Case No: LV15D009589

IN THE FAMILY COURT
AT BLACKBURN

64 Victoria Street
Blackburn
BB1 6DJ

Date: Friday, 6th July 2018

Before:

HIS HONOUR JUDGE BOOTH

- -

Between:

MRS. A	**Applicant**
- and -	
MR. A	**Respondent**

- -

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MS. S. HILLAS appeared for the **Applicant**

MR. N. MONTALDO appeared for the **Respondent**

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Judgment Approved

HIS HONOUR JUDGE BOOTH:

1. This judgment is dealing with Mrs. A's application for all forms of financial remedy consequent upon her divorce from Mr. A. Mrs A has been represented by Miss Hillas and Mr A by Mr Montaldo.

2. Mrs. A is 50 years of age and Mr. A is 50 years of age. They have three children, X, who is 20 and at university; Y, who is 18 and currently taking her A-levels and who is expected to go to university in September; and Z, who is 8 years of age and at school.

3. The parties married in 1994 and separated in 2015 after 21 years of marriage. Mrs. A began her working life as a pharmaceutical technician. She then worked in property management until 2003, from when she devoted herself to the children. Mr. A worked

as an accountant, achieving professional qualifications, until in 2003 he took over the management of the parties' property business.

4. Since separation, their property business and the rental income it generates has been divided between them. Some of the properties are in Mrs. A's name, some are in Mr. A's name and some are in joint names. The property that they currently each manage was determined by Mrs. A on the advice of her solicitors. Mrs A has control of 21 rental properties and Mr A 9. The rental income retained by Mrs A is greater than that retained by Mr A.

5. The children have their base with their mother. Z is at private school with his school fees currently being met by his mother. He spends half his school holidays with his father, together with alternate weekends. That pattern is, from time to time, interrupted when his father is abroad.

6. The evidence in this case has been wide-ranging and detailed. I heard evidence from the witnesses over four and a half days. I have been provided with a substantial volume of paperwork. I will not be making findings on every point on which Mr and Mrs A disagree but only those that will help me decide the correct outcome of the application before me.

Overview

7. Everything that this couple have has been acquired during the course of their marriage. They have been very successful in developing a property portfolio of rental properties, primarily servicing the student market, with a number of their properties being houses in multiple occupation. The business has grown during the course of their marriage as they have reinvested some of their profits. Their business model was relatively simple. They borrowed the vast majority of the purchase price of the properties that they acquired. They have, in some instances, consolidated their borrowings and so have what was referred to as umbrella loans covering a number of different properties. Up until last year, they were able to offset the interest charges on the borrowed money against the profit that they made from the rental income before the assessment of tax. Since separation, and at the moment, they have a property portfolio of some 30 properties.

8. They have been able to enjoy a very high standard of living. They have privately educated their children. They lived in a substantial house in a nice part of south Manchester. They have had many expensive holidays. To give an example, the family income after tax for the last five years up to separation has been as follows: year ended 2015, £106,888; year ended 2014, £127,348; year ended 2013, £162,712; year ended 2012, £117,344; year ended 2011, £115,060. Their average income that they have had available to spend over the five years of the accounts I have just listed is £125,870.

9. The capital value of their property portfolio is a matter of contention. A value was agreed between the parties in 2016 for the purposes of this litigation. I am told that that valuation was not based on any professional advice but on the parties' own knowledge of the property market in which they operated. Such is the extent of the current borrowings that the net value of the portfolio at the agreed value, after deduction of the mortgage finance, the costs of sale and capital gains tax, is the very modest sum of £75,074. I will need, in due course, to consider how that has come about.

10. The former matrimonial home is a five bedroomed house occupied by Mrs. A and the children. The parties have agreed it is worth £900,000 and is subject to a mortgage of £580,000. They have agreed that it has a net value of £301,000. The cost of servicing that mortgage is currently £36,000 a year.

11. Mr. A has some pension provision. Mrs. A has none.

12. Both parties wish to "add back" assets that each say the other has helped themselves to or dissipated or left out of account or hidden, so as to achieve a distribution that is not equal shares but loaded in favour of one or the other.

13. Mr. A has endeavoured to persuade me to attribute to the property portfolio a much higher value than the figures agreed in 2016. The agreed figure was £5,490,000, giving, as I have said, a net value of £75,074. Mr. A seeks to establish that the property portfolio is, in fact, worth £8,310,000, with a net value after costs of sale, redemption of the borrowings and capital gains tax of some £1.6 million.

The parties' respective approaches

14. Mr. A has run a case based on selling everything, the family home, the property portfolio, so that it is all turned into cash, and to divide that between them. He claims to be entitled to receive the first £699,000 with the balance divided equally. He urges a clean break. The effect of that would be that if the valuation that he proposes were to be realised, he would get £1.32 million and Mrs. A would get £575,000. If the agreed valuation turns out to be the true value of the property portfolio then he would get everything and Mrs. A would get nothing. On either of Mr. A's proposals, Mrs. A would be without income and would have to use her capital payment (if she got one) to buy a house for herself and the children.

15. Mrs. A's approach is to say that I should transfer the matrimonial home to her, that she would indemnify Mr. A against his liabilities under the mortgage and obtain his release in short order, failing which the house would have to be sold. She invites me to divide the property portfolio in such a way as to give her the opportunity to generate income. She invites me to attribute to Mr. A the value of assets not disclosed or lost as a result of his actions. She too contends for a clean break but looks to Mr A for financial support for the children including half of Z's school fees.

The law

16. The relevant statute is the Matrimonial Causes Act 1973 (as amended). Not all of the schemes set out in the MCA Part II is brought into play by the facts of this case. Section 23 provides a list of orders that are available. Section 23(1)(c) provides for one party to the marriage to pay a lump sum to the other. Section 24 allows the court to order the transfer of property from one party to the other and to a child or for someone to hold for a child. The power to order a sale of property if that is needed to meet a lump sum is contained in s.24A. Section 24B gives the court power to make one or more pension sharing orders.

17. The matters to which the court is to have regard in deciding how to exercise its powers under sections 23, 24, 24A and 24B are set out in s.25. The court is required, by s.25(1),

to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

18. Section 25(2) specifies that the court shall, in particular, have regard to the following matters:

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

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

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

d) The age of each party and the duration of the marriage.

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

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

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

h) In the case of proceedings for divorce or nullity of marriage the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

19. Section 25A(1) then requires the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon as is just and reasonable (often referred to as the clean break provision).

20. Consideration of the statutory scheme by the higher courts has identified the following factors that are applicable to the facts of this case:

i) The analysis must be gender neutral and non-discriminatory – *White v White* [2000] 2 FLR HL.

ii) The starting point in every enquiry is a two-stage process. First, computation, then distribution – *Charman v Charman* (No 4) [2007] 1 FLR 1246 CA.

iii) In considering s.25, there are three main distributive principles: needs, compensation and sharing, shaped by the overarching requirement of fairness – *Miller v Miller; Macfarlane v Macfarlane* [2006] 1 FLR 1186 HL.

iv) The objective of financial orders is to meet the needs of the parties to enable a transition to independence to the extent that that is possible.

v) The main needs in this case, as in most cases, are for housing and present and future income, including income in retirement.

vi) "Need" will be measured by assessing available financial resources and assessing the standard of living during the relationship and generally the longer the relationship's duration the more important the standard of living will be.

vii) "The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the Applicant's age and health and the standard of living, although the latter factor cannot be allowed to dominate the exercise." – *FF v KF* [2017] EWHC 1093 (Fam) per Mostyn J. I feel sure Mostyn J did not intend his reference to age and health to be taken out of context. The age and health of both parties may be equally relevant as here.

viii) The fact of having a child and the child's dependence on his mother for his care changes everything – *Murphy v Murphy* [2014] EWHC 2263 (Fam) per Holman J.

21. As I have indicated, I am invited by both parties to add back or attribute to the other assets, some of which may exist, some of which may not exist. Mr. Montaldo, on behalf of Mr. A, referred me to *MAP v MFP* [2015] EWHC 627 (Fam), where Moore J identified that arguments in the area of add backs essentially come down to issues of conduct, as defined in s.25(2)(g), namely, "Conduct that it would, in the opinion of the court, be inequitable to disregard". He goes on to assert that as Lady Hale of Richmond made clear in *Miller/Macfarlane*, for such conduct to bite it has to be "gross and obvious". For the court to add back assets that have been spent, the court has to be satisfied that there has been "wanton dissipation of assets". In *Martin v Martin* [1976] Fam 335, Cairns LJ said:

> "A spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably."

22. Bennet J in *Norris v Norris* [2003] 1 FLR 1142 said:

> "The overspend.... at a time when he was about to and then did enter into protracted litigation with the wife can only be classified as reckless... In my judgment, there is no answer that the husband can sensibly give to the question, 'Why should the wife be disadvantaged in the split of the assets by the husband's reckless expenditure?' A spouse can, of course, spend his or her money as he or she chooses but it is only fair to add back into that spouse's assets the amount by which he or she recklessly depletes the assets and thus potentially disadvantages the other spouse within the ancillary relief proceedings."

23. When the Court of Appeal considered the point in *Vaughan v Vaughan* [2007] EWCA Civ 1085, Wilson LJ said:

> "The only obvious caveats are that a notional reattribution has to be conducted very cautiously by reference only to clear evidence of dissipation (in which there is a wanton element) and that the fiction does not extend to treatment of the sums reattributed to a spouse as cash which he can deploy in meeting his needs, for example, in the purchase of accommodation..."

24. Ms. Hillas, on behalf of Mrs. A, drew my attention to the decision of Mostyn J in *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 (Fam), where he was considering adverse inferences to be drawn from a party's lack of transparency in their disclosure:

> "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 than that the Court should be drawn into making an order that is unfair to the Claimant."

25. If it turns out that there are insufficient assets to go around to meet the needs of the parties and that that is a result of one party's conduct, then in the view of Moore J in *R v B and Capita Trustees* [2017] EWHC 33:

> "Mr Howard argued that conduct can only be relevant in a sharing case and that it cannot reduce a party's needs. I am not persuaded by that argument. Conduct features in s.25(2) without a gloss. The conduct may be so serious that it prevents the court from satisfying both parties' needs. If so, the court must be entitled to prioritise the party who has not been guilty of such conduct. The court can undoubtedly reduce the award from reasonable requirements generously assessed to something less. Indeed, that is exactly what happened in *Clark v Clark* [1999] 2 FLR 498. It may be that unless there is no alternative the court should not reduce a party to a 'predicament of real need' (see *Radmacher v Granatino* [2010] UKSC 42) but that is not suggested in this case."

What is there available for distribution?

26. The first thing I must look at is the value of the property portfolio. These parties, as active participants in the letting business since separation and in the husband's case since 2003, are well placed to have arrived at a realistic and sensible valuation of their own property portfolio. I am not surprised that they did not, either of them, feel the need for a professional valuation. There may have been a number of factors in play in making that decision, including their own knowledge and expertise, but I also recognise that the cost of valuing a portfolio of 30 properties would be expensive and there is rather less free cash available now than there was when they were together.

27. I conducted a pre-trial review some four weeks before the final hearing. At that pre-trial review, Mr. A sought to postpone the final hearing and for there to be a formal valuation of the property portfolio by a suitably qualified expert. I refused that application. It seemed to me that there were real benefits for this family in bringing this expensive litigation to a conclusion in circumstances where a week of court time had been set aside to hear the case and which would undoubtedly not be filled if I were to vacate it at such short notice.

28. In his s.25 statement, which was prepared after the pre-trial review, and designed to stand as his evidence-in-chief at the final hearing, Mr. A set out information suggesting that the property portfolio was worth significantly more than the agreed figure. In breach of my ruling, and without any application to include it, he appended to his s.25 statement a valuation carried out by a well-known firm of estate agents, purporting to provide a valuation of the property portfolio. I refused to allow that document into evidence. Initially, I was misled as to the very nature of the document, when without having seen it I was told by Mr. Montaldo that it was an offer to purchase. That description should not have been given to that document.

29. A second document was attached which, on its face, was an offer to purchase the whole of the portfolio by the proprietor of a limited company also operating in the rental market. If that document was genuine, then it was a matter of fact and not expert opinion and so was potentially admissible. I determined that if the author of that letter

came to court and confirmed that the offer was a genuine offer and was still open I would allow that evidence to be given.

30. Mr. Ali came to court and explained his involvement. He was a client of Mr. A's solicitor. He described Mr. A's solicitor as "my lawyer" and his company's solicitor, doing all his legal work. The solicitor had acted as a broker between Mr. A and Mr. Ali, had provided Mr. Ali with a list of properties that were potentially for sale and that he and a surveyor in his employ had carried out a drive by valuation. He said the figures in the offer letter were his own and that that is what he was prepared to pay. He explained that he had a prosperous business and that he had a borrowing facility of £10 million, much of which could be applied to this purchase, together with some cash in the business.

31. As he gave his evidence, he "found" on the bench in the witness box a copy of the estate agents' valuation that I had disallowed. He had been looking at it while giving his evidence. He relied on it in support of his figure. That document should not have been in the witness box. I do not know how it got there and I deprecate the fact that it was there.

32. During the course of counsel's submissions, I made it clear that I had been particularly interested in what Mr. Ali had to say as it provided a potential solution to the case that could be implemented quickly. He had funds available. He was willing to proceed quickly and, to my mind, there was no reason why any sale to him could not be concluded straightaway and, in any event, within three months. That prompted Mr. A and his solicitor to protest that that was wholly unrealistic and that the period should be one of six months. That intervention made me wonder just how genuine Mr. Ali's proposals were.

33. It may be that the question of valuation is not the most important feature of this case. As I indicated as I ran through the general legal principles, it has been established by the authorities that I must address needs and that in this case, as in most cases, the primary needs are for housing and present and future income, including income in retirement.

34. When I look at present and future income, I have to ask where that is to come from. Mr. A is a qualified accountant. He accepted that there is no sound reason why he could not seek employment as an accountant, either instead of or, perhaps more likely, in addition to running a portfolio of rental properties and that realistically he could expect to earn something of the order of £45,000 a year net if he were to obtain such employment. Mrs. A, on the other hand, has no relevant skills that she can take to the employment market. She undoubtedly has the capacity to earn something but it would be modest and certainly for the next handful of years she has Z to look after and so that her earnings are likely to be limited to either part-time work or work during school term time.

35. Looking to the longer future, Mr. A has pension savings. He has disclosed the value of one pension. It is very modest. He has deliberately not disclosed the value of a second pension. Documentation relating to that pension came to the family home, was opened by Mrs. A, who identified what it was and took it to her solicitor. The solicitor identified that it was a document belonging to Mr. A, returned it un-viewed to Mr. A's solicitor, with a request that the document be disclosed pursuant to Mr. A's duty of

making full and frank and clear disclosure of his financial circumstances. No copy of that document was provided. I am therefore invited to consider drawing an adverse inference about why it was that that document was not disclosed. The only inference I can properly draw is that Mr. A did not want Mrs. A and the court to know the value of that pension. For him to behave in that way, in clear breach of his duties and putting himself at risk of criminal proceedings as described on the face of the Form E, leads me to the inevitable conclusion that that pension must contain a very substantial investment. I therefore conclude that Mr. A will be secure once he retires. Mrs. A, as I have said, has nothing.

36. The way the property portfolio has been divided between Mr. and Mrs. A since separation is that she has under her management 21 of the properties, with the balance with Mr. A. The bulk of the properties under her management and in her name, are subject to an umbrella mortgage where notice has been served of its termination. That mortgage is currently at the advantageous rate of LIBOR plus one percent. Mrs. A has had advice from a mortgage broker that she can expect to pay substantially more when that mortgage is replaced. However, she has two difficulties. Firstly, she will be required to pay fees. She will be required to pay the lender a fee, she will be required to pay for the properties to be valued for the purposes of the lending arrangement and she will be required to pay her broker a fee if he is able to secure alternative lending. She has no cash and there is only one property in the portfolio which is not subject to borrowing and which currently forms part of the properties managed by Mr. A. She seeks its transfer into her name so that she can sell it and meet those fees. She also asks me to transfer properties currently managed by Mr A and where he collects the income generated.

37. The next problem is that the properties have a high loan to value rate. Many are in negative equity. In other words, there is very little equity in those properties, as demonstrated by the value of the portfolio as agreed between the parties. Securing refinancing will not necessarily be straightforward but despite that the email from her broker suggests that it is possible.

38. The next factor which will affect both parties is that the government has changed the tax regime for landlords operating in the way they have done. Up until 2017, as was the case with Mr. and Mrs. A, borrowers were able to offset the interest charges on their borrowings against their profit before the assessment of income tax. That has now changed and over the course of four years the amount of interest that is allowed to be offset before income tax will reduce to zero. That means that the good times are probably over for property portfolios operated on this model.

39. It is Mrs. A's case that the only realistic way she can make an income to provide for herself and the children is for her to retain the properties that she currently has, with the additional property that she would sell to raise the fees, and the additional properties she asks to be transferred to her, acknowledging that her income will be lower than it has been in the past.

40. Ms. Hillas has provided me with schedules based on Mrs. A's proposals for the distribution of the property portfolio. Taking the gross rents from figures that were proposed by Mr. A but adjusted for actual rents received where less, Ms. Hillas, in her Schedule 2, "wife's income from rental properties after tax", and using mortgage costs at a higher rate to reflect the replacement umbrella mortgage that will be needed, has

concluded that the long-term potential for Mrs. A is to earn more than £90,000 per annum.

41. In Ms. Hillas' Schedule 3, "husband's income", and taking the rents on the same basis, and for those properties on Mrs. A's proposals that are left with Mr. A, he could potentially generate a net income of £28,000. When that is aggregated to his potential income as an accountant, the parties would not be in dissimilar income positions, albeit that Mr. A would have the security of his substantial pension provision, which would come into play in the longer-term future.

42. As well as Ms. Hillas calculating incomes, she has endeavoured to demonstrate the value of the capital distribution of Mrs. A's proposals for the property portfolio, both on the basis of the agreed valuation figure and a figure using Mr. Ali's proposed purchase price. As I set out below that results in a capital distribution substantially weighted in Mrs A's favour. The parties would be in a similar income position, recognising that Mrs. A has the primary responsibility for meeting the costs of the children, then that outcome is said to be fair.

Addbacks to be attributed to Mrs. A

43. It is Mr. A's case that since separation Mrs. A has helped herself to funds from the parties' joint account to which she was not entitled and which should be reattributed to her in calculating the value of what she is to receive. Mr. A has calculated that Mrs. A has, since separation, withdrawn £256,592 in cash from the parties' joint bank accounts, which he says he should have half. He calculates that she has overspent on the parties' credit card and that he should have 50 percent of that reattributed, namely £32,000. Insofar as she has spent money on her legal fees of £100,000, he says he should be credited with £50,000. There are a number of other smaller figures, including money transferred to the parties' daughters, to which he says he should be credited with half. In addition, he says that Mrs. A has assets that have disappeared, namely cash from a safe deposit box, contents from a safe deposit box and jewellery. He asserts that his half share of that is worth some £166,000. In those various ways, he says that he should receive all of that money back before there is any distribution.

44. Mrs. A explained that she has repaid the parties' daughters money that Mr. A had taken from them. She accepted that she had purchased some jewellery to replace jewellery taken by Mr. A. Some of the money has been spent reimbursing tenants' deposits that were spirited away, she says, by Mr. A into an account belonging to a female friend of his and which have apparently disappeared. Insofar as there was cash in a safe deposit box, she says that in preparing her Form E she overstated the value of that money, tried to correct it but that by a mistake the uncorrected version came to be filed with the court. It is her case that there is nothing to be added back and nothing to be reattributed to her.

Mrs. A's case on addbacks

45. It is Mrs. A's case that Mr. A has, in a number of ways, either removed money that should be available for distribution or has hidden it with relatives and business associates or gambled it away.

46. Mr. A's case is that in 2012, as a way to make easy money, he began to indulge in spread betting. He immediately lost money. In 2014, and into early 2015, he began to engage in spread betting on a very significant scale. Over the course of a matter of months in 2014 and the early part of 2015, he "invested" over £1 million in spread betting. He lost a substantial proportion of that money.

47. He struggled to explain to me why he should have been spread betting in the first place. His account contained internal inconsistencies. He started off by telling me that the main driver was that his wife was never satisfied with the standard of living that they had, that she encouraged him to find ways and means of increasing their wealth, such that he felt under pressure to take risk. He then said that it was David W, a man who was helping him run the property business but who has subsequently formed a relationship with Mrs. A, who introduced him both to spread betting with a company called IG and to other people who were interested in investing in Mr. A's spread betting activities. On everyone's account, Mr. A had not met Mr. W in 2012 and that would not explain Mr. A's early unsuccessful ventures.

48. Mr A lost more than £600,000 from the parties joint account by spread betting. Mr Montaldo on his behalf submitted that this could not properly form part of any reattribution as Mrs A would undoubtedly have wanted a share of any winnings had Mr A been successful. I accept the proposition that she would have wanted to share the winnings. However, Mr A was unsuccessful from the start of his spread betting activities but instead of stopping he gambled bigger sums. I have no sensible explanation for what he was doing. It looks as if he was trying to lose money.

49. Mr A had 3 spread betting accounts in his name. There was an account in Mrs A's name. She claimed to know nothing of that. Mr A accepted that it was him doing the gambling through the account in his wife's name. It was Mrs A's case that from time to time her husband would present her with documents to sign and that as she trusted him she simply signed. That was her explanation for a joint spread betting account that she had signed the application form for but that had not been opened. In my judgment it is far more likely that the account in Mrs A's name was opened by Mr A without her knowledge and as part of a cover up of his own activities.

50. In any event a scrutiny of Mr A's application form for a spread betting account revealed that he had made misrepresentations on the on-line application form saying he was employed as a "retail clothing sales manager", which he was not, and giving a fictitious email account.

51. Complicating the picture is that money paid into the joint account of Mr. and Mrs. A, and according to Mr. A invested in spread betting and lost, was £175,000, the proceeds of drug dealing, money which was the subject of a sophisticated money laundering exercise, the principal actors in which are now in jail. Mr. and Mrs. A were on the periphery of a police investigation and I have some limited documents dealing with that. It is difficult for me to form firm conclusions as I do not have all the material that will have been generated by the police. I accept that Mrs A was not involved. Mr A certainly was.

52. I asked Mr. A whether he slept well at night knowing that he had lost money that apparently belonged to money laundering drug dealers. He told me he had no concerns about the loss of that money. It was his case that it was Mr. W who had introduced the

drug dealing money launderers and their funds through his contacts, of which Mr. A was in complete ignorance. I reject that as an implausible explanation.

53. Mr A's case was that he gave up spread betting in 2015. He could not explain entries in documents showing money being transferred to I.G. in 2017.

My assessment of the husband

54. At this point, I need to say something about the way in which Mr. A gave his evidence. It was clear to me that Mr. A was more than happy to lie to the court. As was put to him, he gave the impression at many points in his evidence of making things up as he went along. On the second day of his evidence he asked to be allowed to revisit evidence he had given on day one where he said he had got confused and had in fact been making things up on the spot.

55. Despite being a qualified accountant, he had a cavalier attitude to the accuracy of the information that he provided, starting with his Form E, continuing with his answers to questionnaires and culminating in his evidence in the witness box. By the end of his evidence, I found it very difficult to accept at face value anything he told me.

56. By way of an example, he had failed to disclose money he had invested in a company called Monte Cristo Properties Limited. The sole director of that company is the former wife of a relative. The fact of the investment only came to light because of an analysis of his disclosed bank statements. He was asked to explain what the payments to Monte Cristo were all about. Overnight, he produced documents that he said demonstrated that his investment had been lost. The documents demonstrated nothing of the sort. The documents demonstrated that he had made an investment with interest which would have continued to accrue until his fund was repaid that was now worth something of the order of £160,000. An internet search of the company, which took seconds, disclosed its most up to date accounts, revealing it was a solvent company with assets and liabilities on its balance sheet that were positive and no doubt the fund owed to Mr. A would appear as money owed on the balance sheet. That investment, as far as I can tell, is absolutely secure.

57. Another example. Mr. A had invested money in what became known as the Hyde Project. His sister had purchased a derelict nursing home site with a plan to obtain planning permission and either develop it or sell it on to a developer. In his Form E, Mr. A disclosed that he had made such an investment. The money he had put in was £125,000. This was the money he said he had raised by a re-mortgage of the family home. In his Form E he described himself as a partner. He described himself as a silent partner. He described himself as having an investment in the business to the tune of 50 percent of his investment and was a shareholder in the business to the extent of the other 50 percent of his investment.

58. He called his sister to give evidence about this very subject. She told me that the investment had been her investment in her name. She said that she was a chartered accountant. She explained that there was no limited company and no shareholding. Neither she nor Mr. A could explain what he had put in his Form E. She went on to tell me that the money had been repaid to Mr. A. The entries on the bank statements about those transactions did not describe the transfer of funds in that way and, in any event, could not be individually identified as there was money passing between Mr. A and his

sister on a regular and frequent basis. His sister told me that she had sold the site with planning permission. She had sold it to a relative. At the time, that relative was living in Dubai. The conveyancing transaction was completed into that relative's name, giving the address as Mr. A's sister's address, where that relative was not living. Mr. A's sister saw nothing wrong in that misrepresentation on the conveyance. I am not at all satisfied that I was being told the truth about any of this transaction.

59. Further, the relative and her husband were the subject of a Witness Summons to attend court to give evidence about this and other transactions. They did not attend. On the final day of the hearing I was asked by Mr Montaldo, on the basis that he had instructions that they were on their way, to halt the proceedings and to delay hearing submissions while one of them attended court. I did not stop. They did not attend. As I understand it, they are a couple with young children. In considering what I should do about their failure to attend I was persuaded that the most proportionate way of dealing with the matter was not to consider punishing them but to conclude that they had stayed away to avoid potentially lying on Mr A's behalf and so add this to the list of factors leading me to draw adverse inferences against Mr A.

60. In his Form E he listed various debts that were the subject of "loan agreements". He said in evidence that there were no loan agreements but continued to assert the veracity of the debts. He called his accountant who confirmed that he had handed over to Mr A £50,000 for him to spend on spread betting but that he expected Mr A to repay him when he was able. He confirmed that there was no written agreement. Mr A asserted that the money had all been lost but that the money was still owed. The inconsistency in this account appeared lost on both Mr A and his accountant – if a bet is lost it is not usual for the original stake to be returned.

61. Mr A was asked detailed questions about his interest in various business ventures. They were all involving friends of his. It was his case that he had lost money in every single one. He told me that he had lost £200,000 in failed businesses. He could not point to a single success. He accepted he had not done any due diligence. He had not kept proper records. He produced no records from the businesses even where he had been a director of a limited company. He invited me to conclude that he had been "stupid". I do not think that. He is clearly a man with ability who has behaved in a thoroughly dishonest way.

62. What are the adverse inferences I am asked to draw? Firstly, that he has deliberately tried to put money/assets beyond the reach of Mrs A and the court. Secondly, that he has still got investments with his friends and family that will in due course be repaid to him. And thirdly, that I should assume that the value of such money/assets is substantial to reflect the scale of the dishonesty and the lengths he and members of his family were prepared to go to lie to the court.

63. Those are the adverse inference that I draw. As to valuing the money/assets I have some information to work with - £200,000 "lost" in failed businesses, £125,000 invested in the Hyde Project. I am led to the conclusion that he has several hundred thousand pounds to which he is entitled.

64. In addition, he has assets that he failed to disclose and that were only revealed during his evidence - £160,000 by way of investment in Monte Christo and a building plot in Bicester that he asserted, without any evidence, was worthless. There is money he

transferred to a lady friend's account that should have been retained as tenants' deposits that he had placed with her. Mrs A told me that she had been sued in respect of some of those deposits and had been repaying the amount removed by Mr A.

65. For the reasons set out above I can discount what he claimed were debts.

66. As for the gambling losses, he is entitled to gamble his own money. He is entitled to gamble money lent to him specifically for the purpose. As far as the criminal money is concerned that can be discounted from the losses but when added to the lies he told on the betting account application forms and the dishonesty I have found all adds support to the adverse inferences I have drawn above.

67. Most of the money "lost" by Mr A had been raised by taking further borrowings on the property portfolio and in the case of the Hyde Project on the family home. The burden of servicing that borrowing will have to be met. That will inevitably increase the pressure on Mrs A if she tries to run a rental business.

68. I therefore attribute to Mr A several hundred thousand pounds to lie on his side of the balance sheet. When added to the value I must attribute to his undeclared pension the result will justify a distribution of the known assets substantially in Mrs A's favour. Even if my assessment of the value of the assets I have attributed to Mr A is wrong, it is entirely his fault if I have been led into error and he rather than Mrs A must take the consequences. Further if this case is about satisfying the needs of the parties and the children then the findings I have made justify an invasion of Mr A's "needs" to do justice between the parties.

69. If I adopt the approach advance by Mrs A then on the face of it Mr A may not have immediately available funds to buy a home where he can entertain Z when he has him to stay. He will in due course be able to recover some of his investments and money with family and friends. He has additionally gone through an Islamic marriage ceremony with a woman he describes as his wife. He denied that a civil marriage ceremony was planned but for the reasons I have given I cannot rely on what Mr A tells me. She is a lady with her own home that she is purchasing with a mortgage. I find that it is more likely than not that he will at some stage live with her. I treat her home as a potential resource available for Mr A to live at.

<u>My assessment of the wife</u>

70. Mrs A's evidence was hardly satisfactory. It was clear to me that she believed that the failure of the marriage was entirely attributable to Mr A walking out on the family and that she and the children should not have their standard of living disrupted in consequence. To that end she had continued spending on herself and the children as if nothing had changed. She complained that Mr A had failed to pay her any child support or contribution towards school fees even though she had been operating that part of the property portfolio that produced the vast part of the joint income. She had taken from the joint account money to spend on holidays for herself and the children as "… that is what they are used to." She said she had repaid money to the children taken by Mr A. She had replaced jewellery she said Mr A had taken from the family home when she and the children were away.

71. In so far as she told me that since 2003 she had left all business affairs to her husband and that she had trusted him so that she had signed any documents he had put in front of her for signature, I accept her evidence. I reject Mr A's evidence that she was directly involved in his failed business ventures with his friends. What he was saying appeared to make little sense. I have no doubt that she expected the standard of living of the family to remain a very good one. That does not explain Mr A's dishonesty that I have described above.

72. Where Mrs A's evidence was less satisfactory was where she was describing her future business plans to justify her having a property portfolio to allow her to generate an income to support herself and the children. She told me that she was good at managing people but not good at understanding money. Her plea was to be given a chance to make things work rather than for me to order a sale where she would be left with no opportunity to generate income. She told me she had plans in place for professional support to help her with a property business although she recognised that such support would come at the expense of future profits.

73. Miss Hillas produced for me detailed calculations to support the proposition that if she were to retain the property portfolio that she currently had supplemented by further properties then she could generate a substantial profit. There are assumptions that underlie those calculations that may or may not prove to be accurate. I treat the figures as illustrative only. Mr A produced figures of his own that painted a different picture suggesting Mrs A would not make much of a profit. He wanted to use this to support the proposition that everything should be sold.

74. What I can be certain about is that if everything were to be sold Mrs A would be without income and with only a limited earning capacity. I see no prospect of her being able to rely on Mr A for support. There could be no clean break. In my judgment Mrs A ought to be able to have the opportunity of providing for herself and her children. If she cannot make the property portfolio profitable then she would have to sell up and find another way of making a living and providing for her retirement. Mr A's earning capacity as an accountant and the pension provision he has together give him a safety net that Mrs A cannot replicate.

What is the appropriate outcome?

75. Firstly, the family home should be transferred to Mrs A for the benefit of providing a home for her and the children. She must indemnify Mr A against liability under the covenants in the mortgage and she must obtain his release within 12 months or the property must be sold and the mortgage redeemed. Whether she would be wise to try and keep the house going is something she will need to consider. The mortgage repayments alone are £36,000 a year. The sale proceeds will be enough to rehouse albeit not necessarily in the same size of house or location. That puts £301,000 on Mrs A's side of the balance sheet. That goes some way to off-set the value of Mr A's pension provision that he has chosen to hide.

76. Secondly, she should retain the property portfolio in her name under the mortgage umbrella. At the agreed valuation it has a capital value of £158,726. Using the values contended for by Mr A as set out in Miss Hillas' Schedule 4 it is £1,198,226. There are two further rental houses in Mrs A's name worth either £1,180 (agreed value) or £148,180 (Mr A's value) and she should keep those.

77. Mrs A asks me to transfer to her 18 Fleeson Street currently in Mr A's name but unencumbered and worth either £92,120 (agreed value) or £103,320 (Mr A's value). Her plan is to sell and use the proceeds to pay the fees to allow her to renew the umbrella mortgage as I have already described. I agree that should happen.

78. She also asks for a transfer 48 Heathside Road which I understand was the original family home purchased with funds provided by her father. She said she wanted it transferred to her "… for sentimental reasons". It is heavily mortgaged so worth either -£9,447 (agreed value) or £18,553 (Mr A's value). Sentimental reasons do not justify transferring something that may be worth nothing.

79. That would give Mrs A 18 of the 30 rental properties. All those in joint names and those in Mr A's name would go to him. He would need to indemnify Mrs A and secure her release from the borrowings or those properties sold with any debt arising being met by Mr A.

80. That would put the figures for Mrs A £1,469,707 on Mr A's values with him at £160,067. Are those values realistic? Possibly but probably not. I cannot know for certain any more than I can know for certain the value of money/assets that sit on Mr A's side of the balance sheet.

81. What that outcome does do is give Mrs A a chance to be independent. Is it fair? For all the reasons I have set out above I have reached the conclusion that it is the fairest outcome that I can achieve.

82. Miss Hillas asks me to make a child maintenance order against Mr A for Z's support. Mr A did not signal his consent to me making such a determination so it is an issue for Mrs A to apply to the Child Maintenance Service.

83. Miss Hillas goes on to ask for an order that Mr A pays half of Z's school fees. Both parents will need to consider together whether private schooling is affordable. It is not clear to me that it is. The businesses will not be as profitable as they were in the past due to the level of borrowings now secured, the cost of that borrowing at higher interest rates and the new tax regimen. Both parents have parental responsibility and should decide together what should be done for Z's future education. One or both will have signed a contract with Z's school. Whoever has signed the contract will be responsible for the fees until they give appropriate notice. Given the history and the degree of animosity that was evident in court there is an urgent need for them to decide what they both want for their son. As far as the adult daughters are concerned it is for them to secure support from their father and not a matter I consider properly before me.

Post Script

84. The judgment above was circulated to the parties and I invited proposed corrections, any requests for clarification and any application for permission to appeal. I have made one typographical correction.

85. Mr Montaldo sought clarification on a few matters. Some of them are to be dealt with as part of the drafting of the Order that will flow from my decision and I need not deal with them further in the judgment. Three matters remain:

i) "If the husband cannot secure the wife's release from the properties in negative equity and the said properties are to be sold, from what source of capital is the husband to discharge the negative equity?" On the husband's figures the properties have a net equity. If he is wrong about their value he will be able to deploy the assets he has hidden from his wife and the court as set out in my findings.

ii) "What findings are made as to the quantum (if any) to be added back to the wife paragraphs 43 and 44?" None. I have made no findings that meet the requirements of reckless/wanton spending on her part.

iii) "Did the court find that the wife had under declared on her tax returns her post separation income?" I did not. The evidence from the wife was that she had handed to the accountant who prepared her tax return the bank statements of the accounts into which the rental income was received. I had no reason to doubt her on this point. In any event I have treated projected income assessments as a guide rather than an accurate prediction. I have made no finding that the wife has hidden assets. Nothing of that sort was established by the husband on a balance of probabilities.