Neutral Citation Number: [2020] EWHC 3087 (Fam)

Case No: **ZC18D00144**

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/10/20

Before :

MRS JUSTICE ROBERTS

- -

Between :

MT	**Applicant**
- and –	
VA	**Respondent**

(Second Application: Legal Services Provision order)

- -

Both parties appeared in person

Hearing date: 28 September 2020

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mrs Justice Roberts:

1. In the context of his claim for a financial remedy order, the applicant, ("H"), applies in this case for the second time for a legal services payment order pursuant to s. 22ZA of the Matrimonial Causes Act 1973. His application was issued on 22 July 2020 shortly before a hearing on 27 July this year. That hearing had been listed in order to consider what further directions might be required in the aftermath of an unsuccessful FDR hearing before Cohen J on 22 June 2020.

2. The respondent to the application is his former wife, ("W").

3. Because there was insufficient time on 27 July to consider H's application, I directed that it should be heard over the course of a day today. The case is far from straightforward and has generated many thousands of pages of evidence since the litigation began in January 2019. Both parties have to date had the benefit of advice and representation from specialist matrimonial solicitors. Leading and junior counsel have been involved in a number of earlier hearings. Their combined costs bill to date is in the order of £525,000; each owes their respective solicitors a substantial sum in respect of costs which remain unpaid. For the purposes of today's hearing, both parties have appeared as litigants in person.

4. For the purposes of his present application, H has restricted his claim to a crystallised sum of £95,000. He proposes to use some £58,000 to clear the arrears of costs which he owes his solicitors with a view to bringing them back on board for some further advice and assistance. There is a further directions hearing listed later next month. In advance of that hearing, he maintains that he requires assistance with the preparation of a detailed questionnaire and a further statement in response to two lengthy statements produced by W and her father. The balance of the award he seeks (some £37,000) will be deployed, if he is successful, in securing that ongoing assistance.

5. As I have said, this is his second application for legal services funding. The first, issued in January 2019 when the financial proceedings began, resulted in an order that W should pay to him a sum of £150,000. That order was made in the Central Family Court by District Judge Hudd on 26 March 2019 following a contested hearing at which both parties were represented by senior counsel. W appealed that order. On 24 September last year, His Honour Judge O'Dwyer refused her application for permission to appeal. The sum of £150,000 was not paid until the end of December last year with the result that H was obliged to issue enforcement proceedings and an application for a *Hadkinson* order.

6. Within the electronic bundle which has been placed before the court for the purposes of this hearing, I have copies of the judgments delivered by both District Judge Hudd and His Honour Judge O'Dwyer. In terms of quantum, the District Judge intended

that her award would be sufficient to fund H's representation through to the conclusion of the FDR hearing. At that stage, it was anticipated that this might take place in September 2019.

7. There is now a final hearing listed before me in June 2021. It has a time estimate of 10 days. That listing reflects in no small part the significant reach of this litigation in terms of the number of issues it has generated as a result of the evidence filed by both parties. It is essential that, going forward, minds are focussed on the material issues in the case which will need to be determined.

8. This is an interlocutory application and thus, for the purposes of explaining the decision which I have reached, I propose to do no more than outline the background and the competing cases advanced by each of the parties.

Background

9. These are relatively young parents to two small children, now 7 and nearly 4 years old. H is 40 and 38 years old. Each grew up in a position of privilege having been raised within wealthy families. They became engaged in October 2010 having by then known one another for a number of years. They married in May 2011. The ceremony was part of a lavish three day celebration costing several millions of pounds. It was paid for by W's family. Her father was then reputed to be a multi-billionaire as a result of his many years of commercial business dealings in the field of international mining. Whether that estimate of his wealth was accurate, it is apparent that, at the time of the marriage, the wife's father was a man of very considerable wealth who provided extremely well for his family.

10. Shortly before the marriage was celebrated, the parties entered into a formal prenuptial agreement. It is dated 28 April 2018. Whilst the precise circumstances surrounding the making of that agreement remain in issue, both parties were independently advised in relation to its terms by specialist English matrimonial solicitors. By its terms, H agreed that, in the event of a divorce, he would not make financial claims against W's non-matrimonial assets. The financial disclosure which he made at the time set out the extent of his premarital wealth. He then held assets of some USD 2 million and was earning about USD 200,000 per annum.

11. It is acknowledged by both parties that, throughout their six year marriage, they were supported financially by one or more of four offshore family trusts which had been set up by W's father as the vehicles for holding and managing family wealth. W has two siblings, a sister and brother. Each was within the class of beneficiaries of four underlying trusts which operated under the overarching umbrella of a separate family trust structure. The trusts were set up over a ten year period between 2000 and 2010. It is common ground in these proceedings that the financial provision which flowed from this trust structure with the approval of the wife's father enabled the parties to

enjoy a lifestyle which they could not otherwise have sustained on the basis of their individual earnings. Throughout the marriage, W worked for a Foundation associated with the trusts and took care of their elder son who had been born in 2013. His younger brother was born in October 2016. By this stage there were tensions within the marriage and in July 2017 H left England and returned to spend time in Nairobi, Africa where his family was primarily based. At that stage the children were 4 years old and 9 months old. It is not clear whether either party regarded their physical separation as bringing to an end any hope of a reconciliation. H visited London sporadically over the course of the next year when he spent time with his children. Nevertheless, it is accepted that they did not share a family home together beyond that point. Throughout their married lives to that point they had lived in expensive rented properties in central London. It is H's case that W's father had promised to make available a sum of £10 million to enable them to buy a permanent home in central London. At the time of the separation W and the children were living in her parents' London home, a substantial property in North London. W issued her divorce petition in June 2018 and decree nisi was pronounced in November that year.

12. In the context of the financial proceedings and the claim he launched in January 2019. H's case is that, having been welcomed as a son into the embrace of the wider family, he became very closely involved in many of his father-in-law's international commercial business dealings. He describes his contribution as being substantial and he maintains that he became an indispensable sounding board for many of his father-in-law's ideas for the business. He maintains that he was trusted by his father-in-law and at one stage there was a plan to set him up independently with a fund of some £20 million. His expectation was that he would use that wealth as a platform for his own entrepreneurial activities. He has provided within the evidence he has filed to date a detailed narrative account of how the family business was operated and his role at its centre with his father-in-law. This account is disputed by both W and her father each of whom maintains that his contribution was minimal and certainly not such as to displace the otherwise clear terms of the prenuptial agreement.

13. W's father's financial fortunes took a significant turn for the worse towards the end of the marriage. In April 2018, he was adjudged bankrupt. The substantial family home in North London was sold to meet debts. He was subsequently discharged from bankruptcy and, together with his wife, he now lives in a rented home in central London. It is H's case that this is a £14 million property and that protestations of continuing financial hardship are nothing more than a device for protecting family money from the claims he is making against W in these proceedings.

14. For her part, W and the two children are now living in a rented property in Hyde Park Place, W2. The property is owned by family friends. The rent (which she claims to be a subsidised rent of £3,900 per month) is being met through loans she has taken from friends and family and the ongoing financial support of her parents and members of her extended family. The children's school fees are being met on a regular basis as

are the wages of a housekeeper/nanny who is employed to help with the children. W does not work in employment although she runs a small business making personalised gift boxes which generates a modest profit but certainly not one on which she could run her domestic economy. She acknowledges that her parents are continuing to subsidise her living costs. Whilst she has represented that she requires a budget of some £70,000 per annum, H maintains that her outgoings are running far in excess of this sum. His case is that she is being subsidised on an annual basis in a six figure sum. W accepts that she has in recent months borrowed very large sums from friends and relatives to fund both living expenses and legal costs.

15. H makes several allegations against W in terms of non-disclosure of her existing assets. He claims that she has thus far failed to disclose a sum of c. USD 1 million which was originally earmarked as a fund to assist her proposed move with the children to a different tax jurisdiction. That plan has since been abandoned but he maintains that she has yet to disclose an account or accounts maintained offshore in which these funds are held.

16. This is a judgment in relation to an interlocutory application for litigation funding. The allegations and cross-allegations which underpin the arguments in relation to the computation of the matrimonial resources available to these parties are complex. There is a wealth of documentary evidence from the parties and third parties, most of which is the subject of forensic challenge. It is neither possible nor appropriate in the scope of this judgment for me to attempt any reliable holistic analysis of this material in the day which has been allowed for this application. The parties' written submissions run to a combined total of almost 50 pages. In addition, each has submitted a number of additional documents as appendices to their submissions. I have heard no oral evidence but have read the core bundle which itself runs to almost 700 pages.

17. However, in order to set some parameters for this judgment and in order to provide context for the basis of H's claim for the additional interim funding he seeks, I need to say something about the prime target of his application for financial relief in the context of his case in relation to contribution.

The offshore litigation

18. W is currently one of three claimants in a substantial piece of litigation involving the failure of a mining project which had formed part of her father's commercial business undertakings. The other two claimants are her brother and sister.

19. I have referred to the offshore trust structure which was set up over a number of years before these parties married. This was operated from the Cayman Islands. In 2011 the trusts were said to be worth hundreds of millions of dollars, a proposition which appears to be accepted by W. It is now said that there are no realisable assets and no

trust accounts have been prepared over the last four to five years. That was a proposition which District Judge Hudd did not accept when she made the first LSPO award in March 2019.

20. The three siblings are beneficiaries of the principal trust for these purposes ("the PD Trust"). That trust was set up by W's father in April 2008 and it appears to have held the bulk of the wider family's wealth. On 1 August 2016 during the subsistence of the marriage, pursuant to a Deed of Variation, their discretionary interests were converted into fixed interests of one third each. W, along with her two adult siblings, became a sole and equal beneficiary in relation to one third of the value of the underlying trust assets.

21. In the context of the offshore litigation, the three claimants (including W as the second named claimant) allege that they collectively invested USD 332 million in the exploration and prospecting of the mining project to which I have referred for the purposes of exploiting the region's iron ore resources. Their case against the respondent to the claim, a national Government, is that, through various acts and omissions, it delayed and eventually rejected the granting of mining and other exploration permits. These defaults resulted on the claimants' case in the extinction of the mining rights which they held through the trust and the expropriation of the value of the entire mining project. They claim that the respondent's conduct amounts to a breach of an international agreement reached between the respondent and the Government of the United Kingdom in August 1997 concerning the promotion and protection of international investments made between the two jurisdictions. By their claim, the three family members as beneficiaries of the trust seek compensation for damages suffered as a result of those breaches. Their claim is based upon a recovery of USD 3.5 billion. A firm of US attorneys based in Washington DC in the United States, KS, is underwriting the costs of the litigation on the basis it will recover the first USD 20 million of any damages awarded and thereafter a percentage of any additional damages up to a maximum of USD 300 million. According to W's disclosure, that firm has to date underwritten costs of some USD 24 million. In the early stages of her financial presentation, she stated that the outcome of the offshore litigation was some years away. She maintained that, notwithstanding the potential resource which her share of the claim represented, it was not relevant to any extant financial claims which H might have because of the terms of the prenuptial agreement, the effective length of their marriage and the absence of any contribution by him to the accumulation of wealth within the wider family's commercial enterprises.

22. Before I deal with the up to date position in relation to the offshore litigation, I turn to address two issues relating to W's financial position which flow from it. Within the family, the litigation and the platform which it provides for a very substantial financial award of damages have been seen as a "litigation asset". Various figures have been advanced by H as the likely estimate of her individual one third share of

any recovery. At one stage he had suggested a figure of USD 27.5 million. That figure was based upon a potential value he extracted from the first of two rounds of "borrowing" against that litigation asset. At the beginning of 2018 an entity called BC LLP agreed to advance to the three family claimants a sum of USD 5.5 million against their recovery on the claim. I can only proceed on the basis that this advance was made following an appropriate process of due diligence and in the light of disclosure of the litigation funding arrangements which were then in place with their lawyers. W received a payment of USD 1.833 million which was paid into an offshore bank account which she set up for these purposes in Switzerland. The deposit was made on 7 March 2018. In terms of the chronology, those funds were transferred to Switzerland the month before the bankruptcy order was made against her father and three months before she issued her divorce proceedings against H, albeit that they were by then estranged.

23. In September 2018 there appears to have been an attempt to raise a second round of borrowing against the outstanding claim. There is within the papers reference to a second loan of USD 11 million from an entity resident in Guernsey (CC). There is no suggestion that W benefitted in her personal capacity from this transaction. Rather the suggestion is that it was paid to her two siblings. District Judge Hudd dealt with these matters in her judgment dated 26 March 2019 when she made the first LSPO award. At para 22 of her judgment, a transcript of which is within the bundle, she says this:

> "22. In the shadow of [the offshore litigation], the wife and her siblings have been able to borrow $5.5 million dollars which they have divided equally between themselves. That is said only to be repayable in the event that any proceeds are received from that litigation and then an uplift would be payable. The husband has raised suspicions that a further $11 million had been raised by the wife and her siblings, but that has been disputed by her and her siblings and, indeed, the relevant company, [C], confirm that they did not offer or provide any financing to them. The only sums therefore that I am aware of the wife receiving are the $1.83 million which was paid into her Swiss account in March of last year. The husband is critical of the wife's disclosure in respect of those sums, saying that she was not disclosing the existence of that in correspondence. It was, however, recently disclosed in the Form E that was recently provided…."

24. Whilst District Judd Hudd was not in a position to make explicit findings of fact in relation to these matters, her judgment makes clear that (para 28):

    (i) she had great difficulty accepting W's account of the financial difficulties with which she had been faced in a situation "where a trust which in 2011 was being described as being worth hundreds of

millions of dollars is now said to have no realisable assets with no further explanation in support";

(ii) W had mis-described the PD Trust as being one in which her beneficial interest was discretionary rather than fixed; and

(iii) W had been able to borrow against her contingent interest in the litigation but was now maintaining that was no longer an option.

25. Whilst the judge accepted that W had made some economies in her domestic expenditure such that she was no longer living at her previous matrimonial standard of living, her expenditure was not consistent with the lifestyle of someone living in hardship. It was relevant, in the judge's view, that but a few short months before, W had been intending to fund an expensive international relocation with the children to Hong Kong. It was common ground that she was receiving direct financial support from her family. Her rent, school fees and nanny expenses continued as before even on the basis of an acceptance by the court that she was then spending over £70,000 per annum on the basis of a budget which did not include additional costs then being met directly by third parties.

26. Since that hearing, W has provided further disclosure in relation to the application of the USD 1.833 million which she accepts she received and paid into her Swiss account. She maintains that from those funds a sum of c.USD 1 million was used to pay off debts which H owed as a result of advances made to one of his companies (AEGPL). Supported by her father's account of how these sums were dispersed, she claims that a sum of USD 972,000 was owed by H to a foreign entity (SCL) which had lent money to his company. She states that her father had personally guaranteed this loan and was being pressed by SCL for repayment. By way of narrative, she has explained that prior to their marriage H had become significantly indebted to companies associated with, or operating under the umbrella of, another of her family trusts, The D Trust. The trustees demanded repayment in 2015 and her father had assisted H by arranging further commercial borrowing with SCL to replace the trust funding.

27. Of the balance, she claims to have gifted a sum of USD 500,000 to her mother. Amongst the documents she has produced is a letter dated 18 March 2019. That letter was written from W's parents' home address which H claims to be worth £14 million albeit that it is a rented property. (W disputes his valuation but accepts that the property is worth c. £7 million.) Her mother states in that letter that W made a gift of USD 500,000 some eleven days earlier from her Swiss account "to show her appreciation for what I have done for her and contributed towards her welfare before and after her marriage, and also for her children". Having confirmed that she and her husband had been facing financial difficulties, W's mother explained that she had

used the majority of the money to repay debt and fund living expenses. Part of the funds were applied towards school fees for H's and W's children.

28. H has identified what he claims to be a number of deficiencies in relation to W's disclosure in relation to the application of this sum of USD 1.833 million. He points to the very significant legal costs which she had incurred over the course of the litigation to that point in time, including lengthy proceedings initiated under the Children Act 1989 in which he had been obliged to appear as a litigant in person.

29. He points to the judgment which His Honour Judge O'Dwyer handed down on 25 September 2019 in relation to W's appeal against the first LSPO award. In dismissing her appeal against the background of what the judge described as "a very complex history of transactions in this hitherto extremely wealthy family whose wealth has now been translated through various trusts" (para 10), he found that there was no realistic basis of challenge to the LSPO award. He found aspects of W's written case on the dispersal of these funds to be "highly controversial".

30. In order to make his point before this court, H has undertaken a partial reconciliation of funds passing between the operating company for the D Trust and AEGPL. These inter-company statements have been referred to in the disclosure made by both W and her father. In para 46 of his written submissions he has highlighted a number of accounting inconsistencies which, on their face, appear to raise at least an evidential foundation for further forensic enquiry. He points to the fact that one payment of USD 100,000 said to have come out of the USD 1.833 million held in W's Swiss account and paid to a company called IS (being a partial repayment of interest owed on the USD 1 million loan) has not been evidenced by any documents despite repeated requests for the same. (W does not accept that she has failed to provide this evidence.) He claims that this sum was in reality an investment by W's father in that company in order to enable it to pursue a public corporate listing of an entirely separate company (CM plc) which was to be used for the purposes of a joint venture to purchase from liquidators an iron ore project which W's father had previously owned in Brazil. Whilst what he says in his written submissions is not evidence, and I do not treat it as such, it demonstrates the extent to which there remains a significant gulf between these parties in relation to the prospects of a reliable forensic tracing exercise which H says is necessary in order to expose to the court the false presentation which he maintains W is giving to this court in terms of her assets and liquidity.

31. In relation to W's alleged gift of USD 500,000 to her mother, H asks rhetorically why this money was needed in circumstances where, since the discharge of his father-in-law's bankruptcy, her parents have lived for the last two years in a substantial property in a prime residential area of central London paying what is likely to be a commercial rent which reflects its attributed (albeit challenged) value of £14 million. I am told that the property extends over four floors of accommodation and there is

nothing in the material before me to suggest that accommodation is presently at risk. W's father has filed a lengthy statement in these proceedings. Of his bankruptcy in 2016, he says this (para 25):

> " We were once billionaires with a private plane and a number of houses and I had now been left penniless. [My wife] and I had to sell our home [in north London] and are now living in rented accommodation. We have had to rely on the generosity of friends and family. Over the years I have had the financial wherewithal to help many people. I had a reputation for being generous; I could afford to be. It has been a great comfort to me that when I fell upon these incredibly difficult times, our family and friends have stepped in where they can, to help me. Most of the help we have had has come from family. It has been extremely hard for me to take the help and I have found it to be personally a very humiliating experience. I have no doubt that I will repair this situation in time. I suspect that some of our friends hope so too and would expect me to remember their generosity. I will."

32. W's father acknowledges that his daughter has borrowed from family and friends in order to meet her living costs and to meet the previous LSPO order in the sum of £150,000. He is very critical of H in respect of his lack of financial contribution towards the maintenance of his own children for a period of almost three years. He accuses his former son-in-law of reckless incompetence in relation to his financial affairs during the course of the marriage. He accuses him of failing to provide a proper account of how he has spent the USD 2 million which he brought into the marriage and the funds which he borrowed. In para 28 of his statement W's father provides an account of the loan arrangement he set up with SCL in the sum of USD 1 million and the personal guarantee he was obliged to give. He alleges that H's financial claims against the family are motivated "by spite". He pours a great deal of cold water on H's case that he made any contribution, far less a valuable one, to the success of the family business through work undertaken for the group. He has produced detailed tables of narrative to refute H's evidence of contribution. He maintains that H's case in relation to his contribution to the mining project at the centre of the offshore litigation is based upon "pure fantasy" (para 41).

33. Over 35 pages of narrative and many more of exhibits, W's father sets out a comprehensive rejoinder which challenges H's case in more or less every aspect. His evidence in relation to contribution is clearly important since he is, and will be, able to present a first hand case on behalf of his daughter in relation to these matters which she cannot. During the course of submissions, H informed me that he will be able to provide evidence by way of response to much of what has been said by his father-in-law. It is in part his wish to shape and hone that evidence which informs his need to seek further legal advice. Without funds he says that he is not in a position to access that advice.

34. In terms of W's general credibility on these matters, H points to the fact that had he not discovered the existence of her new Swiss bank account in November 2018 when he found a series of emails on an old mobile phone, he would never have known about the USD 5.5 million loan distributed between the three siblings. This episode has been the subject of separate *Imerman* correspondence but it enables H to point to the fact that, at a time when she was holding these funds, she was maintaining that she was obliged to borrow money to fund her living expenses. He points to a finding made by Recorder Bedingfield in June this year (2020) in the context of contested Children Act proceedings that W had been untruthful in some aspects of the evidence she had given to the court. Specifically, the Recorder found (para 201) that there was no truth or substance in her allegation against H that he had threatened to "burn down [her] parents' home".

35. In relation to this developing case, W assures me that she has put before this court a truthful presentation of (i) her current financial circumstances and (ii) the means by which she has now applied the entirety of the funds received as an advance on future recovery from the offshore litigation. She criticises H's approach as running contrary to the overriding objective set out in r. 1.1 of FPR 2010.

36. In essence her case in relation to the renewed application for LSPO funding which is now made by H is that he has nothing to lose. She maintains that he is treating this litigation as a game. She continues to rely on the terms of the prenuptial agreement as the answer to his claim for a financial remedy order. For reasons which I shall explain and in the light of very recent developments, she maintains that there is no longer a future litigation asset against which he can claim. In these circumstances she submits that the court should impose a sense of proportion into the litigation commensurate with (i) the absence of any resources against which a claim can be made, and (ii) the clear route which the prenuptial agreement provides to a summary dismissal of his claim.

37. As matters currently stand, it seems to me that in terms of computation (the first exercise which the court will need to consider) there are two matters in issue. The first is the extent to which W has made full and frank disclosure in relation to the sum paid into her offshore Swiss account and its subsequent application, including to members of her own family. The second is the current state of play in relation to the offshore litigation. Before turning to consider that latter issue, I need to remind myself of the law which I have to apply in the context of the current application.

Law

38. There is no dispute as to the law and I need only say this for these purposes.

39. The relevant parts of s. 22ZA of the Matrionial Causes Act 1973 (as amended) provide as follows:-

‘**22ZA Orders for payment in respect of legal services**

(1) In proceedings for divorce ….. the court may make an order or orders requiring one party to the marriage to pay to the other (‘the applicant’) an amount for the purposes of enabling the applicant to obtain legal services for the purposes of the proceedings.

(2) …..

(3) The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.

(4) For the purposes of subsection (3), the court must be satisfied, in particular, that –

(a) the applicant is not reasonably able to secure a loan to pay for the services, and
(b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.

(5) An order under this section may be made for the purposes of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.

(6) An order under this section may -

(a) provide for the payment of all or part of the amount by instalments of specified amounts, and

(b) require the instalments to be secured to the satisfaction of the court.’

40. In considering these matters the court is obliged to have regard to a number of matters set out in s.22ZB. Of particular relevance here are the financial resources and needs of each of the parties both now and in the future; the matters in issue in the ongoing proceedings; any steps taken to avoid or conclude proceedings with a view to avoiding further costs; and the effect of any order on the paying party. In this context, and in terms of any potential impact on W of making an order in the applicant’s favour, s. 22ZB(3) requires me to consider whether making an order would be likely to cause her under hardship or prevent her from obtaining legal services for her own ongoing conduct of the proceedings in question.

41. Definitive guidance was provided by Mostyn J in the (now well known) case of *Rubin v Rubin* [2014] EWHC 611 (Fam), [2014] 2 FLR 1018. In terms of a principled approach, the following are of particular relevance here (and I retain the original Roman numerals):-

    (iv) No order can be made unless the court is satisfied that, without the payment, the applicant would not reasonably be able to obtain appropriate legal services in the proceedings. It is an exercise which looks to the future. It is not a surrogate inter parties costs jurisdiction.

    (vi) The court must be satisfied that commercial litigation funding is not available to the applicant.

    (vii) The court must be satisfied that the applicant's solicitors will not proceed from the foot of a formal *Sears Tooth* arrangement (i.e. an agreement secured by a formal charge to discharge historic or future costs out of any assets recovered at the conclusion of the financial proceedings).

    (x) The court should make it clear in its ruling or judgment which of the legal services mentioned in s. 22ZA(10) the payment is for.

    (xi) In general terms, the court should not fund the applicant beyond an FDR hearing. There must be good reasons for doing so.

    (xii) When considering costs funding for a specified period, monthly instalments are preferable to a single lump sum payment.

Current position re: the offshore litigation

42. It was clear at the hearing of this application on 28 September that there had been recent developments in the offshore litigation. With her written submissions, W produced a copy of a letter from the Washington lawyers handling the claim. That letter is dated 22 September 2020. I understand that a copy was made available to H shortly before the hearing.

43. In that letter KF, the lawyer representing W and her fellow claimants, confirms that an oral hearing before the Tribunal had taken place over two separate periods of time in January and February 2020. Those hearings took place at the World Bank in Washington DC in the United States. The oral hearing had formally closed in June 2020. According to the letter, the respondent defended the claim on the basis of four objections which related to the Tribunal's jurisdiction to decide the claims. KF continues:

> "The Tribunal concluded that the Claimants' discretionary interests under the Trust were not assets or investments for the purposes of the Treaty, and that the Claimants had no standing to bring claims under the Treaty until they became beneficial owners on August 1, 2016. The Tribunal thereafter concluded that the dispute arose before August 1, 2016, between November 24, 2015 and July 13, 2016. Given the Tribunal's finding that the Treaty did not come into effect as regards the Claimants until they acquired an investment in [the relevant jurisdiction] on August 1, 2016, the Tribunal next assessed whether the "continuing acts" doctrine would support a finding of jurisdiction over the dispute. The Tribunal decided that it lacked jurisdiction to decide claims based on actions taken after the filing of the Notice of Arbitration in October 2017 or to consider disputes that otherwise did not arise until after that filing. Accordingly, the Tribunal upheld the *ratione temporis* objection of the Respondent, found in favour of [the Respondent], and dismissed the case.
>
> Given the Tribunal's finding upholding the Respondent's objection to jurisdiction, the Tribunal did not address the merits or the quantum of the Claimants' claims against the Respondent. The award is confidential. The Tribunal did not award any of the Claimants', including [W], any monetary damages. Rather, the Tribunal ordered that the Claimants bear 70% of the costs of the arbitration incurred by [the Respondent], which amounts to USD 4,097,149.25."

44. W's share of those costs is USD 1,365.716.

45. There was nothing in that letter to indicate whether, under the terms of the contingent fee agreement which had been agreed with the claimants' US lawyers, W was exposed to any personal liability for those costs. There was no indication as to whether there was any further avenue open to the claimants to seek a determination on the merits of the claim through a different jurisdictional route.

46. W made it clear in her written submissions on 28 September that this letter and its contents effectively confirmed that this was the end of the road as far as the potential claim against the offshore respondent was concerned. She told me, during the course of her oral submissions, that her understanding was that, because they had lost on jurisdiction, no one was prepared to fund further litigation and the case was effectively closed. By way of a response, H referred to the USD 24 million already spent by her US lawyers on the litigation to date. He told me that W and her siblings had been advised that issuing fresh proceedings was likely to cost between USD 2 to 3 million. They had chosen to proceed in the forum of an international arbitration because they had anticipated an award based upon the value of the company at the time of the alleged breaches on the part of the offshore government. H maintained that, whilst an award in any future proceedings in the respondent's domestic

jurisdiction might be smaller, it remained a potential option and one which he himself would be prepared to consider taking if the court in these proceedings were to transfer to him a share in W's future entitlement to any award flowing from an adjudication on the merits of the claim.

47. W accepted that she could procure a copy of the full judgment for the purposes of informing a better understanding of this issue and the extent to which the end of the road had indeed been reached in terms of this potential resource. I directed her to provide copies for the court and for H subject to his undertaking to preserve confidentiality in its contents. As I explained to H at the hearing, having accepted that undertaking, he may not disclose the judgment, or any part of it, to any third party save his professional legal advisers and then only for the purposes of taking advice in relation to the current matrimonial proceedings.

48. I gave permission for each of the parties to send to the court short written submissions on the effect of the judgment insofar as they had further representations to make in relation to its effect on H's current application.

49. I have since received submissions from each together with further clarification from KF with whom, at my invitation, W has been in contact. I should record my thanks to him for the further information he has supplied to this court.

Subsequent developments

50. A copy of the Arbitral Award is now available. It runs to some 85 pages and is dated August 2020. Whilst a lengthy document, it is a model of clarity in terms of the issues raised in relation to jurisdiction and the reasons for the decision of the Tribunal. The complexities of the litigation are clear from the length of the pleadings and the table of 'Dramatis Personae' reflecting the significant quantity of lay and expert evidence received by the Tribunal. That complexity is further reflected in the costs invested in the litigation on both sides of the litigation. The claimants' costs were just shy of USD 25 million whilst the global costs of the arbitration are recorded to be in excess of USD 41.5 million.

51. The ambit of the decision reached by the Tribunal is recorded in para 258:

> "The Tribunal agrees with the Respondent. The Tribunal lacks jurisdiction to consider claims based on actions taken after the filing of the Notice of Arbitration [i.e. 19 July 2017] or to consider disputes that otherwise did not arise until after that filing."

52. In an email dated 30 September 2020, W raised a series of further questions of KF. The distillation of his responses can be summarised in this way.

    (i) The only way forward is to appeal the award, win the appeal and then commence (and prevail in) a new arbitration. KF views the prospects of success in that course as "modest".

    (ii) In terms of time limits for an appeal, these are no longer running as an appeal has already been filed (or will be filed within the week) with the relevant appeal court in Paris.

    (iii) The appeal process is likely to take two years but it may be longer than this as the court is absorbing significant backlogs as a result of Covid-19. The losing party in that appeal could thereafter appeal to the French Court of Cassation. If W and her siblings were successful in each of these two appeals, they would be entitled to relitigate the entire arbitration.

    (iv) In terms of the costs award, and subject to these appeals, it could "theoretically" be open to [the offshore respondent] to seek to have the award recognised in the United Kingdom under the New York Convention and then enforced against the claimant children.

    (v) Given that there is no existing "merits" claim whilst any appeal is pending, the claimants will not be able to raise further borrowings against the value of a potential award.

53. H raises a number of issues in his comments on the full judgment encapsulated within the Arbitral Award. I do not need to rehearse his comments and observations in this judgment since they are largely questions and other matters in respect of which he seeks legal advice. In essence, he makes the point that this is an adjudication on jurisdiction. The Award does not deal with the merits of the claim at all. An appeal has already been lodged. The inference to be drawn is that, having already spent just under USD 30 million, the US lawyers appear to be willing to invest more. This, he suggests, is inconsistent with W's case that the offshore litigation has now run its course.

54. In this context, I remind myself of the terms of W's post-FDR open offer. By her offer dated 1 July 2020, she made the following proposal to settle all outstanding claims on the basis that:-

(i) she would retain the first £3 million net of costs and taxes received from the offshore litigation. Any funds in excess of £3 million would be paid to H up to a maximum of £3 million.

(ii) any funds received by H were to be used in the following way –

a. up to £1.5 million as a housing fund to be held with a trust or similar structure with a right to live in the property until the children completed their tertiary education. Thereafter ownership of the funds was to revert to W.

b. up to £1.5 million to pay debts and ongoing living expenses until H achieves financial independence through employment or some other form of remunerative activity. There does not appear to be any 'claw back' in relation to this capital.

55. There were other ancillary terms attached to this offer but it clearly envisaged that any capital generated by the outcome of the offshore litigation would be used to fund a settlement of H's outstanding matrimonial claims.

Discussion and analysis

56. The decision handed down by the Tribunal in August this year has clearly delayed any possibility of a swift resolution of the English matrimonial claims in line with W's offer. Looking towards the final hearing it is difficult to see where liquidity exists to meet an immediate award even if it confined to the terms of W's current proposal unless H can establish the existence of undisclosed assets or succeed in an argument that W has access to wider resources which are likely to be provided by family and/or friends. The other possibility is that he may persuade the court to make a contingent lump sum award to be paid only on receipt of a successful claim against the offshore government or a consensual resolution of that claim in whatever sum may be agreed between the claimants and the respondent. In terms of transferring a share in the beneficial ownership of any underlying trust assets, any attempt to vary the underlying terms of an offshore trust, or trusts, based in the Cayman Islands is likely to be a complex and hugely expensive exercise. Even if it can be established that the trust structure in which W is a beneficiary holds assets of any value, enforcement may prove problematic. I do not, and cannot at this stage, speculate about these potential outcomes. I am merely pointing them out as potential outcomes which the parties, with the benefit of legal advice, may wish to consider. As matters stand, we face the prospect of a ten day hearing in June 2021 with all the attendant expense which that will bring in both financial and emotional terms. The court will of course exercise its powers of ongoing case management so as to ensure that court time is allocated only to issues which require resolution for the purposes of determining outcome. A final

hearing is not an opportunity for a forensic trawl through all the grievances generated by the breakdown of a marriage. The judgment which is now available in the form of the Arbitral Award handed down in August 2020 has narrowed considerably the issues in relation to any immediate recovery of funds which can be used to meet H's needs-based claims (as they are advanced on behalf of W). It is clear from the information provided by KF that the outcome of any appeal (if it goes ahead to a conclusion) will not be available to the English court by June of next year. There may well be issues in relation to contribution and non-disclosure which will need to be explored but these must be contained within reasonable limits in terms of the overall time estimate.

57. As matters stand, each of these parties is acting in person. Each will wish to seek clear legal advice on the options going forwards in the light of the very recent developments emerging from the resolution which has now been achieved in the United States. In terms of H's present application for legal services funding, I am satisfied that this option is not open to him in the absence of further provision. He has set out his current financial circumstances in his most recent evidence to this court.

58. He has set out his current employment position in paras 83 and 84 of his written submissions. He has provided third party evidence that a substantial project in which he hoped to be involved was postponed as a result of the Covid-19 pandemic. He maintains that he made over 120 job applications in the last year with a negative response from only a handful of those advertisements. The rest simply did not bother to reply. He has now been approved to work as a delivery driver for Amazon on a flexible no-contract basis. He points to the fact that he has the care of the two children of the family on two or three days each week and has had to invest considerable amounts of time preparing for hearings in these proceedings without the benefit of legal advice. He has substantial liabilities including rent arrears which he intends to address insofar as he can from his earnings delivering Amazon parcels.

59. I have no doubt that W, perhaps with some justification, will point to this state of affairs as being no more than a reflection of H's failure since the breakdown of their marriage to secure remunerative employment. It is clear to me from the issues which were ventilated in the proceedings before HHJ Bedingfield concerning the children's arrangements that she has a keen sense of the unfairness of having been left to deal with all the children's needs without any form of contribution over three years from H. She believes that he has not applied himself to finding work which would have enabled him to make that contribution. W, herself, is under financial pressure at the current time. She has been dependent for some time now on substantial loans from friends and extended family members and the indirect support of her immediate family. She would no doubt point to the unsuccessful outcome of the proceedings in the United States as yet another impediment to her ability to raise further sums to support this litigation. I bear well in mind H's case that she has yet to disclose the full extent of her assets, including whatever now remains of the USD 972,000 which was

paid into her Swiss account. That may well be an issue which the court will need to determine in due course; it is not something which I can take into account at this stage in terms of W's ability to meet a further LSPO.

60. The disclosure of the full Arbitral Award after the conclusion of the hearing on 28 September 2020 has undoubtedly gone some way to crystallise the remaining issues in this case. I do not accept, as W appeared to contend at the hearing, that it has eliminated all and any possibility of future recovery from that litigation. However, as I have already remarked, it has certainly made the prospect of immediate financial liquidity a much more remote prospect. In addition, H will need to factor into his approach to own case that, absent a successful appeal, W may well be personally liable at the end of the day for a very significant costs liability as one of the three unsuccessful claimants. For the purposes of the present interim application, I accept that there is as yet no evidence before this court in relation to that financial exposure. In any event, with an appeal pending in the offshore litigation, there is unlikely to be any risk of immediate enforcement.

The sufficiency of the LSPO award made on 26 March 2019

61. The first LSPO award made by District Judge Hudd on 26 March 2019 was designed to fund H and his legal team to the end of an FDR hearing. H's case is that W's unsuccessful attempt to appeal that award made inroads into the award which were not envisaged when the judge made her calculation of what would be required to reach that point.

62. He points to the fact that, of the judge's award in the sum of £150,000, £40,000 was to be paid to his lawyers to meet outstanding costs. The sum of £110,000 in respect of future legal costs was based upon W's solicitors' estimate of their own costs up to and including the FDR hearing. That figure fell well below his own solicitors' costs estimate of between £190,000 and £210,000. There can be no criticism of the District Judge for applying a benchmark of parity as between H and W and W was to lose her appeal against that decision. That said, it is reasonably clear from her judgment that her expectation, and the basis of her decision, was that there would be additional work and a First Appointment between March and the anticipated FDR date in September. The appeal was not dismissed until 24 September last year. The sum of £150,000 was not paid until December. The FDR was eventually listed before Cohen J on 22 June 2020. In the meantime, both parties had instructed senior counsel to attend the First Appointment on 12 April 2019. Jonathan Southgate QC appeared for H and Simon Webster (who took silk the following year) appeared for W. It was only at that hearing that H and his team were made aware of W's intention to appeal the LSPO award which appeal was issued some four days later. H had by then spent a sum of almost £17,000 but the matter was no further forward save that it was now transferred to the High Court.

63. There were two further hearings in November 2019 and January 2020. In the absence of any payment by W, H had issued an application for freezing and *Hadkinson* orders. The payment having finally been made in two tranches in December 2019 and January 2020, these applications became otiose although W gave various undertakings in relation to any funds received from the offshore litigation. I made a raft of directions on 17 January 2020 and listed the case for FDR in June before Cohen J. Both parties instructed silks for the purposes of that hearing.

64. The matter came back for a further hearing on 27 July 2020. W was represented by counsel on that occasion; H appeared in person. His application for a further LSPO had been issued the previous week. The hearing in July this year had been intended as a post-FDR directions hearing. H maintained that he could not deal with the substantial volume of evidence which had been filed over the early summer by W and her father without access to legal representation. He had not been able to file a questionnaire without that assistance and the court was thus not in a position to consider the appropriate limits on any further evidence gathering. I gave W permission to respond to the evidence which H had filed in support of his application for further litigation funding and listed the matter for a hearing of that application on 28 September 2020.

65. It will be apparent from the chronology that I have outlined above that the sum awarded for future legal costs in March 2019 was expended in no small measure on a litigation trajectory which had not been envisaged at the time. That chronology explains why each of these parties appeared in person for the purposes of this hearing. Each is a highly intelligent individual. Both addressed the court with professional courtesy and I am satisfied that each had an ample opportunity to make appropriate submissions on the material which was before the court in two substantial electronic bundles.

66. I have to apply the law as I have outlined it above to this fresh application for legal services funding in order to reach a result which is fair to both parties. I have the considerable advantage of having case-managed these financial remedy proceedings up to this point and I shall be dealing with the final hearing next June absent a settlement in the meantime. As I have said in paragraph 56, the production of the Arbitral Award has served to crystallise a number of outstanding issues even if it has not provided a conclusive answer, as yet, to the question of what, if any, residual value there may be in the claim if an appeal is successful. I bear in mind, as I must, that this matrimonial litigation has been ongoing for over 20 months. As matters currently stand, neither party owns assets of any significant value. Aside from H's allegations of non-disclosure which have yet to be determined, his only target in these proceedings is now the residual value, if any, of W's recovery in the offshore litigation claim. That receipt is uncertain and more remote in terms of a final resolution given that it depends upon a successful appeal in complex ongoing

international litigation. I have considerable sympathy with W's position that the court should support both parties towards an early resolution of all matters remaining in issue between them so that each can move on towards an independent financial future. She complains that she has yet to receive a response to her open proposals for settlement. I agree that this is the obvious next step if the parameters of the ongoing dispute are to be defined.

67. In order to take that step, I am persuaded that H needs to take legal advice in relation to his position. I am also persuaded that, absent a contribution from W, he does not have the means to procure that advice from his own resources. He is not a viable candidate for a commercial litigation funding arrangement because he currently has no disposable income and no security to offer a potential lender. I am satisfied that his solicitor, whom he has followed to JMW, is not in a position to enter into any form of *Sears Tooth* arrangement in the particular circumstances of this case. I am also satisfied, given recent developments, that this is a case where H requires an element of funding beyond the unsuccessful conclusion of the FDR hearing. In my judgment clear, focussed legal advice at this stage has the potential in the circumstances of this case to narrow rather than broaden the issues which are currently preventing a settlement. It is an investment which may well avoid the need for ten days of expensive litigation in June next year.

68. Is W in a position to satisfy an order in the sum sought by H ?

69. In terms of the criteria relevant to this case which I have to consider under s. 22ZB, I make the following observations:

(i) *W's financial resources (s. 22ZB(1)(a))*

70. I am satisfied that this is a case, as it was throughout the course of this marriage, where W, through her family, has had indirect access to very significant wealth and a standard of living which H and W, through their individual efforts, would not have enjoyed. I am aware from the evidence of her father that he suffered a significant reverse in his own financial circumstances. The bankruptcy which appears to have seen him reliant for a period on financial support from his wife, family and friends, has now been discharged. He has an income some £8,000 per month but his evidence is that he is no longer in a position to provide his daughter with the level of financial support which he has made available in the past.

71. W's family has plainly invested a very significant amount of time and money in the offshore litigation and the international arbitration. W's father's statement (para 48) sets out a detailed chronology of the events and decisions which led them to file for arbitration in 2017. Discussions were ongoing at a very high level between various professional advisors in early 2016. Leading city law firms were engaged to provide

this advice. Advice was also sought from specialist overseas advisors in the Cayman Islands and in the United States. KS has since been involved in the filing of an appeal. W is very close to her father and appears to place considerable confidence in the guidance he provides. I have no doubt that there will be ongoing discussions between the family members and their advisors in relation to the next steps.

72. The financial reverses in W's father's fortunes does not appear to have impacted on his ability to maintain a very substantial residence in one of the most expensive areas in central London. I have read carefully what he has said in his lengthy written evidence about the generosity and confidence of his friends in his ability to recover from a period of financial difficulty. That generosity has extended to the provision of financial assistance for his daughter. She is currently living in a very comfortable home close to Hyde Park. It is home which is owned by one of the family's, or the wife's, close friends and she is living there on the basis of a subsidised rent. She was not specific about these details in her submissions to me at the hearing although she told me that she believed one or more of these same friends was, or were, funding her parents' property through the provision of ongoing loans. She confirmed to me that her parents were subsidising her lifestyle and that of the two children. In the same way, family loans are meeting the ongoing burden of school fees. She told me that her father was assisting her in her attempts to arrange loans through his contacts.

73. I am quite sure that both W and her father are anxious to conclude this litigation. I am aware from H's section 25 statement (amended pursuant to an order in relation to redaction made by Holman J in July 2020) that in January this year, W's father initiated an attempt to discuss a potential settlement. Those discussions, however far they went, are not matters about which I am entitled to know and I do not place any weight on the fact of that meeting for the purposes of my decision on this discrete application. Nonetheless, as I have made clear, the purpose of any award I make is to enable H to seek ongoing legal advice in order to advance the prospects of an early settlement.

74. I am encouraged to take a robust view in making assumptions about a payer's ability to pay. As *Rubin* made clear, I am not confined to "the mere say-so" of W (or her father) in this instance as to the full extent of her resources. In *TL v ML* [2005] EWHC 2860 (Fam), [2006] 1 FCR 465, [2006] 1 FLR 1263, the court confirmed that,

> "Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty has been curtailed but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial."

(ii) *W's financial needs, obligations and responsibilities (s.22ZB(1)(b))*

75. W clearly has her own financial needs and obligations. In addition to the sums she has borrowed from family and friends, she has an unpaid debt to her own solicitors in respect of outstanding legal costs in the sum of c. £80,000 in addition to sums which she owes to her direct access barrister.

(iii) *The subject matter of the proceedings including the matters in issue (s.22ZB(1)(c))*

76. As is universally accepted, the subject matter which underpins this case and the offshore litigation is complex. It is why the case has been transferred to be heard by a full-time Judge of the Family Division. Whilst neither of the parties appears to have access to direct wealth, the case involves a backdrop of vast sums of money running into billions of pounds. It has involved international lawyers in a number of different jurisdictions. Whilst I accept that the recent delivery of the Arbitral Award has removed at a stroke a number of those uncertainties and complexities, there is still the outstanding issue of the appeal. H should be entitled to take advice in relation to these matters if only to inform the terms of any offer he might make to settle the matrimonial litigation.

(iv) *Whether the paying party is legally represented in the proceedings (s.22ZB(1)(d))*

77. W has throughout the early part of these proceedings employed the services of London magic circle firms and senior matrimonial counsel. She is now assisted by her barrister, Ms Kumar on the basis of a direct access instructions. She has appeared for this hearing as a litigant in person. H has made it quite clear that he is not seeking an award which would take him to a final hearing. For the purposes of his present application, he wishes to clear his indebtedness and put his solicitors in funds to assist him with advice and the drafting of a response to the evidence of W and her father (including a questionnaire). I am not being invited to consider issues relating to the funding of the final hearing in June next year.

(v) *W's conduct in relation to the proceedings (s.22ZB(1)(e) and (f))*

78. I accept that W has made open proposals to settle this litigation. Those proposals were predicated on the basis of success in the offshore litigation. To the extent that she and her father have filed extensive written evidence which now requires a response, that evidence was necessary to meet the case which underpins the H's argument in relation to contributions. It is his case that the prenuptial agreement has to be seen in the light of those contributions. Leaving aside for these purposes the untested allegations on non-disclosure, I accept that, in terms of her approach to this litigation, she cannot be tarred with the brush of litigation misconduct.

(vi) *The effect of the order on the paying party (s.22ZB(1)(g))*

- *causing undue hardship*
- *preventing W from obtaining legal services for purposes of the proceedings*

79. There is ample evidence in this case that financial support from immediate or extended family members or friends has been, and continues to be, made available for W. Whatever economies may have been made behind the walls of these two London homes, there is no evidence that the infrastructure of family life in these establishments is not continuing as before. I accept that W is able to point to mounting indebtedness as she continues to fund her life in this manner. She accepts that she is engaged in ongoing discussions with her father who appears to be the guiding hand in procuring these loan facilities even if he is the provenance of such support. The court is not yet in a position to reach any final conclusions or findings in relation to the underlying reality of the family's finances or the extent to which the presentation which has been made to this court is true. That by itself is no impediment to an award under s. 22ZA of the 1973 Act if the court is satisfied that there are available resources to fund such an award or that resources are more likely than not to be made available for these purposes.

80. I have to bear in mind the costs which will be spent if the matter proceeds to a ten day final hearing. In this context I view additional expenditure of less than £40,000 to be a wholly proportionate response to H's current application. The door to his legal representatives will not be opened unless and until his current debt to them is discharged. That debt, as I have said, has been incurred in part because of the unsuccessful appeal which W launched in relation to the earlier LSPO award.

81. This is not a case where I have taken the view that W should be required to pay this further limited award simply because she comes from a family which has enjoyed stratospheric wealth in the past and thus her pockets are to be considered to be deeper than H's. Rather, I have carefully considered all matters in the round and, taking the robust view which I am entitled to adopt, I have reached a clear conclusion that the financial largesse she has enjoyed to date is likely to continue from whatever source or sources it has historically come. I have no wish to place W under any increased pressure or anxiety. I accept that she is not in overall control of her current financial infrastructure. Whilst I accept that she has utilised her own earning capacity to the extent she can, the reality is that she has always had to look to others to provide for her financially. That was the case throughout the marriage and it remains the case now. I do not anticipate that her father will wish to see his daughter in breach of an order when the benefits of enabling H to seek further limited advice in relation to these proceedings may well enhance the prospects of a negotiated settlement. I intend that, if nothing else, that advice will serve to narrow the outstanding issues between them.

82. Even if settlement cannot be achieved at this stage, I am satisfied that the legal advice which is required in the developing circumstances of the offshore litigation justifies a further limited award in H's favour and that W's current circumstances are such that she will be in a position to procure the funding to meet it. In these circumstances, I do not consider she will be thereby be exposed to undue hardship or prevented from obtaining her own legal advice. This case has now reached a point where the scope of the issues has narrowed sufficiently to enable both parties to take a realistic view of the parameters of a settlement acceptable to each of them. They need legal advice to inform the future direction of travel of this litigation. For example, with the Arbitral Award now available, I would anticipate that the scope of H's questionnaire on this aspect of the case will be considerably shortened.

83. H's claim in respect of ongoing legal advice is limited to £37,000. I do not regard that sum as excessive for these purposes. Given that counsel is likely to be involved in the advice which is sought, and in the light of the volume of evidence filed by W and her father in relation to the contribution aspects of the case, time will need to be expended. Professional time is expensive and, whilst H has done a great deal of analysis on the documents to date, he will require an objective overview to inform any open offer which is made to W and any legal team she instructs in the future conduct of these proceedings.

My award

84. The order I propose to make is that W will pay to H as a legal services order a further sum of £95,000. That sum is to be paid to H's solicitors, JMW Solicitors LLP, in two instalments. The sum of £58,000 shall be applied towards the discharge of his outstanding costs and the balance is to be used for the purposes of funding ongoing legal advice in relation to the next steps in these proceedings, including overall settlement. The payment of the first instalment of £58,000 shall be paid by 4pm on Monday, 9 November 2020. The payment of the second instalment of £37,000 shall be paid by 4pm on 1 December 2020.

85. My order is without prejudice to the ability of either party to invite the court to reconsider where the overall burden of costs should lie at the conclusion of these proceedings in the event that the case does not settle.

86. I realise that this order may affect the viability of the next listed hearing on Friday, 13 November. With the final hearing still some eight months away, that may not unduly prejudice the interests of either party and I am prepared to be as flexible as I can be in

terms of relisting that hearing later this term or early next term once H has had the opportunity of taking the legal advice to which I am satisfied he is entitled.

Order accordingly