



Neutral Citation Number: [2023] EWFC 210

Case No: BV20D01752

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/11/2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between :

DH	<u>Applicant</u>
- and -	
RH	<u>Respondent</u>

Jonathan Southgate KC (instructed by **Bloom Budd**) for the **Applicant**
Alexis Campbell KC (instructed by **Crisp & Co**) for the **Respondent**

Hearing date: 1 November 2023

Approved Judgment

I direct that 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 MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. This matter once again comes before the court in long running financial remedy proceedings. The applicant wife, DH (hereafter ‘the wife’) is represented by Mr Jonathan Southgate KC. The respondent husband, RH (hereafter ‘the husband’) is represented by Ms Alexis Campbell KC. Once again, despite the best efforts of the court to progress the matter to final hearing, the *fundamental* tasks required to achieve that end remain undone, notwithstanding the direction of the court. Instead, the parties continue to concentrate their ever diminishing resources on litigating interim issues.
2. Whilst this matter was listed for a return date with respect to a freezing injunction made by this court on 7 September 2023, yet further interim applications have proliferated ahead of this hearing. In the event, the court heard submissions informing the following applications before the court, each dated 23 October 2023. Namely:
 - i) An application by the husband for the discharge of the freezing order made on 7 September 2023 in respect of the husband’s life insurance policy (‘the policy’).
 - ii) An application by the husband for an order that he shall borrow against the policy in the sum of \$492,501 and the funds be divided equally between the parties.
 - iii) An application by the husband that the parties be released from undertakings not in anyway to dispose of, deal with or diminish the value of two bank accounts and be permitted to use the funds therein.
 - iv) An application by the husband for an order that the wife vacate the Wyoming property she is occupying and for the net rental income from that property and the properties in New York be divided equally between the parties.
 - v) An application by the husband for discharge of the MPS order of 30 June 2023 requiring the husband to pay £18,762 per month and a sum equivalent to the children’s school fees and all reasonable extras, summer tuition and university expenses;
 - vi) An application by the husband to discharge the LSPO order of 30 June 2023.
 - vii) An application by the wife for the adjournment of the return date for the freezing order.
 - viii) An application by the wife for enforcement with respect to unpaid MPS and LSPO.
3. In addition, the court heard further submissions with respect to the case management timetable in an effort to keep the proceedings on track to a final hearing listed for a third time as commencing on 19 February 2024.

4. In determining the applications before the court, I have had the benefit of reading the court bundle prepared, together with further documents submitted by both parties ahead of this hearing. I have also had the benefit of written and oral submissions from Ms Campbell and Mr Southgate.

BACKGROUND

5. The detailed background to this matter is set out in my previous judgement, published in June 2023 as *DH v RH* [2023] EWFC 111. That judgment should be read with this one and I will not repeat the background here. There was no appeal of that decision. Within that context, and for the purposes of the current applications before the court, the following conclusions from my previous judgment are relevant:
- i) Without the provision of funds under an LSPO the wife would not reasonably be able to obtain appropriate legal services up to and including the final hearing and provision to obtain those legal services should be made by way of an LSPO.
 - ii) The husband's proposal for funding the wife's legal costs by transfer of the New York properties was not one the court could endorse absent independent evidence of the tax consequences of that step being taken.
 - iii) In circumstances where the parties have been acting in person prior to this hearing, and hence the court has not been given an accurate agreed Schedule of Assets, the assessment of the income, earning capacity, property and other financial resources which each of the wife and the husband had or was likely to have in the foreseeable future must necessarily be a provisional and relatively broad exercise.
 - iv) On his own case that the husband had financial resources, in sufficiently liquid form, to fund an LSPO in favour of the wife, the balance of his bank accounts being £719,743, with savings and investments of £514,443 without causing undue hardship to the husband or prevent him from himself obtaining legal services for the purposes of the proceedings should he choose to do so moving forward.
 - v) The court's concerns regarding the wife's expenditure on legal costs to date were best dealt with by carefully proscribing the manner in which the funds made available under the LSPO were to be deployed and by staging those payments, and for the court to revisit at the PTR the question of whether the LSPO should be varied.
 - vi) An award under an LSPO made a significant way through the proceedings was not a licence to start again with respect to case management or otherwise to fundamentally change the established shape of the case. After some 30 months of litigation the wife had not provided a schedule of alleged non-disclosure of assets notwithstanding the extensive costs expended by her. In such circumstances, it would not be appropriate to authorise any further costs to be expended on that question, save those required to facilitate the meetings required to finalise the joint expert report, to take legal advice in respect of the conclusions of that report and to give instruction on it.

- vii) Within the foregoing context, it would not be appropriate for there to be a wholesale re-examination of the directions that remain to be complied with in this case to take the case to PTR if required. The court gave directions to PTR on 17 November 2022 and the court expected those directions will be complied with. Under the LSPO the wife would have legal funds to do so.
 - viii) With respect to MPS, the task of the court was complicated by the fact is that these interim applications involved contrasting presentations as to value, as to income and as to need, and the fact that it is neither possible nor appropriate to resolve those competing positions at an interim hearing.
 - ix) The wife had plainly established her need for maintenance pending suit. She had no current employment and was required to maintain herself and the children of the family pending the determination of the proceedings.
 - x) The wife having stated her intention to return to rented accommodation in central London, the proper starting point for the assessment of reasonableness must be the current position of the parties, including any proposed material change of circumstances, the most obvious of which was the stated desire of the wife to return to live in London.
 - xi) In circumstances where the family previously lived in London, and where one daughter would now commence tertiary education in the United States and the other would commence boarding, it was not unreasonable for the wife to seek to return to London, where the parties resided for a considerable period during the marriage. Pending the determination of proceedings, the husband must make reasonable provision for the wife's rent in London, absent which provision she would not be able to secure reasonable accommodation.
6. In the foregoing circumstances, I made an LSPO order which provided the payment of £221,654 to PTR and thereafter a further £151,000, to be paid in two further instalments following the PTR, the payments being staged to permit the court to reassure itself at the PTR that the costs provided for under the LPSO are being utilised proportionately.
7. I also made an MPS order which, in addition to a budget of £7,000 per month for rent in London, made provision for MPS of £141,154 per annum. The court also ordered the husband to pay the rental deposit and the moving costs for the wife to return to London. It will also be apparent from my previous judgment that I re-timetabled the case management directions made in this case to take the matter to final hearing dealing with the completion of expert report, updating valuations of US properties, agreement on tax issues or the provision of a jointly instructed tax report, agreement on pension issues or the provision of a jointly instructed pension report, updating disclosure and witness statements.
8. As I have noted, in June 2023, having regard to the evidence the wife then placed before the court, I was satisfied that she intended to return to rented accommodation in central London and that that intention constituted the most obvious material change of circumstances informing the court's evaluation of reasonableness in the context of the application for MPS. However, following the hearing in June 2023, instead of taking up rented accommodation in London, as she had stated to the court was her

intention, the wife instead moved into one of the parties' properties in Wyoming. Ms Campbell on behalf of the husband sought to demonstrate that this was the wife's intention at the time she represented to this court that she intended to take up rental accommodation in London, that is a matter that falls to be dealt with at the final hearing if necessary. However, and quite remarkably, on 21 July 2023 David Lillywhite, the wife's former solicitor at Burgess Mee, sent a demand for payment of removal costs of £19,123 relating to the wife's relocation to Wyoming without any apparent reference to the fact that that step did not accord with what had been represented to the court by the wife only a month before. The husband also contends, by reference, to a LinkedIn page, that the wife is now in employment in Wyoming. Again, that is a matter which the court cannot take to conclusion at this interim hearing.

9. In consequence of the wife's position, in addition to moving costs from her previous English rented property to Wyoming rather than from her previous English rented property to London, she is currently the benefactor of an MPS order that includes a sum of £7,000 per month for rent and her occupation of one of the parties' houses in Wyoming prevents that property providing a stream of rental income.
10. The wife is currently engaged in litigation against a US bank in Wyoming arising out of the husband having paid down part of the mortgage on the Wyoming properties in 2022. In July 2023 the wife lost her case against the US bank with prejudice. As a result, the US bank deducted \$113,000 from the parties' joint account to satisfy the costs awarded against the wife (the husband contends that had the Wife not failed to comply with a direction of this court made in November 2022 that she set up a corporate bank account to assist in the management of the Wyoming properties, this money would not have been lost). The wife continues to litigate against the husband in the US on the same grounds as she pursued against the bank, although he has not been served with proceedings and has instructed lawyers in the US to apply to dismiss the proceedings. The court was informed that the wife is funding the costs of that continuing litigation through a conditional fee agreement. Within this context, at this hearing the husband initially sought an anti-suit injunction or Heman injunction to prevent the wife from pursuing litigation against him in the US. However, the court having indicated that that application would need to be listed for a separate hearing, the husband elected not to pursue that application on the grounds of cost.
11. On 7 September 2023, the matter again came before me. The application that brought the matter back before the court was an application by wife to vary the LSPO to permit the funds payable under that order to be paid to her new solicitors (a drafting error meaning that the LSPO did not make provision for payment to any successor firm). In addition, the parties had been incapable of agreeing the terms of the directions order following the hearing in June and sought to advance further arguments on a range of case management issues. On the day of the hearing, the wife issued an application for an order under s.37 of the Matrimonial Causes Act 1973 or s37 of the Senior Courts Act 1981 to prevent the husband from taking steps to transfer, dispose of or in any way deal with "any crypto assets he holds" and the policy, including using it as collateral for any borrowing.
12. At the hearing on 7 September 2023, the court varied the LSPO to permit the payment of funds to the wife's new solicitors. The court declined the application for a freezing order in respect to cryptocurrency assets but granted the order in respect of the policy.

For a second time, the court re-timetabled the case management directions. In circumstances where none of the cardinal case management directions with respect to the completion of expert report, updating valuations of US properties, agreement on tax issues or the provision of a jointly instructed tax report, agreement on pension issues or the provision of a jointly instructed tax report, updating disclosure and witness statements had been complied with, and for the reasons set out in my judgement of that date, the court was compelled to vacate the final hearing listed in October 2023 and re-list the final hearing in February 2024. At this hearing it was apparent that, notwithstanding the court making an LPSO in favour of the wife in June 2023, and thereafter varying the order to permit funds to be paid to her new solicitors in September 2023, such of those directions that were due to have been completed by the date of this hearing had *still* not been complied with. This in the context of the wife having now received £190,827 under the LSPO.

13. With respect the evidence before the court, in circumstances where there has been continued non-compliance with the directions of the court the court does not at this hearing have an up to date picture of the parties finances. In particular, in circumstances where the parties have failed to comply with the order of 17 November 2022 requiring the provision of updating disclosure six weeks prior to the PTR, have proved incapable of agreeing the terms of the directions order I made in June 2023 and where the directions order eventually made on 7 September provided for updating disclosure to be provided by 10 January 2024 in anticipation of the final hearing, the court has not been equipped with updating disclosure in order to deal with the further interim applications that the parties now seek to pursue.
14. For the hearing in June 2023, court had also had the benefit of a Schedule of Assets prepared by the husband on 23 April 2023. Whilst the Schedule was not agreed, both parties relied on its contents at the hearing in June in support of their respective submissions. The Schedule detailed total assets of some £13.2M. For this hearing husband has again provided the court with a Schedule of assets. As in June 2023, that Schedule is not agreed. There is no Schedule provided by the wife. The current schedule (compiled in the context of there having been no updating disclosure since July 2022) details assets of £13.2M.
15. As I have noted above, at the hearing in June 2023 I concluded that on his own case that the husband had financial resources, in sufficiently liquid form, to fund an LSPO in favour of the wife, the balance of his bank accounts being £719,743, with savings and investments of £514,443 without causing undue hardship to the husband or prevent him from himself obtaining legal services. As I further noted, that decision was not the subject of an appeal. The husband now, however, contends that the court's conclusion that his savings and investments of £514,443 were liquid was erroneous. In this regard, Ms Campbell relies on the fact that as early as 2 May 2023, the husband wrote to the wife highlighting the likely need to rely on the policy to deal with outstanding liabilities in the context of low levels of liquidity. Ms Campbell further relies on the fact that the husband, when submitting typographical corrections in respect of the judgment of June 2023, at which time the husband was a litigant in person, made clear his position that the £514,443 in "Savings and Investments" were illiquid in circumstances where they comprised of private equity and venture capital investments and land investments, which could not easily be realised. That suggested correction was not adopted by the court.

16. In addition, with respect to the balance of his bank accounts standing at £719,743 as at April 2023, the husband has provided a document that purports to be a summary of the funds expended from his bank accounts since June 2023, together with detailed breakdown of the items of expenditure taken from his bank accounts and credit cards (the statements themselves have not been disclosed). That document was provided to the wife under cover of correspondence dated 27 September 2023. The husband has contended in correspondence that his total expenditure since April 2023 of £676,693 has been as follows:
- i) £111,955 with respect to his own legal fees and additional expenditure.
 - ii) £82,060 with respect to the children, including educational fees.
 - iii) £85,579 on living costs.
 - iv) £206,272 comprising a costs order made against the wife in litigation in the US and MPS payments.
 - v) £190,827 comprising payments under the LSPO.
17. Within this context, the husband has further contended in correspondence that there now remain liquid assets of only to meet the parties respective liabilities in the period leading up to the final hearing, which the husband calculates amount to £665,610 comprising:
- i) £30,827 outstanding on the second LSPO payment to the wife.
 - ii) £151,000 final LSPO payment to the wife due at the PTR on 16 January 2023.
 - iii) £93,814 with respect to MPS payments (subject to the submissions made by the husband concerning the wife's current accommodation).
 - iv) £60,000 expenditure by the husband based on expenditure of £12,000 per calendar month.
 - v) £330,000 legal costs of the husband up to the conclusion of the final hearing.
18. Within the foregoing context, and in support of his application to discharge the freezing order and to discharge the LSP and MPS orders, the husband proposes a scheme that, he submits, would negate the need for those orders to continue. Namely, to borrow against the policy and to divide the resulting funds equally between the parties and to permit equal access by the parties to the rental income from the Wyoming properties and equal access by the parties to the rental income from the New York properties. The husband points to the fact that at the hearing in June 2023, through her then leading counsel, the wife identified the policy as one of the liquid assets available to satisfy the wife's application for an LSPO and maintenance pending suit. He submits that the policy is the last liquid asset available to meet both parties legal fees.
19. The husband submits that this overall arrangement would provide each party with funds to meet their respective living expenses and legal costs ahead of the final hearing in February 2024, with both parties meeting 50% of the children's education

expenses. Were the wife to choose to continue to occupy the Wyoming property, thereby excluding any rental income from that property, the husband submits that she would have to accept a reduction in her interim income ahead of trial. In the alternative, the husband again proposes interim property transfers giving one each of the Wyoming properties and the New York properties to the parties to charge of sell as they see fit. This is a course to which the wife again objects to on the grounds of what she contends are tax implications.

20. As to the change of circumstances that would justify the court acceding to the husband's proposed way forward, in her oral submissions Ms Campbell points to the following:

- i) The fact that the wife has not, as she contended she needed to, moved into rental accommodation in London but rather has occupied one of the matrimonial properties in Wyoming rent free.
- ii) The consequence of the wife occupying one of the matrimonial properties in Wyoming, namely depriving the parties of the rental income from that property of some \$120,000 per annum.
- iii) The failure of the wife to comply with any of the directions made by the court to ensure the matter is ready for final hearing notwithstanding the payment by the husband of £190,827 under the LSPO.
- iv) The husband has had to rely on the content of his bank accounts to satisfy his obligations under the LSP and MPS orders and to provide for his own legal fees and living expenses to the tune of £686,000 against a balance in April 2023 of £720,000.
- v) There are now insufficient liquid funds to continue to meet the parties outgoings, including the husband's obligations under the LSP and MPS orders. Without borrowing against the policy and utilising the rent from the US properties the only option for the husband is to breach the LSP and MPS orders.

21. With respect to the freezing injunction, Ms Campbell submits on behalf of the husband that, in any event, the test for the imposition of a freezing injunction is not met. Ms Campbell points to the fact that the husband gave notice, by a letter dated 30 August 2023, of his wish to liquidate the asset in order to meet ongoing obligations under the LSP and MPS orders, Ms Campbell again pointing out that the wife had specifically targeted the policy for this purpose in June 2023. The letter of 30 August 2023 was in the following terms:

“The current position is as follows – [the husband] currently has liquid assets of c. £224,000 (having made the first LSPO payment and MPS payments to your client, in addition to meeting his own legal fees). He is due to make an MPS payment of £18,862 on 1 September 2023 and a further payment of £110,862 with respect to the second LSPO payment (the payment arrangements for which will be determined at the hearing on 7 September 2023), which will leave less than £90,000. This is insufficient for subsequent MPS payments, meeting his own legal fees and meeting

your client's further fees in accordance with the LSPO/MPS order. As such, in accordance with [the husband]'s ongoing duty of full and frank disclosure, we put you on notice he will shortly take steps to liquidate or borrow against his life insurance policy to raise funds to meet his obligations under the interim orders, as he informed [the wife] previously in his email of 2 May 2023 that was also provided to the court."

22. The wife's primary application is, once again, an adjournment application. Mr Southgate submits that, in the absence of any updating disclosure having been exchanged since July 2022, the court is not in a position to determine the applications before it. In particular, Mr Southgate submits that the Schedule of assets prepared by the husband (the wife not having prepared such a document) and the document that purports to be a summary of the funds expended from his bank accounts since June 2023, together with detailed breakdown of the items of expenditure taken from his bank accounts and credit cards, are not supported by corroborating disclosure, end on 2 September 2023 and therefore do not form a sufficient foundation for interim decisions in this case. He submits the court has no clear picture of the husband's income. Within this context, Mr Southgate further submits that what he terms "the basic building blocks" of available resources compared to needs have not been properly dealt with ahead of this hearing, the husband's own tabular summary of what he has spent and where being insufficient not permitting of any counter-analysis.
23. The wife's case with respect to enforcement of the existing MPS and LSP orders is that those orders should remain in place (with the current monthly rental payment of £7,000 being diverted to meet unparticularised costs associated with her visiting the children) on the basis of her continuing and still unparticularised assertion that the husband has extensive undisclosed assets and from employment that he has yet to disclose to the court. Mr Southgate sought to demonstrate what he alleged was a further instance inconsistencies with respect to the husband's disclosure in the form of some £100,000 being missing in the figures presented by the husband. Ms Campbell submits that this money is accounted for as the \$113,000 removed from the parties account following the wife's unsuccessful litigation, as demonstrated on the breakdown provided by the husband. The wife once again asserted that the husband has failed to disclose assets held in cryptocurrency.
24. With respect to employment, the wife submits that it is highly unlikely that the husband would work for a company without remuneration and questions the purpose of incurring expenses to be reimbursed, the husband's case being that the details for the public listed company for which he is a director confirms his remuneration of 50,000 shares, which are disclosed on the updated Asset Schedule, and that the reimbursement of expenses of £32,000 is reflected on his schedule of income and expenditure. With respect to liquidity, the wife submits that the court should rely on its previous conclusion with respect to the liquidity of the husband's savings and investments as set out in his previous Schedule and avers that in seeking a different approach the husband is seeking to appeal the court's judgment in June 2023 by the back door.
25. Within this context, on behalf of the wife, Mr Southgate submitted that the way forward suggested by the husband constitutes a continuation of what the wife alleges is his plan to place all liquid assets beyond her reach, which plan she traces back to the husband's payment down of the mortgages on the Wyoming properties. Mr

Southgate further criticises the scheme suggested by the husband as failing to reflect the *status quo* in respect of the properties that has been in place in respect of the US properties for 12 months and as failing to legislate for events such as the failure of a tenant to pay rent.

26. As to the freezing injunction, the wife submits that the real risk of dissipation is demonstrated by the husband's stated wish to borrow against the policy to meet the parties outgoings as indicated in the letter of 30 August 2023. The wife further relies on what she submits is a history of very serious non-disclosure by the husband in his Form E, as described in my previous judgment, which she submits is continuing, asserting that the husband has omitted private equity investments and venture capital investments set out in Section 2.4 of his Form E from his most recent Schedule. The wife reiterates her submission that the husband also aims deliberately to reduce the available liquidity. In this context, the wife submits that the balance of convenience is plainly in favour of maintaining the policy until a proper evaluation and determination of the husband's available assets can be undertaken at trial. However, during oral submissions, Mr Southgate appeared to concede that were the court to conclude there were insufficient liquid funds to meet the living and legal expenses to trial, then the policy may have to be utilised.

THE LAW

27. For the purposes of determining the interim applications before the court, the relevant legal principles can be stated shortly.
28. The law governing LSP orders is set out in my judgment of 5 July 2023. Within that context, Section 22ZA(5) of the Matrimonial Causes Act 1973 as amended makes clear that the court may at any time in the proceedings vary an LSP order if it considers that there has been a material change of circumstances since the order was made. In deciding whether to vary the order where there has been a change of circumstances, pursuant to s.22ZB(1) of the 1973 Act the court must take account of the matters set out in s. 22ZB(1)(a) to (h) of the Matrimonial Causes Act 1973 as amended. As noted in my judgment in July, in *Rubin v Rubin* [2014] EWHC 611 (Fam), Mostyn J gave comprehensive guidance on the operation of these statutory provisions.
29. Again, the law governing orders for maintenance pending suit to meet immediate need is set out in my July judgment. Where the court is considering whether to vary an MPS order, the court will again need to consider the question of whether there has been a change of circumstances since the MPS order was granted and, if so, to apply the principles applicable to the determination of an application for MPS to those changed circumstances, namely "reasonableness".
30. In seeking to demonstrate that the court cannot in this case revisit its previous conclusion as to the extent of the liquid assets available to the husband to meet the MPS and LSP orders, Mr Southgate relies on the following passage from the judgment of the Court of Appeal in *Garner v Garner* [1992] 1 FLR 573 at 581, in which the Court of Appeal observed, albeit in the context of a periodical payments order, as follows:

“Almost invariably, an application to vary an earlier periodical payments order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application will, in effect, be an appeal. If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a material change in the circumstances. However, because of the impact of continuing inflation, because children grow older and cost more to support and because, for example, the cost of living in its increase may hit one party harder than another, it will usually follow that, if time has passed, there will inevitably have been some changes in the circumstances, and in particular in the financial circumstances, of the parties concerned.”

31. However, in the paragraph immediately following the one set out above, Cazalet J stated as follows in *Garner v Garner*, again in the context of periodical payments:

“Following *Lewis v Lewis*, by which decision this court is bound, a court on the hearing of an application to vary is fully entitled to look at all the relevant matters set out in s 25 of the Matrimonial Causes Act 1973. On occasions, the court may be slow to accede to an application to vary a consent order; not least because the parties' solicitors might otherwise be deterred from either seeking to negotiate such a provision or to achieve finality. Another factor which may influence a court will be the time that has passed since the original order was made. If an application consequent on an order is brought very soon after that order has been made, the court, in normal circumstances, is likely to attach more weight to the earlier order than if it had been made some years previously. Likewise, the court would expect to pay full regard to any special terms agreed between the parties at the time the original order was made – as, for example, when endorsements on briefs or contemporaneous correspondence show that an agreed order has, for some particular reason, been set at an artificially low figure. Shortly stated, the court must decide what weight it should attach to the original order and all the surrounding circumstances. However, once an application to vary is before it, the court is fully entitled to make an order considering all the circumstances afresh, paying such regard to the old order as may be thought appropriate.”

32. In the foregoing context, in *Morris v Morris* [2017] 1 WLR 554 the Court of Appeal held that on an application to vary the court had to conduct an exercise that is proportionate to the requirements of the case.
33. The correct approach to an application for a freezing injunction is set out in *Les Ambassadeurs Club Ltd v Yu* [2022] 4 WLR 1. In that case, Andrews LJ made clear that the focus should be on whether, on the facts of the case, the evidence before the court demonstrates objectively a real risk of unjustified dissipation which is sufficient in all the circumstances to render it just and convenient to grant a freezing injunction.
34. Finally, as I set out in my judgment in July, the task of the court is complicated at the interim stage by the fact that interim applications involve contrasting presentations as to value, as to income and as to need, and the fact that it is neither possible nor

appropriate to resolve these competing positions at an interim hearing. That remains the case ahead of the final hearing in February 2024.

DISCUSSION

35. Having considered the evidence and submissions, I am satisfied that the freezing order should be discharged and that the husband should be permitted to borrow against the policy in order to discharge his obligations under the MPS and LSP orders made by the court in June, including the outstanding payments, and to meet his own expenses. I am further satisfied that the MPS order should be varied to remove the provisions in that order which deal with rent. I am satisfied that the husband's application that the parties be released from undertakings with respect to the bank accounts and for the net rental income from the Wyoming property and the properties in New York be divided equally between the parties, his application for an order that the wife vacate the Wyoming property and his application to discharge the MPS and LSP orders should be dismissed. My reasons for so deciding are as follows.
36. As recognised by leading counsel, the applications with which the court is seised to an extent overlap, both in terms of their determination and their consequence if granted or refused. The husband seeks to discharge the LSPO and MPS orders on the grounds that the parties living expenses and legal expenses can be met by the arrangement he proposes, including borrowing against the policy. The latter step would require the discharge of the freezing order, which the husband submits is in any event justified having regard to the established principles governing such orders, and the discharge of the scheme of undertakings governing the income generated by the US residential properties that has been in place for some 12 months. Subject to her application for an adjournment, the wife resists the applications to discharge the MPS and LSP orders and seeks to enforce the sums outstanding under those orders. In turn, the husband argues that in such circumstances the court will in any event have to permit access to the policy and the rental income from the US properties if those orders are to be satisfied by him whilst allowing him to meet his own outgoings.
37. The position of both parties cases before the court is in many ways very unsatisfactory. With respect to the husband's case, there has been no appeal of the court's finding in June 2023 with respect to the extent of his liquid assets as including his investments. There is no updating disclosure to support his narrative of spending from his bank accounts. With respect to the wife's case, she has not pursued rental accommodation in London presented to the court as a firm requirement in June 2023 notwithstanding provision of £7,000 per month to meet that stated need, but instead has taken the unilateral decision to occupy one of the matrimonial properties that was producing a rental income. Her assertion that the husband can afford to maintain the current payments on the LSP and MPS orders without the need to lift the injunction on the policy appears to be based, at least in part, on her continuing and still unparticularised assertion that the husband has extensive undisclosed assets.
38. Within that context, I have given careful consideration to the wife's application that the husband's applications be adjourned. However, as has been consistently recognised in other cases, it is not unusual for the court to be faced with an incomplete evidential picture when dealing with applications at the interim stage of financial remedy proceedings. Indeed, this was also the position at the time when this court made LSP and MPS orders in June 2023 in favour of the wife. Having regard to

the issues before the court at this hearing, which centre on the extent to which the orders made in June should continue, be varied or be discharged, I am satisfied that the court has before it sufficient information to deal with those interim questions.

39. That is not to say however, that the wife's submissions as to the state of the evidence are irrelevant. Whilst the court is prepared to proceed at an interim stage on the basis of less comprehensive evidence than that which will be available at the final hearing, I am satisfied that the court should only proceed so far as is necessary to ensure the position of the parties in the interim, pending the final hearing. In circumstances where interim applications inevitably involve contrasting presentations as to value, as to income and as to need, and the fact that it is neither possible nor appropriate to resolve those competing positions at an interim hearing, this is not the occasion to engage in a comprehensive restructuring of the financial position between the parties in the absence of their having been any updating disclosure in this case since July 2022 and in the absence of the court being able, at an interim stage, to investigate and determine issues such as non-disclosure of assets. In this context, I am satisfied that the court should make only those orders that are strictly necessary to ensure the parties' respective positions in the 12 weeks before the commencement of the final hearing.
40. I am not satisfied that there has been a change of circumstances such as to justify the discharge of the LSP or the MPS orders, as urged upon the court by the husband. With respect to the LSP order, I am not satisfied that the circumstances have changed in a way that would justify the court altering the conclusion it reached in June 2023 that, without the provision of funds under an LSPO, the wife would not reasonably be able to obtain appropriate legal services up to and including the final hearing. With respect to the LSP order, Ms Campbell candidly concedes, as she must, that the husband is in breach of the LSP order in circumstances where there remains £30,827 outstanding on the amount payable up to the PTR.
41. With regard to the MPS order, I am likewise satisfied that the circumstances have not changed since June 2023 such that the court could now conclude that the wife can no longer establish a reasonable need for maintenance pending suit, although I am satisfied that there has been a change of circumstances that justifies revisiting the quantum of that order. As set out above, in June 2023 the wife stated to the court that it was her intention to return to rented accommodation in central London. In that context, the court concluded that the husband must make reasonable provision for the wife's rent in London, absent which provision she would not be able to secure reasonable accommodation. Notwithstanding the wife's clear representation to the court, she did not take up rental accommodation in London, but instead moved to occupy one of the matrimonial properties in Wyoming. It was not suggested at this hearing that this is anything other than a permanent move pending the final hearing.
42. In the circumstances, I am entirely satisfied that the £7,000 per month awarded to the wife by the court as part of the MPS provision can no longer be justified where the interim need that award was designed to meet no longer exists. Whilst the wife sought to suggest that the £7,000 per month should be redirected to meet expenses consequent on her visiting the children in the US and England, there is no supporting budget in this regard. In any event, on its face, £7,000 per month on expenses related to visiting the children cannot be considered reasonable. In the circumstances, I am

satisfied that the rental component of the MPS order of £7,000 should be removed, leaving a monthly MPS payment of £11,862 to the final hearing in February.

43. It is now some twelve weeks until the final hearing, which is due to commence on 19 February 2024. Within this context, and having regard to the variation I have made to the MPS order, the obligations that require to be met in the twelve weeks or so between now and the final hearing comprise payments under the LSPO of £30,827, being the amount outstanding from the last LSPO order payment due, and £151,000 due at PTR, monthly MPS payments of £11,862 and the interim living and legal expenses of the husband, which he puts at £60,000 and £330,000 respectively (although I accept that there is no budget with respect to either figure). The husband contends that the liquid assets set out in the unagreed updated Schedule of assets are not sufficient to cover the obligations summarised above up to the final hearing and that the policy must now be available to meet those obligations, the criteria for a freezing order not being met in any event. Against this, on the information before the court, the wife contends that no adjustments are necessary in order for the husband to continue to meet his obligations under the LSP and MPS orders and the freezing order should be maintained to meet a real risk of unjustified dissipation.
44. In this context, the wife's case appeared to be that if the court maintains the freezing order on the policy then, having spent unjustifiably the funds in his bank account, the husband will nonetheless be able to meet the outstanding obligations up to trial by employing assets he says he does not have but, in fact, has not yet disclosed and by spending assets that he now says are illiquid but are, in fact, liquid as found by the court in order to meet his obligations.
45. I accept that the court does not have updating disclosure to corroborate the husband's tabulated schedule of expenditure from his bank accounts, the balance of which was £719,743 in April 2023 but is now asserted by the husband to be £137,632. At this interim stage however, even if equipped with updating disclosure, the court would not be in a position at this short hearing to engage in a line by line analysis of the appropriateness or otherwise of the husband's expenditure from his bank accounts, which exercise can be undertaken at the final hearing if necessary and adjustments made to the final division of assets if justified. At this interim stage, and subject to further consideration at the final hearing, I am satisfied that the husband now has available to him significantly reduced funds in his bank accounts, a significant portion of which has been spent on meeting his obligations under the LSP and MPS orders.
46. With respect to the dispute concerning the extent to which the court was justified in concluding in June 2023 that the "Savings and Investments" set out in the husband's Schedule in June 2023 of £514,443 were liquid assets available to satisfy the LSP and MPS orders, that was indeed the finding of the court. As was made clear in *Garner* however, albeit in a different context, where the court is seised of an application to vary the position established by a previous order the court is entitled to make an order considering all the circumstances, paying such regard to the original order as is appropriate. To take any other approach would risk delay and more expense consequent upon the court not being able to acknowledge and take into account new or corrected information. It is correct that the court's finding that the "Savings and Investments" of £514,443 were liquid was not the subject of an appeal. Against this, the husband is now represented and, as Ms Campbell demonstrates, further scrutiny of the Schedule prepared for the hearing in June 2023 and for this

hearing does demonstrate some private equity investments and venture capital investments and land investments included under the “Savings and Investments” heading. Again, the interim nature of this hearing does not lend itself to a detailed exploration of the competing positions on this issue. It is however, vital that this matter can be made ready for what will be the third listing of the final hearing in February 2024. These parties have now spent the best part of £2M in legal costs on proceedings that have been ongoing for two and a half years. These proceedings must now be brought to an effective conclusion. In such circumstances, I am satisfied that any doubt as to the current extent of funds available to ensure the obligations ahead of the final hearing can be met in the interim falls to be decided in favour of a course of action that keeps these proceedings on track to final hearing.

47. Finally, whilst the wife suggests again at this hearing that the husband has failed to disclose significant assets held in cryptocurrency and is not being frank regarding his current employment situation, and by implication that he has undisclosed assets and income available to him to meet his obligations under the LSP and MPS orders, those allegations remain to be definitively particularised and determined. Whilst the court will need to carefully scrutinise those contentions at the final hearing, a definitive determination of the allegation of non-disclosure is beyond the scope of an interim hearing.
48. At the hearing in June 2023 the wife targeted the policy as one of the assets available to the husband to meet his obligations under the LSP and MPS orders. During the course of his submissions Mr Southgate realistically conceded that if the court concluded that insufficient liquid funds remain available to ensure that the obligations ahead of the final hearing could be met, then the policy may have to be utilised. Having regard to the matters set out above, I am satisfied that that is the position.
49. Doing the best the court can on the incomplete information available, I am satisfied that it is necessary to rely on the policy to meet the obligations I have set out above. Having regard to the doubts concerning the liquidity of the savings and investments set out on the Schedule, and the inability of the court to determine at an interim hearing substantive allegations of non-disclosure, the remaining balance of the husband’s bank account is not sufficient to meet the obligations under the LSP and MPS orders and his own expenses and legal costs. In these circumstances, and where the husband indicated from May 2023 that the policy might be required, where the wife originally pursued the policy for that very purpose in June 2023 and the husband again wrote to the wife in August 2023 with the same proposal, I am further satisfied that the criteria for continuing the freezing order are not met.
50. Permitting the husband to borrow against the policy will allow him to meet his obligations under LSPO and MPS order as varied, amounting to some £229,275 including amounts outstanding. It will also allow him to fund from the policy a portion of his own expenses and legal expenses to the final hearing in 12 weeks time. I acknowledge that this represents a shortfall on the husband’s own figures for the period leading up to the final hearing. However, within the limitations placed on the court by this being an interim hearing, and in particular the incomplete nature of the evidence before the court in that context, I am not satisfied that court should go further and implement the complete re-ordering of the interim arrangements between the parties proposed by the husband, comprised of the release of undertakings with respect to the bank accounts, for an order that the wife vacate the Wyoming property

and for the net rental income from the Wyoming property and the properties in New York be divided equally between the parties and to discharge the MPS and LSPO. In circumstances where the court is not yet in a position to determine the competing arguments of the parties with respect to non-disclosure of assets, employment income and liquidity, I am satisfied that the court should only proceed so far as is necessary at this interim stage to ensure the position of the parties with respect to living and legal expenses pending the final hearing. Within this context, I further bear in mind that the balance of husband's bank accounts stands at £80,871, giving him a further resource to draw on in that regard.

CONCLUSION

51. In conclusion, I am entirely satisfied that the LSP and MPS orders should remain in place, subject to the rent of £7,000 per monthly being removed from the MPS order. The freezing injunction will be discharged and the husband is permitted to borrow against the policy in order to satisfy his obligations under the LSP and the MPS orders as varied, and to meet a portion of his own expenses and legal expenses ahead of the final hearing. The husband's applications that the parties be released from undertakings with respect to the bank accounts, for an order that the wife vacate the Wyoming property and for the net rental income from the Wyoming property and the properties in New York be divided equally between the parties and to discharge the MPS and LSP orders are refused. I will invite counsel to agree the terms of the order accordingly.
52. The interim applications with which the court has had to deal in this judgment are another example in this case of the parties litigating interim issues at great expense whilst at the same time failing to adhere to the case management timetable designed to bring this matter, finally, to resolution. Once again, the court *urges* the parties in this case to concentrate on complying with the case management directions that are required to bring this matter to an effective final hearing in February next year, now only some 12 weeks away.