

IN THE FAMILY COURT SITTING AT DERBY

CASE No. ZZ21D43865

Before:

DEPUTY DISTRICT JUDGE ARSHAD

BETWEEN:

Mr ND

Applicant

-and-

Mrs LD

Respondent

Hearing date: 3rd March 2022

Mr D, a litigant in person

Ms Bennett, Counsel of 1GC Family Law Chambers (instructed by Ms Katie Stewart of Tees Solicitors) for the Respondent

Deputy District Judge Arshad:

1. This is my judgment following the final hearing of financial remedy proceedings arising out of the breakdown of the marriage of the parties.
2. The Applicant is Mr ND, who was born on 28th December 1969 and is now 52. The Respondent is Mrs LD, who was born on 1st June 1970 and is now 51. I shall refer to them, respectively, as Husband and Wife for the sake of brevity.

Relevant Facts

3. The parties began cohabiting in 1990 and married on 22nd August 1992, at a time when they were both in employment. There are three adult daughters of the marriage: S (29), N (25), and M (21).
4. After starting a family, the Husband took on the role of a “stay at home” father and the Wife the “breadwinner.” When the Husband did work, it was not always in a full-time capacity and in various sectors, including hospitality. The Wife has worked full-time and able to achieve career progression within the same sector.
5. During the marriage, the parties lived in a property which was rented through a Housing Association. The agreed separation date is 21st May 2019.
6. The separation of the parties has been far from amicable, and the Wife has felt strongly that these proceedings have been made complicated directly as a result of the Husband’s behaviour.
7. The Wife petitioned for divorce and Decree Absolute, after being contested, was pronounced on 20th September 2021.
8. The Husband applied for financial remedy on 22nd July 2021 and has represented himself throughout proceedings.

Procedural Background

9. This case was listed for a First Appointment on 15th November 2021 before Deputy District Judge Apthorpe. As well as the usual standard directions, DDJ Apthorpe also directed the following:

- a. Capacity Assessment of the Husband as to whether he had capacity to conduct proceedings within the meaning of section 2 and 3 of the Mental Capacity Act 2005
 - b. Capacity to work assessment undertaken by the Husband's Psychiatrist
 - c. Dispensing with the need for an FDR and timetabling the case to an in person Final Hearing
10. A Notice of Hearing was sent out to the parties on 2nd February 2022 which confirmed the hearing was attended and would be listed before me.
11. Following the Husband's application for a McKenzie Friend, the matter was referred to me on paper. The Husband sought for one of his adult daughters to be appointed as his McKenzie Friend and this was opposed by the Wife.
12. On 18th February 2022, given the opposition to the Husband's application, complex issues surrounding the Husband's mental health, volume and nature of emails from him and the impending Final Hearing, I felt it appropriate to list this case for a Ground Rules Hearing (GRH) and appoint a SPOC (Specific Person of Contact) within Court. The GRH would consider the following:
 - a. Permission for the parties' adult daughter to be appointed as a McKenzie Friend
 - b. How the Final Hearing would take place: CVP/Attended/Hybrid (the Court was now in receipt of the Husband's capacity assessment and the Special Measures recommended within that) and
 - c. Any other participation directions
13. The GRH was listed on 24th February 2022. Following submissions from both parties, the Husband's application to appoint his daughter as a McKenzie Friend was refused with reasons recorded on the face of the order and the following relevant directions were made:
 - a. The Husband being granted permission in general to be supported by a McKenzie Friend at the Final Hearing (not an adult daughter)
 - b. The format of the Final Hearing to be a hybrid hearing. The Wife attending via video link, the Husband attending in person (the opportunity to attend via video being offered to him by the Court and rejected) and a familiarisation visit to be arranged to allay any anxiety surrounding court attendance

- c. The Husband to file written cross-examination questions to the Court – it being made clear that the Court will exercise its discretion as to the necessity, proportionality and relevance of questions before putting them to the Wife
14. Following this hearing, the Court received numerous emails from the Husband which caused considerable concern for his wellbeing and safety. An ambulance was called out immediately and following further emails, the police were required to be called out too. In fairness to the Husband, he did subsequently send an apologetic email and explained his behaviour was due to his poor mental health.
 15. The Court again received numerous emails from the Husband. For example, on 1st March 2022, the Husband sent 12 emails. Some of these were of a worrying nature which again caused concerns for the wellbeing and safety of the Husband.
 16. A familiarisation visit went ahead on 2nd March 2022. The Husband brought a knife to Court which was confiscated. The Husband was advised by Court staff as to the process for retrieval of his knife. Following this incident and together with the content of previous emails, I made an order on the afternoon of 2nd March listing this case to be heard remotely. It was made clear to the Husband that the hearing would now go ahead remotely, and nobody was to attend the court building.
 17. The Final Hearing in this case has therefore proceeded entirely remotely.

Final Hearing Special Measures and Participation Directions

18. To ensure best evidence and reasonable adjustments, the following measures and directions were implemented:
 - Ensuring the parties understood the framework and format of the hearing
 - Giving permission to the Wife to give evidence remotely
 - Directing that the Husband also give evidence remotely
 - Ensuring the Husband did not come into face-to-face contact with the Wife which included giving the Husband permission to seat himself away from his camera during the hearing when the Wife was giving evidence
 - Requesting the Wife turn off her camera when the Husband was addressing the Court or giving evidence

- The Court and Counsel initially referring to the Husband as “Sir” upon his specific request
- Allowing regular breaks during the hearing, with neither party giving evidence for longer than one hour at a time;
- Flagging which topics/areas questions related to and alerting to new topics/areas before asking questions in cross-examination
- The Court putting to the Wife necessary, relevant and proportionate written questions prepared by the Husband
- The Court allowing the Husband to wear a mask covering his eyes during cross-examination (with no objection from the Wife’s Counsel)
- Giving the Husband an opportunity to have a health/support worker to assist him when reading the written Judgment.

19. There was initially some concern about the capacity of the Husband at the start of the Final Hearing. There is a capacity assessment dated 2nd December 2021. I also reminded myself that capacity is fluid, but I was satisfied that the Husband had capacity for and throughout the Final Hearing.

20. I have placed any emotional reactions from the Husband during the hearing in the context of the capacity assessment of his GP dated 2nd December 2021: *“X does at times find it difficult to regulate his emotions. He can quickly become overwhelmed with varying emotions. Additionally, he experiences significant anxiety and ongoing suicidal ideation. Over recent weeks his suicidal ideation have increased. This appears mainly due to the impending court course”* [sic].

Issues and Positions of the Parties

21. The issues the Court is required to decide are as follows:

- a. Whether Spousal Maintenance is appropriate, and if so:
 - i. for what term and level and
 - ii. whether there should there be an order for the Husband to be a beneficiary of the Wife’s Death in Service benefit
- b. The appropriate percentage for a pension share.

22. This is a “small money needs” case. There are limited assets.

23. The main capital assets are the parties' pensions. The Wife's pensions have a combined CETV of £141,299 and the Husband's a CETV of £9,809.
24. The Husband has a car worth £5,000.
25. Both parties have liabilities which exceed their modest savings. The Husband has savings of £718 and liabilities of £3513. The Wife has savings of £516 and liabilities of £15,945, the majority of which is a loan for her legal costs.
26. The Husband seeks 40% of the Wife's net income which would give him £1,440 per month. Together with his Personal Independence Payment (PIP) of £240, the Husband would have a total income of £1,680 per month. He says this is what he requires to meet his needs. He seeks a percentage of the Wife's Death in Service Benefit to ensure he does not undergo undue hardship during the term of his spousal maintenance. He also sought a pension attachment order or 100% of the Wife's pension to meet his income needs in retirement, though adjusted this position to seeking a pension share that was "fair" in closing submissions.
27. The Wife's position is that this is not an appropriate case for spousal maintenance and that H ought to be awarded a 35% share of her combined pension to account for the Husband's own pension, post separation accrual and the fact that the Wife has had to incur further legal costs since making a more favourable offer to him, which he rejected. The Wife seeks a clean break order.
28. The Court does not have an actuarial report. Given the CETV of the combined pension pots, I can see the sense of one not having been sought. It does mean that the pension share order will have been calculated on a rough and ready basis rather than one embedded on any calculations provided by an actuarial expert.

The Law

29. Section 25 of the Matrimonial Causes Act 1973 (MCA 1973) requires the Court to hold a balance of fairness between the parties. 'Fairness' has three elements: needs, compensation and sharing. The first of these is needs.
30. The leading case of *White v White* [2001] 1 AC 596 sets out the starting point and framework for long marriage cases. This was a case in which the children were

grown up and independent. The available assets substantially exceeded the amounts required by the Husband and Wife for their financial needs in terms of a home and income for each of them. The judge at first instance found that each party contributed a great deal of effort to the marriage and the welfare of the family. Within the home it was the Wife who primarily brought up the children, and she also worked hard in all sorts of ways on the farm. Mr White was a hardworking and active farmer.

31. Lord Nicholls noted:

"Sections 23 and 24 of the Matrimonial Causes Act 1973 empower the court, on granting a decree of divorce and in certain other circumstances, to make financial provision orders and property adjustment orders. Financial provision orders, under section 23, include orders that one party to the marriage shall make payments to the other party. The payments may be periodical, either secured or unsecured, or lump sums. Property adjustment orders, under section 24, include orders that one party to the marriage shall transfer property to the other party. Section 24A empowers the court to make ancillary orders for the sale of property.

Section 25, as substituted by section 3 of the Matrimonial and Family Proceedings Act 1984, sets out the familiar list of matters to which the court is to have regard in deciding how to exercise these powers. Section 25(1) provides that it is the duty of the court in deciding whether, and how, to exercise these powers to have regard to all the circumstances of the case. First consideration is to be given to the welfare of any child of the family under the age of 18. Section 25(2) provides that, as regards the exercise of these powers in relation to a party to the marriage, the court shall in particular have regard to [spacing added for clarity]:

"(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion

of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) ... the value to each of the parties to the marriage of any benefit ... which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring."

Section 25A requires the court to consider the appropriateness of a "clean break". Sections 25B-25D, inserted by section 166(1) of the Pensions Act 1995, make provision regarding benefits under pension schemes."

32. This is the framework for deciding financial remedy cases.

33. The aim of the Court was confirmed by Lord Nicholls:

"...the legislation does not state explicitly what is to be the aim of the courts when exercising these wide powers. Implicitly, the objective must be to achieve a fair outcome. The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses: see Thorpe LJ in Dart v Dart [1996]

2 FLR 286, 294. The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children." Earlier at p.599 he had said "Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder."

34. When awarding periodical payments and absent any argument as to compensation, the court should focus on the principle of need alone, without reference to sharing.
35. Section 25 (2) (a) of the MCA 1973, states, as to incomes, the court will have regard to the parties' current incomes and current/future potential earning capacities. When considering earning capacity, the court will consider, amongst other things, the relevant party's age, qualifications, work history/experience, and role during, and after, the marriage (e.g. as carer for the children): *L v L (Financial Remedies: Deferred Clean Break) [2011] EWHC 2207 (Fam)* and *SS v NS (Spousal Maintenance) [2014] EWHC 4183 (Fam)*. It is not usually necessary to secure expert evidence as to earning capacity: *Buehrlen v Buehrlen [2017] EWHC 3643 (Fam)*. In addition, if there is evidence that the relevant party has unreasonably chosen not to find/take up employment and/or not to exploit their earning capacity, the court may make a periodical payments order based on what it is reasonable for them to be earning: *Joy v Joy-Morancho [2015] EWHC 2507 (Fam)*.
36. *The case of Waggot v Waggot [2018] EWCA Civ 727* confirmed that the sharing principle does not apply to future earned income. The wife in this case sought to argue that the husband's earning capacity itself was a matrimonial asset in which she was entitled to share. The Court of Appeal rejected this for, inter alia, the following reasons: (a) any extension of the sharing principle to post-separation earnings would fundamentally undermine the court's ability to effect a clean break; (b) it would apply to every case in which one party had earnings which

were greater than the other's, regardless of need; (c) it would inevitably require the court to assess the extent to which the earning capacity had accrued during the marriage, and so where would the court start and by reference to what factors would the court determine this issue? (d) it would create uncertainty and would be unworkable: what factors would the court apply to determine either the percentage of any award or its duration? and (e) an earning capacity is not property to which the sharing principle can/should apply. Similarly, in *O'Dwyer v O'Dwyer* [2019] EWHC 1838 (Fam), Francis J stated an income stream is not to be shared and instead periodical payments 'must be based on properly analysed arithmetic reflecting need, albeit that the judge is still left with a significant margin of discretion as to how generously the concept of need should be interpreted'.

37. *In the case of SS v NS* [2014] EWHC 4183 (Fam) Mostyn J emphasised that the court must consider "*a transition to independence as soon as it is just and reasonable.*" He stated that, as to the former: 'a spousal maintenance award is properly made where the evidence shows that choices during the marriage have generated hard future needs on the part of the claimant. Here the duration of the marriage and presence of children are pivotal factors.' By contrast, as to the latter: 'where the needs in question are not causally connected to the marriage the award should generally be aimed at alleviating significant hardship' only.
38. Mostyn J confirmed that 'the marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. The standard should be carefully weighed against the desired objective of eventual independence.
39. The court should only make an order for periodical payments by reference to the needs principle, save in a most exceptional case where it can be said that the compensation principle applies.
40. Finally, the court has the power under MCA 1973, s 23(1)(a) to make a periodical payments order that goes up or down at a defined point in the future to reflect anticipated future circumstances. For example, if the order is likely to be in force for many years, it is common practice to include an indexation clause (most commonly linked to the RPI or the CPI) to obviate the need for future variation applications. This is less appropriate where the payer cannot rely on steady upward growth in income. Alternatively, if the payee is expected to return to employment and/or increase their earnings, the court could include a 'step-down'

in the periodical payments order to reflect this. *MF v SF (Financial Remedy: Litigation Conduct)* [2015] EWHC 1273 (Fam); *D v D (Financial Remedies: Pre-Marital Agreement and Unequal Shares)* [2020] EWHC 857 (Fam). This has, however, been rejected in some cases – see for example *Murphy v Murphy* [2014] EWHC 2263 (Fam). Further, cf. *Aburn v Aburn* [2016] EWCA Civ 72 where the court considered an automatic ‘step-up’ in the periodical payments order.

41. The court in *W v H* expressed support for the orthodox view, encouraged by Thorpe LJ in *Martin-Dye v Martin-Dye* [2006] 2 FLR 901, that pensions should be dealt with separately and discretely from other capital assets and with a view to their post-retirement income producing qualities, citing the PAG view that a court should ‘try, if possible, to deal with each asset class in isolation and avoid offsetting ... a discrete solution which equalises pensions by pension sharing orders and which equalises non-pension assets by lump sum or property adjustment orders’ and to express the view that ‘mixing categories of assets runs the risk of unfairness in that valuation issues become very difficult and, absent agreement, it may be unfair anyway to burden one party with non-realizable assets while the other party has access to realizable assets’.

The Evidence

42. In making my decisions, I have considered the law, the contents of both bundles, (main and supplementary) the Position Statements of both parties and their oral evidence to the Court. Both parties were sworn in at the outset of the hearing and therefore I was able to treat everything they said to me as evidence.
43. I heard evidence from the Husband first. The Husband views himself to be a principled man who was keen to ensure the Court could see he was telling the truth. He was able to put his case articulately, having prepared both opening and closing submissions. The Husband accepted that he had been able to make some savings from his benefit income, but this was before the change in the universal credit. The Husband accepted that he had worked at a time when he suffered from poor mental health, but said he was unable to work now “*I didn’t know what was wrong with me [at the time] and that’s a fair way to put it.*” He agreed that he may

have an earning potential in the future but that nobody had a crystal ball and there was no guarantee. When being cross-examined, I was left with the impression that he answered questions truthfully and whilst he offered much more information than was necessary, he was doing his best to assist the Court. Though it has been raised within the papers, the Husband did not pursue conduct and made a reasonable concession agreeing it was not relevant to my decision making. Throughout his evidence, the Husband felt very strongly about his position. I found the Husband was not always able to fully appreciate the impact his actions had on others. For example, he was unable to appreciate the concern, alarm or distress that may be caused by him sending emails threatening his own safety and then bringing a knife to Court. I do not find the Husband has deliberately engaged in such course of action. There is no malicious intent on his part, and this was clear from his evidence. He has reacted inappropriately on more than one occasion to situations he happens to find himself in.

44. I then heard from the Wife. The Husband had sent in 63 pages worth of cross-examination questions. Bearing in mind the issues, the Court reminded the Husband only those questions that were relevant, necessary and proportionate would be asked. He agreed to this. My impression of the Wife was that she was also doing her best to assist the Court. The Wife felt the Husband had a current earning capacity. This relates back to the fact that the Husband had worked during, albeit on and off, the marriage. The Wife was able to give the Husband appropriate credit for being a “stay at home” father. Numerous questions were asked probing her current and future income and expenses. She was able to answer each question with clarity, consistency and certainty. Her cross-examination was lengthy due to the number of questions formulated by the Husband, and she remained consistent throughout. The Wife equally felt very strongly about her position, and this did not waver at any point in her evidence.

Analysis and Discussion

45. I have at the foremost of my mind the relevant factors under Section 25 of the Matrimonial Causes Act 1973 when deciding the issues in this case.

46. This is a long relationship of just under 30 years; the starting point is equality (White v White). In their differing roles, the Husband and the Wife have both made equally important contributions to this marriage.
47. I remind myself that contributions are not solely financial. The Husband contributed within the home, in the upbringing of the parties' three daughters and at times financially.
48. The Wife contributed by being the "breadwinner" and also within the home and in the upbringing of their daughters.
49. The parties' daughters are all University educated and contribute to society positively. This is to the credit of both the Husband and the Wife.
50. The Husband's health is a relevant consideration in this case. The Husband has diagnoses of emotionally unstable personality disorder, depression, anxiety and suicidal ideation. He also has thyroid difficulties and is gluten intolerant. Whilst the diagnoses for some of these issues are more recent, the Husband accepts he had such difficulties at the time of being employed.
51. Given the limited assets in this case, the needs of the parties are highly relevant. The parties' financial needs are to be assessed having regard to a wide range of factors including age, earning capacity, standard of living, and any disability. Need is not an insulated metric, but one that is informed by other aspects of the Section 25 exercise.
52. Both parties housing needs are currently met. The Husband is living in Local Authority housing and the Wife is renting a property through the Housing Association. I do not accept the argument advanced by the Husband that the Wife can save costs on her housing. She requires a bedroom for a home office to enable her to work from home and even if she did downsize, there is no evidence before me that she could reduce the cost of renting if she moved elsewhere. I therefore find that both parties are appropriately housed.
53. The Husband is on state benefits. His income is **£1,248 per month** (which includes the PIP). The Husband invites the Court to discount the PIP element of his state benefits. In assessing the overall income available to meet the parties needs, it is not appropriate to ignore the PIP element of the Husband's income. This is money available to the Husband to meet his extra costs of daily living (everyday

activities) and any mobility (getting around). It would be artificial to ignore such income but is reflected when assessing what his needs are.

54. In terms of the Husband's earning capacity, I reject the wife's argument that the Husband has a current earning capacity. I find the Husband is not able to work. This is supported by the evidence I have seen. I preferred the Husband's evidence that he is not able to earn an income through photography and that any skill he had in this area is now outdated. However, the Husband has held down other jobs including driving a taxi and there is no evidence to suggest he will never have an earning capacity. I heard evidence from him that he worked during the time he had difficulties with his health. He has another 15 years until he reaches state pensionable age. Whilst I find that the Husband does not have a current earning capacity, I have not ruled out a potential earning capacity in the future.
55. The Wife is employed as a Programme Manager. Her income is £3,600 per month. I heard evidence that the Wife makes jewellery. It was suggested that she may be able to earn additional income from this. Having heard the Wife's evidence, I accept that she has bought various items to further a hobby and make gifts for family and friends I do not find selling handmade jewellery will bring in income for the Wife.
56. In his Form E, which the Husband completed without the benefit of any legal representation, the Husband put down his monthly expenses at £1,149.71. I accept his evidence that he only included certain outgoings and did not include essentials such as clothing and eyecare. I do not however accept that his current essential expenses and therefore needs are £3,555.46. This is wholly excessive. His reasonable needs, bearing in mind the excluded costs such as clothing and eyecare are likely to be around £1,250. These are very modest, but I accepted the Husband's evidence that due to his mental health, his social activities are severely restricted.
57. The Wife's expenses are £3,448. This does not include the legal costs she will need to pay. Including legal costs her expenses are £4,403. If I accepted the Husband's position that the Wife has inflated her expenses, her reasonable needs are around £3,500 at the very minimum.
58. It is a reality for many separating couples that they are required to adjust from two household incomes to one. On the evidence I heard, the Wife continued to

support the Husband (albeit reducing the level of support) until September 2021. This was not significant financial support and included things like paying his mobile phone bill. I accept her evidence that she continued to do this so as not to upset him. The Husband has been free of financial assistance from the Wife since September 2021. The support the wife has provided can be described as a step-down approach. The Husband has not made a maintenance pending suit application. Whilst I accept his evidence that he is living on a limited budget, in his own words he said he was “living on the bottom of what [he] needs”, I also accept the Wife’s evidence that she also is on a budget that just about meets her needs.

59. On the issue of spousal maintenance, I have reminded myself of the relevant case law. The Husband is not asking for a stepped approach or a term-limited order. In deciding spousal maintenance, I have considered whether there is an identifiable shortfall. I accept on the evidence that whilst the husband has satisfied the Court that there are months in which his expenses have exceeded his income, he has been unable to prove that his essential needs, as assessed by the Court, cannot be met from his current income.

60. I then look at the wider picture and potential impact of any decisions I make.

61. The Husband is on state benefits. He seeks an order that 40% of the Wife’s net income is paid to him. He would receive spousal maintenance in the sum of £1,440 and together with his PIP which is not means tested, his total income would be £1,680. He accepts he would lose his benefits, but it would mean he would receive an income of £433 per month more than what he currently receives. The Wife would have £2,160 per month which is well below her court assessed essential needs.

62. On the Husband’s proposal, he would lose his means tested benefit income and the Wife would be in deficit each month as to her expenses. That is not a fair outcome for the parties.

63. I have also considered whether it is appropriate to make a modest spousal maintenance order in favour of the Husband given the Wife has some flexibility in her disposable income based on my assessment of her essential needs. I do not make an order for modest spousal maintenance for two reasons: (1) neither party has asked me to consider this; and more importantly (2) I have not seen or heard any evidence as to the impact on the Husband’s benefit income of a modest spousal

maintenance order. There is a real risk that in gaining income from a modest spousal maintenance order, the Husband would lose the means tested part of his benefit income.

64. Bering in mind that the Court has a duty to consider financial independence, that the parties have been mainly financially independent since July 2020 (and completely since September 2021 when looking at the mobile phone payment), that the Husband has been able to make very modest savings even on his current income and the Wife says she is unable to meet her monthly expenses and has a loan for her legal expenses, that whilst the Husband currently does not have an earning capacity and that I have not ruled out that the Husband may have a potential earning capacity in the future, a spousal maintenance order is not appropriate.
65. As I am not making an order for spousal maintenance, I am not then required to consider whether I ought to make a Death in Service benefit order in respect of Spousal Maintenance.
66. This is a long marriage in which the Husband prioritised the Wife's career and her earning potential over his own. Whilst that does not entitle him to a share of her future earnings, this being a needs case, it does mean that he has not had the same opportunity as the Wife to build up a pension pot. The roles the parties took on during the marriage have generated a need for the Husband to have a share in the Wife's pension pot.
67. The starting point is equality.
68. During his evidence and in closing submissions, the Husband invited the Court to make an order for a "fair" division of the pension. That is what I intend to do.
69. I have considered carefully the submissions advanced on behalf of the Wife that there ought to be some discount because (1) the Husband has his own pension, (2) there is some post- separation accrual and (3) the Wife made an offer which the Husband ought to have accepted which has led her to incur further legal costs.
70. The Wife says the appropriate figure is 35%. In making a pension share, I am required to look at all relevant factors under section 25 of the MCA 1973.
71. Whilst I accept the points the Wife has made to support a discount, I also have to balance this in the wider context of the Wife having an earning capacity and continuing to pay into a private pension pot whilst the Husband may never have

such opportunity. The Husband's questionable future earning capacity and therefore opportunity to pay into a pension off-sets the discounts sought by the Wife. I also have firmly in mind that the Husband was the stay-at-home parent in this relationship. That is the stage that he forewent an opportunity to progress his career and pay into a pension. I did not accept the Wife's evidence that the Husband chose not to pay into a private pension. I preferred the Husband's evidence that he lost that opportunity when he took on the role that he did, a decision that both parties made. I have accounted for the legal expenses the Wife has incurred by assessing her expenses and income needs. To do so when making a pension share would be double counting.

72. In those circumstances, the appropriate pension share is a 50% share (at the agreed date of separation) of the Wife's combined pensions with Standard Life.
73. It is accepted that the figures above refer only to the pensions the parties have within non-state pension pots. The SERPS state pension scheme was in operation until 2002. The Husband opted out of the scheme in 1991 and transferred those funds (i.e. his "additional" state pension as it was then known) into a private pension pot.
74. Both parties will therefore have some level of state pension entitlement not included within the CETV values which was raised at the final hearing

Summary of Orders

75. The orders I have made are as follows:
 - a. Pension Share in favour of the Husband which is 50% of the Wife's combined CETV with Standard Life at the agreed date of separation.
 - b. Clean break; and
 - c. No order for costs