IN THE FAMILY COURT
(Financial Remedies)

AT NORWICH
(Sitting at Great Yarmouth Magistrates, County and Family Court)

Neutral Citation: [2024] EWFC 358 (B)

Case No.: 1665-0480-7735-2402

Date: 4 December 2024

Before:
Deputy District Judge Benjamin Rose
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B E T W E E N:

HKW

Applicant

- and -

CRH

Respondent

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Benjamin Philips, Counsel, instructed by **Norton Peskett Solicitors**, for the **Applicant**
The **Respondent** appeared in person

Hearing date: 3 and 4 December 2024
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This judgment is approved for release to the National Archives for publication.

Ex Tempore Judgment

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1. I have had sight of a bundle of 406 pages, a skeleton argument on behalf of the applicant, and heard oral submissions from both parties. References to the bundle are rendered as [page] or [page/paragraph]. This judgment has been prepared overnight

without representations being made on costs. It is not a reserved judgment; it is delivered as an *ex tempore* judgment.

2. Following the President's *Transparency in the Family Courts: Publication of Judgments* Practice Guidance of 19 June 2024, I anticipate that this judgment will, in due course, be released to the National Archives for publication. Given that, and in order to preserve the confidentiality of the parties, I have assigned random three-letter markers for both the Applicant wife, being *HKW* in this judgment, and the Respondent husband denominated *CFH* and have prepared the judgment anonymously from the outset. This means that I have referred to the parties as 'the applicant' and 'the respondent' throughout, rather than calling them by name; no discourtesy is intended.

3. In addition to the parties, there are three adult children of note; 'ARC' and 'ARD' who are the biological children of both parties. In addition 'ATC' features in this judgment, and is the biological child of the applicant with her former husband. There are other adult children of various parentages that do not feature in this judgment, and are all children of previous relationships, of either the applicant or the respondent.

4. There are 4 properties of note within this case; and are denominated for the purposes of this judgment 'No. 2' a property sold to fund a further purchase, 'No. 3', 'No. 11', and 'the Spanish property'.

Background

5. This matter is a final hearing for financial remedies arising from the dissolution of a marriage contracted between the parties on 17 March 2007.

6. There had been a period of pre-marital cohabitation however the precise timescales are disputed.

7. The applicant was born on 6 February 1966, and is 58 years of age at the time of this judgment. She is currently a Property Manager and has a net income of approximately £22,238 per annum. She resides at the property known as No. 3.

8. The respondent was born on 30 October 1963 and is 60 years of age at the time of this judgment. He is a contractor, working on overseas contracts within the nuclear power industry. He has a variable income however for the purposes of these proceedings the figure in the ES1 at [7], being £82,734, made up of £75,534 earned income and £7,200 rental income.

9. The figure in paragraph 8 is disputed by the respondent as he states that sum is reflective of full time work, however as a contractor, he does not work all year round, taking separate contracts with gaps between them.

10. At the time of the filing of the ES1 it was not clear where the respondent was living; this has been confirmed in the course of these proceedings as being the Spanish property, and working internationally as required, most recently in South Africa.

11. For a significant period during this relationship the applicant was unemployed and reliant upon state benefits. This resulted in an overpayment which is now being repaid to the Department for Work and Pensions. I do not look behind this arrangement, nor do I make any findings or draw any inferences against her from the same, despite an invitation from the respondent to show that it is demonstrative of the applicant's dishonesty.

12. The chronology of the relationship is largely agreed, save for the date that cohabitation commenced, and consequently the duration of the relationship.

13. On the applicant's case; the parties met shortly before they began to cohabit in 1993, with marriage occurring on 17 March 2007.

14. The respondent's case states that cohabitation began in 2004, after his divorce from his first wife in 2002. This first marriage subsisted from 1983 to 2002, however he and his first wife separated prior to dissolution, and the respondent confirmed that there was no overlap in relationships, so the cohabitation must have commenced at some point between 1993 and 2002.

15. On either parties case they initially separated in April 2021.

16. The applicant's case is that this marriage, including prior cohabitation, was 28 years. The respondent's case is that the relationship was some 16 years including pre-marital cohabitation.

17. During this initial period, two children were born; ARD in April 1994, and ARC in April 1996.

18. The respondent in these proceedings petitioned for divorce on 27 July 2022, with a conditional order being granted on 1 June 2023.

19. An application came before District Judge Earl on 28 November 2024 which dealt with the respondent's claim that he was obliged to deal with any financial claims outstanding to his first wife which would necessarily impact upon his abilities to discharge financial claims in the instant proceedings. The thrust of this application was that pensions owned by the respondent should be ring fenced in order that they be available to potential future proceedings as yet not instituted.

20. I need not concern myself with the formalities or details of the application for joinder of the first wife before District Judge Earl on 28 November 2024, save to note that his findings were as follows;

"*I am of the view that [the respondent]'s application has been made entirely to derail the current proceedings and concocted by members of the family... [the respondent]'s application is deceitful, a disgrace and deliberately to frustrate the process... As far as [the first wife] I believe that she has been put up to this by you, it is disgraceful and unacceptable. You should be ashamed of the way that you have conducted the case.*"

21. There is no application to set aside or appeal the order of District Judge Earl, nor am I invited to renew the application afresh, therefore I treat the assets as declared within both parties documentation as assets to be dealt with in these proceedings only.

22. I have heard evidence from the applicant by way of her section 25 statement, her Form E, her replies to questions and some minor clarifications by way of examination in chief.

23. Much of this evidence is also found in the background summary commencing at [12]. This document reveals a history peppered with purchases of properties, transfers of the same, and transfers of funds between the parties. The property known as No. 11 was initially a local authority property and was purchased under the right-to-buy scheme in 1996 by the applicant. It is contended by the respondent that the funds to purchase this property were provided by him, and the property was then immediately rented out to the applicant's ex-husband. The rental income from this property was paid to the applicant. This is not disputed.

24. In around December 2002 the parties purchased No. 2, at a significant discount or undervalue from a member of the applicant's extended family. This property was then rented out with the respondent receiving the rental income therefrom. This is not disputed.

25. In mid to late July 2004 the respondent purchased from the applicant her interest in No. 11, I'm told now, and it does not appear to be contested, that this was for market value in the sum of approximately £120,000. A matter of days later the applicant transferred £100,000, that being the net sum after redemption of mortgage and seller's fees, into a joint account to purchase the land upon which the Spanish property would be built.

26. In February 2005 the parties had selected the land and commenced construction of the Spanish property. By this time the parties had moved to Spain and were living in rental accommodation with visits back to the UK.

27. During the period 2013 to 2020 the Spanish property was rented out intermittently and the income was payable into the joint accounts however some payments were also made into the respondent's account.

28. On Christmas Eve 2020 the respondent drew down £68,444 from his pension and placed it in his own account ending 0775. A matter of days later, on 4 January 2021, £65,000 was transferred out of this account into the joint account ending 4492 taking the balance to approximately £105,000.

29. On 19 February 2021 the respondent withdrew £50,000 from the joint account ending 4492 and transferred this back into his sole account ending 0775 stating that his intention was to purchase Premium Bonds or National Savings and Investment products, with the purported purchase taking place some three days later.

30. At some point in April 2021 the applicant unilaterally returned to the United Kingdom and, on the applicant's case, the parties were separated on 23 April 2021.

31. It appears that there were some attempts to reconcile and indeed the applicant had intended to return to Spain in June 2021 however this did not come to fruition.

32. On 24 June 2021 the respondent withdrew £55,358.75 from the joint account ending 4492 transferred it to his own account ending 0775 leaving the joint account with the balance of nil. It is the applicant's contention that this was done without her permission or knowledge.

33. On 6 August 2021 the parties then sold No. 2, and jointly purchased No. 3 for £283,000 using the sale proceeds of No. 2, and a mortgage.

34. On 27 July 2022 the respondent in these proceedings filed a divorce petition, with mediation being assessed as unsuitable some six weeks later and the applicant filing her Form A on 6 October 2022.

35. The following parts of the chronology are subject to some dispute insomuch as the evidence from the parties is contradictory as to the true form of the payments, i.e. was the nature of the same a gift or a loan.

36. On the respondent's case an agreement was entered into with the parties' son ARC for an €80,000 loan and this was then transferred in three unequal sums across the

following three days. These sums were £25,000 each on 12 December 2022 and 13 December 2022, and a final balancing payment of £19,565.22 on 14 December 2022. The reason for these unequal payments I'm told in oral evidence, is due to limits on transfers within the respondent's banking.

37. Between December 2022 and July 2023 there are various stages complied with either in full or in part by both parties in these proceedings. The respondent also ended his payments toward the mortgage on No. 3 at some point in February 2023. In addition, in early December 2022 the respondent's sole account ending 0775, is credited with some £49,900, ostensibly from either the Premium Bonds or National Savings and investment product purchased previously.

38. On 3 July 2023 the respondent used £23,500 from his sole account ending 0775 to purchase a vehicle, A Mercedes Vito van. I have heard much evidence about this van and the circumstances in which it came to be purchased, the respondent's surprise at having to pay VAT on the same, and his seemingly genuinely held belief that he was having to pay the VAT because the seller had not had to do so as he was a business seller.

39. This position is incorrect, however it is beyond the scope of this judgment, and indeed beyond the jurisdiction of this court, to assess the merits or otherwise of the input/output VAT system utilised by His Majesty's Revenue & Customs.

40. An order was made by the court on 20 November 2023 both giving directions regarding valuations and instructions for pensions expert, confirming that a final order would not be granted until all financial matters have been resolved or, in the case of a pension sharing order being made, 28 days after such an order was made.

41. On 13 December 2023 a financial dispute resolution hearing was listed to take place on 26 June 2024.

42. Experts were instructed and reported on the valuations on the Spanish property on 10 January 2024 with a supplementary report including responses to questions on 31 January 2024. The initial report gave a value of €265,000, with the value being

increased to €274,000 on the supplementary report. These reports are found at [198-243].

43. There was a valuation of No. 11 by Mike Simpson FRICS, on 5 March 2024, and commences at [283], giving a valuation for this property of £207,000.

44. This expert also valued No. 3 on 29 July 2024, giving a valuation of £305,000 at [296].

45. There was a pensions report created by Julian Starr, Actuary, dated 3 June 2024 commencing at [244]; the main findings of this report commence at page seven of the report which is [250] in the bundle, and is summarised in tabular form at [254]. This shows a combined CEV for the respondent of £422,603, made up of his private St James Place plan ending 3875 valued at £223,784, and projected state pension of £198,818. It shows a total pension pot for the applicant of £113,799 made-up exclusively of state pension.

46. The pensions expert recommends at page [258] that a transfer or pension sharing order of the respondent's St James' Place pension of between 54.3% and 57.7% to achieve pension capital equilibrium based upon varying assumptions. A finalised calculation to equalise income is found at [260] and recommends a pension share of the St James Place retirement plan in the sum of 69.0%.

47. At some point between 19 February 2024 and 9 May 2024, £26,689.35 was transferred by the respondent from his sole account number ending 0775, to the son ARD. This information was not, on the applicants case, shared with her until after the event. It is the respondent's position that the applicant was aware from ARD that this was happening, and she was in agreement with the same.

48. The FDR took place on 26 June 2024 and was unsuccessful.

49. I have heard evidence from the applicant. Due to the allegations of domestic violence, and the involvement previously of the criminal courts, the respondent was invited to supply questions to be put to the applicant as he was not permitted to cross examine

her directly as he is no longer represented. The questions that were handed to me ran to 14 questions, one of which I amended to remove an allegation of fraud and two I deleted in their entirety as they referred to the domestic violence and abuse which had already been subject to the findings of the criminal courts, and it is not for this court to go behind those findings.

50. Once the applicant had answered the remaining 12 questions I invited the respondent to consider if he had any supplementary questions based upon the answers given and he asked 3 supplementary questions which were in reality commentary upon answers rather than questions in their own right.

51. The applicant's evidence was largely in keeping with her written evidence, there were no significant deviations from it, she remained vehement in her opposition to the position put forward by the respondent that their relationship had started at any other time than in 1993. Sensible concessions were made regarding possession of documentary evidence of the respondent's residence and the reason given for an inability to change the name on her bank account from her maiden name to her married name.

52. I administered the affirmation to the respondent and required him to confirm the veracity of his evidence and that he understood that proceedings for contempt could be brought against those signing or attesting to documents that were not honestly held as true. The reason for this was a defective statement of truth on his statement at [308].

53. In direct contrast to the applicant's evidence, the evidence given by the respondent was at times fractious, obstructive, he failed to answer simple questions when put, instead feigning misunderstanding or an inability to see the relevance of what were clearly pertinent questions put to him, regarding his own financial dealings.

54. The respondent sought to suggest that as No. 11 had not been a "matrimonial home" it should not be deemed as a matrimonial asset, notwithstanding the fact that it had been purchased by the applicant, transferred to the respondent, and rented out at various

times with both parties receiving rental income, during the currency of the relationship.

55. In cross examination it was put to the respondent that the funds transferred to the parties' son ARD to convert his garage into living accommodation mentioned in paragraph 47 of this judgment were marital assets. The respondent indicated that he did not believe it to be so as these funds were given post separation. These funds included £20,000 towards renovation works, and the remaining balance in dribs and drabs across a six-week period, with the smallest payment being £773 and the largest £1245. It was asserted by the respondent that the payment for £1037 was reimbursement of an Airbnb rental for ARD's birthday.

56. It was put directly to the respondent that ARD was simply holding the funds pending the outcome of these proceedings and they will be returned to the respondent in an attempt to defeat or diminish the marital pot available. This was disputed by the respondent, however he could not explain why he would transfer £20,000 in early May 2024 for renovation works without sight of any plans or planning permission being obtained and indeed it is still correct today that no plans have been drawn up and no planning permission has been obtained.

57. It was likewise put to the respondent directly that ARC was holding the equivalent euro sum of the £69,656 send to him between 12 and 14 December 2022. Within the Form E of the respondent, that was stated as being correct by the respondent when giving his evidence in chief, it is stated but this sum was a loan and that a loan agreement was drawn up. Indeed it is contended that some 23 repayments have been made at €1000 per calendar month. It was asserted by the respondent that the reason for the loan agreement was that ARC needed a loan agreement in case the Spanish tax authorities requested any information which would give rise to gift tax, which is levied at varying rates but would in any event give rise to a tax liability of not less than 30%.

58. The respondent denied that the funds sent to ARC were matrimonial assets notwithstanding that they were a drawdown of the St James's place pension. This argument was seemingly predicated up on the assumption that a. The pension rights

were accrued prior to the respondents asserted date of cohabitation and b. That the drawdown was after the parties had separated.

59. The respondent then unequivocally confirmed that this sum was a gift. He refused to accept that the loan agreement was a sham. When taken to [77] part 2.6 of his form E, where it stated that this was a loan, and it was put to him that it was underhanded to sign a loan agreement to simply avoid tax the respondent indicated that ARC had taken advice and it was his idea. At this point I interjected as ARC was not a party to these proceedings and that he was not able to answer the allegations being put by his father that he was potentially defrauding either the tax authorities in Spain or His Majesty's Revenue and Customs in the UK. The respondent subsequently stated this money was a loan however if his financial position improved and he was able to regift the sums paid back to him then he would do so.

60. The cross examination then turned to four different vehicles, first a Mercedes-Benz van valued at £2245, using a 'we buy any van' valuation, It is said that this van was transferred to one of the other children in order that their vehicle a Ford Mondeo, could be given to the daughter ATC. The respondent was not able to show any evidence that the vehicle had ever been transferred and disagreed when it was put to him but this was a deliberate act to diminish the marital pot further.

61. The next vehicle considered was a Volkswagen Golf valued at £4378, which was gifted to ARC, in place of his aged BMW motor car. The method of valuation in this instance was again asserted to be agreed with the applicant solicitor.

62. The third vehicle is the Mercedes-Benz Vito which was purchased in July 2023 for £23,500, this vehicle has been driven less than 10,000 miles in the previous 15 months and yet the 'we buy any van' valuation was £17,025. This is the same vehicle as in paragraph 38 of this judgment.

63. The final vehicle discussed with the respondent was a BMW valued at approximately £6000 at [78] within the respondent's Form E, seemingly this valuation is based upon scrolling through eBay looking at similar cars situated in the United Kingdom, however this vehicle is in Spain, has been declared off the road and is right hand drive

so of limited use in Spain. Consequently the respondent has valued it using we buy any car in July 2023 only eight months after his Form E at only little over £500. Under cross examination the reason for the difference in price was put down to the location of the vehicle and the lack of desirability of the right hand drive vehicle in continental Europe. This does not, in my estimation, reflect the true value of the vehicle and the form E valuation is more likely to be correct.

64. In his closing submissions, that I had given both the full lunch hour and then an extra 45 minutes, the respondent asserted that the applicant was being dishonest in both her evidence, and also in her dealings with the department for work and pensions. He sought to persuade me that as he purchased No. 11 from the applicant at full market rate, and that this ought to be ring fenced as a non-matrimonial asset. He also sought to persuade me that No. 3 was overvalued and that his incredibly generous pensions should be ring fenced as non matrimonial assets, and that the applicant still had time to pay into her state pension. The respondent again asked me to take into account his first wife's potential entitlement to some of his pension certainly until 2002. As a final throwaway comment, the respondent pointed out that there was a difficulty with the Spanish property, as the property being built by ARC relies on the Spanish property for its electricity supply, and that there are various issues with the drainage as described in his oral evidence, that he would feel morally obliged to disclose to any purchaser.

65. Mr. Phillips for the applicant usefully and helpfully mapped out findings that he required should he be successful in persuading me that the applicant's position was correct.

66. The findings that Mr Phillips sought where those of;

    i. the duration of the relationship,
    ii. whether No. 11 ought to be ring-fenced for the benefit of the respondent,
    iii. whether the respondent’s pension assets ought to be ring-fenced,
    iv. whether the €80,000 loan to ARC was a true loan or whether it ought to be subject to a s.37 addback,

v. whether the £26,689.35 gift to ARD was a true gift or whether it ought to be subject to a s.37 addback,

67. I find as a fact that the parties were in a familial relationship including cohabitation from 1993 as expounded and supported by the applicant's photographic evidence of a doting father fully involved in the day-to-day life of his partner and children. The photographs provided by the applicant commencing at [371] and running to [387] show a long and detailed photographic history that flies in the face of the assertion made by the respondent that he was at best some form of passing acquaintance who occasionally stayed. In coming to this finding I've given consideration to the Kimber factors in that this evidence plainly shows habitual living together, and sharing of daily life albeit there may have been periods when the respondent was not there. The mingling of finances are clearly demonstrated, not only by the comments I have made previously regarding No. 11 and the purchase of the Spanish property, but clearly and unequivocally in the solicitors and bank correspondence found at [352 - 353]. The slightly more visceral points regarding an ongoing sexual relationship within the Kimber factors is borne out by the very existence of ARD, born 1994, and ARC, born 1996. These two children were born within three years of when the applicant states the relationship began properly. The respondent's contention that the relationship was anything less than full familial living at this point, not only does not stand up to scrutiny, but is in my finding a fallacy, and a wilfully dishonest one at that, and seeks to paint his children in a less than flattering light.

68. There is no reason in principle or in law why No. 11 ought to be ring-fenced for the benefit of the respondent, it was purchased by the applicant initially utilising her right to buy discount, the funds used to buy her out were provided by the respondent from his pension, both parties have subsequently benefited from this property both in terms of residence with the children and income from subsequent tenants. Mr. Phillips does not mischaracterise this property when he says that it is truly woven through the fabric of this relationship. It is a marital asset pursuant to *Hart v Hart* [2018] 1 FLR 1283.

69. I find no reason in principle or in law why the respondent's pension accrued, on his own evidence, between 1989 and 2004 should not form part of the marital asset pot on the basis that this relationship, pursuant to my finding in paragraph 67, subsisted from

1993 to 2021. The vast bulk of this pension was accrued during the relationship between the parties, it is a marital asset pursuant to *Hart.* The invitation from the respondent to pay some heed to a potential claim by his ex-wife from 1983 is a nonsense. Once that relationship was ended in or before 1993 any claim she may have had would be limited to that short initial four year period. Simply because the respondent did not finalise that divorce until 2002 does not, in my finding, give the previous wife an interest in post separation pension accruals.

70. When considering the €80,000 loan to ARC, [304] clearly states that the source of this loan was either drawdown from pension assets, or a combination of drawdown and remortgage of No. 11. Given my findings in paragraph 68 and 69 of this judgement it necessarily follows that these sums were marital assets at the time they were given and they were given, in my finding, without the express or implicit consent of the applicant. My further finding is that these transfers were done with the sole intention of defeating the applicant's action for financial remedy and consequently meets the requirements for a s.37 addback; this is neither a loan, nor a gift; it is an attempt to put funds beyond the reach of the applicant.

71. The purported gift of £26,689.35 to ARD, coupled with an apparent quick discussion, and then a number of transfers across a relatively short period of time of around three months, whilst having no concrete or firm plans, architects drawings, budget, or planning permission or application render this payment an attempt to put funds beyond the reach of the applicant. Given that these purported gifts were made within the last nine months, indeed within the latter stages of these proceedings, it is a plain and obvious attempt to defeat these proceedings and consequently likewise meets the requirements for a s.37 addback.

72. Whilst I accept that it appears it was agreed between the parties that the use of a sub prime vehicle purchasing service would be the method for valuing the vans and the cars, I cannot overlook the unevidenced transfers of the Mercedes-Benz van and the Volkswagen at an undervalue, nor do I find that the reasoning given by the respondent for the devaluation of the BMW are reasonable. Consequently the values of £2250 for the Mercedes-Benz van, £4500 for the value of the Volkswagen, and the £6000 value of the BMW are to be deemed as available to the respondent.

73. I do not make the same finding in respect of the Mercedes Benz Vito as this was an agreed method of valuation between the parties or their representatives and there has been no such transfer of this vehicle. The choice to use a subprime vehicle purchasing service as a means of valuing the vehicles is unhelpful as it is anecdotally known at this site does not offer full market value and this explains the 30% dip in value for the Mercedes-Benz Vito, however the asset remains available to the respondent and therefore its full value is the deemed value available.

74. I see no reason to depart from the recommendations of the pensions expert and there will be a 57.7% sharing order against the St James's Place pension currently held by the respondent in the favour of the applicant. Given that the applicant is now in employment the costs of implementing the pension share order are to be borne equally by the parties.

75. In the closing moments on the first day of this hearing a further offer was put forward by the applicant's barrister, seemingly to get around some of the issues of having a respondent who routinely worked overseas and had little to no access to his documents. This revised offer was that No. 3 was to be retained by the applicant, No. 11 was to be sold, and the Spanish property retained by the respondent, on the basis that he is living there presently and it is inextricably linked to the property being built by the son ARC next door. This would leave a balancing payment to be paid from the respondent to the applicant to equalise capital in sum of £7845. In the absence of any agreement overnight between the parties as to what they will do, I find that this is a reasonable and achievable outcome, and largely addresses the issues raised by the respondent that he would find it difficult to pay a large lump sum as previously indicated, of £38,915 if the Spanish property were to be sold, and the respondent retained No. 11.

76. The final point to address is the application for spousal maintenance, this is sought at a nominal sum of £1 per annum, to preserve the applicant's position in the event of undue hardship between the making of this order and her achieving the first of her state pension age of 67, her remarriage, her death, or further order of the court. It is a long held position of the court that the parties ought to make such endeavours as to make themselves financially independent and achieve a clean break wherever

possible, pursuant to the findings of Hale LJ in *Miller & McFarlane* [2006] 1 FLR 1186. My finding and my order regarding this particular point is that given the applicant is now working, will have pension provision by way of a private pension, and will have the benefit of a property free of mortgage that it is inappropriate for the parties to remain financially bound after the pension sharing order and any property transfers have been executed.

77. In reaching my decisions I have had due regard for the established case law regarding the yardstick of equality, and equalisation of income and capital as discussed in *White v White* [2000] UKHL 54, and *Charman v Charman* [2007] EWCA Civ 503. I do not find this is a case in which a departure from equality is warranted as the bulk of the assets are intermingled marital assets, accrued over a long period of time and there has clearly been a joint enterprise between the parties to maximise the applicant's benefit income by selectively declaring residence between 1993 and 2002, this is being repaid by the applicant alone.

78. The relevant law is found at s.25 of the 1973 Act, I have considered the s.25 checklist and whilst I do not slavishly reproduce it, this case is a sharing case where the assets plainly outstrip the needs of the parties, the items in dispute are discrete and set out at paragraph 66 of this judgment, and therefore there is less weight placed upon the 'needs' based section 25 Factors, and instead the principle of fairness is the basis of the decision.

79. In addition, I am required to consider the case of *A, B, and C (Children*) [2021] EWCA Civ 451 with regard to the honesty of a witness and the threefold test expounded in the case of *R v. Lucas* [1981] QB 720 and their relevance to the overarching proceedings.

80. District Judge Earl made findings of dishonesty against the respondent in the application on 28 November 2024, and I have made similar findings today, particularly regarding the transfers to ARC, ARD and the vehicular transfers, and have directed that these be subject to s.37 addbacks.

81. There are historic allegations, and indeed criminal court involvement, regarding domestic abuse perpetrated by the respondent against the applicant. I heard evidence from the respondent in which he sought to portray the applicant as a scrounger, someone who lived their life on benefits gaming the system and someone who had been caught out and was now having to pay back their fraudulently gotten gains. He deliberately portrayed her as unemployed knowing full well that, at various points, and even today, she is in employment. He went further to portray a person with something of a 'revolving door' of partners, indeed he made reference to wearing some of her ex-husband's clothes on the first day of this hearing. When challenged he acted with prickly indignation when his integrity was called into question. Even in his closing submissions, he tried to rekindle the relationship, stating that he simply thought it was very sad that it had come to this and that he wished to remain married to the applicant.

82. There is only one reason for such assertions and it is encompassed in the judgment of Hayden J in *F v M* [2021] EWFC 4 (Fam) at paragraph 4 when discussing coercive conduct;

"*In the Family Court, that expression is given no legal definition, in my judgement, it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that coercion will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling Behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a pattern or a series of acts the impact of which must be assessed cumulatively and rarely in isolation*."

83. Having considered the case in a holistic manner, the findings of District Judge Earl, my own assessment of the conduct shown in evidence, and by observation of the respondent's conduct toward the applicant over the last two days; I am satisfied that this is a case as described by Hayden J in *F v M* in which the respondent has sought to exercise control over the applicant.

84. Cost orders were made by District Judge Earl on 28 November 2024 which require summary assessment today and I assess these costs in same way as the general costs in this matter.

85. With regard to the overarching costs of the action; Rule 28.1 of the Family Procedure Rules 2010 empowers the court to make such order as to costs as it thinks just.

86. The general rule against costs orders being made in financial remedy proceedings is expressly disapplied by rule 28.3(6) in matters where litigation conduct is raised. Instead, Part 44 of the Civil Procedure Rules 1998 applies but with some rules, including rule 44.2(2), explicitly excluded.

87. Since the general rule in civil proceedings - that the unsuccessful party will be ordered to pay the costs of the successful party - appears at CPR 44.2(2), this means that neither general rule applies in applications for remedy and the court starts with a "clean sheet".

88. The surviving parts of CPR 44.2 say:

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction - Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

89. The clean sheet approach has been described as being a "soft-costs-follow-the-event" regime, although the authorities vary on whether a parties' success leads to a 'starting point' that they are entitled to their costs (e.g. *Judge v Judge* [2008] EWCA Civ 1458, per Wilson LJ) or whether, as Ward LJ said in *Baker v Rowe* [2009] EWCA Civ 1162 (at [35]), a judge "could not properly ignore the fact that one side had won and the other had lost but that is not determinative nor even his starting point. It is simply a fact to weigh."

90. It is plain in this application which party has won and which has lost, and in addition, against whom both I and District Judge Earl have made findings of dishonesty.

91. Consequently District Judge Earl has already assessed those costs and I am not required to do so.

92. I award the applicant her costs of pursuing this action, due to the delays, and the unreasonable and deceitful conduct of the respondent, and this is to be subject to detailed assessment in the absence of agreement.

93. The consequential orders for property transfers and a pension sharing order are to be drafted by the solicitor for the applicant and filed at court within the next 14 days. In the event that the respondent does not comply with any aspect of this judgment, then the court shall sign such documents as are required to give efficacy to this order.