

IN THE CENTRAL FAMILY COURT

IN THE MATRIMONIAL CAUSES ACT 1973

MS v FS (No. 3)

**BETWEEN:**

**MS ('Husband')**

**Applicant**

**-and-**

**FS ('Wife')**

**Respondent**

Mr Mendes Da Costa (instructed direct access) on behalf of the applicant husband

Ms Rowe (instructed by Lauros Law) on behalf of the respondent

---

**JUDGMENT**

---

1. This judgment concerns the final hearing of an application for Financial Remedy. The Form A is dated 12<sup>th</sup> February 2011. Husband has been deemed the applicant albeit the Form A was filed by wife, this and the extraordinary delay is explained below. For ease, this judgment refers to the parties as husband and wife although they are long since divorced. I do not intend any discourtesy.
2. This matter was listed for a 3-day final hearing pursuant to the order of Recorder Cowton KC dated 14<sup>th</sup> March 2023. At that hearing both parties appeared as litigants in person. The final hearing could not conclude within the 3 days allocated; it went part-heard to a further day. I had hoped to deliver judgment on the final day of this case, but I took the view that the parties' required a written judgment not least because wife, for reasons set out below, did not attend Court on the final day. There is also the prospect of further litigation of the issues that have been considered in these proceedings. Wife has just issued an application pursuant to Schedule 1 of the Children Act 1989 against husband and it will be important for any judge hearing that application to be aware of

what has occurred in these proceedings. There is also the possibility that this case may return on an application for enforcement.

3. At the main hearing:

- 1) The applicant husband was represented by Mr Mendes Da Costa of Counsel, who was instructed on a direct access basis. Mr Mendes Da Costa was instructed sometime in May 2023;
- 2) The respondent wife was represented by Ms Rowe of Counsel, instructed by Lauros Law solicitors. Wife only instructed her solicitors the week before the trial, and Ms Rowe was only instructed on the Thursday the week before the trial was due to start on the Tuesday. Mr Mendes Da Costa was not aware that the wife was represented until he was at Court for the start of the hearing. The husband either had not received, or not realised he had received, a notice of acting. Ms Rowe prepared written submissions on behalf of wife, but just before the case returned to Court in October 2023 the Court received notice that wife's legal team had come off the record and wife would therefore appear as a litigant in person.

4. In a case with a lengthy, and complicated, history the late instruction of lawyers inevitably impacts upon their ability to prepare and present the case as they might ordinarily wish. This has, again inevitably, had an impact on the smooth running of the final hearing, but it is not for want of dedication on the part of either Counsel.

### **Bundles**

5. There has been a lot of confusion between the parties in relation to the bundles provided to the Court and what evidence there is, and should be, before the Court. Recorder Cowton KC's order specified the content of the bundles, and they were directed to be a maximum of 500 pages. Acting as a litigant-in-person husband had served a bundle index on the wife, wife then wanted considerable further documentation added to it. Husband added some but not all the documentation that wife wanted, and then filed that bundle with the Court, and served it on wife. That bundle is 1130 pages. When wife instructed her legal team, she gave them a bundle she had prepared using her amended index, as opposed to the one the husband had prepared, so on the first day it became apparent the legal teams had prepared the case using two totally different bundles. Due to the issues with the bundles, and uncertainty as to whether everyone had access to the

same documents, the case was stood out at around midday on the first day to allow liaison between the advocates. The hope had been that the advocates would, in the remainder of the time available on the first day, be able identify and prune the evidence to a bundle that was manageable. The advocates were invited to co-operate with producing a Schedule of Issues, and to produce a further ES2 (the parties as litigants-in-person had produced an ES2 but it was not done in the same way that representatives would do so).

6. When the hearing resumed at 10am on day 2, the Court was faced with bundles totalling 1676 pages, made up of:
  - 1) The core bundle of 1130 pages;
  - 2) H's supplementary bundle of 240 pages; and
  - 3) W's revised supplementary bundle of 306 pages.
  
7. This is not how the Financial Remedy Court ordinarily operates. In a different case, the matter would probably have been further stood back, or adjourned completely, for the legal representatives to prepare a bundle compliant with the earlier order. Indeed, on the second day, there was an application on behalf of wife to adjourn. However, I declined to adjourn the case given that this is a case where there is only limited resources and significant need; it just would not have been proportionate. Moreover, wife's fear about whether all the documents she served were within the bundles, were in part caused by her own actions of instructing a legal team only a few working days before trial. When wife gave evidence, during cross-examination, she said that she had sent various documents to husband which she said verified what she was saying. The case was paused and upon further investigation it was clear that wife had sent emails asking for various bank statements to be filed. Those statements are now in wife's supplementary bundle.
  
8. Both barristers were concerned at different points that they did not have documents relied on by the other side. There were concerns raised as to deliberate non-disclosure from the other party, as opposed to the situation simply reflecting the confusion created by the haphazard preparation of the case. In any event as the case could not be resolved within the three-day time estimate there was time afforded to wife's team to check if there was any crucial document that had been missed. I made it clear to the representatives that I would not be able to read every single word of the multiple

bundles. Both parties were, however, able to refer me to the key documents that they wished to ensure that I had read. In any event, in the course of hearing the case and preparing judgment I have in fact read much of the material, and have had the opportunity to consider the key documentation in detail.

### **Legal argument**

9. On the first day of the hearing, Ms Rowe's position statement raised a legal argument that had not been raised previously and which husband and his representative had no notice was going to be put. In short, wife says that because husband has now remarried, and that the only Form A was her own rather than husband's that the Court has no jurisdiction to deal with the application, pursuant to section 28 (3) of the Matrimonial Causes Act 1973. Ms Rowe invited me to dismiss the case and suggested if I wanted to use the Court time available, to treat the listing as an FDR in respect of a future Trusts of Land and Appointment of Trustees Act 1996 claim made by husband. I refused that application and made it clear that although an argument as to jurisdiction was being advanced – which would usually lead to the argument being determined before the case was heard – the Court was not prepared to have Mr Mendes Da Costa bounced into legal argument that he was not forewarned about, and therefore was not in a position to respond to. As a matter of natural justice, it would be unfair of the Court to expect him to respond without time to read the authorities and do his own research. Wife's application for the case to be dismissed is therefore considered as part of this final judgment.

### **These proceedings**

10. The proceedings have a long and tortuous history. This background is set out fully in the judgments of Recorder Allen QC (now of course KC), who dealt with husband's application to set aside the previous consent order and Decree Absolute. Those judgments were anonymised and reported as:

- 1) MS v FS [2020] EWFC B9 (21 February 2020)

<https://www.bailii.org/ew/cases/EWFC/OJ/2020/B9.html>

- 2) MS v FS (No. 2: Costs and Ancillary Issues) [2020] EWFC B8 (21 February 2020)

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWFC/OJ/2020/B8.html>

11. Recorder Allen QC made the following order on the 5<sup>th</sup> February 2020.

- 1) The Judge declared the Decree Absolute voidable, but dismissed the application to set it aside;
- 2) The Judge did set aside the financial consent order made by DJ Middleton-Roy on the 25<sup>th</sup> February 2011;
- 3) He listed the wife's Form A to be dealt with; and
- 4) Ordered wife to pay 80% of the husband's costs on a detailed assessment on the indemnity basis if not agreed.

### **The hearing**

12. The Court heard from both parties, and wife's mother, on the 5<sup>th</sup> and 6<sup>th</sup> July 2023. The case was then adjourned part-heard to 11<sup>th</sup> October 2023 with directions for some further evidence including from Barclays Bank, a bill from the water supplier, husband's pension provider, and written submissions from both parties. On the 3<sup>rd</sup> October 2023 (the week before the case was due to return to Court) wife filed a C2 application asking for the hearing to be vacated, and husband's case dismissed on the basis of the legal argument she had advanced. That application reached me the day before the hearing, and on my request, the Court staff emailed wife to notify her that her application would be dealt with as part of the final hearing, and that she should attend Court.
13. On the 11<sup>th</sup> October 2023 wife did not attend. There is no question that she was aware of the hearing. My clerk telephoned her on two numbers provided by husband; one was not answered, and the other sounded like it was no longer in service. My clerk also emailed wife to tell her the hearing would be going ahead with no response. We waited for over half an hour to start in case she was late because of travel difficulties
14. After the hearing had started, the Court received emails from wife saying that she was in hospital with chest pains and therefore she could not attend Court. She said that she had not been able to communicate earlier as she had not been able to access her telephone which was with the medical staff. She was asked for evidence to be provided and she sent what looked like the top of an official record saying, '*Ambulatory Care Unit, Area B, Outpatients Department*'. There was nothing written on it from staff to confirm that wife was in the Department, or that she required immediate treatment. Wife was

informed that the Court did not accept this as evidence that required the case to be stopped, and that wife could attend via the telephone, or provide evidence from a medic that she was unable to attend. Wife then sent a photo of an arm with gauze on it saying it was her arm, and it was evidence she was in hospital. It certainly did appear to be an arm of someone who had received an injection, or had blood taken, but there was nothing to show that it was wife, or that it had to happen right then. Thereafter, wife sent photos of herself in a hospital gown, lying on a hospital bed, they were dated 11<sup>th</sup> October, so at that point it did look like wife was indeed in hospital. Wife consented to those photographs being disclosed, but instead I have described them to husband and his representative who have agreed it is not necessary for them to view them. The photographs and emails were treated as an application to adjourn, but I declined to adjourn because they were not evidence to verify wife had to be having treatment rather than attending Court.

15. At 3:34pm, after husband and his representative were released, wife sent a further email to Court with a document from the hospital saying wife had presented at the emergency department this morning at 9:49am. She had a 12-hour history of chest pain. The ECG, CXR and bloods were reassuringly normal. She appears to have been discharged at 13:47 with pain relief and a plan to speak to her GP about stress. I accept this as evidence that wife was in hospital at the time of the hearing, however it is not evidence from a medical professional that she had to be there rather than Court today. Therefore, the decision to proceed in her absence stands.

16. It is a shame that wife did not attend at Court. She deprived herself of assisting the Court in quantifying the financial loss that flowed from the loss of her job following husband making a complaint to her regulatory body about her conduct. The Court has had to draw conclusions about that financial loss without her clarification, which is the impact of choosing to absent yourself from a final hearing.

### **Summary background**

17. The parties married on 23.09.2002. It was a marriage arranged by their families; they had only met chaperoned by family members previously. Wife says the parties separated on 20.08.2009. Husband says December 2010, but he then continued to live in the family home until July 2011 when he came home to find the locks changed and his possessions outside of the house. The decree absolute is dated 12.04.2011 (but

husband was not aware of it at the time). The relevance of the date of separation in this case is because of the purchase of the rental property – which wife says occurred after separation, and husband says was during the marriage. Recorder Allen QC said that he preferred the husband’s evidence where it was in conflict to the wife’s evidence, although he did not specifically deal with the date of separation.

18. The children of the family are:

- 1) Q, who is now 19 years old, Q attends a university studying for a 4-year degree; and
- 2) T, who is now 13 years old. T is at school and lives with his mother.

Neither child of the family is having any contact with their father now.

19. The applicant husband is 53 years old. He works as a driver, and a chauffeur (the second generates higher rates of pay because of the class of car). He remarried by way of a religious marriage in Pakistan on 11<sup>th</sup> January 2018. His wife is called N, and she is a full-time mother. She has the benefit of a spousal visa based on their marriage. Husband and N have three small children together – who are 4 ½ years old, 3 years old and 2 years old. They all live in a rented property in L. Husband suffers from depression, anxiety, type 2 diabetes, high cholesterol, and lower back pain.

20. The respondent wife is 43 years old. She was previously employed and is a qualified as an accountant. It has been said at times by Ms Rowe that wife can no longer work as an accountant, but that does not fit with the fact that she has just been employed to cover sick leave, and indeed wife accepted that she is looking for alternative work. Wife remarried in 2017 to MH, and they have a child, Z, who is 5 years. MH is a supervising manager at B, he is said to earn around £38,000 p.a. There is disagreement between the parties about where wife has lived since the parties separated. Husband’s case is that wife has lived in her mother’s home which was extended to a five-bedroom property for her and the children to do so. Her case is that she and the children have always lived in the family home.

21. There are two relevant properties in this case:

- 1) the ‘family home’ purchased in 2006; and
- 2) the ‘rental property’ purchased in 2009.

## **Schedule of Issues**

22. The Court must make decisions about the computation and distribution. In addition, using the advocates list as a guide, in my judgment, the Court needs to determine:

- 1) Wife's legal argument that the Court does not have the power to make an order pursuant to s.28(3) of the Matrimonial Causes Act 1973.
- 2) Wife's case that she owes her mother money for the purchase of the two properties which goes to computation;
- 3) Specifically, the Court has been asked to determine wife's argument that the rental property is non-matrimonial property, and that her contributions to the properties and the children post-separation should be taken into account;
- 4) Wife's conduct argument based on:
  - i. Husband disclosing the judgment in previous proceedings to ACCA so that wife lost her job as result;
  - ii. Husband disclosing the judgment in the previous proceedings to the Police;
- 5) Husband's conduct arguments based on wife fraudulently filing the documents pertaining to the divorce and the original consent order, and further fraud by changing her bank statement in this part of the proceedings;
- 6) The question of how to treat wife's evidence;
- 7) The parties' earning capacity;
- 8) The parties' needs;
- 9) Husband's costs schedule from the proceedings in 2019-2020; and
- 10) Costs from this hearing;

## **The parties' positions**

23. The parties' positions are completely polarised. I pressed the advocates during the trial to give me precise figures of their proposed outcome. Their positions are now:

- 1) The applicant husband seeks an order that:
  - i. as a result of the Form A being for a property adjustment order in respect of the family home only, there should be a declaration in respect of husband's share of the family home, which can then be subject to a sale order and a determination of the parties' shares;
  - ii. husband seeks 50% of the equity in the family home which he calculates at £160,354;



- iii. In addition, he seeks an order for £42,937 for the previous costs award (he says the total figure is £53,671 and 80% was awarded on an indemnity basis). He has accepted that figure would be £39,337 once the costs order of £3,600 which husband owes to wife is deducted;
- iv. He seeks for wife to pay all of his costs incurred since the proceedings before Recorder Allen QC, which are £26,700 according to his Form H.
- v. He asks for an order that the sums from wife in respect of costs shall be taken from her share of the sale proceeds of the family home before the remainder is released to her;
- vi. He seeks to persuade the Court against a lump sum order backed up by a sale order, because of the likelihood of the wife failing to comply but says that if it were allowed that, it should be clear that husband has a share in the family home and that interest should not be discharged unless the lump sum is paid;
- vii. He asks for a clear indication that any future Court looking at enforcement should not allow lengthy extensions to my order, given wife's conduct in this case;

2) The respondent wife says:

- i. Her primary position is that the Court should dismiss the husband's application as it is debarred by his remarriage;
- ii. In the event that is not successful, she says that husband's claim should be limited to £16,000;
- iii. In respect of the costs order, she agrees the calculation would be £42,937 but she says that there is no evidence that husband paid that amount, and therefore says he should not be entitled to recoup it now;

24. Thus, the dispute between the parties is between £160,354 sought by husband, plus £39,377 of costs from previous proceedings and a further £26,700 of costs from these proceedings, as against £0 up to a maximum of £16,000 to husband proposed by wife.

25. This Court often sees greater differences measured in pounds between the parties but the difference between these positions will have a significant impact on the parties' lives. For these parties, this case is as serious as they come. It could not have been more

bitterly fought (and that word is used deliberately), over five years, and multiple Court hearings.

### **Wife's agreement**

26. The wife had re-mortgaged the rental property in April 2023. At the time of the trial, she had £138,624 in her bank account from the re-mortgage. At my request, wife agreed on the 6<sup>th</sup> July 2023 that she would transfer that money to her then solicitors who agreed to hold the funds until further order of the Court. On the 15<sup>th</sup> August 2023, wife's then solicitors informed husband that wife had not transferred them the funds. I only became aware that wife is had not transferred the money, as she said she would when looking at the papers shortly before the hearing on the 11<sup>th</sup> October 2023.

### **Wife's legal argument**

27. Wife's first position is that the Court does not have jurisdiction to make any award for financial remedy and these proceedings should be dismissed. The argument is advanced as follows:

- 1) The only Form A to be considered is that of the Wife dated 12/2/11. The husband does not have a separate application for financial provision before the Court;
- 2) Both parties have been found in the judgment to have remarried. Husband in Pakistan on 11/1/18 and the wife in May 2017. A religious ceremony can amount to a binding legal marriage depending on the circumstances, and the spousal visa issue, combined with the judgment of Recorder Allen QC, along with the information supplied by the husband on his ES1, suggest that husband is officially remarried;
- 3) Section 28 (3) of the Matrimonial Causes Act 1973 states:

"If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries whether at any time before or after the commencement of this Act, that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage."
- 4) Ms Rowe says that cases of Robin v Robin (1983) 4FLR 632 and E v E (2008) 1 FLR 221 show that the husband cannot seek financial provision from the wife unless he has made his own application and prior to any remarriage.

- 5) Therefore, Ms Rowe says this Court cannot make any order, and these proceedings should be dismissed.

28. Mr Mendes De Costa responds that:

- 1) The Court is determining wife's Form A dated 12<sup>th</sup> February 2011, as ordered by Recorder Allen QC;
- 2) Effectively wife is the person applying for a property adjustment order in respect of the family home because the family home was in joint names, it is only now in the wife's sole name because wife forged a consent order and then filed a forged TR1 with the Land Registry to change legal ownership. The wife should be treated as the applicant she was at the time she filed Form A.

29. To determine wife's application for the case to be dismissed, the Court notes the following facts found by Recorder Allen QC:

- 1) Wife filed a divorce petition dated 11<sup>th</sup> December 2010; the petition says the parties separated 20<sup>th</sup> August 2009 since when the parties have lived '*entirely separate and apart*';
- 2) The Acknowledgment of Service was purported signed by husband on the 30<sup>th</sup> December 2010;
- 3) Decree Nisi was granted on 15<sup>th</sup> February 2011;
- 4) The wife's Form A was dated 12<sup>th</sup> February 2011;
- 5) The D81 (statement of information for the consent order) was purportedly signed by both parties on the same date;
- 6) The draft consent order in respect of the finances was purportedly signed by both parties on the same date as the Form A – it transferred the family home to the wife, and recorded that the husband had no interest in wife's other property, and thereafter there was to be a clean break;
- 7) The consent order was approved in boxwork (without a hearing) on the 25<sup>th</sup> February 2011 – it was said to be on the basis that wife would not seek further support for the children;
- 8) Both parties then purportedly signed a TR1 to transfer the family home from joint names to wife's sole name, and the property register was thereafter amended on the 29<sup>th</sup> June 2011;

- 9) On the 6<sup>th</sup> June 2017, the husband issued his own divorce petition based on two year's separation. When it was served on wife, she responded the parties were already divorced;
  - 10) On the 6<sup>th</sup> July 2017, Deputy District Judge Todd dismissed husband's petition;
  - 11) Recorder Allen QC found the husband was unaware of the divorce and financial remedy proceedings, that he did not sign the Acknowledgment of Service, the D81, the consent order, nor the TR1. That these documents were signed by wife, or someone acting on her behalf, and these were deliberately fraudulent acts on wife's behalf.
30. Husband certainly intended to seek a divorce in this jurisdiction before he re-married, although he did not file a Form A when filing his divorce petition. It is now impossible to know whether he would have done so before his re-marriage in January 2018 had matters progressed in the normal way, but the point is he was deprived of that opportunity by wife's fraudulent acts.
31. Ms Rowe relies on *E v E (Premature Remarriage)* [2008] 1 FLR 221; although the citation is 2008 this judgment by Singer J is dated 10<sup>th</sup> October 2006. In that case, the Judge found that wife's petition (which contained a claim for all forms of ancillary relief) could not be relied on by the husband to make an order against herself. Therefore, husband's remarriage a few days after the parties had reached agreement, but before a Form A had been filed at Court, meant he was debarred from making a claim. Ms Rowe relied on a short article written on a Chambers' website setting out that once a party has remarried, they cannot seek financial remedy based on the other party's Form A. The article does not have a date on it, but it seems to be about *E v E* so it could well be from shortly after that judgment was published.
32. Whilst researching this point, I came across the Court of Appeal authority of *Whitehouse-Piper v Stokes* [2008] EWCA Civ 1049, which refers to the case of *Robin v Robin* (1983) 4FLR 632 as '*antique*'. Lord Justice Thorpe states:

*Accordingly, it seems to me plain that the short answer to this appeal is that the wife applied, by her petition, for all forms of ancillary relief. That entitled her to issue a notice of intention to proceed in Form A despite the fact that the application be filed with the court after remarriage. She took that step on*

2 November. She sought an order against herself which was duly achieved. All she failed to do was to show any discretionary entitlement to a balancing lump sum. **The capacity for a party to seek a transfer order against him or herself is clearly established by the decision of this court in Dart v Dart [1996] 2 FLR 286.** Accordingly the jurisdictional point, quite keenly perceived by HHJ Mitchell, does not directly arise in this case. The answer to the problem that he perceived is to be found clearly in the procedure. I do not consider that it is necessary to engage, as the judge did, in an analysis of previous decisions of this court.

33. The parties were given a chance to comment on this authority on the 11<sup>th</sup> October, Mr Mendes Da Costa quickly adopted it and said that it established that the Court has jurisdiction to deal with this case. Wife was not present to make any comment. This is a more recent Court of Appeal authority, so it is therefore binding. In that authority, it is clear, that a party has the capacity to seek a transfer of property order against themselves. In support of that proposition, is the fact that the Court makes such orders all the time. The Court often finds itself making orders that transfer assets away from the applicant, or indeed making orders against their income in favour of the respondent.
34. Further support comes from the fact that Recorder Allen QC found the case should progress on the Form A of the applicant wife, as opposed to setting aside the Decree Absolute (as sought by husband in the proceedings that concluded in 2020). The Recorder's intention by that decision was to focus on what needed to be resolved given both parties wanted to be divorced. The Recorder was plainly not making an order intended to debar husband's claims, or he would have just dismissed the financial remedy application at that stage.
35. Furthermore, there is jurisprudence that parties should not be allowed to benefit from their own fraudulent acts. In particular:
  - 1) Lady Hale sitting in the Supreme Court in *Sharland v Sharland* [2014], in the context of wife being induced to agree a consent order based on false information:

*As was held in Smith v Kay (1859) case, including Kay (1859) VII HLC 749, a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. Furthermore,*

*the court is in no position to protect the victim from the deception , to conduct its statutory duties properly, because the court too has been deceived.*

2) Also, Macur LJ in *Goddard-Watts v Goddard-Watts* [2023] EWCA Civ 115 (15 February 2023):

*‘At another level it raises the equitable principle that a party is not to be allowed to benefit from their fraud by manipulation of the court process to the detriment of the victim of fraud.*

36. The same principle applies here. Wife cannot be allowed to benefit from her own fraudulent actions, or the whole system would be open to manipulation. I also accept Mr Mendes Da Costa’s argument that wife should be treated as applying for a property adjustment order in respect of the family home, which was in joint names, as that would be the position absent her fraud.

37. If I am wrong on those grounds, I would want to examine the detail of husband’s remarriage in Pakistan in detail to see if it does indeed constitute remarriage for the purpose of s.28(3). Husband did rely on his remarriage to N for her to apply to have a spousal visa, which implies he treats that marriage as if it is a legal marriage. However, he was seeking for the Decree Absolute to be set aside in respect of this marriage, so it is clear he did not think there would be an issue of bigamy by the second marriage.

38. I therefore dismiss wife’s legal argument that husband is debarred from pursuing his application in these proceedings and turn to the merits of this case.

### **Wife’s credibility**

39. Ms Rowe was very concerned about how wife’s evidence was going to be treated during this hearing given the previous findings of fraud. Mr Mendes Da Costa submits that because wife’s previous conduct was deliberately misleading to achieve the best outcome in these proceedings, that where wife’s evidence is not supported by other evidence it should be viewed with caution, and that her previous conduct is one factor that can undermine her account.

40. It is open to the Court to take the previous findings of fraud into account when assessing wife’s evidence, as a previous deception once found, obviously 'infects' the fraudulent party in terms of the reliability of their evidence, as per Macur LJ in *Goddard-Watts v*

Goddard-Watts [2023] EWCA Civ 115. However, I am going to treat wife as having a clean sheet in respect of her credibility, given it is over three years from the previous proceedings.

41. I have expressly given myself a Lucas direction, as explained in the judgment of Recorder Allen QC.

### **The parties' evidence**

42. The husband gave evidence first, amongst other things, he told me:

- a) He was still seeing his sons from this marriage between 2010 – 2014/2015, thereafter there was no contact until 2021. Since then, there has been occasional contact for an hour or so in the park, which ceased about three months ago. Since then, he has tried to contact his younger son by telephone, but his son has not answered;
- b) His case is that he paid the mortgage on the family home directly up until December 2010, save for a gap between April 2007 to March 2009 when wife was paying it and he was sometimes transferring funds to her;
- c) Husband says he lived in the family home after wife left in 2010 but came home one day in 2011 to find the locks changed and all his belongings outside;
- d) He said that he offered some ad hoc financial support for the children until the CMS assessment in late 2019. He has then supported the children in line with the various assessments, the original assessment did not include any backdating sum;
- e) He accepted that he sent the judgment of Recorder Allen QC effectively with a complaint about wife's conduct to the ACCA (which is the professional body that regulates accountants). He denied he had done the same in 2016. He said he did it because it was in the public interest. Tellingly, in my view, he went on to say that wife had humiliated and disgraced him. He also accepts he made a complaint to the Police about wife forging his signature, he said that would be *'justice'*. It was suggested in cross-examination, that by doing these acts, husband did not care about the impact on the children. He replied that in doing the acts in the first place it was wife who did not care about the children;
- f) He said that his most recent tax return was not yet due, but it would show an increase in his income because he is now driving elite cars. His past profit was £13,755 (although with a high figure for depreciation on the car), he

believes that his profit in the future would be £18,000p.a. He did not accept that he had other sources of income from driving;

- g) Husband filed his evidence as a litigant-in-person. It shows that he does not have a mortgage capacity, and that he would need £350,000 to re-house in the area where he lives. When pressed that even if his case was successful, it would not enable him to buy a house, he said that he would move to a cheaper area in England;
- h) He said that wife has not been living in the family home, that he walked past on one occasion and saw lots of different people from different ethnicities in the house (which he thought indicated they were not one family), also that they were smoking so he thought it looked like they were all separate tenants rather than a family home;
- i) He also paid for a report from 192.com which shows who was on the electoral role at the family home, which indicated that wife was not on the electoral role at the family home between 2013 and 2017, and that there were other people registered at the property at times from 2015;

43. The wife told me, amongst other things, that:

- a) She has generally tried to represent herself, with some help from previous solicitors;
- b) That the evidence filed which shows husband making payments to the mortgage of the family home are the only payments husband made to the mortgage (and not a sample as he suggests);
- c) That she re-mortgaged the rental property in April 2023. That it has been vacant for the past two years, but she agreed a tenancy agreement in April 2023;
- d) That she was working up until end of April 2023. She is now job-seeking but had a temporary job for four weeks to cover sick leave in which had gross salary of £65,000p.a.
- e) She has always lived in the family home, that reference to her living at the other property are when it has been vacant and therefore reverts back to her as landlord;
- f) That she has used her mum's address as times because she is out at work, and wants important mail to go to her mum's house, where her mum will be able to receive it on her behalf;



- g) She said that other names registered at the family home are from when she has had lodgers and they have used the address to apply for credit cards and things, but then failed to take themselves off the address;
- h) She remarried on the 20<sup>th</sup> May 2017 and her husband moved in on the date of the marriage. He has not appeared on the report husband obtained because he has never applied for a credit card there. There have not been any lodgers since her husband moved in;
- i) That she received a fine from the ACCA in 2017;
- j) That she owes money to her mother which she has borrowed to buy the two properties.
- k) Wife was asked why she did not mention the loans to her mother in the first Form E filed on her behalf, wife blamed that on the solicitors instructed at the time;
- l) She accepted that although she is not working at the moment, that she is actually able to apply for jobs as an accountant;
- m) She denied that she had only rented out the rental property now to prevent the Court finding that she could live in it and the family home could be sold to meet her liabilities, she said that she and the children had always lived in the family home.

44. Wife's mother gave evidence; she spoke rather broken English. Her first language is Urdu, her son had written her statement and read it to her before she signed it. She said she was happy to proceed without an interpreter. Nobody asked me to adjourn the case to a different date for an interpreter. I got the impression that she was able to understand basic questioning when it was put to her as (with some repetition and clarification), as she was responding to what was being asked. She told me:

- 1) She lent her daughter £140,000 and she wants it back;
- 2) That she has worked on, and off, as a sewing machine, machinist;
- 3) She wants to make a Will and for her son to have his share;
- 4) That her daughter has helped her financially at times; and
- 5) That her sons need money to buy houses;

### **Computation of the assets**

45. To determine the assets in this case, the Court needs to determine whether wife owes her mother £140,000. Wife has filed two Forms E, both with the assistance of her previous

solicitor, but she says that she was doing the work herself and just referred to a solicitor for advice when required. Her initial Form E is dated 15<sup>th</sup> April 2020. It is signed by the solicitor on her behalf. It is a detailed Form E but makes no mention of any loans to her mother. It includes reference to borrowing from *friends & family (breakdown to follow)* of £18,800. Wife's second Form E is dated 10<sup>th</sup> June 2020. It is signed by the same solicitor on wife's behalf. That Form E, includes reference to two items not previously mentioned:

- A £50,000 loan from wife's mother in respect of the purchase of the family home, and
- That her mother has a 44.8% beneficial interest in the rental property, arising from investment of £80,000 in 2009 when the property was held in joint names with wife's brother. The property was transferred into wife's sole name on 31/8/2012 and wife paid her brother £30,000.

Wife decided not to pursue the case that her mother has a beneficial interest in the rental property at an earlier hearing, but she says that she must return the money used for the respective purchases.

46. Wife had filed a bank statement dated 12<sup>th</sup> August 2009 which shows a transfer entitled '*loan S\*\*\* 1670212322*' for £140,000. It then shows a payment out on the 8<sup>th</sup> September to G & Sons (the conveyancing solicitor). The font clearly looks different on that part of the bank statement. Wife was asked if she had tinkered with the bank statement, and she replied '*not at all*'. Given my concern about there being a different font on that part of the bank statement I required a further copy from Barclays Bank. In the original bank statement filed by wife in these proceedings, it states that wife received £140,000 on the 12<sup>th</sup> August 2009 with the reference set out in paragraph 44 above. In the bank statement for the same account received directly from Barclays there is no transfer from wife's mother on that day for £140,000. In fact, on the 4<sup>th</sup> August, there was a transfer in from Nationwide Building Society for £129,939.25 and then payments out of £143,000, certainly one of which went to G & Son. Wife would have had a chance to explain these differences, or to acknowledge changing the bank statement, when the case came back but she did not attend.

47. In light of the wife's non-attendance I have considered, with care, how it might be that the two versions of this bank statement have come to be produced to the court. I am driven to the conclusion that the wife has tampered with the bank statement to support

the case she advanced that she had received the money from her mother. That is, in my view, the only proper conclusion to be drawn, and is a conclusion which I am able to reach despite approaching her credibility with a clean sheet. I am fortified in my conclusions by the changes the wife made to her Form E, and, to a lesser extent, that it appears unlikely that her mother (who has worked on and off as a machinist) would have been able to raise this sum of money, and would then have lent it to one of her children and excluded the others. I find as a fact that these loans do not exist, and the sums paid for the deposit and the staircasing were paid from wife's resources.

48. Looking at the ES2, the other issues are:

- a) Whether there are early repayment penalties on the two mortgages, wife says there are penalties but has not filed any evidence of them - so I am not including those figures;
- b) There will always be a CGT liability accruing on one or other of these properties, wife says she owes £91,756 in respect of the rental property. I asked Mr Mendes Da Costa to work through his own calculation, and having done so, he accepted this figure, albeit his case is that wife has actually spent time living at this property not the family home;
- c) Whether wife owes £2,513 on her current account – I have included that;
- d) Whether husband owes friends and family £35,000 – I have not included these figures. Husband told me that from time-to-time his friends and family lend him money, to deal with this case and family hardship. He said that he has promised that they will get something back at the end of this case. The only evidence is some emails saying that they have lent the husband money but nothing more. Having considered the factors in *P v Q (Financial Remedies)* [2022] EWFC B9 (10 February 2022), I find these loans are soft loans. I have no evidence of any precision in respect of these loans, or any details of what the repayment terms are said to be. They have the sense of an informal obligation, as opposed to any kind of commercial arrangement.
- e) I am removing the husband's car loan from the schedule, as there is a matching asset which does not appear either;

- f) Husband says that he owes his former solicitors £3,500 and £6,220 so a total of £9,720, which have been incurred since the hearing before Recorder Allen QC. There is no written evidence to verify the sum in the bundle, but I accept his evidence. He has been accurate about various other figures. I remind myself that these are the same sums that are sought as part of husband's claim for costs. Therefore they should be on the ES2, but they must not be double-counted when assessing the effect of my order;
- g) I accept the figures given for the liabilities to utility companies that husband identifies. There are bills verifying most of the sum, and I accept his evidence that there was another £600 already incurred;
- h) Wife says she owes N finance, self -assessment tax, and liabilities for her son's tuition fees and accommodation fees at university. She puts that as a total of £49,905; the figure is not broken down on the ES2. Husband does not accept any of these sums as outstanding liabilities and says that wife should be treated as having no debts. I have found this blanket approach from both parties unhelpful, as it has left me to pick through the various statements whilst writing this judgment. During the hearing, it was suggested to wife that she had changed the name on a water bill, as the font for her name looks different to the rest of the font used. I made an order against the water company to forward another copy of the bill. The water company did not respond to the order, and I considered it disproportionate to pursue that issue to another hearing. Whilst picking through all the various bills to consider how the sum of £49,905 was reached, as part of writing this judgment, I began to worry that on several of the other bills the fonts look different in places. On the N finance bill, the Barclays arrears notice, and the HMCTS claim, they all look like the name is in a different font to the rest of the bill. Had this been identified to me during the trial I would have made orders to access original copies of all these documents. It would not be fair for me to exclude these liabilities now without wife having the opportunity to give evidence, and it is just not proportionate for me to make disclosure orders and delay this case further. Therefore, I have included the wife's figure for her liabilities on the ES2, but with real hesitation about the veracity

of a lot of these liabilities, which would all have to be investigated further if this case was ever to return to Court;

- i) I have changed the value of husband's B pension. Husband disclosed that he had a pension with B in his Form E. In cross-examination, a pension statement was put to him from wife's supplementary bundle which showed a Transfer Value of £72,774 dated 2021. During his evidence, husband said that figure could not be correct as he had only worked for B between 2006 until 2009; although the statement recorded different dates. As a result of this confusion, and given there was a delay in any event, I directed an expedited pension statement. This shows an up-to-date figure of £36,851.28. I have added that figure to the ES2.

49. I made the point during the trial that where the figures are a matter of record, and there is nothing unusual about the evidence, the figures should have been agreed instead of the Court picking through evidence.

50. I have not included the sums that relate to the previous costs orders of Recorder Allen QC at this point, as to do so would skew the schedule. I therefore use the following:

	Husband	Wife	
Family home		£437,500	
Mort		(£100,000)	
Costs		(£15,000)	
<b>Total</b>		<b>£322,500</b>	
Rental property		£575,000	
Mort		(£340,000)	
Costs		(£15,000)	
CGT		(£91,756)	
<b>Total</b>		<b>£128,244</b>	
<b>Bank accounts</b>	<b>£1,052</b>	<b>£158,616</b>	
<b>Liabilities</b>			
Soft loans	£0		
Other liabilities	(£61,412)	(£49,905)	
Outstanding legal costs	(£9,720)		
<b>Sub-total:</b>	<b>£ (70,080)</b>	<b>£559,455</b>	<b>£ 489,375</b>
<b>Pension</b>			
Wife		£4,700	
Husband	£ 36,851		
<b>Sub-total</b>	<b>£ (33,229)</b>	<b>£564,155</b>	<b>£530,926</b>

The parties had agreed the figures for the costs of sale on the properties themselves in advance of the hearing.

## **S.25 factors**

51. I turn now to consider the relevant factors identified in s.25 and will determine the disputed elements within that analysis.

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

52. The relevant child of the family is T. He is 13 years old and lives with his mother, with very limited contact to his father. His father now supports him by CMS payments. He was not supported earlier in his childhood by his father, although that was at the time his mother had defrauded his father of his share in the family home, and her official position was the transfer of property was in exchange for husband not paying child support so she could not really pursue a claim. T's welfare is my first consideration.

### **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;**

53. The parties do have very different earning capacities. Wife is a qualified accountant. She has agreed that she can earn up to £77,000 gross per annum on the ES2, and in evidence she said up to £66,000. Husband is a driver; he estimates his earning capacity is £18,000 per annum. I find he may have capacity for slightly more, but his current income is supplemented by housing benefits of £240 every other week which is means tested. His family also receive child benefits of £135 every four weeks.

### **The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;**

54. I have largely dealt with the parties' resources above. The secondary argument made by wife is that she says she has almost entirely repaid the mortgage and improved the family home herself, and that the rental property is non-matrimonial property. The parties moved into the family home together. The initial purchase in 2006 was as a shared ownership property. There is no dispute that it was purchased in joint names with a joint mortgage from Santander, and a deposit from L&Q in return for 25% ownership. Wife says there was a declaration of trust, in respect of the property that husband had 20% and wife had 80%. Husband denies that there was a declaration of

trust, and Recorder Allen QC commented that seems to be no obvious reason why it would be held in that way, given how the purchase was funded. In 2009, the property was 'staircased' to a 100% outright ownership to husband and wife in return for a payment of £50,000. Wife says that husband had nothing to do with staircasing the property. Husband says the only reason that wife could afford to raise the £50,000 at that time was because of his financial contribution to the family.

55. In respect of the family home, I see no reason to treat it as anything other than matrimonial property. If wife had not fraudulently signed the documents, it would still be in joint names. The property was bought in the marriage, and husband was paying the mortgage at times. Wife says thereafter she has paid the mortgage and invested various sums like the cost of the new kitchen, she says husband should not have the benefit of those investments and the increase in property price caused by the delay. However, I come back to the fact that the substantial part of the delay was caused by wife's fraudulent actions. Had the Court been allowed the opportunity to properly determine this case in 2011 when wife submitted her Form A, she would have had the benefit of her efforts and investment thereafter.

56. A lot of time was spent in evidence considering whether wife had lived at the family home with the children since the parties' separated. Husband's case was that the wife and the children have been living at wife's mother's property until some point earlier this year, when he accepts that they moved back into the family home but says that was done for litigation advantage. Wife's case was that she and the children have lived in the family home since the day it was purchased, save for the short period when husband occupied it alone. I do not consider it necessary to go into the detail of where wife and the children have lived over the years to determine this case. I find that there was a period when wife and the children did not reside at the family home, and I find that they live there now.

57. In respect of the rental property, wife says this is clearly non-matrimonial property because on her case it was purchased after the conclusion of the marriage, and that husband did not even know about it at the time. Husband says it is matrimonial property because wife was able to save the money for the deposit whilst they were in a relationship and sharing costs, including husband paying the mortgage on the family home. Given I have already found that the funds for the deposit, and the staircasing of

the family home have come from wife's own resources (and not her mother's) there is some weight to husband's argument but there is nuance to the situation. I recognise it was bought just before the end of the marriage, that husband did not know anything about it, and wife has maintained the property throughout. Wife has clearly struggled to maintain these two properties and their mortgages, at times, since separation especially over the last two years.

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

58. There are hard needs on both sides of the case. Meeting T and Q's needs has been tough at times for wife.
  
59. Wife also cares for Z with her second husband. Husband also has three small children from his family with N. The needs of Z and husband's three children are not a need created by this marriage. However, the fact that the parties have responsibilities to other children do form part of the circumstances of the case. Whilst there have been unattractive elements of both parties' conduct as I will come to below, I recognise that each of the party's actions is driven by trying to do their best for the children in their care.
  
60. If there was more money available, the Court would strive to have the parties accommodated in similar housing, but the points made about the ability of husband to purchase a property are fair. Husband would need £350,000 to purchase a house and he has no mortgage capacity. I do not accept that he would move to a cheaper area of the country and would be able to purchase a property for the sum he wants to receive. If there is such a place in England, it is not clear that husband would be able to generate the same sums as a driver of elite cars. The husband has a pressing number of debts. The wife says that these debts must be considered as non-matrimonial liabilities, as they are created after the marriage, and therefore should not be considered as needs in this case. The difficulty with that analysis in this case, is that it is the wife's acts that have kept husband from having his share. It is impossible for the Court to analyse whether husband would have less liabilities if he had received his share and been able to move on after the Form A was filed in 2011.

**The standard of living enjoyed by the family before the breakdown of the marriage;**



61. The parties lived initially in a council property that they were able to purchase during the marriage.

62. I find that there are insufficient sums in this case for the Court to be able to achieve purchased accommodation for both parties.

**The age of each party to the marriage and the duration of the marriage;**

63. The husband is 53 years old and wife is 43 years old. They were married for eight-years from September 2002 until December 2010.

**Any physical or mental disability of either of the parties to the marriage;**

64. The husband has some ill-health. He says it is caused by the experiences of this marriage. I have no doubt that these proceedings have caused untold stress to both parties. They must have been living with a weight constantly on their shoulders wondering what was going to happen. However, I do not have the evidence to find that the husband's ill-health is caused by the marriage.

**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;**

65. The main distinction between the parties is the contribution that the wife has made, and continues to make, to the family by caring for their children. The other child of the family 'Q' is no longer a minor, so he is not my first consideration, but he is part of the circumstances of the case. He is only 19 years old and at university, his mother still cares for him and accommodates him when he is not at university. She is liable for his university accommodation costs if he does not pay them.

66. The wife complains that the husband has had nothing to do with their children. I accept that the husband has made limited effort, but I also find that the wife made it very hard for him when he did try. I have dealt with my findings about child support above.

**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;**

67. Both parties say that the other's conduct should be considered when assessing the outcome in this case. Mr Justice Peel has just given guidance about how to approach a

case involving allegations of conduct in Tsvetkov v Khayrova [2023] EWFC 130 (04 August 2023):

*A party asserting conduct must, in my judgment, prove:*

*i) the facts relied upon;*

*ii) if established, that those facts meet the conduct threshold, which has consistently been set at a high or exceptional level; and*

*iii) that there is an identifiable (even if not always easily measurable) negative financial impact upon the parties which has been generated by the alleged wrongdoing. A causative link between act/omission and financial loss is required. Sometimes the loss can be precisely quantified, sometimes it may require a broader evaluation. But I doubt very much that the quantification of loss can or should range beyond the financial consequences caused by the pleaded grounds.*

*This is stage one.*

*If stage one is established, the court will go on to consider how the misconduct, and its financial consequences, should impact upon the outcome of the financial remedies proceedings, undertaking the familiar s25 exercise which requires balancing all the relevant factors.*

*This is stage two.*

68. The judgment of Lord Justice Moylan in *TT v CDS (Rev 1)* [2020] EWCA Civ 1215 (18 September 2020), that the Court must be entitled to prioritise the needs of the party who has not been guilty of such conduct, and this may result in the other party's needs not being satisfied, is also pertinent.

69. The husband says that the wife's acts as found by Recorder Allen QC, and now by me, in respect of fraudulently tampering with the bank statement would be inequitable to disregard. The facts have been appropriately pleaded, and I have dealt with the findings about them above. I am clear that this extreme set of facts with the wife repeatedly trying to mislead the Court meets the high test of conduct that would be inequitable to disregard. The Court must consider what financial detriment has flowed from these acts. Undoubtedly the level of costs has been caused by wife's acts, which I will address below. I also find that there will have been other financial loss to the husband, but it is now impossible to quantify. The wife says the equity in the family home has increased over this time, as she has paid the mortgage, and made improvements so the value of the

property has increased. Wife says that the Court should use earlier valuations, or the valuations at the time of the hearing in front of Recorder Allen QC, to stop husband having that benefit. However, the Court uses valuations at the date of trial and I see no reason to depart from that when all the delay flows from wife's original acts. Nor am I not going to permit any deductions for capital repayments to the mortgage, or take into account sums to repay investments made by wife given the circumstances. I find that will appropriately consider wife's conduct that is inequitable to disregard, together with the award I am going to make in respect of costs.

70. In respect of the wife's conduct case, she says that the husband's actions in disclosing the judgment of Recorder Allen QC to the Police, and the ACCA, is conduct that would be inequitable to disregard. There is no dispute that husband did those acts. He told me in evidence that he had considered that he had a public duty to do so, although went on to say that the wife had humiliated and disgraced him. Just before this case returned to Court in October 2023, I contacted Recorder Allen QC who sent me the second judgment from the earlier part of this case to me that is set out in paragraph 12 above. That judgment deals with costs and ancillary matters including disclosure of his first judgment. I had not seen that judgment when I was hearing the case in July, and I suspect neither of the barristers instructed were aware of it either or they would have brought it to my attention. When I read that judgment, I saw that this point was considered by the Recorder, and he had in fact raised this issue and asked the parties to address him on it. The Recorder concluded:

*In striking a balance between the competing interests in this case I consider that this is a case where the wrongdoing and 'loss' can reasonably enough be remedied within the family proceedings themselves and that this is not outweighed by any wider public interest. No third parties were affected by W's actions. I reject the submission that W is in some way "dangerous to the public" and/or a "potential danger to her community". I also take into account the question of proportionality which includes the fact "that I have not set aside" the Decree Absolute. Although W has not made any apology I do not consider that in this case this detracts from (as described by Charles J in A v A; B v B) the "general practice ... pursuant to which the court does not report the matter to the prosecuting authorities" particularly because the wrongdoing is not 'external' to the case. Further I take into account that this*

*was an issue I raised to which H is said to “consent” rather than it being an application that was made on his behalf.*

71. It is plain from this judgment that the husband knew he did not have a public duty to disclose the judgment - in fact quite the opposite. When the case came back in October, I asked the husband if he wanted to re-visit what he had told me in July considering the content of this second judgment. He told me that he did not know that the Court had directed the judgment should not be disclosed as he did not have a copy of the second judgment. I found that unconvincing. Even if he did not have a copy of the second judgment to hand, he would have known that issue was going to be determined as his legal team took his instructions to make submissions, so he could have found out what the Judge found.

72. The submissions made on the husband’s behalf to Recorder Allen QC reveal that the husband was of the view that the judgment should be disclosed because there was a question as to whether the wife should be allowed to continue to act as an accountant:

*“ ... relied on the fact that she is an accountant to persuade the court that she is a person of integrity who was telling the court the truth. This makes her dangerous to the public and creates a serious concern which makes it to be in the public interest to alert the public of her being a potential danger to her community. It is in the public interest to take any appropriate action that will protect the public from the activities of a serial unrepentant fraudster who is prepared to mislead the court in order to retain a property fraudulently transferred to [her] sole name.”*

73. In her statement, the wife says that she lost her employment as a civil servant on the 30<sup>th</sup> August 2022 after two-decades of employment and incurred legal fees as a result of the ACCA investigation. There is an exhibit in the bundle that evidences that she lost her job because of the complaint. The husband says he does not believe this evidence and does not believe she lost her job because of his actions. I find that a surprising defence given his very intention when disclosing the judgment was for wife to lose her job, or her certification to practice - he achieved what he set out to do. I find that the husband disclosed the judgments as a vengeful act. The wife had humiliated him and disgraced him in his view, so he did the same to her.

74. I find that losing her job would have caused the wife financial hardship, especially given she is the parent who has largely raised and financially supported their children. I find that conduct is inequitable to disregard. The two things that reduce the severity of his conduct to my mind is that all this flows from the wife's conduct in the first place, and husband took these vengeful steps in the context of suffering his own financial hardship caused by the wife's conduct. The question then is what financial loss flows from this conduct. Wife lost her job and then had a period of unemployment. The evidence is that she has had two temporary contracts since then. When she gave evidence in July wife said that she was job-seeking. Had wife attended Court in October, she could have identified precisely what income had been lost. Without her present, nor any written evidence, I estimate a figure of £10,000 loss which is just over a couple of months pay.
75. I do not find the report to the Police caused any financial loss; therefore it does not require any separate adjustment to my award.

### **Determination**

76. Taking all of that into account, I conclude that there should be a declaration that the husband is the joint beneficial owner of the family home, and he should have been registered as the joint legal owner after the proceedings before Recorder Allen QC.
77. This is a needs-based award; where the parties' assets are insufficient to meet all of their needs. Husband should be able to clear his debts and will have some funds available. On his own evidence he would not be able to re-house on that sum, but I do not accept that would mean his award should be restricted to the sum not to impact his housing benefit. Wife also needs housing and the ability to pay off debts. To stay in the family home and repay every pound of her debts, she would need £372,405. Whilst my award would leave her short of that sum, in my judgment she would be able to manage the remaining liability. The figure most importantly ensures that T needs are met with wife by being able to stay in his home, and also reflects the difference in contribution from the parties.
78. Wife should pay husband a lump sum of £150,354. I would have ordered £160,354 but I have adjusted the figure down because of husband's conduct resulting in wife losing her job.

## Costs

79. In respect of the costs' awards, I accept the calculation from the previous proceedings that wife owes £39,337. The husband was represented by Solicitors and Counsel in that hearing, I do not really understand the argument that he needs to provide evidence that he actually paid the sum. Their services did not come for free.
80. The husband is also seeking £26,700 which is every pound he has paid in costs since the hearing before Recorder Allen QC. The husband has virtually achieved the outcome he was seeking, however because the papers in this case were put together by the parties without representatives there were no open offers in advance of the hearing. That said, it is clear from husband's s.25 statement that he was seeking a share of the house.
81. The wife's position has not been reasonable. Whilst I accept that the legal argument that the husband was debarred from pursuing his case was driven by wife's legal representatives, the position that husband should not have more than £16,000 reflects the wife's approach throughout. Her litigation conduct by tampering with the crucial bank statement has been atrocious. Therefore, the wife should pay a portion of the husband's costs, and because of the extreme circumstances of the wife tampering with the bank statement, I conclude that costs should be awarded on an indemnity basis.
82. In my judgment, wife should pay 50% of husband's costs on an indemnity basis. This is not a run of the mill costs award made against a party who has pitched somewhat unrealistically, this is an award that reflects that wife has done her utmost, including manipulating the evidence, to ensure the husband has nothing. The total the wife therefore has to pay the husband is £203,041. If she has kept the £138,624 that she agreed to place with her solicitors, then she would have to find just shy of £65,000. If she no longer has that sum, because of her own actions, the family home will have to be sold.
83. On my calculations, the effect of my order is as follows:

	Husband	Wife	
Total	-£60,360.00	£559,455.00	*This does not include the outstanding costs from this case or the previous order
Lump sum	£150,354.00	-£150,354.00	
<b>Total:</b>	<b>£89,994.00</b>	<b>£409,101.00</b>	<b>£499,095.00</b>
	18%	82%	
Plus pension	£126,845.00	£413,801.00	£540,646.00
	23%	77%	
Costs from previous judgment	£39,337		
Costs from these proceedings	£13,350		
<b>Total</b>	<b>£52,687</b>		
Outstanding costs	(£9,720)		
	£42,967		
<b>Total with costs award</b>	<b>£132,961</b>	<b>£356,414.00</b>	

## Order

84. The order I make is as follows:

- 1) The husband is the joint beneficial and legal owner of the family home, and that should have been recorded with the Land Registry after the hearing before Recorder Allen QC;
- 2) That the wife shall pay the husband a lump sum of £150,354 in order to have the husband's interest in the family home discharged;
- 3) That in the event the wife has not paid the lump sum by the 27<sup>th</sup> November 2023 that the family home shall be marketed for sale immediately;
- 4) I make the following consequential provisions:
  - i. The husband shall identify three selling agents by no later than 1<sup>st</sup> November, and the wife shall select one by the 20<sup>th</sup> November 2023;
  - ii. The wife may select her choice of conveyancing solicitor, but if she fails to identify a solicitor the Court will select one;
  - iii. The wife shall have conduct of sale, but the estate agents shall inform the husband of every attempted viewing, viewing, their recommendations as to the asking price, and what amount should be accepted;
  - iv. The proceeds of sale shall be allocated:
    - a. To repay the mortgage;
    - b. To repay the estate agent;
    - c. To repay the conveyancing solicitor;
    - d. To pay the husband a lump sum of £150,354;
    - e. To pay the husband the costs awarded below in the sum of £52,687;
    - f. The remainder to the wife;

- 5) This judgment to be served on the wife by the Court and by the husband. I approve that to be via alternatives forms of service, including email;
- 6) Permission to disclose this judgment to the Court dealing with the Schedule 1 claim between the parties;

85. Please can Counsel draft the order as swiftly as possible.

#### **Disclosure of this judgment**

86. This judgment should not be disclosed to third parties including the Police, or the ACCA, for essentially the reasons that Recorder Allen QC set out in 2020. The wife's conduct, unbecoming as it has been, is in relation to these properties, and her marriage to the husband, it does not create a wider risk to the public. There is nothing in this case that gives me concern about how she would conduct herself professionally. Husband has not sought to persuade me otherwise and has reassured the Court that he accepts and understands this decision.

87. However, this judgment must be made available to any Court that is dealing with future financial litigation between the parties, and specifically to the Judge who is dealing with the Schedule 1 application, and any enforcement applications.

#### **Anonymous publication**

88. This is a good example of the complexity and practical difficulties faced by District Judges and Deputy District Judge every day. I therefore intend to publish the judgment anonymously as part of the drive to achieve greater transparency about the workings of the Financial Remedy Court.

DDJ Mehta

23<sup>rd</sup> October 2023