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: [2024] EWFC 165

Case No: 1707-3925-2784-9181

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 July 2024

Before :

MR JUSTICE PEEL

- -

Between :

KV	**Applicant**
- and -	
KV	**Respondent**

- -
- -

Charles Howard KC and Jennifer Palmer (instructed by **Hughes Fowler Carruthers**) for the **Applicant**
Justin Warshaw KC and Eleri Jones (instructed by **Payne Hicks Beach**) for the **Respondent**

Hearing date: 11 June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. This is W's application dated 24 May 2024 for (i) Maintenance Pending Suit ("MPS") pursuant to s22 of the Matrimonial Causes Act 1973 and (ii) a Legal Services Payment Order ("LSPO") pursuant to s22ZA of the Act.

The background

2. There is much that is in dispute between the parties. The nature of a summary hearing such as this, conducted on the basis of voluminous written evidence as well as written and oral submissions, is that the court cannot resolve each and every disputatious fact. But I consider that I have sufficient material to make an informed and fair decision.

3. W and H are both E country nationals: W is 47, and H 53. This is H's second marriage, and he has an adult son by his first marriage. W and H met in 2003, started living together in F city in 2004 and married in 2009. They have three children L(18), B (17) and N(15).

4. In 2015, on W's case the family moved to England, and H purchased for £13.5m a substantial country house and estate in SE England which W describes as the family home. All three children attended X School as day pupils. According to H, the family were in England during term time, and in E country or elsewhere abroad during the holidays. N left X school in 2021 to spend a year as a day pupil at school in F city, before moving to a boarding school in D country in August 2022, from which he was withdrawn by H in May 2024. In 2023, L left X school to continue her education through private tutors, so as to be able to commit more time to her sporting ambitions. B continues to be a pupil at X school albeit she is currently in E country, as are the other two children.

5. In November 2021, the parties separated. H moved to live in D country with his new partner and her child.

6. On 8 February 2024, W issued a divorce petition in England, followed by her Form A on 4 March 2024. After H became aware of W's petition, he issued rival divorce proceedings in E country on 26 March 2024. He also applied for "obligatory associated" child proceedings to "regularise" the arrangements for the children.

7. During the hearing before me, it emerged that there is a dispute between the parties as to the jurisdictional requirements for H to pursue a divorce in E country. I was surprised that this had not been previously agreed, as it would appear to be of fundamental significance, and reasonably straightforward to establish. W told me that it is a necessary divorce suit precondition for H to establish that the minor children, B and N, were habitually resident in E country on the date of issue of the petition. H told me that is wrong; jurisdiction is based on the joint nationality of the parties. On the face of it, H's understanding is consistent with Article 3 of Council Regulation EC No 2201/2003 (to which, of course, the United Kingdom was a party until its withdrawal from the European Union) but no doubt the parties will make further enquiries to establish the position.

8. On 14 May 2024, W issued an application in this court seeking; (i) the return of B from E country to England, alleging that H was wrongfully retaining her in E country

following a holiday in the Caribbean; and (ii) delivery up of several horses which were in the course of being returned to England from a competition attended by B and L in a European country, but which were diverted by H to F city on 24 March 2024. W could not include L in the application because of L's age (over 18) but she alleges that H is putting all three children under pressure not to return to the UK. H denies the assertions, saying that two of the children requested that the horses be transferred to F city, and they wish to remain in E country. Currently, therefore, all three children are in F city with H.

9. The application was heard by Damian Garrido KC sitting as a Deputy High Court Judge on 20 May 2024. He stayed the application for a return order in respect of B by reason of Article 13 of the 1996 Hague Convention on the basis that "corresponding measures" (i.e proceedings which are similar to those initiated by W in respect of the relevant children) were underway in E country and therefore this court should abstain from exercising its jurisdiction. The application in respect of the horses was adjourned to a further hearing.

10. It is common ground that W's financial remedies claim cannot be progressed until there is resolution of the competing divorce suits:

i) H challenges W's claim that she was habitually resident in England and Wales at the date of her petition. Mr Warshaw KC on behalf of H strongly disputes that case. From everything I have read and heard so far, my very preliminary view is that W has a sound prima facie case for establishing her habitual residence at the relevant time; at the very least, it is not open to me at this stage to conclude that her claims are fanciful or specious.

ii) W disputes the jurisdiction for H's petition in E country although, as I have indicated, there may in fact be a misunderstanding as to the basis of the petition.

iii) H submits that in any event E country is the appropriate forum for the divorce, and thereafter financial remedy proceedings, to take place. Again, my very preliminary view is that W's case on forum is not devoid of merit.

11. I gave directions leading to determination of the disputes on jurisdiction and forum. After the hearing before me finished, it transpired that the jurisdictional dispute can be dealt with in the autumn, rather earlier than everyone (including myself) had anticipated. It is therefore necessary to consider the financial arrangements, including legal costs, in the interim, until the hearing of the jurisdiction and forum dispute and, if that is resolved in W's favour, until conclusion of the financial remedy proceedings. Of course, if it is resolved in H's favour, the interim orders will come to an end at that point. I am not minded to adopt a restrictive approach to the application for MPS simply because the jurisdictional hearing is only four months away. For example, it was suggested that I might ignore items for winter holidays. It makes no sense, especially in a case of this size, to adopt that course which would inevitably lead to a variation application if W is successful on jurisdiction and forum, and the financial proceedings then commence.

Resources

12. According to W, she has total liquid assets in bank accounts and an investment portfolio of about £895,000. She owns two apartment blocks in E country which she estimates are worth about €2 million each. They are rented out, producing about £45,000pa gross.

13. H is described by W as a multi-billionaire. She refers to a recent published estimation of his wealth at several billion dollars. He is the founder and was (until fairly recently) significant majority owner of XYZ Group which had total assets (according to a management report) in December 2023 of over €20 billion.

14. Because of the jurisdictional dispute, Forms E have not been filed. Nevertheless, I would have expected H to have given at least a bare outline of his resources in his statement; he did not do so. The consequence is that I know next to nothing about his case as to his own resources and liquidity. What he does say is "I accept that I would be able to meet reasonable orders made by the Court in relation to both LSPO and MPS albeit, depending on time frames, I may in due course have to borrow funds". This is a form of millionaire's defence although in my view neither that, nor the fact that H disputes jurisdiction, absolves him of responsibility to give at least some outline of his finances in a MPS application, not least because FPR 2010 rule 9.7(4) requires him to "file a statement of his means" on an application for an interim order unless he has filed a Form E.

15. The one matter H does refer to in his written testimony is that after separation, he settled 80% of his shares in the company into an E country family trust for W and the three children. He says W was fully aware of this, agreed to the provision being made and signed the documents. W told me through counsel that she had little knowledge of it, but accepted she had a copy of the trust deed. There was no suggestion that she has ever received money from the trust or that she can access it to meet her own needs. Quite how this all fits onto the overall scheme of the parties' financial arrangements is, at present, unclear.

Lifestyle

16. W describes a standard of living available only to the super rich. She refers to the use of (i) two magnificent yachts, (ii) two high-end private jets, and (iii) numerous expensive family properties around the world including in France, the Caribbean, D country, F city, London (a house in Belgravia) and Paris, as well as the SE England home. H says that "Whilst we have enjoyed access to impressive properties, private jets and boats, often we have leased them from XYZ Group". On any view, they had unrestricted use to these properties, jets and yachts, however those arrangements were structured. It is not difficult to conclude provisionally that the wealth and lifestyle of this family was fabulous.

17. In terms of expenditure and funding, W says that spending had no real restrictions, which seems to me to be a reasonably accurate description. She had access (via her PA) to a UK account in H's name from which she met the running costs of the English property, school fees, staffing costs and general expenditure. H typically topped up the account by £150,000 every two to three months; during 2023 the total top ups came to about £900,000 which seems to have been representative of annual expenditure on those items. H met the costs of all the other properties, yachts, jets and the horses. In addition, W had access to:

i) A family credit card belonging to H, but which was also used by H, his mother, his first wife, his son by his first marriage and the three children; expenditure on that was about £60,000pm or £720,000pa.

ii) Two other credit cards which H paid without question, of which one had a spending limit of £832,000pa

Change of financial regime

18. The financial arrangements described above continued after separation for the best part of two and a half years without any real issue.

19. However, in March 2024 the interim regime came to an end. W says this was a direct result of her having issued a petition. H says that W overspent on the family credit card such that in the month of March the expenditure was £130,000 instead of the usual £60,000. So, says H, he wanted to do no more than have oversight and control although it does seem to me that in the context of this case the increased expenditure (which W says was caused by H blocking her access to a bank account) was relatively de minimis. H also pointed to W having rented a yacht in the summer of 2023 at what he termed an excessive cost of £400,000, but he did ultimately pay it, and that event took place nearly a year ago; I am not persuaded that the yacht charter prompted the change in the financial regime.

20. On 20 March 2024, H prevented W's PA from accessing the bank account directly, and implemented an arrangement whereby invoices would have to be approved by H's office. H has continued to pay all such invoices after some early teething problems. He imposed a limit on one of W's credit cards to €1,600 per day, which is €584,000pa; an eye watering sum by most people's standards, but not for this family. H limited W's use of: (i) private jets, (ii) the family properties in France and two cars in D country, and (iii) the yachts.

Impact of the jurisdiction dispute on the MPS/LSPO applications

21. There is no doubt that the fact of a dispute about jurisdiction does not prevent the court from making an interim maintenance award, although if the jurisdictional basis of the applicant's claim is doubtful, the court will be appropriately cautious when considering (i) whether such an award should be made and (ii) the quantification thereof.

22. In **MET v HAT [2013] EWHC 4247** Mostyn J said

i) At para 20:

> "It is certainly true that the court has power to award maintenance pending suit, even where the jurisdiction of the court to pronounce a decree has been challenged"; and

ii) At para 21: "I take the view…that, where the jurisdiction to pronounce a decree is in dispute, the court should act very cautiously indeed. The court is entitled, in my view, to have regard to the strength or otherwise of the claim that the court has jurisdiction, and the more uncertain the court is on a provisional basis that the court does have jurisdiction, the more cautious it should be".

23. I said in **MG v GM [2022] EWFC 8** at para 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**".

24. In **MET v HAT (supra)** Mostyn J considered that the wife's case was very dubious, which entitled him to consider the interim application "very cautiously". By contrast, in **MG v GM (supra)** I found that it did not weigh too heavily.

25. In this case, W's case on (i) her divorce suit here based on her habitual residence and (ii) forum conveniens as between England and E country appears to me to have some merit, although the issues will be forensically examined at trial and the judge may come to a different conclusion. I do not consider the jurisdictional dispute to be a limiting factor on W's claims in these interim applications.

LSPO

26. The claimed costs (all of which include VAT and disbursements) are broken down as follows:

i) £213,499 in respect of unpaid costs billed and/or incurred in respect of divorce, jurisdiction and financial remedies up to 24 May 2024.

ii) £136,500 from 24 May 2024 to this hearing on 11 June 2024.

iii) £580,410 from this hearing to the conclusion of a 5-day trial on jurisdiction and forum.

iv) £137,700, if W is successful on jurisdiction, to the first directions hearing in the financial remedies case

27. 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.

28. A question sometimes arises as to payment of costs already incurred prior to issue of the LSPO application. The authorities on this topic are neatly summarised by MacDonald J at paras 33-37 of **DH v RH [2023] EWFC 111**. They are examples of how to exercise the judicial discretion. There is no dispute that in principle an award for past costs can be made. Where, as noted for example in **Re Z [2020] EWFC 80**, the historic costs sought related to sums due to firms no longer instructed by the applicant, Cobb J declined to encompass those costs within the LSPO. Costs in connection with proceedings already concluded may similarly not be readily recoverable, but costs reasonably and legitimately incurred by the present legal team in ongoing proceedings may, by contrast, be justifiably brought within the LSPO application because, as Cobb J said in **BC v DE [2016] EWHC 1806** at para 22: "It is neither fair nor reasonable to expect solicitors and the Bar to offer unsecured interest free credit in order to undertake their work…".

29. Ultimately, it seems to me, this aspect of the LSPO jurisdiction should be viewed as part of the broad discretion available to judges when determining what LSPO award, if any, should be made, applying the statute and the factors summarised in **Rubin**. The essential question, as MacDonald J put it in **DH v RH** at para 34 is whether "… 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".

30. In **BC v DE (supra)** Cobb J, when considering the quantum of a LSPO application, reviewed the authorities and adopted the technique of applying a "notional standard basis of assessment" to the claimed costs; in that case, a 15% deduction was adopted. That approach has been adopted by other judges (including myself) as a cross check

against the reasonableness of the sums sought; see, for example, **MG v GM (supra)** at para 54(i) where I applied a 30% discount.

31. However, I took a different approach to assessing the reasonableness of sums claimed in **HAT v LAT [2023] EWFC 162** where I said this:

> "35. I considered applying a notional reduction to reflect what would occur on a standard basis assessment, a technique which has on occasions been used by judges of the Division (see, for example, Cobb J in **BC v DE [2016] EWHC 1806 (Fam)** who, at para 26, applied a 15% deduction). But on balance my view is that to do so would be the wrong approach in this case. This is not an inter partes costs order where such a deduction is routinely applied. It is a solicitor/client sum sought by W to enable her to litigate in circumstances where she cannot reasonably be expected to access her own limited resources.
>
> 36. The approach to quantum, in my view, is simply whether the costs sought are reasonable, in the context of the nature of the litigation, the issues, the resources, and how each party is approaching the proceedings. Scrutinising the figure claimed, it seems to me to be little overstated given that, in my view, this is not an over complex case. I doubt that as much solicitor time as is claimed will be required. I note that W's costs to date exceed H's by £50,000, and consider that this sort of discrepancy in W's favour going forward, and paid for by H, would not be justified."

32. To apply a standard basis of assessment discount may be a useful approach or cross check against the reasonable overall figure in some cases, but I do not read any judge in the reported cases as saying that it should be a formula of universal and automatic application. In some cases, it would have the effect of leaving a payee to fund the shortfall out of his/her own resources which may not be possible, or may not be fair to the payee. It may also be unfair to the lawyers who find themselves having to provide legal services at a significant discount. On balance I prefer to look at the sums sought in the round, taking account of all relevant factors and assess an overall reasonable figure, rather than to adopt a standard assessment discount other than as a cross check.

33. H sensibly, in my judgment, does not assert that a LSPO should not be made in principle even though W has her liquid assets and the two apartment blocks, although he submits that these resources should be taken into account when determining quantum.

34. Ultimately the question is, as s22ZA(3) says, one of reasonableness. Apart from the legal fees in the divorce/jurisdiction proceedings which are sought under the LSPO, W will incur legal fees in the E country children proceedings. Further, she is likely to incur costs in connection with financial remedies even though those proceedings are stayed, as she will inevitably have to prepare the ground for future litigation in either jurisdiction; for example, she will need to investigate the trust. She must also continue to litigate about return of the horses (those costs are not included in the LSPO application). It is not difficult to foresee that £895,000 could swiftly reduce, leaving limited resources for unforeseen exigencies. Further, I consider it unreasonable (save in one aspect to which I will return) to expect W to use her own assets which are substantial by most standards, but are "modest" (to use the word adopted by Mostyn J at para 31(v) of **Rubin (supra)**) when set against what appears to be the vast wealth of H.

35. In this case, W's lawyers have confirmed in sworn written evidence that they are not prepared to continue to act for W unless their outstanding costs are met and, in my judgment, given the extent of work which they will have to carry out, this is not an unreasonable stance. Nor are they willing to act on a so-called Sears Tooth arrangement. No litigation lender is willing to lend W monies. The absence of assets in W's name in this jurisdiction is a significant barrier, as is the fact that there is a jurisdiction dispute such that W may not, if H is successful, be able to secure financial relief here. I do not consider it reasonable to expect W to accept H's proposal that he take out a mortgage on the SE England property to fund her costs in circumstances where (i) it is her home and (ii) it is one of the few assets in this country.

36. All of these are in my judgment sound reasons for concluding that W should not have to deploy her assets to meet her own legal fees save that I consider she should contribute a relatively modest amount to her past costs.

37. If the court concludes in the future that a LSPO should not have been made, or a different figure should have been ordered, it may be that W will be required to repay some or all of the LSPO provision. To that extent, H is not prejudiced in that he has the opportunity to seek to recoup the sums if he has a solid justification for doing so.

38. I have considered W's LSPO budget. At first glance it is a high figure, but having heard some of the issues on jurisdiction and forum as they were ventilated before me, I accept that they are broadly reasonable. It is of note that H's estimate of his own costs from today to conclusion of the jurisdiction hearing is £570,000 whereas, for the same period, W's is £580,000. These figures are consistent and would represent a level playing field. However, as the jurisdiction dispute will now take place in the autumn, sooner than expected, I take the view that there should be some discount to reflect the earlier resolution.

39. H submits that I should make a pound for pound order (popularised by Mr Justice Holman) such that he will pay to W exactly the same amount as he pays to his own lawyers for legal fees. In some cases that may well be appropriate but in my judgment, it is not so here. W, and her lawyers, need to be confident of the sums which will be available for meeting legal fees. A pound for pound order risks argument which may lead to further costs, quite apart from the need for careful scrutiny and oversight of the arrangement which could lead to further dispute. And, at the risk of repetition, the scale of wealth in this case renders this suggestion unattractive.

40. In respect of the sums sought by W:

i) H shall pay £100,000 (not £213,499) referable to the period before W's application. She can meet the shortfall from her own resources. Her pre-application costs were considerably higher than H's and although there are reasons for that (e.g. she is the applicant, and her solicitors have been on the record for longer), I do not think H should be the ultimate insurer of all of those costs.

ii) H shall pay £136,500 referable to the period from application to this hearing.

iii) H shall pay £500,000 from this hearing to the end of the jurisdiction hearing, slightly lower than sought by W as the hearing will take place sooner than expected.

41. The above totals £736,500. That shall be paid in equal instalments of £184,125 on 18 June, 18 July, 18 August and 18 September.

42. I decline to make a LSPO in respect of any costs from the end of the jurisdiction hearing to the first hearing after that, if W is successful in fixing jurisdiction in this country. It is some way off, and it is not clear to me what the scope of that hearing will be. It will need to be reconsidered at a later point, if applicable.

MPS

43. In **TL v ML 2006 1 FLR 1263**, Deputy High Court Judge Nicholas Mostyn QC (as he then was) stated that the sole criterion is reasonableness which is synonymous with fairness. That formulation was approved by the Court of Appeal in **Rattan v Kuwad [2021] EWCA Civ 1**. I accept, as was said by Thorpe J (as he was) in **F v F [1996] 2 FCR 397** that: "….in determining the wife's reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra-rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people….I think that it is necessary to establish a yardstick that more nearly reflects the standard of living which has been the norm for the wife….". I reject the suggestion by H that MPS should only cover emergency needs.

44. W's budget for herself is £4,579,290, and in respect of the children £515,070.

45. H offers, in a counter schedule, to meet a number of outgoings directly which are listed on W's budget. I accept that as a starting point, which must be recorded in an undertaking:

i) All the items marked Y shall be paid in this way. By my calculation that amounts to £292,620pa (£5,800pa for cars, £8,600pa for travel insurance and £278,220pa for housing costs in relation to the SE England property). H shall also pay the mortgage on the SE England property.

ii) H shall directly meet the costs of all the horses (some in F city and others in SE England) identified at Schedule 5 on W's budget, including, for the avoidance of doubt, up to £85,000pa for staff. That amounts to an estimated £1,145,200pa. I will not make an order that H pays these monies to W, even if the horses in F city are returned to England. Historically H paid these sums, so this is a continuation of a pre-existing arrangement. I have no reason to think H will not make the payments.

46. I have gone through the balance of the claimed budget with some care. I take into account (i) that H is a man of vast wealth, who falls in the super rich bracket, (ii) from November 2021 when the parties separated there was in practical terms no restraint on W's expenditure until W issued her divorce petition, and (iii) W led a lifestyle both during and after the marriage of the sort available only to the super rich.

47. I propose to make the following deductions from W's claimed budget:

i) Schedule 1 (the house in SE England)

£649,620
-£278,220 to be paid direct by H
-£133,000 for security guards. W has never before had security guards there and does not advance any evidence to justify the inclusion of this item.
-£37,500 for staffing costs (I will allow the sum sought for the PA and one member of staff at £37,500 but not an additional one at that level).

£200,900 to W

ii) Schedule 2 (D country)

On the basis that W is permitted to use the D country property, and the Audi which is kept there, £120,000 for alternative rent, car hire and driver shall be deleted.

£148,500
-£120,000

£28,500 to W

iii) Schedule 3 (South of France)

The sum of £1,078,100pa for W to rent a property in the South of France comparable to the property she had access to until recently seems high. I have very little evidence on this and have had to do the best I can. H's alternative rental particulars seem to me to be far below what W has been used to. As a guide, the French property is rented out at €150,000pw in high season and €100,000 at other times but I doubt that W would in fact go there for 10 weeks per year, particularly as the children are now more independent. I will reduce the figure by £300,000.

£1,078,100
-£300,000

£778,100 to W

iv) Schedule 4 (cars)

£17,200

-£5,800 to be paid directly by H

£11,400 to W

v) Schedule 5 (Horses)

£1,145,200
-£1,145,200 to be paid directly by H

£0 to W

vi) Schedule 6 (holidays and travel)

The sum of £1,198,000pa for holidays should be reduced. It includes a figure for alternative rental and spending money in the Caribbean at £342,000pa, but in fact she has not been to the house there since separation, although H did pay for her to rent there last year; in the circumstances H's offer of £150,000 for rental/spending there seems reasonable. I am inclined to consider W's figures for the use of private jets as not unreasonable in principle. I am less persuaded that £499,000 for 1 week a year yacht rental is tenable given that one of the family yachts is rented out at €150,000pw, although there would be additional costs on top. I will provide for an overall figure of £700,000 rather than the sum claimed.

£700,000 to W

vii) Schedule 7 (other animal expenditure)

£13,300 to W

viii) Schedule 8 (personal)

£329,370
-£50,000 jewellery

£279,370 to W

48. In respect of the budget for the children (who are currently in F city but spend time with both parents), H should pay directly items 1 to 8, 17 and 21 to 24 in the schedule to the draft order presented to me. Those, by my calculation, come to a total of £236,160pa. H shall pay W an additional **£200,000pa.**

49. I invite counsel to compute the above which prima facie appears to produce the following:

i) H shall pay directly:

a) £292,620pa running costs for the house in SE England and car costs

b) £1,145,200pa horse costs

c) <u>£236,160pa children's costs</u>

£1,673,980pa plus the English property mortgage costs

ii) H shall pay to W directly the sums in bold at paras 46 and 47 which total £2,211,570pa. I shall round this sum down to **£2,200,000pa**. This shall be with effect from the date of the application, payable monthly in advance by standing order, and reduced by W's credit card usage between the date of the application and this hearing.