Neutral Citation Number: [2025] EWFC 1

Case No: 1652-1920-1218-0539

**IN THE FAMILY COURT**
**SITTING AT THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/01/2025

**Before**:

**MR JUSTICE MACDONALD**

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**Between:**

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| **Diane Liza Rosemin-Culligan** | **Applicant** |
| **- and -** | |
| **Anthony David Culligan** | **Respondent** |

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**Ms Marina Faggionato** (instructed by **Withers**) for the **Applicant**
**Mr Alexander Thorpe KC** (instructed by **Judge Sykes Frixou**) for the **Respondent**

Hearing dates: 21, 22, 25 and 26 November 2024

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 14 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE MACDONALD

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published.

**Mr Justice MacDonald:**

INTRODUCTION

1. I am concerned with financial remedy proceedings arising from the dissolution of the marriage between the applicant, Diane Liza Rosemin-Culligan (hereafter 'the wife') and the respondent, Anthony David Culligan (hereafter 'the husband'). The wife is represented by Ms Marina Faggionato of counsel and the husband is represented by Mr Alexander Thorpe of King's Counsel. The Wife's Form A was issued on 21 June 2022.

2. In the context of a marriage lasting some forty years, and where the parties are agreed that a broadly equal division of the matrimonial assets should take place, the primary question in this case concerns the *structure* of the equal distribution. In the foregoing context, the *key* disputes between the parties that have occupied the court during the final hearing have centred on the following matters:

    i) What is the value of the husband's shares in a company called Colendi and are those shares capable of being distributed to the wife by way of a share transfer.

    ii) Does the fee from the consultancy agreement entered into by the wife following the sale by her of ELSA Sports Services Limited (hereafter "ELSA") in fact constitute deferred consideration for the sale of that company.

    iii) Who should be responsible for the tax liabilities arising from the disposal of matrimonial assets during the course of the marriage and as a result of property adjustments consequent upon these proceedings, which include certain tax liabilities arising in the United States by virtue of the husband being an "accidental American".

    iv) What portion of the wife's award should comprise, whether by way of a share transfer or in default of that being possible a contingent lump sum, the illiquid matrimonial assets now held the form of the husband's shares in Colendi.

    v) Should the wife retain the former matrimonial home.

3. In addition to these central issues, the wife has formally pleaded conduct that she contends it would be inequitable for the court to ignore under s.25(1)(g) of the Matrimonial Causes Act 1973 ('the 1973 Act'), to which the husband has formally responded. Having signalled his position during the case management stage of the proceedings, the husband seeks to demonstrate that the wife's conduct in relation to the sale of ELSA should also sound in the distribution of the matrimonial assets. Both parties further allege against the other non-disclosure and wider litigation misconduct that they contend is relevant to the distribution of the matrimonial assets and / or the question of costs.

4. In deciding this matter, I have had the benefit of hearing evidence from the wife and from the husband. I have also had a report and heard evidence from Mr Thomas Rodwell, the single joint expert accountant instructed by the parties to value the husband's Colendi shareholding, and the benefit of a further report, not challenged in cross-examination, from Mr Matthew Pannell, the single joint expert instructed on the tax issues that arise in this case. I have read the documents contained in the trial bundle

and have had the inestimable assistance of the written and oral submissions of Ms Faggionato and Mr Thorpe.

## BACKGROUND AND EVIDENCE

5. The wife is 63 and was born on 26 June 1961. The husband is 61 and was born on 6 March 1963. The parties have three adult children. The parties met in 1982, commenced cohabitation in 1985 and married on 4 February 1992 whilst in Japan. The husband left the former matrimonial home on 17 September 2020. The husband contends that this is the date of the parties' separation. Asserting that she was kept in the dark as to the husband's whereabouts and his reason for leaving the former matrimonial home, the wife contends that the date of separation is the date on which she issued her divorce petition on 5 April 2022.

6. The wife is a British Citizen. The husband holds dual British and US citizenship, having been born in the USA whilst his parents were working temporarily in that jurisdiction. He is thus an 'accidental American'. The husband has a US passport and I am satisfied that the wife was aware that the husband held US nationality at least from the point at which the husband started to enter the United States using that passport. The husband's US citizenship now gives rise to significant tax liabilities, the responsibility for the payment of which is a matter of dispute between the parties. On 30 July 2021, and without informing the wife, the husband purchased a property in the US in his sole name for $525,000. That property has been valued at $600,000. During his oral evidence the husband stated his intention to build a home on the property, contending he needs funds in the region of £2M to do so.

7. As I have noted, the parties married on 4 February 1992 in Japan. The purchase of the former matrimonial home was completed in July 1993 and the parties moved into it upon the husband returning from Japan in December 1993. The property has nine bedrooms, seven bathrooms and various reception rooms, including a home cinema. It has an agreed valuation of £7M. The parties are currently in default with respect to the 'offset' mortgage and interest continues to accrue. The wife contends that the husband has obstructed her attempts to address this situation, notwithstanding that she has arranged a replacement mortgage. The husband contends that the wife exacerbated the situation by holding £2.5M in her sole account bearing 3% taxable interest whilst failing to pay funds into the mortgage current account that is incurring interest at 8.4%.

8. In 2018 the parties commenced renovation of the former matrimonial home. The husband contends that a budget of £500,000 was agreed. The wife disputes this. In any event, the parties spent approximately £2.1M, although in cross-examination the wife stated she was not aware of that figure. The husband avers that tensions caused by the renovation and the wife's overbearing approach led to the breakdown of the marriage. The wife asserts that the husband walked out of the marriage without explanation. The wife currently resides in the former matrimonial home with one of the parties' adult children. She seeks to retain that property. The husband contends that the former matrimonial home requires to be sold. He currently resides in rental accommodation that he shares with his elderly father, for whom he performs the role of carer.

9. The foundation for the family's financial resources was laid in two ways. The husband has a background in finance and worked at institutions in the financial sector until 2001 or 2002. In 2006, the husband and a former colleague, François Barthélèmy, set up an

asset management company with F&C. Following the financial crash in 2008, the husband became engaged in litigation against F&C in the Chancery Division. During that litigation the former matrimonial home was used as collateral for costs. As a result of the litigation, reported as *F&C Alternative Investments (Holdings) Ltd v Barthelemy and Culligan* [2011] EWHC 1731 (Ch), the husband recovered £2.5M in net proceeds, which was paid into the parties' joint bank account. Both parties agree that the proceeds of the litigation were invested in a number of properties. Those eight properties were chosen by the wife and purchased in the joint names of the wife and the husband, the wife agreeing in cross-examination that the husband had placed the proceeds from the litigation at her disposal. The rental income from the properties, amounting to approximately £100,000 per annum, is paid into a joint bank account.

10. The remainder of the footing for the matrimonial assets comprised Bitcoin. In 2012 the husband purchased "just over" one thousand Bitcoin at a total cost of £10,000. By 2017, the value of the husband's bitcoin holding had risen to approximately £20M. Both parties accept that, over the course of the marriage, the Bitcoin has been sold off to fund a number of projects. In particular, to provide financial support for the husband's company, SETL Limited, to provide financial support for the wife's company, ELSA, to fund the family's living expenses and to fund the renovation of the former matrimonial home and the acquisition of the husband's property in the US. The wife alleges that the husband is guilty of not disclosing two cryptocurrency wallets. The husband contends that he had thought the wallets in question had been closed and disclosed them as soon as he realised they still held funds.

11. With respect to the companies supported with the proceeds of the sale of Bitcoin, the husband set up a peer-to-peer Bitcoin exchange called 'Roolo' and decided to focus on developing blockchain[1] systems for banks. In 2015 Roolo became SETL Development Limited. That company was set up by the husband and three former colleagues from the City. The wife contends that the original intention was for the spouse of each of the founders to hold half that founder's shares but that, whilst this occurred with respect to the other founders, she never received half of the husband's shares in SETL Development Limited. At the beginning of 2019, SETL Development Limited was placed into voluntary liquidation and a new company, SETL Limited, was incorporated on 5 March 2019 (having briefly been called Launchpad 39A). On 5 May 2021, the husband and the other directors agreed to forego their salaries for two years from 1 April 2021 in return for 10M shares in lieu. The wife contends she was not informed of that decision. Between April 2019 and September 2022, the husband invested £2.7M in SETL Limited, funded from the sale of Bitcoin. Efforts to raise outside capital were not successful. The report of the single joint expert, Mr Rodwell, states that SETL Limited consistently recorded a net operating loss between 2020 and 2022 and that its net asset value decreased significantly each year from 2019 to 2022.

12. On 23 August 2021 Colendi, a financial services platform, registered Articles of Association and finalised its Shareholders' Agreement on 13 October 2021. The founder of Colendi, and the Class A shareholder, is Bülent Tekman. Paragraph 10.2 of the Articles of Association for Colendi provide that no share in the company may be

[1] Blockchain is a decentralised ledger technology that provides an immutable record of transactions for a cryptocurrency, using a method of encryption known as cryptography that employs mathematical algorithms to create and verify a continuously growing data structure in the form of a chain of blocks that functions as a distributed ledger.

transferred unless the transfer is made in accordance with the Articles of Association. Paragraph 9.1.1 of the Shareholders Agreement provides that a transfer of shares in Colendi may only be made in accordance with the Shareholders Agreement. The effect of these documents is that shares in Colendi may only be transferred with the permission of Mr Tekman or where the pre-emption process from which Mr Tekman benefits under the Shareholders Agreement has been completed. In cross-examination, the husband confirmed that he has not asked Mr Tekman if he would consent to legal ownership of the husband's shares being transferred to the wife, only whether she could become a shareholder under the current nominee arrangements detailed below. The husband's explanation for this was that he was "not convinced" that Mr Tekman's agreement is required for an effective transfer. The wife contends that it is not possible for the shares to be transferred without Mr Tekman's consent or the completion of the pre-emption process.

13. In January 2022, Colendi expressed an interest in acquiring SETL Limited. In April 2022, SETL Limited indicated to Colendi that it would be interested in proceeding with that acquisition. The acquisition was the subject of a Colendi press release on 27 June 2022. The husband contends the deal had not in fact completed at that time and that, notwithstanding that he was quoted in the press release, he was surprised by the announcement. On 30 September 2022, a company called Colendi SETL Nominees was incorporated, which would ultimately come to hold the husband's shares in Colendi on trust for the husband. It was the husband's evidence that, by the end of 2022, SETL Limited was running out of money such that he was required to lend it sums in late 2022, of which £178,707 remains owed to the husband. The husband further avers that, as late as January 2023, he was not certain that the deal with Colendi would proceed, as Colendi were wary about the continued financial support that SETL Limited might require.

14. The husband was appointed a director of Colendi SETL Nominees on 12 January 2023. The husband asserts that Colendi SETL Nominees was set up to hold Colendi shares on trust for those who previously held shares in SETL limited. By his further replies to the Wife's Questionnaire dated 15 February 2023, the husband contends that this structure was adopted to avoid a large number of SETL shareholders being reflected on the Colendi share register. In oral evidence, the husband repeated his assertion that the deal with Colendi had been structured with the shares being held indirectly through Colendi SETL Nominees because Colendi wanted a clean shareholder register, without many small shareholders on the register. Against this, the register shows multiple small shareholders listed on the Colendi register (thirty one of the fifty shareholders listed being individuals) and other companies which have invested by way of shares owned directly.

15. The deal with Colendi was finalised by way of a share swap on 28 January 2023. Colendi acquired the entire share capital of SETL Limited in return for SETL shareholders receiving 8% of Colendi's share capital in the form of 28,0555,134 Class B shares. The husband received 12,933,924 Class B shares amounting to 3.6% of Colendi's share capital. The trust agreement between the husband, Colendi SETL Nominees and Colendi was completed on 2 February 2023. The provisions of the trust agreement make clear that the covenant by Colendi SETL Nominees, as trustee, to transfer shares at the request of the husband, as beneficiary, is subject to the Articles of Association and the Shareholders Agreement for Colendi. The terms of the trust further

make clear that Colendi SETL Nominees, as trustee, is not obliged to follow the husband's directions as beneficiary where they are contrary to or in breach of the Articles of Association and the Shareholders Agreement for Colendi, and that the husband, as beneficiary, agrees not to instruct Colendi SETL Nominees to transfer the shares unless permitted or required to do so by those instruments. The wife was notified that SETL Limited had been acquired by Colendi, and that the husband's interest was now "approximately 4%" of Colendi's share capital, by the husband's solicitors on 13 February 2023.

16. The court has the benefit of an expert report dated 30 October 2023, and an addendum expert report dated 9 October 2024, from Mr Rodwell on the value of the husband's shareholding in Colendi. In his updated report Mr Rodwell values the husband's shares at £19M. Mr Rodwell caveats his reports by noting that he had not received from the husband various documents and financial information he had requested and that were likely to have been available, including details of Colendi's current attempts to raise capital.

17. In reaching his valuation, in his reports Mr Rodwell adopts the measure of Market Value, as defined by the International Valuation Standards 2022 (hereafter "IVS"). In his addendum report he adopted 1 October 2024 as his valuation date. Mr Rodwell's valuation of £19M was based on recent transactions in Colendi shares within the context of Colendi's most recent funding round. Colendi raised £39M in 2021 against a pre-money valuation of £120M and acquired assets of £20M in 2021 against a pre-money valuation of £600M. Colendi engaged in a further funding round from Q1 2022 with the aim of raising between £150M and £250M based on a pre-money valuation of approximately £715M. In May 2024, Colendi raised £65M from two existing shareholders based on a pre-money valuation of £700M. It seeks to raise a further £150M by the end of 2024. Mr Rodwell considers that these investments in the May 2024, achieved in a funding round that is likely to continue against a pre-money valuation that included the value of SETL, represent a specific price paid for Colendi shares by willing third party market participants. As such, Mr Rodwell opined that the investments likely provide the best indication of the current Market Value of Colendi's shares, the price at which willing buyers acquired shares in Colendi through its latest funding round reflecting the investors' view of the price that properly compensates them for the fact that their interest will be both non-controlling and non-marketable.

18. Challenged by Mr Thorpe in cross-examination, Mr Rodwell rejected the proposition that Colendi had been unable to "close" its current funding round, maintaining that the funding round was simply continuing and had raised £65M to May 2024. Mr Rodwell likewise rejected Mr Thorpe's challenge that the investors who made those investments were not arm's length investors in circumstances where they were existing shareholders. On this point, Mr Rodwell relied on the fact that those investors made very large investments, on which it can properly be assumed that due diligence was performed, that it is entirely orthodox for a business to approach existing investors for further capital and that there is no evidence that the investors were not acting independently. As such, Mr Rodwell did not consider that the fact that the investors in May 2024 were existing shareholders of itself deprived those investors of their "arm's length" status. Mr Rodwell was not able to comment on the husband's assertion, introduced through Mr Thorpe in cross-examination, that the investors in question had invested only for the specific purpose of capitalising an effort to obtain a banking

licence, as that information had not been provided to him (I note in passing that Colendi is a fintech company, one of whose *central* aims is to become a banking entity).

19. In this context, and where Colendi had exhibited "huge" revenue growth in a short space of time, where the company had a balance sheet showing $95M in cash, where the investors in question were prepared to invest by taking up an offer of $2 per share and where a rational investor will not pay over the odds, Mr Rodwell maintained his view that it was possible to arrive at a reliable valuation of the husband's Colendi shareholding and that that valuation was £19M. He considered that "people putting their hands in their pockets" by way of a very recent transaction in May 2024 for £65M at $2 per share is "some of the best evidence" and "a very good indicator" of value. In reply to Mr Thorpe's challenge, Mr Rodwell asserted that "in terms of valuation evidence it does not get much better in terms of the subjective assumptions that have to be made."

20. Mr Rodwell did not consider it appropriate to apply a discount when assessing the valuation of the husband's shareholding in circumstances where it is likely that interests acquired in the current funding round are comparable to the husband's interest in terms of size, rights and restrictions, and therefore properly reflect the view of investors on the value of non-controlling and non-marketable interests. In justifying this position in cross examination, Mr Rodwell asserted that it was not appropriate to apply a discount to the valuation in circumstances where the current investment round demonstrated that investors who were aware of the restrictions on liquidity were willing to pay $2 per share for an illiquid investment. In the circumstances, Mr Rodwell considered that from a valuer's perspective (as opposed to any discount a court may apply due to the illiquid nature of the asset) the value of $2 per share already had a discount for illiquidity priced in.

21. Finally, Mr Rodwell considered that the husband will not, at present, be able to extract any liquid capital from Colendi in circumstances where it is loss making, currently seeking to raise capital (suggesting little or no surplus liquidity) and the husband not being in a position as a minority shareholder to compel the company to distribute any existing cash balance. Mr Rodwell further opines that it is possible that Colendi will not pay dividends during the next three financial years but that, should SETL become sufficiently profitable, it would not be unreasonable for the husband to receive his previously contracted salary of £300,000 per annum. However, in his addendum report Mr Rodwell notes that SETL has been loss making and Colendi has had to support SETL with cash injections on an almost monthly basis, with a cash flow forecast that projects this continuing to October 2025.

22. There are a number of disputes between the parties arising out of Colendi acquiring SETL Limited in January 2023. First, what the wife knew of the proposed acquisition prior to January 2023. Second, the extent to which it was necessary for the husband to hold his Colendi shares indirectly in Colendi SETL Nominees, rather than directly in a manner that would have more easily permitted transfer of shares to the wife. Third, whether the husband properly disclosed the position in respect of his interest in SETL Limited in his Form E dated 6 October 2022, three months before its acquisition by Colendi. Fourth, whether the valuation of the husband's Colendi shares provided by Mr Rodwell can be relied on by the court (albeit that the husband uses the valuation of £19M in his ES2). Fifth, and finally, whether it is possible to transfer part of the husband's shareholding in Colendi to the wife under the current corporate structure. I

will deal with each of these disputes in so far as necessary when I come to the questions of computation and distribution.

23. The wife has a long-held interest in, and commitment to, women's football. In 2017, the wife became involved with Millwall Football Club women's side. She played a key role in in removing the women's side from the umbrella of the Millwall men's club and rebranding the team as the London City Lionesses. By 2018, the London City Lionesses was in financial difficulties and the wife and the husband proposed a deal whereby they would invest £30,000 in the club and the wife would take over as Chair. In 2019 the parties set up ELSA, incorporating the company in April 2019 with the wife as the sole shareholder. In May 2019, ELSA bought the London City Lionesses. The husband was appointed as a director of the club, together with two employees of SETL Limited. In her form E, the wife describes the London City Lionesses as "a big project for both me and [the husband]".

24. A condition of sale for the London City Lionesses was an undertaking to the Football Association that the club would continue to be financed. The husband contends that, at the point the London City Lionesses was purchased by ELSA, the parties had injected £85,000 into the club and that, following the purchase, they invested a further £340,000 over the remainder of 2019, raised through the sale of Bitcoin. The husband exhibits to his s.25 statement a schedule of payments to ELSA, recorded as loans, totalling £3.6M between 2019 and 2023. Ms Faggionato established during cross examination of the husband that the correct figure is, in fact, £3.3M.

25. The husband avers that during the course of May 2023 it became apparent that the parties were no longer in a position to continue financing the London City Lionesses. In the bundle there is a text from the husband to the wife on 28 May 2023 stating that he does not have sufficient funds to finance the club, maintain the family and settle tax liabilities. The wife avers that the husband wished to withhold funding as a consequence of the breakdown of the marriage and in order to "punish" her. The husband resigned as a director of the club on 22 February 2023 without notice to the wife. An agreement between the parties to sell property to raise funds for the club broke down after the husband had transferred a further £200,000. The wife denied in cross-examination that she had withdrawn her consent to the sale of property once the husband had provided further funds, stating this was "not her style". Within the foregoing context, the wife tasked one of the directors, Justin Snyder, with finding a purchaser for ELSA.

26. After approaches to other football clubs regarding investment in the London City Lionesses, as to the circumstances of which the parties are also in stark disagreement, on 15 August 2023 a Term Sheet was signed between YMK Holdings LLC and ELSA, recording that ELSA would be acquired for £6M on a cash free, debt free basis and repaying all shareholder debt. Contracts were exchanged in November 2023 and the sale was completed on 14 December 2023. The final Sale and Purchase Agreement provided that YMK Holdings LLC would acquire the entire issued share capital of ELSA for £5.96M, less the shareholder loan of £3.396M and with £750,000 deferred.

27. The Sale and Purchase Agreement was allied with a consultancy agreement between ELSA Sports Group Limited and a service company incorporated by the wife called ELSA Sports Consultancy Limited. The consultancy agreement provides for the wife to be paid an annual consultancy fee of £750,000 for four years. The Term Sheet

provided that the consultancy agreement could only be terminated in the event of gross misconduct or, after two years, on payment by ELSA of the balance due over the four year term. In cross-examination the wife denied that the cost of the club to YMK Holdings LLC was, in fact, £9.6M and not £5.96M and that the consultancy fee was simply deferred consideration for the sale of ELSA. The wife accepted in cross-examination that, despite being given the opportunity by the court to do so, she did not provide to the court any documents dealing with the negotiation of the consultancy agreement. The wife further accepted that she had incurred an additional £1M in tax liabilities by entering into to the consultancy agreement, which is subject to income tax, rather than incorporating the consultancy fee as part of the sale price, which is subject to the lower rate of capital gains tax (CGT).

28. The Purchase and Sale Agreement entered into by the wife also provided for a £1.1M fee for Mr Snyder who, as I have noted, was a director of ELSA. The wife conceded that Mr Snyder was also a friend. In the documentation that is available to the court, that payment is variously described as "Professional fees" and "a commission". In cross-examination, the wife agreed that Mr Snyder was, as a director of the club, in any event under a fiduciary duty to advance the sale once it was agreed. She further accepted Mr Thorpe's proposition that if the husband had paid a friend 20% of the total consideration for the sale of SETL Limited by way of a consultancy fee she would probably have accused him of dishonesty. Finally, the wife acknowledged that, with the additional £1M of tax liability incurred due to the structure of the ELSA deal, and with the fee to Mr Snyder the sale of ELSA had cost the family economy an additional £2.1M.

29. Again, there are a number of disputes between the parties arising out of the sale of ELSA. First, whether the wife was sufficiently transparent in respect of the sale prior to the sale of ELSA, with the husband pursuing an unjustified fishing exercise for information, or effected the sale under a cloak of confidentiality, without providing full disclosure in respect of a marital asset that was a partnership and that the husband had funded. Second, whether the salary of £750,000 paid to the wife under the consultancy agreement in fact formed part of the consideration on the sale (and therefore forms part of the matrimonial assets for division), the husband alleging that the ELSA deal was a construct to defeat the husband's sharing claim, or is post marital income. Third, whether the additional £1.1M fee paid to a director who was in any event under a fiduciary duty to sell the club was legitimate. Once again, I will deal with each of these disputes in so far as is necessary when I come to the questions of computation and distribution.

30. As I have noted, and in the foregoing context, the husband's US citizenship now gives rise to significant tax liabilities, the responsibility for the payment of which is a matter of dispute between the parties. Those liabilities arise primarily from (a) the husband's sale of Bitcoin, (b) a potential capital gains tax liability upon the sale of the former matrimonial home and any transfer of other properties and (c) a potential capital gains tax liability upon the transfer of the husband's shares in Colendi. In circumstances I shall come to, the husband's US tax liability has been estimated to be between £1.4M and £1.7M.

31. The court has had the benefit of a report from a single joint expert in respect of the tax issues from Mr Matthew Pannell, Tax Adviser, dated 8 March 2024. It was Mr Pannell who identified contingent US tax liability on the sale or transfer or any UK property,

including the former matrimonial home. Mr Pannell further identifies means by which the husband's US tax affairs can be put in order and the US contingent tax liability mitigated.

32. First, with respect to the tax falling due on the sale of the Bitcoin and other assets, the husband qualifies for the IRS Streamlined Foreign Offshore Compliance Procedure, under which only three years of late tax returns are required provided he files, it is said, by 15 December 2024. Second, with respect to the US tax due on any UK property transfers between the parties, provided the parties remain married on the last day of the tax year, an election can be made under the US Tax Code IRC Section 6013(g), which would have the result that transfers of UK property from the the husband to the wife during the period of the election would not give rise to a US tax charge on those transfers. It would, however, also have the result that the wife would be treated as a US resident, and her income would become reportable to, and taxable in, the US for the period in which the election is in effect. In addition, the wife would become responsible for the entire joint US tax liability on a joint and several basis. In cross-examination, the husband made the point that such liability is immediately due and would cease to exist once the tax due is paid under the terms of the final order made by this court.

33. Within the foregoing context, the parties competing positions regarding the net matrimonial assets available for distribution, as set out in their respective closing ES2s, can be summarised as follows, indicating a broad consensus on the basic figures save for the proper allocation of any US tax liability on transfers of the matrimonial property:

| **Asset** | **Wife' Case** | **Husband's Case** |
|---|---|---|
| Eaton Road (FMH) | £5,811,247 | £5,355,799 |
| 98 Cloister Road | £321,401 | £305,267 |
| 33 Cloister Road | £258,706 | £247,001 |
| 96 St Paul's Crescent | £221,253 | £231,761 |
| 3 Craigie Court | £531,068 | £536,609 |
| 42 St Martin's Road | £467,694 | £461,057 |
| 17 Princes Crescent | £230,857 | £213,011 |
| 3 Wakefield Road | £553,199 | £547,669 |
| 188 Bevendean Crescent | £82,085 | £65,395 |
| Hutchins Road, Georgia | £419,049 | £436,657 |
| Bank Accounts | £2,805,348 | £2,744,627 |
| Investments / Polices | £1,249,733 | £553,545 |
| Colendi | £13,896,707 | £13,718,000 |
| SETL Loan and Wise EIS | £178,707 | £178,707 |
| ELSA | £307,895 | £1,646,644 |
| ELSA Deferred Consideration | £750,000 | £750,000 |
| Chattels | £78,625 | £108,625 |
| Liabilities (including tax) | (£2,626,428) | (£2,687,584) |
| **TOTAL NON-PENSION** | **£25,537,146** | **£25,412,790** |
| Pensions | £1,124,356 | £1,124,356 |
| **TOTAL ASSETS** | **£26,661,502** | **£26,537,146** |

34. With respect to income, the husband contends that he is not currently receiving his contracted salary with Colendi of £300,000 gross per annum. As I have noted, the single joint expert opines that it is not unreasonable to assume that the husband "may again receive his previously contracted salary of £300,00 per year" if Colendi becomes sufficiently profitable. On the wife's case, she is at present paid £750,000 gross per annum. At present, both parties receive a variable rental income from their property portfolio.

35. Both parties seek to rely on conduct in this case as relevant to the distribution by the court of assets that I have summarised above. The wife formally pleads conduct under s.25(1)(g) of the 1973 Act in a conduct statement dated 26 May 2023. The husband, who through Mr Thorpe contends that the high hurdle for proving conduct for the purposes of s.25(1)(g) comes nowhere near to being met in this case, addressed the wife's allegations by a reply dated 31 May 2024. The contents of the competing documents can be summarised as to the four grounds of pleaded conduct as follows:

    i) The wife alleges physical and mental effects caused by the husband's behaviour. Namely, that the husband's sudden departure from the former matrimonial home caused the wife distress, anxiety and confusion, resulting in a GP referral for counselling on account of symptoms of Post Traumatic Stress Disorder (PTSD). The husband asserts that the wife became strident and irrational during the renovations to the former matrimonial home, causing him distress and anxiety. He alleges two occasions on which the wife physically restrained him when he sought to leave. The husband denies that the wife is suffering from PTSD and there is no medical evidence before the court establishing such a diagnosis.

    ii) The wife alleges that the husband engaged in secretive and unilateral financial actions (which in her Form E, the wife asserts "arise from his own mental illness"). The wife relies on the husband's conduct during acquisition of SETL by Colendi, in particular his failure to reveal his decision to take shares in SETL limited in lieu of salary and his failure to disclose the pending acquisition by Colendi. The wife further cites the husband's unilateral purchase of the US property, the late emergence of tax liabilities consequent on his US citizenship and investments into Launchpad 39A and SETL Limited not disclosed to the wife (the husband accepts that he did not disclose the loan to SETL of £205,000 in December 2022 until his updating disclosure in March 2024). The husband denies these allegations. He avers that the parties pooled their finances since 1984 and that the wife was fully aware of the parties' spending, much of which was controlled by her. The husband asserts that the wife was well aware of his US citizenship, given his US passport and the fact that the parties had travelled many times to the US using that passport. He asserts that both parties were unaware of the liability for US tax until it was discovered as a result of these proceedings.

    iii) The wife alleges the husband exhibited financial control over her. The wife asserts that the husband has refused to provide her with any money for legal costs and has curtailed and controlled her spending by limiting her use of the Revolut bank card, by placing new direct debits on the Revolut account and by stopping transfer of funds to the account on one occasion. The wife further avers that the husband ceased to pay the interest on the mortgage on the former

matrimonial home, refused to co-operate in respect of a new mortgage and had correspondence from the bank redirected to the US. The husband denies he financially controlled the wife, pointing to the fact that she retained occupation of the former matrimonial home and ELSA, including £3.3M in loans to ELSA. He further contends that he continued to top up the Revolut card for the wife's day-to-day expenses by way of an automatic transfer from his Citibank account and that he resolved the position on the one occasion where that automatic transaction failed.

iv) The wife alleges that husband made threats regarding ELSA by stating that he would withhold funding if the wife did not agree to sell the jointly owned properties to fund the team and ceased funding the club. The husband asserts that ELSA was fully funded by unsecured loans of £3.3M until it became financially impossible to provide further support due to lack of funds. The husband denies that the communications regarding the need to secure alternative funding amounted to threats.

36. In addition, whilst confirming in cross-examination that she was not seeking to assert that the husband has "a hidden pot of gold", the wife further relies on what she alleges is the husband's non-disclosure and wider litigation misconduct in these proceedings amounting, she says, to forensic cheating. The bundle contains a Schedule of the litigation misconduct alleged by the wife. Certain of the matters set out in that Schedule duplicate matters relied on by the wife in her conduct statement. The additional matters are as follows:

i) Failure by the husband to disclose the pending Colendi deal in his Form E and his assertion in his Form E that SETL Limited had a value of £0 (in cross-examination, the wife emphasised that she had not used the word "dishonest" in this context).

ii) Failure to respond properly and in a timely fashion to Questionnaires and Schedules of Deficiency seeking (a) documentation detailing his interest in Colendi and how the interest is held, (b) details and documentation of loans made by the husband to SETL Limited, (c) details and documentation of payments made to SETL Limited, (d) details and documentation with respect to outstanding US tax liabilities, (e) an explanation of why SETL Development Limited entered a Company Voluntary Arrangement (CVA) in 2019, (f) the current status of Roolo, and (g) confirmation that all details of bank accounts had been disclosed (through Mr Thorpe, the husband acknowledged in closing that his first replies to the wife's Questionnaire were "not good enough").

iii) Failure by the husband to provide a clear account of what happened to the approximately 1000 Bitcoin the husband had at 2017 and a failure to disclose two wallets holding Bitcoin with a current value of £371,870 gross and £282,621 net of CGT at 24% (in cross-examination the husband stated that he had thought the undisclosed wallets were empty and relied on the fact that the only activity in them was automatic, building up small values that increased to much higher sums in the context of the volatility of Bitcoin).

iv) Failure by the husband to disclose the existence of bank accounts with Charles Stanley (the husband accepts he missed these accounts of his Form E but relies

on the fact that neither had had any activity since 2019 and their disclosure as soon as they were discovered).

v) Failure by the husband to disclose the value of his pension with JP Morgan, inserting an estimate figure against the request for "Current value of your pension" in his Form E when the value, as shown in July 2023, was in fact £1.124M (again, through Mr Thorpe, the husband conceded in closing that "he could have done better on the pension").

vi) The husband increased the costs associated with instructing the single joint experts, including falsely claiming a credit with Mr Rodwell and therefore not settling fees he had been ordered to pay (in cross-examination, the husband accepted that he had been wrong on this issue and that additional time and costs had been incurred as a result of him maintaining his position despite his error being pointed out).

vii) Delay by the husband in dealing with his US tax affairs where, some 10 months after Mr Pannell identified that the husband needed to deal with his US tax position, and seven months after engaging a company to do so, the husband had not provided the information required to complete that process. The most recent update from the tax accountants instructed by the husband refers to a foreign tax credit carry over to 2024 of $840,000 but there has been no response to the wife's enquiry seeking clarification of this information (in cross-examination, the husband accepted he could have dealt with his US tax affairs "more quickly").

37. In the foregoing context, the wife further relies on an indemnity costs order made against the husband by Recorder Roberts KC on 16 February 2023 in the sum of £13,400, following the wife having to apply to the court to secure compliance from the husband, and a further costs order made against the husband by DDJ Fagborun Bennett on 15 May 2023 in the sum of £12,000, as evidence of the husband's poor litigation conduct. The wife further asserts that when the husband did respond to requests for information and disclosure, the same was provided in a piecemeal and disorganised collection of email attachments, increasing still further the costs of the litigation to the wife as her solicitors were required to place the information into some sort of order.

38. The husband rejects the wife's allegation of litigation misconduct and alleges that it is, in fact, she who has been guilty of the same. Through Mr Thorpe, the husband engaged in an *ex post facto* analysis of the questions asked by the wife by way of her Questionnaires and Schedules of Deficiency and approved by the court. In that context, and whilst he concedes that he failed to answer the wife's Questionnaire properly at the first attempt due, he says, to being under pressure to conclude the deal with Colendi, the husband asserts that the wife has been guilty of pursuing information and disclosure that was irrelevant and/or fell outside the scope of court orders and has wasted both costs and the court's time.

39. The husband further asserts that the wife has failed to negotiate reasonably, having prior to 12 November 2024 made an offer by which she would have retained *all* of the liquid capital. The husband also contends that the wife has refused to co-operate to minimise the tax liabilities through joint tax planning. Further, in seeking to demonstrate that he was justified in putting a value of £0 on SETL Limited in his Form E and not identifying

Colendi as the "larger entity" and "the larger company" mentioned in his Form E (asserting that at the time SETL was losing money and the deal with Colendi was not complete), the husband relies on the fact that the wife also represented the value of ELSA as £0 on her Form E notwithstanding she was engaged in seeking a sale.

40. With the latter context, the husband alleges that the wife engaged in misconduct by seeking to effect the sale of ELSA under a cloak of confidentiality without providing full disclosure within these proceedings, including reliance on a non-disclosure agreement (NDA) that she could have negotiated so as to permit the husband and the professionals involved in these proceedings to have information concerning the negotiations. In answer to a question put by the court, the wife confirmed that she had not asked the buyer whether this approach was possible. The husband further contends that the wife failed to comply with a court order made on 4 October 2023 requiring disclosure of material related to the sale. The wife asserts she did comply with the order of that date and further points to the order of DDJ Todd refusing a further application by the husband for an order for disclosure of the documents underpinning the negotiations for the sale of ELSA and the dismissal by Cusworth J of the husband's appeal against that refusal and making a further costs order against the husband in the sum of £8,200. The husband further relies on the failure by the wife to pay back the £3.3M loaned to the club by the husband.

41. Finally, the parties open offers are set out in the bundle. In summary, the wife's open offer, set out in correspondence dated 12 November 2024, is as follows:

    i) The former matrimonial home will be transferred into the wife's sole name, subject to the mortgage and mortgage offset accounts, which the wife will take responsibility for. The husband will meet the US tax liability arising on the transfer.

    ii) The husband will retain his property in the United States.

    iii) The wife will transfer to the husband the properties at 98 Cloister Road, 3 Craigie Court and 42 St Martin's Road, with the husband assuming responsibility for the mortgage on 98 Cloister Road.

    iv) The husband will transfer to the wife his interests in 33 Cloister Road, 96 St Paul's Crescent, 17 Princes Crescent, 3 Wakefield Road and 188 Bevendean Crescent, with the wife taking responsibility for the mortgages.

    v) The wife will pay the husband a lump sum of £700,000 subject to a reduction if the husband's tax liability on disposal of his interests in the properties are lower than estimated.

    vi) The husband will transfer to the wife the joint bank accounts and the Eton Road Partner's account.

    vii) The deferred consideration of £750,000 as defined in the ELSA SPA will be shared equally on receipt.

    viii) The husband will transfer to the wife 15% net of the future benefits that he derives in any form from the Colendi shares, to be expressed in the form of

undertakings, contingent lump sums and backed up by a phantom share agreement.

ix) There will be an equal pension sharing order of the husband's pension.

x) The husband will be solely responsible for his liabilities including his tax liabilities, in respect of which he will indemnify the wife.

xi) The wine collection will be divided equally by value and the chattels by agreement or arbitration.

xii) The parties will otherwise retain their own assets.

xiii) Clean break.

xiv) The husband will pay the wife £350,000 towards her costs.

42. In summary, the open offer advanced by the husband in these proceedings is as set out in correspondence dated 4 October 2024 is as follows:

i) The former matrimonial home will be sold and the net proceeds divided equally.

ii) The wife will, subject to any applicable mortgage, transfer to the husband her interests in 96 St Paul's Crescent, 3 Craigie Court and 42 St Martins Road.

iii) The husband will, subject to any applicable mortgage, transfer to the wife his interests in 98 Cloister Road, 33 Cloister Road, 3 Wakefield Road, 17 Princes Crescent and 188 Bevendean Crescent.

iv) The wife will pay to the husband an equalising lump sum to provide equality of division taking into account net assets transferred and taxes due.

v) The husband will pay to the wife a contingent lump sum equal to 50% of the net benefit received by him from the Colendi shares upon sale of the shares, with such income received by way of dividend divided equally until such time as the shares are sold, secured by way of an undertaking.

vi) The deferred consideration of £750,000 as defined in the ELSA SPA will be shared equally on receipt.

vii) The wife's interest in the ELSA Consulting will be treated as a benefit arising from the sale and should be shared equally between the parties, with income extracted on an ongoing basis or allowed to accrue whereupon the company will be wound up, saving 25% tax on the accrued income.

viii) Tax liabilities will be shared equally.

ix) There will be a pension sharing order providing the wife with 50% of the husband's pension.

x) Clean break following the payment of the contingent lump sum in respect of the Colendi shares.

xi) The parties will obtain specialist tax advice as to methodology in order to minimise exposure to US tax liability and there shall be a mutual contingent lump sum to equalise the incidence of tax in that jurisdiction.

xii) No order as to costs.

RELEVANT LAW

43. For the purposes of determining the application before the court, the touchstone is s.25 of the 1973 Act, 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."

44. In addition, s.25A of the 1973 Act, which provides as follows with respect to the duty of the court to consider a clean break between the parties:

> **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."

45. Within the foregoing context and having regard to the issues raised in this case, it is necessary to consider briefly some aspects of the case law with respect to s.25 and s.25A of the 1973 Act.

46. In so far as the husband disputes the valuation of the Colendi shares, King LJ made clear in *Versteegh v Versteegh* [2018] EWCA Civ 1050, [2019] 2 WLR 399 (a case in which multiple experts had struggled to arrive at a valuation) at [134] that:

> "[134] It is undoubtedly far more satisfactory for all concerned if a court can, with sufficient confidence, settle on a valuation of a business to the necessary standard of proof, that is to say the balance of probabilities. Not to do so is unsatisfactory for the applicant (still often the wife) and is often equally frustrating for the respondent (husband) particularly if the result is, as in this case, the making of a *Wells* order."

47. Against this, and as also recognised in *Versteegh*, it is equally important that the court retain a clear eyed appreciation of the limitations inherent in valuations. In *H v H* [2008] 2 FLR 2092 Moylan J (as he then was) observed as follows:

> "[5] The experts agree that the exercise they are engaged in is an art and not a science. As Lord Nicholls of *Birkenhead said in Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, [2006] 1 FLR 1186, at para [26]: "valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility". I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my "share" be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act 1973, not a detailed accounting exercise. As Lord Nicholls of Birkenhead said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often result in divergent opinions each of which may be based on sound reasoning. The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera. Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound and hence likely

> to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained."

48. Reflecting these observations, in *Versteegh* Lewison LJ further articulated the challenges of valuing private companies:

> "[185] The valuation of private companies is a matter of no little difficulty. In *H v H* [2008] EWHC 935 (Fam), [2008] 2 FLR 2092, Moylan J said at para [5] that 'valuations of shares in private companies are among the most fragile valuations which can be obtained'. The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Secondly, even where valuers use the same method of valuation they are likely to produce widely differing results. Thirdly, the profitability of private companies may be volatile, such that a snap-shot valuation at a particular date may give an unfair picture. Fourthly, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifthly, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see *A v A (Ancillary Relief: Property Division)* [2004] EWHC 2818 (Fam), [2006] 2 FLR 115, at paras [61]–[62]; and *D v D and B Ltd* [2007] EWHC 278 (Fam), [2007] 2 FLR 653 (both decisions of Charles J)."

49. In *Martin v Martin* [2019] 2 FLR 291, Moylan LJ emphasised that, within the foregoing context, valuations will fall into different categories, noting that:

> "[89] At one level it can be said that 'valuations are often a matter of opinion on which experts differ', as referred to by Lord Nicholls of Birkenhead in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, [2006] 2 WLR 1283, [2006] 1 FLR 1186, at para [26]. However, it would be right to note that valuations will clearly fall into different categories. At one end, there might be a very active market with a number of comparables which mean that it is not difficult for an expert to provide a secure valuation: as, for example, is very likely to be the case with residential properties. There might, at the other end, be circumstances which make a valuation of a business, 'like many such valuation figures,... inherently speculative', per Holman J in *Fields v Fields* [2015] EWHC 1670 (Fam), [2016] 1 FLR 1186, at para [41], or such that the court is 'unable to reach a safe valuation', per Lewison LJ in *Versteegh v Versteegh* [2018] EWCA Civ 1050, [2019] 2 WLR 399, [2018] 2 FLR 1417, at para [193]."

50. The husband criticises Mr Rodwell for not applying a discount in reaching his valuation. In *GW v RW* [2003] EWHC 611 (Fam) at [65] Mostyn J highlighted the difficulties presented by the question of discounts:

> "[65] I have explained above that the adoption of a *Wells* sharing eliminates the controversy over the discount to apply to H's deferred assets to reflect risk and payment over time. Discounts crop up in a number of areas when the valuation of assets is undertaken in ancillary relief proceedings. They arise in relation to the valuation of minority shareholdings in private companies; in the valuation of substantial blocks of publicly quoted shares, where it is

> said that a sale would drive down the price; and, as here, where it is said that the assets are illiquid, risky or deferred. Although the technique has a respectable pedigree it must be recognised that it is one that is devoid of any science, and is never more than a guess by the expert valuer of what lesser price than face value a hypothetical purchaser would pay for the asset in question. And it is almost invariably the case that the expert will align his guess with his client's interests, so that the expert for the owning party will almost always suggest a higher discount than the expert for the claiming party. So the court is asked to choose between less than disinterested guesses. Here H argues for a discount of 25%. W says it should be 15%. How and by reference to what considerations can I possibly decide this dispute? It is impossible, and any decision made by me would almost certainly be wrong. It is for this reason that I am clearly of the view that a *Wells* sharing is particularly appropriate where the asset in question is the subject of a dispute about discounts."

51. The reference in *GW v RW* and in *Versteegh* to a '*Wells* order' and '*Wells* sharing' refers to the case of *Wells v Wells* [2002] EWCA Civ 476, [2002] 2 FLR 97. In that case it had not proved possible to place a value on the husband's shareholding in his poorly performing business. Holding that the judge at first instance had erred in awarding the wife the bulk of the assets that were readily saleable at stable prices, leaving the husband with those assets which were substantially more illiquid and risk laden, Thorpe LJ stated that in the situation of a clean break case:

> "[24] ...sharing is achieved by a fair division of both the copper-bottomed assets and the illiquid and risk laden assets. After all the wife was already a shareholder in [the husband's company] and a substantial increase in her shareholding would at least have enabled her to participate in future prosperity by dividend receipts or capital receipts on sale or a cessation of trade. An increase in her share of the illiquid and risk-laden asset would have allowed a reduction in the Duxbury fund, if not in the housing fund. If profitability were not recovered, then both parties would share the experience of a marked reduction in standards of living."

52. Turning to conduct for the purposes of s.25(1) of the 1973 Act, in *Tsvetkov v Khayrova* [2024] 1 FLR 937 at [43] and [44], Peel J summarised the proper analytical approach to evaluating conduct pleaded pursuant to s.25(1)(g):

> "[43] A party asserting conduct must, in my judgment, prove:
>
> i) the facts relied upon;
>
> ii) if established, that those facts meet the conduct threshold, which has consistently been set at a high or exceptional level; and
>
> iii) that there is an identifiable (even if not always easily measurable) negative financial impact upon the parties which has been generated by the alleged wrongdoing. A causative link between act/omission and financial loss is required. Sometimes the loss can be precisely quantified, sometimes it may require a broader evaluation. But I doubt very much that the

> quantification of loss can or should range beyond the financial consequences caused by the pleaded grounds.
>
> This is stage one.
>
> [44] If stage one is established, the court will go on to consider how the misconduct, and its financial consequences, should impact upon the outcome of the financial remedies proceedings, undertaking the familiar s25 exercise which requires balancing all the relevant factors."

53. Each party also alleges that the other has been guilty of non-disclosure in the circumstances I have described, although as I have also noted the wife does *not* assert that as at the date of the final hearing there are hidden assets nor does she invite the court to draw inferences to that effect as a result of any non-disclosure by the husband the court may find occurred. The burden of proving that non-disclosure 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. Where the court is satisfied that non-disclosure has occurred, in *Moher v Moher* Moylan LJ emphasised 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.

54. Finally, and within the foregoing context, both parties accuse the other of litigation misconduct. In *Rothschild v De Souza* [2020] EWCA Civ 1215 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 (in cases where money spent on legal costs is no longer available for distribution between the parties and that situation cannot be remedied by an order for costs), the general approach to litigation conduct within 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."

## DISCUSSION

55. I am satisfied that a fair resolution of these proceedings will be achieved by the following division of the matrimonial assets:

i) The former matrimonial home will be transferred into the wife's sole name, subject to the mortgage and mortgage offset accounts, which the wife will take responsibility for.

ii) The wife will transfer to the husband the properties at 98 Cloister Road, 33 Cloister Road, 96 St Paul's Crescent, 3 Craigie Court, 42 St Martin's Road, 17 Princes Crescent, 3 Wakefield Road and 188 Bevendean Crescent, with the husband assuming responsibility for the mortgages.

iii) In the event that the wife is not willing to make an election under US Tax Code IRC Section 6013(g) in order to mitigate the US tax on the transfer of the family home she shall pay the US tax on that transfer on the basis that the husband must also apply his available foreign tax credit in that scenario. The wife's obligation (if she chooses not to make the election) to pay the husband's US tax on disposal of his interest in the family home should be capped at that figure.

iv) The husband will retain his Hutchins Road property in the United States.

v) The wife will pay the husband a lump sum of £750,000.

vi) The husband will transfer to the wife the joint bank accounts and the Eton Road partners account.

vii) The husband will transfer to the wife 30% net of the future benefits that he derives in any form from the Colendi shares, to be expressed in the form of undertakings, contingent lump sums and backed up by a phantom share agreement.

viii) The parties shall share equally the sum of £750,000 deferred consideration for ELSA.

ix) There will be an equal pension sharing order of the husband's pension.

x) The parties shall share equally the US tax liability now falling due but shall otherwise be responsible for their own UK tax liabilities.

xi) The wine collection shall be divided equally by value and the chattels by agreement or arbitration.

xii) The parties will otherwise retain their own assets.

xiii) Clean break following the payment of the contingent lump sum in respect of the Colendi shares.

My reasons for so deciding are as follows.

56. The wife was not an impressive witness. She frequently dissembled and on several occasions she gave the impression of having exaggerated matters for forensic effect. In particular, her claim that she was not aware of the husband's status as a US citizen, made, I am satisfied, in an attempt to bolster the assertion that the husband had somehow chosen to disguise his US citizenship in order to gain a forensic advantage and/or that she should not be responsible for the husband's US tax liabilities. Likewise,

the wife's assertion that the husband stopped her using the Revolut card, when the evidence suggests simply one incidence of technical difficulties. For the reasons I shall come to, I am satisfied that the matters which the wife contends amount to conduct for the purposes of s.25(1)(g) are nothing of the sort.

57. The wife also presented as extremely vague on matters of evidence on which she might have been expected to have a clear recall. In particular the circumstances by which, and the basis on which, she sold ELSA to YMK Holdings LLC and her reasons for her taking some of the decisions in relation to that deal. For example, her decision to take a consultancy fee totalling £3M over four years, notwithstanding that decision made the deal for the sale of ELSA much less tax efficient than it needed to be. Likewise, her decision to pay Mr Snyder a consultancy fee of £1.1M for a deal he was under a fiduciary duty to advance in any event. Indeed, there were a number of occasions where the evidence of the wife gave the impression of her having conducted herself so as almost wilfully to make the parties position less advantageous. Again, by way of example, her insistence that she would not co-operate with respect to mitigating the US tax position with the result that the tax on any transfer of former matrimonial home would be 0% rather than 23.8%. In the circumstances, I have treated the wife's evidence with caution where it is not corroborated by other material.

58. The husband was likewise a less than impressive witness. He too regularly dissembled in response to questions put to him in cross-examination. There were a number of occasions, particularly in relation to the sale of SETL Limited to Colendi, where the husband's assertions did not survive contact with the points put to him by Ms Faggionato. For example, his assertion that Colendi SETL Holdings was established to hold the Colendi shares given to the husband and the other SETL shareholders because Colendi wanted a clean shareholder register, notwithstanding the fact there are multiple small shareholders listed on the Colendi register. The husband also presented as someone who had struggled to engage with the proceedings, giving the impression of being regularly detached from, or overwhelmed by, the process. For example, notwithstanding the approach of the final hearing the husband appeared to have taken very few steps indeed to establish his US tax liability. This resulted in the husband, through Mr Thorpe, pressing this court to deliver judgment in very short order ahead of a contended for deadline to submit his US tax returns. By his own admission, the husband's first replies to the wife's Questionnaire were "not good enough", that "he could have done better on the pension" and that he could have dealt with his US tax affairs "more quickly". The husband seemed to have little insight into the impact this approach would have had on costs. In the foregoing context, I have likewise treated the husband's evidence with caution where it is not corroborated by other material.

*Computation*

59. The first stage of the financial remedies exercise is to compute the matrimonial assets, which involves assigning to each asset a value fairly attributable to it, to ascertain how much access to liquidity can be achieved and to consider the relevant tax consequences, before moving on to determining what constitutes a fair distribution. In undertaking that exercise in this case, it is necessary to deal first with the key disputes between the parties with respect to the nature and extent of the matrimonial assets and liabilities as they relate to Colendi, ELSA and the parties respective tax liabilities.

(i) Colendi

60. I am satisfied on the balance of probabilities that the gross value of the husband's Colendi shareholding as at 1 October 2024 is £19M. I accept the expert evidence provided by Mr Rodwell and do not consider that that evidence was undermined by the thorough challenge mounted against it by the husband through Mr Thorpe.

61. First, notwithstanding that challenge, the husband's closing ES2 includes the figure of £19M for the Colendi shares. This perhaps reflects the husband's less than robust defence in oral evidence of his position on the valuation provided by Mr Rodwell. The highest the husband put his objection to the valuation provided by Mr Rodwell was that he had taken "umbrage that there was not enough focus in his report on the liquidity". The husband accepted that he advances no other number for the valuation of the shares and that there has been no application to adduce competing valuation evidence.

62. Second, I am not persuaded by Mr Thorpe's submission that the existing shareholders who invested £65M at $2 per share in May 2024 were not arm's length investors for the purposes of determining Market Value, which is presumed to emerge from dealings between unrelated parties, each acting independently. Mr Rodwell was satisfied that the investors met the definition of "arm's length" under the IVS, namely parties who do not have a particular or special relationship that may make the price level uncharacteristic of the market or inflated, in circumstances where it is commonplace for businesses to approach original investors to raise capital, where the fact the two investors are existing shareholders does not mean they have a *particular or special relationship* and where, primarily because of the amount of money invested, proper due diligence will have been undertaken by each investor as to Colendi's value. Mr Rodwell's expert opinion is also consistent with their being no evidence to suggest that the investors in question are controlling shareholders or have proximity to, or influence over, management decisions.

63. Third, I am not persuaded that the husband's assertion that the investment secured in May 2024 was with a view to gaining a banking licence in Turkey changes these conclusions. As I have noted, this assertion was introduced through Mr Thorpe in cross-examination and not by way of evidence. Further, Colendi is a fintech company, one of whose central aims is to become a banking entity. In this context, investors investing with a view to the company being able to seek a banking licence is little different from investors investing in the company *per se*.

64. I acknowledge that valuations of shares in private companies present challenges and that the resulting valuation can, in consequence, be fragile. As Mr Rodwell noted during his evidence, valuation is a subjective task. The challenge being to assess an unobservable quantity. However, as recognised by Moylan LJ in *Martin v Martin*, valuations will fall into different categories and the conclusions that a court can draw, or not draw, as to value must have regard to the facts of the particular case. Mr Rodwell considered that he had very good evidence to come to a valuation of the Colendi holding. I accept the evidence of Mr Rodwell that, as he put it, "people putting their hands in their pockets" by way of very recent transactions in May 2024 for £65M at $2 per share is solid evidence on which to base his valuation in the context of the subjective assumptions that have to be made in arriving at that valuation of £19M.

65. I likewise accept Mr Rodwell's evidence with respect to the question of whether a discount should be applied to the valuation. I acknowledge that the valuation of an asset is an estimate of what it will sell for now and that, if it is perceived as being hard to realise, its value will be discounted to reflect that difficulty. It is further the case that the husband's Colendi shares are illiquid and are shares in a private company. Against this, I accept Mr Rodwell's expert opinion that it is not appropriate to apply a *further* discount to his valuation of the husband's Colendi holding in circumstances where the investors willing to pay $2 per share in May 2024 were aware of the restrictions on liquidity and were prepared to pay that price for an illiquid investment, meaning the discount for illiquidity was priced in. The fact of this investment as recently as May 2024 likewise, in my judgment, undermines Mr Thorpe's submission that the longevity of the current funding round ongoing since Q1 2022 should result in a discount because it demonstrates that there is "not sufficient appetite in the market for Colendi shares." Finally, notwithstanding Mr Thorpe's urging I am not persuaded that the fact that the husband is involved in divorce proceedings is relevant to the question of discount as evaluated by Mr Rodwell. An investor would not ordinarily take into account the marital status of other investors when deciding whether to buy at a particular price. The question of whether the *court* may ascribe a lower value to the asset in the distribution exercise is separate issue.

66. For the reasons set out above, I am satisfied on the balance of probabilities that the gross value of the husband's Colendi shareholding as at 1 October 2024 is £19M. Both parties accept that UK CGT based on that value would amount to £4.56M and that any disposal would also incur US CGT in the sum of £722,000. The parties further agree that the husband is owed £153,707 by SETL Limited as a result of him loaning that sum.

(ii) ELSA

67. The primary issue with respect to ELSA is whether the wife structured the sale of that matrimonial asset in such a way that £3M of the consideration paid for ELSA by YMK Holdings LLC, which would form part of the matrimonial assets available for division, became post marital income of £750,000 per annum over four years, which would not. Having regard to the totality of the evidence before the court, I am satisfied that the consultancy fee of £750,000 per annum over four years, paid to the wife under the consultancy agreement that accompanied the sale of ELSA, constituted deferred consideration for that sale of that company to YMK Holdings LLC.

68. Notwithstanding that the parties were in dispute regarding their matrimonial finances during the currency of the negotiations between ELSA and YMK Holdings LLC, the wife's firm criticism in these proceedings of what she asserts has been the husband's lack of transparency in relation to the deal with Colendi and the historic involvement of the husband in the management of ELSA, I am satisfied that the wife showed a marked reluctance to provide information about the negotiations for the sale of ELSA.

69. On 5 June 2023, the husband wrote to the wife requesting "full and candid disclosure of offers and expressions of interest or discussion concerning the sale of ELSA." In default of a response, the husband made an application for disclosure of all negotiations regarding the sale of ELSA on 7 June 2023. Whilst the wife gave some limited disclosure, she stated that she had signed an NDA preventing any wider disclosure. As I have noted, in answer to a question from the court, the wife stated that she had not

asked YMK Holdings LLC whether a clause could be inserted in the NDA permitting disclosure to her husband and the experts given these pending proceedings. This remained the wife's position in the face of an offer by the husband to provide an undertaking that any information would remain confidential (the husband declined himself to sign an NDA as being an unnecessarily costly step). In a letter dated 23 August 2023, Withers asserted that the wife's reluctance to provide information was because the husband had improperly contacted other football clubs, including Besiktas Football AS in Turkey, and there was a risk he would endanger deals. However, that position contrasts with the wife's reaction by text on 5 June 2023 to the news that the husband had contacted Besiktas Football AS, the wife raising no apparent objection and simply asking the husband to send the contact information so she could follow up his contact.

70. On 4 October 2023, DDJ Smith ordered the wife to disclose the Heads of Terms, latest drafts of any share or business purchase agreement and any related shareholders agreement, and copies of completion documents in relation to the sale of ELSA. The wife contends that she complied with the order of 4 October 2023 by providing the signed Heads of Terms on 18 October 2023, the draft SPA on 20 October 2023 and an updated version on 14 November 2023, updates on the date of exchange and, on completion, the exchanged share purchase agreement. Within this context, whilst DDJ Todd refused on 1 May 2024 to grant the disclosure sought by the husband of documents associated with the negotiation of the sale of ELSA to YMK Holdings LLC (which was upheld by Cusworth J on appeal on 14 October 2024) DDJ Todd *did* direct the wife to file and serve a witness statement in response to the husband's allegation that the sale of ELSA was structured to ensure the value of the consultancy agreement did not form part of the consideration for sale. As I have noted, the wife accepted in cross-examination that, despite being given the opportunity by the court to do so, she did not provide to the court any further documents dealing with the specific allegation with respect to deferred consideration. The court is therefore limited to considering the documentation set out above. I am satisfied that that documentation supports the husband's case.

71. Whilst the SPA obligates the wife to carry out the duties set out in Schedule 1, that obligation amounts to the wife being paid £750,000 per annum, or £62,500 per month, for promoting the interests of the club, devoting as much time as reasonably necessary each month to acting as a senior adviser, advising on community relations and strategic capital projects, acting as ambassador and liaising with the CEO and management team. Within this context, whilst the wife avers that YMK Holdings LLC wanted the wife specifically to be attached to the club so that she could advise more generally on the future of women's football, the terms of paragraph 2.2 of the SPA make clear that, whilst ELSA is obligated to pay the wife the fixed 'consultancy fee', there is no obligation on the wife to offer to ELSA opportunities through which she can perform those tasks.

72. Further, the 'consultancy fee' is only not payable in the event of material breach that is not remedied, if the wife is guilty of financial dishonesty, fraud or misappropriation of funds or if the wife is convicted of a criminal offence. Otherwise, ELSA is permitted to terminate the agreement only if it pays the full fixed sum of £3M in full in two instalments. Added to this, beyond performance of the tasks set out in Schedule 1, the payment of the 'consultancy fee' is not linked to any metric of performance. In the

circumstances, the 'consultancy fee' comprises a fixed amount totalling £3M, payable in instalments without obligation on the wife to offer to ELSA opportunities through which she can perform the tasks specified in the SPA and not tied either to how well the company does or the extent to which the wife fulfils those tasks.

73. I am also satisfied that the wife's assertion that the 'consultancy fee' totalling £3M constitutes income, and not consideration, renders the deal for the sale of ELSA financially disadvantageous in a way that is inconsistent with the wife's case that she is a highly experienced pioneer in women's football responsible for building the club from scratch, by reason of which she contends that YMK Holdings LLC wanted her to remain associated with the club. The sale agreed by the wife results in her paying a much higher rate of tax on the monies received under the SPA and accompanying consultancy agreement than would have been due if the total of £3M under the latter had been expressed as part of the sale price. The wife accepted in cross-examination that she had incurred an additional £1M in tax liabilities by entering into to the consultancy agreement, which is subject to income tax, rather than incorporating the consultancy fee as part of the sale price, which is subject to CGT. It is difficult on the face of it to see why the wife, who advances herself before this court as a successful entrepreneur, would choose to take this course. Further, and in the same context, on the face of it is difficult to see why the wife would have agreed to an additional £1.1M fee being paid to Mr Snyder, a friend and a director who was under a fiduciary duty to effect the sale.

74. Finally, the wife's assertion that the 'consultancy fee' totalling £3M constitutes income and not consideration also renders the deal, on its face, commercially puzzling. On the basis of the sale prospectus disclosed by the wife, in the year in which negotiations took place the club had a net operating loss of £804,927. Against this, on the wife's case YMK Holdings LLC to pay her a yearly consultancy fee of £750,000 over four years, totalling £3M. In circumstances where the club is liable to pay VAT on that sum, the 'consultancy fee' is, dependent on the extent to which the VAT is recoverable, equivalent to 41% of the total cost to YMK Holdings LLC of £8.8M. On the wife's case, YMK Holdings LLC agreed to pay a 'consultancy fee' equivalent to nearly half of what it paid for the club as a whole.

75. With respect to this issue, the ultimate question for the court is what is the effect of the ELSA transaction. In combination, the SPA and the consultancy agreement provide for the sale of ELSA in return for a sum of £5.96M, of which £750,000 is deferred, and payment to the wife of the consultancy for £750,000 over each of the following four years, totalling £3M. In these circumstances, and set within the context of the matters set out above taking place at the time the financial remedy proceedings were ongoing, I am satisfied that the effect of the transaction was to, and was likely intended to, defer an additional £3M of the total consideration for the sale of ELSA to YMK Holdings LLC. Within this context, that total consultancy fee, net of tax, falls to be added to the wife's side of the asset schedule in the sum of £1.6M.

76. It was advanced by Mr Thorpe in his closing submissions that should the foregoing findings be made, a fair recompense for the consequent diminution of the matrimonial assets would be to allocate to the wife the £750,000 deferred consideration entirely to the husband's side of the settlement. I am not however satisfied that, in addition to the total consultancy fee net of tax in the sum of £1.6M being added to the wife's side of the asset schedule, the husband should be further awarded the totality of the deferred

consideration in the sum of £750,000, particularly in circumstances where each party had agreed that that sum should be divided equally between them.

(iii) Tax

77. The issue of tax falls into two categories. The domestic tax liability and the more contentious US tax liability arising from the husband's US citizenship. With respect to the question of computation, the wife contends that the husband should bear the *entirety* of the US tax liability, both that already incurred and that which may be incurred as a result of the transfer of matrimonial assets consequent upon the distributive exercise in these proceedings. I am not able to accept that contention.

78. The wife's case with respect to the US tax liability appeared to be that the husband had somehow chosen to disguise his US citizenship in order to gain a forensic advantage and/or that she should not be responsible for the husband's US tax liabilities as they are consequent solely upon that citizenship. I have found that the wife was aware that the husband held US nationality at least from the point at which the husband started to enter the US with her using his US passport. Further, and in any event, the wife's knowledge of the husband's immigration status is not the issue. The fact that the husband is a US citizen, and hence liable to pay US tax, was not the result of choice. He was born in the US, an event which (at present) confers US citizenship automatically. In circumstances where the husband's US citizenship was always going to, and has, lead during the course of the marriage to liability accruing for US taxes, the issue is the source and destination of the funds that generated the US tax liability.

79. The US tax liability arose from the sale of matrimonial assets, primarily Bitcoin, and the proceeds were invested during the marriage in further matrimonial assets, primarily SETL Limited, ELSA and the renovation of the former matrimonial home. Given this position, and the parties' acceptance that this is a case in which there should be a broadly equal division, I am satisfied that the US tax liabilities accruing during the marriage should be treated in the same way. In the circumstances I have described, there is no basis in my judgment for concluding that the position in respect of the US tax liabilities already incurred should be anything other than an equal division of that liability. Mr Pannell's evidence that, with respect to the tax falling due now the husband qualifies for the IRS Streamlined Foreign Offshore Compliance Procedure under which only three years of late tax returns are required provided he files by 15 December 2024, was not the subject of dispute. Following the hearing, the husband provided documents from Blick Rothenberg that confirm his estimated US tax liability on the basis that the expedited procedure is used.

80. With respect to potential US tax liability incurred as a result of the transfer of matrimonial assets consequent upon the distributive exercise in these proceedings, I have reached the same conclusion.

81. The assets on which a potential liability to pay US tax arises are all matrimonial in nature. There is no principled basis in those circumstances for placing any US tax liability accruing on the transfer of such assets solely at the feet of the husband because he is a dual US and UK national, any more than there is for placing UK CGT solely at the feet of the wife because she has only British Citizenship. The evidence of Mr Pannell that contingent US tax liability will arise on a sale or transfer of any UK property, including the former matrimonial home, was not challenged by either party.

Likewise, Mr Pannell's evidence that, in the foregoing context, provided the parties remained married on the last day of the tax year, an election being made by them under the US Tax Code IRC Section 6013(g), which would have the result that transfers of UK property from the husband to the wife during the period of the election would not give rise to a US income tax charge, was also not the subject of challenge (albeit the wife deprecated an approach that results in her income becoming reportable to, and taxable in, the US for the period in which the election is in effect and responsible for the entire joint US tax liability on a joint and several basis).

82. In addition, the husband has outstanding UK tax liabilities of £370,700 on the wife's case and £410,620 on the husband's case. The wife has outstanding UK tax liabilities of £263,375.

83. In the foregoing circumstances, the figures for the tax liabilities, including the potential US tax liabilities on the transfer of certain matrimonial assets, can be summarised as follows (assuming for current purposes that the wife does *not* agree to an election being made under the US Tax Code IRC Section 6013(g) to mitigate tax on the transfer of certain matrimonial assets, that the figures for the US tax due now provided by Blick Rothenberg in advance of the expedited process are accepted, and an exchange rate of $1.27 is applied):

| | **Tax Liability** |
|---|---|
| Eaton Road (FMH) | £97,876 |
| 98 Cloister Road | £16,081 |
| 33 Cloister Road | £11,706 |
| 96 St Paul's Crescent | £0 |
| 3 Craigie Court | £0 |
| 42 St Martin's Road | £6,615 |
| 17 Princes Crescent | £17,787 |
| 3 Wakefield Road | £0 |
| 188 Bevendean Crescent | £16,635 |
| Hutchins Road, Georgia | £14,635 |
| **TOTAL US TAX ON TRANSFERS** | **£181,335** |
| US Tax Due Now | £1,355,431 |
| Tax (other) | £641,197 |
| **TOTAL TAX** | **£2,177,963** |

84. Within the foregoing context, I am satisfied that computation of the net matrimonial assets and liabilities on the evidence available to the court results in the following matrimonial assets available for distribution:

| | **Wife** | **Husband** | **Joint** | **Total** |
|---|---|---|---|---|
| Eaton Road (FMH) | £0 | £0 | £5,909,124 | £5,909,124 |
| 98 Cloister Road | £0 | £0 | £305,267 | £305,267 |
| 33 Cloister Road | £0 | £0 | £247,001 | £247,001 |
| 96 St Paul's Crescent | £0 | £0 | £221,253 | £221,253 |

| | | | | |
|---|---|---|---|---|
| 3 Craigie Court | £0 | £0 | £531,068 | £531,068 |
| 42 St Martin's Road | £0 | £0 | £461,057 | £461,057 |
| 17 Princes Crescent | £0 | £0 | £213,011 | £213,011 |
| 3 Wakefield Road | £0 | £0 | £547,669 | £547,669 |
| 188 Bevendean Crescent | £0 | £0 | £65,395 | £65,395 |
| Hutchins Road, Georgia | £0 | £0 | £419,049 | £419,049 |
| Bank Accounts | £2,771,113 | £8,182 | £0 | £2,779,295 |
| Investments / Polices | £125,839 | £427,706 | £0 | £553,545 |
| Colendi / SETL / Wise | £0 | £13,718,000 | £0 | £13,718,000 |
| SETL Loan and Wise EIS | £0 | £178,707 | £0 | £178,707 |
| ELSA | £1,671,749 | £0 | £0 | £1,671,749 |
| ELSA Deferred Consideration | £750,000 | £0 | £0 | £750,000 |
| Chattels | £0 | £0 | £108,625 | £108,625 |
| US Tax Liabilities | £0 | £0 | (£1,355,431) | (£1,355,431) |
| Other Tax Liabilities | (£86,375) | (£377,822) | £0 | (£464,197) |
| Other Liabilities | (£414,538) | (£242,720) | (£47,956) | (£657,258) |
| **NON-PENSION ASSETS** | **£4,817,788** | **£13,712,053** | **£7,673,088** | **£26,202,929** |
| Pensions | £0 | £1,124,356 | £0 | £1,124,356 |
| **TOTAL ASSETS** | **£4,817,788** | **£14,836,409** | **£7,673,088** | **£27,327,285** |

*Fair Distribution*

85. I turn next to the question of the distribution of the matrimonial assets as I have found them to be. 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."

86. Having regard to the totality of the evidence and submissions in this matter, I am satisfied that, having regard to the matter set out in s.25(1) and s.25A of the 1973 Act

in the context of the principle articulated above, that the fair distribution of the matrimonial assets is as follows:

| | **Wife** | **Husband** | **Total** |
|---|---|---|---|
| Eaton Road (FMH) | £5,909,124 | £0 | £5,909,124 |
| 98 Cloister Road | £0 | £305,267 | £305,267 |
| 33 Cloister Road | £0 | £247,001 | £247,001 |
| 96 St Paul's Crescent | £0 | £221,253 | £221,253 |
| 3 Craigie Court | £0 | £531,068 | £531,068 |
| 42 St Martin's Road | £0 | £461,057 | £461,057 |
| 17 Princes Crescent | £0 | £213,011 | £213,011 |
| 3 Wakefield Road | £0 | £547,669 | £547,669 |
| 188 Bevendean Crescent | £0 | £65,395 | £65,395 |
| Hutchins Road, Georgia | £0 | £419,049 | £419,049 |
| Bank Accounts | £2,021,113 | £8,182 | £2,029,295 |
| Investments / Polices | £125,839 | £427,706 | £553,545 |
| Colendi | £4,115,400 | £9,602,600 | £13,718,000 |
| SETL Loan and Wise EIS | £0 | £178,707 | £178,707 |
| ELSA | £1,671,749 | £0 | £1,671,749 |
| ELSA Deferred | £375,000 | £375,000 | £750,000 |
| Lump Sum | £0 | £750,000 | £750,000 |
| Chattels | £54,313 | £54,313 | £108,625 |
| US Tax Liabilities | (£677,716) | (£677,716) | (£1,355,431) |
| Other Tax Liabilities | (£86,375) | (£377,822) | (£464,197) |
| Other Liabilities | (£414,538) | (£242,720) | (£657,258) |
| **TOTAL NON-PENSION** | **£13,093,909** | **£13,109,020.00** | **£26,202,929** |
| Pensions | £562,178 | £562,178 | £1,124,356 |
| **TOTAL** | **£13,656,087** | **£13,671,198** | **£27,327,285** |

87. In reaching the foregoing conclusion, the starting point is that it is accepted by both parties in this case that there will be a broadly equal division of the assets. This is one of the few sensible concessions that the parties have been capable of making between them during the course of these protracted proceedings and is clearly appropriate. Theirs was a long marriage of some forty years. It was, on the evidence before the court, plainly a marriage of equals in terms of the contribution that each made to the marriage. Both contributed substantially to the family economy by reason of their respective business endeavours. Neither party seeks to suggest anything other than that they made an equal contribution for the purposes of the exercise under s.25 of the 1973 Act.

88. Within this context, the substantive disagreement remaining between the parties is one of how a broadly equal division of the matrimonial assets should be achieved in the

context of a significant portion of those assets being illiquid and, on the wife's case, now carrying increased risk. Both parties having strong feelings about retaining particular matrimonial assets.

89. With respect to the question of 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, the property and other financial resources of the parties is summarised above. With respect to income and earning capacity, both parties have in my assessment reasonable prospects in this regard. The wife is 63. Whilst she has sought to suggest that she suffers from PTSD, there is no medical evidence before the court to support that assertion and certainly no evidence demonstrating there is an impact on her earning capacity. On her own evidence she has long and deep experience of the commercial aspects of women's football and remains in demand as a consultant in that field. Within this context, I am satisfied that she retains a substantial earning capacity moving forward. I reach the same conclusion in respect of the husband. He is 61 and continues to work in the field of fintech. Whilst he is at present not drawing it, he has a contracted salary with Colendi of £300,000 gross per annum. As I have noted, the single joint expert opines that it is not unreasonable to assume that the husband may receive this contracted salary if Colendi becomes sufficiently profitable. It was apparent during his oral evidence that the husband also remains an active investor in fintech, he having recently invested in a company both in an effort to drive business for SETL Limited and on the basis of the company's business model.

90. In the foregoing circumstances, I consider that housing is the primary capital need of each party at this time. During the course of his evidence, the husband evinced an intention to move to the United States to build a home on the land he purchased in that jurisdiction and gave oral evidence that this would come at a cost of some £2M. There is no independent evidence before the court to support that figure, although it was not substantially challenged by the wife.

91. The wife contends that she needs to remain in the former matrimonial home. Whilst the standard of living enjoyed by the parties during the marriage was a good one, on the face of it, it is difficult to see how the wife's current needs as a single person extend to a nine bedroom, seven bathroom property. The fact that one of the adult children is currently residing at that property, and another of the adult children wishes to move in whilst renovations are undertaken to his own property, does not substantially change that assessment. Against this, I accept that the wife has an emotional connection to the former matrimonial home to a degree that was not apparent in the evidence of the husband. Within that latter context, I am satisfied that a fair distribution of the assets can be achieved without the need to sell the former matrimonial home.

92. As I have set out, the obligations in this case include substantial US tax liabilities, in addition to tax liabilities in this jurisdiction, a small amount of credit card debt and some outstanding legal fees. I am satisfied that, to achieve fairness in this case, the husband will need to have left over a sum for securing housing after having settled his share of the liabilities.

93. For the reasons I have already given, I am satisfied that it is appropriate for the US tax liabilities to be shared equally between the parties. It will plainly be advantageous for the US tax position to be regularised as soon as possible and in a manner that mitigates, as far as is permitted, the tax arising in that context. In the circumstances, it was more

than disappointing that a mere 48 hours before the purported deadline for taking advantage of the IRS Streamlined Procedure, the parties were still in apparent dispute about which of them should provide the funds in the interim to enable that filing to take place. In the face of an increasing number of inappropriate emails to the court, containing fresh evidence for which no application to adduce had been made following the case being closed, I ultimately declined to deal with that dispute on paper. For the reasons I have given, I am satisfied that the US tax liability incurred as the result of the sale of matrimonial assets during the course of the marriage for the purpose of investing in other matrimonial assets falls to be shared equally between the parties.

94. Again for the reasons already given, I am likewise satisfied that the US tax falling due on the transfer of assets as between the husband and the wife consequent upon the final order made by this court should be shared equally in the circumstances of this case. In circumstances where transfers of property incurring potential US tax liability will be necessitated by any order this court makes to ensure a fair distribution of the matrimonial assets (including a significant liability upon the transfer of the former matrimonial home), it would again be sensible to mitigate, as far as is permitted, the tax arising in that context.

95. On the expert tax evidence before the court, an election pursuant to under the US Tax Code IRC Section 6013(g) would have the result that transfers of UK property from the husband to the wife during the period of the election would not give rise to a US tax liability. Whilst I accept that such an election exposes the wife to joint and several liability for the US tax, that liability will be paid pursuant to the final order this court makes. Whilst I further accept that an election would result in the wife being treated as a US resident with respect to her income, any election will be for a finite period, after which husband will resume sole liability for US taxes in circumstances where the wife is not a US national. In these circumstances, I am satisfied it would be reasonable for the parties to make an election under the US Tax Code IRC Section 6013(g). The wife resists this course on grounds that the husband is using the fact of his US citizenship for forensic advantage. In circumstances where I have rejected that argument, and given the nature and extent of the tax liability arising on the transfer of the family home as a result of implementation of the final order this court makes to effect a fair division of those assets, I am satisfied that if the wife is not prepared to mitigate the tax liability by making an election then she must bear the additional tax burden that results from taking that position in the manner described above.

96. In reaching my conclusion on a fair distribution, I am satisfied it would *not* be inequitable to ignore the matters of conduct pleaded by the wife pursuant to s.25(1)(g) of the 1973 Act. A significant portion of the final hearing was taken up with evidence that came, broadly, under the heading of 'conduct'. This was unfortunate in circumstances where the allegations relied on by the wife as constituting conduct which it would be inequitable for the court to ignore came nowhere near meeting the high threshold applicable. It was likewise unfortunate where the assertions of non-disclosure and litigation conduct are plainly primarily relevant to the question of costs given the wife confirmed in oral evidence that she is not contending that there exist in this case assets that remain hidden from the court as at the date of the final hearing.

97. The matters formally pleaded by the wife as conduct for the purposes of s.25(1)(g) do not withstand scrutiny in that context when the high threshold applicable under s.25(1)(g) is applied to them. Whilst I am certain that it was unpleasant and worrying,

the husband's sudden departure from the former matrimonial home does not constitute conduct which it would be inequitable for the court to ignore. If it did, then such pleading would be possible in almost all financial remedies cases. The breakdown of a marriage is difficult and emotional. There are, however, no pleaded incidences of emotional abuse or threatening behaviour by the husband. The text messages contained in the bundle show civilised discussions between the partes in late 2021 and early 2022 regarding the renovation of the former matrimonial home. The parties exchanged civil greetings as recently as the husband's birthday in March 2024. As I have further noted, there is no medical evidence before the court establishing that the wife suffers from PTSD. Likewise, I am not satisfied that the husband's conduct of his finances in what the wife contends was a "secretive and unilateral" manner constitutes conduct that it would be inequitable to ignore for the purposes of s.25(1)(g) having regard to the high threshold applicable.

98. There is also, I am satisfied, no cogent evidence that the husband exercised financial control over the wife to an extent that it would be inequitable to ignore. There is no evidential basis for concluding that the husband was financially controlling or coercive. The issue with the Revolut account was clarified in oral evidence and the wife conceded, as demonstrated by the text messages, that the difficulty was a technical one that the husband helped to resolve, following which the wife thanked him. The husband had acquiesced in the parties spending £2.1M on the renovation of the former matrimonial home and the injection of £2.6M into ELSA, in respect of which the wife retained control to the extent she sold it on her own terms, in addition to remaining in occupation of the former matrimonial home. Having regard to the totality of the circumstances summarised in this judgment, it is difficult to see how the allegation of financially controlling and coercive behaviour ever came to be made under s.25(1)(g). Indeed, it is only really explicable as a wholly inappropriate make weight. Finally, the evidence does not bear out the allegation that the husband threatened to withhold funding from ELSA. It is plain on the evidence that at the relevant time the finite and reducing matrimonial finances were not robust enough to continue funding a loss making business. It was perhaps not surprising that the wife retreated in cross-examination to placing the responsibility for making the allegation on her lawyers and asserting that the husband had simply been "passively aggressive" in discussions regarding the continued funding of ELSA.

99. For the foregoing reasons, I decline to take into account the matters of alleged conduct relied on by the wife pursuant to s.25(1)(g). None are matters that it would be inequitable for the court to ignore when determining the fair distribution of the matrimonial assets. With respect to the allegations of non-disclosure and wider litigation misconduct relied on by the wife, I am satisfied that it is appropriate to deal with those matters when the court comes to deal with costs. As I have noted, this is not a case in which the wife contends that there exist assets hidden from the court as at the date of the final hearing. In the circumstances, I am satisfied that the matters complained of constitute delayed or late disclosure, which may sound in increased costs, rather than frank non-disclosure of assets leading to a risk that the court's distributive exercise will not reflect a fair outcome because some matrimonial assets remain hidden.

100. Finally, in considering the distribution of assets in this case I have, pursuant to the duty on the court under s.25A of the 1973 Act 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. This presents a particular challenge in this case in circumstances where close to half the matrimonial assets available for distribution, in the form of the husband's Colendi holding, are illiquid and carry with them a level of risk. Those circumstances lead to the need in this case to consider the question of '*Wells* sharing'.

101. It is plain from the judgment of Thorpe LJ in *Wells v Wells* that '*Wells* sharing' does not mandate the equal division of all assets equally. It could not mean that, as such an approach would corrupt the search for fairness under s.25. Sharing is achieved by a *fair* division of "both the copper-bottomed assets and the illiquid and risk laden assets" and that fair division falls to be ascertained by reference to the factors in s.25. *Wells* sharing allows for the possibility that the only way to achieve fairness in a given case might be to share, to whatever degree appropriate, an illiquid and risk laden asset, notwithstanding the disadvantages that may cause for the receiving party. The corollary of this position is that, in some cases, a fair outcome may require one party to be left with the totality of the asset that is difficult to value or to realise, or a very significant portion of that asset. The guiding principle at all times, however, remains fairness.

102. An order for *Wells* sharing brings a case into conflict with the clean break principle articulated in s.25A of the 1973 Act. As such, the Court of Appeal has further made clear that there is a need for caution where a fair distributive exercise is said to require *Wells* sharing. In *Versteegh*, having recounted some of the disadvantages of a *Wells* order giving one party a share of the other's illiquid or risk laden asset as part of their award (including that it is contrary to the clean break principle, that it is difficult to give the receiving party any real protection in respect of their share of the illiquid or risk laden asset, that there is a lack of certainty for the receiving party with respect to when the asset can be realised and that the poor relationship between the two parties who remain linked by the asset will be detrimental to future co-operation in respect of the asset), King LJ observed as follows:

> "I fully accept that the making of a *Wells* order is something that should be approached with caution by the court and against the backdrop of a full consideration by the court of its duty to consider whether it would be appropriate (per s 25A of the MCA 1973), to make an order which would achieve a clean break between the parties. I do not accept however that *Wells* was a wholly singular case and should be regarded as such by the courts: see for example *GW v RW (Financial Provision: Departure from Equality)* [2003] EWHC 611 (Fam), [2003] 2 FLR 108 and *WM v HM (Financial Remedies: Sharing Principle: Special Contribution)* [2017] EWFC 25, [2018] 1 FLR 313."

103. In circumstances where caution is required, the Court of Appeal in *Versteegh* further suggested that '*Wells* sharing' will be a last resort and that '*Wells* sharing' should only comprise a minority element of the award, Lewison LJ stating:

> "[195] There may be cases in which a judge is left with no alternative but to fix a value. In other cases, instead of fixing a value, a judge may order the asset to be sold, so that the market will fix its real value. In yet other cases, an asset may be divided in specie: this is known in the jargon as '*Wells*

> sharing': see *Wells v Wells* [2002] EWCA Civ 476, [2002] 2 FLR 97. Where the judge comes to the conclusion that he can make no more than a wild guess at the value of an asset, and it is common ground that the asset in question should not be sold, *Wells* sharing may be the only option left. As Mr Mostyn QC put it in *GW v RW (Financial Provision: Departure from Equality)* [2003] EWHC 611 (Fam), [2003] 2 FLR 108, at para [64]:
>
> > 'That this was the only viable route became plain during the evidence. Both W's accountant and H agreed that it was impossible to attribute anything other than a wild guess to the value of H's options. H would extend this uncertainty to the rest of his deferred assets. It therefore follows that a *Wells* sharing is the only way of achieving fairness. Indeed, it would seem to me that this should become standard fare where a case has a significant element of deferred or risk-laden assets. For why should one party receive most of the plums leaving the other with most of the duff?'
>
> [196] Mostyn J returned to the theme in *WM v HM (Financial Remedies: Sharing Principle: Special Contribution)* [2017] EWFC 25, [2018] 1 FLR 313, in which he said at para [24]:
>
> > 'Generally speaking, a *Wells* sharing arrangement (see *Wells v Wells* [2002] EWCA Civ 476, [2002] 2 FLR 97) should be a matter of last resort, as it is antithetical to the clean break. It is strongly counterintuitive, in circumstances where one is dissolving the marital bond and severing as many financial ties as possible, that one should be thinking about inserting the wife as a shareholder into the husband's company … However, *Wells* sharing is not so objectionable if it only applies to a minority element of the claimant's award.'"

104. The view of the Court of Appeal in *Versteegh* that *Wells* sharing will be a last resort and should only comprise a minority element of the award, was expressed in the context of illiquid or risk laden assets that could not be valued accurately or at all. Further, the earlier comments of Mr Mostyn QC (as he then was) in *GW v RW (Financial Provision: Departure from Equality)* highlight the importance, when contemplating *Wells* sharing, of remembering that considerations of fairness operate both ways. It may also be onerous for the party in whose name the illiquid or risky asset is held to be left with all or a greater share of that asset. The fairness of that outcome must also be considered. Within this context, if the illiquid or risk laden asset has been built up from matrimonial funds in an open manner during the course of the marriage and is capable of being reliably valued, there *may* be a stronger argument for the risk and the potential reward to be shared more equally. To this end, the circumstances by which the asset in question came to be illiquid or risky, and the reliability of any valuation that can be achieved in respect of it, may also be relevant when evaluating whether and, if so, to what extent it is fair for the illiquid or risky asset to be shared.

105. None of the preparatory steps that would be required for the court to vary the Colendi SETL Nominees trust have been taken in this case. Whilst this court heard evidence regarding the extent to which it might be possible to transfer shares from the husband's holding in Colendi, ultimately both parties did not appear to dispute that, at the very least, there was no certainty that this could be achieved in a manner that would result

in the wife securing the unencumbered legal and beneficial title to those shares. Within this context, the parties ultimately did not appear to dispute that in so far as the court was required to distribute the matrimonial asset that now comprises the husband's Colendi holding, this would have to be achieved by way of a contingent lump sum of the husband's net receipt upon the sale of his Colendi shares coupled with an undertaking to notify the wife of any such sale and to transfer the relevant share of net proceeds to the wife within five working days of receipt, the husband taking this position following the refusal by the wife to make an election under US Tax Code IRC Section 6013(g). In my judgment these positions were realistic. It would appear that the husband only holds the beneficial title of his Colendi shares. Even if he does hold the legal title, it is further unclear whether Mr Tekman's consent would be required before the legal title could be transferred and he has not been asked if he would be willing to do so. In any event, the terms of the shareholder's agreement mean that any transfer would be caught by the pre-emption provisions.

106. I am accordingly satisfied that a contingent lump sum is the only reliable means of reflecting the wife's share of the matrimonial assets comprised of the Colendi shares in so far as it is necessary to do so to achieve fairness. However, I am further satisfied that whilst maintaining fidelity to the principle of fairness the portion of her award that is comprised of a contingent lump sum should be kept as small as possible.

107. This is not a case in which the Colendi shares cannot be valued. Whilst valuation is more art than science, for the reasons set out above I am satisfied that this court can place weight on the valuation of the husband's Colendi shares provided by the expert in the sum of £19M. However, the question of whether and to what extent it is appropriate in this case to share that illiquid and risky asset with the wife, i.e. whether and to what extent so called '*Wells* sharing' is appropriate on the facts of this case, remains. In this case, the need to consider '*Wells* sharing' arises not from an inability to value an asset but rather from the size of the illiquid or risk laden asset relative to the "copper bottomed" matrimonial assets in the case. Certain of the other disadvantages of '*Wells*' sharing' an illiquid or risk laden asset are therefore nonetheless relevant.

108. The contingent lump sum dependent on the Colendi holding would have a number of the disadvantages for the wife associated with '*Wells* sharing'. It would prevent a clean break at this point in time for the purposes of s.25A of the 1973 Act (requiring that which a clean break seeks to avoid, namely two people who have fallen out having to continue to co-operate closely in respect of financial matters), would leave the wife dependent on an illiquid asset to which a risk attaches and in which it is difficult to deal, would place the wife in a position in which it is difficult to provide her with any solid protection with respect to a contingent lump sum comprising a not insignificant element of her award and would leave the wife with a lack of certainty with respect to when the Colendi shares could be realised and potential future costs consequent thereon (in circumstances where the husband's co-operation in these proceedings with the provision of information has been less than fulsome and has led to punitive costs orders being made). Further, whilst it has been possible to value the Colendi shares in this case, that valuation is a snapshot and the future value of the asset is also the subject of significant uncertainty.

109. Against this, and as I have noted, in circumstances where it is also onerous for the party in whose name the illiquid or risky asset is held to be left with all or a greater share of that asset, the fairness of that outcome must also be considered. On the evidence before

the court, I am satisfied that the wife was not consulted by the husband before he dealt in the way that he did with the substantial matrimonial asset that was SETL Limited, rendering that matrimonial asset illiquid and subject to increased risk. However, the Colendi shares comprise an asset that was built up within the marriage from other matrimonial assets, in the first instance Bitcoin and thereafter SETL Limited. Whilst there was a dispute as to the extent it was necessary for the deal with Colendi to be structured in the way that it was in circumstances where, contrary to the husband's justification for a nominee holding, multiple small shareholders are listed on the Colendi register and other companies which have invested by way of shares owned directly, the wife did not appear to contend that the husband had structured the deal with Colendi in a deliberate attempt to *defeat* the wife's claim. Indeed, as I have noted, in cross-examination, the wife was keen to emphasise that she had not used the word "dishonest" to frame her contention with respect to the husband's approach. Finally, and as I have already observed, I am satisfied that fairness demands that the husband have sufficient liquid funds after he has cleared the liabilities for which he is responsible to rehouse himself.

110. In my judgment, the combined effect of the matters set out above is that there must be some sharing of the illiquid Colendi asset, although the wife's share should be kept to the minimum amount required to ensure fidelity to the principle of fairness. In addition to the difficulties inherent in '*Wells* sharing' summarised above, I am satisfied that it is fair for the husband to bear the larger share of the consequences of having, without consulting the wife, converted his shareholding in SETL Limited, representing close to half the matrimonial assets, into an illiquid minority interest in a multinational corporation.

111. The wife acknowledges by her open offer that it is likely to be necessary to include a contingent lump sum in her favour. This is a realistic position. The court must maintain fidelity to the policy of effecting a clean break where possible. However, it must also maintain fidelity to the principle of fairness. As I have noted, the need to consider '*Wells* sharing' in this case arises not from an inability to value an asset but rather from the size of the illiquid or risk laden asset relative to the other "copper bottomed" matrimonial assets. There is, in my judgment, simply an insufficient amount of the latter to achieve a fair division between the parties without relying to *some* extent on sharing the Colendi shares if the husband is not to be left with very limited or no liquid funds to house himself. It would also not be fair to leave the husband with insufficient liquid assets to fund a property in which to live. In this case the illiquid asset in question is, unlike the position that pertained in *Wells v Wells*, capable of being reliably valued at £19M. Within that context, with respect to the quantum of such '*Wells*' sharing I am satisfied that the appropriate figure is 30%. This will permit a division of assets that properly balances the need for sufficient housing provision for the husband with the need to avoid the wife having to bear too greater share of the illiquid assets, with the risks and difficulties consequent thereon.

## CONCLUSION

112. For the reasons set out above, and to restate my conclusions in the tabular form adopted above, I am satisfied that the fair distribution of the matrimonial assets in this case is as follows:

| | **Wife** | **Husband** | **Total** |
|---|---|---|---|
| Eaton Road (FMH) | £5,909,124 | £0 | £5,909,124 |
| 98 Cloister Road | £0 | £305,267 | £305,267 |
| 33 Cloister Road | £0 | £247,001 | £247,001 |
| 96 St Paul's Crescent | £0 | £221,253 | £221,253 |
| 3 Craigie Court | £0 | £531,068 | £531,068 |
| 42 St Martin's Road | £0 | £461,057 | £461,057 |
| 17 Princes Crescent | £0 | £213,011 | £213,011 |
| 3 Wakefield Road | £0 | £547,669 | £547,669 |
| 188 Bev Endean Crescent | £0 | £65,395 | £65,395 |
| Hutchins Road, Georgia | £0 | £419,049 | £419,049 |
| Bank Accounts | £2,021,113 | £8,182 | £2,029,295 |
| Investments / Polices | £125,839 | £427,706 | £553,545 |
| Colendi | £4,115,400 | £9,602,600 | £13,718,000 |
| SETL Loan and Wise EIS | £0 | £178,707 | £178,707 |
| ELSA | £1,671,749 | £0 | £1,671,749 |
| ELSA Deferred | £375,000 | £375,000 | £750,000 |
| Lump Sum | £0 | £750,000 | £750,000 |
| Chattels | £54,313 | £54,313 | £108,625 |
| US Tax Liabilities | (£677,716) | (£677,716) | (£1,355,431) |
| Other Tax Liabilities | (£86,375) | (£377,822) | (£464,197) |
| Other Liabilities | (£414,538) | (£242,720) | (£657,258) |
| **TOTAL NON-PENSION** | **£13,093,909** | **£13,109,020.00** | **£26,202,929** |
| Pensions | £562,178 | £562,178 | £1,124,356 |
| **TOTAL** | **£13,656,087** | **£13,671,198** | **£27,327,285** |

113. The distribution tabulated above results in a very nearly equal division of the matrimonial assets and will permit the wife to remain housed in the former matrimonial home, as she seeks to do. It further permits the husband to retain the property portfolio built up during the course of the marriage, which he can utilise to fund his housing needs after he has satisfied the liabilities for which he is responsible, the order providing for the parties to share the US tax liability now due. As I have noted, if the wife is not now willing to make an election under US Tax Code IRC Section 6013(g) in order to mitigate the US tax arising from the transfers of the family home consequent upon the order of this court, a further adjustment will need to be made to provide for her to bear those liabilities in the manner described above. Whilst the distribution requires the wife to retain 30% of the illiquid but reliably valued Colendi shareholding, for the reasons I have given I am satisfied that this is necessary to achieve a fair distribution of the assets having regard to the principle of fairness. For the reasons that I have explained, the distribution does not take account of the allegations of conduct made by the wife under s.25(1)(g) of the 1973 Act.

114. I will invite counsel to draw an order accordingly for my approval. I propose to receive submissions as to, and to determine the question of costs in writing unless the parties seek an opportunity to address the court on that issue orally.