Neutral Citation Number: [2024] EWFC 79

Case No: BV20D01752

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 April 2024

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between :

DH	**Applicant**
- and -	
RH	**Respondent**

- -
- -

Brent Molyneux KC (instructed by **AFP Bloom**) for the **Applicant**
Alexis Campbell KC and Sassa-Ann Amaouche (instructed by **Stowe Family Law**) for the **Respondent**

Hearing date: 20, 21, 22, 23, 26 and 28 February 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18 April 2024 by circulation to the parties or their representatives by e-mail.

MR JUSTICE MACDONALD

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in it) to be published on condition always that the names and the addresses of the parties and the children must not be published.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

Mr Justice MacDonald:

INTRODUCTION

1. At a hearing in this matter that took place on 19 August 2021, then counsel for the applicant, Mr Rainer, summarised for the court then seised of the matter the position that has subsisted in this case for its entire duration. Namely, "nothing is agreed, everything is at large and there is quite a bit between us". This matter now once more comes before the court for the final hearing in long running financial remedy proceedings. The applicant wife, DH (hereafter 'the wife') is represented by Mr Brent Molyneux KC. The respondent husband, RH (hereafter 'the husband') is represented by Ms Alexis Campbell KC and Ms Sassa-Ann Amaouche.

2. In determining the application, I have had the benefit of reading the court bundle prepared for the final hearing, together with further documents submitted by both parties ahead of this hearing. The applicant wife has not prepared a draft ES1, a chronology or a statement of issues in advance of the final hearing and did not respond to the husband's proposals in respect of those documents. Only the husband prepared an ES2, the wife contending that it was not possible for her to do so given what she argues is the extent of the undisclosed assets in this case. Likewise, only the husband has provided an open offer, the wife's open position only appearing in very broad outline form in the note that Mr Molyneux prepared for this hearing. The wife's s.25 statement was filed and served only on the second day of the final hearing and then in a form that required submissions regarding the admissibility of certain parts of the statement and the exhibits thereto.

3. In reaching the final hearing, the wife has spent £1.9M in legal fees. The husband has spent £987,000 in legal fees. The monumental sum of some £2.8M in legal costs has been spent in the context of assets that, for reasons I shall come to, I am satisfied amount to some £12.4M. Whilst acknowledging that costs fall to be considered following judgment, the husband submits that what he contends is the disproportionate spending on legal fees by the wife must be considered at the computation stage in these proceedings by way of an add back. In the circumstances, the husband's open offer treats the sum of £887,066 as an asset available to the wife, being the then difference between the parties' respective legal fees. That figure has now increased to £913,000.

4. Part of the legal costs incurred by the wife have been funded by a litigation loan from Detach in the sum of £886,012. Ahead of the final hearing, Detach wrote to the court to advise the court that the wife is in breach of the terms of her loan agreement. Ahead of the final hearing, the wife agreed that, at the conclusion of these proceedings, she will disclose the relevant and necessary parts of the judgment to Detach, provide a copy of the agreed draft final order prior to it being submitted to the court and seek provision within that order for repayment of the monies due to Detach. By his open offer, the husband proposes that the wife be solely responsible for meeting the interest and fees on her Detach loan.

5. Following the conclusion of evidence and submissions, the wife proceeded, without permission, to email significant amounts of material to the court. I make clear that I considered that material in circumstances where the wife had, at that point, dispensed

with the services of her lawyers, but have not taken that material into account in circumstances where I am satisfied that it would not be proper to do so.

BACKGROUND AND EVIDENCE

6. The wife is nearly 55 and was born in April 1969. The husband is 58 and was born in July 1965. The parties met in New York in 1994 and were married in July 1995. The parties have two daughters, M, born in 2005 and now 18, and E, born in 2007 and now 16. M attends college in the United States and E attends an English boarding school. Both children are said by the wife to have diverse special needs, although the court has not been provided with any definitive evidence in this regard. The parties lived in New York until shortly after M's birth in July 2005, when they moved to London. The family relocated to central England in September 2016 so that the children could attend school. Until the end of 2023, the wife lived in rented accommodation in that location. The husband contends that the bill for decorating the property after the wife left of £12,000 and an electricity bill run up by the wife of £24,987 at the property, together with liabilities incurred by the wife at a property in the sum of £23,835, amounts to conduct it would be inequitable for the court to ignore and again seeks add backs in respect of those sums. The wife is now living in Wyoming and the husband is living in Portugal.

7. Both parties have a background in the financial services industry. The wife has a degree from the London School of Economics and an MBA from Columbia. The wife started her career at Citibank, before joining Lehman Brothers where she remained until 2004. The wife ceased work before the birth of the children and has not worked since. The wife asserts she is not currently employed. The husband points to an entry on her LinkedIn page which describes her professional occupation as "Family Office Management".

8. The husband was a trader at Goldman Sachs before being made redundant in 1998. He then worked at Deutsche Bank in New York before leaving Deutsche Bank to join Barclays Capital in 2004, where he remained until 2014. Following his departure from Barclays, the husband asserts that he supported the expenditure of the family by drawing down on shares he had been paid as an element of his remuneration with Barclays. Once that source of funding was exhausted in 2018, the husband was employed by Sphere Digital LLC between 2018 and 2020 before his employment was terminated, leading to litigation. The husband contends that in these circumstances he has not been in receipt of an income for four years, with the family living off capital, rental income and the husband's investment returns. In his Form E the husband describes himself as a company director. The husband was a non-executive director for OP without a salary but with an award of founder shares. He contends that he has now lost that role as the result of a takeover. The husband plans to continue to operate as a niche private investor seeking out profitable returns.

9. Commencing in 2014, the husband began investing in a number of different cryptocurrencies and a range of private equity investments. The husband contends that during the marriage he shared details of these investments with the wife and sought her expert opinion on these. The husband's investments included a $75,000 investment in 2015 in a company called Topanga Canyon Holdings LLC (hereafter 'Topanga'). That company held shares in a cryptocurrency exchange called Coinbase. In 2021 Coinbase floated and the husband's investment increased in value

from $75,000 to some $7M. These events have, subsequently, played a central role in these proceedings, for reasons that I shall return to in more detail below.

10. The wife's first divorce petition was issued in 2014 but not served. The family remained living together until 2016, when the wife moved to rented accommodation to be close to the children's school. The husband rented a flat in London before he relocated to Morocco in 2018. In 2020, the husband leased a flat in Lisbon to enable him to take advantage of the tax arrangements in Portugal. The wife contends that the husband's conduct in relation to his Portuguese tax status has been dishonest. During the COVID-19 pandemic, the parties spent some time residing together at the property rented by the wife in England. The wife issued her second petition for divorce on 23 January 2020.

11. Thereafter, and prior to her divorce petition being served on the husband, the wife accessed a large amount of information from the husband's personal electronic devices, including information belonging to the husband's former partner, and passed that information to her legal team. The wife retained the information from approximately September 2020 to April 2021, before returning the documents in carefully categorised files. This resulted in the need for a significant 'Imerman' exercise on the part of the husband's solicitors, at the cost of £25,000. The husband contends that this is conduct that it would be inequitable to ignore and that the £25,000 of costs associated with the Imerman exercise should be added back into the balance sheet for the wife.

12. Decree nisi was pronounced on 26 November 2020. The financial remedy proceedings were issued in the Family Court sitting at Bristol as long ago as 2 December 2020.

13. As I have noted, only the husband has provided an ES2 for the final hearing. In summary, the matrimonial assets (the husband seeks to exclude as non-matrimonial assets property inherited from his father with a value of £246,387 and a company set up since the parties separated with a value of £100,964) and their respective net values as at the date of the final hearing set out by the husband in his ES2 are as follows:

1WA, Wyoming	£3,458,017
2WA, Wyoming	£4,632,832
Z Street Apartments, New York	£1,992,033
Savings	£221,533
Investments	£526,590
Business Assets	£71,009

Other assets	£165,386
Chattels	£10,000
Pensions	£2,986,224
TOTAL	**£14,063,624**

14. The properties in Wyoming are owned as investment properties, although the wife is currently occupying one of those properties (the wife having moved to Wyoming shortly after informing this court in June 2023 that she intended to return to rented accommodation in central London and this court having made an order for MPS on that basis). The legal title to the properties in Wyoming are held in three corporate wrappers in which the parties are equal shareholders. Both of the properties are subject to a single mortgage with a US bank in the sum of approximately $1.45M. By his open offer, the husband proposed that the wife retain the more valuable of the two properties with a mortgage of approximately £329,364, whilst he retains the less valuable property with a mortgage of £812,368, the costs of transfer being met equally by the parties. At this final hearing, the husband amended his position to take on the whole of the mortgage liability for the Wyoming properties, subject to him receiving all four units in the New York property. The husband contends that, if rented out, the property he proposes should be retained by the wife can generate an income of approximately $150,000 per annum. The wife seeks both properties as part of her case that she should be awarded the *entirety* of the matrimonial assets.

15. Notwithstanding that the wife is litigating in this court regarding the distribution of the two properties in Wyoming, she has also commenced litigation in the United States in connection with those properties, arising out of the husband having paid down part of the mortgage on the Wyoming properties in 2022 in the following circumstances.

16. At the First Directions Appointment (FDA) on 7 April 2021, both parties gave an undertaking not to diminish funds held with the US bank without the other party's consent save for the purpose of meeting mortgage payments in respect of the Wyoming properties and meeting necessary costs referable to the maintenance, upkeep and administration of those properties. On 15 September 2022, the US bank wrote to the parties stating that the parties' "financial condition, which was relied upon as a basis for the approval of the existing loan guarantee with the US bank, has materially deteriorated" and requested that the loan amount secured on the Wyoming properties "be reduced by at least $1,720,000, to bring the balance owing to an amount no greater than $4,000,000." On the same day, and without reference to the wife, the husband made two transfers in the amount of $450,000 and $225,000 from the parties' US bank account to pay down in part the parties' mortgage with that bank. On 14 October 2022, the husband wrote to the wife's then solicitors to inform them that he had further reduced the mortgage liability to $1.77M "through the liquidation

of all the Coinbase shares to which I shall come and all of the cryptocurrency held in Coinbase and Coinbase Pro, as well as the liquidity available in the UBS account and the E*TRADE account".

17. In July 2023, the wife lost the litigation against the US bank with prejudice. As a result, the bank deducted $113,000 from the parties' personal joint account with the bank to satisfy the costs awarded against the wife. The husband contends that had the wife not failed to comply with a direction of this court, made in November 2022, that she set up a corporate bank account to assist in the management of the Wyoming properties, this money would not have been lost to the US litigation. In this context, the husband seeks an add back with respect to the costs awarded against the wife as the result of her failed litigation and the husband's open offer treats the $113,000 costs order made against the wife in her litigation against the US bank as an asset available to the wife, the husband submitting that the wife's choice to litigate against the bank in an attempt to reverse the paying down of the mortgage and her failure to open a joint account as ordered by the court amounts to conduct it would be inequitable for the court to ignore.

18. Notwithstanding that she lost in her litigation against the bank, the wife continues to litigate against the husband in the US on the same unsuccessful grounds as she pursued against the bank, seeking $6.2M in damages. In the circumstances, in his open offer the husband seeks a reverse contingent lump sum charged against the Wyoming and New York properties retained by the wife equivalent to the maximum liability he may be exposed to arising from the wife's claims in the United States against the husband in addition to anticipated legal costs. The wife opposes such a contingent lump sum.

19. The property in New York comprises a development of four apartments in Brooklyn of which the parties are joint equal owners. That property is unencumbered. The husband proposes by his open offer that the parties share the properties *in specie* resulting in each of them retaining two apartments, the costs of transfer being met equally by the parties. The husband contends that the apartments return a reasonable rental return of approximately £50,000 per annum each. As I have noted, during the course of the hearing the husband proposed that he retain all of the New York apartments, subject to him taking on the entirety of the mortgage on the Wyoming properties. Again, the wife seeks all of the apartments as part of her case that she should be awarded the entirety of the matrimonial assets.

20. With respect to the savings, the husband proposes by his open offer that the parties retain the balances in their respective savings accounts and that they divide the balances of the joint accounts equally. With respect to the investments, the husband proposes by his open offer that the private equity investments, almost all of which the husband contends are illiquid, be divided equally and shared *in specie*. As with the properties, the wife seeks all of the savings and investments. As to the business assets, as I have noted the husband trades through a company, of which he is an 80% owner and through which he pays his investment income, and a trading subsidiary. By his open offer, the husband proposes that 50% of his interest in the trading subsidary, which holds an underlying cryptocurrency investment in Chia, shall be transferred to the wife, with the husband retaining his remaining business interests. With respect to the other assets, by his open offer the husband proposes that the assets held in cryptocurrency be divided equally between the parties and that he retains the

benefit of loans he has made and his rental deposit on the Portuguese property. Again, the wife seeks the totality of the foregoing assets.

21. With respect to chattels, during the course of evidence it became apparent that the wife has pawned a considerable number of watches over which the husband claims ownership and has sold the parties' car at what the husband contends is a significant undervalue. On 16 November 2023, I directed that the wife provide the husband with details of the whereabouts of these items, including the husband's mother's gold pendant. The wife failed to comply with that order and only addressed this question when compelled to do so under cross-examination in the witness box. Whilst the wife stated in evidence that she "wanted" certain of the husband's watches as she had worn them in the past, she also stated that none of them held any sentimental value for her. Within this context, in his open offer, the husband proposes that, unless the wife returns the watches, that the value of the watches and the car should be attributed to the wife in the sum of £156,693. With respect to the family car, in evidence the wife conceded that she had sold it for an undervalue (the value attributed to the car by the husband being £50,000) and had used £10,000 to pay solicitors and had given another £10,000 to a friend and to the children. She contended that the person to whom she had sold it still retained £12,000 of the agreed sale price. The wife holds a collection of jewellery which she values at £105,033. This does not feature on the ES2 prepared by the husband as he does not expect the wife to sell these items.

22. With respect to the pensions, the husband benefits from pension funds in the United States and in Jersey. During the course of the proceedings there has been considerable controversy regarding the transfer of the Jersey pension to Malta. That issue has not, however, featured at the final hearing and it would appear that it is now accepted by the wife that the transferred pension is susceptible to an English pension sharing order (the husband raises as a matter of conduct the fact that the wife has spent significant sums disputing the husband's position on pensions and tax before undertaking no cross-examination and making no submissions on these issues). The US pensions can also be shared between the parties in the United States. By his open offer the husband proposes that a lump sum of £340,306 be drawn down and held in escrow to cover potential CGT liabilities arising from the disposal of the shares in Coinbase and a fund of £700,000 from the pension be allocated to the husband to cover the educational expenses of the children, to be drawn down from the pension over time as required. The husband proposes that the remaining pension assets be equalised as between the parties. As with the other matrimonial assets, the wife seeks the entirety of the pension assets.

23. Finally, the parties each carry significant liabilities. The wife contends that she owes money to her father but has produced no evidence to support that contention. In addition, she owes £1,483,425 in legal and professional fees (including her litigation loan with Detach in the sum of £886,812) and £19,209 on her credit cards. As I have noted, the husband contends that the wife has also left liabilities arising from her occupation of her property in England, including an outstanding electricity bill, and Outpost in the sum of £54,607. The husband has debts in the sum of £59,899.

24. In the foregoing circumstances, on the husband's case, and after liabilities of £1,623,691 are taken into account, the total matrimonial assets available for distribution between the parties amount to some £12.4M.

25. As I have noted, the wife has not provided the court with an ES2 for this final hearing. The wife contends that in this case the husband has been guilty of very significant non-disclosure and that the matrimonial assets extend *far* beyond those summarised in the table above. In such circumstances, the wife contends that it has not been possible for her to present the court with a schedule of assets.

26. The wife's case with respect to alleged undisclosed assets divides, broadly, into four allegations, the first three allegations forming part of the foundation for the fourth. First, that the husband failed to disclose in his Form E dated 17 March 2021 that the Topanga investment listed in the Form E and valued at $75,000 was in fact a vehicle for holding shares in Coinbase and further failed to disclose until immediately before the private FDR that, as the result of the public listing of Coinbase held in April 2021, the investment had initially increased in value to some $7M before falling back to $5.28M. Second, that the husband failed to disclose that he was the beneficial owner of 5 Bitcoin held in a Gemini cryptocurrency account, Third, that the husband failed to disclose that he held 16 Bitcoin in a XAPO cryptocurrency wallet. Fourth and finally, the wife alleges that the husband has, in effect, hidden cryptocurrency and other undisclosed assets of between £141M and £210M. The background with respect to the allegations of non-disclosure is as follows, dealing first with Coinbase.

27. As I have noted, in 2015 the husband invested $75,000 in a company called Topanga after the investment was brought to his attention and that of a friend, JAM. The husband contends that the investment was "unusual" in that little information was forthcoming and that he and JAM had only one contact with Topanga between 2015 and 2021, leading them to worry that the company was not legitimate. In this context, the husband points to the fact that a complete, unlawful, search of his electronic devices by the wife produced no substantive documentation or information in respect of Topanga over that period.

28. Topanga held shares in a cryptocurrency exchange called Coinbase. On 30 December 2020 HHJ Cope gave directions for the filing of Form Es by 10 March 2021 and listed the matter for a First Appointment on 7 April 2021. The parties exchanged Forms E on 17 March 2021. At paragraph 2.4 of his Form E, dealing with investments, the husband gave the following information (supported by an exhibit in the form of an IRS Form K-1 detailing the holding in Topanga):

Name	**Type of Investment**	**Size of Holding**	**Current Value**	**Name of any other account holder (*if applicable)***	**Total Current Value of your interest**
Topanga Canyon Holdings LLC	US company	US$75,000			£53,956.83 *(US$75,000 @ 1.39)*

29. Whilst paragraph 2.4 of the Form E asks for the *current* value of the investment, the wife contends that the husband failed to make clear in his Form E the precise nature of the investment comprised of Topanga, in particular that Topanga was a vehicle for

holding equity in Coinbase, and its potential value in the context of the husband knowing that a flotation of Coinbase was imminent. The husband now concedes in his statement that there were discussions and plans for a Coinbase listing, that he was aware of this information and that he should have included it in his Form E. The husband however, maintains that the wife already knew about both the nature of the investment and its potential.

30. In May 2017 the husband contends he sent to the wife a schedule of his assets so that she had an account of them in case he died. That schedule refers to "75,000 Coinbase FF security investment" with the contact listed as JAM. The wife contends she did not see this document until November 2021. On or around 10 March 2018 the husband send the wife a WhatsApp message with a link to an article titled "Tiger Global is in talks to invest in cryptocurrency unicorn Coinbase at $8B valuation". That article described Coinbase as a cryptocurrency trading platform. The husband points out that the wife sent a winking emoji in response, contending that this indicated she was happy concerning an investment she knew would benefit the family. The wife stated in cross-examination that this emoji was sent to reflect the fact that the news was good news for the markets in general, and not specifically for the family. On 25 March 2018 the husband sent an email to the wife setting out an updated account of their assets which listed "Coinbase: 75,000". The wife says that this document made no reference to Topanga and therefore there was no way to distinguish it from a simple cryptocurrency wallet. On 7 February 2019, the husband copied the wife into an email to Barclays concerning a re-mortgage, which distinguished between the private investment in Coinbase and the husband's cryptocurrency holdings. Again, the wife asserts the missing information is the absence of reference to Topanga.

31. The husband also produces a message from him to a friend of the wife's on 26 December 2020 in which he stated "Coinbase is coming soon". He also relies on messages exchanged with the wife's brother on 6 January 2021 in which the husband sent links regarding how to buy Coinbase shares and on 14 April 2021, the date of the flotation, sending the wife's brother links to news stories of the shares opening at $381 per share. Both the wife's friend and her brother now contend that the husband never communicated with them in respect of the Coinbase shares, although those statements, made via WhatsApp to the wife, post-date by a significant period the contemporaneous messages referred to above.

32. Against these matters, on behalf of the wife Mr Molyneux points to the fact that, in the context of the wife's zealous and unremitting search for assets she believes to be undisclosed by the husband, the wife did not raise the question of the nature and potential of Topanga ahead of or at the FDA, despite having identified the adequacy of the husband's disclosure as an issue in her Statement of Issues for the FDA. He further points to the fact that at the First Directions Appointment on 7 April 2021 the notation against Topanga in an asset schedule prepared for that hearing by then counsel for the wife stated "US company, Unknown, Need more information" and the fact that Topanga Canyon Holdings LLC was not addressed individually in the Wife's Questionnaire. This, submits Mr Molyneux, shows the wife was not aware that Topanga was a vehicle for holding stock in Coinbase, which latter term Mr Molyneux submits was used as an interchangeable term for cryptocurrency, and that the communications summarised in the foregoing paragraph were no more than matters of

general interest to someone following the development of cryptocurrency. Within this context, and pointing to text exchanges between the husband and JAM, Mr Molyneux submits that the husband knew Topanga was a very valuable asset at the time he completed his Form E and the wife did not. At the First Appointment on 7 April 2021 the parties agreed to a private FDR.

33. Coinbase floated on 14 April 2021 and Topanga distributed to the husband 21,872 shares with a value of $7,059,188. In circumstances where the listing took place seven days after the FDA, the wife contends that the listing would have been well within the husband's contemplation at the time of that hearing.

34. The wife further asserts that, even after the flotation, the husband continued to hide the true position in respect of Coinbase, sending the wife a schedule on 17 May 2021 in which the value of the Topanga holding was still $75,000 and failing to deal with the subject in his reply to the wife's Questionnaire. She further alleges that the husband sought to take advantage of his ongoing failure to disclose by urging her to negotiate a financial settlement, during which period he also reduced financial support to her to £2,000 per week with a view to increasing pressure on her to settle. Mr Molyneux relies on a letter from the husband's solicitors dated 2 July 2021 as demonstrating the husband did not intend to disclose the windfall from Coinbase:

> "Given the sheer number of our client's bank accounts and the fact that the statements provided with his Replies are up to date, I do not propose providing updating disclosure in addition to this, particularly given the costs involved, save for up-to-date statements for my client's crypto currency accounts as there has of course been significant movement in the value of crypto currencies since my client's Form E. On this basis, my client is content to proceed with the private FDR without your client updating her disclosure also. Please confirm this is agreed."

35. The husband contends that he notified *his* solicitors of the Coinbase IPO on 9 April 2021 but accepts that the wife was not notified until the parties exchanged their updating disclosure on 16 July 2021 immediately prior to the private FDR. The husband relies on the fact that when the parties, belatedly, exchanged updating disclosure, his updating disclosure contained full details of the flotation and its result. The letter enclosing the husband's updating disclosure stated as follows:

> "As your client was aware at the time (and has been kept up to date since), my client invested $75,000 in Topanga Canyon Holdings LLC in 2015 – this was a vehicle for holding Coinbase shares and was a very unusual venture capital opportunity. Until recently Coinbase was a private company and Topanga Canyon Holdings LLC have provided K-1s annually confirming the value of the investment remained $75,000, as detailed in the Form E. After a number of false-starts, Coinbase listed their shares publicly in April 2021. This was clearly a one-off event. Topanga Canyon Holdings LLC informed my client that as a consequence of this, the Coinbase shares had to be transferred to a new investment account held by him personally. The market value of these shares is now c.$5.28m as per the documents enclosed. If these were to be liquidated, my client would incur Portuguese CGT (at 28%) on the gain."

36. The husband seeks to explain what he contends was a *delay* in the disclosure of the Coinbase shares until immediately prior to the FDR by reference to the fact that his solicitors were concentrating on an analysis of the Imerman material returned by the wife in April 2021 (her possession of which the husband contends renders it even less likely he would have attempted to conceal the nature and potential of the Topanga investment) and attempting to respond to the wife's Questionnaire which exhibited 4,700 pages of supporting evidence. Whilst the husband acknowledges that the Coinbase shares should have been disclosed sooner, he points to the fact that whilst late, he made full disclosure *prior* to the private FDR.

37. Before moving on to the wife's further allegations with respect to non-disclosure, I pause to note that the husband submits that the wife's subsequent position with respect to the Coinbase shares constitutes relevant conduct. He asserts that in November 2021, when the Coinbase shares were at what Ms Campbell describes as "an all-time high", the husband asked the wife to agree that the shares be sold at $342 per share. The husband asserts that the wife ignored this request and that by July 2022 the shares had fallen to $51 per share. In September 2022 the husband sold the shares at $74 per share and applied the balance realised of $1.6M to reduce the mortgage debt on the properties in Wyoming as I have described.

38. On behalf of the wife, Mr Molyneux submits that the foregoing matters contaminated the proceedings and left the wife entirely unable to trust the husband's account of his financial position, rendering her subsequent spending on legal costs reasonable given the likelihood of other concealed assets and the need to uncover them. Mr Molyneux submits that this position was compounded by what the wife contends were further incidents of non-disclosure by the husband discovered during the course of the proceedings.

39. The wife contends that the husband failed to disclose that he was the beneficial owner of 5 Bitcoin held in a Gemini cryptocurrency account. The wife asserts that, in the context of the Form E requiring a party to identify "investments you hold or have an interest in", the husband failed to disclose that he was the legal owner of the Gemini account and did not reveal his ownership in response to the wife's Questionnaires. Whilst the wife suggests that the husband's holding with Gemini was only revealed when she obtained a subpoena against Gemini in February 2023, the husband points to the fact that the Gemini account was apparent in the 'Imerman' material taken by the wife, that in his reply to the wife's Questionnaire he did not deny holding an account with Gemini, stating rather that he had not held one for many years and that at a meeting with Mr Pinto and the wife's shadow cryptocurrency expert on 14 June 2022, he had stated in terms that the Gemini account was previously his but had been gifted to his sister.

40. The husband contends that he made a wedding gift to his sister of the rarely used Gemini wallet, worth $22,124 at the time it was gifted in 2018. The husband further contends that his sister did nothing with the gifted account after encountering difficulties with the 'Know Your Client' (KYC) process and that in March 2022 he sought to assist her in having the ownership of the account transferred into her name. He contends that this sequence of events is supported by the statements from Gemini indicating no activity subsequent to the account being gifted in November 2018 and by contemporaneous records showing his attempts to transfer title to his sister. The wife contends these attempts were made only after it became apparent that an expert

in cryptocurrency, resisted by the husband, would be examining his cryptocurrency holdings. Finally, the court has before it a witness statement from the husband's sister, dated 7 February 2024, in which she states that the Gemini account was a wedding gift to her, and sets out the reasons for the delay in transferring the Gemini account into her own name. The sister's statement was not challenged in cross-examination. In evidence, the husband accepted that he could have described the position more fully in his Form E, but maintained he did not believe the Gemini account was any longer his following the wedding gift to his sister.

41. The wife further contends that the husband failed to disclose a cryptocurrency wallet held with XAPO. The husband accepts that the XAPO account was not set out in his Form E and he asserts that he had forgotten about his holding in XAPO, believing the wallet to have "zeroed out", until the wallet was identified by the wife's shadow expert. He further contends that the wife was herself aware of the existence of the XAPO account in circumstances where the husband expressly referred to his cryptocurrency account with XAPO in a discussion with the wife on 24 February 2020 concerning the XAPO KYC process. Following the identification of the XAPO wallet, and the fact that it had received 16.05 Bitcoin in November 2017, the husband liquidated the Bitcoin held in that wallet for €420,720. The husband used those funds to pay £9,000 of extras at the children's school and €9,542 to fund the Cigna Health Insurance Policy. The remaining funds of some $361,000 were used by the husband to pay down a further portion of the mortgage on the Wyoming properties in the manner I have described. The wife contends that this was another example of the husband failing to disclose assets until he has dealt with them unilaterally. The husband contends he was rendering more secure investments that were otherwise risky in the context of the highly volatile cryptocurrency market, with the result that the parties achieved increased equity and reduced interest payments.

42. With respect to the wider financial non-disclosure alleged by the wife against the husband, this falls into two broad categories. First, undisclosed cryptocurrency assets. Second, what the wife characterises as a second undisclosed balance sheet. The wife's case in both respects has been very hard to follow.

43. The wife contends that the evidence before the court demonstrates significant undisclosed assets held by the husband in cryptocurrency. As an overall context, the wife relies on the general point that cryptocurrency provides a space to hide for those who do not wish to make disclosure and, absent KYC, identifying the beneficial owner of an asset held in cryptocurrency depends on the owner being frank. In these circumstances, the wife points to incidences of what she contends are the husband not being frank about cryptocurrency. In addition to the matters concerning Coinbase, Gemini and XAPO set out above, the wife in particular relies on the fact that the cryptocurrency wallet '3Dajtd', originally said by the husband to belong to a woman with whom he had a relationship, QR, and confirmed by QR to belong to her, in fact belongs to a company, TP, owned by a business acquaintance of the husband. The husband admitted in oral evidence that QR had claimed ownership of the wallet because he had asked her to, he believing at that time that it was hers. Mr Pinto identified that 80.25 Bitcoin had been traced through the '3Dajtd' wallet equivalent in value to $786,901. During his oral evidence Mr Pinto confirmed that whilst large sums may pass through a wallet, he is not able to say why such sums have gone

through it or who controls it. The court now has a document from TP stating that '3Dajtd' is a TP wallet.

44. Within the foregoing context, the wife contends that the husband has failed to disclose cryptocurrency under his control valued at some £37M. This figure appears to have been achieved by adding up a mixture of cryptocurrency accounts that the court is aware of, including Gemini and XAPO, and cryptocurrency accounts and wallets that the wife considers have not been sufficiently explained, notwithstanding the expert report to which I shall come below. As well as the foregoing matters, the wife further contends (although the arithmetic is difficult to follow) that the husband has been guilty of non-disclosure of "additional" cryptocurrency assets in the region of £141M. In the circumstances, the wife appears to contend that the husband has failed to disclose cryptocurrency assets worth up to some £178M.

45. With respect to the husband's cryptocurrency holdings, the court has the benefit of an expert report from Mr Marlon Pinto, an expert in cryptocurrency. That report was directed by HHJ Cope on 4 March 2022. The preparation and finalisation of the expert report has been a protracted exercise, with the wife continuing to assert that the husband has failed to disclose the full extent of his holdings in crypto currency to the jointly instructed expert and the husband asserting that the wife has failed to co-operate with proposed meetings with the expert and has contacted the expert unilaterally even whilst instructing solicitors. Within this context, whilst HHJ Cope set a cut-off date for the period considered by the expert of 2019, in the face of the wife's continued interrogatories the husband has in fact made efforts to reconstruct *all* of his cryptocurrency transactions since his initial investment in the field in 2015. In the foregoing context, and unusually, the expert stated in oral evidence he had examined every transaction between 2015 and 2024.

46. Mr Pinto's final report is dated 16 February 2024. It sets out the background to cryptocurrency and the key terms. Mr Pinto gave measured and helpful oral evidence to the court. During his oral evidence, Mr Pinto confirmed that, given the nature of cryptocurrency, significant reliance must be placed on self-certification when seeking to identify ownership of assets, but that surrounding evidence may assist. Whilst the blockchain identifies every single transaction publicly, it is not possible to say from that information alone who owns the wallets and who is engaged in the transactions. Within this context, in his report Mr Pinto examines each of the cryptocurrency transactions in this case about which the wife or her shadow expert have raised concerns in the context of any wider information available in respect of those transactions.

47. Mr Pinto confirmed that on 14 June 2022 and 31 January 2024 the husband provided him with access to his trading platforms and the wallets and keys associated with them and responded to every enquiry made by Mr Pinto. Mr Pinto confirmed that, on the basis of the evidence available, there were no apparent omissions in the transactions from 2015 to date and that all of the potential leads raised by the wife's shadow expert had been addressed. He stated that he had seen all of the transactions on the Coinbase, Gemini and XAPO accounts. He told the court that in none of the documents he had been provided with, including updating information, did he see evidence of unknown or hidden cryptocurrency assets.

48. The genesis of the wife's further assertion that there is also a substantial, undisclosed balance sheet of assets appears to be based on the premise that the husband represented to her during the marriage that the family had significant offshore assets and income but that the family lived off only income taxed in the United Kingdom. From this premise, the wife extrapolates the proposition that significant offshore assets must remain available in some form. With respect to evidence, and again whilst the wife's case is very difficult to follow, the wife asserts that withdrawals from the UBS accounts have not been remitted to the UK, that those withdrawals were cumulative and that they were not dissipated in circumstances where the family was living off only income taxed in the UK, meaning that some £12M of funds must remain undisclosed, which the wife believes has been used to purchase as yet undisclosed assets offshore. The wife further contends that the Portuguese tax returns of the husband evidence further undisclosed offshore assets of some £9.8M. Within the foregoing context, and by including the value of the Coinbase listing as at 14 April 2021 of £5.7M, alleged property in Argentina and Portugal and what she contends are undisclosed proceeds from drawing down the Barclays shares, the wife arrives at a figure of some £33M of assets on an undisclosed balance sheet. The wife further contends that the husband retains an interest in a power plant, which is generating profits for the husband.

49. The husband denies that he has failed to disclose up to £210M of matrimonial assets. He points to there simply being no evidence of such hidden assets, whether in this amount of otherwise. On behalf of the husband, Ms Campbell submitted that the wife's case on this issue remains incomprehensible, notwithstanding that the wife improperly accessed and catalogued all of the husband's confidential financial information, has spent nearly £2M in costs and where the husband has provided vast amounts of information in four sets of replies to the wife's questionnaire and to the expert.

50. In the circumstances set out above, the wife contends, through Mr Molyneux, that the following matters are material to the court's consideration of whether the husband has disclosed his total assets and to whether the court should infer further assets exist:

    i) There is evidenced non-disclosure in the form of Coinbase, Gemini and XAPO. These incidences show that the husband's approach has been to respond to what is known rather than volunteer what ought to be disclosed.

    ii) The husband has recently loaned a friend and acquaintance who has owed the husband £60,000 for 15 years a further $500,000, which is not the action of a man concerned about lack of liquidity.

    iii) The husband's current lifestyle (and the parties' lifestyle prior to their separation) is inconsistent with his case of diminished liquidity and the need to preserve equity.

    iv) The husband has permitted inaccuracies in his US tax return to go uncorrected and misfiled the parties' joint IRS tax return (approved, the husband points out, by the wife's accountant at the time of filing) showing the husband as the "Partnership Representative" in respect of the LLC holding 2 CD Street.

v) The husband was heavily involved in the life of his former partner, QR (whilst Mr Molyneux puts the matter decorously in his closing submissions, the wife's frank allegation is that the husband has engaged in money laundering of illicit proceeds from prostitution services run by QR, who the wife asserts is herself a prostitute).

51. Against the foregoing matters, the husband contends that the wife has been guilty of egregious conduct of her own, some of which I have referred to above already. In summary, the husband seeks to rely on the following matters:

i) In failing to comply with at least *fifty* individual case management orders designed to progress the proceedings (set out in a table prepared on behalf of the husband) and repeatedly issuing applications in respect of matters that the court has already dealt with and falsely asserting she was without legal advice at a time when she had extended her litigation loan, the wife has been guilty of egregious litigation conduct. By contrast, the husband contends he has complied with all directions.

ii) The wife has failed to engage in any way in an effort to settle the proceedings. By contrast, the husband contends he has made repeated offers to discuss settlement.

iii) By failing to agree to the sale of the Coinbase shares at $381 per share the wife was responsible for financial loss.

iv) The wife has spent at an entirely unreasonable level on legal fees, requiring a sum of £913,000 to bring the parties to parity. The husband contends that after August 2021, when the amounts spent by the parties on legal fees were similar, the wife's spending on legal costs became entirely unrestrained and unfocused. The husband contends that this sum should be added back on the wife's side of the balance sheet.

v) The wife acted unreasonably in obtaining a litigation loan in circumstances where the husband offered on 14 September 2021 pound for pound funding of her legal fees, resulting in unnecessary interest and fees of £168,806. The husband contends that this sum too should be added back on the wife's side of the balance sheet.

vi) The wife secured an MPS award including an element for rent in London at a time when she in fact intended to, and did, move to Wyoming, and thereby lied to the court and obtained £22,500 of MPS on a false basis. By occupying the property in Wyoming, the wife was responsible for $120,000 in lost revenue, of which the wife's share was $60,000. The husband asserts that the wife extended her stay in Wyoming to November 2023 *prior* to stating to this court that she wished to rent in London and falsely gave her English address in her statement in support of her application in September 2023. The husband again contends that these figures should be added back.

vii) The wife took legal action against the US bank seeking to reverse the husband's payment down of the mortgage and lost, incurring $113,000 in costs. By failing, as ordered by this court, to open a joint account with the

bank, $113,000 was lost to the parties. During the litigation, the wife misrepresented the position of the husband, in particular by stating to the US court that the husband had been unsuccessful in persuading the English court to direct the parties to open a joint account for Wyoming property when the English court had in fact so directed. As I have noted, the husband seeks an add back with respect to the costs ordered against the wife.

viii) The wife failed to take proper care of her rental property in England, resulting in a bill of £12,000 and an electricity bill of £24,987 and incurred liabilities in Wyoming of £23,835. As I have noted, the husband seeks an add back with respect to the costs ordered against the wife.

ix) The wife stole confidential financial information belonging to the husband, resulting in a breach of confidentiality and the need for an 'Imerman' exercise costing £25,000. Again, the husband seeks an add back with respect to the costs ordered against the wife.

52. As I have noted, the wife now seeks the totality of what she describes as the disclosed matrimonial assets, that the husband pay child maintenance and the costs of the children's tertiary education and that the husband indemnify her against any claims by third parties against the matrimonial assets retained by her. The wife advanced no case in the alternative should the court reject her case that tens of millions of pounds in assets remain undisclosed and determine at the computation stage that the matrimonial assets are broadly those set out in the husband's ES2. In the circumstances, the court is without *any* assistance from the wife regarding the computation and division of assets should her contentions with respect to non-disclosure be rejected in whole or in part.

53. The basis of the husband's open offer is set out in the narrative above. At the conclusion of the hearing the husband's position remained broadly in line with that open offer save that, as I have noted, Ms Campbell submitted that the husband should retain the totality of the mortgage liability in Wyoming and all of the New York rental units and proposed that an additional sum of £233,848 be drawn from the pension funds to pay tax on the pension drawdowns. Ms Campbell submits that the husband's position constitutes a broadly equal division of the matrimonial assets, leaving the parties with sufficient funds to meet their respective housing needs, put by Ms Campbell at £2M each, and a fund of £3M to meet income needs, providing the wife with £150,000 per annum for life, supplemented by any earned income the parties are able to generate.

54. By reason of the wife's failure to comply with no less than seven orders making provision for the parties to either agree the position with respect of tax or a single joint expert to provide a report as to the tax position, the court is without any expert evidence with respect to the tax consequences of the respective positions advanced by the wife and the husband save for information provided by his tax advisers. In the circumstances, the court directed at the pre-hearing review that it will proceed on the basis of the tax information that has been disclosed by the parties and I have done so.

THE LAW

55. For the purposes of determining the application before the court, the touchstone is s.25 of the Matrimonial Causes Act 1973, which provides as follows:

> "**Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 24A, 24B and 24E.**
>
> (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 24A, 24B or 24E above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
>
> (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A, 24B or 24E above in relation to a party to the marriage, the court shall in particular have regard to the following matters —
>
> (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;
>
> (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit. which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
>
> (3) As regards the exercise of the powers of the court under section 23(1) (d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters—
>
> (a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

(e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.

(4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—

(a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child."

25A Exercise of court's powers in favour of party to marriage on divorce or nullity of marriage order.

(1) Where on or after the of a divorce or nullity of marriage order the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or, 24A, 24B or 24E above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the making of a divorce or nullity of marriage order an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be

> entitled to make any further application in relation to that marriage for an order under section 23(1)(a) or (b) above."

56. Within the foregoing context and having regard to the issues raised in this case, it is necessary to consider briefly the case law with respect to three other questions, all of which centre on the issue of misconduct.

57. As I have noted, the husband seeks to add back into the asset schedule on the wife's side certain amounts that he contends were wantonly and recklessly dissipated by the wife. The genesis of the add back jurisdiction is the case of *Martin v Martin* [1976] Fam 335, in which the court held that "A spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably." The add back principle has been applied in a cases where assets have been dissipated through gambling (see *L v L* [1994] 1 FCR 134 and *Vaughan v Vaughan* [2008] 1 FLR 1108), prostitution (see *MAP v MFP* (Financial Remedies: Add-Back) [2015] EWHC 627 (Fam)) and reckless overspending (see *Norris v Norris* [2003] 1 FLR 1142). In *OG v AG* [2020] EWFC 52, when examining the "four distinct scenarios" in which conduct arises in financial remedy proceedings and having dealt first with gross and obvious personal misconduct, Mostyn J described the concept of add back as follows:

> "Second, there is the "add-back" jurisprudence. This arises where one party has wantonly and recklessly dissipated assets which would otherwise have formed part of the divisible matrimonial property. Again, it will only be in a clear and obvious, and therefore rare, case that this principle is applied. In *M v M* [1995] 2 FCR 321 Thorpe J found that the husband had dissipated his capital by his obsessive approach to the litigation, which had included starting completely unnecessary proceedings in the Chancery Division. That dissipation was reflected in the substantive award. Properly analysed, that decision can be seen as a harbinger of the add-back doctrine rather than a sanction reflecting a moral judicial condemnation."

58. It is clear that the wanton and reckless dissipation of assets that may justify an add back can, in an appropriate case, include excessive spending on legal costs. As noted by Mostyn J in *OG v* AG, in *M v M (Financial Provision: Party Incurring Excessive Costs)* [1995] 3 FCR 321 Thorpe J held that it was appropriate on the facts of the case to add back assets dissipated by a husband through an obsessive approach to litigation in order that the court could look, when quantifying the wife's share, not at what remained but at what would have remained had such excessive costs not been incurred. In *Rothschild v De Souza* [2020] EWCA Civ 1215, the Court of Appeal (noting that, depending on the circumstances of the case and having regard to all of the s.25 factors, there is no principle that conduct cannot lead to a party receiving less than their needs) reiterated that the approach taken to conduct in *M v M (Financial Provision: Party Incurring Excessive Costs)* is permissible in an appropriate case:

> "In my view, Mr Chamberlayne was right to accept that litigation conduct (or, as he more accurately described it, litigation misconduct) can be taken into account under section 25(2)(g). This is in part because, as he said, money spent on legal costs is no longer available for distribution between the parties and, as a result, no longer available to meet their needs or be

> shared between them. The depletion of the matrimonial assets will plainly not be remedied by an order for costs. Such an order simply reallocates the remaining assets between the parties. It does not necessarily remedy the effect of there being less wealth to be distributed between the parties."

59. The husband also alleges that, beyond what he asserts has been the wife's wanton and reckless dissipation of assets, in this case the wife has been guilty of egregious litigation conduct through her serial failure to comply with court orders and her failure to engage in any serious attempt to settle the proceedings. In *Rothschild v De Souza* at [65] the Court of Appeal confirmed that whilst there are cases in which the court has determined that one party's litigation conduct has been such that it should be taken into account when the court is determining its award, as described above, the general approach to litigation conduct within the financial remedy proceedings is that it will be reflected, if appropriate, in a costs order. In any event, fairness must be considered. At [78] the Court of Appeal summarised the position as follows:

> "[78] The depletion of matrimonial assets through litigation misconduct will plainly not always be remedied by an order for costs. As I have said, such an order simply reallocates the remaining assets between the parties and does not necessarily remedy the effect of there being less wealth to be distributed between the parties. What is important is that, whether by taking the effect of the conduct into account when determining the distribution of the parties' financial resources (both income and capital) and/or by making an order for costs, the outcome which is achieved is a fair outcome which properly reflects all the relevant circumstances and gives first consideration to the welfare of any minor children."

60. If the costs order route is adopted, the fact that the court has added back assets dissipated by a party through an obsessive approach to litigation will not necessarily prevent a costs order also being made. In *M v M (Financial Provision: Party Incurring Excessive Costs)*, in addition to adding back assets dissipated by a husband through his obsessive approach to litigation, Thorpe J also ordered that the husband pay the wife's costs in circumstances where it had been open to the husband to seek to make an offer to settle proceedings, which he had failed to do.

61. Finally, the wife alleges that the husband has been guilty of very serious non-disclosure in the circumstances I have described. The burden of proving that non-disclosure of matrimonial assets has occurred lies on the party alleging non-disclosure, in this case the wife (see *AF v SF* [2019] EWHC 1224 (Fam) at [63]). In *Moher v Moher* [2019] EWCA 1482 at [7], the Court of Appeal made clear that a finding of non-disclosure must have a sound evidential foundation. In *Moher v Moher*, Moylan LJ summarised the general principles applicable when considering non-disclosure as follows:

> "[86] My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.

> [87] (i) It is clearly appropriate that generally, as required by section 25, the court should seek to determine the extent of the financial resources of the non-disclosing party;
>
> [88] (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court "engage in pure speculation". As Otton LJ said in *Baker v Baker*, inferences must be "properly drawn and reasonable". This was reiterated by Lady Hale in *Prest v Petrodel* , at [85]:
>
> > "… the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are."
>
> [89] (iii) This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is "unable to quantify the extent of his undisclosed resources", to repeat what Wilson LJ said in *Behzadi v Behzadi*.
>
> [90] (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called "the inherent probabilities" the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both *Al-Khatib v Masry and Ben Hashem v Al Shayif* and, in my view, it is a legitimate approach. In that respect I would not endorse what Mostyn J said in *NG v SG* at [16(vii)].
>
> [91] This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a "cheat's charter". As Thorpe J said in *F v F*, although not the court's intention, better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in in *NG v SG* , at [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at [16(viii)], that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations."

62. Within this context, in *Crowther v Crowther and Others* [2021] EWFC 88 at [58], Peel J observed as follows regarding the possible forensic platforms for a finding of non-disclosure:

> "[58] Usually, in my view, the evidential platform for a finding of non-disclosure is established by one or more of the following:
>
> i) Direct evidence of an asset which the alleged non-discloser has not revealed (the classic example being the revelation of the existence of a bank account or accounts which feature nowhere in his/her financial presentation, and holding large sums of money);
>
> ii) Failure to comply with court orders and/or provide adequate or complete responses to questions asked, from which failure the court feels able to draw inferences adverse to the alleged non-discloser;
>
> iii) Evidence of a lifestyle which is wholly inconsistent with disclosed financial resources."

DISCUSSION

Computation

63. The first stage of the financial remedies determination is to compute the matrimonial assets, before moving on to considering what constitutes a fair distribution. Having regard to the evidence in this case, I am satisfied that the matrimonial assets available for distribution are those set out in the ES2 provided by the husband. It follows that I am not able to accept the wife's case that there are, in addition, many tens of millions of pounds of matrimonial assets that have not been disclosed by the husband, nor that there is a proper basis for inferring that the husband has in any event failed to disclose assets in excess of those set out in his ES2.

64. The wife's presentation in the witness box on the issue of alleged non-disclosure bordered on the concerning. Her belief that the husband has vast hidden assets is so powerfully held, and such was her urgent need to impress that belief on the court from the witness box, that at times everything she wished to say on the matter tried to emerge at once, causing her very obvious distress. However, whilst I accept that the wife *very* firmly believes that the husband has tens of millions of pounds in assets hidden and, I am satisfied, has become obsessed with demonstrating that in the context of this litigation, I must conclude that that belief is not borne out by the evidence before the court.

65. As noted by Nicholas Mostyn QC (as he then was) in *GW v RW* [2003] EWHC 611, whilst the Form E asks that the current value of an asset be provided, sensible and fair figures should be attributed to unrealisable or deferred assets when completing the Form E, with the maker of the Form E entitled to qualify in the narrative section any figures given. In these circumstances, and whilst his Form E required the current value of his assets to be given, the husband accepted in evidence that there were discussions and plans for a Coinbase listing, that he was aware of this information and that he should have included that information in his Form E. He further accepts that the wife was not notified of the flotation of the Coinbase shares on 14 April 2021, and

the very substantial increase in the value of that asset, until the parties exchanged their updating disclosure on 16 July 2021, immediately prior to the private FDR.

66. Within this context, I am satisfied that the disclosure of potential value of the Coinbase investment, and its actual value following the flotation, came later than should have been the case. That late disclosure by the husband is to be deprecated. However, I am satisfied that that conduct is properly characterised as inappropriately *late* disclosure rather than, as the wife would have it, egregious non-disclosure. Whilst the court heard considerable evidence as to whether the wife was or was not aware of the investment during the course of the later stages of the marriage, and as to whether the husband intended to move to the FDR without disclosing the asset, the fundamental point is that, whilst late, the increased value of the asset *was* disclosed on 16 July 2021 as part of the husband's updating disclosure *prior* to the FDR, and has been taken into account in the proceedings since that date.

67. With respect to the Gemini account, I am likewise not able to conclude on the evidence that the husband's conduct with respect to that account amounted to a deliberate act of non-disclosure. The court has before it unchallenged evidence that the sister was given the Gemini wallet as a wedding gift in 2018 and that she thereafter delayed in transferring the Gemini account into her own name for the reasons set out in that statement. Within this context, and consistent with the position outlined by the sister in her written evidence, whilst the husband's Form E did not explain the position, the wider evidence suggests that the husband was not making efforts to keep it hidden, but rather believed the wallet now belonged to his sister. In this respect, at a meeting with Mr Pinto and the wife's shadow cryptocurrency expert on 14 June 2022, the husband stated in terms that the Gemini account was previously his but had been gifted to his sister. In addition, the Gemini account was apparent in the 'Imerman' material taken by the wife and in his reply to the wife's Questionnaire the husband did not deny holding an account with Gemini, stating rather that he had not held one for a number of years. Once again, whilst the husband maintained in the foregoing circumstances that he did not believe the Gemini account was any longer his following the gift to his sister for her wedding, the husband accepts that he could have described the position more fully in his Form E. I am satisfied that that concession properly reflects the nature of his default with respect to the Gemini wallet.

68. It is possible to be more sceptical about the husband's explanation for his failure to set out in his Form E details of the XAPO wallet, that explanation being that he had forgotten about the wallet containing a not insignificant sum of cryptocurrency in circumstances where he believed it had 'zeroed out'. Against this however, it is clear that the husband had not, historically, attempted to hide the existence of the XAPO account from the wife, in circumstances where the evidence demonstrates that the husband expressly referred to his cryptocurrency account with XAPO in a discussion with the wife on 24 February 2020 concerning the XAPO KYC process. In that latter context, I am prepared to accept that the husband's failure to list the XAPO wallet on his Form E was an oversight rather than a deliberate non-disclosure in circumstances where, a little over 12 months prior to his Form E, the husband had discussed issues concerning the XAPO wallet with the wife.

69. As I have set out above, in addition to her allegations of non-disclosure with respect to the Coinbase investment and the Gemini and XAPO cryptocurrency wallets, the

wife alleges that the husband has failed to disclose up to £178M in cryptocurrency. Having regard to the available evidence, I am not able to accept that contention.

70. It is the case that the cryptocurrency wallet '3Dajtd', originally said by the husband to belong to QR, and confirmed by her to belong to her, in fact belongs to a company owned by an associate of the husband and that the husband admitted in oral evidence that QR had claimed ownership of the wallet because he had asked her to. It is also the case that Mr Pinto identified that 80.25 Bitcoin had been traced through the '3Dajtd' wallet equivalent in value to $786,901. Against this, during his oral evidence Mr Pinto confirmed that whilst large sums may pass through a wallet, he is not able to say why such sums have gone through it or who controls it. The court now has a document from TP stating that '3Dajtd' is a wallet controlled by TP.

71. Further, and more fundamentally, having analysed all of the transactions on the Coinbase, Gemini and XAPO accounts, and undertaken an audit of the husband's cryptocurrency trading since its inception in 2014, the single joint expert gave evidence that in none of the documents he had been provided with, including updating information, nor during the course of his access to the husband's accounts did he see evidence of unknown or hidden cryptocurrency assets. Within this context, it is also noteworthy that the XAPO wallet was the only additional wallet revealed to exist by the comprehensive process carried out by the single joint expert, which process included investigation of the questions raised by the wife's shadow expert regarding the possibility of hidden cryptocurrency assets.

72. Finally, and as set out above, the husband's approach to the Coinbase investment must be deprecated as late disclosure of a very significant asset, his approach to the Gemini wallet as a less than accurate description of the legal ownership of that asset and his approach to the XAPO wallets as a less than rigorous approach to keeping track of his cryptocurrency holdings. For reasons I shall come to, these are matters relevant to the question of the extent to which the wife's significantly greater expenditure on legal fees should be accounted for by an add back. However, I am satisfied that, thus characterised, they are not matters that are capable of supporting the wife's wider case that the husband has failed to disclose cryptocurrency assets worth up to some £178M in circumstances where there is simply insufficient direct evidence to support the existence of such undisclosed cryptocurrency assets. There is no sufficient evidential foundation to make a finding of such non-disclosure.

73. I accept that, as a class of assets, cryptocurrency renders the identification of ownership and control of assets harder. However, whilst the husband's evidence concerning the '3Dajtd', wallet was less than satisfactory, I am not satisfied that the evidence before the court is capable of establishing on the balance of probabilities that the husband has failed to disclose up to £178M of cryptocurrency assets. There is no cogent direct evidence of such assets (despite the wife having accessed the husband's confidential financial information and having it in her possession for 18 months before returning it and expending close to £2M in fees on legal and professional advice) nor, I am satisfied, of the husband having a lifestyle obviously inconsistent with his disclosed financial resources. My findings concerning Coinbase, Gemini and XAPO are not capable of being extrapolated to support a finding that the husband has failed to disclose tens of millions of pounds worth of cryptocurrency. Whilst, for the reasons I have set out, the husband has been guilty of late disclosure with respect to Coinbase, this is not a case in which the husband has failed to comply with court

orders and/or to provide adequate or complete responses to questions asked from which failure inferences adverse to him could be drawn.

74. In this context, I am likewise satisfied that there is no evidence that could allow the court to conclude on the balance of probabilities that the husband has failed to disclose some £33M of assets comprising an offshore balance sheet. The wife's assertions in this regard were extremely difficult to follow and appeared to be based on a degree of double counting (her calculations on this issue including, for example, the value of the Coinbase listing as of 14 April 2021 of £5.7M) and unevidenced assumptions concerning the husband's Portuguese tax returns and the nature of withdrawals from the UBS account and use to which they were put. The court was provided with no cogent evidence with respect to there being undisclosed proceeds from drawing down the Barclays shares invested in offshore assets, property in Argentina or Portugal or that the husband retains an interest in a power plant. In this context, I am satisfied that there is no direct evidence suggestive of £33M of undisclosed offshore assets (again, despite the wife accessing husband's confidential financial information and having it in her possession for 18 months before it was returned, carefully catalogued, to him and expending close to £2M in fees for legal and professional advice). Again, there is no cogent evidence of the husband having a lifestyle obviously inconsistent with his disclosed financial resources or of him having failed to comply with court orders and/or to provide adequate or complete responses to questions asked from which failure inferences adverse to him could be drawn.

75. Whilst in the foregoing circumstances the court was left with some concerns regarding some parts of the husband's approach to timely and accurate disclosure in this case I am satisfied on the evidence that, even taking into account all of the matters prayed in aid on behalf of the wife by Mr Molyneux, it would not be appropriate in this case to draw an inference that the husband has failed to disclose many tens of millions of pounds of assets or that he has, in any event, failed to disclose lesser sums.

76. In the foregoing circumstances (and satisfied as I am that the wife has not evidenced the alleged loan from her father and does not appear to dispute that the properties inherited by the husband from his father and the power plant and OP ventures are non-matrimonial) I conclude on the balance of probabilities that the matrimonial assets available for distribution are as set out in the ES2 provided for the final hearing by the husband. Namely:

	Wife	**Husband**	**Joint**	**Total**
1 CDE Street, Wyoming			£3,458,017	£3,458,017
2 CDE Street, Wyoming			£4,632,832	£4,632,832

Z Street Apartments, New York			£1,992,033	£1,992,033
Savings	£48,799	£137,990	£34,744	£221,533
Investments	£26,768	£499,822		£526,590
Business Assets		£71,009		£71,009
Other assets	£45,242	£120,144		£165,386
Chattels	£10,000			£10,000
Pensions	£15,003	£2,971,221		£2,986,224
Sub Total	**£145,812**	**£3,800,186**	**£10,117,626**	**£14,063,624**
Liabilities	(£1,527,621)	(£59,899)	(£29,662)	(£1,617,182)
TOTAL	**(£1,381,809)**	**£3,740,287**	**£10,087,964**	**£12,446,442**

77. Ahead of the exercise of distribution, and as noted above, the husband contends that a number of adjustments to the asset scheduled are required by way of add back. In summary, the husband contends that the following figures should be added back to the wife's side of the asset schedule:

i) The differential between the amount spent on legal fees by the wife and that spent by the husband, now amounting to £913,000.

ii) In default of provision of the pawn ticket, the value of the husband's watches and the family car, in the sum of £156,693.

iii) The liabilities generated by the wife at the properties in England and Wyoming, including an outstanding electricity bill of £24,987, now amounting to £61,158.

iv) The loss of rental income on 2 CDE Street, Wyoming consequent upon the wife's occupation of that property following the MPS hearing, in the sum of £60,000.

v) The overpayment of MPS consequent upon the wife representing to the court that she intended to rent a property in London, in the sum of £22,500.

vi) The costs award against the wife in consequence of her losing her US litigation against the US Bank, in the sum of £104,800.

vii) The costs incurred by the husband arising out of the 'Imerman' exercise consequent upon the wife unlawfully accessing his confidential financial information, in the sum of £25,000.

viii) The costs of the *ex parte* application made by the wife on 6 September 2023, in the sum of £30,000.

ix) The existing costs orders, in the sum of £17,410.

78. The case law makes clear that an add back may be appropriate in response to conduct that comprises a clear and obvious case of extravagant living, reckless speculation or other wanton and reckless dissipation of assets, for which an order for costs is not capable of providing a just remedy because a costs order will not remedy the effect of there being less wealth to be distributed between the parties. In such circumstances, and contrary to the case advanced by the husband, an add back will not be an appropriate redress for every unwise, foolish or misconceived action that has led to the dissipation of matrimonial assets. In particular, where a party has incurred costs due to the other party's conduct, that can be dealt with at costs stage in usual way. It is only where expenditure has resulted in reduction of assets such as to affect their fair division that an add back may fall to be considered. In this case, I am satisfied that this is the position in respect of the spending on legal costs by the wife but not in respect of the other matters included by the husband. Those other matters, I am satisfied, fall to be considered and determined at the distribution stage under s.25(2)(g) of the Act, rather than by way of add back at the computation stage.

79. The husband contends that if the wife's excessive spending on legal costs is not added back then, in what is a sharing case, the husband is in effect paying 50% of the wife's excessive spending, which is not fair and accordingly is different from being penalised in costs.

80. Within the context of the findings made above, I accept that the husband's late disclosure of the Coinbase flotation resulted in a legitimate concern on the part of the wife as to whether the husband was being fully transparent regarding his finances. In such circumstances, I am satisfied that it was reasonable for the wife to seek further information regarding his financial position following the disclosure of the flotation. However, thereafter I consider that the course adopted by the wife went *far* beyond such a reasonable approach.

81. Shortly after the disclosure of the Coinbase flotation in the husband's updating disclosure on 16 July 2021, the parties respective costs were broadly similar, the wife's being £169,115 and the husband's being £179,586. Thereafter, the costs sharply diverged. By November 2023 the wife had incurred £1,519,976 as against the husband who had incurred £844,129. At the date of the final hearing the wife had spent £1.9M as against the £907,026 spent by the husband, a difference of some £913,000. Beyond the stark discrepancy in these figures, and as this court has noted

in previous judgments, the wife's spending on legal costs continued notwithstanding that, despite repeated directions by the court, the wife produced no definitive pleading regarding non-disclosure and repeatedly failed to comply with orders of the court designed to address her stated concerns regarding disclosure, in particular those dealing with the timely provision of the expert report on cryptocurrency (ultimately, it was the court which had to approve the terms of the letter of instruction in default of the wife doing so) and the provision of a statement by her explaining her allegations of non-disclosure. As I noted in my judgment dated 5 July 2023, at which time the wife's fees incurred stood at some £1.3M:

> "[50] However, the court cannot but be concerned by the fact that the wife has to date already incurred some £1.3M in legal costs, including a substantial debt at a punitive rate of interest, as compared to the circa £600,000 costs incurred by the husband. Whilst this is not the occasion to make findings in relation to the wife's litigation conduct, and I make clear I do not do so, it would appear that a significant part of those costs have been incurred in the wife's desire to prove her contention that the husband is hiding assets, including holdings in cryptocurrency. Notwithstanding this, and whilst some of the husbands actions will have fed into the wife's concerns, the wife has to date failed to itemise with particularity any deficiencies in disclosure, even though directed to do so by the court."

And

> "[53] Having reviewed the schedules, and having regard to the directions that remain outstanding from 17 November 2022, including the finalisation of the tax and pension positions, the work outlined in the estimate to for the work up to PTR appears broadly reasonable. In particular, it does not contain provision for further investigation of the question of undisclosed assets. I consider that to be the correct approach. An award under an LSPO made a significant way through the proceedings is not a licence to start again with respect to case management or otherwise to fundamentally change the established shape of the case. As I have noted, after some 30 months of litigation the wife has not provided a schedule of alleged non-disclosure of assets notwithstanding the extensive costs expended by her. In such circumstances, I am satisfied that it would not be appropriate to authorise any further costs to be expended on that question, save those required to facilitate the meetings required to finalise the current joint expert report, to take legal advice in respect of the conclusions of that report (as already provided for in the estimate of costs) and to give instruction on it."

82. Notwithstanding these explicit warnings, the wife continued to fail to comply with the directions of the court aimed at progressing the matter to final hearing and as at the hearing on 1 November 2023, at which point the wife's costs stood at £1.5M, the wife had *still* failed to definitively particularise her case with respect to non-disclosure. As I have noted, at the commencement of the final hearing the wife had not prepared a statement of issues in advance of the final hearing confirming her case as to non-disclosure and did not respond to the husband's proposals in respect of the pre-trial documents. The wife had not likewise provided an ES2 detailing what she contends are in fact the matrimonial assets nor an open offer.

83. In the foregoing context, whilst accepting that the actions of the husband will have initially caused the wife legitimate concern, I am satisfied that thereafter the wife's expenditure on legal costs became increasingly unrestrained, unfocused and, ultimately, reckless. I am not able to accept her submission that the husband is the author of the wife's approach having regard to the nature and extent of the information he has provided in response to the wife's multiple further requests for information. Whilst during her oral evidence the wife stated she had attempted to prioritise which orders of the court she complied with, she in fact continued to comply with almost none of them. Despite repeated warnings, the wife frustrated attempts by the court to deal with her concerns with respect to non-disclosure by serially failing to comply with directions whilst also running up legal costs double those incurred by the husband in pursuing her own agenda, to no coherent outcome. It is difficult to see how the wife came to the conclusion that this level of expenditure was reasonable having regard to the value of the assets in the case. In this context, and as noted by HHJ Hess in *YC v ZC* [2022] EWFC 137:

> "In obvious cases, and absent any proper explanation for the differential in spending, the court can deal with any unfairness arising from the differential in legal costs spending by making an adjustment in the court's asset schedule before distribution, for example by excluding a portion of the over-spender's unpaid costs and/or adding back a portion of the over-spender's costs already paid, thus appropriately penalising the over-spender without actually making an *inter partes* order for costs."

84. I consider this to be an obvious cases of reckless expenditure on legal costs in the context of the wife's obsessive approach to her allegations of non-disclosure. Within this context, I am satisfied that an order for costs would not provide a just remedy for the wife's reckless approach because such an order will not remedy the effect of there being less wealth to be distributed between the parties. In the circumstances, and being careful to consider the question of need and in order to achieve fairness, I am satisfied that the court should deal with the unfairness arising from the differential in legal costs spending as between the wife and the husband by adding back to the asset schedule a portion of the wife's costs already paid.

85. Having regard to the evidence, I am satisfied that the sum to be added back is £800,000. Whilst the differential between the party's spending on legal costs is higher than this figure, as I have noted and taking a broad view, the late disclosure of the substantial asset comprising Coinbase gave rise to legitimate concern on the part of the wife and, as I have said, justified the wife in seeking additional information in the context of the late disclosure of a substantial part of the matrimonial resources. In the circumstances, a portion of the additional expenditure by the wife was justified. However, and subject to that caveat, I am satisfied for the reasons I have given that the majority of the differential in spending on legal fees as between the wife and the husband was not, and constituted reckless expenditure. The wife must bear the burden of that reckless spending. The add back has the following effect on the matrimonial assets as I have found them to be:

	Wife	**Husband**	**Joint**	**Totals**

1 CDE Street, Wyoming			£3,690,385	£3,690,385
2 CDE Street, Wyoming			£4,382,196	£4,382,196
Z Street Apartments, New York			£1,992,033	£1,992,033
Savings	£48,799	£137,990	£34,744	£221,533
Investments	£26,768	£499,822		£526,590
Business Assets		£71,009		£71,009
Other assets	£45,242	£120,144		£165,386
Chattels	£10,000			£10,000
Add Back	£800,000			£800,000
Pensions	£15,003	£2,971,221		£2,986,224
Sub Total	**£945,812**	**£3,800,186**	**£10,117,626**	**£14,863,624**
Liabilities	(£1,527,621)	(£59,899)	(£29,662)	(£1,617,182)
TOTAL	**(£581,809)**	**£3,740,287**	**£10,087,964**	**£13,246,442**

Distribution

86. I turn in the foregoing context to the question of the distribution of the matrimonial assets as I have found them to be, adjusted by reason of the add back that I am satisfied must be made in order to ensure fairness in the context of the wife's profligate spending on legal fees. In considering the question of distribution, I remind myself that, as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The rationale for this approach was

explained by the House of Lords in in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 as follows:

> "This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals…The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

87. In considering the distribution of assets in this case I have, pursuant to the duty on the court to consider whether it would be appropriate to exercise its powers so that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable, also borne in mind the desirability of achieving a clean break between the parties, which outcome both parties seek in this case.

88. As I have noted, the wife provided no ES2 of her own and advanced no case beyond her contention that she should be awarded *all* of the matrimonial assets in circumstances where the evidence demonstrated that the husband had failed to disclose tens of millions of pounds in assets. In the circumstances, and again as I have noted, the court received no substantive submissions from the wife as to the approach it should take to computation and distribution were the court to find, as it has, that the assets were as set out in the husband's ES2. Her late filed s.25 statement does, however, deal with *some* of the matters that the court is required to consider when dealing with distribution.

89. Having considered carefully the evidence and submissions in this case, I am satisfied that the fair order to make in this case is as follows:

i) 1 CDE Street, Wyoming will be transferred to the husband. The husband will take on the tax liability assigned to this property. The husband will take on the US Bank mortgage liability in respect of this property in the sum of approximately £812,368.

ii) 2 CDE Street, Wyoming will be retained by the wife. The wife will take on the tax liability assigned to this property . The wife will take on the US Bank mortgage liability in respect of this property in the sum of approximately £329,364.

iii) The husband will retain two of the units at Z Street, New York and the tax liability assigned to those units.

iv) The wife will retain two of the units at Z Street, New York and the tax liability assigned to those units.

v) The parties' joint accounts shall be closed and the proceeds shared between them equally.

vi) The husband's private equity investments shall be shared equally between the parties *in specie*.

vii) The husband's remaining cryptocurrency shall be shared equally between the parties *in specie*.

viii) The following sums shall be set aside from the pension funds:

a) £345,750 to be held in escrow to fund the tax due on Coinbase. If any of the funds held in escrow are not reclaimed, the fund will be divided between the parties upon the expiry of the four year limitation period.

b) £700,000 to be placed in an account to provide a fund for the tertiary education of the children. Withdrawals from the account will require the signature of both parties.

c) £238,848 to fund the tax liability incurred on the pension drawdowns.

ix) The balance of the pension funds in the Malta, Jersey and US pensions shall be shared equally between the parties.

x) The wife shall return to the husband the pawn ticket to enable him to recover his watches and jewellery.

xi) The remaining chattels shall be shared equally between the parties, to be divided by list, with each party taking alternate choices.

xii) The parties shall retain all other assets and liabilities in their own names.

xiii) There shall be a clean break.

My reasons for concluding that this represents a fair division of the matrimonial assets are as follows.

90. The first consideration of the court must be to the welfare while a minor of any child of the family who has not attained the age of eighteen. M has now attained the age of 18 and is in full time tertiary education. E is 16 and is completing her secondary education in this jurisdiction. Whilst the wife contends that both children of the family have diverse special needs, the court has not been provided with any definitive evidence in this regard and it is clear that both children are placed in, and coping well with, mainstream education. As I have noted, both parties agree that a fund should be set aside to provide for the completion of tertiary education by both children. In addition, it will be important moving forward for E (and indeed M, although she is now an adult) to enjoy a relationship with both parties and both parties will be expected to support the living expenses of E when she is with them.

91. With respect to the age of each party to the marriage and the duration of the marriage, the wife is 55 years of age and the husband is 58 years of age. They were married for 29 years. Whilst the latter years of the marriage were not happy and, to adopt Ms Campbell's phrase, "unconventional, this is a case in which the parties committed to sharing their lives and to living and working together, over a long period. Whilst both parties allege extra marital relationships and kept separate homes, they continued to

present to their children and more widely as a couple. Within this context, the husband accepts that the court is dealing with a long marriage. Further, in the context of such a long marriage, it is not productive in my view to undertake a detailed analysis and weighing of the parties' respective contributions during the marriage over so many years and neither party sought to persuade the court to engage in such an exercise in circumstances where it is clear that each contributed in different ways to the marriage and to the assembly of the matrimonial assets. The foregoing position points to an equal sharing of the assets unless there is good reason to depart from equality.

92. With respect to 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, beyond an account of the parties' employment history and the fact that she has not worked since 2004, the wife did not address the issue in her detail her s.25 statement. Mr Molyneux sought to suggest during his closing submissions that the wife's presentation during the course of the hearing is evidence that it is highly unlikely that the wife would be able to hold any form of employment.

93. The husband submits that he has not been employed for four years and has only a modest earning capacity in circumstances where he has not been employed in the banking industry for a decade, where he has lost his role as a director with OP and where his work in renewable energy ceased in 2017 and where his consultancy business has not yet permitted him to draw a salary. Within this context, Ms Campbell submits that the evidence demonstrates the husband has a modest earning capacity. Ms Campbell submits that the wife has a similarly modest earning capacity, with impressive qualifications and expertise in the financial services industry, long experience of management of complex family finances and unencumbered by child care responsibilities now that M is an adult and E is in full time secondary education at boarding school.

94. Having regard to the evidence before the court, and to the age of the parties, I am satisfied that each retains a capacity to earn, albeit I am satisfied that the husband's capacity is greater than the wife's earning capacity, which is modest.

95. The husband is now 58. He maintains a consultancy business specialising in the renewable sector, albeit that business is yet to turn a profit and he does not currently draw a salary. The husband on his own evidence also intends to, and is motivated to continue to look for niche investment opportunities which may, depending on the success or otherwise of such investments, further supplement his capacity to generate income. The husband is an experienced investor who has made good returns historically. In the circumstances, I am satisfied that the husband currently continues to have a reasonable earning capacity, which may further improve depending on the success of any investments that he pursues, as is his intention.

96. The wife is 55 years old. Whilst she has a degree from LSE and an MBA from Columbia and is plainly conversant with complex family financial management, it is now some 18 years since the wife ceased work. Whilst there is no expert evidence before the court with respect to physical or mental disability to support that contention, it was plain to the court from the wife's presentation that she has a number

of vulnerabilities that are likely to conspire with her age and the length of time she has been out of the employment market to make it challenging for her to secure employment offering anything greater than modest remuneration. Whilst the provenance of the entry on the wife's LinkedIn page, which describes her professional occupation as "Family Office Management", is unclear, this likely represents the type of modest employment that may be open to the wife given her length of time out of the employment market and her recent experience. In the circumstances, I am satisfied that the wife has only a modest earning capacity.

97. With respect to the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future, in the foregoing context I am satisfied that both parties will require secure, mortgage free accommodation and, having regard to the their respective earning capacities, a secure income.

98. Once again, the wife did not instruct her leading counsel to make substantive submissions on this issue. On her behalf, Mr Molyneux was confined to the bald submission that this is not a case for an equal split of the assets because her needs will be not met on that basis due to the parties prior living standards and their differential earning capacity. By her s.25 statement, and within the context of her seeking the totality of the matrimonial assets, the wife seeks to retain 2 CDE Street, Wyoming as she considers it to be the family home. The wife also seeks to purchase a two bedroom apartment in New York for £2.3M and to have funds available for serviced apartments in Boston and London for regular monthly stays with each of the children. The husband would prefer to retain 2 CDE Street, Wyoming but recognises that the wife now sees it as her home and is content to retain 1 CDE Street, Wyoming.

99. The wife further contends that the family incurred annual living expenses of £920,000 per annum between 2004 and 2021 and that, over a similar period, the average annual budget for herself and the children was between £355,000 and £365,000, excluding expenses charged to a credit card of some $120,000 per annum. With respect to annual outgoings moving forward, the wife contends that a reasonable figure for annual expenditure in 2024/2025 is £610,776 or £50,898 per month. On behalf of the husband, Ms Campbell submits that these figures are simply not realistic having regard to the extent of the matrimonial assets and the manner in which the parties were financing their lifestyle during the marriage, namely from the expenditure of capital, rental income and income from investments. She points to the fact that on 30 June 2023 this court considered a reasonable MPS budget to be £11,762 per month or £141,144 per annum. The husband asserts that a reasonable annual budget for both parties would be £12,000 per month, or £144,000 per annum.

100. With respect to accommodation, I am satisfied that each party requires secure accommodation. I am further satisfied that neither party needs to maintain additional properties above and beyond this. In particular, there is no proper basis for contending that the wife needs additional accommodation in the form of a two bedroom apartment in New York for £2.3M for herself and the children. M is now an adult in tertiary education and E is at school in this jurisdiction as a boarder. The wife, at her own election, resides separately from both children at what she contends is the family home at 2 CDE Street, Wyoming. The court has not been provided with any property particulars but I am satisfied that, having regard to the age of the parties

and the situation of the children, each party's housing needs can be met by a housing fund in the region of £2M.

101. As to income needs, this court has to take a broad, and realistic, view of both parties' income needs. I am satisfied that it is plain that the figures proposed by the wife in respect of her income needs moving forward are not realistic having regard to the extent of the matrimonial assets as I have found them to be. The evidence demonstrates that this was a family living off capital at a rate that was not sustainable in the long term. The investments that also generated income have thus been depleted and the properties in Wyoming that previously generated significant rental income are, at least in the first instance, required to meet the parties' respective housing needs. In the circumstances, I am satisfied that the annual expenditure during the marriage relied on by the wife (in so far as they are accurate) are not a good metric for financial needs in this case in circumstances where it is clear that the parties were consuming finite capital. In this context, whilst I must and do consider the standard of living enjoyed by the family before the breakdown of the marriage, in this case the marital standard of living in this case cannot be a lodestar where the evidence demonstrates that that standard of living was plainly not sustainable in the long term and where the approach taken to the litigation in these proceedings, in particular by the wife, means that the family are simply not in the financial position they were when the figures articulated by the wife (if accurate) applied. In this context, replicating the marital standard of living in the way contended for by the wife is simply not possible in the context of a fair distribution of the assets (and, indeed, would not be possible even on the distribution contended for by the wife).

102. Having regard to the matters set out above, I cannot accept the wife's figures. There is simply insufficient capital to sustain the level of financial need she contends for. I am satisfied that it is not consistent with principle of fairness to award the wife all the matrimonial capital (as is her case) to support a standard of living which is not, and indeed in the long term was never, affordable. Taking a broad view, I am satisfied on the evidence that the parties respective income need is £150,000 per annum or £12,500 per month. Within this context, I note that a fund of £3M would provide a capitalised sum on a Duxbury basis to provide £150,000 net per annum for life.

103. Finally in respect of the factors in s.25, I am in this case required to consider the question of conduct above and beyond the conclusions I have reached with respect to the add back I am satisfied is required to reflect the reckless spending on legal costs by the wife. The parties respective allegations with respect to conduct are set out above.

104. With respect to the wider alleged litigation conduct of the wife (comprising her serial failure to comply with orders, her alleged misrepresentation of her intentions as to accommodation at the MPS hearing and the availability to her of legal advice, her undertaking no cross-examination or submissions having spent significant sums disputing the husband's position on pensions and tax, the costs incurred by the husband arising out of the 'Imerman' exercise consequent on the wife's unlawful accessing of the husband's confidential information, the costs of the *ex parte* application made by the wife on 6 September 2023, the existing costs orders and her failure to negotiate during the proceedings), I am satisfied that these matters are most appropriately dealt with when the court comes to determine the question of costs.

105. As I have noted, whilst there are cases in which the court has determined that one party's litigation conduct has been such that it should be taken into account when the court is determining its award (which I have done in this case by way of an add back with respect to the reckless spending on legal costs by the wife), the general approach to litigation conduct within financial remedy proceedings is that it will be reflected, if appropriate, in a costs order. As I have noted, and subject to further argument, the fact that the court has added back assets dissipated by a party through an obsessive approach to litigation will not necessarily prevent a costs order also being made. In the circumstances, I am satisfied that the foregoing matters fall to be dealt with at the point the court determines any costs argument following the handing down of the court's decision.

106. There is no basis in my judgment for treating the wife's refusal to consent to the sale of the Coinbase shares at what, in retrospect, was a favourable price point as conduct pursuant to s.25(g) of the Act. In the context of the market, it is impossible to be certain whether a proposed point of sale is advantageous or disadvantageous. Within this context, to penalise a party on the basis of conduct for not agreeing sale at a particular point would not be appropriate. I am likewise not prepared to treat the liabilities incurred with respect to the English property, including the EDF electricity bill, and with respect to the Wyoming property as matters of conduct under s.25(g) of the Act. In addition, I bear in mind that parties rented the property in England for nine years and that the husband spent some time at that property during the course of the lockdowns consequent on the COVID-19 pandemic. In the circumstances, I am satisfied that those liabilities should be apportioned equally between the parties. I am likewise not satisfied that the loss of rental income consequent upon the wife's occupation of 2 CDE Street, Wyoming constitutes a matter of conduct which it would be inequitable for the court to ignore.

107. With respect to the costs incurred by the wife in the US litigation, absent a clear view of the law in the US governing the subject matter of the wife's claim, I have come to the view that this court is not equipped to determine whether, to adopt Ms Campbell's phrase, the wife's "foray into civil litigation in the US" constituted conduct which the court should take into account pursuant to s.25(g). In this context, it would not in my view be desirable for the court to, in effect, engage in satellite litigation about whether the litigation was justified. I likewise reject the husband's contention that he should be awarded a contingent lump sum to meet any future costs associated with litigation against him in the US. It is not part of the role of this court to indemnify a party as to costs with respect to proceedings abroad. Such costs will be a matter for the US court depending on the outcome of those proceedings.

108. I am satisfied that it is appropriate for provision to be made from the pensions for the latent tax liability arising from Coinbase of £345,750, a fund for the tertiary education of the children of £700,000 and tax on the pension drawdown of £233,848. Removal of sums these sums results in total matrimonial assets for distribution of some £12M. Having regard to the matters set out above, I am satisfied that the following distribution of those assets represents the proper outcome in this case on the basis of a clean break between the parties:

	Wife	**Husband**

1 CDE Street, Wyoming		£3,458,017
2 CDE Street, Wyoming	£4,632,832	
Z Apartments, New York	£996,000	£996,000
Joint Accounts	£17,372	£17,372
Private Equity Investments	£249,911	£249,911
Cryptocurrency	£26,683	£26,683
Chattels	£10,000	
Own Assets Retained	(£581,809)	£144,869
Sub Total	**£5,350,989**	**£4,892,852**
Pensions (less funds for education and tax)	£853,313	£853,313
TOTAL	**£6,204,302**	**£5,746,165**
	52%	**48%**

109. From this arrangement, the wife will retain a property with a modest mortgage and the lower tax liability and two rental units in New York, together with some savings and investments and pension provision. This will provide the wife with sufficient assets to purchase a property for £2M, leaving her with a fund of some £3M to invest to generate an income of £150,000 for life, in addition to an income from investments and the pension funds in due course. If the wife seeks to retain the property in Wyoming, then she has the option of doing so, albeit on a likely reduced income generated from the New York units retained by her, supplemented by what I am satisfied is her modest earning capacity and income from the other investments and pension she retains. Within this context, I am satisfied that this sharing award is sufficient to meet the wife's future needs.

110. The husband will likewise retain a property and will retain two rental units in New York from which he can generate income if necessary, supplemented by his

reasonable earning capacity, business interests and the investments and pensions retained by him. Whilst the husband retains a larger mortgage and a higher tax liability this, and the slightly lesser share of the matrimonial assets that the foregoing distribution constitutes, is in my judgment justified by what I am satisfied is the husband's greater earning capacity moving forward.

CONCLUSION

111. I shall invite the parties to agree and prepare a draft order for my consideration and approval. I propose to deal with the question of costs on the basis of written submissions unless either or both parties seek an oral hearing on that issue.