Neutral Citation Number: [2018] EWHC 3053 (Fam)

Case No: BV17D35328

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/10/2018

Before :

MR JUSTICE WILLIAMS

- -

Between :

IX	**Applicant**
- and -	
IY	**Respondent**

- -
- -

Nicholas Cusworth QC and Duncan Brooks (instructed by **Farrer & Co LLP**) for the **Applicant**
Lewis Marks QC and Samantha Singer (instructed by **Alexiou Fisher Philipps LLP**) for the **Respondent**

Hearing dates: 8th - 16 October 2018

- -

Judgment Approved

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Williams :

1. On 12 September 2013, IX married IY in The Principality. By the time they married they had been in a relationship for some years, they having met in 2006. The wife is a former model who had not worked since 2003 in any formal capacity, although she had undertaken some commission-based work in relation to property and jewellery sales, and had a daughter WD, who was seven years old at this point. The husband is a software engineer by training and has deployed that since about 1994 in establishing

and selling businesses which have been at the forefront of one of the deregulated industries. On 28 November 2017 the wife petitioned for divorce, with the parties having been experiencing difficulties in their marriage for many months. On 30 November 2017 the wife issued an application for financial remedies on divorce. It is that application that I now have to determine at the conclusion of a seven-day hearing.

2. The agreed asset schedule shows that the sum which falls to be divided between the parties is either £38,946,372 (the wife's estimation) or £38,274,048 (the husband's estimation).

3. The wife seeks a lump sum order totalling £16 million (plus the discharge of her litigation loans of around £740,000), that representing approximately 40% of the sum available; she saying that on sharing principles this is a fair proportion having regard to all the circumstances. As a crosscheck her team say that such a sum would represent her needs in any event, her needs being made up of housing in Belgravia of between £6 and £7 million and capitalised maintenance of £8.5 million (that being made up of £500,000 per annum until she is 60 and £250,000 per annum for life there after). Her open position is as follows;

   a) H to make a lump sum payment to W of £16 million (H to indemnify W as to any tax liability incurred).

   b) H to transfer a car to W.

   c) Each party to be solely responsible for all liabilities in their sole names, save that H shall be solely responsible for W's two litigation/living expenses loans which currently stand at c.£740,000 (including charges and interest).

   d) Clean break in life and death.

   e) No order for costs, save that H shall pay W the sum of £11,715 plus interest in respect of the costs order of Mr Justice Moor dated 2 May 2018.

4. The husband says that the wife's claim should be assessed purely on a needs basis and that sharing is inappropriate in all the circumstances. He says that her housing need is currently £3.5 million and will reduce to £2.3 million in due course. He says that maintenance at £200,000 per year for the first five years, and £125,000 per year for the next five years and £100,000 per year for the remainder of her life will meet her income needs. Furthermore, taking account of equity release of £1.2 million her income needs can be capitalised at £1.6 million. He therefore offers a lump sum of £5.1 million. His open offer was (it has been tweaked slightly as set out above)

   a) H to make a lump sum payment to W of £4.85 million (no indemnity is offered by H on the basis that there is no need for one)

   b) H to pay the balance of W's reasonable outstanding legal costs; W to be responsible for her litigation loans.

   c) Clean break in life and death.

d) No order for costs, save that H shall pay W the sum of £11,715 plus interest in respect of the costs order of Mr Justice Moor dated 2 May 2018.

5. It will immediately be evident that there is a differential in the bottom lines that each party contends for of around £11.5 million. Within this there is a difference of some £3.5 million in the evaluation of the wife's housing need and at the top end a difference of some £300,000 per annum in her income needs. But more importantly there is the fundamental difference in principle between their approaches; on the one hand sharing with a crosscheck against needs, on the other a needs approach on its own without reference to any sharing principles.

List of agreed issues

6. The parties provided an agreed list of issues is set out below.

1. *The extent to which the parties' pre-marital relationship should be treated as part of the 'duration of the marriage' (s25(2)(d) Matrimonial Causes Act 1973) or as one of the 'circumstances of the case' (s25(2) MCA 1973).*

2. *Whether the parties separated in February 2017 (per H) or September 2017 (per W)? Per H, the extent to which the answer to this question matters, beyond its potential tax impact.*

3. *Children of the Family: the extent to which this classification applies to any of the children in this case and what impact, if any, this classification may have in the section 25 exercise. (per H, no relevance; per W, relevant to assessing the pre-marital relationship and W's and WD's needs).*

4. *The standard of living during the marriage and the extent to which this factor may inform an assessment of need.*

5. *Available resources.*

   (a) *Whether H (including via ZCo) has received full payment in respect of his Zebra options (including whether there are any retention payments).*

   (b) *Whether H's gift of c.£100,000 to his brother in August 2018 should (per W) be included as H's asset for the purposes of these proceedings or (per H) be excluded from the asset schedule.*

   (c) *Whether H's gift of a car worth £50,000 to his father should (per W) be included as H's asset for the purposes of these proceedings as conceded by H in replies to questionnaire or (per H) be excluded from the asset schedule.*

   (d) *Whether (per H) ZCo owes a debt of £522,270.*

   (e) *Whether (per W) the prospect of H paying UK CGT on disposal of his Zebra shares is too remote and therefore should be ignored or (per H) the possibility of H paying CGT means that this potential liability should be deducted on the asset schedule.*

6. *Contributions:*

   a. *The parties' respective contributions during the premarital relationship from late 2007 to September 2013.*

   b. *The extent of H's pre-marital wealth.*

   c. *The weight to be attached to H's contribution of pre-marital wealth.*

7. *Sharing:*

   (a) Whether (per W) W is entitled to share in the growth in value in Zebra during the relationship, or (per H) W's claims are to be assessed by reference to her reasonable needs.

   (b) Whether sums that H brought into the relationship, but which were spent on living expenses during the relationship and no longer exist are (per W) mingled and spent, therefore not capable of being "ringfenced"; or (per H) a relevant and unmatched 'contribution to the welfare of the family' impacting on the fairness of sharing what now remains.

   (c) The extent to which the value of H's shareholding in Zebra derived from contributions that he made before the date of the marriage/relationship and the extent to which the value derived from contributions made after the date of the marriage/relationship. Per H, (a) whether it is desirable or possible reliably to assess when Zebra's major value was built up or when H's contributions were principally made and (b) if it is, the utility of those inquiries in the circumstances of this case.

   (d) The value of H's interest in Zebra before the parties began to live together/were married. Per W: H has failed to provide any reliable evidence about this. Per H: probably only broadly relevant to outcome and not capable of being established definitively. Per W, in the absence of such evidence, the court should take a broad view on the best available evidence; bearing in mind that if there were any evidence available to suggest that H's contribution was greater than the £2.2m which he has claimed for tax purposes, no doubt he would have produced it.

   (e) How H's contributions before the start of the marital relationship to the development of Zebra can or should be reflected in the final outcome?

8. *Needs:*

   (a) The parties' respective housing and other capital needs. Per W, these should be informed by the extremely high standard of living during the relationship. Per H, the extent to which the court should reflect "downsizing" in W's future housing provision within the quantum of her award.

   (b) The parties' respective income needs.

(c) *The appropriate quantum and term of provision that W should receive to meet her future income needs.*

9. *Per W: interim maintenance:*

(a) *Per W, whether H is correct to assert that he had severe cashflow constraints from October 2017?*

(b) *Whether W ought to have received interim maintenance payments sufficient to cover the deficit between her expenditure at the marital rate post separation (and on legal fees as required) and the payments that she received from H?*

(c) *W having not received those payments, whether H should now be responsible for meeting the charges and interest that W incurred in taking out loans to cover that deficit, and the discharge of those loans, before the division of the matrimonial asset base?*

(d) *Per H, the reasonableness of W's expenditure since the breakdown of the relationship.*

(e) *Per H, whether it is otiose and contrary to the overriding objective to seek retrospective judicial determination of interim maintenance questions when (a) the court is engaged in performing the wider section 25 exercise and (b) those interim questions were resolved by consent, albeit without prejudice to later contentions.*

10. *Outcome:*

(a) *W seeks a lump sum of £16,000,000 plus a transfer of one of the parties' cars to her sole name and with H to cover her loans (including interest and costs: £741,340 plus interest since 13 September 2018). H offers to pay W a lump sum of £4,850,000 plus her reasonable outstanding costs but on the basis that W is responsible for her own litigation loans.*

(b) *The appropriate division of chattels, including the parties' dogs: B and C*

The Parties Positions

7. I shall return to some of the parties' more detailed submissions later in this judgment when I address the list of issues, although given the extensive written and oral submissions that I have heard I cannot hope to do anything other than identify the essential thrust of the multitude of legal and evidential arguments addressed to me.

8. The wife's case in a nutshell is that this is quintessentially a sharing case. She says that from 2007 until 2013 the parties cohabited in London, The Alps, and France and that this period added to the four years of the marriage from 2013 to 2017 make this a medium duration marriage. She submits that in 2007 when the cohabitation commenced Zebra was in its early phase and was of limited value; possibly reflective only of the sums that the husband had himself invested into it. She submits that the husband has failed to disclose documentation which would enable her team to

undertake any sort of detailed evaluation of the financial position of Zebra in 2007. The husband's failure to disclose these documents which either he or his accountant must have or must have access to leads unerringly, she submits, to the conclusion that he has withheld them because they do not support his case that it was pregnant with value at that point in time. She submits that the vast majority of the value that was realised on its sale in 2017/18 was built up in Zebra from 2007 and that this was the result of the husband's endeavours in the business over that period. She submits that whilst he made his contributions by building up the business, she made matching contributions on the domestic front by looking after her child and his children, helping in the design, renovation and furnishing of the various properties they owned, organising their lives on the domestic front and supporting him in his business endeavours both emotionally but also practically by introducing him to the social and financial elite of London, Europe and perhaps America. She submits that the evidence plainly supports her evaluation of the nature of the relationship between 2007 and 2013 and that this was truly a seamless transition from cohabitation to marriage. The relationship was committed and exclusive from 2007 and the pattern of their lives did not alter from before to after the marriage. She contributed to the children, to their properties and was prepared to contemplate seeking to adopt the husband's son, HS. The husband's daughter, HD, spent time with her in the summer of 2017 when the husband was away with his new girlfriend. The fact that HD saw Smith Place as her London home illustrates how close the wife was to the children. She submits that the parties led the life of an international family with homes in multiple countries, and a standard of living which involved the finest of all that money could buy albeit perhaps not at the level of the super-rich. On her formulation of her own open offer she would receive approximately 40% of the current net assets in the lump sum of £16 million. She says this is a fair share of the wealth that was generated during the time that the parties were together. She cross checks this against needs. Although she had not owned property prior to meeting the husband, Mr Cusworth QC submits that her need now is for an unencumbered property of her own. He submits that the fact that the parties owned homes in The Alps, The Principality, and France (albeit not necessarily held in their own or the wife's name) justifies her now owning her own home. Her current home would cost approximately £6 million to buy on a relatively short lease. She aspires to buy something similar. Property particulars for alternatives she suggests range between £5 - £6.5 million pounds, giving a housing fund need taking account of stamp duty and cost of purchase of between £6 - £7 million. Her budget comes in at just under £600,000 per year, which she says is less than half of the overall rate of expenditure of the family during the marriage. She relies on a budget which she says shows annual expenditure in 2015 of €1.864 million, the equivalent of £1.341 million. She says since the separation her actual spending has been in the region of £355,000 over the year. She is currently 50 and says that her annual income need until 60 would be £500,000 per year reducing thereafter to £250,000 per year for life. Using standard Duxbury calculations, this would give a capitalised sum to generate income of £8.6 million. Thus she says an appropriate assessment of her income and capital needs gives rise to a lump-sum of £15-£16 million which demonstrates that the 40% share is also broadly comparable with her needs and thus fair.

9. Mr Cusworth QC on behalf of the wife submits that the husband's contention that the entirety of the value of Zebra is a non-matrimonial asset is simply wrong. He points out that the husband was CEO from October 2008 until 2012 and continued to be a

board member and was actively involved in potential sale of Zebra to a private equity business in 2015 and in particular he was central to the ultimate sale in 2017/18. He submits that the period from October 2007 until the marriage in 2013 should properly be regarded as premarital cohabitation which moved seamlessly into the marriage and thus the husband's work in the business during that period and during the marriage itself represented contributions which were matched by the wife's contributions to the welfare of the family. Thus she is entitled to share in the assets generated by the parties during the marriage. Mr Cusworth QC acknowledges that an adjustment to the wife's share would be justified by reference firstly to the fact that Zebra plainly had some value prior to the commencement of the relationship and that its latent potential must be recognised. He submits that the court should discount the current value of Zebra to reflect what the husband introduced (albeit the value should be at the lower end of any bracket given his alleged non-disclosure) and that the wife is entitled to 50% of whatever is left. He also acknowledges that the husband also brought into the marriage the £12 million capital which was expended on the parties' living expenses and that this justifies some departure from equality and thus some further discount from the 50% of that part of the assets which represents the marital acquest (i.e. after the deduction of the value the husband introduced). He submits that difficulties in the valuation of the various elements relating to Zebra (true value in 2007, latent potential/ springboard, passive growth) are not a reason for not applying the sharing principle. He says they are evidential and the court is entitled to adopt a broader brush approach as recognised by Lord Justice Moylan in *Hart*. He submits that the court should err in the wife's favour on valuation of Zebra-linked issues given the husband's attitude to disclosure (see later) and his decision not to call Mr N, his accountant.

10. He says that the values shown for Zebra in the 2007 and 2009 spreadsheets are unlikely to be right, they are no more than guesstimates, and I should not rely on them too heavily. The effect of this submission though is to invite me either to pluck a figure from the air as to their then value or to ascribe a percentage of the current value to the value they had in 2007; again by a broad horizon approach.

11. As to the value of Zebra, the husband put £500,000 in in 2007 and loaned the company £1.3 million later which was then converted from loans to equity. However, the base numbers have not been available and the husband has not produced documentation to support it. In relation to cohabitation, the husband has had access to all of the documents which would prove his case that there was no cohabitation. The limited documents the court has are as a result of the wife circumventing the password protections on the husband's laptop and being able to take photographs of a number of documents she thought were relevant. The husband could have produced more documents to contradict the wife. Furthermore, the husband has wiped the wife's laptop and iPad which were left in France on the basis that they were not used by her and had been reprogrammed to other functions. Mr Cusworth QC suggests that these were deliberate actions by the husband to prevent the wife gaining access to material which might have supported her case.

12. The husband's approach could not be more different. Relying on case law, including the recent decisions of the Court of Appeal in *Sharp v Sharp* [2017] EWCA Civ 408, [2018] 2 WLR 1617 and *Hart-v-Hart*, [2017] EWCA Civ 1306; [2018] 2 WLR 509 he asserts not merely that there should be an adjustment to the parties' shares because

of the existence of non-matrimonial assets, but that the sharing principle itself should not apply and the court should adopt a needs-based approach following that upheld by the Court of Appeal in the *'Hart'* case. He submitted that there is a grey area where sharing or needs might both be appropriate approaches. Mr Marks QC submits that given Zebra was formed in 2002 and that the heavy lifting (including obtaining licences) had been done by 2007, the current value of Zebra is largely attributable to work the husband did before the relationship even commenced. Mr Marks QC referred me to the *Versteegh* case [2018] EWCA Civ 1050 and what Lord Justice Lewison said about the difficulties in valuing private companies. Mr Marks QC submits that Zebra is truly the husband's asset which was never part of the marital arrangements (although I observe that £7 million in proceeds from share sales in 2015 were deployed to maintain the family). The husband argues that the pre-marital relationship cannot properly be characterised as leading seamlessly into marriage and thus the husband's efforts during that period should also be viewed as generating non-marital assets. Even if that premarital period from 2007 to 2013 (or some part of it) can be viewed as part of the marriage, much of the increase in value of Zebra was passive because the heavy lifting had been done before then. The husband also argues that from 2012 (when he stepped down as CEO) until 2017 (when he was involved to handle the sale) he was not actively working in Zebra and so passive growth which is not attributable to his efforts cannot be treated as a part of the matrimonial acquest; that period of course covering the entirety of the marriage. In addition Mr Marks QC submits that because it is impossible for the court to accurately value Zebra as at 2007; or the springboard value; or to discern a reliable means of indexation of the passive growth in the premarital value of Zebra from 2007 to 2017; or the passive growth of Zebra during periods of the husband's inactivity in the company; the shortness of the marriage; and the absence of any children, it is wrong to adopt the sharing approach, because it is not possible reliably to make adjustments to reflect what Mr Marks QC argues are non-marital assets or plainly contributions by the husband which must be non-marital in nature. He describes any attempt at valuing the husband's interest in Zebra pre-2007 or undertaking a latent or springboard value or indexation as being a stab in the dark. Having said that, he also seeks to rely on the 2007 balance sheet produced by the husband's accountant and notes that the wife agreed with the other entries in the balance sheet, in particular the existence of the properties. That he says indicates the balance sheet is a genuine document from 2007. However, he maintains that attempting to value the husband's share in Zebra is nonetheless fraught with difficulty in particular because of the issues with assessing latent value and indexation. He submits that this is this is plainly a case in which she is not entitled to a share in the value of the company at all.

13. In the alternative, he asserts that a true valuation of the business at the date of the marriage would include a significant uplift to reflect its latent potential realised during the marriage and any passive growth attributable to inactive periods, so that any increase in the value of his shares in the business generated during the marriage which might be subject to the sharing principle was consequentially reduced. Furthermore, Mr Marks QC argues that in addition to the non-marital assets (which should not be shared) that the husband made an additional unmatched (by the wife) contribution in the form of the capital he introduced to the marriage which arose from the share sale of his first business. Given that almost all of that capital amounting to some £12 million was spent on meeting the parties living expenses over the ten-year period, the husband argues that this must be taken into account either in adopting a needs-based

approach to the wife's claim or by a significant adjustment if there is to be a sharing-based assessment of the wife's claim. He points out that the husband brought seven properties into the relationship, within two years this was down to three and not long after that it was down to one property (in France) which is mortgaged 100%. In addition, he brought in liquid capital in the form of investments and guarantees which have all been deployed in meeting the family's living expenses.

14. The husband says that if he is right that Zebra is truly to be characterised as a non-marital asset then the wife's claim falls to be assessed by need alone. He says that it is clear from the case law that non-marital assets are not subject to the sharing principle. If that is not applicable then needs are. The husband asserts that the home that the wife currently lives in is larger than she needs given that on her case it was acquired in order to accommodate the whole family of two adults and three children. Her needs now are for herself and for visits from WD, perhaps with a live-in member of staff as well. He has put forward a number of properties in the vicinity of the wife's present home and further afield which show that a housing fund of £3 - £4 million would generously meet her housing needs. The wife says none of them are suitable. The husband says that in due course the wife would have ample scope for later trading down to a smaller or less expensive property and thus would be able to release capital to top up her income fund. The husband characterises the wife's budget as an ugly and most improvident starting point for an assessment of her needs. He observes that prior to the relationship in 2007 she had very little; a small lump sum from her annulled marriage, small commissions from property introductions, irregular financial support from the father of WD, and had been in rented property apparently for most of her life. He says that the 2015 budget the wife relies on in fact was produced by him to demonstrate that if the parties met that expenditure they would be overspending by a considerable sum and they needed to cut back. He does not accept that they in fact spent at that level. He says that a proper assessment of her needs, even taking account of the parties' standard of living, would be £200,000. He submits that this is roughly what she has spent in the last 12 months and that should be a starting point; she needs time to adjust to the real world and to accept that she will not be maintained at the level she lived for the rest of her life. He cross-references this to what he submits can be attributed to the wife as her expenditure in the last 12 months, excluding rental payments. He submits that she is able to meet aspects of her income needs from her role as a brand ambassador. Thus a total lump sum of £4.85 million, which after repayment of W's loans would leave her with about £4.4 million, which will enable her both to purchase a property and to draw income from a capital fund, which would later be topped up by the release of equity from a sale of her property.

15. In closing submissions, the husband altered his position slightly. He offered a housing fund of £3.5 million and assessed the wife's income needs as £200,000 per and for five years, £125,000 per annum for five years and the remainder of her life at £100,000 per annum. The Duxbury sum to generate this income is £2.786 million. Allowing for the wife downsizing in a few years and releasing around £1.2 million would require a payment of a lump sum of £5.1 million representing £3.5 million for housing and £1.6 million for income generation to be supplemented by the release of £1.2 million at some point in the future.

16. This short summary masks a host of other subsidiary points which emerge from the statement of issues and to which I shall return briefly in due course.

The Law

17. At the conclusion of the evidence Mr Marks QC suggested that the parties submit written closing notes which would be supplemented by their oral submissions. Given that the trial template allowed for half a day each for oral submissions I declined his offer; experience suggests that this approach simply doubles the time required to consider the written **and** oral submissions and the trial timetable simply did not contain the additional time that would be required to digest written submissions as well as a day of oral submissions. However, I did suggest that I would be assisted by an agreed summary of the legal principles. Although the silence was not quite deafening in response to this suggestion, it was not something which the parties were able to agree to provide. As will become apparent in the remainder of this section of the judgment, although the statutory provisions are straightforward and the over-arching principles outlined by the House of Lords appear designed to make the determination of financial remedy claims less complex, the reality is far removed. I was fortunate in having the assistance (within the remits of putting their client's cases) of leading and junior counsel and solicitors whose experience is unrivalled. I was also fortunate in having a sensible time estimate in order to consider my judgment. Given that the issues of non-marital assets including business assets are likely to fall for consideration in very many cases, and where the assets are such that they exceed the parties' needs although are nowhere near as substantial as those involved in this case, the task of District Judges (including Deputies) and Recorders and Circuit Judges up and down the country in seeking to apply the law which now derives from a myriad of cases is not an enviable one. No doubt the advent of the financial remedy court will ease the situation to some degree but for the busy Family Court Judge having to determine whether the case might be a 'Charman (no.4)' case where awarding less than one third of the assets would be entering dangerous territory, or how the 'springboard' value of a pre-existing business is to be quantified or what indexation should be applied to passive growth of a non-marital asset, or whether the case was properly characterised as a short marriage, dual career case seems to me to be a big ask. Happily, recent decisions of the Court of Appeal in the field appear to support a less technical, more flexible and more common-sense approach to such issues.

18. In exercising the court's powers when making financial remedies orders following divorce proceedings, the starting point is s.25 of the Matrimonial Causes Act 1973. Under s.25(1), the court must 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, and in particular must have regard to the matters listed in s.25(2) (a) to (h):

"(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) … 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."

19. The current approach is governed by two decisions of the House of Lords in *White v White* [2001] 1 AC 596 (hereafter *"White"*) and *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186 (hereafter "*Miller*"). It is well established that the court's award, in cases where the parties' resources exceed their needs, will be the higher of that reached by the application of the sharing principle and that reached by application of the need principle. Lord Nicholls in *White v White* [2001] AC 596 at page 605:

> *"there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. …. [W]hatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions. This is implicit in the very language of paragraph (f): 'the contributions which each … has made or is likely … to make to the welfare of the family, including any contribution by looking after the home or caring for the family'. If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer."*

20. For that reason, Lord Nicholls recommended that, when a judge reached the preliminary view that one party should receive a bigger share of the assets than the other, "*before reaching a firm conclusion and making an order along these lines, a judge will always be well advised to check his tentative views against the yardstick of equality of division*."

21. In *Miller*, Lord Nicholls developed the analysis of fairness as follows (at paragraphs 9 to 16):

> "*9. The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largesse. It is not a case of 'taking away' from one party and 'giving' to the other property which 'belongs' to the former.*

> *The claimant is not a supplicant. Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case.*
>
> *10. What, then, in principle, are these requirements? The statute provides that first consideration shall be given to the welfare of the children of the marriage …. Beyond this several elements, or strands are readily discernible. The first is financial needs ….*
>
> *11. This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support ….*
>
> *12. In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs ….*
>
> *13. Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage….*
>
> *16. A third strand is sharing. 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*."

22. In the *Hart* case Lord Justice Moylan noted that in *Charman* the Court of Appeal identified the origins of the sharing principle as being in the parties' contributions and that a proper evaluation of the parties' different contributions should generally lead to an equal division of their property unless there was good reason for the division to be unequal.

23. Thus, in cases where the parties have substantial wealth so that considerations of need are irrelevant, the court starts from the position that the matrimonial assets will be subjected to the "sharing principle" and divided equally between the parties.

24. As the Court of Appeal recently observed in *Work v Gray* [2017] EWCA Civ 270 at paragraph 34, "*the sharing principle is now firmly embedded and, in those cases where the resources exceed needs, the 'ordinary consequence' of its application will be the equal division of matrimonial property*." The principle is, however, subject to a number of exceptions, qualifications or caveats, of which one in particular is relevant here.

25. In applying the sharing principle, a distinction is drawn between assets or property that can be classified as matrimonial as opposed to non-matrimonial. The husband argues that a reason for departing from the sharing principle is that his shares in the company should be regarded as a species of non-matrimonial property and that they fall outside the principle altogether. In order to consider the next issue, it is necessary to go back to the case law. Much of the summary that follows is drawn from the judgment of Mr Justice Baker (as he then was) in *XW-v-XH* [2017] EWFC 76 and I am indebted to him for his compendious consideration of the case law in that case.

26. The origin of the distinction between matrimonial and non-matrimonial assets is found in the speech of Lord Nicholls of Birkenhead in *White* at page 610(e) to (f):

> "*… property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.*"

27. In *Miller*, the House of Lords returned to the question of the distinction between matrimonial and non-matrimonial property. On this occasion, however, Lord Nicholls qualified the distinction between matrimonial and non-matrimonial property. At paragraph 26, under the heading "Flexibility", he observed:

> *"This difference in treatment of matrimonial property and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon. Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day. Similarly the 'equal sharing' principle might suggest that each of the party's assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differ."*

28. A little earlier in his speech, Lord Nicholls had said:

> "*...the courts should be exceedingly slow to introduce, or reintroduce, a distinction between 'family' assets and 'business or investment' assets. In all cases the nature and source of the parties' property are a matter to be taken into account when determining the requirements of fairness .... But 'business and investment' assets can be the financial fruits of a marriage partnership as much as 'family' assets. The equal sharing principle applies to the former as well as the latter. The rationale underlying the sharing principle is as much applicable to 'business and investment' assets as to 'family' assets.*"

29. Baroness Hale of Richmond, however, took a slightly different view. At paragraph 149 she said:

"*the question, therefore, is whether in the very big-money cases, it is fair to take some account of the source and nature of the assets, in the same way that some account is taken of the source of those assets in inherited or family wealth. Is the "matrimonial property" to consist of everything acquired during the marriage (**which should probably include periods of premarital cohabitation and engagement**) or might a distinction be drawn between family and other assets? .... To this list should clearly be added family businesses or joint ventures in which they both work. It is easy to see such assets as the fruits of the marital partnership. It is also easy to see each party's efforts as making a real contribution to the acquisition of such assets.* ***[My emphasis added]***

30. At paragraph 150 though she posed a question:

> "*More difficult are business or investment assets which have been generated solely or mainly by the efforts of one party. The other party has often made some contribution to the business, at least in its early days, and has continued with her agreed contribution to the welfare of the family .... But in these non-business-partnerships, non-family assets cases, the bulk of the property has been generated by one party. Does this provide a reason for departing from the yardstick of equality*?"

31. She proceeded to identify the competing arguments (at paragraphs 150-1):

> "*On the one hand is the view… that commercial and domestic contributions are intrinsically incommensurable. It is easy to count the money or property which one has acquired. It is impossible to count the value which the other has added to their lives together. One is counted in money or money's worth. The other is counted in domestic comfort and happiness. If the law is to avoid discrimination between the gender roles, it should regard all the assets generated in either way during the marriage as family assets to be divided equally between them unless some other good reason is shown to do otherwise .... On the other hand is the view that this is unrealistic .... Some [assets] are not family assets in the way that the home, its contents and the family savings are family assets .... It simply cannot be demonstrated that the domestic contribution, important though it has been to the welfare and happiness of the family as a whole, has contributed to the acquisition. If the money-maker had not had a wife to look after him, no doubt he would have found others to do it for him. Further, great wealth can be generated in a very short time, as the* Miller *case shows; but domestic contributions by the very nature take time to mature into contributions to the welfare of the family*."

32. Baroness Hale continued:

> "*152. My Lords, while I do not think that these arguments can be ignored, I think they are irrelevant in the great majority of cases. In the very small number of cases where they might make a difference, of which* Miller *may be one, the answer is the same as given in* White *in connection with premarital property, inheritance and gifts. The source of the assets may be taken into account but its importance will diminish over time. Put the other way round, the court is expressly required to take into account the duration of the marriage: section 25(2)(d). If the assets are not 'family assets', or not generated by the joint efforts of the parties, then the duration of the marriage may well justify a departure from*

> *the yardstick of equality of division. As we are talking here of a departure from that yardstick, I would prefer to put this in terms of a reduction to reflect the period of time over which the domestic contribution has or will continue ....*
>
> *153. This is simply to recognise that in a matrimonial property regime which still starts with the premise of separate property, there is still some scope for one party to acquire and retain separate property which is not automatically to be shared equally between them. The nature and the source of the property and the way the couple have run their lives may be taken into account in deciding how it should be shared. There may be other examples. Take, for example, a genuine dual career family where each party has worked throughout the marriage and certain assets have been pooled for the benefit of the family but others have not. There may be no relationship-generated needs or other disadvantages for which compensation is warranted. We can assume that the family assets, in the sense discussed earlier, should be divided equally. But it might well be fair to leave undisturbed whatever additional surplus each has accumulated during his or her working life. However, one should be careful not take this approach too far. What seems fair and sensible at the outset of a relationship may seem much less fair and sensible when it ends. And there could well be a sense of injustice if a dual career spouse who has worked outside as well as inside the home throughout the marriage ended up less well off the one who had only or mainly worked inside the home.*"

33. Thus, on the facts of ***Miller***, Baroness Hale (paragraph 158) reached the conclusion that:

> "*...there was a reason to depart from the yardstick of equality because those were business assets generated solely by the husband during a short marriage. Whether one puts this as a result of the contacts and capacities he brought to the marriage or as the result of the nature and source of the assets generated ... it comes to much the same thing*."

34. In *Charman v Charman (No.4)* [2007] EWCA Civ 503, [2007] 1 FLR 1246, the Court of Appeal was presented with an argument that "non-business partnership, non-family assets", or "unilateral assets" should be excluded altogether from the sharing principle in a case involving a marriage of 28 years' duration. At paragraph 83, Sir Mark Potter, giving the judgment of the court, said:

> "*We hasten to correct a serious misapprehension at the heart of the submission .... Baroness Hale of Richmond put forward the distinction between unilateral assets and other matrimonial property for use in cases in which the marriage was short. And, although obiter she suggested an extension of it to another situation, namely that of the dual career ... she definitely did not commend the distinction for use in other cases. Its application in a case such as the present would be deeply discriminatory and would gravely undermine the sharing principle articulated, albeit embryonically, in* White *and emphatically developed in other parts of the speeches in* Miller *itself."*

35. At paragraph 86, the President added:

> "*The extension of the concept of unilateral assets, suggested by Baroness Hale of Richmond in Miller at para 153, was expressly endorsed by Lord Mance at para 170. Although obiter, it clearly commands great respect. It relates to the 'dual career'. The suggestion was that, where both parties had worked throughout the marriage, had pooled some of the assets built up by their efforts but had chosen to keep other such assets under their separate control, the latter, although unequal in amount, were unilateral assets which might not be subject to the sharing principle. Because of the convincing logical objections of Lord Nicholls of Birkenhead to the different treatment of unilateral assets, we would prefer, so far as it is proper for us to do so, to keep the room for application of the concept closely confined.*"

36. I was referred to the decision of the Court of Appeal in *K-v-L* [[2011] EWCA Civ 550, [2012] 1 WLR 306 where Lord Justice Wilson (as he then was) considered at paragraphs 19 to 21 an argument that a departure from equality further than to 66.6% - 33.3% was not appropriate to reflect an allowance for special contribution. Lord Justice Wilson made clear that the reference in *Charman* to the unlikelihood of departure from equality further than 66.6%-33.3% was in respect of division of matrimonial property and he drew a distinction between sharing of matrimonial property and sharing of non-matrimonial property where the application of sharing principles might lead to very extensive departure from equal division, often to 100%-0%.

37. The law concerning the treatment of unilateral assets was considered further in the judgment of the Court of Appeal in *Sharp*. The Court of Appeal's decision was based on the opinion of the majority of the House of Lords in *Miller*, namely Baroness Hale of Richmond, Lord Hoffmann and Lord Mance. The two leading speeches in the House in *Miller* were given by Baroness Hale and Lord Nicholls of Birkenhead. As McFarlane LJ observed in *Sharp* (at paragraph 84), there was much common ground in those two speeches, but on some points they differed and on those points it is the opinion of Baroness Hale, with whom Lord Hoffmann and Lord Mance agreed, which represents the authoritative view. As demonstrated by the extracts from the citations above, one point on which the two principal speeches in *Miller* differed was whether or not the court should make a distinction between "family assets" and "business or investment assets". Lord Nicholls was of the view that the court should be "*exceedingly slow to do so*" (paragraph 20). In contrast, Baroness Hale and the majority adopted a more flexible approach taking account of "*the nature and the source of the property and the way the couple have run their lives*" (paragraph 153).

38. In *Sharp*, McFarlane LJ (at paragraph 80) expressed concern about the passage in the *Charman* judgment cited above:

> "*Where… the lone opinion of Lord Nicholls [in Miller] on a matter is in conflict with that of the three members of the House who were in agreement on that matter, the opinion of the majority must be the authoritative view. In so far as the judgment of this court in Charman at paragraph 86 has been interpreted as expressing a preference for the opinion of Lord Nicholls on such matters, such an interpretation is, in my view, erroneous.*"

39. After a very careful analysis of all the speeches in *Miller*, McFarlane LJ in *Sharp* reached the following conclusion:

> "*97. The inescapable conclusion from this analysis of the speeches in Miller, in terms of the possibility of some alteration from, rather than a strict application of, the equal sharing principle in relation to short, childless marriages, where both spouses have largely been in full-time employment and where only some of their finances have been pooled, is that fairness may require a reduction from a full 50% share or the exclusion of some property from the 50% calculation. Of the five members of the Judicial Committee, only Lord Nicholls suggested a contrary view and even on his analysis the potential for some form of relaxation can be seen.*
>
> *98. In contrast to the position in Charman, this court now has to confront the short marriage 'dual career' issue directly on the facts of the present case. In my view, whilst affording due respect to the observations made by the experienced court in Charman, we are obliged to go back to the speeches in Miller and do so on the basis that I have described …. For the reasons that I have given, the authoritative guidance in relation to short marriage, dual-career cases is to be found in the speeches of the majority and not, where it differs, in that of Lord Nicholls.*
>
> *99. Whilst much of what is said in this regard in Miller (for example relating to dual careers) is probably obiter, the conclusive point to be taken from Miller, however, arises from the actual determination of the House of Lords on the Miller appeal itself, where all five of their Lordships agreed that Mrs Miller should receive substantially less than 50% of the value of the New Star shares. The existence of a basis for departing from a strict application of equal sharing, albeit in a small number of cases and on the unusual facts of that case, is thereby established as a matter of law.*"

40. *Sharp*, like *Miller*, involved a short, childless marriage. Unlike *Miller*, where the wife did not work during the marriage, both Mr and Mrs Sharp worked for most of the duration of their marriage. This led McFarlane LJ to consider what had been said about "dual career" cases in *Miller* and *Charman*:

> "*106. Miller is a short marriage, but not a dual career case. This distinction is directly acknowledged by Baroness Hale at paragraph 152: "the duration of the marriage may justify a departure from the yardstick of equality of division". This was also the ratio of Baroness Hale's decision on the facts of Miller …. By contrast, at paragraph 153, Baroness Hale goes on to consider a different case, which did not arise on the facts of either Miller or McFarlane, namely a dual career marriage of any length (and not expressly confined to a short marriage). While the first sentence, and, probably, the second sentence of paragraph 153 are part of the ratio of Miller, the rest of that paragraph appears to be obiter.*
>
> *107. The distinction between the treatment of short marriages in paragraph 152 and the (obiter) discussion about dual career marriages in paragraph 153 in Miller was recognised by this court in Charman at paragraph 83 and that distinction is carried forward in paragraphs 85 and 86. At paragraph 85 the court addresses the issue of short marriages and accepts the majority view expressed by Baroness Hale at paragraph 152 of Miller, while at paragraph 86 they address the obiter example of dual career marriages. It was clearly unnecessary for them to do so, because Charman was not a dual career*

marriage. What is said at paragraph 86 is therefore obiter comment on Baroness Hale's obiter comment on dual career marriages. The court appears to have been concerned that recognition of unilateral assets as falling outside the sharing principle in a long (or more than short) marriage could well produce an unfair result. For that reason, they wanted the notion of different treatment of unilateral assets in such marriages to be 'closely confined'. Baroness Hale had herself recognised the need for care and limitation in the last three sentences of paragraph 153. That issue, which does not arise on the facts of the present case, remains a matter for debate on another day. On that analysis of the key passages in the judgment in Charman, there is no impediment, in terms of possible conflict, for this court now to contemplate a departure from the equal sharing principle in the case of a dual career marriage which was short, and where the couple had kept their finances separate."

41. Thus the Court of Appeal in ***Sharp*** left open the question as to whether the approach of the majority to unilateral assets in ***Miller*** applied outside the "discrete cohort of cases" involving short, childless marriages, where both spouses have largely been in full-time employment. McFarlane LJ concluded that the question whether the majority's approach to unilateral assets applied more widely, which did not arise on the facts of ***Sharp***, "remains a matter for debate on another day".

42. Lord Justice Moylan also addressed the issue of non-matrimonial and matrimonial property in the decision in *Hart.*

"[61] I now turn to the court's approach to non-matrimonial and matrimonial property when applying the sharing principle. I address the reasons underpinning their different treatment in the discretionary exercise and the question of whether the court's approach should be formulaic or can be broader. I also address the manner in which, in my view, the court should deal with this issue in practical terms as a matter of case management and determination.

"*[62] The classification of property as non-matrimonial or matrimonial is relevant in the application of the sharing principle because the court is seeking to establish the extent to which the current assets owned by the parties comprise or reflect the product of marital endeavour and the extent to which they do not. This arises because, as explained below, the sharing principle applies with force to matrimonial property but does not apply, or applies with significantly less force, to non-matrimonial property.*

43. Lord Justice Moylan noted the issue of whether there had been any case since Charman in which a spouse had been awarded a share of non-matrimonial property by application of the sharing principle, but declined to address it further. However he did deal with the evidential issue of how the court was to determine what was a product of marital endeavour.

"[*67] The exercise on which the court is engaged, when applying the sharing principle in this context, is, therefore, to determine whether the current assets owned by the parties, or within the scope of section 25(2)(a), comprise the product of marital endeavour. The court must then decide how that determination should impact on the court's award. This raises (a) an evidential issue, namely a factual determination*

which has been described in terms of identifying whether property is matrimonial or is non-matrimonial but which, in my view, is often more nuanced than this because property can be a combination of the two; and (b) an evaluative or discretionary issue, namely the manner in which the factual determination is weighed when the court is undertaking the section 25 exercise and deciding what award to make.

[68] Put in simple terms, the court ultimately has to decide, as part of the discretionary exercise, how to weigh or reflect the existence of non-matrimonial property when determining the award. A key question which has emerged, and which is engaged in the current case, is whether this should be undertaken in a formulaic manner or whether the court can adopt a broader approach. Before answering this question, I propose to refer to, what I consider to be, relevant observations or guidance from some of the authorities starting with Miller.

[69] In Miller Lord Nicholls addressed the approach which the court should take under the heading "Flexibility":

> *"[26] This difference in treatment of matrimonial and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon. Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day. Similarly the 'equal sharing' principle might suggest that each of the party's assets should be separately and exactly valued. But 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. The costs involved can quickly become disproportionate. The case of Mr and Mrs Miller illustrates this only too well.*
> *[27] Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case."*

[70] Lady Hale noted, as referred to above, that "the importance of the source of the assets will diminish over time". She also commented that:

"As the family's personal and financial inter-dependence grows, it becomes harder and harder to disentangle what came from where" (paragraph 148).

[71] In C v C, I expressed the view that Miller did not require a financial account to be undertaken for the purposes of seeking to establish what element of the parties' wealth should be characterised as matrimonial property. I also expressed concern about the potential for expensive investigation if the court was required to search for clear and precise boundaries:

A bit later I concluded that:

> *"[48] ... a flexible approach is required to ensure that the court's focus remains on achieving a result which is fair. Of course, as the Court of Appeal said in Charman, judges must be loyal to the guidance given on a topic by the House of Lords. However, it is the application of guidance, not the rigid application of any specific formula coupled with a requirement to find clear and precise boundaries. The approach I propose to adopt is to set out the relevant factors drawn from s 25 and then to consider the principles of need and sharing, neither party having submitted that this is a case in which the principle of compensation has any application."*

[76] Further, however, it is important to note that Jones used both a mathematical and a broad approach to determine the fairness of the proposed award. It is also important to note that both approaches arrived, effectively, at the same outcome. In my view, this demonstrates, through the use of both approaches and by reference to the respective outcomes, that both methods provide a permissible route to arriving at a fair determination. Indeed, the importance of the broad assessment is highlighted in the judgments of the other members of the court. Arden LJ referred to "the cross-check of overall fairness (in paragraph 52) ... (as) an essential of the reasoning for my concurrence in the result in this case" (paragraph 64). Sir Nicholas Wall P also applied his view of "overall fairness to both parties" to arrive at a bracket for the award of between 30% and 36%.

44. Lord Justice Moylan returned to the issues in his conclusion and set out what in effect amounts to a route map to judges confronted with the complicated issues which arise in particular where there is an argument as to whether an asset which one party brought into the marriage remains a non-marital asset or has become a marital asset or constitutes a composite of the two. I propose to quote from the conclusions at length given their importance.

[84] In my view, the court is not required to adopt a formulaic approach either when determining whether the parties' wealth comprises both matrimonial and non-matrimonial property or when the court is deciding what award to make. This is not necessary in order to achieve "an acceptable degree of consistency", Lord Nicholls in Miller (paragraph 6), or to achieve a fair outcome. Indeed, I consider that the present case demonstrates the difficulties which can arise if a court strives to adopt a formulaic approach in circumstances where that is not likely to be easily achieved because of the nature of the financial history.

[85] It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. An asset can, of course, be entirely the former, as in many cases, or entirely the latter, as in K v L. However, it is also worth repeating that an asset can be comprise both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word "reflective" because "reflect" was used by Lord Nicholls in Miller (paragraph 73) and "reflective" was used by Wilson LJ in Jones (paragraph 33). When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be

given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science.

[86] In my view, the guidance given by Lord Nicholls in Miller remains valid today and, indeed, bears increased weight in the light of the courts' experience since that case was decided. It can, as he said, be artificial to attempt to draw a "sharp dividing line". Valuations are a matter of opinion on which experts can differ significantly. Investigation can be "extremely expensive and of doubtful utility". The costs involved can quickly become disproportionate. Proportionality is critical both because it underpins the overriding objective and because, to quote Lord Nicholls again: "Fairness has a broad horizon".

[92] The court may decide that the non-marital contribution is not sufficiently material or bears insufficient weight to justify a finding that any property is non-matrimonial.

[93] Alternatively, if the evidence establishes a clear dividing line between matrimonial and non-matrimonial property, the court will obviously apply that differentiation at the next, discretionary stage.

[94] If, however, at the other end of the spectrum, there is a complicated continuum, it would be neither proportionate nor feasible to seek to determine a clear line. C v C was an example of such a case. In those circumstances the court will undertake a broad evidential assessment and leave the specific determination of how the parties' wealth should be divided to the next stage. As I have said, where in the spectrum a case lies depends on the circumstances of the case and is for the judge to decide.

[95] The third and final stage of the process is when the court undertakes the section 25 discretionary exercise. Even if the court has made a factual determination as to the extent of the parties' wealth which is matrimonial property and that which is not, the court still has to fit this determination into the exercise of the discretion having regard to all the relevant factors in this case. This is not to suggest that, by application of the sharing principle, the court will share non-matrimonial property but the court has an obligation to determine that its proposed award is a fair outcome having regard to all the relevant section 25 factors.

[96] If the court has not been able to make a specific factual demarcation but has come to the conclusion that the parties' wealth includes an element of non-matrimonial property, the court will also have to fit this determination into the section 25 discretionary exercise. The court will have to decide, adopting Wilson LJ's formulation of the broad approach in Jones, what award of such lesser percentage than 50% makes fair allowance for the parties' wealth in part comprising or reflecting the product of non-marital endeavour. In arriving at this determination, the court does not have to apply any particular mathematical or other specific methodology. The court has a discretion as to how to arrive at a fair division and can simply apply a broad assessment of the division which would affect "overall fairness". This accords with what Lord Nicholls said in Miller and, in my view, with the decision in Jones.

[97] Finally, I would repeat that fairness has a broad horizon. I recognise, of course, the need for clear guidance and principles when the court is given a discretion as wide as that contained in section 25 of the 1973 Act. Such clarity not only assists judges when determining financial claims but also enables those seeking to resolve the consequences of their separation and divorce, as it has been described, "to bargain in the shadow of the law": Matrimonial Property, Needs and Agreements 2014 (Law Com No 343) paragraph 3.6. However, this should not lead to the imposition of constraints which are not needed to achieve, and which deprive the court of the flexibility required to achieve, a fair outcome.

45. The subject of the appeal was whether a determination by His Honour Judge Wildblood QC of an award which was determined by an assessment of the wife's needs was wrong. The appeal was dismissed notwithstanding that it was reached by an assessment of needs rather than by application of the sharing principle. However, Lord Justice Moylan concluded that the award could not be successfully challenged because the judge independently carried out an overview of the case to ensure that his proposed award was fair. Although assessed by reference to needs, the judge had considered alternative approaches including him assessing what weight to give to the husband's premarital wealth when assessing the extent to which the parties' current wealth reflected marital endeavour and the extent to which it did not. The judge expressly concluded that his proposed award gave proper weight to that factor and that his other approaches did not give proper weight to that factor and accordingly would not be fair. Lord Justice Moylan noted that this was a conclusion which the judge was entitled to reach, and was part of an evaluative or discretionary decision.

46. The balance of the authorities support an approach which permits the court in appropriate circumstances to identify an asset as a non-marital asset, or part of an asset being identified as a non-marital asset. It seems to me that ultimately it is fact specific although the shorter the marriage in practice, the easier it may be to identify a non-marital asset and the longer the period of the marriage and the greater the extent to which the asset has a mingled character, the harder it may be to identify it.

<u>Latent Value</u>

47. Quite separately from the question of whether Zebra should be regarded in its entirety as a non-marital asset, the husband submits as an alternative that the latent value of Zebra at the commencement of the marriage (or marriage plus countable premarital cohabitation) represents a contribution solely attributable to the husband and unmatched by the wife. He asserts that because the heavy lifting had been done in the development of Zebra as a business prior to 2007 that the business had a very substantial value at that time. The husband submits that the value that Zebra had at that point should be identified including its springboard potential and that the resulting figure should be subject to some form of indexation to reflect how it grew in value of its own momentum and without regard to the additional contribution of the husband over the marriage; the latter of course being a contribution to the marital assets matched by the wife's contributions in the course of the marriage.

48. An analysis of the case law on this issue starts with the decision of the Court of Appeal (Sir Nicholas Wall P, Arden and Wilson LJJ) in <u>*Jones v Jones*</u> <u>[2011] EWCA Civ 41</u>. In that case, the parties were married for just under ten years. At the date of the marriage, the husband was the sole owner of a company which he had started

some ten years earlier. At the date of the separation, the company was worth about £12m. After the breakdown of the marriage, however, where the proceedings for ancillary relief were underway, the husband sold the company and the net proceeds of sale in his hands amounted to £25m. That figure amounted to the net assets of the parties at the date of the hearing at first instance. At paragraph 33 of his judgment, Wilson LJ said:

> "*33. My view is that, in applying the sharing principle to this case, we should in the first instance adopt the approach commended to the judge by Miss Stone. We should therefore effect a division of the total assets of £25m into the part reflective of non-matrimonial assets and that reflective of matrimonial assets. But in doing so, we should remember that, as Lord Nicholls stressed in Miller at paragraph 26, we are unlikely to need, still less to achieve, a precise division…*
>
> *34. My view, however, is that we should test the results suggested by the adoption of Miss Stone's approach against application of Mr Pointer's approach, namely by identifying, for allocation to the wife, such lesser percentage than 50% of the total assets as seems to make fair overall allowance for the husband's introduction of his company into the marriage.*
>
> *35. Criticism can easily be levelled at both approaches. In different ways they are both highly arbitrary. Application of the sharing principle is inherently arbitrary; such is, I suggest, a fact which we should accept and by which we should cease to be disconcerted. Mr Pointer's approach seems particularly by-and-large. But is the greater apparent specificity of Miss Stone's approach an illusion? ... [I]n this case, particularly in circumstances in which a central valuation mandated by has been crystallised by sale, I prefer in the first instance to adopt Miss Stone's approach.*"

49. On the facts of that case, Wilson LJ took as the first step the net proceeds of sale of £25m. He continued:

> "*37. Our second step should be to ascribe to the company a value, as at the date of the marriage, which is both realistic and apt to the context in which it is required. In that regard our starting-point should be the valuation of the company as at the date upon which the respective accountants were ultimately agreed, namely £2m net….*
>
> *38. In my view, however, there are two reasons why the sum of £2m requires substantial adjustment.*
>
> *39. The first reason for adjustment arises out of further consideration of the concept of latent potential or, in the judge's word, the springboard. I am concerned lest our decision in this case were to be misunderstood as generally encouraging an enquiry into whether the professional valuation of the company at a specified date should be subject to increase by reference to the presence within it at that date of springboard. Mr Pointer correctly submits that a professional valuation calculated by reference to future maintainable earnings will generally reflect the value of any such springboard. But there will be rare cases in which a judge may be persuaded that it has failed to do so ….*"

50. Having noted (at paragraph 42) that:

> "*we are concerned only with the value to be attributed to the springboard in place at that date [i.e. the date of the marriage], not with a value to be attributed to the subsequent activity of the diver or gymnast upon it*"

51. Wilson LJ concluded, on this issue (paragraph 43):

> "*By reference to its latent potential at the date of the marriage, I propose to take the value of the company at that date as being £4m rather than £2m. The figure is again, highly arbitrary; I make no apology for this but it reinforces the need to test against some other approach the conclusion ultimately reached by reference to it .... [N]ot even a judge at first instance, with access to all the evidence referable to the reason for the company's later success, could secure acquittal of a charge of having been arbitrary at this stage of conversion of such a feature into terms of money*."

52. Wilson LJ added, however, that there was a further reason for adjustment, namely "the need to allow for passive economic growth in the company between the date of the marriage and the date of sale". He explained this at paragraph 46:

> "*…Take a work of art or land with potential for development which a spouse has owned since prior to the marriage and which, without activity on his or her part, has substantially increased in value during it. The court would accept that the increase in its value during the marriage was as much non-matrimonial as its value at the date of the marriage: it would thereby allow for its passive growth. Passive growth is to be contrasted with growth as a result of contributions of one sort or another made during the marriage, i.e. of activity, irrespective of whether such is achieved with the assistance of a springboard already in position*."

53. Applying this to the facts of the case before him, he continued (paragraph 49):

> "*…If at the date of the marriage the husband's £4m had represented the value of a minority holding in the company in which he was no more than an investor but which operated in a field identical to that in which his company actually operated, he would again be the beneficiary of adjustment for any passive economic growth. I do not see how the law can logically decline to attempt to enquire into the existence and, if so, the amount of such growth by reference only to the nature of the husband's investment*."

54. On the facts of that case, Wilson LJ applied to the sum of £4m an increase representing the percentage increase in the relevant stock exchange index between the date of the marriage and the date of the sale, thereby lifting the figure from £4m to £8.7m, which in turn led to an award to the wife of £8m.

55. Wilson LJ then tested the suggested award by the application of what he characterised as Mr Pointer's approach, namely identifying such lesser percentage than 50% of the total assets as seemed fair to make overall allowance for the husband's introduction of his company into the marriage. Recording that his view of overall fairness to the parties led him to identify a bracket of between 30% and 36%, he concluded that the suggested award survived the test.

56. Sir Nicholas Wall P agreed that the appeal should be allowed for the reasons given by Wilson LJ, whilst noting that "*Wilson LJ's expertise in this area of the law is infinitely greater than my own, and I thus make no comment on the means whereby he has reached his conclusions*." Arden LJ, whilst agreeing with Wilson LJ's conclusion, disagreed with his treatment of the issue of passive growth, saying:

> "*59. As to 'passive growth', I agree that in principle and, in the circumstances of this case, an allowance should be made even though the asset is a private company the business of which is developed and expanded (in this case exponentially) during the marriage ...*
>
> *60. However, I would query whether what Wilson LJ proposes in his judgment is really passive growth and reject the notion that the only growth that can be taken into account is passive growth. First, as a matter of principle, when valuing the non-matrimonial assets at the end of a marriage, the court should so far as it can look at what has actually happened and not at what might have happened. In parenthesis, I would add that, because of this principle of 'reality', I would reject the graphs provided by Miss Stone seeking to establish the values of the company at certain dates based on an artificial assumption of a straightline growth up to eventual sale. Secondly, if only passive growth is taken into account, the law rewards the spouse who buries her non-matrimonial assets in the ground rather than the spouse who actively manages them. The correct analysis in my judgment, in circumstances of the present, is that, where a spouse has a non-matrimonial asset of the present kind, he is entitled to that element of the company at the end of the day which can fairly be taken to represent the fruits of the non-matrimonial assets that accrue during the marriage, even if the fruits are the product of activity by him or on his own behalf.*"

57. The decision of the Court of Appeal in *Hart* (as set out above) identifies that whether the court deploys a formulaic (for instance Mostyn J's straight line) or a broader approach will depend on the circumstances confronting the court and its ability to deploy a formulaic approach having regard to the evidence before it. In *XW-v-XH* (above) Baker J said:

> "*I was informed by counsel that courts have regularly made allowance for passive growth in the way advocated by Wilson LJ. In addition, however, there has been further consideration as to whether an allowance should be made for latent potential in at least two cases at first instance – Robertson v Robertson [2016] EWHC 613 (Fam) (per Holman J) and WM v HM, supra, (per Mostyn J).*"

58. In the *Robertson* case, Mr Justice Holman considered that the methodology adopted in *Jones* led to an unfair (to the husband) undervaluation of the latent value of the assets he brought into the marriage. Holman J therefore attributed 50% of the value to the husband as a non-marital asset and 50% of the value to the husband and wife to be shared equally. In *WM v HM*, Mostyn J returned to the argument considered but rejected by Arden LJ in *Jones v Jones* - a linear or arithmetical apportionment based on the respective periods of time before and after the marriage. Noting that neither of the other judges in *Jones* had mentioned this argument, he adopted the linear approach on the basis that it resonated with fairness "*and that, intrinsically, value is (at least) as much a function of time as it is of work or market forces. In argument, I asked 'how*

could it be said that a day's work in 1980 in creating this company was less valuable than a day's work last week?"

59. The weight of authority would support an approach which seeks to identify and to take into account any latent potential that a business asset had when it was brought into the marriage by a party. The authorities would also support an allowance for the passive growth of that latent potential during the course of the marriage. How that is to be done will depend on the facts of the individual case.

Contribution

60. The speeches of the House of Lords in *White* and *Miller* make clear that contributions come in all shapes and sizes. In some marriages, contributions may be very clearly delineated between the money earner and the homemaker but they are treated equally. In many, the dividing lines will be far more blurred with each party contributing to the various needs of the family in a wide variety of different ways. Ultimately a marriage is about a partnership in which usually both will contribute in the way in which they are able. Thus contributions almost inevitably have to be evaluated in the context of the marriage that existed. Where that marriage is atypical it seems to me that the court must approach it in that way. To do otherwise would be to risk discrimination. It is a regrettable feature of the husband's presentation of this case that, at least in opening and in the documents filed by him prior to the hearing, he asserted that the wife had made no contributions to the marriage or no contributions of any value. The motivation for making such an assertion probably finds its roots in the husband's post separation re-evaluation of the wife's attributes and his unfair conclusion that she is and always was a gold-digger. As became clear in the course of the evidence and indeed in the husband's evidence he accepted that she had contributed in various ways to the marriage, whether in assisting in the design and furnishing their various homes, in looking after WD and his own children, in dealing with domestic living arrangements including liaising with staff, organising travel and holidays, arranging their social life and a myriad of other tasks in the domestic context. By the closing of the case Mr Marks QC did not press to any real extent any argument that the wife had not contributed in ways of value to the welfare of the family.

61. Given that Mr Cusworth QC on behalf of the wife accepts that in principle the court may properly take into account the value of Zebra at the commencement of the marriage and that the capital the husband brought into the marriage, which was expended on meeting the parties living expenses during the marriage and depart from equality to reflect that, I do not intend to dwell at length any further on the issue of contribution. One of the few issues not in play in this case is an argument over "special contribution". In K v L (at §15):

> *Lord Nicholls makes clear that what is unacceptable is discrimination in the division of labour within the family, in particular between the party who earns the income and the party whose work is in the home, unpaid. Bodey J was careful to stress that, in that in the present case neither party went out to work, their work in the home, although different, should be taken to be a contribution of equal value for the purposes of the award. But the law does not abjure all discrimination. On the contrary it is of the essence of the judicial function to discriminate between different sets of facts and thus between different claims. What is outlawed is discrimination on the ground of*

> *superficial differences which, on analysis, do not reflect substantive differences—such, of course, as the grounds specified in art 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the Human Rights Act 1998) and, in the present context, on the ground that the effort made by one party to the marriage, unlike that made by the other, happens to have resulted in financial reward. To find that, on top of the efforts of equal value made by each party in the home, the wife made a financial contribution to the marriage of great importance is not to discriminate between the parties in any unacceptable way: on the contrary it correctly recognises a substantive difference.*

Standard of Living.

62. The standard of living that the parties enjoyed during the marriage is part of the section 25 exercise. However, that does not mean that after the termination of the marriage that standard of living can be expected to be provided for so that it endures for the rest of the parties' lives.

63. As Roberts J said in *AB v FC* [2016] EWHC 3285 (Fam) in the context of a 19-month marriage where there was a child:

"*Where, as here, the marriage was short-lived, the impact of consistently high marital expenditure over a relatively short period finds less resonance or reflection in the standard of living which a former (maintained) spouse is entitled to expect in future… the use of the standard of living as a benchmark emphatically does not mean that in every case needs are to be met at that level either at all or for more than a defined period*

[see also Mostyn J in *SS v NS (Spousal Maintenance)* [2014] EWHC 4183 (Fam)]

Pre-Marital Cohabitation

64. Central to the wife's case is the submission that this was not a short marriage of four years but rather that including premarital cohabitation from 2007 to 2013 it constitutes a medium if not long marriage of around 10 years. Conversely, the husband argues that this was a short marriage of only four years and that the relationship prior to 2013 was so far removed from cohabitation, and the transition from that relationship to marriage so far from seamless, that it cannot be added to the four-year marriage either to extend the duration of the marriage (within section 25 (2) (d)) or as part of all of the circumstances of the case (within section 25 (1)).

65. The current approach continues to be characterised by the approach of Mostyn J (as he now is) in *GW v RW* [2003] 2 FLR 108. In that case, he considered:

> *[33] … The case of White v White has emphasised that the law in this area is not moribund but must move to reflect changing social values. I cannot imagine anyone nowadays seriously stigmatising pre-marital cohabitation as 'living in sin' or lacking the quality of emotional commitment assumed in marriage. Thus, in my judgment, where a relationship moves seamlessly from cohabitation to marriage without any major alteration in the way the couple live, it is unreal*

> *and artificial to treat the periods differently. On the other hand, if it is found that the pre-marital cohabitation was on the basis of a trial period to see if there was any basis for later marriage then I would be of the view that it would not be right to include it as part of the 'duration of the marriage'. …….*
> *[34] By the same token I am of the view that it is equally unreal to characterise the 18-month period of estrangement, conducted under the umbrella of a divorce petition which alleged the irretrievable breakdown of the marriage, as counting as part of 'the duration of the marriage'. In my judgment, a period of estrangement where there has been a formal separation should not count as part of the duration of the marriage.*

66. Mr Cusworth QC invited me to consider the decision in the case of *Kimber-v-Kimber* [2000] 1 FLR 383 where His Honour Judge Tyrer identified eight markers to assist in determining cohabitation (albeit in a somewhat different context)

    i) The parties were living together in the same household, apart from a minor change brought about by the husband's warning in April 1999;

    ii) The living together involved a sharing of daily tasks and duties;

    iii) There was stability and permanence in the relationship;

    iv) The financial affairs of the couple was indicative of their relationship;

    v) Their sexual relationship was admitted and ongoing;

    vi) There was a close bond between L and the wife's child;

    vii) As regards the motives of the couple it was clear that the wife had denied cohabitation and acted as she had so as to continue to enjoy the payment of maintenance from her husband;

    viii) There was sufficient evidence that cohabitation existed in the opinion of a reasonable person with normal perceptions.

67. Mr Cusworth QC also drew my attention to a number of first instance decisions in the Family Division that considered premarital cohabitation:

    i) *CO-v-CO* [2004] EWHC 287 where Mr Justice Coleridge said that "*committed settled relationships which often endure for years in the context of cohabitation (often but not always with children) outside marriage must, I think, be regarded as every bit as valid as those where parties have made the same degree of commitment but recorded it publicly by civil registration, i.e. by marriage.*" He considered that it might fall to be considered as a non-financial factor/circumstance under section 25 as much as the duration of the marriage.

    ii) *M-v-M* [2004] EWHC 688 (Fam) Mrs Justice Baron said that she did not draw any distinction between the years of cohabitation and those of marriage, being

clear that in modern society it is a couple's commitment to each other by cohabiting that is the relevant start date for consideration in most cases.

68. It emerges from the authorities that the issue of premarital cohabitation may be treated either as extending the period of the marriage so as to create a marriage of longer duration or it may be treated as a circumstance of the case which is to be taken into account more generally. It also emerges from the cases that cohabitation prior to marriage is relevant because it may indicate that, prior to the formal commencement of marriage, the parties had entered into the sort of partnership involving the mutual support, working together, rights and obligations which may be indistinguishable from those which arise when parties begin to live together only after marriage. It seems therefore that what the court should be looking for is a relationship of the sort which carries with it sufficient markers which justify being treated as a marriage. Mr Cusworth QC submitted that if there was no change in the nature of the relationship as between before and after the marriage that this of itself was an indication (possibly determinative) that the premarital relationship should be equated with marriage. As a matter of logic, I do not think this necessarily works. Take, for instance, a marriage which is entered into as a matter of convenience, or which otherwise is not followed with the usual panoply of mutual commitments which signify marriage. That would not entitle a premarital period which was similarly empty of such commitments to be counted. What the court must be looking to identify is a time at which the relationship had acquired sufficient mutuality of commitment to equate to marriage. Of course in very many cases, possibly most cases, this will be very obviously marked by the parties cohabiting, possibly in conjunction with the purchase of a property. However in other cases, and this may be one of them, it is not so easy to identify. The mere fact that parties begin to spend time in each other's homes does not of itself, it seems to me, equate to marriage. In situations such as this, the court must look to an accumulation of markers of marriage which eventually will take the relationship over the threshold into a quasi-marital relationship which may then either be added to the marriage to establish a longer marriage or which becomes a weightier factor as one of the circumstances of the case.

Adverse inferences

69. Mr Cusworth QC submits that the husband's failure to provide detailed documentation in relation to the sums he put into Zebra (at least until the morning of day three of the hearing) and his failure to provide documentation which might evidence the value of Zebra (save for the 2007 balance sheet provided by him in May 2018 and a 2009 balance sheet which emerged on day three of the hearing) demonstrate that the husband was withholding information from the court. Mr Cusworth QC reminds me that at the case management conference I specifically declined to order a forensic accountancy report in respect of Zebra and observed that both in relation to that and in relation to a section of a new questionnaire raised by the wife, I was relying upon the husband to produce relevant documents which would illustrate the matters that he relied upon. The wife invites me to infer that the only explanation for the husband's failure to disclose relevant documents is that he has something to hide. In this context it is not hidden assets that are the issue but rather that the wife contends that the value of Zebra as at 2007 must have been low. If it was of significant value, why, rhetorically, would the husband not have produced the documents to show that? As a consequence, Mr Cusworth QC invites me to draw

inferences against the husband. In the context of the issues in this case, that inference would involve placing any valuation of Zebra at the lower end of the bracket, and placing the wife's share or the value of her share in any matrimonial property at the upper end of any possible bracket.

70. In *Prest-v-*Prest [2013] UKSC 34 Lord Sumption said, in a case concerning the assessment of a husband's present available wealth (rather than his historic position):

[45] The modification to which I have referred concerns the drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings, which have some important distinctive features. There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings although in form adversarial have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. ***These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing****. I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is.* [My added emphasis]

The Litigation History

71. The history of these proceedings is set out in the Procedural Chronology. It is drawn primarily from the agreed chronology submitted by the parties. When the matter came before me on 29 June 2018 I gave directions to prepare the application for trial. I declined to order a single joint expert in the form of a forensic accountant to value Zebra in 2007 or at any later date.

72. The costs incurred by the wife to the conclusion of this hearing are £689,702.84. Of this a total of £609,572, £300,000 has been paid the husband and £309,000 has come from litigation loans taken out by the wife. She thus still owes some £80,000.

73. The husband's costs total £640,005. He has paid £556,964 towards that grand total. He still owes some £83,000.

74. The grand total of the costs that will in due course have been incurred and paid will amount to around £1.33m. The procedural chronology makes abundantly clear that the application has been vigorously and bitterly fought at every step of the way, with considerable skirmishing in the foothills prior to battle being joined before me. This is undoubtedly a reflection of the hostility that the parties currently feel towards each other which I will comment on later. The collateral damage of the wife's and the husband's antipathy towards each other are of course their children. This became abundantly clear when WD, now aged 22, came to give evidence and found it difficult to hold back the tears. Even her relationship with her stepsister, HD, which was

formerly close, and with HS, her stepbrother, have suffered to the extent that there is currently no ongoing contact, even digital. I very much hope that these are not fatal wounds to those relationships and that when these proceedings conclude the wife and husband will not force their children to choose sides as they so self-evidently have to date, if not expressly by their words, but by their behaviour.

This Hearing and the Evidence

75. The parties helpfully reduced the very extensive documentation down to 2 core bundles, of which I was able to read the bulk on day one of the hearing, which was set aside for judicial reading. In addition, I received and have read the following documents:

    i) An agreed case summary, agreed chronology and an agreed list of issues.

    ii) An agreed schedule of assets: which was not entirely agreed given that it identified various differences between the parties in their assessment of the assets.

    iii) A 20 page skeleton argument on behalf of the wife and a 20 page opening note on behalf of the husband. The husband's team also produced a written closing note which I declined to read, save to the extent that Mr Marks expressly referred me to it during his closing submissions.

76. During the course of the hearing and closing submissions various other documents were produced. I have tried to incorporate the information I have taken from those into the chronology or into other parts of this judgment. They included:

    i) A colour-coded schedule of the wife's contemporaneous evidence in relation to cohabitation;

    ii) A balance sheet for the husband from 2009 and another from 2003;

    iii) Various photographs of the children during their minority;

    iv) A Civil Evidence Act Notice producing a letter from a neighbour, which addressed the issue of whether the wife had ever lived with the husband in The Principality;

    v) A copy of the French original of the *'Act de Mariage'* which referred to the wife as being the divorcee of PQ; relevant because the wife accepted that she was not divorced but rather the marriage was annulled and thus the information provided to the authorities in The Principality was inaccurate;

    vi) A schedule showing the sums the husband received from the sale of his first business between June 2000 and July 2001;

    vii) A schedule showing how the assets recorded on the June 2007 balance sheet were deployed during the relationship and how the funds were spent;

viii) An analysis of the 2015 budget which extracted from it that part which the husband submitted was fairly referable to the wife's income needs. That figure came out at £206,273;

ix) A schedule comparing the wife's future budgets from her Form E (£598,000 including a second home or £431,000 excluding a second home), the maintenance pending suit budget (£444,000 or £343,000 excluding child expenses), her current budget (£1.33 million which included £288,000 in respect of first and second home rentals) and the husband's proposed budget for the wife (£199,744);

x) Duxbury Calculations based on the husband's proposed income needs for the wife;

xi) Extracts from the case management hearing before me in June 2018;

xii) A schedule said to represent the wife's expenditure from September 2017 to date, showing the husband's payments to her and to WD, taking into account monies she has received from litigation loans she has taken (not all of which has been spent on litigation), maintenance received from the husband and sums paid by the husband to WD. This appears to show that the wife spent £250,000 on meeting her own expenses in the last year;

xiii) Capitalised calculations produced on behalf of the wife showing the £8.3 million capital sum required to generate an income of £500,000 per annum from 51 to 60 and £250,000 per annum from 61 to 88; and

xiv) The wife's outcome calculations showing various options as to the approach to the valuation of the husband's premarital assets and his interest in Zebra and how they might impact on the overall sharing of the assets. It also shows a simple needs calculation and how that is reflected in the percentages and sums each party would receive, together with what is called a *'Hart'* percentages calculation.

77. I heard evidence from the wife over the course of 1.25 days, from the husband for about a day, and the wife's witnesses; her daughter WD and her friend Ms U for about half an hour each. I heard submissions for a day.

78. One of the issues in the case centred around the nature of the premarital relationship and another focused on the standard of living and the future needs of the parties. Another focused on the reliability of the husband's evidence in relation to the value of his interest in Zebra prior to the relationship. The credibility of the husband and the wife were important in determining where the truth lies in respect of those issues.

79. In assessing their credibility, I have had regard to the consistency of their evidence over time, its consistency internally, its consistency with contemporaneous documents or other known facts or other witnesses, how it was given and whether the individuals had a motive to tell something other than the truth. In respect of lies told by the parties I give myself a *Lucas* direction and remind myself that a party may lie for many reasons including fear or embarrassment and that the fact that a party has lied about one matter does not mean that they have lied about everything.

The Wife

80. The wife gave evidence first. Mr Marks QC submitted she was rehearsed, robotic and poised. He invited me to conclude that she was prone to exaggeration, inaccurate and unreliable in her dates, and that she lacked connection with the children with her being focused on material considerations. The approach she took in the witness box certainly suggested that she had been coached on how to present, although not perhaps so much in the content of her evidence although there were recurring phrases in the way she described the relationship and her husband which suggested a degree of rehearsal. The strategy she adopted of addressing not only her answers to me, but also whenever she did not understand a question Mr Marks QC asked was to ask me for clarification, suggested a considerable degree of preparation has gone into how she presented. However, I did not think these issues defined her evidence. What most clearly emerged for me in relation to her character and has a direct relevance to the reliability of her evidence is how she sees and describes life in very black-and-white terms. Either things were fabulous, wonderful, loving or they were not. One aspect I thought of her preparation for giving evidence was to seek to avoid describing anything in negative terms. Descriptions of the pre-marital relationship and indeed the marriage and the husband were almost always in glowing terms. Even after the calling off of the marriage in September 2012 she described how good the husband had been and how supportive he had been of her. After another row she described how they had had dinner in the evening and it was "*a beautiful perfect Sunday evening*". I don't think this is just how she gives evidence – I think this is how she sees and describes life itself. She is passionate and throws herself into life with great positivity and this chimes with the husband's various descriptions of her as vivacious, charming and lighting up rooms when she comes into them. This may be one aspect of the wife's personality which attracted the husband, he being very much more measured in his feelings. However, it emerged in the evidence that this positivity is matched by an equally passionate negativity. Those who love with passion hate with a vengeance – "*I will make it my mission to destroy you*". The text messages which emerged of the wife in 2011 telling the husband to get "lawyered up" and that she would be going to the Daily Mail, and her demands for an immediate transfer of £250,000 together with the husband's own evidence of her demands and the rows all suggest that the wife has a negative side in which she is likely to view or describe matters in correspondingly dramatic or hyperbolic terms. How this sounds in her evidence is that it is impossible to believe that life was actually as she describes it. Thus in any description the wife gives there almost inevitably is a hefty degree of hyperbole or exaggeration and one has to therefore discount to some degree or another much of what she says.

81. She is also capable of frank lies though. When I asked her in an innocuous context about whether she had been married before, she told me that she had and that should she had been divorced. Under cross-examination it emerged that this was not the truth. She had petitioned for divorce, but her husband had defended it and apparently cross-petitioned for a decree of nullity on the basis that the marriage was bigamous when it was entered into and that she knew as much. It was also asserted that she had claimed substantial financial remedies. However, she settled for a relatively modest sum of some £400,000; she actually received £320,000. Although it was far from central to any of the issues that I need to determine, it clearly shows that the wife is capable not only of exaggeration, but also of lying when she considers either she has something to hide or when it might be adverse to her interest. She also provided an

inaccurate description of her marital status to the authorities in The Principality, describing herself as divorced when she was not. This does not mean of course that she is lying about everything, far from it; there was little if anything to gain in this court from lying about the bigamous marriage, although perhaps she was concerned that I might characterise her as a gold-digger for previously pursuing a substantial claim against her former husband. In her description of the standard of living and her lifestyle she was clearly genuine in what she said and again was unabashed when describing the huge sums she spent on various aspects of her life. In this respect her openness was quite apparent. Overall, though, I conclude I have to treat her evidence with some caution in particular in relation to the nature of the premarital relationship. Although she held back from any personal criticism of the husband, the tone of the messages she sent in 2011 and those that she sent after separation were replete with vitriol and anger and I have little doubt that she feels extremely powerful negative emotions about the husband. It emerged in evidence that the husband had embarked upon an affair by June 2017 and the end of the marriage, has clearly caused the wife both anger and upset. She has withdrawn from communication with HD and HS although she said that she wanted to re-establish communications after this was over.

The Wife's Witnesses

82. WD was tearful even prior to entering the witness box. I believe it was the first time she had seen the husband for many months. Given that he had plainly fulfilled a father figure role for her over many years and she had become close to him it is hardly a surprise that she was emotional. She has had almost no relationship with him since her mother and the husband separated. Given the intensity of the way the wife feels, and indeed as the husband feels, WD has been caught in the crossfire of the bitter dispute between her mother and her stepfather. She has had to ally herself with her mother for understandable reasons. Given the intensity of how her mother feels and expresses her emotions, it would be impossible for WD at this juncture to have a relationship with her stepfather without incurring the displeasure of her mother. Having said that, the evidence she gave did not come across as being deliberately skewed in her mother's favour although her statement and her evidence was clearly pro her mother's position. Given that she was having to recall back to 2007 when she was 11 years old, it is hardly surprising that in respects her evidence was impressionistic rather than detailed. She may well have felt at times that she had been left in London being looked after by nannies whilst her mother and stepfather took off to exotic climes or base themselves in The Alps for a ski season. I do not think this was the reality given the wife's own evidence, that of Ms U and the documents which were contemporaneous. Given that her own father appears to have been an unreliable figure in her life to the extent that she has made the choice herself not to remain in contact with him, it is hardly a surprise that she should have a rosy view of the extent to which a new family had constituted itself from 2007 onwards. She was a credible witness but did not ultimately add very much to my understanding of the premarital relationship as opposed to the intensity of conflict post-separation.

83. Ms U was careful in her evidence. She did not venture an answer if she was not sure of it. At times I was unsure whether she was overawed by the setting and unable to access her thoughts or whether she was just thinking very carefully. Again, her statement as a friend of the wife was couched in terms supportive of the wife. It was clear from the statement and emerged more clearly perhaps in her oral evidence that

much of her recollection was in fact based on what the wife had told her as much as what she had witnessed with her own eyes; although she had witnessed the husband's presence in London and at social events to a degree. Given that it is highly probable that any description the wife gave of her relationship with the husband, the extent of their cohabitation and the intensity of the relationship would be in exaggerated terms, it may well be that Ms U would have been given the clear impression that, as early as October 2007, the wife and husband were indeed in a relationship which was as close to marriage as it could be without them having undertaken the ceremony. Ms U's evidence was supportive of the theory that the wife was struggling to balance the competing needs of caring for a school aged child and basing herself in London whilst also seeking to pursue a new and exciting relationship with the husband with all of the hedonistic pleasures that that brought. She was credible insofar as she was able to offer observations based on her own direct knowledge. However, her evidence was not inconsistent with the husband's own account of his life when in London.

The Husband

84. The husband appeared on the surface to be more measured and balanced in his giving of evidence. He at times was able to accept that things he had said in his statements were inaccurate or misleading. He was careful to try not to tell obvious lies. He is clearly a very intelligent and careful man. He must have thought carefully about his presentation in the witness box and had probably been assisted with this. His tone in the witness box was markedly different to that which was given in his witness statements which consistently denigrated the wife's contribution and role. It emerged very clearly in his evidence that he now views her as a gold-digger. He said that his children view her likewise. It is clear from the emails that he was sending to his friend, R, in 2007 that this was a fear that he had. I don't know if his three-year relationship which preceded that with the wife and post-dated that with his ex-wife was undermined by this issue. That view of the wife has clearly dominated his thinking about her, has infected his children and has dictated his approach to this case and how he has framed his offer to her. That gives him a reason to give dishonest or unreliable evidence as much as the wife's anger and desire to get her fair share does for her. In June of this year I made it clear to the husband that I sought his assistance (or that of his accountant) in understanding his financial position in 2007 in relation to Zebra and yet almost no documentation at all was produced. Some emerged during the course of the hearing, I having made some observations on how the husband had not apparently taken up my invitation to provide assistance to me. The husband is a very astute and intelligent man. He identified an opportunity in one deregulated sector and made a fortune from it. He later identified an opportunity in another deregulated sector and has made another fortune from it. He acted as CEO for Zebra for several years. He remained on the board and was brought back specifically to assist in the finalisation of its sale. The idea that the only document he could produce in relation to the value of his interest in Zebra in 2007 was the balance sheet, which did not even directly value Zebra, is risible. The idea that his accountant had nothing is equally improbable. The husband is too careful I think to deliberately destroy documents which would have been relevant to the court process but I have little doubt that, whether prior to the issue of divorce proceedings in November 2017 (perhaps much earlier) or subsequently, he has been able to adopt with a clear (by his standards) conscience the attitude which says these documents do not exist or are not available. I also conclude that he is not preoccupied with his money in the way that some

individuals are. He appeared interested in money for what could be done with it, whether in terms of business opportunities or what could be bought with it. He was not preoccupied with figures in the way that some are. His original evidence had been that he sold shares in a successor company to his first business for £15.75 million. When the documents eventually emerged they showed he received £15.332 million. Thus his attitude to precision on figures was not always to his interest and illustrated a relative lack of both interest and accuracy. Ultimately the husband perhaps is defined by being a risk taker, that is why he has made fortunes, and I can only conclude that he decided that the risk of not producing the document and playing the innocent was one he was prepared to take. Whilst it may not be dishonest, it is far from compliant with the duty of **full** and **frank** disclosure that this process and this court requires. However, this fact does not automatically convert into adverse conclusions in respect of values. I believe that part of the reasoning process that has influenced the husband's decisions in this regard is not to hide evidence from the court scrutiny but rather to hinder the wife personally as much as he can and to cause as much frustration to her as he can given that he now clearly feels that she has had the benefit of millions of pounds of his money under false pretences. It is curious, but perhaps understandable, that he should so devalue his 10 year relationship with the wife by now characterising it as one of a gold-digger. It says much about the husband's own insecurities that he should now be unable to objectively accept that for the majority of the relationship and marriage he and the wife were in love with each other and wished to make a lifelong commitment to each other and to bring children into the world together. Perhaps that is a downside of having the level of wealth that the husband has had that it causes him to doubt the motives of those who care for him.

85. Thus, overall neither the husband or the wife were very satisfactory witnesses. They were plainly unreliable in some respects, both in their witness statements and in their oral evidence. The level of hostility they felt towards the other, although carefully masked whilst giving evidence was still apparent and clearly influences how they recall the marriage and how they present their cases. Neither of them truly tried to tell the truth the whole truth and nothing but the truth, but to mould it, suppress it, gild it as they thought would best suit the presentation of their case.

86. Thus, in approaching all factual matters I have had to piece together what I can from their evidence which might be reliable and build a picture from that, from contemporaneous evidence, from common sense and from making what seem to me to be reasonable deductions or inferences having seen the parties give evidence.

Chronology and Some Factual Findings

87. Set out below is a chronology of relevant events. Incorporated into it are aspects of the evidence which I consider relevant and where indicated constitutes my conclusions on the facts.

1963	**H born** (55) in UK. Left in mid-20's to work in US. Parents and brother remained living in England. He subsequently married his first wife.

1968	**W born** (50) in UK. Parents and other family remain living in UK. At some point the wife started work as a model.
1994	H establishes his first business with ML and JB
1996	H ceases to be tax resident in the UK
1996	**WD** born (22). W's daughter with a former partner who played an intermittent role in her life both in terms of his physical presence and in terms of financial support.
1998	**HD** born (20). H's daughter with his first wife.
2000	H sells his first business to a successor business; H receives £15.322m
2001	H moves to a tax haven for tax reasons. Having sold shares in his first business that were nominally valued at £100 million, the husband would have been bankrupt had he been obliged to pay tax on them in the country in which he was resident, where tax fell due at the date of the share transaction not the realisation of the proceeds of sale. The value of the shares declined dramatically as a result of the stock market crash. The first shares sold at £4.70 per share but the last shares sold at 9p per share
2001 – 2002	H, ML, and two others found Zebra
2002	The precursor to ZCo is incorporated in the tax haven
2002	**HS** born (15). H's son with his first wife.
2003	W ceases modelling career. H still resident in the tax haven.
Early 2003	(per H) H and ML invest in Zebra to purchase customer base of another company with £500k put in by H. This was his initial capital input.
April 2002	W marries PQ, knowing it to be bigamous.
2003/4	H separates from first wife. The husband described in his evidence the work that had to be undertaken to put Zebra in the position of beginning the process of applying for licences. He described how in particular the software systems had to be created in various different areas which would enable the business to function. He described having to explore the options to procure what Zebra would supply. He described the business as akin to having to have a fully operational aircraft designed and built even if its first transaction was only to carry one customer. As a software

	engineer he was a leading figure in the development of the software which underpinned the business and which were pre-requisites for the application for licences. I accept that in a deregulated industry seeking to acquire licences from a regulator would require careful and extensive preparation and evidence of the ability to fulfil the commitments that would be undertaken by a new entrant to the market. A regulator would not grant a licence unless satisfied that the company was in a position to deliver to the customer what they were promising.
2004	H moves to live in The Alps to be closer to his children and Europe for setting up Zebra. Rents and then purchases an apartment Swiss CHF7-800k. H settles the Lennon Trust in Singapore
June 2004	The wife issues divorce proceedings from PQ. Although she told me that decree absolute had been granted by about June 2004 this was not true. Her suit was defended on the basis that the marriage was bigamous and should be annulled. In due course it appears that the marriage was indeed annulled - although this appears to have been much later in December 2006. W receives financial settlement of about £320,000.
3 September 2004	Letter of wishes re Lennon Trust: H settlor; H principal beneficiary during lifetime; thereafter: 60% to two children; 30% for wife [ie his first wife] if she survives me; first wife excluded in event of divorce; 10% to parents. The letter of wishes states that the husband was happily married, which plainly was not true. I accept that this letter was no doubt in a standard form but it was not accurate and the husband acted upon it.
2005	The subsidiary later owned by Zebra is formed and applies for licences. An apparent discrepancy in the husband's evidence was explained by the difference between commencing the preparations for applying for licences and the submission of the applications themselves. I accept that very careful preparation would be required and that this would be a lengthy process.
January 2006	Zebra acquires the subsidiary
2006	Accreditation granted by the regulator to the trading subsidiary. Parties meet at a dinner party. Although I accept that the parties met and perhaps began dating occasionally, I do not accept that this could be characterised as a serious or committed relationship at this point. It was not until late in 2007 that the wife introduced the husband to her daughter or he introduced her to his children. Given that WD was living at home with the wife it seems hard to explain how the husband could not have

	met WD prior to autumn 2007 if he was, as the wife says, staying regularly at W's London apartment. I conclude at this stage that the relationship was no more than casual but was developing.
Dec 2006	Decree of Nullity. W receives around £320k
2006	H puts £225k into Zebra as a loan
2007	Licences granted
2007	£520k as a loan but converted into equity by H to Zebra
June 2007	Per W, Parties travel to Italy H's balance sheet shows his net worth at €26.2 million/£17.6m [C209]
September 2007	Per H, parties begin dating. I do not accept that the relationship commenced this late. The contents of the husband's email to R of 29 October 2007 contained details of what the husband and wife had done by then and their activities are far too extensive for the relationship to have commenced only in September 2007. Nor do I believe that the husband would have introduced his children to the wife within weeks of the relationship commencing or that the wife would have introduced WD to the husband so early.
September 2007	H stays at W's London apartment and meets WD. The following weekend, the parties stay at H's property in France. W meets HD and HS. This indicates that both parties by this stage felt that the relationship had moved beyond casual and was more serious in nature.
October 2007	It is the wife's case that at this point the husband moves into W's apartment in Pimlico and parties begin cohabitation. H starts providing for WD as a child of the family. The husband says that prior to October he had stayed at a hotel when in London and had kept some close and other personal items there. He says that these items were now moved to the wife's flat and that he began to stay with her at her property when he was in London. WD meets HD and HS when all 5 spend time in France. H emails his friend R 29.10.07 [2/C349]: *"Well so far so very good…. Perhaps I was completely wrong. Not a moment of insincerity, not a glimpse of anything high maintenance…She has opened up her heart and her home, introduced me to her daughter whom I get on with like a house on fire and her friends…. Having said that I am still very wary, my guard is still up and I am being very careful should the big bad wolf appear...disguised or not."*

It would be a huge leap from considering the relationship serious enough to introduce each other's children and for him moving his few personal possessions in London into the wife's London property to it being characterised as akin to marriage at this point. His previous relationship had endured for three years but not moved on to marriage. It is evident from his email that he was wary. He was of course still married to his first wife. His main home was in The Alps. I do not consider that the relationship at this stage can be considered to be equivalent to marriage. It is entirely possible that the parties had different perceptions and, given the wife's tendency to rose tinted spectacles, she may have invested very high hopes in the relationship and viewed it as having reached a level of intensity akin to marriage. However, I do not accept that the husband viewed it as this when I do not accept that objectively it can be characterised in this way.

November 2007 — H's car traded in against new car acquired for W's use [C350]

Parties travel to Paris for the weekend with all three children, taking a 2 bedroom suite, and on to H's business partner's house in The Alps.

December 2007 — Per W: H purchases engagement ring for W in New York. Parties become unofficially engaged. The evidence as it emerged in court was clear that the wife was mistaken in giving this date. I'm not sure that it was a deliberate error as opposed to a reflection of the wife's general unreliability as to dates combined with her instinctive presentation of matters in the most positive way.

H receives an offer for his property in The Alps. H purchases (with 2 others) chalet nearby. W and H buy some furnishings. The family spend Christmas there with their children and W's mother. H paid CHF 7-800k and had exclusive use.

H purchases land in The Alps for development and later builds a Chalet on this land. The wife's case was that this purchase was by both of them and for both of them to build a family home. The husband says it was bought to provide a main residence for himself, not for the two of them. W was involved with the internal design, visiting on a couple of occasions while H designed it on 'Sketch-Up.' H pays CHF1.5m for large plot with dilapidated house. Subsequently a new property was part built on the land. W's evidence on this seems improbable – in the context of the e-mail H sent to R and the early days of their relationship it does not seem likely to me that the parties discussed purchasing this land at this time as a home for the two of them. That subsequently between 2007 and its sale in

	2012 it came to be viewed retrospectively as a potential family home would be unsurprising. But I do not believe that is how either of them saw it at the time. If the wife did, it was a product of wishful thinking rather than objective reality.
January 2008	Parties spend 10 days in the Maldives together. H's nanny looks after WD in London. [C354] E-mails suggest that H and W liaised with the nanny to make the arrangements. H did not make the arrangements without reference to W – they were not then so embedded that he was able to make decisions about the care of her child.
February 2008	WD offered a place at a private school in London and begins in September. H is in London when letter received and sends it on to W [C444] H emails W [2/C374]: "*I resolutely wish to spend the rest of my life with you and believe with all my heart that somehow together we will make that happen. I don't have all the answers or in fact confess to even know all the questions that we face …*" Viewed in isolation this might suggest that the relationship had moved on to something more approaching a quasi-marital one. However, the totality of the letter makes clear that the parties were still making progress in the relationship. The email refers to disagreements and underlying friction. It explores their attitude to each other's friends and in particular addresses an issue to do with what would appear to be the wife's suspicion that the husband's relationship with R was more than just business/friendship. The contents of the email are more consistent with the relationship still edging forwards. In a new relationship one may well suppress one's hopes to one's partner and one's fears to one's friends. It does not necessarily mean the husband was insincere but rather is a reflection of conflicting emotions.
Easter 2008	Parties stay at H's property in The Alps with their children W says she spent the ski season 2007/2008 from late 2007 until Easter 2008. Indeed she seemed to suggest that this was the situation every year. Her own evidence in her witness statement together with that of Miss U, the husband and common sense suggests that, given she had a daughter at primary and secondary school for the vast majority of this period, she was not in fact living in The Alps as she said, but rather spending the majority of time in London looking after WD whilst also managing to spend weekends and perhaps other short periods of time away from WD with the husband in The Alps.
Spring 2008	H begins renting property in France and, per W, spend time over the spring and summer there

May 2008	Per W, H, W and WD travel to the Caribbean
2008	H and W view various properties for sale in London and the countryside. H commuting from London to Zebra's offices in the Midlands. The property search continued throughout 2008 and 2009. H rents larger flat in London when all the family are together. A pattern began to be established over this period of time. The husband says that it was in 2007-2008 that he spent the most number of nights in England; around 80 or so, still well below the 90 maximum permissible. The husband was having alternate weekend contact with his children and on occasions they were travelling to London and spending the weekend with the husband, wife and WD. I think WD's recollection of them spending regular periods in London and regular periods in the European country where HD and HS lived was accurate although whether that endured over the whole period is another matter. The husband continued to retain his main home in The Alps and travels to see HD and HS and to London to be with his children every other weekend. At times, all three children were transported to The Alps along with the wife in order to spend time together there. The husband described how all of his personal possessions remained at his home in The Alps until they were moved to France. Equally, the wife retained all of her personal possessions in London.
August 2008	(per W) Whole family (H, W and 3 children) have holiday in Caribbean. C433 shows children together This must be 2010: photo shows HD's 12th birthday.
Summer 2008	The husband's property in France sold for €3.8m; H rents another property in France (later purchased) for €150,000 per 6 months. W involved in the arrangements. H and W involved in liaising with Landlord [C380] H's children brought from the European country they lived in to London by nanny. [C363]. At some point in the process H e-mails W talking of 'OUR House' and sharing ownership. [C385] Date of e-mail is not clear. This seems to be further evidence of the progress of the relationship. Whether it had reached the stage where it could be characterised as equivalent to marriage I remain doubtful. Although the parties were and had been involved in a sexual relationship for between 18 months to 2 years, they were not and had never used (as I understand it) contraception. This approach to the possibility of having a child does not in my view necessarily indicate that the relationship had reached the quasi matrimonial stage. After all it appears that they were not concerned about the possibility of conception from very early on in the relationship before it could ever be characterised as quasi matrimonial. The language the husband used in emails

	was effusive and, having seen him talk about it, I conclude that his initial reservations about the sincerity of the wife's feelings for him had diminished and his enchantment with her had overtaken him.
Autumn 2008	Zebra launched (per company website) [2/C320]
October 2008	Email from H to a friend [2/C375]: *"I'm living in [London] at* [*W's*] *place waiting for the market to settle down before getting back on the ladder"*
17 October 2008	H becomes (first) CEO of Zebra. H says he was part-time although involved significant time. He stayed in W's apartment in London and her next apartment in Prime London and 1 or 2 nights in a hotel in the Midlands. W joined him occasionally in the Midlands. H said he spent about 80 odd nights in the UK in 2008. He couldn't have spent more than 20 weeks in England if he wasn't to put his tax status at risk. It seems unlikely he was here for the time either W or WD suggest.
10 November 2008	E-mail to WD's Father – co-authored by H in which they refer to W having an extended family [C372]
Dec 2008	H and W go to New York: C389. Purchase of rings. The wife described this process in some considerable detail and the subsequent purchase of the remainder of the jewel for a set of earrings for her. WD described the ring as an engagement ring.
2009	Zebra raises £4m equity from shareholders [C453] I was told that £1.9m was put in by H as a loan but was repaid in 2010.
January 2009	W enters tenancy in respect of an apartment in Prime London. H pays the rent and guarantees it. He did not wish to rent because of his tax status.
3 February 2009	H granted options over Zebra shares at an exercise price of 30p per share. At some point in 2009 Zebra moved on from selling to businesses into the mass market. The deal with a bank to buy on the futures market was adjusted with the bank taking 10% of the equity in Zebra in return for a more favourable financial arrangement in respect of the futures. I think this in practice meant that Zebra did not have to deposit significant sums in cash with the bank in order to cover forward purchases.
18 February 2009	[C378] Letter to H and W about renting the property in France
24 February 2009	H emails W [2/C316]: "*My Darling* [W], *Wife to Be… I love the way you embrace the children ... and I could think of nothing greater than sharing another child with you…personally I can't imagine my life without you.*"

	H said he was madly in love with W at this time. H says this is a love letter. Although it doesn't necessarily mean the position was by then equivalent to marriage, the indication of the desire for a child and the later fertility testing suggest that by now there was a level of commitment comparable with marriage. The email also suggests that there was some cash flow or other problem with the husband's finances at this point in time.
2009	WD's father ceases all financial support for WD and H assumes full responsibility H begins to build the chalet in The Alps on the plot of land purchased in 2007. The husband described how the project stuttered as a result of funding shortages. Ultimately it was never completed. W was very involved with this development. This would be consistent with the nature of the relationship between the parties by then having crossed the Rubicon and moved away from girlfriend/boyfriend to husband/wife.
Easter 2009	Whole family travels to USA
Summer 2009	Family holiday in French property. HD's birthday celebrated all together there. [C433]
25 December 2009	Handwritten letter from H to W [2/C348]: *"Together now for our 3rd Christmas"*
Christmas/New Year 2009	Per W, Whole family travels to South Africa, with a housekeeper
2010	H puts £431,091 as a loan into Zebra (not returned)
2010	Parties consult a doctor in relation to fertility. Both parties undergo fertility testing. By this time it seems that the relationship was firmly in the quasi marital territory. Zebra makes a profit for the first time.
c.2010	Chalet in The Alps is sold. H rents another chalet in The Alps (per W) as a family home.
October 2010	Whole family travel to USA
Nov 2010	Parties attend an annual ball
2011	H pays £18,975 to Zebra – not returned
2011	W enters tenancy in respect of another property in Prime London. H pays rent

	Zebra's profits increase
Easter 2011	Whole family travel to USA
Summer 2011	Short separation. W threatens to lawyer up and go to a newspaper. Demands H transfers £250,000 to her. Resumption of relationship shortly thereafter. I do not believe that this short, albeit unpleasant, situation undermined the essentially ongoing nature of the quasi matrimonial relationship.
September 2011	H's divorce from his first wife.
6 January 2012	Letter of wishes re: The Lennon Trust [2/C281]: H settlor; H principal beneficiary during lifetime; thereafter 55% to children; 25% for W 'my future wife' if she survives H; W excluded in event of divorce; 20% to H's parents (per W) Later manuscript amendments [1/C28] where H proposes that on his death 50% of the fund be for his children and 50% for W This reflects the fact that the husband and wife viewed themselves as quasi-married. It is interesting although probably not significant that WD is not mentioned as a beneficiary in the way H's children are although it might be she was covered by W. The references to being happily married et cetera suggest only that a standard form of letter provided some years earlier was still being used. The husband's evidence was that the assets which had been put into the Lennon Trust were being slowly withdrawn as the husband's capital was eaten into as it was deployed to meet their generous living expenses.
2012	H ceases to act as CEO of Zebra H sells partially complete chalet in The Alps (before building work is complete). It sold for CHF6-7m and there were loans repaid. The husband said a significant sum realised. H forms SCI Lennon. SCI purchases the property in France the parties had previously rented. Cost was €3.85 million and some €3 million was spent on renovations. The wife's evidence as to her involvement in the renovation of the property powerfully confirmed the level of her input. Given her flair for all matters design and fashion orientated it is hardly a surprise that within the marriage she should have undertaken this sort of role. Whilst I doubt that she flew 3 to 4 times a week for any purpose or any combination of purposes, she undoubtedly was heavily involved in a quite hands-on way in aspects of the development of this home. It seems to have been a recurring feature of the relationship that the parties could not settle upon a single place to make their home. WD continued to be

	schooled in London but the husband continued to be tax resident outside the UK and so could not base himself there. The husband says that the wife continually promised to relocate either to The Alps or to France but never fulfilled her promise. His inability to understand her position perhaps reflects the difference between a father who has contact with his children and a mother who cares full time for hers. He of course had been able to relocate away from the European country to the Tax Haven and then to The Alps and had maintained his relationship with his children at a distance whilst their mother remained the primary carer. At C303 the wife gives her account and says that she wanted to remain based in London due to WD. This conflicted with her oral evidence that she had in effect made her home in The Alps and France. This was a construct to fit her narrative of the relationship being quasi matrimonial from 2007 onwards.
Easter 2012	Discussions about moving to The Principality.
June 2012	H rents first apartment in The Principality as a family home, being W's proposed location for married life. Regular trips to Balearic Island and to French Riviera.
August 2012	Parties become permanent residents in The Principality; discovery by H of messages between W and another man lead to wedding planned for September being called off. Whilst the parties may have become permanent residents of The Principality, this did not actually involve them living full-time there. The status of a resident is one thing; becoming resident another. The issue of the marriage was clearly of some sensitivity. Whilst WD appears to have been fully in the loop, the husband's children plainly were not. I can well understand given the sensitivities as to HD and HS' mother's alleged emotional vulnerability that the husband's remarriage could have caused issues. What I have been unable to grasp is how it was kept from HD and HS given that WD herself knew. Ultimately nothing turns on it. This is the low point of the relationship it seems – but H continued to pay the rent and the physical relationship was maintained, they swiftly resumed the relationship because they went on holiday to Italy very swiftly. H's evidence that they had separated until later in the year was not made out on exploration of the evidence as he accepted they very soon after went on holiday to Italy and resumed their relationship very swiftly. I prefer the wife's account of this period. It was a ripple, perhaps a significant ripple but it did not break or alter the nature of the relationship that had been in place by this stage for some three years

January 2013	Per H: W promises that she will henceforth be faithful to H and that she will move to live with him in The Principality, on the basis of which he agrees to marry in September Per W: H & W's engagement continues; W and H continue living together in The Principality (and other countries); parties plan wedding in The Principality. I did not hear sufficient evidence on this to determine the point. It is clear that the issue of where they would make their home continued to be an issue. The email exchanges at the end of the relationship support the husband's case that he was agitating for the wife to base herself in The Principality [C446].
2013	£57,800 (not returned) H into Zebra. I was told by Mr Cusworth QC and it was not challenged by Mr Marks QC that the total sum of £1,777,866 was invested by H into Zebra and not returned via loans.
2013	ZCo borrows CHF2.42m, later divided as a loan of CHF1.21m from H and CHF 1.21m from a third party.
25 February 2013	Lennon Trust: request to wind up Lennon Trust and remit funds to H.
March 2013	Refurbishment of French property ongoing [C428]; W involved
Easter 2013	Whole family travel to USA
12 September 2013	**Parties marry, in The Principality**
31 December 2013	ZCo Balance Sheet [C210]
26 March 2014	Lennon Trust dissolved [C192] Funds and investments remitted to CS/UBS as guarantee for French mortgage. Some since sold, some still held.
11 September 2014	ZCo's loan divided between H and a third party
24 January 2015	Email from H to W [2/C317]: *"I see you sprinkle your magic on HS and HD and I know you are the greatest of mothers, the most amazing wife"* Reference to financial difficulties and to being on the first steps to being financially secure. By this time the husband appears to have almost run out of the capital which he had brought into the relationship and the marriage. The huge sums spent by the parties on their living expenses and on the renovation of the French property must have been a considerable drain. The reference to financial security was to the prospect of a sale of Zebra referred to below
2015	*Possible sale of Zebra at £500m overall.*

2015	Parties rent a new apartment in The Principality in joint names for 3 years. Parties undertake extensive structural and decorative work overseen by W costing some €500,000. The letter from a neighbour in The Principality suggests that the wedding card that the neighbours sent in 2013 and which referred to the husband and wife as their neighbours was more in the way of a pleasantry rather than a genuine reflection of the wife appearing to live in The Principality. The neighbour says she was of the impression that the wife generally lived in London caring for WD. Ultimately, I do not consider I need to resolve the issue of whether the wife was living in The Principality or not. The wife maintains that she had essentially relocated to The Principality after the marriage. Again this seems unlikely given that WD was still at school studying for her A-levels. But ultimately by this time the parties were married and had chosen to arrange their lives as they had. That there may have been a disagreement as to whether the wife had fulfilled an alleged promise to locate more fully to The Principality is neither here nor there.
3 February 2015	The husband receives via ZCo £6,069,416 (£14.16 per share) from sale of Zebra shares [2/C274-276]
29 April 2015	H lends a business associate £1 million
15 May 2015	H awarded Zebra options at exercise price of £1.57 per share
May 2015	WD leaves school. Does Foundation course.
30 June 2015	The husband receives £954,353 from Zebra share sale (£17 per share).
July 2015	H acquires Manx company that buys a yacht for €900,000
	Budget document C337 Must be after the purchase of the boat in 2015 as it refers to it. The reference to difficult financial times suggest they had used up much of the husband's capital. He must have initiated a conversation about adopting some restraint in their financial expenditure. Otherwise the wife's handwritten notes on the budget as to ways of saving money would not make any sense. The husband says that W wouldn't economise by giving up on London and moving to The Principality as H wanted.
23 September 2015	Business press article [2/C321] states Zebra's customers increased by 100% in consecutive years
3 March 2016	ML agrees to repay 1,300,000 CHF to H (repaid from December 2017 and final payment made 22 March 2018)

2016	Parties discuss HS coming to live in The Principality: W resists on the basis that she considers it would be better for him to be schooled perhaps in London
Sept 2016	WD starts fine art course in NY
February 2017	**Per H: Date of separation**
March 2017	**W pawns some jewellery**
Easter 2017	H, W and 2 children to Morocco
April 2017	H consults lawyer in The Principality to advise upon divorce.
May 2017	W asks H to pay a bill for Messrs Farrer & Co Incident in The Principality where W damages bedroom door. Parties had sex the next morning.
June 2017	H starts new relationship.
July 2017	H cancels W's Amex Black card, having warned her repeatedly about over-spending. This seems more likely to be linked to the husband's view that the marriage was now over rather than necessarily a concern about overspending although that may have played a part.
August 2017	Parties attend a meeting at Farrer & Co
September 2017	**Per W: Date of separation** H appointed CEO of Zebra and becomes closely involved with business in context of discussions with the ultimate purchaser [C446] E-mail: '*you promised me to give up* [Prime London] *and move to The Principality. Hasn't happened*.
12 October 2017	[2/E1] AFP write stating that H's capital "has all but run out" and states that H will now provide W with an allowance of £6,500 per month "from which she must budget (on top of her rental which he has covered up until the end of this year)." W in New York. E-mails [C220] are unpleasant to read and the wife accepted that they did not reflect well on her. Clearly this was a very difficult time.
1 December 2017	[2/E4] AFP state sale of Zebra hangs in the balance and delayed to end June 2018, but matters will improve dramatically if the position changes as a result of a share sale. For the time being, H implores W again to curb her spending,

	requires W to break London tenancy and offers 2 more months' rent; proposes that W move to The Principality property and H stay in France
December 2017	W sets up website and online shop promoting luxury brands
31 December 2017	ZCo Accounts – C179/C284
4 January 2018	AFP serve copy of draft Sale and Purchase Agreement on W - H's share of total consideration (17.5%) £33,162,500 - Slaughter & May advise total consideration likely to be higher (H to receive c.£40 million)
February 2018	Completion of sale of Zebra.
23 May 2018	Potential gross receipts of £36,685,146 from Zebra with £6,323,612 retained. £3,161,806 due 2018; £1,580,903 due 2019; £1,580,903 due 2020

Financial Information

The agreed schedule of assets shows a bottom line on the wife's case of £38,946,372. On the husband's case the bottom line total assets is £38,274,048. The net assets figures include deductions for the repayment of the two litigation loans taken by the wife in the sums of £366,800 and £374,540 and her unpaid legal costs. The schedule also includes a figure for the husband's unpaid costs. Both parties have included the sums retained in relation to the Zebra shares in the sum of £3,964,378. The proceeds of the Zebra share sale are currently represented by bank accounts in the husband's name totalling £4,898,663 and sums held in ZCo (the husband's company structure) in the sums of £5,296,687, £5,800,000, and £16,447,810 (held by Forsters to the court order) as well as the retentions of £3,964,378.

88. The only real estate owned by the parties is the property in France. Although the total of its purchase price and the amount spent on renovations comes to some €6.85 million, the property is now only valued at €3.62 million. This came as something of a surprise given that for FDR purposes sums north of €6 million I think were mooted. However the SJE was not called and his valuation is not challenged and so in that respect the parties are sitting on a very substantial loss as compared to the sums invested. Having regard to the mortgages which are secured against the property it represents a net deficit of £326,486. Similarly the boat represents a net deficit of £427,615. The boat is valued at €650,000 and an offer has been received of €600,000. The husband said that he was hoping to get €700,000 for it.

89. The difference between the parties relates to

i) A gift by the husband to his brother of £100,054 on 8 August 2018.

ii) The gift by the husband of a classic car to his father, valued at £50,000.

iii) An alleged debt owed by ZCo of £522,270.

Although significant sums by most people's standards, they are modest in the overall picture of this family's finances.

90. The budget produced in 2015 [C337-8] by the husband demonstrates a very high level of expenditure. The husband said that some of them were exaggerated by him for the purpose of embarking on a discussion with the wife about reducing their expenditure. On examination of them by Mr Cusworth QC it was clear that if some of them were exaggerated it had little impact on the overall picture. The following are illustrative.

i) €17,100 per calendar month London rental

ii) €14,000 per calendar month The Principality rental

iii) €7500 per month France mortgage

iv) €12,000 per month boat lease payment

v) Allowances, W €6750, H €5000

vi) Staff in The Principality €8100 per calendar month. Other staff across the properties total €10,000 per calendar month.

vii) Flights €2000 per calendar month

viii) Holidays €100,000 per annum

ix) Amex €30,000 per calendar month.

91. The total amounted to €1,863,968 (£1.34m) annually or €155,330 per month. The wife offered some solutions to assist such as selling some of the cars, selling the boat, making the The Principality staff redundant, and other suggestions.

92. Mr Marks QC in one of the schedules produced suggested that if one isolated the wife's expenditure out of this schedule, one achieved a figure of €278,468 or £206,273. This figure was achieved by, amongst other things, attributing only 25% of the holiday costs and 25% of the Amex costs to the wife. I think this was done on the basis that the holidays and the Amex also covered the children. This seems to be a somewhat arbitrary and rather unrealistic approach. The evidence made very clear that the husband and wife took numerous luxury holidays on their own and if any adjustment were to be made it would not reduce it to 25% of the total and in any event if anything the holiday figure seems to underestimate the total costs. More significantly, the wife was clearly at least the equal spender of the husband on the American Express card. She described aspects of her expenditure to me. £2000 for a dress, £500-£750 for a pair of shoes, £750 for hair extensions and £1000 to put them in. Of the €360,000 per annum Amex expenditure I would have thought that at least half of it was attributable to the wife. Those minor adjustments to the budget would result in adding in a further €15-€25,000 per annum for the wife's holidays and another €90,000 per annum for Amex expenditure. That would bring her share of the total up to about €388,000 or £287,000 (at 2015 exchange rates £1=1.35e). At current exchange rates the figure would be closer to £350,000.

93. Taking the 2007 balance sheet as a starting point, the value of the husband's capital at that point was £17.64 million. That included approximately £5.2 million which the husband attributed to the value of his interest in Zebra at June 2007. Mr Marks QC and Ms Singer's schedule B identifies £11.35 million worth of assets which have been expended during the relationship. The wife agreed that the assets identified in the June 2007 balance sheet existed (well at least the properties) and that they had now been sold. So the parties spent in the region of £11 million between 2007 and 2015. In evidence the husband told me that save for a sum of around a £100,000 he did not receive remuneration as CEO of Zebra. In addition, a further £7 million received in respect of the sale of Zebra shares in 2015 has been spent since 2015. Some of those funds went on what Mr Marks QC describes as big-ticket items. The refurbishment of France absorbed €3 million, the refurbishment of the The Principality property €500,000, the boat cost €900,000, and the husband made further investments in Zebra of €800,000, totalling €5.2 million or roughly £4 million. Allowing for sums which are owed to the husband of €5.71 million the husband's team calculates that the parties have spent around €15.3 million in 10 years. Depending on the exchange rate used that somewhere between £10 and £14 million. Mr Cusworth QC estimates that the figures are more and in particular questions where the £7 million received from the Zebra shares sold in 2015 has gone. I do not consider it necessary to embark on any more detailed analysis of the figures. It is manifestly plain that the husband has spent all of the capital that was left over from the sale of his first business on meeting the lavish standard of living that the parties have led for the last 10 years odd.

94. The husband's schedule of expenditure in his form E amounted to some £368,961. Excluding the children's expenses this amounted to £237,563. In his evidence he accepted that since the sale of the Zebra shares and the receipt of substantial liquid funds he had not limited his expenditure to the sorts of figures included in that schedule. He did not expand on the sorts of sums he had spent, but I got the impression he was not holding back. The fact that he has given his brother £100,000 and his father a classic car is illustrative of the sort of expenditure that the husband finds it easy to make.

95. The wife's budgets for the future in her Form E totalled either £598,194 or £431,194 if one excluded second home expenses. Her maintenance pending suit budget totalled £444,463. The husband's proposed budget totals £199,744. The husband's criticism of the wife's expenditure in the context of his own generous expenditure is harsh. In his time, he has spent huge sums on properties, has owned Lamborghinis, Ferraris, Bentleys, has taken private jets, flown first class, and lavished money on his family for the very best that money can buy. The husband says that the wife can reduce her budget because she receives freebies as a brand ambassador. For how long that will continue must be doubtful. In any event, given the sort of lifestyle the husband has indulged over the last 10 years, annual expenditure in the tens of thousands of pounds for clothes footwear handbags and coats is not unreasonable. In addition, sums spent on food wine and entertaining in the tens of thousands of pounds are not unreasonable. And budgets for holidays and air travel of a hundred thousand per annum is not unreasonable. I have little doubt that the husband will be spending similar sums on himself, his girlfriend and his children.

96. It will be self-evident from the information contained within the chronology that given that the development and growth of Zebra spanned a period of some 15 to 16

years that it is not possible to divine a sharp dividing line between matrimonial and non-matrimonial assets. It is perfectly plain on the evidence that part of the value of Zebra is solely attributable to the husband's efforts prior to 2007 (or 2009). It is equally clear that part of Zebra's value arose from his efforts from 2009 seeing it through its first steps into the mass consumer market, into its first years of profitability and its development into a significant player in a deregulated sector such that it became an attractive target for the ultimate purchaser in 2017/18, and earlier for a private equity group in 2015. It is therefore a mixed asset of non-marital value and marital value and thus a mingled non-marital/marital asset.

97. Had I authorised the instruction of a single joint forensic accountancy expert in June, it is possible that I would have had opinion evidence which illuminated the issue of the value of Zebra in 2007. I might have had valuations for subsequent years. However, as I have already noted, and as Lord Justice Lewison observed in *Versteegh,* the valuing of private companies is a matter of no little difficulty. Such valuations are the most fragile that can be obtained. The reasons were explored further in that case. Thus even if I had such forensic accountancy evidence it might not have been very robust.

98. What I know is that the husband has a track record of establishing ground-breaking companies in the deregulated sector. He made a small fortune by challenging the established providers in the deregulation of one sector. What had at one stage looked like £100 million profit was reduced to only £15 million. With some of the same business partners he then embarked on the establishment of a challenger in another deregulated sector. The chronology of the establishment and development of Zebra makes clear that it had been an entity which was being built for several years even before the husband met the wife. The husband's principal endeavour in the early days was in developing the various software systems which were integral to the viability of the idea and the acquisition of the licences. Although there may have been difficulties along the way, for instance the bringing in of the software team, this does not detract from the overall assessment of a viable business idea having been developed and well advanced by 2007. I accept the husband's evidence as to the reasons for dispensing with the IT team and bringing in another team in order to build a system that would be robust for years hence to replace one initially designed by himself which appeared likely to be fragile when confronted with the demands of a mass consumer business.

99. I accept that the balance sheets are genuine contemporaneous documents. Mr Cusworth QC did not in fact suggest they were modern forgeries. His criticism was that their accuracy in valuation terms was unreliable in part because the methodology used to reach the valuation was not known. However, the 31st March 2003 balance sheet shows Zebra reflected by a payment to a law firm of £500,000 or €724,000. This I believe was the payment made to acquire the customer base. As at 30th June 2007, the husband's private equity investments were valued at €8,999,000 or roughly £6 million. The ZCo schedules suggest that the total value of the other assets held by them totalled some £800,000. The husband said there had not been significant changes in respect of the other holdings. The ZCo schedule shows Zebra Ltd initially valued at £570,000 (original cost). The 2007 balance sheet thus indicates that the Zebra value at that point was £5.2 million. The 2009 balance sheet shows private equity investments of broadly similar valuations. The ZCo balance sheet for 31st December 2013 gives the figures in Swiss francs for 2012 and 2013 which shows an

original cost valuation given at 2012 figures of CHF4.5 million. This probably reflects the additional sums invested by the husband in Zebra which took his total capital injection into the business up to £1.8 million but not the valuation which formed part of the June 2007 balance sheet. What the ZCo balance sheet does show is a huge revaluation as between 2012 and 2013 where the original cost at 4.5 million CHF has increased to 37.4 million CHF - roughly £25 million.

100. I do not consider that the original capital investment that the husband made in Zebra of £1.8 million is in any way an accurate reflection of its value as at 2007, still less as at 2009. In 2007 it was ready to fly, it secured the licences to compete in the deregulated sector and it began to trade, making a profit in the year to 2010. This further corroborates the assertion that the business had very significant latent value at an earlier stage. But how does one assess that latent value? If I accept Mr N's valuation in June 2007 of £5.2 million does that fully reflect the latent potential of the business? If it does how should one index that to reflect its current value. Or should one take the Mostyn J straight line approach to attribute value on the basis of equal accrual year by year since its formation in 2002 until 2017 (I take the later commencement and end year in order to bear on the side of generosity to the wife having regard to the husband's failure to be full and frank)? The current sums held in respect of Zebra are £36,407,538 and the husband says the total actually received would be around £37.5 million - although the figures appear to vary both within the chronology and within the parties' documents. If one takes the figure of £37.5 million and undertakes a straight line valuation over the 16 year period some of the figures would be as follows

i) End 2002: £2.34 million

ii) End 2007: £14.04 million

iii) End 2009: £18.72 million

iv) End 2013: £25.74 million

My figures are different to those outlined at paragraph 54.1 of Mr Marks QC and Ms Singer's valuation but not I think significantly so (well not in the context of the sorts of figures we are talking about)

101. An alternative method might be to look at the sum invested by the husband and to apply indexation by reference to a high performing comparable stock index such as technology stocks. I identify this only because I conclude that the nature of Zebra was such that it can only sensibly be compared to some index which has demonstrated very high rates of growth. No doubt others could be identified by the parties. To link Zebra to something like the FTSE 100 index or any other mainstream index would in no way be a fair comparison. If one took the husband's investment of £1.8 million in 2009 (H had put in £500,000 and invested a further £1.9 million in 2009 some of which was repaid and so this year perhaps represents the high point of his financial investment) and applied the NASDAQ technology index from 2009 to 2018 results in that figure being multiplied by 7.04 giving a figure of £12.672 million out of the total of £38.5 million.

102. An alternative might be to take the starting point of £5.2 million in 2007 and apply some form of indexation. If one used the NASDAQ for 2007 (it was higher then than in 2009) the indexation would be £20.5m.

103. Other methods might also be attempted for instance those considered by Mr Mr Marks QC and Miss Singer in paragraph 54.3.

104. It is immediately apparent that seeking to undertake any sort of arithmetical valuation may result in significantly different outcomes depending on the starting points for dating and valuation used.

105. In all the circumstances I do not consider on the evidence that it is possible for me to undertake a reliable valuation of the latent potential of the business or to apply any sort of indexation to it for passive growth. In the circumstances I am confronted with it seems to me that an alternative approach is mandated. It is quite plain that the business had very considerable latent value whether at 2007 or 2009 the point at which I think the premarital relationship had crossed the Rubicon into quasi marital territory. After that the husband worked hard in the business to develop it from its fledgling status in the mass consumer market to the point in 2012 when he handed over to a CEO with greater experience in that sort of industry than he had. However he continued to play a role whilst the business built on those original foundations to become the company spoken of in the business press article and subsequently becoming the target of the purchase. Thus the part of the husband's interest in Zebra which predated the marriage and which should properly be considered as the non-marital portion of the whole is a very significant part of it. On the other hand the part which was developed during the quasi marital relationship and the marriage was also a very significant part of it, albeit somewhat greater. I consider that the two should be assessed so as to apportion 40% of the value of Zebra to the husband as a non-marital asset and 60% as a marital asset. 40% of £37.5 million is £15 million. 60% of £37.5 million is £22.5 million. By crosschecking these figures against the sorts of figures produced by the various other methodologies I am fortified in my conclusion that the husband's premarital asset is properly valued at in the region of £15 million. In adopting this approach I am very much taking the non-formulaic approach.

106. This takes into account the latent value or springboard value and the element of passive growth both during periods in which the husband was active and inactive over the period. The £22.5 million portion also properly reflects the periods when the husband was very active and productive of value when CEO and when handling negotiations and also those periods when his involvement was more hands off.

Conclusions on the Issues Identified

107. So returning to the agreed list of issues my conclusions are as follows

1. The extent to which the parties' pre-marital relationship should be treated as part of the 'duration of the marriage' (s25(2)(d) Matrimonial Causes Act 1973) or as one of the 'circumstances of the case' (s25(2) MCA 1973).

The nature of the relationship between the parties is hard to fit into any recognised category. The authorities tend to refer to the parties' cohabitation and the seamless transition from cohabitation to married life. In this case at the commencement of the relationship the wife

lived in London, had done for many years and continued to do so her main home being here to this day. In contrast the husband left the UK in the late 1980s and has had his main home overseas ever since. At the commencement of the relationship his main home was in The Alps although he also owned properties in France, the Tax Haven and in Asia. In October 2007 the husband began to stay at the wife's London property on a regular basis for somewhere in the region of 60-80 nights per year. The wife at the same time began to spend significant periods of time, in particular during school holidays, but also for periods during term time at the husband's home in The Alps. As time moved on a piece of land was acquired in The Alps which, whatever its origins, came to represent an intended family home. From the summer of 2008 the husband and wife rented a property in France and this became in due course the husband's main home and the family's main base for the summer. In June 2012 a home was rented in The Principality it being intended to be the main base of both the husband and wife albeit never really became that. From late 2007 when the husband was in London not only was he staying with the wife but also with WD and he took on the role of stepfather to her and took on financial responsibility for her school fees and general maintenance. As I have identified in the chronology, the relationship continued to develop over the course of 2008 and the beginning of 2009 by which time I consider it had crossed the Rubicon and was in the territory of a quasi-marital relationship. That continued to develop until by the time the parties were exploring fertility investigation in early 2010 it was firmly established.

Even if one could not identify a cut-off date, it is clear that the premarital relationship was, notwithstanding some ups and downs, a committed relationship which was moving towards marriage, in which children were contemplated and hoped for and in which the pattern of life which developed from 2008 onwards continued largely without change after the marriage took place in 2013. The initial phases where the husband was captivated by the wife developed into a more robust and mutually committed relationship. The fact is, though, that this was a committed and exclusive relationship which endured for some six years before being sealed by marriage. The hiccups that the relationship experienced and which are clearly evidenced by the email exchanges, the text messages in 2011 and the calling off of the wedding in September 2012 do not represent a serious fracture. The husband's case that there had been a separation of some months from August 2012 to late 2012 are not borne out by the evidence that within days they went on holiday together to Italy and throughout the autumn were spending significant periods of time together; to all intents and purposes back as a happy couple

2. Whether the parties separated in February 2017 (per H) or September 2017 (per W)? Per H, the extent to which the answer to this question matters, beyond its potential tax impact.

It is clear that the relationship was in breakdown from late 2016 albeit the parties continued to spend time together. The husband accepts that he started another relationship by at the latest June 2017 and the majority of the summer 2017 was spent apart. In his mind he probably had separated emotionally by February 2017. The physical separation, given they spent time living separately in London and France anyway may be harder to identify. In the wife's mind she certainly hadn't separated emotionally or physically until September 2017

3. Children of the Family: the extent to which this classification applies to any of the children in this case and what impact, if any, this classification may have in the section 25 exercise. (per H, no relevance; per W, relevant to assessing the pre-marital relationship and W's and WD's needs).

On the basis of the evidence as to the relationship between the husband and WD, her place in the relationship and marriage of the husband and wife and his having taken on financial responsibility for her seems to me she was properly to be treated as a child of the marriage. In respect of the husband's children HD and HS I do not consider that they could properly be treated as children of the family. They lived for the majority of the relationship and marriage with their mother in the European country. They spent alternate weekends with the husband, the wife and WD. They spent, it would seem, large parts of school holidays with the family. During those periods the wife helped to care for them but the husband maintained sole financial responsibility for them and they never lived in either the legal or in any commonly understood way with the husband, wife and WD.

4. The standard of living during the marriage and the extent to which this factor may inform an assessment of need.

Over the 10 years from 2007 to 2017 a total sum of approximately £18 million was spent by the husband. A part of this went to support his ex-wife and family in the European country but by far the lion's share, probably in excess of £17 million was spent on properties (including rental & renovations) several luxury cars, a yacht, holidays, entertainment, jewellery and all of the finest that money can buy. Whilst not quite the standard of living of the super-rich it was a very high standard of living indeed. As WD described it was a very different way of life to that which she had experienced before 2007.

5. Available resources.

(f) Whether H (including via ZCo) has received full payment in respect of his Zebra options (including whether there are any retention payments).
It is clear there are some retention payments. I did not hear any evidence about any impediment to them in due course being paid although I note from Mr Marks QC's opening note an issue about a regulatory investigation having the potential to impact upon them.

(g) Whether H's gift of c.£100,000 to his brother in August 2018 should (per W) be included as H's asset for the purposes of these proceedings or (per H) be excluded from the asset schedule.
Although in most cases a sum of this sort would probably fall to be added back in, the sums the parties have spent in the last year amount to several hundred thousand pounds each and in the context of the lifestyle of each a sum of the hundred thousand pounds seems to me to be encompassed within the sort of expenditure that the husband might legitimately be able to make.

(h) Whether H's gift of a classic car worth £50,000 to his father should (per W) be included as H's asset for the purposes of these proceedings as conceded by H in replies to questionnaire or (per H) be excluded from the asset schedule.
The car in question was owned by the husband before the marriage, indeed before the relationship and so should be excluded from the assets

(i) Whether (per H) ZCO owes £522,270 in respect of a gain on shares.
Whilst the husband's evidence was unsatisfactory in various respects for the reasons which I have outlined above, his explanation of a loan to the husband in return for its repayment and the profits on the share options purchased with the loan appeared to me to be genuine. Although it came in late this was supported by

the email and accompanying documents. If the husband says that that sum is owing I accept that.

(j) Whether (per W) the prospect of H paying UK CGT on disposal of his Zebra shares is too remote and therefore should be ignored or (per H) the possibility of H paying CGT means that this potential liability should be deducted on the asset schedule.
The evidence from the single joint expert is that if the parties separated in the tax year 2016/17 the husband would not be resident in the UK for tax purposes in that year and therefore any potential CGT liability does not arise. On the other hand if the husband and wife separated in the tax year 20 17/18 he might be treated as a UK resident in which case a CGT liability might arise. However the SJE assesses the possibility as only being 20%. Given that the husband is the individual who will file the tax return and will state the date of separation as being within the 2016/17 tax year it seems to me that on the balance of probabilities it is most unlikely indeed that CGT will be payable in the UK.

6. Contributions:

a. The parties' respective contributions during the premarital relationship from late 2007 to September 2013.
During the pre-marital relationship both parties made contributions to the ordinary functioning of the relationship. The husband worked in Zebra at least up until 2012 when he stood down as CEO. The husband and wife operated together to make arrangements for the care of WD, to deal with HD and HS, to deal with property rentals and renovations and all the other myriad tasks involved in living an international relationship of the sort they had.
Quite separately from the husband's work, he financially supported the family from assets which he brought into the relationship. Although it is difficult to be precise, the total of the assets which he appears to have deployed between about 2007 and 2017, excluding the £7 million raised from the sale of Zebra shares in 2015, was about £11 million.

b. The extent of H's pre-marital wealth.
It is known, and I think not contentious, that in 2001-2 the husband received £15,322,000 from the sale of his first business. At one point his shares were worth nearly £100 million but, due to the stock market crash, the value declined to £15.322 million. The balance sheet produced by the husband's accountant for the 31st of June 2007 has been much contested but as explained above I consider it to be in general terms reliable. That shows net assets of about £17.64 million, which includes about £5.2 million for Zebra which gives £12.4 million of assets excluding Zebra. Allowing for the capital which the husband is likely to have expended between 2002 and 2007 that £12.4 million in all likelihood represents the remainder of the £15.322 million received from the sale of the first business.

c. The weight to be attached to H's contribution of pre-marital wealth.
See later

7. Sharing:

(f) Whether (per W) W is entitled to share in the growth in value in Zebra during the relationship, or (per H) W's claims are to be assessed by reference to her reasonable needs.

The husband brought Zebra into the relationship at a time when the idea had been in existence for some five years and when the process of developing the idea into a viable business was well underway. The software which lay at the heart of the business, the work on securing supplies through a futures deal, the preparation for the application for licences, acquisition of databases and development of business plans was already very far established by 2007.

However thereafter in the course of the relationship the husband's contribution to the relationship and subsequently to the marriage was in part his work in developing Zebra. The wife, whilst not playing an active role in the business, was playing her own role within the relationship. I have little doubt that the husband's ability to develop the business was aided by his contentment in his relationship and the emotional and practical support that the wife gave him. Although he is now unable to exercise any real objective perspective on how she contributed to the relationship, it is clear that she did. Not to recognise this and to seek to ring fence Zebra would be to discriminate against the wife in respect of her contributions during the course of the relationship and subsequently marriage. The husband's efforts in the period 2007 to 2017 are now reflected in part in the monies which accrued from the Zebra share sales.

It follows that the wife is entitled to share in the growth of Zebra over the period of the marriage and the pre-marital relationship from around 2009. As I have determined earlier in this judgment I assess the husband's non-marital portion of Zebra at 40% and the husband and wife's marital asset within Zebra at 60%

(g) Whether sums that H brought into the relationship, but which were spent on living expenses during the relationship and no longer exist are (per W) mingled and spent, therefore not capable of being "ringfenced"; or (per H) a relevant and unmatched 'contribution to the welfare of the family' impacting on the fairness of sharing what now remains.

The husband's deployment of all of his pre-2007 capital to meet the family's expenses between 2007 and 2015 does amount to a very significant contribution to the welfare of the family. It was unmatched by the wife. To the extent that she had any pre-relationship assets, she frankly accepted she spent them on herself on items of art and jewellery which she retains. Whilst she is right that those very significant sums have been spent and cannot be ringfenced, that does not mean that they should be ignored entirely. It would be unfair to ignore the unmatched financial contributions of the husband in bringing in excess of £10 million of capital into the marriage and deploying it for the benefit of the family. It is probably theoretically possible to calculate roughly how much of the £12.4 million can be attributed to the husband's family in the European country, to his own needs, to those of the family, to Zebra, but I do not consider that to be a useful exercise. The deployment of those funds is clearly a very significant contribution which must be taken into account in the overall discretionary exercise. The figures produced by Mr Marks QC and Ms Singer show that £11.35 million of the 2007 assets were spent. I do not consider it appropriate simply to add them back in any arithmetical way. The husband chose to deploy them and has benefited from them as have his children, the wife and WD. The family are

fortunate that his divorce settlement to his first wife did not require him to pay her 50% of the assets. I consider that that contribution warrants an adjustment to the sharing of the matrimonial assets in the husband's favour. In broad terms a 60/40 split of the matrimonial assets would in my view reflect this very significant additional contribution that the husband has made. That at first blush would put the wife's share of the Zebra matrimonial assets at £9 million and the husband's at £13.5 million. Of the remaining assets amounting to some £775,000 there is no reason why they should not be split in the same proportions. It is almost impossible to identify where their origins lie but given the parties received some £7 million from the sale of Zebra shares in 2015 some part may be referenced to them in some part may be referenced to other matters, including ages old assets brought by the husband into the marriage or the proceeds of sale of the property in The Alps. That division results in the quantification of the wife's share of the marital assets adjusted to reflect the husband's additional financial contribution at £9.31million.

(h) The extent to which the value of H's shareholding in Zebra derived from contributions that he made before the date of the marriage/relationship and the extent to which the value derived from contributions made after the date of the marriage/relationship. Per H, (a) whether it is desirable or possible reliably to assess when Zebra's major value was built up or when H's contributions were principally made and (b) if it is, the utility of those inquiries in the circumstances of this case.
This is perhaps the most contentious issue. However I have no doubt that Zebra had a very significant value prior to 2007. The current value of that 2007 value is a contribution which is solely attributable to him; the difficulty is in assessing the value in 2007 and how that sounds in the 2018 share sale proceeds. The Zebra business has not become mingled in the general matrimonial assets. However the matrimonial contributions (of the husband and in which the wife is entitled to share) have become mingled with the non-matrimonial contributions of the husband relating to the pre-2007 value and the passive growth of that value.

(i) The value of H's interest in Zebra before the parties began to live together/were married. Per W: H has failed to provide any reliable evidence about this. Per H: probably only broadly relevant to outcome and not capable of being established definitively. Per W, in the absence of such evidence, the court should take a broad view on the best available evidence; bearing in mind that if there were any evidence available to suggest that H's contribution was greater than the £2.2m which he has claimed for tax purposes, no doubt he would have produced it.
Although the wife is right in her assertion that the husband has not provided reliable evidence about the value of the husband's interest in Zebra prior to 2009, even had he done so I'm not sure that I would have been in any better position to carry out the exercise of valuing it given the difficulties in valuing private companies. As I foresaw at the case management hearing in June, it was likely that I would find it more apt to deploy a broad brush approach which is what I have eventually concluded is appropriate having explored some of the other possibilities which could be used to value the husband's non-matrimonial interest in Zebra. I have to the extent that I consider it fair adopted figures which probably operate to the detriment of the husband in valuation terms and which operate favourably to the wife.

(j) How H's contributions before the start of the marital relationship to the development of Zebra can or should be reflected in the final outcome?
As I have already identified, the husband's contributions to the development of Zebra are assessed at 40% of its current value.

8. Needs:

(d) The parties' respective housing and other capital needs. Per W, these should be informed by the extremely high standard of living during the relationship. Per H, the extent to which the court should reflect "downsizing" in W's future housing provision within the quantum of her award.
The wife clearly has a need for a 2/3bedroom property in the Prime London area. It is not unreasonable for her to seek such a property given she has lived in that area for a very significant period of time. In particular, the parties chose to base themselves in Prime London when in London and that is where the wife's roots now are. The husband's property particulars for that area provide a range between £3.5 - £4.1 million. The wife's properties range from £5 - £6.485 million. She has clearly chosen properties which are broadly comparable to her current home, the husband has chosen properties which, whilst beyond most people's dreams, are significantly lower in standard than the current property. I conclude that a property somewhere between the wife's bottom end and the husband's top end would provide the wife with suitable accommodation in the Prime London area. Including purchase costs, that would require a sum of in the region of £4.5 million. I do not consider it appropriate for the wife to be required to downsize at some point later in her life. If anything she will be more embedded in Belgravia and may as she grows older have more need for care and for live-in staff. Once she finds a property she should be able to remain there for as long as she chooses although she might relocate in order to release capital. The husband's housing needs are met by France.

(e) The parties' respective income needs.
The wife's assessment of her income needs included a second home which is no longer pursued. However, her needs are still quantified at £500,000 a year for the next 10 years. Having considered the 2015 budget which illustrated expenditure of €1.86 million per annum or £1.34 million per year including £436,000 of payments for property and the boat it seems that more appropriately the family's total expenditure at the height of their expenditure could fairly be assessed at £800,000 per annum excluding properties. That budget included further extensive payments (in the region of £156,000 per annum) for staff which will not form part of the wife's budget save in respect of £24,000 per annum for a housekeeper. As I explored above, I consider that the Husband's calculation of the wife's share of the 2015 budget was unrealistic. I conclude that a sum of £300,000 per annum more accurately reflects the sort of expenditure that was attributable to the wife to generate the standard of living that she has experienced since about 2007. The duration of the marriage including relevant pre-marital cohabitation or quasi matrimonial relationship is about eight years; so not a short marriage but not a long marriage. I consider it reasonable for the wife to continue to live at that general standard of living for an equivalent period and so for the next 9 years I consider that her income needs are £300,000 per annum. Given that this is not a

long marriage with children I consider it reasonable to look at how long periodical payments should be made for and whether the wife would be able to adjust without undue hardship to the termination of her financial dependence on the husband. The reality is that the wife's ability to secure any income is negligible, particularly by reference to her needs judged against the standard of living enjoyed by the wife before the breakdown of the marriage. Hardship, and undue hardship are relative terms which I consider I should assess by reference to the standard of living enjoyed by the family during the marriage. The termination of any periodical payments would undoubtedly create objective and subjective undue hardship. However, I do consider that given the duration of the marriage and by reference to the wife's life prior to the marriage that it is not reasonable to expect the husband to continue to maintain her for life at anything approaching the level that she enjoyed during the currency of the marriage and will continue to enjoy for a further nine years. I consider that she could adjust without undue hardship to a significant reduction in the periodical payments. I consider it to be fair for the husband to maintain her after the age of 60 at a rate of £100,000 per annum only. That sum will still enable her to lead a good, if modest in comparison, standard of living in Belgravia. It will still provide sufficient to hire staff, to meet her other general outgoings at a reasonable level and to enjoy holidays. If the wife wishes to seek to maintain a much higher standard of living she would have the option of downsizing in Prime London and freeing further capital. I thus consider that her income needs after 60 should be set at £100,000 per annum as suggested by the husband. This takes into account in addition a need for the wife to adjust away from the hugely lavish lifestyle that she has led as a result of the combination of the huge financial contribution that the husband brought into the marriage. By my calculations this would require a capital sum of £4.44 million. The husband's income needs exceed the wife's given he remains responsible for maintaining his first wife and his children. He also has other expenses in relation to France and the boat. However, all his needs are easily met by his non-marital share in Zebra and his share of the marital acquest. Whether the husband still has it in him to establish a further business and to make a third fortune is a matter of pure speculation. He certainly retains an earning capacity of sorts; whether it is at fortune levels as an entrepreneur or whether simply at the very significant levels that may be achievable through deploying his experience as a consultant or director I cannot determine. Given his track record to date it would be no surprise if he were to establish another very successful business.

(f) The appropriate quantum and term of provision that W should receive to meet her future income needs.
Both parties have approached the case on the basis of a maintenance need for the remainder of her life and I consider that it is inevitable that in the circumstances of this case and with the almost non-existent capacity of the wife to generate an income that this is the correct approach. This relationship endured from the wife's being 39 through her to her being 50 years of age. She has almost no earning capacity. Having led the life she has over the last 11 years it is unreasonable to expect her now to return to the life of uncertainty that she led prior to embarking on a relationship with the husband and subsequently the marriage.

The total lump sum that would be payable based on an assessment of needs would therefore be £4.5 million (housing) and £4.44 million (income) giving a total of

£8.94 million. That sum is slightly below the award calculated on a sharing basis of £9.31 million and accepting that the authorities make clear that the award must be the greater of the sharing award needs-based award, I conclude that the quantification of the appropriate award in this case is £9.31 million.
£9.31 million represents some 24.32% of the net assets of £38,274,048. I am satisfied that that is a fair proportion of the total assets in this case having regard to the non-marital assets of the husband and the adjustment to reflect the husband's additional unmatched financial contribution. It seems to me that it would be unfair for the award to exceed this. It leaves the husband with £28,964,048. I'm satisfied that that differential is a fair differential having regard to all of the section 25 factors and the particular features that I have identified as being of central importance in this case. Although I note that none of Mr Cusworth QC and Mr Brooks' outcome calculations fall lower than 33%, I don't consider that there is a bottom line cut off of the sort that was discussed at the close of submissions arising from Charman (No 4). If I am in dangerous territory so be it. I am satisfied that the process that I have undertaken to value the non-marital and marital assets and the adjustment I have made to reflect the very significant capital that the husband brought into the marriage and spent on the parties' living expenses represent a fair outcome on a "broad horizons" basis.

9. Per W: interim maintenance:

(f) Per W, whether H is correct to assert that he had severe cashflow constraints from October 2017?
I do not consider that I need to determine this as a separate issue.

(g) Whether W ought to have received interim maintenance payments sufficient to cover the deficit between her expenditure at the marital rate post-separation (and on legal fees as required) and the payments that she received from H?
I consider that the wife ought to have received interim maintenance at a level consistent with the parties' previous joint expenditure.

(h) W having not received those payments, whether H should now be responsible for meeting the charges and interest that W incurred in taking out loans to cover that deficit, and the discharge of those loans, before the division of the matrimonial asset base?
The full value of the loans plus interest and charges has been deducted from the total assets in order to reach the net asset value of £38,274,048. The calculations above are therefore on the basis that those loans are discharged.

(i) Per H, the reasonableness of W's expenditure since the breakdown of the relationship.
The levels of expenditure that the wife maintained following separation were not dissimilar to those which were made by the parties jointly in the marriage. They were therefore reasonable.

(j) Per H, whether it is otiose and contrary to the overriding objective to seek retrospective judicial determination of interim maintenance questions when (a) the court is engaged in performing the wider section 25 exercise and (b) those interim questions were resolved by consent, albeit without prejudice to later contentions.

I agree with the husband for the reasons which will be apparent from the preceding subparagraphs.

10. Outcome:

(c) W seeks a lump sum of £16,000,000 plus a transfer of one of the parties' cars to her sole name and with H to cover her loans (including interest and costs: £741,340 plus interest since 13 September 2018). H offers to pay W a lump sum of £4,850,000 plus her reasonable outstanding costs but on the basis that W is responsible for her own litigation loans.
The husband should make a lump sum payment to the wife of £9.31 million. Her outstanding costs are also a deduction from the assets which is reflected in the net asset figure and so they will be paid in addition to the £9.31 million that the wife will receive. I consider that the husband should bear the risk in relation to any of the Zebra retentions. I reach this conclusion partly because I consider it is fair for the husband to take the risk he having made his own risk decisions in relation to the evidence he provided to the court but also because if there are any retentions it is likely to be as a result of matters internal to the company which the husband and the board would be responsible for.

(d) The appropriate division of chattels, including the parties' dogs: B and C
I have heard almost nothing on this issue although I believe that one dog is currently in France and one dog is in England. That seems to me to be fair. If the parties wish to argue over their access to the other dog I would suggest that they place the dispute before a mediator or arbitrator; perhaps one with experience of dogs.

Conclusion

108. I remind myself that ultimately the search is always for what are the requirements of fairness in the particular case. It is achieving fairness as between the parties given the particular factual matrix that their marriage took place within, that is the aim. Not fairness as viewed by the modern-day equivalent of 'the man on the Clapham omnibus' but fairness judged by the standards of this particular couple in their particular circumstances having regard to the principles contained in the MCA 1973 as explained by the House of Lords. In reaching my decisions above I have sought to apply the principles of sharing, needs and compensation on a non-discriminatory evaluation as outlined by the House of Lords in *White* and *Miller,* and have sought to apply the section 25 factors to the factual matrix as I determined it to be having regard to the guidance from the authorities I have referred to. I have sought to undertake various cross-referencing analyses in order to test the outcome. I am entirely satisfied that it is right that a significant portion of the value of Zebra represents a non-marital asset that the husband owned prior to the commencement of the relationship or the transition of the relationship into a quasi-matrimonial one and that in respect of the non-marital asset no sharing issue arises. In respect of my departure from equality in respect of the sharing of the matrimonial assets, I am satisfied that it is both essential to make an adjustment and that the adjustment I have made is fair. As I anticipated at the case management hearing I have had to deploy a broad brush rather than a fine sable, but standing back and viewing the result with the perspective of a broad

horizon, I am satisfied that the outcome is fair to both the wife and to the husband. I have not sought to address each and every argument made by the parties' legal teams – I do not consider it proportionate to do so. My aim in this judgment is to reach a decision and to explain it in a way which allows the parties to understand why I have reached the conclusions that I have.

109. As an endnote, this case did not require me to consider in any particular detail the needs of the children although I heard quite a lot about them. WD (concluded as a child of the family) and HD (not a child of the family) are no longer minors with HS (not a child of the family) still a minor. Whatever the price the wife and the husband have paid emotionally as a result of the breakdown of their marriage and whatever the cost financially to them of this process, having seen WD I have little doubt that the emotional price the children have paid individually and collectively is far higher. I hope that following the conclusion of this case the parties will be able to redirect their energies away from the money and dedicate them to something infinitely more valuable in the form of their children.

110. That is my judgment.

Procedural chronology

28 November 2017	W's petition issued (s1(2)(b))
30 November 2017	W's Form A
21 December 2017	F&Co requests interim maintenance beyond £6.5k pcm + £15k as promised towards legal fees, in default of which MPS & LSPO app will be issued by 31.12.17
January 2018	Farrer receive £15,000 from H
10 January 2018	W sends a text to H: "[to the CEO of the ultimate purchaser] *Dear AM I hope this finds you well.* *Let me introduce myself…I'm the wife of* [H] *of Zebra"*
11 January 2018	W proposes undertaking not to take steps to disrupt sale of Zebra. AFP reject undertaking
12 January 2018	F&Co send AFP W's draft undertaking. H applies for non-mol w/o notice **Order DJ Hudd [1/B1]** Interim non-molestation order made in form of a gagging order; return date 26.01.18; costs reserved
26 January 2018	**Order of HHJ Harris [1/B4]**– *Return date* Consent order with the parties providing mutual undertakings not to contact one another other than through solicitors and not

	to publish information about relationship; W agrees and undertakes not to publish allegations about H mistreating her or daughter or information about financial affairs; order of DJ Hudd discharged; no order as to costs
	W applies for an asset preservation order; H served with application notice. W's affidavit in support of application for asset preservation order
	Order of Williams J [1/B10] Order made wp to H's contention that application unnecessary and wp to his case that there is no evidence of intended dissipation of funds; H and ZCO undertake not to dispose of, deal with, or diminish value of holding in Zebra except for taking all reasonable steps to sell shares in accordance with SPA; H and ZCO undertake to transfer 50% of proceeds of sale from Zebra to Forsters LLP (Solicitors for ZCO) client account; Forsters LLP undertake to hold sum pending resolution of W's financial remedy application; application listed on notice on 26.02.18; ZCO joined to proceedings for purposes of injunction only; costs reserved.
30 January 2018	W's Form E signed [1/C1]
1 February 2018	H's Form E signed [1/C47]
5 February 2018	H makes ex parte application for zonal nmo.
	Order of DJ Ashworth [1/B13] FLA s42A exclusion zone order in respect of The Principality property; return date 15.02.18; costs reserved
7 February 2018	W application to set aside order of DJ Ashworth made on 05.02.18
8 February 2018	**Order of Keehan J [1/B17]** Order of DJ Ashworth discharged (save for return date); H to pay costs of W application dated 7 February 2018
15 February 2018	**Order of HHJ Harris [1/B21]** Consent order directing: parties will attend private FDR; W will return to H all original documents belonging to H presently held by W or W's solicitors; questionnaires; replies; each party to file 3-page documents outlining relevant s.25 factors; mechanism to agree value France property (by reference to market appraisals); updating disclosure; listing of CMC and Final Hearing; costs in the application.
	Order of HHJ Boye [1/B24] – *return date on H's application for zonal NMO dated 05.02.18*

	Consent order: W agrees not to attend The Principality property or France property, other than on reasonable notice; parties to file written evidence; list for one day hearing; costs reserved (save H to pay W's costs of FLA application incurred between 9 -13 February 2018).
19 February 2018	**Order of Newton J [1/B33]** – *return date on W's application for an asset preservation order* Consent order: mirroring undertakings given to Williams J; hearing on 26.02.18 vacated; costs reserved
21 February 2018	H applies for a non-molestation order on notice DJ Cove makes an order for abridged service
22 February 2018	**Order of DJ Duddridge [1/B26]** W not to attend The Principality property without first giving 14 days' notice to H; application dated 21.02.18 adjourned to 18.05.18; costs reserved
2 March 2018	W's statement in support of application for maintenance pending suit [1/C93]
5 March 2018	W applies for maintenance pending suit and legal services payment order. Seeks £39,220 per month backdated to November 2017 (plus rent of £128k pa and property outgoings) Farrers send to AFP "the originals of all documents belonging jointly to [W] and [H] that we hold in our possession"
8 March 2018	Farrer receive £155,807 from ZCo/Forsters
1 April 2018	W replies to questionnaire [1/C136]
13 April 2018	H replies to questionnaire [1/C149]
16 April 2018	Consent Order [1/B43]: seeking adjournment of hearing of H's non-molestation order applications; costs reserved
30 April 2018	H applies for an order seeking delivery of laptop and destruction of material obtained from it
Mar-May 2018	Farrer receive £320,000 from Legal Cost Finance
2 May 2018	**Order of Moor J [1/B44]** W offering assurances, accepted by the court, that neither she nor her solicitors will access laptop or documents in sealed envelope, nor will they disclose any contents to any third party; applications dismissed; time to exchange 3-page s.25 documents extended; W required to deliver laptop to her solicitors; no further disclosure without permission (save H's

	reply to deficiencies and disclosure arising from envelope); H shall pay W's costs of the application.
3 May 2018	H's s.25 document [1/C200]
	W's s.25 document [1/C194]
4 May 2018	H's replies to W's schedule of deficiencies [1/C265]
23 May 2018	H's further replies to W's schedule of deficiencies [2/C272]
24 May 2018	Private FDR Appointment before Nigel Dyer QC
18 June 2018	**Order of Williams J [1/B53]** *re MPS* Upon H confirming he will pay W £10k pcm backdated to 01.03.18 (wp to W's position that this does not meet her needs) and continue to pay W's rent and transfer £138,333 to W's solicitors for her legal costs up to the end of the FDR; and upon W having obtain a loan to pay balance of her interim income needs (on her case) and legal fees up to 16.10.18 Consent order: application adjourned to first day of final hearing on 08.10.18; no order as to costs.
20 June 2018	Farrer receive £138,333 from ZCo/Forsters
27 June 2018	W's Further Questionnaire [2/C285]
29 June 2018	**Order of Williams J [1/B55]** - *Case Management Conference* H not seeking a finding in relation to application of The Principality's marital property regime Order: parties to file narrative s.25 statements; serve witness statements, with hearsay notices if applicable (W permission to rely on evidence from 3 named witnesses, H permission to rely on factual evidence from Mr N); SJE to be instructed to value France; SJE to be instructed to report on H's potential tax liabilities on disposal of shares; H's application to rely on Knight Frank report dismissed; W's application for SJE report on value of Zebra shares as at 01.09.17 dismissed; service of updating disclosure; trial directions; costs in the application.
27 July 2018	SJE tax report [2/D1] Summary of conclusions: H should not be considered to be UK tax resident in 2017/18 and will not have an exposure to UK CGT on the disposal of Zebra shares whether or not he is UK resident in 2017/18; If (contrary to SJE's opinion) H is found to be UK resident there is a 20% likelihood that H will have to pay CGT
3 August 2018	**Order of DJ Duddridge [1/B72]** *re H's FLA applications dated 05.02.18 and 22.02.18*

	Consent order: applications to be adjourned generally with liberty to apply (to be dismissed if no application to restore within 6 months)
16 August 2018	Decree Nisi pronounced
21 August 2018	Farrers to AFP: W did not send all images copied from laptop
31 August 2018	Letter from SJE [2/D21], responding to questions asked by AFP in relation to the SJE tax report
13 September 2018	SJE valuation of France at €3,620,000 [2/D24]
14 September 2018	W's section 25 statement [2/C289] H's section 25 statement [2/C449] Statement of WD [2/C535] Statement of Ms U [2/C541] W's Hearsay notice re: evidence from previous owner of French property [1/B73] Parties' updating disclosure for final hearing exchanged (including H's voluntary replies to W's further questions in respect of which no order made on 29.6.18)
17 September 2018	Farrer receive £350,000 from Litigation Loans
24 September 2018	[1/A1] W's open proposal: £16m lump sum + H pay W's loans of c£740k
26 September 2018	[1/A3] H's open proposal: £4.85m lump sum + W's reasonable outstanding legal fees
2 October 2018	H's Hearsay notice re: evidence from neighbour H's service on W's solicitors of copy messages between parties
8 October 2018	**Final Hearing (7 days)**