Neutral Citation Number: [2025] EWFC 11

Case No: 1727963880840219

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2025

Before :

Mr Justin Warshaw KC
sitting as a Deputy High Court Judge

- -

Between :

PM	**Applicant**
- and -	
RM	**Respondent**

- -
- -

Alexis Campbell KC and Helen Williams (instructed by **Family Law in Partnership**) for the **Applicant**
Andy Campbell (instructed by **Stewarts Law**) for the **Respondent**

Hearing dates: 18 December 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 January 2025 by circulation to the parties or their representatives by e-mail.

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MR JUSTIN WARSHAW KC

Mr Justin Warshaw KC :

1. This is an application dated 29 November 2024 brought by PM for maintenance pending suit ("MPS") pursuant to s22 of the Matrimonial Causes Act 1973 and provision for a legal services payment order ("LSPO") services pursuant to s22ZA of the Act. The respondent to the application is her husband, RM. I shall refer to the parties in this judgment as the wife ("W") and the husband ("H").

2. In addition to that formal application, I was asked by W to make an injunction against the second respondent to these proceedings, the trustees of the A Trust, prohibiting them from dealing with the family home, which they own through B Ltd, and to make directions generally in the financial remedies proceedings.

3. W was represented at the hearing before me on 18 December 2024 by Alexis Campbell KC leading Helen Williams and H was represented by Andrew Campbell. I am very grateful to all counsel for the manner in which this hearing was conducted.

The background

4. W is 45 years old. She was born in A Country and moved to E Country at the age of 10. She has recently acquired British citizenship and is also a citizen of C Country, D Country and E Country. H is 68 years old. He was born in B Country before moving to E Country in 2011. He renounced his B Country citizenship in 2015. He holds E Country, D Country and C Country nationality and is a non-domiciled resident in England.

5. The parties began to cohabit in summer 2015 in E Country. They moved to England in August 2016. They married in F Country in May 2017, prior to which on 7 November 2016 they executed a pre-nuptial agreement in E Country, under which W was to receive on divorce US $1 million and an apartment. W alleges that she signed under duress and without any financial disclosure from H. H says both parties had independent legal advice.

6. The parties have four children between them, including H's two adult children from his first marriage.

7. On first moving to England in 2016, the family lived in rented accommodation in London. W says that the rent on that property was over £100,000 per month. In April 2018 the family home in London was purchased, according to W, for £42.5 million or £41.5 million according to H. It was purchased in the name of B Ltd, which is owned by the A Trust of which H states he is the sole beneficiary during his lifetime, and then his children equally after his passing.

8. In early July 2024, W told H that she wanted a divorce. She says that in August the parties had initial discussions about a settlement. She says they agreed that H would provide her with £15 million for a house plus £10 million to invest, maintenance of £360,000 per annum (with security) and additional payments for holidays, school fees and medical expenses. W says that on return from the holiday she expected the alleged agreement to be formalised and implemented. I will deal with what eventuated below.

The proceedings

9. W issued a divorce petition on 27 September 2024. She issued a Form A on 4 October 2024. A first appointment listed on 16 April 2025 is being vacated and is to be listed on 27 March 2025.

10. On 8 October 2024, W issued an application for an injunction to prevent H and B Ltd from dealing with the family home. The injunction application came before Garrido J on 9 October 2024. H had only short notice of that application. The judge appears to have been unimpressed by the evidential basis upon which the application was made and specifically recorded on the face of the order:

> The Judge determined the evidence provided by the applicant was not sufficiently clear in demonstrating unjustified dealing with the family home that might give rise to a conclusion that there is a solid risk of dissipation of the family home to her prejudice

11. After the conclusion of the hearing before me, I was supplied with a copy of the judgment of Garrido J. That judgment confirms what was recorded on the face of the order.

12. At the conclusion of the hearing on 9 October 2024, the judge adjourned the injunction application to a full day's hearing on 30 January 2025, with directions for the trustees of the A Trust, the settlement which owns B Ltd, to be joined and for the trustees and H to serve witness statements in response to the application by 22 November 2024. H gave the court an undertaking not to deal with the family home and to use his best endeavours to obtain the same from the trustees and B Ltd. In correspondence on 24 November 2024, the parties agreed to extend the date for H to serve his witness statement to 20 December 2024. The return date hearing on 30 January 2024 has since been moved to 27 March 2025. It is listed before Garrido J.

13. This application for MPS and LSPO by W is dated 29 November 2024. It was sent to H's solicitors on that date. It was formally issued on 4 December 2024. The issue of interim provision had been raised by W's solicitors in a letter dated 8 October 2024 and the issue was raised outside court on 9 October 2024. It was chased again in correspondence on 18 November 2024. On Tuesday 10 December 2024, W's solicitors contacted Peel J's clerk to ask for an early date for the hearing of this application, explaining the urgent nature of the application. That same afternoon H's solicitors wrote to Peel J's clerk pointing out that it had been agreed that H's witness statement in answer to the injunction application was to be served on or before Friday 20 December 2024. They explained that the statement 'will also deal with matters which will be relevant to the interim maintenance and funding application.' That was an unsurprising proposition as there is plainly significant overlap in answering this application and the injunction application. The following day, Wednesday 11 December 2024, the court sent a notice of hearing to the parties listing the MPS and LSPO hearing on Wednesday 18 December 2024.

14. The service of this notice of hearing gave H only four working days' notice of this hearing. However, he has known about the application since 29 November 2024 and the issue of interim funding had first been raised in correspondence on 8 October 2024. In addition, H had been working on a statement which was due on Friday 20 December 2024 for some time. Although I accept that the short notice of this hearing has presented difficulties for both H and his solicitors, nonetheless he was able to serve a very full statement on the morning of the hearing and I do not think that this

has created any great prejudice for him. I have reminded myself throughout the process of giving this judgment that H was under some time pressure to complete his statement.

15. The short notice also meant that H was unable to attend the hearing in person today. He was however able to join the hearing by video. I do not consider that this has hampered his participation in the proceedings in any way.

Lifestyle and standard of living

16. W describes a lifestyle consistent with extreme wealth. The family home is a very grand property of 2,790 square meters, with 9 bedrooms, heated indoor pool, massage room, cinema room, commercial chef's kitchen, wine cellar, gym and four car garage. She says no expense was spared on the interior and gives a number of examples to demonstrate this. She says in 2021, the parties spent in excess of €400,000 redecorating H's and her bedrooms. She explains that €100-120,000 was spent on the children's bedroom and that the wallpaper in the dining room cost c.£36,000. Until the breakdown of the marriage, the parties had 15 members of staff in London.

17. W identifies expensive artwork, silverware and vases. She wears designer clothes and has an extensive wardrobe. She has totted up her expenditure at Net a Porter, Dior, Valentino, Prada, Celina and Brunello Cucinelli, over various periods. It would appear that she was free to spend what she wanted on clothes.

18. The family took luxurious holidays. W gives a breakdown of the holidays and approximate costs since Christmas 2023, as follows:
    a. Family trip to Courcheval at Christmas at a cost of c.€400-500,000
    b. Family trip to Zermatt in the February half term for c. €70,000
    c. A solo trip for W to Courcheval in March for c.€45,000
    d. Family trip to Dubai at Easter for c.US$100,000
    e. Attending a wedding in Israel in June 2024 for c. US$30-35,000
    f. Family trip for the summer holiday to Tuscany for €400,000

19. H does not dispute the details of the standard of living presented by W and accepts that it was very high. It is significant that expenditure generally and on holidays continued at an extravagant level until W told H she wanted a divorce.

Resources

20. W is a full-time homemaker. She has a Revolut account with a balance of c.£11,000 and a Barclays account with a balance of c.£7,000. She has no other capital resources save for her jewellery.

21. W says she does 'not have any real understanding of H's work but believes it primarily revolves around making political connections and introductions, though he did once refer to investing in gold'. H says that since leaving B Country he has been largely retired and has funded the parties' lifestyle from liquidating assets accrued prior to the marriage.

22. W says that she has little knowledge of the full extent of H's business interests and wealth. The lifestyle she describes is consistent with enormous wealth. In her statement in support of her application for an injunction she described a number of documents belonging to H which she had found at the family home, including an asset schedule which showed H's wealth as in excess of £200 million. The documents she found were sent unread by W's solicitors to H's solicitors pursuant to the dicta in *Imerman*. She also asserts that the family have a large home in Z City.

23. H produced that asset table with his statement. He says he does not recognise it and that he did not create it. He says he does not know who produced it but he suspects it was created by an assistant or fiduciary to open a bank account or obtain borrowing. He says it is likely that the author sought to exaggerate the position. He says he has no idea when the schedule was produced but it was not recently.

24. The asset table lists the following assets and liabilities:

    a. The family home at £45 million with £27.2 million borrowing
    b. Land in Z City worth £150 million
    c. Private Equity investments in the US worth £17 million

d. Cash of £8.25 million
e. Cars Art and Jewellery worth £3.15 million

I will revert to this asset table in a few paragraphs.

25. H says that he was very financially comfortable when the parties met and that the standard of living was very high. He claims, however, that the family is in a financial crisis, precipitated by borrowing secured against the family home of c.£23.7 million. The original mortgage of £27 million was secured against the property in favour of Lender O. Following the collapse of Lender O in March 2023 a demand for repayment of the loan was made. H sought to remortgage with Lender P but says that given his B Country heritage and connections, this proved impossible. The only lending facility available was by way of bridging finance, initially with Lender Q, then with Lender R and then with Lender S. Lender S would only finance a loan of c. £23 million and so H borrowed £4 million from Bank T on the condition of depositing £4 million with them under some sort of back-to-back arrangement. The rate of interest on the c.£23.7 million is extremely high at 15%. The monthly payment required is around £260,000 per month on an interest-only basis, which has been required since March 2023. This H says has completely drained his cash reserves and there is now overdue interest accruing together with default interest.

26. H maintains that he has been working hard to resolve this issue by (a) seeking to delay payments on the bridging loan, (b) approaching banks to replace the current bridging loan and (c) marketing the family home.

27. H says that the only other resources he has are as follows:
    a. A remote prospect of recovering land in Z City which he originally purchased in 1995/1996, which was stolen from him by an organised crime group.
    b. A personal numbered Swiss Account with Bank T with a balance at October 2024 of £53,203 which contained £1,046,076 in January 2024.
    c. A numbered Swiss Account with Bank T in the name of U Company AG, of which H is the sole shareholder, with a balance at October 2024 of CHF57,259 which contained CHF706,130 in January 2024.
    d. Some artwork.

28. H says that he has been outside of the UK since 13 October 2024 trying to arrange to borrow money to save the family from ruin. He is currently in Z City. While in Z City H has been staying in a property which W understood to be owned by H and which the family used from time to time during the marriage. H says the property was rented by him previously and is owned by V Company. H says he has no interest in V Company and that he is allowed to stay at the property rent free by the ultimate beneficial owner.

29. It is apparent that the asset table referred to above, was produced by H or on his behalf at some time after July 2023, when Lender R became a chargee of the family home. This is clear because the £27.2 million liability attached to the family home is described as 'Lender R'. This asset table is not an ancient document. It is no more than 18 months old. I have heard no oral evidence at this hearing but I am satisfied that for the purpose of this interim hearing I can assume that the asset table was produced in the last 18 months and reflects resources then available to H.

30. The table refers to £8.25 million in cash. Under the back-to-back arrangement with Bank T, it would appear that £4 million of those funds may now be security for equivalent borrowing. That would indicate that H had available to him £4.25 million in cash during the last 18 months. In addition, the table references £17 million in investments in private equity in the US. H says that this might be a reference to certain investments made over 20 years ago. I ask myself why such investments would feature on an asset table if they no longer existed. I do not consider that H's explanation that this is likely to be a document which deliberately overstates his resources for the purposes of borrowing is plausible. I think it likely that he has private equity investments in the US of great value and I make that finding for the purpose of this interim application. I make it plain that any findings I make about H's finances on this application are for this interim application only and will no doubt be the subject to much greater scrutiny.

31. It must have been clear to H that the asset table was created after July 2023 and yet in his statement he did not address what had happened to the £8.25 million in cash. It may be that those funds are totally accounted for by the back-to-back arrangement

and the costs of the borrowing. However, it seems highly unlikely that H would have continued to spend at the rate demonstrated by the cost of holidays since Christmas 2023 unless he had access to other resources.

32. It is very difficult at this stage in the proceedings to draw any concrete conclusions about H's wealth. However, I have no hesitation in finding on the balance of probabilities for the purposes of this application that it is likely that H has significantly greater resources available to him than he has disclosed.

Change of financial regime

33. Despite H's assertion that the family has been in a parlous financial situation, no brakes were applied to expenditure until after W announced that the marriage was over in July 2024. There had been some discussion prior to this about sale of the family home but W says that this was in the context of a possible move to Geneva in light of the potential changes to the non-dom tax regime. For the purposes of this application and without hearing oral evidence, I conclude that what W says is on this topic is likely to be true.

34. In early July 2024, whilst on holiday, W told H she wanted a divorce. In August, she says that they discussed a settlement and shook on terms that H would provide her with a £15 million house, £10 million to invest and £360,000 per annum for maintenance secured with a fund of £8.5 million, being total provision of £33.5 million. H does not address this in his statement. For the purposes of this application, I accept what W says.

35. When the family returned from holiday, W says that H told him that they had no money and that the family home was all they had left. During the marriage, W had been paid an allowance of CHF20,000 per month, had use of an Amex card and had been able to send invoices to the office of U Company in G Country. H stopped paying W's allowance in August, prevented her access to the Amex card and terminated the U Company facility. Since that time he has made one payment to W of CHF 30,000 on 3 October 2024. The staff have not been paid their wages and some have resigned.

Approach to the evidence

36. I remind myself of what Nicholas Mostyn QC, as he then was, said about how the court should approach evidential disputes of this nature in TL v ML [2005] EWHC 2860 (Fam) at para 124 (iv) and (v), where he stated:

> "iv) Where the affidavit or Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee.
> v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where he position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial."

37. I have no hesitation in concluding that H's disclosure is obviously deficient. But regardless of this I have to decide on the balance of probabilities where the truth lies. It seems to me that in circumstances where the family lived very extravagantly right up to the moment that W announced the marriage was over, I can safely conclude that the family finances are not as parlous as H has asserted. I think it very unlikely that he continued to spend at this rate because he expected to receive a personal loan by July as he appears to assert in his statement without identifying any details at all about this purported expected loan.

38. Erring in favour of the payee, I can safely conclude on the evidence I have before me at this interim hearing that H has access to resources to meet this interim claim.

39. It is difficult to draw any conclusions about the level of resources available to H but I am satisfied on the balance of probabilities that he has access to sufficient resources to meet these interim claims made by W.

LSPO

40. The costs claimed by W are as follows:
    a. Outstanding fees from 26 August to 30 October - £54,235
    b. From 1 November to date - £71,374
    c. A total of costs incurred to date therefore of £125,609

d. To the end of a post FDR directions hearing:
    i. RTM/ early settlement meeting £23,244
    ii. Return date – freezing injunction and 46 LRA £39,048
    iii. To end of first appointment £84,220
    iv. To end of private FDR £127,880
    v. To end of post-FDR directions hearing £34,608
    vi. Correspondence/ calls/ meeting £99,336
e. A total to the end of the post FDR directions hearing of £408,336
f. A grand total of £533,945.

41. H offers nothing and says the application is premature and must await either the sale of the family home or his being able to borrow money to cover the parties' legal fees.

42. The applicable principles in relation to an application for legal fees funding were set out by Mostyn J in Rubin v Rubin [2014] EWHC 611 at paragraph 13:

> "13. I have recently had to deal with a flurry of such applications and there is no reason to suppose that courts up and down the country are not doing likewise. Therefore it may be helpful and convenient if I were to set out my attempt to summarise the applicable principles both substantive and procedural.
>
> i) When considering the overall merits of the application for a LSPO the court is required to have regard to all the matters mentioned in s22ZB(1) – (3).
>
> ii) Without derogating from that requirement, the ability of the respondent to pay should be judged by reference to the principles summarised in TL v ML [2005] EWHC 2860 (Fam) [2006] 1 FCR 465 [2006] 1 FLR 1263 at para 124 (iv) and (v), where it was stated
>
> > "iv) Where the affidavit or Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee.
> > v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where he position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial."
>
> iii) Where the claim for substantive relief appears doubtful, whether by virtue of a challenge to the jurisdiction, or otherwise having regard to its subject

matter, the court should judge the application with caution. The more doubtful it is, the more cautious it should be.

iv) The court cannot make an order unless it is satisfied that without the payment the applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future. It is important that the jurisdiction is not used to outflank or supplant the powers and principles governing an award of costs in CPR Part 44. It is not a surrogate inter partes costs jurisdiction. Thus a LSPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings.

v) In determining whether the applicant can reasonably obtain funding from another source the court would be unlikely to expect her to sell or charge her home or to deplete a modest fund of savings. This aspect is however highly fact-specific. If the home is of such a value that it appears likely that it will be sold at the conclusion of the proceedings then it may well be reasonable to expect the applicant to charge her interest in it.

vi) Evidence of refusals by two commercial lenders of repute will normally dispose of any issue under s22ZA(4)(a) whether a litigation loan is or is not available.

vii) In determining under s22ZA(4)(b) whether a Sears Tooth arrangement can be entered into a statement of refusal by the applicant's solicitors should normally answer the question.

viii) If a litigation loan is offered at a very high rate of interest it would be unlikely to be reasonable to expect the applicant to take it unless the respondent offered an undertaking to meet that interest, if the court later considered it just so to order.

ix) The order should normally contain an undertaking by the applicant that she will repay to the respondent such part of the amount ordered if, and to the extent that, the court is of the opinion, when considering costs at the conclusion of the proceedings, that she ought to do so. If such an undertaking is refused the court will want to think twice before making the order.

x) The court should make clear in its ruling or judgment which of the legal services mentioned in s22ZA(10) the payment is for; it is not however necessary to spell this out in the order. A LSPO may be made for the purposes, in particular, of advice and assistance in the form of representation and any form of dispute resolution, including mediation. Thus the power may be exercised before any financial remedy proceedings have been commenced in order to finance any form of alternative dispute resolution, which plainly would include arbitration proceedings.

xi) Generally speaking, the court should not fund the applicant beyond the FDR, but the court should readily grant a hearing date for further funding to be

fixed shortly after the FDR. This is a better course than ordering a sum for the whole proceedings of which part is deferred under s22ZA(7). The court will be better placed to assess accurately the true costs of taking the matter to trial after a failed FDR when the final hearing is relatively imminent, and the issues to be tried are more clearly defined.

xii) When ordering costs funding for a specified period, monthly instalments are to be preferred to a single lump sum payment. It is true that a single payment avoids anxiety on the part of the applicant as to whether the monthly sums will actually be paid as well as the annoyance inflicted on the respondent in having to make monthly payments. However, monthly payments more accurately reflects what would happen if the applicant were paying her lawyers from her own resources, and very likely will mirror the position of the respondent. If both sets of lawyers are having their fees met monthly this puts them on an equal footing both in the conduct of the case and in any dialogue about settlement. Further, monthly payments are more readily susceptible to variation under s22ZA(8) should circumstances change.

xiii) If the application for a LSPO seeks an award including the costs of that very application the court should bear in mind s22ZA(9) whereby a party's bill of costs in assessment proceedings is treated as reduced by the amount of any LSPO made in his or her favour. Thus, if an LSPO is made in an amount which includes the anticipated costs of that very application for the LSPO, then an order for the costs of that application will not bite save to the extent that the actual costs of the application may exceed such part of the LSPO as is referable thereto.

xiv) A LSPO is designated as an interim order and is to be made under the Part 18 procedure (see FPR rule 9.7(1)(da) and (2)). 14 days' notice must be given (see FPR rule 18.8(b)(i) and PD9A para 12.1). The application must be supported by written evidence (see FPR rule 18.8(2) and PD9A para 12.2). That evidence must not only address the matters in s22ZB(1)- (3) but must include a detailed estimate of the costs both incurred and to be incurred. If the application seeks a hearing sooner than 14 days from the date of issue of the application pursuant to FPR rule 18.8(4) then the written evidence in support must explain why it is fair and just that the time should be abridged."

43. In this case W seeks £125,609 for payment of incurred costs. This question of incurred costs was addressed by Peel J in KV v KV [2024] 2 FLR 951, where he said:

28. A question sometimes arises as to payment of costs already incurred prior to issue of the LSPO application. The authorities on this topic are neatly summarised by MacDonald J at paras 33-37 of DH v RH [2023] EWFC 111. They are examples of how to exercise the judicial discretion. There is no dispute that in principle an award for past costs can be made. Where, as noted for example in Re Z [2020] EWFC 80, the historic costs sought related to sums due to firms no longer instructed by the applicant, Cobb J declined to encompass those costs within the LSPO. Costs in connection with proceedings already concluded may similarly not be readily recoverable, but costs

reasonably and legitimately incurred by the present legal team in ongoing proceedings may, by contrast, be justifiably brought within the LSPO application because, as Cobb J said in BC v DE [2016] EWHC 1806 at para 22: "It is neither fair nor reasonable to expect solicitors and the Bar to offer unsecured interest free credit in order to undertake their work…".

29. Ultimately, it seems to me, this aspect of the LSPO jurisdiction should be viewed as part of the broad discretion available to judges when determining what LSPO award, if any, should be made, applying the statute and the factors summarised in Rubin. The essential question, as MacDonald J put it in DH v RH at para 34 is whether "…the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings".

44. In the same authority Peel J went on to address the general approach to quantification of a LSPO award:

30. In BC v DE (supra) Cobb J, when considering the quantum of a LSPO application, reviewed the authorities and adopted the technique of applying a "notional standard basis of assessment" to the claimed costs; in that case, a 15% deduction was adopted. That approach has been adopted by other judges (including myself) as a cross check against the reasonableness of the sums sought; see, for example, MG v GM (supra) at para 54(i) where I applied a 30% discount.

31. However, I took a different approach to assessing the reasonableness of sums claimed in HAT v LAT [2023] EWFC 162 where I said this:

> "35. I considered applying a notional reduction to reflect what would occur on a standard basis assessment, a technique which has on occasions been used by judges of the Division (see, for example, Cobb J in BC v DE [2016] EWHC 1806 (Fam) who, at para 26, applied a 15% deduction). But on balance my view is that to do so would be the wrong approach in this case. This is not an inter partes costs order where such a deduction is routinely applied. It is a solicitor/client sum sought by W to enable her to litigate in circumstances where she cannot reasonably be expected to access her own limited resources.
> 36. The approach to quantum, in my view, is simply whether the costs sought are reasonable, in the context of the nature of the litigation, the issues, the resources, and how each party is approaching the proceedings. Scrutinising the figure claimed, it seems to me to be little overstated given that, in my view, this is not an over complex case. I doubt that as much solicitor time as is claimed will be required. I note that W's costs to date exceed H's by £50,000, and consider that this sort of discrepancy in W's favour going forward, and paid for by H, would not be justified."

32. To apply a standard basis of assessment discount may be a useful approach or cross check against the reasonable overall figure in some cases, but I do not

> read any judge in the reported cases as saying that it should be a formula of universal and automatic application. In some cases, it would have the effect of leaving a payee to fund the shortfall out of his/her own resources which may not be possible, or may not be fair to the payee. It may also be unfair to the lawyers who find themselves having to provide legal services at a significant discount. On balance I prefer to look at the sums sought in the round, taking account of all relevant factors and assess an overall reasonable figure, rather than to adopt a standard assessment discount other than as a cross check

45. Ultimately then the question is, as s22ZA(3) says, one of reasonableness. W has straddled all the hurdles set up in Rubin. Her solicitors have explained to her that unless they are paid soon they will down tools. W has no meaningful resources with which she can meet her fees. No litigation funders will lend her money and her solicitors will not offer her credit on a Sears Tooth arrangement.

46. So what is a reasonable figure? I take this very broadly. Her total incurred costs to date are £125,609. A proportion of that relates to the injunction hearing in front of Garrido J. The costs of that hearing are reserved to the return date of that hearing in March. Ms Campbell KC indicated that the lion's share of the costs to 30 October relate to that hearing. Those costs amount to £54,235. I am not going to make provision for those costs. I will however make provision for 85% of the costs from 1 November of £71,374. So I shall order H to pay to W £60,668 towards incurred costs. This should be paid within 14 days of my order. I consider this sum to be reasonable. W will be able to seek a costs order in respect of the injunction hearing at the return date. I note that although I am making a 15% reduction this is not guided by what might be assessed on a standard basis but on what I consider to be reasonable in all the circumstances.

47. As to the costs from now until the end of the post FDR directions, I take the same approach and shall order the payment of 85% of £408,336 i.e. £347,085. This is to be paid in equal monthly instalments with the first instalment to be paid one month after my order and the last instalment being paid a month before the post FDR directions. I will leave it to counsel to calculate the instalment programme once dates have been ascertained.

Maintenance

48. In TL v ML [2006] 1 FLR 1263, Nicholas Mostyn QC (as he then was) stated that the sole criterion for assessing maintenance is 'reasonableness' which is synonymous with 'fairness'. That case was approved by the Court of Appeal in Rattan v Kuwad [2021] EWCA Civ 1. I remind myself of the words of Thorpe J (as he then was) in F v F [1996] 2 FCR 397 that:

> "….in determining the wife's reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra-rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people….I think that it is necessary to establish a yardstick that more nearly reflects the standard of living which has been the norm for the wife….".

49. Until the breakdown of the marriage, W had unfettered use of an Amex card, an allowance of CHF20,000 per month and a facility to send invoices to the U Company office for payment. In addition, H met all the costs relating to the family home.

50. By her written application, W sought maintenance of £120,076 per month and an order for H to pay all the outgoings on the family home, all car costs, all the staff costs, the school fees and card payments of £10,000 per month to the house manager and chef. Ms Campbell KC modified the position before me and sought on her client's behalf an order for H to pay:

    a. £33,410 per month
    b. Mortgage payments
    c. Utility payments
    d. School fees
    e. The salary for one security guard and the nanny
    f. Medical expenses

51. The reduction in monthly payment was calculated by removing holiday costs.

52. H offers nothing and says the application is premature and must await either the sale of the family home or his being able to borrow money to cover the family's living costs.

53. I have looked carefully and critically at the budget produced by W. There are areas where it could be pruned. However, I think it appropriate that W and the children should be able to take some holidays. Therefore the concession to remove £86,666 per month referable to holidays acts as an automatic prune to the rest of the budget. Given the view to which I have come about the resources available to H, I consider that the sums sought by W are reasonable and I order H to pay £33,410 per month monthly in advance from the date of the application and to meet the other payments identified above. I do not intend to backdate the order beyond the date of the application.

Injunction application

54. W sought an injunction against the second respondent, the trustees of the A Trust, in the same terms of the undertaking which H said he would use his best endeavours to obtain from them. The words of that undertaking were as follows:

> not take any steps that will dispose of or diminish the value of the family home (whether by increasing the borrowing charged against it, said to be circa £28 million, or otherwise) unless those steps have been agreed in advance in writing by the applicant or ordered by the court or encourage any others to do so;

55. W seeks the order because H explains in his statement that X, trustee of the A Trust (possibly the sole trustee), has refused to give the undertaking because (a) the trust has no funds to meet legal fees and (b) he is not willing to fetter his ability to take steps to protect the trust through a sale of the family home or refinance and he is under a duty to protect H as the sole beneficiary.

56. Garrido J made very plain in his judgment that there was no evidential basis for concluding that there might be a risk of dissipation of the family home or its proceeds. It does not appear to have been part of his reasoning that H gave an undertaking as set out above and undertook to uses his best endeavours to obtain the same undertaking from the trustees.

57. W relies on the failure of the trustee to give the undertaking and the fact that the house is now being marketed by Y Estate Agents as reasons to support the making of an application for an injunction. H resists the application.

58. I do not consider that the points made by W should lead me to reconsider the decision already made by Garrido J. I do not accede to this application. However, if at any point a sale is imminent and H is unable to provided concrete reassurance that the proceeds of sale will be kept safely in this jurisdiction, subject of course to repayment of legitimate charges, then I expect that a court would likely grant an injunction freezing the proceeds of sale.

Directions

59. Both parties have asked me to make directions for the expedition of the financial remedy proceedings in order to facilitate the hearing of a first appointment at the return date of the injunction on 27 March 2025. The directions proposed would timetable Forms E, questionnaires and answers to questionnaires subject to just exception prior to the first appointment. I have no hesitation in making those directions.

60. I will also list (a) a court FDR on the basis that given H's assertion about his means he may suggest that he cannot pay for a private FDR, (b) a post FDR directions hearing, (c) a PTR and (d) a 7 day final hearing. The case is allocated to Garrido J and all these applications save the FDR should be before him. The first appointment listed on 16 April 2025 should be vacated.

61. I note that I am listing the case up to and including a final hearing in accordance with current practice.

62. Given the provision I have made for LSPO, I do not consider that I should make any inter partes costs orders on this hearing.

63. That is my judgment.