Neutral Citation Number: [2021] EWFC 117

Case No: ZC19D00073

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 March 2021

Before :

THE HON. MR JUSTICE COHEN

- -

Between :

LADY HIROKO BARCLAY	**Applicant**
- and -	
SIR FREDERICK HUGH BARCLAY	**Respondent**

- -
- -

Mr S Leech QC & Mr R Sear (instructed by **Payne Hicks Beech**) for the **Applicant wife**
Mr J Tod (instructed by **Newton Kearns**) for the **Respondent husband**

Hearing dates: 15-19 March 2021

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Approved Judgment

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THE HON. MR JUSTICE COHEN

The judgment was delivered in private but this version of it may be reported.

The Hon. Mr Justice Cohen:

Introduction

1. I have been dealing with the application by Lady Barclay ("W") for financial remedy orders against her husband Sir Frederick Barclay ("H").

2. W is aged 78 and is by nationality Japanese. Since 1973 she has lived in London. H is 86 and was born and brought up in London. He is of British nationality. Although he has spent much of the recent past living abroad for tax purposes, he has, according to his s.25 statement and the position statement filed on his behalf, been domiciled in the UK since 2014 when he returned to London.

3. The parties met and began to co-habit in 1973. W had had one brief and unsuccessful marriage and was the mother of a son who was aged 6 when co-habitation began and is now aged 53. He has always been treated as a child of the family and took the surname of H, but he is not regarded by H as a fully-entitled member of the family and is excluded by H from all financial provision.

4. In 1978 the parties' daughter Amanda ("Amanda") was born.

5. The parties married in 1987. Although there was a blip in the marriage in 2005, the parties remained living together until March 2019 when W issued a petition for divorce and within days left the matrimonial home.

6. It follows that from the time of cohabitation to separation the parties were together for 45 years and I treat this as being a very long marriage.

H's business career

7. H's financial acumen and success is well known.

8. After some initial reverses, H and his brother DB entered the property world, principally hotels, and expanded from there into other areas. H says that by the time he and W met, he and his brother had bought up stakes in a variety of businesses including a hotel in Park Lane. Soon after the parties began living together they bought the Howard Hotel in Temple Place. He says that over a period of a decade, presumably the 1970s, fifteen hotels were purchased.

9. In 1983 H and DB purchased Ellerman Lines and sold off the assets of the company making a profit of some £200m. It was the sale of the Ellerman chain of pubs and breweries in 1990 which led to H becoming non-resident and non-domiciled in England from 1990-2014, during which time he was resident and domiciled in Monaco. H and DB lived in neighbouring apartments there.

10. H's absence from the UK did not in any way inhibit his business activities. In his statement he describes how he expanded further into hotels and leisure (in particular the Ritz Hotel as well as other luxury hotels); retail (Littlewoods, which became Shop Direct/Very Group); print and media (The Telegraph, The Scotsman and The Spectator); logistics (Yodel) and property. H and his brother became enormously wealthy.

11. In 1989 H and DB set up a charitable foundation and in 2000 they were both knighted for their philanthropic works.

Family homes

12. When H and W first began living together they did so in a flat which H owned in Belgravia, London.

13. In 1979 a terraced house in Wilton Place SW1 was purchased. It was sold in 1982 and a property in Chester Square was purchased and became the family home until 1992, when the family moved to another property in Chester Square, which in turn remained the family home until 2016.

14. From 1990 H was non-domiciled and so spent little time in the UK and never stayed in the family home. That meant that when Amanda was young, almost the entire burden of bringing her up fell on W.

15. The second Chester Square home was put into the name of W. Later on, in 2010 or shortly after, W, at the instance of H, signed the paperwork with which she was presented to transfer to Amanda. Thus it was that she lost the ownership of the only asset in her name.

16. In 2016 Chester Square was sold and Cleveland Court was purchased. It is a very large apartment over 3 floors, with 5 principal bedrooms in a beautiful position in St James's and extending to over 6000 sq. ft, including a ballroom. The purchase price inclusive of staff flats and garages was a little over £30m and a further £8.6m was spent on works. The purchase was funded to a significant extent by commercial borrowing of £24m, with the balance of the funding met by a loan from ARB Overseas Ltd (ARB being Amanda's initials), which is a BVI company owned by a trust of which H was the settlor but of which he is not now a beneficiary.

17. H remains living in Cleveland Court but has received an eviction notice as a result of non-payment of the mortgage. The property is on the market for sale at an asking price of £30m. H says, "*I believe that this is what the property will achieve*". The price is apparently consistent with a valuation obtained on behalf of the mortgagees.

18. H says that he intends to go and live with Amanda. Time will tell whether that proves to be the case. W remains in rented accommodation and will need to buy herself a home.

19. In 1993 H and DB acquired Brecqhou, an island off Sark in the Channel Islands. It was purchased for just £2.3m in the joint names of the two brothers. The freehold is held as tenants in common, but the brothers have granted a long lease. A very large property was built on the island and it became the main residence of DB and his wife. Other members of the family, including H, had their own individual quarters. H says that he has not visited the island since a brief trip over the New Year 2014-2015.

Family relationships

20. A very sad part of this case has been to see the state of family relations.

21. Since the separation, the relationship between W and Amanda has been severed. Amanda has sided totally with her father. She has been of considerable financial assistance to her father, having been made very wealthy by him, but has made it plain that she is unwilling to assist her mother in any way. I should state that I have not during the hearing heard anything of Amanda's side of the matters covered in this judgment.

22. H and DB were extremely close. W explains that not only were the brothers very close but they were also highly competitive, both with one another as well as with outsiders, and at times in great conflict with one another. In or about 2014 there was a major falling out between them and the relationship was never repaired. No doubt it was a matter of great regret to H that his brother died recently without there having been any restoration of relations.

23. The rift between H and DB's sons is widely known. There are proceedings in the QBD between H and Amanda on the one hand and three of DB's four children on the other hand. Those proceedings have received widespread publicity. The nephews have not been involved in the substance of these proceedings.

Succession planning

24. H and, from what I have been told, DB, shared an obsession with privacy but also with avoiding tax, whether payable in their lifetime or on death. In describing some of the schemes hereinafter, I make it clear that I am not in any way suggesting that there was any form of improper activity.

25. H says that in the mid-1990s he and his brother began to discuss how to pass on their wealth to the next generation. He says that the principle was agreed that DB's 3 children by his first marriage (their shares being subsequently adjusted to provide for his son by his second marriage) and Amanda were to share equally in what had been built up. Each was to receive 25% of the business empire. This required H to gift half of what he had to the 3 nephews. Thus it was that H's 50% interest in the empire (as he himself describes it) was settled into trusts of which only one half was to benefit him or his daughter.

26. W says and I accept, that H felt that this arrangement was forced upon him by DB. H described it to me as the biggest mistake of his life and that it left him at the mercy of the other side of the family after the 2014 fall-out.

27. Impetus to the arrangements was given by H's desire to return to England. In March 2013 DB settled 5 trusts, each holding a valuable property. In each instance H was within the beneficial class. W was not a beneficiary. They included the Chester Square property. As far as I can tell, all these properties remain in these trusts for Amanda's benefit, apart from the Chester Square property which was sold for around £7m and the proceeds then used to reduce the mortgage against Cleveland Court in 2019. In addition H bought for Amanda a valuable property in Holland Park and possibly other property as well.

28. In October 2013 DB settled the Amelia Trust ("Amelia"). H was within the beneficial class, but W was not. The Amelia Trust and the Co-Ed Trust ("Co-Ed") are the two entities at the centre of this case. I shall attempt to simplify the subsequent transactions, omitting that which has been overtaken by later developments.

29. In December 2013 an informal 'valuation' of the brothers' joint interests was drawn up by H showing the underlying net values of the assets held within the trust structures that had been established. It is unnecessary to go into any detail beyond saying that it was agreed between them that a 25% share of the total net value was £650m. On 3 January 2014 £650m of unsecured loan notes were issued.

30. In April 2014 Co-Ed Trust was established, settled by DB. Once again H was the beneficiary and W was excluded. On the same day a letter of wishes was signed by DB saying that H was to be regarded as the primary beneficiary of Co-Ed Trust during the lifetime. The loan notes were distributed to Co-Ed by Amelia.

31. In the same month, H had himself (to express the reality of what happened) excluded from Amelia Trust, leaving Amanda as the beneficiary.

32. Thus it is that Co-Ed came to own £650m worth of loan notes of which H was to be the primary beneficiary, but dependent on Amelia to provide the funds to honour them. According to the trust documents, Amelia could redeem the notes at any time but Co-Ed, as the note-holder, had to give 12 months' notice if it wanted the notes redeemed. The funds for the payment came from the family underlying businesses.

33. The practice was very different. Between 2014-2019, approximately £128m of the loan notes' value was paid to H. H simply spent as he wished. He did not seek the trustees' approval. He bought, for example, the yacht Leander for over £30m and Cleveland Court without even consulting the trustees. There would be a quarterly reconciliation of what H had spent. H treated the funds as if entirely his own. There is no tax liability that attaches to the redemption of the loan notes.

34. It is H's case that as of the time of his Form E the loan notes balance was £552m and that since the start of 2019 the redemption had been systematic so that H received £800k per month to meet his living expenses. He went on to say "*I anticipate, and hope, that the businesses will continue to be able to fund monthly payments of £800,000 (or £2.5m per quarter*)". As at September 2019 H says the balance was about £540m, although by my calculations the figure must have been closer to £545m.

35. It is H's case that as from September 2019, without any warning, Amelia ceased to make payments to Co-Ed and that H has received nothing since that date. He said that the underlying businesses have liquidity issues.

36. It might be thought, and is obvious with the benefit of hindsight, that an arrangement whereby H left control of 75% of the family business in the hands of DB's side of the family might place H and Amanda in a vulnerable position if family relations turned sour. That is exactly, says H, what happened. This has impacted on them in a variety of different ways. Particularly material for these purposes are:

    i) According to H, neither he nor Amanda, who was briefly a director, had any inkling that the Ritz Hotel had been sold until they read about it in the media;

    ii) They have no knowledge other than what they read, as to the precise sale figure and how the proceeds have been used.

iii) They have no knowledge of any underlying figures and are unable to access any information.

iv) Their ability to access funds from Amelia and Co-Ed is dependent on the flow of funds from the underlying entities which the nephews control.

I have to decide how much of that narrative I accept.

The assets of the Co-Ed Trust

37. Co-Ed Trust owns the loan notes but also owned the yacht Leander. This was the last of a succession of luxury yachts owned by H. It is a famous 75 metre yacht with a crew of 28. H and W would spend about 6 weeks on it each year.

38. When H declared himself unable to make the maintenance payments and the legal services payment orders which I had ordered by way of interim provision, I made orders in June 2020 in respect of the yacht which H had said that he was in the process of trying to sell. He said that this was with the blessing of the Co-Ed trustees, but that he was in charge of the sale process. He said that he had turned down an offer of £32m and would accept not less than £35m. This is to be seen against a previous SJE valuation of December 2019 of £45m in a good market and £35m in a poor market.

39. My orders required the full provision to W's solicitors of information about marketing and the receipt of any offers. The orders were served on the trustees as well as on H. He was fully aware of their terms. Correspondence between solicitors contained repeated requests by W for updates, but nothing was reported. On 2 March 2021, just before the hearing was due to begin, H, eventually faced up to the fact that he had to explain why the Lloyds Register was reporting a change of ownership. He said that the yacht had been sold on 23 September 2020 for €29m and that H had received just under £12.4m into his own bank account.

40. H said in evidence that he had forgotten about the court order; that he left the sale details to other people, naming a friend MC as the one who had conduct of the sale for him; and insisted that he was no good with paperwork and that there was no dishonest intent.

41. If it had not been for the alertness of W's team, it seems highly likely that the court would have conducted this hearing in complete ignorance of the sale. H had engaged in a charade, pretending that no sale had taken place. I unhesitatingly acquit H's solicitors of doing anything other than follow their instructions, but unknown to them, their instructions were completely untrue.

42. I have no means of knowing what the actual sale price was or how it has been applied, because H has not provided a copy of the sales contract, or any paperwork at all. The trustees have hidden behind the Liechtenstein laws of privacy to give no information. MC says that whatever H might say, he (MC) did not complete the sale.

43. I do not accept without corroboration that the price was €29m although it might have been. I am prepared to accept that £3m was used to pay a debt to DG but that still leaves about £10m unaccounted for. H said that £8m went to Amanda to pay what H owed her but there is no evidence to support that or any explanation of how the figure is calculated. I am prepared to accept also that RBS had a charge upon the boat for £8m,

explaining how a large part of £12.4m was used, and that H had an overdraft with the bank, but there is no proper documentary evidence provided save for H's bank statement evidencing the repayment of the overdraft.

44. In short, I reject H's account of this all being part of an innocent muddle caused by old age. I find that this was a deliberate act by H, who was fully aware of the court orders. I find it hard to see another explanation beyond an attempt to benefit himself at the expense of W. The result is that the only significant accessible assets remaining within Co-Ed now are the loan notes with a face value of ca. £545m.

45. Before leaving Leander, it is to be noted that this is another example of the line between H and Co-Ed being blurred to extinction (I have already referred to H's use of trust funds with accounting only subsequently). H bought Leander without reference to the trustees. He then refitted the yacht at his own expense. He paid the costs of running the boat, put by him at £375k per month. These were expenses that should have been paid by the Trust, as owner, not H.

Cleveland Court

46. Cleveland Court is held within a trust settled by Co-Ed with a life interest to H, and is subject to a mortgage now standing at some £17m. In their Forms E the parties guesstimated its value as being in the £25-35m bracket and for the purposes for the FDA an approximate value in this range was assumed.

47. It therefore came as a matter of great surprise when Savills valued the property for the purposes of the proceedings at £13.9m. Neither party accepts this value and in his s.25 statement, filed only a few days before trial, H remained sure that it is worth and will achieve £30m. He says that the mortgagees had it valued last year at that figure. In his evidence he was more circumspect saying that it would require a good market to reach that figure. Bearing in mind what has been spent on the property, namely over £37m by way of purchase and works, its large and luxurious size, and the magnificence of the location I agree with the parties that I should take a figure of £30m.

48. It is not clear to me exactly what the current mortgage balance is, but it appears likely that there is an equity of about £12m. H accepts that I should treat the property as being his.

49. The funding of the property is to be noted. A mortgage was taken of £24m and the balance came by way of loan from ARB Overseas Ltd. This is one of Amanda's vehicles funded by H's share of the family assets. H has not himself since 2014 been a beneficiary, and thus his ability to have use of those funds once again shows the fluidity of the structure. H accepts that I should disregard the apparent liability to the company.

50. The mystery does not end there. £7m net was received from the second Chester Square property sale which was used to reduce the mortgage to £17m, but for some unexplained reason the loan to ARB Overseas Ltd has increased to £24m in the accounts for the year ending 2019. A small part of the increase appears to be down to indexation. Fortunately, I do not need to resolve this in the light of H's acceptance that I should treat the equity after deducting the commercial mortgage only as being available to him.

Amelia Island Trust (Brecqhou)

51. I ordered a valuation of the island. The parties were told that DB refused to allow anyone to set foot on the island. As a result there had to be a desktop valuation which, on the basis of a merger of the freehold and leasehold interests, put the value at £65m. H's one half share would therefore be worth £32.5m.

52. I recognise that valuation of such a unique property is hugely speculative. H thought that if sold with vacant possession it would achieve £80-90m, being about what was spent on it. This raises the question of the value in the circumstances of the current family disunity. There is no evidence before me as to whether the family will keep the island in the long-term now that DB has passed away.

53. H says that in 2000 he and DB entered into a 150 year lease of the island to a limited company and that subsequently they agreed that in exchange for DB being solely responsible for the running costs of the island, H would forego his right to visit, severely limiting the value of his interest. This was not explored during the hearing beyond Mr Leech QC suggesting that H might have his own right to challenge this consequence, if that is what it is, in the courts of Guernsey.

Litigation and conduct

54. This matter first came before me on 1 October 2019 on the first appointment. H through his counsel said that the resources with which the court was dealing were some £600m comprising:

    i) The remaining loan notes of about £550m

    ii) Cleveland Court

    iii) Leander

    iv) H's interest in Brecqhou

    With each of ii)-iv) being worth some £30m but Cleveland Court heavily charged.

55. H opposed any form of expert valuation of the loan notes. As he was raising an issue as to their liquidity, I directed that by 12 November 2019 H serve a witness statement setting out his case as to whether they were available to satisfy an award to W within a reasonable period of time. If it was his case that the loan notes were not likely to be liquid, I directed the filing of a single joint expert report with H to pay the cost of the report in the first instance.

56. I further directed that questionnaires be answered by 12 November 2019.

57. H filed neither the statement that I had ordered nor his replies to questionnaire and I extended his time until 19 November.

58. H then did file his statement doubting the liquidity of the loan notes and he provided answers to questionnaire which were exiguous in the extreme.

59. By December 2019 H was saying that he was unable or unwilling to make any payment towards W's legal costs having previously agreed to pay them voluntarily. A prime

motive in this change of position appeared to be his expressed unhappiness at W obtaining orders for expert evidence.

60. On 20 December 2019 I had to extend the time for the provision of the SJE evidence as to the value of Cleveland Court and Brecqhou and appointed KPMG as the SJE to report on the loan notes. I made provision for the payment by way of LSPO in the sum of £1.1m by 4 tranches to be paid monthly. H paid the first payment of £350k but none of the next 3 payments.

61. Whilst H was pleading impecuniosity and applying for the financial remedy proceedings to be adjourned until Leander was sold, he did not reveal that he and Amanda were embarking upon and paying for extremely expensive litigation (H and Amanda's costs to date exceeding £7.5m) in the QBD. There were no less than 10 hearings in February 2020 in those proceedings before W first heard about them through media reporting.

62. W only heard about the sale of the Ritz Hotel in April 2020 through the media. H claims that he learnt about it by the same route. H ceased to pay the interim monthly maintenance of £60k (inclusive of the cost of the rent) from April onwards, the figure being one that he himself had chosen as being appropriate for W's support.

63. On 8-9 June 2020 H gave evidence in respect of his finances. This should have been the first two days of the final hearing, but that had been adjourned in the light of the lack of progress with expert evidence. However, two days were kept to deal with enforcement issues.

64. H was remarkably vague in much of his evidence. In particular he said that he had not sought to find out what had happened to the proceeds of the sale of the Ritz or how much they actually were; it transpired that he himself had control of the sale of the yacht and had refused a substantial offer for it without even having revealed within these proceedings that it had been made; and it was apparent that notwithstanding his expressed financial difficulties he was continuing to conduct his life in exactly the same way as he had before, including making payments of £375k per month in respect of the expenses of the yacht. He accepted that whatever funds he sought, Amanda would make available to him.

65. I ordered H to pay the remaining £750k outstanding under the legal services order by 7 July 2020. I required him to pay Savills' fees for having valued Brecqhou by 7 July 2020 and KPMG's fees which were outstanding. I also ordered him to sign their letter of engagement. I directed him to pay the costs of the hearing with a payment on account of £100k.

66. The matter was due to come back before me on 27 July 2020. By that time H had failed to pay the sums of money that I had ordered by way of LSPO and costs and failed yet again to sign the letter of instruction to KPMG or put Savills in funds. Confidence was not increased by H parting company with his second set of solicitors and counsel.

67. However, shortly before that hearing date, H paid the outstanding sums and in addition made good the 5 months that he had not paid of voluntary maintenance which would have been one of the matters to be the subject of the hearing before me. As a result the hearing was vacated and adjourned for a further hearing on 21 August 2020.

68. Two further hearings that would otherwise have been heard by me were vacated by consent, backed by orders with a penal notice requiring compliance by H well in advance of the FDR which had been fixed for 17 December 2020. This planning was once again frustrated by H's repeated refusal to engage with KPMG, whether by signing the letter of engagement or paying their fees or by replying to the further questionnaires/schedule of deficiencies.

69. My order of 30 October 2020 included further provision about the sale of the yacht Leander and was made in perfect ignorance of the fact that it had already been sold in breach of my orders.

70. H did not attend the FDR.

71. On 13 January 2021 I made a further order to try to get the case back on track and directed that I would at the pre-trial review on 19 January 2021 wish to deal with matters of capacity in the light of H having not been represented since summer 2020. I was very concerned at the prospect of H self-representing at a final hearing in the light of his presentation in June 2020. Whether in consequence of my direction or otherwise, H's current solicitors filed a notice of acting on 18 January 2021. It was hoped that this was the start of a new dawn.

72. On 19 January 2021 I made by consent a further legal services order in the sum of £370,822 and directions intended to lead to the production of the report from KPMG as well as updating disclosure and s.25 statements. By then the extent of the KPMG inquiry had been much slimmed down by me to its barest essentials.

73. It took until 24 January 2021 for H to sign the letter of instruction to KPMG but H failed to provide the documents that they required, reduced to the minimum as they were, or pay their fee. Of course, at this stage it was still not known that H had sold Leander.

74. Only on 2 March 2021 did H admit that the yacht had been sold for €29m and that he in fact had received nearly £12.4m of that money, with the whereabouts of the balance unexplained. Whether directly related to this non-disclosure or otherwise (and it is not for me to know) H parted company with yet another set of counsel.

75. H had also claimed that he was owed money by one of his nephews (over £1m) but in fact he had received most of it during the proceedings without disclosing it.

76. In the circumstances it is hardly surprising that W says that I should draw adverse inferences and, above all, that if there was anything in H's argument about the lack of liquidity in the case it was down to him and nobody else to produce evidence in support. Instead, he has frustrated the exercise of investigating what was the key part of his case.

77. H's repeated flouting of orders to answer questions and produce documents is flagrant. It occupies many pages of the chronology and of the schedule attached to W's s.25 statement.

78. In short, H has done everything possible to impede the progress of these proceedings. The case should have been heard in June 2020 but had to be taken out of the list because of H's non-compliance with orders. He has parted company with two sets of lawyers and for a period was acting in person. He failed to attend either the FDR or the PTR

despite orders for his remote attendance. He has breached orders in respect of the yacht, paying court-ordered experts or providing them with the necessary authorities, payment of legal services orders, and discovery/disclosure.

79. H's counsel described his actions in respect of the sale of the yacht as "*the actions, of an embittered, angry, aged litigant who has lost the cunning and professionalism that he formerly possessed*". While Mr Tod may not thank me for using these words in a wider context than he intended, they seem to me to be accurate.

The parties' positions

W's position

80. W asks for a lump sum of £120m. She says that should be paid as a lump sum of £70m within 28 days of the order and a lump sum of £50m within 3 months of the date of the order.

Such sums must be paid free and clear of any tax liability, to be backed by a contingent lump sum equal to any liability imposed upon her. Until payment maintenance pending suit and thereafter periodical payments shall be payable.

H' position

81. H offered to request the trustees of Co-Ed to transfer to W 40% of the remaining unsecured loan notes issued to it by Amelia. In the meantime and pending transfer H will pay to W 40% of the net amount received by him from the Co-Ed by way of loan note redemption.

In addition he offered to pay a lump sum equal to 50% of the net proceeds of the yacht, "*the sale of which is still being actively pursued*", even though it had taken place months before. He also offered "*to ask the trustees of the Cleveland Court trust to distribute the net sale proceeds of the property … to our clients in equal shares".*

82. It is apparent that H's proposal might mean that W would receive not one penny. If the trustees of Co-Ed chose not to make payment in respect of the loan notes, W would receive nothing. The yacht had already been sold. The trustees of the Cleveland Court settlement might decline to make W a payment. None of this need be any skin off H's nose, as he could benefit by Amanda drawing from Amelia, or any of her other trusts, and providing H with support so that he had no need to resort to the loan notes. Upon H's death, W would receive nothing.

83. When I put this to Mr Tod, he said that W's needs could be assessed as being £25m, made up as to £8-9m for housing and about £16-17m for a maintenance fund (£800k for 20 years), and that H should be given about 1 year to pay it. I do not in any way criticise Mr Tod for having to put such a difficult case, but it cannot be avoided that on H's case this offer could not be met.

84. In principle this would plainly be a 50:50 case. It is not necessary for me to spend any time in this judgment dealing with H's argument that he should be entitled to a discount for a special contribution. This is a hopeless argument because:

i) This was a very long marriage, which with the prior cohabitation spans some 45 years;

ii) It is H's case that he has no access to funds and so cannot identify what his contribution has been;

iii) He has unilaterally, on his case, put beyond the reach of either himself or W the funds that he says he amassed during the marriage.

85. Thus the core issue is the ability of H to access funds. It is W's case that until these proceedings started, H was able to get whatever he wanted by way of funds. Some £128m was made available to H by way of loan notes between June 2014-September 2019. There was never any suggestion prior to these proceedings that liquidity was a problem.

86. H claims that the payments dried up because of a lack of liquidity in the underlying businesses. That is totally unsupported by any evidence and is dependent on his say-so. However, the company results and other public information produced by W shows improving profitability in the online shopping business, logistics and media. These are three of the five elements of H's empire.

87. Whatever the proceeds of sale of the Ritz were, and however they were used, that can only have increased liquidity. If, as W surmises, that they were used to reduce borrowing, then self-evidently liquidity is improved. In short, H has not produced a jot of evidence to support his contention that there are liquidity issues.

Housing

88. H says that Cleveland Court will be sold. He says that he has managed to arrange for the bank to defer any eviction until April 2021. He has produced no evidence of discussions with the bank, despite my order, and I have a considerable reservation in my mind as to whether or not this eviction and sale will ever take place. This scepticism is heightened by the fact that H says that he has made no arrangements at all as to what will happen to the very large quantity of contents of the property. If he does move, I have no doubt that he will re-house himself entirely appropriately and comfortably, whether with Amanda's support or otherwise through a trust vehicle.

89. W puts her housing costs as in the bracket of £16-19m for a luxury 3-4 bedroom serviced apartment. H has produced particulars in the range of £7-8m for W, without any suggestion of how she might be able to have the funds to purchase a property.

H's health

90. H is 86 and, in many respects, presents as a man of somewhat lesser years. He is plainly physically active. He was able to follow complicated questions and at times showed himself to be very much on the ball.

91. It was with relief that I learned that after some 6 months of acting in person, H was to be represented at this hearing. I had the benefit of some medical reports that had been provided. They came from a cardiologist and a consultant psychiatrist. Both sought to say that his attendance at the hearing was not advised. Fortunately, that was not a point

that was pressed by his legal team. Evidence was given remotely and he had the assistance of a solicitor with him at all times to help with bundles.

92. H was content to go very much longer in the witness box than his doctors had advised but it was clearly important that I kept a close eye on him to ensure that he did not become over-tired or agitated. With the agreement of H and his legal team, I divided his evidence into chunks of about 45 minutes, with a 15 minute break in between. H's evidence straddled two days but on neither day, after an early start, did the court sit after 1.30pm.

93. In a report dated 23 February 2021 the psychiatrist had no doubts as to H's mental capacity to make decisions and capacity to conduct litigation, but he advised that the divorce proceedings and the QBD action had been a chronic life stress for H. H was anxious about the upcoming hearing which *"has impaired his decision-making ability on the details of this final hearing*". He went on to say that H "*had been experiencing impaired insight, cognitive dysfunction and memory and information processing difficulties due to the chronic stress of this case and in relation to the final hearing.*

He demonstrates significantly impaired decision-making ability as a consequence of the stress he has been under, particularly about attendance at the final hearing and being subjected to cross examination".

94. Whenever H was challenged in evidence, he had a tendency to retreat to a mantra that his memory was not good and that he was bad at paperwork.

95. It would be naïve for me to expect H to be able to function as well as he did in his prime. I do not, however, accept that his memory was as lacking as he sought to present.

96. There seem to me to be two hallmarks of H. The first is the desire to ensure there is no tax to pay, particularly on death. That was the whole purpose of the very complicated structures which H and his brother, with the assistance of their advisors, devised in various offshore jurisdictions. As there will be no assets in H's name, other than those which are equalled by the debts he owes, there will be no liability to IHT. Of course, the use of loan notes excludes a liability to income tax.

97. The second feature is that of control. I have already commented upon the absence of any resources of significance in W's name or to which she has access. She was never the beneficiary of any of the trusts apart from Cleveland Court Trust. Remarkably, she was not consulted about the purchase of Cleveland Court but was simply told that the family were moving. She was not consulted or informed about the disposal of the family interest to the next generation. H did not consult her in any way about any financial matter nor think it appropriate to inform her in advance. He kept her in ignorance of every financial decision of importance.

98. The parties separated on 28 March 2019. W's Form A was issued on 3 April 2019. On 23 May 2019 H had a consultation with leading trusts and matrimonial counsel. Five days later he executed a new will leaving everything to Amanda and making no provision at all for W. On 4 June 2019 Amanda was added as a beneficiary of Co-Ed, joining her father.

99. H would not accept the obvious, namely that these were manoeuvres that were intended to reduce W's ability to benefit from H's wealth. He said he had no knowledge of them and just simply did what he was advised.

100. Until the second day of his evidence (day 3 of the hearing) it had been H's case that the Barclay family businesses were in a poor shape and there was no liquidity whatsoever for the loan notes to be funded and make distributions to H. Mr Leech QC took H through the published accounts and newspaper financial reports in relation to the Ritz Hotel, Telegraph Group, Very, Shop Direct and Yodel. Each reported significantly improved financial performances over the previous year. Furthermore, insofar as the group was heavily leveraged, the sale of the Ritz Hotel would have significantly reduced borrowing.

101. This led H to a complete change of tack. The reason that he ceased to receive payments in respect of the loan notes from September 2019 was not because the businesses could not afford to pay, but because of the conflict between H and his nephews. His (revised) case was that his nephews had used their majority status to turn off the taps. He explained that there was no difficulty until they found out that H was ferreting around to ascertain the true debts of the businesses. H gained information from the banks and from senior employees that revealed that the debts were very much less than he had been told and that his nephews were not telling him the truth. As a result, the nephews restricted the flow of funds into Amelia.

102. The beginning of the break-up in the relationship between H and his nephews was in September 2019 which led to them imposing financial restrictions. It is common knowledge that this led to the bugging of H's business meetings on an industrial scale.

103. H's conclusion was that in fact the businesses are doing well but that his nephews were conspiring to cheat him and act quite contrary to what H had agreed with their father.

104. H was unable to explain why this exposition, plausible though it might be, was not given earlier, not least in his s.25 statement filed only a few days before the hearing began. H could offer no explanation at all. But an obvious way of looking at it is that H hoped that his first version, namely that of lack of liquidity, would pass muster, and only when that was exposed did he try another argument.

105. It ties in also with H's approach to the KPMG report. H refused to provide the raw material to enable KPMG to carry out an informed job. As a result, KPMG were driven to prepare a report on the basis of the information that could publicly be obtained. If H thought that this report would be helpful in establishing a lack of liquidity, there could not be any possible reason for him refusing to fund the report. He knew full well, as I find, that by not paying KPMG it was inevitable that the report would not be released. That is what he hoped because it would explode his liquidity argument.

106. H's response was that he could not afford to pay KPMG. However, H received £200k in February 2021 and £150k soon after as the final instalment of money that was due to H from his nephew Howard. That money could easily have been used to pay KPMG, as could the Leander proceeds. Plainly, he could have afforded to pay for the report if he chose.

107. H says that he has never approached his nephews to enquire why his funds had stopped and how they could be reinstated. He had no explanation of why he had done nothing. His response was simply that his commercial lawyers had advised him there was nothing he could do about it. He has not produced any such advice and there would seem to be obvious routes open to him including:

    i) The use of the powers possessed by oppressed/prejudiced minority shareholders under The Companies Act; and

    ii) Suing on the debts owed by the underlying businesses to Amelia.

108. For the avoidance of doubt and in the absence of the evidence that would be available to H if his argument was valid, I reject H's contention that there is any absence of liquidity such as to mean that the loan notes could not be paid.

109. The argument that H's nephews have chosen to restrict the flow of funds is more difficult to assess, but that is entirely H's fault. He has not raised the argument before. I have no knowledge of how the nephews would respond as the issue has only just been raised. But, if at the forefront of H's mind, it is inconceivable that it would not have been squarely before the court long ago.

110. Related to this is H's claim that he has had no knowledge of anything that has been going on in any of the businesses for the last 20 years or more, and had no access to information, and in relation to the structures set up, H just did what he was told by the advisors.

111. Whilst I am prepared to accept that H's involvement in business has been much more limited than it was previously, I do not accept that his ability to obtain information about either the business or the financial structures put in place by him and his brother is anything like as limited as he says. I arrive at that conclusion for a number of reasons:

    i) Attached to his Form E were a series of riders setting out in detail the financial structures that were in place. They are sophisticated documents which H drew up or obtained for the purposes of this litigation.

    ii) In 2013 H and his brother came to the comprehensive agreement that I have mentioned, dividing the family businesses between them which listed an ascribed value to each of the family ventures. H said that he had no access to figures but he accepted eventually that he had sufficient reliable information to be able to come to an agreement.

    iii) At various stages in replies to questionnaire and in statements he has provided detailed financial information. I refer, for example, to the summary of the share reorganisation provided in October 2019 and his liquidity statement dated November 2019. None of these could have been prepared by someone who had no access to information.

112. H's claim that Amanda handled everything for the last 20 years was untrue. The idea that at just over 20 she took over the handling of his financial affairs is far-fetched and is inconsistent with the finding of David Richards J (as he then was) in McKillen v Misland and others [2012] EWHC 2343 (Ch) who, to summarise, found that the

brothers were both content to be seen as controlling the family business interests and, at paragraph 33, concluded

Whatever the precise ownership structure and whatever, if any, beneficial interests the Barclay brothers have in these companies, and whatever, if any, legal rights of control they have, I am satisfied, as I have said, that they could in practice control all the "Barclay companies" involved in this case.

113. I am willing to accept that Amanda helps her father with his affairs, but that is very different from managing them, and her state of ignorance is shown clearly in her letter of 12 February 2021 when she wrote

"I really do have no idea about the loan notes… how they were set up and how they operate is beyond me".

The assets

114. Unusually, in this case I do not have to trouble with a schedule of assets. There are some £545m worth of loan notes. There are some available funds in Cleveland Court, possibly some element of the Leander proceeds unaccounted for, and the harder to realise interest in Brecqhou. H has some debts. But, W limits her claim to what is about 20% of the funds and I need look no further than the loan notes.

115. I should mention that in the 2018 Co-Ed accounts the loan notes appear written down by a further £191,711,064.96. This astonishingly precise figure is given no explanation beyond "*it is to be assumed that that the Notes are currently worth less than their nominal value…(as) it is now considered that the underlying companies are currently unable… to redeem the Notes for their full nominal value".*

116. The accounts are unaudited, unsigned and undated. No explanation is given or evidence provided. It is not relied upon by H and I reject it.

117. Unlike in many cases, H cannot sensibly argue that he does not have any control over the trusts from which he benefits. Co-Ed was established on 15 April 2014. The trustees who were a professional company received a letter of wishes signed by the settlor, DB expressing

"2.1 I wish you to regard Sir Frederick as the principle beneficiary of the trust during his lifetime.

2.2 After Sir Frederick's death my wish is that you should in consultation with the protector, consider using your power to add to the class of beneficiaries to enable you to benefit Sir Frederick's daughter and remoter issue …"

118. The trustees were given the widest possible powers of dealing with the trust fund for the benefit of the beneficiaries. The beneficiaries were defined as:

i) H; and

ii) Any person subsequently added.

119. On 27 March 2018 the Co-Ed Administration Foundation was established to act as trustee, with the trustees of the Co-Ed Foundation acting as the members of the Foundation Council. More importantly, Amanda was added as a beneficiary. H and Amanda were appointed members of the Consenting Body which gave them power over the appointment and removal of trustees and protector.

120. The protector for all the relevant trusts (Amelia, Co-Ed and ARB) is in each case the professional chosen by H and Amanda.

121. It is also to be noted that the Foundation deed contained provision that the Foundation "*shall not be bound to disclose to any other person whatsoever any document or information relating to the foundation or the foundation assets or to any trust or settlement of which the foundation is a trustee"*. No doubt it is the exercise of those powers which have led to the non-provision of information but it is to be noted that the powers are permissive and not mandatory. I have no doubt that if H had really wished the trustees to have provided information, they would have done so.

122. On a date no later than 22 June 2020 H moved the conduct of "their trust and other matters" from the family office in Monaco and Guernsey. H explained the reason for this was that he wanted to have his own trustees and protectors, separate from those used by his brother. A new set of professionals was appointed. H says they were chosen by Amanda rather than by him. It matters not, but it is clear that these appointments were at H's instigation. The entities involved were Amelia, Co-Ed, Amelia Island (Brecqhou), Cleveland Court and their related trusts.

123. H made no contact with the Co-Ed in relation to these matters until a lawyer-composed letter was sent to the Co-Ed trustees on 24 February 2021, just a few working days before this case was due to begin, asking them to "*seek a redemption of the full amount due under the loan notes"* and whether they "*would be willing to transfer to me* (H) *personally all or any proportion of the assets of the Co-Ed trust"*.

124. The curious response was that Liechtenstein law did not permit them to provide this information but that there were no liquid funds in Co-Ed to meet his request for funds, which was not only an internally inconsistent response to the letter but was not a reply to what was asked.

125. Against that background, I find it unbelievable that H has put himself in a position where he is without any resource to funds. It goes against everything that he set out to create. His failure even to tackle his nephews can only be explained by his knowledge that he has the means to correct what (if anything) has gone wrong and I am satisfied that that is what he will do when this case is over.

126. H had the benefit of £128m between 2014-2019. For him to be alienated completely from benefitting from the remaining £545m of loan notes would be both inconceivable and an unacceptable loss for him. Notwithstanding his advanced years, the fight has not gone out of him, if that was what was required. By way of example only, when it was pointed out to him that H's proposal for W's future meant that she would receive 40% of nothing, H metaphorically shrugged his shoulders. He could not see any responsibility to provide for W after his death. That, was the responsibility of her son, he said, notwithstanding that (according to H) he had never had a job. He regarded suggestions that it was his responsibility with disdain.

127. It is incumbent on the court to consider the extent of W's needs. These comprise two elements, housing and income. H has produced 3 estate agents particulars of properties around the £8m mark. W has produced particulars of properties in the £16-19m bracket. H's particulars are of 3 bedroomed flats (apart from 1 house in Chelsea) in well-converted period houses on the Knightsbridge/Belgravia boundary.

128. W made it clear that she wanted to live in a purpose built flat. She does not want a conversion where noise from neighbours can be a problem. Her core requirements were 24 hour security and a flat on one floor in a purpose built building. It does not seem to me to be unreasonable in this case. I select the figure of £15m as being appropriate to meet W's housing needs. This approximates to half the value of Cleveland Court. It is closer to her end of the bracket than that of H for the reasons that she gave and I understand.

129. She has put in a budget of some £7m p.a., reducing to £6m, when the cost of an overseas residence is removed. I accept that her spending has been unlimited during the marriage but many aspects of her budget could not properly fall within a needs budget even at the top end of a lifestyle which the parties have enjoyed. A figure of over £3.8m p.a. for holidays is not one that would fall within a needs budget. Almost every item in the budget could be pruned with no effect on lifestyle. I put a needs-based award for income at £2.5m pa.

130. W's life expectancy is 11 years but I accept that this statistic needs to be taken with great caution. W is the youngest of 6 children and 4 of her 5 siblings are still going strong. She says she has every intention of living for well over 20 years and with the history of family longevity it would be foolish to work on an assumption of a life expectancy of less than 15 years. A straight multiplier would require £37.5m and while H would cavil at needs of £52.5m, it is not that much more than he spent on Leander.

131. I do not need to delve further into needs because H accepts that this is a case for a sharing award. W is entitled to share in what has been built up during the marriage.

132. I am completely satisfied that justice in this case can only be provided for by the making of a lump sum order or orders. So complex are the structures that H has set up and so open to possible avoidance of an order are they, that any Wells type order could easily be avoided. It would be a dereliction of duty if I left the parties in a position where they were locked into perpetual litigation and analysis of what has been provided for the benefit of H and where it has come from. It is easy to envisage a situation where H would say that he is being maintained by Amanda and/or some trust but that he has a matching liability and has received no resource himself and so has no liability to make payment to W.

133. I do accept that there needs to be a substantial discount for receipt of funds in short order. The order that I shall make is that H shall pay the sum of £100m to W. This is to comprise a lump sum of £50m to be paid within 3 months and a second lump sum of £50m to be paid within 54 weeks of today. It amounts to about 18% of what H can benefit from.

134. I select the period of three months because:

i) W should not have to wait for receipt of the needs-based element of her award for longer than necessary; and

ii) I am satisfied on the evidence that has been put before me that H can have access to the necessary funds within that period.

135. I allow the longer period for the second tranche to permit the giving of 12 months' notice for the redemption of loan notes if that is what is required. But I do remind myself that such a request has never been required before by the Amelia Trust. I am prepared out of an abundance of caution to accept that because the scale of these payments taken together are on a different scale, time might be required for Amelia to take the necessary steps to gather in the funds from the underlying businesses.

136. I find as a fact that the trustees will comply with his request for funds and will be able to access them. H is the primary beneficiary. They have provided very significant funds before. He has not even had to ask for payments but has just helped himself.

137. Until the first tranche is paid H shall continue to pay or cause to be paid to W £60k per month which will reduce to £30k per month upon payment in full of the first tranche. This is the equivalent of an interest rate of approximately 0.7% p.a.

138. I adjourn generally W's application for a variation of trust, to be dismissed upon payment in full of the lump sums. I permit the continuation of her MHA rights of occupation until further order.