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Neutral Citation Number: [2024] EWFC 28

Case No: 1666-1940-6298-3105

**IN THE FAMILY COURT**

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The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Date: 12 February 2024

**Before :**

**Mr Justice Moor**

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**Between :**

**LMZ**

**Applicant**

**-and-**

**AMZ**

**Respondent**

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Mr Jonathan Tod (instructed by DMH Stallard) for the **Applicant**  
Mr Edward Boydell (instructed by Family Law in Partnership) for the **Respondent**

Hearing dates: 5<sup>th</sup> to 9<sup>th</sup> February 2024

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# JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an unusual application for financial remedies. The main unusual feature is the respective ages of the parties. The applicant, LMZ was born on 2 November 1978 and is therefore aged 45. The Respondent, AMZ was born on 18 January 1931 and is therefore aged 93. I propose to refer to them respectively as “the Wife” and “the Husband” for the sake of convenience only. I mean no disrespect to either by doing so.
2. The Wife was aged 20 when she married the Husband, then aged 68, on 27 September 1999. It was an arranged marriage but appears to have been a happy and fulfilling one for both parties for many years, notwithstanding the age difference. There are two children of the marriage. HZ is aged 23. She has obtained a pharmacy degree at the University of J, but I was told during the hearing that she wishes to study to become a doctor and has a place to study medicine at X Medical School. NZ is aged 21. She married in December 2023. She is in her third year studying medicine at the University of U. Fortunately, the fees have all been paid in advance by the Husband. She wishes to be a GP.
3. The marriage broke down in either September 2021 or summer 2022, but the parties have continued to reside together in the family home in London. Indeed, it appears that the Wife continues to perform some caring tasks for the Husband. She certainly cooks his meals. It is, of course, sad and regrettable that this marriage has broken down at such a late stage of the Husband’s life. I have no doubt that the legal proceedings have been a considerable ordeal for him, as they have been for the Wife. Nevertheless, however regrettable the breakdown of this marriage is, I must approach the financial remedy claim dispassionately, whilst having proper regard to the needs, both emotional and financial, of both parties in these unusual circumstances.
4. For a long time, the Wife was pursuing a sharing claim. It was quite clear to me, from the moment I was first allocated this case, that doing so was completely misconceived. Fortunately, Mr Jonathan Tod, who has acted for the Wife since the beginning of this year when she instructed new solicitors, recognised this and abandoned the sharing claim. Instead, he pursues a needs case, based on this being a marriage of significant length, that produced two children, largely brought up by the Wife for understandable reasons given the age of the Husband, and where the Wife has, in addition, made an additional contribution to assisting in the management of the Husband’s business interests. It follows that she has a strong needs based claim.
5. What she does not have is a sharing claim of any significance. I accept entirely that the Husband has put assets in her name, such as acquiring the matrimonial home in joint names and giving her and their daughters a

company called PR Ltd into which he transferred assets of approximately £5 million. The simple fact of the matter, however, is that virtually his entire wealth accrued long before the date of the marriage. Any sharing claim would be considerably less than the Wife's needs claim.

### The factual history

6. Both parties were born in Iraq. Indeed, so far as the Husband was concerned, he was born into virtual poverty. In 1949, he and his brothers established a shoe-making company in Iraq known as the Y Shoe Manufacturing Company. In the 1950s, the Husband purchased land in Baghdad, now known as the Z Centre, which was subsequently used to build a shoe factory. In the 1960s, he purchased further land, now known as the P Centre, on which he built his home in Iraq.
7. In 1964/1965, he married his first wife. There was one son, A, from this very short marriage. He married his second wife in 1966. The marriage produced three daughters, B, C and D, and a son, E. The marriage ended in 1998.
8. In 1966, the partnership with his brothers was dissolved and he started his own business, P Shoe Manufacturing Company. He studied shoe manufacturing in Europe, particularly Germany, utilising rubber in the manufacturing of shoes in Iraq for the first time and developing techniques for the fast mass production of shoes. In addition to manufacturing shoes and related products, he also sold shoes, setting up a number of different companies and branches. By 1979, his total workforce was approximately 600 people.
9. In 1980, he moved to London, although he continued to return regularly to Iraq to oversee his businesses there until the war between Iran and Iraq prevented him from continuing to do so. He says that this war and the subsequent Gulf War had a devastating effect on his shoe manufacturing businesses in Iraq. In London, he set up two businesses, T Ltd and P Shoes Ltd. He registered a patent in both the UK and the EU in relation to his method of fast shoe manufacture. He also had three shops selling shoes in Central London.
10. On 21 October 1982, he settled the AMZ Settlement (hereafter "the Trust"), which is a discretionary trust, currently administered by trustees from Guernsey. He is excluded as a beneficiary, although he is owed money that he has loaned to the Trust. The beneficiaries are his wife from time to time, his children and remoter issue, although there is a power to add named beneficiaries, and charities. In the absence of being named as a beneficiary, the Wife will cease to be one on decree absolute. The Trust is now the ultimate owner, via a complicated structure, of most of the Husband's company interests, including a UK business known as H Ltd and two Moroccan entities, V Ltd. and S Ltd., subject to loans owed to the Husband. This was very sensible in terms of Inheritance Tax planning. In fact, there have never been any distributions to beneficiaries. A is now the Protector of the Trust. Shortly after the Trust was established, G Bank in London, on 15 November 1982, wrote a letter saying that the bank was informed that the Husband's assets

exceed £6 million. Whilst I accept that it may well have been the Husband that informed the bank that this was the case, I accept that he was a very wealthy man by this point.

11. In March 1983, the Husband incorporated H Ltd. It gradually acquired a property portfolio between 1988 and 2010. It now owns eight UK properties, all in the London area, six of which were purchased prior to the marriage. In 1986, he entered into a partnership in Morocco, known as V Ltd., to manufacture biscuits at a site in Casablanca. He also acquired a shop there to sell the biscuits, via an entity called S Ltd. By 1990, he owned the business outright but, unfortunately, a devastating fire destroyed the factory site. This appears to have taken place in 1994, although the Wife says, at one point, that it happened in 1999. Since then, little appears to have happened other than the premises being partially let. It does appear that planning permission has been granted for mixed commercial/residential on the site of the factory.
12. It is tolerably clear that the Husband had largely wound down to retirement by the date of the marriage. The shoe factory in Iraq had ceased to make a profit and it was subsequently closed in 2004. The shops in London were closed by 2000 and were running at a loss by the date of the marriage. The Husband is very interested in writing and in producing magazines. He produced magazines via a company known as T Ltd, dealing with tourism, Islam, and leather and shoes, but again this stopped several years ago.
13. As noted above, the parties married on 27 September 1999 in Amman Jordan. The Wife did not have a visa to join the Husband in the UK so, initially, they lived in a property owned by the Husband in Casablanca. He transferred a 30% interest in this property to the Wife. The Wife was not well during her first pregnancy. She spent some time in Iraq with her relatives prior to the birth of HZ in November 2000. When the Wife's visa came through in early 2001, the family moved to this country and lived at their first matrimonial home, a property in the middle of the Thames, known as QI, which had been purchased by the Husband in around 1988. Unfortunately, it is now prone to flooding.
14. In 2005, the Wife began working at H Ltd, assisting with book-keeping and, later, the management of the properties, which were a mixture of commercial and residential, that were rented out to third parties. She was appointed company secretary in 2009 and became a director in March 2013. At the time of the marriage, she had been studying for a degree in business/accounting at B University. She gave that up to marry. Whilst in England, she twice attempted to revive her accountancy studies, but was unable to continue, first, due to her commitments to the girls, and, subsequently, due to the ill-health of the Husband.
15. In 2005/2006, the Husband set up the AMZ Charity in Iraq and a UK charity with a similar name. Unfortunately, the Husband suffered a period of significant ill-health in 2007. At one point, he had to be evacuated from QI by the emergency services, which caused significant difficulties. A decision was, therefore, taken to move to a property in London, which is also an area with a

significant Iraqi expatriate community. In consequence, the former matrimonial home at VW was purchased in 2008. It is a significant detached home with seven bedrooms with an agreed valuation of £2,920,000. It is mortgage free. I am satisfied that it is significantly in excess of the reasonable needs of both parties going forward, but the Husband very much wishes to remain there for the remainder of his life or until he needs nursing home accommodation. This is a reasonable request, sensibly agreed by the Wife. It would be intolerable to uproot him at this point unless his physical health requires it.

16. On 23 August 2011, the Husband transferred £950,000 to his son, A, to assist him with purchasing a home. There is no doubt that this was, at least, initially, a loan. Loan documentation was drawn up and placed in the safe at the matrimonial home and A wrote a letter explaining how he would repay the money relatively quickly by selling two properties. He did not, in fact, do so. I have been told that this was because his marriage broke down and his circumstances changed. There is no doubt that he still considered he owed the money to his father, in an email sent to one of his sisters in May 2022, but the Husband says that he has forgiven the loan, which has therefore become a gift.
17. On 20 November 2012, the Husband incorporated a company known as PR Ltd. It is clear that this was with the intention of transferring assets to the Wife, HZ and NZ, both to give them some financial independence and to give the Wife a business to run. The Wife was appointed as a director. The shares were allocated as to 40% to the Wife and 30% to each daughter. The Husband then financed the company by transferring large sums of money into it or to the Wife for onward transmission. This money was held in accounts overseas with G Bank and T Bank. I am absolutely clear that this was money earned by the Husband before the marriage. At first, he transferred the two overseas accounts into joint names and, later, transferred the T Bank account into the Wife's sole name. The money was then paid into PR Ltd. and credited to the Wife's director's loan account with the company. The first substantial payment was £900,000 on 31 March 2014 from G Bank, followed by £1,100,000 on 13 May 2014. Thereafter, further sums were transferred between 19 October 2018 and 30 October 2020, totalling nearly £2.7 million. The company used part of this money in November 2018 to acquire EF Road, from H Ltd. for £1,500,000. It also purchased JK Road and a number of adjacent residential flats, which it then developed utilising a commercial loan. In due course, this loan was repaid, in part from the sale of one of two commercial units at the EF Road property.
18. A dispute has arisen in relation to the Wife's Director's Loan Account with PR Ltd. She is, in fact, the only director but I accept that the company can owe money to non-directors as well, including the parties' two daughters. On 16 July 2019, a resolution was passed that the loan granted to the company by the shareholders which, at the time, totalled £3,806,158, was to be allocated to the shareholders as to £1,522,462 to the Wife and £1,141,848 to each daughter. Separate loan accounts were established. Since then, only two modest payments out have been made to the parties' daughters. As at 17 May 2023, HZ was owed £1,135,898 and NZ £1,101,848. Significant further sums,

however, were transferred to the company from G Bank and T Bank and credited to the Wife's loan account. She has used her loan account from time to time to pay some of her expenses. She has also used it to pay her costs of these proceedings. Indeed, by 17 May 2023, she had paid £136,267 towards her costs. Her loan account then stood at £2,616,841. She now asserts that part of this money is owed to the girls by virtue of their shareholdings. I will have to resolve this issue.

19. It was extremely unfortunate that this marriage broke down, particularly as the parties clearly continue to have considerable affection for each other. The exact date of the breakdown really does not matter. Suffice it to say that the Wife petitioned for divorce on 3 September 2022. A conditional order for divorce was pronounced on 21 February 2023. It has not, as yet, been made final. She then issued a Form A on 3 November 2022. It appears that, around this time, the parties negotiated some form of separation agreement. It is clear that neither party considers it binding for a number of reasons. Indeed, sensibly, I do not even know what it contained. I will say no more about it.
20. Both parties filed initial Forms E in January 2023. There was some suggestion during oral evidence that these were produced pursuant to the separation agreement. There were huge omissions from both documents. The Wife's one, dated 24 January 2023, gave her net assets as being £1,503,410, but she attributed no value to her interest in PR Ltd. at all. Interestingly, her figure for expenditure going forward was £15,313 per month, which is approximately £183,750 per annum. The Husband's equivalent document was dated 31 January 2023. He gave his net assets as being £7,678,160, but attributed no value at all to his Iraqi assets. He gave his figure for his income needs going forward as being £10,068 per month or £120,800 per annum.
21. The case was transferred to be heard by a High Court Judge. Peel J made directions on 30 March 2023. The case was allocated to me but the intention was, at that stage, that there would be a private FDR.
22. Amended Forms E were sworn by each party in early April 2023. The Husband's document is dated 3 April 2023. He does say that he feels weak and tired, which is entirely understandable given his age, and that he has a heart condition. Again, he ascribes no value to the Iraq assets, saying that he is unable to sell or value them as he needs to go to Iraq to update his identification documentation. He adds that "the political and social situation also does not facilitate me to deal with the selling or changing of ownership of these assets". There are three significant plots of land, the P Centre, the Z Centre and the N Centre. He says the P Centre is unfinished. In relation to the Z Centre, there is a mosque, head office of the Z Charity and 17 shops to rent. Any profits go towards completing the P Centre. At the time, he had £83,596 in bank accounts. His major assets, other than his half interest in VW, were loans owed to him by various entities. He was owed £2,888,251 by the Trust, although it is clear that this is money owed by H Ltd. to the Trust and then onwards to the Husband. He was owed £2,684,124 by the Moroccan company, V Ltd., in relation to the site of the old biscuit factory, and a further £154,517 from S Ltd., in relation to the empty shop in Casablanca. Finally, he

was, at the time, owed £218,473 direct by H Ltd. , but this money has since been spent on the family's general expenditure and his costs of these proceedings. Indeed, he now owes H Ltd. (£77,805). In consequence, he calculates his net assets as being worth £7,599,758. He has a modest income from his state pension and from H Ltd. amounting to £23,659 net per annum. He says that his capital need is to remain in the former matrimonial home. The family had a good standard of living but it is now more modest given his age. The bulk of the assets are illiquid and the family is living off the repayment of loans made to entities many years ago. He makes the point that he had built up his assets and wealth by the time of the marriage. He has retired save for charitable work in Iraq which is his passion. He has gifted the Wife large sums of money which was invested in PR Ltd. He is frail and worried about the upheaval of moving, whereas the Wife does not want to live in VW. He asserts that she can rehouse for half the value of the property and she can work.

23. The Wife's amended Form E is dated 4 April 2023. She sets out her assets, including her 30% interest in Residence Z in Casablanca and a property that she owns in Baghdad. In relation to PR Ltd, she says that the company has cash at bank of £372,589, but £111,457 of that is unavailable as it is tenant deposits or is owed to the girls. She says that she borrowed some money from the girls' private savings when the company needed it. The odd thing is that any such loans are not included in their loan accounts, although NZ was repaid £40,000 on 4 May 2023. She says she is owed £1,969,790, but this is not what the loan account shows. It is merely a calculation of 40%, to reflect her shareholding, of the total owed by PR Ltd. to her and the girls. She does say that the balance sheet shows the company has negative assets to the tune of (£105,000). She says she cannot withdraw further funds without putting the company under significant pressure to sell assets. She says she has a 21.43% interest in the AMZ Settlement, but that is a reference to the Husband's letter of wishes which says that, after his death, the Trustees are to consider allocating 21.43% of 80% of the income to her, which is actually 17.14%. She says she resigned from H Ltd. in August 2022 when the Husband made her continuing involvement unfeasible. She calculates her net assets at £3,956,437 and her income as £17,349 which is her net salary from PR Ltd. She put her capital needs at £3,914,750, which included £3.5 million for a house. This was clearly based on her valuation of VW. Importantly, she said that she did not wish to retain the matrimonial home, due to it having "unhappy memories" for her. She sought £100,000 to furnish the property. Turning to her income needs, the figure in the schedules attached to the Form E came to £42,615 per month or over £510,000 per annum. I make it clear that this Form E was prepared by different solicitors to those that represent her today, but it was a quite remarkable figure by any standards. She said that the standard of living during the marriage was very comfortable and she had made a full contribution as a devoted wife and mother. She said that the Husband viewed her as his carer. She made a number of allegations that have, very sensibly not been pursued, such as a fear of non-disclosure and dissipation of assets, including gifting money to the children of his first two marriages and by way of charitable donations.

24. The parties had informally agreed to instruct an Iraqi surveyor to report on the valuation of the Iraqi properties. AH reported in May 2023. Whilst the letter of instruction refers to him as a member of the Iraqi Bar Association, his notepaper says his company provides legal services and real estate development and investment. He valued the various pieces of land at \$4,032,000 (KA, which is old shops and warehouses in poor condition); \$11,600,000 (Z Mosque, consisting of the mosque and 17 commercial stores in a modern construction); \$12,305,700 (C area, namely a large building with seven floors and a basement); \$5,046,640 (former shoe factory in RA, now consisting of an old laboratory and store); and \$5,060,000 (land with three caravans). The Husband does not own all of these outright. He has an 11.1% share in the last two valuations, that he owns with the children of his earlier marriages. Indeed, there is reference to the sellers of the property to the family still being in occupation. In another piece of land, he has an interest of approximately 86%. Nevertheless, Mr Tod on behalf of the Wife, argues that, in sterling, I should take the value of his interests in Iraq at approximately £29 million gross.
25. The Husband was very unhappy with these valuations. Indeed, it was clear from his oral evidence that he genuinely had no faith in them whatsoever. He therefore instructed AA to revalue the assets. Like Mr AH, he is a lawyer, whose notepaper says he deals in company registrations, trademark registrations and is a legal counsellor. It is accepted that he has done work for the Husband for many years, so he is not entirely independent. In a two page report dated 11 June 2023, he values two of the main pieces of land at \$3,360,000 and \$8,450,640, which are, of course, still very significant sums. In relation to the latter valuation, he says that the building (I assume the Z Centre) is only 80% complete but is completely new and of an excellent grade. I am pretty sure there is a further report which I have not seen that takes the total value up to \$19,400,000. Based on these valuations, Mr Boydell, on behalf of the Husband, argues that I should take the gross value of the land at £15,275,591.
26. In relation to the Husband's health, I have seen a report from his GP, Dr DM, dated 20 June 2023 that says he has good mental capacity but he has multiple co-morbidities and is frail. He can only attend court for the morning session. Having seen the Husband give evidence over two full mornings, I consider he is in remarkably good shape for a man of his age but he clearly is indeed frail and vulnerable.
27. Prior to the case first being heard by myself, the Husband applied pursuant to Part 25 for valuations of the properties in PR Ltd. and for an accountant to value the Wife's shareholding in the company. I heard the case on 5 July 2023. It was agreed that there should be a recital to my order which said that the Husband could continue to live in the former matrimonial home for as long as he wishes. It was also recorded that neither party was alleging conduct against the other. This was an entirely appropriate position for both parties to adopt. In relation to the Iraqi properties, I suggested a formula to prevent a huge dispute as to their true values, namely that the gross value was somewhere between the Husband's figure of £15 million and the Wife's of



£28 million. It really did not seem to me that any further precision was either desirable or necessary, particularly as the real dispute was and remains whether the funds can actually be accessed by the Husband. The Husband accepted in a further recital that he is domiciled in England and Wales for inheritance purposes and that he chooses English law. Again, this was sensible and to his considerable credit. I authorised a letter being sent to the trustees of the AMZ Trust as to the Trust's value and liquidity. I directed reports from a single joint expert surveyor as to the value of PR Ltd.'s properties and, thereafter, from an accountant as to the value of the Wife's shareholding. I directed witness statements but I imposed sensible page limits upon them. Finally, I directed a further report from Iraq as to the ability to sell the properties in Iraq without the Husband being present and whether the net proceeds of sale could then be removed from the country. The final hearing was set down for 5 February 2024 with a time estimate of five days.

28. In fact, an in-court FDR, as opposed to a private FDR, was conducted by Peel J on 17 November 2023. Unfortunately, it was not successful. He made various directions that took the case up to the Pre-Trial Review heard before me on 17 January 2024. My order of that day again recites the respective cases as to the value of the Iraqi properties, namely that they are worth at least \$19.4 million per the Husband and \$36.7 million on the Wife's case. The gross value of VW was agreed at £2.92 million; Residence Z at 2.842 million Moroccan Dirhams; and the Wife's property in Iraq at \$175,000. It was again agreed that the Husband can live in VW for as long as he wishes. The Husband was to provide a schedule of all monies sent to Iraq in the last five years and he was to produce a further statement as to liquidity, particularly in relation to the P Centre, Z Centre and N Centre in Iraq and his efforts to liquidate assets.

#### The parties' statements

29. In total I now have six statements from the parties. Both filed section 25 statements and replies to the statement of the other. The Wife then filed a needs statement and the Husband filed one to deal with his sources of liquidity. I will try not to repeat what I have already set out above whilst dealing with these statements, but, inevitably, there may be an element of repetition. The Wife's first statement was dated 21 September 2023. She makes the point that A has replaced her as a director of H Ltd. She says she was studying accountancy at B University at the time of the marriage, but had to leave to marry, without completing her degree. She is still undertaking some responsibility for the Husband's care. The S Ltd. property in Casablanca was constructed whilst they lived there at the beginning of the marriage. She worked in H Ltd. during the marriage for no pay but was told by the Husband that the businesses would eventually be hers and the children's. The biscuit factory land in Morocco was redesignated as "commercial/housing" in May 2023. She says she raised the children virtually single handed, but the Husband had provided the finance. She had to abandon her UK accountancy course in 2005 due to him not being able to look after the children. She tried again in 2006 but he became quite unwell in 2007 and she again had to stop. She describes her work for H Ltd. as involving book-keeping; ensuring the

properties were maintained; finding new properties; and conducting renovations and improvements to the properties and the family home. She alleges that the Husband's cash flow issues are due to him having sent money to his charity in Iraq. This led to EF Road being purchased by PR Ltd. from H Ltd. She says she was forced out of H Ltd. by one of the Husband's daughters from his second marriage. She ends by saying she would like to complete her accountancy degree and ACCA qualification, although she has since changed her mind about that. She says that her work experience outside the family businesses is limited. She exhibits property particulars with an asking price of around £3.5 million.

30. The Husband's first statement was dated 22 September 2023. He says he was a very successful businessman by the time of the marriage. The Wife came to the marriage with nothing and has received nothing since from her family. The Iraq land had been purchased in the 1950s, 1960s and 1987. His motivation in life now is to give money back to those that need it. In consequence, he set up the Z Charity in Iraq in 2005/6. Since then, H Ltd. has donated £1.048 million. Since 2019, he himself has donated £46,733. The P Centre was his home in Iraq. The development of the Z Centre started in 2015 but is not yet fully complete. Originally, it was funded from Iraqi shoe profits but recently it has been funded by rents received in Iraq. He says that he owned the Casablanca property before the marriage. He subsequently gave the Wife a 30% interest. He accepts that the Wife has brought up their two daughters to be wonderful young women and she has looked after him, for which he will always be extremely grateful. He says that his drawings from H Ltd., which, he contends, was, almost entirely, what the family lived on, were £108,000 in 2020; £173,100 in 2021 and £180,000 in 2022. The only other family income was his salary of £1,796 per month and the Wife's income of around £24,000 per annum. He contended that her income needs are between £100,000 to £110,000 per annum and she can rehouse for £1.375 million to £1.75 million. He will need around £8,500 per month for a live-in carer.
31. The Wife's statement in response is dated 13 October 2023. She said that the Husband promised her that she could complete her accountancy studies after their wedding but it did not happen. She asserts that the development of the Z Centre in Baghdad is almost complete. She says that Mr AA, the Husband's Iraqi valuer, is a friend of his. In so far as he needs to update his documentation, he can do so at the Iraqi Embassy in London. He is doing well for a man of his age. She became heavily involved in H Ltd., so it is completely untrue that she did not contribute financially. She says she is distraught that family assets were transferred to the Trust without her knowledge, such as the former matrimonial home on QI. The parties' daughters got their shares in PR Ltd due to significant gifts having already been given to the older children, such as shares in P Iraq and a large plot of land in L, Iraq. A home was bought for B and two properties for A plus the "loan" of £950,000 to him, although it was to attract interest. She has increased her salary from PR Ltd. to £2,500 per month, although she still pays tax and national insurance, even though she could draw the money tax free from her loan account. She repeats that the fire in Morocco took place in June 1999 but I think she must be wrong about that. In any event, it was still before

the marriage. She says she endorsed the charity but not the sums given to it, as the amount has impacted their lifestyle.

32. The Husband's statement in reply is dated 16 October 2023. He repeats that any assets or money held by the Wife came from him. Although A is the Protector of the Trust, he was the settlor. He denies preventing the Wife from completing her studies. He accepts that she worked in H Ltd. on more than a part-time basis, but it was not seven days per week. The family has not had financial difficulties due to money being sent to the charity in Iraq. He was the decision maker in the marriage, but the Wife also made donations herself to the charity as she viewed it as a worthwhile cause. She does not need a property with seven bedrooms. She is fluent in English and Arabic.
33. The Wife's needs statement is dated 15 January 2024. She contends that she should have an alternative property valued at £3.5 million. It is clear that this is largely based on her view that this is the value of the matrimonial home, even though it has an agreed value for the purposes of the final hearing of £2.92 million. On this basis, she would need £311,250 for stamp duty. She now says she needs £250,000 for furnishings, notwithstanding the sum of £100,000 given in her second Form E. She seeks a Porsche electric vehicle at a cost of £128,700 plus £1,000 for a charging port. She says she needs to improve her English, with a language course costing £2,550. She will require £68,832 to qualify as an accountant but she acknowledges she will be almost fifty by the time she has qualified. She accepts that her outgoings should be reduced from the figure in her second Form E. Her new schedule is in the sum of £22,615 per month, or £271,380 per annum. She makes the point that the Husband spends less as he is extremely restricted due to his age.
34. The Husband's liquidity statement is dated 29 January 2024. He says he could draw down approximately £1,197,200 by way of equity release on the matrimonial home but this would be at an interest rate of 5.75% rolled-up. He cannot do so until the parties are finally divorced and the Wife and children have vacated or, in the alternative, the children have given a waiver of their occupation rights. He adds that he is not happy about debt accruing on such a loan given that he is a Muslim and interest is not acceptable in the religion. He says he has had to redeem his personal loan from H Ltd. to pay his costs, such that there is nothing now due to him and he owes the company £77,804. Even having done so, he also owes costs of £88,488 plus the costs of the final hearing. The Trust owes other professionals £89,869 for work done, at least in part, on this case. He makes the point that the value of the properties in Iraq is the land not the buildings but he continues to contend that extracting funds from that country would be extremely difficult. First, he would need to obtain vacant possession of the various properties. The P Centre is not even complete. He cannot go to Iraq to oversee the matter. He does not think sales would be easy and there is then the question of removing funds from the country. The Iraqi Embassy says that it does not have the biometric machinery to provide a UIID card. To get such a card, he would have to go to Iraq, which he cannot, given his age. He could renew his Civil Status Identity Card at the Iraqi Embassy in London but has been told it could take a few months. He would then have to grant a Power of Attorney to someone to carry

out the sale on his behalf. His nephew could do, that but overall it will not be easy. He has been told it would be very difficult to get a bank loan on the Iraqi properties, given his age and lack of Iraqi ID. He is owed £2.652 million by V Ltd. and £152,711 by S Ltd. in Morocco. He has been told to split the title to the land owned by V Ltd. in two and sell each separately but that will require new title deeds. He is then owed £2.88 million from the Trust. He had hoped to repay part of this money by a sale of the former matrimonial home on QI for £1.15 million but the purchasers pulled out in December 2023 due to the sale of their property falling through. Since then, the garden has been flooded. The property is now back on the market again but at a reduced asking price of £1.1 million. H Ltd. is also attempting to sell a property in Clapham for £1.34 million but there is a need to evict the tenant who owes rent of £53,500. A bailiff has been instructed. I assume this means that a possession order has already been obtained. He says that his son, A, with whom he has a difficult relationship, will not agree to other sales. I am not particularly impressed by this. Although I have not heard from A, if money is needed to fund this divorce settlement, other properties will simply have to be sold. In relation to the sum of £950,000 advanced to A in August 2011, he says he now views it as a gift. He describes this money as being part of his Inheritance Tax planning, although producing a written document declaring it a loan with interest was the opposite of Inheritance Tax planning, as it would just increase his estate significantly. The exhibits to this statement include documentation relating to his personal director's loan account with H Ltd., showing that he was owed £1,333,884, but has withdrawn £1,411,689, hence the deficit of (£77,805).

### Expert reports

35. A number of experts' reports have been obtained. I have three separate reports from the Iraqi legal expert, QZA of CQ Law. The first is dated 20 October 2023. She confirms that it is possible to sell property in Iraq without being present, provided the Husband has appointed a Power of Attorney and can show that he has capacity. There should be no difficulty in selling the land provided there are no squatters on the land. She then details a number of different taxes that will be incurred on sale, such as a sales tax of between 3 and 6%. There will be a property tax at 10% of the annual rental income, with possible penalties if the tax has not been paid to date. There will be a pavement tax, although this is usually quite small; a council tax, if it has not been paid to date; and income tax if due on previously received rent but unpaid. The question of transferring money out of Iraq is in a state of flux following US pressure. At present, transfers out are limited to \$500,000 per transfer and require strict proof of the source of the money. The Husband would need a new Iraqi ID card to sell the properties and, at that point, she said he would have to appear in person.
36. She answered several questions from the parties in her second report dated 8 November 2023. She said in this report that the new UIID card has replaced the two previous documents but it does appear that you can still operate on the earlier documents as there is no law requiring a citizen to renew their cards. Indeed, the Husband's 44 year old identification card might still work but it

would be sensible to renew it. In her third report dated 31 January 2024, she says that a de-dollarisation policy has been instituted by the Iraqi government since 1 January 2024. Despite this, it is possible to transfer out \$500,000 every 15-30 days. The Q Bank of Iraq is insisting on personal attendance, rather than attendance by someone acting under a Power of Attorney but other banks are currently happy to act on a Power of Attorney but the situation could change.

37. The properties in PR Ltd. were valued by Mr PG, a surveyor from HWA in October 2023. He has not given oral evidence before me and I have not therefore heard him cross-examined. I have to say that I have considerable doubts about some of his conclusions. Both properties consist of commercial units and residential flats. In relation to JK Road, he valued the commercial unit at £686,000 and the residential flats at £1,765,000, making a total of £2,451,000 but he then discounted the residential flats twice. The first was by 15% to £1,500,000 for the residential properties on the basis that the entire block was sold together as one unit. I have to say that I simply do not understand why it would be sold as a block unless it was a forced sale, which it would not be. He then discounts the resulting figure of £2,186,000 to £2 million to take account of matters such as voids between the date of obtaining vacant possession and the date of sale. Whilst I can see force in this latter deduction if the properties are being sold individually, I cannot see how it applies if the block is being sold as one unit as, surely, the purchaser would want the tenants in place, unless he or she wished to redevelop the entire site. He performs exactly the same exercise in relation to the EF Road property, valuing the retail unit at £356,000 and the flats at £1,625,000 million, but reducing this latter figure to £1,381,000 due to the 15% discount. He then further reduces the resulting combined figure of £1,737,000 to £1,635,000 for the voids prior to sale. In relation to rental returns, he confirms that the current passing rents are £132,000 per annum for JK Road and £135,900 for EF Road. Mr Tod submits to me that I have to accept his discounts as he was not called to be cross-examined. I do not agree. I accept I have to give reasons for disagreeing with an expert but, equally, I have to apply common-sense. The expert did not know that the Wife had earlier sold one of the two retail units at EF Road separately to the rest of the block. Equally, he is not fully aware of the financial circumstances of the Wife and daughters in this case. I am absolutely clear that they do not need to sell each property as a block if it involves a significant discount, such as 15%. They would not even consider doing so. I have come to the clear conclusion that I should accept the modest discounts for voids pending sale. I do not, however, accept the general 15% reduction. It follows that I take the gross value of JK Road at approximately £2,250,000 million and EF Road at around £1,900,000. The total is therefore £4,150,000 as against the figure given by Mr PG of £3,650,000.
38. CF of KPF was then asked to produce a valuation of the business based on the above report. CF says that PG has valued the properties at £3.9 million against the balance sheet value of £4.46 million. This is not, of course, the figure arrived at by PG but that is because CF has ignored the second reduction for voids pending sale, presumably on the basis I have outlined

above that, if you are selling the entire block, there will be no such voids. He makes the point that the balance sheet of PR Ltd. already showed net liabilities of (£105,000) as at November 2022, having taken the loans owing to the Wife, HZ and NZ at £5,034,000. He, therefore, calculates the adjusted net liabilities at (£609,000). If I take my figure of £4,150,000 for the value of the properties, there are still net liabilities but in the slightly smaller sum of (£359,000). This can only be a very rough calculation for a number of reasons. First, much will have changed since November 2022. The rental income is now considerably higher than it appears to have been at the time. Second, the outstanding loan accounts are lower. Third, whilst, on either calculation, there is a shortfall, there is no intention at present to crystallise this shortfall by an overall sale. Hopefully, with time, the position will right itself, either by profits generated or an increase in the value of the properties. It does mean, however, that I must be cautious as to how I approach the issue of the value of the Wife's director's loan account. CF then considers that expected profits, after an allowance for the cost of running the business, should be £100,000 per annum, which would generate £75,000 per annum after tax, once some tax losses have been utilised. He does appear to be basing this on a lower rent roll of approximately £190,000 to £200,000 per annum, than is actually now being achieved. He does not say what he considers to be the appropriate allowance for the cost of running the business, but I consider an appropriate salary for such a director to be no less than the sum of £30,000 per annum plus a company car, as currently paid to the Wife. He makes the good point that her salary can be paid to her tax free on the basis that it is taken from her director's loan account. There will be some tax on the benefit of the company car but it may be possible to cover that from her personal tax allowance. Perhaps more significantly, if she does not take her salary, it will increase the profits of PR Ltd. and, in consequence, increase the Corporation Tax bill, so it is not an entirely tax-free means of extracting money. CF does consider that the cost of repairs and maintenance in PR Ltd. has increased but the Wife told me in her oral evidence that there is a constant need for redecoration, new boilers and the like. Indeed, she said that the roof now needs replacing on the JK Road property at considerable cost. In due course, I will have to assess what she is likely to be able to generate from this business. It is inevitable that my calculations will have to be on a fairly broad brush basis whilst ensuring that I am fair to both parties.

39. RO, solicitors to the Trustees in Guernsey, wrote a letter to the court dated 9 November 2023. The firm made it clear that the Trustees are keen to assist as appropriate but they are not submitting to the jurisdiction of this court and they remind me that I have no jurisdiction over the Trust. I am further reminded that the Trustees do not manage the companies and have no control over loan repayments from H Ltd. to the Trust. No distributions have ever been made to any beneficiary. Some small loan repayments have, historically, been made to the Husband, but nothing has been repaid since 31 May 2017. Whilst I accept all this, I am clear that it is for the Husband to make the appropriate arrangements to comply with whatever order I decide is correct in this case. I am clear that he is able to direct the marketing of any H Ltd. property that he wishes and that A will fall into line, particularly given the generosity shown to A by his father in the past. Moreover, there are two

further considerations. First, the Husband has run out of money now that his personal H Ltd. loan has been utilised. Even without this case, the Husband needs money for his own needs, which can only be achieved by loan repayments. Second, I am sure A will not want his father to be in breach of any court order that I make. I am also clear that, when sufficient properties have been sold to repay the loan to the Trustees, they will then repay the loan due from them to the Husband. I accept this will happen only after they have paid existing Trust liabilities, which at present amount to approximately £500,000. Of this, around £100,000 is professional fees incurred, at least in part, in relation to this case. The remainder, in the sum of approximately £400,000, is tax due to HMRC as a result of the ten-year IHT charge on the Trust. These amounts clearly must be paid, so the sale of at least one H Ltd. property is clearly essential sooner rather than later.

40. CA prepared a report dated 15 January 2024 as to tax. There will be Corporation Tax on the sale of the property at Clapham of £157,060, meaning that a sale is likely to generate around £1.15 million. There should be no tax implications of the repayment of the Moroccan loans on the basis that the Husband can utilise the motive defence. In other words, the transactions were not designed to avoid tax. Any remittance over and above the value of the loans may attract tax on the basis that it amounts to foreign income or capital gains. The best course of action is for the Wife to be paid into an offshore bank account and not to remit the money until after the final divorce decree. The letter also sets out the various loans owed to the Husband in the total sum of £5,731,045, of which it is said that the Husband will need £1 million for his own expenditure.

#### The open offers

41. Both parties have made two open offers each. It is pertinent to note that their respective positions have moved further apart rather than closer together from the first to the second of such offers. I do not criticise this. I accept that it is entirely legitimate to say, in a first offer, that the offer is more generous than the court will award so it should be accepted, followed by a second offer in which the litigant says that, as it was not accepted, this is now the litigant's position. Indeed, this is the only way to deal with the inability of parties to make Calderbank offers, which I have to say I find so regrettable in these big money cases.
42. The Wife's first open offer is dated 10 January 2024. On the basis that she is to retain her shareholding and director's loan account in PR Ltd., she seeks a lump sum of £5.75 million in an optimistic seven days. It is said that the Husband is to instruct the Trustees irrevocably to remit such funds to the Wife in the event that the Husband predeceases her before payment. I do not believe this is either possible or appropriate, other than in relation to the repayment to him of the loan owed by the Trust to him. The offer then seeks a transfer of 10 VW to the Wife within 28 days of the order being made, but on the basis that the Husband retains a life interest. He is to discharge the outgoings during his lifetime. The Wife will take no steps to encumber the property in any way. Depending on the view taken as to the value to the Wife

of her loan to PR Ltd., this proposal was seeking total provision for her of around £10 million.

43. The Husband's first open offer was also dated 10 January 2024. He puts the Wife's housing need at £1.75 million plus £200,000 to meet her other capital expenses. He says she should vacate VW. He puts her income needs at £110,000 per annum. She earns £30,000 per annum but, says the letter, she should retrain as an accountant to earn £60,000 per annum in three years. On this basis, he will ignore her own assets. The proposal is that VW is transferred to the Husband. The Morocco property should be sold with the net proceeds, said to be approximately £202,000, being paid to the Wife. On the basis of a net income of £60,000 per annum after three years, he says that a Duxbury fund should be £2,101,288. He therefore calculates her total needs at £4,050,000. If she retains her property in Iraq, worth £129,000 and keeps the proceeds of sale of the Moroccan property, he must pay her £3.75 million which he hopes to do by 1 July 2024 on the basis that he calls in the loans and sells underlying assets.
44. The Wife's second open offer was dated 31 January 2024. It makes it clear that she is not making a sharing claim. The matrimonial home should be transferred to her with the Husband having an irrevocable long lease for his lifetime. She will rent in the interim before returning to the property on his death. She seeks furnishings for her property at £250,000 and a Porsche Cayenne motor car. She says that she no longer has the confidence or ability to become an accountant earning £60,000 per annum. She spends about 20-25 hours per week working on PR Ltd. She wishes to spend the rest of her time doing charitable work. On the basis of her schedule of outgoings at £22,000 per month, she seeks a Duxbury fund of £5.9 million, calculated on the basis of earnings of £30,000 per annum. She then seeks rent of £5,000 per month for the period she is out of the family home. This can either be capitalised at £420,000 or paid by way of periodical payments. She exhibits to the letter rental property particulars at between £4,950 and £5,200 per calendar month in the Belsize Park area of London. The Porsche Cayenne advertisements show new models available at between £70,400 to £79,800 or a Mercedes EQB at £62,810.
45. The Husband's second open offer is also dated 31 January 2024. He proposes that the joint tenancy of VW is severed but with him to remain in the property for life. The Wife is to vacate the property once she has received £1 million of her lump sum. The Casablanca apartment should be transferred to the Husband but with the Wife receiving £60,000 for her 30% share. She should retain her Iraqi property at £129,000 and her director's loan account in PR Ltd., put at £1.9 million. She should then receive a lump sum of £2.35 million via the repayment of loans, hopefully by 1 February 2025. As she will retain half the value of the matrimonial home, worth approximately £1.4 million, the proposal is that she receives £3.75 million in due course, together with her retaining the loan in PR Ltd.

#### Further valuations



46. The book value of H Ltd.'s properties is some £17,335,000 obtained via valuations obtained by the directors during 2021. The Husband produced a one-page summary of more recent valuations obtained by the Trustees that showed the properties being worth £14,260,000. It later transpired that these had been prepared for Inheritance Tax purposes in relation to the ten-year charge. It follows that the figures may be conservative but it does not really matter as, either way, the figures are far in excess of the loan due to the Husband and he has no interest in the company other than by way of the loan. The S Ltd. shop in Casablanca was valued at approximately £425,000 and the V Ltd. biscuit factory land at between £3.85 million and £4.175 million.
47. In consequence of all the above, the Wife asserts that the assets have a value of £45,759,583 but this includes £34.2 million held in Iraq. It follows that the sum outside Iraq, on her case, is only approximately £11.5 million. The Husband, on the other hand, asserts that the total assets are only worth £23,976,296 of which £12,830,896 are held in Iraq. He, therefore, contends that the assets outside Iraq have a total value of just over £11,145,000.
48. The costs in this case are not as high as those in many cases heard in the High Court, but they are still significant and cannot be ignored. The Wife has incurred total costs of £402,343 of which she had paid £318,618. This means that she owed £83,725 at the time the schedule was prepared. I am told that she has since discharged much or all of this but it just means that the value of her director's loan account in PR Ltd. will have reduced yet further. The Husband's total costs bill is remarkably similar at £410,672, of which he has paid only £226,927. This means that he owes £183,745. As he has exhausted his director's loan account with H Ltd., he can only pay these outstanding costs by either being repaid his loan from the Trust or increasing further the amount he owes the company.

#### The law I have to apply

49. I must apply section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. It is the duty of the court to have regard to all the circumstances of the case. The children are both now adult, albeit they are still in full-time education. Their welfare is, therefore, not my first consideration, although I do not ignore their respective positions.
50. I must then have particular regard to the matters set out in subsection (2), namely:-
- (a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
  - (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

- (c) The standard of living enjoyed by the family before the breakdown of the marriage;
- (d) The age of each party to the marriage and the duration of the marriage;
- (e) Any physical or mental disability of either of the parties to the marriage;
- (f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and
- (h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution ...of the marriage, that party will lose the chance of acquiring.

51. The overall requirement in applying section 25 is to achieve fairness. It was made clear in the seminal House of Lords decision of White v White [2000] UKHL 54; [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife.

52. In the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

- (a) The sharing of matrimonial property generated by the parties during their marriage;
- (b) Compensation for relationship generated disadvantage; and
- (c) Needs balanced against ability to pay.

53. There was very limited matrimonial property generated during the marriage, given that the Husband had, to all intents and purposes, retired before the date of the marriage. I accept that the Wife did provide valuable work in H Ltd., but the entire capital for that venture came from assets generated before the marriage. I see the Wife's endeavours in H Ltd. as amounting to a contribution, rather than generating matrimonial assets. I further accept that the matrimonial home was put into joint names and the Wife was given an interest in the Moroccan apartment and a small property in Iraq. She and the girls were also given a very significant amount of money, amounting to some £5 million, to fund PR Ltd.. Of course, it can be said that these assets were all "matrimonialised" but, overall, it is absolutely clear to me that any sharing claim that the Wife may have is significantly below her needs claim. I therefore say absolutely no more about sharing.

54. Turning to compensation, I accept that the Wife was studying for a degree at B University and, absent the marriage, she might have gone on to have a

successful career, possibly as an accountant. I do not, of course, have a crystal ball and cannot possibly assess where that career might have taken her. I am, however, absolutely confident that her needs claim in this case will result in her exiting this marriage overall with wealth that is such as to make any possible claim for compensation entirely irrelevant. Again, I consider it no further.

55. It does, therefore, all come down to the question of the Wife's needs. The correct approach in such cases was set out by Roberts J in Juffali v Juffali [2016] EWHC 1684 (Fam), albeit that Juffali was a very different case to this case as the assets in Juffali were far in excess of those here. Nevertheless, Roberts J made it clear that needs do not exist in a vacuum. A number of important principles were identified:-

*“(i) The first consideration in any assessment of needs must be the welfare of any minor child or children of the family.*

*(ii) After that, the principal factors which are likely to impact on the court's assessment of needs are (a) the length of the marriage; (b) the length of the period, following the end of the marriage, during which the applicant spouse will be making contributions to the welfare of the family; (c) the standard of living during the marriage; (d) the age of the applicant; and (e) the available resources as defined by section 25(2)(a).*

*(iii) There is an inter-relationship between the level at which future needs will be assessed and the period during which a court finds those needs should be met by the paying former spouse. The longer that period, the more likely it is that a court will not assess those needs on the basis throughout of a standard of living which replicates that enjoyed during the currency of the marriage.*

*(iv) In this context, it is entirely principled in terms of approach for the court to assess its award on the basis that needs, both in relation to housing and income, will reduce in future in an appropriate case.”*

56. Mr Tod has placed considerable emphasis in his submissions on the decision of the Court of Appeal in K v L; [2011] EWCA Civ 550; [2012] 1 WLR 306. This was a case where the Wife had inherited assets of almost £57 million, making the assets almost entirely non-matrimonial. The parties had lived to a very modest standard, notwithstanding this wealth. Indeed, their matrimonial home was only worth some £225,000. Although the husband claimed £18 million, the first instance judge awarded him £5.3 million. He appealed, but the Court of Appeal dismissed his appeal, making it clear that this was an entirely needs based claim. He was, in fact, allowed a greater sum for his housing needs than the value of the very modest matrimonial home. This provides clear support for the proposition that, although the court has to consider the standard of living enjoyed during the marriage as one of the section 25 factors, a litigant should not be penalised because he or she has lived to a very modest standard in comparison to the available assets, just as another litigant should not benefit from having spent far more during the marriage than was justified by the available resources.

57. Mr Tod, however, takes it further. He submits to me that, if the award was £5.3 million out of £57 million in 2011, it would be some £9.1 million now. He argues that I should reflect that in my award to the Wife here. I do not accept that submission. Needs must always be assessed on the facts of each particular case. It is not appropriate to say that X received £Y so Z must also get £Y adjusted for inflation. Next, the facts of K v L are very far removed from the facts here. If the assets in K v L were £57 million in 2011, they would be approaching £100 million today. Not only are the assets in this case nowhere near £100 million, a very significant part of them are located in Iraq, a war torn country with significant problems known to all. I will have to make findings as to the availability of funds from Iraq but both parties accept that the assets outside Iraq are in the region of £11 million, which is nothing like the facts of K v L.
58. I must remember the potential language barrier in this case. The first language of neither party is English. In fact, they both speak it very well. They did not require the services of an interpreter. I had very little difficulty understanding what the Wife was saying. I had far more difficulty understanding the Husband but I consider that was due to his age and infirmity not his grasp of the English language. Mr Boydell had to inform us, on a number of occasions, of what he believed the Husband had said, which the Husband then confirmed. Nevertheless, in relation to both parties, I accept that I must take great care in assessing their evidence, as processing information provided in a foreign language may put the participant at a disadvantage. I must guard against the very real possibility that questions or answers or both are misunderstood or, at the least, nuances and shades of different meaning are lost in the process. I have taken all this into account in assessing the evidence in this case.

#### The evidence I heard

59. As already noted, I did not hear any expert evidence. The only evidence that I did hear was from the two parties. In her evidence in chief, the Wife told Mr Tod that she considered the entire loan accounts in PR Ltd. to be held for herself and the girls in accordance with the respective shareholdings, saying it was not really her money, but belonged to all three of them. She further relied on the Husband telling her that he would transfer all the money into her name, but it would then be invested for the girls. She said that no further resolutions had been passed as she was working very hard and did not think it necessary to change anything. I regret to say that, as a matter of law, I cannot accept that this is the legal position. If it was, the declaration of loans in favour of the girls dated 16 July 2019 would not have been necessary. The money paid in thereafter came from accounts in which the girls had no legal interest. The money can only have accrued to the loan account of the Wife. Indeed, if this was wrong, she would not have been able to use the money freely to pay her legal costs.
60. She was asked about H Ltd. I make it clear that she undoubtedly worked hard in H Ltd., which was an important contribution she made, but she accepted that she did everything that the Husband wanted her to do and she followed his instructions. She was then cross-examined by Mr Boydell. She agreed that,

although she was seeking £70,000 to purchase a motor car, she is currently leasing one via PR Ltd. The lease does not expire until 2025. She accepted that, if her car was not provided by PR Ltd., it would increase the profits of the business. She was asked about the Trust. She said that she thought that the Husband does have control over the Trust. She mentioned that he sold EF Road to PR Ltd., but this does not show control over the Trust, as the directors control the day to day business of H Ltd. It is only the shares that are held by the Trust. As a matter of law, she is undoubtedly wrong in saying that the Husband has control over the Trust, which is a genuinely discretionary trust. I do accept he may have considerable influence over the Trustees as Settlor. This does not matter, though, as he has no interest in the Trust other than the repayment of his loan.

61. She then said that she viewed her interest in PR Ltd. as being an income stream worth £30,000. Given the amount the business owes her, her interest is undoubtedly more than that. I will have to determine how to take this into account fairly to both parties. She did say that the business is not all hers as she only holds 40% of the shares, adding that she can only deal with the capital for the benefit of her daughters. Whilst she does have to pay regard to their shareholdings, I note that they have not, to date, benefitted much from their loan accounts. She added that, if she wanted to rent out a shop, the girls would have to give their permission but I do not accept that this is what has happened to date. She has just run the business herself, although I am entirely satisfied she has done so appropriately and in the interests of all the shareholders. In relation to the discount suggested by the valuer, she accepted that she would always want to get the best price for any property she sold. She did sell one shop separately as she needed to pay back the loan she had taken to refurbish the JK Road property, such that the company now has no debt. She added that she could not force the girls to agree to a sale. I do accept that they could call an EGM and outvote her, but, overall, I consider it fanciful to suggest that this would ever happen. In relation to the expenses, she made the fair point that tenants do not always pay their rent and unexpected expenditure emerges, such as the roof repairs. She always redecorates after every tenant, which is both sensible and appropriate. I accept all of that. She added that she wants to invest further in the business, to make the company more successful and to keep the properties in a good state. She said that a director cannot just take all the money out, which is undoubtedly correct, as there has to be prudence.
62. She said she would like to keep the family home, but she really had no answer as to why she had previously said that it held too many unhappy memories for her, other than telling me that the unhappy memories were of the marriage not the house, but that is not what she said at the time. She did say that it was where her children were brought up; that she worked on the house; and loved it but that is true of nearly every case. She added that she did not want the Husband to have to leave it, which goes to her credit. She said that, if she could not keep the matrimonial home, she wanted something similar to it. She said that she felt she had earned the right to live in a good house and that she deserves a nice property. She wanted to feel secure. All of that is undoubtedly true but it is impossible to see why she would need a seven

bedroom property. She was then asked about the standard of living during the marriage. It was put to her that this was not a case where the family had expensive holidays. She made the fair point that the Husband was aged 68 when they married. She also reminded me that they had to go to Morocco to look after his business interests there and to go to Syria or Jordan to see her family. In the past year, she has spent approximately £6,800 on a holiday with HZ to Spain. She said this was the amount she could afford at the time, rather than the budget that she seeks.

63. She was then asked about her earning capacity and, in particular, training to be an accountant. It was suggested to her that she had only abandoned that last week and that it was a complete change of mind. She said that she had decided that it was unreasonable to train as an accountant at her age. She said she was getting old and she asked, rhetorically, who would give her a training contract at her age. I accept that it would be very difficult for her to find such a training contract. She therefore said that she had decided that to proceed would be a waste of time and money and that it would be better to concentrate on PR Ltd. I agree. She also said that she would like to devote some of her time to working for charities. Again, in the circumstances of this case, and given the Husband's commitment to charity, I do not consider that is an unreasonable aspiration for her to hold. In relation to her salary from PR Ltd., she said she thought she was being paid the market rate and that she would be unable to generate a salary of £60,000 per annum. She was doing her best by running PR Ltd. profitably. She accepted that her verbal English is good thanks to the support of her friends, but she said she was not so good when it came to writing or emails, which is where she needs help. She explained that it had taken her 5-6 hours to read and understand Mr Tod's seventeen-page Case Summary. She was asked about her budget of £511,000 in her second Form E. She said she did not think it was exaggerated, although it clearly was. She acknowledged that such a budget would have been way in excess of the standard of living during the marriage. She said she thought all the family's money came from H Ltd., as that was what the Husband told her and she thought he was right. In relation to the sum of £950,000 received by A, she said that it was a loan until she decided to get divorced, whereupon the Husband said it was a gift. She wondered why the loan agreement was kept in the safe if the loan had been forgiven. She also reminded me that A had confirmed it as a loan in 2022. She was asked about £250,000 given by the Husband to his grandson and a house he purchased for his daughter, B. She said she respected her Husband's wishes. I make it clear that, other than where I have disagreed with her above, I accept the Wife's evidence. She was an entirely honest witness, doing her very best to assist me. She clearly still feels great affection and respect for her Husband. She genuinely cares about him, which is to her great credit.
64. The Husband told me, in answer to questions from Mr Boydell that he had tried to sell the Iraqi properties but had been unable to do so or to get any money out of the country. He had transferred one small piece of land to the Wife but it had been occupied by squatters and it had cost \$25,000 to have them removed. Although he did not know when, he thought it was a long time ago. He said that he has many problems with squatters in relation to his land.

There had been an awful lot of problems with these assets over the years and, in Iraq, you can never quite tell what problems will emerge. He was then cross-examined by Mr Tod. He said he had spent twelve years stitching shoes together with his two brothers until he had become ill. He had spent two years in hospital before going back to working 16 hours per day. He had proceeded to build his business up from scratch to the point where he owned four factories and had between 600 and 700 people working for him. He had refused offers to sell to various multi-national shoe companies. He had then moved into the production of magazines, particularly related to tourism and shoes. He said he was a very respected man, but had been too much involved with his work. He did very well with property when he moved into that field. He had good help, including from the Wife. His main expense today is his charity. H Ltd. has provided an amount of approximately £60,000 per annum for the fixed expenses of the UK charity and it is clear that the company has also sent over £1 million to Iraq for charitable purposes. He said that God had given him a long life, money and his position, so he wanted other people to benefit from his work, even his competitors. He said he was not that rich, just rich in ideas, which was more important than money.

65. He was asked about his nephew, MZ, to whom he had said he could give a Power of Attorney. He said he had not spoken to MZ for two months, but he is expected to come to the UK at the end of this month. He then seemed to say that MZ lives in the UK, but is an Iraqi citizen as well. MZ is caring for his family and may not be willing to take on the commitment, although he then contradicted this by saying that MZ has already agreed to do so, but might change his mind. He was asked about his Wife's role in H Ltd. He said that she ran the administration of the company, a role now performed by his PA, Mr SR, who assisted him in giving his evidence by finding pages for him in the bundles. He said that the work Mr SR does in the business is bookkeeping but Mr SR does what the Husband asks him to do. He accepted that he was the Settlor of the Trust but said that he cannot appoint new trustees. In fact, when he was taken to the Trust documents, it was clear that he can do so, but he made the point that his memory is not great, which was a fair one to make given his age. He confirmed that he has given a letter of wishes to the trustees but he said that they are not obliged to follow his wishes. I accept that, but I consider it unlikely that they would not do so, although the letter only refers to the position after his death. He was asked about Morocco. He accepted that the valuation of the biscuit factory land was on the basis that it was not divided but he was, understandably, quite unable to say what effect that might have on the value.

66. In relation to A's £950,000, he said that it was initially a loan but he had never demanded repayment as he knew A's financial situation. In his mind, it is now a gift, although he accepted that he had not informed A of this. He added that it was his money and he was free to deal with it as he wished. In relation to this, I note that over ten years have passed without A repaying the money, even though it was supposed to be repaid from the sale of properties shortly after the money was transferred to him. Whilst I accept that A has referred to it as a loan, it is clear that he has never taken any active steps to repay it and I accept that the Husband now views it as a gift. I do not find that it is a

resource available to the Husband to meet his obligations to the Wife. He confirmed that all the money in PR Ltd. came from him. He had said that the shareholdings should be 40% to the Wife and 30% to each girl but he had given the money that was subsequently paid into the company to his Wife. He did say that she was free to do what she wanted with the money as he would not interfere. In one sense, this is, of course, correct. Any litigant can give his or her assets away after a financial remedy hearing but that does not mean that the court approaches the case on any basis other than that the money is available to meet his or her needs.

67. He was asked about entertaining at the matrimonial home. He said that nobody had come for four years. Significant entertaining had been very rare. Although there had been parties, there had not been that many. There was not a religious celebration every year. He did say that his Wife would have her female friends round, but disputed that the family had done much more than that. In relation to his health, he had once had a bad fall. It made a mess of his face and he was not able to move his shoulder. His Wife had helped him and took him to hospital. She also cooked food for him and met his needs. He was very grateful to her for all she had done for him. He did not remember how much NZ's wedding cost, but he had paid. Mr Tod then asked him about the matrimonial home. He said he would be happy if it was retained for the family as it was the family home and he would like that to carry on. It is, of course, entirely a matter for him how he deals with the property in his will, but it is for me to assess the parties' respective needs as they are today. Mr Tod then asked him about the valuation of the Iraqi properties. He confirmed that they had agreed on a joint valuation. He said that his Wife's brother knew a well-known surveyor so they used him. He could not remember if he had made any enquiries of his own. He said that he had accepted such a valuation should be obtained to solve the problem but the valuation was unrealistic. It was absolutely clear that he genuinely believed that the valuation was indeed unrealistic. Finally, he accepted that his Wife had assisted him in his charitable work. He confirmed that she was free to do what she wants in that regard as far as he is concerned, although it does not absolve me of my duty under section 25 to consider her earning capacity and reasonable steps she should take to increase that earning capacity. He said that he would like everyone to donate to his charity. His Wife had helped him with his charity, but his good work was behind him.

68. Mr Boydell asked him in re-examination about the H Ltd. properties. He confirmed that the EF Road property had been transferred from H Ltd. to PR Ltd. for £1.5 million. All the other properties had been purchased between 1989 and 1996, before he met his Wife, other than RU Road, which was bought in 2010 and GW Road, bought in 2006. Nothing else had been bought or sold since the date of the marriage. He was then asked about the girls' education. He told me that he had funded all NZ's University fees in advance and that HZ would be studying medicine in X, so he would not have to pay any private tuition fees. I make it clear that it was incredibly difficult for the Husband, a man of 93, to give evidence to this court. I accept the observations of both counsel to the effect that he is a man of enormous integrity who is straightforward and whose humanity shines through.



Moreover, he respects his Wife. He is grateful to her for all she has done for him and wants to do his best by her.

### The schedule of issues

69. The parties prepared a schedule of issues. I propose to go through the schedule issue by issue to resolve the various disputes between the parties. The first section is headed “Computation/Liquidity” and begins with “the value and liquidity of overseas property owned by both parties in Iraq and Morocco”. I do, of course, take full account of the expert reports of AH and QZA, but I consider that the reports, in fact, throw up numerous issues that cannot be glossed over. At one point during the hearing, I described Iraq as “war-torn”. There is no doubt that it has suffered a long period of instability since the fall of Saddam Hussein with various armed factions operating and underlying sectarian tension. The simple fact of the matter is that the Husband has been quite unable to extract value from these Iraqi assets now for some forty years. It may be that he has not been taking active steps to do so and he views some of this as his legacy in the country of his birth but I have no doubt that he would have wanted to liquidate some of these assets if he could have, if only to benefit his children.
70. I take the view that there are numerous problems inherent in extracting funds now. The Husband is aged 93. He cannot go to Iraq. His identification documentation needs to be renewed. A trustworthy individual must act as his Power of Attorney. Vacant possession of the land for sale must be secured. This may be particularly difficult if there are squatters on site. A purchaser with access to millions of dollars of funds must be found. The money must then be repatriated out of Iraq. I do not say that all these are insurmountable difficulties, but they are significant and I cannot find that money will be available from Iraq in the foreseeable future, which is the period with which I am primarily concerned. It follows that this is nothing like a £50 million case, even if I accept the valuations of AH. Equally, however, I do not take the view that I should find that this is simply an £11 million case, by ignoring the Iraqi assets entirely.
71. The situation in Morocco is different. Again, I accept that money has not been extracted since the fire in 1994, but there does not appear to be any real barrier to selling the land and repatriating the funds. The simple fact of the matter is that it is essential that it happens as it is the only way to repay the Husband’s loans of approximately £2.8 million owed to him by V Ltd. and S Ltd. This large sum is urgently required to fund the needs going forward of both the Wife and, just as importantly, the Husband.
72. The next identified issue is “the value of the Wife’s interest in PR Ltd. including monies owed to her by the company”. It is clear from what I have already said in this judgment that I reject her case that she must allocate 60% of the overall loans to the children. The loans were her money, given to her by the Husband, and then invested by her in PR Ltd. It required a specific Board resolution on 16 July 2019 to allocate any of this money to the girls. There has been no such allocation since. Moreover, the Wife’s treatment of the

money, such as using it to cover her costs, belies any suggestion that the girls hold 60% of the overall loans.

73. The most recent statement of the loan account is dated 17 May 2023 and shows that she was owed £2,616,841 on that day. At that time, she had paid £136,000 to her solicitors. Her total costs have been £402,000, so I must deduct a further sum of £266,000 from the loan account to bring it to £2,350,000. There may, of course, have been other drawings since May 2023 for her personal expenditure, such as the Spanish holiday but it will have been de minimis in the context of the case. The company is, however, in deficit. Whilst history suggests that the property values will, over years, rather than months, recover to eliminate the debt, I must deal with the case as at today's date. I have found a deficit of (£359,000). I deduct half of this from the Wife's loan account as she is owed, overall, almost exactly the same as both girls put together. Her loan account therefore becomes £2,170,000.
74. The expert says that the business can generate £100,000 per annum gross, £75,000 per annum net, after it has paid the Wife £30,000 by way of salary and provided her with a company car. Whilst it could be said that the business ought to reinvest some of its profits, I take the view that the figures are already generous to the Wife given the significantly larger rent roll than assumed by the expert. The girls are entitled to some benefit from the business. I am therefore going to say that the Wife can generate £75,000 per annum plus a company car, index linked, from PR Ltd. towards her annual income needs. Given that all the money inside PR Ltd. emanated from the Husband and the loan account is a very significant sum, I consider this is the minimum figure to do justice in this case.
75. The next issue is said to be "the recoverability of loans owed to the Husband by the Trust and the two Moroccan companies". I have already dealt with Morocco. Turning to H Ltd., there is no doubt that the loans are recoverable in full in the sum of £2,888,251. The money is desperately needed. The Trustees also need approximately £500,000 to cover the professional fees and ten year tax charge. It seems pretty clear to me that other properties in addition to Clapham and QI will have to be marketed to achieve repayment in full. I reject any suggestion that A is in a position to object. He has been treated very generously by his father. It is now necessary for his father to receive the sum he is owed in full, not just to pay the Wife but also to meet his father's own care expenses. The money will simply have to be found.
76. The next issue is "what funds can be paid to the Wife through the Trust". On the final decree of divorce, she will cease to be a beneficiary of the Trust. Unless there is a final decree, any order I make in her favour cannot be enforced. There have never been any distributions during the entirety of the existence of the Trust. The letter of wishes that requested that she be allocated just over 17% after the Husband's death was limited to income only, of which there has been virtually none. I do accept that, in a consensual situation, it might be possible to achieve some such arrangement, but this is not a consensual situation. I conclude that there is no realistic possibility of payments being made to the Wife after final decree from the Trust.

77. The final issue under this heading is “whether the Husband is owed monies by his son A and, if he is, whether and when any such monies might be repaid”. I am satisfied that I should ignore any potential repayment from A. The Husband made this loan nearly thirteen years ago. There has been no repayment. He is entitled to benefit his children from his wealth. He has done so to HZ and NZ by giving them over £1 million each of loans in PR Ltd. Absent having to find capital to pay to the Wife, a loan attracting interest makes no sense for a 93 year old in Inheritance Tax terms. I do not know A’s financial circumstances. Of course, if his father is in financial difficulties, I would expect A to assist him, but I am not simply going to add £950,000 to the assets schedule.
78. The statement of issues then moves on to “capital needs”. It is agreed between the parties that the Husband’s housing needs will be met by him continuing to live in the family home for the rest of his life. Accordingly, the questions for me to consider are (1) what are the Wife’s housing needs now and after the Husband passes away; (2) how can these best be met in both the short and long term; (3) what are the Wife’s further capital needs e.g. furniture, vehicle and relocation costs; and (4) what are the respondent’s additional capital needs?
79. I am clear that the Wife does not need a seven bedroom property, such as VW. She does, however, need somewhere with sufficient space to allow her to have the girls, their partners and any future grandchildren to stay. I am clear that her original property particulars with asking prices of £3.5 million are excessive and more related to her view of the value of VW. More recently, she has submitted a £2.8 million property in Hampstead Village and a £3.25 million property in St John’s Wood. Whilst the size of these properties at four bedrooms each is not excessive, their location is too expensive in the context of the assets in this case. The Husband’s particulars at £1.5 to £1.7 million are closer to what is reasonable but I consider that an appropriate budget is £2 million. The stamp duty on such a purchase will be £151,250. She will need to furnish this property. At first, she sought £100,000 to do so before increasing the figure to £250,000. I consider that an overall budget for furnishings and any works to the new property is £150,000, making a total housing fund need of £2.3 million. I reject the claim for finance for a vehicle. It can and should be funded via PR Ltd.
80. I do not see that the Wife’s needs for housing will change after the Husband’s death. Whilst the Husband may allow her to return to the family home, there is absolutely no reason why he should do so and he has many other calls on his resources. He will already have made a significant financial settlement upon her as a result of his investment in PR Ltd. and by paying my award. It follows that I can see absolutely no reason for her to rent property between now and his death. She should purchase her new home now.
81. The Husband will be remaining in VW but, other than this, his overriding need is to be able to fund his income needs. In particular, I fear his need for carers to assist him may well be a very significant financial burden going forward.

His only income is approximately £24,000 per annum from a combination of H Ltd. and his state pension. There is the real difficulty of not knowing for how long he may need to fund his care requirements. Mr Boydell asks me to allocate £1 million to cover these needs. Whilst this may be more than he needs, it is only reasonable to leave him with such a sum whatever award I decide is fair to the Wife.

82. The final main issue is the Wife's income needs. The statement of issues suggests that I need to decide (1) what are her future income needs; (2) how far these can be met from her interest in PR Ltd.; (3) what are the Husband's future income needs; (4) to what extent, if any, can the Wife increase her earning capacity; and (5) how should the capitalisation figure/Duxbury fund be met?
83. I have, of course, already answered some of these issues. I have found that I should attribute £75,000 per annum to her interest in PR Ltd. I have found that the Husband's income needs can be met by setting aside £1 million for him. In relation to the Wife's earning capacity, I have rejected any suggestion that she should qualify as an accountant. Overall, I am clear that she cannot increase her earning capacity over and above her earned income as a director of PR Ltd.
84. This leaves the sole issue as being that of her income needs. This issue was not helped at all by the £500,000 per annum budget included in her second Form E. Her budget in her first Form E was just over £180,000 per annum. I accept that there were several items that were not included, such as buildings and contents insurance, medical insurance premiums and the like but, equally, there were many items that were overstated such as £30,000 per annum for repairs and maintenance to her house or items that are unnecessary, such as £16,500 per annum on a car, when it is to be provided by PR Ltd. I am quite clear that, to date, she has spent nothing like this amount. Indeed, the entire family have existed on about this amount, including significant payments to the girls. I do accept that expenditure has been considerably curtailed by the Husband's age. Although I have made the point that a court should not penalise a party for underspending, I am required to have regard to the financial standard of living during the marriage and the available resources. I have rejected Mr Tod's case that there are £50 million of assets, or, at least, that there is anything like that in terms of realisable assets. Overall, I have come to the conclusion that an appropriate budget for the Wife, to include some charitable giving, is £150,000 per annum. I then have to deduct £75,000 per annum from this that she will be receiving from PR Ltd., giving an income need of £75,000 per annum.

### Computation

85. The final issue is that of computation. I am satisfied that there must be a clean break in this case and that the Wife's income need should be satisfied by a whole life Duxbury calculation. This marriage lasted over twenty years. There were two children. The Wife gave up any chance of a career as an accountant and had a very significant role in caring for the girls, given the age of the Husband. She is now aged 45. Despite the difficulties in Iraq, the

assets are considerable. She also contributed significantly to H Ltd. A Duxbury calculation for a woman of 45 to produce £75,000 per annum for the rest of her life is £1,690,000, which I round up to £1.7 million.

86. This gives her a total capital need of £4 million, being £2.3 million for housing and £1.7 million for a Duxbury fund. In addition to her loan account in PR Ltd. in the sum of £2.17 million, it gives her a total award of £6.17 million. She can retain the Iraq property over and above this figure, given my overall conclusion as to the unavailability of Iraqi funds. She must transfer her interest in the Moroccan property to the Husband.
87. I am entirely satisfied that the Husband is able to fund such an award. The total loans owed to him by the Trust, S Ltd. and V Ltd., after repaying the money owed by him to H Ltd. on his overdrawn loan account, come to £5,602,642. I have said that he must retain at least £1,000,000 for his own expenditure. After he has paid the Wife £4 million, he will, in fact, have approximately £1.6 million remaining, although I do accept that this involves full recovery of the Morocco loans and he must pay his outstanding costs in the sum of £183,745. Either way, there should be a significant surplus over £1 million. He will also have the use of the former matrimonial home for his life.
88. Excluding the Iraq assets, I have assessed the assets as being just over £11 million. This means that the Wife would be receiving somewhat over half, but I cannot ignore the Iraqi assets completely and I do have to remind myself of the Husband's age and life expectancy. The simple fact of the matter is that his needs are less than hers. It is also right to take into account the fact that he has already given away significant assets both to the Trust and to his older children, as well as to the children of this marriage.
89. In his first open offer, the Husband said that he could pay by July of this year, but I think that is overly optimistic, given that he has to sell assets in Morocco that may require new titles to be created. I am clear that he should raise half the money by 31 July 2024 and the balance by 31 December 2024. There will be interest in default of payment from the date payment is due at the High Court judgment debt rate, which will protect the Wife's position. To avoid any issues about an ability to vary my order, I make two separate lump sum orders, each in the sum of £2 million.
90. The Wife will transfer VW to the Husband forthwith, but there will be an all monies charge on the property, pending payment of the lump sum in full. This charge can only be enforced with leave of the court, following an order of a High Court Judge. It is not for me to stipulate the criteria for enforcement. A very important factor would obviously be if the Husband has had to vacate the property to live in a care or nursing home, but the main one would almost certainly be the reasonableness of the efforts the Husband has made to pay in full. The Wife is protected as she will be able to enforce her charge against the property before his estate is distributed.
91. Counsel will draft the resulting order but, unlike in many of these cases, it should be relatively straightforward. The main features will be the transfer of

VW to the Husband with the all monies charge in favour of the Wife and the two lump sums of £2 million each. There must also be a transfer of the Wife's interest in the Moroccan property to the Husband.

92. There has been some discussion about potential costs orders during the course of the hearing. I have provided for the costs of both parties in this judgment. It is a needs based award on both sides and there is a presumption of no order as to costs. Whilst I cannot prevent an application for costs, my initial indication is that there should be no order as to costs.

93. Finally, I want to thank both counsel for the immense assistance they have given me in relation to this case. Nothing more could have been said or done on behalf of either of their clients.

Mr Justice Moor

12 February 2024.