Ref. LV20D10563
Neutral Citation Number: [2024] EWFC 379

IN THE FAMILY COURT AT BLACKBURN

64 Victoria Street
Blackburn

Before HIS HONOUR JUDGE BOOTH sitting as a High Court Judge

IN THE MATTER OF

ON

-v-

ON

MS HARRISON KC appeared on behalf of the Applicant
MS BENNETT appeared on behalf of the Respondent

APROVED JUDGMENT *Version 2.0*
11th DECEMBER 2024

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JUDGE BOOTH:

What is the Case About?

1. The interface between an arbitral award and the court in financial remedy proceedings and the duty of full, frank and clear disclosure and when it ends.

The issues as defined at a Directions Hearing

2. a) Whether there has been fraudulent non-disclosure by the husband; b) In the event that fraudulent non-disclosure is established, whether that non-disclosure was material to the Award; c) In the event that the non-disclosure was material to the Award, what adjustment, if any, should be made to reflect that on disclosure; d) The court having determined a) to c) above, the court shall determine the structure of the order to be made.

Representation

3. Ms Harrison, KC represented the wife. Ms Bennett represented the husband. I am grateful to both for the extensive and helpful written material, and the submissions they made.

The Evidence

4. I have a very substantial volume of paper in this case, running to nine lever arch files. I have the documents generated within the arbitrated financial remedy process. I have subsequent documents generated by the process I am concerned with. Further documents have been disclosed on a piecemeal basis, primarily by the husband about his businesses.

History

5. The parties are in their early 50s. The husband is the managing director of companies involved in the building and development of land and property. The wife has not worked outside the home, although was a director of the husband's principal business and paid a salary.

6. The parties met in 1988, were engaged to be married in 1994 and married in April 1996. There was no pre-marital co-habitation. They have four children, the youngest of whom remains at a fee-paying school, living with her mother. The older children are largely independent.

7. The parties separated in 2019, divorce and financial remedy proceedings were issued, however, were dismissed in 2020 following a reconciliation. Later in 2020 the parties separated, for the final time, meaning that this was a long marriage, of 24 years, which had produced four children.

8. Divorce proceedings were issued in November 2020 with a Decree Nisi made in March 2021.

9. The wife issued financial remedy proceedings on Form A on 3 February 2021. The First Appointment was dealt with on paper by way of a consent order in July 2021. The parties attended a private FDR appointment in November 2021. They were not able to reach agreement and thereafter agreed to arbitrate. To that end, an arbitrator was appointed, Nicholas Allen, KC, and he first gave directions on 28 February 2022.

10. A hearing took place, before him, on the 16th to 19 May 2022, inclusive, and the award was sent in draft to the parties on 26 July 2022. Counsel who represented the parties in front of me represented their clients in the arbitration.

11. Under the terms of the IFLA Scheme and the arbitration form signed by the parties, Form ARB 1 FS, the parties agreed that they would apply together for a court order, in the same or similar terms as the arbitrator's award, and would take all reasonable, necessary steps to see that the order was made.

12. Following the draft award being distributed in July 2022, both parties raised points of clarification and asked for other issues to be decided. It was not until January 2023 that the arbitrator was able to decide all those points, as an addendum to his award, and delivered what was intended to be the final version, dated 2 January 2023.

13. Thereafter, the parties attempted to agree the terms of a draft order, so that it could be approved by the court. By June 2023 it was clear that an impasse had been reached, and the wife applied to the court for directions to list the dispute about the terms of the order for determination by the court.

14. Before that application could be listed, the wife reached the conclusion that the husband had failed to provide full and frank disclosure to her and to the arbitrator, and so by an application dated 21 August 2023, she issued an application to set aside the award and to receive substantially more. Subsequently the husband also asked to be relieved of his obligations and for him to be ordered to pay less.

The Award

15. Within the arbitration the husband contended that the assets available for distribution between them was some £4.6 million. The wife contended that the assets should be valued at £7.3 million. The difference between them was as to the value to be taken for the husband's principal businesses.

16. That issue had been considered by a forensic accountant of vast experience, who had provided reports to the court based on the information provided to him. The wife had unsuccessfully sought to have her own expert evidence admitted into evidence. The arbitrator placed a value on the husband's business interests at £1.3 million after reminding himself of the fragility of the valuation of private companies when valued on an earnings basis. In fact, the asset value was very close to the earnings basis valuation.

17. As a result of that conclusion, the arbitrator determined that the asset base was £4.8 million and divided it broadly equally. In doing so he carried out a section 25 exercise, in a conventional way, but decided that the wife would be without sufficient income on the figures that he was provided with. He concluded that the husband had significantly greater than disclosed income based on the family's lifestyle and expenditure.

18. Having considered the need for a clean break and based on the value of the former matrimonial home at £2.9 million net, he concluded that the wife needed periodical payments until she was aged 67, when she would have the benefit of a State Pension and a modest personal pension.

19. He made allowances for the wife's liabilities, primarily for legal costs. His award was approximately 50 percent of the assets each with the bulk of the wife's award being the value

in the family home plus a time limited periodical payments order for herself. The husband was to support the parties' youngest daughter. He retained his business interests and some other assets.

The Relevant Law

20. The wife's case is that a duty of full and frank disclosure is owed by the parties to each other and the court in financial remedy litigation until the court order is sealed. It is the husband's contention that that duty ends at the arbitration hearing or with the judgment, and that the award in this case should be treated as a judgment.

21. There is no dispute that the parties to a divorce are under a duty to provide full, frank, and clear disclosure of their finances. The earliest statement of that principle was *J v J* [1955] P215.

22. The duty commences from the moment Form E is due and continues until the conclusion of the proceedings: *N v N* [2014] EWCA Civ 314. That would normally be when the judgment is pronounced - *Rose v Rose* [2002] EWCA Civ 208. The latest moment would be when the final order is sealed.

23. In other cases, different language has been used. In *Livesey (Jenkins) v Jenkins* [1985] AC424, Lord Brandon observed that a party must bring to the attention of the other side, and the court, by way of evidence,

> "… any changes in the situation of either party occurring between the filing of the original affidavits and the final disposition of the claims by the court…"

24. It was said by Singer J in *S v S (No. 2) (Ancillary Relief: Application to set aside)* [2009] EWHC 2377 (Fam),

> "[20] It is of course trite law that the parties to an ancillary relief application have a duty of full and frank disclosure which extends until judgment is given: *Jenkins v Livesey (formerly Jenkins)* [1985] AC424 and *Vernon v Bosley (No. 2)* [1999] QB18."

25. In *Gordon (formerly Stefanou) v Stefanou* [2010] EWCA Civ 1601 Coleridge J said this,

> "[36] Finally, I would like to endorse Ms Stones QC's concern about the potential effect of lengthy delay between the end of a hearing and the production of the judgment in these complex ancillary relief cases involving fast moving commercial enterprises, where the profile of a company can alter, sometimes in a short period. In such cases the picture is inevitably continually shifting, and this places an unfair burden, I think, on participants in such enterprises in having to discharge this continuing burden of disclosure. *Livesey (formerly Jenkins) v Jenkins* [1985] AC424 contemplated, I think, a short period, i.e., not more than a matter of a few weeks, between hearing and judgment. In this case, on both occasions, there was a gap of

> some four months. Arguably, I think, different disclosure considerations might apply in a case involving this kind of delay, however, I am not going to go down that track today, I merely raise it as a concern which may call for consideration in a future case."

26. The question of whether the duty continued beyond the first instance decision, into the appellate process, was considered in *N v N (see above)*. The point was not decided.

27. However, I am not dealing with the judgment of a court, I am dealing with an arbitral award, that the parties have, by contract, agreed that they will ask the court to make an order in like terms.

28. An arbitration award, when made, is in principle effective and binding as between the parties – *BC v BG* [2019] EWFC 7. However, it is not a court order, and it needs to be turned into a court order to be enforceable, rather than be enforced under the Arbitration Act 1996. It can only be turned into a court order by a judge. That means that an arbitral award cannot have the same status as a judgment by a judge for the purposes of ending the duty of full and frank disclosure.

29. Parties may apply jointly for a consent order, implementing the arbitral award, following Family Procedure Rule 9.26 and FPR practice direction 9A paragraph 7.1.

30. A party seeking to challenge an arbitral award would have to issue a notice to show cause, that being the procedure endorsed by Lord Wilson, giving the lead judgment of the Supreme Court in *Wyatt v Vince* [2015] UKSC 14. I have treated that as the effective application here and that is the process that has been adopted.

31. The Court of Appeal in *Haley v Haley* [2020] EWCA Civ 1369 spelt out the role of the court, and from where the effectiveness of the order and its enforceability was derived. King LJ said,

> "Given that the orders determining the enforceable legal rights of the parties following divorce are made under Matrimonial Causes Act 1973 and not under the Arbitration Act 1996, there is no requirement for the discontented party first to make an application under section 57, section 68 or section 69 of the Arbitration Act 1996 before asking the family court to decline to make an order under the Matrimonial Causes Act 1973 under the terms of the Arbitral Award."

32. In the Appendix to his judgment in *A v A (Arbitration Guidance)* [2021] EWHC 1889 (Fam) Mostyn J provided procedural guidance as to how disputes, of the nature before me, should be dealt with. In *Haley v Haley* King LJ had said that,

> "The approach to determine whether the court should decline to make an order in the terms of the Award is by reference to the appeal procedure and the approach found in the Family Procedure Rules 2010."

33. The nature of the hearing to be conducted will be, as with an appeal, confined to a review and will not be a re-hearing, subject to any case management direction which the

judge may make, in relation to updating or other evidence. The court, thereafter, will only substitute its own order if the judge decides that the arbitrator's award was wrong, not seriously or obviously wrong, or so wrong that it leaps off the page, but just wrong.

34. Against that background, can the award be treated as if it were a judgment, so that the duty of full and frank disclosure ends with the award? The answer to that question, may very well be, "It depends."

35. If the award is followed by an immediate application to the court, with the court asked to make an order in terms of the arbitral award, I see no reason why the duty should not, for all practical purposes, end with the award. However, that is not what happened here. The award was delivered more than six months after the arbitration hearing. Ms Bennett's primary submission was that I should treat the date of the arbitration hearing as the end point of the duty of full and frank disclosure. As is clear from the authorities I have quoted above, had the arbitration hearing been a final hearing before a judge, that would not have been the consequence, given the delay between the hearing and the award.

36. There was then a further six months spent haggling over the terms of the order to implement the award. Again, it seems to me, that had this been a judgment of the court, with a delay of six months before production of an order, the duty would have continued. I see no reason why it should not have continued here.

37. Once the proceedings were before the court, then in my judgment, the duty continued again until this court has decided what should happen. There has been no "final disposition of the claims" as contemplated by Lord Brandon .and no "conclusion of the proceedings" per MacFarlane LJ in *N v N* (above).

38. My conclusion is, on the facts of this case, the duty of full, frank, and clear disclosure has continued throughout, and continues until an order is endorsed by the court, following my judgment.

<u>The nature of this hearing</u>

39. The wife makes serious allegations against the husband of deliberately / fraudulently not disclosing relevant information to the arbitrator and to her resulting in the award being wrong. The husband refutes that allegation. A finding of material non-disclosure must be established on evidence and after a fair and appropriate trial process during which the evidence is evaluated – *N v N* (above). The parties asked me to conduct a hearing where both gave evidence and were subject to cross-examination so that I could carry out an appropriate evaluation and assess whether the allegations made by the wife were established on a balance of probability. That is what I have done. There was no alternative. The hearing lasted longer than the original arbitration hearing.

<u>What are the Wife's complaints?</u>

40. The wife has an extensive list of matters she says I should treat as failures by the husband of his duty of full and frank disclosure.

41. Firstly, the completion of the arbitration hearing in May 2022 occurred some six weeks before the year end of the husband's principal business. A single joint expert forensic accountant had relied on information provided to him by the husband and the accounts from 2021 with updating information including projected figures for 2022.

42. The accounts of the business for 2022 were filed with Companies House in January 2023, shortly after the final arbitral award was distributed. Those accounts were very different from the projections given to the single joint expert, and upon which he based his assessment of the value of the business.

43. The company made a profit. What had been projected by the husband in the information he provided to the single joint expert, was that the company would make a loss. It would have been the third loss in a row. Also, due to a substantial tax rebate, the asset value of the business was considerably greater than that assessed by the single joint expert based on the information provided by the husband.

44. It is the wife's case that the husband reacted to the success of his company in a way only consistent with someone who had thought they had scored a victory, by starting to spend money, including the acquisition through the business of a Lamborghini motorcar for his own use, at a cost of nearly £4,000 per month.

45. The husband's case in the arbitration was that his business was struggling in a difficult market, and that things were financially tight. It is the wife's case that the husband knew that he had given incomplete and/or misleading information to the single joint expert, leading to the wrong valuation.

46. Next, the wife complains of a misstatement of a performance of another related business, which would have put an additional £34.8K into the pot.

47. Next, she complains about a misrepresentation by the husband of the role of a company that was not the subject of valuation, as it was said by the husband to be dormant. In fact, he had activated the company and used it as a special purpose vehicle to facilitate a major development which was intended to provide profit to his business.

48. A great deal of time and energy was spent investigating this aspect of the case. The single joint expert has concluded that that company has no value. Ms Harrison and the wife tried to persuade me otherwise. The documents show that if the development turns out in a particular way and that parts of it are sold for maximum prices, there is a potential for some funds to be left in that company. That is not the position currently, and it certainly was not the position in 2022.

49. A sum of £527,228 stood in an account prior to the arbitration. The arbitrator left that out of account on the basis it was needed to support one of the businesses as explained by the husband. She complains that the husband misled her, and the arbitrator, about those funds, not telling anyone that he had those funds, had retained them, or dissipated them, spending them on his legal costs and, subsequently, on the deposit for a house.

50. The husband's answer to all of this is to say that he disclosed what he knew at the time of the arbitration hearing, that he did not know that the figures for the business were going to be better than those projected, and that it was just good fortune that things turned out as they did, but that that was too late to affect the outcome of the arbitration, and the financial remedy proceedings. Otherwise, he denied any attempt to mislead or withhold information, or to fail to provide adequate or full explanations of his affairs.

My Assessment of the Parties and the Evidence

51. Neither the husband nor the wife was impressive witnesses. The wife was clearly determined to expose the husband as a liar and a cheat, and my conclusion is that she has rather lost her sense of perspective.

52. The Arbitrator observed of the husband that, "He would answer the letter rather than the spirit of the questions." That is how he behaved before me. In relation to his purchase of the expensive motorcar, he made it very clear that he felt it was something he deserved, as it was only the wife who appeared to be benefitting from his years of hard work.

53. The mere fact that things have turned out differently than expected, or that after his evidence to the Arbitrator, the husband has changed his mind about some things does not amount to fraud.

54. Was he careless in his disclosure and his evidence, or did he deliberately mislead? That requires me to analyse, carefully, the complaints made, and the explanations given, in the context of all the evidence in the case. The only way I could review the complaints made of fraudulent non-disclosure was to hear evidence and assess the parties. Insofar as the wife had evidence of things being different than the husband had said they were, it fell to the husband to explain. That is an evidential burden. The burden of proof always rests with the wife.

55. On the face of it, for the company to produce very different figures from those given to the single joint expert, and on which he based his opinion, calls for an explanation. The husband's first point was that although he is the driving force of the business, he employs approximately 100 people and has a proper management structure where he delegates aspects of the business to other people. He said he could not be expected to know everything.

56. Whilst on a day-to-day basis I have no doubt there is some force in that argument, the hearing before the arbitrator occurred right at the end of the financial year. There had been a period of difficult trading for the company, with well-publicised problems in the building industry, not least related to materials costs flowing from the consequences of the war in Ukraine.

57. On three major contracts, the husband's company had instituted a process of trying to re-negotiate the terms of its original contract, to charge more for materials that had been used in the contract because the husband's company had had to pay more for those materials themselves, than was in the contemplation of anybody at the time the contract was entered into.

58. The husband said this had been delegated to one of his employees and pointed to emails from that employee to the companies with whom they were negotiating. The husband's case was that at the time of the arbitration hearing, those attempts to renegotiate had been rebuffed.

59. The single joint expert had asked the husband to provide information about work in progress. Work in progress would have included quantifiable variations to a contract. The claims that had been made in respect of attempts to renegotiate the contract price was categorised by the company's accountants as non-quantifiable disputes which did not fall into work in progress. There was, therefore, a separate category of claims which did not feature in the books and were not reported to the single joint expert.

60. Did the husband know about those non-quantifiable disputes? I am certain that he did. The decision to engage with his customers in a negotiation would have been a decision for management at the highest level and would only have been taken by him. And I have no doubt that in broad terms he was kept posted, as to the progress of those disputes. The significance for the company's accounts of success, should they be successful in those claims, was that they went straight on to the bottom line. The costs expended by his company in purchasing the materials was down as an expense, so already allowed for, but the husband did not tell the wife, nor as far as I can see, the single joint expert, that there was potential for claims to be met that would alter the profitability of the company to a significant degree.

61. In fact, those claims were met in full, and they transformed the business from loss making to profitable. That occurred in the months following the arbitration hearing, and before the arbitral award was published in January 2023. The husband disclosed nothing, as in his view (wrongly as I have decided) his duty of full and frank disclosure had ended in May 2022.

62. The single joint expert was asked to revisit his figures for the value of the businesses and looked again at an earnings-based value and an asset value, but both were different than the values presented to the arbitrator. I have looked at his methodology, as the arbitrator did, and can find no reason to disagree with the conclusions reached by the single joint expert. His approach is cautious and measured, and at each turn he has been asked to look again at his figures, he has reflected and altered them to meet the changing circumstances of the world and wider economy, as well as the figures put before him.

63. In his view, the new figures, as they appeared in the 2022 accounts, would have resulted in an increase in the net value of the businesses, by £3.649 million. In my judgment, that is likely to have transformed the arbitral award. I think it inevitable that the arbitrator would have used this new figure for the basis of his award. Although it was an earnings-based valuation, the asset valuation was also higher.

64. If there were an extra £3.649 million to be distributed between the parties, in my judgment the principles applied by the arbitrator would almost certainly have ended with an award of 50 percent of the total assets to the wife, with a requirement that the husband pay a substantial lump sum but be relieved of his obligation to pay periodical payments to his wife.

65. I would have expected such a lump sum of approximately £1.8 million pounds to be payable in stages over a maximum period of two years.

66. None of the other matters complained about by the wife would have resulted in any material difference to the award and that is the test I must apply.

67. The 2023 Accounts have subsequently become available, and they show a less favourable position. Based on the 2023 figures, the single joint expert has assessed that the extra amount that should be attributed to the husband's business will be some £2.36 million. Adopting the same approach and so based on the most current figures the wife would have an entitlement to an extra £1.16 million to achieve broad equality of capital distribution.

68. In my judgment, that too would have led to a different approach by the Arbitrator and, again, he is likely to have concluded that an equal division of the parties' assets would require a lump sum of 1.16 million pounds, and that that would be sufficient to discharge the

obligation to pay periodical payments. Again, I would have expected that sum to be payable over a period but a shorter period of time than for the larger amount.

69. I need to answer the question of whether the failure to disclose by the husband was deliberate or careless. I am satisfied that he knew about the non-quantifiable variations claims but did not explain the way they were dealt with in the books of the company, and that the consequences would be that they would go straight to increase the profit.

70. Thereafter, having decided that he had discharged his duty of disclosure, his failure to disclose the fact that that money had come in was deliberate. He decided that he was not explaining that. He decided he was not going to share what he regarded as his good fortune with his wife. In my judgment, that amounts to fraud once I have established that his duty of full and frank disclosure continued throughout the process and continues to this day. Such a finding was inevitable, given the decisions the husband made, not to disclose anything further.

Other Changes

71. The bulk of the funds that were to be received by the wife come from the proceeds of sale of the family home. It was anticipated that she would receive almost 3 million pounds. The house has been on the market for more than two years, there have been no offers, and it is clearly substantially over-priced; there is no interest at its current asking price. I must therefore assume, for these purposes, that the house is worth significantly less than was thought by both parties, at the time of the arbitration hearing. It seems to me, more likely, that a realistic value would produce £2.5 million for the wife. That skews the balance sheet against her.

72. Another factor in play is the lifestyle choices made by this couple. I say this not by way of criticism, as it was an approach adopted by many people. They bought property subject to very large mortgages. Mortgages that were affordable at the time that they were taken became unaffordable because of interest rate changes and the expiration of fixed terms. Therefore, the husband has expended tens of thousands of pounds on interest payments, which would inevitably have depleted the parties' finances, but has kept a roof over the head of the wife and the parties' youngest child. He is entitled to some credit for that in the balancing exercise.

73. What is inexplicable, and for which he could offer no rational explanation, is why he took on a yet further mortgage after the arbitration hearing when he bought himself another house, subject to a substantial mortgage.

74. A further change is in relation to the costs of the whole of the litigation process. Amongst the wife's complaints was that the husband had helped himself to cash of over half a million pounds, saying it was needed to support the businesses (see paragraph 49 above). That turned out not to be how he applied the money, but he spent it on his legal costs and on the deposit for his new house.

75. Because there was no spare cash, the wife took a litigation loan. That was the position at the time of the arbitration hearing. Her costs at that stage, including interest, exceeded £600,000 but the interest has continued to accrue on those outstanding costs. The work done by her legal team in support of this application have not yet been billed. I am told they stand at approximately £600,000. They will have to be paid. The wife, therefore, must find £1.2

million to pay her legal fees. That would consume the entirety of a lump sum based on the 2023 figures for the husband's business.

76. The husband has been paying his legal costs as he has gone on but has incurred nothing like as much as the wife.

What should I do?

77. The award has been shown to be wrong for the reasons set out above. It has been said in several appeal cases, both dealing with set aside applications and appeals, that the court should consider how to correct an award, dependent on the facts of each case. Ms Harrison reminds me that a fraudster should not be able to benefit from his own fraud. Can I simply adjust the figures and otherwise leave the arbitral award alone?

78. To require the parties to re-litigate the financial remedy proceedings from the start is unthinkable. The costs of that exercise would lead to even greater financial ruin than they have visited upon themselves. I must therefore grapple, in the best way I can, with an adjustment of the award.

79. It seems to me that the wife should have the provision of extra to reflect the current value of the business. In the same way that the husband cannot fix the limit of his duty by the date of the arbitral hearing, the wife cannot fix the date of the values to be applied by those that are most favourable to her.

80. My duty is to look at things as they stand today, apply section 25 of the Matrimonial Causes Act, putting the interests of the parties' daughter as my first consideration.

81. The husband has throughout the financial remedy process complained that his businesses were struggling and teetering on the edge. I am afraid he has cried wolf too often. His reaction on making a profit in 2022 was to start to spend the money in 2023. His reaction to being saddled with massive mortgage repayment increases by 2023 was to take out a yet further mortgage.

82. I see that from his current disclosure the businesses do not currently have an overdraft facility with his bank but there have been relatively few occasions when he has appeared to need that overdraft facility.

83. In my judgment, this is a classic case for an equal division of what these parties have generated during their marriage. Everything they have has accrued during their marriage is due to their hard work, whether that be in running a business or in looking after a family with four children. The wife's obligations to the parties' youngest daughter will continue for several years to come; the financial obligation of educating her and providing for her will fall on the husband for several years to come. Both need a home.

84. The arbitrator was persuaded that the wife's needs for a home came in at well over one million pounds. I am not so persuaded. She could be adequately housed for less, and what she ultimately spends will be a matter for her to decide.

85. However, what I cannot ignore are the costs that these parties have incurred. The hearing before me lasted a week, with evidence confined to the question of whether there had been any or any fraudulent non-disclosure.

86. A significant part of that hearing was taken up with the circumstances around the formerly dormant company, that was revived as a special purpose vehicle in which the single joint expert had concluded, in his most recent report, had no value. Approaching the case in a similar way to an appeal, if a party appeals on a ground that fails, then they are at risk of having to pay the costs of the other side in fighting that lost issue.

87. In my judgment the costs of these proceedings must be considered in context. The husband failed to disclose information that was highly material to the outcome of the arbitration. The starting point is that he should pay the costs of putting that right. The wife used that vehicle as an opportunity to make allegations against the husband of other financial impropriety and non-disclosure, which made no material difference, and which she has not, therefore, established. That must be at her expense.

88. Whilst it is inevitable that the husband must pay something towards the wife's costs, it can only be a small proportion of what she has incurred. There was an issue, I reserved, as to the costs of an expert opinion, which I directed that the wife should pay in the first instance. That issue has fallen in favour of the husband, and so those costs must remain where they lie.

89. I must look at offers. Again, neither party has helped themselves. The wife's proposals for settlement were grossly excessive, and the husband's responses were effectively a failure to negotiate. He should have offered more; she should have accepted an awful lot less than she was asking but that never happened.

90. I remind my self of the provisions of Family procedure Rules 28.3 and PD 28A and the checklist in Civil Procedure Rules 44.4 but bearing in mind that this application is to be treated in the same sort of way as an appeal.

91. Given the incidence of costs and given that the arbitrator deducted those costs in arriving at the parties' net positions, it seems to me I should do the same. The effect of the wife's liability for costs will be to wipe out the benefit of any lump sum she is likely to get. Therefore, the need for periodical payments in her favour will continue.

Conclusion

92. My conclusion is that the wife should receive £1.16 million pounds more, plus £200,000 in respect of her costs.

93. Although the case has last for longer than a day, it is clearly in the interests of both parties that I conclude everything as soon as I can. The general rule of no order as to costs does not apply to an appeal. I start with a clean sheet of paper. I am influenced by the outcome of the various issues that have been litigated here, the wife having succeeded on establishing fraud on one ground but failing on all the others, and failing on the ground that used up the most court time and produced the most documentation. In so far as she has succeeded, she is entitled to her costs on an indemnity basis. Having looked her Statement of Costs and considered matters in the round I summarily assess her entitlement to costs at £200,000. These proceedings ought to have been concluded well within that budget.

94. On the same basis, the husband is entitled to his costs in respect of the issues where he successfully defeated the wife's claims but on a standard basis. The totality of his costs in his Statement of Costs is said to be £360,000. If I compare the rates charged by his lawyers to those charged by the wife's lawyers, they are comparable or in many instances lower. He cannot recover the costs of the fraud issue, but he succeeded on everything else. Doing my

best and allowing some discount as I am assessing what the wife should pay and the proportionality of the amounts sought in the context of the case, my summary assessment is that the wife should pay £250,000.

95. Rather than make a costs order against her in favour of the husband on the issues she pursued but did not establish, I have left the reduction in value of the family home on her side of the balance sheet. She does not have the ability to pay a costs order made against her. The obligation in the award for the husband to underwrite the agreed valuation is discharged.

96. The costs order in the wife's favour is payable within 28 days from the date of the handing down of the judgment.

97. For those sums to be paid, such assets as can be sold will have to be sold, and the proceeds of sale of a house currently standing to the credit of the parties with the conveyancing solicitors will have to be used towards those extra sums. Three further houses identified in the evidence should be sold, and the proceeds paid to the wife. I do not intend that the husband sells his current home or the business premises unless he chooses otherwise.

98. I see absolutely no reason why the totality of that lump sum should not be paid within 18 months, and that is the time limit I will give the husband. In the meantime, the lump sum should carry interest at 4% per annum to reflect the fact that the wife is being kept out of her money that she should have received long ago, and that interest is running on her legal fees loan that she will have to pay where the husband has paid his legal costs from the disputed account. From the due date of payment (18 months from the date of the handing down of the judgment) interest will run at the Judgment Act rate in the usual way.

99. As already explained, the periodical payments order provision remains in place. Had the wife not incurred the level of legal costs she has this would have been a clean break order – see paragraph 68 above. That is a factor in the balance to be struck to achieve a fair outcome.

100. He has known that the outcome of the arbitral award was wrong from at least January 2023 when the business accounts were signed off by him and filed at Companies House. He has had ample time to put his affairs in order so as to be able to put his hands on funds to pay out his wife. The fact that he has chosen not to do so is a consequence that he will have to live with.

101. I expect the parties to provide me with an order that reflects what I have decided within a very short period. I remind both parties that the duty of full and frank disclosure continues until such time as I get an order that I can approve. I note that there is already in existence an extensive draft order based on the arbitral award.

Lessons to be learnt

102. The first lesson is that the duty of full and frank disclosure continues beyond an arbitral hearing, beyond an arbitral award/judgment and until the court has approved an order reflecting the arbitral award. Secondly, any application to set aside an arbitral award needs to be focussed, realistic and confined to those matters that make a material difference. Thirdly, the approach to costs in these circumstances is likely to mirror that of an appeal, where a party will only recover the costs in the appeal on issues they succeed in and are at risk of being ordered to pay costs in relation to issues where they lose.

103. Finally, this case should be a salutary reminder of the need to negotiate and to settle on realistic terms in a timely fashion. Otherwise, the outcome, as here, can be ruinous.

Addendum

I circulated a draft of this judgment to counsel and invited corrections and any matters of clarification. That was responded to, and I handed down what was intended to be the final version dated 22nd November2024 (distributed on the 21st). That was followed by the wife's legal team raising different points. I allowed that to happen and provided for the husband's team to be able to respond. On viewing the wife's points I realized that my treatment of the costs issues required some expansion and I have done that in what I have headed *Version 2.0.* The additional points made on behalf of the wife are a blatant attempt to reopen the case. It is said that I have failed to achieve a broad 50/50 division by producing a schedule of figures some of which are updated some of which are not. The husband's team have produced a counter-schedule based on more up to date figures to show that I have. The only other approach is fresh Forms E. I am satisfied with my figures. What distorts the position is the vast amount of legal costs incurred by the wife on issues she has failed to establish. I am also aware that in a very few weeks' time the 2024 figures for the husband's business will be filed at Companies House. I have no idea whether that will be good or bad news for the companies. It may very well be bad news for the parties as the only next step may be to start the financial remedy proceedings again.