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Neutral Citation Number [2021] EWFC 126

**IN THE CENTRAL FAMILY COURT
MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984, PART III**

B E T W E E N :

SW

Applicant

and

SH

R2 (SH's brother)

R3 (a company)

R4 (SH's daughter)

Respondents

FINAL HEARING 8TH - 12TH MARCH 2021

DEPUTY DISTRICT JUDGE BURLES

1. This is my judgment at the conclusion of the final hearing of SW's application for financial provision under Part III of the Matrimonial and Family Proceedings Act 1984. SW has also brought a claim under Schedule 1 to the Children Act 1989 that also falls to be considered in this judgment.
2. The hearing took place over the course of five days between the 8th of March 2021 and the 12th of March 2021. That hearing was conducted remotely, using CVP. All of those five days were required to complete the hearing of the evidence alone and there was no time to hear submissions. Following the conclusion of the evidence I received written closing submissions from all parties save for R4. I then heard oral submissions on the 10th of May 2021 again remotely using CVP.

3. Owing to difficulties in identifying a date at which I could hand down judgment I provided a draft judgment in writing on 22nd June 2021 and hand it down today on 8th July 2021.

Parties and Representation

4. The applicant is SW whom I shall refer to as the Wife. She has been represented throughout this hearing by Mr Perrins, counsel.
5. The First Respondent is SH who I shall refer to as the Husband. He has been represented at this hearing by Miss Hussey QC.
6. The Second Respondent is the brother of the Husband. He has been represented by Mr Davies, counsel. I refer to him as R2.
7. The Third Respondent is a company wholly owned by the Fourth Respondent. The Fourth Respondent is the daughter of the Husband and the owner of the third respondent company. She has represented herself and the company at this hearing. I refer to her in this judgment as R4, "K" or SH's daughter.

Child

8. At the heart of this case is a child, C, aged 3. C lives with his mother the Wife, and has no contact with the Husband, who is his father, for reasons that I shall explain. C is in good health.
9. The parties met in April 2016, married on 10th March 2017 in Morocco and separated on 28th July 2018 whilst they were living in London. The parties were divorced in Morocco on 17th April 2019. Theirs was a short marriage and a short relationship. However, these proceedings have been very bitterly fought over the full range of issues including divorce in England and in Morocco, financial proceedings in Morocco and England, proceedings for protective measures under the Family Law Act 1996 and proceedings brought by the Husband for contact with C under the Children Act 1989.

The Hearing

10. The technology was far from perfect in relation to this hearing. It proved very time consuming to join people to the hearing and I had to keep joining them in on occasions when the Internet failed. This probably consumed almost a whole day of the hearing when taken overall. However, the CVP itself worked reasonably well. All of the parties gave evidence and were cross examined. The Wife gave evidence using Special Measures, in that the Husband turned off his video when she was giving evidence. There were regular breaks, both planned and unplanned.

11. At the outset of the hearing, I made some case management decisions for the reasons that I gave at the time. In particular I declined to treat the applications concerning R2, R3 and R4 as separate matters to be decided in advance of the main application brought by the Wife. In addition, I limited the single joint expert evidence to prevent further material being adduced by the parties in relation to the values of the Husband's London properties and also in relation to the value of his interest in property in Lebanon.
12. I decided having heard submissions that I should read the judgment of Recorder Castle which I did. I further resolved an issue of disclosure in relation to the Wife's litigation funding.
13. I have asked myself whether the hearing was fair. In relation to R2, I had reservations as to whether or not he may be receiving messages from others whilst he was giving his evidence. I had a similar concern in relation to R4 when she was giving her evidence. In relation to R4 I was concerned that I had not established at the outset of the hearing what material she had access to. It became apparent that she did not have the complete trial bundle. Whilst she was giving her evidence it became necessary to ask her to verify what additional material, if any, she had access to whilst being cross examined. She did say that she had notes.
14. I was unable to form a clear view as to whether either of R2 or R4 was receiving outside support and, although I did have some concerns, I do not attach significant weight to those concerns except where I may make reference to them in this judgment.
15. I was supplied with a core bundle running to some 643 pages and an Exhibits Bundle of over 700 pages. In addition, I received written Opening and Closing Arguments from the represented parties.
16. Over the course of the hearing a number of other documents were produced.
 - (i) I permitted the introduction and translation by the Wife of certain videos and certain photographs that had been exchanged between the parties during their relationship. These had to be translated overnight and whilst the Husband was giving evidence. This was not ideal, but the material was relevant.
 - (ii) After the close of evidence, I was provided at my request with the original Arabic version of a document at [H23] in the bundle being a letter in relation to the Wife's Moroccan lawyer's involvement in the Moroccan divorce proceedings. In addition, I was provided by the Husband at the same time with certain other documents that I had not asked for and which were not the subject of evidence and cross-examination. I admitted them into evidence subject to a clear warning as to the weight that could be attached to them given the timing of their arrival into the case.
17. I accept that the management of additional material into the hearing was not ideal, but I am satisfied that in doing so it did not cause any significant unfairness to any party.

18. Throughout the hearing I have applied the civil standard of proof to the issues and, in relation to the set-aside applications brought by the Wife against R2, R3 and R4 I have set out my approach to the burden of proof later in this judgment.

The Parties and Background Matters

The Wife

19. The Wife is aged 35 and is a Moroccan and [Country A] national. She was born in Morocco and lived there until she was a teenager. Her father had left the family home when the Wife was a child to begin a business in [Country A]. At that time the Wife and her brothers remained in Morocco being cared for by their mother and an aunt. In her teenage years the Wife and her brothers and mother joined their father in [Country A]. The Wife was educated in [Country A] including to a Masters' degree level. In 2015 the Wife came to England in order to improve her English. She took a low paid job as a waitress later in a hotel and enrolled into an English language school. In due course the Wife's brothers also came to live in London, it was my understanding that this was originally in the [English county] area.
20. At the time of the final hearing the Wife was living at the property at [S Court], a one-bedroom flat in [Central London]. C lives with her. This property is in the Husband's sole name and the Second Respondent has commenced possession proceedings against the Wife in relation to [S Court]. The Wife currently has an occupation order in her favour and, pending the outcome of the final hearing, the possession proceedings have been stayed. The Wife is not currently working and is a full-time carer to C.

The Husband

21. The Husband is 49 years old and is Lebanese by birth. He is one of seven siblings including the Second Respondent. The Husband grew up in [an area] of Lebanon. He came to the United Kingdom as a young adult and by degrees established a property portfolio in London. Those properties are generally of a non-premium / sub-prime quality, mostly ex-local authority, although some are of a more premium quality, including the property at S Court. The Husband's business has been focused on the receipt of rent from tenants in these properties. Historically he operated as a sole trader. The properties are owned by him personally. Many of them, if not all, are subject to mortgages and, the Husband says, have significant latent CGT obligations within them if they were sold.
22. The Husband has four children, K is the eldest, A is aged 18 and is K's brother and lives in the [Country B] with their mother E, a [Country B] citizen. The Husband has a son B who lives in [Country C] with his mother F. The Husband's fourth child is C. The Husband has contact with all of his children except for C. The Husband says that he has a history of providing property to the mothers of his children but the Wife states that this is not accurate. There was an issue as to whether a property in the

[Country B] was or was not a home for K and A's mother. I did not regard it as necessary to decide that issue. In [Country C] the Husband has two properties one of which, he says, is lived in by B's mother, and the other is used by the Husband when visiting B, although there were disputes over whether B and his mother continued to use one as a home.

Second Respondent

23. R2 is the older brother of the Husband. He lives in London, and he too operates as a property-owning landlord.

K / R4

24. K is aged 22 and lives in London. She lived in the [Country B] for much of her life and speaks with a strong [Country B] accent. There is a significant dispute between the parties as to the extent to which K was involved in the Husband's business prior to the creation of R3 in October 2018. K states that she works full time at R3 managing the Husband's properties.

Chronology

25. I was provided with a detailed Chronology by the Applicant.
26. The parties met in April 2016 at a Duty-Free shop in Heathrow Airport. The Wife was on her way to Dubai and the Husband to Lebanon. They had a whirlwind romance, which began with some video / Facetime calls from Lebanon to the Wife in Dubai. Those videos are the ones that were introduced into the hearing by the Wife and referred to earlier in this judgment.
27. Their relationship quickly flourished and involved a significant amount of travel.
28. By September 2016 they travelled to Morocco and were discussing marriage with the Wife's family who were in Morocco and, in particular, the type of marriage - i.e. whether a purely Islamic religious marriage or whether it should be a civil marriage.
29. In October 2016 at Heathrow the Husband was arrested on suspicion of a serious sexual assault against the mother of his son B and the parties separated as the Wife was understandably concerned. She went to Morocco and in due course the Husband found her there and eventually persuaded her to return to relationship.
30. The Husband was in Morocco for some weeks persuading the Wife to reconcile. He succeeded and they returned to live in London, the Wife says at the S Court address.
31. In early 2017 they travelled together to the [Country B], as I understood it to see H's children K and A although possibly only A was there at that time and K may have travelled with them.

32. In March 2017 they married in Morocco, and it was a civil marriage of the type that the Wife's family had wished for. In advance of the marriage they spent some time in Morocco preparing for the wedding.
33. At some point in 2017 they purchased a property in Morocco in [Moroccan town]. This was purchased in their joint names although the funding came from the Husband. There is a significant issue in the case as to whether this property was intended to be the parties' primary marital home (Husband's case) or whether it was an investment property to be used to generate a rental income (Wife's case).
34. After the marriage the parties left Morocco and it is the Wife's case that they returned to live in London in the S Court property.
35. On 7.6.18 C was born in London. After leaving hospital the Wife returned to S Court with C.
36. By 11.6.18 the marriage was in significant difficulties and Westminster Children's services became involved.
37. On 28.7.18 the Wife left the S Court property while the Husband was in [Country C] and she and C moved into a confidential refuge / place of safety provided by Westminster Social Services.
38. On 1.8.18 the Husband applied for, and Holman J made, a location and passport order directed to the Tipstaff.
39. Shortly after that hearing the Husband travelled to Morocco.
40. On 6.8.18 the Husband began divorce proceedings in Morocco, when he attended the Moroccan court in person with the benefit of his Moroccan lawyer. There then began the Moroccan divorce proceedings that I shall deal with in more detail later in this judgment.
41. On 9.8.18 Knowles J made an order under the Children Act 1989 in the child arrangements proceedings:
 - The Husband and Wife acted in person, and
 - Westminster Social Services were in attendance at the hearing and orders made which began lengthy Child Arrangement proceedings relating to C.
42. On 1.10.18 - the Wife began Family Law Act 1996 proceedings seeking non-molestation and occupation orders in order to permit her return to S Court with C.
43. On 1.10.18 the Wife sent a divorce petition for issuing to Liverpool, England.
44. On 19.10.18 R3 was incorporated with K as the shareholder. K was aged 19 at this time.
45. On 19.10.18 a lease agreement between the Husband and R3 was entered into under which R3 secured the rights to the rental income from the Husband's properties in exchange for providing him with a fixed monthly rental income of some £4,500 pw.

46. On 1.11.18 the Wife issued a Form A seeking English financial relief pursuant to her divorce. On 20.12.18 the Wife applied for MPS and LSPO orders.
47. On 23.11.18 - HH J Wright made inter alia an Occupation Order in the Wife's favour to protect her occupation at S Court.
48. On the 27.1.19 - the Husband was arrested and detained by police in relation to the matters that came before Recorder Castle and which I deal with below. He was not charged.
49. On 8.2.19 - HH J Meston QC made orders as follows:
- Maintenance Pending Suit at £18,000 pa, an order that it is common ground the Husband has not complied with in full and is in arrears of.
 - A Legal Services Payment Order to pay £35,000 together with staged further lump sums.
 - A Section 37 injunction order restraining the Husband from dissipating his assets, and
 - A Heman injunction order requiring the Husband to take no further steps in the Moroccan divorce proceedings and to take steps to seek to adjourn the Moroccan divorce. I will return to this in more detail.
50. On 17.4.19 the Moroccan Court issued a final decree of divorce having issued what the Wife contends was a preliminary decree on 21.1.19 but which the Husband contends was a formal decree of divorce. At the same time as this order the Moroccan Court made orders that H pay to W:
- £850 pcm in maintenance, and
 - A lump sum £16,000 odd (that had been ordered at an earlier hearing).
51. There was also an order for the sale by auction of the parties' Moroccan Villa. The estimated value of the Villa is some £360,000 odd. On 20.6.19 the Wife applied for relief under the Part III jurisdiction and on 11.7.19 an order was made by DDJ Todd, including:
- (i) Converting the Wife' earlier Form A into a Part III application,
 - (ii) Giving the Wife permission to pursue her Part III application,
 - (iii) Dismissing the Wife's English divorce petition on the basis that the Husband should pay the costs of it, and
 - (iv) Making interim orders in the same terms as the earlier MPS and LSPO orders with the Husband to pay S Court service charges and other payments relating to S Court. A further 'section 37' (Part III equivalent) order was made restraining the Husband from dissipating his UK assets and a First Appointment was ordered. The Husband did not comply with the LSPO made by DDJ Todd or comply in full with the DDJ's interim periodical payments orders. The Husband did make payments pursuant to the Moroccan orders and

some payments in respect of the various English orders, but I am satisfied that he has not complied in full with the English orders.

52. On 24.9.19 the Wife applied for enforcement of the outstanding Maintenance Pending Suit and other outstanding costs orders.
53. Meanwhile the proceedings in relation to C reached a fact-finding hearing before Recorder Castle on 6.9.19 where the Husband acted in person (having been represented by leading counsel earlier in those proceedings) and the Wife was represented by leading counsel and the Recorder heard evidence from both parties and made findings that I shall return to.
54. On 1.10.19 DDJ Hodson made an order requiring the Husband to ensure that the monies payable in Morocco as maintenance were paid to the Wife's UK Bank account. It is clear to me that DDJ Hodson was satisfied the Wife was not receiving that maintenance and that he wished for her to do so. I was told (and the Order records) that at this hearing the Husband offered S Court as security for the Wife's enforcement proceedings.
55. On 14.11.19 a hearing had been before DJ Jenkins on the Wife's application to enforce outstanding costs and LSPO orders. In fact orders were made by consent prior to the hearing.
56. On 14.11.19, the Husband executed a charge over S Court in favour of the Second Respondent to secure monies that it is said he owed his brother both in relation to historic debt that preceded the marriage and also more recent loans that R2 had made available to him.
57. On 1.12.19 the Husband paid the maintenance monies due to the Wife under the Moroccan divorce order into a [Moroccan] bank account in Morocco and, save for three months of payments paid as a lump sum, not into the Wife's UK bank account as ordered by DD J Hodson . Those monies were then removed from the [Moroccan] bank account by a Ms L in circumstances I shall describe later.
58. On 3.12.19 the Husband applied inter alia to discharge / vary the earlier order for MPS and the Part III permission. The variation application was adjourned to the final hearing and the application to discharge the Part III permission was never determined.
59. On 10.12.19 there was an FDR in the Wife's Part III application before Recorder Roberts QC and, when that did not secure a settlement, the matter was listed for a final hearing in June 2020.
60. Various orders then followed in relation to enforcement and pre-final hearing disclosure. At a hearing on 17.2.20 the Wife sought to enforce interim maintenance orders under DDJ Todd's orders - arrears now £18,000 it is said in W's Chronology although the Husband states the arrears stood at £4,500. In any event there were arrears that needed enforcement.
61. On 4.5.20 the Husband entered into a second charge over his solely owned C Square property in favour of the Second Respondent, said to be to secure further sums borrowed by the Husband from his brother.

62. On 29.5.20 HH J Gibbons adjourned the final hearing of the Part III application and re-listed it for five days commencing 8.3.21.
63. Following the Recorder's findings, a final order was made in the C proceedings on 6.8.20 by HH J Evans-Gordon providing for:
- (i) There to be no contact between the Husband and C,
 - (ii) A Section 91(14) Order for five years,
 - (iii) An occupation order in the Wife's favour over S Court, and
 - (iv) H to pay 1/3rd of W costs
64. The Husband's subsequent application for Permission to Appeal this order was dismissed by Peel J.
65. On 10.8.20, just a few days after the 'no contact' order made against the Husband, the Second Respondent commenced possession proceedings against the Wife in relation to the enforcement of his charge over S Court. Those proceedings have been adjourned or stayed pending the outcome of this hearing.
66. On 23.12.20 - the Wife applied:
- (i) To set aside the second charge as between the Husband and the Second Respondent over the S Court property, and
 - (ii) To set aside the lease agreement between the Husband and R3.
 - (iii) These applications were later case managed to be heard at this hearing.
67. On 10.2.21 there was a pre-trial review before DDJ Airey at which the Second, Third and Fourth Respondents were joined to these proceedings.
68. On 8.3.21 the final hearing commenced before me with the evidence closing late on the final day and before submissions could be made. Written submissions were then filed and oral argument made on 10th May.

The Resources

69. I intend to deal with the issues in a broad manner as it is rightly agreed by all parties that this is a 'needs' case and not a 'sharing' case.

The Wife

70. The Wife has no significant resources save for her 50% interest in the Moroccan villa, which has total value of some £352,000, and which is still awaiting sale. I disregard the suggestion that she has valuable jewellery or any other significant assets.
71. She has a litigation loan that has been taken out to meet the entirety of her litigation costs, i.e. including the child arrangements proceedings and the Family Law Act 1996

proceedings as well as the financial proceedings. This loan stands at some £411,000 odd and is increasing by several thousand pounds each month in interest. In addition she owes her solicitors some £142,000 in outstanding costs. She has the benefit of costs orders that have been made in her favour against the Husband and arrears of maintenance, which remain unpaid, of nearly £100,000.

72. She has no current income.

The Husband

73. The Husband's London properties comprise some 15 properties and they have been valued by a Single Joint Expert valuer. Net of the mortgages secured against them but disregarding the charges in favour of the Second Respondent over S Court and the C Square property they have a value of some £4.6m excluding any CGT.

74. In addition, the Husband has:

(i) His 50% interest in the Moroccan villa.

(ii) A property in [Country B], worth about £588,000 odd and lived in by his former partner (although this was not entirely clear) and A.

(iii) Two properties in [Country C] with net values of about £292,000 and £376,000, of which one was lived in by his son and former partner.

(iv) Some property assets in Lebanon that he values at some £35,000 including a burial plot in [Lebanese town] that both he and the Single Joint Expert say has no value.

75. In total his properties have a net value before Capital Gains Tax of some £6m or thereabouts.

76. He contends that the London properties are pregnant with latent capital gains tax of some £1.3m although this is his estimate and has not been established by a Single Joint Expert. That would reduce his net assets to about £4.7m and his London portfolio to about £3.3m net.

77. He states that his income is the sum he draws from R3 which was initially £4,500 pw but which may now have reduced to £3,500 pw. He also contends that when he was in receipt of the entirety of the rental income prior to the lease agreement with R3 his income from the properties was about £35,000 pa - £40,000 pa or thereabouts after payment of the mortgages secured against his property portfolio.

78. The Husband asserts that he owes his brother, the Second Respondent, about £404,000 and which debt is secured by charges against S Court and the C Square property.

79. He owes his solicitors some £42,000 and asserts that he has a debt of some £18,000 odd in relation to an [Country C] property.

80. Other than this he says he has no other significant assets.

Summary submissions made by each party

Wife's Case in Summary

81. The Wife's case in summary was that this was essentially an English marriage. She contended that the parties' primary connections are with England. Their marital home was in London and parties' marriage had little connection with Morocco, save that they married there and jointly own a property there.
82. The Wife's contention is that the Moroccan financial award is clearly inadequate to meet her needs. In any event, she argues that the Husband has disobeyed the Hemain injunction ordered by His Honour Judge Meston QC and so the Husband, by doing so, has deprived the English court of firstly a 'forum conveniens' assessment and, in all likelihood, an English financial remedy hearing following an English divorce.
83. The Wife contends the Husband is a non-discloser and that he has litigated in such a way that he has tried to frustrate and impede the Wife's claims at every turn. In particular he has introduced the Second, Third and Fourth Respondents to assist him in frustrating the Wife's claims.
84. She contends that the Husband has very significant resources available to him, including undisclosed assets in Lebanon and a property in Lebanon that the single joint expert has failed to properly value, that she says is referred to by local people in [Lebanese town] as '[SH's] Castle'. She further contends that the Husband's true rental income from his property portfolio is very much greater than that disclosed by him to the Inland Revenue and was, as per a document created by her advisers for this hearing, about £500,000 pa gross, whereas the Husband had previously claimed he received a fraction of this. She suggested that his bank accounts alone showed deposits of some £339,000 odd and that his disclosed income was a significant and dishonest understatement.
85. She accepts that this is a short marriage, but she argues that she has significant needs flowing from the marriage both for herself and for C. Those needs include a home and financial support to assist her on her path to financial self-sufficiency. She argues that these needs cannot be met without her litigation loan first being repaid and that it is a need that should be met by the Husband.
86. She argues that the transactions involving the Second, Third and Fourth Respondents are devices intended to frustrate her claims and that they should be set aside.

Husband's Case in Summary

87. The Husband contends that the Moroccan award is reasonable and that the Wife is now seeking an unjustified 'top up' from the English court. He contends that the Wife's connections with England are tenuous. He argues that this is essentially a Moroccan case, and that the Wife should not now be given a second bite of the cherry

within these Part III proceedings. He suggests that the Wife is guilty of being ‘wantonly acquisitive’ and that her application is a cynical attempt to maximise financial gain and that she has targeted the Husband as a “meal ticket”.

88. The Husband argues that the fact that the Moroccan award may not meet the Wife's London based needs is irrelevant not least because he believes that she has no settled intention to make London her home in the future.
89. He contends that the Wife should be entitled to a Schedule 1 type award and offers as alternatives that either the Wife lives in his property at C House during C’s minority or, if the Wife is insistent on having an address that is confidential and unknown to the Husband, she can rent with the Husband meeting rental payments for three years payable in advance.
90. As to the Wife’s litigation loan he contends that the court should not strive to meet this debt at the Husband’s expense as the lenders took the risk of that loan not being satisfied and the Wife is not pursuing a reasonable claim.
91. He contends that the Wife has an immediate earning capacity that she has failed to exploit and that she could achieve self-sufficiency immediately.
92. As to the Wife's suggestion that the Husband owns a castle in Lebanon and that he has a stable of pedigree horses, these, he suggests, are inventions by the Wife. He contends that the arrangements between him, the Second, Third and Fourth respondents are all genuine commercial arrangements.

Second Respondent

93. The Second Respondent contends that the charge secured over S Court and over the C Square property are genuine arrangements put in place to secure genuine debts. In particular the Husband borrowed about £109,000 to purchase the Moroccan villa in 2017. Thereafter the Husband borrowed further sums to fund his legal costs of these proceedings as well as meeting costs obligations within these proceedings. He contends that the presumption established by section 23(7) does not operate against him and that the transactions were made in good faith, for valuable consideration and with no notice of any intention on the part of the Husband to defeat the Wife's claims.

Third and Fourth Respondents

94. K has argued that there was a change in the law in relation to the properties that the Husband owned and lets out for rent so that the Husband would not be permitted to continue letting those properties save under very strict conditions. She contended that she had been working in the Husband’s business of letting properties for many years and that it made commercial sense for her to create the Third Respondent in order to avoid the consequences of this change in the law. The lease agreement entered into between her and the Husband, using the vehicle of the Third Respondent, was a genuine transaction intended to meet a genuine business need. Under that agreement

she would be entitled to the rental income and the Husband, in return, would be entitled to a fixed income of some £4,500 per week. It was her case that she ran the business now operated by the Third Respondent and the Husband took little or no further part in it. For those reasons the transaction was genuine, made for valuable consideration, in good faith, and with no notice of any intention on the part of the Husband to defeat the Wife's claims.

THE LEGISLATIVE CONTEXT

95. The relevant legal framework set out in the 1984 Act and the leading case in this area of *Agbaje v Agbaje* [2010] UKSC 13, [2010] 1 FLR 1813. As Lord Collins sets out at [71]-[73]:

“[71] ...the proper approach to Part III simply depends on a careful application of ss 16, 17 and 18 in the light of the legislative purpose, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England. There are two, interrelated, duties of the court before making an order under Part III. The first is to consider whether England and Wales is the appropriate venue for the application: s 16(1). The second is to consider whether an order should be made under s 17 having regard to the matters in s 18. There are two reasons why the duties are interrelated. First, neither s 16(2) nor s 18(2) and (3) refers to an exhaustive list of matters to be taken into account. Section 16(1) directs the court to have regard to 'all the circumstances of the case' and s 16(2) refers the court to certain matters 'in particular'. Second, some of the matters to be considered under s 16 may be relevant under s 18, and vice versa.

[72] It is not the purpose of Part III to allow a spouse (usually, in current conditions, the Wife) with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases. **There is no condition of exceptionality for the purposes of section 16, but it will not usually be a case for an order under Part III where the Wife had a right to apply for financial relief under the foreign law, and an award was made in the foreign country. In such cases mere disparity between that award and what would be awarded on an English divorce will certainly be insufficient to trigger the application of Part III.** Nor is hardship or injustice (much less serious injustice) a condition of the exercise of the jurisdiction, but if either factor is present, it may make it appropriate, in the light of all the circumstances, for an order to be made, and may affect the nature of the provision ordered. Of course, the court will not lightly characterise foreign law, or the order of a foreign court, as unjust.

[73] The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice. The following general

principles should be applied. First, primary consideration must be given to the welfare of any children of the marriage. This can cut both ways as the children may be being supported by the foreign spouse. Second, it will never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse. **Subject to these principles, the court has a broad discretion.** The reasons why it was appropriate for an order to be made in England are among the circumstances to be taken into account in deciding what order should be made. **Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings.** The full procedure for granting ancillary relief after an English divorce does not apply in Part III cases. The conditions which can be attached to leave, together with the court's case management powers, can be used to define the issues and to limit the evidence to be filed, as was done by Munby J in this case. This enables the jurisdiction to be tailored to the needs of the individual case, so that the grant of leave does not inevitably trigger a full-blown claim for all forms of ancillary relief.”

(emphasis in bold added)

96. These principles were summarised by King LJ in *Zimina v Zimin* [2017] EWCA Civ 1429 at [47], as follows:
- i. The legislative purpose is to alleviate the adverse consequence of no, or no adequate financial provision having been made by a foreign court in a situation where there are substantial connections with England.
 - ii. The duties under section 16 and section 17 together impose two interrelated duties i.e. to consider whether “in all the circumstances of the case” England and Wales is an appropriate venue and, secondly, whether an order should be made “having regard to all the circumstances” including the matters in section 25(2)(a)-(h) of the Matrimonial Causes Act 1973.
 - iii. Part III cannot be used to ‘top up’ foreign provision in order to make it equate to an English award; it follows that mere disparity will be insufficient to ‘trigger’ the application of Part III.
 - iv. No element of exceptionality is required and neither injustice nor hardships are preconditions. The order need not be the minimum amount required to avoid injustice.
 - v. In considering quantum the court has a broad discretion subject to three principles:
 1. Primary consideration is to be given to the needs of any children.
 2. It is never appropriate to make an order which gives a claimant more than she would have been awarded had all the

proceedings taken place within this jurisdiction.

3. Where possible the order should have the result that provision is made for the reasonable needs of each spouse.

97. It is important to note that it is common ground that jurisdiction is established here under Section 15 by reason of:
- (i) The Wife's habitual residence here,
 - (ii) The existence of property here.

Section 16 - Duty to consider whether England is appropriate venue for application

98. Section 16 provides as follows:

“The court shall in particular have regard to the following matters—

(a) the connection which the parties to the marriage have with England and Wales;

(b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;

(c) the connection which those parties have with any other country outside England and Wales;

(d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;

(e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;

(f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;

(g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;

(h) the extent to which any order made under this Part of this Act is likely to be enforceable;

(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

99. Under Section 18 the court must have regard to:

“(1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.

(3A) The matters to which the court is to have regard under subsection (3) above—

(a) so far as relating to paragraph (a) of section 25(2) of the 1973 Act, include any benefits under a pension arrangement which a party to the marriage has or is likely to have [F14 and any PPF compensation to which a party to the marriage is or is likely to be entitled,] (whether or not in the foreseeable future), and

(b) [deals with pensions - not relevant here]

(4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in section 25(3)(a) to (e) of the 1973 Act.”

This in turn means that I must have regard to

“(3) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters:

(a) the financial needs of the child;

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

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

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

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

(5) - not relevant

(6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the

financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.”

100. Miss Hussey QC reminds me, quite properly, that following the *Agbaje* decision it is not the purpose of the Part III Jurisdiction that a spouse with some English connections can take advantage of the English jurisdiction where they have perceived their original award as inadequate. This she argues is precisely the Wife’s approach here and is impermissible.
101. I also observe that under the Part III jurisdiction in section 23 there is the equivalent provision for setting aside transactions intended to defeat financial claims as is also set out in Section 37 of the Matrimonial Causes Act 1973.

My assessment of the Witnesses their credibility and reliability

The Wife

102. The Wife gave her evidence in a measured way. Miss Hussey QC has suggested that she was ‘rehearsed’ but I did not find it rehearsed. I did find it had been considered. In my assessment she was broadly consistent in her evidence.
103. Importantly I did find her concerns about the Husband knowing her address in the future and her concern as to the risk of his taking action acting against her to be genuinely felt.
104. Some examples of her evidence that impressed me are given below.
105. Firstly, she asserted that the Husband owned a ‘castle’ and had ‘horses’ in [Lebanese town] and it was suggested by the Husband that this was pure invention. In fact the introduction of photographs and videos showed that the substance of the Wife’s assertions was broadly accurate and were certainly founded in reality. To my mind this significantly enhanced her credibility.
106. She stated, and I found convincing, that there was a photo in [a restaurant] in London of the Husband in the Castle with his horses. She stated and I found convincing that the Husband had photographs dating back to when the Castle was under construction. She stated that local people in [Lebanese town] referred to it as ‘[SH’s] castle’ hence her use of the word ‘castle’.
107. Secondly, I found her evidence in relation to completion of some of the Husband’s rental property rent books to be convincing, backed up as it was by entries in actual rent books in her own handwriting, see for e.g. EXB 120 and EXB 205 and the Husband’s attempts - both in cross-examination and in documents submitted subsequent to the evidence closing - to undermine this evidence was unconvincing. The Wife did not suggest that she was central to the business but, contrary to Husband’s evidence, I am quite satisfied she had some practical involvement in the business.
108. Thirdly it was suggested by the Husband that the Wife had ‘raided’ the joint Moroccan account to remove money in a cynical move to ‘warehouse’ money. In evidence she accepted that she had removed money unilaterally and had done so to ensure she had funds once she left S Court to move into a refuge. The Wife to my mind did not seek to misrepresent this action.
109. These are just some examples of the way in which her evidence impressed me.
110. The areas where I found her evidence to be less convincing were as follows:
 - (i) Her plans for the future, what work she would pursue and when. For example her failure to have her [Country A] qualifications verified for equivalent UK purposes was a relatively simple step but one that the Wife still had not taken.
 - (ii) She had not really looked ahead to the sort of jobs she might aspire to getting and how quickly she could achieve them.

- (iii) She had not researched the costs of au pairs.
 - (iv) I therefore agree in part with Miss Hussey QC's criticisms in this regard, but I was not satisfied that this indicated an intention to depart to Morocco once these proceedings are concluded.
111. I recognise that it is difficult to plan before the outcome of these proceedings is known and I do consider that it is not easy as a single mother within these very demanding proceedings to undertake research, but the absence of those investigations means that that I have had to treat her needs-based claims with some reservations.
112. I found her proposed housing need aspirations to be aspirational and unrealistic.
113. I was also doubtful that she was entirely unaware of the Husband's Moroccan divorce proceedings given that her father had been served with papers in Morocco at the outset of that case. However, on this matter I was ultimately left unclear given the lack of corroborative evidence on the point.
114. The main challenge advanced against her were that she had lied about her knowledge of the Moroccan divorce and these challenges were largely based on certain dates and matters given by her in her written evidence. In particular:
- (i) On 4.2.19 the Wife's solicitors wrote to Husband's then solicitors and stated that the Wife's Moroccan lawyer had "filed a notice of action on 3.10.18" and had "first Attended a hearing on 11.10.18". These are now accepted to be inaccurate. Looking at the totality of the evidence I am satisfied these were errors by the Wife's [previous] lawyers and did not evidence dishonesty on the Wife's part. The date given for the hearing is clearly wrong and the supporting Moroccan documents do not support the presence of the Wife's lawyer at the hearing on 10.10.18 in any event, indeed quite the reverse.
 - (ii) In her own witness statement at [D19] the Wife stated that her Moroccan lawyer attended on 10.10.18, but in evidence she said this was simply the wrong date. The Husband suggested she was lying. I was not persuaded that she was lying and on balance found that this was a simple mistake.
 - (iii) In addition in the FLA 1996 proceedings the Wife's witness statement suggested she was aware of Moroccan proceedings at an earlier time than she states in these proceedings. She was cross-examined about this and stated that the proceedings she referred to in that statement were the dispute over the Moroccan Villa and not the Moroccan divorce. I was not persuaded that she was being untruthful.
 - (iv) Similarly, she was cross-examined about her use of the word 'home' in relation to the Moroccan Villa at para 18 of her witness statement [D7 / 210] - but I do not read anything significant into this. Similarly, I was not persuaded that her divorce petition, when eventually issued, was deliberately misleading in not referring to the Moroccan divorce proceedings, given I was told, and accept, that her solicitors had originally issued it prior to the date the Wife first states she knew of those proceedings.

115. Considering her evidence in the context of all the material before me I felt able to broadly accept her evidence and generally prefer it to the Husband's where they differ.
116. I felt she was plainly focused on securing a safe future for C.
117. I have formed my own view of the Wife's credibility, but I note in passing that Recorder Castle appears to have reached a similar conclusion.

Husband – Credibility

118. I found the Husband to be intelligent, articulate, and at times extremely charming and charismatic. I also formed the view that he was very much focused on himself and his own interests and in getting his point over to the court rather than answering the question before him. As a result he became a witness who on many occasions exasperated the court by not answering the questions put to him. He was very argumentative and, whilst at times pleasant and charming, at other times arrogant.
119. When being asked about his failure to pay the maintenance pending suit he came very close to suggesting to me that he regarded the Moroccan court order as being the only valid obligation upon him and not the English orders. He then also suggested he could not afford the English order, but I was left with the impression that he was willing to operate tactically and in defiance of court orders.
120. I now set out some examples of the matters that have caused me to conclude that I must treat the Husband's evidence with very considerable caution and that I cannot generally rely on his evidence.

Recorder Castle's Findings

121. In my assessment of Husband's credibility, I take into account Recorder Castle's assessment of him and the fact that the Recorder disbelieved his evidence on a number of important and serious matters.
122. Before me the Husband purported to accept the Recorder's findings but, when this was explored, in reality he continued to deny many of them. He again denied the sending of revenge porn messages and other images to the Wife's family that the Recorder found had been intended to pressure the Wife into abandoning these proceedings. He said he was in custody when they were sent and that the police had taken no action. His evidence contradicted the Recorder's clear finding, and the Husband was unable to provide any alternative convincing explanation for who might have sent these images. He claimed that some texts were in fact sent by C's maternal family which I found completely unconvincing as well as being contrary to the Recorder's findings.
123. He made a variety of very lurid and extraordinary allegations against the Wife's sexual behaviour at the outset of their relationship in his first witness statement in

these financial proceedings but did not pursue them. I was completely unconvinced that they were true and was satisfied he had included them to maximise embarrassment for the Wife.

The ‘Castle & Horses’ in [Lebanese town]

124. In his counsel’s Opening Note he described the suggestion that he had a ‘castle’ in [Lebanese town] and ‘horses’ as baseless and effectively invented by the Wife. He asserted that all there was on this plot was a small burial ground when his parents were buried. I permitted the introduction of videos and photographs that he had sent to the Wife in courtship, and I am satisfied that these showed that there was a real basis for these suggestions. Prior to those videos being translated he denied that he referred in them to ‘his farm’ or ‘his house’ but when translated the Husband’s previous denials were shown to be untrue. He did indeed refer to it as ‘my house’ and ‘my horses’ and ‘my farm’. All of this very significantly damaged his credibility.
125. I am willing to accept that the [Lebanese town] building is subject to a planning permission dispute that goes back many years, perhaps as far as the Israeli occupation as he later told me when trying to minimise its value, but the photographs show it is a building much valued by the Husband.

H’s Breaches of Orders

(i) Hemain Injunction

126. My findings on the Hemain injunction are set out elsewhere but put shortly I am satisfied that the Husband deliberately disobeyed the Hemain injunction. He was entirely unable to identify any positive steps he had taken to seek to delay or suspend the Moroccan divorce proceedings to allow for an English ‘forum conveniens’ hearing and the independent Moroccan material contradicted his evidence that he was powerless to prevent that divorce.
127. For example, he suggested to me that it had been agreed between his lawyer and the Wife’s lawyer that they would see whether the court would order a stay but there was no credible evidence of this suggested agreement.

(ii) H’s Breaches of English Maintenance Orders

128. The Husband’s s credibility was further undermined by his failure to ensure that the Wife received the maintenance due to her under the Moroccan divorce order. An issue arose in the proceedings as to whether the Wife was able to access the maintenance paid pursuant to the Moroccan order which was being paid into a [Moroccan] bank account in Morocco by the Husband. Those same sums were then removed by a Ms L. It is now known that this person was an assistant of the Husband’s Moroccan lawyer, and the sums were then paid to that lawyer. The Husband only admitted this in his

Replies [E38 / 400] provided shortly before the pre-trial review and asserted that it was necessary to do this to prove the maintenance was paid. This was evidence I found it impossible to accept because:

- (i) This explanation only came after a number of previous occasions where the Husband had said, to suit his position in the English proceedings, that the Wife had access to these Moroccan payments,
 - (ii) The true position as regards Ms L was only revealed very late,
 - (iii) DDJ Hodson and DDJ Todd both ordered the Husband to make the payments to the Wife's UK Bank account and he failed to do this.
129. He sought to justify that he was at risk in Morocco if it was not possible to prove he made the payments but there was no real independent evidence to back this up and I found it lacked all credibility. It also showed how far the Husband would go to defy English orders and to make life difficult for the Wife.

H's non-disclosure of bank accounts and property in Lebanon

130. The Husband's Form E was originally served (no date is given in the hearing bundle for his Form E) without reference to a number of bank accounts and properties in Lebanon. This was only rectified after the Wife was able to find reference to the properties in Lebanese Land Registries and serve that evidence on the Husband. In evidence he told me that he hadn't disclosed a [Lebanese city] property because it was a family home of his wider birth family, and it would have been unfair to sell it. I found that evidence very revealing.

The rent books

131. He suggested that the Wife never had any part in the letting business and she had never completed any part of the rent books in which he recorded rental payments to him. As made clear above this was contradicted by the copies of the rent books in the exhibits bundle and the evidence was strongly inconsistent with the Husband's evidence. I do not find that the Wife had any significant role in the business, but it is quite clear to me that she was actively involved to an extent, contrary to the Husband's assertions.

Matrimonial Home in Morocco

132. The Husband now contends that the Moroccan Villa was the parties' family home and intended to be their 'forever home', but this is not consistent with:
- (i) His own Divorce Petition in Morocco which clearly described S Court as the marital home. His explanation that this had got 'lost in translation' was not convincing.

- (ii) The Moroccan Order [H33 /] dated 26.11.18 also refers to S Court as the parties' matrimonial home'.
133. His attempt later to present the Moroccan property as their home was inconsistent with the Moroccan court's own material and further damaged his credibility.
134. The Husband's credibility was further undermined in relation to his dealings with the Second Respondent which I address later but examples include:
- (i) The timing of the execution of the second charge over S Court with regard to the Wife's own enforcement proceedings and the Husband's ability to secure the removal of the Wife's Matrimonial Home Rights over that property, without notifying the Wife.
 - (ii) To my mind the timing of the charge at such a strategically important moment in the proceedings, i.e. just as W sought to enforce against the property, together with the Husband's lack of openness about it, indicated a fundamental lack of good faith.
 - (iii) Moreover the suggestion that the Husband borrowed £109,000 in 2015 from his brother, used that money in 2017 to buy the Moroccan villa and only charged his property in 2019 was fundamentally unbelievable.
135. Likewise in relation to R3 I found the Husband's evidence further undermined his credibility and some examples are set out below:
- (i) He said he was a 'rogue landlord' as far as [London Borough 1] was concerned so he needed to restructure his business, but no evidence that he had been classified as 'rogue' was produced.
 - (ii) He provided a letter at [EXB427] but
 - i. This letter is dated 18 October 2020 - so post-dates the incorporation of R3, and
 - ii. It does not show that H was a rogue landlord in any event, on the contrary it provides a warning as to what might happen if a landlord were to breach rules.
 - (iii) When challenged as to why he had produced no documentary evidence to support his case as to his status with [London Borough 2] he asserted he had never been asked to. Not only was this lacking in credibility it was also incorrect as in her Schedule of Deficiencies [E22] he had been required broadly to address this issue.
136. He was understandably and predictably asked for copies of written advice from his accountant about the need to close his bank accounts and establish the lease agreement with R3. No such evidence from his accountants was produced that addressed the business need to take these steps and the letters from them addressed other matters of disclosure or, as per the letter at ExG10 simply describes the steps taken in relation to bank account closure but does not explain the underlying purpose.

This to my mind defied all common sense, there must have been such advice to support the need for these changes to the banking arrangements.

137. Further I found it very concerning that in his initial witness statements and Form E he made no mention of the apparent issues with Licencing and being a rogue landlord with [London Borough 2]. His later introduction of this explanation was unconvincing.
138. Finally given my impression of K as a rather immature and potentially vulnerable young adult, now aged just 22, I found it wholly unconvincing that the Husband would effectively entrust and burden her with this onerous business responsibility. Indeed, given that R3 was incorporated in 2018 - when K was just 19 years old - this became even more difficult to accept. Operating a property lettings business in a sub-prime market must be a difficult and demanding operation, securing rental payments, addressing disputes over deposits, room conditions and it struck me as unconvincing that the Husband would leave this to K, especially given his concerns about her drugs use in late 2017.
139. Looked at the context of the material before me I found the Husband to be a witness on whose evidence I could not rely. I have formed my own view of him as a witness, but I note that Recorder Castle formed a similar view, and I recognised the Recorder's description of the Husband as a witness.

Second Respondent

140. I had significant reservations about the credibility of the Second Respondent for the following reasons:
 - (i) He is clearly very close to his brother, the Husband and, given my findings about the Husband this calls into question the Second Respondent's motivation. This is particularly so in relation to the timing of the second charge and its coincidence with the Wife's enforcement claims against S Court. It is too much of a coincidence that the Second Respondent insisted on this security at this important moment.
 - (ii) I found his various explanations for the reasons for the charge over S Court to be impossible to reconcile. The account given in his FLA 1996 statement indicated that he had originally been content for the Husband to use the £109,000 lent to him as he saw fit and there was no suggestion that at the time of the use of the monies to buy the Moroccan property, did he require a charge as security for it. This to my mind was inconsistent with his statement and evidence before me that he had insisted at the time the Villa was bought that the Husband offer security for the loan.
 - (iii) Moreover, his explanation for the original loan of £109,000 was very hard to understand. He suggested he had lent it to his brother to buy a substitute property in [Lebanese city] because the family home was too small but no property was ever purchased, or even identified, and he simply left the

money with his brother. I could not understand why he would transfer the money to his brother prior to a property being identified and a purchase agreed as only then would the money be needed.

(iv) In addition when asked about the possession proceedings he had taken against the Wife to enforce his charge over S Court, a part of the Second Respondent's explanation was that he did it for the Wife's own good, because to his mind [place in Central London], where S Court lies, is not a fit and pleasant environment the Wife and C. This was an extraordinary suggestion and I was unable to accept it.

(v) Finally his explanation, made belatedly after his evidence had finished, and after a short court break, that a relevant [Bank] bank account had been closed and so statements were unobtainable, was both unconvincing and concerning. I was concerned that he may have been reminded of his omission by the Husband, though I make no specific finding to that effect.

141. Having had the advantage of seeing him be cross-examined and give his evidence and based on the totality of all the material, I found I could not rely on the Second Respondent's evidence.

R4 – SH's daughter

142. I have addressed my concerns as to the credibility of the Husband's position in relation to the involvement and K and the Third Respondent and they have influenced my view of K as a witness.
143. In relation to the manner in which she gave evidence and the content of her answers I was left with the clear impression that she was not what she purported to be i.e. the driving force behind the R3 and the lease agreement with her father. Indeed I found her grasp of the business to be very limited.
144. Her inability to produce any evidence prior to the incorporation of R3, whether from accountants or from London Borough 2, to justify the lease agreement between R3 and the Husband seemed to me to defy common sense and strongly indicate that I was not being given an honest presentation.
145. She was by turns emotional, appearing bored, other times angry and upset and I was left with the impression that she lacked the maturity to take on the role the lease agreement gave her.
146. In cross-examination of K the Wife's counsel raised an issue in relation to K's previous use of illegal drugs and an incident where the police were called by K because the Husband had discovered K's drugs and had become angry and, I was given the impression, violent. K was very critical of the Wife for not coming to her aid. The police were called and the Husband detained overnight. The Husband has criticised the introduction of this issue and it is right that K understandably found it upsetting. However it seems to me it was relevant and not unfair to raise it as the Husband's counsel had suggested that K was a suitable person for the role she had

adopted with R3. Given that this incident in relation to the drugs was less than a year before the lease agreement was entered into it does seem to me to be relevant. I observe in passing that K said it was just a small quantity of cannabis and I do not suggest otherwise, but the relevance is in the Husband's strong reaction to finding it and the suggestion that several months later he would be content to entrust K with control of the rental income from his property portfolio.

147. She was also frequently very critical of the Wife and described her as being in essence a 'gold-digger' i.e. cynically looking to rob the family of wealth. She complained that the Wife never attempted to engage with the Husband's family, and she complained that the Wife had not come to K's help when the Husband reacted angrily, and possibly violently, to finding K with drugs in her possession in late 2017.
148. She referred to the Wife variously as a 'witch' and 'a princess in a fairy tale' and I was left in no doubt that K had a strong and deep antipathy towards the Wife.
149. In her closing submissions she read out a prepared speech and I was not satisfied that she had prepared it herself. This concern was reinforced when, having read it to the end, she said "I now want to say something for myself" or words to that effect. I found that troubling and overall I was left with the impression that she was simply doing her best to assist the Husband.
150. Having heard her give evidence and observe her over five days I did not feel able to rely on her evidence.

Factual issues – Findings

151. I now address some central factual matters.

A The Findings of Recorder Castle.

152. No attempt was made to re-open these findings and it seems to me that I can and should take into account that:
 - (i) Findings were made at a hearing at which the Husband acted in person but fully participated, and
 - (ii) Those findings form a relevant context to these financial proceedings.
153. I therefore take into account the following findings:
 - The Wife was found by the Recorder *not* to have committed a variety of acts alleged against her by the Husband including:
 - Making an attempt on the Husband's life, assisted by her father,
 - Discussing killing the Husband with her mother and with her brothers, and
 - Discussing bribing police in Morocco to have the Husband arrested.

154. I further take into account that the Husband was found to have committed serious matters as follows:
- Being guilty of serious sexual assaults against the Wife.
 - Acting in a coercive and controlling fashion against the Wife by, inter alia, retaining sexually explicit images of the Wife so as to permit him to coerce the Wife.
 - By sending sexual videos and images of the Wife to her father and threatening to show them publicly in an attempt to coerce the Wife into withdrawing proceedings in relation to the marriage, which I take to be her English divorce and these financial proceedings.
 - On 25.1.2019 the Husband sent private images and videos of the Wife to the Wife's father in breach of a non-molestation order.
 - On 26.1.19 he also sent threatening messages to her father and threatened to carry out an 'acid attack' on her brothers.
 - It is also clear from the judgment of Recorder Castle (para 97 but not recorded in his findings schedule) that he found that the Husband had created a fake Facebook Page in a name very like the Wife's and included in it explicit images - as part of his coercive approach to her and attempt to control the divorce proceedings.
 - On 4th June 2019 the Husband sent further images and videos to the Wife's two uncles and four cousins "in a bid to intimidate and harass the Wife to cease the ongoing proceedings".
155. It is clear from the Judgment of Recorder Castle that it is these financial claims that I am deciding that are the 'proceedings' to which the findings relate. In my view the Husband's willingness to do these acts is not something I should or can properly overlook when considering whether he has been guilty of litigation misconduct with a view to defeating the Wife's claims in these proceedings and, in particular in relation to:
- (a) The Moroccan proceedings and the Hemain injunction,
 - (b) The secured charges in favour of the Second Respondent, and
 - (c) The lease arrangement entered into with the Third and Fourth Respondents.
156. However I remind myself that I must also form my own assessment of the evidence independent of the Recorder's findings and that they are but one part of the overall evidential picture.

B - The parties' connections with England and Morocco and with Sandringham Court / the Moroccan villa

157. This is a central factor to be determined under s 16(2) of the 1984 Act.

The Husband's Case

158. The Husband's case on this issue I summarise as follows:

- (i) The parties had no real connection with England and their primary connection was with Morocco,
- (ii) They travelled extensively during the short marriage and had no real 'home base', certainly not in London,
- (iii) The Wife's connections with England are 'tenuous',
- (iv) About 105 days of the parties' relationship were spent together in Morocco, underlining the importance of Morocco,
- (v) The villa purchased by the parties in their joint names in Morocco was intended to be their matrimonial home / their 'forever' home.
- (vi) When they were in London the parties were not based at S Court but stayed in various addresses.

159. In the Husband's closing submissions I was very properly reminded of the following matters:

- (i) The Wife was born in Morocco,
- (ii) She has a Moroccan passport,
- (iii) Her childhood family home was in Morocco,
- (iv) She was married in Morocco,
- (v) Her address on her marriage certificate is given as in Morocco,
- (vi) The parties own a property in Morocco jointly - but do not own property anywhere else in the world jointly.
- (vii) The Wife returned to Morocco when the parties' relationship was strained in the autumn of 2016, and was there for about three months.

The Wife's Case

160. W's position was that:

- (i) The parties married in Morocco and spent time there preparatory to the wedding, but S Court was their home,
- (ii) They did travel extensively but not particularly to Morocco,

- (iii) The Moroccan property was a commercial investment and not a home,
- (iv) They never intended to live in Morocco - they intended to live in London,
- (v) C was born in London for this reason,
- (vi) Over the course of relationship prior to the Wife's Part III application in June 2019
 - i. They spent 167 days in Morocco in total but 97 of those days were when the parties were separated after the Husband was arrested in the autumn of 2016,
 - ii. The great majority of their non-separated days were spent outside of Morocco,
 - iii. Between meeting and her Part III application in June 2019 they spent 803 days in London,
 - iv. The travel data produced broadly supports these figures.

161. My central findings on this issue are as follows:

- (i) I accept the points on the Husband's behalf made in closing and summarised above, they are factually accurate.
- (ii) However in my view they do not adequately express the true focus of this marriage.
- (iii) The parties did travel a good deal - to the [Country B], [Country C], and other countries but London was the hub at the heart of this short marriage and the travels within it,
- (iv) The pattern was that they generally left London to travel and then returned to London from travel,
- (v) Their matrimonial home was the property at S Court,
- (vi) This was a short marriage, but it was in essence a short marriage based in London,
- (vii) The Moroccan property was never intended to be a 'forever home' to be lived in by both parties but was to form part of the Husband's / parties' property portfolio.

162. My reasons for these findings:

- (i) I preferred the Wife's evidence over the Husband's,
- (ii) The Wife's evidence as to travel was backed up by the ISOMETRIC data on her passport,

- (iii) There was no convincing evidence that the parties lived anywhere other than at S Court when staying in London,
- (iv) The Wife accepts that she kept some belongings at a property in S Road, but I accept she did so as a ‘fig leaf’, i.e. to avoid upsetting her brothers and her father by them thinking the parties might be living together before marriage. If she did spend a night apart from the Husband and sent text messages I find this was for the same reason.
- (v) When C was born and when the relationship broke down the Wife was clearly based at S Court.
- (vi) Recorder Castle also found as fact at para 8 of his judgment that the parties lived together at S Court,
- (vii) I do not agree that the Wife’s connections with England are ‘tenuous’ I find:
 - i. She travelled to London deliberately to improve her English and pursue a future here,
 - ii. Her brothers were and remain in London / England,
 - iii. The Husband’s property portfolio was focused on London,
 - iv. C born in London and raised in London and that was intentional and deliberate.

163. As to the Moroccan Villa:

- (i) I prefer the Wife’s evidence to the Husband’s evidence on this point,
- (ii) I accept the point made against her that this was not a ‘Riad’ of the classic type, but I still was satisfied this was an investment property and perhaps an occasional base for the parties when visiting Morocco,
- (iii) There were no photos etc of the parties actually living in the property,
- (iv) Given the Husband’s desire and history of acquiring property assets in different countries, I felt on balance this was just another example, albeit in joint names on this occasion because that was a local requirement, and
- (v) There was no evidence of planning a future life in Morocco - visas, practicalities, plans, schools etc for moving there.

MOROCCAN PROCEEDINGS & HEMAIN INJUNCTION

164. The factual matrix is as follows:

- (i) The parties separated when the Wife left S Court
- (ii) The Wife went into a confidential refuge with C,

- (iii) The Husband did not know where the Wife and C were then living,
- (iv) He took some legal advice in England from Vardags, the Husband says after the divorce proceedings were issued in Morocco,
- (v) He then travelled to Morocco where he commenced divorce proceedings.
- (vi) On 8.2.19 he was ordered by HH J Meston QC to take no further steps in the Moroccan divorce and to use his best endeavours to stay or adjourn the Moroccan divorce.

165. In assessing this issue I have been referred to a number of translated Moroccan documents. I have had no expert evidence and have heard no evidence from the parties' Moroccan lawyers. Piecing together the picture has not been entirely easy.

166. Doing the best I can I find as follows:

Date	Event	Comment
28.7.18	The Wife leaves family home in accordance with a plan to do so and goes into a refuge. The Husband was in [Country C]	
? date	The Husband returns from [Country C] to find she has left S Court and is unaware of her and C's whereabouts.	
1.8.18	The Husband secures from Holman J a location and passport order addressed to the Tipstaff	
? date	Shortly after the hearing before Holman J the Husband travels to Morocco, he told me	I did not find this convincing I accept that in Sept 2016 he had found the Wife in Morocco after he had been arrested. However, I find

	<p>to find the Wife and not to commence divorce proceedings.</p> <p>H says he met or had contact with the Wife's brother or family member who told him the marriage was over and only then did he begin began divorce proceedings</p>	<p>that he strongly suspected, if not believed, that this marital rupture was to be final and there was no prospect of reconciliation.</p> <p>In part at least he intended in my view to consider a Moroccan divorce as being beneficial to him rather than the English divorce he feared the Wife would commence.</p> <p>I was not persuaded that the Wife's brother had said anything meaningful to him. I do not find that happened.</p> <p>Rather the Husband's failure to inform the Wife by email or text of his decision to commence the divorce in Morocco is in my view telling of his wish to keep this as secret as possible.</p>
6.8.18	<p>H issues the divorce petition via his Moroccan lawyer in Morocco</p> <p>This petition carried the number [number].</p>	<p>The speed at which the Husband did this reinforces my view that he already knew that this was a final separation and he was, by the time of divorce petition. acting tactically</p>
6.8.18		<p>On 6.8.18 the Moroccan court listed a hearing on 3.10.18 - [H21]</p> <p>I find that the Husband did not send any message to the Wife, email or text - or to her family at this time. I find that he did not want her to know of divorce.</p>

		<p>Hence</p> <ul style="list-style-type: none"> • His 20.8.18 his witness statement in the Children Act proceedings makes no reference to divorce in Morocco, • On 6.9.18 - the Wife's statement (No 1) in the CA 1989 proceedings makes no reference to her knowing of divorce, • On 21.9.18 - the Husband's witness statement again makes no reference to a Moroccan divorce, • There is no correspondence re divorce in Morocco.
1.10.18	<p>Wife sends her English divorce petition to Liverpool for issue.</p> <p>It contains no reference to any rival Moroccan petition.</p>	
3.10.18	<p>There is a hearing in Morocco in relation to the Husband's Divorce Petition</p> <p>The order is translated at H24.</p> <p>It records as follows: [557/643]</p> <p>“[H's Moroccan</p>	<p>It is important that there is no reference to the Wife or her lawyers being present.</p> <p>Doing the best I can, I find the Wife was neither present nor represented at this hearing.</p> <p>The reference to service on the Wife's father of the 'notification' is a reference to an attempt to serve her father by those acting for the Husband, and that is referred to. But there was no evidence before me from the process server, and it is suggested by the Wife that her father regarded this as service of documents in relation to the sale of the Villa and unpaid bills and not divorce, which I have addressed earlier in this</p>

	<p>lawyer] appeared for Husband and Wife didn't appear".</p> <p>"It was reported that her father, referred to by name and description, refused the notification".</p> <p>The order then re-listed the hearing for "10.10.18 for the presence of the Husband"</p>	<p>judgment.</p> <p>It is agreed that there were connected proceedings in relation to the Moroccan Villa - but the Villa case carries a different case number.</p> <p>Although I had concerns about this issue on balance I was not satisfied that the Wife did know of the Moroccan divorce proceedings at this time.</p>
10.10.18	<p>The Moroccan Court made an Order (at [H27]) and makes clear that the Husband's lawyer was present but neither W nor Husband himself was present</p>	<p>There is no reference or other independent evidence as to the Wife's lawyer being present or 'on the record'. I have addressed the Wife's errors in her own statements and those of her previous solicitors earlier in this judgment.</p>
11.10.18	<p>The FHDRA in the CA 1989 proceedings took place. The Wife asserts and I accept that it was at this hearing that the Husband revealed to her solicitor, perhaps inadvertently, that he had begun divorce proceedings in</p>	

	<p>Morocco. The Wife stated, and I accept, that this was the first occasion she had learned of the Moroccan divorce proceedings.</p>	
22.10.18	<p>At H29 is a further Moroccan order - The Husband's lawyer appeared but neither the Wife nor the Husband appeared, although the order records that the Wife's lawyer had, by the time of or perhaps at this hearing, filed his 'representation'. The order adjourned the case to 12.11.18</p>	<p>This is the first recorded involvement of the Wife's Moroccan lawyer, which to my mind is consistent with the Wife first learning of the divorce at the 11.10.18 hearing.</p>
12.11.18	<p>The order [H30] states that both the Husband and his lawyer and the Wife's lawyers appeared.</p>	<p>The order adjourned the case to 26.11.18 "to allow translation of the foreign documents", a reference to the English divorce proceedings. Where both parties do attend it is clear the Moroccan order reflects this fact, thereby underlining her lack of prior involvement at earlier hearings.</p>
	<p>At [H23] is a document which I find is a formal letter from</p>	<p>It was suggested that the Wife had lied about the involvement of her lawyer and that her lawyer had been involved at the 3.10.18 hearing and that this</p>

	<p>the Wife’s Moroccan lawyer to the Moroccan court.</p> <p>It refers to “Hearing of 3.10.18” and states that the lawyer has been hired by the Wife.</p> <p>It then asks for a ‘delay so I can review the file”</p> <p>Signed [W’s Moroccan lawyer] who it is agreed is the Wife’s Moroccan lawyer.</p>	<p>document proved this.</p> <p>Initially I too considered that this document suggested this possibility and I called for the Arabic original which came in after the evidence had closed.</p> <p>The Arabic original does not suggest anything different to the original translation.</p> <p>Having considered this document in the context of the totality of the evidence in my view is as follows:</p> <ol style="list-style-type: none"> 1. The order of 3.10.18 makes it clear that W’s lawyer was not in attendance on that day. 2. The letter at H23 is undated and, though it refers to the hearing on 3.10.18 I find that it is NOT dated 3.10.18, 3. The logical inference I find is that [W’s Moroccan lawyer’s] letter was undated but was sent AFTER the 3.10.18 Order on a date unknown and simply sought an adjournment and did so by reference to the 3.10.18 hearing. <p>ii. I cannot be sure WHEN</p>
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		<p>H23 was actually sent but I am satisfied it was AFTER the 3.10.18 HEARING and after the 10.10.18 hearing too, and that the Wife was not present or represented at those hearings.</p> <p>iii. I am further satisfied she was <i>not</i> deliberately not attending the hearings in Morocco but rather the Husband preferred the hearings to proceed without her knowledge.</p>
26.11.18	<p>There was a further hearing in the Moroccan divorce at which the Wife's lawyers argued for a stay based on the English divorce and the Husband's lawyer opposed the stay and sought to advance the Moroccan divorce.</p> <p>The court adjourned the case until 7.1.2019 for a further hearing and there were further hearings in the Moroccan proceedings on 7.1.19, 21.1.19 and 30.1.19 at which both</p>	

	parties were represented.	
8.2.19	<p>In London HH J Meston QC heard the First Appointment and made orders on the Wife's application for a Hemain injunction, whereby the Husband was ordered to</p> <p><i>“take no further steps in Moroccan divorce proceedings”</i> and</p> <p><i>“use his best endeavours to have those proceedings stayed including adjourning the hearing listed for 13.2.19 and any subsequent hearing in those proceedings”</i></p> <p>A Penal Notice was attached.</p> <p>The Husband was represented by counsel at that hearing before HH J Meston QC.</p>	
14.2.19	Pursuant to HH J	I was told by the Husband that he did not sign it

	<p>Meston’s order the Husband was sent a letter by W’s solicitors for him to co-sign. The purpose was that the parties could thereby jointly present a requested stay to the Moroccan court as directed by HH Judge Meston</p> <p>The Husband refused to sign it</p>	<p>because it did not ask a for a ‘stay’ but rather a ‘dismissal’. I was not persuaded by this.</p> <p>In any event HH J Meston’s order placed a <i>positive</i> obligation on the Husband to stay the Moroccan proceedings and it is damning that he made no counter proposal of a draft letter with wording seeking a stay in terms that he was willing to sign.</p> <p>I am satisfied the Husband could have stayed the Moroccan proceedings. I attach no weight to the letter from his lawyer that the Husband needed to attend in person to do so. No expert evidence was called on this point.</p> <p>Looked at overall I was satisfied the Husband had no intention of staying the Moroccan proceedings.</p>
20.2.19	<p>The Moroccan Court made an order at a hearing where the Wife’s lawyer argued for a stay. There is no evidence that the Husband’s lawyer supported that application.</p> <p>The order states that the Husband “<i>asks the court to pronounce a divorce judgment for discord</i></p>	<p>I am satisfied that at this hearing the Husband made a positive demand of the Moroccan Court to pronounce a provisional divorce and to begin the final divorce process.</p> <p>As addressed earlier in this judgment I do not accept the Husband’s suggestion that this hearing was part of a way forward that had been agreed with the Wife’s lawyer.</p> <p>I am clear that in pressing ahead so the Husband was in clear breach of HH J Meston’s Heman injunction.</p> <p>I reject the suggestion that the court ordered a divorce</p>

	<p><i>and to order the provisional enforcement judgment”.</i></p> <p>The court appears to have accepted the Husband’s position and made a provisional divorce order.</p>	<p>against the Husband’s wishes, the terms of the order and hearing are inconsistent with that suggestion.</p> <p>There is no evidence that the Husband positively sought a stay of the Moroccan divorce.</p>
20.2.19	<p>[H41] - there is a further court document.</p> <p>In it is the Husband’s lawyer makes clear his <i>“readiness to pay as soon as possible the dues of the divorce ... and if necessary within one week of the date of the verdict ...”</i></p>	<p>This puts the matter beyond any further doubt and can only be seen as a clear breach of the Hemain Injunction.</p> <p>This request by the Husband’s lawyer in my judgment breached both the letter and the spirit of the 8.2.19 Hemain Order.</p>
26.3.19	<p>The Husband’s Moroccan lawyer issued a further request to conclude the divorce [H42]</p> <p>In it he suggested that the Wife’s wish for a delay was “mainly due</p>	<p>This too was a clear breach of the Hemain injunction in my judgment.</p> <p>I was wholly unpersuaded by the suggestion that he was unable to prevent the divorce or that he could only instruct his lawyer to do by being physically present in Morocco.</p>

	the bad faith of the Wife”	
17.4.19	The divorce was duly pronounced and made final - see [H45] The Wife’s attempt to secure a stay was rejected.	There is no evidence the Husband sought to prevent this outcome, indeed the reverse is true, he actively pursued it.

167. I find that:

1. The Husband began the Moroccan divorce proceedings by stealth and in the hope of the stealing a march on any divorce initiated by the Wife in London,
2. He plainly and cynically disobeyed the Heman injunction by failing to seek a stay or adjournment of the Moroccan proceedings,
3. Indeed, the Husband took active steps to expedite the Moroccan divorce in breach of the Heman injunction.
4. As a consequence the London court was deprived a proper and fair ‘forum non conveniens’ hearing.
5. I did not hear argument as to the likely outcome of such a forum dispute in London but,
 - a. given my findings about the central part London played in this short marriage,
 - b. given the great concentration of wealth in England,
 - c. The parties’ personal connections with London, and
 - d. The parties’ lack of significant current associations with Morocco, I find that there was a strong likelihood that this divorce and the associated financial claims would have been adjudicated in London.

The Heman Injunction and H’s Other Actions

168. The Husband’s deliberate and tactical commencement and prosecution of divorce proceedings in Morocco in August 2018 showed that he was operating tactically at this time with a view to putting obstacles in the way of the Wife’s likely English divorce. My findings as to his motive and purpose at this time inform my findings in relation to:

- The subsequent creation of the second charge in favour of the Second Respondent which was created in November of 2019, and
 - The creation of the lease in favour of the Third Respondent and K, in October 2018.
169. The nature and proximity of the timing of these events is relevant in my view as to understanding the Husband's purposes in relation to them.

My findings in relation to the Statutory Criteria

170. Under section 16 of the 1984 Act I must address the matters set out below, but I have already considered these in the preceding sections of this judgment and do not propose to address them again here.

- (i) *The parties' connection with England & Wales.*
- (ii) *The parties' connection with Morocco where the marriage was dissolved.*
- (iii) *The parties' connections with any country outside of England & Wales.*
- (iv) *Any financial benefit received.*

171. I accept that the Wife was ordered to receive in the Moroccan divorce:

- 50% of the Moroccan villa valued at about £352,000 odd - so £176,000 odd (although this was not it seems to me a 'divorce' order as such but an order made in a separate property claim),
- A lump sum of £16,000 odd, and
- Child maintenance of £850 pcm.

I address these in the orders I make at the conclusion of this judgment.

- (v) *The extent to which the Moroccan order has been complied with:*

172. My understanding is as follows:

- (i) The Wife has been received her lump sum of £16,000 odd.
- (ii) For the reasons given earlier in this Judgment I am satisfied that she has not received the ordered maintenance because the Husband manipulated the position to avoid her receiving those sums. The Wife may have closed the joint bank account in Morocco into which she had received payments from the Husband but this neither explained nor justified his subsequent failure to pay these sums into her [UK] Bank account as subsequently ordered.

173. I take this non-compliance into account in my decision together with the Husband's non-compliance with the English orders for maintenance and costs. It is clear to me that the Wife has faced formidable difficulties in enforcing orders made in her favour.

(vi) Any right to apply outside England;

174. There is no evidence of any further process available to the Wife in Morocco I therefore regard this factor of limited relevance.

(vii) The availability of property in this country

175. The bulk of the Husband's wealth is in England.

(viii) The extent to which any order made under Part III is enforceable;

176. Any order made by me is enforceable in this jurisdiction, where the bulk of the Husband's wealth is situated.

(ix) The length of time elapsed.

177. The Wife has acted very promptly and there is no issue of delay.

178. Section 18(2) -

(i) I have had regard to 'all of the circumstances of the case', and particular have had regard to the welfare of C.

(ii) I am required to consider the section 25 (MCA 1973) criteria - which I have done and which I address below.

(iii) Before dealing with the s 25 criteria I remind myself that I must have regard to pension issues under subsection 18(3), the resources of C under 18(5) - neither of which are relevant - and the extent to which there has been compliance with the Moroccan orders under 18(6) which I have addressed earlier in this judgment.

(iv)I address the Section 25 criteria as follows:

Section 25 MCA 1973

(i)First consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen ...

179. C's welfare is my primary focus and, in particular, an outcome where he can thrive in the care of his mother, the Wife, in a secure and stable home.

25(2) (a) – “The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future ...”

180. I have set out the parties' assets and liabilities earlier in this judgment.

181. I make the following additional comments:

(i) I am satisfied that the Husband has not given a full and frank disclosure of his resources.

(ii) I am satisfied that the castle and farm in [Lebanese town] that was shown in the videos and photographs appears to me to be likely to have a greater value than suggested in the SJE report as the report does not appear to correctly reflect the scale and quality of the property there. I am satisfied it is a valuable resource to the Husband. I did not permit any alternative valuation evidence and so am limited in how far I can go. I am further satisfied that he has other resources in Lebanon and I reject his suggestion that some of these belong to his brother, horses, cars etc. I saw no evidence to support that assertion.

(iii) I find he has not made a full disclosure of his bank accounts, but I am unable to form a clear view of the scale and value of undisclosed resources in bank accounts. I consider that, on balance, the £109,000 used to fund the Moroccan Villa purchase came from the Husband's own resources and not monies borrowed from the Second Respondent.

(iv) Given the relatively modest nature of the parties' home in S Court, the fact that his property portfolio carries a good deal of mortgage debt I think it is probably unlikely that the undisclosed wealth is very significant. I am reluctant to try to form a view of the undisclosed wealth although I am aware of reported decisions that encourage me to do so. Doing the best I could do with limited evidence I think it unlikely it is more than a million pounds but likely that it significantly exceeds £100,000. If I am wrong about this the Husband only has himself to blame for his poor disclosure.

Husband's Income

182. The true income from the property portfolio is, I find significantly higher than the sum suggested by the Husband as received by him from the Third Respondent. The Wife has sought to create her version of an accurate table of the likely income which estimated the rental income at about £500,000 pa. However, she has rightly accepted that certain downward assessments needed to be made in the light of the cross-examination of the Husband and the evidence of room rates and occupancy levels.

183. I did not find the Husband's denial of any detailed current knowledge of the true room rates and true income to be convincing. Likewise K's understanding I found to be unconvincing and superficial.
184. Overall I was persuaded that the property rental income was significantly higher than the Husband and K had disclosed and I reached that view because:
- (i) The table created by the Wife's counsel to estimate the true rental had logic to it, albeit was shown to be too ambitious,
 - (ii) The record of deposits into the Husband's bank account was significant although significant mortgage debts and costs would have to be met from those sums, and
 - (iii) The parties' international lifestyle in their short marriage seemed to me to be consistent only with a significant level of available income or other resources in excess of the net income (i.e. after all portfolio mortgage payments) as disclosed by the Husband.
185. I am satisfied that the Husband had the resources to meet his MPS obligations but chose not to meet them.
186. I am also satisfied that H will have a significant income in the future even after the impact of my orders. It will be a significant reduction from the current income as properties are sold or mortgaged to meet my orders but he will still be a position comfortably to meet his own needs.

Earning Capacity – Wife

187. I believe that the Wife will relatively quickly be able to establish her earning capacity. Her English is not perfect but is good and she is plainly well educated and has significant academic qualifications. In her evidence she felt she would need 2 - 3 years to find work in her chosen industry and will need time to recover from these proceedings. I address these issues later in this judgment.

25(2)(b) – “The financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable W future...”

188. This is a 'needs' case and I address these issues below when I consider the orders I make.

25(2) (c) – “The standard of living enjoyed by the family before the breakdown of the marriage”

189. In a needs case this seems to me to be of limited relevance. I note that the parties travelled extensively, and the Husband has property internationally including the

‘castle’ in [Lebanese town]. However I also note that their marital home was relatively modest, with a value of £615,000, and is subject to a mortgage,

25(2) (d) – “The age of each of the parties and the duration of the marriage”

190. I have addressed these matters earlier in my judgment. It is important that this is a short marriage but that it nevertheless has generated significant long-term needs for C and the Wife.

25(2) (e) – “Any physical or mental disability of either of the parties ...”

191. The parties are in good physical health.
192. Given the findings made by Recorder Castle and my own findings and the exceptionally bruising nature of these proceedings I accept that the Wife will need some time to re-establish a degree of balance and stability into her life and this will impact on the speed at which she can develop her earning capacity.

25(2)(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”

193. The Husband has made the financial contributions of the available wealth. The Wife did make some modest contribution to the property portfolio, assisting with rent books etc - but this was to the running of the portfolio and not towards the creation of it and I regard it as irrelevant.
194. The Wife has already made significant past welfare contributions to C and will make large future contributions for many years to come. Given the 91(14) Order she is likely to have the entire responsibility for C’s future welfare.

25(2)(g) – “Conduct ... that would be inequitable to disregard”

195. I do have regard to the findings of Recorder Castle and to my own findings of litigation misconduct in relation to the Husband.
196. These matters do not in my judgment go to the size of the Wife’s award but are relevant as to whether she should be expected to accept Schedule 1-style provision (in whole or in part) or any provision under which the Husband would know of her future address.

25(2)(h) – “The value to each of the parties of any benefit (for example a pension) which that party will lose ...”

197. This is not relevant.

OUTCOMES

(ii) OUTCOME AS BETWEEN WIFE, HUSBAND & SECOND RESPONDENT

The Law

198. It is agreed that the 1984 Act replicates in section 23 the law in relation to Section 37 MCA 1973, and the legal principles are the same. Under s 23(2)(b) - the court can set aside a disposition if it is made with the intention to defeat the Wife's claims for financial relief. Financial relief is widely interpreted and means not just substantive orders but also claims for enforcement- see 23(1).
199. Under section 23(5) - there is a statutory presumption against the Husband if any transaction is made within 3 years of the financial claim. This presumption is engaged in this case.
200. 23(4) A third party can escape set aside if they can establish that:
- (i) Valuable consideration,
 - (ii) Good faith, and
 - (iii) They had no notice of the Husband's intention to defeat the Wife's claims.
201. I have considered the guidance provided in *Kremen v Agrest* [2011] 2 FLR 478 and, in particular I conclude that to succeed on the s 23(4) defence the Second Respondent must satisfy all three of the conditions and not simply one of them.
202. Pursuant to *Kemmis v Kemmis & Others* [1988] 2 FLR 223 - the intention to defeat does not have to be only intention for entering into the transaction, but it must be one of them. Further 'notice' does not need to be 'actual' but can be constructive notice, per *Hunt v Luck* [1901] 1 Ch 45 and the cases considering 'constructive notice'.
203. Here the transaction in question is a charge executed by the Husband in favour of his brother the Second Respondent and entered into on 14.11.19 and over S Court. The sum secured is £227,390. The three-year presumption clearly operates against the Husband, but it was argued that it does not operate against the Second Respondent and that the burden of proof is on the Wife as against the Second Respondent.
204. In *Kremen v Agrest* it was made clear by Mostyn J that the evidential presumption does operate against the Second Respondent:

“Although there is a formal legal burden on W to demonstrate the negative of the matters referred to in para [9](iv) above, I take the view

that for obvious reasons (having to prove a negative; lack of knowledge) there is an evidential burden shifted to LF to establish this exception. If he does not establish all three limbs of the exception then the defence will not arise.”

205. I adopt these observations as well as the observations as to ‘sham’ transactions. However, I have reached my view below based on the evidence and, even were the burden of proof to fall on the Wife, I would have reached the same decision. The key dates of this transaction are these:

- a. In 2015 the Second Respondent says he provided £109,000 odd to his brother in a number of instalments to help buy a new and larger family property after the death of their parents who had lived in [Lebanese city] and the sale of the parents’ small flat in [Lebanese city].
- b. In between April 2015 and September 2015, the Second Respondent says he provided the £109,000 to the Husband, his brother, as an advance on a purchase to be selected by the Husband. However, no purchase was ever effected nor even a property identified.
- c. After the Husband married in 2017 the Second Respondent says he allowed the Husband to use that money to buy the Villa in Morocco, which was bought in the parties’ joint names.
- d. After the marriage broke down the Second Respondent says he provided further money to his brother to meet:
 - i. Costs orders in the proceedings made in the Wife’s favour, and
 - ii. The funding of the Husband’s own legal costs of the proceedings.
- e. 8.11.18 - the Second Respondent gave a witness statement in the FLA 1996 proceedings in support of the Husband.
- f. On 14.11.19 the Husband executed a charge in favour of the Second Respondent over S Court to secure the sums concerned, now said to be £227,390.
- g. As set out earlier in this judgment the timing of this charge coincides with the period during which the Husband facing enforcement proceedings by the Wife in the English proceedings and S Court was an obvious enforcement option and he acted to defeat that claim. I take this into account when assessing the motives of the Husband and the Second Respondent, in relation to this second charge. It is clear the Second Respondent was actively involved in supporting the Husband’s position in the English proceedings by the provision of witness statements in the FLA 1996 proceedings for example.
- h. The timing of the charge on 14.11.19 and other timing is supportive of its cynical intent.
 - i. As stated above on 1.10.19 DDJ Hodson made an order inter alia adjourning the Wife’s enforcement application (dated 30.9.19) to enforce unpaid costs allowance orders to the 14.11.19 - (see para 10 of DDJ Hodson order) “*unless H has before then paid or offered security*”
 - ii. The 14.11.19 hearing was due to be heard before DJ Jenkins but was compromised. I am satisfied the Wife did not know that the Husband had executed or proposed to execute this charge over S Court until after this time.

- iii. In advance of the hearing I am satisfied that the Husband offered to place a charge over S Court, but of course he had just reduced the available equity in that property by virtue of the second charge in favour the Second Respondent.
206. Moreover in the meantime the Husband had secured the removal of the Wife's Matrimonial Homes Act rights over S Court - without the Wife being informed by the Land Registry. He was able to do so because of the Moroccan divorce had ended the marriage. As a consequence the Wife's Occupation Order was not sufficient protection and not effective against the Second Respondent.
207. On 14.5.20 the Husband executed a further charge over C Square to secure further borrowing for these proceedings of £150,000. No application has been made to set aside the C Square charge under section 23 of the 1984 Act.
208. On 6.8.20 HH J Evans-Gordon made a final order in the child arrangements proceedings ordering there be no direct contact and a 91(14) Order.
209. On 10.8.20 (2 days later) the Second Respondent opened correspondence with the Wife's advisers and subsequently commenced possession proceedings against the Wife.
210. I am satisfied that the Husband and the Second Respondent both acted in bad faith to the Wife in entering into this charge over S Court and with the intention of:
- (i) forcing her to move home and
 - (ii) impeding any possible enforcement process by diminishing the equity in one of the more marketable of the Husband's properties.
211. Even without the statutory presumption against the Husband and the evidential burden against the Second Respondent (per *Kremen*) I would be satisfied that this was the case.
212. At the outset of the case the Wife's counsel indicated that there was no evidence that the later monies - i.e. the sums provided to the Husband to meet his litigation obligations, actually emanated from the Second Respondent. Over the course of the hearing I am told that bank statements were provided that did demonstrate this fact.
213. I am satisfied that this charge over S Court was intended to defeat the Wife's claims and has the effect of impeding her enforcement opportunities and should be set aside and I do so for the following reasons:
- (i) I find that there was no original 'loan' of £109,000 and I find this because:
 - a) My view of the Husband as a whole who has taken many attempts to cause difficulties for the Wife's conduct of these proceedings,
 - b) He is sufficiently motivated against the Wife to effect this transaction,
 - c) The lack of any evidence of the £109,000 monies being clearly passed from the Second Respondent to the Husband, in 2015. What I was shown was an excel spreadsheet as evidence of the 2015 transactions, which I found unconvincing, and I was not shown

documents that clearly demonstrated the passing of these monies between the Husband and his brother.

1. The Husband said the sums had gone into his [B] bank account, but no statements were provided, and the account was not disclosed on his Form E,
 2. The Second Respondent stated in evidence, albeit belatedly, that [H Bank] had required him to close the [H Bank] account - but for reasons given earlier by me in this judgment this was unconvincing.
- d) More fundamental was the lack of any convincing reason why the monies were not simply returned in 2015 when the purchase fell through or did not happen.
 - e) Even more fundamental were the inconsistent accounts given by the Second Respondent in the FLA 1996 and in these proceedings which I have already set out, as to when he insisted on the security being established. The Second Respondent could not convincingly explain the discrepancy.
 - f) The Second Respondent stated that he had re-mortgaged one of his own properties before the Husband's purchase of the villa but could not convincingly explain why he did this when he could have demanded the return of the £109,000 instead.
 - g) The Second Respondent agreed that he chose the security to be over S Court because it was the most marketable property (as was C Square) but I was satisfied that this was really intended to prevent the Wife taking advantage of the relatively marketable quality of the property. In addition, the possession proceedings were intended to maximise the litigation pressure on the Wife by requiring her to move property.

- (ii) When asked why he was taking possession proceedings the Second Respondent tried to justify this on basis that living in [area in Central London] was not good for the Wife and C, this was simply unbelievable.

214. Counsel for the Second Respondent suggested that the central plank of the Wife's case was the Husband was effectively recycling his own money and not genuinely borrowing the Second Respondent's money. I agree that in the final analysis this point was not strongly pursued by the Applicant but it seems to me that the need to satisfy all of the requirements of section 23(4) are more pertinent and my central findings are that (i) the Husband the Second Respondent were working together with the primary intention of maximising the difficulties for the Wife to pursue her claims and so there is bad faith in relation to both of them and (ii) the original £109,000 was not the Second Respondent's money and so he has not provided full valuable consideration. They did not act with good faith, and I have no hesitation in finding that the Second Respondent had actual notice of the Husband's intention to defeat the Wife's claims. Even if I am wrong about this I am satisfied the timing of the charge and the possession proceedings fixes the Second Respondent with constructive notice of the Husband's bad faith. I am further satisfied the Second Respondent has not discharged the evidential burden that he carries in relation to this transaction.

215. I ask myself whether I should exercise the discretion to set aside the S Court charge? I have concluded that I should for the following reasons:
- (i) This will reduce any enforcement issues faced by the Wife, not least because S Court is, by common consent, one of the more marketable properties.
 - (ii) The Husband's conduct justifies my doing so, and
 - (iii) The Second Respondent has plenty of other targets in relation to the Husband's property portfolio to satisfy any sums that he is owed. I am not satisfied that the original sum of £109,000 is a genuine sum owed by the Husband to the Respondent. The Wife suggested that this was probably the repayment by the Second Respondent of a sum he owed the Husband and that in many ways seems more realistic. In any event I am not satisfied the Husband owes that £109,000 to his brother.
216. The charge over C Square is not affected by this Order as no application has been made in relation to it.

(ii) OUTCOME AS BETWEEN THE WIFE, THIRD RESPONDENT AND K

The Law

217. I will not repeat here my summary of the law as set out above in relation to the Second Respondent.
218. The transaction that I am concerned with here is the creation of a Guaranteed Rent Contract dated 19.10.18 and created between the Husband and R3 a company wholly owned by K. It is my understanding that under the lease agreement:
- a) The Husband was no longer entitled to the rent from the properties he owned,
 - b) The rent from the properties became payable to R3,
 - c) The Husband was entitled to £4,500 per week 'guaranteed' (now said to be £3,500 per week) and any additional rental income was retained by R3,
 - d) The period of the contract was a fixed term of 5 years.
219. The date of the Guaranteed Rent Contract means the statutory presumption against the Husband is fully engaged and the burden of proof to establish that this was not entered into in order to defeat the Wife's claims shifts to him. The evidential burden also passes to K and the Third Respondent per *Kremen*.
220. I have concluded that this Guaranteed Lease Contract was intended to defeat the Wife's claims and has had that effect, as was intended. There are insufficient non-property resources to meet the Wife's claims and it was, in my assessment, always clear that the Husband's property portfolio would be a target for the Wife's claims and this contract has the effect of complicating the enforcement options against the Husband's property portfolio.

- (i) Any application for an order for sale could be resisted by R3 as being prejudiced by such an order.
- (ii) The contract adds a further layer of complexity to enforcement so as to slow down and impede the enforcement process, and
- (iii) The income from the properties is now diverted into third party bank accounts – R3 – and so would be less easy to assess and enforce against.

221. I have reached my conclusion for the following reasons:

- (i) My view of the Husband as a whole, his desire to put obstacles in the way of the Wife's claims and my difficulty in accepting his evidence on important matters.
- (ii) My view of K, her strong hostility towards the Wife, and my inability to accept her evidence on important matters.
- (iii) The unconvincing justification for the arrangement as detailed elsewhere in this judgment but in summary including:
 - a) The lack of any convincing evidence that the Husband had been classified as a rogue landlord by [London Borough 2] or that he faced difficulties with his rental arrangements such that this contract with K became a business necessity. Any suggestion by the Husband that he should not be criticised because he may not have been asked to provide this until the final hearing I reject as it must, in my judgment, have been clear the Husband that this material would need to be evidenced regardless of whether it was, or was not, sought by the Wife in a Questionnaire or like document.
 - b) The absence of any evidence of advice from relevant accountants to explain and justify the arrangement. The documents produced [Ex426] from the accountants did not address the rogue landlord issue or how this scheme had become a business necessity.
 - c) K told me that she had intended to offer the rental collection service to other landlords and not just her father, but had been unsuccessful in achieving this, but no credible evidence supporting this intention was produced.
 - d) The timing of the arrangement, coming as it did shortly after the marriage had broken down.
 - e) K's unconvincing evidence in relation to the detail of the operation of the rental business which I found inconsistent with her central role in it as director of the Third Respondent, including her limited understanding of an HMO and her explanation of the profit and loss arrangements of the Third Respondent and its lack of a formal office overhead which evidence left me confused.
 - f) I found the suggestion that she could operate the day-to-day rental collection and dispute management arrangements of the business, even with the help of any employee, difficult to accept given her young age and her limited maturity.
 - g) I found the suggestion that the Husband would entrust the income from his hard-earned business to K very difficult to accept, given her

youth, lack of experience and immaturity. This was even more difficult to accept having heard of the Husband's reaction to the drugs incident involving K in December 2017, less than a year before the rental contract agreement was created.

- h) Although there is evidence that K received monies from the business prior to the incorporation of R3 I was not persuaded that this was a genuine salary as she suggested and, given her age at the time, I felt it more likely to be a tax-efficient way for the Husband to pay an allowance / living expenses to K.
222. Given her close relationship with her Father I am satisfied that K has full awareness of the Husband's desire to frustrate the Wife's claims and, indeed, that she too shares that wish.
223. Even if some element of the motivation for the contract was caused by any difficulties the Husband had with [London Borough 2], I am satisfied that the Husband's desire to frustrate the Wife's claims was still a significant motivation for this arrangement.
224. For all of those reasons I was entirely satisfied that the scheme had been intended to defeat the Wife's claims. I am confirmed in that view by the statutory presumption that operates against the Husband and the evidential burden in relation K and the Third Respondent which they have not discharged.
225. I have a discretion whether or not to set aside this contract. I am clear that I should set it aside so as to simplify the enforcement arrangements available to the Wife to secure the sums that I order be paid below.

(III) OUTCOME AS BETWEEN THE WIFE AND THE HUSBAND

226. The central features of this case are in my judgment as follows:
- (i) This was a short marriage,
 - (ii) The available resources are all non-matrimonial and almost entirely created by the Husband before the marriage,
 - (iii) The parties' short marriage was essentially a London marriage and not a Moroccan marriage, but there remains a significant non-English component to the marriage given the parties connections with Morocco and Lebanon. This factor is best expressed in my judgment by seeking to carefully scrutinise and conservatively address the Wife's needs-based claims.
 - (iv) This is a 'needs' case. There is no 'acquest' or issue of 'compensation'.
 - (v) The marriage has created needs for both the Wife and C and those needs are for
 - a) Secure housing and
 - b) Reasonable income needs.

227. In addition, an important and striking feature of the case is that the Husband has misconducted himself to a very troubling extent as detailed earlier in this judgment including:
- (i) In his personal behaviour as found by Recorder Castle.
 - (ii) In his actions intended to deter the Wife from pursuing her claims as found by Recorder Castle
228. In particular the Husband's deliberate breach of the Heman injunction means that the court was deprived of a 'forum non conveniens' hearing as described earlier in this judgment. Had there been such a hearing this would, in my assessment, have probably been a London divorce. I take that into account in my assessment of the criteria under the Part III jurisdiction.
229. I recognise and agree that per *Agbaje* and per Lord Justice Collins in particular the court should not award more than an English court, nor should I fall into the error of seeking to 'top up' the Moroccan award to an 'English' level.
230. A central feature of the Wife's needs is the need to discharge her very large litigation loan before she can address her housing needs and other claims. In relation to the very large size of that loan it seems to me that broadly:
- (i) The Wife's huge litigation loan and costs of these proceedings are to a significant extent referable to the Husband's litigation misconduct in these proceedings,
 - (ii) The Wife does not appear to me to have litigated in an unreasonable manner, and
 - (iii) The Husband to a large extent only has himself to blame for the scale of the Wife's litigation loan.
231. I recognise that the Husband was ordered to pay only one-third of the Wife's costs of the child arrangements proceedings and there was no order in relation to the balance. If I order the Husband to discharge the Wife's litigation loan in full this would have the effect of going behind that costs order. That does present difficulty given the Wife's lack of other resources. However, I must do the best I can in an attempt to arrive at a fair outcome.
232. Had the Husband litigated the financial issues reasonably the costs allowance orders made against the Husband would in my view have been sufficient to take this matter to a conclusion and would be likely to have avoided the need for the Wife to borrow so heavily by way of her litigation loan.

Discussion

233. I recognise that the Wife has been provided an award in Morocco and that it appears to have been a proper Moroccan award. However, I do consider that it is both fair and

necessary to make a further ‘needs-based’ award in favour of the Wife that focuses largely, but not exclusively, on her needs as C’s mother and I do so because:

- (a) This was a London marriage,
- (b) The Husband disobeyed the Heman injunction that prevented the ‘forum’ argument,
- (c) The Moroccan award cannot meet the Wife’s needs.

234. The fair application of the Part III jurisdiction as defined by the case-law is in my assessment as follows:

- (a) To make a needs-based award.
- (b) To assess those needs at a broadly basic level.
- (c) To focus on C and on the Wife’s needs as his mother.
- (d) To have regard to the Wife’s future contributions to C’s welfare.

NEEDS ISSUES

London needs vs Moroccan needs

235. I have concluded that the Wife’s needs should be assessed in London, and I reject the suggestion that the Wife’s needs should be assessed by reference to her being based in Morocco in the future.

236. I recognise that I had reservations about the Wife’s evidence as to her future needs and her future earning capacity. I also recognise that her concerns about the Husband are genuine and that this might incline her to move away from London and possibly from England to limit the risk of there being unwanted contact with the Husband in the future. Nevertheless, I have concluded that the Wife’s needs should be based on a future in London and my reasons are as follows:

- (i) She told me she intended to live in London,
- (ii) I found her a credible and broadly reliable witness and on balance I find that she will live in London, because:
 - a) It was her original plan to live in London,
 - b) It was never her plan to live and work in Morocco, and
 - c) Her brothers live in London, and this is important to her.
- (iii) This is in any event a broadly London marriage and C has only ever lived in London.

Litigation Loan

237. Unless this is re-paid in full I cannot provide for the Wife and C’s housing needs. I would have wished to have been able to adopt a more nuanced approach to reflect the

fact that not all of the Wife's legal costs can be said to have been the responsibility of the Husband. The Husband has significant resources, but his wealth is not 'stellar' and so this is a difficult issue. However, I have concluded that the Husband should discharge the litigation loan in full, and should do so speedily to prevent further interest accruing for reasons including the following:

- (i) Unless I do so I cannot meet the Wife and C's needs,
- (ii) The Husband can afford to do so without compromising his own needs,
- (iii) The Wife has not misconducted herself in the litigation and as best I can assess her approach to the financial remedy proceedings, the C child arrangement proceedings, the Family Law Act proceedings and the Moroccan proceedings have been broadly reasonable.
- (iv) The Husband's significant misconduct and its contribution to the Wife's high legal costs and litigation loan would make it unfair to allow the size of the loan to deflect me from meeting the Wife's needs.
- (v) The Husband's misconduct also inclines me against the submission made on his behalf that I should strive to find an outcome that does not require the litigation loan to be repaid because, inter alia, of the speculative and risky 'gamble' taken by the litigation funders.

Housing Award - Quantum

- 238. The Wife's proposal is that she should have £775,000 to purchase a three- bedroom property in the [area of London] area. She has provided sample property particulars and has suggested she needs a three-bedroom property to accommodate an au pair as well as herself and C. The Wife also contended that she needed to be close to her current GP, current Social Services support and so in or close to the Westminster Borough.
- 239. The Husband contends that the Wife should either rent or have the use of the Husband's property at C House.
- 240. I consider that the Wife's needs are for a secure home, purchased without mortgage, and that it would not meet her needs, or reflect her past and her future contributions, for her to rent.
- 241. I have however formed the view that the Wife's housing claim is too high for the following reasons:
 - (i) The marital standard of living was S Court, albeit a one-bedroom property, but with a value at £615,000.
 - (ii) It is reasonable to expect the Wife to move further out from central London and, although she will need a new GP and may need a new support network from her local authority, it is not unreasonable to expect her to manage this.

- (iii) This was a very short marriage with a significant non-London component to it,
 - (iv) The overall resources available are large but are certainly not very large,
 - (v) I have ordered outright housing provision rather than a form of provision whereby a part of the housing award would revert to the Husband on C reaching independence.
 - (vi) The Husband has his own needs to consider and has obligations to other children that I take into account. I have criticised the Husband in many respects, but I am satisfied that he takes his responsibilities to his children seriously,
 - (vii) The Wife's need for an au pair is time-limited and C will be at school in less than 2 years.
242. I have considered the property particulars advanced by the Husband but:
- (i) I reject the Moroccan properties, and
 - (ii) I reject the rental properties based in [English county].
243. I have had regard to the C House property with a view to assessing the quantum of the Wife's claims (not with a view to the Wife occupying that property). It is a 2-bed flat with no garden in a largish block and is valued at £415,000. In my view the Wife should have accommodation that is somewhat more attractive than the C House property, but it is not an unrealistic example of a future property.
244. I have no property particulars addressing the gap between C House and the Wife's proposed particulars in [area of London].
245. Doing the best I can the Wife's fund should be sufficient to buy a two-bed property, ideally with some outdoor space for C, and she will have to find a property in an area that my award permits. I consider that a housing fund of £575,000 will meet this need. If the Wife seeks a three-bedroom property she can move to a cheaper area. The sum of £575,000 will meet the cost of purchasing and equipping a modest property mortgage free.

Housing Award - Outright or Schedule 1

246. I have not found this particular issue to be easy. I certainly do not think it fair or appropriate that the entirety of the Wife's housing award should revert to the Husband on C becoming an independent adult. But I have considered very carefully whether I might order that a part of the Wife's housing fund - for example 1/3rd - could revert to the Husband on C reaching independence. Had I done so I might have been less conservative in the quantum of the Wife's housing award.
247. However, I have decided against such an approach and direct that the award be outright with no reversionary element inter alia for the following reasons:

- (i) Given the Husband's proven misconduct I am very concerned for C's welfare that his mother should feel secure. Only if she is secure can she provide the best care for C.
 - (ii) I find her anxieties about the Husband's future behaviour to be genuine and well-founded.
 - (iii) A Schedule 1 award would be very difficult to police so as to properly create anonymity and security.
248. Even if it is somehow possible to create a secure Schedule 1-type of award whereby the Wife's address was not traceable by the Husband I would, and do, on balance decide against that approach looking at the case as a whole because, inter alia:
- (i) The Husband does have considerable resources and he does not need that reversionary element,
 - (ii) The Wife's concerns about the Husband are genuine and do need to be addressed, and
 - (iii) The Wife's future contributions justify an outright award.

Capitalised Income Fund

249. I would have preferred for the Wife's income needs to be met by monthly payments from the Husband's income rather than by way of a capitalised award. However, I have concluded that the spousal claims must be met by way of a capitalised award, because of the difficulties the Wife would face enforcing monthly payments, inter alia for the following reasons:
- (i) The Husband's unjustified failure to comply with the maintenance pending suit orders made in these proceedings, and
 - (ii) The Husband's introduction with K of the Third Respondent in an attempt to defeat or impeded possible maintenance claims.
250. The Wife seeks a needs-based capitalised income lump sum award of £225,000 based on:
- (i) £5,000 pcm for the first 2 ½ years (including the cost of an au pair), and
 - (ii) £2,500 pcm - for a further 2 ½ years.
251. I agree that an au pair or some significant child support will be necessary in the short-term. I do not think a live-in au pair is necessary and the Wife will have to make adjustments.
252. I have considered the Wife's income needs 'budget' and I have taken into account the shortness of the marriage, the Wife's limited income before the marriage and the marital standard of living. I have concluded as follows:

- (i) The Wife's income needs, including property-related costs but excluding her immediate child-care costs, can be met for £2,750 - £3,000 per month.
- (ii) The Wife has a clear earning capacity. She is in good health, has a Masters' degree and is well able to create a career subject to her responsibilities towards C. She has the right to work in the United Kingdom. I have no clear evidence as to her entitlement to state benefits. However it will take her time to develop that career and I estimate:
 - a) In the next 12 months she will be able to earn very little as C will still be young, these proceedings have been bruising and anything she does earn would be likely to be absorbed by child-care costs. She will need about £36,000 in Year 1.
 - b) In Year 2 she should be able to earn about £12,000 pa net but she will need child-care costs of about £750 pcm - C will just be beginning at school. In Year 2 she will need about £33,000.
 - c) In Year 3 she should be able to earn about £20,000 pa net but she will need child-care costs of about £500 pcm - C will be young and at school and the Wife will need support with juggling work and care. In Year 3 she will need about £22,000 odd to meet her needs.
 - d) In Year 4 the Wife's earnings should increase to £24,000 pa net, in Year 5 about £30,000 pa net and thereafter she should be able to meet her own needs and any childcare costs from her own income. In Years 4 and 5 she will still have childcare costs and for those two years I estimate her needs for the 2-year period of about £30,000.
- (iii) In total it seems to me that the Wife's capitalised income claims should be assessed at £120,000 - £125,000. This will support the Wife to independence and will permit a reasonable, but fairly basic standard of living. I award £125,000 as a lump sum under this Head.

The Overall Award

253. The lump sums that I order the Husband to pay are as follows:

- (i) A sum sufficient to discharge in full the Wife's litigation loan. I will hear submissions on timing for payment, but it is in his interests to pay this as soon as possible as interest accrues at £6,960 per month, for which interest the Husband will be responsible.
- (ii) A further lump sum of £700,000 to meet the Wife's Housing and capitalised spousal maintenance claims. I stand back and consider that this is a reasonable sum and I observe that the costs incurred in securing this part of the award appear to be out of all proportion to that award, but the Husband must shoulder the responsibility for that.

- (iii) I will hear submissions on the timescale for payment of this sum and other ancillary provisions.
- (iv) There will be a spousal maintenance clean break. I will hear submissions on whether this should take effect immediately or on payment of the £125,000.
- (v) There will be no order in relation to the Schedule 1 claim.

Ancillary Provisions

254. I make the following further orders.
- (i) Upon payment of the £700,000 lump sum in full then the Wife should transfer her interest in the Moroccan Villa to the Husband
 - (ii) However, if the Moroccan Villa sells prior to payment in full of the lump sum the totality of the sale proceeds should be paid to the Wife as part-payment of the lump sum,
255. I will need to decide after hearing submissions on the appropriate costs orders to be made, and in particular, in relation to the Wife's outstanding costs of these proceedings which I understand to be about £143,000 odd.
256. There will need to be appropriate agreements and undertakings to address outstanding costs orders and outstanding maintenance orders both in England and Morocco.
257. That concludes this judgment. I regret the delay in this judgment that has been caused by securing appropriate listing arrangements in order to deliver it orally at an earlier date.

LATER

258. At the conclusion of this hearing I am invited to consider what further orders I should make in relation to costs having handed down judgment today. In particular, I am asked by Mr Perrins that the husband be ordered to pay the wife's outstanding costs in full and by Miss Hussey QC to make no order as to costs.
259. The background I will not deal with in any detail. We had a final hearing over 5 days in which the evidence was completed and then two additional days for written and oral submissions and judgment handed down today. In my judgment I made orders providing for lump sums to the wife for her housing together with a sum for capitalised maintenance and I ordered the husband to discharge the wife's litigation loan. This loan included not just the wife's financial remedy costs but also her Children Act costs where he was ordered to pay 2/3^{rds} of her costs. The litigation loan also covered the Family Law Act costs.
260. I made that order in relation to the litigation loan because I was concerned that without making that order I would not be able to meet the wife's and child's needs and I took into account the scale of the husband's resources, and my assessment that

the wife had not misconducted herself and had behaved reasonably within the litigation, whereas I found that the husband had significantly misbehaved.

261. I am invited by both parties to take a broad and pragmatic approach to costs and avoid the delay of any detailed assessment and the costs that would generate.
262. I am not attracted to the submission that there should be no order as to costs in relation to the outstanding sums. I am fully cognisant of the strong submissions made by Miss Hussey QC that a party must litigate reasonably and openly, and a party cannot operate with a blank cheque even in a 'needs' case such as this. I am well aware of, and have regard to, the authorities Miss Hussey QC refers to in this regard.
263. Under FPR 2010 r.28.3 Part III applications are expressly included as financial remedy proceedings. I have reviewed those provisions and bear in mind the general rule that there should be no order as to costs, but that the court can nevertheless make orders to reflect the conduct of the parties.
264. However, I also consider that I have a power to make a further substantive award under Part III to reflect needs. The wife's outstanding costs were £143,000 and are now, I am told, £178,214. I am satisfied in the broad sense that I will be looking at a costs order and limited by r.28.3.
265. I address the relevant factors in r.28.3(7), such as (a) any failure to comply with the rule and (b) any open offer to settle. The wife was criticised for not making an earlier open proposal on the basis of her needs case prior to trial. That criticism is significantly misplaced when this case cried out for the husband to make an open offer, either on a Schedule 1 basis in part or on an outright basis, to realistically meet a modest housing award and modest income award. The husband failed to make any sensible proposal and worse still made it very difficult for the wife to formulate an open proposal by the way he conducted himself.
266. There is some limited merit in the argument that the wife was unaware of the valuation of the husband's properties until shortly before trial and did not have the detail of the husband's replies, but it was apparent at an early stage that the husband had significant means and resources and she was aware of the length of marriage. It is said she should have made an earlier open proposal and there is no reason not to do so. However, this is not a significant criticism of wife. I consider it to be of limited force in relation to the issue of costs.
267. Under sub-(c) whether it was reasonable for a party to pursue or contest a particular allegation, I prefer to deal with this under sub-(d) and the manner in which a party has pursued or responded to the application or a particular allegation or issue. I remind myself of the all the findings I have made in my judgment both in relation to the application and the husband's conduct generally, including those findings made by Recorder Castle. In particular, his conduct in relation to the s.37 application, the breach of the *Hemain* injunction, his non-payment of the English court orders and to my mind the husband's overall approach has been strikingly unhelpful and intend to make this litigation as difficult as possible for the wife. I am reminded of the very unpleasant actions of the husband, as found by Recorder Castle, to discourage her from pursuing her claims.

268. These have all weighed in my mind in relation to the issue of costs. There is a very clear and marked imbalance in misconduct by the husband.
269. So far as any other aspect of a party's conduct is concerned, under sub-(e), I did not take this into account in the quantum of the award, but in relation to the structure – whether the award should be outright or whether there should be an element on Schedule 1 terms. I adopted an outright award but assessed needs conservatively for the reasons I explained.
270. In relation to sub-(f), the financial effect on the parties of any costs order, without a costs order the wife's housing and income needs will not be met. That might be fair in a case in which a party had litigated unreasonably, but I have found that the wife has litigated reasonably and therefore it will be a very difficult and unfair outcome for her if no order as to costs is made and the impact of this of in reducing her award by some £178,000.
271. I take into account that the husband does not have infinite resources, but he has significant resources. I have in mind the CGT the husband has to pay on disposal of property and this is why he should have made a very early offer to settle the case, rather than placing obstacles in the way, and such an offer would have protected him and encouraged the wife to settle these proceedings. But in my judgment he took a completely different approach and made things more difficult for the wife.
272. I consider that I have the power to order a lump sum to reflect needs, but that this is a case where the husband should be ordered to pay the wife's outstanding costs of these financial remedy proceedings and on an indemnity basis. It seems to me that the misconduct of the husband crosses the threshold into the indemnity standard and that it is the sort of conduct that the court should mark its disapproval of. The misconduct has also made it very difficult for the case to be resolved.
273. I am troubled by the disproportionate overall litigation costs of some £600,000, but over £131,000 of that is interest on the litigation loan and the wife cannot be criticised for that. Also it is difficult for Miss Hussey QC to criticise the wife when the husband's conduct has inevitably driven costs up. In fact, each party's financial remedies costs are similar and the husband's slightly more than the wife's. That is a powerful point.
274. It seems to me that the husband should pay the wife's outstanding costs on an indemnity basis but that there should be no overlap in relation to any existing costs orders.
275. The criticism levelled against the wife can be met by a percentage approach and that is what I am being invited to do. There were some errors in one of the wife's witness statements and in letters prepared by her previous solicitors, which she should take responsibility for. She overstated her housing claim in producing property particulars of 3 bedroom properties in [an area of London] and, although I take Mr Perrins' point that they were all in the bracket, in my judgment the wife over pitched her claims. The issues in relation to the single joint expert evidence as to the value of the Lebanese properties are limited given my conclusions.

276. I consider that the right order is to order the husband to pay 90% of the wife's outstanding costs on an indemnity basis or £150,000, whichever is the higher, in the event there is a detailed assessment which either party could seek. There is to be no overlap with the existing costs order.

DAVID BURLES

8.7.21

DEPUTY DISTRICT JUDGE

CENTRAL FAMILY COURT