 months x £84,000pa for child maintenance = £693,000

Total: £933,000.

Any surplus in the account when C attains the age of eighteen may be used in respect of the father's maintenance obligations thereafter.

189. By contrast with *AZ v FM*, the period of commutation here is relatively long. In my judgement, therefore, the lump sum payment should be subject to an undertaking by the mother that she will ring-fence it in a separate interest-bearing account from which she must make no payments other than (i) in respect of school fees and any extras appearing on the school bill, and (ii) an annual payment to her own separate account for the payment in advance of £84,000. She should provide the father annually with a copy of the bank statements for the ring-fenced account and copies of school bills which she has discharged. If it transpires that C does not secure a place at a private school the education fund should be returned to the father. If, for any reason, the court later varies downwards the amount of child maintenance which the mother should receive any surplus in the account can be returned to the father. These stipulations should be incorporated into the mother's undertakings.

190. The father's obligation to pay child maintenance will continue beyond C's eighteenth birthday until completion of her tertiary education (first degree only, but including a gap year). After she attains the age of eighteen, the father will pay the inflated equivalent of £56,000 to the mother and £28,000 to C directly. Those payments do not form part of the commuted lump sum and should be index linked by reference to the CPI. If the father defaults, any sums not covered by the interest which may have accrued in maintenance fund may be recouped by the mother (plus interest at the judgment rate) from the equity in the property once it is sold.

191. In summary, the total amount which the father must pay is as follows:

(a) £1,000,000 for housing inclusive of costs of purchase on the basis that the property will be held on terms that it reverts to the father, at the latest, upon the completion of C's tertiary education.

(b) £933,000 by way of a commuted lump sum for maintenance and education, on the terms set out above.

(c) £389,000 as a lump sum in respect of the mother's debts, moving costs, furniture, decoration and six months' rent (in the event of default, the rent element to increase by £4,000 per month; the balance to be subject to interest at the judgment rate).

(d) With effect from C's eighteenth birthday until the conclusion of her tertiary education, the CPI inflated equivalent of £56,000 to the mother and £28,000 directly to C.