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

Case No: BV18D16969

IN THE FAMILY COURT AT KINGSTON-UPON-THAMES
Sitting at Wandsworth Family Court

76-78 Upper Richmond Road
Putney
London SW15 2SU

Date: 20/05/2020

Before :

DISTRICT JUDGE JOHN SMART

- -

Between :

Mrs D	**Applicant**
- and –	
Mr D	**Respondent**

- -
- -

Mr Andrew Bailey (instructed under the **Bar Direct Access Scheme**) for the **Applicant**
Ms Francesca Dowse (instructed by **Stowe Family Law LLP**) for the **Respondent**

Hearing dates: 19th, 20th March 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

John Smart

....

DISTRICT JUDGE JOHN SMART

District Judge John Smart:

1. This is my judgment following the final hearing of Financial Remedy proceedings arising out of the breakdown of the marriage of the parties.

2. The Applicant is Mrs D, who was born on 23rd September 1968 and is now 51. The Respondent is Mr D, who was born on 5th August 1970 and is now 49. I shall refer to them, respectively, as the Wife and the Husband for the sake of brevity. The parties married on 20th May 2017. They had begun to cohabit on 24th April 2017. The parties separated shortly afterwards. There were no children of the marriage. According to the Wife, they separated in February 2018. The Husband contended that the parties separated on 1st September 2017. There is no doubt that this was a very short marriage, 10 months at the most including pre-marital cohabitation. The Husband petitioned for divorce in June 2018. The Decree Nisi was pronounced on 9th October 2018. A stay was put on the decree absolute pending the outcome of these proceedings by Deputy District Judge McHardy by order made on 19th September 2018.

Background facts

3. The parties met at work in 1988. They became friends and subsequently lived in the same house share in 1989-90. They seem to have remained in touch as friends thereafter. The Wife stayed with him for a month in 1994 when she came back to the UK after a backpacking trip. She then purchased a house in 1995. She had a son, DM, in 1996 after a brief relationship (not with the Husband), and brought him up as a single mother. She remained in touch with the Husband until 1999 when she left the UK. The Wife explained in her witness statement that she left the UK after "…recovering childhood memories of abuse by my father, living off the proceeds of sale [of house], I embarked on therapy and started my cottage industry aromatherapy skincare business." Sadly, when she indicated to her father that she forgave him, and tried to reconcile, her father committed suicide. The Wife explained in her witness statement that this was the catalyst for her Complex Post Traumatic Stress Disorder. She returned to the UK and Kingston Council assisted her and DM with accommodation, since they were homeless.

4. After some years in temporary accommodation, in 2005 she was granted a weekly assured tenancy of a 2-bedroomed flat at 15 X Street, Kingston, by Richmond upon Thames Churches Housing Trust. The landlord subsequently became Paragon Community Housing Limited. In 2005 her surname was then 'F'. She changed her surname to 'G' by deed poll in November 2013. X Street is a quiet cul-de-sac. The flat had off-street parking and overlooked a field. It was not far from Richmond Park and not far from DM's primary school. She lived there until she gave up the tenancy on marrying the Husband. At that point, shortly before getting married, she and DM moved into the Husband's property.

5. The Wife heard in December 2011 that the Husband was getting divorced, and they got back in touch and on one occasion there was intimacy but it was not until 2015 that they began a romantic relationship. By then she had been dependent upon the state for about 11 years. Although she was seeking to develop a skincare range and attended some fairs and markets she made only small sums from this, drawing out about £25 a week from her business. She had also suffered what she described in her witness statement as a

complete mental health breakdown in 2013. The acute assessment unit at Kingston Hospital suggested that she had a form of PTSD and recommended CBT therapy. This therapy seems to have assisted her, as did changing her name, phone number and email address to separate herself from her past and her family.

6. The wife started working in Sainsbury's in March 2016. She was living on working tax credits and housing benefit which had been reduced by some 50% due to non-dependent deductions – her son, being adult, paying the other 50% of the rent. However, her work caused her to receive less by way of working tax credits and ended up worse off financially.

7. The parties married in a church in Kingston but, according to the wife in her witness statement, "Unfortunately, the marriage ran into difficulties within 16 weeks, triggering my C- PTSD, my mental health decline and that of my son's who, at the time, was working full-time and planning to change his surname by deed poll to "D". She said that the Husband became increasingly hostile and controlling towards her and her son, leaving them completely traumatised. It is unnecessary for me to make findings about what caused the breakdown of their relationship.

8. The wife has continued to earn small sums from her aromatherapy skincare business, but not more than £1,000 per annum. She worked as a personal care assistant for a Working Peeress with disabilities for 18 hours a week from April 2018 to 30th November 2019 earning on average £230 per week. She says she had to leave that job because of the "constant re-traumatisation of my C-PTSD by my husband and his solicitor during these divorce proceedings". Subsequently, she got a part-time job stacking shelves in Sainsbury's and earned £160 per week. She indicated in her evidence that she had to leave after 3.5 weeks because of stress and a suicide attempt by DM on 30 December 2019. She has to provide him with support, and she also mentioned in her witness statement that DM did not have a support worker.

9. It appears that DM was granted a residential licence of accommodation by the Royal Borough of Kingston in December 2018, and thereafter a probationary tenancy in October 2019. The Wife has been assisting him to try and secure a permanent home, although she is aware that the local authorities may in certain circumstances discharge their duty to assist him by finding privately rented accommodation.

10. DM has Type 1 Diabetes, and has severe depression. He has attempted suicide on more than one occasion. He was referred for counselling in 2011. He was working in 2014 when suffering from acute diabetic keto-acidosis. He later had surgery which left him bedridden for 7 months until November 2015. He attempted suicide on 19 June 2016. Although he was under the psychiatric team at Kingston Hospital, after a few days he was discharged home back to full-time work afterwards. I have seen a discharge summary from Kingston Hospital dated 21st June 2016 which indicated that there had been four A & E attendances in the last 24 months, and that there had been an intentional insulin overdose for which he had been admitted to hospital having been found by his mother. In her witness statement the wife indicated that, and I accept that, shortly afterwards, the husband asked her to marry him telling her that he wanted to help her to look after DM saying "why don't you both move in with me, I want to take care of you, I'll look after you both, let's get married". They got engaged on 30 July 2016. At this point she had outstanding housing benefit overpayments to cope with and is rent

arrears. It was appreciated that she would not be able to surrender her tenancy and move out of her flat without clearing this indebtedness.

11. I have also seen a document produced by South West London and St George's Mental Health NHS Trust indicating that DM had been admitted on 22nd January 2018 with a planned discharge date of 9th February 2018 – at that stage he was on citalopram 10 mg tablets which the GP was to continue, and he had been treated with diazepam and zopiclone while admitted (which were not to continue), together with medication for his diabetes. I was also shown a letter from South West London and St George's Mental Health NHS Trust dated 27th March 2018 indicating the DM was currently under the care of South Kingston recovery support team and had a diagnosis of moderate depressive disorder and personality disorder traits, and was being treated with antidepressants. There was a discharge summary dated 30 May 2018.

12. The wife's diagnosis of complex PTSD is evidenced by a letter from Dr Amir Bashir to her GP dated 18 February 2019. According to him, the treatment of choice is trauma-focused CBT and/or Eye Movements Desensitisation Reprocessing. It was not possible to predict the length of the therapy and prognosis view of her long complex history. The Wife was referred by her GP to Kingston iCope (Psychological Therapies Service), and that service wrote to her GP on 4 January 2019. It was agreed that she would re-refer herself back to the service when she had more stability and the divorce was completed in order to address the traumatic memories with EMDR or CBT

13. The Wife accepted in her witness statement that the husband assisted her financially with her rent arrears and housing benefit overpayments totalling £2,900. She also accepted that work was done on his property to turn it from a three-bedroomed bungalow into a four-bedroomed detached house in view of the need to accommodate her and DM along with him and his two teenage daughters who stayed with him on alternate weeks. She surrendered to the keys to her flat on getting married.

14. So far as the Husband is concerned, he is a Business Unit Manager employed by Tech Data. Previous to that he worked for Lenovo where his earnings were higher (£83,921 according to his form E). He accepted a redundancy package in circumstances where his employers were undergoing a restructuring. He sought to blame the Wife for his under-performance e.g. by banishing his daughter E from the house until she apologised to her, and then banishing his daughter C until she had recovered from her anorexia. He submitted documentary evidence of his earnings to rebut an allegation which had been made by the Wife that he had under-stated his income by categorising what were commission payments as reimbursement of expenses. I am satisfied that he has not mis-stated his income.

15. The Husband has two daughters from his previous marriage, E, born on 23 March 2000, who is now 20 and studying languages at Bristol University and C, born on 30 May 2002 who is nearly 18 and currently studying for her A-levels at Esher College. He and his first wife agreed shared care arrangements such that, up to January 2018, his daughters spent half their time with him. He indicated in his witness statement that he and his former wife had a very amicable relationship but that in January 2018 the wife made unpleasant threats to him and directly to the children as a result of which they had stayed with their mother full-time. He said that "when having an assessment for anorexia with Springfield Hospital, C made reference to the wife having an argument with E, following her into the bathroom and preventing her from leaving. The hospital

referred this to 'Achieving for Children' in September 2017 and the wife is now trying to raise formal complaint with the hospital as a result of the referral".

16. The Wife and Husband are, if I understand this correctly, living separately under the same roof, she having spent some days per week before the COVID-19 lockdown at her mother's property. She had also been spending time on a more or less daily basis trying to assist and motivate DM.

17. The Husband's case is that once he and the Wife live separately, C will once again spend (at least) half her time with him. He says that E will stay with him during university reading weeks and holidays. E's course is about 80%+ self-taught and she comes home regularly. I accept that this what is likely to happen. He also said in his witness statement that he entered into an agreement when he got divorced the first time which included an obligation to fund his daughters to tertiary education – he and his former wife pay half each. I was not referred to any documentation verifying this.

18. The husband disclosed within these proceedings a number of medical records relating to himself and his daughters. He himself has self referred to iCope and had some CBT. The Husband attended six sessions of individual cognitive behavioural therapy in 2018 having presented with significant levels of stress low mood and anxiety triggered by the breakdown of his marriage. He reported to iCope that his wife's treatment towards his daughter's had impacted on his relationship with his daughter and informed iCope that the wife had made a number of threats towards them which had resulted in them both having to move out of the family home in order to protect their well-being and safety he said that his stress low mood and anxiety had had a huge impact on his employment to the extent that he felt unable to work from home.

19. In relation to E there was a letter from a paediatric liaison nurse at South West London and St George's Mental Health NHS Trust to his GP dated 9th June 2016 in which reference was made to E having had a three month history of low mood and suicidal ideation. She had been experiencing panic attacks and mood swings and had lost some weight. A subsequent letter from a doctor within the Woodroffe Family Adolescent & Child Team dated 17th October 2016 to E's GP indicated that E had been referred to their services in June 2016 due to self-harming behaviours. The letter indicated that she had been restarted on Fluoxetine 20 mg and would be attending regular psychotherapy sessions once a fortnight.

20. More recently there was a medical certificate dated 26 March 2019 from a doctor at the University of Bristol Students Health Service indicating that they were seeing E for support with symptoms of anxiety, depression and emotional dysregulation which had worsened since E had started University. There was also a discharge letter from a specialist nurse at Avon and Wiltshire Mental Health Partnership NHS Trust dated 19th March 2019 following an occasion on which E was brought to the hospital because she was having thoughts of harming herself. E told the nurse that she had had a stressful situation over the last couple of years including her father's ex-wife making threats towards her and her mother having recently undergone surgery and her sister nearly dying from anorexia; coupled with certain relationship difficulties and her having struggled at University with her course. The letter indicated that the GP had restarted fluoxetine and that she had used certain drugs although not since December, and had been drinking at a bottle of vodka a week. The nurse signposted her to sources of

support, gave her a self-help book and the telephone number for Samaritans and the 24-hour crisis line.

21. As to C, there is a letter dated 13th of April 2018 from a clinical nurse specialist within Children and Adolescent Mental Health Services at South West London and St George's Mental Health NHS Trust dated 13 April 2018 addressed to both of C's parents indicating that she was first assessed by their team in September 2017 which highlighted difficulties related to a diagnosis of anorexia nervosa.

22. So far as the referral to Achieving for Children was concerned there was a letter dated 11 October 2017 to the Husband's daughter's mother as follows:

> "As you are aware, information has recently been shared with children's services that your 17-year-old daughter E had been locked in the family bathroom by her stepmother D. We have no details regarding the specifics of the incident and this is third party information shared by your younger daughter C with another professional.…"

23. A further letter dated 9 November 2017 explained that, "A referral was received following your daughter Caitlin disclosing to a health professional that while she was staying at her dad's house his wife D locked her older sister in the bathroom. When this type of allocation is received by Children's Services we have a duty to explore the concerns in order to identify with a social care involvement is required. In this case the telephone contact took place with Ms McMullen where she informed us that she was aware of the alleged incident and that this was not a clear representation of what had happened. Ms McMullen explained that E had been conversing with her stepmother through the closed door of the bathroom. You will now be aware that no further action is being taken by children's services and that our involvement has now ended…"

Assets and Liabilities

24. The parties' respective counsel submitted schedules of assets which did not differ to a significant extent. The Wife's schedule showed anticipated costs of sale of the family home at 2%, whereas the Husband's showed it at the customary 3%.[1] I feel that on the basis of the charging level suggested by Greenfield Estate Agents of 1% commission in the letter of 18th February 2019 attached to the wife's Form E, the Wife's approach is to be preferred in this case. I therefore set out below her schedule, amended to correct a minor transposition error (£5,959 for some shares owned by the Husband), and also corrected to show the value of the Husband's main pension fund as at 16th March 2020:

[1] Although authority on the point was not cited, I note that in *Behzadi v Behzadi* [2008] EWCA Civ 1070 at para.7.1, Wilson LJ stated: '*…in the absence of evidence to the contrary, they should be taken at the percentage nowadays conventionally taken in respect of the sale of real property in England and Wales, namely 3%.*'

	Joint	Wife	Husband
Property			
FMH: [address], Surbiton			£546,323
(1) Val: £780,000			
(2) Mtg (£211,604)			
(3) ERP (£6,473)			
(4) CoS @2% (£15,600)			
Other capital assets			
(1) Tesco bank c/a - (now closed)	£ nil		
(2) Metro bank c/a - (30.6.019)		£49	
(3) Tesco bank c/a - (for son)		£nil	
(4) Metro bank ISA (June 2019)		£2	
(5) Metro bank bus/a - (28.6.2019)		£90	
(6) Santander c/a - (3.7.2019)			£9,398
(7) Santander s/a - (5.4.2019) Loyalty saver			£nil
(8) Nationwide c/a - (20.6.2019)			£100
(9) Nationwide s/a -			£100
(10) Northamber plc 11,000 shares @ £0.539			£5,959
(11) Car			£1,200
Liabilities:			
(1) Santander cc			(£4,207)
(2) Santander loan			(£20,061)
(3) Barclaycard		(£3,192)	
(4) Virgin cc		(£2,627)	
(5) Tesco loan for legal fees		(£5,599)	
TOTAL CAPITAL	**£nil**	**£(11,277)**	**£538,812**
Pensions:			
(1) Retiready Aegon		CE £42,036	
(2) Old Mutual Wealth			CE £287,667
(3) Tech Data Aviva			CE £2,023
TOTAL PENSION		**CE £42,036**	**CE £289,690**

25. The equity in the property at [address], Surbiton ("the FMH") and the Husband's pension assets are the main assets in this case. The Wife has considerably less by way of pension provision and a negative net asset position (ignoring her pension provision).

26. I will deal with the parties' anticipated income and expenditure, and other relevant matters later in this judgment. Before doing so I will summarise the open positions of the parties.

Open positions

27. The Wife's open offer letter dated 5th March was detailed, and lengthy but can be summarised as requiring an order for sale of the FMH and payment of a lump sum of £159,600. The Wife proposes to purchase a houseboat with full residential moorings

for £132,000 including purchase costs, £11,418 to discharge her debts and £16,200 to meet mooring costs for 18 months. There would be a clean break.

28. In response, on 11th March 2020, the Husband offered £30,000, rationalised as £2,000 for a rental deposit, £16,500 for the cost of renting for 16 months at £1,000 p.c.m., and £11,500 to discharge the Wife's post-separation debts. Again, the offer was made on a clean break basis. He proposed that he should pay £20,000 within 14 days and the wife should then vacate the FMH removing only her personal possessions, leaving it ion a good state of repair and removing any locks she had fitted. She would also be required to sign a form MH4 removing her home rights notice from the registered title of the FMH within 14 days. The remaining £10,000 would be released assuming that she caused no damage, or the cost of remedying damage would be deducted, and the MH4 would then be lodged at the Land Registry. There would be a clean break on income and capital.

29. I should note when the parties completed their Form Es they had the ability to address issues of conduct at section 4.4 of the form, which contains the following note: "Bad behaviour or conduct by the other party will only be taken into account in very exceptional circumstances when deciding how assets should be shared after divorce/dissolution. If you feel it should be taken into account in your case, identify the nature of the behaviour or conduct below." This section of each of the parties' Form Es was left blank.

30. Although the Wife has been dissatisfied with the Husband's financial disclosure, his conduct was not something flagged up at the First Directions Appointment, and did not lead to any directions over and above the filing of s.25 MCA 1973 statements. Nevertheless, at the final hearing the wife sought to argue that the Husband's conduct was material in that it was 'gross and obvious' (see below), and impacted on her financial circumstances. Reference was made in the Wife's position statement to her s.25 statement at pp. C111-113. Meanwhile, reference was made in the Husband's s.25 statement (paragraphs 44-47) to the Wife's conduct during the marriage and to litigation misconduct. These points were amplified at paragraphs 52-54 and 72-74 of the Husband's position statement. A 204-page bundle of correspondence was supplied by the Husband's solicitors. The hearing bundles also comprised a 377-page main bundle and there was a rather shorter supplementary bundle.

31. In her closing submissions, counsel for the Husband did not pursue findings in relation to conduct. Counsel did reserve her client's right to rely on litigation misconduct in relation to costs. Counsel for the Wife did seek findings in relation to conduct. Her case, as summarised in her counsel's oral opening submissions, is that the Husband was abusive and manipulative during the course of and prior to the litigation, which impacted on her ability to generate an income and triggered her PTSD, causing her to lose her job. Mention was made of the Husband's use of CCTV.

Evidence

32. The parties were sworn and verified their Form Es, replies to questionnaires and s.25 statements. In the case of the Husband he also verified his responses to the Schedule of Deficiencies which he had served specifically verified that he had made full and frank disclosure. Each gave some additional evidence in chief and was cross-examined. Each was in the witness box for about 3 hours.

33. The Wife indicated in examination in chief that that she saw her son every day, helping to motivate him, managing his money, and taking him to out-patient appointments. She indicated that she was on a waiting list for psychological support, although I am not convinced that she is on a waiting list for treatment as such- she is on a waiting list for a second opinion assessment. When these proceedings have concluded she will be referred back but I anticipate that there will be a delay in getting support; and the COVID 19 crisis will probably cause some delay in getting a referral. She gave evidence about one house boat in some property particulars at pp.X1-2 – it had been sold and did not have full residential mooring rights. She reiterated that she needed a 2-bedroomed home in order to provide support for her son and because she previously had a 2-bedroomed flat. As to a houseboat the particulars of which were at pp.X 3-4, on sale at £89,000 she said that this had sold and then re-sold for £200,000 after a refurbishment. As to one at pp.X5-6, at £44,000 it was in Poplar Marina and was only a 1-bedroomed house boat, and did not include full moorings. The Wife gave evidence about some other houseboats which she had considered but said that the one she was considering was the cheapest in the area with full residential moorings. The wife indicated her concern that, if she just rented for a year, at the end of that time she would be destitute and homeless, and would not be housed by Kingston Council. She said that she needed the stability of her own home, and had long-term trauma for which she needed treatment, and could not cope with having to move regularly in the rental sector.

34. When cross-examined on her business profits I thought that she explained truthfully how she paid for attending fairs and I did not think that she was understating her previous ability to draw money from her aromatherapy business. She was also cross-examined on her income needs set out at pp.C50-51 of the trial bundle, and also on the income which she might be able to earn when she has had treatment.

35. Overall, I thought that the Wife was a truthful witness who was doing her best to assist the court.

36. The Husband updated the value of his pension fund with Old Mutual during examination in chief. He indicated concerns that he had with the value of the FMH because of subsidence issues a few years ago, although the gross value of the FMH had been agreed. He also worried that due to the Coronavirus pandemic any sale might not be a quick sale. He explained how his job required him to visit customers, but currently he could not do so, and he would not achieve the commission which he might otherwise derive from sales. On target, he stood to obtain £25K per annum, with a basic salary of £60K.

37. The husband was taken to his schedule of expenditure at p.C235 of the trial bundle. He accepted that he would not be taking a holiday in the short term, and that legal fees of £1,500 per month would not be payable when this litigation concluded. He thought his maximum mortgage capacity would be an additional £80,000 on top of his current mortgage which he said was about £216,000.

38. C would finish full time secondary education this June, and he did not know what her university costs would be. E would not be going to Spain for her next academic year, but she would have no accommodation in the UK apart from the FHM at present. He reiterated that both daughters would spend time with him, C in particular would spend more time with him than with her mother.

39. The husband indicated that he would be able to pay the Wife £20,000 within 14 days, taking a short-term loan. He wanted the current stressful situation over with as soon as possible, and for the wife to leave the FMH. He said he would then raise a further sum of £10,000. The costs order in his favour for £1,800 including VAT which had been made against the wife during the proceedings would be written off. I think he also indicated that the Wife would not need to pay back the LSPO.

40. In relation to the duration of the marriage, and when the parties separated, the Wife's case was put to the husband in cross-examination. He indicated that he had been banished from the bedroom to sleeping on a sofa, and told her he wanted her to leave. There were some text messages from late January 2017 put to him in cross-examination in affectionate terms. The Husband agreed that he attempted to patch the relationship up. Although it was put to him that he had undertaken a campaign of antagonism towards her including the installation of CCTV and exacerbated her vulnerabilities, he indicated in cross-examination that the use of CCTV had been suggested by the police, and that she had put a stereo outside the bedroom, turned the wifi off so that he could not work, and threatened to kill him.

41. In relation to his housing need it was accepted that he had not provided property particulars for properties suitable for him to move to. It was put to him that the properties at pp.375-377 of the hearing bundle were suitable for him. He indicated that those put forward were insufficient for his daughters' needs and in the wrong areas. The Husband was cross-examined on his capacity to borrow, and he indicated that he would borrow from friends to raise funds to pay the sums which he offered to pay the Wife. He was also cross-examined on his projected expenditure, and accepted sardonically that his West Ham season ticket might have to go. He stood his ground on items of expenditure such as presents, indicating that he had 2 daughters, a mother, 3 brothers, 3 sisters, 3 brothers in law and sisters in law and 14 nephews and nieces. I did not gain the impression that any of his expenditure was deliberately exaggerated, and indeed he had not put in a figure for entertainment. Although counsel for the Wife put to the Husband the wife's case to the effect that there had been a lack of candour, a failure to be clear and honest, and that on one occasion she had not been allowed to come to the cinema, and that he was driven by hostility and antagonism, none of these points was accepted by the Husband. Nor do I find them proven. In re-examination the Husband stressed his lifelong connection to the Berrylands/Surbiton area- where his network of friends was, and that it had good transport connections. I accept his evidence in this regard and I should say that I considered him to be an honest witness.

Submissions

(1) Husband

42. It was submitted that this was a very short marriage lasting some 16 weeks. It was submitted that the wife had not brought any assets to the marriage and yet asked to be put in to the position that she was before the marriage although she was not actually offering to repay the husband for the money that he spent in discharging her debts. Mention was made in counsel for the husband's opening note to the cases of *Sharp v Sharp* [2017] EWCA Civ 408 and *Miller; McFarlane* [2006] FLR. The cases were not, however, formally cited. It was accepted that Mr Mrs D's case was not a big-money case. It was a needs case. It was submitted that husband should only be required to meet her needs for a short period of time. Counsel for the husband made reference to,

although did not cite *C v C* [1997] FLR 2 FLR 26. It was submitted that the FMH should be characterised as non-matrimonial property, and that any capital award should be modest. He brought the FMH to the marriage having spent sums on the extending it.

43. It was submitted that there was no medical evidence of how someone with PTSD might present, or that she was unable to work full-time and that the wife was not vulnerable. She did not take responsibility for her bad behaviour. Her lack of vulnerability was demonstrated by her litigation conduct including complaining to the SRA against the husband's solicitors and writing to counsel for the husband, and also writing in inappropriate terms to E. She was bright, intelligent and had a good grasp of fact management, and was able to present herself in writing with considerable skill. Submitted that she had three years' experience in telesales, had her own aromatherapy business with its own website. She had IT skills she had worked for a Working Peeress. She had also worked for Sainsbury's. It was submitted that she was likely to be able to obtain employment.

44. It was submitted that her actual financial need was for a one bedroomed rented property, which would cost £800-£1,000 per month. It was submitted that the property particulars provided by the wife herself for a houseboat at a cost of £130,000 and 2- bedroomed properties for purchase in the range of £175,000-£225,000 bore no resemblance to reality. Her son was not in full time education, had not lived with her for two years and his mental health issues were not her responsibility. She could time her visits around her working hours.

45. It was submitted that was impractical for the wife to re-house in a houseboat because of the capital outlay and also the monthly outgoings at £900 per month.

46. The wife's income as set out in her 2018/2019 tax return was £13,483 less £570 in tax. It was submitted that the wife could and should work. It was submitted that she could receive £8,000 per annum in benefits if she was earning £12,000. In addition to income of about £20,000 per annum there was her skincare business. There are no recent accounts and business was to be regarded as a hobby. It was submitted that her asserted income needs of £2,136 were overstated – if massage chiropractor stress supplements loan and credit card repayments were stripped out and a one-bedroom flat was rented then her needs would be £1,665 per month.

47. Reference was made in the opening note supplied by Counsel for the husband to *SS v NS* [2014] EWHC 4183 and *Matthews v Matthews* [2013] EWCA Civ 1874, although these cases were not cited, there being a statutory 'steer' towards a clean break. It was submitted that there was a reasonable expectation that the wife would be self-sufficient almost immediately, with the husband's assistance, and that the case was suitable for a clean break order.

48. It was submitted that the husband had to discharge the mortgage at over £1,000 a month and repay a £20,000 loan from Santander, in part taken out to fund the Wife's costs at £581 a month over 3 years. It was submitted that shortly before the marriage he took out additional borrowing in the sum of £150,000 to fund the extension of the FHM (£130,000) and £20,000 for the wedding. He had total needs of £6,183.67 per month, less than his current average income. The submitted that the husband needed to make significant financial contributions for his daughters' education and maintenance The most he could borrow was about £60,000. On the husband's offer the wife would exit

the short marriage free of debt and rehoused while she found employment and undertook therapy.

49. It was submitted that the husband needed to remain in the home where he was with the ability to house his two daughters. The submission was that he needed a three-bedroomed property, and that their stability was critical given their mental health issues and the traumatic period of time they had been subjected to as a result of the wife's behaviour.

50. It was submitted that I should reject the wife's arguments that her housing association tenancy had a tangible value or that there should be some form of compensation for psychological reasons. Nor should I accept her estimation of husband's mortgage capacity derived from money supermarket website: he had adduced evidence from a mortgage broker as to his capacity to borrow after he had discharged his debt Santander £20,000 and his credit card

51. I was reminded that some this was a case of unmatched contributions – it was submitted that the husband had come to the marriage with his property, acted to his financial detriment in funding an extension and wedding and in clearing all of the wife's debts on a marriage which lasted 16 weeks.

(2) Wife

52. It was submitted on behalf of the wife that she needed to have the stability and security afforded by owned accommodation. She needed the provision of a lump sum. She had given up the security that she had under her assured tenancy and was a vulnerable person, albeit not a passive wallflower. It was submitted that I should find that the marriage lasted from May until February not September.

53. It was submitted that the Wife could work part-time for Sainsbury's for example for 16 to 20 hours a week rising to full-time employment after she had undertaken therapy about January 2022. It was submitted that until then she would earn £150 gross per week.

54. It was submitted that the central issue in this case was the Wife's need for secure and stable accommodation. She had an assured tenancy from 2005 giving her low rent life-long accommodation and sacrificed that in reliance on the Husband's assurances that he would take care of her and her son DM. The Wife was completely dependent on the state for housing and income for 15 years prior to the marriage and her tax credit award showed her low income.

55. It was submitted that I should have regard to the following propositions:

    i) In respect of 'needs' the starting point was Lord Nichols' well known judgment in *White v White* [2007] EWCA:

    'Clearly and it is well recognised, there is some overlap between the factors listed in s25(2). In a particular case there may be other matters to be taken into account as well. But the end product of this assessment of financial needs should be seen, and treated by the court, for what it is: only one of several factors wot which the court is to have particular regard. This is so, whether the end product

is labelled financial needs of reasonable requirements. In deciding what would be a fair outcome the court must also have regard to other factors such as the available resources and the parties' contributions. In following this approach the court will be doing no more than giving effect to the statutory scheme.

ii) Further, Lord Nichols in *Miller, McFarlane*, at para 11:

When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity , the family's standard of living and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age of disability are instances of the latter.

iii) Baroness Hale in *Miller, McFarlane* [2006] UKHL 14 at paras 136 - 138:

136. Thus where the principles of fairness and non-discrimination and the 'yardstick of equality' which established [in White]. But the house was careful to point out (see p 605f) that the yardstick of equality did not inevitably mean equality of result. It was a standard against which the outcome of the section 25 exercises was to be checked. In any event, except in those cases where the present assets can be divided and each can live independently at roughly the same standard of living, equality of outcome is difficult both to define and to achieve. Giving half the present assets to the breadwinner achieves a very different outcome from giving half the assets to the homemaker with children.

137. So how is the court to operate the principles of fairness, equality and non-discrimination in the less straightforward cases? As Lord Justice Ward has argued non-judicially ("Have the House of Lords abused Cinderella? Their Contribution to Divorce Law"), lecture at King's College, London, 23 November 2004, given that we have a separate property system, there has to be some sort of rationale for the redistribution of resources from one party to another. In my view there are at least three. Any or all of them might supply such a reason, although one must be careful to avoid double counting. The cardinal feature is that each is looking at factors which are linked to the parties' relationship, either causally or temporally, and not to extrinsic, unrelated factors, such as a disability arising after the marriage has ended.

138. The most common rationale is that the relationship has generated needs which it is right that the other party should meet. In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriage (note that the House did not adopt a restrictive view of needs in White: see pp 608g to 609a). This is a perfectly sound rationale where the needs are the consequence of the parties' relationship, as they usually are. The most common source of need is the presence of children, whose welfare is always the first consideration, or of other dependent relatives, such as elderly parents. But another source of need is

having had to look after children or other family members in the past. Many parents have seriously compromised their ability to attain self-sufficiency as a result of past family responsibilities. Even if they do their best to re-enter the employment market, it will often be at a lesser level than before, and they will hardly ever be able to make up what they have lost in pension entitlements. A further source of need may be the way in which the parties chose to run their life together. Even dual career families are difficult to manage with completely equal opportunity for both. Compromises often have to be made by one so that the other can get ahead. All couples throughout their lives together have to make choices about who will do what, sometimes forced upon them by circumstances such as redundancy or low pay, sometimes freely made in the interests of them both. The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation.

iv) And at para 144:

In general, it can be assumed that the marital partnership does not stay alive for the purposes of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living.

v) In terms of meeting needs, the court could and should look beyond assets acquired during the marriage, but to look to relevant assets from which needs may be met: Sir Mark Potter P in *M-D v D* [2009] 1 FLR 810:

Para 53. . . For that purpose the focus had to be upon their minimal future needs rather than observing and applying the distinction, urged on behalf of the husband and accorded considerable weight by the Judge, between the matrimonial property or 'acquest' and what each of the parties brought to the marriage by way of pre-acquired property.

56. The Wife did not seek periodical payments on the basis of the lump sum sought. Nor did she seek a pension sharing order.

57. In response to comment that I made during the course of the hearing about an order for payment of a deferred sum, this is not her first choice but a possible alternative.

58. It was submitted that I should take into account the Wife's psychiatric difficulties and that her son's welfare was a relevant consideration for the court since he suffered with significant and serious mental health problems which had led to repeated and recent suicide attempts. The wife was his sole carer and advocate for housing and although he had a probationary tenancy which might need something secure, his security remained dependent on his ability to meet his obligations as a tenant. The Wife needed to assist him with his financial management care. The Husband's children, on the other hand had the support of their father and also their mother with whom they were living did not have comparable health issues that would leave them as long-term dependants on him.

59. It was submitted that the wife had no mortgage raising capacity and that she would not have the ability to meet her housing needs by reference to the public sector. In that regard I was referred to a letter from the local housing authority and advice received from Kingston Churches Action on Homelessness.

60. It was submitted that the capital sum sought amounted to 29.21% of the equity in the FMH, or 22.41% of the total asset pot including liabilities and pensions. She submitted that the husband could in fact borrow £371,000 over 20 years based on his current earnings which would be affordable. In the alternative the husband could sell the FMH which was too large for his immediate and future needs. It was submitted that property particulars for suitable two and three bedroom properties for him had a price range of £295,000-£357,000.

61. It was submitted that the husband's conduct was relevant – it submitted that it was 'gross and obvious'- she accused him of being manipulative, abusive and controlling. During the course of proceedings she had been caused great frustration by his failure to give disclosure. Counsel for the wife made reference to but did not cite *R v B and Capita Trustees* [2010] EWHC 1630 (Fam) , a case where a husband had committed fraud in hiding two loans totalling £7 million from the wife, never declaring income to HMRC, taking money to which he was not entitled, the pursuit of ruinous litigation and repeatedly lied to the court. His behaviour had brought financial catastrophe on the family and the judge found that this was conduct which she should take into account. I should say that I found it very difficult to see, in this case, any factual parallel with the *Capita Trustees* case.

62. Counsel for the wife also referred to the did not cite *MD v D* [2009] 1 FLR 810 in relation to the duration of the marriage as a relevant factor. The wife's concern was about being homeless in the longer term.

The law

63. As to what the Court's task is on an application or this sort, it may assist the parties themselves if I set out the principles by reference to the decision of the House of Lords in *White v White* [2001] 1 AC 596.

64. The leading speech was given by Lord Nicholls of Birkenhead, with whom Lord Hoffmann, Lord Cooke of Thorndon, Lord Hope of Craighead and Lord Hutton agreed. The context was a 'clean break' case, where the children were grown up and independent. The available assets substantially exceeded the amounts required by Mr and Mrs White for their financial needs, in terms of a home and income for each of them. The judge at first instance found that each party contributed a great deal of effort to the marriage and the welfare of the family. Within the home it was the Wife who primarily brought up the children, and she also worked hard in all sorts of ways on the farm. Mr White was a hardworking and active farmer. Holman J said:

> "In truth this was a marital and also a business partnership in which, by their efforts and commitment, each contributed to the full for 33 years, and any attempt to weigh the respective contributions of their effort is idle and unreal."

65. Lord Nicholls noted that the basis of the jurisdiction is a statute, see p.604

"Sections 23 and 24 of the Matrimonial Causes Act 1973 empower the court, on granting a decree of divorce and in certain other circumstances, to make financial provision orders and property adjustment orders. Financial provision orders, under section 23, include orders that one party to the marriage shall make payments to the other party. The payments may be periodical, either secured or unsecured, or lump sums. Property adjustment orders, under section 24, include orders that one party to the marriage shall transfer property to the other party. Section 24A empowers the court to make ancillary orders for the sale of property.

Section 25, as substituted by section 3 of the Matrimonial and Family Proceedings Act 1984, sets out the familiar list of matters to which the court is to have regard in deciding how to exercise these powers. Section 25(1) provides that it is the duty of the court in deciding whether, and how, to exercise these powers to have regard to **all the circumstances of the case**. [emphasis added]. First consideration is to be given to the welfare of any child of the family under the age of 18. Section 25(2) provides that, as regards the exercise of these powers in relation to a party to the marriage, the court shall in particular have regard to [spacing added for clarity]:

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

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

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

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

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

(h) ... 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."

Section 25A requires the court to consider the appropriateness of a "clean break". Sections 25B-25D, inserted by section 166(1) of the Pensions Act 1995, make provision regarding benefits under pension schemes."

66. So much for the framework. What is the aim ? Lord Nicholls noted at p.604-5

"…the legislation does not state explicitly what is to be the aim of the courts when exercising these wide powers. **Implicitly, the objective must be to achieve a fair outcome**.[emphasis added] The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses: see Thorpe LJ in *Dart v Dart* [1996] 2 FLR 286, 294. The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children." Earlier at p.599 he had said "Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder."

67. At p.605 he went on:

"Equality

Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss LJ said in *Dart v Dart* [1996] 2 FLR 286, 303, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between Husband and Wife and their respective roles. Typically, a Husband and Wife share the activities of earning money, running their home and caring for their children. Traditionally, the Husband earned the money, and the Wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the Wife who is the money-earner, and the Husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the Husband and Wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions. This is implicit in the very language of paragraph (f): "the contributions which each ... has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family". (Emphasis added.) If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer. There are cases, of which the Court of Appeal decision in *Page v Page* (1981) 2 FLR 198 is perhaps an instance, where the court may have lost sight of this principle.

A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the ***available assets***. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.

This is not to introduce a presumption of equal division under another guise. Generally accepted standards of fairness in a field such as this change and develop, sometimes quite radically, over comparatively short periods of time. The discretionary powers, conferred by Parliament 30 years ago, enable the courts to recognise and respond to developments of this sort. These wide powers enable the courts to make financial provision orders in tune with current perceptions of fairness. Today there is greater awareness of the value of non-financial contributions to the welfare of the family.

There is greater awareness of the extent to which one spouse's business success, achieved by much sustained hard work over many years, may have been made possible or enhanced by the family contribution of the other spouse, a contribution which also required much sustained hard work over many years. There is increased recognition that, by being at home and having and looking after young children, a Wife may lose for ever the opportunity to acquire and develop her own money-earning qualifications and skills. In *Porter v Porter* [1969] 1 WLR 1155, 1159, Sachs LJ observed that discretionary powers enable the court to take into account "the human outlook of the period in which they make their decisions". In the exercise of these discretions "the law is a living thing moving with the times and not a creature of dead or moribund ways of thought".

Despite these changes, a presumption of equal division would go beyond the permissible bounds of interpretation of section 25. In this regard section 25 differs from the applicable law in Scotland. Section 10 of the Family Law (Scotland) Act 1985 provides that the net value of matrimonial property shall be taken to be shared fairly between the parties to the marriage when it is shared equally or in such other proportions as are justified by special circumstances. Unlike section 10 of the Family Law (Scotland) Act 1985, section 25 of the 1973 Act makes no mention of an equal sharing of the parties' assets, even their marriage-related assets. A presumption of equal division would be an impermissible judicial gloss on the statutory provision. That would be so, even though the presumption would be rebuttable. Whether there should be such a presumption in England and Wales, and in respect of what assets, is a matter for Parliament."

68. This makes it clear that while there is no presumption of equal division, and there must be a non-discriminatory approach, there is still at least a "yardstick" of equal division of "available assets". Are all of the parties' assets to be treated in the same way? This is a subject on which important guidance was given at p.610:-

"**Inherited money and property**

I must also mention briefly another problem which has arisen in the present case. It concerns property acquired during the marriage by one spouse by gift or succession or as a beneficiary under a trust. For convenience I will refer to such property as inherited property. Typically, in countries where a detailed statutory code is in place, the legislation distinguishes between two classes of property: inherited property, and property owned before the marriage, on the one hand, and "matrimonial property" on the other hand. A distinction along these lines exists, for example, in the Family Law (Scotland) Act 1985 and the (New Zealand) Matrimonial Property Act 1976.

This distinction is a recognition of the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.

Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."

69. *White v White* was considered by the House of Lords in *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618. There were two leading speeches, one by Lord Nicholls of Birkenhead, and another by Baroness Hale of Richmond. Lord Hope agreed with both of them. Lord Hoffman agreed with Baroness Hale. It has to be said that in both cases the assets at stake were many times as large as those in the present case. Not surprisingly, the key points made in *White v White* were repeated by Lord Nicholls. I will not set out his speech in full but the first 29 paragraphs are illuminating, albeit there were some differences of approach in Baroness Hale's speech, and I will simply highlight the key points:-

"

(1) In seeking a fair outcome there is no place for discrimination between a Husband and Wife and their respective roles. Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the home-maker and the child-carer.

(2) There can be different views on the requirements of fairness in any particular case. The Matrimonial Causes Act 1973 gives only limited guidance on how the courts should exercise their statutory powers. Primary consideration must be given to the welfare of any children of the family. The court must consider the feasibility of a "clean break". Beyond this the courts are largely left to get on with it for themselves. The courts are told simply that they must have regard to all the circumstances of the case. Of itself this direction leads nowhere. Implicitly the courts must exercise their powers so as to achieve an outcome which is fair between the parties.

(3) The financial provision made on divorce by one party for the other, still typically the Wife, is not in the nature of largesse. It is not a case of "taking away" from one party and "giving" to the other property which "belongs" to the former. The claimant is not a supplicant. Each party to a marriage is *entitled* to a *fair* share of the available property. The search is always for what are the *requirements* of fairness in the particular case.

(4) Several elements, or strands, are readily discernible. The first is financial needs. This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.

(5) In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs.

(6) Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the Husband in terms of his earning capacity but left the Wife severely handicapped so far as her own earning capacity is concerned. Then the Wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her Husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as home-maker and child-carer. When this is so, fairness requires that this feature should be taken into account by the court when exercising its statutory powers. Compensation and financial needs often overlap in practice, so double-counting has to be avoided. But they are distinct concepts, and they are far from coterminous. A claimant Wife may be able to earn her own living but she may still be entitled to a measure of compensation.

(7) A third strand is sharing. This "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. The yardstick of equality is to be applied as an aid, not a rule.

(8) This principle is applicable as much to short marriages as to long marriages: see *Foster v Foster* [2003] 2 FLR 299, 305, para 19 per Hale LJ. A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership. To confine the *White* approach to the "fruits of a long marital partnership" would be to re-introduce precisely the sort of discrimination the *White* case [2001] 1 AC 596 was intended to negate.

(9) For the same reason the courts should be exceedingly slow to introduce, or reintroduce, a distinction between "family" assets and "business or investment" assets. In all cases the nature and source of the parties' property are matter to be taken into account when determining the requirements of fairness. But "business and investment" assets can be the financial fruits of a marriage partnership as much as "family" assets. The equal sharing principle applies to the former as well as the latter. The rationale underlying the sharing principle is as much applicable to "business and investment" assets as to "family" assets.

(10) Matrimonial property and non-matrimonial property. By section 25(2)(a) the court is bidden to have regard, quite generally, to the property and financial resources each of the parties to the marriage has or is likely to have in the foreseeable future. This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.

(11) The matter stands differently regarding property ("non-matrimonial property") the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non-matrimonial property is that a judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property.

(12) In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage. With longer marriages the position is not so straightforward. Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not. After many years of marriage the continuing weight to be attributed to modest savings introduced by one party at the outset of the marriage may well be different from the weight attributable to a valuable heirloom intended to be retained in specie. Another relevant matter is the way the parties organised their financial affairs.

(13) This difference in treatment of matrimonial property and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon. Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day. Similarly the "equal sharing" principle might suggest that each of the party's assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility. The costs involved can quickly become disproportionate.

(14) Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case.

(15) In big money cases, the capital assets are more than sufficient to meet the parties' financial needs and the need for either party to be compensated when one party's earning capacity has been advantaged at the expense of the other party. In these cases, should the parties' financial needs and the requirements of compensation be met first, and the residue of the assets shared? Or should financial needs and compensation simply be subsumed into the equal division of all the assets? There can be no invariable rule on this. Much will depend upon the amounts involved.

Generally a convenient course might be for the court to consider first the requirements of compensation and then to give effect to the sharing entitlement. If this course is followed provision for the parties' financial needs will be subsumed into the sharing entitlement. But there will be cases where this approach would not achieve a fair outcome overall. In some cases provision for the financial needs may be more fairly assessed first along with compensation and the sharing entitlement applied only to the residue of the assets. Needless to say, it all depends upon the circumstances."

70. There were some differences of approach, summarised by Lord Mance as follows:-

"167….On the one hand, on Lord Nicholls's approach, non-matrimonial property is viewed as all property which the parties bring with them into the marriage or acquire by inheritance or gift during the marriage (plus perhaps the income or fruits of that property), while matrimonial property is viewed as all other property. The yardstick of equality applies generally to matrimonial property (although the shorter the marriage, the smaller the matrimonial property is in the nature of things likely to be). But the yardstick is not so readily applicable to non-matrimonial property, especially after a short marriage, but in some circumstances even after a long marriage.

168 On the other hand, Baroness Hale's approach takes a more limited conception of matrimonial property, as embracing "family assets" (cf Wachtel v Wachtel [1973] Fam 72, 90 per Lord Denning MR) and family businesses or joint ventures in which both parties work (cf Foster v Foster [2003] 2 FLR 299, 305, para 19, per Hale LJ). In relation to such property she agrees that the yardstick of equality may readily be applied. In contrast, she identifies other "non-business-partnership, non-family assets", to which that yardstick may not apply with the same force particularly in the case of short marriages; these include on her approach not merely (a) property which the parties bring with them into the marriage or acquire by inheritance or gift during the marriage (plus perhaps its income or fruits), but also (b) business or investment assets generated solely or mainly by the efforts of one party during the marriage."

71. Lord Mance evidently agreed with Baroness Hale where she said as follows:

"152 My Lords, while I do not think that these arguments can be ignored, I think that they are irrelevant in the great majority of cases**.** In the very small number of cases where they might make a difference, of which Miller may be one, the answer is the same as that given in *White v White* [2001] 1 AC 596 in connection with premarital property, inheritance and gifts. The source of the assets may be taken into account but its importance will diminish over time. Put the other way round, the court is expressly required to take into account the duration of the marriage: section 25(2)(d). If the assets are not "family assets", or not generated by the joint efforts of the parties, then the duration of the marriage may justify a departure from the yardstick of equality of division. As we are talking here of a departure from that yardstick, I would prefer to put this in terms of a reduction to reflect the period of time over which the domestic contribution has or will continue (see Bailey-Harris, "Comment on GW v RW (Financial Provision: Departure from Equality)" [2003] Fam Law 386, 388) rather than in terms of accrual over time (see Eekelaar, "Asset Distribution on Divorce-Time and Property" [2003] Fam Law 828). This avoids the complexities of devising a formula for such accruals.

153 This is simply to recognise that in a matrimonial property regime which still starts with the premise of separate property, there is still some scope for one party to acquire and retain separate property which is not automatically to be shared equally between them. The nature and the source of the property and the way the couple have run their lives may be taken into account in deciding how it should be shared**.** There may be other examples. Take, for example, a genuine dual career family where each party has worked throughout the marriage and certain assets have been pooled for the benefit of the family but others have not. There may be no relationship-generated needs or other disadvantages for which compensation is warranted. We can assume that the family assets, in the sense discussed earlier, should be divided equally. But it might well be fair to leave undisturbed whatever additional surplus each has accumulated during his or her working life. However, one should be careful not to take this approach too far. What seems fair and sensible at the outset of a relationship may seem much less fair and sensible when it ends. And there could well be a sense of injustice if a dual career spouse who had worked outside as well as inside the home throughout the marriage ended up less well off than one who had only or mainly worked inside the home."

72. The *White* and *Miller* cases were considered by the Court of Appeal in *Charman v Charman (No 4)* [2007] 1 FLR 1246. This case was also not cited to me. The summary of the case from the head note suffices to demonstrate that the Court of Appeal thought that the yardstick of equal division adumbrated in *White* had been elevated into a sharing "principle" in *Miller*, entitling the Court to go immediately to it rather than cross-checking at the end. Whether or not this is technically correct will not affect the outcome in this case. What is of significance is the idea that at least potentially, all the parties' property is liable to be considered by the Court and divided up in the manner considered to be fair. That is consistent with remarks made in the two House of Lords cases to which I have referred. As I say, I need only reproduce part of the head note:-

"

(16) In *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 the House of Lords had identified three main distributive principles: need (generously interpreted), compensation and sharing. The yardstick of equality of division, identified by the House of Lords in *White v White*, had filled the vacuum that resulted from the abandonment of the criterion of 'reasonable requirements', but had now developed into the 'equal sharing principle'. Under the 'sharing principle', property should be shared in equal proportions unless there was good reason to depart from such proportions, therefore departure from equality was not departure from the principle, but took place within the principle (see paras [64], [65], [68])

(17) Since *Miller* and the development of the yardstick into the sharing principle, the court's consideration of the sharing principle no longer had to be postponed until the end of the process. The sharing principle could not, however, be a true starting point; as the judge had stated, the starting point of every enquiry in an application for ancillary relief was the financial position of the parties and was always in two stages: first computation and then distribution. Although it might be convenient for the court to consider some of the matters set out in s 25(2) other than in the order set out in the section, a court should first consider, with whatever degree of detail was apt to the case, the matters set out in s 25(2), namely the property, income (including earning capacity) and other financial resources. Irrespective of whether the assets were substantial, likely future income must always be appraised for, even in a clean-break case, such appraisal might well be relevant to the division of property that best achieved the fair overall outcome (see paras [65], [67]).

(18) Notwithstanding some remarks in *Miller*, and subject to the exceptions identified in that case, the sharing principle applied to all the parties' property, but to the extent that property was non-matrimonial there was likely to be better reason for departure from equality. The distinction put forward by Baroness Hale of Richmond in *Miller* between unilateral assets and other matrimonial property was for use in cases in which the marriage was short; its application in a case such as the present would be deeply discriminatory and gravely undermine the sharing principle (see para [66]).

(19) Each of the three distributive principles identified by the House of Lords in *Miller* could be collected from s 25 of the Matrimonial Causes Act 1973: the principle of need required consideration of the financial needs, obligations and responsibilities of the parties, the standard of living enjoyed by the family, the age of the parties and any physical or mental disability of either; the principle of compensation related to prospective financial disadvantage which some parties faced upon divorce as a result of decisions taken for the benefit of the family during the marriage; and the principle of sharing was dictated by reference to the contributions of each party to the welfare of the family, to the length of the marriage and, in an exceptional case, to the conduct of a party. However, it was as unnecessarily confusing to present a case of contribution as a positive type of conduct, which it would be inequitable to disregard, as it was to present a case of conduct as a negative or nil type of contribution (see paras [69]-[72]).

(20) Any irreconcilable conflict between the result suggested by one of the three principles, needs, sharing and compensation, and that suggested by another, must be answered by application of the criterion of fairness: when the result suggested by the needs principle was an award greater than the result suggested by the sharing principle, the former should in principle prevail; when the result suggested by the needs principle was an award of property less than the result suggested by the sharing principle, the latter should in principle prevail; irreconcilable conflict

between the compensation principle and one of the others would be left for another case (see para [73]).

(21) In cases of very substantial matrimonial property it might be immediately apparent that the result of applying the sharing principle would immediately subsume the result of applying the principles of need and of compensation. In such circumstances the judge might well first consider distribution by reference to the sharing principle, and then shortly refer to the other principles. It was not the case that consideration of the discount from equality should play no part in the distributive exercise: a discount was nothing other than a departure from equality. The judge had in fact adopted a serial approach, considering all the factors set out in s 25, insofar as they were relevant, including the Husband's special contribution, arriving at a figure of £48m for the Wife, noting that this was 37% of the total assets, and concluding that such departure from equality was justified. That was a valid approach, but the judge would have been entitled to consider percentages at an earlier stage (see para [76]).

(22) The court did not agree with the approach suggested by Mance LJ in *Cowan v Cowan* [2001] EWCA Civ 679 of sharing the surplus of the assets after needs had been satisfied; in the large cases, it was probable that sharing, whether equal or not, would cater automatically for needs. There was also the grave practical objection that an approach that invited expensive concentration upon the value of assets and also elaborate presentation of needs would be the worst of both worlds (see para [77]).

(23) Special contribution had inevitably survived *Miller*, because the statutory requirement to consider contributions by each party to the welfare of the family would be inconsistent with a blanket rule that past contributions to its welfare must be accorded equal weight. However, the House of Lords had heavily circumscribed the situations in which it would be appropriate to find that one party had made a special contribution. The notion of special contribution could, in principle, take a number of forms, non-financial as well as financial, but in practice, for practical reasons, special contribution claims had thus far arisen only in cases of substantial wealth generated by a party's success in business during the marriage. In such cases the court would have regard to the amount of the wealth, which in some cases would be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserved equal treatment; often, however, he or she would need independently to establish such a quality, whether by genius in business or in some other field. Sometimes, by contrast, it would immediately be obvious that substantial wealth generated during the marriage was a windfall, not the product of a special contribution. Neither in its method nor in its result had the judge's treatment of the Husband's special contribution been vulnerable to appeal (see paras [79], [80], [91]).

(24) Notwithstanding a suggestion by Baroness Hale of Richmond in *Miller* that the generation of wealth should not always qualify as a contribution to the welfare of the family, the usual conclusion, applicable in this case, was that wealth generated by a party during a marriage was the product of a contribution on his or her part to the welfare of the family. In any event, a party's property did not fall outside the court's redistributive powers in ss 23-25 of the Matrimonial Causes Act 1973 just because it was not the product of a contribution within the meaning of s 25. The distinction put forward by Baroness Hale of Richmond in *Miller* between unilateral assets and other matrimonial property was for use in cases in which the marriage was short, and had not been commended for use in other cases. Its application in a case such as the present would be deeply discriminatory and gravely undermine the sharing principle (see paras [81], [83]).

(25) The court was unable to identify any figure as a guideline threshold for a special contribution; a party's claim to have made a special contribution ought not to succeed by reference to something interpreted as effectively a presumption deriving from the court's identification of a threshold figure. However, the court was prepared to respond to the judge's call for guidance on the appropriate range of percentage adjustment to be made in which departure from equality was justified, although it ought to be borne in mind that fair despatch of some cases might require departure from the proposed range: it was hard to conceive that, where such a special contribution was established, the percentages of division of matrimonial property should be nearer to equality than 55%-45%; but also, following a very long marriage, fair allowance for special contribution within the sharing principle would be most unlikely to give rise to percentages further from equality than 66.6%-33.3%. If the contribution was special, it followed that it was unmatched, and, in principle, the greater the wealth the greater the extent to which it was unmatched, and to which it called for an unequal division under the sharing principle (see paras [87]-[90])."

73. I note that in *Sharp v Sharp* [2018] 2 WLR 1617 the Court of Appeal stressed that Baroness Hale's speech should be preferred to that of Lord Nicholls' speech in *Miller* where it is in conflict in it since hers had the support of the majority of their lordships.

74. I am also aware of the decision of the Court of Appeal, overturning Charles J in *J v J* reported as *Jones v Jones* [2011] EWCA Civ 41, and the decision of Mostyn J, *N v F* [2011] EWHC 586 Fam in which there was a useful review of the not altogether consistent approaches of the CA in *Charman* as compared with *Jones v Jones* and *Robson v Robson*. Essentially, the former involves adjusting from 50% but taking into account all assets. The latter involves identifying the scale of the non-matrimonial property to be excluded and then dividing the remainder equally. Mostyn J preferred the latter approach at [14]– identify whether the existence of pre-marital property should be reflected at all, depending on questions of duration and mingling, and then, if it decides that reflection is fair and just, to decide how much of the pre-marital property should be excluded. Should it be the actual historic sum or less if there has been much mingling ? Or more to reflect a springboard and passive growth. Then the remaining matrimonial property should normally be divided equally. The fairness of the award should be tested by the overall percentage technique.

75. Importantly though, Mostyn J stressed that "all of this is subject to need"- see [15]. Citing Lord Nicholls in *White,* "In the ordinary course this factor can be expected to carry little weight without recourse to this property".

76. I have borne in mind the s.25 MCA 1973 factors in deciding this case, which have already been quoted. I am of course obliged to consider whether there should be what is usually called a "clean break", something which both parties wanted, and it is convenient to set out the relevant legislation, as follows:

"**25A Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage**

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24, 24A, 24B or 24E above in favour of a party to the marriage, it shall be the duty of 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 after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any future application in relation to that marriage for an order under section 23(1)(a) or (b) above."

77. The Family Court Practice 2019 has this to say on the subject of clean breaks and spousal maintenance:

"**Scope**—The 'clean break' section is to be read with s 25(2)(a) to provide that earning capacity includes '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' with a view to a clean break. The court must consider:

(i) termination: whether it is appropriate to terminate the financial obligations as soon after the decree as is 'just and reasonable';

(ii) term: if periodical payments are to be made, whether they should be made or secured only for such period as to allow adjustment without undue hardship to termination (with or without a bar on the payee applying to extend the original term);

(iii) dismissal: if there is no continuing obligation for periodical payments, the court may dismiss the application, with a direction under s 28(1A) that there be no future application for an order under s 23(1)(a) or (b).

At any stage when the court is considering orders under s 23 or s 24, the court has a duty to consider whether an immediate or future clean break is appropriate. This principle was developed in *Minton v Minton* (1978) FLR Rep 461, HL and had survived *White v White* [2000] 2 FLR 981, HL to be reiterated in *Miller; McFarlane* [2006] 1 FLR 1186, HL. See also *Robson v Robson* [2011] 1 FLR 751, CA.

The statute is silent as to the circumstances in which it may be appropriate to make a clean break order. In *C v C (Financial Relief: Short Marriage)* [1997] 2 FLR 26, CA, the Court of Appeal summarised the proper approach to assessing whether a clean break order should be made, which depends on all the circumstances of the case, including the welfare of any minor child and the s 25 checklist factors. A short marriage will not of itself require a term order. If a term is appropriate, there must be evidence to support that conclusion, as opposed to hope or crystal ball gazing. If there is doubt about when self-sufficiency will be attained, it is wrong to require the payee to apply to extend the term. If there is uncertainty about the appropriate length of the term, the proper course is to impose no term but leave the payer to seek variation or discharge.

Therefore, a clean break order may be appropriate where there is evidence that the applicant is financially self-sufficient, or is expected to be in the near future, or where the parties are impecunious with no prospect of future financial contribution. In *L v L (Financial Remedies: Deferred Clean Break)* [2012] 1 FLR 1283, FD on appeal from the PRFD, a joint lives order was set aside in favour of a non-extendable term order of just over 2 years, where a 44-year-old Wife worked in an established business and retained a valuable farm that was capable of generating income, the children were subject to shared care arrangements and the Wife additionally expected to benefit from a family trust.

The Court of Appeal has expressed itself in favour of a clean break in *Matthews v Matthews* [2014] 2 FLR 1259, CA, where the imposition of a clean break was upheld on appeal. The Wife's claim for a nominal spousal maintenance was rejected where the Wife's earning capacity was found to be greater than the Husband's, despite her difficulties in finding employment and her poor credit rating. The submission that it was wrong in principle to impose a clean break (subject to child support) where there were dependent children aged 6 and 3 was rejected, as there was a clear presumption in favour of a clean break and the trial judge had taken all relevant circumstances into account. In *Chiva v Chiva* [2014] EWCA Civ 1558, the Court of Appeal dismissed a Wife's appeal, approving a clean break after 24 months where the Wife's future earning power was such that she could be expected to make up the loss of periodical payments at the end of 2 years. In *Wright v Wright* [2015] EWCA Civ 201, a Husband's variation application some years after a joint lives order, the Court of Appeal refused a Wife permission to appeal against an order that reduced her spousal maintenance, with termination in December 2018 when the younger child reached 14, the Wife having had since the divorce in 2006 to achieve self-sufficiency.

Therefore, clean break orders may no longer be thought to be inappropriate where there is a continuing responsibility to the housing and maintenance of dependent children".

78. The Family Court Practice goes on to refer to guidance on the approach to claims for spousal periodical payments by Mostyn J in *SS v NS (Spousal Maintenance)* [2015] 2 FLR 1124, FD, at [46]:

(i) A spousal maintenance award is properly made where the evidence shows that choices made during the marriage have generated hard future needs on the part of the claimant. Here the duration of the marriage and the presence of children are pivotal factors.

(ii) An award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies. (Also note here that 'needs' is a very flexible concept and may, if the circumstances of a case allow, permit, for example, the 'stockpiling' of maintenance to generate a stronger capital base or to make future pension provision: see *Fields v Fields* [2016] 1 FLR 1186, FD.)

(iii) Where the needs in question are not causally connected to the marriage, the award should generally be aimed at alleviating significant hardship.

(iv) In every case, the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable.

(v) If the choice between an extendable term and a joint lives order is finely balanced, the statutory steer should militate in favour of the former.

(vi) The marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. That standard should be carefully weighed against the desired objective of eventual independence.

(vii) The essential task of the judge is not merely to examine the individual items in the claimant's income budget but also to stand back and to look at the global total and to ask if it represents a fair proportion of the respondent's available income that should go to the support of the claimant.

(viii) Where the respondent's income comprises a base salary and a discretionary bonus, the claimant's award may be equivalently partitioned, with needs of strict necessity being met from the base salary and additional, discretionary, items being met from the bonus on a capped percentage basis.

(ix) There is no criterion of exceptionality on an application to extend a term order. On such an application, an examination should be made of whether the implicit premise of the original order of the ability of the payee to achieve independence had been impossible to achieve and, if so, why.

(x) On an application to discharge a joint lives order, an examination should be made of the original assumption that it was just too difficult to predict eventual independence.

(xi) If the choice between an extendable and a non-extendable term is finely balanced, the decision should normally be in favour of the economically weaker party.

79. Under the heading "Longer-term dependence on maintenance" the Family Court Practice states:

"The situation of a dependant party may still be relevant. In *Murphy v Murphy* [2014] EWHC 2263 (Fam), the court rejected a term order for a Wife at 57 lacking capital and held that 'the fact of having children, and their obvious dependence in this particular case on their mother for their care, changes everything … The economic impact on this Wife is likely to endure not only until they leave school but, indeed for the rest of her life'. In *Miller; McFarlane* [2006] 1 FLR 1186, HL, it was held that a clean break should not be imposed at the expense of a fair result: where a party is likely to need financial support or is entitled to compensation, and capital assets are not available, periodical payments might properly be ordered."

80. I note that in *Matthews v Matthews* [2014] 2 FLR 1259, CA, referred to above, there was reference to the decision of Wilson J in *S v B (Ancillary Relief: Costs)* [2004] EWHC 2089 (Fam), [2005] 1 FLR 474. It was said that:

> "The facts of that case are very very far removed from the facts of the present, in that it was a case where the Husband had a very significant income and where the Wife's ability to earn was severely compromised by circumstances attending the breakdown of the marriage, which it is unnecessary for me to go into here. However, Mr Buck took us to the judge's discussion of the point of principle, which appears at para [36] of his judgment, where the judge was concerned with an appeal against the making of an order for periodical payments of the type which Mr Buck says ought to have been made in this case, that is to say a nominal order thereby keeping alive the possibility of an application for a variation in the event that the Wife's circumstances deteriorated during the minority of the child of the marriage. Wilson J said this at para [36]:
>
>> 'Let me be frank: had I been the judge, I would have dismissed the Wife's application for periodical payments. The marriage was, in real terms, so short; the Wife is young and able-bodied and, even allowing for her responsibilities towards the child, so fully employable; and the capital award, particularly allowing for the purchase in West London and a third bedroom to assist in childcare (and later perhaps, if necessary, to generate income from a lodger), so large; that I would have considered it as appropriate for the court's powers so to be exercised as to terminate the Husband's further obligations towards the Wife forthwith. Until the dying moments of Mr Scott's submission, I was minded to allow the appeal in this regard. But he has driven me reluctantly to the conclusion that the nominal order is not appealable: for, although not my preference, it is not plainly wrong. I must accept that a fair number of my colleagues – be they High Court judges, circuit judges or district judges – would reasonably have exercised their discretion in favour of keeping alive, at least until the child was a teenager, the Wife's right to seek to inflate a nominal order for periodical payments to a substantive level. They would regard it as a reasonable precaution against unforeseen developments, taken primarily for the sake of the child. I stress, however, that the circumstances in which it would be apt to vary the order are indeed unlikely to arise: if, for example, the Wife fell seriously ill and if, by then, the Husband was again a substantial earner, then, yes, there might be a needs-based variation of the order, providing always that the court bore in mind the amount of capital for which, after so short a marriage, the Wife had by order relieved the Husband.'

81. I mention this since it does seem to reflect a school of thought that is consistent with the statute. However these cases are fact-specific and each judge has to assess the facts of the case and whether, for example, an immediate clean break should be ordered.

82. Further, on he subject of clean breaks:

(a) In *Minton v Minton* [1979] AC 593, 608) Lord Scarman said: 'An object of the modern law is to encourage [the parties] to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down'.

(b) Section 25A MCA 1973 was introduced by s3 MFPA 1984, and came into effect in October 1984, imposing on courts the duty to give active consideration to a clean break. In *Matthews v Matthews [2013] EWCA Civ 1874* the Court of Appeal described the nature of that duty, *per* Tomlinson LJ:

> "We are here concerned with an exercise of discretion but it is an exercise of discretion in which Parliament has indicated that there should be **a clear presumption in favour of making a clean break**, in the sense that that is something which the court is mandated to consider, whether it would be appropriate to bring about a complete break between the parties, so far as concerns financial matters, as an initial consideration"

(c) In *Waggott v Waggott [2018] EWCA Civ 727* Moylan LJ said at paragraph 103 of the judgment:

"The "steer" provided by section 25A is clear because of **the duty** it imposes on the court under 25A(1), when making an order of the type(s) specified, "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 after the grant of the decree as the court considers just and reasonable". (emphasis added)

(d) At paragraph 133 of *Miller v Miller; McFarlane v McFarlane [2006] UKHL 24* Baroness Hale had said:

"[s]ection 25A is a powerful encouragement towards securing the court's objective by way of lump sum and capital adjustment (which now includes pension sharing) rather than by continuing periodical payments. This is good practical sense. Periodical payments are a continuing source of stress for both parties. They are also insecure…. It is also the logical consequence of the retreat from the principle of the life-long obligation. Independent finances and self-sufficiency are the aims". (Emphasis added).

83. I should say something about the relevance of conduct, one of the matters which the 1973 Act indicates is potentially of relevance. The *Financial Remedies Handbook* (12th Edition) by Bird and Harrison contains a useful summary of how the courts have approached this factor:

"**[1.177]** The task of summarising some of the leading cases on what might be regarded as relevant conduct was made easier and more authoritative by the judgment of Stanley Burton J in *S v S*[1]. His Lordship had to consider whether or not the alleged conduct in that case should be taken into account. He was at pains to point out that he did not normally sit in the Family Division and so relied on the two expert counsel[2] appearing before him. He dealt with the position as follows:

"I have been told by Counsel that there are only rare cases in the reports where this has occurred. I have been taken to what I believe must be all of them. The examples given include:

(i) *Armstrong v Armstrong[1974] SJ 579*: wife shoots husband with his shotgun with intent to endanger life.

(ii) *Jones v Jones[1976] Fam 8*: husband attacks wife with a razor and inflicts serious injuries: there are financial consequences (wife rendered incapable of working).

(iii) *Bateman v Bateman[1979] 2 WLR 377*: wife twice inflicts stab wounds on her husband with a knife.

(iv) *S v S[1982] Fam Law 183*: husband commits incest with children of the family.

(v) *Hall v Hall[1984] FLR 631*: wife stabs husband in the abdomen with a knife.

(vi) *Kyte v Kyte[1987] 3 AER 1041*: wife facilitates the husband's attempted suicide.

(vii) *Evans v Evans[1989] 1 FLR 351*: wife incites others to murder the husband.

(viii) *K v K[1990] 2 FLR 225*: husband's serious drink problem and "disagreeable" behaviour led to the forced sale of the matrimonial home and serious financial consequences to the wife.

(ix) *H v H[1994] 2 FLR 801*: serious assault and an attempted rape of wife by husband: and financial consequences because the consequent imprisonment of husband destroyed his ability to support her.

(x) *A v A[1995] 1 FLR 345*: husband assaults the wife with a knife.

(xi) *C v C(Bennett J 12 December 2001 unreported)*: wife deliberately drugged husband to make him very sleepy and then while he was in a somnolent state placed a bag over his head, which she held in such a way that the husband could not breathe. Although it was found that

the wife did not have an intent to kill, Bennett J concluded that the husband did believe that she was trying to kill him, and that her aim was to make him so believe.

(xii) *Al-Khatib v Masry[2002] 1 FLR 1053*: husband guilty of "very grave" misconduct in abducting the children of the marriage in contempt of court.

(xiii) *H v H[2006] 1 FLR 990*: very serious assault by husband on wife with knife, leading to 12 years' imprisonment for attempted murder and with financial consequences, namely destroying her Police career."

[1] *[2006] EWHC 2793 (Fam).*

2 Mr Nicholas Mostyn QC and Mr Philip Moor QC.

[1.178] His Lordship's comments on these cases were as follows:

> "As will be seen, it is not suggested that there were any financial consequences from the conduct of which the Applicant complains in this case, which factor may have exacerbated, in the judgment of Scott Baker J, the facts in *K v K* referred to at (viii) above. However, that case apart, all of the conduct found in those cases appears of manifest seriousness. Apart from the statutory provision, and the words of Ormrod J in *Wachtel* quoted by Baroness Hale above, there is a certain amount of recurrent phraseology: "If the courts were in these circumstances not to discharge the order, the public might think that we had taken leave of our senses" (per Balcombe LJ at 355 in *Evans* at (vii) above): Sir Roger Ormrod in *Hall* at (v) above describes (at 632) the conduct as "gross and obvious" which has "nothing to do with the ordinary run of fighting and quarrelling in an unhappy marriage" and which the judge's "sense of justice required to be taken into account": Bennett J in *C* at (xi) above, asks whether "it would be repugnant to any sense of justice for the wife to receive any award at all". Mr Mostyn QC pointed to the words of Sir George Baker P in *W v W[1976] Fam 107* at 110D when he referred to the sort of conduct which would cause the ordinary mortal to throw up his hands and say "… surely that woman is not going to get a full award": and, in the course of submissions, he suggested a test of applying what he called the "gasp factor"."

[1.179] One case which was, perhaps surprisingly omitted from this pantheon of wrongdoing was *Clark v Clark*[1] which was described by Thorpe LJ as 'one of the most extraordinary marital histories that I have ever encountered' and 'as baleful as any to be found in the family law reports'. The wife was 36 years younger than the husband. At the date of the marriage, he was rich while her liabilities exceeded her assets. The marriage was never consummated. Over the 5-year marriage, she persuaded him to purchase a number of properties, most of which were vested in her sole name. In addition, she acquired shares, a racehorse, a Bentley and a boat. The husband was coerced into transferring a large house into the wife's name, and he was then forced to live as a virtual prisoner in part of the house while she occupied the larger part with her lover. He attempted suicide, and when he returned home he was again confined as a virtual prisoner, the wife removing his telephone and gate buzzer. He was eventually rescued by relatives. The judge found that the wife had exercised undue influence over the husband, that this was a short marriage, that the husband's contributions had been enormous while hers were negligible and that her marital and litigation conduct must be condemned in the strongest terms. Nevertheless, he awarded her a lump sum of £552,500. Both parties appealed.

[1] *[1999] 2 FLR 498, CA.*

[1.180] The wife's appeal was dismissed and the husband's appeal allowed. The judge had fallen into manifest error in allowing the wife £552,500. He had failed to reflect his findings on the wife's misconduct in his award; it would be hard to conceive of a case of graver marital misconduct. This was a rare case in which litigation misconduct should be reflected in the substantive award. However, to leave the wife with nothing was impracticable since that would have required her to make substantial repayments to the husband, and the lump sum was reduced to £125,000.

[1.181] For a case where the conduct of both parties was equally reprehensible and so cancelled each other out and had no effect on the award see the judgment of Mostyn J in *FZ v SZ (Ancillary Relief: Conduct: Valuations)*[1].

In *R v B and Capita Trustees* the husband was guilty of fraud in hiding two loans totalling £7m from the wife, never declaring income to HMRC, taking money to which he was not entitled, the pursuit of ruinous litigation and repeatedly lying to the court. His behaviour had brought financial catastrophe on the family. The judge found that this was conduct which he should take into account.

1 *[2010] EWHC 1630 (Fam)*, *[2011] 1 FLR 64*."

84. On the subject of short marriages, *Duckworth on Matrimonial Finance* (2020) summarises indicates:

"MCA 1973, s 25(2)(d) directs the court to have regard, inter alia, to: 'the age of each party to the marriage and the duration of the marriage.' Quite simply, this means that, in short marriage cases, the wife will get less[1]. She has had less time to notch up a 'contribution' within MCA 1973, s 25(2)(f), or to become accustomed to a 'standard of living' which the court will perpetuate by reference to s 25(2)(c). Her 'needs' (s 25(2)(b)) can be secured by more modest provision, and so on. However, the presence of any children born during the marriage will have a beneficial impact on the wife's claims, both because the welfare of children is the first consideration under MCA 1973, s 25(1), and also because s 25(2)(f) gives pronounced emphasis to *forward* contributions by either party in looking after the children. Short marriages throw into sharper relief the duty of the court under MCA 1973, s 25A to consider implementing a clean break, or a programmed transition to independence. Be that as it may, there are cases, particularly with older people venturing into matrimony (albeit unsuccessfully) for the second or third time, where the emphasis must be on aftercare[2].

1. *GW v RW (Financial Provision: Departure from Equality)* [2003] EWHC 611 (Fam), [2003] 2 FCR 289, [2003] 2 FLR 108, N Mostyn QC, at paras [36]–[44].
2. *S v S* [1977] Fam 127 at 134 per Ormrod LJ (house settled on ageing wife).

85. I should note that in this case neither side suggested that a sum of capital should be settled on the Wife until death or re-marriage, at which point the capital sum would revert to the Husband.

86. In relation to the *Miller* case which I have mentioned above, *Duckworth* argues that *Miller* provides:

"…an improved methodology for assessing quantum in short marriage cases. Instead of focusing on *contributions* (and less helpfully, *conduct*), each of which can lead to erroneous thinking, the emphasis has now shifted to *property*; not in the sense of strict property rights, but of a broad demarcation line between marital and non-marital assets. Essentially, if an item of property is 'matrimonial', or the product of a business relationship between the couple, then the yardstick of equality applies, subject of course to discretionary departures; whereas if it is non-matrimonial, the asset belongs to the party who brought it to the marriage, unless there is some rationale for intervention:

> 'As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.
>
> The matter stands differently regarding property ("non-matrimonial property") the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage is highly relevant …

In the case of a short marriage, fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage.'[1]

1.At paras [22]–[24] per Lord Nicholls. See also *FS v JS* [2006] EWHC 2793 (Fam), sub nom *S v S (Non-Matrimonial Property: Conduct)* [2007] 1 FLR 1496 Burton J at para [50], supporting the proposition in the text and rejecting a submission of Nicholas Mostyn QC to the contrary."

87. Where the court is dealing with a short marriage, *Duckworth* is of the view that**:**

"It will rarely be appropriate to award substantive periodical payments (or maintenance pending suit[1]) to the young wife of a short, childless marriage, who can be expected to pursue her own career after the divorce[2]. There is, however, no rule of law to that effect: exceptions may be made for deserving cases, as, for example, where the wife has given up a career to marry, or is cut off from her cultural roots[3]. And it would seem that the mere existence of substantial assets in a liquid form can induce the court to frame a *Duxbury* award for the wife's benefit[4].

Where children have been born to the parties, either during the marriage or in a period of pre-marital cohabitation[5], the position is different because the wife's earning capacity will necessarily be hampered by having to look after the family. While it may be right in such a case to fix a term of, say, five years on any periodical payments order, so as to ease the wife's transition to independence, it is not generally appropriate to add an MCA 1973, s 28(1A) bar on her extending the term, unless she consents[6]. Where the breakdown of the marriage and the presence of children results in a severe impairment of the wife's earning capacity, the burden is on a wealthy husband to show why there should be any term at all[7]. At the other end of the income scale, the protection afforded by the Child Support Agency may be a reason for limiting spousal maintenance to the short term[8].

A husband cannot be presumed upon to support a teenage child of the wife's previous marriage, even if he is well off[9]; although it is no answer to a wife's claim for reasonable financial support to say that she has negligently allowed herself to become pregnant by another man[10].

In the case of an older wife, some of the older authorities proceed on the basis of short-term maintenance followed by a clean break[11]; but these need reviewing in the light of *Miller*[12]. Before imposing a term, therefore (whether or not coupled with a s 28(1A) direction), it would seem that the court must at least rehearse all avenues issues of 'need' and 'compensation', and only implement a clean break if satisfied that the wife can progress to financial independence. Paradoxically, this can mean that for an older man, marrying a divorcee can be as expensive as marrying the first time round, even if the marriage is comparatively brief. Whether this is what Parliament intended when it enacted MCA 1973, s 25A[13] is to be doubted[14].

1. *F v F(Maintenance Pending Suit)* (1983) 4 FLR 382.

2. *Graves v Graves* (1973) Fam Law 124.

3. *Soni v Soni* [1984] FLR 294.

4. See *Miller v Miller*, above.

5. *Day v Day* [1988] 1 FCR 470, [1988] 1 FLR 278.

6. *Waterman v Waterman* [1989] 1 FCR 267, [1989] 1 FLR 380, CA (marriage lasting 17 months, one child); *N v N (Consent Order: Variation)* [1994] 2 FCR 275, [1993] 2 FLR 868, CA.

7. *C v C (Financial Relief: Short Marriage)* [1997] 3 FCR 360, [1997] 2 FLR 26, CA. See however Division **B3**, which critiques *C v C* and charts a more pronounced move in recent authorities towards the clean break.

8. *Mawson v Mawson* [1994] 2 FLR 985, Thorpe J (three-year marriage; nine-month term; no MCA 1973, s 28(1A) direction).

9. *Leadbeater v Leadbeater* [1985] FLR 789 (four-year marriage, which never really got off the ground;no order for W's 17-year-old daughter claiming social security; per Balcombe J: in marriage of this length, responsibility lay with girl's father).

10. *Fisher v Fisher* [1989] 1 FCR 309, [1989] 1 FLR 423, CA.
11. See eg *Hedges v Hedges* [1990] 1 FCR 952, [1991] 1 FLR 196, CA (18-month term for school housemaster's wife aged 37); *Robertson v Robertson* (1983) 4 FLR 387 (similar term for wife of short marriage who had never worked due to back injury; age not stated); *P v P (Financial Relief: Non-Disclosure)* [1994] 1 FCR 293, [1994] 2 FLR 381, Thorpe J (two-year term for 51-year-old wife of long marriage who had some earning capacity as a teacher).
12 Cf however *M-D v D* [2008] EWHC 1929 (Fam), [2009] 1 FCR 731, [2009] 1 FLR 810, Sir Mark Potter P (five-year marriage between aspiring barrister and ageing circuit judge; tapered periodical payments of £20,000 year 1, £15,000 year 2, and £10,000 year 3; thereafter clean break; small lump sum to supplement pension arrangements).
13 By MFPA 1984.
14 Cf *Quan v Bray* [2018] EWHC 3558 (Fam), [2019] 1 FCR 1014, per Mostyn J at [48]: 'These provisions have been strangely neglected since they were enacted, but recent decisions have emphasised their key importance.'

88. So far as lump sum and property claims are concerned, the next two sections from *Duckworth* are in point:

"**D Effect on Lump Sum and Property Claims**

1 Equal division of 'matrimonial property'

Where a young couple pool their efforts to acquire a joint home or to run a business, then subject to issues of prior housing need, the assets are in principle divisible equally. This is because, as a rule, all jointly acquired wealth is 'matrimonial property' and should be divided accordingly. This, however, does not solve the problem of what the court should do, if anything, where an asset is brought into the marriage by one party but grows in value during the short marriage[1]. The trend of first instance decisions is away from treating such 'passive economic growth' as falling into the matrimonial pot[2]. The position may be different, however, if the accretion in value came from an unexpected windfall, or was contributed to by the other spouse[3].

It is strongly arguable post-*Miller* that the matrimonial home, even if acquired prior to the marriage during a period of cohabitation, and other 'family assets' in the traditional sense (holiday homes, caravans, furniture, insurance policies and other family savings)[4] are divisible equally regardless of the duration of the marriage[5]. If so, English law has aligned itself with Scottish law up to a point[6], which may indeed have been the intention of the Judicial Committee. However, this approach would not be apt in the case of a second marriage where one or other party brings to the table their interest in the matrimonial home of a former marriage[7].

1. See *Miller v Miller* [2006] UKHL 24, [2006] 2 FCR 213, [2006] 1 FLR 1186, at [71] per Lord Nicholls, and at [167]–[168] per Lord Mance, which demonstrate some difference of approach. In principle, Lord Mance would have put to one side the growth in value of the husband's New Star business during the marriage, whereas Lord Nicholls treated it as matrimonial property, albeit subject to some departure from equality. Lady Hale falls somewhere in between.

2. *Rossi v Rossi* [2006] EWHC 1482 (Fam), [2006] 3 FCR 271, [2007] 1 FLR 790; *Fallon v Fallon* [2008] EWCA Civ 1653, [2010] 1 FLR 910, CA (four-year marriage, two children; parties lived in council property, in which H was accruing the right to buy; on separation, W and children were rehoused by local authority; thereafter H exercised his right to buy and sold at a profit; not treated as a matrimonial asset.
3. See eg *FS v JS* [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496, Burton J (unexpected sale of H's partnership share, thought to be valueless on previous divorce, for £1.2m; 'matrimonial property' and so in principle divisible equally despite shortish marriage of 7.5 years), sed quaere: in *S v AG (Financial Orders: Lottery Prize)* [2011] EWHC 2637 (Fam), [2011] 3 FCR 523, [2012] 1 FLR 651, Mostyn J treated a lottery ticket, not purchased from joint funds, as W's separate property, notwithstanding the long marriage.
4. [2006] UKHL 24, [2006] 2 FCR 213, [2006] 1 FLR 1186, at [149] per Baroness Hale.
5. A submission to this effect was accepted by Burton J in *FS v JS* [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496. Cf however *Fallon v Fallon* [2008] EWCA Civ 1653, [2010] 1 FLR 910, CA (no entitlement to share in 'right to buy' exercised after separation, even though right was accruing during the marriage); and *NA v MA* [2006] EWHC 2900 (Fam), [2007] 1 FLR 1760, at [175], where Baron J took Lord Nicholls to mean, not that the matrimonial home should be divided equally, but that its value and the lifestyle it produced were relevant s 25 factors. (In the event however she awarded W £4.5m as a housing fund, as against the £8m matrimonial home.)
6. See Family Law (Scotland) Act 1985, as explained in Lord Hope's speech.
7 Cf *Kowalczuk v Kowalczuk* [1973] 1 WLR 930, where Lord Denning MR espoused this distinction. Lord Denning, of course, is something of a posthumous authority in these things.

2 Discounting from equality

The early demise of a marriage can be a reason for departing substantially from equality[1]. This is because, the shorter the marriage, the more the court has regard to the source of wealth, whether it be capital introduced by one party, or a proven earning capacity that pre-dated the relationship. Thus in 'big money' cases, for example, it is not uncommon for the courts to discount the wife's award to 40% or less, even in a marriage that has lasted as long as 12 years and produced children[2]. And in one small asset case, the wife walked away with an award of only 16% (£40,000), on the ground that despite having two children, she was securely housed and her only need for money was to pay down debts[3]. As in many areas of matrimonial finance, no single formula can be devised to produce the perfect result: the outcome depends on the facts of the individual case and must be looked at broadly[4].

1. See **[4]** above.
2. *GW v RW (Financial Provision: Departure from Equality)* [2003] EWHC 611 (Fam), [2003] 2 FCR 289, [2003] 2 FLR 108, N Mostyn QC; *FS v JS* [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496, Burton J (7.5-year marriage, two children; 40% of matrimonial assets to W; H to keep all non-marital property). Cf *Miller* [2006] UKHL 24, [2006] 2 FCR 213, [2006] 1 FLR 1186 (marriage of two years and nine months; one-sixth to wife).
3. *Fallon v Fallon* [2008] EWCA Civ 1653, [2010] 1 FLR 910, CA. Cf however *M-D v D* [2008] EWHC 1929 (Fam), [2009] 1 FCR 731, [2009] 1 FLR 810, Sir Mark Potter P (five-year marriage between circuit judge and former probation officer turned barrister; each securely housed; lump sum of £50,000 to W, bringing her up to 41% of the joint assets, in order to 'kick start' her pension.

4. *Miller*, per Baroness Hale at para [152]; per Lord Nicholls at para [27]. For authoritative discussion of relevant principles, see insightful judgment of McFarlane LJ in *Sharp v Sharp* [2017] EWCA Civ 408, [2017] 2 FCR 766, [2017] 2 FLR 1095."

Discussion

89. I must give first consideration, albeit not paramount consideration, to C's welfare while she is under 18, but I do not overlook that she turns 18 within 2 weeks. She will need to be accommodated with both parents, but I accept the husband's evidence to the effect that she will wish to spend more time with him that with her mother. In taking into account all the circumstances of the case I bear in mind that E will continue her studies at Bristol University but will spend a considerable amount of time with her father. I do not overlook the Wife's son DM but cannot give as much weight to his needs in circumstances where he has his own accommodation and is older than E and C.

90. I have summarised the assets and liabilities above. In relation to housing needs, I have concluded that the Wife's need is for one-bedroomed accommodation in the light of the fact that DM lives in his own accommodation and is unlikely to live with the Wife. The Husband's need is for a 3-bedroomed property, which is what he had until he spent money extending the FHM. The two daughters cannot reasonably be expected to share a room in my judgment bearing in mind their ages, studying commitments, mental health and the bearing in mind that they have had their own rooms hitherto.

91. I do not consider that the assured tenancy that the Wife had possessed any realisable value, or that I can safely resolve this case by reference to her arguments involving calculations about the comparative cost of renting.

92. As to the income and earning capacity of the parties, and any mental disabilities which have a bearing on this, I do not consider that there is sufficient evidence to conclude that the stress caused by the breakdown of the marriage will have a lasting effect on either party's long-term earning capacity. I do not find that the Husband or his solicitors

have exacerbated the Wife's Complex PTSD. There is some medical evidence that she was unable to work full time at p.C156 of the trial bundle. I can see that she has spent time in preparing for the final hearing and does spend time caring for her son, but although he has had a number of crises in the past I do not consider that the evidence is such that I can find that she can only work part time due to her son's mental health. It does seem that work on her own underlying condition should ideally be started once the Wife is settled in alternative accommodation, and it might assist and accelerate her return to full-time work if she could fund therapy privately. She has not sought a capital sum to meet the cost of this however. I do not think that her aromatherapy business is likely to bring in more than a profit of about £1,000 per annum. I consider that based on her historic earning levels a total income of about £17,000-£18,000 per annum is likely, but that it will take about 18 months to 2 years for her to achieve this level of income due to the need for her to wait for therapy to commence, then complete it and seek full time work. Currently I feel that about half this sum is more likely.

93. I think that the husband's commission entitlement this year will be very much lower than previously because of the Covid-19 crisis, and that it will take a couple of years to get back to earning commission of £24,280 or so. His net salary of around £3,775 per month is realistically what he is likely to receive at the moment.

94. The Wife estimated her monthly expenditure at £2,140 in her Form E. although some criticism was made as to some elements of it, and in particular to the inclusion of house boat-related expenditure, I consider that her need is about £2,000 per month if she purchases a house boat of the sort under consideration. I think she would save at least £100 a month if she rented a 1-bedroomed flat, and probably up to another £400 a month if she purchased a fractional share in a shared ownership property. A shortfall of up to £14,050 seems likely in the first year. In the second year I think this is capable of being reduced by up to £5,000. Both these figures, however ignore the possibility of obtaining state benefits. I think that she will be able to work full time and be independent after 2 years, slightly longer than she herself thinks. I think that after 2 years she will be self-sufficient.

95. The Husband estimated his expenditure at about £5,393 + £135 for telephone/broadband, less £1,500 legal expenses per month less £500 per month in child maintenance from this June (£3,528), together with £792 per month for his daughters, which he thought would increase. This level of expenditure cannot be sustained on his income unless he obtains commission, or a job with a level of remuneration which was comparable to his previous job. Once the stress of this litigation is behind him, I think his earning capacity is likely to increase but I suspect this will take a year or so.

96. It does not seem to me that the standard of living of the parties was one which involved extravagances. The FMH was extended, and there was a wedding costing £20,000 but it does not seem that there was lavish expenditure.

97. The ages of the parties, 51 and 49 I have already mentioned and I should say that I preferred the Wife's case on the length of the marriage. Although the marriage was in difficulty it seems that it finally broke down in February 2018 and that overall with pre-marital cohabitation, this was an 8 month, extremely short marriage. Each contributed in their own way from their earnings. The Husband seems to have spent substantially on enlarging the FMH to accommodate the Wife and her son. It does not seem that

during this short marriage there was any substantial contribution made by the Wife to the welfare of the family.

98. I reject as unproven the allegations of misconduct alleged against the Husband. The Wife's allegations of coercive control and emotional abuse whether directed against her or her son were vague. She spat at him (which she admitted) and, according to the Husband, threatened to kill him when he asked her and her son to leave during a row. This may have been linked to her Complex PTSD. The use of CCTV although arguably inconsistent with her right to a private life might arguably have been justified by the need to gather evidence of her behaviour for use in court. I need not resolve this issue. Nor could it be right to characterise the Husband's solicitors' conduct as bullying. The Wife's threats of complaints to the professional bodies of both the Husband's solicitors and counsel were, in my judgment, unwarranted. She was treated with courtesy and professionalism. Even had the Wife's allegations been proven they would not, on the case law summarised above, have been of sufficient gravity of themselves to have affected he way in which I resolved this case.

99. The parties' approaches to the issue of their and the other party's housing needs has differed. The Husband did not provide evidence of other properties which might be suitable for himself. He provided evidence of how much it might cost to rent a studio flat or 1-bedroomed flat in Kingston. The Wife has provided property particulars for properties said to be suitable for the husband- one two-bedroomed semi-detached house in Walton on Thames on the market for £375,000, the other a 3-bedroomed semi in Addlestone on the market for £295,000. Those properties were not really in a comparable area. From my general knowledge of property prices in this area gained from hearing this sort of case, and a recent check online, it seems to be possible to buy a 3-bedroomed house for £450,000 within a mile or so of the FMH which would satisfy the Husband's needs bearing in mind his daughters' needs. The Wife is keen on living in a house boat but has not so far as I am aware lived in one and the mooring fees which seem to be applicable are not dissimilar to the cost of renting a flat. The properties she considered suitable were a two-bedroomed flat on the market at £200,000, and, as I say, a two-bedroomed houseboat with residential moorings for sale at £130,000. During the hearing the Husband produced some additional evidence of the cost of house boats and although there was some evidence that it might be possible to purchase a one-bedroomed house boat of reasonable size (328 sq foot) for £65,000, most of them seem more expensive than this, or the one suggested by the Wife, and the condition of the boat might also be an issue at the lower price band. The wife did not produce any particulars for l-bedroomed shared ownership flats, which would seem to afford comparable security of tenure to what she enjoyed in the past with the ability to see some capital appreciation. The rent payable will depend on the extent of the fractional share, and obviously be higher the lower the share purchased. From general knowledge and a recent check online it seems that it might be possible to purchase a 25% share in a 1-bedroomed flat within a reasonable distance from the FMH from about £75,000, but £110,000 is more realistic. The level of rent and service charges will be less than the £1,000 + payable to rent such a flat on the open market- of the order of £500 per month.

100. The uncertainty over the Husband's commission and ability to increase his earnings impacts on his capacity to re-mortgage to raise a lump sum for the benefit of the Wife. The Covid 19 crisis may well have an impact on the job market. I can see that waiting

a year might mean an increased ability to borrow if in fact he earns commission which lenders take into account, or obtains a better remunerated job.

101. I bear in mind that the parties' total net assets excluding pensions amount to £527,535, and that if this had been a longer marriage the yardstick of equality would have produced £263,767 each. However, although a short marriage is no less to be regarded as a partnership of equals, and one must seek to avoid discrimination on divorce, there is an instinctive feeling that parties generally have less call on each other after a short marriage. Less time has elapsed for the non-working party to make a contribution, or to have enjoyed an enhanced standard of living. Here, although the Wife surrendered her assured tenancy, the Husband invested money in enlarging the FMH and paid off her indebtedness on marriage. Although the FMH is to be treated as matrimonial property, their contributions were not equal. I feel that a significant departure from equal sharing is required in fairness, and consider that of the order of 20 % of the net assets would be the right sort of split. I am not convinced that the Wife's indebtedness should be cleared by the Husband in this case. I wish to avoid, if I can do so, the need for the Husband to sell the FMH but I do not feel that I should depart from equality as far as the Husband suggests.

Conclusion

102. I have decided that the Husband will have to raise the sum of £110,000 within a year or the FMH will have to be sold. The costs order and LSPO will be discharged. This will leave the Wife with some indebtedness to pay off over time. This amounts to just under 21% of the parties' net assets, excluding pensions. It will enable a small shared ownership flat to be purchased, or possibly a small houseboat. On such a sale the Husband would be able to re-house in suitable accommodation with the assistance of a mortgage. There will not be a pension sharing order in circumstances where the parties have not sought such an order and almost all of the pension accrual was pre-marital.

103. The Wife will need to rent for a year or so, and to facilitate this and bearing in mind her financial position, the Husband will pay interim maintenance/periodical payments at £12,000 per annum to the wife for year 1 and then £9,000 per annum for year 2. I have taken a broad look at the likely expenditure in the second year, and in the absence of clear evidence I have taken a conservative view about the availability of state benefits. The first payment of £12,000 is to be made within 1 month. The Wife must leave the FMH within 1 month of being paid £12,000. I will make an occupation order terminating her home rights and prohibiting return to the FMH. In the second year, the payments may be paid monthly in advance. I would encourage, but not order, a second tranche of £9,000 to be paid all at once. This term is to be non-extendable, with a s.28(1A) MCA 1973 bar. Save as aforesaid, on payment of the sum of £110,000 there will be a clean break in life and death.

104. I would be obliged if Counsel would seek to agree an order to give effect to this judgment.