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Neutral Citation [2023] EWFC 161 (B)

IN THE FAMILY COURT AT BRIGHTON

Date: 29 September 2023

Before :

Recorder Laura Moys

- -

Between :

O — **Applicant**

- and -

O — **Respondent**

Hearing date: 30 & 31 August and 1 September 2023

JUDGMENT

Introduction and issues to be determined

1. This is my decision following a final hearing heard over three days at the end of August and beginning of September 2023. The applicant former wife is Mrs O who has been represented by counsel Ms Lister. The respondent is Mr O, who has represented himself. Although the parties have been separated since August 2022 I am going to use the conventional shorthand "W" and "H" to describe them in this judgment; I mean no discourtesy to them.

2. By way of background summary, W is 54 years old and is the director of a further education training college in Surrey [which I will call 'Y training'], a franchise of Z Training Ltd.

3. H is 55 years old and is a director of, and 33% shareholder in, C [Sussex] Ltd which is a themed bar and mini golf venue. He is also a director of C [Essex] Ltd.

4. The parties met in July 2003 and started cohabiting in March 2004. They married in May 2006 and separated in August 2022. On 7 September 2022, W petitioned for divorce.

5. In 2002, before the parties met and when H was still in a relationship with a former partner, a lady named M (with whom he has an adult daughter, D, who lives independently in East London), H established a language school called "S College" which was owned via a ltd company ('the language school'). During the marriage W worked with H at the language school which provided an income for them and the family.

6. The language school proved successful and in 2010, on the basis of tax mitigation advice H believed to be sound at the time, H invested in a film scheme that was later challenged by HMRC as involving disguised remuneration and found to be non-compliant. As a result of participation in this tax avoidance scheme, H has an outstanding personal tax liability which currently stands at just under £500,000 including penalties and interest.

7. It is common ground that H withdrew £950,000 from the language school and that he did not pay the correct amount of tax on that sum. The money was used to purchase the family home in which the parties lived from 2011 and also to acquire the lease for W's franchise, Y Training.

8. There are two children of the family, A (aged 17, turning 18 in October) and B aged 12. Both children attend [an independent school], in Surrey where A is in Year 12 and B is in Year 7. Fees are around £14,000 a term for both children; the current autumn term fees are overdue. W took out a Natwest personal loan to pay part of the school fees in the course of these proceedings and the current balance on that loan stands at just over £27,000.

9. The parties remain living in the former family home in [a market town in Surrey] (market value c.£1.65m and equity of c.£928k) together with their children. It is common ground that continuing to live under the same roof for over a year since separation has been tense and difficult for the whole family. It is also common ground that the home will need to be sold in due course and that it is a property in excess of either party's reasonable future housing needs.

10. The hearing before me did not have a smooth start. PD27A had not been properly complied with such that I was provided with a core bundle of 407 pages in advance of the hearing and a further electronic 'disclosure bundle' of 1,091 pages despite no permission having been granted for the bundle to exceed 350 pages. Over the course of the first day I was emailed two further lengthy documents by H comprising written submissions/representations about disputed valuation evidence and attaching case law. The judicial reading time estimate in the agreed witness template had been set, somewhat optimistically, at one hour.

11. Moreover, up until the preceding weekend it had been understood that H had instructed direct access counsel to represent him at the hearing and I was told that his representative and W's representative had even engaged in some limited correspondence over email regarding case management for the upcoming hearing. The same counsel had represented H at the PTR that had taken place before HHJ Nisa on 1 August, i.e. just four weeks earlier.

12. However, unexpectedly, H decided to dis-instruct his direct access barrister just a day or two before the start of the final hearing before me and to represent himself.

13. As a consequence, no ground rules had been put in place regarding the appropriate conduct of the final hearing in order to accommodate H as a litigant in person as it had not been anticipated at the PTR that H would represent himself. Following discussion with the parties (and after establishing that H had no intention to re-instruct a lawyer – he told me he could not afford to do so - and that he was not inviting the court to adjourn the hearing other than for a short period to enable him to prepare questions of W) I made participation directions that prevented H from directly cross-examining W and I gave him time to prepare written questions with a view to commencing W's evidence at 2pm on the basis that those questions would then be asked through me. This course of action was agreed by both parties.

14. Unfortunately, when I resumed the case at 2pm H had not written out his questions and told me that he required more time. I therefore adjourned the case overnight to give H the remainder of the day to work on them. I was then able to utilise that time to read the core bundle and a selection of documents from the disclosure bundle that had been signposted to me, but inevitably this derailed the (already tight) time estimate.

15. The upshot is that it was not possible to complete hearing the evidence, closing submissions, and prepare and deliver a judgment within the three days allotted and so I circulated this written judgment in draft on 26 September and handed down judgment remotely on 29 September.

Evidence

16. In addition to the documents in the bundles I have referred to, I have also considered a detailed, helpful skeleton argument prepared by Ms Lister on behalf of W (for which I record my gratitude to her), a number of schedules prepared by W's solicitors regarding transfers into and out of a spread betting account managed by H, and of credits and debits into/out of H's bank accounts from 2022. I also heard oral evidence from the SJE expert chartered surveyor who had valued a number of rental properties

owned by the parties, and from W and H. I heard closing submissions from both sides on 1 September.

17. I do not intend to refer in this judgment to each and every piece of evidence or argument explored over the three day hearing. I will highlight only those matters of particular relevance when explaining how I have reached findings in respect of disputed factual issues and to explain my reasoning in respect of the decisions I have made.

The Issues

18. The parties are fortunate to have built up a net asset base of c.£2.5m (depending on my findings regarding the value of a number of rental properties held in H's sole legal name and establishing whether H owes a debt of £150,000 to a company, C Essex Ltd, of which he is a director).

19. This is a large sum of money by most people's standards and, having heard the evidence of the parties, I am left in no doubt that there is sufficient money in this case to discharge debts, house W and H and their children appropriately, and to enable the family to move on with their lives. It is regretful that they have not been able to compromise these proceedings and that they have each incurred significant legal fees liabilities as a result. It is also clear to me – having seen both parties in court – that the proceedings have taken a toll on the whole family and have served to polarise and entrench feelings of anger and mistrust.

20. The legal fees incurred are excessive in the context of the assets and issues in the case. W's Form H records total costs incurred of £195,258 of which W still owes her solicitors £81,000. She has been funding her representation through an expensive commercial litigation loan. H has also incurred legal fees during the times he has been represented (although he has not filed updated evidence of the total amount incurred). What is clear, is H had spent some £48,000 by the time of the FDR in May 2023 and still has at least £32,000 outstanding. This is not meant as a criticism of any of the lawyers involved in this case, but professional legal representation has come at a considerable cost.

21. For context (and although the parties disagree about the value of various different assets and debts on the ES2 asset schedule; issues going to the value of the 'pot' have been explored at great length and expense in the last year of litigation), I observe that, in fact, the difference between the parties (in respect of what they each say the total net liquid capital is) is a figure of just over £450k. This is as against total legal fees incurred of £243,258.

22. These proceedings have been plagued by the inability of H and W to resolve a number of issues on which significant time and money has been consumed. They are as follows:

i. What market value should be ascribed to 13 rental properties purchased from 2001 onwards and held in H's name? H disputes the evidence of the Single Joint Expert, chartered surveyor Adam Mazalla-Tomlinson, who prepared two reports for the court and also gave oral evidence on the first day of the hearing. At the hearing before HHJ Nisa in August H was refused permission to rely on the unilaterally obtained evidence of an alternative surveyor (a Mr Murphy) such that the only expert evidence before me on the issue of valuation is the evidence of Mr Mazalla-Tomlinson.

ii. W alleges that H has engaged in various forms of financial conduct that she says should be reflected in the overall award in a number of ways. Most significantly, she asserts that between March 2020 and May 2023 H incurred net losses of £406,820.68 via a spread betting account. She invites the court to 'add back' these losses to H's side of the balance sheet (the figure sought by W started at £406,820 but then reduced by £60,000 following the oral evidence as W now accepts that £60,000 deposited into the account in 2020 came from C, the company of which H is a director and shareholder) on the basis that H's actions in gambling and losing this money were reckless and have significantly reduced the value of the 'pot' available for division between the parties and that it would be inequitable to disregard this conduct.

iii. W also asserts that H's failure to adequately deal with a large debt owed to HMRC following the use of a tax avoidance scheme resulted in unnecessary financial penalties being levied which he alone should bear responsibility for.

iv. There is a dispute about H's earning capacity. W alleges that H's disclosure regarding his earned income is confusing and opaque and that, further, he has failed to let the rental properties at a fair commercial rate.

v. It is accepted that H received £300,000 from his father in 2001 and that the money was used to invest in the rental property portfolio. H asserts that this £300,000 was a non-marital contribution from his side that should be taken into account and that it was akin to an advance inheritance from his father. He invites me to treat a number of the rental properties in the portfolio as 'non-matrimonial' assets and to exclude them from division. W accepts the money came from H's father but says it has been utilised for the benefit of the family as a whole over the course of a long marriage and that no weight at all should be placed on its provenance in all the circumstances of this case.

vi. The parties are also apart (albeit to a more limited extent) on the issues of the quantification of their respective housing needs and the term and amount of spousal maintenance for W.

23. The parties' disagreement is reflected in their open positions as follows:

i. W proposes that there be a sale of the family home, and of four further properties (namely Flat 2 Hamilton House, 5 Flynn Court, 11 Kelly Court, and Flat 22, 46 Coldharbour) and that she should retain the net proceeds of sale of all of those properties save for Flat 22 which should be set aside as an education fund to pay for the children's school fees for the remainder of their secondary education. She proposes that the remaining 10 properties held in H's sole name should continue to be owned by him and that she should continue to own 19 College Crescent, a property in her sole name, which is currently let to tenants.

ii. In real terms, the net effect of W's proposal would leave her with around £1.37m and H with around £1.15m, but W presents the net effect [p.406] as including a notional 'add back' to H's side of the balance sheet thus leaving him with a theoretical c. £1.6m, although it is acknowledged that the added back sum no longer exists and so cannot be deployed to meet H's needs.

iii. In addition, W seeks maintenance at the current level (£2,000 per month) until sale of the FMH (with H to continue to pay the current outgoings in respect of the FMH in addition until sale) rising to £4,000 per month (described as 'global' maintenance) from sale of the family home for a term of 3 years followed by a 'nominal' maintenance order until B completes secondary education. In her closing submissions, however, Ms Lister clarified that W would prefer to receive a capitalised sum (which she calculated to be £144,000 using a Duxbury calculator) in lieu of monthly payments from completion of sale of the home if it can be afforded from the capital available.

iv. For his part, H's position evolved somewhat over the course of the hearing and in his closing submissions. I understand his most recent position to be that W should retain the net proceeds of sale of the family home and her property at 19 College Crescent (he had previously proposed that 19 College Crescent should be transferred to him to live in and that out of the equity from the family home W should pay him a lump sum to discharge the mortgage on 19 College Crescent so that he would have an unencumbered home). All other assets and liabilities should remain as they are, resulting in W retaining net capital of c.892k and H of c.£1.6m.

v. Through closing submissions H proposed that he pay the children's school fees until their youngest child (who is currently in Year 7) completes secondary school, and that he then pay 'global' maintenance (i.e. a combination of spousal and child maintenance) of £2,000 per month for the next two years reducing to £1,000 per month until the youngest child of the family attains the age of 18 or completes secondary education. This was a change to his original position during the hearing which had been global maintenance of £2,500 per month until July 2024 (when the eldest child of the family completes secondary school) reducing to £850 per month until the youngest child completes secondary school in 6 years' time.

24. By way of structure, I intend to resolve two key factual issues first: 1) the value of the investment properties; and 2) W's 'conduct' allegations regarding H's alleged financial mismanagement in respect of the spread betting account and the debt to HMRC.

25. I will then go on to consider the remaining factual issues part and parcel with my assessment of those factors set out under s.25 MCA 1973 before setting out the order I intend to make.

My impression of H and W as witnesses

H's evidence

26. As far as H is concerned, I do not think he set out to deliberately hide assets from W and the court or that he has been motivated (as W would have it) by a desire to put assets beyond W's reach. However, I also think H has not been completely honest or straightforward in his financial dealings and in his evidence to the court and I think he has buried his head in the sand in respect of the spread betting losses and the large debt owed to the Revenue.

27. I find him to be a person who is reluctant to admit to his mistakes and who sees himself as a passive victim of circumstance rather than being prepared to acknowledge a fair share of responsibility for poor financial decisions. This meant H struggled to make sensible concessions when asked questions by Ms Lister about his disclosure and about his financial proposals.

28. My impression of H is that he is a proud man who initially made some successful and sensible financial decisions and investments in respect of the purchase of the rental properties and the operation of the language school from 2001 onwards which enabled the parties to enjoy a very comfortable lifestyle, living in a 1.65m home and privately educating both of their children. I have no doubt that H was rightly proud of the lifestyle he had been able to afford his family through his business ventures and he was desperate to be able to maintain that lifestyle for them.

29. H emphasised in his oral evidence the success that came from the expansion of the language school that led to the parties being able to purchase the family home, a property which was a significant 'step up' in terms of value and amenity from the accommodation they had been living in before.

30. Unfortunately, matters began to spiral out of control, first with the notification (in around 2018) that H would be liable for unpaid tax on the £950,000 that had been withdrawn in 2011, followed by H's businesses (which were in the hospitality industry) being unable to operate during the Covid-19 pandemic resulting in H making a series of poor financial decisions in an ever more desperate and unthinking attempt to stem losses.

31. Matters were exacerbated by the steep rise in interest rates and the change in taxation rules for landlords regarding the treatment of mortgage interest payments which I accept have significantly impacted on H's rental income and the viability of the portfolio as an income stream.

32. This downward spiral appears to have run more or less in parallel with the breakdown of the marriage, the ensuing divorce and financial remedy applications, and these expensive and acrimonious proceedings, all of which have been a further drain on family resources.

33. It is clear to me that H struggles to acknowledge that his use of the spread betting account (though, on one view, 'well intentioned' in the sense that I accept that H opened the account in the naïve hope of generating money for the family and to maintain the lifestyle the family was used to) got completely out of control.

34. For example, when pressed about the financial consequences of his actions by Ms Lister in cross-examination, H replied *"well you don't expect to lose do you"*, and "*It was a case of we [expected to] make money not lose money"*. In his s.25 statement at [§37 and §38], H provided a further description of his use of the account which I find encapsulates an unrealistic overconfidence in his ability to make a success of that venture and which underscores a continuing failure to accept that the "investments" were in reality no different to gambling.

35. H wrote:

"Due to my occupation as an accountant in the financial sector I have a great deal of experience with the markets. Far more than most lay people or home traders and over the years that knowledge has proved successful as far as financial investments have been concerned…Unfortunately whilst my instinct was correct I didn't have the finance and security to capitalise on the opportunity".

36. This description belies the fact that (a) H has never worked as a trader or investment banker and has not worked in the banking sector at all for decades; and (b) H accepts losing a staggering £406,821 through spread betting, predominantly in 2020, and yet he continued to operate the account without success right up until the spring of this year in what can only be considered a vain hope of recovering some of the money he had lost.

37. H acknowledged - in response to a question from me - that the 'winnings' from spread betting are tax free precisely *because* they are considered (for tax purposes) a speculative bet rather than an investment, but H continues to hold the belief that it would have 'all come good' if he could have just carried on betting for a bit longer.

38. Moreover, it is clear to me that a large amount of the money lost through the spread betting account wasn't H's in the first place as it came from a combination of money taken from the business account of C Essex ltd and from (at least) one government 'bounce back' loan that had been intended to enable a former business owned by H ([S] Entertainments ltd – this company owned a chip shop in Essex) to remain operational through the Covid-19 pandemic.

39. Instead of using the bounce back loan to, e.g., pay staff and suppliers or the rent on the premises, H placed the money into the spread betting account and then lost it. S Entertainments Ltd has since been wound up as it is unable to repay the bounce back loan.

40. H's unrealistic approach to his finances and, to a certain extent, his unwillingness to accept a reduction in his and W's standard of living as a result of financial losses (not all of which, I accept, were entirely H's 'fault' or within his control) seems to me to have permeated his approach to the issues in this case and to his settlement proposals.

41. H is extremely reluctant to sell any of the investment properties because he is convinced that if he holds on to them for longer he will be able to make more money from their future sale (which may or not prove to be correct) and despite the fact that he owes nearly £500,000 to HMRC with no way to pay for it other than selling the properties.

42. H told me he now wishes to take out a bridging loan with a high level of interest in order to try to refinance the rental properties and repay the debt to HMRC without selling anything and in circumstances in which he claims to have "zero income" (his words), has not provided any updated mortgage capacity evidence, and says the level of borrowing on the investment properties is already unsustainable.

43. When asked by Ms Lister why he had tried to take out a bridging loan without first obtaining W's agreement he said *"I was desperate for money"* and *"It is not as if I am going to blow this money"*.

44. H also appeared to treat the government bounce back loans obtained in 2020 as akin to 'free cash' with no acknowledgment of their proper purpose or any plan to repay the money.

45. H told me that he was "entitled" to take out the loans - which were government backed (and therefore, at their core, funded by the taxpayer) - and became frustrated when he told me that, in his view, the government should have given business owners grants rather than loans. He said: *"everyone took loans"*, and *"there was a lot of Covid money washing around*" to provide what he sees as justification for taking out a taxpayer backed loan for the business, intended to support the running costs of that business during an unprecedented national lockdown, and then losing it through spread betting.

46. I have taken into account the stressful, protracted nature of these proceedings and the fact that H is a litigant in person (although, on that note, H's cross-examination questions of the SJE also showed him to be an intelligent and articulate man with a thorough grasp of the detail of his case). I have also reminded myself that a number of

the transactions and decisions H was asked about are now several years' old and it is understandable that he may not remember all of the detail or may have mixed up dates or conflated one transaction with another.

47. However, even accommodating for these factors, I have decided that I must treat H's evidence with some caution where it is not corroborated by good quality independent evidence.

W's evidence

48. As far as W was concerned, although I found her to be courteous and, overall, helpful in her responses to me and her manner in court, there were a number of aspects of her evidence that troubled me.

49. It may simply be the inevitable effect of being embroiled in these proceedings for over a year, but I find W struggled to have anything positive to say about H and tended to see him as solely responsible for every financial difficulty this couple have ever faced.

50. An example of this is W's position regarding the debt to HMRC that arose from the use of a tax avoidance scheme.

51. Whilst it is clear that her legal team have done their best to reframe W's position in as palatable a way as possible (Ms Lister emphasised that W is only seeking to 'add back', as she puts it, the penalties and interest that have accrued on the unpaid debt to HMRC due to what W considers to be H's failure to adequately deal with the debt and not the principal sum) W's s.25 statement says at [§53]:

"In yet another example of poor decision making, [H] invested family funds in a tax scheme which was later considered[ed] a tax avoidance scheme by HMRC and resulted in a considerable liability of £482,024.63 being incurred."

52. This seems to me to be unfair criticism of H given that the funds withdrawn from the language school were placed into a scheme that, as W accepts, H was advised by his

accountant was compliant at the time and, more significantly, which enabled W and the children to be housed in a property now worth £1.65m.

53. Money withdrawn from the language school was also used to purchase the franchise in Z Training that W owns and which has latterly been providing her with an income. This is an example of W being prepared to enjoy the benefit of an effectively tax free income in 2011/2012 (from a business in which she also worked together with H), but at the same time seek to distance herself from responsibility for the subsequent financial fallout.

54. W's s.25 statement itself begins by saying [§2] *"this is not a conduct case…"* but is then littered with conduct allegations against H – many of which are generalised assertions about him allegedly being unpleasant or abusive in the family home since separation and which have not been the subject of factual enquiry.

55. None of W's allegations were ever the subject of formal pleadings so that their alleged impact on the financial proceedings and/or relevance to a fair outcome could be spelled out. Despite an acknowledgement of this not being a 'conduct' case, W's statement contains an entire section headed *"s.25(2)(g) conduct"* which runs to 13 detailed paragraphs.

56. As I will come on to discuss when dealing specifically with the dispute in respect of the funds lost via the spread betting account, a fundamental difficulty with W's 'add back' case is that a significant amount of the money lost by H from 2020 came from the bank account of C Essex Ltd and was not H (or W's) personal money to do as they wished with. Ms Lister even suggested to H in cross-examination that he had never made the company aware of how he was going to use the funds and that he never had permission to remove them in the first place.

57. W's case is that as the company director with access to the company bank account H had removed the funds, transferred them to his own account, and used them for an improper purpose.

58. Accordingly, Ms Lister asked H: *"Did you take the money from C ltd without [the other shareholders] knowing, invest it in the risky strategy of spread betting, and then lose it?"*.

59. As I raised with the parties, there seemed to me to be a fundamental difficulty with suggesting, on the one hand, that "matrimonial" money should be "added back" to H's side of the balance sheet to compensate W for the loss of that money by H, whilst at the same time it being W's case that at least some of that money was never H or W's money in the first place.

60. This is a good example of precisely why, as Peel J recently emphasised in *Tsvetkov v Khayrova* [2023] EWFC 130 at [§46], 'conduct' allegations need to be properly pleaded at the earliest opportunity so that the person alleging the conduct is required to state *"with particularised specificity"* what the conduct allegations are, how those allegations meet the threshold for a conduct claim, and what the financial impact caused by the alleged conduct is so that the person accused of misconduct knows what case it is that he/she must meet.

61. In my view, had this been done, the tension in W's add back strategy regarding the 'C ltd' money would have emerged much sooner than the final hearing and the difficulty with W's approach regarding that money would have been apparent.

62. There were also examples of W's tendency towards an exaggeration of the perceived malevolence of H's behaviour. For example, in her s.25 statement [at §11] W alleged *"[H] was ordered to pay £2,000 per month [by way of interim maintenance] but only pays £500 pw"*. Whilst I accept there have, in more recent weeks, been difficulties getting H to pay the £500 on time, W's written evidence had been worded to give the impression that H's action in paying £500 weekly (amounting to £2,000 over the course of a month), rather than in one lump sum of £2,000 per month, had been a unilateral decision on his part.

63. In fact, it was accepted during the hearing that there had been correspondence over H's suggestion of paying a weekly amount in advance and that this was an approach W had *agreed* to, even if that is an agreement W now regrets.

64. Whilst I consider W to be, overall, an honest witness, I do think she sees things very much from her own perspective as the 'wronged' party such that – as with H – I have treated her evidence with some caution where it is not independently corroborated.

Valuation evidence and the market value of the rental properties

65. I have the benefit of two SJE valuation reports prepared by Mr Mazalla-Tomlinson, one dated 12 May 2023 and an addendum prepared very close to the final hearing and dated 14 August 2023.

66. I also heard around 2.5 hours of oral evidence from Mr Mazalla-Tomlinson to whom H put cross-examination questions directly.

67. W accepts Mr Mazalla-Tomlinson's evidence and so whilst Ms Lister made some criticism of him at the outset of the hearing for having apparently spoken to H alone at court prior to the hearing, this criticism does not, in my judgment, take the case anywhere as W does not actually challenge Mr Mazalla-Tomlinson's evidence and relies on all of the values ascribed by him in his report.

68. For completeness, I accept Mr Mazalla-Tomlinson's response to the criticism which was that he was aware that H was representing himself and was unhappy with the conclusions in his report, and that he had been attempting to provide H with some reassurance when H came to find him and ask questions of him.

69. Whilst the timing and context of the discussion (i.e. absent a representative for W and just before he was about to given evidence) were plainly unfortunate (and I understand entirely why W and her representatives raised it with me) given that Mr Mazalla-Tomlinson did not change his evidence in any material respect under cross-examination from H, W's concern that the expert might have been inappropriately 'influenced' by H is not substantiated. I will ensure a copy of this judgment is provided to Mr Mazalla-Tomlinson so that he can reflect on the difficulties that arose from that unwise pre-hearing exchange, although I also make clear that I do not

consider that it fundamentally reduced the weight to be placed on his expert evidence or undermined the overall quality of that evidence.

70. As I have alluded to earlier in this judgment, at a case management hearing in August the court refused to allow H to rely on the report of a sole expert (Mr Murphy) that had been obtained without prior permission. There was no appeal against that decision, such that the only expert opinion evidence as to the value of the properties before the court at final hearing was that of the SJE. Although I am of course not bound to accept the evidence of an expert -and ultimately it is for the judge to make findings of value based on *all* the relevant and admissible evidence- inevitably in a situation where there is no other independent expert evidence of value before the court H had an uphill struggle demonstrating that his alternative values should be ascribed to the properties.

71. H's challenge to the SJE evidence was put on a number of bases which I will deal with in turn.

72. First, H said that the addendum expert report had been filed late and that it did not attach examples of comparables which suggested that the SJE had failed to consider any comparables *before* reaching his conclusion about value. H asserted that the SJE had attached the comparables at a later date to pay 'lip service' to the requirement for them and without having looked at them before preparing the report.

73. I reject these criticisms. On the issue of timing, Mr Mazalla-Tomlinson had only been ordered to prepare the addendum on 1 August and was only given two weeks to do so, the tight timescale reflective of HHJ Nisa's understandable wish to preserve the fixture starting before me on 31 August. I am satisfied that Mr Mazalla-Tomlinson went out of his way to furnish the parties with an addendum report in time for the final hearing to be effective and I am grateful to him for that.

74. In any event, I am satisfied that the parties had sight of a draft of the addendum report by 15 August (just one day after the filing date that had been ordered and two weeks before the start of the hearing before me) because by that time H was emailing the

SJE with an annotated version of his report in which he challenged the SJE's conclusions.

75. The comparables themselves were provided on 16 August and I am satisfied that the delay in attaching them was because, as Mr Mazalla-Tomlinson said in evidence, he was still in the process of formatting his report and had wanted to get a draft over to the parties as quickly as possible because he was aware of the impending final hearing.

76. To the extent that the normal process of asking written questions of clarification within 10 days of receipt of the report (and then receiving responses to those questions) was truncated and then either did not occur and/or did not take place within the timescales set out in the Family Procedure Rules (which was another criticism levied at the SJE by H), I am also satisfied that the questions H posed of Mr Mazalla-Tomlinson in writing were very lengthy, went far beyond the permitted scope of 'clarification', and that through those questions H was actually asking the SJE to comment on/respond to the report of his solely instructed expert, a Mr Murphy, which the court had already expressly ruled to be inadmissible.

77. To that end, the SJE was entitled to tell the parties that he did not consider it appropriate to provide a response to H's written questions (and no doubt had he attempted to do so this would have disproportionately increased costs and may also have resulted in a debate about the relevance or admissibility of the answers). In any event, the solution to all this was that H was permitted to cross-examine Mr Mazalla-Tomlinson and he responded at court to all questions raised by H such that I am satisfied all of H's concerns have now been fully and fairly ventilated.

78. Mr Mazalla-Tomlinson also spoke at length about the detailed process he undertook to reach conclusions about the value of the properties. He told me that this process involved a combination of physical inspection, measurements (i.e. of square footage), the taking of photographs, consideration of the sale data for comparable properties, and an analysis of current market trends for the relevant postcode in terms of undertaking an analysis of the percentage by which properties in that area are rising or falling in value over time using Land Registry data.

79. He further emphasised (and I entirely accept) that valuation is not a 'science' in that it is not possible to input into an algorithm certain features of a property or its location and come up with a precise prediction of what it will sell for. Ultimately, a property is worth what someone is prepared to pay for it, and I accept he has drawn on his lengthy experience as a chartered surveyor to provide what he considers to be a fair value for each of the properties, about which it is inevitable there will always be an element of subjectivity and uncertainty.

80. I pointed out to H that there are also a number of properties valued by Mr Mazalla-Tomlinson in respect of which H either *agrees* the values or suggests figures only very slightly different to those in the report. Regarding Flat 11 Kelly Court, for example, the SJE valued this property in his addendum report at £431,650 whereas H suggests it is worth £430,000.

81. H cannot, on the one hand, accuse the SJE of (in H's somewhat trenchant words in closing submissions) being a "rogue surveyor" (H also asserted "appalling is an understatement" when describing what he thought of Mr Mazalla-Tomlinson's professional abilities) but then *agree* with the SJE's expertise when it suits him to do so.

82. Despite the lengthy evidence I heard, the main area for disagreement between H and the SJE concerns just one of the properties - 77 Narrow Street - which the SJE valued at £430,000 and which H, conversely, says is worth just £310,000.

83. H pointed out to the SJE that 77 Narrow Street requires refurbishment work and he also relied on the fact that – apparently (and H had not provided any evidence of this) - a property next door sold recently (2022) for just £267,000. H also suggested that he had received a recent offer on the property that is far below the value advised by the SJE.

84. I found Mr Mazalla-Tomlinson's evidence on the topic of 77 Narrow Street thorough, thoughtful, and balanced. He told me that 77 Narrow Street is a sizeable property with a very large living space such that it is akin to a 3 bedroom property in its size rather

than a 2 bedroom property (he understood that the property that may have sold in 2022 was actually a 2 bedroom property of a smaller square footage). On the other hand, he acknowledged that the property is in a commercial unit which is unusual and would not be (in my words) everyone's cup of tea. He also felt that the current presentation might put some buyers off, but he also did not think it would cost a significant sum to undertake any necessary cosmetic improvements. He said there are flats on the market in the same block and in the same post code (of a comparable size and nature) with asking prices in excess of £400,000.

85. As far as the recent offer received by H is concerned, it is accepted by H that the property has only been on the market since 3 August and, in any event, H has declined to accept the one offer of £245,000 that he has received. He clearly feels that this offer is far below what the property is worth because in his closing submissions to me he described the offer as "peanuts".

86. During the course of the hearing H emailed me an exchange with an estate agent, Mr Pring of Fisks London, in which Mr Pring advised that the asking price for 77 Narrow Street should be reduced from £260,000 to £259,950 to attract more viewings.

87. Mr Pring opined that the property was likely to sell for around £245,000 which is in fact less than what H thinks it is worth (H's position being that the market value is £310,000; in his Form E in January 2023 H considered the property to be worth £355,000). I note that there was no permission given for H to rely on evidence from Mr Pring -evidence which actually contradicts H's own assertions about value – and that H 'ambushed' the court and W with the emails part way through the hearing and after Mr Mazalla-Tomlinson had given his evidence. Mr Pring was not called to give oral evidence and was not subject to cross-examination. I place no weight on the emails.

88. As against this, Mr Mazalla-Tomlinson had been frank in that he considered that of all the properties he valued the one he struggled the most with was 77 Narrow Street because of its unique features and the cosmetic work that is required. He accepted that he could have overestimated the value and that ultimately the market itself will dictate what the property is worth.

89. There is always a risk that in superimposing my own finding as to the value of 77 Narrow Street I am simply introducing my own subjective (and non-expert) view together with a heavy dose of arbitrariness. On the other hand, I must consider and weigh up *all* the competing evidence in order to arrive at a fair conclusion and not only the valuation report.

90. Given the SJE's admitted caution in respect of value, the unusual features of the property that may make it harder to sell, the work that is required, and the fact it appears to be accepted there have been 16 viewings that have only resulted in one offer (which H described as 'peanuts') and given the difficulties with the current housing market in the context of high interest rates and greater restrictions on borrowing, I have decided to place a slightly more conservative value of **£400,000** on the property. I also consider that the structure of my overall award should acknowledge the risks involved in selling this property and that those risks should not be left solely with H.

91. Insofar as the other properties are concerned, I see no good reason to depart from the values proposed by the SJE and I adopt those values without hesitation.

The add back arguments and the use of the spread betting account

92. H accepts that in March 2020 he opened a spread betting account with CMC markets ('the spread betting account') and that between 2020 and 2023 he "invested" and then lost some **£406,821**.

93. There is no dispute that this is the figure that should be ascribed to the net losses (W uses this same figure in her s.25 statement at §49).

94. W learned about the spread betting activity in the course of the disclosure process. H declared the existence of the account in his Form E, [p.176] and gave some further details about the account in his replies in March 2023 (as well as attaching a summary for the account) although from the "disclosure bundles" it does not appear that the full transaction history was provided to W until May 2023.

95. Prior to separation (the parties separated in August 2022) H deposited £497,000 into the spread betting account.

96. From August 2022 to date H has deposited a further £40,000 into the spread betting account. H last deposited money into the account in March 2023 and the account is now closed.

97. From 2020 onwards, H was able to withdraw £130,179.32 from the account but there are net losses of £406,820.68 (rounded by both parties to **£406,821**).

98. I am satisfied that of the £406,821, **£150,000** came from the company bank account for C Essex Ltd. H took the money in breach of his fiduciary duties as a director, without prior authorisation from the other directors and shareholders, and with those other directors and shareholders being unaware of what he planned to do with the money.

99. I make this finding because (i) the language in the email from George Bejko-Cowlbeck (a director of C Leisure ltd and C Sussex Ltd) at [943] of the disclosure bundle which was disclosed by H in April 2023 is inconsistent with H's case that he was permitted to 'invest' money from C as he saw fit in order to try to raise money for the company; and (ii) it is inherently implausible that H's fellow directors would have considered gambling the money via a personal spread betting account in H's name to be a sound investment strategy.

100. It is clear from the tone of the email at [943] that H's fellow directors were unhappy (to put it mildly) with the loss of £150,000 hence the reference in that email to convening an AGM to consider H's future at the company. On the other hand, I am told H has been permitted to continue with the use of a company car (which W is driving at present) and remains a director and shareholder for the time being. H told me he is trying to rebuild bridges with his fellow directors.

101. There is no evidence of any formal ‘loan’ agreement in place in respect of the £150,000 and in any event given that I find H took the money without authorisation the same sum cannot also have been a loan.

102. To the extent that H is at risk of having to repay the £150,000 to C Essex ltd in the future he is the author of his own misfortune and I do not consider that W should have to share in that risk. The same applies in respect of any tax liability that may have arisen (either for the company or H personally) from the withdrawal of £150,000 from the company bank account, something H does not appear to have given much thought to.

103. Whilst W asserted (through cross-examination of H) that there cannot have been as much as £150,000 that originated from C Essex ltd because the email at [943] refers to borrowing ‘in 2020’ whereas the receipts into H’s bank account from C spanned April 2020 to June 2021, I am satisfied that H did use all of the £150,000 in spread betting and that, as H suggested, the language of the email is better understood as meaning that H started his behaviour (removing money from the C Essex ltd company bank account) in 2020 but that does not mean that all the transactions took place in that one year.

104. Moreover, I also find that a further £100,000 of deposits into the spread betting account came from two loans, one made personally to H and the other a Covid ‘bounce back’ loan made to [Essex] Entertainments ltd which was a government backed loan.

105. A further £156,821 came from the sale of shares formerly owned by H in [G] ltd. I am satisfied the shares were a matrimonial asset.

106. That leaves just over £130,000 unaccounted for. In the absence of H having been able to provide me with a cogent alternative explanation for where the remaining £130,000 came from I find it, too, must have come from resources built up during the marriage (i.e. matrimonial money).

107. Of the c.£287,000 of matrimonial funds, about £157,000 was lost (as H was able to withdraw £130,179 from the account and this has been used for living expenses and legal fees since that time including paying the outgoings on the FMH).

108. I do not consider that it would be fair or appropriate to 'add back' to H's side of the balance sheet the £250,000 that came from C Essex ltd and from the two loans. In respect of the former, the £150,000 did not belong to either H or W and so it cannot be right, in my judgment, to attempt to 'add back' this fictional sum when neither party was entitled to it in the first place.

109. It would also involve an element of double counting to make H solely responsible to the company in the future for any liability but also reattribute the notional sum it into H's side of the ES2 (and then 'share' it with W) as if it were a positive sum held by him without reflecting the corresponding liability.

110. In the same way, regarding the loans, adding back money that originated from a loan means adding back a debt rather than a positive sum because, obviously, any balance that comes from a loan has a corresponding debt owed. As I intend to leave H solely responsible for these debts it would be unfair to allow W to 'share' in the notional upside without also sharing in responsibility for future repayment.

111. I have found the situation in respect of the lost £157,000 of matrimonial money more difficult.

112. Although the test for notionally reattributing to one party's share of the assets money that has been spent has been described as requiring *"…clear evidence of dissipation (in which there is a wanton element)"* (per Wilson LJ in *Vaughan v Vaughan*[1]), as Moylan J (as he then was) clarified in *Evans v Evans*[2] this is not the end of the 'story' because *"…reattribution must be justified in the context of the case. It is a form of conduct and as such it must be inequitable to disregard it".*

[1] [2007] EWCA Civ 1085
[2] [2013] EWHC 506 (Fam)

113. Moreover, as Mostyn J emphasised in *BJ v MJ (financial remedy: overseas trust)*[3], *"Although intellectually pure, the problem with this technique [notionally reattributing] is that it does not recreate any actual money. It is in truth a process of penalisation."*

114. The authorities emphasise that particular caution must be exercised in 'needs' cases because, very obviously, money that has long since gone cannot be used to, e.g., provide a party with future accommodation. This point was made by Roberts J in *US v SR (No 3) (adverse influences: costs order reflecting litigation misconduct)*[4] when she noted that the money that had been spent did not represent 'real money' and that: *"…a notional reattribution to a spouse of property which he (or she) has dissipated, or has transferred in order to obstruct the other's claims, does not extend to treatment of the sums reattributed to a spouse as cash which he can deploy in meeting his needs"*.

115. As King J (as she then was) also noted in *GS v L (financial remedies: pre-acquired assets: needs)*[5], it may also be appropriate to take into account the extent, timing and nature of any alleged wanton dissipation and set it against the backdrop of a general assessment of the (over)spending of *both* parties. Fairness also usually demands that the 'add back' jurisdiction is exercised sparingly.

116. In the circumstances of this case I have found the following factors of particular importance.

117. Whilst there is some level of ambiguity in the jurisprudence about the level of 'intention' required (see, e.g. *MFP v MAP*[6] where Moor J considered whether the husband in that case had overspent '*with an intention to reduce the wife's claim'*) I am satisfied that in this case H did not place money in the spread betting account to try to put it beyond W's reach. The vast majority of the deposits were made prior to separation and in circumstances where I am satisfied H was desperately trying to

[3] [2011] EWHC 2708 (Fam)
[4] [2014] EWFC 24 (Fam)
[5] [2011] EWHC 1759 (Fam)
[6] [2015] EWHC 627 (Fam)

make money (in large part) to maintain the lifestyle of himself and W which included expensive private education and the running of a £1.65m home.

118. This fact seems to me to have some relevance, if not on the issue of 'wantonness' then certainly on the issue of whether it would be 'inequitable to disregard' H's conduct.

119. When considering H's conduct for the period 2020-2023, I consider it only fair to view H's behaviour in the context of a long relationship of almost 20 years where both parties also made many positive contributions to each other and to their children which cannot be overlooked.

120. If H's reckless behaviour from 2020 were placed on one side of a set of scales, doing justice between the parties means (in my view) also placing his positive contributions to W and the children over the 17 years prior to that on the opposite side. These positive contributions included not only the success of the language school but also, significantly in my judgment, the initial gift of £300,000 that came from H's father prior to marriage and which was invested in property which then grew in value and benefitted the family as a whole.

121. I do however find that H's decision to deposit £40,000 into the spread betting account after separation and at a time when he had already incurred significant losses was reckless in the extreme, particularly given H has not been able to pay the school fees since January 2023 and W has had to take out a loan to pay them.

122. I also consider that H's behaviour in dishonestly taking money from C Essex ltd has had a relevant financial impact because not only is there a risk that the company may take action personally against H, but I accept H's evidence that the rift with the company has reduced the amount of income H is currently able to draw and that he is not currently receiving a director's salary, unlike his co-directors. This has undoubtedly added to the financial strain on the family in the course of proceedings which includes H now being in arrears in respect of interim maintenance.

123. I also factor in that W has spent £195,000 on legal fees which she invites the court to 'top slice' from the assets before dividing the remainder between the parties. Even taking into account the fact that H has not always been represented and so W's solicitors have had to do more of the 'running' in terms of hearing preparation, I consider this to be an excessive amount to have spent in view of the value of the assets and the issues in this case and I do not intend to ignore that either.

124. All in all, I have decided it would be inequitable to disregard the £40,000 deposited between December 2022 and March 2023 but not the earlier amounts. I will deal with the overall effect of my decision in terms of its impact on the award at the conclusion of this judgment.

S.25 factors

125. I will now turn to deal with each of the s.25 factors in turn. Insofar as there are disputed issues I will set out my findings as I go along.

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.

126. W works for Y Training, a franchise of Z Training ltd. She is in the process of trying to sell the lease for the business as she tells me it is no longer making a profit. She also told me that the business has to move premises, having received notice to quit on 1 September and that she is required to vacate by 1 October.

127. W has been told she can move to another floor in the same building on a temporary basis but said she was concerned that moving into permanent new premises would be prohibitively expensive and so she is keen to sell as quickly as possible. The lease is on the market for £60,000 but there are restrictions on sale because the 'parent' company, Z Training ltd, has to approve any prospective purchaser and she told me they have already turned down an offer from a person they deemed to have insufficient experience.

128. Whilst H suggested that W could make more of an effort to make the business profitable, I am satisfied (having heard W's evidence) that W has reached the 'end of the road' with the franchise venture and that she would also need to inject significant capital (which she does not currently have), and time and effort in order to grow the business and turn a profit. Her preferred option is to sell it and to start afresh in a new career with more reliable remuneration.

129. That said, I am sceptical about how realistic W's plan to achieve this aim through retraining as a counsellor is. As H pointed out in his questions of W, her proposal involves a further period of retraining (she has already achieved her level 3 qualification but requires a further 2 years to achieve level 4 before she can even begin to start working in a paid capacity) and her suggestion of working as a counsellor would be likely to involve her being self-employed with no guaranteed salary.

130. Moreover, W said she would need to undertake 50 hours of personal therapy at a cost of £50 per hour in addition to the tuition cost of retraining (£4,600 a year) which she had not included in her budget.

131. Whilst I sympathise with W's wish to start a new career in an area that interests her, she has a long career history working in an administrative capacity in the education sector, both at the language school and, more recently, for her own business. She is capable of securing a position similar to the ones she has undertaken to date but working for someone else in a salaried role. She has not made any steps to apply for such roles because it is not what she wants to do, but that is out of choice rather than an inability to obtain paid employment.

132. I agree with H that W could earn around £36,000 per year gross if working full time in that field, translating to around £28,000 net (£2,222 net pcm). I see no good reason why W cannot apply for full time jobs immediately given that both children are in full-time secondary education (and A will turn 18 next month). I am prepared to accept that she may need around 6 months to secure a paid position, a timeframe which will also fit in with the ongoing process of selling the franchise.

133. In the ES2 prepared for this hearing W asserts that H's income is £106,500 net p.a. of which she says £28,500 is income from working (based on H's assertion that he can earn £36,000 gross) together with rental income of £78,000 net. The £78,000 net is an estimate of what W says H could generate in rental income, rather than what he is currently receiving.

134. In view of the steep rise in interest rates over the last 12 months and the change in taxation rules (that mean landlords are no longer able to claim tax relief on mortgage payments) the properties are currently running at a loss.

135. It is W's case that H is not renting out the flats at a fair commercial rate and that he could achieve a better income from them if he carried out a rent review and increased the amount charged to the current tenants accordingly, or gave those tenants notice and let the properties to new tenants prepared to pay a higher sum. Ms Lister took Mr Mazalla-Tomlinson through a list of suggested rental comparables from online property websites which W had produced with her s.25 statement.

136. I note that Mr Mazalla-Tomlinson had not actually been ordered to provide an opinion regarding rental income [see the wording of the first appointment order of HHJ Farquhar of 6.2.23 at §8] and so this question had not been the subject of either of his reports. W had not applied for an expert rental valuation at the conclusion of the FDR, or at the PTR, even though she could have chosen to do so.

137. Mr Mazalla-Tomlinson pointed out that he would have to formally review each property to be able to provide a valuation of the achievable rental income and that it was difficult to give a view 'off the cuff' when giving evidence. Whilst some of the figures suggested by W were not, on the face of it, unreasonable, he urged caution in respect of W's assertion about increases in the rental market more broadly because he said that there could be fluctuations depending on the area in which the particular property is located (noting that there are a spread of different properties held within the portfolio which are located across different parts of the country).

138. He also made the following points, which I accept:

i. When carrying out a rent review one has to weigh up the benefit of a potential rent increase versus the risk of losing a loyal and reliable tenant who is already in occupation and paying rent;

ii. There is always a risk the property will be left unoccupied (and therefore generating no income) for a few months between the existing tenant vacating and a new tenant moving in. Gaps like this, even of just a few months, can completely negate any modest rise in rental income when looked at over the course of a year.

iii. The comparables shown to him only reveal asking prices. It is not possible to say what the properties shown on the marketing websites will ultimately be let for (acknowledging this could mean a figure higher or lower than the asking price).

iv. Some of the properties in the portfolio require work to be undertaken and in order to achieve the best rental income and that work would have to be carried out in advance of a new tenant moving in (this also increases the risk of some of the properties being vacant for a period of time whilst this work is carried out).

139. All in all, I have decided that it is too speculative to try and attribute an enhanced rental price for some or all of the properties in the portfolio. Moreover, it is inevitable (as I will come on to detail when setting out the order I intend to make) that a number of the properties will need to be sold in any event in order to meet the parties' capital needs including, in particular, the large debt to HMRC.

140. For completeness, it was suggested on behalf of W that H is deliberately suppressing the rental income from the properties for presentational reasons and that he would not wish to hold on to the properties (per his open proposal) if they were loss making. This submission does not, in my view, sit comfortably with the evidence I heard and with my impression of H.

141. H is someone who is desperate for money to maintain a lifestyle that these parties can no longer afford, a situation that led him to take unjustified risks in respect of the CMC spread betting account as I have already identified. I have no doubt that if H had been able to increase the rental yield he would have done so already.

142. As to H's wish to hold on to the properties, I do not see this as part of some sort of 'grand masterplan' in which H has misled the court as to the true rental potential but, rather, as part and parcel of H's wish to try to cling on to these assets despite the fact his proposals are unrealistic (such as with H's suggestion of a bridging loan that I have referred to earlier in this judgment).

143. With regard to earned income, I have already found that H is not currently generating an income through C Sussex Ltd, at least in part because of the fallout from his decision to remove £150,000 from the C Essex ltd bank account between 2020 and 2021 and then lose the money. However, this does not mean H has no ability to generate an income going forward, and H accepts he has an earning capacity.

144. I asked H what the other directors receive by way of earned income and he told me they each earn £45,000 gross. Whilst this is a higher sum that the £38,000 suggested by W in the ES2 it seems to me to be a fair and realistic income figure for future director's remuneration given H's experience and noting that H can either endeavour to repair relations with the team at C Sussex ltd (and I find there are the green shoots of reparation already given H continues to work for them and still has the benefit of a company car) or obtain alternative employment earning at around the same level.

145. My findings as to earning capacity are therefore summarised as follows:

i. W is capable of earning £2,222 net per month from employment after a 6 month grace period. If she is able to retain her property at 19 College Crescent she will also be able to generate net rent from the property of £8,760 p.a. such that she has potential income of £2,952 per month net.

ii. H is capable of generating income of £2,885 net. Whether he is able to retain any of the rental properties will depend on the order I make.

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

146. The parties each have a need to purchase alternative accommodation on sale of the family home. I consider it reasonable that both children should be able to spend time overnight and for extended periods of time with both of their parents and to have a 'home' with each of them, sufficiently local to their current school.

147. I have considered the alternative housing particulars put forward by each party and I heard evidence from both parties on the question of housing needs.

148. I have to say I was unimpressed by W's approach to her rehousing needs. She had not actually viewed any of the properties put forward by H and nor did I get the impression she had looked at the particulars with a critical eye or in any particular detail. I felt she had already dismissed them automatically because they were (a) put forward by H; and (b) not in a price bracket she felt was suitable rather than for any good, practical reason.

149. I also felt that some of W's concerns about properties put forward by H were not well-founded.

150. For example, W asserted that she requires four bedrooms in order for her mother to come to stay with her. When I explored this, it transpired W's mother lives in Russia and normally visits just once a year for a fortnight. I enquired whether, as both children are boys, and as (at some stage in the foreseeable future) 17-year-old A is likely to leave home at least for part of the year to attend tertiary education, it might be possible for the boys to share a room for a two week period once a year during a visit. W accepted that was a possibility.

151. W also suggested that certain of the properties put forward by H *"need a lot of work"* when, at least as far as the photographs are concerned, they looked to me to be

in turnkey condition (and W has not viewed them so I have only the particulars to go on).

152. Moreover, whilst the parties currently live in a £1.65m home and the standard of living during this long marriage is plainly an important factor in assessing future housing needs, it is not the only factor, and (in my judgment) if the parties wish to be able to discharge their considerable debts (including in excess of £200,000 owed to their lawyers and c.£500k owed to HMRC) as well as continue to fund private education for their children (which both parties said they wanted) then difficult choices have to be made. The parties are also separated, and two homes have to be purchased out of a decreasing pot.

153. As I pointed out to the parties in court, the children's school is located on [anonymised] road in the Surrey town in which the parties live, which is on the border with [another town] in which property can be purchased more affordably, and is actually closer to the slightly cheaper area than to the town in which the parties are currently living . Whilst both parents understandably want to be housed in a sensible proximity to the school, the more expensive properties that are on the market in the region of £1m-£1.1m (such as the one on C Hill and the one on L Lane) are in reality further away than properties that could be purchased more cheaply in the [environs of the town in which W and H are currently living] and so W's justification that she had picked her properties because of their proximity to school did not hold water.

154. W in any event accepted that the property at [293] of the bundle that H had proposed "seemed fine". That property a semi-detached, 4 bedroom house on [address anonymised] that appears to have been recently renovated, is in walking distance of the high street, and is on the market for £900,000.

155. On the evidence available to me both parties are capable of rehousing with a fund of £950,000 to include stamp duty and moving costs in a property in the right location and of a suitable standard and size. Neither party "needs" four bedrooms, but in view of the standard of living during the marriage and the capital pot available if they wish to purchase accommodation similar to that at [293] I consider that to be a reasonable wish.

Income needs

156. As W seeks spousal maintenance from H it was W's budget that was the focus of questions in court, but I have had regard to both parties' budgeted needs.

157. There are a number of items on W's budget that I explored with her and which I do not consider reasonably necessary going forward. Ms Lister pragmatically (and correctly in my view) submitted in her closing submissions that W accepts some 'trimming' of her budget is inevitable. W also accepted in evidence that when she prepared her budget she had not really considered whether the running costs of a smaller property would be less than for the former family home and so she had based figures such as council tax and heating costs on her current property and not the accommodation she will live in in due course. She also had some difficulty explaining how she had arrived at a number of the figures on her schedule and, at times, appeared surprised by them.

158. There are a number of items on W's budget that, in my judgment, W does not reasonably need at all. This includes £700 per month for mortgage payments on a main home as it is common ground she will be able to purchase mortgage-free accommodation. I also do not consider she requires £360 a month for 'domestic help' when this is not a sum she pays currently, and which is in any event excessive on the facts of this case. Nor does she need to increase her food spending from the current £600 per month to £1,000 per month.

159. Given my findings in respect of earning capacity I also do not consider W needs to budget for 70 hours of personal therapy at £50 an hour as part of the learning for her proposed course. If W chooses to undertake this therapy she will need to cut back her spending in other areas.

160. I make similar observations of H's budget. My order will enable H to buy a house without a mortgage and so he will not need £750 a month for mortgage payments. Nor will he need £7,500 to pay HMRC by instalments as he will be able to sell some of the properties to discharge the debt and prevent any further interest and penalties from

accruing. I intend that school fees will be dealt with out of capital as I do not consider they are affordable from income and so neither party will need to factor in school fees as part of their monthly income requirements.

161. Considering the evidence as a whole I find that W has an income need of £4,000 per month for herself and the children. H has an income need of £3,000 per month (not including the payment of spousal maintenance), the lower figure reflective of the fact that the parties agree it is likely the children will spend more time in term time with W, although I acknowledge H will have expenses to pay for them when they stay with him and that W's needs will also accordingly reduce over time as the children become independent and leave home.

162. Both parties advocate for a relatively short term of substantive maintenance for W (W herself seeks a term of just 3 years from the date of completion of the FMH). As I will go on to detail, I consider that the statutory steer towards a clean break applies with particular force in this case given the acrimony between the parties and the recent arguments over interim maintenance payments and school fees. I intend to ensure any shortfall between W's income needs and her earning capacity is dealt with out of capital so as to enable a clean break.

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

163. As I have said, the parties enjoyed a very comfortable standard of living but in the run up to the breakdown of the marriage this standard of living was being maintained by the accrual of large amounts of debt because of the outstanding HMRC loan. I have had an eye to the standard of living, but it is not the 'lodestar', especially in view of the change in financial circumstances in recent years and the reality of the assets that are available.

The age of each party to the marriage and the duration of the marriage

164. The parties are of equivalent age for the purposes of the s.25 exercise, W being 54 and H 55. This was a long marriage.

Any physical or mental disability of either of the parties to the marriage

165. H suffers from depression for which he is receiving treatment [110] together with a number of autoimmune related skin conditions such as psoriasis, but fortunately none of these conditions impact H to the extent that he is unable or unwilling to work full time.

166. W is in good physical health but, as with H, it is clear these difficult proceedings have taken a toll on her. I very much hope that once these proceedings are concluded both parties may begin to feel better in themselves.

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.

167. I consider both parties made a full contribution to the welfare of the family over a long period.

168. The fact H had been given £300,000 by his father in 2001 is a significant factor which cannot be disregarded in my judgment. This gift – from a source wholly external and prior to the marriage - enabled the parties to build up the rental portfolio that formed a significant part of the household income for a number of years.

169. Whilst I accept that the initial non-matrimonial investment was then used to support the family and became 'mixed' with matrimonial assets over time, I also find that without this initial gift and H's (again, pre-marital) decision to establish the property portfolio the parties would not have the asset base they have today and that it would not be fair for this factor to be entirely overlooked.

170. However, in my judgment, the £300,000 gift is already appropriately reflected as a counterbalance to H's foolish and reckless behaviour in the operation of the spread betting account from 2020 and that is how I intend to factor it into my decision.

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.

171. I have dealt with "conduct" allegations earlier in this judgment and will not repeat my findings and analysis here.

In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit F7 . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

172. There are no pension assets in this case. Insofar as is possible with the assets available, my award needs to factor in that the capital that the parties receive now will also provide them with a modest cushion for retirement as, at 54 and 55, neither is likely to be able to establish a significant pension pot between now and statutory retirement age.

Decision and order

173. In view of the findings and analysis I have conducted, my decision is as follows:

i. The former matrimonial home is to be marketed for sale forthwith and the entirety of the net proceeds of sale after payment of the mortgage and sale costs shall be provided to W. Both parties are to have conduct of the sale.

ii. The flats at 11 Kelly Court and 77 Narrow Street are to be sold and the net proceeds of sale divided equally between the parties. This means that, as far as 77 Narrow Street is concerned, any uncertainty about the price this property will ultimately sell for will be shared by both parties in equal proportions.

iii. Flat 5 Flynn Court is to be sold and the entirety of the net proceeds of sale provided to W.

iv. Flat 22, 46 Coldharbour is to be sold and the entirety of the net proceeds of sale (£169,085) placed in an education trust for the benefit of the children so as to enable

the school fees to be paid. Both W and H are to be the trustees. The costs of setting up and administering the trust will come out of the fund. Whilst I acknowledge W's concern about H having involvement with this money because of my findings about his reckless behaviour in the context of the spread betting account, I consider her concerns are adequately dealt with by the use of a formal trust structure and the requirement of two signatories (W and H) to remove any money from the trust bank account. I do not consider it in the best interests of the children (whose welfare is my first consideration) for there to be a framework whereby H is cut out of any financial responsibility for the payment of school fees due to the risk that this may create an impression in the minds of the children that H does not contribute to their school fees or is not involved to the same extent as their mother.

v. W will retain her property at 19 College Crescent and H will retain the other properties held in his sole name. The parties will otherwise retain their bank accounts, investments and business interests and be solely responsible for liabilities in their sole names.

vi. H is to indemnify W in respect of any risk of financial penalty arising as a result of the £150,000, the bounce back loans, and the HMRC debt. The overall structure of my order (as will be shown from the net effect table below) leaves H with sufficient capital to discharge the HMRC debt in full.

174. The net effect of my decision is as follows:

Asset	Net value per finding	W	H
FMH	£928,795	£928,795	
Flat 10 Flynn Court	£80,062		£80,062
Flat 11 Flynn Court	£109,430		£109,430
Flat 5 Flynn Court	£143,426	£143,426	
Flat 11 Kelly Court	£143,438	£71,719	£71,719
Flat 11 Garland Court	£144,735		£144,735
77 Narrow Street	£163,609	£81,805	£81,805
52 Henry Addlington Close	£161,861		£161,861
Flat 22, 46 Coldharbour	£169,085	School Fees Fund	
Flat 11 Regent's Gate House	£38,359		£38,359
Flat 1 Hamilton House	£132,172		£132,172
Flat 2 Hamilton House	£139,267		£139,267
125 King's Avenue	£433,491		£433,491
Flat 213, 41 Millharbour	£302,696		£302,696
Flat 8, 55 Targowa Street (Poland)	£48,800		£48,800
19 College Crescent	£179,878	£179,878	
H bank accounts	(£9,884)		(£9,884)
W bank accounts	£1,649	£1,649	
H liabilitiies (excluding Natwest personal loan balance)	(£563,558)		(£563,558)
W liabilities	(£217,922)	(£217,922)	
Total Net (after liabilities discharged)	**£2,529,388**		
Total net less school fees fund	**£2,360,303**		
Award		**£ 1,189,350**	**£ 1,170,954**
		50.39%	49.61%
Housing fund		£ 950,000	£ 950,000
Surplus		£ 239,350	£ 220,954

175. As is shown, after paying their debts (including H discharging the HMRC debt) and meeting their housing needs W will be left with just under £240,000 and H just over £220,000 (H will also have to pay the balance of his personal Natwest Loan - £38,000 – which I have declined to 'top slice' because of my findings in respect of the operation of the spread betting account).

176. The difference in capital terms of c.£20,000 in W's favour (and H being left with the Natwest loan) adequately marks H's conduct, in view of all the other balancing factors I identified earlier (including my acknowledgment of the £300,000 inheritance).

177. I also consider that with a surplus of £239,350 W will be able to make up the shortfall of £1,778 between her income needs and her earning capacity such that there

is no justification for a maintenance order for a term of 3 years as proposed by W, and there should be a clean break from completion of the sale of the family home. As a cross-check, I have calculated that on a Duxbury basis £1,778 per month over a term of three years requires a capital sum of £58,704. I consider it fair for W to amortise a modest proportion of her capital to meet her income needs in the short term.

178. In the interim, H is to pay maintenance at the current rate as ordered under the MPS order but in one lump sum of £2,000 per month rather than in £500 weekly instalments as the latter arrangement has led to difficulty with late payments. This sum is to be paid until conclusion of the sale of the FMH and payment of the net proceeds from the sale to W.

179. Likewise, H will be left with a sufficient surplus to top up the very modest shortfall between his current income needs and his earning capacity if required. As with W, H will also have to amortise some of this capital to meet any shortfall in income needs.

180. The overall effect of my decision is, having ring-fenced a fund for school fees, W is awarded 50.39% of the remaining assets and H 49.61%. The small departure from equality in W's favour (notwithstanding my acknowledgment of the non-matrimonial character of the £300,000 gift from H's father), together with my treatment of H's outstanding personal loan and the fact I have left him with the risk of having to repay any money recouped by L Essex ltd, is justified in view of the conduct findings I have made. I consider this to be a fair outcome in all the circumstances, having regard - of course - to the needs of the children of the family whose welfare is my first consideration.

181. I also give permission for this decision to be reported but suitably anonymised in order to prevent identification of the parties' children, including by way of jigsaw identification (for this reason I have anonymised the names of the parties and their children as well as a number of place and company names).

182. That is my decision.