

VS v OP (Litigation misconduct, quasi-inquisitorial approach and inferences)

1674-8085-8157-6906

Neutral citation number: [2024] EWFC 190 (B)

Judgment, Recorder Chandler KC

Royal Courts of Justice 18 July 2024

The court's quasi-inquisitorial role

1. What should the court do where one party deliberately flouts orders, refuses to provide disclosure and breaches a series of penal notices whereby, as a result of that default, the court does not have the full picture?
2. In civil litigation, where a party fails to comply with orders, the court can resort to a range of effective sanctions including striking out and judgment in default.
3. However, those orders are not available in financial remedy proceedings. The overarching objective is a fair outcome having regard to the s.25 factors, in pursuit of which the court takes a 'quasi-inquisitorial' role. This means that the court is not "...confined within the tramlines of adversarial pleadings" (Baker LJ in *Re HW* [2023] EWCA Civ 149 at [37]), but has a duty to independently "...investigate issues which he considers relevant to outcome even if not advanced by either party" (Thorpe LJ in *Parra v Parra* [2002] EWCA Civ 1886 at [22]),
4. In cases of non-disclosure, following the Court of Appeal's decision in *Moher* [2019] EWCA Civ 1482, the court still has to evaluate the parties' resources and provide a reasoned explanation of the award. Where a party has failed to give full and frank disclosure, inferences may be drawn provided they are properly drawn and reasonable (*NG v SG* [2011] EWHC 3270 (Fam)). The court should not engage in speculation, or reverse-engineering when it comes to filling evidential gaps, however convenient such an approach might be.

5. The court's 'quasi-inquisitorial' role can be easier said than done. There is a marked difference between the position at an attended hearing, where the court raises new points with experienced advocates who are on top of the legal and factual issues, and the position where one or both parties are litigants in person, unfamiliar with the law, the court's powers, or what point a judge might want to explore. In this case, the Husband is a litigant in person who can no longer afford representation, and the Wife, who is in breach of a series of orders for disclosure, has, once again, failed to attend.

Lack of a bundle

6. To cap it all off, no bundle was prepared for this two-day final hearing. At the pre-trial review, the Husband was directed to lodge a bundle that was compliant with PD 27A. He did not do so.
7. In the absence of a bundle, I have searched the portal for the main documents, in the hope of salvaging this final hearing. I have found in the region of 150 separate files on the portal relating to this application including 116 uploaded documents, 12 scanned documents, 7 uploaded orders and a further dozen related notes and emails. The uploaded documents range from the parties' Forms E, to fragments of disclosure (it appears that some credit card statements have been uploaded individually page by page), to documents which are wholly irrelevant to the claim (e.g. emails relating to half term arrangements for the children).
8. It has been a time consuming and at times frustrating exercise to construct a working knowledge of this case from so many splinters of information, without any clear idea as to what are the issues. Neither party has filed a position statement, an open proposal (although the Husband did upload a 'non-prejudice offer' [sic] which I did not read), a chronology or an up-to-date schedule of assets. However, as part of my pre-reading I was able to locate and read:
 - (a) All six earlier orders which provide some helpful background in terms of the court's recitals to those orders:

- (b) The Husband's Form E dated 23 September 2022;
- (c) The Wife's Form E dated 21 September 2023; and
- (d) The Husband's s.25 statement dated 27 May 2024

9. I have considered adjourning this final hearing so that a proper bundle can be prepared. On one hand, this would have alleviated the judicial task: the provision of a paginated bundle containing the most important documents is, after all, a basic requirement of court procedure. But on the other, in terms of the visible assets, this is a low asset case which has already involved an inordinate number of hearings (six) including three ineffective Financial Dispute Resolution appointments before Recorder Cowton KC. In light of the Wife's persistent non-compliance, I think it unlikely that an adjournment would produce the disclosure which she has been ordered on provide on four earlier hearings.
10. In the circumstances, with some reservations, I have decided to proceed with this final hearing, mindful that I do not have the full picture because of (a) the wife's non-disclosure and litigation misconduct, (b) the husband's failure to provide the court with a bundle, (c) the non-attendance of the Wife, who, for the record, I am satisfied was notified of its listing. Ultimately, all litigation must come to an end, and it would in my view be grossly disproportionate to allow this case to proceed to a further, eighth, hearing when in all probability the court will again be presented (with due respect to the Husband) with badly prepared, where the Wife has failed to comply with orders and disclosure and might again not attend.
11. During the hearing, the fog has lifted to some extent. The Husband has, I am satisfied, done his best to help this court, including providing to my clerk the latest available documentation in terms of the Wife's disclosed liabilities. He has also confirmed that a document which he had uploaded to the portal as a "non-prejudice offer" [sic], and which I had deliberately not read, was intended to be an open proposal visible to me at final hearing. I have explained to the Husband the difference between an open proposal and a without

prejudice offer. I have accordingly read the Husband's so-called non-prejudice offer on the basis that it contains his open proposal.

12. I do not regard the Husband's failure to provide a bundle as litigation misconduct and I will not reflect it in my award. However, in my judgment it is no defence for him to say he hasn't provided a bundle because he is a litigant in person:

(a) Moore-Bick LJ commented in *R (Hysal) v SS for Home Department* [2014] EWCA Civ 1633, Moore-Bick LJ commented at [44] that: "...Litigation is inevitably a complex process, and it is understandable that those who have no previous experience of it should have difficulty in finding and understanding the rules by which it is governed. The problems facing ordinary litigants are substantial and have been exacerbated by reductions in legal aid. Nonetheless, if proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. In my view, therefore, being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules."

(b) Lord Sumption commented in *Barton v Wright Hassall LLP* [2018] UKSC 12 at [18] "...Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

Introduction

13. This is my judgment in the financial remedy proceedings issued by the Husband on 31 January 2023.

14. The applicant husband is 38 years old. The respondent wife is 37. The Husband has today attended in person. The Wife has not attended this final hearing.

15. The parties married on 18 June 2016 and separated in early December 2021.
16. There are three children of the marriage: A, B and C who are now aged 7, 6 and 2. In his s.25 statement, the Husband states that the children spend equal amounts of time with both parents following a child arrangements order from October 2023.

Litigation

17. To date, there have been at least six hearings in these financial remedy proceedings.
18. First, on 15 May 2023 DDJ Morris dealt with an ineffective First Appointment. The recitals to that order record that the wife has failed to provide a Form E, and she has failed to respond to any documents sent in advance of the hearing including the ES1 and ES2. The Wife also failed to respond to emails containing a link to the hearing whereby the court was satisfied that the Wife has had notice of the hearing and that the hearing was ineffective due to her litigation misconduct. In terms of orders made on that day, the Wife was ordered to provide a Form E with relevant attachments by 30 May 2023, with a penal notice attached. The court made a series of other directions relating to the valuation of properties etc with a relisted First Appointment.
19. Second, an adjourned directions hearing took place on 30 June 2023 before DDJ Mertens. The recitals to that order explained that the Wife apologised for her previous non-attendance and non-compliance, which arose because she was unwell and had struggled with the stress of these proceeding. In terms of orders, the Wife was given further time to file her Form E (by 21 July 2023) with consequential directions for replies to questionnaire, mortgage capacity and an FDR listed after 14 September 2023

20. Third, on 22 September 2023, the third hearing took place before Recorder Cowton KC. This had been listed as an FDR but was ineffective as such. The learned judge's recitals recorded that (7) the Wife had failed to comply with earlier directions: she had filed her Form E late (20 September 2023) with incomplete supporting disclosure; whereby (9) the FDR was ineffective but was used instead as a directions hearing to consider further disclosure sought by both parties. Orders were made for specific disclosure against the Wife with an FDR relisted to 4 December 2023.
21. Fourth, on that date (4 December 2023) an adjourned FDR came back before Recorder Cowton KC. The recitals to the order recorded that [5] the hearing was again ineffective due to the Wife contacting the court at 7.50am explaining that she could not attend for a series of reasons. At [7] the court recorded its displeasure at the waste of court time caused by the Wife, and that [10] the Wife had failed to provide the ordered disclosure, whereby those orders were to be repeated with penal notices. In those circumstances an adjourned FDR was re-listed for a second time.
22. Fifth, at the third attempt at an FDR on 1 February 2024, the Wife again failed to attend court, although she indicated in a WhatsApp message to the Husband that she had been unaware of the hearing. H indicated that both parties had been sent the order from the last hearing confirming the hearing date. At [7] the court again expressed its displeasure at the waste of court time. At [11] (underlined) the court 'emphasises to the respondent that it can make a final order dealing with all assets, including ordering a sale of the family home, whether or not the respondent engages with these court proceedings, in order to provide a fair overall outcome to both parties'. The application was set down for pre-trial review (before Recorder Cowton KC) and final hearing (before another judge). A further order made for disclosure against the Wife with penal notice. An order made for s.25 statements to be exchanged by 27 May 2024, open proposals by 3 June 2024.
23. Sixth, the pre-trial review took place before DDJ Mason on 17 June 2024 who recoded at [5] that the Wife had again failed to attend despite both parties

having been emailed the date of hearing. The court ordered the joinder of the Husband's sister, who was permitted ("is at liberty") to file points of claim setting out her beneficial interest in the Husband's property at Property B. Further directions for disclosure were made against the Wife to take place by 26 June 2024 with a penal order attached.

24. I note that costs have been reserved on the following occasions: 22 September 2023, 4 December 2023, 1 February 2024 and 17 June 2024.

Litigation misconduct and non-disclosure

25. Having read those orders I am satisfied that the Wife has engaged in serious litigation misconduct and has failed to give full and frank disclosure of her financial position, i.e.

(a) She filed her Form E six months late, i.e. 20 September 2023 whereas the Form C had required this to be filed by 10 April 2023;

(b) Her Form E was deficient, and she had failed to attach all of the necessary documents;

(c) The wife failed to attend for the hearings on 15 May 2023, 4 December 2023, 1 February 2024 and 17 June 2024;

(d) She has failed to provide the required disclosure and has breached the penal notices made on 15 May 2023, 4 December 2023, 1 February 2024 and 17 June 2024;

26. In terms of the specifics of the Wife's non-disclosure, I note that the latest version of the order for disclosure is contained at paragraph 12 of the PTR order of 17 June 2024. That required the Wife to provide a raft of further disclosure.

27. None of these items have been provided by the Wife although the Husband has told me that there is no issue in relation to the Wife's Deliveroo shares. He

accepts that her shareholding is modest, whereby the current value is around £650.

28. In terms of the material issues, the Wife's non-disclosure means that there is an evidential gap in relation to the following:
- (a) the extent of the Wife's interest in a property in Germany. In relation to this the Husband asserts that the Wife (who is a German national) co-owns the property with her mother. He says that the Wife has received a share of the rental income from the property visible from bank statements attached to the Wife's Form E;
 - (b) the extent of the Wife's interest in a company which the Husband understands holds a property in Germany;
 - (c) the Wife's current income, in terms of what she is earning and what sums she is receiving from Germany. The Husband's case that the Wife has in the past earned significant sums (e.g. £45,000 pa in 2020), that she was earning at least £2,100 net pm working X Company until the July 2023.

The visible assets

29. Helpfully, in this case, at the hearing on 22 September 2023, the parties agreed the market values of the two main assets: at £350,000 and £225,000.
30. The Wife lives at [Property A] with the children when they are with her. This is a jointly owned property, subject to a mortgage with Halifax. The Husband's case is that there was an agreement for the parties to each pay one-half of the mortgage which the Wife has not complied with, resulting in him paying the whole mortgage.
31. The Husband lives with his mother, sister and the children (when they are with him) at [Property B], which his family acquired in 2015 by way of the exercise of a right to buy an ex-council house. There is a dispute between the parties as

to how this purchase was funded. The Wife has asserted that it was acquired during the marriage with marital funds. To the extent that this might be relevant, on the balance of probabilities I consider it more likely that the Husband's account is correct, and that the property was acquired before the parties married without the use of marital funds. That property is subject to a mortgage in favour of NatWest.

32. Provision was made at the pre-trial review for the Husband's sister to be joined as an intervenor in relation to her asserted beneficial interest in [Property B]. The court directed that she should attend the final hearing on the first day (see Order of DDJ Mason, para 11).
33. The sister has not attended this hearing for reasons that remain unclear. The Husband appeared to be unaware that an order had been made for her to attend. The Husband tells me that his sister has filed points of claim, which he has responded to, but the Wife has not. The Husband says he admits his sister's claim which apparently is for a 25% beneficial interest in the property. I have not been able to locate a copy of her points of claim from the portal and the Husband has not been able to send me one.
34. As I explained to the Husband during the hearing, where this leaves me is as follows:
 - (a) The starting point, as a matter of law, is that the Husband as legal owner of Property B, is also its beneficial owner: *Stack v Dowden* [2007] UKHL 17);
 - (b) The burden of proving otherwise is upon the sister;
 - (c) The sister has not attended court, seemingly in breach of the pre-trial review order. I have not been furnished with an explanation as to why not;
 - (d) I have also not been provided with a copy of the sister's points of claim and I have not been able to locate it on the portal;

(e) In the circumstances, I am not in a position to make a declaration in favour of a joined intervenor who has not attended and whose points of claim (assuming they exist) have not been provided to me. I accordingly will discharge the sister as a party and proceed on the basis that the Husband is the sole legal and beneficial owner of [Property B].

35. I propose to ignore the parties' bank balances. The Husband has five accounts with small balances. The Wife's most recent Santander balances are similarly modest.
36. In terms of investments, I accept the Husband's evidence as to the values (set out below) and I have adopted £650 for the value of the Wife's Deliveroo shares.
37. I do not propose to take into account the value of the parties' chattels. For the record, the Husband owns two watches with a combined value of £5,200. He told me that he has sold his BMW. The Wife has jewellery and a bag collection worth £5,000. She also has an engagement ring which the Husband says is now worth £12,000 and which the Wife says is worth £5,800. In my judgment the true market figure is probably closer to the Wife's figure, but I do not consider I have reliable evidence on how much a sale of this ring would actually achieve (as opposed to an insurance valuation).
38. I accept the Husband's evidence that he is owed £24,000 from friends which is broadly in line his evidence that he owes £27,000 to family members. I propose in effect to net these items off and not take them into account.
39. I accept the Husband's evidence that his hard liabilities, comprising a NatWest Loan and two credit cards, amount to £38,900. I similarly accept the Wife's evidence that her hard liabilities amount to £50,307 representing four credit cards. I note in passing that the Husband does not have any outstanding legal fees to pay but he says he has paid in the region of £40,000 on this litigation.

40. I do not ascribe any value to the parties' company interests. I accept that the Husband's company has been struck off the register and that the Wife's company is dormant.
41. I accept with some reservations the Wife's asserted liability of £12,500 in relation to legal fees. I have not seen any evidence in support, but I note that the Wife has been represented in the earlier stages of these proceedings, e.g. by Vaitilingam Kay Solicitors.
42. I do not propose to include the figure put forward by the Wife for a car loan, or monies owed to the Wife's mother, which as far as I am aware have not been evidenced. I also do not propose to include the Wife's student loan, which is a long-term liability, the repayment of which is linked to the Wife's income.

Summary of assets

43. In terms of the value of the visible net assets and liabilities I accordingly find as follows:

	Joint	Husband	Wife
Property A			
Gross value (agreed) £350,000			
Mortgage (£231,742)			
ERP (£3,476)			
Costs of sale at 2.5% (£8,750)			
Net equity	£106,032		
Property B			
Gross value (agreed) £225,000			
Mortgage (£115,714)			
ERP (£1,778)			
Costs of sale at 2.5% (£5,625)			
Net equity		£101,883	
Investments			
Cornerstone £22,625			

Fidelity	£207			
Crypto	£750			
Deliveroo	£750 / £650		£24,322	£650
Liabilities			(£38,900)	(£62,807)
Totals		£106,032	£87,305	(£62,157)

44. I do not consider that I am in a position to infer that the Wife co-owns a property in Germany with her mother. I have not been provided with evidence which supports a prima facie case of ownership. The Husband asserts that the Wife has received rent directly into her bank account. I note the Wife's explanation from her Form E is that some payments were made to her account because her mother (who lives in Germany) has struggled to manage her finances in Germany. In my view, that is a plausible explanation for the appearance of rent payments on the Wife's bank account, but I am far from convinced that I have been provided by the Wife with a clear explanation for the transfer of funds between her and her mother.
45. Accordingly, I conclude that the value of the assets net of liabilities is **£131,180**.

Incomes and outgoings

46. The Husband works as a project management officer with Company C. His net take home income is in the region of £6,300 pm. In addition, he receives £330 from his sister by way of a contribution towards 'rent', and he receives £505 disability living allowance which is referable to his condition of sickle cell anaemia.
47. The Husband's outgoings are set out within his Form E. During the hearing, he helpfully updated these as follows:
- | | |
|--|--------|
| Car – not currently owned but intends to buy | £391 |
| Food and utilities was £600 now (due to children) | £1,000 |
| Property B mortgage (net of sister's contribution) | £500 |
| Debt | £1,235 |

Other	£1,194
Children	<u>£700</u>
	£5,020

48. In my judgment, **£5,000 pm** is a reasonable assessment of the Husband's outgoings, on the basis of his intention to stop contributing to the mortgage at Property A. It follows that there is in my judgment a surplus between the Husband's income and his outgoings, although I appreciate his contract is due to end in December 2024 and he hopes to make additional payments to reduce his liabilities. The Husband candidly accepted that he could afford to pay some maintenance but strongly resisted the making of an order.
49. The Wife's income position is far from clear. At the beginning of this case, she was working for Company D, earning around £2,100 pm net. I have seen a solicitor's letter stating that her employment was due to end in May 2023, although it appears from her Santander bank statements that she continued to receive payments from Company D on 27 June 2023 (£2,021.29) and 27 July 2023 (£634.29). The Wife's case in her Form E was that she intended to "take a 3-6 month break", although she did not state her expected earning capacity thereafter.
50. As to her income for the past year, since July 2023, the Wife has only provided bank statements up to September 2023. These show that on 11 August 2023, the Wife received £953.32 of state benefits, seemingly relating to a claim for Universal Credit. The bank statements also include a number of credits which have not been fully explained, e.g. payments in August 2023 (£1,029 and £240 on 8 August 2023).
51. The Husband believes that the Wife has since returned to work, either for a company or for herself as an eyelash technician. The Husband told me that the Wife recently travelled to Los Angeles for training and has in the past earned substantial amounts (circa £45,000 in 2020) as an account manager. He invites me to draw the inference that the reason why the Wife has not provided documentation which would cast light on her present income (e.g. bank

statements, a copy of her CV, details of jobs she has applied for etc.) is because she has in fact already returned to work and wants to conceal this fact. The Husband urges me to find that the Wife is financially independent and that I should impose an immediate clean break.

52. My approach is as follow:

- (a) That the facts of this case require me to take a robust approach to the question of the Wife's income. This court does not have any information about the Wife's current position because she has repeatedly failed to provide it, in spite of the making of several orders with penal notices;
- (b) The Wife plainly has a reasonable earning capacity. I note that until recently (July 2023) she was earning £2,100 pm. It is possible that she will be able to earn well in excess of this as the Husband asserts, she was back in 2020;
- (c) In addition, the Wife appears to have received other sources of income, as evidenced by her Santander accounts and possibly from her mother in Germany;
- (d) In my judgment there is force in the Husband's argument that the Wife has not complied with the orders and penal notices for a reason, which is likely to be that she saw some advantage to keeping the court in the dark as to her current financial arrangements. Having considered the matter carefully, I conclude that it is reasonable to draw inferences in relation to the Wife's current income. Firstly, that has returned to work; Secondly, that it is reasonable to infer she is earning at least £2,100 net pm (i.e. what she was earning last year); Thirdly, that the Wife is regularly in receipt of additional monies which might include some payment from her mother, which I propose to assess modestly at £300 pm. This means that I have drawn inferences that the Wife's income is £2,550 pm comprising her earned income £2,100, some additional unexplained income of £300 pm and her child benefit of £145 pm

53. Because of the Wife's non-engagement in this case, it is difficult to assess her outgoings in detail. I note that she has put forward in her Form E a current total of £4,784 pm, although that was prepared at a time when the children were mainly living with her whereas now the children's care is shared equally between the parties. The current figure is therefore likely to be lower. Doing the best I can on limited information, I have adopted a figure of £3,750 pm which includes the mortgage costs on Property A.

Section 25 factors

Welfare of minor children

54. My first consideration is the welfare of three minor children who are currently aged 7, 6 and 2 respectively. I understand that the children spend equal amounts of time with each parent. It is an important consideration that, if by a degree of stretching and risk taking, the resources can be stretched to provide both parties with owned accommodation (*M v B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 53).

Income, earning capacity, property and other financial resources

55. I have found that the Husband currently earns £6,300 pm net and receives DLA of £505 pm making a grand total (rounding down) of £6,800pm. I do not include his sister's contribution to 'rent' but I have reduced his outgoings to reflect that sum.
56. I have drawn the inference that the Wife has returned to work and is now earning at least £2,100 which with child benefit and other payments I round up to £2,550pm.
57. In terms of the capital assets, I have found that the total value of the assets net of liabilities is **£131,180**
58. I am unable to reach a conclusion as to the extent of the Wife's pension provision but in my view any such provision is likely to be modest and of

limited significance to the outcome of this case, bearing in mind the ages of the parties.

Financial needs and obligations

59. The Husband needs to provide a home for himself and the children while they are minors, and he needs to deal with his debts.
60. His housing need is presently met, albeit very modestly, at Property B, where he lives in a 3-bedroom house with his mother and sister. I note that this is far from ideal, particularly when the children are with him, but it appears to be adequate.
61. The Husband is managing his debts from his income. I have included his figures for debt repayment in my appraisal of his outgoings. I have reached a figure of approximately £5,000 pm for his total outgoings.
62. The Wife similarly needs a home for herself and the children while they are minors and needs to deal with her debts.
63. The Wife's housing need is presently met at Property A which is also a modest property. I have not been provided with any evidence as to where she might otherwise live. She has not provided the directed mortgage information although in my view it is unlikely that she will have a significant mortgage capacity.
64. On one hand I accept that in a modest asset case like this, neither party has an absolute right to reside in owned accommodation. But on the other, I am troubled by the prospect of ordering the sale of Property A. While this will release funds which can be used to repay debt, it will in all likelihood mean that the Wife and the children (when they are living with her) will have to live in rented accommodation, either in the private sector or, assuming that this is even available, in the public sector.
65. I similarly have concerns about the extent of the Wife's liabilities which, according to the Husband, have significantly increased in the past two years

and include several purchases of luxury items. It is unclear how the Wife will be able to manage her finances in future bearing in mind the scale of her credit card debt. However, on balance I have reached the conclusion that the Wife should be given the opportunity to remain living at Property A in order to provide some stability for the children.

66. I have broadly assessed that the Wife's overall needs amount to £3,750pm.

Standard of living

67. The standard of living was comfortable during the marriage. It may be that the parties have lived beyond their means in terms of acquiring expensive chattels and increasing credit card debt when it would have been more sensible for them to reduce their spending.

Age and duration of marriage

68. The parties are now aged 38 and 37 and the duration of the marriage was in the region of 5 ½ years.

Mental and physical disability

69. The Husband suffers from sickle cell anaemia and receives disability living allowance as part of his income. I note that two of the children of the marriage also have sickle cell anaemia.

Contributions

70. In my judgment both parties made a full and equal contribution to this marriage.

Conduct

71. The Wife has engaged in serious litigation misconduct in this case. She has failed to comply with several orders for disclosure. She has not complied with penal notices, and she has failed to attend court on four occasions. This has delayed the proceedings and materially increased the Husband's legal costs, whereby he has attended this final hearing as a litigant in person.

Outcome

72. Firstly, my order is that the Husband shall retain the property at [Property B]. I reject the Wife's case that this property should be sold. I accept that it was acquired before the parties married, without marital funds, and that it provides a home for the Husband, his mother and sister. For reasons explained earlier I am not in a position to make a declaration of beneficial interest in favour of the sister.

73. Secondly, I have considered carefully whether to order a sale of the property at [Property A]. I have concluded that, reflecting the court's first consideration of the welfare of the children, it should be transferred to the Wife in order to provide a home for the children. In addition, I will provide as follows:

(1) The Wife shall be solely responsible for the mortgage secured against 19 Property A from 1 August 2024;

(2) The Wife shall use her best endeavours to secure the Husband's release from the mortgage within three months. The Wife shall in any event indemnify the Husband against all loss relating to this mortgage;

74. It follows that the assets are to be divided as follows:

		Husband	Wife
Property A			
Gross value (agreed) ¹	£350,000		
Mortgage	(£231,742)		
ERP	(£3,476)		
Costs of sale at 2.5%	<u>(£8,750)</u>		
Net equity			£106,032
Property B			
Gross value (agreed) ²	£225,000		
Mortgage	(£115,714)		

¹ Agreed valuations confirmed in order of 2 February 2024, para 13

² Agreed valuations confirmed in order of 2 February 2024, para 13

ERP	(£1,778)		
Costs of sale at 2.5%	(£5,625)		
Net equity		£101,883	
Investments			
Cornerstone	£22,625		
Fidelity	£207		
Crypto	£750		
Deliveroo	£750 / £650	£24,322	£650
Liabilities		(£38,900)	(£62,807)
Totals		£87,305	£43,875

75. I appreciate that this division involves a departure from equality in the Husband's favour. If the total net assets are £131,180 then an exact equal split would be £65,590 each. However, in my view it is acceptable and fair to depart from equality in this case for two main reasons:

(a) I have accepted that the Husband's property (Property B) was acquired before the marriage and therefore to some extent it cannot be described as a marital asset to which the concept of equal sharing should apply;

(b) I here take into account the Wife's litigation misconduct which has significantly added to the duration and expense of this case. As I have noted earlier there have been three ineffective FDR hearings and this final hearing is the seventh hearing, due in large part to the Wife's failure to comply with orders.

76. I retain some doubt as the sustainability of the Wife's position in terms of how she might maintain Property A while also servicing her significant debts. It is possible that she might be compelled to sell it in order to pay her creditors. In such circumstances she will exit this marriage with a modest amount of net capital (circa £43,875) to assist her with a deposit and the costs associated with moving into rented accommodation, leaving her with a modest sum of savings.

77. Turning to income, I order the Husband to pay spousal maintenance to the Wife in the sum of £1,200 pm. This sum is affordable on the Husband's own figures, and it will bridge the gap between what I have inferred is the Wife's income and my own broad assessment of her outgoings.
78. I now turn to the question of the duration of maintenance. I accept the Husband's evidence that the Wife has earned more significant sums in the past (i.e. £45,000 in 2020) and in my view it is reasonable to assume that the Wife will increase her income over time.
79. As to how long this should be, I have in mind an extendable period of four years whereby the Husband will pay £1,200 pm from 1 August 2024 until 1 July 2028. This means that I accept the Husband's case that it is reasonable to assume that the Wife will be able to increase her earned income from c. £2,100 pm to something like £3,600 pm over the next four years, by which stage the children will be 11, 10 and 6. At that stage the amount will reduce to a nominal figure, to be dismissed finally when all of the children reach the age of 18 or complete their secondary education, at which stage (assuming the order has not been discharged because of remarriage or death etc) the order will end with a s.28(1A) bar.
80. That order will be subject to annual indexation from 1 August 2025 referable to any change in the consumer price index.
81. Orders for maintenance are subject to variation. In other words, where there has been a material change of circumstance, either party may seek to vary the amount or change the term.
82. I will also make no order as to costs including in relation to all earlier reserved costs orders. I have taken into account the Wife's litigation misconduct in my overall redistribution of the assets.

Recorder Chandler KC

18 July 2024