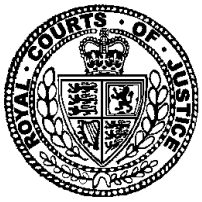

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2022] EWFC 8

Case No: ZZ21D65380

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 March 2022

Before :

MR JUSTICE PEEL

- -

Between :

MG

Applicant

- and -

GM

Respondent

- -
- -

Brent Molyneux QC (instructed by Vardags) for the Applicant
Jonathan Southgate QC and Jennifer Perrins (instructed by Hughes Fowler Carruthers) for the Respondent

Hearing date: 17 February 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE PEEL

Mr Justice Peel :

The application

1. By application dated 7 January 2022, W seeks Maintenance Pending Suit and a Legal Services Payment Order comprising:

   i) £68,250 to secure a new rental property in Kensington from 28 February 2022, and ongoing rental at £25,000 per month.

   ii) £510,000pa general maintenance.

   iii) The cost of two nannies at £126,000pa.

   iv) Nursery and school fees.

   The total of the above ongoing sums sought is nearly £1m pa.

   v) £448,846 backdated sums which W has spent on herself and the children since 1 July 2021.

   vi) Legal fees totalling about £900,000 which is designed to cover: (a) Hague Convention proceedings, (b) Children Act proceedings, (c) a divorce jurisdictional dispute and (d) this application. The summary breakdown is:

      a) £230,810 to cover all outstanding and unpaid fees.

      b) £246,000, being £24,600pm over 10 months for Children Act proceedings until the assumed conclusion thereof (but continuing if proceedings are not in fact finalised by then).

      c) £423,000 being £42,300pm over 10 months for the divorce jurisdiction proceedings until the assumed conclusion thereof (but continuing if proceedings are not in fact finalised by then).

2. I have been presented with over 1000 bundle pages. Because the parties have yet to resolve their jurisdiction dispute, i.e whether W is entitled to bring divorce proceedings in this country at all, the financial remedy proceedings are stayed. Consequently, there are no Forms E. W filed a statement dated 14 January 2022, H replied on 13 February 2022, and W responded to H's reply on 15 February 2022. Each has filed statements from supporting witnesses. The forensic endeavours by both parties have been exhaustive. Unless the parties can resolve some or all of their issues, the litigation (possibly in two jurisdictions) will be prolonged and ruinously expensive. It seemed to me, as I was invited to delve into the bowels of the bundles, that neither party is willing or able to approach their disputes in a proportionate way, nor seek a pragmatic solution; rather, they choose to litigate on all fronts.

3. This is a case where the parties agree on nothing. They each accuse the other of being bent on a path of destruction. They are utterly conflicted about the history of the marriage, the circumstances of its breakdown, where they are all habitually resident, the welfare of the children and, most significantly for today's purposes:

i) Whether W is a successful businesswoman with significant resources in her own right (as H asserts, but she denies); and
ii) Whether H has access to significant resources (as W asserts, but he denies).

This is a battle royale. Despite the protestations of impecuniosity by each of them, they have each been able to secure the services of the finest legal teams.

The law

4. In respect of general interim maintenance, Nicholas Mostyn QC (as he then was) set out the now familiar principles at para 124 of **TL v ML [2005] EWHC 2860:**

"From these cases I derive the following principles:

i) The sole criterion to be applied in determining the application is "reasonableness" (s22 Matrimonial Causes Act 1973), which, to my mind, is synonymous with "fairness".
ii) A very important factor in determining fairness is the marital standard of living (*F v F*). This is not to say that the exercise is merely to replicate that standard (M v M).
iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long term expenditure more aptly to be considered on a final hearing (*F v F*). That budget should be examined critically in every case to exclude forensic exaggeration (*F v F*).
iv) 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 (*G v G, M v M*). In such a situation the court should err in favour of the payee.
v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial (*M v M*)."

5. The applicable principles in relation to an application for legal fees funding are set out by Mostyn J in **Rubin v Rubin 2014 EWHC 611** at paragraph 13:

"13. I have recently had to deal with a flurry of such applications and there is no reason to suppose that courts up and down the country are not doing likewise. Therefore it may be helpful and convenient if I were to set out my attempt to summarise the applicable principles both substantive and procedural.

i) When considering the overall merits of the application for a LSPO 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 (Fam) [2006] 1 FCR 465 [2006] 1 FLR 1263 at para 124 (iv) and (v), where it was stated

> "iv) 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.
> v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial."

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 LSPO 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(4)(a) 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.
viii) If a litigation loan is offered at a very high rate of interest it would be unlikely to be reasonable to expect the applicant to take it unless the respondent offered an undertaking to meet that interest, if the court later considered it just so to order.
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.
x) The court should make clear in its ruling or judgment which of the legal services mentioned in s22ZA(10) the payment is for; it is not however necessary to spell this out in the order. A LSPO may be made for the purposes, in particular, of advice and assistance in the form of representation and any form of dispute resolution, including mediation. Thus the power may be exercised before any financial remedy proceedings have been commenced in order to finance any form of alternative dispute resolution, which plainly would include arbitration proceedings.
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 of which part is deferred under s22ZA(7). 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. Further, monthly payments are more readily susceptible to variation under s22ZA(8) should circumstances change.
xiii) If the application for a LSPO seeks an award including the costs of that very application the court should bear in mind s22ZA(9) whereby a party's bill of costs in

> assessment proceedings is treated as reduced by the amount of any LSPO made in his or her favour. Thus, if an LSPO is made in an amount which includes the anticipated costs of that very application for the LSPO, then an order for the costs of that application will not bite save to the extent that the actual costs of the application may exceed such part of the LSPO as is referable thereto.
> xiv) A LSPO is designated as an interim order and is to be made under the Part 18 procedure (see FPR rule 9.7(1)(da) and (2)). 14 days' notice must be given (see FPR rule 18.8(b)(i) and PD9A para 12.1). The application must be supported by written evidence (see FPR rule 18.8(2) and PD9A para 12.2). That evidence must not only address the matters in s22ZB(1)-(3) but must include a detailed estimate of the costs both incurred and to be incurred. If the application seeks a hearing sooner than 14 days from the date of issue of the application pursuant to FPR rule 18.8(4) then the written evidence in support must explain why it is fair and just that the time should be abridged.

6. The fact that jurisdiction is in dispute does not prevent the court from making an interim order, but I accept that the court should be cautious, both as to whether to make an order and as to quantum, in circumstances where the order may turn out to be based on a false premise: **Re YM and BA [2020] EWFC 13**, **MET v HAT [2013] EWHC 247** and **BN v MA [2013] EWHC 4250**.

Background

7. H was born in Country A and is a citizen of Country A, Country B, and Country C. He is 45 years old. W is a citizen of Country B and Country D. She is 38 years old. They met in 2016, married in London in January 2017, and have two children aged 3 and 1 who hold UK, Country B, and Country D citizenship. He has had a prominent business career, including running for some time a successful hedge fund, which collapsed at the end of 2018. Since then, he has been a businessman actively involved in a wide range of projects. The nature of H's work cannot be viewed in terms of conventional income. His modus operandi is to invest, take risks, and aspire to significant returns which are commensurate with the level of risk.

8. The family lived in London until February 2021 when they moved to Country E. On H's case it was a permanent relocation to Country E; on W's, it was a temporary move.

9. The marriage seems to have come to an end by the summer of 2021. On 10 June 2021, H applied in the Country E court for interim measures in respect of the children and possibly also (although the position seems to be not entirely clear, and is disputed) in respect of divorce.

10. On 27 August 2021, W and the children came to UK from Country E, without H's knowledge or consent. Soon after, H applied for the return of the children under the 1980 Hague Convention.

11. W's English behaviour petition is dated 27 August 2021 and was issued the day after the removal of the children to this country, asserting that she was domiciled and habitually resident in England. H in his Answer disputed W's claimed jurisdictional basis for her suit. W's Form A is dated 7 September 2021.

12. Correspondence between English solicitors started on 13 September 2021.

13. On 30 September 2021, H issued divorce proceedings in Country E.

14. On 22 November 2021, in the certificate of complexity justifying allocation to a High Court Judge, signed by both parties:

    i) W asserted net assets in excess of £50m.
    ii) H asserted net assets of £25-£50m.

15. On 29 and 30 November 2021, the Hague Convention application was heard by HHJ Robertshaw. H's application was dismissed by her order dated 20 December 2021. He has been refused Permission to Appeal by the Court of Appeal.

16. By agreed order dated 3 December 2021, the financial remedy proceedings are stayed pending determination of the financial remedy proceedings.

17. On 7 January 2022, W applied for MPS and a LSPO.

18. On 7 February 2022, the court in Country E concluded that it has no jurisdiction, on the basis of its finding that the parties are habitually resident in England. H intends to appeal.

19. A 4 day hearing is due to take place later this year to determine jurisdiction and forum conveniens issues. I cannot at this stage make any comment about the merits of this issue. What is apparent is that unless there is some meeting of minds, the financial proceedings (whether in this country or in Country E) will not even start until the end of this year.

The issues and evidence

20. It is not disputed that H ceased all financial support of W and the children in June/July 2021. Since then, he has not paid a penny, not even for the children. That, of course, was when the marriage was entering its final throes. Until then H, I am satisfied, provided W with largely unfettered access to funds enabling her to sustain a very high level of expenditure. A spending analysis shows that between June 2020 and June 2021, she spent about £43,000 per month; it is clear from the bundle that W would regularly ask H for large sums (running into tens of thousands of pounds) which H would pay largely without question. There were no real fetters placed upon her. In addition, H paid rental costs, staff, and other expenses. It is clear that the standard of living during the marriage was at the luxurious end. The family had the use of expensive cars, occasional private jet use, opulent holidays, properties rented in London at up to £13,000 per month, and a spectacular property in Country E rented at €22,000pm. W's spending analysis for the pre separation period tells its own tale.

21. Despite the fact that H has paid nothing since June/July 2021 (some 7 months), W has been able to continue spending (on her own case) at £72,900 per month on average (including rent at £12,000pm). She has secured personal loans from friends totalling nearly £500,000 to fund her ongoing lifestyle.

Husband's resources

22. In 2019, H (through a SPV), bought a property in W8 for £7.7m, funded as to 60% by a mortgage and the balance from monies received by him on the closure of his hedge

fund. The parties did not live there. In September 2021, H sold the property to the tenants for £11m, without notifying W. H says she was fully aware of the sale and produces in support of his account an exchange of messages from April 2021 which, to my mind, do not in fact assist his case at all. Further, in a somewhat extraordinary exchange of text messages in November 2021, H encouraged W to dream about what a perfect house it would be for the family, yet it had in reality been sold 2 months earlier. I am quite sure that had W known about the imminent sale in September 2021 (i) there would be in the bundle clear and unequivocal messages between H and W to that effect (but there are not), and (ii) W would have immediately sought preservation of the monies and a distribution to her for her interim funding. It is not credible that she would have simply ignored the sale some three months after separation and at a time when she had no support from H, who personally netted £4.3m from the property sale, sums which he says that he has invested in business interests.

23. H in 2019 bought a flat in a fashionable part of SW1 for £3.25m with a 60% mortgage which, in February 2021 he sold for £4.2m. He received £2.1m net which he invested in his businesses.

24. W estimates H's wealth at not less than £100 million. She has set out in some detail various business interests in which, she says, H is involved. I cannot begin to explore the various highways and byways which she places before the court, and which H largely disputes. I propose to concentrate on the most significant alleged financial resources.

25. H is the CEO of two special purpose acquisition companies, ABC Holdings ("ABC") and ABC Holdings II ("ABC II"), which are structured to take private companies public, under which process the investors receive shares in the new company. Risk capital for the SPACs has to be raised by the management team for running costs, and a two year timescale is envisaged.

26. H has a conditional ownership of 19% of ABC and ABC II. He has put up $3.5m risk capital in ABC II. According to H, a merger between ABC and a manufacturing company was due to complete in April 2022, but will be subject to a lock-up until April 2023 which is the earliest point at which a return could be made; at present his interest is under water. He says that the deal has now collapsed which raises question marks about its viability. As for ABC II there is as yet no target for a merger, H foresees no return before 2024, and he says his interest currently has no value.

27. H has invested $2.89m in private lending funds, which he says are tied up for 5-7 years from 2019. In that period, he is committed to providing capital on demand up to $6.5m. The funds provide borrowing to third parties with a view to achieving an investment income.

28. H has investments in 31 SPVs in the USA, which hold shares in 31 private companies. His investment is in the region of £8m. The value is only accessible, he says, if there is a liquidity event such as an IPO or sale of the company. As I understand it, the remaining value of H's hedge fund is tied up in these private investments.

29. W asserts that H turned a $20m return in 2021 from an investment in XYZ Inc, a technology company. H says that the company's principal product will not enter

production until 2025, he has received nothing so far and expects to receive nothing before then.

30. H denies any separate holdings in cryptocurrencies (although one is included in the private investment companies). He owns a property in Country A occupied by his parents. He has invested $350,000 in a condominium in Country C, but produces evidence about the current poor economic state of the hotel.

31. H in his statement evidences borrowing in December 2021 from three individuals totalling £1,774,000, repayable between June and September 2022, and applied to the running costs of ABC, to which he is committed in the sum of $2.37m.

32. H owes the US Inland Revenue Service $1.112m which is currently subject to a payment plan at $15,448 pm.

33. According to H, his only income is a return on his investments in the sum of £115,000pa. He, like W, says he is reliant on the support of friends and/or family.

Wife's resources

34. W's case is simple. She says she has no assets or income, and owes £453,000 to friends who have supported her since separation, including £365,000 from a Mr ML ("ML").

The A Ltd Group

35. This business concept originated from ML who, so it appears, is its owner and principal. Its business is the provision of personal protective equipment ("PPE") during Covid times. He was introduced to H and W in 2020.

36. In September 2020, ML told H and W about a business opportunity to provide PPE equipment to the Country E government. W approached a potential investor, Mr SH ("SH"), who invested $25m through a back to back arrangement via H. H, too, invested; $1.2m in May and €600,000 in September 2021. $230,000 has been repaid to him, leaving about $1.6m owed.

37. In circumstances where there is a dispute about the extent of W's involvement in, and remuneration from, A Ltd, H has produced witness statements from two associates, Mr FG (a London solicitor) and Mr UN (a New York lawyer) who, in July 2021, stayed with H and W and report that W said words to the effect that the venture was proving to be very lucrative and W was making much more money than H from the PPE business. W describes this as a jokey conversation, similar to many such jocular moments between herself and H.

38. W has produced statements from ML and SH who say that W had no interest in or control over A Ltd, and has never received any remuneration. They say that the business is about to be terminated and will do no better than break even.

Conclusions

39. In my view, the fact of a jurisdictional dispute is relevant, but does not weigh too heavily. After all, habitual residence in W's favour was found by the English court, albeit within Hague Convention proceedings, and the Country E court has very recently

declined jurisdiction. I do not regard W's prospects of success as so remote that this application should be limited by a pessimistic prognosis of the outcome of her suit.

40. An interim maintenance application is almost invariably tried on the basis of submissions only. That was the case here. In many (perhaps most) cases, there is sufficient information for the court to exercise its jurisdiction broadly, with a tolerably accurate assessment of the finances. In this case, I am hampered by the fact that each party denies holding any liquid assets, yet is accused by the other of having access to a great deal of wealth. Each says that the other is a barefaced liar. I am very conscious of the difficulties this presents at an interim hearing. I cannot be completely sure of the ground on which I stand where the positions are so polarised.

41. In such circumstances, in my judgment I must be circumspect. I should not be afraid to draw adverse inferences if so warranted, but to my mind I should not make orders without either; (i) credible evidence that one or other party is able to access large sums of wealth; or (ii) being satisfied that the disclosure by either party is so deficient as to justify, even at this stage, making an award which that party denies is capable of being met. In this respect, I am most assisted by objectively verifiable facts, and contemporaneous documents.

42. It seems to me to be directly relevant that W has provided a full run of bank and credit card statements which has allowed H and his legal team to analyse her finances in some detail. By contrast, H has provided none except for a summary balance and one bank statement. It has not been possible for W and her team to analyse his finances. True, Forms E were not required, and H has not been ordered to provide such statements. But it must have been obvious that in a case where everything is disputed, including the extent of his wealth and accessibility of funds, such documents would be necessary. Given the nature of his case, that he is unable to pay anything for W and the children, I find it extraordinary that he has not produced bank and credit card statements. It is, accordingly, more difficult for me to accept what he says at face value.

43. It is, in my judgment, significant that H cut off W and the children financially in mid 2021, at a time when the marriage was in terminal breakdown, and has not paid a farthing since. Until then, they had been fully supported in an expensive lifestyle with, so it seems to me, no indication of impending financial doom. On the contrary, whenever W asked for large sums of money, he provided them; her expenditure at £43,000 per month on average, all paid for by H transferring monies to her, is telling. It is likely that H stopped paying because he chose to, perhaps out of anger and frustration with W.

44. It is also, to my mind, telling that during 2021 H invested millions of pounds into his business interests from the sale of the two London properties. That includes £4.3m from the sale of the property in W8 which took place after separation and without W's knowledge or agreement. Put simply, H during 2021 elected to prioritise his own interests over those of his family, and his actions in selling the W8 property deprived her of the opportunity to seek a share of the proceeds to meet her interim needs. He cannot complain if she now brings an interim application. Further, it seems to me to be highly unlikely, even on an interim evaluation, that H parted with millions of pounds into his businesses, knowing that (on his case) he would not have any monies left even for his own personal needs.

45. Similarly, it is of note that H invested $1.2m into the PPE business in May 2021 and a further €600,000 in September 2021. On any view, that was not injecting money into his own existing businesses and investments; he was not compelled to do so by capital calls or ongoing operational costs. He chose to take advantage of a new opportunity. If he was short of funds and/or had no liquidity, it is hard to see why he would have put such liquid cash at risk in this way. There was also in the bundle a WhatsApp from H in April 2021 in which he said, "I'm investing in a biotech 1mm". Whether he did so is unclear, but at the very least he had sufficient funds to contemplate a new venture only 2 months before separation. At the same time, i.e April 2021, he paid €176,000 euros for 8 months upfront rental of a property in Country E. These are not the actions of a man who contemplates a cashflow crunch.

46. H's case is built around illiquidity. But this is nothing new. In his own statement he says that he has had "almost constant problems with liquidity" since the collapse of his fund at the end of 2018. Nevertheless, he has managed to sustain a very fine lifestyle for the whole family, and invested large sums in business ventures. To my mind, it is more than just coincidence that the liquidity problems, according to him, were so acute at the time of separation that the tap was turned off, yet there had been no previous reduction in an undiluted ability to spend money.

47. It is said by H that he sold cars in 2020 and 2021 at an undervalue, and paid capital calls and rent late. These matters do not, in my view, outweigh the factors which I have already referred to, and must be seen in the context of the lavish lifestyle continuing without restraint until mid 2021. True, he has a payment plan in place for US tax but that could be seen as an efficient way of spreading over time a liability.

48. H on the certificate of complexity put the family assets at £25m-£50m. His explanation that in his view W has at least as much wealth as him, is pure speculation. Even in his own narrative statement, he places his worth at £14.5m. In the light of the history which I have related, I am sceptical about H's stated liquidity issues. Moreover, it is for him to find a way to unlock liquidity, particularly in circumstances where he invested so much family wealth in his business during 2021. Wilson LJ (as he then was) in **Behzadi v Behzadi [2008] EWCA 1070** said"…it is for the owner of property to establish, if such be the case and unless it is self-evident, that its value cannot be realised (which includes being borrowed against: ***Newton v Newton*** [1990] 1 FLR 33 at 44) or, if realised, that its proceeds cannot be transferred to the place at which it is suggested that they can be deployed". I am not satisfied that H has discharged that burden. Overall, it seems to me that H is likely to be able to arrange his wealth in such a way as to ensure that funds can be made available; the history of this case points clearly in that direction. I am therefore satisfied, in broad terms, that H is able to meet an award.

49. I turn to H's argument that W has ample resources of her own via A Ltd. There are certainly aspects of her involvement which are on the suspicious side, as can be seen in some text and email exchanges. She appears to be very close to ML and SH (albeit whether she is or has been in a romantic relationship with either or both is disputed). She has received substantial sums from ML. She showed an active interest in the business. In one message, she referred to ML as her "biz partner". Her name appeared in the original draft prospectus in the "Who are we" section and, on occasion, she used an A Ltd email account. She received €170,000 as a result of SH's first investment of

€1.7m, although the €170,000 was transferred on to H, consistent with all contracts having been between H, SH and A Ltd. H relies upon the evidence of the US and UK lawyers, although it seems to me that it is perhaps less compelling than it appears at first sight, based as it is on secondary, rather than primary knowledge.

50. However, in my view there are compelling factors which satisfy me, on an interim evaluation, that W has not had, and does not have, access to large sums from A Ltd:

i) There is not a single document showing that W has or has had a legal/beneficial interest in the business, or holds an office or has any major role. As a friend of ML, she undoubtedly helped in trying to find investors, and was able to locate and introduce SH (for which €170,000 was paid ultimately to H), but that is, so it seems to me, as far as it goes. Insofar as she has been promised a share of any profits when the business closes down (a) there may be no profits at all and (b) as made clear in her narrative statement, this was at most a verbal agreement referable to final closure and does not persuade me that it evidences past receipts by W, said by H to be in vast sums, or ongoing remuneration entitlement. It is in the nature of a goodwill payment for her role in locating investors, particularly SH. That role readily explains some of the exchanges between her and H referring to an involvement in the business and possible payments.

ii) There is not a single document showing that W has ever received any monies from the PPE business. One might have expected to see something (e.g. in a bank statement) showing monies sourced from A Ltd, or leading to A Ltd, but H cannot point to any such evidence.

iii) There is not a single document evidencing a contractual arrangement between W and A Ltd, whether for commission, share of profits, salary or otherwise. By contrast, there are numerous contracts in the bundle relating to the back to back arrangements between H, SH and A Ltd. All such documents are in H's name.

iv) There is nothing before me to indicate that A Ltd made any profits, let alone vast profits of the sort contended for by H. His case is rather undermined by his assertions from October 2021 that the PPE business was a "scam" (to use his own word).

v) If H is right, it is curious that in the welter of documents, including numerous text messages, WhatsApp, and email exchanges, at no time does H press W repeatedly for information about the large sums which he now says she has received. On any view, H was involved in the business and knew of its activities. It is almost inconceivable that he would not have asked W about what she was receiving, particularly at a time when he says he had no money, and they were in the throes of separation. This seems to me to be a glaring lacuna in his case.

vi) ML has provided a statement in which he says W has no interest in the business, has no entitlement to see documents, and has never received any remuneration, compensation, or commission. It is fair to say that ML has taken W's side, and I must approach his evidence with care, but what he says tallies with what I have read.

vii) It was in fact H who invested monies in the business, and not W.

viii) H relies on the monies provided to W by ML directly (as opposed to from A Ltd); I regard disputed issues about whether he provided her with a car and a watch as less significant. W says they are loans, albeit the figures do not entirely match the loan agreements which were drawn up ex post facto. ML also says that they are loans. H does not accept that they are loans, but it seems to me that (absent any clear evidence to the contrary) I should proceed on the basis that they are genuine loans, albeit repayment may not be immediately demanded. I have the sense with both parties that they mix with wealthy people who do this sort of thing as part of an ongoing relationship, whether as friends or business associates. It seems to me that W received monies from ML because she had been deprived of any financial support from H. The obligation to support W and the children must rest with H; there is no reason why W should become further indebted, legally and morally, to ML. The fact that she has received monies from ML and others has, of course, enabled her to continue an untrammelled level of expenditure. My sense is that she was unconcerned about the consequences, being the sort of person so used to expenditure that she is unable to rein it in.

51. I am not satisfied that W has access to funds as asserted by H. I therefore conclude that it is appropriate for me to make an award. The question is at what level.

Quantification

52. W's budget is, on an interim basis, grossly exaggerated. Her expenditure since separation, with no support from H and no resources of her own, has been irresponsibly excessive. She has shown no restraint. Counsel for H demonstrated that she has spent large sums on clothes, jewellery, and credit cards. Her claimed budget is overstated to a very considerable degree; exaggerated and unreasonable items, on an interim basis, include the cost of a housekeeper at £53,000pa, holidays and travel for W and the children at £120,000pa, clothes and shoes for W at £78,000, nanny costs at £126,000pa. Almost all items can and should be reduced significantly. I do not propose to analyse each and every line of her claimed budget. Rather, in my view, this is a case where a broad, **Purba v Purba [2000] 1 FLR 444** approach is appropriate. I bear in mind that H too is entitled to be able to meet his own needs. However, on my findings, he is well able to access sums to enable him to do so.

53. I conclude that in relation to the MPS application the appropriate award is:

i) £250,000pa general maintenance backdated to the date of the application. That sum includes any monies spent by W on nanny costs. I consider it preferable to avoid requiring H to pay nanny costs direct, which creates potential for dispute. This award is intended to cover all the personal expenses of W and the children. It will be for W to decide how she spends it; for example, whether she spends more on nannies, and less on other items, or vice versa. W must manage her finances herself. This sum would afford a very comfortable standard of living, shorn of the excessive items claimed.

ii) £144,000 pa for rental, backdated to the date of the application. That is £12,000 per month. I do not accept that it is fair or appropriate for W to seek to double

this sum. It happens to be what she is currently paying. The parties' rent in England has never exceeded the sum which I propose to order, and I am satisfied that it would enable them to house at a reasonable level.

iii) School and nursery fees as and when they become payable.

iv) I decline to order a sum of £448,846 to cover her expenditure between July and December 2021, before she had applied for interim provision, and in circumstances where she elected to borrow funds (rather than apply for MPS) and spend at an excessive level.

54. As for the legal fees funding application, I award as follows:

i) H shall pay W's unpaid and unbilled costs (which I am told are £230,810.56) **less** any part thereof referable to the Hague Convention proceedings which should be completely discounted (I am told that is about £34,000). I regard the costs referable to the Hague Convention as entirely distinct historic costs, incurred before the issue of this application and therefore irrecoverable. On similar facts (i.e where there had been prior Hague Convention proceedings), Mostyn J rejected the claim for those costs in **Rubin** (a decision with which Cobb J expressly agreed in **BC v DE [2016] EWHC 1806** at para 24). I further propose to apply a discount, which is frequently (but not invariably) applied to the sums sought in order to reflect a notional standard basis of assessment. In **BC v DE** Cobb J referred to previous decisions where a discount between 15% and 30% was applied. I propose to apply a 30% deduction to the reduced sum. Thus, the sum payable will be £230,810.56 less the unpaid Hague Convention costs, x 70%.

ii) In respect of future costs relating to the jurisdiction proceedings, W seeks between £381,000 and £423,000. Both figures are too high. H's own costs are estimated at £175,520 excluding VAT, which is not payable as he is overseas. I shall order a total sum of £250,000, inclusive of VAT and disbursements, payable in equal instalments over 10 months. At the end of 10 months the payments (if the proceedings have not earlier ended) shall cease. This is intended to be a final, capped figure, absent further order of the court.

iii) In respect of future Children Act proceedings, W seeks between £222,000 and £246,000, whereas H estimates his own costs at £49,590 excluding VAT. The proceedings are currently adjourned with agreement to mediate. It is hard to assess what would be required should the proceedings revive. I know nothing about the extent of the welfare inquiry, save that it is about the children's contact with H. On balance, I consider that the appropriate sum is £100,000, inclusive of VAT and disbursements. That sum is capped, absent further order. However, I propose to structure the sum as follows:

a) £10,000 forthwith to cover some costs which will inevitably be incurred even during the mediation process

b) The balance of £90,000, payable in equal instalments over 9 months, to be stayed until the mediation process is completed. The stay shall be lifted only if the process does not result in agreement, or by order of the court.

iv) In respect of all legal costs paid to W by H, W's solicitors must inform H at the end of each month of the amounts actually incurred.

55. Prima facie, W is entitled to her costs of this hearing. H made no offer, and W has largely succeeded. However, in practice those costs are subsumed within the costs funding allowance which I have made. I suggest that the order records this.

Other

56. H made a specific disclosure application against W shortly before this hearing in relation to the PPE business. I was invited to make such an order on the papers, which W opposed. I did not consider that I could fairly do so. Having now heard the MPS/LSPO application, I was tempted to dismiss the request for further disclosure. After all, the financial proceedings are stayed, and H has taken advantage of that by not producing bank statements. However, on balance, I will make the order sought. In practice, it may be that W is not entitled to call for the documents, but I would hope that ML will assist to lay to rest any queries. Should the documentation shed a markedly different light on this application, H would be able to contemplate applying for variation of my order. I will not, as suggested, adjourn W's applications until after compliance with the disclosure order, as suggested by H.

57. I approved a directions order in relation to the main suit on 24 January 2022, intended to timetable the case to final hearing. At that stage I knew nothing about the case. Having now read into it, I propose to vary paragraphs 6, 7 and 8 thereof so that:

i) W's statement shall be limited to 15 pages plus exhibits.
ii) H's statement shall be limited to 15 pages plus exhibits.
iii) W's statement in reply shall be limited to 8 pages plus exhibits.