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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
FINANCIAL REMEDIES COURT

Royal Courts of Justice
Strand
London

Before HIS HONOUR JUDGE HESS (Sitting as a deputy High Court judge)

IN THE MATTER OF

PS

- v -

NB

MR C POCOCK KC, MR A MOLD KC and MR T HAGGIE, instructed by Kingsley Napley LLP, appeared on behalf of the Applicant
MR WAGSTAFFE KC and MR M LEWIS, instructed by Hill Dickinson LLP, appeared on behalf of the First Respondent

JUDGMENT
6 DECEMBER 2023
(TRANSCRIPT APPROVED ON 15 FEBRUARY 2024)

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JUDGE HESS:

1. I am going to deliver judgment on the issues as we mentioned yesterday and then we will turn to other things.

2. I am dealing today with various matters arising out financial remedy proceedings which themselves arise out of the divorce between PS to whom I shall refer in this judgment as the wife, and NB to whom I shall refer in this judgment as the husband.

3. The representation before me is as follows. For the wife appear Mr Christopher Pocock KC, Mr Andrew Mold KC and Mr Thomas Haggie, all instructed by Kingsley Napley solicitors. For the husband, Mr Christopher Wagstaffe KC and Mr Max Lewis, both instructed by Hill Dickinson solicitors.

4. I pause to note that there are two other collections of parties already to these proceedings. First, the husband's two sisters, who are the second and third respondents. Secondly, the wife's sister and brother-in-law are respectively the fourth and fifth respondents. All those people have been excused from attending this hearing. The issues relating to them will no doubt return but are not centrally relevant to my decisions in this hearing and therefore it has not been thought necessary for them to be in attendance or represented at this hearing.

5. The background to this case is that both parties have Country D heritage but appear to have spent the majority of their lives in England and, certainly, are fluent English speakers. The wife is aged 57 and the husband is 56.

6. They met in 1999. They began co-habiting in the year 2000 and they married on 29 April 2006. In the meantime, they had two children. P, who is now aged 22. He is now in work in a surveyor's office. And Q who is aged 20. He is now studying at University.

7. In 2005, the husband and wife purchased what became the family home. Apart from a period when it was rented out and another period when it was substantially knocked down and rebuilt in the early days, the parties have lived at that family home and that is the case right up to date and so, at present, despite the divorce proceedings going on, the parties with their two children all live in that home together.

8. The property has been mortgaged on at least one occasion since its purchase. My impression is that the marriage had some difficulties for a number of years but sadly, broke down in 2022. The wife issued divorce proceedings in Spring 2022. I have not seen reference in the papers to a decree nisi or conditional order, but I do not think it is suggested that there is any opposition to the progress of the divorce itself. It may be there is a decree nisi to which I have not been referred.

9. The wife issued a Form A seeking financial remedies on 25 May 2022 and financial remedies proceedings have become a complicated exercise reflecting the many complex disputed areas arising in this family's finances. It is not entirely surprising, therefore, that significant amounts of legal fees have accrued in trying to deal with this difficult case.

10. Forms E were exchanged in September 2022. I dealt with the first appointment on 14 November 2022 in the Central Family Court at which hearing it was established that Peel J (as head of the London Money List) had approved a reallocation of the case to High Court Judge level and allocated it to me in that capacity and that is the way the case has been dealt with in all subsequent hearings.

11. I made some further directions on 22 May 2023 and listed the case for yet further directions on 18 October 2023. On 22 August 2023, I made an order on paper effectively reinforcing my earlier disclosure orders and then, when the case returned to me on 18 October 2023, I made some further directions including providing for a private FDR, which is to take place in April 2024 before Nigel Dyer KC and also, in case the private FDR is not successful, I listed a pretrial review before me on 31 May 2024 and a final hearing also before me in the Royal Courts of Justice for 12 days beginning on 22 July 2024.

12. It also became apparent on 18 October 2023 that there was a need for a further interim hearing to determine an application that the wife had made for maintenance pending suit and a legal services payment order, and an application which the husband (I think had not then issued but saying that he would and indeed has issued) for an order under the Trust of Land and appointment of Trustees Act 1996 (hereafter referred to as "TLATA") for the family home to be sold. In effect, within the context of the financial remedies proceedings, an application for an interim order for sale.

13. Also, there were various other valuation directions which needed more time to determine.

14. I was able to list this hearing, therefore, on two days before me in the Royal Courts of Justice on 5 and 6 December 2023 and at the commencement of this hearing, I decided that a timetable for these various applications over two days would best be served (taking into account the overriding objective and FPR 2010, Rule 1) for me to hear some limited oral evidence, in particular but not necessarily limited to the TLATA application, but limited to 90 minutes of cross-examination on each side plus any re-examination which arose from that cross-examination.

15. I indicated then that I would hear submissions on the maintenance pending suit and legal services payment order and TLATA issues and I indicated that after a suitable interval

to enable me to prepare my judgment, I would give an *ex tempore* oral judgment on those issues and then after that, I would return to the other directions which also needed considering and it is this judgment that I am now delivering, dealing with those issues which I have just mentioned.

16. I have been presented with an electronic bundle running to 1,486 pages and a second bundle described as part A running to another 110 pages - so nearly 1,600 pages of material thus far has been produced in this case.

17. Of particular relevance to the issues that I am now dealing with are the following:

(1) the parties' forms E which were exchanged and filed in September 2022;

(2) a valuation and some photographs of the family home;

(3) the husband's material, in particular his statements on the trust of land issue dated 1 November 2023 and a subsequent statement dealing with the MPS and LASPO issues on 1 December 2023;

(4) the wife's material consisting of a statement dated 12 October 2023 in which she describes her visit to the offices of the foreign trustees, her conversation with an employee of that firm in July 2023 and secondly, a statement covering trust of land and MPS LASPO issues dated 17 November 2023;

(5) an affidavit from the husband's father, sworn on 18 October 2023; and

(6) the document which purports to be a deed of settlement for the EG trust.

18. I have looked at all of those documents and some of the other documents as well.

19. As far as the law is concerned, I want to deal with it in separate parts.

20. First of all, the law relating to maintenance pending suit applications. I think it is appropriate and sufficient, covering all material areas, for me to read out various passages from the *Dictionary of Financial Remedies* (2023 edition) and I therefore quote:

> *"Once divorce proceedings have been issued, the court may make an MPS order requiring one party to pay to the other such maintenance as the court thinks reasonable…When determining an MPS application, the court usually makes a decision on quantum without hearing oral evidence and the exercise of discretion will often be a broad one focusing on the applicant's immediate needs and the respondent's readily identified income and resources. The court later hearing the full financial remedy application can make a capital adjustment to the final order if the interim assessment turns out on a more detailed analysis to be unfair in either direction, whether too low or too high. On the same basis, a recipient who unjustifiably spends significantly above the assessed MPS level runs the risk of being later subjected to a downwards capital adjustment…The principles relating to the MPS award were*

considered by Nicholas Mostyn QC sitting as a Deputy High Court Judge (as he then was) in TL v ML [2005] EWHC 2860 where he stated:
"From these cases, I derive the following principles:
(i) The sole criteria to be applied in determining the application is reasonableness which in my mind is synonymous with fairness.
(ii) A very important factor in determining fairness is the marital standard of living. That is not to say that the exercise is merely to replicate that standard.
(iii) In every MPS application, there should be a specific MPS budget which excludes capital or long-term expenditure more aptly to be considered at the final hearing. That budget should be examined critically in every case to exclude forensic exaggeration.
(iv) Where the affidavit or form A disclosure of the payer, so by the payer, is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee."…
The Court of Appeal in Rattan v Kuwad [2021] EWCA Civ 1 accepted the general effect of the above principles but it emphasised that, as with all guidance, the way in which they are applied depends on the particular circumstances of the individual case…When addressing an MPS application, the duty of full and frank disclosure applies. A respondent who does not comply with its duty or does not provide the court with proper material to explain or to support their assertions as to their means cannot expect the court to accept those assertions if it seems fair to take a robust contrary view."

21. In addition to that, I shall mention one recent authority in which Peel J in *HAT v LAT* [2023] EWHC 162 said this,

> *"The law on MPS can be readily stated. The statute enables the court to make such an order for MPS if the court thinks reasonable and the same applies to interim PPs after pronouncement of decree absolute. In TL v ML, Nicholas Mostyn QC stated that the sole criteria is reasonableness which is synonymous with fairness. That formulation was approved by the Court of Appeal in Rattan v Kuwad. I reject the submission made on behalf of the husband that the wife should be confined to emergency immediate relief. That is not consistent with the overriding approach to reasonableness which the authorities endorse."*

22. As far as the law in relation to applications for a legal services payment order, again, I think it suffices for me to read out some extracts from the *Dictionary of Financial Remedies* (2023 edition) on this subject which says the following:

> *"Once divorce proceedings have been issued, the court may make a specific order requiring one party to the marriage to pay to the other an amount in the form of a legal services payment order to enable the applicant to obtain legal services for the purpose of the proceedings. See Matrimonial Causes Act (1973), section 22ZA. The court must not make an order unless it is satisfied that without it, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of proceedings or any prior to the proceedings. The court must be satisfied in particular that the applicant is not reasonably able to secure a litigation loan or to gain representation by a Sears Tooth charge…In deciding whether to make an order and if so, in what form, the court must have regard to – see the Matrimonial Causes Act (1973) section 22ZA: (a) the relative income, earning capacity, property and other financial resources of the applicant and the paying party now and in the foreseeable future; (b) the relative financial needs, obligations and responsibilities; (c) the subject matter of the proceedings and what is at stake and (d) whether the paying party is legally represented in the proceedings; (e) any cost saving step proposed by the applicant, eg, mediation; (f) the applicant's conduct in relation to the proceedings; (g) sums owed by the other party in respect of costs and (h) the effect of the order on the paying party…In analysing the effect on the paying party, the court must have regard to whether the making or variation of the order is likely to cause undue hardship to that party or prevent them from obtaining their own legal services for the purposes of the proceedings…* In *Rubin v Rubin* [2014] EWHC 611, Mostyn J suggested a summary of the substantive and preceding principles applicable to these applications:
>
> *"(i) When considering the overall merits of the application for a LASPO, the court is required to have regard to all the matters mentioned in s22ZB(1) – (3).*
>
> *(ii) Without derogating from that requirement, the ability of the respondent to pay should be judged by reference to the principles summarised in TL v ML [2005] EWHC 2860….*
>
> *(iii) Where the claim for substantive relief appears doubtful, whether by virtue of a challenge to the jurisdiction, or otherwise having regard to its subject matter, the court should judge the application with caution. The more doubtful it is, the more cautious it should be.*
>
> *(iv) The court cannot make an order unless it is satisfied that without the payment the applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future. It is important that the jurisdiction is not used to outflank or*

supplant the powers and principles governing an award of costs in CPR Part 44. It is not a surrogate inter partes costs jurisdiction. Thus a LASPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings.

(v) In determining whether the applicant can reasonably obtain funding from another source the court would be unlikely to expect her to sell or charge her home or to deplete a modest fund of savings. This aspect is however highly fact-specific. If the home is of such a value that it appears likely that it will be sold at the conclusion of the proceedings then it may well be reasonable to expect the applicant to charge her interest in it.

(vi) Evidence of refusals by two commercial lenders of repute will normally dispose of any issue under s22ZA whether a litigation loan is or is not available.

(vii) In determining under s22ZA(4)(b) whether a Sears Tooth arrangement can be entered into, a statement of refusal by the applicant's solicitors should normally answer the question.

(ix) The order should normally contain an undertaking by the applicant that she will repay to the respondent such part of the amount ordered if, and to the extent that, the court is of the opinion, when considering costs at the conclusion of the proceedings, that she ought to do so. If such an undertaking is refused the court will want to think twice before making the order…

(xi) Generally speaking, the court should not fund the applicant beyond the FDR, but the court should readily grant a hearing date for further funding to be fixed shortly after the FDR. This is a better course than ordering a sum for the whole proceedings. The court will be better placed to assess accurately the true costs of taking the matter to trial after a failed FDR when the final hearing is relatively imminent, and the issues to be tried are more clearly defined.

(xii) When ordering costs funding for a specified period, monthly instalments are to be preferred to a single lump sum payment. It is true that a single payment avoids anxiety on the part of the applicant as to whether the monthly sums will actually be paid as well as the annoyance inflicted on the respondent in having to make monthly payments. However, monthly payments more accurately reflects what would happen if the applicant were paying her lawyers from her own resources, and very likely will mirror the position of the respondent. If both sets of lawyers are having their fees met monthly, this puts them on an equal footing both in the conduct of the case and in any dialogue about settlement."

23. In the context of historic costs, Cobb J has emphasised that the test is whether the applicant would reasonably be able to obtain appropriate legal services and that is not really

to expect solicitors or counsel to extend unsecured interest free credit. See *BC v DE* [2016] EWHC 1806.

24. To secure provision for unpaid historic costs, the applicant does not therefore need to show that their solicitors will down tools if they remain unpaid. The underlying rationale is to provide equality of arms. That said, adopting the same rationale, the court was unlikely to consider it necessary to discharge the historic sums owed to a former solicitor. That provision is made for historic costs. It may be appropriate to agree to sums to reflect a standard assessment.

25. As far as the law in relation to the TLATA application was concerned, the following points merit raising at this stage. In the context of the ongoing financial remedy proceedings, what is in effect sought is an interim remedy though a procedural route, the jurisdictional route selected in this case is in fact a final order under TLATA. This brings into play the following legal issues. The court must consider the factors set out in section 15 of TLATA as follows:

(1) The matters to which the court has had regard in determining an application under section 14 include (a) the intentions of the person or persons (if any) who created the trust; (b) the purposes for which the property subject to the trust is held; (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and (d) the interests of any secured creditor of any beneficiary.

(2) In any case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 13, the matters to which the court is to have regard include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12. Per Mostyn J in *BR v VT* (2016) 2 FLR 519, if the court is minded to make an order for sale, the court must also conduct the exercise in section 33 of the Family Law Act 1996 namely, in deciding whether to exercise his powers under subsection and if so, in what manner, the court should have regard to all the circumstances including (a) the housing needs and housing resources of each of the parties and any relevant child; (b) the financial resources of each of the parties; (c) the likely effect of any order of any decision by the court not to exercise its powers under subsection 3 and the health or wellbeing of the parties and of any relevant child and (d) the conduct of the parties in relation to each other and otherwise.

(3) In deciding whether to make an order for sale under the TLATA in the context of ongoing financial remedy proceedings, the court should also bear in mind the comments of Wilson LJ

(as he then was) in *Miller-Smith v Miller-Smith* (2009) EWCA Civ 1297 where amongst other things, he says:

> *"By asking itself whether the issued raised by the application can be reasonably left to be resolved within an application for ancillary relief following divorce is in principle much more desirable that an issue, as here, about sale of the home should be resolved within an application for ancillary relief for there, the court will undertake a holistic examination of all aspects of the parties' finances, needs, contributions etcetera, will devise a fairer set of arrangements for future housing and finances of each of them and to that end, will provide for the transfer of capital as well as perhaps as for payment of future income from one to the other.*
>
> *By an order under TLATA on the other hand, the court base that on only one piece of the jigsaw, namely that the home be sold without it being able to survey the whole picture by laying down the others.*
>
> *So, at this threshold stage of the enquiry which is an application under the Trust of Land Act between spouses, the court will in particular have regard to the question of whether within a timeframe probable in all the circumstances, the parties will become able to apply for ancillary relief. Furthermore,* ***if at first sight, there appears to the court to be any measurable chance that on an application for ancillary relief made within that time frame, the respondent to the application for an order of sale under TLATA will be able to preserve her or his occupation of the home by securing an outside transfer of ownership of it or a variation of the trust, it is hard to conceive that an order for sale would reflect a proper exercise of discretion****."*

26. Pertinent also is the analysis of Cobb J in *WS v HS* (2018) 2 FLR 525 in which he considered the area of the law and amongst other things stated:

> *"A matrimonial home is often the main asset acquired during a marriage. It is so in this case. Not uncommonly, issue will be drawn between the parties, particularly where there are dependent children as to whether it should be retained and if so, for how long. The apportionment of the shares of the parties' proceeds of sale may be dependent on a large number of factors which may only be fully appreciated on a full review of the criteria under section 25 of the Matrimonial Causes Act 1973. Courts will be slow to take any interim step which may pre-empt the exercise of the wider discretion at final hearing. It is only then that all pieces of the jigsaw come together. That said, there will be cases where it would be right to do so and as rule 20.21(c)(5) makes clear, a good reason needs to be shown*

for an order for sale before the court can exercise its interim powers."

27. I bear all of those matters of law firmly in mind when turning to the determination of this case. I will start by saying some things about the family home. It is common ground, at least for the purposes of this hearing, and I think also for the FDR, that the family home is currently worth about £6 million. Also, it is subject to a mortgage with a private bank with an outstanding sum of £3.5 million. In broad calculations, it would, following a sale, produce a net equity of about £2.32 million, half of which would be £1.16 million.

28. It is also true that the property is currently home to the husband and the wife and their two children, P and Q. It is also true that not very long ago, there was an unfortunate incident where a roof collapsed in the swimming pool/gym area and I am told that has not been repaired and there may be some issues as to how and when that might be done and whether the insurance will cover that; but for the time being, that part of the house at least looks unsightly.

29. It has not been disputed before me further that the repayments on the mortgage currently stand at £19,440 per calendar month and that this contrasts with what the case was just a year and a half ago in May 2022 when those interest payments stood at £4,605 a month, the culprit here being the rise in interest rates that has occurred in the intervening period.

30. There is no evidence before me that any cheaper mortgage would be available. I dare say it might be but I certainly am not able to make any decision based on that fact.

31. It has not been disputed before me also that the current running costs of the house are the following which are set out in the husband's statement – council tax, £390 per month; home insurance including contents insurance, £938 per month; electricity £1,850 per month; gas, £1,252 per month; BT landline, £73 a month; Sky TV, £217 a month; TV subscriptions, £50 a month; the costs of running the aquarium, £342 a month; the costs of employing a gardener, £600 a month and water rates £70 a month and not included in my list, a notional figure for household repairs on the grounds that that is too vague to have a particular figure attached to it and therefore, there may be some repairs.

32. If I add all of those figures, deducting the £200 for doing the household repairs, that adds up to a figure of £5,782 per month.

33. The wife invites me to make an order that the husband should pay all of this cost, ie, that he should pay £5,782 towards the household outgoings or whatever they cost, plus £19,440 on the mortgage or whatever it costs. On the basis of those two figures, that would

commit him to paying £25,222 per calendar month and the wife also invites me to reject the application for immediate sale of the property.

34. In addition, the wife invites me to order that the husband should pay maintenance pending suit of £132,000 per annum or £11,000 per month and she also asks me to order that the husband should pay an immediate lump sum for legal costs incurred to date which is said to be £318,000. In fact, on the maths, the wife has incurred, I have been told, fees of £802,147 of which she has paid £487,492, the difference between the two figures being £314,655, not £318,000. It is a very small difference but I note the mathematics.

35. The wife also asks me to require the husband to make an ongoing legal services payment order payments to her of £70,400 per month on 1 January, February, March, April and May 2024. Five payments of £70,400 would be a total of £352,000 and that broadly accords with the estimate that has been advanced as to what costs will be onwards from here and up to and including the pretrial review on 31 May 2024.

36. Presumably, if the FDR has not caused settlement of the case, the wife will be looking for a further payment of legal services payment at the hearing on 31 May 2024 or at some other convenient hearing for that purpose to enable her to take the case to trial.

37. I note by way of a comparison that the husband has so far incurred £471,929 of costs of which he has paid £308,497 and therefore has an outstanding costs debt of £163,432.

38. The husband's response to all of this is to say that the family home needs to be sold. It is simply not affordable to keep it and he says that I should not fix any MPS or LASPO order until that has happened and until the point we know how much money there is and whether or not there is, in fact, a need for any payments.

39. If I am against him on the sale of the house, he makes no offers on the maintenance pending suit or LASPO applications saying that he simply cannot afford to pay anything towards them.

40. He goes on in his statement to make the point that the atmosphere in the home is toxic. Perhaps that is not entirely surprising in relation to two people who are going through fairly bitter litigation against each other and in the context of the fact that the wife and the husband are not talking to each other and the children, in particular P, appeared to be taking the wife's side and making life difficult for the husband in a number of ways.

41. Notwithstanding all of that, this is not a case in which there are any allegations of physical violence justifying an order on that basis but it is not surprising to me that this house is not a happy place to be at the moment.

42. So, how do I decide as between those two very contrasting positions? Well, at the heart of the dispute which exists both in this hearing and also, it seems likely to be the ongoing argument at the heart of the ongoing dispute, is the question of what a court should make of the husband's presentation of his financial circumstances.

43. On his own presentation, he says that apart from the family home and possibly some interest in ABCD Ltd, his net capital worth is only a very modest amount. The ES2 says about £60,000 but that, I do not think, includes the outstanding costs obligations which I have just mentioned and if I take that off, he is in a negative position on his presentation.

44. On his presentation, his income is approximately £134,000 per annum net or approximately £11,000 per calendar month net. If this presentation turns out to be correct or if I was to be compelled to assume that it was correct today, then it is obvious that he would be unable to afford very much of what the wife is asking him to pay; but the question really arising is whether this is a case in which I should be drawing robust adverse inferences following the principles set out in the Nicholas Mostyn judgment in *TL v ML* (see above).

45. I remind myself of the relevant paragraph in that judgment. Where the affidavit or form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee.

46. I want to remind myself that this is not a final hearing and that there are dangers in reaching conclusions about the veracity of the presentation after a very limited amount of cross-examination, that which I heard yesterday. I am very conscious that I have only heard a small snippet of what may turn out to be a cross-examination and a small snippet of what disclosure may yet come and I do want to make clear that I retain an open mind about this and it may be that I will reach a different conclusion about the husband's presentation at the end of the case, but on the basis of what I have seen so far and the limited oral evidence that I heard yesterday and the cross-examination I heard yesterday, I have concluded that this is a case which falls full square within the paragraph in Nicholas Mostyn J's judgment which I have just read out, in other words, that I should make some robust inferences at least at this interim stage.

47. Why have I reached this conclusion? Well, the following factors formed part of my thinking in relation to this, or the major part of my thinking in relation to this.

48. First, I am quite satisfied that this family has lived a very high level for a long period of time commensurate with a family which has a high level of financial resources. I do not want

to labour the point but they live in a very expensive house with a swimming pool, an aquarium. They have had expensive holidays. They were at one stage thinking of buying a £2.5 million yacht although they did not actually do that in the end.

49. On the face of it, this is a high resource family and, on the face of it, the husband's presentation does not begin to explain how this was afforded over a number of years. That fact alone causes the judicial eyebrow to be raised.

50. Secondly, insofar as light has been thrown on the assets alleged by the husband to exist but not to belong to him, and in this context, I concentrate on the assets held in the EG trust, I know not as much as I should or perhaps will before the end of this case but I make the following observations.

51. The assets within that trust consist of a large number of real property assets worth at least £100 million, which is the husband's own estimate, subject to a debt said to be of about £55 million, that is to say a net value of about £45 million.

52. There is some evidence, as Mr Pocock has argued, that in fact the valuations that they have so far obtained underestimate this and it may be more, there may also be more indebtedness in that estimate, but it suffices for my present purposes to say that it seems that these assets are worth a net value of at least £45 million. Obviously there would be some costs of realising those assets but it is a substantial sum and if those were really the husband's assets or he had access to them, as the wife suspects, then the presentation that he has given would be severely deficient.

53. The main reason why I and we in this court have few details about this trust and its past and its creation etcetera at this stage is, I am satisfied at the moment anyway, because the husband is quietly and deliberately blocking the disclosure process. The conversation that the wife records with the employee of the corporate trustee in July 2023, and I have no reason at the moment to doubt that, that was not a subject which Mr Wagstaffe cross-examined the wife on yesterday but as it stands, subject to further cross-examination, points firmly to the conclusion, it seems to me, that it is the husband who is blocking the disclosure. If he stopped blocking it, there would be a lot of information disclosed which may be of interest.

54. The opposition which is being put up in the courts Country D, so it seems to me at this stage, seems to me motivated mainly by the husband's desire to hide what is going on, which is a classic reason for a court to draw adverse inferences. I am afraid I have not been impressed, at this stage certainly, by Mr Wagstaffe's argument that the opposition to the disclosure in Country D is motivated by a pure desire to protect the integrity of the trust from the wife's principal application and in fact that she is confusing her role as trustee and

potential attacker of the trust. This argument seems to me to be uncompelling, at least at this stage. If this trust is valid and if he is not able to benefit from these assets as he asserts, then my view is that the husband would be strongly in favour of supporting the disclosure of information of the documents from Country D to England. The fact that he is not is for me, at this stage certainly, highly suspicious that those documents will reveal a rather different picture to the one he has so far wished to portray to this court.

55. It may be by the time I come to consider this again that it will look very different but that is my impression at this stage.

56. Thirdly, the affidavit of the husband's father if reliable, and I am aware that it is challenged on the basis that he may not have capacity or that he may have been manipulated by his current partner who is a cousin of the wife as it happens, raises on its face at this stage, without further explanation, some serious challenges as to the validity of the trust. He is said to have been the settlor of the trust and placed significant amounts of assets in it. His affidavit, if it be correct and reliable, says that this is absolutely not true. It is an issue which needs to be resolved but at the moment, with the level of disclosure we have had so far, that it is seriously troubling as a picture of the reliability of what the husband says about the trust.

57. Fourthly, there was an indication in the evidence that for many years, the husband has taken large amounts of money from the trust to support the family. At this stage, my broad impression is that he has been able to take what he wished at any stage at will and has regularly done so. It is not the whole picture but the photographs of the cash in the house and his explanation for going to Country D, asking for some cash which was here, large amounts of cash, tens of thousands of pounds worth of cash in a bag, are indicative of that situation and that the presentation is not all that it seems.

58. Fifthly, if these assets really are the property of the husband or he has access to them, then that paints a very different picture of his wealth than the one which he would wish me to believe.

59. Again, this is an interim hearing only and again, I make clear that I have an open mind and I make take a different view at the final hearing but there are various events which have already been exposed which suggest that the husband is far from averse to being dishonest in his presentation.

60. I heard some oral evidence from him on some of these matters yesterday and found myself difficult to be convinced of the reliability of the way in which he dealt with some of these matters under cross-examination from Mr Pocock.

61. For example, (a) the husband's email exchange with his siblings in December 2021 does not point to a picture of someone who is always honest in his presentation; (b) likewise, I was not impressed with the husband's attempt to explain the two emails sent in the same minute on 29 April 2021 with different wording. Absent a convincing explanation to this event, which has not yet come, it seems to point both to a willingness to be dishonest in the presentation of the document and also, a willingness to hide personal assets and present them as inaccessible trust assets or corporate assets. Both of those indicators are pertinent to today's application; (c) likewise, the email that he sent to his siblings on 14 December 2021 in which he both promised substantial cash gifts to his various nieces and nephews but reserved the right to recall them by way of documents which he would retain which would be loan documents, seem to me to throw some light on the manipulative way that the husband is prone to present his situation.

62. Likewise, I note that he informed the mortgagee of the family home in the context of a remortgage application signed by the husband on 5 May 2022 that his annual income was then £720,444 (I think that is probably gross), which is a very different figure from the one that I am presented with in the context of this case and was only a year ago. It may be that further explanation would explain why that is a different figure but certainly nothing that I heard yesterday convinced me that his current presentation of his income should be regarded as reliable in the context of this case.

63. It follows from all this that at this stage, and I emphasise again, at this stage because further disclosure may paint a different picture, I should draw robust assumptions about the honesty of the husband's presentation and not accept that he is a man of relative impecuniosity as he claims but make the robust assumption that he is a man with access to substantial assets, quite possibly the whole of £45 million worth of real property assets to which I have just referred.

64. Having reached this conclusion, I have no hesitation really in deciding that the husband's application for an interim order for sale under TLATA must fail. It must follow from what I have just said that there is at least, and possibly much more than, a measurable chance, in the words of Wilson LJ, that the wife will ultimately be successful in gaining ownership of the family home at a final hearing, possibly mortgage free, and it would be quite wrong in my view for me to pre-empt that possibility by ordering its sale now and I will not do so.

65. The same conclusions would have been reached by doing a line by line analysis of TLATA, section 15 and the Family Law Act 1996, section 33 so I have reached the conclusion that that application should be rejected.

66. I have also reached the conclusion, based on the same thoughts, that the wife is entitled to some orders for maintenance pending suit and legal services payment order. I want to say a number of things about the quantification of that application. I propose to make the following orders.

67. I propose to require the husband to make the mortgage payments and the household outgoings per the list that I have set out above, not including the £200,000 payment for the avoidance of doubt, and for him to do that until the conclusion of these financial remedies proceedings.

68. Whether the household outgoings should be in the form of an undertaking or an order I will take further submissions on but one way or another, he should make those payments.

69. I also propose to make an additional maintenance pending suit order. In this context, I have looked at the schedule, effectively a living budget which is exhibited at exhibit 23 to the wife's MPS statement and I have looked at that critically in the context of the guidance given by Nicholas Mostyn in *TL v ML*.

70. It seems to me that it is fixed at quite a high level and at a higher level than I think is reasonable in all the circumstances. There is room, I think, for some economy in that budget whilst leaving the wife living a life which is a perfectly reasonable one and also one which is reasonably commensurate with what she had before and I have in that context alighted on a figure of £7,500 as being a reasonable payment and that is what I shall order.

71. I may need to hear further submissions as to when that should start but will continue also until the conclusion of these proceedings.

72. As far as the legal services payment order is concerned, I have the following comments. First of all, it seems to me that it is reasonable to say that the wife is going to have to pay £314,655, the outstanding bill from her current solicitors and I have been given the schedule of £352,902 from now onwards to the pretrial review hearing on 31 May and those figures have not been challenged, certainly not in any detail and in view of the complexity of this case and the necessity of instructing separate counsel to do the trust issues, it seems to me that that is not an unreasonable figure to put in the budget.

73. I have considered Mr Wagstaffe's suggestion that there has not been sufficient proof that litigation funding was not available but I accept the wife's case that she has gone to two reputable litigation funders and they have both said no. The fact that one of them is actually

not making any loans at the moment does not in fact remotely detract from the fact that the evidential basis has been made out.

74. The other matter that was raised by Mr Wagstaffe is this that it would be reasonable to expect the wife to make some contribution to her legal costs from the two properties that she has. I exclude from that the one that is occupied by her mother which seems to me unreasonable to expect her to do anything with but the other two properties which are tenanted, one has an equity of £324,000 or thereabouts and the other has equity of £200,000 or thereabouts, taking into account sale costs and CGT.

75. It seems to me that in the context of the law for a legal services payment order in the context that it is reasonable for the wife up to a point to use her own resources to meet her legal costs and put her own money where her mouth is where the costs of litigation are concerned.

76. I have decided that it is reasonable to expect her, either by way of selling those properties, borrowing against them, perhaps a Sears Tooth charge might be considered against one of those properties or some other combination of events to access £300,000 from those assets and that forms part of my section 22ZB analysis of her situation.

77. I am going to divide that £300,000 into two portions, one relating to the past costs and one relating to future costs and I am going to order, therefore, that the husband should pay a legal services payment order of £314,655 minus £150,000. That is a total of £164,655 within a fairly short period. I may hear some more submissions on what that period might be.

78. I am also going to order in terms of the ongoing legal services payment order for him to pay £352,902 minus £150,000. That is £202,902 and dividing that by five covering a number of months gives a figure of £40,580 per month and I will order that he should pay that on 1 January, February, March, April and May 2024.

79. Two other matters. One is that I would expect the wife to give the usual undertaking to repay those sums if the court thinks at the end of the day that she should do so in the standard way and secondly, I am conscious that the future costs figures do not include one particular valuation figure which we are going to go and argue about now and it may be that I will be prepared to revisit the future costs figures if I am persuaded that a further amount is needed to be spent by the valuation exercise.

80. So, that is my judgment. It brings us to one o'clock.
