IMPORTANT NOTICE

This judgment was delivered in private, but the judge has given permission for this version of the judgment to be published. It follows that those people named in this judgment can be identified but the firm of solicitors, referred to in the judgment as "XYZ" cannot be identified and the firm's anonymity must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2019] EWHC 3330 (fam)

Case No: ZC14D03637

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 November 2019

Before :

Mr Justice Moor

- -

Between :

Terry John Neil

Applicant

-and-

Soraya Jasmine Neil (aka as Henderson)

Respondent

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- -

Ms Deborah Bangay QC for the **Applicant** (instructed by Hughmans)
The **Respondent** appeared in person

Hearing dates: 18 to 22 November 2019

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JUDGMENT

MR JUSTICE MOOR:-

1. This is an application by Terry John Neil dated 18 September 2017 to set aside Paragraph 26 of an order made by Airey DDJ on 8 July 2017 (but it must

mean 2015); for determination of the amount for which the Respondent, Soraya Jasmine Neil (also known as Henderson) is liable to him in relation to his share of the proceeds of sale of the former matrimonial home, Claybank; and for an order for the payment of the amount determined to be due. His case is that the July 2015 order was obtained by fraud.

2. There are two cross-applications made by the Respondent. The first is dated 26 October 2017 and is for enforcement of maintenance arrears by such method as the court deems most appropriate, as well as to vary a periodical payments order. The second application is dated 6 September 2018 and claims to be for maintenance pending suit. The Respondent is in person and it would therefore be wrong to be too critical of her but that second application must be dismissed as there has been a Decree Absolute so there is no jurisdiction for maintenance pending suit whatever view I take of the 2015 order. She denies any fraud emphatically. She puts it well when she says that there are only two factual issues in the case, namely did he sign the various orders and did he know what they contained.

3. I propose to refer to the Applicant as "the Husband" and the Respondent as "the Wife". I do so solely for the case of convenience, given that they have been divorced for a long time. I mean absolutely no disrespect to either by so doing.

The relevant history

4. The case has a long history. It will be necessary for me to set out a good deal of it to put the case into context. There is much that is in dispute. If a fact is in issue, I will make that clear. For the avoidance of doubt, this section does not amount to findings of fact on matters that are in dispute.

5. The Husband was born on 20 August 1966, so he is aged 53. He is the Chairman of West End Piccadilly Ltd, which supplies security and other staff to West End clubs and restaurants. The Wife was born on 10 January 1967, so she is aged 52. She is currently in receipt of employment support allowance and housing benefit.

6. Both parties have adult children by previous relationships. I have heard oral evidence from one of these children, Daniel Henderson-Neil, who was born on 26 February 1989. He is therefore aged 30 and is the Wife's son by a previous relationship. The Husband has two children by a previous relationship, Jessica also now 30 and Jack, aged 26.

7. The parties commenced cohabitation in approximately 1992 but did not marry until March 2007. There is one child of their marriage, Yasmin, who was born on 31 January 1997, so she is now aged 22. The former matrimonial home was a substantial property known as Claybank, Blackpond Lane, Farnham Royal, Slough.

8. In 2002, a company called Manage Security Services Ltd (hereafter "MSS") was created by the Husband, the Wife and others. The shareholding structure

appears quite complex and does not matter given that I understand that the Husband and the Wife beneficially owned at most 33.33% of the shares between them. The business traded as TSS Security UK ("TSS"). Both the Wife and the Husband worked full time in the business with the Husband as the Managing Director, dealing with operations and the Wife as the main administrator, who also dealt with finance. It appears the Wife resigned as a director on 10 October 2014, but she continued to work for the business, and I have not explored why she resigned as a director when she did.

9. The parties separated on 14 January 2014. There was some suggestion from the Wife that this was only a trial separation although this is strenuously denied by the Husband. The Husband vacated Claybank and moved to a rented property in Beaconsfield. From 24 May to 22 June 2014, the parties undertook three mediation sessions with Frank Auton, a mediator from the Thames Valley Mediation Service. These sessions resulted in a Memorandum of Understanding (hereafter "the MOU") dated 22 July 2014. It is right to note that it is headed "without prejudice" and the document itself says that it is "legally privileged and without prejudice. It does not record or create a legally binding agreement between them. They understand that they may take this document to their legal advisors to be used as the basis for a legally binding agreement subject to the advice they receive".

10. The terms of the MOU were that Claybank was to be sold and the net proceeds were to be divided equally but the Wife would receive the first £1 million from the sale to enable her to purchase a house for herself and Yasmin (known as Jazzy). If this amounted to more than 50% of the equity, the difference would be reflected as a charge on her new property in the Husband's favour. This charge would be realised only if she sold the property or remarried. The document suggests the property was worth £2.8 million with a resulting equity of £1.77 million net. They would retain their house in Spain in joint ownership and eventually share any proceeds of sale. They both intended to remain as directors of the business, but they wished to have a clean break agreement as they "have sufficient assets between them to achieve this". A section headed "maintenance for Soraya" said that "spousal maintenance was not considered necessary, due to their professional careers, substantial and equal incomes and assets". At the time, they were each earning £8,500 per month from the business although, following the separation, the Husband's rent was also paid. Initially, this was at the rate of £2,000 per month but it subsequently increased to £4,500 per month. On 1 October 2014, the Wife's pay increased to £12,500 per month net. She says this was to reflect the fact that the business was paying the Husband's rent. There were a number of subsidiary issues dealt with in the MOU that are not material to my decision. Finally, under the heading "future inheritance prospects", it said that neither of them anticipated an inheritance in the foreseeable future" and they wished for all future claims between them to be dismissed. It does appear that some minor amendments were made on 19 December 2014 but nothing material to this judgment.

11. The Wife instructed XYZ (hereafter "XYZ"). On 5 December 2014, she told XYZ that she had reached a verbal financial agreement with the Husband. She

was not seeking maintenance for herself but needed to keep the option open should her circumstances change. She said she was to get the first £1 million of the proceeds of sale of Claybank and the Husband was to get the balance. The Husband did not instruct lawyers but, by 8 January 2015, he had agreed with the Wife that he would pay £5,500 per month towards the expenses of Claybank until its sale. A first draft of a consent order was prepared by XYZ and sent to the Wife on 9 March 2015. It is said that it reflected her instructions in respect of the agreement she had reached with the Husband, but the draft includes many requests to the Wife for further clarification. It noted that each had received £103,000 following an equal division of their savings. It provided for £1 million of the proceeds of sale of Claybank to be paid to the Wife with the balance to the Husband. There was a recital that the Wife would undertake to place a charge on her new property in favour of the Husband to the extent that the £1 million she was to receive exceeded her half share. There was a nominal periodical payments order until the Husband's 65th birthday, the death of either party, the Wife's remarriage or a further order terminating payments.

12. A Decree Nisi was pronounced on 27 March 2015. On 8 April 2015, the Wife told XYZ to delete the clause that the nominal maintenance would terminate on remarriage. XYZ did so but that was not, of course, possible as a matter of law. On 5 May 2015, she sent XYZ an email saying that she had removed her obligation to secure a guarantee against her next property in favour of the Husband, as that had "been agreed between us". On 6 May 2015, XYZ sent a further revised draft order that did remove the obligation to create a charge over the Wife's new property. This draft was sent by XYZ to the Husband on 11 May 2015. The accompanying letter is important. It refers to the parties having attended mediation the previous year and having reached agreement in this regard. It goes on to say that the draft consent order "reflects the terms of the agreement," although it did not, of course, do so, particularly in relation to the charge back and the nominal maintenance order. Having said that, there was a large inconsistency in the draft. For example, at [18], it said that the net proceeds of sale were to be divided equally but the Wife was to receive £1 million from the proceeds of sale. The Husband gave an undertaking to pay £5,500 per month into the joint bank account to meet the balance of the outgoings of the family home until it was sold. The nominal maintenance provision did, once more, include termination on re-marriage.

13. Surprisingly, this was the only attempt at direct communication by XYZ with the Husband. It is right that he reacted badly to receiving the letter. He sent an email to the Wife the same day, saying "please tell them not to contact me I really don't want stuff like that slapping me in the face…its deleted and not responded to". This response was very unfortunate and led to many of the problems that have since occurred although it does not, in any way, excuse any fraud I find proved.

14. The Wife did manage to get the Husband to sign this draft order. She also signed. She returned it to XYZ on 18 May 2015. The Husband admits he signed this draft but says that he did not read it properly. It is clear that the Wife had been negotiating a mortgage from Coutts to help her buy her new

property. The following day, 19 May 2015, the Wife sent an email to Coutts asking for confirmation they had all they needed for her to purchase a property for £1.65 million. When Coutts asked if the mortgage would be the same, the Wife said she would prefer £150,000 more. On 20 May 2015, the Wife sent Miles Kean of Coutts a draft order. This draft included a clause for substantive periodical payments of £66,000 per annum (£5,500 per month) from 1 April 2015 until the same trigger events although the Wife had deleted "the Applicant's remarriage" by putting a line through it. This document was not signed by either party. On 21 May 2015, Miles Kean of Coutts sent an email to the wife asking for confirmation of the periodical payments saying that it was "the real key" and saying that he needed to substantiate that it would last for the term of the loan. On 1 June 2015, Coutts made a mortgage offer to the Wife of £900,000. The bank sought a certified copy of the court order on 3 June 2015, making the point that their copy was only a draft. The Wife responded that the "divorce is with the courts" but that she and the Husband had signed the draft financial order.

15. On 4 June 2015, XYZ sent the signed version (that did not include the substantive periodical payments order) to the court for the order to be made and sealed. The following day, Coutts said that the bank required both the draft signed by both parties and an email/written consent from the Husband confirming he was happy with the settlement. The Wife said she would get on it straight away. She then emailed XYZ on 10 June 2015 to say that there had been a development and the financial agreement had to be changed to reflect it, saying "Terry's current maintenance payments to me of £5,500 pcm will continue after the Decree Nisei and until I remarry." She asked for the document to be amended and returned to the parties for signing. She added that it was urgent as it was required by Coutts to sanction the new mortgage. In consequence, XYZ retrieved the original order from the court. The Wife then sent an email to Coutts saying that "Terry will email you separately to confirm his agreement to the settlement proposals". She then sent an email to the Husband asking him "to email Miles at Coutts…that you are in agreement with our financial settlement including a monthly alimony payment of £5,500 after declaration of the Decree Nisei". The Husband says he never received this email. He asserts that the Wife had full access to his email at TSS and that she must have deleted it before he read it.

16. Although XYZ queried the amendment, noting that the Wife's income was £12,500 per month whereas the Husband's was £8,500 per month, the firm followed instructions and amended the order on 11 June 2015. Two changes were made. First, Paragraph 18 was amended to remove the clause that referred to the net proceeds of sale of Claybank being divided equally, which was referred to as "tidying up" the recital. Second, the periodical payments order of £5,500 per month was added at Paragraph 26. The Wife told XYZ on 12 June 2015 that "Terry is on his way over to sign". The Wife then emailed Coutts to say that "any shortfall in alimony incurred through court revision will be met by an equal increase in my salary". At 1335, she sent the draft order to Coutts. It was unsigned by her but purported to be signed by the Husband. At 1338, she sent a further email to the Husband asking him to confirm the agreement to Miles Kean at Coutts. At 1402, she sent the draft

order signed by both parties to Coutts. She then left for a holiday in Los Angeles and Hawaii on a flight at 1545. She did not return until 27 June 2015.

17. The Spanish property had by now been sold, so XYZ redrafted the order to reflect that on 15 June 2015. At 1513 UK time, she sent an email to XYZ saying that the draft was fine to proceed. Also, at 1513, an email was sent from the Husband's mail box to Cecily Robinson at Coutts saying that he was confirming "that I am in agreement with our financial settlement including a monthly ongoing alimony payment of £5,500 pcm after declaration of the Decree Nisei". Again, it is his case that he did not send this email and the Wife must have sent it from his email address. She says that this would not have been possible given that she emailed Coutts at exactly the same time. At 1516, she emailed the Husband thanking him for his email, but he says he did not get that either. The same day XYZ lodged the consent order at court. At 1518, an email was sent from the Husband's email account to Miles Kean confirming his agreement. Once again, Decree Nisi was spelt "Decree Nisei".

18. The Wife signed the final version of the order when she returned from holiday. She says the Husband also signed and there is a signature on the document that purports be from him. The document, apparently signed by both, was sent to XYZ on 30 June 2015 by Stephen Howell, an employee of TSS. Airey DDJ appears to have first approved the consent order on 2 July 2015, but it was dated 8 July 2015 with some very small and inconsequential amendments. The Wife received her mortgage offer from Coutts on 6 July 2015 based on a gross salary of £259,000 per annum and alimony of £66,000 per annum. The Decree Absolute was pronounced on 7 August 2015.

19. Claybank was sold on 30 November 2015 for £2,350,000. The net proceeds of sale came to £1,348,930. The entire net proceeds were, by agreement, transferred to an account in the Wife's name for reasons that I do not understand. Even on the basis of the consent order, the Husband was entitled to £348,930 but he did not get this sum. The Wife did transfer £100,000 to him on 21 December 2015. She proceeded to buy a new home, known as Kerry House, with a mortgage from Coutts. It appears that £123,750 of the surplus money was used to pay the stamp duty. On 4 February 2016, the Wife sent the Husband an email refusing to put a charge on her new property "while Gaza exists, you will just have to trust me like I once trusted you". Gaza was a reference to the Husband's girlfriend, Ghazel Jahanbin.

20. As 2016 progressed, there were undoubtedly serious difficulties in MSS/TSS. I have not investigated the very serious cross-allegations and cannot make any findings of fact in relation to them. In the course of an email from the Wife to the Husband on 7 March 2016, she complained about his behaviour and said that if this continued, she would be forced to seek constructive dismissal and "personal maintenance from you". On 9 March 2016, the Husband replied referring to the Wife changing deals for her benefit and his loss. He says he signed "a maintenance order ie for you to secure your home". The Wife complained in an email dated 3 April 2016 that he was "in arrears of a 5k monthly maintenance payment you signed in agreement to". The Husband's response said that the "maintenance order was done for you as your aware do

you remember?" He was also seeking his "550ish…as you legitamatly owe me this money." He also asks "maintenance for what" and says "it's disgusting that u ask me a favour to get u a loan of 150k…"

21. The Husband complains on 18 April 2016 that he was "set up with the maintenance order and equity situation" and, on 20 April 2016 that "you asked me to sign the papas for you in order to get the loan; I don't wish to revise; just keep to the original agreement which is half the equity in Claybank". He later adds that the "maintenance order was set up in order for you to borrow £150k wherein you stated it was a paperwork exercise" and asks her directly if this is true both as to the equity in Claybank and the 150k loan. The Wife responds on 21 April 2016 that she was "not claiming maintenance am I. I am letting it roll." The following day, 22 April 2016, the Husband sends another email in which he asks her "will you be paying me 50% equity of Kerry House. You asked me to sign maintenance papers of £5,000 pcm in order for you to secure loan of £150,000; I did this in goodwill for you with you obviously stating that I wouldn't be paying the monies to you." By 9 May 2016, he asks if she intends to steal his equity and says "Maintenance, again there is no way on the world that I would pay for this. Set up ie for you get new business."

22. On 17 June 2016, the Wife's access to the MSS server was terminated on the Husband's instruction so she could no longer send or receive emails from Soraya@tsssecurity.com. The Husband then instructed his current solicitors, Hughmans. The firm requested payment from the Wife on 17 August 2016 of the sum of £248,931. XYZ responded on the Wife's behalf on 23 September 2016 demanding payment of £82,500 in arrears of periodical payments. A copy of the court order was forwarded to Hughmans, although it was not the sealed version with Airey DDJ's name added. A second much longer letter referred to the Husband agreeing to loan to the Wife the sum of £150,000 to assist with purchase of the Wife's property, which was to be secured by a legal charge and paid on sale. It is said that this was documented on the respective email addresses that the Wife no longer had access to. The letter goes on to suggest that the Husband subsequently said that a charge was not necessary and that he would recoup the sum of £150,000 out of the business. The response from the Husband's solicitors on 4 October 2016 said that the order "bears no relation to that which (the Husband) thought he had agreed with your client" and seeks all correspondence/communications with the Husband.

23. By now, the dispute in relation to MSS was in full flow with proceedings in the Chancery Division. There were allegations of the misappropriation of funds and an alleged raid on the business premises by the Wife. It is said that the Wife resigned from the business on the day of a disciplinary hearing. An injunction was made against the Wife and, in response, on 4 November 2016, she served a witness statement from a woman called Eva Borkova exhibiting various documents dated 1 November 2016 purportedly signed by Ms Borkova. In January 2017, MSS went into administration although the Wife says that the Husband and his new business partner, Mr Richard Traviss immediately bought the business out of administration as a "Phoenix"

arrangement and continued trading under a new company structure, West End Piccadilly Limited.

24. The Wife sold her new property, Kerry House, on 2 March 2017 for £2,075,000. She received £1,178,000. Of this money, she transferred a sum of £620,000 to Mr Hart, her then boyfriend. She says this was to repay money he loaned to her. Whilst the Husband does not accept this, I have not investigated any of this and do not take it into account in any way. It may be relevant in relation to the Wife's subsequent bankruptcy but that is not a matter for me.

25. In the Chancery Division proceedings, the Husband alleged that the Wife had relied on a false statement, namely the witness statement of Ms Borkova. Mr Robert Miles QC, sitting as a Deputy High Court Judge, found that there was a strong prima facie case against the Wife and permitted an application to commit her to prison for contempt of court to proceed. Eventually, however, the litigation itself was compromised. A Tomlin order was made by Asplin J on 31 August 2017. Although I am told by the Wife that the terms of the agreement are confidential and cannot be disclosed, it seems tolerably clear that a sum of £177,500 was paid to the administrators of MSS. I am not clear exactly who paid this sum although the Defendants were the Wife, Mr Hart and a company called Tailored Risk Solutions Limited (hereafter "TRS"). On 9 August 2017, Daniel Henderson-Neil had been appointed as a director of TRS. The suggestion is that this was to enable him to authorise the payment as a director. A signature purporting to be his appears on the agreement, but he says this was all done without his knowledge and it is not his signature. His appointment as a director was terminated on 16 August 2017.

26. On 1 September 2017, the Wife herself wrote to the Husband's solicitors, claiming the Husband was in arrears of periodical payments of £150,000 and asking for the maintenance of £5,500 per month to commence forthwith. The Husband's solicitors responded on 5 September 2017, alleging the July 2015 order was procured by forgery and fraud on the Wife's part, saying he will pursue an application to set the order aside and seeking enforcement of the sum of £574,465, namely half the equity in Claybank less the £100,000 already paid.

27. He duly made the application to set aside on 18 September 2017. His statement in support is dated the same day. He accepts he did not take legal advice following the MOU and in the run up to the consent order. He says the first draft of that order, as lodged with the court, was contrary to the MOU as it provided for £1 million to the Wife absolutely with no charge in his favour, plus nominal maintenance that he had not agreed. He says the sealed order differed further as it provided for spousal maintenance of £5,500 per month which he had never agreed to pay. He says that he does recall discussions with the Wife in which she said she had to raise a loan of £150,000 and needed him to provide a guarantee for repayments of £5,000 per month for three years. He says he does not recall signing anything but was entirely trusting of the Wife. He may have signed a document but, if so, he did not properly read it or understand it. He says he was due £674,465 from the

proceeds of sale of Claybank of which he should have had £348,930 immediately. He says he acquiesced in the Wife receiving the entire proceeds, other than the initial payment of £100,000 that she sent to him. There was no charge over her new property, Kerry House.

28. As I have already indicated, the Wife sought enforcement of the maintenance arrears and an upward variation of the periodical payments order on 26 October 2017. Her statement is dated the same day. She confirms that the Husband did pay £5,500 per month towards the costs of the home until it was sold in November 2015, although she gets the date wrong. She says the spousal maintenance was to allow her to purchase a property their daughter wanted her to purchase. She adds that, although the Husband's income was less than hers, the company paid for everything for him and he got huge bonuses. She denies forging the signature of a shareholder of the company (Ms Borkova) and claims it was the Husband who was siphoning off money, not her. She complains that he ran the business into the ground and then did a "Phoenix" into a new company. She says in a second statement of the same date that she was living in a bed sit and relying on the charity of friends.

29. Zacaroli J heard the committal application over eight days commencing on 20 November 2017. His judgment is dated 23 January 2018. He found the Wife to be in contempt of court on four of the seven grounds alleged against her. These were, in essence, serving a witness statement exhibiting forged documents and use of the document in court, knowing it to be forged. He found that she had lied to him throughout her evidence even though she had been steadfast in protesting her innocence.

30. She filed a witness statement in those proceedings dated 31 January 2018 in which she accepted that the Judge correctly found that the documents were forgeries and that she knowingly and wrongly used them. It is clear from this case, however, that it remains her position that she was not the forger herself. She apologised to the court and said she was genuinely ashamed. She very much regretted doing it but was in a very emotional state following the very personal and horrible dispute with the Husband. She was on anti-depressants and was angry and hurt. She took stupid decisions in the heat of those emotions and was not blaming the Husband. She filed for bankruptcy on 5 February 2018 and was made bankrupt on 6 March 2018.

31. She was sentenced by Zacaroli J on 8 February 2018. He found the custody threshold had been reached. He said that it was a deviously planned and executed course of conduct that had involved the hijacking of an innocent person's identity and duping her own solicitor. The Wife had falsely claimed that the Husband had intimidated and bribed witnesses. She was culpable to a high degree as it was a deliberate concerted action. The admission was too little too late and her first reaction had been to criticise the judgment on Facebook but he accepted the Wife's apology was genuine. He sentenced her to eight months imprisonment and ordered that she pay indemnity costs. Of the total bill of £459,000, he ordered her to pay £320,000 by 8 March 2018. She has not done so. She went to prison immediately but was released on 6 June 2018.

32. The Husband filed a second statement on 13 March 2018. He said that he did a search of the company computer system and a number of emails emerged that he says he had never seen before. He did not see or send an email on 10 June 2015 and had no contact with XYZ at the time. He did not send the emails to Coutts on 15 June 2015. He alleged the Wife must have logged in as him. He would not have used the word "alimony" and he notes that "Nisi" is misspelt as "Nisei" as in the Wife's emails. He added that XYZ represented to him that the first consent order, which he did sign, reflected the MOU. The only change he agreed was to pay £5,500 per month for the outgoings on Claybank pending sale. The Wife had demanded a substantial pay rise in October 2014 to £12,500 per month net. She would present him with many documents every day to sign and she regularly signed his signature for him. Indeed, he says that, on one occasion, the bank rejected a cheque he had signed as they were so used to her signature. The Wife did tell him she needed to raise £150,000 for a new business she was starting and that she required him to be a guarantor for three years of payments of £5,000 per month to which he agreed although he cannot recall signing any documents. She later told him that he had signed the maintenance order to enable her to obtain the mortgage on Kerry House and to enable Andy Hart to get the loan of £150,000. He believed her but still did not realise it had been submitted to the court as opposed to shown to Coutts.

33. On 6 September 2018, the Wife made her application for maintenance pending suit. The statement in support said that she was bankrupt and relying on benefits whereas the Husband was driving a Bentley and a new Mercedes AMG Jeep. She alleged he is living in a house costing £8,500 per month in rent and was taking multiple luxurious holidays. I have not investigated the up to date financial position of both parties and so can make absolutely no findings about this at all. The Report of her Trustees in Bankruptcy dated 22 October 2018 asserted that there was a deficiency of £386,760 with a further five claims totalling £143,683. The Trustees said they were investigating cash transfers of £635,000 and £50,000 and three car purchases on credit card.

34. In a recital to a directions order made by O'Leary DDJ on 27 October 2018, the Husband confirmed that he does not know if the signature on the final order is his or not and that he reserves his position as to forgery pending analysis. He asserts that there were no subsequent amendments to the MOU.

35. The Wife filed a number of statements on 3 November 2018. She says that her case has been hampered by a plethora of her papers being lost when she was imprisoned and evicted from her then flat. She says that the MOU was legally privileged and not legally binding, asserting that it only reflected the temporary position as circumstances were constantly changing and contending that the parties had, at the time, not even established that it was a permanent separation. She would not have agreed something legally binding and there were many mistakes in the document. She says they never even agreed or discussed the Husband having a charge over her property, although I have to note that this is not what the MOU says. She says it is true that she had not required any separate periodical payments for herself as they were both

earning the same and contributing to household outgoings. She was granted a salary increase to £12,500 per month net as the company was also paying the Husband's rent and living costs. She asserts that his rent was £8,000 per month. She says the email confirmation to Coutts was sent from his phone and that it is absurd for him to say that he did not understand the order given that he was the Managing Director of a company turning over £15 million per annum. She says that he spent over four years in prison for armed robbery and that there is an ongoing investigation by the Metropolitan Police as to bribery and corruption. She adds that she had intended to buy a property for £1 million but the parties' daughter wanted her to spend £1.775 million which she could only afford if she received an additional £5,500 per month by way of periodical payments. She and Yasmin asked the Husband and he agreed.

36. The Husband replied on 6 March 2019. He said that the Wife had only required inconsequential amendments to the MOU. He said his conviction from over 28 years ago is irrelevant and that it was robbery not armed robbery. He did, however, accept, when I asked him, that he pleaded not guilty but was disbelieved by the jury. He asserted that XYZ, other than in relation to the divorce petition, took instructions from the Wife without any reference to him.

37. The case came before Brooks DDJ on 12 November 2018. He found that there was prima facie evidence of fraud sufficient to pierce legal professional privilege to permit sight of the communications between the Wife and XYZ. He, therefore, made orders to require XYZ and Coutts to disclose their files. Due to the seriousness of the allegations, he transferred the case to be heard by a High Court Judge.

38. The Wife made a number of applications on 24 January 2019. One was for an order for the settlement of the Husband's claim by payment of a sum of £218,930, saying she accepted the claim but made no admission of guilt. When I asked her in court about this, it became clear that she thought that, if she agreed to pay this money to the Husband, it would be extinguished by her bankruptcy. When I explained it would survive the bankruptcy, she withdrew the offer, but it is interesting that, at the time, she accepted that she owed this money. On 2 February 2019, she made applications for subpoenas against a large number of individuals, but these were all either unnecessary, as the witnesses have given statements on behalf of the Husband, or were irrelevant to the matters I have to determine.

39. The various statements filed by the Husband in support of his case were from the parties' daughter, Yasmin Henderson-Neil; Stephen Howell, the PA to the Directors of TSS from December 2013 to December 2016; Tolu Yerokun, an employee of TSS; Daniel Henderson-Neil, the Wife's son; and Warren Pountain of OneByte, who provided computer services to TSS. Yasmin's statement is dated 26 February 2019. She says that she had understood that Claybank was to be sold and the proceeds divided equally. Her mother found Kerry House and told her that some of her father's share would be used to buy it, but he would receive the money when it was sold. She was asked to tell him she loved the house, so she did. She said that her mother had access to emails during the June 2015 holiday and spent lots of time on her phone. She

overheard her mother say in September 2016 that she was "setting up" her father. She accepts that she works for her father in his new business. She claims she did not sign an application for an additional card on her mother's Coutts account.

40. Stephen Howell's statement is dated 6 March 2019. He is also still employed by the successor business. He says he worked primarily for the Wife from 2013 to 2016. She controlled the finances and administration and exerted complete control. She had, at her own specific request, full access to all emails of everybody in the office, including himself and the Husband. She spent a lot of time on her phone during the June 2015 holiday to LA and Hawaii. She did tell the Husband that she needed him to guarantee a loan of £150,000 for a new business. The Husband had told him he did not know what she meant by maintenance order and he had never agreed. The Husband was extremely trusting and regularly signed documents presented to him. He did not have time to read everything.

41. Tolu Yerokun's statement is dated 12 March 2019. She was, originally, an office assistant in TSS but she also works in the new company. She said that, on one occasion, she got a call from a man asking for details of a letter she had sent him. It was dated whilst she was away on annual leave. He faxed her a copy of the letter and she discovered the signature was not hers. She exhibited the letter. She had seen the Wife sign the Husband's signature on an uncountable number of times. Daniel Henderson-Neil's statement is dated 14 March 2019. He says that his mother is "the most calculating, vindictive, malicious person" he has ever known. She appointed him a director of TRS Ltd without his knowledge. He has subsequently said that his signature on the Tomlin order was forged and that he had nothing to do with his resignation either.

42. The Husband made open proposals on 14 March 2019. He proposed the order dated 8 July 2015 be set aside and that a fresh order be made dismissing all capital and income claims. He would thus forego any claim to the proceeds of sale of Claybank. On that basis, he would agree to no order as to costs. The offer was only open for acceptance until 1 June 2019 and he would not be bound by the proposals at trial. The Wife rejected the offer on 18 March 2019.

43. A further report was received on 30 May 2019 relating to the Wife's bankruptcy. There are unsecured creditors of £551,705 (including HMRC in the sum of £170,000). The Trustees are continuing to investigate the transfer of £663,000 from the sale of Kerry House to a third party, presumably Mr Hart. The Wife made a large number of further applications on 20 September 2019. I dealt with these applications on 7 October 2019. Many of them were misconceived although I make full allowance for the fact that she is acting in person. For example, they included applications for witness summonses that I had already dealt with. She also applied for financial disclosure in Form E on the basis that the Husband is in breach of the periodical payments order but I took the view that this was unnecessary as I was dealing with the set-aside application at this hearing. She also applied to

dismiss the Husband's case on the basis that "it has no merit; is fatally flawed; is based on false evidence; has caused her extreme hardship and distress; and that he has abused the court process to breach a valid court order". I adjourned this application to be heard at this trial on the basis that these are the issues that I am now considering. She also sought the committal to prison of the Husband and Mr Howell. Again, these applications were misconceived so I dismissed them. I did make various directions to ensure the smooth running of this trial.

The expert evidence

44. Before I turn to the expert evidence, I will deal with the statement of Warren Pountain dated 16 January 2018. Although he is a factual witness, his evidence is material to the expert evidence. He is the CEO of Onebyte, which is a managed IT services provider, which provided IT services for both TSS/MSS and the new company. He says that the Wife, at her specific request, had access to all emails into and out of the company (including those of the Husband) until this access was terminated in September 2016. She could read and manage all emails to any account including the right to "send as." If she did so, it would appear to the recipient as if the emails had been sent by the mailbox owner even though they had been sent by the Wife. It followed that she could send emails from terry@tsssecurity.com. The Husband did not have that access.

45. Mr Simon Biles of Forensic Equity was instructed as Single Joint Expert to investigate the disputed emails. He says in his report dated 7 January 2019 that the two emails purported to be sent by the Husband to Coutts on 15 June 2015 were found in the sent folder of the Wife's email account (soraya@tsssecurity.com). Whilst the Husband could have deleted emails from his sent items, Mr Biles asks why they would be found in the Wife's sent box. The Wife could have deleted emails she sent to the Husband to prevent him seeing them but there is no clear evidence that she did so. There is little evidence as to the chain of events due to the time that has passed. The scenario that the disputed emails to Coutts were sent by the Wife is plausible and there is evidence that she sent them given that they were in her sent folder.

46. Mr Biles replied to extensive questions from the Wife on 28 May 2019. He says that he cannot say which individual accessed an email account. There is insufficient evidence to identify from where the emails were sent. The two emails in the Wife's sent box, said to have been sent by the Husband, are those to Cecily Robinson of 15.06.15 at 1513 and to Miles Kean at 1518 the same day. The copying in of the Wife to those emails is not a plausible explanation as to why they were found in her sent items as, if she was copied in, they would have been found in her inbox. He cannot comment on the use of mobile phones, but he can say that emails can be deleted remotely.

47. Two handwriting experts were instructed as to the disputed signatures. The Husband instructed Mr Michael Handy who reported on 4 January 2018. Whilst the form of the questioned signature of the Husband on the consent order was significantly similar to those signatures of the Husband, there were

a number of differences in detail. It was made more difficult to assess by a different pen type having been used but, the documents provide evidence, albeit weak, that the Husband did not sign the 8 July 2015 order. On 26 November 2018, he said that his opinion was that it was more likely than not that it was not the Husband's signature. In other words, it was not his signature on the balance of probability, but it was far from conclusive. The Wife then instructed Mr Stephen Cosslett of Cosslett and Barr. His report is dated 1 May 2019 and he came to exactly the opposite conclusion of Mr Handy. He says that, whilst the Husband's signatures are essentially similar, they do show a fairly wide range of variation particularly with the exact shape and proportion of the loops and their relative positions. The relative simplicity of the signature does make it easier to simulate but the questioned signature does appear to be fluently written although, like Mr Handy, he says it is more difficult to assess as it was not written with a ball point pen. He says there is no evidence that the signature was copied although he cannot rule it out that it was a skilled attempt to copy. There is some limited evidence that it was signed by the Husband and, on the balance of probabilities, it is more likely that the Husband signed than someone else did on his behalf. Very sensibly, the parties took the view that these reports cancelled each other out. They did not seek to cross-examine each other's witness. I take the view that the handwriting evidence is therefore entirely neutral. It does not help me one way or the other and I must decide the case on the other evidence. I therefore ignore the handwriting expert evidence completely.

The Law

48. I now turn to deal with the law I must apply. In particular, applications for financial remedy are governed by section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. The overall objective is to achieve fairness. It is the duty of the court to have regard to all the circumstances of the case. There are no minor children in this case that require consideration. I must have particular regard to the matters set out in subsection (2), namely:-

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

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

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

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

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

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

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

(h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

49. There are very serious issues in this case and the parties' positions are diametrically opposed. The burden of proof in relation to a disputed allegation is on the party who seeks to establish it. In most respects, this is the Husband. The standard of proof is the civil standard, namely the balance of probabilities. The seriousness of an allegation makes no difference to the standard of proof to be applied in determining the truth of the allegation. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies (Re B (Children) (FC) [2008] UKHL 35; [2008] 2 FLR 141). If the evidence in respect of a particular finding sought by a party is equivocal, the court cannot make a finding on the balance of probabilities, as the party seeking the finding has not discharged either the burden or standard of proof (Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20; [2004] 2 FLR 200). Moreover, findings must be made on evidence, not on suspicion, speculation or hypothesis.

50. There are issues in the case as to the extent to which the Wife and, to a lesser extent, the Husband, have lied to this court. First, I must decide the extent of the lies in this case. If I find that a lie has been told, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that confirms the case of the other as to a different disputed fact. A witness may lie for many reasons. They may possibly be "*innocent*" ones. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct unrelated to the issues in this case; or out of panic, distress or confusion.

51. It follows that, if I find that a witness has lied, I must assess whether there is an "*innocent*" explanation for those lies. However, if I am satisfied that there is no such explanation, I can take the lies into account in my assessment of where the overall truth lies and in relation to my findings on the facts in issue in the case.

52. I have already referred to the findings of Zacaroli J as to the Wife's contempt of court. I must therefore give myself a bad character direction. I remind myself that I must not find that the Wife's case before me is untrue just because of the findings of Zacaroli J. Nevertheless, I have to consider the issue of propensity. In other words, whether or not the Wife has a tendency to undertake the sort of things she is accused of in this case. The Husband relies on the committal findings of dishonest conduct in the Chancery litigation as

evidence that it is more likely that she was involved in dishonest conduct in relation to the consent order. The Wife responds that, having been sent to prison once for such conduct, she would certainly not go through the risk of that again if she had committed such conduct in relation to the consent order. It is entirely a matter for me to assess the value and importance of the committal findings. I am entitled to rely on them if I consider it is helpful to do so.

53. I have heard expert evidence from Mr Biles. It is for me to weigh the expert evidence alongside the lay and other observational evidence. The expert advises but the judge decides. I decide on the evidence. An expert is not in any special position and there is no presumption of belief in an expert, however distinguished. It is, however, necessary for a judge to give reasons for disagreeing with an expert's conclusions. Moreover, a judge cannot substitute his own views for the views of the expert without some evidence to support what he concludes (see Re B (Care: Expert Witnesses) [1996] 1 FLR 667 at 670). The expert evidence does not sit in a vacuum, nor is it to be interpreted in isolation from the other evidence.

54. Ms Bangay asserts fraud. She defines fraud as "the intentional use of false or misleading information in an attempt illegally to deprive another person of money, property or legal rights". I have no reason to doubt this definition and therefore proceed on that basis.

55. The law as to setting aside a financial remedy order can be dealt with shortly, given that, if I find fraud proved, it is highly likely that it will vitiate the basis on which the order was made such that it will have to be set aside. The leading cases are Gohil v Gohil [2015] UKSC 61 and Sharland v Sharland [2015] UKSC 60, although both cases deal primarily with the duty of full and frank disclosure rather than alleged fraud in the obtaining of the order, as alleged here. It is clear that, if fraud is established, the order will be set aside, save in very limited circumstances as described by Lady Hale at Paragraph [33]:-

> "*The only exception is where the court is satisfied that, at the time when it made the consent order, the fraud would not have influenced a reasonable person to agree to it, nor, had it known then what it knows now, would the court have made a significantly different order, whether or not the parties had agreed to it. But, in my view, the burden of satisfying the court of that must lie with the perpetrator of the fraud. It was wrong in this case to place upon the victim the burden of showing that it would have made a difference.*"

56. In this particular case, it is hard to imagine how there can be anything other than a set-aside of at least part of the order, if I am satisfied that the Wife did perpetrate a fraud on the Husband by failing to obtain his informed consent to the terms of the eventual order and, in particular, the substantive periodical payments order.

57. Ms Bangay QC, who appears on behalf of the Husband, relied on a number of authorities following the closing of the evidence as to the approach to the MOU. I must be careful in the way I deal with this as Ms Neil, who is a litigant in person, had only very short notice of these authorities. The first was from Passmore on Privilege and dealt with whether there is a privilege that renders the mediation process sacrosanct. It is clear that this has, at times, been doubted. I do not need, however to consider this in detail as I have heard about the process that led to the MOU. Moreover, whilst I have already noted that the document itself says that it is "without prejudice" and it does not create a legally binding agreement between them, Ms Bangay asserts that the MOU became a binding agreement when XYZ sent the letter to the Husband on 11 May 2015, referring to "the parties being able to reach an agreement in this regard" and which adds that XYZ had "drafted a consent order reflecting the terms of this agreement". I will have to consider this submission when I come to deal with outcome. It is right that Ms Bangay further relies on the decision of the then President, Sir James Munby in S v S (Arbitral Award) [2014] EWHC 7 in which he endorsed the arbitration process for financial remedy applications, saying the award should, in the absence of very compelling countervailing factors, be determinative where the parties had agreed to be bound by the result. Whilst arbitration agreements are very different to the situation here, as the parties agree to be bound by the outcome before they enter the arbitration process, there is no doubt that the decision is strong authority for the concept of converting agreements into orders swiftly if there is no good reason not to do so.

58. Ms Bangay finally relies on the decision in the case of Kingdon v Kingdon [2010] EWCA Civ 1251. HHJ Cardinal found non-disclosure proved in relation to the sale of some shares at a profit of £1,268,000. He did not set aside the whole consent order but merely built on it by making a further lump sum order of £481,000 to reflect the specific non-disclosure. The Court of Appeal dismissed the husband's appeal. The judgment recognises that there will be cases of non-disclosure where the proper course is to conduct the entire financial remedy exercise again, such as if the court had been led to proceed on an entirely false basis, but this will not always be the case. One such example is where the non-disclosure relates to one discrete element of the case. I am being invited to do just that in this case.

The oral evidence

59. Before considering the evidence, I should pay tribute to the way in which the Wife has conducted herself throughout the hearing. It cannot have been at all easy for her. She has been acting in person. She has faced very serious allegations. She has had to cross-examine both of her children, with whom she has fallen out very badly, and she has had to cross-examine her ex-Husband. She has conducted herself with dignity while defending her position resolutely. Her cross-examination has, by and large, been relevant and skilled although she has at times strayed from the issues I have had to determine. I make it clear that I take fully into account that she has had to appear in person against a very experienced QC. Before making my findings of fact, I have asked myself whether there was anything else that a skilled lawyer could have

done or said to alter my opinion. In all cases, I am satisfied that there was not. It follows that I am quite sure that she has had an entirely fair trial in accordance with Article 6.

60. I heard oral evidence of fact from the Husband, Daniel Henderson-Neil, Yasmin Henderson-Neil, Stephen Howell, Tolu Yerokun, William Pountain and the Wife. I heard expert evidence from Mr Simon Biles.

61. I will deal first with Mr Biles, even though he gave evidence last by video-link from Warwick. Fortunately, the link worked very well. The Wife asked him perfectly proper questions to try to shake his principal finding, namely that the two disputed emails purporting to be from the Husband to Coutts on 15 June 2015, were found in the Wife's sent box and that this was compelling evidence that she sent them, not him. The Wife tried, with skilful cross-examination, to suggest that these emails could have been put there by someone acting on behalf of the Husband to discredit her. Mr Biles was adamant that this could not have been the case. He told me, and I accept entirely, that the access to the Wife's email box was "view only" and the content could not have been altered or deleted. Although an email could be downloaded and then changed and any such email can then be forwarded elsewhere without the recipient knowing it had been changed, the email cannot be changed in its place in the original email box. There was no discrepancy between the emails he received in PDF form from, as it turned out, the Husband's solicitor and those he found in the Wife's sent box. There were no emails noticeably out of order. He said that the emails would not have appeared in the sent box if they had been copied to the Wife by the Husband. In such circumstances, they would be in her inbox. Moreover, if she had sent the emails using the Husband's email address, they would still be in her sent box. He later confirmed that he had found the email the Wife sent to the Husband on 15 June 2015, in her sent box, between the two emails to Coutts. All three emails were in the correct order. He also said that the emails were in exactly the place he would expect if they had been sent on 15 June 2015, which shows they were not sent at a different time. He did confirm that the Husband could easily have deleted any emails he sent to Coutts but that would only have been possible if the Husband had sent them in the first place. I accept Mr Biles' evidence. It is of considerable importance. It is right to say that the Wife did stray from the issues in the case by alleging impropriety by the Husband's solicitor in relation to access to the emails and some form of conspiracy to deny her a copy of Mr Biles' report for three to four months. I reject her criticisms in this regard but, in any event, they are irrelevant to the matters I have to decide.

62. I now turn to the witnesses of fact. By the time the evidence was completed, I had formed a very clear view of where the truth lay. The Husband gave his evidence in an uncomplicated way. He was unshakeable as to the core truth of what he was saying. I do, of course, accept that he has been convicted by a jury on a plea of not guilty, to the serious offence of robbery. Although entirely different to the issues in this case and a very long time ago, I must take into account that he has been disbelieved on his oath by a jury. He is also being investigated by the Metropolitan Police for the alleged offence of influencing a police officer by hospitality, but I have not investigated this at all

and do not consider it helps me to decide where the truth lies in this case. I do accept also that he is a man well versed in business who has made a success of running a successful company with a multi-million-pound turnover. I was, however, clear that the Husband was not at all computer literate in 2015 although he was able to send and receive emails. Moreover, it is clear that he put his head in the sand and refused to engage with lawyers in relation to the divorce and financial settlement after the MOU had been agreed. He was, however, adamant that he had been told by XYZ that the original consent order followed the terms of the MOU and that was what he was signing up to. I accept his evidence in that regard, although it is a great shame that he did not read the document or ask someone to do so on his behalf. It is also not to his credit that he got aggressive with the Wife about being contacted. I do, though, accept that he cannot be held to something when he was told, by a firm of lawyers, that it was something different. He also sent a whole series of emails to the Wife in 2016 after the consent order had been made that suggest some knowledge of a maintenance order being made in July 2015. I will make my findings of fact as to these emails later in this judgment, but I do take on board that he gave a full explanation for this in his statement dated 13 March 2018.

63. He was cross-examined perfectly properly by the Wife but told me that he definitely did not meet the Wife in the car park at the TSS offices and sign the second consent order in his car. He said to the Wife that she "knew full well that I would never sign a maintenance order" and this had the ring of truth. He also asked, rhetorically, why would he be "ripped off for all the equity" in Claybank. He insisted that he understood he was merely signing a guarantee for a loan. He restated that he never saw the emails sent to him by the Wife in relation to the maintenance order and that he did not send any email to either Miles Kean or Cecily Robinson. Indeed, it is his case that he did not even know her email address. He said he was pretty sure that the Wife had deleted the emails she sent to him about this before he had seen them, but he confirmed that he definitely did not see them. He said he did not tamper with her "sent items" account. He was "completely lost". He had not forwarded anything, deleted anything or have any knowledge of any of this. He said this with conviction. In general, I accept his evidence. I find it very difficult to understand why he would suddenly agree to pay the Wife £5,500 per month periodical payments when her salary from TSS was £12,500 per month net, let alone do so only a couple of days after signing a consent order that provided for, at worst, nominal maintenance. Moreover, why did he not pay any maintenance at all from the day Claybank was sold if he had agreed to do so. None of this makes sense unless he is telling the truth.

64. Turning to the other witnesses, it is fair to say that some of their evidence did not assist greatly on the main issues in the case. I will therefore concentrate on the aspects that I consider are of relevance and make findings as to those matters alone. The first witness was Warren Pountain from OneByte. It is right to say that he did give a different account to that of Stephen Howell as to how access was obtained to the Wife's emails and whether it was continuous or a one-off, but I take the view that this is just a difference of recollection. I am certainly satisfied that Mr Pountain was not deliberately attempting to

mislead me, even though I prefer Mr Howell's evidence as I consider he is more likely to have remembered the sequence of events. In any event, it is agreed that access was obtained and the emails were found in the Wife's sent box. He confirmed that the Husband could delete emails from his sent box, but he was adamant that, if an email was sent by the Wife purporting to be from the Husband, the email would appear in the Wife's sent box even though it looks as though it came from the Husband. It would not be in the Husband's sent box. I remind myself that this is the same as the evidence given by Mr Biles and I accept it. Mr Pountain said it would be possible to send two emails both stamped with the same minute, depending on the length of the emails. He reminded me that the time on an email does not include the seconds but only the hours and minutes. He also said it could be done from an Iphone in Los Angeles. I accept his evidence other than in relation to the exact way in which access was given to the Wife's email account but I find that this discrepancy is immaterial to the matters I have to decide.

65. Daniel Henderson-Neil told me that the Husband, who he referred to as his father even though he is not, was "computer illiterate" and could barely turn a computer on. Although I accept that the Husband was not technically minded, there is no doubt that he could and did send and receive emails regularly. He then said that he was aware that the Husband would "sign documents put under his nose" without reading them. I accept that evidence. It was clearly very distressing for the Wife to have to cross-examine her own son, and I take that into account, but Mr Henderson-Neil remained adamant that he had not signed the Tomlin order; did not know about his appointment as a director of TRS; and knew nothing, at the time, about his resignation. There was some attempt to obtain handwriting evidence, but it has not been produced at the time of writing this judgment. At best, the evidence in relation to TRS is further similar fact evidence. Whilst I have no reason to disbelieve Mr Henderson-Neil, I do not consider it necessary to make a finding in this respect, but I do consider that his evidence as to the Husband signing documents without reading them provides some corroboration for the Husband's case.

66. Mr Stephen Howell had once been close to the Wife. I accept that he is now very much in the Husband's camp and that he does continue to work for the Husband, but I found him to be a cogent and believable witness, who was doing his best to assist me. He told me that he specifically remembers a conversation with the Husband and the Wife when the Husband asked about a loan of £150,000 for a new business she had started. Mr Howell told me that the Wife said that she needed the Husband to guarantee the loan. Mr Howell could not remember if the Husband agreed to do so or not. I accept this evidence. It is important. Mr Howell said that, following the sale of Claybank, he was told by the Wife to change the arrangements and pay the Husband's salary into his sole account. It is noteworthy that this did not include any arrangements for paying £5,500 per month of that salary to the Wife to cover the periodical payments order. When cross-examined by the Wife, he said that he had to ask Warren Pountain to obtain access to the Wife's email account, but it was just to view the account. He believed it was continuous access once it had been granted. He was asked to forward an email

to the administrators of MSS/TSS sent to the Wife by Knight Frank, so he did so.

67. Tolu Yerokun was the Office Director by the summer of 2014. She oversaw the admin team and reported to the Wife. She told me she did see the Wife sign the Husband's signature on documents and told me that she would also pre-sign cheques in his name so they could be used to pay doormen who came into get their wages. This was before the Wife was able to sign the cheques herself. I accept this evidence and reject the Wife's ongoing complaint that evidence such as this is given without "proof". The evidence is the oral evidence of the witness as to what they say they have seen. It is not hearsay. In relation to her main allegation, however, Ms Yerokun does provide supporting evidence, namely the letter dated 10 March 2008 to Mr Richard Lance of Cornhill Secretaries that she says she never sent or signed. The Wife seemed to be suggesting that this letter had been concocted in some way, but I reject that out of hand. It is stamped "RECEIVED" on 11 March 2008 and there is a manuscript number at the top of the page. Although it is difficult to read, I am satisfied that the number is the TSS fax machine number, which corroborates Ms Yerokun's account that she asked for it to be faxed back to her. There is the word "COPY" on it, but I consider that this is likely to be because a copy was used for the fax machine, rather than the original. The Wife suggested that it was suspicious that this letter had been kept for so long, but Ms Yerokun said that she kept it because it was weird that her "signature" was on a document she had not signed. It is clear to me that she kept it for "insurance purposes," particularly given that she had previously had a run-in with the Wife over disciplinary proceedings against her. I recognise that I do not have handwriting evidence, but I accept the evidence of Ms Yerokun without reservation. In one sense, this is further similar fact evidence.

68. The final witness was Yasmin Henderson-Neil. It was particularly difficult to see her cross-examined by her mother. She told me that her father is a little bit better at computers now, but he had been a bit "useless" and has never been a computer "whizz", whereas her mother was extremely computer literate. She was adamant that the application for the Coutts card did not contain her signature. In cross-examination, she was taken to a number of other signatures of hers. It is clear that she has changed her signature recently and the signature on the credit card application is more like her old signature, but she said that the one on the application was not hers but a good attempt at hers. It did appear that she had been spending some money on a company credit card for items such as Itunes and Deliveroo. Her mother was adamant that this was the reason why she applied for an additional card for Yasmin on her mother's account. I consider that likely and I find Yasmin was wrong when she denied having a company Nat West card in 2016. Having said that, and despite the lack of handwriting evidence, given the huge number of allegations of forgery of signatures made against the Wife, and given that Yasmin had absolutely no motive whatsoever for lying as to whether she signed this application or not, I find on the balance of probabilities that the Wife did sign her signature. The Wife would not have considered this fraud. It is just what she regularly did. She had become very practised and proficient at doing it, hence the genuine similarity to Yasmin's own signature.

69. Ms Neil then gave evidence. She was certainly confident. She never lacked an answer. She was consistent with what she has said throughout but I did not believe a word of it. Indeed, there simply was no answer to some of the points put to her, as I will explain in due course. I regret to say that I am unable to accept any of her evidence without corroboration and I reject virtually the entirety of her case. Inevitably, Ms Bangay started by asking her about her evidence before Zacaroli J. She accepted she lied to him on her oath and that she only accepted she had done so after receipt of his judgment. She denied forging Ms Borkova's signature on the statement and the exhibits herself. She mentioned somebody else in the company. It may well be that, if Zacaroli J had been hearing the case to the civil standard of proof, as opposed to the criminal standard, he would have found she did forge these signatures but I have not investigated that in the depth that he did and I do not need to make any finding so I do not do so. Ms Neil then told me that she had never signed the Husband's signature for him nor the signatures of others. I reject this out of hand. She was adept at doing so and did so regularly. I have overwhelming evidence of this from all the Husband's witnesses. I simply do not believe they are all lying to me. It may be that the regularity of her doing so and her proficiency makes it more difficult for handwriting experts to ascertain forgeries. For example, I am sure she would not hesitate as she signed. Having said that, there is no need for me to speculate and I have already said that I consider the handwriting expert evidence itself to be entirely neutral. I make my findings on the basis of the other evidence I have heard. I am sure that, at least initially, the Wife saw nothing wrong in signing the Husband's signature. It was convenient. He didn't seem to mind, as it probably took a burden away from him but, as time went on, it became far more sinister and indeed criminal.

70. She was asked about the MOU and she said that they did agree that there would be no spousal maintenance at the time and they did agree an equal division of the proceeds of sale of Claybank, although the eventual equity was less than had been expected initially. She further accepted that there was "no question" of a substantive periodical payments order in March 2015. Inevitably, she was taken to the draft letter and then the letter itself that XYZ sent to the Husband. It was put to her that the sentence in the draft and the final letter was not accurate when it said that the draft order was the same as the MOU. She initially said she believed it was accurate. This is clearly absolutely incorrect, but she then accepted that the draft order was not in accordance with the MOU. In any event, there was a clear acceptance in the letter that an agreement had been reached and the letter purports to say that this agreement was being confirmed in open correspondence outside the cloak of privilege. I find that the Husband had been actively misled. I accept he signed the original order under a fundamental misunderstanding that the order was the same as the MOU. The Wife knew this and did not correct the letter from XYZ.

71. Ms Bangay then moved on to the position with Coutts. It is clear that Coutts wanted the Wife to have a maintenance order in addition to her salary before they would give her the mortgage she sought. The Wife accepted that she sent

Miles Kean at Coutts a document on 20 May 2015 that is headed as an order. It is clearly, however, an earlier draft as it includes numerous questions to the Wife by XYZ for her to give them instructions to enable the order to be completed. Mr Kean was bound to spot that. It is possible that the Wife did not have a copy of the order submitted to the court in a Word document such that she could amend it but that is speculation. In any event, the then Paragraph 23 was amended to change £1 per annum to £66,000 per annum. The Wife accepts she did this although she continued to deny to me that it was a fraudulent document as a result. I cannot agree. This was the admitted falsification of a document with the intention of misleading Mr Kean. By now, she was so used to doing this sort of thing that it is possible she did not even see it as wrong, but it was clearly very wrong. The Husband had not, of course, signed it and I am absolutely clear he had not agreed to it. Indeed, the Wife did not even contact XYZ between 20 May 2015 and 10 June 2015, which she surely would have done if there had been such a fundamental change in the agreement. It was, in fact, just a matter of chance that the order submitted to the court had not been made by then, as it was rejected by Berry DJ on 2 June 2015 because there was a page missing. Inevitably, Mr Kean was not satisfied with the draft sent by the Wife and he asked for a certified copy from the Wife's lawyer on 3 June 2015. On 3 June 2015, the Wife told Mr Kean that the divorce was with the courts and she had signed the draft financial order. This was extremely misleading because the order that was with the courts provided for £1 per annum maintenance not £66,000 per annum.

72. The matter becomes almost beyond doubt on 12 June 2015, when the Wife sent Cecily Robinson at Coutts a PDF of the order prepared by XYZ which had, by then, substituted £66,000 per annum periodical payments for £1 per annum, although it was not the final version as it still included reference to the Spanish property continuing to be held in joint names. The document purports to have been signed by the Husband but it is absolutely clear he had not done so. The order was now 6 pages so his signature would have been on page 7. It was not on page 7. It purported to be on page 9. Moreover, it is clearly not from a PDF document but from a Word document as there is a "track changes" formatting amendment at the bottom. The earlier document sent on 20 May 2015 was, of course, far longer as it had all the questions to the Wife in it. The Husband's signature page on that document would, indeed, have been on page 9.

73. Ms Bangay then asked about the Husband's alleged communications with Coutts. She asked Ms Neil how he would have got Cecily Robinson's email address, as the email exchanges show the Wife had only given him Mr Kean's address. She said she had no idea how he got it and he could have asked Mr Howell. I reject this evidence. She made a mistake. She forgot she had not sent Ms Robinson's email address to him. It was put that she then realised the error so sent a further email to Mr Kean. That may be the explanation, but it is speculation. She was then asked about the spelling of Decree Nisi as "Nisei". She said the Husband had either copied her email or used the same wording as she had used but I consider that absolutely fanciful. First, the 15 June 2015 email was not directly copied from either of the email requests made by the

Wife on 10 June and 12 June 2015, as, for example, neither of those say "£5,500 pcm". One says "£5,500" and the other says "£5,500 monthly alimony". Second, it is not as though those emails were sent immediately before the Husband's alleged emails. There was a three to five day gap. I am sure the explanation is that the Wife spelt "Nisi" with an "e" and so she did so in all the emails. She had absolutely no explanation for why the two emails to Coutts were found in her sent box. Again, I am sure they were there because she sent them. I reject the suggestion she could not send two emails at 1513. They were not long emails. The consequence of my finding is, of course, extremely important. The Husband did not send these emails and did not know about them. He was not confirming his agreement to Coutts to pay the maintenance and there must have been a good reason for that. It was simply that he had not agreed. Indeed, it would be remarkable if he had suddenly agreed to pay £5,500 per month maintenance indefinitely when the MOU was a clean break and the Wife was earning £12,500 per month net from the business, whereas he was only getting £8,500 per month plus his rent. Indeed, he never paid a penny after the sale of Claybank. If he had genuinely agreed to do so, this would be remarkable and would have led to an immediate complaint via XYZ. The Wife's explanation for all of this could have been that he asked her to send the emails on his behalf as he was too busy/not interested. That, however, is not her explanation. She has, instead, lied and lied about this and there is only one possible explanation. She was a committing a fraud.

74. The Wife was then taken to the emails, sent in the early part of 2016, after the consent order had been made. I was, initially, somewhat troubled by these emails as they seemed to suggest that the Husband had a level of knowledge of a maintenance order. On careful reading, however, the explanation is clear. It is noteworthy that, on 7 March 2016, the Wife was saying to him that she might be "forced to seek personal maintenance from you" if he attempted to take over the company from her. This is entirely inconsistent with him having agreed an order to pay £66,000 per annum already. Thereafter, the Husband was asking about a charge on the Wife's home. This is convincing evidence that he was still working on the MOU, not even the first order submitted to the court. The Wife did not respond on 4 February 2016 to say that he had agreed to there being no charge. Instead, she said that she would not give him one while "Gaza" exists, saying that he would just have to trust her. This is a clear acceptance that he was due some money from the property. Her explanation that he was asking for an equity share does not make sense given the agreement. On 9 March 2016, he sent her an email in which he said "…why I signed a maintenance order ie for you to secure your home". It is striking that the Wife was not asking why he was not paying what he had agreed to pay at this point, if he had so agreed. The subsequent emails make it abundantly clear that, whatever the Husband thought he had signed, he was not expecting to pay anything to the Wife. For example, on 3 April 2016, he says that "I say it's disgusting that u ask me a favour to get u a loan of 150k sign and get ripped off". The Wife's explanation that the loan of £150,000 was the loan he gave her out of the £348,00 she owed him on sale of Claybank is not credible from the context of all the emails. First, I reject her suggestion that there was a loan of £150,000 at that point. There is no contemporaneous reference to it

anywhere. Second, "get u a loan" must refer to a third party. Third, this is made completely clear in other emails from the Husband. For example, on 20 April 2016, he says that "you asked me to sign the papers for you in order for you to get the loan…" That last email is instructive as he then asks the Wife to keep to the original agreement "which is half the equity of Claybank less costs, and for you to keep house whilst Jazzy uses as her family home". Again, the Wife had no answer to this other than to say that her reply referred to the email being full of "inaccuracies and inconsistencies". That is not good enough. She did not immediately say, you agreed to me having the equity in Claybank up to £1 million.

75. The Wife did then say to Ms Bangay that there was never a loan of £150,000 from any third party. I accept that but £150,000 was the increase in the loan that the Wife requested from Coutts and, on the balance of probabilities, I find that this is what the Husband is referring to. On 20 April 2016, the Husband says that "the maintenance order…was set up in order for you to borrow 150k, wherein you stated was paperwork exercise in order for you to borrow for you said was another business at the time". Her response was simply to ask the Husband to stop harassing her, but this email is as clear evidence as there could be that this was not an order that the Husband thought committed him to pay £5,500 per month for life. This is conclusively proved by the email he sent on 20 May 2016 in which he asked two direct questions. One is about splitting the equity in Claybank but the second is "did you ask me to sign maintenance papers in order for you to secure 150k loan, wherein you stated that you obviously wouldn't be receiving said payment from me". He did not think he would be paying anything. The Wife's response on 21 April 2016 appears to confirm that when she said "I'm not claiming maintenance am I. I'm letting it roll." She told me that this was because he could not afford to pay her, and she was being understanding but I reject that evidence. He never paid because he did not think he had to. Finally, Ms Bangay asked her why she did not pay the money she owed him on the sale of Kerry House. She said she did not have an answer for that.

76. There are many aspects of this case about which I am completely clear and one or two matters that have to be pieced together. I am not completely clear as to what was said between the Husband and the Wife in relation to the Coutts mortgage, but I am entirely satisfied that the Husband was not agreeing to pay the Wife £5,500 per month or indeed any direct maintenance payment at all. I find, on the balance of probabilities, that he believed he was providing her with some sort of a guarantee for her borrowing of £150,000 for her to start a new business. It appears he was told that the repayments would be £5,000 per month for three years, although I note that this was not £5,500 per month as in the order. He does appear to have signed something, but it is not clear what. It does not, however, matter as I am clear that there was a fraud against him perpetrated by the Wife. This finding is inevitable, given the emails she sent to Coutts purporting to be from him. It must, therefore, follow that she deleted from his inbox the emails she sent him at the same time. There is no other explanation as I reject the suggestion that he might have deleted them himself. She could, of course, have deleted them virtually instantaneously to reduce the chances of him seeing one of them, although it is

pretty clear that, unlike the Wife, he does not spend a significant part of his life online.

My overall findings of fact

77. It follows that I am clear that I must make some very serious findings against the Wife. In summary, my findings are:-

(a) Without the Husband's knowledge, the Wife got XYZ to amend the MOU in the first order, to delete the charge back and include nominal maintenance of £1 per annum.

(b) I have not heard from XYZ but I find it almost impossible to see how they could say in their email to the Husband that the resulting draft Consent Order reflected the terms of the MOU.

(c) Nevertheless, the letter from XYZ is an open acknowledgment that the parties had reached a binding agreement that the Wife wanted incorporated into a consent order. She cannot rely on her own deceit to back away from that acknowledgment by an attempt to say she was only agreeing if there was no charge back and nominal maintenance.

(d) Very foolishly, the Husband refused to engage and sent an aggressive email to the Wife saying he did not want to hear from her solicitors any more. In argument, I raised with Ms Bangay my belief that none of this would have happened had he engaged with the process at that point. Ms Bangay challenged that suggestion fundamentally, but I consider it is right. If he had instructed lawyers, the Wife's deceit would have been exposed. This does not, however, justify her deceit in any way.

(e) The Husband signed the first Consent Order thinking it was in accordance with the MOU. This does not go to his credit, but it is a fact.

(f) Thereafter, the Wife realised she could not get the loan of £900,000 that she wanted from Coutts without convincing Coutts that she would also be getting periodical payments of £5,500 per month. She knew, at all times, that she would not be receiving any such sum. She sent Coutts a document that she accepts she falsified by changing £1 per annum to £66,000 per annum. As that was not enough to satisfy them, she later sent them another document to which she added a signature of the Husband from an earlier document.

(g) She then sent fraudulent emails purporting to be from the Husband to Coutts when they were actually sent by her. I am quite satisfied the Husband knew nothing about this at all.

(h) As that was not sufficient either, she had to approach XYZ to get the consent order changed. I have already made the point that I have not heard from XYZ but it is quite remarkable that they did not even try to contact the Husband at this point, particularly as they had to get the existing order back from the court. I do understand that it is only natural for a firm of solicitors to believe what their client says but, in this case, everything came from the

Wife and there was no direct check with him at all as to a maintenance order that was, on the face of it, surprising given their client had a higher income than him, as they themselves noted when advising the Wife.

(i) The Wife sent back the final consent order with a signature on it from the Husband. He accepts he signed something but denies that he signed the consent order. The Wife says that he was unable to identify the fake signature when she cross-examined him and there is something in that. The handwriting evidence is equivocal. Although she has a real propensity to sign documents, I cannot be sure he did not sign this one, but I am sure he was not aware of what he was signing. He did not know he was committing himself to lifelong maintenance of £5,500 per month. He thought he was guaranteeing a loan/mortgage. If he did sign, he did not read it carefully.

(j) Following the sale of the property, the Husband did not pay any maintenance as he had no idea he was supposed to. He would never have agreed to do so, in any event. It was clear he thought there should be a clean break and, since agreeing to that, he had permitted the Wife to increase her net pay from £8,500 per month to £12,500 per month. He also thought he should have a charge on her new property.

(k) The Husband has been very naïve. The Wife has been thoroughly dishonest. His naivety is not a crime and is often a feature of financial remedy proceedings. Equally, dishonesty is, regrettably, a regular feature of financial remedy proceedings but I have never before come across a court order obtained by fraud in the way that this order was obtained dishonestly. It is conduct of the most serious nature as provided for by section 25(2)(g).

<u>The outcome</u>

78. It follows, as sure as night follows day, that the Husband is entitled to a set aside of the order of Airey DDJ dated 8 July 2015. His application, however, does not seek a total set aside and his instructions in that regard were confirmed to Ms Bangay during submissions. He seeks to set aside the periodical payments order at Paragraph [26] and for me to determine the amount the Wife owes to him pursuant to Paragraph [25]. I consider this to be a measured response and extremely realistic. After all, the Wife has no assets and there is a large deficiency in her bankruptcy even if money is recovered from Mr Hart. She already owes the administrators of MSS/TSS a very large sum of costs. After this judgment, she is likely to owe the Husband a significant costs figure. I agree the Husband's approach.

79. It follows that Paragraph [26] of the order is set aside. So far as Paragraph [25] is concerned, I am clear as to the declaration I must make. For these purposes, I entirely ignore the charge back although the Husband would have been entitled to ask me to deal with that as well. Paragraph [25] provided that

the Wife should receive the first £1 million and the Husband should get the balance. The balance amounted to £348,930. The Wife paid him £100,000. She therefore owes him £248,930. I reject completely her case that she has already paid him any of this sum. She could not point to any evidence at all that she had done so. I further reject her case that he agreed to give her any of this money for her stamp duty or anything else. I declare that she owes him £248,930 which she must pay within 28 days. Thereafter, interest will accrue at 8% per annum. Whilst there is an argument for past interest to be added to the figure, I am of the view that there is no point given the Wife's financial circumstances.

80. I now turn to the most difficult part of the case, namely how to deal with the consequences of my having set aside Paragraph [26]. I accept that, at one point, I was of the view that I would have to set the issue of maintenance down for a rehearing. I even said that I considered Ms Bangay would have an uphill task in convincing me to the contrary but that was before I had read the case of Kingdon as clearly as I have now and before I understood the point Ms Bangay was making that the XYZ letter had converted the MOU into an open agreement.

81. This case is crying out for a final determination now. Indeed, both parties said how much they wanted the case over and for me to deal with it finally. I accept that, in Ms Neil's case, that was on the basis that she was saying she should have £5,500 per month maintenance, or even more than that given her variation application, but she was entirely right to say that the case should be over once and for all.

82. I have to apply the law. The case of Kingdon is authority for the proposition that I do not have to set the case down for a rehearing if I am clear as to the correct outcome. I have to apply FPR Rule 1.1. I have to deal with cases justly but that includes, so far as practicable, ensuring a case is dealt with expeditiously and fairly; dealing with it in ways that are proportionate to the nature, importance and complexity of the issues; ensuring that the parties are on an equal footing; saving expense; and allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

83. I am clear that I can now rely on the MOU. The privilege that attached to it was waived by the Wife when XYZ wrote saying that the parties had been able to reach an agreement and they had therefore drafted a Consent Order reflecting the terms of the agreement. Given her conduct, the Wife cannot be heard to say that this was on the basis of nominal maintenance because it was not. It was a clean break. She cannot benefit from her own deceit.

84. The only reason why a clean break order was not made in 2015 was because the Wife was twice deceitful as to the matter. First, she told her solicitors that the parties had agreed to nominal maintenance when they had not. Second, she told them that the Husband had agreed to substantive maintenance, when he had not. Again, she cannot benefit from her own deceit.

85. I accept entirely that I have not got before me details of the Husband's current financial circumstances. The Wife says he is doing exceptionally well; that he has a huge income; that he drives a Bentley and a new Mercedes AMG Jeep; that he is living in a house costing £8,500 per month in rent; and is taking multiple luxurious holidays. I have not directed him to file a Form E nor has the Wife been able to investigate his circumstances. I therefore intend to take her case at its highest and, for these purposes, I am going to assume that all that she says about his position is correct. I then have to ask myself whether there is any chance that this Wife would get a substantive maintenance order against him in those circumstances. If there is, I would have to set the case down for a hearing but, if there is not, I should immediately impose a clean break.

86. I have come to the clear conclusion that there is no realistic prospect that this Wife would ever get a substantive maintenance order against this Husband. There are numerous reasons for this but the following are clearly important features:-

(a) Her conduct has been egregious. The court cannot and will not ignore it.

(b) If she had not engaged in this conduct, there would already be a clean break made long ago.

(c) She has brought all her difficulties upon herself. She received £1 million from the proceeds of sale of Claybank. She could have invested this in a property with a sensible mortgage, as opposed to the excessive one she fraudulently obtained.

(d) She had an excellent income from working in MSS/TSS. Although I have not examined the circumstances of her departure from that business, she has been found to have behaved in a disgraceful manner in the Chancery litigation. Whatever happened prior to her leaving MSS/TSS, she ended up in prison entirely as a result of her own actions.

(e) It is almost inevitable that she will owe the Husband a very large sum of money indeed. I have already assessed that she owes him £248,930 but it could have been far higher than that. The charge back should have been for an additional £352,535. The Husband's costs of this litigation are £293,652 and, although I have not yet heard the costs submissions, my findings of fact point strongly to only one outcome. I consider it inconceivable that a judge would order the Husband to pay this Wife maintenance without allowing him to deduct the money he is owed, given her conduct. It follows that I cannot see how the Wife could ever succeed in obtaining a substantive order against him that he actually had to pay.

(f) I also note that, on the Wife's case, the Husband is in rented accommodation. He says, and I accept, that he has had to borrow significantly to fund this litigation. This would be relevant to the quantum of any maintenance award, even if the Wife got over the hurdles noted above.

(g) This is one of those very rare cases where I must take into account the Wife's conduct. I am clear that, if I allowed her to proceed

with a claim for maintenance, I would be allowing her to benefit from her fraud. Whilst I accept that this was a long marriage with a child, the Wife's conduct, in my view, is the magnetic factor that, in effect, trumps everything else.

(h) Finally, the cost, expense and emotional strain of a further hearing would be enormous and, I am satisfied, would not achieve anything.

87. It follows that Ms Bangay has satisfied me that there should be a clean break now even though my initial reaction was that it was an uphill task. I therefore replace Paragraph [26] with a clean break order in life and death. The rest of the order stands but with a declaration that the Wife owes the Husband £248,930.

88. I am not, at present, minded to report the Wife to the DPP. I undoubtedly would have done so had she not already served an eight-month sentence for contempt. I remind myself that the contempt was committed after the fraud I have found proved.

89. I am currently of the view that I should permit this case to be reported without anonymisation, particularly given that the judgment in the Chancery Division proceedings is already in the public domain. I have though decided to anonymise XYZ's identity as I have not heard from the firm during the trial.

90. Given my serious findings of fact, I order the Wife to pay the Husband's costs on the indemnity basis. His total costs were £293,652, inclusive of VAT. I assess those costs in the sum of £250,000, also inclusive of VAT and direct payment in 14 days with interest in default at 8%.

Mr Justice Moor
22 November 2019